UNITED STATES – COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA

Recourse to Article 22.6 of the DSU by the United States

(DS437)

INTEGRATED EXECUTIVE SUMMARY OF THE UNITED STATES OF AMERICA

January 15, 2021

I. INTRODUCTION

1. Contrary to the requirements of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the level of suspension of concessions that China has requested is not equivalent to the level of nullification or impairment.

2. Pursuant to Article 22.7 of the DSU, the task of an arbitrator is to determine whether the requested level of suspension of concessions or other obligations is equivalent to the level of nullification or impairment of benefits accruing to the complaining party under the relevant covered agreement(s), as required under Article 22.4. China, in its DSU Article 22.2 request, has proposed to suspend concessions at a level of $2.4 billion annually; the United States has objected to that level, referring the matter to arbitration; and the United States has made a *prima facie* case (including through China's concession that $2.4 billion exceeds the level of nullification or impairment and by demonstrating fundamental defects in China's methodology and data) that China's requested level of suspension is inconsistent with Article 22.4 of the DSU.

3. Thus, it is appropriate for the Arbitrator to reject China's requested level of nullification or impairment and continue the analysis, pursuant to Article 22.7, to determine the level of suspension that it considers to be equivalent to the level of nullification or impairment, as other arbitrators have done in prior Article 22.6 proceedings. The United States has provided the Arbitrator ample evidence to sustain its factual assertions in order to assist the Arbitrator in determining the correct methodology (including correct underlying assumptions) and the correct data that can be used to accurately estimate a level of suspension that is equivalent to the level of nullification or impairment.

4. The level of nullification or impairment should be determined by estimating the trade effects of removing the WTO-inconsistent aspects of the U.S. countervailing duty ("CVD") measures following the expiration of the reasonable period of time ("RPT"), through a counterfactual of reducing the CVD rate by the relevant WTO-inconsistent Less-Than-Adequate-Remuneration ("LTAR") rate. China agrees with this approach, but has incorrectly identified the WTO-inconsistent CVD rates to use to calculate the counterfactual WTO-consistent CVD rates. The United States has shown that the rates from the final determinations of the section 129 proceedings ("section 129 rates"), which were the compliance measures reviewed in the Article 21.5 proceedings in this dispute, are the correct WTO-inconsistent CVD rates, and the counterfactual WTO-consistent CVD rate for each product should be calculated by reducing the section 129 CVD rate by the relevant WTO-inconsistent LTAR rate.

5. With respect to the methodology to simulate the counterfactual, a two-step Armington-based imperfect substitutes partial equilibrium model is appropriate for the purpose of this proceeding, but only with certain necessary adjustments to be able to accurately estimate the level of nullification or impairment caused by the WTO-inconsistent CVD measures at issue – and not caused by any other factors. While China's methodology uses a two-step Armington-based model, it fails to apply the necessary adjustments, consequently generating distorted counterfactual market shares and grossly overestimating the trade effects of the CVD measures at issue.

6. The two necessary adjustments identified by the United States are: (1) controlling for the trade effects of the antidumping ("AD") duties that also were imposed on the same products; and (2) controlling for the trade effects of the positive supply shocks for imports of the same products from third countries, making them more competitive in the U.S. market. These adjustments are necessary to generate a counterfactual market representation which accurately estimates how the U.S. market would be different if the CVD rates were made WTO-consistent at the expiration of the RPT (*i.e.*, in 2017), and thus properly isolate the trade effects of the CVD measures at issue.

7. Finally, contrary to the incorrect data used by China, the United States has proposed to use the same data and data estimation methods chosen by the arbitrator in DS471 – save for certain instances where data-based adjustments were necessary. In estimating the counterfactual value of imports from China, the United States has provided the Arbitrator data that accurately reflect imports from China that are subject to the CVD measures at issue in this proceeding. This contrasts with China's reliance on basket tariff categories and blanket use of an economy-wide GDP deflator to estimate the market size for each discrete product.

8. As the United States has demonstrated, when proper analysis is employed and correct data are used, the actual level of nullification or impairment is no more than **$105.77 million** annually.

II. APPROPRIATE CALCULATION OF THE LEVEL OF NULLIFICATION OR IMPAIRMENT FOR THE COUNTERVAILING DUTY MEASURES AT ISSUE

A. Article 22 of the DSU Requires that the Proposed Level of Suspension Be Equivalent to the Level of Nullification or Impairment

9. Pursuant to Article 22.4 of the DSU, the DSB is not to authorize the suspension of concessions or other obligations unless "the level" of suspension is "equivalent" to the level of nullification or impairment. Article 22.7 of the DSU further provides that where a matter is referred to arbitration, the arbitrator "shall determine whether the level of . . . suspension is equivalent to the level of nullification or impairment." The starting point in the analysis of a suspension request is to determine the extent to which any WTO-inconsistent measure maintained following the expiration of the RPT nullifies or impairs benefits accruing to the complaining Member under the relevant covered agreement(s).

10. Thus, an analysis of the level of nullification or impairment must focus on the "benefit" accruing to the complaining party under a covered agreement that is allegedly nullified or impaired as a result of the breach found by the DSB. Arbitrators in past proceedings have uniformly based their determinations on hard evidence and have refused to "accept claims that are 'too remote', 'too speculative', or 'not meaningfully quantified.'" As the arbitrators in *EC – Hormones (US) (Article 22.6 – EC)* and *EC – Hormones (Canada) (Article 22.6 – EC)* found, "we need to guard against claims of lost opportunities where the causal link with the [WTO-] inconsistent [measure] is less than apparent, i.e., where exports are allegedly foregone not because of the [WTO-inconsistent measure] but due to other circumstances."

11. In previous Article 22.6 proceedings, the arbitrators compared the level of trade for the complaining party under the WTO-inconsistent measure to what the complaining party's level of trade would be expected to be had the Member concerned brought the WTO-inconsistent measure into conformity following the expiration of the RPT. The situation in which the Member concerned has removed the WTO inconsistency is referred to as the "counterfactual." The difference in the level of trade under these two situations typically represents the level of nullification or impairment. Other Article 22.6 arbitrators have recognized that a counterfactual was an appropriate method in those proceedings to calculate a level of nullification or impairment.

12. Similarly, in this proceeding, both the United States and China have proposed a counterfactual in which the WTO-inconsistent aspect of each of the CVD measures at issue (*i.e.*, the WTO-inconsistent LTAR rate) is removed following the expiration of the RPT. China, however, has proposed to use incorrect rates as the WTO-inconsistent CVD rates, which also results in incorrect counterfactual WTO-consistent CVD rates. The appropriate analysis requires a comparison between the baseline value of imports of each product from China to the United States and the value of imports from China to the United States that would have been expected had the CVD rates been WTO-consistent following the expiration of the RPT (the counterfactual). As described below, China's incorrect WTO-inconsistent rates and incorrect counterfactual WTO-consistent rates result in an incorrect outcome of the counterfactual analysis.

B. The Correct Counterfactual is Reduction of the Section 129 CVD Rate by the Relevant WTO-Inconsistent LTAR Rate

13. In this proceeding, the correct counterfactual is the estimated value of imports of relevant products from China to the United States if the WTO-inconsistent CVD measures were modified, following the expiration of the RPT, to comply with the DSB recommendations, holding all other factors constant. China, in its methodology paper, acknowledges that the Article 21.5 compliance panel in this dispute reviewed and found to be WTO-inconsistent the section 129 determinations, which are the basis of the WTO-inconsistent CVD rates used by the United States. Yet, China has disregarded this fact and has used the rates from the CVD orders, rather than the section 129 rates, as the baseline rates for the counterfactual analysis.

14. The relevant rates to be used as the WTO-inconsistent CVD rates are the section 129 rates because the section 129 determinations were the measures that were actually "found to be WTO-inconsistent" in this dispute.

C. The Correct Methodology for Determining the Level of Nullification or Impairment Must Incorporate Other Relevant Factors and Rely on a Correct Assumption Regarding Elasticities of Substitution

15. As explained above, the key issue in this proceeding is the impact on trade flows of the maintenance of the WTO-inconsistent CVD measures following the expiration of the RPT. The United States and China generally agree that a version of the two-step Armington approach used by the arbitrators in DS464 and DS471 is appropriate. However, the United States disagrees

with China's proposed version of the two-step Armington approach because it not only fails to address the fundamental deficiencies of the unadjusted two-step Armington approach but also further distorts the model by relying on a flawed assumption about elasticities of substitution.

16. In contrast, the U.S. methodology corrects the fundamental deficiencies of the two-step Armington approach used in DS464 and DS471 by implementing two necessary adjustments. These adjustments are necessary to capture China's true relative competitiveness and correctly estimate the level of nullification or impairment attributable to the CVD measures at issue. Moreover, the U.S. methodology is based on a correct assumption about elasticities of substitution.

1. The Correct Methodology Properly Isolates the Trade Effects of the WTO-Inconsistent CVD Measures by Adjusting for Other Factors that Demonstrably Affected the Evolution of Market Shares Between the Time of Imposition of the Relevant CVD Measure and Remedy Year

17. The two-step Armington approach, as applied by the arbitrators in DS464 and DS471, begins by calibrating a standard partial equilibrium Armington model using market share data from the year prior to the imposition of the CVD measure ("the year-prior") for three entities: U.S. domestic producers, China, and the rest of the world ("ROW"). In this type of model, market shares observed in the year-prior data are assumed to capture relative competitiveness in the U.S. market in that year. The year-prior data in this proceeding, however, do not reflect an accurate picture of China's underlying competitiveness because the U.S. market was distorted by subsidies and dumping, prior to the imposition of the relevant CVD and AD measures.

18. Using the year-prior data and calibrated parameters, step one of the two-step Armington approach, as applied by the arbitrators in DS464 and DS471, simulates the application of WTO-inconsistent CVD measures on imports from China. The counterfactual market shares resulting from step one are ostensibly assumed to represent the relative competitiveness of each entity (*i.e.*, domestic shipments, imports from China, and imports from ROW) after the expiration of the RPT, that is, in 2017.

19. In step two of the two-step Armington approach, the counterfactual market shares generated in step one are used to calibrate a new benchmark model. The market shares are used to divide up the total value of the U.S. market in 2017, as observed in the data, constructing an alternative 2017 market in which no factors other than the CVD measures on imports from China have affected relative competitiveness among the entities between the date of imposition of the CVD measure and the remedy year (2017). This constructed market is assumed to be representative of the market in 2017. This new benchmark model is then used to simulate the trade effects of modifying the WTO-inconsistent CVD rates to be WTO-consistent in 2017, including estimating each entity's market share under the counterfactual WTO-consistent CVD rates. The level of nullification or impairment is the difference between the simulated value of 2017 U.S. imports from China under the WTO-inconsistent rates and the simulated value of 2017 U.S. imports from China under the modified, counterfactual WTO-consistent rates.

20. As recognized by the authors of a recent paper discussing the DS471 arbitration, the two-step Armington approach used in that arbitration had a fundamental deficiency: it incorrectly attributed trade damage solely to the AD duties at issue in that proceeding by failing to account for other factors that affected the evolution of relative competitiveness in the U.S. market (*i.e.*, market shares) between the date of imposition of the duties and the remedy year. The CVD duties at issue in this proceeding were among those factors. China, in DS471, appears to have anticipated this problem when it proposed to "tak[e] into account the impact of CVD measures" in its alternative methodology for estimating the level of nullification or impairment caused by the AD measures that were at issue in that proceeding.

21. The U.S. methodology in this proceeding offers a solution that corrects this deficiency by incorporating two adjustments. These adjustments ensure that the model controls for economic forces other than the CVD measures at issue and properly isolates the trade effects of the CVD measures. In contrast, the unadjusted two-step Armington model that fails to account for other relevant factors would essentially estimate trade damage based on an incorrect counterfactual market, in which factors observed to have affected the actual 2017 market shares are absent, thus overestimating the level of nullification or impairment.

a. First, the Two-Step Armington Approach Must Account for the Effect of Dumping and the Corresponding Antidumping Duties on China's U.S. Market Share

22. An unadjusted two-step Armington approach fails to account for the parallel AD measures that applied to the products at issue in this proceeding – meaning the model essentially asks how the market would be different if CVD rates were WTO-consistent at the expiration of the RPT and if AD duties were never imposed in the first place. But there is no question that the AD measures were imposed simultaneously or almost simultaneously with the CVD measures at issue, and that China's actual relative competitiveness in 2017 was directly affected by these AD measures. Thus, it would not be proper under the correct counterfactual to assume that AD duties never existed or affected relative competitiveness in the U.S. market.

23. Accordingly, the model in step one of the two-step Armington approach must account for the parallel AD duties to be able to estimate China's actual relative competitiveness and generate an adequate representation of the counterfactual 2017 market. Otherwise, the step two model calibrated with incorrect counterfactual 2017 market shares would, in turn, overestimate China's relative competitiveness in 2017 because it would not account for the correction for dumping – the AD duties – that was in effect at the end of the RPT. Therefore, only a two-step approach that properly accounts for the parallel AD measures can accurately simulate the 2017 market shares and thus accurately estimate the level of nullification or impairment.

24. 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 the counterfactual WTO-consistent CVD rates in step two. This prevents the two-step Armington model from simulating an incorrect counterfactual 2017 market in which the parallel AD duties were never imposed, thereby properly controlling for the effects of the AD duties.

b. Second, the Two-Step Armington Approach Must Account for Third-Country Supply Shock, *i.e.*, Factors Other than Trade Remedy Measures that Influenced the Evolution of Market Shares in the Interim Period Between Imposition of the Relevant CVD Measure and Remedy Year

25. As explained above, the unadjusted two-step model used by the DS471 arbitrator ignores the trade effects of other factors on the evolution of relative competitiveness during the interim period between the imposition of the CVD measures and 2017. In reality, however, entry of new market participants and increased capacity of countries other than China to supply the U.S. market influenced China's (and other suppliers') relative competitiveness. In several of the product markets at issue in this proceeding, investments of private firms or changes in government policy allowed certain third country suppliers to improve their relative competitiveness in the U.S. market during the interim period.

26. A model that fails to account for such third-country supply shocks fails to answer the relevant question; rather, it assesses how the market would be different if CVD rates were WTO-consistent and if third-country market shares were held proportionally constant. Such a model cannot accurately estimate the nullification or impairment caused by the WTO-inconsistent CVD measures at issue in this proceeding. The resulting estimate of nullification or impairment would either understate or overstate the actual level of nullification or impairment, depending on the underlying circumstances.

27. The United States has provided evidence for five of the products (Aluminum Extrusions, OCTG, Solar Panels, Line Pipe, Pressure Pipe) that investments of private firms or changes in government policy boosted the supply potential of certain third countries and resulted in imports from those countries gaining U.S. market share at China's expense. In other words, these positive supply shocks improved the relative competitiveness of those third countries and led to the relative deterioration of China's competitive position in the U.S. market during the interim period. Such changes during the interim period should be reflected in the step one counterfactual market that is used to calibrate the step two model. Otherwise, the step one counterfactual market would not represent China's actual relative competitiveness in 2017, and in turn, cannot be used to correctly estimate the level of nullification or impairment. Accordingly, the United States has quantified and incorporated those supply shocks into its model using a historical simulation approach based on the economics literature.

28. In principle, the two-step Armington approach should incorporate a supply shock adjustment for every product for which the relative competitiveness of third-country suppliers has changed between the date of imposition of the CVD measures and 2017. However, it is not possible to directly observe supply shocks and their magnitude by country. As the best alternative, the United States has relied on two types of information to make the best effort to identify the relevant supply shocks: (1) trade data showing trends of disproportionate increases in certain third countries' market shares relative to other exporting countries between the year in which the CVD measure was imposed and 2017, and (2) analyses documented in relevant U.S. International Trade Commission ("USITC") investigations of any industry investment or government policy changes in those third countries during the same period.

29. Using this evidence-based method, the United States has identified the "Rising Supplier" countries for Aluminum Extrusions, OCTG, Solar Panels, Line Pipe, and Pressure Pipe, and has detailed the government policies or industry investments that are linked to the expansion of their supply potential. Based on evidence, the adjustment also includes a net decline in 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 in 2014 and 2016, which ultimately boosted China's relative competitiveness. The United States has not found sufficient evidence to recommend implementing the supply shock adjustment for the remaining five products.

30. Both the AD adjustment and the third-country supply shock adjustment stem from the fact that 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 measure at issue and the remedy year, as long as there is evidence to support those effects and sufficient quantitative information to incorporate them into the model. The United States has controlled for these two factors because there is sufficient evidence to demonstrate their effects on the evolution of relative competitiveness between the imposition of the relevant CVD measures and 2017. On the other hand, the United States has not adjusted for any other factors due to lack of sufficient evidence that any other factors (including any other duties or non-tariff actions) meaningfully affected the evolution of relative competitiveness during the interim period.

31. China falsely argues that incorporating the necessary adjustments proposed in the U.S. methodology would be equivalent to adopting a one-step Armington model. However, the step one counterfactual market shares generated by the U.S. methodology are consistently and significantly greater than China's actual 2017 market shares that would be used in a one-step Armington model. The U.S. methodology corrects the critical deficiency in the unadjusted two-step Armington model so that the model can generate accurate counterfactual 2017 market shares and thus estimate the level of nullification and impairment that is properly attributable to the CVD measures at issue – the very purpose of adopting a two-step Armington model.

2. The Correct Methodology Relies on the Correct Assumption that the Elasticity of Substitution across Imported Varieties is Same as the Elasticity of Substitution Between Imported Goods and Domestic Goods

32. Contrary to China's argument, the so-called "Rule of Two" is not the correct assumption for the methodology in this proceeding. The Rule of Two is an *ad hoc* assumption that the elasticity of substitution across imported varieties ("micro-elasticity") is two times the elasticity of substitution between imported goods and domestic goods ("macro-elasticity"). This proposition has serious implications, as it would result in a significantly higher estimate of the level of nullification or impairment. However, China has not sufficiently demonstrated why the Arbitrator should deviate from the more reasonable assumption that the micro-elasticity and the macro-elasticity are constant (*i.e.*, the Rule of One), which is the standard in Armington partial equilibrium modeling in the academic literature and which has been used in previous WTO arbitrations, including DS471.

33. While China has frequently referenced *Feenstra et al.*, there simply is no evidence in the paper to conclude that the micro-elasticity is double the macro-elasticity for the products at issue in this proceeding. Rather, China has misinterpreted the statistical data presented in the paper. The corrected outcome provided by the United States is, in fact, evidence in favor of the null hypothesis that the macro-elasticity and micro-elasticity are equal.

34. 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 Harmonized Tariff Schedule of the United States ("HTSUS") categories at the 10-digit level. In 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 CVD measure. 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. The weak evidence in *Feenstra et al.* that the micro-elasticities may be higher than the macro-elasticities for the products sampled in the paper does not support the application of the Rule of Two for the specific products at issue in this proceeding that are largely from different industries.

35. Further, a nested approach – which encompasses the Rule of Two and other model arrangements in which the elasticity of substitution is not assumed to be constant across all sources of supply – is not appropriate in this proceeding because trade diversion is not expected for the products at issue. A nested approach could be used where there is evidence that buyers are more likely to substitute one source of supply over another in response to a change in the price of the subject variety. However, product-specific evidence reported by the USITC shows that the domestic variety, imports from China, and imports from ROW are not systematically differentiated, but rather are comparable and interchangeable in terms of product quality, terms of sale, and use. That is, there is no basis to assume that an increase in the price of imports from China would lead U.S. buyers to systematically and disproportionately substitute toward imports from ROW, over U.S. domestic products. And there is certainly no evidence that buyers are likely to substitute toward imports from ROW at double the rate of substitution toward U.S. domestic products.

36. Accordingly, the correct methodology should rely on the standard Rule of One and thus use the substitution elasticity estimates reported by the USITC for both micro- and macro-elasticities. These USITC elasticities (which were developed under the implicit assumption that the micro-elasticity and macro-elasticity are equal) are tailored to the specific products subject to the duties and are based on analysis of responses from purchasers, producers, and importers to questionnaires concerning the pertinent market, as well as arguments made by interested parties.

D. The Correct Data Inputs that Would Be Used in Applying the Two-Step Armington-Based Partial Equilibrium Model

37. In an effort to identify the best data available for this proceeding, the United States has maintained a reasoned and consistent approach of using the same year-prior and 2017 U.S.

market 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 (Aluminum Extrusions, Line Pipe, OCTG, Print Graphics, Seamless Pipe, Solar Panels, and Steel Cylinders). For the other three products that were not at issue in DS471 (Kitchen Shelving, Pressure Pipe, and Wire Strand), the United States has estimated the U.S. market data by applying estimation methods that are similar to those applied by the DS471 arbitrator. In contrast, China has unnecessarily deviated from the data and data estimation methods used by the DS471 arbitrator and has proposed data that are not suitable for accurately estimating the level of nullification or impairment.

1. Year-Prior U.S. Market Data

38. China has chosen the wrong year-prior for three of the products (OCTG, Line Pipe, and Pressure Pipe). Since step one of the two-step Armington approach uses the year-prior data to generate market shares that reflect relative competitiveness in the U.S. market in 2017, it is necessary to ensure that the two-step approach uses the correct year-prior – that is, the year prior to the imposition of the final CVD measure. However, China has attempted to deviate from the approach taken by the arbitrators in DS471 and DS464 by arguing that the year-prior should be based on the date of imposition of the preliminary CVD measure.

39. However, the imposition of a CVD measure is not made final until both the U.S. Department of Commerce and the USITC make affirmative final determinations. Any cash deposits collected following an affirmative preliminary CVD determination are merely provisional and subject to refund depending on the outcome of the final determination. Moreover, for all of the products at issue, no provisional CVD duties were collected for a "gap period" of several months between the expiration of the preliminary CVD measure and the publication of the final CVD measure. China has not explained how, or why, any changes in trade flows during the gap period should be attributed to CVD duties when there were no CVD duties in place. Therefore, the United States has maintained the use of the year prior to the imposition of the final CVD measure, rather than a temporary preliminary CVD measure.

40. In addition to misidentifying the relevant year-prior and thus using incorrect year-prior data, China has also misidentified the relevant domestic shipments or imports values for three other products (Print Graphics, Steel Cylinders, and Solar Panels). For Kitchen Shelving, China's estimated imports values improperly rely on "basket" HTSUS categories that broadly include a number of products that fall outside the scope of the Kitchen Shelving CVD measure.

41. In contrast, the United States has correctly identified the year-prior for each product in a manner that is consistent with the year-prior identified by the arbitrator in DS471, and has used the domestic shipments and imports values that were either used by the DS471 arbitrator, or calculated those values using sources and methods similar to those relied on by the DS471 arbitrator. There are only two exceptions. First, for the domestic shipments value for Steel Cylinders, whereas the DS471 arbitrator relied on an estimate based on industry data, the United States has replaced the estimate with actual data, which became available after the release of the DS471 decision. Second, for Kitchen Shelving, the United States has corrected for the overinclusion problem of relying on basket tariff categories by incorporating industry data-based adjustments to data collected in the relevant USITC investigations.

2. 2017 U.S. Market Data

42. With respect to the 2017 data, the United States has generally used the data already reported by the DS471 arbitrator for the seven products that were also at issue in that arbitration. Where the United States has adjusted data used by the DS471 arbitrator due to an overinclusion issue (Print Graphics and Seamless Pipe imports from ROW) or due to the availability of more recent or better data (OCTG and Steel Cylinders domestic shipments), ample evidence and explanations have been submitted for the application of those adjustments.

43. As for the three products that were not at issue in DS471, the United States has calculated an estimate using industry-specific data to estimate each component of the U.S. market for each product (*i.e.*, domestic shipments, imports from China, and imports from ROW). This is the method that the DS471 arbitrator used and also the method that the USITC uses in its investigations.

44. While the United States has used HTSUS-based data for the year-prior data due to lack of a better alternative, the United States has used, for 2017 imports from China, USCBP data reporting company-specific imports of subject merchandise that are subject to the CVD measures at issue. USCBP data, which are collected by the U.S. federal agency that enforces CVD measures at the time of importation, provide the most accurate estimates of the imports from China that were subject to the CVD measures at issue in this proceeding.

45. In contrast, China has abandoned the reasoned approach of estimating each component of the U.S. market using industry-specific data, and has instead resorted to a novel approach of applying a GDP deflator to the reported value of the U.S. market for a specific product in an earlier year and extrapolating the value of the 2017 U.S. market for that product. This is not supported by economic theory. A GDP deflator is based on the entire U.S. economy and is not tailored to specific products. A GDP deflator, which is nominal GDP divided by real GDP, is a measurement of inflation. Accordingly, the outcome of China's GDP deflator approach merely states the value of the earlier U.S. market in terms of 2017 dollars – it does not estimate the size of the 2017 U.S. market. By attempting to project a future market size using a GDP deflator, China improperly assumes that the U.S. market for each individual product grew in line with the prices of all final goods and services produced in the United States between the earlier data year and the remedy year. Furthermore, regardless of the number of years over which a GDP deflator is applied, the deflator's estimate for the 2017 market size would vary depending on the year that the deflator happens to extrapolate from – which demonstrates that the GDP deflator method is not a reliable proxy for projecting a future market size.

46. While China has suggested the Producer Price Index (PPI) as an alternative, applying the PPIs would also merely state the value of an earlier U.S. market in terms of 2017 dollars, similar to the GDP deflator approach. Moreover, 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.

E. The Level of Nullification or Impairment that Would Result from the Application of an Appropriate Armington-Based Partial Equilibrium Model

47. As a result of applying the two-step Armington-based approach that incorporates the two necessary adjustments proposed by the United States, the level of nullification or impairment from the maintenance following the expiration of the RPT of the U.S. WTO-inconsistent CVD measures on Aluminum Extrusions, Print Graphics, OCTG, Solar Panels, Steel Cylinders, Line Pipe, Seamless Pipe, Kitchen Shelving, Pressure Pipe, and Wire Strand from China is no more than **$105.77 million** per year.

II. CONCLUSION

48. For the reasons given throughout this proceeding, the United States respectfully requests that the Arbitrator find that the level of suspension of concessions or other obligations requested by China is not "equivalent" to the level of nullification or impairment. The United States requests that the Arbitrator find that the level of nullification or impairment is no more than **$105.77 million** annually.