

**UNITED STATES – MEASURES AFFECTING IMPORTS OF CERTAIN PASSENGER
VEHICLE AND LIGHT TRUCK TYRES FROM CHINA
WT/DS399**

**OPENING STATEMENT OF THE UNITED STATES OF AMERICA
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

June 1, 2010

1. Mr. Chairman, members of the Panel, on behalf of the United States, we thank you and the Secretariat for your ongoing work in this panel proceeding. This oral statement will highlight our views on major issues in this dispute.

I. Introduction

2. The *Tires* investigation presents the very situation that was intended to be covered by the transitional mechanism contained in China's Protocol of Accession. Between 2004 and 2008, the period covered by the ITC's investigation, the Chinese tire industry grew at an extremely rapid rate, more than doubling in size.¹ Chinese tire exports increased as a percentage of their total tire production, growing to 59.5 percent of total shipments in 2008.² Exports to the United States, China's single largest export market throughout the period, increased significantly as a result.

3. Between 2004 and 2008, imports from China more than tripled, growing from a level of 14.6 million tires in 2004 to 46 million tires in 2008.³ Due to this tremendous growth in their import volumes, Chinese imports were able to increase their share of the U.S. market by 12.0

¹ITC Report, p. 25 and Table IV-3. Exhibit US-1.

²ITC Report, Table IV-3. Exhibit US-1.

³ITC Report, Table C-1. Exhibit US-1.

percentage points between 2004 and 2008, and had a 16.7 percent share of the market in 2008.⁴

They achieved this increase in market share by consistently and significantly underselling U.S. tires during the period of investigation.⁵

4. Because of this extraordinary growth in the volume and market share of the low-priced Chinese imports, there was a decline in nearly all of the economic indicators for the U.S. tire industry between 2004 and 2008.⁶ The U.S. industry lost 13.7 percentage points of market share, almost all of which was taken by the Chinese imports over the period.⁷ As a result, the industry's production quantities fell by 26.6 percent, its capacity utilization rates fell by 10.3 percentage points, its U.S. shipments fell by 29.7 percent, and its net sales quantities dropped by 28.3 percent.⁸ The industry experienced a decline of 11.5 percent in its productivity levels and was forced to reduce its work force by 14.2 percent.⁹

5. Finally, the industry's profitability fell considerably between 2004 and 2008. Its gross profits declined by 33.6 percent, and its operating income margins fell by 4.8 percentage points during this period.¹⁰ In other words, as the U.S. International Trade Commission ("ITC") found, the record of its investigation established that imports of tires from China were, in fact, increasing rapidly so as to be a significant cause of material injury to the U.S. tire industry. The ITC's findings on this issue were reasoned and supported by the record evidence.

⁴ITC Report, Table C-1. Exhibit US-1.

⁵ITC Report, p. 23 and Tables V-9 - V-14. Exhibit US-1.

⁶ITC Report, Table C-1. Exhibit US-1.

⁷ITC Report, Table C-1. Exhibit US-1.

⁸ITC Report, Table C-1. Exhibit US-1.

⁹ITC Report, Table C-1. Exhibit US-1.

¹⁰ITC Report, Table C-1. Exhibit US-1.

6. The question for this Panel is whether, as China claims, the U.S. measure is inconsistent with U.S. obligations under Section 16 of the Protocol. The Protocol requires a Member to determine that imports of an article from China are “increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry.”¹¹ In addition, it requires a Member to “consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry”¹² Contrary to China’s arguments, the ITC performed an analysis that was fully consistent with the Protocol requirements.

7. China’s arguments that the U.S. measure does not comply with the Protocol rest on a fundamentally flawed reading of Section 16. China not only seeks to import the standards of GATT Article XIX and the Safeguards Agreement into the text of the transitional mechanism, China also claims that the standards for applying a measure under the transitional mechanism are more demanding than the ones for applying a global safeguard measure. Nothing in China’s Protocol of Accession, or the Safeguards Agreement, for that matter, supports these notions.

8. It is evident that the Protocol contains no cross-reference to the disciplines of Article XIX or the Safeguards Agreement. This stands in sharp contrast with the Safeguards Agreement itself, which contains explicit references to Article XIX of the GATT 1994. This context shows that if the negotiators of the transitional mechanism had sought to import the requirements of Article XIX or the Safeguards Agreement, they would have done so through explicit references.

9. The Protocol’s use of a lower injury standard than the Safeguards Agreement also shows

¹¹Protocol of Accession, para. 16.4.

¹²Protocol of Accession, para. 16.4.

that China is wrong. The Appellate Body has clearly stated that the “serious injury” standard of the Safeguards Agreement is “a much higher standard of injury”¹³ than the “material injury” standard, in GATT 1994 Article VI, the Antidumping Agreement, and the SCM Agreement. Given that the transitional mechanism contains a material injury standard, rather than the Safeguards Agreement’s “much higher” serious injury standard, it is illogical to read the transitional mechanism as containing the same standards as the Safeguards Agreement. It is even less logical to assert, as China does, that the Protocol’s standards are stricter than those of the Safeguards Agreement.

II. Imports from China Did, Indeed, Increase Rapidly over the Period of Investigation

10. Turning now to the ITC’s injury determination, we will first address the question of “increasing imports.”

11. As you can see from the charts in our first written submission,¹⁴ imports from China increased rapidly on an absolute and a relative basis. These increases were sustained and consistent, as they increased in every year of the ITC’s five-year period of investigation.¹⁵ Indeed, the Chinese imports increased quickly and significantly over the period of investigation, with the largest increases occurring over the last two years of the period. It *was* a rapid and recent increase.

12. For example, the record showed that:

- The quantity of the subject imports increased by 215 percent between 2004 and

¹³US – Lamb Meat (AB), para. 124.

¹⁴ITC First Submission, paras. 108-111.

¹⁵ITC Report, pp. 11-12 and Table C-1. Exhibit US-1.

2008, and the market share of the subject imports more than tripled between 2004 and 2008.

- 60 percent of the growth in the volume of imports during the period of investigation occurred in 2007 and 2008, the final two years of the period.
- 62 percent of the growth in the market share of the imports occurred in 2007 and 2008, again the final two years of the period.
- Imports from China were at their highest levels, in absolute and relative terms, in 2008, the final year of the period, and China was the single largest import source for tires in that year.¹⁶

Quite clearly, these trends establish a rapid and recent increase in the subject imports from China, including the final years of the period.

A. The ITC’s Finding that Imports Were Increasing Rapidly is Fully Consistent with the Standard Set Forth in the Protocol

13. To counter this strong evidence of rapidly rising imports, China has tried to develop a theory that the Protocol of Accession imposes a more stringent standard for finding increasing imports than the Safeguards Agreement. China’s theory is unpersuasive.

14. When making this argument, China ignores the critical fact that paragraph 16.4 of the Protocol makes clear that the increase in imports must be rapid enough “to be a significant cause of material injury, or threat of material injury” to the industry. The Appellate Body has made clear that the standard of “material injury” is lower than that of “serious injury” used in the

¹⁶ITC Report, pp. 11-12 and Table C-1. Exhibit US-1.

Safeguards Agreement.¹⁷ Thus, the Protocol’s language linking “rapid increases” of imports to material injury suggests that the import increases required by the Protocol are linked to a different and lower standard of injury than the increases required by the Safeguards Agreement.¹⁸ In claiming the Protocol has a higher standard for increasing imports than the Safeguards Agreement, China completely ignores this crucial distinction between the Agreement and the Protocol.

B. The ITC Reasonably Found that Import Increases Had Not Abated in 2008

15. China also argues that the ITC supposedly failed to recognize that import increases had “abated” in 2008. The ITC addressed this argument in its analysis, and correctly rejected it.¹⁹ It pointed out that the subject imports increased “by significant amounts” in each year of the period, and that the subject imports were at their highest levels in 2008. It also correctly pointed out that, on an absolute and a relative basis, the increase in 2008 alone was a “large, rapid, and continuing” increase over the increase seen in 2007.²⁰ The subject imports did not “abate” in 2008; instead, the subject imports were larger and were continuing to increase over the levels seen in 2007.

16. It is important to recognize, moreover, that the Protocol does not require that imports be growing at an accelerating rate at the end of the period. Rather, it requires that the volumes of the subject imports be “increasing rapidly”,²¹ which is exactly what happened in this case.

¹⁷*US – Lamb Meat (AB)*, para. 124.

¹⁸*See US – Steel Safeguards (AB)*, para. 346.

¹⁹ITC Report, p. 12. Exhibit US-1.

²⁰ITC Report, p. 12. Exhibit US-1.

²¹Protocol of Accession, para. 16.4.

Moreover, China’s argument that imports had “abated” in 2008 ignores the fact that imports in that year were 10 percent higher than the level seen in 2007, which is when imports rose by a stunning 53 percent on an absolute basis.²²

C. China’s Alternative Quarterly Analysis Is Flawed

17. China also asks the Panel to disregard the ITC’s analysis and focus instead on only the last two years of data, examining it on a quarterly basis. China’s proposed alternative methodology is flawed for a number of reasons.

18. First, China’s approach ignores all import data before 2007, thus making it impossible to place the increases that occurred in 2007 and 2008 in context. The Appellate Body has explained that competent authorities should not consider data from the most recent past in isolation from the data pertaining to the entire period of investigation because doing so limits the ability of the authority to place that data within an adequate context for analysis.²³ Yet that is exactly what China is advocating here.

19. Second, China’s comparison of succeeding quarters has the potential to introduce distortions that do not typically exist in annual data. Variations in production schedules, weather conditions and seasonal demand can affect how much producers sell during any particular quarter. It is for this reason that the ITC typically compares quarterly data at comparable times of year, rather than for succeeding quarterly periods.²⁴ For example, the ITC would compare the

²²ITC Report, p. 12 and Table C-1. Exhibit US-1.

²³*US - Lamb Meat (AB)*, paras. 137 and 138.

²⁴*E.g., Circular Welded Non-alloy Steel Pipe from China*, Inv. No. TA-421-6, USITC Pub. 3807 (October 2005) at pp. I-21, II-2, and III-8, Exhibit US-8; *Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (Feb. 2003) at pp. I-15, I-25 and I-26. Exhibit US-9.

first quarter of 2008 with the first quarter of 2007. And, as we pointed out in our submission,²⁵ there were significant increases in the quarterly volumes of the subject imports between comparable periods in three of four quarters in 2008.

D. The Decision Not to Seek Data for the First Quarter of 2009 Was Reasonable

20. Finally, China maintains that the ITC should have obtained or analyzed import data for the first quarter of 2009. Contrary to China’s assertions, the ITC was not required to collect and obtain data for that period. The Protocol does not require that the ITC obtain and analyze data for any specific period. As WTO panels have indicated in the trade remedies context, the ITC need only use a period of investigation that “allows it to focus on the recent imports” and that is “sufficiently long to allow conclusions to be drawn regarding the existence of increased imports.”²⁶ The ITC’s use of a five year period of investigation, which ended less than four months before the institution of the investigation, certainly satisfies this standard.

21. The ITC’s decision not to collect data for the first quarter of 2009 was consistent with its handling of other investigations. As we have shown in our written submission,²⁷ when the ITC collects interim quarterly data in its trade remedy investigations, the time that elapses between the end of the interim quarter and the institution of the investigation is typically longer than the 20 days between the end of the interim quarter and the beginning of the investigation in this case.

22. There is also no merit to China’s argument that the ITC should just have used the available official import statistics for the first quarter of 2009, even though it had not collected

²⁵US First Written Submission, para. 126.

²⁶See *US - Line Pipe (Panel)*, para. 7.201.

²⁷ITC First Written Submission, paras. 130-138.

any other data for that quarter. Information on absolute imports would have been quite useless without data on relative import levels, given that the ITC needed to ascertain whether imports were increasingly rapidly, either absolutely or relatively.²⁸ As the ITC correctly said in its decision, analyzing the absolute volume data for the first quarter of 2009 would not have had “probative value” because the ITC would not have been able to assess whether “the subject imports [were] increasing in relative terms in the absence of a data series that includes first quarter 2009 data on U.S. production and U.S. apparent consumption.”²⁹

E. Conclusion on Increasing Imports

23. In sum, the ITC provided a reasoned explanation of how the increased imports requirement of Section 16 was satisfied. China’s critique of the ITC’s analysis simply does not stand up to scrutiny. By any measure, the increase in imports of tires from China was sufficient to be a significant cause of material injury to the U.S. tire industry.

III. The ITC’s Causation Analysis Was In Accordance with the Requirements of the Protocol

24. Now, we’d like to turn to China’s challenges to the ITC’s causation analysis. China makes two basic claims about the ITC’s analysis. First, it contends that the U.S. statute is inconsistent, as such, with the causation requirements of the Protocol. China also claims that the ITC’s analysis, as applied, was inconsistent with the requirements of the Protocol.

25. Both claims are unfounded. The U.S. statute incorporates all the specific requirements of the Protocol on causation and the ITC’s analysis fully met all the requirements of the Protocol.

²⁸Protocol of Accession, para. 16.4.

²⁹ITC Report, p. 12, n. 55. Exhibit US-1.

A. The Causation Standard of the U.S. Implementing Statute Is Consistent With the Provisions of the Protocol

26. Let me start by addressing China’s claim that the causation provisions of the U.S. statute are inconsistent with the requirements of the Protocol. We are somewhat puzzled by this argument. Why? Because the U.S. statute incorporates all of the specific requirements of the Protocol, and does so on an almost verbatim basis.

27. China does not contest that the U.S. law duplicates the requirements of the Protocol. It focuses instead on the fact that the U.S. statute defines a factor as being a “significant cause” of material injury or threat if it “contributes significantly” to material injury or the threat of material injury.³⁰ China claims that this definition of “significant cause” somehow weakens or reduces the causal link requirement of the Protocol.

28. This definition clearly does not weaken the causal link requirement of the Protocol. In fact, the text of the Protocol makes clear that this is the case. It provides that “market disruption” exists whenever imports from China are “a significant cause of material injury, or threat of material injury” to the domestic industry.³¹ By stating that imports from China can be “a significant cause” of material injury to the industry, the text of the Protocol establishes that there may be more than one significant cause of material injury. The Protocol does not require a ranking of causes. It is clear, therefore, that when imports from China are contributing significantly to material injury they can be “a significant cause” of such injury.

29. The U.S. statute’s definition of “significant cause” is also consistent with the way in

³⁰19 U.S.C. §2451(c)(2). Exhibit US-3.

³¹Protocol of Accession, para. 16.4.

which the Appellate Body has defined the terms “cause” and “causal link” under the Safeguards Agreement. Under the Safeguards Agreement, the Appellate Body has stated that an authority may find increased imports to be a “cause” of serious injury if there is “a relationship of cause and effect such that increased imports contribute to ‘bringing about,’ ‘producing,’ or ‘inducing’ the serious injury.”³² Given this line of reasoning, it is entirely clear that the Protocol’s requirement of a significant “causal link” between imports and material injury would be satisfied by a finding that imports from China are “contributing significantly” to the industry’s injury, which is what the U.S. statute requires.

30. Finally, we would reiterate that China has no textual or analytic basis for claiming the Protocol contains a more rigorous or demanding causation standard than the Safeguards Agreement. Nothing in the text of the Protocol indicates that this is the case. Unlike the Safeguards Agreement, for example, the Protocol does not contain specific language stating that the transitional mechanism is to be used as an “extraordinary remedy,” or that increases in imports must result from “unforeseen developments.”³³

31. Similarly, as we noted in the introduction, the Protocol does not require that the increasing imports be the cause of “serious injury,” as does the Safeguards Agreement. Instead, the Protocol simply requires only that imports be a significant cause of “material injury,” a standard the Appellate Body has stated is lower than the “serious injury” standard set forth in the Safeguards Agreement.³⁴ Indeed, the absence of these requirements from the Protocol indicates

³²US - Wheat Gluten (AB), para. 67.

³³See Argentina – Footwear (AB), paras. 93-95; US - Line Pipe (AB), para. 81.

³⁴US - Lamb Meat (AB), para. 124.

that the transitional mechanism was actually intended to be subject to less rigorous standards than those of the Safeguards Agreement.

32. To sum up, China’s argument about the inconsistency of the U.S. statute with the Protocol has no merit.

B. The ITC’s Causation Analysis, As Applied, Was in Accordance with the Protocol

33. Now, we’d like to turn to the specifics of the ITC’s causation analysis in this case. Despite China’s claims to the contrary, the ITC thoroughly and reasonably explained why rapidly increasing imports from China were a significant cause of material injury to the domestic industry. In other words, the ITC’s analysis was fully in accordance with the requirements of the Protocol.

1. *The ITC Reasonably Analyzed The Conditions of Competition in the U.S. Market*

34. At the outset, China claims that, in its causation analysis, the ITC misinterpreted and distorted the conditions of competition in the U.S. market. The ITC did nothing of the sort. Instead, the ITC provided a detailed and reasoned explanation of the pertinent conditions of competition affecting the U.S. tire market, which we discuss in full in our first written submission.³⁵

35. China’s challenges to the ITC’s findings do not withstand scrutiny. For example, China claims that the ITC did not recognize that the industry was impacted by declining demand for tires, particularly in 2008. China is mistaken in this regard. In its analysis, the ITC specifically

³⁵U.S. First Written Submission, paras. 198, and 216 - 234.

explained that demand for replacement tires and for OEM tires was falling throughout the period, and fell in 2008 when the economy weakened.³⁶

36. But, as the ITC also pointed out, even in the face of declining demand, the subject imports increased rapidly in every year of the period.³⁷ Moreover, the subject imports continued to grow even in 2008, when the global economic recession occurred.³⁸ The fact that the volumes of low-priced subject imports continued to increase throughout the period, even during the decline in demand in 2008, shows the industry's injury was not simply caused by demand declines, as China now contends.

37. China is also mistaken when it claims the ITC failed to consider the industry's purported "business strategy" of shifting U.S. production from low-end to high-end tires. The ITC addressed this issue and rejected China's contentions.³⁹ The ITC pointed out that imports were already increasing before the announced plant closings, and that U.S. producers confirmed at the time of these closings that low-priced imports played an important part in the closings.⁴⁰ In short, the ITC reasonably concluded that domestic producers did not voluntarily abandon the low-end part of the U.S. tire market, as China alleges.

38. Finally, the ITC also considered and rejected the argument that competition between Chinese and U.S. tires was attenuated.⁴¹ As the ITC pointed out, most market participants found that the subject and U.S. tires were at least frequently interchangeable. The Chinese and U.S.

³⁶ITC Report, p. 22. Exhibit US-1.

³⁷ITC Report, pp. 22 and 26. Exhibit US-1.

³⁸ITC Report, p. 26. Exhibit US-1.

³⁹ITC Report, p. 26-27. Exhibit US-1.

⁴⁰ITC Report, p. 26-27. Exhibit US-1.

⁴¹ITC Report, pp. 27-28. Exhibit US-1.

tires were sold in all market sectors, and there was significant competition between the Chinese and U.S. tires in the low-end sector of the market, the sector that was allegedly a focus for the subject imports.⁴² As the ITC correctly found, the record showed that competition between the subject and U.S. tires was significant, not attenuated, during the period.

2. *The ITC Reasonably Considered the Volume of Imports, Their Price Effects and their Effect on the Industry and Reasonably Concluded There Was A Causal Link Between Increasing Imports and Material Injury*

39. After considering conditions of competition in the market, the ITC then analyzed the volume of imports, the effect of imports on prices, and the effect of such imports on the domestic industry. It provided a reasoned explanation why increasing imports of the subject tires were a significant cause of material injury to the industry.

40. Again, the ITC's analysis was entirely consistent with the Protocol. The record showed that:

- The volumes and market share of the subject imports increased in each year of the period and were at their highest levels of the period in 2008.
- Subject imports increased by 215.5 percent over the period, with the largest part of this increase occurring in 2007 and 2008.
- The subject imports increased their share of the U.S. market more than three-fold over the period of investigation, growing from 4.7 percent in 2004 to 16.7 percent in 2008. More than half of this increase occurred in 2007 and 2008.⁴³

⁴²ITC Report, pp. 27-28. Exhibit US-1.

⁴³ITC Report at pp. 11-12, 22, 24, and Table C-1. Exhibit US-1.

41. The ITC reasonably found that these increasing volumes of subject imports affected domestic producers' market share, shipment levels, and prices. As the ITC found, the consistent underselling by the large and rapidly increasing volume of subject tires displaced domestic shipments by U.S. producers and eroded the domestic industry's market share, leading to a substantial reduction in domestic capacity, production, shipments, and employment during the period examined.

42. Specifically, at the same time that subject import volumes increased rapidly in every year of the period, the record showed that:

- The domestic industry's market share fell in every year of the period, declining by 13.7 percentage points over the period of investigation;⁴⁴
- The domestic industry's production declined in every year of the period, resulting in an overall decline of 26.6 percent;
- The domestic industry's capacity declined in every year of the period, for an overall decline of 17.8 percent;
- The domestic industry's U.S. shipments declined in every year of the period, for an overall decline of 29.7 percent;⁴⁵
- The domestic industry's net sales quantities declined in every year of the period, for an overall decline of 28.3 percent;⁴⁶ and
- The domestic industry's employment-related factors fell significantly over the

⁴⁴ITC Report, p. 25-26. Exhibit US-1.

⁴⁵ITC Report, pp. 15-18 and 24. Exhibit US-1.

⁴⁶ ITC Report, pp. 23-24. Exhibit US-1.

period of investigation, with the number of production-related workers falling by 14.2 percent, the number of hours worked falling by 17.0 percent, and wages paid falling by 12.5 percent over the period.⁴⁷

All of these factors were at their lowest levels in 2008, while Chinese tire imports were at their highest in 2008.

43. The ITC also reasonably found that the subject imports affected prices for the domestic like product. After a thorough evaluation of pricing in the tires market during the period of investigation, the ITC found that subject imports undersold the domestic product throughout the period.⁴⁸ Specifically, the subject imports undersold U.S. tires in 119 out of 120 comparisons. Moreover, the average margins of underselling were at their highest in 2007 and 2008, which was also when the volumes of subject imports were at their highest.⁴⁹

44. The ITC also reasonably concluded that this continued underselling by the subject imports prevented domestic producers from raising prices sufficiently to offset higher production costs.⁵⁰ As the ITC noted, domestic producers' ratio of cost of goods sold to net sales increased from 84.7 percent in 2004 to 90.1 percent in 2008, an increase of 5.4 percentage points over the period. The sharp increase in this ratio in 2008 – which occurred when the volume of subject imports was highest and the margins of underselling were high – indicated that U.S. producers were experiencing a cost-price squeeze and were unable to pass increasing raw material costs on

⁴⁷ITC Report, p. 17 and 24. Exhibit US-1.

⁴⁸ITC Report, p. 23. Exhibit US-1.

⁴⁹ITC Report, p. 23. Exhibit US-1.

⁵⁰ITC Report, pp. 23-24. Exhibit US-1.

to their customers.⁵¹ In other words, this case presented a classic case of price suppression for the industry.

45. Finally, the ITC also reasonably found that the subject imports significantly affected other aspects of the domestic industry's condition during the period of investigation. The industry suffered significant declines in its operating income, operating margins, capacity utilization, and productivity in three out of four years of the period.⁵² Moreover, all of these factors, except for capacity utilization, were at their lowest levels for the period in 2008, which is precisely when the volumes and market share of the subject imports were at their greatest.⁵³

46. As the ITC concluded:

The significant increase in the volume of such imports coincided with significant underselling of the domestic products by the subject imports. It also coincided with the sharp decline in the domestic industry's performance indicators. The rising volume of subject imports from China displaced domestic sales, and this displacement has led to declining domestic production, shipments, capacity utilization, employment, and profitability.⁵⁴

This finding was fully supported by the record and met the requirements under the Protocol.

3. China's Arguments to Rebut the Causation Finding Are Unavailing

47. China attempts to rebut the ITC's reasoned causation finding by making two basic arguments. First, China argues that the declines in the domestic industry's performance

⁵¹ITC Report, pp. 23-24. Exhibit US-1.

⁵²ITC Report, pp. 15-18 and Table C-1. Exhibit US-1.

⁵³ITC Report, Table C-1. Exhibit US-1.

⁵⁴ITC Report, p. 29. Exhibit US-1.

indicators were caused exclusively by declines in demand over the period, in particular 2008, when the global economic recession began. Second, China argues that the record did not establish a causal link between the subject imports and the domestic industry's deteriorating condition because there was an alleged lack of coincidence between import volumes and a small number of condition factors in a single year, 2007. Once again, China's arguments are factually and legally in error.

48. First, China's argument that changes in demand caused the declines in the industry's condition ignores the fact that the declines in the industry's production, capacity, shipments and net sales quantities far exceeded, on a percentage basis, the declines in apparent consumption in every year of the period. China's argument overlooks the fact that the volumes of the subject imports from China increased more than three-fold during the period, despite the overall decline in demand during the period of investigation.⁵⁵ This consistent and rapid increase stands in stark contrast to the volume-related declines exhibited by the domestic industry and by non-subject imports over the period.⁵⁶ In fact, even in 2008, when apparent consumption declined by almost 7 percent, subject imports increased by more than 10 percent over the levels seen in 2007.⁵⁷

49. Second, China has no basis for its claim that there was a lack of coincidence between import volume trends and injury factors in 2007. There is no support in the text of the Protocol for China's apparent belief that there must be a perfect coincidence between import volume movements and every single injury factor during each year of the period of investigation. Even

⁵⁵ITC Report, pp. 22, 26 and Table C-1. Exhibit US-1.

⁵⁶ITC Report, pp. 22, 26 and Table C-1. Exhibit US-1.

⁵⁷ITC Report, Table C-1. Exhibit US-1.

in the context of the stricter causation requirements under the Safeguards Agreement, panels have recognized that an authority is not required to establish a coincidence in trends for every factor and for all years of the period examined. Rather, in cases such as *US– Wheat Gluten* and *US – Steel Safeguards*, panels have recognized that an overall coincidence in trends is sufficient to satisfy causation.⁵⁸

50. The record did show that there was an overall coincidence in import volume and industry condition trends, which we describe in our first written submission. Even though a few factors, such as profitability and productivity, improved somewhat in one year – 2007 – numerous other injury factors (including the industry’s capacity, shipments, net sales quantities, market share, and employment-related factors) declined in that year.⁵⁹ And the improvements in profitability and productivity that were seen in 2007 were short-lived. Both of these factors declined to their lowest levels in 2008, which was when the volume and market share of the subject imports were at their highest levels.⁶⁰

51. In sum, the ITC more than met its obligations under the Protocol. An examination of the overall trends in imports and the overall trends in the condition of the industry over the period of investigation, as well as the ITC’s reasoned explanation of these trends, supports the ITC’s finding of a causal connection between increased imports and material injury in this case.

⁵⁸*US– Wheat Gluten (Panel)*, para. 8.102; *US – Steel Safeguards (Panel)*, para. 10.302.

⁵⁹ITC Report, Table C-1. Exhibit US-1

⁶⁰ITC Report, Table C-1. Exhibit US-1

4. *The ITC Reasonably Considered Other Factors, As Appropriate, In Its Analysis*

52. Finally, China claims that the ITC failed to consider the injurious impact of other factors in its causation analysis. China argues that the text of the Protocol specifically requires the ITC to address the injurious effect of these other factors in detail.

53. First, China’s argument is legally flawed. Unlike the Safeguards Agreement,⁶¹ the Protocol does not specifically require a competent authority to perform a detailed “non-attribution” analysis of the possible effects of other factors causing material injury in its causation analysis. Instead, the Protocol directs a competent authority to assess only whether increasing imports are a significant cause of material injury to the industry by taking into account the “volume of imports,” their “effect . . . on prices for like or directly competitive articles, and the effect of such imports on the domestic industry”⁶² Given that the Protocol does not require the competent authority to address the effects of other factors in its analysis, China has no textual basis for claiming that the ITC should perform the same type of non-attribution analysis that may be expected under the Safeguards Agreement.

54. Second, China’s argument is factually flawed. The ITC did not “refuse to investigate alternative causes” or “barely acknowledge” them in its analysis. Even though the Protocol does not so require, the ITC investigated, considered, and analyzed all of the factors that could reasonably be considered significant enough to potentially break the causal link between imports and material injury.

⁶¹Safeguards Agreement, Article 4.2(b).

⁶²Protocol of Accession, para. 16.4.

55. For example, as we discussed earlier, the ITC specifically considered and addressed the claim that the industry had adopted a “business strategy” of shifting their U.S. production away from low-end tires to high-end products and the declines in demand in the U.S. tires market over the period.⁶³ Similarly, the ITC also considered the impact of demand declines on the industry’s condition over the period.⁶⁴ It concluded, based on the evidence, that the decision to shut down certain facilities was related to the subject imports. The ITC also found that demand declines did not explain the deteriorating condition of the industry, because the subject imports continued to grow throughout the period of investigation despite the demand declines.⁶⁵

56. The ITC also specifically considered the other alleged causes of injury cited by China in its submission. It considered such factors as the industry’s raw material costs, changes in its productivity levels, changes in the levels of non-subject imports, and the impact of rising gas prices on demand. For example, the ITC specifically discussed the effect that increases in raw materials pricing had on the industry, finding that the industry’s ratio of cost of goods sold to net sales increased considerably over the period.⁶⁶ The ITC concluded that the presence of the growing levels of lower-priced subject imports prevented the U.S. producers from passing these “increasing raw materials costs on to their customers,” thus leading to a decline in the industry’s operating margins over the period of investigation.⁶⁷

57. Similarly, the ITC also considered the impact that higher gasoline prices had on driving

⁶³ITC Report, pp. 26-27. Exhibit US-1.

⁶⁴ITC Report, pp. 22 and 26. Exhibit US-1.

⁶⁵ITC Report, pp. 22 and 26. Exhibit US-1.

⁶⁶ITC Report, pp. 23-24. Exhibit US-1.

⁶⁷ITC Report, pp. 23-24. Exhibit US-1.

habits. In its analysis, the ITC expressly noted that “demand for replacement tires fell in 2008 as the number of miles driven decreased, consumers tried to get more miles from current tires, and the economy weakened.”⁶⁸ As the ITC concluded, the demand declines resulting from these factors did not sever the causal link between imports and injury, given that the subject imports were actually increasing during periods of declining demand, including 2008.⁶⁹

58. The U.S. first written submission details the ITC’s consideration of other factors cited by China,⁷⁰ but we do not need to repeat the ITC’s analysis here. The point remains a simple one: the ITC considered the significant factors allegedly causing injury to the industry, addressed any impact in an appropriate manner, and reasonably explained, why these factors failed to sever the causal link between the subject imports and material injury. In sum, the ITC’s analysis was fully consistent with the text of the Protocol and reflects a reasoned approach to the consideration of these issues.

IV. The United States Applied a Remedy Consistent with Paragraphs 16.3 and 16.6

A. The United States Applied Additional Duties Only to the Extent Necessary to Remedy the Market Disruption

59. Turning now to the remedy, the United States agrees that any measure applied under the transitional mechanism may only remedy the material injury that results from the rapidly increasing imports from China. This is what the United States has done. In particular, the ITC rejected the remedy recommended by the petitioner because it would have been “higher than

⁶⁸ITC Report, pp. 22 and 26. Exhibit US-1.

⁶⁹ITC Report, pp. 22 and 26. Exhibit US-1.

⁷⁰U.S. First Written Submission, paras. 103-114.

necessary to remedy the market disruption [. . .] found.”⁷¹ In addition, the ITC used economic modeling to assess the likely impact of various options and proposed an additional tariff of 55 percent in the first year, which was estimated to reduce shipments of Chinese tires by 38.2 to 58.4 percent.⁷² This was clearly a remedy aimed at the disruptive increase, and not at Chinese imports as a whole. The ITC explained why the limitation on Chinese imports would reduce shipments and therefore have an effect on domestic and non-subject imports, on their prices, and on the domestic industry’s revenue. In other words, how the limitation on Chinese imports would remedy the market disruption.

60. Therefore, China is wrong as a matter of fact when it asserts that the ITC improperly focused on the benefits to the domestic industry instead of the “specific market disruption found to exist.”⁷³ Our written submission provides further examples of how it properly considered other factors. As a legal matter, China’s argument simply makes no sense. The Protocol defines market disruption in terms of material injury to the domestic industry of which rapidly increasing imports from China are a significant cause.⁷⁴ It requires Members to examine objective factors, including the volume of imports, the effect of imports on prices for like products, and the effect of imports on the domestic industry.⁷⁵ It is hard to imagine how any Member could properly address the specific market disruption found to exist without examining the benefits to the industry of the limitation on Chinese imports. Indeed, the Protocol seems to require such an

⁷¹U.S. First Submission, para. 341, quoting from ITC Report, p. 36. Exhibit US-1.

⁷²U.S. First Submission, para. 341, quoting from ITC Report, p. 37. Exhibit US-1. *See also*, Staff Remedy Memorandum to the Commissioners, in particular Table 3. Exhibit US-20.

⁷³China First Submission, para. 384.

⁷⁴Protocol of Accession, para. 16.4.

⁷⁵Protocol of Accession, para. 16.4.

examination.

61. China has failed to meet its burden of proof to demonstrate that the ITC’s recommended remedy is inconsistent with paragraph 16.3. Of course, the remedy ultimately imposed by the United States is 20 percentage points less in the first year than the remedy recommended by the ITC. This was as a result of the additional information gathered through the remedy phase procedures required by the U.S. implementing statute and additional factfinding conducted by the Office of the U.S. Trade Representative (“USTR”) and other agencies during this phase.⁷⁶ In addition, although not required by the Protocol, the remedy imposed reduced the additional duties by five percentage points for the second and third years. This again demonstrates that the focus was on remedying the market disruption caused by increased Chinese imports.

B. The United States Applied Additional Duties Only for Such Period of Time as May be Necessary to Remedy the Market Disruption

62. With respect to the obligation under paragraph 16.6, we agree that a measure taken under the transitional mechanism must be limited to the period of time necessary to remedy the market disruption. However, we disagree with China’s efforts to seek an impossible level of exactitude and with China’s attempt to read out of the text the remaining elements of paragraph 16.6, which provide key context for interpreting the first sentence.

63. China argues that a remedy measure may remain in place “only for the exact amount of time” or “for that period of time specifically found” to address the market disruption.⁷⁷ That level of precision is neither possible nor required.

⁷⁶See Exhibit CN-14.

⁷⁷China First Submission, para. 397.

64. Most significantly, the first sentence of paragraph 16.6 must be read in context with the second and third sentences of that paragraph, which indicate the negotiators' expectation about how long a measure may last depending on whether the increase in imports was absolute or relative. China attempts to dismiss these two sentences as defining only rights that China has, and not the flexibility available to the Members using the transitional mechanism.⁷⁸ However, the context of these two sentences of paragraph 16.6 does provide guidance as to the permissible length of a measure under the transitional mechanism.

65. In the *Tires* investigation, the ITC found that imports from China had increased in both absolute and relative terms. The United States applied a three-year measure.

V. China's Claims under Articles I:1 and II:1(b) of the GATT 1994 Must Also Fail

66. Finally, as China has failed to demonstrate that the United States has acted inconsistently with its obligations under the transitional mechanism, China's claims under Articles I:1 and II:1(b) of the GATT 1994 must also fail.

VI. Conclusion

67. Mr. Chairman, members of the Panel, this concludes our opening statement. We would be pleased to respond to any questions you may have.

⁷⁸China First Submission, para. 399.