UNITED STATES – COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA

Recourse to Article 22.6 of the DSU by the United States

(DS437)

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

Public Version

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TABLE OF REPORTS AND AWARDS

Short Form	Full Citation
Brazil – Aircraft (Article 22.6 – Brazil)	Decision by the Arbitrators, *Brazil – Export Financing Programme for Aircraft – Recourse to Arbitration by Brazil under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS46/ARB, 28 August 2000
EC – Bananas III (Ecuador) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB and Add.1, 24 March 2000
EC – Hormones (US) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Measures Concerning Meat and Meat Products (Hormones) – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS26/ARB and Add.1, 12 July 1999
US – Anti-Dumping Methodologies (China) (Article 22.6 – US)	Decision by the Arbitrator, *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*, WT/DS471/ARB and Add.1, 1 November 2019
US – Washing Machines (Korea) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea – Recourse to Article 22.6 of the DSU by the United States*, WT/DS464/ARB and Add.1, 8 February 2019

TABLE OF EXHIBITS

Exhibit No.	Description
U.S. Written Submission	
Section 129 Proceedings	
USA-1	Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act, 81 Fed. Reg. 37180 (June 9, 2016)
USA-2 (CHI-4-CP)	Memorandum to Paul Piquado Assistant Secretary for Enforcement and Compliance, *Section 129 Proceeding: United States - Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437)*: Preliminary Determination of Public Bodies and Input Specificity (February 25, 2016)
Aluminum Extrusions from the People's Republic of China (Aluminum Extrusions)	
USA-3	Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination: *Aluminum Extrusions From the People's Republic of China*, 79 Fed. Reg. 13039 (March 7, 2014)
USA-4	Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision: *Aluminum Extrusions From the People's Republic of China*, 80 Fed. Reg. 69640 (November 10, 2015)
USA-5	Aluminum Extrusions - All Others Counterfactual Rate
USA-6	Letter to Secretary of Commerce from Peter Koenig, RE: Aluminum Extrusions from China, Subject: Remand - Zhongya Data (August 28, 2015)
USA-7	Letter to Penny S. Pritzker from Mark David Davis, RE: Aluminum Extrusions from the PRC: Response to Request for Q&V Data from Investigation Period of Review, by the Guang Ya Group, Subject: Remand - Guang Ya Data (August 31, 2015)
Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (Kitchen Shelving)	
USA-8	U.S. International Trade Commission, *Certain Kitchen Appliance Shelving and Racks from China*: Investigation Nos. 701-TA-458 and 731-TA-1154 (Review), USITC Publication 4520 (February 2015)

Exhibit No.	Description
Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (Lawn Groomers)	
USA-9	Final Results of Sunset Review and Revocation of Countervailing Duty Order: *Tow Behind Lawn Groomers and Parts and Thereof From the People's Republic of China*, 79 Fed. Reg. 56769 (September 23, 2014)
Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China (Line Pipe)	
USA-10	Memorandum to The File, *Section 129 Proceedings: 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 23, 2015)
USA-11	Correction to Notice of Amended Final Determination Pursuant to Final Court Decision: *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China*, 75 Fed. Reg. 20334 (April 19, 2010)
USA-12	U.S. International Trade Commission, *Certain Welded Carbon Quality Steel Line Pipe from China*: Investigation Nos. 701-TA-455 and 731-TA-1149 (Review), USITC Publication 4464 (May 2014)
Certain Oil Country Tubular Goods from the People's Republic of China (OCTG)	
USA-13	*TMK IPSCO et al v. United States*, Final Results of Redetermination Pursuant to Court Remand (Consol. Court No. 10-00055), Slip Op. 16-62 (December 21, 2016)
USA-14	U.S. Request for China's Assistance in Obtaining Authorizations for Access to BCI Submitted in OCTG Investigations (February 12, 2020)
Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China (Seamless Pipe)	
USA-15	Memorandum to Susan H. Kuhbach Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, *Countervailing Duty Investigation: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China (WTO/DS437)*: Ministerial Errors for Final Determination (October 14, 2010)

Exhibit No.	Description
USA-16	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 (Review)*, USITC Publication 4595 (February 2016)
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China (Solar Panels)	
USA-17	Memorandum to The File, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*, Calculation of the All-Others Rate (October 9, 2012)
USA-18	Solar Panels - All Others Counterfactual Rate Chart
USA-19	*International Energy Agency, Photovoltaic Power Systems Programme, National Survey Report of Photovoltaic Applications in United States of America 2017, 2018, p. 23 (table 18),* available at http://www.ieapvps.org/index.php?id=93&eID=dam_frontend_push&docID=4546
USA-20	U.S. Department of Energy, Energy Information Administration, *2017 Annual Solar Photovoltaic Module Shipments Report* (August 2018), p. 2 (table 2), available at https://www.eia.gov/renewable/annual/solar_photo/pdf/pv_full_2018.pdf
USA-21	U.S. International Trade Commission, *Certain Crystalline Silicon Photovoltaic Products from China and Taiwan*, Investigation Nos. 701-TA-511 and 731-TA-1246-1247 (Final), USITC Publication 4519 (February 2015)
USA-22	U.S. International Trade Commission, *Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products)*, Investigation No. TA-201-75, Volume 1: Determination and Views of Commissioners, USITC Publication 4739 (November 2017)
Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China (Wire Strand)	
USA-23	Memorandum to Paul Piquado Acting Deputy Assistant Secretary for Import Administration, *Countervailing Duty Investigation: Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China (WTO/DS437),* Final Determination Ministerial Error Allegation (June 29, 2010)
USA-24	Continuation of the Antidumping and Countervailing Duty Orders: *Prestressed Concrete Steel Wire Strand From the People's Republic of China*, 80 Fed. Reg. 61372 (October 13, 2015)

Exhibit No.	Description
USA-25	U.S. International Trade Commission, *Prestressed Concrete Steel Wire Strand from China*: Investigation Nos. 701-TA-464 and 731-TA-1160 (Review), USITC Publication 4569 (September 2015)
USA-26	U.S. International Trade Commission, *Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Korea, Mexico, and Thailand*, Investigation Nos. 701-TA-432 and 731-TA-1024-1028 (Second Review) and AA1921-188 (Fourth Review), USITC Publication 4527 (April 2015)
Other	
USA-27	Harmonized Tariff Schedule of the United States ("HTSUS") Codes for the 11 Products Subject to WTO-Inconsistent Findings
USA-28	U.S. Proposed WTO-Inconsistent CVD Rates and Counterfactual WTO-Consistent CVD Rates: Corrections to China's Exhibit CHN-52
USA-29	19 U.S.C. § 1671d
USA-30	U.S. International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, USITC Publication 4889 (April 2019)
USA-31	E. Hutchinson, *Principles of Microeconomics* (2017), Chapter 4.7, available at https://pressbooks.bccampus.ca/uvicecon103/chapter/4-6-taxes.
USA-32	P. Dixon, et al., "Updating USAGE: Baseline and Illustrative Application," CoPS Working Paper No. G-269 (February 2017)
USA-33	Technical Note on Nested Demand (Rule of Two)
USA-34	C. Corado and J. de Melo, "An Ex-Ante Model for Estimating the Impact of Trade Flows of a Country's Accession to a Customs Union," Discussion Paper No. DRD67, World Bank (1983)
USA-35	C. Corado and J. de Melo, "An Ex-Ante Model for Estimating the Impact of Trade Flows of a Country's Accession to a Customs Union," *Journal of Development Economics*, Vol 24: 153-166 (1986)
USA-36	RH Dehejia and S. Wahba, "Causal effects in nonexperimental studies: Reevaluating the evaluation of training programs," *Journal of the American Statistical Association*, Vol. 94: 1053–1062 (1999)
USA-37	V. Harder, et al., "Propensity score techniques and the assessment of measured covariate balance to test causal associations in psychological research," *Psychological methods*, Vol. 15(3): 234–49 (2010)

Exhibit No.	Description
USA-38	K. Imai, et al., "Misunderstandings between experimentalists and observationalists about causal inference. (Series A)," *Journal of the Royal Statistical Society*, Vol. 171: 481–502 (2008)
USA-39	G. Imbens, "Nonparametric estimation of average treatment effects under exogeneity: A review," *The Review of Economics and Statistics*, Vol. 86: 4–29 (2004)
USA-40	DB Rubin, "Using propensity scores to help design observational studies: Application to the tobacco litigation," *Health Services & Outcomes Research Methodology*, Vol. 2:169–88 (2010)
USA-41	*Product Trends and Manufacturer Insights for Residential Laundry, Cooking and Refrigeration Appliances* (September 15, 2015)
USA-42	Alan Wolf, "Appliance Shipments Up 6% in 2017: AHAM," *TWICE, https://www.twice.com/product/appliance-shipments-up-6-percent-last-year* (February 7, 2018)
USA-43	Detailed Explanation of the US Proposed Supply Shock Adjustment
USA-44 **[BCI]**	Year-Prior US Shipments and Imports Data
USA-45 **[BCI]**	2017 US Shipments and Imports Data
USA-46	Elasticities
USA-47 **[BCI]**	Data Inputs for DS471 Two-Step Armington Approach Without US Adjustments
USA-48	Results from Step 1 of Two-Step Armington Without US Adjustments
USA-49 **[BCI]**	China's U.S. Market Shares for Seven Products in DS471
USA-50 **[BCI]**	AD Duty Rates and CVD Rates Used In Step 1 of the Two-Step Armington Approach
USA-51 **[BCI]**	AD Duty Rates and CVD Rates Used In Step 2 of the Two-Step Armington Approach
USA-52 **[BCI]**	Data Inputs for the Two-Step Armington Approach with CVD+AD Adjustment

Exhibit No.	Description
USA-53	Results from Step 1 of Two-Step Armington Approach with CVD+AD Adjustment
USA-54 **[BCI]**	Data Inputs for Two-Step Armington Approach with CVD+AD and Supply Shock Adjustments
USA-55	Results from Step 1 of Two-Step Armington Approach with CVD+AD and Supply Shock Adjustments
USA-56 **[BCI]**	Data Inputs for Two-Step Armington Approach with Supply Shock Adjustment
USA-57	Results from Step 1 of Two-Step Armington Approach with Supply Shock Adjustment
USA-58 **[BCI]**	Year-Prior Import Data for Four Products, Based on DS471 Exhibit USA-94
USA-59	U.S. Imports from China and RoW, Based on DS471 Exhibit USA-57
USA-60	U.S. Shipments for Six Products, Based on DS471 Exhibit USA-58
USA-61	U.S. Shipment Estimates for the Three Additional Products
USA-62 **[BCI]**	2017 U.S. Imports from China for Four Products based on DS471 Exhibit USA-21
USA-63 **[BCI]**	US Response to the Arbitrator's Question 62 in DS471
USA-64 **[BCI]**	2017 U.S. Imports From China As Reported By Customs, By Specified Product, and Entry Rate
USA-65	U.S. Imports for Consumption Using HTSUS Categories for the Three Additional Products
USA-66 **[BCI]**	U.S. Imports from China from Customs for the Three Additional Products
USA-67	U.S. Imports for Consumption Using HTSUS Categories for Seamless Pipe, Print Graphics, and Pressure Pipe for Specified Years
USA-68	Progression of U.S. Modeling Stages
USA-69 **[BCI]**	Calculation of the Maximum Share Covered by China-Government Entity during Period of Investigation for Six Products based on DS471 Exhibit USA-54

Exhibit No.	Description
USA-70	Chinese Exporters Subject to AD Duties on Print Graphics, OCTG and Steel Cylinders, Based on DS471 Annex E-4
USA-71 **[BCI]**	Data Inputs for Antidumping Duty Rates for Seven Products, Based on DS471 Annex E-6
USA-72	AD Rates for Aluminum Extrusions, Based on DS471 Annex E-7
USA-73 **[BCI]**	Excerpt of DS471 U.S. Written Submission, Paras. 104 and 108
USA-74 **[BCI]**	Company-Specific Antidumping Duty Rates, Based on DS471 Exhibit USA-92
USA-75	*Federal Register* Notices of Final Antidumping Determinations
USA-76	Excerpt of DS471 U.S. Response to the Advance Questions of the Arbitrator, Question 7
USA-77	Antidumping Duty Rates for the Three Additional Products
USA-78 **[BCI]**	DS471 Panel, First U.S. Written Submission, Exhibit USA-12 (Cited in Exhibit USA-73 of This Proceeding)
USA-79 **[BCI]**	Stata Code Inputs for U.S. Two-Step Armington Model (Excel)
USA-80	Stata Code for Two-Step Armington Model from DS471
USA-81	Stata Code for Two-Step Armington Model with CVD+AD Adjustment Only
USA-82	Stata Code for Two-Step Armington Model with Both US Adjustments (CVD+AD and Supply Shock)
USA-83	Stata Code for Two-Step Armington Model with Supply Shock Adjustment Only
USA-84	National Association of Home Builders, Remodeling Market Index (RMI): National RMI with Components and Subcomponents (Seasonally Adjusted), available at http://www.nahb.org/en/research/housing-economics/housing-indexes/remodeling-market-index.aspx (accessed February 13, 2020) (Excel)
USA-85	World Steel Association, *Steel Statistical Yearbook 2017*, Table 19: Production of Wire Rod, available at https://www.worldsteel.org/steel-by-topic/statistics/steel-statistical-yearbook.html

Exhibit No.	Description
USA-86	World Steel Association, *Steel Statistical Yearbook 2018*, Table 19: Production of Wire Rod, available at https://www.worldsteel.org/steel-by-topic/statistics/steel-statistical-yearbook.html
USA-87	China's Response to U.S. Request for China's Assistance in Obtaining Authorizations for Access to BCI Submitted in OCTG Investigations (February 17, 2020)
USA-88	Letter from USDOC to GOC regarding: Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the People's Republic of China; Questionnaire Pursuant to June 24, 2016 Remand (Jul. 25, 2016)
U.S. Responses to Advance Questions	
USA-89	U.S. International Trade Commission, *Oil Country Tubular Goods from China:* Investigation Nos. 701-TA-463 and 731-TA-1159 (Review), USITC Publication 4532 (May 2015)
USA-90	Relevant Excerpts of the Tariff Act of 1930, as amended: 19 U.S.C. §§ 1671b, 1671d, 1671e, 1671f, 1673b, 1673d, 1673e, 1673f
USA-91	U.S. International Trade Commission, *Circular Welded Carbon Quality Steel Line Pipe from China:* Investigation Nos. 701-TA-455 and 731-TA-1149 (Second Review), USITC Publication 4955 (September 2019)
USA-92	U.S. International Trade Commission, *Certain Welded Line Pipe from Korea and Turkey:* Investigation Nos. 701-TA-525 and 731-TA-1260-1261 (Final), USITC Publication 4580 (November 2015)
USA-93	U.S. International Trade Commission, *Welded Stainless Steel Pressure Pipe from China, Malaysia, Thailand, and Vietnam:* Investigation Nos. 731-TA-1210-1212 (First Review) and 701-TA-454 and 731-TA-1144 (Second Review), USITC Publication 4994 (November 2019)
USA-94	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia*: Countervailing Duty Order, 75 Fed. Reg. 70206 (November 17, 2010)
USA-95	U.S. Customs and Border Protection, Customs Rulings Online Research System ("CROSS") Rulings on Certain HTSUS Codes Used by China to Estimate Imports of Kitchen Shelving
USA-96	C. Dawkins, T.N. Srinivasan, and J. Whalley, "Chapter 58: Calibration" in *Handbook of Econometrics, Vol 5*, Edited by J.J. Heckman and E. Leamer (2001)

Exhibit No.	Description
USA-97	Memorandum to Christian Marsh from Susan H. Kuhbach, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China: Final Scope Rulings for Certain Playing Card Products and Certain Packaging Paperboard Products* (September 13, 2012)
USA-98	Relevant Cumulative Probabilities for Feenstra, *et al*. Results: Elaboration of Exhibit CHN-96
USA-99	Detailed Explanation of the U.S. Proposed Supply Shock Adjustment for OCTG, Solar Panels, Aluminum Extrusions, Line Pipe, and Pressure Pipe: Updated Version of Exhibit USA-43
USA-100	U.S. Proposed WTO-Inconsistent CVD Rates and Counterfactual WTO-Consistent CVD Rates: Updated Version of Exhibit USA-28
USA-101	Revised Estimates of the Level of Nullification or Impairment
USA-102 **[BCI]**	U.S. Apparent Consumption Graphs Incorporating the GDP Deflator Approach
USA-103 **[BCI]**	Excel Spreadsheet of Data Used to Generate Exhibit USA-102
USA-104	R. Startz, "Choosing the More Likely Hypothesis," *Foundations and Trends in Econometrics*, vol. 7, no. 2, pp. 119–189 (2014)
USA-105	Revised Stata Codes
USA-106 **[BCI]**	Revised Stata Code Data Inputs for U.S. Two-Step Armington Model – Update to Exhibit USA-79
U.S. Responses to Follow-Up Questions	
USA-107	Comparison of Provisional and Final CVD Rates
USA-108	*Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China*: Notice of Amended Preliminary Countervailing Duty Determination, 73 Fed. Reg. 45954 (August 7, 2008)
USA-109	*Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China:* Preliminary Affirmative Countervailing Duty Determination, 73 Fed. Reg. 52297 (September 9, 2008)
USA-110	*Certain Oil Country Tubular Goods From the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, 74 Fed. Reg. 47210 (September 15, 2009)

Exhibit No.	Description
USA-111	*Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination, 74 Fed. Reg. 56576 (November 2, 2009)
USA-112	*Aluminum Extrusions From the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination, 75 Fed. Reg. 54302 (September 7, 2010)
USA-113	*High Pressure Steel Cylinders From the People's Republic of China*: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 76 Fed. Reg. 64301 (October 18, 2011)
USA-114	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 Fed. Reg. 25400 (April 30, 2012)
USA-115	*Crystalline Silicon Photovoltaic Cells and Modules From China*, 77 Fed. Reg. 72884 (December 6, 2012)
USA-116 **[BCI]**	Affidavit of Norris Cylinder
USA-117 **[BCI]**	Year-Prior U.S. Shipments and Import Data: Revision of Exhibit USA-44
USA-118 **[BCI]**	2017 U.S. Shipments and Import Data: Revision of Exhibit USA-45
USA-119	Product Scope in the Antidumping (AD) and Countervailing Duty (CVD) Proceedings of the Seven Products That Were Also at Issue in DS471
USA-120	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia and the People's Republic of China*: Final Results of Expedited First Sunset Reviews of the Antidumping Duty Orders, 81 Fed. Reg. 907 (January 8, 2016)
USA-121	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China*: Final Results of Expedited Sunset Review of the Countervailing Duty Order, 81 Fed. Reg. 7081 (February 10, 2016)
USA-122	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia and the People's Republic of China*: Continuation of Antidumping and Countervailing Duty Orders, 82 Fed. Reg. 1692 (January 6, 2017)

Exhibit No.	Description
USA-123	*Certain Oil Country Tubular Goods From the People's Republic of China*: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision, 82 Fed. Reg. 6490 (January 19, 2017)
USA-124	*Certain Oil Country Tubular Goods From the People's Republic of China*: Continuation of the Antidumping Duty Order and Countervailing Duty Order, 80 82 Fed. Reg. 28224 (May 18, 2015)
USA-125	Initiation of Five-Year ("Sunset") Reviews, 82 Fed. Reg. 20314 (May 1, 2017)
USA-126	*High Pressure Steel Cylinders From the People's Republic of China*: Continuation of Antidumping Duty and Countervailing Duty Orders, 82 Fed. Reg. 57427 (December 5, 2017)
USA-127	Initiation of Five-Year ("Sunset") Review, 81 Fed. Reg. 18829 (April 1, 2016)
USA-128	*Aluminum Extrusions From the People's Republic of China*: Continuation of Antidumping and Countervailing Duty Orders, 82 Fed. Reg. 19025 (April 25, 2017)
USA-129	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part, 82 Fed. Reg. 55987 (November 27, 2017)
USA-130	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping and Countervailing Duty Orders, in Part, 83 Fed. Reg. 2617 (January 18, 2018)
USA-131	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014, 81 Fed. Reg. 39905 (June 20. 2016)
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
U.S. Comments on China's Responses to the Arbitrator's Questions after the Arbitrator's Videoconference with the Parties	
USA-161	Christine McDaniel and Edwin Vermulst, *United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings involving*

Exhibit No.	Description
	China: Re-litigating through the Backdoor?, European University Institute Working Paper RSCAS 2020/98 (December 2020).

1. In this document, the United States comments on China's responses to the Arbitrator's written questions following the Arbitrator's videoconference 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.

I. NESTED APPROACH TO ELASTICITIES OF SUBSTITUTION

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]

99. <u>To China</u>: 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".[2]

<u>Comment</u>:

2. The United States comments on China's responses to questions 70 and 99 together.

3. Throughout this proceeding, the United States has thoroughly refuted China's repeated, misguided argument that *Feenstra et al.* provides evidence supporting the application of the *ad hoc* Rule of Two in this proceeding.[3] There simply is no evidence in *Feenstra et al.* to conclude that the microelasticity is double the macroelasticity for any of the products at issue in this proceeding. However, in its response to question 70, China disregards the standard metrics used in econometric theory and practice (including by the authors of *Feenstra et al.*), and uses an unorthodox and simplistic thought experiment to evaluate the point estimates generated in *Feenstra et al.* in an attempt to show that the paper supports the Rule of Two.

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

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

[3] *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, paras. 9-19; Responses of the United States of America to the Questions from the Arbitrator after the Videoconference with the Parties (December 11, 2020) ("U.S. Responses to Arbitrator's Post-Videoconference Questions"), Question 70.

4. China argues that the "strength" of its "non-parametric tests" of comparing point estimates "lies in [its] simplicity."[4] China explains that its "back-of-the-envelope calculation"[5] is simpler because one need not have any knowledge of the estimation procedure and can simply disregard the inconveniently large standard errors that accompany *Feenstra et al.*'s estimates. It is certainly simpler to ignore elements of econometric theory that do not support the desired argument, but doing so, of course, would be entirely inappropriate for the purpose of correctly interpreting the results generated in *Feenstra et al*.

5. China fails to consider that the structure of the data used in *Feenstra et al.* all but ensures that point estimates for the microelasticities would tend to exceed those of the macroelasticities. *Feenstra et al.* explains that macroelasticity, which is estimated using aggregated product data, tends to result in smaller magnitude than microelasticity, which is estimated using individual product data.[6]

6. In addition, China neglects to recognize that the large standard errors imply that the point estimates of both microelasticities and macroelasticities reported by *Feenstra et al.* are highly imprecise. This is why China's coin flipping analogy is inappropriate in this proceeding, and why China considers it necessary to "contaminate"[7] any evaluation of the relative magnitudes of the microelasticity and macroelasticity with a consideration of the standard errors.

7. Contrary to China's argument, this simplistic thought experiment is not statistically robust evidence that the Rule of Two holds for the products at issue in this proceeding. Furthermore, as explained in the U.S. response to question 1, China's procedure fails to utilize the appropriate data from *Feenstra et al.*[8] While China bases its analysis on the paper's preliminary finding that the microelasticity and the macroelasticity were different for 73 of 98 products,[9] China neglects to consider that the paper finds that the microelasticity was statistically significantly larger than the macroelasticity for only 26 of 98 products when the authors ran the same evaluation using their two-step GMM estimation method. As shown in Exhibit USA-98, this corrected outcome is, in fact, evidence in favor of the null hypothesis that the macroelasticity and microelasticity are equal.

8. Moreover, the results of *Feenstra et al.* do not support China's position because they do not apply to the products at issue here and cannot be generalized. The sample examined in *Feenstra et al.* only covers 0.5 percent of all HTSUS[10] categories at the 10-digit level. In

[4] Responses of the People's Republic of China to the Questions from the Arbitrator after the Meeting (December 11, 2020) ("China's Responses to Arbitrator's Post-Meeting Questions"), Question 70, para. 6.

[5] China's Responses to Arbitrator's Post-Meeting Questions, Question 70, para. 5.

[6] *See Feenstra et al.*, footnote 1 (Exhibit CHN-63).

[7] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 70, para. 7.

[8] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1, paras. 16.

[9] *See* Exhibit CHN-96.

[10] Harmonized Tariff Schedule of the United States ("HTSUS").

addition, it appears that the only overlap between the sample in *Feenstra et al.* and the products at issue in this proceeding is a limited subset of the products subject to the OCTG countervailing duty ("CVD") measure (which is discussed more at length below).[11] China's reliance on the paper, therefore, essentially suggests that the elasticity structure of the products at issue in this proceeding should be determined based on weak evidence of a higher microelasticity found in products from largely different industries. From a statistical perspective, it is unreasonable to generalize the weak results of *Feenstra et al*. The small sample in *Feenstra et al.* is not randomly sampled from the population of all products, and there is no evidence that it is a representative sample. In fact, the authors of *Feenstra et al.* themselves do not assert that the paper's results are generalizable outside of the specific sample, contrary to China's argument.[12] China's advocacy for the *ad hoc* Rule of Two, thus, relies on extrapolating beyond what is supported by the data presented in *Feenstra et al*. The United States has provided ample evidence showing why *Feenstra et al.*'s weak evidence that the microelasticities may be higher than the macroelasticities for products sampled in the paper does not apply to the specific products at issue in this proceeding.[13]

9. With respect to China's argument regarding OCTG,[14] the United States agrees that the products covered by NAICS[15] code 3312100130 overlap with some of the products subject to the OCTG CVD measure. However, the United States does not agree that *Feenstra et al.*'s point estimates for NAICS code 3312100130 are evidence that the Rule of Two would be appropriate for OCTG. As discussed above, the point estimates in *Feenstra et al.* are highly imprecise and are estimated from data at two different levels of product aggregation. Moreover, *Feenstra et al.* finds that, for two-thirds of the products in its sample, the magnitudes of the microelasticity and macroelasticity estimates are statistically indistinguishable.[16] China has not demonstrated that NAICS code 3312100130 is among the minority of products with a statistically detectable difference in the magnitudes of microelasticity and macroelasticity.

10. Moreover, contrary to China's argument regarding the U.S. International Trade Commission ("USITC") estimate of elasticity of substitution for OCTG,[17] the USITC report

[11] The United States previously has stated that none of the products at issue in this proceeding are among the 98 products selected in *Feenstra et al.* and that there is no overlap between the two sets of products even at the six-digit HTSUS5 level. *See* U.S. Responses to Arbitrator's Advance Questions, Question 1, para. 17; U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 70, para. 5. The United States has since learned that this statement was inaccurate: some of the products subject to the OCTG CVD measure appear to overlap with the sample in *Feenstra et al.* The United States regrets this error.

[12] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 99, para. 58.

[13] U.S. Responses to Arbitrator's Advance Questions, Question 1, paras. 9-19; *see also* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 101.

[14] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 70, para. 2.

[15] North American Industry Classification System ("NAICS").

[16] *See Feenstra et al.*, p. 147 (Exhibit CHN-63).

[17] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 70, para. 10; Question 99, para. 59.

provides evidence that the elasticity of substitution between domestic OCTG and imported OCTG (macroelasticity) is the same as the elasticity of substitution among imported OCTG (microelasticity). USITC Publication 5090 (Exhibit USA-148) states that the "elasticity of substitution depends upon the extent of product differentiation between domestic and imported products," and that product differentiation "in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (e.g., availability, sales terms/ discounts/ promotions, etc.)."[18] These are the very factors on which the U.S. evidence of comparability and interchangeability – as defined and evaluated by the USITC – is based.[19] In the case of OCTG, the USITC found that all sources – imported and domestic products – are pairwise comparable on many factors related to quality and terms of sale,[20] and there is a "high degree of interchangeability among the domestic like product, subject imports and non-subject imports."[21] Accordingly, the USITC estimate pertains to both macroelasticity and microelasticity.

11. With respect to China's repeated misrepresentation of the U.S. argument regarding trade diversion,[22] the United States has not agreed that there is evidence of "substantial trade diversion" for the products at issue, nor have we ever agreed that the application of the Rule of Two would be appropriate in this proceeding. China attempts to mischaracterize the evidence used to support the supply shock adjustment in the U.S. model,[23] as a manifestation of trade diversion. However, while both the supply shock adjustment and an assumption of a higher microelasticity imply disproportionate gains in the market share of third-country suppliers, the assumption underlying the supply shock adjustment (*i.e.*, that a shock in third-country supply affected China's relative competitiveness in 2017) does not mean that the import-import substitution elasticity should be higher than the import-domestic substitution elasticity. Further, the two phenomena have entirely different implications for estimating the level of nullification or impairment.[24] The United States has provided positive, product-specific evidence showing that

[18] USITC Publication 5090 (July 2020), p. II-30 (Exhibit USA-148).

[19] *See* U.S. Response to Arbitrator's Advance Questions, Question 1. China, in paragraph 11 of its response to this question, attempts to argue that comparability and interchangeability do not indicate similar microelasticities and macroelasticities, by relying on a different definition of "comparability" and "interchangeability. Using the USITC definition, extruded aluminum rails would not be "comparable" across all sources if domestic and import varieties had different dimensions, so China's example does not hold.

[20] *See* U.S. Response to Arbitrator's Advance Questions, Question 1; *see also* USITC Publication 4532, p. 11 (Exhibit USA-89).

[21] *See* U.S. Response to Arbitrator's Advance Questions, Question 1; *see also* USITC Publication 4532, p. 11 (Exhibit USA-89).

[22] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 70, para. 8; Question 99, para. 60; Opening Statement of China at the Meeting of the Arbitrator (November 12, 2020) ("China's Opening Statement"), para. 13; *see also* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 101, para. 101; U.S. Responses to Arbitrator's Advance Questions, Question 1, para. 4.

[23] In Exhibit USA-99, the United States has provided positive, product-specific evidence to support the supply shock, detailing instances of subsidies provided by third-country governments and investments made by firms in third countries that disproportionately boosted relative competitiveness of those third-country suppliers.

[24] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1, para. 6.

trade diversion is not expected for the products at issue, as 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.[25]

12. Finally, with respect to China's repeated mischaracterization of the Rule of One as "extreme" and the Rule of Two as "standard,"[26] as explained in the U.S. response to question 101, 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.[27] If, in fact, there is evidence that products from all sources are not equally substitutable (and a nested model is, thus, more appropriate), best economics practices require efforts to estimate the appropriate elasticities. China has not made an attempt to do so in this proceeding.

II. WHETHER TO CONSIDER THE EFFECT OF OTHER FACTORS ON CHINA'S MARKET SHARES

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.

104. To China and the United States: 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"?

Comment:

[25] *See* U.S. Responses to Arbitrator's Advance Questions, Question 1; U.S. Responses to Arbitrator's Post-Videoconference Questions, Questions 70 and 101.

[26] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 70, para. 12.

[27] *See also* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 70, para. 6.

13. The United States comments on China's responses to questions 72 and 104 together.

14. As China has recognized, "[t]he methodology used to estimate N/I must be able to capture the full amount of N/I caused by the measures at issue in this proceeding, that is, the WTO-inconsistent CVD duties."[28] The methodology proposed by China, however, fails to serve this purpose and, instead, distorts the effect of the WTO-inconsistent CVD measures at issue by failing to control for other relevant factors. As previously explained, 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.[29] This is achieved by including those factors in the model.[30] The United States has described in detail the evidence-based analytical process through which it has identified such factors and has included them in the U.S. model, regardless of how doing so may increase or decrease the market shares generated in step one or the final estimation of the level of nullification or impairment in step two.[31] It is not clear what additional "principled basis"[32] China believes should be provided by the United States.

15. In fact, over the course of this proceeding, China has not directly addressed the U.S. argument that inclusion of the parallel antidumping ("AD") duties in step one of the two-step Armington model is necessary to correctly simulate the 2017 U.S. market shares.[33] Instead, China has attempted to mischaracterize the U.S. methodology, which takes into account the existence of AD duties to correctly isolate the trade effect of the CVD measures at issue in this proceeding.[34] China has simply refused to engage with the fact that the U.S. methodology reflects the best effort to control for economic forces other than the CVD measures at issue so that the model can accurately estimate the level of nullification or impairment attributable to those measures only.

16. The hypothetical one-step Armington model exercise that China discusses in its response to question 104 is another example of China's misguided approach to this proceeding. China uses this exercise in an attempt to argue that the non-linearity assumed by an Armington model causes it to underestimate the level of nullification or impairment when the full extent of the relevant CVD and AD duties are incorporated. The exercise shows that, in a one-step Armington model, the first of two duties of equal magnitude that are imposed sequentially has a larger effect

[28] China's Responses to Arbitrator's Post-Meeting Questions, Question 72, para. 14.

[29] *See* Closing Statement of the United States of America at the Arbitrator's Videoconference with the Parties (November 18, 2020) ("U.S. Closing Statement"), para. 10; U.S. Responses to Arbitrator's Post-Videoconference Questions, Questions 71 and 102.

[30] *See* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 103.

[31] *See* U.S. Written Submission, paras. 77-82; U.S. Responses to Arbitrator's Advance Questions, Question 5; U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 103; Exhibit USA-99.

[32] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 72, para. 20.

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

[34] *See* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 103.

on the trade value than the second. As China points out, this difference is a result of the Armington model's assumption of non-linear supply and demand curves.[35] The Armington model attributes less damage to the second duty in China's example because the damage attributable to the second duty is, in fact, smaller in the presence of the first duty than it would be in absence of the first duty. Accordingly, the non-linearity of the Armington model implies that the trade effects of modifying CVD duties will be smaller under a scenario where AD duties are in place on the same products (*i.e.*, the actual 2017 market in this proceeding) than under a false scenario where such AD duties never existed.

17. Notwithstanding China's objection, it is not proper under the correct counterfactual to assume that AD duties never existed—even if recognizing the existence of the AD duties may result in a lower estimate of nullification or impairment. The lower estimate would be the more accurate estimate, and it does not mean that including the parallel AD duties in the model "first" would "understate" the level of nullification or impairment attributable to the CVD rates at issue.

18. China's exercise confuses the issue because the simulated action (*i.e.*, imposing and removing two duties sequentially) is fundamentally different from including the parallel AD duties in step one of the U.S. model. In fact, it entirely fails to simulate the policy change that is at issue in this proceeding, *i.e.*, a modification of WTO-inconsistent CVD measures, while all other policies – including the parallel AD duties – remain in place.

19. Further, China's suggestion that the U.S. model includes the AD duties "first" before including the CVD duties is inaccurate. Step one of the U.S. model simulates the introduction of both WTO-inconsistent CVD duties and AD duties, and step two simulates the change to WTO-consistent CVD duties and AD duties. In other words, both CVD duties and AD duties are included in both step one and step two of the model, with the CVD duties modified from the WTO-inconsistent rate to the WTO-consistent rate in step two for the counterfactual analysis, and AD duties held constant.

20. Moreover, China's exercise does not address the question of whether the model used in this proceeding should incorporate the parallel AD duties because its conclusion is based on a counterfactual scenario that does not apply to this proceeding. China's reasoning implicitly assumes that the level of nullification or impairment is equal to the trade damages attributable to CVD duties under a counterfactual scenario in which AD duties had never been imposed. However, the correct counterfactual in this proceeding is one in which the CVD measures at issue were modified to be WTO-consistent at the end of the RPT,[36] and the AD duties, which are not at issue in this proceeding, remain in place. The correct counterfactual 2017 market must

[35] This is a standard assumption maintained throughout much economic theory and modeling.

[36] *See* U.S. Written Submission, para. 19 ("Article 22.4 of the DSU explicitly requires that the 'level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of nullification or impairment.' Accordingly, the task of the Arbitrator in this proceeding is to determine the level of nullification or impairment by estimating the impact of removing the WTO-inconsistent measures following the expiration of the RPT (which, in this matter, is calendar year 2017). It is, however, *not* an arbitrator's task to attempt to simulate a return to a time before the imposition of the WTO-inconsistent measures.")

include the AD duties because they were in effect in 2017, and they have affected relative competitiveness in the 2017 U.S. market. As explained in the U.S. response to question 4, the correct two-step Armington model for this proceeding should simulate, in step one, market shares that are representative of the realized 2017 market, which are then used to calibrate the step two model.[37] In other words, if the AD duties are not explicitly included in step one, the model would not correctly simulate the 2017 market shares because the two-step Armington approach relies on data from the year-prior in which neither AD nor CVD measures were in place.

21. As a concrete example, the correct counterfactual scenario for OCTG is the modification of the WTO-inconsistent CVD rate of 12.26 percent to a WTO-consistent rate of 2.07 percent in the 2017 market in which OCTG imports from China also faced AD duties of up to [[***]].[38] However, as explained above, China's exercise assumes an incorrect counterfactual scenario in which the AD duties were never imposed.[39] In reality, OCTG imports from China were subject to AD duties in 2017, and those duties did reduce China's relative competitiveness in the U.S. market, compared to the time before they were introduced to correct for dumping. As such, unless those AD duties are included in step one of the model, the market shares generated in step one would not be representative of relative competitiveness in the 2017 market as realized, and step two, as a result, could not correctly estimate the level of nullification or impairment.

22. Lastly, China, again, argues that the arbitrators in DS464 and DS471 did not incorporate contemporaneous duties into their calculations of the level of nullification or impairment, and that the United States did not suggest doing so in those proceedings.[40] As explained in the U.S. closing statement, the straightforward reason is that, in those proceedings, none of the parties had proposed a two-step Armington approach to begin with, and thus no party proposed any adjustments to control for other relevant factors in a two-step Armington approach. In contrast, both parties in this proceeding have proposed a two-step Armington approach. Therefore, as explained in the U.S. response to question 102, each party has had the opportunity and burden (to the extent it makes an argument) "to produce evidence . . . to the arbitrators"[41] to identify all relevant factors to include in the model.[42] The United States has made its best effort to do so, and, accordingly, has made necessary adjustments to the two-step Armington model used in DS471 and DS464 to accurately estimate the level of nullification or impairment.

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[37] *See also* U.S. Response to Arbitrator's Post-Videoconference Questions, Questions 71, 72, and 103.

[38] *See* Exhibit USA-157 (BCI).

[39] *See* U.S. Responses to Arbitrator's Advance Questions, Question 4; *see also* U.S. Responses to Arbitrator's Post-Videoconference Questions, Questions 103 and 104.

[40] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 72, paras. 17-19.

[41] *EC – Hormones (US) (Article 22.6 – EC)*, para. 11; *EC – Bananas III (Ecuador) (Article 22.6 – EC)*, para. 37; *Brazil – Aircraft (Article 22.6 – Brazil)*, para. 2.9; *see also* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 100.

[42] *See* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 102.

73. **<u>To China</u>: 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.**

<u>Comment</u>:

23. As detailed in the U.S. response to question 110, 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. 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.[43] For the other three products that were not at issue in DS471,[44] the United States has estimated the data by applying estimation methods that are similar to those applied by the DS471 arbitrator.[45]

III. CALCULATION OF US MARKET DATA FOR THE REMEDY YEAR

80. **<u>To China and the United States</u>: 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.**

<u>Comment</u>:

24. The U.S. response to question 23 provided examples using Print Graphics, Pressure Pipe, and Seamless Pipe to show that China's GDP deflator approach is not appropriate for estimating the U.S. market size in the remedy year. China, in its response to this question, attempts to defend its estimates for the three products. China's defense, however, is unavailing.

25. With respect to China's estimates of the 2017 market size for Print Graphics and Pressure Pipe, China argues that its estimates, which are calculated by adjusting the 2015 market size for inflation, are appropriate to use in this proceeding because those estimates are "close" to those

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

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

[45] 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* 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 48.

used by the arbitrator in DS471. However, it is entirely irrelevant whether the estimates are close to the estimates used by the DS471 arbitrator. The problem is that the GDP deflator approach is fundamentally inadequate for the purpose of estimating the remedy year market size in this proceeding. As explained in the U.S. response to question 23, a GDP deflator is merely a measure of inflation. The GDP deflator used by China describes the evolution of prices of all final goods and services produced in the U.S. economy over time. It is baseless to assume that demand for certain types of specialized paper (Print Graphics) and certain types of metal pipes used in industrial processes (Pressure Pipe)[46] would track the evolution of prices for all final goods and services produced in the United States over any period. This also is the case for Seamless Pipe. Therefore, there is no evidence that putting the U.S. market size in another year in terms of 2017 dollars, by applying a GDP deflator, would accurately reflect the size of the U.S. market in 2017.

26. Moreover, as explained in the U.S. written submission, the values of remedy year market size for Print Graphics and Pressure Pipe used by the DS471 arbitrator are overstated because they included the value of imports from the rest of the world (ROW) of non-subject products, due to reliance on broad, basket HTSUS categories.[47] Contrary to China's argument,[48] the adjustments incorporated in the U.S. data to exclude the ROW imports of non-subject products improves, rather than "distorts," the market value for 2017. Accordingly, even if China's estimates were close to those used by the DS471 arbitrator, they would be inaccurate, and would not support the use of a GDP deflator in this proceeding.

27. With respect to China's estimate of the 2017 market size for Seamless Pipe, China argues that the U.S. estimate is less reasonable than its inflation-adjusted 2009 market size. As explained in Exhibit USA-60, the U.S. estimate annualizes domestic shipments of small diameter pipes to estimate 2017 domestic shipments, and combines it with the estimated value of imports from China (USCBP data) and the estimated value of imports from ROW (adjusted HTSUS aggregated data). As explained in the U.S. response to question 80, the DS471 arbitrator used this estimation method for the 2017 U.S. market size for the seven products that were also at issue in that proceeding. In contrast, China's estimate unjustifiably assumes that demand for Seamless Pipe grew between 2009 and 2017 at the same rate of change in prices for all final goods and services produced in the United States. China fails to consider the fact that the U.S. economy was significantly distorted by financial crisis and recovery during that time period.

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 product-specific estimates are not available, please provide alternative growth rates

[46] *See* USITC Publication 4644 (November 2016), p. I-10 (Exhibit CHN-5), for a description of the uses of products covered by the Pressure Pipe order.

[47] *See* U.S. Written Submission, paras. 144-146.

[48] *See* China's Responses to Arbitrator's Post-Meeting Questions, Question 80, para. 44.

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

Comment:

28. As a preliminary matter, the United States has shown that China's application of a GDP deflator to the reported value of the U.S. market in an earlier year would merely state the value of the earlier U.S. market in terms of 2017 dollars—it would not estimate the size of the 2017 U.S. market.[49] Similarly, a Producer Price Index (PPI), contrary to China's characterization in its response, is not a "case-specific growth rate[]," and applying the PPI would merely state the value of the earlier U.S. market in terms of 2017 dollars.

29. In Exhibit CHN-115, China relies on selected U.S. Bureau of Labor Statistics (BLS) PPI Series indices to adjust the value of the 2017 U.S. market to calculate an alternative estimate for each of the products at issue, except for OCTG, Steel Cylinders, and Solar Panels. The PPIs, while narrower in product coverage than the economy-wide GDP deflator, are not tailored to the specific products at issue in this proceeding and are unsuitable for estimating the market size for these products. Generally, applying the PPIs would include the price effects of many other, non-subject products that are often produced by different manufacturers or distributed through different channels.

30. Below, the United States offers product-specific critiques of the PPIs used by China:

- Pressure Pipe (Circular Welded Austenitic Stainless Pressure Pipe): China has used BLS PPI Series WPU10150211 ("Metals and metal products – Pressure pipe & fittings, ductile iron, not seasonally adjusted"). This PPI series includes fittings, which are not subject to the Pressure Pipe CVD measure.

- Line Pipe (Circular Welded Carbon Quality Steel Line Pipe): China has used BLS PPI Series WPU101706 ("Metals and metal products – Steel pipe and tube, not seasonally adjusted"). This PPI series covers many different types of pipes and tubes that are not subject to the Line Pipe CVD measure, including seamless pipes (*i.e.*, not welded).

- Kitchen Shelving (Kitchen Appliance Shelving and Racks): China has used BLS PPI Series WPU12410169 ("Furniture and household durables – Other household ranges and cooking equipment, including outdoor equipment, not seasonally adjusted"). This PPI series broadly covers many types of household cooking equipment and includes outdoor grills and ovens, which are not subject to the Kitchen Shelving CVD measure.

[49] *See* U.S. Responses to Arbitrator's Advance Questions, Question 23; *see also* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 80.

- Wire Strand (Pre-Stressed Concrete Steel Wire Strand): China has used BLS PPI Series WPU10880101 ("Metals and metal products – Ferrous wire rope, cable, forms and strand, not seasonally adjusted"). This PPI series includes rope, cable, and other forms fabricated from wire, which are not subject to the Wire Strand CVD measure.

- Seamless Pipe (Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe): China has used BLS PPI Series WPU101706 ("Metals and metal products – Steel pipe and tube, not seasonally adjusted"). This PPI series covers many different types of pipes and tubes that are not subject to the Seamless Pipe CVD measure, including welded pipes (*i.e.*, not seamless).

- Print Graphics (Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses): China has used BLS PPI Series WPU09130321 ("Pulp, paper, and allied products – Coated and laminated single and multi-web paper, not seasonally adjusted"). This PPI series includes web paper and waxed paper, which are not subject to the Print Graphics CVD measure.

- Aluminum Extrusions: China has used BLS PPI Series WPU102802 ("Metals and metal products – Aluminum castings, not seasonally adjusted"). This series covers aluminum castings, rather than aluminum extrusions. Aluminum castings are considered to be a separate product from aluminum extrusions because the two products are manufactured using different production processes. In fact, the Aluminum Extrusions CVD measure specifically excluded from its scope "aluminum products produced by a method of casting," *i.e.*, aluminum castings.[50] Accordingly, the PPI series selected by China does not cover any product subject to the Aluminum Extrusions CVD measure.

31. With respect to OCTG, Steel Cylinders, and Solar Panels, Exhibit CHN-115 identifies a BLS PPI Series for each of the products, but does not actually apply the PPI growth rate to estimate the value of the 2017 market. Regardless, the PPIs suggested by China are unsuitable, as explained below:

- OCTG: BLS PPI Series WPU101706 ("Metals and metal products – Steel pipe and tube, not seasonally adjusted") covers a number of different types of pipes and tubes, and includes many non-subject products such as drill pipe, standard pipe, line pipe, and pressure pipe, which are likely to account for most of the changes in this PPI.

- Steel Cylinders (High Pressure Steel Cylinders): BLS PPI Series WPU10720104 ("Metals and metal products – Storage and other non-pressure tanks, not seasonally adjusted") covers a number of different types of iron and steel storage and non-pressure tanks, and includes many non-subject products such as large-scale

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

aboveground or underground petroleum storage tanks and water tower tanks, which are likely to account for most of the changes in this PPI.

- Solar Panels: BLS PPI Series WPS117847 ("Machinery and equipment – Other semiconductor and related devices, seasonally adjusted") is very broad and includes many non-subject products such as chips, wafers, and heat sinks, which are likely to account for most of the changes in this PPI.

83. **To China: 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.**

Comment:

32. Contrary to China's argument, the product specifications in the Preston Pipe and Tube data in Exhibit USA-136 (BCI) do match the product scope of Line Pipe. China, in fact, erroneously provided the product scope of Pressure Pipe as the product scope of Line Pipe.[51] The correct product scope of Line Pipe is "circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter."[52] Accordingly, it is not limited to line pipe with a diameter of 14 inches or less.

33. The Preston Pipe and Tube data reports shipments of line pipe with a diameter of [[***]],[53] and average market prices of line pipe with a diameter of [[***]] inches and [[***]] inches.[54] Since the Preston Pipe and Tube data covers line pipe that exactly meets the product scope of Line Pipe, this data does not include out-of-scope line pipe or overstate U.S. domestic shipments, contrary to China's assertion. Rather, the Preston Pipe and Tube data accurately captures the Line Pipe product at issue in this proceeding, and is superior to the data provided by China, which is based on a fundamentally problematic GDP deflator methodology.

Print Graphics

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.**

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[51] *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Countervailing Duty Order*, 74 Fed. Reg. 11712 (March 19, 2009) (Exhibit CHN-3).

[52] *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 74 Fed. Reg. 4136 (January 23, 2009) (Exhibit CHN-10) (underline added).

[53] *See* Exhibit USA-136 (BCI), pp. 6, 10 of the PDF (API Line Pipe Supply - By Size Range & Source - Net Tons); *see also* Exhibit USA-60, p. 3.

[54] *See* Exhibit USA-136 (BCI), pp. 3, 4, 7, 8, 11, 12 of the PDF (Line Pipe - Average Market Prices); *see also* Exhibit USA-60, pp. 3-4.

90. <u>To China</u>: 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.

<u>Comment</u>:

34. The United States comments on China's responses to questions 89 and 90 together.

35. The United States refers the Arbitrator to the U.S. response to question 88, and additionally provides the following comments on China's response to question 90. As an initial matter, contrary to China's statement, the addition of the five new HTSUS codes did <u>not</u> change the product scope of Print Graphics. As explained in the U.S. response to question 88, the scope of a CVD measure is determined by the written description of the subject products, and not by the reference HTSUS codes, which are provided "for convenience and customs purposes only." Comparison of the final CVD determination in 2010 and the final results of the 2016 sunset review shows that the written description of the subject products for Print Graphics did not change.[55]

36. Furthermore, as explained in the U.S. response to question 88, the data in the 2016 USITC sunset review already includes subject Print Graphics products under the five new HTSUS codes. China essentially has conceded this in its response to question 90 by stating that the 2016 USITC sunset review "properly captured" the product scope and that "at least four of the five new codes were the result of subdividing the original HTS[US] codes." The United States has shown that, in fact, <u>all</u> five codes were subdivisions of the original HTSUS codes.[56] 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.

37. China argues that because the new HTSUS codes merely subdivided the original HTSUS codes, "no further adjustments need to be made to the U.S. domestic sales data," but the subject and non-subject imports data nevertheless should be adjusted to "include" the new codes. This argument is simply inconsistent. China does not explain why it believes that the 2016 sunset review would underreport the value of imports while accurately reporting domestic sales.

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[55] *See 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*, 75 Fed. Reg. 70201 (November 17, 2010) (Exhibit CHN-49); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order*, 81 Fed. Reg. 7081 (February 10, 2016) (Exhibit USA-121); *see also* U.S. Department of Commerce, Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations RE: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review: *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China* (March 4, 2016) (Exhibit CHN-108).

[56] *See* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 88, paras. 55-58.

Moreover, the new HTSUS codes are already "included" in the imports data in the 2016 sunset review – which thus needs no adjustment – as explained in the U.S. response to question 88.[57]

38. As a result, China's proposal to add the value of imports under the five new HTSUS codes to the U.S. market size reported in the USITC sunset review would amount 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 using a deflator, and would further distort the overall estimate of the level of nullification or impairment.

IV. WHETHER TO CONSIDER THE EFFECT OF OTHER FACTORS ON CHINA'S MARKET SHARES

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>Comment</u>:

39. China's statement that the two-step Armington model without any adjustment "permits the isolation of the effect of the WTO-inconsistent CVD duties" is simply incorrect. As explained in the U.S. response to question 71, in order to isolate the trade effect of the CVD measures from all other factors, the methodology must control for those other factors by including them in the model. Failing to include the other factors in an *ex ante* model like the two-step Armington model implicitly assumes that those other factors do not affect the outcome of interest (which, in step one of the model used in this proceeding, is China's 2017 market share and, in step two, the trade effect of the CVD measures).

40. Accordingly, as explained in the U.S. response to question 102, 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"[58] to identify all relevant factors to include in the model and implement all adjustments necessary for the model 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 examined available data and consulted with the experts at the relevant U.S. government agencies, including the USITC. Based on these efforts, the United States has implemented adjustments to the two-step Armington model to control for two factors (*i.e.*, the parallel AD duties and third-country supply shocks) for which there is sufficient evidence to demonstrate their effects on the evolution of relative competitiveness in the U.S. market between the imposition of the relevant CVD measures and 2017.

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[57] *See* U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 88, paras. 59-60.

[58] *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. Responses to Arbitrator's Post-Videoconference Questions, Question 100.

41. China's criticism of the two U.S. adjustments, however, demonstrates a fundamental misunderstanding of the purpose of the U.S. adjustments. As explained above, the objective of the U.S. adjustments is to remedy the serious flaw in the unadjusted two-step Armington approach used by the arbitrators in DS471 and DS464. Contrary to China's argument that the U.S. adjustments are "irreconcilable with the purpose of the two-step Armington model, which is to isolate the effect of the WTO-inconsistent duties from all other factors,"[59] it is the unadjusted two-step Armington approach that fails to isolate the effect of the WTO-inconsistent duties. It is therefore not surprising that a recent paper discussing the DS471 arbitration disagrees with China's position when it explains there are "two key problems" with the unadjusted two-step approach:

> First, the approach ignores the effects of other market factors during the period such as changes in supply, demand, or consumer preferences. The longer the period, the more likely there would be structural changes in those factors. Of the 25 cases under consideration [in DS471], some overlapped with major macroeconomic events that affected trade patterns such as supply chain shifts that were well underway before the duty was imposed.
>
> Second, the approach ignores co-existing duties not [at issue in the proceeding] that were imposed at the same time or after the [WTO-]inconsistent duties were imposed. Such duties would affect market shares and those effects would not be captured in this two-step approach.[60] [61]

42. By failing to account for other relevant factors that affected relative competitiveness between the year-prior and the remedy year, the unadjusted two-step Armington approach used in DS471 and DS464 incorrectly attributed the trade damage solely to the policy at issue. That is why the United States has made necessary adjustments to the two-step Armington approach used in DS471 and DS464 to accurately estimate the level of nullification or impairment.

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[59] China's Responses to Post-Meeting Questions, Question 105, para. 74.

[60] Christine McDaniel and Edwin Vermulst, *United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings involving China: Re-litigating through the Backdoor?,* European University Institute Working Paper RSCAS 2020/98 (December 2020), p. 7 (Exhibit USA-161). Notably, the authors of the paper thank a number of individuals, including China's own consulting economist, Tom Prusa, "for helpful comments on previous drafts." *See id.*, footnote 1.

[61] The United States, pursuant to Paragraph 5(1) of the Working Procedures of the Arbitrator in this proceeding, submits Exhibit USA-161 as "evidence necessary for purposes of rebuttal" and "evidence necessary for [. . .] comments on answers provided by the other party."

43. Moreover, China's mischaracterization that the U.S. model would adjust for "any factor that could theoretically have affected China's competitiveness"[62] compounds that misunderstanding. As explained above, the United States has adjusted the model based on empirical data and market analysis, and only for those factors that were observed to have affected China's relative competitiveness in the U.S. market between the year-prior and the remedy year.[63]

44. China argues that: "If the United States were permitted to 'adjust' market shares *downward* due to factors that allegedly inflated China's market share in the year prior (thus reducing N/I), China would need to be permitted to 'adjust' its market share *upward* in the remedy year to account for factors that would have increased its market share in that year (thus increasing N/I)." China, however, has been more than "permitted" throughout this proceeding to account for factors that may have affected China's relative competitiveness in a way that would imply an upward adjustment to China's market share. As explained in the U.S. response to question 102, 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. However, China has not brought forward evidence and argument for any other factor, instead merely raising hypothetical issues regarding unspecified SPS measures or technical regulations.[64]

45. Specifically, China has raised another hypothetical that Chinese firms "could have deepened their trading relationships and made investments to increase their capacity"[65] had the CVD measures been WTO-consistent between the date of the imposition of the CVD measure and the remedy year. However, even if this hypothetical were true—for which China has not provided any evidence—it would not warrant any adjustment to the model for the purpose of this proceeding. As explained in the U.S. written submission, it is not an Article 22.6 arbitrator's task to attempt to simulate a return to a time before the imposition of the WTO-inconsistent measures. The correct counterfactual in this proceeding, thus, is not one in which the CVD measures at issue were WTO-consistent from the beginning of the imposition of those CVD measures.[66] Rather, the correct counterfactual is one in which the CVD measures were modified to be WTO-consistent at the end of the RPT, which, in this matter, is the year 2017. Therefore, China's hypothetical that the WTO-inconsistent CVD measures may have resulted in fewer investments or shallower trading relationships between the year-prior and 2017, even if true,

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[62] China's Responses to Post-Meeting Questions, Question 105, para. 74.

[63] *See* U.S. Responses to Post-Videoconference Questions, Questions 71 and 102.

[64] *See* China's Opening Statement, para. 20.

[65] China's Responses to Post-Meeting Questions, Question 105, para. 75.

[66] *See* U.S. Written Submission, para. 19 ("Article 22.4 of the DSU explicitly requires that the 'level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of nullification or impairment.' Accordingly, the task of the Arbitrator in this proceeding is to determine the level of nullification or impairment by estimating the impact of removing the WTO-inconsistent measures following the expiration of the RPT (which, in this matter, is calendar year 2017). It is, however, *not* an arbitrator's task to attempt to simulate a return to a time before the imposition of the WTO-inconsistent measures.")

would not be a valid basis on which to "'adjust' [China's] market share upward" in the model, contrary to China's suggestion.[67]

46. The United States has considered various factors that may have increased China's relative competitiveness between the year-prior and 2017, such as the removal of a non-tariff barrier that may have disproportionately affected China's access to the U.S. market, and a deterioration of a third country's relative competitiveness. In the process, as explained in the U.S. response to question 71, the United States has consulted with the experts at the USITC and researched the relevant markets.[68] We did not find evidence demonstrating that any other contemporaneous duties or any non-tariff actions in the United States meaningfully affected the evolution of relative competitiveness, which would have supported including a policy change in the model that may result in an upward or downward adjustment to China's counterfactual market share in step one. However, we have found evidence of a deterioration of the relative competitiveness of India, Malaysia, Thailand, and Vietnam in the U.S. Pressure Pipe market due to U.S. trade remedies against Pressure Pipe from those countries. As a result, we have implemented a supply shock adjustment that reduces the market shares of those countries, as detailed in the U.S. response to question 5[69] and Exhibit USA-99.

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>Comment</u>:

47. In its response to this question, China argues that because trade actions other than the CVD measures at issue "must . . . be held constant," they "thus do not form part of the counterfactual analysis under Article 22.6 of the DSU." As a preliminary matter, the second part of this argument regarding the counterfactual analysis is misleading, as explained in the U.S. response to question 103, because it blurs the distinction between step one and step two of the two-step Armington approach. The U.S. methodology does not suggest that trade actions other than the CVD measures at issue should form part of the counterfactual analysis in this

[67] China's Responses to Post-Meeting Questions, Question 105, para. 74 (italics removed).

[68] For instance, as explained in the U.S. response to question 102, 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 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.

[69] *See* U.S. Responses to Arbitrator's Advance Questions, Question 5, para. 53.

proceeding. The counterfactual analysis, which is carried out in the final stage of step two to determine the level of nullification or impairment, only simulates a modification of CVD rates to make them WTO-consistent. Accordingly, in the counterfactual analysis, all other variables – including trade actions other than the CVD measures at issue – are held constant at their value in 2017, as reflected in the U.S. methodology.

48. As explained in the U.S. response to question 104, in order to hold all other factors constant, as China proposes, an economic model must also include the relevant other factors,[70] instead of leaving them out of the model as suggested by China. Accordingly, under the U.S. methodology, trade actions other than the CVD measures at issue, such as the parallel AD duties, are incorporated in step one, which calibrates the model for the counterfactual analysis and the estimation of the level of nullification or impairment in step two. The U.S. methodology takes the AD duty rates as they are and incorporates them with the WTO-inconsistent CVD rates in step one and with the counterfactual WTO-consistent CVD rates in step two of the two-step Armington approach. This, in fact, holds the AD duties constant.

49. On the contrary, by failing to include the AD duties in the model, and thus failing to hold the AD duties constant, China's methodology implicitly assumes that the presence of the parallel AD duties – which were generally much greater than the CVD duties at issue – had no effect on China's realized 2017 market share. This flawed methodology would essentially estimate trade damages based on an incorrect counterfactual market in which AD duties were never imposed (and incorrectly assumed not to exist).

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

107. To China: Please comment on the argument in paragraph 29 of the United States' opening statement that "for all of the products at issue, 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." (emphasis original)

Comment:

50. The U.S. response to question 108 explains why the two economic papers that China has submitted as Exhibits CHN-113 and CHN-114 fail to address whether the preliminary CVD measures on the products at issue in this proceeding caused any Chinese exporters to exit the market. Not only do those papers pertain to unrelated AD measures (which often have significantly higher rates than CVD measures), but they also do not make use of firm-level data, which would be required to determine whether any exporting companies exited the market.

51. Specifically, the statement in Exhibit CHN-113 that "[e]xporters often cease serving the market during the investigation" appears to refer to countries, rather than companies, that cease

[70] *See also* U.S. Closing Statement, para. 10; U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 103, para. 118.

to supply the U.S. market: the paper later clarifies that "AD actions . . . caus[ed] named countries to completely abandon the U.S. market."[71] The United States recalls that China first raised the possibility of market exit in its response to question 13, in which China discussed hypothetical "companies D, E, F, G, and H" that stop exporting to the United States following the imposition of a CVD measure.[72] In other words, China's concern is that some of the Chinese companies may have exited the U.S. market. Exhibit CHN-113, which analyzes whether countries exited the U.S. market and does not make use of firm-level data, fails to support China's theory.

52. Similarly, Exhibit CHN-114 also fails to support China's theory of exporter exit. As explained in the U.S. response to question 108, a decline in exports to the United States from subject countries following the imposition of duties could mean that each exporting company reduced the level of its exports, a subset of exporting companies exited the market, or a mix of both phenomena. China has not explained why the findings of Exhibit CHN-114 should be extrapolated to conclude that certain Chinese exporters necessarily exited the market.

53. It is, thus, misleading to state that Exhibits CHN-113 and CHN-114 serve as "empirical evidence"[73] that the preliminary CVD measures on the products at issue in this proceeding "increased market exit,"[74] since those papers do not, in fact, address whether companies exit the market due to preliminary duties, and also do not even examine the relevant preliminary CVD measures in their empirical analyses.

54. In sum, China has not provided compelling evidence on why the Arbitrator should deviate from the approach taken by the arbitrators in DS471 and DS464: *i.e.*, selecting the year prior to the imposition of the final CVD measure as the appropriate year-prior to use in this proceeding.[75]

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[71] Prusa and Besedes, "The Hazardous Effects of Antidumping," *Economic Inquiry*, Vol. 55, No. 1 (January 2017), p. 27 (Exhibit CHN-113).

[72] China used this hypothetical case in an attempt to argue that the year-prior data used by the United States would "result in a serious undercount" by leaving out the Chinese companies that stopped exporting to the U.S. market following the imposition of the relevant CVD measure. *See* China's Responses to Arbitrator's Advance Questions, Question 13, para. 57. However, as explained in the U.S. response to question 32, China's argument is entirely mistaken because the year-prior USCBP data used by the United States are not based on specific CVD orders and are thus not limited to companies that exported to the United States under one of the CVD measures at issue. Rather, the year-prior USCBP data are the full-year data of all shipments made by any company under the reference HTSUS codes, regardless of whether the company exited the market following the imposition of the relevant CVD measure.

[73] China's Responses to Arbitrator's Post-Meeting Questions, Question 107, para. 84.

[74] China's Responses to Arbitrator's Post-Meeting Questions, Question 107, para. 83.

[75] *See* U.S. Responses to Arbitrator's Advance Questions, Questions 2 and 14; U.S. Responses to Arbitrator's Follow-Up Questions, Question 33; U.S. Responses to Arbitrator's Post-Videoconference Questions, Question 109.