UNITED STATES – MEASURES AFFECTING IMPORTS OF CERTAIN PASSENGER VEHICLE AND LIGHT TRUCK TYRES FROM CHINA

(WT/DS399)

RESPONSES BY THE UNITED STATES
TO THE PANEL'S QUESTIONS TO THE PARTIES
FOLLOWING THE SECOND PANEL MEETING

August 6, 2010

I. BOTH PARTIES

A. Causation "As Applied"

Q31. Page 12 of the USITC Report states that "both the ratio of subject imports to U.S. production and the ratio of subject imports to U.S. apparent consumption rose throughout the period examined, and both ratios were at their highest levels of the period in 2008". In addition, footnote 127 of the USITC Report expressly calculates subject imports' "share of the quantity of apparent US consumption" for the whole period of investigation: 4.7 per cent in 2004, 6.8 per cent in 2005, 9.3 per cent in 2006, 14.0 per cent in 2007, and 16.7 per cent in 2008. Is "apparent consumption" equivalent to "demand"? Please explain.

1. Yes, as used by the ITC in its analysis, the terms "demand" and "apparent consumption" are essentially equivalent. Although there are theoretical distinctions between the economic concepts of "demand" and "apparent consumption,"[1] the ITC uses apparent consumption as the best proxy for observed demand in the market in its causation and injury analysis. The ITC uses apparent consumption as a proxy for observed demand to obtain a more specific understanding of how specific demand shifts in a market have affected actual shipments of the product under investigation during its period of investigation. By doing so, the ITC is able to specifically assess demand-related issues in its analysis, such as the argument made by Chinese respondents that demand declines in 2008 caused the considerable declines in the industry's condition in that year.

2. We would note that, in its own submissions, China has consistently used data reflecting "apparent consumption" as a proxy for demand when making assertions and arguments about changes in "demand" over the ITC's period of investigation.[2] China's newfound attachment to the distinctions between "demand" and "apparent consumption" would appear to reflect its dawning recognition that there was not a particularly close correlation between demand trends during the period and the declines in the condition of the U.S. industry over the period, as the United States has previously argued.[3]

Q32. In the context of an allegation of *ex post* rationalization, China argues that the USITC failed to compare increasing subject imports with declining OEM demand (China's

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[1] Under basic economic theory, "demand" is defined as the amount of a product purchasers are willing to buy at a given price level. "Apparent consumption," on the other hand, represents the observed "quantity demanded" of a product and the "quantity supplied" of that product at the prevailing price level. Thus, as can be seen, there is a relationship, but not a precise identity, in meaning between the two terms. As we have pointed out, however, the ITC uses apparent consumption in the U.S. market as the best proxy available to assess observed demand at existing price levels in a market. The United States notes that the use of apparent consumption for this purpose allows the ITC to assess, in a relatively precise manner, how "demand" has been reflected in actual purchasing, sales, and shipment trends in the market over the historical period of investigation.

[2] *See*, *e.g.*, China First Written Submission, paras. 332 and 341; China Oral Statement at First Panel Meeting, para. 75; China Second Written Submission, paras. 330-332.

[3] U.S. First Written Submission, paras. 316-322; U.S. Second Written Submission, paras. 81-84.

SWS, para. 329). If "apparent consumption" is equivalent to "demand" (see preceding question), would the relationship between subject imports and declining demand in the OEM sector have been covered by the USITC's more general finding regarding the relationship between increasing subject imports and declining demand? If so, was the USITC required to focus on the OEM sector specifically?

3. Yes, the ITC's more general finding concerning the relationship between demand in the U.S. market for tires and Chinese imports does cover the relationship between subject imports and declining demand in the OEM sector. In this regard, the United States notes that when assessing trends concerning apparent consumption in the U.S. market, the ITC relied on apparent consumption data that included consumption data for tires sold in the OEM and replacement parts of the overall U.S. market for tires.[4] Furthermore, in its injury and causation analysis, the ITC expressly addressed demand changes in the market over the period, and in 2008 specifically, for both the overall market, the OEM market, and the replacement market, thus making clear that the ITC considered changes in demand in the OEM and replacement markets in its analysis.[5]

For example, on page 15 of its Report, the ITC stated that:

> Demand for passenger vehicle and light truck tires depends on changes in the numbers of new passenger vehicles and light trucks produced in the United States, changes in the numbers of existing passenger vehicles and light trucks that need replacement tires, and changes in the total number of miles driven. U.S. apparent consumption fluctuated during the period examined, but was highest in 2004 and lowest in 2008. Demand for OEM tires declined during 2008 due to decreased passenger car production. Demand for replacement tires also declined during 2008 because of a decrease in miles traveled, consumers' desire to get more miles out of existing tires, and the weak economy.[6]

As can be seen, the ITC found that demand fluctuated somewhat over the first fours year of the period, but that demand in the overall market fell in 2008 due to declining demand as consumer demand fell in response to the recession.[7] The ITC also specifically stated that this same trend was seen in the OEM market in that year, as demand for and production of passenger cars fell.[8]

4. Moreover, in its causation analysis, the ITC pointed out that, despite the declines in demand that were seen in 2008, the volume of subject imports increased significantly in that

[4] *See, e.g.*, ITC Report, pp. V-3-V-4 and Table V-2 and V-3. Exhibit US-1.

[5] ITC Report pp. 15, 22, and 32. Exhibit US-1.

[6] ITC Report, p. 15; see also ITC Report, pp. 22 and 32. Exhibit US-1.

[7] ITC Report, p. 15; see also ITC Report, pp. 22 and 32. Exhibit US-1.

[8] ITC Report, p. 15; see also ITC Report, pp. 22 and 32. Exhibit US-1.

year, even though the volumes of non-subject imports and the U.S. industry's production levels both declined considerably in that year.[9] Specifically, the ITC pointed out that:

> Moreover, [Chinese] imports continued to increase rapidly even in 2008 when U.S. apparent consumption was falling. Subject imports increased by 4.5 million tires in 2008, while U.S. consumption declined by 20.4 million tires. Imports from third countries declined by 6.0 million tires in 2008, or by 6.1 percent, roughly consistent with the 6.9 percent decline in U.S. apparent consumption in 2008. Meanwhile, domestic production of subject tires declined by 20.0 million tires in 2008, or by 11.1 percent, and absorbed virtually all the decline in U.S. apparent consumption that year.[10]

Given this, the ITC reasonably concluded that the demand declines in that year were not, as the Chinese respondents asserted during the investigation, the exclusive cause of the industry's problems in that year.[11]

5. In sum, the United States would make several points about the ITC's discussion of demand in the OEM and overall market:

- First, the ITC expressly noted and took into account demand changes in the overall market and in the OEM market in its analysis.[12]
- Second, having taken these demand changes into account, the ITC's finding that imports increased even in the face of declining demand in 2008 appropriately covers both demand in the overall market and demand in the OEM market. Indeed, in its causation analysis, the ITC found that, as in the overall market, Chinese imports increased their market share in the OEM market, at the same time that the U.S. industry's market share was falling.[13]
- Third, the OEM market represented approximately 17 percent of the overall U.S. market for tires in 2008.[14]

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[9] ITC Report, p. 26. Exhibit US-1.

[10] ITC Report, p. 26. Exhibit US-1.

[11] ITC Report, pp. 26 and 29. Exhibit US-1.

[12] ITC Report, pp. 15, 22, and 34. Exhibit US-1.

[13] ITC Report, p. 21 Exhibit US-1 (stating that "the share shipped to the OEM market by U.S. producers declined each year during the period examined, while the share of subject imports from China shipped to the OEM market increased irregularly and was at its highest in 2006 at 7.3 percent").

[14] *Compare* ITC Report, p. V-4 (Table V-3) *with* ITC Report, p. V-1 (Table V-1). Exhibit US-1.

Given that there were similar demand and import volume trends in the OEM market and overall market, that is, that demand declined overall and that imports obtained an increasing share of the overall and OEM market, the ITC did not need to separately address the relationship between Chinese import trends and demand trends in the OEM market.

Q33. At para. 322 of its SWS, China argues that the ITC majority failed to address "the shift in demand in favour of larger tires".

(a) Would a shift towards larger tyres during the period of investigation have affected sales in both the OEM and replacement markets during the period?

6. As an initial matter, the United States would first note that the ITC did not need to address the "shift in demand in favor of larger tires" because the record evidence did not indicate that there was a "shift in demand in favor of larger tires" during the period of investigation. In its questionnaires, the ITC asked U.S. producers and importers to report the factors that had a significant impact on demand trends during the period of investigation.[15] Not one of the responding U.S. producers or importers reported that a "shift in demand in favor of larger tires" had affected demand trends during the period of investigation.[16] Instead, producers and importers identified such factors as the "downturn in the economy," "lower vehicle production," "fewer miles being driven," "overstretched tire life," "more radial tire use," "economic growth," "increased use in performance wheels," and "continued popularity of SUV's, light trucks, and crossover vehicles" as being factors affecting demand changes over the period.[17] Similarly, in the press release cited in the ITC Report's discussion of demand characteristics, the Rubber Manufacturers Association ("RMA") did not attribute declines in the passenger or light truck tires markets in 2008 to a "shift in demand in favor of larger tires."[18] Accordingly, the ITC did not address any "shift in demand in favor of larger tires" because the record evidence did not support this proposition.

7. Nonetheless, for purposes of answering the question, the United States notes that, if such a demand shift occurred, it would presumably have affected demand in both the OEM and replacement sectors of the market in the same manner because producers and importers generally sell the same ranges and types of tires in both sectors of the market. Such a shift might have affected demand in the OEM sector of the market at a slightly earlier point in the period, but as increasing amounts of automobiles and trucks that used larger tires were sold over time, such a shift would affect demand for replacement tires within a relatively short time frame as consumers replaced these larger tires. Moreover, if such a shift occurred, it would presumably have affected

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[15] ITC Report, p. V-9-V-11. Exhibit US-1.

[16] ITC Report, p. V-9-V-11. Exhibit US-1.

[17] ITC Report, p. V-9. Exhibit US-1.

[18] ITC Report, p. V-9. Exhibit US-1.

both the domestic producers and Chinese importers because both suppliers provided the same broad range of tire sizes and styles in the market.[19]

(b) At page V-9 of the ITC Report, reference is made to "a shift to P-metric passenger car tires". Are P-metric tyres a type of "larger tire[]" referred to at para. 322 of China's SWS?

8. No. The term "P-metric passenger car tires" does not refer to a specific type of larger tire, or to larger tires in general. The term "P-metric" refers to a type of labeling system for passenger car tires that is used to identify the specific size, load, and other characteristics of a particular tire model. In other words, the "P-metric" tire labeling system can be used to identify both smaller- and larger-size tires in the passenger car market. "P-metric" tires can be contrasted with "LT-metric" tires which are used to label "light truck" tires. When the ITC Report referred to "P-metric" tires in its discussion of the RMA's discussion of factors affecting demand in 2008, the ITC Report was pointing out that the RMA believed that, in 2008, demand for light truck tires in the OEM market had been affected by producers increasingly using passenger car tires (i.e., "P-metric" tires) instead of light truck tires in light truck manufacture.

(c) At page V-9 of the ITC Report, reference is also made to "more radial tire use". Is this factor relevant to both the OEM and replacement markets?

9. The issue of radial tire use is not a particularly important factor in the market, either in the OEM or replacement market. According to the RMA's Factbooks for 2007 through 2009, virtually all of U.S. production and import shipments in both the OEM and replacement market consisted of radial tires.[20] Thus, non-radial tires would have had little impact on the issue of demand changes in either market sector, or in the overall tires market.

Q34. China suggested at the Panel's second substantive meeting with the parties that "demand" is reflected in Figure V-4 of the USITC Report. Figure V-4 concerns the production of passenger vehicles and light trucks during the period of investigation, and thus presumably relates to demand in the OEM market. Would declines in the production of passenger vehicles and light trucks during the period have affected demand in the replacement market? Please explain.

10. A decline in the amount of passenger vehicles or light trucks produced and sold in any year of the period could have an impact on the need for consumers to purchase replacement tires for those vehicles in subsequent years of the period. For instance, a passenger car produced and sold in 2005 might not need replacement tires in that year, but could require one or more replacement tires in subsequent years, that is, in 2006, 2007, or 2008. Thus, a decline in overall

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[19] ITC Report, p. 21. Exhibit US-1.

[20] RMA Factbooks for 2007, 2008, and 2009; Petitioner's Posthearing Brief Exhibit 5 at 3, 15, 27. Exhibit US-36.

"demand" for new passenger cars and light trucks in one year of the period could affect demand not only for OEM tires in that year, but also demand for replacement tires in subsequent years of the period, to the extent that the overall number of vehicles on the road is declining.

III. UNITED STATES

A. General

Q42. Please comment on China's suggestion that the United States is relying on *ex post* rationalizations to justify the USITC's determination. (See para. 40 of China's reply to Question 10, and paras 195, 223, 247, 263, 271, 324 and 329 of China's Second Written Submission).

11. The United States does not agree that the Panel should ignore a number of arguments made by the United States because they are allegedly "ex post" arguments, as China claims. In this proceeding, China has challenged almost all of the United States findings on causation, and has done so by misstating or mischaracterizing the record data or by providing their own unfounded or misplaced analytical interpretations of that record data. As a party to these proceedings, the United States has the right to respond to the types of mistaken factual assertions or unfounded readings of the record evidence proffered by China, and can reasonably do so by pointing out that China's factual arguments are not consistent with the record or that they reflect an interpretation of the record that is not plausible. The United States would add that all of the arguments it has made in its submission, including those claimed to be "ex post rationalizations," are (i) based on evidence in the record before the ITC, (ii) address specific factual challenges made by China to the ITC's findings, and (iii) are consistent with the ITC's findings on the issues being challenged by China.

12. With these "ex post rationalization" arguments, China is essentially asserting that the United States is offering a new rationale for the findings underlying the ITC's determination. This is simply not the case. In its written submissions, the United States is simply responding to the issues raised by China and pointing our their flaws. In doing so, the United States has not offered the Panel a new interpretation of the record or a new rationale for the ITC's findings. In each case cited by China, the U.S. arguments are fully consistent with the ITC's analysis of the record and its findings on the elements specified under the Protocol, including its findings concerning the "volume of {Chinese} imports," the "effects of {Chinese} imports on prices for like or directly competitive articles," and the "effects of such imports on the domestic industry producing like or directly competitive products."[21] The U.S. approach on these issues is entirely appropriate and, indeed, to be expected, in a proceeding of this sort.

B. Interpretation of Paragraph 16

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[21] Protocol of Accession, para. 16.4.

Q43. At page 35 of its Report, the USITC states that the three-year remedy "is designed to give the domestic industry and its workers breathing space in which to adjust to import competition". The notion of "adjustment" is not found in the Protocol. It is, though, referred to in Article 7.1 of the Safeguards Agreement, which provides that a remedy may only be imposed if it is necessary "to facilitate adjustment". Does the USITC's reference to "adjustment" have any bearing on the US argument, made at para. 9 of its oral statement yesterday, that "the transitional mechanism exists outside and apart from the global safeguards disciplines of the Safeguards Agreement"? If so, what implications would this have for the methodology of the investigation conducted by the USITC?

13. The issue before this Panel is what obligations the United States, and other WTO Members, have to satisfy when imposing a measure under the transitional mechanism. A remedy under the transitional mechanism cannot be measured against general safeguard concepts, but against the specific obligations contained in the transitional mechanism. As the United States has demonstrated, the specific disciplines of the Safeguards Agreement were not incorporated into the transitional mechanism, explicitly or implicitly. The transitional mechanism is a type of safeguard measure, generally speaking, but that does not mean a measure taken under it has to satisfy the standards of the Safeguards Agreement.

14. Paragraph 16.6 of China's Protocol requires that a WTO Member apply a measure only for such period of time as may be necessary to prevent or remedy the market disruption. That is, measures under the Protocol are temporary. The Protocol makes no reference to the notion of adjustment, and there is no obligation to consider adjustment in establishing the measure to prevent or remedy market disruption. However, given the temporary nature of the remedy, there is nothing remarkable in the ITC's statement quoted above. As a general matter, the United States may wish, as a matter of policy and in light of the temporary nature of the remedy to market disruption, to encourage the affected industry to adjust. There is nothing in the Protocol that prohibits a Member from structuring its measure to pursue that policy. To the contrary, a Member can meet its Protocol obligations while at the same time pursuing that policy, and doing so could in fact lead to a remedy less onerous than the one permitted by the protocol. And, certainly, one would expect that China would welcome this approach to the extent it results in a phasing down of the remedy over time.

15. We would note that the sentence from which the quoted statement is taken reads in its entirety:

> This recommendation recognizes that the remedy is only temporary in nature and is designed to give the domestic industry and its workers breathing space in which to adjust to import competition, which will be encouraged by phasing down of the duties.

The statement reflects recognition of the temporary nature of the measure and the hope that the industry will adjust. The sentence reflects that the ITC expected that the "phasing down of the duties" would encourage adjustment. In addition, we note that two sentences later, the ITC explained:

> We also expect the level of tariff protection that is necessary to offset market disruption to decrease as new investments and other adjustments are implemented.

16. With respect to the second part of the question, the United States does not believe that the reference to "adjustment" in the ITC's discussion of its remedy recommendation has any bearing on the Panel's review of the ITC market disruption determination and methodology. The ITC's statements are clearly related to the expected effect of the ITC's remedy recommendation, as noted above. This is distinct from the issue of whether the methodology for the market disruption determination meets the obligations of the Protocol.

C. Relative Data

Q44. In paragraph 131 of China's first written submission it says that "...the trends in market share – particularly imports from China as a percentage of total consumption – suggest a stable trend..." China again refers to market share in this way in paragraphs 114 and 117 of its SWS. In paragraph 21 of its SWS the US talks about a "rapid rise in the market share of the Chinese imports over the period..." Does the United States also refer to "market share" in terms of a percentage of total consumption? If not, what is the United States referring to when it says "market share"?

17. Yes. When the United States refers to market share for imports, it is using the term "market share" to refer to the volume of imports as a percentage of apparent U.S. consumption for the period in question.

D. Section 421 Causation Standard

Q45. Please comment on China's reply to Question 16 from the Panel. In doing so, please address China's argument (para. 66 of China's reply to Question 16) that, in the Safeguards Agreement, "the focus is on the link, not the nature of the cause itself."

18. The United States disagrees with much of what China asserts in its response to question 16 from the Panel, including its statement that the focus of the Safeguards Agreement is "on the link, not the nature of the cause itself." The United States addresses China's main points below.

19. First, the United States disagrees with China's claim that, unlike the Protocol, the language of the Safeguards Agreement focuses only on the existence of the causal link between imports and serious injury, and not on the nature of the cause itself. It is true, as China points out in paragraph 66 of its response to Question 16, the text of the Safeguards Agreement does not specify what particular level of causal link between global imports and serious injury is required

under the Agreement as a condition for imposing a global safeguard.[22] Nonetheless, in its reports under the Safeguards Agreement, the Appellate Body has interpreted the Safeguards Agreement as requiring that there be "a genuine and substantial relationship of cause and effect" between increased imports and the requisite level of injury before a global safeguard can be imposed.[23] Thus, the Appellate Body itself has made clear that it interprets the "causal link" language of the Safeguards Agreement as establishing the "nature of the cause" required under the Agreement. Accordingly, it is not true, as China asserts, that the Safeguards Agreement focuses solely on the link itself, as opposed to the nature of that link.

20. Second, the United States disagrees with the novel and mistaken interpretation of the U.S. statute that China continues to offer the Panel in paragraph 62 of its response to Question 16. In paragraph 62, China has again claimed that the U.S. statute weakens the Protocol's causal link standard by providing that Chinese imports "need not be equal to or greater than any other cause."[24] China claims that this phrase permits the ITC to find Chinese imports to be a "significant cause" of material injury even if they merely contribute to that injury, and that it directs the ITC not to consider the effects of any other factors causing injury in its analysis.[25] China's claims are mistaken. As the United States has explained,[26] the statutory phrase cited by China simply does not have the meaning that China ascribes to it. As the ITC has made clear in its section 421 determinations, the phrase cited by China does not permit the ITC to find imports from China to be a "significant cause" of injury even if they are less than some other "minimal" cause of injury,[27] nor does it indicate the ITC should ignore all other causes of injury.

21. Instead, as the United States has explained, the statutory phrase cited by China makes clear that the ITC is not required to find that Chinese imports are the most important cause of injury to the industry or that they are equal in effect to the most important cause of injury.[28] The

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[22] *See, e.g.*, Safeguards Agreement, Article 4.2(b).

[23] Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, adopted 19 January 2001 ("*US – Wheat Gluten (AB)*"), para. 69. (Emphasis added.)

[24] China Response to Panel's Written Questions after First Panel Meeting, para. 62.

[25] China Response to Panel's Written Questions after First Panel Meeting, paras. 61-62.

[26] United States Second Written Submission, paras. 52-57.

[27] ITC Report, p. 18. Exhibit US-1. *See also Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (Nov. 2002) at p. 18, Exhibit US-15; *Certain Ductile Iron Waterworks Fittings from China*, Inv. No. TA-421-4, USITC Pub. 3657 (Dec. 2003) at pp. 15-16. Exhibit US-16.

[28] United States Second Written Submission, paras. 25-57; *see, e.g.*, ITC Report, p. 18 (stating that the ITC need not find the Chinese imports to be the "leading or most important cause of injury or more important than (or even equal to) any other cause" of material injury under the statute). Exhibit US-1. *See also Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (Nov. 2002) at p. 18, Exhibit US-15; *Certain Ductile Iron*

statutory language is intended to make clear to the ITC that it need not make this causation finding, which is a finding that is required of the ITC under the U.S. statute in global safeguards proceedings.[29] But it is critical to point out that, as the ITC has consistently explained, section 421 still requires the ITC to conclude that there is a "direct and significant causal link" between Chinese imports and material injury.[30] Both of these principles – that is, that Chinese imports need not be the most important or primary cause of material injury to the industry but must have a "direct and significant causal link" to material injury – are consistent with and fulfill the requirements of the Protocol.

22. Moreover, there is nothing in the statutory phrase cited by China that prevents the ITC from addressing or discussing effects of other factors, or from assessing whether one or more of the factors are such a significant cause of injury that those factors indicate that Chinese imports are "such a subordinate, subsidiary or unimportant cause [of injury] as to eliminate a direct and significant causal relationship" between Chinese imports and material injury.[31] If this were the case, the ITC would not have examined, as it did, the possible impact of other factors, such as demand declines in 2008 or the industry's alleged business strategy of shifting away from low-end products in its analysis, on the industry's condition, nor would it have rejected the argument that these factors broke the necessary causal link between Chinese imports and material injury.[32]

23. Finally, the United States agrees with China that the Protocol does not allow a Member to find Chinese imports to be "a significant cause" of injury, if they make a mere contribution to injury.[33] The United States has consistently stated that this is what the Protocol requires, and the ITC has made clear that, under section 421, imports from China are not a significant cause of

Waterworks Fittings from China, Inv. No. TA-421-4, USITC Pub. 3657 (Dec. 2003) at pp. 15-16. Exhibit US-16.

[29] For a full explanation of this difference, please see the United States' Second Written Submission, paras. 52-57. In that discussion, the United States explains that, unlike the Protocol and section 421, the U.S. global safeguards statute requires the ITC to find that global imports are both an "important cause" of serious injury and are "not less than any other cause" of such injury. *Id.* The statutory language cited by China makes clear that the second criterion – that is, that imports be as important a cause of injury as any other single cause – is not required in a section 421 proceeding. *Id.*

[30] ITC Report, p. 18. Exhibit US-1. *See also Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (Nov. 2002) at p. 18, Exhibit US-15; *Certain Ductile Iron Waterworks Fittings from China*, Inv. No. TA-421-4, USITC Pub. 3657 (Dec. 2003) at pp. 15-16. Exhibit US-16.

[31] ITC Report, p. 18 (stating that the ITC need not find the Chinese imports to be the "leading or most important cause of injury or more important than (or even equal to) any other cause" of material injury under the statute.) Exhibit US-1. *See also Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (Nov. 2002) at p. 18, Exhibit US-15; *Certain Ductile Iron Waterworks Fittings from China*, Inv. No. TA-421-4, USITC Pub. 3657 (Dec. 2003) at pp. 15-16. Exhibit US-16.

[32] *See*, *e.g.*, ITC Report, pp. 26-27 and 29. Exhibit US-1.

[33] China Response to Panel's Written Questions after the First Panel Meeting, para. 61.

injury if they make a mere contribution to material injury. [34] It is for this reason that the ITC has consistently stated that there must be "a direct and significant causal link" between Chinese imports and material injury.[35] It is also why the ITC has stated that imports from China will not be considered a "significant cause" of material injury if they are such an "unimportant," "subordinate," or "subsidiary" cause of injury that there is no "direct and significant causal link" between them and material injury.[36]

E. Causation "As Applied"

Q46. The Panel notes that, on page 21 of the USITC Report, it is stated that 17.7 per cent of total US producers' US shipments in 2008 went to the OEM sector. On page 27, it is stated that 18.6 per cent of total US producers' shipments in 2008 went to tier 3 of the replacement market. If the United States is able to provide certain specific information regarding the volume of shipments into the OEM sector, and tier 3 of the replacement market, why can it not provide information regarding tiers 1 and 2? If this involves issues of confidentiality, please explain.

24. The United States is able to provide public data concerning the approximate percentage of total U.S. industry shipments into Tier 1 and Tier 2 of the market for replacement tires in the United States in 2008, and for the percentages of Chinese and other import shipments into these tiers in that year as well. The following charts set forth information on shipments into the three tiers, with the first chart providing data on the estimated quantities shipped by the industry and importers into each tier, and the second chart providing an estimate of the percentage of shipments made by the industry and importers into each tier:

A. *Quantity*:

	Tier 1 Shipments (000's)	Tier 2 Shipments (000's)	Tier 3 Shipments (000's)	"Unreported" Shipments (000's)
U.S. Industry	69619	21937	25430	19539
Chinese Imports	836	10817	16823	11165
Other Imports	30061	12736	7925	28083

[34] *E.g.*, United States First Written Submission, para. 166; United States Second Written Submission, para. 45.

[35] ITC Report, p. 18. Exhibit US-1.

[36] ITC Report, p. 18. Exhibit US-1.

B. Share of Total Shipments, By Source:[37]

	Tier 1 Shipments (%)	Tier 2 Shipments (%)	Tier 3 Shipments (%)	"Unreported" Shipments (%)
U.S. Industry	51.1 %	16.0 %	18.6 %	14.3 %
Chinese Imports	2.1 %	27.3 %	42.4 %	28.2 %
Other Imports	38.1 %	16.2 %	10.1 %	35.6 %

Source: ITC Questionnaires.

25. Several points should be made about the charts. First, the charts establish that the ITC correctly rejected the argument made by Chinese respondents that Chinese imports were not significantly competing with the U.S. industry in the market.[38] As can be seen, there was a considerable degree of direct competitive overlap between the U.S. industry and Chinese imports in tiers 2 and 3 of the tires market. Specifically, in 2008, approximately 18.6 percent of total reported U.S. shipments were reported as being shipped into the Tier 3 category of the market, while 42.4 percent of Chinese imports were reported as being shipped into that category. In quantity terms, in 2008, approximately 25.43 million U.S. tires were reported as being shipped into that tier while 16.823 million Chinese tires were shipped into Tier 3.

26. Similarly, in 2008, approximately 16.0 percent of total reported U.S. shipments were reported as being shipped into the Tier 2 category of the market, while 27.3 percent of Chinese imports were reported as being shipped into that category. In quantity terms, approximately 21.9 million U.S. tires were reported as being shipped into that tier in 2008 while 10.8 million Chinese tires were shipped into Tier 2. It is, moreover, worth pointing out that this data showed a considerable degree of overlap in 2008, which is after several U.S. producers had shut down production capacity for low-end tires considerably, due in significant part to competition from low-end Chinese tire imports.[39] Given this data, the ITC correctly concluded – as did the

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[37] The percentages reported in the chart are the estimated percentage of each supply source's total shipments in the overall market that were sent into either Tier 1, Tier 2, or Tier 3 in 2008. For example, the chart shows that the U.S. industry estimated, in the aggregate, that 51.1 percent of its total shipment in 2008 were Tier 1 shipments, 16.0 percent were Tier 2 shipments, and 18.6 percent were Tier 3 shipments. The remainder of the industry's shipments could not be classified as being shipped into any category because those shipments were made by producers who did not break out their shipments as being made into any of the three tiers.

[38] ITC Report, p. 27. Exhibit US-1.

[39] ITC Report, p. 26 and I-15–17. Exhibit US-1.

dissenting Commissioners – that it was not true, as the Chinese respondents claimed, that there was little competition between Chinese and U.S. tires in these tiers of the market.[40]

27. Second, the United States can provide estimates of the industry's and importers' shipments into the three tiers only for 2008, the final year of the period of investigation. During its investigation, the ITC first asked for information concerning the tiers of the tires market after Chinese respondents asserted in their briefs that the replacement market was segmented into three tiers or categories and that there was minimal competition between Chinese and U.S. tires in the three tiers or categories.[41] To examine this claim, the ITC issued supplemental questionnaires to U.S. producers and importers on this issue, and sought information on the existence of these categories and the nature of the categories. In those supplemental questionnaires, the ITC asked producers and importers whether the replacement market could be segmented into three tiers or categories and, if so, what types of tires were included in each tier.[42] The ITC also asked producers and importers to estimate the percentage of their total shipments that were made into the tiers or categories in the market.[43] It asked producers and importers to supply this information only for 2008, however. The ITC did so to minimize the reporting burden on producers and importers, and to ensure it would be able to obtain a reasonably useful data set on this issue.[44]

28. Third, as reported in the charts, the ITC did not itself make a determination that certain volumes of shipments by individual producers and importers in 2008 should be classified as either Tier 1, Tier 2, or Tier 3 category tires. Instead, the ITC included in each category volumes of shipments for each producer or importer based on each individual producer's and importer's own estimates of the percentage of shipments that were shipped in each tier in 2008. Thus, if a producer reported in its supplemental questionnaire response that 40 percent of its reported shipments in 2008 had been Tier 1 tires, 40 percent had been Tier 2 tires, and 20 percent had been Tier 3 tires, then the ITC included 40 percent of that producers' reported shipments of replacement tires in Tier 1, 40 percent in Tier 2, and 20 percent in Tier 3.[45] As a result, the

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[40] ITC Report, p. 27-28 and 64. Exhibit US-1.

[41] ITC Report, p. V-4-V-6. Exhibit US-1.

[42] ITC Report, p. V-4-V-6. Exhibit US-1.

[43] ITC Report, p. V-4-V-6 and Appendix D. Exhibit US-1.

[44] With respect to the OEM data, which was reported on a year-to-year basis, the ITC asked for annual data because the request was made in its original questionnaires, which were sent out at the beginning of its investigation.

[45] The United States notes that the ITC only asked producers and importers to supply an estimate of the percentage of shipments in each category for 2008; the ITC did not ask them for specific shipment quantities or each category in that year. Thus, to calculate the data in the charts, the ITC multiplied the estimated percentages for the shipments into each Tier reported by the producers and importers to the actual shipment quantities reported by each individual producer or importer in its original questionnaire for 2008 to obtain an estimate of the quantities shipped

quantities reported under each tier do not reflect the ITC's assessment of how many shipments should be included in the tiers. They represent the individual producers' and importers' own individual views as to how their shipments could be classified. Thus, the types of tires included in each category will vary, depending on the individual producer's or importer's definition of the types of tires that belong in each category.[46]

29. Fourth, the shipments included in the "unreported" category reflect shipments made by two classes of producers and importers. The first class of producer and importer included any producer or importer who reported that the market could not be segmented into tiers. This class included a major U.S. producer that reported "there was no consensus in the marketplace on how to divide the U.S. market,"[47] as well as five importing firms that reported that the market could not be segmented into three tiers.[48] Since these producers stated that they could not divide the market into tiers, they did not provide any estimates of the percentage of their shipments that were made into the alleged tiers. Because the ITC could not include shipments for these producers in any of the reported tiers, the ITC included these shipments in the "unreported" category. The second class of producers and importers included in the "unreported category" consisted of companies that submitted a response to the ITC's original questionnaire but did not respond to the ITC's supplemental questionnaire.

30. Finally, with respect to the confidentiality issue raised by the Panel, the specific information reported by each individual company in its supplemental questionnaire consists of the company's own business proprietary information, including their estimates of the percentage of their shipments in 2008 into the three tiers. Because this information constituted the companies' business proprietary data, the ITC treated each company's responses to these questions as confidential information and redacted it from the public version of Appendix D of the ITC Report, which contains the specific individual responses of each company.[49] Nonetheless, when this information was aggregated by staff to provide the ITC with an estimate of the percentage of tires shipped by U.S. producers and importers into the three tiers of the market, that aggregated data does not reveal the individual proprietary data for any individual company, and could be released publicly. Thus, when the ITC referred specifically to estimated

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into each tier by the companies. The United States would note that the ITC calculated the data contained in the charts during its investigation; the data were not prepared for this proceeding.

[46] To take one example, the United States would note that one U.S. producer reported that 65 percent of its tires were Tier 1 tires, even though other produces and importers typically reported that company's tires were in the Tier 2 or Tier 3 category.

[47] ITC Report, p. V-6. Exhibit US-1.

[48] ITC Report, p. V-5. Exhibit US-1.

[49] ITC Report, Appendix D. Exhibit US-1.

percentage of shipments made by the U.S. industry or Chinese imports into Tier 2 or Tier 3 of the market, the ITC was able to cite this data publicly in its determination.[50]

31. As the United States pointed out at the second panel hearing, the ITC cited specific data on these shipment percentages in order to rebut the Chinese Respondents' claims that Chinese imports were focused primarily on the Tier 3 sector of the market and that the U.S. industry had voluntarily left that tier of the market.[51] Although the ITC also had public information on the percentage of the industry's and importers' shipments into the other tiers of the market, that data was not specifically cited in the determination and therefore was not released at that time. The United States is able to release this data now because it is, unlike the individual data contained in each supplemental questionnaire, not confidential.

Q47. On page 27 of the USITC Report, it is stated that 18.6 per cent of total US producers' shipments in 2008 went to tier 3 of the replacement market. Is the United States able to provide data regarding the proportion of US producers' shipments to tier 3 in the remaining years of the period of investigation?

32. No. As the United States indicated in its response to Panel question 46, the ITC only sought information from U.S. producers and importers concerning the percentage of their shipments into the Tier 1, Tier 2, and Tier 3 categories of the market for the year 2008. Thus, the only available evidence on record relating to this specific issue was the evidence relating to 2008. There is no record evidence for other years.

Q48. At para. 61 of its SWS, the United States asserts:

> **China's argument that Tier 1 tires constitute 70 percent of the total replacement market is belied by the very article it cites for support. The Modern Tire Dealer article cited by China reported that "major brands" represented 72.6 percent of domestic brand share in 2008. China's argument assumes incorrectly that all of these "major brands" fall into Tier 1. It is clear from the article, however, that the "major brand" label is much more expansive than the Tier 1 label as defined by respondents before the ITC. Instead, the article shows that the major brand category includes a large percentage of tires that fall into Tier 2 as defined by respondents, a tier in which Chinese tires competed fully. (footnotes omitted)**

Please explain how the article demonstrates (I) that "the 'major brand' label is much more expansive than the Tier 1 label as defined by respondents before the ITC, and (ii) that "the article shows that the major brand category includes a large percentage of tires that fall into Tier 2 as defined by respondents."

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[50] ITC Report, p. 27. Exhibit US-1.

[51] ITC Report, p. 27. Exhibit US-1.

33. In our answers to the Panel's Written Questions after the first panel meeting, we provided an article from the January 2009 edition of the publication, The Modern Tire Dealer, which was entitled "No Smoke or Mirrors."[52] The article, which was cited on page V-6 of the ITC's Staff Report, provided an overview of the tires market in 2008, including an overview of the passenger tire and light truck tire markets.

34. The article establishes that the "major brands" referenced in the article are much more expansive than the Tier 1 brands, as those brands were defined by the Chinese respondents before the ITC. During the ITC's investigation, the Chinese respondents defined the "tier 1" category of the market as consisting of certain specified "flag-ship" tire brands. During the investigation, the Chinese Respondents identified Bridgestone, Goodyear, and Michelin as the "flag-ship" brands that were included in Tier 1.[53] As can be seen from Chart 4 of the Modern Tire Dealer article, these three brands accounted for only 30 percent of the passenger tire market in 2008, and 27 percent of the 31 million tire light truck market.[54] Obviously, these market share levels are considerably lower than the 72.6 percent share of the replacement market that the article states is held by "major brands."[55] Thus, using the Chinese Respondents own assessment of what brands should be considered Tier 1 brands in the market, the data contained in the "No Smoke or Mirrors" article indicates that the Tier 1 category is considerably smaller than the "major brands" category cited in the article, and that Tier 1 does not occupy the 70 percent share of the market claimed by China.

35. The article provides further support for the U.S. position when one examines the market share reported in the article for brands that were considered by some market participants to be Tier 2 (or even lower level) brands in the U.S. market.[56] During the investigation, the Chinese Respondents asserted that the Tier 2 category of the market included "secondary or former Tier 1 brands tires such as BF Goodrich, Uniroyal, and General, or foreign brands, such as Pirelli, that are flag brands in their own country but do not yet have the brand equity in the United States to

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[52] United States Response to the Panel's Questions After the First Panel Meeting, paras. 71-77 and Exhibit US-29.

[53] ITC Report, p. V-4. Exhibit US-1.

[54] *See* United States Response to Panel Questions after First Panel Meeting, Exhibit US-29 at Chart 4. The article states that, in 2008, Goodyear had 14.5 percent of the passenger tire market, Michelin had 8.0 percent of the market, and that Bridgestone had 7.5 percent of the market, for an overall total of 30.0 percent of the passenger tire market. *Id*. at Chart 4. Similarly, Goodyear had 12.0 percent of the light truck tire market, Michelin had 7.0 percent of the market, and that Bridgestone had 8.0 percent of the market, for an overall total of 27.0 percent of the light truck tire market. *Id*. at Chart 4.

[55] *See* United States Response to Panel Questions after First Panel Meeting, Exhibit US-29 at Chart 5.

[56] *See* United States Response to Panel Questions after First Panel Meeting, Exhibit US-29 at Chart 4.

be Tier 1 brands."[57] In addition to the four brands specifically characterized by the Chinese Respondents as Tier 2 brands, U.S. producers identified several other brands as being middle-level or lower-level brands in the U.S. market, including Firestone, Dayton, Dunlop, and Yokohama.[58] If one includes on the list of Tier 2 brands any non-U.S. brand tires that may be flag-ship brands in their own country but do not yet have brand equity in the United States, the list of Tier 2 brands would also include such brands as Hankook, Kumho, Toyo, and Continental.[59] Using the market share data contained in Chart 4 of the article, in 2008, these individual brands held approximately 37.5 percent of the passenger car tire market, and 39.0 percent of the light truck tire markets in 2008.[60] Because one can only reach the 72.6 percent figure cited in the article as the market share held by "major brands" in the U.S. replacement market by including the market share for these types of brands, it is clear that the "major brands" category in the article includes a wide range of brands that were actually Tier 2 brand tires, as the category was defined by the Chinese respondents before the ITC.

36. It is important to add one further point. As the United States just noted, brands that were supposedly Tier 2 or lower-level brands in the U.S. market held at least approximately 37.5 percent of the passenger car replacement market, and 39.0 percent of the light truck replacement market in 2008. The article also points out that the "associate" and "private" brand tires that supposedly made up the Tier 3 category of the market constituted approximately 17.4 percent of the market.[61] Thus, according to the article, a significant majority of tires sold in the replacement market consisted of tires sold as Tier 2 or Tier 3 tires. Given this, China's claim that the tires sold in the Tier 1 category represented 70 percent of the market is obviously a clear overstatement of the market share held by tires in that category.

37. Finally, the United States would point out that there was no consensus among market participants on how to define the tiers or on which tire brands should be included in the various categories.[62] In fact, there were wide variations in the estimates of the share of the total U.S.

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[57] ITC Report, p. V-4. Exhibit US-1.

[58] ITC Report, pp. V-5-V-6. Exhibit US-1.

[59] ITC Report, pp. V-4-V-6. Exhibit US-1. As indicated in the report, the Chinese respondents and U.S. producers reported that brands such as BF Goodrich, Uniroyal, General, Pirelli, Firestone, Dayton, Dunlop, and Yokohama were specifically named as "tier 2," non-"best," or "lower-profile" brands. *Id.* Respondents also included in tier 2 "foreign brands, such as Pirelli, that are flag brands in their own country but do not have the brand equity in the United States to be Tier 1 brands." *Id.* at V-4. This definition would include such foreign brands as Hankook, Kumho, Yokohama, Koyo, and Continental. *Id.* Yokohama is also reported to be a "lower-profile" brand by Michelin. ITC report, p. V-6. Exhibit US-1.

[60] *See* United States Response to Panel Questions after First Panel Meeting, exhibit 29, Chart 4.

[61] *See* United States Response to Panel Questions after First Panel Meeting, exhibit 29, Chart 5.

[62] ITC Report, pp. 27 and 50 and V-5-V-6. Exhibit US-1.

market accounted for each tier.[63] For example, the individual producers and importers reported that, in their view, Tier 1 of the market could represent anywhere from 21 to 78 percent of the shipments made in the overall market, that Tier 2 could represent anywhere from 7 percent to 52 percent of shipments in the overall market, and that Tier 3 could represent anywhere from 10 to 50 percent of shipments in the overall market.[64] Obviously, the range of these estimates establishes that the various producers and importers all had widely varying views of the types and brands of tires that made up the individual tiers of the market. Nonetheless, if one uses respondents' own definitions of the brands and types of tires that fall into the Tier 1 and Tier 2 categories of the market, the data contained in the article shows that the tire brands sold in the Tier 1 category do not constitute the large bulk of the market, as China claims.

Q49. At para. 327 of its SWS, China argues that the condition of the domestic industry tracks demand more closely than it does subject imports. Please comment.

38. The United States disagrees with China's argument that the condition of the domestic industry tracks demand more closely than its does subject imports.[65] On the contrary, as the ITC made clear, an examination of the trends in demand, Chinese imports and the industry's condition over the period of investigation show that increases in the volumes of Chinese imports correlate more closely with the declines in the industry's condition over the period than demand changes.

39. As an initial matter, it is important to point out that, during the period, demand, as measured by apparent consumption, did not decline significantly in every year of the period, as China has suggested in its written submissions. To take the most salient example of this, demand, as measured by apparent consumption, did not decline in <u>2007</u>, but actually <u>increased</u> by 1.6 percent.[66] If it were true that the industry's condition tracked changes in demand over the period of investigation, the industry should have seen a similar increase in the absolute levels of its production, shipments, sales, and employment levels, and should have maintained its market share at a reasonably stable level. None of that occurred. In that year, despite the growth in apparent consumption, the industry's:

- Production quantities declined by 4.5 million tires, or by 2.4 percent;

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[63] ITC Report, p. 51. Exhibit US-1.

[64] ITC Report, p. 51. Exhibit US-1.

[65] The United States would note that it has specifically addressed this issue in its first written submission at paras. 317-319 and 321; its oral statement at the first panel proceeding at para. 55; and in its second written submission at paras. 81-83. The United States would also direct the Panel's attention to Exhibit US-22, which has a comparison of demand, production, and import volume trends over the period of investigation.

[66] ITC Report, Table C-1. Exhibit US-1.

- U.S. shipment quantities fell by 8.1 million tires, or by 5.0 percent;
- Net sales quantities fell by 10.4 million tires, or by 5.5 percent;
- Market share fell by 3.6 percentage points;
- The number of its production-related workers fell by 2,195 workers, or by 6.4 percent;
- Hours worked fell by 3.7 percent;
- Wages paid fell by 6.3 percent; and
- Hourly wages fell by 2.7 percent.[67]

Obviously, given these trends, the industry's overall condition did not improve considerably in 2007, even though the industry may have seen some improvement in its profitability levels in that year.

40. The record indicated that the most significant factor causing these declines in 2007 was not demand but Chinese imports. In 2007, the increase in Chinese imports significantly exceeded the 1.6 percent growth in demand, on both a relative and absolute level.[68] Even though apparent consumption increased by 4.67 million tires, the quantity of Chinese imports in that year increased by 14.5 million tires, or by 53.7 percent.[69] As a result of the fact that Chinese imports grew at a much higher absolute and relative level than the growth in demand in 2007, the market share of Chinese imports increased by 4.8 percent, leading directly to a 3.4 percent decline in the domestic industry's market share.[70] Moreover, the increase in Chinese imports of 14.5 million tires had a direct relationship to the decline of 10.4 million tires in the industry's net sales quantities in that year.[71] The United States would add that, in 2007, the market share of non-subject imports declined by 1.1 percent,[72] thus indicating that non-subject imports were not a cause of the declines in the industry's production, sales, shipment, and market share levels in 2007.

[67] ITC Report, Table C-1. Exhibit US-1.

[68] ITC Report, Table C-1. Exhibit US-1.

[69] ITC Report, Table C-1. Exhibit US-1.

[70] ITC Report, Table C-1. Exhibit US-1.

[71] ITC Report, Table C-1. Exhibit US-1.

[72] ITC Report, Table C-1. Exhibit US-1.

41. The lack of a significant degree of correlation between the declines in the industry's condition and demand trends can also be seen from a comparison of these trends for 2005. In 2005, demand, as measured by apparent consumption, fell slightly from the prior year, declining by 0.8 percent from the level seen in 2004.[73] In essence, this relatively small decline indicates that demand for tires was effectively stable between 2004 and 2005. If it were true, as China claims, that the industry's condition tracked demand trends closely over the period, then the industry's overall condition should have remained essentially stable, or declined slightly, in 2005. Again, this was not the case.

42. In 2005, the indicia of the industry's condition fell at a considerably faster pace than the 0.8 percent decline in demand. Specifically, in 2005, the industry's:

- Production quantities declined by 10.6 million tires, or by 4.8 percent;
- U.S. shipment quantities fell by 13.0 million tires, or by 6.7 percent;
- Net sales quantities fell by 12.7 million tires, or by 5.7 percent;
- Market share fell by 4.8 percentage points;
- The number of its production-related workers fell by 2.2 percent;
- Hours worked fell by 3.1 percent;
- Wages paid fell by 0.8 percent;
- Gross profits fell by 13.5 percent;
- Operating income fell by 35.4 percent; and
- Unit operating income fell by 31.5 percent.[74]

Again, these declines far outstripped the relatively small decline in apparent consumption in 2005, indicating that it was not demand declines that were driving these trends in 2005.

43. Instead, as in 2007, the record indicated that the most significant factor causing these declines was not demand but Chinese imports. In 2005, despite the decline in apparent consumption, Chinese imports increased significantly over the levels seen in 2004.[75] In 2005, when apparent consumption declined by 2.5 million tires, the quantity of Chinese imports in that

[73] ITC Report, Table C-1. Exhibit US-1.

[74] ITC Report, Table C-1. Exhibit US-1.

[75] ITC Report, Table C-1. Exhibit US-1.

year increased by 6.2 million tires, or by 42.7 percent.[76] As a result of this significant growth, the market share of Chinese imports increased by 2.1 percentage points.[77] The increase in Chinese imports of 6.2 million tires in 2005 represented half of the 12.7 million tire decline in the industry's net sales quantities in 2005, and nearly half of the 13.0 million tire decline in the industry's U.S. shipments in that year.[78] Due in significant part to the increase in Chinese import volumes, the U.S. lost 3.7 percentage points of market share in that year.[79] Moreover, the substantial rates of decline in the U.S. industry's employment and profitability data correlate more closely with the significant increase in the volumes of the Chinese imports in 2005 than the relatively small decline in demand in that year.[80] In sum, the record established that the declines in the industry's condition in 2005 were more closely correlated to the significant increases in Chinese volumes than to the small demand decline in that year.

44. Finally, the record did establish that there were demand declines in both 2006 and 2008 and that the industry's condition declined significantly in both years.[81] The record established that in those two years, the declines in the industry's condition considerably outpaced the declines in demand that occurred during both years.[82] In 2006, the record showed that demand, as measured by apparent consumption, fell by 13.55 million tires, that is, by 4.4 percent, from the level in 2005.[83] But, in that same year, the industry's production levels, U.S. shipment levels, and net sales quantities all fell by considerably larger amounts than demand, in both absolute and relative terms.[84] Specifically:

- The industry's production volumes fell by 22.9 million tires between 2005 and 2006, that is, by 11.0 percent. This was approximately 9.4 million tires more than the total decline in apparent consumption in that year.

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[76] ITC Report, Table C-1. Exhibit US-1.

[77] ITC Report, Table C-1. Exhibit US-1.

[78] ITC Report, Table C-1. Exhibit US-1.

[79] ITC Report, Table C-1. Exhibit US-1.

[80] ITC Report, Table C-1. Exhibit US-1.

[81] ITC Report, Table C-1. Exhibit US-1.

[82] ITC Report, Table C-1. Exhibit US-1.

[83] ITC Report, Table C-1. Exhibit US-1.

[84] ITC Report, Table C-1. Exhibit US-1.

- The industry's U.S. shipment volumes declined by 17.9 million tires between 2005 and 2006, that is, by 9.9 percent. This level was approximately 4.3 million tires more than the total decline in apparent consumption in that year.

- The industry's U.S. shipment volumes declined by 18.6 million tires between 2005 and 2006, that is, by 8.9 percent. This level was approximately 5.0 million tires more than the total decline in apparent consumption in that year.

In other words, not only did the U.S. industry absorb all of the decline in demand in 2006, it also saw its production, U.S. shipments, and net sales quantities all decline at significantly higher levels than the declines in demand in that year. Moreover, as the industry's production, shipment, and net sales quantities all declined considerably in 2006, the industry's:

- Market share fell by 3.4 percentage points;

- Production-related workers fell by 4.4 percent;

- Hours worked fell by 5.3 percent;

- Wages paid fell by 1.0 percent;

- Gross profits fell by 19.5 percent;

- Operating income fell from a profit of $165.5 million in 2005 to a loss of $114.5 million in 2006; and

- Operating income margin fell from a profit of 1.5 percent in 2005 to a loss of 1.1 percent in 2006.[85]

45. Again, the record indicated that Chinese imports were a significant cause of these declines. In 2006, despite the decline of 4.4 percent in apparent U.S. consumption, Chinese imports increased significantly in absolute and relative terms.[86] In that year, when demand fell, the quantity of Chinese imports increased by 7.0 million tires, or by 29.9 percent over their levels in 2005.[87] As a result of this significant growth, the market share of Chinese imports increased by 2.4 percentage points in that year.[88]

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[85] ITC Report, Table C-1. Exhibit US-1.

[86] ITC Report, Table C-1. Exhibit US-1.

[87] ITC Report, Table C-1. Exhibit US-1.

[88] ITC Report, Table C-1. Exhibit US-1.

46. This increase in Chinese imports represented 37.5 percent of the 18.6 million tire decline in the industry's net sales quantities in 2005, and 39 percent of the 13.0 million decline in the industry's U.S. shipments in that year. [89] Due in significant part to the increase in Chinese import volumes, the U.S. lost 3.4 percentage points of market share in that year.[90] Moreover, the significant increase in Chinese imports also coincided with the significant declines in the U.S. industry's employment and profitability data in 2006.[91] In sum, the record established that the declines in the industry's condition in 2006 were directly correlated with the significant increases in Chinese volumes.

47. Finally, in 2008, the record also showed that the significant increase in Chinese imports had a direct impact on the declines in the industry's condition in that year. In 2008, demand, as measured by apparent consumption, fell by 6.9 percent.[92] In that year, the industry's production, sales, shipment, and profitability levels all fell at a considerably faster rate than the decline in demand.[93] For example, the industry's:

- Production quantities declined by 11.1 percent;
- U.S. shipment quantities fell by 12.1 percent;
- Net sales quantities fell by 11.7 percent;
- Gross profits fell by 39.5 percent; and
- Operating income fell from a profit of $507.2 million tires in 2007 to a loss of $262.8 million in 2008, a decline that was larger in dollar terms than the size of the industry's operating income in 2007.
- Unit operating income fell from a profit of $2.82 in 2007 to a unit loss of $1.65 in 2008, which is also a decline that is larger in dollar terms than the size of the industry's unit operating income in 2007.

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[89] ITC Report, Table C-1. Exhibit US-1.

[90] ITC Report, Table C-1. Exhibit US-1.

[91] ITC Report, Table C-1. Exhibit US-1.

[92] ITC Report, Table C-1. Exhibit US-1.

[93] ITC Report, Table C-1. Exhibit US-1.

- The industry's operating margins also fell from a profit of 4.5 percent in 2007 to a loss of 2.4 percent in 2008, which is again a decline that is larger than the size of the industry's operating income margin in 2007.[94]

In other words, the record showed that the significant increase in Chinese imports caused many of the industry's indicia to decline at a more significant rate than the decline in demand in 2008.

48. In its written submissions, China has made much of the fact that there was a "one-to-one" decline in both apparent consumption and declines in the industry's production, U.S. shipment and sales quantities in 2008. It is true that the declines in demand and the industry's production, shipment, and sales quantities were relatively similar in size in 2008.[95] In 2008, apparent consumption declined by 20.4 million tires, while the industry's production levels fell by 20.0 million tires, its U.S. shipments fell by 18.850 million tires, and its net sales quantities fell by 21.0 million tires in that year.[96] However, China's claim that it was demand declines that caused all of the industry's declines in 2008 overlooks one simple fact. China's argument is premised on the notion that the industry, which held <u>only 49.6 percent</u> of the market in 2008, should have absorbed <u>all of the declines in demand</u> in that year. However, all else being equal, the industry should typically be expected to absorb only its pro rata share of demand declines in that year, which would have been 49.6 percent of the 20.4 million tire decline in demand, or 10.12 million tires. Because the volumes of Chinese imports continued to increase in 2008, despite the decline in demand, the industry was forced to absorb <u>all</u> of the decline in demand in the market in that year.[97] As a result of the increase in Chinese imports and market share in 2008, the industry's condition was considerably worse than it would have been in the absence of that increase.

49. In sum, the United States would point out that, throughout the period, the increases in Chinese imports coincided in every year with significant declines in the industry's production, U.S. shipment, net sales quantity, market share, and employment levels, and generally coincided with declines in the industry's profitability level, capacity utilization, and productivity levels. This contrasts with demand trends, which very clearly did not correspond closely to declines in the industry's condition in two years of the period, 2007 and 2005. When demand increased in 2007, for example, the industry saw its production, shipment, sales, market share, and employment levels continue to decline significantly from the levels in 2006. Similarly, when demand essentially remained stable in 2005, the industry's condition indicia generally fell very considerably in that year. Even in 2006 and 2008, when declines in the industry's condition far

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[94] ITC Report, Table C-1. Exhibit US-1.

[95] ITC Report, Table C-1. Exhibit US-1.

[96] ITC Report, Table C-1. Exhibit US-1.

[97] We would note that, in contrast to the Chinese imports, whose quantities grew by 10.8 percent in 2008, the quantity of non-subject imports fell by 6.1 percent, which tracked the decline in demand of 6.9 percent. ITC Report, Table C-1. Exhibit US-1.

outpaced demand declines, the record showed that the declines in indicia of the U.S. industry's condition also correlated with significant increases in the quantity and market share of Chinese imports that were underselling U.S. tires in those years. Accordingly, the record shows that there was a significantly closer correlation between Chinese import trends over the period and the industry's decline than demand trends.

Q50. Please give specific citations for all places where, in the context of its determination of "significant cause", the USITC made findings on demand trends in the OEM and /or replacement markets.

50. The ITC addressed demand trends in the OEM and overall market in its causation analysis at pages 22 and 26 of its Report, and discussed specific data on shipments by Chinese imports and U.S. tires into the OEM and replacement markets on p. 21 of its Report.[98] We would note that the ITC discussed demand trends for the OEM market and the overall market in its injury analysis on page 15 of its Report, and in its remedy recommendation at pages 31 and 32 of its Report.[99] The United States would note that the discussions relating to demand in the OEM and overall market contained on pages 15, 31, and 32 of its Report are as much a part of the ITC majority's analysis as its statements within the "causation" section of its opinion, and should be considered to be part of the ITC's consideration of this issue by the Panel.

Q51. Precisely which plant closures did the USITC refer to in rejecting the argument that the domestic industry voluntarily ceded the low-end of the market?

51. In rejecting the argument that the domestic industry voluntarily ceded the low-end of the market to imports, the ITC cited the closings of three plants that occurred in 2006 and thereafter.[100] In particular, the ITC pointed to the closings of Bridgestone's Oklahoma City plant in 2006, Continental's Charlotte, North Carolina plant in 2006, and Goodyear's Tyler, Texas plant in 2007.[101] The closings in question are listed in Table I-3 of the ITC Report[102] and are described in the ITC Report in more detail on pages I-15-17 and III-16, footnote 62.

52. As the ITC explained in its determination, Bridgestone, Goodyear, and Continental all indicated that the closings were effectuated, in significant part, due to low-priced import competition. For example, the record showed that:

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[98] ITC Report, pp. 21, 22, and 26. Exhibit US-1.

[99] ITC Report, pp. 15, 31, and 32. Exhibit US-1.

[100] ITC Report, p. 26. Exhibit US-1.

[101] ITC Report, p. 26 n. 147. Exhibit US-1. The ITC mistakenly dated the Goodyear closing as being announced in 2008, but the Report makes clear that this closing occurred in 2007. ITC Report, Table I-3 and I-16. Exhibit US-1.

[102] ITC Report, Table I-3 (at p. I-13). Exhibit US-1.

- Bridgestone "closed a subject tire plant in Oklahoma City, OK, in December 2006, due to ... shrinking of demand for low-end tires the plant produced, which was facing increasing 'fierce competition from low-cost producing countries.'"[103] A representative of Bridgestone specifically cited low-cost competition from Korean and Chinese imports as a basis for the decision.[104]

- Goodyear announced the closing of its Tyler, Texas facility in 2007, "reportedly due to pressure from low-cost imports which competed with the plants small-diameter passenger car tires and to its decision to exit certain segments of the private-label tire business."[105] Goodyear stated it was experiencing "considerable pressure from low-cost imports."[106]

- Cooper announced the closing of its Charlotte, North Carolina, facility in July 2006, stating that "global competition [was] putting pressure on [it] as our manufacturing costs are cheaper overseas."[107]

Moreover, the record showed that two other producers reported that they shut down facilities or reduced production during the period of investigation, due in significant part to competition from low-priced imports. For example, the record showed that:

- Michelin reported that, in 2006, it reduced production by 30 to 40 percent at its plant in Opelika, Alabama, due to "'shrinking demand in the mass market tire market and to intense cost pressure due to imports from competitors in lower-cost countries.'"[108]

- Cooper announced, in December 2008, the closure of its Albany, Georgia plant, citing "'increased lower-priced imports and the softening domestic demand for {its} products.'"[109]

Given that the record showed that, by 2006, China had become the single largest source of imported tires in the U.S. market and that it was, with the exception of Indonesia, the country

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[103] ITC Report, pp. I-15 and III-14, n. 57. Exhibit US-1.

[104] ITC Report, p. III-16, n. 62. Exhibit US-1.

[105] ITC Report, pp. I-16-I-17. Exhibit US-1.

[106] ITC Report, p. III-16, n. 62. Exhibit US-1.

[107] ITC Report, p. I-15. Exhibit US-1.

[108] ITC Report, p. I-17. Exhibit US-1.

[109] ITC Report, p. I-16. Exhibit US-1.

with the lowest average sales values in that same year,[110] the Commission reasonably concluded that the industry had not chosen to close these facilities for reasons having nothing to do with low-cost imports, including those from China.

Q52. We note that the USITC Report states:

> **The 2006 announced closure of Bridgestone's Oklahoma City, OK plant was reportedly related to both the plant's product mix (low-end segment of the market) and intense competition from lower-cost sources - low-cost Korean and *Chinese-made tires specifically cited*.**[111]

Where, and / or by whom, were "Chinese-made tires specifically cited"?

53. The citation in the ITC Report is taken from a contemporaneous news article, "Dayton Tire Plant to Close" (July 13, 2006). As the ITC indicated in its Report, that article was included in the Commission's record as an exhibit to the Petitioner's Prehearing Brief. ITC Report, page III-16, footnote 62. We attach a copy of the article as Exhibit US-37.

54. The article describes Bridgestone's reasons for closing its Oklahoma City, Oklahoma plant in 2006, which was one of the three plant closings cited by the ITC as a basis for rejecting the argument that the industry voluntarily ceded the low-end of the tires market to imports.[112] The article, which was written at the time the closing was announced, reported that Bridgestone had finalized plans to shut down its Oklahoma City tire plant by the end of 2006.[113] The article pointed out that the Oklahoma City facility produced mostly 13-, 14-, and 15-inch passenger tires for the replacement market and that its closure would result in the loss of 1,600 jobs.[114]

55. The article quoted Mr. Steve Brooks, the vice-president of manufacturing operations for Bridgestone, as stating that:

> But the reality is, this plant produces tires in the low-end segment of the market where demand is shrinking and fierce competition from low-cost producing {sic} is increasing . . . . Even with substantial new investment, global market forces make it virtually impossible to restore the plant to a competitive position and stem the huge losses.

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[110] ITC Report, Table II-1. Exhibit US-1.

[111] ITC Report, page III-16, n. 62, emphasis added. Exhibit US-1.

[112] "Dayton Tire Plant to Close," p. 1. Exhibit US-37.

[113] "Dayton Tire Plant to Close," p. 1. Exhibit US-37.

[114] "Dayton Tire Plant to Close," p. 1. Exhibit US-37.

The article then stated that "Brooks pointed to low-cost Korean and Chinese-made tires flooding the U.S. market as one of the reasons for the plant's economic troubles."[115] Obviously, this article shows that a "flood" of Chinese imports was one of the most significant reasons for the shut-down of this facility in 2006, which was before the even more substantial increase in Chinese market share that occurred in 2007.

Q53. We note that the market share of subject imports in 2006 was 9.3 per cent, up from 4.7 per cent in 2004. Please explain how imports with a relatively small share of the market – in comparison to non-subject tyres - could force domestic producers to reduce capacity.

56. The United States does not agree that the Chinese imports had a relatively small share of the market in 2006, which is when members of the industry began attributing the closure of their production facilities to the pricing pressure of "low-cost imports," including those from China.[116] By the end of 2006, China had a 9.3 percent share of the market, and became the single largest import source for passenger car and light truck tires in that year.[117] Moreover, the record indicates that, by 2006, Chinese imports were the lowest priced source of imports in that year, except for Indonesia; the record showed that the average unit values for Chinese imports in that year were lower than those of Canada, Japan, Korea, Brazil, and Mexico, the other large import suppliers of tires in the market in that year.[118] Finally, by 2006, the record showed that China had become the largest producer of tires in the world, producing 33 percent of all passenger and light truck tires produced globally in that year.[119]

57. In other words, it was clear why the U.S. industry started shutting down facilities in the U.S. market in 2006 and continued thereafter. As those producers stated, the closing of those facilities was due, in significant part, to pricing pressure from low-cost imports, including China.[120] Indeed, in a March 2006 edition of Modern Tire Dealer, it was reported that the volumes of Chinese imports that had entered the U.S. market even at the beginning of 2006 had had a "profound" effect on domestic supply in the market, and that this "profound" impact on supply could be expected to continue in the future.[121] Thus, even industry reporters recognized the significant disruption China was causing in the U.S. market at the beginning of 2006.

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[115] "Dayton Tire Plant to Close," p. 1. Exhibit US-37.

[116] ITC Report, pp. 26, I-15-I-17, III-5, and III-16, n. 61. Exhibit US-1.

[117] ITC Report, Tables II-1 and C-1. Exhibit US-1.

[118] ITC Report, Table II-1. Exhibit US-1.

[119] ITC Report, Table II-1. Exhibit US-1.

[120] ITC Report, pp. 26, I-15-I-17, III-5, and III-16, n. 61.

[121] United States First Written Submission, Exhibit US-18.

58. Given these facts, neither the market share of the Chinese imports nor their growing and adverse impact in the market could be considered small, even in light of non-subject import market share levels, which remained at a relatively stable level throughout the period of investigation.[122] Instead, as the U.S. producers who closed their facilities and the Modern Tire Dealer both acknowledged, the Chinese imports were the most significant adverse change in competitive conditions in the U.S. tire market over the period of investigation.

Q54. The company press release regarding the closure of the Continental plant in Charlotte, NC, attributed the closure inter alia to "global competition putting pressure on us as our manufacturing costs are cheaper overseas." The reference to "our" overseas manufacturing costs suggests that the "global competition" at issue was actually competition from other Continental plants in the world. According to the USITC Report, Continental does not appear to have any production facilities in China.[123] In light of this is there any basis for blaming the closure of the Continental plant on imports from China.

59. Yes. As the United States pointed out in its prior answer, market observers reported imports from China were having a "profound" effect on domestic supply in 2006, and domestic producers were publicly acknowledging that low-cost imports were putting significant pricing pressure on their low-end facilities in 2006, the year that Continental closed its tires production facility in Charlotte, North Carolina. It is true that, in the press release cited by the Panel in its question and by the Commission in its Report, Continental emphasizes that it is moving its facilities overseas in order to get the benefit of its lower cost facilities there.[124]

60. Nonetheless, when Continental attributed the closure of its Charlotte facility to "global competition," the ITC reasonably concluded this statement indicated that Continental, like its competitors Bridgestone and Michelin,[125] felt significant price pressure coming from low-cost global competitors, including imports from China, and that it chose to close its Charlotte facility, in part, due to this "global competition." The United States believes that, given the market circumstances under which Continental issued the press release, it is more reasonable to read the release in this manner, rather than to read it as meaning that Continental's overseas operations were competing so aggressively with their Charlotte facility that Continental was forced to shut down its own Charlotte facility.

Q55. When referring to the USITC's reliance on press releases regarding plant closures, the United States asserted that "it was entirely reasonable for the ITC to take these

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[122] ITC Report, Table C-1. Exhibit US-1.

[123] ITC Report, pages IV-3 to IV-6, describing "U.S. Producers' Subject Tire Manufacturing Facilities in China". Exhibit US-1. No Continental plant is included in this listing.

[124] ITC Report, p. I-15. Exhibit US-1.

[125] ITC Report, pp. I-16-I-17. Exhibit US-1.

producers at their word when they explained why they shut down these facilities."[126] We note that four out of 10 U.S. producers responded "no" to the question of whether the increased Chinese imports were the cause of material injury, four said they were not in a position to answer, and the remainder took no position or did not respond.[127] In the context of no US producers blaming Chinese imports for the material injury suffered, why was it not equally reasonable for USITC "to take these [four] producers at their word" when assessing causation, particularly since these four producers were responding to a questionnaire dealing specifically with the role of subject imports, whereas the abovementioned press releases were published independently of the USITC's investigation?

61. The ITC reasonably gave the appropriate degree of weight to the statements made by the U.S. producers on the two issues. In the case of the press releases and statements made about the closings, the U.S. producers were specifically explaining, outside the context of any particular litigation or administrative proceeding, why they had decided to close down the facilities in question. The contemporaneous statements of the producers were explicitly intended to explain why they had chosen to shut down the facilities in question. Moreover, the statements explicitly stated the precise reasons for the closings, indicating that the closings were effectuated as a significant result of "pressure from low-cost imports," which included Chinese imports.[128] Given the context in which these statements were made, the ITC reasonably concluded that the producers had no reason to color or shade their statements on the closings.[129]

62. Moreover, it is important to point out that the majority of producers provided answers that were not particularly meaningful to the question of whether increased Chinese imports were the cause of material injury for the domestic industry. Although four producers said they were not materially injured by Chinese imports, four of the producers said they were not in a position to answer the question and the remaining producers did not respond to or took no position on the question. In other words, the majority of the industry did not actually respond in a meaningful manner to the question posed by the ITC. Instead, they simply chose not to respond to the question. Given this, the producers actually expressed no opinion on the matter, thus meaning

[126] U.S. First Written Submission, para. 308.

[127] ITC Report, p. 65, n. 125. Exhibit US-1.

[128] ITC Report, pp. I-16 and III-16, n. 62. Exhibit US-1.

[129] In contrast, the statements made by the producers on the existence of material injury were made within the context of an administrative proceeding, and when responding to this particular question from the ITC, the producers could have been influenced by any number of factors having little to do with whether the Chinese imports had caused material injury to their U.S. operations. For example, a producer might choose not to take a position on whether it was materially injured by Chinese imports in order to avoid offending existing Chinese suppliers of imported tires or other related raw materials, or to avoid offending its own U.S. customers, who might themselves be purchasing Chinese tires in the market, or out of fear of retribution by China against its own production facilities operating in China. In other words, the producers's responses could have been influenced by any number of factors that had little to do with whether Chinese imports were materially injuring them.

that the ITC simply had no ability to "take them at their word" with respect to their opinion on the existence of material injury. Accordingly, the ITC properly gave these subjective, and not particularly meaningful, responses the appropriate weight in light of the objective data on imports and the condition of the domestic industry as well as the contemporaneous statements by the domestic producers regarding the reasons they were forced to close factories during the period of investigation.

Q56. Could the United States please comment on paragraph 64 of China's oral statement.

63. The United States disagrees with China's argument in paragraph 64 that the type of "coincidence" analysis required under the Safeguards Agreement requires not only an assessment of the temporal "coincidence" between import trends and trends in the industry's condition but also an assessment of whether the "degree of the respective annual increases [in Chinese imports] correspond generally with the degree of the respective declines in injury factors."[130] China's argument is flawed as an analytical matter because it assumes that Chinese imports must cause all, or most, of the injury being suffered by an industry in any particular year of the period being examined. It is only in such a situation that there would be a close "correspondence" between the degree of the annual increase in Chinese import volumes and any declines in the indicia of the industry's condition. In cases where other factors are causing material injury to an industry at the same time as Chinese imports, there might not necessarily be the same "degree" of correspondence between changes in the volume trends of Chinese imports and changes in the industry's condition.

64. In making this argument, China also fails to recognize that, even under the Safeguards Agreement, WTO panels have not adopted the approach contemplated by China. For example, in a detailed discussion of the "coincidence" analysis contemplated under the Safeguards Agreement, the panel in *US – Steel Safeguards* did not indicate that the "degree of correspondence" approach urged by China was a necessary aspect of a "coincidence of trends" analysis.[131] In that report, the panel explained that, because of the specific language of the Safeguards Agreement relating to the "rate and amount" of increases in imports and the "changes" in injury factors, "'it is the relationship between the movements in imports (volume and market share) and the movements in injury factors that must be central to a causation analysis and determination'" under the Agreement. [132] The panel then explained that:

[130] China Oral Statement, para. 64.

[131] Panel Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R, WT/DS259/R, adopted 10 December 2003, as modified by the Appellate Body report WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, and Corr.1 ("*US – Steel Safeguards (Panel)*"), paras. 10.297-10.311.

[132] *US – Steel Safeguards (Panel)* , para. 10.298 (*citing Argentina – Footwear (AB)*, para. 144).

> We understand from [this language] that the term "coincidence" refers to the relationship between movements in imports and the movements in injury factors. The panel and Appellate Body [in *Argentina – Footwear*] made it clear that, in considering movements in imports, it is necessary to look at movements in import volumes and import market shares. In our view, the word "coincidence" in the current context refers to the *temporal* relationship between the movements in imports and the movements in injury factors. <u>In other words, the upward movements in imports should normally occur at the same time as the downward movements in injury factors in order for coincidence to exist</u>.[133]

The panel added, moreover, that it is the "overall coincidence ... that matters, and not whether coincidence or lack thereof can be shown in relation to a few select factors which the authority has considered."[134] The Panel also noted that, in some cases, "there may be a lag between the influx of imports and the manifestation of the injurious effects on the domestic industry of such an influx."[135]

65. In other words, as the panel explained, under the Safeguards Agreement, the focus of a "coincidence" analysis is not on whether there is the same "degree of correspondence" between the change in import trends and declines in the industry's condition in any one year. Instead, the analysis is intended to determine whether there is a "temporal relationship between the movements in imports and the movements in injury factors," which is indicated when "upward movements in imports ... occur at the same time as the downward movements in injury factors."[136] Moreover, as the panel explained, even under the Safeguards Agreement, a "coincidence" analysis does not require a complete one-to-one identity in the movement of import volumes and industry indicia; it is the "overall coincidence ... that matters, and not whether coincidence or lack thereof can be shown in relation to a few select factors which the authority has considered."[137] Given this, China's "degree of correspondence" theory is not consistent with the approach taken by WTO panels under the Safeguards Agreement.

66. The United States would like to make one final but important note on this issue. As the Panel is aware, the United States has consistently pointed out that the type of "coincidence" analysis that derives from the text of the Safeguards Agreement is not specifically required under

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[133] *US – Steel Safeguards (Panel)*, para. 10.299.

[134] *US – Steel Safeguards (Panel)*, para. 10.302.

[135] *US – Steel Safeguards (Panel)*, para. 10.309.

[136] *US – Steel Safeguards (Panel)*, para. 10.299.

[137] *US – Steel Safeguards (Panel)*, para. 10.302.

the text of the Protocol.[138] In making this argument, the United States has pointed out that the Protocol does not contain the language of the Safeguards Agreement[139] that the Appellate Body found required a "coincidence of trends" analysis under the Safeguard Agreement.[140] Accordingly, this Panel should not impose a requirement on the United States to conduct a specific type of coincidence analysis not found in the language of the Protocol.

Q57. Did the USITC address "the shift in demand in favour of larger tires" (see para. 322 of China's SWS)? Please explain.

67. As the United States indicated in its response to question 33, the ITC did not need to address the "shift in demand in favor of larger tires" because the record evidence did not indicate that the "shift in demand in favor of larger tires" was a factor that affected demand during the period of investigation. In its questionnaires, the ITC asked U.S. producers and importers to report the factors that had a significant impact on demand trends during the period of investigation.[141] Not one of the responding U.S. producers or importers reported that a "shift in demand in favor of larger tires" had affected either perceived increases or decreases in demand during the period.[142] Instead, producers and importers identified such factors as the "downturn in the economy, lower vehicle production, fewer miles being driven, overstretched tire life," "more radial tire use," "economic growth," "increased use in performance wheels," and "continued popularity of SUV's, light trucks, and crossover vehicles" as being factors that affected changes in demand over the period.[143] Similarly, in the press release cited in the ITC Report's discussion of demand characteristics, the Rubber Manufacturers Association ("RMA") did not attribute declines in the passenger or light truck tires markets in 2008 to a "shift in demand in favor of larger tires."[144] Accordingly, the ITC did not address any "shift in demand in favor of larger tires" because the record evidence did not support this proposition.

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[138] United States First Written Submission, paras. 239-240; United States' Response to Panel's Written Questions after the First Panel Meeting, paras. 68-69.

[139] That is, the language of the Safeguards Agreement requiring an authority to examine the "rate and amount" of changes in imports and "changes" in the industry's condition. Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles Apparel and Other Items*, WT/DS56/AB/R and Corr.1, adopted 22 April 1998 ("*Argentina – Footwear (AB)*"), paras. 144-145.

[140] United States First Written Submission, paras. 239-240; United States' Response to Panel's Written Questions after the First Panel Meeting, paras. 68-69.

[141] ITC Report, p. V-9-V-11. Exhibit US-1.

[142] ITC Report, p. V-9-V-11. Exhibit US-1.

[143] ITC Report, p. V-9. Exhibit US-1.

[144] ITC Report, p. V-9. Exhibit US-1.

68. The United States would also point out that, in its first submission, China proffered the Panel no record evidence to support its claim that "consumer demand shifted in favor of larger tires, even for smaller, fuel-efficient vehicles."[145] Instead, China points to a statement made by the dissenting Commissioners that, "according to some public press reports, . . . one of the reasons for the closure of both Bridgestone's Oklahoma City, Oklahoma plant and Goodyear's Tyler, Texas plant was that the plants made smaller sized tires that were increasingly unpopular in the marketplace." [146] The record makes clear, however, that the decision to close these factories was the result of a reduced demand for the products made by these producers at these facilities due in significant part to "low-cost import competition."[147]

69. For example, Bridgestone made clear that demand for "low-end" tires made at the Oklahoma City factory was being affected by "low-cost Korean- and Chinese-made tires" which were "flooding the U.S. market."[148] As for Goodyear's Tyler plant, press reports noted that it "primarily makes small passenger-car tires, a business that has been under considerable pressure from low-cost imports."[149] In other words, an influx of low-priced imports, including Chinese tires, helped make it difficult for Bridgestone and Goodyear to keep producing the types of tires at the facilities in question.

[145] China's First Written Submission, para. 339.

[146] China's First Submission, para. 339 (citing ITC Report, p. 51, n. 47 (dissenting Commissioners)).

[147] "Dayton Tire Plant to Close," p. 1. Exhibit US-37.

[148] "Dayton Tire Plant to Close," p. 1. Exhibit US-37.

[149] "Bridgestone: Plant Closures reflect changing market," Petitioner's Prehearing Brief at Exh. 7. Exhibit US-38.