ANNEX F

REQUEST FOR THE ESTABLISHMENT
OF A PANEL

WORLD TRADE ORGANIZATION

WT/DS268/2
4 April 2003

(03-1912)

Original: English

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

Request for the Establishment of a Panel by Argentina

The following communication, dated 3 April 2003, from the Permanent Mission of Argentina to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 7 October 2002, the Government of the Republic of Argentina requested consultations with the Government of the United States of America pursuant to Article 4 of the World Trade Organization (WTO) Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement) regarding the determinations of the US Department of Commerce (Department) and the US International Trade Commission (Commission) in the sunset reviews of the anti-dumping duty measure on oil country tubular goods (OCTG) from Argentina.

The first consultation was held in Geneva, Switzerland, on 14 November 2002. A second consultation was held in Washington, D.C., on 17 December 2002. While the consultations enabled the parties to gain a better understanding of their respective positions, unfortunately the consultations failed to produce a mutually agreeable solution.

In the original anti-dumping duty investigation of OCTG from Argentina covering the period 1 January 1994 through 30 June 1994, the Department determined that Siderca S.A.I.C. (Siderca), an Argentine producer and exporter of OCTG, was dumping at a margin of 1.36 per cent.[1] The

[1] *Final Determination of Investigation of Sales at Less Than Fair Value of Oil Country Tubular Goods From Argentina,* 60 Federal Register 33539 (28 June 1995). The 1.36 per cent margin was calculated on the basis of the Department's practice of "zeroing" negative dumping margins.

Department did not conduct a substantive administrative review of the anti-dumping duty measure on OCTG from Argentina in the five years following its imposition.

On 3 July 2000, the Commission and the Department initiated sunset reviews of the anti-dumping measures on OCTG from Argentina, Italy, Japan, Korea, and Mexico.[2] Based on the Department's determination that the responses submitted by Argentine respondent parties to the initiation notice were "inadequate", the Department conducted an "expedited" sunset review of the anti-dumping duty measure applicable to OCTG from Argentina (Department's Determination to Expedite).[3] On the basis of the "expedited" review, the Department determined that termination[4] of the anti-dumping duty measure on OCTG from Argentina would be likely to lead to continuation or recurrence of dumping at 1.36 per cent (Department's Sunset Determination).[5]

The Commission determined that termination of the anti-dumping duty measure on OCTG (other than drill pipe – i.e., casing and tubing) from Argentina, Italy, Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (Commission's Sunset Determination).[6] The Commission also determined that termination of the anti-dumping duty measure on drill pipe from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. On 25 July 2001, the Department issued a determination to continue the anti-dumping duty measure on OCTG from Argentina (Department's Determination to Continue the Order).[7]

The Republic of Argentina considers that the Department's Determination to Expedite, the Department's Sunset Determination, the Commission's Sunset Determination, and the Department's Determination to Continue the Order are inconsistent with US WTO obligations, and that certain aspects of US laws, regulations, policies and procedures related to the administration of sunset reviews are inconsistent with US WTO obligations. The Republic of Argentina requests that a panel be established in accordance with Articles 4.7 and 6 of the DSU to address the specific claims related to the US sunset reviews of anti-dumping duty measure on OCTG from Argentina as set forth below.

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[2] *Notice of Initiation of Five-Year ("Sunset") Reviews*, 65 Federal Register 41053 (3 July 2000) (Department's notice); *Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico*, 65 Federal Register 41088 (3 July 2000) (Commission's notice).

[3] *Oil Country Tubular Goods From Argentina: Adequacy of Respondent Interested Party Responses to the Notice of Initiation*, Department of Commerce Memorandum For J. May from E. Cho, No. A-357-810 (22 Aug. 2000).

[4] Referred to as "revocation" under US law.

[5] *Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods From Argentina, Italy, Japan, and Korea*, 65 Fed. Reg. 66701 (7 Nov. 2000) (together with the Department of Commerce Issues and Decision Memorandum for the Expedited Sunset Reviews of the Anti-Dumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, and Korea, dated 31 October 2000, and incorporated by reference into the Department's Sunset Determination).

[6] *Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico*, Inv. Nos. 701-TA-364 (Review), 731-TA-711, and 713-716 (Review), USITC Pub. 3434 (June 2001); 66 Federal Register 35997 (10 July 2001).

[7] Continuation of Countervailing and Anti-Dumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders from Argentina and Mexico With Respect to Drill Pipe, 66 Fed. Reg. 38630 (25 July 2001).

A. THE DEPARTMENT'S DETERMINATION TO EXPEDITE AND THE DEPARTMENT'S SUNSET DETERMINATION ARE INCONSISTENT WITH THE ANTI-DUMPING AGREEMENT AND THE GATT 1994

1. US laws, regulations, and procedures regarding "expedited" sunset reviews are inconsistent with Articles 11, 2, 6 and 12 of the Anti-Dumping Agreement. In particular, 19 U.S.C. § 1675(c)(4) and 19 C.F.R. § 351.218(e) operate in certain instances to preclude the Department from conducting a sunset review and making a determination as to whether termination of an anti-dumping duty measure would be likely to lead to continuation or recurrence of dumping, in violation of Articles 11.1, 11.3, 11.4, 2.1, 2.2, 2.4, 6.1, 6.2, 6.6, 6.8, 6.9, 6.10, 12.2, 12.3, and Annex II of the Anti-Dumping Agreement. When a respondent interested party is deemed by the Department to have "waived" participation in the Department's sunset review, US law mandates that the Department find that termination of the order would be likely to lead to continuation or recurrence of dumping, without requiring the Department to conduct a substantive review and to make a determination based on the substantive review.

2. The Department's application of the expedited sunset review procedures in the sunset review of OCTG from Argentina was inconsistent with Articles 11, 2, 6 and 12 of the Anti-Dumping Agreement because: (1) Siderca was deemed to have waived its right to participate in the sunset review, despite its full cooperation with the Department, in violation of Articles 11.1, 11.3, 11.4, 2.1, 2.2, 2.4, 6.1, 6.2, 6.6, 6.8, 6.9, 6.10, 12.2, 12.3 and Annex II; (2) the Department did not in fact conduct a "review" within the meaning of Article 11.3; and the (3) the Department failed to "determine" – as required by Article 11.3 – whether termination of the anti-dumping order would be likely to lead to continuation or recurrence of dumping.

3. The Department's Determination to Expedite the review of Argentina solely on the basis that Siderca's shipments to the United States constituted less than 50 per cent of the total exports from Argentina was inconsistent with Articles 11.1, 11.3, 11.4, 2.1, 2.2, 2.4, 6.1, 6.2, 6.6, 6.8, 6.9, 6.10, 12.2, 12.3 and Annex II of the Anti-Dumping Agreement.

4. The Department's Sunset Determination is inconsistent with Article 11.3 of the Anti-Dumping Agreement, and Article X:3(a) of the GATT 1994 because it was based on a virtually irrefutable presumption under US law as such that termination of the anti-dumping duty measure would be likely to lead to continuation or recurrence of dumping. This unlawful presumption is evidenced by the consistent practice of the Department in sunset reviews (which practice is based on US law and the Department's Sunset Policy Bulletin).

5. The Department's application of the standard for determining whether termination of anti-dumping measure would be "likely to lead to continuation or recurrence of dumping" is inconsistent with Articles 11.1, 11.3, 2.1, 2.2, and 2.4 of the Anti-Dumping Agreement. The Department's finding in this case that dumping was likely to recur in the event of termination, and that the likely margin of dumping would be 1.36 percent, is inconsistent with the standard established by Article 11.3 of the Anti-Dumping Agreement. The Department's reliance on the 1.36 per cent margin from the original investigation cannot support a determination that dumping would be likely to continue or recur under Article 11.3. In addition, the 1.36 per cent margin – calculated on the basis of the Department's practice of "zeroing" negative dumping margins – cannot support the Department's Sunset Determination or the Department's Determination to Continue the Order.

B. THE COMMISSION'S SUNSET DETERMINATION WAS INCONSISTENT WITH THE ANTI-DUMPING AGREEMENT AND THE GATT 1994

1. The Commission's application of the standard for determining whether the termination of anti-dumping duty measure would be "likely to lead to continuation or recurrence of ... injury" was

inconsistent with Articles 11, 3 and 6 of the Anti-Dumping Agreement. The Commission failed to apply the plain and ordinary meaning of the term "likely" and instead applied a lower standard in assessing whether injury would continue or recur in the event of termination, in violation of Articles 11.1, 11.3, 11.4, 3.1, 3.2, 3.3, 3.4, 3.5, and 6 of the Anti-Dumping Agreement.

2. The Commission failed to conduct an "objective examination" of the record and failed to base its determination on "positive evidence" regarding whether termination of the anti-dumping duty measure "would be likely to lead to continuation or recurrence" of injury. In particular, the Commission's conclusions with respect to the volume of imports, price effects on domestic like products, and impact of imports of the domestic industry demonstrate the Commission's failure to conduct an objective examination in violation of Articles 11, 3, and 6. The Commission's findings on these issues do not constitute "positive evidence" of likely injury in the event of termination, in violation of Articles 11.1, 11.3, 11.4, 3.1, 3.2, 3.3, 3.4, 3.5, and 6 of the Anti-Dumping Agreement.

3. The US statutory requirements that the Commission determine whether injury would be likely to continue or recur "within a reasonably foreseeable time" (19 U.S.C. § 1675a(a)(1)) and that the Commission "shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time" (19 U.S.C. § 1675a(a)(5)) are inconsistent with Articles 11.1, 11.3 and 3 of the Anti-Dumping Agreement.

4. The Commission's application of a "cumulative" injury analysis in the sunset review of the anti-dumping duty measures on OCTG from Argentina was inconsistent with Articles 11.1, 11.3, 3.1, 3.2, 3.3, 3.4 and 3.5 of the Anti-Dumping Agreement. There is no textual basis in the Anti-Dumping Agreement for conducting a cumulative injury analysis in an Article 11.3 review. Assuming *arguendo* that cumulation is permitted in Article 11.3 reviews, then the Commission was required to adhere to the requirements of Article 3.3 (including those related to *de minimis* margins and negligible imports) in the Commission's Sunset Determination. The Commission's cumulative injury analysis in the Commission's Sunset Determination failed to satisfy the Article 3.3 requirements.

Argentina also considers that certain aspects of the following US laws, regulations, policies, and procedures related to the determinations of the Department and the Commission are inconsistent with US WTO obligations, to the extent that any of these measures mandate action by the Department or Commission that is inconsistent with US WTO obligations or preclude the Department or Commission from complying with US WTO obligations:

- Sections 751(c) and 752 of the Tariff Act of 1930, as amended, codified at Title 19 of the United States Code §§ 1675(c) and 1675a; and the US Statement of Administrative Action (regarding the Agreement on Implementation of GATT Article VI) accompanying the Uruguay Round Agreements Act (the SAA), H.R. Doc. No. 103-316, vol. 1;

- The Department's *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Anti-Dumping and Countervailing Duty Orders*; Policy Bulletin, 63 Federal Register 18871 (16 April 1998) (Sunset Policy Bulletin);

- The Department's sunset review regulations, codified at Title 19 of the United States Code of Federal Regulations § 351.218; and the Commission's sunset review regulations, codified at Title 19 of the United States Code of Federal Regulations §§ 207.60-69 (Subpart F).

Argentina considers that the Department's Determination to Expedite, the Department's Sunset Determination, the Commission's Sunset Determination, the Department's Determination to

Continue the Order and the above mentioned US laws, regulations, policies and procedures are inconsistent with the following provisions of the Anti-Dumping Agreement, the GATT 1994, and the WTO Agreement:

- Articles 1, 2, 3, 6, 11, 12, 18 and Annex II of the Anti-Dumping Agreement;
- Articles VI and X of the General Agreement on Tariffs and Trade (GATT) 1994; and
- Article XVI:4 of the WTO Agreement.

Accordingly, Argentina respectfully requests that, pursuant to Article XXIII of the GATT 1994, Article 6 of the DSU, and Article 17 of the Anti-Dumping Agreement, a panel with standard terms of reference be established at the next meeting of the Dispute Settlement Body to examine and find that the measures identified herein are inconsistent with US obligations under the Anti-Dumping Agreement, the GATT 1994, and the WTO Agreement. To that end, I would be grateful if this request could be included in the agenda of the Dispute Settlement Body scheduled for 15 April 2003.

The above text describes the legal basis of the claims. It does not restrict the arguments that Argentina may develop before the panel.