INDIA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS: RECOURSE TO ARTICLE 22.6 OF THE DSU BY INDIA

(DS430)

RESPONSES OF THE UNITED STATES OF AMERICA TO QUESTIONS FROM THE ARBITRATOR

December 20, 2017

Public Version

TABLE OF REPORTS

SHORT FORM	FULL FORM
EC – Chicken Cuts (Brazil) (Panel)	Panel Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts, Complaint by Brazil*, WT/DS269/R, adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R
US – Poultry (China) (Panel)	Panel Report, *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392/R, adopted 25 October 2010

TABLE OF EXHIBITS

Exhibit No.	Description
US-64	Vasant P. Gandhi and Zhang-Yue Zhou, "Rising Demand for Livestock Products in India: Nature, Patterns and Implications," *Australasian Agribusiness Review*, Vol. 18, 2010, pp. 103–35.
US-65	New Maroti Chicken Center, Fresh Chicken Leg
US-66	Mutton Mahal, Fresh Chicken Leg
US-67	Kuk Kudu Ku, Fresh and Frozen Chicken Leg
US-68	VNU Logistics India Private Limited, Frozen Chicken Leg Quarter
US-69	Moula Mutton & Chicken Stall, Fresh Chicken Leg
US-70	Gopi's Chicken, Chicken Leg
US-71	Unity Foods, Frozen Chicken Leg
US-72	N. Gregory Mankiw, Principles of Microeconomics, 8th edition, 2017, selected pages
US-73	Martin J. Osborne, "Theory of a cost-minimizing firm," available at https://economics.utoronto.ca/osborne/2x3/tutorial/COSTSFRM.HTM
US-74	Comtrade, U.S. Frozen Chicken Leg Quarter Exports, Value by Month, 2016
US-75	Comtrade, EU Frozen Chicken Leg Quarter Exports, Value by Month, 2016
US-76	U.S. Census Bureau Trade Data, U.S. Frozen Chicken Leg Quarter Exports, Unit Export Prices by Month, 2016
US-77	Eurostat, EU Frozen Chicken Leg Quarter Exports, Unit Export Prices by Month, 2016
US-78	Comtrade Disclaimer
US-79	United States Department of Agriculture, Food Safety and Inspection Service, "Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used," 60 Fed. Reg. 55,962, November 3, 1995
US-80	Tyson Foods, Inc., *Fiscal 2013 Factbook*
US-81	B. Soundararajan, *Sale of Processed Chicken Grows*, India Times, Feb. 11, 2011
US-82	*India is second fastest growing processed meat and poultry market*, Retail News, April 24, 2017
US-83	*Poultry Processing in India*, available at: https://www.meyn.com/en-GB/658/poultry-processing-in-india.html 1/
US-84	R.Karthikeyan, V.R. Nedunchezhian, "Vertical Integration Paving Way to Organised Retailing in Indian Poultry Industry," *International Journal of Business and Management Invention*, Vol. 2, Issue 1, January 2013, pp. 39–46.
US-85	U.S. Census Bureau Trade Data, U.S. Frozen Chicken Leg Quarter Exports, Export Volume by Country and Year, 1997–2017

US-86	U.S. Census Bureau Trade Data, U.S. Frozen Chicken Leg Quarter Exports, Exports by Volume, 2016–2017
US-87	India Ministry of Commerce, Export Statistics for India, 2016
US-88	Shipping Contracts [[THIS EXHIBIT IS SCI]]
US-89	U.S. Census Bureau Trade Data, maritime shipping tonnage, 2016
US-90	USDA 2017, *South Africa Extends Anti-dumping Duties on U.S. Bone-in Chicken*, available at: https://gain.fas.usda.gov/Recent%20GAIN%20Publications/South%20Africa%20Extends%20Anti-dumping%20Duties%20on%20U.S.%20Bone-in%20Chicken_Pretoria_South%20Africa%20-%20Republic%20of_12-11-2017.pdf
US-91	South African Revenue Service, Import Statistics of Chicken Cuts and Edible Offal, 2015–2017

QUESTION 5[1]

Please provide estimates of the Indian income elasticity of CLQ or in its absence of the Indian income elasticity of frozen poultry, or processed poultry or poultry.

1. The United States is not aware of a specific Indian income elasticity of CLQs, frozen poultry, or processed poultry. As noted in Exhibit US-59, the USDA report "India's Poultry Sector" estimated an income demand elasticity of 1.7 and then further estimated that price demand elasticity of poultry was -1.5. Other studies have estimated an income elasticity of poultry for urban areas of India at 1.22[2] and 1.255.[3]

QUESTION 6

Both parties have used the wholesale price of fresh chicken despite the product at issue being processed/frozen chicken. Would this price tend to overestimate/underestimate the price of processed/frozen chicken? Is there any evidence that might shed some light on the magnitude of this premium/discount?

2. As an initial matter, U.S. market research suggests that some chicken leg products sold in India as "fresh" have been previously frozen. For example, New Maroti Chicken Center, a wholesale trader, offers a "fresh chicken leg" that is described as "frozen."[4] Similarly, the "Fresh Chicken Leg" sold by wholesaler Mutton Mahal indicates that it is stored at -33 degrees Celsius and "freezing type" is "BQF" which stands for bulk quick frozen.[5] Given this, any difference between the price of "fresh" chicken legs and "frozen" CLQs may be artificial. The artificial distinction is reflected in the prices charged by wholesaler Kuk Kudu Ku, located in Thane, Maharashtra. Kuk offers both fresh chicken legs and frozen chicken legs for 180 rupees per kilogram.[6]

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[1] These responses to the Arbitrator questions only address those questions for which the United States did not provide a written response in the November 15, 2017 Responses of the United States of America to the Advance Questions from the Arbitrator (the "November 15 Responses").

[2] Exhibit US-47.

[3] Exhibit US-64.

[4] Exhibit US-65.

[5] Exhibit US-66.

[6] Exhibit US-67.

3. Leaving this issue aside, India is incorrect to argue that Indian consumers "are willing to pay a premium price" for "fresh" chicken parts.[7] If anything, the opposite is true. The wholesaler VNU Logistics India Private Limited, located in Coimbatore, Tamil Nadu, offers frozen CLQs for 240 rupees per kilogram.[8] A different wholesaler in Tamil Nadu advertised a fresh chicken leg at 195 rupees per kilogram.[9]

4. Similarly, the wholesaler Gopi's Chicken, located in Bengaluru, Karnataka, offers fresh chicken leg for 160 rupees per kilogram,[10] while Unity Foods, also a wholesaler in Bengarluru, Karnataka, offers frozen chicken leg for 200 rupees per kilogram.[11]

5. Regardless, the Murga Market leg price is still the most appropriate price to use as the domestic price in the model. As discussed in the Methodology Paper, there is not a single price for domestic CLQs (fresh or frozen); prices are different in different cities and change in each city across time.[12] As a result, the average wholesale price of fresh domestic CLQs from the Murga Market in Delhi appears to be the best approximation of the domestic price for processed chicken in India. Without additional information about the exact contours of the processed market in India—i.e., the percentage of processed poultry consumption in India that is CLQs, versus breasts, versus wings—as well as the substitutability between those different cuts, there is no reason to compare the price of U.S. CLQs to anything other than the Murga Market leg price.

6. Additionally, India has already agreed to use the price of fresh CLQs in determining the level of nullification or impairment.[13]

QUESTION 7

Beyond the information contained in the elasticity of demand, would the parties be able to provide other evidence of the extent to which Indian households or

[7] First Written Submission of India, para. 68.

[8] Exhibit US-68.

[9] Exhibit US-69.

[10] Exhibit US-70.

[11] Exhibit US-71.

[12] Methodology Paper, para. 37 and App. B; *cf.* First Written Submission of India, para. 68 ("India acknowledges that prices for both fresh and frozen chicken vary considerably from month to month and from company to company.").

[13] First Written Submission of India, para. 68.

enterprises (restaurants, hotels) would switch from consumption of fresh or processed poultry to frozen poultry (CLQs) if the measure at issue were removed?

7. As an initial matter, it is not accurate that enterprises (restaurants, hotels) would have to switch from consumption of fresh or processed poultry to frozen poultry (CLQs) if the measure at issue were removed. There is nothing in the record to suggest that these enterprises are not already using frozen chicken, and would have to switch from consumption of fresh poultry to frozen CLQs (as opposed to simply realizing cost savings from lower-priced frozen poultry), especially because they already have in place the required cold chain infrastructure. *See, e.g.*, US-35. Furthermore, as noted in response to Question 9, processed poultry includes frozen poultry.

8. But even if a particular enterprise were not using frozen chicken currently, there is little reason to believe that it would not switch to using frozen chicken when frozen CLQs are made available at substantially lower cost. Businesses are motivated to make profit, and lowering input costs by switching to frozen chicken would increase sales and profits.[14] "[W]hatever the firm's output, the bundle of inputs must be chosen to minimize the cost of producing that output."[15]

9. With regard to households, the experiences of Haiti and Cameroon, discussed at length in the U.S. Written Submission, indicate that a substantial number of Indian households would purchase lower-cost U.S. frozen CLQs notwithstanding any stated preference for fresh poultry.[16] In addition, according to basic economic principles, Indian consumers would be willing and able to purchase more poultry when the price of available poultry falls.[17]

10. India's belief that this willingness to switch from fresh local poultry to frozen poultry would be muted given the higher incidence of vegetarianism in India is misplaced. The model analyzes the behavior of individuals who *are currently consuming poultry*, not India's total population. This by definition excludes whatever segment of India's population is vegetarian.

[14] Exhibit US-72.

[15] Exhibit US-73.

[16] U.S. Written Submission, paras. 46–49.

[17] Exhibit US-72.

QUESTION 8

An important point of contention between the parties is the competitiveness of EU exporters relative to U.S. producers. The parties have provided data using different data sources, different reference periods, and different definitions of the EU as follows:

- ***Data sources: India relies on UN Comtrade and FAS-USDA data while the United States relies on Eurostat and U.S. Department of Commerce (Bureau of Census) data.***

- ***Reference period: India uses data from July 2016-June 2017 while the United States uses data from 2016.***

- ***EU: India only includes data from 27 members while the United States uses data from all 28 members.***

Using data on all 28 members and with calendar year 2016 as the reference period, please provide unit export prices for HS 020714 using the following sources of data.

a) UN Comtrade data for both the U.S. and EU-28; and

b) U.S. Department of Commerce (Bureau of Census) data for the U.S. and Eurostat for the EU-28.

11. The requested data are provided in Exhibits US-74 through US-77. But the United States notes that data from Comtrade cannot provide representative unit export prices because it does not contain complete volume and pricing data for each year. Comtrade itself includes an extensive disclaimer that notes the limitations of its data.[18]

12. Additionally, per unit values for EU exports at the six digit level do not properly identify relevant prices to compare to U.S. frozen CLQs at the eight digit level. Specifically, a substantial portion of EU exports under code 020714 is mechanically deboned or mechanically separated meat ("MSM"). It is "produced by mechanically separating meat from the bones of carcasses or other parts . . . . Seasonings and stabilizers are added for flavor, to preserve color, and deter rancidity. Seasoned mechanically separated chicken, under 15% fat, consists of meat and skin that is paste-like in consistency with the percentage of fat 15 percent or less."[19] This byproduct of chicken processing is used as an input for chicken products that are processed

[18] Exhibit US-78.

[19] Exhibit US-17, p. 99.

further. The United States reports this product under a different HS code. And, it is decidedly *not* a product that Indian consumers might purchase instead of U.S. CLQs. The United States is not aware of any retail use for MSM that is not processed further, and the use of MSM in further processing is of a different kind than the use of CLQs. MSM is used either in products that are made entirely of MSM, or as a binder for products that include pieces of whole muscle meat such as CLQs.[20] Therefore comparing the EU prices that include it to U.S. prices that do not is not helpful.

13. Instead of relying on the flawed data from Comtrade, or comparing EU export totals that include MSM to U.S. export totals that do not, it would be more appropriate to rely upon evidence of the relevant EU prices, which are substantially higher than those of U.S. CLQs.[21]

QUESTION 9

> ***Both parties have used the term "processed poultry". To ensure consistency in the use of the terminology could you please provide a description and examples of the types of products which are contained in this category? Can frozen CLQs be transformed into "processed poultry"?***

14. For purposes of this dispute, processed poultry is all poultry sold in India other than that slaughtered and sold at a wet market. This includes both whole dressed chickens and chicken cut into pieces, as well as "processed chicken products, such as frozen chicken burgers, salamis, nuggets, sausages, and tikkas."[22]

15. By this definition, frozen CLQs *are* processed poultry; there is no need for them to be transformed into processed poultry. But, during the meeting with the Arbitrator, India stated a number of times that demand for frozen CLQs would be limited because frozen poultry meat cannot be used in *further processed products*. But the WTO's own experience refutes that assertion. In *United States – Certain Measures Affecting Imports of Poultry from China*, the WTO addressed a situation where the United States shipped frozen chicken to China, where it was processed further and then shipped back to the United States.[23] Similarly, in responding to questions from the panel in *EC – Chicken Cuts*, Brazil explained that "[f]rozen chicken meat

[20] Exhibit US-79.

[21] November 15 Responses, paras. 9–10, Exhibits US-55, US-56.

[22] Exhibit US-14.

[23] Panel Report, *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392/R, adopted 25 October 2010, para. 2.18.

(salted or not) will have to be thawed prior to usage, *be it for direct consumption or for the further processing industry*."[24]

16. Additionally, publicly available documents from the U.S. poultry industry confirm that frozen poultry is used in further processed products. For example, Tyson Foods, Inc. has noted that chicken can be "[d]istributed for further processing" in either "Ice Bulk Pack (fresh) or *Bulk Frozen*" form.[25]

17. These examples confirm that there are no technical or safety limitations on the use of frozen poultry meat in further processed poultry products and that frozen poultry meat is in fact used for processed poultry products.

QUESTION 10

> ***In its closing statement, India referred to 60% of the population being non-vegetarian. However, according to the sample registration system (SRS) baseline survey 2014 released by the registrar general of India, 71% of Indians over the age of 15 are non-vegetarian (source: (http://www.censusindia.gov.in/vital_statistics/BASELINE%20TABLES07062016.pdf).***
>
> ***Can both parties please provide evidence and the year of publication for the statistics on the percentage of vegetarianism in India?***

18. The United States is not aware of a source that is more useful or provides more recent data than the 2014 study cited in the question. The United States notes that India's unsourced estimate is likely too high given the statement in Exhibit IND-13 that India's "population is increasingly converting to a non-vegetarian diet."[26]

19. The United States additionally notes that the prevalence of vegetarianism in India is irrelevant to the model described in the Methodology Paper. That model looks only at the effects of price changes on consumption in the processed poultry sector in India, not the entire population. The processed poultry sector by definition only evaluates the behavior of individuals who are not vegetarian. The model only produces consumption estimates for individuals who are *already consuming poultry*.

[24] *EC – Chicken Cuts (Brazil) (Panel)*, Annex C, p. C-12 (emphasis added).

[25] Exhibit 80 (emphasis added).

[26] Exhibit IND-13 p. 8.

QUESTION 14

Assume for the sake of argument that the Arbitrator agrees with the United States that the level of nullification or impairment will not be static but can vary over time. Assume also that the Arbitrator decides that the future level of nullification and impairment will be made to depend on the magnitude of the gap between the domestic Indian price and the landed price of U.S. CLQs plus the cost of the MFN tariff. (After all, this is the basis of the United States' proposed approach to determining the level of nullification and impairment in the year 2016, an approach which India does not take issue with given that the partial equilibrium model has been used in previous cases.) To determine the level of nullification and impairment in year t + 1, it will suffice to:

- ***Calculate the price gap for year t using information on the Indian wholesale price, U.S. export price, landing cost, cost of transport and applied MFN tariff;***
- ***Calculate the size of the Indian processed/frozen poultry market in year t;***
- ***Calculate the counterfactual volume of imports based on the model and set of parameters (demand and supply elasticities) adopted by the Arbitrator;***
- ***Multiply that volume with the U.S. export price.***

The Arbitrator shall decide on the sources of data for the size of the Indian processed/frozen poultry market, Indian wholesale price, U.S. export price, landing cost, cost of transport, applied MFN tariff and on the values of the parameters based on the submissions and arguments of the parties. The spreadsheet on which these calculations are to be performed could be located in a secure site to which only the parties shall have password-protected access.

We would like to obtain parties' views on this approach and please make sure to address the following questions:

a. Would the United States still prefer a variable to a fixed award?

b. Would India still prefer a fixed to a variable award?

c. What are the drawbacks to this approach whether from a theoretical or practical perspective?

20. As noted during the meeting on November 30, 2017, the United States does not object to this approach in theory. But, the United States believes that this approach is not feasible. The largest obstacle to successfully executing this approach is the substantial challenges related to identifying the size of the Indian processed poultry market in a timely manner for a particular

year. The United States is not aware of any source that would accurately analyze the size of that market in any given year, and that would update that figure on a timely basis for each year going forward. This would be necessary to show the growth of the market from year t to year t+1. Because of this challenge, it would be more appropriate to use an annual growth rate of 15%, which is consistent with industry estimates.[27]

21. But even aside from that issue, it would not be possible to evaluate the alternative option without additional information about the specific sources that would be consulted when performing the proposed calculation each year. For example, how would the "cost of transport" be determined? Would this require the United States to produce the actual transportation cost data for specific countries that are on file with the U.S. Federal Maritime Commission? Or would some other source be used? Would U.S. Census statistics be used to determine the price of U.S. CLQs, or something else? Would the Murga Market price be used for Indian CLQs? Without more clarity around these sourcing questions, it is difficult to evaluate the feasibility and appropriateness of the proposed alternative option.

QUESTION 15

> ***Assume for the sake of argument that the Arbitrator agrees with the United States that the level of nullification or impairment will not be static but can vary over time. Further assume that the Arbitrator decides that the level of nullification and impairment in year t + 1 will be determined as follows:***
>
> ***Level of nullification and impairment$_{t+1}$ = Level of nullification and impairment$_t$ * (1+ GDP Growth$_t$).***
>
> ***The GDP growth rate to be used will be the official estimates provided by the Government of India (i.e., Chief Statistician of India (CSI)). We would like to obtain parties' views on this approach and please make sure to address the following questions:***
>
> ***a. Would the United States still prefer a variable to a fixed award?***
>
> ***b. Would India still prefer a fixed to a variable award?***
>
> ***c. What are the drawbacks to this approach whether from a theoretical or practical perspective?***

22. It is appropriate to determine the level of suspension of concessions using a formula that estimates an annual 15% growth rate in India's processed poultry industry. A substantial number

[27] Exhibits US-81 through US-84.

of sources have predicted that annual growth of the processed poultry industry will be 15%, if not more.[28] This anticipated growth is greater than India's GDP growth over the past several years, and the annual 15% rate may underestimate the actual growth in the processed poultry market. There is no reason to think that India's future GDP growth would serve as a reliable proxy for growth in its processed poultry industry.[29]

23. But using a formula where the growth rate is India's GDP growth rate would, in theory, be preferable to determining the level of suspension of concessions that is fixed and does not account for the growth in the Indian processed poultry market. As the United States has explained, a fixed level of suspension of concessions would not be equivalent to the level of nullification or impairment in future years, contrary to the requirement in Article 22.4 of the DSU.

24. It is not possible, however, to evaluate this alternative formula in practice without additional information about the source of GDP growth that would be used. Specifically, would the growth rate be calculated using nominal GDP or real GDP? Would the growth rate be calculated in rupees, or some other currency, such as U.S. dollars? The United States notes that the International Monetary Fund ("IMF") provides a readily accessible database, which reports annual nominal GDP estimates for India in rupees.[30] This may be a better, more accurate source to use when determining the Indian GDP growth rate in year t.

QUESTION 16

India has provided estimates of the cost of transporting chilled chicken and frozen meat from Savannah, Georgia to the Indian port of Nhava Sheva using quotes provided by Indian shipping companies (see Exhibits IND-45 and IND-46).

a) Would the United States please provide its views on this evidence.

25. The United States does not believe that the exhibits provided by India accurately reflect shipping costs. As an initial matter, chicken or poultry moving from the United States to Asia is going to be "frozen," not "chilled" as stated in Exhibit IND-45. Similar, frozen chicken is almost always shipped -18 degrees Celsius, which is contrary to the statement in Exhibit IND-46 that "temperature should be -8 degree [sic]." As a result, it is unclear whether the quoted rates

[28] Exhibit US-14, Exhibits 81–84.

[29] *See also* November 15 Responses, para. 42.

[30] IMF World Economic Outlook Database, available at: http://www.imf.org/external/pubs/ft/weo/2017/02/weodata/index.aspx

accurately reflect the cost of shipping frozen CLQs at the proper temperature, or whether there was some miscommunication with the shipping agents.

26. Assuming that there was no miscommunication, and that the exhibits reflect a quote to ship frozen CLQs with the correct parameters, it is important to note that these quotes came from shipping agents and not the shipping lines themselves. It is unclear the extent to which the agents have increased the price to take profit and other expenses into account. By contrast, the contracts included in Exhibit US-63 are directly between shipping lines and exporters.

27. The exhibits also fail to provide additional information necessary to evaluate their accuracy. Specifically, the letters 1) do not appear to reflect volume discounts that would be available to US exporters, 2) do not disclose whether the goods would have to be transshipped, and 3) do not disclose whether the carrier would re-use the reefer container, leading to substantial cost savings. Without this information, there is no reason to believe that the rates included in these letters would be representative of costs incurred by U.S. exporters seeking to ship large quantities of frozen CLQs to India.

QUESTION 17

Would the size or scale of the U.S. companies exporting frozen CLQ affect the freight rates they would be charged by shipping companies? Would the difference in size of the Indian and Chinese Taipei market of processed or frozen poultry affect the freight rates that would be faced by exporters to these destinations?

28. Shippers provide volume discounts. If anything, volume discounts for shipping to India would be larger than those for shipping to Chinese Taipei. In 2016, the United States exported over 58,000 metric tons of CLQs to Chinese Taipei.[31] But the model estimates that in the absence of the import ban India will import over 650,000 metric tons of CLQs.

QUESTION 18

Neither party has raised the cost of distribution and logistics in India — the cost of moving imported CLQs from the port to final consumers. How important an issue is this in explaining the price gap? Would the parties be able to provide evidence on the magnitude of these costs?

29. The United States is not aware of any publicly available source that would provide an accurate estimate of the internal transportation costs in India from the port to final consumers,

[31] Exhibit US-85.

more than likely because India's WTO-inconsistent import ban has prevented the import of poultry into the country for more than a decade.

30. But such a value is not relevant to calculating the level of nullification or impairment. There is nothing to suggest that not taking these costs into account has any impact on "the price gap," since there is nothing to suggest that there are any substantial internal transportation costs included in the domestic CLQ price used in the model. The question asks about transportation costs "from the port to final consumers." This would be similar to the cost "from the farmer to final consumers" for domestically produced poultry. But the prices from the Delhi Murga Market used in the model are wholesale prices, and (in theory) only incorporate a portion of those costs, from farmer to wholesaler. The United States is not aware of any estimate of that potential component of the wholesale price, nor is it aware of any evidence that would suggest the cost of transportation from farmer to wholesaler is substantial enough to affect meaningfully the wholesale price of domestic CLQs. Additionally, the United States is not aware of any source that would provide a reliable estimate of the additional cost of transportation from wholesaler to final consumer. Estimating that additional cost is necessary if the Arbitrator wishes to accurately compare the cost of domestic CLQ in the hands of the final consumer to the cost of imported CLQ in the hands of the final consumer.

QUESTION 26

Please provide data on the total volume of exports of CLQ in calendar year 2016 and during the period of July 2016-June 2017.

31. The requested data on the total volume of U.S. CLQ exports are provided in Exhibit US-86.

QUESTION 27

In the U.S. Responses to Advance Questions, the U.S. argues that frozen CLQs compete with other segments of the processed poultry market in India and that consumers would switch from consuming other processed poultry products to frozen CLQs. Please provide evidence to support this claim.

Furthermore, the choice of domestic price in India should correspond to the market definition - if the U.S. insists on enlarging the market definition to entire processed poultry segment, is the price for fresh CLQs still the appropriate price to be used in the economic model?

32. Indian consumers would consume U.S. frozen CLQs instead of other processed poultry products because of the substantial price advantage U.S. CLQs would have over domestic poultry. As discussed in the Methodology Paper, U.S. CLQs are 40% less expensive than their

Indian counterpart.[32] The experiences of Haiti and Cameroon, discussed at length in the U.S. Written Submission, indicate that a substantial number of Indian households will purchase U.S. CLQs notwithstanding any stated preference for domestic poultry.[33] Quick service restaurants, institutional food preparers such as hotels, and other enterprises that purchase chicken would choose the lower-cost U.S. CLQs to lower input costs and increase sales,[34] as "whatever the firm's output, the bundle of inputs must be chosen to minimize the cost of producing that output."[35] To produce their prepared foods and meals, these sellers use various inputs including chicken. When the price of one of their inputs falls, producing prepared foods is more profitable and these institutions will produce more.

33. Furthermore, U.S. CLQs will compete with *all* poultry in India. Indeed, Exhibit IND-47, which India attached to its opening statement, suggests that India's poultry consumption patterns will mirror those of neighboring Sri Lanka, which "'only produces processed chicken.'" But the United States limited its analysis of the nullification or impairment resulting from India's WTO-inconsistent import ban to the processed poultry sector to account for a number of issues, including challenges regarding data collection, the purported Indian consumer preference for poultry slaughtered and purchased at a wet market, vegetarianism, and the logistical issues associated with transporting processed poultry throughout India.

34. Further, for the reasons discussed in Paragraph 5, *supra*, it is proper to use the price of fresh Indian CLQs as the domestic price in the model. In any event, the price of fresh domestic chicken legs is either equivalent to *or less than* the price of frozen domestic chicken legs. *See* Paragraphs 2 through 4, *supra*.

QUESTION 28

Please refer to paragraph 5 of the Opening Statement of India. Is it possible to find evidence or case studies to show that U.S. exporters will be able to supply the expected expansion in Indian import demand for CLQs calculated by the U.S. in its partial equilibrium model in the short run (during the one year period following removal of the measure at issue)?

35. U.S. CLQ exports to Russia during the 2000s are evidence that U.S. exporters will be able to supply the expected expansion in Indian import demand for CLQs that the United States

[32] Methodology Paper, paras. 36–40, Apps. B and C.

[33] U.S. Written Submission, paras. 46–49.

[34] Exhibit US-72.

[35] Exhibit US-73.

calculated with the partial equilibrium model. As noted in Paragraphs 5 and 10 of the November 15 Responses, and Exhibit US-57, in the mid-2000s annual CLQ exports from the United States to Russia averaged 730,000 metric tons. Starting in 2001, CLQ exports to Russia exceeded 500,000 metric tons each year.[36] In 2001, Russia lowered the value added tax and import duty on CLQs, and customs procedures became more transparent. As a result, U.S. exports of CLQs increased from 281,940 metric tons in 2000 to 624,487 metric tons in 2001.[37] The U.S. poultry industry has only become more efficient in the intervening years, so there is no reason to believe that it could not immediately meet the projected Indian demand of over 600,000 metric tons.

36. Similarly, U.S. producers have demonstrated an ability to quickly capitalize on market opportunities. For example, the United States was excluded from the South African poultry market between 2001 and 2015. The United States re-entered the market in 2016, but subject to a tariff rate quote of 65,000 metric tons.[38] Through the first nine months of 2017, the United States had nearly exceeded that quota, supplying 33.2% of the South African import market despite the competitive disadvantage.[39]

37. In any event, nothing would prevent U.S. industry from shifting supplies from other countries to India. The United States exported nearly 1.4 million metric tons of CLQs in 2016,[40] and a portion of that could be used to satisfy demand of Indian consumers.

QUESTION 29

In paragraph 11 of U.S. Responses to Advance Questions, the United States cites an academic study (US-58) that gives a range of estimates of the U.S. export supply elasticity of between 4.5 and 9.3.

a) Are these estimates of the short-run or long-run U.S. export supply elasticity?

38. The study uses monthly data with a three-month moving average to estimate the supply elasticities and therefore the elasticities should be considered short-run estimates. Long-run estimates would be based on lower-frequency data (*e.g.* annual data), which reflects the

[36] Exhibits US-51, US-57.

[37] Exhibit US-85.

[38] Exhibit US-90.

[39] Exhibit US-91.

[40] Exhibit US-55.

additional time that suppliers would have to adjust to price changes. This suggests that the short-run elasticities estimated in US-58 may underestimate the actual long-run supply elasticities.

b) How relevant are these estimates for the Indian market? As these elasticities were estimated for U.S. CLQ exports to the Chinese market, how does the size of U.S. exports to China during the period of the study compare with the expected expansion in Indian import demand for CLQs?

39. The supply elasticities estimated in Exhibit US-58 should be highly relevant to the Indian market. Supply elasticities are concerned with characteristics of the supplying market, rather than the destination market. As a result, supply elasticities depend only on how the supplying market (i.e. the United States) will respond to price changes. The characteristics of the consuming market are not relevant to this analysis of supply. Importantly, frozen CLQs are a homogenous good, so there should be no difference between the willingness of U.S. producers to adjust production in response to price changes in China or price changes in India. The United States is not aware of any other academic studies that estimate the U.S. supply elasticity of CLQs, but, in theory, estimates for other countries should be similar.

40. U.S. CLQ exports to China during the period of study were relatively smaller than the expected expansion in Indian import demand.[41] But that disparity should not impact the willingness and ability of U.S. producers to meet the expected increase in demand from India. As noted in Paragraph 35, *supra*, in the recent past the United States has exported substantially larger volumes of CLQs than it did in 2016.[42] This demonstrates that the U.S. poultry industry has excess capacity that could meet the anticipated new demand from India. But, even aside from this, U.S. producers could still meet the demand by shifting exports from existing markets to the newly opened Indian market. The estimate of supply elasticity in Exhibit US-58 is primarily dependent upon the overall level of U.S. CLQs on the world market and not the specific bilateral amount sent to China. Again, since frozen CLQs are a homogeneous product and are actively traded on global markets, the U.S. could easily shift CLQs from any foreign market consistent with its total aggregate volume from 2016, which was nearly 1.4 million metric tons. Such switching would be unnecessary, however, given the demonstrated capacity of the U.S. poultry industry that is well above the 2016 export totals.

QUESTION 31

Based on the U.S. Census' foreign trade statistics (Exhibits IND-43, IND-44 and IND-44), the lowest average cost of freight and insurance for imports of frozen

[41] Annual U.S. CLQ exports to China and Hong Kong from 2005 through 2009 averaged over 62,000 metric tons. Exhibit US-85.

[42] Exhibit US-85.

meat to the U.S. in 2016 was $0.079/kg from Ireland followed by $0.097/kg from Chile, and most major exporters had the average cost between $0.100/kg and $0.150/kg . Furthermore, the cost of exports tends to be higher for exports from the U.S. to less developed economies than vice versa. Based on this information, how can one reason that the proposed cost of exports from the U.S. to India ($0.085/kg) is at the lowest bound of the range of costs of exports to the United States?

41. Shipping costs from the United States to India would be relatively low, at 8.5 cents per kilogram, including insurance. This figure is supported both by the publicly available website worldfreightrates.com[43] and by actual rates paid by U.S. exports for shipping frozen animal products to Chinese Taipei.[44]

42. Costs to ship certain products from other countries to the United States do not necessarily represent what the costs would be to ship from the United States to India. Distance between origin and destination is not the sole factor in shipping costs. Two other key determinates are (1) whether the cargo must be routed through an intermediate port—a process known as "transshipping;" and (2) whether the refrigerated containers used to ship the product to the destination port can be re-used for product leaving the destination port. If, consistent with the counterfactual, India is importing over 600,000 metric tons of CLQs from the United States, both of these factors would suggest relatively low shipping costs.

43. Transshipment increases transportation costs because the containers being transshipped must be unloaded from one vessel, stored, and then loaded on to a second vessel. Transshipment of perishable items such as CLQs is particularly difficult given that the refrigerated containers must be connected to a power source and constantly monitored to maintain refrigeration during storage.

44. While a number of factors affect whether goods are transshipped, an important one is volume. Many times goods are transshipped to allow carriers to consolidate a number of small loads into one large load and therefore maximize the volume of product being delivered to a given port. Here, if India is importing over 50,000 metric tons of CLQs each month, it is unlikely that those would be transshipped through an intermediate port, and, as a result, total transportation costs would be lowered.

45. Similarly, when transporting perishable goods in refrigerated containers, the ability to re-use that container at the destination port can lower the cost of transport. While the exact savings is difficult to estimate given the number of factors involved, it may be up to $500 per container. Refrigerated containers are very expensive and typically cannot accommodate forklifts or other

[43] Written Submission of the United States of America, para. 60.

[44] Exhibit US-63.

heavy devices as they could damage the unit, so they can be used only for perishable items, as opposed to general use. India is a leading exporter of bovine meat—shipping out over 1.2 million metric tons in 2016.[45] It is highly likely that refrigerated containers bringing frozen U.S. CLQs into India could then be used to ship bovine meat out of India. This would lower shipping costs.

46. This is why the United States chose Chinese Taipei as a comparison market for shipping costs. Like India would without its ban, Chinese Taipei imports a substantial volume of frozen CLQs, facilitating direct shipments from the United States without the need to transship. And, like India, Chinese Taipei exports a substantial volume of perishable animal products and therefore can reuse the refrigerated containers that are used to ship U.S. CLQs.

QUESTION 32

The United States has argued that the cost of shipping frozen CLQ to Chinese Taipei is a good proxy for the shipping cost to India. In this regard, it has provided copies of service contracts executed between U.S. exporters and shipping companies containing information on the cost of shipping frozen CLQs from US ports to Chinese Taipei (see Exhibit US-63).

a) Given that the destination of concern — India — is more distant from the U.S. than Chinese Taipei, would the United States be able to provide evidence bearing on the additional cost required in order to make up the difference?

47. India is not necessarily more distant from the U.S. than Chinese Taipei. Distance depends on direction. The shipper can sail through the Suez Canal and reach India first, or it can sail through the Panama Canal and reach Chinese Taipei first. As a result, the relative distances of the countries from the United States should not matter for purposes of shipping, especially since, as discussed in Paragraphs 42 through 45, *supra*, distance between ports is not the only determining factor of shipping costs.

b) In connection with this, would not the shipping cost from the U.S. to Karachi, Pakistan (which is included in Exhibit US-63) be a better proxy for the freight cost to India?

48. As discussed in the November 15 Responses, Chinese Taipei is an appropriate proxy for shipping costs that will be incurred when U.S. producers begin supplying frozen CLQs to India.[46] Chinese Taipei is geographically close to India, and, like India, has a domestic market

[45] Exhibit US-87.

[46] November 15 Responses, para. 48.

that would compete with U.S. poultry and that exports frozen agricultural products that would facilitate container reuse.

49. While Chinese Taipei is an appropriate proxy for shipping costs to India, Pakistan might also be a proxy given its geographical proximity to India.

50. [[**********.[47]]] This is consistent with the $0.085 shipping cost used in the Methodology Paper. Given that Pakistan is an imperfect proxy for the expected shipping costs, as discussed immediately above, it is appropriate to use the $0.085 estimate for shipping costs included in the Methodology Paper.

c) Are there other factors besides distance which might affect the freight costs?

51. As discussed in Paragraphs 42 through 45, *supra*, whether goods must be transshipped, and whether refrigerated containers can be re-used by the destination port, are key components of shipping costs.

QUESTION 33

Please provide data on maritime shipping tonnage (and value of carried cargo) of US-India and US-Chinese Taipei trade in 2016.

52. The requested data on maritime shipping tonnage are provided in Exhibit US-89.

[47] Exhibit US-88.