

**ANNEX F**  
**REQUEST FOR THE ESTABLISHMENT**  
**OF A PANEL**

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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.<sup>2</sup> 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).<sup>3</sup> On the basis of the "expedited" review, the Department determined that termination<sup>4</sup> 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).<sup>5</sup>

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).<sup>6</sup> 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).<sup>7</sup>

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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<sup>2</sup> *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).

<sup>3</sup> *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).

<sup>4</sup> Referred to as "revocation" under US law.

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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, 3Agr 1.0238 Tw (refail (1)C. §7701.3, 11.4, 2.1,515 0 TD/4, ) TD -"e rev

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.

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