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

(DS617)

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

November 19, 2024

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China – HP-SSST (AB)	Appellate Body Reports, *China - Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan and the European Union*, WT/DS454/AB/R, WT/DS460/AB/R, adopted 28 October 2015
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US – Oil Country Tubular Goods Sunset Reviews (AB)	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/AB/R, adopted 17 December 2004

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USA-01	19 C.F.R. § 351.204
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USA-03	Tenaris Bay City, Inc., IPSCO Tubulars Inc., Maverick Tube Corporation, and Tenaris Global Services (U.S.A.) Corporation, "Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Comments on Petitioners' Second General Issues Questionnaire Response" (Oct. 22, 2021) (excerpts)
USA-04	Applicants' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia," Vol. 1, Part 3 (Oct. 6, 2021) (excerpt)
USA-05	USITC Blank U.S. Purchaser Questionnaire from OCTG investigations (excerpt)
USA-06	19 C.F.R. §§ 351.102, 351.301
USA-07	Definition of "As the Case May Be", *Collins*, http://www.collinsdictionary.com/dictionary/english/as-the-case-may-be (accessed Apr. 23, 2024)
USA-08	Definition of "Case", *Oxford Learner's Dictionaries*, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/case_1 (accessed Apr. 23, 2024)
USA-09	*Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223 (Preliminary), USITC Pub. No. 4422 (Aug. 2013) (excerpt)
USA-10	*Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Preliminary), USITC Pub. No. 2803 (Aug. 1994) (excerpt)

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USA-12	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (excerpt)
USA-13	*Oil Country Tubular Goods From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 87 Fed. Reg. 59,056, 59,057 (Dep't of Commerce Sept. 29, 2022)
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USA-17	*Proclamation 9705: Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625 (Mar. 15, 2018)
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USA-19	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Preliminary), USITC Pub. No. 5248 (Nov. 2021)
USA-20	Definition of "Significant," The New Shorter Oxford English Dictionary, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993), Vol. 2, p. 2860
USA-21	19 U.S.C. § 1862
USA-22	15 C.F.R., Part 705
USA-23	WTO Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 10 November 2017, G/C/M/130, at 26-27 (Mar. 22, 2018)
USA-24	U.S. Department of Commerce, "The Effect of Imports of Steel on the National

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USA-36	*The New Shorter Oxford English Dictionary*, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993) (excerpt)
USA-37	Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I (1994) (excerpt)
USA-38	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv.

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	Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (additional excerpt)
Opening Statement of the United States at the Second Panel Meeting	
USA-39	*The New Shorter Oxford English Dictionary*, 345 (L. Brown ed. 1993)

I. INTRODUCTION

Madam Chairperson, members of the Panel,

1. On behalf of the U.S. delegation, I would again like to thank the Panel, and the Secretariat staff assisting you, for your work on this dispute.

2. The United States has addressed Argentina's arguments at length in prior submissions, and today we would like to limit our remarks to several important issues addressed in the Parties' second written submissions and responses to Panel questions.

3. We will first address Argentina's claims that the U.S Department of Commerce ("Commerce") failed to properly examine the evidence on the record and determine that the application seeking an anti-dumping ("AD") investigation on oil country tubular goods ("OCTG") from Argentina was made "by or on behalf of the domestic industry."

4. Next, we will respond to certain assertions of Argentina regarding the U.S. International Trade Commission's ("ITC") decision to cumulate dumped and subsidized imports in the OCTG investigation.

5. We will conclude our opening statement by addressing certain arguments by Argentina's claims about the ITC's injury analysis.

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

6. Commerce determined that the application seeking the underlying AD investigation had adequate support from the U.S. domestic industry. Argentina has failed to show otherwise. Because there is no evidence that the application did not have adequate industry support, Argentina has pursued a series of tactical arguments that have no substantive basis.

7. In our statement today, we will focus on two such arguments, namely, Argentina's arguments that Commerce simultaneously "double-counted" and "under-counted" domestic production in its assessment of industry support for the application, in a manner inconsistent with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement. In its second written submission, Argentina placed the most emphasis on these two arguments.[1] We will only focus on Argentina's arguments as they pertain to Articles 5.1, 5.2, 5.3, and 5.4, noting that Article 6.6 of the AD Agreement speaks to the course of the investigation only after it has been initiated.[2]

8. Argentina continues to suggest that Commerce was on notice of these two issues at initiation.[3] Argentina is wrong. *No* interested party raised either of these issues with Commerce

[1] Argentina's Second Written Submission, paras. 34-39, 46-53, 55-64.

[2] *See*, *e.g.*, U.S. First Written Submission, paras. 23-29.

[3] Argentina's Second Written Submission, para. 30.

at initiation.[4] 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."[5] The same is true of the other articles Argentina invokes on the question of industry support for the application. Therefore, it is unclear how any aspects of these arguments are relevant to assessing whether Commerce acted in a manner inconsistent with Article 5 of the AD Agreement. These points remain unclear because, in short, this line of argument is neither relevant to the Panel's standard of review nor the Panel's role under the DSU.[6]

9. With specific regard to Argentina's "double-counting" argument, it amounts to supposition.[7] For example, in its second written submission, Argentina asserts that "to the extent that a U.S. processor sourced from domestic production, that pipe *could* be counted twice."[8] In earlier filings in this dispute, Argentina asserted that there was a "significant risk" of "double-counting" production, and referred to website screenshots of two of the applicants, none of which shows that Commerce "double-counted" domestic production of OCTG.[9] But speculation is not equivalent to making a *prima facie* case that an investigating authority's actions are inconsistent with the AD Agreement. And Argentina has not pointed to *any* evidence on Commerce's record that Commerce *actually* "double-counted" domestic production. In other words, Argentina has failed to establish that Commerce reached a conclusion that could not have been reached by an unbiased and objective investigating authority on the basis of the evidence before it.

10. In what appears to be an attempt to buttress its speculation, Argentina tries to obfuscate the burden of proof by suggesting that the *United States* must show that "pipe was not counted twice,"[10] or that we "failed to demonstrate that the commingling of pipe formation and pipe processing data did not result in 'double-counting', which would distort the industry support calculation."[11] It is not the United States' burden to prove a negative here. Rather, it is Argentina's burden to show that there *is* actually "double-counting" of domestic production. Argentina has not satisfied this burden. And, as a result, Argentina has failed to establish that Commerce reached a conclusion that could not have been reached by an unbiased and objective investigating authority on the basis of the evidence before it.

11. Nonetheless, to dispel any doubt, we explained in our second written submission that Argentina's "double-counting" argument presumes that either: (1) a fully integrated domestic

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[4] *See, e.g.,* U.S. Second Written Submission, paras. 20, 25.

[5] Argentina's First Written Submission, para. 159 (citing *EC – Fasteners (China) (Panel)*, para. 7.182); *see also* U.S. Second Written Submission, para. 33.

[6] U.S. Second Written Submission, para. 32.

[7] *See, e.g.*, U.S. Second Written Submission, para. 21.

[8] Argentina's Second Written Submission, para. 34 (emphasis added); *see also id.* at para. 53.

[9] Argentina's First Written Submission, paras. 200, 202, 205 (citing Tenaris's Oct. 15, 2021 Comments at Exhibits 5, 6 (Exhibit ARG-03)); *see also* U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 10; U.S. First Written Submission, paras. 59-64.

[10] Argentina's Second Written Submission, para. 34 (emphasis omitted).

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

producer of OCTG reported the same product twice, once as unfinished green tube and then again after processing it into finished OCTG; or (2) one domestic producer reported production of green tube, which it then sells to another domestic producer, who reports finishing of that green tube into OCTG as production. The record before Commerce does not demonstrate a single instance of either of these scenarios occurring, or even of a domestic producer further processing another domestic producer's green tube.[12] Thus, there is *no* "significant risk"[13] that Commerce "could"[14] have "double-counted" domestic production. For the purposes of the Panel's assessment, this further confirms that Commerce's conclusion is one that an unbiased and objective investigating authority could have reached.

12. Turning to Argentina's "under-counting" argument, which 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 – or the Panel's standard of review.[15] It was never before Commerce at initiation.[16]

13. Argentina suggests that "[w]hether the information provided for in Exhibit ARG-66 was ever before the investigating authority is irrelevant."[17] But it is difficult to reconcile this assertion with Argentina's 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."[18]

14. Furthermore, Commerce did not merely "defer[ ] to,"[19] or rely on a "simple assertion"[20] by, the applicants, regarding whether the domestic industry-wide shipment data were complete. Argentina's argument is essentially that Commerce did not probe the applicants enough regarding whether this shipment data could serve as an appropriate proxy for domestic production.[21] But Commerce did more than enough: Commerce examined the evidence on the record and sought additional evidence where it was necessary. In our second written submission, we detailed the back-and-forth process between Commerce and the applicants regarding these shipment data.[22]

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[12] U.S. Second Written Submission, para. 22.

[13] Argentina's First Written Submission, para. 200.

[14] Argentina's Second Written Submission, para. 34.

[15] U.S. Responses to the Panel's First Set of Questions, para. 18; U.S. Second Written Submission, para. 32.

[16] U.S. Responses to the Panel's First Set of Questions, para. 18.

[17] Argentina's Second Written Submission, para. 37.

[18] Argentina's First Written Submission, para. 159 (citing *EC – Fasteners (China) (Panel)*, para. 7.182); *see also* U.S. Second Written Submission, para. 33.

[19] Argentina's Second Written Submission, para. 42; *see also id.* at para. 47.

[20] Argentina's Second Written Submission, para. 57.

[21] Argentina's Second Written Submission, paras. 57-58.

[22] *See* U.S. Second Written Submission, paras. 26-30.

15. It bears emphasizing that the extent to which an investigating 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 before Commerce that the domestic industry-wide shipment data were incomplete. Indeed, Commerce explicitly observed that "Tenaris USA has not provided any data or made any arguments to impugn the . . . shipment data."[23] Thus, even though the applicants' response to Commerce's question stated that, "'*as far as Petitioner is aware*, the . . . shipment data account for all U.S. shipments of the domestic like product,'"[24] this must be counterbalanced against the fact that nothing on the record suggested that "key information underpinning the industry support calculation was incomplete," as Argentina asserts.[25]

16. Argentina's assertions that Tenaris voiced its disagreement with industry support prior to initiation changes nothing; Tenaris's opposition does not detract from the fact that Commerce's assessment is supported by the information on the record.[26] Indeed, no interested party ever contended that relying on the record evidence would "double-count" or "under-count" domestic production.

17. Commerce *did*, however, undertake its own examination of the accuracy and adequacy of the information in the application, in a manner consistent with Articles 5.3 and 5.4 of the AD Agreement.[27] Commerce's initiation checklist illustrates that Commerce acted in a manner consistent with all of the articles Argentina invokes on the question of industry support for the application.[28] The United States has also further elaborated on Commerce's determination throughout this dispute to show that Argentina's arguments, including those regarding alleged "double-counting" and "under-counting" of domestic production for the purposes of initiating the underlying AD investigation, lack merit.

18. Finally, we will make one more point on Argentina's arguments regarding industry support for the application. Argentina complains that the United States has relied on only the public record of Commerce's initiation in refuting Argentina's arguments.[29] The United States has relied on the public record of Commerce's initiation in defending Commerce's determination because that evidence is sufficient to establish that Commerce did not act in a manner inconsistent with U.S. commitments under the WTO agreements.

19. To be clear, Argentina's confidential exhibit is the only BCI before this Panel and consists of new material Argentina developed for this Panel proceeding, which was never before the investigating authority prior to initiation, and whose accuracy and relevance has not been

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

[24] U.S. Second Written Submission, para. 27 (quoting Applicants' First General Issues Questionnaire Response, at 4-5 (Oct. 12, 2021) (Exhibit ARG-14)) (emphasis added).

[25] Argentina's Second Written Submission, para. 58; *see also id.* at para. 3.

[26] Argentina's Second Written Submission, para. 61.

[27] Argentina's Second Written Submission, para. 62.

[28] USDOC Initiation Checklist, Attachment II (Exhibit ARG-18).

[29] Argentina's Second Written Submission, para. 22; *see also id.* at para. 29.

previously examined by Commerce. Argentina's confidential exhibit does not speak to the question of whether an unbiased and objective investigating authority could have reached the same conclusions Commerce reached based on the evidence before it.

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

20. We now turn Argentina's arguments about cumulating imports in assessing whether material injury exists. We first address Argentina's arguments that Article 3.3 of the AD Agreement precludes an investigating authority from cumulating imports subject to simultaneous AD and CVD investigations. We then address Argentina's arguments that such cumulation by the ITC was not warranted under Article 3.3 in the underlying investigation, based on the "conditions of competition" among subject OCTG imports and the domestic like product.

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

21. As an initial matter, we disagree with Argentina that the text of the AD Agreement precludes so-called "cross-cumulation" of imports. As we have explained previously, the text of Article 3.3 of the AD Agreement, and the other articles of that agreement, do not speak to, let alone preclude, cross-cumulation. Silence cannot imply a prohibition. Furthermore, we have explained that additional context in the AD Agreement, the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and the General Agreement on Tariffs and Trade 1994 ("GATT 1994") support our interpretation that Article 3.3 of the AD Agreement permits cross-cumulation.[30]

22. In this regard, we would like to comment on a few recurring themes in Argentina's latest written submission.

23. First, Argentina relies heavily on the Appellate Body and panel reports in *US – Carbon Steel (India)* in contending that cross-cumulation is inconsistent with Article 3.3 of the AD Agreement.[31] In assessing the ITC's approach to cumulation in the OCTG investigation, and the U.S. statutory provision at issue in this dispute, in light of the AD Agreement, the Panel should be guided by the standard of review under Article 11 of the DSU and Article 17.6 of the AD Agreement.

24. The United States highlights that 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 such as under the AD Agreement, 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. Rather, the Panel should make its own objective assessment of the matter before it, applying the customary rules of interpretation, as it is required to do under the DSU.[32] Applying such

[30] *See, e.g.,* U.S. First Written Submission, paras. 100-122, 323-324.

[31] Argentina's Second Written Submission, paras. 71-74, 76-77, 81, 86.

[32] *See* DSU, Articles 3.2, 11.

customary rules of interpretation reveals that cross-cumulation is permitted under the AD Agreement.

25. Second, Argentina erroneously accuses the United States of reading additional terms into Article 3.3, namely, the phrase "unfairly traded imports," in place of the phrase "dumped imports."[33] The United States is doing no such thing. The point we have been making all along is that it is crucial to read all of the Covered Agreements, namely, the AD and SCM Agreements and the GATT 1994, together, harmoniously.[34] We are not inventing new treaty terms; rather, Argentina is trying to impose limitations that are not present in the text.

26. Not reading these agreements together, in a harmonized manner, risks undermining or even contradicting the purpose of cumulating imports. As certain previous reports have reasoned, the ability to cumulate the injurious effects of dumped imports is a "useful tool" for an investigating authority "to ensure that all sources of injury and their cumulative impact on the domestic industry are taken into account in an investigating authority's determination."[35] 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."[36] Nowhere in its second written submission does Argentina dispute that this is the purpose of cumulation.

27. But the purpose of cumulation has equal logic in a situation in which some imports are dumped and others subsidized, as was the case here.[37] Ignoring this logic, where both types of unfairly traded imports are injuring the domestic industry simultaneously, would prevent the investigating authority from adequately taking into account the injurious effects of all of these imports, and would render the authority's injury analysis less than complete.[38]

28. Third, the United States disagrees with Argentina that the context offered by GATT 1994 Article VI:6(a), particularly the phrase "as the case may be," suggests merely a binary choice between two options, namely, dumped or subsidized imports, but not both.[39] A 1993 dictionary, for example, defines "as the case may be" as "according to the situation."[40] Thus, the text ("the effect of dumping or subsidization") explicitly recognizes that, in accordance with the ordinary 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.

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[33] Argentina's Second Written Submission, paras. 73, 82, 88-89.

[34] *See, e.g.,* U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 17.

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

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

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

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

[39] Argentina's Second Written Submission, paras. 85-87.

[40] *The New Shorter Oxford English Dictionary*, 345 (L. Brown ed. 1993) (Exhibit USA-39) (definition of "case").

29. For the reasons articulated in our prior submissions, we request that the Panel reject Argentina's arguments regarding "cross-cumulation" of imports, both in terms of the ITC's material injury determination in the OCTG investigation, and with regard to section 771(7)(G) of the Tariff Act of 1930, as amended, which permits such cumulation.

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

30. With regard to the ITC's assessment of the "conditions of competition" in deciding whether to cumulate imports in the OCTG investigation, we would like to respond to two points raised in Argentina's latest written submission. These points pertain to the ITC's decision to cumulate OCTG imports from Korea and Russia, respectively.

31. First, with regard to imports from Korea, the ITC *did not* ignore that there was an AD order on OCTG from Korea.[41] The ITC found that it was irrelevant to the question of whether to cumulate imports.[42] At the same time, the ITC 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 ITC's period of investigation ("POI"). The ITC found that all four of these conditions were satisfied, thus justifying cumulation of all subject import sources.[43] We refer to our prior arguments in this regard.[44] But 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.[45]

32. Second, with regard to cumulating OCTG imports from Russia with those from other sources, the ITC did not merely assess whether the various measures imposed on Russia following its invasion of Ukraine prevented or prohibited such imports from entering the U.S. market.[46] Rather, the ITC *did* consider the so-called "dynamics" of competition between imports from Russia and other sources.[47]

33. Specifically, while the ITC found that measures taken in response to Russia's invasion of Ukraine "did not prevent such imports from entering and being sold in the United States in

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[41] Argentina's Second Written Submission, paras. 98-101.

[42] *Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Preliminary), USITC Pub. No. 5248 (Nov. 2021), at 24 (Exhibit USA-19) (USITC Preliminary Report), *unchanged in Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Final), USITC Pub. No. 5381 (Exhibit ARG-01) ("USITC Final Report"); U.S. First Written Submission, para. 162.

[43] USITC Final Report at 16-23 (Exhibit ARG-01).

[44] *See, e.g.,* U.S. First Written Submission, paras. 130-136, 138-152, 161-165.

[45] Argentina's Second Written Submission, paras. 98-101.

[46] Argentina's Second Written Submission, paras. 105-109.

[47] Argentina's Second Written Submission, para. 108.

significant quantities from February 2022 to the end of the POI," and none of the additional measures "prohibit the entry or sale of Russian OCTG,"[48] these findings must be considered in the broader context of the ITC's cumulation assessment. As it found with respect to imports from Korea, the ITC found that Russian imports 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, relative to other import sources and the domestic like product, during the POI.[49] Indeed, the ITC considered these factors *against* the additional measures taken towards Russia that Argentina highlights in this dispute,[50] including, for example, Russia's loss of American Petroleum Institute certification.[51]

34. Ultimately, Argentina prefers the ITC to have reached different conclusions regarding cumulating imports from Korea and Russia with those of other sources including those of Argentina. However, the ITC's establishment of the facts was proper and its evaluation of the facts supporting cumulation was unbiased and objective. Therefore, the Panel should decline to substitute any different conclusion for the ITC's regarding cumulation.[52]

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

35. As the United States has already established, the ITC conducted a thorough and objective investigation of all record evidence before it determined that positive evidence demonstrated that the subject imports were causing injury to the domestic industry within the meaning of the AD Agreement. The Panel in this dispute can recognize that an unbiased and objective investigating authority, looking at the same evidentiary record as the ITC, could have reached the same conclusion.

36. 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 ITC 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 because, according to Argentina, the ITC should have accepted Tenaris's assertions wholeheartedly, even though positive evidence of record indicated that those assertions were unavailing.

A. Conditions of Competition Informed Every Part of the ITC's Analysis of Whether There Is Material Injury to the Domestic Industry by Reason of Dumped Imports

37. For example, Argentina continues to argue that the ITC's considerations of volume under Article 3.2 was "assessed in a vacuum"[53] and that its consideration of price effects lacked

[48] USITC Final Report at 22-23 & n.113 (Exhibit ARG-01).

[49] USITC Final Report at 16-23 (Exhibit ARG-01); *see also* U.S. First Written Submission, paras. 154-158.

[50] *See* USITC Final Report at 16-23 (Exhibit ARG-01).

[51] Argentina's Second Written Submission, para. 109; U.S. First Written Submission, para. 155.

[52] AD Agreement, Article 17.6(i).

[53] Argentina's Second Written Submission, para. 117.

"contextual consideration."[54] Argentina continues to argue that the ITC's examination of the impacts of subject imports on domestic producers under Article 3.4 ignored conditions of competition.[55]

38. There is no factual basis to these arguments. As the ITC 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."[56]

39. The ITC's analysis considered volume and price effects, and examined impact, in the context of demand conditions of competition in the U.S. market, including oil and gas prices, the COVID-19 pandemic, and the recovery of U.S. rig count.[57]

40. The ITC's analysis considered volume and price effects, and examined impact, in the context of supply conditions of competition in the U.S. market, including market share, the availability and supply reliability of domestically produced OCTG, and the high degree of substitutability between the domestic like product and subject imports.[58]

41. The ITC's analysis further considered other conditions of competition during the period of investigation, including Tenaris's Rig Direct program,[59] HRC prices,[60] and inventories.[61] And the ITC's analysis found – based on positive evidence – that price is an important condition of competition when it comes to OCTG purchasing decisions.[62]

42. The ITC's objective consideration of volume and price effects under Article 3.2, and its objective examination of impact data under Article 3.4, clearly was systematic and fully accounted for conditions of competition during the period of investigation. The ITC was not otherwise required under either Article 3.2 or Article 3.4 to demonstrate whether dumped imports are causing injury to the domestic industry, nor was it required under those articles to analyze other known factors that may be causing injury to the domestic industry.[63]

43. In other words, contrary to Argentina's arguments, the ITC was not required as part of its Article 3.2 analysis to consider "qualitative" reasons why unfairly traded imports were needed in

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[54] Argentina's Second Written Submission, para. 127.

[55] *See* Argentina's Second Written Submission, paras. 142-143.

[56] USITC Final Report at 27 (Exhibit ARG-01); *see* U.S. Second Written Submission, paras. 68-76; U.S. First Oral Statement, para. 41.

[57] USITC Final Report at 27 (Exhibit ARG-01); *see* U.S. Second Written Submission, para. 69.

[58] USITC Final Report at 27-29 (Exhibit ARG-01); *see* U.S. Second Written Submission, paras. 70-71.

[59] USITC Final Report at 30 n.165 (Exhibit ARG-01); *see* U.S. Second Written Submission, para. 72.

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

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

[62] USITC Final Report at 29 (Exhibit ARG-01); *see* U.S. Second Written Submission, para. 73.

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

the market[64] before it could find whether any increase in such imports was significant, nor was the ITC required to consider "qualitative" reasons why certain price development or trends exist[65] before it could find that the prices of these imports had a significant effect on domestic prices.

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

B. The ITC's Examination of Factors under Article 3.4 of the AD Agreement Was Based on the Totality of the Evidence and As Such as Could Have Been Reached by an Unbiased and Objective Investigating Authority

45. Argentina's second submission also repeats the baseless argument that the ITC failed to analyze cash flow.[66]

46. Article 3.4 generally does not require an investigating authority to explicitly mention each of the factors listed in that article 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.[67]

47. That said, the ITC specified in its final report that it examined all factors reported in Table VI-1 of its final report,[68] and the factor "cash flow" explicitly appears in that table as one of the measures of the domestic industry's financial performance that the ITC examined.[69] That the ITC examined cash flow as reported in Table VI-1, along with other factors related to cash flow (including net sales revenues,[70] operating income or (loss),[71] gross profit,[72] net income,[73] the ratio of net income to net sales,[74] and the ratio of operating income to net sales[75]), confirms

[64] *See* Argentina's Second Written Submission, paras. 117-121.

[65] *See* Argentina's Second Written Submission, paras. 126-127.

[66] Argentina's Second Written Submission, paras. 145.

[67] *See EC – Tube or Pipe Fittings (AB)*, para. 161.

[68] USITC Final Report at 42 n.233 (Exhibit ARG-01).

[69] USITC Final Report at Table VI-1 (Exhibit ARG-01).

[70] USITC Final Report at 42 and n.234 (citing Table VI-1) (Exhibit ARG-01).

[71] USITC Final Report at 42 and n.235 (citing Table VI-1) (Exhibit ARG-01).

[72] USITC Final Report at 42 n.235 (citing Table VI-1) (Exhibit ARG-01).

[73] USITC Final Report at 42 n.235 (citing Table VI-1) (Exhibit ARG-01).

[74] USITC Final Report at 42 n.235 (citing Table VI-1) (Exhibit ARG-01).

[75] USITC Final Report at 42 and nn.236-237 (citing Table VI-1) (Exhibit ARG-01).

that the ITC's determination in regard to the domestic industry's financial performance incorporated an examination of the industry's cash flow during the period of investigation.

48. Argentina also introduces in its second written submission a new argument that the ITC did not fully examine trends related to "capital utilization."[76] This argument should be summarily dismissed. Article 3.4 does not list "capital utilization" as a specific economic factor that an authority must evaluate. Argentina has otherwise failed to demonstrate why the ITC should have evaluated capital utilization as a relevant factor having a bearing on the state of the domestic industry. Lastly, the Panel should reject this argument as untimely because Argentina did not raise this matter until its second written submission.

49. Argentina has otherwise failed to put forward any viable arguments regarding the ITC's examination of output,[77] return on investment,[78] or factors affecting domestic prices.[79] The United States refers the Panel to our arguments in our first written submission, which fully demonstrate why Argentina's claims regarding these factors should be rejected.[80]

50. For the reasons put forward here and in our previous submissions and statements, the Panel should reject Argentina's claims in regard to the ITC's examination of certain factors under Article 3.4.

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

51. Argentina continues to argue that because so-called "positive trends" predated the domestic industry's applications for trade remedy relief,[81] the ITC'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."[82]

52. The ITC did not discount the improved performance of the domestic industry during interim 2022.[83] Quite the contrary, based on an objective examination of the evidence, the ITC reasonably considered the improved industry performance as substantiating the causal nexus between subject import competition and how the industry fared during the period of investigation, including in 2021, when the industry's performance was weak relative to strong demand growth.

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[76] Argentina's Second Written Submission, subtitle IV.E.2.b ("Capital Utilization") and paras. 150, 155.

[77] Argentina's Second Written Submission, para. 153.

[78] Argentina's Second Written Submission, para. 153.

[79] Argentina's Second Written Submission, para. 156.

[80] U.S. First Written Submission, paras. 253-255 (output), 257 (return on investment), 260-265 (factors affecting domestic prices), 266-268 (cash flow).

[81] Argentina's Second Written Submission, para. 176.

[82] Argentina's Second Written Submission, para. 178.

[83] United States' First Written Submission, para. 285, citing USITC Final Report at 43.

53. Just because the domestic industry may have been, according to Argentina, "recovering,"[84] or that, according to Argentina, data "demonstrated improvements in the domestic industry,"[85] does not mean that unfairly traded subject imports did not cause material injury to the domestic industry during the period of investigation. The table submitted by Argentina at paragraph 180 of its second written submission confirms this point and illustrates the objectivity of the ITC's analysis.

54. For example, the first figure that Argentina suggests warrants a rejection of the ITC's finding of a causal relationship between the dumped imports and injury to the domestic industry is the 61 percent difference in the industry's operating losses between 2020 and 2021.

55. Nothing could be further from the truth: Argentina overlooks that in real terms – as the ITC recognized – the domestic industry in 2021 continued to operate at a loss of *negative* $254.9 million. While this loss may not have been as great as the loss that the domestic industry experienced in 2020 – when it was *negative* $659.3 million – the ITC reasonably interpreted the data to indicate that the industry was continuing to be materially injured by undersold subject imports, as reflected in the fact that the industry lost 12.0 percentage points of market share from 2020 to 2021. "The entirety of the domestic industry's market share loss over this period was … attributable to subject imports."[86]

56. Perhaps an operating loss of *negative* $254.9 million in 2021 is not as great as the loss that the domestic industry experienced in 2020. But how long can an industry survive such operating losses.

57. Another figure that Argentina suggests warrants rejection of the ITC's causal relationship finding is the 3.7-percentage point change in the domestic industry's capacity utilization, from 23.9 percent in 2020 to 27.6 percent in 2021. Again, while the 2021 figure is higher than the 2020 figure, the ITC reasonably observed that "the industry's performance in 2021 remained similar to its performance in 2020, when the industry was experiencing a demand collapse due to the COVID-19 pandemic."[87]

58. Perhaps a capacity utilization rate in 2021 is in real terms, as the ITC noted in its determination, 3.7 percentage points higher than the rate in 2020.[88] But how long can an industry survive where 75 percent of the industry's productive capacity has laid idle for two years in a row.

59. Then there are the corresponding interim 2022 data that Argentina omits from its table. The omitted data show that the domestic industry, after it filed applications for trade remedy relief, had a *positive* operating income of $508.3 million.[89] Capacity utilization increased to

[84] Argentina's Second Written Submission, paras. 9, 185.

[85] Argentina's Second Written Submission, para. 180.

[86] USITC Final Report at 36 (citing Tables IV-19 and C-1) and 43 (Exhibit ARG-01).

[87] USITC Final Report at 43, n.243 (Exhibit ARG-01).

[88] USITC Final Report at 43, n.243 (Exhibit ARG-01).

[89] USITC Final Report at 42 (citing Table VI-1) (Exhibit ARG-01).

almost 40 percent.[90] The reason, as the ITC reasonably and objectively concluded in its final report: Subject imports competed less aggressively in the U.S. market.

60. Contrary to Argentina's argument, the figures that it plucked from our responses to questions following the first panel meeting *confirm* that the ITC correctly found a correlation between subject imports and domestic industry performance.

61. In 2021, subject imports competed aggressively in the U.S. market, engaging in significant underselling, capturing 12.0 percentage points of market share from the domestic industry from 2020 to 2021. "Consequently, despite the 32.2 percent increase in apparent U.S. consumption from 2020 to 2021, the industry's production, employment, and financial performance remained weaker in 2021 than would have been expected in light of the strong increase in demand."[91]

62. In interim 2022, after the domestic industry petitioned for trade remedy relief, the subject imports competed "less aggressively" and the domestic industry's overall performance improved.[92]

63. There is nothing "internally inconsistent"[93] about these two ITC conclusions. In 2021, a causal relationship existed between the dumped imports and the domestic industry's poor production, employment, and financial performance. As the data show, the sudden withdrawal of the unfairly trade imports from the U.S. market, and the rebound effect that had on the domestic industry's performance, substantiated that they were a cause of injury to the domestic industry during the period of investigation.

64. As fully demonstrated in our submissions and statements, none of Argentina's arguments establish that the ITC's finding of a causal relationship between the dumped imports and the injury to the domestic industry was inconsistent with Articles 3.1 and 3.5. The ITC's finding is such as could have been reached by an unbiased and objective investigating authority and should not be disturbed by the Panel.

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

65. Argentina argues that an investigating authority, in every instance, must reach a conclusion about price suppression under Article 3.2 of the AD Agreement.[94]

66. Argentina may dispute our summary of its argument, but when one examines the reality of what Argentina is saying, it becomes apparent that its argument contradicts the plain language

[90] USITC Final Report at 40 (citing Table III-8) (Exhibit ARG-01).

[91] USITC Final Report at 43 (Exhibit ARG-01); *see* USITC Final Report at 40 (Exhibit ARG-01).

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

[93] Argentina's Second Written Submission, para. 184.

[94] Argentina's Second Written Submission, paras. 128-132.

of Article 3.2, which stipulates three alternative ways in which an investigating authority can consider price effects: price undercutting, price depression, or price suppression.[95]

67. An investigating authority would be expected to always collect price data as part of its consideration of price effects under Article 3.2.[96] 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.[97] As a result, the data required for a possible analysis of price suppression exists, by default, in the record of investigation.

68. Article 3.2, however, unequivocally states that an authority need only "consider" possible price effects, and there are three alternative ways of doing so. The plain language of Article 3.2 thus confirms that an authority is not obligated 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.[98]

69. And this is where Argentina is totally wrong about the obligations set forth in Articles 3.1 and 3.2. At paragraph 128 of its second written submission, Argentina asserts that "where an investigating authority omits or fails to take into account evidence that should have been taken into account for its price effects analysis and, in turn, its injury analysis, it independently violates its obligations under Article 3.1."[99] As the United States has demonstrated, 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 ITC "should have" taken price suppression into account thus is without merit.

70. Article 3.1 does not provide a backdoor to challenge the ITC's decision under Article 3.2 not to reach a conclusion about price suppression. The Panel should reject Argentina's argument to the contrary and find that the ITC's decision cannot be challenged under Article 3.1 on a standalone basis.

V. CONCLUSION

71. As we have demonstrated in our previous submissions and oral statements, and as we have demonstrated again today, Argentina has advanced arguments that lack legal and factual support, inviting the Panel to invent new obligations that have no basis in the covered agreements. Consequently, for the reasons provided, the United States respectfully requests that the Panel reject Argentina's claims that the United States has acted inconsistently with the covered agreements.

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[95] AD Agreement, Article 3.2, second sentence.

[96] *See*, *e.g.*, USITC Final Report at V-15 (Table V-6), V-17 (Table V-7) (Exhibit ARG-01); USITC Blank U.S. Producer Questionnaire from OCTG Investigations, at 46-50 (Exhibit USA-33).

[97] *See*, *e.g.*, USITC Final Report at VI-3 (Table VI-1), VI-6 (Table VI-3), VI-9 (Table VI-5) (Exhibit ARG-01); USITC Blank U.S. Producer Questionnaire from OCTG Investigations, at 33-34, 36 (Exhibit USA-33).

[98] *See China – GOES (AB),* para. 130.

[99] Argentina's Second Written Submission, para. 128 (footnote omitted) (underline added).

72. Madam Chairperson, members of the Panel, this concludes our opening statement. We thank you for your attention. We look forward to responding to any questions you may have.