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

(WT/DS399)

EXECUTIVE SUMMARY OF FIRST WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

May 17, 2010

I. Introduction

1. Over a five-year period from 2004-2008, imports of tires from China into the United States more than tripled, growing from 14.6 million tires to 46 million tires. As a result of this rapid growth, there was a decline in nearly all of the economic indicators for the U.S. tire industry. Because WTO Members anticipated that this kind of development might arise following China's accession to the WTO, they negotiated the transitional product-specific safeguard mechanism ("the transitional mechanism") contained in paragraph 16 of China's Protocol of Accession.

2. China argues that the standards of the transitional mechanism must be interpreted so as to be both "more demanding" than what the text's ordinary meaning would indicate, and "more demanding" than the standards applicable under the Safeguards Agreement. The United States will demonstrate that the plain text of paragraph 16 does not support China's arguments; that the U.S. law implementing the transitional mechanism is fully consistent with that mechanism; and that the rigorous and detailed investigation undertaken by the ITC and the remedy imposed are fully in accordance with the Protocol.

II. No Special Interpretive Approach is Required by the Protocol

3. China argues that the "object and purpose" of the Protocol necessarily make the terms of the transitional mechanism stricter than those of the Safeguards Agreement. The Protocol, as part of the WTO Agreement, does not have its own "object and purpose." The "purpose" of any provision (in this case the transitional mechanism) can be determined only by ascertaining what the provision means under customary rules of interpretation reflected in Articles 31 and 32 of the Vienna Convention (and DSU Article 3.2). Any attempt to identify *a priori* some supposed "purpose" for the provision and then interpret the text on the basis of that "purpose" is an invitation to import into the agreement obligations not found there.

III. Paragraph 16 Does not Incorporate GATT 1994 Article XIX or the Safeguards Agreement

4. It is evident from the text of paragraph 16, in light of the context provided by the Working Party Report, that the Protocol does not incorporate the disciplines of Article XIX of the GATT 1994 or the disciplines of the Safeguards Agreement. There is no cross-reference in paragraph 16 to Article XIX or to specific provisions of the Safeguards Agreement. The only reference to the Safeguards Agreement is found in Paragraph 16.1. That paragraph simply states that "whether the affected Member should pursue application of a [global safeguard]" is one of the options that may be discussed in negotiations over seeking a mutually agreed solution. This cannot be interpreted to incorporate the disciplines of the Safeguards Agreement, explicitly or implicitly. On the contrary, this indicates that the transitional mechanism exists apart from the global safeguard disciplines of GATT 1994 Article XIX and the Safeguards Agreement.

5. Textual differences also indicate that the Protocol does not incorporate the standards and obligations of Safeguards Agreement or GATT 1994 Article XIX. The injury standards are the

most significant of these. The Safeguards Agreement provides for a "serious injury" standard, while paragraph 16.4 provides for a "material injury" standard. This is the standard provided for in Article VI of the GATT 1994, the SCM Agreement, and the Antidumping Agreement. The Appellate Body has explained that "the word 'serious' connotes a much higher standard of injury than the word 'material'." This distinction demonstrates that the negotiators of the Protocol did not intend to incorporate the Safeguards Agreement or Article XIX of the GATT 1994, either directly or by implication.

6. Finally, the Safeguards Agreement itself demonstrates the error in China's argument. That Agreement contains several explicit references to Article XIX of the GATT 1994. If the negotiators of the Protocol had sought to make portions of Article XIX, or of the Safeguards Agreement, applicable to the transitional mechanism, they would have done so explicitly. The Protocol's silence indicates that the obligations under the Safeguards Agreement and Article XIX of the GATT 1994 are not incorporated.

IV. The ITC Reasonably Concluded That Imports from China Were "Increasing Rapidly" Under Paragraph 16 of the Protocol

7. The ITC found that imports from China increased rapidly on an absolute and relative level. The quantity of subject imports rose by 215.5 percent between 2004 and 2008, by 53.7 percent between 2006 and 2007, and by 10.8 percent between 2007 and 2008. The market share of the imports increased by 12.0 percentage points between 2004 and 2008, with the two largest year-to-year increases in market share occurring in 2007 and 2008. On an absolute and a relative basis, imports were at their highest levels in 2008, at the end of the period of investigation. The ITC reasonably concluded that these increases were rapid and were in such quantities as to cause material injury to the industry.

8. Contrary to China's contentions, the Protocol does not impose a more demanding standard for the "rapidly increasing" standard than the Safeguards Agreement. Paragraph 16.4 makes clear that there should be a "rapid" increase in imports, either on an absolute or relative level, and that the level of increase must be such "as to be a significant cause of material injury or threat of material injury" to the industry. The Protocol's language linking "rapid increases" of imports to material injury or threat of material injury establishes that the import increases required by the Protocol are less significant than those required in the context of the Safeguards Agreement, where increased imports are linked to "serious injury."

9. Although the Protocol does not specify how rapid an increase must be to meet the "increasing rapidly" standard, the language of the Protocol does suggest that a competent authority should examine whether the rapid increases have continued in the recent past, rather than at some distant point during the period of investigation. The ITC complied with this standard by focusing on recent increases in imports, specifically those in the last two years of the period of investigation, 2007 and 2008.

10. China's assertions that the ITC's analysis is inconsistent with the Protocol have no merit. First, the ITC did not rely exclusively on an "end-point-to-end-point" analysis. The ITC specifically considered the growth in the absolute and relative quantities for the subject imports during each year of the period of investigation and concluded that the imports increased, both absolutely and relatively, throughout the period, by significant amounts in each year. Moreover, the Appellate Body has not stated that a competent authority should never examine or analyze trends in import increases between the end-points of an investigation.

11. The ITC also reasonably rejected the argument that import increases had "abated" in 2008. It pointed out that the subject imports had increased "by significant amounts" in each year of the period, that they had been "at their highest levels at the end of the period in 2008," and that, on both an absolute and relative level, the increase in 2008 "alone" was a "large, rapid, and continuing" increase over the increase in their levels in 2007. The Protocol does not require that subject imports be growing at an increasingly rapid rate at the end of the period, or that imports be increasing at a rate that is higher than the rate of growth of imports earlier in the period.

12. Furthermore, China's alternative quarterly analysis of the import data is flawed. It completely ignores all data before 2007, thereby concealing the increases that occurred in 2007 and 2008. China also ignores that quarterly data has the potential to introduce distortions that do not typically exist in annual data. Moreover, China's quarterly data only shows changes in the absolute levels of the Chinese imports and ignores data on relative imports.

13. The ITC's decision not to seek data for the first quarter of 2009 was reasonable and consistent with its established practice. The ITC does not have a practice of collecting data for any fiscal quarter that is completed before the beginning of its investigation, as China asserts. Instead, the ITC considers a number of factors, including the time elapsed between the end of the most recent quarter and the issuance of its questionnaires, the likelihood of obtaining full information from the parties for the interim period, and the number of parties from whom data must be sought. It is not true that the ITC's decision not to collect interim data in the *Tires* case was at odds with its practice in other cases.

V. ITC's Causation Analysis Was in Accordance with the Requirements of the Protocol

1. Causation Standard of U.S. Statute Is Fully Consistent With Protocol

14. The U.S. statute tracks, on an almost verbatim basis, the language contained in paragraphs 16.1 and 16.4 of the Protocol. Moreover, in its determinations, the ITC has explained that the U.S. statute requires the ITC to find a "direct and significant causal link" between the rapidly increasing imports and the material injury or threat of material injury suffered by the industry. This requirement is fully consistent with the Protocol's requirement that the competent authority establish that imports from China are "a significant cause" of material injury or threat to an industry.

15. There is nothing in the language of the statute that indicates that its definition of "significant cause" somehow weakens or reduces the causal link required under the Protocol. On the contrary, the U.S. statute's definition of a "significant cause" of material injury as one that "contributes significantly" to that injury is consistent with Appellate Body analysis and the language of the Protocol itself. The Protocol specifically provides that "market disruption shall exist" whenever rapidly increasing imports from China are "a significant cause of material injury, or threat of material injury" to a domestic industry. By stating that imports from China can be "a significant cause" of material injury or threat to an industry, the text of the Protocol establishes that there may be multiple significant causes of material injury or threat to an industry.

16. In the Safeguards Agreement context, the Appellate Body has stated that, when assessing whether there is a "causal link" between imports and injury, a competent authority need only establish that there is a "relationship of cause and effect such that increased imports contribute to 'bringing about,' 'producing,' or 'inducing'" the requisite level of injury." It follows from this reasoning that, under paragraph 16.4, imports from China can be one of several "significant causes" that contribute to the overall level of material injury or threat of injury.

17. Finally, neither the Protocol nor the Working Party Report links the causation standards of paragraph 16 of the Protocol to the causation standards of the Safeguards Agreement. Thus, nothing in the Protocol or the Working Party Report instructs or implies that the competent authority needs to satisfy a more demanding, strict, or stringent showing of the "causal link" between imports from China and material injury than that specified in the Safeguards Agreement or the Antidumping or Subsidies Agreements, as China claims. In fact, the absence of restrictions, such as the non-attribution language of Article 4.2(b) of the Safeguards Agreement, suggests that the threshold for application of a measure under the transitional mechanism is lower.

2. ITC's Causation Analysis, As Applied, Was in Accordance with the Protocol

18. The ITC's causation analysis, as applied, was fully in accordance with paragraphs 16.1 and 16.4 of the Protocol. The ITC objectively analyzed the record evidence in detail and then established unambiguously that rapidly increasing imports from China were a significant cause of material injury to the domestic industry. The arguments made by China simply ignore the pertinent obligations required of the United States by the plain language of the Protocol.

19. Throughout its submission, China improperly attempts to create standards and impose obligations on the United States that are not found in the language of the Protocol. Moreover, China has opted to ignore the numerous and detailed factual findings by the ITC establishing clearly that rapidly increasing imports from China were a significant cause of material injury to the domestic industry. Instead of addressing the ITC's analysis as a whole, China opts to present carefully selected portions of the ITC's determination in isolation and attempts to rebut each one on its own by suggesting alternative interpretations of the data.

20. The ITC, however, properly rejected such a piecemeal approach to causation. In accordance with the plain language of the Protocol, and in the context of the conditions of competition in the U.S. tire market during the period examined, the ITC focused instead on the entirety of the evidence relating to the volume of the imports, the effect of imports on prices for the domestic like product, and the effect of such imports on the domestic industry.

21. In terms of volume, the ITC found that subject imports increased in each year of the period and were at their highest levels of the period in 2008. The record also showed that subject imports increased by 215.5 percent over the period, with the greatest and most rapid increases occurring after 2006. The Commission noted that the large increase in the volume of subject imports was also reflected in the large and growing share of the U.S. market held by subject imports. 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. The record showed that more than half of this increase has occurred since 2006.

22. The ITC also examined the effect of subject imports on prices for the domestic like product. The ITC conducted a detailed and thorough evaluation of pricing in the tires market during the period of investigation, and explained that persistent and significant underselling by subject imports contributed to the deteriorating condition of the domestic industry.

23. To conduct its pricing analysis, the ITC collected quarterly data over the period examined for six specific products, each of which was defined by specific dimensions, load indexes, and speed ratings of each to ensure compatibility. These comparisons showed underselling by the subject imports in 119 out of 120 comparisons, with the average margins of underselling at their highest in 2007 and 2008, coinciding with the largest volumes of subject imports. 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 since 2004 in domestic capacity, production, shipments, and employment during the period examined. The ITC also found that continued underselling by the subject imports prevented domestic producers from raising prices sufficiently to offset higher production costs and thus suppressed prices.

24. The ITC examined the effect of subject imports on the domestic industry during the period of investigation. As subject imports increased both absolutely and relatively in every year of the period, virtually all of the domestic industry's performance indicators declined as well. As the ITC explained, the underselling by large and rapidly increasing Chinese tires eroded the domestic industry's market share, leading to a substantial reduction since 2004 in domestic capacity, production, shipments, and employment. Moreover, the evidence showed that all of these indicators were at their lowest levels in 2008 when subject imports were at their highest. Even though some factors, such as profitability and productivity, improved somewhat in 2007 when imports continued to increase, numerous other injury factors including capacity, shipments, net sales quantities, market share, and employment-related factors all continued to decline in that year. Finally, even the improvement in profitability and productivity was temporary given that

both factors declined in 2008 to levels below the start of the period, at the same time subject imports rose to their highest levels both in terms of absolute volume and market share.

3. ITC Reasonably Concluded That Other Factors Did Not Sever the Causal Link

25. In its analysis, the ITC also considered and addressed other factors allegedly causing material injury to the industry, and found that these other factors did not break the clear causal link between increasing imports from China and the material injury to the industry. China alleges that the ITC failed to comply with its obligations to address these other factors fully. China's arguments are flawed in two significant respects.

26. First, China's arguments are legally flawed. China is, again, seeking to import into the Protocol analytical standards developed under the Safeguards Agreement that have no basis in the text of the Protocol. Unlike the Safeguards Agreement, the Protocol does not specifically require a competent authority to consider the possible effects of other factors causing material injury or threat of material injury as part of its causation analysis. Instead, the competent authority must assess only whether increasing imports are a significant cause of material injury or threat of material injury to the industry, and to consider the "volume of imports," their "effect . . . on prices for like or directly competitive articles, and the effect of such imports on the domestic industry" producing such articles in that analysis. Given the absence of any language in the Protocol requiring the competent authority to consider and then "separate and distinguish" other factors causing injury as part of its causation analysis, China has no textual basis for claiming that the Protocol requires a competent authority to perform such an analysis.

27. As a result, a competent authority may use any reasonable methodology to consider such other factors when assessing whether market disruption exists. A competent authority's need to address the effects of other possibly injurious factors will depend on the facts and circumstances of the particular case. In some cases, such a factor might arguably be so significant a cause of injury that a competent authority would need to perform a more detailed explanation of its effects. In other cases, the factor may be contributing to injury in a considerably less significant fashion. In those circumstances, the competent authority could reasonably refer to the factor and indicate that the factor does not explain the injury caused to the pertinent industry. In still other cases, the authority could simply find that there was no evidence establishing that a particular factor caused injury to the industry, or it might find that the parties have not presented sufficient evidence to establish that the factor causes any injury at all. The ITC's analysis was consistent with this analytic structure.

28. Second, China's arguments are mistaken because they claim the ITC "apparently refused to investigate alternative causes," or that "[it] barely acknowledged" them in its analysis. The ITC investigated, considered, and analyzed all of the factors that could reasonably be considered significant enough to break the causal link between imports and material injury. Indeed, the ITC directly considered and addressed the industry's alleged "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, the two main factors cited by China as breaking the causal link between imports and injury. The ITC also specifically considered other alleged causes of injury, such as increases in 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, and found that they too did not indicate that the subject imports from China were not a significant cause of material injury to the industry.

29. For example, with respect to the industry's alleged business strategy of shifting production of low-end tires to China, the ITC explained that imports of tires from China were rapidly increasing before Bridgestone, Continental, and Goodyear announced the closing of plants in 2006 and 2008, and that fierce competition from low-cost producing countries was a factor in the decision to close certain plants. Similarly, with respect to declining demand, the ITC found that, "even in 2008 when U.S. apparent consumption was falling," the record showed that the subject "imports continued to increase rapidly." Because a decline in demand should typically have comparable effects on all sources of supply, domestic and import, the ITC reasonably concluded that demand changes were not the source of the industry's injury.

30. The ITC also considered and 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. The ITC nonetheless 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. Finally, with respect to the impact that higher gasoline prices had on driving habits, the ITC specifically acknowledged this factor in its analysis, stating 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." The ITC reasonably found, however, that demand declines resulting from these factors did not sever the causal link between imports and injury.

VI. The United States Applied a Remedy Consistent with the Protocol Requirements

1. The Additional Duties Are Only to the "Extent Necessary" Per Paragraph 16.3

31. China argues that the ITC impermissibly considered the effect of the tariffs on the domestic industry and disregarded testimony from domestic producers that no remedy was necessary. Neither argument is valid.

32. The United States agrees that any remedy under paragraph 16.4 of the Protocol may only remedy the material injury that results from the rapidly increasing imports from China. The United States also agrees that the Appellate Body's analysis of the phrase "no more than the extent necessary to prevent or remedy serious injury" in Article 5.1 of the Safeguards Agreement can provide useful reasoning in interpreting the similar phrase in paragraph 16.3 of the Protocol. The United States does not agree with China's conclusion that the Appellate Body's findings

signify that "the remedy measure provision has an exceedingly narrow reach." Although the authority to impose a measure is circumscribed by the extent of the injury caused by the relevant imports, where imports have a broad injurious effect, the authority would be correspondingly broad. It is also significant that paragraph 16.3 of the Protocol provides that a Member facing rapidly increasing imports from China that cause market disruption is "free, in respect of such products, to withdraw concessions or otherwise to limit imports. . . ." This authority grants a Member latitude in crafting an appropriate remedy.

33. The evaluation of whether a safeguard approaches or passes the permissible extent cannot be a matter of scientific precision. As the working group that reviewed the U.S. Article XIX measure on felt hats and hat bodies under the GATT 1947 noted, "it is impossible to determine in advance with any degree of precision the level of import duty necessary to enable the United States industry to compete with overseas suppliers in the current competitive conditions of the United States market." This observation remains true today. Although economic modeling allows a generalized evaluation of market conditions, it cannot measure with any precision the effect of rapidly increasing imports or the effect of measures designed to remedy their effect.

34. China's criticism of the "focus" on the benefits to the domestic industry and not on "specific market disruption" simply makes no sense. Paragraph 16.4 defines market disruption in terms of "material or threat of material injury" of which rapidly increasing imports from China are a significant cause. It further requires a Member to examine "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 producing like or directly competitive products." Thus, the effect of imports on prices and on the domestic industry are crucial elements in the existence of market disruption. The ITC found that the market disruption to the domestic industry consisted of, inter alia, declining capacity, capacity utilization, profitability, and employment. It is difficult to imagine how it could "address[] the specific market disruption found to exist" without examining the potential benefits of a remedy to these identified effects of increased imports. Therefore, China's criticism is invalid as a legal matter.

35. Contrary to China's arguments, the ITC conducted a detailed analysis, based on the facts on the record and using economic tools available, to craft a remedy that would only address the injury caused by Chinese imports. Parts C, D, and E of the remedy determination and Chairman Aranoff's separate views on remedy demonstrate a focus on addressing the material injury caused by Chinese imports. One particular manifestation of this, is the ITC's discussion of why it rejects the remedy proposed by petitioners. The ITC explains that the proposed quota would be equivalent to a 65 *ad valorem* tariff, "which we view to be higher than necessary to remedy the market disruption we have found." The ITC is clearly calibrating its remedy to ensure that it addresses the injury caused by the increasing Chinese imports. China is simply wrong to assert that the ITC did not distinguish between the injury caused by Chinese imports and other factors.

36. China's argument that the ITC disregarded the testimony from U.S. producers that they were not materially injured by Chinese imports and would not change their behavior if there

were to be a remedy is also misguided. China relies on the views of the dissenting Commissioners. However, their reasoning reveals that there was a difference of opinion among the Commissioners as to the appropriate weight to give to the evidence on this issue, with the two dissenters believing that more weight should have been given to the views presented by some of the U.S. producers. This is a matter for the fact-finder – the ITC as a whole. Four Commissioners evaluated the evidence differently. The ITC's determination before this Panel is that reflected in the majority opinion.

37. It is clear that U.S. producers' views on this issue were hardly unanimous, and therefore needed to be evaluated, along with the other evidence of record, by the fact finder – the ITC. The fact that U.S. producers did not provide specific restructuring plans does not imply a deficiency in the ITC's analysis as the Protocol does not require the filing or consideration of industry restructuring plans in the analysis of market disruption or of an appropriate remedy. In any case, it is not true that the ITC disregarded the evidence before it. Finally, whether individual producers said they would not change their business plans is not determinative of whether the proposed remedy was "to the extent necessary to remedy" the market disruption found with respect to the industry as whole. A remedy must by necessity seek to address the material injury caused on the industry. This means that the remedy must seek to address the various factors that indicate the health of the industry "as a whole", as it has been affected by the market disruption found. The impact on individual companies will necessarily vary.

38. Thus, China has failed to meet its burden of proof to demonstrate that the ITC recommended remedy failed to comply with paragraph 16.3. It is noteworthy that after soliciting further information from interested parties and providing for a hearing, President Obama determined that the most appropriate action to remedy the market disruption found by the ITC was an additional duty set at 35 percent *ad valorem* for the first year (instead of a 55 percent *ad valorem* duty). In addition, the President determined that, although not required by the transitional mechanism or U.S. law, the additional duty should be reduced by five percentage points in the second and third years of the remedy, resulting in each case in additional tariffs lower than those recommended by the ITC. The only argument China makes against the final remedy imposed by the United States is that "President Obama's determinations apparently assume the USITC had provided the necessary analysis, when in fact the USITC had not done so." We have shown that China has failed to meet its burden with regard to its challenge to the ITC's remedy analysis. Therefore, its challenge to the measure actually applied by President Obama must also fail.

2. The U.S. Measure is Consistent with Paragraph 16.6 of the Protocol

39. Based on the ordinary meaning of paragraph 16.6, any safeguard measure must be limited to the period of time as is necessary to prevent or remedy the material injury caused by rapidly increasing Chinese imports. The United States does not agree with China's attempts to heighten the burden under this requirement based on comparisons to the Safeguards, Antidumping, and SCM Agreements. China also argues that a remedy may remain in place "only for the exact

amount of time" to address the market disruption. This level of exactitude is neither required nor possible. The Protocol requires competent authorities to make decisions regarding safeguard measures based on evidence and formal proceedings providing for participation by interested parties. Those authorities cannot know at the time of taking a measure the "exact amount of time" it will be necessary. The Working Party Report recognized that a Member taking a safeguard need not identify an exact time period by explicitly allowing them to extend a measure based on a finding that action continues to be necessary to prevent or remedy market disruption.

40. China fails to give appropriate weight to the remaining elements of paragraph 16.6, which allow China to suspend concessions substantially equivalent to any safeguard measure two years after its application if there was a relative increase in imports and three years after application if there was an absolute increase. These indicate that the negotiators of the Protocol envisaged safeguard measures remaining in place for at least three years if there was an absolute increase in Chinese imports, as was the case with regard to tires, or even longer in the case of an extension under paragraph 246(f) of the Working Party Report. The ITC found that Chinese imports had increased both in absolute terms and in relative terms, and the United States applied a safeguard measure for three years, as envisaged in the third sentence of paragraph 16.6 of the Protocol.

41. China argues, as it did with regard to its paragraph 16.3 claim, that the ITC's rationale "focuses entirely on the condition of the domestic industry and the time it needs to adjust," a consideration that in China's view "is irrelevant." The United States has already explained that this assertion is incorrect as a matter of fact, as the ITC conducted a detailed analysis involving a number of factors, and law, as the effect of the remedy is not merely relevant, but critical, in understand whether it is "necessary to prevent or remedy market disruption." That logic applies to the duration of a measure as well as its other terms. China also repeats its argument that the ITC did not give sufficient weight to the views of domestic producers who "had not provided specific restructuring plans." The United States has already explained that the ITC weighed all of the evidence before it, and considered that the evidence favoring its remedy outweighed the evidence cited by China against the remedy.

VII. Conclusion

42. China's claims that the additional duties imposed by the United States on subject tires from China are inconsistent with U.S. obligations under Articles I:1 and II:1(b) of the GATT 1994 are dependent on a finding of inconsistency with U.S. obligations under the transitional mechanism. China has failed to demonstrate that the United States has acted inconsistently with its obligations under the transitional mechanism. Therefore these claims must be rejected.

43. The United States requests that the Panel reject China's claims in their entirety.