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

(DS617)

INTEGRATED EXECUTIVE SUMMARY OF THE UNITED STATES OF AMERICA

January 17, 2025

EXECUTIVE SUMMARY OF THE U.S. FIRST WRITTEN SUBMISSION

I. 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

A. The USDOC Did Not Act Inconsistently With Article 6.6 Because It Is Not Applicable to Initiations and Is Irrelevant to Questions of Industry Support

1. Article 6.6 does not apply to initiations. Therefore, the USDOC could not have acted inconsistently with it in examining whether there was sufficient industry support *in initiating the investigation*. Article 6.6 applies "during the course of an investigation" and not to an investigating authority's determination on initiation. Article 5 underscores this division; that text distinguishes between the "[i]nitiation" and the "[s]ubsequent [i]nvestigation." Article 5.7 also demarcates a clear boundary between "(a) . . . the decision whether or not to initiate an investigation" from "(b) thereafter, during the course of the investigation." Article 5.4 makes clear that it only applies to initiations: "[a]n investigation shall not be initiated . . . unless . . ." In addition, the evidentiary standard for initiation is governed by Article 5.3, not Article 6.6.

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

2. The information provided by the applicants in their application, coupled with the supplementary information the USDOC sought from them, supported that the application was made "by or on behalf of the domestic industry" in accordance with Articles 5.1 and 5.4.

3. In assessing whether the application was made "by or on behalf of the domestic industry," the USDOC applied various analytical approaches to discern whether domestic workers and producers supporting it accounted for (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the like product produced by that portion of the industry expressing support for, or opposition to, the application.

4. As an initial matter, the USDOC defined its POI as October 1, 2020, through September 30, 2021, which represented the four fiscal quarters preceding the application's filing. The USDOC attempted to measure industry support based on production data sourced from the most recently completed year, *i.e.*, calendar year 2020; thus, there was contemporaneous overlap between the USDOC's POI and the time period it was examining regarding industry support.

5. The USDOC applied different approaches to discern whether the application had the requisite industry support. The first approach was proposed by the applicants. They used application supporters' information as the numerator in their industry support calculation. For the denominator, actual production data for all domestic producers were not reasonably available to the applicants, so they used available information on total 2020 domestic shipment data for the U.S. industry as a "reasonable proxy" for production. Then, the applicants used their own 2020 export shipments-to-total shipments ratio for 2020 and applied that ratio to the industry-wide domestic shipment data to estimate the industry's total 2020 domestic and export shipments.

They next deducted their own shipments from estimated total shipments to derive non-applicants' total 2020 shipments. Then, they essentially converted the non-applicants' 2020 shipments figure to a production figure by applying a historical ratio of non-applicants' production-to-shipments, which they derived from a USITC sunset review of OCTG orders covering 2018-2019. Finally, the applicants added the resulting approximation of non-applicants' 2020 production volumes to their own 2020 production data to establish the total production volume for the entire domestic industry for 2020, to derive the denominator.

6. Under the second approach to assessing support, the USDOC calculated estimates of the entire domestic industry's actual 2020 production data by relying on a similar but more conservative approach based on industry-wide information, not the applicants' own ratios. First, the USDOC calculated the industry-wide ratio of production-to-shipments by relying on the publicly available information on domestic producers' production and domestic shipments from the USITC sunset review. Next, it applied the industry-wide ratio to the available domestic shipment data, to calculate total 2020 production for the entire domestic industry. The USDOC then applied the supporting producers' reported production data as the numerator, and applied the total 2020 production figure for the entire domestic industry as the denominator.

7. The USDOC also incorporated several other calculation approaches to assess support. Under each approach, estimated U.S. production of the domestic like product by supporters was "well above" 25 percent of total U.S. OCTG production, thus satisfying the 25 percent threshold. The USDOC also examined whether supporters accounted for greater than 50 percent of the portion of the domestic industry expressing either support for or opposition to the application. Under each of the aforementioned calculation approaches, supporters accounted for greater than 50 percent of those parties expressing an opinion for which the USDOC had production data. Thus, the USDOC determined that the application had the requisite support.

8. Argentina suggests that it was problematic for the USDOC to rely on "estimated" data to discern production, instead of "actual" production data, for the purposes of Articles 5.1 and 5.4. But the data the USDOC relied on were indicative of production levels for a recent time period.

9. Article 5.1, as informed by Article 5.4, calls for an investigating authority to analyze industry support based on "total *production* of the like product." There is no reference in these articles, or elsewhere in Article 5, to particular sources of information that must or must not be used in assessing whether there is adequate support. They do not preclude the use of estimated production data in discerning support. Thus, they do not preclude reliance on alternative data, such as shipment data, to the extent such data may serve as a reasonable proxy for production.

10. Here, the USDOC did not have record production data for the entire industry. Thus, it looked to alternative data that were indicative of production. It had shipment data for the entire industry, and relied on that data as a proxy. The USDOC used additional information on the record to convert shipment data to production data, and it used this converted data as the denominator in the calculation, so it ultimately analyzed "total *production* of the like product."

11. Argentina unavailingly argues that the USDOC relied on "outdated" 2020 domestic industry shipment data, and 2018-2019 industry-wide data to convert the industry-wide shipment data to production data. Articles 5.1 and 5.4 do not specify a period to examine, or proscribe

types of evidence to use. Here, 2020 was the most-recently completed year, and reasonably overlapped with the POI. The 2018-2019 ratio data was the "most recently available" record data to make conversions. The mere fact that data relate to the past does not mean they cannot be used to establish support. With regard to the 2018-2019 data, the USDOC also considered a 2020 ratio, which, when applied to the 2020 shipment data, also showed that the applicants satisfied industry support. Thus, more recent data still resulted in the same overall conclusion.

12. Argentina contends that the industry support data, particularly 2020 data, was "anomalous." With regard to 2020, the USDOC pointed out: "In any . . . petition where a domestic industry is alleging material injury . . . by reason of dumped or subsidized imports, the industry may have produced far less in a more recent 12-month period than the most recently completed calendar year period used by [the USDOC] to determine industry support." If Argentina is correct that market forces impacted domestic production, then Argentina has made no suggestion that they would not have impacted *all* domestic producers largely equally. The notion that production may have been lower in 2020 than some more recent period does not *ipso facto* mean that the figures are no longer valid. Indeed, Argentina appears to acknowledge that even data from some parts of 2021 would have been problematic. It is unclear from Argentina's statements whether using a more recent time period would have been any more appropriate.

13. Argentina contends that the USDOC should have applied U.S. law to poll the industry in determining support, which the USDOC appropriately found unnecessary. Argentina prefers a different approach, but this is not a basis to find against the USDOC's approach to initiation. And the Panel need not determine whether the USDOC complied with U.S. law; Argentina's claims are grounded in the AD Agreement, which did not obligate the USDOC to "poll."

14. Argentina's argument that the USDOC "double-counted" production by including processors and finishers of unfinished OCTG in its analysis of support is without merit. First, at no point during the USDOC's initiation did Tenaris explicitly frame its issues with production data as a "double counting" issue. Furthermore, evidence Argentina points to, namely, website screenshots of certain applicants, does not actually show that double-counting occurred.

15. Finally, Argentina wrongly suggests that the USDOC shifted the burden regarding support to Tenaris, instead of maintaining the applicants' burden. Argentina appears to be asserting this as an Article 5.4 claim, but it is unclear how its argument implicates Article 5.4 (or Article 5.1). The USDOC *never* relieved the applicants of their burden. The initiation checklist evinces a series of back-and-forth between the USDOC and the applicants on this issue. In its checklist, the USDOC was making the point that Tenaris could have submitted information to undercut the applicants' analysis, but it declined to exercise this right. It was not the USDOC's responsibility to ensure that Tenaris availed itself of rights it possessed under the regulations.

C. The USDOC's Support Analysis Is Not Inconsistent With Article 5.3

16. The USDOC determined that there was "sufficient" evidence on the question of industry support to justify initiation. Argentina reiterates much of the arguments under Article 5.3 that it made under Articles 5.1 and 5.4 regarding how the USDOC approached support: (1) the USDOC's use of "outdated" and "anomalous" data; (2) its use of estimated production data; and (3) "double-counting." As discussed above, the USDOC determined under Article 5.4 that the

application was made "by or on behalf of the domestic industry." Thus, the information underpinning the support determination was "sufficient" for Article 5.3. The United States refers to its responses to these arguments by Argentina above, in the context of Articles 5.1 and 5.4 above, which the United States adopts in response to Argentina's parallel Article 5.3 arguments.

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

17. Argentina asserts that the application did not contain "'relevant'" "'information as is reasonably available'" to the applicants. Initially, if the Panel addresses Argentina's Article 5.3 arguments, it is unnecessary to address its Article 5.2 arguments. Article 5.2 describes what information an application must contain, and these requirements do not impose obligations directly on the authority. Rather, the pertinent obligation is in Article 5.3. Articles 5.2 and 5.3 are related, such that whether the application meets Article 5.2 would be relevant to the authority's Article 5.3 examination. Given this interpretation, to the extent the Panel makes Article 5.3 findings, it is not necessary to reach Article 5.2 findings.

18. Should the Panel address Argentina's Article 5.2 arguments, its arguments are similar to its Article 5.1, 5.3, and 5.4 arguments: (1) the USDOC's use of "outdated" and "anomalous" data; (2) its use of estimated production data; and (3) "double-counting." The USDOC found that the application contained information "reasonably" available to the applicants regarding support. We refer to our arguments above regarding the evidence before the USDOC, which was "reasonably available" to the applicants and "relevant" to the question of industry support.

II. THE USITC'S DECISION TO CUMULATE IMPORTS OF OCTG FROM ARGENTINA WITH IMPORTS FROM OTHER SOURCES SUBJECT TO SIMULTANEOUS AD AND CVD INVESTIGATIONS IS NOT INCONSISTENT WITH ARTICLES 3.1 AND 3.3 OF THE AD AGREEMENT

A. The Cumulation of Dumped and Subsidized, Non-Dumped Imports Is Not Inconsistent with Articles 3.1 and 3.3

19. A proper interpretation of Article 3.3 reveals that nothing in the text prohibits the cumulation of imports that are dumped with imports that are subsidized. As cross-cumulation is not inconsistent with Article 3.3, it is not inconsistent with Article 3.1 either.

20. Article 3.3 addresses the conditions under which an authority "may cumulatively assess" dumped imports. The phrase "such imports" makes clear that the only category subject to the Article 3.3 criteria are imports that "are simultaneously subject to anti-dumping investigations." Article 3.3 does not address or prohibit an authority from conducting a cumulative assessment of the effects of dumped and subsidized imports. It does not address subsidized imports; it is *silent* on the issue of whether cumulation of dumped and subsidized imports is permissible. The absence of "subsidized imports" in Articles, 3.1, 3.2, 3.4, and 3.5 supports that there is a silence on whether cumulation of dumped and subsidized imports – and *also* on examining cumulated dumped and subsidized imports in other components of an injury analysis – is permissible.

21. In similar circumstances, a prior report has found that the silence of an Agreement on the

permissibility of a particular approach towards cumulation does not indicate that the methodology is prohibited. *US – Oil Country Tubular Goods Sunset Reviews (AB)* rejected Argentina's claim that an authority could not cumulatively assess imports from multiple countries in sunset reviews. The Appellate Body explained its reasoning that "[t]he silence of the text on this issue . . . cannot be understood to imply that cumulation is prohibited in sunset reviews." We suggest a similar finding here. Article 3.3's silence on cross-cumulation must not be read as prohibiting it, as that would read into the text an obligation that is not there.

22. The AD and SCM Agreements contain nearly identical provisions governing injury analyses, including cumulation, in original investigations. The near identical language highlights the overlap of the injury analysis under both Agreements. Both contemplate that an authority may consider the cumulative injurious effects of unfairly traded imports from multiple sources, given that these imports can have a cumulative injurious impact on the industry. A treaty interpreter must read all applicable provisions of a treaty and give meaning to *all* of them, harmoniously. The AD Agreement obligations must take account of the context offered by Article VI of the GATT 1994 and the SCM Agreement.

23. Article VI of the GATT 1994 provides important context for considering the relationship of the AD and SCM Agreements. Article 3.1 of the AD Agreement expressly references Article VI of the GATT 1994, as does Article 15.1 of the SCM Agreement. Article VI:6(a), in turn, provides that a Member shall not impose antidumping or countervailing duties "unless it determines that the effect of *dumping or subsidization*, as the case may be, is such as to cause or threaten to cause material injury to an established domestic industry . . ." The phrase "as the case may be" acknowledges that cumulation of dumped and subsidized imports may be appropriate in particular investigations. It recognizes that there may be situations in which it "may be the case" that the unfair trade practices covered by an injury determination may involve dumping, subsidization, or both unfair trade practices. "As the case may be" means "according to the circumstances," and therefore does not indicate a binary choice between two options. Very often, a domestic industry will be faced with both dumped and subsidized imports. Where these circumstances exist, it would be appropriate to interpret Article VI:6(a) as contemplating a cumulative analysis. Therefore, "as the case may be" contemplates an examination of the injurious effects of dumped imports, subsidized imports, or dumped and subsidized imports.

24. The ability to cumulate the injurious effects of dumped imports is a "useful tool" for an authority "to ensure that all sources of injury and their cumulative impact on the domestic industry are taken into account in an investigating authority's determination." The explanation in *EC – Tube or Pipe Fittings (AB)*, outlining why cumulation plays an important role in the context of dumped imports, has equal logic where some imports are dumped and others subsidized. In *US – Oil Country Tubular Goods Sunset Reviews (AB)*, which involved whether cumulation of dumped imports was permitted in sunset reviews under the AD Agreement, the report found that an authority could cumulate imports from multiple countries in sunset reviews, even though such an approach was not expressly permitted in the sunset provisions. This report, and *EC – Tube or Pipe Fittings (AB)*, reasoned that a cumulative assessment of the effects of unfairly traded imports from multiple countries is a logical component of the injury analysis. The same logic extends to injury analyses conducted under the SCM Agreement.

25. Artificially limiting the ability to cross-cumulate, such that the same volume of dumped

imports from a country can be subject to AD duties in some circumstances but not in others, will impair the right to effectively address dumped imports. For, while the obligations applicable in the context of AD and CVD investigations are legally distinct, the injury that has occurred, from the perspective of the relevant domestic industry, is cumulative. It would be misguided to consider the injury caused by dumped and subsidized imports to the same industry in isolation. AD and CVD remedies "are, from the perspective of producers and exporters, indistinguishable." Therefore, injury caused by dumping and subsidization is, from the perspective of domestic producers, indistinguishable. It would make little sense for an authority to conduct separate injury analyses of dumped and subsidized imports when both types are simultaneously injuring the same domestic industry and the requirements for cumulation are otherwise satisfied. The Panel should interpret the AD Agreement in a way that ensures that the treatment of those imports is consistent under all the applicable provisions of the WTO agreements.

B. The USITC Appropriately Determined that the Conditions of Competition Justified Cumulation

26. In justifying cumulation of imports based on "a reasonable overlap of competition between subject imports . . . and among subject imports from each source and the domestic like product," the USITC considered four factors. First, the USITC found that subject imports from each country were fungible with each other and the domestic like product. Second, the USITC found that subject imports from each source and the domestic like product were sold in overlapping channels of distribution during the POI. Third, the USITC found that subject imports from each source and the domestic like product were sold in overlapping U.S. geographic regions during the POI. Finally, the USITC found that subject imports from each country and the domestic like product were simultaneously present in the U.S. market during the POI. The USITC concluded that its findings overall evidenced a reasonable overlap of competition, and therefore supported a cumulative assessment of the effects of subject imports.

27. Argentina asserts that the USITC's consideration of the degree of fungibility was flawed because it failed to consider that imports from Argentina and Mexico, which primarily consisted of seamless OCTG, are not sufficiently fungible with imports from Korea, which primarily consisted of welded OCTG. The USITC acknowledged that certain demanding applications may require seamless, but the record reflected that seamless and welded can be used in most if not all other applications, *i.e.*, in the majority of applications. Argentina appears to ignore that the USITC examined "the *degree of fungibility* between subject imports from different countries and between subject imports and the like product . . .," not whether two products are fungible *at all*. The USITC acknowledged arguments about higher average unit values for seamless OCTG from Argentina and Mexico compared to welded OCTG from Korea and Russia, but reasonably found that, on balance, the record indicated substantial fungibility, notwithstanding such differentials.

28. In addition, Argentina unavailingly contends that the USITC relied on flawed data regarding imports from Korea, because qualitative questionnaire responses addressed imports of OCTG on a countrywide basis, to include respondents' perceptions of non-subject imports. It is important to note that the USITC did separate all *quantitative* data concerning nonsubject imports from subject imports in analyzing the volume, price, and impact of subject imports. Market participants were asked to address the degree of interchangeability on a countrywide basis, but their responses do not single out non-subject imports; rather, they concerned imports

from Korea as a whole, including the large percentage of reported imports from Korea found to be subsidized. The responses were probative as to the interchangeability and comparability of subject imports; the record contained no indication that the characteristics of OCTG imported by non-subject producers were materially different from those imports from subject producers.

29. Furthermore, the USITC considered and reasonably rejected the argument that subject imports from Argentina and Mexico did not sufficiently share channels of distribution with subject imports from Korea or Russia, and that the USITC allegedly failed to consider the implications of Tenaris's "Rig Direct" program in the context of analyzing channels of distribution. First, the USITC observed that, during 2021, a share of subject imports from Mexico and a share of subject imports from Argentina were sold to both distributors and end users, as were subject imports from both Russia and Korea as well as the domestic like product. Argentina does not contest this factual finding, but only asserts that they were not sold "predominantly" or "overwhelmingly" through the same channels of distribution. The USITC considered this argument and determined otherwise.

30. Second, the USITC considered that Tenaris sold OCTG using Rig Direct in assessing channels of distribution, as well as regarding causal link, based on questionnaire responses regarding sales to end users and distributors. This included data collected from Tenaris and other importers and domestic purchasers. The USITC observed, based on compiled information, that shares of subject imports from Mexico were sold to distributors as were subject imports from Russia and Korea. The USITC did not summarily disregard evidence regarding Rig Direct but considered the whole record before it, including evidence that corroborated that "domestic producers in combination with their distributors provide the same services as Rig Direct."

31. The USITC reasonably rejected the argument that subject imports from Russia competed on a different basis than imports from other countries. Argentina reiterates these arguments, referencing, *inter alia*, Russia's loss of API certification, revocation of Russia's permanent normal trade relations status, duties imposed pursuant to section 232 of the Trade Expansion Act of 1962, and U.S. sanctions imposed. The record belies Argentina's assertions. None of these measures prohibited the entry or sale of Russian OCTG during the POI. The USITC also did not consider only whether imports from Russia entered the U.S. market during the POI. Rather, it comprehensively considered relevant data for subject imports from Russia, other sources, and the domestic like product in analyzing each of the four cumulation factors.

32. Specifically, the USITC considered Russia's API certification loss, and, based on positive evidence, rejected that this rendered Russian OCTG non-fungible. Regarding measures in response to its invasion of Ukraine, the USITC found that none of them "prevent[ed] such imports from entering and being sold in the United States in significant quantities from February 2022 to the end of the POI." The volume of Russian imports, and U.S. shipments of such imports, was higher in interim 2022 (after Russia's invasion) than interim 2021 (before it). Russian imports were more present in the U.S. market over the 42-month POI than those from Argentina, which undercuts Argentina's assertion that these measures placed Russian OCTG on a different competitive basis. The USITC acknowledged responses that Section 232 duties "had effects in the U.S. market." But the duties "did not prevent subject imports from Russia from entering the U.S. market in significant volumes throughout the POI . . ."

33. Finally, the fact that OCTG imports from Korea have been subject to an AD order is irrelevant for cumulation. Articles 3.1 and 3.3 do not preclude an investigating authority from cross-cumulating. It is entirely appropriate for an authority to do so, given that cumulation is a "useful tool" for an authority "to ensure that all sources of injury and their cumulative impact on the domestic industry are taken into account . . ." The fact that an AD order may be in place, which is intended to remedy the injury caused by dumped imports to the industry, does not mean that those same imports, when they are subsidized, are not separately injuring the industry.

III. THE USITC'S DETERMINATION OF INJURY WAS NOT INCONSISTENT WITH ARTICLES 3.1, 3.2, 3.4, AND 3.5 OF THE AD AGREEMENT

A. The USITC's Consideration of the Volume of the Dumped Imports Was Not Inconsistent With Articles 3.1 and 3.2

34. The USITC considered whether there had been a significant increase in dumped imports, in absolute or relative terms. It found that cumulated subject imports increased in absolute volume from 2019 to 2021 and their absolute volume was greater in interim 2022 than in interim 2021, and that cumulated subject imports as a share of apparent U.S. consumption increased from 2019 to 2021. Finally, the USITC observed that the market share of cumulated subject imports was lower in interim 2011 – *i.e.*, after the petitions' filing – than in interim 2021, and that this decline "was related to the pendency of the investigations and place[d] less weight on interim 2022 market share data in determining that . . . the volume of imports is significant."

35. Argentina does not dispute that the import volumes examined by the USITC are quantitatively significant, but instead argues that the Panel should ignore the plain meaning of "significant" in Article 3.2 and find the USITC's finding regarding the significant volume of dumped imports is inconsistent with Articles 3.1 and 3.2 because of "qualitative" factors and conditions of competition. Argentina's arguments focus on the USITC's alleged failure to analyze causal and other known factors that, according to Argentina, negate the significant increase in dumped import volumes. Article 3.2 does not require an authority to conduct either of these analyses, which is reserved for Article 3.5. Therefore, Argentina has failed to demonstrate that the USITC acted inconsistently with Articles 3.1 and 3.2.

36. Argentina also argues that the USITC should have deemed the significant increase in the volume of dumped imports during the POI as "not significant," because "imports were needed in the market" as a result of: (1) oil price shocks and COVID-19; (2) supply constraints, including U.S. plant shutdowns and curtailments, stockpiling and inventory bulge, the price of hot-rolled coil (HRC), and labor shortages; and (3) Tenaris's role in the domestic industry, *i.e.*, its U.S. investments, Rig Direct, and its "one price" policy. These arguments are grounded on the flawed proposition that the consideration of import volumes should have duplicated the Article 3.5 analysis. Article 3.2 does not require the authority to duplicate its Article 3.5 examination.

37. Argentina argues that dumped import volumes cannot be considered as increasing significantly during the POI because the Section 232 quota had a "restraining effect on imports of OCTG from Argentina" and "established at a non-injurious level." Section 232 did not establish a quota on imports of OCTG from Argentina at a 'non-injurious level.' Section 232 allows the United States to adjust imports of an article based on a finding that such imports

threaten to impair U.S. national security. The Section 232 steel report and quota did not address conditions that may be causing injury to domestic steel producers, and certainly did not address the question of injury as defined under Article 3. In addition, the analysis under Article 3.2 does not examine the relationship between subject imports and injury to the domestic industry; it examines the relationship between subject imports and import volume. The USITC thus had no obligation under Article 3.2 to consider Argentina's erroneous assertion that the Section 232 quota ensured that steel imports from Argentina were 'non-injurious.'

B. The USITC's Consideration of the Price Effects of the Dumped Imports Was Not Inconsistent with Articles 3.1 and 3.2

38. The USITC's record confirms that the USITC, consistent with Articles 3.1 and 3.2, objectively examined all positive evidence and took into account whether subject imports significantly undersold the domestic like product. The USITC also considered whether subject imports depressed or suppressed prices to a significant degree.

39. Following its review of the positive evidence, the USITC found that "[q]uarters in which there was underselling accounted for more than two-thirds … of the reported volume of cumulated subject import sales …, and quarters in which there was overselling accounted for approximately one-third … of the reported volume of cumulated subject import sales …. Underselling by cumulated subject imports predominated during each year of the POI and interim 2022." In addition, the pricing data showed that cumulated subject imports undersold the domestic like product "at margins ranging between 0.0 and 73.1 percent and averaging 10.8 percent." The USITC also found that positive evidence of record demonstrated that domestic producers lost sales to subject imports on the basis of price.

40. The USITC considered price depression by evaluating POI price trends. It observed that prices for all but one of the domestic pricing products increased overall and that the prices for the subject import pricing products for which data were available also increased over this period.

41. The USITC considered price suppression by evaluating the domestic industry's cost-of-goods sold ("COGS")-to-net sales ratio, its unit COGS, its net sales AUVs, and fluctuations in apparent U.S. consumption and raw material costs. However, the USITC did not reach a conclusion about price suppression given its findings of significant underselling by subject imports during each year of the POI and interim 2022 and the market share shift to those imports.

42. The USITC reasonably concluded that cumulated subject imports significantly undercut like product prices and that underselling led the industry to lose market share to subject imports. The USITC was not further required by Article 3.2 to make a finding about whether cumulated subject imports also depressed or suppressed prices of like products to a significant degree.

43. The United States agrees that Article 3.2 requires the investigating authority to examine the effect of the dumped imports on prices, but disagrees that the term "significantly" inflates this inquiry to require an authority to take into account what Argentina refers to as "qualitative aspects of the relevant factual context." In carrying out its price effects analysis, an authority "is focused on the relationship between subject imports and domestic prices, and the authority may not disregard evidence that calls into question the explanatory force of the former for significant

depression or suppression of the latter." While the price effects inquiry under "Article 3.2 must provide a meaningful basis for subsequently determining whether the dumping imports are causing injury to the domestic industry within the meaning of Article 3.5 of the Anti-Dumping Agreement," Article 3.2 does not obligate the authority to duplicate the subsequent Article 3.5 examination of causation or the examination of other known factors.

44. Argentina argues that the USITC's decision not to reach a conclusion about price suppression violates Article 3.2. Contrary to Argentina's argument, Article 3.2 does not obligate the USITC to consider price suppression once it established the existence of price undercutting.

45. The record clearly demonstrates that the USITC evaluated Tenaris's "one price" approach in an unbiased and objective manner. Although Tenaris alleged that its subject imports did not undersell its own domestically produced OCTG, Tenaris did not further demonstrate that its subject imports did not undersell the OCTG domestically produced by other firms. Therefore, the USITC's decision not to alter its overall price effects analysis based on one company's assertion that its subject imports did not undersell its own domestically produced OCTG was reasonable because, as the USITC made clear, the price effects analysis is made pursuant to the "data reported by and comparisons among all responding imports and domestic producers."

46. Argentina challenges the USITC's consideration of Tenaris's long-term contracts, complaining that the USITC's analysis was "unreasonably narrow." The USITC conducted a complete analysis of Tenaris's contention that it should lag U.S. market prices to account for its long-term contracts. The USITC was "unpersuaded by Tenaris's argument": First, the USITC "must consider the significance of underselling by cumulated subject imports," not just imports by Tenaris. Second, even as to Tenaris's imports, "the percentage of Tenaris's U.S. shipments subject to contracts containing a time lag is unclear." Third, Tenaris incorrectly assumes that domestic OCTG is generally sold at spot market prices. Finally, the argument is inconsistent with other record evidence. Argentina has failed to demonstrate why an objective and unbiased authority could not have reached the USITC's conclusion.

47. Argentina challenges the USITC's consideration of lost sales, arguing that the USITC's price effects analysis should have incorporated a causation analysis, because "additional positive evidence … demonstrates that, rather than due to price, Tenaris had gained sales in the U.S. market based on its unique role in the market and utilization of the Rig Direct® business model." Argentina acknowledges that the USITC conducted a full analysis of reported lost sales, but asserts that the USITC should have considered the following factors as part of its consideration of price effects: security of supply; Tenaris's unique role in the market; Tenaris's Rig Direct® business model; shortages of supply; and increases in demand. Argentina conflates the price effects analysis under Article 3.2 with the analyses that an authority conducts pursuant to Article 3.5; an investigating authority is not obligated under Article 3.2, as part of its price effects analysis, to duplicate the Article 3.5 analysis. Therefore, the fact that the USITC did not consider these factors as part of its price effects analysis is immaterial.

C. The USITC's Consideration of the Impact of the Dumped Imports Was Not Inconsistent with Articles 3.1 and 3.4

48. The USITC's analysis of the impact of subject imports on the domestic industry

examined all relevant economic factors which have a bearing on the state of the industry, and found the following pattern for almost all relevant factors:

- The performance of the domestic industry weakened significantly from 2019 to 2020 as the result of declining demand, including the effects of the COVID-19 pandemic.

- Demand improved significantly from 2020 to 2021, but the performance of the domestic industry improved only slightly as subject imports captured market share.

- After petitioners filed trade remedy petitions in late 2021, the performance of the domestic industry improved significantly in interim 2022 relative to interim 2021.

49. The USITC found that this pattern repeated itself in regard to industry output; U.S. mills' capacity, production, and capacity utilization; industry employment, hours worked, wages paid, and productivity; U.S. mills' U.S. shipments, end-of-period inventories, and end-of-period inventories as a ratio of total shipments; domestic industry share of apparent U.S. consumption; financial performance, total net sales revenues, operating losses, ratio of operating income to net sales, return on assets, capital expenditures, and R&D expenses; and gross profit and net income.

50. The USITC reasonably concluded that cumulated subject imports had a significant impact on the domestic industry. The USITC was not otherwise required by Article 3.4 to reach a conclusion about whether this impact was causing injury.

51. Argentina's Article 3.4 claims evince a misunderstanding of the step-by-step injury analysis established under Article 3. Argentina argues, in part, that the authority's Article 3.4 analysis must "address[ ] alternative explanations and offer[ ] an adequate and reasoned explanation of how the injury is explained by the dumping." While Articles 3.2 and 3.4 "are necessary components to answering the ultimate question in Article 3.5," the role they play is not meant to duplicate Article 3.5's role. The Article 3.4 analysis involves the state of the domestic industry and does not address whether dumped imports caused injury to the industry. In sum, the authority's examination under Article 3.4 need not explain "how the injury is explained by the dumping." Argentina's misunderstanding of the obligations set out in Article 3.4 infects nearly all of its claims against the USITC's examination of relevant factors and indices, including:

52. *Sales:* Argentina's claim is grounded in "known factors other than the dumped imports which at the same time are injuring the domestic industry." The analysis of other known factors takes place under Article 3.5 (and the USITC examined such factors as part of that analysis).

53. *Profits:* Like its claim about the sales factor, Argentina's claim against the USITC's examination of the profit factor is grounded in known factors other than the dumped imports. Again, this type of analysis takes place under Article 3.5.

54. *Output:* Argentina acknowledges that the USITC fully examined the trends related to the domestic industry's output, but argues that the USITC examination under Article 3.4 should have included an analysis of demand and supply conditions (*i.e.*, other known factors), including the "Russia/Saudi oil supply/price war and the COVID-19 pandemic" and "inventory overhang, labor shortages, and the high prices for HRC." Argentina's unending argument that the authority

should graft onto Article 3.4 an obligation that exists under Article 3.5 is fundamentally flawed.

55. *Market Share:* Argentina is wrong when it claims that the USITC's examination of market share should have addressed possible countervailing circumstances, including inventory buildup and destocking, Rig Direct, labor shortages, the prices of HRC, and intra-industry competition. The Panel should reject Argentina's Article 3.4 claim regarding the USITC's examination of market share.

56. *Productivity and Return on Investment:* Argentina acknowledges that the USITC fully examined the trends related to the domestic industry's productivity and return on investment, but argues that the USITC's Article 3.4 examination should have included an analysis of "demand and supply conditions that existed in the U.S. OCTG market during POI" (*i.e.*, the Russia/Saudi oil supply/price war, the COVID-19 pandemic, etc.). Argentina's claims are grounded in known factors other than the dumped imports, an analysis that takes place under Article 3.5.

57. *Capacity Utilization:* Argentina argues that the USITC's finding regarding capacity and capacity utilization is inconsistent with Article 3.4 because it failed to take into account supply constraints, *i.e.*, "the high cost of HRC" and "labor shortages." Argentina's claim is grounded in known factors other than the dumped imports, an analysis that occurs under Article 3.5.

58. *Factors Affecting Domestic Prices:* Argentina reiterates its argument about the USITC's decision not to reach a conclusion about price suppression. The USITC was not required under Article 3.2 to consider whether price suppression constitutes a price effect. Article 3.4 does not independently obligate the authority to examine price suppression in regard to factors affecting domestic prices. Argentina also repeats its argument about lost sales and lost revenues, asserting once again that evidence put forward by Tenaris "showed that any lost sales or lost revenues were due to non-price factors," including Rig Direct. As with its Article 3.2 argument, Argentina conflates the analysis that the USITC is required to conduct under Article 3.4 with the analyses that an authority conducts pursuant to Article 3.5. The authority is not obligated under Article 3.4 to duplicate its examination of causation or its examination of other known factors as required under Article 3.5. Argentina repeats its argument about Tenaris's long-term contracts. As previously discussed, the USITC conducted a complete analysis of Tenaris's contention that it should lag U.S. market prices to account for Tenaris's long-term contracts. The record explains why the USITC decided not to lag U.S. market prices to account for Tenaris's contracts. Argentina's contrary argument is nothing more than an alternative, biased interpretation of the facts. It is not the Panel's task to conduct a *de novo* review of the evidence on the record of the underlying investigation, nor to substitute its judgment for that of the authority.

59. *Cash Flow:* Argentina argues that the USITC failed to analyze cash flow. Contrary to Argentina's argument, Article 3.4 does not address the manner in which an authority's analysis of each factor must be set out in the documents providing the explanation for its determination. The USITC report demonstrates that that the USITC's examination of the domestic industry's financial performance incorporated an examination of the industry's cash flow.

60. *Inventories:* Argentina argues that the USITC's examination of the impact of inventories is inconsistent with Articles 3.1 and 3.2. Argentina's claims are grounded in "known factors other than the dumped imports." The examination of these other known factors is provided for

under Article 3.5, not Article 3.4.

61. *Employment and Wages:* Argentina argues that the USITC's examination of the impact of subject imports on the domestic industry's employment and wages is inconsistent with Articles 3.1 and 3.4 because "[t]he USITC failed to analyse the employment indicia within the context of the demand and supply conditions that existed in the U.S. OCTG market during the POI." Argentina's claim is grounded in known factors other than the dumped imports, which is provided for under Article 3.5.

62. *Growth and Ability to Raise Capital or Investments:* Argentina argues that the USITC's examination of the impact of subject imports on the industry's investment, growth, and development violates Article 3.1 and 3.4. Argentina has failed to meet its *prima facie* burden. Its single sentence argument states that the USITC "rel[ied] on self-reported data from Petitioners rather than … evidence of conditions of competition during the POI." Although Argentina asserts that this "renders the USITC's determination a violation of Article 3.1 and 3.4," it fails to articulate how or why. The Panel should summarily reject Argentina's claims in regard to the domestic industry's investment, growth, and development. Even if the Panel considers these claims, the claims appear to be grounded in causation or known factors other than the dumped imports, which is provided for under Article 3.5; the USITC was not obligated under Article 3.4 to conduct a duplicate inquiry. It is also not the Panel's task to conduct a *de novo* review of the record evidence, nor to substitute its judgment for that of the authority.

D. The USITC's Examination of Causal Relationship Was Not Inconsistent with Articles 3.1 and 3.5

63. Taking into account the volume data and price data it considered under Article 3.2 and the impact data it examined under Article 3.4, the USITC found that relevant evidence on the record demonstrated "a causal nexus between cumulated subject imports and the industry's weak performance relative to the strong growth in apparent U.S. consumption from 2020 to 2021." The USITC's assessment of the domestic industry's improved performance in interim 2022 compared to interim 2021 also supported its finding of a causal nexus between cumulated subject imports and the injury to the domestic industry. This evidence demonstrated that "subject imports competed less aggressively in the U.S. market after the filing of the petitions, losing … market share as the domestic industry gained … market share in interim 2022 compared to interim 2021." The sudden withdrawal of subject imports from the U.S. market following the filing of petitions, correlated with the contemporaneous improvement in the domestic industry's "performance by nearly every measure between the interim periods," further corroborating the relationship of cause (subject imports) and effect (domestic industry performance). The USITC's finding of a causal relationship between the dumped imports and the injury to the domestic industry is one that could have been reached by an objective and unbiased authority.

64. Argentina lumps together arguments about factors other than the dumped imports that it alleges severed this causal nexus. The second sentence of Article 3.5 states that "[t]he demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities." It states nothing about factors other than dumped imports, which are discussed instead in the third sentence. Consequently, the second sentence does not impose on the

causation analysis the additional obligation to demonstrate that there is no causal relationship between "known factors other than the dumped imports" and injury. Therefore, Article 3.5 does not require the USITC to include an examination of possible other known factors as part of its analysis of the causal nexus between subject imports and the injury experienced by the industry.

65. Contrary to Argentina's argument, the USITC did not discount the improved performance of the domestic industry during interim 2022. The USITC found "a causal nexus between cumulated subject imports and the domestic industry's weak performance relative to the strong growth in apparent U.S. consumption from 2020 to 2021. Subject import volume had increased significantly, driven by significant subject import underselling." As a result, despite a significant increase in apparent U.S. consumption in 2021 relative to 2020, "the [domestic] industry's production, employment, and financial performance remained weaker in 2021 than would have been expected in light of the strong increase in demand." In fact, the USITC found that "the industry's performance in 2021 remained similar to its performance in 2020." Then, after the industry filed petitions in October 2021, "the domestic industry was able to improve its performance markedly in interim 2022 compared to interim 2021." The difference, based on the USITC's examination: "subject imports competed less aggressively in the U.S. market after the filing of the petitions, … [which enabled] the domestic industry [to] gain[ ] 0.6 percentage points of market share in interim 2022 compared to interim 2021." The USITC reasonably considered this improved performance as corroborating the causal nexus between subject import competition and how the industry fared during the POI, including in 2021, when the industry's performance was weak relative to strong demand growth. In sum, the USITC gave full weight to the post-petition performance data in its impact analysis and adequately explained its reasoning.

E. The USITC's Examination of Known Factors That May Be Injuring the Domestic Industry Was Not Inconsistent with Articles 3.1 and 3.5

66. The USITC conducted an extensive examination of other known factors to ascertain "whether there are other factors that may have had an adverse impact . . . during the POI to ensure that we are not attributing injury from such other factors to subject imports."

67. The USITC first examined whether the injury it had attributed to subject imports could have been caused by nonsubject imports. The evidence examined showed that the injury to the domestic industry could not have been caused by nonsubject imports because: (1) when subject imports captured 12.0 percentage points of market share from 2020 to 2021, nonsubject imports actually lost market share; (2) "when the domestic industry's performance was weaker than would have been expected," the AUVs of subject imports were lower than the AUVs for nonsubject imports; and (3) when "the domestic industry's performance substantially improved [in interim 2022]," nonsubject imports significantly increased. The USITC thus reasonably concluded that "[n]onsubject imports do not explain the injury we have attributed to subject imports."

68. The USITC next examined whether the injury it had attributed to subject imports could have been caused by the domestic industry's supply constraints, and found that the domestic industry's supply constraints did not draw subject imports into the U.S. market in 2021.

69. The USITC examined whether the injury it had attributed could have been caused by

distributors who drew down their inventory overhang instead of placing orders with domestic mills. The USITC found that "inventories, or inventories alone, cannot explain why additional demand in 2021 was satisfied by increased subject imports, rather than domestic producers and nonsubject imports."

70. The USITC next examined whether the injury it had attributed to subject imports could have been caused by Tenaris's Rig Direct program. But evidence of record demonstrated that domestic producers and their distributors provided the same services to end users as Rig Direct, and that program could not explain the market share that the domestic industry lost to subject imports not sold via this program. The USITC reasonably concluded that Rig Direct did not explain the injury.

71. Finally, the USITC examined whether the injury it had attributed could have been caused by rising domestic HRC prices, labor shortages, or intra-industry competition, and found each unavailing. First, rising HRC prices had no impact on domestic producers of seamless OCTG, because they used steel billets as their raw material input. Second, labor shortages did not significantly constrain domestic production given that domestic producers could have hired workers "as warranted by increased demand for domestic OCTG, and the domestic industry sharply expanded employment in interim 2022, after the filing of the petitions caused subject imports to compete less aggressively in the U.S. market." Finally, intra-industry competition could not "explain the domestic industry's loss of market share to subject import from 2020 to 2021," because the entirety of that loss went to subject imports.

72. The USITC fully and objectively considered all known factors as required by Article 3.5, to ensure that it did not attribute any alleged injury from known factors to the subject imports.

73. Argentina argues that the USITC failed to ensure that injury caused by the following known factors was not attributed to the dumped imports as required by Articles 3.1 and 3.5. Argentina's arguments largely criticize the USITC for failing to adopt the arguments put forward by Tenaris. Presenting an alternative factual analysis cannot establish that the USITC's findings do not reflect an objective examination or are unsupported by positive evidence.

74. First, the record of the investigation demonstrates that the USITC considered the effect of the Russia/Saudi oil price war, as compounded by the COVID-19 pandemic, on OCTG demand and this effect on the industry. It is obvious from the record that the USITC fully evaluated the impact of the oil price war. The USITC's analysis of the impact of the COVID-19 pandemic pervades the entire USITC final report. Alternatively, the Panel should consider the Russia/Saudi oil price war and the COVID-19 pandemic as not constituting known factors during the time period in which the USITC found that the dumped imports were injuring the domestic industry. Article 3.5 stipulates that the authority shall examine "any known factors other than the dumped imports which at the same time are injuring the domestic industry." Since the decline in demand caused by the Russia/Saudi oil price war and the COVID-19 pandemic preceded the USITC's finding of a causal relationship between the dumped imports and the injury to the domestic industry, these two events did not constitute other known factors "at the same time" in which the USITC found that the dumped imports were injuring the industry.

75. Second, Argentina argues that the USITC failed to consider that Tenaris, "due to its

investments … in the United States, … would not import in a manner that would harm the U.S. industry." The USITC included Tenaris as a member of the domestic industry, and its causation analysis necessarily included data about Tenaris. Tenaris thus cannot be considered an 'other factor' under Article 3.5, because doing so replicates the analysis of the causal relationship between dumped imports and the injury to the domestic industry (including Tenaris, but also including other domestic producers). Finally, Argentina argues that the USITC did not fully examine intra-industry competition. It is important to place in context what the phrase "intra-industry competition" meant in the context of the investigation: "intra-industry competition" is a phrase that simply reframes Tenaris's arguments about its U.S. investments, its one price approach, its Rig Direct program, etc. The USITC thoroughly examined, and was unpersuaded by, these aspects of Tenaris's business model (aka intra-industry competition). It thus was reasonable that the USITC found that "[i]ntra-industry competition cannot explain the domestic industry's loss of market share to subject imports from 2020 to 2021."

76. Third, the USITC objectively examined supply constraints, including HRC prices, labor shortages, and inventory issues, finding that they did not explain the industry's market share loss and consequent injury caused by subject imports. Argentina's arguments invite the Panel to conduct a *de novo* examination of the record and substitute its judgment for the USITC's.

IV. SECTION 771(7)(G) OF THE TARIFF ACT OF 1930, AS AMENDED, IS NOT INCONSISTENT AS SUCH WITH ARTICLE 3 OF THE AD AGREEMENT

77. Argentina argues that section 771(7)(G), containing the statutory AD cumulation provision, is inconsistent, as such, with Articles 3.1, 3.2, 3.3, 3.4, and 3.5. Article 3.3 does not prohibit an authority from cumulating dumped imports with subsidized, non-dumped imports in examining whether injury exists. To the extent section 771(7)(G) requires such cumulation in certain circumstances, it is not inconsistent with Article 3.3. Article 3.3 does not prohibit such cumulation; section 771(7)(G) is not inconsistent with Articles 3.1, 3.2, 3.4, or 3.5 either.

EXECUTIVE SUMMARY OF U.S. OPENING STATEMENT AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

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

78. Argentina's arguments that the USDOC's industry support determination was inconsistent with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 primarily center on its allegations that USDOC used "estimated," "outdated," and "anomalous" data. As an initial matter, none of the AD Agreement articles circumscribe the types of information an investigating authority must or must not rely on in determining whether an application is made by or on behalf of the domestic industry. Articles 5.1 and 5.4 do not preclude the use of *estimated* production levels. Thus, an authority may rely on alternative data, such as shipment data, if it can serve as a reasonable proxy for production.

79. The USDOC did not rely on "outdated" information. Article 5.3 imposes no temporal limitation on the data an authority may rely on in determining whether there is sufficient evidence to initiate an AD investigation. The same can be said of the other articles invoked by

Argentina. The mere fact that data relates to the past does not amount to an inconsistency with any of these articles. The majority of the data the USDOC relied on was contemporaneous with its POI. USDOC employed several lines of analyses in determining support. Under *all* the lines of analysis applied to the record, the application satisfied the 50 and 25 percent thresholds.

80. The data were not "anomalous." If Argentina's position is that (1) 2020 data is "outdated" and "anomalous," (2) 2021 was also part of the same "market disruption" that rendered 2020 data "anomalous," and (3) 2018-2019 data is outdated, it does not appear that there is any recent time period the USDOC could have used in Argentina's view. The USDOC appropriately rejected party attempts to "adjust the time period analyzed for industry support to move the needle in such a way so that the [application] no longer ha[s] the requisite level of support," which Argentina now appears to be doing.

81. No party made a "double-counting" allegation before the USDOC, and Argentina does not show that USDOC *actually* "double-counted" production. That there was a "risk" that the USDOC "double-counted" is conjecture. Speculation does not demonstrate inconsistency.

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

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

82. Argentina has challenged the USITC's decision to cross-cumulate imports in the underlying investigation and the statutory provision authorizing such cross-cumulation. These U.S. measures are consistent with the AD Agreement. The AD Agreement does not discuss or prohibit cross-cumulation. But silence in the text cannot imply a prohibition. The lack of reference to "subsidized imports" in Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement supports that there is *also* a silence in the agreement on whether examining cumulated dumped and subsidized imports in other components of a material injury analysis is permissible.

83. Additional context in the AD Agreement, SCM Agreement, and GATT 1994 support that Article 3.3 permits cross-cumulation. Article 3.3 of the AD Agreement and Article 15.3 of the SCM Agreement are written in essentially identical terms. This highlights the overlap of the injury analysis under both agreements. Thus, it is crucial to read Articles 3.3 and 15.3 together.

84. Nothing in the AD or the SCM Agreements prohibits cross-cumulation, which follows from Article VI of the GATT 1994, which the AD Agreement and SCM Agreement elaborate and clarify. It is significant that both Article 3.1 of the AD Agreement and Article 15.1 of the SCM Agreement on injury explicitly refer to Article VI, confirming that it is critical context.

85. Article VI:6(a) provides that a Member shall not impose ADs or CVDs "unless it determines that the effect of *dumping or subsidization*, as the case may be, is such as to cause or threaten to cause material injury to an established domestic industry . . ." The text recognizes that there may be situations in which it may be the "case" that the injury is caused by dumping, subsidization, or both. "[O]r" includes both possibilities, and "as the case may be" confirms that there need not be a binary choice between two options. Cumulating dumped and subsidized

imports may be appropriate "as the case may be" in particular investigations.

86. Not reading all of these articles together risks undermining the purpose of cumulation. Cumulating the injurious effects of dumped imports is a "useful tool" "to ensure that all sources of injury and their cumulative impact . . . are taken into account . . ." Furthermore, "[a] cumulative analysis logically is premised on a recognition that the domestic industry faces the impact of the 'dumped imports' as a whole and that it may be injured by the total impact of the dumped imports, even though those dumped imports originate from various countries." These points have equal logic where some imports are dumped and others subsidized. Focusing solely on the injurious effects of either dumped or subsidized imports alone, when both types of unfairly traded imports are injuring the industry simultaneously, would prevent the authority from adequately taking into account the injurious effects of all of these imports.

87. It would be misguided to consider the injury caused by dumped and subsidized imports to the same industry in isolation. Injury caused by dumped and subsidized imports is, from the perspective of domestic producers, indistinguishable. It would make little analytic sense for an authority to conduct separate injury analyses, when both types of imports are simultaneously injuring the same domestic industry and the requirements for cumulation are otherwise met.

88. The interpretation of Article VI and Article 3.3 that underlies the approach of the USITC is one that an unbiased and objective investigating authority could have reached. The AD Agreement should be interpreted consistent with its text in a manner ensuring that treatment of those imports is consistent under all the applicable provisions of the WTO agreements.

B. The USITC's Analysis of the "Conditions of Competition" Warranted Cumulation of All Subject Import Sources

89. The USITC's cumulation analysis appropriately accounted for the relevant conditions of competition between and among subject imports and the domestic like product, consistent with Articles 3.1 and 3.3. The USITC's examination of the conditions of competition was a multi-factor analysis. The USITC's examination of all factors, *combined*, supported cumulation. It is critical to examine the whole picture, as the USITC did, and not isolated pieces of evidence. Furthermore, Article 3.3 does not require a perfect overlap of competition. In this light, the USITC found cumulation was warranted based on a "reasonable overlap" of "conditions of competition."

90. Specifically, positive evidence supported that: subject imports and the domestic like product were fungible and were sold through overlapping channels of distribution, and subject imports were present in the U.S. market for nearly the entire POI and were sold in overlapping U.S. geographic regions. Accordingly, the USITC's cumulation determination was based on positive evidence and one that an unbiased and objective authority could have reached.

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

91. The USITC conducted a thorough and objective investigation of the record evidence before it determined that positive evidence demonstrated that the dumped imports are, through

the effects of dumping, causing injury to the domestic industry. Most of Argentina's arguments hang on the legally invalid idea that the USITC should have conducted a duplicate causation analysis at every step of its investigation, grafting onto Articles 3.2 and 3.4 an obligation that exists just under Article 3.5. Other arguments ask the Panel to conduct a *de novo* review.

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

92. Argentina argues that the USITC's considerations of volume and price effects under Article 3.2, and its examination of the impact of these imports on domestic producers under Article 3.4, should address the causal relationship between dumped imports and injury to the domestic industry. Argentina is wrong: Articles 3.2 and 3.4 do not require a causation analysis.

93. The Article 3.2 volume inquiry concerns the identification of the change in the import volume and a consideration of whether there has been a significant increase in dumped imports. The price effects inquiry concerns the identification of possible price undercutting, or price depression, or price suppression, and a consideration of whether there has been significant price undercutting, or significant price depression, or significant price suppression. The use of "or" between these possible price effects indicates that they are independent lines of inquiry.

94. Article 3.4 addresses specific economic factors and indices and the impact of dumped imports on the state of the industry. The importance of a factor may vary significantly from case to case, and nothing in Article 3.4 requires an authority to reach a negative injury determination merely because the industry reported a number of positive or improving factors.

95. Causation is not required to be examined under these provisions, and causation is not relevant to any of these inquiries. Argentina's challenge to the USITC's volume inquiry, and many of the arguments put forward in its challenges to the USITC's price effects and impact inquiries, focus on causation or other known factors. Articles 3.2 and 3.4, and Article 3 generally, confirm that causation and other known factors are to be examined under Article 3.5.

B. The USITC's Causation Analysis is Not Inconsistent with Articles 3.1 and 3.5

96. Article 3 establishes a step-by-step progression for investigating injury. The record demonstrates that the USITC followed this progression precisely. The USITC reserved its analysis of causation until its inquiry under Article 3.5. Under that Article 3.5 causation analysis, the USITC took into account the findings it made pursuant to its volume, price effects, and impact inquiries and concluded that the positive evidence on the record of the investigation demonstrated a causal relationship between dumped imports and injury to the domestic industry.

97. Argentina fails to make a *prima facie* case that the USITC's finding was inconsistent with Articles 3.1 and 3.5. Argentina argues that the USITC's causation analysis should have considered other known factors. Article 3.5 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.

98. Argentina also argues that the Panel should dismiss the USITC's finding of a causal relationship between dumped imports and injury because, after the domestic industry petitioned for trade remedy relief, the subject imports abruptly competed "less aggressively" and the domestic industry's overall performance improved in interim 2022. As the USITC correctly found, this sudden withdrawal substantiated that subject imports were a cause of injury to the industry during the POI, because it confirmed a correlation between imports and industry performance.

C. The USITC's Examination of Other Known Factors is Not Inconsistent with Articles 3.1 and 3.5

99. The AD Agreement does not specify the particular methods and approaches an authority may use to analyze other known factors. The question of whether an authority's analysis of other known factors is consistent with Article 3.5 turns on whether it evaluated these factors and whether its evaluation is supported by positive evidence and reflects an objective examination.

100. The USITC clearly examined every other known factor identified and, following a thorough review of positive evidence, objectively ensured that it did not attribute injury from any of these factors to dumped imports. For example, the USITC examined the dramatic decline in OCTG demand during the early part of the POI, resulting from, what Tenaris called, "the one-two punch of OPEC/Russia supply jousting and the COVID-19 global pandemic." Its examination of this 'one-two punch' pervades its final report, including discussing conditions of competition.

101. In addition, the dramatic decline in demand brought about by these events was not injuring the domestic industry "at the same time" dumped imports were, and, for this reason, should not be considered a "known factor[] other than the dumped imports" under Article 3.5.

102. The USITC examined other factors Argentina identifies and objectively concluded, based on positive evidence, that none of them explained the injury that the USITC attributed to dumped imports. Argentina's arguments invite the Panel to conduct a *de novo* examination. The USITC's findings are such as could have been reached by an unbiased and objective authority.

EXECUTIVE SUMMARY OF THE U.S. SECOND WRITTEN SUBMISSION

I. 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

A. The USDOC's Analysis Is Not Inconsistent With Articles 5.1 and 5.4

103. The information provided by the domestic industry applicants, and the supplementary information the USDOC sought, supported that the application was made "by or on behalf of the domestic industry." During the first substantive meeting, and in its responses to questions, Argentina has continued to raise arguments it made in its first written submission, as well as a new argument that the USDOC "understated" domestic production in the denominator of the industry support calculations. These arguments are unavailing.

104. Argentina continues to argue that the USDOC relied on "outdated" or "anomalous" data. It was appropriate for the USDOC to rely on the applicants' actual production data for 2020, and 2020 domestic industry-wide shipment data, which the USDOC converted to estimated industry-wide production data. Year 2020 corresponded to the most recently-completed year preceding the application, and reasonably overlapped with the POI. The USDOC appropriately relied on the 2018-2019 production-to-shipments conversion ratio, which was the "most recently available" on the record to convert the 2020 shipment data to estimated production data. It also considered a 2020 ratio to convert the 2020 industry-wide shipment data to estimated production data, and applying this more recent ratio showed the application *still* had the requisite support.

105. Argentina has pointed to nothing in Articles 5.1 or 5.4 that specifies that an authority must select a particular time period to examine support, or that proscribes the types of evidence an authority may use. 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 authority has considered that the data is reliable, and has appropriately refuted party arguments to the contrary.

106. Regarding its assertion about "anomalous" data, Argentina's position is 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. Argentina's arguments suggest that Argentina would not have approved of any of these time periods for the purposes of determining industry support for the application. Article 5.4 requires an authority to assess such support prior to initiation, and the USDOC used appropriate data to do so.

107. Argentina suggests, without textual support, that an authority cannot use "estimated" production data. None of the provisions cited require "actual" production data. The absence of the term "actual" connotes a certain level of flexibility in what data an authority may rely on in assessing whether an application is made by or on behalf of the relevant industry. 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 industry support. Thus, Articles 5.1 and 5.4 permit an authority to rely on alternative data to the extent such data may serve as a suitable proxy for production, in assessing industry support. That is what the USDOC did here.

108. It is logical that an authority should be able to rely on reasonable proxy information. It is reasonable to expect that applicants comprising a subset of the relevant domestic industry would not have production volumes for the entire industry, given that such information would almost certainly constitute BCI of some firms for which applicants would not have access. Thus, there must be inherent flexibility in Article 5 for an applicant to provide less than "actual" production data for the entire industry, and, in turn, for the authority to be able to rely on such data.

109. Next, Argentina continues to assert that there was a "significant risk" that the USDOC "double-counted" production in its industry support determination by including processors and finishers of unfinished OCTG in its analysis of support. Asserting that there was a "significant risk" amounts to conjecture, which is insufficient to make a *prima facie* case of inconsistency.

110. No interested party raised a "double-counting" argument before the USDOC, and Argentina has not provided evidence that it affirmatively occurred. Furthermore, its 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 again after it is further processed into finished OCTG; or (2) one domestic producer reported production of green tube, which it then sells to another domestic producer, which further processes it into finished OCTG and reports finishing as production. The record does not demonstrate these scenarios occurring, or even of a domestic producer further processing another domestic producer's green tube.

111. Finally, in its opening statement at the first substantive meeting, Argentina introduced a new argument that the USDOC "understated" total production in the denominator of its support analysis. Similar to Argentina's "double-counting" argument, no interested party raised this additional line of argument at initiation. Argentina's assertion that the USDOC "merely accepted unsubstantiated assertions from the supporters of the application," or "relied on a 'simple assertion'" from the applicants that the domestic shipment data were complete, is baseless. The USDOC issued multiple questionnaires to the applicants, which covered, *inter alia*, the shipment data. This engagement between the USDOC and the applicants supports that it made efforts to safeguard against any deficiencies in the record before determining that the application had the requisite support. This back-and-forth must be balanced against the fact that other parties, including Tenaris, raised concerns about the support calculations. However, *no* interested party argued that the shipment data were incomplete. The absence of any objection, coupled with the response by the applicants – which the applicants' attorneys made with the understanding that they were subject to criminal sanctions if they made willful, material false statements to the U.S. Government – supports that there was no reason for the USDOC to further second-guess, based on the record before it, whether the shipment data were complete.

112. The *only* evidence Argentina has put forward before the Panel is Exhibit ARG-66 (BCI), which does not show that "under-counting" occurred. It is unclear how this line of argument on "understating" production and this exhibit – and also the "double-counting" argument – is relevant to the Panel's standard of review or its role under the DSU. It is unclear how this argument or evidence is relevant to assessing the USDOC's compliance with Article 5.4, or any other provisions. Argentina concedes 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." It strains logic how the USDOC could have acted inconsistently regarding alleged issues that were never brought to its attention.

B. The USDOC's Analysis Is Not Inconsistent With Article 5.3

113. Consistent with Article 5.3, the USDOC determined whether there was "sufficient" evidence of industry support for the application to justify initiating the investigation, and determined that the evidence supported that the application had support. Argentina's arguments that the USDOC acted inconsistently with Article 5.3 overlap to some extent with its Article 5.1 and 5.4 arguments: (1) the USDOC's use of "outdated" and "anomalous" data for purposes of calculating industry support; (2) its use of estimated production data; and (3) "double-counting." Argentina also raised a new argument that the USDOC allegedly "understated" production in its opening statement, but it appears to be framing this as an inconsistency with Article 5.3. The United States refers to its responses to these arguments by Argentina in the context of Articles 5.1 and 5.4 above, which we adopt in response to Argentina's parallel Article 5.3 arguments.

C. The USDOC's Analysis Is Not Inconsistent With Article 5.2

114. Argentina asserts that the application did not contain "'relevant evidence', including actual 'domestic production'." Initially, to the extent the Panel addresses Argentina's Article 5.3 arguments, it is unnecessary to address Argentina's Article 5.3 arguments. Should the Panel address its arguments separately under Article 5.2, then 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: (1) the USDOC's use of "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) "double-counting." We refer to our prior responses to these arguments by Argentina.

115. Argentina appears to be framing its allegation that the USDOC "understated" production as an Article 5.2 inconsistency. Argentina is incorrect that, even if the USDOC had "passively accept[ed]" the applicants' statement that, as far as they were aware, the shipment data were complete, this would be inconsistent with Article 5.2. Article 5.2 imposes no obligation directly on the authority; the obligation is in Article 5.3. The USDOC did not accept an "unsubstantiated assertion" that the shipment data were complete; we refer to our discussion above.

II. ARGENTINA'S CLAIMS REGARDING CUMULATION ARE WITHOUT MERIT

116. Argentina's claims regarding the cumulation of imports, in terms of the USITC's decision to cumulate imports of OCTG from Argentina with other sources subject to simultaneous AD and CVD investigations, *and* in terms of section 771(7)(G), are without merit. Argentina has failed to show that the AD Agreement prohibits cumulating imports subject to AD investigations with other unfairly traded, but not dumped, imports subject to simultaneous CVD investigations. 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 prohibition. Likewise, we demonstrated that the cumulation analysis, namely, the USITC's analysis of overlapping competition, was not inconsistent with Articles 3.1 and 3.3.

117. Argentina contends that the United States "concedes that the U.S. statute mandates cross-cumulation." We have made no such concession. The statute on its face is not definitive; we do not consider that Argentina has demonstrated that it requires cross-cumulation in its filings.

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

118. 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 subject imports and the domestic industry's weak performance during the POI. The USITC also objectively considered all other known factors as required by Article 3.5 and, based on positive evidence, ensured that it did not attribute any alleged injury from known factors to subject imports.

A. The USITC's Investigation Demonstrated that the Injury to the Domestic Industry Was Caused by Dumped Imports

119. 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. Contrarily, evidence on the USITC's record confirms the injury to the domestic industry was caused by dumped imports, not Tenaris's domestically-produced OCTG. For example, Tenaris submitted a U.S. producer questionnaire and a U.S. importer questionnaire, which distinguished between its domestic and import shipments, and between its prices between U.S.-produced and imported OCTG. The USITC integrated data submitted by Tenaris with that of other U.S. producers and U.S. importers and found, on the basis of positive evidence, including Tenaris's own reporting, that subject imports captured market share from the domestic industry through significant underselling.

120. 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." Positive evidence demonstrates that most U.S. purchasers knew the origin of their OCTG. The evidence collected, namely, USITC Purchaser Questionnaire responses, indicates that most purchasers definitively knew whether their purchases were subject imports or U.S.-produced OCTG.

121. Argentina's responses to Panel questions contradict its repetitive assertion that the USITC failed to consider Tenaris's argument about alleged intra-industry competition. In response to Questions 36 and 38, Argentina acknowledged that the term "intra-industry competition" is a shorthand expression for Tenaris's arguments about Rig Direct, its own price approach, etc. The USITC's final determination demonstrates that the USITC considered these arguments and objectively found them unavailing.

122. Argentina claims that Tenaris "would not import in a manner that would harm the U.S. industry, which includes its own investigations," but evidence before the USITC indicated that dumped imports did just that. While dumped imports might have been in Tenaris's interests, the USITC found that they were not in the best interests of the whole domestic industry.

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

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

124. 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 driven by oil and gas prices as well as exploration and production." According to the 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.

125. 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." The USITC found that cumulated subject imports' share increased during this same time period.

126. The USITC found "a moderate-to-high degree of substitutability between the domestic like product and cumulated subject imports." It recognized that certain factors limited substitutability and 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." Nonetheless, the evidence supported a substitutability finding.

127. The USITC also recognized other conditions of competition, including Tenaris's Rig Direct program, HRC prices, and inventories, and appropriately reviewed the evidence of record.

128. Lastly, the USITC found, based on the positive evidence, that "price is an important factor in OCTG purchasing decisions."

129. These conditions of competition fully informed the USITC's objective injury analysis under Articles 3.2, 3.4, and 3.5 of the positive evidence of record. For example, the USITC's consideration of price effects under Article 3.2 considered the relationship between 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." Given these conditions of competition, plus "the predominant underselling by subject imports, both in quarterly comparisons and by volume," 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.

130. 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." The USITC addressed all of Tenaris's arguments in this regard and objectively determined that none of these factors could account for the injury to the domestic industry that it had attributed to the dumped imports.

131. 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, in finding a causal relationship under Article 3.5 between the dumped imports and the injury to the industry and that it did not attribute any alleged injury from other known factors to the dumped imports. The USITC's injury finding is such as could have been reached by an unbiased and objective investigating authority.

C. The Decision Not to Reach a Conclusion on Price Suppression under Article 3.2 Cannot be Challenged under Article 3.1 on a Standalone Basis

132. 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." 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 Article 3.1. Any claim now thus is outside the Panel's terms of reference. If the Panel addresses this question, it should find that, where an 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.

133. First, Argentina misinterprets Article 3.2's plain language. Article 3.2 states that an authority need only "consider" possible price effects, which confirms that it is not obligated to explicitly determine whether dumped imports have had an effect on prices through price undercutting, or through depression, or through suppression. Argentina erroneously alters Article 3.2 by substituting the conjunctive "and" for the conjunctive "or." The meaning of the conjunctive "or" in Article 3.2 indicates that an authority, when it considers the price effects of dumped imports, need not consider, or arrive at a decision regarding, all three lines of inquiry.

134. Second, Argentina misconstrues the reasoning of the *Korea – Pneumatic Valves* and *China – Autos (US)* panels. Argentina quotes *Korea – Pneumatic Values* out of context; the panel's finding is limited to Article 3.5 and does not address Article 3.2 or 3.1. The *Korea – Pneumatic Valves* panel's reasoning does not support Argentina's argument that a decision not to reach a conclusion about price suppression under Article 3.2 can be challenged under Article 3.1 on a standalone basis. In addition, the question addressed in *China – Autos (US)* involved a price depression analysis. The report in *China – Autos (US)* does not address Argentina's argument.

135. 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. Such an interpretation acts to deter an authority from ever considering price data regarding more than one of the inquiries in Article 3.2. Such a 'chilling effect' is at odds with Article 3.2, which establishes three alternative ways by which an authority can consider the effect of dumped imports on prices.

136. While Article 3.1 does require the injury determination to involve an "objective examination" and to be based on "positive evidence," Article 3.1 does not articulate the analysis 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.

EXECUTIVE SUMMARY OF U.S. OPENING STATEMENT AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL

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

137. The USDOC determined that the application had adequate support from the U.S. industry. Argentina has pursued a series of tactical arguments that have no substantive basis.

We will focus on two arguments, namely, that the USDOC simultaneously "double-counted" and "under-counted" production in its assessment of support, inconsistently with Articles 5.1, 5.2, 5.3, 5.4, noting that Article 6.6 speaks to the course of the investigation only after initiation.

138. Argentina suggests that the USDOC was on notice of these two issues at initiation. *No* interested party raised either of these issues at initiation. Argentina has already acknowledged 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." The same is true of the other articles. Thus, it is unclear how these arguments are relevant to assessing whether the USDOC acted in a manner inconsistent with Article 5. This argument is also not relevant to the Panel's standard of review or its role under the DSU.

139. Argentina's "double-counting" argument is supposition. Argentina has not pointed to *any* evidence on the USDOC's record showing "double-counting."

140. Argentina's "under-counting" argument is largely based on Exhibit ARG-66 (BCI). We do not see how this exhibit is relevant in light of the timing – when it was first proffered during the first substantive hearing, not at initiation – or the Panel's standard of review. It is difficult to reconcile Argentina's assertion that "[w]hether the information provided for in Exhibit ARG-66 was ever before the investigating authority is irrelevant," with its prior statement 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."

141. Furthermore, the USDOC did not merely "defer[ ] to" the applicants regarding whether the shipment data were complete. The USDOC examined the evidence on the record and sought additional evidence where necessary. The extent to which an authority should probe an interested party on an issue in an AD investigation is a function of the authority's administrative record itself and what information is necessary in a given situation. Here, *no* interested party contended that the domestic industry-wide shipment data were incomplete. The applicants' response must be counterbalanced against the fact that nothing on the record suggested that "key information underpinning the industry support calculation was incomplete." And the USDOC *did* examine the accuracy and adequacy of the application, as evinced by its initiation checklist.

142. Finally, Argentina complains that we have relied on the public record of the USDOC's initiation in this dispute. But it is sufficient to establish that the USDOC did not act inconsistently with the WTO agreements. Argentina's confidential exhibit is the only BCI before this Panel and consists of new material Argentina developed, which was never before the authority prior to initiation, and whose accuracy and relevance has not been previously examined by the USDOC.

II. THE USITC'S DECISION TO CUMULATE IMPORTS IS NOT INCONSISTENT WITH ARTICLES 3.1 AND 3.3 OF THE AD AGREEMENT

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

143. The AD Agreement does not preclude "cross-cumulation." Article 3.3, and the other

articles, do not speak to or preclude cross-cumulation. Silence cannot imply a prohibition. Context in the AD Agreement, the SCM Agreement, and the GATT 1994 support that Article 3.3 permits cross-cumulation. We comment on a few themes in Argentina's latest submission.

144. First, Argentina relies heavily on *US – Carbon Steel (India)* in contending that cross-cumulation is inconsistent with Article 3.3. In assessing the USITC's approach to cumulation in the OCTG investigation, and the U.S. statutory provision, the Panel should be guided by the standard of review under Article 11 of the DSU and Article 17.6 of the AD Agreement. The analytical approach of a prior appellate or panel report may inform a panel's understanding of the operation of the relevant provisions in highly technical areas, but care must be taken not to treat a prior approach as if it has legal authority. Therefore, the Panel should not treat *US – Carbon Steel (India)* as "precedent" or "case law" here. To do so would amount to serious legal error.

145. Second, Argentina accuses the United States of reading additional terms into Article 3.3, namely, the phrase "unfairly traded imports." The United States is doing no such thing; our point is that it is crucial to read all of the Covered Agreements, namely, the AD and SCM Agreements and the GATT 1994, together, harmoniously. Argentina is trying to impose limitations not present in the text. Not reading these agreements together, in a harmonized manner, risks undermining or contradicting the purpose of cumulation. The purpose of cumulation has equal logic in a situation in which some imports are dumped and others subsidized. Ignoring this logic, where both types of unfairly traded imports are injuring the industry simultaneously, would render the authority's injury analysis less than complete.

146. Third, the context offered by GATT 1994 Article VI:6(a), particularly the phrase "as the case may be," does not suggest a binary choice between two options, namely, dumped or subsidized imports, but not both. The text ("the effect of dumping or subsidization") explicitly recognizes that, in accordance with the meaning of "as the case may be," there may be situations in which it may be the "case" that the injury is caused by dumping, subsidization, or both.

B. The USITC's Analysis of the "Conditions of Competition" Among Subject Imports and the Like Product Warranted Cumulation of Imports

147. The USITC *did not* ignore that there was an AD order on OCTG from Korea, but found that it was irrelevant to cumulation. At the same time, the USITC considered, relative to OCTG imports from other sources and relative to the domestic like product, whether imports from Korea were (1) fungible, (2) sold in overlapping channels of distribution, (3) sold in overlapping geographic regions of the United States, and (4) simultaneously present in the U.S. market during the POI. The USITC found that all four of these conditions were satisfied, thus justifying cumulation. The culmination of that analysis *was* an assessment of the "conditions of competition," during a time period in which the discipline of an AD order on OCTG imports from Korea was in place.

148. The USITC did not merely assess whether the measures imposed on Russia following its invasion of Ukraine prevented or prohibited such imports from entering the U.S. market. The USITC *did* consider the "dynamics" of competition; its findings must be considered in the broader context of its cumulation assessment, in which it examined the four above factors. It

considered these factors *against* the additional measures taken towards Russia that Argentina highlights.

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

149. The USITC conducted a thorough and objective investigation of the record before it determined that positive evidence demonstrated that the subject imports were causing injury to the domestic industry. Argentina's latest submissions mainly restate the arguments it made in its initial written submissions and oral statements. Argentina continues to cling to the erroneous view that the USITC should have conducted a duplicate causation analysis at every step of its investigation. Argentina also continues to beseech the Panel to conduct a *de novo* review.

A. 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

150. As the USITC underscored in its final report, conditions of competition informed every aspect of its "analysis of whether there is material injury by reason of subject imports." Its objective consideration of volume and price effects under Article 3.2, and its examination of impact data under Article 3.4, was systematic and fully accounted for conditions of competition.

151. The USITC was not otherwise required under Article 3.2 or Article 3.4 to demonstrate whether dumped imports are causing injury to the industry, nor did those articles require it to analyze other known factors that may be causing injury. Thus, the USITC was not required under Article 3.2 to consider "qualitative" reasons why unfairly traded imports were needed in the market before it could find whether any increase in such imports was significant, nor was the USITC required to consider "qualitative" reasons why certain price development or trends exist before it could find that the prices of these imports had a significant effect on domestic prices.

B. The USITC's Examination of Factors under Article 3.4 Was Based on the Totality of the Evidence

152. Argentina repeats the baseless argument that the USITC failed to analyze cash flow. Article 3.4 generally does not require an authority to explicitly mention each of the factors listed there as part of its determination, because Article 3.4 does not address the manner in which an authority's analysis of each factor must be set out in its determination. That said, its final report evinces that "cash flow" was examined by the USITC.

153. Argentina also introduces a new argument that the USITC did not fully examine trends related to "capital utilization." Article 3.4 does not list "capital utilization" as a specific economic factor that an authority must evaluate. Lastly, the Panel should reject this argument as untimely because Argentina did not raise this matter until its second written submission.

C. The USITC's Causation Analysis Is Not Inconsistent with Articles 3.1 and 3.5

154. Argentina argues that because so-called "positive trends" predated the industry's

applications for relief, the USITC's "determination to discount evidence of improving domestic industry performance at the end of the period of investigation by attributing it to the filing of the application was improper." The USITC did not discount the improved performance of the industry during interim 2022. Quite the contrary, the USITC reasonably considered improved industry performance as substantiating the causal nexus between subject import competition and how the industry fared during the POI, including in 2021, when the industry's performance was weak relative to strong demand growth. Just because the domestic industry may have been, according to Argentina, "recovering," or that data "demonstrated improvements in the domestic industry," does not mean that unfairly traded subject imports did not cause material injury to the domestic industry during the period of investigation. The figures that Argentina plucked from our responses to questions following the first panel meeting *confirm* that the USITC correctly found a correlation between subject imports and domestic industry performance.

155. There is nothing "internally inconsistent" about the USITC's two conclusions that: (1) in 2021, subject imports competed aggressively in the U.S. market, engaging in significant underselling; and (2) in interim 2022, after the domestic industry petitioned for trade remedy relief, subject imports competed "less aggressively" and the domestic industry's overall performance improved. In 2021, a causal relationship existed between the dumped imports and the domestic industry's poor performance. The sudden withdrawal of unfairly traded imports from the U.S. market, and the rebound effect that had on the industry's performance, substantiated that they were a cause of injury to the industry during the POI.

D. The USITC's Decision Not to Reach a Conclusion on Price Suppression under Article 3.2 Cannot be Challenged under Article 3.1 on a Standalone Basis

156. Argentina argues that an authority, in every instance, must reach a conclusion about price suppression under Article 3.2, but its argument contradicts the plain language, which stipulates three alternative ways to consider price effects: price undercutting, depression, or suppression.

157. An authority would be expected to always collect price data as part of its consideration of price effects under Article 3.2. And an authority would be expected to collect data about cost-of-goods sold as part of its examination of the financial performance of the domestic industry. As a result, the data required for a possible analysis of price suppression exists, by default, in the record of investigation. Article 3.2, however, unequivocally states that an authority need only "consider" possible price effects, and there are three alternative ways of doing so. An authority is not obligated under Article 3.2 to analyze aspects of a domestic industry's cost-of-goods sold as part of its consideration of price effects and determine whether dumped imports have had an effect on prices through price suppression.

158. The AD Agreement does not establish an obligation whereby an authority must, much less should, take price suppression into account for its price effects analysis or its injury analysis. Argentina's argument that the USITC "should have" taken price suppression into account thus is without merit. Thus, Article 3.1 does not provide a backdoor to challenge the USITC's decision under Article 3.2 not to reach a conclusion about price suppression.