ANNEX A

EXECUTIVE SUMMARIES OF THE FIRST WRITTEN SUBMISSIONS OF THE PARTIES

ANNEX A-1

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF CHINA

I. INTRODUCTION

1. On 4 February 2010, China requested consultations with the European Union. Consultations between China and the European Union were held on 31 March 2010 but failed to result in a mutually satisfactory solution. On 8 April 2010, China requested the establishment of a Panel. The Panel was established on 18 May 2010 and was composed on 5 July 2010.

2. In its first written submission, China presented its view of the facts and legal issues pertinent to this case and at the same time responded to the European Union's Request for a Preliminary Ruling filed on 22 July 2010. The extent to which this summary treats certain facts and legal issues should not be taken as any indication of the relative importance that China attaches to them.

II. CHINA'S RESPONSE TO THE EU'S REQUEST FOR A PRELIMINARY RULING

3. In its Request for a Preliminary Ruling (PR Request), the European Union claimed the following regarding China's Panel Request: a) that China's "as such" claims concerning Article 9(5) of the *Basic AD Regulation* do not meet the specificity requirements of Article 6.2 of the DSU; 2) that China's claims based on Article 17.6(i) of the Anti-Dumping Agreement also fail to satisfy the requirements of Article 6.2 of the DSU, and that in any case Article 17.6(i) cannot form the basis of a claim; 3) that some of China's claims concerning the Review Regulation and Definitive Regulation lack the required specificity regarding the measure that they were attacking, and 4) that certain claims should be excluded from the Panel's terms of reference for "having no basis in the request for consultations".

4. With respect to the European Union's allegations of lack of specificity in the Panel Request as required by Article 6.2 of the DSU, similar allegations were made with respect to disparate claims in three different sections of its PR Request, to which most of China's arguments in response were equally applicable.

5. With respect to the allegations that China has not identified the *specific measures* at issue, China considers that the measures at issue were unambiguously identified with sufficient precision. The three measures are, as they were identified in the Panel Request, (1) Article 9(5) of Council Regulation (EC) No. 384/96 on protection against dumped imports from countries not members of the European Community as amended, codified and replaced by Council Regulation (EC) No. 1225/2009, (2) Council Implementing Regulation (EU) No. 1294/2009 of 22 December 2009 and (3) Council Regulation (EC) No. 1472/2006 of 5 October 2006.

6. With respect to the allegations that China failed, in its Panel Request, to provide a brief summary of the legal basis of several of its claims, also made in various sections of the PR Request, China considers that the European Union has erroneously considered that the provision of *legal arguments* with respect to claims is what is required to meet the "summary of the legal basis" standard, when in fact the mere listing of provisions of agreements violated has been held to be sufficient to meet the Article 6.2 DSU standard. Furthermore, China considers that it had generally

gone well beyond the minimum standard of what is considered to constitute a "summary of the legal basis" by explaining which specific parts of the various provisions on which it bases its claims it considered to have been violated. In addition, China considers that the European Union did not demonstrate that its ability to defend its interests has been prejudiced by the alleged lack of specificity with respect to the various claims. Lastly, the European Union ignored the fact that, in order to clarify the meaning of claims made in a panel request, reference may be made to a party's first written submission, which in this case should certainly clarify any ambiguities in the Panel Request, to the extent that there were any.

7. With respect to the assertion that certain of China's claims should be excluded from the Panel's terms of reference because they were not adequately expressed in the request for consultations, China considers that there is no WTO requirement of continuity between the claims in a consultations request and a panel request, and to the extent that there is, the European Union has drastically overstated it. With respect to the addition of Article 9.1 of the Anti-Dumping Agreement that the European Union has identified specifically in claim III.6 concerning the determination of injury in the original investigation, China considers that the addition of the claim under that article cannot be said to have changed the nature of the dispute as a whole, and it can reasonably be said to have evolved from the legal basis indicated in its request for consultations, thus meeting the minimum standard.

8. In the context of the European Union's contention that Article 17.6(i) of the Anti-Dumping Agreement cannot be the basis of a claim because it does not impose an obligation on investigating authorities, and thus China's claims made on the basis of that article should be excluded from the Panel's terms of reference, China considers that, viewed in the context of the relevant agreements and the AB's rulings that a panel must hold the investigating authorities' establishment or evaluation of the facts to be inconsistent with the Anti-Dumping Agreement when it does not act in conformity with the standards established by that Article, it does indeed impose an obligation on investigating authorities. China has further noted the undesirable practical consequences of considering otherwise, as well as the fact that in this case the Panel should consider China's claims based on Article 17.6(i) of the Anti-Dumping Agreement.

III. CHINA'S CLAIMS CONCERNING ARTICLE 9(5) OF THE *BASIC AD REGULATION*

9. Chinese exporting producers can obtain an individual dumping margin and duty if they obtain Market Economy Treatment (MET). In the event that they do not qualify for MET, they can obtain an individual dumping margin and duty only if they get Individual Treatment (IT), subject to compliance with the five criteria listed in Article 9(5) of the *Basic AD Regulation*. If, however, the non-MET exporting producers fail to demonstrate that they satisfy the five IT criteria of Article 9(5), they cannot obtain an individual dumping margin and duty rate and are automatically subject to the country-wide duty rate. China considers that Article 9(5) of the *Basic AD Regulation* violates Articles 6.10, 9.2, 9.3, 9.4 and 18.4 of the Anti-Dumping Agreement, as well as Articles I.1 and X:3(a) of the GATT 1994 and Article XVI:4 of the WTO Agreement. As a result of these violations, China requests that the Panel find Article 9(5) to be inconsistent with the aforementioned provisions and recommend that it be withdrawn.

10. With respect to Article 6.10, China considers that Article 6.10 provides that as a mandatory rule individual dumping margins be determined for each known exporter or producer, except when sampling is applied. Article 6.10.2 further requires that as a rule an individual dumping margin be established for a producer that is not initially sampled if it provides the necessary information and the only exception is when the number of producers/exporters is so large that it would be unduly burdensome to do so and it would prevent the timely completion of the investigation. However, Article 9(5) creates an additional exception, with no counterpart in the Anti-Dumping Agreement, in violation of Article 6.10, that in order to benefit from an individual dumping margin, an exporter from China must fulfil the specific IT conditions.

11. With respect to Article 9.2, China considers that this article is violated in that exporting producers in non-market economy countries that do not obtain MET and fail to qualify for IT will not be subject to an individual anti-dumping duty based on their individual dumping margin which in fact is determinant of the 'appropriate amount' of duty that should be collected from such exporting producers. The Article 9.2 the requirement to specifically name the supplier/s read together with Article 6.10 leaves no room for any other interpretation except that the duty be established on an individual basis for each producer/exporter involved except where it is impracticable to do so because of the large number of producers/exporters involved.

12. With respect to Article 9.3, China submits that Article 9(5) of the *Basic AD Regulation* is inconsistent with that article because if a non-market economy exporting producer fails to meet the IT criteria, the dumping margin for such an exporting producer is not established in accordance with Article 2 of the Anti-Dumping Agreement, and it follows that the anti-dumping duty based on such a dumping margin will lead to the collection of duty in amounts exceeding the individual dumping margin of some of the exporting producers concerned.

13. With respect to Article 9.4, China considers that on account of the Article 9(5) criteria, the dumping margin for the sampled non-market economy exporting producers that fail to obtain IT is not established on an individual basis and is not calculated in accordance with the requirements of Article 2. Consequently, the weighted average dumping margin including the dumping margin for non-IT exporting producers, applicable to the non-sampled exporting producers, is not consistent with the requirement of Article 9.4 of the Anti-Dumping Agreement. Furthermore, contrary to Article 9.4, non-MET exporting producers that are granted individual examination can only obtain an individual duty only if they satisfy the IT criteria.

14. With respect to Article I:1 of GATT 1994, China considers that the advantage of obtaining an individual dumping margin and an individual duty is not accorded by the European Union unconditionally to like products originating in the territories of all WTO Members, notably on account of the additional Article 9(5) IT criteria applicable only in case of imports from non-market economy countries. In case of imports from market economies, exporting producers are automatically *i.e.* without being subject to any conditions or additional criteria, notably the IT criteria, granted an individual dumping margin and individual duty rate and this constitutes an 'advantage' or 'favour' within the meaning of Article I:1 of the GATT 1994, not granted in the context of imports from what the European Union terms as non-market economy countries, including China.

15. With respect to Article X:3(a) of GATT 1994, China considers that the European Union violates that article because it does not administer the provisions of Article 9(5) in a uniform, impartial and reasonable manner. The European Union does not administer Article 9(5) in a 'uniform' manner insofar as it applies different methodologies to establish the country-wide dumping margins and duty rates for non-IT exporting producers depending on the level of cooperation of exporting producers in a given case being high or low and even within these subsets, notably when the cooperation is low, it uses a host of different methodologies to determine the country-wide dumping margin and the country-wide duty rate. The European Union does not administer Article 9(5) in a 'reasonable' manner in anti-dumping investigations concerning non-market economy countries notably China, because the country-wide dumping margin and country-wide duty are established for non-IT exporting producers in an unreasonable manner and often through the inappropriate application of 'facts available'.

16. In light of the foregoing, China considers that the European Union violated Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organisation and Article 18.4 of the Anti-Dumping Agreement.

IV. CHINA'S CLAIMS CONCERNING THE REVIEW REGULATION

17. China considers that the Review Regulation is inconsistent with the European Union's obligations under the below-mentioned provisions of the Anti-Dumping Agreement and GATT 1994 and China requests that the Panel find that the Review Regulation is inconsistent with the below-mentioned provisions and recommend that it be withdrawn.

18. China submits that in the current case, the European Union violated the substantive disciplines of Articles 2.1 and 2.4 of the Anti-Dumping Agreement as well as Article VI:1 of the GATT 1994 in establishing continued dumping which was the basis of its determination of the likelihood of continuation of dumping under Article 11.3 of the Anti-Dumping Agreement.

19. China considers that on account of the analogue country selection procedure and the resulting selection of Brazil as the analogue country, the European Union precluded a fair comparison between the export price and normal value in violation of Articles 2.1, 2.4 and 17.6(i) of the Anti-Dumping Agreement, as well as VI:1 of GATT 1994. Furthermore, the analogue country selection process was such that it did not amount to a proper establishment of the facts and an unbiased and objective evaluation of those facts, in violation of Article 17.6(i) of the Anti-Dumping Agreement.

20. Additionally, the European Union violated Articles 2.1 and 2.4 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 by using the PCN classification system used in the original investigation which led to the grouping of completely different footwear types together, disregarding the technical differences, market realities and consumer perceptions of the distinction between divergent footwear types. Moreover, the mid-investigation re-classification of footwear categories further made an already overly broad and hence defective definition of the product concerned (and like product) even broader and precluded sufficient and accurate comparability between footwear manufactured in the European Union, footwear imported from China and footwear produced in the analogue country, Brazil.

21. China posits the applicability of the Article 3 provisions in the present case taking into account – (i) the interpretation accorded by the Panels and AB on this issue; (ii) in light of the facts of this case; and (iii) the approach of the European Union made known in WTO disputes.

22. With regard to the various claims, China first submits that by not soliciting sampling information from only one interested party, *i.e.* the complainant European Union producers comprising the domestic industry, while all the other interested parties were required to complete detailed sampling forms in order to be sampled, the European Union violated the obligation of conducting the expiry review investigation in an objective and unbiased manner as required by Articles 3.1 and 17.6(i) of the Anti-Dumping Agreement. The mere fact that the complainant European Union producers had presented aggregate data in the expiry review request/complaint, had provided declarations of support, and that the CEC had sent a letter on behalf of the complainant producers mentioning their agreement to be included in the sample is not a substitute for the normal sampling procedure that should have been applied because the information solicited through the sampling forms was not only significantly more detailed but would have provided the relevant data that was not otherwise provided to the European Union for the selection of the European Union producers' sample, which in turn could be considered positive evidence.

23. The European Union violated Articles 3.1and 17.6(i), 6.10 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 - (i) by selecting the European Union producers' sample comprising of eight complainants in the absence of *affirmative, objective, credible and verifiable* data and evidence. Consequently, the European Union could not have conducted an objective examination of the facts which were not at its disposal. Moreover, as the sample was not based on credible and affirmative data and was selected in the absence of the requisite data in violation of Articles 3.1 and 17.6(i), it is not consistent with the sampling criteria of Article 6.10 of the Anti-Dumping Agreement.

It follows that the European Union's evaluation of injury to the domestic industry based on such a sample notably with regard to the price-undercutting calculation and the analysis of the microeconomic indicators was inconsistent with Article 3.1 of the Anti-Dumping Agreement as well as Article VI:1 of the GATT 1994; (ii) the European Union producers' sample was neither statistically valid nor represented the largest percentage of volume that could reasonably be investigated, and the European Union failed to cover the largest percentage of volume that could be investigated, thus violating Article 6.10. Consequently, the injury determination of the European Union based on such a sample was not the result of an 'objective examination' of 'positive evidence' and was thus inconsistent with Articles 3.1, 17.6(i) of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994; (iii) the inclusion of a company in the sample that was no longer a European Union producer of the like product, is inconsistent with the provisions of Articles 3.1, 17.6(i) of the Anti-Dumping Agreement that require the investigating authorities to conduct an injury determination on the basis of an 'objective examination' of 'positive evidence' and Article 6.10 that requires the sample to be either statistically valid or account for the 'largest representative volume' of the production, sales of the domestic industry. As a result the injury determination of the European Union for the entire domestic industry to the extent it was based on such a sample was inconsistent with Articles 3.1, 17.6(i) and Article 6.10 of the Anti-Dumping Agreement as well as Article VI:1 of the GATT 1994; (iv) the use of an overly broad PCN classification system and the subsequent mid-investigation re-classification of footwear categories by the European Union precluded an objective examination of both the volume of the allegedly 'dumped' Chinese imports and the effect of these imports on prices in the domestic market for like products and the consequent impact of these imports on domestic producers of such products within the meaning of Articles 3.1 and 17.6(i) of the Anti-Dumping Agreement and Article VI of the GATT 1994.

24. China submits that the European Union violated Article 3.4 of the Anti-Dumping Agreement because it analysed the macroeconomic injury indicators on the basis of data that included the data of producers not part of the European Union industry, *i.e.*– (i) producers that were not included amongst the complainants representing 35 per cent of the European Union production of the like product, *i.e.* the domestic industry in this case. These producers were part of the European Union production but not part of the European Union industry in this case, but their data was taken into account as the European Union used the data for the '*whole [European]Union production*'; (ii) producers that either ceased production in the European Union, outsourced majority of their production outside the European Union, are major importers of the product concerned and/or are related to exporters in China. The data of such producers was included in the Prodcom data as well as the aggregate data reported by the various national Member States' producer associations, which was the basis of the European Union's evaluation of the macroeconomic injury indicators. Moreover, the European Union's evaluation of these injury indicators was not based on 'positive evidence' and an 'objective' evaluation of such evidence and was thus inconsistent with Articles 3.1 and 17.6(i) of the Anti-Dumping Agreement.

25. With respect to the causation analysis, China considers that the European Union violated Articles 3.1, 3.5 and 17.6(i) of the Anti-Dumping Agreement by - (a) failing to ensure that injury caused by certain other known factors was not attributed to the imports of the product concerned from China; (b) failing to analyse several other factors 'known' to it as these were consistently pointed out by the interested parties in their comments and therefore attributed the injury caused by such factors to the Chinese imports; and (c) failing to make an objective examination based on positive evidence demonstrating that Chinese imports are through the effects of dumping, causing injury to the European Union industry.

26. With respect to Article 6.1.2 of the Anti-Dumping Agreement, China considers that the European Union did not make available 'promptly' the evidence provided by all the sampled European Union producers in their injury as well as Community interest questionnaire responses to all interested parties and thereby violated that article. More specifically, the injury questionnaire responses of four out of the eight sampled producers were not made available to the interested parties 'promptly' on the

grounds that the responses contained confidential information, even though the producers concerned did not request confidentiality. The non-confidential Community interest questionnaire responses of five European Union producers sampled in the expiry review were not made available at all.

27. China further considers that in violation of Article 6.4 of the Anti-Dumping Agreement, the European Union failed to provide timely opportunities for interested parties to see all non-confidential information that was relevant to the presentation of their case and was used by the European Union in the expiry review investigation with regard to the– (i) information used for establishing the sample of the European Union producers including the information pertaining to the procedure used and concerning the data of the sample and the amended data concerning one sampled producer that discontinued the production of the like product during the RIP; (ii) information regarding the revised production and sales data of the complainant producers and the sampled producers pursuant to the discovery that one sampled producer had discontinued the production of the like product during the RIP; (iii) information regarding the analogue country selection procedure, the cooperation of the analogue country producers and the data submitted by some of them; and (iv) information regarding the Community interest questionnaire responses of five European Union producers sampled in the expiry review investigation. Consequently, Chinese exporters were denied opportunities to defend their interests in violation of the first sentence of Article 6.2 of the Anti-Dumping Agreement, which requires that "*[t]hroughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests.*"

28. China considers that the European Union violated Article 6.5 of the Anti-Dumping Agreement by - (a) granting confidential treatment to names of the European Union producers including complainants, supporters, sampled producers and producers sampled in the original investigation; by granting confidential treatment to some information in the expiry review request, standing forms, CEC submissions, questionnaires of sampled EU producers; and analogue country questionnaires, which were not confidential; and (b) granting confidential treatment to some of the information in these documents and to the names of the European Union producers including complainants, supporters, sampled producers and producers sampled in the original investigation that completed the Community interest questionnaire, in the absence of 'good cause'. The European Union violated Article 6.5.1 of the Anti-Dumping Agreement by - (a) failing to require the parties concerned to provide non-confidential summaries of the confidential information submitted and/or to give a statement of reasons as to why summarization was not possible; and (b) by failing to ensure that the non-confidential summaries provided permitted a reasonable understanding of the confidential information submitted.

29. Furthermore, the European Union violated Article 6.5.2 by failing to find that confidentiality of the European Union producers' names (including that of complainants, supporters, sampled producers and producers sampled in the original investigation that completed the Community interest questionnaire) was not warranted in this case on account of several reasons. Consequently, Chinese exporters and other interested parties were denied the right to defend their interests as per Article 6.2. Furthermore, it was the European Union's obligation to find that confidentiality of information for which non-confidential summaries were not provided in the non-confidential injury questionnaire responses by each of the eight sampled European Union producers was unwarranted because - (i) such information was amenable to non-confidential summarization; (ii) no request for confidentiality of the information was made by these producers; (iii) there was no explanation from these producers why only specific producers could not provide non-confidential summaries for responses to particular questions while other sampled producers had provided the non-confidential summaries of their responses to the very same questions. Thus the European Union should have disregarded such information and by not doing so it violated Article 6.5.2. Moreover the Chinese exporters could not have a complete picture based on the responses of all the eight sampled producers to adequately and in a timely manner defend their interests within the meaning of Article 6.2 of the Anti-Dumping Agreement.

30. China further considers that the European Union by failing to apply facts available within the meaning of Article 6.8 when faced with incorrect and misleading information from the sampled European Union producer that discontinued the production of the like product during the RIP in its confidential and non-confidential injury questionnaire responses and from some or all sampled producers regarding the PCNs produced by them, acted inconsistently with Article 6.8 and did not conduct the injury determination in an objective and unbiased manner in accordance with Article 3.1 of the Anti-Dumping Agreement.

31. China considers that the European Union violated Article 12.2.2 of the Anti-Dumping Agreement by failing to provide in the Review Regulation relevant information on matters of fact and law, as well as the reasons for its determinations, with respect to various key points throughout the investigation including (i) the data used for the selection of the European Union producers' sample; (ii) the granting of confidential treatment to the names of the complainants, supporters, sampled producers and producers sampled in the original investigation; (iii) determination concerning the evaluation of the macroeconomic injury indicators; (iv) the difference in the figures concerning the representativeness of the sampled European Union producers at different stages of the investigation; (v) extent to which the data of the sampled producer that discontinued production in the European Union of the like product during the RIP was used for the purpose of the injury determination; (vi) how the re-classification of PCNs was achieved for the Chinese exporters and the sampled complainant producers; and (vii) quantification of allowances in the form of adjustments made for differences affecting price comparability.

32. Based on the violation of the aforementioned provisions of the Anti-Dumping Agreement and the GATT 1994, China submits that as a consequence, the European Union also violated Articles 11.3, 1 and 18.1 and of the Anti-Dumping Agreement.

V. CHINA'S CLAIMS CONCERNING THE DEFINITIVE REGULATION

33. China considers that as a result of the determinations made in the European Union's original investigation, it has violated various provisions of the Anti-Dumping Agreement, GATT 1994, China's Protocol of Accession (Protocol) and the Report of the Working Party on the Accession of China.

34. By not examining the non-sampled cooperating Chinese exporting producers' MET applications, China considers that the European Union violated Part I, paragraph 15 (a)(ii) of the Protocol, Paragraph 151(e), (f) of the Report, and Articles 2.4, 6.10.2 and 17.6(i) of the Anti-Dumping Agreement. Part I, paragraph 15 (a)(ii) of China's Protocol of requires individual examination of and findings regarding all MET questionnaire responses that have been submitted, as in order to apply the "analogue country" procedure, the importing WTO Member must first determine whether the producers cannot clearly show that they operate under market economy conditions.

35. China considers that by failing to provide a disclosure on the merits of the MET questionnaire responses, the European Union failed to provide Chinese producers a full opportunity for the defence of their interests as required by Paragraphs 151 (e) and (f) of the Working Party's Report. Furthermore, the European Union has not established facts in a "proper" manner and has not evaluated those facts in an unbiased and objective way within the meaning of Article 17.6(i) Anti-Dumping Agreement, as it requested massive amounts of information and, once provided, rejected that information outright, without any analysis whatsoever. China considers that an investigating authority must examine individual MET forms as the MET determination is based on the information provided by individual producers.

36. China considers that the European Union violated Article 2.2.2 of the Anti-Dumping Agreement as the amounts for SG&A and profits established for one Chinese company granted MET were not calculated on the basis of a "reasonable method," as the European Union used the SG&A and

profits of Chinese exporters in other anti-dumping cases involving a radically different industry from that of the product concerned when it was clearly more reasonable to use figures reported by other Chinese companies producing footwear. Furthermore, the European Union did not calculate a benchmark to ensure that the "cap" (*i.e.* the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin) was not exceeded.

37. China considers that the European Union violated Articles 2.4 and 17.6 of the Anti-Dumping Agreement, as well as Article VI:1 of the GATT 1994 by having precluded a fair comparison between the export price and the normal value with respect to three issues – (i) with respect to the analogue country selection procedure, the European Union showed the same sort of bias toward the selection of Brazil as it did in the review investigation, mentioned above. Among other reasons, it granted only minimal extensions to certain companies located in Thailand and Indonesia to submit the response to the questionnaire for producers in potential analogue countries, whereas several Brazilian companies were granted more time, and the European Union did not objectively evaluate all the information made available by interested parties, despite repeated requests from those interested parties. As a result, the European Union violated the standard set forth by Article 17.6(i) requiring lack of bias, and precluded a "fair comparison" per 2.4 as well.

38. Constituting a further violation of the fair comparison obligation of Article 2.4, and similar to the scenario described above, the European Union ignored several factors which should have made it obvious that Brazil was an inappropriate analogue country selection, among others, that costs of production are different in the two countries and the vast differences in per capita GNP.

39. China considers that the PCN methodology was too broad to allow for a fair comparison, thus violating Article 2.4. Despite requests from interested parties, the PCN did not take into account the type, quantity or quality of the leather used, nor the differences between the production processes. Furthermore, the European Union failed to identify footwear designed for sporting activities and STAF, thereby mixing footwear used for sports and casual footwear. As the European Union excluded STAF above a certain price threshold after the PCN had been established, it used a methodology not based on the PCN, which did not allow for a fair comparison.

40. With respect to adjustments for differences in production costs, China considers that fair comparison obligation under Article 2.4 and proper establishment obligation under Article 17.6(i) were violated because the European Union made an upward adjustment to the Brazilian normal value on the basis of the data of the sampled Chinese exporting producers that were not granted MET. At one point in the investigation the European Union did not grant MET to 11 sampled Chinese exporting producers and considered that these Chinese exporting producers did not operate under market economy conditions with regard to the manufacture and sales of the like product in China, but at another point the European Union saw fit to use the very data of the sampled Chinese exporting producers that it otherwise disregarded, and to make significantly high adjustments of 21.6 per cent to the normal value based on the Brazilian producers' costs.

41. China considers that because the European Union wrongly established the like product/product concerned by not excluding STAF below €7.5/pair, even though conceptually and technically there is no difference between STAF below and above €7.5, it violated Article 2.6 of the Anti-Dumping Agreement. The European Union should not have been permitted to sub-categorize STAF into lower priced and higher priced categories, which are respectively included and excluded from the investigation. Since price cannot be the determining factor in what constitutes a "product" within the meaning of Article 2.6 of the Anti-Dumping Agreement the European Union violated that Article.

42. China considers that the European Union violated Article 6.10 of the Anti-Dumping Agreement because the sample of the Chinese exporting producers selected was not based on the

largest percentage of export volumes of the product concerned. This is assuredly the case as the sample was established before the exclusion of STAF from the product scope of the investigation; and the domestic sales volumes of the sampled companies were also wrongly taken into account for sample selection, while the key determining factor should have been the volume of export sales.

43. China considers that the European Union violated Articles 6.10, 9.2 and 9.3 of the Anti-Dumping Agreement with respect to the denial of Chinese exporters of the calculation of individual dumping margins and duty for the same reasons that it considers that the Article 9(5) of the Basic AD Regulation violates those articles *as such*. China notes, however, that the facts of this case are not such that the European Union could claim that it would be exempt from calculating individual dumping margins as a result of the number of producers being so large that individual examinations would be unduly burdensome.

44. China considers that the European Union violated Articles 3.1, 6.10 and 17.6(i) of the Anti-Dumping Agreement and Article VI:1 of GATT 1994 because it did not solicit sampling information from one category of interested party, *i.e.* the producers. The European Union therefore impermissibly discriminated between the complainant and exporting producers with respect to the sample selection procedure and therefore did not perform an "objective examination," and act in an unbiased manner as required by Articles 3.1 and 17.6. By making its injury assessment partially on the basis of unverified data of producers including those not part of the domestic industry, it did not comply with the requirement of Article 3.1 that it make the relevant determination on the basis of "positive evidence".

45. China considers that the European Union violated Articles 3.1, 3.2, 9.1 and 17.6(i) of the Anti-Dumping Agreement because it wrongly calculated the underselling margin by applying a volume-based reduction ratio to the originally calculated price-based margin and by allocating the non-injurious import value in relation to import values for 2005, *i.e.* a period outside the investigation period. Furthermore the underselling calculation was based on only 46.6 per cent of exports of the sampled Chinese exporting producers. Finally, for the calculation of the non-injurious price for the European Union industry, the European Union established a rate of profit based on data relating to footwear that was not part of the product subject to the investigation and concerning only one segment of the domestic industry.

46. The European Union violated Articles 3.1 and 9.2 of the Anti-Dumping Agreement as the anti-dumping duty on Chinese exports was not imposed and collected on a non-discriminatory basis as required by Article 9.2, since the duty rate established for China was higher than that for Vietnam, although both the dumping and injury margins found for Vietnamese exporters were higher than those for Chinese exporters.

47. China considers that the European Union violated Article 3.3 of the Anti-Dumping Agreement because the cumulative assessment of imports from China and Vietnam was inappropriate and it failed to recognize important differences between China and Vietnam concerning import volumes, market shares and prices, most notably the sudden increase of imports from China caused by the lifting of the quota on imports of footwear as of January 2005.

48. China considers that the European Union violated Articles 3.1, 3.2 and 3.4 of the Anti-Dumping Agreement because, among other reasons, (1) it failed to use the verified figures on production capacity and capacity utilization provided by the European Union producers and instead based the examination of production capacity and the capacity utilization on the employment figures, (2) it did not sufficiently consider various injury factors, such as sales values or market share analysis based on turnover, (3) several sampled producers did not show any signs of injury, and (4) it failed to adequately assess the extent by which the 2005 import increase was due to the lifting of the quota on imports of footwear from China.

49. With respect to the causation analysis, China considers that the European Union violated Articles 3.1, 3.5 and 17.6(i) of the Anti-Dumping Agreement as it failed 1) to abide by the non-attribution obligation of Article 3.5 with respect to, among other factors, the lifting of the quota on Chinese imports, the changing trends in demand and Euro-U.S. dollar exchange rate, 2) to take into account factors which had a clear impact on the domestic industry, and 3) to conduct an objective examination based on positive evidence, thereby violating Articles. 3.1 and 17.6(i).

50. China considers that the European Union violated Article 6.1.1 of the Anti-Dumping Agreement and Part I, paragraph 15 the Protocol because the MET questionnaire is a "questionnaire" within the meaning of Article 6.1.1, and thus the respondents should have had 30 days to respond to it. In addition, the extremely high burden imposed by the breadth of information requested in the questionnaire makes it such that parties did not have full opportunity for the defence of their interests, as required by the Protocol, given the 15 day deadline to respond.

51. China considers that the European Union violated Articles 6.2, 6.4, 6.5, 6.5.1 6.5.2, with respect to the treatment of confidential information, as well as Article 12.2.2 of the Anti-Dumping Agreement, with respect to the failure to adequately explain the reasons for its determinations, in very similar ways to those described above with respect to the review investigation. The differences in the facts are detailed in the First Written Submission, to which China refers.

52. China considers that the European Union violated Article 6.9 of the Anti-Dumping Agreement because the additional definitive disclosure regarding a change in the form of the measures was not made in sufficient time for the interested parties to defend their interests, namely only three working days which is not a sufficient time period to analyse and comment on the substantial change in the form of the measures and the modifications in the underlying calculations of the injury margins, and on the appropriateness of using data that relate to a period subsequent to the IP.

53. China considers that the European Union violated Articles 1 and 18.1 of the Anti-Dumping Agreement because based on the violation of the aforementioned Anti-Dumping Agreement and GATT 1994 provisions, the European Union applied an anti-dumping duty in breach of Article VI of the GATT 1994 and the provisions of the Anti-Dumping Agreement.

ANNEX A-2

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF THE EUROPEAN UNION

PRELIMINARY ISSUES

1. **China misunderstands Article 17.6(i) of the *ADA***. In China's view, "the Article should not only be regarded as imposing an obligation, but imposing one of substance beyond that otherwise contained in the *ADA*". China acknowledges that its interpretation of Article 17.6(i) likely does not correspond to the original intent of the drafters. In EU's view, supported by Appellate Body case law, Article 17.6(i) serves as a reminder (or evidence) that the duties of proper establishment of facts and their unbiased and objective evaluation are indeed contained in other provisions of the *ADA*. China's claims based on Article 17.6(i) should be excluded from the Panel's terms of reference because they fail to satisfy the requirements of Article 6.2 DSU.

CHINA'S "AS SUCH" CLAIM AGAINST ARTICLE 9(5) OF THE BASIC AD REGULATION

2. The EU maintains that China's Panel Request failed to meet the requirements of Article 6.2 of the *DSU* with respect to its claims relating to Articles 6.10, 9.3 and 9.4 of the *ADA* and Article X:3(a) of the *GATT 1994*. The EU considers that when the description of a legal claim does not relate to the specific result of the operation of the measure at issue as described by the complainant's panel request, the explanation provided as to how or why the measure challenged violates the various provisions is insufficient to present the problem clearly, as required by Article 6.2 of the *DSU*, and more so in case of "as such" claims. In order for the Panel to examine whether China's Panel Request meets the requirements under Article 6.2 of the *DSU*, the EU submits that the Panel should first examine the measure on its face. Once the scope or operation of Article 9(5) of the Basic AD Regulation has been established, the Panel should proceed to examine whether China's Panel Request complies with the requirements under Article 6.2 of the *DSU*. Otherwise, the requirement to "plainly connect" the measure at issue and the legal claims under Article 6.2 of the *DSU* in a sufficient manner to present the problem clearly will be meaningless. Indeed, it would amount to a mere exercise of "ticking boxes" (i.e. whether the panel request contains a measure, a legal claim and a description of what is at issue), leaving the respondent Member wondering how the measure at issue can be the source of the alleged nullification or impairment of benefits.

3. The text of Article 9(5) of the Basic AD Regulation leaves no doubt that the issue contained in that provision refers to the imposition of anti-dumping duties. When Article 9(5) of the Basic AD Regulation is seen in the context of other provisions of the Basic AD Regulation, the same conclusion is reached about its meaning and content. Since the meaning and content of Article 9(5) are clear on its face, then the Panel should assess the consistency of this measure "as such" on that basis alone.

4. Should the Panel find that China's Panel Request plainly connects the challenged measure with the provisions of the covered agreements in accordance with Article 6.2 of the *DSU* (*quod non*), the EU submits that the Panel should refrain from examining China's claims under Articles 6.10, 9.2, 9.3 and 9.4 of the *ADA* and Article X:3(a) of the *GATT 1994* since the specific measure described by China in its Panel Request (i.e. Article 9(5) of the Basic AD Regulation) does not fall within the scope of the obligations contained in the provisions of the covered agreements invoked by China.

5. The EU requests the Panel to reject China's claims that Article 9(5) of the Basic AD Regulation is "as such" inconsistent with Articles 6.10, 9.2, 9.3, 9.4 and 18.4 of the *ADA*, Articles I:1 and X:3(a) of the *GATT 1994* and Article XVI:4 of the *WTO Agreement*. The relevant part of Article 9(5) of the Basic AD Regulation that China is challenging in the present dispute is meant to address an issue which is not new in the context of the application of anti-dumping rules: how to impose anti-dumping measures on imports from non-market economy countries. In the context of anti-dumping proceedings, the application of Article 9(5) amounts to a purely threshold question: does the supplier meet the five criteria? Or, put in substantive terms, can the applicant company be considered as a supplier acting independently from the State? If the answer by the EU authorities is positive, that IT supplier is considered an independent exporter or producer and the source of the alleged price discrimination, and an individual anti-dumping duty will be specified for that IT supplier. In contrast, if the answer is negative, that non-IT supplier is not considered a genuine exporter or producer, but an entity which does not act independently from the State (which is ultimately the actual producer and the source of the alleged price discrimination) and, thus, that non-IT supplier will be subject to the actual supplier, country-wide duty rate. In other words, Article 9(5) serves to identify the relevant supplier (i.e. an independent supplier or the State and its related export branches) for the purpose of examining whether dumping occurs and then addressing accordingly the actual source of price discrimination.

6. As a non-market economy country, the EU investigating authorities apply Article 9(5) to imports from China. The fact that China is a non-market economy country is very relevant for the present case. In a non-market economy country, State control over the means of production and State intervention in the economy, including international trade, imply that all the means of production and natural resources belong to one entity, the State. All imports from non-market economy countries are therefore considered to emanate from a single supplier, the State. The State (in this case, China) in this sense can be considered as one supplier whose dumping behaviour can be identified and addressed in accordance with the disciplines in the *ADA*. In view of the State's control over international trade, it would not be relevant to name exporting companies which do not act independently from the State separately since they collectively constituted one single supplier or exporting entity, i.e. the State. The application of a single duty rate then also becomes necessary to avoid circumvention of the duties (i.e. the channelling of exports through the supplier with the lowest duty rate). Article 9(5) is therefore addressing this specific situation.

7. China's claims against Article 9(5) of the Basic AD Regulation are based on a misinterpretation of the relevant provisions in *the ADA* as well as China's Protocol of Accession, and fundamentally ignore the relevance of China being a non-market economy country in the present dispute. First, Article 6.10 does not contain a strict rule requiring investigating authorities to always determine dumping margins on an individual basis. Second, contrary to what China asserts, Article 6.10 does not contemplate only one exception (i.e. sampling) where investigating authorities are permitted to depart from the general principle of determining dumping margins on an individual basis. The interpretation that Article 6.10, first sentence, does not contain a strict obligation and sampling is just but one situation where the preference for the individual determination of dumping margins does not need to be followed is supported by the existence of other situations where the preference mentioned in Article 6.10, first sentence, may not apply. Third, as the relevant case-law has clarified, Article 6.10 should not be interpreted as requiring the determination of dumping margins for each legal entity in all cases, regardless of whether they are economically related to each other. Article 9(5) aims at identifying the relevant supplier and the actual source of price discrimination in the context of imports from non-market economy countries (i.e. an IT supplier which acts independently from the State or the State and its related export branches). The EU considers that the relationship between non-IT suppliers and the State is similar to that addressed by the panel in *Korea – Certain Paper*, and thus the reasoning followed by that panel may be applied by analogy in the present case.

8. China also submits that Article 9(5) of the Basic AD Regulation violates Article 9.2 of the *ADA* in that exporting producers in non-market economy countries that do not obtain MET and fail to qualify for IT will not be subject to an individual anti-dumping duty. The EU observes that, in the context of its Article 9.2 claim, China also ignores that, in the case of imports from non-market economy countries, the State and those companies which do not act independently from the State, can be considered as one single supplier of the product concerned and the actual source of any alleged price discrimination. Thus, the imposition of anti-dumping duties "on a country-wide basis" pursuant to the operation of Article 9(5) would imply the imposition of duties on the actual supplier (i.e. "China Inc.") for which injurious dumping is found pursuant to an investigation conducted in accordance with the requirements of the *ADA*. On this basis, China's observations about the terms "appropriate", "amounts", "sources" as well as other contextual considerations would fall. In addition, assuming that Article 9.2 of the *ADA* lays down the principle that anti-dumping duties are applied on an individual basis for each supplier involved, the EU submits that China's interpretation that the only exception to this principle is where it is impracticable to do so "because of the large number of suppliers involved", as provided by Article 9.4 of the *ADA*, i.e. when sampling is used, is incorrect. Indeed, sampling is not the only situation where investigating authorities can depart from the general principle contained in Article 6.10, first sentence. Likewise, Article 9.2 expressly permits the imposition of duties on a country-wide basis in other cases than the sampling scenario, in particular when it is "impracticable" to do so on an individual basis. Moreover, Article 9.4 of the *ADA* cannot be the only exception to the individual imposition of duties, as China argues, because, by definition, that would deprive the third sentence of Article 9.2 of the *ADA* of any meaning. In fact, this interpretation would make that sentence ("impracticable") redundant and unnecessary, contrary to the principle of effectiveness in treaty interpretation, since the only exception would already be mentioned in Article 9.4. The EU considers that Article 9.2 of the *ADA*, third sentence, in view of its text, context, and object and purpose leads to the conclusion that Members are allowed to impose anti-dumping duties on a country-wide basis in cases where the specification of individual anti-dumping duties per supplier would be ineffective. This would be the case, in particular, when the imposition of individual anti-dumping duties per supplier could result in the anti-dumping measure being deprived of any effect on the source of the price discrimination. The EU submits that Article 9(5) of the Basic AD Regulation falls under that category.

9. The EU considers that China's claims under Articles 9.3, 9.4 and 18 of the *ADA* as well as Article XVI:4 of the *WTO Agreement* are entirely dependent on a finding that Article 9(5) "as such" infringes Article 9.2 and, to some extent, Article 6.10. Moreover, the EU notes that China's claim under Article I:1 of the *GATT 1994* depends on a finding as to whether the *ADA* permits an investigating authority to require suppliers in case of imports from non-market economy countries to prove that certain conditions are met in order to obtain an individual anti-dumping duty. If the *ADA* so permits, in view of the *lex specialis* principle, and Article II:2(b) of the GATT 1994, no violation of Article I:1 of the *GATT 1994* can be found. Finally, the EU fails to see how Article 9(5) can fall within the scope of Article X:3(a) of the *GATT 1994*. Thus, the Panel should reject China's claim.

REVIEW REGULATION

10. **Claim II.1 and II.13.** Paragraph 151 of the Working Party Report on the Accession of China creates no obligations for other WTO Members. The purpose of choosing an analogue country is to secure a comparable price as the normal value. China's accusation of bias in the selection of the analogue country is entirely unfounded. The obligation on a Member making the choice of such a country is to find one that is 'appropriate' under the circumstances, not the one that is 'most appropriate'. Competitiveness of the domestic market is a factor to be considered in making the selection, and was amply satisfied by Brazil. Differences in economic development are not relevant. The Commission placed significant, but not exclusive reliance on the representativeness of domestic sales. China's complaints about the lack of specificity of the EU's PCN system of product classification are unfounded.

11. **China errs by disregarding Article 11.3 of the *ADA***. There is a *difference* between saying that Article 3 of the *ADA applies* to an expiry review measure – which is what China argues and what the Appellate Body in the *US – Oil Country Tubular Goods Sunset Reviews* case *explicitly* said is not the case – and saying that Article 3 of the *ADA* may provide "*guidance*" for a consideration of claims raised under Article 11.3 "*where appropriate*". The Panel is asked to review claims II.2 to II.5 in light of the various provisions of Article 3 cited by China, in *isolation* from the disciplines set out in Article 11.3 of the *ADA*. Such an approach constitutes a legal error which should be avoided. For this reason alone, the Panel should not consider China's claims. China's approach is also not justified by the facts of the case.

12. **Claim II.2**. China's claim is legally and factually mistaken. Contrary to China's understanding, the domestic industry for the purposes of the review has been defined as the totality of the EU producers. On law, China effectively argues that a compliance with the requirements of Article 3.1 of the *ADA* depends on the conduct of the sampling procedures pursued for the purpose of establishing dumping under Article 2 of the *ADA*. In the EU's view, Article 3.1 sets up an objective standard (instead of a relative or a comparative standard) the compliance with which has to be considered on the merits of what happened in the injury investigation. Contrary to what China tries to imply – the panel in *EC – Salmon (Norway)* never stated that the disciplines of Article 6.10 of the *ADA* should be followed in an injury analysis. Rather, it stated: "… we see no basis to impose the criteria of Article 6.10 on sampling in the context of injury." In any event, no EU producer was "considered automatically eligible to be sampled" without having to provide detailed information.

13. **Claim II.3**. China's claims are based on legal and factual misunderstandings. On law, the issue of whether an injury analysis based on sampling is consistent with the *ADA* is subject to an examination based on Article 3.1 of the *ADA* (and not Article 6.10 thereof, as China argues). On facts, China's concern is not, in reality, with the availability of data and their presence on the file, but rather with the access of China's interested parties to this data. This is not, however, an issue which arises, legally, under Article 3.1 of the *ADA*. The selection of the sample has in any event been described in several notes available in the non-confidential version of the file. With respect to the producer who discontinued production during the RIP, only the real level of production in the EU during the RIP was taken into account, as explained in the Review Regulation.

14. **Claim II.4**. Contrary to what China asserts, the "domestic industry" in the review investigation did not comprise only the complaining producers. China's claim thus does not correspond to the facts. Further, given that the "domestic industry" was defined as the entire domestic industry (rather than merely the complainants), it was not overly difficult to adjust the Prodcom data to take account of the two companies which were excluded as related (recital 19 of the Review regulation) and the one company which discontinued production (recital 23). The EU submits that in the circumstances of this case, the approach adopted by the EU investigating authority (namely seeking data at the macro-level from Prodcom and producer associations, with subsequent verification), together with subsequent cross-checking of the information received from these various sources, including information obtained from the sample and specialised sectoral studies, was entirely reasonable and perhaps yielded even the highest level of accuracy possible.

15. **Claim II.5**. China's claim is insufficiently specific to qualify under Article 6.2 of the *DSU*. The *ADA* lays down no methodology for determining causation. China's fails in its attempt to show that the EU wrongly attributed to the dumped imports injury caused by other factors. The examination of the issue of 'structural inefficiency' shows that the condition of the EU industry did not break the causal link between the dumped imports and the injury to the industry. Appropriate consideration was given to the effects of non-dumped imports from third countries, contraction in demand, and changes in pattern of consumption; furthermore high labour costs, outsourcing, and exchange rate fluctuations were properly addressed.

16. **Claim II.6**. The EU was correct in removing uncertainties as to the confidential status of submissions, and these explained the delays in making information available in the various instances raised by China.

17. **Claim II.7**. In Article 6.4 of the *ADA* the notion of information is a narrow one, and the provision regulates the period following the provision of information. The various instances raised by China either fell outside the scope of this provision or involved circumstances where its requirements were fulfilled by the EU authorities, both as regards the selection of the sample of EU producers, and of the analogue country.

18. **Claim II.8**. That a particular company is supporting a complaint is a fact that is capable of being kept confidential. The *ADA* does not provide for weighing the importance of protecting confidentiality, and the complainants gave adequate grounds for protecting their identities. The EU's treatment of the annexes to the Review Request and of responses of the sampled EU producers respected the rules on confidentiality. Good cause for protecting information that is 'by nature' confidential is provided by demonstrating that the information falls into this category.

19. **Claim II.9**. Neither Article 6.2 nor Article 6.5.2 of the *ADA* provide a basis for making claims in this context. The complainants' demand for confidentiality was justified.

20. **Claim II.10**. Article 6.8 of the *ADA* does not impose an obligation on national authorities to reject information; it is permissive in character. The company referred to by China ultimately supplied correct data to the EU authorities. The same is true of China's claim regarding the allocation of products to PCNs.

21. **Claim II.11**. China's invocation of Article 11.3 of the *ADA* in a consequential role misunderstands its place in the Agreement as regards expiry reviews.

22. **Claim II.12**. China's invocation of Article 12.2.2 of the *ADA* is so vague as to place its claim outside the limits set by Article 6.2 of the DSU. In the instances cited by China the information published by the EU was sufficient to satisfy the requirements of the *ADA*. The EU was not engaged in 'reconciling diverging information and data' and so did not publish an evidentiary path. The justification for protecting identities was adequately explained as was the evaluation of macroeconomic injury indicators, the representativeness of the sample, the discontinuation of production and several other topics raised by China.

23. **Claim II.14**. China's claim of consequential breach is redundant.

DEFINITIVE REGULATION

24. **Claim III.1/Claim III.20**. The EU considers that China's claims are based on a wrong understanding of the implication of the use of sampling in the present case. Contrary to what China argues, the examination of the MET applications is not required with respect to exporting producers which do not fall within the sample and do not qualify for individual examination. On this basis, the Panel should reject China's claim in their entirety.

25. **Claim III.2**. The third option in Article 2.2.2 of the *ADA* for setting the SG&A and profits in a constructed price requires reasonableness and imposes a cap. The former implies three elements for matching the analogue sales with the original sale – similarity of product, same market, ordinary course of trade. The EU had to balance these, and China has not shown that the EU's decision was unreasonable. The conditions assumed in the cap could not be applied in the circumstances of this case.

26. **Claim III.3 / Claim III.20**. There is no evidence that the Commission was biased in the procedures that it adopted in choosing an analogue country. In this choice the EU was right to place considerable emphasis on the possibility of making comparisons with sales prices. The EU's gave correct consideration to the factors of competition, labour costs, and the representativeness of sales. China has presented no arguments or evidence that call into question the suitability of the EU's PCN system for comparing prices. The adjustment for leather was necessary, and possible because the cost differences could be determined on the basis of the international market.

27. **Claim III.4**. China confuses the notion of 'product concerned' with that of 'like product'; there is no rule that limits the scope of anti-dumping proceedings to like products. China has established no legal rule governing that scope. Nor has China shown that the EU may not use a value limit on its definition of the product scope.

28. **Claim III.5**. China's claim, grounded in Article 6.10 of the *ADA*, is based on an erroneous understanding of the *ADA*. The EU refers to its explanations on this issue provided in the section addressing China's claim II.2. The information on the macroeconomic indicators with respect to the Community industry was obtained from the complaint and the standing forms sent to the complainants. Hence, China is incorrect in submitting that the EU relied on data from associations which included companies that were not parts of the industry. With respect to the issue of verification, China's argumentation is based on a legal error.

29. **Claim III.6 / Claim III.16**. China fails to understand that the purpose of the EU's lesser duty rule is to determine what price increase would be necessary to remove the injury. China's invocation of Article 9.1 of the *ADA* and its shift of focus to the EU's lesser duty rule are not permitted by the DSU because they were not raised in consultations. Article 3.1 of the *ADA* addresses the existence of injurious dumping, not the calculation of the 'lesser duty', which in any case is an entirely voluntary matter. Hence, with respect to the claim at issue, a Member which takes such action is not obliged to observe the legal concepts found in Article 3. There is no basis for claiming that the EU failed properly to evaluate the facts. China has not established that the EU's methodology for calculating the lesser duty was discriminatory.

30. **Claim III.7**. Claims of failure to make an objective examination should be framed under Article 3.1 of the *ADA*. The EU's description of volumes of imports having developed 'in parallel' was clearly not intended as a mathematical expression. The right to cumulate does not depend on the existence of normal conditions of competition. China has not refuted the EU finding that the market shares of China and Vietnam developed similarly.

31. **Claim III.8**. China's interpretation of the notion of production capacity (as an injury factor) is too restrictive; it has not shown that in the circumstances of the footwear industry the EU was not justified in linking it to employment. The combination of data from the whole industry with those from sampled companies is an acceptable, indeed commendable practice. Furthermore, relying on data from all the sampled companies (rather than just three) would have produced the same result. The injury finding involves an overall appreciation of factors, and is not determined by any single factor. Since profit figures are themselves usually small margins, an index of annual change can produce very large figures. Proper account was taken of the margin of dumping.

32. **Claim III.9**. Exporters are not eliminated as a cause of injury merely because some circumstance, such as removal of a quota, has given them the opportunity to dump. The EU fully examined the role of changes in consumer preferences as a potential cause of injury, and its evaluation of consumption is not open to criticism. Exporters cannot escape responsibility for injury by blaming exchange rate movements. The methodology adopted by the EU for injury assessment discounted the effects of changes in export performance.

33. **Claim III.10 / Claim III.11 / Claim III.12**. The complainants made a reasoned application for confidentiality regarding the identities of themselves and their supporters, and the EU justifiably accorded them that treatment. Good cause was given by all these parties. Several of China's claims cover information about which it had invoked no duty of disclosure. Other claims concerned data that were properly accorded confidential treatment. On several matters it appears that no request for the data was made by interested parties. Some of China's claims are stated with insufficient precision to be clearly understood. Its claims of insufficient summarization of confidential information are not justified.

34. **Claim III.13**. The document sent to exporters regarding possible MET was not a 'questionnaire' in the sense of Article 6.1.1 of the *ADA*. That term is reserved for the main, comprehensive list of questions sent to interested parties. Paragraph 151 of China's Accession Working Party Report provides no basis for a claim. The EU gave adequate time for exporters to respond to its queries.

35. **Claim III.14**. The document explaining the changed basis for calculating the 'lesser duty' was a follow-up to the disclosure made by the EU under Article 6.9 of the *ADA*. As such, the EU was under no obligation to allow interested parties the opportunity to comment, although it did in fact do so.

36. **Claim III.15**. China is mistaken is saying that one company was removed from the list of the sampled exporters. Rather, the removal of STAF from the 'product concerned' had consequences for the export volumes of the firms in the sample. The selection criterion of the 'largest volume of the exports from the country in question' allows for consideration to be given to the level of domestic sales because it is qualified by the phrase 'that can reasonably be investigated'. In any event, China agreed with the EU on the composition of the sample.

37. **Claim III.17/Claim III.18**. By it is own admission, China's claim is based on the assumption that the application of Article 9(5) of the Basic AD Regulation is inconsistent with Articles 6.10, 6.10.2, 9.2 and 9.3 of the *ADA* in all cases. As the EU has shown before, China's "as such" claim is without merit and, thus, the Panel should reject it also in the specific context of the original investigation at issue.

38. **Claim III.19**. The EU published sufficient information about the selection of the sample. In other respects China exaggerates the amount of information that must be published, or includes topics where there is no obligation to publish. Not every argument that is raised by an interested party need be addressed.

39. **Claim III.21**. China's claim of consequential breach is redundant.

CONCLUSION

40. The EU requests the Panel to reject all of China's claims.