UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO ANTI-DUMPING PROCEEDINGS INVOLVING CHINA

Recourse to Article 22.6 of the DSU by the United States

(DS471)

COMMENTS OF THE UNITED STATES OF AMERICA ON CHINA'S RESPONSES TO THE ARBITRATOR'S QUESTIONS FOLLOWING THE ARBITRATOR'S MEETING WITH THE PARTIES

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TABLE OF REPORTS AND AWARDS

Short Form	Full Citation
US – Anti-Dumping Methodologies (China) (Panel)	Panel Report, *United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China*, WT/DS471/R and Add.1, adopted 22 May 2017, as modified by Appellate Body Report WT/DS471/AB/R
US – Washing Machines (Article 22.6 – US)	Decision by the Arbitrator, *United States – Anti-dumping and Countervailing Duty Measures on Large Residential Washers from Korea – Recourse to Article 22.6 of the DSU by the United States*, WT/DS464/ARB, 8 February 2019

TABLE OF EXHIBITS

Exhibit No.	Description
USA-97	Notice of Final Results of Antidumping Duty Administrative Review, Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 76 Fed. Reg. 31,936 (June 2, 2011)
USA-98	Trade Weighted U.S. Dollar Index: Broad Goods, Board of Governors of the Federal Reserve System
USA-99	Notice of Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders, Certain New Pneumatic Off-the-Road Tires From the People's Republic of China, 84 Fed. Reg. 20,616 (May 10, 2019)

INTRODUCTION

1. In this document, the United States comments on China's responses to the Arbitrator's written questions following the substantive meeting of the Arbitrator with the parties. The absence of a U.S. comment on an aspect of China's response to any particular question should not be understood as agreement with China's response.

2. Before presenting the U.S. comments on China's responses, the United States would like to inform the Arbitrator that, on May 10, 2019, in the context of a five-year sunset review, the U.S. Department of Commerce ("USDOC") revoked the antidumping duty order on off-the-road tires from China ("*OTR Tires*"), effective February 4, 2019.[1] *OTR Tires* is one of the 13 products China identified in connection with its "as applied" claims concerning the Single Rate Presumption ("SRP").[2] Because the antidumping duty order on *OTR Tires* has been revoked, there is nothing else for the United States to do to implement the recommendation of the Dispute Settlement Body ("DSB") with respect to the finding related to the USDOC's use of the SRP in connection with the *OTR Tires* antidumping duty order. Therefore, there can be no nullification or impairment to China related to this finding, and the Arbitrator should determine that the level of nullification or impairment for *OTR Tires* is zero.

1 GENERAL

50. <u>To both parties</u>: The Arbitrator understands that China has excluded *Aluminum Extrusions* from the scope of its estimated level of nullification or impairment but argues that the Arbitrator should include *Aluminum Extrusions* if it were to follow the United States' approach for estimating the level of nullification or impairment.

a. <u>To China</u>: Is this understanding correct? If so, please explain why it would be reasonable to exclude *Aluminum Extrusions* under China's approach but include it under the United States' approach.

<u>Response:</u>

3. China's assertion regarding the USDOC adopting a "very contorted product scope" in *Aluminum Extrusions* is incorrect.[3] As the United States explained in the U.S. response to question 62, there were no expansions of the product scope for *Aluminum Extrusions* between the imposition of the antidumping duty order and 2017.[4] The written product description of the

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[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders,* 84 Fed. Reg. 20,616 (May 10, 2019) (Exhibit USA-99).

[2] *See* Methodology Paper Submitted by China (November 26, 2018) ("China's Methodology Paper"), para. 10.

[3] China's Answers to Arbitrator Questions Following Meeting (May 10, 2019) ("China's Responses to Questions Following the Arbitrator Meeting"), para. 2.

[4] Responses of the United States of America to Questions from the Arbitrator Following the Substantive Meeting of the Arbitrator with the Parties (May 10, 2019) ("U.S. Responses to Questions Following the Arbitrator Meeting"), paras. 59-60.

Aluminum Extrusions antidumping duty order, which is dispositive regarding the scope of an antidumping duty order, is consistent over time.[5]

4. While China's assertion on scope is incorrect, China acknowledges the problem of relying on Harmonized Tariff Schedule ("HTS") data to estimate trade values. As the United States has explained throughout this proceeding, HTS basket categories generally over-estimate the value of Chinese imports that are subject to the antidumping duty orders at issue because the HTS codes referenced in an antidumping duty order frequently cover non-subject merchandise. As the United States demonstrated in the U.S. response to question 62, relying on HTS codes leads to a distortion in the understanding of how the value of trade subject to antidumping duties evolves over time.[6] HTS data, therefore, necessarily lead to an overestimation of the actual level of nullification or impairment – even under an appropriate methodological approach. Thus, it would be unreasonable to rely on an approach to data that China acknowledges is problematic.

2 COUNTERFACTUAL

53. <u>To both parties</u>: China states that in *Diamond Sawblades*, the USDOC calculated the separate duty rate for non-individually-examined exporters or producers as an average of the duty rates assigned to the individually-examined exporters or producers, which in turn were based on total adverse facts available.

b. <u>To both parties</u>: Did the USDOC determine the separate duty rate in the manner described by China in any of the other anti-dumping duty orders at issue?

<u>Response</u>:

5. As the United States explained in the U.S. response to question 53(a), the answer is no. The United States understands the Arbitrator's question as asking whether the USDOC determined other separate duty rates used in the U.S. proposed counterfactual as an average of two individually-examined rates, each of which was based on total facts available. The answer to that question is "no." The United States did determine the separate duty rate in *Narrow Woven Ribbons* as an average of the rates for two individually-examined respondents, one of which was *de minimis*, while the other was based on total facts available.

6. Further, in its response to question 53(b), China refers the Arbitrator to Exhibit CHN-52. As the United States demonstrated in the U.S. response to question 54(d), the information contained in Exhibit CHN-52 should not be relied on because it is riddled with errors and incorrect assertions.[7]

54. <u>To both parties</u>: China argues that the United States' use of the separate duty rates on record as the counterfactual for the PRC-wide entity relies on the assumption

[5] *Id.*

[6] U.S. Responses to Questions Following the Arbitrator Meeting, paras. 58-62.

[7] U.S. Responses to Questions Following the Arbitrator Meeting, paras. 21-22.

that these separate duty rates are WTO-consistent. China argues that this assumption is wrong and identifies four categories of "likely" WTO inconsistencies, i.e. the improper use of facts available, the improper double-counting of anti-dumping and countervailing duties, the improper use of the WA-T methodology, and the improper use of zeroing.

a. <u>To China</u>: What is the legal basis for considering, in an Article 22.6 proceeding, the alleged "likely" WTO consistency of the separate duty rates on record when these were not challenged in the original proceedings of this dispute? Why would the Arbitrator refrain from adopting a counterfactual that has elements that are alleged "likely" to be in violation of obligations that were not discussed in the original proceedings of this dispute?

<u>Response</u>:

7. The United States recalls that there is no basis for a presumption of WTO-inconsistency, let alone a presumption based on an assertion that something is "likely" WTO-inconsistent. As the United States explained in the U.S. response to question 54(b), China does not even present its claims as being ones of "inconsistency" but only of "likely" inconsistency.[8] That is not the type of claim that even an original panel would review, let alone an arbitrator under Article 22.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). In addition, the U.S. proposed counterfactual is entirely consistent with the DSB's recommendations.[9] Under the U.S. proposed counterfactual, Chinese products would not be subject to the measures found to be WTO-inconsistent.

8. Additionally, China's assertion regarding the United States not implementing the DSB's recommendations is a distraction.[10] In this arbitration, the issue is not whether the United States has implemented the DSB's recommendations – it is not disputed that the United States has not yet done so. Indeed, that is the reason for this arbitration proceeding.

9. Finally, the United States has not argued that the Arbitrator should "completely ignore WTO-inconsistency in evaluating" the U.S. counterfactual.[11] Rather, the United States has explained throughout this proceeding that the mandate of the Arbitrator is explicitly linked in Articles 22.6, 22.7, 22.4, and 22.2 of the DSU to the level of nullification or impairment resulting from a failure to comply with the recommendations of the DSB.[12] The DSU provisions

[8] U.S. Responses to Questions Following the Arbitrator Meeting, para. 15.

[9] *See* Written Submission of the United States of America (January 7, 2019) ("U.S. Written Submission"), paras. 37-47.

[10] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 17.

[11] China's Responses to Questions Following the Arbitrator Meeting, para.18.

[12] *See* U.S. Written Submission, paras. 20-26. *See also*, Opening Statement of the United States of America at the Meeting of the Arbitrator with the Parties (April 24, 2019), ("U.S. Opening Statement at the Arbitrator Meeting"), paras. 26-28.

on suspension of concessions relate to the effects of the measures subject to the DSB recommendations that follow from a finding of inconsistency with the covered agreements.

10. Thus, the United States has consistently explained that the role of the Arbitrator is to assess the level of nullification or impairment resulting from those measures. China has stated that the Arbitrator is not to make a "formal" finding of WTO-consistency in this proceeding. Yet, at the same time, China argues that the Arbitrator should proceed as though the Arbitrator has made an (informal) finding of "likely" inconsistency. China cannot have it both ways.

11. Nor is there any basis in the WTO agreements to presume a measure "may be" or "perhaps is" or "likely is" WTO-inconsistent. Of course, "likely" inconsistent also admits that it may also be consistent, and there is no basis to reject the likelihood of consistency.

12. In sum, there is no basis for the Arbitrator to go beyond the adopted findings and the DSB's recommendations by examining China's speculation regarding allegedly "likely" WTO inconsistencies of the U.S. proposed counterfactual.

e. <u>To both parties</u>: Assuming arguendo that the Arbitrator does not consider the separate duty rates on record a reasonable counterfactual, are there any alternative duty rates on the record of the anti-dumping duty orders at issue that could be used as the counterfactual duty rates?

<u>Response</u>:

13. In its response to question 54(e), China does not propose a consistent approach for selecting alternative separate duty rates that could be used as counterfactual duty rates. While the United States selected the duty rates of the U.S. proposed counterfactual using a consistent approach that avoided selecting rates in an arbitrary manner,[13] China's proposal does the opposite. China's proposal selectively chooses rates that appear geared to result in a higher level of nullification or impairment.

14. In Exhibit CHN-53, China agrees with some of the U.S. proposed rates and rejects others. Exhibit CHN-53, however, does **not** explain why China rejects certain rates proposed by the United States.

15. In addition, Exhibit CHN-53 does **not** provide the rationale for the selection of China's alternative rates. The rates proposed in Exhibit CHN-53 are a mixture of the U.S. proposed separate duty rates, individual rates,[14] and an "average of agreed upon [benchmark] AD rates" of 2.40 percent.[15] China suggests using the "average of agreed upon [benchmark] AD rates" of 2.40 percent for seven proceedings. China calculated this 2.40 percent rate by averaging the

[13] *See* U.S. Responses to Questions Following the Arbitrator Meeting, para. 35.

[14] In Exhibit CHN-53, China proposes using rates calculated for an individual exporter in lieu of the U.S. proposed duty rates for six of the proceedings: *OTR Tires*, *Solar Cells*, *Polyethylene Retail Carrier Bags*, *PET Film*, *Diamond Sawblades*, and *Narrow Woven Ribbons*.

[15] *Id*.

rates that were initially proposed by the United States, and which China accepted in Exhibit CHN-53. Again, China has provided **no** rationale for why it accepted these rates while rejecting others. In addition, China calculated this average of 2.40 percent based on rates assigned in entirely different proceedings than the seven proceedings for which China proposes to use the average rate. China has not explained why the Arbitrator should use an average of rates derived from different proceedings than the proceedings to which the average would be applied.

16. Furthermore, while the U.S. proposed duty rates are based on a consistent approach, the common theme running through the alternative individual rates proposed by China is that they all appear to be the lowest individually-calculated rates in the history of each proceeding. China provides no rationale in Exhibit CHN-53 for why these particular individual rates, rather than other individual rates, should be used.

17. For *OTR Tires*, for example, Exhibit CHN-53 suggests using a rate of zero percent, which was calculated for a respondent in the investigation in 2008. As the United States explained above in the introduction to these comments, the USDOC has revoked the *OTR Tires* antidumping duty order.[16] Because there can be no nullification or impairment to China with respect to *OTR Tires*, the Arbitrator should determine that the level of nullification or impairment for *OTR Tires* is zero.

18. That being said, the United States observes that the USDOC has conducted numerous administrative reviews in *OTR Tires* since the investigation and has assigned numerous other individual rates. While the United States has explained why the separate duty rate included in Exhibit USA-5 for *OTR Tires* should be used, China provides no rationale for using the zero percent rate from the investigation, rather than an individual rate from a more recent review. This same problem extends to *Retail Carrier Bags* and *Narrow Woven Ribbons*, where China also proposes using individual rates calculated in the investigation rather than rates from more recent reviews.

19. In other proceedings, however, Exhibit CHN-53 does use individual rates from administrative reviews, but again China provides no rationale for why it selected a particular rate from a particular review. For *Solar Cells*, for example, Exhibit CHN-53 suggests using a 0.79 percent rate calculated in an administrative review in 2015. The USDOC has conducted numerous administrative reviews since 2015, but China does not suggest using a rate from a more recent review. Likewise, for *PET Film* and *Diamond Sawblades*, China uses rates from 2013 administrative reviews even though the USDOC has conducted additional reviews since 2013.

20. In closing, the United States selected its proposed rates for a consistent reason – they were rates in effect at the expiration of the RPT. Notably, none of the individual rates proposed by China were in effect at any point after 2017.[17] In Exhibit CHN-53 there is no discernable

[16] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders*, 84 Fed. Reg. 20,616 (May 10, 2019) (Exhibit USA-99).

[17] *See* Exhibit USA-77.

logic followed by China in selecting its proposed rates. For these reasons, the United States does not believe that it would be appropriate to rely on the haphazardly-compiled rates contained in Exhibit CHN-53. Rather, one should rely on the duty rates proposed by the United States, which are based on a consistent approach pertaining to separate duty rates, if there were any, most recently determined prior to the expiration of the RPT.

56. <u>To China:</u> Please comment on the United States' proposed counterfactual for Group 3 exporters or producers, namely that these should continue to be subject to the PRC-wide rate, even though the PRC-wide rate was originally determined for the PRC-wide entity as a whole.

<u>Response</u>:

21. As an initial matter, the United States notes that there is no justification for China's baseless aspersion and for calling into question the good faith participation of the United States in this proceeding.[18] China's highly charged rhetoric does not assist the Arbitrator in accurately determining the level of nullification or impairment.

22. Moving to China's response to question 56, the United States notes that China "agrees that 'facts available' could be used" for Group 3, yet limits its agreement to only certain firms within Group 3.[19] Notwithstanding that the United States explained the composition of Group 3 over four months ago,[20] China now introduces a new argument. China now contends that Group 3 should be divided into companies that, on the one hand, as China agrees, "provided no data to USDOC", and, on the other hand, exporters that, China asserts, "believed that they provided all 'necessary information within a reasonable period of time' but USDOC concluded otherwise."[21] Not only does China invent this purported distinction for the first time at this late stage of the arbitration, China faults the United States for not distinguishing between China's newly fabricated subgroups within Group 3.

23. China seems to acknowledge that a facts available rate could apply to the group of companies that provided no data to the USDOC. China contrasts that with companies that China contends "believed" that they had provided all necessary information. However, China's distinction is inapplicable because, for purposes of this arbitration, it is relevant that there is evidence of non-cooperation for companies falling under Group 3 such that a rate based on facts available could apply. Of course, the USDOC's analyses concerning evidence of non-cooperation are described in the relevant USDOC determinations. Whether a firm "believes" that it had cooperated or not, ultimately the USDOC analyzes the evidence on the record and makes its own determination concerning the cooperation of a given respondent.

[18] China's Responses to Questions Following the Arbitrator Meeting, para. 30.

[19] China's Responses to Questions Following the Arbitrator Meeting, para. 29.

[20] *See* U.S. Written Submission, paras. 35 and 40.

[21] China's Responses to Questions Following the Arbitrator Meeting, para. 26.

24. China's response provides another example of the fact-intensive exercise that would be involved in sorting through China's allegations of allegedly "likely" WTO inconsistencies. The correct approach is to presume that the U.S. measures at issue are WTO consistent where there is no adverse finding adopted by the DSB. Thus, one should rely on the U.S. description of Group 3.[22]

25. Moreover, one should not rely on Exhibit CHN-54. China submitted Exhibit CHN-54 as support for its argument concerning its proposed restructuring of Group 3. The United States recalls that Group 3 includes firms that are part of the China-government entity. However, the *Diamond Sawblades* Issues and Decision Memorandum, which China submitted, discusses the USDOC's finding of non-cooperation by **individually-examined** respondents, not of Group 3 firms that were treated as part of the China-government entity. Those individually-examined respondents received an individual duty rate that was based on facts available.[23] As the USDOC explained in the Issues and Decision Memorandum that China submitted in Exhibit CHN-54, "[the USDOC] has not denied these two individually examined respondents a separate rate in this segment of the proceeding [*i.e.*, in this administrative review]. Rather, we have assigned them a separate rate, which is a separate rate based on" facts available.[24] Thus, the *Diamond Sawblades* portion of Exhibit CHN-54 does not support China's meritless argument.

26. Notably, China does not argue that there is no evidence of non-cooperation for its second subcategory under Group 3. Rather, China argues that unspecified firms "believed" that they had provided all necessary information. Again, this arbitration is not the appropriate forum to challenge whether evidence supports the USDOC analyses and determinations concerning a firm's cooperation or lack thereof. For the reasons described above, China's proposed restructuring of Group 3 into two subgroups is simply meritless.

58. <u>China</u>: The Arbitrator recalls China's argument that the counterfactual for APP-China in *Coated Paper* should be the termination of the anti-dumping order rather than a 0-00% duty rate, since the latter does not take into account the chilling effect of the anti-dumping order. The Arbitrator also recalls China's statement at the meeting that this argument is meant to demonstrate that China's proposed counterfactual is reasonable and that China does not request that adjustments be made for the chilling effect. Please further elaborate on this statement.

<u>Response</u>:

27. In its response to question 58, China asserts that its differences-in-differences ("DID") methodology "mitigates the effects from the existence of an AD order."[25] China, however, does not explain how its implementation of DID methodology does this. China's unsupported assertion is particularly curious given China's recognition, earlier in the same paragraph, that

[22] *See* U.S. Written Submission, paras. 35 and 40.

[23] Exhibit CHN-54, pp. 24-42.

[24] *Id.*, p. 42.

[25] China's Responses to Questions Following the Arbitrator Meeting, para. 33.

"there is insufficient information to estimate precisely the chilling effect on China trade flows."[26] China's contention is internally inconsistent and logically incoherent.

28. Furthermore, the United States has demonstrated that China's DID methodology is inappropriate because it cannot capture the impact of different antidumping duty margins on trade flows, which is the key issue in this proceeding.[27] Moreover, China's DID analysis is premised on false assumptions and is fundamentally flawed as a result.[28]

60. <u>To China</u>: The Arbitrator understands that China does not object to the United States' position that there is no nullification or impairment with respect to BTIC in *Steel Cylinders*, because BTIC's duty rate was revoked prior to the expiry of the reasonable period of time

a. Is this understanding correct?

b. Is there, in your view, any nullification or impairment stemming from the continued use of BTIC's duty rate as the separate duty rate in *Steel Cylinders*?

<u>Response</u>:

29. As explained in the U.S. written submission, with respect to the *Steel Cylinders* antidumping duty order, China only challenged the USDOC's use of the alternative, average-to-transaction comparison methodology and "zeroing" with respect to the margin of dumping for BTIC (and BTIC is the only company for which there was an "as applied" finding concerning the use of the alternative, average-to-transaction comparison methodology and "zeroing").[29] Because China did not challenge the separate duty rates applied to Group 2 firms and the DSB adopted no findings concerning Group 2 firms,[30] as a legal matter, for purposes of this proceeding there can be no nullification or impairment resulting from the separate duty rates applied to Group 2 firms.

30. In addition, as the United States explained in the U.S. response to question 59(b), the United States modified to zero the applicable duty rate to determine the level of nullification or impairment from the China-government entity in *Steel Cylinders*.[31]

3 ECONOMIC MODEL

[26] China's Responses to Questions Following the Arbitrator Meeting, para. 33.

[27] *See* U.S. Written Submission, para. 113.

[28] *See* U.S. Written Submission, paras. 129-148. *See also*, Responses of the United States to the Advance Questions from the Arbitrator (April 1, 2019) ("U.S. Responses to the Arbitrator's Advance Questions"), paras. 42-88.

[29] U.S. Written Submission, para. 102.

[30] *See US – Anti-Dumping Methodologies (China) (Panel)*, paras.7.5-7.6.

[31] *See* U.S. Responses to Questions Following the Arbitrator Meeting, para. 45.

3.1 United States' proposed models

65. <u>To both parties</u>: For purposes of this question, assume arguendo that the Arbitrator uses the Armington-based model with a two-step approach, also used by the arbitrator in *US – Washing Machines* (*Article 22.6 – US*).

a. <u>To both parties</u>: The Arbitrator's understanding is that, ideally, this calculation would be made, for each of the 25 anti-dumping orders, as follows:

1. Identify the composition of the PRC-wide entity in 2017.

2. Identify, for the year preceding the imposition of the relevant anti-dumping duties, the value of imports from the producers or exporters that were included in the entity in 2017, i.e. the PRC-wide entity as composed in 2017.

3. On that basis, find the market share of the PRC-wide entity (as composed in 2017) in the year preceding the imposition of the relevant anti-dumping duties. In the same way, calculate the market shares for the year preceding the imposition of the relevant anti-dumping duties, namely: domestic shipments, imports from the rest of China, and imports from the rest of the world.

4. Apply the Armington-based model to calculate the market shares of the PRC-wide entity (as composed in 2017) as well as the other three sources, following the imposition of the relevant anti-dumping duties.

5. Use these newly calculated market shares for all the four sources as their market shares in the year 2017. In other words, replace the actual market shares presented by the United States for 2017 with these newly calculated market shares.

Please comment on this method of calculating the market shares.

e. In case the Arbitrator has no information about the composition of the PRC-wide entity (as of the imposition of the anti-dumping duties) and the composition of the PRC-wide entity (as of 2017), on what basis should the Arbitrator quantify the change in the composition of the PRC-wide entity from the imposition of the anti-dumping duties to the year 2017?

<u>Response</u>:

31. As an initial matter, the United States notes that China appears to agree that the two-step approach used by the arbitrator in *US – Washing Machines (Article 22.6 – US)* **cannot** be used in this proceeding to calculate the level of nullification or impairment.[32]

32. That said, China's response to the Arbitrator's proposed two-step approach is problematic for a number of reasons. First and foremost, the data inputs described in China's version of Step 1 and Step 2 do not seem to be available. The United States does not have the data described in China's version of Step 1 and Step 2. And, if China has such data, China has yet to provide it to the Arbitrator.

33. Second, due to the lack of the data inputs described in Step 1 and Step 2, Step 3 cannot be calculated. Finally, Steps 4, 5, 6, and 7 in China's proposed modeling approach cannot be executed because the required data in Step 3 cannot be calculated.

34. In addition, the United States makes the following comments, which are organized by theme, regarding China's response to this question.

Data Availability

35. The United States disagrees with China's argument that the unavailability of detailed data is a reason for rejecting the two-step approach. Neither the two-step approach used by the arbitrator *US – Washing Machines (Article 22.6 – US)*, nor the two-step approach presented in the U.S. response to question 65, requires company-specific data. To run the Armington model, only a measure of the total value of imports subject to duties found to be WTO-inconsistent would be required. The Arbitrator's written questions following the substantive meeting recognize that circumstances exist in which proxy data could be used. China seems to accept this notion. For instance, China relies on imports data at the 10-digit HTS level. China uses this data as a proxy for the actual value of imports subject to antidumping duties.

36. Contrary to China's insinuations,[33] there is no central U.S. government database in which the value of imports in the year prior to each order from the China-government entity as composed in 2017 could be identified and assembled. U.S. Customs, for instance, does not track the value of shipments for the product subject to antidumping duties in years before the duties are imposed.

37. To be responsive to the Arbitrator's request in question 65, the United States provided the Arbitrator with Exhibit USA-94 (Import Data in the Year Preceding the Imposition of Antidumping Duties) and Exhibit USA-95 (2017 Imports from China Under the China-Government Entity: *OCTG*). As the United States explained in its May 15, 2019, comments, the

[32] *See* China's Responses to Questions Following the Arbitrator Meeting, paras. 38 and 51 (noting that "China presents reasons why this methodology cannot be applied in a way that is reasonable in this particular proceeding" and that "China believes the *US – Washing Machines* methodology cannot be reasonably applied in this proceeding").

[33] China's Responses to Questions Following the Arbitrator Meeting, para. 42.

United States is currently working to submit the remaining data for companies within the China-government entity in 2017 and double-checking the data in Exhibit USA-94.

38. As noted in the May 15 comments, the United States continues to have strong concerns about the Arbitrator relying on the two data sets to estimate the level of nullification or impairment. First, as the United States explained in the U.S. response to question 65, it would be incorrect to use the value of Chinese imports in the year preceding the imposition of an antidumping duty order because, as the USDOC found, Chinese imports were being dumped during that time period.[34] This means that trade during that period was distorted. Accordingly, this data set does not provide a valid basis for a calculation of the level of nullification or impairment. Second, the data of companies within the China-government entity in 2017 does not distinguish between Group 3 companies and Group 4 companies. As the United States has explained throughout this proceeding, Group 4 is the only category that potentially would result in any nullification or impairment based on the recommendations of the DSB related to the SRP and the resulting application of a China-government entity rate.[35] Thus, using this data set necessarily would lead to a level of suspension that would be well in excess of the actual level of nullification or impairment, and that would be contrary to the DSU.

39. In addition, there have been industry developments (*e.g.*, firms change names, firms merge, etc.) between the year prior to the imposition of an antidumping duty order and 2017. These changes make it difficult, if not impossible, for the Arbitrator to rely on the two data sets – (1) composition of the China-government entity in 2017, and (2) import data in the year preceding the imposition of an antidumping duty order – to link Chinese firms that received the China-government entity rate in 2017 to Chinese firms that exported to the United States in the year preceding the imposition of an antidumping duty order.

40. If the Arbitrator were to implement the two-step approach contemplated in question 65, instead of relying on the two data sets, the information provided by the United States in Exhibit USA-54 should be used to distinguish Groups 1 and 2 from Groups 3 and 4. The information provided by the United States in Exhibit USA-55 should also be used to distinguish Group 3 from Group 4. This is a simpler and more reasonable approach to calculate market shares for purposes of the two-step approach contemplated by question 65.

41. As a final note, the U.S. Armington model uses data on the value of imports from the China-government entity as composed in 2017 with data that accurately describe the rest of the market in 2017. The evolution of the China-government entity is a non-issue regarding the application of the U.S. Armington model.

Elasticities

[34] *See* U.S. Responses to Questions Following the Arbitrator Meeting, para. 92.

[35] *See* U.S. Written Submission, paras. 35-47.

42. China's assertions about elasticities are incorrect. First, the United States uses elasticity values from credible sources.[36] Second, elasticity values allow the Arbitrator to accurately estimate (using the Armington model) the change in trade values in response to a change in antidumping duties.

43. In contrast, China's method – linearly adjusting China's grossly inflated estimates of the level of nullification or impairment – is not based on sound economic theory. China presents its flawed results as "adjustments" to its inflated estimates of the level of nullification or impairment to account for partial removal of antidumping duties and to limit the level of nullification or impairment to the China-government entity. Because China's approach is incorrect, its estimates are meaningless.

44. Third, the arbitrator in *US – Washing Machines (Article 22.6 – US)* also used the midpoint of a range of elasticity values in a calculation of the level of nullification or impairment.[37] Doing so is a reasonable approach for estimating the level of nullification or impairment.

45. Finally, as the United States explained during the substantive meeting, China's assertion that the estimates of elasticity models become systematically less accurate as the magnitude of the tariff changes grows is false. For the CES Armington model, there is, in fact, no literature to support China's assertion. The price elasticity of demand varies with the size of the price change, so there is no reason to suggest that the estimates generated by the Armington model are unreasonable, as China does. Also, a technical way to verify that the Armington model is reliable in estimating the impact of a very large reduction in the duty would be to use the Euler method, in which the model is solved piecemeal as a series of small duty reductions.[38]

Two-Step Data Challenges Are Shared with DID

[36] As the United States has previously explained, the elasticity estimates used by the United States reflect the most reliable information available, which is collected by the U.S. International Trade Commission ("USITC") in antidumping and countervailing duty ("AD/CVD") investigations. The USITC's elasticity estimates are not created on behalf of the United States for purposes of WTO dispute settlement. Rather, the USITC has been estimating elasticities for AD/CVD investigations since the late 1980s. Both petitioners and respondents in an AD/CVD investigation have opportunities to comment on the elasticity estimates, which they often do, and the USITC incorporates these comments into its final report.

[37] *See US – Washing Machines (Article 22.6 – US)*, paras. 3.97 and 3.99 (noting that both "Korea and the United States have proposed the value of -0.55 for the demand elasticity for LRWs in the United States' market. Korea refers to a report published by the USITC in the 2017 Large Residential Washers from China Investigation, as its source for this estimate, as does the United States; the -0.55 figure is the **mid-point** or **average** of the range of -0.3 to -0.8 reported in that USITC determination. The United States cites the same report and similarly takes the **mid-point** of the estimated range", and further noting that "Korea uses an estimate of 7 for the supply elasticity for LRWs, which is the **median** of the range of 6 to 8 found in the January 2017 USITC Large Residential Washers from China Investigation. The United States argues for a supply elasticity of 6, the **median** of the range of 4 to 8, which comes from the December 2017 report published at the conclusion of the USITC's global safeguard investigation of LRWs.") (emphasis added and citations omitted).

[38] *See* Riker, *Multinational Production and Employment in an Industry-Specific Model of Trade*, U.S. International Trade Commission, Working Paper 2018-08-C (Exhibit USA-67).

46. The data challenges China identifies in paragraph 40 of its responses to the Arbitrator's written questions following the substantive meeting are shared with China's DID tabular methodology. Like the two-step approach, DID compares imports prior to the imposition of each order with their value in 2017. For the DID comparison to produce estimates that isolate the effect of antidumping duties on trade flows, specific and credible data that reflect market characteristics in both a year where there was no dumping and in 2017 are necessary. China's implementation of DID, however, does not define the specific value of imports subject to duties found to be WTO-inconsistent.

China's Use of *Cold-Rolled Steel Flat Products* as an Example Is Misleading

47. China uses *Cold-Rolled Flat Steel Products* as an example to argue that the U.S. Armington results are, allegedly, "unrealistic".[39] China's presentation of the facts in *Cold-Rolled Steel Flat Products*, however, is misleading. China is correct that, under the U.S. proposed counterfactual, the duty rate on imports from subject China falls from 265.79 percent to 0.00 percent.[40] China is also correct that the actual value of imports under the China-government entity in 2017 was [[***]]. This represents the total value of imports under the order.[41]

48. However, China incorrectly compares this exact value of imports under the order in 2017 to the total value of imports under the HTS reference codes in 2015 of $272 million. The products subject to duties under each order represent only a subset of the total value under HTS reference codes.

49. The U.S. Armington model estimates an increase of $90,000 (1,500 percent) in imports value for the *Cold-Rolled Steel Flat Products* order. This is reasonable, considering that, in 2017, imports of cold-rolled steel flat products under the antidumping duty order represented only 0.2 percent of the total value of imports under the HTS reference codes. This combines both Group 3 and Group 4 imports. Moreover, as explained in the U.S. response to question 51(b), no Chinese respondent cooperated during any portion of the USDOC's investigation. Therefore, all Chinese imports fall under Group 3.[42] Under the correct counterfactual, then, the level of nullification or impairment is zero.

50. In contrast, China's DID methodology predicts that removing duties in 2017 would have boosted imports from China by $735 million (270 percent), which amounts to an astounding increase of **122,684 percent** over the actual value of imports subject to antidumping duties under the antidumping duty order in 2017. The magnitude of this increase implies that eliminating antidumping duties on cold-rolled steel flat products would have **increased** China's share of imports relative to the year prior to the order. Imports from China represented 17 percent of all imports (under the HTS reference codes) for cold-rolled steel flat products in 2015, the year prior to the order. China's level of nullification or impairment estimate implies that imports from

[39] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 47.

[40] *See* Exhibit USA-5.

[41] In other words, there were no Chinese imports under rates other than the China-government entity rate.

[42] *See* U.S. Responses to Questions Following the Arbitrator Meeting, footnote 7.

China would have increased China's market share to 37 percent if duties that had been in place for one year had been lifted in 2017. It is difficult to understand why China thinks this is a reasonable assumption.

The Purported Chilling Effect

51. China asserts that DID analysis mitigates an alleged "chilling effect," which, according to China, the two-step approach adopted by the arbitrator in *US – Washing Machines (Article 22.6 – US)* cannot estimate.[43] As the United States explained in the U.S. comment regarding China's response to question 58, China does not explain how its implementation of DID methodology "mitigates" an alleged "chilling effect." China's unsupported assertion is particularly curious given China's recognition that "there is insufficient information to estimate precisely the chilling effect on China trade flows."[44] China's contention, again, is internally inconsistent and logically incoherent.

52. In addition, China has failed to provide any evidence of a "chilling effect." In fact, during the substantive meeting, China admitted that a "chilling effect" cannot be empirically estimated.

Motivation for Using the Two-Step Approach in *US – Washing Machines (Article 22.6 – US)* Does Not Apply

53. China mistakenly criticizes the two-step approach on the basis that Armington-based models can only capture the short-run impact of changes in duties. China also provides a graph with timelines for the antidumping cases at issue.[45] The motivation for the two-step approach used by the arbitrator in *US – Washing Machines (Article 22.6 – US)* was that the duration of the rates found to be WTO-inconsistent in that arbitration depressed trade in excess of the direct effect of tariffs. China's graph reveals that, for six antidumping orders, duties were in effect for three years or less as of 2017. For these six antidumping duty orders, the two-step approach is unnecessary under the logic applied by the arbitrator in *US – Washing Machines (Article 22.6 – US)*.

Punitive Inferences

54. In paragraph 61 of China's response to question 65(e), China is encouraging the Arbitrator to do something other than determine whether the requested level of suspension is equivalent to the level of nullification or impairment. China appears to propose that the Arbitrator draw **punitive** inferences against the United States, which simply is not contemplated by the DSU.

[43] China's Responses to Questions Following the Arbitrator Meeting, para. 50.

[44] China's Responses to Questions Following the Arbitrator Meeting, para. 33.

[45] China's Responses to Questions Following the Arbitrator Meeting, para. 48.

55. The solution to data challenges is not punishing the United States. Nor is the solution adopting China's flawed methodological approach.

66. <u>To both parties</u>: The Arbitrator notes China's argument that the data on the value of imports of the producers or exporters in the PRC-entity, presented by the United States as part of its proposed calculations, is confidential and cannot be verified by China and the Arbitrator.

a. <u>To China</u>: Please clarify which specific information China is referring to as well as the sources of such information

<u>Response</u>:

56. Before commenting on China's response, the United States notes that China, again, questions the good faith efforts of the United States with highly charged rhetoric that is completely inappropriate.[46] Such rhetoric does not help the Arbitrator complete its task.

57. Regarding China's response to question 66, the United States notes that the U.S. response to question 62 explains the process used by the USDOC to calculate the applicable share of U.S. imports to serve as the basis for calculations concerning the level of nullification or impairment.[47] The United States has also addressed China's concerns about "verified" data.[48]

58. China's response to question 66 omits the fact that most of the data that the United States provided is **public**. The United States relies on only a limited amount of confidential data (*i.e.*, the U.S. Customs data for 2017 and the maximum share/applicable share data calculated by the USDOC). If China believes that the U.S. Customs data and USDOC data are not accurate, China should provide export data from its customs authorities to support its assertion.

59. In addition, China's assertion that the United States knows "the identities of those particular Chinese exporters that are included in the PRC-wide entity (at different points in time) but the United States has simply chosen not to provide this information"[49] is **false**. While U.S. Customs tracks shipments that enter the United States, the United States does not have information on what does **not** come into the United States. That is, exporters and producers that do not ship may be part of the China-government entity but U.S. Customs cannot identify them.

60. Finally, the United States has done its best to respond to the Arbitrator's request for company-level data.[50] As the United States explained in the U.S. response to question 65, U.S. Customs does not track the value of shipments for the product subject to antidumping duties in

[46] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 69 (asserting that the United States is engaging in "gamesmanship to influence the outcome of the Article 22.6 proceeding").

[47] *See* U.S. Responses to Questions Following the Arbitrator Meeting, paras. 74-79.

[48] *See* U.S. Responses to Questions Following the Arbitrator Meeting, para. 118.

[49] China's Responses to Questions Following the Arbitrator Meeting, para. 65.

[50] *See* Exhibits USA-94 and USA-95.

years before the duties are imposed. Therefore, there are constraints on the ability of the United States to provide company-level data to the Arbitrator.

67. <u>To China</u>: Does China have company-specific data on the import values in the year prior to the imposition of the relevant anti-dumping duties for the PRC-wide entity (as composed in 2017), for each of the 25 anti-dumping orders at issue? If so, please provide such data.

61. While the second sentence of China's response to question 67 is technically correct, the United States understands that China's customs authorities collect export shipment data, which would include data on the Chinese exporter of the goods.

68. <u>To both parties</u>: In its opening statement, China argues that the United States, in its proposed calculations, used incorrect duty rates and incorrect market shares in estimating the level of nullification or impairment, and points to specific examples concerning *Furniture*.

a. <u>To China</u>: Did the United States, in your view, use incorrect duty rates or market shares for any of the other anti-dumping orders at issue? If so, please provide relevant evidence in support of your view.

<u>Response</u>:

62. China contends that there are two fundamental problems with the maximum share values calculated by the United States. First, China argues that, because China does not have the confidential information underlying the calculations, China cannot verify the information or check for "inadvertent mistakes." Second, China argues that the composition of the China-government entity changes over time. Before addressing each argument, the United States reiterates that, given data constraints, the maximum shares contained in Exhibit USA-54 provide a reasonable proxy for the China-government entity share in 2017.

63. With respect to the confidential nature of some of the information underlying the U.S. market share calculation, the United States addressed the use of confidential information in the U.S. response to question 66. Additionally, the United States reiterates that not all of the information relied on in the U.S. maximum share calculations is confidential. Specifically, the United States relied on publicly available monthly trade value data for the relevant HTS codes, as explained in Exhibit USA-86, to calculate the total import statistics in Exhibit USA-54.

64. With respect to China's arguments that the results of the period-of-investigation maximum share calculations understate the China-government entity's share in 2017 because the maximum share calculation does not take into account the subsequent revocation of certain firms' separate-rate status, the United States has demonstrated that the calculations are not necessarily, or in all situations, understated.[51] The composition of the China-government entity

[51] Written Submission of China (February 13, 2019) ("China's Written Submission"), paras. 146-154; China's Oral Statement (April 24, 2019) "(China's Opening Statement at the Arbitrator Meeting"), para. 49.

can change. However, such a change would not render the U.S. maximum share calculations unreasonable for use in this arbitration in light of the information available.

65. Specifically, the United States demonstrated that, to the extent the constituent companies of the China-government entity may change, some companies are granted a separate rate and, thereby, exit from the China-government entity.[52] When companies that were part of the China-government entity during the investigation are subsequently granted separate-rate status, an **overstatement** of the China-government entity share results, which would lead to an estimate in excess of the actual level of nullification or impairment.

66. In the U.S. response to question 68, the United States provided examples of antidumping proceedings in which more firms were granted separate-rate status and had exited the China-government entity for part, or all, of 2017 than had lost their separate-rate status for part, or all, of 2017.[53] The United States also points out that, in *Steel Flat Products*, there has been no known change to the composition of the China-government entity where there has not been an administrative review since the imposition of the antidumping duty order. Additionally, in *Cast Iron Pipe Fittings*, the only known change to the composition of the China-government entity since the investigation is the granting of a separate duty rate to NEP (Tianjin) Machinery Company, a rate that remained in effect for that company in 2017.[54] Accordingly, the U.S. maximum share calculations are a reasonable proxy for the China-government entity share in 2017.

67. Regarding duty rates, the United States has explained why one cannot rely on the information contained in Exhibit CHN-52, which is riddled with errors.[55] Furthermore, Exhibit CHN-53 **does not** provide a rationale for the selection of each of China's "alternative" benchmark antidumping duty rates. Exhibit CHN-53 contains a haphazardly-compiled list of rates, including: (1) some separate duty rates proposed by the United States, (2) individual rates,[56] and (3) an "average" rate of 2.40 percent. As explained in the U.S. response to question 54(e), China does not provide a rationale for the selection of these rates. Indeed, the individual rates listed in Exhibit CHN-53 appear to simply be the **lowest** individual rates ever calculated in each proceeding, none of which were in effect at any point in 2017. Accordingly, Exhibit CHN-53 should not be relied on.

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[52] *See* Exhibit USA-89.

[53] *See* U.S. Responses to Questions Following the Arbitrator Meeting, paras. 123-131.

[54] *Compare* Exhibit USA-50, Letter O, p. 7,768 (identifying two firms being granted rates separate from the China-government entity in the investigation) *with* Exhibit USA-97, *Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 Fed. Reg. 31,936 (Dep't of Commerce, June 2, 2010) (assigning a rate separate from the China-government entity rate to a firm not listed in Exhibit USA-50, Letter O).

[55] U.S. Responses to Questions Following the Arbitrator Meeting, para. 21.

[56] In Exhibit CHN-53, China proposes using rates calculated for an individual exporter in lieu of the U.S. proposed duty rates for six of the proceedings: *OTR Tires*, *Solar Cells*, *Polyethylene Retail Carrier Bags*, *PET Film*, *Diamond Sawblades*, and *Narrow Woven Ribbons*.

69. <u>To both parties</u>: In *OCTG*, the USDOC calculated an individual duty rate of 32.07% for TPCO using the WA-T methodology (with zeroing) and applied this duty rate as the separate duty rate to non-individually-examined exporters or producers (Group 2). The United States explains that the WA-WA duty rate on record for TPCO is [[***]]%, but does not propose to use this as a counterfactual duty rate. For purposes of the questions below, assume arguendo that the Arbitrator chooses the WA-WA duty rate on record as the counterfactual duty rate for TPCO and as the counterfactual duty rate for the separate duty rate assigned to Group 2 exporters or producers.

b. <u>To both parties</u>: If this data is not available, which data, in your view, would be a reasonable proxy?

<u>Response</u>:

68. The United States provided the data in the U.S. response to question 69(a).[57]

70. <u>To both parties</u>: In *Steel Cylinders*, the USDOC continues to assign a separate duty rate to Group 2 exporters or producers based on the individual duty rate previously calculated for BTIC using the WA-T methodology (with zeroing), but the United States does not propose to use a counterfactual duty rate. For purposes of the questions below, assume arguendo that the Arbitrator chooses a counterfactual duty rate for the separate duty rate.

b. <u>To both parties</u>: If this data is not available, which data, in your view, would be a reasonable proxy?

<u>Response</u>:

69. China's response to question 70(b) acknowledges that an average-to-average antidumping duty rate would be a reasonable rate to use in a counterfactual. While China has made a number of flawed arguments against the U.S. proposed counterfactual concerning the DSB's recommendations with respect to the findings related to the use of the alternative, average-to-transaction comparison methodology and "zeroing" in *Coated Paper*,[58] China has not argued against the U.S. proposed counterfactual of using the average-to-average antidumping duty rate in *Steel Cylinders*.

74. <u>To China</u>: In applying the tabular DID approach, China defines the "benchmark period" as the time period preceding the imposition of the anti-dumping duties, and selects 2017 as the remedy period. The Arbitrator understands that, in doing so, China calculates the effects of the anti-dumping duties on China's exports over the

[57] *See* U.S. Responses to Questions Following the Arbitrator Meeting, paras. 132-135.

[58] *See* China's Written Submission, paras. 196-202.

duration of several years, as opposed to the effect of anti-dumping duties after the expiry of the reasonable period of time. Is this understanding correct?

Response:

70. As an initial matter, the United States notes that China is not being consistent in its selection of its "benchmark" period. In some cases, China uses a three-year period while in other cases China uses a four-year period.

71. The United States also points out that, if the level of nullification or impairment estimates were obtained using a properly-specified DID model, the estimates would **not** be equivalent to the level of nullification or impairment because the estimates would represent the value of imports from China that would have occurred if the antidumping duties had **never** been in place and market characteristics in 2017 were identical to the benchmark period. China appears to admit this in its response to question 74, arguing that it is attempting to estimate not just the withdrawal of the antidumping duty measures after the end of the RPT, but the total non-existence of the antidumping duty orders.[59] That is not the correct measure of the benefit to China that has allegedly been nullified or impaired by the continued application of the WTO-inconsistent measures after the end of the RPT.

72. The appropriate measure of the level of nullification or impairment should make a reasonable effort to account for real-world conditions. For instance, this would include limitations on the ability of China's suppliers to increase exports to the United States in response to the lower tariff. The appropriate measure should also take into account the competitive conditions with respect to other source countries that existed in 2017. Moreover, the appropriate measure should use the **correct counterfactual**, which is a reduction of duties on a subset of firms subject to the China-government entity rate. DID methodology, however, cannot provide a reasonable estimate of the level of nullification or impairment in this proceeding, even if the methodology were implemented correctly.

73. China's suggestion that the Arbitrator could use one year prior to the imposition of an antidumping duty order as an alternative benchmark period in DID tabular calculations emphasizes another flaw in China's methodology. Namely, the change in the value of imports on which DID relies is exaggerated by the fact that China was found to be **dumping** products prior to the imposition of the order. Thus, China explains that it did not use the single year prior to the order because it would "unduly emphasize peak imports."[60] Pre-antidumping duty order import values **distort** China's benchmark annual average even when the single year prior to the order is not the sole basis for the calculation.

74. China's response to question 74 also reveals the extent to which China's DID estimates **overstate** the level of nullification or impairment when China explains that its estimates "do not assume China would have gained relative to the overall market."[61] In fact, China's DID

[59] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 84.

[60] China's Responses to Questions Following the Arbitrator Meeting, para. 83.

[61] China's Responses to Questions Following the Arbitrator Meeting, para. 86.

"average of averages" estimates of the level of nullification or impairment imply that China's share of imports under HTS codes would have been **larger** in 2017 than the year prior to the order for **15** of the **21** antidumping duty orders in which the HTS reference codes are undisputed (see Table I below). Even under China's incorrect counterfactual (in fact, even if China had **not** been dumping products in the United States in the year prior to the order), China's assertion is a gross exaggeration.

Table I: Share of Total Imports Implied by China's Nullification or Impairment Estimates Often Exceeds Actual Share in Year Prior to Imposition of AD Orders.

AD Order	Year Prior Share of Total Imports Value (HTS Reference Codes)	China Estimates-Implied Share of 2017 Total Imports Value (HTS Reference Codes)
Shrimp	8%	22%
OCTG	44%	60%
CSPV Cells	53%	63%
Steel Cylinders	93%	134%
Ribbons	26%	60%
PET Film	14%	33%
Wooden Furniture	48%	56%
Cast Iron Pipe Fittings	45%	48%
Carbon Quality Steel Line Pipe	14%	41%
Line and Pressure Pipe	24%	25%
Copper Pipe	47%	73%
Cold Rolled Steel Flat Products	17%	37%
Corrosion-Resistant Steel	16%	32%
Stainless Steel Sheet and Strip	9%	25%
Washers	56%	114%

75. **<u>To China</u>: How would China respond to the United States' view that "[t]he presence of systematic shocks that affect all firms in China or in a comparison group in a given year causes DID estimates to be inconsistent", and therefore "one must use regression-based DID analysis to avoid inconsistency from group-time-specific random shocks"?**

<u>Response</u>:

75. The issue identified by the Arbitrator's question is not "purely a theoretical argument", as China contends.[62] Rather, it is a practical consideration that applies any time tabular DID is used.[63]

76. China's assertion that systematic shocks can be considered symmetric between China and its comparison groups (The World and Non-Subject Countries)[64] amounts to an assumption that China's economy can be considered to have followed a parallel path to all other countries over the period 2002-2017. China's assertion presumes that all changes in domestic policy, global trading arrangements, and industry structure affected trends in U.S. imports from China and all other countries identically. This presumption is absurd.

77. China's exchange rate example[65] is just one instance of a shock that affects imports from China asymmetrically. Contrary to China's incorrect observation, the United States does not have a single, monolithic exchange rate. Rather, the value of the U.S. dollar has an independent, market-determined exchange rate with every currency. The dollar may strengthen dramatically relative to some currencies, while remaining relatively stable with respect to another currency. This type of event may be relevant in this case since a weaker currency can provide an exporting country an advantage relative to competitors. Indeed, between January 1, 2015, and January 1, 2016, the dollar strengthened by 5.7 percent relative to the Chinese yuan, whereas its value increased by 10.7 percent on average.[66] Currencies of several of China's key global competitors experienced strong depreciations relative to the U.S. dollar during this period, offering them an advantage relative to China that may well have had effects that persisted into 2017.

76. <u>To China</u>: China contends that its proposed tabular DID approach can still be used if the Arbitrator were to choose a counterfactual other than the one proposed by China. In adjusting the calculation, China proposes to scale the estimated level of nullification or impairment downward by accounting for the partial removal of the anti-dumping duties.

a. Could China please elaborate on the precise method it uses to adjust the estimated level nullification or impairment to take into account changing anti-dumping duty rates?

<u>Response</u>:

[62] China's Responses to Questions Following the Arbitrator Meeting, para. 87.

[63] *See* U.S. Responses to the Arbitrator's Advance Questions, paras. 66-67.

[64] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 89.

[65] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 89.

[66] *See* Trade Weighted U.S. Dollar Index: Broad Goods, Board of Governors of the Federal Reserve System, available at https://fred.stlouisfed.org/series/TWEXBMTH (Exhibit USA-98).

78. As an initial matter, China's tabular DID approach cannot be used to estimate the level of nullification or impairment. To summarize, below are three major flaws of China's approach that the United States has discussed throughout this proceeding:

- **The tabular DID methodology cannot accommodate the correct counterfactual.** DID tabular methodology can only estimate the level of nullification or impairment based on removal of antidumping duty orders on all imports from China.

- **The tabular DID methodology relies on data that overstates the true value of imports subject to antidumping duties.**

- **China's implementation of tabular DID produces biased and inconsistent estimates of the level of nullification or impairment.** China's tabular DID analysis does not meet the requirements of parallel trends, uniformity, and stability.

79. To accommodate a counterfactual in which duties are reduced rather than eliminated, China offers the Arbitrator linear adjustments to its nullification or impairment estimates derived from its application of tabular DID. The fact that these adjustments are based on the separate rates listed in Exhibit USA-5 is entirely irrelevant. These adjustments are seriously flawed and are not consistent with China's own methodology.

80. China's general approach assumes that the **change** in the value of imports from China due to a **change** in the duty rate is proportional to one minus the **level** of the reduced duty rate, (*i.e.*, the separate rate). Thus, the reduction from a duty of 77.6 percent to 17.3 percent in *Carrier Bags* and the reduction of a 239.0 percent duty to 15.9 percent in *CSPV Cells* are treated almost identically. China simply ignores the question of whether the drop of 60 percentage points in the duty rate for *Carrier Bags* might induce a different market response compared to the **223 percentage** point drop in the duty for *CSPV Cells.* In fact, all of the characteristics that distinguish a market response to a price change for carrier bags compared to a high-technology product, such as CSPV cells, are ignored in China's approach. As explained in the U.S. response to part (b) of this question, there is no economic basis for China's adjustments.

b. Could China please explain the economic rationale for such an adjustment?

81. China's approach is not based on economic theory. China attempts to rationalize its non-economic approach with a lengthy discourse on the elasticity of demand. However, China's explanation is not consistent with the adjustments China actually makes. While China's explanation is unclear and hard to follow, China seems to confuse the **change** in duty rates and the **level** of duty rates. China explains that, in cases where the aggregate elasticity of demand is less than one, a 10 percent change in duties would imply a less than 10 percent change in import **quantities**.[67] China confuses the concept of the elasticity of aggregate demand with the price elasticity of demand for imports from China. As discussed in the U.S. responses to questions 65 and 37, in the CES Armington model used by the United States, the price elasticity of demand varies with the size of the change in duty. China's explanation is incorrect, simplistic, and

[67] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 100.

ignores the role of the supply response and the ability to substitute across sources in determining the counterfactual imports **value**.

82. More troubling, China's explanation is not consistent with the adjustments China actually makes. China explains that it applies a 10 percent reduction in its estimates of nullified or impaired import **value**, not for cases where duties fall by 10 percent, but rather for cases where the **level** of the counterfactual rate is 10 percent or less, independent of the magnitude of the change from the China government-entity rate and the separate rate.[68] Likewise, when the separate rate is greater than 10 percent, China applies a reduction proportional to the counterfactual rate, regardless of the magnitude of change this implies relative to the China government-entity rate.

83. The convoluted logic seems to be that China's DID tabular estimates represent the value of imports in the absence of antidumping duties. The United States reiterates that the DID tabular methodology cannot capture the impact of changes in antidumping duty margins on trade flows. Although China attempts to rationalize its approach, there is no valid economic rationale for the adjustments China makes.

77. <u>To China</u>: China contends that its proposed tabular DID approach can be adjusted to take into account only PRC-wide entity exports. The Arbitrator understands that, in doing so, China applies the share of the PRC-wide entity during the period of investigation to the estimated level of nullification or impairment using the tabular DID approach and corrects for cases with documented changes to the composition of PRC-wide entity.

a. Is the Arbitrator's understanding correct?

b. Could China please elaborate on the precise method it uses to correct for cases with documented changes to the composition of PRC-wide entity?

c. Could China please explain the economic rationale for such an adjustment?

84. China's suggested approach to estimating the level of nullification or impairment attributable only to imports from the China-government entity again is seriously flawed because it simply adjusts, without any economic basis, the values obtained using the DID tabular approach. As summarized in the U.S. comment on China's response to question 76, and as the United States has explained throughout this proceeding,[69] China's DID tabular approach is not a valid means to estimate the level of nullification or impairment.

85. To accommodate a counterfactual in which only imports from the China-government entity are taken into consideration, China offers the Arbitrator linear adjustments to its estimates of the level of nullification or impairment. Like the adjustments discussed above in the U.S.

[68] *See* China's Responses to Questions Following the Arbitrator Meeting, para. 67.

[69] *See* U.S. Written Submission, paras. 111-161; U.S. Responses to the Arbitrator's Advance Questions, paras. 42-88. *See also*, U.S. Opening Statement at the Arbitrator Meeting, paras. 38-56.

comments on China's response to question 76, China's adjustments to take into account only imports from the China-government entity are not consistent with China's own methodology. From the methodological perspective of the DID approach, this adjustment implies a change in the definition of the treatment group, which China makes no attempt to apply.[70]

86. Again, China does not provide the Arbitrator with an economic rationale for these adjustments. China simply restates that it applies the maximum share covered by the China-government entity during the period of investigation to the level of nullification or impairment estimates based on the **elimination** of antidumping duties on all imports from China.

87. Although China takes great pains to argue that the maximum share is not representative of the import value it would like to attribute to the China-government entity, China rejects the observed share of the China-government entity in 2017 because, according to China, it is too small. The United States notes that each antidumping duty order was imposed because China was found to be **dumping** products in the U.S. market. Thus, China's market share during the period of investigation is inflated.

[70] *See* China's Methodology Paper, para. 41.