ANNEX E

EXECUTIVE SUMMARIES OF THE SECOND WRITTEN SUBMISSIONS OF THE PARTIES

ANNEX E-1

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF CHINA

I. INTRODUCTION

1. 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. PRELIMINARY RULING REQUEST ISSUES

2. First, China notes that it is its view that the drafters *did* intend to have Article 17.6(i) set limits on authorities' discretion to act in an unfair manner. After the inclusion in the *Anti-Dumping Agreement* of Article 17.6(i), it seems as though it would have gone without saying that if Members did not conduct investigations in accordance with the broad standards set by the Article, then they would be liable to have the determinations not made in conformity therewith overturned.

3. China also notes, as it did in its response to question 29 by the Panel, that even if the Panel were to consider that Article 17.6(i) were not capable of forming the basis of a claim, the Panel should still consider China to have made its *prima facie* case in respect of its procedural fairness claims through the Article 2.4 fair comparison obligation. The facts which China has said violate the 17.6(i) standards are the same facts which would violate the fair comparison obligation, and for the same reasons (it is noteworthy that the EU responded to these allegations on their merits).

4. With respect to the EU's DSU Article 6.2 arguments in connection with China's Article 17.6(i) claims, China refers to Paragraphs 116 to 135 of its First Written Submission ("FWS") for a general overview of how WTO panels and the AB have interpreted Article 6.2 of the DSU, as well as Paragraphs 149 to 155 of its FWS for its argument as to why China's Article 17.6(i) claims, specifically, satisfied the requirements of that Article.

5. China does not have much substance to add to those arguments in connection with the rest of the EU's DSU Article 6.2 arguments pertaining to the Definitive and Review regulation claims. The *claims*, as China has explained, were properly made in the panel request as they identified the measures at issue and provided a brief summary of the legal basis of the complaint, as those terms have been defined by consistent case law. An elaboration of the *arguments* was provided in China's FWS.

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

6. As an initial matter, China would note that up to this point, it has not relied upon the conclusions of the panel in the *EC - Steel Fasteners* dispute as they relate directly to each of China's as such claims. As of four days before the due-date of this submission, however, the final report of the panel in that dispute has been made public, and China considers that the holdings of the panel in that dispute should henceforth be duly taken into account by the panel in this one.

7. Notably, with respect to China's *as such* claims, the panel in that dispute ruled in favour of China with respect to every claim on which it made an affirmative finding. Specifically, the panel held that Article 9(5) of the Basic AD Regulation violates Articles 6.10 and 9.2 of the *Anti-Dumping Agreement*, along with the MFN principle contained in Article I:1 of the GATT 1994, Article XVI:4 of the WTO Agreement and Article 18.4 of the AD Agreement.[1] In addition, it is noteworthy that the panel considered, in the context of a virtually identical panel request in both cases, that each of China's *as such* claims fell within the scope of Article 9(5) such that they could be considered on their merits, and none failed to meet the requirements of DSU Article 6.2.

8. China additionally notes that in light of the identical nature of the as such claims at issue in the two disputes and the close temporal relationship between them (i.e. no AB report has made any statement which would cast doubt upon the validity of the panel's reasoning in the *EC - Steel Fasteners*), as well as the common parties, China considers the issue of whether or not Article 9(5) is inconsistent with Article 6.10, 9.2 and I:1 of the GATT to have been resolved such that any major contradiction with respect to the result in the two disputes would be difficult to accord with Article 3.2 of the DSU the AB's holding that, while not binding, panel reports create legitimate expectations among Members.

9. As to the substance, China considers that the EU clearly has no legal basis on which to consider that the actual status of China's economy is relevant for the purposes of this dispute, and the Panel report in *EC - Steel Fasteners* has effectively rejected any form of the proposition that either the Working Party report, the Protocol, or any of the EU's "evidence" as to the current state of China's economy can form the basis of a justification to institute a rebuttable presumption which applies to China on a discriminatory basis and has nothing to do with the calculation of normal value.

10. It is on this basis that the Panel held for China with respect to the GATT I:1 claim. It is also noteworthy, as a foundational issue that equally undermines the EU's defenses with respect to *each* of the provisions at issue, that the Panel in *EC - Steel Fasteners* held that in determining whether a company is related to the state as a factual matter, be it in the context of whether the state is a single producer for Article 6.10 purposes or a supplier for Article 9.2 purposes, the burden of proof shall not be shifted to the exporters, irrespective of the economy from which that producer comes. In China's view, the panel held the same burden of proof issue to, in itself, constitute a violations of Articles 6.10 and 9.2 of the *Anti-Dumping Agreement*, as well as GATT I:1.

IV. CHINA'S CLAIMS CONCERNING THE REVIEW REGULATION

11. China recalls that the analogue country selection process falls within the scope of the fair comparison obligation of Article 2.4, first sentence. In paragraphs 154-193 of China's replies to the questions of the Panel in connection with the first meeting with the Panel, China provided a detailed response to the Panel's request that China respond to the EU's argument in its FWS, paragraph 171, that the obligation in Article 2.4 of the AD Agreement to make a fair comparison comes into play after such a normal value has been identified, but not before.

12. China's principal argument in that respect is that the fair comparison obligation contained in Article 2.4, first sentence, is an independent, overarching obligation which stands alone from the more specific obligations relating to the examples of due allowances which follow it. China considers that the analogue country selection and selection process effectively precluded a fair comparison, and therefore the EU is in violation of that obligation. China finds support for this argument in various AB reports' interpretation of the fair comparison obligation, as well as the drafting history of the Article and the wording of China's Protocol of Accession, which considers the "comparison" to be essentially synonymous with the establishment of normal value.

[1] See generally *EC - Steel* Fasteners, paras. 7.11-7.50 for holdings on preliminary issues and 7.51 to 7.137 for holdings on substantive issues relating to the as such claims.

13. Along with the substantive criteria in making the selection and the result, the Fair Comparison obligation informs the procedural fairness aspects of analogue country selection. It would be difficult to imagine that the "comparison" could be truly "fair" in a situation where the substantive criteria used to derive the normal value on which the comparison was based were fair (which is not the case here either), but the actual *procedure* were effectively rigged so as to favour the interests of the domestic producers such that the final normal value were sure to be unrealistically high.

14. Article 2.1 of the *Anti-Dumping Agreement* may form the basis of a claim. In response to the EU's reliance on the AB in *US - Zeroing (Japan)*, China notes that it is not reading Article 2.1, and particularly what it considers to be the necessity to establish a *comparable price*, in isolation. Rather, the obligation to establish a comparable price is in fact found throughout various provisions of the *Anti-Dumping Agreement* such that it cannot be said that Article 2.1 independently imposes it, and the independent imposition of an obligation by a provision is not a necessary prerequisite to its being capable of citation as the basis of a claim.

15. Certain procedural fairness issues must be considered to fall within the scope of Article 2.1. even though there is no embedded due-process language contained within Article 2.1, as is the case with Article 2.4. Nevertheless, China considers that if there is an obligation to secure a comparable price, a process by which that price is secured which is effectively rigged in such a way that the resulting price will not be, or will be far less likely to be "comparable," then that obligation is violated. At the least, China would consider that certain of the facts of this case, which evidence blatant bias in favour of the domestic producers throughout the selection of the analogue country, should violate the general principle of good faith.

16. As to the actual way in which Article 2.1 and 2.4 place limits on authorities' discretion with respect to the analogue country selection process, China considers that the EU's interpretation of the significance of the silence of the contracting parties as to the specific criteria to be used in the analogue country selection is misplaced, and the AB report in *US-Hot Rolled Steel* lends clear support to this view. A reasonable analogue country selection process undertaken in the event of a finding of distortion of domestic prices must *at least aim in the direction* of finding a proxy normal value for that which would have prevailed if not for the distortion. The EU's argument that the only "inferred requirement" is that the country operate under market conditions is not tenable in light of the object and purpose of the *Anti-Dumping Agreement*.

17. In that respect, China considers that the actual criteria which the EU used *in this case* to select the analogue country were, taken as a whole, inappropriate as a means to find a comparable price which could permit a fair comparison because they did not include *any factor* which could evidence an intention to find a proxy normal value for the actual country under investigation.

18. That conclusion notwithstanding the criteria in this case were analysed in an unreasonable manner because the EU placed a manifestly unreasonable amount of importance on sales volume as an analogue country selection criterion, and this was primarily responsible for the inappropriate selection of Brazil. Furthermore, the sales volumes analysed were derived as the result of a violation of the interested parties' due process rights, and thus the procedural fairness issues tainted those analyses.

19. Those arguments notwithstanding, China also considers that the EU's analysis of the "competition" criterion was unreasonable because the effects of the protection of a market must be considered as a counterweight to the fact that there are a significant number of producers in that market. Furthermore, the analysis of the "like product" criterion was unreasonable because Brazilian producers did not even produce one of the major subsets of the product concerned.

20. With regard to the claim concerning the PCN classification system, China has explained that the existence of an overly broad PCN system with broad PCN categories precluded a fair comparison in the review investigation. The differences on account of the physical characteristics and technical differences which affected the production costs and sales prices were not captured by the PCN system used in the review investigation. Chinese producers could not possibly quantify these differences for the hundreds of extremely different footwear types classified under the same PCN in order to be able to request specific adjustments within the PCN. China has also established that there was a change in the methodology of classification of sports, sports-like and trekking footwear from one category to another, contrary to the EU's claim in the FWS that there was merely a rectification of the classification errors. The changed classification further prevented a fair comparison between the PCN-based Chinese export prices and Brazilian normal value within the meaning of Article 2.4 and consequently the EU's evaluation of 'dumping' was inconsistent with Article 2.1 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994.

21. Having mentioned the foregoing, China notes that the legal basis of its claims II.1 and II.13 are Articles 2.1, 2.4, and 17.6(i), and Article VI:1 GATT and Article 11.3. China first established the legal basis for the applicability of Article 2 provisions in the expiry review with reference to Article 11.3; then it provided detailed factual and legal arguments establishing the violation of the provisions of Articles 2.1, 2.4, 17.6(i) and GATT Article VI:1. Thereafter, China argued the breach of Article 11.3 based on the establishment of the violation of the provisions of Article 2 and Article VI:1 GATT 1994.

22. With regard to claims II.2-II.5, China submits that the EU's assertion of a legal error by China is incorrect and must be rejected. China claims that an investigating authority is not required to or mandated to make an injury determination again in the context of a likelihood of injury determination under Article 11.3. However, as was the case in the review investigation, if an investigating authority makes an injury determination and relies upon it for the likelihood of injury determination, then the provisions of Article 3 would be relevant in the context of that injury determination and the violation of the provisions of Article 3 can be alleged in the context of that injury determination.

23. Article 11.3 being termed as a consequential claim in China's FWS does not indicate that it is not the legal basis of China's claim.[2]

24. In China's view, if a panel finds that an investigating authority conducted an injury determination which is inconsistent with the Article 3 provisions, and relied upon that injury determination for its likelihood-of-injury determination, then the latter determination of the investigating authority is also defective and inconsistent with Article 11.3. Such a likelihood of injury determination cannot form a proper foundation for the continuation of the anti-dumping duties under Article 11.3.[3]

25. China has established that the EU made an injury determination in this case based on the provisions of Article 3. The scheme of the injury determination in the review investigation mirrored that of the original investigation. This injury determination then became the essential basis of the EU's finding of a likelihood of continuation of injury. The EU's assertion that "*[t]he determination of likelihood of injury that is made in the Review Regulation is based… **also on an examination of the individual factors pertaining to both injury and causation that are relevant to such a determination. In fact, by far the greatest emphasis is placed on this examination***"[4] is factually incorrect. The likelihood determination of the EU was simply based on a finding of continued dumping and injury to

[2] Panel Report, *US - OCTG Sunset Reviews*, paras. 7.273-7.274.

[3] AB in *US - OCTG Sunset Reviews* also held that the requirement of Article 3.1 that an injury determination be based on "positive evidence" and an "objective examination" is equally relevant to likelihood determinations under Article 11.3.

[4] Para. 93, EU's response question 43 from the Panel.

the exclusion of any additional analysis. The alleged likelihood-of-injury causation analysis was not a part of the likelihood-of-injury analysis of the EU but merely its response to the arguments raised by interested parties. Thus, to the extent the EU made an injury determination in the review investigation, it was required to comply with the Article 3 provisions.

26. As regards the sampling of the EU producers, China considers that since some information for the complainant producers was available to the EU-which was (a) not the relevant information nor the kind of evidence which is necessary for sampling and can be considered "positive evidence"; and (b) not at the same level and to the extent as that solicited for the purpose of sampling through a sampling form and was solicited from the other interested parties including non-complainant producers – the EU did not comply with the objective examination and positive evidence requirement of Articles 3.1 and 17.6(i) in selecting the eight complainant producers in the sample. By not sending the sampling forms to the complainant producers only, the EU did not gather the requisite "positive evidence" and did not 'identify' the facts for the purpose of sample selection and consequently the injury determination, on the basis of an objective examination. China notes that by soliciting sampling information through sampling forms an investigating authority in addition to gathering the relevant data ensures to a certain extent that the data qualifies as "positive evidence".

27. If the Panel were to accept the EU's new definition of the domestic industry, it would only lend further support to China's assertions in the context of the present claim because while the EU claims to have investigated the existence of injury both with respect to the complaining and non-complaining producers, it solicited the information relevant for sampling, i.e. positive evidence, exclusively from the non-complainant producers.

28. The EU's entire defence is based on an assumption unsupported by any evidence, that the "positive evidence", i.e. the information relevant for sampling, that would have been obtained through completion of sampling forms by each individual complainant, was available to it for all the complainant producers individually at the time of sample selection, i.e. before 10 October 2008. This assumption has been refuted by China. With regard to the complaint, the EU's response to question 45 from the Panel makes clear that the data for the full RIP was not available in the complaint; information regarding the sales data for the years 2006, 2007 and the RIP, and information about the product types produced were not provided by each complainant. The declarations of support provided only the production data for 2007 and January 2008 and no information was solicited for sales or sector/product segments. Additionally, the standing forms requested the production and sales volume for the years 2006, 2007 and first half of 2008 and were allegedly completed by 'some' complainants. Even if two, five or ten complainants completed the standing form, clearly the EU did not have the data from each complainant. The EU's assertion that the aggregate data for majority of the complainants that did not complete the standing forms was obtained from the national associations is irrelevant as desegregation of the data of individual producers from the aggregate data of all companies that were members of the national associations is impossible. Aggregate data of the national associations is neither the same as the individual data that the complainants would have provided if they would have completed the sampling forms, nor can that aggregate data be considered "positive evidence". Simply considering the full year 2007 data provided by some complainants in the standing form responses, equal to or representative of the data for the last six months which were part of the RIP amount to extrapolation and not "positive evidence". Product/sector segment information was not sought in the standing form. Last, the EU's use of estimates provided by CEC in the letter of 29 October 2008, to further confirm estimates provided in the complaint, cannot be considered relevant "positive evidence" for sampling. In any event, the reference to the CEC letter of 29 October 2008 which post-dated the sample selection, i.e. 10 October 2008, does not establish that the selection of the eight producers sampled on 10 October 2008 was based on positive, credible and affirmative data relevant for sample selection.

29. China has explained the basis on which it posits the applicability of Article 6.10 for sampling in the context of injury in this case. Based on that reasoning and the interpretation of the panel ruling

in *EC - Salmon*, China considers that if an investigating authority claims to have based the sample principally on the volume of production of the domestic producers, it is obliged to follow the criteria prescribed in Article 6.10 and there is no other methodology which would ensure that the domestic industry as a whole is represented by the sample. The contrary would lead to anarchic situations like the present case where the EU industry's sample comprises of only eight companies of which one completely outsourced production in the RIP to a non-EU country, and in total the sampled companies account for only 8.2 per cent of the domestic industry production if the domestic industry were to be accepted as comprising of the complainants and 3.1 per cent of the total production of the EU industry should the Panel consider that the domestic industry comprises of complainants and non-complainants.

30. Additionally, if the Panel were to accept the new definition of the domestic industry, China considers that the sample of the EU producers selected from a pool of complainant producers only is biased and unrepresentative of the domestic industry as whole which includes non-complainant producers representing 65 per cent of the total domestic industry production. In violation of Articles 3.1 and 17.6(i) of the *Anti-Dumping Agreement*, the EU ensured that only one segment of the domestic industry, notably the complainants that claimed the existence of injury to begin with, were represented in the sample.

31. China submits that the inclusion of a company in the domestic industry sample that definitively ceased EU production and outsourced its entire production at some point during the RIP to a third country and was no longer representative of the entire domestic industry as a whole after that point in time, cannot be justified on the ground that it represented an important business model because such business model pertained to an importer and representativity of business models was not one of the criteria for sample selection as admitted by the EU in the FWS. Even if the data of this company pertaining only to its activity as a producer was taken into account for the injury determination, China considers that the effect of outsourcing on this company would be attributed to the allegedly dumped imports and transposed to the situation of the other EU producers. Consequently an injury analysis based on a sample including such a producer cannot be considered objective and based on positive evidence.

32. China requests the Panel not to accept the EU's ex-post definition of the 'domestic industry' as consisting of complainants and non-complainants. The contrary would make the provisions of Articles 3.1 and 3.4 practically ineffective. Ample evidence on the record as noted by China in the SWS disproves the EU's new definition. The Review Regulation and the Notes for the File show that the EU represented since the beginning of the review investigation that the domestic industry consisted of the complainant producers only, as is indeed standard EU practice. Thus, the EU violated Article 3.4 because it analyzed the macroeconomic injury indicators on the basis of data that included the data of non-complainant producers accounting for around 65 per cent of the EU production.

33. If however, the domestic industry were to be considered by the Panel as consisting of complainants and non-complainants then also China's claim stands as the Prodcom data as well as the data of the national associations for the various macroeconomic indicators used by the EU included the data pertaining to the domestic producers that had delocalized production to the countries concerned; or were related to Chinese exporters or imported significant quantities of the product concerned from China and/or Viet Nam. An unsubstantiated assumption forms the basis of the EU's evaluation of the macroeconomic indicators that only three EU companies out of 18,000 producers outsourced production outside the EU and/or were related to Chinese producers. Additionally, irrespective of the domestic industry definition, China has established in the SWS that the EU's assessment of the injury indicators was not based on "positive evidence" and an "objective examination" of evidence. Notably, Prodcom data is an un-objective source of data, it is available only for calendar years (not the RIP) and at the CN code level; and the data of the national associations contained significant estimates and represented only 80 per cent of the EU production.

34. With regard to causation, China considers that the EU did not objectively separate and distinguish the injurious effects of certain duly demonstrated factors and made boilerplate statements without analyzing the nature and extent of the injury caused by those factors. This is evident from the explanations provided by the EU in the Review Regulation. The EU simply attributed the injurious effect of those other known factors to the dumped imports in violation of Article 3.5. Additionally, with respect to certain other known factors, the EU admittedly refused to analyze the injurious effects of those factors. Consequently, the EU did not comply with its overarching obligation to demonstrate causation and the non-attribution analysis was not done in compliance with Article 3.5.

35. With regard to the procedural issues, in the context of the violation of Article 6.1.2 by the EU, China considers that in the absence of any proof that would establish that the five sampled EU producers did not submit Community interest questionnaire responses, China's claim stands. Concerning the delay in making available the injury questionnaire responses of four sampled EU producers, China notes that the condition in Article 6.1.2, i.e. "subject to the requirement to protect confidential information", which is the basis of all the arguments of the EU, does not come into play as the subject questionnaires were the properly filed non-confidential versions. Investigating authorities have no obligation to ascertain whether the submitted evidence labelled 'non-confidential' is indeed non-confidential. It is the party submitting evidence/a document that has to request confidentiality and demonstrate good cause for confidentiality and in the absence thereof, it is the investigating authority's obligation to promptly make available the evidence submitted by one interested party to another. If the EU's interpretation of Article 6.1.2 were to be accepted, investigating authorities will virtually never have to bother to make promptly available any evidence to interested parties.

36. In the context of claim II.7, China's notes that its claims under Article 6.2 are <u>not</u> merely consequential to its claims under Article 6.4. China has also established an independent violation of Article 6.2. Based on the panel ruling in *Guatemala–Cement II* China considers that there may be cases in which a panel will nevertheless need to make additional findings under Article 6.2, although the more specific provision has not been violated. In the specific context of Article 6.4, China has refuted the misconceived interpretation of the terms 'information', information 'used' by investigating authorities, and timeliness, forwarded by the EU. If the EU's interpretation of Article 6.4 were to be accepted, procedural issues among others concerning the sample selection and analogue country selection cannot be challenged under this Article.

37. With regard to the violation of Articles 6.5 and 6.5.1, China has refuted at length the erroneous interpretations and factually incorrect arguments of the EU in the FWS and in response to the Panel questions. The EU violated Article 6.5 (a) by granting confidential treatment to the names of the EU 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, injury questionnaires of sampled EU producers; and analogue country questionnaires, which were not confidential; and (b) by granting confidentiality to certain information in the above-mentioned documents on its own accord in the absence of "good cause" showing by the parties concerned. The EU also violated Article 6.5.1 (a) by 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.

38. China reiterates its claims II.9-II.12 and refers to its detailed rebuttal in the SWS of the EU's arguments in the context of these claims.

V. CHINA'S CLAIMS CONCERNING THE DEFINITIVE REGULATION

39. China considers that sampling does not apply to the MET determination because Article 6.10 and 6.10.2 do not concern the methodology and data to be used for calculating the margin of dumping. The EU was under an obligation to base the margin of dumping on prices or costs in China even to non-sampled exporting producers which can show to operate under market economy conditions.

40. Alternatively, the criterion "largest volume of export sales" does not guarantee that the sample is representative for a determination whether producers operate under market economy conditions, as it excludes small and medium-sized exporters. Also, by requesting non-sampled companies to respond to MET questionnaires in a very short deadline and then not looking at them, creating a reasonable expectation that they could be granted MET and granting no additional opportunity to apply for individual examination once it was decided to disregard the information supplied by them, the EU did not act in respect of the general principle of good faith and fundamental fairness and the "proper establishment" requirement of Article 17.6(i).

41. China considers that the EU was not excused from individually examining any subsequent submission of non-sampled companies because the size of the sample was extended at the request of the Chinese authorities. It is for the EU to provide evidence that its administrative capacities did not allow for the examination of four additional companies. In any event, in case of sampling, investigating authorities should always allocate some resources in case any company requests an individual examination as otherwise, Article 6.10.2 would be rendered meaningless.

42. China considers that the EU was not allowed to disregard the sales of companies not granted MET for the calculation of the cap for the establishment of the amounts for SG&A and profits for the Chinese company granted MET. In addition, the EU could have used the profit realized by exporting producers in the textile sector – which together with footwear belong to the broader category "Fashion and design industries" – to calculate the cap. In any event, that the method used was unreasonable, because the EU used criteria not provided in Article 2.2.2(iii) to arbitrarily restrict the amount of data that could be used.

43. With regard to the analogue country selection process, China refers to its arguments made in the context of the review regulation that (i) the EU places an unreasonable amount of weight on domestic sales volume as a means to select an analogue country, (ii) the criteria taken as a whole are manifestly unreasonable and necessarily cannot not accord with the obligations to secure and make a fair comparison as the EU does not seriously take into account any criterion which aims at finding a proxy normal value for that which would have existed but for the distortion in the Chinese market. With regard to instances of procedural bias China considers among others that (i) exporting producers did in fact request the EU to undertake more extensive and diligent efforts to secure producer cooperation and better assess the appropriateness of India and Indonesia as analogue countries, (ii) the burden of proving that there were fewer (known) producers in Indonesia lies with the EU and (iii) the EU has been unable to rebut the prima facie evidence that the several Brazilian companies were granted more time, (iv) and the failure to even consider the numerous and repeated arguments made by an interested party constitutes an improper establishment of the facts.

44. China considers that the PCN methodology was too broad to allow for a fair comparison, thus violating Article 2.4 because the EU only made one adjustment even though many differences affecting cost of production were not reflected in the PCN. The method used to exclude STAF was unreasonable because the EU "deemed to be STAF" all PCNs reported with a weighted average CIF price above a price threshold. China notes also that the EU is stating something else in the context of this dispute than what is contained in the published Regulation, namely that the leather cost adjustment was based only on world market prices, and that the EU refused as a matter of principle to make adjustments in previous investigations because the companies were not granted MET, while in

the footwear case, the EU was prepared to make an exception for the calculation of a significant adjustment upwards.

45. China considers that the EU effectively determined that STAF and non-STAF were not 'like products' because the test it applied effectively constitutes a 'like product' test or indeed an even stricter test than the 'like product' test. Given the absence of any production of STAF in Brazil and – or hardly any – in the EU, the EU violated Article 2.6 read together with Articles 3.1 and 4.1 by determining that the product concerned and all corresponding types of footwear produced and sold in Brazil, as well as those produced and sold by the Community industry on the Community market are alike.

46. With regard to the use of different sampling procedures for Chinese exporters and EU producers, China refers to its claim II.2. Also, the EU's conclusion that, in the case of relatively small and medium sized companies, losses cannot be sustained for a significant period without being forced to close down, was based on data from associations which included companies that were not parts of the industry. China considers that the requirement to conduct an objective determination of injury based on positive evidence in this case required a verification of the information provided, given that the information was collected at the complaint stage.

47. China considers that its description of the lesser duty calculation methodology is in line with the wording of Article 9.1, which is relevant to the dispute because it creates the possibility to have a lesser duty and sets the context within which such a rule would operate. While the lesser duty rule provision is voluntary, China submits that, once it is used, an authority is bound to interpret the term "injury" in terms of Article 3. China considers that the lesser duty calculation is covered by Article 17.6(i), as export prices are the facts to be evaluated.

48. China stands by the arguments and conclusions that (i) by mixing data from 2003, the IP and 2005, the EU did not conduct an unbiased and objective examination and this violated Articles 3.1 and 17.6(i), (ii) an unbiased and objective authority would not apply a different standard either (a) in terms of ensuring a fair comparison by not including all export sales when using the lesser duty rule or (b) by using different datasets for dumping and injury margin calculations, (iii) by basing the profitability on one part of the Community industry, especially in light of the fact that profit had never exceeded 2 per cent even in the 2003 non-injurious situation, the EU violated Article 3.1 by not conducting an objective examination, and (iv) by collecting a higher duty for China than Viet Nam when all objective measures indicated that the opposite was true, the EU violated Article 9.2.

49. China considers that the EU failed to consider an important asymmetry between the development of the import volumes from China and from Viet Nam, as the 2001 import volumes from China were much lower than for Viet Nam and the increase in imports from China occurred only towards the end of the IP, and thus the volume of imports did not develop "in parallel". The Definitive and Provisional Regulation do not contain any compelling explanation as to why, in light of the suppression of the quota in 2005 and the acceleration of imports during the first quarter of 2005 due particularly to the development of the Chinese imports, the EU still considered that a cumulative assessment of the imports was appropriate.

50. China did not purport to propose a definition of production capacity that would fit in all circumstances and in any event the EU cited an example which does not apply to the facts of this case or referred to figures which are not on record. In addition, by taking employment as a proxy for production capacity, the EU analysed this factor only for part of the Complainants. With regard to the analysis of "other factors" China considers that EU's arguments should be rejected.

51. Concerning causation, the one common theme is that the explanations given by the EU evidence the erroneous understanding of the non-attribution requirement as being an obligation

completely distinct from the obligation to demonstrate that the dumped imports are, through the effects of dumping causing injury as set forth by Article 3.5, first sentence.

52. As to the 15 days to reply to the MET questionnaire, a recent panel report has ruled that there may be a set of initial questionnaires. China reiterates that there is absolutely no bar to the consideration of an uncited provision (para. 151 of the WPR and Article 6.1) in support of a claim relating to a provision which was cited in a panel request.

53. China does not consider that specific and subjective valuations made by one party from Viet Nam, concerning the additional disclosure, could simply be extended to all parties. Furthermore, the *EC – Salmon (Norway)* applied to a reassessment of facts, while in the present case the disclosure used facts occurring after the period of investigation, namely in the calendar year 2005.

54. By including exports of STAF in the largest volume of exports of non-STAF from China, such as exports from the company PWC, the EU failed to base the sample on the largest percentage of the exports from the country in question which can reasonably be investigated. In addition, the consideration of domestic sales by the EU is based on a wrong interpretation of the notion of reasonableness as it appears in Article 6.10.

55. As regards the claims arising as a consequence of the fact that Article 9(5) of the Basic AD Regulation is inconsistent with the provisions as such, unless the panel disagrees with the clear holdings of the *EC – Steel Fasteners* panel with respect to China's Article 9.2 and 6.10 claims, then it must find that the EU violated those articles in the context of the as applied claims as well.

56. China reiterates its claims III.10 to III.12 and III.19 and refers to its detailed rebuttal in the SWS of the EU's arguments in the context of these claims.

ANNEX E-2

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THE EUROPEAN UNION

INTRODUCTION

1. Pending the Panel's response to the EU Request for a Preliminary Ruling, the EU notes that this Request has affected the way in which the European Union has been arguing its claims before the Panel. The fact that the European Union addressed in good faith (fully or at least partially) some other China's claims which were the subject of the Request does not mean that the European Union accepted that those claims had been brought properly within the Panel's terms of reference.

2. Instead of repeating the EU arguments, the European Union focuses on addressing those assertions and arguments brought by China at the First substantive meeting as well as in China's Responses to Questions from the Panel and the European Union. The fact that the European Union does not specifically comment on a certain statement or a response made by China does not mean that the European Union agrees with it. Rather, it means that the European Union considers those statements irrelevant to the claims at issue or rebutted by the arguments made by the European Union in previous submissions.

ARTICLE 17.6(I) OF THE ADA

3. There is no question that WTO Members should establish facts properly and evaluate them in an unbiased and non-objective way *when discharging their WTO obligations* in the conduct of domestic anti-dumping proceedings. The standard of review established in Article 17.6(i) achieves – from the practical perspective – just that objective. In essence, this standard reflects a corresponding obligation (obligations) which is (are) imposed on WTO Members by "other provisions" (Appellate Body Report, *US – Hot-Rolled Steel*, para. 56) of the *ADA*. It follows that to achieve China's objective to make WTO Members establish facts properly and evaluate them in an unbiased and non-objective way, it is not necessary to construe Article 17.6(i) as a separate legal basis. Conversely, doing so would be counterproductive and of concern for the WTO system.

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

4. The European Union observes that China has not yet addressed the arguments made by the European Union in its request for preliminary rulings and First Written Submission that China's Panel Request failed to meet the requirements of Article 6.2 of the DSU. Essentially, China seems to try to identify the specific measure in the description of the legal claims. This in itself implies that the identification of the specific measure, as required by Article 6.2 of the DSU, was insufficient. The European Union has also explained that Article 9(5) addresses a threshold question and provides for the imposition of anti-dumping duties on an individual basis (in the case of IT suppliers) or on a country-wide basis (in the case of non-IT suppliers). Other provisions of the Basic AD Regulation address the individual calculation of dumping margins, how those margins are calculated and how the level of anti-dumping duties is established. Likewise, the European Union recalls that the dumping margin does not serve in all cases as the basis for establishing the level of anti-dumping duties since the European Union has adopted the lesser duty rule (i.e., the anti-dumping duty may be based on an

injury margin). Thus, the explanations as to why Article 9(5) violates the covered agreements do not relate to the specific measure identified by China in its Panel Request; rather, those explanations seek to expand the measure at issue to other aspects of the Basic AD Regulation which were not identified by China in accordance with Article 6.2 of the DSU. The European Union further observes that compliance with the requirements under Article 6.2 of the DSU is not only a due process issue, but also a jurisdictional matter. What China cannot do is to specify Article 9(5) in its Panel Request, state that it "effectively" provides for one specific issue (in relation to the imposition of anti-dumping duties) and then allege violations of other provisions which relate to other aspects which may or may not derive from the Article 9(5) determination, alone or in combination with other provisions (not identified by China) of the Basic AD Regulation. This is therefore both a jurisdictional and a due process issue into which the Panel should look carefully. Consequently, for all the reasons mentioned in its previous submission, the European Union 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.

5. The European Union observes that China has not made any new arguments concerning its claims under Articles 9.4 and 18.4 of the *ADA*, Article X:3(a) of the GATT 1994 and Article XVI:4 of the WTO Agreement. Accordingly, the European Union will only address China's arguments concerning Articles 6.10, 9.2 and 9.3 of the *ADA* and Article I:1 of the GATT 1994. In particular, the European Union will divide its analysis into China's claims under the *ADA* and China's claims under Article I:1 of the GATT 1994.

6. With respect to China's claims under the *ADA*, the European Union has explained in detail in its submissions why China's claims are without merit. To recall, China's main argument is that Article 6.10 mirrors Articles 9.2 and 9.4 of the *ADA*. According to China, since sampling is the only exception to the individual determination of dumping margins contained in Article 6.10, first sentence, the imposition of anti-dumping duties in accordance with Article 9.2 must also be done on an individual basis. The European Union has shown that sampling is not the only exception to the general preference of individual determination of dumping margins. The European Union has provided examples taken from its own practice to show this. The European Union can also provide other hypothetical examples, such as the one already explained during the First Hearing. Indeed, in a case where sampling is not used (e.g. there are three known cooperating exporters representing almost the totality of exports), it may occur that the investigating authority has to construe the normal value for the three of them on the basis of the same information (facts available – e.g. because relevant information is not provided in the questionnaire responses), and may have to use the same export prices for all of them (e.g. if it finds double invoicing or the accounts/records of the company are not complete). In those circumstances, the investigating authority would calculate one single dumping margin for all three suppliers and would impose a single anti-dumping duty on all three. This is permitted by Articles 6.10 and 9.2. Needless to say, the three suppliers would be entitled to request a refund pursuant to Article 9.3.1 if they can show later on that the anti-dumping duty imposed does not reflect their specific level of dumping. This is the mechanism envisaged in the *ADA* to prevent abuses by Members while ensuring an adequate protection pursuant to an anti-dumping investigation.

7. Moreover, if other provisions of the *ADA* (such as Articles 6.8 or 9.5, as China recognises) directly and expressly permit to depart from the "mandatory rule" (as China posits) contained in Article 6.10, first sentence, the only conclusion that the treaty interpreter can reach is that Article 6.10 cannot be interpreted in such a rigid manner.

8. If anything, China's reaction to the examples posed by the European Union shows the weakness of its case. First, China recognises that, pursuant to Article 6.8, investigating authorities do not need to calculate an individual dumping margin (in the sense of specifying a duty rate for an exporter by name) when the exporter fails to cooperate in the middle of the investigation. In other words, even if the exporter or producer is "known", such an exporter or producer would fall under the category or group of non-cooperating suppliers/residual duty/all others rate. Its own data would not

be used to calculate an individual dumping margin and its name would not be specified in the anti-dumping measures (just as part of the residual duty or "all others" rate). Second, in the case of the trader, China ignores that the panel in *EC – Salmon (Norway)* already concluded that, according to Article 2.5 of the *ADA*, "investigating authorities may be entitled to focus their determination of the existence of dumping on a producer's pricing behaviour, notwithstanding the existence of a known exporter that is responsible for the export sales under investigation". In other words, even if there is a "known" exporter (i.e., trader), there is no need to calculate an individual dumping margin for that trader. Third, in cases where it is not possible to identify the actual producer of the product concerned, China argues that the producer is not known. While the identity of the producer may be known, the true problem is to relate specific transactions to the known producer. In any event, China fails to see that in those cases the "exporter" will be "known" and, despite of that, no individual dumping margin is calculated for that "known exporter" (yet again another exception to the strict rule posited by China in Article 6.10, first sentence). Fourth, with respect to the example where the information gathered does not allow to calculate individual dumping margins per supplier, China only asserts that just because the drafters did not envision and list other hypothetical scenarios which would necessarily call for a derogation of the general rule contained in Article 6.10, first sentence, this does not imply that the exception in Article 6.10 is one of many. The European Union disagrees. The recognition of other situations where investigating authorities can depart from the general rule contained in Article 6.10, first sentence, implies that such a rule is a general preference or principle that may not be followed in some cases. This further implies that Article 6.10, second sentence (i.e., sampling) is not the only exception to that general preference.

9. Moreover, the panel in *Korea – Certain Paper* identified situations where, even if there were several legal entities involved, all together could be considered as a single exporter or producer "for the purposes of the dumping determinations in anti-dumping investigations". In this respect, as the Appellate Body has acknowledged, it is well recognised in international economic and trade literature that "dumping" is "international price discrimination". As Article VI:2 of the GATT 1994 and Article 9.1 of the *ADA* further state, the purpose of imposing and collecting anti-dumping duties is to "offset or prevent dumping", that is, to address the source of price discrimination. Consequently, a proper identification of the single exporter or producer in a case where there are several related companies allows the imposition of anti-dumping duties on the "actual source of price discrimination" (or, in other words, on the supplier found to be the source of dumping). This also permits avoiding potential circumvention at a later stage. Article 9(5) follows the same logic and seeks to identify the relevant supplier (i.e., an IT supplier which acts independently from China, or China and its related export branches (non-IT suppliers) which are not acting independently from 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).

10. The differences in the elements examined in *Korea – Certain Paper* and the Article 9(5) criteria lie in the different context where the panel made its findings. The reversal of the burden of proof in cases on non-market economy countries, or put in different terms, the fact that NME exporters have to show that they comply with the Article 9(5) criteria, is further justified in the case of imports from China. Indeed, China has not contested the evidence provided by the European Union (which relies not only on two reports, but also on extensive findings made in the context of anti-dumping investigations and on China's constitution and institutional framework) showing how China interferes in the export activities of private companies in China. Moreover, under Section 15(d) of China's Protocol of Accession, the European Union is entitled to consider China as a non-market economy country until 2016, although it has the possibility to acknowledge that market economy conditions prevail in certain industries or sectors. The European Union has not made use of this possibility and, despite recognising the efforts made by China in this respect, still considers that China is not a full market economy for the purpose of anti-dumping proceedings.

11. There is specific wording in Section 15(a) of China's Protocol of Accession already providing for the reversal of the burden of proof when determining price comparability under Article VI of the

GATT 1994 and the *ADA*. "Price comparability" in the sense of Article VI of the GATT 1994 and Article 2.1 of the *ADA* refers to the dumping determination. As per Section 15(a)(ii), in determining the existence of dumping, the importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China "if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product". The term market economy "conditions" does not encompass the situation when State intervention in the economy including international trade is so substantial that operators cannot act independently from the State in their export activities. Likewise, the term "sale" also includes "export" sales. Thus, Section 15(ii) of China's Protocol of Accession allows investigating authorities to have recourse to "a methodology that is not based on a strict comparison with domestic prices or costs in China" when determining the existence of dumping if the producers under investigation fail to show the existence of market economy conditions.

12. With respect to China's claim under Article I:1 of the GATT 1994, the European Union notes that China's argument is based on the presumption that the *ADA* does not allow for treating suppliers from non-market economy countries differently. In other words, China assumes what it pleads for (i.e., that Article 9(5) violates certain provisions of the *ADA*) in order to conclude that there is no conflict with Article I:1 of the GATT 1994. Such a circular argument should be rejected. More so where there are other references in the *ADA* which allow WTO Members to treat non-market economy countries differently. What China seems to argue is that even in cases where there are recognised exceptions to the non-discrimination principle in the *ADA* (or elsewhere, such as Section 15 of China's Protocol of Accession), those exceptions are contrary to Article I:1 of the GATT 1994. That approach ignores the fundamental principle of *lex specialis* and the General Interpretative Note to Annex 1A of the WTO and reduces all exceptions to nullity.

13. Consequently, the European Union requests the Panel to reject China's claim that Article 9(5) is "as such" inconsistent with Articles 6.10, 9.2, 9.3, 9.4 and 18.4 of the *ADA*, Articles I and X:3(a) of the GATT 1994 and Article XVI:4 of the WTO Agreement.

REVIEW REGULATION

14. **Claims II.1 and II.13.** Members are free to use a PCN system when comparing export prices and normal values unless it prevents a fair comparison. Differences that are not reflected in the system can be taken account of when making comparisons. China has gone outside the terms of reference in complaining about the way particular comparisons were made. It can find no authority illustrating its argument that Article 2.4 applies to the choice of the normal value, and the case law points in the opposite direction. The terms of the Accession Protocol clearly establish that the only obligations arising from the Working Party Report are those binding China. China's new criterion for choosing the normal value – what the value would have been if sales had been made in the ordinary course of trade at the same level of trade in the domestic market – has no support outside one specific, limited context. Its attempts to justify this criterion by examining the relevant texts are unsuccessful. The term 'appropriate' is not explicitly attached to any rule governing how the choice of analogue country should be made, but that fact is not significant since there is no doubt that the choice is subject to implicit rules and principles, even if these cannot be stated with great certainty. The European Union took into account competitiveness and representativeness in choosing Brazil as the analogue country, and such rules may require consideration of this kind.

15. **Issues common to Claims II.2 to II.5 and II.11.** It seems that China, the European Union and the United States agree that errors or inconsistencies with Article 3 made in the finding of injury made in the context of an expiry review do not automatically or necessarily lead to a finding of a violation of Article 11.3 *ADA*. Rather, inconsistencies in the injury finding with Article 3 can lead to a violation of Article 11.3 of the *ADA* only "if the investigating authority bases its likelihood of injury determination entirely on the injury determination" (as phrased by China), or if "IA based its likelihood determination to *a decisive degree* on a defective finding of injury" (the European Union)

or if "defects in this new present injury finding are critical to the expiry review and undercut the factual basis underlying the determination of continuation or recurrence of injury" (the United States). The applicable legal test, described above, has profound implications for the ways in which the Panel should dispose of China's claims. First, these claims are, factually, based upon China's unsupported assertion that the European Union relied entirely in its determination of the likelihood-of-injury on its finding of injury. This is incorrect and the Panel can dismiss China's claim on this basis alone. Such a ruling would be fully consistent with the legal test that China itself considers applicable and with respect to which the evidentiary onus thus lies on China. Second, China asked the Panel to rule on its claim of a violation of Article 11.3 *ADA* as a mere *consequential* claim. This construction of claims contradicts China's own legal test concerning the applicability of Article 3 in the expiry reviews and invites (and mandates) the Panel to adopt the theory that some defects (regardless of their extent) in the finding of injury made in the context of an expiry review *automatically and necessarily* render the determination of the likelihood of injury inconsistent with Article 11.3 *ADA*. This is legally erroneous and, hence, the Panel should dismiss China's claims. As a final remark, the European Union stresses that what is at issue is whether the EU's determination of the likelihood-of-injury satisfied the obligations of Article 11.3 *ADA*. This is what China should be asked to prove in a claim against an expiry review. So far, however, all the debate before the Panel concerned the compliance with Article 3 of the *ADA*. China's way of framing its claims suggests that the Panel should review China's claims with respect to the injury finding in isolation from the disciplines of Article 11.3 of the *ADA*. Yet, the correct focus of the injury should be whether China has *established* that the EU IA's determination of likelihood of injury contradicted the requirements of Article 11.3 of the *ADA*. This is not the case.

16. **Claim II.2**.Instead of clarifying the issues, China's response to Question 39 obfuscates them by departing from the original claim set out in the Panel request and developed in China's First Written Submission. China's response includes contradictory statements which make it difficult for the European Union to understand what actually China's argument is.

17. **Claim II.3** With respect to applicability of Article 6.10 of the *ADA* to injury sampling, for careful readers of the *EC – Salmon (Norway)* case China's argumentation comes as a *déjà vu*. China does not bring any new element or idea into the discussion. When considered carefully in light of the facts of the present case, in effect, China is saying that in the circumstances at hand an investigation of injury cannot take place. Eventually, the Panel does not need to inquire into the representativeness of the sample. What China claims under its Claim II.3 is that the EU producers' sample was neither statistically valid nor represented the largest percentage of production as required by Article 6.10 *ADA*. Since there are no legal requirements to sample companies in an injury analysis in accordance with Article 6.10, China's claim can simply be rejected on law. The issue of whether the EU IA acted inconsistently with Article 3.1 *ADA* under Claim II.3 depends on whether there was sufficient information on the record for a selection of the sample in accordance with the requirements of Article 3.1 *ADA*. As the European Union explained also in its First Written Submission, in the context of a discussion under Article 3 of the *ADA*, there may indeed be very good reasons for keeping a company which discontinued production in the RIP in a sample. China did not make a claim under Article 4.1 of the *ADA*.

18. **Claim II.4** Regarding Prodcom, if China is really of the view that the possible presence of related companies invalidates a legal analysis under Article 3.4 of the *ADA*, China is effectively saying that in situations where the domestic industry is very large, an analysis of the relevant factors cannot be made consistently with Article 3.4 *ADA*, since there is always the risk that some such companies would be included. Regarding China's assertion concerning the reliance on information from the national associations in the analysis of the injury factors assessed at the macroeconomic level, China misunderstands the analysis which was undertaken. The European Union also does not see a reason for which reasonable estimates should not constitute positive evidence.

19. **Claim II.5** A determination of likelihood of injury under Article 11.3 should not be equated with a determination of likelihood of dumping in so far as reliance is placed on a finding of existing injury or dumping.

20. **Claim II.6** The failure of one interested party to appreciate that some EU producers had not replied to the Community Interest questionnaires was not the European Union's fault. The burden lies on China to prove the factual assertions (disputed by the European Union) that form part of its claim. China's reiterations of its criticisms of the grant of identity confidentiality to EU producers remain unconvincing. The EU producers' had limited legal assistance. The Commission assisted all interested parties, without discrimination, in providing the information that had been requested of them.

21. **Claim II.7** The obligation in Article 6.4 to 'provide timely opportunities for all interested parties to see all information' available does not extend to the investigating authority's intentions or reasoning. China's contentions regarding the notification obligations of the investigating authority during the course of the investigation have no basis in law. The European Union's decision on the analogue country did not become irrevocable at the stage that is alleged by China.

22. **Claim II.9** China has not produced further effective criticisms of the decision to accord EU producers confidentiality for their identities.

23. **Claim II.10** The European Union prefers to use actual data rather than 'facts available', even if that means accepting corrections to evidence that has been submitted. Such efforts are just what is required by Article 3.1. China has provided no evidence that could establish a case of discrimination by the European Union in exercising this power.

DEFINITIVE REGULATION

24. **Claim III.1 and III.20** The European Union considers that the examination of the MET applications was not required with respect to exporting producers which, as was the case in the Footwear investigation, did not fall within the sample and did not qualify for individual examination. On this basis, the Panel should reject China's claims in their entirety. Moreover, China fundamentally ignores that, according to paragraph 342 of China's Working Party Report, the commitments listed therein "are incorporated in paragraph 1.2 of [China's Protocol of Accession]". Thus, only the commitments listed in paragraph 342 of the Working Party Report are integral part of the covered agreements. Since paragraphs 150 and 151 of China's Working Party Report are not listed in paragraph 342, it should be concluded that they are not part of the covered agreements. China also takes issue with the meaning of Section 15(a)(ii) of its Protocol of Accession and argues that the term "industry" does not imply that the use of NME methodologies is precluded only if it can be established that the "industry", rather than the single operators within such industry, operate on market economy conditions. The European Union disagrees. In general terms producers requesting MET must show that market economy conditions prevail in the industry (as opposed to individual companies) producing the like product with regard to manufacture, production and sale of that product. However, as a unilateral concession vis-à-vis China, the European Union examines whether an individual producer can be considered as a market economy producer (and thus grant MET) even if market economy conditions cannot be shown to prevail in the industry or sector producing the like product. Finally, China considers that sampling cannot apply to a determination whether market economy conditions prevail in the industry concerned. In this respect, the European Union notes that China again disregards the consequences of using sampling. Even in cases concerning market economy countries, prices or costs of non-sampled cooperating exporting producers are not examined and there is no obligation to do so, other than Article 6.10.2 of the *ADA*. Similarly, there was no obligation to examine MET applications of non-sampled cooperating exporting producers in the Footwear investigation. In view of the above, the Panel should reject China's claim in their entirety.

25. **Claim III.2** China's proposal of an alternative basis for determining administrative, etc., expenses and profits is irrelevant in the light of the standard of review set by Article 17.6(i) in regard to evaluations of the facts. China could succeed only by showing bias or non-objectivity on the part of the European Union.

26. **Claim III.5** The European Union decided to opt for the bifurcated approach and based its analysis on multiple sources of information, subject to multiple cross-checking. This method is entirely reasonable and yields possibly the most reliable results under the circumstances. China satisfies itself with criticizing this method without offering a credible and feasible alternative. The EU IA could, instead of relying on its bifurcated approach, simply extrapolate information from the sample composed of complainants to the entire domestic industry. Intuitively, it would seem that China would not really prefer such an approach, given the context of a discussion provided by China's claim II.4.

27. **Claim III.9** The issue of the collective effect of 'other factors' as a cause of injury was not raised by any interested party in the investigation, nor in this dispute by China until the Panel itself poses a question. China's notion that the European Union's 'break the causal link' methodology precludes a collective assessment is mere assertion. China has given no basis for its contention that the European Union should have carried out a quantitative analysis. It has adduced no evidence to support a claim that failure to make a collective assessment in the initial investigation 'attributed improperly to dumped imports the injuries caused by other factors.' Since the European market operates in euros it is in that currency rather than dollars that undercutting must be assessed. The causation issue to be determined under the *ADA* is the effect of the 'dumped imports' and not that of the margin of dumping. The concentration of dumped imports at a particular time is not an 'other cause' of injury but may constitute an exacerbated form of injury caused by the dumped imports.

CONCLUSION

28. For the reasons set out in this and previous submissions by the European Union, China's claims should be rejected in their entirety.