WORLD TRADE ORGANIZATION

WT/DS234/ARB/MEX
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I. INTRODUCTION

A. INITIAL PROCEEDINGS

1.1 On 27 January 2003, the Dispute Settlement Body (DSB) adopted the report of the Panel in this dispute, as modified by the report of the Appellate Body.[1]

1.2 The findings adopted by the DSB were that the measure at issue in this case – the Continued Dumping and Subsidies Offset Act of 2000 (hereafter "CDSOA"):[2]

(a) is a non-permissible specific action against dumping or a subsidy, contrary to Articles VI:2 and VI:3 of the GATT 1994, Article 18.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereafter the "Anti-Dumping Agreement") and Article 32.1 of the Agreement on Subsidies and Countervailing Measures (hereafter the "SCM Agreement");

(b) is inconsistent with certain provisions of the Anti-Dumping Agreement and SCM Agreement, so that the United States has failed to comply with Article 18.4 of the Anti-Dumping Agreement, Article 32.5 of the SCM Agreement and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization (hereafter the "WTO Agreement");

(c) pursuant to Article 3.8 of the DSU, to the extent that it is inconsistent with provisions of the Anti-Dumping Agreement and the SCM Agreement, nullifies or impairs benefits accruing to the complaining parties[3] under those Agreements;

1.3 On 13 June 2003, an arbitrator established under Article 21.3(c) of the DSU ruled that the "reasonable period of time" for the United States to implement the recommendations and rulings of the DSB in this case was 11 months from the date of adoption of the Panel and Appellate Body Reports by the DSB. The United States was con-

(a) the offset payments attributed to anti-dumping or countervailing duties collected and assessed on products from Mexico, plus

(b) a proportionate amount of the balance of the total offset payments minus the offset payments on products from other Members that are authorized by the DSB to suspend concessions or other obligations in this dispute.

1.6 Each year, as soon as the amount of the offset payments that have been made is known, Mexico will notify to the DSB the details concerning the corresponding suspension of obligations.

B. REQUEST FOR ARBITRATION AND SELECTION OF THE ARBITRATOR

1.7 On 26 January 2004, the United States submitted a communication to the DSB[6] objecting to the level of suspension of tariff concessions and related obligations under GATT 1994 proposed by Mexico, on the grounds, *inter alia*, that Mexico's request failed to specify the level of suspension it proposed to implement, and was therefore an inadequate basis for an arbitrator to make the determinations provided for in Article 22.7 of the DSU.

1.8 At the DSB meeting of 26 January 2004, Mexico's request under Article 22.2 of the DSU and the United States objection were referred to arbitration in accordance with Article 22.6 of the DSU.[7]

1.9 The arbitration was undertaken by the original panel, namely:

Chairman: Mr Luzius Wasescha

Members: Mr M. Maamoun Abdel-Fattah
Mr William Falconer

1.10 On 13 February 2004, the Arbitrator held a joint organization meeting with the United States and all the parties who requested authorization to suspend concessions or other obligations pursuant to

proceedings. The Arbitrator added that parties should feel free to include comments on the United

annual adjustment to the level of suspension; and (c) the suspension of obligations by one WTO Member in relation to a measure also affecting other Members or non-Members.

1.20 Section V of the Decision contains the award of the Arbitrator. It is followed by some concluding remarks in relation to certain wider issues raised in the course of the arbitration.

II. PRELIMINARY ISSUES

A. REQUEST OF THE UNITED STATES FOR A PRELIMINARY RULING

1. Summary of the United States' request

2.1 As mentioned in the previous section, on 19 February 2004, the United States filed a request for a preliminary ruling from the Arbitrator that:

(a) a Requesting Party cannot suspend concessions or other obligations based on the nullification or impairment suffered by other WTO Members; and consequently offset payments for products other than the Requesting Parties' products that are subject to anti-dumping or countervailing duty orders are outside the scope of the arbitration proceeding with respect to that Requesting Party;

(b) the Requesting Parties failed to specify the lev

1. PRELIMINARY ISSUES

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that process is essentially to eliminate from an arbitration issues that could not be deemed to fall within the mandate of the Arbitrator.[14]

2.6 Indeed, a core issue in this arbitration is whether the level of nullification or impairment suffered by the Requesting Parties can be determined on the basis of the total disbursements made by the United States under the provisions of the CDSOA. We address this question as part of our review of the substantive issue, in Section IV.B.2 below.

2.7 Similarly, we concluded that consideration of whether the ability to set a new level of suspension each year is allowed under Article 22 of the DSU had to form part of our broader assessment of the level of nullification or impairment and of the level of suspension of concessions or other obligations. We address this question in Section IV.B.3 below.

2.8 Finally, with respect to the alleged failure of the Requesting Parties to specify the level of suspension and the level of nullification or impairment sufficiently to enable the Arbitrator to determine equivalence, we note that the United States did not seek an immediate ruling on the admissibility of the Requesting Parties' requests, but rather that the Arbitrator require the Requesting Parties to provide the necessary information in the course of the proceedings. We recall that other arbitrators have reminded parties that they had an obligation to provide evidence in support of their allegations and, more generally, a duty to cooperate with the arbitrator.[15] We assumed that all parties would cooperate in good faith and we did not deem it necessary to make any specific request at that stage.

2.9 As an additional consideration, we note that this particular claim of "specificity" by the United States is essentially based on the assumption that the approach advocated by the United States to the determination of nullification and impairment is the only correct one, and should have been followed by the Requesting Parties. Since a central question in this case is whether the Requesting Parties are entitled, under Article 22 of the DSU, to proceed on the basis of the level of nullification or impairment and the level of suspension they propose, it does not seem appropriate in our opinion to address this question as a matter for a preliminary ruling. Rather, it should be addressed as part of the substance of the case.

2.10 This said, we note that our decision not to issue a preliminary ruling on the particular issues raised by the United States does not preclude us from ruling on procedural issues in the Decision.

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Requesting Parties plan to apply, if they are allowed to suspend concessions or other obligations.[16] We consider that such claims are more appropriately addressed as part of our review of the substance of the case. We nonetheless found that certain aspects of these claims should be discussed separately to the extent that they relate to specific procedural rights of the United States in these proceedings, which ought to be protected.

2.12 We consider this to be the case in relation to the claim that there should be a minimum degree of specificity supporting any request for suspension of concessions or other obligations so as to allow the respondent in the main dispute to exercise its right to request arbitration.[17]

2. Main arguments of the parties

(a) United States

2.13 The United States claims that the Requesting Parties have failed to specify the level of suspension of concessions and the level of nullification or impairment, both in their requests under Article 22.2 of the DSU and subsequently in the course of this arbitration, in a way that enables the Arbitrator to determine equivalence. The United States presents this issue as one of specificity of the request under Article 22.2 of the DSU and, more generally as a question of duty to cooperate with the Arbitrator by providing information on the level of nullification or impairment.[18]

2.14 The United States contends that the Requesting Parties have failed to quantify either the level of suspension or the level of nullification or impairment. The Requesting Parties replace specific values with general concepts and ask the Arbitrator to determine that two amounts are equivalent to one another without knowing what those amounts are. The United States adds that the Requesting Parties decline to provide any information on the level of suspension requested or to base their request on trade effect.[19]

2.15 The United States notes that the Requesting Parties intend to impose a yet unidentified duty to an unspecified value of imports, thus failing to identify the amount of trade that would be covered by their request. Without more information, it is impossible to "determine" the level of suspension proposed and the actual impact of the duty on imports from the United States.[20]

(b) Mexico

2.16 According to Mexico, the argument of the United States that the Requesting Parties failed to identify a level of suspension or a level of nullification or impairment, thus making it impossible for the Arbitrator to fulfil its mandate, is based on the assumption that these levels can only be determined in terms of trade effect. Mexico considers that Article 22 of the DSU does not require a "trade effect" test. In any event, Mexico' request for retaliation clearly sets out a quantifiable level of suspension of concessions and related obligations. The Requesting Parties specified that the amount of the annual offset payments constitutes the level of nullification or impairment up to which each Requesting Party may suspend concessions or other obligations. As the amount of disbursement is

[16] The United States contests in substance the intention of the Requesting Parties to impose a tariff surcharge on a list of products to be calculated so as to generate, over a period of one year, an income equivalent to the offset payments made in the latest annual distribution under the CDSOA. The United States argues that this approach places no limit on the level of suspension that will be effectively imposed and is contrary to past practice.

[17] We leave aside the question of the usefulness of a sufficiently specific request to allow the DSB to reach an informed decision.

[18] United States preliminary request, 19 February 2004, paras. 21-27.

[19] United States written submission, para. 25.

[20] United States written submission, para. 28.

published each year by the United States' authorities, the corresponding levels are clearly defined. Mexico adds that the arbitrator in *US – 1916 Act (EC) (Article 22.6 – US)* acknowledged that the fact that the requested suspension had not been stated in quantitative terms did not, in and of itself, render a request for suspension of concessions or other obligations inconsistent with Article 22.[21] *A fortiori,*

of who bears the burden of proof – is crucial in Article 22 arbitration proceedings. The EC is required to submit evidence showing that the proposal is *not* equivalent. However, at the same time and as soon as it can, Canada is required to come forward with evidence explaining how it arrived at its proposal and showing why its proposal *is* equivalent to the trade impairment it has suffered. Some of the evidence – such as data on trade with third countries, export capabilities and affected exporters – may, indeed, be in the sole possession of Canada, being the party that suffered the trade impairment. This explains why we requested Canada to submit a so-called methodology paper."[29]

2.27 Having regard to the duty of the parties to supply evidence and [3029]

countervailing duties (i.e. other United States' producers and foreign producers/exporters not subject to an anti-dumping or countervailing duty order) was not relevant to the findings of the Panel or the Appellate Body under Article 18.1 of the Anti-Dumping Agreement and Article 32.1 of the SCM Agreement. A Member cannot suffer nullification or impairment as a result of a non-permissible specific action against dumping or against a subsidy if no order is in place and if no duties can be collected on that Member's products. The allocation of the total annual disbursements advocated by the Requesting parties shows that the Requesting Parties have not even attempted to relate the levels of suspension proposed to the level of nullification or impairment suffered.

3.3 In addition,

the arbitrator in *US – FSC (Article 22.6 – US)*, Mexico considers that the concept of nullification or impairment relates to the measure that is in breach of the WTO obligations. It cannot be restricted to its trade effect, which is neither referred to in the DSU or the GATT 1994. Consequently, each single payment under the CDSOA violates the relevant WTO obligations and represents the quantitative level of nullification or impairment.[41]

3.8 Mexico considers that a contextual analysis of the DSU and the GATT 1994 reveals that the concept of nullification or impairment should be interpreted in the light of the violation and of the adverse impact on the affected "benefits". While Article 22.4 does not qualify the concept of nullification or impairment or the term "level", Articles 3.8, 22.3 and 23.1 of the DSU provide some further guidance. It follows from these provisions that the violation of obligations is the most prominent case of nullification or impairment. The presumption of "adverse impact" of a breach under Article 3.8 of the DSU is not related to any trade effect, but to the balance of rights and obligations under the covered agreements. In case of violation, a Member assumes a right which is not conferred upon it by the covered agreements, thus distorting the balance of rights and obligations under the WTO Agreement. Mexico recalls that, in *US – 1916 Act (Article a d v*

3.11 Mexico disagrees with the United States that previous arbitrations support the view that the level of nullification or impairment should be based on the measure's trade effect. The decisions in *EC – Hormones (US) (Article 22.6 – EC)* and *EC – Bananas III (Article 22.6 – EC)* dealt with traditional market access barriers such as tariffs, quotas and other import restrictions. The situation is different in the case of the CDSOA. Mexico also contests the argument of the United States that the CDSOA does not have any trade effect because the use of the disbursements by the recipient companies is not pre-determined or the trade effect of such disbursements is *de minimis*. It also contests the attempt of the United states to equate the findings of the Panel that the CDSOA causes no "adverse effects" under Article 5(b) of the SCM Agreement to an absence of "nullification or impairment". The Panel explicitly drew a distinction between the two concepts. Mexico also notes that the arbitrator in *US – 1916 Act (Article 22.6 – US)* based its conclusion on the broader notion of "economic effects" of the measure at issue. The arbitrator in that case did not examine the economic effect of the application or the economic consequence of the measure (i.e. the court judgements or the settlement agreements). If the same logic were to be applied in this case, it would ensue that only the economic effect of the CDSOA (i.e. the offset payments made there under) should be taken into account for determining the quantitative level of nullification or impairment of the CDSOA. As for the relationship between offset payments and anti-dumping and countervailing duty orders, Mexico recalls that neither the Appellate Body nor the Panel excluded any offset payments from their analysis. Likewise, Mexico notes that, even in case of revoked orders, the United States domestic industry would still receive a disbursement as part of the CDSOA offset payment. The adverse effect on foreign producers/exporters would remain the same.

3.12 Mexico also contests the fact that the level of nullification or impairment could be "zero". The Panel concluded that nullification or impairment existed and the Appellate Body upheld this conclusion. For Mexico, claiming that a level of nullification or impairment is "zero" amounts to saying that there is no nullification or impairment. While the arbitrator in *EC – Bananas III (Article 22.6 – EC)* stated that the presumption under Article 3.8 of the DSU cannot be taken as evidence of a particular level of nullification or impairment, this does not mean that no nullification or impairment exists. Mexico notes that the arbitrator in *US – 1916 Act (Article 22.6 – US)* acknowledged that any amount payable pursuant to court judgements or settlement agreements would constitute nullification or impairment. The issue in that case was one of proving the amount of those payments. It had nothing to do with the substantive determination of the level of nullification or impairment. The arbitrator did not conclude that the level of nullification or impairment was *de facto* "zero".[45]

3.13 Finally, regarding the risk alleged by the United States that the approach advocated by Mexico would lead to each Requesting Party suspending obligations in excess of its respective level of nullification or impairment, Mexico argues that this approach is based on an objective concept of nullification or impairment in relation to the violating measure as such, not in relation to individual nullifications or impairments. As all offset payments constitute nullification or impairment, the suspension of obligations should be authorized to the same amount.[46]

B. ANALYSIS OF THE ARBITRATOR

1. Introduction

3.14 The approaches of the parties are – in appearance at least – based on diametrically opposed conceptions of "nullification or impairment". However, while the United States' approach seems to

[45] Written submission of Brazil, the European Communities, India, Japan, Korea and Mexico, paras. 45-68.

[46] Written submission of Brazil, the European Communities, India, Japan, Korea and Mexico, paras. 73-80.

3.28 Article 22.3(a) reads as follows:

> "[T]he general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment."

3.29 Article 23.1 reads as follows:

> "When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding."

3.30 We are of the view that, taken in their context, including Article XXIII of GATT 1994 and Article 3.8 of the DSU, those provisions simply deal with the principles to be applied in the suspension of concessions or more generally in dispute resolution. They reinforce, rather than contradict, the basic distinction between violation, on the one hand, and nullification or impairment the result of a violation, on the other hand.

3.31 Mexico considers that the concept of "benefit" in the DSU encompasses the rights and obligations of Members under the WTO Agreement.

3.32 As mentioned above, pursuant to Article XXIII of GATT 1994, nullification or impairment of a benefit may be "the result of" a violation of a right, which implies that a violation is not to be confused with the nullification or impairment itself. Rather, the violation is the *cause* of a nullification or impairment of a benefit. In other words, rights *confer* benefits (e.g., predictable conditions of competition), they are not *theme nTw (mis123 047arD 0 3 Tc1 047arDTf 0 Tc -0,,,,9eTw (or impairment of a l7Aegin*

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(ii) Interpretation of the provisions relating to nullification or impairment by previous arbitrators

3.36 Previous Article 22.6 arbitrators concluded, as we have, that violation and nullification or

> under Article 22.6 of the DSU.[54] Moreover, like the parties to this dispute, the Arbitrators will proceed on the assumption that the licensing royalties realizable by copyright holders constitute an adequate measure of the economic benefits arising from Articles 11*bis*(1)(iii) and 11(1)(ii)."

3.39 We further note that, with the exception of the arbitrations carried out under Article 4.11 of the SCM Agreement, previous arbitrators have relied on an approach based on the economic or trade effect of the violation.[55] While most arbitrations have relied on the narrower concept of trade effect, we note that both the *US – Section 110(5) Copyright Act (Article 25.3)* arbitrator and the *US – 1916 Act (EC) (Article 22.6 – US)* arbitrators referred to economic effects.[56] The use of direct trade effect

procedures to prevail over those of the *DSU*. There can be no presumption, therefore, that the drafters intended the standard under Article 4.10 to be necessarily coextensive with that under Article 22.4 so that the notion of 'appropriate countermeasures' under Article 4.10 would limit such countermeasures to an amount 'equivalent to the level of nullification or impairment' suffered by the complaining Member. Rather, Articles 4.10 and 4.11 of the *SCM Agreement* use distinct language and that difference must be given meaning."[59]

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have to bring a dispute against each specific application of a measure. This would generate more disputes in disregard of the principle of "prompt settlement" of disputes expressed in Article 3.3 of the DSU.[64]

(b) Analysis of the Arbitrator

3.59 First, we recall that the Requesting Parties have not identified nullification or impairment beyond that resulting from the instances of application of the CDSOA.

3.60 Second, we note that the United States raised two separate questions regarding this issue: one is whether disbursements already made under the CDSOA can be considered by the Arbitrator, the other one is whether future disbursements may be considered.

3.61 At this stage, the question before us is whether we may take into account the economic or trade effects resulting from the instances of application of the CDSOA, given the United States claim that the CDSOA was challenged as such, and, had not been applied when it was first challenged.

3.62 We agree with the United States that the DSB never issued recommendations or rulings with respect to the application of the CDSOA. We also note the arguments of the Requesting Parties that once a measure has been found illegal, any instance of application of this measure is *ipso facto* illegal.

3.63 We take the view that the CDSOA *mandates* disbursements whenever certain conditions are met; that these disbursements have been found by the Panel and the Appellate Body to be a core element in their conclusion that the CDSOA violates the WTO Agreement[65], and that there is no reason, *for the purpose of assessing nullification or impairment*, to exclude instances of the application of the CDSOA from our consideration.

3.64 This approach is in line with the practice of other arbitrators. For instance, the arbitrator in *US – 1916 Act (EC) (Article 22.6 – US)* considered that instances of application could be taken into account in assessing nullification or impairment by a law as such.[66]

3.65 We also recall that, in reply to one of our questions[67], the United States referred to two cases, *US – Section 110(5) Copyright Act (Article 25.3)* and *EC – Hormones (US) (Article 22.6 – EC)*. In those two cases, a law had been challenged as such. Nevertheless, the arbitrators determined the level of nullification or impairment on the basis of an analysis of lost royalties in the first case and lost trade in the second case.

3.66 We fail to see any meaningful difference between the *US – Section 110(5) Copyright Act (Article 25.3)*, the *EC – Hormones (US) (Article 22.6 – EC)* arbitrations and this arbitration. In these two cases, the arbitrators relied, for all practical purposes, on the economic result of the *application* of the law. In this case, Mexico requests us to rely on disbursements made under the CDSOA to assess the level of nullification or impairment it suffered. The only difference which may exist is that, under the CDSOA, the United States' authorities are expected to implement the law through the application

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[64] Written submission of Brazil, the European Communities, India, Japan, Korea and Mexico, paras. 35-40.

[65] See Panel Report, paras. 7.35-7.39 and 8.1; Appellate Body Report, para. 256.

[66] *US – 1916 Act (EC) (Article 22.6 – US)*, para. 7.8.

[67] Reply of the United States of 28 April 2004 (paras. 11 and 12) to question 12 of the Arbitrator of 21 April 2004, which reads as follows:

"Considering its reasoning in paragraphs 15 to 19 of its written submission and more generally its position on nullification or impairment, could the United States give an example of a situation where a law *as such* would cause more than "zero" nullification or impairment?"

of a number of administrative steps. The United States seems to claim that, as a result, these are "measures" separate from the CDSOA on which no finding was ever made. The difference, in our view, is a matter of degree, not of nature.

3.67 As a result, we conclude that we are entitled, for the purpose of assessing the trade effect and, thus, the level of nullification caused by the CDSOA to Mexico, to take into account instances of application of the CDSOA.

3.68 The second question raised by the United States is addressed in Section IV.B.3 below.

4. Approach to be followed by the Arbitrator in this case

3.69 Given our conclusion that the approach advocated by Mexico is not compatible with Article XXIII of GATT 1994 and Article 22 of the DSU, and consistent with past arbitrations, it falls to us to determine the approach we consider to be compatible.

3.70 We do not agree with the United States that nullification or impairment is to be limited in all instances to the direct trade loss resulting from the violation. We agree with the Requesting Parties that the term "trade effect" is found neither in Article XXIII of GATT 1994, nor in Article 22 of the DSU. Previous arbitrators' decisions based on direct trade impact are not binding precedents.

3.71 However, as already mentioned, the "trade effect" approach has been regularly applied in other Article 22.6 arbitrations and seems to be generally accepted by Members as *a* correct application of Article 22 of the DSU.

3.72 On that basis, we conclude that we should apply an approach based on determining the trade effect, on the Requesting Parties, of the violation by the United States of its WTO obligations through the application of the CDSOA. Indeed, while the Requesting Parties contest the view of the United States that nullification or impairment may only be assessed in relation to the trade effect of the challenged measure and the conclusion that the actual trade effect of the CDSOA is "zero", they have not convincingly argued that *an approach* based on the trade effect of the CDSOA could not be applicable in this case.

3.73 In selecting the methodology to be applied in determining the level of nullification or impairment suffered by Mexico in this case, we noted the importance attached by the Requesting Parties to the view that suspension of concessions or other obligations is intended to induce compliance, and the view of the Requesting Parties that this purpose should guide our determinations under Article 22.7 of the DSU.

3.74 The concept of "inducing compliance" was first raised in the *EC – Bananas III (US) (Article 22.6 – EC)*[68] arbitration and has been referred to since in other arbitrations. However, it is not expressly referred to in any part of the DSU and we are not persuaded that the object and purpose of the DSU – or of the WTO Agreement – would support an approach where the purpose of suspension of concessions or other obligations pursuant to Article 22 would be exclusively to induce compliance. Having regard to Articles 3.7 and 22.1 and 22.2 of the DSU as part of the context of Articles 22.4 and 22.7, we cannot exclude that inducing compliance is part of the objectives behind suspension of concessions or other obligations, but at most it can be only one of a number of purposes in authorizing the suspension of concessions or other obligations. By relying on "inducing compliance" as the benchmark for the selection of the most appropriate approach we also run the risk of losing sight of the requirement of Article 22.4 that the level of suspension be *equivalent* to the level of nullification or impairment.

[68] *EC – Bananas III (US) (Article 22.6 – US)*, para. 6.3.

3.75 Moreover, we note from past arbitrations that, in all instances, arbitrators have quantified or valued the benefit nullified or impaired. In the present case, both parties have also attempted to quantify the level of nullification or impairment. Such quantification or valuation exercises show, in our view, that even though each party relies on a radically different legal approach, the economic rationales underlying these approaches seem to be very close. We consider that, beyond the legal argumentation of the Requesting Parties, their choice of the total disbursement made under the CDSOA is ultimately a benchmark, which they expect to yield a higher level of nullification or impairment than the more "classical" benchmark based on lost trade. All the more so as the United States has taken the view that the level of nullification or impairment caused by the CDSOA was in fact "zero" in terms of direct trade loss. As we see it, the Requesting Parties in effect use the amount of disbursements under the CDSOA as simply a proxy for the conduct of an economic analysis of the impact of the CDSOA disbursements on their exports or, more generally, on the competitive situation of the businesses concerned. Under those circumstances, we believe that our decision to rely on the trade effect resulting from the violation to determine the level of nullification or impairment does not, in economic terms, significantly depart from the rationale of the Requesting Parties' approach.

3.76 We are also mindful that other arbitrators have taken a prudent approach by avoiding claims that were "too remote", "too speculative" or "not meaningfully quantified".[69] We recall that parties have also cautioned us against the risk of relying on overly speculative data.[70]

3.77 For this reason, we considered it inappropriate to try to apply a counterfactual based on a relatively simple equation and simple parameters, as in *EC – Hormones (US) (Article 22.6 – EC)*, *EC – Hormones (Canada) (Article 22.6 – EC)* or *EC – Bananas III (US) (Article 22.6 – EC)*. Rather, given the number of factors potentially influencing the eventual trade effect of the CDSOA disbursements, it would be more appropriate to identify and apply an economic model reflecting those factors and allowing us, on the basis of a clearly identifiable amount – the disbursements made under the CDSOA – to assess the extent to which those payments could nullify or impair benefits accruing to the Requesting Parties.

3.78 To this end, we requested the parties to submit data and relevant economic literature so as to assess the feasibility of an economic model that would measure the extent to which disbursements under the CDSOA affect exports from the Requesting Parties to the United States.[71] On the basis of

3.83 However, the United States ultimately acknowledged that modelling could actually be done with some precision and volunteered a possible model.[77]

3.84 The model proposed by the United States adopts a disaggregated approach to estimating trade effects. Instead of treating the United States' economy as a whole and estimating a single trade effect number, it estimates the trade effect at the product level for each importer. These individual values are then summed to obtain the total trade effect. The model proposed by the United States also divides the countries in the world into three groups: the United States, WTO Members affected by the CDSOA disbursements and other exporters to the United States, thereby isolating the effects of the CDSOA payments only on the WTO Members subject to active anti-dumping or countervailing duty orders. The inputs required to run the model include:[78]

- A current market value share for each source of the products;
- An *ad valorem* measure of the CDSOA distribution that actually affected production;
- An estimate of the elasticity of substitutability as between products produced in the United States and imports (the elasticity of substitution);
- An estimate of the price sensitivity of supply for each product (the elasticity of the United States' supply, complaining party import supply, and rest-of-the-world import supply); and
- An estimate of the market demand elasticity.

3.85 Estimates of the supply, demand and substitution elasticities were taken from various US International Trade Commission reports. Supply elasticities for WTO Members with dumped or subsidized exports into the United States were arbitrarily set at 100 to reflect that they would not be able to adjust the price of their product downwards.[79] Trade and production data for the model is sourced from the Bureau of the Census, US Department of Commerce, and USITC investigations.[80]

3.86 The output of the model for each WTO Member affected by the CDSOA payments and each industry is as follows:[81]

- "An estimate of the decrease in US domestic shipments"; and
- "An estimate of changes in foreign trade partner exports to the United States, specifically breaking out the gain to the individual complaining party, the exemption of whose duty payments from CDSOA served as the basis for the particular counter factual estimation."

3.87 While the model is straightforward and based on the standard literature in applied international economics, implementation of the model by the United States in this case was not. The United States made a number of assumptions, which in its view were specific to the current case. These assumptions affect the input of the model, the values of the elasticities and the treatment of unavailable data.

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[77] In commenting on the view of the Requesting Parties that modelling would be "complex and burdensome" and Chile's comment that modelling would be "tedious", the United States stated that:

> "The fact that an exercise is complex, tedious, or even burdensome does not mean it can be dispensed with."

Comments of the United States of 4 May 2004 on answers of the Requesting Parties to the questions of the Arbitrator, para. 3.

[78] Exhibit US-18.

[79] Exhibit US-18.

[80] Exhibit US-18.

[81] Exhibit US-18.

3.88

academic study.[88] The United States also cites a study that concludes that 60 per cent of an investment tax incentive was received by the recipients.[89]

3.94 The results of the United States' model as applied according to its assumptions are outlined in Table 1.

(b) Requesting Parties

3.95 The original position of the Requesting parties was that modelling need not be considered by the Arbitrator to determine the award. Instead, they argued that the value of the CDSOA disbursements was a proxy for the minimum level of nullification or impairment caused by the measure found to be illegal. The position of the Requesting Parties is that the level of nullification or impairment can be quantified on the basis of the value of the CDSOA payments; since their view is that economic modelling of the trade effects in this case would be too difficult.[90]

3.96 However, in response to a question posed by the Arbitrator regarding whether or not a model for estimating the trade effects that meets their criteria exists, the Requesting Parties submitted such a model. Their model is based on the level of CDSOA payments, a gross measure of the elasticity of

Table 1: Estimated Level of Nullification or Impairment Revised Pursuant to the Model Proposed by the United States

Country	2001			2002			2003		
	Model results	No production data adjustments	Total nullification and impairment	Model results	No production data adjustments	Total nullification and impairment	Model results	No production data adjustments	Total nullification and impairment
Brazil	$0	$7	$7	$176,783	$0	$176,783	$124,264	$0	$124,264
Canada	$342,357	$0	$342,357	$0	$0	$0	$0	$0	$0
Chile	$0	$0	$0	$0	$0	$0	$0	$0	$0
EC	$651,736	$147,474	$799,210	$154,538	$80,620	$235,158	$119,810	$102,176	$221,986
India	$0	$336	$336	$85,584	$1,083	$86,667	$46,537	$935	$47,472
Japan	$1,149,255	$23,442	$1,172,697	$1,061,395	$39,144	$1,100,539	$1,036,507	$46,484	$1,082,991
Korea	$130,631	$6,684	$137,315	$52,041	$41,121	$93,162	$65,329	$31,461	$96,790
Mexico	$0	$0	$0	$0	$0	$0	$0	$203	$203
Total	$2,273,979	$177,943	$2,451,922	$1,530,341	$161,968	$1,692,309	$1,392,447	$181,259	$1,573,706

Source: United States

3.98 The Requesting Parties further simplify this expression by reducing it to the following three components:

- the elasticity of substitution (η), which is the first term and can be expressed as:

$$h = \left(\frac{\Delta M / M}{\Delta P_q / \Delta P_q} \right) \qquad (2)$$

- the total value of the payments expressed as a margin of the price reduction on domestic production financed by payments (S), the second term in the equation and can be expressed as: $S = \Delta P_q * Q$ (3)

- the ratio of the value of imports to the value of domestic shipments in the markets in question: (R), the third term in the equation and can be expressed as $R = \left(\frac{P_m M}{P_q Q} \right)$ (4)

3.99 Taken together, the model of the Requesting Parties as expressed by equation (1) can be presented as the product of the above three variables (equations (2)-(4)).

$$\text{Reduction in imports} = h * S * R \qquad (5)$$

3.100 The Requesting Parties operationalize their model for the year 2002 with data from public sources. For the elasticity of substitution, they adopt the highest elasticity in the classification of sectors used by the Global Trade Analysis Project of 5.2.[92] They argue that this is appropriate since "the kinds of products that are typically subject to anti-dumping and countervailing duties tend to be commodities and commoditised manufactured goods that compete under conditions much closer to perfect competition".[93] They further argue that:

> "elasticities of substitution specific to the products benefiting from the CDSOA payments would be higher than the aggregated average GTAP or NAIC data because CDSOA disbursements typically relate to commodities and commoditised manufactured products, for which preference of buyers is largely determined by price. Moreover, it is generally acknowledged in the economic literature that the more disaggregate the sample the higher the estimated substitution elasticity. Therefore the Requesting Parties consider that an elasticity drawn from the upper end of the GTAP range (5.2) is justified as typical degree of price sensitivity".[94]

3.101 In

long-run estimates and not short-run estimates. They note that these estimates are "on average, twice as large as short-run elasticities".[95]

3.102 Data on domestic shipments are sourced from public sources. The Requesting Parties estimate that in the year 2002 the ratio of imports to domestic production was 0.295.

3.103 Using total payments for 2002 of US$329 million, the Requesting Parties, therefore, conclude that the total trade effect of the CDSOA programme is US$505 million. In simple terms, they conclude that for the year 2002 the trade effect coefficient would be 1.54 times the level of disbursements. At this point we should note that this coefficient is independent of the value of disbursements. It depends only on the assumed value of the elasticity of substitution and the import penetration ratio. Changes in either one of these values will change the overall value of the coefficient.

3.104 We also recall that, in commenting on the model submitted by the Requesting Parties, the United States observed that the Requesting Parties include the amount of all CDSOA offset payments. This is equivalent to assuming that every CDSOA dollar disbursed by the United States under the CDSOA would be put towards reducing the price of domestic products (i.e. pass

assumption that only 50 per cent of a given CDSOA disbursement will have an impact on output, will necessarily reduce any estimate of the trade effect by 50 per cent.

(b) Choosing an appropriate model

3.114 The previous sections presented the approaches to economic modelling submitted by the

the pass-through effect of the disbursements on production. In the Requesting Parties' model, this term was implicitly assigned a value of one. It can be rewritten as:

$$\text{Reduction in imports} \qquad R$$

difficulties should not be confused with those resulting from the failure of the parties to supply data, where those parties are generally the source of the relevant information. While the first type of difficulty (the intrinsic difficulties attached to the use of an economic model) is one of the elements arbitrators must consider in deciding whether to apply an economic model, the second type of difficulty (that resulting from the failure of the parties to supply data) should not be part of that consideration. We therefore remain convinced that it is appropriate to rely on the information available when the arbitrator is of the view that an economic model would be the most effective way of calculating the level of nullification or impairment and one or more parties do not fully cooperate with the arbitrator in providing data and do not submit convincing reasons for not doing so. In other words, we consider that we are expected to produce, at a minimum, an outcome which is robust in a lowest common denominator sense, but which is nonetheless, in our opinion, a fair measure of the level of nullification or impairment.

4. Data issues

(a) Introduction

3.127 A complete explanation of the approach we have adopted is appended as Annex B. This section addresses the data issues related to economic modelling in this case. It discusses the value of the payments, the pass-through effect and the elasticity of substitution. It does not discuss import penetration, since there is only one source for this data, the United States' Government. We therefore used the figures provided by the United States regarding import penetration.

3.128 Another issue that needs to be addressed in advance of parameterizing the model is the relevant market to be examined. The Requesting Parties claim that the CDSOA disbursements have an impact on their exports to the United States and also their exports to other markets.[101] Hence, in their view, any analysis of trade effects should take into accou2nwith t04nrTj TD 3isl9ie36 321 5.ates ad also

concept of a trade effect coefficient (square brackets in our expression),[102] which is independent of the value of the disbursement.

3.132 In fact, the model proposed by the United States, the so called Armington model, has a similar characteristic. As noted above, the United States has only furnished the Arbitrator with a fully specified model for seven product categories. However, in cases where the model is applied in the same industry to different WTO Members, the relative trade effect is always identical. Only the absolute trade effect varies. For example, take the impact of CDSOA payments on ball bearing imports from the European Communities and Japan in the year 2001. In both cases the aggregate trade effect, according to the United States' model, is 0.77.[103] Similarly, for the years 2002 and 2003 the aggregate trade effects are, respectively, 0.74 and 0.7. Therefore, despite the fact that the payments attributable to the European Communities and Japan are different, the total trade effect in relative terms is identical.

3.133 We recall the United States' arguments that the value of disbursements should be adjusted to take into account administrative errors, reimbursements, revoked anti-dumping or countervailing duty orders. We consider that we should, as a matter of transparency, rely on figures published by the United States' authorities when it comes to assess the value of CDSOA disbursements. As a result, we will disregard administrative errors that have not been corrected at the time of the publication of the relevant figures.[104] Likewise, we see no reason to adjust the figures published by the United States' authorities because reimbursements have been requested but the requests have not yet been finally settled.[105]

3.134 With respect to the United States' argument that disbursements relating to revoked orders should be deducted, we note that, under the CDSOA, payments made in, say, 2004, actually correspond to revenue collected in 2003. If an order was revoked on imports from a given Requesting Party in 2004, this has no influence on the fact that offset payments in 2003 corresponded to duties collected at the time when the order was in place. Under these circumstances, we see no reason to exclude payments made in a given year, even though in that year no duty may have been collected due to the revocation of an existing order, if the payments are based on duties collected while the order was in place. We believe this interpretation to be consistent with the Panel and Appellate Body findings in this case.

3.135 As a result, we decide to use the amount of disbursements published by the United States, without any adjustment.

3.136 The United States has also raised the issue of *de minimis* deductions. We do not have any legal guidance as to why such deductions should be made in these proceedings. In making the deductions, the United States referred to two provisions of the Anti-Dumping Agreement and the SCM Agreement that we do not consider relevant in an arbitration pursuant to Article 22.6 of the DSU. Furthermore, we do not see any rationale for making the deductions on economic grounds. The purpose of an economic model is to estimate the trade effect of the measure. Any result derived from that model should then be assessed in terms of its relevance. Any methodology that *a priori* excludes certain industries will automatically bias the end result. In any case, assuming that the final result of any economic model is that the total trade effect is 1 per cent of the value of the CDSOA

[102] See para. 3.117 above.
[103] Aggregate trade effects are defined as the total imports reduced as a result of the CDSOA disbursements.
[104] We also note the possibility that such correction may be reflected in the figures subsequently published.
[105] See United States written submission, para. 13.

disbursement, then we do not see any grounds, legal or economic, to round that value down to zero and issue an award of "zero".

(c) Elasticity of substitution

3.137 The views of the parties also differ on the appropriate value of the elasticity of substitution to be used in modelling, although they are all in agreement that it is possible to calculate values at the 3-digit NAIC level.[106] The Requesting Parties submitted a set of elasticities at that level. The United States did not submit these elasticities when requested, and failed to convincingly contest the validity of the values submitted by the Requesting Parties. As a result, we used in our model the values submitted by the Requesting Parties.

3.138 In recognition of the fact that different aggregation methodologies exist, we decided to vary the elasticity values submitted by the Requesting Parties by 20 per cent. Therefore, three different sets of simulations are performed; one using the submitted elasticities and one each for values that are 20 per cent lower and 20 per cent higher than these elasticities.

(d) Pass-through

3.139 While the concept of pass-through is generally referred to in the economic literature as the extent to which exchange rate changes affect domestic prices, in this case we use the concept in a similar fashion to that used by the arbitrator in the *US – FSC (Article 22.6 – US)* case. The arbitrator in that case noted, in the context of an export subsidy that:

> "[P]ass through relates to the degree to which a company uses a subsidy it receives to lower the price of the product that it exports. At one extreme the company may choose to apply the full amount of the subsidy to the price of its products, thereby lowering its price. At the other, it may choose not to lower the price of the product."[107]

3.140 Therefore, pass-through, in the context of the case before us, is the extent to which a CDSOA disbursement will be applied to reducing the price of a beneficiary firm's products. A 100 per cent pass-through assumption implies an application of the total amount, whereas a zero assumption implies that none will be so employed.

3.141 The United States' position that the pass-through factor is zero is highly unrealistic. A factor of zero would presume that no recipient of a CDSOA payment would ever use the funds in any way that could have a price effect. While this may be the case for some firms5sT25 0 ough facthly unren applicar5 -12th

payments to train their workers, to upgrade their technology or machinery, or to expand their capacity and/or production. While using the funds in these sorts of ways clearly will have supply side effects that may have eventual consequential effects on prices, these price effects will be inter-temporal.

based on total disbursements on Requesting Parties products of US$190,199,701.02. Our remaining task is to allocate this total trade effect amongst the Requesting Parties. One possibility is to use the aggregate share of total imports for each Requesting Party. This, however, has an obvious bias, especially due to the industry concentration of the disbursements as discussed earlier. More detailed trade data could circumvent the problem of industry concentration, but, in our view, this is also problematic, due to the fact that the trade data would be biased since they reflect import values when the anti-dumping and countervailing duties were in place.

3.148 In our view, a better measure is based on the distribution of CDSOA payments, which is in turn based on aggregate duty collections on imports of products subject to anti-dumping duty or countervailing duty orders, but which can be analysed to determine the distribution of those imports amongst the various exporting countries. From this we may conclude that a WTO Member's share of the total disbursements is a better indicator of the share of their exports that will be lost in consequence of the disbursement than the aggregate share of imports. Therefore, we decide to allocate the total trade effect amongst the Requesting Parties on the basis of the share of CDSOA disbursements attributable to duties collected on their respective exports. In doing so, we note that the level of nullification or impairment will not exceed, for each Requesting Party, the level of nullification or impairment that results from the disbursements relating to that party's exports subject to anti-dumping or countervailing duty orders.

Table 3: Summary of Trade Effect Coefficient Values by Elasticity and Pass-Through, 2001-2003

2001			
	Elasticity values		
Pass through	Low	Medium	High
25	0.22	0.27	0.33
50	0.43	0.54	0.65
75	0.65	0.81	0.98
100	0.87	1.09	1.30
2002			
	Elasticity values		
Pass through	Low	Medium	High
25	0.25	0.31	0.37
50	0.50	0.62	0.74
75	0.74	0.93	1.12
100	0.99	1.24	1.49
2003			
	Elasticity values		
Pass through	Low	Medium	High
25	0.22	0.28	0.34
50	0.45	0.56	0.67
75	0.67	0.84	1.01
100	0.89	1.12	1.34

D. CONCLUSION: LEVEL OF NULLIFICATION OR IMPAIRMENT

3.149 As mentioned above, the purpose of the development of an economic model in this case was to define a coefficient by which future disbursements under the CDSOA would be multiplied to reach a value of trade effect. In line with past arbitrations, we consider this trade effect to represent the level of nullification or impairment suffered by Mexico.

3.150 We note that this solution is hybrid to the extent that it combines a fixed coefficient calculated on the basis of actual disbursement patterns over a particular period of time – in this case 3 years[110], with variable amounts of future disbursements. We also acknowledge that this coefficient is based on past disbursements (2001-2003) which may reflect neither the amount nor the categories of products which will be subject to anti

or impairment as we have decided to determine it (i.e., in terms of trade effect). This issue is addressed in relation to the following features of Mexico's request, which are challenged by the United States:

(a) Suspension of concessions or other obligations expressed as a duty on an undetermined quantity of trade rather than as a suspension of concessions and tariff surcharges on a determined value of trade;

(b) Suspension of concessions or other obligations by some of the Requesting Parties so as to cover the totaru0amout ainefs4uti.e., e.1275 Tw ( ) Tj 23.at37ldmru0amout 25 Tw tned quantity

s o337.75 -24.75 TD -0.3725 Tc 0 Tw3amout 2the 04TD 00amo385725 Tc52.7209.25 -DSU,.e.

considered the amount of additional duty as related to the *nature* of the envisaged suspension, which falls outside the mandate of arbitrators under Article 22.7 of the DSU.[116]

(b) Analysis of the Arbitrator

4.7 In the approach we decided to follow in order to determine the level of nullification or impairment, disbursements made under the CDSOA were only a starting point in assessing the *trade effect* of the CDSOA on each Requesting Party. The figure reached as a result of the application of an economic model by the Arbitrator is, consequently, a *value of trade*.

4.8 Comparatively, Mexico's proposed suspension of concessions or other obligations is not based on a value of trade but aims at equating the amount disbursed by the United States under the CDSOA in relation to imports from Mexico and "a proportionate amount of the balance of total offset payments minus the offset payments on products from other Members that are authorized by the DSB to suspend concessions or other obligations in this dispute."[117]

2. Suspension of concessions or other obligations by Mexico and other Requesting Parties so as to cover the total amount of disbursements made under the CDSOA

(a) Main arguments of the parties

(i) United States

4.12 The United States notes that all the Requesting Parties, except Chile, include in their requests, authorization to impose countermeasures in an amount that corresponds to duties collected on dumped and subsidized products from all other countries, including non

(b) Position of the Arbitrator

4.14 For reasons already stated above, we are of the view that the reasoning applied in the context of arbitrations pursuant to Article

the CDSOA in the future. It is not even possible to specify the level of payments under the CDSOA given the uncertainties attached to its calculation. The United States concludes that if requesting parties were permitted to refigure and revise their own level of suspension on an annual basis, these arbitrations would generate, rather than resolve, disputes between parties.[122]

(ii) Mexico

4.19 Mexico argues that the purpose of Article 22.4 of the DSU is to ensure equivalence between the level of suspension and the level of nullification or impairment so as to ensure that no punitive measures are taken against a Member found in violation of its WTO obligations. This does not mean, however, that a level may not vary depending on the variations of the level of nullification or impairment. The Requesting Parties fixed one single level of suspension which is identifiable at each point in time during the application of the suspension. Mexico refers to the decision in *US – 1916 Act (EC) (Article 22.6 – US)*, where the arbitrator took into account the objective of Article 22.4, which is to ensure equivalence between two levels in the course of the application of retaliatory measures. Me

Mexico exceeds, for a given period, the level of nullification or impairment that Mexico has sustained as a result of the violation of the United States' obligations by the CDSOA, as calculated using the formula developed above.[129]

V. AWARD OF THE ARBITRATOR

5.1 For the reasons set out above, we determine that, in the matter *United States*

obligation to comply with DSB recommendations and rulings seems to imply that suspension of concessions or other obligations is intended to induce compliance, as has been acknowledged by previous arbitrators.[130] However,

ANNEX A

(j) to facilitate the maintenance of the record of the arbitration, and to maximize the clarity of submissions and other documents, in particular the references to exhibits submitted by parties, parties shall sequentially number their exhibits throughout the course of the arbitration.

affected WTO Member. The aggregate estimate using this approach was obtained by summing the individual estimates for each product.

4.

20. While reiterating that economic modelling is not always precise, we consider that the issue is whether or not the broad parameters of an outcome derived through a trade-effects analysis is "unreasonable".[144] In this context, our assessment is that an analysis at the 3-digit level effectively bridges the problems of a too highly aggregated model that assumes single values for each variable and a disaggregated analysis, which does not have all the required data.

21. -

variance in values should be explored. In this regard, the model of the Requesting Parties narrows the debate over relevant elasticity values to only the elasticity of substitution.

26. The Requesting Parties themselves acknowledge the difficulties in obtaining precise estimates. They submitted two sets of elasticities as evidence of possible values that could be used to model the trade effect. One set was sourced from the Global Trade Analysis Project ("GTAP") based on the sectors within their basic model. The second submitted set for the same sectors was sourced from United States International Trade Commission ("USITC") researchers. The two sets differed considerably (Annex Table 1). The standard GTAP range has a lower mean (2.7) than the USITC estimates (3.1), smaller range (4 compared to 3.4), but both have the same median (2.8). The USITC has higher values in 22 of the categories and the same value in eight of the categories.

27. In an attempt to develop a workable framework for modelling, the parties were requested to submit elasticities of substitution at the 3-digit NAIC level.[147] The Requesting Parties, while expressing some reservations, responded positively to this request and provided the data. The United States did not, but stated many of the difficulties confronting any methodology to concord data from one classification to another. It also offered to respond positively to the request, but only at a later stage.[148] As a result, we did not have any choice, but to proceed with the elasticity estimates provided by the Requesting Parties. However, before doing so, we reviewed the estimates submitted by the United States according to the product categories for which CDSOA disbursements were made. Basic summary statistics are presented in Annex Table 1 for each of the four sets of elasticity values: GTAP, USITC estimates of GTAP, US submitted elasticities (low, high and mid-point) by CDSOA product categories and NAIC 3-digit industry category as submitted by the Requesting Parties.

Annex Table 1: Summary Statistics of Sets of Elasticities of Substitution

	GTAP	USITC GTAP	Requesting Parties NAIC	US Product Low*	US Product Mid-Point*	US Product High*
Mean	2.68	3.09	2.67	2.83	3.99	5.17
Median	2.8	2.80	2.8	3	4	5
Std. Deviation	0.8	1.18	0.79	0.87	0.92	1.12
Minimum	1.8	1	1.8	1	2	3
Maximum	5.2	5	5.2	5	6.5	8
Count	41	41	31	65	65	65

* Does not include values for seamless pipe and sugar, since specific values for these products were not provided. They were only listed as "high" and "perfect" respectively.

28. The table confirms the view of the Requesting Parties that aggregate elasticities tend to be lower. The first three columns reflect the values from the GTAP classification, including the concorded classification into the NAIC category. The median for all three sets is 2.8 and the mean ranges from 2.67 to 3.09. In contrast, the mean of the mid-point values of the US product elasticity estimates is 3.99 and the median value is 4. The highest value for this category is 6.5, whereas the highest value for the aggregated values is 6.2. In general terms the descriptive statistics of the low category proposed by the United States corresponds to the statistics of the first three columns.

29. The table also confirms that the issue of what values to assign to the various elasticities of substitution that a modeller may use is far from being resolved. Our case is complicated by the fact

[147] Question 1 of the additional set of questions of the Arbitrator.

[148] "If the Arbitrators so request, the United States could calculate such concorded elasticity estimates using where necessary, either simple averages or trade-weighted averages." Replies of the United States to additional questions of the Arbitrator, para. 2.

that, despite asking specifically for values that we could use, we only have one set of values for the 3-digit NAIC level. In order to account for measurement error and, of course, aggregation bias, we propose to use the Requesting Parties' set of elasticity estimates, but vary them by 20 per cent in order to have a range of effects. That is, the calculations will be done using elasticity values that are both 20 per cent above the submitted elasticities and 20 per cent below. The figure of 20 per cent was chosen as a conservative adjustment, given that the differences between the means of the US low and medium and US medium and high values is approximately 25 per cent.

3. Import penetration

30. The import penetration values were calculated using data provided by the United States. They are defined by the Requesting Parties as the "ratio of imports to domestic shipments". The latter is defined as total shipments less exports.

31. The figures reported in the table correspond to what might intuitively be expected, with the exception of the very high figure for fish and fish products. The reported production figures for the years 2000 through to 2002 are respectively: US$3.55 billion, US$3.23 billion and US$3.09 billion. The respective export figures were: US$2.66 billion, US$2.85 billion and US$2.8 billion. When these figures are combined with the import figures of US$8.12 billion, US$7.71 billion, and US$7.8 billion for the respective years, the resulting import penetration figures are very high relative to those calculated for the other industries.[149]

[149] Imports divided by the residual of production minus exports.

values for each of the years are not too dissimilar from the overall value of 0.295 presented by the Requesting Parties, which could also be used as a proxy.

D. IMPLEMENTING THE MODEL

34. Having dealt with the specification and various parameters of the model, we turn now to its implementation. The adopted aggregation methodology for the results at the 3

Annex Table 3:

Annex Table 4: Counterfactual Trade Effect of CDSOA Disbursements
Assuming 100 per cent Pass-through by 3-digit NAIC, 2002

NAIC Code	Industry	Disbursements (US dollars)	Elasticity	Market Penetration	Reduction in imports (US dollars) Low

Annex Table 6: Summary of Results for Various Values for Substitution Elasticity and Pass-through, 2001-2003

2001			
	Low	Medium	High
25 per cent	0.22	0.27	0.33
50 per cent	0.43	0.54	0.65
75 per cent	0.65	0.81	0.98
100 per cent	0.87	1.09	1.30
2002			
	Low	Medium	High
25 per cent	0.25	0.31	0.37
50 per cent	0.50	0.62	0.74
75 per cent	0.74	0.93	1.12
100 per cent	0.99	1.24	1.49
2003			
	Low	Medium	High
25 per cent	0.22	0.28	0.34
50 per cent	0.45	0.56	0.67
75 per cent	0.67	0.84	1.01
100 per cent	0.89	1.12	1.34