UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO ANTI-DUMPING PROCEEDINGS INVOLVING CHINA

Recourse to Article 22.6 of the DSU by the United States

(DS471)

INTEGRATED EXECUTIVE SUMMARY OF THE UNITED STATES OF AMERICA

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I. INTRODUCTION

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

2. Pursuant to Article 22.7 of the DSU, the task of an arbitrator is to determine whether the requested level of suspension of concessions or other obligations is equivalent to the level of nullification or impairment of benefits accruing to the complaining party under the relevant covered agreement(s). The starting point in any analysis of a request for authorization to suspend concessions is to determine the extent to which the Member's WTO-inconsistent measure that is the subject of the Dispute Settlement Body's ("DSB") recommendations nullifies or impairs benefits accruing to the complaining party. Thus, an analysis of the level of nullification or impairment must focus on the benefit allegedly nullified or impaired as a result of the breach found by the DSB. Due to conceptual flaws and methodological errors, however, China has not provided a calculation that is equivalent to the level of nullification or impairment.

3. This proceeding requires that each of the 25 antidumping duty determinations specifically identified in China's methodology paper be separately analyzed to determine the most appropriate methodology to calculate the level of nullification or impairment. China appears to agree. Yet, China proposes a one-size-fits-all approach to estimating its requested level of suspension of concessions. China's proposed methodology is of no use to the Arbitrator for it cannot capture the impact of antidumping duty margins on trade flows, which is the key issue in this proceeding. China compounds its methodological error by relying on false assumptions and incorrect data to implement its approach.

4. Furthermore, China's methodology paper contains errors sufficient by themselves to establish that China's proposal is fundamentally flawed. For instance, China proposes an incorrect counterfactual, applies an economic method that is completely inappropriate, and makes numerous errors when compiling the data inputs it uses to estimate the level of nullification or impairment. As a result, China overestimates the level of nullification or impairment attributable to the maintenance following the expiration of the reasonable period of time ("RPT") of the U.S. antidumping measures about which the DSB adopted recommendations.

5. China bases its request on the assertion that the Arbitrator must use a counterfactual that assumes the complete removal of the U.S. antidumping duty measures following the expiration of the RPT, even U.S. antidumping duty measures that have not been found to be WTO-inconsistent. China's proposal is contrary to the DSU and results in a gross overestimation of the level of nullification or impairment. The proper counterfactual to be applied for the purpose of this proceeding is the elimination of the WTO-inconsistent aspects of the U.S. antidumping duty measures, not the revocation or complete removal of the antidumping duty orders themselves.

6. In response to the flawed one-size-fits-all methodology proposed by China, the United States proposes three approaches that accurately estimate the trade effects of the WTO-inconsistent U.S. antidumping duty measures following the expiration of the RPT.

II. APPROPRIATE CALCULATION OF THE LEVEL OF NULLIFICATION OR IMPAIRMENT

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

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

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

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

10. The appropriate analysis requires consideration of the present trading relationship between China and the United States (as represented by the 2017 baseline), as well as what that relationship would be if the U.S. measures had been brought into compliance with the DSB recommendations following the expiration of the RPT (the counterfactual). As described below, the trade differential will be the level of nullification or impairment attributable to the maintenance of the U.S. measures.

B. The Appropriate Counterfactual Eliminates the WTO-Inconsistent Aspects of the U.S. Antidumping Duty Measures

1. China's Counterfactual Has No Support in the DSU

11. China proposes to estimate the level of nullification or impairment based on assuming the withdrawal of all of the U.S. antidumping duty orders, even parts of the U.S. antidumping duty measures that are not subject to the DSB's recommendations.

12. Article 22.1 of the DSU provides that compensation and the suspension of concessions is available in the "event that the recommendations" of the DSB "are not implemented within a reasonable period of time." Thus, Article 22.1 of the DSU directs an arbitrator to base an Article 22.6 decision on the "recommendations" of the DSB. Similarly, Article 22.2 of the DSU, which is explicitly referenced in the first sentence of Article 22.6, limits the role of an arbitrator to assessing the effects of the WTO-inconsistent U.S. antidumping duty measures in accordance with the DSB's recommendations. To go beyond the DSB recommendations, as China proposes, would be contrary to the DSU.

13. The DSB recommendations at issue in this proceeding relate to the use by the U.S. Department of Commerce ("USDOC") of the Single Rate Presumption ("SRP"), as well as the use in certain proceedings of an alternative, average-to-transaction comparison methodology and "zeroing" in conjunction with that alternative comparison methodology. To determine the equivalent level of nullification or impairment in this proceeding, it is necessary to correctly understand the findings adopted by the DSB. The DSB findings of WTO inconsistency relate to certain aspects of the U.S. antidumping measures, but other aspects of the U.S. antidumping measures have not been found to be WTO-inconsistent. As the United States will discuss in the following section, the antidumping duty rates that apply to Chinese imports at issue in this proceeding can be broken down into four categories.

14. Similarly, for the three investigations and one administrative review for which the panel made findings concerning the USDOC's use of the alternative, average-to-transaction comparison methodology and "zeroing," only certain companies were assigned antidumping duty rates found to be WTO-inconsistent. Those rates can be isolated and the level of nullification or impairment resulting from their maintenance following the expiration of the RPT can be estimated accurately without incorrectly assuming, as China does, the total withdrawal of the U.S. antidumping duty measures.

2. The Correct Counterfactual is Modification of the WTO-Inconsistent U.S. Antidumping Duty Measures To Eliminate the WTO-Inconsistencies Found by the DSB, Not the Total Withdrawal of the Antidumping Duty Measures

15. In this proceeding, the correct counterfactual is the estimated value of exports of relevant products from China to the United States if the WTO-inconsistent U.S. antidumping duty measures were brought into compliance with U.S. WTO obligations, holding all other factors constant. The level of "nullification or impairment" to China is the difference between the value

of China's exports to the United States as reflected in the 2017 trade data, and the estimated export value under the counterfactual scenario.

16. In other words, the question is: for each of the 13 products subject to "as applied" findings and for each of the 12 products China has identified in connection with the "as such" findings, how many additional exports from China would enter the United States under the separate duty rate (the rate that applies to what the United States calls Group 2) if the presumption of a China-government entity were eliminated. As discussed above, China's methodology paper applies an incorrect counterfactual. The key assumption in China's counterfactual is the removal of all antidumping duties, even the U.S. antidumping duties that were not found to be WTO-inconsistent. Under the correct counterfactual, however, those firms that are subject to the China-government entity rate and did not fail to cooperate would, instead, be assigned the separate duty rate. The correct estimate of the level of nullification or impairment is the difference in the value of trade that would be induced by changing—if, in fact, there were a difference between the rate assigned the China government entity and separate-rate respondents—the rate for these firms only. For most cases, this represents a small share of imports from China at any given period. To illustrate, Chinese imports are divided into four groups:

> **Group 1**: Chinese imports from firms to which individual duty rates apply;
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> **Group 2**: Chinese imports from firms that were not individually examined yet received what is labeled as a "separate duty rate" (that is, a rate separate from the rate assigned to the China-government entity);
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> **Group 3**: Chinese imports from firms that are subject to the China-government entity antidumping duty rate for which there is evidence that they failed to cooperate with the USDOC's investigation, such that a rate based on facts available could have applied even if they were not part of the China-government entity; and
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> **Group 4:** Chinese imports from firms that are subject to the China-government entity antidumping duty rate for which there is no evidence that they failed to cooperate with the USDOC's investigation.

17. Under the correct counterfactual, the only modification is that duties on Group 4 imports are changed from the rate assigned to the China-government entity to a separate duty rate. With the exception of certain antidumping duty rates determined using the alternative, average-to-transaction comparison methodology with "zeroing," all other antidumping duties would remain unchanged.

C. The Correct Methodology for Determining the Level of Nullification or Impairment Must Be Determined Case by Case

1. Complying with the DSB Recommendations Concerning U.S. Antidumping Duty Measures on Corrosion-Resistant Steel and Diamond Sawblades Would Not Result in Any Increase in the Value of Exports of Those Products from China to the United States; the Level of Nullification or Impairment is Zero

a. The DSU Permits the Arbitrator to Find that a Measure Causes No Nullification or Impairment

18. Article 3.8 of the DSU plainly provides for the possibility that the Member concerned may rebut the presumption of the existence of nullification or impairment by putting forth evidence that a breach of WTO obligations does not have an adverse impact on the complaining party. Additionally, nothing in Article 3.8 of the DSU, which is one of the "General Provisions" of the DSU, limits the opportunity of the Member concerned to make such a rebuttal only during the original panel phase of a dispute settlement proceeding. The more logical time for a Member concerned to make such a rebuttal would be in the context of an arbitration under Article 22.6 of the DSU, wherein the question of the level of nullification or impairment – and indeed, the question of the existence of any level of nullification or impairment at all following the expiration of the RPT – is placed squarely before the decision maker that is tasked by the DSU with evaluating that question and the question of the level of suspension – *i.e.*, the DSU Article 22.6 arbitrator. If no trade is foregone due to a WTO-inconsistent measure's continuing existence beyond the expiration of the RPT, *i.e.*, if the estimate of the trade foregone is zero, then the correct conclusion is that the level of nullification or impairment is zero.

19. Furthermore, the factual circumstances related to a WTO-inconsistent measure's impact on the complaining party might change over time, including after a panel report is circulated and before a suspension request is made under Article 22.2 of the DSU. In an arbitration under Article 22.6 of the DSU, it is incumbent upon the arbitrator to establish the level of nullification or impairment following the end of the RPT, so as to ensure that the level of suspension authorized by the DSB does not exceed the level of nullification or impairment.

20. Accordingly, it is necessary for the Arbitrator to determine in this proceeding the ongoing trade effects of the U.S. antidumping duty measures on corrosion-resistant steel and diamond sawblades from China (using 2017 as the baseline for the counterfactual). China suggests in its methodology paper that the "question that must be answered [in this proceeding] is what would have been the value of imports from China in 2017 'but for' the United States continued imposition of the WTO inconsistent measures." By this, China uses 2017 as a proxy (presumably for reasons of data availability) for the ongoing trade effects caused by the maintenance of WTO-inconsistent measures beyond the expiry of the RPT in August 2018. For purposes of the counterfactual, the United States has also used 2017 data.

b. The Evidence Demonstrates that the Level of Nullification or Impairment from the Antidumping Duty Measures on Corrosion-Resistant Steel and Diamond Sawblades is Zero

21. The evidence demonstrates that bringing the U.S. antidumping duty measures on corrosion-resistant steel and diamond sawblades from China into compliance would result in no increase at all in the value of corrosion-resistant steel or diamond sawblades exported from China to the United States.

22. In cases where the China-entity rate and a separate duty rate are the same, the level of nullification or impairment is zero because the counterfactual scenario in which the USDOC undertook a redetermination and changed the WTO-inconsistent rate for companies that form part of the China-government entity—an entity based on a presumption found to be WTO-inconsistent—from the China-government entity rate to the separate duty rate determined for those separate-rate respondents subject to the relevant proceeding, would, in these cases, not result in any reduction of the antidumping duty rate. In *Corrosion-Resistant Steel*, the China-government entity rate is 199.43 percent and the separate rate is also 199.43 percent. In *Diamond Sawblades*, in 2017, the China-government entity rate was 82.03 percent and the separate rate also was 82.03 percent. Accordingly, the level of nullification or impairment is zero.

2. An Armington-Based Imperfect Substitutes Partial Equilibrium Model is the Appropriate Method for Estimating the Level of Nullification or Impairment Resulting from the Maintenance Following the Expiration of the RPT of the WTO-Inconsistent U.S. Antidumping Duty Measures on Aluminum Extrusions, Shrimp, Steel Cylinders, Woven Ribbons, PET Film, Carrier Bags, Coated Paper, Steel Line and Pressure Pipe, Welded Carbon Steel Pipe, Welded Carbon Steel Line Pipe, Steel Nails, Stainless Steel Sheet and Strip, Cast Iron Pipe Fittings, Copper Pipe and Tube, Cold Rolled Steel Flat Products, Truck Tires, and Washers

23. China recognizes that an "elasticities style trade model" or "a partial equilibrium model" "could be used for calculating" the level of nullification or impairment. Indeed, China characterizes such an approach as "an excellent short-run quantitative model."

24. Despite China's suggestion that "many policies have been found to be inconsistent with WTO rules" and "various and complicating issues" support the use of China's flawed approach – discussed further below – the analysis required in this proceeding actually is quite simple. Antidumping duty measures are tariffs. The simplest description of the correct counterfactual scenario here is that the tariffs imposed by the United States are assumed to be reduced. Partial equilibrium analysis is, to use China's term, an "excellent" tool for modeling the trade effects of a tariff reduction.

25. Under correct economic theory, the effect of the reduction or removal of the WTO-inconsistent U.S. antidumping duties applied to aluminum extrusions, shrimp, steel cylinders,

woven ribbons, PET film, carrier bags, coated paper, steel line and pressure pipe, welded carbon steel, welded carbon steel line pipe, steel nails, stainless steel sheet and strip, cast iron pipe fittings, copper pipe and tube, cold rolled steel flat products, truck tires, and washers from China depends on the substitutability between (1) the domestic like product (the product made in the United States), (2) subject imports (the product imported from China that is subject to the WTO-inconsistent antidumping duty), (3) non-subject imports from China (the product imported from China that is not subject to the WTO-inconsistent antidumping duty), and (4) non-subject imports from the rest of the world (the product imported from countries other than China). To properly measure the effect of the reduction of the antidumping duties on aluminum extrusions, shrimp, steel cylinders, woven ribbons, PET film, carrier bags, coated paper, steel line and pressure pipe, welded carbon steel, welded carbon steel line pipe, steel nails, stainless steel sheet and strip, cast iron pipe fittings, copper pipe and tube, cold rolled steel flat products, truck tires, and washers from China, one would need to use for each product an economic model that accounts for the substitution effects on all four of these varieties.

26. An example of such a model – an Armington-based imperfect substitutes partial equilibrium model – that would be appropriate to use can be found in a 2017 paper by Ross Hallren and David Riker. The Hallren and Riker paper provides a convenient framework to undertake a partial equilibrium analysis of the trade effects of modifying import tariffs where the imported and domestic goods are imperfect substitutes. Indeed, the Hallren and Riker paper provides as an "illustrative application" an example of modeling the effects of "a reduction in the import ad-valorem tariff applied to subject imports from 5 to 0 percent," which corresponds to the modification of duties for purposes of this discussion. The partial equilibrium model in the Hallren and Riker paper is based on the Armington approach to trade, where products are differentiated by source countries and consumers view products from different countries as imperfect substitutes. As explained in *A Practical Guide to Trade Policy Analysis*, "most simulation models use the 'Armington assumption' whereby varieties of goods are differentiated by country of origin (Armington, 1969)."

27. The U.S. version of the model assumes that there are four varieties of products in the industry that are imperfect substitutes in demand. The four varieties are the domestic product, non-subject imports from rest of world, non-subject imports from China, and subject imports from China. As the Hallren and Riker paper explains, all source varieties are imperfect substitutes and consumers substitute between each variety at a constant rate, which is the Armington elasticity. The Hallren and Riker paper points out that the Armington elasticity "is a key element in the model" because it tells how sensitive consumers are to changes in the relative prices of each of the source varieties.

28. The model detailed in the Hallren and Riker paper permits the estimation of the magnitudes of the changes in the prices of the four varieties of products, the industry's overall price index, and the quantities of the products as a result of a reduction in the *ad valorem* tariff on subject imports. The goal of the analysis is to quantify these changes given information on the duties and the initial values of trade and market shares in the respective industries in this proceeding.

a. Reduction of Tariff Rates on Subject Imports from the China-Entity Rate to the Separate Duty Rate

29. To use the four-country model, one first needs to define 2017 imports from subject imports versus non-subject imports from China. U.S. Customs and Border Protection ("CBP") is able to compile U.S. import data for all products subject to an antidumping order. The United States has provided a table with CBP-sourced data for each of the 13 products subject to "as applied" findings and for each of the 12 products subject to "as such" findings that are discussed in China's methodology paper. This CBP data is separated into total imports subject to an antidumping duty order as well as total imports subject to the China-government entity rate.

30. Finally, we note that the Armington model, like all other standard trade models, relies on the observed value of imports as a share of the market to characterize an entity's relative competiveness given the conditions in the market, including the imposition of duties. In this context, an appropriate minimal trade share for subject China imports is at least one percent of total U.S. imports from China. If the share is lower than one percent, the United States uses a formula-based approach to calculate the level of nullification or impairment.

b. Correct Data Inputs that Would Be Used in Applying an Armington-Based Imperfect Substitutes Partial Equilibrium Model

31. The Hallren and Riker paper explains that the following data inputs would be used in applying the Armington-based imperfect substitutes partial equilibrium model that the paper describes: domestic shipments of domestic producers; trade value of subject imports from China; trade value of non-subject imports from China; trade value of non-subject imports from rest of world ("ROW"); supply elasticity for domestic producers; supply elasticity for subject imports from China; supply elasticity for non-subject imports from China; supply elasticity for non-subject imports from ROW; elasticity of substitution within the industry; price elasticity of total demand; change in tariff rates on subject imports.

c. Results of Armington-Based Model

32. As a result of applying the Armington-based model, the level of nullification or impairment from the maintenance following the expiration of the RPT of the U.S. antidumping duty measures on aluminum extrusions, shrimp, steel cylinders, woven ribbons, PET film, carrier bags, coated paper, steel line and pressure pipe, welded carbon steel, welded carbon steel line pipe, steel nails, stainless steel sheet and strip, cast iron pipe fittings, copper pipe and tube, cold rolled steel flat products, truck tires, and washers from China is no more than $**24.03 million** per year. For these same products, China's one-size-fits-all approach estimated the level of nullification or impairment to be $**8,638 billion** annually.

3. A Formula-Based Approach is the Appropriate Method for Estimating the Level of Nullification or Impairment from the U.S. Antidumping Duty Measures on Wood Flooring, OCTG, CSPV Cells, and Off-the-Road Tires

33. Total U.S. imports under the China-government entity rate as a share of total U.S. imports from China under the order for wood flooring, OCTG, CSPV cells, off-the-road tires, and bedroom furniture was less than one percent in 2017. That being the case, an Armington-based imperfect substitutes partial equilibrium model cannot reliably be used to estimate the level of nullification or impairment for these products.

34. In light of the facts of these cases and the evidence available, the most appropriate methodology to estimate the level of nullification or impairment for wood flooring, OCTG, CSPV cells, off-the-road tires, and bedroom furniture is a formula-based approach. A formula-based approach examines China's historical import share of the U.S. market for Group 4 companies for the five products prior to the imposition of the WTO-inconsistent antidumping duty measure and applies that market share to the total value of imports of the goods from China in 2017. The United States observes that this approach reflects trade distorted by dumping and thus overestimates the level of nullification or impairment. Nevertheless, this approach is consistent with the approach taken by arbitrators in past Article 22.6 proceedings and fits well with the evidence on record for these five products.

35. Where the relevant data were available, previous Article 22.6 arbitrators have used historical export or import levels to determine the level of nullification or impairment caused by a measure. In *EC – Hormones*, for example, the arbitrator calculated the level of nullification or impairment in respect of edible beef offal by: (1) considering average U.S. exports of the covered product in the three years preceding the import ban at issue; (2) making a downward adjustment based on changing preferences; (3) multiplying the estimated figure by the estimated price of the products; and (4) deducting the value of current imports. In *EC – Bananas III*, the arbitrator calculated the effect of the EU measure based on the level of Ecuador's "best-ever exports," which occurred the year before the measure was enacted. In *US – Gambling*, the arbitrator used the difference between the complaining Member's revenues from supplying the services affected by the challenged measure the year before the measure came into effect and the average actual annual revenue in the years following to calculate the level of nullification or impairment.

36. A similar formula-based approach is appropriate in this proceeding because historical levels of U.S. imports of the five Chinese products are indicative of the level of nullification or impairment caused by the U.S. antidumping duty measures.

37. The United States starts with the maximum share of imports that may have been assigned the China-government entity rate during the period of investigation.

38. The United States calculated the level of trade during the period of investigation for the relevant U.S. Harmonized Tariff Schedule (HTS) codes. It then calculated the share of trade covered by the mandatory respondents and the separate rate respondents. The remainder would

be the maximum share of imports covered by the China-government entity rate. The maximum or estimated share is then applied to U.S. imports from China for the specified product in 2017 to determine the level of nullification or impairment. Next, the United States calculated the share of companies that did not respond to the USDOC quantity and value questionnaire and would have correctly been assigned a rate based on facts available, which was the basis on which the China-government entity rate was determined. The maximum share was then reduced by this amount.

39. The level of nullification or impairment resulting from the U.S. antidumping duty measures on wood flooring, OCTG, CSPV cells, and off-the-road tires from China is no more than **$176.733 million**. This contrasts with China's estimate of **$6.036 billion** for these four products.

4. Estimating the Level of Nullification or Impairment Related to Recommendations Adopted by the DSB Concerning the USDOC's Use of the Alternative, Average-to-Transaction Comparison Methodology and "Zeroing" in Certain Proceedings

40. In the original dispute, China challenged, and the DSB adopted "as applied" recommendations concerning, the use of the alternative, average-to-transaction comparison methodology and "zeroing" in only three original investigations (*OCTG*, *Steel Cylinders*, and *Coated Paper*) and one administrative review (*PET Film*). The other antidumping proceedings at issue in this arbitration are not implicated by the findings related to the use of the alternative, average-to-transaction comparison methodology and "zeroing," so there can be no nullification or impairment related to those other proceedings as a result of the findings on the average-to-transaction comparison methodology and "zeroing."

a. Steel Cylinders

41. The level of nullification or impairment related to the USDOC's use of the alternative, average-to-transaction comparison methodology and "zeroing" during the original antidumping investigation of steel cylinders from China is zero. With respect to the *Steel Cylinders* antidumping investigation, China only challenged the USDOC's use of the alternative, average-to-transaction comparison methodology and "zeroing" with respect to the margin of dumping determined for BTIC, and BTIC is the only company for which there was an "as applied" finding concerning the use of the alternative, average-to-transaction comparison methodology and "zeroing." In response to a decision of the U.S. Court of International Trade, the USDOC revoked the antidumping duty measure with respect to BTIC effective August 27, 2017. The USDOC took this action prior to the expiration of the RPT and there is nothing else for the United States to do to implement the DSB's recommendations with respect to the findings related to the USDOC's use of the alternative, average-to-transaction comparison methodology and "zeroing" to determine the margin of dumping for BTIC in the *Steel Cylinders* antidumping investigation. Therefore, there is no nullification or impairment to China related to this finding.

b. PET Film Administrative Review

42. The level of nullification or impairment related to the USDOC's use of "zeroing" during the third administrative review of the antidumping order on PET film from China is zero. With respect to the third administrative review of PET film, China only challenged the USDOC's use of "zeroing" with respect to the margin of dumping determined for the DuPont Group, and the DuPont Group is the only entity for which there was an "as applied" finding concerning the use of "zeroing." However, the results of the third administrative review of PET film have been succeeded by the results of the fourth administrative review of PET film, which were published on July 2, 2014. In the fourth administrative review, the USDOC assigned the DuPont Group a margin of dumping that was not determined using "zeroing." The antidumping rate applicable to the DuPont Group at the end of the RPT (and during the baseline year 2017) would not be changed as a result of any redetermination of the results of the third administrative review that are the subject of findings adopted by the DSB. Therefore, there can be no nullification or impairment following the expiration of the RPT related to this finding.

c. Coated Paper

43. In the *Coated Paper* antidumping duty investigation, the USDOC found that the average-to-transaction rate in the investigation for APP China was 7.62 percent, and the average-to-average rate (without "zeroing") would have been *de minimis* ([[***]] percent). Thus, there would not have been an antidumping duty imposed for APP China. The separate rate assigned by the USDOC was the APP China rate, which was determined using "zeroing." That rate was applied as a separate rate in 2017.

44. The level of nullification or impairment resulting from the maintenance of the antidumping duty rate determined using the average-to-transaction comparison methodology and "zeroing" following the expiration of the RPT can be estimated using the Armington-based imperfect substitutes partial equilibrium model. Specifically, the model can be used to estimate the trade effect of a reduction from the WTO-inconsistent rate of 7.62 percent to zero percent for the non-China-government entity imports in 2017, and to model a reduction of the China-government rate to zero for the China-government entity shipments. The result provides the level of nullification or impairment related to this finding, which is no more than $0.19 million.

45. If the USDOC assigned facts available to any Chinese firms due to non-cooperation, this approach may overstate the level of nullification or impairment.

d. OCTG

46. In the *OCTG* antidumping duty investigation, the USDOC found that, for Chinese respondent TPCO, the margin of dumping calculated using the average-to-average comparison methodology was [[***]] percent, while the margin of dumping calculated using the average-to-transaction comparison methodology with "zeroing," which is the WTO-inconsistent aspect of the measure, was 32.07 percent. Thus, there still would have been an antidumping duty imposed for TPCO. The separate rate assigned by the USDOC was the TPCO rate, which was determined using "zeroing." That rate appears to have been applied as the separate rate in 2017.

47. There is not a sufficient level of subject imports from China in 2017 for the United States to apply the Armington-based model for this product. Nevertheless, given that the tariff modification that would apply in the counterfactual scenario is less than [[***]], the impact would be so small that it cannot be "meaningfully quantified." An estimation of zero as the level of nullification or impairment is thus reasonable and plausible in this situation.

III. THE LEVEL OF SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS PROPOSED BY CHINA FAR EXCEEDS THE LEVEL OF NULLIFICATION OR IMPAIRMENT

A. China Grossly Overstates the Level of Nullification or Impairment Because China's Proposed Approach Is Not Appropriate, It Is Premised on False Assumptions, and It Is Based on Incorrect Data Inputs

1. China's DID Tabular Methodology is Not Appropriate

48. China justifies using Differences-in-Differences (DID) tabular analysis by alluding to its "simplicity." While simplicity can be a virtue, it does not justify using the tabular DID methodology in this proceeding. The tabular DID methodology cannot capture the impact of different antidumping duty margins on trade flows, which is the key issue to estimate any nullification or impairment in this proceeding. China's tabular DID methodology is only able to estimate termination of all antidumping duties on China, including WTO-consistent duties on imports from China (Group 1, Group 2, and Group 3).

49. Thus, it is not possible, as a legal matter, to use China's tabular DID analysis, because it would necessarily overestimate the level of nullification or impairment by including in the estimate the removal of WTO-consistent duties.

50. The United States observes that there is no support in the economics literature for using DID tabular analysis to estimate the effects of antidumping duties on imports. After an extensive search of the economics literature, the United States did not find any academic studies using DID tabular analysis to estimate the effects of antidumping duties or tariffs on imports.

2. China's Methodology is Premised on False Assumptions and Is Fundamentally Flawed as a Result

51. China's tabular DID methodology cannot provide accurate estimates of the level of nullification or impairment because it is premised on false assumptions. According to economic literature, the following three key assumptions must hold in a tabular DID analysis: (1) parallel trends (the comparison group is composed of exports that would be expected to follow the same trends as China's exports of the subject products in the absence of antidumping duties); (2) stability (the treated and comparison exports must remain the same over time); and (3) uniformity (the treatment or lack thereof (*i.e.*, antidumping duties) must be the same for all exports that comprise the treatment and control groups, respectively).

52. Together, the assumptions of parallel trends, stability, and uniformity mean that an appropriate comparison group must be comparable enough that its exports could reasonably be

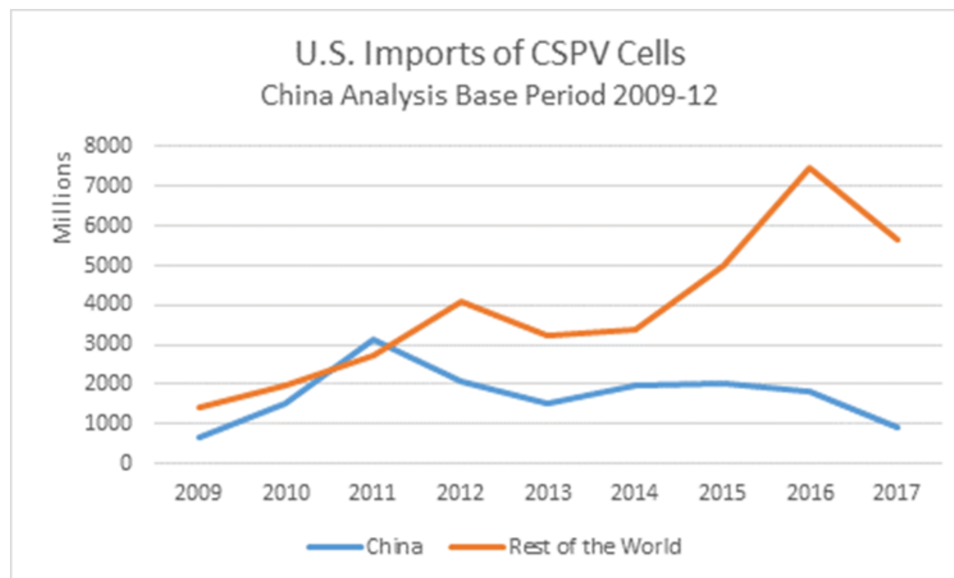
expected to follow the same trend as those from China without the "treatment" of the WTO-inconsistent U.S. antidumping duties, but distinct enough that the effects of imposing U.S. antidumping duties on China's imports will not "spillover" on their exports. If these three key assumptions do not hold, China's tabular DID methodology will produce estimates that are inaccurate. In this proceeding, all three assumptions do not hold in the comparison groups constructed by China.

53. In its methodology paper, China acknowledges the importance of the parallel trends assumption, and asserts that it made a "considerable effort" to demonstrate that the parallel trends assumption holds for its control groups. While China's methodology paper provides a considerable amount of discussion on the parallel trends assumption, China fails to demonstrate that the parallel trends assumption, in fact, holds in its control groups.

54. China entirely disregards the second (stability) and third (uniformity) assumptions. The stability assumption has two implications in this context. First, stability requires that the set of "treated" and "comparison" exports remains unchanged between the initial period and 2017. However, China's analysis incorrectly relies on HTS codes to define imports subject to each antidumping duty order, and in some significant cases (for example, *Aluminum Extrusions*), the set of HTS codes to which antidumping duties are applied in the initial period is not the same in 2017. Therefore, the stability assumption does not hold, and this is another reason why it is inappropriate to apply the tabular DID method.

55. The second implication of stability in this case requires China to design its comparison group such that the effects of U.S. antidumping duties on China's exports do not have spillover effects on comparison group exports. **Figure 1** below illustrates the likely spillover effects that can be seen in the *CSPV* case. In contrast to China's "treated" exports, exports from countries other than China increased in 2010 after U.S. antidumping duties were applied. Since it is likely that this is, at least partially, a result of the antidumping duties applied to Chinese exports, it is a spillover effect that invalidates DID analysis of this case.

Figure 1 – U.S. Imports of CSPV Cells



56. The uniformity assumption requires that the WTO-inconsistent U.S. antidumping duties be the same for all "treated" groups. This assumption is violated both in the design and in the implementation of China's tabular DID methodology. The uniformity assumption does not hold under China's incorrect counterfactual. Moreover, the uniformity assumption also requires that exports in the comparison group be equally "untreated." Erroneously, three of the four comparison groups that China considers are composed of total U.S. imports, including the "treated" imports from China and other countries subject to antidumping duties.

57. In short, a fundamental flaw in China's approach is China's failure to demonstrate that its comparison groups can reasonably be expected to satisfy the key assumptions of tabular DID methodology.

3. China's Final Estimates of Nullification or Impairment Are Fundamentally Biased and Mutually Exclusive

58. The final estimates of nullification or impairment presented by China for each antidumping duty order are averages of estimates obtained from tabular DID analysis showing the differences in the level of import values and estimates obtained from tabular DID analysis showing the differences in the natural logarithm ("log") of import values.

59. As noted in China's Exhibit CHN-18, a DID model may be applied to a variable in levels or in logs, but the parallel trends assumption can only be met in either levels or logs. Put another way, the parallel trends assumption cannot be met in both levels and logs. China's estimates from these metrics are therefore biased. Contrary to China's assertions, the distortions attributable to China's incorrect application of tabular DID analysis do not average out. Rather, they accumulate.

4. China's Methodology is Based on Incorrect Data Inputs

60. China's approach to data – capturing total trade flows occurring under basket HTS categories – is unreasonable because it grossly over-estimates the value of trade of products subject to WTO-inconsistent aspects of U.S. antidumping measures. Many of the reference HTS codes are broad categories, of which the product subject to an antidumping duty order is just a subset.

61. China's data does not provide the Arbitrator a reliable basis to estimate nullification or impairment in this proceeding. If the Arbitrator were to use China's incorrect data, it would lead to a level of suspension that would be well in excess of the actual level of nullification or impairment.

IV. CONCLUSION

62. For the reasons set forth above, the United States respectfully requests that the Arbitrator find that the level of suspension of concessions or other obligations requested by China is not "equivalent" to the level of nullification or impairment. The United States requests that the Arbitrator find that the level of nullification or impairment is no more than **$200.790 million** annually.