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 ARBITRATOR'S FOURTH SET OF QUESTIONS TO THE PARTIES

January 14, 2022

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1 FOR CANADA

Questions 275 and 276 are directed to Canada.

2 FOR THE UNITED STATES

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]

277. Could the United States please confirm that: (a) a new shipper must have had exports of the relevant product to the United States in order to request a new shipper review; (b) a new shipper must request a new shipper review within one year of its first shipment of the relevant product to the United States; and (c) given the deadlines associated with the request for, and initiation and conduct of, new shipper reviews, a new shipper would reasonably be expected to have at minimum ten months' worth of shipments to the United States by the time its new shipper review is completed? Further, could the United States please explain, if a new shipper does indeed have to request a new shipper review within a year of its first shipment to the United States, and it misses this deadline, does this mean that the new shipper could never request a new shipper review or an administrative review, i.e. the new shipper would be subject to the All-Others rate in perpetuity?

Response:

2. As an initial matter, the United States provides responses to questions concerning new shipper reviews in this submission without prejudice to the U.S. position that new shipper reviews are not subject to this arbitration proceeding, and therefore cannot be a basis for Canada to suspend concessions.[3]

3. The United States confirms that (a) a new shipper must have had exports of the relevant product to the United States in order to request a new shipper review;[4] and (b) a new shipper must request a new shipper review within one year of its first shipment of the relevant product to the United States.[5] The United States disagrees however, that (c) a new shipper would

[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.
[3] *See, e.g.*, U.S. Comments on Canada's Responses to Third Set of Questions, paras. 24-28.
[4] 19 CFR 351.214(b) (Exhibit CAN-55).
[5] 19 CFR 351.214(c) (Exhibit CAN-55).

reasonably be expected to have at minimum ten months' worth of shipments to the United States by the time its new shipper review was completed. Specifically, that scenario assumes that the new shipper continues to export subject merchandise into the United States after the date of its first shipment, but that may not necessarily be the case. Indeed, a new shipper may have had only one entry.[6] It would make commercial sense for a new shipper to make limited shipments while it is hypothetically subject to a higher All Others rate prior to securing an individual company CVD rate that the new shipper presumes would be lower. It is not unusual for new shippers to take such an approach. As discussed in the U.S. response to question 207(d), the lack of shipments to utilize for a new shipper's reference period value of imports further supports the U.S. position that new shipper reviews are not within the scope of this proceeding.

4. The United States further notes that a new shipper's failure to request a new shipper review within the requisite deadline does not preclude that new shipper from the option of requesting an administrative review to acquire a company-specific CVD rate.[7] That is, by requesting an administrative review, the new shipper has the ability to not be "subject to the All Others rate in perpetuity", contrary to the potential scenario described in the question.

278. Could the United States please clarify how it obtained the value of USD 36.77 billion for US market size Y in Table 1 of Annex A of the United States' Responses to the Third Set of Arbitrator's Questions? Using data on "Total apparent U.S. consumption" for 2016 from Table IV-7 in Exhibit USA-34, and I-O data from Exhibits USA-57 and USA-58 (which the United States itself seems to use in deriving $m_{US} = 0.83$ in the table), the Arbitrator obtains a value of USD 37.9 billion.[8] Is the difference due to: (a) rounding issues; (b) different underlying data; or (c) different calculations

Response:

5. The United States observes that the difference in the calculation appears to be from a difference between the value of imports from the world used by the United States and that used by the Arbitrator. The United States calculates a value that rounds to $6,284,003 thousand, whereas the footnote to the Arbitrator's question indicates that the Arbitrator calculates $6,455,169 thousand. The United States import value represents 2016 U.S. imports under the primary HTS codes listed in the U.S. International Trade Commission's ("Commission") Softwood Lumber final determination.[9] Using a value that rounds to $6,284,003 thousand for

[6] 19 CFR 351.214(b)(2)(iv)(A)-(C); and 19 CFR 351.214(f)(2)(i) ("The Secretary may rescind a new shipper review…or in part, if the Secretary concludes that… there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise. . . .") (emphasis added) (Exhibit CAN-55).
[7] 19 CFR 351.213(b) (Exhibit CAN-54).
[8] USD 37.98 billion = $\frac{6,455,169}{1-0.83}$.
[9] USITC Softwood Lumber Final Determination, p. I-16 ("Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers ''Wood and articles of wood.'' Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4407.10.01.01; 4407.10.01.02;

the numerator and a value that rounds to 0.17 for the denominator, the United States obtains a value of the U.S. market that rounds to $36,767,761 thousand.

6. Lastly, the United States is uncertain how the value of $6,455,169 thousand was obtained in the footnote to the Arbitrator's question. If the secondary HTS codes were also included,[10] the United States calculates a value of $6,361,223 thousand.

279. Could the United States please confirm Canada's assertion that the USITC would only produce a report that contains information on the value of domestic shipments and total market size in original investigations and sunset reviews, but for no other type of CVD proceeding that may, in Canada's view, qualify as a triggering event?[11]

Response:

7. The United States confirms that the Commission only produces reports that contain information on the value of domestic shipments and total market size in original investigations and sunset reviews. If the reference period value for domestic shipments is not available in the Commission report, then the United States has provided instructions in the U.S. alternative instructions in response to Annex A in the U.S. Responses to the Third Set of Questions.[12] The United States has also provided instructions on how to compute total market size depending on the source of the value of domestic shipments.[13]

3 FOR BOTH PARTIES

280. The Arbitrator notes that Canada suggests using the values of 15 and 6, respectively, for the supply elasticity of Canadian imports and for the elasticity of an aggregated non-Canadian supply[14], and that the United States suggests using the value of 10 for the domestic (i.e. US) supply elasticity and the value sourced from USITC reports for the foreign (i.e. non-US) supply elasticity. Assume, for the

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4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.99.10.00.") (Exhibit USA-34).

[10] USITC Softwood Lumber Final Determination, p. I-16 ("Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.91.70.40; and 4421.91.97.80.") (Exhibit USA-34).

[11] See Canada's comments on United States' response to Arbitrator question No. 202, fn 46 to para. 38.

[12] U.S. Responses to Third Set of Questions, Annex A, U.S. Alternative Instructions, paras. 1.12 *et seq.*

[13] U.S. Responses to Third Set of Questions, Annex A, U.S. Alternative Instructions, paras. 1.18 *et seq.* *See also* U.S. response to question 263.

[14] Canada's response to Arbitrator question No. 139, paras. 88-89.

purpose of this question only, that the Arbitrator selects the four-varieties version of the US model described in Question No. 246 to compute NI, and that the Arbitrator will instruct Canada to use a different elasticity for domestic (i.e. US) and foreign (i.e. non-US) supply. Could the parties please comment on whether the use of 10 and 6 for import and domestic supply elasticities would constitute reasonable values in the four-varieties model framework outlined in Annex A to the Arbitrator's previous set of questions to the parties?

Response:

8. As an initial matter, the United States clarifies that the U.S. position on supply elasticity is the inverse of what is stated in the question. That is, the United States has proposed that the value of 10 be used for import (*i.e.*, non-U.S.) supply elasticity, and that the value of domestic (*i.e.*, U.S.) supply elasticity be sourced from the Commission report that most closely corresponds to the reference year.[15] Therefore, the United States agrees with the Arbitrator that the import supply elasticity should be 10 for both imports from Canada and from third countries (*i.e.*, non-U.S. supply).

9. However, the United States disagrees with the Arbitrator's designation of a value of 6 for all U.S. domestic supply elasticities for all products. As the United States has explained, it would be inappropriate to use a predetermined value that is not specific to a product, and would not account for market changes that are likely to occur in the future.[16] Further, the use of a predetermined value is unreasonable when the United States has demonstrated that the relevant Commission report would contain a product-specific and more contemporaneous domestic supply elasticity value.[17]

281. Can the parties please submit signed copies of the parties' jointly proposed BCI Understanding?[18]

Response:

10. The United States refers the Arbitrator to accompanying Exhibit USA-60 for the parties' BCI Understanding. The United States highlights that the jointly agreed BCI Understanding is

[15] *See* U.S. Responses to Third Set of Questions, Annex A, U.S. Alternative Instructions, paras. 1.7-1.8. *See also* U.S. response to question 198 (providing a tiered approach to selecting elasticity values).
[16] *See* U.S. response to question 65 (providing several reasons demonstrating that a predetermined U.S. domestic supply elasticity will not produce a reasoned estimate of nullification or impairment).
[17] *See* U.S. response to question 66 (detailing how the Commission's domestic supply elasticity values are obtained, including input from the relevant foreign government and foreign companies). *See also* U.S. Comments on Canada's Responses to Third Set of Questions, paras. 152-169 (refuting Canada's contention that the Commission reports are not an appropriate source).
[18] See Exhibit USA-47; United States' response to Arbitrator question No. 153, para. 74; Canada's response to Arbitrator question No. 153, para. 101.

without prejudice to the U.S. position that Canada has suffered no nullification or impairment, and that Canada's request for suspension of concessions must be rejected.

282. Both parties have recently confirmed that a triggering event occurs, *inter alia*, when an affected company becomes an unaffected company. The Arbitrator assumes that Canada will be able to discern relatively easily, based on the public records of USDOC proceedings, when companies that were previously assigned either an affected individual CVD rate or an affected non-selected rate in an administrative review become unaffected companies. Could the parties please confirm, however, that Canada will be able to readily discern when a company previously subject to an affected All-Others[19] rate (i.e. created in an original investigation) is assigned an unaffected CVD rate, given that companies subject to the All-Others rate are not named in any CVD proceeding segment?

Response:

11. The United States confirms that Canada would have the information to assess whether a company previously subject to an affected All Others rate from the investigation was assigned an unaffected CVD rate in a subsequent administrative review. This is because the All Others rate from the investigation is applied to all entries subject to the CVD order unless a company has received a CVD rate in a subsequent segment of the CVD proceeding.[20] For each segment of a CVD proceeding, the accompanying Federal Register notice will list all individually-examined companies along with their CVD rates. For an administrative review, the Federal Register notice will list all individually-examined companies, as well as the companies receiving the non-selected rate. Therefore, Canada would be able to readily discern whether a company in an administrative review had previously been under the All Others rate from the investigation by reviewing past Federal Register notices. That is, if the company in question did not previously receive an individually-examined or non-selected rate in the CVD proceeding, then this would mean that the company was previously receiving the All Others rate.[21]

12. Therefore, if a previously affected Canadian company (including one that originally had the affected All Other rate from the investigation) then received an unaffected CVD rate in a subsequent segment of the CVD proceeding, the level of nullification or impairment originally calculated would need to be modified to reflect that a previously affected company was now unaffected.

283. The Arbitrator notes the Canadian position that triggering events arise from the *imposition of a CVD order* following an investigation or the *final* results of various

[19] In their submissions going forward, the parties are requested to use the term "all-others rate" only with respect to the All-Others rate created in the original investigation. All-others rates of the kind assigned in administrative reviews shall be referred to as "non-selected" rates.
[20] U.S. Responses to Third Set of Questions, para. 79 n. 70.
[21] Canada could also discern all of the unaffected and affected Canadian companies from the investigation – including the companies receiving the affected All Others rate – from the company-specific U.S. Customs and Border Protection ("Customs") data that would be provided at the time of calculating nullification or impairment related to the application of the challenged measure from the investigation.

other CVD proceedings. The United States has not appeared to take issue with this position. In light of this apparent shared position of the parties, could the parties please clarify whether *provisional* CVDs would be taken into account in the reference period duty rate of relevant companies? As part of your response, please clarify whether provisional duties would only be imposed in an original investigation, or whether they would also be imposed in other kinds of CVD proceedings. Relatedly, could the parties please explain whether the reference period CVD rate for individually investigated companies in an original investigation and for companies subject to the All-Others rate created in the original investigation will always be zero?

Response:

13. The United States confirms that a triggering event – that is, the application or removal of the challenged measure – may arise from either a CVD order in the original investigation, or the final results of an administrative review.[22] However, the United States only considers it appropriate for Canada to seek countermeasures after assessment of CVD duties occurs – either when an administrative review is not requested for an affected company, or after the final determination in an administrative review is published.[23]

14. The United States also confirms that provisional duties are applied during the original investigation. However, provisional duties would not need to be accounted for in the reference year CVD rate for a CVD investigation because the duties are the result of a preliminary determination that is not final.[24] Further, the preliminary determination from the CVD investigation does not contain the challenged measure because verification does not occur until after the preliminary determination.[25] Therefore, the reference period CVD rates for individually-investigated companies and companies subject to the All Others rate in the original investigation would always be zero. Further, although the reference CVD rate would be zero, the total reference year duty rate may not be because the model must also account for any

[22] U.S. Responses to Second Set of Questions, paras. 18, 89. As the United States previously explained, for an investigation, the start date of the application of the challenged measure would be the publication date of a countervailing duty order following final affirmative determinations by both Commerce and the Commission in a CVD investigation. This is because under the U.S. retrospective system, a CVD order is only issued after Commerce issues an affirmative final determination and the Commission issues an affirmative determination concerning material injury. If Commerce issues an affirmative final determination, but the Commission issues a negative final determination on material injury, the CVD investigation is terminated, and no CVD order is issued and no duties are assessed. Indeed, if no CVD order is issued, Commerce will instruct Customs to terminate collection of cash deposits and refund all CVD cash deposits, with applicable interest. 19 U.S.C. § 1671d(c)(2) (Exhibit USA-4).

[23] *See* U.S. Responses to First Set of Questions, paras. 107-108, 249-250 (explaining the U.S. retrospective duty system). In particular, when a company does not request an administrative review, Commerce instructs Customs to assess duties at the rate established in the completed review covering the most recent prior period or, if no review has been completed for that company, the cash deposit rate applicable at the time merchandise entered. U.S. Responses to First Set of Questions, paras. 100, 107. *See also* 19 C.F.R. § 351.212 (Exhibit USA-18).

[24] *See* footnote 22, above, discussing the U.S. retrospective system.

[25] U.S. Responses to First Set of Questions, para. 38 (describing the precise content of the challenged measure).

corresponding AD duties and ordinary tariffs to ensure a reasoned estimate of nullification or impairment.[26] Therefore, it may be the case that the total reference year duty rate would not be zero after accounting for the other duties.

284. In its most recent submission, the United States appears to suggest that a change in composition of the cross-owned affiliates of a hypothetical Canadian company (Company A), subject to a CVD rate affected by the OFA-AFA Measure, should qualify as a triggering event that requires Canada to re-run the model to calculate a level of NI.[27] Could the parties please clarify whether the USDOC would ever change the composition of Company A's cross-owned affiliates without re-investigating Company A and thus assigning a new CVD rate to that company and its cross-owned affiliates? Based on your answer to this first question, could the parties please also clarify the extent to which a change in the composition of a company's cross-owned affiliates would ever arise as an independent triggering event?

Response:

15. The United States clarifies that Commerce will not change the composition of a company's cross-owned affiliates without re-examining that company, *e.g.* "Company A", in a subsequent segment of a CVD proceeding. Specifically, if an individually-examined respondent reports changes to its affiliation structure or to the operations of its affiliates in a subsequent administrative review, Commerce will revisit its prior cross-ownership finding to determine whether a change in its determination concerning cross-ownership is warranted.[28] Therefore, Commerce's determination concerning the composition of a company's cross-owned affiliates occurs alongside Commerce's determination of subsidization, and is therefore not an independent triggering event.

285. In its most recent submission, Canada has noted that the legal status of a particular type of CVD proceeding under US law may change in the future.[29] In light of such uncertainty, could the parties please clarify whether the Arbitrator's Decision would specify that: (a) triggering events may arise only in the *specific* types of CVD proceedings enumerated by Canada[30]; or (b) that a triggering event may arise in *any US CVD proceeding* in which the OFA-AFA Measure is used (or which could cure a company of an affected CVD rate)?[31]

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[26] *See* U.S. responses to questions 81, 83-85 (demonstrating that to correctly isolate for the trade effect solely due to the removal of the challenged measure, any corresponding AD duties and ordinary tariffs must also be taken into account in the model).
[27] United States' comments on Canada's response to Arbitrator question No. 268, para. 218.
[28] *See* 19 C.F.R. § 351.525(b)(6) (Exhibit USA-56).
[29] Canada's response to Arbitrator question No. 189, fn 39.
[30] See, e.g. Canada's response to Arbitrator question No. 35 (enumerating specific CVD proceedings).
[31] For purposes of this question only, please assume that the Arbitrator agrees with Canada that CVD proceedings beyond investigations and administrative reviews are within the scope of this arbitration proceeding.

Response:

16. As the United States has explained, the only types of CVD proceedings for which Canada may seek to suspend concessions are those enumerated by Canada in the original panel proceeding – that is, CVD investigations and CVD administrative reviews.[32] Both parties agree that Canada may only suspend concessions for the duration of the challenged measure.[33] Therefore, if U.S. law changes such that those CVD proceeding no longer exist, then the challenged measure would no longer exist, and Canada would not have a basis to suspend concessions, consistent with Article 22.8 of the DSU.[34]

286. For purposes of this question only, please assume that the Arbitrator agrees with Canada that disaggregated US Customs data should be provided to Canada in the relevant Excel spreadsheet. In light of that assumption, could the parties please comment on the accompanying revised version of Exhibit CAN-147, with added columns U-W? Could the parties please comment on whether such additional columns would be necessary, or helpful, for the parties in identifying the relevant companies to which certain values of shipments should be assigned? In particular, is it necessary for US Customs to link each shipment value to a particular company name that actually appears in a CVD order to ensure that it is clear what duty rate should be assigned to that shipment? Further, could the parties please confirm that Column Q in this spreadsheet refers to the *reference period CVD rate?*

Response:

17. The United States understands that Canada has proposed that columns A through Q in the Arbitrator's revised Exhibit CAN-147 be provided by Customs on a disaggregated, shipment-by-shipment basis. As the United States has explained, entry-by-entry shipment data is both unnecessary for the model and for the purposes of verification, particularly when Canada may only be able to verify the data using aggregated data.[35] Therefore, the United States provides a response to this question without prejudice to the U.S position that only aggregated, company-specific Customs data should be provided.

18. With respect to the Arbitrator's additional columns U-W, the United States does not oppose the inclusion of column U, concerning the identification of whether entries were subject to the non-selected rate in an administrative review. However, the inclusion of column V, "If yes non-selected, from which administrative review did the non-selected rate arise", is not necessary given that the Customs data provided would be for the specific administrative review where the challenged measure was applied. The United States considers column W, requesting

[32] *See, e.g.*, U.S. Comments on Canada's Responses to Third Set of Questions, paras. 24-28.
[33] *See, e.g.*, Canada's response to question 245.
[34] DSU, Article 22.8 ("The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed . . . .").
[35] *See* U.S. Comments on Canada's Responses to Third Set of Questions, paras. 117-119.

Customs to link an entry with a specific company identified in the CVD order, to be useful, although not necessary given that there is already a column for the manufacturer name.

19. Further, the United States understands the inclusion of the columns R through W, under the heading, "assessment of whether entry was made by an affected exporter," to be an optional assessment by the United States.[36] Indeed, Canada is also readily able to complete this assessment on its own.[37] Therefore, although the United States does not object to providing a preliminary assessment of the affected and unaffected entries, such an assessment should be optional and not mandatory. In particular, if the Arbitrator requires the United States to provide entry-by-entry shipment data, which may amount to thousands of entries, under the limited time frame, it may be too burdensome for the United States to make the preliminary assessment for Canada for each shipment.

20. Lastly, the United States confirms that column Q, "CVD rate," refers to the reference period CVD rate. It is the U.S. understanding that all of the data between columns A through Q would pertain to the reference period, consistent with the heading in the spreadsheet, "all entries to the United States from Canada under the relevant HTS codes or AD/CVD number during the reference period".

287. The Arbitrator notes that the parties have submitted diverging views on the key question of the selection of the reference period. The Arbitrator notes that the US proposal on this score may result in the selection of a reference period, in certain circumstances, in which the values of imports are distorted by the presence of CVD rates affected by the OFA-AFA Measure. While the Canadian proposal for a reference period appears to address that issue, the Canadian proposal may, under certain circumstances, result in the selection of a reference period that precedes the triggering event by multiple years. This concern appears particularly acute when an affected All-Others rate is created in an original investigation. In that instance, the Arbitrator understands that the All-Others rate will be affected for the duration of the CVD order, thereby necessitating the fixing of the reference period as the calendar year preceding the issuance of that CVD order for all following triggering events.[38] The Arbitrator also separately recalls that the parties have indicated that

[36] *See* Canada's Response to First Set of Questions, para. 180 ("While shipments from all exporters would be included in the dataset, the United States could provide a preliminary identification of the shipments from the respondent(s) unaffected by the OFA-AFA measure, affected respondent(s), and affected exporters subject to the All Others rate." (emphasis added)).

[37] *E.g.,* Canada's Response to First Set of Questions, para. 180 n. 210 ("Canada will provide the United States with the names of the respondent(s) that are subject to the OFA-AFA measure and the names of the respondent(s) that are not subject to the OFA-AFA measure.").

[38] For example, assume that Company A receives an OFA-AFA affected CVD rate in an original investigation in Year T. Its CVD rate is used to calculate the All-Others rate. Thus, moving forward, there is an affected Company A and an affected All-Others rate. One year later, in Year T+1, Company A is cured of its affected rate in an administrative review. It is now an unaffected company. Nine years later, in Year T+10, a new administrative review occurs. Company B receives a CVD rate affected by the OFA-AFA Measure. Further assume that Company B only entered the market five years ago in Year T+5. Under the Canadian approach, the Arbitrator understands that the

the number of companies subject to the All-Others rate will probably decrease over time, and therefore if a CVD order has been in place for a number of years, the value of imports that is affected by the All-Others rate will probably have become low at the time of the triggering event.

In light of these observations, could the parties please offer their views on the following proposal for the selection of a reference period, which may strike a balance as between the parties' two proposals. The reference period shall be the most recent calendar year in which there was no company with a CVD rate that was affected by the OFA-AFA Measure, *but* the All-Others rate will not qualify as an affected rate in the selection of the reference period? Under this proposed approach, could the parties further comment on: (a) what the reference-period CVD rate would be for the companies subject to an affected all-others rate; (b) what the reference period CVD rate would be for a company that was subject to an affected All-Others rate during the reference period but, upon the triggering event, was assigned a different CVD rate (i.e. individual or a non-selected rate); and (c) whether, under this approach, a calculated level of NI would always and completely replace any previous calculated level of NI?[39]

Response:

21. The United States understands the Arbitrator to propose as the reference period the most recent calendar year in which no Canadian companies are affected by the challenged measure other than those falling under the affected legacy All Others rate from the investigation. However, this proposal would not remedy the problem that arises from a hypothetical scenario of legacy rates from other segments of a CVD proceeding.

22. For clarity, the United States uses the example provided in the footnote to this question. In the example provided by the Arbitrator, Company B receives an affected CVD rate in year T + 10. The investigation takes place in year T, where both Company A and the All Others rate are affected by the challenged measure. Company A is cured of its affected CVD rate in year T + 1, and therefore the United States assumes that there are no other affected CVD rates in that CVD proceeding with the exception of the affected All Others rate from the investigation. In this scenario, the United States understands that the Arbitrator proposes to use the most recent calendar year in which no Canadian companies are affected by the measure, excluding the

reference period cannot be updated to the Year T+9 because the All-Others rate was affected during that time. This is so because Canada would select the most recent year in which no active CVD rate affected by the OFA-AFA Measure was present. Thus, the reference period of Year T-1 must be used. That reference period will yield a value of imports of zero for Company B, effectively excluding Company B from the calculation of the level of NI, even though it was Company B's affected CVD rate that triggered the calculation of NI in this case.

[39] In answering this question and in making any proposals on this front, the parties are asked to bear in mind, as a background fact, that Canada will presumably not know whether any companies actually exported to the United States during a particular reference period under an affected All-Others rate until Canada has already defined the reference period and receives the US Customs data for that reference period back from the United States.

original affected All Others rate from the investigation, as the reference period. Therefore, the reference period would be year T + 9.

23. However, if Company A was never cured of its affected CVD rate from year T, and Company B was not affected until year T + 10, under the Arbitrator's proposal, the reference year would remain year T – 1. As the example in the footnote to the question states, if Company B did not begin to import until year T + 5, then using a reference period of year T – 1 would fail to yield a value of imports for Company B although it was Company B's affected CVD rate that triggered the new calculation of nullification or impairment.

24. Further, as the United States illustrated in the U.S. comment on Canada's response to question 207, the use of an outdated reference period will generate an arbitrary level of nullification or impairment that is entirely disconnected from the counterfactual scenario that represents the remedy that Canada would seek.[40] That is, if the reference period is year T – 1, but the triggering event is in year T + 10, the calculation of nullification or impairment will represent the effects of imposing the year T + 10 factual rates, instead of the year T + 10 counterfactual rates, on the market prevailing in year T – 1, which would likely be unrepresentative of the year T + 10 market. Therefore, the use of outdated reference year CVD rates and value of imports in the model means that the market simulated by the model does not represent any actual market outcome. The calculation of nullification or impairment would thus be arbitrary.

25. Accordingly, the United States maintains that to correctly represent the counterfactual scenario from an application of the challenged measure, the calculation would be limited to finding nullification or impairment stemming from the new application of the challenged measure. Under this approach, the nullification or impairment calculated by the model will not fully replace any previously calculated level of nullification or impairment from that CVD proceeding. Rather, the level of nullification or impairment calculated by the model following the new application of the challenged measure would represent the nullification or impairment attributable to the newly applied measure. Nullification or impairment stemming from a legacy affected CVD rate would also be maintained.[41] Therefore, the total level of nullification or impairment would be the sum of the newly calculated nullification or impairment and any legacy nullification or impairment. As explained in the U.S. response to question 207, the United States considers that Canada's ability to suspend concessions in response to any earlier and separate applications of the challenged measure will have compensated for those effects on Canada's trade flows in the year prior to the most recent application of the measure.

288. The Arbitrator notes that the parties appear to agree that, in its initial notification to the United States following a triggering event, Canada would include the names of individually investigated Canadian companies (whether affected or unaffected), with the United States further arguing that Canada should include the names of companies

[40] *See, e.g.,* U.S. Comments on Canada's Responses to Third Set of Questions, paras. 92-93, 100.
[41] As the United States previously discussed, nullification or impairment stemming from legacy affected CVD rates would be modified as necessary to reflect that some companies are no longer affected by that rate. U.S. Responses to Third Set of Questions, para. 71 n. 65.

subject to an All-Others rate, insofar as that information is available. Could the parties please clarify whether Canada should also include the names of companies subject to affected or unaffected non-selected rates (i.e. created in administrative reviews) in its initial notification?

Response:

26. The United States confirms that Canada should also include the names of companies subject to affected or unaffected non-selected rates in administrative reviews in its initial notification.

289. The parties have both clarified that one type of triggering event is when an affected company becomes an unaffected company. Could the parties please explain whether this would hold in the event that a new shipper, which, before the completion of its new shipper review, could be subject to an affected All-Others rate (at least for a short time), thereby being affected by the OFA-AFA Measure, then become subject to an individual and unaffected CVD rate in a new shipper review? Under what circumstances, if any, would this qualify as a triggering event? In particular, would this only qualify as a triggering event if some of the new shipper's value of imports had been counted as affected imports (as part of the companies' value of imports subject to an affected All-Others rate) as part of a previous calculation of a level of NI (if it were possible for Canada to make this determination)? Relatedly, could the parties please clarify whether, as a general matter, that a triggering event will only arise in the context of a USDOC proceeding, or upon the imposition of a CVD order?

Response:

27. Both parties agree that Canada may only suspend concessions for the duration of the challenged measure.[42] Therefore, consistent with Article 22.8 of the DSU, when an affected company becomes an unaffected company, Canada must either terminate or modify the level of nullification or impairment previously calculated.[43] This includes the scenario described in the question – that is, a new shipper, which, before the completion of its new shipper review, was subject to an affected All Others rate (*i.e.*, an affected company) can, upon completion of that segment of the proceeding, be rendered unaffected by virtue of receiving its own unaffected company-specific CVD rate. This would only qualify as a triggering event – specifically, the removal of the challenged measure – to the extent that the level of nullification or impairment previously calculated included entries from the new shipper.[44]

28. The challenged measure and the removal of the challenged measure are two distinct triggering events. The application of the challenged measure in a CVD investigation or

[42] *See, e.g.*, Canada's response to question 245.
[43] DSU, Article 22.8 ("The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed . . . .").
[44] *See also* U.S. response to question 277 (explaining that new shippers likely have limited shipments).

administrative review may "trigger" suspension of concessions after duties are assessed. In contrast, the removal of the challenged measure in any CVD proceeding "triggers" Canada's obligation to terminate or modify the original level of nullification or impairment, consistent with Article 22.8 of the DSU.

29. With respect to the last portion of this question concerning the context in which a triggering event may arise, please see the U.S. response to question 285, above.

290. In Arbitrator question No. 221, the Arbitrator proposed potential minimum search criteria for US Customs data. Could the parties please explain whether, if US Customs were to use such criteria as an *initial* matter, as advocated by Canada[45], this might result in an overly restrictive means by which US Customs would assign, in particular, values of imports to relevant companies (see question No. 221(c)(i)-(iv)), and perhaps interfere with the parties' ability to agree on a data set that may differ?

Response:

30. As the United States has explained, the United States does not consider it appropriate to restrict how Customs may conduct the search in the ACE database.[46] 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 entries are relevant to the CVD order. Indeed, because the challenged measure is not applied to Canada, it is possible that despite best efforts, there may be scenarios that neither party nor the Arbitrator has been able to foresee concerning the composition and categorization of a future Customs dataset. Accordingly, the United States objects to the use of specific search criteria in Customs' initial search. Without prejudice to this position, the United States provides responses to the additional search criteria below.

Could the parties please also comment on the addition of the following language:

a. To the content of the proposed text in question No. 221(c): whenever the language "individually investigated Canadian company" or "individually investigated company" or "individually examined company" appears, such phrase shall be followed by the additional phrase "or company subject to a non-selected CVD rate"?

Response:

31. The United States agrees with the addition of this text.

b. The following additional language at the end of the text of question No. 221(c)(ii): "or it is otherwise known by US Customs that the Manufacturer ID

[45] Canada's response to Arbitrator question No. 221, para. 176.
[46] *See* U.S. Responses to Third Set of Questions, para. 138.

specifically relates to an individually investigated company or company subject to a non-selected CVD rate."

Response:

32. The United States agrees with the addition of this text.

c. An additional point which would appear as Arbitrator question No. 221(c)(v): "If, for any reason, the criteria above lead to a conflict (i.e. would lead to the assignment of a particular value of imports to more than one individually investigated company and/or company subject to a non-selected rate) then the preference shall be to assign the value of imports to an affected company rather than to an unaffected company. Beyond that criteria, the value of imports shall be assigned to the company that US Customs deems appropriate."

The parties are encouraged to propose any other changes that the parties feel would increase the reliability of such minimum search criteria.

Response:

33. The United States disagrees with this criterion. Rather, this criterion should be amended to reflect that if the criteria listed in question 221(c) leads to a conflict, then it is appropriate to assign the value of shipments in question to the company that appears in two or more of the circumstances listed in question 221(c)(i) through (iv). Otherwise, as currently proposed, it appears that Canada would be permitted to assign a particular value of imports to an affected company solely on the basis of one of the four criteria being present. This would contradict the other information present that likely led to the parties' initial disagreement, and would not be appropriate.

291. With reference to Canada's proposed search criteria for the Statistics Canada database when ascertaining a value of imports for the companies subject to the All-Others rate[47], could the parties please explain whether, for the Manufacturer Name and Manufacturer ID, Canada would not only exclude entries from individually investigated companies but would also exclude entries associated with companies subject to non-selected rates? Please explain whether any other changes to Canada's proposed search criteria for Statistics Canada, USITC DataWeb, and/or USA Trade Online would need to be made to take account of companies subject to non-selected rates.

Response:

34. The United States confirms that if Canada were to rely on data from Statistics Canada for the All Others rate, this data would need to exclude not only individually-examined companies

[47] Canada's response to Arbitrator question No. 222, Table 4.

but also companies subject to the non-selected rate. With respect to the search criteria proposed by Canada, the U.S. comment on Canada's response to question 222 applies equally to non-selected rates.[48]

292. **Both parties suggest that the real *level of suspension* should be maintained constant over time and that, for this purpose, an inflationary adjustment should be applied. Both parties suggest the use of industry-specific PPIs that would reflect price changes of products subject to the calculation of the *level of NI*. The Arbitrator notes that Canada would presumably be able to retaliate against goods beyond those subject to the relevant CVD order. Could the parties please therefore clarify whether it would be more appropriate for the purpose of maintaining the real level of suspension to use an economy-wide price index, i.e. the general US PPI?**

Response:

35. The United States maintains that U.S. industry-specific PPIs of products should be used as an inflation adjustment to maintain the real level of suspension. Further, whether a Member may apply countermeasures with respect to goods beyond those subject to the relevant CVD order is outside the scope of this arbitration proceeding. Specifically, arbitration under Article 22.6 of the DSU concerns two types of issues. The first type is an arbitration "if the Member concerned objects to the level of suspension proposed". The second type is an arbitration "if the Member . . . claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c)". This matter was referred to arbitration because the United States objected to the level of suspension proposed by Canada.[49] Therefore, the Arbitrator's mandate in this proceeding is limited to determining whether the level of suspension of concessions or other obligations is equivalent to the level of nullification or impairment actually experienced by Canada. Consideration of the goods that a Member may consider for the purpose of applying countermeasures is outside the scope of this arbitration.

293. The Arbitrator notes that US Bureau of Labor Statistics price indexes proposed by the parties are subject to monthly revisions up to four months after original publication. Would the parties agree that preliminary data subject to such monthly revisions should not be used in the calculations of any inflationary adjustment?

Response:

36. The United States considers it appropriate to use the latest version of the price index published as of the date of making the annual adjustment of the level of nullification or impairment. This may include data that may be subsequently modified. To account for those modifications, the United States considers it appropriate for the following year's inflationary adjustment to include any monthly revisions to the previous year's inflationary adjustment.

[48] U.S. Comments on Canada's Response to Third Set of Questions, paras. 133-135.
[49] WT/505/14.

37. To exemplify, the United States considers a scenario where the December (year 1) to December (year 2) inflation estimate of 3.5 percent (100.0 to 103.5 in index terms) is applied to inflate the first year's level of suspension and is based on data that is then revised. In the following year, the inflationary adjustment should consider the full two years of the index to take into account any revisions that were made (for example, 100.0 in December of year 1 to 105.3 in December of year 3). Therefore, the inflationary adjustment each year would be applied to the initial (*i.e.*, year 1) level of suspension.

294. Assume, for the purpose of this question only, that a four-variety approach as outlined in Annex A to the Arbitrator's previous set of questions to the parties is selected. Assume further that a new shipper review occurs that qualifies as a triggering event, and that the reference period is one in which no exports of the new shipper occurred. Could the parties please comment on the following hypothetical procedure for such an instance[50]:

Response:

38. As the United States has explained, new shipper reviews are outside the scope of this arbitration, and are not an appropriate basis for Canada to seek to suspend concessions.[51] Without prejudice to this position, the United States provides the following responses below.

(a) Canada would use a value of imports for the latest twelve-month period before the issuance of the final results of the new shipper review;

Response:

39. The U.S. model requires the value of imports to be, in fact, from the reference period. If there are no shipments that occurred during the reference period, then there is no value of imports to utilize for the model. As the United States previously explained in the U.S. comments on Canada's response to question 207(d), the United States does not consider it appropriate to use a value of imports that falls outside of the reference period.[52] The use of a value of imports that is not from the reference period means that the calculation itself is unconnected with the market the new shipper is entering. The appropriate reference period to evaluate the impact of the challenged measure on a new shipper remains the year prior to the imposition of the measure. The lack of shipments of the new shipper during the reference period supports the U.S. position that new shipper reviews cannot be a basis for Canada to seek suspension of concessions.[53]

(b) If shipment data is not available for twelve months, Canada would annualize the observed shipment value by multiplying it with the inverse of the time period to

[50] If convenient, please answer this question in combination with your comments on the section of Table 1, further below, addressing new shipper reviews.
[51] *See* U.S. Comments on Canada's Response to Third Set of Questions, paras. 24-28.
[52] *See* U.S. Comments on Canada's Response to Third Set of Questions, paras. 103-106.
[53] *See* U.S. response to question 277, above, discussing limited shipments by new shippers.

which this data refers. To provide an example: if imports worth 120 have been observed over 9 months, the annualized imports would be $120 * \frac{12}{9} = 160$;

Response:

40. If, during the reference period, the shipment data is not available for all twelve months, Canada may only utilize the data that did, in fact, exist during those twelve months. That is, if there is shipment data for nine of the twelve months, this is the value that should be considered the annual value of imports. The United States objects to artificially increasing the value of imports by further annualizing any existing data. Such an approach would be entirely arbitrary and disconnected from factual reality.

(c) Canada would adjust the value of imports to the price level of the reference year using an industry-specific producer price index; and

Response:

41. Under the U.S. approach, an inflation adjustment is unnecessary because only the value of imports from the reference year may be used.

(d) Canada would add the new shipper's annualized and price-level adjusted value of imports to the value of affected imports and to the market size as observed in the reference period to derive new market share data. Subsequently, a new CVD order-specific level of NI would be determined.

Response:

42. For the reasons explained above and in the U.S comment on Canada's response to question 207(d), the U.S. model requires the value of imports to be from the reference period. To artificially construct a value of imports through the use of non-reference year data and annualization would result in an arbitrary level of nullification or impairment that is entirely disconnected from the counterfactual scenario that represents the remedy that Canada would seek.

295. Below appears a table with proposals regarding how Canada would calculate the value of imports and duty rates. For the purpose of reviewing this table only, the parties are asked to assume that Canada would be using a four-variety model as outlined in Annex A to the Arbitrator's previous set of questions to the parties. Could the parties please explain whether they: (a) consider any content of the below table to be unreasonable; and (b) whether the parties discern any gaps in the below content that would lead to Canada being unable to reasonably calculate the value of imports or change in duty rates in any particular scenario? Please pay special attention to the content on new shippers in your answers. As part of your answers to this question, could the parties also please explain how, in a four-variety version of the US model, the value of imports for new shippers would be incorporated into the

calculations of relevant market shares? Finally, in evaluating the content of the final column of this table, the parties are kindly asked to be mindful of their responses to question No. 287, regarding the selection of an appropriate reference period.[54]

Response:

43. Below, the United States provides comments on the Arbitrator's Table 1. As requested by the Arbitrator's footnote to this question, the United States references previous arguments from the U.S. submissions to streamline this response.

44. With respect to footnote 17 of Table 1, the United States does not agree with the text, "or, alternatively, the most recent identification of cross-owned affiliates before the triggering event". At minimum, the United States proposes to change the text to "or, alternatively, the most recent identification of cross-owned affiliates after the triggering event", consistent with the U.S. position that if a composition of the company changes after the application of the challenged measure, Canada should modify the calculation to reflect the changes in the group to ensure that the level of suspension is equivalent to the level of nullification or impairment actually being experienced by Canada.[55] However, as the United States explained in the U.S. response to question 284, above, a cross-ownership determination is not independent from a determination of subsidization. Therefore, the Arbitrator may wish to delete this portion of the sentence.

45. With respect to the first row, second column, concerning the value of imports of affected Canadian companies, the table provides that in the absence of Customs data, Canada may have the discretion to select from three options. For the reasons previously provided,[56] the United States does not consider it appropriate for Canada to have discretion in selecting an alternative source; rather, there should be a hierarchy to utilizing alternative sources. The United States maintains that the primary alternative source that should be used is the publicly-ranged sales value from the record of Commerce's proceeding along with Census' USA Trade Online data. With respect to option 1, "obtains values directly from an affected company", the United States requests the addition of a footnote indicating that Canada should only be permitted to obtain and utilize data directly from an affected company if the company consents to sharing the information with the United States.[57] With respect to option 2, providing that the approach should be "adapted to the reference period per Canada's explanations", the United States offered additional clarifications to Canada's proposal and requests for the U.S. clarification to be added to the accompanying footnote.[58]

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[54] If the parties have criticisms of the methods herein that have already been adequately included in answers to previous questions, please refer back to those answers rather than engaging in repetitious arguments.
[55] U.S. Comments on Canada's Responses to Third Set of Questions, para. 218.
[56] *See* U.S. Comments on Canada's Responses to Third Set of Questions, paras. 224-226; U.S. Responses to Second Set of Questions, para. 100. *See also* U.S. Closing Statement at the Virtual Session, para. 9 (concerning Canada's continued advocacy to have "discretion" to select the values and sources that are only beneficial to Canada).
[57] *See* U.S. Comments on Canada's Responses to Third Set of Questions, para. 136.
[58] U.S. Responses to Second Set of Questions, paras. 108-112; U.S. Responses to Third Set of Questions, Annex A, U.S. Alternative Instructions, paras. 1.14-1.16.

46. With respect to the first row, third column, concerning the counterfactual duty rates for companies assigned an affected individual CVD rate, the table provides that the counterfactual duty rate will be the "factual CVD rates less the OFA-specific CVD rate". However, as the United States has explained, other information may exist on the record that could be utilized, and therefore the removal of the measure would not necessarily always reduce the portion of the CVD rate.[59]

47. With respect to new shippers, for the reasons previously provided,[60] the United States objects to the inclusion of new shippers in Table 1. This includes footnote 18, row two concerning affected new shippers, and the references to affected new shippers in row three, column two. In addition, in the second row, second column, concerning the provision of Customs data for an affected new shipper, for the reasons provided in the U.S. response to question 294, above, the United States disagrees with the inclusion of the last paragraph, concerning the use of data outside the reference period and the annualization of the value of imports.

48. With respect to the absence of Customs data for new shippers, in response to footnote 23, the United States confirms that publicly ranged U.S. sales data of the new shipper would exist on the record of a proceeding. Without prejudice to the U.S. position concerning the inclusion of new shipper reviews in this arbitration proceeding, the United States confirms that this information could be used in the absence of U.S. Customs data. Further, Canada should only be permitted to obtain and utilize data directly from the new shipper if the company consents to sharing the information with the United States.[61]

49. With respect to the third row, second column, concerning the provision of Customs data for unaffected companies, the United States observes that the second sentence may have intended to reference unaffected companies, rather than the affected companies. That is, the sentence should instead state, "[t]he total value of imports for the unaffected variety will be the sum of such values."

50. With respect to the third row, second column, concerning the absence of Customs data for unaffected companies, the United States provides several observations. First, for the reasons previously provided,[62] the United States does not consider it appropriate for Canada to have discretion in selecting an alternative source; rather, there should be a hierarchy for utilizing alternative sources. The United States maintains that the primary alternative source that should be used is the publicly-ranged sales value from the record of Commerce's proceeding along with Census' USA Trade Online data.

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[59] *See* U.S. Opening Statement at the Virtual Session, para. 29 (summarizing the U.S. position).
[60] *See* U.S. response to question 294; U.S. comment on Canada's response to question 207(d).
[61] *See* U.S. Comments on Canada's Responses to Third Set of Questions, para. 136.
[62] *See* U.S. Comments on Canada's Responses to Third Set of Questions, paras. 224-226; U.S. Responses to Second Set of Questions, para. 100. *See also* U.S. Closing Statement at the Virtual Session, para. 9 (concerning Canada's continued advocacy to have "discretion" to select the values and sources that are only beneficial to Canada).

51. Second, for the reasons previously provided,[63] the United States requests the addition of a footnote indicating that Canada should only be permitted to obtain and utilize data directly from an unaffected company if the company consents to sharing the information with the United States.

52. Third, with respect to option 2 under "Option 1", the table provides that Canada may take the company's publicly ranged U.S. sales data from the Commerce CVD proceeding combined with aggregate Canadian sales data from USA Trade Online/USITC DataWeb or Statistics Canada. The text, as written, conveys that Canada may take the publicly ranged U.S. sales data and add it to the value obtained from the aggregate sources. However, utilizing the sum of the data from Commerce's proceeding and data from public aggregate sources would be far too over-inclusive. The United States observes that in the first row, second column, concerning the absence of Customs data for affected Canadian companies, option 2 with similar text stated "in conjunction with". This phrase would also be appropriate here. Further, although option 2 provides that the approach should be "adapted to the reference period per Canada's explanations," the United States recalls that the United States offered additional clarifications to Canada's proposal.[64]

53. In addition, for the reasons the United States has previously explained,[65] only the primary HTS codes should be used in determining the value of imports. Therefore, the United States requests that all references in the table to "all HTS codes" be changed to "primary HTS codes".

54. With respect to footnote 24, as the United States previously explained, the factual CVD rate for an unaffected company is not necessarily equal to the reference period CVD rate. Indeed, it is likely that the reference year CVD rate will differ from the factual CVD rate.[66] Canada did not disagree with this observation.[67] Therefore, the United States suggests deletion of footnote 24.

55. Lastly, with respect to the third row, third column, concerning the reference period CVD rates for the unaffected exporters, the United States observes that the reference period CVD rate will always be available from USDOC public records. As this information is readily available, regardless of how the value of imports is obtained for the unaffected exporter, Canada should assign the relevant reference period duty rate to that value of imports. Where the value of imports is obtained on an aggregate basis for a group of unaffected companies, as the United States previously explained, the duty rate would be a weighted average for the unaffected company variety.[68] If a weighted average cannot be calculated, then a simple average of the reference period rates associated with the corresponding companies should be used. This is appropriate in circumstances where Canada has obtained the value of imports via the methods

[63] *See* U.S. Comments on Canada's Responses to Third Set of Questions, para. 136.
[64] U.S. Responses to Second Set of Questions, paras. 108-112; U.S. Responses to Third Set of Questions, Annex A, U.S. Alternative Instructions, paras. 1.14-1.16.
[65] U.S. Responses to Second Set of Questions, para. 103; U.S. Responses to Third Set of Questions, para. 140.
[66] *See* U.S. Responses to Third Set of Questions, paras. 110, 113-118.
[67] *See* Canada's Comments on U.S. Responses to Third Set of Questions, para. 59.
[68] *See* U.S. response to question 211.

described in the table (either through Customs data or any of the alternatives in the absence of Customs data) and the number of unaffected companies is known. Therefore, where the number of unaffected companies is known, the United States disagrees that for options 2, 4, or 5, the factual All Others rate would be used as the reference period rate unless the companies for whom the value of imports is known have identical reference period duty rates.

56. Only in the unlikely and rare circumstance where Customs data are not provided, and Canada obtains the value of imports for an aggregate group of unaffected companies, and the number of unaffected companies in that group is unknown, the United States agrees that the All Others rate from the investigation could be used as the reference period CVD rate. This would only apply if this scenario occurred in an administrative review and there were companies still being assessed an unaffected All Others rate from the investigation.[69] If this scenario occurred in a CVD investigation, then the reference period CVD rate for the unaffected exporters would be zero.[70]

[69] That is, in an administrative review, all other unaffected companies would be known – they would either receive an individually-examined CVD rate or would receive the non-selected rate.
[70] *See* U.S. response to question 283, above.