ANNEX E

EXECUTIVE SUMMARIES OF THE SECOND WRITTEN SUBMISSIONS OF THE PARTIES

Contents		Page
Annex E-1	Executive Summary of the Second Written Submission of China	E-2
Annex E-2	Executive Summary of the Second Written Submission of the United States	E-11

ANNEX E-1

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF CHINA

I. THE FACTUAL BACKGROUND OF THE MEASURES IN THIS DISPUTE PROVIDES RELEVANT CONTEXT FOR THIS PANEL AND SHOULD BE CONSIDERED

1. The factual background surrounding the measures in this dispute is highly relevant to this dispute, yet the United States attempts to shift the focus away from these determinations. The United States highlights the size of the Chinese capacity and other factors relating to threat of future injury, even though the USITC based its decision solely on present injury. This is inappropriate because the condition of the Chinese tyre industry is wholly irrelevant to this dispute as it is a consideration only for issues of "threat." While focusing on such irrelevant facts, the United States ignores that the USITC investigation was initiated solely by a labour union, the USW, and lacked the support of the U.S. tyre industry. The USITC's failure to collect critical information about recent trends in imports, which showed that they were in decline, rendered the U.S. injury and remedy findings further incomplete. The USITC determination is also incomplete without consideration of the views of the dissenting Commissioners, thus the U.S. attempt to limit the Panel's inquiry to solely the majority determination is inappropriate. The United States ignores the unique and highly politicized process in which the quasi-judicial decision-making of the USITC actually took place in this specific case. Properly understood, however, the factual background of these measures supports China's contention that they are inconsistent with U.S. obligations under the WTO.

II. THE PROPER ANALYTIC FRAMEWORK SHIFTS THE BURDEN OF PROOF TO THE UNITED STATES AND REQUIRES THE PANEL TO CONDUCT A SEARCHING, "OBJECTIVE" ASSESSMENT

2. China has met its burden of establishing a *prima facie* case that the U.S. measures are inconsistent with Article 16 by demonstrating that the United States neither evaluated all relevant factors nor provided a reasoned and adequate explanation for its decision consistent with the requirements for imposing measures under Article 16. Because China has made a *prima facie* case, the burden of proof has shifted to the United States to establish the elements of its defense of its actions in imposing measures under Article 16.

3. Both parties agree that the relevant standard of review is the standard provided in Article 11 DSU, that a panel should make an "objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements." The jurisprudence on this standard, as it has been developed under the *Agreement on Safeguards*, is applicable. The "objective assessment" required under DSU Article 11 is a searching inquiry in which it is inappropriate to simply defer to the findings of an investigating authority. In conducting a proper "objective assessment" a panel should inquire whether the investigating authority examined all the relevant facts before it and explained how the facts supported the determination made, as well as inquire whether the determination was consistent with the Member's obligations under the WTO.

4. The U.S. attempt to strip away the applicable WTO jurisprudence is untenable. Article 16, alone, does not govern the type of "objective assessment" required. There is no legitimate basis by which the United States can assert that the requirements, and related jurisprudence, for an "objective assessment" of measures under the *Agreement on Safeguards* should be ignored in the case of an

"objective assessment" under Article 16. Measures under both Article 16 and the *Agreement on Safeguards* involve reviews of determinations of increased imports and causation, albeit based on sometimes differing substantive standards. Appellate Body jurisprudence – across various WTO agreements – makes clear that investigating authorities must examine and address alternative explanations of the evidence for that determination to be deemed reasoned or adequate.

5. The U.S. attempt to ignore striking parallels between the *Agreement on Safeguards* and Article 16 is impermissible. The parallel language in the *Agreement on Safeguards* provides highly relevant context for understanding Article 16, namely the necessity of demonstrating that imports are increasing and that the increasing imports are causing injury to an industry in the importing country. Although there are differences, the basic concepts are the same. Both the similarities and differences between the texts serve to inform the Panel of the meaning of these terms. The U.S. attempt to isolate the Protocol from the rest of the WTO Agreement is misplaced, and similar attempts have been rejected by panels in the past. The certain parentage of Article 16 from the *Agreement on Safeguards*, including references to the Committee on Safeguards, cannot be ignored. The Protocol must be interpreted in context. U.S. arguments that it should not be, are incorrect and inconsistent.

III. IMPORTS FROM CHINA WERE NOT "INCREASING RAPIDLY" WITHIN THE MEANING OF ARTICLE 16 OF THE PROTOCOL

A. THE PROTOCOL IMPOSES A SPECIFIC AND STRICT STANDARD THAT MUST BE MET TO FIND PROPERLY THAT IMPORTS ARE "INCREASING RAPIDLY"

6. The text of Article 16 sets forth a specific and narrow set of circumstances under which imports from China that are "increasing rapidly" may permissibly be subject to transitional product-specific safeguards. Investigating authorities must make an adequate finding that imports from China "are being imported…in such increased quantities" as well "increasing rapidly." These two requirements, found in Article 16.1 and 16.4 respectively, ensure that a finding of a simple increase over the entire period of investigation cannot meet the standard required for measures to be imposed. Article 16 demands much more.

7. The use of the present continuous tense – "are being imported" and "increasing" – in Articles 16.1 and 16.4 requires investigating authorities to focus on the more recent period of time when assessing increasing imports. The Appellate Body has recognized the distinction between the use of "increasing" and "increased" and how "increasing" is a requirement for imports at the time of the determination, i.e. in the most recent past. Contrary to the U.S. argument, reviewing this standard in the context of the *Agreement on Safeguards* confirms this interpretation. The use of the word "rapidly," which is intrinsically linked to "steep," raises the standard and is used to distinguish imports which are "increasing rapidly" from imports which are merely "increasing." The U.S. attempt to limit "rapidly" to strictly a temporal interpretation is unavailing under its ordinary meaning and internally inconsistent.

8. The U.S. attempt to equate the lack of an explicit quantitative standard in the text of Article 16 with the lack of any standard at all is inappropriate. Rather, the text and applicable context of Article 16 require investigating authorities to consider three qualitative factors in determining adequately whether imports from China are "increasing rapidly." Authorities should focus on the most recent full year of data and any available interim data, consider and give the most weight to the most recent import trends, and analyze the most recent year in more detail when initial analyses show that imports are slowing. The USITC, however, failed to comply with any of these factors. Additionally, the fact that Article 16 requires a showing of "material injury" and not "serious injury" does not lower the causation standard. The "increasing rapidly" standard is discrete from the "material injury" standard. "Increasing rapidly" is the first element listed in Article 16 and thus the threshold consideration. Only after a proper finding of "increasing rapidly" may an investigating authority independently begin to determine whether such imports were a "significant cause" of

"material injury." The U.S. attempt to conflate the two discrete issues through a quick glossing over of the full context of Article 16 and false analogies to Appellate Body jurisprudence is improper. Furthermore, the "increasing rapidly" standard is also discrete from the "increased quantities" standard, making a finding of imports to be "increasing rapidly" all the more exacting.

B. THE USITC IMPROPERLY FOUND IMPORTS FROM CHINA TO BE "INCREASING RAPIDLY"

9. The USITC's analysis of increasing imports fails to comply with specific and strict standard of Article 16. Aware of this, the United States attempts to establish that the USITC had near blanket discretion to assess increasing imports and that the Panel should defer to this discretion. Yet such discretion as the USITC has is limited to the extent that its analysis must still comply with the standards of the Protocol. The USITC had no discretion to focus on an end-point-to-end-point increase over the period because this does not comply with the "increasing rapidly" requirement of Article 16.4. The USITC's over-reliance on this approach rendered its analysis inconsistent with Article 16. It must have explained adequately why imports were found to be "increasing rapidly" during the more recent part of the period. In contrast, the USITC never even stated what it understood "rapidly" to mean. The U.S. attempt to equate what the USITC said with what the USITC did cannot be accepted.

10. The USITC's finding that increases had not abated in 2008 impermissibly ignores recent trends, misinterprets the data, and is premised on the improper approach of combining and analyzing 2007 and 2008 together. The largest increase in imports was from 2006 to 2007, which can hardly be considered the most recent period. But by employing a simple "end-point-to-end-point" analysis, the USITC masked the fact that imports from China were dramatically slowing during the end of the period. Imports could not properly be determined to be still "increasingly rapidly" at the end of the period when the increase from 2007 to 2008 was only 10.8 per cent, a fraction of any of the prior years' increases. Despite these essential facts, the USITC did not focus on the difference between the increase in 2008 and 2007, or the difference between the increase in 2008 compared to the overall 2004 to 2007 period. Instead of properly focusing analysis on the more recent period, the USITC obscured it.

11. China's alternative quarterly analysis, presented in its First Written Submission, is directly applicable and relevant. Due to the dramatic slowing of imports from China, it was highly probative on whether imports were still "increasing rapidly" and consistent with the requirement of analyzing the most recent period and the trends within that period. The analysis revealed that the largest increase in imports from China occurred in Q2 2007 – more than two years prior to the USITC determination. Imports peaked in Q2 2008 and then proceeded to decline, with the quarter-to-quarter comparisons showing a mixture of increases and decreases. The U.S. response that this analysis is flawed because it does not assess 2004 to 2006 demonstrates the U.S. failure to understand that the point of the quarterly analysis was to highlight the trends over the *most recent* period.

12. Similarly, the USITC should have – but refused to – collect and analyze import data for the first quarter of 2009. Although the USITC acknowledged that imports from China declined during the first quarter of 2009, it failed to gather or assess this data and its impact on the USITC's overall analysis. The excuses offered for not collecting the full data for this interim period are unavailing. There is no reason the data "would not have been available" if the USITC had asked for it. The USITC has a well-settled practice of gathering such data, and in many cases has gathered interim data for a first quarter during a tighter time frame. The U.S. claims that such a collection would have been too burdensome and that the USITC makes its decisions on a case-by-case basis are unpersuasive and dangerous.

IV. THE U.S. DEFINITION OF "SIGNIFICANT CAUSE" IS INCONSISTENT AS SUCH WITH THE REQUIREMENTS OF ARTICLE 16 OF THE PROTOCOL

13. The U.S. statutory definition of "significant cause" that was applied by the USITC is inconsistent "as such" with the requirements of the Protocol. The text of the Protocol adds the word "significant" to the causation analysis under Article 16. The ordinary meaning embedded in "significant cause" is one that requires subject imports to "produce" or "bring about" the injury in a significant way. The rapidly increasing imports need not "produce" or "bring about" the injury in and of themselves, but the ordinary meaning of the words used in the Protocol requires something much more than a mere contribution. In contrast, Section 421 defines "significant cause" as merely a cause that "contributes significantly" and "need not be greater than or equal to any other cause." This binding definition impermissibly lowers the required causation standard of Article 16 and is thus inconsistent as such with the Protocol. It is simply untenable, and contrary to the ordinary meaning of the language, to argue that the use of "significant cause" in Article 16 of the Protocol can actually lower the corresponding standard in global safeguards that does not contain the modifier "significant."

14. The U.S. responses to this claim lack force. The United States argues that it is free to adopt whatever "methodologies or standards" that it wishes to determine whether imports are a significant cause of material injury. WTO members, however, do not have discretion to adopt whatever "standard" they wish – the standard is "significant cause," and that standard has been set by the text of Article 16. The U.S. argument that the definition simply serves to provide "guidance" is unpersuasive as no guidance is provided and the definition serves explicitly – in light of both the plain meaning of the words used as well as their history and application – to lower the causal standard and reduce the meaning of "significant." The U.S. claim that the statute really means "a direct and significant causal link" is irrelevant because that is not the language used by the statute itself. The statute redefines "significant cause" as a "cause that contributes significantly," not as a "direct and significant causal link."

15. The United States cannot shift focus away from the words of the statute itself to the legislative history of Section 406, a different statute. The legislative history of a different statute cannot trump the actual language of Section 421, especially in the noncommittal way in which it has been cited by the USITC. U.S. arguments misperceive the potential relevance of these materials as this dispute arose due to the USITC's faulty application of Section 421 – not Section 406. The U.S. claims that the USITC understood its obligations under Section 421 in light of the legislative history of Section 406, or that China should have been "well aware" – due to prior Section 406 investigations – that "significant cause" in Article 16 actually meant "contributes significantly" demonstrate a fundamental misunderstanding of the situation. The legislative history of Section 406 cannot justify the impermissible redefinition of "significant cause" in the U.S. implementing statute. It is not the negotiating history of Article 16 and thus it cannot justify a low causation standard.

16. The additional language of "need not be equal to or greater than any other cause" in the U.S. statute impermissibly allows an investigating authority to determine that even a minimal cause, which can be less than any other cause, could still be considered as "a significant cause." This is not a reasonable interpretation of the words "a significant cause." The U.S. argument that the USITC has interpreted the statute in a way consistent with the Protocol is improper. The United States must defend the statute itself in an "as such" claim, not the language of the USITC determination which differs from the statute.

17. The United States claims that, even if this definition does impermissibly lower the causal standard, the statute is still not inconsistent "as such" unless it "mandates" WTO-inconsistent action. Panels, however, have repeatedly noted that the mandatory/discretionary distinction is not an issue that needs to be decided as a threshold matter by a panel in an "as such" claim. Rather, the issue is simply whether the legislation on its face is inconsistent with the relevant WTO provision. The "contributes significantly" redefinition has been demonstrated to be precisely that. Regarding the

mandatory/discretionary distinction, however, as in previous disputes, the U.S. agency in this case lacks the necessary discretion. Furthermore, the U.S. statute does require the USITC to apply a fundamentally flawed definition which the USITC had no discretion to disregard.

V. IMPORTS FROM CHINA WERE NOT A "SIGNIFICANT CAUSE" OF INJURY WITHIN THE MEANING OF ARTICLE 16 OF THE PROTOCOL

18. Imports from China were not a "significant cause" of material injury within the meaning of Article 16. The USITC failed to conduct a reasoned and adequate analysis of the conditions of competition, failed to establish any temporal "coincidence" between rapidly increasing Chinese imports and various alleged injury factors, and failed to address adequately alternative causes that undermine any suggestion that imports from China were causing "material injury." These failures render the USITC's causation analysis wholly incomplete and inconsistent with the requirements of the Protocol.

19. To fill this analytical void, the United States claims that the Panel should grant it extreme deference and discretion regarding causation. The United States argues that it is unnecessary to conduct a conditions of competition analysis, a coincidence analysis, or a weighing of alternative causes. The United States seeks to ignore all prior efforts to provide meaning to the core concept of "cause" in the context of WTO trade remedies. This would render all prior WTO jurisprudence on these issues meaningless. But the Protocol was not drafted – and does not exist – in a vacuum. It cannot be interpreted in isolation from other WTO agreements. The Panel should reject these U.S. arguments. Likewise, the Panel should also reject the U.S. claim that the limited analysis it did undertake was somehow sufficient to meet the demanding causation standard imposed by Article 16. This is an untenable attempt to have it both ways. If the USITC did engage in analysis of the conditions of competition, coincidence, and alternative causes – then it must have done so adequately. The cursory causation analysis provided by the USITC, however, falls well short of that standard.

A. THE USITC FAILED TO ASSESS ADEQUATELY CONDITIONS OF COMPETITION

20. An analysis of the conditions of competition is required under the Protocol. The U.S. claim that Article 16 "does *not* require the investigating authority to examine conditions of competition" is incorrect. This claim hinges on the use of the phrase "or under such conditions of competition" in the English text of Article 16.1. Yet the French and Spanish texts of Article 16.1 use the terms "et" and "y" respectively. This conjunctive use is also consistent with Article 2.1 of the *Agreement on Safeguards*, which uses "and under such conditions of competition" in all three languages. The only way to reconcile the equally authentic texts, as is required, is to apply the conjunctive interpretation of the term "or" in the English text of Article 16. The U.S. argument that Article 16.1 does nothing but define the conditions under which consultation may be requested is an impermissibly strained reading of the text. In contrast, China's reading reconciles the texts and puts forth the logical claim that any reasonable analysis of causation must assess the condition of competition in which that analysis takes place. The competitive relationship cannot be viewed in isolation.

21. The USITC's failure to assess adequately conditions of competition is not affected by the finding that products are "like" products because this does not preclude finding attenuated competition based on market segmentation. The segmentation of the tyre market in this case led to attenuated competition. Despite the fact that the USITC considered all tyres to be the same "like" product, this condition of competition – attenuated competition – continues to exist. The concept "like or directly competitive product" serves simply to delineate which domestic producers make the product and are to be included in the domestic industry. This has been confirmed by the Appellate Body and is consistent with the approach of the USITC in this case and in general as the USITC routinely finds that there is a single "like" product, but then assesses market segments under a conditions of competition analysis.

22. Regardless, the USITC purported to analyze the conditions of competition in its report – implicitly acknowledging that such an analysis was required and that failing to do so would produce an incomplete and invalid analysis of causation. Despite having undertaken such an analysis, the USITC failed to do so in a reasoned and adequate manner. The USITC equated minimal competition between subject imports and domestic tyres as significant competition and ignored the implications of attenuated competition and its impact on causation. In doing so, the USITC relied too heavily on subjective questionnaires, and too little on the actual evidence of a highly segmented market. The USITC tried to dismiss the highly segmented market by finding isolated portions of competitive overlap, rather than the substantive degree of overlap that would establish and support its findings. Such an approach is impermissible.

23. There was attenuated competition in this case as imports from China were virtually absent from an estimated 74 per cent of the U.S. market. Despite this, the USITC asserted that there was "significant competition" between imports and domestic tyres. To critique China's data on this issue, the United States claims that the data is "belied by the very article China cites" – yet China cited no article for this data, just the USITC Determination's reporting on U.S. producers. Furthermore, the point of the data estimate was to convey the order of magnitude to which competition was attenuated and critique the USITC's improper willingness to equate any competition with "significant" competition. If China's estimate is inhibited by the limited public record, China urges the Panel to ask the United States to provide the actual information necessary for the Panel to make its own assessment.

24. The unsupported and unexplained inferential leaps made by the USITC in finding competition can be seen in the OEM market, where the USITC states there was competition despite imports from China making up 4.8 per cent of the market and U.S. tyres making up 51.6 per cent of the market in 2008. With imports from China ranging from just 0.2 per cent to 4.8 per cent of the OEM market, and non-subject imports being nine times the quantity of subject tyres in the OEM segment, it is simply fanciful that subject tyres could be in significant competition with U.S. tyres in this market or a significant cause of injury. The U.S. claim that the Protocol does not require the USITC "to ignore the impact" of subject imports when they are just 5 per cent of the market improperly avoids the thrust of the requirement. Where imports occupy a negligible proportion of the market in question, the investigating authority must provide a reasoned and adequate explanation of why there is significant competition between imports and domestic tyres, much less a significant causal relationship between those imports and injury.

25. Similarly, there was no basis for inferring significant competition between tyres from China and domestic tyres in the replacement market. The U.S. claim that "the record showed that tyres from China and tyres from the United States compete in all segments of the market" ignores impermissibly the fact that the USITC majority itself conceded that sales in the aftermarket could be placed in three tiers of which "the largest share of U.S. producers' shipments fall into category 1, and that the largest share of subject import shipments fall into category three." The U.S. attempt to blur the lines between tiers to support its finding of significant competition belies the record and is indicative of bias. The fact that the distinction between tiers may not be absolute does not mean that the distinction does not exist at all, or that the distinction does not produce highly attenuated competition.

B. THE USITC FAILED TO ASSESS ADEQUATELY WHETHER THERE WAS TEMPORAL COINCIDENCE BETWEEN IMPORTS FROM CHINA AND THE ALLEGED INJURY

26. The USITC failed to establish any meaningful temporal coincidence between imports and injury. When the ten factors assessed by the USITC are examined properly, the lack of coincidence between rapidly increasing imports and injury to the domestic industry is certain. During the most recent period of time, the domestic industry experienced it best year of the entire period of investigation when imports from China increased at the highest rate. The United States argues that

such an obvious lack of correlation is but an "anomaly" and does not speak to "overall correlation." A proper analysis of "overall correlation," however, reveals that that this "anomaly" is in fact consistent with all the data. There is no meaningful correlation for the more recent half of the period and many of the factors show purely positive correlation throughout the period. In short, during the period of time most relevant for drawing the link to imports from China that are "increasing rapidly," the USITC has demonstrated no temporal coincidence.

27. The United States fails to rebut China's showing of a lack of coincidence. Instead, the United States asserts, incorrectly, that a coincidence analysis was not required. The U.S. attempt to justify what little coincidence analysis the USITC actually undertook is improper as it adds new, *ex post* arguments in support of a coincidence finding. All of this is unpersuasive and inadequate. Just as "coincidence" analysis plays a "central" role in determining whether or not a causal link exists in the context of global safeguards, such an analysis is equally important when evaluating the application of a product-specific safeguard under the Protocol. Under Article 16.4, the correlation must exist during the period of time when imports were increasing rapidly, and correlate with the adverse trends at issue. Moreover, this correlation must also be sufficient to constitute a "significant" causal link.

28. It is not true that, absent express direction, the investigating authority is "free to choose and use any appropriate methodology it wishes." Guidance must be taken from the *Agreement on Safeguards* jurisprudence, and such guidance was created in the absence of any "express" correlation language requirement. The U.S. attempt to limit the guidance to the specific text of the *Agreement on Safeguards* also fails as the correlation requirement is intrinsically linked to the causation analysis that investigating authorities must conduct – namely whether increased imports are causing injury. Because Article 16 of the Protocol involves the same causal analysis of whether rapidly increasing imports are causing injury, the same embedded analysis is necessary. In any event, the United States asserts that the USITC "did, in fact, use a 'coincidence of trends' analysis." Accordingly, having engaged in such an analysis, the USITC was obliged to do so properly.

29. In the face of such a requirement, the USITC's coincidence analysis is wholly inadequate. The USITC's report devotes little attention to coincidence analysis, relying primarily on sweeping generalizations. The USITC majority failed to compare year-to-year movements in imports and injury factors, or assess in any serious way whether those movements reveal meaningful coincidence or correlation. This failure is particularly apparent with respect to the more recent period (i.e., changes in 2006-2007 and 2007-2008). The USITC ignores that imports from China grew at their fastest rate in 2006-2007, but grew at their slowest rate (10.8 per cent) in the period from 2007-2008. Likewise, the USITC ignores the fact that various injury factors showed a substantial improvement in 2006-2007, when imports from China were at their highest level in the period, and experienced their greatest declines of the period in 2008, when Chinese imports grew at the slowest rate in the period. And finally, the USITC ignores that certain the injury factors, such as price, R&D expenditures, and capital improvements, show positive trends throughout the period.

30. Regarding the U.S. theory of causation, two concrete tests present themselves in the more recent period. Given the U.S. argument that imports from China were fungible, that the product is price sensitive, and that different market segments do not matter, one would expect the large increase in imports over the 2006-2007 period to have the largest adverse impact on injury indicators and one would expect that the small increase in imports over the 2007-2008 period would have the smallest adverse impact on injury indicators. That the facts in the record completely belie the U.S. theory strongly points to a lack of correlation.

31. To refute this, the United States posits new, *ex post* rationales for this absence of correlation, such as dismissing 2006-2007 as an "anomaly" and speculating that there may have been a temporal lag between imports and injury. Both arguments are inadmissible, as the USITC never made findings on either point in its report and *ex post* assertions cannot substitute for findings in the USITC's report. The U.S. attempt to bolster the theory of "underselling" is also unavailing as these comparisons do not

take into account the differences in brands nor do they account for the significant degree to which U.S. prices rose and outpaced prices for subject imports. The U.S. claim that industry profits in 2007 were "small" is a strained reading of the record as operating profits were $507 million. On several factors, such as production and net sales, the United States chose to avoid addressing their bearing on correlation, further reinforcing the fact that not much can be said to buttress the USITC Determination's analysis of coincidence.

32. U.S. claims that the lack of correlation between the individual injury factors does not speak to "overall coincidence" should be dismissed. There can be no "overall correlation" in this case because there is essentially no correlation for 50 per cent of the period, and several factors (sales value, price, R&D, and capital investments) showed purely positive correlation throughout the period. There was essentially a complete lack of coincidence across the factors during the most recent – most relevant – period. The lack of correlation was not just "one or two variations in trends" as posited by the United States. Rather there was a complete temporal lack of "overall coincidence" when the data is viewed on an individual factor basis or as a whole. Despite this, the USITC has provided no "*very* compelling" explanation to rebut this lack of coincidence as in necessary if causation is still to be found.

C. THE USITC FAILED TO CONSIDER ADEQUATELY ALTERNATIVE CAUSES

33. The USITC also failed to consider adequately alternative causes. Causal factors such as changing demand and business strategy were put aside as the USITC invoked the low U.S. statutory standard that it need not engage in any "weighing of causes." This failure renders the USITC's analysis incomplete and makes it nearly impossible for the USITC to determine whether or not subject imports were actually a "significant" cause of injury. Declines in demand and a shift in business strategy had a considerable effect on the U.S. tyre industry, yet the USITC chose to ignore these implications. These failures reveal the striking degree to which the USITC's causation analysis was inconsistent with the requirements of Article 16.

34. The U.S. argument that the USITC was under no obligation to examine alternative causes is misplaced, relying too heavily on the absence of express non-attribution language in the text of Article 16. Although there is no formal non-attribution requirement expressly provided in Article 16 of the Protocol, such an assessment was still necessary. The fact that the USITC stated that it did consider alternative factors reinforces this requirement and, as the United States acknowledges, a proper analysis of a causal link requires the authority to "consider such other factors." Such consideration is necessary if a causation analysis is to be conducted in good faith and in accordance with the Protocol.

35. The U.S. attempt to isolate Article 16 from any applicable WTO jurisprudence by claiming the relevant Appellate Body jurisprudence on the nature of the causation analysis is limited strictly to the text of the *Agreement on Safeguards* is unfounded. An "assumption" that other factors are not causing the alleged injury cannot be made consistently with the obligation to find a "causal link" – a "genuine and substantial" relationship of cause and effect. Appellate Body jurisprudence teaches that an authority cannot properly conclude that a "causal link" exists without having first assessed whether other factors were actually responsible. This is true whether there is an express non-attribution requirement or not. Likewise, the U.S. argument focuses exclusively on the omission of an express non-attribution clause while ignoring impermissibly the key addition of the modifier "significant" to the causation standard. Because "significant" is best understood in relation to other causes, the addition reinforces the need for a consideration of other causes.

36. Thus the USITC's failure to consider adequately other causes rendered its analysis inconsistent with the Protocol. The mere mentioning of such factors, without any real analysis, is insufficient and cannot constitute a reasoned explanation. The U.S. assertion that the USITC adequately considered declining demand is unsupported by the record. The USITC gave only passing

attention to changes in demand, failing to account for the essentially 1:1 correlation between declining demand in 2008 and the fall in U.S. shipments. The juxtaposition of statistics upon which the U.S. argument rests is inadequate. For the analysis to be complete, an explanation was required for the prolonged decline in demand. The U.S. claim that the USITC "examined in detail and rejected" the role of producers' changing business strategy is misleading as the USITC devoted one paragraph to that issue. In the face of testimony and evidence concerning the long-standing industry restructuring – which predated the arrival of imports from China – cursory treatment is inadequate. Viewed cumulatively, these causes and other causes, have an even greater impact which should have been considered. The U.S. failure to do so by claiming that it is not "always" necessary is insufficient as the "specific factual circumstances" of this case should have been addressed.

VI. THE UNITED STATES APPLIED A REMEDY THAT WAS INCONSISTENT WITH THE REQUIREMENTS OF ARTICLE 16 OF THE PROTOCOL

37. Despite the fact that the basic requirements for applying a transitional product-specific safeguard under Article 16 had not been met, the United States imposed a remedy. Because the USITC failed to establish that rapidly increasing imports from China were a "significant cause" of market disruption, no remedy was appropriate. Even if the United States had complied with the requirements of Article 16 and thus had the theoretical right to apply measures, the remedy applied was inconsistent with the Protocol. Articles 16.3 and 16.6 require that any remedies imposed must be "only to the extent necessary" and only for "such period of time" as may be necessary to prevent or remedy market disruption. Despite this, however, the United States chose to impose a blanket remedy – never taking into account what "extent" was necessary to remedy the alleged market disruption. This failure by the USITC to properly limit the remedy rendered it excessive in extent and duration.

38. Asserting broad discretion, the U.S. argument claims that the imposition of remedies cannot be a matter of "scientific precision." The United States makes this claim because the USITC never determined to what extent imports from China were allegedly causing market disruption – and without knowing this, no remedy could be limited properly. The Panel inquired as to how the USITC determined that its calculated reduction of subject imports addressed the alleged market disruption, but the United States avoided answering this question and instead simply quoted the output of its economic modeling. These quotations in no way address why the results calculated were in fact determined to be necessary to address the extent of the market disruption. Article 16.3 requires an explicit and reasoned explanation of how the remedy imposed addresses, and is limited to, the extent of the market disruption caused by imports from China. And Article 16.6 requires the remedies imposed to be only "for such period of time" as necessary. The U.S. failure to provide any such explanation renders its actions inconsistent with its obligations under the Protocol.

39. The U.S. deficiencies in explaining why the remedy has been set for three years are even more glaring. The economic modeling was done for only one year, not for all three years. Neither the USITC nor President Obama provided any meaningful explanation of why the three years duration was necessary. The focus of a permissible remedy must be on the effect of the allegedly injurious imports. The remedy imposed by the United States, however, is not limited to the effect of these imports. Imports cannot be held responsible for the entire downturn, and the remedy cannot seek to address that entire downturn.

VII. THE ADDITIONAL DUTIES IMPOSED BY THE UNITED STATES ARE ALSO INCONSISTENT WITH OBLIGATIONS UNDER GATT 1994

40. Because the imposed tariffs were not justified as emergency action under relevant WTO rules, they are inconsistent with both Article I:1 and Article II:1(b) of the GATT 1994. The United States does not accord the same treatment that it grants to passenger and light truck tyres originating in other countries to like products originating in China and has imposed higher tariffs, which are unjustified modifications of U.S. concessions on passenger and light truck tyres under the GATT 1994.

ANNEX E-2

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THE UNITED STATES

I. INTRODUCTION

1. The United States has demonstrated, in its first written submission, oral statement, and answers to the Panel's questions, that China's basic thesis – that the standards of the transitional mechanism are so high and the analysis by the ITC so deficient – is completely unfounded and based on mischaracterizations of the text of the Protocol and the very detailed analysis conducted by the ITC. A few new issues raised by China at the panel meeting – the language difference in paragraph 16.1 and the relationship between section 421 and section 406, as examples – are distractions that do nothing to support China's arguments. Even while China conceded that the obligations of the Safeguards Agreement have not been incorporated into the Protocol, it continues its attempt to draw the Panel to a comparison with the Safeguards Agreement text. This temptation must be resisted.

II. INTERPRETIVE ISSUES

A. TRANSITIONAL MECHANISM AND SAFEGUARDS AGREEMENT

2. The question of what, if any, relationship there is between the transitional mechanism contained in paragraph 16 of China's Protocol of Accession and the Safeguards Agreement has been a focus of attention in this dispute. As the United States has noted before, this is not a useful framework for analysis.

3. The United States recalls that during the first meeting of the Panel with the parties, China clarified that it was not arguing that the provisions of the Safeguards Agreement had been incorporated into the Protocol. Therefore, we seem to have agreement on this issue.

4. With respect to whether the Protocol is *lex specialis*, in its answers to the Panel's questions, China states that paragraph 16 "provide[s] a more specific set of rules to address the application of safeguard measures to import from China under certain particular circumstances" and that the Safeguards Agreement provides "the more general principles." This is simply wrong. The Safeguards Agreement and the transitional mechanism apply in different circumstances. They are separate remedies available to a WTO Member under different circumstances. Indeed, China's own answer acknowledges that the Protocol and the Safeguards Agreement apply in different circumstances. Therefore, China seems to concede – as it must – that the transitional mechanism is distinct from the Safeguards Agreement - that is, it exists separate and apart from the Safeguards Agreement, as the United States has explained.

5. The United States simply disagrees with China's assertion that there is "substantial overlap in structure and language" between the transitional mechanism and the Safeguards Agreement. Even a quick reading of both reveals that there are substantial portions and concepts from the Safeguards Agreement that are simply not present in the transitional mechanism. Any analysis that starts from the premise that terms have been "added" to the Safeguards Agreement text is flawed.

6. Under the interpretive approach required by Article 3.2 of the DSU, the Panel must consider the text of the Protocol, in its context and in light of the object and purpose of the agreement. China appears to advance a different approach, under which the Panel should examine the Safeguards Agreement instead, and then add the Protocol to that agreement. Nothing in the text of the Protocol, or in the customary rules of treaty interpretation, countenance that approach. Furthermore, the most relevant context for the Panel's consideration is the context provided by the other provisions of the transitional mechanism and the context provided by the relevant passages of the Working Party Report. To the extent that there is a need to seek broader contextual guidance, the Panel may also look to prior interpretations of similar terms or provisions of the Safeguards Agreement or any of the other WTO agreements as appropriate. Where relevant, the Panel may also consider the reasoning of other panels and the Appellate Body interpreting such provisions. However, care must be exercised to avoid importing words or obligations from one agreement that are not found in the other.

B. THE UNITED STATES IS NOT ARGUING THAT THERE ARE NO STANDARDS TO BE APPLIED

7. The United States has not argued that "there is no standard and that the authorities are always correct." A Member invoking the transitional mechanism must meet the standards contained in the text of paragraph 16 of the Protocol, read in conjunction with the context provided by the Working Party Report. It is evident that the text of the transitional mechanism contains different, and in some cases fewer, prescriptions than the text of the Safeguards Agreement. This is not an "extreme interpretation," but an interpretation consistent with the customary rules of interpretation of public international law, as required by DSU Article 3.2.

C. LANGUAGE DIFFERENCES IN PARAGRAPH 16.1 HAVE NO IMPACT ON ANALYSIS

8. The textual difference identified by China has no bearing on the analysis of China's argument on the ITC's analysis of the conditions of competition. China argues that the conditions of competition analysis that the ITC did conduct as part of its causation analysis is flawed. An analysis of that issue requires the Panel to look at paragraph 16.4, not paragraph 16.1. Paragraph 16.1 sets out the conditions under which a Member may seek consultations with China under the Protocol. Whether or not the basis for consultations is the same as the standard for a finding of market disruption set out in paragraph 16.4 need not be addressed by this Panel. In any event, it does not affect the analysis of the requirements of paragraph 16.4, which is where "market disruption" is defined, and paragraph 16.4 does not require a "conditions of competition" analysis. (Nor, for that matter, does paragraph 16.1.)

D. STANDARD OF REVIEW

9. China's answers regarding this issue (to questions 9 and 18), do not address the issue of what is the proper standard of review which the Panel must use to evaluate whether the United States met its obligations. China instead confuses the standard of review with what is required by the particular obligation. In discussing what it views as the differences in "application" of the standard of review, China merely restates particular terms from the provisions of the Safeguards Agreement and the Protocol, but the terms of these provisions are not a "standard of review."

10. Throughout its submission and statements, China has tried to argue that the ITC did not conduct a thorough analysis of the facts and did not provide sufficient and adequate explanations for its market disruption determination. The ITC Report is before this Panel, and the Panel should review it to determine whether the ITC has provided reasoned explanations as to how the evidence before it supported its conclusion that there was market disruption. For the reasons we have given, the answer is yes. It should be clear from reading the Report, that the issues raised by China in this dispute are the very issues that the ITC had before it, that the ITC evaluated the evidence appropriately, and

provided reasoned conclusions. With respect to the remedy, we note that China's arguments are likewise centered on criticizing the ITC analysis. We have explained why China's arguments are likewise invalid.

III. IMPORTS OF TYRES FROM CHINA INCREASED RAPIDLY OVER THE PERIOD

11. As the ITC found, the record showed clearly that imports of tyres from China increased rapidly. Imports increased by significant amounts in each year of the period of investigation, growing by 42.7 per cent in 2004, 29.9 per cent in 2005, 53.7 per cent in 2007, and 10.8 per cent in 2008, the final year of the period of investigation. On a relative basis, Chinese imports gained approximately 12 percentage points of market share during the period of investigation, which correlated with similar declines in the U.S. industry's market share. The largest portion of these increases occurred during the final two years of the period. As the ITC concluded, the record showed that import "increases were large, rapid, and continuing at the end of the period – and from an increasingly large base."

12. China's challenges to this finding are flawed. First, China's assertion that imports "abated" is misleading. It is only through use of a chart that is limited to changes in the rate of growth of import increases that China can provide any support for its claim that there was a "declining" or "lessening" trend in import volumes during 2008. **The Protocol provides that competent authorities should establish that imports were "increasing rapidly", on an absolute or relative basis – it 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 in any earlier point of the period.** Even if the rate of growth in absolute terms lessened somewhat in 2008 when compared to the extremely rapid rate of growth seen in 2007, the quantities of Chinese imports continued to grow rapidly in 2008.

13. Moreover, China's use of quarterly data also is misleading. China's comparison of changes in the quarterly volumes of Chinese imports in 2008 involves a comparison of quarterly data for successive quarters. This type of comparison can be inherently distortive, however, because changes in import shipment data between quarters can be affected by variations in production schedules, seasonal demand, and weather developments.

14. Further, China's increasing imports arguments ignore the textual link in the Protocol between increased imports and material injury. The United States did not "conflate two distinct issues," as China claims. The concept of increased imports does not stand alone. The language of the Protocol links the issue of rapidly increasing imports to material injury. Accordingly, when considering the meaning and scope of the term "rapidly," the Panel must take into account the "context" in which that term is used. The Protocol's language, which links "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.

15. Finally, China's assertion that the Appellate Body requires a competent authority to obtain data only for the "most recent past" is unsupported by the relevant Appellate Body reports. In *Argentina – Footwear* and *US – Lamb Meat* the Appellate Body found that the examination of data for at least two years was appropriate. Moreover, **the Appellate Body has stated that "in conducting their evaluation under Article 4.2(a), competent authorities cannot rely exclusively on data from the most recent past, but must assess that data in the context of the data for the entire investigative period."**

IV. THE U.S. STATUTE IS CONSISTENT, AS SUCH, WITH THE PROTOCOL

16. China has failed to carry its burden of establishing that the U.S. statute is inconsistent, as such, with the Protocol. Despite China's claims, section 421's definition of a "significant cause" of

material injury as a cause that "contributes significantly to the material injury of the domestic industry" is consistent with the language of the Protocol itself, the ordinary meaning of the words "cause" and "contribute," and the Appellate Body's own definitions of the words "cause" and "causal link" under the Safeguards Agreement. Simply put, section 421 does not "impermissibly lower" the causation standard of the Protocol, as China claims.

17. China's claims on this score appears to be premised on the mistaken notion that the Protocol requires that imports from China be the sole cause of material injury to an industry. This concept is not consistent with the Protocol. The Protocol provides that "market disruption shall exist" if Chinese imports constitute "**a** significant cause of material injury" to the industry. By providing that Chinese imports may constitute "a significant cause" of injury, the Protocol explicitly contemplates that there may be multiple significant causes of material injury or threat to an industry, a point which China ignores.

18. China's argument is also not consistent with the ordinary meaning of the word "cause." While the Shorter Oxford English Dictionary defines the word "cause" as meaning a factor that "produces an effect or consequence" or "that brings about an effect or result," there is no question that the word "cause" can be used to describe a situation where more than one factor brings about or produces a particular effect or result. Given this, it is clear that "cause" can be used with respect to situations where multiple factors contribute to "bringing about" or "producing" an effect or result.

19. Finally, China's argument is inconsistent with the Appellate Body's explanation of the terms "cause" and "causal link" in the Safeguards Agreement context. In *US – Wheat Gluten*, the Appellate Body explained that "the term 'causal link' denotes, in our view, a relationship of cause and effect such that increased imports contribute to "bringing about, "producing," or "inducing" the serious injury." Given this reasoning, the ITC can reasonably conclude that imports that significantly "contribute" to the industry's injury are a significant cause of that injury.

20. China is also mistaken in claiming that the U.S. statute "allows the U.S. investigating authority to determine that even a minimal cause, which can be less than any other cause, could still be considered as 'a significant cause.'" Under the U.S. statute, rapidly increasing imports from China must "contribute significantly" to material injury to be considered a significant cause of injury to the industry. Moreover, the ITC has consistently stated that the statute requires a finding that Chinese imports have a "direct and significant causal link" to the industry's material injury. Indeed, the ITC has rejected the idea that imports from China can be a "significant cause" of material injury if they constitute a "minimal" or "unimportant" cause of such injury. The statute does not allow the ITC to find imports to be a significant cause of injury if they contribute minimally to that injury.

21. Furthermore, China has now raised, for the first time, the claim that the legislative history of section 406, the U.S. statute on which the Protocol was modeled, indicates that the "significant cause" standard of section 406 "was intended to be an easier standard to satisfy than" the "substantial cause" standard of section 201, the U.S. global safeguards statute. China's statements seriously misconstrue the legislative history of section 406 and the relationship of the causation standards set forth in sections 406 and 201.

22. In making this claim, China fails to point out to the Panel that the "substantial cause" standard of section 201 contains an additional element that makes the statutory "substantial cause" standard a higher one than section 406's "significant cause" standard. In section 201, the Congress defines "substantial cause" to mean "a cause which is important and not less than any other cause" of serious injury to an industry. As the ITC has consistently explained in its global safeguards determinations, section 201 therefore requires that "increased imports must be both an important cause of the serious injury or threat and a cause that is equal to or greater than any other cause." In contrast, section 406 does not require the ITC to conclude that the injury caused by the subject imports is greater than or

equal to the injury caused by any other factor injuring the industry. Thus, the standard of section 201 is higher because it requires a finding that global imports be as important as any other cause of serious injury to the domestic industry during the period of investigation. In its argument, China has entirely failed to point out this important distinction between the two statutes to the Panel.

23. Accordingly, it should be clear, then, why China is mistaken when it asserts that section 421 permits the ITC to find that imports are a significant cause of material injury even if they are a minimal cause of such injury, simply because section 421 provides that those imports "need not be equal to or greater than any other cause" of injury to the industry. This phrase does not mean that imports can be considered a "significant cause" if they are "less than any other cause," including a minimal cause of injury, as China asserts. Instead, this language establishes imports from China need not be the most important cause, or equal in effect to the most important cause, of material injury to the industry, a concept that is consistent with the requirements of the Protocol.

V. THE ITC'S CAUSATION ANALYSIS, AS APPLIED, WAS CONSISTENT WITH THE PROTOCOL

A. THE ITC REASONABLY FOUND THERE WAS A CAUSAL LINK BETWEEN CHINESE IMPORTS AND INJURY

24. **As the United States has established, the ITC's analysis of the causal link between rapidly increasing imports from China and the industry's declining condition is fully consistent with paragraph 16.4 of the Protocol. The ITC objectively and thoroughly analyzed the record evidence on these issues and established, clearly and unambiguously, that rapidly increasing imports from China were a significant cause of material injury to the domestic industry.**

25. In its oral statement, China continues to claim that the ITC misinterpreted and distorted the conditions of competition in the U.S. market. The ITC did nothing of the sort. Rather, the ITC provided a detailed and reasoned explanation of the pertinent conditions of competition in the U.S. tyre market. The ITC reasonably analyzed issues argued by the parties, such as declining demand, the industry's business strategy and allegedly attenuated competition, and found that the record evidence did not establish that these issues broke the requisite causal link under the Protocol.

26. In its oral statement, China also mistakenly claims there was "no correlation between imports and injury." As detailed in the U.S. first written submission and its oral statement, this statement shows China's fundamental misunderstanding of the extensive record that was before the ITC in the *Tires* investigation. That evidence established a clear overall coincidence between rapidly increasing subject imports volumes and the deterioration in the condition of the domestic industry. China's bold claim of no correlation in light of this record, calls into doubt the validity of China's other arguments in this proceeding.

27. At the outset, China continues to claim that a coincidence analysis is required under the Protocol by referring to the requirements under the Safeguards Agreement. As a legal matter, China is seeking to impose obligations on the United States not found in the language of the Protocol. China asserts that Article 16 of the Protocol involves the same causal analysis as in the Safeguards Agreement, which means that a "'coincidence' analysis is logically required under the Protocol." **As the United States has explained, China's argument ignores the fact that there is different language in the Safeguards Agreement and the Protocol.** Moreover, **China's argument also ignores the fact that the Appellate Body and WTO panels had made clear that investigating authorities are not required to perform a correlation analysis even under the Agreement on Safeguards.**

28. China's arguments on the lack of coincidence are also misplaced as a factual matter. **As the ITC stated there was a clear overall "coincidence" in trends between the rapidly increasing imports and their effects on the domestic industry.** This finding was reasoned, fully supported by the record, and met the requirements under the Protocol. As the United States noted in both its first written submission and in its oral statement, as Chinese import volumes increased rapidly in every year of the period, the record showed that the large majority of the domestic industry's performance indicators declined in every year of the period as well. **As the ITC explained in its determination, the underselling by large and rapidly increasing subject Chinese tyres eroded the domestic industry's market share, leading to a substantial reduction since 2004 in domestic capacity, production, shipments, and employment.**

29. 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 a single year - 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. Moreover, even the improvement in profitability and productivity was temporary. The record showed 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.

30. In sum, the ITC found that the significant increase in the volume of subject imports throughout the period coincided with significant and pervasive underselling of the domestic like product by the subject imports. The rising volume of subject imports also coincided with the decline in the domestic industry's performance indicators as subject imports from China displaced domestic sales, and this displacement led to declining domestic production, shipments, capacity utilization, employment, and profitability. As a result, the record clearly supported the ITC's finding that the subject imports were a significant cause of material injury to the domestic industry.

B. OTHER FACTORS DID NOT SEVER THE CAUSAL LINK

31. China also claims the ITC "ignored" or decided to "forgo any analysis of other causal factors." Again, this is incorrect. As discussed in the U.S. First Written Submission**, the ITC did investigate, consider, and analyze 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 two other factors primarily relied on by China in its oral statement, i.e., the industry's alleged "business strategy" of shifting its U.S. production away from low-end tyres to high-end products, and declines in demand in the U.S. tyres market over the period. The ITC examined these issues and reasonably concluded that they did not indicate that subject imports were not a significant cause of material injury to the industry.**

32. China continues to argue that a Member cannot determine whether subject imports are "a significant cause" of injury as required by the Protocol without examining whether other factors were responsible. **China ignores the fact that** the Protocol, **unlike the Safeguards Agreement, does <u>not</u> specifically require a Member to consider the possible effects of other factors causing material injury or threat of material injury as part of its causation analysis. Instead, the Protocol requires a Member, when assessing whether rapidly increasing imports are a significant cause of material injury or threat of material injury to the industry, 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.**

33. Contrary to China's argument, the United States is not asking for the Panel to conclude that the United States has unfettered discretion to make such a determination. Instead, the United States is simply pointing out that Members are only required to perform the specific obligations that are set

forth in the relevant legal text. Since China has not, and cannot, demonstrate that the Protocol imposes on the United States any obligation to address the injurious effects of other factors as part of its causation analysis, China's claim in this regard must fail. Moreover, even if such an obligation were found to exist, the ITC did consider all of the other factors that could reasonably be claimed to be injuring the domestic industry in a significant manner.

34. For example, China continues to claim the ITC "largely ignored the U.S. tire market's prolonged contraction in demand," and failed to acknowledge that changes in demand might have been a cause of injury to the industry. As discussed in the U.S. First Written Submission, however, the ITC fully addressed demand trends in the market, including those in the OEM market, and found that demand trends did not break the causal link between the subject imports and injury. The ITC found that, even though apparent U.S. consumption fell in 2008, shipments of low-priced subject imports not only remained strong but continued to grow during the market contraction in that year. The fact that low-priced subject imports were able to increase both absolutely and relatively in the face of a contracting market in 2008, even as the quantities of domestically produced tyres and non-subject imports both declined, contradicts China's argument that the domestic industry was injured solely by demand declines in 2008.

35. China also claims the ITC "chose to attribute plant closings to imports from China, when the record does not support such a conclusion." Again, this is mistaken. As the United States previously explained, the ITC cited ample record evidence to support its finding. The ITC explained that imports of tyres from China were rapidly increasing before Bridgestone, Continental, and Goodyear announced the closing of plants in 2006 and 2008. **As the producers stated, the decision to close those facilities was not a voluntary decision that was made independently of imports. It was, instead, a direct response to the growing presence in the market of low-cost Chinese imports, that had already had a "profound" effect on the U.S. market at the very beginning of the period according to contemporaneous press reports. The ITC's analysis had a strong evidentiary foundation.**

VI. CHINA HAS NOT MET ITS BURDEN OF PROOF ON REMEDY

36. In its answers to the Panel questions, China acknowledges that paragraph 16.3 of the Protocol does not require a Member to "separate and distinguish other causes" and that there "is no specific obligation to quantify." Despite these admissions, China asserts that "the less compelling the authorities' explanation of how it distinguished the role of imports from other causes, the greater the likelihood the authorities improperly imposed a remedy that goes too far." However, China fails to provide any explanation why an alleged failure to quantify, where quantification is not required, requires a "compelling explanation", and why the explanations provided by the United States are not adequate.

37. China's argument on remedy seems to be that it is not satisfied with the explanations provided. In the U.S. First Written Submission and in the U.S. reply to Panel question 30, the United States has pointed to the detailed explanations provided by the ITC in its report in which it explains how its proposed remedy addresses the market disruption of which imports from China are a significant cause. In addition, the United States has explained that the remedy actually imposed by the United States is less stringent than the remedy recommended by the ITC. This was as a result of additional information gathered during the remedy phase and additional fact-finding conducted by the Office of the U.S. Trade Representative and other agencies during this phase. An explanation of this was provided at the time the measure was imposed and was even included by China as one of its exhibits. Finally, as the United States has also explained, the remedy imposed is reduced by five percentage points in the second and third years. China has failed to establish how the measure fails to meet the requirements of paragraphs 16.3 and 16.6.

VII. CONCLUSION

38. For the reasons set forth above, and in our first written submission and answers to questions from the Panel, the United States requests that the Panel reject China's claims in their entirety.