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 QUESTIONS FROM THE ARBITRATOR FOLLOWING THE VIRTUAL SESSION (THIRD SET OF QUESTIONS)

October 29, 2021

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1 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] The United States continues to observe 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.[2]

1.1 For both parties

181. Below appears a table of scenarios for calculating a counterfactual all-others CVD rate. Could the parties please confirm whether there are any relevant counterfactual scenarios that are *not* reflected in this table, and whether the parties consider the potential ways to calculate the all-others rate indicated in the final column as unreasonable?

[1] *See* U.S. Written Submission, paras. 13-34; U.S. Responses to First Set of Questions, paras. 1-35.
[2] *See* U.S. Responses to First Set of Questions, para. 35.

Scenario No.	Individually investigated firms used to calculate all-others rate in counterfactual	Potential manner of calculating counterfactual all-others rate
1	None.	Proxy of 0%.[3]
2	One firm.	The firm's counterfactual CVD rate.
3	Two firms *and* the USDOC had in fact used the simple average of firms' CVD rates or the weighted average of firms' CVD rates using publicly available US sales data.	Use methodology the USDOC in fact used.
4	Two firms *and* the USDOC had in fact used three or more firms' confidential US sales data to calculate the weighted average of firms' CVD rates.	Canada first prompts the relevant companies to provide written authorization to the USDOC to share the companies' confidential US sales data with Canada, and, if Canada is able to obtain *all* such data, then calculate the weighted average CVD rate of the relevant firms with that data. Canada then calculates a simple average of the relevant firms' CVD rates and a weighted average of their CVD rates using publicly ranged US sales data from the record of the USDOC proceeding. Canada then selects whichever of those two rates most closely approximates the weighted average rate that was derived from the firms' confidential US sales data. If Canada cannot obtain all such data, then Canada uses the simple average of the relevant firms' counterfactual CVD rates.
5	Three or more firms.	Canada first prompts the relevant companies to provide written authorization to the USDOC to share the companies' confidential US sales data with Canada, and if Canada is able to secure all such data, then Canada calculates the weighted average CVD rate with such data. If Canada cannot obtain all such data, then Canada uses the simple average of the relevant firms' counterfactual CVD rates.

[3] In answering this question, the United States is also kindly asked to explain whether a 0% all-others rate would mean that the companies subject to the all-others rate would be excluded from the scope of the CVD order or not.

Response:

2. The United States confirms that the scenarios reflected in the table depict all relevant counterfactual scenarios, with the exception of scenarios 4 and 5. With respect to scenario 4, the United States does not consider it appropriate for Canada to reassess which averaging methodology to use. As the United States has explained,[4] the averaging methodology used in the counterfactual should be the averaging methodology that was, in fact, used by Commerce in the CVD proceeding at issue, regardless of whether the number of firms used to calculate the counterfactual differ from the number of firms that Commerce originally used. Therefore, if Commerce originally used a weighted average, then the weighted average should be used to calculate the counterfactual All Others rate. Such an approach – following the same averaging methodology applied by Commerce in the hypothetical, future proceeding – is practical to implement and would limit the risk of potential controversies between the parties.[5] And such an approach would not leave room for methodological disputes.

3. At the virtual session, Canada proposed to utilize the publicly ranged sales data on the record of Commerce's proceeding to calculate a weighted average if authorization of confidential data cannot be obtained. Therefore, for both scenarios 4 and 5, only if Canada is unable to obtain the necessary authorization to access the confidential U.S. sales data does the United States consider it appropriate to use the publicly ranged sales data on the record of Commerce's proceeding to calculate a weighted average for the counterfactual All Others rate. In the rare event this information is not available on the record,[6] then the simple average of the firms' CVD rates should be used.

4. With respect to the question posed in the footnote to scenario 1, a zero percent All Others rate would not necessarily mean that the companies subject to the All Others rate would be excluded from the CVD order. Rather, under U.S. law, any exporter or producer for which Commerce determines an individual net countervailable subsidy rate of zero or de *minimis* in a CVD investigation is excluded from an affirmative final determination or a CVD order.[7]

5. Regardless, in response to question 238, below, the United States confirms that if a company's CVD rate is zero, *de minimis*, or entirely based upon facts available, for the purposes of this arbitration proceeding, such a company's CVD rate would be excluded from the calculation of the counterfactual All Others rate.[8]

[4] U.S. Responses to First Set of Questions, paras. 59, 84-85.
[5] U.S. Responses to First Set of Questions, para. 85.
[6] In each CVD proceeding, Commerce 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 usage of such information would be appropriate. *See* U.S. Responses to Second Set of Questions, para. 105.
[7] U.S. Responses to First Set of Questions, 77.
[8] U.S. Responses to First Set of Questions, para. 75.

182. Please assume for purposes of this question that the Arbitrator adopts the methods for calculating the counterfactual all-others rate in the table above.

a. Could the parties please recommend a timeline for: (i) by when Canada should request the relevant firms to release their sales information; and (ii) by when Canada should receive that information in order to use it to calculate a counterfactual all-others rate before Canada could resort to using a simple average? Also, please comment on whether setting both such deadlines would be necessary if the Arbitrator were to adopt a deadline of the kind mentioned in question 185, below; and

Response:

6. At the virtual session, Canada stated that the parties may be able to resolve any issue through alternative means, including a mutually agreed solution, and that introducing deadlines may preclude such alternative solutions. The United States agrees that the parties should have the flexibility and discretion to resolve any issue through alternative means. However, the United States understands question 185 to propose a minimum start date by which Canada may begin to suspend concessions following a "triggering event", and does not view the proposal in question 185 to preclude the parties from pursuing alternative solutions.

7. Therefore, in the event Canada determines to proceed with suspension of concessions, the United States considers it appropriate to adopt a timeline for when Canada should request the relevant companies to release the information and by when Canada should receive that information. The United States considers it appropriate to provide the companies 15 days to authorize the use of their confidential information on the record of Commerce's proceeding. After the United States is in receipt of the authorization, the United States would have 10 days to provide the information to Canada. Throughout the process, the parties may remain in communication and confer with each other in the event more time is necessary.

b. The Arbitrator notes that it appears possible that the all-others rate could actually increase in the counterfactual.[9] Could the parties please explain whether this is correct, and if so, also please explain how this would be accounted for in each party's proposed model?

Response:

8. The Arbitrator's understanding is correct. As the United States has explained, the All Others rate could increase in the counterfactual. Indeed, this situation would have occurred in the CVD investigation of *Supercalendered Paper from Canada* had the CVD order remained in effect with the challenged measure removed.[10]

[9] U.S. Written Submission, para. 54.
[10] U.S. Written Submission, para. 54.

9. The U.S. model has the flexibility and ability to account for such a scenario. The counterfactual All Others rate, regardless of whether the rate has decreased, increased, or remained the same, will be an input into the model. The level of nullification of impairment would be calculated as the difference between two model runs. The first model run would capture the change in duties between the reference period rates and the factual rates, and the second model run would capture the change in duties between the reference period rates and the counterfactual rates. This could include a counterfactual All Others rate that exceeds the corresponding factual rate. Ultimately, the model will determine whether the application of the challenged measure resulted in a positive level of nullification or impairment. Whether or not that is the case will depend upon the balance of the effects across all affected varieties. If it did not, or in fact, if Canada paid less duties than it would have had the measure not been applied, then Canada is not entitled to suspend concessions.

10. Canada's approach in this circumstance is less clear. As described in Canada's response to question 127, Canada's approach to calculating nullification or impairment is contingent on the relative magnitudes of t_{ref}, t_{inc}, and t_{con}. However, Canada does not define its preferred formula to account for the situation where the counterfactual duty rate exceeds the factual duty rate.[11] As discussed further in the U.S. response to question 197, below, Canada's contingent approach implies that the counterfactual scenario that defines the calculation of nullification or impairment depends on the relative magnitudes of the duty rates. Therefore, the United States is unable to comment on how Canada would calculate the level of nullification or impairment in circumstances where $t_{inc} < t_{con}$ without additional information on the counterfactual Canada would propose for this circumstance.

1.2 For Canada

Questions 183 and 184 are directed to Canada.

2 OVERALL METHODOLOGY

2.1 For both parties

185. Could the parties please comment on whether it would be appropriate for the Arbitrator to specify that, following a triggering event, unless Canada suspends concessions sooner, the time-period during which Canada is entitled to suspend concessions with respect to that triggering event starts to run six months following the triggering event?

Response:

11. As an initial matter, the United States clarifies that a "triggering event" occurs in two separate instances. First, there is a "triggering event" if there is a new application of the challenged measure. Second, there is a "triggering event" if the challenged measure is removed and a company's CVD rate is no longer affected by the challenged measure. In such an instance,

[11] *See* Canada's response to question 127.

modification of the level of nullification or impairment would be necessary to reflect that a company's CVD rate is no longer affected by the challenged measure.

12. The United States maintains that the approach as described by the Arbitrator in question 123 is the more reasonable and appropriate method. As question 123 recognizes, because the affected CVD rate may not be in place for the entirety of a calendar year, the level of suspension may need to be determined by multiplying the level of nullification or impairment by the fraction of the year the challenged measure was in effect. Further, as question 207, below, contemplates, in a calendar year, it is hypothetically possible for multiple triggering events to occur. That is, there could be a new application of the challenged measure, but there could also be the removal of a challenged measure thereby requiring modification to the level of suspension.

13. Therefore, if Canada were permitted to request suspension of concessions six months after each triggering event, it is possible that the level of suspension would be continuously varying in one year, with additional amounts added or removed from the requested level of suspension at different times throughout the year. In contrast, the more simple and straightforward approach would be for Canada to notify the DSB of the level of suspension during the first quarter of the year following a triggering event (or triggering events), thereby taking into account any and all new application(s) or removal of application(s) of the challenged measure.

186. The Arbitrator understands that the parties are in agreement that, following a triggering event, Canada would send an initial notification to the United States, and the content of that notification would include the following: (a) a notification that Canada intends to suspend concessions with respect to a given application of the OFA-AFA Measure; (b) the names of all Canadian exporters who are then subject to relevant individual CVD rates affected by the OFA-AFA Measure; (c) the names of all Canadian exporters who are subject to a relevant individual but unaffected CVD rate, and individually investigated companies that were excluded from the scope of the relevant CVD order; (d) a request for the United States to gather data on Canadian imports of the relevant product from US Customs with reference to the relevant HTS codes from the relevant CVD order or the relevant AD/CVD case number; and (e) the reference period. Could the parties please confirm whether this understanding is correct, and if not, please explain what the content should be?

Response:

14. The Arbitrator's understanding is correct. However, for part (c), Canada should also provide the names of companies that imported under the All Others rate, to the extent possible.

187. Both parties have used the term "unaffected exporters" in their submissions. In this context, could the parties please confirm that this term is comprised of the two following types of companies: (a) Canadian exporters of the relevant product whose CVD rates would not change in the counterfactual; and (b) Canadian exporters of

the relevant product who were individually investigated but subject to no CVD rate at all due to their exclusion from the CVD order entirely?

Response:

15. The United States confirms that unaffected exporters, or the "non-subject" Canadian variety, refers to the companies described in part (a) and (b) of this question. Specifically, the term encompasses Canadian companies with CVD rates that would not change in the counterfactual[12] and Canadian companies that were excluded from the CVD order.

2.2 For Canada

Questions 188 through 195 are addressed to Canada.

2.3 For the United States

196. The Arbitrator recognizes that, according to Canada's formula, the level of NI can exceed the *vimp* of affected exporters. This is the case if the product of the scaling factor and the change in duty rate is larger than one (assuming, for the purpose of this question only, that the counterfactual duty rate would equal the reference year duty rate and therefore, no second run of the model would be required). Could the United States please comment on this issue and explain whether levels of NI exceeding the value of imports from relevant affected exporters could also be an outcome of the US model?

Response:

16. It is clear to the United States that, in certain cases where $t_{con} = t_{ref}$, Canada's formula will result in a level of nullification or impairment that will exceed the *vimp* of affected exporters. Canada's basic formula proposed in equation (1) of its methodology paper defines the change in imports as the product of the value of imports, the change in duty, and the scaling factor:

$$\text{Change in Imports} = \text{Value of Imports} \times \Delta\text{Duty} \times \text{Scaling Factor} \quad (1)$$

17. Based on this formula, in cases where the product of the scaling factor and the change in duty rate (*i.e.*, ΔDuty x Scaling Factor) is larger than one, the change in imports would be greater than the value of imports.

18. To see the mathematical implications more clearly, we consider equation (1) as it is derived in equation (17) of Exhibit CAN-105, where $t = t_{ref}$ and $\Delta t = t_{inc} - t_{ref}$. That is:

[12] *See* U.S. response to question 207, below, for further detail.

$$NI = SCF \times \frac{t_{inc} - t_{ref}}{1 + t_{ref}} \times vimp_{CAD}$$

where SCF is the scaling factor, and $vimp_{CAD}$ is the value of imports.

19. The United States understands that this formula would primarily be applied in cases where the factual duty rate is greater than the reference year duty rate, *i.e.*, $t_{inc} > t_{ref}$. As such, this formula calculates Canada's nullification or impairment as the approximation of the exports value lost to Canada due to the application of the factual duty rate. It would produce a level of nullification or impairment that exceeds $vimp_{CAD}$ any time t_{inc} was sufficiently larger than t_{ref} such that the magnitude of the product of the change in duty rate term with the scaling factor is larger than one.[13] The implication of such a result is that the application of the factual rate resulted in Canada losing more than 100 percent of its exports value to the United States. For instance, in the *Softwood Lumber* example illustrated in Exhibit USA-48, this result would be obtained from Canada's base model (scenario 1) if t_{inc}were greater than 0.4.[14]

20. In the scenario where $t_{con} = t_{ref}$, it would not be possible for the U.S. model to produce a result where the level of nullification or impairment exceeds the value of imports from relevant affected exporters. Such a scenario would only require a single run of the U.S. model, and a single run of the U.S. model will never generate losses in import value that exceed the baseline import value. In other words, in this scenario, the U.S. model cannot generate a result where Canada's lost exports value exceeds 100 percent of its exports value to the United States.

21. The United States observes that the scenario demonstrates the effect of approximation error arising from Canada's use of a log-linearized model rather than an exact model, as proposed by the United States. The magnitude of this error using Canada's proposed approach – and thus the over-statement of nullification or impairment – grows larger with the difference between t_{inc} and t_{ref}.

22. Lastly, the United States recalls that at the virtual session, Canada argued that the U.S. model does not permit all possible scenarios because a non-linear Armington model cannot generate a result where Canada's lost export value is equal to 100 percent. However, as question 248 recognizes, a non-linear model can generate lost export value that is infinitely close to 100 percent. Therefore, it is not reasonable to forgo a model that excludes the scenario in which the U.S. tariffs are completely prohibitive and exchange it for a model that permits the unfathomable scenario that the U.S. duties cause Canada to lose more than 100 percent of its exports value when $t_{con} = t_{ref}$.

197. In its response to Arbitrator question No. 127, Canada proposes to adjust the level of *vimp* between the first run and the second run of the its model. Could the United

[13] Algebraically, this occurs whenever $t_{inc} - t_{ref} = \frac{1+t_{ref}}{|SCF|}$

[14] The United States recalls that in the example in Exhibit USA-48, $t_{ref} = 17.99$. In the example contemplated by this question, t_con would also equal 17.99.

States please comment on this proposed adjustment, i.e. whether it considers this approach valid in the framework of Canada's overall methodology?

Response:

23. Canada's proposed approach to adjust the level of *vimp* between the first run and the second run of its model is not appropriate because it is inconsistent across scenarios. In response to question 127, Canada proposes to apply three different formulas to calculate the level of nullification or impairment, depending on the relative magnitudes between the reference year duty rate (t_{ref}), the factual duty rate with the challenged measure (t_{inc}), and the counterfactual duty rate without the challenged measure (t_{con}). These three different formulas represent three entirely different counterfactuals, each of which could be evaluated using the same underlying Armington model of the product market of interest.

24. In contrast, the U.S. approach is consistent. The U.S. model applies a single counterfactual scenario regardless of whether the reference year duty rates are lower, higher, or between the factual and counterfactual duty rates.

25. At the virtual session, Canada suggested that its proposal is, in part, motivated by properties specific to a log-linearized model. To the extent that is the case, the U.S. non-linear model has the benefit that the same calculation produces a consistent estimate of nullification or impairment in every circumstance.

26. The United States considers that the counterfactual evaluated by the model should be uniform across scenarios to avoid calculating nullification or impairment based on different definitions of what would constitute compliance. In particular, the appropriate counterfactual in all circumstances is one in which total reference year duty rates (t_{ref}) are changed to counterfactual duty rates (t_{con}) instead of factual duty rates (t_{inc}) in the relevant investigation or administrative review, that is, at the time the factual duty rates would have actually been applied. This is appropriate because it reflects the difference between the application of the challenged measure and an alternative universe in which the challenged measure would not be applied, which would constitute compliance for the purpose of this dispute.

27. Therefore, for every scenario, the analysis should always be carried out in a consistent manner that reflects this counterfactual. This is achieved by taking the difference of the results from two runs of the U.S. model. The first run estimates the change in Canadian exports value associated with moving from the reference year duty rate, t_{ref}, to the factual duty rate with the challenged measure, t_{inc}. The second run estimates the change in Canadian exports value associated with moving from the reference year duty rate, t_{ref}, to the counterfactual duty rate without the challenged measure, t_{con}. The level of nullification or impairment is obtained by subtracting the change in exports value from Canada in the second run from the change in exports value in the first run. The resulting level of nullification or impairment therefore captures any additional value of Canadian exports if the counterfactual rates would have been in effect instead of the factual rates.

28. In contrast, under Canada's approach, one of three different formulas for calculating the level of nullification or impairment may be applied, depending on the relative magnitudes of the duty rates.[15] Further, each formula represents a different counterfactual scenario.

29. Canada first proposes a formula for when the reference year duty rates are between the factual and counterfactual rates, $t_{con} < t_{ref} < t_{inc}$.[16] Only under this formula is the counterfactual correctly represented, and aligns with the U.S. model. That is, the formula captures a change from the reference duty rate (t_{ref}) to the counterfactual rate (t_{con}) instead of a change from t_{ref} to the factual rate (t_{inc}).

30. Canada next proposes a different formula for when reference year duty rates are less than the factual and counterfactual rates, and the counterfactual rate is less than the factual rate, that is if $t_{ref} < t_{con} < t_{inc}$.[17] Under this formula, the counterfactual represented is one in which the United States will have modified duty rates from the counterfactual rate (t_{con}) to the factual rate (t_{inc}) after duties have previously been changed from the reference rate (t_{ref}) to the counterfactual rate (t_{con}). That is, Canada's formula assumes that the counterfactual rates will have been applied and that Canada will be seeking a modification from the counterfactual rates to the factual rates in a future period after the market has already been adjusted to the counterfactual rates. However, not only does this counterfactual differ from the previous scenario, but it inverts the change of duties that is being assessed by erroneously focusing on the change from the counterfactual rate to the factual rate.

31. Lastly, Canada proposes a third formula for when reference year duty rates are greater than the factual and counterfactual rates, that is if $t_{con} < t_{inc} < t_{ref}$.[18] In this formula, the counterfactual scenario is one in which the United States will have modified duty rates from a factual rate (t_{inc}) to the counterfactual rate (t_{con}) after duties have previously been changed from the reference rate (t_{ref}) to the factual rate (t_{inc}). Although in this formula Canada appropriately assesses the change from the factual to the counterfactual rate, Canada's formula again assumes that the factual rates with the challenged measure have already been applied, and

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[15] *See* Canada's response to question 127.

[16] The formula Canada indicates it would apply is equivalent to subtracting Equation (17) of Exhibit CAN-105 with $t = t_{ref}$ and $\Delta t = t_{con} - t_{ref}$ from Equation (17) with $t = t_{ref}$ and $\Delta t = t_{inc} - t_{ref}$. In both applications $vimp_{CAD}$ would be the same value, namely the reference year value of imports from Canada. *See* Canada's Response to Second Set of Questions, para. 64; Arbitrator's question 127.

[17] Canada proposes to calculate the level of nullification or impairment by first applying an "adjustment" formula from the log-linear Armington model that approximates the level of Canadian imports obtained when t_{ref} is increased to t_{con}. This approximate level of imports is denoted $vimp_{con}$. Next, the formula in equation (17) of Exhibit CAN-105 is applied with $t = t_{con}$ and $\Delta t = t_{inc} - t_{con}$, and $vimp_{CAD} = vimp_{con}$. Canada's Response to Second Set of Questions, paras. 66-68.

[18] Canada proposes to calculate the level of nullification or impairment by first applying an "adjustment" formula from the log-linear Armington model that approximates the level of imports obtained when t_{ref} is decreased to t_{inc}. This approximate level of imports is denoted $vimp_{inc}$. Next, the formula in equation (17) of Exhibit CAN-105 is applied with $t = t_{inc}$ and $\Delta t = t_{con} - t_{inc}$, and $vimp_{CAD} = vimp_{inc}$. *See* Canada's Response to Second Set of Questions, paras. 69-70.

that Canada will be seeking a modification from the factual to the counterfactual duty rate in a future period after the market has already adjusted to the factual rates. As the United States has explained, however, the model must capture the change that would have occurred had the counterfactual rate been applied instead of the factual rate at the time the challenged measure is applied.

32. Further, as the United States observes in the U.S. response to question 182(b), Canada does not provide a formula to apply in the case where $t_{inc} < t_{con}$, a scenario the United States has demonstrated is definitively possible.[19]

33. Therefore, Canada's use of different formulas based upon the relative magnitudes between the duty rates is further evidence that Canada's log-linearized approach is not flexible and not simple, as Canada suggests. In contrast, the non-linear model used by the United States can accommodate any scenario and produce an estimate of nullification or impairment under a consistent definition of the counterfactual.

198. The Arbitrator notes that Canada and the United States disagree with respect to whether the values of elasticities, and values of shipments from domestic (US) sources and non-Canadian imports from the rest of the world (RoW), should be calculated now or in the future.[20] The Arbitrator notes that data sources in existence now can change in a variety of ways, and may even become totally unavailable in the future. The Arbitrator thus notes that this could mean that Canada could find itself unable to run the model due to the lack of necessary information. Assuming that the Arbitrator would consider that scenario unacceptable, how would the United States propose to remedy this problem with respect to each of the values described above? Moreover, in the future, if the parties disagreed regarding whether a data source was still fit for use in a given context, how would such a disagreement be decided?

Response:

34. The United States proposes the use of a tiered approach to ensure that Canada will always be able to apply the model, ideally using product-specific information where such information is available.

35. For the **values of substitution, demand, and domestic supply elasticities**, the United States has explained the need for the elasticities to correspond to the specific product and time period at issue. As a first option, the United States considers that it would be most appropriate for the elasticity estimates to be based on data reported from a single source,[21] that is the relevant

[19] U.S. Written Submission, para. 54.
[20] The Arbitrator understands that Canada makes its arguments in the context of advocating the computation of a single Canadian market share for use in its scaling factor, whereas the United States breaks out these values in individual market shares.
[21] As the United States has explained, taking all the required elasticity estimates from one source is more appropriate than taking one elasticity from one academic study and another elasticity from a different source, because, as

Commission report from the future CVD proceeding at issue. A Commission report is the only source for these parameters that is product-specific and issued in the relevant time period.[22] As the United States has explained, the Commission has provided qualitatively estimated demand, substitution, and domestic supply elasticities for every product under a CVD (or AD) investigation in its reports since 1987.[23] Further, the estimates are made after analyzing responses from domestic producers and importers, and foreign producers and exporters concerning the market of the product under investigation. The Commission also considers any relevant academic estimates, as well as arguments made by interested parties. Therefore, although Canada argues against the use of future Commission reports because Canada alleges that the parties will not have had the opportunity to assess and verify the data,[24] both the Government of Canada and Canadian companies will have already had the opportunity to opine on the parameter values in the relevant Commission report.[25] Further, where the product has been known, past arbitrations have utilized the Commission reports for elasticity values.[26]

36. If and only if the elasticity estimates are not available in the Commission report, then the second option would be for the parties to consult and use some future source, including considering updated academic literature. Given that this arbitration proceeding involves some unknown, future product and it remains unknown if or when the challenged measure would ever be applied, it is pertinent for any instructions from the Arbitrator to provide for an opportunity for the parties to consult on the use of a future source in the event the parties both agree an alternative source would be better suited for the product and time period at issue. Indeed, Canada has contemplated this by providing for consultation modalities in its written responses to questions.[27] Therefore, only in the rare and unlikely situation where the Commission report does not contain elasticity values, then the parties would proceed to consult on an alternative, future source.

37. If the parties cannot come to an agreement on an alternative, future source, then the final option would be for Canada to use the predetermined source determined by the Arbitrator. The United States does not consider it appropriate for Canada to ultimately have the sole discretion to

documented in Ahmad *et al* (2020), elasticity estimates can vary, even for the same sector or product, across studies depending on the assumptions made and estimation methods employed by the researcher. U.S. Responses to First Set of Questions, para. 149 (citing Ahmad *et al.* (2020) (Exhibit USA-23)).

[22] U.S. Written Submission, paras. 104-105.

[23] U.S. Responses to First Set of Questions, para. 126.

[24] *See* Canada's Written Submission, para. 141.

[25] U.S. Responses to First Set of Questions, paras. 175 n. 251, 182 n. 265.

[26] *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.

[27] Canada's Response to First Set of Questions, para. 141. The United States generally agrees with Canada's proposed modalities with the exception of part (iii). If the parties cannot reach agreement on an alternative source for elasticity estimates, the United States considers it appropriate for the parties to proceed to option three and use a predetermined source by the Arbitrator.

select a source if the parties are unable to come to an agreement, as Canada proposes.[28] Indeed, if Canada ultimately has the sole discretion to use any source it wants, Canada effectively has no incentive to engage in good faith consultations with the United States. Further, as the United States has explained, nothing in the DSU provides that a Member can simply have wide (or possibly unbounded) discretion to do as it wants when suspending concessions.[29] Rather, the DSU provides that in an Article 22.6 proceeding, the Arbitrator should ensure that the level of suspension is equivalent to the level of nullification or impairment. The decision on equivalence therefore rests with the Arbitrator, not Canada.

38. Therefore, if the parties are unable to come to an agreement after consultations, the parties should proceed to the third option and use a method predetermined by the Arbitrator. In response to question 255, the United States observes that there are number of sources presently before the Arbitrator to consider for each of the elasticity values as the third and final option.

39. Specifically, for the third option for substitution elasticity, the Arbitrator has proposed Fontagne *et al.* (2020), while Canada has proposed Caliendo and Parro (2015). The United States highlighted Soderbery (2015)[30] and Ahmad and Riker (2019)[31] as two other recent contributions that employ methodologies and levels of aggregation distinct from one another and from Fontagne *et al* (2020). Therefore, for the third option, the United States suggests the Arbitrator use the median value of the CVD order-specific elasticities from the three academic studies with a level of disaggregation at the 6-digit level HTS or higher.[32] The United States maintains that the Caliendo and Parro values are highly aggregated, and are therefore not suitable as a third option.[33]

40. For the third option for demand elasticity, the United States agrees with the Arbitrator's proposal to use the most recently available GTAP consumer final demand elasticities.[34] In contrast, Canada proposed to fix the value to GTAP 11.

[28] Canada's Response to First Set of Questions, para. 141(iii) ("However, if Canada disagrees with the United States' counterproposal, or if the parties cannot reach agreement within four weeks of Canada's initial proposal, Canada shall be entitled to use a new source, different from its initial proposal, to calculate necessary inputs.").
[29] U.S. Closing Statement at the Meeting, para 10.
[30] Anson Soderbery, "Estimating Import Supply and Demand Elasticities: Analysis and Implications", Journal of International Economics, Vol. 96, Issue 1, May 2015 ("Soderbery (2015)") (Exhibit USA-24).
[31] 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)") (Exhibit USA-27).
[32] *See* U.S. alternative instructions in Annex A, below.
[33] U.S. Written Submission, paras. 115, 117.
[34] *See* Annex A to these questions.

41. For the third option for domestic supply elasticity, Canada has proposed a value of 10.[35] In contrast, the United States considers it appropriate to use a value of 1.55, the median value over manufacturing industries from Riker (November 2020).[36]

42. For the **value of U.S. import supply elasticity**, a tiered approach is unnecessary because both parties have proposed a value of 10.[37] Further, estimates of this parameter are scarce in literature.[38] Therefore, a value of 10 should be utilized.

43. **For the value of shipments from domestic sources,** as the first option, the United States considers that it would be most appropriate for the value to be based on data reported in the relevant Commission report from the future CVD proceeding at issue.[39] In the event such information is not public, for the second option, Canada and the United States could obtain industry estimates through the most relevant trade association or private sector suppliers and consult on the use of the best information available.[40] If the parties cannot reach agreement on the appropriate trade association or private sector data within 45 days, or in the event that there is no data from a relevant trade association or private sector supplier, then Canada could proceed to the final option. As the final and third option, U.S. domestic market share could be obtained from the underlying data inputs of the BEA I-O table associated with the reference year at the most disaggregated level available.[41] In the unlikely event that reference year data are not available, the most recent data closest to the reference year should be used.

44. **For the value of shipments from the rest of the world**, as the first option, the values from the relevant Commission report should be used because the values will correspond closer to the products under the scope of the CVD order.[42] If the values are not publicly available, then the second option would be to apply the share of imports from Canada under the primary HTS reference codes, calculated using data from Census, to the value of imports from Canada, obtained from Customs, using the equation provided in the U.S. alternative instructions.[43] In the

[35] *See* Canada's Response to First Set of Questions, para. 133.
[36] *See* Riker (November 2020), Table 6 (Exhibit USA-31). *See also* U.S. Responses to First Set of Questions, para. 176.
[37] Reishus & Lemon Report, para. 27; U.S. Written Submission, para. 120.
[38] U.S. Responses to First Set of Questions, para. 173.
[39] *See* U.S. Written Submission, para. 129.
[40] *See US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.16 n. 276 ("For *Steel Cylinders,* we use the value of US shipments provided by the United States based on data from the annual report by the only US producer, Trimas Corporation.").
[41] *See* U.S. response to question 145 and U.S. alternative instructions to Annex A. *See also US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.16 n. 276 (stating that for *Ribbons* and *Iron Pipe Fittings*, the Arbitrator was using the US shipments provided by the United States from the US Census Bureau's Annual Survey of Manufacturers).
[42] As the U.S. explains in response to questions 221(b) and 265, to determine whether a domestic industry has been injured by subsidized or dumped imports, the Commission only examines the data of imports that entered under the primary 10-digit level HTS codes listed in the scope. Further, the Commission will also exclude any primary 10-digit level codes that are considered a "basket" category. A CVD order is only issued if the Commission reaches an affirmative determination of injury.
[43] Namely, ROW would be calculated as follows,

$$value\ of\ ROW\ imports = \frac{1-sh_{CA}}{sh_{CA}} \times imports\ from\ Canada\ of\ specified\ product$$

very unlikely event that the data from the reference year are not available from Census, Canada should obtain the Census data from the most recent year published closest to the reference year.

45. Therefore, any reasonable set of instructions issued by the Arbitrator would provide for a tiered approach, as described above, to accommodate all future scenarios. Such a set of instructions would ensure that, in the best-case scenario, Canada would apply the model using product-specific information. However, the instructions would also ensure that if such information were not available, then Canada would also be assured of being able to run the model by having a final option.

46. The United States provides a complete set of instructions for calculating model inputs with the U.S. response to question 246 and Annex A. These instructions follow the format of Annex A to the Arbitrator's questions following the virtual session and detail the alternative approaches to follow when the values from the Commission reports are not available.

47. Importantly, if the challenged measure were to occur under the CVD orders pertaining to *Wind Towers* or *Softwood Lumber*, for the relevant parameter values, the United States considers it would be appropriate to use the Commission report for the product at issue that is most recent to the reference period.[44] If the value is not available in the most recent Commission report relative to the reference period, then the alternative would be to use the most recent Commission report containing such a value. The United States observes that the values for substitution, demand, and domestic supply elasticity, as well as the value of shipments from domestic sources are all available in the Commission reports from the *Wind Towers* and *Softwood Lumber* investigation.[45]

199. Assume, for purposes of this question only, that the elasticity of supply for US domestic producers is equal to the elasticity of supply for US imports. Could the United States please comment on Canada's Proof of Equivalence (Exhibit CAN-105)? In particular, could the United States please indicate whether the calculations are correct, and whether the assumptions made by Canada in deriving its results are reasonable?

Response:

48. For purposes of this question only, under the non-standard assumption that the elasticity of supply for U.S. domestic products is equal to the elasticity of supply for U.S. imports, as well as the implicit additional assumption that there are no duty rate changes on the non-subject

[44] U.S. Responses to First Set of Questions, para. 125. *See also US – Washing Machines (Korea) (Article 22.6 – US)*, para. 3.97 (using a demand elasticity estimate from the Commission investigation on large residential washers from China); para. 3.100 (using an elasticity estimate from the Commission's global safeguard investigation of large residential washing machines).
[45] *See* USITC Softwood Lumber Final Determination (Exhibit USA-34); USITC Wind Towers Final Determination (Exhibit USA-35).

varieties between the reference year and the application of the challenged measure,[46] the United States did not find errors in the calculations in Exhibit CAN-105.

49. However, the proof of equivalence in Exhibit CAN-105 does not have the implications that Canada contends. Namely, the proof does not demonstrate that the formula Canada proposes to apply accurately accounts for the offsetting effects of duty rate changes of differing magnitudes on all varieties in the market. This is true for a number of reasons.

50. First, Canada has demonstrated equivalence through the use of a log-linear formula. However, the log-linear formula is derived from a non-linear Armington model. The exact non-linear solution of a two-variety Armington model is not equivalent to the exact non-linear solution to a three-variety Armington model. Therefore, to the extent the log-linear formula solutions are equivalent, this is only because the log-linearized formula is an approximation of the exact solution.

51. Second, Canada's proof of equivalence is irrelevant to this proceeding because Canada does not propose to apply the model as defined in Exhibit CAN-105. In particular, the proof of equivalence hinges on Canada substituting the definition of market share of subject Canadian imports (denoted CAD) into equation (13). The subject Canadian variety's market share is defined in Exhibit CAN-105 as:[47]

$$\theta_{CAD,p} = \frac{vimp_{CAD,p}}{\sum_i vimp_{i,p}}$$

where $vimp_{CAD,p}$ is the value of imports of product p that are actually subject to duty rates with the challenged measure[48] in the reference year. By extension, total Canada market share is defined in Exhibit CAN-105 as:

$$\theta_{CA,p} = \frac{vimp_{CAD,p} + vimp_{CAN,p}}{\sum_i vimp_{i,p}}$$

The United States observes that this definition is identical to the correct definition of market share, and therefore, aligns with the U.S. definition of market share.[49]

52. However, in the application of its formula as specified in its methodology, Canada does not propose to define Canada's market share as it does in the proof. Instead, Canada proposes to calculate the level of nullification or impairment using a constructed estimate of Canada's market share at an aggregate sector level and a fixed point in time. In particular, Canada's application of the model defines market share as:

[46] As the United States has explained, neither of these assumptions are supported by economic theory. *See* U.S. Written Submission, paras. 81-82; U.S. Responses to First Set of Questions, paras. 134, 176-178.
[47] Index p added for clarity to the definition in Proof of Equivalence, p. 3 (Exhibit CAN-105).
[48] Proof of Equivalence, p. 1 (Exhibit CAN-105).
[49] *See* U.S. response to question 74.

$$\theta_{CA,s} = Import\ share\ of\ 2018\ domestic\ absorption\ in\ sector\ s \times Canada\ share\ of\ 2019\ sector\ s\ imports$$

where $sector\ s$ refers to one of the 20 sectors defined in Caliendo and Parro (Exhibit CAN-06) containing the specific product. The specific product whose market is being modelled may fall into one or more of these aggregate sectors. However, the use of a sector-level market share is not consistent with the model in Exhibit CAN-105, and thus fundamentally distorts the calculated level of nullification or impairment. Therefore, in practice, Canada's proposed formula results in an estimate that is not equivalent to the level of nullification or impairment.

53. Further, the assumptions made by Canada to derive its results are not reasonable. As the United States has explained, it is not reasonable to assume that a fixed, aggregate sector level market share is a reasonable proxy for a product-specific and contemporaneous market share as defined in Exhibit CAN-105. Using the example of data from the *Softwood Lumber* CVD order, the United States has further demonstrated the distortive effects of using predetermined, sector-level market share values in Exhibit USA-48. Scenario 1 in the exhibit calculates the level of nullification or impairment using Canada's formula, including Canada's proposed scaling factor associated with the Wood Sector – a market share of eight percent.[50] Scenario 2 calculates the level of nullification or impairment using again Canada's formula, but instead includes the actual market share of softwood lumber, that is 32.2 percent.[51] With all else being equal, scenarios 1 and 2 demonstrate that the use of a predetermined market share alone results in a difference of 22 percent of the estimate of nullification or impairment in scenario 1.

54. The *Softwood Lumber* example demonstrates that where the product-specific market share is greater than the aggregate sector-level market share, the level of nullification or impairment will be overstated. Although it would be possible for a predetermined market share to be greater than the share of a specific product and thus understate the level of nullification or impairment, it is unlikely in the case of products under a CVD order. This is because CVD duties are only applied when there is an affirmative finding that the domestic industry is materially injured or is threatened by material injury. Therefore, it is reasonable to expect that an affirmative finding of injury is associated with greater import penetration, *i.e.*, larger market shares, than prevails at the broad sector level. Accordingly, using any aggregate sector-level market shares as a proxy for product-specific market shares is unreasonable and very likely to impact the calculation of nullification or impairment. This includes the use of the GTAP market shares referenced in question 68 and the HS-2 level scaling factors provided in the Appendix to Canada's methodology paper.[52]

55. Therefore, Canada's assertion that its formula as expressed in equation (17) in Exhibit CAN-105 has an advantage over a model like the U.S. model because "market share parameters can only be determined after the WTO-inconsistent duty is imposed" is false.[53] In both the U.S. and Canadian models, market share parameters can only be determined once the specific product

[50] Reishus & Lemon Methodology Report, p. 14, Figure 2.
[51] USITC Softwood Lumber Final Determination, p. IV-12, Table IV-7 (Exhibit USA-34).
[52] Reishus & Lemon Methodology Report, p. 15, Figure 3.
[53] *See* Proof of Equivalence, p. 3 (Exhibit CAN-105).

and reference year are known. They cannot be predetermined. Otherwise, the calculation of nullification or impairment is fundamentally inconsistent with the model and cannot be considered equivalent.

56. More generally, the simplifying assumptions underlying Canada's formula are also not reasonable. That is, Canada's proposed formula cannot produce an equivalent estimate of nullification or impairment even if the product-specific, contemporaneous market shares were used in calculating the scaling factor. First, as the United States previously explained,[54] it is contrary to standard modelling practice to assume that domestic and import supply elasticities are equal. The United States provided multiple studies demonstrating this fact in response to question 64. Second, it is not reasonable to fail to account for the total duty rates changes on the non-subject Canadian variety between the reference year and the application of the challenged measure.[55] Third, it is also not reasonable to assume that CVD duties are the only duties applied.[56] The United States demonstrated in response to question 84 why AD duties and ordinary tariffs must also be included. Fourth, it is likewise not reasonable to assume that Canada is the only source of imports.[57]

57. In Exhibit USA-48, the United States demonstrates that each of these simplifying assumptions will tend to distort the estimate of nullification or impairment, and their cumulative effect in the case of *Softwood Lumber* is a dramatic overstatement of the damages to Canadian exporters. Further, Canada's failure to account for these features means that the formula that Canada derives in Exhibit CAN-105 does not capture the key features of the market.

58. In addition, as the United States has explained, the non-linear Armington model provides precise estimates equivalent to the level of nullification or impairment. In contrast, a log-linearized model will always overstate the level of nullification or impairment due to approximation error.[58] Exhibit USA-48, using data from *Softwood Lumber*, demonstrates that this error is not trivial, and that the approximation error grows with the change in duty rates. In particular, scenarios 4 and 5 in the exhibit demonstrate a hypothetical scenario involving very small changes in duty rates. A comparison between the two scenarios reveals that the approximation error represents 23 percent of the estimate of nullification or impairment produced by a log-linearized formula.[59] Scenarios 6 and 7 in the exhibit demonstrate that with a

[54] *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)).
[55] *See* U.S. Written Submission, paras. 81-82; U.S. Responses to First Set of Questions, paras. 134. *See also* Softwood Lumber Illustrative Table, compare scenarios 5 and 8 (Exhibit USA-48).
[56] *See* U.S. Responses to First Set of Questions, paras. 214-240.
[57] *See* U.S. Responses to First Set of Questions, paras. 183-185.
[58] *See* Riker and Schreiber (2020) (Exhibit USA-49).
[59] Scenario 4 in Exhibit USA-48 estimates nullification or impairment at $77 million using a log-linear model, whereas the identically-parameterized non-linear model in scenario 5, estimates nullification or impairment at $59 million. The approximation error of the log-linear model is therefore $18 million.

larger change in duty rates, approximation error represents 44 percent of estimate of nullification or impairment produced by a log-linearized formula.[60]

59. Therefore, Canada's log-linearized model unnecessarily introduces approximation error, but provides no real advantage in simplifying the actual calculations because it is no less practical to run the exact U.S. model in Stata. Canada has shown its familiarity with Stata programming in Exhibits CAN-74 and CAN-102, and the Stata program submitted by the United States is based on a program developed by the WTO Secretariat. Therefore, a log-linear model has no advantage over the U.S. model in terms of practicality in solution.

60. Finally, the United States disagrees with Canada's assertion in Exhibit CAN-105 that the formula it has proposed in its Methodology Paper "minimizes the scope for dispute between the parties".[61] Contrary to Canada's assertion, equation (13) in Exhibit CAN-105, a log-linearized model, parameterized with a theory-consistent market share and specified with the proper market characteristics, does not "require more information than Canada's formula". Rather, the data requirements of both approaches are the same. Canada seeks to avoid the data requirements and implement "simplifying assumptions". However, as the United States has explained above, and clearly demonstrated in Exhibit USA-48, each one of these assumptions distorts the level of nullification or impairment. In contrast, the U.S. model has the flexibility and ability to handle the data while producing a reasonable and accurate estimate of nullification or impairment.

3 ELASTICITY OF SUBSTITUTION

3.1 For Canada

Question 200 is directed to Canada.

4 ELASTICITY OF DEMAND

4.1 For Canada

Question 201 is directed to Canada.

5 MARKET SHARES AND MARKET SIZE

5.1 For both parties

202. If, in the parties' answers to question No. 207, below, the parties' answers indicated that more than one reference period might be used when Canada runs the model in a given instance (e.g. for one company or group of companies reference year (*t-1)* and for another company reference year (*t*)), and assuming for the moment that the

[60] Scenario 6 in Exhibit USA-48 estimates nullification or impairment at $768 million using a log-linear model, whereas the identically-parameterized nonlinear model in Scenario 7, estimates nullification or impairment at $432 million. The approximation error of the log-linear model is therefore $336 million.
[61] Proof of Equivalence, p. 3 (Exhibit CAN-105).

Arbitrator decides to adopt the United States' proposed model, then please explain from which year Canada should calculate market shares for the value of domestic shipments and for US imports from the rest of the world (i.e. all sources except Canada).

Response:

61. As the United States explains in detail in response to question 207, below, the reference period for all varieties will remain the same in a given application of the model.

5.2 For Canada

Questions 203 and 204 are addressed to Canada.

5.3 For the United States

205. Could the United States please explain whether a period of investigation in a USITC report may not be equal to a calendar year? If this is the case, could the United States please explain whether instances could thus occur in which information of USITC reports with respect to market size are not in the format of annualized data?

Response:

62. The Commission reports typically present data for the most recent three full calendar years, along with more current partial-year data, if available (along with partial-year data from the preceding year for comparison). The underlying data for market size during these partial years are not annualized in the Commission reports.

206. Could the United States please comment on Canada's response to Arbitrator question No. 142, including Canada's claim that "[u]se of the various sources referred to by the United States would require a detailed explanation of how the underlying data would be converted into a form consistent with the Input-Output accounts"?

Response:

63. As an initial matter, the United States observes that the "various sources" to which Canada refers are the alternative sources that the United States offers for total U.S. consumption as an input to calculate domestic market shares that more closely represent the relevant product and time period subject to the challenged measure as a final option in the event product-specific data are not available. This is in contrast to the highly aggregated, fixed historical market shares that Canada proposes to use.

64. As the United States has explained, the Commission report is the most appropriate source for domestic market share information because it will yield the most accurate and reasoned estimate of the level of nullification or impairment. If the information is not publicly available in

the Commission report, and if the parties are unable to agree on the use of information from the relevant industry or trade association, then the last, third option is to use the disaggregated data underlying the BEA's Input-Output accounts for U.S. consumption data. The underlying data to the I-O table would produce a more reasoned estimate than the values underlying Canada's proposed market shares because it is the most current, most disaggregated, and publicly and readily available information on domestic production and consumption of goods in the U.S. economy.

65. The U.S. response to question 145 explains in detail the underlying data inputs that go into the I-O table. The United States also provides a complete set of instructions for calculating model inputs with its response to question 246 and Annex A. These instructions follow the format of Annex A to the Arbitrator's questions following the virtual session and detail the alternative approaches to follow when the Commission estimate of U.S. domestic shipments is not publicly available.

66. In the U.S. alternative instructions in Annex A, as a final option under the U.S. tiered approach, the United States provides instructions for manufacturing and agricultural products following the U.S. response to question 145. With respect to mining and energy commodities, the United States has revised its approach. The United States is unaware of a simple, uniform data source that could be relied on for reasonable proxies for annual values of domestic shipments for the handful of mining and energy commodities that the United States imports from Canada. In this limited situation under the U.S. final option, where the alternative would be the much more highly aggregated 71-sectors BEA I-O tables suggested in the Arbitrator's proposed instructions in Annex A, the U.S. alternative instructions provide for the use of the most recent detailed, BEA benchmark I-O tables that divide the U.S. economy into 405 industries.[62] Although these benchmark tables are produced only around every five years, the data divides the U.S. economy into 405 industries, making it a better proxy for domestic market share than the 71-sector BEA I-O table. Indeed, given the essential role the market share estimate plays in nullification or impairment estimates arising from the Armington model, should a mining or energy commodity be the product at issue and domestic shipments data are unavailable in the relevant future Commission report, it is pertinent to obtain the most disaggregated value possible. Therefore, Canada should use the most recent version available of the 405-industry BEA I-O benchmark table as a final option for mining and energy commodities falling under Chapter 21 of the NAICS code.

[62] The 405-industry BEA I-O benchmark table is available at https://www.bea.gov/industry/input-output-accounts-data. The most recent year available at this time is 2012 (released in November 2018). Canada submitted the 2012 supply table in Exhibit CAN-73. The United States is also submitting the accompanying 2012 use table in Exhibit USA-59. Therefore, there is always a useable format available to Canada via the record of this proceeding.

6 CHANGE IN DUTY RATE

6.1 For both parties

207. Assume that an investigation occurs in year t. There are three individually investigated companies, A, B, and C. Companies A and B are given individual CVD rates affected by the OFA-AFA Measure. Company C is given an unaffected individual CVD rate. The all-others rate is also affected by the OFA-AFA Measure. Canada runs the model at this time and suspends concessions. An administrative review occurs and concludes in year t+1.[63]

For each scenario below, please explain: (a) which companies Canada would run the model for in year t+1; (b) what the reference period (for value of imports/market shares and change of duty rate) would be for each individually investigated company (whether affected or unaffected), and the companies subject to the all-others rate; and (c) to what extent the newly calculated level of suspension would replace the level calculated in year t.[64]

Response:

67. The United States provides the following responses without prejudice to the U.S. position that Canada may only seek to suspend concessions after duties have been assessed.

68. As an initial matter, the scenarios described in this question confirm that the U.S. model is consistent, and it has the flexibility and ability to accommodate all of the scenarios described. As the United States explains in further detail below, the U.S. approach to each scenario is the same. If a new application of the challenged measure occurs in a segment of a CVD proceeding, Canada may run the model. The calculation of the level of nullification or impairment will be related solely to the new application of the challenged measure in that specific segment of the CVD proceeding.

69. In the U.S. model, all Canadian companies in the market will always be included in each run of the model. This is necessary because the model characterizes the entire market. The subject Canadian variety will consist of companies that were affected by the challenged measure in that specific segment of the CVD proceeding. The non-subject Canadian variety will consist of companies that were not affected by the challenged measure in that specific segment of the CVD proceeding. This would include companies that have legacy affected CVD rates from prior segments of the CVD proceeding.

[63] Please assume strictly for purposes of this question that the Arbitrator agrees with Canada's position that a triggering event occurs when a CVD rate affected by the OFA-AFA Measure is imposed on a Canadian company, even if such duties have not been assessed.

[64] Please assume strictly for purposes of this question that the Arbitrator would not define the duration of the reference period as anything other than one calendar year.

70. The reference year will always be the year prior to the most recent application of the challenged measure.

71. Canada may also continue to suspend concessions for the maintenance of a prior application of the challenged measure (that is, a legacy application). However, the prior suspension of concessions must be modified when a prior application of the challenged measure is removed and companies are no longer assessed an affected CVD rate.[65]

72. Therefore, as the United States has explained, a "triggering event" occurs in two ways. First, there is a "triggering event" if there is a new application of the challenged measure. Second, there is a "triggering event" if the challenged measure is removed and a company's CVD rate is no longer affected by the challenged measure.

73. In response to question 244(b), the United States confirms that the approach to have the reference period be the year prior to the new application of the challenged measure is consistent with the function of the counterfactual. That is, the level of nullification or impairment that is being calculated relates only to the new application of the challenged measure. Therefore, the counterfactual will detect the difference between the real-world market situation where the challenged measure is applied to the newly affected companies and one in which the challenged measure is not applied to the newly affected companies.

74. Using the change of duty rates and value of imports from a reference period in which the legacy companies are affected by the challenged measure is appropriate because the U.S. model will consider those legacy companies to be part of the non-subject Canadian variety. As discussed in response to question 187, by definition, the non-subject Canadian variety consists of companies with rates that do not change in the counterfactual. It is appropriate to include companies with legacy affected CVD rates in the non-subject Canadian variety because the result to be ascertained relates only to the level of nullification or impairment resulting from the new application of the challenged measure.

75. Further, it is possible to use the year prior (which may have contained prior CVD rates with the challenged measure) as the reference period because Canada may also continue to

[65] If the prior application involves an affected All Others rate and a company that was previously within the All Others variety is no longer affected by the challenged measure (for instance, if an administrative review of the company has been requested and initiated), Canada shall reduce the level of suspension by the amount associated with that company's share of the All Others value of imports in the original calculation of nullification or impairment.

To illustrate, if the first application of the challenged measure in a CVD proceeding affects the All Others rate from the investigation, Canada will need to reassess the level of nullification or impairment in each administrative review. That is, some companies that originally received the All Others rate from the investigation will receive another rate when they are subject to an administrative review. For example, if Company W receives an individually-examined CVD rate and is no longer assessed the All Others rate from the investigation, the level of nullification or impairment attributable to Company W's share in the All Others value of imports from the investigation will be removed from the level of nullification or impairment. Canada will retain only the level of nullification or impairment that excludes the share of Company W. If applicable, Canada may apply an inflation adjustment for the level retained.

suspend concessions for the prior application of the challenged measure to the legacy companies, with modifications as necessary.[66] Therefore, if there are two applications of the challenged measure in two segments of a CVD proceeding, the total level of suspension would be the sum of the level of nullification or impairment resulting from the initial application of the challenged measure (modified as necessary) plus the level of nullification or impairment resulting from the new application of the challenged measure.

76. To respond to question 244(c), the United States observes that in contrast to the U.S. approach just described, Canada proposed at the virtual session for the reference period to be the most recent calendar year in which no company was affected by the challenged measure. However, this approach is problematic because it is unlikely that the challenged measure would occur in consecutive segments of a CVD proceeding. Specifically, part two of the challenged measure is Commerce's "discovery" of unreported information at verification. However, as previously explained, verifications do not occur in every administrative review.[67] Accordingly, it is unlikely for the challenged measure to occur in consecutive segments of a CVD proceeding. Therefore, if there is an initial application of the challenged measure in a CVD investigation or administrative review, it is unlikely for a new application of the challenged measure to occur for several years. If the reference period remains the most recent calendar year in which no company was affected by the challenged measure, as Canada proposes, this would mean that the reference period could be several years prior to the new application. This would also mean that the reference period would be completely disconnected from the market conditions at the time of the new application of the challenged measure.[68]

77. As explained above, the United States proposes to use the year prior to the new application of the challenged measure as the reference period. This permits the data inputs to be more reflective of the market conditions at the time of the new application of the challenged measure. Further, as discussed, because the purpose of the calculation is to ascertain the level of nullification or impairment resulting solely from the new application of the challenged measure, use of a reference year in which there are legacy affected CVD rates would not impact the calculation.

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[66] As explained, if a company is no longer assessed an affected CVD rate, then the level of nullification or impairment resulting from the initial application of the challenged measure must be modified. This includes adjusting the level of nullification or impairment if certain companies are no longer assessed the affected All Others rate.

[67] U.S. Responses to Second Set of Questions, para. 11.

[68] In the earlier stages of this proceeding, the United States similarly considered that a new application of the challenged measure would involve running the model again and accounting for both the prior application and new application of the challenged measure. *See* U.S. Responses to First Set of Questions, para. 113. As such, the reference year would be the year prior to the first application of the challenged measure. However, after further consideration, the United States observed that the characteristics of the challenged measure would likely cause the data from the reference period to be outdated because the challenged measure would be unlikely to occur for several years in the same CVD proceeding. Accordingly, as explained above, the United States has amended its approach to ensure that the level of nullification or impairment will be reasonable and accurate.

78. The United States responds to each subpart of the question below.

a) In the administrative review, Company A's OFA-AFA rate is taken off and replaced with a WTO-consistent CVD rate. Company B retains its WTO-inconsistent CVD rate originally affected by the OFA-AFA Measure, and the all-others rate is again affected by the OFA-AFA Measure, but changes.[69] Canada runs the model and suspends concessions.

Response:

79. As an initial matter, the United States provides a few clarifications concerning this scenario. First, a company only retains a CVD rate from a prior segment of a CVD proceeding if an administrative review of that company is not requested. Further, for an All Others rate in an administrative review to be affected by the challenged measure, a new application of the challenged measure would need to occur in that specific administrative review.[70] Therefore, the United States understands this scenario to include an administrative review of both Company A and at least one additional company, Company D. No administrative review of Company B is requested and accordingly its legacy affected CVD rate is retained. Company A is not affected by the measure, and receives a new CVD rate. Company D is affected by the measure, and accordingly the All Others rate in the administrative review is also affected by the measure.

80. In this scenario, in response to part (a) of the Arbitrator's question, running the U.S. model requires that all companies – subject and non-subject – be included, as the model characterizes the entire market. The subject varieties would consist of Company D and the affected All Others rate from the administrative review. The non-subject Canadian variety would consist of all other companies, including Companies A, B, C and any other companies under the affected All Others rate from the investigation that did not request an administrative review. Although Company B and companies under the All Others rate from the investigation have legacy affected CVD rates, their rates will not change in the counterfactual because the calculation is limited to assessing the level of nullification or impairment associated with the new application of the challenged measure in the administrative review.

81. The U.S. model is run twice regardless of the number of subject varieties. The first run of the model estimates the total effects associated with all changes in duty rates from the reference year to the factual scenario. The second run of the model estimates the total effects of

[69] The Arbitrator understands that a reference period for unaffected companies would only be necessary under the US model.

[70] The United States also clarifies that the All Others rate in an investigation and the All Others rate in an administrative review differ. The All Others rate established in an investigation will remain in place for the duration of the CVD order. The All Others rate from an investigation remains the applicable duty only for companies for which Commerce does not receive and initiate a request for an administrative review. Importantly, all Canadian companies that import the relevant product to the United States may request an administrative review. The All Others rate calculated during an administrative review, or what is also referred to as the "non-selected companies" or "non-examined companies", will only apply to companies for which that administrative review was requested and initiated, but which Commerce did not select for individual examination. The All Others rate in an administrative review does not replace the All Others rate from the investigation.

all changes in duty rates from the reference year to the counterfactual scenario. The level of suspension is always the difference between these two estimates.

82. In answer to part (b) of the Arbitrator's question, the reference period in the U.S. model is the same for all varieties. The reference period is the year prior to the application of the challenged measure in the administrative review, that is, year t.

83. In answer to part (c) of the Arbitrator's question, the newly calculated level of suspension is in addition to the level of suspension calculated from the investigation. However, the original level of suspension would need to be modified to reflect that Company A no longer is affected by the challenged measure. Further, if Company D previously received the affected All Others rate from the investigation, Canada would also need to take this into account when modifying the original level of suspension. Specifically, Canada would need to remove the level of nullification or impairment attributable to Company A, as well as the portion of the affected All Others rate from the investigation attributable to Company D.

b) In the administrative review, Company A is assigned a new CVD rate but its new CVD rate is again affected by a new application of the OFA-AFA Measure. Company B retains its originally imposed OFA-AFA-affected CVD rate. Company C is assigned an individual CVD rate affected by a new application of the OFA-AFA Measure. Canada runs the model and suspends concessions.

Response:

84. The United States understands this scenario to reflect an administrative review where Company A and Company C are individually-examined. Company B is not subject to the administrative review and it retains its original CVD rate from the investigation. Because Company A and C are affected by the challenged measure in the administrative review, the All Others rate in the administrative review will also be affected.

85. In this scenario, in answer to part (a) of the Arbitrator's question, running the U.S. model again requires that all companies – subject and non-subject – be included, as the model characterizes the entire market. The subject varieties would consist of Companies A and C, and the affected All Others rate from the administrative review. The non-subject Canadian variety would consist of all other companies, including Company B with its legacy affected CVD rate and any companies remaining under the All Others rate from the investigation. The U.S. model is again run twice as previously described in subpart (a), above.

86. In answer to part (b) of the Arbitrator's question, the reference period in the U.S. model is the same for all varieties. The reference period is the year prior to the application of the challenged measure in the administrative review, that is, year t.

87. In answer to part (c) of the Arbitrator's question, the newly calculated level of suspension would be in addition to the level of suspension calculated from the investigation. However, the original level of suspension resulting from the investigation would need to be modified to reflect

that certain companies have received new rates. This would include removing the level of nullification or impairment that was previously attributable to Company A.[71]

88. In response to question 244(a), this approach will not double count the level of nullification or impairment associated with Company A (that is, a company with a legacy affected CVD rate that then is assigned a newly affected CVD rate in a subsequent administrative review). As explained, Canada would need to modify the original level of suspensions and remove the amount attributable to Company A. Accordingly, the level of suspension attributable to Company A going forward would only result from the calculation associated with the new application of the challenged measure from the administrative review, and no suspension of concessions would be related to the legacy application of the challenged measure to Company A.

c) In the administrative review, Company C becomes subject to an affected all-others rate, but previously had an individually assigned CVD rate. All other individually investigated companies retain their original CVD rates. Canada runs the model and suspends concessions. Please also explain how to calculate the all-others *vimp* and change of duty rate in this example, with a special eye to explain how Company C would factor into that calculation, if at all.

Response:

89. The United States observes that the scenario as described is not possible. For an All Others rate in an administrative review to be affected by the challenged measure, an individually-examined company in that same segment of the proceeding would have to be affected by the measure. However, the hypothetical indicates that all other individually-investigated companies (Companies A and B) retain their original CVD rates. For Companies A and B to retain their original affected CVD rates from the investigation would mean that an administrative review was not requested for those companies. Therefore, as the scenario is described, it is not possible for Company C to subsequently have an affected All Others CVD rate in the administrative review if all other companies retain their original rates.

90. To facilitate a response to this question, the United States further assumes that Companies D and E are reviewed in the administrative review. Company D is affected by the measure, and accordingly the All Others rate in the administrative review is also affected by the measure. Company E is not affected by the measure. Further, Company C requests an administrative review, but is not selected for examination and therefore receives the affected All Others rate in the administrative review.

91. In this scenario, in answer to part (a) of the Arbitrator's question, running the U.S. model requires that all companies – subject and non-subject – be included, as the model characterizes

[71] In the U.S. model, each affected company is a unique variety. As such, the portion of nullification or impairment that would be attributable to Company A would be the difference in the change in Company A's exports between the two model runs. In the event the Arbitrator determines to use a four-variety model, Canada would remove the level of nullification or impairment in proportion to Company A's share of the value of imports in the investigation.

the entire market. The subject Canadian varieties consist of Company D and the affected All Others rate (which would include Company C) from the administrative review. The non-subject Canadian variety would consist of Companies A, B and companies remaining under the All Others rate from the investigation with their legacy affected CVD rates, as well as unaffected Company E. The U.S. model would again be run twice as described in subpart (a), above.

92. In response to part (b) of the Arbitrator's question, the reference period would be the year prior to the application of the challenged measure in the administrative review.

93. In response to part (c) of the Arbitrator's question, this newly calculated level of suspension would be in addition to the adjusted level of suspension calculated for the investigation. The level of suspension calculated for the investigation would need to be modified by removing the level of nullification or impairment attributable to Canadian companies that are no longer affected by their legacy CVD rates. This would include Companies D and E because they received new CVD rates in the administrative review. Assuming Companies D and E were previously assessed the All Others rate from the investigation, the share attributable to Companies D and E under the All Others rate from the investigation would need to be removed from the original level of suspension.

94. Further, if the market only contained Companies A through E, this would mean that the affected All Others rate from the investigation would no longer be relevant to the original calculation.[72] That is, we assume that only Companies D and E were subject to the affected All Others rate from the investigation. Therefore, the original level of suspension would need to remove the level of nullification or impairment attributable to the affected All Others rate from the investigation.

d) In year t+1, instead of an administrative review occurring, a new shipper review occurs. The new shipper is assigned an individual CVD rate that is affected by the OFA-AFA Measure. Canada runs the model and suspends concessions. As part of this response, please also explain whether a new all-others rate would be calculated in any CVD proceeding other than an investigation or administrative review.

Please be specific in your answers and indicate whether and how your answer would change based on whether the Arbitrator were to adopt the Canadian formula or the US model.

Response:

95. As the United States has explained, new shipper reviews are not within the scope of this arbitration proceeding.[73] The United States recalls that Canada brought a challenge against an unwritten measure, which imposed upon Canada a high evidentiary burden to demonstrate the

[72] *See also* U.S. response to question 253, below.
[73] U.S. Responses to First Set of Questions, para. 103.

measure's existence. To demonstrate the existence of the challenged measure, Canada utilized nine CVD determinations, consisting of post-2012 investigations or administrative reviews.[74] Canada brought forward no evidence relating to new shipper reviews, expedited reviews, changed circumstances reviews, or sunset reviews. Therefore, the measure, as defined by Canada, relates only to CVD investigations and administrative reviews.

96. Further, Commerce rarely conducts verifications in new shipper reviews, thereby making this hypothetical scenario highly unlikely.

97. Lastly, in practice, neither Canada's approach nor the U.S. model can accommodate a new shipper review. By definition, a new shipper is a company that did not previously export subject merchandise, and thereby requests a review to receive an individual CVD rate.[75] Accordingly, it would be unlikely for there to be a value of imports to utilize from the reference year because, by definition, the company did not previously export the relevant product. This further supports the U.S. position that new shipper reviews are not within the scope of this arbitration proceeding.

208. The parties have explained that, after a CVD order is issued, importers indicate an "AD/CVD case number" on Form 7501. As a matter of terminology, could the parties please clarify whether the correct term is indeed "CVD/AD Case Number", or is it a "CVD Number"? Could the parties please also confirm that this number is associated with the specific values of imports on Form 7501 that the importers consider to be subject to a relevant CVD order?

Response:

98. The terminology from Form 7501: Box 29(B) is "AD/CVD No". The United States confirms that the import value is associated with the case number.

209. The Arbitrator understands that the parties agree that, regarding the change in duty rate, the reference period CVD rate with respect to a company or group of companies:

a) will be zero unless that company or group of companies had previously been assigned a CVD rate as a result of a CVD order resulting from an original investigation (or subsequent CVD proceeding such as an administrative review) concerning the same product to which the OFA-AFA Measure was applied; and

[74] *US – Supercalendered Paper (Canada) (Panel)*, para. 7.314 ("Canada argues that in each post-2012 investigation or review listed above . . . .").

[75] In response to the question, the United States notes that because the purpose of a new shipper review is to establish an individual countervailing duty rate for the new shipper, Commerce would not calculate an All Others rate in a new shipper review.

b) if the reference period CVD rates varies, the reference period CVD rate will be the weighted average of the CVD rates using the number of months that the relevant rates were in effect as weights.

Could the parties please confirm this understanding? If it is correct, could the parties then further state their understanding of how the weights would be assigned if a reference period CVD rate was not in effect for a whole number of months (e.g. if the reference period CVD rate was 5% through 10 April, and then changed to 10% through 31 December)?

Response:

99. The United States confirms the Arbitrator's understanding concerning the scenarios as described in parts (a) and (b) of this question. If the reference period CVD rate was not in effect for a whole number of months, then the United States considers it appropriate for the month to be attributed to the rate that was in effect for the majority of the month. That is, if the relevant rate ends before the 15th of the month, then the calculation of that rate would not include that month. If the relevant rate ends after the 15th of a month, then the entirety of that month would be included in the calculation of that rate.

100. To illustrate, in the hypothetical posed in the question, if the reference period CVD rate of 5 percent was applied through April 10, and then changed to 10 percent through December 31, the United States considers it appropriate for April to be attributed to the 10 percent rate, since it went into effect before the 15th of the month.

101. At the virtual session, Canada proposed assigning the weight by the number of days. The United States would also consider this approach to be appropriate.

6.2 For the United States

210. For purposes of this question only, please only consider CVD rates and no other types of duties or tariffs.

Please assume that, in the relevant market, there is only one Canadian Company A that has a WTO-consistent CVD rate of 10% for the entire calendar year before a particular administrative review is completed. Upon that completion, Company A's CVD rate changes to a WTO-inconsistent rate of 20%, of which 5 percentage points is due to the application of the OFA-AFA Measure (i.e. the counterfactual new CVD rate would be 15%). In this instance, could the United States please confirm the Arbitrator's understanding that, for purposes of running the US model:

a) t^{REF} corresponds to column L in Sample U.S. Model Data File (Exhibit USA-11), and it is equal to 10% in both runs of the US model;

b) t^{INC} corresponds to column O in Sample U.S. Model Data File (Exhibit USA-11) in the first run of the US model, and it is equal to 20%; and

c) t^{CON} corresponds to column O in Sample U.S. Model Data File (Exhibit USA-11) in the second run of the US model, and it is equal to 15%?

Response:

102. The Arbitrator's understanding in parts (a) through (c) is correct.

103. Further, the varieties in Exhibit USA-11 are defined on lines 37-42 of the Stata program in Exhibit USA-1. The United States is also submitting Exhibit USA-50, which revises Exhibit USA-1. In particular, lines 203-221 of Exhibit USA-50 includes notes with detailed definitions for all of the variables in Exhibit USA-11 to clarify how each variable fits into the model. The United States notes that the only difference between Exhibit USA-1 and Exhibit USA-50 is to the descriptive notes. The changes do not affect how the program is run.

211. For purposes of this question only, assume that there are two individually unaffected Canadian exporters, Company A and Company B. Company A had a reference period CVD rate of 10%, and following a triggering event (e.g. an administrative review in which a different company had the OFA-AFA Measure applied to it), it is assigned a CVD rate of 15% (both rates unaffected by the OFA-AFA Measure). Company B had a reference period CVD rate of 20%, and, upon a triggering event, it is assigned a CVD rate of 50% (both rates unaffected by the OFA-AFA Measure). In this instance, could the United States please clarify how the United States' model, using a *single* variety for unaffected exporters, calculates the change in duty rate? Specifically, is the difference between the reference period CVD rates and the new CVD rates taken into account in the model, or it is not? If it is, how is a single change of duty rate obtained for multiple companies? If it is efficient to do so, please respond to this question together with your responses to the following two questions.

Response:

104. In the U.S. model, unaffected companies are accounted for in a single variety. The model accounts for both the unaffected companies' variety reference period CVD rates and the new CVD rates. In the hypothetical, both Company A and Company B are non-subject companies because they are not affected by the challenged measure. Therefore, the change in the duty rate is the same in both runs of the U.S. model. This reflects the fact that, although there is a change in the duty rate between the reference period and the factual rate (referenced as the "new" CVD rate in the question), that change is not different under the counterfactual scenario. Indeed, by definition, a non-subject company is a company with a CVD rate that does not change in the counterfactual. This is in contrast to subject varieties for which the change in duty in the first (factual) run of the model is from the reference rate to the factual rate with the challenged

measure. The second (counterfactual) run of the model is the change in duty from the reference rate to the counterfactual rate without the challenged measure.

105. Where there are multiple unaffected companies, the duty rate would be a weighted average for the unaffected company variety. As such, following the example presented in the question, the non-subject Canadian variety is comprised only of Company A and Company B. Therefore, the reference rate for the single non-subject Canadian variety would be a trade-weighted average of Company A and Company B's total duty rate in the reference period. Using the notation from question 210, that is:

$$t_{non-subject}^{REF} = (s_A \times t_A^{REF}) + (s_B \times t_B^{REF}) = (s_A \times 0.1) + (s_B \times 0.2)$$

where t_i^{REF} is the total duty rate applied to imports from Company $i = A, B$ in the reference year, $s_i = \frac{vimp_i}{vimp_A + vimp_B}$, *i.e.*, a trade weight for Company i, and $vimp_i$ is the reference year value of imports for non-subject Company i.

106. Likewise, the new CVD rate for the single non-subject Canadian variety would also be a trade-weighted average of Company A and Company B's total duty rate after the triggering event. Therefore, the new CVD rate would be applied in both model runs as follows:

$$t_{non-subject}^{POST} = (s_A \times t_A^{POST}) + (s_B \times t_B^{POST}) = (s_A \times 0.15) + (s_B \times 0.5)$$

where t_i^{POST} is the total duty rate applied to imports from non-subject Company i after the triggering event.

107. The trade weights for the single non-subject Canadian variety would be the same in both model runs for both the reference rate and the new CVD rate because the trade weights would be based on the value of imports during the reference year period.

212. Does the United States envision situations in which the reference year duty rate changes between the first and the second model run under (a) Canada's approach and (b) the United States' approach? Please make sure to discuss the case of the unaffected Canadian variety (i.e. "non-subject imports from Canada"[76]) in your reply under (b). If it is efficient to do so, please respond to this question together with your responses to the preceding question and the following question.

Response:

108. Under the approach of either Canada or the United States, the reference year duty rate should not change between the first and second model run. The purpose of the reference year is to serve as an anchor and a point of comparison with the factual and counterfactual duty rates. This is true for all varieties, including the unaffected, non-subject Canadian variety.

[76] United States' written submission, para. 72.

213. The United States has suggested that, in a version of the US model in which all affected Canadian companies belonged to a single affected Canadian variety, any such composite variety of affected Canadian companies should be assigned trade-weighted averages of duty rates of affected companies.[77] Would the United States:

a) suggest the same approach for the unaffected Canadian composite variety?

Response:

109. Yes. Please see the U.S. response to question 211, above.

b) consider that there can be circumstances in which, for the unaffected Canadian composite variety, the reference period duty rate and the "initial"[78] duty rate could differ from each other?

Response:

110. Yes. The reference period duty rate is year prior rate, whereas the initial (or "factual") duty rate is the rate obtained during the year of the application of the challenged measure (to another Canadian company). Therefore, it is likely that the reference year rate will differ from the initial duty rate for the unaffected, non-subject Canadian composite variety.

c) consider that there can be circumstances in which, for the unaffected Canadian composite variety, the counterfactual duty rate could be different from the initial and/or from the reference period duty rate?

If it is efficient to do so, please respond to this question together with your responses to the preceding two questions.

Response:

111. For the unaffected, non-subject Canadian variety, the counterfactual duty rate will always be the same as the initial, factual duty rate because, by definition, the non-subject Canadian variety consists of companies with rates that do not change in the counterfactual scenario.[79] That is, since the unaffected variety's duty rate is by definition not affected by the challenged measure at the time of the triggering event, there is no difference between the initial, factual rate and the counterfactual rate.

112. With respect to the reference year duty rate, for the same reason provided in the response to subpart (b) of this question, it is likely that the counterfactual duty rate of the unaffected Canadian variety will differ from the reference period rate.

[77] United States' response to Arbitrator question No. 132, para. 26.
[78] United States' response to Arbitrator question No. 83, para. 222.
[79] *See* U.S. response to Question 187, above.

113. To illustrate, the United States provides the following example of the U.S. model. For a hypothetical, we assume that Company A receives an affected CVD rate of 25 percent, with 5 percent of the CVD rate attributed to the challenged measure. Company B is unaffected by the challenged measure and receives a 15 percent CVD rate. The reference year CVD rate for both Company A and Company B is zero.

114. Therefore, for affected Company A, the reference year CVD rate is zero percent. The initial, factual CVD rate with the challenged measure is 25 percent. The counterfactual rate is 20 percent because the 5 percent attributed to the challenged measure has been removed.

115. For unaffected Company B, the reference year CVD rate is zero percent. The initial, factual CVD rate is 15 percent. The counterfactual rate is also 15 percent because the challenged measure was not applied to Company B (*i.e.*, the challenged measure does not need to be removed from Company B's CVD rate in the counterfactual scenario).

116. The first run of the U.S. model captures the change in duty between the reference year rate and the factual rate. Accordingly, Company A's rate is changed from zero (the reference period rate) to 25 (the factual rate), and Company B's rate is changed from zero to 15.

117. The second run of the U.S. model captures the change in duty between the reference year rate and the counterfactual rate. Accordingly, Company A's rate is changed from zero (the reference period) to 20 (the counterfactual rate with the challenged measure removed). Company B's rate again changes from zero to 15 because there is no challenged measure to remove from Company B's rate in the counterfactual scenario.

118. The level of nullification or impairment is the difference between the results of the first and second runs of the model.

7 VALUE OF THE IMPORTS

7.1 For both parties

214. The Arbitrator notes that Canada has indicated that it will, in its initial notification to the United States following a triggering event, identify, *inter alia*, the "cross-owned affiliates" of individually investigated firms.[80] Could the parties please explain the role of "cross-owned affiliates" in the collection of CVDs under the US system? Are "cross-owned affiliates" of companies subject to CVD rates always assigned the same CVD rate? How are "cross-owned affiliates" identified by importers who must decide how to assign CVD rates to imports? How would Canada identify "cross-owned affiliates", and how often would that judgment be expected to coincide with importers'?

[80] Canada's response to Arbitrator question No. 154, paras. 105-106.

Response:

119. As an initial matter, the United States considers it appropriate for Canada to identify cross-owned affiliates in its notification only when the cross-owned affiliates have been determined by Commerce to be cross-owned affiliates. Specifically, if Commerce determines there to be cross-owned affiliates, Commerce's final determination will list a respondent and then identify the cross-owned affiliates.[81] The respondent and its cross-owned affiliates receive the same CVD rate. Importers are therefore able to identify the listed cross-owned affiliates as subject to CVD duties.

120. Commerce normally attributes a subsidy to the products produced by the corporation that received the subsidy.[82] However, Commerce also attributes subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.[83] Accordingly, subsidies received by cross-owned affiliates are combined with that of the respondent company. This determination by Commerce will be reflected in Commerce's final determination in a CVD investigation or administrative review.

215. The Arbitrator thanks the parties for their jointly proposed BCI Understanding. The Arbitrator would like to confirm its understanding that, in order for US Customs to release import data to Canada, it would not be "necessary" (within the meaning of the first line of paragraph 3 of the draft BCI Understanding) for Canada to "obtain an authorizing letter" from the entity that submitted such information, although, in order for the USDOC to release confidential information on the record of a USDOC proceeding, such an authorizing letter would be necessary?

Response:

121. The Arbitrator's understanding concerning when authorization letters are needed is correct. That is, with the 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")[84] and instruction from the Arbitrator for the United States to provide relevant Customs data to Canada, the United States would provide the Customs information to Canada without needing authorization letters from the Canadian companies.[85] The United States notes that Customs would not provide the information directly to Canada. Instead, at the request of the Office of the

[81] *E.g., Certain Softwood Lumber Products From Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 Fed. Reg. 347, 348-349 (Jan. 3. 2018) (Exhibit CAN-18).
[82] 19 C.F.R. § 351.525(b)(6) (Exhibit USA-56).
[83] *See* 19 C.F.R. § 351.525(b)(6) (Exhibit USA-56).
[84] *See* U.S. response to question 153, below.
[85] U.S. Responses to First Set of Questions, para. 260.

U.S. Trade Representative ("USTR"), Customs would provide the requested information to USTR, and USTR would then provide the information to Canada.

122. In contrast, as the United States has explained,[86] confidential information submitted to Commerce during the course of an AD/CVD proceeding is protected under an administrative protective order from unauthorized public disclosure, in accordance with Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Accordingly, Canada must obtain authorization letters from Canadian companies permitting Commerce to release the information. After the United States receives the authorization letters, Commerce would provide the information to USTR, and USTR would then provide the information to Canada pursuant to the BCI Understanding.

216. It is the Arbitrator's understanding that, in US Customs data collected from Form 7501, specific values of imports are always assigned to unique HTS 10-digit level code. Could the parties please confirm this understanding?

Response:

123. The United States confirms this understanding.

217. The parties have explained that, after a CVD order is issued, importers indicate an "AD/CVD case number" on Form 7501 when the importer considers that the relevant imports, or certain of such relevant imports, are subject to that unique CVD order. Could the parties please confirm that the importers will include this number and associate it with relevant imports even when the imports are from a Canadian exporter that was excluded entirely from the scope of the CVD order (e.g. because it was assigned a zero or *de minimis* individual CVD rate in the original investigation)? Can the parties also please confirm that such a "AD/CVD case number" is assigned to values of imports associated with specific and unique HTS 10-digit level codes?

Response:

124. If a company is excluded from an AD/CVD order, then the imports from this company are not subject to AD/CVD duties, and an importer does not report an AD/CVD case number on the entry summary form 7501. However, this would only be the case during an investigation. In an administrative review, when the respondent receives a zero or *de minimis* rate, the respondent is still subject to the CVD order, and therefore must report the relevant AD/CVD case number in its entry summary.

125. Commerce's final determination will identify when Commerce excludes a company from a CVD order. To ensure that an excluded company's value of imports are accounted for in the

[86] U.S. Responses to First Set of Questions, para. 261.

model, the United States will provide Customs the excluded company's name and request for the value of imports that entered under the relevant 10-digit HTS codes.

126. Lastly, the United States confirms that the AD/CVD case number will be associated with a value of imports. Further, the value of imports is also associated with specific HTS 10-digit level codes.

218. The parties appear to disagree as to whether Statistics Canada is in possession of company-specific data with respect to Canadian exporters. Could the parties please clarify this apparent disagreement?[87]

Response:

127. At the virtual session, it became clear that the reason for the discrepancy was because each party was discussing data from different entities. The United States reiterates that Customs does not share company-specific importer data with Canada. However, at the virtual session, Canada clarified that Statistics Canada is in possession of company-specific manufacturer data. The United States does not disagree with this statement. Regardless, Canada has stated that Statistics Canada is unable to provide company-specific data to the Government of Canada for use in connection with this dispute,[88] and therefore the use of company-specific data from Statistics Canada is not possible.

219. Assume that the Arbitrator considered it reasonable for Canada to receive information from US Customs, pursuant to the parties' BCI Understanding, in disaggregated form as suggested by Canada.[89] In this case, could the parties please submit a joint proposal for an excel spreadsheet format that would contain such data? Please also assume that the USDOC would *further* offer a suggested assignment of aggregated values with reference to: (a) each individually investigated company (whether affected or unaffected); and (b) companies subject to the all-others rate.

Response:

128. The United States regrets that the parties have been unable to come to an agreement on a joint proposal for an excel spreadsheet concerning the categories relevant to the transmission of Customs data. The United States submits its proposed spreadsheet in Exhibit USA-53 and provides the following explanations, below.

129. As an initial matter, as explained in detail in the U.S. response to question 232, the United States disagrees with the use of disaggregated Customs data – that is, entry-by-entry shipment information for each Canadian company, amounting to hundreds or thousands of rows

[87] United States' response to Arbitrator question No. 156; Canada's response to Arbitrator question No. 172, para. 168.
[88] Canada's Response to Second Set of Questions, para. 110.
[89] Canada's response to Arbitrator question No. 86, para. 182, and No. 154, para. 105.

of data for each Canadian exporter. Canada's proposal is therefore overly burdensome, and "disaggregated" data are neither necessary for verification nor for the calculation of the level of nullification or impairment.

130. In providing the value of imports for each Canadian company, the United States proposes to provide the following information: manufacturer name, manufacturer ID, entry type, entry date range, country of origin, HTS code number (if investigation), AD/CVD number (if administrative review), total entered value,[90] HTS rate, AD rate,[91] and CVD rate. Further, the United States could offer a suggested assignment of which values are associated with an unaffected Canadian company, affected Canadian company, and the All Others rate.

131. During the virtual session, Canada explained the need for disaggregated entry-by-entry information to account for any misspellings of manufacturer name or manufacturer ID. The United States maintains that deferral to Customs to aggregate this information remains the best option given that Customs is the U.S. agency that collects the import data and enforces collection of duties. However, the United States also understands the need to ensure the accuracy of the value of imports attributed to a Canadian manufacturer due to potential misspellings. Accordingly, to address this concern, the United States proposes to submit aggregated values on a manufacturer name/manufacturer ID combination basis.

132. To illustrate: if entries came under (1) Company A, LLC, (2) Company A, Inc., and (3) Comp. A, LLC., and the manufacturer ID had at least two variations, the U.S. initial proposal was to defer to Customs to aggregate this information and provide a total aggregate value of imports for Company A. However, to address Canada's concern, the United States could also provide aggregated value of imports for all manufacturer name/manufacturer ID combinations, such as (1) Company A, LLC/manufacturer ID #1; (2) Company A, LLC/manufacturer ID #2; (3) Company A, Inc./manufacturer ID #1; (4) Company A, Inc./manufacturer ID #2; (5) Comp. A., LLC/manufacturer ID #1; and (6) Comp. A, LLC/manufacturer ID #2. By providing the information in this manner, Canada would be able to sufficiently verify the value of imports data.

220. If Canada had to calculate relevant values of imports in the absence of US Customs data using information obtained directly from Canadian companies, how should Canada convert Canadian dollar values to US dollar values for purposes of calculating a level of NI (assuming the Canadian companies keep their records in Canadian dollars)?

Response:

133. 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

[90] "Entered value" will reflect the price actually paid or payable for the merchandise when sold for exportation to the United States, excluding international freight, insurance, and other C.I.F. charges.
[91] As the United States has explained, total duty rates must be used to ensure an accurate and reasonable calculation of the level of nullification or impairment. *See* U.S. responses to questions 84 and 85.

such information to the extent necessary for Canada to suspend concessions consistent with a DSB authorization and the Arbitrator's decision.

134. In the extremely unlikely circumstance that the United States does not provide Customs data to Canada, the United States considers it appropriate for the Arbitrator to predetermine one alternative data source, specifically the use of Census' USA Trade Online, with publicly-ranged U.S. sales values obtained from Commerce's proceeding.[92] Pre-selection of the alternative data source by the Arbitrator will avoid future disagreement between the parties.

135. The United States only considers it appropriate to obtain the value of imports directly from the Canadian exporters when the figure is not available from the record of Commerce's proceeding.[93] Only in this limited scenario when the information is obtained from the Canadian companies, the United States would recommend using the Canadian Dollar per U.S. Dollar, period average exchange rate in the International Financial Statistics (IFS) published by the International Monetary Fund (IMF). Since the shipment data from Canadian companies would be on an annual basis, the Canadian Dollar per U.S. Dollar, period average exchange rate should be based on the same annual time period.

221. If the parties continue to disagree regarding how to calculate the value of imports following consultations, would it be reasonable to either: (a) allow Canada to use company-specific data obtained directly form companies (for those companies' data only); (b) prescribe specific minimum searches in the ACE database that could occur that would yield the data set for a company or group of companies; (c) defer to the judgment of US Customs regarding how to aggregate the values (see question No. 219, above); or (d) some other solution? For option (b), would the following search criteria be appropriate?

Response:

136. If the parties continue to disagree on how to calculate the value of imports after consultations, the United States considers that option (c), defer to the judgment of Customs, is the most appropriate solution. In particular, Customs is the U.S. agency responsible for trade data on entries subject to AD/CVD duties and would be the best suited to determine which entries are relevant to the CVD order.

137. With respect to option (a), as the United States explains further in response to question 230, below, it would not be appropriate for Canada to use company-specific data obtained directly from the companies. In particular, because Canada has only proposed to verify and supplement the data of the affected Canadian exporters, the level of nullification or impairment would be artificially increased because the value of imports of the unaffected exporters would not be verified or supplemented.

[92] U.S. Responses to Second Set of Questions, para. 100.
[93] U.S. Responses to Second Set of Questions, para. 106.

138. With respect to option (b), as the United States has explained, 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 be sufficient and consistent with prior arbitrator decisions.[94] Specific instruction as to how Customs should perform the data search in ACE is not necessary. However, if the parties fail to come to agreement during consultations, then certain search criteria elements could be prescribed. With respect to the elements of the search criteria for option (b), the United States makes observations concerning each search criteria below.

a) <u>Exports during the Reference Period</u>. If the parties disagree as to whether a particular shipment reflected on Form 7501 entered the United States during the reference period, then the "Entry Date" field on that Form 7501 for the relevant shipment will control.

<u>Response</u>:

139. The United States agrees with this proposed search criterion.

b) <u>Relevant Product</u>. If the parties disagree as to the extent to which a particular shipment reflected on Form 7501 reflects exports from Canada of the relevant product, then, for a pre-investigation reference period the relevant HTS codes will control (i.e. all products entering under one or more relevant HTS codes could be treated as the relevant product). For a post-investigation reference period, the relevant AD/CVD case number will control (i.e. all products that have been assigned the relevant AD/CVD case number could be treated as the relevant product).

<u>Response</u>:

140. The United States generally agrees with this search criterion. However, as the United States has explained, only the primary set of 10-digit-level HTS codes identified in the CVD order should be included to avoid overinclusion of imports.[95] Secondary 10-digit-level HTS codes that the products "may" or "might" also enter under are generally broader than the merchandise subject to the CVD order. Importantly, a CVD order is only issued if the Commission reaches an affirmative determination of injury. To determine whether a domestic industry has been injured by dumped or subsidized imports, the Commission only examines the data of imports that entered under the primary 10-digit level HTS codes.[96] The Commission does not determine injury on the basis of the products that entered under the secondary HTS codes. Therefore, 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.

[94] U.S. Responses to Second Set of Questions, para. 77.
[95] U.S. Responses to Second Set of Questions, para. 103.
[96] *See, e.g.*, USITC Softwood Lumber Final Report, p. IV-1 n.1 (listing only the primary 10-digit level HTS codes) (Exhibit USA-34).

c) <u>Assignment to Canadian company</u>. If the parties disagree with respect to which Canadian company to assign a particular shipment of the relevant product reflected in Form 7501, the shipment could be assigned to an individually investigated Canadian company (whether affected or unaffected by the OFA-AFA Measure) if any of the following applies:

i. the "Manufacturer Name" matches that of an individually investigated company as written in the relevant USDOC final determination, CVD order, or final results;

ii. the "Manufacturer ID" of the company was previously or subsequently assigned to a company in any other Form 7501 reflecting imports of any product during the reference period whose name matches that of an individually examined company in the CVD order;

iii. the company-specific CVD case number assigned to the company was previously or subsequently assigned to a company in any other Form 7501 reflecting imports of any product during the reference period whose name matches that of an individually examined company in the CVD order; or

iv. the relevant Form 7501 specified that the company's products are subject to a specific CVD rate that is unique to a particular individually investigated company subject to the relevant US CVD order.[97]

If none of the above circumstances apply, but the shipment was otherwise associated with an import from Canada of the relevant product during the reference period, then the shipment will be assigned to the group of companies subject to the "all-others" rate.

<u>Response</u>:

141. As an initial matter, the United States considers it appropriate for Customs to provide <u>aggregated</u> values of imports for each Canadian exporter. To the extent that Canada's verification results in the need for further consultation between the parties and the parties continue to disagree, Customs could be requested to rerun a search and include particular shipments in the aggregate value if two or more of the circumstances described above apply.

142. Further, in response to the footnote to subpart (iv), the United States confirms that if there is a CVD order, the value of a shipment will be associated with the CVD duty.

d) <u>Under-inclusivity of US Customs dataset</u>. If the parties disagree as to the inclusivity of the US Customs data set (i.e. whether the dataset should be

[97] The United States is also kindly requested to please explain whether Form 7501 will specify that a particular value of a shipment is associated with a specific numerical CVD rate.

supplemented with additional shipment values not originally contained in the US Customs data set), then the *dataset will not be supplemented*.

Response:

143. The United States agrees with this criterion.

7.2 For Canada

Questions 222 through 227 are addressed to Canada.

7.3 For the United States

228. Could the United States please confirm that USITC DataWeb data is updated only annually, whereas USA Trade Online data is updated monthly?

Response:

144. Both the USITC Dataweb data and USA Trade Online data are updated each month with the release of a new month's trade data by Census. In addition, USA Trade Online also provides the aggregate total of U.S. trade with Canada on a monthly basis in the current year.

229. Canada notes that in some cases the OFA-AFA Measure may be applied to all firms in an investigation, and in that instance a value for unaffected exporters would not be necessary to calculate.[98] Could the United States please explain whether this situation could arise and if it could how the value of imports should be calculated?

Response:

145. The United States observes that Canada made this statement in the context of aggregate investigations. An aggregate CVD investigation results in a single estimated country-wide subsidy rate applicable to all exporters and producers. However, the precise content of the measure as described by Canada in the original panel proceeding was limited to CVD investigations and administrative reviews involving individual CVD rates. Canada did not use an aggregate investigation to demonstrate the existence of the measure. Accordingly, aggregate investigations are not a part of the scope of this proceeding.

146. Furthermore, the United States recalls that during the virtual session, Canada agreed that aggregate investigations were not within the scope of this proceeding. Canada, however, noted that its observation could also apply to individually-investigated Canadian companies. If such an instance were to ever arise, then all value of imports from Canada would be considered part of the subject Canadian variety.

[98] Canada's response to Arbitrator question No. 157, fn 101 to para. 115.

230. Could the United States please respond to Canada's proposal regarding what should happen if the parties are unable to agree on what data to use to calculate the value of imports following consultations?[99] Please assume for purposes of this question that the Arbitrator would consider it necessary to prescribe a data source, or defer to one party's judgment as to what data to use. Also, for purposes of this question, please assume that Canada will also have to collect information on the value of imports from unaffected Canadian exporters.

Response:

147. As contemplated by question 221, if the parties are unable to agree on the value of imports following consultations, the United States considers that deferring to the judgment of Customs is the most appropriate way forward. Customs is the U.S. agency responsible for trade data on entries subject to AD/CVD duties and would be best suited to determine which import values are relevant.

148. It would not be appropriate for Canada to supplement the data set with company-specific data from the affected companies, as Canada contends. Customs collects all entry summary data that is reported by importers. Therefore, it is unclear why an individual Canadian company would have sales that were not reported to Customs, but that the company would then claim reflect imports to the United States that were subject to a CVD order.

149. Further, Canada's proposal to supplement the Customs data would also artificially increase the level of nullification or impairment because Canada only proposes to verify and supplement the value of imports from affected exporters.[100] Under Canada's logic, unaffected exporters would not have the incentive to provide information to verify the import values obtained from Customs.[101] Further following Canada's logic, if Canada were to only verify the import values of affected exporters, and in turn, supplement that data, this would have a disproportionate and unreasonable effect on the level of nullification or impairment. That is, Canada only proposes to supplement and increase the value of imports of the affected exporters, while leaving the value of imports from the unaffected exporters untouched. Therefore, Canada's proposed method generates an artificial level of nullification or impairment.

150. Lastly, Canada argues that it should have discretion to supplement Customs data even if the parties disagree because "Canada is the complainant in this proceeding and that there is nullification or impairment to Canada resulting from the United States' ongoing non-compliance".[102] However, nothing in the DSU provides that Canada's role as the complaining Member means that Canada can simply have wide (or possibly unbounded) discretion to do as it wants when suspending concessions.[103] Rather, the DSU provides that the purpose of an Article

[99] See, e.g. Canada's response to Arbitrator question No. 165, paras. 145-146.
[100] *See* Canada's Response to Second Set of Questions, para. 109.
[101] *See* Canada's Response to Second Set of Questions, para. 28. In contrast, the United States has explained that unaffected exporters could have the incentive to cooperate. *See* U.S. Responses to First Set of Questions, para. 266.
[102] Canada's Response to Second Set of Questions, para. 146.
[103] U.S. Closing Statement at the Meeting, para. 10.

22.6 proceeding is to ensure that the level of suspension requested by Canada is equivalent to the level of nullification or impairment. The decision on equivalence rests with the Arbitrator, not Canada. Therefore, the Arbitrator should reject Canada's impermissible attempt to arrogate to itself authority that the DSU assigns to the Arbitrator.

231. The Arbitrator notes that the United States indicates that US Customs could provide a written attestation to Canada, upon transmitting US Customs data to Canada, to the effect that the data contains all requested information. Would US Customs further be able to represent to Canada in writing at that time that: (a) US Customs had used its best efforts to search for requested data and properly assign the values associated with relevant shipments to the relevant affected and unaffected companies; and (b) such search and assignment occurred in a manner that US Customs believes is consistent with its task of administering CVD orders and collecting duties thereunder? Also, would the United States be prepared to orally represent before this Arbitrator that US Customs would use such best efforts?

Response:

151. At the virtual session, the United States orally represented that Customs would use such best efforts. The United States also confirms that a written attestation, as described in parts (a) and (b) of the question, could be provided with the transmission of Customs data to Canada.

232. Could the United States please explain whether there are any technical issues preventing the United States from providing US Customs data in disaggregated form in the manner that Canada proposes and pertaining to the data fields that Canada proposes?[104]

Response:

152. As an initial matter, the United States understands Canada to be requesting disaggregated entry-by-entry shipment data, which would constitute hundreds or thousands of rows of data for each Canadian exporter. There are not any technical issues with providing Customs data in this manner as Canada proposes. However, disaggregated data are neither necessary for verification, nor are such data necessary for the calculation of the level of nullification or impairment.

153. Canada contends that "data at its most disaggregated level" are necessary for the purposes of verification.[105] However, Canada proposes to verify disaggregated Customs data with aggregated data.[106] That is, if Canada obtains "all" export data directly from affected exporters as it suggests,[107] the data would presumably be on an aggregate basis. Further, Canada also proposes to use data from Statistics Canada for verification. However, Canada

[104] Canada's response to Arbitrator question No. 86, paras. 182.
[105] Canada's Response to First Set of Questions, para. 182.
[106] Canada's Response to First Set of Questions, para. 185.
[107] Canada's Response to First Set of Questions, para. 185.

acknowledges that Statistics Canada data is in an aggregate form.[108] Therefore, it is unnecessary for the United States to provide disaggregated entry-by-entry shipment data because Canada will be verifying the data with aggregated information.

154. Furthermore, disaggregated entry-by-entry shipment data is not necessary for the calculation of the level of nullification or impairment. The model only requires an aggregate value of imports for each variety. Additionally, the provision of disaggregated entry-by-entry data would exceed the information that the United States has previously provided in past arbitrations.[109] Accordingly, the United States maintains that only the provision of aggregated values of imports on a company-specific basis is necessary for both the verification and calculation of the level of nullification or impairment on an annual basis.

233. Could the United States please clarify the relevance of the "Entry type" field in Form 7501?[110]

Response:

155. The "entry type" field in Form 7501 is a two-digit code for the type of entry summary being filed. "03" stands for antidumping/countervailing duty,[111] and therefore could be relevant to the query of the relevant product in the ACE database.

234. The Arbitrator notes that the United States has explained that companies are assigned a company-specific CVD number following an investigation.[112] Could the United States please clarify: (a) whether affected and/or unaffected companies get such individual numbers; (b) when these CVD numbers are assigned to companies; (c) how importers know which number pertains to which company; and (d) whether companies subject to an all-others CVD rate get assigned such a number or whether only individually investigated companies get assigned such a number?

Response:

156. Company-specific numbers are assigned by Commerce to companies known to Commerce in its CVD proceedings, regardless of whether they are affected or unaffected by the challenged measure. Included among companies known to Commerce in its CVD proceedings would be individually-examined companies in an investigation and individually-examined companies and non-examined companies in an administrative review. Companies subject to an All Others CVD rate from an investigation would not get assigned a company-specific identification number unless and until they are subject to an administrative review. However, the All Others rate from an investigation will also be assigned its own identification number.

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[108] Canada's Response to Questions, para. 185 n. 212 ("Canada may only access aggregated, non-confidential data.").
[109] *See US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.22.
[110] United States' response to Arbitrator question No. 154, para. 78.
[111] Entry Summary Form 7501, Instruction p. 1 (Exhibit CAN-93).
[112] United States' response to Arbitrator question No. 177, para. 98.

157. A company-specific identification number is created during the first segment of a CVD proceeding in which the company is assigned its own rate, for instance as an individually-examined company in an investigation or as a company subject to an administrative review. A company-specific identification number remains active across subsequent segments of a CVD proceeding unless there is a reason for deactivation (*e.g.*, the company is succeeded by another company that Commerce determines is a successor-in-interest). Company-specific identification numbers are reflected in Commerce's instructions to Customs, which, in many cases, are public or are otherwise available via administrative protective order to any interested party, including importers.

235. Could the United States please submit an example of a real Form 7501 (or multiple forms, if necessary) reflecting imports from a Canadian company that illustrates how a CVD/AD case number, and a company-specific AD/CVD case number, are assigned to specific imports under specific HTS 10-digit codes?

Response:

158. As an initial matter, importers typically input the information requested on Form 7501 via electronic means through the ACE database. Furthermore, the United States is unable to provide a real Form 7501 because the challenged measure is not presently being applied to Canada. Therefore, there are no imports that are the subject of this proceeding. The United States observes that Canada provided a blank Form 7501 template that may be of assistance to the Arbitrator for illustration purposes.[113]

8 INFLATIONARY ADJUSTMENT

8.1 For both parties

236. Could the parties please explain the specific purpose of the inflationary adjustment? In particular, is the purpose: (a) to track the level of NI that results from the application of the challenged measure; and/or (b) to preserve the real value of suspensions of concessions (or, perhaps alternately stated, preserve the economic impact of such suspension on the United States) even in an inflationary environment? Whichever it is, could the parties please specifically explain how the parties' proposed inflationary indices accomplish the relevant purpose?

Response:

159. The purpose of the inflationary adjustment is to preserve the real value (or the economic impact) of the annual level of suspension of concessions. An inflation adjustment is appropriate only where a prior application of the measure is maintained from year to year. As the United

[113] Entry Summary Form 7501 (Exhibit CAN-93).

States explained in response to question 180, the level of nullification or impairment would be adjusted based on the relevant U.S. producer price index for the specified product index.[114]

237. The Arbitrator notes that PPIs from the U.S. BLS are available in an annualized format. Could the parties please explain whether they agree on the use of annual data for inflation adjustment, or would the parties consider it more appropriate to calculate average annual inflation rates based on monthly data? In the latter case, should there be a simple or a weighted average applied?

Response:

160. The United States supports the use of annual data for the inflation adjustment, based on the year-on-year change in the index from December to December. Indeed, because the level of nullification or impairment is calculated on an annual basis, the inflation adjustment should also use annual data.

A.1 THE APPROPRIATE COUNTERFACTUAL

A.1.1 For both parties

238. It is the Arbitrator's understanding that a company's CVD rate would not be used to calculate the counterfactual all-others rate, for purposes of this arbitration proceeding, if the company's CVD rate would not be used to calculate the all-others rate under the terms of, specifically, 19 U.S.C. § 1671d(c)(5)(i). The parties are requested to provide their written responses to question No. 181 with this understanding in mind.

Response:

161. Please see the U.S. response to question 181, above.[115]

239. In light of the parties' oral responses to question No. 181, could the parties please explain whether, for Scenarios 4 and 5 in that question, in the event that Canada could not secure the appropriate data from the relevant Canadian companies, Canada should therefore use a weighted average using publicly ranged data as weights, rather than use a simple average of companies' CVD rates as proposed in the last column of the table in that question?

Response:

162. Please see the U.S. response to question 181, above.

[114] U.S. Responses to Second Set of Questions, paras. 113-114.
[115] *See also* U.S. Responses to First Set of Questions, para. 75.

240. Could the parties please confirm that, in the context of US CVD proceedings, if a company could be described as both unaffected and not individually investigated (as these terms have been used in this arbitration proceeding), the only such companies are those that are assigned an unaffected all-others CVD rate?

Response:

163. The United States confirms this understanding.

A.1.2 For the United States

241. In its oral response to question No. 181, Canada indicated that if, in Scenario 1 contemplated in that question, the removal of the OFA-specific CVD rate from a company or companies would result in a counterfactual situation in which a CVD order never should have been imposed at all, then the NI moving forward would be calculated with respect to the entire CVD rates imposed on all relevant companies under that order. Does the United States agree that this is a relevant counterfactual situation, and, if so, agree with Canada's proposal for how to calculate the level of NI? For purposes of this question only, in your response, please assume that the Arbitrator would adopt a proxy of zero for relevant companies' OFA-specific CVD rate(s).

Response:

164. 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 in the counterfactual would result in the CVD order no longer being in place because all companies received zero or *de minimis* rates. Only in this limited scenario and for the purposes of responding to this question, the United States agrees that if Commerce continued to apply duties in an administrative review, Canada could calculate nullification or impairment in the administrative review using a counterfactual rate of zero.

165. The factual rate would be the CVD rates applied to the companies during the administrative review. The reference year rate would be the rates that the companies had received in the year prior to the administrative review, regardless of whether those rates involved the challenged measure. This is appropriate because the calculation would be limited to determining the level of nullification or impairment solely resulting from the administrative review. As the United States explained in response to question 207, this new level of suspension from the administrative review would be in addition to the level of suspension arising from the investigation, modified as necessary.

242. Could the United States please confirm that, in an administrative review, the only companies that could be re-investigated, and thus potentially receive new CVD rates (whether individual or in the form of an additional all-others rate), are those companies that requested an administrative review to be performed? That is, if a

company did *not* request an administrative review that is in fact performed, then its CVD rate will not change as a result of the administrative review?

Response:

166. This understanding is generally correct. In an administrative review, Commerce only examines the companies for which an administrative review was requested and initiated. Companies subject to review will then receive a new CVD rate, while companies not subject to review will not have their CVD rates change. The United States clarifies that an administrative review can be requested by the individual exporter or producer itself, or an interested party, including a U.S. domestic interested party, may request an administrative review of a Canadian exporter or producer.[116]

243. Could the United States please explain how long new shipper reviews conducted by the USDOC normally take to complete?

Response:

167. Generally, Commerce will initiate a new shipper review in the calendar month beginning after the end of the six-month period beginning on the date of the countervailing duty order under review, or the end of any six-month period occurring thereafter if the request for review is made during that six-month period.[117] Typically, Commerce will issue the preliminary results of the review within 180 days after the date on which the new shipper review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. If, however, Commerce determines that the new shipper review is extraordinarily complicated, the agency may extend the 180-day period to 300 days, and the 90-day period to 150 days.[118]

A.2 OVERALL METHDOLOGY

A.2.1 For both parties

244. In its oral response to question No. 207, the United States indicated that, in a situation where a triggering event occurs at a time when the prior calendar year was one in which "legacy" CVD rates (as the United States used that term) affected by the OFA-AFA Measure were in effect, a new run of the model would only treat the newly affected companies as the affected variety, and the newly calculated level of NI would be summed with the previously calculated level of NI from the previous triggering event. In their written responses to question No. 207, could the parties please explain:

a. whether this approach would lead to double-counting of a level of NI with respect to a company which had an affected "legacy" CVD rate and then was

[116] 19 CFR § 351.213(b) (Exhibit CAN-100).
[117] *See* 19 U.S.C. § 1675(a)(2)(B)(ii) (Exhibit USA-15).
[118] *See* 19 U.S.C. § 1675(a)(2)(B)(iii) (Exhibit USA-15).

assigned a newly affected CVD rate in the administrative review (e.g. Company A in question 207(b));

b. whether taking the change of duty rates and *vimps* of certain companies from a reference period in which certain companies' CVD rates were affected by the OFA-AFA Measure (i.e. "legacy" affected CVD rates) would be consistent with the basic function of a counterfactual, i.e. to detect the difference between the real-world market situation and one in which the OFA-AFA Measure were not used by the USDOC; and

c. whether using instead, as the reference period, the most recent calendar year in which no company were subject to a CVD rate affected by the OFA-AFA Measure (as Canada appeared to argue would be more appropriate in its oral answer to question No. 207) would be preferable?

Response to subparts (a) through (c):

168. As requested by the question, the United States has incorporated the response to this question into the U.S. response to question 207, above.

245. Could the parties please confirm that, under either party's model, Canada would alter the level of NI and associated suspension accordingly whenever one of the following events occurs: (a) an unaffected company becomes an affected company; (b) an affected company is assigned a new CVD rate affected by a new application of the OFA-AFA measure; or (c) an affected company becomes an unaffected company.

Response:

169. The United States confirms this understanding.

246. During the meeting with the parties, the Arbitrator's questions reflected concerns regarding, *inter alia*, certain aspects of the parties' models. In particular, and with respect to the Canadian model, the Arbitrator has concerns about certain aspects of the technical accuracy of the model (esp. instances in which the level of NI could exceed the *vimp*, the implications of Exhibit USA-48, and the extent to which offsetting effects as between Canadian producers are taken into account). With respect to the United States' model, the Arbitrator has particular concerns regarding whether the value of domestic shipments could be reasonably determined using the data sources the United States proffers in that context, and, relatedly, whether a total value of the US market for a given product could be obtained (values which are critical to calculating all relevant market shares under the United States' model). In light of such concerns, and without prejudice to the content of the parties' forthcoming written responses to the Arbitrator's other questions, the Arbitrator requests that the parties comment on the proposed alternate ways of calculating the substitution elasticity, the demand elasticity, and relevant market

shares described in Annex A to this set of questions. For purposes of this question, also please assume that the Arbitrator decided to adopt a four-varieties version of the United States' model to compute the level of NI (see question Nos. 129 and 132).

Response:

170. Please see the U.S. response to Annex A, below.

A.2.2 For Canada

Questions 247 through 252 are addressed to Canada.

A.2.3 For the United States

253. Further to the parties' oral answers to question No. 207, could the United States please explain how many all-others rates (whether formed as a result of an investigation or administrative review) could be active with respect to a single given CVD order at any given time?

Response:

171. The All Others rate calculated in an investigation exists and remains active throughout a CVD proceeding. As the United States explains in the U.S. response to question 207, however, the All Others rate in an administrative review (otherwise known as the non-selected company rate) will only apply to companies subject to the administrative review, but not selected for individual examination. This rate will apply to a non-selected company until that company is subject to a subsequent administrative review. Therefore, it is possible for various All Others rates from administrative reviews to remain active throughout a CVD proceeding.

254. In its oral response to question No. 185, Canada indicated that the Arbitrator would exceed its jurisdiction if the Arbitrator imposed the kind of temporal structure on the suspension of concessions contemplated in question No. 185. Does the United States agree with this assertion? Why or why not?

Response:

172. Under Article 22.7 of the DSU, the Arbitrator "shall determine whether the level of such suspension is equivalent to the level of nullification or impairment". The United States considers that the provision of a temporal structure on the suspension of concessions would be consistent with the Arbitrator's mandate under the DSU to ensure equivalence.

173. In particular, the United States understands question 185 to propose a minimum start date by which Canada may begin to suspend concessions following a "triggering event". The United States considers a minimum start date to be appropriate to ensure that the suspension of concessions requested by Canada avoids double counting and is equivalent to the level of nullification or impairment. Indeed, as the Arbitrator recognizes in question 123, because the

affected CVD rate may not be in place for the entirety of a calendar year, the level of nullification or impairment must be limited to the portion of the year to which the affected CVD rate is applied.[119] In addition, if there is a scenario as contemplated by question 207 where more than one segment of a CVD proceeding contains the challenged measure and prior applications of the challenged measure are terminated, Canada would need to ensure that any level of suspension requested appropriately accounts for these changes.

174. Therefore, the use of a minimum start date helps ensure that the level of suspension of concessions is equivalent to the level of nullification or impairment, consistent with Article 22.7 of the DSU. Further, this approach was also adopted by the arbitrator in *US – Washing Machines (Korea) (Article 22.6 – US)*.[120]

255. In its oral response to question No. 198, the United States enumerated certain sources that Canada could use which included "sources that are before the Arbitrator today". In its written response to question 198, could the United States please take care to specify what those sources are?

Response:

175. As requested by the question, the United States has incorporated the response to this question into the U.S. response to question 198, above.

A.3 MARKET SHARES AND MARKET SIZE

A.3.1 For both parties

256. Could the parties please clarify whether USITC reports contain the value of domestic shipments of the relevant product and/or the value of the entire US market for the relevant product, and if so whether each is usually confidential?

Response:

176. The Commission report contains both the value of domestic shipments and the value of U.S. apparent consumption (that is, the value of the entire U.S. market) for the relevant product.[121] This information will always exist in the report; however, in some cases, this information will be confidential. As the United States explained in response to question 144, 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

[119] *See* U.S. Responses to Second Set of Questions, paras. 15-16.
[120] *See US – Washing Machines (Korea) (Article 22.6 – US)*, para. 5.3.
[121] *See also* U.S. Responses to Second Set of Questions, para. 42.

could be derived from the published data.[122] Therefore, the determination of whether such information is kept confidential is made on case-by-case basis.

177. The United States also reviewed the Commission's determinations from AD/CVD investigations completed over the last seven years, starting with investigations filed in October 2014. The table in Exhibit USA-54 lists the AD/CVD investigations in chronological order based on the AD/CVD petition filing date. There were 109 AD/CVD investigations over the last seven years, of which the Commission issued 108 final determinations, and one negative preliminary determination. The table demonstrates that 43 percent of the Commission's investigation determinations (that is, 47 of the 109 determinations) publicly reported U.S. domestic shipment information,[123] and 35 percent of the Commission investigation determinations (that is, 38 of the 109 determinations) publicly reported U.S. apparent consumption. In cases involving Canada, 70 percent of the Commission investigation determinations (that is, 7 of the 10 determinations) publicly reported U.S. domestic shipment information, and 50 percent of the Commission investigation determinations (that is, 5 of the 10 determinations) publicly reported U.S. apparent consumption.

178. Therefore, the table in Exhibit USA-54 demonstrates that there is a likelihood that the U.S. domestic shipments could be obtained directly from the Commission report. Importantly, the demonstration of even a few determinations in which the Commission has publicly provided the total value of U.S. domestic shipments is a sufficient basis for the Arbitrator to instruct Canada to utilize the Commission report in an instance where the domestic shipment value is publicly available. That is, because this arbitration proceeding involves the unprecedented request for some future, unknown level of nullification or impairment, and therefore involves an unknown future CVD proceeding, the U.S. demonstration of the existence of public U.S. domestic shipments value in Commission reports should be accounted for in any instructions from the Arbitrator to ensure that any future scenarios are appropriately captured.

A.3.2 For Canada

Questions 257 through 259 are addressed to Canada.

A.3.3 For the United States

260. With reference to the United States' response to Arbitrator question No. 47, para. 137, could the United States clarify its statement that the market share in the Canadian formula's scaling factor could be larger or smaller than "a subject variety's actual market share"? In particular, could the United States clarify whether this can only occur in practice because of aggregation issues (i.e. because a

[122] U.S. Responses to Second Set of Questions, para. 42.

[123] In three of the determinations, the value of U.S. domestic shipments was public for some of the reported years, but not all. Specifically, Fluid End Blocks (Pub 5152), Common Alloy Aluminum Sheet (Pub 5182), and Standard Steel Welded Wire Mesh (Pub 5175) are reported in Exhibit USA-54 as "mix". These determinations were counted as public in the above percentage because some of the years reported public U.S. domestic shipment data. None of these determinations involved Canada.

sectoral market share would include more types of products than just the market for the product subject to disputed measure), or whether this can also occur because of other issues beyond aggregation? Specifically, Canada asserts that, in a narrowly defined product market, mechanically, the market share calculated using all Canadian imports of the product in question must be larger than, or at minimum equal to, the market share of the affected Canadian imports only (Canada's response to Arbitrator question No. 41, para. 78). Would the United States agree with this proposition or could a situation be conceived where the market share of all Canadian imports of a given product could be smaller than the market share of the affected Canadian imports only, e.g. because the comparison is made at two different points in time (before and after the imposition of the WTO-inconsistent duty)?

Response:

179. The United States generally agrees that in a narrowly-defined product market**,** mechanically, the market share calculated using all Canadian imports of the product in question must be larger than, or at minimum equal to, the market share of the affected Canadian imports. However, this proposition is irrelevant because Canada does not propose to use the share of a narrowly-defined product market. Rather, the market share in the Canadian formula's scaling factor represents broad, sector-level market shares fixed in a past time period.

180. As the United States has explained, the use of a fixed, past, sector-level market share will not be representative of Canada's market share for a specific product covered by a CVD order in a future reference year. Although it is possible for Canada's broad, sector-level market share to be larger or smaller than the product-specific market share, in many cases, the sector-level market share will be less than the actual product-specific market share, and thereby overstate the level of nullification or impairment.[124] This is because CVD duties are only applied when there is an affirmative finding that the domestic industry is materially injured or is threatened by material injury. Therefore, it is reasonable to expect that an affirmative finding of injury is frequently associated with greater import penetration, *i.e.*, larger product-specific market shares, than prevails at the broad sector level.

181. It is likewise true that in many cases a past market share will be less than the contemporaneous market share, and thereby overstate the level of nullification or impairment. This is because CVD duties are applied when there is a finding that the Canadian government has provided subsidies to the industry. Therefore, it is reasonable to expect that in many instances the subsidies will have allowed Canada to expand its share of the U.S. market.

182. Further, if Canada's reference to a "narrowly-defined product market" is only understood to mean a market share that corresponds to the exact affected product rather than the use of an aggregate, sector-level market share, Canada's argument that the market share of all Canadian

[124] *See* U.S. Response to question 199, above.

imports must exceed or be equal to the market share of the affected product may still fail to hold if the market share of all Canadian imports is calculated based upon a past year.

183. To illustrate, we consider an example where total Canadian imports have a 30 percent share of the U.S. market for the narrowly-defined product "widget type A" in a fixed, past year, as Canada proposes. We further assume that subsidies provided by the Canadian government, which may be the subject of the CVD order at issue, have increased Canada's market share of widget type A to 50 percent in the reference year. In that case, the market share of the subject variety in the reference year may account for up to 50 percent, and would therefore exceed the 30 percent market share limit of the fixed, past year.

184. The United States likewise illustrated this reality in Exhibit USA-48. Using data from *Softwood Lumber*, a comparison of scenarios 1 and 2 demonstrated the distortive effects of using a predetermined, sector-level market share value. Specifically, with all else being equal, a comparison of scenarios 1 and 2 demonstrates that the use of a predetermined market share alone results in a difference of 22 percent of the estimate of nullification or impairment in scenario 1, thereby inflating the level of nullification or impairment.

185. Therefore, the difference between the predetermined market share and the product-specific, reference year market share may be attributable to either the level of aggregation or market evolution, or a combination of both factors.

261. During the course of this proceeding, Canada has stressed that a significant problem with the United States' model is the inability of Canada to reliably determine the value of domestic shipments of the relevant product from the sources that the United States has proposed in this context. With respect to the data on domestic shipments in USITC reports, the Arbitrator understands that these data are not always publicly available, i.e. they are confidential. Could the United States please explain why such data would be confidential and not publicly available? Could the United States please also explain whether there are any available mechanisms that would enable confidential data on domestic shipments and/or other confidential data needed to compute the total value of the US market in the USITC reports to be consistently and reliably shared with Canada?

Response:

186. As the United States explained in response to question 144, 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 confidential information could be derived from the published data.[125]

[125] U.S. Responses to Second Set of Questions, para. 42.

187. Further, as is evident from Exhibit USA-54, Canada has exaggerated the difficulty in obtaining information on domestic shipments from the Commission reports. As the United States explained in response to question 256, over the last seven years, 43 percent of the Commission's investigation determinations publicly reported U.S. domestic shipment information. In investigations involving Canada, 70 percent of the Commission's investigation determinations publicly reported U.S. domestic shipment information. Therefore, there is a strong likelihood that Canada will be able to obtain the U.S. domestic shipment value from the relevant public Commission report.

188. In the event the information in the Commission report is not publicly available, then the United States has also proposed a tiered approach, describing the additional options for obtaining the values of U.S. domestic shipments in the U.S. responses to questions 198, 246, and Annex A.

262. Could the United States please explain whether there are any other methods for calculating or reliably estimating the value of domestic shipments and/or the total value of the US market of a relevant product beyond those suggested by the United States in this proceeding to date?

Response:

189. **Total Value of U.S. Domestic Shipments:** After receipt of this question, and review of the Arbitrator's proposed instructions in Annex A, the United States further contemplated whether there are any additional sources to obtain or reliably estimate U.S. domestic shipments. The United States has accordingly revised some aspects of the U.S. tiered methodology for obtaining domestic shipments. Specifically, under the final option of the U.S. tiered approach for U.S. domestic shipments, if the product concerns mining or energy commodities, the United States has proposed to utilize the most recent detailed BEA benchmark I-O table.[126]

190. The United States confirms that all reliable methods for calculating or reliably estimating the value of domestic shipments of which the United States is aware at this time have been included in the U.S. tiered approach described in the U.S. response to question 198 and in the U.S. alternative instructions in Annex A. Importantly, these detailed instructions will allow Canada to reliably calculate or estimate domestic shipments for any good.

191. **Total Value of U.S. Market:** In response to question 198, the United States details the sources from which the total value of the U.S. market is obtained. In the U.S. response to question 263, the United States explains that the approach for calculating or estimating the total value of the U.S. market depends on the available information relied on following the U.S. tiered approach. The U.S. alternative instructions in Annex A are reflective of these responses.

263. With reference to Table IV-7 in Exhibit USA-34, which provides information on "Apparent U.S. consumption" by origin country, and that is used in the calculations of Exhibit USA-48, could the United States please explain how often this specific information is commonly available in USITC reports, and how often it is not

[126] *See* U.S. response to question 206; U.S. alternative instructions in Annex A.

publicly disclosed? Moreover, even if such information were disclosed, would it be comparable to the trade statistics that would be used to calculate the numerators for the other market shares (i.e. RoW, Canadian affected, and Canadian unaffected) given that those latter trade statistics would often be presumably based on HTS codes? If it is efficient to do so, please respond to this question in responding to the previous two questions.

Response:

192. Exhibit USA-54 demonstrates that in the last seven years, 35 percent of the Commission investigation determinations (that is, 38 of the 109 determinations) publicly reported U.S. apparent consumption. In cases involving Canada, 50 percent of the Commission investigation determinations (that is, 5 of the 10 determinations) publicly reported U.S. apparent consumption.

193. Nevertheless, the United States has not proposed to obtain the total value of the U.S. market (that is, U.S. apparent consumption) entirely from the relevant Commission report. As discussed in the U.S. alternative instructions in Annex A, the United States provides two methodologies for obtaining U.S. apparent consumption, depending on the comparability of the statistics used for trade and those used for domestic shipments.

194. The trade statistics used to represent the value of the rest of the world, Canadian affected and Canadian unaffected imports will always be comparable under the U.S. methodology detailed in the U.S. alternative instructions under Annex A. Under the U.S. instructions, the first option for rest of the world imports is the relevant Commission report, where they are representative of the specific product, and hence directly comparable to the corresponding information on imports from Canada as provided by Customs.[127] In the event this information is unavailable and Canada ultimately relies on the U.S. final option, the U.S. alternative instructions ensure that the rest of the world imports are comparable to imports from Canada, as they are calculated as a proportion of Canadian affected and Canadian unaffected imports.

195. Domestic shipments data obtained from the relevant Commission report are likewise comparable to the trade data. The data used by the Commission to describe domestic shipments are obtained from various sources intended to complement trade information obtained from surveys and official statistics based on primary HTS 10-digit codes to represent a complete and consistent picture of the specific market subject to investigation. Therefore, the domestic shipments data from Commission reports would be comparable to trade data.

196. If domestic shipments data are available from the Commission report (U.S. first option) or the parties agree to another source that is contemporaneous and product-specific (U.S. second option), then the total value of the U.S. market will be the sum of: (1) the value of U.S. domestic shipments, (2) the value of imports from Canada from Customs, and (3) the value of imports from the rest of the world. This summation is then used as the common denominator for

[127] Although the United States previously suggested the use of Census data as the first option, after further consideration and to ensure comparability between the trade data proposed for the first options, the United States proposes for the first option to utilize the value of imports from the rest of the world from the Commission report.

calculating market shares of each variety. Because comparable values may be obtained from multiple sources, using a summation of the values associated with each variety to define U.S. apparent consumption will ensure that market shares will sum to one.

197. In the event that contemporaneous, product-specific domestic shipments data are not available, the U.S. alternative instructions under Annex A adopt the algebraic methodology for calculating market shares and total apparent consumption as provided in paragraphs 1.8 and 1.9 of the Arbitrator's proposed instructions to Annex A. This methodology for calculating the market shares and total apparent consumption ensures that the numerator and denominators of market shares are calculated from comparable data when the absence of contemporaneous, product-specific data necessitates the use of values that can be a proxy for contemporaneous, product-specific data. As the Arbitrator observes in footnote 12 of the proposed instructions, under this approach, the market shares are guaranteed to sum to one. Further, we note that the algebraic approach and the summation of values approach both lead to the same result when contemporaneous and product-specific data are applied.

A.4 VALUE OF IMPORTS

A.4.1 For both parties

264. Could the parties please confirm whether Canadian exporters have any role to play in the assignment of a CVD Number to their exports to the United States, or whether importers alone determine whether a CVD Number should be assigned to certain US imports?

Response:

198. As the United States explained in response to question 234, company-specific identification numbers are reflected in Commerce's instructions to Customs, which, in many cases, are public or are otherwise available via administrative protective order to any interested party, including U.S. importers and Canadian exporters. Importers often use customs brokers to assist them with submitting entry summary data.[128] Ultimately, it is the U.S. importers that are responsible for the information submitted. If importers submit incorrect information to Customs, they are subject to civil penalties under 19 U.S.C. § 1592.[129]

265. Could the parties please clarify whether, when the USDOC indicates in a CVD order that certain 10-digit HTS codes "may" or "might" contain the relevant product, this designation means: (a) that only the minority of the goods imported under each such HTS code are expected to be within the scope of the CVD order; (b) that each such HTS code is expected to contain a mix of goods that are and are not within the scope of the CVD order (even if the majority of such goods could still be

[128] U.S. Responses to Second Set of Questions, para. 93.
[129] U.S. Responses to Second Set of Questions, para. 93 (citing 19 U.S.C. § 1592 (Exhibit USA-43)).

expected to be within the scope of the CVD order); or (c) something else? If the answer is (c), please explain.

Response:

199. When Commerce indicates in a CVD order that certain 10-digit HTS codes "may" or "might" contain the relevant product, this designation means that each such HTS code is expected to contain a mix of goods that are and are not within the scope of the CVD order (that is, option (c) described in the question). It is unclear whether within the mix of goods, a minority or majority of the goods will be within the scope of the CVD order, as described by options (a) and (b) in the question.

200. Importantly, a CVD order is only issued if the Commission reaches an affirmative determination of injury. As the United States explained in response to question 221(b), in its assessment of injury, the Commission only examines the data of imports that entered under the primary 10-digit level HTS codes.[130] The Commission does not determine injury on the basis of the products that entered under 10-digit HTS codes that "may" or "might" contain the relevant product.

266. Could the parties please clarify whether Statistics Canada has the capability to identify the value of the exports to the United States of a particular Canadian company for a specific time-period?

Response:

201. The United States defers to Canada on whether their statistical agency has the capability to identify the value of exports to the United States of a particular Canadian company for a specific time-period. Under the memorandum of understanding between Statistics Canada and U.S. Customs, the United States provides Canada's U.S. import value information to Canada for use in Canada's calculation of exports to the United States. As the United States explains in response to question 218, as part of this exchange, the United States provides data associated with the Canadian manufacturer, but does not provide information concerning the U.S. importer or the Canadian exporter.

202. Further, the United States recalls that Canada has stated that Statistics Canada is unable to provide company-specific data to the Government of Canada for use in connection with this arbitration.[131] Therefore, it is the understanding of the United States that the use of company-specific data from Statistics Canada is not possible for this arbitration.

267. During the course of this proceeding, both parties have referred to "publicly ranged" data present in USDOC record documents, and upon which Canada could rely in its calculations of the level of NI in certain contexts. Could the parties please

[130] *See, e.g.*, USITC Softwood Lumber Final Report, p. IV-1 n.1 (listing only the primary 10-digit level HTS codes) (Exhibit USA-34).
[131] Canada's Response to Second Set of Questions, para. 110.

explain what exactly "publicly ranged" data are? In particular, what is/are the source(s) of relevant "publicly ranged" data, and what form does it take?

Response:

203. In a CVD investigation or administrative review, Commerce requests individually-examined companies to report the numerical value of their U.S. sales of the relevant product.[132] Because respondents typically request for their actual sales values to be kept confidential, respondents are required to submit a publicly-ranged value. A publicly-ranged sales value means that the numerical value provided is within 10 percent of the actual figure.[133] The publicly-ranged U.S. sales value can be found in the public version of the individually-examined company's questionnaire response, and may also be in the public version of the All Others rate calculation memo.

268. In light of the parties' oral responses to question No. 214, could the parties please, in their written responses to that question, clarify whether the cross-owned affiliates of a particular company might change over time? For example, might the list of a given company's cross-owned affiliates be identified as one group of companies at the end of an USDOC CVD investigation, but be identified as a different group of companies at the conclusion of a subsequent administrative review? If the composition of the group of cross-owned affiliates could change, would Canada use the most recently identified group in calculating a level of NI?

Response:

204. Commerce's cross-ownership determination continues until the issue is revisited in a subsequent segment of the CVD proceeding. Specifically, if an individually-examined respondent reports changes to its affiliation structure or to the operations of its affiliates, Commerce will revisit its prior cross-ownership finding to determine whether a change is warranted.[134] If the composition of the group of cross-owned affiliates changes between segments of a proceeding (*i.e.*, from a CVD investigation to an administrative review, or from one administrative review to a subsequent review), the United States considers it appropriate to use the group most recently identified by Commerce to calculate a level of nullification or impairment going forward.

A.4.2 For Canada

Questions 269 through 272 are addressed to Canada.

[132] U.S. Responses to Second Set of Questions, para. 105.
[133] 19 CFR § 351.304(c) (Exhibit USA-55).
[134] *See* 19 C.F.R. § 351.525(b)(6) (Exhibit USA-56).

A.4.3 For the United States

273. The Arbitrator notes that the United States has argued that there should be no requirement for the United States to provide disaggregated US Customs data to Canada. The United States has explained that, in order for Canada to create a change-of-duty rate for the unaffected variety in the US model, Canada would need to use a trade-weighted average using the values of imports of the unaffected companies as weights. Could the United States please explain whether, given the need for Canada to create such a trade-weighted average (if the US model were selected), US Customs essentially must provide Canada with disaggregated, company-specific trade value data to Canada for this reason?

Response:

205. Although the United States previously stated that it was not necessary to provide company-specific information for the unaffected Canadian variety,[135] given the need for a trade-weighted average for the unaffected Canadian variety, the United States has reconsidered its position. The United States confirms and clarifies it will provide company-specific trade value data to Canada for all Canadian exporters of the product – both unaffected and affected companies. The provision of such data will enable the parties to use a trade-weighted average for the unaffected Canadian variety.

206. However, as the United States explained in response to question 232, the United States understands Canada's request for disaggregated information to mean entry-by-entry shipment information for each company, which would constitute hundreds or thousands of rows of data for each Canadian exporter. Entry-by-entry shipment information is neither necessary for the model nor for verification.[136] Accordingly, the United States proposes to provide Canada aggregated import values on a company-specific basis.

A.5 CHANGE IN DUTY RATE

A.5.1 For the United States

274. Could the United States please indicate why, for unaffected Canadian exporters, the Reference Period CVD rate can change, as, for instance, in the "non-subject duty rates" column of scenario 8 of "Nullification or Impairment Under Various Models/Scenarios Using Data from Softwood Lumber" (Exhibit USA-48)?

Response:

207. The United States notes that the reference period CVD rate cannot change. As explained in the U.S. response to question 212, the reference year is a point of comparison with the factual

[135] U.S. Responses to Second Set of Questions, para. 86.
[136] *See* U.S. response to question 232, above.

and counterfactual duty rates. This is true for all varieties, including the unaffected, non-subject Canadian variety.

208. To clarify the example in Exhibit USA-48, the value labelled "t_post" in the non-subject duty rates column does not represent a change in the reference period CVD rate applied to non-subject varieties. Rather, t_post is the hypothetical CVD rate assigned to non-subject varieties in the administrative review in which the challenged measure is hypothetically applied to Company E. As such, for the non-subject variety, t_post is both the factual and counterfactual duty rate in the model.

209. In general, CVD rates may change for all varieties between the reference period and the period in which the challenged measure is applied.[137] For instance, scenario 8 in Exhibit USA-48 contemplates a scenario in which the non-subject CVD rate in the reference year was 12.06 percent. For simplicity in exposition, this rate was obtained by using the simple average of CVD rates from the *Softwood Lumber* CVD order of all companies other than Company E.[138] The non-subject Canadian variety's factual (and counterfactual rate) is then hypothetically increased to 13.00 percent during the administrative review in which the challenged measure is applied to Company E's CVD rate.

[137] *See also* U.S. responses to questions 211 through 213, above.

[138] As the United States explains in response to question 211, above, where there are multiple unaffected companies, the duty rate would be a weighted average for the unaffected company variety. In scenario 8 of Exhibit USA-48, the United States uses a simple average only for simplicity of exposition.

ANNEX A

210. The United States appreciates the Arbitrator providing instructions for proposed alternative approaches to calculate the model inputs. The U.S. response to this question is in five parts. First, we provide a revised version of Annex A, which offers additional detail for the purpose of clarity. Second, we comment on Annex A, as revised. Third, we document the application of the Arbitrator's methodology to *Softwood Lumber*, as described in Exhibit USA-48, and discuss the implications for the estimate of nullification or impairment. Fourth, following the format established in Annex A, we offer the U.S. alternative instructions for calculating model inputs – the substitution elasticity, the demand elasticity, the domestic and import supply elasticities, and relevant market shares – which applies the U.S. proposed tiered approach. Finally, we examine the implications of the U.S. proposed alternatives for the estimate of nullification or impairment, again using *Softwood Lumber* as an example.

I. Revised Instructions to Annex A

211. The following is a revised version of the proposed instructions in Annex A. The Arbitrator's proposed instructions are reproduced below. Additions to the text are indicated with underlined text. To avoid confusion, the United States has removed underline from any text that was originally underlined by the Arbitrator. Deletions are in ~~strikethrough font~~.

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1.1. Assume, for the purpose of this Annex only, that the Arbitrator would be using a fixed four-variety approach to the US model, as described in Arbitrator question No. 127 (addressed to Canada) and in Arbitrator question No. 132 (addressed to the United States). This Annex describes how the Arbitrator could instruct Canada to compute future CVD order-specific substitution and demand elasticities, and future relevant market shares (i.e. the share of US domestic shipments, shipments from affected Canadian firms, shipments from unaffected Canadian firms, and shipments from the Rest of the World (RoW) in US domestic consumption of the relevant product).

Calculation of future substitution and demand elasticities in the US model

1.2. To compute the CVD order-specific substitution elasticity, the Arbitrator shall instruct Canada to use the most recent version of Fontagnè, Guimbard and Orefice (2020) (FGO) trade elasticities at the 6-digit level.[139] For each HS-6 sub-heading, the substitution elasticity σ shall be calculated as $1 - \varepsilon$, where ε is the point estimate of the FGO trade elasticity. This corresponds to

[139] If the most recent version of such elasticities is unavailable, or for some reason, due to a change in their format, become unusable, Canada could revert to the most recently available version of these elasticities in a useable format. FGO trade elasticities are available at https://sites.google.com/view/product-level-trade-elasticity. The Arbitrator notes that Canada has been asked to submit HS 6-digit level FGO elasticities as an exhibit in question No. 194 (Canada orally committed to do so at the meeting), and thus a useable format of these elasticities would always be available to Canada via the record of this proceeding.

the variable labelled "epsilon_pt" in the FGO data set dated 28 Nov 2019.[140] The substitution elasticities shall be concorded to the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product. That is, a single 6-digit substitution elasticity will be assigned to each referenced 10-digit HTS code. The 6-digit HTS code corresponding to a given 10-digit HTS code is the first 6 digits of the 10-digit code. If periodic revisions to the HS make it necessary to concord the reference HTS codes in the CVD order to the 6-digit FGO elasticities, Canada shall use official correspondence tables from ~~Census~~ the United Nations.[141] In the event that an FGO HS 6-digit level elasticity has a missing value in the FGO dataset, is missing from the dataset entirely, is statistically insignificant as defined by FGO,[142] or qualifies as a statistical outlier[143], the median over all statistically significant, non-outlier estimates within the HS 4-digit heading to which the HS 6-digit sub-heading belongs to shall be assigned to the HTS 10-digit code.[144] ~~In the event that the HS 6-digit sub-heading corresponding to an HTS 10-digit product is absent from the FGO HS 6-digit level dataset, Canada shall assign the median elasticity computed across all HS 6-digit sub-headings to this HTS 10-digit product.[145]~~ Once each HTS 10-digit code in a CVD order is assigned a substitution elasticity, in case all primary HTS 10-digit codes in a CVD order have the same substitution elasticity, this common substitution elasticity will also be the CVD order-specific substitution elasticity. In case two or more primary HTS 10-digit codes are assigned different substitution elasticities, the CVD order-specific substitution elasticity shall be computed as a weighted average of each HTS 10-digit code's substitution elasticity with Canadian reference year imports (sourced from US Census' USA Trade Online) as weights, according to the following formula:

$$\sigma = \sum_{j}^{J} \sigma_j \frac{M_j}{\sum_j^J M_j},$$

[140] As discussed in footnote 1, the Arbitrator has asked for Canada to submit this dataset as an exhibit in response to question 194.

[141] Accessible via https://unstats.un.org/unsd/trade/classifications/correspondence-tables.asp ~~https://www.census.gov/foreign-trade/reference/codes/index.html#concordance~~.

[142] The FGO dataset dated 28 November, 2019 includes a variable labelled "zero" which is equal to one if a point estimate is statistically insignificant.

[143] An elasticity of substitution shall be considered as a statistical outlier if its value exceeds the sum of the median plus two times the standard deviation of all HS 6-digit level elasticities calculated from point estimates of ϵ. Based on the data set dated 28 Nov 2019, the Arbitrator calculates a threshold for outliers of 6-digit HS level estimates in FGO (2020) of 23.97.

[144] In the unlikely event that such a median cannot be calculated within the HS4 heading, Canada shall calculate the median over all statistically significant, non-outlier estimates within the HS2 chapter. If a median cannot be calculated within the HS2 Chapter, Canada shall calculate the median over all statistically significant, non-outlier estimates HS 6-digit point estimates. Based on the data set dated 28 Nov 2019, this treatment is necessary to obtain a substitution elasticity for Chapter 45.

~~[145] It might also occur that one HTS 10-digit code will correspond to more than one HS 6-digit sub-heading. In this case, Canada shall assign the median across the corresponding HS 6-digit elasticities to the HTS 10-digit code.~~

where σ_j is the elasticity of substitution for HTS 10-digit code *j* (common to all HTS 10-digit codes within each HS 6-digit sub-heading), M_j is the corresponding import value (US imports from Canada) in HTS 10-digit code *j* and $\sum_j^J M_j$ is the total of all imports subject to a CVD order.

1.3. To compute the CVD order-specific demand elasticity, Canada shall assign the most recent and most highly disaggregated GTAP consumer final demand elasticities[146] available[147] to HS 6-digit levels, and then assign the HS 6-digit demand elasticity to each of the HTS 10-digit codes listed in the respective CVD order belonging to the respective HS-6-digit product category.[148] In the event that a primary HTS 10-digit code referenced in a relevant CVD order cannot be concorded with a GTAP sector, Canada shall calculate the simple average of all GTAP demand elasticities and assign this value to the respective HTS 10-digit code. Once each primary HTS 10-digit code in a CVD order is assigned a demand elasticity, in case all primary HTS 10-digit codes in a CVD order have the same demand elasticity, this common demand elasticity will also be the CVD order-specific demand elasticity.[149] In case two or more HTS 10-digit codes have different demand elasticities, the CVD order-specific demand elasticity shall be computed as a weighted average of each primary HTS 10-digit code's demand elasticity with Canadian reference year imports (sourced from US Census' USA Trade Online) as weights, according to the following formula:

$$\varepsilon = \sum_j^J \varepsilon_j \frac{M_j}{\sum_j^J M_j},$$

where ε_j is the elasticity of demand for a HTS 10-digit product *j*, M_j is the corresponding import value (US imports from Canada) in HTS 10-digit code *j* and $\sum_j^J M_j$ is the total of all imports subject to a CVD order.

Description of methodology for calculating market shares

1.4 In the four-variety version of the US model, the following market shares would be needed: (a) the share of US domestic shipments in US expenditure (m_{us}); (b) the share of affected

[146] The Arbitrator notes that the consumer final demand elasticities are not equivalent to total industry demand elasticities called for in the Armington model defined for this proceeding. As such, they would be used as proxies.
[147] If the most recent version of such elasticities is unavailable, or for some reason, due to a change in their format, become unusable, Canada could revert to the most recently available version of these elasticities in a useable format. We note that the current GTAP demand elasticities are already on the record in Source Data 2 (Exhibit CAN-08), and thus a useable format of these elasticities would always be available to Canada via the record of this proceeding.
[148] The assignment of GTAP demand elasticities to HS 6-digit sub-headings shall be done using the correspondence in sheet "HS2017 to GTAP11" of Exhibit CAN-08. If future GTAP or HS classifications will be used, the assignment shall be done using correspondence tables at https://wits.worldbank.org/product_concordance.html, or at https://www.gtap.agecon.purdue.edu/databases/contribute/concord.asp, or at https://www.gtap.agecon.purdue.edu/resources/res_display.asp?RecordID=5111.
[149] ~~It might also occur that one HTS 10-digit code will correspond to more than one HS 6-digit sub-heading. In this case, Canada shall assign the median across the corresponding HS 6-digit elasticities to the HTS 10-digit code.~~

Canadian imports in US expenditure (m_{aca}); (c) the share of unaffected Canadian imports in US expenditure (m_{nca}); and (d) the share of US imports from the rest of the world in US expenditure (m_{row}). Canada shall calculate these market shares, in addition to the value of the US market – which is also an input into the US model[150] – in accordance with the following five steps.

1.5 First, Canada shall compute m_{us} for the reference year based on information from the most recent version of BEA 71 sectors I-O supply and use tables proposed by Canada.[151] In particular, Canada shall compute m_{us} in the relevant sector as the share of domestic shipments (total commodity output minus exports of goods and services) in total supply (total commodity output plus imports minus exports of goods and services).[152] The 71 sectors in the BEA tables are defined using 3-digit NAICS codes. Therefore, the primary 10-digit HTS reference codes provided in the relevant CVD order must first be concorded to the corresponding three-digit NAICS codes.[153]

NEW 1.6 In cases where the primary reference HTS codes concord to two or more NAICS codes, the CVD order-specific US market share shall be computed as a weighted average of each NAICS code's market share with the corresponding HTS 10-digit Canadian imports (sourced from US Census' USA Trade Online) as weights, according to the following formula:

$$m\_us = \sum_{j}^{J} m\_us_j \frac{M_j}{\sum_j^J M_j},$$

where m_us_j is the market share for NAICS code j (common to all HTS 10-digit codes within each 3-digit NAICS code), M_j is the corresponding import value (US imports from Canada) under all primary HTS 10-digit reference codes under the CVD order that concord to NAICS code j and $\sum_j^J M_j$ is the total of all imports under the primary HTS 10-digit reference codes.

[150] The value of the US market is indicated as input Y in the notation of the United States Responses to First Set of Questions, Amended Table 1 in Appendix 1 ~~written submission, Table 1 in Appendix 2~~, and in Sample US Model Data File (Exhibit USA-11).

[151] The Arbitrator notes that BEA 71 sectors I-O supply and use tables are updated annually, and are available at https://www.bea.gov/industry/input-output-accounts-data. In case these tables are not available for the reference period, Canada could use the BEA 71 sectors I-O supply and use tables available for the most recent year preceding the reference period. In case BEA 71 sectors I-O supply and use tables become unavailable as a general matter, Canada could use the ~~2018~~ 2020 BEA 71 sectors I-O supply and use tables, which ~~Canada~~ the United States submitted in Exhibits USA-57 and USA-58.~~Source Data 1 (Exhibit CAN-07).~~ The Arbitrator notes that these I-O tables cover the whole US economy and thus any HTS 10-digit code can presumably be matched to them. The Arbitrator further notes the possibility that future versions of these tables might increase their sectoral scope, i.e. they would cover more than 71 sectors. The Arbitrator does not, however, discern any way in which such a change would alter the practical use of such tables in this context.

[152] Total commodity ~~O~~output and Imports would be sourced from the BEA IO "supply" table. Exports of goods and services would be sourced from the BEA IO "use" table.

[153] Annual concordance tables between the US HTS and 6-digit NAICS codes for imports are available at https://www.census.gov/foreign-trade/reference/codes/concordance/index.html. The first three digits of the 6-digit NAICS code is the 3-digit NAICS code found in the BEA 71 sectors I-O supply and use tables.

1.6 Second, Canada shall calculate the share of imports depending on their Canadian or non-Canadian origin. These calculations shall be conducted at the level of the primary HTS 10-digit codes that belong to a given CVD order using import data from US Census' USA Trade Online for the reference year. Canada shall calculate these shares based on the following formula:

$$m_{can} = \frac{US\ imports\ from\ Canada}{US\ imports\ from\ the\ world}$$

1.7 Third, Canada shall calculate the share of Canadian imports (in all Canadian imports of the relevant product) depending on their tariff treatment, i.e. whether products are affected by a WTO-inconsistent CVD order or not. For an investigation, ~~T~~these calculations shall be conducted at the level of HTS 10-digit codes using company-specific import data from the US Customs (for the numerator and denominator) ~~and from US Census' USA Trade Online (for the denominator)~~ for the reference year. For an administrative review, these calculations shall be conducted based upon the AD/CVD case number using the company-specific import data from US Customs (for the numerator and denominator) for the reference year. Canada shall calculate these shares based on the following formula:

$$m_{acan} = \frac{US\ affected\ imports\ from\ Canada}{US\ imports\ from\ Canada}$$

1.8 Fourth, based on the calculations described before, the four varieties model shall be applied using as inputs the following four market shares, which sum up to one[154]:

$$m_{us}$$

$$m_{aca} = (1 - m_{us}) * m_{can} * m_{acan}$$

$$m_{nca} = (1 - m_{us}) * m_{can} * (1 - m_{acan})$$

$$m_{row} = (1 - m_{us}) * (1 - m_{can})$$

1.9 Fifth, Canada shall calculate the total value of the relevant US market (Y) using information on the US market share and the value of total imports that fall under a given CVD order:

$$Y = \frac{US\ imports\ from\ the\ world}{1 - m_{US}}$$

[154] To see this, consider the following example. Let $m_{us} = 0.6$, and therefore $(1 - m_{us}) = 0.4$. This implies that 60% of US expenditure is covered by domestic production, and the remaining 40% is covered by imports. Let $m_{can} = 0.2$, and therefore $(1 - m_{can}) = 0.8$. This implies that 20% of imports are of Canadian origin, and 80% of imports are of non-Canadian origin. Finally, let $m_{aca} = 0.4$, and therefore $(1 - m_{aca}) = 0.6$. This implies that 40% of Canadian imports are affected, and 60% of Canadian imports are not affected. Then $m_{us} + m_{aca} + m_{nca} + m_{row} = 0.6 + (0.4*0.2*0.4) + (0.4*0.2*0.6) + (0.4*0.8) = 1$.

where the numerator is equal to the denominator in the calculation of m_{can}.

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II. Comments on Revisions to Annex A

212. **Paragraph 1.2**: *With respect to the use of FGO as a source for the elasticity of substitution*, the United States will not repeat its criticism of the application of this source here.[155] Rather, we explain the revisions to Annex A that we have made in the foregoing section.

213. First, throughout the Arbitrator's proposed instructions, the United States has clarified that only the primary set of 10-digit level HTS codes should be utilized, to avoid an overinclusion of imports.[156]

214. Second, we clarify that it is FGO's point estimate for ϵ that should be the basis for calculating substitution elasticities. In the data set dated 28 Nov 2019,[157] the point estimate for each code is the variable labelled $epsilon\_pt$.[158]

215. Third, the Arbitrator prescribes that outliers and missing values of $epsilon\_pt$ should be replaced by the median value from the corresponding HS4 or HS2 level, but prescribes that codes missing from the data set should be replaced by the median estimate over all codes. The United States contends that codes with values missing from the data set should be replaced with the corresponding HS4 or HS2 level, and additionally that codes with statistically insignificant estimates should also be replaced by the corresponding medians. It is appropriate to replace missing values with median values from the corresponding HS4 or HS2 level because a 6-digit code not in the data set is more likely to have market characteristics similar to its industry counterparts than to the median product over all industries. It is appropriate to replace statistically insignificant values with median values because statistically insignificant estimates indicate that the code's elasticity cannot be distinguished from zero. The United States further clarifies that the median values calculated for these purposes should be the median of the set of statistically significant point estimates that are not statistical outliers.

216. The United States also has changed that the correspondence table should be obtained from the United Nations because those tables concord between different HS versions. The tables from Census do not provide a concordance between different HS versions.

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[155] *See* U.S. response to question 50.
[156] U.S. Responses to Second Set of Questions, para. 103. *See also* U.S. response to question 265, above.
[157] Obtained at https://sites.google.com/view/product-level-trade-elasticity.
[158] The data set also includes a variable labelled $epsilon$, for which the value of all statistically insignificant, positive, and missing point estimates are replaced with the corresponding *average* value from the corresponding HS4 heading or HS2 chapter. This is described at page 59 of FGO. Note that the authors calculate these values in order for their results to be more easily compared to other estimates.

217. Finally, the United States agrees that in the event that two or more HTS 10-digit codes correspond to a different elasticity estimate, it is appropriate to calculate a trade-weighted average, and that the share of imports from Canada under each HTS 10-digit code is the appropriate weight. The United States adds the clarification that the imports data should be from the reference year used in the model.

218. **Paragraph 1.3:** *With respect to the use of GTAP demand elasticities,* the United States maintains its objections to the use of this source.[159] Nevertheless, if the Arbitrator determines to instruct Canada to use this source, a weighted average based on reference year imports from Canada is appropriate. The United States agrees that the most recent version of the GTAP database should be used, and clarifies that the most disaggregated available data set should be used. The United States also notes that the demand elasticities in the GTAP database are not the total industry demand elasticities required by either the U.S. model or the Canadian formula. As explained in the U.S. response to question 62, total industry demand elasticities represent the demand response of all buyers – consumers, government, and firms – of the product as a final or intermediate good. The GTAP demand elasticities are consumer final demand elasticities only, and accordingly, the United States has added a footnote indicating that GTAP consumer final demand elasticities are used as a proxy for the total industry demand parameter required by the model.

219. **Paragraph 1.5***: With respect to the calculation of U.S. market share,* the United States has explained the need to use the most precise information available for this input. Without prejudice to the U.S. position concerning the use of the BEA I-O supply and use table,[160] the United States has clarified that exports of goods and services would be sourced from the BEA I-O "use" table. Imports and total commodity output would be sourced from the BEA I-O "supply" table. Further, the United States provides the 2020 BEA I-O tables as Exhibits USA-57 and USA-58 for Canada to use as a last resort. Lastly, because the 71 sectors in the BEA table use 3-digit NAICS codes, the primary 10-digit HTS codes would need to be concorded to the 3-digit NAICS codes.

220. **New Paragraph 1.6:** The United States adds instructions for calculating a weighted-average market share in the event that the primary 10-digit HTS reference codes concord to two or more of the 3-digit NAICS codes on which the 71 sectors BEA I-O table is based.

221. **Current paragraph 1.7:** The United States makes a distinction between CVD investigations and administrative reviews. For an investigation, the calculations for the share of Canadian imports should be conducted based on company-specific 10-digit HTS level import values. When the challenged measure occurs in an administrative review, imports from Canada under the AD/CVD case number should be used to calculate Canada's market share. Further, the United States also suggests that it would be more consistent to use data obtained from Customs

[159] *See* U.S. Written Submission, paras. 108-113; U.S. Responses to First Set of Questions, paras. 164-169.
[160] In the event that the market shares defined by the Arbitrator are used as an alternative because more precise data are unavailable, the U.S. alternative instructions to Annex A, below, provide clarifying information on how m_us should be calculated using data underlying the BEA I-O tables. This includes providing instructions for the case where the reference 10-digit HTS codes for a CVD order fall under multiple BEA sectors.

for both the numerator and denominator in the calculation of m_acan, to ensure that the sum of the unaffected and affected Canadian variety equal one.

222. Finally, the United States observes that the instructions do not include domestic and import supply elasticities. The United States refers the Arbitrator to the U.S. alternative instructions, below, for the U.S. proposal for instructions concerning domestic and import supply elasticity.

III. Comparison of the Arbitrator's Proposed Annex A Approach With the U.S. Approach

223. Below, Table 1 uses the inputs from the CVD investigation of *Softwood Lumber from Canada* to compare the U.S. methodology, the proposed approach described by the Arbitrator in Annex A, and a hybrid approach using actual product-specific market shares, but Annex A proposed elasticities. The U.S. methodology primarily relies on the use of the relevant Commission report for model inputs. As such, for *Softwood Lumber from Canada*, the Commission's final determination from the investigation is used.[161] That is, the actual values associated with the U.S. softwood lumber market.

224. Because the Arbitrator's instructions do not propose supply elasticity values, we set domestic supply elasticities at 1.55 and import supply elasticities are assumed to be 10.[162]

[161] *See* USITC Softwood Lumber Final Determination (Exhibit USA-34).

[162] The domestic supply elasticity value of 1.55 is the median domestic supply elasticity across manufacturing industries from Table 6 in Riker (November 2020) (Exhibit USA-31). *See* U.S. responses to questions 63 and 64 for discussion of why the domestic supply elasticity must be less than the import supply elasticity.

Table 1: Model inputs for Softwood Lumber under various approaches

Approach	**Elasticities**		**Market Shares**		**U.S. Market (Y)**	**NI Estimate**
United States (actual values)[163]	Demand (ϵ)	-0.5	m_{us}	.64	$17.92 billion	$60.4 million
	D. Supply (η_{us})	1.25	m_{aca}	.15		
	I. Supply (η)	10	m_{nca}	.17		
	Substitution (σ)	3.5	m_{row}	.04		
Annex A	Demand (ϵ)	-0.91	m_{us}	.83	$36.77 billion	$171.0 million
	D. Supply (η_{us})	1.55	m_{aca}	.07		
	I. Supply (η)	10	m_{nca}	.08		
	Substitution (σ)	18.98	m_{row}	.02		
Hybrid (actual market shares/ Annex A elasticities)	Demand (ϵ)	-0.91	m_{us}	.64	$17.92 billion	$119.4 million
	D. Supply (η_{us})	1.55	m_{aca}	.15		
	I. Supply (η)	10	m_{nca}	.17		
	Substitution (σ)	18.98	m_{row}	.04		

225. The data in the first two rows of Table 1 demonstrate that the approach outlined in Annex A produces a distorted picture of the softwood lumber market. The United States observes that the substitution elasticity estimate of 18.98 obtained from FGO is substantially higher than the median value of the Commission estimate of 3.5.[164] It may be the case that the FGO estimate of 18.98 correctly characterizes the global market for products falling into the same 6-digit HS codes as the specific products under the scope of *Softwood Lumber*. However, the surveys and comments on substitutability – including those made by the Government of Canada before the Commission – that form the basis for the Commission estimates suggest that the FGO's very high substitution elasticity does not accurately describe the U.S. market for softwood lumber products that were within the scope of the CVD investigation.[165]

[163] Corresponds to Scenario 9 in Exhibit USA-48. Values obtained from USITC Softwood Lumber Final Determination (Exhibit USA-34). *See also* Exhibit USA-48 for sources.
[164] USITC Softwood Lumber Final Determination, p. II-28 (Exhibit USA-34).
[165] As noted in the U.S response to question 50, FGO is also significantly higher than estimates from other academic studies for the same products. *See* U.S. Responses to First Set of Questions, para. 153, Comparison Table 2. Further, the FGO estimate of 18.98 is also higher than the value suggested by the Canadian government before the Commission, where Canada argued that the substitution elasticity for softwood lumber was no greater than the lowest end of the range of 2 to 5 identified by Commission staff. *See* U.S. Responses to First Set of Questions, para. 152 n. 216.

226. Likewise, the market shares obtained from the proposed Annex A methodology misrepresent the size and the nature of competition in the market. The use of the 71-industry BEA I-O table in Annex A implies a U.S. market size of $37 billion, roughly double the actual size of the softwood lumber market – $18 billion – as reported in the Commission report.[166] Further, the Arbitrator's proposed Annex A methodology suggests Canada's U.S. market share is 15.4 percent, which is about half of Canada's actual market share of 32.2 percent.[167]

227. The data in the last row of Table 1 presents a hybrid scenario with the actual market shares of the softwood lumber industry, but with the Arbitrator's proposed Annex A elasticity sources. A comparison of the results from the U.S. model with the hybrid model demonstrates that the elasticities prescribed in Annex A inflate the estimate of nullification or impairment by $59 million (98 percent of the estimate from the U.S. model). This dramatic increase is attributable to the significantly larger value for substitution elasticity from FGO, as discussed above, and also a large magnitude demand elasticity from the GTAP "lumber" sector. It may be the case that the larger magnitude GTAP demand elasticity correctly characterizes the demand response of consumers for final products in the GTAP "lumber" sector. However, it does not take into account the response of governments and industrial users of the specific products subject to the *Softwood Lumber* CVD order. Importantly, the products under the CVD order are primarily used by industry for construction and remodeling of homes.[168]

228. Further, a comparison of the hybrid model methodology with the Arbitrator's proposed Annex A methodology demonstrates how utilizing aggregated sector values from the 71-industry BEA I-O table further inflates the estimate of nullification or impairment. The Annex A approach increases the estimate by an additional $52 million (43 percent) over the hybrid approach. This increase is attributable to the implied Annex A market size (Y) that is double the actual size of the softwood lumber market. This demonstrates that using the constructed market shares from the BEA I-O table when data on the actual market size and actual market shares are publicly available from the Commission report would result in an estimate of nullification or impairment that is not reasonable.

IV. U.S. Alternative Instructions to Annex A: the U.S. Preferred Approach

229. In this section we provide the U.S. alternative instructions that incorporates the U.S. preferred tiered approach following the Arbitrator's proposed instruction format of Annex A for a four-variety model.

230. These alternative instructions are without prejudice to the U.S. position that each affected Canadian company should be a distinct and separate Canadian variety. In Exhibit USA-51,[169] the United States provides a Stata program that runs the U.S. model exactly as in Exhibit USA-1, but which is adjusted to accommodate any number of varieties. In particular, the United States

[166] USITC Softwood Lumber Final Determination, p. IV-11, Table IV-7 (Exhibit USA-34).
[167] USITC Softwood Lumber Final Determination, p. IV-12, Table IV-7 (Exhibit USA-34).
[168] USITC Softwood Lumber Final Determination, p. II-1 (Exhibit USA-34).
[169] Accompanying Exhibit USA-52 includes the data inputs for this model.

observes that the use of a model that treats each affected Canadian company as a separate variety has the benefit of allowing for company-specific adjustments to the level of nullification or impairment when the challenged measure is removed from an individual company.[170] As such, these instructions also explain how to obtain the relevant inputs for the U.S.-preferred model in which each individually-examined company and the All Others rate are defined as individual varieties.

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Calculation of future substitution, supply and demand elasticities in the US model

1.1. To compute the CVD order-specific substitution elasticity, the Arbitrator shall instruct Canada to use the median numerical value of the substitution elasticity range determined by the U.S. International Trade Commission (Commission) in the report of the specified future product that most closely corresponds to the reference year.

1.2. In the unlikely event that future product-specific substitution elasticities are not available from the Commission report,[171] the Arbitrator shall instruct the parties to consult and use some future source, including considering updated academic literature. If the parties cannot come to an agreement on an alternative, future source, then the final option would be to calculate a CVD order-specific elasticity of substitution from each of the three academic studies: Soderbery (2015)[172], Ahmad and Riker (2019)[173], and the most recent version of Fontagnè, Guimbard and Orefice (2020) (FGO). Canada shall use the median value of these three CVD order-specific elasticities.

1.3. **Soderbery (2015):** For each HTS 10-digit code, the substitution elasticity σ shall be the estimated value at the HTS 10-digit level for each of the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product. These values can be obtained from the Soderbery HTS 10-digit dataset under the column labelled "sigma".[174] In the event that a Soderbery HTS 10-digit elasticity estimate is not included in the dataset or qualifies as a statistical outlier,[175] then the relevant HTS 10-digit code will be concorded to the HTS 8-digit level, and the corresponding value from the Soderbery HTS 8-digit

[170] *See* U.S. response to question 207.
[171] The Commission has published substitution elasticity estimates for every CVD and AD investigation since 1987. It is expected to continue to do so in the future.
[172] Anson Soderbery, "Estimating Import Supply and Demand Elasticities: Analysis and Implications", Journal of International Economics, Vol. 96, Issue 1, May 2015 ("Soderbery (2015)") (Exhibit USA-24).
[173] 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)") (Exhibit USA-27).
[174] Soderbery (2015) 10-digit HTS level dataset (Exhibit USA-26). The Arbitrator notes that this data set does not include any statistically insignificant values produced by this approach.
[175] An elasticity of substitution shall be considered as a statistical outlier if its value exceeds the sum of the median plus two times the standard deviation of all HTS 10-digit level elasticities. The Arbitrator calculates a threshold for outliers in the HTS 10-digit estimates in Soderbery (2015) of 35.84.

dataset under the column labelled "sigma" will be used.[176] The 8-digit HTS code corresponding to a given 10-digit HTS code is the first 8 digits of the 10-digit code. In the event that a Soderbery 8-digit level elasticity is not included in the dataset or qualifies as a statistical outlier,[177] the median over non-outlier estimates in the Soderbery HTS 10-digit dataset within the HS 8-digit sub-heading to which the HTS 8-digit sub-heading belongs to shall be assigned to the HTS 10-digit code.[178]

1.4. **Ahmad and Riker (2019):** For each 6-digit NAICS code, the substitution elasticity σ shall be the value in the column labelled "sigma1" in the Ahmad and Riker dataset.[179] The substitution elasticities shall be concorded to the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product. That is, a single 6-digit NAICS substitution elasticity will be assigned to each primary reference 10-digit HTS code.[180] In the event that a 6-digit NAICS code is missing from the dataset or qualifies as a statistical outlier[181], the median over non-outlier estimates within the NAICS 3-digit heading to which the NAICS 6-digit sub-heading belongs to shall be assigned to the HTS 10-digit code.[182]

1.5. **Most recent version of Fontagnè, Guimbard and Orefice (2020) (FGO)** trade elasticities at the 6-digit level:[183] For each HS-6 sub-heading, the substitution elasticity σ shall be calculated as 1 – ε, where ε is the point estimate for the trade elasticity in FGO. This corresponds to the variable labelled "epsilon_pt" in the accompanying data set dated 28 Nov 2019. The substitution

[176] Soderbery (2015) 8-digit HTS level dataset (Exhibit USA-25). The Arbitrator notes that this data set does not include any statistically insignificant values produced by this approach.
[177] An elasticity of substitution shall be considered as a statistical outlier if its value exceeds the sum of the median plus two times the standard deviation of all HTS 8-digit level elasticities. The Arbitrator calculates a threshold for outliers in the HTS 8-digit estimates in Soderbery (2015) of 33.47.
[178] In the event that such a median cannot be calculated within the HS8 heading, Canada shall calculate the median within the HS6 heading. If a median cannot be calculated within the HS6 heading using the HTS 10-digit dataset, Canada shall calculate the median within the HS6 heading using the HTS 8-digit dataset. If a median cannot be calculated within the HS6 sub-heading, Canada shall calculate the median within the HS4 heading. If a median cannot be calculated within the HS4 heading, Canada shall calculate the median within the HS2 Chapter. If a median cannot be calculated within the HS2 chapter, Canada shall calculate the median over all non-outlier estimates in the HTS 10-digit dataset.
[179] Ahmad & Riker (2019) 6-digit NAICS level dataset (Exhibit USA-28).
[180] Annual concordance tables between the U.S. HTS and 6-digit NAICS codes for imports are available at https://www.census.gov/foreign-trade/reference/codes/concordance/index.html.
[181] An elasticity of substitution shall be considered as a statistical outlier if its value exceeds the sum of the median plus two times the standard deviation of all HS 6-digit level elasticities. The Arbitrator calculates a threshold for outliers in the 6-digit HS level estimates in Ahmad and Riker (2019) of 4.78. The Arbitrator notes that since the authors use a structural model rather than statistical methods, there is no need to make provisions for statistically insignificant estimates.
[182] In the unlikely event that such a median cannot be calculated within the HS4 heading, Canada shall calculate the median within the HS2 Chapter. If a median cannot be calculated within the HS2 Chapter, Canada shall calculate the median over all non-outlier HS 6-digit estimates.
[183] If the most recent version of such elasticities is unavailable, or for some reason, due to a change in their format, become unusable, Canada could revert to the most recently available version of these elasticities in a useable format. FGO trade elasticities are available at https://sites.google.com/view/product-level-trade-elasticity. The Arbitrator notes that Canada has been asked to submit HS 6-digit level FGO elasticities as an exhibit in question No. 194 (Canada orally committed to do so at the meeting), and thus a useable format of these elasticities would always be available to Canada via the record of this proceeding.

elasticities shall be concorded to the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product. That is, a single 6-digit substitution elasticity will be assigned to each referenced 10-digit HTS code. The 6-digit HTS code corresponding to a given 10-digit HTS code is the first 6 digits of the 10-digit code. If periodic revisions to the HS make it necessary to concord the reference HTS codes in the CVD order to the 6-digit FGO elasticities, Canada shall use official correspondence tables from the United Nations.[184] In the event that a FGO 6-digit HS level elasticity has a missing value in the FGO dataset, is missing from the dataset entirely, is statistically insignificant or qualifies as a statistical outlier[185], the median over statistically significant, non-outlier point estimates within the HS 4-digit heading to which the HS 6-digit sub-heading belongs to shall be assigned to the HTS 10-digit code.[186]

1.6. For each study, once each HTS 10-digit code in a CVD order is assigned a substitution elasticity, in cases where all HTS 10-digit codes in a CVD order have the same substitution elasticity, this common substitution elasticity will also be the CVD order-specific substitution elasticity. In cases where two or more HTS 10-digit codes are assigned different substitution elasticities, the CVD order-specific substitution elasticity shall be computed as a weighted average of each HTS 10-digit code's substitution elasticity with Canadian reference year imports (sourced from US Census' USA Trade Online) as weights, according to the following formula:

$$\sigma = \sum_{j}^{J} \sigma_j \frac{M_j}{\sum_j^J M_j},$$

where σ_j is the elasticity of substitution for HTS 10-digit code *j* (common to all HTS 10-digit codes within each HS 6-digit sub-heading), M_j is the corresponding import value (US imports from Canada) in HTS 10-digit code *j* and $\sum_j^J M_j$ is the sum of all imports subject to a CVD order.

1.7. To compute the CVD order-specific domestic supply elasticities, Canada shall use the median numerical value of the domestic supply elasticity range determined by the Commission in the report of the specified future product that most closely corresponds to the reference year. In the unlikely event that future product-specific domestic supply elasticities are not available from the

[184] The correspondence tables are available at https://unstats.un.org/unsd/trade/classifications/correspondence-tables.asp.
[185] An elasticity of substitution shall be considered as a statistical outlier if its value exceeds the sum of the median plus two times the standard deviation of all HS 6-digit level elasticities calculated from point estimates of ϵ. Based on the data set dated 28 Nov 2019, the Arbitrator calculates a threshold for outliers in the 6-digit HS level estimates in FGO (2020) of 23.97.
[186] In the unlikely event that such a median cannot be calculated within the HS4 heading, Canada shall calculate the median within the HS2 chapter. If a median cannot be calculated within the HS2 Chapter, Canada shall calculate the median over all HS 6-digit point estimates. Based on the data set dated 28 Nov 2019, this treatment is necessary to obtain a substitution elasticity for Chapter 45.

Commission report,[187] the Arbitrator shall instruct consultations on the use of some future source, including considering updated academic literature. If the parties cannot come to an agreement on an alternative, future source, then the Arbitrator shall instruct Canada to set the domestic supply elasticity to 1.55.[188]

1.8. For the CVD order-specific import supply elasticities, Canada shall use a value of 10.

1.9. To compute the CVD order-specific demand elasticity, Canada shall use the median numerical value of the demand elasticity range determined by the Commission in its report of the specified future product that most closely corresponds to the reference year. In the unlikely event that future, product-specific demand elasticities are not available from the Commission report,[189] the Arbitrator shall instruct the parties to consult and use some future source, including considering updated academic literature. If the parties cannot come to an agreement on an alternative, future source, then the final option would be for Canada to assign the most recent and most highly disaggregated GTAP consumer final demand elasticities[190] available[191] to HS 6-digit levels, and then assign the HS 6-digit demand elasticity to each of the primary HTS 10-digit codes listed in the respective CVD order belonging to the respective HS-6-digit product category.[192]

1.10. In the event that a HTS 10-digit code referenced in a relevant CVD order cannot be concorded to a GTAP sector, Canada shall calculate the simple average of all GTAP demand elasticities and assign this value to the respective HTS 10-digit code. Once each HTS 10-digit code in a CVD order is assigned a demand elasticity, in cases where all HTS 10-digit codes in a CVD order have the same demand elasticity, this common demand elasticity will also be the CVD order-specific demand elasticity. In cases where two or more HTS 10-digit codes have different demand elasticities, the CVD order-specific demand elasticity shall be computed as a weighted average of each HTS 10-digit code's demand elasticity with Canadian reference year imports (sourced from US Census' USA Trade Online) as weights, according to the following formula:

[187] The Commission has published domestic supply elasticity estimates for every CVD and AD investigation since 1987. It is expected to continue to do so in the future.
[188] The value 1.55 is the median domestic supply elasticity across manufacturing industries from Table 6 in Riker (November 2020) (Exhibit USA-31).
[189] The Commission has published demand elasticity estimates for every CVD and AD investigation since 1987. It is expected to continue to do so in the future.
[190] The Arbitrator notes that the consumer final demand elasticities are not equivalent to total industry demand elasticities called for in the Armington model. As such, they would be used as proxies.
[191] If the most recent version of such elasticities is unavailable, or for some reason, due to a change in their format, become unusable, Canada could revert to the most recently available version of these elasticities in a useable format. We note that the current GTAP demand elasticities are already on the record in Source Data 2 (Exhibit CAN-08), and thus a useable format of these elasticities would always be available to Canada via the record of this proceeding.
[192] The assignment of GTAP demand elasticities to HS 6-digit sub-headings shall be done using the correspondence in sheet "HS2017 to GTAP11" of Exhibit CAN-08. If future GTAP or HS classifications will be used, the assignment shall be done using correspondence tables at https://wits.worldbank.org/product_concordance.html, or at https://www.gtap.agecon.purdue.edu/databases/contribute/concord.asp, or at https://www.gtap.agecon.purdue.edu/resources/res_display.asp?RecordID=5111.

$$\varepsilon = \sum_{j}^{J} \varepsilon_j \frac{M_j}{\sum_j^J M_j},$$

where ε_j is the elasticity of demand for HTS 10-digit product j, M_j is the corresponding import value (US imports from Canada) in HTS 10-digit code j and $\sum_j^J M_j$ is the sum of all imports subject to a CVD order.

Description of methodology for calculating market shares

1.11. In the four-variety version of the U.S. model, the following market shares would be needed: (a) the share of U.S. domestic shipments in U.S. expenditure (m_{us}); (b) the share of affected Canadian imports in U.S. expenditure (m_{aca}); (c) the share of unaffected Canadian imports in U.S. expenditure (m_{nca}); and (d) the share of U.S. imports from the rest of the world in US expenditure (m_{row}). Canada shall calculate these market shares, in addition to the value of the U.S. market – which is also an input into the U.S. model – in accordance with the following four steps. In the multiple affected varieties model, market shares for each of the N affected varieties are denoted $m_{aca_1}, \ldots, m_{aca_N}$.

1.12. **Step One**: Canada shall obtain the value of domestic shipments for the reference year from the Commission report of the specified future product. In the event that these values are not publicly available in the Commission report, the Arbitrator shall instruct Canada and the United States to obtain industry estimates of domestic shipments through the most relevant trade association or private sector suppliers, and consult on the use of the best information available. If the parties cannot reach agreement on the appropriate trade association or private sector data, or in the event that there is no data from a relevant trade association or private sector supplier, then the final option would be for Canada to obtain the U.S. domestic shipments value from the underlying data sources that would be used by BEA to construct its I-O accounts. That is:

a. **For manufacturing products:** For each 6-digit NAICS code falling under chapters 31-33, total domestic supply shall be obtained from the U.S. Census Bureau's Annual Survey of Manufacturer's table for the reference year entitled, "Summary Statistics for Industry Groups and Industries in the United States."[193] Total domestic supply shall be the value in the column labelled "Sales, value of shipments or revenue ($1,000)." The value of exports for each of the corresponding 6-digit NAICS codes (total exports value sourced from US Census' USA Trade Online) would then be deducted from the corresponding value of domestic supply to obtain an estimate of domestic shipments. To compute a proxy for U.S. market share when domestic shipments are obtained at the 6-digit NAICS level, it is also necessary to compute a corresponding value of total domestic consumption. To compute total domestic consumption, the value of imports from the world for each of the corresponding 6-digit NAICS codes (general imports value sourced from US Census' USA Trade Online) would be added to the corresponding estimate of

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

domestic shipments. Total domestic consumption and domestic shipments estimates shall be concorded to the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product. [194] That is, a single 6-digit NAICS value of total domestic consumption and domestic shipments will be assigned to each referenced 10-digit HTS code.

b. **For agriculture:** For an agricultural product, the Arbitrator shall instruct Canada to obtain the value of total domestic production for the reference year from the file "Annual cash receipt by commodity, U.S. and States" in the U.S. Department of Agriculture's U.S. Farm Income and Wealth Statistics.[195] Total domestic production shall be concorded to the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product. That is, a single agricultural product value of domestic production will be assigned to each primary reference 10-digit HTS code.[196] The value of exports for each of the relevant agricultural products (sourced from US Census' USA Trade Online at the HTS 10-digit level) would then be deducted from the corresponding value of domestic supply to obtain an estimate of domestic shipments. To compute a proxy for U.S. market share when domestic shipments are obtained at the agricultural product level, it is also necessary to compute a corresponding value of total domestic consumption. To compute total domestic consumption, the value of imports from the world for each of the agricultural products (sourced from US Census' USA Trade Online at the HTS 10-digit level) would be added to the corresponding estimate of domestic shipments.

c. **For mining and energy products:** For mining and energy products, Canada shall compute domestic shipments and total domestic consumption for the reference year based on information from the most recent detailed benchmark BEA I-O supply and use tables that correspond to the reference year.[197] Mining and energy products are defined under Chapter 21 of the NAICS. For each 6-digit code falling under Chapter 21 of the NAICS, Canada shall compute domestic shipments (total commodity output minus exports of goods and services) and total domestic consumption (domestic shipments plus imports).[198] The detailed benchmark BEA I-O tables define each sector using 6-digit

[194] Annual concordance tables between the U.S. HTS and 6-digit NAICS codes for imports are available at https://www.census.gov/foreign-trade/reference/codes/concordance/index.html.
[195] This information is available 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/.
[196] Concordance tables between U.S. 10-digit HTS and agricultural products are available at https://apps.fas.usda.gov/GATS/ProductGroup.aspx?GROUP=FAS#.
[197] Detailed benchmark input-output accounts divide the U.S. economy into 405 industries. These accounts are produced roughly every five years. They are available at https://www.bea.gov/industry/input-output-accounts-data. The most recent year available at this time is 2012 (released in November 2018). Canada submitted the 2012 supply table in Exhibit CAN-73. The United States submitted the 2012 use table in Exhibit USA-59. Therefore, there is always a useable format of the tables available to Canada via the record of this proceeding.
[198] Imports and total commodity output would be sourced from the most recent Benchmark "supply" table. Exports of goods and services would be sourced from the most recent Benchmark "use" table.

NAICS codes. Therefore, the 10-digit HTS reference codes provided in the relevant CVD order must first be concorded to the corresponding six-digit NAICS codes.[199]

1.13. **Step Two**: Canada shall obtain the value of imports from Canada of the specified product depending on their tariff treatment, i.e. whether products are affected by a WTO-inconsistent CVD order or not. For an investigation, these calculations shall be conducted at the level of the primary HTS 10-digit codes using company-specific import data from U.S. Customs for the reference year. For an administrative review, these calculations shall be conducted based upon the AD/CVD case number using the company-specific import data from U.S. Customs for the reference year. In a four-variety model, the sum of imports value from the affected companies will be the value of imports for the affected variety. In a multiple affected variety model, imports value from each affected company will be the value of imports for the associated variety. The value of imports from the unaffected variety will be the remaining value of imports from Canada from the U.S. Customs data.

1.14. In the unlikely event the United States does not provide U.S. Customs data, Canada shall define the value of imports from Canada based upon the publicly-ranged values of the U.S. sales of the relevant product by the individually-examined companies from the relevant record of Commerce's CVD proceeding. Because the Commerce proceeding will only contain information on export sales from individually-examined companies, 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 added to the affected or unaffected Canadian variety, as appropriate. The All Others' rate market 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 primary reference 10-digit HTS codes from Census during the corresponding period. The All Others share is then obtained by subtracting this number from one, as follows.

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

1.15. 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 primary 10-digit HTS codes from Census during the reference year.[200]

1.16. For each affected variety and for the unaffected variety, a market share at the time of the relevant Commerce proceeding shall 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

[199] Annual concordance tables between the U.S. HTS and 6-digit NAICS codes for imports are available at https://www.census.gov/foreign-trade/reference/codes/concordance/index.html. Instructions for further concordance to any 6-digit summary codes that may be used in the Benchmark IO accounts are included with the supply and use table files from BEA. In Exhibit CAN-73 and Exhibit USA-59, these instructions are found on the tab labelled "NAICS Codes".

[200] For clarity, the Arbitrator notes that 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.

based upon the 10-digit HTS level codes from Census. To obtain the value of imports attributable to each affected variety in the reference year, this market share would then be applied to the value of imports from Canada under the primary 10-digit HTS codes from Census during the reference year.[201]

1.17. **Step Three**: Canada will compute the value of imports from the rest of the world (ROW) in the reference year using the value reported for the specific future product from the Commission report on the specified future product. In the event that these values are not publicly available in the Commission report, the Arbitrator shall instruct Canada to obtain the value of imports from Canada and from the rest of the world for each of the primary reference HTS 10-digit codes referenced in the product scope description in the relevant CVD order pertaining to the relevant product from the U.S. Census (sourced from USA Trade Online). Imports value for the ROW variety will be calculated by first calculating Canada's share of Census imports from the world under the primary reference HTS 10-digit codes, that is:

$$sh_{CA} = \frac{imports\ from\ Canada\ under\ HTS\ 10\text{-}digit\ codes}{imports\ from\ the\ World\ under\ HTS\ 10\text{-}digit\ codes}$$

and then applying this share to the value of imports from Canada of the specified product as follows,

$$value\ of\ ROW\ imports = \frac{1 - sh_{CA}}{sh_{CA}} \times imports\ from\ Canada\ of\ specified\ product$$

where "imports from Canada of specified product" refers to the value of imports from Canada obtained in step two.[202]

1.18. **Step Four**: Canada will compute the requisite market shares and the total value of the U.S. market (Y) to be used as data inputs in the model. If the U.S. domestic shipments are product-specific and contemporaneous (that is, from the Commission report or from the relevant trade association or private sector suppliers), then domestic market share, m_{US} shall be calculated as follows,

$$m_{US} = \frac{domestic\ shipments}{total\ value\ of\ the\ U.S.market} \equiv \frac{domestic\ shipments}{Y}$$

[201] For clarity, the Arbitrator notes that 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.

[202] The Arbitrator notes that the value of imports from Canada will be equivalent to the value of imports under the relevant 10-digit codes when the CVD investigation is at issue. When a CVD administrative review is at issue, the value of imports from Canada will be the total value of imports under the CVD case number.

where Y is the sum of domestic shipments and imports from all sources.[203] In this case, the remaining market shares can likewise be calculated as:

$m_{aca_i} = \frac{US\ imports\ from\ affected\ company\ i}{Y}$, $m_{nca} = \frac{US\ unaffected\ imports\ from\ Canada}{Y}$, and

$m_{row} = \frac{US\ imports\ from\ ROW}{Y}$.

1.19. If domestic shipments are aggregated or non-contemporaneous (that is, from the relevant trade association or private sector suppliers, or the sources detailed under the final option of step one (paragraphs 1.12(a)-(c)), then domestic market share is a trade-weighted average of the market share of each product to which the primary reference HTS 10-digit codes referenced in the relevant CVD order are concorded. For each aggregate product, *e.g.,* each 6-digit NAICS code j, the product j-specific market share is calculated as:

$$m_{us\,j} = \frac{domestic\ shipments_j}{total\ domestic\ consumption_j}$$

and total domestic market share shall be computed as:

$$m\_us = \sum_j^J m\_us_j \frac{M_j}{\sum_j^J M_j},$$

where M_j is the corresponding import value (US imports from Canada) in HTS 10-digit code j and $\sum_j^J M_j$ is the total of all imports subject to a CVD order.

1.20. Market share for affected and unaffected Canadian firms, respectively shall then be calculated:

$$m_{aca_i} = (1 - m_{us}) * m_{can} * m_{acan_i}$$

$$m_{nca} = (1 - m_{us}) * m_{can} * (1 - m_{acan})$$

[203] That is: $Y = domestic\ shipments + US\ affected\ imports\ from\ Canada + US\ unaffected\ imports\ from\ Canada + imports\ from\ ROW$

where m_{can} is Canada's share of total imports[204] and m_{acan_i} is affected variety i's share of imports from Canada,[205] and m_{acan} is the total share of affected varieties' imports from Canada.[206]

1.21. Market share for the ROW variety is calculated:

$$m_{row} = (1 - m_{us}) * (1 - m_{can})$$

1.22. The total value of the relevant US market (Y) is then calculated using information on the U.S. market share and the total value of imports as follows.

$$Y = \frac{US\ affected\ imports\ from\ Canada + US\ unaffected\ imports\ from\ Canada + US\ imports\ from\ ROW}{1 - m_{US}}$$

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V. Implications of the U.S. Tiered Approach on the Calculation of Nullification or Impairment

231. The United States has explained that the Commission report remains the best available source for model inputs to ensure an estimate of nullification or impairment that is reasonable and accurate.[207] In the U.S. response to question 198, the United States explained that a set of instructions by the Arbitrator would provide for a tiered approach to ensure that in the best case scenario, Canada would apply the model using product-specific and contemporaneous data, while also providing a final option so that Canada would be assured of having data to run the model.

232. In the following discussion and for the limited purpose of demonstration,[208] the United States explores how its tiered approach would have been followed for the *Softwood Lumber* example in Exhibit USA-48 if, hypothetically, the requisite information was not available from the Commission report and the parties' consultations on a source had failed. That is, if the parties cannot come to an agreement on an alternative, future source, then, as discussed in the U.S. response to question 198 and the foregoing detailed instructions, the U.S. tiered approach calls for Canada to apply values from sources predetermined by the Arbitrator. Continuing the hypothetical in Exhibit USA-48, we assume that the challenged measure is applied to a company during an administrative review. Therefore, the data from the *Softwood Lumber* Commission report is used as an input for the reference year.

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[204] $m_{can} = \frac{US\ affected\ imports\ from\ Canada + US\ unaffected\ imports\ from\ Canada}{US\ affected\ imports\ from\ Canada + US\ unaffected\ imports\ from\ Canada + US\ imports\ from\ ROW}$

[205] $m_{acan_i} = \frac{US\ imports\ from\ affected\ company\ i}{US\ affected\ imports\ from\ Canada + US\ unaffected\ imports\ from\ Canada}$

[206] $m_{acan} = \frac{US\ affected\ imports\ from\ Canada}{US\ affected\ imports\ from\ Canada + US\ unaffected\ imports\ from\ Canada}$

[207] *See* U.S. Written Submission, paras. 104-105.

[208] The United States observes that all requisite information is available in the USITC Softwood Lumber Final Determination (Exhibit USA-34).

233. For the elasticity of substitution, the last option in the tiered approach calls for Canada to calculate a CVD order-specific substitution elasticity based on estimates in three studies: Soderbery (2015), Ahmad and Riker (2019) and the most recent version of FGO, and apply the median value. The CVD order-specific estimates calculated for softwood lumber from each study, as well as the median value, are displayed in Table A, below.

Table A: CVD Order-Specific Substitution Elasticities

Source	Lumber
Soderbery 2015	2.24
Ahmad Riker 2019	3.82
FGO 2020	18.98
Median Academic Study Estimate	**3.82**

234. For import supply elasticity, the only option is to use the value of 10. For the domestic supply elasticity, the last option under the U.S. approach prescribes a value of 1.55. For the demand elasticity, the last option under the U.S. approach is to use the consumer final demand elasticity from the most recent GTAP dataset.

235. From GTAP 11,[209] the reference HTS codes concord to the sector "Lumber: manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials." The consumer final demand elasticity for this sector is -0.91.

236. In the hypothetical example where data on domestic shipments is not publicly available in the *Softwood Lumber* Commission report, the last option for the value of U.S. domestic shipments is to obtain estimates of domestic shipments and total consumption from the underlying inputs to the BEA I-O accounts. As the products covered by *Softwood Lumber* are manufactured products, following the instructions above, the United States concorded the primary HTS 10-digit reference codes to four 6-digit NAICS codes[210] and obtained domestic shipments and the total value of consumption for each 6-digit code for the reference year from the 2016 Annual Survey of Manufacturers.

237. In the event that data on ROW imports had not been publicly available, the last option is to obtain the value of ROW imports using data on U.S. imports from Canada and the World under the primary 10-digit HTS reference codes from Census' USA Trade Online. Following these instructions, the United States calculates Canada's share of world imports under the relevant 10-digit HTS codes as 0.90. Using this with the value of imports from Canada of $5.8

[209] As submitted in Exhibit CAN-08.
[210] Specifically, 321113, 321114, 321918, and 321999.

billion from the example in Exhibit USA-48, we obtain an estimated value of ROW imports of $645 million.[211]

238. Below, Table B compares the inputs for *Softwood Lumber* obtained from the Commission report[212] to those obtained following the "final option" under the U.S. tiered approach and the values obtained following the Arbitrator's proposed instructions in Annex A.

239. As evident from the third and fourth column of Table B, while the U.S. "final option" approach still distorts the overall size of and competition within the market relative to the exact information in the Commission report, in the case of *Softwood Lumber*, it is a better proxy for the market than the Arbitrator's proposed approach in Annex A, both in terms of market shares and market size for the case of the softwood lumber market in 2016.[213]

240. The final column of Table B illustrates the implications of using the U.S. "final option" approach for the estimate of nullification or impairment. In the specific case of *Softwood Lumber*, using the U.S. "final option" approach to obtain proxies for product-specific elasticities and exact market shares results in an estimate of $83.5 million, a 38 percent ($23.1 million) increase in the estimated level of nullification or impairment over the estimate using product-specific values from the Commission report. A hybrid model using the "final option" values for elasticities with actual market share results in an estimate of $75.4 million, which constitutes a smaller, 25 percent ($15 million), increase in the level of nullification or impairment relative to using the actual values in the *Softwood Lumber* Commission report. Table B also shows that both of these estimates are dwarfed by the nullification or impairment estimate of $171 million obtained from following the Arbitrator's proposed instructions in Annex A.

[211] $\frac{1-0.90}{0.90} \times \$5.8\ billion = \$0.645\ billion$

[212] USITC Softwood Lumber Final Determination (Exhibit USA-34).

[213] The final option under the U.S. tiered approach is not guaranteed to be a better proxy relative to Annex A. However, since the final option relies on less aggregated data sources for market shares, it is likely to be a better proxy in most cases.

Table B: Model inputs for Softwood Lumber under alternative approaches

Approach	**Elasticities**		**Market Shares**		**U.S. Market (Y)**	**NI Estimate**
United States (actual values)[214]	Demand (ϵ)	-0.5	m_{us}	.64	$17.92 billion	$60.4 million
	D. Supply (η_{us})	1.25	m_{aca}	.15		
	I. Supply (η)	10	m_{nca}	.17		
	Substitution (σ)	3.5	m_{row}	.04		
U.S. Final Option	Demand (ϵ)	-0.91	m_{us}	.73	$24.18 billion	$83.5 million
	D. Supply (η_{us})	1.55	m_{aca}	.11		
	I. Supply (η)	10	m_{nca}	.13		
	Substitution (σ)	3.82	m_{row}	.03		
Annex A	Demand (ϵ)	-0.91	m_{us}	0.83	$36.77 billion	$171.0 million
	D. Supply (η_{us})	1.55	m_{aca}	0.07		
	I. Supply (η)	10	m_{nca}	0.08		
	Substitution (σ)	18.98	m_{row}	0.02		
Hybrid (actual market shares/ U.S. Final Option elasticities)	Demand (ϵ)	-0.91	m_{us}	.64	$17.92 billion	$75.4 million
	D. Supply (η_{us})	1.55	m_{aca}	.15		
	I. Supply (η)	10	m_{nca}	.17		
	Substitution (σ)	3.82	m_{row}	.04		

VI. Conclusion

241. A set of instructions that includes the U.S. tiered approach would ensure that in the best-case scenario, Canada would apply the model using product-specific and contemporaneous data, while also providing a final option so that Canada would be assured of having data to run the model. Indeed, as demonstrated above, where product-specific information is available in the Commission report, the use of aggregated, sector-level sources will not result in an estimate that is equivalent to the level of nullification or impairment.

[214] Values obtained from USITC Softwood Lumber Final Determination (Exhibit USA-34). *See also* Exhibit USA-48 for sources.