

***UNITED STATES – ANTI-DUMPING AND COUNTERVAILING DUTIES ON RIPE
OLIVES FROM SPAIN***

Recourse to Article 22.6 of the DSU by the United States

(DS577)

**RESPONSES OF THE UNITED STATES OF AMERICA TO THE ADDITIONAL
QUESTIONS FROM THE ARBITRATOR TO THE PARTIES**

June 6, 2025

TABLE OF CONTENTS

TABLE OF EXHIBITS ii

1 COUNTERFACTUAL 1

2 PARTIES’ ECONOMIC MODELS FOR THE AS APPLIED INCONSISTENCY 4

3 PARTIES’ ECONOMIC MODELS FOR THE AS SUCH INCONSISTENCY 10

TABLE OF EXHIBITS

Exhibit No.	Description
U.S. Written Submission	
USA-1	Section 771B of the Tariff Act of 1930 (19 U.S.C. § 1677-2) (USA-1-OP)
USA-2	Legislative History of Section 771B (EU-9-CP)
USA-3	<i>Asociación de Exportadores e Industriales de Aceitunas de Mesa v. United States</i> , 102 F.4th 1252 (Fed. Cir. 2024)
USA-4	Ripe Olives From Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 83 Fed. Reg. 37,469 (July 25, 2018)
USA-5	Section 703 of the Tariff Act of 1930 (19 U.S.C. § 1671b)
USA-6	<i>US – Ripe Olives from Spain</i> , 12 November 2020 response to Panel question No. 12, para. 116
USA-7	Ministerio De Agricultura, Alimentación y Medio Ambiente, <i>Diagnóstico sobre el sector de la aceituna de mesa en España</i> , p. 28 (2016), https://www.mapa.gob.es/ca/agricultura/temas/producciones-agricolas/160427diagnosticoaceitunademesadefinitivo_tcm34-135524.pdf
USA-8	Courtesy Machine Translation of Relevant Excerpts from Exhibit USA-7
USA-9	Cooperativas Agro-Alimentarias España, <i>Consejo Sectorial Aceituna de Mesa</i> (Sep. 11, 2023)
USA-10	Courtesy Machine Translation of Relevant Excerpts from Exhibit USA-9
USA-11	U.S. Customs and Border Protection Ruling Letter N308088 (Dec. 23, 2019)
USA-12	Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union’s rights for the application and enforcement of international trade rules and amending Council

Exhibit No.	Description
	Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization, 2014 O.J. (L 189)
USA-13	Ripe Olives from Spain, Inv. Nos. 701-TA-582, 731-TA-1377, USITC Pub. 5526 (July 2024) (Review)
USA-14	Data for Figure 1: Inputs for U.S. Ripe Olive Production
USA-15	Summary of Estimation Results for Two-Step Armington Model Employed by the United States
USA-16	U.S. Domestic Shipment and Import Data (Microsoft Excel File)
USA-17	Table of 8-digit and 10-digit HTSUS codes under HTS 2005.70 in 2016
USA-18	Paul Krugman, <i>Scale Economies, Product Differentiation, and the Pattern of Trade</i> , 70 Am. Econ. Rev. 950 (1980)
USA-19	Marc J. Melitz, <i>The Impact of Trade on Intra-Industry Reallocations and Aggregate Industry Productivity</i> , 71 Econometrica 1695 (2003)
USA-20	Large Residential Washers, Inv. No. TA-201-076, USITC Pub. 4745 (December 2017)
USA-21	Anson Soderbery, <i>Estimating Import Supply and Demand Elasticities: Analysis and Implications</i> , 96 J. Int'l Econ. 1 (2015)
USA-22	Ripe Olives From Spain: Notice of Correction to Antidumping Duty Order, 83 Fed. Reg. 39,961 (Aug. 7, 2018)
USA-23	NAT'L AGRIC. STATISTICS SERV., U.S. DEP'T OF AGRIC., PRICE PROGRAM: HISTORY, CONCEPTS, METHODOLOGY, ANALYSIS, ESTIMATES, AND DISSEMINATION (2011)
USA-24	National Agricultural Statistics Service Price Index Data Series 2000-2023

Exhibit No.	Description
USA-25	U.S. Solution and Computer Code for the Armington Partial Equilibrium Model
U.S. Responses to First Set of Questions	
USA-26	Asociación para la Promoción de las Aceitunas Sevillanas de las variedades Manzanilla y Gordal, <i>Aceitunas Manzanilla y Gordal de Sevilla: evolución del cultivo, cadena de valor e indicaciones geográficas</i>
USA-27	Courtesy Machine Translation of Exhibit USA-26
USA-28	Aceituna, MINISTERIO DE AGRICULTURA, PESCA Y ALIMENTACIÓN, https://www.mapa.gob.es/va/ministerio/servicios/informacion/aceituna_tcm39-102885.pdf
USA-29	Rémi Avignon and Etienne Guigue, <i>Markups and Markdowns in the French Dairy Market</i> (2022)
USA-30	Submission of Factual Information by Musco Family Olive Company and Accompanying Relevant Exhibits, Ripe Olives from Spain, No. C-469-818 (Remand, Slip Op. 20-8) (Feb. 25, 2020)
USA-31	Agro Sevilla Aceitunas S.Coop. And.’s Olive Sourcing Questionnaire Response, Ripe Olives from Spain, No. C-469-818 (Aug. 14, 2017)
USA-32	Agro Sevilla Aceitunas S.Coop. And.’s Affiliations Questionnaire Response and Accompanying Relevant Exhibits, Ripe Olives from Spain, No. C-469-818 (Aug. 18, 2017)
USA-33	Ripe Olives from Spain Countervailing Duty Investigation: Placing Information on the Record, INT’L TRADE ADMIN., U.S. DEP’T OF COM., Ripe olives from Spain, No. C-469-818 (July 31, 2017)
USA-34	Response of the Government of Spain to the Department’s October 25, 2017 Supplemental Questionnaire, Ripe Olives from Spain, No. C-469-818 (Nov. 7, 2017)
USA-35	Section 129 Proceeding Regarding the Countervailing Duty Investigation of Ripe Olives from Spain: Placing Factual Information on the Record, INT’L TRADE ADMIN., U.S. DEP’T OF COM., Ripe olives from Spain, Section 129 Proceeding, No. C-469-818 (Sept. 23, 2022) (including relevant attachments)
USA-36	Timeline of Actions in Antidumping and Countervailing Duty Investigations on Ripe Olives from Spain

Exhibit No.	Description
USA-37	<i>Weights, Measures, and Conversion Factors for Agricultural Commodities and Their Products</i> , ECON. RES. SERV., U.S. DEP'T OF AGRIC., Agricultural Handbook Number 697 (1992)
U.S. Responses to Questions Following Substantive Meeting	
USA-38	Broda, Greenfield, & Weinstein, <i>From Groundnuts to Globalization: A Structural Estimate of Trade and Growth</i> , 71 Res. in Econ. 759 (2017)
USA-39	Hakan Yilmazkuday, <i>Importer-Specific Elasticities of Demand: Evidence from U.S. Export</i> , 35 Int'l Rev. of Econ. & Fin. 228 (2015)
USA-40	Hillberry & Hummels, <i>Trade Elasticity Parameters for a Computable General Equilibrium Model</i> , 1 Handbook of Computable General Equilibrium Modelling 1213 (2013)
USA-41	Underlying data for Figure 1
USA-42	Ahmad, Montgomery, & Schreiber, <i>A Comparison of Sectoral Armington Elasticity Estimates in the Trade Literature</i> , USITC J. of Int'l Com. & Econ. (2021)
USA-43	Bajzik et al., <i>Estimating the Armington Elasticity: The Importance of Study Design and Publication Bias</i> , 127 J. of Int'l Econ. 103383 (2020)
USA-44	Imbs & Mejean, <i>Elasticity Optimism</i> , 7 Am. Econ. J.: Macroeconomics 43 (2015)
USA-45	Anson Soderbery, <i>Trade Elasticities, Heterogeneity, and Optimal Tariffs</i> , 114 J. of Int'l Econ. 44 (2018)
USA-46	Janet E. Nelson, <i>California Table Olives: Marketing, Imports, and the Federal Marketing Order</i> , in U.C. Agric. & Nat. Resources, Olive Production Manual 11 (2005)
USA-47	California Olive Committee, <i>2016-2017 California Olive Committee Annual Report</i> (2017)
U.S. Comments on EU's Responses to Question Following Substantive Meeting	

Exhibit No.	Description
USA-48	Section 705 of the Tariff Act of 1930 (19 U.S.C. § 1671d)
USA-49	<i>Albemarle Corp. & Subsidiaries v. United States</i> , 821 F.3d 1345 (Fed. Cir. 2016)
USA-50	Robert Feenstra, <i>New Product Varieties and the Measurement of International Prices</i> , 84 Am. Econ. Rev. 157 (1994)
USA-51	Technical Document for Econometric Estimation of the Elasticity of Substitution between U.S. Imports of Ripe Olives from Different Countries
USA-52	David Riker, <i>A Trade Cost Approach to Estimating the Elasticity of Substitution</i> , Office of Economics, U.S. International Trade Commission, Working Paper 2020-07-D (2020)
USA-53	Carolyn Fischer & Alan Fox, <i>How Trade Sensitive are Energy-Intensive Sectors?</i> , 108 Am. Econ. Ass'n 130 (2018)
USA-54	Data file (in .dta format) for Econometric Estimation of the Elasticity of Substitution between U.S. Imports of Ripe Olives from Different Countries (Exhibit USA-51)
USA-55	Modeling file (in .do format) for Econometric Estimation of the Elasticity of Substitution between U.S. Imports of Ripe Olives from Different Countries (Exhibit USA-51)
U.S. Responses to Additional Questions From the Arbitrator to the Parties	
USA-56	List of HTS-10 Codes Used for Olives Trade Data in U.S. Department of Agriculture Economic Research Service's Fruit and Tree Nuts Yearbook Tables
USA-57	U.S. Department of Agriculture List of Processed Agricultural Products

1 COUNTERFACTUAL

79. To the United States: In its comments on the European Union’s response to Arbitrator question No. 41, the United States indicates that it cannot speculate as to the accuracy of the European Union’s calculations and whether the figures (provided by the European Union in paragraph 22 of its Methodology Paper) represent the CVD rates the USDOC would have calculated without the application of Section 771B.¹ Can the United States explain whether it agrees that:

- i. the values presented by the European Union in paragraph 22 of its Methodology Paper can be obtained by subtracting from the CVD rates imposed on the relevant exporters the *ad valorem* subsidy rate attributed to various programs benefitting olives growers that were passed through to the exporters in their full amounts due to the application of Section 771B?**
- ii. these values are based on the calculations prepared by the USDOC for the original investigation, as contained in Exhibits EU-2 (BCI), EU-3 (BCI) and EU-4 (BCI)?**

Response:

1. The United States agrees that in paragraph 22 of the European Union’s (EU) Methodology Paper, the EU presents subsidy rates that, in its view, the respondents would have received without the application of Section 771B of the Tariff Act of 1930 (Section 771B).² Indeed, the EU explains that “[t]hese values are obtained by subtracting from the countervailing duty rates imposed on exporters..., the *ad valorem* subsidy rate attributed to various programs benefitting olives growers that were passed through to the exporters in their full amounts due to the application of Section 771B.”³ Further, the values the EU calculated appear to be derived from calculations the USDOC prepared in the original investigation, which the EU included as Exhibits EU-2 (BCI), EU-3 (BCI), and EU-4 (BCI).

2. However, as the United States has previously explained,⁴ U.S. Department of Commerce (USDOC) countervailing duty (CVD) investigations require certain case-specific determinations with regard to the methodologies used in determining program-specific subsidy rates (which are then used to determine a net subsidy rate), including determinations regarding whether to apply or remove Section 771B. For example, the USDOC may need to consider whether a particular respondent has cross-owned affiliates,⁵ subsidies those companies received and how they should

¹ United States’ comments on the European Union’s response to Panel question No. 41, para. 11.

² See EU Methodology Paper, para. 22.

³ EU Methodology Paper, para. 22, fn. 22.

⁴ See U.S. comments on EU responses to second set of questions from the Arbitrator, paras. 10-11.

⁵ 19 C.F.R. 351.525(b).

be attributed to the respondent, those companies' level of cooperation with the USDOC's requests for information, etc. As such, the United States cannot speculate as to the accuracy of the EU's calculations and whether the values the EU put forth represent the program-specific or net subsidy CVD rates the USDOC would have calculated without the application of Section 771B.

80. To the United States: For the prospective model, both the United States and the European Union describe counterfactual scenarios for which the European Union may be required to separate from the total CVD rates the subsidy rates derived from a pass-through analysis under Section 771B and the subsidy rates derived from other programmes. The European Union indicates that it will be necessary that the European Union obtains the relevant data, which is likely to be BCI.⁶ Please explain your views on how the European Union could obtain the relevant values in such future cases, what constraints exist on the availability of the values, and what the European Union could do to separate the different subsidy rates if such values cannot be obtained. Would the United States consider publishing the subsidy rates derived from a pass-through analysis under Section 771B, and the subsidy rates derived from other programmes, separately?

Response:

3. As an initial matter, the United States has explained in previous submissions why adoption of a prospective model is not appropriate.⁷ It bears emphasizing that each segment of a CVD proceeding, and indeed, separate CVD proceedings, are distinguished by case-specific facts. Respondent-specific facts must be taken into account when applying CVD methodologies to calculate program-specific rates and it is not possible to anticipate these case-specific circumstances through a prospective model. Moreover, a prospective model developed in the context of this dispute is necessarily influenced by the circumstances present in the ripe olives from Spain investigation and market conditions related to exports of such merchandise. As such, a prospective model cannot appropriately account for the circumstances present in a future USDOC proceeding involving a distinct and different agricultural product, different market conditions, and potentially different subsidies, or similar subsidies applied in a manner unique to that product and industry.

4. Given these circumstances and as explained in the U.S. response to question 79 above, it is not possible to devise a universal methodology to accurately calculate a net CVD rate that does not include rates determined through the use of Section 771B. USDOC CVD proceedings require certain decisions with regard to the methodologies used in determining program-specific subsidy rates (and thus net subsidy rates). It is possible the EU may disagree with certain of those decisions. It is likewise possible that the United States may disagree with the subsidy rates

⁶ European Union's response to Arbitrator question No. 41, para. 16.

⁷ See, e.g., U.S. written submission, paras. 125-139; U.S. responses to first set of questions from the Arbitrator, para. 94; U.S. responses to second set of questions from the Arbitrator, paras. 80-81, 85-88; U.S. comments on EU responses to second set of questions from the Arbitrator, paras. 76, 86.

the EU may calculate in its attempts to separate from the total CVD rates the subsidy rates derived from an attribution analysis under Section 771B. Leaving this calculation to the exclusive discretion of the Party implementing the model (here the EU) is likely to give rise to future controversies between the Parties. This provides yet another reason for the Arbitrator to decline to adopt a prospective model for automatically authorizing suspension of concessions and instead require the EU to make a new request for suspension if and when Section 771B is applied to EU products in the future.⁸

5. Notwithstanding these concerns, should the Arbitrator adopt a prospective model that requires the EU to obtain certain data that may be Business Confidential Information (BCI), the Arbitrator should adopt appropriate procedures for sharing and handling BCI for use in running the prospective model. First, the Arbitrator should require that the EU notify the United States when it seeks to invoke the prospective model to calculate the level of nullification or impairment with respect to a future measure. Second, if the EU is to be the party calculating the level of nullification and impairment, the Arbitrator should adopt BCI procedures to ensure the protection of such information from unauthorized disclosure. The EU could obtain such BCI directly from the respondent companies, which will be EU exporters, or could request it from the United States.

6. If the EU cannot obtain required BCI information directly from the respondent companies, it would be necessary for authorization letters to be obtained from the particular companies who submit BCI to the USDOC in the course of a future countervailing duty proceeding, before the USDOC would be able to share any such BCI information with the EU. Companies provide such confidential information to the USDOC under an administrative protective order (“APO”). BCI submitted to the USDOC during the course of an AD/CVD proceeding is protected under an APO from unauthorized public disclosure by the parties to an AD/CVD proceeding, and protected by U.S. law from unauthorized public disclosure by the USDOC.⁹ This treatment of BCI is consistent with Article 6.5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (AD Agreement) and Article 12.4 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement). Accordingly, in a WTO dispute, the information can only be released by the USDOC with specific authorization of the party that provided the information. That is why it would be necessary to obtain authorization letters from companies in an EU member country permitting the USDOC to release BCI information from those companies to the EU.

7. Regarding constraints that may exist on the availability of BCI values and how the EU could determine the level of nullification and impairment if such values cannot be obtained, the United States submits that the USDOC, as the investigating authority, and not the EU, should determine how to calculate program-specific, and net CVD rates, without using Section 771B. As the investigating authority responsible for calculating CVD rates and for applying Section

⁸ See U.S. written submission, para. 130.

⁹ See 18 U.S.C. § 1905; 19 U.S.C. § 1677f(b)(1)(A); 19 C.F.R. § 351.306(a)(5).

771B, the USDOC is best positioned to determine the appropriate subsidy rate without the application of Section 771B. Thus, should a prospective model be adopted, the USDOC should be consulted to determine the appropriate subsidy rates for use in such a model.

8. Finally, on the question of whether the United States would consider publishing subsidy rates derived using Section 771B separately from subsidy rates for other programs, the USDOC publishes subsidy rates pursuant to United States law and consistent with the SCM Agreement. Specifically, the USDOC publishes the subsidy rates calculated for each program it countervails separately, and it explains the methodology it applies in calculating the program-specific subsidy rate. The USDOC then determines an overall net subsidy rate for each of the companies under investigation. To the extent the Arbitrator’s question envisions the USDOC publishing separate program-specific or net subsidy rates both with and without the use of Section 771B at the time of its determination, U.S. law and the SCM Agreement do not require the publication of such hypothetical rates in future measures.

9. This provides yet another reason that the Arbitrator should decline to adopt a prospective model and instead require the EU to make a new request for suspension of concessions or other obligations if and when Section 771B is applied to EU products in the future. Should the Arbitrator adopt a prospective model, however, the USDOC should be consulted to determine the appropriate subsidy rates, as previously explained.

2 PARTIES’ ECONOMIC MODELS FOR THE AS APPLIED INCONSISTENCY

81. To the European Union: Regarding the calculation of the single ADD and CVD rates, the European Union suggests that equal weights, i.e. a simple average, are preferable to trade weights from the investigation period, as the latter are not representative of the market in the reference year.¹⁰ Does the European Union also consider that a simple average is preferable to a weighted average using more recent trade weights?

Response:

10. This question is addressed to the EU.

82. To the European Union: The Arbitrator understands that the European Union’s economic model is designed to focus on the reallocation of trade, including among third countries, and that it is not designed to include domestic production.

i. If the European Union’s economic model with third markets was to be adjusted to include the United States’ domestic production, would it also be necessary to obtain relevant domestic production data for entities other than the United States?

¹⁰ European Union’s response to Arbitrator question No. 49, para. 36.

- ii. **If obtaining relevant domestic production data for other entities is not feasible, meaning that the United States would be the only entity with a domestic component, would the European Union deem some adjustment to its economic model to be necessary to account for this discrepancy and, if so, please explain the necessary adjustment?**

Response:

11. This question is addressed to the EU.

83. To the European Union: The European Union provided a link to the import demand elasticity estimates from Kee, Nicita, and Olarreaga (2008) in footnote 35 of its Methodology Paper which appears now to be a broken link. Could the European Union please provide a different link or otherwise make the estimates available?

Response:

12. This question is addressed to the EU.

84. To the United States: Questions regarding the calculation of the all-others duty rate:

- i. **Please provide the weights used to calculate the all-others rate published in the Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order.¹¹**

Response:

13. The data used to weight-average the all-others rate in the antidumping duty investigation are BCI and, without authorization from the respondent companies, the USDOC may not release that specific data. Should the Arbitrator determine that the weighted data are absolutely necessary to its evaluation, the United States or the EU could request authorization letters from the respondent companies to release the BCI.

14. We note, however, that the weighted data used to calculate the all-others rate in the antidumping duty investigation are not necessary for the Arbitrator's task in this dispute because the weights simply reflect each respondent company's value of sales reported to the USDOC. As the United States has previously explained,¹² the all-others rate is intended to be representative for all exporters, and as such, it is a more accurate estimated average than a simple average of the

¹¹ Exhibit USA-22.

¹² See U.S. comments on EU responses to second set of questions from the Arbitrator, para. 29.

three respondents' rates and the all-others rate (which, as the EU acknowledges,¹³ is itself a weighted average of the three respondents' rates).

15. To the extent there is confusion regarding how the USDOC calculates the all-others rate in situations where it uses a weighted average, we clarify that the USDOC finds the weighted average rate by summing the rates calculated for the responding companies multiplied by their sales of subject merchandise to the United States during the period analyzed. The USDOC then divides the resulting value by the total sales of subject merchandise in the United States of all responding companies.

16. To illustrate how this works, suppose there were three companies subject to an investigation, with a combined total value of sales of subject merchandise to the United States worth \$100: Company A had \$50 worth of sales and received a 10% rate, Company B had \$30 worth of sales and received a 20% rate, and Company C had \$20 worth of sales and received a 25% rate. To calculate the weighted average, the USDOC multiplies the companies' value of sales by their rate, sums the values for each company, and divides the result by the total value of sales of subject merchandise to the United States for all three companies. In the example, that would be adding \$5 for company A, \$6 for Company B, and \$5 for Company C (for a total of \$16), and dividing it by the total sales figures of \$100 for a weighted average subsidy margin of 16%. Sales figures for each company subject to an investigation or review are typically submitted to the USDOC by respondent companies as BCI.

17. As explained in previous U.S. comments on the EU's responses to questions from the Arbitrator, the all-others rate is preferable to a simple average of the company-specific and all-others rate because the all-others rate is already a weighted average of the company respondents' rates and is intended to be representative for all exporters.¹⁴ Furthermore, averaging the all-others rate (itself a weighted average) with the rates for the three respondents whose data were used to calculate the all-others rate could introduce distortions that are unnecessary when the all-others rate itself is representative for all exporters.

ii. How is the all-others rate in Ripe Olives from Spain: Final Section 129 Determination Regarding the Countervailing Duty Investigation¹⁵ calculated?

Response:

18. The USDOC calculated the all-others rate in the Section 129 determination in the same way it calculated the all-others rate in the original investigation, using the BCI sales figures to weight-average the subsidy rates of the three respondent companies.

¹³ See EU responses to second set of questions from the Arbitrator, para. 36.

¹⁴ See U.S. comments on EU responses to second set of questions from the Arbitrator, paras. 28-29.

¹⁵ Exhibit EU-15.

- iii. Is that all-others rate an average of the *revised* individual duty rates and were the weights used in its calculation the same as those used in the calculation of the all-others rate published in the original CVD order?**

Response:

19. The sales values used in the Section 129 proceeding were the same as the values used in the underlying investigation. As such, the weighting data used in the Section 129 proceeding were the same as used in the original investigation. The change in the all-others rate is due to the change in the total subsidy rate calculated for Aceitunas Guadalquivir in the Section 129 proceeding.

- iv. If not the same, to which year do the weights refer?**

Response:

20. As stated above, the weighting data used in the Section 129 proceeding are the same as those used in the underlying investigation because they are based on the sales figures from the period of investigation.

- 85. To the United States: We note that in the administrative review of the ADD rates published in December 2022 “Commerce assigned to the companies not individually examined, [...] a margin of 2.87 percent which is the weighted-average of Agro Sevilla’s and Camacho’s [...] margins for these final results” where “[a]s the weighting factor, we relied on the publicly ranged sales data reported in the quantity and value charts submitted by Agro Sevilla and Camacho.”¹⁶ To which year does the weighting factor refer?**

Response:

21. The year the weighting factor is referring to is the period of review for the administrative review published in December 2022, which was August 1, 2020 through July 31, 2021.¹⁷

- 86. To both parties: The information available from the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) on olives processed utilization for canning and limited use underlies the information for the same product group contained in Yearbook Tables from the USDA Economic Research Service.¹⁸ Compared to the NASS database, these tables include additional information, notably on the quantity of imports, exports and domestic**

¹⁶ Exhibit EU-25.

¹⁷ See Exhibit EU-25.

¹⁸ Accessible at [Fruit and Tree Nuts Data - Fruit and Tree Nuts Yearbook Tables | Economic Research Service](#) under the supply and utilization tab.

availability. Please comment on the possibility of using the data on imports and domestic availability reported in the Yearbook Table to obtain the United States’ domestic market share of processed canned and limited olives (calculated as $1 - \frac{\text{imports}}{\text{domestic availability}}$), and then use this value as a proxy for the domestic market share of fully-in-scope ripe olives.

Response:

22. The United States disagrees with using data from the Yearbook Tables published by the USDA Economic Research Service (ERS), which is not a more accurate source for U.S. domestic production data than the USDA NASS data proposed by the United States. As the Arbitrator acknowledges in its question, ERS does not generate original data for its Fruit and Tree Nuts Yearbook Tables. Instead, ERS compiles information from various public and industry sources, including USDA NASS data.¹⁹ Specifically, for canned olive production data in Table G-24, footnote 2 states that the production data (million pounds, product-weight equivalent in Column B) were derived by converting NASS data from fresh weight to product/processed weight using a conversion factor of 1.06.

23. In addition, the import and export volume data in Columns C and G were sourced from the U.S. Census Bureau, and were converted from metric units to domestic units by ERS.²⁰ Although ERS provides a comprehensive list of HTS 10-digit codes used to pull trade data for olives, it is not clear which HTS-10 codes were used by ERS to determine the trade volume for canned olives.²¹ Furthermore, the data inputs required for calculating nullification and impairment include not only the market share for U.S. produced fully in-scope ripe olive products, but also the market shares for ripe olives produced in Spain, the rest of the EU, and the rest of the world. However, the ERS Yearbook Tables provide only the total import volume without a breakdown by source country. Therefore, the ERS Yearbook Tables do not contain all the data needed for the nullification and impairment analysis. By contrast, the value-based domestic market share data from NASS combined with more precise import data at the HTS-10-digit level sourced directly from the U.S. Census Bureau provide a better source for the required data inputs for calculating nullification and impairment.

87. To both parties: The European Union includes third markets in its economic model to explicitly model exporters’ responses to the change in duties in the United States’ market by re-allocating their exports to/from other export markets.²² The export

¹⁹ For details, see the “Methods” section on the ERS Fruit and Tree Nuts Yearbook page, available at <https://www.ers.usda.gov/data-products/fruit-and-tree-nuts-data/documentation>.

²⁰ For details, see “Import and Export Data” section on the ERS Fruit and Tree Nuts Yearbook page, available at <https://www.ers.usda.gov/data-products/fruit-and-tree-nuts-data/documentation>.

²¹ Exhibit USA-56 provides a list of all HTS-10 codes used to pull trade data for the products covered in ERS’s Fruit and Tree Nuts Yearbook Tables. The list of HTS-10 codes for olives can be obtained by filtering the “CommodityName” in Column E.

²² Exhibit EU-6, p.2.

supply elasticity in this model reflects Spain’s ability to shift sales between their domestic market and exports, which depends positively on the ratio between their total sales and their *global exports*. This is reflected in the European Union’s reasoning that its assumption of infinite (or very high) export supply elasticity is accurate because Spain and the other two entities “produce much more than they consume” and therefore, compared to the United States, these entities have a much higher ability to increase exports and reallocate them to the United States.²³

In the United States model, the export supply elasticity relates specifically to the exporters’ ability to shift sales from other markets to the United States’ market. Hence, it represents not only the flexibility to shift between domestic and global export sales, but also between export sales to the United States’ market and export sales to other foreign markets. The export supply elasticity in this model therefore depends positively on the ratio between Spain’s total sales and their *exports to the United States*. Unless the United States is the only export market, the appropriate elasticity in the United States’ model is higher than the appropriate elasticity in the model proposed by the European Union.

Given the above, there appears to be a clear theoretical relationship between the inclusion of third markets and the value of the export supply elasticity in a model that focuses on the United States’ market only.²⁴ In other words, an appropriately chosen export supply elasticity in the simpler one-market model can arguably capture the adjustment through trade diversion to and from third markets. Please comment.

Response:

24. As an initial matter, the United States reiterates that the EU’s assumption that an infinite (or very high) export supply elasticity should be used in the case of ripe olives because Spain produces much more ripe olives than it consumes is neither a reasonable assumption nor is it supported by the production data that the EU has provided in this dispute.²⁵ Having said that, the United States agrees with the Arbitrator that a simple one-market model, as proposed by the United States, is sufficient to capture adjustment through trade diversion to and from third country markets, provided an appropriate export supply elasticity is chosen.²⁶ This makes the U.S. model preferable to the EU’s proposed model, which introduces substantial complexity and additional data inputs without any discernable benefit.

²³ Opening statement of the European Union at the meeting of the parties with the arbitrator, paras. 59-61.

²⁴ See for instance F. Farrokhi and A. Soderbery (2024), “Trade Elasticities in General Equilibrium: Demand, Supply, and Aggregation”. *The Review of Economics and Statistics*, available at https://doi.org/10.1162/rest_a_01515, equation 18.

²⁵ See U.S. responses to second set of questions from the Arbitrator, paras. 64-65.

²⁶ See U.S. written submission, para. 74.

88. To both parties: Major differences in the Armington elasticity estimates in the literature are related to whether the estimates capture short-run or long-run reaction (Hillberry and Hummels, 2012; Bajzik et al., 2020).²⁷ Short-run estimates are expected to be lower than long-run estimates because it may take time for markets to fully adjust to the change in prices. Estimates from Soderbery (2015), being based on annual changes in prices and market shares, capture changes over a relatively short time horizon. The estimates published by Fontagné et al. (2022) capture a long-run reaction because they are mostly identified on the variation across markets. As the authors explain, an alternative regression specification that focuses only on the variation over time provides lower estimates.²⁸

In this case, we seek to quantify the annual change in imports in the reference year if the WTO-inconsistent CVD was removed in the reference year.²⁹ Arguably, this calls for an elasticity estimate that is based on annual changes, making Soderbery (2015) the more appropriate source according to this particular criterion. Please comment.

Response:

25. The United States agrees with the Arbitrator that the elasticity estimates by Fontagné et al. (2022) should be interpreted as reflecting long-run responses, and are therefore expected to be larger than short-run estimates due to the greater scope for adjustment over time. In this specific dispute, we seek an elasticity estimate that is based on annual changes over a short time horizon. Therefore, estimates from Soderbery (2015) are the more appropriate source for calculating a precise level of nullification or impairment.

3 PARTIES' ECONOMIC MODELS FOR THE AS SUCH INCONSISTENCY

89. To the European Union: Does the European Union agree with the United States' position that the suspension of concessions should not be extended in an amount of time equal to that necessary to calculate and impose suspension of concessions following a triggering event³⁰? If not, how would authorizing such a time extension be consistent with Article 22.8 of the DSU and, as suggested by the United States, with the principle that concessions should not be suspended in a punitive manner?

²⁷ Exhibit USA-40 and Exhibit USA-43.

²⁸ Exhibit EU-27 and United States' comments on the European Union's responses, para 50.

²⁹ Note that this is consistent with the rationale for the two-step simulation approach. The first step simulation has been introduced to redress the issue of too small actual market shares of the affected exporters in the reference year that could be caused by a prolonged imposition of the WTO-inconsistent duty (Decision by the Arbitrator, *US – Washing Machines (Article 22.6 – US)*, paras. 3.114 – 3.119). If the model was parametrized with long-run elasticities, the adjustment to the prolonged duty imposition would be reflected in the results and there would be no need for the first step.

³⁰ United States' response to Arbitrator question No. 36.b.

Response:

26. This question is addressed to the EU.

90. To the United States: Please explain whether the USDA Economic Research Service Yearbook Tables, referred to in question No. 86 above, contain data on all processed agricultural products that may be relevant for the prospective model?

Response:

27. The ERS Yearbook Tables compile data from various sources for an extensive range of agricultural products, including both fresh and processed agricultural products.³¹ However, the product coverage is not exhaustive, and some products are not covered. Examples include coffee and frozen tart cherries. Because the scope of a future Section 771B investigation cannot be definitively predicted, it is not possible to determine whether the Yearbook Tables will encompass all processed agricultural products that could be subject to a future use of a prospective model adopted by the Arbitrator.

28. Even for products that are included in the ERS Yearbook Tables, there are limitations associated with using the ERS data, as explained in our response to the Arbitrator’s Question 86, above.

91. To the United States: In relation to the European Union’s response to Arbitrator question No. 74, please respond to the European Union’s indications that BCI procedures might be needed so as to share information necessary to run the prospective model. If so:

a. How should those BCI procedures be put in place, in practical terms?

Response:

29. The United States refers the Arbitrator to its discussion of BCI protection and BCI procedures in its response to Question 80, above. In addition, the United States provides the following additional detail regarding proposed BCI procedures.

30. Following a triggering event, the EU should first send a notification to the United States that it intends to suspend concessions or other obligations due to the application of Section 771B. The USDOC, as the investigating authority, should then perform a calculation to determine what portion of the subject CVD rates are due to the application of Section 771B. The USDOC would share the results of that calculation with the EU, without sharing the underlying calculations themselves, which would contain BCI, or it could share the calculations with BCI sufficiently redacted. If the EU accepts the results of these calculations, it can proceed to apply the

³¹ For details, see “Coverage of Data” section on the ERS Fruit and Tree Nuts Yearbook page, available at <https://www.ers.usda.gov/data-products/fruit-and-tree-nuts-data/documentation>.

prospective model accordingly. If the EU does not accept the results or if the EU would like more information on how the USDOC performed its calculations, the EU can request authorization from the relevant EU exporters to share BCI disclosed to the USDOC in the course of its CVD proceeding. If such authorization is granted, the USDOC will then share its full calculations with the EU.

31. If the EU continues to disagree with the calculations performed by the USDOC or if the EU is unable to obtain authorization from EU exporters to share the relevant BCI, the EU should not be permitted to apply the prospective model and should instead approach the DSB for a new authorization to suspend concessions or other obligations pursuant to the procedures laid out in the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). In such a case, there will either be a legitimate disagreement between the Parties on a fundamental input into the prospective model or there will be a lack of information necessary for proper operation of the prospective model. Therefore, it would be inappropriate to apply the prospective model, as doing so would risk authorizing a level of suspension of concessions that is not equivalent to the level of nullification or impairment, contravening Article 22.4 of the DSU.

32. Simply assuming that the counterfactual CVD rate is 0% where the Parties cannot obtain the relevant BCI, as is suggested by the EU,³² is not reasonable as there would be no basis for such an assumption, particularly considering that the case-specific facts and market in a future CVD proceeding are unknown. Furthermore, if a 0% counterfactual CVD rate were the default, EU exporters would have no incentive to share the BCI that is necessary for calculating the correct counterfactual CVD rate. To the contrary, EU exporters would be incentivized to decline any requests from either the EU or the United States to share such information because refusing to cooperate would always inflate the level of suspension of concessions that the EU can undertake and would thereby improperly increase pressure on the United States to remove the CVD order at issue. As previously explained, the USDOC cannot share BCI without the express consent of the company that provided that BCI in the underlying investigation. Accordingly, the default rule proposed by the EU would always provide EU exporters with the means to undermine an accurate calculation of nullification or impairment and inflate the level of suspension that the EU could assume.

b. What information should be covered by those BCI procedures?

Response:

33. The United States again refers the Arbitrator to its response to Question 80, above. As discussed in our response to Question 80, BCI procedures should cover any information that is subject to the APO in the underlying CVD investigation.

c. Is this an area where the parties can agree among themselves, or should the Arbitrator be involved in this process (for instance, following a process

³² See EU responses to second set of questions from the Arbitrator, para. 99.

similar to that featured in *US – Supercalendered Paper with the BCI Understanding*³³?

Response:

34. The United States supports a process similar to that featured in *US – Supercalendered Paper with the BCI Understanding*. The United States is willing to engage with the EU on appropriate BCI procedures, but would prefer that any understanding reached by the Parties is incorporated into the findings of the Arbitrator to ensure that future controversies between the Parties do not arise with respect to the treatment of BCI.

92. To both parties: Assume that in response to a CVD order issued by the United States involving the use of Section 771B, the European Union calculates a level of NI under the prospective model using the CVD rates in that order and suspends concessions on that basis. Further assume that the CVD rates are subsequently modified, possibly resulting in a change in the level of NI.

- a. In practical terms, how would the European Union revise the calculation of the NI and, consequently, the original suspension of concessions? For instance, should the European Union terminate the original suspension, then proceed to recalculate the level of NI, and finally proceed to suspend concessions on the basis of the revised calculation? Regarding the data inputs into the revised calculation, should the duty rate be the only modified input or should all other data inputs, such as the market value and market shares, be also modified?**
- b. Are the above considerations equally applicable to the NI stemming from the ripe olives investigation? That is, if a given CVD rate (or rates), used in the calculation of the level of NI under the “as applied” scenario in this Arbitration for ripe olives, is (or are) modified by the United States after the issuance of the Arbitrator’s Decision, is the European Union required to revise the level of authorized NI?**

Response:

35. As an initial matter, if duty rates are revised in such a manner that calls into question whether Section 771B is continuing to be applied in a WTO-inconsistent fashion, the decision of the Arbitrator should not permit the EU to continue to use a prospective model to automatically suspend concessions or other obligations where such application could cause the level of countermeasures to exceed the level of nullification or impairment, a result contrary to the DSU. For example, if the USDOC were to conduct a Section 129 proceeding and revise duty rates to comply with DSB recommendations, the DSB authorization resulting from the Arbitrator’s decision should not continue to permit application of a prospective model under outdated and

³³ Decision by the Arbitrator, *US – Supercalendered Paper (Article 22.6 – US)*, para. 8.60.

erroneous values. Rather, the authorization should reflect that the EU should seek an authorization that is appropriate under the revised duty rates.

36. Putting aside the issue of compliance, if CVD rates used as an input into the approach adopted by the Arbitrator are subsequently modified, the United States suggests that the EU should terminate the original suspension, recalculate the level of NI, and implement the modified suspension. The revised duty rates should be the only updated inputs in the recalculation, with all other data inputs, such as the market shares and the market value, remaining unchanged from the original assessment. Such a process should apply for CVD modifications made in both the “as applied” scenario in this Arbitration for ripe olives and the “as such” scenario for prospective CVD orders on processed agricultural products.

93. To both parties: The United States proposes that parallel ADDs should be included in the model scenarios so that, where the counterfactual CVD is 0%, the level of NI would be calculated as the difference between the two following scenarios:

Simulation A: WTO-inconsistent scenario of imposing a combined duty of ADD plus WTO-inconsistent CVD; and

Simulation B: WTO-consistent (counterfactual) scenario of imposing only the ADD.

In the Armington partial equilibrium model, the effect of the combined duty in simulation A can be decomposed into an effect of first imposing the ADD and then imposing the CVD, which is equal to the effect of first imposing the CVD and then imposing the ADD. For this purpose, the sequence in which the duties are imposed does not matter. However, the sequencing does matter for the individual effects of each duty, due to diminishing marginal effects of *ad valorem* trade costs featured in the Armington model.³⁴

Thus, the United States’ approach is equivalent to assuming that the CVD was imposed on top of the ADD, and attributes the lowest marginal effect of the combined duty to the CVD.

The European Union’s approach, which considers only the CVD in simulation A and 0% duty in simulation B, is arguably equivalent to considering the imposition of a combined duty assuming that the CVD is imposed first and therefore allocated the highest marginal effect of the combined duty.

As the United States observes, the proposed economic model cannot achieve an accurate allocation of trade effects between two functionally identical contemporaneous measures.³⁵ Within the framework of the Armington partial

³⁴ As also discussed in European Union’s comments on United States’ response to question No. 54, paras. 23-26.

³⁵ United States’ response to Arbitrator question No. 21, para 50.

equilibrium model, if an ADD is imposed in parallel with the WTO-inconsistent CVD, the United States’ approach allocates the lowest possible trade effect to the CVD while the European Union’s approach allocates the highest possible trade effect to the CVD.

Please comment on whether there is a more accurate approach to allocating the trade effect.

Response:

37. In general, the United States agrees with the Arbitrator that in a non-linear Armington partial equilibrium (PE) model, (1) the sequence in which the duties are imposed can influence the marginal effect attributed to each individual duty, even though it does not affect the combined effects and (2) the PE models proposed by both Parties cannot achieve an accurate allocation of trade effects between two functionally identical contemporaneous measures.

38. However, the United States respectfully disagrees with the Arbitrator’s characterization of the U.S. approach as imposing the CVD on top of the AD duty, as well as with its portrayal of the EU’s approach as equivalent to applying the CVD first. The sequence of the two duties is irrelevant in this case and unrelated to the rationale for including the AD duty in Simulation A. In fact, the model proposed by the United States does not sequence the duties at all – rather it reflects the reality that these duties were imposed contemporaneously. Similarly, the EU model does not sequence the duties either, but simply omits AD duty from the analysis entirely. Accordingly, Simulation A is employed in the U.S. approach to establish the appropriate baseline in step 1 of the two-step Armington PE methodology, with the corresponding counterfactual market shares assumed to represent the prevailing “as is” competitiveness positions of each entity in 2023. Accounting only for the CVD while disregarding the WTO-consistent AD duty in Simulation A, as suggested by the EU, would construct a purely hypothetical scenario divorced from actual competitiveness that is not pertinent to evaluating the WTO-inconsistent equilibrium, and result in an overestimation of Spain’s market share, thereby inflating the estimate of nullification and impairment. Therefore, the U.S. approach, which estimates the trade impacts of maintaining the WTO-inconsistent CVD conditional on the existence of the contemporaneous WTO-consistent AD duty, is both appropriate and accurate for the current proceeding.

39. The United States also disagrees with the Arbitrator’s interpretation of the marginal effect of the *ad valorem* trade cost. If the marginal effect was always diminishing in a non-linear PE model, as the Arbitrator suggests, we would expect the impact of removing the combined duties should always be smaller than the sum of the impacts of removing each duty separately. The calculations submitted by the EU demonstrate that this is not the case. For example, eliminating both the AD duty and CVD simultaneously would result in an increase in Spain’s exports to the U.S. of \$25.121 million based on the U.S. model, which exceeds the combined effect of removing each duty individually by \$4.795 million. In contrast, for the other three entities (U.S., rest of EU, and ROW), the effect of simultaneous elimination would be smaller than the

combined effect of individual removals.³⁶ This indicates that the marginal effect can be non-linear as well, likely impacted by other parameters in the model such as the initial market share and the demand and supply elasticities.

40. Furthermore, in a non-linear Armington PE model, the total impact on trade flows from reducing an *ad valorem* trade cost can differ substantially from its marginal impact, thanks mainly to the curvature of the import response to trade cost under constant elasticity of substitution (CES) preferences. The divergence between these two impacts can increase with the initial tariff level, the size of the shock, and the Armington elasticity, as well as other factors, all of which determine how much of the curvature the model traverses. The key issue in this proceeding is measuring the overall impact, not the marginal impact, on trade flows of maintaining the WTO-inconsistent CVD. The U.S. approach of treating the contemporaneous AD and CVD duties as functionally equivalent to a combined duty and then applying a modified duty without the WTO-inconsistent CVD component in the counterfactual achieves the goal of accurately measuring overall impact of the CVD, while the EU approach does not.

94. To both parties: In response to Arbitrator question No. 60, the parties indicated that the trade data to be used in the economic model for the “as applied” inconsistency should include only the product codes listed in Ripe Olives from Spain: Investigation Nos. 701-TA-582 and 731-TA-1377 (Final).³⁷ Could the parties please clarify which source should be used to determine the relevant HS product codes for the prospective model for the “as such” inconsistency, and how the codes should be selected?

Response:

41. As the United States has previously explained,³⁸ and as the EU has acknowledged,³⁹ the USDOC’s written description of the subject merchandise is the sole authoritative source for determining the scope of a CVD order. Although the USDOC often provides HTS subheadings or statistical reporting numbers in its published CVD orders, those codes are provided only for convenience and do not define the scope of the order. Frequently, because of the nature of the particular products or the trade flows of those products, the USDOC’s scope definitions do not perfectly align with the available HTS subheadings, such that any selection of HTSUS subheadings could understate or overstate imports of the subject merchandise. For example, it is entirely possible for in-scope products to run across multiple HTS codes without making up a majority of imports under any of those codes or for a CVD order to cover a highly specific product that makes up only a fraction of imports within a single broader HTS code.

³⁶ See EU comments on U.S. responses to second set of questions from the Arbitrator, para. 25, Table 1.

³⁷ Exhibit EU-9.

³⁸ See, e.g., U.S. responses to first set of questions from the Arbitrator, paras. 58-60.

³⁹ See EU responses to second set of questions from the Arbitrator, para. 49.

42. In the case of ripe olives, the Parties happen to agree that seven HTS-10-digit codes sufficiently align with the scope of the CVD order such that import flows under those codes are a suitable proxy for imports subject to the CVD order.⁴⁰ However, there is no reason to believe that HS codes will be able to provide a suitable proxy for in-scope imports for any future CVD order in which Section 771B was applied in the underlying investigation. Due to the wide range of products potentially subject to Section 771B and the uncertainty surrounding the details of any future CVD order, it would not be possible to discern a methodology that could reliably determine an accurate proxy for in-scope import flows for an as-yet unknown CVD order. The United States has repeatedly raised this concern starting with its Written Submission and the EU has never provided a suitable methodology that could address this issue.⁴¹

43. The inability to predict how to accurately define import flows for any future CVD order applying Section 771B presents yet another compelling reason that the Arbitrator should decline to adopt a prospective model for automatically calculating nullification and impairment. Instead, if Section 771B is applied to products from the EU in the future, the EU should request authorization from the DSB to suspend concessions in a specific amount which can be challenged by the United States through arbitration. The question of how to accurately define import flows subject to the relevant CVD order would then be properly determined through the arbitration process envisioned in the DSU.

95. To both parties: If the prospective economic model were to source values for the Armington elasticity from either Fontagné et al. (2022) or Soderbery (2015), the relevant elasticity estimates may end up being unusually large compared to the average estimate, i.e., outliers. The decision by the Arbitrator in *US – Supercalendered Paper* lays out instructions for handling such outliers by capping the Armington elasticity at the median value for all products plus two standard deviations.⁴²

i. If outliers were treated in a similar manner in this case, would the appropriate median elasticity value be that of all products, or that of only processed agricultural products?

Response:

44. The appropriate median elasticity value for the prospective economic model should be that of all processed agricultural products, as Section 771B pertains solely to processed agricultural products.

⁴⁰ See, e.g., EU Methodology Paper, Table 1, Notes; EU responses to second set of questions from the Arbitrator, paras. 53-55.

⁴¹ See U.S. written submission, para. 130.

⁴² Decision by the Arbitrator, *US – Supercalendered Paper (Article 22.6 – US)*, para. 8.298.

ii. In the latter case, how should processed agricultural products be defined? For example, could they refer to products falling under chapters 2 to 24 of the Harmonized System?

Response:

45. Defining processed agricultural products as all products falling under HS Chapters 2-24 would be too broad, as it would capture raw agricultural products. For example, chapter 2 includes fresh or frozen meat, and chapter 3 includes raw seafood. The United States suggests to use the HTS codes in Exhibit USA-57 to define the scope of all processed agricultural products, defined as agricultural products subject to certain forms of transformation process which can range from minimal handling (such as drying, freezing, packaging, etc.) to extensive processing (such as fermenting, cooking, blending, etc.). The list in Exhibit USA-57 was provided by the USDA, and has remained relatively stable since at least 2010.

46. Based on the estimates from Soderbery (2015), the median elasticity of substitution is 1.86 for all products with the standard deviation of 15.81, 2.01 for agricultural products falling under HS Chapters 2-24 with the standard deviation of 15.98, and 1.98 for processed agricultural goods as listed in Exhibit USA-57 with the standard deviation of 17.37.⁴³ The median plus two standard deviations is 33.48 for all products, 33.97 for agricultural products under HS Chapters 2-24, and 36.72 for processed agricultural goods. As shown in Table 1 below, none of the in-scope HTS 10-digit codes has an elasticity of substitution estimate above these three thresholds. Therefore, neither the simple average of 5.1 nor the trade-weighted average of 8 proposed by the United States for the elasticity of substitution estimates of the in-scope products is impacted by outliers.

Table 1: In-scope Elasticity of Substitution Estimates at the HTS-10 level

US HTS 10-digit code	Soderbery (2015) Estimate
2005.70.5030	4.3
2005.70.5060	Not Reported
2005.70.6020	2.2
2005.70.6030	1.8
2005.70.6050	9.5
2005.70.6060	7.5
2005.70.6070	Not Reported
Simple average	5.1
2016 trade-weighted average	8.0

⁴³ See Soderbery (2015) (Exhibit USA-21) Table 4 for the median elasticity of substitution for all products. The median substitution elasticity for specific sets of goods, and the two standard deviations are calculated based on the companion dataset on Soderbery’s website, available at <https://web.ics.purdue.edu/~asoderbe/elasticities/liml/>.

iii. If estimates for the elasticity of export supply were sourced from Soderbery (2015), should outliers for that parameter be treated the same way?

Response:

47. The United States agrees that outliers for the export supply elasticity can be treated in the same way. Based on the estimates from Soderbery (2015), the median export supply elasticity is 0.15 for all products with the standard deviation of 108.78, 0.81 for agricultural products under the HS Chapters 2-24 with the standard deviation of 96.15, and 0.84 for processed agricultural products with the standard deviation of 39.44.⁴⁴ Therefore, the median plus two standard deviations is 217.71 for all products, 193.11 for agricultural products under the HS Chapters 2-24, and 79.72 for processed agricultural products.

48. As shown in Table 2 below, none of the in-scope HTS 10-digit codes has an export supply elasticity estimate above the threshold for either all products or all agricultural products under the HS Chapters 2-24, while only one of the in-scope HTS 10-digit codes has an export supply elasticity estimate above the threshold for processed agricultural products. Applying the methodology used in *US – Supercalendered Paper* and capping value for the outlier (HTS 2005.70.6020) at 79.72 would reduce the simple average export elasticity for all in-scope products to 16.79, and reduce the weighted average export elasticity for all in-scope products to 8.78.

Table 2: In-scope Foreign Export Supply Elasticity Estimates at the HTS-10 level

US HTS 10-digit code	Soderbery (2015) Estimate
2005.70.5030	0.0004
2005.70.5060	Not Reported
2005.70.6020 (outlier)	Replace 113.2105 with 79.72
2005.70.6030	4.2086
2005.70.6050	0.0010
2005.70.6060	0.0007
2005.70.6070	Not Reported
Simple average (capping outlier)	16.79
2016 trade-weighted average (capping outlier)	8.78

⁴⁴ See Soderbery (2015) (Exhibit USA-21) Table 4 for the median export supply elasticity for all products. The median export elasticity for agricultural goods falling under HS Chapter 2-24, and the two standard deviations are calculated based on the companion dataset on Soderbery’s website, available at <https://web.ics.purdue.edu/~asoderbe/elasticities/liml/>.

96. To both parties: In relation to the price level adjustment, would the parties agree with following the process outlined in section 9.4 (“Technical Implementation”) of the Decision by the Arbitrator in *US – Supercalendered Paper (Article 22.6 – US)*?

Response:

49. In principle, the United States does not object to the process outlined in section 9.4 of the report by the arbitrator in *US – Supercalendered Paper* to adjust the level of nullification and impairment for price-level changes in future “as such” cases concerning agricultural products covered by Section 771B. However, in the current proceeding concerning ripe olives, all in-scope HTS-10 products defined in the relevant CVD order correspond to the same 6-digit NAICS code 311421 based on the 2016 concordance between the HTS-10 import codes and NAICS codes provided by the U.S. Census Bureau.⁴⁵ NAICS 311421 (classified as “Fruit and Vegetable Canning”) is the most disaggregated NAICS code available, and includes not only in-scope ripe olive products but also a broad range of other fruits and vegetables, such as provisionally preserved fruits, cucumbers, artichokes, beans, walnuts, tomato sauces, and juices. Therefore, the producer price index for NAICS 311421 is a less accurate price index for the in-scope products subject to the relevant CVD order than the “Producer Price for Olives for Processing, Canned” from the NASS proposed by the United States.⁴⁶

⁴⁵ See U.S. responses to second set of questions from the Arbitrator, para. 56.

⁴⁶ See U.S. comments on EU responses to second set of questions from the Arbitrator, paras. 67-68.