UNITED STATES – COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA

Recourse to Article 22.6 of the DSU by the United States

(DS437)

RESPONSES OF THE UNITED STATES OF AMERICA TO THE FOLLOW-UP QUESTIONS FROM THE ARBITRATOR

Public Version

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A. WHETHER TO CONSIDER THE EFFECT OF BOTH SUBSIDIES AND DUMPING ON CHINA'S MARKET SHARES

30. <u>To China</u>: Please comment on the United States' claim that for the purposes of the two-step Armington model it is irrelevant whether the AD duty rates are WTO-consistent, as they are incorporated into the model only to correctly represent the actual extent of duties on imports from China in the relevant period.

<u>Response</u>:

1. This question is addressed to China.

B. US MARKET DATA FOR THE YEAR PRIOR TO THE IMPOSITION OF CERTAIN CVD MEASURES

31. <u>To China</u>: According to the United States, China's approach of identifying the relevant year prior to the imposition of the CVD measures fails to take into account the fact that: (i) "provisional measures are, as the name indicates, preliminary and temporary in duration"; (ii) "provisional AD and CVD measures expire after 120 days (or 180 days for provisional anti-dumping (AD) measures, if so requested)"; (iii) "exposure to duty liability is not confirmed until a final CVD determination and the imposition of a duty order"; and (iv) "[e]ven then, under the U.S. retrospective system of AD and CVD duty assessment, final duty liability is typically not known until later, when the USDOC determines final AD or CVD duty margins in an administrative review".[1] Please comment on these statements by the United States.

<u>Response</u>:

2. This question is addressed to China.

32. <u>To the United States</u>: China argues that, as from the date of the imposition of preliminary CVD duties, the USCBP starts collecting cash deposits at the applicable cash deposit rate; however, before that date there is no "subject merchandise" as no CVD duties have been imposed.[2] According to China, this data is not an accurate representation of the entire subject imports market for the full year "for a variety of reasons, the most obvious being that by definition, any year *prior* to the year in which duties were imposed cannot include months where duties were already in place". Further, China argues that "the U.S. approach fails to account for the serious issue of exporters who exit the market (i.e. stop supplying the United States)".[3] Please comment on these statements by China.

<u>Response</u>:

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[1] United States' response to Arbitrator's question No. 14, footnote 110 to para. 93.

[2] China's response to Arbitrator's question No. 13, para. 50.

[3] China's response to Arbitrator's question No. 13, para. 56.

3. The United States confirms that, prior to the imposition of provisional countervailing duty ("CVD") measures as a result of an affirmative preliminary CVD determination, U.S. Customs and Border Protection ("USCBP") does not collect cash deposits or collect specific data on the imports of merchandise subject to the relevant CVD investigation because there has not been a suspension of liquidation of "subject merchandise".[4] While USCBP suspends liquidation and starts collecting cash deposits from the date of the imposition of provisional CVD measures as a result of an affirmative preliminary CVD determination, these cash deposits are provisional and potentially refundable,[5] and are collected for no longer than 120 days.[6]

4. As explained in the U.S. response to the Arbitrator's Advance Question No. 2, an imposition of provisional CVD measures is just that, provisional. An antidumping ("AD") or CVD investigation by the U.S. Department of Commerce ("USDOC") or the U.S. International Trade Commission ("USITC") may eventually be terminated as a result of negative dumping or subsidy or injury determinations. In such a case, USCBP would no longer suspend liquidation or collect cash deposits and would cease collecting data on imports of "subject merchandise," and all cash deposits would be refunded. Accordingly, since any cash deposits collected for a limited time period following an affirmative preliminary CVD determination are merely provisional and the imposition of CVD measures is not made final until both the USDOC and the USITC make affirmative final determinations, the correct year-prior should be based on the date of the imposition of the final CVD measures.

5. As explained in paragraph 124 of the U.S. written submission and in the U.S. response to the Arbitrator's Advance Question No. 13, the United States has used the same year-prior

[4] *See* sections 703(d)(1)(B) and (d)(2) of the Tariff Act (19 U.S.C. §§ 1671b(d), 1673b(d)) (Exhibit USA-90).

[5] Any cash deposits collected prior to issuance of the final determination are fully refundable in case of a negative final determination. Further, under the United States' retrospective antidumping and countervailing duty regime, all cash deposits made prior to the institution of a duty order are also potentially refundable based upon the outcome of the first administrative review, when parties have the opportunity to request a review of entries made after the preliminary determination, and through the first year after the institution of the order (typically an 18-month period). For example, after an affirmative preliminary determination, if the Chinese exporters were to immediately discontinue use of the majority of their subsidy programs while continuing to export to the United States, it is possible that revised subsidy calculations in the first administrative review, with little or nothing in the subsidy numerator, could return a *de minimis* subsidy rate of less than 0.50 percent *ad valorem*, which would mean that any cash deposits collected would be refunded. *See* 19 C.F.R. § 351.106 (Exhibit USA-147).

[6] *See* sections 703(d) and 733(d) of the Tariff Act of 1930, as amended ("the Tariff Act") (19 U.S.C. §§ 1671b(d), 1673b(d)) (Exhibit USA-90). Cash deposit collection resumes if the USDOC publishes an AD/CVD order following an affirmative final determination by the USDOC and an affirmative final determination of injury by the USITC. *See* sections 705(c)(2), 706(a), 735(c)(2), and 736(a) of the Tariff Act (19 U.S.C. §§ 1671d(c)(2), 1671e(a), 1673d(c)(2), 1673e(a)) (Exhibit USA-90). If either of the final determinations is negative, then all cash deposits collected are refunded. *See* sections 705(c)(2) and 735(c)(2) of the Tariff Act (19 U.S.C. §§ 1671d(c)(2), 1673d(c)(2)) (Exhibit USA-90). If the USITC's affirmative final determination is limited to a finding of threat, then all provisional measures in the form of cash deposits are refunded. *See* sections 706(b)(2) and 736(b)(2) of the Tariff Act (19 U.S.C. §§ 1671e(b)(2), 1673e(b)(2)) (Exhibit USA-90). If the USDOC publishes an AD/CVD order and if the cash deposits collected exceed the final duties, then the amount of difference is refunded. If the cash deposits collected following the preliminary determination are less than the final duties, then the difference is disregarded. *See* sections 707 and 737 of the Tariff Act (19 U.S.C. §§ 1671f, 1673f) (Exhibit USA-90).

shipment data that were used by the arbitrator in DS471 for the products that were also at issue in DS471, including Line Pipe, OCTG, and Aluminum Extrusions. For the products that were not at issue in DS471, such as Pressure Pipe and Wire Strand, the United States has derived the data using a methodology that is consistent with the methodology used by the arbitrator in DS471. In other words, the arbitrator in DS471 considered it appropriate to select the year-prior based on the date of the imposition of the final AD measures.

6. With respect to China's hypothetical scenario that "companies D, E, F, G, and H" could exit the market immediately following an affirmative preliminary determination[7], China has not provided any evidence that exporters have actually exited the market after USCBP began collecting provisional cash deposits related to any of the CVD measures at issue.[8] More importantly, China's concern regarding a possible undercount stems from a misunderstanding about the nature of the year-prior USCBP data provided by the United States. In China's hypothetical, "companies D, E, F, G, and H" sold unspecified "subject merchandise" between January 1, 2009, and June 30, 2009, but immediately exited the U.S. market once the provisional CVD measures were imposed on July 1, 2009. China argues that the USCBP data provided by the United States would fail to account for the imports equivalent to subject merchandise that were sold by companies D, E, F, G, and H during the first six months of 2009. However, the year-prior USCBP data are not based on subject merchandise under specific CVD orders, but are based on the reference Harmonized Tariff Schedule of the United States (HTSUS) codes that are used by USCBP to identify shipments that may be subject to the relevant duties. The year-prior USCBP data do not only represent the particular companies that shipped subject products under the relevant HTSUS codes following the imposition of the provisional duties, but are, rather, the full-year data of all shipments made by any company under the relevant HTSUS codes. Because USCBP does not track the value of shipments of subject merchandise prior to the imposition of provisional duties, the HTSUS-based data provide the best available estimate, though it may include imports that fall outside of the product scope of subject merchandise. Accordingly, rather than being under-inclusive, the HTSUS-based year-prior data provided by the United States would include all products that were imported into the United States under the reference

[7] China's response to Arbitrator's question No. 13, para. 56.

[8] In fact, contrary to China's unsupported assumption, the imposition of preliminary CVD measures does not necessarily cause instantaneous market exit. Rather, it sometimes has an opposite effect. For instance, exporters who are assigned a relatively low preliminary CVD rate may significantly increase their exports to the United States. This partly results from decreased sales volumes from their competitors who were assigned higher preliminary CVD rates, and partly from the United States' requirement that imports entered during a provisional measure period may not be assessed cash deposits at a rate higher than the applicable preliminary CVD rate even if the company is later assigned a higher final CVD rate following the final determination or the first administrative review. *See* sections 707 and 737 of the Act (19 U.S.C. §§ 1671f, 1673f) (Exhibit USA-90). Second, because all of the CVD measures at issue had companion AD measures, and the USDOC typically issues a preliminary AD determination (with its own set of provisional cash deposit rates) two months after a preliminary CVD determination, exporters may increase their sales volume to the United States following the imposition of provisional CVD measures, before any provisional AD measures are additionally imposed.

HTSUS codes in the year-prior, regardless of whether any exporters exited the market following the imposition of a provisional CVD measure.

7. The same HTSUS-based year-prior USCBP data was used by the arbitrator in DS471 to estimate trade effects of the AD measures at issue,[9] and the United States considers it appropriate to use the same data and data methodology for the purpose of this proceeding.[10] The United States obtained this HTSUS-based data from USCBP because USCBP was the best source of comprehensive HTSUS-based import data that could be sorted by company, as requested by the arbitrator in DS471.

8. Therefore, China's concern is unwarranted because the HTSUS-based year-prior USCBP data provided by the United States do not leave out or under-report subject merchandise sold to the United States during the months preceding the imposition of provisional CVD measures in the year-prior. The United States' year-prior data methodology mirrors the methodology used by the arbitrator in DS471, capturing all products within the relevant reference HTSUS codes in the correct year-prior selected based on the date of the imposition of the final CVD measures at issue.

33. <u>To China and the United States</u>: Please quantify any difference between the preliminary and final CVD rates for Pressure Pipe, Line Pipe, OCTG, Wire Strand, Aluminum Extrusions, and Steel Cylinders, and confirm whether or not the preliminary determinations for these products were at issue in earlier stages of this dispute, and whether this has any relevance for determining the correct year-prior in these arbitration proceedings.

<u>Response</u>:

9. The United States is providing in Exhibit USA-107 the quantified differences between the preliminary CVD rates and the relevant final CVD rates[11] for the six products identified in this question.

10. While it is not entirely clear what is meant by the term "at issue" in the question, the United States considers that the preliminary determinations for the six products were not "at issue" in earlier stages of this dispute, and, in any event, as explained below, the preliminary

[9] *See* WT/DS471/ARB, para. 7.22.

[10] As background, the arbitrator in DS471 asked for company-specific import data for the year-prior, and because USCBP does not track the value of shipments of subject merchandise before the duties are imposed, the United States submitted data based on the reference HTSUS codes.

[11] Where the CVD rate resulting from a final determination was superseded by the section 129 proceedings, the United States has provided the section 129 rate as the final CVD rate because that is the WTO-inconsistent CVD rate proposed by the United States. *See* U.S. Written Submission, paras. 37-39. *See also* Exhibits USA-28, USA-100, and USA-138.

determinations do not have any relevance for determining the correct year-prior in these arbitration proceedings.

11. In its original panel request, China identified as the "specific measures at issue" "the preliminary and final countervailing duty measures identified in Appendix 1" of the request.[12] With respect to each of the six products identified in the question – Pressure Pipe, Line Pipe, OCTG, Wire Strand, Aluminum Extrusions, and Steel Cylinders – Appendix 1 of China's panel request lists final determinations but not preliminary determinations.[13] This is in contrast to other products, such as Solar Panels, Wind Towers, and Steel Sinks, for which China did list preliminary determinations.[14] While China's panel request further explains that "[t]he measures include the determination by the USDOC to initiate the identified countervailing duty investigations, the conduct of those investigations, any preliminary or final countervailing duty determinations issued in those investigations, any definitive countervailing duties imposed as a result of those investigations, as well as any notices, annexes, decision memoranda, orders, amendments, or other instruments issued by the United States in connection with the countervailing duty measures identified in Appendix 1,"[15] the reference to preliminary determinations amongst all of the other decisions and documents appears to have been an effort by China to be comprehensive in its identification of any and all documents of potential relevance to its "as applied" claims, which concerned "the initiation and conduct of the identified countervailing duty investigations, as well as the countervailing duty determinations, orders, and any definitive countervailing duties imposed pursuant thereto".[16] Throughout the original dispute, the provisional CVD rates determined in the preliminary determinations and the timing of those determinations were never raised as an issue. Rather, references were made to the preliminary determinations to the extent that they, when read together with the final determinations, explained decisions that the USDOC made in connection with the imposition of the CVD measures. For these reasons, the United States does not consider that the preliminary determinations for the six products identified in the question were "at issue" in earlier stages of this dispute.

12. Additionally, as explained in paragraph 37 of the U.S. written submission, the CVD determinations that are relevant for the assessment of the level of nullification or impairment are the section 129 determinations modifying the final CVD rates from the original investigations, as those section 129 determinations are the compliance measures taken by the United States, and the basis for the compliance proceedings in which China sought findings that the United States had not come into compliance with the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

[12] China's Request for the Establishment of a Panel, WT/DS437/2 (August 21, 2012), p. 1.

[13] *See* China's Request for the Establishment of a Panel, WT/DS437/2 (August 21, 2012), pp. 5-8.

[14] *See* China's Request for the Establishment of a Panel, WT/DS437/2 (August 21, 2012), p. 8.

[15] China's Request for the Establishment of a Panel, WT/DS437/2 (August 21, 2012), p. 1.

[16] China's Request for the Establishment of a Panel, WT/DS437/2 (August 21, 2012), p. 2.

13. Accordingly, the preliminary determinations have no relevance for determining the correct year-prior in this Article 22.6 arbitration proceeding, which concerns the section 129 determinations modifying the final CVD rates. As explained in the U.S. response to the Arbitrator's Advance Question No. 2, any provisional CVD measures imposed as a result of the preliminary determinations are not final and are potentially refundable.[17] Thus, the dates of those preliminary determinations are not determinative of the correct year-prior in this arbitration proceeding. Rather, it is the dates of the final CVD measures imposing the final CVD rates that should determine the correct year-prior. Finally, we observe again that the year-prior identified by the United States accords with the year-prior used by the arbitrator in DS471.[18]

Kitchen Shelving

34. **<u>To China</u>: Please comment on the United States' response to Arbitrator's question No. 11 regarding Kitchen Shelving where the United States lists products covered by the HTS codes used by China that do not seem to fit the description of subject merchandise. Could you propose a methodology to adjust your import data to better reflect the scope of subject merchandise?**

<u>Response</u>:

14. This question is addressed to China.

35. **<u>To China and the United States</u>: Please provide estimates as to the percentage of 2008 imports of Kitchen Shelving under the eight HS10-level codes[19] used by China that may be relevant for the CVD order at issue.**

<u>Response</u>:

15. China has used the following eight HTSUS codes: 7321.90.5000, 7321.90.6040, 7321.90.6060, 7321.90.6090, 8418.99.8050, 8418.99.8060, 8516.90.8010, and 8516.90.8050. As explained in paragraph 127 of the U.S. written submission and in the U.S. response to the Arbitrator's Advance Question No. 11, most of the HTSUS codes used by China are broad categories that contain products other than subject merchandise covered by the Kitchen Shelving CVD measure.[20] While all eight HTSUS codes used by China may include some of the subject

[17] *See* the U.S. response to the Arbitrator's Question No. 32, footnote 5, above.

[18] *See* U.S. Written Submission, para. 125; U.S. Response to the Arbitrator's Advance Question No. 14, footnote. 110.

[19] Exhibit CHN-53, p. 10, footnote I.

[20] While the HTSUS codes that China uses to construct its proposed import data fall under the HTSUS subheadings that the USITC cites to describe the product scope, the USITC explicitly states: "All of these statistical reporting numbers are residual or 'basket' categories and contain a number of other products besides certain [Kitchen Shelving]." USITC Publication 4098, p. I-6 (Exhibit CHN-19). In other words, the HTSUS codes used by China cover a broad array of products that were not specifically captured in other codes under the same 6-digit or 8-digit level subheading – including many that are not subject to the relevant CVD measure on Kitchen Shelving.

merchandise, the only HTSUS codes specific to Kitchen Shelving are 7321.90.6040 ("Shelving and racks for cooking ovens, of iron or steel") and 8516.90.8010 ("Shelving and racks for electric cooking stoves, range and ovens of subheading 8516.60.40"). However, import data from the U.S. Census are not available for these two HTSUS codes for year 2008 because the two codes were not in effect prior to 2009. Therefore, as the best alternative, the United States has used the 2010 U.S. Census import data for 7321.90.6040 and 8516.90.8010 (the "Kitchen Shelving specific HTSUS codes"), adjusting the data based on the relevant import trends of products under the other six HTSUS codes, *i.e.*, 7321.90.5000, 7321.90.6060, 7321.90.6090, 8418.99.8050, 8418.99.8060, and 8516.90.8050 (the "broader kitchen appliance HTSUS codes").

16. Given the broad range of products imported in 2008 under the six broader kitchen appliance HTSUS codes, the United States estimates that subject merchandise in Kitchen Shelving constituted approximately 2.9 percent of all imports from China under the six broader kitchen appliance HTSUS codes. The United States is not able to make percentage estimates for each of the six broader kitchen appliance HTSUS codes because there is no available data that would enable the United States to determine precisely what portion of the products imported in 2008 under each of those HTSUS codes would have met the product scope description of the 2009 CVD order on Kitchen Shelving. Instead, the United States has derived the 2.9 percent overall estimate by taking into account the relevant import values and the observed import trends involving Kitchen Shelving products, as elaborated in the following paragraphs.

17. The United States considers it reasonable to assume that the 2.9 percent estimate applies to all six broader kitchen appliance HTSUS codes because all of those HTSUS codes are similarly broad in their HTSUS descriptions, and cover similar, overlapping products. The below table summarizes the United States' estimates:

HTSUS Code	HTSUS Description	U.S. Estimate of Percentage of 2008 Imports under the HTSUS Code that were Products Relevant to the Kitchen Shelving CVD Order	Note
7321.90.5000	Other parts of articles in subheading 7321.11.30 (stoves and ranges)	2.9%	"Broader kitchen appliance HTSUS codes"
7321.90.6040	Shelving and racks for cooking ovens	0% (HTSUS code was not in effect until July 2009)	Specific to Kitchen Shelving.
7321.90.6060	Other parts of cooking appliances and plate warmers	2.9%	"Broader kitchen appliance HTSUS codes"
7321.90.6090	Other parts of stoves, ranges, grates, cookers, barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances… of	2.9%	"Broader kitchen appliance HTSUS codes"

HTSUS Code	HTSUS Description	U.S. Estimate of Percentage of 2008 Imports under the HTSUS Code that were Products Relevant to the Kitchen Shelving CVD Order	Note
	iron or steel, other than articles in subheading 7321.11.30 (stoves and ranges) or cooking appliances and plate warmers		
8418.99.8050	Other parts of combined refrigerator-freezers fitted with separate external doors and parts of household type refrigerators	2.9%	"Broader kitchen appliance HTSUS codes"
8418.99.8060	Other parts of refrigerators, freezers and other refrigerating or freezing equipment	2.9%	"Broader kitchen appliance HTSUS codes"
8516.90.8010	Shelving and racks for cooking stoves, ranges and ovens of subheading 8516.60.40	0% (HTSUS code was not in effect until July 2009)	Specific to Kitchen Shelving.
8516.90.8050	Other parts of cooking stoves, ranges and ovens of subheading 8516.60.40	2.9%	"Broader kitchen appliance HTSUS codes"

18. The two Kitchen Shelving-specific HTSUS codes, once they went into effect in July 2009, have primarily covered kitchen shelving products designed for stoves and ovens ("oven racks"). The remaining portion of Kitchen Shelving from China (*i.e.*, kitchen shelving products designed for refrigerators, freezers, and other refrigerating or freezing equipment and racks, or "refrigeration shelving") is not covered under those two HTSUS codes and is most likely covered under one or more of the six broader kitchen appliance HTSUS codes.

19. First, to estimate the value of 2008 imports of oven racks from China, the United States bases its calculation on the 2010 imports from China under the Kitchen Shelving-specific HTSUS codes. (As explained in Exhibit USA-61, the United States has used 2010 as the starting point because the two HTSUS codes did not become effective until months into 2009, and also because there often is a systemic lag between the institution of new HTSUS codes and the actual implementation by the industry.) According to the U.S. Census data, the value of total imports from China under the two Kitchen Shelving specific HTSUS codes was approximately $10 million in 2010.

20. The United States then adjusts the $10 million imports value from 2010 by taking into account the observed market trends between 2008 and 2010 for the six broader kitchen appliance HTSUS codes, since those codes were in effect throughout the period and cover some of the relevant Kitchen Shelving products.

21. According to the U.S. Census data, overall imports under the six broader kitchen appliance HTSUS codes decreased by approximately 16 percent between 2008 ($824 million) and 2009 ($690 million). The United States assumes that the decrease specifically for subject merchandise in Kitchen Shelving was closer to 20 percent, since the 2009 Kitchen Shelving CVD order likely led to a sharper decline in subject merchandise imports than in imports of other products that were also under the six broader kitchen appliance HTSUS codes (none of these other products were subject to any AD or CVD orders at the time). The United States considers this 20 percent rate to be the best estimate of the decrease in imports of Kitchen Shelving from China between 2008 and 2009.

22. As explained in Exhibit USA-61, the United States assumes that imports of Kitchen Shelving from China remained constant between 2009 and 2010 because the Kitchen Shelving CVD rates did not change during that time period and the demand effects of the recessionary pressures observed in 2008 had largely ceased.

23. Based on the aforementioned assumptions that imports of Kitchen Shelving from China decreased by 20 percent between 2008 and 2009 and remained constant between 2009 and 2010, the United States estimates that the value of 2008 imports of oven racks from China was approximately $12 million.

24. As discussed above, some of the subject merchandise in Kitchen Shelving (refrigeration shelving) were imported under the six broader kitchen appliance HTSUS codes. Accordingly, the $12 million estimate represents only a portion of the total imports of Kitchen Shelving from China (oven racks). The United States estimates that the remaining portion of the imports of Kitchen Shelving from China (refrigeration shelving) was approximately $12 million as well. In other words, the United States assumes that oven racks and refrigeration shelving each composed 50 percent of the total Kitchen Shelving imports from China in 2008.[21] Accordingly, the total Kitchen Shelving imports from China in 2008 is estimated to be approximately $24 million (*i.e.*, the sum of $12 million and $12 million).

25. According to the 2008 U.S. Census data, the value of imports under the six broader kitchen appliance HTSUS codes was approximately $824 million.[22] The estimated $24 million of Kitchen Shelving imports from China is 2.9 percent of this $824 million aggregate. As explained above, the United States considers it reasonable to assume that the 2.9 percent estimate applies across all six broader kitchen appliance HTSUS codes.

36. **<u>To China</u>: China reports the aggregate 2008 imports of Kitchen Shelving under eight HS10 categories, some of which did not exist in 2008 (HS 8516.90.8010, 8516.90.8050, and 7321.90.6040). Please confirm that no imports were recorded under these HS10 codes in the above aggregate import data, and whether this**

[21] *See* Exhibit USA-61.

[22] *See* U.S. Response to Arbitrator's Advance Question No. 11, Table 6.

implies that a certain amount of subject Kitchen Shelving imports may have been unrecorded for 2008.

Response:

26. This question is addressed to China.

37. To China and the United States: For estimates of sales of Kitchen Shelving of the US domestic variety in 2008, please comment on the advantages and disadvantages of both China's approach to rescaling its data (which uses a ratio of HS10 level imports associated with the primary NAICS code to HS10-level imports associated with all relevant NAICS codes) and the United States' approach (which is based on a cost-share factor).

Response:

27. While the North American Industry Classification System ("NAICS") industry-level data could be helpful for estimating U.S. domestic shipments of Kitchen Shelving, China's methodology is problematic because it relies on an incorrect assumption regarding the HTSUS codes associated with the primary NAICS codes. China improperly assumes that the entirety of the HTSUS codes associated with the NAICS codes consists of the relevant Kitchen Shelving products only. However, as explained above in the U.S. response to the Arbitrator's Question No. 35, six of the eight HTSUS codes used by China broadly contain other kitchen appliance products aside from merchandise subject to the Kitchen Shelving CVD measure. As a result, China's methodology of adjusting the NAICS industry-level domestic shipments data by equating the relevant imports ratio and domestic shipments ratio uses an incorrect imports ratio that is based on an estimate of Kitchen Shelving imports that improperly includes non-subject merchandise under the six broader kitchen appliance HTSUS codes. Therefore, that methodology cannot generate an estimate that properly represents U.S. domestic shipments.

28. The United States refers the Arbitrator to the U.S. response to the Arbitrator's Advance Question No. 11 for more detailed explanations on how the six broader kitchen appliance HTSUS codes improperly capture a number of products that are outside of the scope of the Kitchen Shelving CVD measure and why the value of 2008 imports under those codes does not represent actual imports of the relevant Kitchen Shelving products.

29. The United States has estimated U.S. domestic shipments for Kitchen Shelving by taking the kitchen shelving cost share of the value of U.S. domestic shipments of end-use products containing kitchen shelving and subtracting the value of U.S. imports of kitchen shelving.[23] The U.S. methodology is based on industry market reports with U.S. shipment data for refrigerators and ovens, producer price indexes for refrigerators and freezers, and ovens, as well as the refrigerator and oven Original Equipment Manufacturers (OEM) Cost of Goods Sold (COGS) in

[23] *See* Exhibit USA-61.

USITC Publication 4098.[24] These were the best publicly available sources given the general lack of public data detailing the exact volume and value of U.S. shipments of Kitchen Shelving.

30. In contrast to China's improper reliance on over-inclusive HTSUS codes, the United States has used accurate representations of the Kitchen Shelving industry as provided by the industry itself, as well as data collected in the relevant USITC investigations. Contrary to the criticisms in China's response to the Arbitrator's Advance Question No. 11, the data used in the USITC investigations are internally cross-checked and verified by the USITC in accordance with rigorous standards. Throughout the USITC investigation, Kitchen Shelving producers, importers, purchasers, and any other interested parties had ample opportunity to raise concerns with the data collected, but the parties agreed that the data were an accurate representation of the industry. Moreover, the assumptions used in the U.S. methodology, as extensively explained in Exhibit USA-61, are based on accurate, reliable, and actual data reported by the U.S. Kitchen Shelving industry.

38. **<u>To China</u>: In footnote 103 to paragraph 126 of its written submission, the United States argues that China appears to have used a definition of subject merchandise for Print Graphics that is different from that used by the arbitrator in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)* (DS471), since China would have reported US domestic shipments for "certain coated paper (all integrated producers)", while the DS471 arbitrator would have based its decision on US domestic shipments for "certain coated paper other than coated packaging paperboard". In response to the Arbitrator question No. 10, the United States adds that "[i]t is possible that the arbitrator in DS471 decided to exclude coated packaging paperboard from the relevant data based on the USDOC's determination to exclude from the product scope coated packaging paperboard products with a thickness of 310 µm or more and a density of less than 0.70 g/cm". Please comment on these arguments by the United States, especially on whether the scope of Print Graphics includes coated packaging paperboard or not.**

<u>Response</u>:

31. This question is addressed to China.

Print Graphics

39. **<u>To China and the United States</u>: Please explain whether or not the scope of the relevant Print Graphics CVD order as reviewed at earlier stages of this dispute, as well as in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)* (DS471), encompassed coated packaging paperboard.**

[24] *Certain Kitchen Appliance Shelving and Racks from China*, Investigation Nos. 701-TA-458 and 731-TA-1154 (Review), USITC Publication 4098 (August 2009) (Exhibit CHN-19).

Response:

32. The scope of the Print Graphics CVD order covers certain coated paperboard, including coated packaging paperboard, which meets the physical characteristics described in the scope and is suitable for high quality print graphics using sheet-fed presses.[25] Specifically, in a 2012 scope ruling, the USDOC found that coated packaging paperboard products that meet the scope description, except for those with a thickness of 310 µm or more and a density of less than 0.70 g/cm^3, were covered by the CVD order.[26] Thus, at least some of coated packaging paperboard is covered in the scope of the Print Graphics CVD order. Additionally, the USITC considered producers of coated packaging paperboard to be part of the domestic industry for its injury analysis.[27]

33. As explained in the U.S. response to the Arbitrator's Advance Question No. 10, while China relies on U.S. domestic shipment data found in Table IV-6 of the final USITC report, which reports shipments from all U.S. integrated producers, including coated packaging paperboard shipments, the United States has used U.S. domestic shipment data found in Table IV-4 of the same USITC report, which excludes coated packaging paperboard. The data used by the United States is the same as the data used by the arbitrator in DS471. It is possible that the arbitrator in DS471 chose not to rely on the data reported in Table IV-6 because that data included non-subject coated packaging paperboard products that were excluded in the 2012 USDOC scope ruling for not being suitable for high-quality print graphics because they had a thickness of 310 µm or more and a density of less than 0.70 g/cm^3.[28] In other words, the shipments value used by China based on Table IV-6 is likely over-inclusive.

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[25] *See* Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 Fed. Reg. 59212 (September 27, 2010) (Exhibit CHN-48) ("The merchandise covered by this order includes coated paper and paperboard in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher; weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except as described below), embossed, or perforated; and irrespective of dimensions.").

[26] *See* Memorandum to Christian Marsh from Susan H. Kuhbach, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China: Final Scope Rulings for Certain Playing Card Products and Certain Packaging Paperboard Products* (September 13, 2012) (Exhibit USA-97).

[27] *See* U.S. International Trade Commission, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia*, Investigation Nos. 701-TA-470-471 and 731-TA-1169-1170 (Final), USITC Publication 4192 at III-2, fn. 8 (November 2010) (Exhibit CHN-50) ("Respondents contended that coated packaging paperboard is covered by the scope of these investigations, and therefore, the Commission consider them part of the U.S. industry.").

[28] *See, e.g.*, USITC Publication 4192 at I-19 (Exhibit CHN-50) ("Some of the U.S. production of these three grades of coated packaging paperboard falls outside of the scope of these investigations because some products within these three grades are in the form of web rolls or fail to meet the brightness and/or the basis weight specifications described in the scope language."). *See also id.* at III-2, footnote 7 ("The Commission requested U.S. producer data

Solar Panels

40. **<u>To China and the United States</u>: Please comment on whether the relevant Solar Panels CVD order covers both crystalline silicon photovoltaic (CSPV) cells and CSPV modules. Likewise, please indicate whether you believe that, in the context of the two-step Armington methodology, it would be important to measure the size of the market using the same product definition in both the year-prior and the remedy year.**

<u>Response</u>:

34. Yes, the relevant Solar Panels CVD order covers both CSPV cells and CSPV modules. The CVD order states:

> The merchandise covered by this order is *crystalline silicon photovoltaic cells*, and *modules*, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.[29]

35. In the context of the two-step Armington methodology, it is important to measure the size of the market using the same product definition in both the year-prior and the remedy year. As explained in paragraphs 64-66 of the U.S. written submission, the first step of the two-step Armington methodology uses market share data from the year-prior to generate "counterfactual market shares" representing the relative competitiveness of the Chinese producers, U.S. domestic producers, and the rest of the world in the remedy year of 2017. These counterfactual market shares are used in the second step of the methodology to construct an alternative 2017 market, which is then used to simulate the effects of modifying the relevant CVD rates to be WTO-consistent in 2017. Since the year-prior data and the 2017 data are used in conjunction to construct an alternative 2017 market for each of the relevant products, it is important that the year-prior data and the 2017 data both cover the same product scope to ensure the consistency of the methodology and to obtain accurate results. As a best available method to measure the size of the relevant market using the same product definition covering both CSPV cells and CSPV modules, the United States has estimated the year-prior Solar Panels imports from China based

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from the following U.S. integrated producers… pertaining to products that meet the physical specifications listed in the scope (GE brightness, basis weight, and in sheet form) regardless of end use, specifically requesting information regarding coated packaging paperboard in sheet form that meet the physical specifications listed in the scope.").

[29] Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (December 7, 2012) (Exhibit CHN-44) (italics added). *See also* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 Fed. Reg. 63788 (October 17, 2012) (Exhibit CHN-43). For a complete description of the scope of the investigation, including excluded products, please see Appendix I of 77 Fed. Reg. 63788 (Exhibit CHN-43).

on the reference HTSUS codes (as explained above in the U.S. response to the Arbitrator's Question No. 32), and used the data for 2017 Solar Panels imports from China collected by USCBP on shipments subject to the CVD measure.

41. **To China: China has presented year-prior sales data for Solar Panels based on USITC Report 4360, Table IV-4 (Exhibit CHN-45). The figures in this table refer to "CSVP modules". In light of this reference, please comment on the following statement made by the arbitrator in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)* (DS471) in its decision: "[i]t is not uncommon for solar cells to be imported as such, for assembly into solar modules in the United States, and we therefore do not believe it would be appropriate to use the data reported for solar modules in the USITC investigation report and in Exhibit CHN-55 (BCI)."[30]**

Response:

36. This question is addressed to China.

42. **To China and the United States: In its calculation of US shipments of Solar Panels, the United States explains that it "does not include shipments of cells since most domestically produced cells are used in the production of modules by the same firm".[31] Likewise, USITC Publication 4360 states that "the vast majority of U.S. shipments of CSPV cells manufactured in the United States are internally consumed to produce CSPV modules."[32] However, the United States submits year-prior data that seems to include solar cells (WT/DS471ARB/Add.1, Annex E-1), and in response to the Arbitrator question No. 10, the United States explains the difference between the parties' year-prior figures by arguing that "China's proposed value of U.S. domestic shipments only includes the value for modules"[33], while the United States presumes that "[i]t is likely that the arbitrator in DS471 estimated the value of US domestic shipments of cells and derived its own estimate for U.S. domestic shipments of cells and modules".[34] Please comment or elaborate on these statements, with special reference to the assumption concerning domestic production patterns.**

Response:

37. As explained in paragraph 120 of the U.S. written submission, the United States has generally used the data that the arbitrator in DS471 chose to use to estimate the trade effects

[30] *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 7.22, footnote 299.

[31] Exhibit USA-60, p. 1.

[32] Exhibit CHN-45, p. IV-11, footnote 12.

[33] United States' response to Arbitrator's question No. 10.

[34] United States' response to Arbitrator's question No. 10.

attributable to the WTO-inconsistent AD rates on the seven products that were also at issue in DS471. Accordingly, for Solar Panels, the United States has used the 2011 U.S. domestic shipments value of **$804.853 million**, which was used by the arbitrator in DS471. As explained in Exhibit USA-44 (BCI),[35] the arbitrator in DS471 cited USITC Publication 4360[36] as the source of this value.[37] However, as explained in the U.S. response to the Arbitrator's Advance Question No. 10, USITC Publication 4360 reports $790.466 million[38] for the 2011 U.S. domestic shipments of CSPV modules – which led the United States to conjecture that the arbitrator in DS471 may have arrived at $804.853 million by deriving its own estimate of U.S. domestic shipments of CSPV cells and adding it to $790.466 million.

38. However, on further reflection, the United States considers that the arbitrator in DS471 may have actually misidentified the source of its estimate of $804.853 million. The correct source appears to be USITC Publication 4519,[39] rather than USITC Publication 4360. USITC Publication 4519 pertains to a more recent USITC investigation of CSPV cells and modules, and reports $804.853 million as the 2011 U.S. domestic shipments of CSPV modules.[40] The U.S. domestic shipments value reported in this 2015 USITC publication ($804.853 million) is higher than the U.S. domestic shipments value reported in USITC Publication 4360 ($790.466 million) presumably because the USITC was able to collect additional, more accurate information and update its data after the release of USITC Publication 4360 in 2012.

39. Having clarified the actual apparent source of the U.S. domestic shipments data used by the arbitrator in DS471, the United States does not disagree with China's approach of using the U.S. domestic shipments value for modules without separately accounting for U.S. domestic shipments of cells, given the particular domestic production patterns in the United States.[41] The year-prior value of $804.853 million is an appropriate estimate of U.S. domestic shipments of

[35] As updated in Exhibit USA-114 (BCI).

[36] *Crystalline Silicon Photovoltaic Cells and Modules From China*: Investigation Nos. 701-TA-481 and 731-TA-1190 (Final), USITC Publication 4360 (November 2012) (Exhibit CHN-45).

[37] *See* WT/DS471/ARB/Add.1, Annex E-1.

[38] *See* USITC Publication 4360, Table III-7 (Exhibit CHN-45).

[39] *Certain Crystalline Silicon Photovoltaic Products from China and Taiwan*: Investigation Nos. 701-TA-511 and 731-TA-1246-1247 (Final), USITC Publication 4519 (February 2015) (Exhibit USA-21).

[40] *See* USITC Publication 4519, Table III-8 (Exhibit USA-21). For purposes of clarification, in Exhibit USA-60, the United States referenced the value of $981.964 million, which is also found in Table III-8 of USITC Publication 4519, but that figure included export shipments. Accordingly, $804.853 million is the relevant value, and that is the U.S. domestic shipments estimate that the United States has used in its calculation of the level of nullification or impairment in this proceeding and that the arbitrator in DS471 appears to have used in its calculation in the DS471 arbitration proceeding.

[41] Notwithstanding this approach for U.S. domestic shipments for Solar Panels, the United States maintains that U.S. imports from China and U.S. imports from the Rest of the World (RoW) should separately account for imports of cells and imports of modules because the United States imports both cells and modules, and China has not provided any evidence that most imported cells are internally used in the production of modules by the same firm. *See* U.S. Response to Arbitrator's Advance Question No. 10.

subject merchandise for the Solar Panels CVD measure at issue because most domestically produced cells are internally used in the production of modules by the same firm, as explained in Exhibit USA-60 as well as in both USITC Publications 4360[42] and 4519.[43] In other words, separately estimating U.S. domestic shipments of cells and those of modules would effectively result in double-counting.

40. Accordingly, the reason for the different year-prior U.S. domestic shipments values used by the United States ($804.853 million)[44] and by China ($790.466 million)[45] is that the United States relied on a more recent USITC Publication 4519, on which the arbitrator in DS471 also evidently relied, while China used an older USITC Publication 4360.

43. **To the United States: In response to Arbitrator's question No. 10, the United States notes that the USCBP data on Solar Panels for the year-prior covers imports of both photovoltaic cells and modules. However, Exhibits USA-58 and USA-59 mention only "CSVP cells". Please confirm whether both photovoltaic cells and modules are included in the United States' data on imports from China given the descriptions of this data in the relevant exhibits.**

Response:

41. Both CSPV cells and CSPV modules are included in the data provided in Exhibits USA-58 and USA-59. The label was intended to be a shortened version of "CSPV Cells and Modules". The United States regrets any confusion.

44. **To China and the United States: In response to Arbitrator's question No. 10, the United States claims that, regarding Solar Panels, the arbitrator in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)* (DS471) used the aggregated value of imports from China based on company-specific data compiled by the USCBP "to identify imports made by companies subject to the China-wide rate, which was a necessary step to calculate the level of nullification or impairment in the Article 22.6 proceeding".[46] Please comment on whether the product scope and timing of the application of the anti-dumping measures at issue in DS471 are such that the USCBP data used by the Article 22.6 arbitrator in that dispute has**

[42] USITC Publication 4360, pp. III-3, III-7, IV-11 (Exhibit CHN-45).

[43] "Of the 9 responding U.S. producers, two firms, the petitioner SolarWorld and Suniva, reported that they manufactured CSPV cells in the United States during the period of investigation. SolarWorld and Suniva reported that they internally consume the majority of their CSPV cells in their U.S. production of CSPV modules." USITC Publication 4519, p. III-6 (Exhibit USA-21).

[44] *See* Exhibits USA-44 (BCI) and USA-117 (BCI).

[45] *See* Exhibit CHN-53, p. 2.

[46] United States' response to Arbitrator's question No. 10.

appropriate scope and temporal coverage to be applicable in the present Article 22.6 proceedings.

Response:

42. The United States has confirmed that the product scope and timing of the application of the antidumping measures at issue in DS471 are such that the USCBP data used by the Article 22.6 arbitrator in that dispute has appropriate scope and temporal coverage to be applicable in the present Article 22.6 proceeding.

43. With respect to product scope, the Solar Panels CVD measure at issue in this proceeding and the Solar Panels AD measure that was at issue in DS471 have the same product scope. The USDOC initiated the two investigations simultaneously on November 8, 2011, and as companion cases, the investigations "involve the same class or kind of merchandise from the same country".[47] Specifically, both AD and CVD investigations cover CSPV cells and CSPV modules.

44. With respect to temporal coverage, both AD and CVD measures on Solar Panels took effect on December 6, 2012.[48] Accordingly, the year-prior for both AD and CVD measures is 2011.[49] Moreover, because both AD and CVD measures have been in effect since December 6, 2012, and neither has been revoked to date, the two measures have the same temporal coverage. Therefore, the United States considers it correct and appropriate to use in this proceeding the same year-prior and remedy year data used by the arbitrator in DS471.

45. To the United States: In response to Arbitrator's question No. 13 regarding Pressure Pipe, Line Pipe, OCTG, Wire Strand, and Aluminum Extrusions, China questions the suitability of relying on USCBP data for the year-prior since "USCBP begins to request information from exporters of subject merchandise once a

[47] Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 Fed. Reg. 25400 (April 30, 2012) (Exhibit USA-114).

[48] The final antidumping and countervailing duties take effect and USCBP begins collecting cash deposits on the date of publication of the USITC's final injury determination in the *Federal Register*. *See* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (December 7, 2012) (Exhibit CHN-44). The USITC's final affirmative injury determination in both CVD and AD investigations was published on December 6, 2012. *See* Crystalline Silicon Photovoltaic Cells and Modules From China, 77 Fed. Reg. 72884 (December 6, 2012) (Exhibit USA-115).

[49] As explained above in the U.S. response to the Arbitrator's question No. 45, the year-prior Solar Panels import data used by the arbitrator in DS471 is obtained from USCBP and covers *all* 2011 imports from China under the relevant reference HTSUS codes (HTSUS 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000). *See* Exhibit USA-27. It is *not* based on subject merchandise, as USCBP does not track the value of shipments subject to AD or CVD measures in years before the duties are imposed, but is the best available data based on the reference HTSUS codes identified in the scope definition of the relevant AD and CVD investigations.

preliminary duty is imposed".[50] Please comment on this statement by China. Additionally, please confirm the scope of the information recorded by the USCBP in Exhibit USA-58, especially whether it corresponds to CSVP cells only or not, whether it refers to imports subject to the China-wide AD rate only or it includes the CVD rate also, and whether it covers the full year 2011 or only parts of it.

Response:

45. As explained in the U.S. response to Arbitrator's Advance Question No. 13, the United States uses data provided by USCBP for U.S. imports of Line Pipe and OCTG from China in the year-prior.[51] The USCBP data for U.S. imports of Line Pipe and OCTG from China in the year-prior, though, are not based on subject merchandise, as USCBP does not track the value of shipments subject to AD or CVD measures in years before the duties are imposed. Rather, as explained above in the U.S. response to Arbitrator's question No. 32, the year-prior data are based on the reference HTSUS codes that were subsequently used by USCBP to identify shipments that may be subject to the relevant duties.

46. The United States uses these HTSUS-based data because the same data were used by the arbitrator in DS471 to estimate trade effects of the AD measures on Line Pipe and OCTG from China, and the United States considers it appropriate to use the same data for the purpose of this proceeding. For background, the arbitrator in DS471 asked for company-specific import data for the year-prior, and because USCBP does not track the value of shipments of subject merchandise before the duties are imposed, the United States submitted data based on the reference HTSUS codes. For Line Pipe and OCTG, USCBP was the best and most comprehensive source of the HTSUS-based, company-specific import data.

47. Specifically, with respect to U.S. imports of Line Pipe from China, the United States uses an aggregated value of 2008 imports under the relevant reference HTSUS codes,[52] obtained from USCBP. The United States uses this USCBP data because that is the data used by the arbitrator in DS471 and also because the full year data for 2008 are not available in the relevant USITC report, USITC Publication 4055 (Exhibit CHN-11).

48. With respect to U.S. imports of OCTG from China, the United States uses an aggregated value of 2009 imports under the relevant reference HTSUS codes,[53] obtained from USCBP. The

[50] China's response to Arbitrator's Advance Question No. 13.

[51] With respect to U.S. imports of Pressure Pipe from China, the United States uses import data for 2008 from the U.S. Census Bureau (Exhibit USA-65) because the full year data for 2008 is not available in the relevant USITC report, USITC Publication 4064, which only reports data for January-September. With respect to U.S. imports of Wire Strand from China, the United States, like China, base its import data on USITC Publication 4162 (Exhibit CHN-28). With respect to U.S. imports of Aluminum Extrusions from China, the United States bases its data on a 2017 USITC report, USITC Publication 4677 (Exhibit CHN-37).

[52] HTSUS 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. *See* Exhibit USA-27.

[53] HTSUS 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60,

United States uses this USCBP data because that is the data used by the arbitrator in DS471 and also because the full year data for 2009 are not available in the relevant USITC report, USITC Publication 4124 (Exhibit CHN-23).

49. In response to the second part of the question, the Solar Panels data in Exhibit USA-58 are the same year-prior import data used by the arbitrator in DS471 and cover both CSPV cells and CSPV modules.[54] These data obtained from USCBP cover *all* 2011 imports from China under the relevant reference HTSUS codes[55] – which include imports subject to the China-wide AD rate as well as imports subject to the CVD rates, since the reference HTSUS codes necessarily capture products subject to the duties. The data cover the full year 2011. As explained above, because USCBP does not track the value of shipments of subject merchandise before the duties are imposed, the United States in DS471 complied with the arbitrator's request for company-specific import data by providing HTSUS-based data as reported by USCBP at the transaction level.

Pressure Pipe

46. **<u>To China and the United States</u>: The parties use different data sources for data on imports of Pressure Pipe in their respective year-prior years. China uses a USITC report (Exhibit CHN-4, Table IV-4), whereas the United States uses HTS aggregates obtained from the US Census Bureau (Exhibit USA-65). The USITC report relied upon by China in the context of import varieties states that "[d]ata on apparent U.S. consumption of WSS pressure pipe presented in table IV-4 are based on … U.S. imports from official statistics as adjusted to *include* WSS pressure pipe imported under HTS basket categories and to *exclude* pressure pipe greater than 14 inches and imports of non-subject mechanical tubing from Canada."[56] Conversely, the United States uses five HS10-level categories, which may not have been adjusted in the same way as indicated in the USITC report above. Please comment on any potential differences in scope between the two data sources.**

<u>Response</u>:

50. As explained in the U.S. response to the Arbitrator's Advance Question No. 13, the United States derived the relevant Pressure Pipe data using a methodology that mirrors the

7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50. *See* Exhibit USA-27.

[54] *See* U.S. response to Arbitrator's question No. 10.

[55] HTSUS 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. *See* Exhibit USA-27.

[56] *See* USITC Publication 4064, p. IV-6 (Exhibit CHN-4) (emphasis added).

methodology used by the arbitrator in DS471. For U.S. imports from China and from the rest of the world, the United States has used HTSUS aggregated data for 2008 from the U.S. Census Bureau (Exhibit USA-65), whereas China has used import data for 2007 from USITC Publication 4064 (Exhibit CHN-4). The United States has used the U.S. Census data because the corresponding full-year data for 2008 is not available in USITC Publication 4064, which only reports data for January-September for 2008.

51. The values of 2008 imports of Pressure Pipe reported in Exhibit USA-65 are based on the same reference HTSUS codes provided in USITC Publication 4064 (HTSUS 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085).[57] In providing the reference HTSUS codes, the USITC noted that those codes are "believed to include primarily subject products but also include modest quantities of nonsubject products."[58]

52. The United States is not able to determine exactly how the import values in Table IV-4 of USITC Publication 4064 were adjusted to exclude pressure pipe greater than 14 inches and nonsubject mechanical tubing from Canada. Likewise, the United States is not able to determine how the import values were adjusted to include welded stainless steel (WSS) pressure pipe imported under the "basket categories" (7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090). Moreover, it does not appear that these adjustments were made at a constant ratio: the values of imports of Pressure Pipe reported in Table IV-4 exceed the corresponding U.S. Census data for 2005, 2006, and 2007 by 8.8 percent, 7.5 percent, and 4.7 percent, respectively. As a result, the United States has not attempted to adjust the HTSUS aggregated data under 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 that it reported in Exhibit USA-65. In other words, the imports values provided in Exhibit USA-65 are exact aggregates of the HTSUS data reported by the U.S. Census without any adjustments.

Line Pipe, OCTG, and Steel Cylinders

47. <u>To the United States</u>: Please comment on the following criticisms by China of the United States' USCBP data on year-prior imports of Line Pipe, OCTG, and Steel Cylinders from China (Exhibit USA-58):[59]

a. China claims that the USCBP records subject imports only by following the imposition of the relevant measure, which typically does not happen on 1 January. According to China, this implies that "USCBP data will only have a partial tally of the full year of imports".[60]

[57] USITC Publication 4064, p. I-6 (Exhibit CHN-4).

[58] USITC Publication 4064, p. I-6, footnote 18 (Exhibit CHN-4).

[59] United States' response to Arbitrator's question No. 13; China's response to Arbitrator's question No. 13.

[60] China's response to Arbitrator's question No. 13.

b. China adds that even if the USCBP obtained import data prior to the imposition of the relevant CVD order, since no merchandise was "subject merchandise" during that period, the USCBP could not have differentiated between what would have later been considered as subject and non-subject merchandise under a given HTS code.[61] Therefore, China argues, prior to the CVD order, USCBP data is no more accurate than other import data (e.g. US Census Bureau data) recorded at the HTS code level.[62]

c. China adds that some Chinese exporting firms may exit the market after the imposition of the CVD order, and therefore the USCBP may not be aware of these firms if it starts to collect data on firms exporting subject merchandise only after the imposition of the CVD order, and cannot therefore identify imports from these firms from a time period predating the CVD order even if that data had been collected, leading to an undercounting of year-prior imports from China.[63]

Response:

53. The United States disagrees with the criticisms summarized in subparts a and c of the question. As explained above in the U.S. response to the Arbitrator's Question No. 32, China's concerns regarding the year-prior USCBP data provided by the United States stem from a misunderstanding about the nature of the data. Unlike the 2017 USCBP data provided by the United States, the year-prior USCBP data are not based on subject merchandise under specific CVD orders, but are based on the reference HTSUS codes that are used by USCBP to identify shipments that may be subject to the relevant duties. The year-prior USCBP data does not only represent the particular companies that shipped subject products under the relevant HTSUS codes following the imposition of the provisional duties, but are, rather, the full-year data of all shipments made by any company under the relevant HTSUS codes. Because USCBP does not track the value of shipments of subject merchandise prior to the imposition of provisional or final duties, the HTSUS-based data provide the best estimate. Accordingly, the United States has reported in Exhibit USA-58 the full year imports of Line Pipe, OCTG, and Steel Cylinders from China under the relevant reference HTSUS codes in the year-prior. Rather than being partial or under-inclusive, the HTSUS-based year-prior data provided by the United States would include all products that were imported into the United States throughout the year-prior under the relevant reference HTSUS codes, regardless of whether any exporters exited the market following the imposition of the CVD measures.

[61] China's response to Arbitrator's question No. 13, para. 54.

[62] China's response to Arbitrator's question No. 13.

[63] China's response to Arbitrator's question No. 13.

54. The same HTSUS-based year-prior USCBP data was used by the arbitrator in DS471 to estimate trade effects of the AD measures at issue,[64] and the United States considers it appropriate to use the same data and data methodology for the purpose of this proceeding.[65] The United States obtained this HTSUS-based data from USCBP because USCBP was the best source of comprehensive HTSUS-based import data that could be sorted by company, as requested by the arbitrator in DS471.

55. With respect to the criticism summarized in subpart b of the question, China is not incorrect. In DS471, the United States initially attempted to obtain the HTSUS-based import data from U.S. Census, but subsequently relied on USCBP's database due to certain technical limitations and logistical issues with the U.S. Census database at the time and the urgent timing of the DS471 arbitrator's request.

Steel Cylinders

48. **<u>To China and the United States</u>: Since Form 10-K does not separate revenue by different sub-units of TriMas Corporation, China assumes that half of the reported 2010 revenue of TriMas Corporation's Engineered Components Division is attributable to Norris Cylinder, and that two-thirds of Norris Cylinder's estimated revenue stems from domestic sales of steel cylinders.[66] The United States assumes that Norris Cylinder's entire estimated revenue for 2011 stems from US domestic sales.[67] Please elaborate on these different assumptions concerning the share of Norris Cylinder's domestic sales.**

<u>Response</u>:

56. Since the submission of the U.S. responses to the Arbitrator's Advance Questions, the United States has been able to obtain actual U.S. domestic sales data of Norris Cylinder. Exhibit USA-116 (BCI) shows that Norris Cylinder's U.S. domestic sales of High Pressure Steel Cylinders was approximately [[***]] in 2010[68] and [[***]] in 2011. Given the availability of Norris Cylinder's data, the United States requests that the Arbitrator use the actual U.S. domestic sales value of [[***]] to calculate the overall value of the year-prior U.S. domestic shipments of High Pressure Steel Cylinders. Doing so would obviate the need to make any assumptions concerning the value of Norris Cylinder's domestic sales.

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[64] *See* WT/DS471/ARB, para. 7.22.

[65] As background, the arbitrator in DS471 asked for company-specific import data for the year-prior, and because USCBP does not track the value of shipments of subject merchandise before the duties are imposed, the United States submitted data based on the reference HTSUS codes.

[66] See Exhibit CHN-94.

[67] United States' response to Arbitrator's question No. 14.

[68] This amount is [[***]] of Norris Cylinder's estimated revenue in 2010 ($56.5 million, which is half of TriMas Engineer Components' net sales ($113 million)).

49. **<u>To China and the United States</u>: As regards China's data on year-prior imports of Steel Cylinders from China (Exhibit USA-74), China uses the primary HS10 tariff code HS 7311.00.0030 in USITC Publication 4328[69] to download import data from USITC DataWeb.[70] This USITC publication notes, however, that "[s]ubject merchandise may also be imported under HTSUS statistical reporting numbers 7311.00.0060 or 7311.00.0090."[71] Please comment on the appropriateness of the product scope in these data.**

<u>Response</u>:

57. The United States also has used the value of imports under HTSUS 7311.00.0030 to estimate the year-prior imports of Steel Cylinders from China.[72] Subject Steel Cylinders are primarily imported under HTSUS 7311.00.0030. Although, as noted in USITC Publication 4328, subject merchandise may also be imported under the two additional HTSUS codes, these codes are primarily included to inform USCBP officials of common misclassifications. The two HTSUS codes are basket categories that mostly consist of products that are not subject to the Steel Cylinders CVD measure.

58. Steel Cylinders subject to the relevant CVD measure are high-pressure steel cylinders for compressed or liquefied gas that are seamless, are manufactured to meet specific U.S. Department of Transportation ("DOT") safety requirements, and have an approved DOT type marking in accordance with the requirements under section 178.36 through 178.68 of Title 49 of the Code of Federal Regulations ("CFR").[73] The subject Steel Cylinders cannot be classified under HTSUS 7311.00.0060 or 7311.00.0090 because cylinders classified under either of those HTSUS codes are either not seamless or not marked as meeting the specific DOT specifications and the requirements under the relevant sections of 49 CFR, as shown below:

[69] See Exhibit CHN-41.

[70] China's Methodology Paper, para. 94.

[71] Exhibit CHN-41, p. 36.

[72] *See* Exhibit USA-58 (BCI).

[73] *See* USITC Publication 4328, p. 4 (Exhibit CHN-41) ("seamless steel cylinders designed for storage or transport of compressed or liquefied gas ('HPSCs'). HPSCs are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ('DOT') approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. HPSCs covered by the investigation have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings. Excluded from the scope of the investigation are HPSCs manufactured to UN-ISO-9809-1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the investigation are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.").

- HTSUS 7311.00.00: Containers for compressed or liquefied gas, of iron or steel:
    - Certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49 CFR or under a specific exemption to those requirements:
        - HTSUS 7311.00.0030: *seamless* steel containers not overwrapped and *marked with one of the specified DOT markings* (DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T or DOT-E)
        - HTSUS 7311.00.0060: containers that are either *not* seamless steel containers not overwrapped, or *not* marked with one of the specified DOT markings
    - Other:
        - HTSUS 7311.00.0090: other containers falling under HTSUS 7311.00.00 that are *not* certified to meet the specified 49 CFR sections

C. ELASTICITY ESTIMATES FOR CERTAIN PRODUCTS

50. <u>To the United States</u>: The United States sources its total demand elasticity (for OCTG) and domestic supply elasticity (for Print Graphics, Aluminum Extrusions and Solar Panels) from more recent USITC reports than does China. It is unclear whether the more recent USITC reports advanced by the United States base their elasticity estimates on a longer time period and thus include more data. Please comment.

<u>Response</u>:

59. The elasticity estimates reported in the more recent USITC reports are of greater relevance because any changes in the market since the original investigations have been incorporated into the updated elasticity estimates. These estimates are thus more representative of the relevant market in the remedy year (2017). The elasticity estimates provided in the USITC sunset reviews of Aluminum Extrusions[74], Solar Panels[75], and Print Graphics[76] are based on the most recent five-year period of review. The demand elasticity estimate provided in the final investigation of OCTG from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam[77] was the latest available estimate for demand elasticity of OCTG in the

[74] USITC Publication 4677 (Exhibit CHN-37).

[75] USITC Publication 4874 (Exhibit CHN-46).

[76] USITC Publication 4656 (Exhibit CHN-51).

[77] USITC Publication 4489 (Exhibit CHN-24).

United States, and is based on the most recent three-year period of investigation.[78] All parties to the relevant investigations had the opportunity to comment on these estimates as well as the underlying data, and the USITC has taken these comments into account in determining the final elasticity estimates.

51. **To China and the United States: China and the United States submit the same minimum and maximum values (2 and 4, respectively) for the domestic supply elasticity of Print Graphics, but the midpoint values provided differ (3 according to China and 4 according to the United States). The parties also submit the same minimum and maximum values (3 and 5, respectively) for their elasticity of substitution parameter of Print Graphics, but the midpoint values provided differ (4 according to China and 3 according to the United States). Please confirm or clarify these figures.**

Response:

60. In Exhibit USA-46, the United States incorrectly transposed the elasticity ranges for Print Graphics between the domestic supply elasticity and the elasticity of substitution. The correct range for the domestic supply elasticity is 3-5, and the correct range for the elasticity of substitution is 2-4.[79] The United States regrets these errors. Despite these typographical errors in the elasticity ranges, the midpoints in Exhibit USA-46 were correctly reported, and the United States has used these correct midpoints in its economic modelling analysis. As a result, the errors in the stated elasticity ranges did not affect the accuracy of the estimated level of nullification or impairment.

D. CHINA'S NET OF DUTY ADJUSTMENT FOR THE CALCULATION OF NULLIFICATION OR IMPAIRMENT

52. **To China: China submits product-specific Producer Price Index (PPI) data.[80] Please elaborate on the source of this data submitted in Exhibit CHN-103.**

Response:

[78] Since the submission of the U.S. written submission and the U.S. responses to the Arbitrator's Advance Questions, the USITC has published a review of OCTG from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. *See Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Investigation Nos. 701-TA-499-00 and 731-TA-1215-1216, 1221-1223 (Review), USITC Publication 5090 (July 2020) (Exhibit USA-148). This USITC Publication 5090 reports the same demand elasticity that the United States has used based on USITC Publication 4489. However, the United States notes that the domestic supply elasticity appears to have changed from a midpoint of 3 (range of 2-4) to a midpoint of 5 (range of 4-6). *See* USITC Publication 5090, pp. II-29 and II-30 (Exhibit USA-148).

[79] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia*, Investigation Nos. 701-TA-470-471 and 731-TA-1169-1170 (Review), USITC Publication 4656, p. II-20-II-21 (December 2016) (Exhibit CHN-37).

[80] See Exhibit CHN-103.

61. This question is addressed to China.

53. **<u>To the United States</u>: As regards USCBP data for 2017 submitted by the United States, the United States notes that this is the same data as it had submitted in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)* (DS471). Please indicate whether the product scope of this USCBP data matches the definition of subject product scope covered by the CVD measures at issue in these proceedings.**

<u>Response</u>:

62. Yes, the product scope of the USCBP data matches the definition of subject product scope covered by the CVD measures at issue in these proceedings. This is because the product scopes of the AD proceedings for the seven products that were also at issue in DS471 (*i.e.*, Aluminum Extrusions, Line Pipe, OCTG, Print Graphics, Seamless Pipe, Solar Panels, and Steel Cylinders) are identical to the product scopes of the CVD proceedings for the same products. Exhibit USA-119 provides detailed descriptions for the relevant product scopes.

Line Pipe and OCTG

54. **<u>To the United States</u>: In footnotes 8 and 12 of Exhibit USA-60 the United States refers to the source of the information for its calculation of domestic shipments of OCTG and line pipe as "*https://prestonpipe.com*". Please submit the relevant sections of the website in the form of an exhibit along with an indication of the date on which it was accessed.**

<u>Response</u>:

63. The United States submits the requested information as Exhibits USA-135 (BCI) and USA-136 (BCI). The information referenced in footnotes 8-10 of Exhibit USA-60 is found in Exhibit USA-135 (BCI), which is a compilation of Preston Pipe & Tube Report's OCTG Market Analysis published in 2010, 2011, and 2018. The information referenced in footnote 12 of Exhibit USA-60 is found in Exhibit USA-136 (BCI), which is a compilation of Preston Pipe & Tube Report's API Line Pipe Market Analysis published in 2009, 2010, and 2018. The information in Exhibits USA-135 (BCI) and USA-136 (BCI) is BCI as it comes from a part of the Preston Pipe website that is restricted to subscribers.

Kitchen Shelving

55. **<u>To the United States</u>: China has objected to the use of the United States' USCBP data on remedy year (2017) imports of Kitchen Shelving from China, arguing that this data is unverifiable by China, and has asked the United States to report the**

data by exporter.[81] Could the United States provide exporter-specific USCBP data for 2017 imports of Kitchen Shelving from China?

Response:

64. The United States provides the requested data in Exhibit USA-144 (BCI). This USCBP data pertains to all 2017 imports of Kitchen Shelving from China and is sorted by exporter.

65. The United States again notes that China has provided no basis to doubt the veracity of the USCBP data, which is drawn from the same database as the information used by the arbitrator in DS471.[82] China could verify the accuracy of the USCBP data by comparing the data provided in Exhibit USA-144 (BCI), with export data compiled by its own customs agency, General Administration of Customs China ("GACC"). As explained in the U.S. response to the Arbitrator's Advance Question No. 15, the GACC, like USCBP, collects data on exports from China.

66. Lastly, it appears to the United States that China could have verified the non-exporter-specific, aggregate imports data previously provided by the United States in Exhibit USA-66 (BCI), without separately requiring exporter information, based on information already available to China. For instance, the GACC requires Chinese exporters to report in the Imported and Exported Goods Customs Declaration Form[83] the product name of the commodity being exported and detailed information on the physical description, specifications, end uses, and tariff classifications of the exported commodity, which would allow China to identify export shipments falling within the scope of the relevant CVD measure. Accordingly, it appears to the United States that China could filter its GACC export records based on the commodity names and descriptions, as well as the requisite tariff classification codes, to identify the export shipments meeting the product description that defines the scope of a U.S. CVD measure and thus likely subject to the CVD measure.

[81] China's response to Arbitrator's question No. 25.

[82] *See* WT/DS471/ARB, paras. 7.28-7.29; WT/DS471/ARB/Add.1, Annex E-8.

[83] *See* Exhibits USA-145 and USA-146 for the relevant excerpts of the GACC Standards for Completion of Customs Declaration Form for Imported and Exported Goods, in the Chinese original text and in an English translation. According to the document, Item 34 of the Customs Declaration Form requires a tariff classification code at the most granular, 10-digit level. Item 35 requires commodity name, specifications, and model; commodity specifications and model must be "sufficiently detailed to meet the requirements for Customs to classify [the commodity], review price, and administer licenses" and "consistent with the contracts, invoices, and other related documents submitted by the consignee, consignor, or the entrusted customs declaration enterprise" of the goods. Details sufficient for classifying the goods would often entail product material or ingredients, end uses, power source, weight, and dimensions – which could be used to identify goods meeting the product description that defines the scope of a U.S. CVD order.

OCTG

56. **<u>To the United States</u>: According to Exhibit USA-60, the average price of certain OCTG in 2017 was USD 1,594.53 per ton and the estimated US production of certain OCTG in 2017 was 2,527,390 net tons. These would amount to a total of USD 4,029,999,177 for estimated US Shipments in 2017. The United States notes that the estimate "was then slightly rounded down to $4 billion".[84] Please explain the reasons for this rounding down.**

<u>Response</u>:

67. The United States rounded down $4.029999177 billion to $4 billion simply in the interest of convenience rather than for any substantive reason. The United States considered this rounded-down value to be a reasonable estimate because the difference of $0.029999177 billion amounts to only about 0.7 percent of the calculated total and also because it is based on an estimated production quantity rather than an actual quantity.

57. **<u>To China and the United States</u>: The United States submitted an estimated 2017 US shipments figure of USD 4,000,000,000 for OCTG.[85] According to USITC Publication 4489[86], the actual US domestic sales of OCTG in 2011, 2012, and 2013 range from USD 5,286,771,000 to USD 5,867,506,000. Please comment on this difference and the possible reasons behind it.**

<u>Response</u>:

68. The United States has estimated the value of U.S. shipments by multiplying the average U.S. price by the corresponding estimated U.S. production quantity based on proprietary data provided by one of the most credible sources of information about the U.S. steel pipe and tube industries.[87] This is also the same value used by the arbitrator in DS471 based on the same data and same estimation methodology.[88]

69. The value of estimated 2017 U.S. domestic shipments is significantly lower than the actual U.S. domestic sales in 2011-2013, likely because the average price of OCTG decreased

[84] Exhibit USA-60.

[85] Exhibit USA-45.

[86] Exhibit CHN-24.

[87] Exhibits USA-60, USA-134 (BCI), and USA-135 (BCI). The USITC has relied on data from Preston Pipe & Tube Report in multiple OCTG investigations. *See Certain Oil Country Tubular Goods from China*, Investigation No. 701-TA-463 (Final), USITC Publication 4124 (January 2010), p. VII-3 (Exhibit CHN-23); *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Investigation Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223 (Final), USITC Publication 4489 (September 2014), pp. II-10, II-13, VII-36, VII-38 (Exhibit CHN-24).

[88] *See* WT/DS471/ARB/Add.1, Annex E-8.

during that interval. According to the USITC, the unit value of U.S. producers' U.S. shipments declined from $1,691 per short ton in 2011, to $1,567 per short ton in 2013,[89] and then declined even more to $1,280 per short ton in 2017.[90]

70. In fact, a recently released USITC publication reported 2017 U.S. domestic shipments of OCTG to be approximately $3,099,276,000 in value,[91] which is even lower than the $4 billion estimate. Given the availability of the 2017 U.S. domestic shipments value in a related USITC OCTG review, the United States requests that the Arbitrator use this actual value in its calculations.

Wire Strand

58. **<u>To China and the United States</u>: As regards the United States' data on remedy year (2017) sales of the US domestic variety of Wire Strand, please comment on the reliability of data from the World Steel Association (Exhibit USA-85) and the estimation method which uses the ratio of inputs in the production of wire strand to the production of wire strand (Exhibit USA-61).**

<u>Response</u>:

71. The World Steel Association's ("WSA's") annual Steel Statistical Yearbook (Exhibit USA-85) is one of the most credible sources of steel industry-related information, as a comprehensive compilation of data and statistics collected from the WSA's member steel industry associations and other international organizations. For U.S. steel industry statistics, the WSA relies on the American Iron and Steel Institute ("AISI").[92] The AISI is the premiere U.S. steel industry association that regularly compiles domestic shipment statistics from its member steel companies, which includes most U.S. steel producers.[93] Accordingly, the United States considers it reasonable to use these publicly available data from credible sources, especially given the lack of more specific industry-level or firm-level production information that is publicly available.

72. Further, the U.S. methodology for estimating U.S. domestic sales of Wire Strand is systematic and logical. As explained in Exhibit USA-61, the United States first calculates the

[89] *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Investigation Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223 (Final), USITC Publication 4489 (September 2014), Table IV-9 (Exhibit CHN-24).

[90] *See Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Investigation Nos. 701-TA-499-00 and 731-TA-1215-1216, 1221-1223 (Review), USITC Publication 5090 (July 2020), Table III-8 (Exhibit USA-148).

[91] *Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Investigation Nos. 701-TA-499-00 and 731-TA-1215-1216, 1221-1223 (Review), USITC Publication 5090 (July 2020), Table III-8 (Exhibit USA-148).

[92] *See* Exhibit USA-142.

[93] *See* Exhibit USA-143.

average annual share of wire strand production relative to input wire rod production, based on the 2007-2009 annual domestic production quantities of wire strand reported in USITC Publication 4569 (Exhibit USA-25), and the 2007-2017 annual domestic production quantities of wire rod reported in the WSA's 2017 Steel Statistical Yearbook (Exhibit USA-85). This average annual share is then applied to the WSA's annual wire rod production quantities to generate the year-to-year projections of the corresponding wire strand production quantities.

73. Next, the United States calculates the average annual share of wire strand shipments that are sold to customers as opposed to being placed into inventory, based on the 2007-2009 annual domestic shipment quantities and domestic production quantities of wire strand, both of which are reported in USITC Publication 4569. This average annual share is then applied to the year-to-year projections of the wire strand production quantities (generated in the first step) to generate the year-to-year projections of the corresponding domestic shipments quantities of wire strand. This methodology utilizes the best available data to generate reasonable estimates of domestic sales of Wire Strand.

Seamless Pipe

59. **<u>To the United States</u>: China has criticised the United States' estimates for remedy year (2017) sales of the US domestic variety of Seamless Pipe as covering a narrower scope of products than the relevant CVD order. According to China, "[t]he product scope in the unrelated case has 26 HTS codes, i.e. only 68% of those covered by the original case."[94] China therefore suggests scaling the United States' figure up by a factor of 1/0.68.[95] Please comment on the product scope of the relevant data and on China's scaling proposal.**

<u>Response</u>:

74. The 68 percent ratio to which China refers appears to be the ratio of the number of reference HTSUS codes in the product scope of a 2017 CVD investigation on seamless pipe from Japan and Romania (26 HTSUS codes)[96] relative to the number of reference HTSUS codes in the product scope of the CVD investigation on seamless pipe from China, which is at issue in this proceeding (38 HTSUS codes).[97] In other words, 68 percent does not represent the ratio of domestic shipments of subject seamless pipe relative to domestic shipments in the other, more recent seamless pipe investigation. It is unreasonable to assume that each particular HTSUS code would represent an equal domestic shipments value. Despite China's assertion, the fact that the U.S. estimate for 2017 domestic shipments happens to be 69 percent of the 2009 domestic

[94] China's response to Arbitrator's Question No. 24.

[95] China's response to Arbitrator's Question No. 24.

[96] *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania*, Investigation Nos. 731-TA-847 and 849 (Third Review), USITC Publication 4731 (October 2017), pp. I-15–I-17 (Exhibit CHN-105).

[97] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China*, Investigation Nos. 701-TA-469 and 731-TA-1168 (Final), USITC Publication 4190 (November 2010), p. I-10 (Exhibit CHN-32).

shipments value is a mere coincidence and has no relation to the relative number of reference HTSUS codes in the two seamless pipe investigations.

75. As the USITC reports in both investigations explain, reference HTSUS codes are "provided for convenience and customs purposes only," and it is the USDOC's description of product scope that is "dispositive," rather than the HTSUS codes.[98] Under the USDOC's product scopes for the respective investigations, both the subject seamless pipe from China[99] and the subject seamless pipe from Japan[100] are less than or equal to 16 inches in outside diameter. The subject seamless pipe from Romania does not include large diameter seamless pipe (*i.e.*, greater than 4.5 inches up to and including 16 inches in outside diameter). The USITC report for the Japan and Romania investigation includes data for both small diameter seamless pipe from Japan[101] and large diameter seamless pipe from Japan.[102]

76. As explained in Exhibit USA-60, the United States uses the domestic shipments data reported in the USITC report from the Japan and Romania investigation (USITC Publication 4731)[103] to estimate the 2017 domestic shipments of subject seamless pipe because that data is more recent than the latest available USITC report from the China investigation (USITC Publication 4595)[104] and reports the value of domestic shipments from January to March 2017, which the United States has annualized to estimate 2017 domestic shipments for the full year.

77. Given that the product scopes of the investigations of seamless pipe from China and from Japan are nearly identical,[105] it is reasonable and more accurate to rely on the domestic shipments data from the 2017 Japan and Romania investigation to estimate the actual 2017 domestic shipments of subject seamless pipe at issue in this proceeding.

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[98] U.S. International Trade Commission, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China: Investigation Nos. 701-TA-469 and 731-TA-1168 (Final)*, USITC Publication 4190 (November 2010), p. I-10 (Exhibit CHN-32). *See also* U.S. International Trade Commission, *Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania: Investigation Nos. 731-TA-847 and 849 (Third Review)*, USITC Publication 4731 (October 2017), p. 10 (Exhibit CHN-105).

[99] *See* USITC Publication 4190, p. I-8 (Exhibit CHN-32).

[100] *See* USITC Publication 4731, pp. I-14–I-17 (Exhibit CHN-105).

[101] USITC Publication 4731, Tables I-14 and I-16 (Exhibit CHN-105).

[102] USITC Publication 4731, Tables I-15 and I-17 (Exhibit CHN-105).

[103] USITC Publication 4731 (Exhibit CHN-105).

[104] *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China*, Investigation Nos. 701-TA-469 and 731-TA-1168 (Review), USITC Publication 4595 (February 2016) (Exhibit USA-16).

[105] The physical descriptions and size ranges for the subject seamless pipe from China and the subject seamless pipe from Japan are the same. The product standards also mostly correspond, only except that the subject seamless pipe from China includes seamless pipe produced to the ASTM A-1024 specifications (unlike the subject seamless pipe from Japan), and the subject seamless pipe from Japan includes small diameter seamless pipe produced to the ASTM A-335 specifications (unlike the subject seamless pipe from China).

Aluminum Extrusions

60. **<u>To the United States</u>: The United States bases its estimates of remedy year (2017) sales of the US domestic variety of Aluminum Extrusions on 2015 US domestic sales data in USITC Publication 4677[106] scaled up by year-on-year growth rates used in *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)* (DS471).[107] Please provide the source for these growth rates and an explanation of how they were calculated.**

<u>Response</u>:

78. The United States has developed the 1.8 percent growth rate for 2015-16 and the 3.1 percent growth rate for 2016-17 based on the following business proprietary survey data from the Aluminum Association.

Year	U.S. and Canadian Shipments of Aluminum Extruded Products (in Thousands of Pounds)	Growth Rate
2015	[[***]]	--
2016	[[***]]	1.8%
2017	[[***]]	3.1%

Source: The Aluminum Association, "U.S. and Canadian Producer Shipments of Aluminum Extruded Products".

79. The figures under "U.S. and Canadian Shipments of Aluminum Extruded Products" represent aggregated producer shipment data, in terms of quantity, for 2015, 2016, and 2017. They include Canadian shipments because the Aluminum Association does not break out U.S. shipments from the Canadian shipments [[***]].

80. The 2015-16 growth rate is calculated by dividing the difference between the 2015 and 2016 shipment quantities by the 2015 shipment quantity. Similarly, the 2016-17 growth rate is calculated by dividing the difference between the 2016 and 2017 shipment quantities by the 2016 shipment quantity.

61. **<u>To China and the United States</u>: The United States' estimation method for data on remedy year (2017) imports of Aluminum Extrusions from the rest of the world is based on adjusting HTSUS data relying on 2011 product codes to represent the HTS codes that the United States considers. Please comment on the appropriateness of relying on these HTS codes, including in terms of their product scope.**

<u>Response</u>:

[106] Exhibit CHN-37, Table I-9.

[107] *See* Exhibit USA-45.

81. The United States has used USCBP data on 2017 imports of Aluminum Extrusions from China because it represents the actual imports subject to the relevant CVD measure. USCBP did not collect data on the actual Aluminum Extrusion imports from the rest of the world. Therefore, the United States has used HTSUS aggregated data instead. This is the same data used by the arbitrator in DS471.[108] It is appropriate to rely on these reference HTSUS codes from the 2011 USITC investigation[109] because the same codes were used in the 2017 USITC sunset review of the CVD measure at issue.[110]

Steel Cylinders

62. **<u>To the United States</u>: In Exhibit USA-60, the United States refers to information reported by TriMas Corporation for 2017 for the calculation of US shipments of steel cylinders for the remedy year. Please clarify if such information is contained in TriMas Corporation's 2018 SEC Annual Report (Form 10-K) submitted by China as Exhibit CHN-56. If not, please submit the relevant evidence.**

<u>Response</u>:

82. Yes, TriMas reported on page 36 of Exhibit CHN-56 that its Engineered Components division had $127.3 million in net sales in 2017: "*Engineered Components.* Net sales in 2017 increased approximately $8.5 million, or 7.2%, to $127.3 million, as compared to $118.8 million in 2016."

83. As explained above in the U.S. response to the Arbitrator's Question No. 48, the United States has been able to obtain actual U.S. domestic sales data of Norris Cylinder. Exhibit USA-116 (BCI) shows that Norris Cylinder's U.S. domestic sales of High Pressure Steel Cylinders was approximately [[***]] in 2017. Given the availability of Norris Cylinder's data, the United States requests that the Arbitrator use the actual U.S. domestic sales value to calculate the overall value of the 2017 U.S. domestic shipments of High Pressure Steel Cylinders. Doing so would obviate the need to make any assumptions concerning the value of Norris Cylinder's domestic sales.

Solar Panels

63. **<u>To China</u>: In response to Arbitrator's question No. 23, the United States indicates that the figure provided by China for the total remedy year (2017) sales of Solar Panels in the US market is not contained in the USITC report cited by China.**

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[108] *See* WT/DS471/ARB/Add.1, Annex E-8.

[109] HTSUS 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. *See Certain Aluminum Extrusions from China*, Investigation Nos. 701-TA-475 and 731-TA-1177 (Final), USITC Publication 4229 (May 2011), p. I-7 (Exhibit CHN-36).

[110] HTSUS 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. *See Certain Aluminum Extrusions from China*, Investigation Nos. 701-TA-475 and 731-TA-1177 (Review), USITC Publication 4677 (March 2017), pp. 6-7, I-6 (Exhibit CHN-37).

Rather, the United States maintains, it appears that China's estimate was based on the unsubstantiated assumption that imports constitute 90% of the US market.[111] Please comment on this assertion by the United States.

Response:

84. This question is addressed to China.

64. To China: Please comment on the reliability of the United States' data sources and estimation method (Exhibit USA-60) for data on the total remedy year (2017) sales of the US domestic variety of Solar Panels.

Response:

85. This question is addressed to China.

65. To the United States: In response to Arbitrator's question No. 10, the United States explains that the data provided for imports of Solar Panels from China and the rest of the world for the year prior to the imposition of the CVD measures covers both photovoltaic cells and modules. However, the data submitted by the United States on 2017 imports of Solar Panels (Exhibits USA-64 and USA-65) is labelled "CSPV *Cells*". Please explain, especially in light of the product scope of the CVD order at issue.

Response:

86. Both CSPV cells and CSPV modules are included in the 2017 Solar Panels figures reported in Exhibit USA-64, covering all subject merchandise for the Solar Panels CVD measure at issue. The label was intended to be a shortened version of "CSPV Cells and Modules". The United States regrets any confusion.

87. Exhibit USA-65 does not label any information "CSPV Cells". Rather, the Exhibit pertains to Kitchen Shelving, Pressure Pipe, and Wire Strand.

E. IDENTIFICATION OF THE PORTION OF THE CVD RATE ATTRIBUTABLE TO INPUT SUBSIDY PROGRAMME

66. To the United States: In response to Arbitrator's question No. 28, the United States explains that the LTAR rate for the provision of wire rod with respect to Fasten Companies was modified following the publication of the final determination to correct a ministerial error in response to petitioners' allegations. According to the United States, as a result of the correction of this ministerial error, "the correct LTAR rate for wire rod for Fasten Companies is 6.75 percent (as opposed to

[111] United States' response to Arbitrator's question No. 23, and in particular fn. 149 to para. 138.

China's 6.18 percent)".[112] Please provide evidence that the correction of the ministerial error, or the allegation requested by the petitioners, resulted in an increase of 0.57 percentage points in the LTAR rate for the Fasten Companies. Also, please elaborate on how the 0.57 percentage point change in the WTO-inconsistent CVD rate translates directly into an equal change in the LTAR rate.

Response:

88. The United States is providing to the Arbitrator as Exhibit USA-137 a USDOC memorandum publishing the calculation of the amended LTAR rate as a result of the correction of the ministerial error.[113] The amended final calculation memorandum, which was issued in the CVD investigation in 2010 but placed on the electronic public record five years later, prior to the final results of the Section 129 proceeding, shows that the initial U.S. assumption (*i.e.*, that the correction of the ministerial error resulted in an increase of 0.57 percentage points in the LTAR rate for the Fasten Companies) was incorrect. The United States regrets this error. As shown in the memorandum, the LTAR rate for the Fasten Companies was 6.59 percent, instead of 6.75 percent as previously submitted by the United States. In other words, the correction of the ministerial error resulted in an increase of 0.41 percentage points, not 0.57 percentage points. Accordingly, the counterfactual WTO-consistent CVD rate should be 16.69 percent, instead of 16.605 percent as previously submitted by the United States. The table below summarizes the changes:

Respondent	WTO-Inconsistent CVD Rate	LTAR Rate	Counterfactual WTO-Consistent CVD Rate	Note
Fasten Group	9.42	6.59 (not 6.75 as previously provided)	2.83 (not 2.67 as previously provided)	
Xinhua Metal Products	45.85	15.31	30.54	
All Others	27.64	10.95 (not 11.03 as previously provided)	16.69 (not 16.605 as previously provided)	*The All Others counterfactual rate is the simple average of the counterfactual rates for Fasten and Xinhua.*

89. The correction of the LTAR rates and the counterfactual WTO-consistent CVD rates has only a minor impact on the estimate of nullification or impairment attributable to the CVD

[112] United States' response to Arbitrator's question No. 28.

[113] U.S. Department of Commerce, International Trade Administration, Memorandum to The File, Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437), Placement of Final Calculation on Record of Proceeding – Fasten Companies (October 2, 2015) (Exhibit USA-137).

measure on Wire Strand. Under the incorrect All Others LTAR rate and WTO-consistent CVD rate, the United States estimated nullification or impairment of $0.267 million. Using the correct rates, the United States now estimates $0.269 million.[114]

90. The United States submits Exhibits USA-138, USA-139, and USA-140 (BCI) that update Exhibits USA-100, USA-101, and USA-106 (BCI), respectively, to reflect the corrected rates.

67. <u>To China</u>: Please comment on the assumption underlying the United States' adjustment of the revised LTAR rates suggested for the provision of wire rod with respect to the Fasten companies and All Others, as explained by the United States in its response to Arbitrator's question No. 28.

<u>Response</u>:

91. This question is addressed to China.

F. COUNTERFACTUAL WTO-CONSISTENT CVD RATES FOR THE "ALL OTHERS" CATEGORY

68. <u>To the United States</u>: According to paragraph 52 of the United States' written submission, the United States calculated the All Others WTO-inconsistent CVD rate for OCTG as a weighted average of the four individually investigated respondents, and the All Others WTO-consistent CVD rate as the simple average of the four individually investigated respondents for the reason explained therein. However, the All Others LTAR rate contained in Exhibit USA-100 does not contain a figure, stating "N/A" instead. Please explain why the United States does not submit an All Others LTAR rate for OCTG, and especially comment on whether it would be possible to use a simple average of the four individually investigated respondents for calculating such All Others LTAR rate. In the absence of such All Others LTAR rate, please explain how this would impact or relate to the statement made in paragraph 29 of the United States' written submission that the "appropriate counterfactual analysis would entail modifying the relevant CVD rates by deducting the portion of the total CVD rate attributable to input subsidy programs".

<u>Response</u>:

92. The United States did not submit an All Others LTAR rate for OCTG because in the underlying final and amended final CVD determinations for OCTG, the USDOC did not calculate a separate All Others LTAR rate and thus did not rely on one to determine the All Others net subsidy rate (*i.e.*, the All Others WTO-inconsistent CVD rate for the purpose of this proceeding). Rather, the USDOC determined the All Others net subsidy rate by calculating the

[114] As the United States has reported estimates of nullification or impairment up to two digits after the decimal points, the estimate for Wire Strand remains the same, rounding to $0.27 million.

weighted average of the four individually-investigated respondents' net subsidy rates based on their relative sales of subject merchandise in the United States, using sales data that are BCI.[115]

93. The United States replicated this methodology to the best of its abilities in calculating the All Others WTO-consistent CVD rate by calculating a simple average of the individually-investigated respondents' WTO-consistent CVD rates.[116] This did not require calculating a separate All Others LTAR rate.

94. While it is technically possible to calculate an All Others LTAR rate using a simple average of the four individually-investigated respondents' LTAR rates (which would be approximately 1.61 percent), employing such methodology would be not only unnecessary but also inconsistent with the U.S. proposal that the Arbitrator use the All Others rate calculation methodology used by the USDOC in each of the underlying determinations in arriving at the All Others WTO-consistent CVD rate for each product.[117] Relying on the simple average of the counterfactual WTO-consistent CVD rates of the individually-investigated respondents hews closer to the original calculation methodology used by the USDOC in the underlying OCTG CVD proceeding, and is, in fact, a methodology that the USDOC has used in some of the other CVD proceedings.[118] Therefore, the United States requests that the Arbitrator determine the All Others WTO-consistent CVD rate based on the simple average of the individually-investigated respondents' WTO-consistent CVD rates, instead of using a simple average of the respondents' LTAR rates.

95. This approach proposed by the United States is not in conflict with the quoted statement from paragraph 29 of the U.S. written submission, which primarily applies to the determination of the WTO-consistent CVD rates for each individually-investigated respondent. As explained above, the United States has proposed in paragraph 51 of the U.S. written submission that the Arbitrator employ the All Others rate calculation methodology used in each of the underlying CVD determinations to arrive at the All Others WTO-consistent CVD rate for each product. In the process, the WTO-consistent CVD rates for individually-investigated respondents would be calculated in accordance with the statement from paragraph 29 (*i.e.*, by modifying the WTO-

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[115] *See* U.S. Written Submission, para. 52. *See also Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 Fed. Reg. 3203 (January 20, 2010) (Exhibit CHN-22); *Oil Country Tubular Goods From the People's Republic of China: Notice of Court Decision Not in Harmony With the Amended Final Determination of the Countervailing Duty Investigation*, 82 Fed. Reg. 25770 (June 5, 2017) (Exhibit USA-141) ("As a general rule, the all-others rate is equal to the weighted average countervailable subsidy rates established for individually investigated producers and producers, excluding any zero and *de minimis* countervailable subsidy rates. The [USDOC] will instruct [US]CBP that the 'all-others' cash deposit rate is to be amended to reflect the weighted-average of the revised subsidy rates calculated for Changbao, TPCO, Wuxi, and Jianli, as listed above.").

[116] Calculating a simple average for the All Others WTO-consistent CVD rate was the best possible attempt to replicate the USDOC's methodology in OCTG because, as explained in paragraph 52 of the U.S. written submission, the parties were unable to obtain authorization to access the necessary BCI sales data.

[117] *See* U.S. Written Submission, para. 51.

[118] *See* U.S. Written Submission, para. 50.

inconsistent CVD rate by deducting the portion of the total CVD rate attributable to the relevant LTAR program(s)), and those WTO-consistent CVD rates for individually-investigated respondents would be used to calculate the All Others WTO-consistent CVD rate according to the original USDOC methodology in the underlying CVD investigation.

69. <u>To China and the United States</u>: China and the United States agree that the WTO-inconsistent CVD rate applicable to each order should be modified by deducting the portion of the total CVD rate attributable to the alleged input subsidy programs.[119] In response to Arbitrator's question No. 29, China explains that, following the US approach, it calculated "the WTO-consistent All Others rate for Aluminum Extrusions as a weighted average of the voluntary respondents; and the WTO-consistent All Others rate for Solar Panels as a weighted average of the two mandatory respondents' rates".[120] In this regard, please explain the calculation performed by the parties to obtain the All Others LTAR rates for Aluminum Extrusions and Solar Panels submitted[121], especially how these rates relate to the arithmetic difference between the relevant All Others WTO-inconsistent CVD rates and the All Others WTO-consistent CVD rates.

<u>Response</u>:

96. The United States and China agree on the calculation methodology for the All Others counterfactual WTO-consistent rates for Aluminum Extrusions and for Solar Panels. The United States notes that the All Others LTAR rates for Aluminum Extrusions and for Solar Panels previously provided in Exhibits USA-28 and USA-100 erroneously stated 2.55 percent for Aluminum Extrusions and 0.715 percent for Solar Panels – which were inadvertently copied from Exhibit CHN-52 in the process of comparison – and now corrects them to 3.88 percent and 0.62 percent, respectively, in Exhibit USA-138. The United States regrets these errors. The All Others counterfactual WTO-consistent rates are not affected by the errors.

97. Below, the United States elaborates on the explanations provided in Exhibits USA-5 (Aluminum Extrusions) and USA-18 (Solar Panels) regarding the calculation of the All Others LTAR rates and the All Others WTO-consistent CVD rates.

<u>Aluminum Extrusions (case no. C-570-968)</u>:

[119] China's Methodology Paper, paras. 16 and 21; United States' Written Submission, para. 26.

[120] China's response to Arbitrator's question No. 29.

[121] Exhibits CHN-100 and USA-100.

Respondent	**WTO-Inconsistent CVD Rate (%)**	**-**	**LTAR Rate (%)**	**=**	**Counterfactual WTO-Consistent CVD Rate (%)[122]**
Dragonluxe Limited	374.15[123]		2.55[124]		371.6
Miland Luck Limited	374.15[125]		2.55[126]		371.6
Liaoyang Zhongwang Group	374.15[127]		2.55[128]		371.6
Zhongya Companies (voluntary respondent)	4.89[129]		1.62[130]		3.27
Guang Ya Companies (voluntary respondent)	9.94[131]		6.06[132]		3.88
All Others	7.37[133]		**3.88[134]**		**3.57**

[122] *See* Exhibit USA-5.

[123] *See* Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 Fed. Reg. 30653 (May 26, 2011) (Exhibit CHN-35).

[124] Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (PRC) (March 28, 2011), p. 66 (Exhibit CHN-33).

[125] *See* Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 Fed. Reg. 30653 (May 26, 2011) (Exhibit CHN-35).

[126] Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (PRC) (March 28, 2011), p. 66 (Exhibit CHN-33).

[127] *See* Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 Fed. Reg. 30653 (May 26, 2011) (Exhibit CHN-35).

[128] Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (March 28, 2011), p. 66 (Exhibit CHN-33).

[129] *See* Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination: Aluminum Extrusions From the People's Republic of China, 79 Fed. Reg. 13039 (March 7, 2014) (Exhibit USA-3).

[130] Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (March 28, 2011), p. 36 (Exhibit CHN-33).

[131] *See* Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 Fed. Reg. 30653 (May 26, 2011) (Exhibit CHN-35).

[132] Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (March 28, 2011), p. 36 (Exhibit CHN-33).

[133] *See* Aluminum Extrusions From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision, 80 Fed. Reg. 69640 (November 10, 2015) (Exhibit USA-4).

[134] As noted above, the All Others LTAR rate for Aluminum Extrusions previously provided in Exhibits USA-28 and USA-100 erroneously stated 2.55 percent – which was inadvertently copied from Exhibit CHN-52 in the process of comparison. The United States regrets this error.

98. With respect to the underlying CVD measure, because Dragonluxe Limited, Miland Luck Limited, and Liaoyang Zhongwang Group were assigned rates determined on the basis of facts available, the USDOC only used the rates for the two voluntary respondents – Zhongya Companies and Guang Ya Companies – to determine the All Others CVD rate, pursuant to the U.S. countervailing duty law.[135] In order to protect the confidentiality of the proprietary information of the two voluntary respondents, the USDOC used the publicly ranged sales value data for exports of subject merchandise to the United States reported by those respondents.[136] Accordingly, the United States in this proceeding uses the same publicly-ranged sales value data to calculate the All Others LTAR rate and the All Others counterfactual WTO-consistent CVD rate as weighted averages of the voluntary respondents.

Voluntary Respondent	**Publicly-Ranged Sales Value for U.S. Exports of Subject Merchandise, Used by USDOC (US$)**	**Weight Based on Publicly-Ranged Sales Value**
Zhongya Companies	$22,251,050[137]	0.49 = 22,251,050 / (22,251,050 + 21,500,000)
Guang Ya Companies	$21,500,000[138]	0.51 = 21,500,000 / (22,251,050 + 21,500,000)
Total	*$43,751,050*	*1.00*

[135] *See* Aluminum Extrusions From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision, 80 Fed. Reg. 69640 (November 10, 2015) (Exhibit USA-4) ("[T]he Department [of Commerce must] base the all-others rate on the weighted average of individually-investigated non-zero, non-*de minimis*, non-AFA rates.").

[136] *See* Aluminum Extrusions From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision, 80 Fed. Reg. 69640 (November 10, 2015) (Exhibit USA-4) ("The Department [of Commerce] requested and received from the voluntary respondents (*i.e.*, Guang Ya Companies and Zhongya Companies) their publicly ranged sales value and volume data for exports of subject merchandise to the United States during the 2009 investigation period. Using that data, the Department calculated a weighted-average all-others subsidy rate of 7.37 percent.").

[137] *See* "Aluminum Extrusions from China" (August 28, 2015) (Exhibit USA-6).

[138] $21,500,000 is the sum total of Guang Ya Aluminum's U.S. Exports of Subject Merchandise ($7,500,000) and Guangcheng's U.S. Exports of Subject Merchandise ($14,000,000). Guang Ya and Guangcheng collectively make up Guang Ya Companies. *See* "Aluminum Extrusions from the PRC: Response to Request for Q&V Data from Investigation Period of Review, by the Guang Ya Group" (August 31, 2015) (Exhibit USA-7).

99. The All Others LTAR rate for Aluminum Extrusions is the weighted average of the LTAR rates for the voluntary respondents, Zhongya Companies (1.62 percent) and Guang Ya Companies (6.06 percent). Accordingly, the All Others LTAR rate is calculated as follows:

$$\underbrace{1.62\% \times 0.49}_{\text{Zhongya}} + \underbrace{6.06\% \times 0.51}_{\text{Guang Ya}} = \underbrace{\mathbf{3.88\%}}_{\text{All Others}}$$

100. Similarly, the All Others counterfactual WTO-consistent CVD rate is the weighted average of the counterfactual WTO-consistent rates for Zhongya Companies (3.27 percent) and Guang Ya Companies (3.88 percent). Accordingly, the All Others counterfactual WTO-consistent CVD rate is calculated as follows:

$$\underbrace{3.27\% \times 0.49}_{\text{Zhongya}} + \underbrace{3.88\% \times 0.51}_{\text{Guang Ya}} = \underbrace{\mathbf{3.57\%}}_{\text{All Others}}$$

101. The 3.88 percent All Others LTAR rate is equivalent to the arithmetic difference between the All Others WTO-inconsistent CVD rate (7.37 percent) and the All Others WTO-consistent CVD rate (3.57 percent). (The minor discrepancy of 0.08 percent is due to rounding errors.) This is consistent with the United States' and China's shared position that the appropriate counterfactual analysis entails modifying the relevant WTO-inconsistent CVD rate by deducting the portion of the total CVD rate attributable to the input subsidy program(s), which is the LTAR rate.[139]

Solar Panels (case no. C-570-980):

Respondent	**WTO-Inconsistent CVD Rate (%)**	**-**	**LTAR Rate (%)**	**=**	**Counterfactual WTO-Consistent CVD Rate (%)[140]**
Trina Solar	15.97[141]		1.14[142]		14.83

[139] *See* U.S. Written Submission, para. 29; China's Methodology Paper, paras. 16, 21.

[140] *See* Solar Panels – All Others Counterfactual Rate (Exhibit USA-18).

[141] *See* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (December 7, 2012) (Exhibit CHN-44).

[142] *See* Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China (October 9, 2012), p. 13 (Exhibit CHN-42).

Wuxi Suntech	14.78[143]		0.29[144]		14.49
All Others	15.24[145]		**0.62[146]**		**14.62**

102. With respect to the underlying CVD measure, because there were only two respondents – Trina Solar and Wuxi Suntech – the USDOC determined the All Others CVD rate using the publicly ranged sales value data for exports of subject merchandise to the United States reported by those respondents. As in Aluminum Extrusions, the publicly ranged sales values were used in order to protect the confidentiality of the companies' proprietary information.[147] Accordingly, the United States in this proceeding uses the same publicly-ranged sales value data to calculate the All Others LTAR rate and the All Others counterfactual WTO-consistent CVD rate as weighted averages of the two respondents.

Respondent	**Publicly-Ranged Sales Value for U.S. Exports of Subject Merchandise, Used by USDOC (RMB)**	**Weight Based on Publicly-Ranged Sales Value**
Trina Solar	RMB 1,775,666,080[148]	0.39 = 1,775,666,080 / (1,775,666,080 + 2,800,000,000)

[143] *See* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (December 7, 2012) (Exhibit CHN-44).

[144] *See* Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China (October 9, 2012), p. 13 (Exhibit CHN-42).

[145] *See* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (December 7, 2012) (Exhibit CHN-44).

[146] As noted above, the All Others LTAR rate for Solar Panels previously provided in Exhibits USA-28 and USA-100 erroneously stated 0.715 percent – which was inadvertently copied from Exhibit CHN-52 in the process of comparison. The United States regrets this error.

[147] *See* Memorandum to The File, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China, RE: Calculation of the All-Others Rate (October 9, 2012) (Exhibit USA-17) ("We were unable to calculate a weighted-average of the two calculated rates using the business proprietary export values reported by respondents because doing so would reveal Trina Solar's and Wuxi Suntech's business proprietary information (BPI) to one another. The calculations below demonstrate that relying on the public values provides a more accurate proxy for the weighted-average rate using the BPI data than relying on a simple average of the Trina Solar and Wuxi Suntech rates.").

[148] *See* Memorandum to The File, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China, RE: Calculation of the All-Others Rate (October 9, 2012), p. 2 (Exhibit USA-17).

Wuxi Suntech	RMB 2,800,000,000[149]	0.61 = 2,800,000,000 / (1,775,666,080 + 2,800,000,000)
Total	*RMB 4,575,666,080*	*1.00*

103. The All Others LTAR rate for Solar Panels is the weighted average of the LTAR rates for the two respondents, Trina Solar (1.14 percent) and Wuxi Suntech (0.29 percent). Accordingly, the All Others LTAR rate is calculated as follows:

$$\underbrace{1.14\% \times 0.39}_{\text{Trina Solar}} + \underbrace{0.29\% \times 0.61}_{\text{Wuxi Suntech}} = \underbrace{\mathbf{0.62\%}}_{\text{All Others}}$$

104. Similarly, the All Others counterfactual WTO-consistent CVD rate is the weighted average of the counterfactual WTO-consistent rates for Trina Solar (14.83 percent) and Wuxi Suntech (14.49 percent). Accordingly, the All Others counterfactual WTO-consistent CVD rate is calculated as follows:

$$\underbrace{14.83\% \times 0.39}_{\text{Trina Solar}} + \underbrace{14.49\% \times 0.61}_{\text{Wuxi Suntech}} = \underbrace{\mathbf{14.62\%}}_{\text{All Others}}$$

105. The 0.62 percent All Others LTAR rate is equivalent to the arithmetic difference between the All Others WTO-inconsistent CVD rate (15.24 percent) and the All Others WTO-consistent CVD rate (14.62 percent). As explained above, this is consistent with the United States' and China's shared position that the appropriate counterfactual analysis entails modifying the relevant WTO-inconsistent CVD rate by deducting the portion of the total CVD rate attributable to the input subsidy program(s), which is the LTAR rate.[150]

[149] *See* Memorandum to The File, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China, RE: Calculation of the All-Others Rate (October 9, 2012), p. 2 (Exhibit USA-17).

[150] *See* U.S. Written Submission, para. 29; China's Methodology Paper, paras. 16, 21.