

***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)

**COMMENTS OF THE UNITED STATES OF AMERICA
ON THE RESPONSES OF THE EUROPEAN UNION TO THE ADDITIONAL
QUESTIONS FROM THE ARBITRATOR TO THE PARTIES**

June 13, 2025

TABLE OF CONTENTS

TABLE OF REPORTS AND AWARDS ii

TABLE OF EXHIBITS iii

1 COUNTERFACTUAL 1

2 PARTIES’ ECONOMIC MODELS FOR THE AS APPLIED INCONSISTENCY 2

3 PARTIES’ ECONOMIC MODELS FOR THE AS SUCH INCONSISTENCY 12

TABLE OF REPORTS AND AWARDS

Short Form	Full Citation
<i>US – Supercalendered Paper (Canada) (Article 22.6 – US)</i>	Decision by the Arbitrator, <i>United States – Countervailing Measures on Supercalendered Paper from Canada</i> , WT/DS505/ARB and Add. 1, 13 July 2022
<i>US – Washing Machines (Korea) (Article 22.6 – US)</i>	Decision by the Arbitrator, <i>United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (Recourse to Article 22.6 of the DSU by the United States)</i> , WT/DS464/ARB, 8 February 2019

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 Questions 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. Response provided in U.S. responses to the additional questions from the Arbitrator.

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.² 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:

2. Response provided in U.S. responses to the additional questions from the Arbitrator.

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

² European Union's response to Arbitrator question No. 41, para. 16.

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.³ Does the European Union also consider that a simple average is preferable to a weighted average using more recent trade weights?

Comment:

3. The United States disagrees with the European Union (EU) that using a simple average of the duties imposed on the three respondents in the underlying countervailing duty (CVD) investigation and the all-others rate would produce a more reasoned estimate of the level of nullification and impairment than simply using the all-others rate. As explained in the U.S. response to the Arbitrator's Question 84, the all-others rate is itself the weighted average rate of the three respondents' rates, and is intended to be the representative rate for all Spanish exporters not individually investigated by the U.S. Department of Commerce (USDOC).⁴ The all-others rate has been applied by the U.S. Customs and Border Protection during the customs clearance process for importers that did not identify a specific producer or exporter in Spain with an individual rate, and it continues to be so applied. Whether the all-others rate is calculated using trade weights representative of the market during the investigation period or during 2023 is therefore not relevant because the goal of the nullification and impairment analysis is to estimate the change in Spain's exports to the United States as a result of removing the applied WTO-inconsistent CVD rates during the investigation period. As both an actual rate applied to all Spanish exporters without an individual rate and as a weighted average of the three individual rates applied to the three respondent companies, the all-others rate is an appropriate proxy for the CVD rates that have been applied, including in 2023.

4. Even if, as the EU argues, the trade weights used for the original investigation could be relevant for the second application of the two-step Armington model in 2023, mathematically there is no reason to believe that a simple average of the respondents' CVD rates and the all-others rate would produce a more accurate estimate of nullification and impairment than the weighted average presented by the all-others rate. In fact, it would be less accurate for at least two reasons. First, the simple average proposed by the EU is still based on CVD rates calculated using information from the investigation period, not from 2023. Second, by including the all-others rate in its calculation, the EU proposes to take a simple average of a data set that includes a weighted average of the other data elements. Taking an average of an average introduces distortions into the model without any mathematical basis or benefit in accuracy. Accordingly,

³ European Union's response to Arbitrator question No. 49, para. 36.

⁴ U.S. responses to third set of questions from the Arbitrator, paras. 14-17.

the EU approach should be rejected in favor of using the all-others rate as a proxy for the CVD rates applied to Spanish exports of ripe olives.

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?**
- 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?**

Comment:

5. The United States disagrees with the EU's argument that U.S. domestic production can only be included in the model if domestic production data is available at the same level of disaggregation as the trade data used, based on Harmonized System (HS) codes. Including domestic production in the model for calculating nullification and impairment reflects the reality that U.S.-produced ripe olives were available during the relevant time period, and that U.S. consumers had the option of substituting between domestic-produced and imported ripe olives, including from Spain. By omitting U.S. domestic production, the EU's model fails to capture this critical substitution effect between domestic and foreign sources of ripe olives.⁵

6. As explained in the U.S. responses to the Arbitrator's Question 72, it is neither reasonable nor necessary to expect a one-to-one match between suitable domestic production data and the in-scope Harmonized Tariff Schedule (HTS) tariff lines used to approximate the relevant import flows.⁶ Indeed, that these two proxy values do not neatly align with one another is not relevant to the Arbitrator's assessment. Both inputs are approximations of the coverage of the CVD order, and the Arbitrator's goal should be only that each proxy used is as accurate as possible in that regard.

7. As explained in the U.S. responses to the Arbitrator's Question 24(b), even though the USDOC lists HTS subheadings where the subject products are likely to be classified, those HTS numbers are not dispositive in determining whether specific imports will be subjected to duties,

⁵ As the United States explained in its written submission, excluding domestic production from the model is unsupported by prior arbitrations, factually suspect, and incompatible with the rationale behind imposing CVDs in the first place. See U.S. written submission, paras. 72-80.

⁶ See U.S. responses to second set of questions from the Arbitrator, paras. 67-69.

and are provided only for convenience and U.S. customs purposes (as stated in the CVD order).⁷ Domestic shipments of in-scope products can only be approximated through a proxy value which is expected to track as closely as possible the coverage of the relevant CVD order. Here, the NASS production data is consistent with the scope of the CVD order and is the best available proxy for U.S. domestic production of ripe olives. There is no reason to believe that the NASS data includes any significant volume of out-of-scope products and the EU has not provided any evidence that it does.⁸

8. In addition, the EU incorrectly claims that there are no available estimates from public sources of domestic demand or domestic supply elasticities, and that the United States relies on its own estimates of such elasticities for the estimation of nullification and impairment. On the demand side, by claiming “[o]ne cannot use a single demand elasticity for both domestically produced goods and goods that are traded (i.e. imported/exported)”,⁹ the EU erroneously asserts that a nested constant elasticity of substitution (CES) approach must be employed in the model. However, this is inconsistent with not only the U.S. model but also the EU’s model, which is based on Balistreri and Rutherford (2013). As United States explained in its written submission, Balistreri and Rutherford (2013) assume demand following a non-nested CES approach, under which consumers substitute across all sources at a constant rate – an elasticity that is equivalent to the Armington elasticity.¹⁰ This approach is standard for an Armington partial equilibrium (PE) model, and has been used widely in the economic literature on trade. The assumption of non-nested CES demand used by both Parties in their respective models is also consistent with the conclusion of the U.S. International Trade Commission (USITC) in its 2024 review report that “the degree of substitutability is particularly high between subject imports and domestically produced ripe olives....”¹¹ The EU itself has confirmed that a nested CES approach is not appropriate for its model.¹²

9. On the supply side, the EU incorrectly asserts that the domestic supply elasticity (4.5) is not sourced from verifiable estimates. As explained in the U.S. written submission, the USITC published a range of 3 to 6 for domestic supply elasticities for ripe olives in its 2024 sunset investigation report, which took into consideration comments from all parties in that proceeding.¹³ The United States uses the midpoint of that range to estimate the trade impacts in the current proceeding.

⁷ See, e.g., U.S. responses to first set of questions from the Arbitrator, paras. 60-62; U.S. comments on EU responses to second set of questions from the Arbitrator, paras. 35-38.

⁸ See U.S. responses to first set of questions from the Arbitrator, paras. 61-62; U.S. responses to second set of questions from the Arbitrator, para. 68.

⁹ EU responses to third set of questions from the Arbitrator, para. 7.

¹⁰ See U.S. written submission, para. 109

¹¹ Exhibit USA-13, p. 20, n. 101.

¹² See EU written submission, para. 88.

¹³ See U.S. written submission, para. 99.

10. The United States also disagrees with the EU's argument that the U.S. model is incomplete because it does not include reallocation of trade among third countries. As explained in the U.S. response to the Arbitrator's Question 87, the United States agrees with the Arbitrator that a simple one-market model, as proposed by the United States, is sufficient to capture the adjustment through trade diversion to and from third-country markets, provided that an appropriate export supply elasticity is chosen.¹⁴ To be more explicit, an appropriate upward-sloping foreign export supply elasticity in the U.S. model will accurately capture the responsiveness of Spain's exports to relative price changes, such that the change in Spain's exports to the United States reflects the aggregate effect of both adjustments in Spanish domestic production and the reallocation of its exports across all third countries. The United States further notes that its approach is consistent with every two-step Armington model used by past Article 22.6 arbitrators, all of which focused on a single market and accounted for reallocation of trade between imports of different origins within that market.¹⁵

11. Therefore, the global dimension of the EU model is unnecessary and overly complex because the dispute only concerns the impact of CVD rates on imports from the EU into the U.S. market.¹⁶ In fact, the inclusion of Spain's exports to third markets further diminishes the accuracy of the EU's nullification and impairment estimate because it forces the EU to adopt the unreasonable assumption that the share of in-scope total ripe olive imports (HS 200570) into the United States is representative of the share of in-scope total ripe olive imports into other markets, in order to calculate in-scope trade flows for those other markets. As explained in the U.S. response to the Arbitrator's Question 59, the vastly different production and consumption patterns for table olives between the United States and other markets suggests that assuming the same share in other markets would significantly distort the estimates of in-scope imports in those markets. Given the critical role these market shares play in the EU's model, such an assumption would thereby call into question the accuracy of the EU's nullification and impairment estimate.¹⁷

12. In theory, the accuracy of the EU's model could be enhanced if domestic production in different entities, especially in the United States, were taken into consideration. However, such an adjustment is not possible because, as the EU has acknowledged: "reliable domestic production data matching the relevant trade flows and the relevant parameter estimates will frequently not be available for many entities."¹⁸

13. Overall, compared to the EU's model, the U.S. model concentrates specifically on analyzing the U.S. market where the CVD duties were applied, and enables a more precise analysis of both the interaction between domestic production and total U.S. imports, as well as

¹⁴ See U.S. responses to third set of questions from the Arbitrator, para. 24.

¹⁵ See U.S. written submission, para. 73. See also U.S. responses to first set of questions from the Arbitrator, paras. 54-56.

¹⁶ See U.S. written submission, paras. 69-71.

¹⁷ See U.S. responses to second set of questions from the Arbitrator, paras. 39-43.

¹⁸ EU's responses to third set of questions from the Arbitrator, para. 12.

the redistribution of trade flows among various foreign sources, within U.S. import flows. The U.S. model requires only U.S. market share as a model input, for which available data can provide an accurate estimate. As a result, the U.S. model is more technically sound, more reflective of reality, and relies on more practical data requirements than the EU model, and therefore is more appropriate for producing a reasoned estimate of nullification and impairment.¹⁹

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?

Comment:

14. The United States does not have a comment on the EU's response to this Question.

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.²⁰**
- ii. How is the all-others rate in Ripe Olives from Spain: Final Section 129 Determination Regarding the Countervailing Duty Investigation²¹ calculated?**
- 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?**
- iv. If not the same, to which year do the weights refer?**

Response:

¹⁹ For sake of completeness, the United States reiterates its disagreement with the EU's argument that domestic production should be excluded from the analysis of nullification and impairment because total U.S. domestic production of table olives may have decreased during the relevant time period. As the United States has previously stated, changes in actual domestic production flows are influenced by both demand and supply side factors that are unrelated to changes in price and, therefore, a decrease in U.S. domestic production does not justify an extreme assumption that domestic supply is completely inelastic. See U.S. responses to first set of questions from the Arbitrator, paras. 63-65; U.S. comments on EU responses to second set of questions from the Arbitrator, para. 65.

²⁰ Exhibit USA-22.

²¹ Exhibit EU-15.

15. Response provided in U.S. responses to the additional questions from the Arbitrator.

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.”²² To which year does the weighting factor refer?

Response:

16. Response provided in U.S. responses to the additional questions from the Arbitrator.

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.²³ Compared to the NASS database, these tables include additional information, notably on the quantity of imports, exports and domestic 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.

Comment:

17. The United States agrees with the EU in general that the domestic market share data derived from the USDA Economic Research Service (ERS) Yearbook Tables is not ideal for the current proceeding, but disagrees with the EU that it is nonetheless a better option than the NASS data proposed by the United States. As explained in the U.S. response to the Arbitrator’s Question 86, USDA ERS does not generate original data for its Fruit and Tree Nuts Yearbook Tables. Instead, it compiles information from various public and industry sources, including USDA NASS data. Specifically, the production data for canned olives were derived by converting NASS data from fresh weight to product/processed weight, using a conversion factor of 1.06.²⁴

18. It is also unclear how the EU could take the import share/domestic share data in

²² Exhibit EU-25.

²³ Accessible at [Fruit and Tree Nuts Data - Fruit and Tree Nuts Yearbook Tables | Economic Research Service](#) under the supply and utilization tab.

²⁴ See U.S. responses to third set of questions from the Arbitrator, paras. 22-23.

quantities for canned olives from the ERS Yearbook Table²⁵ and then “scale it with trade data of full-in-scope products” to quantities first and then to values.²⁶ Although ERS provides a list of HTS 10-digit codes used to obtain trade data for olives, it is not clear which HTS-10 codes were used by ERS to determine the trade volume for canned olives.²⁷

19. As explained in the U.S. response to the Arbitrator’s Question 72,²⁸ in this proceeding, the NASS production data for canned olives is consistent with the scope of the CVD order and is the best available data for U.S. domestic production of ripe olives. While NASS does not collect data on specific olive varieties, information about the U.S. olive industry supports the conclusion that all, or nearly all, of the production reported is for ripe olives that would be covered by the scope of the CVD order. The EU has presented no evidence to suggest that the volume of U.S. olives destined for canned processing includes any significant quantity of out-of-scope specialty olives. Nor has it presented any evidence to suggest that the United States exports ripe olives in any significant quantity, especially given that, as the EU acknowledges, U.S. domestic production of ripe olives can satisfy only a fraction of U.S. consumption of ripe olives.²⁹

20. Furthermore, if the EU considers domestic production data for canned olives in the ERS Yearbook Tables to be an acceptable proxy for U.S. production of in-scope table olives, there is no basis to assert that the NASS production data proposed by the U.S. is less accurate, because both datasets are from essentially the same data source – one measured in volume and the other in value.

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.³⁰ The export 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.³¹

²⁵ See EU responses to third set of questions from the Arbitrator, para. 18. The EU refers to “NASS” data in paragraph 18 of its response to Question 86 when referring to the Arbitrator’s suggestion, which we assume was meant to refer to the ERS Yearbook Tables.

²⁶ EU responses to third set of questions from the Arbitrator, para. 18.

²⁷ See U.S. responses to third set of questions from the Arbitrator, para. 23.

²⁸ See U.S. responses to second set of questions from the Arbitrator, para. 68.

²⁹ See EU responses to first set of questions from the Arbitrator, para. 54, Table 1.

³⁰ Exhibit EU-6, p.2.

³¹ Opening statement of the European Union at the meeting of the parties with the arbitrator, paras. 59-61.

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.³² 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.

Comment:

21. The United States disagrees with the EU’s argument that the U.S. model does not account for the reallocation of exports in third markets. As explained above in the U.S. comments on the EU’s response to the Arbitrator’s Question 82, an appropriate upward-sloping foreign export supply elasticity in the U.S. model should accurately capture the responsiveness of Spain’s exports to relative price changes caused by the duties in the U.S. market, such that the change in Spain’s exports to the United States reflects the aggregate effect of both adjustments in Spanish domestic production and the reallocation of its exports across all third countries.

22. The United States also disagrees with the EU’s argument that an appropriately chosen export supply elasticity in a one-market model can capture the adjustment through trade diversion in third markets “only . . . in a narrow price range” and that the results from such a model would deviate significantly from those of a multi-market model.³³ The EU seems to conflate two distinct concepts: the definition of export supply elasticity and the modelling assumption, shared by both Parties, that this elasticity remains constant within the PE framework. By definition, the export supply elasticity captures the aggregate response of foreign exporters to relative price changes in the destination market, encompassing both supply-side adjustments (through changes in production) and the reallocation of exports across multiple destinations given any change in prices. However, for large price changes, the assumption of a constant export supply elasticity may no longer hold, as exporter responses may become nonlinear due to capacity constraints, and prohibitive adjustment costs, etc. Neither the U.S. nor

³² 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.

³³ EU responses to third set of questions from the Arbitrator, para. 21.

the EU model can fully capture such nonlinear dynamics, because both rely on the simplifying assumption of constant export supply elasticity.

23. Furthermore, the United States disagrees with the EU that the correct value of the export supply elasticity should be 99 or higher. The EU uses the value of 99 as a model input to stand in for its actual position that the export supply elasticity is infinite. However, the EU now proposes that the Arbitrator might increase the value of the export supply elasticity even further.³⁴ In other words, the EU is now advocating for an export supply elasticity that is higher than infinity. To date, the EU has never explained how the practical limitations and timeframes for cultivating olive trees can justify an implied domestic supply elasticity of zero in the United States, while the same crop can be cultivated without any limitation on production in Spain.³⁵

24. As explained in the U.S. responses to the Arbitrator's Question 71, the only argument that the EU provides to support such an extreme assumption is that U.S. demand for ripe olives can be fully satisfied by Spain regardless of price. However, the data provided by the EU does not support this assumption, as the mere fact that total excess ripe olive production from the EU as a whole covers total consumption in the United States by a modest margin in no way justifies applying an infinite export supply elasticity to ripe olives from Spain.³⁶

25. As explained in the U.S. written submission, the assumption of an infinite export supply elasticity improperly inflates the EU's estimate of nullification and impairment because the CVDs would be borne in their entirety by Spanish ripe olive processors, resulting in larger estimated trade impacts from the WTO-inconsistent CVD order, all else being equal.³⁷ It is worth noting that the EU's proposed export supply elasticity value is so high that increasing the value any further above 99, in both models, would produce only negligible changes in the nullification and impairment estimate, all else being equal. This likely reflects the fact that once the export supply elasticity reaches a certain threshold (such as 99), the model behaves as though the foreign supply is effectively infinite, so that any additional increase in this elasticity would minimally effect U.S. imports. This further demonstrates that the EU's proxy value of 99 is unrealistically high.

26. Overall, the EU's criticism of the U.S. one-market model for allegedly failing to capture the reallocation of exports in third markets is inconsistent with its own extreme assumption of an effective infinite export supply elasticity for Spain. Under this assumption, Spain is treated as being able to export unlimited quantities to the United States at a fixed price, without facing capacity constraints or any impact on its exports to other markets. In other words, reallocation of exports in third-country markets is not only unnecessary under such an assumption, it is

³⁴ EU responses to third set of questions from the Arbitrator, para. 23 (“The EU remains firmly convinced that the correct value of the elasticity for its model is 99 (infinite) and, in case the Arbitrator chose to correct the US model by increasing the export supply elasticity, the value of such parameter should be higher than 99.”) (emphasis added).

³⁵ See U.S. written submission, para. 101.

³⁶ See U.S. responses to second set of questions from the Arbitrator, paras. 64-65.

³⁷ See U.S. written submission, para. 102.

explicitly ruled out by the assumption itself. By assuming away the need for export reallocation in third markets, the EU undermines its criticism of the U.S. model for not capturing such reallocation.

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).³⁸ 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.³⁹

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.⁴⁰ 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.

Comment:

27. The United States disagrees with the EU’s argument that the distinction between a short-run and a long-run reaction is irrelevant in a static comparison. A simulation parametrized by short-run elasticities would reflect immediate trade shifts based on the existing preferences and capacity whereas a simulation parametrized by long-run elasticities will reflect more flexible substitution patterns and bigger adjustments over time. As pointed out by the Arbitrator, it would be more appropriate to apply short-run elasticities in the first step of the two-step simulation approach, which was introduced to account for the issue of exceedingly small actual market shares of affected exporters in the reference year.⁴¹

28. The United States reiterates its disagreement with the EU that the Fontagné et al. (2022) estimates should be the source for substitution elasticity. As explained by the United States in its responses to the Arbitrator’s Questions 58 and 61, in the context of this proceeding, the estimates

³⁸ Exhibit USA-40 and Exhibit USA-43.

³⁹ Exhibit EU-27 and United States’ comments on the European Union’s responses, para 50.

⁴⁰ 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.

⁴¹ See Third set of Questions from the Arbitrator, Question 88, n. 13.

from Soderbery (2015), which are not only derived using U.S. imports but also are tied directly to the in-scope products, align well with the underlying modelling approach and offer a better fit than the estimates in Fontagne et al (2022), which are based on global trade flows at a much more aggregated HTS-6 level, and vary across products but not across countries.⁴² Using Soderbery (2015) is consistent with the approach taken in the arbitrator’s decision in *US – Washing Machines*, which, like this dispute and unlike *US – Supercalendered Paper*, involved the application of a model to both “as applied” and “as such” breaches.⁴³ The arbitrator in *US – Washing Machines* emphasized the level of disaggregation in the Soderbery (2015) estimates as a benefit of using that source.⁴⁴

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 event⁴⁵? 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?

Comment:

29. As the United States has explained in its previous responses to questions from the Arbitrator, the United States disagrees with the approach taken by the arbitrator in *US – Supercalendered Paper* to allow suspension of concessions or other obligations to extend past the removal of the relevant CVD order in the amount of time that it takes to calculate and suspend concessions following a triggering event.⁴⁶ The parties in *US – Supercalendered Paper* agreed that suspension of concessions must be capped at “the length of time during which a given CVD rate (or CVD rates) affected by the [WTO-inconsistent measure] that yielded that level of [nullification and impairment] is (or are) in place.”⁴⁷ However, the arbitrator went beyond that point of agreement and authorized a temporal shift in Canada’s authorized suspension of concessions that would allow Canada to continue to suspend concessions for a limited period of time after the CVD order was removed.

30. As the EU has recognized, it is the application of a WTO-inconsistent CVD order that

⁴² See U.S. responses to second set of questions from the Arbitrator, paras. 37-38, 49.

⁴³ See *US – Washing Machines (Korea) (Article 22.6 – US)*, para. 4.75.

⁴⁴ See *US – Washing Machines (Korea) (Article 22.6 – US)*, para. 4.72.

⁴⁵ United States’ response to Arbitrator question No. 36.b.

⁴⁶ See U.S. responses to first set of questions from the Arbitrator, para. 89.

⁴⁷ *US – Supercalendered Paper (Canada) (Article 22.6 – US)*, para. 6.45.

generates nullification or impairment.⁴⁸ Once a WTO-inconsistent CVD order is removed there ceases to be any nullification or impairment arising from that CVD order. Accordingly, continuing to suspend concessions after the removal of a CVD order is inconsistent with both Article 22.8 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Article 22.4 of the DSU. Specifically, it is inconsistent with Article 22.8 because it would allow the suspension of concessions to continue past the point when the measure generating the nullification or impairment that is the basis for suspension has been removed.⁴⁹ It is also inconsistent with Article 22.4 of the DSU, which requires that the “level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.”⁵⁰ The DSU specifically refers to the “level” of suspension, not the “amount” of suspension. Accordingly, when a CVD order is revoked, the level of nullification or impairment is zero and, consistent with Article 22.4 of the DSU, the level of suspension of concessions must also be zero. The EU’s reading of Article 22.4 would convert suspension of concessions into compensatory or punitive damages, which are not permitted by the DSU.

31. The EU response to Question 89 also demonstrates the internal inconsistency of the EU’s positions. In its response, the EU’s reading of the arbitrator’s report in *US – Supercalendered Paper* conflicts with the position that the EU has taken on the parameters for an appropriate counterfactual. Specifically, the EU’s response to the Arbitrator’s Question 89 states that under the DSU “substantive compliance is reached by the revocation of the underlying measure (here: Section 771B), and not by the termination of particular applications of such underlying measure.”⁵¹ In other words, the EU has now acknowledged that one compliance scenario may be where Section 771B is revoked. This acknowledgment contradicts the EU’s arguments concerning the appropriate counterfactual, in which the EU takes the position that the appropriate counterfactual cannot consist of a compliance scenario in which the United States addresses the “as such” WTO-inconsistency of Section 771B.⁵² These two contrasting positions cannot be reconciled. If compliance under the DSU requires addressing the WTO-inconsistency of Section 771B, then the appropriate counterfactual compliance scenario should necessarily contemplate achieving such compliance by reinterpreting, amending, or repealing and replacing Section 771B.

⁴⁸ See EU Closing Statement from Meeting with the Arbitrator, para. 4; EU responses to second set of questions from the Arbitrator, paras. 3, 117.

⁴⁹ See DSU, Article 22.8 (“The 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, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached.”)

⁵⁰ DSU, Art. 22.4 (emphasis added).

⁵¹ EU responses to third set of questions from the Arbitrator, para. 28.

⁵² See, e.g., EU responses to second set of questions from the Arbitrator, para. 117 (“Hence no counterfactual can be construed on the basis of a potential US compliance by amending or repealing Section 771B.”).

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:

32. Response provided in U.S. responses to the additional questions from the Arbitrator.

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?
- b. What information should be covered by those BCI procedures?
- 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 similar to that featured in *US – Supercalendered Paper* with the BCI Understanding⁵³)?

Response:

33. Response provided in U.S. responses to the additional questions from the Arbitrator.

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?

Comment:

⁵³ Decision by the Arbitrator, *US – Supercalendered Paper (Article 22.6 – US)*, para. 8.60.

34. The DSU does not allow for the so-called extension periods proposed by the EU. The EU argues that if the Arbitrator were to adopt a prospective model for calculating nullification and impairment, and if a CVD rate used in such a model were to be modified, the EU should then be entitled to nevertheless continue the suspension of concessions at the same unchanged level until it is able to re-calculate and implement suspension of concessions at a revised level, based on the modified rate.⁵⁴ As the United States has explained in its responses to previous questions from the Arbitrator⁵⁵ and in the U.S. comment on the EU’s response to Question 89, above, the DSU does not allow for the “‘extension’ period[s]” proposed by the EU.⁵⁶ To the contrary, Article 22.4 of the DSU requires that the “level of suspension authorized by the DSB shall be equivalent to the level of nullification or impairment.”⁵⁷ Accordingly, if the Arbitrator were to adopt a prospective model and a CVD rate used to calculate the level of nullification or impairment in that model were subsequently modified, the level of suspension would necessarily no longer be equivalent to the level of nullification or impairment and suspension would also therefore need to be paused in order not to exceed the permissible level. In order to calculate a revised level of suspension that is equivalent to the level of nullification or impairment, the model would then need to be re-run with the correct data input.

35. Other data inputs used in a prospective model, aside from the CVD rate, need not be updated in such circumstances and opening other data inputs up for changes is likely to cause unnecessary controversies between the Parties.⁵⁸ Furthermore, requiring only an updated CVD rate, while keeping other data inputs static, would minimize the duration of any gap periods during which the EU must pause suspension in order to recalculate the correct level of nullification and impairment, in line with the requirements of the DSU. Thus, if the Arbitrator were to adopt a prospective model and the United States were to modify a CVD rate for which the EU has suspended concessions using that model, the EU would then need to pause its suspension, recalculate the correct level of suspension using the updated CVD rate while keeping all other model parameters the same, and proceed to suspend concessions in the correct amount.

- 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?**

Comment:

⁵⁴ See EU’s responses to third set of questions from the Arbitrator, para. 32.

⁵⁵ See U.S. responses to first set of questions from the Arbitrator, para. 89.

⁵⁶ See EU’s responses to third set of questions from the Arbitrator, paras. 32-33.

⁵⁷ DSU, Art. 22.4.

⁵⁸ See U.S. responses to third set of questions from the Arbitrator, para. 36.

36. The requirement of Article 22.4 of the DSU that the level of suspension authorized by the DSB “shall be equivalent to the level of nullification or impairment” applies to “as applied” WTO-inconsistent measures just as it does to measures inconsistent “as such”.⁵⁹ Accordingly, if CVD rates on ripe olives from Spain were to be changed in the future, and the CVD order continued to be inconsistent with the DSB recommendations in this dispute, then any level of suspension approved by the Arbitrator would then need to be adjusted to maintain equivalence with the revised level of nullification or impairment. There is no reason under the DSU that a prospective level of suspension should be adjusted to remain consistent with Article 22.4 of the DSU while the level of suspension authorized for the past application of a WTO-inconsistent measure should not. The fact that countermeasures can continue to be applied “until such time as the measure found to be inconsistent with a covered agreement has been removed” under Article 22.8 of the DSU does not change that the level of countermeasures applied “shall be equivalent to the level of the nullification or impairment” under Article 22.4.⁶⁰ Thus, if the Arbitrator were to approve suspension of concessions for the CVD order on ripe olives and the United States were to subsequently revise the CVD rates on ripe olives in the future without bringing the measure into compliance with the DSB recommendations, the EU’s level of suspension would then need to be adjusted to reflect the revised CVD rates in order to satisfy the requirements of Article 22.4 of the DSU. Regardless, for the reasons explained in our previous submissions, the United States continues to disagree with the EU’s assertion that “the only way to comply for the US in the present case is to terminate the CVD order.”⁶¹

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.⁶²

⁵⁹ DSU, Art. 22.4.

⁶⁰ DSU, Art. 22.8, 22.4.

⁶¹ See, e.g., U.S. written submission, paras. 22-41.

⁶² As also discussed in European Union’s comments on United States’ response to question No. 54, paras. 23-26.

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.⁶³ Within the framework of the Armington partial 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.

Comment:

37. As explained in its response to the Arbitrator’s Question 93, the United States disagrees with the EU that the impact of the CVD would be minimized or distorted if the simulation reflects the AD duty and CVD as imposed simultaneously, represented in the model as a single combined duty level for purposes of measuring nullification and impairment.⁶⁴ In a non-linear PE model, it is expected that the total impact on trade flows from reducing an *ad valorem* trade cost can differ substantially from its marginal effect. However, the key issue in this proceeding is measuring the overall impact, not the marginal impact, on trade flows of maintaining the WTO-inconsistent CVD.

38. In addition, “Simulation A” is employed in the U.S. approach to establish the appropriate baseline in step one of the two-step Armington PE approach, 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 AD duty in Simulation A, as suggested by the EU, would construct a purely hypothetical scenario which does not reflect actual competitiveness and is not pertinent to evaluating the WTO-inconsistent equilibrium, thereby resulting in an overestimation of Spain’s market share and commensurate inflation of the estimate of nullification or impairment.⁶⁵ Contrary to the EU’s assertions, the

⁶³ United States’ response to Arbitrator question No. 21, para 50.

⁶⁴ See U.S. responses to the third set of questions from the Arbitrator, paras. 37-40.

⁶⁵ See U.S. responses to the third set of questions from the Arbitrator, para. 38.

U.S. model does not “impose the CVD on top of the ADD.”⁶⁶ As the EU recognizes, both Parties propose models that operate based on “a *static* comparison of two alternative scenarios (i.e. Spanish imports in 2023 with and without the CVDs).”⁶⁷ This is indeed how the U.S. model operates – through a static comparison of a scenario in which the actual combined contemporaneous AD/CVD duty is applied, versus a hypothetical scenario in which only the AD duty is applied. The U.S. model thus reflects the mathematical reality of the imposition of these contemporaneous duties on the exact same set of products sharing the same defined scope. It does not sequence the duties or impose one on top of the other.

39. The United States also disagrees with the EU’s argument that other macroeconomic events such as the COVID-19 pandemic or inflation are similar to the AD duties. As explained in the U.S. responses to the Arbitrator’s Question 21, parallel AD duties are different in-kind from general macroeconomic shocks such as COVID-19 and high inflation, which impacted virtually all products and markets over a portion of the relevant time period. In addition, their impacts emerged much later and gradually dissipated during the relevant timeframe. By contrast, the AD investigation on ripe olives from Spain was parallel to the CVD investigation; the two measures cover the exact same products, were implemented at almost exactly the same time in 2017, and operate through the same mechanism (a duty on imports).⁶⁸

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).⁶⁹ 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?

Comment:

40. As the United States explained in its response to the Arbitrator’s Question 94, there is no reason to believe that HS codes will provide a suitable proxy for in-scope imports for any future CVD order in which Section 771B is applied and, therefore, the Arbitrator should decline to adopt a prospective model for any future applications of Section 771B.⁷⁰ However, if the Arbitrator decides to adopt a prospective model, the United States agrees with the EU that the

⁶⁶ EU responses to third set of questions from the Arbitrator, para. 38.

⁶⁷ EU responses to third set of questions from the Arbitrator, para. 24 (emphasis in original).

⁶⁸ See U.S. responses to first set of questions from the Arbitrator, paras. 47-49.

⁶⁹ Exhibit EU-9.

⁷⁰ See U.S. responses to third set of questions from the Arbitrator, paras. 41-43.

Arbitrator should apply the same approach used for ripe olives and consider only HS codes that are fully covered by the relevant CVD order to define in-scope imports.⁷¹

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.⁷²

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

Comment:

41. The EU states that it “does not oppose to restricting the set on which to identify outliers to processed agricultural products”,⁷³ however the HS codes that it proposes using would go beyond processed agricultural products. As explained in the U.S. responses to the Arbitrator’s Question 95, HS Chapters 2-24 is too broad to represent processed agricultural products because those HS Chapters include considerable amounts of raw agricultural products such as fresh meat and raw seafood.⁷⁴ In addition, the EU does not provide any justification or explanation for including additional HS4 lines in the scope for processed agricultural products. Instead, processed agricultural products should be defined with reference to the HTS codes provided by the United States in Exhibit USA-57, which consists of a list of processed agricultural products provided by the U.S. Department of Agriculture, which has remained relatively stable and has been used widely in the United States since at least 2010.

42. The United States also disagrees with the EU’s characterization of the Soderbery (2015) estimates as being unreliable. The export supply elasticity estimates from Soderbery (2015) are

⁷¹ EU’s responses to third set of questions from the Arbitrator, para. 42 (“In line with the approach chosen in the case of ripe olives, only the fully covered codes should be taken into consideration.”).

⁷² Decision by the Arbitrator, *US – Supercalendered Paper (Article 22.6 – US)*, para. 8.298.

⁷³ EU responses to third set of questions from the Arbitrator, para. 45.

⁷⁴ See U.S. responses to third set of questions from the Arbitrator, para. 45.

a better option than the assumption of an infinite export supply elasticity proposed by the EU, which is unsupported by theory and lacks empirical validation.⁷⁵ In addition, the United States does not agree with the outlier values calculated by the EU in paragraph 44 of its response because those values are based on substitution elasticities sourced from Fontagné et al. (2022). The United States reiterates that Soderbery (2015) is a more appropriate source for substitution elasticity values in this dispute.⁷⁶

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)*?

Comment:

43. As explained in its responses to the Arbitrator’s Question 96, in principle the United States does not object to the process outlined in section 9.4 of the arbitrator’s report in *US – Supercalendered Paper*. 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, which also includes a broad range of other out-of-scope fruits and vegetables. Therefore, the producer price index for NAICS 311421 is a less accurate price index for the in-scope products that are subject to the CVD order than the “Producer Price for Olives for Processing, Canned” from the NASS, proposed by the United States.⁷⁷

⁷⁵ See, e.g., U.S. responses to second set of questions from the Arbitrator, para. 50.

⁷⁶ See, e.g., U.S. written submission, paras. 106-111; U.S. responses to second set of questions from the Arbitrator, paras. 47-49.

⁷⁷ See U.S. comments on EU responses to second set of questions from the Arbitrator, paras. 67-68.