UNITED STATES – COUNTERVAILING DUTY MEASURES ON
SUPERCALENDERED PAPER FROM CANADA

Recourse to Article 22.6 of the DSU by the United States

(DS505)

RESPONSES OF THE UNITED STATES OF AMERICA
TO THE SECOND SET OF QUESTIONS FROM THE ARBITRATOR

June 15, 2021

United States – Countervailing Duty Measures on
Supercalendered Paper from Canada: Recourse to Article 22.6
of the DSU by the United States (DS505)

U.S. Responses to Second Set of Questions
June 15, 2021
Page i

TABLE OF CONTENTS

United States – Countervailing Duty Measures on
Supercalendered Paper from Canada: Recourse to Article 22.6
of the DSU by the United States (DS505)

U.S. Responses to Second Set of Questions
June 15, 2021
Page ii

United States – Countervailing Duty Measures on
Supercalendered Paper from Canada: Recourse to Article 22.6
of the DSU by the United States (DS505)

U.S. Responses to Second Set of Questions
June 15, 2021
Page iii

TABLE OF REPORTS AND AWARDS

Short Form	Full Citation
US – Anti-Dumping Methodologies (China) (Article 22.6 – US)	Decision by the Arbitrators, *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China – Recourse to Article 22.6 of the DSU by the United States,* WT/DS471/ARB, 1 November 2019
US – Differential Pricing Methodology (Panel)	Panel Report, *United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, WT/DS534/R and Add.1, circulated 9 April 2019
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 – Washing Machines (Korea) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (Recourse to Article 22.6 of the DSU by the United States)*, WT/DS464/ARB, 8 February 2019
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 – 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

United States – Countervailing Duty Measures on
Supercalendered Paper from Canada: Recourse to Article 22.6
of the DSU by the United States (DS505)

U.S. Responses to Second Set of Questions
June 15, 2021
Page iv

TABLE OF EXHIBITS

Exhibit No.	Description
	U.S. Written Submission
USA-1	U.S. Solution and Computer Code for the Armington Partial Equilibrium Model
USA-2	Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada ("Supercalendered Paper IDM") (excerpt)
USA-3	Final Determination Calculations for Resolute FP Canada Inc. ("Resolute's Calculation Memo")
USA-4	19 U.S.C. § 1671d
USA-5	Table of GTAP Sectors with Number of Harmonized Tariff Schedule ("HTS") Categories
USA-6	Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination, 80 Fed. Reg. 63535 (Oct. 20, 2015)
USA-7	Calculation of the All-Others Rate for the Final Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada ("Supercalendered Paper All Others Rate Calculation Memo"), Oct. 13, 2015
USA-8	Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Amended All Others Rate Calculation for Final Determination Memo, Dec. 4, 2017
USA-9	Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Amended All Others Rate Calculation for Final Determination Attachment, Dec. 4, 2017
USA-10	Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders, 85 Fed. Reg. 52543 (Aug. 26, 2020)
USA-11	Sample U.S. Model Data File
USA-12	*Supercalendered Paper from Canada*, USITC Publication 4583, Investigation No. 701-TA-530 (Final), December 2015 (excerpt)

United States – Countervailing Duty Measures on
Supercalendered Paper from Canada: Recourse to Article 22.6
of the DSU by the United States (DS505)

U.S. Responses to Second Set of Questions
June 15, 2021
Page v

Exhibit No.	Description
U.S. Responses to First Set of Questions	
USA-13	19 U.S.C. § 1671b
USA-14	19 U.S.C. § 1671e
USA-15	19 U.S.C. § 1675
USA-16	19 U.S.C. § 1677e
USA-17	19 U.S.C. § 1677f
USA-18	19 C.F.R. § 351.212
USA-19	19 C.F.R. § 351.306
USA-20	Paul S. Armington, *A Theory of Demand for Products Distinguished by Place of Production*, IMF Staff Papers, Vol. 16, No. 1 (Mar. 1969) ("Armington (1969)")
USA-21	U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and Specific Industry Sectors, USITC Publication Number 4889, April 2019, Appendix I
USA-22	Erika Bethmann *et al.*, "A Non-technical Guide to the PE Modeling Portal", USITC Office of Economics Working Paper Series (March 2020) ("Bethmann *et al.* (2020)")
USA-23	Saad Ahmad *et al.*, "A Comparison of Armington Elasticity Estimates in the Trade Literature", USITC Office of Economics Working Paper Series (April 2020) ("Ahmad *et al.* (2020)")
USA-24	Anson Soderbery, "Estimating Import Supply and Demand Elasticities: Analysis and Implications", Journal of International Economics, Vol. 96, Issue 1, May 2015 ("Soderbery (2015)")

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page vi

Exhibit No.	Description
USA-25	Soderbery (2015) 8-digit HTS level dataset
USA-26	Soderbery (2015) 10-digit HTS level dataset
USA-27	Saad Ahmad & David Riker, "A Method for Estimating the Elasticity of Substitution and Import Sensitivity by Industry", USITC Office of Economics Working Paper Series (May 2019) ("Ahmad & Riker (2019)")
USA-28	Ahmad & Riker (2019) 6-digit NAICS level dataset
USA-29	Thomas Hertel & Dominique van der Mensbrugghe, "Chapter 14: Behavioral Parameters," GTAP 10 Data Base Documentation, Center for Global Trade Analysis (2019)
USA-30	Russell Hillberry & David Hummels (2013), "Chapter 18: Trade Elasticity Parameters for a Computable General Equilibrium Model," Handbook of CGE Modeling, Vol. 1 ("Hilberry & Hummels (2013)")
USA-31	David Riker, "Approximating an Industry-Specific Global Economic Model of Trade Policy", USITC Office of Economics Working Paper Series, November 2020 ("Riker (November 2020)")
USA-32	Jennifer Leith *et al.*, "Indonesia Rice Tariff", Poverty and Social Impact Analysis, March 2003 ("Leith *et al.* (2003)")
USA-33	Michael Gasiorek *et al.*, "Which manufacturing industries and sectors are most vulnerable to Brexit?", The World Economy (2019) ("Gasiorek *et al.* (2019)")
USA-34	*Softwood Lumber Products from Canada,* USITC Publication 4749, Investigation Nos. 701-TA-566 and 731-TA-1342 (Final), December 2017 ("USITC Softwood Lumber Final Determination")
USA-35	*Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam*, USITC Publication 5101, Investigation Nos. 701-TA-627-629 and 731-TA - 1458-1461 (Final), August 2020 ("USITC Wind Towers Final Determination")
USA-36	Certain Fabricated Structured Steel From Canada: Final Negative Countervailing Duty Determination, 85 Fed. Reg. 5387 (Jan. 30, 2020)
USA-37	*Uncoated Groundwood Paper from Canada Does Not Injure U.S. Industry, Says USITC*, USITC News Release 18-103, Aug. 29, 2018

United States – Countervailing Duty Measures on U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6 June 15, 2021
of the DSU by the United States (DS505) Page vii

Exhibit No.	Description
USA-38	*100- to 15- Seat Large Civil Aircraft from Canada Do Not Injury U.S. Industry, Says USITC*, USITC News Release 18-015, Jan. 26, 2018
USA-39	USITC Softwood Lumber Foreign Producer/Exporter Questionnaire
USA-40	USITC Softwood Lumber U.S. Producer Questionnaire
USA-41	USITC Softwood Lumber U.S. Importer Questionnaire
USA-42	USITC Softwood Lumber U.S. Purchaser Questionnaire
U.S. Responses to Second Set of Questions	
USA-43	19 U.S.C. § 1592
USA-44	*Welded Stainless Steel Pressure Pipe from China*, USITC Publication 4064, Investigation Nos. 701-TA-454 and 731-TA-1144 (Final), Mar. 2009 (excerpt)
USA-45	*Welded Stainless Steel Pressure Pipe from India*, USITC Publication 4644, Investigation Nos. 701-TA-548 and 731-TA-1298 (Final), Nov. 2016 (excerpt)
USA-46	Saad Ahmad & David Riker, "Updated Estimates of the Trade Elasticity of Substitution", USITC Office of Economics Working Paper Series (May 2020) ("Ahmad & Riker (May 2020)")
USA-47	Understanding between Canada and the United States Concerning Procedures to Apply to Business Confidential Information to the Extent Necessary to Apply a DSB Authorization Consistent with the Arbitrator's Decision ("BCI Understanding")

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 1

1 NULLIFICATION OR IMPAIRMENT

Questions 112 and 113 are directed to Canada.

2 THE APPROPRIATE COUNTERFACTUAL

General Comment:

1.   The United States provides the following responses without prejudice to the U.S. position that Canada's proposed suspension of concessions is not allowed or is not equivalent to the level of nullification or impairment, which is zero, and therefore Canada's request for suspension of concessions must be rejected.[1]

2.1 For both parties

114.   Both parties have indicated that, in the counterfactual: (a) if a Canadian company's overall CVD rate were to fall below the *de minimis* threshold in an original investigation, that company would be excluded from the scope of the CVD order; and (b) such a counterfactual scenario would not affect the USDOC's ability to assign a WTO-consistent CVD rate to that company in a subsequent CVD proceeding (e.g. in an administrative review).[2] Could the parties please explain how the USDOC could assign a WTO-consistent CVD rate to such a company in that manner when, in the counterfactual, the company would not have been subject to the CVD order in the first place? Assuming, for purposes of this question, that the Arbitrator agrees with Canada that the company's counterfactual CVD rate should be reduced by the amount of the OFA-specific CVD rate, would the answer be that the OFA-specific rate would be represented with a *proxy* of zero?[3]

Response:

2.   The United States understands the question to describe a limited scenario where a CVD investigation involves the challenged measure, and the removal of the challenged measure causes Company A's CVD rate to become *de minimis*, thereby removing Company A from the CVD order in the counterfactual. Only in this limited scenario, if the U.S. Department of Commerce ("Commerce") continued to apply duties to Company A in an administrative review, Canada could calculate nullification or impairment in the administrative review using the initial duty rate from the administrative review and a counterfactual duty rate of 0. However, in doing so, Canada must terminate the suspension of concessions originating from the investigation to avoid

---

[1] *See* U.S. Written Submission, paras. 13-34; U.S. Responses to First Set of Questions, paras. 1-35. Furthermore, the United States also considers that an appropriate way forward for Canada is to agree to suspend this proceeding until such time as it considers that the challenged measure is applied to its goods, should that circumstance ever arise. *See* U.S. Responses to First Set of Questions, para. 35.

[2] Canada's response to Arbitrator question No. 10; United States' response to Arbitrator question No. 10.

[3] See Decision by the Arbitrator, *US – Washing Machines (Article 22.6 – US)*, para. 4.22 (addressing similar issue).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 2

any double-counting or the imposition of countermeasures in excess of the level of nullification or impairment.

115.   Could the United States please confirm that the *de minimis* threshold in administrative reviews is 0.5% and that the USDOC would not exclude a company from the scope of a CVD order due to the company's CVD rate falling below that *de minimis* level as a result of an administrative review?[4]

Response:

3.   The United States confirms that the *de minimis* threshold in administrative reviews is 0.5%.[5] Commerce would not exclude a company from the scope of a CVD order if the company has a *de minimis* rate in an administrative review.[6]

116.   Please assume, for purposes of this question, that the USDOC has used three or more firms' confidential US sales data to calculate an all-others rate, but that in the counterfactual, the number of firms that the USDOC would use drops to two.[7] In this scenario, could the parties please explain whether confidential US sales data should be used again to calculate the counterfactual all-others rate? And if so, does this raise concerns that the counterfactual all-others CVD rate could potentially be reverse-engineered in a manner that could inappropriately expose the confidential US sales data of those two firms?

Response:

4.   In the scenario described in the question, confidential U.S. sales data may be used again to calculate the counterfactual all-others rate. The concerns of reverse-engineering an All Others rate that is composed of two individually-investigated respondent CVD rates exist in Commerce's CVD proceedings because the All Others rate is published and made public. However, the United States understands that within the context of the application of measures authorized by the Dispute Settlement Body ("DSB"), the counterfactual All Others rate itself would not be published or made public. Rather, the counterfactual All Others rate would be a data input into the model that would be used to determine the level of nullification or impairment. It is the U.S. understanding that while the level of nullification or impairment may be announced and made public, the underlying data inputs (including the counterfactual All Others rate) would only be exchanged between the parties, and any confidential information would be subject to the Understanding between Canada and the United States Concerning

---

[4] See Canada's response to Arbitrator question No. 10, para. 21.
[5] *See* 19 C.F.R. § 351.106(c)(1) (Exhibit CAN-38).
[6] *See* U.S. Responses to First Set of Questions, para. 45; Canada's Response to Questions, para. 21.
[7] The Arbitrator understands that the parties would agree that this could happen when, for instance, in an original investigation, CVD rates from Canadian Firms A, B, and C were used to calculate the all-others' rate in reality, but, in the counterfactual, Firm C's CVD rate fell below the *de minimis* threshold once the effects of the OFA-AFA Measure are removed.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 3

Procedures to Apply to Business Confidential Information to the Extent Necessary to Apply a DSB Authorization Consistent with the Arbitrator's Decision ("BCI Understanding").[8]

117.   Please assume, for purposes of this question, that the Arbitrator agrees with the United States that, if the USDOC had used confidential US sales information to calculate an all-others rate in a relevant CVD proceeding (because three or more firms' CVD rates were used to do so), then the counterfactual all-others rate should (at least as a first option) be calculated using such confidential US sales data. In this circumstance, could the parties please confirm that, if the relevant Canadian companies provided written authorization to the USDOC to provide the relevant memoranda containing such confidential information to Canada, that the USDOC could so provide those memoranda to Canada with that confidential sales information visible? Could the parties also please confirm that provision of such memoranda would eliminate any need for Canada to obtain the same sales data directly from Canadian exporters?

Response:

5.   If the relevant Canadian companies provided written authorization, the United States would be able to provide the necessary confidential Commerce memoranda to Canada. The United States confirms that access to such confidential memoranda from Commerce's administrative record in a particular CVD proceeding would eliminate the need to obtain the sales data directly from the companies.

2.2 For Canada

Question 118 is directed to Canada.

3 OVERALL METHODOLOGY

3.1 For both parties

119.   Could the parties please explain who or which office in each Member's government would be communicating with the other Member's government during the period in which Canada is calculating the level of NI following a triggering event?

Response:

6.   For the United States, the point of contact is the Legal Advisor to the U.S. Mission to the World Trade Organization.

120.   Could the parties please explain whether there are any circumstances under which, with respect to a given application of the OFA-AFA Measure to a particular type of

---

[8] *See* U.S. response to question 153, below.

United States – Countervailing Duty Measures on U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6 June 15, 2021
of the DSU by the United States (DS505) Page 4

OFA, the reference period for determining the value of imports/market shares would *not* be the calendar year prior to that application?

Response:

7.   No, the United States does not believe there to be any circumstances under which the reference period for determining the value of imports and market shares would not be the calendar year prior to the application of the challenged measure.

121.   Please assume for purposes of this question that Canadian Company A was assigned an individual CVD rate affected by the OFA-AFA Measure in an original investigation. A year later, the USDOC performs an administrative review with respect to Company A. Could the parties please explain whether there are any circumstances under which such an administrative review would *not* result in the removal of the CVD rate affected by the OFA-AFA Measure?

Response:

8.   With respect to the scenario presented in the question, it is correct to understand that the conduct of an administrative review with respect to Company A will always result in the removal of the prior application of the challenged measure from Company A's CVD rate. This is because the challenged measure is specific to a CVD proceeding.

9.   Further, the precise content of the challenged measure makes it impossible for the prior application of the challenged measure to Company A to continue in a subsequent administrative review of that company. The United States recalls the precise content of the challenged measure, as defined by Canada and as found by the original panel, consists of three parts: "[(1)] [Commerce] asking the 'other forms of assistance' question and, [(2)] where [Commerce] 'discovers' information that it deems should have been provided in response to that question, [(3)] applying [adverse facts available] to determine that the 'discovered' information amounts to countervailable subsidies."[9]

10.   In an administrative review following an investigation, Commerce will issue questionnaires to the individually-examined respondents and ask questions concerning all previously countervailed subsidies. This includes specific questions concerning the "discovered subsidies" that were "discovered" during the prior segment of the CVD proceeding, such as the original investigation.[10] Respondents, therefore, have the opportunity to fully participate and respond to questions concerning the prior "discovered subsidies". As such, an administrative review of Company A would remove the prior application of the challenged measure because Commerce's determination in the administrative review with respect to countervailability of

---

[9] *US – Supercalendered Paper (Canada)* (Panel), para. 7.316.
[10] *See* U.S. Responses to First Set of Questions, para. 102 (explaining that administrative reviews are "segments" of a CVD proceeding, initiated by Commerce at the request of an interested party").

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 5

what were previously "discovered subsidies" would no longer be the result of the "other forms of assistance" question, that is, part one of the challenged measure.

11.   There is also a very low likelihood for the challenged measure to be applied anew to Company A because verifications do not occur in every administrative review. As such, part two of the challenged measure, Commerce's "discovery" of unreported information at verification, also would be unlikely to occur, thereby precluding a new application of the challenged measure to Company A's CVD rate.

12.   Lastly, the United States observes that the scenario highlighted in this question further supports the U.S. position that Canada may only impose countermeasures after duty assessment occurs.[11] As demonstrated above, an administrative review of Company A would obviate the need for countermeasures applied in response to Company A's CVD rate from the investigation because the duties assessed to Company A would <u>not</u> be based on the challenged measure.

122.   **The Arbitrator recalls that Canada must suspend concessions that are "equivalent" to the level of NI that Canada calculates in any given instance. Could both parties please explain how the parties' proposals regarding the duration for which Canada would be allowed to suspend concessions following a triggering event would facilitate such equivalence? In answering this question, please take due account of the following considerations: (a) the level of NI calculated under either the Canadian or United States' model appears by nature to be an *annual* level of NI caused by the application of the OFA-AFA Measure; (b) CVD rates affected by the OFA-AFA Measure will presumably be in place for a duration of time that differs from one exact calendar year, and perhaps less than a year; and (c) following a triggering event, Canada will not know for how long the CVD rate(s) affected by the OFA-AFA Measure will remain in place. If the parties deem it more efficient, please combine your answer to this question with your response to the following question.**

     <u>**Response**</u>**:**

13.   The United States responds to questions 122 and 123 together, below.

123.   **Could the parties please explain whether the following basic manner of granting Canada the right to suspend concessions would be appropriate? Assume that a relevant triggering event occurs in Year (X). Following the triggering event, Canada calculates a level of NI (which, as indicated in the question immediately above, would appear to be, by nature, an annual amount of NI) using the appropriate model. Starting on or after 1 January of Year (X+1) but only until 31 December of Year (X+1), Canada may suspend concessions *vis-à-vis* the United States equivalent to the NI calculated multiplied by the fraction of the Year (X) that the CVD rate affected by a given application of the OFA-AFA Measure was in effect (e.g. if a given OFA-AFA rate was in effect for six months of Year (X), Canada could**

---

[11] U.S. Responses to First Set of Questions, paras. 100, 107 (explaining that the United States has a retrospective duty system and a CVD investigation does not result in duty assessment).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 6

suspend concessions in Year (X+1) in the amount of 50% of the NI calculated for that application of the OFA-AFA Measure). If the OFA-AFA rate is maintained for the entire Year (X+1), Canada would, in the Year (X+2), be entitled to suspend concessions in the full amount of the NI previously calculated, and continue to do so until the relevant OFA-AFA rate is terminated. Upon such termination in, for example, Year (X+3), Canada may still suspend concessions in Year (X+4), but only equivalent to the fraction of the Year (X+3) during which the OFA-AFA rate was in effect.

Response:

14.　　As the United States has previously explained, the DSB cannot authorize a suspension of concessions in this dispute because no present level of nullification or impairment exists.[12] The United States has demonstrated that no benefits accruing to Canada "are being impaired", and therefore Canada's proposed suspension of concessions cannot be equivalent to the level of nullification or impairment, which does not exist for Canada and is zero.[13]

15.　　Without prejudice to this position, in the event the Arbitrator seeks to award a suspension of concessions for a future, hypothetical level of nullification or impairment, the United States generally considers it appropriate to follow the method as described in question 123. As the question recognizes, because the affected CVD rate may not be in place for the entirety of a calendar year, the level of nullification or impairment should be equivalent to the portion of the year to which the affected CVD rate is applied (executed by multiplying the level of nullification or impairment by the fraction of the year the challenged measure was in effect).

16.　　 Lastly, the question posits that Canada could calculate nullification or impairment in the same year as the "triggering event" (year X). However, as previously explained and detailed below in response to question 130, if the challenged measure is applied in an investigation, Canada could only calculate nullification or impairment after the affected CVD duties are assessed under the U.S. retrospective duty assessment system.[14]

3.2 For Canada

Questions 124 through 129 are addressed to Canada.

3.3 For the United States

130.　　Regarding the duration during which Canada may suspend concessions after a relevant triggering event, could the United States please respond to Canada's assertions in paragraph 53 of Canada's response to Arbitrator question No. 35?

---

[12] *See* U.S. Responses to First Set of Questions, para. 16.
[13] *See* U.S. Written Submission, paras. 23-34; U.S. Responses to First Set of Questions, paras. 14-17.
[14] *See* U.S. Responses to First Set of Questions, paras. 106-108.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 7

Response:

17.   In its response, Canada observes that there may be a delay between Commerce's final determination or countervailing duty order applying the challenged measure and the implementation of suspension of concessions by Canada.[15] As a result, Canada seeks to suspend concessions for an amount of time that is equivalent to the entire amount of time for which the United States applies the challenged measure.[16]

18.   The United States considers it appropriate to only suspend concessions for the duration of the application of the challenged measure to the affected CVD rate, and only after the <u>assessment</u> of the affected CVD duty.[17] That is, the start date of the application of the challenged measure would be the publication date of a countervailing duty order following final affirmative determinations by both Commerce and the U.S. International Trade Commission ("Commission") in a CVD investigation, or the publication date of the final determination in an administrative review. The end date of the challenged measure would be the publication date of the final determination for a subsequent administrative review of that affected company.[18] Further, the United States considers it appropriate that Canada only "trigger" the model after assessment of CVD duties occurs – either when an administrative review is not requested for a company, or after the final determination in an administrative review is published.[19]

19.   To illustrate, if the challenged measure affected Company A in the third administrative review, Canada could "trigger" the model and suspend concessions for the duration of that application of the challenged measure to Company A after affected duties are assessed – that is, from the publication date of the final determination of the third administrative review, through the publication date of the final determination in a subsequent administrative review of Company A.

20.   The United States considers it appropriate for Canada to notify the DSB of the level of suspension it calculates and of any adjustment to the level of suspension for each year during the first quarter of the following year, in accordance with the approach described in question 123.[20] Therefore, if the final determination in an administrative review contained the challenged measure and was published in year X, Canada, in the first quarter of year X + 1 could "trigger"

---

[15] Canada's Response to Questions, para. 53.

[16] Canada's Response to Questions, para. 53.

[17] *See* U.S. Responses to Questions, paras. 100, 106-107.

[18] *See* U.S. response to question 121 (explaining that the conduct of an administrative review with respect to Company A will always result in the removal of the prior application of the challenged measure from Company A's CVD rate). *See also* U.S. Responses to First Set of Questions, para. 110.

[19] *See* U.S. Responses to First Set of Questions, paras. 106-108 (explaining the U.S. retrospective duty system). In particular, when a company does not request an administrative review, Commerce instructs U.S. Customs and Border Protection ("Customs") to assess duties at the rate established in the completed review covering the most recent prior period or, if no review has been completed for that company, the cash deposit rate applicable at the time merchandise entered. U.S. Responses to First Set of Questions, paras. 100, 107. *See also* 19 C.F.R. § 351.212 (Exhibit USA-18).

[20] *See also* U.S. Responses to First Set of Questions, para. 115 (citing *US – Washing Machines (Korea) (Article 22.6 – US)*, para. 5.3).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 8

the model and calculate the level of nullification or impairment and notify the DSB. As described in question 123, the level of nullification or impairment should be equivalent to the portion of year X to which the affected CVD rate is applied. If each year the entries of the company continue to be assessed at that affected CVD rate, Canada would notify the DSB in the first quarter of each year the level of suspension. However, if a subsequent administrative review were conducted, thereby terminating the application of the challenged measure, after the issuance of the final determination in, for example, year X + 5, Canada, in the first quarter of year X + 6 would calculate the final level of nullification of impairment for the duration of the time in which the challenged measure applied in year X + 5. No further countermeasures by Canada would be appropriate for the application of that challenged measure.

131.   In paragraph 223 of the United States' response to Arbitrator question No. 83, the United States asserts that "to calculate nullification or impairment it would be necessary to run the U.S. model twice. The first run would impose the initial [WTO-inconsistent factual] CVD rate, and the second run would impose the [WTO-consistent] counterfactual CVD rate." Could the United States please explain whether the Arbitrator is right in understanding that in the event of a counterfactual WTO-consistent CVD rate of zero, the second model run would result in a zero value of NI and, thus, the total value of NI would be calculated by the first model run?

Response:

21.   As a general matter, it is not true that a counterfactual CVD rate of zero allows the level of nullification or impairment to be calculated based on the first model run alone. However, as the question recognizes, there are circumstances under which the second model run of the counterfactual CVD rate would result in a zero value of nullification or impairment. In this limited scenario, mathematically speaking, the difference between the first and second model runs would equal the level of nullification or impairment calculated by the first model run.

22.   The second model run would only produce zero nullification or impairment in a situation where the counterfactual CVD rate brings <u>total</u> duty rates back to the *status quo ante*. That is, the second model run produces zero nullification or impairment only if there is no difference between the total duties applied in the year prior and the total duties under the counterfactual CVD rate.[21]

23.   Furthermore, there are foreseeable circumstances under which a counterfactual CVD rate of zero may still result in a non-zero value of nullification of impairment. For instance, if the year-prior CVD duty rate is not zero, or if the other duty rates change between the year prior and the application year. Therefore, since a counterfactual CVD rate of zero does not always imply

---

[21] As the United States previously explained, the duty rates used in the model must be the total duty rates (the sum of the CVD rate and any other contemporaneous duties, including AD duties), rather than the CVD rate alone in order to correctly represent the percent change in duty induced by the removal of the challenged measure. *See* U.S. response to question 83. It is the percent change in the duty rate that is relevant to the calculation of nullification of impairment in the U.S. Armington framework. *See* U.S. response to question 81.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 9

that the second model run produces a value of zero nullification or impairment, it remains appropriate for the methodology to specify that the model should be run twice.

132.   In paragraph 146 of the United States' response to Arbitrator question No. 49, the United States asserts that circumstances could occur under which the US model requires expansion, relative to the computer code provided by the United States to the Arbitrator, i.e. when multiple Canadian companies were assigned company-specific CVD rates affected by the OFA-AFA Measure. In such a scenario, it appears that the US model code would have to be re-written and adjusted to take into account the specific number of resulting varieties of Canadian imports. The Arbitrator further notes that this number of varieties could be large in cases where the OFA-AFA Measure were applied to a large number of individually investigated Canadian companies. Does the United States envisage a way that reduces this complexity by fixing the number of varieties *ex ante*? In particular, could imports that have received individually investigated company rates and all-others rates be grouped together, reducing the overall number of varieties to exactly four: US domestic shipments, RoW imports, unaffected Canadian imports, and affected Canadian imports? Under such an approach, would the United States suggest a way to assign a trade-weighted average of all OFA-AFA related CVDs to the affected Canadian imports variety?

        Response:

24.   As an initial matter, it is straightforward to adjust the U.S. computer code to change the number of varieties.[22] Upon the Arbitrator's request, the United States can either submit detailed instructions for adjusting the code or provide updated codes suitable for an additional number of varieties.

25.   However, to the extent the Arbitrator seeks to collapse all affected Canadian companies, both those individually-investigated and those under the All Others rate, into a single "affected Canadian" variety, the United States notes that this simplification would induce some loss of precision in the nullification or impairment estimate. The imprecision would be larger to the extent that duty rates varied across affected companies.

26.   In any event, under such an approach, the value of imports for the composite variety (*i.e.*, the "affected Canadian" companies) would be the sum of imports from each of the affected entities. The duty rates could be proxied by trade-weighted averages of affected companies for year-prior duty rates, duty rates with the challenged measure, and duty rates without the challenged measure.

---

[22] *See* U.S. Written Submission, Appendix I, para. 4 n. 143 ("If there are multiple individually-investigated Canadian companies that are subject to a rate change, the model could easily expand to incorporate one variety for each individually-investigated affected company. That is, they would be denoted by CA_I , CA_2, CA_3, etc.").

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 10

4 MODEL PARAMETERS

4.1 Elasticity of Substitution

4.1.1 For both parties

133.   The Arbitrator notes that the underlying Harmonized System (HS) classification at the 6-digit product level is subject to revisions every five years, while the 4-digit product headings remain unchanged. If the Arbitrator decided to employ HS6 substitution elasticities estimated by Fotagnè, Guimbard and Orefice (2020)[23], it is thus possible that Canada may have to apply one or several concordance tables before such data could be used. Against this background, were the Arbitrator to decide to employ substitution elasticities estimated by Fontagnè, Guimbard and Orefice (2020), could the parties please indicate their preferences about using either their HS 6-digit elasticity estimates, with potential need for concording the data, or using their 4-digit elasticity estimates, with no need for further adjustments?

Response:

27.   As an initial matter, the United States maintains its position that the Commission report remains the best available source for substitution elasticity estimates.[24] At a minimum, if the challenged measure occurs in a Canadian CVD proceeding under the *Softwood Lumber* or *Wind Towers* CVD orders, the United States considers it appropriate to use the substitution elasticity estimates from the respective Commission reports.[25]

28.   Without prejudice to the U.S. position concerning the use of the relevant Commission report, in the event Fontagne *et al.* (2020) were selected, the use of estimates at the 6-digit HTS level is preferred, recognizing that this may require concording the data. The United States observes that the concern outlined in the question will not be present with the use of the relevant Commission report because the Commission estimates relate directly to the specific product at issue.[26] The Commission estimates have the advantage that they are not affected by changes in the product classification system since they are tailored to the product as defined by the scope of Commerce's investigation.[27]

---

[23] Accessible via https://sites.google.com/view/product-level-trade-elasticity

[24] U.S. Written Submission, paras. 116-118; U.S. response to question 50 (explaining that Commission reports are product-specific, closer in time to the reference period, and take into consideration interested party comments, including any submitted by the Government of Canada and Canadian companies).

[25] U.S. Responses to First Set of Questions, paras. 152-153 & Comparison Table 2 (demonstrating that Fontagne *et al.* (2020) estimates are higher than the product-specific Commission estimates in *Softwood Lumber* and *Wind Towers*).

[26] *See* U.S. Responses to First Set of Questions, para. 152.

[27] The United States has also demonstrated that the median substitution elasticity estimates in Fontagne *et al.* (2020) are substantially larger than other studies and existing Commission reports on Canadian products. *See* U.S. Responses to First Set of Questions, para. 151, Comparison Table 1 (comparing Soderbery (2015), Ahmad and

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 11

4.1.2 For Canada

Question 134 is addressed to Canada

4.1.3 For the United States

135. **In paragraph 158 of the United States' response to Arbitrator question No. 57, the United States asserts that substitution elasticities in USITC reports are provided as a "range", and the median of that range should be used in the model. Since a "range" defines the *difference* between the maximum and the minimum of a given set of values, is the Arbitrator correct in understanding that the United States suggests to take the simple average between the maximum and the minimum? Could the United States please further explain how the distribution of the elasticity estimates is characterized in USITC reports, i.e. how many values are calculated and why the USITC reports do not simply determine a unique point estimate?**

   Response:

29.   The United States considers it appropriate to use the simple average, *i.e.*, the median numerical value between the maximum and minimum numerical values that are reported in the Commission report. Further, the use of the median of the numerical range in the relevant Commission report would be consistent with the approach of previous arbitrations.[28]

30.   The numerical estimates provided in the Commission reports are intended to give a likely range in which the elasticities fall; the values are not specific econometric estimates. The Commission report contains a range between two values, a likely minimum and a likely maximum. Importantly, the Commission staff estimates the numerical range after taking into consideration interested party comments, as well as relevant academic articles and econometric studies.[29] Each case is unique, and differences in the conditions of competition across investigations affect the estimates in a given industry. For example, different portions of the relevant market may have substitution elasticities that would be at the higher end or lower end of the range estimated in the Commission report. A range provides the necessary latitude to be able to provide a description of the nature of the elasticity with a higher degree of confidence than a simple point estimate would, much in the same way confidence intervals are essential in the study of statistics. In economic literature, point estimates are nearly universally provided with a standard deviation and marked with varying levels of confidence in the point estimate.

Riker (2019), and Fontagne *et al.* (2020)) & para. 153, Comparison Table 2 (comparing the Commission report estimates in *Softwood Lumber* and *Wind Towers* with Soderbery (2015), Ahmad and Riker (2019) and Fontagne *et al.* (2020)). *See also* Saad Ahmad *et al.*, "A Comparison of Armington Elasticity Estimates in the Trade Literature", USITC Office of Economics Working Paper Series (April 2020) ("Ahmad *et al.* (2020)") (Exhibit USA-23).

[28] *See US – Washing Machines (Korea) (Article 22.6 – US)*, para. 3.101; *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.36.

[29] *See, e.g.*, USITC Softwood Lumber Final Determination, p. II-28 n. 44 (Exhibit USA-34) (stating that the Government of Canada and Canadian companies (referenced as "Joint Respondents") submitted an econometric study as well as four academic articles that estimated substitution elasticity for U.S. and Canadian softwood lumber) & pp. II-29-II-32 (detailing the examined academic articles).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 12

Therefore, providing a range leads to greater confidence that, despite small movements in the market throughout the period for which data were collected, the elasticity is likely in that range. For the purpose of applying the economic model in the context of this proceeding, it is reasonable and appropriate to use the median numerical value of the range estimated by the Commission.

136. Could the United States please comment on Canada's response to Arbitrator question No. 51, and in particular on Canada's statements, in paragraphs 103 and 106 thereto, that "[t]he relevant issue is whether the estimated elasticities provide reliable and verifiable estimates of the relevant behavioural parameters", "irrespective of the particular data that was used to estimate them"?

<u>Response:</u>

31.   Generally, in economic modeling, it is better to use parameter values that reflect the specific time periods and industries of the application. In particular, the elasticity of substitution may evolve over time if changes in its determinants, such as technology or preferences introduce a greater degree of product differentiation or new sources and uses for the product. This evolution is illustrated in Ahmad and Riker (May 2020).[30] The authors compare substitution elasticity estimates produced with a common methodology using data from 2012 and 2017.[31] Although the estimates are highly correlated between the two periods, there are changes in values even during this relatively short period of time. The Commission reports similarly demonstrate that a change in substitution elasticities may occur depending on the time period under investigation,[32] further supporting the need to use data that closely corresponds to the reference period.

32.   Therefore, in cases where the value of these parameters has evolved over time it is important that they are captured in the representation of the market. If they are stable over time (there is not a rationale in economic theory for why they must be), then the time period covered in the dataset does not matter. However, since it is uncertain whether the substitution elasticities associated with a specific product will have changed, it is better practice to use the most up-to-date elasticity estimates in the model since any change in elasticity numbers will impact the value of the estimated level of nullification or impairment.

---

[30] Saad Ahmad & David Riker, "Updated Estimates of the Trade Elasticity of Substitution," USITC Office of Economics Working Paper Series (May 2020) ("Ahmad & Riker. (May 2020)") (Exhibit USA-46).

[31] Ahmad & Riker (May 2020), pp. 4-8 (Exhibit USA-46).

[32] For example, in the Commission investigations of Welded Stainless Steel Pressure Pipe, the substitution elasticity changed from its investigation in 2009 to its investigation in 2016. In 2009, the Commission reported a range of 3 to 6, but in 2016, the Commission reported a range of 2 to 4. Further, although this question relates to substitution elasticity, these Commission determinations similarly demonstrate that the U.S. domestic supply elasticity changed as well. In 2009, the U.S. supply elasticity was a range of 5 to 10, but in 2016, the supply elasticity was a range of 5 to 7. *Compare Welded Stainless Steel Pressure Pipe from China*, USITC Publication 4064, Investigation Nos. 701-TA-454 and 731-TA-1144 (Final), Mar. 2009, pp. II-13 to II-14 (Exhibit USA-44) *with Welded Stainless Steel Pressure Pipe from Indi*a, USITC Publication 4644, Investigation Nos. 701-TA-548 and 731-TA-1298 (Final), Nov. 2016, pp. II-24 to II-25 (Exhibit USA-45).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 13

33.   Therefore, the United States considers it appropriate to use the relevant Commission report because in estimating elasticities, the Commission takes into account the conditions of competition distinctive to the industry under investigation during the time period of the investigation, and such factors dictate the scope of data used to estimate elasticity values.

4.2 Elasticity of Demand

4.2.1 For the United States

137.   **In paragraph 170 of the United States' response to Arbitrator question No. 62, the United States argues that "[t]o the extent the Arbitrator determines to predetermine the value of demand elasticity, then it is imperative to consider the elasticities reported in the existing public Commission reports on Canadian products."**

   a.   **Could the United States please clarify how the Arbitrator would consider both predetermined values of demand elasticities and demand elasticities reported in USITC reports at the same time?**

   Response:

34.   The United States maintains that it would be appropriate for the Arbitrator to predetermine the <u>source</u> for elasticity, but <u>not the values</u> of the elasticities. The relevant Commission report remains the best available source for elasticity estimates. These estimates are specific to the product, reflect the specific time period, and provide opportunity for interested parties, including Canadian companies and the Canadian government, to comment. The Commission estimates have also been used by prior WTO arbitrators.[33]

35.   If the Arbitrator determines to predetermine the value of demand elasticity using existing sources, then, if the challenged measure were to occur in a CVD proceeding under the *Softwood Lumber* or *Wind Towers* CVD orders, the elasticities reported in the existing Commission reports in each of those investigations should be used as the source of the values. Those reports currently exist and the value of demand elasticity is reported in them. Additionally, as previously explained,[34] the estimates in these Commission reports are product-specific and have accounted for comments from the Canadian companies and the Government of Canada.[35] Although the question relates to demand elasticity, the United States considers that this would be an amenable approach for all three types of elasticities in a CVD proceeding under the *Softwood Lumber* or *Wind Towers* CVD orders – substitution, demand, and domestic supply.[36]

---

[33] *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.36; *US – Washing Machines (Korea) (Article 22.6 – US)*, paras. 3.97-3.101.
[34] U.S. Responses to First Set of Questions, paras. 169-170.
[35]*See* U.S. Responses to First Set of Questions, paras. 152 n. 216, 155 n. 225, 175 n. 251.
[36] *See* U.S. Responses to First Set of Questions, paras. 169-170, 174.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 14

36.   For future CVD orders involving other Canadian products, the United States maintains its position that the Arbitrator should predetermine the <u>source</u> of elasticity estimates and direct Canada to use the estimates from the relevant future Commission report.

> **b. In case the Arbitrator wishes to employ demand elasticities from an independent source (i.e. a source not directly affiliated with the US or Canadian governments) that is available to both parties, which such source would the United States consider appropriate?**

>   **Response:**

37.   The Commission is an independent, nonpartisan, quasi-judicial entity, and is not directly affiliated with a U.S. presidential administration. Rather, the Commission is headed by six Commissioners, each with a term of nine years. Accordingly, the United States considers the Commission report to be an independent source available to both parties.[37]

4.3 Elasticity of Supply

Questions 138 and 139 are addressed to Canada.

4.4 Import Shares and Market Size

4.4.1 For Canada

Questions 140 through 142 are addressed to Canada.

4.4.2 For the United States

143. **In paragraph 83 of Canada's response to Arbitrator question No. 41, Canada asserts that a three-variety model would similarly account for offsetting effects as Canada's two-variety model does. Could the United States please comment on this assertion?**

    Response:

38.   Canada asserts that by specifying the scaling factor in its formula with a market share associated with all Canadian exporters, the resulting estimate of nullification or impairment is equivalent to the result obtained from a linearized Armington model with three varieties: 1) the domestic variety; 2) the subject Canadian variety; and 3) the non-subject Canadian variety,

---

[37] Furthermore, the United States observes that the parties have proposed, and in some instances, have agreed, to use data inputs from government sources, including data from Customs, the U.S. Census Bureau ("Census"), and the U.S. Bureau of Economic Analysis ("BEA").

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 15

which uses the market share for each variety.[38] Canada argues that this result holds as long as the same elasticities are used in both models.[39]

39.   As an initial matter, the United States observes that Canada's assertions are unsupported, and therefore the United States does not have a basis to verify Canada's statements concerning the equivalence between Canada's two-variety formula and a three-variety model. With respect to the question, on a theoretical level, a model that treats subject and non-subject Canadian exporters as separate varieties would account for some of the offsetting effects of the challenged measure. However, as discussed below, Canada's three-variety model also would not be suitable for estimating nullification or impairment in this proceeding. Therefore, it is irrelevant whether or not such a three-variety model would produce an estimate of nullification or impairment that is equivalent to Canada's proposed two-variety formula.

40.   Canada's assertion of equivalence rests in part on an assumption that the same elasticities are used in both models.[40] This is an inappropriate assumption for this case. In particular, Canada's three-variety model fails to differentiate imported and domestically-produced varieties. As the United States previously demonstrated, it is standard practice to assume the elasticity of supply for domestic producers is less than the elasticity of supply for imports in order to account for the greater ability of foreign suppliers to shift supply from other markets.[41] Canada's three-variety model proposal would also continue to define the scaling factor using predetermined, industry-level market shares. This would not be consistent with any Armington model of the market for a specific product in a future year, and thus cannot be used to measure the trade effects of changing duty rates.[42]

41.   Finally, Canada's assertion specifies a linearized model. As the United States has discussed previously, relying on a linearized model unnecessarily introduces approximation error.[43] The United States has provided a program that can be used to estimate nullification or impairment from an Armington partial equilibrium model directly in its nonlinear form.[44] This program, which was based on one developed by the arbitrator in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, is run using STATA, a standard and widely available statistical software program.

144.   With reference to paragraph 190 of the United States' response to Arbitrator question No. 69, could the United States please further elaborate on the statement

---

[38] Canada's Response to Questions, para. 83.

[39] Canada's Response to Questions, para. 83.

[40] Canada's Response to Questions, para. 83.

[41] *See* U.S. response to question 64 (citing Riker (November 2020) (Exhibit USA-31); Bethmann *et al.*(2020) (Exhibit USA-22); Leith *et al.* (2003) (Exhibit USA-32); Gasiorek *et al.* (2019) (Exhibit USA-33)).

[42] *See* U.S. response to question 76. As the United States explained in that response, in order to be consistent with an Armington model, the market shares used in calculating nullification or impairment must be each variety's contemporaneous share of U.S. consumption of the specific product at issue. That is, a variety's market share must be equal to the value of imports (*vimp*) of the specified variety divided by the total value of U.S. consumption. *See also* U.S. response to question 47.

[43] U.S. Written Submission, paras. 88-89.

[44] *See* U.S. Solution and Computer Code for Armington Partial Equilibrium Model (Exhibit USA-1).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 16

"[i]n the event such information is not public"? Specifically, does this statement reference situations where the USITC estimate of domestic shipments exists, but cannot be publicly disclosed, or that no USITC estimate of domestic shipments exists? In addition, could the United States please explain in detail how the USITC estimates domestic shipments?

Response:

42.   The United States clarifies that its statement in paragraph 190 of the U.S. response to question 69 refers to situations where the Commission estimate of domestic shipments exists, but cannot be publicly disclosed to protect business confidential information ("BCI"). Specifically, the Commission treats data as confidential if they include information from only one or two companies, or if they include information from three or more companies and one company accounts for at least 75 percent of the total or two companies account for at least 90 percent of the total. In such cases, the Commission will not disclose the actual numbers, but will limit its discussion to a non-numerical characterization of such data to avoid any possibility that BCI could be derived from the published data.

43.   The Commission collects U.S. shipment data from U.S. producers through questionnaires. Under U.S. law, industry participants who receive questionnaires, including U.S. producers, are required to respond to questionnaires.

44.   U.S. producers are required to report the quantity and value of three forms of U.S. shipments. These are as follows (and include the relevant reporting instructions):[45]

> *"Commercial U.S. shipments"* – Shipments made within the United States as a result of an arm's length commercial transaction in the ordinary course of business. Report <u>net values</u> (*i.e.*, gross sales values less all discounts, allowances, rebates, prepaid freight, and the value of returned goods) in U.S. dollars, f.o.b. your point of shipment.
>
> *"Internal consumption"* – Product consumed internally by your firm.
>
> *"Transfers to related firms"* – Shipments made to related domestic firms. Such transactions are valued at fair market value.

45.   U.S. producers are advised that the information submitted by them is subject to audit and verification by the Commission. To facilitate possible verification of data, U.S. producers are requested to keep all files, worksheets, and supporting documents used in the preparation of the questionnaire response.

46.   After the collection of U.S. shipment data, Commission staff review the data for internal consistency, cross-questionnaire consistency, and consistency with other sources of information

---

[45] *See, e.g.,* USITC Softwood Lumber U.S. Producer Questionnaire (Exhibit USA-40).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 17

on the record. Commission staff seek clarification and corrections as appropriate. Once the review process is completed, Commission staff present the final data in the Commission report.

145.   In paragraph 190 of the United States' response to Arbitrator question No. 69, the United States mentions that "as a last resort, […] it is appropriate to use the data that underlies the BEA IO-data table". Could the United States please clarify:

    a.   Whether such data are in the form of a supply- and use- I-O table;
Response:

47.   The underlying data is not in the form of a supply and use table. The data are prepared, for publication purposes, to fit into the supply and use table format.

    b.   Which reference years exist for such data, and how frequently they are updated;

Response:

48.   The underlying domestic shipment data from Census' Annual Survey of Manufactures (ASM), the U.S. Department of Energy, Energy Information Administration (EIA), and the U.S. Department of Agriculture's (USDA) Economic Research Service (ERS) is updated annually, if not more frequently.

    c.   Whether such data are publicly available, or under what circumstances they could be made available to the Arbitrator and to Canada;

Response:

49.   The United States confirms that the data are publicly available on each U.S. agency's website.

    d.   In the case of the Census' Annual Survey of Manufactures (which, according to the United States, is the basis of BEA I-O data for manufacturing), how many and which 6-digit NAICS codes are covered;

Response:

50.   All 364 industries (NAICS 6-digit industry detail) provided in the Annual Survey of Manufactures are used. These data are public.

    e.   For data from the United States' Department of Energy, Energy Information Administration (which, according to the United States, is the basis of BEA I-O data on mining), and for the data from the United States' Department of Agriculture's Economic Research Service (ERS) (which, according to the United States, is the basis of BEA I-O data on agricultural products), which product classification is used;

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 18

Response:

51.   The data for agriculture and mining are not based on a product classification system. However, the relevant product could be matched to the product description.

> **f.   How would the United States calculate the US domestic market share based on such data. In this regard, could the United States please provide an example how such a calculation would work, including computer code if appropriate; and**

Response:

52.   As explained in the U.S. response to question 74, U.S. market share is defined as:

$$m\_us = \frac{value\ of\ domestic\ shipments}{total\ value\ of\ U.S.\ market\ (Y)}$$

53.   To estimate the value of domestic shipments from the sources underlying the BEA I-O data table, the total value of shipments is obtained from the ASM, ERS, or EIA, as appropriate, and then the corresponding value of exports is deducted. The process for estimating the value of domestic shipments from each data source is detailed below. As explained in the U.S. response to question 74, the total value of the U.S. market is the sum of domestic shipments and the value of imports for each variety. This will ensure that the sum of the market shares across varieties adds up to one, thus ensuring the varieties in the model represent 100 percent of the market value. This is a requirement of the Armington model.

54.   **Census' ASM (manufacturing):** To estimate the value of domestic shipments for manufactured goods, it would first be necessary to determine which NAICS codes correspond to the imported products subject to the CVD order. This may be done by concording the reference HTS codes in the CVD order to NAICS. After determining the relevant NAICS codes, the total value of shipments for the most recent year from the ASM could be obtained from the ASM table entitled, "Summary Statistics for Industry Groups and Industries in the United States," under the column "Sales, value of shipments or revenue ($1,000)".[46] Census data on the U.S. exports value for the corresponding NAICS codes could be obtained from USA Trade Online. The value of exports would then be deducted from the total value of shipments to obtain domestic shipments for the manufactured good.

55.   **USDA ERS (Agriculture):** USDA maintains public data files concerning U.S. Farm Income and Wealth Statistics. To estimate the value of domestic shipments for agriculture products, the value of total domestic production could be obtained from the public data file

---

[46] This information would be obtained on the Census website at https://www.census.gov/data/tables/time-series/econ/asm/2018-2019-asm.html

United States – Countervailing Duty Measures on
Supercalendered Paper from Canada: Recourse to Article 22.6
of the DSU by the United States (DS505)

U.S. Responses to Second Set of Questions
June 15, 2021
Page 19

entitled, "Annual cash receipt by commodity, U.S. and States".[47] The value of exports for all agricultural and related products can be obtained from the USDA Foreign Agriculture Service Global Agriculture Trade System (GATS) data.[48] Therefore, the value of domestic shipments for agriculture products would be the value of total domestic production of the product (obtained from the "Cash Receipt" data file") subtracted by the value of U.S. exports of the product (obtained from GATS).

56.   **Department of Energy EIA (Mining):** EIA maintains information on the value of domestic shipments on a commodity-specific basis. Accordingly, to estimate the value of domestic shipments for mining products, the appropriate EIA publication would first need to be identified. The publications are publicly available on the EIA website. The corresponding value of exports would be obtained from Census' USA Trade Online, and the value of domestic shipments for a mining product would be total value of shipments less the value of exports.

> g. **Whether such data differentiate between different sources of imports, or if they contain only two sources of supply, i.e. domestical shipments and imports?**

> **Response:**

57.   The underlying import data used for the BEA I-O tables does not differentiate between sources of imports. As discussed in the response above, the relevant data from ASM, EIA, and ERS is only for U.S. domestic shipments. However, corresponding U.S. import data can be identified for the relevant product from Census' USA Trade Online.

5 CHANGE IN DUTY RATE

5.1 For both parties

146.   **Could the parties please propose a procedure to determine the reference-period duty rate in cases where the duty rate in the year prior to the imposition of the OFA-AFA Measure changes over the course of the year? In this respect, would the parties consider it appropriate to determine the reference-period duty rate as the duty rate in place on a certain *point in time* prior to the imposition of the OFA-AFA Measure? Or should it be determined as an average duty rate in place over a certain *period of time*? If the parties consider it efficient to do so, please combine your answer to this question with your answers to the next question.**

---

[47] This information would be obtained from USDA ERS website at https://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics/data-files-us-and-state-level-farm-income-and-wealth-statistics/
[48] The information would be obtained on the USDA GATS website at https://apps.fas.usda.gov/GATS/

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 20

Response:

58.   The United States responds to questions 146 and 147 together, below.

147.   Could the parties please clarify how the reference-period CVD rate should be determined in instances where the CVD rate on a company's relevant exports to the United States varied during the course of a relevant calendar reference year? Relatedly, could the parties please clarify how duties *other than CVDs* (e.g. anti-dumping duties, "ADDs") would be determined in instances where a company's relevant exports to the United States were subject to varying levels of such duty rates (e.g. different anti-dumping duty rates) during the course of a relevant calendar reference year?

Response:

59.   If the year prior duty rates (either the CVD or AD rates) vary during the course of the relevant calendar reference year, for the purposes of this arbitration, the United States considers it appropriate to use a weighted average rate, where the weights are the share of months each rate was in effect during the reference year.

148.   Could the parties please explain the procedure that the parties propose to determine the reference year CVD rate for companies that are subject to the all-others CVD rate following the application of the OFA-AFA Measure? In doing so, could the parties please comment on whether the information required to implement their proposals will be available to Canada?

Response:

60.   If an affected All Others rate that was established during a CVD investigation is applied, the year prior reference CVD rate for All Other companies would be zero. No further information would be required for Canada to implement this approach.

61.   If an affected All Others rate that was calculated in an administrative review is applied, the reference year CVD rate would be the CVD rate that was applied in the prior year to the company now subject to the affected All Others rate. The CVD rates from each CVD proceeding are public and available to Canada.

5.2 For the United States

149.   Could the United States please respond to Canada's assertions that ADDs should not be considered in the relevant model due to their likely WTO-inconsistency?[49]

---

[49] Canada's response to Arbitrator question No. 77, para. 156; and No. 78, para. 165.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 21

Response:

62.   Canada suggests that the model should not account for AD duties because they will likely be WTO-inconsistent as a result of the decision in *US – Washing Machines (Korea)* concerning the differential pricing methodology.[50] However, the WTO-consistency of AD duties is not relevant to the economic model in this proceeding. Furthermore, Canada's presumption of WTO-inconsistency of future AD duties is neither permissible nor accurate.

63.   As an initial matter, the United States has explained that the appropriate model must account for AD duties in the year prior rate, initial duty rate, and counterfactual duty rate to correctly estimate the level of nullification or impairment resulting from the challenged measure.[51] This is because the trade effects in the Armington model depend on the <u>percent change</u> in duty rates rather than the <u>absolute change</u> in duty rates.

64.   Canada confuses this exercise by suggesting that the WTO-consistency of the AD rates is relevant to the application of the economic model. From an economics perspective, the modelling exercise does not simulate any changes to the values of the AD duties in the counterfactual analysis. Rather, the model accounts for the actual presence of AD duties to appropriately model the percent change in the total duty rate applied to imports from Canada as a result of the removal of the challenged measure (*i.e.*, the removal of the part of the CVD rate with the challenged measure). In response to question 84, the United States demonstrated that the failure to account for AD duties in the year prior rate and in the initial and counterfactual duty rate would overestimate the level of nullification or impairment by overstating the percent change in duty rates.[52] Therefore, the WTO-consistency of the AD duty rates is not relevant for the purposes of the model, as the AD duty rates are incorporated into the model only to correctly estimate the level of nullification or impairment resulting from the challenged measure while controlling for other duties applied on imports from Canada in the relevant period.

65.   To put this another way, the AD duty rates are not part of the <u>counterfactual</u> scenario, they are part of the <u>factual</u> scenario used to construct the model. The AD duties are like the elasticities or the data on the reference period value of imports and domestic shipments. It could make a significant difference in the calculation of the level of nullification or impairment if the value of imports were $100,000 vs $100,000,000. In the same way, it could make a significant difference if a 10-percentage point change in the CVD rate means a decline from 30 percent to 20 percent versus a decline from 80 percent to 70 percent (taking into account AD duties and any other known duties in place). Taking those other duties into account permits the model to accurately estimate the effect of the change in CVD rates.

66.   Further, Canada erroneously presumes that any and all future applications of AD duties by the United States necessarily will be WTO-inconsistent. That is an outrageous assertion by Canada, seeking for the Arbitrator and the DSB to act contrary to Article 23 of the

---

[50] Canada's Response to Questions, para. 156 (citing *US – Washing Machines (Korea) (AB)*).
[51] *See* U.S. response to questions 83 and 84.
[52] *See* U.S. Responses to First Set of Questions, paras. 229-239.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 22

Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") by assuming the existence and WTO-inconsistency of future measures as the basis for a DSB authorization.[53] A Member's measures cannot be determined to be WTO-inconsistent until a party claiming a breach of a provision of a WTO agreement has met its burden in WTO dispute settlement and the DSB has adopted findings of inconsistency.[54]

67.   Canada presumptuously assumes that the differential pricing methodology that was found to be WTO-inconsistent in *US – Washing Machines (Korea)* necessarily would be applied in future AD proceedings. In *US – Differential Pricing Methodology*, however, Canada brought a claim that the U.S. application of the differential pricing methodology in the AD investigation of softwood lumber from Canada was WTO-inconsistent and relied on the Appellate Body's findings in *US – Washing Machines (Korea)* to make its case. However, the panel disagreed with the Appellate Body's interpretation of the relevant provisions of the AD Agreement, and found that Canada had failed to demonstrate that certain aspects of the application of the differential pricing methodology in the *Softwood Lumber* AD investigation were WTO-inconsistent.[55] Therefore, the application of the differential pricing methodology in a future AD proceeding – if that methodology is, indeed, applied – cannot be presumed to be WTO-inconsistent, and there certainly is no basis to presume that all AD duties imposed by the United States in the future will be WTO-inconsistent.

68.   Accordingly, AD duties that are present during the relevant time period should be included in the model to correctly estimate the level of nullification or impairment. Only by accounting for the AD duties will the model appropriately isolate the effect of the challenged measure – the portion of the CVD rate with the challenged measure – on U.S. imports from Canada while controlling for all other duties that are also applied during the relevant time period.

150.   The United States argues that ADDs should be taken into account for determining the reference year duty rate. Could the United States please clarify whether US Customs data collects for all HTS 10-digit company-specific imports the composition of the applied duty rate in the year prior to application of future OFA-AFA related CVDs? That is, do the data separate between ADDs, CVDs, most-favoured nation (MFN) and preferential tariff rates, or is only the composite of all applied duty rates available? In case such duty rate specifications are collected by US Customs, could the United States make this information available to Canada?

Response:

69.   Customs collects data from all importers on the 10-digit HTS classification basis, and the data separates AD from CVD, as well as from other import duties. Duty rate specifications are

---

[53] DSU, Article 23.2(a) (stating that a Member shall "not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding . . . .").

[54] *US – Wool Shirts and Blouses (AB)*, pp. 13-16.

[55] *See US – Differential Pricing Methodology (Panel)*, para. 8.1.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 23

available, including an indicator of whether or not an import duty is a preferential rate under the United States-Mexico-Canada Agreement. Because Canada is a WTO member, non-preferential duties are MFN duties.

70.   The United States confirms that it can make this information available to Canada under the parties' BCI Understanding.

151.   In paragraph 213 of the United States' response to Arbitrator question No. 82, the United States argues that ADDs should be taken into account for determining the reference year duty rate "if they are contemporaneously present on the same product during the time period at issue". If the Arbitrator were to decide that the reference-year duty rate is based on the duty rate in the year prior to the application of the OFA-AFA Measure, should ADDs in that period be considered? That is, what exactly is "the time-period at issue"?

Response:

71.   The reference to "the time period at issue" in the U.S. response to question 82 was an overarching reference to the need to include relevant AD duties in the total initial duty, the total counterfactual duty rate, as well as the year prior (reference year) duty rate.[56] Therefore, the United States confirms that the reference year duty rate should account for any AD duties that are applied in the reference year to the product at issue. The purpose is to correctly estimate the level of nullification or impairment by isolating the effect of the challenged measure on U.S. imports from Canada while controlling for all other duties during the relevant time period.

152.   In the view of the United States, could situations occur where US Customs does not collect information regarding duty rates (whether CVDs, ADDs, MFN, or preferential tariff rates) in the reference period, assuming, only for the purpose of this question, that the reference period is the full calendar year prior to the imposition of the OFA-AFA Measure? In this respect, would the United States consider it appropriate to assume a reference year duty rate of zero in such an instance?

Response:

72.   Customs is the U.S. authority responsible for applying and collecting all applicable duties on entries into the United States. Accordingly, the agency is aware of the existence or non-existence of duties on entries, and collects information on all entries, including whether duties did not exist or if the applicable duties were zero.

---

[56] *See* U.S. response to question 83 (explaining that the AD duties should be accounted for in the total initial duty and total counterfactual duty rate); U.S. response to question 85 (explaining that AD duties should be accounted for in the total year prior duty rate). *See also* U.S. response to question 84 (demonstrating the need to account for AD duties because they are relevant to the percent change in total duty rates induced by the modification of CVD rates).

United States – Countervailing Duty Measures on U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6 June 15, 2021
of the DSU by the United States (DS505) Page 24

73.   If duties did not exist in the reference period, for instance, if a CVD duty did not apply, then a year prior CVD duty rate of zero is appropriate. However, it would not be appropriate to assume that the <u>total</u> year prior rate would be zero because the total year prior rate should be the sum of all applicable duty rates, including any corresponding AD duties and other tariff rates.[57] In a limited instance where all applicable duty rates in the year prior are zero, then the reference year duty rate would be zero.

6 VALUE OF THE IMPORTS

6.1 For both parties

153.   Could the parties please, when they submit responses to these questions, also submit a joint proposal for BCI procedures that would govern the sharing of US Customs data with Canada?[58]

       <u>**Response:**</u>

74.   Although the United States initially proposed additional BCI working procedures to protect the information exchanged after this arbitration proceeding, after further consideration, the United States believes an understanding between the parties would better serve to protect any BCI information exchanged between the parties for the purposes of applying a DSB authorization consistent with the Arbitrator's decision. In particular, the United States observes that paragraph 1 of the current Additional Working Procedures of the Arbitrator Concerning Business Confidential Information states, "The following procedures apply to business confidential information submitted in the course of <u>the present Arbitration proceeding</u>." Given that the parties would have no recourse to the Arbitrator once the proceeding is completed, the parties have consulted and reached a mutual agreement on the procedures to apply to the exchange of BCI necessary to apply a DSB authorization consistent with the Arbitrator's decision. The parties are prepared to sign the BCI Understanding prior to the conclusion of this proceeding if the Arbitrator agrees that the procedures are appropriate and necessary for the purposes of Canada applying a DSB authorization consistent with the Arbitrator's decision.

75.   A copy of the BCI Understanding is submitted along with these responses as Exhibit USA-47. The United States understands the necessary BCI information to be limited to the All Others Rate calculation memorandum on the record of a Commerce CVD proceeding and the import values from Customs. If Canada determines to use confidential Canadian exporter data to verify Customs' import values, the United States would also consider such information necessary and protected under the BCI Understanding.

76.   The United States highlights that its agreement with Canada on the terms of the proposed BCI Understanding is without prejudice to the U.S. position that Canada has suffered no

---

[57] *See* U.S. responses to questions 84 and 85.
[58] See United States' response to Arbitrator question No. 101, para. 260; Canada's response to Arbitrator question No. 86, para. 176.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 25

nullification or impairment, and that Canada's request for suspension of concessions must be rejected.

154. **Could the parties please explain what data fields in Form 7501 should determine what shipments will be deemed exports of the *specific relevant product* from Canada, and *by what company* such exports were made? Could the parties propose a procedure according to which searches could be performed in US Customs data (i.e. one that the Arbitrator could prescribe in advance) that would reliably address the issues raised in the preceding sentence, and thus reliably assign values of imports to relevant Canadian companies?**

Response:

77.   In prior arbitrations, the United States has provided the value of imports with respect to the relevant CVD case number or the relevant reference HTS codes at the request of the arbitrator.[59] An instruction by the Arbitrator in its decision for the United States to provide the relevant import value data collected by Customs for the relevant product for the reference period would similarly be sufficient and consistent with prior arbitrator decisions. Specific instruction as to how Customs should perform the data search in ACE is not necessary.

78.   Nonetheless, the United States observes that the data fields that would likely be relevant to the inquiry of the relevant product would include entry type and AD/CVD case number. For an investigation, the data fields that would likely be relevant would include description of merchandise and HTS code number. For determining the company, the data fields that would likely be relevant would include manufacturer ID and manufacturer name.

79.   In providing the relevant data, the United States could provide an attestation from Customs that the reported data is inclusive of all requested information.

155. **The Arbitrator notes that Canada's proposal for verification of US Customs data appears geared towards ensuring that the US Customs data are not materially under-inclusive of relevant Canadian exports. If this is so, could the parties please comment on whether there might be other ways for Canada's concerns to be addressed, at least in part? For example, could a Canadian representative attend the search at US Customs for relevant information in the US Customs ACE system, thereby ensuring that the search was done in a complete manner?**

Response:

80.   Since the data collected by Customs is derived from the entry data reported by the importers themselves,[60] it is unclear why Canada believes Customs data may be under-inclusive

---

[59] *E.g., US – Washing Machines (Korea) (Article 22.6 – US)*, para. 3.110; *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.22 (stating that the United States "subsequently provided confidential company-specific trade data compiled by US Customs").
[60] *See* U.S. response to question 174.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 26

of the subject merchandise. For administrative reviews, when AD/CVD case numbers are used, the data from Customs will be a reflection of the entries with AD or CVD duties. For investigations, when reference HTS numbers are used, the data will likely be over-inclusive since some of the values under the reference HTS codes are <u>not</u> subject to duties.[61]

81.   In providing the relevant data, the United States can provide an attestation from Customs that the reported data is inclusive of all requested information.

156.   Could the parties please clarify whether Statistics Canada is in possession of company-specific data obtained from US Customs? If so, could Canada obtain such company-specific data directly from Statistics Canada rather than from US Customs in order to calculate the relevant import values, perhaps pursuant to an agreement from the United States and establishment of relevant BCI procedures? Relatedly, the Arbitrator notes that Canada asserts that it could use data from Statistics Canada to verify data obtained from US Customs.[62] As part of its answer to this question, could Canada please explain how it would use data from Statistics Canada, which the Arbitrator understands is *aggregated* at the 8-digit HTS level, to verify *company-specific* data from US Customs?

     Response:

82.   U.S. Customs does not share company-specific data with other countries, and therefore Statistics Canada would not be in possession of company-specific data from Customs. The United States can make the relevant Customs data available to Canada under the parties' BCI Understanding.

157.   With respect to Canada's proposal for calculating the value of imports of unaffected exporters for the reference period in the absence of US Customs data[63], could the parties please explain whether publicly ranged sales figures for such companies will always be on the record of a relevant USDOC proceeding?

     Response:

83.   The United States confirms that all companies individually examined by Commerce are requested to submit publicly-ranged sales figures in a CVD proceeding. Therefore, the publicly-ranged sales figures reported by the individually-examined companies that are not affected by the challenged measure will be available on the record of a Commerce proceeding.

6.2 For Canada

Questions 158 through 172 are addressed to Canada.

---

[61] *See* U.S. response to question 105. *See also US – Washing Machines (Korea) (Article 22.6 – US)*, para. 4.92.
[62] Canada's response to Arbitrator question No. 86, para. 185.
[63] Canada's response to Arbitrator question No. 86, fn 217 to para. 191(iii).

United States – Countervailing Duty Measures on U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6 June 15, 2021
of the DSU by the United States (DS505) Page 27

6.3 For the United States

173. Could the United States please respond generally to Canada's revised approach to calculating relevant import values, as outlined mainly in Canada response to Arbitrator question No. 86? In doing so, could the United States take care to respond to the proposal in footnote 217 to paragraph 191(iii) of Canada's response to Arbitrator question No. 86?

<u>Response</u>:

84.   As an initial matter, the United States welcomes Canada's acceptance of the use of Customs information to obtain the value of imports for the affected exporters.[64] The United States observes that Customs data will also be needed for the value of imports for the unaffected Canadian exporters.

85.   **Scope of data and verification:** With respect to the scope of data, for an investigation, the United States will request data from Customs under the relevant reference 10-digit HTS codes in the reference period. For an administrative review, the United States will request data from Customs under the relevant CVD case number in the reference period.

86.   For affected individually-examined companies, the United States will provide to Canada the aggregated import data from Customs on a company-specific basis for the reference period, consistent with prior arbitrations.[65] For an affected All Others rate, the United States will provide the import data for all companies under the All Others rate on an aggregate basis. This information would not need to be on a company-specific basis for the purpose of applying the model. For unaffected Canadian exporters, the United States will provide aggregated import data for all unaffected Canadian exporters for the reference period. This information also would not need to be on a company-specific basis for the purpose of applying the model.[66] The information could be provided in an excel spreadsheet, and could include an attestation from Customs that the reported information is inclusive of all requested information. Importantly, the provision of the relevant import values in aggregate form for each variety is the information needed for the model.

87.   Canada attempts to justify its request for Customs data in the most disaggregated form by contending that such disaggregated data are necessary for the purposes of verification.[67] However, Canada proposes to verify disaggregated Customs data with aggregated data.[68] That is, if Canada obtains "all" export data directly from affected exporters as it suggests, this data would presumably be on an aggregate basis. Further, Canada also proposes to use data from

---

[64] Canada's Response to Questions, para. 175.
[65] *US – Washing Machines (Korea) (Article 22.6 – US)*, para. 3.110; *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.22.
[66] *See also* U.S. Responses to First Set of Questions, para. 196.
[67] Canada's Response to Questions, para. 182.
[68] Canada's Response to Questions, para. 185.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 28

Statistics Canada for verification. However, Canada acknowledges that Statistics Canada data is in an aggregate form.[69] Accordingly, the provision of Customs import values on an aggregated basis would be verifiable by Canada.

88.   Canada further proposes that for an investigation, if the Customs data provided on the basis of the reference HTS codes does not reflect certain export sales that fall within the scope of the CVD order but that were not covered by the reference HTS codes, Canada may supplement the dataset with that company-specific export data.[70] However, Canada does not propose how to adjust the Customs data for entries that are listed but <u>not</u> subject to the CVD order.[71] Without making adjustments for the overinclusive entries, it would not be appropriate for Canada to supplement the data with additional export entries. Such an approach would overestimate the level of nullification or impairment and result in an unreasoned estimate.

89.   **Procedures for exchange of information:** After a countervailing duty order containing the challenged measure or the final determination in an administrative review containing the challenged measure is published <u>and</u> after the affected CVD duties are assessed,[72] Canada may seek to suspend concessions. The United States does not consider it appropriate for Canada to suspend concessions following a final determination in an investigation, but prior to the issuance of a CVD order.[73] Under the U.S. retrospective system, a CVD order is only issued after Commerce issues an affirmative final determination <u>and</u> the Commission issues an affirmative determination concerning material injury.[74] If Commerce issues an affirmative final determination, but the Commission issues a negative final determination on material injury, the CVD investigation is terminated, and no CVD order is issued and no duties are assessed.[75]

90.   The United States agrees that Canada's notification should contain the names of the affected companies, the names of the unaffected companies, and either the relevant reference HTS codes from the CVD order (in an investigation) or the relevant CVD case number (in an administrative review[76]).[77]

---

[69] Canada's Response to Questions, para. 185 n. 212 ("Canada may only access aggregated, non-confidential data.").
[70] Canada's Response to Questions, para. 187.
[71] *See* U.S. Responses to First Set of Questions, para. 252 (explaining that the use of 10-digit HTS data will likely overstate the value of imports since some of the values under the reference HTS codes are not subject to duties); Canada's Response to Questions, para. 178 ("[T]he HTS codes may also include products that are not covered by the product description.").
[72] *See* U.S. Responses to First Set of Questions, paras. 106-107, 249-250.
[73] Canada's Response to Questions, para. 189.
[74] *See* U.S. Responses to First Set of Questions, para. 249.
[75] Indeed, if no CVD order is issued, Commerce will instruct Customs to terminate collection of cash deposits and refund all CVD cash deposits, with applicable interest. 19 U.S.C. § 1671d(c)(2) (Exhibit USA-4).
[76] Although Canada's proposal references the application of the challenged measure in a "subsequent proceeding", as explained in the U.S. response to question 35(b), the only post-investigation CVD proceedings that are applicable to this arbitration are administrative reviews. *See* Canada's Response to Questions, para. 189; U.S. Responses to First Set of Questions, paras. 103-105.
[77] *See* Canada's Response to Questions, para. 189.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 29

91.   Canada proposes only two weeks, from the date of notification, for the United States to provide the disaggregated data to Canada.[78] Notably, Canada has omitted a proposal for the amount of time that Canada would have to aggregate and verify the data. Nevertheless, given that the data provided by the United States will be on an aggregate basis and would therefore require the resources of the U.S. government to compile the information, the United States requests 45 days, from the date of notification, to provide the data to Canada. Canada would, in turn, have 20 days to verify the data. The United States concurs with Canada that if verification reveals any errors with the data, the parties would consult during a two-week period and correct the errors, if possible.[79] If, at any point during this process, a party considers that more time is needed for a certain stage, the parties would consult and seek to reach an agreement on the additional length of time necessary.

92.   Finally, with respect to the alternative data sources that Canada may use in the event the United States does not provide Customs data, including Canada's proposal in footnote 217 as referenced by the question, please see the U.S. response to question 178, below.

174.   Could the United States please confirm that US Customs data is derived from data collected via Form 7501 "Entry Summary"?[80] Could the United States please also explain: (a) who is responsible for completing this form and providing it to US Customs (and in particular who determines whether a CVD number is applicable to the shipment); (b) how such information is provided to US Customs; (c) if there are any penalties that the responsible party faces if the form is filled out incorrectly; and (d) whether searches in the ACE database can be performed for any fields in Form 7501?

Response:

93.   The United States confirms that Customs data is derived from data collected from the entry summary data, collected via entry summary form 7501. Importers are responsible for submitting this data to Customs, and determining whether a CVD (or AD) number is applicable to the shipment, subject to verification by Customs. Importers often use customs brokers to assist them to submit this data. The data is provided electronically to Customs, and searches in the ACE database can be performed for any fields in Form 7501. If importers submit incorrect information to Customs, they are subject to civil penalties under 19 U.S.C. § 1592.[81]

175.   Could the United States please comment on paragraph 145 of Canada's response to Arbitrator question No. 70, in particular with respect to Canada's claim that "without a comprehensive list of Canadian exporters subject to the countervailing duty order in an investigation, Canada is not aware how U.S. Customs would

---

[78] Canada's Response to Questions, para. 189.
[79] Canada's Response to Questions, para. 186.
[80] See Canada's response to Arbitrator question No. 87, para. 199; Exhibit CAN-93.
[81] 19 U.S.C. § 1592 (Exhibit USA-43).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 30

conclusively identify companies that shipped non-subject merchandise prior to the imposition of the countervailing duty order"?

Response:

94.   As an initial matter, the United States understands Canada's reference to "non-subject merchandise" to refer to the unaffected Canadian exporters. Earlier in paragraph 145 of its responses, Canada discusses three categories: (1) individually-investigated companies, (2) companies subject to the All Others rate, and (3) non-subject exports. As Canada acknowledges elsewhere in its submission, Canada can identify the unaffected Canadian exporters.[82] Therefore, Canada's assertion, that it is not aware how the United States would request data from Customs on the unaffected exporters that Canada identifies, is puzzling.

95.   Nonetheless, as detailed below, for an investigation, the United States will request from Customs all relevant import data for goods that entered under the reference HTS codes during the reference period. The United States will provide Customs with the names of the affected exporters and obtain aggregated import values on a company-specific basis. If the All Others rate also contains the challenged measure, then the only unaffected exporters would be any other companies that were individually-investigated by Commerce. In such a scenario, the United States would similarly provide Customs the names of the unaffected exporters and obtain the aggregated import value for all unaffected exporters. If the All Others rate does not contain the challenged measure, then the United States would request Customs to provide the aggregate import values of all unaffected exporters, that is, the aggregate import values for all other exporters that exported to the United States under the reference HTS codes during the reference period, excluding the individually-investigated company affected by the challenged measure.

176.   **Could the United States please explain what specific data from US Customs the United States would provide to Canada, and the form such data would take, for purposes of determining value of imports/market shares of relevant exporters? Would it be evident from the form of such transmitted data that the search for relevant imports was done in a comprehensive fashion in US Custom's ACE system?**

Response:

96.   Please see the U.S. responses to questions 173 and 175, above.

177.   **Canada has noted that the name of a manufacturer may be inconsistently inputted into Form 7501.[83] Could the United States please explain whether the same "Manufacturer ID" would nonetheless remain constant even in such situations, or**

---

[82] Canada's Response to Questions, para. 189 (proposing to name unaffected exporters in its notice to suspend concessions), para. 203 ("Canada would be able to identify the unaffected exporters based on information on Commerce's record . . . ."), para. 212 (explaining how it would identify Canadian companies unaffected by the challenged measure).
[83] Canada's response to Arbitrator question No. 86, fn 213 to para. 185.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 31

whether there is another way to reliably discern that the shipments came from the same manufacturer?

Response:

97.   The United States understands that there may be minor spelling errors or typos in the name of a manufacturer. The manufacturer ID may also be subject to minor errors as inputted by the importer or customs broker. Therefore, a combination of the use of the manufacturer name and the manufacturer ID would allow Customs to confirm whether certain entries were associated with a specific company.

98.   Furthermore, when Customs begins to track entries based on AD/CVD case numbers, individually-examined companies importing under the relevant AD/CVD order are also assigned a company-specific AD/CVD case number. Customs could also use this information to confirm whether certain entries are associated with a specific company.

178.   Could the United States please explain how it proposes Canada should calculate the relevant values of imports if the United States does not provide US Customs data to Canada for that purpose?

Response:

99.   As an initial matter, the United States has proposed to use Customs data to calculate the level of nullification or impairment. Accordingly, the United States is committed to providing such information to the extent necessary for Canada to apply for a DSB authorization consistent with the Arbitrator's decision.

100.   In the extremely unlikely circumstance that the United States does not provide Customs data to Canada, Canada proposes that it have the discretion to select from: (1) the value of imports obtained directly from affected exporters; (2) total aggregated values of imports by affected exporters based on Statistics Canada data; or (3) total aggregated value of imports from USA Trade Online or USITC DataWeb.[84] To avoid future disagreement over which of these alternative sources Canada may use, the United States considers it appropriate for the Arbitrator to predetermine one alternative data source, specifically the use of Census' USA Trade Online,[85] with publicly-ranged U.S. sales values obtained from Commerce's proceeding. As detailed below, in the limited instance where Commerce data is not available, the use of data from the affected exporters along with USA Trade Online data would be necessary.

101.   **Use of Census' USA Trade Online for total value of imports:** The data from Census' USA Trade Online are available on a 10-digit HTS level, and therefore align with the 10-digit

---

[84] Canada's Response to Questions, para. 191.
[85] Although USITC DataWeb has the same initial data as USA Trade Online, the United States maintains preference for USA Trade Online because it revises some imports from Canada on a monthly basis. On the other hand, USITC DataWeb is updated only on an annual basis. *See* U.S. Responses to First Set of Questions, paras. 119-122.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 32

HTS reference codes in the CVD order. In contrast, data from Statistics Canada would not be appropriate given that the data are at the 8-digit HTS level. Indeed, Canada acknowledges that the value of imports obtained from Statistics Canada would overstate the value of imports.[86] As discussed below, there may be limited circumstances where the use of data obtained directly from the affected exporters is necessary.

102. **Relevant 10-digit HTS codes:** Canada further proposes to increase the value of imports by adding additional HTS codes that fall under the product description, but that were not listed in the CVD order. Canada, however, fails to explain how its proposal would be verified or circumscribed. Likewise, Canada does not suggest a procedure to lower the value of imports from USA Trade Online despite Canada's recognition that the values obtained on the 8- and 10-digit HTS level are broader than the product description in a CVD order.[87] Therefore, only the 10-digit HTS codes identified in the CVD order should be used.

103. Specifically, the United States considers it appropriate only to use the primary set of 10-digit HTS codes identified in the CVD order. A CVD order may list two sets of 10-digit HTS codes. One portion lists the HTS codes that the product "is" or the products "are" currently classified under, and there may also be an additional description of the HTS codes that the product "may" or "might" be classified under.[88] The second category of HTS codes that the products "may" or "might" also enter under are generally broader than the merchandise subject to the CVD order. To avoid overinclusion, only the HTS codes that the CVD order states the product "is" or the products "are" currently classified under should be used.

104. **Additional sources to calculate value of imports:** Under the alternative approach of using 10-digit HTS data from Census, it will also be necessary to use information either from Commerce or the exporters themselves to estimate the value of imports attributable to each individual Canadian variety because Census data is not company-specific. Canada suggests that the value of a Canadian company's sales to the United States should be taken from publicly-ranged export sales information on the record of Commerce's proceedings during the period of investigation. The United States agrees in principle that it is appropriate to use this information, subject to availability, as discussed below.

105. The requisite information to calculate shares for each Canadian variety typically exists on the record of Commerce's proceeding. Specifically, in each CVD proceeding, Commerce

---

[86] Canada's Response to Questions, para. 191 n. 216 ("Canada acknowledges that 8-digit HS Codes will often result in more broadly defined products compared with the corresponding U.S. HTS Codes.").

[87] Canada's Response to Questions, paras. 178 & 191 n. 216. *See also US – Washing Machines (Korea) (Article 22.6 – US)* ("Yet, failing to adjust such market-level data will likely overstate the level of nullification or impairment, as frequently not all imports within the referred HTS 10-digit codes are affected by the WTO-inconsistent measure. Some adjustment is therefore necessary.")[87]

[88] *E.g.,* Wind Towers CVD Order, 85 Fed. Reg. 52545 ("Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading . . . Wind towers of iron or steel are classified under HTSUS . . . Wind towers may be classified under HTSUS . . . .") (Exhibit USA-10); Softwood Lumber CVD Order, 83 Fed. Reg. 349 ("Softwood lumber products that are subject to this order are currently classifiable under the following ten-digit HTSUS subheadings . . . . Items so identified might be entered under the following ten-digit HTSUS subheadings . . . .") (Exhibit CAN-18).

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 33

requests the individually-examined companies to submit the publicly-ranged values of their U.S. sales of the relevant product. When the company reports the publicly-ranged values of its export sales of the relevant product to the United States, then the United States concurs in the usage of such information to determine the value of imports.

106.   However, if the company does not report the value to Commerce, then the figures will not be available from the record of Commerce's proceeding. In this limited circumstance, the United States considers it appropriate for Canada to obtain the value of imports from the corresponding year directly from the Canadian exporters.

107.   When the information from Commerce is available, Canada appears to suggest that this information should always be obtained from Commerce's record of the CVD <u>investigation</u>. However, the publicly-ranged values of exports of the relevant product to the United States by the individually-examined companies would also exist in the questionnaire responses of an <u>administrative review</u>. Therefore, the CVD proceeding (either an investigation or administrative review) that most closely corresponds to the reference period is the proceeding record information that should be used to obtain publicly-ranged values of export sales of the relevant product by the individually-examined companies.

108.   **Calculation of value of imports:** In general, the United States agrees with Canada's proposal that import values associated with each variety may be estimated by calculating the market shares of affected and unaffected varieties from the related Commerce proceedings and applying those shares to total reference year import value obtained from Census. That is, for each affected variety and for the unaffected variety, a market share at the time of the relevant Commerce proceeding would be calculated by dividing the value of the export sales of the relevant product to the United States by the total value of imports during the corresponding period. For an affected variety comprised of an individually-examined company, this is calculated as:

$$market\ share = \frac{individual\ company's\ export\ sales\ to\ the\ U.S.\ during\ Commerce\ proceeding}{total\ imports\ from\ Canada\ under\ HTS\ codes\ during\ Commerce\ proceeding}$$

109.   To obtain the value of imports attributable to the affected variety in the reference year, this market share would then be applied to the value of imports from Canada under the 10-digit HTS codes from Census during the reference year. For clarity, data from Census' USA Trade Online may need to be pulled twice – once to obtain total imports for the year that corresponds closest to the Commerce proceeding, and once to obtain total imports for the reference year.

110.   **Market share and value of imports for the All Others rate:** Lastly, although Commerce likely has the relevant information for individually-examined companies, Commerce proceedings will not contain the information concerning export sales for companies under the All Others rate. To determine the value of imports of the unaffected and each affected Canadian

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
of the DSU by the United States (DS505)   Page 34

variety,[89] it may be necessary to first solve for the market share of the All Others rate, and then the All Others share can either be treated as a separate affected variety, or added to the unaffected Canadian variety, as appropriate.

111.   To calculate the market share of the All Other's rate, it is first necessary to determine the share of all individually-examined exporters. This share is calculated by dividing the sum of the export sales to the United States of all individually-examined exporters obtained from the appropriate Commerce proceeding by the total value of imports under the relevant HTS codes from Census during the corresponding period. The All Others share is then obtained by subtracting this number from one, as illustrated:

$$all\ others\ share = 1 - \frac{sum\ of\ companies'export\ sales\ to\ the\ U.S.during\ Commerce\ proceeding}{imports\ from\ Canada\ under\ HTS\ codes\ during\ Commerce\ proceeding}$$

112.   To obtain the value of imports in the reference year under the All Others rate, the All Others market share would then be applied to the total value of imports from Canada under the 10-digit HTS codes from Census during the reference year.

7 INFLATIONARY ADJUSTMENT

7.1 For Canada

Question 179 is addressed to Canada.

7.2 For the United States

180.   With reference to the United States' response to Arbitrator question No. 111, could the United States please suggest which data would be appropriate for a "U.S. producer price index for the relevant industry" in this context? Could the United States please explain whether such data are available on an annual basis?

Response:

113.   The U.S. producer price indexes (PPI) are produced monthly by the U.S. Department of Labor's Bureau of Labor Statistics (BLS), and an annual change can be calculated from the year-on-year change in the index from December to December.   The data is available on the BLS website at www.bls.gov/ppi. BLS publishes approximately 535 industry-specific price indexes and over 4,000 product line and product category sub-indexes. These indexes follow the NAICS classification system. To determine the correct PPI to use, the HTS codes can be concorded to NAICS.

---

[89] When the All Others rate contains the challenged measure, under the U.S. model, the All Others rate represents a distinct, affected variety. When the All Others rate does not contain the challenged measure, the All Others rate is a part of the unaffected Canadian variety.

United States – Countervailing Duty Measures on   U.S. Responses to Second Set of Questions
Supercalendered Paper from Canada: Recourse to Article 22.6   June 15, 2021
 of the DSU by the United States (DS505)   Page 35

114.   BLS also publishes more than 3,700 commodity price indexes for goods. The commodity classification structure of the PPI organizes products and services by similarity or material composition, regardless of the industry classification of the producing establishment. This system is unique to BLS and does not match any other standard coding structure.