

US – ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS¹

(DS282)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Mexico	ADA Arts. 3 and 11	Establishment of Panel	29 August 2003
			Circulation of Panel Report	20 June 2005
Respondent	United States		Circulation of AB Report	2 November 2005
			Adoption	28 November 2005

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Determinations by the United States Department of Commerce ("USDOC") and the International Trade Commission ("ITC") in the sunset review of the anti-dumping duties on Oil Country Tubular Goods ("OCTG") imports as well as laws and regulations governing sunset reviews.
- Product at issue: OCTG imports from Mexico.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

Art. 11.3 (sunset review): dumping

- Sunset Policy Bulletin ("SPB") as such: The Appellate Body reversed the Panel's finding that the SPB *as such* was inconsistent with ADA Art. 11.3 due to the Panel's failure to make "an objective assessment of the matter and the facts of the case" as required by DSU Art. 11. The Panel initially found that the SPB established an "irrebuttable presumption" of likelihood of dumping inconsistently with Art. 11.3, as the USDOC treated the standard set out in SPB as conclusive or determinative as to the "likelihood" of continuation or recurrence of dumping in "sunset reviews".
- "Likelihood of dumping" standard as applied: The Panel concluded that the USDOC's determination of likelihood of continuation/recurrence of dumping in the sunset review at issue was inconsistent with Art. 11.3 because it had failed to consider relevant evidence submitted by Mexican exporters and almost exclusively relied on the basis of a decline in imports volumes alone.

Art. 11.3 (sunset review): injury

- Likelihood of injury standard as such and as applied: The Appellate Body upheld the Panel's finding that US laws dealing with the likelihood of continuation or recurrence of injury in sunset reviews were not inconsistent *as such* with Arts. 11 or 3, because Art.11.3 does not establish any rules regarding the time-frame for such determination and the temporal elements of Art. 3.7 and 3.8 are not directly applicable in sunset reviews. The Appellate Body also stated that where the determination of likelihood of dumping is flawed, it does not follow that the likelihood of injury determination is *ipso facto* flawed as well. The Panel found that the ITC did not act inconsistently with Arts. 11.3 or 3 in its determination of likelihood of continuation or recurrence of injury.
- Cumulation analysis: The Appellate Body upheld the Panel's finding that the ITC's decision to conduct a cumulative assessment of imports from different countries in its likelihood of injury determination was not inconsistent with Arts. 3.3 and 11.3. The Panel found that "the silence of the [AD] Agreement on cumulation in sunset reviews" must mean that cumulation is permitted, and hence the conditions under Art. 3.3 only apply to original investigations, not to sunset reviews.

Art. 11.3 (sunset review): causation

- Causation: The Appellate Body found that the Panel did not act inconsistently with DSU Art. 11 in rejecting Mexico's claims relating to causation, as it considered that Art. 11.3 does not require re-establishing a causal link (established under Art. 3), as a matter of legal obligation, in a sunset review and that "what is essential for an affirmative determination under Article 11.3 is proof of likelihood of continuation or recurrence of dumping and injury, if the duty expires".

¹ *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*

² Other issues addressed: ADA Art. 11.2; GATT Art. X:2; submission of evidence at late stages; a prima facie case; panel's analysis of the evidence; terms of reference; jurisdiction to address certain issues on its own motion; panel's exercise of judicial economy; Mexico's request to make a specific recommendation for implementation.