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

(DS617)

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EC – Tube or Pipe Fittings (AB)	Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted 18 August 2003
EC – Tube or Pipe Fittings (Panel)	Panel Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/R, adopted 18 August 2003, as modified by Appellate Body Report WT/DS219/AB/R
Guatemala – Cement II	Panel Report, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, WT/DS156/R, adopted17 November 2000
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Mexico – Anti-Dumping Measures on Rice (AB)	Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/AB/R, adopted 20 December 2005

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Mexico – Anti-Dumping Measures on Rice (Panel)	Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/R, adopted 20 December 2005, as modified by Appellate Body Report WT/DS295/AB/R
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Mexico – Steel Pipes and Tubes	Panel Report, *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala*, WT/DS331/R, adopted 24 July 2007
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Russia – Commercial Vehicles (AB)	Appellate Body Report, *Russian Federation – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*, WT/DS479/AB/R and Add. 1, adopted 9 April 2018
Russia – Commercial Vehicles (Panel)	Panel Report, *Russian Federation – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*, WT/DS479/R and Add. 1, adopted 9 April 2018
Thailand – H-Beams (Panel)	Panel Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/R, adopted 5 April 2001, as modified by Appellate Body Report WT/DS122/AB/R
US – Anti-Dumping and Countervailing Duties (China) (AB)	Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011

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US – Anti-Dumping and Countervailing Duties (China) (Panel)	Panel Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R, adopted 25 March 2011, as modified by Appellate Body Report WT/DS379/AB/R
US – Coated Paper (Indonesia)	Panel Report, *United States – Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia*, WT/DS491/R, and Add.1, adopted 22 January 2018
US – Cotton Yarn (AB)	Appellate Body Report, *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WT/DS192/AB/R, adopted 5 November 2001
US – Countervailing Duty Investigation on DRAMS (AB)	Appellate Body Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R, adopted 20 July 2005
US – Countervailing Measures (China) (Panel)	Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R and Add.1, adopted 16 January 2015
US – Countervailing Measures on Certain EC Products (AB)	Appellate Body Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R, adopted 8 January 2003
US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)	Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS212/RW, adopted 27 September 2005
US – Gasoline (AB)	Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996
US – Hot-Rolled Steel (AB)	Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001
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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US – Ripe Olives from Spain (Panel)	Panel Report, *United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain*, WT/DS577/R, adopted 20 December 2021
US – Stainless Steel (Korea) (Panel)	Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 February 2001
US – Supercalendered Paper (Panel)	Panel Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/R and Add. 1, circulated 5 July 2018
US – Shrimp (Viet Nam) (Panel)	Panel Report, *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam*, WT/DS404/R, adopted 2 September 2011
US – Softwood Lumber IV (Panel)	Panel Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/R and Corr.1, adopted 17 February 2004, as modified by Appellate Body Report WT/DS257/AB/R
US – Softwood Lumber V (Article 21.5 – Canada) (AB)	Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/AB/RW, adopted 1 September 2006
US – Softwood Lumber VI (Panel)	Panel Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*, WT/DS277/R, adopted 26 April 2004
US – Softwood Lumber VI (Article 21.5 – Canada) (AB)	Appellate Body Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS277/AB/RW, adopted 9 May 2006
US – Stainless Steel (Korea) (Panel)	Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 February 2001
US – Supercalendered Paper (Panel)	Panel Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/R and Add. 1, circulated 5 July 2018

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US – Washing Machines (AB)	Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R, adopted 26 September 2016
US – Wheat Gluten (Panel)	Panel Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/R, adopted 19 January 2001, as modified by Appellate Body Report WT/DS166/AB/R
US – Wool Shirts and Blouses (AB)	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997, and Corr. 1
US – Zeroing (Japan) (AB)	Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R, adopted 23 January 2007

TABLE OF ABBREVIATIONS

Abbreviation	Definition
AD	Anti-dumping
AD Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
API	American Petroleum Institute
AUV	Average Unit Value
Commission, USITC	United States International Trade Commission
COGS	Cost-of-Goods Sold
CVD	Countervailing Duty
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT 1994	*General Agreement on Tariffs and Trade 1994*
OCTG	Oil Country Tubular Goods
POI	Period of Investigation
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SG&A	Sales, General, and Administrative
USDOC	United States Department of Commerce
WTO	World Trade Organization

TABLE OF EXHIBITS

Exhibit No.	Description
USA-01	19 C.F.R. § 351.204
USA-02	Applicants' Letter, "Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Response to General Issues Questionnaire" (Oct. 12, 2021) (excerpts)
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)
USA-11	*Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1216, 1221-1223 (Review), USITC Pub. 5090 (Jul. 2020) (excerpt)

Exhibit No.	Description
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)
USA-14	USITC Blank U.S. Importer Questionnaire from OCTG investigations
USA-15	TMK Post-Conference Brief
USA-16	*Certain Preserved Mushrooms from Chile*, Inv. No. 731-TA-776 (Final), USITC Pub. 3144, at 14-15 (Nov. 1998)
USA-17	*Proclamation 9705: Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625 (Mar. 15, 2018)
USA-18	*Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 Fed. Reg. 53,691 (Dep't of Commerce Sept. 10, 2014)
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 Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended," at 1-61 (Jan. 11, 2018)

Exhibit No.	Description
USA-25	Presidential Proclamation 9759 of May 31, 2018, "Adjusting Imports of Steel into the United States," 83 Fed. Reg. 25857-25860
USA-26	Petitioners' Public Posthearing Brief, Exhibits. 3-4

I. INTRODUCTION

1. Applying U.S. laws and regulations consistent with the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") and the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), the U.S. Department of Commerce ("USDOC") determined that imports of oil country tubular goods ("OCTG") from Argentina were sold at less-than-fair-value. In connection with the USDOC's antidumping duty ("AD") determination, the U.S. International Trade Commission ("USITC" or "Commission") determined that imports of OCTG from Argentina sold at less-than-fair-value caused material injury to the domestic industry.

2. In this dispute, Argentina challenges certain USDOC and USITC determinations in the AD investigation of OCTG from Argentina. Argentina's claims lack merit. Furthermore, Argentina challenges, on an as such basis, section 771(7)(G) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(7)(G)), which is a provision of U.S. law that requires the USITC to cumulate imports from various sources subject to simultaneous AD and countervailing duty ("CVD") investigations in considering whether imports from such sources resulted in material injury to the domestic industry. When subjected to scrutiny, none of Argentina's proposed interpretations of the AD Agreement or the GATT 1994 are supported by the ordinary meaning of the text of the agreements, in context, and in light of the object and purpose of the agreements.

3. In the context of a WTO challenge to a trade remedies determination, a WTO panel must not conduct a *de novo* evidentiary review, but instead should "bear in mind its role as *reviewer* of agency action" and not as "*initial trier of fact*."[1] The role of a panel in a dispute involving a Member's application of an AD measure is to assess "whether the investigating authorities properly established the facts and evaluated them in an unbiased and objective manner."[2] Rather, the Panel's task in this dispute is to determine whether a reasonable and unbiased investigating authority, looking at the same evidentiary record as these authorities, could have reached the same conclusions that the USDOC and the USITC reached.

4. Reviewed in this light, the USDOC and USITC determinations in the AD investigation of OCTG from Argentina accord with the requirements of the AD Agreement and the GATT 1994, properly interpreted pursuant to customary rules of interpretation. Both the USDOC and USITC provided reasoned and adequate explanations for their determinations, those determinations were based on ample evidence, and the USDOC's and USITC's conclusions in the investigation were ones that an unbiased and objective investigating authority could have reached.

5. The United States has structured this submission as follows.

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[1] *US – Countervailing Duty Investigation on DRAMS (AB)*, paras. 187-188 (emphasis original).

[2] *US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) (Panel)*, para. 7.82; *see also ibid.*, paras. 7.78-7.83; *US – Supercalendered Paper (Panel)*, paras. 7.40, 7.150, 7.202; *US – Coated Paper (Indonesia) (Panel)*, paras. 7.61, 7.83; *US – Countervailing Measures (China) (Panel)*, para. 7.382; *China – GOES (Panel)*, paras. 7.51-7.52; *EC – Countervailing Measures on DRAM Chips*, paras. 7.335, 7.373.

6. **Section II** describes the rules of interpretation, standard of review, and burden of proof applicable in WTO dispute settlement proceedings.

7. **Section III** addresses Argentina's claims that the USDOC acted inconsistently with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement by failing to properly examine the evidence on the record and to determine, based on such evidence, that the application was made "by or on behalf of the domestic industry."

8. **Section IV** addresses Argentina's claims that the USITC's decision to cumulate subject imports in the OCTG investigation is inconsistent with Articles 3.1 and 3.3 of the AD Agreement.

9. **Section V** addresses Argentina's claims that the USITC's injury analysis was inconsistent with Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement.

10. **Section VI** addresses Argentina's consequential claims under Articles 1 and 18.1 of the AD Agreement and Article VI of the GATT 1994.

11. **Section VII** addresses Argentina's challenge to aspects of the statutory provision regarding cross-cumulation, section 771(7)(G) of the Tariff Act of 1930, as amended (19 U.S.C. 1677(7)(G)), under Articles 3.1, 3.2, 3.3, 3.4, and 3.5 of the AD Agreement.

12. **Section VIII** offers concluding remarks, including a response to Argentina's request for "suggestions" from the Panel under Article 19.1 of the *Understanding on Rules and Procedures Governing Settlement of Disputes* ("DSU").

II. RULES OF INTERPRETATION, STANDARD OF REVIEW, AND BURDEN OF PROOF

13. As set out in Article 11 of the DSU, the Panel is "to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements" by "mak[ing] an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements." Pursuant to the Panel's terms of reference, as established by Article 7.1 of the DSU, the Panel is then to "make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for" in the covered agreements, as required by Article 19.1 of the DSU.

14. With respect to the specific standard of review for anti-dumping measures, Article 17.6 of the AD Agreement provides that:

> (i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and

> objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;
>
> (ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

15. The Panel's task in this dispute is to assess whether the USDOC and USITC properly established the facts and evaluated them in an unbiased and objective way.[3] The Panel's task is not to determine whether it would have reached the same results as the USDOC or USITC. Rather, the Panel's task is to determine whether a reasonable and unbiased investigating authority, looking at the same evidentiary record as these authorities, could have reached the same conclusions that these authorities reached. In this way, the Panel must not conduct a *de novo* evidentiary review, but instead should "bear in mind its role as *reviewer* of agency action" and not as "*initial trier of fact*."[4] Indeed, it would be inconsistent with a panel's function under Article 11 of the DSU to go beyond its role as reviewer and instead substitute its own assessment of the evidence and judgment for that of the investigating authority.[5]

16. In assessing the "applicability of and conformity with the covered agreements," Article 3.2 of the DSU indicates that the Panel is to utilize customary rules of interpretation of public international law to discern the meaning of relevant provisions of the covered agreements. Previous WTO reports have recognized that Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("Vienna Convention") reflects such customary rules. Article 31 of the Vienna Convention provides that a "treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." A corollary of this customary rule of interpretation is that an "interpretation must give meaning and effect to all the terms of the treaty."[6]

17. The DSU does not assign precedential value to panel or Appellate Body reports adopted by the DSB or interpretations contained in those reports. Instead, it reserves such weight to

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[3] This is consistent with the findings in numerous prior reports. *See*, *e.g.*, *US – Countervailing Measures on Certain EC Products (21.5 – EC)*, para. 7.82 (referring to other reports concerning the AD Agreement, and observing that its role was to assess "whether the investigating authorities properly established the facts and evaluated them in an unbiased and objective manner."); *see also ibid.*, paras. 7.78-7.83.

[4] *US – Countervailing Duty Investigation on DRAMS (AB)*, paras. 187-188 (emphasis original).

[5] *US – Countervailing Duty Investigation on DRAMS (AB)*, paras. 188-190.

[6] *US – Gasoline (AB)*, 23.

"authoritative interpretations" adopted by WTO Members in a different body. The WTO Agreement states that the Ministerial Conference or General Council have the "exclusive authority" to adopt interpretations, acting not by negative consensus (as in the DSB) but by positive consensus, and under different procedures that promote awareness and participation by Members.[7] The DSU explicitly notes that the dispute settlement system operates without prejudice to this interpretative authority reserved to Members.[8]

18. Therefore, a panel is not permitted under its terms of reference as established by the DSB or under the DSU to ignore this task and instead simply treat prior panel or Appellate Body reports as binding "precedent."[9] Indeed, were a panel to decide to simply apply the reasoning in prior Appellate Body reports alone, it would fail to carry out its function, as established by the DSB, under DSU Articles 7.1, 11, and 3.2 to make findings on the applicability of existing provisions of the covered agreements, as understood objectively through customary rules of interpretation.

19. This does not mean that the United States considers a prior panel or Appellate Body interpretation to be without any value. To the extent that a panel finds prior Appellate Body or panel reasoning to be persuasive, a panel may refer to that reasoning in conducting its own objective assessment of the matter. But considering an interpretation in a prior panel or Appellate Body report is very different from a statement that the interpretation is controlling or "precedent" in a later dispute.

20. "The burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence."[10] Accordingly, Argentina, as the complaining party, bears the burden of demonstrating that the U.S. measures within the Panel's terms of reference are inconsistent with the AD Agreement and GATT 1994. Argentina must establish a *prima facie* case of inconsistency with a provision of a WTO covered agreement before the burden shifts to the United States, as the party complained against, to rebut Argentina's *prima facie* case.[11]

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[7] WTO Agreement, Article IX:2 ("The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements").

[8] DSU Art. 3.9 ("The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement").

[9] For a detailed elaboration of these provisions, *see* Statement by the United States on the Precedential Value of Panel or Appellate Body Reports Under the WTO Agreement and DSU, Meeting of the DSB on December 18, 2018, *available at*: https://ustr.gov/sites/default/files/enforcement/DS/Dec18.DSB.Stmt.(Item%204_Precedent).(public).pdf.

[10] *US – Wool Shirts and Blouses (AB)*, p. 14; *see also China – Autos (US)*, para. 7.6.

[11] *EC – Hormones (AB)*, para. 109 (*citing US – Wool Shirts and Blouses (AB)*, pp. 14-16); *see also China – Broiler Products*, para. 7.6.

III. 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

21. Argentina argues that, in initiating the AD investigation of OCTG from Argentina, the USDOC acted inconsistently with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement by failing to properly examine the evidence on the record and to determine, based on such evidence, that the application[12] was made "by or on behalf of the domestic industry."[13] As discussed below, Argentina's arguments are without merit.

22. In subsection III.A below, the United States first addresses Argentina's claim under Article 6.6 of the AD Agreement, and explains that Article 6.6 does not apply to initiations. Therefore, the USDOC could not have acted inconsistently with that article in initiating the AD investigation. In subsections III.B, III.C, and III.D below, the United States explains how the USDOC did not act inconsistently with Articles 5.1 and 5.4, 5.3, and 5.2 of the AD Agreement, respectively, in its assessment of industry support for the application, and demonstrates how all of Argentina's arguments to the contrary lack merit.

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

23. Argentina asserts that, because the USDOC allegedly initiated the investigation without the requisite industry support, the USDOC did not satisfy itself as to the accuracy of the information supplied by interested parties upon which its decision to initiate was based, which is inconsistent with Article 6.6.[14]

24. However, Article 6.6 does not apply to initiations. Therefore, the USDOC could not have acted inconsistently with Article 6.6 in examining whether there was sufficient industry support *in initiating the AD investigation* at issue. As Argentina's Article 6.6 claim is limited to the question of industry support, which is a prerequisite to initiating an investigation, the Panel should decline to make any findings under Article 6.6 in this dispute.[15]

25. Article 6.6 states:

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[12] The AD Agreement uses the terms "application" and "applicant." The comparable terms under U.S. law are "petition" and "petitioner." However, for the benefit of the Panel, the United States has used the AD Agreement terms "application" and "applicant" throughout this submission (except where directly quoting from the USDOC's analysis on the investigation record) for the purposes of clarity.

[13] Argentina's First Written Submission, paras. 126-241.

[14] Argentina's First Written Submission, paras. 130, 238-241.

[15] Argentina's First Written Submission, paras. 238-241.

> Except in circumstances provided for in paragraph 8, the authorities shall *during the course of an investigation* satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.[16]

26. Article 6.6 thus applies just "during the course of an investigation;" it does not apply to an investigating authority's determination whether to initiate an investigation. Indeed, the text of Article 5 underscores that the initiation of an investigation exists separate and apart from any investigation that may follow. This delineation is confirmed by the title of Article 5, which distinguishes between the "[i]nitiation" and the "[s]ubsequent [i]nvestigation."[17] It is also confirmed by Article 5.7, which demarcates a clear boundary between "(a) … the decision whether or not to initiate an investigation" from "(b) thereafter, during the course of the investigation."[18] Most importantly, Article 5.4, which the united States discusses in greater detail in subsection III.B below, makes clear that it only applies to initiation: "[a]n investigation shall not be initiated … unless …."[19] The panel in *Mexico – Steel Pipes and Tubes* agreed with this reading of Article 5.4.[20]

27. In addition, the evidentiary standard for initiation is governed by Article 5.3, which the United States discusses in greater detail in subsection III.C below, not Article 6.6. Article 5.3 refers to "the accuracy and adequacy of the evidence provided in the *application*,"[21] and Article 5.4 repeatedly refers to information in the "application." Article 6.6 does not refer to the "application" at all, which further supports that Article 6.6 does not apply to the investigating authority's analysis of industry support under Article 5.4.

28. Finally, the DSB reports that Argentina relies on in support of its Article 6.6 claim were limited to issues arising during investigations and not at initiation, which further underscores that Article 6.6 does not apply to initiations.[22] In *Guatemala – Cement II*, the panel was considering an argument by Mexico that the Guatemalan investigating authority relied on irrelevant information for its *final determination* in an AD investigation.[23] Similarly, in *Argentina – Ceramic Tiles*, the panel was addressing a challenge to Argentina's use of facts available under Article 6.8 of the AD Agreement *during an AD investigation*, and in so doing the panel

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[16] AD Agreement, Article 6.6 (emphasis added).

[17] AD Agreement, Article 5, title ("Initiation and Subsequent Investigation").

[18] AD Agreement, Article 5.7.

[19] AD Agreement, Article 5.7.

[20] *See Mexico – Steel Pipes and Tubes*, para. 7.347 ("In our view, Article 5.4 pertains exclusively to initiation, and there is no on-going obligation to monitor domestic industry support once an investigation has been initiated under the *Anti-Dumping Agreement*").

[21] AD Agreement, Article 5.3 (emphasis added).

[22] Argentina's First Written Submission, paras. 161-162, 238 (citing *Guatemala – Cement II*, para. 8.172; *Argentina – Ceramic Tiles*, para. 6.57).

[23] *Guatemala – Cement II*, paras. 8.166-8.174.

explained the relationship between Articles 6.6 and 6.8 in assessing the European Communities' claim.[24] Neither of these cases involved an Article 6.6 claim regarding issues pertaining to initiating an AD investigation.

29. For these reasons, the United States respectfully requests that the Panel make no findings under Article 6.6 in this dispute.

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

30. As the United States demonstrates below, the information provided by the applicants in their application, coupled with the supplementary information the USDOC sought from the applicants, supported that the application was made "by or on behalf of the domestic industry" in accordance with Articles 5.1 and 5.4 of the AD Agreement. In fact, the USDOC considered more conservative analytical approaches than the applicants provided for purposes of calculating industry support. Ultimately, the approaches considered by the USDOC led to the same end result—the supporters of the petition accounted for more than 25 percent of total U.S. production, and more than 50 percent of the production of the parties expressing an opinion on the application. In making this assessment, the USDOC did not act inconsistently with Articles 5.1 or 5.4 of the AD Agreement.

31. Argentina's arguments to the contrary are unavailing. In subsection 1 below, the United States provides the proper legal framework for understanding Articles 5.1 and 5.4 of the AD Agreement. In subsection 2, the United States explains how the information and the USDOC's analysis revealed that industry support for the application satisfied the criteria in Articles 5.1 and 5.4. In subsections 3-7 below, the United States refutes Argentina's Article 5.1 and 5.4 arguments that: (1) the USDOC inappropriately relied on "estimated" production levels as opposed to "actual" production levels; (2) the USDOC relied on "outdated" or "anomalous" data for the purposes of its industry support analysis; (3) the USDOC should have "polled" the domestic OCTG-producing industry; (4) there was double-counting of domestic production in the USDOC's industry support calculation; and (5) the USDOC inappropriately shifted the burden regarding industry support to Tenaris USA, a U.S. OCTG producer that opposed the application.

1. The Proper Legal Framework for Understanding the Obligations Set Out in Articles 5.1 and 5.4 of the AD Agreement

32. Article 5.1 of the AD Agreement states:

> Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping

[24] *Argentina – Ceramic Tiles*, paras. 6.56-6.58.

> shall be initiated upon a written application by or on behalf of the domestic industry.[25]

33. Article 5.1 provides that, unless the investigating authority self-initiates an AD investigation under Article 5.6, the initiation of an AD investigation must be prefaced by an application (*i.e.*, a petition). The application must be made "by or on behalf of the domestic industry."

34. Article 5.4 explicitly refers back to Article 5.1, and it elaborates on the phrase "by or on behalf of the domestic industry" with regard to the "application." Article 5.4 states:

> An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[13] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[14] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.[26]

35. Accordingly, as required by the first sentence of Article 5.4, an investigating authority may not initiate an AD investigation unless it has conducted an examination of the evidence and determined that the requisite industry support exists.[27] This determination and the underlying examination must take place prior to the authority's decision whether to initiate an investigation and must be based on evidence available to the investigating authority prior to initiation, not after initiation.

36. The second and third sentences of Article 5.4 specifically define the conditions under which the application will be considered to have been made "by or on behalf of the domestic industry," which, again, is the phrase to which Article 5.1 refers. The conditions in the second and third sentences of Article 5.4 are expressed as numerical benchmarks and both conditions must be satisfied. Those two numerical benchmarks preclude an investigating authority from initiating an AD investigation where producers expressly supporting the application account for

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[25] AD Agreement, Article 5.1.

[26] AD Agreement, Article 5.4 (footnotes omitted).

[27] *See also Mexico – Steel Pipes and Tubes*, para. 7.324 ("Article 5.4 commences with the phrase: 'An investigation shall not be initiated unless . . .'. This is a clear textual indication that Article 5.4 sets out a fundamental requirement that must be respected in *initiating* an investigation") (emphasis in original).

less than 25 percent of total production, or where producers supporting the application account for less than 50 percent of production of those producers expressing an opinion.

2. The USDOC Did Not Act Inconsistently With Articles 5.1 and 5.4 of the AD Agreement in Determining That the Application Was Made "By or On Behalf of the Domestic Industry"

37. In assessing whether the application for the AD investigation on OCTG from Argentina was made "by or on behalf of the domestic industry" within the meaning of Articles 5.1 and 5.4 of the AD Agreement, the USDOC applied various analytical approaches to discern whether domestic workers and producers supporting the application 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 domestic like product produced by that portion of the industry expressing support for, or opposition to, the application.[28] As discussed above, these 25 and 50 percent thresholds emanate from Article 5.4 of the AD Agreement. Under these analytical approaches, coupled with additional information before the USDOC, the USDOC found that there was sufficient industry support to warrant initiation, consistent with Articles 5.1 and 5.4 of the AD Agreement.

38. As an initial matter, the USDOC defined its period of investigation ("POI") as October 1, 2020, through September 30, 2021, which represented the four fiscal quarters preceding the application, which was filed on October 6, 2021.[29] In doing so, the USDOC attempted to measure industry support based on production data sourced from the most recently completed calendar year, absent a compelling reason to rely on an alternative period.[30] Because the applicants filed the application on October 6, 2021, the USDOC determined that the most recently completed calendar year to measure domestic industry production was calendar year 2020.[31] Thus, there was contemporaneous overlap between the USDOC's POI and the time period it was examining for purposes of discerning industry support for the application.

39. The USDOC applied different approaches to the record evidence to discern whether the application had the requisite industry support. The first approach was proposed by the applicants—comprised of four producing companies and a union with workers at certain OCTG production facilities in the United States. The applicants identified 20 domestic producers of OCTG as constituting the domestic industry, based on information contained in the then-most recently completed USITC sunset review of other orders covering OCTG from certain countries, which the USITC completed in 2020, and which covered 2018-2019, coupled with the

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[28] U.S. Department of Commerce, Enforcement and Compliance, Office of AD/CVD Operations, "Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Argentina," Attachment II, at 4-8, 13-18 (Oct. 26, 2021) (Exhibit ARG-18) (USDOC Initiation Checklist).

[29] USDOC Initiation Checklist at 6 (Exhibit ARG-18); *see also* 19 C.F.R. § 351.204(b)(1) (Exhibit USA-01).

[30] *See* USDOC Initiation Checklist, Attachment II, at 16 (Exhibit ARG-18); *see also* 19 C.F.R. § 351.203(e)(1) (Exhibit ARG-11).

[31] *See* USDOC Initiation Checklist, Attachment II, at 15-16 (Exhibit ARG-18).

applicants' knowledge of the industry.[32] The four producing company applicants provided their 2020 production data for the domestic like product as well as a letter of support and 2020 production data from other domestic producers, including Wheatland Tube, in addition to other information relevant to establishing industry support.[33] The culmination of the information for the producing companies who supported the application served as the numerator of the applicants' industry support calculation.

40. Because actual production data for all domestic producers were not reasonably available to the applicants, the applicants used available information on 2020 domestic shipment data for the U.S. industry as a whole as a starting point to approximate total industry production.[34] The applicants obtained the shipment data from a source recognized by the applicants as "the recognized authority on the U.S. pipe and tube market."[35] In the USDOC's and the applicants' view, this shipment data served as a "reasonable proxy" for production data.[36] The applicants then relied on their own export shipments-to-total shipments ratio for 2020 and applied that ratio to the 2020 domestic shipment data for the entire domestic industry to estimate the industry's total domestic and export shipments during 2020.[37] They next deducted their own shipments from the estimated total shipments to derive non-applicants' total shipments in 2020.[38] Then, the applicants 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 the aforementioned USITC sunset review of certain OCTG orders. 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.[39] This figure served as the denominator of the applicants' industry support calculation.

41. Under the second approach to assessing industry support, the USDOC calculated its own estimates of the entire domestic industry's actual 2020 production data by relying on a similar, yet more conservative analytical approach, which was based on industry-wide information, not the applicants' own ratios.[40] Specifically, first, the USDOC calculated the industry-wide ratio of production-to-shipments by relying on the publicly available information on domestic producers'

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[32] USDOC Initiation Checklist, Attachment II, at 4 (Exhibit ARG-18) (citing Applicants' Letter, "Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Response to General Issues Questionnaire" (Oct. 12, 2021), at 1-2, Exhibits 1, 2 (Exhibit USA-02) (Table I-7 in Exhibit 1, which is the USITC report cited by the applicants, lists the number of domestic OCTG producers)).

[33] USDOC Initiation Checklist, Attachment II, at 4 (Exhibit ARG-18).

[34] USDOC Initiation Checklist, Attachment II, at 4-5, 14-15 (Exhibit ARG-18).

[35] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

[36] USDOC Initiation Checklist, Attachment II, at 5, 15 (Exhibit ARG-18).

[37] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

[38] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

[39] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

[40] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

production and domestic shipments from the same USITC sunset review referenced above. Next, the USDOC applied the industry-wide ratio to the available industry-wide domestic shipment data from the same authoritative source on the domestic pipe and tube market, as provided by the applicants, to calculate total 2020 production for the entire domestic industry.[41] 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, to discern whether the applicants' production figures satisfied the 25 percent numerical threshold in Article 5.4 of the AD Agreement.

42. The USDOC also incorporated several additional approaches to assess industry support in its analysis, including an alternative approach proposed by non-applicant U.S. producer Tenaris USA, which opposed the application.[42] The USDOC noted that, once corrected to properly account for the production of a supporter and other production information on the record, Tenaris USA's proposed alternative approach led to the same end results as the applicants' calculation and the USDOC's own calculation.[43] Moreover, in response to party arguments regarding the use of a historical ratio to approximate 2020 production, the USDOC calculated industry support under yet another approach, in which it used the applicants' 2020 ratio of production-to-domestic shipments to adjust the industry-wide shipment data in order to approximate production for the non-applicants.[44] This approach also led to the same results as the applicants' calculation and the other calculation approaches, in connection with the 25 percent threshold in Article 5.4.[45]

43. Under each approach, the share of estimated U.S. production of the domestic like product represented by supporters of the application was "well above" 25 percent of total U.S. OCTG production,[46] thus satisfying the 25 percent threshold in Article 5.4 of the AD Agreement (*i.e.*, that domestic producers expressly supporting the application cannot account for less than 25 percent of total production of the domestic like product).

44. With regard to the 50 percent threshold in Article 5.4, the USDOC examined whether supporters of the application 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 industry support calculation approaches, the USDOC assessed that supporters of the application accounted for greater than 50 percent of those parties expressing an opinion on the application for which the USDOC had production data.[47] As an alternative, the USDOC assumed for the sake of argument that all other known U.S. producers of OCTG, for whom

[41] USDOC Initiation Checklist, Attachment II, at 5, 17 (Exhibit ARG-18).

[42] USDOC Initiation Checklist, Attachment II, at 17-18 (Exhibit ARG-18).

[43] USDOC Initiation Checklist, Attachment II, at 17-18 (Exhibit ARG-18).

[44] USDOC Initiation Checklist, Attachment II, at 17-18 (Exhibit ARG-18).

[45] USDOC Initiation Checklist, Attachment II, at 17-18 (Exhibit ARG-18).

[46] USDOC Initiation Checklist, Attachment II, at 6, 17 (Exhibit ARG-18).

[47] USDOC Initiation Checklist, Attachment II, at 6-7 (Exhibit ARG-18).

production data were not on the record, opposed the application and also found that supporters of the application accounted for greater than 50 percent of the production of the domestic like product by that portion of the industry expressing support for or opposition to the application, pursuant to each industry support calculation approach.[48] Thus, the USDOC determined that the application had the requisite industry support for purposes of initiation, such that the application was made "by or on behalf of the domestic industry" under Articles 5.1 and 5.4 of the AD Agreement.

3. Articles 5.1 and 5.4 of the AD Agreement Do Not Preclude An Investigating Authority From Relying on Domestic Industry Shipment Data as a Reasonable Proxy For Domestic Production

45. Argentina suggests that it was problematic for the USDOC to rely on "estimated" data to discern production levels, instead of "actual" production level data, for the purposes of Articles 5.1 and 5.4.[49] But the data the USDOC relied on was indicative of production levels for a recent time period.

46. Article 5.1 of the AD Agreement, as informed by Article 5.4, calls for an investigating authority to base its analysis of industry support on "total *production* of the like product" produced by the domestic industry.[50] But there is no reference in these articles, or elsewhere in Article 5 of the AD Agreement, to particular sources of information that must or must not be used by an investigating authority in assessing whether there is adequate industry support for the application.[51] For example, they do not preclude the use of estimated production data in discerning industry support for the application. None of these articles use the term "actual."[52] The absence of this qualifier connotes a certain level of flexibility in what data an investigating authority may rely on in addressing whether adequate industry support exists. Thus, Articles 5.1 and 5.4 do not preclude the investigating authority from relying on alternative data, such as domestic industry shipment data, to the extent such data may serve as a reasonable proxy for production, in determining whether the application is made "by or on behalf of the domestic industry." This is especially the case if certain domestic industry production data is not reasonably available.

47. Here, the USDOC did not have on its record production data for the entire domestic OCTG-producing industry for purposes of assessing industry support. Thus, the USDOC looked to alternative data that were indicative of production levels.[53] The USDOC had domestic

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[48] USDOC Initiation Checklist, Attachment II, at 7, 17-18 (Exhibit ARG-18).

[49] Argentina's First Written Submission, paras. 179-180, 215; *see also id.* at paras. 196, 235-236 (raising similar arguments in context of Article 5.2(i) of the AD Agreement).

[50] AD Agreement, Article 5.4 (emphasis added).

[51] *See also Mexico – Olive Oil*, para. 7.225 (analyzing parallel Article 11.4 of the SCM Agreement).

[52] Argentina's First Written Submission, para. 235.

[53] 19 C.F.R. § 351.203(e)(1) (Exhibit ARG-11).

shipment data for the entire domestic industry for 2020, and relied on that data as an appropriate proxy and starting point for the calculation. Moreover, the USDOC used additional information on the record to essentially convert shipment data to production data, and it ultimately used this converted data as the denominator in the industry support calculation.[54] Thus, the USDOC did ultimately analyze "total *production* of the like product," consistent with Article 5.1, as informed by Article 5.4.[55]

4. The USDOC Did Not Rely On "Outdated" or "Anomalous" Data for the Purposes of Articles 5.1 and 5.4 of the AD Agreement

48. Argentina unavailingly argues that the USDOC relied on "outdated" 2020 domestic industry shipment data, and 2018-2019 industry-wide data for the limited purpose of converting the domestic industry-wide shipment data to domestic industry-wide production data, in determining whether there was industry support for the application.[56]

49. As an initial matter, Articles 5.1 and 5.4 of the AD Agreement do not specify a particular time period to examine, or proscribe particular types of evidence to use, for the purposes of determining industry support for an application.

50. Here, the USDOC's reliance on 2020 production and shipment data, and certain limited information from 2018-2019 to convert 2020 shipment data to production data, is not inconsistent with the text of Articles 5.1 or 5.4. Year 2020 was the most-recently completed calendar year preceding initiation, and the USDOC appropriately relied on production data from that time period, which reasonably overlapped with its POI. Likewise, the 2018-2019 conversion ratio data was the "most recently available industry-wide production and shipment data" available on the record to make necessary data conversions.[57] The mere fact that data relate to the past does not mean that they cannot be used to establish industry support, particularly given that there was nothing on the record to call into question the accuracy or adequacy of the evidence provided by the applicants.

51. With specific regard to the 2018-2019 conversion ratio data, the USDOC also had available to it – and considered – a 2020 ratio of production to shipments proffered by the applicants, which, when applied to the 2020 domestic industry shipment data, also showed that the applicants satisfied the requirements for industry support.[58] Thus, even more recent data from the applicants still resulted in the same overall industry support calculation, even without the 2018-2019 data from the USITC report.

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[54] *See* USDOC Initiation Checklist, Attachment II, at 4-8, 14-15, 17 (Exhibit ARG-18).

[55] AD Agreement, Article 5.4 (emphasis added).

[56] Argentina's First Written Submission, paras. 189, 190-195, 215, 219.

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

[58] *See* USDOC Initiation Checklist, Attachment II, at 17-18 (Exhibit ARG-18).

52. In addition to its data contemporaneity arguments, Argentina also unavailingly contends that the industry support data, particularly the 2020 shipment data, was "anomalous."[59] According to Argentina, 2020 "fundamentally differed from the OCTG market in October 2021 when the application was filed and when USDOC's decision to initiate was taken."[60] Argentina asserts that unique market factors impacted OCTG demand in 2020, including the oversupply of oil by the Organization of the Petroleum Exporting Countries, the global COVID-19 pandemic, and hot-rolled coil input prices, such that 2020 constituted an "inappropriate basis" for the USDOC to establish industry support.[61] Essentially, Argentina asserts that the OCTG market in the United States in 2020 was "volatile and highly unusual," and "data pertaining to this time period did not accurately reflect the state of the domestic industry at the time of the filing of the application."[62]

53. With regard to the 2020 data, the USDOC made the point that: "In any antidumping or countervailing duty petition where a domestic industry is alleging material injury to the domestic industry 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."[63] In discussing these market factors, Argentina appears to be suggesting that domestic OCTG production was lower in 2020 than in some different time period.[64] But if Argentina is correct that these market forces impacted domestic OCTG production, then the United States notes that Argentina has made no suggestion that these factors would not have impacted *all* domestic producers largely equally. Furthermore, the simple notion that domestic production may have been lower in 2020 than some more recent period does not *ipso facto* mean that the figures are no longer valid for discerning whether industry support for an AD application exists.

54. Indeed, Argentina appears to acknowledge at certain points in its first written submission that even data from some parts of 2021 would have been problematic, such as when it states that "[t]he consequences of the 2020-*2021* market disruption for the broader OCTG market cannot be overstated,"[65] and "'domestic welded OCTG shipments have fallen dramatically during the first half of 2021.'"[66] Argentina makes much ado of its contention that prices for hot-rolled coil, which is the primary input to producing welded OCTG, "were soaring during 2020," but its first

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[59] Argentina's First Written Submission, paras. 168-178, 215, 219.

[60] Argentina's First Written Submission, para. 168.

[61] Argentina's First Written Submission, paras. 168-178.

[62] Argentina's First Written Submission, paras. 215, 219.

[63] USDOC Initiation Checklist, Attachment II, at 16 (Exhibit ARG-18).

[64] *See, e.g.,* Argentina's First Written Submission, para. 172 ("The OCTG market is inextricably linked to energy production activity, which was severely reduced by these market forces.").

[65] Argentina's First Written Submission, para. 173 (emphasis added).

[66] Argentina's First Written Submission, para. 174 (citing Tenaris's Oct. 15, 2021 Comments at 14-15 (Exhibit ARG-03)).

written submission illustrates that hot-rolled coil prices were at their *lowest* point since 2017 in approximately August 2020 (*i.e.*, declining for eight months of the period Commerce considered for industry support), before rising sharply for the remainder of the year and *into 2021*.[67] Furthermore, Argentina asserts that "[d]omestic production and shipments did not start to increase until [hot-rolled coil] prices declined *starting in September 2021*."[68]

55. Thus, it is unclear from Argentina's statements in its first written submission whether using a more recent time period would have been any more appropriate in light of these purported concerns. If anything, as the USDOC explained when initiating the investigation, it appears that the ultimate basis for Argentina's argument now against relying on 2020 industry data, and instead to poll the domestic industry, is "for [the USDOC] 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."[69]

5. Articles 5.1 and 5.4 of the AD Agreement Did Not Require the USDOC To "Poll" The Domestic Industry

56. Argentina contends that the USDOC should have exercised its authority under U.S. law to poll the domestic industry[70] in determining whether sufficient industry support for the application existed.[71] However, the USDOC appropriately found it unnecessary to do so.[72] The USDOC specifically explained that U.S. law did not require it to poll the domestic industry "if the [applicants] provide reasonable estimates of non-[applicant] company production;" "[t]he use of estimates does not require [the USDOC] to poll the industry."[73] Argentina has not demonstrated that the USDOC departed from an "established practice" in the underlying

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[67] Argentina's First Written Submission, para. 45 (citing Tenaris's Oct. 15, 2021 Comments on Industry Support at 14-15 (Exhibit ARG-03)).

[68] Argentina's First Written Submission, para. 46 (emphasis added) (citing Tenaris's Prehearing Brief at 25 (Exhibit ARG-04)).

[69] USDOC Initiation Checklist, Attachment II, at 16-17 (Exhibit ARG-18).

[70] The concept of "polling the industry" to determine whether the requisite industry support exists is a concept emanating specifically from U.S. law. This concept applies in certain factual circumstances. *See* 19 U.S.C. § 1673a(c)(4)(D) (Exhibit ARG-10). Specifically, section 1673a(c)(4)(D) requires the USDOC, if "the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product," to either: (i) "poll the industry or rely on other information in order to determine if there is support for the petition . . .," or (ii) "if there is a large number of producers in the industry, [the USDOC] may determine industry support for the petition by using any statistically valid sampling method to poll the industry." 19 U.S.C. § 1673a(c)(4)(D) (Exhibit ARG-10). If the USDOC declines to poll the industry in the circumstances contemplated in section 1673a(c)(4)(D) but otherwise relies on appropriate analyses to assess whether the application is made by or on behalf of the relevant domestic industry, that does not render its industry support determination inconsistent with Articles 5.1 or 5.4 of the AD Agreement (or Articles 5.2 or 5.3).

[71] Argentina's First Written Submission, paras. 182-183, 218, 220.

[72] USDOC Initiation Checklist, Attachment II, at 19 (Exhibit ARG-18).

[73] USDOC Initiation Checklist, Attachment II, at 16 (Exhibit ARG-18).

initiation either.[74] Argentina simply prefers the USDOC to have applied a different approach to analyzing industry support, but this is not a basis to find against the USDOC's reasoned approach when initiating the investigation.[75]

57. In any event, the Panel need not determine whether the USDOC complied with domestic law; rather, Argentina's claims are grounded in the AD Agreement. Articles 5.1 and 5.4 did not obligate the USDOC to "poll the industry" to assess industry support. Indeed, footnote 13 to Article 5.4 states that "[i]n the case of fragmented industries involving an exceptionally large number of producers, authorities *may* determine support and opposition by using *statistically valid sampling techniques*," but this footnote does not *require* polling the domestic industry.[76] As discussed above, there is no reference in Article 5.4, or elsewhere in the AD Agreement, to particular sources of information that must or must not be used by an investigating authority in assessing whether there is adequate industry support for the application.[77] Articles 5.1 and 5.4 do not preclude an investigating authority from relying on other approaches to analyzing industry support, depending on the facts and circumstances before it.

58. Finally, in suggesting that the USDOC should have polled the industry under U.S. law, Argentina overemphasizes the statute's directive to poll the industry,[78] and downplays that the statute also authorizes the USDOC to "*rely on other information* in order to determine if there is support for the [application]" where those domestic producers or workers supporting the application do not exceed 50 percent of total domestic production of the product at issue.[79] As discussed above, the USDOC relied on "other information" on the record for 2020 production of the applicants and other domestic producers and the opinions expressed to assess the question of whether supporters account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the application.[80] Its decision to do so was not inconsistent with Articles 5.1or 5.4 of the AD Agreement.

6. Argentina Has Not Demonstrated That the USDOC "Double-Counted" Domestic Industry Production for the Purposes of Articles 5.1 and 5.4 of the AD Agreement

[74] Argentina's First Written Submission, paras. 187-188.

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

[76] AD Agreement, Article 5.4, n.13 (emphasis added).

[77] *See also Mexico – Olive Oil*, para. 7.225 (analyzing parallel Article 11.4 of the SCM Agreement).

[78] *See* Argentina's First Written Submission, paras. 187-188, 196, 218.

[79] *See* 19 U.S.C. § 1673a(c)(4)(D) (Exhibit ARG-10).

[80] USDOC Initiation Checklist, Attachment II, at 19 (Exhibit ARG-18).

59. Argentina's argument that the USDOC "double-counted" OCTG production by including processors and finishers of unfinished OCTG in its analysis of industry support is without merit; the USDOC did not act inconsistently with Articles 5.1 or 5.4 of the AD Agreement.[81]

60. In its first written submission, Argentina relies on Tenaris's pre-initiation comments from October 15, 2021 and October 20, 2021 in suggesting that "Tenaris raised concerns that the domestic production data underlying Petitioners' industry support calculation may have included data that pertained to mere finishing operations rather than the production of OCTG, and, this risked distortions to the industry support calculations," and that "Tenaris argued that the relationship of pipe formation and pipe finishing has implications for any assessment of a domestic OCTG industry given that the percentage of green pipe and plain end imports of OCTG into the United States will vary year to year and may constitute the majority of imports in any given year."[82]

61. First, at no point during the USDOC's initiation did Tenaris explicitly frame its issues with production data as a "double counting" issue. The phrase "double count" does not appear in the record of the investigation, nor did Tenaris make specific "double counting" arguments before the USDOC.

62. Furthermore, the evidence Argentina points to does not actually show that the USDOC double-counted domestic OCTG production and domestic processing of domestically-produced green tube into finished OCTG. Specifically, Argentina hinges its arguments on website screenshots from two of the applicants, Borusan U.S. and PTC, and suggests that it was "unclear" to what extent these applicants were involved in actual pipe production as opposed to green tube finishing operations.[83]

63. But in discussing the Borusan U.S. website screenshot, Argentina inappropriately deemphasizes the word "also" in the language it selectively quotes at paragraph 203 of its first written submission. The website screenshot suggests that Borusan's Baytown, Texas facility *manufactures* OCTG "casing" and "*also*" engages in processing (*i.e.*, heat-treatment, inspection, and threading) of "tubing" from Borusan's Turkey facility.[84] If anything, this screenshot demonstrates that Borusan U.S.'s Baytown, Texas facility further processes *imported* green tube from its Turkey facility, and not domestically produced green tube from another U.S. producer.

64. Similarly, with regard to PTC, Argentina glosses over record evidence for PTC's Liberty, Texas facility with two ERW mills with 480,000 tons of annual capacity for producing ERW

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[81] Argentina's First Written Submission, paras. 197-208, 219, 221.

[82] Argentina's First Written Submission, para. 198 (citing Tenaris's Pre-Initiation Comments (Oct. 15, 2021) at 9-11 (Exhibit ARG-03); Tenaris's Pre-Initiation Comments (Oct. 20, 2021) at 8-9 (Exhibit ARG-17).

[83] Argentina's First Written Submission, paras. 202-205, 208 (citing Tenaris's Oct. 15, 2021 Comments at Exhibits 5, 6 (Exhibit ARG-03)).

[84] Tenaris's Pre-Initiation Comments (Oct. 15 2021) at Exhibit 5 (Exhibit ARG-03) (emphasis added).

(*i.e.*, welded) OCTG, and its 350,000 square foot second facility in Houston, Texas that "allows [PTC] to provide seamless OCTG."[85] According to the website screenshot, PTC's Houston facility "allows [PTC] to process overflow production from [its] Liberty, Texas plant" and to "handle processing of OCTG."[86] Thus, the record evidence demonstrates that PTC is first and foremost a *producer* of OCTG that also appears to have capabilities to process (or finish) OCTG.

65. Argentina also wrongly makes the point that PTC was not identified as a U.S. producer in its most recent sunset review of other U.S. AD and CVD orders on OCTG products.[87] However, the USDOC explained that PTC was reflected in the USITC's sunset review as Boomerang, which is "now PTC Liberty" (*i.e.*, PTC).[88]

66. Finally, Argentina appears to suggest that the USDOC should have engaged in further analysis to determine whether any green tube Borusan U.S. (or others) imported from foreign sources should constitute "domestic production" of OCTG.[89] But the USDOC's "examination of the record gives [the USDOC] no reason to believe that these finishing operations should not be included as production of the domestic like product."[90] The USDOC did not differentiate between finishing of imported or domestically sourced green tube in making this statement. In discussing that the scope and domestic like product included both finished OCTG and green tube, the USDOC referenced a prior USITC report from other AD and CVD proceedings involving OCTG, in which the USITC found that "processors that provide heat treatment engage in sufficient production-related activities in the United States to be treated as domestic producers."[91] The record is devoid of information to suggest that "domestic industry" and "like product" should be defined differently.

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[85] Tenaris's Pre-Initiation Comments (Oct. 15, 2021) at Exhibit 6 (Exhibit ARG-03) (PDF pp. 60-62).

[86] Tenaris's Pre-Initiation Comments (Oct. 15, 2021) at Exhibit 6 (Exhibit ARG-03) (PDF pp. 60-62).

[87] Argentina's First Written Submission, para. 204 (citing *Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 & 731-TA-1215-1216 (Review), USITC Pub. 5090, at I-36 (July 2020) (Exhibit ARG-38)).

[88] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18) (citing Petitioners' Letter, "Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Response to General Issues Questionnaire" (Oct. 12, 2021), at 1, Exhibit 1 (Exhibit USA-02) (stating that "Boomerang" is "now PTC;" Table I-7 in Exhibit 1, which is an excerpt of the USITC report, lists the number of domestic OCTG producers, which included "Boomerang")); *see also Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 & 731-TA-1215-1216 (Review), USITC Pub. 5090, at I-36 (July 2020) (Exhibit ARG-38) (referencing "Boomerang Tube;" Argentina's excerpt of this report is simply the page of the USITC sunset review report following the applicants' excerpt of this same report in Exhibit 1 within Exhibit USA-02)).

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

[90] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18).

[91] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18) (citing 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, Exhibit I-14, at 13 (Oct. 6, 2021) (Exhibit USA-04) (Exhibit I-14 corresponds to *Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine,*

7. The USDOC Did Not Relieve the Applicants From Demonstrating That the Application was Supported by the Domestic Industry, and Did Not Shift the Burden to Tenaris

67. Finally, Argentina wrongly suggests that the USDOC shifted the burden regarding industry support to Tenaris USA, a domestic OCTG producer that opposed the application, instead of maintaining the burden on the applicants to demonstrate that the application was made "by or on behalf of the domestic industry."[92] Argentina appears to be asserting this as an Article 5.4 claim,[93] but it is unclear from its arguments how this line of argument implicates Article 5.4 (or Article 5.1). However, for completeness, the United States refutes Argentina's arguments concerning burden shifting to non-applicants such as Tenaris USA.

68. The USDOC *never* relieved the applicants of their burden of demonstrating industry support. As Argentina acknowledges, the applicants submitted four different calculations in their effort to demonstrate requisite industry support for their application.[94] The USDOC's initiation checklist evidences a series of back-and-forth between the USDOC and the applicants on the issue of industry support, in which the USDOC held applicants to the task of demonstrating that such support existed for the application. Contrary to Argentina's assertion, this is exactly "what an objective and unbiased investigating authority is expected to do."[95]

69. Argentina cites to a USDOC rulemaking in which the USDOC explained that applicants are responsible for establishing industry support for applications, and other interested parties are not responsible for showing that other data is more accurate than data in the application.[96] As an initial matter, the "applicability date" of this rule was to applications filed "on or after October 20, 2021."[97] Therefore, by its terms, the preambular language in this rule, which modified certain of the USDOC's regulations pertaining to industry support analyses, did not apply to the application here, which was filed on October 6, 2021.

70. Regardless, the statement in the final rule does not stand for the proposition that the USDOC cannot point to the insufficiency of arguments and evidence of a particular interested

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and Vietnam, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223 (Final), USITC Pub. 4489 (Sept. 2014)).

[92] Argentina's First Written Submission, paras. 209-212, 220.

[93] *See* Argentina's First Written Submission, para. 220. Argentina does not appear to be making Article 5.2 or 5.3 claims on this issue in its first written submission. *See, e.g.,* Argentina's First Written Submission, paras. 223-237.

[94] Argentina's First Written Submission, paras. 181, 196.

[95] Argentina's First Written Submission, para. 211.

[96] Argentina's First Written Submission, para. 209 (citing *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300, 52,305 (Dep't of Commerce Sept. 20, 2021) (Exhibit ARG-39)).

[97] *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300, 52,300 (Dep't of Commerce Sept. 20, 2021) (Exhibit ARG-39).

party attempting to undercut industry support for an application. To the contrary, all applicants and interested parties, including those expressing support for, or opposition to, on the application must substantiate their arguments with supporting evidence. The USDOC must make its determination to initiate based on positive evidence on the administrative record, not mere speculation. However, interested party arguments during the proceeding, as reiterated by Argentina in its first written submission, did not adequately rely on positive evidence, such as of Tenaris USA's production, or alternative data submitted on the record for comparison purposes, to support an allegation that supporters of the application did not account for more than 50 percent of the industry expressing support for, or opposition to, the application.

71. The USDOC did state in its initiation checklist that "'[w]hile the petitioners are responsible for establishing industry support of the petition, parties that oppose the petition or seek to impugn the data provided by the petitioners are responsible for giving effect to their opposition and/or arguments by providing evidence that supports them.'"[98] But this was not shifting the burden to Tenaris. The USDOC's regulations at 19 C.F.R. § 351.203(e)(1)) state that "[w]here a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary [of the USDOC], is unavailable, production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels."[99] The applicants did, in fact, place alternative data on the record indicative of production levels, and the USDOC relied upon this information in determining industry support for the application. Where Argentina's argument fails is that the USDOC's regulations at 19 C.F.R. § 351.301(c)(1)(v) at the time of the USDOC's initiation allowed for the submission of rebuttal factual information after another interested party, such as an applicant, filed a questionnaire response.[100] Tenaris was clearly aware of this regulatory right as it, in fact, submitted rebuttal factual information disputing the applicants' claims on the question of industry support.[101] Indeed, Tenaris USA opposed the application and filed four submissions commenting on industry support, but declined to provide its own production data for the USDOC to account for its opposition.[102]

72. Commerce was essentially making the point in its initiation checklist that Tenaris could have submitted further information to undercut the applicants' industry support analysis, such as its own domestic production data, or alternative production data for the domestic industry, but it declined to exercise this right. It was not Commerce's responsibility to ensure that Tenaris

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[98] Argentina's First Written Submission, para. 211 (quoting USDOC Initiation Checklist, Attachment II, at 21 (Exhibit ARG-18)).

[99] 19 C.F.R. § 351.203(e)(1) (Exhibit ARG-11).

[100] 19 C.F.R. § 351.301(c)(1)(v) (2021) (Exhibit USA-06) (the USDOC's regulations at 19 C.F.R. § 351.102 define "factual information" for the purposes of 19 C.F.R. § 351.301 (Exhibit USA-06)).

[101] *See generally* Tenaris's Pre-Initiation Comments (Oct. 15 2021) (Exhibit ARG-03).

[102] USDOC Initiation Checklist, Attachment II, at 6-7, 16 (Exhibit ARG-18) (citing 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," at 2 (Oct. 22, 2021) (Exhibit USA-03)).

availed itself of every right it possessed under the USDOC's regulations at initiation, such as submitting production data that rebutted the data submitted by the applicants.

73. In sum, the USDOC did not act inconsistently with Articles 5.1 or 5.4 of the AD Agreement in initiating the AD investigation because the application was made "by or on behalf of the domestic industry."

C. The USDOC's Analysis of Industry Support Is Not Inconsistent With Article 5.3 of the AD Agreement

74. In its first written submission, Argentina reiterates much of the same arguments it makes in support of its Article 5.1 and 5.4 claims in the context of asserting that the USDOC acted inconsistently with Article 5.3 of the AD Agreement in initiating the AD investigation based on its industry support determination.[103] For similar reasons, those arguments must fail under Article 5.3 as well.

75. In subsection 1 below, the United States provides the proper legal framework for understanding Article 5.3. In subsection 2, the United States refutes Argentina's Article 5.3 claims.

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 5.3 of the AD Agreement

76. Article 5.3 elaborates on the role of investigating authorities in initiating AD investigations:

> The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.[104]

77. In assessing an investigating authority's initiation of an AD investigation, a panel's task is to "determine 'whether an unbiased and objective investigating authority would have found that the application contained sufficient information to justify initiation of the investigation.'"[105] A panel does not "conduct a *de novo* review of the accuracy and adequacy of the evidence to arrive at its own conclusion regarding whether the evidence in the application was sufficient to justify initiation,"[106] and may not "substitute its judgment for that of the investigating authority."[107]

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[103] Argentina's First Written Submission, paras. 128, 197-208, 223-233.

[104] AD Agreement, Article 5.3.

[105] *See China – GOES (Panel)*, para. 7.51 (citing *US – Softwood Lumber V (Panel)*, para. 7.84).

[106] *China – GOES (Panel)*, para. 7.51.

[107] *China – HP-SSST (Japan) (Panel)*, para. 7.6.

78. The inquiry under Article 5.3 is to determine whether an application contains "sufficient evidence" or "adequate facts or indications" to justify initiation of an investigation, not to sustain a preliminary or final determination. Panels have observed in the context of the AD Agreement and SCM Agreement that the evidentiary standard to initiate an investigation is necessarily lower than is required to support a final finding by the investigating authority.[108] However, there is no further guidance in Article 5.3 regarding how the investigating authority is to determine if the information is "sufficient" to warrant initiation of an AD investigation. But relevant to the question of industry support, if an investigating authority appropriately "determine[s]" under Article 5.4 that "the application has been made by or on behalf of the domestic industry," then inherently the investigating authority would have also determined that the information underpinning the determination of requisite industry support for the application is "sufficient" for purposes of Article 5.3.

2. The USDOC Did Not Act Inconsistently With Article 5.3 of the AD Agreement

79. The USDOC examined its administrative record to determine whether there was "sufficient" evidence on the question of industry support for the application to justify initiating the AD investigation on OCTG from Argentina.[109] It determined that the evidence adequately supported that the application had such support for the purposes of initiation.[110]

80. 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 the industry support question, namely: (1) the USDOC's use of alleged "outdated" and "anomalous" data for purposes of calculating industry support; (2) its use of estimated production data; and (3) alleged "double-counting" concerns.[111] As discussed above, the USDOC determined under Article 5.4 that the application was made "by or on behalf of the domestic industry" on the basis of the record evidence. Thus, inherently, the USDOC determined that the information underpinning the determination of requisite industry support was "sufficient" for purposes of 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 in

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[108] *See China – GOES (Panel)*, para. 7.54 (quoting *US – Softwood Lumber V (Panel)*, para. 7.84) ("[T]he quantity and the quality of the evidence required to meet the threshold of sufficiency of the evidence is of a different standard for purposes of initiation of an investigation compared to that required for a preliminary or final determination."); *Argentina – Poultry Anti-Dumping Duties*, para. 7.62 ("We do not of course mean to suggest that an investigating authority must have before it at the time it initiates an investigation evidence of dumping within the meaning of Article 2 of the *quantity* and *quality* that would be necessary to support a preliminary or final determination.") (emphasis in original); *Guatemala – Cement II*, para. 8.35 (stating that an investigation "is a process where certainty on the existence of all the elements necessary in order to adopt a measure is reached gradually as the investigation moves forward").

[109] *See generally* USDOC Initiation Checklist, Attachment II (Exhibit ARG-18).

[110] *See, e.g.,* USDOC Initiation Checklist, Attachment II, at 22 (Exhibit ARG-18); Argentina's First Written Submission, para. 223.

[111] Argentina's First Written Submission, paras. 128, 197-208, 224-233.

subsection III.B above, which the United States adopts in response to Argentina's parallel arguments regarding Article 5.3. In addition, Argentina speculates that relying on the 2018-2019 conversion data from the USITC report "skewed the resulting industry support calculation in [the applicants'] favor,"[112] but Argentina has not explained how the data "skewed" anything.

81. Argentina also makes additional arguments within the context of Article 5.3 regarding the contemporaneity of the evidence that the USDOC relied on in determining that the application had the requisite domestic industry support. Argentina specifically argues that Article 5.3 requires that evidence in support of initiation have a "temporal connection to the date of initiation,"[113] which it asserts that the USDOC's 2020 domestic shipment data and 2018-2019 shipments-to-production conversion data lacked.[114] In support of its arguments against using these data, Argentina relies on the panel report in *Pakistan – BOPP Film (UAE)*, which is currently on appeal.[115]

82. As the panel in *Pakistan – BOPP Film (UAE)* recognized in the context of assessing an Article 5.3 claim, "the data on which initiation decisions and preliminary and final determinations are based are necessarily from a past period," but "more recent data are likely to provide better indications about current dumping causing injury, and vice versa," and "all things equal, the more remote the data, the less likely it is to speak to current injurious dumping."[116] Thus, ideally, the evidence in the application should be recent enough to substantiate that injurious dumping is occurring.[117] The United States agrees in principle that, ideally, an investigating authority should rely on evidence as close to the data of initiation as possible, but Article 5.3 does not preclude an investigating authority from relying on data pre-dating the date of initiation.

83. However, in that dispute, Pakistan's investigating authority had relied on data for dumping ending in December 2009, and data on injury ending in June 2010, to initiate an AD investigation in April 2012. Pakistan had purportedly used such data because of domestic

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[112] Argentina's First Written Submission, para. 224.

[113] Argentina's First Written Submission, paras. 149-155.

[114] *See, e.g.,* Argentina's First Written Submission, paras. 227, 230.

[115] Argentina's First Written Submission, paras. 227, 230 (citing *Pakistan – BOPP Film (UAE)*, paras. 7.36, 7.37, 7.48 (on appeal)).

[116] *Pakistan – BOPP Film (UAE)*, para. 7.26 (on appeal).

[117] For example, as appropriately recognized by the panel in *Mexico – Steel Pipes and Tubes*, while there must be "an inherent real-time link between the investigation leading to the imposition of measures and the data on which the investigation is based," the POI will, necessarily, be from a "past period". *Mexico – Steel Pipes and Tubes*, paras. 7.227-7.228 (citing *Mexico – Anti-Dumping Measures on Rice (Panel)*, paras. 7.56-7.57, *Mexico – Anti-Dumping Measures on Rice (AB)*, para. 165). Furthermore, the WTO Committee on Anti-Dumping Practices recommended that the POI for antidumping investigations should be as "close to the date of initiation as is practicable." Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations, GI ADP/6, 16 May 2000, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=39606,44627&CurrentCatalogueIdIndex=1&FullTextHash=.

litigation surrounding an earlier attempt to initiate the AD investigation, which led to a subsequent initiation of the investigation based on the same underlying data.[118] The panel faulted Pakistan under Article 5.3 of the AD Agreement for "failing to assure itself that there was sufficient evidence to justify initiation of an investigation."[119] The panel reached this finding on the basis of a "temporal gap" of 27 months between the dumping evidence and the initiation date, and approximately 22 months between the injury evidence and the initiation date, coupled with the panel's observation that the investigating authority "did not discuss or acknowledge the issue of the temporal scope of the evidence in its Initiation memorandum . . . or in any other record document before us."[120]

84. Here, the circumstances before the USDOC were markedly different. The USDOC *did* consider interested parties' arguments on the contemporaneity of both the conversion ratio data and the domestic industry shipment data.[121] Specifically, the USDOC acknowledged these party arguments on the ratio data, but found it "unclear on what basis they make such a claim," and explained that these parties did "not offer any alternative sources or production estimates that would, in their view, be more reliable."[122] The USDOC made similar remarks regarding interested parties' objections to using 2020 domestic industry shipment data.[123] The United States also emphasizes that the USDOC specifically relied on the 2018-2019 ratio data as *one minor component* of the industry support analysis. This distinguishes the USDOC's approach from the facts of *Pakistan – BOPP Film (UAE)*, in which it appears that the entirety of the investigating authority's initiation data underpinning dumping and injury was "approximately two years" before the initiation date.[124] Clearly, the USDOC considered the "sufficiency" of the evidence on industry support for the purposes of initiation.[125]

85. In sum, the USDOC did not act inconsistently with Article 5.3 of the AD Agreement in determining that there was "sufficient" evidence regarding industry support for the application to justify initiating the AD investigation.

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

86. Finally, and similar to its Article 5.1, 5.3, and 5.4 claims regarding the USDOC's assessment of industry support for the application, Argentina asserts that, with regard to Article

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[118] *Pakistan – BOPP Film (UAE)*, paras. 7.35-7.39 (on appeal).

[119] *Pakistan – BOPP Film (UAE)*, para. 7.48 (on appeal).

[120] *Pakistan – BOPP Film (UAE)*, paras. 7.35-7.48 (on appeal).

[121] USDOC Initiation Checklist, Attachment II, at 16-17 (Exhibit ARG-18).

[122] USDOC Initiation Checklist, Attachment II, at 15-16 (Exhibit ARG-18).

[123] USDOC Initiation Checklist, Attachment II, at 16-17 (Exhibit ARG-18).

[124] *Pakistan – BOPP Film (UAE)*, para. 7.48 (on appeal).

[125] AD Agreement, Article 5.3.

5.2 of the AD Agreement, the application did not contain "'relevant'" "'information as is reasonable available'" to the applicants, which the USDOC relied on in initiating the OCTG from Argentina AD investigation.[126] As an initial matter, as discussed in subsection 1 below regarding the proper legal framework for Article 5.2, to the extent the Panel addresses Argentina's arguments under Article 5.3, it is unnecessary for the Panel to address Argentina's arguments under Article 5.2. Be that as it may, should the Panel address Argentina's arguments under Article 5.2, the United States explains in subsection 2 below that these arguments are unavailing.

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 5.2 of the AD Agreement

87. Article 5.2 of the AD Agreement provides, in relevant part:

> An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:
>
> (i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
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> . . .[127]

88. Article 5.2 requires an applicant to provide information regarding the domestic industry and production levels, as contemplated by subparagraph (i) of that article, to the extent such information "is reasonably available to the applicant."[128] Moreover, Article 5.2 provides that "[s]imple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to

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[126] Argentina's First Written Submission, paras. 234-237 (quoting AD Agreement, Article 5.2).

[127] AD Agreement, Article 5.2.

[128] For example, Article 5.2 does not require the same level of information as would be required to make a preliminary or final determination in an AD investigation. *See Mexico – Corn Syrup*, para. 7.74.

meet the requirements of this paragraph." Thus, the United States agrees with Argentina in principle that an application must contain "'relevant' data" regarding industry support.[129]

89. However, Argentina acknowledges that there is a "distinction between Articles 5.2 and 5.3, namely that Article 5.2 deals with the content of the application, whereas Article 5.3 establishes the standard of review that investigating authorities must perform of the application."[130] In explaining this distinction, Argentina quotes from the panel report in *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, stating, in relevant part:

> In this regard, we find that Article 5.2 determines the content of the complaint submitted by the domestic industry and does not therefore create directly an obligation for the investigating authority. It is Article 5.3 that, as we will see in the next section, sets the criteria for the review that the authority must undertake to determine whether the evidence contained in the complaint is sufficient to justify the initiation of an investigation.[131]

90. The United States agrees with the panel in *Morocco – Definitive AD Measures on Exercise Books (Tunisia)* that Article 5.2 describes what information an application must contain, and these requirements apply to the application, and does not impose obligations directly on the investigating authority. Rather, the pertinent obligation is in Article 5.3. In this sense, Articles 5.2 and 5.3 are related, such that whether the application meets the requirements in Article 5.2 would be relevant to the authority's examination of the application under Article 5.3.

91. Given this interpretation of Articles 5.2 and 5.3, read together, to the extent the Panel makes findings under Article 5.3 regarding the USDOC's initiation of the investigation, it is not necessary to reach findings regarding Article 5.2.[132]

2. The USDOC Did Not Act Inconsistently With Article 5.2 of the AD Agreement

92. Once again, on the question of industry support for the application, Argentina raises similar arguments in the context of Article 5.2 of the AD Agreement as it does with regard to Articles 5.1, 5.3, and 5.4 of the AD Agreement, namely: (1) the USDOC's use of alleged "outdated" and "anomalous" data for purposes of calculating industry support; (2) its use of

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[129] Argentina's First Written Submission, paras. 141-142.

[130] Argentina's First Written Submission, para. 145.

[131] Argentina's First Written Submission, para. 145 (quoting *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, paras. 7.354-7.355 (on appeal) (emphasis omitted by Argentina).

[132] *See China – GOES (Panel)*, para. 7.50 (considering claims under parallel SCM Agreement Articles 11.2 and 11.3, explaining that "the obligation upon Members in relation to the sufficiency of evidence in an application finds expression in Article 11.3 of the SCM Agreement," and considering it unnecessary to make findings under Article 11.2); *US – Countervailing Duties (China) (Panel)*, paras. 7.143-7.146 (similar).

estimated production data; and (3) alleged "double-counting" concerns.[133] As discussed above in subsection 1, it is unnecessary for the Panel to make findings under Article 5.2 of this dispute, as the pertinent obligation on the investigating authority is under Article 5.3.

93. Regardless, for completeness, the USDOC reasonably found that the application contained information "reasonably available" to the applicants on the question of industry support for the application.[134] To the extent the Panel decides to address Argentina's Article 5.2 arguments, then the United States refers to its arguments in the subsections above regarding the evidence before the USDOC, which was "reasonably available" to the applicants and "relevant" to the question of industry support for the application. Separately, Argentina also speculates that, with regard to Article 5.2(i), "at the time of the initiation of the OCTG investigation, more recent information was certainly available to the applicant."[135] However, Argentina does not identify *what* "more recent information" was available to the applicants. Thus, the USDOC did not act inconsistently with Article 5.2.

E. Conclusion

94. In conclusion, the USDOC conducted a rigorous assessment of the record evidence in determining that the application to initiate the AD investigation on OCTG from Argentina was made "by or on behalf of the domestic industry." It employed various analytical approaches in assessing this question, appropriately followed up with the applicants, and addressed arguments raised by interested parties, including many of the arguments Argentina now makes in its first written submission. Those arguments are unavailing, and the Panel should uphold the USDOC's reasoned determination to initiate the underlying investigation, and find that the USDOC did not act inconsistently with Articles 5.1, 5.2, 5.3, 5.4, or 6.6 of the AD Agreement.

IV. 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

95. In making its final determination of material injury by reason of subject imports, the USITC cumulated subject imports from Argentina, Mexico, Russia, and South Korea.[136] In addition to the AD and CVD petitions being filed on the same day, the USITC found a

[133] Argentina's First Written Submission, paras. 129, 195-208, 234-237.

[134] USDOC Initiation Checklist, Attachment II, at 15, 18, 19, 22 (Exhibit ARG-18).

[135] Argentina's First Written Submission, para. 236.

[136] *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, at 16-23 (Nov. 2022) (Exhibit ARG-01) (USITC Final Report).

reasonable overlap of competition between subject imports from Argentina, Mexico, Russia, and Korea, and among subject imports from each source and the domestic like product.[137]

96. Argentina contends that the USITC's decision to cumulate subject imports, including those from Argentina, is inconsistent with Articles 3.1 and 3.3 of the AD Agreement for two reasons: (1) the USITC cumulated imports from Argentina with those from sources that were not simultaneously subject to an AD investigation, namely, imports from Korea, which were only subject to a simultaneous CVD investigation;[138] and (2) the USITC did not properly examine whether the conditions of competition with respect to imports from Argentina justified their cumulation with other sources, namely, Korea or Russia.[139]

97. The USITC did not act inconsistently with the AD Agreement in cumulating imports in the underlying investigations. The United States addresses below each of Argentina's arguments regarding the USITC's decision to cross-cumulate imports in the OCTG investigations and demonstrates that this decision is not inconsistent with Articles 3.1 and 3.3 of the AD Agreement. Notably, during the investigations, certain interested parties raised arguments similar to those raised by Argentina now regarding the USITC's findings on conditions of competition among imports and the domestic like product. The USITC reasonably rejected these arguments, with explanation. Argentina provides no basis for the Panel to overturn the USITC's findings on these issues.

98. First, and as the United States explains in subsection IV.A below, Article 3.3 does not expressly prohibit the cumulation of dumped and subsidized imports in investigations, as Argentina asserts,[140] but is instead silent on the issue. Moreover, the cumulation of dumped and subsidized imports is fully consistent with the object and purpose of the AD Agreement, which authorizes Members to provide relief to industries that are being injured by unfairly traded imports from a variety of sources.[141]

99. Second, in subsection IV.B, the United States explains that the USITC did not act inconsistently with Articles 3.1 and 3.3 in cumulating OCTG imports from Argentina with those from Korea or Russia, in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.[142]

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

[138] Argentina's First Written Submission, paras. 262, 321-324.

[139] Argentina's First Written Submission, paras. 263-264, 325-353.

[140] Argentina's First Written Submission, paras. 276-289, 321-324.

[141] *EC – Tube or Pipe Fittings (AB)*, para. 116.

[142] Argentina's First Written Submission, paras. 325-353.

A. The Cumulation of Dumped and Subsidized, Non-Dumped Imports in Determining Whether Material Injury Exists Is Not Inconsistent with Articles 3.1 and 3.3 of the AD Agreement

100. Argentina asserts that the USITC acted inconsistently with Articles 3.1 and 3.3 of the AD Agreement because, in the OCTG investigations, it cumulated imports from Argentina with imports from sources that were not simultaneously subject to an AD investigation, namely, imports from Korea, which were subject only to a simultaneous CVD investigation. As Argentina does in its first written submission, the United States will refer to this approach as "cross-cumulation."[143] As discussed below, an examination of the text, in context and in light of the object and purpose of the AD Agreement, demonstrates that such cumulation is permitted.

1. Article 3.3 of the AD Agreement Does Not Expressly Prohibit or Even Address Cross-Cumulation, and Its Silence Cannot Be Read as a Prohibition

101. Below, the United States demonstrates that a proper interpretation of Article 3.3 of the AD Agreement reveals that nothing in the text of Article 3.3 prohibits the cumulation of imports that are dumped with imports that are subsidized.[144]

102. As an initial matter, Article 3.1 of the AD Agreement is an "overarching" provision that sets forth "a Member's fundamental, substantive obligation" with respect to injury determinations and "informs the more detailed obligations in" the succeeding paragraphs.[145] These include decisions to cumulate imports from different sources pursuant to Article 3.3. Argentina's Article 3.1 claim in this context is dependent on the success of its Article 3.3 claim.[146] As discussed below, cross-cumulation is not inconsistent with Article 3.3. Therefore, it is not inconsistent with Article 3.1 either.

103. Article 3.3 of the AD Agreement provides that:

> Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the amount of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and

[143] *See, e.g.,* Argentina's First Written Submission, para. 254.

[144] Argentina's First Written Submission, paras. 321-324.

[145] *China – GOES (AB)*, para. 126 (citing *Thailand – H-Beams (AB)*, para. 106).

[146] *See, e.g.,* Argentina's First Written Submission, paras. 323-324 ("The evidence used for the examination was not 'affirmative, objective, verifiable, and credible' of the situation in relation to alleged *dumped* imports, nor did the examination 'conform to the dictates of the basic principles of good faith and fundamental fairness' because the evaluation and conclusions were based on a commingling of dumped and non-dumped imports.").

> the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.[147]

104. Article 3.3 does not prohibit cross-cumulation of dumped imports with subsidized imports.[148] Article 3.3 addresses the conditions under which an authority "may cumulatively assess" imports from all countries that are found to be dumped. By its terms, Article 3.3 provides that, "[w]here imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of *such imports* only if" certain conditions are met. By using the phrase "such imports," Article 3.3 makes clear that the only category of imports subject to the criteria contained in Article 3.3 are imports from countries that "are simultaneously subject to anti-dumping investigations."

105. Although Argentina argues that the presence of "simultaneously subject to anti-dumping investigations", "such imports", and the *de minimis* and negligibility standards in Article 3.3 limit a cumulative assessment only to imports that are dumped,[149] Article 3.3 actually does not address—and certainly does not set any prohibition against—an investigating authority conducting a cumulative assessment of the effects on the domestic industry of dumped imports and subsidized imports. In fact, it does not address subsidized imports at all. Rather, Article 3.3 is *silent* on the issue of whether cumulation of dumped and subsidized imports is permissible.

106. Also unavailing is Argentina's assertion that the explicit reference to "dumped imports" in Articles 3.1, 3.2, 3.4, and 3.5, and no reference to "subsidized imports" in these articles, provides "broader context" to reading such a limitation on Article 3.3.[150] The absence of "subsidized imports" merely supports that there is a silence on the issue of whether cumulation of dumped and subsidized imports – and *also* on examining cumulated dumped and subsidized imports in other components of a material injury analysis – is permissible.[151]

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[147] AD Agreement, Article 3.3 (underline added).

[148] Argentina relies heavily on the appellate and panel reports in *US – Carbon Steel (India)*, which found that cross-cumulation is not permitted under Article 15.3 of the SCM Agreement, which parallels Article 3.3 of the AD Agreement. As discussed below, and as should be evident, the United States disagrees with the findings in *US – Carbon Steel (India)* and that Article 3.3 of the AD Agreement precludes cross-cumulation.

[149] Argentina's First Written Submission, paras. 276-278.

[150] Argentina's First Written Submission, paras. 279-280, 284-286, 288 (citing *US – Carbon Steel (India) (AB)*, para. 4.591).

[151] The United States disagrees with Argentina that an investigating authority must consider the effect of "subsidized imports" as one of the "other factors" under Article 3.5 of the AD Agreement. Argentina's First Written Submission, para. 279. Requiring an investigating authority to assess the effect of "subsidized imports" in attributing causation of injury to dumped imports under Article 3.5, or vice versa in the case of parallel Article 15.5

107. In similar circumstances, a prior report has found that the silence of an Agreement on the permissibility of a particular methodological approach towards cumulation does not indicate that the methodology is prohibited.[152] For example, the report in *US – Oil Country Tubular Goods Sunset Reviews (AB)* rejected Argentina's claim that an investigating authority could not conduct a cumulative assessment of imports from multiple countries in sunset reviews.[153] In that dispute, Argentina argued that the cumulation of imports from multiple countries was not permitted in sunset reviews under the AD Agreement because the practice was not specifically authorized or addressed in the sunset provisions of the Agreement.

108. The Appellate Body rejected Argentina's claim, concluding that, although cumulation was not expressly authorized in sunset reviews, it was permissible because it was consistent with the policies underlying the AD Agreement.[154] In reaching this conclusion, 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."[155]

109. The United States suggests a similar finding here. Article 3.3 does not expressly prohibit or even address cross-cumulation—which may not be surprising as cross-cumulation only could arise where there is an investigation of dumping from at least one source, investigation of subsidized imports from at least one different source, and injury to a domestic industry. Furthermore, the fact that Article 3.3 does not specifically authorize an authority to cumulate dumped imports with imports that are subsidized but not dumped does not, in and of itself, indicate that such an approach is prohibited by the AD Agreement. Thus, Article 3.3's silence on this matter must not be read as prohibiting cross-cumulation, as such an approach would read into that text an obligation that is not there.

2. The Context Provided by the SCM Agreement and Article VI of the GATT 1994 Supports an Interpretation That Cross-Cumulation is Permitted by the AD Agreement

110. The AD and SCM Agreements contain nearly identical provisions governing an authority's injury analysis, including cumulation, in original investigations,[156] a fact with which Argentina agrees.[157] This near identical language highlights the overlap of the injury analysis under the AD and SCM Agreements. Both contemplate that an authority may consider the

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of the SCM Agreement, would be circular and risk nullifying material injury determinations anytime there are affirmative AD and CVD determinations involving the same product from the same import source.

[152] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, paras. 294-300.

[153] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, paras. 294-300.

[154] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, paras. 294-300.

[155] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, para. 294.

[156] *Compare* AD Agreement, Article 3.3, *with* SCM Agreement, Article 15.3.

[157] Argentina's First Written Submission, paras. 281, 288.

cumulative injurious effects of unfairly traded imports from multiple sources, given that these imports can have a cumulative injurious impact on the domestic industry.

111. A treaty interpreter must read all applicable provisions of a treaty in a way that gives meaning to *all* of them, harmoniously. Therefore, the obligations contained in the AD Agreement must take account of the context offered both by Article VI of the GATT 1994 and the provisions of the SCM Agreement.

112. Article VI of the GATT 1994 provides important context for considering the relationship of the AD Agreement with the SCM Agreement.[158] Article 3.1 of the AD Agreement expressly references Article VI of the GATT 1994, stating that the injury findings prescribed in Article 3 of the AD Agreement relate to a "determination of injury for purposes of Article VI of GATT 1994."[159] The SCM Agreement contains the same language in reference to Article VI at Article 15.1.[160] Article VI:6(a) of the GATT 1994, 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…."

113. The phrase "as the case may be" acknowledges that cumulation of dumped and subsidized imports may be appropriate in particular injury investigations. In particular, this language recognizes that there may be situations in which it "may be the case" that the unfair trade practices covered by an authority's injury determination may involve dumping, subsidization, or both unfair trade practices. According to common definitions, "as the case may be" means "according to the circumstances," and therefore does not indicate a binary choice between two options.[161] Article VI:6(a) requires that the effects of "dumping or subsidization, as the case may be," must cause injury to the domestic industry. The "circumstances" invoked by this phrase are the circumstances involving the injury to the domestic industry caused by the unfair trade practices.

114. Very often, a domestic industry will be faced with both dumped and subsidized imports – as was the case in the OCTG investigations here – and where these circumstances exist, it would be appropriate to interpret Article VI:6(a) as contemplating a cumulative analysis of injury based on these circumstances. Therefore, the phrase "as the case may be," as used in Article VI:6(a) of the GATT 1994, indicates that the Agreement contemplates that an injury investigation may involve an examination of the injurious effects of dumped imports, subsidized imports, or

[158] The cumulation of dumped and subsidized imports is fully consistent with the object and purpose of the AD and SCM Agreements, which authorize Members to provide relief to industries that are being injured by unfairly traded imports from a variety of sources. *EC - Tube or Pipe Fittings (AB)*, para. 116.

[159] AD Agreement, Article 3.1.

[160] SCM Agreement, Article 15.1.

[161] *See, e.g.*, Definition of "As the Case May Be", *Collins*, http://www.collinsdictionary.com/dictionary/english/as-the-case-may-be (accessed Apr. 23, 2024) (Exhibit USA-07); Definition of "Case", *Oxford Learner's Dictionaries*, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/case_1 (Exhibit USA-08).

dumped and subsidized imports. Furthermore, the use in Article VI:6(a) of the word "or" to join the phrases "dumping" and "subsidization" and the use of the phrase "as the case may be" reflects the fact that injury determinations can involve either or both unfair trade practices.

115. As a prior report has acknowledged previously under the AD Agreement, 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."[162] The report in *EC – Tube or Pipe Fittings* Appellate Body explained the rationale behind cumulation in the context of dumped imports:

> 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. If, for example, the imports from some countries are low in volume or are declining, an exclusively country-specific analysis may not identify the causal relationship between the dumped imports from those countries and the injury suffered by the domestic industry. The outcome may then be that, because imports from such countries could not be individually identified as causing injury, the dumped imports from these countries would not be subject to anti-dumping duties, even though they are in fact causing injury. In our view, by expressly providing for cumulation in Article 3.3 of the Antidumping Agreement, the negotiators appear to have recognized that a domestic industry confronted with dumped imports originating from several countries may be injured by the cumulated effects of those imports, and that those effects may not be adequately taken into account in a country-specific analysis of the injurious effects of dumped imports.[163]

116. The explanation in *EC – Tube or Pipe Fittings*, outlining why cumulation plays an important role in the context of dumped imports, has equal logic in a situation in which some imports are dumped and others subsidized, as was the case in the OCTG investigations here. In contrast, an analysis that focuses solely on the injurious effects of either dumped or subsidized imports alone when both types of unfairly traded imports are injuring the domestic industry at the same time would necessarily prevent the investigating authority from "adequately taking into account" the injurious effects of all unfairly traded imports, and would render the authority's injury analysis less than complete.

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[162] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, para. 297.

[163] *EC – Tube or Pipe Fittings (AB)*, para. 116.

117. In *US – Oil Country Tubular Goods Sunset Reviews (AB)*, a case involving the issue of 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 of the AD Agreement.[164] The report explained that:

> Although *EC – Tube or Pipe Fittings* concerned an original investigation, we are of the view that [its] rationale is equally applicable to likelihood-of-injury determinations in sunset reviews. Both an original investigation and a sunset review must consider possible sources of injury: in an original investigation, to determine whether to impose antidumping duties on products from those sources, and in a sunset review, to determine whether anti-dumping duties should continue to be imposed on products from those sources. Injury to the domestic industry – whether existing injury or likely future injury – might come from several sources simultaneously, and the cumulative impact of those imports would need to be analyzed for an injury determination . . . Therefore, notwithstanding the differences between original investigations and sunset reviews, cumulation remains a useful tool for investigating authorities in both inquiries 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 as to whether to impose – or continue to impose – anti-dumping duties on products from those sources.[165]

118. In other words, the reports in both *US – Oil Country Tubular Goods Sunset Reviews (AB)* and *EC – Tube or Pipe Fittings* reasoned that a cumulative assessment of the effects of unfairly traded imports from multiple countries is a logical – and critical – component of the injury analysis authorized in the AD Agreement.[166] The same logic, of course, extends to the injury analysis conducted in countervailing duty investigations under the SCM Agreement.

119. Argentina's proposed view of Article 3.3 of the AD Agreement – focusing solely on the injurious effects of either dumped imports or subsidized imports alone[167] – would have the effect of forcing a Member to make a country-specific analysis in the above circumstances. As discussed above, both the text of the AD and SCM Agreements, and the report in *EC – Tube or Pipe Fittings*, recognize the inherent limitations in such an analysis.[168] Imposing an artificial limitation on the ability to cross-cumulate, such that the same volume of dumped imports from a

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[164] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, paras. 296-297.

[165] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, paras. 296-297 (emphasis added).

[166] *EC – Tube or Pipe Fittings (AB)*, para. 117.

[167] *See, e.g.,* Argentina's First Written Submission, para. 289.

[168] *EC – Tube or Pipe Fittings (AB)*, para. 116.

country can be subject to AD duties in some circumstances but not in others, will impair the right afforded to Members under the AD Agreement 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 to an industry, from the perspective of the relevant domestic industry, is cumulative.

120. It would be misguided to consider the injury caused by dumped and subsidized imports to the same domestic industry in isolation. AD and CVD remedies "are, from the perspective of producers and exporters, indistinguishable."[169] Therefore, injury caused by dumping and subsidization of imports is, from the perspective of domestic producers, indistinguishable. A prior report recognized this when it observed that "it may well be the case that the injury the [antidumping and countervailing] duties seek to counteract is the same injury to the same industry."[170] Accordingly, it would make little analytic sense for an investigating authority to conduct separate injury analyses of dumped and subsidized imports when both types of imports are simultaneously injuring the same domestic industry and the requirements for cumulation are otherwise satisfied. The United States therefore urges the Panel to 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.

121. In sum, both the relevant context and the object and purpose of the AD and SCM Agreements support the proposition that cumulation of dumped and subsidized imports is not inconsistent with the WTO Agreements, in particular Articles 3.1 or 3.3 of the AD Agreement. Whenever dumping and subsidization are simultaneously occurring in the market, there often will be cumulative price or volume effects from the dumped and subsidized imports—effects that will be indistinguishable to domestic producers injured by those imports. Where dumped and subsidized imports from multiple countries are having such a compounding effect on the industry, it is reasonable for an investigating authority to consider the effects of these imports on a cumulated basis in its analysis. Doing otherwise would prevent an investigating authority from properly taking into account the combined injurious impact of all unfairly traded imports that are affecting an industry adversely at the very same time.[171]

122. For these reasons, the United States requests that the Panel reject Argentina's claims under Articles 3.1 and 3.3 of the AD Agreement with regard to the USITC's decision to cross-cumulate imports in the OCTG investigations. Cross-cumulation is not inconsistent with Articles 3.1 or 3.3 of the AD Agreement, when read in context and in light of the object and purpose of the AD Agreement. Therefore, the Panel should find that the USITC's decision to cross-cumulate subject OCTG imports, including OCTG imports from Argentina, is not inconsistent with Articles 3.1 and 3.3 of the AD Agreement.

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[169] *US – Anti-Dumping and Countervailing Duties (China) (AB)*, para. 570.

[170] *US – Anti-Dumping and Countervailing Duties (China) (AB)*, para. 570, n. 549.

[171] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, paras. 296-297; *EC – Tube or Pipe Fittings (AB)*, para. 116.

B. The USITC Appropriately Determined that Conditions of Competition with Respect to Imports of OCTG from Argentina Justified Their Cumulation with Imports from Other Sources

123. In its first written submission, Argentina contends that the USITC's cumulation analysis, namely its analysis of the overlap of competition between and among subject imports from each country and the domestic like product, was not based on an objective examination of positive evidence, and thus is inconsistent with Articles 3.1 and 3.3 of the AD Agreement.[172] Contrary to Argentina's arguments, the USITC's analysis of the overlap of competition was "objective" and based on "positive evidence" in the administrative record, as discussed below.[173] Therefore, the United States respectfully requests that the Panel find that the USITC's determination was not inconsistent with Articles 3.1 and 3.3.

1. The Proper Legal Framework for Understanding the Obligations Set Out in Articles 3.1 and 3.3 of the AD Agreement as They Pertain to Assessing "Conditions of Competition"

124. Article 3.1 of the AD Agreement provides as follows:

> A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.

125. The term "positive evidence" relates to the quality of the evidence that an investigating authority may rely upon in making a determination. In other words, the evidence must be "capable of credibly supporting the injury determination."[174] With regard to "objective examination," the "objective" suggests that the examination is impartial and not influenced by personal feelings. That is, "an investigating authority's examination must be impartial and supported by reasoning that is coherent and internally consistent."[175]

126. As discussed above, Article 3.1 is an "overarching" provision that sets forth "a Member's fundamental, substantive obligation" with respect to injury determinations and "informs the more

[172] Argentina's First Written Submission, paras. 262-265, 325-353. Argentina does not challenge that the investigations of OCTG from the other countries were initiated simultaneously with the investigations of OCTG from other countries, or that the margin of dumping for each country was more than *de minimis*, or that the import volume from no country was negligible. *See* AD Agreement Article 3.3.

[173] The terms "positive evidence" and "objective examination," which are set forth in in Article 3.1 of the AD Agreement, are further discussed below.

[174] *US – Ripe Olives from Spain (Panel)*, para. 7.209.

[175] *US – Ripe Olives from Spain (Panel)*, para. 7.209.

detailed obligations in" the succeeding paragraphs.[176] These include decisions to cumulate imports from different sources pursuant to Article 3.3.

127. To recall from subsection IV.A.1 above, under Article 3.3, an investigating authority may cumulate imports if: (1) the dumping margins for the individual countries are more than *de minimis*, (2) the volume of imports from the individual countries are not negligible, and (3) the investigating authority determines that a cumulative assessment is appropriate in light of the conditions of competition both between the imported products and between the imported products and the like domestic product.[177]

128. Article 3.3 indicates that "a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the domestic product."[178] Nonetheless, while "an investigating authority enjoys a certain degree of discretion in making that determination on the basis of the record before it . . . cumulation must be suitable or fitting in the particular circumstances of a given case …."[179] Thus, while Members have discretion under Article 3.3 to develop appropriate criteria and analytical frameworks for assessing whether cumulation is appropriate in light of the conditions of competition among imports and between imports and the domestic like product,[180] those criteria and analyses must bear a reasonable relationship to the inquiry into whether the various products compete in the domestic market of the importing Member.

129. Furthermore, nothing in the text of Article 3.3 requires an investigating authority to find a *perfect* overlap of competition among import sources and the domestic like product in determining whether to cumulate imports. For example, the phrase "conditions of competition" in Article 3.3 is not accompanied by qualifiers such as "identical" or "similar".[181] Indeed, the reasoning of the panel in *EC – Tube or Pipe Fittings* provides useful guidance on this point:

> Moreover, [Article 3.3 of the AD Agreement] contains no express indicators by which to assess the "conditions of competition", much less any fixed rules dictating precisely and exhaustively the *relative*

[176] *China – GOES (AB)*, para. 126 (citing *Thailand – H-Beams (AB)*, para. 106); Argentina's First Written Submission, para. 267.

[177] AD Agreement, Article 3.3.

[178] AD Agreement, Article 3.3.

[179] *EC – Tube or Pipe Fittings (Panel)*, para. 7.241; Argentina's First Written Submission, para. 292.

[180] *See China – AD on Stainless Steel (Japan)*, para. 7.66 ("Article 3.3 does not set out any mandatory or indicative factors that it requires an investigating authority to consider when determining whether cumulation is 'appropriate' in light of 'the conditions of competition'.") (citing *EU – Footwear (China)*, para. 7.404).

[181] *See also EC – Tube or Pipe Fittings (Panel)*, para. 7.242 ("We understand the phrase 'conditions of competition' to refer to the dynamic relationship between products in the marketplace. The phrase "conditions of competition" in Article 3.3 is not accompanied by any sort of qualifier (for example, "identical" or "similar"). The term is unqualified.") (footnote omitted).

> *percentages or levels of such indicators that must be present*. Unlike the lists of factors that guide an authority's examination under, for example, Articles 3.2, 3.4 and 3.5, Article 3.3 does not provide even an indicative list of factors that might be relevant in the assessment called for under that provision, in particular, the assessment of "conditions of competition".[182]

2. The USITC's Assessment of Conditions of Competition Is Not Inconsistent with Articles 3.1 or 3.3 of the AD Agreement

130. In cumulating imports from sources subject to the OCTG investigations, including Argentina, Korea, Mexico, and Russia, the USITC found "a reasonable overlap of competition between subject imports from Argentina, Mexico, Russia, and South Korea, and among subject imports from each source and the domestic like product."[183] In making this finding, the USITC considered the following four factors:

1. the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

2. the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

3. the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

4. whether the subject imports are simultaneously present in the market.[184]

131. In its first written submission, Argentina does not dispute the four factors the USITC considered as an appropriate means to examine conditions of competition for purposes of Articles 3.1 and 3.3 of the AD Agreement. Indeed, Argentina appears to agree that it was appropriate for the USITC to rely on these four factors.[185] Instead, Argentina challenges certain

[182] *EC – Tube or Pipe Fittings (Panel)*, para. 7.242 (emphasis added).

[183] USITC Final Report at 19 (Exhibit ARG-01).

[184] USITC Final Report at 17-23 (Exhibit ARG-01).

[185] Argentina's First Written Submission, paras. 298-311, 313-352 (discussing arguments pertaining to cumulation in the context of the USITC's four factor analysis). Argentina also discusses cumulation arguments relating to the

factual aspects of the USITC's cumulation analysis, namely, its analysis of the overlap of competition between and among subject imports from each country and the domestic like product. Argentina contends that these aspects of the analysis were not based on an objective examination of positive evidence.[186] As demonstrated below, the USITC conducted an objective analysis of the factors and reached its decision to cumulate based on positive evidence in the record. That is, the USITC properly assessed, based on positive evidence, whether there was a reasonable overlap in competition such that cumulation was "appropriate in light of the conditions of competition" between and among subject imports and the domestic like product.[187]

132. The USITC concluded, after assessing the record evidence in light of the four factors described above, that "the record shows a reasonable overlap of competition between and among domestically produced OCTG and imports from each subject country," which supported its decision to cumulate subject imports from Argentina, Korea, Mexico, and Russia.[188] First, the USITC found that subject imports from each country were fungible with each other and the domestic like product.[189] As the USITC explained, majorities of responding domestic producers, importers, and purchasers, both when comparing the domestic like product with imports of OCTG from each subject country and when comparing these imports with each other, reported that these products are always or frequently interchangeable.[190] Furthermore, majorities of all responding market participants reported that factors other than price are only sometimes or never significant in purchasing decisions between and among imports from each subject country and the domestic like product.[191] The USITC assessed that other evidence on its record further confirmed fungibility, including that: (1) majorities or pluralities of responding purchasers rated subject imports from each source as comparable with both each other and the domestic like product with respect to at least 14 of 15 purchasing factors; (2) there was a substantial degree of overlap between U.S. shipments of subject imports from each source and domestically produced OCTG in terms of end finish, grade, and product type in 2021; and (3) all OCTG, regardless of source, is generally produced to the same American Petroleum Institute ("API") standards.[192]

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value of subject imports, which the USITC addressed in its final report. Argentina's First Written Submission, paras. 339–340; USITC Final Report at 18, 21 (Exhibit ARG-01).

[186] Argentina's First Written Submission, paras. 325-353. Argentina does not challenge that the investigations of OCTG from the other countries were initiated simultaneously with the investigations of OCTG from other countries, or that the margin of dumping for each country was more than *de minimis*, or that the volume from no country was negligible. *See* AD Agreement Article 3.3.

[187] *See also EC – Tube or Pipe Fittings (Panel)*, para. 7.242.

[188] USITC Final Report at 19-23 (Exhibit ARG-01).

[189] USITC Final Report at 19-21 (Exhibit ARG-01).

[190] USITC Final Report at 19 & Tables II-15-II-17 (at II-40-II-41) (Exhibit ARG-01).

[191] USITC Final Report at 19 & Tables II-18-II-20 (at II-43-II-44) (Exhibit ARG-01).

[192] USITC Final Report at 19-20, I-18, Table II-14 (at II-32-II-39), & Tables IV-14-IV-16 (at IV-27-IV-32) (Exhibit ARG-01).

133. 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.[193] Specifically, questionnaire data showed that domestically produced OCTG and imports from each country were sold to both end users and distributors during each full year of the POI and during the interim period 2022 (January-June 2022).[194] While the USITC recognized that the proportions of subject imports from each country sold through these channels varied, it nevertheless reasonably found that the domestic like product and subject imports were sold through overlapping channels of distribution for the entire POI.[195]

134. Third, the USITC found that subject imports from each source and the domestic like product were sold in overlapping geographic regions of the United States during the POI.[196] It noted the record evidence pertinent to this factor, which supported its finding that both subject imports from each country and domestically produced OCTG were sold in overlapping geographical regions of the United States.[197]

135. 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.[198] The USITC observed that the domestic like product, subject imports from Mexico, and subject imports from Korea were present in the U.S market for all 42 months of the POI while subject imports from Argentina were present for 37 months and subject imports from Russia were present for 38 months of the POI.[199] Based on this positive evidence, the USITC found that the domestic like product and subject imports from each country were simultaneously present in the U.S. market for nearly the entire POI.[200]

136. Based on its objective analysis of these factors, including positive evidence in the record, the USITC reasonably concluded that its findings overall evidenced a reasonable overlap of competition, and therefore supported a cumulative assessment of the effects of subject imports from Argentina, Korea, Mexico, and Russia, in a manner consistent with Articles 3.1 and 3.3 of the AD Agreement.

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[193] USITC Final Report at 21-22 (Exhibit ARG-01).

[194] USITC Final Report at 21-22, n.108, 30 n.165, & Table II-1 (at II-7-II-8) (Exhibit ARG-01).

[195] USITC Final Report at 21-22 (Exhibit ARG-01).

[196] *See* USITC Final Report at 22 & n.108, 30 n.165 (Exhibit ARG-01).

[197] USITC Final Report at 22 & Table II-2 (at II-9) (Exhibit ARG-01). The USITC also observed that subject imports from all four countries primarily entered into the United States though its southern border. USITC Final Report at 22 & Table IV-17 (at IV-33-IV-34) (Exhibit ARG-01).

[198] USITC Final Report at 22 (Exhibit ARG-01).

[199] USITC Final Report at 22 n.112, Table IV-18 (at IV-35-IV-37), Tables V-6-V-14 (at V-15-V-31) (Exhibit ARG-01).

[200] USITC Final Report at 22 (Exhibit ARG-01).

3. Argentina's Arguments that the USITC's Cumulation Analysis Failed to Account for Arguments Concerning Certain Conditions of Competition Are Factually Incorrect

137. Argentina contends that the USITC acted inconsistently with Articles 3.1. and 3.3 of the AD Agreement in its assessment of the conditions of competition, particularly in its analyses of fungibility, channels of distribution, and simultaneous presence in the U.S. market, and that the USITC also ignored the fact that there was already an existing AD order covering OCTG imports from Korea as an additional "condition of competition."[201] Many of Argentina's arguments in this dispute echo arguments that certain interested parties presented to the USITC. The USITC properly considered and responded to those arguments during the underlying investigations. As discussed below, the USITC's Final Report evinces that it made an objective assessment of the pertinent facts, and based its findings on positive evidence in the record. As the USITC properly established the facts and evaluated them in an unbiased and objective way, the Panel should not overturn its analyses and findings regarding conditions of competition.[202]

a. The USTIC Reasonably Found that Subject Imports and the Domestic Like Product Were Fungible

138. Argentina asserts that the USITC's consideration of the degree of fungibility between and among subject imports from each country and the domestic like product was flawed because it failed to consider that imports from Argentina and Mexico,[203] which primarily consisted of seamless OCTG, are not sufficiently fungible with imports from Korea, which primarily consisted of welded OCTG.[204] Argentina also posits that seamless and welded OCTG are not interchangeable in certain applications, and higher average unit values ("AUVs") for seamless OCTG compared to welded OCTG highlight this lack of interchangeability.[205] The USITC

[201] Argentina's First Written Submission, paras. 321-353.

[202] *See* AD Agreement, Article 17.6(i).

[203] Tenaris is a U.S. producer that also imported OCTG from Argentina and Mexico, and has affiliated OCTG producers in both countries. The USITC found that appropriate circumstances did not exist to exclude Tenaris pursuant to the related party provision. USITC Final Report at 14-16 (Exhibit ARG-01). In its submissions to the USITC, Tenaris grouped together arguments concerning exports of OCTG from Argentina and Mexico that it imported into the United States. Thus, the USITC addressed arguments concerning imports from Argentina and Mexico together in the USITC Final Report. *See* USITC Final Report at 20-21, 22 & n.108, (Exhibit ARG-01). Argentina does not appear to dispute this approach of the USITC. *See, e.g.,* Argentina's First Written Submission, paras. 312-314, 345.

[204] Argentina's First Written Submission, paras. 345-346; *see also ibid.* at para. 314 (presenting table of subject imports categorized as either seamless or welded).

[205] Argentina's First Written Submission, para. 347.

appropriately considered—and rejected—these arguments in the context of its fungibility analysis in the underlying investigation.[206]

139. First, the USITC considered and appropriately rejected the argument that imports from Argentina and Mexico, which primarily consisted of seamless OCTG, were not sufficiently fungible with imports from Korea, which primarily consisted of welded OCTG.[207] Far from "ignor[ing] the record evidence," the USITC weighed the evidence on the record and reached a justified determination on the basis of that evidence.[208] The USITC acknowledged that certain more demanding applications—namely, high pressure or sour service environments—may require seamless OCTG. However, as it explained, the record reflected that seamless and welded OCTG can be used interchangeably in most if not all other applications, *i.e.*, in the majority of applications.[209] For example, both welded and seamless OCTG can meet the specifications for most API grades, showing that either form of OCTG can be used in most applications.[210] Further buttressing the USITC's finding that seamless and welded OCTG imports were largely fungible was a foreign respondent's explanation that "'customers can use either [electric resistance welding] [*i.e.*, welded OCTG] or seamless OCTG for most applications'".[211] The USITC also observed that it had found seamless and welded OCTG to be fungible and interchangeable in many previous investigations and reviews and that the record of the current investigations did not suggest that the characteristics or uses of seamless and welded OCTG had changed since these prior determinations such that a different conclusion was warranted.[212]

140. Market participant reporting further contradicts Argentina's fungibility assertions. As the USITC noted, majorities of all responding market participants reported that imports from Argentina and Mexico are always or frequently interchangeable with imports from Korea, and majorities or pluralities of purchasers rated subject imports from both Argentina and Mexico as

[206] USITC Final Report at 20-21 (Exhibit ARG-01).

[207] Argentina's First Written Submission, paras. 314-315, 345-346; USITC Final Report at 20-21 (Exhibit ARG-01).

[208] Argentina's First Written Submission, para. 346.

[209] USITC Final Report at 20 (Exhibit ARG-01).

[210] USITC Final Report at 20-21, I-18-I-19 (Exhibit ARG-01) ("Most API grades provide for seamless and welded production methods").

[211] USITC Final Report at 21 (Exhibit ARG-01) (quoting TMK Prehearing Brief, Exhibit 1, para. 6 (Declaration of Evgeniya Capaeva, Head of Commercial and Industrial Policy at TMK) (Exhibit ARG-28) (PDF p. 34)).

[212] USITC Final Report at 21 & n.104 (Exhibit ARG-01) (citing, *e.g.*, *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) at 10 (Exhibit USA-09); *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) at I-9 (Exhibit USA-10); *Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1216, 1221-1223 (Review), USITC Pub. 5090 (Jul. 2020) at 16 (Exhibit USA-11)).

comparable to subject imports from Korea with respect to the vast majority of purchasing factors.[213]

141. The USITC's weighing of this record evidence is further reinforced by the hearing testimony of a U.S. Steel representative, who stated that "[*t*]*here are a few* … applications … that do require seamless."[214] The same representative also stated that, with regard to seamless and welded OCTG, "ultimately, those products are very much interchangeable in the market, with only a small piece really being laid out to be absolutely necessary to use seamless product."[215] The USITC took this testimony into account, but also comprehensively examined the views of all participants in the U.S. OCTG market in making its fungibility finding.[216]

142. For example, with regard to interchangeability between subject imports from Argentina and Korea, eight purchasers reported that subject imports from Argentina were "always" interchangeable with subject imports from Korea, two reported they were "frequently" interchangeable, and one reported they were "sometimes" interchangeable, while no purchaser reported they were "never" interchangeable.[217] In addition, in comparisons between U.S.-produced OCTG and subject imports from Argentina, eight purchasers reported that they were "always" interchangeable, three reported that they were "frequently" interchangeable, one reported they were "sometimes" interchangeable, and no purchaser reported they were never interchangeable.[218] The USITC explained how these views supported finding that seamless and welded OCTG can be used in the majority of applications and that imports from both Argentina and Mexico are fungible with imports from Korea and the domestic like product.[219]

143. Argentina unavailingly suggests that "[t]he difference in physical characteristics due to the method of production results in a complete lack of interchangeability for certain

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[213] USITC Final Report at 19-20 & Table II-14 (at II-32-II-39) (Exhibit ARG-01).

[214] *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, at 57 (Sept. 22, 2022) (Exhibit USA-12) (USITC Hearing Transcript).

[215] USITC Hearing Transcript at 57 (Exhibit USA-12).

[216] *See* USITC Final Report at 19-21 (Exhibit ARG-01).

[217] USITC Final Report at Table II-15 (at II-40) (Exhibit ARG-01).

[218] USITC Final Report at Table II-15 (at II-40) (Exhibit ARG-01). Similarly, when asked whether subject imports from Mexico were interchangeable with imports from Korea and the domestic like product, seven purchasers reported that subject imports from Mexico and Korea were "always" interchangeable, two reported that they were "frequently" interchangeable, one reported that they were "sometimes" interchangeable, and no purchaser reported that they were never interchangeable. When comparing subject imports from Mexico to domestically-produced OCTG, eight purchasers reported that they are "always" interchangeable, three reported that they were "frequently" interchangeable, one reported they were "sometimes" interchangeable, and no purchaser reported that they were never interchangeable. USITC Final Report at Table II-15 (at II-40) (Exhibit ARG-01).

[219] *See* USITC Final Report at 19-21 (Exhibit ARG-01).

applications" between OCTG imports from Argentina and Korea.[220] While there are different production processes for seamless and welded OCTG, Argentina appears to ignore that the USITC examined "the *degree of fungibility* between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality related questions."[221] An analysis of the degree of fungibility between two products is quite different from an analysis of whether two products are fungible *at all*. Thus, the notion that welded OCTG cannot be used in "certain applications"[222] in no way undermines an overall finding that there is a "sufficient degree of fungibility" between seamless and welded OCTG, particularly given that "welded and seamless OCTG can be used interchangeably in most if not all other applications."[223]

144. Second, the USITC considered—and reasonably rejected—the argument that higher average unit values ("AUVs") for seamless OCTG from Argentina and Mexico compared to welded OCTG from Korea and Russia demonstrated a lack of interchangeability between these types of OCTG.[224] The USITC acknowledged the AUV differentials, but reasonably found that, on balance, the record information discussed above indicated a substantial degree of fungibility between the imports from all four sources, notwithstanding such AUV differences.[225]

145. Third, and finally, Argentina contends that the USITC relied on flawed data regarding imports from Korea, but its argument is unavailing.[226] Specifically, Argentina questions the USITC's consideration in its cumulation analysis of qualitative questionnaire responses regarding the interchangeability and comparability of OCTG from different countries, because

[220] Argentina's First Written Submission, para. 315.

[221] USITC Final Report at 17 (Exhibit ARG-01) (emphasis added).

[222] Argentina's First Written Submission, para. 314-315 (citing Tenaris Prehearing Brief at 37 (Exhibit ARG-04)).

[223] USITC Final Report at 20 (Exhibit ARG-01).

[224] Argentina's First Written Submission, para. 347.

[225] USITC Final Report at 21 (Exhibit ARG-01); Argentina's First Written Submission, para. 347. Argentina does not articulate its reasoning as to why a variance in AUVs purportedly demonstrates a lack of fungibility between seamless and welded OCTG. Argentina's citation to *China – AD on Stainless Steel (Japan)*, does not shed light on its argument. That panel report indicates only that "consideration of price trends *may* be relevant in assessing the conditions of competition between subject imports . . .," not that they *must* be relevant to an analysis of competitive overlap. *China – AD on Stainless Steel (Japan)*, para. 7.97 (emphasis added); Argentina's First Written Submission, paras. 339-340. Notably, the panel in that dispute rejected the argument that higher prices for imports from Japan demonstrated a lack of competitive overlap that would render cumulation inappropriate, especially given the increase in volume of lower-priced subject imports from Korea. *China – AD on Stainless Steel (Japan)*, para. 7.98. Similarly, in the current investigations, the volume of subject imports from each source increased at a greater rate than apparent U.S. consumption from 2020 to 2021, undercutting Argentina's assertion that higher AUVs for subject imports from Mexico and Argentina reflected a lack of fungibility between seamless and welded OCTG from each source. USITC Final Report at Table C-1 (at C-3) (Exhibit ARG-01).

[226] Argentina's First Written Submission, para. 351.

these responses addressed imports of OCTG on a countrywide basis.[227] In particular, this meant the qualitative responses regarding impressions of OCTG imports from Korea included questionnaire respondents' combined perceptions of both subject imports from Korea and the non-subject imports from Korea imported by Hyundai Steel USA.[228] Although a small portion of OCTG imports from Korea were of nonsubject OCTG imported by Hyundai Steel, the large majority of OCTG imports from Korea during each year of the POI were of subject OCTG.[229]

146. As an initial matter, it is important to note that the USITC did indisputably separate all *quantitative* data concerning nonsubject imports from Korea from subject imports in analyzing the volume, price, and impact of subject imports.[230] Indeed, Argentina appears to recognize as much by confining its arguments on this issue to a complaint about the USITC's consideration of "qualitative" questionnaire responses concerning OCTG imports from Korea.[231]

147. The USITC's U.S. Importer, Domestic Producer, and U.S. Purchaser Questionnaires asked market participants, including importer Hyundai Steel USA, to address the degree of interchangeability between OCTG on a countrywide basis. U.S. Purchaser Questionnaires similarly asked purchasers to compare OCTG from different sources in terms of 15 specified purchasing factors, including availability.[232] Thus, market participants' answers to these questions do not single out non-subject imports Hyundai Steel Corporation; rather, they concerned OCTG imports from Korea as a whole, including the large percentage of reported imports from Korea that the USDOC found to be subsidized.[233]

148. Notwithstanding the countrywide context of these responses, they were probative as to the interchangeability and comparability of subject imports from Korea as the record contained

[227] Argentina's First Written Submission, para. 351.

[228] Argentina's First Written Submission, para. 351. Hyundai Steel USA imported OCTG from Korea that was produced by Hyundai Steel Corporation. In its final CVD determination, the USDOC calculated a *de minimis* rate for Hyundai Steel Corporation, but calculated an above *de minimis* rate for SeAH Steel Corporation. *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) (Exhibit USA-13). Thus, Hyundai's *de minimis* rate meant that it would have been excluded from a CVD order covering OCTG imports from Korea, and for this reason imports by Hyundai Steel USA were considered "non-subject" imports.

[229] USITC Final Report at Table IV-19 (at IV-41) (Exhibit ARG-01).

[230] *See* USITC Final Report at Tables IV-19 (at IV-41), V-17 (V-37), C-1 (C-3-C-5) (Exhibit ARG-01).

[231] Argentina's First Written Submission, para. 351.

[232] *See, e.g.*, USITC Blank U.S. Importer Questionnaire from OCTG Investigations at questions III-21-III-22 (Exhibit USA-14) ("Is OCTG produced in the United States *and in other countries* interchangeable (i.e., can they physically be used in the same applications?") (emphasis added); *see also* USITC Blank U.S. Purchaser Questionnaire from OCTG Investigations at question IV-3 (Exhibit USA-05) ("For the factors listed below, please rate how OCTG produced in each country . . . compares with OCTG produced *in each of the other countries* you identified.") (emphasis added).

[233] Subject imports from Korea accounted for the large majority of imports from Korea during each year of the POI. USITC Final Report at Table C-1 (Exhibit ARG-01).

no indication, and Argentina does not argue, that the characteristics of OCTG imported by Hyundai Steel USA were materially different from those of imports from Korea from subject producers such as SeAH Steel Corporation. Indeed, interested parties implicitly acknowledged the probative value of these responses during the investigations, and repeatedly referred to the similarities between imports from Korea as a whole, making no distinction between the characteristics of subject imports from Korea and the nonsubject Hyundai imports.[234] Thus, market participants' responses were probative as to the interchangeability and comparability between subject imports from Korea, other subject imports, and the domestic like product, and were therefore properly considered by the USITC.[235]

b. The USTIC Reasonably Found Reasonable Overlap Regarding the Channels of Distribution though which Subject Imports and the Domestic Like Product are Sold

149. The USITC considered—and reasonably rejected—the same arguments that Argentina now makes in its first written submission in analyzing overlapping channels of distribution. These arguments are 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 adequately consider the implications of Tenaris's "Rig Direct®" program in the context of analyzing channels of distribution.[236]

150. First, the USITC addressed the argument that subject imports from Argentina and Mexico did not sufficiently share channels of distribution with subject imports from Korea or Russia to support its finding a reasonable overlap of competition.[237] It observed that, during 2021, a share of subject imports from Mexico and 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.[238] Notably, Argentina does not contest the USITC's factual finding that subject imports from each source were sold to end users and distributors during the POI; it only asserts that, in its view, they were not sold "predominantly" or "overwhelmingly" through different channels of distribution.[239] Nevertheless, the USITC considered this argument and

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[234] *See*, *e.g.*, TMK Post-Conference Brief at 6 (Exhibit USA-15) ("the record demonstrates there are important distinctions between the OCTG from Argentina, Mexico, and Russia on the one hand, and South Korea on the other hand."); *see also* Tenaris Prehearing Brief at 36 (Exhibit ARG-04) ("imports from Argentina and Mexico were essentially all seamless OCTG during the POI whereas imports from Korea were nearly all welded."); Tenaris Posthearing Brief at 6 (Exhibit ARG-29) ("With respect to Korea, seamless OCTG from Argentina and Mexico competes only to a limited extent with welded OCTG from Korea.").

[235] *See* USITC Final Report at Tables II-14-II-17 (at II-32-II-41) (Exhibit ARG-01); *see also ibid.* at 20.

[236] Argentina's First Written Submission, paras. 348-350.

[237] Argentina's First Written Submission, para. 316.

[238] USITC Final Report at 22 n.108 & Table II-1 (at II-7-II-8) (Exhibit ARG-01).

[239] Argentina's First Written Submission, para. 316.

determined otherwise, finding that subject imports from each source were sold to distributors and end users during each year of the POI and in interim 2021.[240]

151. Second, The USITC considered that Tenaris sold OCTG using its "Rig Direct®" program in assessing channels of distribution, as well as in its assessment of causal link (discussed below in section V), based on questionnaire responses regarding sales to end users as well as to distributors.[241] This included data collected from Tenaris, as well as all other responding importers and domestic producers. USITC staff compiled the data regarding Tenaris's sales to end users (*i.e.*, its sales using Rig Direct®) along with end user sales reported by other industry participants in Table II-1. The data in this table, upon which the USITC relied, constituted positive evidence for analyzing channels of distribution.[242] As the USITC observed based on this information, shares of subject imports from Mexico and Argentina were sold to distributors, as were subject imports from Russia and Korea.[243] Thus, despite Argentina's assertion that Tenaris sold OCTG "mainly" to U.S. end users through the Rig Direct® program,[244] the evidence nonetheless supported overlapping channels of distribution among all sources, including sales to distributors with regard to imports from Argentina.

152. Argentina erroneously suggests that the USITC summarily disregarded evidence regarding aspects of Tenaris's Rig Direct® program and ignored statements from customers describing Tenaris's program.[245] The USITC considered the whole record before it, including Tenaris's assertion that the Rig Direct® program is superior to the distribution model used by

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[240] Argentina points out that the USITC has declined to cumulate subject imports in investigations where subject importers were sold "predominantly" or "overwhelmingly" through different channels of distribution. Argentina's First Written Submission, para. 316 (citing *Certain Preserved Mushrooms from China, India, and Indonesia*, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159, at 8-9 (Feb. 1999) (*USITC Preserved Mushrooms Final Report*) (Exhibit ARG-43). Be that as it may, each determination of whether to cumulate imports is *sui generis* and reflects the facts and circumstances on the USITC's record. As the USITC explained in the OCTG investigations, "no single factor," such as channels of distribution, "is necessarily determinative . . ." USITC Final Report, at 17 (Exhibit ARG-01).

Moreover, in the mushrooms investigations cited by Argentina, the USITC's declination to cumulate imports from Chile and Indonesia was not only based on channels of distribution data, but also on other more specific evidence, not similarly present here, showing "extremely attenuated" competition between these imports, including that "[t]he record [did] not indicate that *any* purchaser ha[d] purchased both Chilean and Indonesian product." *Certain Preserved Mushrooms from Chile*, Inv. No. 731-TA-776 (Final), USITC Pub. 3144, at 14-15 (Nov. 1998) (Exhibit USA-16); *see also USITC Preserved Mushrooms Final Report* at 8-9 (Exhibit ARG-43).

[241] Argentina's First Written Submission, paras. 348-350. "Rig Direct®" is Tenaris's name for its sales of both imported and domestically-produced OCTG to end users (*e.g.*, rigs). USITC Final Report at 30 n.165 (Exhibit ARG-01).

[242] USITC Final Report at 22 n.108 (citing Table II-1 (at II-7-II-8)) (Exhibit ARG-01).

[243] USITC Final Report at 22 n.108 (Exhibit ARG-01).

[244] Argentina's First Written Submission, para. 349.

[245] Argentina's First Written Submission, para. 350.

other U.S. OCTG producers.[246] However, other record evidence, particularly purchaser responses as well as signed declarations and supporting documentation, corroborated that "domestic producers in combination with their distributors provide the same services as Rig Direct."[247] The USITC did not disregard the evidence put forward by Tenaris during the investigation and highlighted by Argentina now, but rather weighed the competing evidence put forward by applicants that demonstrated that OCTG imports from the various sources shared overlapping channels of distribution. As this analysis was unbiased and objective, the Panel should not overturn the USITC's analysis and conclusion.[248]

c. The USTIC Reasonably Found that Subject Imports from Russia Shared a Competitive Overlap with Other Subject Imports and the Domestic Like Product

153. Finally, the USITC reasonably rejected the argument that subject imports from Russia competed on a different basis than imports from other countries.[249] Argentina now reiterates those same arguments, citing again to Russia's loss of API certification, revocation of Russia's permanent normal trade relations status with the United States, duties imposed on Russian imports pursuant to section 232 of the Trade Expansion Act of 1962 (while such duties were not imposed on OCTG from other sources), and sanctions imposed by the United States on Russian entities and individuals.[250]

154. The facts on the USITC's record belie Argentina's assertions. As an initial matter, none of the measures identified by Argentina prohibited the entry or sale of Russian OCTG during the POI.[251] Moreover, the USITC did not consider only whether imports from Russia entered the U.S. market during the POI, to the exclusion of other conditions of competition, as Argentina claims.[252] Rather, the USITC comprehensively considered the relevant data for subject imports from Russia as well as for each other subject country and for the domestic like product in analyzing each of the cumulation factors: its fungibility, channels of distribution, geographic overlap, and simultaneous presence in the U.S. market. Moreover, in doing so, the USITC addressed all relevant party arguments.[253]

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[246] USITC Final Report at 30 n.165, 46 (Exhibit ARG-01) (citing Tenaris's USITC Prehearing Brief at 10-11 (Exhibit ARG-04)).

[247] USITC Final Report at 46, Table II-14 (at II-32-II-39) (Exhibit ARG-01) (citing Petitioners' Posthearing Brief at Exhibits 3, 4 (Exhibit ARG-30)).

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

[249] USITC Final Report at 20 nn.94 & 95, 22-23 nn.112, 113, 114, 116. (Exhibit ARG-01).

[250] Argentina's First Written Submission, paras. 325-342.

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

[252] Argentina's First Written Submission, para. 328.

[253] USITC Final Report at 19-23 (Exhibit ARG-01); *see* Tenaris Prehearing Brief at 18-20 (Exhibit ARG-04) (arguing that sanctions have restricted access of Russian OCTG to the U.S. market), 40-41 (arguing that a lower

155. With respect to fungibility, the USITC explained that a majority of market participants reported that subject imports from each source were always or frequently interchangeable and that majorities of U.S. purchasers reported that subject imports from all countries were comparable with respect to at least 14 of 15 purchasing factors.[254] These questionnaire responses were provided in July 2022, several months after the loss of API certification services in March 2022, and therefore reflected market participant perceptions on the comparability and interchangeability of subject imports from Russia following the loss of these certifications.[255] Moreover, the USITC discussed that, while subject imports from Russia lost the ability to be produced bearing the API monogram, they are still produced to API specifications[256] and would not necessarily be prevented from being affixed with the API monogram in the future or sold in the United States as "green tube".[257] Finally, the USITC observed that U.S. shipment data reflected that there was a substantial degree of overlap between OCTG from all countries – including Russia – in terms of type, grade, and finish in 2021.[258] In sum, the USITC addressed and rejected the argument that the loss of API certifications rendered Russian OCTG non-fungible with OCTG from other countries. Thus, the USITC based its findings on positive evidence on the record consisting of market participant perceptions of these products (after the loss of API certifications), U.S. shipment data (after the loss of API certifications), and U.S. import data (after the loss of API certifications).[259]

156. With regard to the measures taken against Russia in response to its February 2022 invasion of Ukraine—which included all the measures highlighted by Argentina except for the

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AUVs for Russian imports show a lack of fungibility); *see also* Tenaris Posthearing Brief, Exhibit 1 at 1-6 (Exhibit ARG-29) (arguing that purchasers would not use non-API certified OCTG and that sanctions would prevent subject imports from entering into the U.S. market); TMK Prehearing Brief at 4-12 (Exhibit ARG-28) (arguing that subject imports from Russia were excluded from the U.S. market following the February 2022 invasion of Ukraine and that the loss of API certification services reduced the fungibility or these imports); TMK Posthearing Brief at 3-12 (Exhibit ARG-31) (arguing that the loss of API certification renders subject imports from Russia non-fungible with other OCTG and that these imports are not simultaneously present or geographically overlapping the U.S. market).

[254] USITC Final Report at 19 (citing Tables II-15–II-17, II-14) (Exhibit ARG-01).

[255] *See* Argentina's First Written Submission, paras. 330-332 (speculating without support that "the questionnaire responses *may* not have captured the post-invasion competitive landscape.") (emphasis added).

[256] USITC Final Report at 20 n.95 (citing Tables II-12, II-14 (at II-30, II-32-II-39) (Exhibit ARG-01). Indeed, 15 of 17 purchasers reported that Russian OCTG always or usually met minimum quality specifications and 13 of 15 reported Russian OCTG was comparable to the domestic like product in terms of its ability to meet minimum quality specifications. *Ibid*.

[257] USITC Final Report at 20 n.94 (citing I-18), 23 & n. 116 (Exhibit ARG-01).

[258] USITC Final Report at 19 (citing Tables IV-14-IV-16 (at IV-27-IV-32)) (Exhibit ARG-01). The USITC noted that the U.S. shipments and imports of Russian OCTG increased in interim 2022, following the loss of API certifications, compared to interim 2021. *Ibid*. at 23, n.114.

[259] The USITC also considered and rejected arguments contending that lower AUVs for subject imports from Russia and Korea reflected a lack of fungibility – an argument that cuts against the proposition that Section 232 duties and other sanctions rendered Russian imports non-competitive in the U.S. market. USITC Final Report at 21 (Exhibit ARG-01).

Section 232 duties in place since 2018—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".[260] In fact, "significant volumes" of Russian OCTG entered the United States during March 2022 and May 2022, following the invasion of Ukraine, which was toward the end of the USITC's POI.[261] Indeed, the volume of Russian OCTG imports, and U.S. shipments of these imports, was higher in interim period 2022 (*i.e.*, January-June 2022)—including months after Russia's February 2022 invasion of Ukraine—than in interim period 2021 (*i.e.*, January-June 2021)—before that invasion.[262]

157. Furthermore, the USITC explained that subject imports from Argentina were present in the U.S. market in 37 out of the 42 months examined between January 2019 and June 2022, and imports from Russia were even more present in 38 out of those 42 months.[263] The fact that Russian OCTG imports were present in the market for almost the entire POI undercuts Argentina's assertion that these measures placed Russian OCTG on a different competitive basis than imports from Argentina, imports from other countries, or the domestic like product.

158. With regard to the Section 232 duties which were imposed prior to the POI,[264] the USITC acknowledged that most responding domestic producers, importers, and purchasers reported that Section 232 duties "had effects in the U.S. market".[265] However, like the measures taken in response to Russia's invasion of Ukraine, the Section 232 duties as they pertained to Russian steel imports "did not prevent subject imports from Russia from entering the U.S. market in significant volumes throughout the POI, or from being present in the U.S. market for 38 months of the 42-month POI".[266] Similarly, they neither prevented the AUVs of subject imports from Russia from being below those of imports from Argentina and Mexico during each year of the POI,[267] nor did they prevent Russian imports from underselling the domestic like product in a majority of quarterly price comparisons.[268]

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[260] USITC Final Report at 22-23 (Exhibit ARG-01).

[261] USITC Final Report at 22-23 (Exhibit ARG-01).

[262] USITC Final Report at 23 n.114 (Exhibit ARG-01).

[263] USITC Final Report at 22 n.112 & Table IV-18 (at IV-34-IV-37) (Exhibit ARG-01).

[264] The United States imposed Section 232 duties on imports of steel products, including from Russia, on the basis of the President's determination that "steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States". *Proclamation 9705: Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625, 11,626 (Mar. 15, 2018) (paras. 5, 8) (Exhibit USA-17).

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

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

[267] USITC Final Report at 23, Table C-1 (at C-3-C-5) (Exhibit ARG-01).

[268] USITC Final Report at Table V-17 (at V-37) (Exhibit ARG-01).

159. In its first written submission, Argentina invites the USITC – and this Panel – to speculate on the potential future implications of sanctions on Russia and Russian OCTG imports into the United States.[269] Such speculation is directly contrary to the USITC's obligation to base its findings on positive evidence in the record.[270] Notably, no party challenged the January 2019-June 2022 POI before the USITC or requested the collection of additional data following the close of the USITC's record. Argentina, in essence, claims that the USITC should have acted contrary to the AD Agreement, and instead of relying on actual import data, U.S. shipment data, and a majority of market participant responses, the USITC should have speculated about Russian imports' future continued presence in the U.S. market. Notwithstanding that a small minority (four of 27) purchasers indicated that subject imports from Russia dropped to zero,[271] the weight of the record evidence demonstrated the continued presence of significant quantities of subject imports from Russia entering into and competing in the U.S. market. Further confirming what the data showed was the reporting of market participants indicating Russian OCTG was interchangeable with, and comparable to, OCTG from other countries. Accordingly, the USITC reasonably rejected this line of argument.

160. In sum, during the underlying investigations, the USITC objectively considered but reasonably rejected many of the same arguments that Argentina now makes to the Panel. The USITC based its objective analysis and ultimate finding of "a reasonable overlap of competition between and among domestically produced OCTG and imports from each subject country" on positive evidence,[272] which supported its decision to cumulate imports. As its establishment of the facts was proper and evaluation of the facts supporting cumulation was unbiased and

[269] Argentina's First Written Submission, paras. 329-332 (arguing that the USITC should have disregarded questionnaire responses because they "may have not captured the post-invasion landscape[,]" and that the USITC should have based its findings on import volumes at the time of the USTC's vote (October 2022), despite only having collected data until June 2022).

[270] AD Agreement, Article 3.1.

[271] *See* Argentina's First Written Submission, paras. 329-331. Argentina cites to *Pakistan – BOPP Film (UAE)*, para. 7.89 (on appeal), for the proposition that the "more recent the data, the more likely they are to be relevant to current injury." The panel in *Pakistan – BOPP Film (UAE)*, however, made this statement in the context of an investigating authority establishing a POI ranging from January 2007-June 2010 after initiating the investigation in April 2012 – a nearly 22-month gap between end the POI and the initiation of the investigations. *Ibid*. at para. 7.80; *see also Mexico – Anti-Dumping Measures on Rice (AB)*, para 167 (finding an inconsistency with Article 3.1 of the AD Agreement based in part on a 15-month gap between the end of the POI and the date of initiation). Thus, this statement relates to the need for an investigating authority to establish a POI relevant to the question of present material injury to satisfy its obligation under Article 3.1. The USITC initiated its investigations in October 2021 and, consistent with its longstanding practice and without objection from any party, established a POI running from January 2019-June 2022. *See, e.g.*, USITC Final Report at II-1 & Table II-1 (at II-7-II-8) (Exhibit ARG-01). As discussed above, the USITC considered data on the record pertaining to this POI, including the explicit discussion of data following the invasion of Ukraine, from February 2022 to June 2022.

[272] USITC Final Report at 23 (Exhibit ARG-01); AD Agreement, Article 3.1.

objective, the Panel should decline to substitute any different conclusion for that of the USITC.[273]

d. The USITC Did Not Fail To Consider That OCTG Imports From Korea Were Already Subject to an AD Order

161. Finally, Argentina argues that the USITC acted inconsistently with Articles 3.1 and 3.3 of the AD Agreement in its decision to cross-cumulate OCTG imports, including those from Argentina, because it also included imports from Korea, which was already subject to an AD order, and which meant that Korean imports were entering the U.S. market under non-injurious conditions.[274] Argentina also contends that this is an additional "condition of competition" that the USITC should have examined.[275] The Panel should reject these arguments.

162. Although Argentina is correct that OCTG imports from Korea have been subject to an AD order since 2014,[276] this point is irrelevant for purposes of cumulation. As the USITC found,[277] for purposes of cumulation, it is irrelevant whether an existing AD order on imports of a product from a particular source is in place, when such imports are currently subject to a CVD investigation. Again, as discussed above in subsection IV.A, the text of Article 3.1 or Article 3.3 does not preclude an investigating authority from cumulating imports subject to that CVD investigation with imports from other sources that are subject to simultaneous AD investigations. Silence on the question of cross-cumulation does not imply a prohibition.

163. Moreover, as explained above in subsection IV.A, it is entirely appropriate for an investigating authority to cumulate imports subject to simultaneous AD and CVD investigations. As a prior report has acknowledged, 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."[278] The same can be said of a decision to cumulate imports subject to simultaneous AD and CVD investigations.

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

[274] Argentina's First Written Submission, paras. 253, 262.

[275] Argentina's First Written Submission, para. 352.

[276] *Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 Fed. Reg. 53,691 (Dep't of Commerce Sept. 10, 2014) (Exhibit USA-18).

[277] *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) ("the prior antidumping duty petition concerning OCTG from South Korea, filed in 2013, is irrelevant to the Commission's analysis of whether the petitions relating to the current investigations were filed on the same day"), *unchanged in* USITC Final Report (Exhibit ARG-01).

[278] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, para. 297.

164. Finally, the fact that an AD order may be in place, which is intended to remedy the injury caused by dumped imports to the domestic industry, does not mean that those same imports, when they are subsidized, are not separately injuring the domestic industry. AD and CVD remedies are not mutually exclusive.

165. In sum, the USITC objectively considered but reasonably rejected much of the same arguments that Argentina now makes during the underlying investigation. The USITC based its objective analysis and ultimate finding of "a reasonable overlap of competition between and among domestically produced OCTG and imports from each subject country" on positive evidence,[279] which supported its decision to cumulate imports. As its establishment of the facts was proper and evaluation of the facts supporting cumulation was unbiased and objective, the Panel should decline to substitute any different conclusion it might reach for that of the USITC.[280]

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

166. Argentina alleges that the USITC's injury determination in regard to import volume was not consistent with Articles 3.1 and 3.2 of the AD Agreement because the USITC failed to undertake an objective examination based on positive evidence relating to: (1) certain "qualitative factors;" and (2) the Section 232 quota.[281] Argentina also alleges that the USITC's injury determination in regard to price effects was not consistent with Articles 3.1 and 3.2 because it failed to undertake an objective examination based on positive evidence relating to: (1) underselling, specifically in regard to Tenaris's long-term contracts; (2) price effects; and (3) Tenaris's "one price" approach.[282] Argentina alleges that the USITC's injury determination in regard to the impact of dumped imports on the state of the domestic industry was not consistent with Articles 3.1 and 3.4 because it failed to undertake an objective examination based on positive evidence relating to: (1) economic factors and indices bearing on the state of the industry; and (2) lost sales or lost revenues resulting from non-price factors.[283] Finally, Argentina alleges that the USITC's injury determination in regard to examination of causation and other known factors was not consistent with Articles 3.1 and 3.5 because it failed to undertake an objective examination based on positive evidence relating to: (1) a causal relationship between the alleged injury to the domestic industry and the subject imports;[284] and (2) the attribution to the subject imports of injuries caused by other known factors.[285]

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[279] USITC Final Report at 23 (Exhibit ARG-01); AD Agreement, Articles 3.1, 3.3.

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

[281] *See* Argentina's First Written Submission, paras. 356-357, 369-416.

[282] *See* Argentina's First Written Submission, paras. 417-422, 435-482.

[283] *See* Argentina's First Written Submission, paras. 483-489, 512-588.

[284] *See* Argentina's First Written Submission, paras. 589-610, 635-654.

[285] *See* Argentina's First Written Submission, paras. 611-634.

167. Argentina's arguments lack merit. 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 the cumulated subject imports and the domestic industry's weak production, employment, and financial performance during the POI. The USITC also objectively considered all other known factors as required by Article 3.5 and, based on positive evidence, fully ensured that it did not attribute any alleged injury from known factors to the cumulated subject imports. Therefore, as the United States explains in detail below, the Panel should reject Argentina's arguments and find that the USITC's determination of injury was not inconsistent with Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement.

168. The United States has structured the arguments in this section as follows.

169. Subsection V.A summarizes the legal framework for understanding how the obligations set out in Article 3.1 of the AD Agreement overlay an investigating authority's analysis of injury under Articles 3.2, 3.4, and 3.5 of the Agreement.

170. Subsections V.B through V.F then explain how the investigatory record demonstrates that the USITC considered the evidence in an unbiased and objective manner and provided a reasoned and adequate explanation for its determination of injury. Specifically:

- Subsection V.B addresses the USITC's consideration of the volume of the dumped imports under Articles 3.1 and 3.2 of the AD Agreement;
- Subsection V.C addresses the USITC's consideration of the price effects of the dumped imports under Articles 3.1 and 3.2;
- Subsection V.D addresses the USITC's examination of the impact of the dumped imports on the domestic industry under Articles 3.1 and 3.4;
- Subsection V.E addresses the USITC's examination of the causal relationship between the dumped imports and the injury to the domestic industry (*i.e.*, the "causation analysis") under Articles 3.1 and 3.5; and
- Subsection V.F addresses the USITC's examination of any known factors other than the dumped imports to ensure that injuries that may have been caused by these other factors are not attributed to the dumped imports (referred to by Argentina as the "non-attribution" analysis) under Articles 3.1 and 3.5.

171. The argument for each subsection is divided into three parts. The first part of each subsection summarizes the proper legal framework for the Panel's analysis of Argentina's relevant claims. The second part demonstrates that the USITC's findings are, contrary to Argentina's claims, such as an unbiased and objective investigating authority could have reached. The third part demonstrates that Argentina has failed to show in regard to its claims

that the United States acted inconsistently with the relevant obligations under Article 3 of the AD Agreement.

A. The Legal Framework for Understanding How the Obligations Set Out in Article 3.1 of the AD Agreement Overlay an Investigating Authority's Analysis of Injury Under Articles 3.2, 3.4, and 3.5

172. Article 3.1 of the AD Agreement provides as follows:

> A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on the domestic producers of such products.[286]

173. The text of Article 3.1 establishes two overarching obligations. The first obligation is that the injury determination must be based on "positive evidence."[287] The second obligation is that the injury determination must involve an "objective examination" of the volume of the dumped imports, their price effects, and their impact on the domestic industry.[288]

174. As discussed above in subsection IV.C.1, the term "positive evidence" relates to "the quality of the evidence that an investigating authority may rely upon in making a determination, and requires the evidence to be affirmative, objective, verifiable, and credible."[289] The term "objective examination" requires "that an investigating authority's examination 'conform to the dictates of the basic principles of good faith and fundamental fairness,' and be conducted 'in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation'."[290]

175. While Article 3.1 indicates that these obligations extend to every aspect of an investigating authority's injury analysis,[291] it does not articulate the analysis that an authority must undertake to determine whether the "volume of the dumped imports," "the effect of the dumped imports on prices in the domestic market for like products," or "the consequent impact

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[286] AD Agreement, Article 3.1.

[287] AD Agreement, Article 3.1; *see Mexico – Anti-Dumping Measures on Rice (AB)*, paras. 163-164.

[288] AD Agreement, Article 3.1; *see Mexico – Anti-Dumping Measures on Rice (AB)*, para. 180 (quoting *US – Hot-Rolled Steel (AB)*, para. 193).

[289] *China – GOES (AB)*, para. 126 (citing *US – Hot-Rolled Steel (AB)*, para. 192).

[290] *China – GOES (AB)*, para. 126 (citing *US – Hot-Rolled Steel (AB)*, para. 193).

[291] *See Thailand – H-Beams (AB)*, para. 106 ("Article 3.1 informs the more detailed obligations in succeeding paragraphs"); *China – GOES (AB)*, paras. 130 and 201.

of these imports on domestic producers of such products," cause injury. It is the succeeding paragraphs – Articles 3.2, 3.4, and 3.5 – that do so.

176. For example, Article 3.2 addresses the investigating authority's consideration "[w]ith regard to the volume of the dumped imports" and "[w]ith regard to the effect of the dumped imports on price."[292] Article 3.4 discusses the economic factors and indices that an authority should evaluate in examining the impact of dumped imports on the domestic industry.[293] Finally, Article 3.5 addresses the investigating authority's examination of the causal relationship between the dumped imports and the injury to the domestic industry and its examination of any other known factors of possible injury to the domestic industry.[294]

177. In sum, the two overarching obligations of "positive evidence" and "objective examination" set out in Article 3.1 of the AD Agreement extend to every aspect of an investigating authority's injury analysis. These obligations, however, do not require that an investigating authority follow a particular methodology as it conducts this analysis in accordance with the obligations of Article 3.2, 3.4, or 3.5 of the AD Agreement.

B. The USITC's Consideration of the Volume of the Dumped Imports Was Not Inconsistent with Articles 3.1 and 3.2 of the AD Agreement

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 3.2 of the AD Agreement in Regard to the Volume of the Dumped Imports

178. According to Article 3.2 of the AD Agreement, "[w]ith regard to the volume of dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."[295] The phrase "increase in dumped imports" is qualified by the adjective "significant," which the dictionary defines, in part, as "important, notable; consequential."[296] The plain text of Article 3.2 thus requires that an investigating authority consider whether there has been a significant, *i.e.*, "important, notable, consequential," increase in dumped imports.

179. This obligation is met, according to the reasoning in *Thailand – H-Beams (Panel)*, when it is "apparent in the relevant documents in the record" that an authority has "given attention to

[292] AD Agreement, Article 3.2.

[293] *See* AD Agreement, Article 3.4.

[294] *See* AD Agreement, Article 3.5.

[295] AD Agreement, Article 3.2, first sentence.

[296] The New Shorter Oxford English Dictionary, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993), Vol. 2, p. 2860 (Exhibit USA-20).

and taken into account whether there has been a significant increase in dumped imports, in absolute or relative terms":[297]

> We note that the text of Article 3.2 requires that the investigating authorities "consider whether there has been a significant increase in dumped imports". The *Concise Oxford Dictionary* defines "consider" as, *inter alia*: "contemplate mentally, especially in order to reach a conclusion"; "give attention to"; and "reckon with; take into account". We therefore do not read the textual term "consider" in Article 3.2 to require an explicit "finding" or "determination" by the investigating authorities as to whether the increase in dumped imports is "significant". While it would certainly be preferable for a Member explicitly to characterize whether any increase in imports as "significant", and to give a reasoned explanation of that characterization, we believe that the word "significant" does not necessarily need to appear in the text of the relevant document in order for the requirements of this provision to be fulfilled. Nevertheless, we consider that it must be apparent in the relevant documents in the record that the investigating authorities have given attention to and taken into account whether there has been a significant increase in dumped imports, in absolute or relative terms.[298]

180. Articles 3.1 and 3.2 do not otherwise dictate that an investigating authority must follow a particular methodology in order to demonstrate that it has "given attention to and taken into account" whether there has been a significant increase in dumped imports. As the report in *Mexico – Anti-Dumping Measures on Rice (AB)* explained, "an investigating authority enjoys a certain discretion in adopting a methodology [under Articles 3.1 and 3.2] to guide its injury analysis … [and may] rely on reasonable assumptions or draw inferences … [provided] its determinations are based on 'positive evidence'."[299]

181. Finally, the plain text of Article 3.2 does not require an investigating authority to consider conditions of competition or alleged restraints on competition in assessing whether there has been a significant increase in dumped imports, in absolute or relative terms. As the report in *US – Ripe Olives (Panel)* explained, "[t]he investigating authority's inquiry regarding volume only

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[297] *Thailand – H-Beams (Panel)*, para. 7.161.

[298] *Thailand – H-Beams (Panel)*, para. 7.161 (footnote omitted).

[299] *Mexico – Anti-Dumping Measures on Rice (AB)*, para. 204. This report also noted that "when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified." *Ibid.*

concerns the identification of the change in the volume of imports and an assessment of its significance."[300]

2. The USITC's Finding that the Volume of the Dumped Imports, and the Increase in that Volume, are Significant in Absolute Terms and Relative to Consumption in the United States is One That Could Have Been Reached by an Objective and Unbiased Investigating Authority

182. The record of the USITC's investigation confirms that the USITC considered whether there had been a significant increase in dumped imports, in absolute or relative terms, during the POI. Following its review of the positive evidence of record, including data tables, the USITC found that the cumulated subject imports increased in absolute volume from 2019 to 2021 and that their absolute volume was greater in interim 2022 than in interim 2021.[301] The USITC also found that the evidence demonstrated that the cumulated subject imports as a share of apparent U.S. consumption increased from 2019 to 2021.[302] Finally, the USITC observed that the market share of cumulated subject imports was lower in interim 2022 – *i.e.*, after petitioners had filed the petitions – than in interim 2021. The USITC found 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."[303]

183. The USITC reasonably concluded, on the basis of positive evidence and without favoring the interests of any particular party to the proceeding, that subject import volume was significant. The USITC's decision to accord less weight in its determination to the decrease in the market share of cumulated subject imports in interim 2022 after the filing of the petition, was based on a reasonable assessment of the temporal relationship between the petition filing and the behavior of subject imports. Therefore, based on the positive evidence of record, and the USITC's objective examination of that evidence, the USITC's finding "that the volume of cumulated subject imports, and the increase in that volume, are significant in absolute terms and relative to consumption in the United States"[304] is one that could have been, and was, reached by an objective and unbiased investigating authority.

3. Argentina Fails to Establish that the USITC's Findings Regarding the Significant Increase in the Volume of the Dumped Imports are Inconsistent with Articles 3.1 and 3.2 of the AD Agreement

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[300] *US – Ripe Olives (Panel)*, para. 7.247.

[301] USITC Final Report at 32, at IV-41 Table IV-19, at C-3 – C-5 Table C-1 (Exhibit ARG-01).

[302] USITC Final Report at 32–33, at IV-41 Table IV-19, at C-3 – C-5 Table C-1 (Exhibit ARG-01). The USITC also considered the volume of cumulated subject imports relative to U.S. OCTG production, which increased overall from 2019 to 2021. USITC Final Report at 32 n.183 (Exhibit ARG-01).

[303] USITC Final Report at 32-33 n.184 (Exhibit ARG-01).

[304] USITC Final Report at 33 (Exhibit ARG-01).

184. Argentina does not dispute that the import volumes examined by the USITC are quantitatively significant.[305] Instead, Argentina argues that the Panel should ignore the plain meaning of the term "significant" as it appears Article 3.2 of the AD Agreement and find the USITC's finding in regard to the significant volume of dumped imports is inconsistent with Articles 3.1 and 3.2 because of so-called "qualitative" factors and conditions of competition.[306]

185. 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 during the POI. Article 3.2 does not require an investigating authority to conduct either of these analyses. That analysis is reserved for Article 3.5. Therefore, as the United States fully demonstrates below, Argentina has failed to demonstrate that the USITC acted inconsistently with Articles 3.1 and 3.2 of the AD Agreement when it held that the volume of dumped imports, and the increase in that volume, is significant in absolute terms and relative to consumption in the United States.[307]

a. Argentina Misinterprets the Legal Obligations Established Under Article 3.2 of the AD Agreement in Regard to the Consideration of the Volume of Dumped Imports

186. Argentina submits that the term "significant" as it appears in the first sentence of Article 3.2 requires the authority to conduct a "qualitative" review of the possible reasons why dumped "imports were needed in the market"[308] before it can find whether any increase in dumped imports is significant.[309] Argentina argues that the following statement by the Appellate Body in *China – HP-SSST* supports this proposition:

> The *significance* of the price undercutting found on the basis of that dynamic assessment is a question of the magnitude of the price undercutting. What amounts to *significant* price undercutting – that is, whether the undercutting is important, notable, or

[305] Argentina's First Written Submission, para. 382 ("The volume of imports … increased during the POI"); *see* Argentina's First Written Submission, paras. 354-416.

[306] Argentina's First Written Submission, paras. 407-408; *see* Argentina's First Written Submission, paras. 354-416.

[307] As an initial matter, the Panel should reject Argentina's argument that the USITC's decision to cumulate imports from Argentina with imports from other sources rendered its import volume analysis inconsistent with Articles 3.1 and 3.2 of the AD Agreement. Argentina's First Written Submission, para. 355. This allegation is completely dependent on the success of its cumulation-specific claims under Articles 3.1 and 3.3. As discussed above in section IV, the USITC's decision to cumulate imports in the OCTG investigations was not inconsistent with Articles 3.1 or 3.3 of the AD Agreement, and therefore that decision was not inconsistent with Articles 3.1 or 3.2 to the extent this decision implicated its volume analysis

[308] Argentina's First Written Submission, para. 372; *see ibid*, para. 402 ("imports were required to meet demand").

[309] Argentina's First Written Submission, paras. 365-366, 398-405.

> consequential – will therefore necessarily depend on the circumstances of each case.[310]

187. First, the reasoning in *China – HP-SSST (AB)* is limited to the consideration of price effects under Article 3.2 of the AD Agreement. In *US – Ripe Olives (Panel)*, the European Union argued that the investigating authority's volume analysis must provide "explanatory force" for the occurrence of a significant volume increase based on the observation of the Appellate Body that the authority must do so for the occurrence of significant depression or suppression of domestic prices.[311] The panel in that dispute rejected this argument, finding that the reasoning in *China – HP-SSST (AB)* about price effects under the second sentence of Article 3.2 does not extend to the investigating authority's consideration of volume under the first sentence of Article 3.2:

> The investigating authority's inquiry regarding volume only concerns the identification of the change in the volume of imports and an assessment of its significance. There is no further requirement to use this data to consider some further phenomena such as an effect on prices. We therefore disagree with the European Union's assertion that an investigating authority's volume analysis must provide "explanatory force" for the occurrence of a significant volume increase.[312]

188. The reasoning in *China – HP-SSST (AB)* is also antithetical to Argentina's argument. The sentence preceding those quoted by Argentina defines the "dynamic assessment" as pertaining to an "assessment of price developments and trends in the relationship between the prices of the dumped imports and those of domestic like products over the duration of the POI."[313] According to the same appellate report, "such developments and trends includes assessing whether import and domestic prices are moving in the same or contrary directions, and whether there has been a sudden and substantial increase in the domestic prices."[314] It is an "assessment of whether or how these prices interact over time."[315] Therefore, contrary to Argentina's argument, the assessment of whether or how prices interact over the POI does not include a consideration of "qualitative" reasons why such development or trends exist.[316]

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[310] *China – HP-SSST (AB)*, para. 5.161 (footnote omitted) (italics original). Argentina quotes paragraph 5.161 of the Appellate Body's report in *China – HP-SST (AB)* at paragraph 365 of its first written submission.

[311] *See US – Ripe Olives (Panel)*, para 7.247

[312] *US – Ripe Olives (Panel)*, para 7.247.

[313] *China – HP-SSST (AB)*, para. 5.161.

[314] *China – HP-SSST (AB)*, para. 5.159.

[315] *China – HP-SSST (AB)*, para. 5.160.

[316] *See China – HP-SSST (AB)*, para. 5.169 (in completing the legal analysis of this issue, the report reasoned that an acceptable objective examination simply takes "into account all the positive evidence relating to, *inter alia*, the

189. The Appellate Body's interpretation of the term "significantly" in *US – Washing Machines (AB)*, on which Argentina also relies,[317] similarly does not support the central premise of Argentina's argument. The interpretation of "significantly" in *US – Washing Machines (AB)* relates to the second sentence of Article 2.4.2 of the AD Agreement. Article 2.4.2 does not address the determination of injury. Instead, Article 2.4.2 describes a methodology by which an investigating authority may determine the existence of margins of dumping whenever it finds "a pattern of export prices which differ significantly among different purchasers, regions or time periods."[318] This "pattern clause" is a condition for resorting to the average-to-transaction methodology, which is an exception to the methodologies normally used.[319] The second sentence of Article 2.4.2 thus establishes all elements of the analysis that must be completed before the investigating authority can resort to this exceptional methodology. Therefore, the context in which the term "significant" appears in Article 2.4.2 differs from the context – as well as the object and purpose – in which it appears in Article 3.2, because unlike Article 2.4.2, "the various paragraphs of Article 3 of the Anti-Dumping Agreement contemplate a 'logical progression' in the investigating authority's examination leading to an ultimate determination of whether dumped imports are causing material injury to the domestic industry."[320]

190. The analysis under Article 3.2 concerns the volume of subject imports, either in absolute terms or relative to domestic production or consumption. The analysis under Article 3.2 does not concern the causal relationship between subject imports and injury to the domestic industry or other known factors. Those analyses are reserved for Article 3.5 of the AD Agreement.[321]

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contrary price movements of the Grade C imports and domestic Grade C, as well as the limited period during which the perceived mathematical difference occurred").

[317] Argentina's First Written Submission, paras. 367 n.361, 403 n.410, and 404 n.412.

[318] AD Agreement, Article 2.4.2, second sentence.

[319] *See*, *e.g.*, *US – Softwood Lumber V (Article 21.5 – Canada) (AB)*, para. 97; *US – Zeroing (Japan) (AB)*, para. 131; *US – Washing Machines (AB)*, paras. 5.18, 5.51.

[320] *China – HP-SSST (AB)*, para. 5.203 (citing *China – GOES (AB)*, para. 128); *see ibid.*, paras. 5.140, 5.162, 5.170, 5.203 (citing *China – GOES (AB)*, para. 128). Argentina acknowledges the logical progression of inquiry contemplated by Article 3 of the AD Agreement. *See* Argentina's First Written Submission, paras. 502-503.

The United States further notes that panel reports that have since addressed Article 3.2 have not considered the Appellate Body's interpretation of the term "significantly" in *US – Washing Machines (AB)* as relevant to their inquiry. *E.g.*, *Dominican Republic – AD on Steel Bars (Costa Rica)*, paras. 7.136 ("Article 3.2 does not set out a minimum threshold for what qualifies as a 'significant' increase; whether an increasing is 'significant' will depend on the specific circumstances of the case" (citing, in part, *China – HP-SSST (AB)*, para. 5.161); *US – Ripe Olives (Panel)*, para 7.247 ("We … disagree … that an investigating authority's volume analysis must provide "explanatory force" for the occurrence of a significant volume increase"); *Pakistan – BOPP Film (UAE) (Panel)*, para. 7.263 (on appeal) ("Article 3.2 does not set out a minimum threshold for what qualifies as a 'significant' increase; whether an increasing is 'significant' will depend on the specific circumstances of the case" (citing *China – HP-SST (AB)*, para. 5.161).

[321] *See China – GOES (AB)*, para. 147 ("The analysis pursuant to Article[ ] 3.5 … concerns the causal relationship between *subject imports* and *injury* to the domestic industry. In contrast, the analysis under Article[ ] 3.2 concerns

Therefore, it would be a mistake for the Panel to find that an investigating authority under Article 3.2 must examine what Argentina refers to as the "qualitative" relationship between the volume of the dumped imports and injury to the domestic industry, because doing so would incorrectly require the authority to conduct "a duplicate analysis of causation at each step of an investigating authority's examination under Article 3…, and graft[ ] onto Article[ ] 3.2 …, as well as Article[ ] 3.4 …, an obligation that exists under Article[ ] 3.5 …."[322]

b. The Panel Should Reject Argentina's Claims Regarding the USITC's Consideration of Import Volume Under Article 3.2

191. The United States will first address below subsection VI.C.4 of Argentina's first written submission, which discusses demand and supply consideration in the OCTG market. The United States will then address subsection VI.D of Argentina's submission, which discusses the Section 232 quota on Argentina's steel exports to the United States.

Causal Demand and Supply Factors

192. Argentina argues that the USITC should have deemed the significant increase in the volume of dumped imports during the POI as "not significant,"[323] because "imports were needed in the market"[324] as a result of: (1) oil price shocks and COVID-19;[325] (2) supply constraints, including U.S. plant shutdowns and curtailments, stockpiling and inventory bulge, the price of hot-rolled coil (HRC), and labor shortages;[326] and (3) Tenaris's role in the domestic industry, *i.e.*, its U.S. investments, its Rig Direct® program, and its "one price" policy.[327]

193. Argentina's claims against the USITC's consideration of import volume under Article 3.2 are all grounded on the flawed proposition that the USITC's consideration of import volumes under this provision should have duplicated the analysis conducted under Article 3.5. For example, in the title that accompanies this subsection, Argentina categorizes its claims as pertaining to "Factors That Had a Substantial Impact on Demand and Supply Consideration in the OCTG Market."[328] Argentina thus clearly delineates that its claims against the USITC's consideration of import volume do not relate to the volume of the subject imports, either in absolute terms or relative to domestic production or consumption; they relate to the relationship

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the relationship between subject imports and a different variable, that is, *domestic prices* [or domestic production or consumption]" (italics original)).

[322] *China – GOES (AB)*, para. 148 (footnote omitted).

[323] Argentina's First Written Submission, para. 399.

[324] Argentina's First Written Submission, para. 372.

[325] Argentina's First Written Submission, paras. 375-381.

[326] Argentina's First Written Submission, paras. 382-392.

[327] Argentina's First Written Submission, paras. 393-397.

[328] Argentina's First Written Submission, Section VI.C.4 title, at p. 99 (underline added).

between subject imports and injury to the domestic industry allegedly caused by other factors. As explained, this latter analysis is reserved for Article 3.5.

194. For example, if the Panel compares Argentina's Article 3.2 arguments about import volume to its Article 3.5 arguments, it is evident that Argentina is suggesting exactly what must be avoided, a duplicate analysis of causation and other known factors:

Import Volume 'Qualitative' Arguments	Causation and Other Known Factors Arguments
Demand fluctuations caused by oil price swings and the COVID 19 pandemic[329]	The Russia/Saudi oil supply/price war and COVID-19 demand shock[330]
Domestic supply constraints,[331] including U.S. plant shutdowns and curtailments,[332] inventory stockpiling,[333] HRC prices,[334] and labor shortages[335]	Supply constraints,[336] including high inventories,[337] HRC prices,[338] and labor shortages[339]
Tenaris's need to import subject merchandise "to complement its robust U.S. production,"[340] including its Rig Direct® program[341]	Although Tenaris imports subject merchandise, it "would not import in a manner that would harm the U.S. industry, which includes its own investments,"[342] including its Rig Direct® program[343]

195. It is further worth noting that the obligation under Article 3.2 to consider the import volume of dumped imports does not condition the imposition of an antidumping measure on the investigating authority finding a significant increase in that volume.[344] As previously discussed,

[329] Argentina's First Written Submission, paras. 375-381.

[330] *See* Argentina's First Written Submission, paras. 594, 598, 613-614, 617-619.

[331] *E.g.*, Argentina's First Written Submission, paras. 382-392.

[332] *E.g.*, Argentina's First Written Submission, paras. 384-385.

[333] *E.g.*, Argentina's First Written Submission, paras. 386-387.

[334] *E.g.*, Argentina's First Written Submission, paras. 388-389.

[335] *E.g.*, Argentina's First Written Submission, paras. 390-391.

[336] *E.g.*, Argentina's First Written Submission, paras. 595-599, 602-603.

[337] *E.g.*, Argentina's First Written Submission, paras. 596-597, 599, 631.

[338] *E.g.*, Argentina's First Written Submission, paras. 596, 601-602, 628-629

[339] *E.g.*, Argentina's First Written Submission, paras. 596, 603-604, 630.

[340] Argentina's First Written Submission, para. 396; *e.g., ibid.*, paras. 393-397.

[341] *E.g.*, Argentina's First Written Submission, paras.395-396.

[342] Argentina's First Written Submission, para. 607; *e.g., ibid.*, para. 620.

[343] *E.g.*, Argentina's First Written Submission, paras. 600, 623.

[344] *See US – Countervailing Duty Investigation on DRAMS (Panel)*, para. 7.319 n.283 (examining this sentence in concordant Article 15.2 of the SCM Agreement, the panel noted that, "[i]f there is no need to demonstrate increased

the Article 3.2 obligation to "consider whether there has been a significant increase in dumped imports" means that the investigating authority is only required to take the volume of dumped imports into account.[345] This understanding is further confirmed by the last sentence of Article 3.2, which states that "no one or several of these factors [concerning volume and price effects] can necessarily give decisive guidance."[346] Indeed, even Argentina acknowledges that "[a]n investigating authority is not required [under Article 3.2] to make a definitive determination as to whether there has been a significant increase in dumped imports."[347] Therefore, it is nonsensical to insist, as Argentina does, that the investigating authority's consideration of the volume of dumped imports should have examined "Factors That Had a Substantial Impact on Demand and Supply Consideration in the OCTG Market" when Article 3.2 does not require an explicit finding as to whether the increase in dumped imports is "significant" and such factors are fully examined under Article 3.5.

196. The inquiry under Article 3.2 focuses on the relationship between the subject imports, either in absolute terms or relative to domestic production or consumption.[348] Article 3.2 does not otherwise require the investigating authority to duplicate its examination of causation or its examination of other known factors as required under Article 3.5 when it considers whether there has been a significant increase in the volume of dumped imports. Therefore, Argentina's claim that the USITC violated Article 3.1 and 3.2 of the AD Agreement – because it did not conduct a duplicative analysis of the relationship between oil price shocks/the COVID-19 pandemic/supply constraints/Tenaris's role in the domestic industry and the increase in the volume of dumped import – is baseless. Therefore, the Panel should reject Argentina's claims in regard to the USITC's conclusion that the volume of subject imports, and the increase in that volume, was significant.

Section 232

197. 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."[349]

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imports in all cases, one might conclude that there is no generalized requirement to establish any temporal correlation between increased imports and injury in the context of a countervail investigation").

[345] U.S. First Written Submission, Subsection V.B.1 (discussing the reasoning in *Thailand – H-Beams (Panel)*); *see US – Countervailing Duty Investigation on DRAMS (Panel)*, para. 7.233 n.224 ("the language of [concordant] Article 15.2 [of the SCM Agreement] would seem to suggest that an injury determination may be consistent with Article 15 of the *SCM Agreement* even in the absence of a determination that (as opposed to consideration whether) there has been a significant increase in the volume of subsidized imports").

[346] AD Agreement, Article 3.2.

[347] Argentina's First Written Submission, para. 363.

[348] AD Agreement, Article 3.2, first sentence.

[349] Argentina's First Written Submission, para. 415; *see ibid.*, paras. 411-416.

198. Contrary to Argentina's position, Section 232 did not establish a quota on imports of OCTG from Argentina at a 'non-injurious level.' Section 232 of the Trade Expansion Act of 1962 allows the United States to adjust imports of an article based on a finding that such imports threaten to impair U.S. national security.[350] The purpose of the Section 232 investigation into steel imports was to determine the effect of those imports on U.S. national security and whether the global excess capacity problem in that industry was threatening the ability of the United States to meet its national security needs.[351] In the Section 232 report on steel imports,[352] the U.S. Secretary of Commerce stated that "[g]lobal excess steel capacity is a circumstance that contributes to the 'weakening of our internal economy' that 'threaten[s] to impair' the national security."[353] The Secretary further stated, "[t]he displacement of domestic steel by imports has the serious effect of putting the United States at risk of being unable [to] meet the national security requirements."[354] The report concluded that steel articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.[355] Following that conclusion, the United States and Argentina agreed on a range of measures, "including measures to reduce excess steel production and excess steel capacity, measures that will contribute to increased capacity utilization in the United States, and measures to prevent the transshipment of steel articles and avoid import surges."[356] The Section 232 report and the resulting 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 of the AD Agreement. Therefore, there is no merit to Argentina's claim that the Section 232 quota established a given import volume at a non-injurious level.

199. In addition, as discussed, 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

[350] See 19 U.S.C. 1862 (Exhibit USA-21); Section 232 Regulations, 15 C.F.R., Part 705 (Exhibit USA-22).

[351] WTO Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 10 November 2017, G/C/M/130 (Mar. 22, 2018), at 26-27 (Exhibit USA 23).

[352] U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended" (Jan. 11, 2018) (Exhibit USA-24).

[353] U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended," at 55 (Jan. 11, 2018) (Exhibit USA-24).

[354] U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended," at 57 (Jan. 11, 2018) (Exhibit USA-24).

[355] U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended," at 55-57 (Jan. 11, 2018) (Exhibit USA-24).

[356] Presidential Proclamation 9759 of May 31, 2018, "Adjusting Imports of Steel into the United States," 83 Fed. Reg. 25857-58 (Exhibit USA-25). The United States acted to protect its essential security interests pursuant to Article XXI of the GATT 1994.

imports from Argentina were 'non-injurious.' Therefore, the Panel should reject Argentina's Section 232 argument and find that the USITC's import volume analysis was not inconsistent with the obligations of the United States under Articles 3.1 and 3.2 of the AD Agreement.

Conclusion

200. Argentina has failed to make out its claims. None of Argentina's arguments establish that the USITC's finding regarding the volume of subject imports was inconsistent with Articles 3.1 and 3.2 of the AD Agreement. The USITC's finding is such as could have been reached by an unbiased and objective investigating authority. Therefore, the United States respectfully requests that the Panel find the USITC's finding that there was a significant increase in dumped imports during the POI, both in absolute terms and relative to consumption in the United States, was not inconsistent with Articles 3.1 and 3.2 of the AD Agreement.

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

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 3.2 of the AD Agreement in Regard to the Price Effect of the Dumped Imports

201. According to Article 3.2 of the AD Agreement, "[w]ith regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree."[357]

202. "The [dictionary] definition of the word 'effect' is, *inter alia*, 'something accomplished, caused, or produced; a result, a consequence.' The definition of this word thus implies that an 'effect' is 'a result' of something else."[358] Therefore, an examination of price effects requires an investigating authority to examine whether subject imports significantly undercut the prices of like domestic products, or depressed or suppressed prices of these products to a significant degree.[359]

203. The text of Article 3.2 explicitly recognizes three alternative ways in which subject imports can have an "effect" on prices: through undercutting, through price depression, or through price suppression. The inquiry into undercutting, on the one hand, and the inquiry into

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

[358] *China – GOES (AB)*, para. 135 (quoting Shorter Oxford English Dictionary, 6th ed., A. Stevenson (ed.) (Oxford University Press, 2007), Vol. 1, p. 798).

[359] *See China – GOES (AB)*, para. 136.

price depression or suppression, on the other, are separate inquiries, either of which can demonstrate price effects under Article 3.2. As explained in *China - HP-SSST (AB)*,

> the two inquiries under the second sentence of Article 3.2 are separated by the words "or" and "otherwise". The elements that are relevant to a consideration of whether there has been "significant price undercutting" may, therefore, "differ from those relevant to the consideration of significant price depression and suppression". We do not read Article 3.2 as suggesting that the "effect" of price undercutting must either be price depression or price suppression. Instead, … while price undercutting by imports *may* lead to price depression or price suppression, "there is *no requirement* in Article 3.2 to demonstrate the existence of these other phenomena when considering the existence of price undercutting".[360]

204. The report in *China – HP-SSST (AB)* further explained that because "the term 'price undercutting' in Article 3.2 is qualified by the word 'significant', which is relevantly defined as 'important, notable, consequential',"[361] an investigating authority is required to undertake a "dynamic assessment of price developments and trends in the relationship between the prices of the dumped imports and those of domestic like products over the duration of the POI. The *significance* of the price undercutting found on the basis of that dynamic assessment is a question of the magnitude of the price undercutting."[362]

> What amounts to *significant* price undercutting – that is, whether the undercutting is important, notable, or consequential – will therefore necessarily depend on the circumstances of each case. In order to assess whether the observed price undercutting is significant, an investigating authority may, depending on the case, rely on all positive evidence relating to the nature of the product or product types at issue, how long the price undercutting has been taking place and to what extent, and, as appropriate, the relative market shares of the product types with respect to which the authority has made a finding of price undercutting. In all cases, an investigating authority must, pursuant to Article 3.1, objectively examine all positive evidence, and may not disregard relevant

[360] *China – HP-SSST (AB)*, para. 5.156 (quoting *China – HP-SSST (Panel)*, para. 7.129) (italics original; footnotes omitted).

[361] *China – HP-SSST (AB)*, para. 5.161 (footnotes omitted).

[362] *China – HP-SSST (AB)*, para. 5.161 (italics original).

> evidence suggesting that prices of dumped imports have no, or only a limited, effect on domestic prices.[363]

205. Finally, as explained in subsection V.B.1, an investigating authority is not required by Articles 3.1 and 3.2 to follow a particular methodology when it considers the price effects of dumped imports. As the report in *Korea – Pneumatic Valves (AB)* noted, "[u]nder Article 3.2, an investigating authority considers the explanatory force of dumped imports for, *inter alia*, the occurrence of price effects, but it is not required to make 'a definitive determination' on the volume of dumped imports and the effect of such imports on domestic prices."[364]

2. The USITC's Finding that Dumped Imports had Significant Adverse Price Effects on the Domestic Industry is One That Could Have Been Reached by an Objective and Unbiased Investigating Authority

206. The record of the USITC's investigation confirms that the USITC, consistent with Articles 3.1 and 3.2 of the AD Agreement, objectively examined all positive evidence and took into account whether subject imports significantly undersold the domestic like product.[365] The USITC also considered whether subject imports depressed or suppressed prices to a significant degree.[366]

207. The USITC first considered pricing data for nine specific pricing products in its analysis of underselling (*i.e.*, undercutting). In consultation with the parties participating in the investigation, it defined nine pricing products: four of these pricing products consisted of seamless OCTG sold to end users; two consisted of seamless OCTG sold to unrelated distributors; and three consisted of welded OCTG sold to unrelated distributors.[367] These products ensured that the price comparisons reflected equivalent products (controlling for outer diameter, wall thickness, grade, and casing), sold at the same levels of trade (unrelated distributors or end users).[368] As the USITC staff explained:

> Because pricing products from the preliminary-phase investigations resulted in limited price comparisons, the Commission invited parties to provide suggestions for products that would improve pricing data coverage from those products used in the preliminary phase. For the products used in this final phase, products 1 to 4 and products 7-8 were based on products suggested by petitioners, and product 7 was based on product 3

[363] *China – HP-SSST (AB)*, para. 5.161 (italics original; footnote omitted).

[364] *Korea – Pneumatic Valves (AB)*, para. 5.190 (footnote omitted).

[365] USITC Final Report at 33–37 (Exhibit ARG-01).

[366] USITC Final Report at 37–39 (Exhibit ARG-01).

[367] USITC Final Report at 34 n.186, at V-12 – V-13 (Exhibit ARG-01).

[368] USITC Final Report at 34 n.186, 36 n.202 (Exhibit ARG-01).

> from the preliminary phase. Products 5-6 were based on suggestions from Tenaris. Products 8-9 were based on staff contact with ***. Based on questionnaire comments from parties, staff expected that products 1, 2, 5, and 6 would provide data for OCTG imported from Argentina and Mexico, products 3 and 4 would provide data for OCTG imported from Russia, and products 7, 8, and 9 would provide data for OCTG imported from South Korea. Somewhat more data was provided than these expectations.[369]

The USITC's investigation thereby ensured that price comparability was not distorted by comparisons that might reflect differences in product specifications, distribution, or levels of trade.

208. Following its review of the positive evidence of record, 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."[370] 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."[371]

209. The USITC also found that positive evidence of record demonstrated that domestic producers lost sales to subject imports on the basis of price:

> Twenty of 28 responding purchasers reported that they had purchased subject imports instead of the domestic like product during the POI. Eight of those 20 reported that subject imports were priced lower than the domestic like product, and five of those eight reported that price was a primary reason for purchasing of *** short tons of subject OCTG over the domestic like product. Consistent with purchasers' reporting, Petitioners provided contemporaneous communications indicating that domestic

[369] USITC Final Report at V-13 – V-14 (Exhibit ARG-01) (footnotes omitted).

[370] USITC Final Report at 36 (Exhibit ARG-01); *see ibid.* at V-37 (Table V-17) (Exhibit ARG-01) (footnotes omitted).

[371] USITC Final Report at 36 (Exhibit ARG-01; *see ibid.* at V-37 (Table V-17) (Exhibit ARG-01) (footnotes omitted).

> producers (and their distributors) have lost sales to subject imports on the basis of price.[372]

210. The USITC considered price depression by evaluating price trends during the POI for the nine aforementioned products.[373] It observed that the prices for all but one of the domestic pricing products increased overall during the POI and that the prices for the subject import pricing products for which data were available also increased over this period.[374] "Three of seven responding purchasers reported that U.S. producers had lowered their prices during the POI to compete with lower-priced imports, with price reductions ranging from 7 to 35 percent."[375]

211. The USITC also 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, as well as fluctuations in apparent U.S. consumption and raw material costs during the POI.[376] However, the USITC did not reach a conclusion about price suppression given its findings in regard to the significant price underselling by cumulated subject imports during each year of the POI and interim 2022 and the market share shift to those imports.[377]

212. The USITC reasonably concluded, on the basis of positive evidence and without favoring the interests of any particular party to the proceeding, that cumulated subject imports significantly undercut the prices of like domestic products and that this underselling led the domestic industry to lose market share to subject imports.[378] Given these findings, the USITC was not further required by Article 3.2 to make a particular finding about whether cumulated subject imports also depressed or suppressed prices of like products to a significant degree. Therefore, based on the positive evidence of record, and its objective examination of that evidence, the USITC's findings that "cumulated subject imports significantly undersold the domestic like product," this underselling "led the domestic industry to lose market share to subject imports," and, as a result, "cumulated subject imports had significant adverse price effects on the domestic industry,"[379] are findings that could have been reached by an objective and unbiased investigating authority.

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[372] USITC Final Report at 36-37 (Exhibit ARG-01) (footnotes omitted).

[373] USITC Final Report at 37-38 (Exhibit ARG-01).

[374] USITC Final Report at 38 (Exhibit ARG-01).

[375] USITC Final Report at 38 (Exhibit ARG-01) (footnote omitted).

[376] USITC Final Report at 38-39 (Exhibit ARG-01).

[377] USITC Final Report at 39 (Exhibit ARG-01).

[378] USITC Final Report at 39 (Exhibit ARG-01).

[379] USITC Final Report at 39 (Exhibit ARG-01).

3. Argentina Fails to Establish that the USITC's Findings that Dumped Imports had Significant Adverse Price Effects on the Domestic Industry are Inconsistent with Articles 3.1 and 3.2 of the AD Agreement[380]

a. Argentina Misinterprets the Legal Obligations Established Under Article 3.2 of the AD Agreement in Regard to the Consideration of the Effect of the Dumped Imports on Prices

213. The United States agrees with Argentina that Article 3.2 requires the investigating authority to examine the effect of the dumped imports on prices. However, the United States disagrees with Argentina 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."[381]

214. In carrying out its price effects analysis, an investigating 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.[382] That said, as the report in *Russia – Commercial Vehicles (AB)* explained:

> The inquiry into whether dumped imports have "explanatory force" for[, for example,] significant suppression of domestic prices under Article 3.2 of the Anti-Dumping Agreement is distinct from the injury causation and non-attribution analysis under Article 3.5 of the Anti-Dumping Agreement. While the assessments under both Article 3.2 and 3.5 are interlinked elements of a single, overall injury analysis, the inquiry under each provision has a distinct focus. The analysis under Article 3.2 focuses on the relationship between dumped imports and *domestic prices*. In contrast, the analysis under Article 3.5 focuses on the causal relationship between dumped imports and *injury* to the

[380] As an initial matter, the Panel should reject Argentina's argument that the USITC's decision to cumulate imports from Argentina with imports from other sources rendered its price effects analysis inconsistent with Articles 3.1 and 3.2 of the AD Agreement. Argentina's First Written Submission, paras. 422, 437. This allegation is completely dependent on the success of its cumulation-specific claims under Articles 3.1 and 3.3. Argentina's First Written Submission, para. 437 ("*a necessary consequence of this violation* is the further violation of Articles 3.1 and 3.2 of the AD Agreement regarding the USITC's assessment of non-dumped imports in the price effects analysis") (italics added). As discussed above in section IV, the USITC's decision to cumulate imports in the OCTG investigations was not inconsistent with Article 3.1 or Article 3.3 of the AD Agreement, and therefore that decision was not inconsistent with Article 3.1 or Article 3.2 to the extent this decision implicated its price effects analysis.

[381] Argentina's First Written Submission, para. 432.

[382] *China – GOES (AB)*, para. 154.

> domestic industry.… The examination under Article 3.5, by definition, covers a distinct and broader scope than the scope of the elements considered in relation to price suppression under Article 3.2.[383]

215. The investigating authority's consideration of price effects under Article 3.2, like its consideration of import volume, is a "building block for the ultimate determination of injury."[384] "[T]he outcome of the price effects inquiry under Article 3.2 … enables the investigating authority to advance its analysis so as to serve as a meaningful basis for its determination as to whether subject import, through such price effects, are causing injury to the domestic industry."[385] 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,"[386] Article 3.2 does not obligate the investigating authority to duplicate the examination of causation or the examination of other known factors subsequently conducted under Article 3.5.[387]

b. The Panel Should Reject Argentina's Claims Concerning the USITC's Consideration of Price Effects Under Article 3.2

216. The United States will first address below Subsection VI.E.4.a of Argentina's first written submission, which discusses the USITC's decision not to reach a conclusion about price suppression. The United States will then address Subsection VI.E.4.b of Argentina's submission, which discusses Tenaris's use of a "one price" approach. Next, the United States will address Section VI.E.4.c of Argentina's submission, which discusses Tenaris's long-term contracts. Finally, the United States will address Subsection VI.E.4.d of Argentina's submission, which discusses lost sales.

Price Suppression

217. Argentina argues that the USITC's decision not to reach a conclusion about price suppression violates Article 3.2.[388] Contrary to Argentina's argument, Article 3.2 does not

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[383] *Russia – Commercial Vehicles (AB)*, para. 5.54 (italics original) (footnotes omitted).

[384] *China – HP-SSST (AB)*, para. 5.162.

[385] *China – HP-SSST (AB)*, para. 5.162 (citing *China – GOES (AB)*, para. 154); *see China – GOES (AB)*, para. 149 (recognizing that the Article 3.2 analysis is "necessary in order to answer the ultimate question in Article[ ] 3.5 …as to whether subject imports are causing injury to the domestic industry").

[386] *China – HP-SSST (AB)*, para. 5.180 (citing *China – GOES (AB)*, paras. 149 and 154).

[387] *See Russia – Commercial Vehicles (AB)*, para. 5.54 (noting that "an investigating authority is not required under Article 3.2 to conduct an 'analysis of all known factors that may cause *injury* to the domestic industry', as required by Article 3.5" (quoting *China – GOES*, para. 151 (italics original)); *China – GOES*, para. 149 (noting the price effects inquiry under Article 3.2 "*contributes* to, rather than duplicates, the overall determination required under Article[ ] 3.5" (italics original)).

[388] Argentina's First Written Submission, paras. 438-443.

obligate the USITC to consider price suppression once it established the existence of price undercutting. As the panel in *US – Ripe Olives* noted,

> Article 3.2 and Article 15.2 instruct an investigating authority to consider whether the dumped or subsidized imports result in any of three phenomena, i.e., significant price undercutting, significant price depression, or significant price suppression. The use of the disjunctive "or" between these three phenomena indicates that they are independent lines of inquiry. A view that only price depression and price suppression constitute price effects would read out of the text the option to consider price undercutting as an independent channel of inquiry. This would be inconsistent with the requirement that effect be given to all terms of a treaty. We thus interpret Article 3.2 and Article 15.2 to mean that a consideration of any of the three price effects can independently satisfy the requirement in Article 3.1 and Article 15.1 to examine the "effect … on prices in the domestic market for like products".[389]

218. The panel further noted in the footnote accompanying the above statement that "[s]imilar conclusions are arrived at in prior reports, such as Appellate Body Report, *China – GOES*, para. 137; and Panel Reports, *China – Autos (US)*, para. 7.255; *China – Cellulose Pulp*, para. 7.63; and *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 7.129."[390]

219. For the above reasons, the Panel should reject Argentina's claim against the USITC's decision not to reach a conclusion about price suppression, because the USITC was not required under Article 3.2 to consider whether price suppression constitutes a price effect once it determined there had been significant price undercutting by dumped imports.

Tenaris's "One Price" Approach

220. Argentina's second challenge focuses on the USITC's consideration of Tenaris's "one price" approach. Argentina acknowledges that the USITC considered the "one price" approach as part of its price effects analysis,[391] but complains that the USITC's consideration was inadequate.[392]

221. The record of the underlying investigation clearly indicates that the USITC considered Tenaris's argument about its "one price" approach:

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[389] *US – Ripe Olives (Panel)*, para. 7.258.

[390] *US – Ripe Olives (Panel)*, para. 7.258, n.556.

[391] *See* Argentina's First Written Submission, paras. 444, 449.

[392] *See* Argentina's First Written Submission, paras. 448-449, 454.

> Tenaris emphasizes that, pursuant to its "one price" approach, its subject imports did not undersell its *own* domestically produced OCTG. *See* Tenaris's Posthearing Br., at 1. We base our analysis of subject import underselling, however, on the pricing data reported by and comparisons among all responding imports and domestic producers.[393]

222. The USITC's response to Tenaris's argument highlights the tenuousness of Argentina's challenge: The USITC injury investigation did not focus just on Tenaris's imports. The USITC "issued importer questionnaires to 46 firms believed to be importers of OCTG … [and] [u]sable questionnaire responses were received from 27 companies, representing … subject imports from Argentina, Mexico, Russia, and South Korea (subject) and 75.5 percent of total U.S. imports in 2021 under HTS subheadings 7304.29, 7305.20, and 7306.29."[394] The investigation also did not focus just on Tenaris's U.S. production. The USITC received usable data about domestic production, etc., from 19 firms, thought to "represent the large majority of U.S. OCTG production during 2021."[395] In addition, 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."[396]

223. The Panel's role in this dispute is to assess whether the USITC properly established the facts and evaluated them in an unbiased and objective way. Put differently, the Panel's task is to determine whether a reasonable, unbiased investigating authority, looking at the same evidentiary record as the USITC, could have – not would have – reached the same conclusions that the USITC reached. The USITC clearly disclosed why it relied on specific pricing factors it considered material (*i.e.*, the pricing data reported by and comparisons among all responding importers and domestic producers) and why it deemed Tenaris's argument about its "one price" approach not relevant.[397] The investigatory record thus demonstrates that the USITC evaluated the evidence involving price underselling in an unbiased and objective manner and provided a

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[393] USITC Final Report at 37 n.206 (Exhibit ARG-01) (italics original).

[394] USITC Final Report at IV-1 (Exhibit ARG-01) (footnote omitted).

[395] USITC Final Report at III-1 (Exhibit ARG-01).

[396] USITC Final Report, at 37 n.206 (Exhibit ARG-01).

[397] The USITC is not required by Articles 3.1 and 3.2 to follow a particular methodology when it considers the price effects of dumped imports. *See Korea – Pneumatic Valves (AB)*, para. 5.190 (recognizing that under Article 3.2, "an investigating authority considers the explanatory force of dumped imports for, *inter alia*, the occurrence of price effects, but it is not required to make 'a definitive determination' on the volume of dumped imports and the effect of such imports on domestic prices" (footnote omitted)).

reasoned and adequate explanation for its decision not to alter this analysis based on Tenaris's argument.

224. For the above reasons, Argentina's claim lacks merit. The record of the investigation clearly demonstrates that the USITC evaluated Tenaris's "one price" approach in an unbiased and objective manner.

Tenaris's Long-Term Contracts

225. Argentina's third challenge focuses on the USITC's consideration of Tenaris's long-term contracts. Argentina recognizes that the USITC conducted an extensive analysis of these contracts as part of its consideration of price effects,[398] but complains that the USITC's analysis was "unreasonably narrow."[399]

226. 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.[400] The USITC was "unpersuaded by Tenaris's argument"[401] for multiple reasons: First, the USITC "must consider the significance of underselling by cumulated subject imports," not just imports by Tenaris.[402] Second, even as to Tenaris's imports, "the percentage of Tenaris's U.S. shipments subject to contracts containing a time lag is unclear."[403] Third, Tenaris incorrectly assumes that domestic OCTG is generally sold at spot market prices.[404] Finally, the argument is inconsistent with other record evidence:

> [T]he record shows that the rate of cumulated subject imports underselling was fairly consistent from 2019 to 2021, rising only slightly from 55.9 percent of quarterly comparisons in 2019 to 57.1 percent of quarterly comparisons in 2020 and to 60.4 percent of quarterly comparisons in 2021.[405]

227. The record of the underlying investigation thus explains in detail why the USITC decided not to lag U.S. market prices to account for Tenaris's long-term contracts. Other than a

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[398] *See* Argentina's First Written Submission, paras. 456-467.

[399] *See* Argentina's First Written Submission, paras. 460; *see ibid*., para. 462 ("narrow grounds").

[400] *See* USITC Final Report at 34-35 (Exhibit ARG-01).

[401] USITC Final Report at 35 (Exhibit ARG-01).

[402] USITC Final Report at 35 (citing USITC Final Report at III-24 and "Tenaris Global's importer questionnaire response at II-7a and II-8a") (Exhibit ARG-01).

[403] USITC Final Report at 35 (citing, in part, "Tenaris's Prehearing Br. at Exhibit 63 (Prusa Analysis) (indicating that 25 percent of Tenaris's sales are not be contract, and stating only that Tenaris's contracts '*typically*' have quarterly adjustments" (italics original)(Exhibit ARG-01).

[404] USITC Final Report at 35 (footnote omitted) (Exhibit ARG-01).

[405] USITC Final Report at 35 (footnote omitted) (Exhibit ARG-01).

reiteration of Tenaris's arguments before the USITC, Argentina has failed to demonstrate why an objective and unbiased investigating authority could not have reached the conclusion reached by the USITC. The Panel's task is not to perform a *de novo* review of the evidence on the record of the underlying investigation, nor to substitute its judgment for that the investigating authority. Therefore, the Panel should find that the investigatory record demonstrates that the USITC evaluated the evidence in an unbiased and objective manner and provided a reasoned and adequate explanation for its decision not to lag U.S. market prices to account for Tenaris's long-term contracts.

Lost Sales

228. Argentina's last challenge focuses on the USITC's consideration of lost sales. Argentina argues 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."[406]

229. Argentina acknowledges that the USITC conducted a full analysis of reported lost sales.[407] The USITC report that Argentina quotes indicates that 40 percent of the responding purchasers who had purchased subject imports "reported subject imports were priced lower than the domestic like product."[408] Further, 63 percent of those purchasers reported price as the primary reason for buying a set amount of short tons of subject OCTG over the domestic like product.[409] At this point of its analysis, the USITC stepped back and examined Tenaris's argument that some of the purchasers who claimed they had bought subject imports due to price had contradicted this reporting elsewhere in their responses. The USITC found this argument unavailing, because contrary to Tenaris's assertions, the questionnaire responses of the particular purchasers corroborated their lost sales reporting.[410] Finally, the USITC noted that "contemporaneous communication indicat[ed] that domestic producers (and their distributors) have lost sales to subject imports on the basis of price."[411] The USITC thus correctly concluded that the record before it included "evidence that domestic producers lost sales to subject imports on the basis of price."[412]

230. Notwithstanding that positive evidence of record fully supported the USITC's finding in regard to lost sales, Argentina asserts that the USTIC should have considered the following

[406] Argentina's First Written Submission, para. 473.

[407] *See* Argentina's First Written Submission, paras. 468-470, 479.

[408] Argentina's First Written Submission, para. 469 (quoting USITC Final Report at 36 (Exhibit ARG-01)).

[409] *See* Argentina's First Written Submission, para. 469 (quoting USITC Final Report at 36-37 (Exhibit ARG-01)).

[410] USITC Final Report at 37 n.203 (Exhibit ARG-01).

[411] USITC Final Report at 37 (Exhibit ARG-01).

[412] USITC Final Report at 36 (Exhibit ARG-01).

factors as part of its consideration of price effects: security of supply;[413] Tenaris's unique role in the market;[414] Tenaris's Rig Direct® business model;[415] shortages of supply;[416] and increases in demand.[417] Argentina thus conflates the price effects analysis under Article 3.2 with the analyses that an authority conducts pursuant to the obligations set out in Article 3.5. As discussed, an investigating authority is not obligated under Article 3.2, as part of its price effects analysis, to duplicate its examination of causation or its examination of other known factors as required under Article 3.5. Therefore, the fact that the USITC did not consider these factors as part of its price effects analysis is immaterial.

231. Finally, Argentina's additional references[418] to the Appellate Body reports in *EC and certain member States – Large Civil Aircraft* and *US – Large Civil Aircraft (2nd complaint) (AB)* do not undermine the propriety of the USITC's finding. The aircraft disputes did not address injury under Article 3 of the AD Agreement or Article 15 of the SCM Agreement. They addressed whether subsidies caused "serious prejudice" within the meaning of Articles 5(c) and 6.3 of the SCM Agreement. A determination of "serious prejudice" differs decisively from a determination of "injury" under Article 3 of the AD Agreement and Article 15 of the SCM Agreement.[419] It is thus erroneous to take out of context a statement from prior reports about the definition of the term "significant" as it appears in Article 6.3(c) of the SCM Agreement and suggest that statement extends equally to Article 3.2 of the AD Agreement and Article 15.2 of the SCM Agreement. To the contrary, prior reports have repeatedly recognized that the term "significant" as it appears in Article 3.2 and Article 15.2 does not necessitate that an investigating authority examine causation or other known factors as part of its price effects analysis. Again, according to the logical progression of Article 3 and Article 15, these analyses fall squarely under Article 3.5 and Article 15.5, respectively.

Conclusion

232. Argentina has failed to make out its claims. None of Argentina's arguments establish that the USITC's finding regarding the price effects of the subject imports was inconsistent with

[413] *See* Argentina's First Written Submission, para. 472.

[414] *See* Argentina's First Written Submission, para. 473.

[415] *See* Argentina's First Written Submission, para. 473.

[416] *See* Argentina's First Written Submission, para. 480.

[417] *See* Argentina's First Written Submission, para. 480.

[418] Argentina's First Written Submission, para. 478 n.488.

[419] SCM Agreement, Article 6.3. Unlike the determination of injury under Article 3 of the AD Agreement and Article 15 of the SCM Agreement, which address injury to a domestic industry caused by dumped or subsidized imports in the territory of the complaining Member, the determination of "serious prejudice" addresses adverse effects in the market of the subsidizing Member or in a third country market. And whereas the provisions of Article 3 of the AD Agreement and Article 15 of the SCM Agreement are contextually similar, Article 6.3 of the SCM Agreement is completely different. For this reason, the meaning of the term "significant" as it appears in Article 6.3 of the SCM Agreement is contextually different from the meaning of this term as it appears in Article 3.2 of the AD Agreement and Article 15.2 of the SCM Agreement.

Articles 3.1 and 3.2 of the AD Agreement. The USITC's finding is such as could have been reached by an unbiased and objective investigating authority. Therefore, the United States respectfully requests that the Panel find the USITC's finding that subject imports significantly undersold the domestic like product and that this underselling led the domestic industry to lose market share to subject imports was not inconsistent with Articles 3.1 and 3.2 of the AD Agreement. The United States also respectfully requests that the Panel find the USITC's finding that subject imports had significant adverse price effects on the domestic industry was likewise not inconsistent with Articles 3.1 and 3.2.

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

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 3.4 of the AD Agreement

233. Article 3.4 requires that an investigating authority's examination of the impact of dumped imports on the domestic industry include "an evaluation of all relevant economic factors and indices having a bearing on the state of the industry."[420] Article 3.4 lists specific economic factors that an authority must evaluate: "actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments."[421]

234. As Article 3.4 explains, the factors and indices listed therein are "not exhaustive, nor can one or several of these factors necessarily give decisive guidance."[422] The importance of a factor may vary significantly from case to case. Also, the relative weight that an investigating authority may give to a specific factor in an investigation has no bearing on its importance relative to other factors listed in Article 3.4. As the report in *Korea – Pneumatic Valves (AB)* explained, "while Article 3.4 requires an examination of the explanatory force of subject imports on the state of the domestic industry through an evaluation of *all* the relevant factors *collectively*, it does not follow that a particular factor should be evaluated in a particular manner or given a particular relevance or weight."[423]

235. Like Article 3.2, Article 3.4 does not dictate the methodology that should be employed in conducting the examination of the impact of dumped imports on the domestic industry, or the manner in which the results of this examination are to be set out in the record of the

[420] AD Agreement, Article 3.4.

[421] AD Agreement, Article 3.4.

[422] AD Agreement, Article 3.4.

[423] *Korea – Pneumatic Valves (AB)*, para. 5.172 (italics original).

investigation.[424] In fact, an investigating authority's determination, through its demonstration of why the authority relied on specific factors it found to be material in the case, may disclose why other factors on which the authority did not make specific findings were accorded little weight or deemed irrelevant.[425]

236. For example, nothing in Article 3.4 requires an investigating authority to reach a negative determination of injury merely because a domestic industry reported a number of positive or improving economic indicators during the POI. Nor does it follow as matter of logic from a conclusion that an industry is being injured that every indicator must be negative. As the panel in *EC – Footwear* reasoned, "it [is] clear that it is not necessary that all relevant factors, or even most or a majority of them, show negative developments in order for an investigating authority to make a determination of injury."[426] An investigating authority thus is not required to find that a certain number of injury factors declined during the POI before it can find an affirmative determination of injury. Still, as with all aspects of the injury determination, the authority's consideration of all relevant factors and indices must be based on an "objective examination" of "positive evidence" as required by the overarching obligations set out in Article 3.1 of the AD Agreement.

237. Finally, nothing in Article 3.4 requires an investigating authority to demonstrate a causal relationship between the subject imports and the state of the domestic industry. As the report in *Korea – Pneumatic Valves (AB)* noted, "while 'Article 3.4 requires an examination of the "explanatory force" of subject imports for the state of the domestic industry', an investigating authority is not required to demonstrate under that provision whether subject imports are causing injury to the domestic industry."[427]

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[424] *See* AD Agreement, Article 3.4; *EC – Tube or Pipe Fittings (AB)*, para. 131 ("By its terms, [Article 3.4] does not address the manner in which the results of this evaluation are to be set out, nor the type of evidence that may be produced before a panel for the purpose of demonstrating that this evaluation was indeed conducted" (footnote omitted)) and para. 158 ("The requirements of 'positive evidence' and 'objective examination' in Article 3.1 … similarly do not regulate the *manner* in which the results of the analysis are to be set out" (italics original)). Indeed, in *EC – Tube or Pipe Fittings (AB)*, an internal note for the file (Exhibit EC-12) setting out the European Commission's consideration of some of the injury factors listed in Article 3.4 was found to satisfy the requirements of Articles 3.1 and 3.4 of the AD Agreement. *See ibid*., paras. 119 and 132-133.

[425] *See EC – Tube or Pipe Fittings (AB)*, paras. 160-161 (agreeing with the European Communities' contention "that the analysis of a factor is implicit in the analyses of other factors does not necessarily lead to the conclusion that such a factor was not evaluated" and finding "that it is not required that in every anti-dumping investigation a separate record be made of the evaluation of each of the injury factors listed in Article 3.4").

[426] *EU – Footwear (China)*, para. 7.413 (footnote omitted).

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

2. The USITC's Finding that Dumped Imports had an Impact on the Domestic Industry is One That Could Have Been Reached by an Objective and Unbiased Investigating Authority

238. 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.[428] To conduct this analysis, the USITC issued a questionnaire to 32 U.S. producers for which it received usable data about operations from 19 firms, which represented the vast majority of U.S. OCTG production during 2021.[429] From the usable data, the USITC compiled detailed information about the domestic industry's output, production capacity, production, capacity utilization, commercial shipments, export shipments, and inventories. The USITC also compiled detailed information about the number of production-related workers, hours worked, hours worked per production-related worker, wages paid, hourly wages, unit labor costs, and worker productivity. Finally, from this data, the USITC compiled detailed information about the domestic industry's net sales, COGS, gross profit, sales, general, and administrative ("SG&A") expenses, operating income, net income, research and development expenses, capital expenditures, unit COGS, unit SG&A expenses, unit operating income, unit net income, COGS/sales ratio, operating income/sales ratio, and net income/sales ratio.[430]

239. The USITC conducted a thorough evaluation of the state of the domestic industry based on the information it had collected 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 from the domestic industry.

- After petitioners filed trade remedy petitions in late 2021, the performance of the domestic industry improved significantly in interim 2022 relative to interim 2021.[431]

[428] USITC Final Report at 39-43 (Exhibit ARG-01).

[429] USITC Final Report at III-1 (Exhibit ARG-01).

[430] USITC Final Report at 39-43, at Tables III-7–III-9, III-13–III-18, III-26–III-29; VI-1, VI-5–6, VI-16, VI-18–19, VI-23–24, at Table C-1 (Exhibit ARG-01).

[431] USITC Final Report at 40-43 and 43 n.243 (Exhibit ARG-01).

240. The USITC found that this pattern repeated itself in regard to domestic industry output;[432] U.S. mills' capacity, production, and capacity utilization;[433] domestic industry employment, hours worked, wages paid, and productivity;[434] U.S. mills' U.S. shipments, end-of-period inventories, and end-of-period inventories as a ratio of total shipments;[435] domestic industry share of apparent U.S. consumption;[436] financial performance, total net sales revenues, operating losses, ratio of operating income to net sales, return on assets, capital expenditures, and R&D expenses;[437] and gross profit and net income.[438] For example, the USITC found that the domestic industry's performance significantly weakened with the substantial decrease in apparent U.S. consumption from 2019 to 2020 because of the effects of the pandemic. The following year, from 2020 to 2021, apparent U.S. consumption increased 32.2 percent; "however, the domestic industry's performance showed little if any improvement, as cumulated subject imports captured market share from the industry and prevented it from fully capitalizing on the strong recovery in demand."[439]

241. The USITC reasonably concluded, on the basis of positive evidence and without favoring the interests of any particular party to the proceeding, that cumulated subject imports had a significant impact on the domestic industry during the POI. The USITC was not otherwise required by Article 3.4 to reach a conclusion about whether this impact was causing injury to the domestic industry. Therefore, based on the positive evidence of record, and its objective examination of that evidence, the USITC's finding that "cumulated subject imports had a significant impact on the domestic industry"[440] is one that could have been, and was, reached by an objective and unbiased investigating authority.

3. Argentina Fails to Establish that the USITC's Findings that Dumped Imports had an Impact on the Domestic Industry are Inconsistent with Articles 3.1 and 3.4 of the AD Agreement[441]

[432] USITC Final Report at 40 (Exhibit ARG-01).

[433] USITC Final Report at 40 (Exhibit ARG-01).

[434] USITC Final Report at 41 and nn.225-228 (Exhibit ARG-01).

[435] USITC Final Report at 41-42 and nn.231-232 (Exhibit ARG-01).

[436] USITC Final Report at 41 (Exhibit ARG-01) (footnote omitted).

[437] USITC Final Report at 42-43 (Exhibit ARG-01) (footnotes omitted). .

[438] USITC Final Report at 42 n.235 (Exhibit ARG-01). "The domestic industry also reported negative effects on investment, growth, and development due to subject imports." USITC Final Report at 43 (Exhibit ARG-01) (footnote omitted).

[439] USITC Final Report at 40 (Exhibit ARG-01) (footnote omitted).

[440] USITC Final Report at 47 (Exhibit ARG-01).

[441] As an initial matter, the Panel should reject Argentina's argument that the USITC's determination that the domestic industry was injured by reason of imports of OCTG from Argentina is inconsistent with Articles 3.1 and 3.4 based on its decision to cumulate imports in the investigations. Argentina's First Written Submission, paras.

a. Argentina Misinterprets the Obligations Set Out in Article 3.4 of the AD Agreement in Regard to the Impact of Dumped Imports on the Domestic Industry

242. Argentina's claims regarding the obligations set out in Article 3.4 of the AD Agreement continue to evince a complete misunderstanding of the step-by-step injury analysis established under Article 3 of the AD Agreement.

243. Argentina argues, in part, that the investigating authority's analysis under Article 3.4 must "address[ ] alternative explanations and offer[ ] an adequate and reasoned explanation of how the injury is explained by the dumping."[442] The reasoning in *China – HP-SSST (AB)*, which Argentina cites as support for this statement,[443] is inapposite to this argument. According to that report, the investigating authority decides the ultimate question as to how injury to the domestic industry is explained by dumped imports as part of its examination under Article 3.5.[444] Articles 3.2 and 3.4 "are necessary components to answering the ultimate question in Article 3.5,"[445] but the role they play is not meant to duplicate the role played by Article 3.5:

> The Appellate Body has clarified that, similar to the consideration under Article 3.2, the examination under Article 3.4 "*contributes to*, rather than duplicates, the overall determination required under Article[] 3.5". However, whilst an investigating authority is required to *examine* the impact of dumped imports on the domestic industry pursuant to Article 3.4, it is *not* required to *demonstrate* that dumped imports are causing injury to the domestic industry, which is an analysis specifically mandated by Article 3.5.[446]

244. The panel report in *Russia – Commercial Vehicles* and the report in *China – X-Ray Equipment Vehicles*, both discussed by Argentina,[447] further underscore that the analysis under

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484, 509-511. This allegation is completely dependent on the success of its cumulation-specific claims under Articles 3.1 and 3.3. Argentina's First Written Submission, para. 509 ("a necessary consequence of this violation is the further violation of Article 3.4 of the AD Agreement regarding the USITC's evaluation of the impact of the dumped imports …"). As discussed above in section IV, the USITC's decision to cumulate imports in the OCTG investigations was not inconsistent with Article 3.1 or Article 3.3 of the AD Agreement, and therefore that decision was not inconsistent with Article 3.1, Article 3.3, or Article 3.4 to the extent this decision implicated its analysis that the domestic industry was injured by reasons of OCTG imports from Argentina.

[442] Argentina's First Written Submission, para. 492 (underline added).

[443] *See* Argentina's First Written Submission, para. 492 n.494.

[444] *See China – HP-SSST (AB)*, para. 5.141.

[445] *China – HP-SSST (AB)*, para. 5.141 (citing *China – GOES*, para. 128).

[446] *China – HP-SSST (AB)*, para. 5.205 (quoting *China – GOES*, para. 149 (italics original) and citing *China – GOES*, para. 150) (italics original)).

[447] Argentina's First Written Submission, paras. 493, 496, and 497 n.502

Article 3.4 involves the state of the domestic industry and does not address whether dumped imports caused injury to the industry.

245. In *Russia – Commercial Vehicles*, the European Union argued, in part, that the analysis conducted by DIMD (the investigating authority) under Article 3.4 "failed to consider Volkswagen's argument that the increase in the domestic industry's inventories was due to the termination of the licence agreement between Sollers and Fiat."[448] The panel declined to consider this argument as part of its evaluation of whether DIMD had acted inconsistently with Article 3.4, because "the European Union's argument pertains to the issue of causation [under Article 3.5], rather than the DIMD's evaluation of inventories in the context of its examination of the state of the domestic industry [under Article 3.4]."[449]

246. In *China – X-Ray Equipment Vehicles*, the panel similarly reasoned that, "[i]n relation to whether the claim is best characterised as falling under Article 3.4 or 3.5 of the Anti-Dumping Agreement, … Article 3.4 requires an examination of 'the impact of the dumped imports on the domestic industry' and an evaluation of all relevant factors and indices 'having a bearing on the state of the industry'."[450]

> In *China – GOES,* the Appellate Body held that Article 3.4 requires "an *examination* of the explanatory force of subject imports for the state of the domestic industry". However, it does not require a *demonstration* that subject imports are causing injury to the domestic industry. Rather, the latter analysis occurs under Article 3.5, which also requires a non-attribution analysis relating to all factors causing injury to the domestic industry.[451]

247. In sum, contrary to Argentina's assertion, the investigating authority's examination under Article 3.4 need not explain "how the injury is explained by the dumping." That analysis occurs under Article 3.5, where "[i]t must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement."[452]

b. The Panel Should Reject Argentina's Claims Against the USITC's Examination of Factors and Indices under Article 3.4

[448] *Russia – Commercial Vehicles (Panel)*, para. 7.156 (footnote omitted).

[449] *Russia – Commercial Vehicles (Panel)*, para. 7.156. The panel referred discussion of this issue to the section of its report that addressed matters of causation and other known factors under Article 3.5. *See ibid.*, para. 7.157.

[450] *China – X-Ray Equipment Vehicles*, para. 7.254.

[451] *China – X-Ray Equipment Vehicles*, para. 7.254 (citing *China – GOES (AB)*, para. 150) (italics original).

[452] AD Agreement, Article 3.5.

248. Argentina's misunderstanding of the obligations set out in Article 3.4 of the AD Agreement infects nearly all of its claims against the USITC's examination of relevant factors and indices. For the reasons set forth below, the Panel should reject Argentina's claims concerning the USITC's findings under Articles 3.1 and 3.4 of the AD Agreement.

Sales

249. Argentina acknowledges that the "USITC identified the trends related to the factor 'sales'," [453] but argues that the USITC should not have attributed these trends to the impact of the dumped imports. Instead, according to Argentina, the USITC as part of the examination under Article 3.4 should have attributed the domestic industry's sales performance to the Russia/Saudi oil supply war,[454] "the full impact of COVID-19 on U.S. industry sales and production,"[455] and supply conditions or constraints,[456] including the contention that "Tenaris, the largest U.S. producer, imported to satisfy demand due to the supply constraints."[457]

250. Argentina's claim is grounded in "known factors other than the dumped imports which at the same time are injuring the domestic industry."[458] The oil supply war, the impact of the COVID-19 pandemic, and possible supply constraints constitute factors other than the dumped imports that purportedly injured the domestic industry at the same time dumped imports entered into the U.S. market. The analysis of other known factors takes place under Article 3.5 (and the USITC clearly examined such factors as part of that analysis[459]). The USITC was not obligated under Article 3.4 to conduct a duplicate analysis of whether the sales performance of the domestic industry should have been attributed to these other known factors. Argentina's claim against the USITC's examination of the sales factor under Article 3.4 thus is unavailing.

Profits

251. Argentina argues that the USITC examination of "'profitability' … suffered from the same defects [as its examination of sales]."[460] According to Argentina, the financial performance of the domestic industry should not have been attributed to the impact of the dumped imports, but rather should have been attributed to demand conditions (the "Russia/Saudi

[453] Argentina's First Written Submission, para. 519, *see ibid*., para. 518.

[454] *See* Argentina's First Written Submission, para. 519.

[455] Argentina's First Written Submission, para. 519.

[456] *See* Argentina's First Written Submission, paras. 519-520.

[457] Argentina's First Written Submission, para. 520.

[458] AD Agreement, Article 3.5, third sentence.

[459] *See* U.S. First Written Submission, *infra*, Subsection V.F.

[460] Argentina's First Written Submission, para. 522.

oil price/supply war"[461] and the COVID-19 pandemic[462]) and supply conditions ("inventory overhang, "the price of HRC and its effect on welded OCTG production," and "bottlenecks," including "the challenge of hiring workers"[463]).

252. 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. The USITC thus was not obligated under Article 3.4 to conduct a duplicate analysis of whether the profit performance of the domestic industry should have been attributed to the Russia/Saudi oil war, the COVID-19 pandemic, inventory overhang, etc. The Panel thus should also find Argentina's claim against the USITC's examination of the profit factor under Article 3.4 unavailing.

Output

253. Argentina acknowledges that the USITC fully examined the trends related to the domestic industry's output,[464] 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."[465] As the United States has demonstrated, Argentina's unending argument that the investigating authority should graft onto Article 3.4 an obligation that exists under Article 3.5 is fundamentally flawed.

254. Argentina also argues that the USITC should have conducted a causal analysis under Article 3.4 and "explain[ed] how the positive movement in output [from 2020 to interim 2022] was outweighed by any other factors or indices moving in a negative direction during the POI."[466] According to the panel in *EC – Pipe Fittings*, "a firm distinction must be drawn between the causation and injury elements of an investigation."[467] As that panel recognized, "[w]hether or not an evaluation of causal factors is adequate is a matter to be examined under Article 3.5."[468] The USITC, as part of its examination under Article 3.5, explained that despite improvements in apparent U.S. consumption, "the industry's production, employment, and financial performance remained weaker in 2021 than would have been expected in light of the

[461] Argentina's First Written Submission, para. 525.

[462] Argentina's First Written Submission, para. 526.

[463] Argentina's First Written Submission, para. 527.

[464] *See* Argentina's First Written Submission, para. 529.

[465] Argentina's First Written Submission, para. 530.

[466] Argentina's First Written Submission, para. 531 (footnote omitted).

[467] *EC – Tube or Pipe Fittings (Panel)*, para. 7.344.

[468] *EC – Tube or Pipe Fittings (Panel)*, para. 7.344.

strong increase in demand."[469] Also as part of its examination under Article 3.5, the USITC indicated that, "[a]dditionally undermining Tenaris's argument that domestic industry supply constraints necessitated increased subject imports in 2021, cumulated subject import underselling remained nearly as predominant in 2021 as in 2020, whereas subject imports drawn into the U.S. market by short supplies of domestic OCTG would be expected to command higher prices."[470] Thus the United States did not act inconsistent with its obligations under the AD Agreement when the USITC limited its Article 3.4 examination of trends related to output to a finding indicative of the state of the domestic industry and reserved further examination about whether such trends demonstrated injury until its analysis under Article 3.5.

255. For the above reasons, the Panel should reject Argentina's claim against the USITC's examination of the output factor under Article 3.4.

Market Share

256. Argentina argues "that there were alternative explanations for the changes in market share during the POI,"[471] indicating again that its claim against the USITC's examination of market share under Article 3.4 is grounded in known factors other than the dumped imports, an analysis that occurs under Article 3.5. Argentina thus is wrong when it claims that the USITC's examination of market share should have addressed possible countervailing circumstances, including inventory buildup and destocking,[472] Tenaris's Rig Direct® program,[473] labor shortages,[474] the prices of HRC,[475] and intra-industry competition.[476] Therefore, for the reasons already articulated by the United States concerning other factors where Argentina has made nearly identical claims, the Panel should reject Argentina's claim that the USITC's examination of market share was not consistent with the obligations of Article 3.4.

Productivity and Return on Investment

257. Argentina acknowledges that the USITC fully examined the trends related to the domestic industry's productivity[477] and return on investment,[478] but argues that the USITC

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

[470] USITC Final Report at 44-45 (Exhibit ARG-01).

[471] Argentina's First Written Submission, para. 533.

[472] *See* Argentina's First Written Submission, paras. 536-537.

[473] *See* Argentina's First Written Submission, paras. 538-541.

[474] *See* Argentina's First Written Submission, para. 544.

[475] *See* Argentina's First Written Submission, paras. 545-546.

[476] *See* Argentina's First Written Submission, paras. 547-549.

[477] *See* Argentina's First Written Submission, para. 552.

[478] *See* Argentina's First Written Submission, para. 554.

examination under Article 3.4 should have included an analysis of "demand and supply conditions that existed in the U.S. OCTG market during POI"[479] (*i.e.*, the Russia/Saudi oil supply/price war, the COVID-19 pandemic, etc.). Argentina's claims in regard to the USITC's examination of these factors are grounded in known factors other than the dumped imports, an analysis that takes place under Article 3.5. The USITC thus was not obligated under Article 3.4 to conduct a duplicate analysis of these factors, and the Panel should find Argentina's claims against the USITC's examination of productivity and the return on investment under Article 3.4 unavailing.

Capacity Utilization

258. 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, specifically "the high cost of HRC" and "labor shortages."[480] Argentina's claim in regard to the USITC's examination of this factor is grounded in known factors other than the dumped imports, an analysis that occurs under Article 3.5. The USITC was not obligated under Article 3.4 to conduct a duplicate analysis of these factors, and the Panel should find Argentina's claim in this regard to be without merit.

259. Argentina also argues that "[t]he positive movement in this factor at the end of the POI requires 'a compelling explanation of why and how, in light of such apparent positive trends, the domestic industry was, or remained, injured within the meaning of the Agreement'."[481] Argentina acknowledges that the USITC fully examined the trends related to the domestic industry's capacity and capacity utilization.[482] As noted *EC – Pipe Fittings (Panel)*, "a firm distinction must be drawn between the causation and injury elements of an investigation."[483] As that panel recognized, "[w]hether or not an evaluation of causal factors is adequate is a matter to be examined under Article 3.5."[484] The USITC, as part of its examination under Article 3.5, explained that it was "unpersuaded by Tenaris's argument that any injury to the domestic industry is explained by the industry's supply constraints and not subject imports" because of, in part, the domestic industry's "substantial unused capacity throughout the POI, including a capacity utilization rate of 27.6 percent and excess capacity of 4.8 million short tons in 2021."[485] Therefore, the United States did not act inconsistently with its obligations under the AD Agreement when the USITC limited its Article 3.4 examination of trends related to capacity and

[479] Argentina's First Written Submission, paras. 552 and 555.

[480] Argentina's First Written Submission, paras. 560, 562.

[481] Argentina's First Written Submission, para. 561 (quoting *Thailand – H-Beams (Panel)*, para. 7.249).

[482] *See* Argentina's First Written Submission, para. 561.

[483] *EC – Tube or Pipe Fittings (Panel)*, para. 7.344.

[484] *EC – Tube or Pipe Fittings (Panel)*, para. 7.344.

[485] USITC Final Report at 44 (Exhibit ARG-01).

capacity utilization to a finding indicative of the state of the domestic industry and reserved its analysis about whether such trends demonstrated injury until its examination under Article 3.5.

Factors Affecting Domestic Prices

260. Argentina reiterates its argument about the USITC's decision not to reach a conclusion about price suppression, asserting that "[t]he refusal to make a finding is notable given that the record evidence confirmed no price suppression."[486] As the United States demonstrated,[487] the USITC was not required under Article 3.2 of the AD Agreement to consider whether price suppression constitutes a price effect. Article 3.4 does not independently obligate the investigating authority to examine price suppression in regard to factors affecting domestic prices. Therefore, the USITC's decision not to reach a conclusion about price suppression as part of its Article 3.4 analysis is neither notable nor inconsistent with Article 3.4 of the AD Agreement, and the Panel should summarily reject Argentina's argument to the contrary.

261. Argentina also repeats its argument about lost sales and lost revenues,[488] asserting once again that evidence put forward by Tenaris "showed that any lost sales or lost revenues were due to non-price factors,"[489] including Tenaris's Rig Direct® business model.[490] As with its argument under Article 3.2, Argentina conflates the analysis that the USITC is required to conduct under Article 3.4 with the analyses that an authority conducts pursuant to the obligations set out in Article 3.5. The investigating 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. Therefore, it is immaterial that the USITC did not consider as part of its Article 3.4 analysis non-price factors that purportedly caused lost sales or lost revenues.

262. Argentina also argues that "questionnaire data contradicted Petitioner's [sic] allegations of lost sales due to price"[491] and that "[t]he USITC did not acknowledge this contrary evidence and simply accepted Petitioners' claims."[492] This is a untrue. The USITC clearly stated that it found "*some* evidence that domestic producers lost sales to subject imports on the basis of

[486] Argentina's First Written Submission, para. 564.

[487] *See* U.S. First Written Submission, Subsection V.C.2.b.

[488] *See* Argentina's First Written Submission, para. 565 (referring to its argument in Section VI.E of its first written submission, which discusses price effects under Article 3.2). Argentina's arguments about lost sales and lost revenues relative to Articles 3.1 and 3.4 of the AD Agreement appear at paragraphs 564-567 and paragraphs 580-583 of its first written submission. The United States addresses both sets of Argentina's repetitive arguments in this section.

[489] Argentina's First Written Submission, para. 566; *see* Argentina's First Written Submission, para. 582.

[490] *See* Argentina's First Written Submission, paras. 584-585.

[491] Argentina's First Written Submission, paras. 586.

[492] Argentina's First Written Submission, para. 587.

price,"[493] a statement that confirms that the USITC understood that not all the evidence of record supported such a finding.

263. Argentina argues that the USITC's finding in regard to lost sales relied, in part, on 'deficient' data reported in Table V-18 of its staff report.[494] This argument is without merit. As Argentina acknowledges, the USITC fully recognized "'some data in the table may represent shipments of the same OCTG'."[495] Thus the USITC fully understood that the data reported in Table V-18, which generally demonstrated a shift in purchases from the domestic industry to subject imports, was approximated. The USITC then found that multiple purchasers and contemporaneous communications provided by the domestic industry collaborated the data reported in this table[496] and Table V-19, which contains data on confirmed reports of lost sales. Therefore, the alleged deficiency is inconsequential and does not rise to a breach of the "positive evidence" requirement of Article 3.1, especially given the USITC fully acknowledged that not all evidence – only "some evidence"[497] – demonstrated that domestic producers lost sales to subject imports on the basis of price.

264. Finally, Argentina repeats its argument about Tenaris's long-term contracts.[498] As previously discussed,[499] 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 USITC then explained in detail why it was "unpersuaded by Tenaris's argument."[500] The record of the underlying investigation thus fully explains why the USITC decided not to lag U.S. market prices to account for Tenaris's contracts. Argentina's argument to the contrary is nothing more than an alternative, bias 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 investigating authority. Therefore, the Panel should find that investigatory record confirms that the USITC evaluated the evidence in an unbiased and objective manner and provided a reasoned and adequate explanation for its decision not to alter its finding to account for Tenaris's long-term contracts.

265. For the above reasons, the Panel should reject Argentina's claim against the USITC's examination under Article 3.4 of the factors affecting domestic prices.

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[493] USITC Final Report at 36 (Exhibit ARG-01) (italics added).

[494] Argentina's First Written Submission, para. 567.

[495] Argentina's First Written Submission, para. 567 (quoting USITC Final Report at V-40, Table V-18) (Exhibit ARG-01)).

[496] USITC Final Report at 36-37 (Exhibit ARG-01).

[497] USITC Final Report at 36 (Exhibit ARG-01).

[498] Argentina's First Written Submission, para. 568.

[499] *See* U.S. First Written Submission, Subsection V.C.2.b

[500] *See* USITC Final Report at 34-35 (Exhibit ARG-01).

Cash Flow

266. Argentina argues that the USITC failed to analyze cash flow.[501] 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[502]:

> [I]t is not required that in every anti-dumping investigation a separate record be made of the evaluation of each of the injury factors listed in Article 3.4. Whether a panel conducting an assessment of an anti-dumping measure is able to find in the record sufficient and credible evidence to satisfy itself that a factor has been evaluated, even though a separate record of the evaluation of that factor has not been made, will depend on the particular facts of each case.[503]

267. The USITC report demonstrates that the USITC examined cash flow as part of its overall examination of the domestic industry's financial performance.[504] As the USITIC notes in its report, "[f]or purpose of analyzing the financial results of the domestic industry, we examine the combined operations of both U.S. mills and non-toll processors. CR/PR at Table VI-1."[505] "Cash flow" appears in Table VI-1 as one of the measures of the domestic industry's financial performance.[506] That the USITC analyzed the financial results of the domestic industry as it appears in Table VI-1 thus confirms that its examination of the domestic industry's financial performance incorporated an examination of the industry's cash flow during the POI.

268. In addition, the USITC's final determination highlighted certain financial indicators reported in that table – net sales revenues,[507] operating income or (loss),[508] gross profit,[509] net

[501] *See* Argentina's First Written Submission, para. 572.

[502] *See EC – Pipe Fittings (AB)*, para. 160.

[503] *EC – Pipe Fittings (AB)*, para. 161. The Appellate Body then agreed that the evaluation of other factors indicated that the European Communities had evaluated the factor "growth" even though there was no separate record of that evaluation and thus the Communities did not violate its obligations under Article 3.4. *See ibid.*, paras. 162-166.

[504] *See* USITC Final Report at 42-43 (Exhibit ARG-01).

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

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

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

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

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

income,[510] the ratio of net income to net sales,[511] and the ratio of operating income to net sales.[512] The USITC's examination of these financial indicators confirms that it evaluated cash flow, because the interrelationship between these factors and cash flow necessarily involves an examination of cash flow. In fact, both operating income or (losses) and operating income to net sales ratio are measures of the domestic industry's cash flow. Therefore, the Panel should reject Argentina's argument and find that the USITC addressed and evaluated the cash flow factor as part of its Article 3.4 impact analysis.

Inventories

269. Argentina argues that the USITC's examination of the impact of inventories is inconsistent with Articles 3.1 and 3.2 because of: (1) "the combination of U.S. distributors' inventories *plus* high HRC prices and labor shortages constrained supply;" and (2) "the significant inventory held by U.S. distributors prevented them from placing orders with U.S. producers."[513] Argentina's claims are grounded in "known factors other than the dumped imports."[514] The examination of these other known factors is provided for under Article 3.5, not Article 3.4. Therefore, the Panel should find Argentina's claim unavailing, because the USITC was not obligated under Article 3.4 to conduct a duplicate analysis of these other known factors in regard to the effects of inventories on the state of the domestic industry.

Employment and Wages

270. 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."[515] Once again, Argentina's claim is grounded in known factors other than the dumped imports. The examination of other known factors is provided for under Article 3.5. Therefore, the Panel should find Argentina's claim unavailing, because the USITC was not obligated under Article 3.4 to conduct a duplicate analysis of these other known factors in regard to the effects of employment and wages on the state of the domestic industry.

Growth and Ability to Raise Capital or Investments

271. Argentina argues that the USITC's examination of the impact of subject imports on the domestic industry's investment, growth, and development violates Article 3.1 and 3.4 of the AD

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

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

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

[513] Argentina's First Written Submission, para. 575 (italics original).

[514] AD Agreement, Article 3.5, third sentence.

[515] Argentina's First Written Submission, para. 577 (footnote omitted).

Agreement.[516] Argentina has failed to meet its *prima facie* burden in regard to these claims. Its argument, comprised of a single sentence, simply states that the USTIC "rel[ied] on self-reported data from Petitioners rather than … evidence of conditions of competition during the POI."[517] Although Argentina asserts that this "renders the USITC's determination a violation of Article 3.1 and 3.4,"[518] it utterly fails to articulate how or why. Argentina thus has failed to establish a *prima facie* case in regard to these claims, because it failed to present evidence and arguments sufficient to establish that the USITC's examination of the impact of subject imports on the domestic industry's investment, growth, and development breached the obligations of Articles 3.1 and 3.4.[519] For this reason, the Panel should summarily reject Argentina's claims in regard to the domestic industry's investment, growth, and development.

272. Even if the Panel considers these claims, it should reject them. The claims appear to be grounded, once again, in causation or known factors other than the dumped imports. These claims also appear to be nothing more than alternative, bias interpretations of the facts. As to the former, the examination of causation and other known factors is provided for under Article 3.5, and the USITC was not obligated under Article 3.4 to conduct a duplicate inquiry. As to the latter, 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 investigating authority. For these reasons, if the Panel should consider these claims, it should find them wholly without merit.

Conclusion

273. The USITC's finding under Articles 3.1 and 3.4 of the AD Agreement in regard to the impact of the subject imports on the domestic industry is based on the totality of the evidence on the record.[520] Accordingly, the Panel's review of the USITC finding should take into account the interaction of that evidence with the USITC's reasoning and avoid looking at isolated aspects of that evidence. As the report in *Japan – DRAMs (Korea) (AB)* explained, "'when an investigating authority relies on the totality of circumstantial evidence, this imposes upon a panel the obligation to consider, in the context of the *totality* of the evidence, how the *interaction* of certain pieces of evidence may justify certain inferences that could not have been justified by a

[516] Argentina's First Written Submission, para. 579.

[517] Argentina's First Written Submission, para. 579.

[518] Argentina's First Written Submission, para. 579.

[519] Argentina bears the burden to submit argument and evidence sufficient to establish a *prima facie* case that the USITC's examination of these factors was not consistent with obligations set out in the AD Agreement. *See US – Wool Shirts and Blouses (AB)*, p. 14 (it is a well-established rule in WTO dispute settlement proceedings that "the party who asserts a fact, whether the claimant or the respondent, is responsible for providing proof thereof" (footnote omitted)).

[520] *See* USITC Final Report at 39-43 (Exhibit ARG-01).

review of the individual pieces of evidence in isolation.'"[521] Following a similar approach, the panel in *US – Anti-Dumping and Countervailing Duties (China)* explained "that a panel reviewing a determination on a particular issue that is based on the 'totality' of the evidence relevant to that issue must conduct its review on the same basis"[522]:

> In particular, … if an investigating authority relies on individual pieces of circumstantial evidence viewed together as support for a finding, a panel reviewing such a determination normally should consider that evidence in its totality in order to assess its probative value with respect to the agency's determination, rather than assessing whether each piece on its own would be sufficient to support that determination.[523]

274. Argentina has failed to make out its claims in regard to the USITC examination under Articles 3.1 and 3.4 of the AD Agreement. None of Argentina's arguments establish that the USITC's finding regarding the impact of the subject imports on the domestic industry was inconsistent with Articles 3.1 and 3.4. The USITC's findings in regard to each economic factor listed in Article 3.4, and its finding in regard to the totality of those factors, is such as could have been reached by an unbiased and objective investigating authority. Therefore, the United States respectfully requests that the Panel find the USITC's examination of the impact of the dumped imports on the domestic industry was not inconsistent with Articles 3.1 and 3.4 of the AD Agreement.

E. The USITC's Examination of the Causal Relationship Between the Dumped Imports and the Injury to the Domestic Industry Was Not Inconsistent with Articles 3.1 and 3.5 of the AD Agreement

275. Pursuant to Article 3.5 of the AD Agreement, an investigating authority must conduct two separate but complementary analyses before determining whether "the dumped import are, through the effects of dumping, as set forth in [Articles 3.2 and 3.4], causing injury within the meaning of this Agreement."[524] This subsection discusses the USITC's objective and unbiased examination of the causal relationship between the dumped imports and the injury to the domestic industry. The next subsection, subsection V.F, discusses the USITC's objective and unbiased examination of other known factors to ensure that any injuries caused by such factors are not attributed to the dumped imports.

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[521] *Japan – DRAMs (Korea) (AB)*, para. 131 (quoting 131 (quoting *US – Countervailing Duty Investigation on DRAMS (AB)*, para. 157 (italics original)).

[522] *US – Anti-Dumping and Countervailing Duties (China) (Panel)*, para. 9.52

[523] *US – Anti-Dumping and Countervailing Duties (China) (Panel)*, para. 9.52.

[524] AD Agreement, Article 3.5, first sentence.

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 3.5 of the AD Agreement in Regard to the Causation Analysis

276. Article 3.5 defines the investigating authority's obligation to conduct a causation analysis as follows: "The 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."[525] The investigating authority's causation analysis is broader in scope than its analyses of the volume, price effects, and impact of subject imports conducted under Articles 3.2 and 3.4.[526] As the report in *Korea – Pneumatic Valves (AB)* explained:

> In requiring a "demonstrat[ion] that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury", the causation inquiry under Article 3.5 calls for a holistic assessment by an investigating authority that links together the considerations under Article 3.2 and the examination conducted under Article 3.4 in order to reach a definitive determination regarding the existence of a *causal relationship* between dumped imports and injury to the domestic industry.[527]

277. That said, Article 3.5 – just like Articles 3.2 and 3.4 – does not dictate the methodology that an investigating authority must utilize for its causation analysis. In addition, an authority's examination of the causal relationship between the dumped imports and the injury to the domestic industry need not demonstrate that the dumped imports are the sole cause of injury to the domestic industry, only that they are a cause of injury.[528] Finally, as the report in *US – Tyres (China)(AB)* recognized, "a temporal coincidence between upward trends in imports and a decline in the performance indicators of the domestic industry may evidence the existence of a causal link between rapidly increasing imports and material injury to the domestic industry."[529]

2. 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 Investigating Authority

[525] AD Agreement, Article 3.5, second sentence.

[526] *See Korea – Pneumatic Valves (AB)*, paras. 5.190-5.192.

[527] *Korea – Pneumatic Valves (AB)*, para. 5.191 (italics original).

[528] *See China – Autos (US)*, para. 7.322 (citing *US – Wheat Gluten (AB)*, para. 67) (While an investigating authority's analysis "must demonstrate a relationship of cause and effect, such that imports are shown to have contributed to the injury to the domestic industry[,] … subject imports need not be 'the' cause of the injury suffered by the domestic industry, provided they are 'a' cause of such injury").

[529] *US – Tyres (China) (AB)*, para. 192.

278. As shown in subsections V.B and V.C, the USITC's volume analysis and price effects analysis objectively found based on positive evidence that a significant and increasing volume of cumulated subject imports had predominantly undersold the domestic like product and, through this underselling, had captured market share from the domestic industry. As shown in subsection V.D, the USITC's impact analysis objectively found based on positive evidence that subject imports had explanatory force for the industry's inability to fully capitalize on increasing demand and resulted in the domestic industry's production, employment, and financial performance being weaker than they otherwise should have been.

279. 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 in the investigation 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"[530]:

> Subject import volume increased significantly in absolute terms and relative to apparent U.S. consumption from 2020 to 2021, driven by significant subject import underselling, capturing 12.0 percentage points of market share from the domestic industry during the period. 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.[531]

280. 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."[532] The sudden withdrawal of subject imports from the U.S. market following the filing of antidumping and countervailing duty petitions, correlated with the contemporaneous improvement in the domestic industry's "performance by nearly every measure between the interim periods,"[533] further corroborating the relationship of cause (subject imports) and effect (domestic industry performance).

281. The USITC reasonably concluded based on the volume data 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 between the cumulated subject imports and the domestic industry's weak

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

[531] USITC Final Report at 43 (Exhibit ARG-01) (footnote omitted).

[532] USITC Final Report at 43 (Exhibit ARG-01) (footnote omitted).

[533] USITC Final Report at 43 (Exhibit ARG-01) (footnote omitted).

production, employment, and financial performance during the POI. Therefore, based on the positive evidence of record, and its objective examination of that evidence, 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 investigating authority.

3. Argentina Fails to Establish that the USITC's Causation Analysis is Inconsistent with Articles 3.1 and 3.5 of the AD Agreement[534]

282. Argentina present its arguments about the USITC's causation analysis in subsections VI.F.6[535] and VI.F.8[536] of its submission. The United States addresses the arguments included in each subsection separately below.

283. In subsection VI.F.6 of its submission, Argentina lumps together arguments about factors other than the dumped imports – the oil price war and COVID-19, supply constraints, inventory, HRC prices, labor shortages, Tenaris's U.S. industry position, and intra-industry competition[537] – that it alleges severed the causal nexus between subject imports and the injury to the domestic industry during the POI.[538] 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."[539] This sentence thus states nothing about factors other than dumped imports, which are discussed instead in the third sentence of Article 3.5. Consequently, the second sentence of Article 3.5 does not impose on the investigating authority's causation analysis the additional obligation to demonstrate that there is no causal relationship between "known factors other than the dumped imports" and the injury to the domestic industry. Therefore, the Panel should summarily reject Argentina's claims in subsection VI.F.6 of its submission, because Article 3.5 does not require the USITC to include

[534] As an initial matter, the Panel should reject Argentina's argument that the USITC's causation analysis is inconsistent with Articles 3.1 and 3.5 based on its decision to cumulate imports in the investigations. Argentina's First Written Submission, para. 511. These allegations are completely dependent on the success of its cumulation-specific claims under Articles 3.1 and 3.3. As discussed above in section IV, the USITC's decision to cumulate imports in the OCTG investigations was not inconsistent with Article 3.1 or Article 3.3 of the AD Agreement, and therefore that decision was not inconsistent with Article 3.1 or Article 3.5 to the extent this decision implicated its causation analysis.

[535] Argentina's First Written Submission, paras. 589-610.

[536] Argentina's First Written Submission, paras. 635-654.

[537] Argentina's First Written Submission, paras. 594 (oil and COVID-19), 595 (supply), 596-600 (inventory), 601-602 (HRC), 603-605 (labor), 607 (Tenaris), 608 (intra-industry). As demonstrated below, the USITC fully accounted for these other known factors to ensure that it did not misattribute injury from these other factors to the dumped imports,. See U.S. First Written Submission, Subsection V.F, *infra*.

[538] Argentina's First Written Submission, paras. 589-610.

[539] AD Agreement, Article 3.5, second sentence.

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 domestic industry.[540]

284. In subsection VI.F.8 of its submission, Argentina argues that the USITC's causation determination violated Article 3.5, because it discounted the positive interim 2022 data even as the volume of subject imports increased,[541] "leaning on the filing of the petition as the sole reason for the recovery."[542] Argentina also argues that the USITC failed to follow its own past practice.[543]

285. Contrary to Argentina's argument, the USITC did not discount the improved performance of the domestic industry during interim 2022.[544] 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."[545] 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."[546] In fact, the USITC found that "the industry's performance in 2021 remained similar to its performance in 2020."[547] 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."[548] The difference, based on the USITC's unbiased and objective 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

[540] Argentina also argues in Subsection VI.F.8, paragraph 651, of its submission that the USITC failed to consider supply constraints during its causation analysis. This argument should be rejected for the same reasons the Panel should reject the arguments set out in subsection VI.F.6 of Argentina's submission.

[541] Argentina's First Written Submission, paras. 635, 637-648.

[542] Argentina's First Written Submission, para. 646 (citing USITC Final Report at 43 (Exhibit ARG-01)).

[543] Argentina's First Written Submission, paras. 649-650, 652.

[544] The USITC defined "interim 2022" as January-June 2022 and "interim 2021" as January-June 2021. USITC Final Report at 14, 15 (Exhibit ARG-01).

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

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

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

[548] USITC Final Report at 43 (Exhibit ARG-01). Argentina's argument fails to account for the magnitude of the subject import volume increases relative to apparent U.S. consumption. For example, from 2020 to 2021, the volume of subject imports increased by over 400 percent the rate of apparent U.S. consumption. However, from interim 2021 to interim 2022, the volume of subject imports increased at less than 10 percent the rate of apparent U.S. consumption. USITC Final Report at 43 (Exhibit ARG-01). This evidence, along with market share data and the domestic industry's performance metrics, supports the USITC's statement that subject imports competed "less aggressively" in interim 2022 following the filing of the petitions.

compared to interim 2021."[549] 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 in its causation analysis.

286. The Panel otherwise does not have the authority or competence to determine whether the USITC's determination in the injury investigation of OCTG from Argentina is consistent with its previous administrative determinations. As explained in *US – Stainless Steel (Korea) (Panel)*,

> the requirement of uniform administration of laws and regulations must be understood to mean uniformity of treatment in respect of persons similarly situated; it cannot be understood to require identical results where relevant facts differ. Nor do we consider the requirement of reasonable administration of laws and regulations is violated merely because, in the administration of those laws and regulations, different conclusions were reached based upon differences in the relevant facts.[550]

The USITC investigations cited by Argentina addressed entirely different industries, entirely different fact patterns. The USITC's conclusions in those other investigations were reached based on the facts and circumstances unique to those investigations, and the importance of a factor may vary significantly from one investigation to the next because of such differences. For these reasons, the Panel should reject Argentina's contention that the USITC failed to follow in this investigation certain conclusions it may have reached in other, completely different investigations.[551]

287. Argentina has failed to make out its claims. None of Argentina's arguments establish that the USITC's finding of a causal nexus between the cumulated subject imports and the domestic industry's weak performance relative to the strong growth in apparent U.S. consumption from 2020 to 2021 industry was inconsistent with Articles 3.1 and 3.5 of the AD Agreement. The USITC's finding is such as could have been reached by an unbiased and objective investigating authority. Therefore, the United States respectfully requests that the Panel find the USITC's causation analysis, which found a nexus between the cumulated subject

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

[550] *US – Stainless Steel (Korea) (Panel)*, para. 6.51; *see US – Shrimp II (Viet Nam) (Panel)*, para. 7.308 (similarly noting that "a ruling by a domestic court of a Member, applying the domestic law of that Member, cannot establish an inconsistency with WTO obligations").

[551] *See US – Stainless Steel (Korea) (Panel)*, para. 6.50 (noting that the WTO dispute settlement system is not "intended to function as a mechanism to test the consistency of a Member's particular decisions or rulings with the Member's own domestic law and practice; that is a function reserved for each Member's domestic judicial system, and a function WTO panels would be particularly ill-suited to perform" (footnote omitted)).

imports and the injury to the domestic industry during the POI, was not inconsistent with Articles 3.1 and 3.5.

F. The USITC's Examination of Known Factors Other Than the Dumped Imports That May Be Injuring the Domestic Industry Was Not Inconsistent with Articles 3.1 and 3.5 of the AD Agreement

1. The Proper Legal Framework for Understanding the Obligations Set Out in Article 3.5 of the AD Agreement in Regard to the Examination of Known Factors Other Than the Dumped Imports

288. Article 3.5 defines the investigating authority's obligation to conduct an examination of known factors other than dumped imports as follows:

> The authorities shall … examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.[552]

289. The purpose of the examination of other known factors is to ensure the existence of an unsevered causal link between the dumped imports and the injury to the domestic industry. As the report in *EC – Pipe or Tube Fittings (AB)* explained, the Article 3.5 requirement "obligates investigating authorities in their causality determinations not to attribute to dumped imports the injurious effects of other causal factors, so as to ensure that dumped imports are, in fact, 'causing injury' to the domestic industry."[553] The investigating authority's examination of other known factors thus ensures that dumped imports are causing material injury to the domestic industry and that the injury attributed to subject imports is not really caused by these other factors.

290. Given that Article 3.5 does not dictate the methodology that an investigating authority must employ for its examination of other known factors,[554] a panel's role as it reviews the authority's analysis is not to serve as an initial trier of fact, but to assess whether the authority

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[552] AD Agreement, Article 3.5, third and fourth sentences.

[553] *EC – Tube or Pipe Fittings (AB)*, para. 188.

[554] *See US – Ripe Olives (Panel)*, para. 7.306 ("Article 3.5 … do[es] not set out a specific methodology for investigating authorities when undertaking a non-attribution analysis. However, the methods applied by an investigating authority must comport with the overarching obligation in Article 3.1 … to undertake an objective examination based on positive evidence").

"properly established the facts and evaluated them in an unbiased and objective manner."[555] For example, in *US – Countervailing Duty Investigation on DRAMS*, the panel reviewed the methodology used by the USITC for its examination of other known factors and found that the USITC did not attribute the effects of non-subject imports from the effects of dumped imports:

> By ascertaining that the price underselling frequency by non-subject imports was lower than, and increased less than, the underselling frequency of alleged subsidized imports between 2000 and 2002, and that the injurious price effects of non-subject imports were less pronounced than their absolute and relative volumes might otherwise indicate, the ITC effectively separated and distinguished the injurious price effects of alleged subsidized imports from the injurious price effects of the larger volume of non-subject imports. In other words, the ITC demonstrated that alleged subsidized imports had injurious price effects independent of those of the larger volume of non-subject imports. Given that there is no obligation under Article 15.5 to quantify the amount of injury caused by alleged subsidized and non-subject imports respectfully, the ITC has done all that it was required to do.[556]

291. Finally, the "known" factors that an investigating authority is required to examine as part of its analysis generally include only those factors clearly raised by interested parties during the course of the investigation.[557] This accords with the ordinary meaning of the term "known factors." As the panel in *Thailand – H-Beams* observed, while an investigating authority is not precluded from taking the initiative to examine a factor not known to interested parties, "there is no express requirement in Article 3.5 AD that investigating authorities seek out and examine in each case *on their own initiative* the effects of *all* possible factors other than imports that may be causing injury to the domestic industry under investigation."[558]

2. The USITC's Examination of Other Known Factors Ensured That it Did Not Attribute Any Injury from Other Known Factors to the Subject Imports

[555] *US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) (Panel)*, para. 7.82; *see* AD Agreement, Article 17.6(i); *US – Supercalendered Paper (Panel)*, para. 7.40; *China – GOES (Panel)*, paras. 7.51-7.52.

[556] *US – Countervailing Duty Investigation on DRAMS (Panel)*, para. 7.360. Although the panel's finding addressed Article 15.5 of the SCM Agreement, the panel held that the required examination of other known factors is the same in the context of both antidumping and countervailing duty investigations. *See ibid.*, paras. 7.351-7.353.

[557] *See China – Autos (US)*, para. 7.323 ("whether an 'other factor' was 'known' to an IA will normally turn on an evaluation of the extent to which that factor was 'clearly raised' before the IA by interested parties in the course of an investigation").

[558] *Thailand – H-Beams (Panel)*, para. 7.273 (italics original)).

292. The USITC conducted an extensive examination of other known factors to ascertain "whether there are other factors that may have had an adverse impact on the domestic industry during the POI to ensure that we are not attributing injury from such other factors to subject imports."[559]

293. The USITC first examined whether the injury it had attributed to subject imports could have been caused by nonsubject imports. The evidence examined by the USITC 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 average unit values (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.[560] The USITC thus reasonably concluded that "[n]onsubject imports do not explain the injury we have attributed to subject imports."[561]

294. The USITC next examined whether the injury it had attributed to subject imports could have been caused by the domestic industry's supply constraints.[562] This examination found that the domestic industry's supply constraints did not draw subject imports into the U.S. market in 2021. First, large majorities of purchasers rated the availability and reliability of domestically produced OCTG superior or comparable to that of subject imports.[563] This said, the domestic industry nonetheless suffered from substantial unused capacity throughout the POI, "including a capacity utilization rate of [just] 27.6 percent and excess capacity of 4.8 million short tons in 2021, when the [domestic industry's] market share loss occurred."[564] In addition, if, as Tenaris argued during the investigation, short supplies of domestic OCTG necessitated increased subject imports in 2021, then the imports would be expected to command high prices.[565] The evidence demonstrated just the opposite: "subject imports underselling remained nearly as predominant in 2021 as 2020."[566] The USITC thus reasonably concluded that the "record does not indicate that the domestic industry's supply constraints … could account for the industry's market share loss and consequent injury."[567]

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[559] USITC Final Report at 44 (Exhibit ARG-01).

[560] USITC Final Report at 44 (Exhibit ARG-01) (footnotes omitted).

[561] USITC Final Report at 44 (Exhibit ARG-01).

[562] USITC Final Report at 44–45 (Exhibit ARG-01).

[563] USITC Final Report at 44, 44 n.250, at Table II-14 (Exhibit ARG-01).

[564] USITC Final Report at 44 (Exhibit ARG-01); *see ibid*., at Tables III-7–8 (Exhibit ARG-01) (footnote omitted).

[565] USITC Final Report at 44-45 (Exhibit ARG-01).

[566] USITC Final Report at 44-45 (Exhibit ARG-01) (footnote omitted).

[567] USITC Final Report at 44 (Exhibit ARG-01).

295. The USITC also examined whether the injury it had attributed to subject imports could have been caused by distributors who elected to draw down their inventory overhang instead of placing orders with domestic mills. This examination found the "inventory overhang" argument incongruent: "[T]o the extent that inventory overhangs were causing supply constraints, this issue would affect domestic OCTG and imports alike, including subject imports."[568] But this is not what the evidence indicated: In 2021, while domestic producers' production and shipment only grew 16.9 percent and 6.0 percent, respectively, and nonsubject import volume only grew 21.7 percent, subject import volume grew by a staggering 135.6 percent – far exceeding the 32.2 increase in apparent U.S. consumption during this period.[569] This "suggests 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."[570] The USITC considered inventory data for end users and distributors which showed that inventories "were relatively constant between January 2019 and March 2021."[571] Indeed, even Tenaris's preferred inventory data showed that any alleged inventory "bulge" was "largely worked down" before 2021, when the domestic industry lost market share to subject imports.[572] Finally, the evidence demonstrated that "[a]s demand increased in 2021, … inventories grew steadily, consistent with the market, for the rest of 2021 and interim 2022."[573] The USITC thus reasonably concluded that the alleged inventory overhang could not account for the industry's consequent injury. To the contrary, "the industry's weak production, employment, and financial performance and inability to capitalize on the increase in apparent consumption was driven by significant subject import underselling and the cumulated subject import volume."[574]

296. The USITC next examined whether the injury it had attributed to subject imports could have been caused by the so-called "superior availability and technical assistance" afforded by Tenaris's Rig Direct® program. During the POI, Tenaris primarily sold subject imported OCTG to end users through its U.S. sales affiliate – what Tenaris referred to as its Rig Direct® program.[575] Tenaris suggested that this program was superior to the distribution model used by other U.S. producers,[576] but evidence of record demonstrated that domestic producers and their

[568] USITC Final Report at 45 (Exhibit ARG-01).

[569] USITC Final Report at 45 & Table C-1 (Exhibit ARG-01).

[570] USITC Final Report at 45-46 (footnote omitted) (Exhibit ARG-01).

[571] USITC Final Report at 45 (citing II-16 and Table II-4) (Exhibit ARG-01).

[572] USITC Final Report at 45, 45 n.255 (Exhibit ARG-01). Notably the inventory data submitted by Tenaris did not distinguish where in the supply chain inventories were held. *Ibid*., n.255.

[573] USITC Final Report at 45 (Exhibit ARG-01). The USITC observed inventory trend was "supported by industry witnesses at the hearing, who indicated that inventory levels were normalized by the fourth quarter of 2020." USITC Final Report at 45, n.254 (citing Hearing Transcript at 61 (Mendenhall) and 98 (Tait)) (Exhibit ARG-01).

[574] USITC Final Report at 46 (Exhibit ARG-01).

[575] USITC Final Report at 30 n.165 (Exhibit ARG-01).

[576] USITC Final Report at 30 n.165 (Exhibit ARG-01).

distributors provided the same services to end users as the Rig Direct® program.[577] In fact, "[c]ontrary to Tenaris's argument, large majorities of purchasers rated domestically produced OCTG as superior or comparable to subject imports with respect to both availability and technical support/service."[578] Finally, as the USITC observed, Tenaris's Rig Direct® program could not explain the market share that the domestic industry lost to subject imports not sold via this program.[579] The USITC thus reasonably concluded that the Rig Direct® program did not explain the injury that the USITC attributed to subject imports.

297. Finally, the USITC examined whether the injury it had attributed to subject imports could have been caused by rising domestic HRC prices, labor shortages, or intra-industry competition, and found each of these arguments unavailing.[580] First, rising HRC prices had no impact on domestic producers of seamless OCTG, because they used steel billets – not HRC – as their raw material input. These producers "were fully capable of serving the increase in OCTG demand from 2020 to 2021 in light of their low rate of capacity utilization … and the interchangeability of seamless OCTG for welded OCTG."[581] Indeed, while respondents argued that welded OCTG could not be used interchangeably with seamless OCTG in some applications, no party alleged the inverse. Second, labor shortages did not significantly constrain domestic production given the evidence demonstrated 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."[582] Finally, intra-industry competition could not "explain the domestic industry's loss of market share to subject import from 2020 to 2021,"[583] because the entirety of that loss went to subject imports.[584] The USITC thus reasonably concluded that HRC prices, labor shortages, and intra-industry competition did not explain the injury that the USITC attributed to subject imports.

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[577] USITC Final Report at 46 (Exhibit ARG-01); *see* Petitioners' Public Posthearing Brief, Exhs. 3-4 (Exhibit USA-26).

[578] USITC Final Report at 46 (Exhibit ARG-01) (footnote omitted).

[579] USITC Final Report at 46 (Exhibit ARG-01).

[580] USITC Final Report at 46-47 (Exhibit ARG-01).

[581] USITC Final Report at 46 (citing Tables III-7–8 (showing that the excess capacity of domestic seamless producers was sufficient to supply the entire increase in demand and that the proportion of seamless production, as a share of total domestic production, increased from 2020 to 2021)) (footnote omitted) (Exhibit ARG-01).

[582] USITC Final Report at 46-47 (footnote omitted) (Exhibit ARG-01).

[583] USITC Final Report at 47 (Exhibit ARG-01).

[584] Indeed, it is nonsensical to insist that the domestic industry's loss of market share resulted from the industry taking market share from itself: Any loss in the domestic industry's market share can only be attributed to subject imports, nonsubject imports, or a combination thereof. Any re-allocation of market shares among domestic producers does not in and of itself constitute a loss of domestic market share.

298. Based on the positive evidence of record, the USITC fully and objectively considered all known factors as required by Article 3.5, including those factors raised by interested parties during the investigations, to ensure that it did not attribute any alleged injury from known factors to the subject imports. Accordingly, the USITC's finding that the injury to the domestic industry could not have been caused by other known factors is one that could have been, and was, reached by an objective and unbiased investigating authority.

3. Argentina Fails to Establish that the USITC's Examination of Other Known Factors is Inconsistent with Articles 3.1 and 3.5 of the AD Agreement[585]

299. Argentina argues that the USITC failed to ensure that injury to the domestic industry caused by following known factors was not attributed the dumped imports as required by Articles 3.1 and 3.5 of the AD Agreement: (1) the Russia/Saudi oil supply/price war and the COVID-19 pandemic; (2) Tenaris's role in the U.S. OCTG market, including Tenaris's Rig Direct® program, and intra-industry competition; and (3) supply constraints, including HRC prices, labor shortages, and inventory issues.[586]

300. Argentina's arguments about the USITC examination of other known factors largely criticize the USITC for failing to adopt the arguments put forward by Tenaris in the underlying investigation. Presenting an alternative analysis of the facts cannot establish that the findings made by the USITC do not reflect an objective examination or are unsupported by positive evidence.[587] Rather, Argentina must show that an objective and unbiased investigating authority could not have reached the same determination, which, as the United States demonstrates below, it has failed to do.

Russia/Saudi Oil Price War and COVID-19

301. Argentina's argument that the USITC did not adequately address the effects of the Russia/Saudi price war on demand early in the POI[588] is factually inaccurate. First, the USITC

[585] As an initial matter, the Panel should reject Argentina's argument that the USITC's examination of other known factors is inconsistent with Articles 3.1 and 3.5 based on its decision to cumulate imports in the investigations. Argentina's First Written Submission, paras. 511, 611. These allegations are completely dependent on the success of its cumulation-specific claims under Articles 3.1 and 3.3. As discussed above in section IV, the USITC's decision to cumulate imports in the OCTG investigations was not inconsistent with Article 3.1 or Article 3.3 of the AD Agreement, and therefore that decision was not inconsistent with Article 3.1 or Article 3.5 to the extent this decision implicated its examination of other known factors.

[586] Argentina's First Written Submission, paras. 6.11-634.

[587] *See US – Softwood Lumber VI (Article 21.5 – Canada) (AB)*, para. 99 ("in its assessment of whether the conclusions reached by an investigating authority are reasoned and adequate, '[a] panel may not reject an [investigating authority's] conclusions simply because the panel would have arrived at a different outcome if it were making the determination itself'" (quoting *US – Countervailing Duty Investigation on DRAMS (AB)*, para. 187)).

[588] Argentina's First Written Submission, paras. 611, 613-619. Argentina concedes that their concern is that "the USITC failed to properly consider record evidence establishing that there was a *dramatic decline in demand* for

indicated in its preliminary report of this investigation that Tenaris had identified the "OPEC/Russia supply war" as a factor contributing to the declining OCTG demand in the U.S. market at the beginning of the POI.[589] The USITC's final determination rests on "the record developed in the subject investigation," which includes its preliminary report.[590] Second, the USITC in its final determination specifically recognized that "U.S. oil and gas prices fell irregularly from January 2019 to mid-2020, and then increased irregularly though the end of the POI."[591] The record of the investigation thus clearly 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 thoroughly evaluated this effect on the domestic industry.[592] It is thus immaterial that the USITC did not utter the term "OPEC/Russia supply war" or "Russia/Saudi oil supply/price war" as part of its Article 3.5 analysis, because it is obvious from the record of the investigation that the USITC fully evaluated the impact of this event as part of its final determination.

302. Argentina acknowledges that the USITC examined "the impact of the COVID-19 pandemic in its determination,"[593] but nonetheless asserts that the USITC's discussion of this impact was "cursory."[594] As demonstrated by the record of the investigation, the USITC 's analysis of the impact of the COVID-19 pandemic pervades the entire USITC final report.[595] The USITC's analysis of this impact thus is far from cursory, and Argentina's arguments to the contrary are nothing more than an invitation for the Panel to conduct a *de novo* examination of the investigatory record and substitute its judgment for the USITC's. The Panel should reject this invitation and find Argentina's claim unavailing.

303. 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 investigating authority shall examine "any known factors other than the dumped imports which

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OCTG during the early part of the POI caused by the Russia/Saudi oil supply/price war, which was exacerbated by the COVID-19 pandemic." Argentina's First Written Submission, para. 613 (italics added).

[589] USITC Preliminary Report at 31 n.179 (Exhibit USA-19).

[590] USITC Final Report at 1 (citing section 207.2(f) of the USITIC's Rules of Practice and Producer (19 CFR 207.2(f)), which defines the record of investigation as including, in part, the USITC's preliminary determination) (Exhibit ARG-01).

[591] USITC Final Report at 27 and 27 n.138 (citing Table E-1, which reports the price of crude oil by month, January 2019-August 2022) (Exhibit ARG-01).

[592] USITC Final Report at 27 and 44 (the record of underlying investigation demonstrates that the USITC evaluated demand trends throughout the POI as related to the following OCTG demand indicators: (1) apparent U.S. consumption; (2) active U.S. rig count; and (3) U.S. oil and gas prices) (Exhibit ARG-01).

[593] Argentina's First Written Submission, para. 617.

[594] Argentina's First Witten Submission, paras. 614-615.

[595] *E.g.*, USITC Final Report at 27-28, 40, 43 n.243, 45 n.256.

at the same time are injuring the domestic industry."[596] As reported in the USITC's final determination, "Petitioners and Tenaris agree that OCTG demand in the United States, after declining through August 2020 due to the COVID-19 pandemic, recovered thereafter through the end of the POI."[597] On the other hand, the USITC's causation analysis 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."[598] Therefore, 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, the Panel should reject Argentina's argument as immaterial because 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 domestic industry.

304. Finally, the Panel should reject Argentina's contention that the Panel should find that the USITC acted inconsistent with Article 3.5 because the USITC's conclusion differed from its injury determinations in dissimilar investigations and another country's injury determination in an investigation of OCTG from Mexico.[599] As discussed in relation to similar arguments made by Argentina about the USITC's causation analysis,[600] the Panel does not have the authority or competence to determine whether the USITC's determination in the injury investigation of OCTG from Argentina is consistent with its previous administrative determinations. The USITC investigations cited by Argentina addressed entirely different industries, entirely different fact patterns. The WTO dispute settlement system is not "intended to function as a mechanism to test the consistency of a Member's particular decisions or rulings with the Member's own domestic law and practice; that is a function reserved for each Member's domestic judicial system, and a function WTO panels would be particularly ill-suited to perform."[601] WTO panels are similarly ill-suited to compare different investigations conducted by different WTO Members.[602] Therefore, the Panel should summarily reject Argentina's contention that the USITC failed to follow in this investigation certain conclusions it may have reached in other, completely different investigations.

Tenaris's Role in the Domestic Industry, Including Tenaris's Rig Direct® Program, and Intra-Industry Competition

[596] AD Agreement, Article 3.5, third sentence (underline added).

[597] USITC Final Report at 27 (footnote omitted) (underline added) (Exhibit ARG-01).

[598] USITC Final Report at 43 (footnote omitted) (underline added) (Exhibit ARG-01).

[599] Argentina's First Witten Submission, paras. 616-617 and 6.17 n.702.

[600] U.S. First Written Submission, Subsection V.E.3.

[601] *US – Stainless Steel (Korea) (Panel)*, para. 6.50.

[602] Canada's injury investigation of OCTG from Mexico necessarily considered a different domestic industry, different subject imports, different import volumes, different price effects, etc., during a different POI. *See* Tenaris Prehearing Brief, Exhibit 61 (Exhibit ARG-04).

305. Argentina argues that the USITC failed to consider that Tenaris, "due to its investments of more than $10 billion to produce and sell OCTG in the United States, … would not import in a manner that would harm the U.S. industry, which includes its own investments."[603] The USITC included Tenaris as a member of the domestic industry.[604] As such, the USITC's causation analysis, in which the USITC analyzed the causal relationship between the dumped imports and the injury to the domestic industry, necessarily included data about Tenaris. Tenaris thus cannot be considered an 'other factor' for purposes of the Article 3.5 'other known factors' analysis, because doing so replicates the analysis of the causal relationship between dumped imports (including imports by Tenaris) and the injury to the domestic industry (including Tenaris, but also including other domestic producers) that forms the basis of the Article 3.5 causation analysis.[605] It is also internally inconsistent to argue that Tenaris "would not import in a manner that would harm the U.S. industry" and yet also argue that intra-industry competition explains injury to the domestic industry.

306. Argentina also argues that the USITC dismissed evidence about Tenaris's Rig Direct® program.[606] As demonstrated in subsection V.F.2 of the U.S. submission, *supra*, the USITC fully addressed Tenaris's Rig Direct® program and reasonably and adequately explained why the record did not support finding that the alleged superiority of this program, rather than underselling, explained the market share shift to dumped imports.[607]

> Contrary to Tenaris's argument, large majorities of purchasers rated domestically produced OCTG as superior or comparable to subject imports with respect to both availability and technical support/service. Moreover, Petitioners have submitted signed declarations and supporting documentation corroborating that domestic producers in combination with their distributors provide the same services as Rig Direct. Finally, we note that the domestic industry not only lost market share to subject imports from Argentina and Mexico, primarily imported by Tenaris, but also to subject imports from Russia and South Korea that were not sold via Rig Direct.[608]

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[603] Argentina's First Witten Submission, para. 620; *see ibid.*, paras. 620-622, 624.

[604] USITC Final Report at 13-16 (including Tenaris USA in the domestic industry) (Exhibit ARG-01).

[605] The panel report in *China – Autos (US)*, which Argentina discusses, does not support Argentina's position because, unlike here, the investigating authority in that matter did not address "'the role of Chinese producers not part of the domestic industry … in connection with the analysis of causation.'" Argentina's First Written Submission, para. 626 (quoting *China – Autos (US)*, para. 7.332 (underline added)).

[606] Argentina's First Written Submission, paras. 623, 627.

[607] USITC Final Report at 30 n.165, 46 (Exhibit ARG-01).

[608] USITC Final Report at 46 (Exhibit ARG-01).

The Panel thus should reject Argentina's alternative, bias interpretation of the facts as well as its invitation for the Panel to substitute its judgment for that of the USITC.

307. Finally, Argentina argues that the USITC did not fully examine intra-industry competition.[609] It is important to place in context what is meant by the phrase "intra-industry competition" in the context of the underlying investigation. In its prehearing brief, Tenaris argued that the "one price for its OCTG offerings, regardless of whether the OCTG is produced in a Tenaris mill in the United States or another country," its "business model and approach to supplying the domestic markets in which Tenaris operates," constitutes intra-industry competition.[610] In its posthearing brief, Tenaris similarly argued that "this case is about Tenaris's innovative business model, and the Commission must not attribute to subject imports the effect of [this] healthy intra- industry competition."[611] In other words, "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. As the United States has demonstrated in great detail in this submission, the USITC thoroughly examined, and was unpersuaded by,[612] these aspects of Tenaris's business model (aka intra-industry competition). It thus was reasonable that the USITC, after examining the redundant arguments in Tenaris's prehearing and posthearing briefs,[613] remained "unpersuaded … that intra-industry competition explains any injury to the domestic industry"[614] and found that "[i]ntra-industry competition cannot explain the domestic industry's loss of market share to subject imports from 2020 to 2021."[615]

308. For the above reasons, the Panel should find Argentina's claims in regard to Tenaris's role in the domestic industry, Tenaris's Rig Direct® program, and intra-industry competition are without merit.

Supply Constraints, Including HRC Prices, Labor Shortages, and Inventory Issues

309. Argentina argues that the USITC violated Articles 3.1 and 3.5 because it failed to undertake an objective examination of known supply constraints – high HRC prices, labor shortages, inventory overhangs.[616] To the contrary, the USITC explicitly addressed each of these

[609] Argentina's First Written Submission, paras. 624-625.

[610] Tenaris Prehearing Brief at 61-62 (Exhibit ARG-04) (cited at USITC Final Report at 46 (Exhibit ARG-01)).

[611] Tenaris Posthearing Brief at 2 (Exhibit ARG-29) (cited at USITC Final Report at 46 (Exhibit ARG-01)).

[612] *See*, *e.g.*, USITC Final Report at 37 n.206 (one price approach), 46 (Rig Direct® program)

[613] USITC Final Report at 47 and 47 n.266 (citing Tenaris's Prehearing Brief at 60 and Tenaris's Posthearing Brief at 2) (Exhibit ARG-01).

[614] USITC Final Report at 47 (Exhibit ARG-01).

[615] USITC Final Report at 47 (Exhibit ARG-01).

[616] Argentina's First Written Submission, paras. 628–632.

factors, finding that they did not explain the market share loss and consequent injury to the domestic industry caused by the subject imports.[617]

310. For example, in response to Tenaris's argument about HRC prices, the USITC found as follows:

> [E]ven if increasing HRC prices helped reduce domestic production of welded OCTG, domestic producers of seamless OCTG, which utilize steel billets as their raw material input, were unaffected by changes in HRC prices. Domestic producers of seamless OCTG were fully capable of serving the increase in OCTG demand from 2020 to 2021 in light of their low rate of capacity utilization, *** percent in 2021, and the interchangeability of seamless OCTG for welded OCTG.[618]

311. In addition, no party to the investigations ever disputed that seamless OCTG can be used in place of welded OCTG in all applications; it was only alleged that welded OCTG cannot be used in place of seamless OCTG in certain more demanding applications.[619] The record evidence considered and referenced by the USITC also showed that seamless OCTG's share of total domestic production increased significantly from 2020 to 2021, which belies Argentina's assertion that the USITC had failed to show that seamless OCTG producers were filling the supply gap.[620] Therefore, based on an objective examination of the positive evidence on record, the USITC reasonably concluded that rising HRC prices did not explain the injury that the USITC attributed to subject imports.

312. In response to Tenaris's argument labor shortages, the USITC found as follows:

> [R]esponding domestic producers and domestic industry witnesses at the hearing indicated that they were capable of hiring 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.[621]

313. On this point, the USITC took into account the testimony of Robert J. Beltz, General Manager – Commerce, United Steel Tubular Products, Inc.: "'{w}e had the people. We had the

[617] USITC Final Report at 44-47 (Exhibit ARG-01).

[618] USITC Final Report at 46 (Exhibit ARG-01).

[619] *See, e.g.*, Tenaris's Public Prehearing Brief at 37-38 (Exhibit ARG-04).

[620] USITC Final Report at 46-47, n. 265 (*citing* II-13, Table III-5, Hearing Transcript at 67 (Beltz) & 68 (Dorn)); *see* USITC Final Report at Tables III-26-27 (Exhibit ARG-01).

[621] USITC Final Report at 46-47 (Exhibit ARG-01).

availability.'"[622] The USITC also took into account the testimony of Scott M. Dorn, Head of Tubular Solutions, United States Steel Tubular Products: "'we started up our electric arc furnace in October of 2020, and we hired 150 people during that time frame … and we also hired employees throughout our production facilities through this timeframe.'"[623] Although Argentina considers these statements "self-serving,"[624] Argentina did not claim in its panel request that the USITC's decision to rely on this data violated either Article 5.1[625] or Article 6.6[626] of AD Agreement. Therefore, based on an objective examination of the positive evidence on record, the USITC reasonably concluded that labor shortages did not explain the injury that the USITC attributed to subject imports.

314. In response to Tenaris's arguments about inventory overhangs, the USITC found as follows:

> As an initial matter, we note that even Tenaris's preferred inventory data, derived from ***, show that any alleged inventory "bulge" was largely worked down by the end of 2020, prior to the domestic industry's loss of market share to subject imports in 2021. Thus, any such inventory overhang would not explain why the 32.2 percent increase in apparent consumption from 2020 to 2021, unmet by existing inventories, was satisfied by increased subject imports rather than domestic producers. Second, inventory data from ***, which includes inventory of OCTG held by end users and distributors, indicates that monthly inventory levels of OCTG – which include sourcing from both domestic producers and importers – were relatively constant between January 2019 and March 2021, with small fluctuations above and below a level of about *** net tons. Thus, these data suggest no "massive" draw down of inventories in 2020, as Tenaris describes. As demand increased in 2021, these inventories grew steadily, consistent with the market, for the rest of 2021 and interim 2022. Finally, to the extent that inventory overhangs were causing supply constraints, this issue would affect domestic OCTG and imports alike, including subject imports. However, the record indicates otherwise. Inventories may have had some effect on delaying domestic producers' resumption of production and shipments,

[622] USITC Final Report at 47 n.265 (Exhibit ARG-01).

[623] USITC Final Report at 47 n.265 (Exhibit ARG-01)

[624] Argentina's First Written Submission, para. 630.

[625] *See* AD Agreement, Article 5.1 (the term "investigation" in this provision indicates that the investigating authority must conduct an examination of the relevant issues that is active, systematic, and careful).

[626] *See* AD Agreement, Article 6.6 ("the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based").

> which only grew 16.9 percent and 6.0 percent, respectively, in 2021, and on nonsubject import volume, which only grew 21.7 percent in 2021. However, at the same time, cumulated subject import volume grew by 135.6 percent, with significant increases in volume from all subject countries which suggests 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.[627]

The USITC thus fully explained why inventory overhangs did not explain the injury that the USITC attributed to subject imports.

315. In sum, it is undisputable that the USITC conducted an objective examination of the positive evidence about supply constraints. Based on that examination, the USITC was "unpersuaded by Tenaris's argument that any injury to the domestic industry is explained by the industry's supply constraints and not subject imports."[628] Argentina's arguments to the contrary are nothing more than an invitation for the Panel to conduct a *de novo* examination of the investigatory record and substitute its judgment for the USITC's. The Panel should reject this invitation and find all of Argentina's claims unavailing.

Conclusion

316. None of Argentina's arguments establish that the USITC's examination of other known factors was inconsistent with Articles 3.1 and 3.5 of the AD Agreement. The USITC in its determination examined each of the factors raised by Argentina in its first written submission and ensured that it did not attribute any injuries from other known factors to the subject imports. The USITC provided a reasoned explanation of the nature and extent of the injurious effects, if any, of each of the identified factors other than subject imports at issue in the underlying investigations. The USITC explained why these other factors could not account for the adverse effects that it had attributed to the subject imports. The USITC's finding is such as could have been reached by an unbiased and objective investigating authority. Therefore, the United States respectfully requests that the Panel find the USITC's examination of other known factors, which found that subject imports had an unsevered causal link between the dumped imports and the

[627] USITC Final Report at 45-46 (Exhibit ARG-01) (footnotes omitted).

[628] USITC Final Report at 44 (footnote omitted) (Exhibit ARG-01). Argentina does not otherwise contest the USITC's findings that supply constraints were reported for both the domestic industry and subject imports and that large majorities of purchasers reported that the domestic product was superior or comparable to subject imports in terms of availability. *See ibid.* Similarly uncontested are the USITC's findings that the domestic industry had 4.8 million short tons of excess capacity in 2021 – capacity more than sufficient to satisfy the increase in U.S. demand during the POI – and that underselling trends did not support that subject imports were drawn into the U.S. market. *See ibid*., at 44-45.

injury to the domestic industry, was not inconsistent with Articles 3.1 and 3.5 of the AD Agreement.

VI. ARGENTINA'S CONSEQUENTIAL CLAIMS UNDER ARTICLES 1 AND 18.1 OF THE AD AGREEMENT AND ARTICLE VI OF THE GATT 1994 REGARDING THE AD INVESTIGATION OF OCTG FROM ARGENTINA ARE WITHOUT MERIT

317. Argentina argues that, based on its assertion that aspects of the USITC's and USDOC's investigations at issue here are inconsistent with certain paragraphs of Articles 3, 5, and 6 of the AD Agreement, those aspects are also inconsistent with Articles 1 and 18.1 of the AD Agreement and Article VI of the GATT 1994.[629] Therefore, Argentina's claims under Articles 1 and 18.1 of the AD Agreement and Article VI of the GATT 1994 are entirely consequential to its other claims addressed above, which Argentina concedes.[630] Because there is no inconsistency with those other claims, as discussed above, then by Argentina's own logic, the USITC and USDOC's analyses are not inconsistent with these latter articles either.[631] Therefore, the Panel should find that the USDOC and USITC did not act inconsistently with the GATT 1994 or AD Agreement.

VII. SECTION 771(7)(G) OF THE TARIFF ACT OF 1930, AS AMENDED (19 U.S.C. § 1677(7)(G)), IS NOT INCONSISTENT AS SUCH WITH ARTICLE 3 OF THE AD AGREEMENT

318. Argentina argues that section 771(7)(G) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(7)(G)), which contains the cumulation provision of the U.S. antidumping statute, is inconsistent, as such, with Articles 3.1, 3.2, 3.3, 3.4, and 3.5 of the AD Agreement.[632] Based on its reading of this provision, Argentina contends that such "cross-cumulation" is inconsistent with Article 3.3, and also with Articles 3.1, 3.2, 3.4, and 3.5, to the extent such cumulation implicates the USITC's analyses of volume and price effects, impact on the domestic industry, and causal link.[633]

319. Argentina's arguments are without merit. Article 3.3 of the AD Agreement does not prohibit an investigating authority from cumulating dumped imports from some sources with subsidized, non-dumped imports from other sources in examining whether material injury exists. To the extent section 771(7)(G) requires such cumulation in certain circumstances, the statutory provision is not inconsistent with Article 3.3 of the AD Agreement. Because Article 3.3 does not

[629] Argentina's First Written Submission, paras. 655-664.

[630] Argentina's First Written Submission, para. 664.

[631] Argentina's First Written Submission, para. 664.

[632] Argentina's First Written Submission, para. 665.

[633] Argentina's First Written Submission, paras. 662, 700-723.

prohibit such cumulation, section 771(7)(G) is not inconsistent with Articles 3.1, 3.2, 3.4, or 3.5 either.

320. The United States provides background on section 771(7)(G) of the Tariff Act of 1930, as amended, in subsection VII.A. In subsection VII.B, the United States refutes Argentina's contentions that this provision is inconsistent with Articles 3.1, 3.2, 3.3, 3.4, and 3.5 of the AD Agreement.

A. Background Regarding Section 771(7)(G) of the Tariff Act of 1930, as Amended

321. The provisions of section 771(7)(G) of the Tariff Act (19 U.S.C. § 1677(7)(G)), particularly subparagraph (i), require the USITC to cumulate dumped or subsidized imports from multiple countries subject to antidumping or countervailing duty investigations if certain criteria are met.[634] Specifically, section 1677(7)(G)(i) provides that, in original injury investigations:

> the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which:
>
> (I) petitions were filed under section 1671a(b)[635] or 1673a(b)[636] of this title on the same day,
>
> (II) investigations were initiated under section 1671a(a)[637] or 1673a(a)[638] of this title on the same day, or
>
> (III) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under 1671a(a) or 1673a(a) of this title on the same day,
>
> if such imports compete with each other and with domestic like products in the United States market.[639]

322. Section 1677(7)(G)(ii), which Argentina does not challenge, provides that the USITC may *not* cumulatively assess the volume and effect of imports in an injury investigation, if the

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[634] Argentina's First Written Submission, paras. 666, 672-681.

[635] Section 1671a(b) is the section of the U.S. statute relating to the filing of a countervailing duty petition and the subsequent initiation of a countervailing duty investigation. 19 U.S.C. § 1671a(b) (Exhibit ARG-13).

[636] Section 1673a(b) is the section of the U.S. statute relating to the filing of an antidumping duty petition and the subsequent initiation of the antidumping duty investigation. 19 U.S.C. § 1673a(b) (Exhibit ARG-10).

[637] Section 1671a(a) authorizes the USDOC to initiate a countervailing duty investigation on its own initiative. 19 U.S.C. § 1671a(a) (Exhibit ARG-13).

[638] Section 1673a(a) authorizes the USDOC to initiate an antidumping duty investigation on its own initiative. 19 U.S.C. § 1673a(a) (Exhibit ARG-10).

[639] 19 U.S.C. § 1677(7)(G)(i) (Exhibit ARG-35).

investigation has been terminated,[640] or if the USDOC has made a preliminary negative determination for the imports, unless the USDOC has subsequently made a final affirmative determination with respect to those imports before the Commission's final determination is made.[641] That is, subparagraph (ii) contains exceptions to subparagraph (i).[642]

B. Section 771(7)(G) of the Tariff Act of 1930, as Amended, Is Not Inconsistent with Articles 3.1, 3.2, 3.3, 3.4, or 3.5 of the AD Agreement

323. Argentina alleges that section 771(7)(G) of the Tariff Act of 1930, as amended, is inconsistent as such with Article 3.3 of the AD Agreement, on the basis that Article 3.3 prohibits cross-cumulation of imports subject to AD and CVD investigations for purposes of making a material injury determination.[643] As discussed in section IV.A above in addressing Argentina's claims regarding the USITC's decision to cross-cumulate imports in the OCTG investigations, a proper interpretation of Article 3.3 of the AD Agreement reveals that nothing in the text of Article 3.3 prohibits the cumulation of subsidized imports with imports that are dumped. That is, Article 3.3 does not itself contain any language that would prevent Members from cumulating dumped and subsidized imports in original investigations. For this reason, to the extent section 771(7)(G) requires such cross-cumulation, it is not inconsistent as-such with Article 3.3.

324. Article 3.3 is the only part of the AD Agreement that discusses cumulation of imports. Argentina's remaining claims under Articles 3.1, 3.2, 3.4, and 3.5 appear to be premised on its assertion that cross-cumulation is not permitted under Article 3.3, such that cross-cumulation in the context of analyzing volume and price effects, impact on the domestic industry, and causal link is inconstant with these remaining articles.[644] Thus, Argentina's Article 3.1, 3.2, 3.4, and 3.5 claims are consequential in nature. Given that section 771(7)(G) is not inconsistent with Article 3.3, it is not inconsistent with Articles 3.1, 3.2, 3.4, or 3.5 either. Finally, to the extent Argentina is basing its arguments against section 771(7)(G)(i) under Articles 3.1, 3.2, 3.4, or 3.5 on the presence of the term "dumped imports" and not the phrase "subsidized imports," the United States refers to its arguments on this point in section IV.A above.

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[640] 19 U.S.C. § 1677(7)(G)(ii)(II) (Exhibit ARG-35). For the purposes of section 1677(7)(G)(ii)(II), an investigation is considered terminated if the USITC finds that imports from the country are negligible, the USITC has previously made a negative determination for imports from the country, or if the USDOC makes a negative AD or CVD determination for imports from the country.

[641] 19 U.S.C. § 1677(7)(G)(ii)(I) (Exhibit ARG-35). Section 1677(7)(G) also contains provisions relating to determinations for countries subject to the Caribbean Basin Economic Recovery Act and any country involved in a free trade agreement with the United States in effect before January 1, 1987. 19 U.S.C. § 1677(7)(G)(ii)(III), (IV) (Exhibit ARG-35). Neither provision is at issue here.

[642] Section 771(7)(G) also contains subparagraphs (iii) and (iv), which contains provisions regarding the final record of a USITC proceeding and regional industry determinations, respectively. 19 U.S.C. § 1677(7)(G)(iii)-(iv) (Exhibit ARG-35). Argentina does not appear to challenge either of these subparagraphs.

[643] Argentina's First Written Submission, paras. 696-699.

[644] Argentina's First Written Submission, paras. 705-706, 713-715, 721-723.

VIII. CONCLUSION

325. For the foregoing reasons, the United States respectfully requests that the Panel reject all of Argentina's claims.

326. Alternatively, if the Panel should find in Argentina's favor, the United States requests that the Panel decline Argentina's request that it suggest that the United States "terminate the duties imposed" and "repeal the definitive anti-dumping measure on imports of OCTG from Argentina."[645] In general, panels have declined requests to make additional suggestions under Article 19.1 of the DSU, and for good reason. A Member generally has many options available to bring a measure into conformity with its WTO obligations. As the panel noted in *US – Softwood Lumber VI*, Article 21.3 of the DSU makes clear that "the choice of means of implementation is decided, in the first instance, by the Member concerned."[646] Therefore, the Panel should decline Argentina's request and limit itself to the recommendation set forth in the first sentence of DSU Article 19.1.

[645] Argentina's First Written Submission, paras. 727-729 (citing *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 Fed. Reg.70,785 (Dep't of Commerce Nov. 21, 2022) (Exhibit ARG-08)).

[646] *US – Softwood Lumber VI (Panel)*, para. 8.8.