UNITED STATES – LAWS, REGULATIONS AND METHODOLOGY FOR CALCULATING DUMPING MARGINS (“ZEROING”)

RECOURSE TO ARTICLE 22.6 OF THE DSU BY THE UNITED STATES

(DS294)

Written Submission of the United States

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Table of Contents

I. INTRODUCTION. 1

II. PROCEDURAL BACKGROUND. 2
A. The EU's Original Claims. 2
B. Panel Proceedings. 2
C. Appellate Body Proceedings. 3
D. Implementation of the DSB Recommendations and Rulings and Further Actions 3
E. Article 21.5 Panel.. 6
F. Recourse to Article 22.6. 9

III. CALCULATION OF THE LEVEL OF NULLIFICATION OR IMPAIRMENT. 9
A. Article 22 of the DSU Requires that the Proposed Level of Suspension Be Equivalent to the Level of Nullification or Impairment 10
B. The Calculation Necessary to Accurately State the Level of Nullification or Impairment.. 12
1. Overview of Calculation. 12
2. Measures at Issue on Prospective Basis.. 13
3. Price Change as Measured by Section 129 Determinations.. 15
(a) Calculation of Change in AD Duty Rates. 15
(b) Calculation of Price Change Given Change in AD Duty Rates.. . 17
4. U.S. Import Demand Elasticities Based on World Bank Data.. 18
5. Actual 2007-09 Import Values Based on U.S. Customs and Border Protection Data.. 19
(a) CBP Data Measures the Actual Value of Trade Subject to Antidumping Duties under the Relevant Measures 20
(b) Average Trade Values from 2007-09 Reasonably Estimate the Value of Trade. 20
6. Counterfactual Level of Nullification or Impairment. 21

IV. THE LEVEL OF SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS PROPOSED BY THE EU GROSSLY EXCEEDS THE LEVEL OF NULLIFICATION OR IMPAIRMENT. 22
A. The EU's Calculation Erroneously Includes Measures That Have Been Revoked and Measures for which There Were No Findings of WTO Inconsistency with Respect to Administrative Reviews.. 23
1. The Measures at Issue in Cases 1 and 6 Are Revoked, and Cannot Serve as a Basis for Suspension of Concessions. 24
2. The United States is in Full Compliance with the Findings in Cases 7, 8, and 14.. 25
B. The EU's Calculations Overestimate the Trade Value of Merchandise 26
1. Use of Trade Data Based on HTS Codes Overestimates Trade Values Compared to the Scope of the Antidumping Orders. 26

2. The EU's Calculation Inappropriately Bases Its Calculations Solely on Trade Data for the Year 2007 29
3. Actual Entry Data for the Relevant Antidumping Orders Shows that the EU Trade Data is Overbroad. 29

C. Methodology 1 Contains Additional Deficiencies 30
1. The EU’s Calculation Erroneously Assumes that the Elimination of Zeroing Would Result in the Elimination of All Antidumping Duties in All Cases. 30
2. The EU's Calculation Erroneously Assumes that the EU's Trade Values Should Have Grown at the Same Rates as those of the Rest of the World 30
3. The EU's Inclusion of the Reverse Charge is Inappropriate. 31
4. The EU's Calculation of Trade Effects in Methodology 2 Confirms that the Level of Suspension of Concessions or Other Obligations Proposed in Methodology 1 is Excessive. 32

D. Methodology 2 Contains Additional Deficiencies 32
1. The EU’s Calculation Erroneously Assumes that the Elimination of Zeroing Would Result in the Elimination of All Antidumping Duties in All Cases. 32
(a) The EU Erroneously Calculates an *Ad Valorem* Tariff Based upon All Antidumping Duty Rates Applied, Not the Amount, if Any, Due to Zeroing 33
(b) The EU Erroneously Calculates Nullification or Impairment Based upon All Antidumping Duty Rates Applied, Not the Amount, if Any, Due to Zeroing 34
(c) By Combining Actual Trade and “Trade Loss” Figures, the EU’s Calculation Further Overstates the Level of Nullification or Impairment. 36
2. The EU’s Use of GTAP Elasticities Overstates the Trade Effect. 36
3. The EU’s Use of the Dumping Duties in the Trade Loss Formula Is Incorrect. 37

V. THE EU SHOULD NOT BE AUTHORIZED TO SUSPEND CONCESSIONS OR OTHER OBLIGATIONS UNDER THE DSU. 37

A. The EU’s Request to Suspend DSU Concessions or Other Obligations is Not Based on DSB Recommendations and Rulings and Therefore Violates Article 22 40

B. The EU’s Request to Suspend DSU Concessions or Other Obligations Violates Article 22.3. 41
1. The EU’s Article 22.2 Request Fails to Meet the Principles and Procedures of Article 22.3(a). 42
2. The EU’s Article 22.2 Request Fails to Meet the Principles and Procedures of Article 22.3(b), (c), and (e). 42

VI. THE AUTHORIZED LEVEL OF SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS SHOULD SPECIFIED IN TERMS OF INDIVIDUAL AD ORDERS SUBJECT TO THIS DISPUTE. 45

Table of Exhibits 46

Table of Reports

Short Form	**Full Citation**
EC – Bananas (Article 22.6) (Ecuador)	Arbitrator Award, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under DSU Article 22.6*, WT/DS27/ARB/ECU, circulated 24 March 2000
EC – Bananas (Article 22.6) (US)	Arbitrator Award, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under DSU Article 22.6*, WT/DS27/ARB, circulated 9 April 1999
EC – Hormones (Article 22.6) (US)	Arbitrator Award, *European Communities – Measures Concerning Meat and Meat Products (Hormones) – Recourse to Arbitration by the European Communities*, WT/DS26/ARB, circulated 12 July 1999
US – 1916 Act (Article 22.6)	Arbitrator Award, *United States – Anti-Dumping Act of 1916 – Recourse to Arbitration by the United States under DSU Article 22.6*, WT/DS136/ARB, circulated 24 February 2004
US – CDSOA (Article 22.6) (EC)	Arbitrator Award, *United States – Continued Dumping and Subsidy Offset Act of 2000 – Recourse to Arbitration by the United States under DSU Article 22.6*, WT/DS217/ARB/EEC, circulated 31 August 2004
US – Gambling (Article 22.6)	Arbitrator Award, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Recourse to Arbitration under DSU Article 22.6*, WT/DS285/ARB, circulated 21 December 2007
US – Section 110(5) (Article 25)	Arbitrator Award, *United States – Section 110(5) of the US Copyright Act – Recourse to Arbitration under DSU Article 25*, WT/DS160/ARB25/1, circulated 9 November 2001
US – Upland Cotton (Articles 22.6 /4.11)	Arbitrator Award, *United States – Subsidies on Upland Cotton – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS267/ARB/1, circulated 31 August 2009
US – Zeroing (EC) (Panel)	Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/R, adopted 9 May 2006, as modified by the Appellate Body Report, WT/DS294/AB/R

US – Zeroing (EC) (AB)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/AB/R, adopted 9 May 2006, and Corr.1
US – Zeroing (EC) (Article 21.5) (Panel)	Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/RW, adopted 11 June 2009, as modified by the Appellate Body Report, WT/DS294/AB/RW
US – Zeroing (EC) (Article 21.5) (AB)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/AB/RW and Corr. 1, adopted 11 June 209

I. INTRODUCTION

1. In proposing a level of suspension of concessions in this dispute, the European Union[1] presents the Arbitrator with two flawed and inconsistent calculations that grossly exceed the level of nullification or impairment.

2. The United States objects to the excessive levels of suspension proposed by the EU in its two methodologies, and will explain in detail below the numerous flaws and erroneous assumptions contained in the EU's two internally inconsistent calculations. Chief among the flaws and erroneous assumptions that pervade the two methodologies are the overestimation of the trade values at issue, the assumption that all dumping margins would be eliminated by the elimination of zeroing, use of an inappropriate set of demand substitution elasticities, and several arbitrary assumptions relating to profit, duty absorption, and the estimated rate of trade growth if zeroing were eliminated.

3. Rather than present a proper counterfactual, in which one would determine what the level of trade would be if the United States eliminated the use of zeroing from its method for calculating dumping margins in the measures at issue, the EU in its two methodologies seeks to derive a value for trade lost as a result of the existence of the dumping orders themselves (regardless of the impact of zeroing on the dumping margins in those orders). To accept the EU's methodologies, the Arbitrator would need to ignore the underlying recommendations and rulings of the DSB in this case and the traditional counterfactual approach to determining a level of nullification or impairment.

4. As an alternative to the erroneous methodologies proffered by the EU, the United States as accurately as possible estimates the trade effects of the measures at issue by means of a counterfactual. This counterfactual (1) examines the actual relevant U.S. imports during the most recent period; and (2) estimates the relevant imports that would exist during the same period if (a) the United States measures were brought into compliance with the DSB recommendations and rulings; (b) the long-term economic adjustments resulting from compliance were reflected; and (c) all other factors were held constant.

5. In the discussion below, the United States first explains the methodology employed to arrive at the level of nullification or impairment and why the approach taken by the United States is preferable. After demonstrating the validity of the level of nullification or impairment calculated using this methodology, the United States explains why the methodologies used by the EU fail to arrive at a reasonable estimate of the level of nullification or impairment. First, the United States details the erroneous assumptions that are common to both EU methodologies. Second, the United States details the individual flaws of each EU methodology.

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[1] For ease of reference the United States will refer to the European Union throughout this submission. Technically, it would be more proper to refer to the European Communities before Dec. 1, 2009 and European Union after.

6. In addition to outlining the reasons that the EU calculations cannot be used to set the level of suspension of concessions, the United States also addresses why the EU should not be authorized to suspend concessions or other obligations under the DSU. Specifically, the United States demonstrates that the EU's request to suspend DSU concessions or other obligations is not based on DSB recommendations and rulings and violates Article 22.3 of the DSU.

7. Finally, the United States proposes a mechanism whereby the level of suspension can be adjusted to account for the revocation of antidumping orders over time to ensure that the level of suspension does not exceed the level nullification or impairment in the future.

II. PROCEDURAL BACKGROUND

8. This Article 22.6 proceeding arises from a challenge made by the EU against the United States concerning the calculation of the margins of dumping in antidumping duty proceedings.

A. The EU's Original Claims

9. The EU challenged U.S. "laws, regulations, administrative procedures, measures and methodologies for determining the dumping margin in original investigations and review investigations" as being inconsistent with the Antidumping Agreement, the GATT 1994, and the Marrakesh Agreement Establishing the World Trade Organization ("Marrakesh Agreement") "as such."[2] The EU also challenged "methodologies and the laws, regulations, administrative procedures and measures" "as applied" in the determinations made in fifteen specific antidumping investigations and sixteen specific administrative reviews.[3]

B. Panel Proceedings

10. On October 31, 2005, the original panel issued its report, finding that Commerce's methodology with respect to the calculation of margins of dumping in investigations was "as such" inconsistent with Article 2.4.2 of the AD Agreement.[4] The panel further found that the United States acted inconsistently with Article 2.4.2 with respect to its determinations in the fifteen antidumping investigations challenged.[5]

11. With respect to the determinations in the sixteen administrative reviews challenged, the panel found that the United States did not act inconsistently with Articles 1, 2.4, 2.4.2, 9.3, 11.1, 11.2 or 18.4 of the AD Agreement, Articles VI:1 or VI:2 of GATT 1994, or Article XVI:4 of the

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[2] EC Panel Request, WT/DS294/7/Rev.1, p. 2.

[3] EC Panel Request, WT/DS294/7/Rev.1, p. 4.

[4] *US – Zeroing (EC) (Panel)*, para. 8.1(c).

[5] *US – Zeroing (EC) (Panel)*, para. 8.1 (a).

Marrakesh Agreement.[6] Similarly, the panel found that Commerce's methodology with respect to the calculation of the margin of dumping in administrative reviews, new shipper reviews, changed circumstances reviews, and sunset reviews was not "as such" inconsistent with the covered agreements.[7]

C. Appellate Body Proceedings

12. The EU appealed the panel's "as such" and "as applied" findings with respect to administrative reviews. The United States appealed the panel's "as such" findings with respect to antidumping investigations. The Appellate Body upheld the panel's finding that Commerce's methodology for determining margins of dumping in investigations was "as such" inconsistent with Article 2.4.2 of the AD Agreement. The Appellate Body reversed the panel's "as applied" finding concerning the determinations in the sixteen administrative reviews, finding that these determinations were inconsistent with Article 9.3 of the AD Agreement and Article VI:2 of GATT 1994.[8] The Appellate Body found that it was unable to complete the analysis of whether Commerce's methodology for calculating margins of dumping in administrative reviews was inconsistent with the AD Agreement, the GATT 1994, or the Marrakesh Agreement, and declined to make an "as such" ruling concerning this methodology.[9] The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on May 9, 2006. The EU and the United States agreed to a reasonable period of time, ending April 9, 2007, for the United States to implement the recommendations and rulings of the DSB.

D. Implementation of the DSB Recommendations and Rulings and Further Actions

13. On December 27, 2006, Commerce announced that it would no longer calculate the margins of dumping in antidumping investigations using comparisons of weighted average normal values and weighted average export prices without providing offsets for sales made at

[6] *US – Zeroing (EC) (Panel)*, paras. 8.1 (d), (e) and (f).

[7] *US – Zeroing (EC) (Panel)*, paras. 8.1 (g) and (h).

[8] *US – Zeroing (EC) (AB)*, para. 263(a)(i).

[9] *US – Zeroing (EC) (AB)*, paras. 263(c) and (g)(ii).

greater than normal value.[10] This modification of Commerce's methodology became effective for all future investigations and those pending before Commerce as of February 22, 2007.[11]

14. On March 1, 2007, Commerce initiated proceedings pursuant to Section 129 of the Uruguay Round Agreements Act[12] covering twelve[13] of the fifteen antidumping investigation determinations found to be inconsistent with the AD Agreement.[14] Commerce announced that in these Section 129 determinations, it intended solely to recalculate the margins of dumping by applying the modification of its calculation methodology described in the December 26, 2006 Federal Register notice.[15]

15. Commerce issued its determinations with respect to eleven of the Section 129 determinations on April 9, 2007.[16] These eleven determinations became effective on April 23, 2007.[17] The determinations resulted in the full revocation of the antidumping duty orders on

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[10] Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77722 (December 27, 2006) (Exhibit US-3).

[11] Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification, 72 Fed. Reg. 3783 (January 26, 2007) (Exhibit US-4).

[12] 19 U.S.C. § 3538.

[13] Commerce revoked the antidumping orders with respect to Certain Cut-to-length Carbon-quality Steel Plate from France (A-427-816), Certain Stainless Steel Sheet and Strip in Coils from France (A-427-814), and Certain Stainless Steel Sheet and Strip in Coils from the United Kingdom (A-412-818). Commerce did not recalculate margins for as to these orders. Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures, 72 Fed. Reg. 9306, 9306 (March 1, 2007) (Exhibit US-5).

[14] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures, 72 Fed. Reg. 9306 (March 1, 2007) (Exhibit US-5).

[15] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures, 72 Fed. Reg. 9306, 9306 (March 1, 2007) (Exhibit US-5).

[16] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25261 (May 4, 2007) (Exhibit US-6).

[17] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25261, 25263 (May 4, 2007)(Exhibit US-6).

Certain Hot-Rolled Carbon Steel Products from the Netherlands and Stainless Steel Wire Rod from Sweden. In addition, the determinations resulted in the partial revocation of the antidumping duty orders on Stainless Steel Bar from France, Stainless Steel Bar from Germany, Stainless Steel Bar from Italy, and Stainless Steel Bar from the United Kingdom with respect to certain individual companies for which Commerce had found *de minimis* margins in the Section 129 determinations.

16. Commerce issued its Section 129 determination with respect to the investigation of Stainless Steel Sheet and Strip in Coils from Italy on August 20, 2007, recalculating the margin of dumping under its modified methodology and declining to address the substance of any of the errors alleged.[18] This Section 129 determination became effective August 31, 2007.[19]

17. With respect to the determinations in the sixteen administrative reviews challenged by the EU, the antidumping duty rates established by those reviews, with the exception of one company, were no longer in effect because they had been superceded by determinations made in later administrative reviews.

18. In 2007, Commerce[20] and the International Trade Commission (ITC)[21] instituted sunset reviews of the antidumping duty orders on Stainless Steel Bar from France, Germany, Italy and the United Kingdom. Pursuant to these sunset reviews, the ITC determined that revocation of the antidumping duty orders "would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time."[22] Accordingly, Commerce revoked these antidumping duty orders effective March 7, 2007[23] and all cash

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[18] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy, 72 Fed. Reg. 54640 (September 26, 2007) (Exhibit US-6).

[19] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy, 72 Fed. Reg. 54640, 54641 (September 26, 2007) (Exhibit US-6).

[20] Initiation of Five-Year ("Sunset") Reviews, 72 Fed. Reg. 4689 (February 1, 2007) (Exhibit US-7).

[21] Stainless Steel Bar From France, Germany, Italy, Korea, and the United Kingdom, 72 Fed. Reg. 4293 (January 30, 2007) (Exhibit US-8).

[22] Stainless Steel Bar From France, Germany, Italy, Korea, and The United Kingdom, 73 Fed. Reg. 5869, 5869 (January 31, 2008) (Exhibit US-9).

[23] Revocation of Antidumping Duty Orders on Stainless Steel Bar From France, Germany, Italy, South Korea, and the United Kingdom and the Countervailing Duty Order on Stainless Steel Bar From Italy, 73 Fed. Reg. 7258 (February 7, 2008) (Exhibit US-10).

deposits on imports made on or after March 7, 2007 were to be refunded. These entries of this merchandise are no longer subject to antidumping duties.[24]

19. On April 24, 2007, the United States announced at a DSB meeting that it had taken all of the steps necessary to implement the DSB's recommendations and rulings.

E. Article 21.5 Panel

20. On September 13, 2007, the EU submitted its request for the establishment of a panel under Article 21.5 of the DSU. On 25 September 2007, the DSB established the Article 21.5 panel. On 30 November 2007, the Director-General established the composition of the Panel by appointing three panelists.

21. The EU made claims in relation to certain of the Section 129 determinations adopted by the United States to implement the recommendations and rulings of the DSB.[25] In addition, the EU challenged subsequent administrative reviews, changed circumstances reviews,[26] and sunset reviews adopted in relation to the 15 original investigations and the 16 administrative reviews at issue in the original proceedings (the "subsequent reviews"),[27] as well as liquidation and assessment instructions and final liquidation of duties resulting from those subsequent reviews.[28] The EU further claimed omissions and deficiencies in the United States' implementation of the DSB's recommendations and rulings.[29]

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[24] Revocation of Antidumping Duty Orders on Stainless Steel Bar From France, Germany, Italy, South Korea, and the United Kingdom and the Countervailing Duty Order on Stainless Steel Bar From Italy, 73 Fed. Reg. 7258 (February 7, 2008)(Exhibit US-10).

[25] See *US - Zeroing (EC) (Panel)*, para. 3.2(a) (referring to Cases 2, 3, 4, 5, and 11).

[26] In this submission, we use the term "changed circumstances review" to describe the review of a final affirmative dumping determination or suspension agreement, as required by Section 751(b) of the Tariff Act. That provision requires Commerce to review a final dumping determination or a suspension agreement based upon a request by an interested party demonstrating that changed circumstances warrant a review of such a determination.

[27] In the Annex to its request for the establishment of a panel under Article 21.5 of the DSU, the EU identified 31 "Cases". In relation to each of these Cases, it also identified reviews subsequent to the 15 original investigations (Cases 1 through 15) and the 16 administrative reviews (Cases 16 through 31) at issue in the original proceedings. For ease of reference, we will use the same numbering system to facilitate identification of the 31 Cases and the various proceedings at issue, as listed in the panel request attached to the Panel Report as Annex A-1, pp. A-7 to A-16. (See Panel Report, footnote 34 to para. 3.1).

[28] See *US - Zeroing (EC) (Panel)*, para. 3.2(b) and (c).

[29] See *US - Zeroing (EC) (Panel)*, para. 3.2(d).

22. Before the panel in the Article 21.5 proceedings, the EU claimed that the United States failed to comply with the recommendations and rulings of the DSB, and acted inconsistently with the covered agreements, when, after the end of the reasonable period of time, the United States:

(a) continued the measures at issue in the original proceedings pursuant to sunset review determinations that relied on antidumping margins calculated with zeroing;
(b) continued to collect antidumping duties and established new cash deposit rates based on zeroing with respect to the measures at issue in the original proceedings and subsequent reviews;
(c) failed to revoke fully the antidumping duty orders underlying the original investigations at issue in the original proceedings; and
(d) continued to collect duties based on zeroing in relation to the 16 administrative reviews at issue in the original proceedings and in subsequent administrative reviews, and continued to rely on margins of dumping calculated with zeroing in sunset reviews subsequent to those administrative reviews.[30]

23. The United States requested the Panel to reject these claims and to find that the United States had fully complied with the DSB's recommendations and rulings in the original proceedings.

24. The Panel Report was circulated to WTO Members on 17 December 2008. The Panel found, *inter alia*, that:

(a) the United States failed to comply with the DSB's recommendations and rulings in the original dispute and has acted inconsistently with the covered agreements by determining, after the end of the reasonable period of time, the amount of antidumping duties to be assessed based on zeroing in the 2004-2005 administrative reviews of Case 1 (Hot Rolled Steel from the Netherlands) and Case 6 (Stainless Steel Wire Rod from Sweden) and by issuing assessment instructions pursuant to those determinations; and
(b) the United States failed to comply with the DSB's recommendations and rulings in the original dispute by continuing to apply cash deposit rates established in the 2000-2001 administrative review in case 31 (Ball Bearings from the United Kingdom) to imports of NSK.[31]

25. Both the United States and the EU appealed certain issues of law and legal interpretations developed in the Panel Report. On May 14, 2009, the Appellate Body, *inter alia*,:

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[30] *US - Zeroing (EC) (Panel)*, para. 4.1(a)-(e).

[31] *US - Zeroing (EC) (Panel)*, para. 9.1.

(a) with respect to Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands (Case 1):
    (i) upheld the Panel's findings that the United States acted inconsistently with the covered agreements in its determination in the 2004-2005 administrative review and in issuing the consequent assessment instructions; and that, as a result of the final results of this administrative review, the United States has failed to comply with the recommendations and rulings of the DSB to bring the original investigation in Case 1 into conformity; and
    (ii) reversed the Panel's finding that the assessment instructions issued on April 16, 2007 and the liquidation instructions issued on April 23, 2007 did not establish that the United States failed to comply with the recommendations and rulings of the DSB to bring the original investigation in Case 1 into conformity with its obligations under the covered agreements by virtue of those instructions;
(b) with respect to Stainless Steel Wire Rod from Sweden (Case 6):
    (i) upheld the Panel's findings, in paragraphs 8.213 and 9.1(b)(i) of the Panel Report, that the United States acted inconsistently with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 in issuing the results of the 2004-2005 administrative review determination on 9 May 2007, as well as the consequential assessment and liquidation instructions; and
    (ii) upheld the Panel's finding that the United States failed to comply with the recommendations and rulings of the DSB to bring the original investigation in Case 6 into conformity;
(c) with respect to Ball Bearings and Parts Thereof from the United Kingdom (Case 31):
    (i) found that the Panel erred in refraining to make a specific finding with respect to the assessment after the end of the reasonable period of time of duty liability for imports from NSK Bearings Europe Ltd. in Case 31; and
    (ii) found further that duties assessed after the end of the reasonable period of time on the basis of cash deposits reflecting zeroing establish a failure by the United States to comply with the recommendations and rulings of the DSB;
(d) with specific respect to Cases 18 through 24 and 27 through 30, was not in a position to complete the analysis in relation to these Cases and declined to rule on whether the Panel did not comply with its duties under Article 11 of the DSU;
(e) with respect to the subsequent sunset reviews:
    (i) found that the sunset review in Certain Pasta from Italy (Case 19) is inconsistent with Article 11.3 of the Anti-Dumping Agreement and results

in failure by the United States to comply with the recommendations and rulings of the DSB; and

(ii) found that the sunset reviews in Stainless Steel Sheet and Strip in Coils from Germany (Case 28), Ball Bearings and Parts Thereof from France (Case 29), Ball Bearings and Parts Thereof from Italy (Case 30), and Ball Bearings and Parts Thereof from the United Kingdom (Case 31) are inconsistent with Article 11.3 of the Anti-Dumping Agreement and result in failure by the United States to comply with the recommendations and rulings of the DSB.

26. On June, 11 2009, the DSB adopted the Appellate Body Report[32] and the Panel Report[33] as modified by the Appellate Body Report in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"): Recourse to Article 21.5 of the DSU by the European Communities.*[34]

F. Recourse to Article 22.6

27. On January 29, 2010, the EU filed its request for authorization from the DBS to suspend the application of concessions or other obligations under the covered agreements pursuant to Article 22.2 of the DSU in this dispute. On February 12, 2010, the United States filed its objection to the level of suspension of concessions or other obligations proposed by the EU. The U.S. objection also claimed that the EU's proposal does not follow the principles and procedures set forth in the DSU. The U.S. objection automatically resulted in the matter being referred to this arbitration.

III. CALCULATION OF THE LEVEL OF NULLIFICATION OR IMPAIRMENT

28. Pursuant to Article 22.6 of the DSU, the United States objects to the EU's proposed level of suspension because it is not equivalent to the level of nullification or impairment from the measures at issue. In its Methodology Paper, the EU properly recognizes that the level of nullification or impairment may be calculated based on a "counterfactual," but both of the EU's proposed methodologies fail to present a proper counterfactual. Moreover, the methodologies offered suffer from incorrect assumptions. These incorrect assumptions result in vastly greater calculations of nullification or impairment than the EU can legitimately claim. We discuss the

[32] *US - Zeroing (EC) (Article 21.5) (AB)*

[33] *US - Zeroing (EC) (Article 21.5) (Panel)*

[34] WT/DS294/33, 8 June 2009.

methodological errors and incorrect assumptions in the EU's calculations in Section IV of this submission.

29. As an alternative to the erroneous EU calculations, in this submission the United States provides a calculation of the level of nullification or impairment. In order to do this, the United States first discusses the requirement of Article 22 of the DSU that the proposed level of suspension be equivalent to the level of nullification or impairment. Next, the United States discusses the proper methodological approach to calculating the level of nullification or impairment, which is a counterfactual. A counterfactual estimates the level of trade the complaining party would have were the measures brought into conformity with the DSB recommendations and rulings, in this case by not using "zeroing"in the calculation underlying the measures at issue. By calculating what level of trade the complaining party would have had, a counterfactual approach provides the most reasonable estimate of the level of nullification or impairment.

30. The calculation provided in this submission determines the factors that may be subject to change in the absence of zeroing. The starting point for the calculation is the measures at issue. In this case, the three factors that are necessary to reasonably estimate the counterfactual are: (1) the difference, if zeroing is removed, in the antidumping duty rates for the products to which those measures apply; (2) the impact of the difference in the antidumping duty rates on the price of those products, using import demand elasticities for those products; and (3) any decrease in the value of trade as a result of the price impact for each of those products. For each of these factors, the calculation uses reasonable assumptions given the available data.

31. The calculation applies these factors to estimate the level of trade that would occur in the absence of zeroing. The additional amount of trade in the counterfactual is the level of nullification or impairment. Because it is methodologically sound and uses reasonable assumptions, the calculation provided in this submission reasonably estimates the level of nullification or impairment.

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

32. Pursuant to Article 22.7 of the DSU, the task of the Arbitrator is to determine whether the level of suspension of concessions or other obligations is "equivalent" to the level of nullification or impairment. Arbitrators in the past have recognized that "equivalence" is an exacting standard:

> [T]he ordinary meaning of the word "*equivalence*" is "equal in value, significance or meaning", "having the same effect", "having the same relative position or function",

"corresponding to", "something equal in value or worth", also "something tantamount or virtually identical."[35]

33. The starting point in any analysis of a suspension proposal is to determine the extent to which a Member's failure to bring its WTO-inconsistent measure into conformity with the DSB's recommendations and rulings nullifies or impairs benefits accruing to the complaining party.

34. Thus, an analysis of the level of nullification or impairment must focus on the "benefit" allegedly nullified or impaired as a result of the infringement or breach found by the DSB.[36] 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.'"[37] As the arbitrator found in *EC - Hormones*, "[W]e need to guard against claims of lost opportunities where the causal link with the inconsistent [measure] is less than apparent, i.e. where exports are allegedly foregone not because of the [inconsistent measure] but due to other circumstances."[38]

35. In previous proceedings, the arbitrator has compared the level of trade for the complaining party under the WTO-inconsistent measure to the complaining party's level of trade where the Member has brought the WTO-inconsistent measure into conformity. 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.

[35] *EC – Bananas (Article 21.5) (US)*, para. 4.1.

[36] The concept of nullification or impairment derives from Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). Article XXIII provides: "If any contracting party should consider that *any benefit* accruing to it directly or indirectly under this Agreement *is being nullified or impaired ... as a result of ... the failure of another contracting party to carry out its obligations* under this Agreement ... the matter may be referred to the CONTRACTING PARTIES." For example in *US – Section 110(5),* the arbitrators agreed with the U.S. position that the "nullification-or-impairment analysis must focus on what benefits the EC would receive if the measure at issue – Section 110(5)(B) – were modified in accordance with the DSB recommendation." *See US – Section 110(5) (Article 25),* U.S. Oral Statement to the Arbitrators (September 5, 2001), para. 22; *US – Section 110(5) (Article 25)*, paras. 3.20-3.35.

[37] *US – 1916 Act (Article 22)*, para. 6.10; *see also* paras. 5.54 and 5.69 ("In determining the level of nullification or impairment ... we need to rely, as much as possible, on credible, factual, and verifiable information. We cannot base any such estimates on speculation. ... We are of the view that any claim for a deterrent or 'chilling effect' by the European Communities in the present case would be too speculative, and too remote.").

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

36. Other Article 22.6 arbitrators have recognized that a counterfactual is the appropriate method to calculate a level of nullification or impairment.[39] An analysis of the actual effect of the measures at issue is thus necessary.

37. Accordingly, the United States agrees with the basic concept – as expressed in the EU's Methodology Paper – that the level of nullification or impairment may be calculated based on a "counterfactual," under which the Member concerned is assumed to have adopted measures in compliance with the DSB recommendations and rulings. In its methodology paper, the EU offers two different approaches, resulting in two different levels of nullification or impairment. Neither of these is a proper counterfactual. Moreover, both of the EU's counterfactuals are fatally flawed. The incorrect assumptions and methodological flaws in the EU's calculations result in vastly inflated calculations of nullification or impairment. The EU's proposed level of suspension therefore vastly exceeds any level of nullification or impairment that it could legitimately claim.

38. In order to remedy the incorrect assumptions in the EU's approaches, the United States has provided a calculation of the level of nullification or impairment. This calculation corrects the incorrect assumptions in the EU's calculation and reasonably estimates the level of nullification or impairment. An explanation of this calculation follows.

B. The Calculation Necessary to Accurately State the Level of Nullification or Impairment

1. Overview of Calculation

39. The calculation estimates the trade effects of the measures at issue by means of a counterfactual. The proper analysis to be applied is a "comparative static analysis." To apply the analysis to calculate the amount of nullification or impairment, one must: (1) examine the actual relevant U.S. imports during the most recent period; and (2) estimate the relevant imports that would exist during the same period if (a) the U.S. measures were brought into compliance with DSB recommendations and rulings; (b) the long-term economic adjustments resulting from compliance were reflected; and (c) all other factors were held constant.

40. The estimate in (2) is the counterfactual, which is the estimated volume of relevant imports that would exist absent zeroing following the assumptions described above. The level of

[39] *See*, *e.g.*, *US - Gambling (Article 22.6)*, para. 3.14 ("the use of a counterfactual to assess the level of exports that would have accrued to Antigua had the United States complied with the rulings, constitutes an appropriate basis for assessing the level of nullification or impairment of benefits accruing . . . ."); *US – CDSOA (Article 22.6) (EC)*, para. 4.22; *EC – Hormones (Article 22.6) (Canada)*, para. 37, and *EC – Bananas III (Article 22.6) (US)*, para. 7.1.

nullification or impairment is the difference between the actual value of EU exports to the United States and the estimated value in the counterfactual.

41. The starting point for the counterfactual is the measures subject to the DSB recommendations and rulings that currently cause nullification or impairment. As discussed below, some of the measures the DSB found not to be in compliance have either been revoked or brought into compliance, and consequently no longer cause nullification or impairment. The United States discusses below which measures have been revoked or brought into WTO compliance, and thus no longer result in nullification or impairment.

42. Measurement of trade effects requires empirical application of the conceptual methodology. To perform such an empirical application, the United States generally considers the availability of the relevant data, knowledge of relevant behavioral parameters, and the types of trade measures and obligations involved. When possible, this analysis is performed through formal economic modeling practices (*i.e.*, development and use of a mathematical model based on the principles of standard economic theory). When formal modeling is not possible, a more descriptive analysis is pursued, reflecting as much as possible the underlying economic analytical structure that would have been reflected in a more formal model.

43. In this proceeding, the United States' empirical application involves: (1) the price change from the effect of zeroing on AD duty rates; (2) U.S. import demand elasticities; and (3) trade value data from 2007-09 showing the actual value of goods imported under the relevant AD orders.

44. To calculate the level of nullification or impairment, the United States uses the following formula for each measure at issue in this dispute:

*Level of nullification or impairment = price change of product * U.S. import demand elasticity * trade subjected to antidumping (AD) duties with zeroing*

2. Measures at Issue on Prospective Basis

45. The analysis begins with the measures at issue. Each measure corresponds to a different AD order, *e.g.*, *Certain Pasta from Italy*. Because the analysis is prospective, measures that have been revoked or have been brought into compliance are not relevant to the calculation of the counterfactual. If a measure has been revoked, then it would not be imposing any AD duties, and the absence or existence of zeroing would have no impact on trade. If a measure has already been brought into compliance with the DSB recommendations and rulings, then it is not currently causing nullification or impairment. As a result, neither category of measure results in nullification or impairment.

46. Some of the measures in the EU's methodology paper have been revoked or brought into compliance with the DSB recommendations and rulings. The calculation accordingly excludes those measures.

47. The EU claims that the following measures are causing nullification or impairment for purposes of this arbitration:

- A-475-826 Certain Cut-to-Length Carbon Quality Steel Plate from Italy (Case 14)
- A-421-807 Certain Hot-Rolled Carbon Steel from the Netherlands (Case 1)
- A-401-806 Stainless Steel Wire Rod from Sweden (Case 6)
- A-469-807 Stainless Steel Wire Rod from Spain (Case 7)
- A-475-820 Stainless Steel Wire Rod from Italy (Case 8)
- A-423-808 Stainless Steel Plate in Coils from Belgium (Cases 9 and 18)
- A-475-818 Certain Pasta from Italy (Cases, 15, 19 and 20)
- A-475-824 Stainless Steel Sheet and Strip in Coils from Italy (Cases 11, 21 and 22)
- A-475-703 Granular Polytetrafluoenthylene from Italy (Cases 23-24)
- A-428-825 Stainless Steel Sheet and Strip in Coils from Germany (Cases 27-28)
- A-427-801 Ball Bearings from France (Case 29)
- A-475-801 Ball Bearings from Italy (Case 30)
- A-412-801 Ball Bearings from the United Kingdom (Case 31)

48. Pursuant to Article 22.2 of the DSU, the authorization of suspension of concessions or other obligations may be requested where a Member has failed to bring a measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time. Article 22.8 of the DSU makes clear that "suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed." Thus, the level of nullification or impairment includes only those measures that were found to be inconsistent with the covered agreements and that the United States has not brought into compliance with the DSB recommendations and rulings or otherwise removed.

49. As we demonstrate below, several of the measures enumerated by the EU have either been brought into compliance (Cases 7, 8, and 14) or have been removed entirely (Cases 1 and 6), and are thus not properly included within the level of nullification or impairment. However, the United States does not contest the inclusion of the following measures:[40]

[40] Additionally, Cases 9, 11, and 15 refer to the investigations in Stainless Steel Plate in Coils from Belgium, Stainless Steel Sheet and Strip in Coils from Italy, and Pasta from Italy. As the United States has complied with the DSB's recommendations and rulings relating to these investigations by making adjustments through the Section 129 process, the United States does not consider Cases 9, 11, and 15 to be relevant here. Regardless, the inclusion or exclusion of these three case numbers does not impact the United States' calculations below. Each of the antidumping orders corresponding in these cases is included in the calculation.

- A-423-808 Stainless Steel Plate in Coils from Belgium (Case 18)
- A-475-818 Certain Pasta from Italy (Case 19-20)
- A-475-824 Stainless Steel Sheet and Strip in Coils from Italy (Cases 21-22)
- A-475-703 Granular Polytetrafluoenthylene from Italy (Cases 23-24)
- A-428-825 Stainless Steel Sheet and Strip in Coils from Germany (Cases 27-28)
- A-427-801 Ball Bearings from France (Case 29)
- A-475-801 Ball Bearings from Italy (Case 30)
- A-412-801 Ball Bearings from the United Kingdom (Case 31)

3. Price Change as Measured by Section 129 Determinations

50. After determining the relevant measures, the next element of the calculation is the price change, if any, of the product subject to each of those measures in the absence of zeroing. The price change due to zeroing is a necessary component of the calculation because the change in price would trigger the change, if any, in the level of trade.

51. The first step in estimating the price change due to zeroing is to estimate the percentage-point change in existing AD duty rates, if any, due to zeroing. The change in AD duty rates in the counterfactual is the difference between what AD duty rates would be without zeroing and the existing AD duty rates for the same product. This is the beginning point for determining the change in price.

52. The amount of effect of zeroing on AD duty rates, if any, would depend on whether the calculation of the existing AD duty rates involved significant "zeroed" sales, *i.e.*, sales with negative dumping margins that were treated as zero rather than negative in the calculation of the antidumping duty rate. If there are relatively few sales that were "zeroed" in the calculation of the existing AD duty rates, then the removal of zeroing would have little or no effect on AD duty rates. If a product has little or no change in AD margins due to the removal of zeroing, then there would be correspondingly little impact on price.

53. After estimating the change in AD duty rates, if any, due to the effect of zeroing, the calculation applies this change to determine the change in price. The calculation uses the percentage-point change in the AD duty rate to estimate the percentage change in price. Below we explain how the calculation estimates (1) the change in AD duty rates; and (2) the change in price given the change in AD duty rates.

(a) Calculation of Change in AD Duty Rates

54. The U.S. calculation estimates the percentage-point change in AD duty margins due to zeroing by drawing on determinations performed by Commerce pursuant to Section 129 of the

Uruguay Round Agreements Act (URAA).[41] These determinations are relevant to calculating the level of nullification or impairment because they estimate the effect of the removal of zeroing in several AD investigations, including some of the AD orders at issue in this arbitration.

55. Pursuant to Section 129, Commerce recalculated the margin of dumping from an investigation without zeroing.[42] As a result, each Section 129 determination shows the margin of dumping with zeroing and without zeroing. In many cases, these Section 129 determinations are recalculations with respect to the same AD orders at issue in this dispute. For AD orders where Commerce performed a Section 129 determination with respect to the same order, the calculation uses the difference in AD duty rates as a result of the Section 129 determination as a proxy for the difference in the AD duty rate absent zeroing. For AD orders where there was no corresponding Section 129 determination, the calculation uses a simple average of the differences in the rates as a result of the Section 129 determinations for all products as a proxy for the difference in the AD duty rate absent zeroing.

56. For each of the twelve challenged AD investigations in this dispute, the United States recalculated the margin of dumping without applying a zeroing methodology following the adoption of the DSB's recommendations and rulings.[43] During each of these re-calculation proceedings, Commerce issued preliminary results, received and responded to comments from interested parties, and published its results in the U.S. Federal Register. Similar Section 129 determinations have also been completed as to several other AD investigations at issue in other disputes where the dumping margins were recalculated.[44]

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[41] *See* Uruguay Round Agreements Act of 1994, P.L. 103-465, Section 129, *codified at* 19 U.S.C. § 3538 (Exhibit US-11), and accompanying Statement of Administrative Action, H.R. 103-826(I), at 37.

[42] *See* Section 129 Determinations, attached as Exhibit US-6.

[43] Commerce issued its determinations with respect to eleven of the Section 129 determinations on April 9, 2007. Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25261 (May 4, 2007); Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy, 72 Fed. Reg. 54640 (Sept. 26, 2007). (Exhibit US-6).

[44] Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act Regarding the Antidumping Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan, 73 Fed. Reg. 29109 (May 20, 2008); Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador, 72 Fed. Reg. 48257 (Aug. 23, 2007); Implementation of the Findings of the WTO Panel in United States -- Antidumping Measure on Shrimp from Thailand; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand, 74 Fed. Reg. 5638 (Jan. 30, 2009); Implementation of the Findings of the WTO Panel in United States -- Final Antidumping Measures on

57. The Section 129 determinations represent recalculations of numerous dumping margins with offsets granted to bring those investigations into compliance with the DSB's recommendations and rulings in various disputes. Accordingly, the Section 129 determinations represent a reasonable proxy for the effect of zeroing on antidumping duty rates. The results of these determinations reliably estimate the impact of zeroing, and ensure that any suspension of concessions is equivalent to, and not in excess of, the level of nullification or impairment for the measures found to be inconsistent.

58. The calculation estimates the effect of zeroing as to each order in question by relying on the completed Section 129 determinations. For orders where Commerce completed a Section 129 determination, (*i.e.*, *Stainless Steel Plate in Coils from Belgium, Certain Pasta from Italy*, *Stainless Steel Sheet and Strip in Coils from Italy*), the calculation applies the simple average of the calculated change in dumping margins from the Section 129 determinations for the same product. For example, if a product had individual AD duty rates for two different suppliers, the average percentage-point change in AD duty rates for the two suppliers would be the estimated change in AD duty rates due to zeroing.

59. For cases where there was no Section 129 determination for the specific product at issue, (*i.e.*, *Stainless Steel Sheet and Strip in Coils from Germany, Granular Polytetrafluoenthylene from Italy* and the orders on ball bearings), to estimate the impact of the removal of zeroing, the calculations takes the simple average of the margin differences between the original margin with zeroing and the recalculated margin without zeroing across orders where a Section 129 determination has been completed.[45] This simple average of determinations was the most appropriate choice of methodology given the lack of availability of Section 129 determinations for the specific products under these orders.

60. In determining the average change in dumping margins, the calculation excludes the "all others" rate because that rate is a weighted average of those firms with individually calculated rates, rather than a calculation of a specific importer's margin.

(b) Calculation of Price Change Given Change in AD Duty Rates

61. After determining the effect of zeroing on AD duty rates, it is necessary to determine the effect on prices from the reduced AD duty rates. The calculation does this by removing the effect

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Stainless Steel from Mexico: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act, 74 Fed. Reg. 19527 (Apr. 29, 2009); Purified Carboxymethylcellulose from the Netherlands (available on Commerce's official website: http://ia.ita.doc.gov/download/section129/full-129-index.html); Purified Carboxymethylcellulose from Sweden (available on Commerce's official website: http://ia.ita.doc.gov/download/section129/full-129-index.html); Purified Carboxymethylcellulose from Finland (available on Commerce's official website: http://ia.ita.doc.gov/download/section129/full-129-index.html); Chlorinated Isocyanurates from Spain (available on Commerce's official website: http://ia.ita.doc.gov/download/section129/full-129-index.html). (Exhibit US-6)

[45] *See* Exhibit US-12.

of the reduced AD duty rates from the original price of the product, which included the AD duty paid by the importer. When the AD duties change, the percentage change in the price paid by a U.S. importer is equal to the change in duties divided by the original price of the good (including the duty).

62. For example, if the price of a hypothetical product was $1, with a tariff rate of 100 percent, the price to the U.S. importer would be $2. If the tariff were then removed, thus causing the price of the good to return to $1, the percentage change in price would not be 100 percent, which would imply that the product becomes free, but rather 50 percent.

63. After determining the percentage change in duty rate by the method described above, the calculation estimates the percentage change in price by the following formula:

$$\textit{Price change} = \frac{\textit{(change in margin)}}{\textit{(1 + original margin)}}$$

64. The change in AD margins due to zeroing may result in little or no change to the price of a given product for several reasons. For products with a low existing AD duty rate, the amount of antidumping duties may be a negligible portion of the overall price of the product. In such a case, *e.g.*, a product with a cost of $1000 and an AD margin of one percent, the portion of the product's price attributable to zeroing would be very small, and any reduction in the AD margin would not significantly impact the product's price. Similarly, for products where the AD margin does not change significantly due to zeroing, there would be little price change because the change in rates was itself minor.

65. For example, in the case of a hypothetical product with a zeroed duty rate of 15% and a rate of 10% from the corresponding Section 129 determination, the recalculation would work as follows:

$$\textit{Change in duty rate} = 15\% - 10\% = 5\%$$

$$\textit{Price change} = \frac{-.05}{(1+.15)} = -4.35\%$$

We summarize the price change for each product at issue in Exhibit US-13.

4. U.S. Import Demand Elasticities Based on World Bank Data

66. The next element of the calculation of the level of nullification or impairment is the U.S. demand response to the change in the EU product price from the change in AD duty rates. The calculation estimates the U.S. demand response by use of U.S. import demand elasticities. In the

calculation, the import demand elasticities estimate the likely increase in import demand for the products in question given the price change.

67. Import demand elasticity figures are normally negative, meaning that an increase in price will result in less imports demanded. If the demand elasticity figure for a given product is between zero and negative one, an increase in price of one percent would result in a less-than-one-percent decrease in the level of trade.

68. To estimate U.S. demand elasticities for the counterfactual, the calculation uses U.S. import demand elasticities estimated by World Bank researchers.[46] This study provided U.S. import demand elasticities at the six-digit Harmonized Tariff Schedule (HTS) line.[47]

69. For some of the products involved in this dispute, multiple six-digit HTS lines apply. In those cases, the United States took a simple average of the different import demand elasticities for those tariff lines. In some cases, the study did not provide import demand elasticities for all of the possible tariff lines under which the product may be imported. For those products, the calculation averages those that were available.

70. To give one example, if a hypothetical product had a zeroed duty rate of 15%, a duty rate of 10% from the corresponding Section 129 determination, and an elasticity of -0.6, the calculation would be as follows:

$$\textit{Price change} = \frac{-.05}{(1+.15)} - 1 = -4.35\%$$

Elasticity = -0.6

Percentage change in volume of trade = 2.61% (-4.35%-0.6)*

We summarize the U.S. import demand elasticities for each product at issue in Exhibits US-14 and US-15.

5. Actual 2007-09 Import Values Based on U.S. Customs and Border Protection Data

71. After determining the impact of price change and elasticity, the next step in the calculation is to determine the actual value of trade subject to zeroing under the relevant measures. Any percentage change in the value of trade resulting from the removal of zeroing

[46] *See* Exhibit US-14, Kee et al., *Import Demand Elasticities and Trade Distortions*

[47] *See* Exhibit US-15, Excel file of U.S. import demand elasticities from Kee et al.

must be applied to the correct baseline level of trade to result in an accurate estimate of the level of trade in the counterfactual. Because the counterfactual compares the level of trade once zeroing is removed to the existing level of trade, the actual volume of trade for the products at issue is crucial to calculating both figures.

72. To determine the volume of trade currently affected by zeroing, the calculation uses actual import values for 2007-09 as provided by U.S. Customs and Border Protection (CBP). Specifically, the calculation uses the statistics provided by CBP listing the value of trade subject to AD duties under the orders at issue. These figures are the best available data for the value of trade affected by the measures at issue.

(a) CBP Data Measures the Actual Value of Trade Subject to Antidumping Duties under the Relevant Measures

73. To measure the value of trade subject to AD duties under the relevant measures, the calculation uses the trade data provided by CBP. CBP is the responsible U.S. agency to apply the cash deposit rates/AD duties as imports enter the United States. CBP maintains a database to record all entries of subject products into the United States. The United States has provided a summary table of the trade subject to antidumping duties at Exhibit US-16.

74. In applying the CBP trade data, the calculation excludes any trade that was not charged an AD duty. This includes: (1) importers who were excluded from the AD order after the initial investigation; (2) importers who had the AD order revoked after administrative reviews (*e.g.*, for being assessed a zero-percent duty rate for three consecutive administrative reviews); and (3) importers who are still subject to the AD order, but who were assessed a zero-percent duty rate in the most recent administrative review. The calculation does not include such trade because AD margins incorporating zeroing do not apply in those situations and therefore no level of nullification or impairment is associated with these trade flows.

75. Another issue involves imports from firms that were subject to adverse facts available (AFA) rates. In most cases, AFA rates are calculated based upon petition rates or other calculations that do not involve zeroing, so imports subject to AFA rates are appropriate to exclude. Nevertheless, the calculation does not exclude trade from firms with AFA rates. Thus, to the extent that there were imports from firms subject to AFA rates, the calculation overstates the trade value affected by zeroing.

(b) Average Trade Values from 2007-09 Reasonably Estimate the Value of Trade

76. To estimate the counterfactual, the calculation uses the trade data for the last three years (2007-2009) to estimate the value of trade. Any percentage change from the effect of zeroing is applied to this baseline level of trade.

77. The average of the years 2007-09 is an appropriate estimate because (1) these years represent the time since the expiration of the reasonable period of time (RPT) on 10 April 2007; (2) the averaging removes distortions from an exceptionally high or low level of trade for a given year; and (3) inclusion of more recent data more reasonably estimates the value of trade.

6. Counterfactual Level of Nullification or Impairment

78. The calculation multiplies the price change, import demand elasticity, and value of trade to calculate the level of nullification or impairment for each of the relevant measures. This calculation, representing all of the steps detailed above, is provided as Exhibit US-13. This estimate includes all of the data used in the calculation, including: (1) inclusion of trade from those measures still in effect; (2) the effect of zeroing on AD duty rates based upon Section 129 determinations; (3) import demand elasticities estimated by the World Bank data; and (4) trade values based upon actual CBP data for the 2007-09 period.

79. The calculation applies this formula by EU member State-product pair and then sums the values for each year. The average of the annual sums estimates the level of nullification or impairment. Both the calculation and data sources are based upon best available information. The calculation thus represents a reasonable estimate of the level of nullification or impairment.

80. To give one example, if a hypothetical product had a zeroed duty rate of 15%, a duty rate of 10% as a result of the corresponding Section 129 determination, an elasticity of 0.6, and an actual trade value of $10 million, the calculation would be as follows:

Change in duty rate = 15% - 10% = 5%

$$\textit{Price change} = \frac{-.05}{(1+.15)} = -4.35\%$$

Elasticity = -0.6

Trade value = $10 million

*Level of nullification or impairment = -4.35% * -0.6 * $10 million = $261,000*

81. The following table shows the results by case and year.

Case(s)		2007	2008	2009
18	S.S. Plate Belgium	$727,853	$181,343	$21,465
19,20	Pasta	$88,386	$94,744	$85,337
21,22	S.S. Sheet Italy	$4,281	$10,904	$54,895
23, 24	Gran Poly Resin	$43,411	$34,500	$2

27, 28	S.S. Sheet Germany	$413,638	$516,914	$273,539
29	Ball Bearings France	$702,976	$751,607	$532,833
30	Ball Bearings Italy	$839,166	$1,126,371	$573,472
31	Ball Bearings U.K.	$487,363	$595,697	$459,492
TOTAL NULLIFICATION OR IMPAIRMENT:		$3,307,075	$3,312,079	$2,001,034

AVERAGE NULLIFICATION OR IMPAIRMENT (2007-2009): $2,873,396

AVERAGE NULLIFICATION OR IMPAIRMENT (2008-2009): $2,656,557

82. Based upon the calculation, the estimated amount of nullification or impairment for the measures at issue is therefore $2,873,396. This estimate is more conservative than the estimate from the most recent two years of data of $2,656,557. Because it accurately reflects the available data and is based on reasonable assumptions as to the effect of zeroing, the calculation provides a reasonable estimate of the level of nullification or impairment.

IV. THE LEVEL OF SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS PROPOSED BY THE EU GROSSLY EXCEEDS THE LEVEL OF NULLIFICATION OR IMPAIRMENT

83. As noted above, the EU offers two alternative methodologies for calculating its level of nullification or impairment. Both methodologies contain critical flaws that result in the overstatement of the estimated trade effects of zeroing and, consequently, a level of suspension that grossly exceeds the level of nullification or impairment. In addition to the inherent flaws of each individual methodology, the EU's two methodologies yield inconsistent results.

84. As discussed below, the EU's calculations both rest on overbroad datasets (both in terms of the cases included and the total trade values estimated to be at issue), an unrepresentative base year of 2007, and the faulty assumption that the elimination of zeroing would result in the elimination of all antidumping duties in all cases. Methodology 1 suffers from the additional flaws of an erroneous assumption that the EU's trade would have grown at the same pace as the rest of the world in the absence of zeroing and the inclusion of an additional amount of nullification or impairment based on the calculation of an arbitrary and inappropriate reverse charge. Further, Methodology 1's level of suspension of concessions is then shown to be excessive by the EU's own calculations in Methodology 2. For its part, in addition to the other flaws, Methodology 2 uses a problematic set of substitution elasticities and then exaggerates the results derived from those substitution elasticities by making unjustified assumptions about their application to the data.

A. The EU's Calculation Erroneously Includes Measures That Have Been Revoked and Measures for which There Were No Findings of WTO Inconsistency with Respect to Administrative Reviews

85. The EU's proposed level of suspension of concessions is excessive insofar as it seeks to impose a countermeasure in relation to the antidumping orders related to Cases 1, 6, 7, 8, and 14. The United States has either brought the measures at issue in these cases into consistency (Cases 7, 8, and 14) or revoked the antidumping orders in their entirety (Cases 1 and 6).[48]

86. Article 22.1 of the DSU states that the suspension of concessions or other obligations are to be applied, "in the event that the recommendations and rulings are not implemented." Furthermore, Article 22.8 of the DSU makes clear that "suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed." As the measures found to be inconsistent have either been revoked or brought into compliance with the covered agreements when Commerce recalculated the margins without zeroing in the Section 129 determinations, no suspension of concessions should be authorized in connection with the antidumping orders at issue in Cases 1, 6, 7, 8 and 14.

87. With regard to Methodology 1, the EU's proposed suspension includes a "reverse charge" for duty amounts that the EU claims are "total annual amounts imposed by the relevant WTO inconsistent measures" including the antidumping orders at issue in Cases 1, 6, 7, 8, and 14, among others.[49] With regard to Methodology 2, the EU has similarly included the antidumping orders at issue in Cases 7, 8, and 14 in its calculation of the *ad valorem* tariff on equivalent trade.[50] The EU's calculations, however, fail to account for the fact that the United States revoked the antidumping orders at issue in Cases 1 and 6 and brought the covered measures at issue in Cases 7, 8, and 14 into compliance with the DSB's recommendations and rulings.

88. An antidumping order cannot form part of the basis for calculation of the level of nullification or impairment due to continued zeroing if either (i) the measures found inconsistent are no longer in effect, or (ii) the challenged investigations were brought into full compliance and there was no finding of non-compliance. Cases 1 and 6 fall into the former category. Cases 7, 8, and 14 fall into the latter.

[48] *Certain Hot-Rolled Carbon Steel from the Netherlands* ("Case 1"); *Stainless Steel Wire Rod from Sweden* ("Case 6"); *Stainless Steel Wire Rod from Spain* ("Case 7"); *Stainless Steel Wire Rod from Italy* ("Case 8"); *Certain Cut-to-Length Carbon Quality Steel Plate from Italy* ("Case 14").

[49] EU Methodology Paper, paras. 28 and 35.

[50] EU Methodology Paper, paras. 33 and 43.

1. The Measures at Issue in Cases 1 and 6 Are Revoked, and Cannot Serve as a Basis for Suspension of Concessions

89. The suspension of concessions is a remedy that is prospective in nature and, according to Article 22.8 of the DSU, is designed to be in place "until such time as the measure found to be inconsistent with a covered agreement has been removed." Consequently the calculation of the level of nullification or impairment should be forward-looking to estimate what the impact of non-compliance will be on future trade. Because the measures at issue in Cases 1 and 6 have been revoked, they cannot be treated as creating ongoing negative trade effects suffered by the EU, and should not be permitted to form the basis of its requested suspension of concessions.

90. The Section 129 determinations completed as to the original investigations in Cases 1 and 6 resulted in the revocation of the underlying antidumping duty orders, effective for all entries on or after April 23, 2007.[51] Thus, as of April 23, 2007, the original antidumping investigations subject to the DSB's recommendations and rulings in cases 1 and 6 were terminated as to all subsequent entries of the merchandise to which the measures previously applied. Additionally, as a result of a subsequent Commerce determination in a sunset review, the revocation of the antidumping duty order in Case 1 became effective as of November 29, 2006.[52] Consequently, with respect to Case 1, any cash deposits made on imports occurring on or after November 29, 2006 have been refunded with interest and no such cash deposit or any other measure has applied to entries made since revocation of the measure.

91. The EU's inclusion of cases 1 and 6 appears to be premised on findings of inconsistency with respect to a measure that applies only to entries made prior to revocation and does not apply to any subsequent entries.[53] An inconsistent measure that has been repealed is not a proper basis for suspension of concessions. In recognizing countermeasures as "an exceptional remedy," the arbitrator in *US – Upland Cotton*, recalled that a complaining Member is only entitled to the remedy of a countermeasure as long as the noncompliant measure continues to exist.[54] These two

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[51] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25261, 25262-63 (May 4, 2007) (Exhibit US-6).

[52] Certain Hot-Rolled Steel Flat Products from the Netherlands: Final Results of the Sunset Review of Antidumping Duty Order and Revocation of the Order, 72 Fed. Reg. 35220, 35221-22 (June 27, 2007). (Exhibit US-17).

[53] *See EC – Zeroing (Article 21.5) (Panel),* paras. 9.1(b)(i) and 8.203-8.213 (Finding the United States did not comply with respect to the 2004-2005 review period in Cases 1 and 6); *EC – Zeroing (Article 21.5) (AB)*, paras. 469 (d)(ii) (Finding the United States did not comply in the issuance of liquidation instructions with respect to the 2005-2006 review period in Case 1).

[54] *US – Upland Cotton (Articles 22.6/4.11)*, para. 3.45.

measures do not, and cannot, have any future trade effects. Therefore, cases 1 and 6 are not properly included in the calculation of the EU's alleged countermeasures.

2. The United States is in Full Compliance with the Findings in Cases 7, 8, and 14

92. As noted above, Article 22.8 of the DSU provides that "suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed." This means that any suspension of concessions or other obligations may remain in place only until the inconsistent measure has been removed or brought into compliance with the DSB's recommendations and rulings.

93. With respect to Cases 7, 8, and 14, the DSB's recommendations and rulings from the original dispute settlement proceeding concerned only the original antidumping investigations carried out by Commerce. Accordingly, in its Section 129 determinations, Commerce recalculated the dumping margins for the investigations to which those recommendations and rulings applied – without using the zeroing methodology.[55] The results from Commerce's Section 129 determinations applied from April 23, 2007 onwards,[56] and several continue to be in effect.[57]

94. For each of these cases, there was no finding of noncompliance, despite the EU's compliance challenges to subsequent reviews under these orders. In *US – Upland Cotton,* the

[55] Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25261 (May 4, 2007) (Exhibit US-6). (As a result of the 129 determinations, in Case 7, the margins for both Roldan S.A. and the "all others" decreased from 4.76 percent to 2.71 percent. For Case 8, the margins for Cogne Acciai Speciali S.r.l., and the "all others" would be decreased from 12.73 percent to 11.25%. In Case 14, the margins for Palini and Bertoli S.p.A. and "all others" decreased from 7.85% to 7.64%, while ILVA S.p.A. was excluded from the order.)

[56] *See EC – Zeroing (Article 21.5) (AB),* para. 232.("[t]he recalculation without zeroing replaced the effects of the cash deposit rates calculated with zeroing in previous administrative reviews . . ."); *see also* Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. at 25264 (Exhibit US-6) ("With respect to Stainless Steel Wire Rod from Spain,. . . [t]he section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate."; "With respect to Stainless Steel Wire Rod from Italy,. . .[t]he section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate."; "With respect to Certain Cut-To Length Carbon-Quality Steel Plate Products from Italy,. . .[t]he section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.")

[57] The "all others" rate in cases 7 and 8, as well as the rate recalculated for Cogne Acciai Speciali S.r.l. in Case 8 continue to be in effect.

arbitrator specifically declined to award compensation where there was no finding of inconsistency, despite the complaining Member's request for such a finding.[58] With respect to cases 7, 8, and 14, all administrative reviews that the EU challenged in the compliance proceeding were completed prior to the end of the RPT.[59] During the compliance proceeding, neither the panel nor the Appellate Body made any findings of inconsistency as to reviews completed prior to the end of the RPT.[60]

95. The suspension of concessions is available as a limited, temporary remedy to the extent compliance has not been achieved.[61] The United States fully complied with the DSB recommendations and rulings when it recalculated the investigation margins in Cases 7, 8, and 14 without zeroing, and there has been no further finding of noncompliance with respect to these cases. For these reasons, regardless of the methodology for calculating suspensions of concessions, the EU cannot include in its level of nullification or impairment Cases 7, 8, and 14.

B. The EU's Calculations Overestimate the Trade Value of Merchandise

96. The EU's calculations overstate the trade value at issue in three ways: (1) the HTS subheadings used to generate trade value data are much broader than the scope of merchandise subject to the antidumping orders, (2) the trade value data includes imports of subject merchandise that is not subject to a zeroed antidumping duty rate, and (3) the EU's calculation erroneously is based solely on 2007 data.

1. Use of Trade Data Based on HTS Codes Overestimates Trade Values Compared to the Scope of the Antidumping Orders

97. The EU used the USITC Interactive Tariff and Trade DataWeb by reference to the U.S. Harmonized Tariff Schedule (HTSUS) as the source for its trade data. The EU obtained the trade values used in its calculations by reference to the HTSUS subheadings that include the subject merchandise. In so doing, the EU captures a significant amount of merchandise that should not

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[58] S*ee US – Upland Cotton (Articles 22.6/4.11)*, para. 3.42.

[59] In the Compliance proceeding, the EC challenged one subsequent administrative review in Case 7: 1998-1999 Review (66 Fed. Reg. 10988 (Feb. 21, 2001), and 3 sunset reviews: Case 7, 69 Fed. Reg. 50167 (Aug. 13, 2004); Case 8, 69 Fed. Reg. 50167 (Aug. 13, 2004); Case 14, 70 Fed. Reg. 72607 (Dec. 6, 2005). *See* EC Annex in *EC-Zeroing (Article 21.5)(Panel)*.

[60] *See EC – Zeroing (Article 21.5) (Panel),* para. 8.174 (Finding any definitive duty determination made after the end of the RPT must be consistent with the DSB's recommendations and rulings.); *EC – Zeroing (Article 21.5) (AB),* para. 232 ("To the extent that the effects of the administrative and sunset reviews excluded from the Panel's terms of reference were replaced with those of a subsequent Section 129 determination in which zeroing was not applied, those subsequent reviews would generally would not have the necessary link in terms of effects, . . . with the recommendations and rulings of the DSB, so as to fall within the [compliance] Panel's terms of reference.").

[61] *US – Upland Cotton (Articles 22.6/4.11)*, para. 3.45.

be considered when determining the possible trade effects on merchandise subject to a particular antidumping order.

98. Although Commerce provides relevant HTSUS subcategories in its scope descriptions for customs purposes, and for convenience, it makes clear that the *written descriptions* – not HTS subcategories – define the scope of an antidumping order.[62] This is the case because HTSUS subheadings are not tailored to the merchandise covered by antidumping orders. While subject merchandise is "included" and "categorized" under particular HTSUS subheadings, it does not follow that all products properly categorized under the same HTSUS subheading are subject to the antidumping order.[63] Indeed, there are many instances in which both subject and non-subject merchandise are both covered by the same HTSUS subheadings.

99. The broad nature of HTSUS subheadings is demonstrated by the fact that most of the scope descriptions in the antidumping orders at issue here exclude products that would otherwise be found under the applicable HTSUS subheading. As a result, the relevant HTSUS subheadings are generally broader than the merchandise specifically included by the scope definition of a particular order. For example, the antidumping order on pasta does not cover certain organic and gluten-free pastas, as well as pasta in packages of more than five pounds four ounces.[64] Yet, HTSUS 1902.19.20 draws no such distinctions between the covered and non-covered pasta. Similarly, the scope of stainless steel sheet and strip in coils' orders exclude merchandise contained in their scope descriptions, such as, sheet and strip that is cut-to-length, plate, flat-wire

[62] See, e.g., Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 71 Fed. Reg. 74897 (Dec. 13, 2006) (Exhibit US-18) ("Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive."); Similar or identical language can be found in the scope descriptions in the most recently published segments of the orders at issue: Notice of Rescission of Antidumping Duty Antidumping Review: Stainless Steel Sheet and Strip in Coils From Italy, 70 Fed. Reg. 76775 (Dec. 28, 2005) (Exhibit US-19); Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 Fed. Reg. 44819 (Aug. 31, 2009) (Exhibit US-20); Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Administrative Review, 74 Fed. Reg. 14519 (Mar. 31, 2009) (Exhibit US-21); Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review, 75 Fed. Reg. 10464, 10465 (Mar. 8, 2010) (Exhibit US-22).

[63] *See e.g.,* Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Administrative Review, 74 Fed. Reg. 14519 (Mar. 31, 2009)(Exhibit US-21) ("During the period covered by this review, such merchandise was *classified under* item number 3904.61.00.") (emphasis supplied); Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 71 Fed. Reg. 74897 (Dec. 13, 2006)(Exhibit US-18) ("The merchandise subject to this order is currently *classifiable under* . . . (HTSUS) at subheadings . . .) (emphasis supplied).

[64] *See* Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review, 75 Fed. Reg.10464, 10465 (Mar. 8, 2010) (Exhibit US-22).

and razor blade steel – merchandise that would be otherwise covered by the HTSUS subheadings.[65]

100. There are additional instances in the orders at issue where Commerce has revoked the antidumping order solely with respect to individual producers/exporters subject to the antidumping duty orders. In such cases, entries from firms importing merchandise classifiable under the enumerated HTSUS subheadings, that would otherwise be subject to the antidumping duty order, are not subject to any dumping duty, much less a margin that contains zeroing. For instance, numerous firms have been excluded from the order on Pasta from Italy (Cases 19 and 20), and now import subject merchandise free of duties.[66] The HTSUS subheadings do not distinguish between producers/exporters subject to the order versus those that are not.

101. Finally, it is incorrect to assume that imports from all producers/exporters under an antidumping order are necessarily subject to zeroed antidumping duty rates. For example, because most rates based on adverse facts available do not contain zeroing, any producer/exporter subject to an adverse facts available rate that was derived from the highest margin alleged in the petition or an producer's/exporter's calculated margin was not affected by the application of zeroing. There is no way to break out the importations made by these producers/exporters from those whose merchandise continues to be subject to zeroed antidumping duty rates.

102. For these reasons, the EU's sole reliance on HTSUS import data, as opposed to case-specific trade data, results in a gross overstatement of the trade value subject to the orders at

[65] Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 71 Fed. Reg. 74897 (Dec. 13, 2006)(Exhibit US-18; Notice of Rescission of Antidumping Duty Antidumping Review: Stainless Steel Sheet and Strip in Coils From Italy, 70 Fed. Reg. 76775 (Dec. 28, 2005)(Exhibit US-23). For additional examples of scope exclusions, *see also,* Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Administrative Review, 74 Fed. Reg. 14519 (Mar. 31, 2009)(Exhibit US-21)("The order excludes PTFE dispersions in water and fine powders."); Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 Fed. Reg. 44819 (Aug. 31, 2009), (Exhibit US-20) and accompanying scope memo incorporated by reference.

[66] Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 Fed. Reg. 77852, 77854 (Dec. 13, 2000) (Exhibit US-23) (DeCecco was excluded from the order); Notice of Amendment of Final Determination of Sales of Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy, 66 Fed. Reg. 65889 (Dec. 21, 2001) (Exhibit US-24)(Tamma Industrie Alinmentarie and Delverde are excluded from the order); Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta from Italy, 67 Fed. Reg. 300. 301-302 (Jan. 3, 2002) (Exhibit US-25)(Puglisi and Corex are excluded from the order); Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 Fed. Reg. 6832, 6833 (Feb. 9, 2005)(Exhibit US-26) (Ferrara and Lensi were excluded from the order); Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 Fed. Reg. 71464, (Nov. 29, 2005)(Exhibit US-27) (Pallante was excluded from the order).

issue in this case. It is simply not true that all, or even most, of the trade value reported under a particular HTSUS subheading listed in the scope of an antidumping duty order is necessarily subject to the order.

2. The EU's Calculation Inappropriately Bases Its Calculations Solely on Trade Data for the Year 2007

103. The EU selected 2007 as its base year for calculating trade loss. In so doing, the EU ignores two years of more recent publically available data (2008 and 2009). While 2007 may have been the year that bridged the end of the reasonable period of time to comply with the original panel's recommendations and rulings, using the single year 2007 is not representative of the potential effects going forward to the EU. Trade values can vary substantially from one year to the next. This is particularly so in the uncertain economic and trade environment that has persisted since 2007. A multi-year time period would better take into account market and trade fluctuations.

104. For this reason, the United States employed a 3-year period for its calculations. This period of time corresponds to the period of time after the RPT. The task of the Arbitrator is to determine the level of suspension permitted based on the findings of the compliance panel and, in this case, due to the dynamics of this case, the Arbitrator will be making its determination over 3 years after the end of the reasonable period of time. Arbitrators in past proceedings have taken similar approaches that use multi-year time periods, whether in projections of several years for a subsidy or in the use of formulas.[67] It therefore makes sense that the Arbitrator use actual data of the period following the end of the reasonable period of time to provide more information about the likely trade effects to the EU.

105. Furthermore, the matter was only referred to arbitration on February 12, 2010, so it follows that the Arbitrator would not be relying on data for a limited period that pre-dated the arbitration to such an extent.

3. Actual Entry Data for the Relevant Antidumping Orders Shows that the EU Trade Data is Overbroad

106. The United States presents at Exhibit 16 the actual import data for the subject merchandise in each of these cases as collected by Customs. These data contain only those values of merchandise for which Customs collected antidumping duties or cash deposits. A comparison of the two shows that the publically available data based on HTS subheadings grossly overstates the 2007 trade value at issue in this proceeding.

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[67] *US – CDSOA (Article 22.6); US – 1916 Act (Article 22.6).*

C. Methodology 1 Contains Additional Deficiencies

1. The EU's Calculation Erroneously Assumes that the Elimination of Zeroing Would Result in the Elimination of All Antidumping Duties in All Cases

107. In addition to the flaws discussed above, the EU's calculation is predicated upon the erroneous assumption that elimination of zeroing would result in the elimination of all antidumping duties in all cases. The impact of zeroing on dumping margins does not depend on the use of the methodology itself, but rather the extent to which export prices are not less than normal value for some of the comparisons being made as part of the dumping margin calculation. The EU thus cannot support its implicit assumption that removal of zeroing would automatically result in the removal of all AD duty rates.

108. Also belying this faulty assumption are the actual results of the Section 129 determinations. Of the 50 dumping margins recalculated without zeroing, including recalculated all others" rates, only 13 became zero or *de minimis* as a result of the recalculation. The remaining dumping margins remained above *de minimis*, despite the removal of the zeroing methodology from the calculation. Indeed, seven margins were unchanged as result of the recalculation, and eight others were minimally impacted, with 0.3% or less change. The recalculated rates thus show that the effect of removing zeroing is much smaller than the 100 percent assumption in the EU's calculation – and is, in many cases, negligible.

109. The elimination of zeroing would not result in the elimination of all antidumping duties, and in the cases of many orders would result in a slight reduction, if any, in the antidumping duties to be applied. The EU's calculation thus overstates the level of nullification or impairment.

2. The EU's Calculation Erroneously Assumes that the EU's Trade Values Should Have Grown at the Same Rates as those of the Rest of the World

110. In creating its counterfactual level of trade in Methodology I, the EU assumes that the EU trade volumes should have grown at the same rate as those of the rest of the world. There are several problems with this assumption: (1) it fails to account for the shifting of supply in the rest of the world away from EU suppliers due to changes in taste or new entrants into the market, (2) it ignores the diversion of EU supply to third countries due to the antidumping orders, (3) it ignores the continued application of the antidumping orders even in the absence of zeroing, and (4) it results in numerical inconsistencies between counterfactual growth and real world growth. As a result, the rest of the world's trade growth to the United States is not an appropriate metric.

111. The rest of the world's trade is influenced by the fact that dumping orders exist against some EU suppliers. Importers are likely to shift sources once antidumping cases commence. Therefore, rest of world trade growth is likely to not only reflects increases in demand due to increased consumption but also increases in demand from importers seeking alternatives to EU suppliers.

112. The EU's approach also negates the fact the EU was found to be dumping. As the United States has already demonstrated, the discontinued use of zeroing would not generally eliminate findings of dumping by EU producers. Since the antidumping orders in these cases would likely have remained in place against EU producers, the level of trade for the EU is not likely to have grown similarly to the rest of the world.

113. This approach also provides spurious results. For example, for Certain Stainless Steel Plate in Coil from Belgium, the rest of world trade compounded annual growth rate was 4.43%, implying that in 2007, imports from Belgium should have been $23,873. In fact, however, their imports were $28,537. Thus, by the EU's calculations, the discipline of importing under an antidumping duty with zeroing has been a boon for the EU.

114. For these reasons, relying on rest of world trade growth is not an appropriate method to create the counterfactual to determine trade loss.

3. The EU's Inclusion of the Reverse Charge is Inappropriate

115. As part of its calculation for the "trade loss" (basket 2), the EU includes additional trade loss associated with lost profits (at a robust 20% profit rate) from the EU's partial absorption of 5 percent of the duties paid on actual 2007 trade. The EU is claiming that the occurrence of duty absorption means that EU firms have decided to lessen the trade effect of the antidumping duties by partially paying the duties themselves. The EU appears to be attempting to capture the additional trade that occurred from this absorption and claim it as additional trade loss. The EU has provided no justification for the level of duty absorption and profit rate used in its analysis. Moreover, the EU has provided no evidence whatsoever to support its claims in this regard.

116. Instead, the United States and the Arbitrator are expected to accept this claim and the EU calculation at face value. Indeed questions raised regarding the seemingly arbitrary values put forth by the EU are anticipated by the EU's proffering a second set of unsubstantiated values for duty absorption and profit. The EU states that if either the United States challenges this estimate or the Arbitrator modifies the calculation, the absorption rate should be 50 percent and the profit rate 10 percent.[68]

[68] EU Methodology Paper, footnote 35.

117. This form of alternative argument underscores the arbitrary nature of the values employed in the EU's calculations. The replacement of the 5 percent absorption rate with 50 percent and the replacement of the 20 percent profit rate with 10 percent results in an alternative reverse charge that is 20 times greater than the reverse charge proposed in the first instance.

118. This reverse charge further overstates the "trade loss" by including cases 1, 6, 7, 8, and 14. As explained above, the antidumping orders underlying Cases 1 and 6 have been revoked. Therefore, these cases will no longer provide any on-going loss to the EU. Similarly, with respect to Cases 7, 8, and 14, the challenged investigations were brought into full compliance with the DSB's recommendations and rulings and there were no findings of non-compliance with respect to these cases in the Article 21.5 proceedings.

4. The EU's Calculation of Trade Effects in Methodology 2 Confirms that the Level of Suspension of Concessions or Other Obligations Proposed in Methodology 1 is Excessive

119. As discussed in detail below in the critique of Methodology 2, the EU in its Methodology 2 calculates that the level of EU trade absent the zeroed antidumping duties would be $475.016 million and the trade value with the zeroed antidumping duties in place would be $281.352 million. This implies that the actual trade lost according to this methodology is $193.664 million. This figure is far lower than the EU's "trade loss estimate" of $298.650 Million in Methodology 1.

120. Moreover, the EU's proffer of a $193.664 million trade loss in Methodology 2 demonstrates the excessive results of Methodology 1. The Arbitrator should reject Methodology 1.

D. Methodology 2 Contains Additional Deficiencies

1. The EU's Calculation Erroneously Assumes that the Elimination of Zeroing Would Result in the Elimination of All Antidumping Duties in All Cases

121. The EU's calculation in Methodology 2, as is its calculation in Methodology 1, is predicated upon the erroneous assumption that elimination of zeroing would result in the elimination of all antidumping duties in all cases. As we have demonstrated above, elimination of zeroing would not result in the elimination of all antidumping duties, and in the case of many orders would result in a slight reduction, if any, in the antidumping duties to be applied. The EU's calculation thus overstates the level of nullification or impairment.

122. The EU has failed to present a counterfactual amount of the level of nullification or impairment due to the elimination of zeroing. The EU makes no attempt to determine what the

change in antidumping duty rates in effect would have been absent zeroing. Instead, the EU's calculation proceeds from the erroneous assumption that the elimination of zeroing would in turn eliminate all antidumping duties.

123. The DSB recommendations and rulings in this case addressed Commerce's use of zeroing in its calculation of dumping margins in investigations, administrative reviews, new shipper reviews, changed circumstances reviews, and sunset reviews in several measures. The DSB recommendations and rulings did not require the United States to eliminate the antidumping duties in their entirety. Thus, the appropriate inquiry in this arbitration is not to determine the impact of antidumping duties overall in the cases at issue in this dispute. Rather, the appropriate inquiry is the impact of the use of zeroing on the AD duties applied in those cases. By failing to make a distinction between the amount of AD duties attributable to the use of zeroing and the impact of the full level of AD duties applied to each case, the EU has failed to calculate the level of nullification or impairment.

(a) The EU Erroneously Calculates an *Ad Valorem* Tariff Based upon All Antidumping Duty Rates Applied, Not the Amount, if Any, Due to Zeroing

124. To calculate the *ad valorem* tariff, the EU seeks to take a weighted average of the rates for each applicable measure. The EU first takes the arithmetical average of the antidumping duty rates applicable on April 10, 2007[69] for each measure the EU identifies as relevant (i.e., Cases 7, 8, 9, 11, 14, 15, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, and 31).[70] The EU then takes a weighted average of those duty rates by multiplying each by the fraction of 2007 trade value of that product divided by total 2007 trade value for all measures.[71] The EU then sums these weighted averages to derive an *ad valorem* tariff of 12.08% percent applicable across all the measures and products to be subject to the countermeasure.[72]

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[69] As an initial matter, the EU provides no justification for the selection of April 10, 2007 as the relevant date for calculating the average applicable dumping margins. The date is not representative of the prospective situation. However, in any event, the actual rates are not the issue, but rather the change in the rates under the counterfactual is the issue.

[70] The defects in the EU's selection of the relevant measures are discussed elsewhere in this submission. *See supra* at section IV.A. Rejection of the EU's selection of the relevant measures would, at minimum, require recalculation of the EU's *ad valorem* tariff.

[71] It should also be noted that, although the EU describes the result of its calculation as a "weighted average," the rates for an individual product are themselves simple averages rather than weighted averages by importer. Although the EU weights the rates for various products, it does not weight the rates actually paid by the various importers. The EU's *ad valorem* calculation thus is, at best, an imperfect approximation of the weighted rates actually paid by importers.

[72] *See* EU Methodology Paper at para. 43; Exhibit EU-2 at Worksheet "Methodology 2," Column I.

125. As the EU's explanation confirms, its *ad valorem* tariff calculation relies upon the erroneous assumption that all antidumping duties are due to zeroing. The 12.08% *ad valorem* tariff figure represents the average of *all* duty rates applicable on 10 April 2007. Accordingly, the EU's *ad valorem* tariff calculation proceeds from the assumption that removal of zeroing would remove *all* antidumping rates. The EU offers no calculation, and has offered no support, for this assumption. In other words, the EU seeks to retaliate for zeroing with a tariff equivalent to the entire antidumping duty rate, whether due to zeroing or not.

126. As discussed above, Commerce's Section 129 determinations demonstrate that the actual effect of removing the effect of zeroing is much smaller than the 100 percent reduction implicit in the EU's calculations.[73] The EU's faulty *ad valorem* tariff calculation thus drastically overstates the effect upon antidumping rates of zeroing and should be rejected.

(b) The EU Erroneously Calculates Nullification or Impairment Based upon All Antidumping Duty Rates Applied, Not the Amount, if Any, Due to Zeroing

127. The EU applies its *ad valorem* tariff to its counterfactual "equivalent level of trade," which the EU defines as "the higher value of trade that it is calculated would be occurring in 2007 (on an annual basis) if the WTO inconsistent measures would not be present."[74] The EU calculates the "equivalent level of trade" as the sum of the actual amount of trade, as calculated by trade under the corresponding HTSUS codes, and a calculated level of "trade loss" from the application of antidumping duties. The EU's "equivalent level of trade" calculation, like its *ad valorem* tariff calculation, suffers from the fundamental flaw of assuming that elimination of zeroing would eliminate all antidumping duty rates. Rather than calculating the amount of nullification or impairment, if any, due to zeroing, the EU's calculation proceeds from the faulty assumption that all antidumping duty rates result in nullification or impairment. The only inconsistency with the covered agreements that was found by the DSB was the use of zeroing – these provisions dealing with zeroing are the only "benefit" under the covered agreements that is being nullified or impaired. The EU's "equivalent level of trade" calculation thus overstates the level of nullification or impairment.

128. To calculate the "equivalent level of trade" counterfactual, the EU first estimates the total 2007 trade value covered by each of the relevant antidumping orders (according to the EU's calculations, the total estimated trade value is $281,352,000).[75] The EU then uses elasticities of

[73] For a discussion of the actual mathematical effect of the 129 recalculations, *see supra* section IV.C.1.

[74] *See* EU Methodology Paper, para.45.

[75] *See* EU Methodology Paper at para. 44; Exhibit EU-2 at Worksheet Methodology 2, Column H. We discuss the defects in the EU's selection of the relevant measures elsewhere. *See supra* at section IV.A. Rejection of the EU's selection of the relevant measures would, at minimum, require recalculation of the EU's trade loss figure.

demand substitution obtained from GTAP[76] to calculate for each product the "higher value of trade that it is calculated would be occurring in 2007 (on an annual basis) if the WTO inconsistent measures would not be present."[77]

129. After selecting the GTAP elasticity, the EU calculation"multiplies the GTAP elasticity by the average of duty rates applicable on 10 April 2007, and applies the result to the annual 2007 trade" for each product to generate figures for "trade loss."[78] The EU then adds the estimated 2007 trade value figure to the "trade loss" figure of $193.664 million to calculate the "trade without zeroed duty" figure of $475.016 million. The corresponding "trade loss" figure is $193.664 million. The EU asserts that this $475.016 million figure represents the "equivalent level of trade."[79]

130. Because the EU uses the entire duty rate applicable on April 10, 2007, the EU's calculation operates upon the assumption that all AD duty rates result in nullification or impairment. This assumption is incorrect because the only nullification or impairment would be from the difference between the AD duty rate in effect and the rate that would have been in effect absent zeroing. The EU's calculation thus materially overstates the nullification or impairment due to zeroing, and accordingly overstates the level of nullification or impairment.

131. Both the *ad valorem* tariff and "equivalent level of trade" calculations suffer from the common flaw of assuming that the elimination of zeroing would eliminate all AD duties, as opposed to eliminating any effect of zeroing upon AD rates. As demonstrated above, this methodological flaw overstates both the *ad valorem* tariff to be applied to any equivalent amount of trade, and the equivalent amount of trade itself. The EU's rate assumption thus causes its calculation to overstate the level of nullification or impairment.

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[76] *See* EU Methodology paper at para. 45. "GTAP" refers to the Global Trade Analysis Project, Purdue University, West Lafayette, Indiana, United States of America. See: https://www.gtap.agecon.purdue.edu/default.asp. The defects in the EU's selection of GTAP elasticities, as opposed to the more specific World Bank elasticities used in the United States' calculations, are explained elsewhere. *See infra* at section IV.D.4 Rejection of the EU's selection of GTAP elasticities would, at minimum, require recalculation of the EU's trade loss figure.

[77] *See* EU Methodology Paper, para. 45.

[78] *See* EU Methodology Paper at para. 46; Exhibit EU-2 at Worksheet Methodology 2, Column J, K. We discuss the defects in the EU's use of only 2007 trade data, as opposed to an average of 2007-09 trade data, elsewhere. *See supra* section IV.B.2. Rejection of the EU's decision to use only 2007 trade data would, at minimum, require recalculation of the EU's trade loss figure.

[79] *See* EU Methodology Paper at para. 46; Exhibit EU-2 at Worksheet Methodology 2, Column J.

(c) By Combining Actual Trade and "Trade Loss" Figures, the EU's Calculation Further Overstates the Level of Nullification or Impairment

132. The calculation of "trade loss" of $193.664 million in the EU's calculation, while overstated for the reasons discussed above, demonstrates that the EU's methodology overstates the level of nullification or impairment. A calculation of "trade loss," by its very nature, represents the level of nullification or impairment. By combining the actual amount of trade with the amount of "trade loss," the EU's calculation overstates the level of nullification or impairment by its own terms. At most, the level of nullification of impairment should be the amount of "trade loss," not an *ad valorem* tariff applied to both the original amount of trade and amount of "trade loss."[80]

133. At best, the EU's effort to apply the *ad valorem* tariff to the amount of "trade loss" relies upon the assumption that the level of incremental "trade loss" from the suspension of concessions by the EU would be equivalent to the level of "trade loss" from the relevant measures applied by the U.S. Article 22.7, however, provides that the arbitrator "shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment." Absent knowledge of the nature of concessions or other obligations to be suspended, even if the EU applied the same tariff to the same value of goods, the actual level of nullification or impairment could be quite different depending on import demand elasticities or other variables. Thus, there is no way to determine whether the level of suspensions proposed by the EU would be equivalent to the level of nullification or impairment.

2. The EU's Use of GTAP Elasticities Overstates the Trade Effect

134. The EU further overstates the trade effect by its use of elasticities from the GTAP model. GTAP is an inappropriate source for elasticities for this type of analysis given the specific nature of the products in this dispute. GTAP only has 57 sectors to represent the whole economy. For example, iron and steel products are grouped together. This prevents distinctions between say pipe/tube products, ball bearings and plate.

135. The elasticities used by the EU were Armington substitution elasticities. The substitution elasticity measures how readily users switch from one source to another, while the import demand elasticity measures the extent to which consumption will increase when a product's own

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[80] As we discuss elsewhere, the EU's "trade loss" figure of $193.664 million in methodology 2, while overstated, demonstrates unequivocally that the EU's "trade loss estimate" of $298.650 million in methodology 1 greatly overstates the level of nullification or impairment by the terms of the EU's own calculations. *Compare* EU Methodology Paper, Exhibit EU-2, Worksheet Methodology 1, Column P ($298.650 million "trade loss estimate") *with* Worksheet Methodology 2, Column K (sum total of $193.664 "trade loss"). *See supra* Section IV.C.4.

price falls.[81] The import demand elasticity is the appropriate measure to use when determining the change in imports resulting from a duty (i.e., price) decrease, not the substitution elasticity. Aside from being the incorrect elasticity, substitution elasticities generally tend to be larger than import demand elasticities.[82] Inserting a larger elasticity will create a higher estimated level of trade loss, if everything else is held constant.

136. Additionally, relying on GTAP for elasticities presents an additional problem. In the GTAP structure, there first is a decision about domestic versus import and then import versus import. Thus, for each sector there are two substitution elasticities. The substitution elasticity between domestic and import is half the substitution elasticity between import sources. The EU, to arrive at a single elasticity for the formula, arbitrarily selected a weighting scheme of 30 percent for the domestic to import and 70 percent for the import to import. As with other factors in the EU calculations, the EU has provided no support for this particular weighting scheme other than to say substitution is more likely to occur between import sources than switching from domestic. The EU statement appears to reflect a preference based on the fact that the import-import substitution elasticity is higher than the import-domestic substitution elasticity, and provides no rationale for their 70-30 weighting scheme.

137. By contrast, the World Bank study import demand elasticities were estimated at the six-digit HTSUS level specifically for the United States. The United States acknowledges that even at the six-digit level there are still some aggregation issues, but clearly the six-digit HTSUS is much more disaggregated, thereby providing elasticity estimates much more closely related to the products in this dispute.

3. The EU's Use of the Dumping Duties in the Trade Loss Formula Is Incorrect

138. In its alternative approach, the EU has used a formula similar to the United States to calculate the nullification or impairment. The difference between the two has to do with the actual inputs into the formula. As the United States provided in its calculation of the level of nullification or impairment, the product price change from the elimination of zeroing is needed.

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[81] Technically, the elasticity of substitution is the percentage change in relative demand for two goods divided by the percentage change in their relative prices. This elasticity is calculated as the percentage change in the ratio of demand for good one to demand for good two, divided by the percentage change in the ratio of the price of good one to the price of good two. See Mas-Colell, Andreu, Michael Whinston, and Jerry Green, 1995, "Microeconomic Theory," 97 (Exhibit US-29).

[82] Substitution elasticities are larger than import demand elasticities if the substitution elasticity is higher than the aggregate demand elasticity, which is equivalent to assuming that imports are substitutes for domestic goods rather than complements. (No party in this dispute has argued that the imports in question are complementary to domestic products.) See Francois, Joseph, and Kenneth Reinert, 1997, "Applied Methods for Trade Policy Analysis," 138–139 (Exhibit US-28).

139. The EU, on the other hand, has used a simple average of the current duty rates in the formula. Even for the moment, if one ignores the issue that the removal of zeroing would not eliminate the duty in its entirety, the level of duty reduction does not equate to the price change. The percent change in price will be lower than the percentage point reduction in the duty rate. Making this change to the EU calculation, by itself, lowers the EU's counterfactual level of trade from $475 million to $427 million.

V. THE EU SHOULD NOT BE AUTHORIZED TO SUSPEND CONCESSIONS OR OTHER OBLIGATIONS UNDER THE DSU

140. In its request to the Dispute Settlement Body ("DSB") under Article 22.2, the EU states that, "consistent with Article 22.3 and particularly 22.3(a) of the *DSU*, the European Union seeks to suspend concessions or other obligations with respect to the same sector(s) under the *DSU*."[83] The EU states that it will suspend these DSU concessions or other obligations "as long as the United States does not withdraw ... its statement that the zeroing methodology used in review investigations will not be brought into conformity with the covered agreements."[84] The EU's request, however, does not specify the particular statement the United States is to "withdraw" or cite any DSB recommendations or rulings with regard to any such alleged statement.

141. In response to the EU's Article 22.2 request, the United States referred the matter to arbitration and claimed that "the European Union's proposal in document WT/DS294/35 does not follow the principles and procedures set forth in paragraph 3 of Article 22 of the DSU."[85] This claim was made with regard to the EU's request to suspend concessions or other obligations under the DSU.

142. In footnote 4 of its methodology paper, the EU provides a U.S. statement it now characterizes as an announcement that "with the exception of model zeroing in original investigations, the United States zeroing methodology will remain unchanged."[86] The statement to which the EU refers, however, is not a declaration that "zeroing methodology used in review investigations will not be brought into conformity with the covered agreements."[87] The statement in question was made in response to comments received by Commerce during its modification of its methodology in antidumping *investigations* with respect to the calculation of weighted-

[83] EU Article 22.2 Request, WT/DS294/35, p. 3.

[84] EU Article 22.2 Request, WT/DS294/35, p. 3.

[85] US Referral to Article 22.6 Arbitration, WT/DS294/36.

[86] EU Methodology Paper, para. 2.

[87] EU Article 22.2 Request, WT/DS294/35, p. 3.

average dumping margin.[88] Commerce did not state that it would never modify antidumping methodologies other than those in investigations; it simply stated that the modification at issue in that particular notice pertained only to investigations.

143. The EU's request not only misconstrues Commerce's statement, it is directly contradicted by other U.S. statements quoted in the EU's methodology paper. Footnote 2 of the EU Methodology Paper, for example, quotes from the minutes of the May 30, 2006 DSB meeting: "The representative of the United States said that his delegation was able at the present meeting to inform Members that the United States intended to implement the DSB's recommendations and rulings." In addition, the EU's allegation ignores statements by the United States at more recent DSB meeting where the United States unequivocally stated its intention to comply with the recommendations and rulings in this dispute.[89]

144. To the extent that an alleged statement by the United States forms the basis for the EU's request to suspend concessions or other obligations under the DSU, it seems this request can be immediately rejected. As indicated above, no such statement exists.[90]

145. Even aside from the fact that no such statement exists, the EU's argument that it could suspend DSU concessions or other obligations based on such a statement is both wholly unprecedented[91] and deeply flawed. In particular, the EU's request to suspend concessions or

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[88] See 71 Fed. Reg. 77722 (December 27, 2006) (Exhibit US-3).

[89] See, for instance, Dispute Settlement Body – Minutes of Meeting Held in the Centre William Rappard on 19 January 2010 (WT/DSB/M/278), para. 33.

[90] In its methodology paper, the EU seems to provide a different explanation for its request to suspend DSU concessions or other obligation by describing an alleged "US policy." According to the EU, this "policy" is comprised of publicly declining to modify the methodology as it relates to administrative proceedings and repeatedly arguing that subsequent administrative reviews displace the original measures, leaving nothing to implement, and no effective recourse to Article 22. EU Methodology Paper, para 50. This, the EU asserts, is an attempt "to deprive the European Union of its WTO rights and benefits through the passage of time occasioned by an ultimately futile and non-fruitful re-iterative recourse to the DSU." As an initial matter, this alleged "policy" is not mentioned as a basis for suspending concessions or other obligations in the EU's Article 22.2 request. In addition, the EU provides no citations or indeed any evidence to suggest that such a policy exists. Indeed the entire assessment is based on a unilateral determination by the EU regarding when recourse to the provisions of the DSU would be "fruitful."

[91] Not one of the 33 Article 22.2 requests to date – with only the exception of the request now before the Arbitrator – have requested the suspension of concessions under the DSU, but only under covered agreements as defined in Article 22.3(g)(i): *Australia – Salmon*, WT/DS18/12 (GATT); EC – *Hormones (US)*, WT/DS26/19 (GATT); *EC – Hormones (Canada)*, WT/DS48/17 (GATT); *EC – Bananas (US)*, WT/DS27/43 (GATT); *EC – Bananas (Ecuador)*, WT/DS27/52 (GATT, GATS, TRIPS); *Brazil – Aircraft*, WT/DS46/16 (GATT, Import Licensing Agreement, Textile Agreement); *Canada – Dairy (US)*, WT/DS103/17 (GATT); *Canada – Dairy (New Zealand)*, WT/DS113/17 (GATT); *US – FSC*, WT/DS108/14 (GATT); *US – 1916 Act (EC)*, WT/DS136/15 (GATT, Antidumping Agreement); *US – 1916 Act (Japan)*, WT/DS162/18 (GATT, Antidumping Agreement); *US – Section 110(5)*, WT/DS160/19 (TRIPS); *US – CDSOA (EC, et al.)*, WT/DS217/20, WT/DS217/21, WT/DS217/22,

other obligations under the DSU violates the DSU (1) by seeking suspension with regard to an alleged measure on which no DSB recommendations and rulings have been made, thereby contravening Articles 22 and 23;[92] (2) by failing to follow the principles and procedures of Article 22.3(a), (b), (c), and (e); and (3) because suspension of DSU concessions or other obligations is not allowed by the terms of the DSU itself.[93]

A. The EU's Request to Suspend DSU Concessions or Other Obligations is Not Based on DSB Recommendations and Rulings and Therefore Violates Article 22

146. Article 22 is clear that the suspension of concessions or other obligations is contingent on the failure of a Member to implement the recommendations and rulings of the DSB,[94] and that the suspension of concessions or other obligations may not be requested unless that condition is met.[95] Moreover, Article 23.2(c) makes it an explicit obligation upon Members to seek suspension only with regard to measures upon which DSB recommendations and rulings have

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WT/DS217/23, WT/DS217/24, WT/DS217/25 (GATT); *US – CDSOA (Canada)*, WT/DS234/25 (GATT, Antidumping Agreement, SCM Agreement); *US – CDSOA (Mexico)*, WT/DS234/26 (GATT); *Canada – Aircraft*, WT/DS222/7 (GATT, Import Licensing Agreement); *Japan – Apples*, WT/DS245/12 (GATT, SPS Agreement, Agriculture Agreement); *US – Softwood Lumber CVD Final*, WT/DS257/16 (GATT); *US – Softwood Lumber Dumping*, WT/DS264/17 (GATT); *US – Upland Cotton*, WT/DS267/21, WT/DS267/26 (GATT, GATS, TRIPS); *US – Sunset OCTG*, WT/DS268/24 (GATT); *US – Softwood Lumber Investigation*, WT/DS277/9 (GATT); *US – Gambling*, WT/DS285/22 (GATS, TRIPS); *EC – Biotech*, WT/DS291/39 (GATT, SPS Agreement, Agriculture Agreement); *US – Zeroing (Japan)*, WT/DS322/23, WT/DS322/24 (GATT).

[92] In this regard, the United States understands that the EU is not arguing that the so-called "statement" should be taken into account in determining the level of nullification and impairment resulting from lack of compliance with the DSB recommendations and rulings, but rather that the EU is arguing that there is a new, separate breach by the United States by a new "measure" that should serve as an independent basis for the suspension of concessions. The United States also recalls the EU's long-standing position that an arbitrator under Article 22.6 of the DSU is not authorized to review disagreements as to compliance. See, *EC – Bananas (Article 22.6) (US)*, para. 4.11.

[93] The Arbitrator does not need to reach this last point in light of the other bars to the EU's request articulated in this section. However, in this regard, the United States notes that the DSU is neither a "sector" as defined in Article 22.3(f) nor an "agreement" as defined in Article 22.3(g).

[94] DSU, Art. 22.1: "[T]he suspension of concessions or other obligations are temporary measures *available in the event that the recommendations and rulings are not implemented* within a reasonable period of time" (emphasis added).

[95] DSU, Art. 22.2: "If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time ... any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreement."

been made.[96] Thus, the first step in determining whether the EU's request to suspend DSU concessions or other obligations is properly made, is to determine on which DSB recommendations and rulings, if any, it relies.

147. In its methodology paper, the EU discusses extensively the findings of the panels and Appellate Body that formed the basis for the DSB's recommendations and rulings in this dispute. It discusses findings with respect to Cases 1-6, 19, and 28-31.[97] Nowhere in all of that discussion, however, does the EU ever point to a finding that the United States deprives the EU of WTO rights and benefits by virtue of a statement that the U.S. will not bring zeroing into conformity.

148. The reason the EU did not do so is that the DSB recommendations and rulings in this dispute pertain only to certain specific antidumping proceedings, and are based only on the GATT 1994 and the Antidumping Agreement.[98] The DSB did not make a recommendation or ruling on this alleged measure, nor, for that matter, did it make any recommendations and rulings concerning violations of the DSU. Accordingly, there is no basis to suspend concessions with regard to this alleged measure under Article 22.

149. The EU's request to suspend concessions or other obligations under the DSU on the basis of an alleged measure that is not the subject of DSB recommendations and rulings is not consistent with Article 22, and the U.S. therefore asks the Arbitrator to reject the EU's request.

B. The EU's Request to Suspend DSU Concessions or Other Obligations Violates Article 22.3

150. Article 22.3 states that if a Member requests the suspension of concessions or other obligations under Article 22.2, that Member "shall apply" the principles and procedures laid out in Article 22.3. As stated by a previous arbitrator, "Article 22.3 sets out specific principles and procedures that the complaining party must follow, and we understand the role of the arbitrator

[96] DSU, Art. 23.2: "Members shall ... follow the procedures set forth in Article 22 ... before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within the reasonable period of time."

[97] EU Methodology Paper, paras. 9-19.

[98] Dispute Settlement Body – Minutes of Meeting Held in the Centre William Rappard on 9 May 2006 (WT/DSB/M/211), para. 54; Dispute Settlement Body – Minutes of Meeting Held in the Centre William Rappard on 11 June 2009 (WT/DSB/M/269), para. 18. See also, *US – Zeroing (EC) (Panel)*, paras. 8.1-8.2; *US – Zeroing (EC) (AB)*, paras. 263-264 ("The Appellate Body recommends that the DSB request the United States to bring its measures, which have been found in the Report, and in the Panel Report as modified by this Report, to be inconsistent with the *Anti-Dumping Agreement* and with the GATT 1994, into conformity with its obligations under those agreements."); *US – Zeroing (EC) (Article 21.5) (Panel)*, para. 9.1; *US – Zeroing (EC) (Article 21.5) (AB), paras.* 469-470.

acting pursuant to Article 22.7 of the DSU to involve a review of whether those principles and procedures have been followed."[99]

151. Article 22.3 primarily imposes limits on the sectors and agreements under which a Member may seek to suspend concessions or other obligations. The EU has violated these principles and procedures by its request to suspend DSU concessions or other obligations.

1. The EU's Article 22.2 Request Fails to Meet the Principles and Procedures of Article 22.3(a)

152. As described by a previous arbitrator, the subparagraphs of Article 22.3 comprise "a sequence of steps towards WTO-consistent suspension of concessions or other obligations."[100] Article 22.3(a) is first in that sequence, and it seems that these are the principles and procedures that the EU would prefer to be applied to its Article 22.2 request: in that request, the EU cites as the basis for suspending DSU concessions or other obligations "Article 22.3 and *particularly 22.3(a)*."[101]

153. Article 22.3(a) applies only to "the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment."[102] However, as explained above, the alleged measure is not the subject of any DSB recommendations and rulings and therefore the first condition – a finding of a violation or other nullification or impairment – has not been met. As such, the principles and procedures of Article 22.3(a) would not apply to the EU's request to suspend DSU concessions or other obligations.

2. The EU's Article 22.2 Request Fails to Meet the Principles and Procedures of Article 22.3(b), (c), and (e)

154. Article 22.3(b) and (c) "would only be relevant if the suspension of concessions proposed ... would be outside the scope of the panel or Appellate Body findings."[103] Since there are no DSB recommendations and rulings with respect to the alleged measure causing nullification or

[99] *US – Upland Cotton (Articles 22.6/4.11)*, para. 5.50.

[100] *EC – Bananas (Article 22.6) (Ecuador)*, para. 55.

[101] EU Article 22.2 Request, p. 3 (emphasis added).

[102] DSU, Art. 22.3(a). The EU understands this is the correct principle as elsewhere in its Article 22.2 request it has properly stated the correct standard: "[c]onsistent with Articles 22.3(a) and 22.3(f) of the *DSU*, the European Union seeks to suspend concessions or other obligations with respect to the same sector(s) as that in which the Panel or Appellate Body has found a violation or other nullification or impairment, that is, with respect to goods."

[103] *EC – Bananas (Article 22.6) (US)*, para. 3.9.

impairment under the DSU, however, that is precisely the case with the EU's Article 22.2 request with respect to DSU obligations. Since the EU's request does not meet the principles and procedures of Article 22.3(a), if that request is to meet the principles and procedures of Article 22.3 at all, it must do so under the next step: subparagraphs (b) or (c), while taking into account subparagraphs (d)-(f).

155. The EU has failed to adhere to the principles and procedures of these subparagraphs, however. Article 22.3(e) states that "if a party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it *shall* state the reasons therefor *in its request*."[104] The EU is presumably well aware of this requirement, as the arbitrator in the EU's *Bananas* dispute with Ecuador explained this provision as follows:

> [G]iven the requirement in subparagraph (e) that the party requesting authorization for suspension 'shall state the reasons therefor,' it is our position that Ecuador had to come forward and submit information giving reasons and plausible explanations for its initial consideration of the principles and procedures set forth in Article 22.3 that caused it to request authorization under another sector and agreement than those where violations were found.[105]

156. The EU's Article 22.2 request does not, however, contain any information giving reasons and plausible explanations for seeking authorization to suspend under an agreement other than where violations were found. The closest the EU may be considered to have come to meeting this requirement is in the penultimate paragraph on page 3 of its Article 22.2 request. There the EU states that it will suspend concessions and obligations under the DSU "as long as the United States does not withdraw, with respect to the products covered by the above proceedings, its statement that the zeroing methodology used in review investigations will not be brought into conformity with the covered agreements."[106] This, however, is not a reason or explanation for suspending under Article 22.3(c); it is simply a statement of the triggering condition that will lead the EU to suspend DSU concessions if such a suspension is authorized by the DSB. The EU's Article 22.2 request is bereft of even an attempt to meet the requirement of Article 22.3(e).

157. This failure is an adequate reason for the Arbitrator to find that the EU has not complied with the principles and procedures of Article 22.3, and therefore its Article 22.2 request with respect to DSU concessions cannot be authorized. Article 22.3(e) is clear that the reasons for suspending obligations pursuant to subparagraphs (b) or (c) must be stated in the Article 22.2 request. As such, the EU is barred from any suspension under subparagraph (c).

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[104] DSU, Art. 22.3(e) (emphasis added).

[105] *EC – Bananas (Article 22.6) (Ecuador)*, para. 60.

[106] See, EU Article 22.2 Request, WT/DS294/35, p. 3.

158. The standards set forth in Articles 22.3(c) have been discussed by previous arbitrators. Had the EU made an attempt to provide an explanation for why it considered it necessary to suspend concessions under another covered agreement, it could have made reference to what those previous arbitrators considered practicable,[107] effective,[108] and serious circumstances[109] to constitute, and explain, as it was required to do, why it considers that the situation in this dispute meets those standards. Instead, it has provided nothing.

159. The DSU requires that the EU provide such an explanation in order to impose discipline on cross-sectoral or cross-agreement suspension. It is clear from the text of the DSU,[110] and the step-by-step design of Article 22.3(a), (b), and (c), that suspension across sectors and agreements is disfavored. Therefore "the basic rationale of these disciplines is to ensure that the suspension of concessions or other obligations across sectors or across agreements (beyond those sectors or agreements under which a panel or the Appellate Body has found violations) remains the exception and does not become the rule."[111] The difficulty, in the absence of the required explanation, in determining precisely which DSU concessions the EU seeks to suspend and why, reflects the wisdom of the approach of the DSU.

160. The EU has failed to satisfy the principles and procedures of Article 22.3. The EU is precluded from suspending concessions or other obligation under Article 22.3(a), as this subparagraph only applies to sectors under which a panel or the Appellate Body has made a finding of violation or nullification or impairment. But the EU cannot meet the principles and procedures of Article 22.3(c) either due to its failure to meet the requirements of Article 22.3(e), and Article 22.3(c) itself. Since, the EU's request to suspend concessions or other obligations under the DSU has failed to meet the principles and procedures of Article 22.3, that request should be rejected.

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[107] *US – Upland Cotton (Articles 22.6/4.11)*, para. 5.73: "the essence of a consideration of 'practicability' of suspension is that it relates to its actual availability and feasibility. The impracticability could be either a legal one, as postulated in the example given in *EC – Bananas III (Ecuador) (Article 22.6 – EC)*, or a factual one, such as might arise if the countermeasure exceeds the total amount of the trade available to be countered."

[108] *US – Upland Cotton (Articles 22.6/4.11)*, para. 5.79: "where the complaining party would cause itself disproportionate harm, such that it would in fact be unable to use the authorization, there would be a basis for concluding that such suspension would not be 'effective'."

[109] *US – Gambling (Article 22.6)*, para. 4.107: "the trade at issue and its importance to the complaining party, as well as the broader economic elements relating to the Member suffering the nullification or impairment and the broader economic consequences of the proposed suspension on the parties may be relevant in the context of a determination that the circumstances are 'serious enough'."

[110] DSU, Art. 22.3(a): "the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s)."

[111] *EC – Bananas (Article 22.6) (US)*, para. 3.7.

VI. THE AUTHORIZED LEVEL OF SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS SHOULD SPECIFIED IN TERMS OF INDIVIDUAL AD ORDERS SUBJECT TO THIS DISPUTE

161. The EU's original complaint in this dispute covered some 31 measures relating to 22 antidumping duty orders. These individual antidumping orders are subject to revocation through several processes including revocation, changed circumstances review, sunset review, and Section 129 determinations.

162. Consequently, it is clear that one or more of the antidumping duty orders that remain at issue in this dispute may be revoked through one of the above-mentioned processes on a separate time line than the other orders. Article 22.4 provides for the level of suspension of concessions or other obligations to be equivalent to the level of nullification or impairment. As a result, it would be most consistent with Article 22.4 if the level of suspension of concessions to be authorized were stated separately with respect to each antidumping duty order that remains. Such a specified level for each order would permit the level of suspension to remain equivalent to the level of nullification or impairment as antidumping duty orders are revoked. This approach would be consistent with that of past arbitrators that used a formula to account for future changes in a given situation.

Table of Exhibits

Exhibit No.	**Description**
US-3	Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77722 (December 27, 2006)
US-4	Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification, 72 Fed. Reg. 3783 (January 26, 2007).
US-5	Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures, 72 Fed. Reg. 9306 (March 1, 2007).
US-6	Section 129 Determinations:

- Implementation of the Findings of the WTO Panel in *US – Zeroing (EC)*: Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25261 (May 4, 2007).

- Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador, 72 Fed. Reg. 48257 (Aug. 23, 2007)

- Implementation of the Findings of the WTO Panel in US-Zeroing (EC); Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy, 72 Fed. Reg. 54640 (Sept. 26, 2007).

- Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act Regarding the Antidumping Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan, 73 Fed. Reg. 29109 (May 20, 2008).

- Implementation of the Findings of the WTO Panel in United States -- Antidumping Measure on Shrimp from Thailand; Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation

of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand, 74 Fed. Reg. 5638 (Jan. 30, 2009).

- Implementation of the Findings of the WTO Panel in United States -- Final Antidumping Measures on Stainless Steel from Mexico: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act, 74 Fed. Reg. 19527 (Apr. 29, 2009).

- Purified Carboxymethylcellulose from the Netherlands (*available at* http://ia.ita.doc.gov/ download/section129/full-129-index.html.

- Purified Carboxymethylcellulose from Sweden (*available at* http://ia.ita.doc.gov/ download/section129/full-129-index.html).

- Purified Carboxymethylcellulose from Finland *available at* http://ia.ita.doc.gov/ download/section129/full-129-index.html)

- Chlorinated Isocyanurates from Spain (*available at* http://ia.ita.doc.gov/ download/section129/full-129-index.html).

US-7 Initiation of Five-Year ("Sunset") Reviews, 72 Fed. Reg. 4689 (February 1, 2007).

US-8 Stainless Steel Bar From France, Germany, Italy, Korea, and the United Kingdom, 72 Fed. Reg. 4293 (January 30, 2007).

US-9 Stainless Steel Bar From France, Germany, Italy, Korea, and The United Kingdom, 73 Fed. Reg. 5869, 5869 (January 31, 2008).

US-10 Revocation of Antidumping Duty Orders on Stainless Steel Bar From France, Germany, Italy, South Korea, and the United Kingdom and the Countervailing Duty Order on Stainless Steel Bar From Italy, 73 Fed. Reg. 7258 (February 7, 2008).

US-11 Uruguay Round Agreements Act of 1994, P.L. 103-465, Section 129, *codified at* 19 U.S.C. § 3538

US-12 Margin Change Calculations

US-13 Calculation Spreadsheet

US-14 Kee et al. Import Demand Elasticities and Trade Distortions

US-15 Excel file of U.S. import demand elasticities from Kee et al.

US-16 Trade Summary from U.S. Customs and Border Protection data

US-17 Certain Hot-Rolled Steel Flat Products from the Netherlands: Final Results of the Sunset Review of Antidumping Duty Order and Revocation of the Order, 72 Fed. Reg. 35220, 35221-22 (June 27, 2007).

US-18 Stainless Steel Sheet and Strip and Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 71 Fed. Reg. 74897 (Dec. 13, 2006).

US-19 Notice of Rescission of Antidumping Duty Antidumping Review: Stainless Steel Sheet and Strip and Coils From Italy, 70 Fed. Reg. 76775 (Dec. 28, 2005).

US-20 Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 Fed. Reg. 44819 (Aug. 31, 2009).

US-21 Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Administrative Review, 74 Fed. Reg. 14519 (Mar. 31, 2009).

US-22 Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review, 75 Fed. Reg. 10464, 10465 (Mar. 8, 2010).

US-23 Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 Fed. Reg. 77852, 77854 (Dec. 13, 2000).

US-24 Notice of Amendment of Final Determination of Sales of Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy, 66 Fed. Reg. 65889 (Dec. 21, 2001).

US-25 Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta from Italy, 67 Fed. Reg. 300. 301-302 (Jan. 3, 2002).

US-26 Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 Fed. Reg. 6832, 6833 (Feb. 9, 2005).

US-27	Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 Fed. Reg. 71464, (Nov. 29, 2005).
US-28	Francois and Reinert, *Applied Methods For Trade Policy Analysis*
US-29	Mas-Colell et al., *Microeconomic Theory*