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 QUESTIONS FROM THE ARBITRATOR AFTER THE VIDEOCONFERENCE WITH THE PARTIES

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USA-132	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Final Results of Countervailing Duty Administrative Review; 2013, 81 Fed. Reg. 46904 (July 19, 2016)
USA-133	*Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China*: Continuation of Antidumping and Countervailing Duty Orders, 79 Fed. Reg. 28894 (May 20, 2014)
USA-134	*Seamless Carbon Alloy Steel Standard Line and Pressure Pipes From the People's Republic of China*: Continuation of Antidumping Duty Order and Countervailing Duty Order, 81 Fed. Reg. 14089 (March 16, 2016)

Exhibit No.	Description
USA-135 **[BCI]**	Preston Pipe & Tube Report: OCTG Market Analysis
USA-136 **[BCI]**	Preston Pipe & Tube Report: API Line Pipe Market Analysis
USA-137	U.S. Department of Commerce, Memorandum to The File, RE: Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437), Placement of Final Calculations on Record of Proceeding (October 2, 2015)
USA-138	Updated U.S. Proposed WTO-Inconsistent CVD Rates: Correction to Exhibit USA-100
USA-139	Revised Estimates of the Level of Nullification or Impairment: Revision of Exhibit USA-101
USA-140 **[BCI]**	U.S. Model Data Inputs: Revision of Exhibit USA-106
USA-141	*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)
USA-142	World Steel Association, *Steel Statistical Yearbook 2017*, Sources, available at https://www.worldsteel.org/steel-by-topic/statistics/steel-statistical-yearbook.html
USA-143	American Iron and Steel Institute (AISI), About AISI, Members, available at https://www.steel.org
USA-144 **[BCI]**	2017 USCBP Imports Data for Kitchen Shelving from China, Sorted by Exporter
USA-145	The General Administration of Customs China (GACC) Standards for Completion of Customs Declaration Form for Imported and Exported Goods (中华人民共和国海关进出口货物报关单填制规范) (Chinese original), available at http://202.127.48.170/customs/302249/302266/302267/2281037/index.html
USA-146	Relevant Excerpts of the General Administration of Customs China (GACC) Standards for Completion of Customs Declaration Form for Imported and Exported Goods (中华人民共和国海关进出口货物报关单填制规范) (English translation), available at http://202.127.48.170/customs/302249/302266/302267/2281037/index.html
USA-147	19 C.F.R. § 351.106 (*De minimis* net countervailable subsidies and weighted-average dumping margins disregarded)

Exhibit No.	Description
USA-148	U.S. International Trade Commission, *Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*: Investigation Nos. 701-TA-499-500 and 731-TA-1215-1216, 1221-1223 (Review), USITC Publication 5090 (July 2020)
U.S. Responses to the Questions from the Arbitrator after the Videoconference with the Parties	
USA-149 **[BCI]**	Aluminum Association, Excerpt of "U.S. and Canadian Producer Shipments of Aluminum Extruded Products" Dataset
USA-150	"Forecasts/Shipments," *ApplianceDESIGN* (March 2018)
USA-151	U.S. International Trade Commission, *Instruction Booklet, General Information, Instructions, and Definitions for Commission Questionnaires, Certain Oil Country Tubular Goods from China Investigation Nos. 701-TA-463 and 731-TA-1159 (Final)*, available at https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2009/Oil%20Country%20Tubular%20Goods%20From%20China/Final/us_instructions_-_final.pdf
USA-152	Harmonized Tariff Schedule of the United States, Change Record (2012)
USA-153	U.S. Department of Commerce, International Trade Administration, Memorandum to File from Joshua Morris, *Module Update for Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China* (February 8, 2012)
USA-154	Elasticities: Revised Version of Exhibit USA-46
USA-155 **[BCI]**	Year-Prior U.S. Domestic Shipments and Imports Data
USA-156 **[BCI]**	2017 U.S. Domestic Shipments and Imports Data
USA-157 **[BCI]**	CVD Rates and AD Rates Used in the U.S. Model
USA-158	Stata Code for the U.S. Model: Updated Version of Exhibit USA-82
USA-159 **[BCI]**	U.S. Model Data Inputs: Revision of Exhibit USA-140
USA-160	U.S. Estimates of the Level of Nullification or Impairment

A. UPDATED VERSION OF THE ADVANCE QUESTIONS SENT ON 6 NOVEMBER 2020

70. <u>To China and the United States</u>: In connection with the evidence contained in *Feenstra et al.* (Exhibit CHN-63), please indicate how the products for which there seems to be statistically significant evidence in this study with respect to the two hypotheses (i.e. microelasticity larger than macroelasticity, and specifically the Rule of Two) compare to the products under the CVD investigations at issue in these proceedings, for instance concerning their differentiability or the presence of domestic competitors in the relevant market.[1]

<u>Response</u>:

1. As an initial matter, the United States stresses that <u>neither</u> of the two hypotheses in *Feenstra et al.* provides statistical evidence in favor of the so-called rule of two.[2] In particular, the paper rejects the second hypothesis testing the rule of two for certain products on the basis of the statistical evidence. Moreover, as the United States has explained, based on statistical principles, the fact that the hypothesis on the rule of two was not rejected for certain other products should <u>not</u> be understood to mean that the rule of two was affirmatively proven to be true for those products.

2. With respect to the question on the "differentiability" of the covered products in the Feenstra study and the ten products at issue in this proceeding, the United States understands the term "differentiability" to mean whether U.S. domestic products, imports from China, and imports from the rest of the world ("ROW") are considered <u>interchangeable</u> from the perspective of buyers.

3. With respect to the question on the "presence of domestic competitors in the relevant market," the United States understands the question to mean whether U.S. domestic products are considered <u>comparable</u> to imports from China (and imports from ROW) from the perspective of buyers.[3]

4. As shown in the product-specific evidence provided by the United States, all but one of the USITC investigations on the products at issue in this proceeding have found that U.S. domestic products, imports from China, and imports from ROW are similarly comparable in terms of intrinsic characteristics, quality, and terms of sale.[4] Since comparability and interchangeability across sources indicate the extent to which price changes may induce buyers

[1] *See also* question No. 98, which was asked as follow-up to this question at the Q&A session.

[2] *See* Written Submission of the United States of America (February 18, 2020) ("U.S. Written Submission"), paras. 107-111; Exhibit USA-33; Responses of the United States of America to the Advance Questions from the Arbitrator (May 7, 2020) ("U.S. Responses to Arbitrator's Advance Questions"), Question 1.

[3] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1.

[4] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1, Table 1.

to substitute one source for another, the fact that domestic products and imported products are comparable and interchangeable implies that the macroelasticity and the microelasticity are the same for the product at issue.

5. While the United States, in compiling the aforementioned evidence, has relied on information from the USITC investigations on the products at issue in this proceeding, we have not found an equivalent source from which to draw information on the interchangeability and comparability of the particular products covered by the Feenstra paper. None of the products at issue in this proceeding are among the 98 products selected in the Feenstra paper. In fact, there is no overlap between the two sets of products even at the six-digit HTSUS[5] level.

6. In the absence of such information regarding the products selected in the Feenstra study, it is more appropriate to rely on the affirmative, product-specific evidence on markets for the relevant products, as provided by the United States, rather than to extrapolate from a statistical study, the results of which are not generalizable to the products at issue. Indeed, the Feenstra study itself acknowledges that the rule of two is a merely an "ad hoc assumption" that has been employed by "some researchers."[6] The rule of one is, in fact, the standard in Armington partial equilibrium modeling in the academic literature[7] and has been used in previous WTO arbitrations, including DS471. China has not provided any evidence that the microelasticities are twice as large as the macroelasticities for the products at issue in this proceeding, and thus has not shown why the Arbitrator should deviate from the standard rule of one.

71. To the United States: In response to Arbitrator's question No. 4, the United States argues that a model that ignores other contemporaneously imposed duties directly affecting imports from China in 2017 cannot answer the question of how the market would be different if the CVD rates were WTO-consistent at the expiration of the RPT. In this regard, please elaborate on the relevance, if any, of any other contemporaneous duties in place on these products, e.g. applied ordinary customs duties or, as China mentions in paragraph 20 of its opening statement, "non-tariff actions, such as increased SPS requirements or the effects of new technical regulations, that might also have had effects similar to those of the measure in question".

Response:

7. Other contemporaneous duties such as applied ordinary customs duties may be relevant to the two-step Armington approach if the rates of such duties were changed during the interim period between the relevant year-prior and 2017. If applied ordinary customs duty rates changed

[5] Harmonized Tariff Schedule of the United States.

[6] *Feenstra et al.*, p. 146 (Exhibit CHN-63).

[7] *Bethmann et al.*, p. 2 (Exhibit CHN-60) ("The standard trade policy model is the constant elasticity of substitution (CES) tariff model . . . This model has one substitution elasticity that describes substitutability across all sources of supply"); *see also* U.S. Written Submission, paras. 109-110.

during the interim period, the difference between the rate applied in the year-prior and the rate applied in 2017 may be incorporated into step one of the two-step Armington modeling approach.

8. Similarly, any non-tariff action implemented during the interim period should be incorporated into the model if there is evidence that it had a significant impact on the evolution of market shares during that period. It should be noted, however, that regulatory measures are typically applied to all producers and exporters, regardless of their country of origin, including domestic producers. Accordingly, these policies generally would be incorporated in an Armington model as a uniform shock to all producers and varieties. Such a shock would generally manifest as a reduction in the value of the counterfactual market estimated in step one, rather than a change in market shares. However, step two of the two-step Armington approach uses the value of the actual 2017 market, rather than the value of the counterfactual market generated in step one. (In other words, while the model in step two uses the counterfactual 2017 market shares estimated in step one, the total value of the 2017 market used in step two is the actual, and not counterfactual, value.) Since both Parties agree that it is appropriate to use the actual value of the 2017 market in step two, it would not be necessary for the model to incorporate policies that imply a uniform shock, such as regulatory measures that are not specific to countries of origin. On the other hand, if there is evidence that certain regulatory measures implemented during the interim period had a significant and disproportionate impact on China's market share specifically, such policies should, indeed, be represented in the model to the extent feasible.

9. The incorporation of other relevant contemporaneous duties and non-tariff actions, if any, is consistent with the underlying rationale for the two necessary adjustments proposed by the United States because adjusting the two-step Armington approach for changes in the rates of other contemporaneous duties on the products would help isolate the trade effects that are truly attributable to the WTO-inconsistent CVD measures at issue. To isolate the effect of the CVD measures from all other factors, the methodology must control for the other factors by including them in the model. Not including the other factors in an *ex ante* model like the Armington model implicitly assumes that they will not affect the outcome of interest – which here is China's 2017 market share.

10. The arbitrator in DS471 applied an Armington-based model in two steps to estimate the effects of the WTO-inconsistent duties in the respective product markets while addressing the small market shares resulting from the purported depressing effects of the WTO-inconsistent duties over time.[8] Accordingly, the objective of step one of the two-step Armington approach in this proceeding is to estimate counterfactual 2017 market shares that are not distorted by the maintenance of the WTO-inconsistent CVD measures following the expiration of the RPT. In order to accurately estimate the trade effects of the WTO-inconsistent CVD measures beyond the expiration of the RPT, the model in step one must generate counterfactual market shares that are

[8] *See* U.S. Written Submission, para. 2; *see also US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, paras. 6.67–6.81.

representative of each market player's actual relative competitiveness in 2017.[9] To generate correct 2017 counterfactual market shares, the model in step one must control for other factors that affected market shares in the interim period between the year-prior and 2017.

11. As we have explained, the United States has identified two such factors for the products at issue based on a careful analysis of the U.S. market during the relevant time period: the contemporaneous AD duties in place on the products at issue and the structural changes in the supply potential of third countries selling to the United States. Accounting for these two factors is necessary to correctly calibrate the model to isolate the trade depressive effects of the WTO-inconsistent CVD measures from the effects of the AD measures and the effects of investment- or policy-driven changes in the competitiveness of third country suppliers.

12. As we have shown, our adjustments to control for these two factors are based on evidence: the AD duty rates can be directly observed and tracked based on public information from the U.S. Department of Commerce (USDOC), and the United States has used reliable trade data and industry analysis by the USITC to identify third country supply shocks. There may be any number of hypothetical scenarios with other potentially relevant factors, but these two factors are actually relevant in the context of this proceeding and, in fact, critical for accurately assessing how the market would be different if the CVD rates at issue were WTO-consistent at the expiration of the RPT.

13. Following the videoconference with the Arbitrator, the United States has reviewed the Most Favored Nation (MFN) tariff rates for the ten products at issue in this proceeding, and found that none of the rates changed during the interim period between the year-prior and 2017. Similarly, the United States has not identified any non-tariff actions, including SPS measures[10] and technical regulations, that were enacted, removed, or changed with regard to the relevant products during the interim period between the year-prior and 2017.

72. To China and the United States: Please indicate whether the calculation of the level of N/I using a two-step Armington methodology is affected in any way by the relatively contemporaneous nature of the CVD and the AD duty orders. Please also indicate whether your answer would be different if these orders were not contemporaneous, in particular if the AD duties preceded or followed the CVD orders by several years.

Response:

14. As the United States has demonstrated, all of the CVD measures at issue were imposed in the same year that AD measures were imposed on the same products.[11] If, hypothetically, the

[9] *See* U.S. Written Submission, paras. 64-105; U.S. Responses to Arbitrator's Advance Questions, Questions 4 and 5.

[10] As none of the products at issue are food or agricultural products, no SPS measures apply to them.

[11] *See* U.S. Responses to Arbitrator's Advance Questions, Question 2.

AD measures had been applied to the relevant products several years prior to the imposition of the CVD measures, it would not be appropriate to incorporate the AD measures into step one of the two-step Armington approach. In contrast, any AD measures imposed in the same year as the CVD measures or any year between that year and 2017 must be incorporated into the two-step Armington approach.

15. The purpose of step one of the two-step Armington approach is to generate the correct counterfactual market shares representing the U.S. market in 2017.[12] These counterfactual 2017 market shares are used to calibrate the step two model, in which the level of nullification or impairment is calculated.

16. If an AD measure on the same product had already been in place during the year prior to the imposition of the CVD measure, that AD measure, which serves as a correction for China's dumping in the U.S. market, would already be reflected in China's year-prior market share. Accordingly, the impact of such AD measures on China's relative competitiveness would already be represented in the step one counterfactual market share.

17. However, if AD measures were imposed in a later year than the year of the imposition of the CVD measure, then those AD measures should be incorporated into step one to generate an adequate representation of the counterfactual 2017 market and thus accurately estimate the level of nullification or impairment. This is the same as when AD and CVD measures are imposed on a product in the same year.

73. To China: In light of the United States' clarification concerning data collection by USCBP in response to Arbitrator's question No. 32, please comment on the United States' suggestion to rely on USCBP data for estimates of imports from China.

Response:

18. This question is addressed to China.

Solar Panels

74. To China: In response to Arbitrator's question No. 42 regarding solar panels, the United States argues that its figure for sales of the domestic variety, which was relied upon by the Arbitrator in DS471, is based on USITC Publication 4519 (Exhibit USA-21), which is more recent than USITC Publication 4360 (Exhibit CHN-45) relied upon by China. Please comment on the United States' suggestion to rely on the more recent USITC publication in this regard.

Response:

[12] *See* U.S. Written Submission, paras. 68, 72; U.S. Responses to Arbitrator's Advance Questions, Question 4.

19. This question is addressed to China.

75. <u>To China and the United States</u>: Also regarding Solar Panels, for sales of imports from China and the rest of the world, the USITC figures submitted by China (Exhibit CHN-45) and the USCBP and US Census figures submitted by the United States (Exhibits USA-58 and USA-59) differ substantially, as also highlighted in paragraph 56 of China's opening statement. Please comment on the reasons for this difference, considering that, in light of China's response to Arbitrator's question No. 40, these differences do not appear to be explained by differences in product scope.

<u>Response</u>:

20. The difference between the USITC-reported data and the HTSUS-based data used by the arbitrator in DS471 (and thus by the United States in this proceeding) appears to be due to a difference in the range of products covered by the data. The USITC-reported data (Exhibit CHN-45) is "compiled from data submitted in response to [USITC] questionnaires,"[13] and only includes imports of modules among subject Solar Panels products. On the other hand, the HTSUS-based USCBP[14] and U.S. Census figures submitted by the United States (Exhibits USA-58 and USA-59) aggregate values of all imports under the reference HTSUS codes,[15] and include imports of both cells and modules,[16] as well as any other products that fall under the reference HTSUS codes.

21. Additionally, as the United States has explained, the USITC figures appear to include modules only,[17] though the scope of the Solar Panels CVD order explicitly includes cells as

[13] *Crystalline Silicon Photovoltaic Cells and Modules From China, Investigation Nos. 701-TA-481 and 731-TA-1190 (Final)*, USITC Publication 4360 (November 2012), Table IV-4 (Exhibit CHN-45).

[14] 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 identified in the scope definition of the relevant CVD investigation.

[15] The product scope is determined by the written description of the subject product in the AD or CVD order, and reference HTSUS codes are "provided for convenience and customs purposes only." *See* Responses of the United States of America to the Follow-Up Questions from the Arbitrator (August 21, 2020) ("U.S. Responses to Arbitrator's Follow-Up Questions"), Question 59. *See also* U.S. responses to Questions 88 and 91, below.

[16] *See* U.S. Responses to Arbitrator's Advance Questions, Question 10.

[17] *See* U.S. Responses to Arbitrator's Advance Questions, Question 10.

well.[18] Other tables in the USITC report present figures for "CSPV cells" and "CSPV cells and modules", though the information in those tables is redacted.[19]

22. In this arbitration proceeding, the United States has used the same Solar Panels year-prior imports data that the arbitrator in DS471 used, as reported in Exhibits USA-58 and USA-59.

Kitchen Shelving

76. <u>To the United States</u>: In response to Arbitrator's question No. 35 regarding Kitchen Shelving, China proposes to use midpoints between its estimate and the United States' estimate. Please comment on this suggestion by China, and on China's argument that the United States' estimate should be corrected in a way that the value of the two HTS codes relied upon by the United States would be multiplied by four rather than by two, since "two HTS codes are one-quarter of the eight HTS codes listed"

<u>Response</u>:

23. The United States disagrees with China's proposal to use midpoints between its estimate and the U.S. estimate because China's proposal is not based on data or evidence, but rather is merely an arbitrary compromise for convenience. The reference HTSUS codes for Kitchen Shelving include non-subject products, and this overinclusion issue has a significant impact on the accuracy of China's proposed methodology. It is simply untenable and incorrect for China to argue that the Arbitrator "must assume" that the HTSUS categories contain "some or possibly only subject imports."[20] The United States has demonstrated, relying on the relevant import values and the observed import trends in trade data, that subject Kitchen Shelving products compose approximately 2.9 percent of all imports from China under the six broader reference HTSUS codes.[21]

24. However, China's proposed midpoint approach would, in effect, incorrectly assume that approximately 60 percent of imports from China under the reference HTSUS codes consist of subject products. Such an assumption contradicts actual trade data and the publicly available, fact-based industry reports, as well as the industry survey responses that are on the record in the

[18] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 Federal Register 73017 (December 7, 2012) (Exhibit CHN-43) ("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.").

[19] *See, e.g.*, Exhibit CHN-45, Tables IV-1 (pp. 136-138 of the PDF version of Exhibit CHN-45), IV-2 (pp. 140-141 of the PDF version of Exhibit CHN-45), IV-3 (pp. 140-141 of the PDF version of Exhibit CHN-45), C-1 (p. 211 of the PDF version of Exhibit CHN-45), and C-3 (p. 213 of the PDF version of Exhibit CHN-45).

[20] Responses to Follow-Up Questions from the Arbitrator of the People's Republic of China (August 21, 2020) ("China's Responses to Arbitrator's Follow-Up Questions"), Question 34.

[21] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 35.

original Kitchen Shelving CVD investigation.[22] The data show that China is urging the Arbitrator to adopt a seriously flawed assumption that would lead to a grossly inflated assessment of nullification or impairment.

25. With respect to China's argument that the U.S. estimate of 2008 subject imports from China should be doubled to correct a mathematical error, the United States disagrees with China's argument. The United States maintains its original estimate of $24 million. This estimate is not based on an erroneous calculation but on a reasonable, data-based assumption that "oven racks [referring to the two Kitchen Shelving-specific HTSUS codes[23]] constitute around 50 percent of all kitchen shelving imports from China, with the remaining 50 percent reported under the other 'basket' [HTSUS] categories – i.e., refrigeration shelving."[24]

26. As the United States has explained, the two Kitchen Shelving-specific HTSUS codes – 7321.90.6040 and 8516.90.8010 – cover shelving and racks for cooking ovens, stoves, and ranges, which we have referred to as "oven racks."[25] The other six HTSUS codes relate to components of a variety of kitchen appliances, including shelving and racks for refrigerators and freezers, which we have referred to as "refrigeration shelving."[26] The U.S. estimate that oven racks and refrigeration shelving each composed 50 percent of the total Kitchen Shelving imports from China is based on data on cost share and overall demand for end use products.

27. First, with respect to the cost of Kitchen Shelving products as a share of the cost of end use products, the United States has taken into account the fact that the average cost share of oven racks was slightly higher than that of refrigeration shelving. According to the producers, importers, and purchasers who responded to questionnaires in the original USITC investigation, the cost of Kitchen Shelving products is estimated to be 1.5 to 4.0 percent of the total cost of ovens/ranges, and 0.6 to 3.0 percent of the total cost of refrigeration equipment.[27] Based on this, the United States has estimated that the average cost share of oven racks (2.75 percent) is slightly higher than that of refrigeration shelving (1.8 percent).

28. The United States has also taken into account data showing that demand for refrigeration equipment has been higher than demand for ovens/ranges. Based on market data, annual shipments of refrigeration equipment have been approximately 10-12 million units, and annual shipments of ovens/ranges have been approximately 8-10 million units in recent years.[28]

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[22] *See* Exhibit USA-61.

[23] HTSUS 7321.90.6040 and 8516.90.8010.

[24] Exhibit USA-61.

[25] *See* Exhibit USA-61.

[26] *See* Exhibit USA-61.

[27] See USITC Publication 4098, pp. II-3-II-4.

[28] *See Product Trends and Manufacturer Insights for Residential Laundry, Cooking and Refrigeration Appliances* (September 15, 2015), pp. 24, 32 (Exhibit USA-41); *see also* "Forecasts/Shipments," *ApplianceDESIGN* (March 2018), p. 5 (Exhibit USA-150) (citing Association of Home Appliance Manufacturers (AHAM) data).

Accordingly, taken together, the slightly higher cost share of oven racks and the slightly higher demand for refrigeration equipment have led to the reasonable estimation that imports of subject Kitchen Shelving products from China can be equally divided between oven racks and refrigeration shelving.

29. In short, the United States has arrived at the 50-50 estimate based on actual data on market segments of end use products of Kitchen Shelving.

30. By contrast, the method suggested by China is not based on any data or market analysis, and is overly simplistic. China's proposal to use the relative numbers of HTSUS codes to determine the proportions of imports of subject oven racks and imports of subject refrigeration shelving is unreasonable because (1) the proposition is based on an unsupported premise that each of the HTSUS codes would represent an equal value of imports; and (2) as we have explained earlier, only the two HTSUS codes covering oven racks are specific to Kitchen Shelving products, while the other six HTSUS codes broadly include non-subject products.

31. Therefore, the United States maintains that the correct estimate of the total Kitchen Shelving imports from China is the sum of $12 million for oven racks and $12 million for refrigeration shelving – thus $24 million total.

Print Graphics

77. **<u>To China</u>: Considering your response to Arbitrator's question No. 38 regarding Print Graphics, please confirm whether you suggest relying on the figures contained in Table IV-4 of Exhibit CHN-50 for year-prior sales of the domestic variety.**

<u>Response</u>:

32. This question is addressed to China.

78. **<u>To the United States</u>: In response to Arbitrator's question No. 50, the United States submits that, according to a recent USITC review of OCTG (Exhibit USA-148), 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). Please indicate if this updated figure has any implications for your model data inputs (Exhibit USA-140).**

<u>Response</u>:

33. The updated figure based on the July 2020 USITC review would result in a revision to the U.S. model data inputs (Exhibit USA-140) to reflect a value of 5 for the domestic supply elasticity, labeled "epsilon_us". The United States provides Exhibits USA-154 (updated elasticities) and USA-159 (BCI) (updated data inputs) which reflect this revision.

79. **To China: Please comment on the updated data on domestic supply elasticity for OCTG provided in footnote 78 in the United States' response to Arbitrator's question No. 50.**

Response:

34. This question is addressed to China.

80. **To China and the United States: In response to Arbitrator's question No. 61, China claims that when relying on market size estimates for years earlier than the remedy year, all that is required to convert verified import values to 2017 figures is to adjust for price changes over time. In response to Arbitrator's question No. 23, the United States has criticized this approach by claiming that this effectively assumes constant consumption over time. Since not just prices but also quantities may change over time, please comment on whether using real growth rates in combination with a GDP deflator or, alternatively, nominal growth rates, would improve upon China's estimates for remedy-year market size.**

Response:

35. As the United States has explained, China's application of a GDP deflator to the value of the U.S. market in an earlier year would merely show the value of the earlier U.S. market in terms of 2017 dollars—it does not estimate the size of the 2017 U.S. market.[29] The United States has estimated the actual value of the 2017 U.S. market using (1) reasonable, data-based estimates of U.S. domestic shipments of the product, (2) the value of imports of subject product from China according to data collected by USCBP, which enforced the CVD measure at the time of importation, and (3) the value of imports from ROW under the relevant reference HTSUS codes according to data reported by U.S. Census. Together, these components sum up to U.S. apparent consumption for 2017. The United States notes that the arbitrator in DS471 used this estimation method for the 2017 U.S. market value for the seven products that were also at issue in that proceeding.

36. The United States has considered various approaches to make the best effort to provide the information requested by the Arbitrator, but has not found any real or nominal growth rates for U.S. demand specific to the products at issue. The only proxy rates that could be appropriate for estimating the 2017 market size in this proceeding would be product-specific rates calculated using the U.S. estimate of the 2017 market value and the actual value of an earlier market for each of the products, which should be either the year-prior U.S. apparent consumption data proposed by the United States or the most recent year data available reported by the USITC.

81. **To China and the United States: Please submit your best estimates for nominal growth rates for each product starting from the last year for which USITC estimates for sales of the domestic variety are available all the way until 2017. If**

[29] *See* U.S. Responses to Arbitrator's Advance Questions, Question 23.

product-specific estimates are not available, please provide alternative growth rates (e.g. industry-specific or national growth rates). If nominal growth rates should not be available, please provide estimates of real growth rates.

Response:

37. The United States considers that the most appropriate growth rates to use to estimate sales of the domestic variety in this proceeding would be the product-specific, compounded annual growth rates between the most-recent-year domestic shipments data available, as reported by the USITC,[30] and the 2017 domestic shipments estimated by the United States.[31] As the United States has explained, the estimates of domestic shipments provided by the United States are based on product-specific data and market analysis.[32]

38. With respect to OCTG, since 2019 is the last year for which a USITC estimate is available for sales of the domestic variety,[33] the United States again requests that the Arbitrator use the actual 2017 value of $3.099 billion, rather than relying on a growth rate.[34] For the other seven products for which USITC data is available, the United States has calculated the following nominal compounded annual growth rates:[35]

- Aluminum Extrusions (based on annualized 2016 data): + 12.2 percent;
- Line Pipe (based on annualized 2008 data): - 6.5 percent *[i.e., minus 6.5 percent]*;

[30] *See Certain Aluminum Extrusions From China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Review)*, USITC Publication 4677 (March 2017), p. I-44 (Exhibit CHN-37); *Circular Welded Carbon Quality Steel Line Pipe from China*, Investigation No. 701-TA-455 (Final), USITC Publication 4055 (January 2009), p. IV-21 (Exhibit CHN-11); *Welded Stainless Steel Pressure Pipe from India, Investigation Nos. 701-TA-548 and 731-TA-1298 (Final)*, USITC Publication 4644 (November 2016), p. IV-8 (Exhibit CHN-5); *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 (December 2016), p. I-36 (Exhibit CHN-51); *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. C-6 (Exhibit CHN-32); *Prestressed Concrete Steel Wire Strand from China, Investigation Nos. 701-TA-464 and 731-TA-1160 (Final)*, USITC Publication 4162 (June 2010), p. IV-11 (Exhibit CHN-28); and *Crystalline Silicon Photovoltaic Cells and Modules from China, Investigation Nos. 701-TA-481 and 731-TA-1190 (Review)*, USITC Publication 4874 (March 2019), Table C-2 (Exhibit CHN-46).

[31] *See* Exhibit USA-118 (BCI).

[32] *See* U.S. Written Submission, para. 140; *see also* Exhibits USA-60, USA-61, and USA-116 (BCI).

[33] *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).

[34] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 57.

[35] *See* Exhibits USA-118 (BCI) and USA-103 (BCI).

- Pressure Pipe (based on 2015 data): - 6.6 percent *[i.e., minus 6.6 percent]*;
- Print Graphics (based on 2015 data): - 3.3 percent *[i.e., minus 3.3 percent]*;
- Seamless Pipe (based on 2009 data): - 4.5 percent *[i.e., minus 4.5 percent]*;
- Solar Panels (modules only) (based on 2011 data): - 13.7 percent *[i.e., minus 13.7 percent]*;
- Wire Strand (based on 2009 data): + 0.1 percent.

39. For Kitchen Shelving and Steel Cylinders, USITC did not report public domestic shipments data.[36]

82. **<u>To the United States</u>: US Census (Exhibits USA-59 and USA-65) and USCBP (Exhibits USA-64 and USA-66) figures submitted by the United States differ substantially for imports from China. Could the United States please comment on this difference and explain its reliance on USCBP over US Census data for imports from China, in particular with respect to each of the products, except for kitchen shelving.**

<u>Response</u>:

40. The 2017 imports figures in the U.S. Census data exhibits (Exhibits USA-59 and USA-65) and the USCBP data exhibits (Exhibits USA-64 and USA-66) are different because they cover different scopes of products. The U.S. Census data show aggregated values of 2017 imports under all of the relevant reference HTSUS codes, which, as the United States has explained, may include non-subject products that share the same HTSUS subheadings. In contrast, the USCBP data represent the actual imports subject to the specific CVD order.

41. The United States has shown that USCBP data provides the most accurate estimate of 2017 U.S. imports from China that are subject to the CVD measures at issue here. USCBP, through its Automated Commercial Environment ("ACE") portal system, processes import entries and collects data that allow the agency to determine which imports are subject to a CVD measure and at which CVD rates. USCBP collects data using the description of the product as defined in the relevant CVD order, which establishes the scope of products that are subject to the CVD order.

42. On the other hand, U.S. Census data in Exhibits USA-59 and USA-65 are based on HTSUS categories and likely includes products outside the scope of the CVD measure. Many of the reference HTSUS codes are broad categories, of which the subject product is only a subset. As the United States has shown in Table 8 in the U.S. written submission, for products such as Kitchen Shelving, Print Graphics, and Wire Strand, the actual subject products imported from

[36] *See* U.S. Written Submission, para. 147; U.S. Responses to Arbitrator's Advance Questions, Question 14.

China compose [[***]] of all imports of those products from China reported under the relevant reference HTSUS codes.[37] Even for most of the other products at issue, that ratio was below [[***]].[38] The table is reproduced below (with minor modifications to the row headings for clarity):

U.S. Imports from China
(in $ Thousands)

Product	USCBP Data - Subject Products	U.S. Census Data - Reference HTSUS Codes	USCBP Data as a Share of U.S. Census Data
Aluminum Extrusions 1/	[[***]]	31,625	[[***]]
Print Graphics 1/	[[***]]	98,100	[[***]]
OCTG 1/	[[***]]	19,800	[[***]]
Solar Panels 1/	[[***]]	897,800	[[***]]
Steel Cylinders 1/	[[***]]	6,000	[[***]]
Line Pipe 1/	[[***]]	900	[[***]]
Seamless Pipe 1/	[[***]]	69,500	[[***]]
Kitchen Shelving 2/	[[***]]	305,988	[[***]]
Pressure Pipe 2/	[[***]]	3,911	[[***]]
Wire Strand 2/	[[***]]	78	[[***]]

1/ *See* Exhibits USA-59 and USA-64 (BCI).

2/ *See* Exhibits USA-65 and USA-66 (BCI).

43. Therefore, the United States has used data from USCBP's ACE database for the value of imports from China because that is the best data available to accurately capture the value of trade subject to the relevant CVD measures and thus accurately estimate the level of nullification or impairment.

Line Pipe

83. <u>To China</u>: Please comment on the United States' estimation methodology for sales of the domestic variety as described in Exhibit USA-136 provided by the United States in response to Arbitrator's question No. 54.

<u>Response</u>:

44. This question is addressed to China.

[37] *See* U.S. Written Submission, para. 142.

[38] *See* U.S. Written Submission, para. 142.

OCTG

84. **<u>To the United States</u>: Import figures for OCTG, as indicated in USITC Publication 5090 (Exhibit USA-148), differ substantially from the figures in Exhibit USA-59 based on US Census for the same year. Please clarify the reason for this difference. Please explain why the United States relies on US Census rather than USITC data for imports from the rest of the world. In particular, please indicate whether imports from the rest of the world could not be obtained by deducting USCBP data on imports from China from total imports as indicated in the USITC report.**

<u>Response</u>:

45. The United States notes that the total 2017 U.S. imports figure reported in USITC Publication 5090 (Exhibit USA-148) is $3,107.4 million,[39] and the figure reported in U.S. Census data (Exhibit USA-59) is $2,933.0 million, which is 5.6 percent less than the USITC figure. This minor difference of 5.6 percent appears to stem from the difference in how the values are calculated. The USITC figure was calculated on a landed, duty-paid value (LDPV) basis.[40] LDPV is equivalent to the sum of customs value, any import duties and fees paid, international freight costs, and any other charges except inland freight within the United States. The USITC uses LDPV as import value in its import injury investigations because LDPV represents the total value of bringing the subject merchandise into U.S. commerce. On the other hand, the U.S. Census data is based on customs values only.

46. The United States has relied on U.S. Census data because that is the data source used by the arbitrator in DS471 for imports from ROW. This is consistent with how we have estimated the values of imports from ROW for other products that were also at issue in DS471 (save for adjustments for certain basket HTSUS categories relating to two products). The United States notes that USITC Publication 5090 was published in July 2020 and was not available at the time of the decision of the arbitrator in DS471 or the filing of the written submissions of the Parties in this proceeding.

47. The United States does not consider it appropriate to obtain the value of imports from ROW by deducting USCBP data on imports from China from the total imports value in USITC Publication 5090. The total imports value in USITC Publication 5090 covers all imports under the reference HTSUS codes,[41] while USCBP data specifically covers subject imports under the OCTG CVD order. Accordingly, a more appropriate calculation would be to deduct the HTSUS-aggregated imports from China from HTSUS-aggregated total imports from the world—which is

[39] USITC Publication 5090, p. I-44 (Exhibit USA-148).

[40] *See* U.S. International Trade Commission, *Instruction Booklet, General Information, Instructions, and Definitions for Commission Questionnaires, Certain Oil Country Tubular Goods from China Investigation Nos. 701-TA-463 and 731-TA-1159 (Final)*, p. 6 (Exhibit USA-151).

[41] USITC Publication 5090, p. I-45 (Exhibit USA-148).

the method used by the United States, and which ensures the consistency of the scope of the products covered.

85. **<u>To the United States</u>: Also regarding OCTG, please explain the difference between the remedy year (2017) figure for apparent consumption of "*U.S. producers' U.S. domestic shipments. -- Fully domestic value*" (USD thousands 3,108,763, excluding "incremental value from heat treating imports") in Table I-11 of Exhibit USA-148 and the 2017 figure of "*U.S. shipments*" (USD thousands 3,099,267) in Table III-8 of the same exhibit. Please explain why the United States relies on Table III-8 instead of Table I-11.**

<u>Response</u>:

48. The United States first notes that the 2017 quantity of U.S. producers' domestic shipments reported in Table I-11 and the 2017 quantity of U.S. mills' domestic shipments reported in Table III-8 are the same (2,420,832 short tons). The values referenced in the question differ because the 2017 value of U.S. producers' domestic shipments (fully domestic value) reported in Table I-11 includes the value of toll processing on domestic OCTG, while the U.S. mills' domestic shipments value reported in Table III-8 does not. As a result, the 2017 value of U.S. mills' domestic shipments reported in Table III-8 is 0.3 percent less. Including the value of toll processing on domestic OCTG is a technical adjustment that the USITC makes to reduce any potential reclassification or double-counting of imports for purposes of calculating the value of U.S. apparent consumption.[42] The United States has selected a value that does not incorporate this technical adjustment; specifically, the value reported in Table III-8 represents unadjusted data that is not linked to the calculation of apparent consumption.

86. **<u>To the United States</u>: Regarding sales of the domestic variety, USITC Publication 5090 (Exhibit USA-148) indicates that USITC included "*incremental value from heat treating imports*" in the product scope of its OCTG investigation. Please explain the reasons for using a value that excludes this, in particular whether this may have anything to do with the magnitude of the "*incremental value from heat treating imports*".**

<u>Response</u>:

49. Including the incremental value from heat treatment of imported OCTG by producers located in the United States is a technical adjustment that the USITC makes to reduce any potential reclassification or double-counting of imports for purposes of calculating the value of U.S. apparent consumption. The United States has selected the value reported in Table III-8, which does not incorporate this technical adjustment, because that value represents unadjusted data that is not linked to the calculation of apparent consumption. The selection is not related to the magnitude of the technical adjustment.

[42] *See* Exhibit USA-148, p. I-45.

Print Graphics

87. **<u>To the United States</u>: The United States argues that China's suggested GDP deflator approach is unreliable on the basis that pre-remedy-year data is an unreliable proxy for remedy-year data no matter the time difference. However, with respect to Print Graphics, the United States adjusts 2015 market size data to 2017 using growth rates from 2010 to 2015. Please comment on adjusting data using 2015 to 2017 growth rates, even if potentially more aggregate, as a possible alternative to using past growth rates.**

<u>Response</u>:

50. As the United States has noted, due to a lack of available data on the U.S. Print Graphics market between 2015 and 2017, the United States, as the best alternative, has estimated the 2017 domestic shipments by deriving an average 2010-2015 growth rate specific to Print Graphics.[43] Similarly, the United States does not have sufficient data to estimate the growth rate for the U.S. Print Graphics market between 2015 and 2017. As a result, the United States considers that the U.S. method of relying on the average 2010-2015 growth rate is the best method available for Print Graphics.

51. As the United States has shown, for other products at issue, where there is data available for a specific product for the relevant time period, that data should be used to estimate actual sales, rather than relying on any deflator or growth rate. Print Graphics was an exception because relevant data was not available.

88. **<u>To the United States</u>: Please comment on China's response to Arbitrator's question No. 38, including on Exhibits CHN-108 and CHN-109.**

<u>Response</u>:

52. As an initial matter, the United States disagrees with China's use of a GDP deflator to extrapolate the size of the 2017 U.S. market based on the size of the 2015 U.S. market. China's approach unjustifiably assumes that the U.S. Print Graphics market necessarily rose in value at the same rate as the economy-wide inflation rate between 2015 and 2017. The United States has repeatedly demonstrated how the GDP deflator approach is fundamentally baseless and unusable in this proceeding, including in our earlier response to question 80.

53. Furthermore, the United States has explained that the reference HTSUS codes identified in the Print Graphics CVD order's product scope broadly include non-subject products that are not subject to the CVD measure.[44] Aggregating all imports under the reference HTSUS codes,

[43] *See* Exhibit USA-60.

[44] *See* U.S. Written Submission, paras. 144-45; *see also 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 (December 2016) (Exhibit CHN-51) ("In light of the data coverage

as China has done in Exhibit CHN-109, would include non-subject products and does not provide an accurate estimate of the actual level of subject imports of Print Graphics. Accordingly, the United States has used USCBP data for 2017 imports of Print Graphics from China and made adjustments to the HTSUS-aggregated data for imports from ROW to minimize inclusion of non-subject products.

54. Even aside from these problematic data estimation methods, the United States disagrees with China's proposal to separately add the value of "extra imports"[45] that entered the United States under the additional five HTSUS codes.[46] It is important to clarify that the inclusion of the five HTSUS codes described in Exhibit CHN-108 did not expand the scope of the products subject to the Print Graphics CVD order. First, as the United States has explained, it is always the written description of the subject product in a duty order that is "dispositive"[47] for product scope – not the reference HTSUS codes, which are provided "for convenience and customs purposes only."[48] Second, the inclusion of the five HTSUS codes was merely an "update"[49] to reflect changes to the HTSUS classifications. As shown in the 2012 record of changes to the HTSUS, the five codes were newly added to the HTSUS index in January 1, 2012,[50] as subdivisions of existing codes. The United States will address each of the five new codes one by one.

55. HTSUS **4810.29.1035** was one of the replacements for 4810.29.1000, which was already one of the reference HTSUS codes in the original product scope of the Print Graphics CVD

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by responses to the Commission's questionnaires and the *inclusion of nonsubject products in the broad HTS statistical reporting numbers*, import data in this report are based on questionnaire responses supplemented with proprietary Customs data") (emphasis added).

[45] China's Responses to Arbitrator's Follow-Up Questions, Question 38.

[46] HTSUS 4810.29.1035, 4810.29.7035, 4810.92.1235, 4810.92.1435, and 4810.92.6535.

[47] U.S. Responses to Arbitrator's Follow-Up Questions, Question 59; *see also* 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); 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); Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China*, 75 Fed. Reg. 69050 (November 10, 2010) (Exhibit CHN-31).

[48] U.S. Responses to Arbitrator's Follow-Up Questions, Question 59; *see also* 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); 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); Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China*, 75 Fed. Reg. 69050 (November 10, 2010) (Exhibit CHN-31).

[49] Exhibit CHN-108.

[50] *See* Harmonized Tariff Schedule of the United States, Change Record (2012), pp. 47-48 (Exhibit USA-152).

investigation (the other replacement, 4810.29.1025, was determined by USDOC to be inapplicable based on the product scope[51]).[52]

56. HTSUS **4810.29.7035** merely broke out 4810.29.70 at a more granular level. 4810.29.70 also was already one of the reference HTSUS codes in the original product scope.

57. The remaining three new codes – **4810.92.1235**, **4810.92.1435**, and **4810.92.6535** – also merely broke out 4810.92, which again was already one of the reference HTSUS codes in the original product scope.

58. In other words, prior to the 2012 HTSUS update, products under these five new HTSUS codes already had been covered by the existing reference HTSUS codes in the product scope. As a result, including the five new codes did not bring in any additional products into the scope of the Print Graphics CVD order, but merely updated the existing list of reference HTSUS codes in the product scope.

59. Moreover, the United States does not agree with China's assertion that the data in the 2016 USITC sunset review (Exhibit CHN-51) did not include products under the five HTSUS codes.[53] To the contrary, the sunset review explains that the USITC accounted for the 2012 HTSUS code changes, explaining that:

> In the original investigations, [USITC] staff utilized data for adjusted HTS statistical reporting number 4810.92.12, whereas data in these first five-year reviews rely on HTS statistical reporting number 4810.92.1235 (a 2012 subdivision applicable only to sheets). Additionally, data in the original investigations excluded HTS statistical reporting number 4810.92.14, whereas data in these first five-year reviews includes HTS statistical

[51] *See* U.S. Department of Commerce (USDOC), International Trade Administration, Memorandum to File from Joshua Morris, *Module Update for Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China* (February 8, 2012) (Exhibit USA-153) ("[T]he language of the scope of the order emphasizes the inclusion of 'sheets' and not 'rolls.' Therefore, we have not added [to the USCBP Customs Module] the following HTSUS numbers, as they pertain to 'rolls': 4810.29.1025 […]."). The United States notes that Exhibit CHN-108 cites this memorandum regarding the 2012 update to the Customs Module.

[52] The list of the reference HTSUS codes in the original product scope is as follows: 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090, 4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70, 4810.32, 4810.39 and 4810.92. *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* (September 27, 2010), 75 Fed. Reg. 59212, 59213 (Exhibit CHN-48); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (November 17, 2010), 75 Fed. Reg. 70201, 70202 (Exhibit USA-49).

[53] *See* China's Responses to Arbitrator's Follow-Up Questions, Question 38, footnote 17.

> reporting number 4810.92.1435 (a 2012 subdivision applicable only to sheets), which aligns with Commerce's scope definition.[54]

60. Regarding the other three new HTSUS codes (4810.29.7035, 4810.92.1235, and 4810.92.6535), the USITC sunset review appears to confirm that they were merely subdivisions of broader HTSUS codes already included in the reference HTSUS codes, noting that "the HTS statistical reporting numbers used to compile data in these first five-year reviews are largely consistent with those used in the original investigations."[55]

61. Accordingly, the data in the 2016 USITC sunset review already includes subject products under the five new HTSUS codes. China's assumption that the data did not include them is unsupported. As a result, China's addition of the value of imports under the five new HTSUS codes to the U.S. market size reported in the sunset review amounts to double-counting of subject imports under those five HTSUS codes. Using this overstated market size data not only is incorrect but also would overstate the 2017 market projection when China attempts to convert the 2015 market into the 2017 market, and would further distort the overall estimate of the level of nullification or impairment.

89. **To China: Please elaborate on footnote 17 to your response to Arbitrator's question No. 38, specifically by providing the sources for Exhibit CHN-109.**

Response:

62. This question is addressed to China.

90. To China: Please explain why the suggested change in product scope, as provided in your response to Arbitrator's question No. 38, should affect imports but not sales of the domestic variety.

Response:

63. This question is addressed to China.

Seamless Pipe

91. **To the United States: Please elaborate on the substantial difference between the HTS codes listed in two different CVD investigations (seamless pipe from Romania and Japan, and seamless pipe from China) in light of your response to Arbitrator's question No. 59 indicating that the product scope in the two investigations is "nearly identical".**

[54] USITC Publication 4656 (Exhibit CHN-51), p. IV-2, footnote 10.

[55] USITC Publication 4656 (Exhibit CHN-51), p. IV-2.

Response:

64. The United States has noted that the product scopes of the USITC investigations of seamless pipe from China and seamless pipe from Japan are nearly identical.[56] The United States has also noted that the product scope of the USITC investigation of seamless pipe from Romania differs from the investigations on seamless pipe from China and on seamless pipe from Japan because the investigation on seamless pipe from Romania does not include seamless pipe that is greater than 4.5 inches up to and including 16 inches in outside diameter.[57]

65. While it appears that the investigation on seamless pipe from China lists 12 more reference HTSUS codes[58] in its product scope description than the investigations on seamless pipe from Japan and from Romania, the difference in the number of reference HTSUS codes does not necessarily mean that the investigations cover different types of subject products. As the United States has explained, the USITC and the U.S. Department of Commerce (USDOC) provide these reference HTSUS codes "for convenience and customs purposes only,"[59] and it is the written description of the subject product scope that is "dispositive,"[60] not the reference HTSUS codes. Based on a comparison of the written descriptions of the subject products, the investigation on seamless pipe from China and the investigation on seamless pipe from Japan appear to have covered the same steel types (carbon and alloy), same manufacturing and finishing processes, and same size ranges (up to 16 inches outside diameter).[61] While there are certain differences between the products specifically excluded from the scope of the respective CVD investigations, the United States considers the scopes to be substantially comparable, and it is thus reasonable and appropriate to use 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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[56] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 59.

[57] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 59.

[58] HTSUS 7304.31.3000, 7304.31.6050, 7304.39.0028, 7304.39.0032, 7304.39.0040, 7304.39.0044, 7304.39.0052, 7304.39.0056, 7304.39.0068, 7304.39.0072, 7304.51.5005, and 7304.51.5060.

[59] U.S. Responses to Arbitrator's Follow-Up Questions, Question 59; *see also* 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); 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); Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China*, 75 Fed. Reg. 69050 (November 10, 2010) (Exhibit CHN-31).

[60] *Id.*

[61] *See* 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-8 (Exhibit CHN-32); 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), pp. I-14 to I-19 (Exhibit CHN-105).

Aluminum Extrusions

92. **<u>To the United States</u>: In response to Arbitrator's question No. 60 regarding Aluminum Extrusions, the United States explains that it scales up its estimate for sales of the domestic variety using a real growth rate based on quantities rather than values. Please comment on whether, in the absence of nominal growth rates, this estimate should additionally be scaled up using a GDP deflator as specific to the product as possible.**

<u>Response</u>:

66. The United States has calculated growth rates using quantities rather than values because the only data available to the United States on 2015-2017 aluminum extrusion shipments was in terms of quantity.

67. The United States does not agree with scaling up the estimate using any GDP deflator because such an approach would fail to reflect how the price of aluminum extrusions is determined in reality. The base price of aluminum, as a global commodity, is set by the London Metals Exchange (LME)[62] and may not directly correlate to U.S. GDP. In addition to the LME base price, aluminum extrusion prices are also influenced by regional premiums (based on supply and demand in a particular region) and conversion or fabrication costs.

68. In the absence of nominal growth rates, it would be more accurate to scale up the estimate using a wholesale price index (WPI) or consumer price index (CPI), rather than a GDP deflator. A WPI deflator would measure prices received by intermediate goods producers as paid by their immediate downstream customers, rather than derived demand by the ultimate customers of finished goods. Moreover, using a WPI or CPI would reflect the effect of imports on domestic sales prices, whereas the GDP deflator would not.

93. **<u>To the United States</u>: Please submit the relevant document referenced in your response to Arbitrator's question No. 60 as "The Aluminum Association, 'U.S. and Canadian Producer Shipments of Aluminum Extruded Products'".**

<u>Response</u>:

69. The United States has provided Exhibit USA-149 (BCI) during the videoconference with the Arbitrator. The exhibit contains a relevant excerpt of the Aluminum Association's "U.S. and Canadian Producer Shipments of Aluminum Extruded Products" dataset, which is available on

[62] *See* U.S. International Trade Commission, *Certain Aluminum Extrusions from China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Review)*, Publication No. 4677 (March 2017) (Exhibit CHN-37), p. 29 ("AEFTC and Brazeway asserted that all aluminum extrusions reflect the base metal price tied to an index (such as the London Metal Exchange), delivery fee, and a negotiated conversion margin, and they observe that aluminum extrusions are sold in a wide range of prices."); p. V-2 ("Most importers reported adjusting prices monthly based on changes in LME prices.")

the members-only Industry Statistics page of the Aluminum Association website (aluminum.org). Figures other than the 2015, 2016, and 2017 annual shipments figures that were provided in the U.S. response to the Arbitrator's question 60 are redacted to protect the Aluminum Association's business proprietary information.

Solar Panels

94. **<u>To China and the United States</u>: For sales of imports of Solar Panels, the USITC figures submitted by China (Exhibit CHN-45) and the USCBP and US Census figures submitted by the United States (Exhibits USA-64 and USA-59) differ substantially. Please comment on the reasons for this difference, taking into account that, in light of China's response to Arbitrator's question No. 63, these differences do not appear to be explained by differences in product scope.**

<u>Response</u>:

70. The United States notes that the correct reference for the USITC figures submitted by China appears to be Exhibit CHN-46 rather than Exhibit CHN-45, which does not report 2017 imports figures. Moreover, the correct reference to China's response appears to be with regard to the Arbitrator's question 64 rather than question 63.

71. The United States considers that the differences stem from differences in product scope. According to Exhibit CHN-46, while the figures in that USITC report were derived from the value of imports under HTSUS 8541.40.6020 and 8541.40.6030, the USITC incorporated adjustments to the HTSUS-based imports value:[63]

> […] to remove the following: (1) known imports of modules that contained U.S.-produced cells (from questionnaire responses) and (2) an estimated amount of thin film products (based on the ratio of total imports held by thin film products in July and August 2018 under HTS statistical reporting numbers 8541.40.6035 and 8541.40.6045).

72. The U.S. Census figures in Exhibit USA-59 are also based on HTSUS-based imports value but did not incorporate the aforementioned adjustments. Rather, they include all imports under the reference HTSUS codes. This is the data used by the DS471 arbitrator to estimate imports from ROW.

73. The USCBP figures in Exhibit USA-64 (BCI) specifically cover actual imports from China subject to the Solar Panels CVD measure. Accordingly, the USCBP imports data is a

[63] *Crystalline Silicon Photovoltaic Cells and Modules from China, Investigation Nos. 701-TA-481 and 731-TA-1190 (Review)*, USITC Publication 4874 (March 2019), p. I-57, footnote 113 (Exhibit CHN-46).

subset of the HTSUS-based U.S. Census imports data in Exhibit USA-59. This USCBP data is the data used by the DS471 arbitrator to estimate imports from China.

95. **To the United States: In response to Arbitrator's question No. 66, the United States has provided amended LTAR rates for the provision of wire rod and has submitted new exhibits in this regard. Among such exhibits, the United States has provided an updated estimate of N/I (Exhibit USA-139). However, the only change in Exhibit USA-139 relative to the earlier Exhibit USA-101 seems to relate to Steel Cylinders, and not to Wire Strand. Please explain how the Arbitrator should take Exhibit-139 into account as regards Steel Cylinders and Wire Strand, including as regards the relevance of these changes to the total figures of your N/I estimates, which remain unchanged from Exhibit USA-101.**

Response:

74. As the United States has explained, the correction of the LTAR rates for the provision of wire rod and the corresponding changes to the WTO-consistent CVD rates has only a minor impact on the estimate of nullification or impairment attributable to the Wire Strand CVD measure.[64] Under the incorrect LTAR rates and WTO-consistent CVD rates, the United States previously estimated the level of nullification or impairment to be $0.267 million. Using the corrected rates, that estimate was revised to $0.269 million.

75. Because the United States in Exhibit USA-139 has reported estimates of the level of nullification or impairment up to two digits after the decimal points, and because the impact of correcting the LTAR rates on the level of nullification or impairment for Wire Strand was only about $0.002 million, the estimate for Wire Strand has essentially remained the same at $0.27 million. The same is true for the estimate using the net of duties approach: the estimate increases from $0.175 million to $0.177 million, essentially remaining approximately $0.18 million.

76. The estimates of the level of nullification or impairment for Steel Cylinders in Exhibit USA-139 are updated estimates based on the incorporation of Norris Cylinder's actual U.S. domestic sales data.[65] Accordingly, the reference in the endnote should have been to U.S. response to the Arbitrator's question 48, instead of question 66. The United States regrets any confusion caused by this inadvertent error.

96. **To China: Please comment on the United States' response to Arbitrator's question No. 66, especially regarding the amendment of the LTAR rate for wire rod for Fasten Companies in Exhibit USA-138.**

Response:

[64] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 66.

[65] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 48; *see also* Exhibit USA-116 (BCI).

77. This question is addressed to China.

97. **<u>To China</u>: Please comment on the United States' response to Arbitrator's question No. 69, especially regarding the amendment, by the United States, of the All Others LTAR rates for Aluminum Extrusions and for Solar Panels in Exhibit USA-138.**

<u>Response</u>:

78. This question is addressed to China.

B. NEW QUESTIONS

98. **<u>To the United States</u>: Please elaborate on the arguments in paragraph 3 of your closing statement that you have "made a *prima facie* case that China's proposed level of suspension is not equivalent to the level of N/I caused by the CVD measures" since China "recognized that its initial requested level of suspension (i.e. USD 2.4 billion) was in excess of the level of N/I and reduced by more than one hundred percent".**

<u>Response</u>:

79. Article 22.2 of the DSU provides that, under certain specified circumstances, a complaining Member "may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements." Article 22.4 of the DSU provides that "[t]he level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment." And Article 22.6 of the DSU provides, in relevant part, that, "if the Member concerned objects to the level of suspension proposed … the matter shall be referred to arbitration." Accordingly, per the terms of the DSU, the "matter" that was referred to arbitration by the U.S. objection[66] is the "level of suspension proposed" by China in its request to the DSB, which is $2.4 billion annually.[67] The task of the Arbitrator is to determine whether the level of suspension proposed by China is, or is not, equivalent to the level of nullification or impairment.

80. Because the DSB would authorize China's request at the level set out in its request absent the U.S. objection, it is reasonable for the Arbitrator to first request the United States to substantiate its objection, which referred the matter to arbitration. In one of the first Article 22.6 decisions, *EC – Hormones (US) (Article 22.6 – EC)*, the arbitrator reasoned as follows concerning the burden of proof in an Article 22.6 proceeding:

> WTO Members, as sovereign entities, can be *presumed* to act in conformity with their WTO obligations. A party claiming that a Member has acted *inconsistently* with WTO rules bears the burden

[66] *See* Communication from the United States (October 25, 2019), WT/DS437/31.

[67] *See* Recourse to Article 22.2 of the DSU by China (October 17, 2019), WT/DS437/30.

> of proving that inconsistency. The act at issue here is the US proposal to suspend concessions. The WTO rule in question is Article 22.4 prescribing that the level of suspension be equivalent to the level of nullification and impairment. The EC challenges the conformity of the US proposal with the said WTO rule. It is thus for the EC to prove that the US proposal is inconsistent with Article 22.4. Following well-established WTO jurisprudence, this means that it is for the EC to submit arguments and evidence sufficient to establish a *prima facie* case or presumption that the level of suspension proposed by the US is *not* equivalent to the level of nullification and impairment caused by the EC hormone ban. Once the EC has done so, however, it is for the US to submit arguments and evidence sufficient to rebut that presumption. Should all arguments and evidence remain in equipoise, the EC, as the party bearing the original burden of proof, would lose.[68]

Numerous other Article 22.6 arbitrators have agreed with or adopted as their own the reasoning above.[69]

81. The United States concurs that this reasoning by the *EC – Hormones (US)* arbitrator reflects the structure of DSU Articles 22.2 and 22.6. China has proposed to suspend concessions at a level of $2.4 billion annually; the United States has objected to that level, referring the matter to arbitration; and the United States has substantiated (including through China's concession that $2.4 billion is not the level of nullification or impairment) that China's proposed level of suspension is inconsistent with Article 22.4 of the DSU.

82. As explained in the U.S. closing statement during the videoconference,[70] as well as in the U.S. written submission,[71] China has conceded that the level of suspension it proposed pursuant

[68] *EC – Hormones (US) (Article 22.6 – EC)*, para. 9 (italics in original).

[69] *See EC – Bananas III (Ecuador) (Article 22.6 – EC)*, paras. 37-38; *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.8; *US – FSC (Article 22.6 – US)*, paras. 2.8, 2.10; *Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)*, paras. 2.5-2.6; *US – 1916 Act (EC) (Article 22.6 – US)*, paras. 3.2-3.4; *US – Offset Act (Byrd Amendment) (Brazil) (Article 22.6 – US)*, para. 2.25; *US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US)*, para. 2.36; *US – Offset Act (Byrd Amendment) (Chile) (Article 22.6 – US)*, para. 2.24; *US – Offset Act (Byrd Amendment) (EC) (Article 22.6 – US)*, para. 2.25; *US – Offset Act (Byrd Amendment) (India) (Article 22.6 – US)*, para. 2.25; *US – Offset Act (Byrd Amendment) (Japan) (Article 22.6 – US)*, para. 2.25; *US – Offset Act (Byrd Amendment) (Korea) (Article 22.6 – US)*, para. 2.25; *US – Offset Act (Byrd Amendment) (Mexico) (Article 22.6 – US)*, para. 2.25; *US – Gambling (Article 22.6 – US)*, paras. 2.22-2.23; *US – Upland Cotton (Article 22.6 – US I)*, para. 4.22; *US – Upland Cotton (Article 22.6 – US II)*, para. 4.13; *US – COOL (Article 22.6)*, para. 4.7; *US – Washing Machines (Article 22.6 – US)*, para. 1.14; *EC – Large Civil Aircraft (Article 22.6 – EC)*, para. 4.2; *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 1.11; *US – Large Civil Aircraft (2nd Complaint) (Article 22.6 – US)*, para. 4.3.

[70] *See* Closing Statement of the United States of America at the Arbitrator's Videoconference with the Parties (November 18, 2020) ("U.S. Closing Statement"), paras. 3-4.

[71] *See* U.S. Written Submission, para. 1.

to Article 22.2 ($2.4 billion annually)[72] exceeds the level of nullification or impairment, and has revised its estimate to $1.02 billion annually.[73] Accordingly, the United States has made a *prima facie* case that China's proposed level of suspension is inconsistent with Article 22.4 of the DSU. China has not rebutted that *prima facie* case – on the contrary, China has explicitly agreed that the level of suspension it proposed to the DSB is not equivalent to the level of nullification or impairment. On the question of equivalence, then, the arguments and evidence do not "remain in equipoise"; rather, the U.S. objection is substantiated.[74]

83. In the U.S. response to question 100 below, the United States further comments on the role of the parties and their respective burdens in the subsequent phase of the arbitration, *i.e.*, in connection with the Arbitrator's estimation of the level of suspension that it considers to be equivalent to the level of nullification or impairment.

99. To China: Please comment on the argument in paragraph 17 of the United States' opening statement that "[t]here is no product-level evidence in support of applying this arbitrary assumption to the products at issue".[75]

Response:

84. This question is addressed to China.

100. To the United States: Please comment on the arguments and references contained in paragraph 11 of China's opening statement regarding the parties' respective burden of proof in these proceedings, in particular as regards the nested approach and the Rule of Two suggested by China.

Response:

85. China appears to misunderstand the parties' respective burdens of proof in these proceedings. In particular, China conflates the general burden of proof related to the question of whether the level of suspension China proposed to the DSB is equivalent to the level of nullification or impairment, as required by Article 22.4 of the DSU, with the issue of the role and responsibility of the parties in presenting evidence and supporting their arguments during these proceedings.

86. As explained above in the U.S. response to question 98, the United States has made a *prima facie* case that China's proposed level of suspension is inconsistent with Article 22.4 of the DSU, and China has not rebutted that *prima facie* case – on the contrary, China has explicitly

[72] *See* Recourse to Article 22.2 of the DSU by China (October 17, 2019), WT/DS437/30.

[73] *See* Methodology Paper of the People's Republic of China (January 14, 2020) ("China's Methodology Paper"), para. 3.

[74] *EC – Hormones (Canada) (Article 22.6 – EC)*, para. 9.

[75] This question was asked as a follow-up to question No. 70 at the Q&A session.

agreed that the level of suspension it proposed to the DSB is not equivalent to the level of nullification or impairment. On the question of equivalence, then, the arguments and evidence do not "remain in equipoise", and the United States should prevail on its objection.[76]

87. DSU Article 22.7 states that the arbitrator "shall determine whether the level of such suspension is equivalent to the level of nullification or impairment." In its final sentence, Article 22.7 states in relevant part that the DSB "shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator." This provision suggests that, where the arbitrator has "determined" that the level of suspension is not equivalent to the level of nullification or impairment, the arbitrator shall proceed in its "decision" to determine the equivalent level, such that a subsequent request for authorization can be "consistent with the decision of the arbitrator." In this regard, the United States agrees that it is appropriate for the Arbitrator to continue the analysis and estimate the level of suspension that it considers to be equivalent to the level of nullification or impairment, as other arbitrators have done in prior Article 22.6 proceedings.[77]

88. The additional reasoning of the arbitrator in *EC – Hormones (US)* related to burden of proof is relevant to such a subsequent phase of these proceedings. Referring to its discussion of the general burden of proof, the *EC – Hormones (US)* arbitrator further reasoned that:

> The same rules apply where the existence of a specific *fact* is alleged; in this case, for example, where a party relies on a decrease of beef consumption in the EC or the use of edible beef offal as pet food. It is for the party alleging the fact to prove its existence.
>
> The duty that rests on *all* parties to produce evidence and to collaborate in presenting evidence to the arbitrators – an issue to be distinguished from the question of who bears the burden of proof – is crucial in Article 22 arbitration proceedings. The EC is required to submit evidence showing that the proposal is *not* equivalent. However, at the same time and as soon as it can, the US is required

[76] *EC – Hormones (Canada) (Article 22.6 – EC)*, para. 9.

[77] *See EC – Hormones (Canada) (Article 22.6 – EC)*, para. 12; *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 3.18; *Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)*, para. 3.51; *US – 1916 Act (EC) (Article 22.6 – US)*, paras. 4.6-4.9; *US – Offset Act (Byrd Amendment) (Brazil) (Article 22.6 – US)*, para. 3.15; *US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US)*, para. 3.13; *US – Offset Act (Byrd Amendment) (Chile) (Article 22.6 – US)*, para. 3.13; *US – Offset Act (Byrd Amendment) (EC) (Article 22.6 – US)*, para. 3.15; *US – Offset Act (Byrd Amendment) (India) (Article 22.6 – US)*, para. 3.15; *US – Offset Act (Byrd Amendment) (Japan) (Article 22.6 – US)*, para. 3.15; *US – Offset Act (Byrd Amendment) (Korea) (Article 22.6 – US)*, para. 3.15; *US – Offset Act (Byrd Amendment) (Mexico) (Article 22.6 – US)*, para. 3.15; *US – Gambling (Article 22.6 – US)*, paras. 3.75 and 3.172-3.173; *US – Upland Cotton (Article 22.6 – US I)*, para. 4.25; *US – Upland Cotton (Article 22.6 – US II)*, para. 4.16; *US – COOL (Article 22.6)*, para. 4.4; *US – Washing Machines (Article 22.6 – US)*, para. 1.15; *EC – Large Civil Aircraft (Article 22.6 – EC)*, para. 3.4; *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 1.12; *US – Large Civil Aircraft (2nd Complaint) (Article 22.6 – US)*, para. 3.5.

> to come forward with evidence explaining how it arrived at its proposal and showing why its proposal *is* equivalent to the trade impairment it has suffered. Some of the evidence – such as data on trade with third countries, export capabilities and affected exporters – may, indeed, be in the sole possession of the US, being the party that suffered the trade impairment. This explains why we requested the US to submit a so-called methodology paper.[78]

89. The arbitrator in DS471similarly reasoned that "it is for each party to bring forward the elements to sustain the factual assertions it makes, and . . . each party has a duty to collaborate in the establishments of facts."[79] The United States agrees with this reasoning.

90. Turning to the statements China made in paragraph 11 of its opening statement, China first asserts that "[a]s the complainant, China does not bear the burden of establishing a *prima facie* case that its proposed level of suspension is 'equivalent' within the meaning of Article 22.4 of the DSU."[80] China's statement is correct, but inapposite. As explained above, it has been established, and China has agreed, that the level of suspension that China proposed to the DSB ($2.4 billion) is not equivalent to the level of nullification or impairment, and thus is inconsistent with Article 22.4 of the DSU.

91. China attempts to support its (inapposite) assertion by quoting the arbitrator in *US – COOL (Article 22.6 – US)*, which reasoned that "merely putting forward . . . a different methodology as 'appropriate' . . . is not sufficient"[81] to meet the objecting party's burden of proof. However, the arbitrator in *US – COOL* also explained that "[i]t may be possible to present an alternative methodology as a way of engaging with, and contributing to disproving, a

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[78] *EC – Hormones (US) (Article 22.6 – EC)*, paras. 10-11 (italics in original; underline added; footnotes omitted). *See also EC – Bananas III (Ecuador) (Article 22.6 – EC)*, para. 37; *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.9; *US – FSC (Article 22.6 – US)*, para. 2.11; *Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)*, para. 2.7; *US – 1916 Act (EC) (Article 22.6 – US)*, para. 3.5; *US – Offset Act (Byrd Amendment) (Brazil) (Article 22.6 – US)*, para. 2.26; *US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US)*, para. 2.37; *US – Offset Act (Byrd Amendment) (Chile) (Article 22.6 – US)*, para. 2.25; *US – Offset Act (Byrd Amendment) (EC) (Article 22.6 – US)*, para. 2.26; *US – Offset Act (Byrd Amendment) (India) (Article 22.6 – US)*, para. 2.26; *US – Offset Act (Byrd Amendment) (Japan) (Article 22.6 – US)*, para. 2.26; *US – Offset Act (Byrd Amendment) (Korea) (Article 22.6 – US)*, para. 2.26; *US – Offset Act (Byrd Amendment) (Mexico) (Article 22.6 – US)*, para. 2.26; *US – Gambling (Article 22.6 – US)*, paras. 2.21 and 2.24-2.25; *US – Upland Cotton (Article 22.6 – US I)*, para. 4.23; *US – Upland Cotton (Article 22.6 – US II)*, para. 4.14; *US – COOL (Article 22.6)*, paras. 4.8-4.9; *US – Washing Machines (Article 22.6 – US)*, para. 1.14; *EC – Large Civil Aircraft (Article 22.6 – EC)*, para. 4.4; *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 1.11; *US – Large Civil Aircraft (2nd Complaint) (Article 22.6 – US)*, para. 4.4.

[79] *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 1.11. *See also US – Washing Machines (Article 22.6 – US)*, para. 1.14; *US – Gambling (Article 22.6 – US)*, para. 2.24. *See also EC – Hormones (US) (Article 22.6 – EC)*, para. 11; *US – 1916 Act (EC) (Article 22.6 – US)*, para. 3.6; and *US – COOL (Article 22.6 – US)*, para. 4.9.

[80] Opening Statement of China at the Meeting of the Arbitrator (November 12, 2020) ("China's Opening Statement"), para. 11.

[81] *US – COOL (Article 22.6 – US)*, para. 4.12.

proposed methodology."[82] The arbitrator's concern was that "the alternative methodology does not, in itself, assist the Arbitrator in determining whether the result from the first methodology is (or is not) equivalent to the level of nullification or impairment. In such a situation, it would follow from the rules on burden of proof that the objecting party has not proved that the act at issue is WTO-inconsistent."[83] Here, however, as the United States has demonstrated, it has already been established that the level of suspension that China proposed to the DSB is WTO-inconsistent.

92. Furthermore, the United States plainly has not "merely put[] forward . . . a different methodology" in response to the methodology China proposed. Rather, the United States has shown that China's methodology is incorrect, *inter alia*, because it relies on an unsupported *ad hoc* assumption about substitution elasticities and fails to control for factors besides the CVD measures at issue that affected China's market share in 2017. Even more, the United States has also put forward the correct methodology to assist the Arbitrator in accurately determining the level of nullification or impairment.

93. China further contends in paragraph 11 of its opening statement that "[d]ue to the allocation of the initial burden of proof to the United States, '[s]hould the evidence remain in equipoise on a particular claim, the Arbitrator[] would conclude that the claim has not been established. Should all evidence remain in equipoise, [the United States], as the party bearing the original burden of proof, would lose the case'."[84] Again, the quoted passage refers to the general burden of proof on the United States to establish the WTO-inconsistency of the level of suspension China proposed to the DSB, which the United States has already met.

94. The only "claim" in this proceeding is the U.S. "claim" that the level of suspension that China proposed to the DSB is WTO-inconsistent. Other arguments or assertions made by the parties are not "claims" in that sense. And it certainly is not the case that the methodology proposed by China or facts alleged by China are entitled to any presumption of correctness or special weight simply because China has put them forward, or that the United States has a higher burden than China with respect to the methodology and facts that the United States has put forward.[85] The parties are on equal footing as the Arbitrator works to estimate the level of suspension that it considers to be equivalent to the level of nullification or impairment. Ultimately, in this phase of the proceeding, there can be no equipoise; it is the Arbitrator's duty to break any ties as it determines for itself what methodology and facts to use to estimate the level of nullification or impairment.

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[82] *US – COOL (Article 22.6 – US)*, para. 4.12.

[83] *US – COOL (Article 22.6 – US)*, para. 4.12.

[84] China's Opening Statement, para. 11 (quoting *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.8 and also citing *EC – Hormones (US) (Article 22.6 – EC)*, para. 9, *US – 1916 Act (EC) (Article 22.6 – US)*, para. 3.2, *US – Gambling (Article 22.6 – US)*, para. 2.22, and *US – COOL (Article 22.6 – United States)*, para. 4.7).

[85] *See, e.g., US – Gambling (Article 22.6 – US)*, paras. 2.21 and 2.24-2.25.

95. China also states in paragraph 11 of its opening statement that China does not "bear the burden of verifying the U.S. data."[86] The United States agrees with the reasoning of the decisions to which China refers in making this statement, *i.e.*, that "[i]t is for the party alleging the fact to prove its existence."[87] However, the United States also recalls the decision of the arbitrator in *Brazil – Aircraft (Article 22.6 – Brazil)*, which reasoned that when information originates in a Member government, it is appropriate to assume good faith and accept the information and supporting evidence provided by the Member to the extent it is also accepted by the opposing Member (obviously, not the situation here) or to the extent the opposing Member "did not provide sufficient evidence to put in doubt the accuracy of [the Member's] statements and/or evidence."[88] The arbitrator in *Brazil – Aircraft* contrasted the situation of information originating with a Member and the situation of information originating with a company that is "independent" from the government of the Member, explaining that "we could not treat statements from that company as we would have if they had originated from a subject of international law."[89] Accordingly, while China may not "bear the burden of verifying the U.S. data",[90] China does bear the burden of providing to the Arbitrator "sufficient evidence to put in doubt the accuracy" of the data provided by the United States, and China has not met that burden.[91] China has offered only mere speculation and conjecture about the U.S. data, without establishing any basis to doubt the data's accuracy.

96. Finally, with respect to the nested approach and the rule of two, as discussed above,[92] where China alleges a particular fact, including an economic assumption such as the nested approach and the rule of two, China bears the burden of proving the existence of the fact. And, of course, the United States bears the same burden with respect to facts that it alleges.

97. Here, China has asserted that the microelasticities are exactly twice as large as the macroelasticities for the relevant products in this proceeding, and that this assumption is widely used in the relevant empirical literature.[93] However, China has failed to sustain these assertions, as explained above in the U.S. response to question 70.

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[86] China's Opening Statement, para. 11 (citing *EC – Hormones (US) (Article 22.6 – EC)*, para. 10 and *US – COOL (Article 22.6 – US)*, para. 4.8).

[87] *EC – Hormones (US) (Article 22.6 – EC)*, para. 10 and *US – COOL (Article 22.6 – US)*, para. 4.8

[88] *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.10.

[89] *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.11.

[90] China's Opening Statement, para. 11 (citing *EC – Hormones (US) (Article 22.6 – EC)*, para. 10, and *US – COOL (Article 22.6 – US)*, para. 4.8).

[91] *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.10.

[92] *See* paras. 88-89.

[93] *See* China's Opening Statement, paras. 12, 15; China's Methodology Paper, Section III.C.5; Written Submission of the People's Republic of China (March 24, 2020) ("China's Written Submission"), Section V.A.

98. In contrast, the United States has sustained its assertion that in PE modeling the "standard trade policy model is the constant elasticity of substitution (CES) tariff model."[94] The CES model assumes the Rule of One by definition. The United States also has sustained its assertion that a nested approach – which encompasses the Rule of Two and other model arrangements assuming a nonconstant elasticity of substitution – is not appropriate in this proceeding because trade diversion is not expected for the products at issue. The United States has provided product-specific evidence reported by the USITC that shows that the domestic variety, imports from China, and imports from ROW are not systematically differentiated, but rather are comparable and interchangeable in terms of product quality, terms of sale, and use.[95] The United States further elaborates on this point in the U.S. response to question 101, below.

99. In sum, the United States has established that the level of suspension that China proposed to the DSB is WTO-inconsistent because it is not equivalent to the level of nullification or impairment, as required by Article 22.4 of the DSU. Consequently, both parties now have the opportunity and burden to provide to the Arbitrator evidence to sustain their factual assertions in order to assist the Arbitrator in determining the correct methodology (including correct underlying assumptions) and the correct data that can be used to accurately estimate a level of suspension that is equivalent to the level of nullification or impairment. The United States believes that it has successfully carried that burden by providing to the Arbitrator the best evidence and data available.

101. To the United States: Please comment on the argument in paragraph 13 of China's opening statement that "[t]he United States has failed to show a statistical (or even an anecdotal) rejection of the 'Rule of Two' as applied by China", and that "[t]he sample responses to the USITC's questions on comparability and interchangeability submitted by the United States are insufficient evidence to apply the 'Rule of One' because those responses do not indicate anything about price response, which is needed to inform the value of the elasticity." Please also comment on the argument in paragraph 14 of China's opening statement that "[t]he United States has not presented any precise estimate of the appropriate micro-elasticity, nor has it demonstrated that in the absence of a more precise estimate, its extreme assumption of the 'Rule of One' is more appropriate than the 'Rule of Two'."

Response:

100. First, contrary to China's mischaracterization, the Rule of One is far from being an "extreme" assumption and is, in fact, the standard assumption that is widely applied by economic modelers in Armington partial equilibrium (PE) trade models of a single product market.[96] In contrast, as described in the Feenstra paper, the Rule of Two is an "*ad hoc* assumption" used by "some researchers," most often for the purpose of parameterizing global, multi-sector

[94] *Bethmann et al.*, p. 2 (Exhibit CHN-60); *see also* U.S. Written Submission, paras. 109-110.

[95] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1.

[96] *See* Exhibit CHN-60, p. 2.

computable general equilibrium (CGE) models,[97] which are distinct in form and purpose from PE models. Even for the purpose of CGE modeling, the USITC has recently abandoned the Rule of Two, partially because the Feenstra paper "suggests that for between two-thirds and three-quarters of sample goods, there is no significant difference between the estimation of the [macroelasticity] (substitution between imports and domestic goods) and [microelasticity] (substitution between imports from different source)."[98]

101. Second, China, in its opening statement, made another mischaracterization of the U.S. position regarding the Rule of Two. The United States has never agreed that the Rule of Two would be appropriate where trade diversion is expected. Rather, the United States has stated that, in certain cases, a nested approach may be appropriate for products where trade diversion is expected.[99] A "nested approach" encompasses a wide range of possible model arrangements in which the elasticity of substitution is not assumed to be constant across all sources of supply (*e.g.*, U.S. domestic producers, China, and ROW). (The Rule of Two – which assumes that the microelasticity is twice as large as the macroelasticity – is a very specific kind of a nested approach.) A nested approach would be used where there is evidence that buyers are more likely to substitute one source of supply over another in response to a change in the price of the subject variety.[100] However, China has not provided such evidence for any of the products in this proceeding.

102. In contrast, as explained in the U.S. responses to question 1 and question 70, above, the United States has submitted ample evidence in support of the Rule of One, based on information from surveys of U.S. buyers of the products at issue in this proceeding. These survey responses indicate that the U.S. buyers of all but one of the products find varieties from all sources to be: 1) comparable in terms of almost all dimensions of quality and terms of sale, and 2) interchangeable across all sources in their application.[101] These buyer perceptions, which were documented in the USITC reports, are certainly indicative of whether the price responses would be constant across sources, contrary to China's argument in paragraph 13 of its opening statement. That is, they show that there is no basis to assume that an increase in the price of imports from China

[97] *See* Exhibit CHN-63, p. 1.

[98] *See* U.S. Written Submission, para. 109.

[99] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1, para. 4.

[100] As an illustrative example of a case in which a nested approach may be appropriate, consider a fictional market for vehicles in which U.S. producers specialize in the production of large vehicles, and both China and ROW specialize in the production of small vehicles. In that case, when faced by an increase in the price of vehicles imported from China, it is likely that proportionately more buyers would substitute toward vehicles imported from ROW because they are more comparable in size to imports from China and likely to be suitable for the same purposes. To capture this feature of the fictional vehicles market, an economic modeler would consider a nested approach. To do so, the modeler would estimate separate microelasticities and macroelasticities to quantify the degree to which buyers' willingness to substitute toward domestically produced vehicles versus vehicles imported from ROW diverged. If the estimated values differ, the analyst would then apply a statistical test to determine whether the differences were statistically significant or merely an artifact of noise in the sample data.

[101] U.S. Responses to Arbitrator's Advance Questions, Question 1, para. 3.

would lead U.S. buyers to systematically and disproportionately substitute toward imports from ROW, over U.S. domestic products. There is certainly no evidence that buyers are likely to substitute toward imports from ROW at double the rate of substitution toward U.S. domestic products.

103. China's argument that this product-specific evidence from USITC surveys of buyers is insufficient because it does not "inform the value of the elasticity" is also unavailing. The evidence on comparability and interchangeability supports the U.S. position that it is reasonable to assume that the microelasticity and macroelasticity are equal, *i.e.*, the standard Rule of One. With respect to the specific values of the elasticity, the standard Rule of One is already reflected in the elasticity values published in the USITC reports for each product, which are the elasticity values used by the United States in this proceeding. The elasticity estimates in those USITC reports are developed under the implicit assumption that the microelasticity and macroelasticity are equal.[102]

104. As explained in the U.S. response to question 100, above, the United States has met its burden to sustain the assertions that the Rule of One is the more standard and more reasonable assumption in Armington PE modeling, and that a nested approach is not appropriate in this proceeding because trade diversion is not expected for the products at issue. Having provided sufficient support for the standard Rule of One, the United States is not obligated to provide a "precise estimate of the appropriate microelasticity" for each product. The United States notes that China also has not provided any statistical estimates of the microelasticities or macroelasticities for the products in this proceeding.

105. Further, China has failed to sustain its assertion that the Rule of Two is a reasonable assumption to apply in this proceeding. China has not provided any product-specific evidence that a nested approach would be appropriate for the products at issue, let alone any evidence that the microelasticity should be twice as large as the macroelasticity for the products at issue. The Rule of Two is, in fact, the more extreme assumption; applying it here would deviate from the standard practice in economic modeling as well as the approach taken by the DS471 and DS464 arbitrators; and doing so would result in a grossly incorrect estimate of the level of nullification or impairment.

102. To the United States: At paragraph 24 of its opening statement, the United States indicated that "in reality, many other factors [i.e. other than CVDs] have influenced the evolution of China's … market shares over a period of six to nine years" and at paragraph 10 of its closing statement it agreed that "adjustments, which control for changes in the relevant AD duties and third country supply capacities, should extend to apply to any changes that occur between the imposition of the CVD measure and the remedy year" (emphasis original). Please explain what is the

[102] *See* U.S. Written Submission, para. 129; U.S. Responses to Arbitrator's Advance Questions, Question 1, para. 2.

***economic* rationale for selecting for adjustment only two out of the "myriad other factors" (to use the United States' words at paragraph 74 of its written submission).**

Response:

106. As explained in paragraph 10 of the U.S. closing statement, and in the U.S. response to question 71, above, the correct methodology for this proceeding should control for any other factors that affected the evolution of relative competitiveness in the U.S. market for the products at issue between the imposition of the final CVD measure and the remedy year, as long as there is evidence to support those effects and sufficient quantitative information to incorporate them into the model.

107. The first factor for which the U.S. methodology controls – the parallel antidumping (AD) duties on the ten products at issue – demonstrably affected relative competitiveness by correcting for dumping by the Chinese exporters. The AD duties can be easily incorporated into the model because, like CVDs, they are straightforward *ad valorem* duties for which the rates can be directly observed and tracked based on public information from the USDOC.

108. With respect to the second factor for which the U.S. methodology controls – the positive supply shocks in third countries that made exporters in those countries more competitive in the U.S. market – the United States has provided conclusive evidence based on reliable trade data and industry analysis by the USITC that demonstrate the existence of the relevant supply shocks. (These supply shocks included subsidies provided by third country governments,[103] investments made by individual firms to expand manufacturing capacity in third countries,[104] and increases in output by third country firms,[105] among others.[106]) The United States has quantified and incorporated those supply shocks into the model using a historical simulation approach based on the economics literature.[107]

109. The United States has controlled for these two factors because there is sufficient evidence to demonstrate their effects on the evolution of relative competitiveness between the imposition of the relevant CVD measures and 2017. On the other hand, the United States has not adjusted for any other factors because we have not found sufficient evidence that any other factors meaningfully affected the evolution of relative competitiveness during the interim period. As explained in the U.S. response to question 71, above, the United States has not found any other

[103] *See* Exhibit USA-99 (the reference column for OCTG, Line Pipe, and Pressure Pipe).

[104] *See* Exhibit USA-99 (the reference column for Solar Panels).

[105] *See* Exhibit USA-99 (the reference column for Aluminum Extrusions).

[106] *See* U.S. Responses to Arbitrator's Advance Questions, Questions 5 and 6, and Exhibit USA-99, for a complete description of the economic factors that motivate the U.S. supply shock adjustment.

[107] *See* Dixon, et al., *Updating USAGE: Baseline and Illustrative Application* (2017) (Exhibit USA-32).

duties or non-tariff actions that demonstrably affected the relevant market shares during the interim period.

110. The United States considers that each party has the opportunity and burden (to the extent it makes an argument) "to produce evidence and to collaborate in presenting evidence to the arbitrators"[108] to identify and implement all adjustments necessary for the methodology to accurately estimate the level of nullification or impairment. In an effort to assist the Arbitrator to the full extent possible, the United States has consulted with the experts at the relevant U.S. government agencies, including the USITC. Likewise, China has had the opportunity to identify any other relevant factors based on evidence, in order to assist the Arbitrator in refining the model used in this proceeding, instead of merely raising hypothetical issues regarding unspecified SPS measures or technical regulations.

103. <u>To the United States</u>: Please comment on China's arguments in paragraph 35 of its opening statement that "[t]here is no principled means of determining which changes should be incorporated and how" and in paragraph 19 of its opening statement that "[t]rade actions other than the measures at issue, regardless of their nature, timing, duration, or WTO-consistency or inconsistency, do not form part of the counterfactual analysis under Article 22.6 of the DSU."

<u>Response</u>:

111. China's argument in paragraph 35 of its opening statement is problematic because (1) it suggests that it is not possible to develop an economic model that accurately represents a particular market, and (2) it unjustifiably disregards the principled, data-driven analytical methodology employed by the United States to identify and incorporate the relevant factors into the model.

112. Regarding the first problem, it is not only possible but also necessary to develop an economic model to represent a market, including the relative competitiveness in the market. The process of determining which economic forces can and should be included in a model – a process known as "model specification" – is, in fact, one of the central tasks of economic modeling. Accordingly, it is necessary to utilize appropriate techniques of model specification to control for the economic forces other than the WTO-inconsistent measures at issue so that the model can accurately estimate the level of nullification or impairment attributable to those measures only. As the arbitrators in *EC – Hormones (US) (Article 22.6 – EC)* and *EC – Hormones (Canada) (Article 22.6 – EC)* found, "we need to guard against claims of lost opportunities where the causal link with the [WTO-]inconsistent [measure] is less than apparent, i.e., where exports are

[108] *EC – Hormones (US) (Article 22.6 – EC)*, para. 11; *see also EC – Bananas III (Ecuador) (Article 22.6 – EC)*, para. 37; *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.9. *See also* U.S. response to question 100, above.

allegedly foregone not because of the [WTO-inconsistent measure] but due to other circumstances."[109]

113. Regarding the second problem, the United States has already demonstrated a principled approach to model specification, as substantiated by the ample data, evidence, and explanations we have provided. For instance, the United States, in the U.S. written submission, has provided a detailed explanation of how we have arrived at the two adjustments, using Solar Panels as an example.[110] The example shows the degree to which the CVD-only model (*i.e.*, the two-step Armington approach that does not control for the parallel AD duties or third country supply shocks) would distort the relative competitiveness of not only the Chinese exporters but also the U.S. producers and the ROW exporters in 2017. This suggests that factors other than the WTO-inconsistent CVD measures changed the market between the imposition of the measures and 2017, and as a result, the counterfactual market shares from step one of the CVD-only model would not represent the actual relative competitiveness in 2017, rendering step two incapable of accurately estimating the level of nullification or impairment. This is consistent with the DS471 arbitrator's acknowledgement that "the evolution of market shares is affected by different factors"[111] besides the duties at issue.

114. In the Solar Panels example, the decline in the U.S. producers' market share relative to the ROW market share in the actual 2017 data indicates that relative competitiveness was not constant over time, contrary to the inherent assumption underlying a standard Armington model. Based on this result, the United States examined the information in the relevant USITC reports to determine the appropriate adjustment to account for changes in relative competitiveness that are separate from changes caused by the CVD measures at issue. As discussed in the U.S. response to question 6 and in Exhibit USA-99, a USITC report on Solar Panels revealed that significant investments in manufacturing capacity had been made between 2012 and 2016 in Korea, Malaysia, the Netherlands, Thailand, and Vietnam.[112] This led the United States to hypothesize that this subset of third countries may have contributed to the disproportionate growth in the ROW market share between 2011 and 2017.[113] The hypothesis was confirmed by the data: those five countries' share of the Solar Panels market grew dramatically from [[***]] in 2011 to [[***]] in 2017.

115. As discussed in the U.S. response to question 5, economists conceptualize changes in a producer's competitiveness as shifts in its supply curve. To implement a supply curve shift in the context of an Armington model, one specifies a "shock" in the model that counteracts the

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[109] *EC – Hormones (US) (Article 22.6 – EC)*, para. 41; *EC – Hormones (Canada) (Article 22.6 – EC)*, para. 40. *See also EC – Hormones (US) (Article 22.6 – EC)*, para. 77 (refusing to consider, as "too speculative," lost exports that would have resulted from foregone marketing campaigns).

[110] *See* U.S. Written Submission, paras. 77-82.

[111] *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 6.66.

[112] *See* U.S. Responses to Arbitrator's Advance Questions, Question 6, para. 62.

[113] *See* U.S. Written Submission, para. 77, Figure 3.

standard Armington model assumption that relative competitiveness is constant over time.[114] To quantify the magnitude of the shock, the U.S. methodology follows the historical simulation approach of *Dixon et al.*,[115] as detailed in paragraph 100 of the U.S. written submission and the U.S. response to question 7.

116. China appears to argue that this supply shock adjustment is unreasonable because it may not identify all possible changes in relative competitiveness.[116] China's argument implies that observed changes in the relative competitiveness in the U.S. Solar Panels market – including the leap in the market shares of Korea, Malaysia, the Netherlands, Thailand, and Vietnam following documented investments in their manufacturing capacity[117] – should be ignored. However, ignoring the evidence of such other factors would cripple the two-step Armington approach, as the counterfactual market shares used in step two certainly will not be representative of the market in 2017.

117. The United States has applied to the other nine products the same evidence-based analytical process utilizing relevant USITC investigations and trade data. Five of the products had documented evidence in USITC reports of changes in government policy or industry investments in specific third countries and showed disproportionate changes in those third country exporters' market shares in the United States.[118]

118. With respect to the second part of the Arbitrator's question, China's argument in paragraph 19 of its opening statement is misleading because it blurs the distinction between step one and step two of the two-step Armington approach. The United States has not argued that trade actions other than the CVD measures at issue should form part of the counterfactual analysis in this proceeding. The counterfactual analysis, which is to determine the level of nullification or impairment in step two, only simulates a modification of CVD rates to make them WTO-consistent, holding all other variables (including other trade actions) constant at their value in 2017. This is reflected in the U.S. methodology.

119. This fact, however, does not relate to controlling for other relevant trade actions to isolate the trade effects of the CVD measures at issue. It is in step one – not in step two's counterfactual analysis – that the United States has simulated the imposition of the parallel AD duties, along with the CVD duties. As explained above,[119] the purpose of step one of the two-step Armington approach is to simulate the counterfactual market shares of U.S. domestic producers, China, and ROW in the remedy year in the absence of trade-depressing effects of the WTO-inconsistent

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[114] *See* U.S. Written Submission, paras. 98-100, for technical explanations.

[115] Exhibit USA-32. *See also* U.S. Written Submission, para. 100; U.S. Responses to Arbitrator's Advance Questions, Question 7, paras. 66-68.

[116] *See* China's Opening Statement, para. 35.

[117] *See* U.S. response to question 102, above.

[118] *See* U.S. Responses to Arbitrator's Advance Questions, Question 5; Exhibit USA-99.

[119] *See* U.S. Responses to Arbitrator's Questions, Questions 71 and 72.

measures at issue. Step two, in turn, is calibrated with these counterfactual market shares to calculate the level of nullification or impairment by bringing the measures into compliance (*i.e.*, modifying the CVD rates). Thus, if the counterfactual market shares generated in step one are not representative of relative competitiveness in 2017, step two cannot correctly generate an estimate of the level of nullification or impairment. Accordingly, failure to control for trade actions other than the measure of interest would result in an inaccurate estimate of the level of nullification or impairment.

120. Contrary to China's argument,[120] since the AD duties are held constant in step two, the U.S. methodology does not, in fact, "assess" the trade effects of the AD duties. Moreover, nothing about the U.S. proposal concerns whether the parallel AD duty rates are WTO-consistent or inconsistent.[121] The United States has simply taken the AD duty rates as they are, and incorporated them into the model to prevent it from simulating an incorrect counterfactual 2017 market in which AD duties were never imposed in the first place.

104. <u>To China and the United States</u>: Could China please elaborate on the arguments and the example contained in paragraphs 26-27 of its opening statement? Could China please also elaborate on the argument in paragraph 30 of its opening statement that "[t]he AD-adjusted model proposed by the United States incorporates the effects of trade actions not subject to the recommendations and rulings of the DSB that mask the effect of lowering the WTO-inconsistent CVD rate to the WTO-consistent rate"? Could the United States please comment on these arguments and the example submitted by China, as well as on the argument in paragraph 28 of China's opening statement that "[i]f the sum of the AD and CVD N/I calculated separately equalled the level of N/I when the effects of the two duties are modelled together, that would show that the full measure of N/I was not being captured by the model but rather some portion was being misattributed to the parallel AD duties"?

<u>Response</u>:

121. China's arguments in paragraphs 26-27 of its opening statement are unavailing because the hypothetical scenario presented by China is based on a false premise of market-preclusive parallel AD duties. China argues: "If an arbitrator under Article 22.6 were to adopt the U.S. approach of incorporating the AD duties into an assessment of the nullification and impairment resulting from the WTO-inconsistent CVD duties, the nullification and impairment resulting from the latter would be zero." In reality, step one of the U.S. model generates non-zero counterfactual market shares for imports from China, and thus non-zero estimates of nullification or impairment, for every product at issue in this proceeding.

[120] *See* China's Opening Statement, para. 18.

[121] *See* U.S. Responses to Arbitrator's Advance Questions, Question 4.

122. This is true even when the combined CVD and AD duty rates are large. For instance, the U.S. model of the OCTG market imposes on imports from China a combined duty rate of [[***]] in step one (AD rate of up to [[***]] plus CVD rate of 12.26 percent),[122] followed by a reduced rate of [[***]] in step two (AD rate of up to [[***]] plus CVD rate of 2.07 percent).[123] The small reduction in the duty rate in step two results from modifying the CVD rate to be WTO-consistent in 2017, while the AD rate is held constant in this counterfactual scenario. Notwithstanding the high AD rate, the level of nullification or impairment for OCTG is estimated to be $76.05 million,[124] far from zero.

123. Moreover, contrary to China's argument that the U.S. model recreates China's actual 2017 market shares that would be used in a one-step Armington model,[125] the step one counterfactual market shares generated by the U.S. model are systematically and significantly greater than China's actual 2017 market shares, as shown in the table below. This further confirms that the U.S. model does just the opposite of "mask[ing] the nullification and impairment properly attributable to the WTO-inconsistent CVD rate."[126]

Counterfactual Market Share Generated in Step One of U.S. Model vs. Actual 2017 Market Share (in %)

Product	Step One Counterfactual Market Share for China	Actual 2017 China Market Share*
Aluminum Extrusions	2.77	[[***]]
Print Graphics	12.32	[[***]]
OCTG	9.17	[[***]]
Solar Panels	14.16	[[***]]
Steel Cylinders	41.43	[[***]]
Line Pipe	1.25	[[***]]
Seamless Pipe	6.93	[[***]]
Kitchen Shelving	5.35	[[***]]
Pressure Pipe	8.65	[[***]]
Wire Strand	1.35	[[***]]

* Actual 2017 market shares for China are calculated by dividing the value of U.S. imports from China by the value of total U.S. market, based on Exhibit USA-156 (BCI).

[122] *See* Exhibit USA-50 (BCI).

[123] *See* Exhibit USA-51 (BCI).

[124] *See* Exhibit USA-160.

[125] *See* China's Opening Statement, paras. 31 and 34.

[126] *See* China's Opening Statement, para. 27.

124. Moreover, as shown in the table below, the level of nullification or impairment estimated by the U.S. model is different from the level of nullification or impairment that would be estimated in a one-step Armington approach. Accordingly, China's assertion that incorporating the necessary adjustments proposed in the U.S. model would be "equivalent to adopting [a] one-step model"[127] is clearly wrong.

Estimates of Level of Nullification or Impairment under U.S. Model vs. One-Step Armington*
(in $ Millions)

Product	**U.S. Model (*see* Exhibit USA-160)**	**One-Step Armington**
Aluminum Extrusions	10.82	[[***]]
Print Graphics	1.68	[[***]]
OCTG	76.05	[[***]]
Solar Panels	7.94	[[***]]
Steel Cylinders	2.70	[[***]]
Line Pipe	3.86	[[***]]
Seamless Pipe	0.90	[[***]]
Kitchen Shelving	1.40	[[***]]
Pressure Pipe	0.15	[[***]]
Wire Strand	0.27	[[***]]**
TOTAL	**$105.77**	**[[***]]**

* Calculated following DS471 definition, instead of net of duties.
** [[***]]

125. As China stated in paragraph 27 of its opening statement, "the question before the arbitrator is the level of nullification and impairment attributable to the WTO-inconsistent measures, which . . . are the CVD duties." That is precisely why the methodology used in this proceeding must control for the effects of the parallel AD duties or any other relevant trade actions. As explained above in the U.S. response to question 102, because the AD duties affected the evolution of China's market share in 2017, those effects must be controlled for in order to isolate the effects of the CVD measures at issue. China, in DS471, appears to have understood this need when it proposed to "tak[e] into account the impact of CVD measures"[128] in its alternative methodology for estimating nullification or impairment caused by the AD measures that were at issue in that proceeding.

[127] *See* China's Opening Statement, para. 5.

[128] Executive Summary of the Arguments of China, *US – Anti-Dumping Methodologies (China) (Article 22.6 – US)*, para. 17 (Annex B-2 of WT/DS471/ARB/Add.1).

126. Likewise, with respect to China's argument in paragraph 30 of its opening statement, incorporating the effects of the parallel AD duties is, in fact, necessary to accurately capture the effect of lowering the WTO-inconsistent CVD rate to the WTO-consistent rate. It is a basic concept in economic modeling that to control for factors other than the policy at issue, one must include those other factors in the model. Moreover, contrary to China's argument, to "hold[] all other factors constant,"[129] the model should include the relevant factors. However, by excluding the AD duties, China's model implicitly assumes that the presence of the parallel AD duties – which were generally much greater than the CVD duties at issue in this proceeding – had no effect on China's realized 2017 market share.[130] In fact, as explained in the U.S. response to question 4, by failing to explicitly include the AD duties, China's model essentially estimates trade damages based on an incorrect counterfactual market in which AD duties were never imposed.[131] The U.S. model, on the other hand, actually holds the AD duties constant, taking the AD duty rates as they are and incorporating them with the WTO-inconsistent CVD rates in step one and the counterfactual WTO-consistent CVD rates in step two.[132]

127. With respect to paragraph 28 of China's opening statement, China makes an assertion but offers no support for it, and the United States finds it difficult to follow the logic of China's argument. China appears to criticize the U.S. description of Table 5 in the U.S. response to question 4, which explains that for each product at issue, the sum of the nullification or impairment estimates that result from modifying the CVD rates only (Scenario 1 in Table 5) and from modifying AD rates only (Scenario 2) exceeds the nullification or impairment estimate that results from making both modifications simultaneously (Scenario 3). China asserts that if the sum of the nullification or impairment estimates from Scenario 1 and Scenario 2 were to equal the nullification or impairment estimate from Scenario 3, then "some portion" of the level of nullification or impairment must be "misattributed" to the AD duties. But China offers no explanation for this assertion. Absent further reasoning from China, the United States does not understand how China has arrived at that conclusion.

128. As explained in the U.S. response to question 4, if the sum of the nullification or impairment estimates from Scenario 1 and Scenario 2 were to equal the nullification or impairment estimate from Scenario 3, then that would show that the model effectively isolated the effects of the CVD measures, even without having included the parallel AD duties.

129. Moreover, it is not clear why the hypothetical proposed by China should mean that the nullification or impairment must be "misattributed" to the AD duties, but not to the CVD duties, and China offers no explanation in its opening statement.

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[129] China's Opening Statement, para. 30.

[130] *See* U.S. Closing Statement, para. 10.

[131] *See* U.S. Response to Arbitrator's Advance Questions, Question 4, para. 31.

[132] *See* Exhibits USA-50 (BCI) and USA-51 (BCI).

105. <u>To China</u>: Please provide factors of relevance for the remedy year in these proceedings "that could have affected China's competitiveness so as to increase the level of N/I" as stated in paragraph 36 of China's opening statement.

<u>Response</u>:

130. This question is addressed to China.

106. <u>To China</u>: In paragraph 18 of China's opening statement, China states that "the purpose of Article 22.6 inquiry is to assess the level of N/I caused by the respondent's WTO-inconsistent measures in place <u>at the expiry of the reasonable period of time</u>" (emphasis added). Please explain how that statement relates to the one in paragraph 20 of China's opening statement that "[t]rade actions other than the measures at issue, regardless of their nature, timing, duration, or WTO-consistency or inconsistency, do not form part of the counterfactual analysis under Article 22.6 of the DSU".

<u>Response</u>:

131. This question is addressed to China.

107. <u>To China</u>: Please comment on the argument in paragraph 29 of the United States' opening statement that "for all of the products at issue, <u>no</u> provisional CVD duties were collected for several months between the expiration of the provisional CVD period and the publication of the final CVD determination." (emphasis original)

<u>Response</u>:

132. This question is addressed to China.

108. <u>To the United States</u>: Please comment on the arguments contained, and the evidence (Exhibits CHN-113 and CHN-114) referenced, in paragraph 47 of China's opening statement.

<u>Response</u>:

133. China, in paragraph 47 of its opening statement, submits two economic papers as Exhibits CHN-113 and CHN-114 in an attempt to rebut the U.S. argument that China has not provided any evidence of market exit by Chinese exporters caused by the imposition of the relevant preliminary CVD measures. However, the papers do not discuss the impact of preliminary CVD measures on the products at issue in this proceeding, and thus do not provide any evidence that Chinese exporters have actually exited the market in response to the relevant preliminary CVD measures. Rather, Exhibit CHN-113 covers AD cases from 2006 or earlier,[133]

[133] *See* Exhibit CHN-113, p. 12.

and Exhibit CHN-114 covers AD cases from 1980 to 1985[134]—both time periods during which none of the CVD measures at issue in this proceeding were yet in place.

134. Moreover, neither paper makes use of firm-level data, which would be required to determine whether exporting firms exited from the market.[135] Rather, both papers simply find that exports to the United States from subject countries declined following the imposition of certain AD duties—which could mean that each exporting firm reduced the level of its exports, a subset of exporting firms left the market, or a mix of both. Thus, neither paper is directly relevant to the question of whether exporters exit the market because of the imposition of preliminary duties.

135. China, in paragraph 46 of its opening statement, attempts to "infer" from the steep decline in U.S. OCTG imports from China in 2009 following the imposition of the preliminary CVD duties that "at least some exporters" must have exited the market. However, the mere fact that imports from China declined around the same time as the imposition of the preliminary duties does not prove that any Chinese exporters exited the market, nor does it mean that the observed decline in imports was caused by the preliminary CVD duties. On the contrary, there was "a slump in demand [for OCTG] that was a consequence of conditions in the overall economy."[136]

136. The only other information China has provided in an attempt to support its allegation is "China's understanding" that "many Chinese firms" stopped selling to the U.S. market when WTO-inconsistent duties are imposed.[137] The United States is unable to verify this information because China does not cite to any source for this "understanding."

137. Therefore, China still has not provided any actual evidence that Chinese exporters exited the U.S. market because of the relevant preliminary CVD measures. As the United States further explains in the U.S. response to question 109, below, China has failed to demonstrate why the Arbitrator should deviate from the correct and well-supported approach taken in the DS471 and DS464 arbitration proceedings, in which the arbitrators selected the year prior to the imposition of the final CVD measures as the year-prior.

109. To the United States: Please comment on whether, in your view, the existence of a preliminary CVD measure could have an impact on China's market shares even if, as stated in paragraph 29 of your opening statement, "[a]ny cash deposits collected

[134] *See* Exhibit CHN-114, p. 52.

[135] While Exhibit CHN-113 uses the term "exit," the "hazard" estimated in the paper is, in fact, the likelihood of all exports to the United States of a product from a particular country ceasing. *See* Exhibit CHN-113, p. 14. In other words, the estimated hazard is not the probability of an individual firm or some subset of firms exiting the market.

[136] *Certain Oil Country Tubular Goods from China, Investigation No. 701-TA-463 (Final)*, USITC Publication 4124 (January 2010), p. 23 (Exhibit CHN-23).

[137] *See* Responses to Questions from the Arbitrator of the People's Republic of China (May 7, 2020) ("China's Responses to Arbitrator's Advance Questions"), Question 13, paras. 57.

following an affirmative preliminary CVD determination are merely provisional and subject to refund depending on the outcome of the final determination" and "no provisional CVD duties were collected for several months between the expiration of the provisional CVD period and the publication of the final CVD determination".

Response:

138. The United States considers that the existence of a temporary preliminary CVD measure could have some impact on trade, including China's market share. The U.S. response to question 32 discusses how preliminary CVD measures could lead to an increase or a decrease in each exporter's sales to the U.S. market, depending on the circumstance.[138] Moreover, where a positive or negative change is observed in an exporter's sales to the U.S. market following the imposition of a preliminary CVD measure, such a change should not be indiscriminately attributed to the preliminary CVD measure, as explained above in the U.S. response to question 108 with respect to China's OCTG example.[139]

139. Such variable impact of preliminary CVD measures further supports the U.S. position that the correct year-prior is the year prior to the imposition of the final CVD measures. As the question notes, all preliminary duties are temporary in nature, and moreover, no provisional CVD duties were collected for a "gap period" of several months between the expiration of the preliminary CVD measure and the publication of the final CVD measure.[140] China has not

[138] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 32, footnote 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.")

[139] *See* U.S. response to question 108, above; U.S. Closing Statement, para. 18 ("the OCTG example China provides to support the purported 'distorting effects of the preliminary duties' unjustifiably assumes that the 99 percent drop in OCTG imports from China in 2009 was due to the imposition of the preliminary CVD duties. China does not provide any evidence that the preliminary CVD duties are, in fact, the cause. China neglects to consider that 2009 was at the height of the Great Recession, or that there may have been industry events or other factors that contributed to the decline in demand for products that are primarily used in oil and gas wells."). *See also Certain Oil Country Tubular Goods from China, Investigation No. 701-TA-463 (Final)*, USITC Publication 4124 (January 2010), p. 23 (Exhibit CHN-23) ("the trend in interim 2009 coincided with, and appears to have been caused by, a slump in demand that was a consequence of conditions in the overall economy"); p. I-3 ("Apparent U.S. consumption was markedly lower in January-September 2009 relative to January-September 2008.").

[140] *See* U.S. Responses to Arbitrator's Advance Questions, Question 2.

explained how, or why, any changes in trade flows during the gap period should be attributed to CVD duties when there were no CVD duties in place.

140. Using the year prior to the imposition of the final CVD measure is also consistent with the approach taken by the arbitrators in DS471 and DS464.

110. <u>To the United States</u>: Please comment on the argument in paragraph 56 of China's opening statement that "[t]he significant difference between what the USITC reports and what the United States has submitted confirms that the U.S. approach of only selectively relying on USITC data produces inaccurate estimates".[141]

<u>Response</u>:

141. China's argument fundamentally misunderstands the U.S. approach to data in this proceeding. In an effort to identify the best data available for the ten products at issue, the United States has maintained a reasoned and consistent approach of using the same data and data estimation methods used by the DS471 arbitrator.[142] The United States has generally used the data that the arbitrator in DS471 chose to use for the seven products for which AD measures were at issue in the DS471 arbitration proceeding.[143] For the other three products that were not at issue in DS471,[144] the United States has estimated the data by applying estimation methods that are similar to those applied by the DS471 arbitrator.[145]

142. China's argument quoted in the question suggests that the United States has cherrypicked particular USITC-reported year-prior figures based on whether those figures would result in a higher or lower estimate of nullification or impairment. That is false. As shown in the table below,[146] for the seven products that were also at issue in DS471, the United States has simply used the same year-prior data used by the DS471arbitrator. The only exception is the U.S. domestic shipments figure for Steel Cylinders, which the United States has replaced with actual data that became available after the release of the DS471 decision.[147]

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[141] This question was asked as a follow-up to question No. 75 at the Q&A session.

[142] *See* U.S. Written Submission, paras. 124-127.

[143] Aluminum Extrusions, Line Pipe, OCTG, Print Graphics, Seamless Pipe, Solar Panels, and Steel Cylinders.

[144] Kitchen Shelving, Pressure Pipe, and Wire Strand.

[145] As an exception, the United States has made a downward adjustment to the data on U.S. imports from ROW for Print Graphics, Seamless Pipe, Kitchen Shelving, and Pressure Pipe. *See* U.S. Written Submission, paras. 144-47. Additionally, the United States has revised the year-prior U.S. domestic shipments data for Steel Cylinders to reflect the updated information provided by the sole U.S. producer of Steel Cylinders. *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 48.

[146] *See also* Exhibit USA-155 (BCI).

[147] *See* U.S. Responses to Arbitrator's Follow-Up Questions, Question 62 (discussing newly available actual data for Steel Cylinders).

Products that were also at issue in DS471	**Variety**	**Year-prior data used by the arbitrator in DS471**	**Year-prior data used by the United States in this proceeding**
Aluminum Extrusions	U.S. Domestic Shipments	USITC Publication 4677 (Exhibit CHN-37)	
	Imports from China	USITC Publication 4677 (Exhibit CHN-37)	
	Imports from ROW	USITC Publication 4677 (Exhibit CHN-37)	
Line Pipe	U.S. Domestic Shipments	Annualized value based on USITC Publication 4055 (Exhibit CHN-11)	
	Imports from China	HTSUS aggregated, company-specific data from USCBP (Exhibit USA-58 (BCI))	
	Imports from ROW	HTSUS aggregated data from U.S. Census (Exhibit USA-59)	
OCTG	U.S. Domestic Shipments	Annualized value based on USITC Publication 4124 (Exhibit CHN-23)	
	Imports from China	HTSUS aggregated, company-specific data from USCBP (Exhibit USA-58 (BCI))	
	Imports from ROW	HTSUS aggregated data from U.S. Census (Exhibit USA-59)	
Print Graphics	U.S. Domestic Shipments	USITC Publication 4192 (Exhibit CHN-50)	
	Imports from China	USITC Publication 4192 (Exhibit CHN-50)	
	Imports from ROW	USITC Publication 4192 (Exhibit CHN-50)	
Seamless Pipe	U.S. Domestic Shipments	USITC Publication 4595 (Exhibit USA-16)	
	Imports from China	USITC Publication 4595 (Exhibit USA-16)	
	Imports from ROW	USITC Publication 4595 (Exhibit USA-16)	
Solar Panels	U.S. Domestic Shipments	USITC Publication 4519 (Exhibit USA-21)	
	Imports from China	HTSUS aggregated, company-specific data from USCBP (Exhibit USA-58 (BCI))	
	Imports from ROW	HTSUS aggregated data from U.S. Census (Exhibit USA-59)	

Products that were also at issue in DS471	**Variety**	**Year-prior data used by the arbitrator in DS471**	**Year-prior data used by the United States in this proceeding**
Steel Cylinders	U.S. Domestic Shipments	Data estimated based on the 2012 annual 10-K report by TriMas Corporation, which owns the only U.S. producer Norris Cylinder (Exhibit CHN-55)	Actual data provided by the only U.S. producer Norris Cylinder (Exhibit USA-116 (BCI))
	Imports from China	HTSUS aggregated, company-specific data from USCBP (Exhibit USA-58 (BCI))	
	Imports from ROW	HTSUS aggregated data from U.S. Census (Exhibit USA-59)	

143. For two of the three products that were not at issue in DS471, the United States has used the same data estimation methods used by the DS471 arbitrator. The DS471 arbitrator used the full-year USITC data, if available. Where the full-year USITC data was not available, the DS471 arbitrator relied on alternatives: (1) for U.S. domestic shipments, data from industry sources (*e.g.*, the TriMas 10-K report for Steel Cylinders), or the available partial-year USITC data for the previous year, which the DS471 arbitrator then annualized (*e.g.*, Line Pipe, OCTG); and (2) for imports from China and imports from ROW, HTSUS aggregated data from USCBP or U.S. Census (*e.g.*, Solar Panels, OCTG, Line Pipe). In accordance with this approach, the United States has used the following data for Pressure Pipe and Wire Strand:

Products that were not at issue in DS471 (except Kitchen Shelving)	**Variety**	**Year-prior data used by the arbitrator in DS471**	**Year-prior data used by the United States in this proceeding**
Pressure Pipe	U.S. Domestic Shipments	Annualized value based on USITC Publication 4064 (Exhibit CHN-4)	
	Imports from China	HTSUS aggregated data from U.S. Census (Exhibit USA-65)	
	Imports from ROW	HTSUS aggregated data from U.S. Census (Exhibit USA-65)	
Wire Strand	U.S. Domestic Shipments	USITC Publication 4162 (Exhibit CHN-28)	
	Imports from China	USITC Publication 4162 (Exhibit CHN-28)	
	Imports from ROW	USITC Publication 4162 (Exhibit CHN-28)	

144. For Kitchen Shelving, in absence of USITC-reported data, the United States has derived precise data based on information from industry market reports and the relevant USITC report.

As explained in Exhibit USA-61 and also in the U.S. response to question 76, above,[148] the U.S. method corrects for the overinclusion problem of relying on "basket tariff categories."[149] By relying on the best information available from reputable industry sources, the official imports data, and the relevant USITC investigation, and by minimizing the inclusion of non-subject products, the U.S. data estimation method for Kitchen Shelving is not inconsistent with the estimation methods used by the DS471 arbitrator.

111. <u>To the United States</u>: Please comment on the argument in paragraph 35 of China's opening statement that it is not possible "to identify which of [the changes in relative competitiveness] were caused by the WTO-inconsistent duties".

<u>Response</u>:

145. The United States disagrees with China's argument. As explained above in the U.S. response to question 103, it is indeed possible to specify an economic model to identify the change in relative competitiveness that is caused by the CVD measures at issue and should be reflected in the level of nullification or impairment. The United States has described the evidence-based, data-driven analytical process we have used to identify the factors that affected relative competitiveness in the U.S. market[150] and our model specification to control for them.[151]

146. In fact, arbitrators in other Article 22.6 proceedings have made adjustments to their economic analyses to control for factors other than the WTO-inconsistent measures at issue in those proceedings. For example, in *EC – Hormones (US)*, the arbitrator "consider[ed] it reasonable to make a downward adjustment" to the level of exports prior to the imposition of the measure at issue "to take account of the demonstrated decline in apparent consumption of EDO [edible bovine offal] in the EC market since the imposition of the ban," due to declining consumer taste for EDO and other market factors.[152] In *US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US)*, in which a U.S. measure disbursing offset payments to certain domestic producers was at issue, the arbitrator adjusted the economic model for the "pass-

[148] *See also* U.S. Written Submission, para. 127; U.S. Responses to Arbitrator's Advance Questions, Question 11; U.S. Responses to Arbitrator's Follow-Up Questions, Questions 35 and 37.

[149] *See* U.S. International Trade Commission, *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*, Final Determination, USITC Publication No. 4098 (Aug. 2009), p. I-6 (Exhibit CHN-19) ("Certain KASAR [*i.e.*, kitchen appliance shelving and racks] is classifiable in the Harmonized Tariff Schedule of the United States ('HTSUS') under subheadings 7321.90.50, 7321.90.60, 8418.99.80, and 8516.90.80, and reported for statistical purposes under 7321.90.5000, 7321.90.6090, 8418.99.8050, 8418.99.8060, and 8516.90.8000. All of these statistical reporting numbers are residual or 'basket' categories and contain a number of other products besides certain KASAR.").

[150] *See* U.S. responses to questions 102 and 103, above.

[151] *See* U.S. Written Submission, paras. 86-105.

[152] *EC – Hormones (US) (Article 22.6 – EC)*, paras. 67-68.

through factor" of the disbursements on production because only some of the disbursement payments were applied to reduce the price of a beneficiary firm's products.[153]

112. <u>To the United States</u>: In light of the United States' response to Arbitrator's question No. 82, which indicates that USCBP figures are the most accurate estimates regarding imports from China subject to the CVD measures at issue, please comment on whether US Census figures for imports from the rest of the world could be adjusted in order to obtain a more accurate reflection of the relevant product scope by using the ratio of USCBP to US Census figures for imports from China.

<u>Response</u>:

147. It would not be accurate to adjust the U.S. Census figures for imports from ROW in the remedy year by using the ratio of the USCBP figure to the U.S. Census figure for imports from China. Doing so would assume that the ratio of the relevant products to all products under the reference HTSUS codes would be the same for both imports from China and imports from ROW.[154] However, there is no basis for such an assumption. In other words:

$$\frac{\text{Value of subject imports from China (USCBP)}}{\text{Value of imports from China under the reference HTSUS codes (U.S. Census)}} \neq \frac{\text{Value of relevant imports from ROW (U.S. Census)}}{\text{Value of imports from ROW under the reference HTSUS codes (U.S. Census)}}$$

148. One of the reasons such an assumption would be incorrect is that imports from ROW were not subject to the CVD and AD duties imposed on subject imports from China. As a result, applying to imports from ROW the ratio for imports from China would likely underestimate the value of relevant imports from ROW.

149. As an alternative to the approach suggested in the question, for three products for which the reference HTSUS codes are basket categories containing a number of non-subject products, the United States has adjusted 2017 imports from ROW by using a ratio derived by dividing the value of imports from ROW in earlier years (which was reported in relevant USITC investigations) by the value of products imported from ROW under the reference HTSUS codes in those years.[155] This ratio, which is derived from imports data on ROW, is appropriate to use to adjust imports from ROW because it does not rely on data pertaining to other varieties, such as imports from China.

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[153] *See US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US)*, paras. 3.138-3.142.

[154] *See* U.S. Written Submission, Table 8, and the United States' response to Question 82, above, for the ratio of USCBP to U.S. Census figures for imports from China.

[155] The four products are Pressure Pipe, Print Graphics, and Seamless Pipe. *See* U.S. Written Submission, paras. 144–147.

150. Where the value of imports from ROW is not publicly reported by the USITC, 2017 imports from ROW could be adjusted through the data-driven, alternative method used by the United States for Kitchen Shelving. The United States has estimated 2017 imports of Kitchen Shelving from ROW based on product-specific industry data and market analysis.[156]

113. <u>To the United States</u>: In paragraph 23 of its opening statement, China quotes the following sentence from the United States' response to Arbitrator's question No. 4: "The purpose of the two-step Armington approach is to generate a counterfactual market representation to determine how the market would be different if CVD rates were WTO-consistent at the expiration of the RPT." Please explain the relevance, if any, of this argument for determining the correct WTO-inconsistent CVD rates to be used for the counterfactual in these proceedings.

<u>Response</u>:

151. The quoted sentence, which relates to the correct calibration of the two-step Armington modeling approach, is not relevant to determining the correct WTO-inconsistent CVD rates. In that sentence, the United States explains the objective of the two-step Armington approach in order to demonstrate why the two adjustments proposed by the United States are necessary for controlling for certain other factors so that the two-step approach could generate counterfactual market shares that accurately represent the actual relative competitiveness of each variety in 2017. The sentence reflects the fact that the relevant counterfactual market is the market in which the CVD measures at issue would have been WTO-consistent at the expiration of the RPT – with which China, in its opening statement, has agreed.[157] While the RPT expired in April 2016, China has used 2017 as the baseline for simulating a counterfactual market to estimate the level of nullification or impairment in this proceeding,[158] and the United States has agreed with the approach.[159]

152. As previously explained in detail, the compliance measures that were reviewed and "found to be WTO-inconsistent"[160] in the Article 21.5 compliance proceedings in this dispute were the final determinations in the section 129 proceedings.[161] The sentence quoted in the question regarding the calibration of the two-step Armington approach, thus, does not bear on the

[156] *See* U.S. Written Submission, para. 147; U.S. Responses to Arbitrator's Advance Questions, Questions 11 and 25.

[157] *See* China's Opening Statement, para. 24 ("The United States is correct as to the 'central question', that is, how would the market differ if the CVD rates were WTO-consistent at the expiration of the RPT?").

[158] *See* China's Methodology Paper, para. 4.

[159] *See* U.S. Written Submission, footnote 23.

[160] *US – Tuna II (Mexico) (Article 22.6 – US)*, para. 3.25.

[161] *See* U.S. Responses to Arbitrator's Advance Questions, Question 20.

fact that the correct WTO-inconsistent CVD rates to be used in the counterfactual analysis here are those section 129 rates that have been found to be WTO-inconsistent.

153. The United States has shown that the arbitrator's decision in *US – Tuna II (Mexico) (Article 22.6)* is not a valid basis for China's refusal to recognize the section 129 rates as the correct WTO-inconsistent CVD rates for Line Pipe, OCTG, and Seamless Pipe.[162] Unlike the section 129 rates at issue here, the later-in-time compliance measure that the arbitrator rejected in *US – Tuna II (Mexico)* had not yet been "found to be WTO-inconsistent."[163] Also, *US – Tuna II (Mexico)* is further distinguishable from the present proceeding in that the later-in-time compliance measure was enacted three years after the expiration of the RPT,[164] and, in fact, later than Mexico's request for authorization to suspend concessions under Article 22.2 of the DSU.[165] In contrast, the section 129 determinations for Line Pipe, OCTG, and Seamless Pipe[166] were issued less than two months after the expiration of the RPT and more than three years before China's Article 22.2 request for authorization.

154. The United States also has shown that there are two other Article 22.6 arbitrators who have reached a conclusion different from that reached by the *US – Tuna II (Mexico)* arbitrator concerning the relevance of a compliance measure that came into existence after the expiration of the RPT.[167] Accordingly, contrary to China's argument, whether a measure was implemented prior to the expiration of the RPT is not dispositive when determining the relevant measure for the counterfactual analysis in an Article 22.6 proceeding.

155. For these reasons, the correct WTO-inconsistent CVD rates to use in this proceeding are the section 129 rates because the final determinations in the section 129 proceedings were the compliance measures that were reviewed and found to be WTO-inconsistent in this dispute.

114. To China and the United States: Could each party please submit an updated set of calculations for the level of N/I reflecting its most recent approach, including updated code and data?

Response:

156. The United States provides the following exhibits:

[162] *See* U.S. Responses to Arbitrator's Advance Questions, Question 20.

[163] *US – Tuna II (Mexico) (Article 22.6 – US)*, para. 3.25.

[164] *See US – Tuna II (Mexico) (Article 22.6 – US)*, paras. 1.5, 3.16. The RPT expired in June 2013, and the later-in-time compliance measure was enacted three years later in March 2016.

[165] *See US – Tuna II (Mexico) (Article 22.6 – US)*, para. 1.5.

[166] These section 129 determinations also covered Pressure Pipe and Solar Panels.

[167] *See* U.S. Responses to Arbitrator's Advance Questions, Question 20.

- USA-154: Elasticities;
- USA-155 (BCI): Year-prior data on U.S. domestic shipments, imports from China, and imports from ROW;
- USA-156 (BCI): 2017 data on U.S. domestic shipments, imports from China, and imports from ROW;
- USA-157 (BCI): CVD and AD rates for the products at issue;
- USA-158: Computer code;
- USA-159 (BCI): Data inputs for the computer code; and
- USA-160: Estimates of the level of nullification or impairment.

157. These exhibits incorporate all corrections and revisions made throughout the course of the proceeding so far in the various submissions and responses to the Arbitrator's questions, and they replace prior exhibits as the final source for the calculation of the level of nullification or impairment. Based on the information submitted, the correct level of nullification or impairment is no more than **$106 million** annually, as shown in Exhibit USA-160.