



25 May 2023

(23-3546)

Page: 1/5

Original: English

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

REQUEST FOR CONSULTATIONS BY ARGENTINA

The following communication, dated 17 May 2023, from the delegation of Argentina to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

Following instructions from my authorities, on behalf of the Government of the Republic of Argentina ("Argentina") I hereby request consultations with the United States of America pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Articles 17.2 and 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement"), and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) concerning the final anti-dumping ("AD") measure imposed on oil country tubular goods ("OCTG") from Argentina as well as concerning certain provisions of the United States' legislation regarding cross-cumulation of imports in assessing injury caused by imports in AD and countervailing duty ("CVD") investigations.

These measures appear to be inconsistent with the United States' obligations under certain provisions of the Anti-Dumping Agreement and the GATT 1994.

In the following sections, Argentina identifies the specific measures at issue and indicates the legal basis for its complaint.

I. Identification of the Measures

A. The Definitive Anti-Dumping Measure on Oil Country Tubular Goods ("OCTG") from Argentina

This request concerns the definitive AD measure imposed by the United States on OCTG from Argentina pursuant to the preliminary and final AD determinations issued by the U.S. Department of Commerce ("USDOC"), and the United States International Trade Commission ("USITC"), and the resulting AD order issued by the USDOC, following an investigation by the USDOC and the USITC on imports of OCTG from Argentina, Mexico, the Russian Federation and South Korea. The USDOC's AD order on OCTG from Argentina was published in the *Federal Register* on 21 November 2022.¹ The AD order imposes definitive AD duties on OCTG from Argentina based on USDOC's calculation of a final weighted-average AD margin of 78.30 percent for Siderca S.A.I.C. ("Siderca") and all other Argentine exporters of subject merchandise, with cash deposits (pursuant to the USDOC preliminary and final AD determinations) effective starting from May 11, 2022.

The definitive AD measure on OCTG from Argentina is based on a number of intermediary determinations that are equally part of this request such as in particular:

¹ *Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for the Russian Federation*, 87 Federal Register 70,785 (November 21, 2022).

- The USITC determination to initiate the investigation, notice of which was published in the *Federal Register* on 13 October 2021. See *Oil Country Tubular Goods From Argentina, Mexico, Russia, and South Korea: Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 86 Federal Register 56,983 (Oct. 13, 2021).
- The USDOC determination to initiate the investigation into alleged dumping. See *Oil Country Tubular Goods From Argentina, Mexico, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations*, 86 Federal Register 60,205 (Nov. 1, 2021).
- The USITC's preliminary determination that there was a "reasonable indication that an industry in the United States is materially injured by reason of imports of oil country tubular goods from Argentina, Mexico, Russia, and South Korea." See *Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea*, 86 Federal Register 67,491 (Nov. 26, 2021).
- The USDOC's preliminary affirmative determination in the AD investigation of OCTG from Argentina. See Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures, 87 Federal Register 28,801 (May 11, 2022);
- The final affirmative less-than-fair-value ("LTFV") determination with respect to OCTG from Argentina issued by USDOC and published in the *Federal Register* on September 29, 2022. See *Oil Country Tubular Goods From Argentina: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 87 Federal Register 59,054 (September 29, 2022).
- The USITC's consolidated views published 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. 5381 (November 2022) ("Views of the Commission").
- The USITC's final injury determination as published in the *Federal Register* on November 18, 2022. See *Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Final), 87 Federal Register 69,331 (Nov. 18, 2022).

The measure further includes any notices, annexes, decision memoranda, orders, amendments, or other instruments issued by the United States in connection with this definitive AD measure on OCTG from Argentina.

B. Section 771(7)(G) of the United States Tariff Act of 1930

This request also concerns on an "as such" basis Section 771(7)(G) of the United States Tariff Act of 1930, codified at 19 U.S.C. § 1677(7)(G), which is the U.S. statutory provision covering cumulation for determining material injury. It requires in certain situations the USITC to cross-cumulate the effect of imports that are subject to simultaneous AD and CVD petitions and /or investigations. In particular, 19 USC § 1677(7)(G) provides that the USITC shall cumulatively assess the volume and effect of the subject merchandise from all countries with respect to which: (a) petitions seeking imposition of either an AD or a CVD were filed on the same day, (b) AD or CVD investigations were initiated on the same day; or (c) when both (a) and (b) are satisfied. As a result, the USITC is required to cross-cumulate the effect of imports even when such imports are not simultaneously subject to an AD investigation or a CVD investigation.

The request also covers all the amendments, replacements, implementing acts or any other related measure in connection with the legal provision referred herein.

II. Legal Basis

Argentina is concerned that the above-identified measures appear to violate the United States' obligations under the AD Agreement and the GATT 1994.

A. The Anti-Dumping Measure on OCTG from Argentina

The United States' AD measure on OCTG from Argentina appears to be inconsistent with a number of provisions of the AD Agreement and the GATT 1994. In particular, Argentina's request concerns several aspects of the injury determination such as in particular the cumulation of imports for purposes of the injury analysis, the examination of the volume and price effects of the dumped imports, the overall impact of the dumped imports on the state of the domestic industry, and the causal link between the alleged dumped imports and the injury found to exist.

In addition, Argentina's request concerns the application and the related decision of the USDOC to initiate the investigation. The measure therefore appears to be inconsistent with the following provisions of the AD Agreement and the GATT 1994, such as:

Cumulation

1. Articles 3.1 and 3.3 of the AD Agreement because the USITC cumulated imports from Argentina with those from sources that were not simultaneously subject to an AD investigation.
2. Articles 3.1 and 3.3 of the AD Agreement because the USITC cumulated imports from Argentina without properly examining whether the conditions of competition with respect to imports from Argentina justified their cumulation with imports from other sources.
3. Articles 3.1 and 3.3 of the AD Agreement because the USITC cumulated imports from Argentina with imports from Korea even though imports from Korea were already subject to AD duties that had been imposed in 2014 such that any impact of these imports was addressed and remedied already.

Volume of imports and price effects

4. Articles 3.1 and 3.2 of the AD Agreement because the USITC's examination of volume and price effects of dumped imports is based on an examination that includes imports that are not subject to a simultaneous AD investigation, such as imports from Korea, which were only subject to a simultaneous CVD investigation.
5. Articles 3.1 and 3.2 of the AD Agreement because the USITC failed to undertake an objective examination based on positive evidence regarding the conditions of competition that had a substantial impact on demand and supply considerations in the OCTG market in evaluating the import volumes.
6. Articles 3.1 and 3.2 of the AD Agreement because the USITC failed to undertake an objective examination based on positive evidence of the volume of imports in light of constraints on import volumes, such as the application of Section 232 quota measures on imports of OCTG from Argentina, during the period of investigation.
7. Articles 3.1 and 3.2 of the AD Agreement
 - a. because the USITC's determination regarding purported underselling fails to objectively examine and take into account the implications of price adjustment mechanisms in Tenaris' long term contracts.
 - b. because the USITC's determination regarding purported price effects (including purported lost sales and lost revenue) was not based on an objective examination of positive evidence since it was based on information that was demonstrated to be inaccurate or otherwise lacking in probative value.
 - c. because the USITC failed to make any determination regarding whether subject imports prevented prices for the domestic like product from increasing.

- d. because the USITC's determination regarding purported price effects of subject imports failed to take into account Tenaris' use of a "one price" approach of selling its product at the same price regardless of the origin of the product.
- e. because the USITC generally failed to make an objective examination based on positive evidence relating to the purported price effects of subject imports.

Injury and Causation

- 8. Articles 3.1 and 3.4 of the AD Agreement because the USITC's final determination of injury considered both dumped imports and imports not subject to a simultaneous AD investigation while examining the impact of dumped imports on the domestic industry, and thus including in the analysis the impact of imports from Korea which were only subject to a simultaneous CVD investigation
- 9. Articles 3.1 and 3.4 of the AD Agreement because the USITC generally failed to undertake an objective examination of the record evidence and make a determination based on positive evidence relating to its evaluation of all of the relevant economic factors and indices on the record having a bearing on the state of the industry.
- 10. Articles 3.1 and 3.4 because the USITC failed to undertake an objective examination of the record evidence which showed that any lost sales or lost revenues were due to non-price factors and not due to the purported price-effects of subject imports.
- 11. Articles 3.1 and 3.5 of the AD Agreement because the USITC's final determination of causation included the impact of both dumped imports and imports not subject to a simultaneous AD investigation as a result of the cumulation with imports from Korea which were only subject to a simultaneous CVD investigation.
- 12. Articles 3.1 and 3.5 of the AD Agreement because of the USITC's failure to demonstrate that subject imports are causing the alleged injury to the domestic industry.
- 13. Articles 3.1 and 3.5 of the AD Agreement because of the USITC's failure to ensure that injury caused by known other factors was not attributed to the dumped imports in light of the evidence on the record. In particular:
 - a. because the USITC failed to undertake an objective examination of the record evidence which showed that any lost sales or lost revenues were due to non-price factors and not due to the purported price-effects of subject imports;
 - b. because the USITC erroneously attributed the positive performance of the domestic industry in the first half of 2022 to the effects of the filing of the petitions, rather than to the conditions of competition and prevailing OCTG market forces; and
 - c. because the USITC failed to undertake an "objective examination" of the record evidence of the relevant economic factors that were injuring the domestic industry other than dumped imports, and failed to base its determination on "positive evidence" related to (1) the impact of alleged underselling, and (2) other known factors such as the global oil and gas supply dynamic, the COVID-19 pandemic, intra-domestic industry competition stemming from Tenaris' role as the largest U.S. OCTG producer and its unique business operations and pricing policy that differed from the business models of U.S. producers, the U.S. distributors' inventory buildup, and supply constraints, including labor shortages and the pricing of hot-rolled coil, the primary input for OCTG.

Initiation

- 14. Articles 5.1, 5.3, 5.4, and 6.6 of the AD Agreement because the USDOC failed to properly examine the evidence on the record and to determine, based on the evidence on the record, that there was sufficient evidence to justify initiation the investigation and that the application had the degree of support necessary to be considered to have been made by or on behalf of the domestic industry.

General

15. Articles 1 and 18.1 of the AD Agreement and Article VI of the GATT 1994 because the United States imposed the AD measure on OCTG from Argentina in apparent violation of the provisions of the AD Agreement identified above.

B. Section 771(7)(G) of the United States Tariff Act of 1930

Section 771(7)(G) of the United States Tariff Act of 1930 is the U.S. statutory provision covering cumulation when determining material injury that is codified at 19 U.S.C. § 1677(7)(G). Section 1677(7)(G) requires the USITC (1) to cumulatively assess the effects of dumped imports with the effects of imports not subject to a simultaneous AD investigation when such imports are subject only to CVD investigations and not to simultaneous AD investigations, or (2) to cumulatively assess the effects of subsidized imports with the effects of imports not subject to a simultaneous CVD investigation when such imports are subject only to AD investigations and not to simultaneous CVD investigations.

By requiring such cross-cumulation in certain situations, Section 1677(7)(G) results in the inclusion of non-dumped imports or non-subsidized imports (as the case may be) in the assessment of (i) the increase in volume of dumped or subsidized imports (as the case may be) as well as their effect on domestic prices, (ii) the impact of dumped or subsidized imports (as the case may be) on the domestic industry, and (iii) the causal link between dumped or subsidized imports (as the case may be) and injury.

Argentina considers that Section 771 (7) (G) of the United States Tariff Act of 1930 appears to be inconsistent as such with

1. Article 3.3 of the AD Agreement because it requires in certain situations the cumulation of imports from sources that are not subject to a simultaneous AD investigation.
2. Articles 3.1 and 3.2 of the AD Agreement because it requires in certain situations the inclusion of imports not subject to a simultaneous AD investigation in the context of an examination of volume and price effects.
3. Articles 3.1 and 3.4 of the AD Agreement because it requires in certain situations the inclusion of imports not subject to a simultaneous AD investigation in the examination of the impact of dumped imports on the state of the industry.
4. Articles 3.1 and 3.5 of the AD Agreement because it requires in certain situations the inclusion of imports that are not subject to a simultaneous AD investigation in the determination of the existence of a causal link between dumped imports and the injury found to exist.

III. Conclusion

Argentina is concerned that the AD measure on OCTG from Argentina, as well as Section 771(7)(G) of the United States Tariff Act of 1930, appear to be inconsistent with the relevant obligations of the United States under the AD Agreement, and the GATT 1994.

The United States' measures appear to nullify or impair the benefits accruing to Argentina directly or indirectly under the cited agreements.

Argentina reserves the right to raise additional factual and legal issues, and to address additional measures and related claims regarding the above matters, in the course of the consultations and in any request for the establishment of a panel.

Argentina looks forward to receiving the United States' reply to this request and to fixing a mutually acceptable date for consultations.
