ANNEX A

EXECUTIVE SUMMARIES OF THE FIRST WRITTEN SUBMISSIONS OF THE PARTIES

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

ANNEX A-1

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF CHINA

I. THE UNITED STATES FAILED TO EVALUATE PROPERLY WHETHER IMPORTS FROM CHINA WERE "IN SUCH INCREASED QUANTITIES" AND "INCREASING RAPIDLY," AS REQUIRED BY ARTICLE 16.1 AND ARTICLE 16.4 OF THE PROTOCOL

1. The United States failed to evaluate properly whether imports from China were in "such increased quantities" and "increasing rapidly" as required by Articles 16.1 and 16.4 of the Protocol of Accession. Simply finding any increase does not satisfy the requirements of the Protocol. The text creates the obligations to find both that the increase is occurring over the more recent period of time and that the recent increase is "rapid." This standard was not met by the United States in this case.

A. ARTICLES 16.1 AND 16.4 REQUIRE THAT IMPORTS FROM CHINA BE IN "SUCH INCREASED QUANTITIES" AND "INCREASING RAPIDLY"

2. The text of Article 16 uses specific language to define the narrow circumstances under which increasing imports from China can be subject to product-specific safeguards. The ordinary meaning of the language, and its use of the present tense, emphasizes the importance of time – specifically the most recent period. The use of the term "such" indicates that not just any increase will be sufficient. Accordingly, a Member seeking to restrict imports from China must focus on the recent period of time, and must find that the increasing imports during that recent period of time are of such a magnitude as to cause or threaten injury. The Member must *also* find that the recent imports from China are increasing "rapidly." This key additional requirement sets a standard even higher than that for global safeguards.

3. The context of both Article 16 and other WTO agreements supports this interpretation. For safeguards to be imposed under Article 16, imports from China must be "in such increased quantities" or under such conditions as to cause market disruption to the domestic industry. Article 16.4 adds an additional requirement, stating that for market disruption to exist, imports from China must be increasing "rapidly" (absolutely or relatively).

4. Because both Article 2.1 of the *Agreement on Safeguards* and Article 16.1 of the Protocol use the phrase "in such increased quantities," the Appellate Body decisions interpreting this identical language provide context in this case. These decisions state that the use of the present tense requires domestic authorities to focus on the most recent past. The Appellate Body has stated that trends – especially in the most recent past – must be examined and interpreted in context of the entire period. In addition, the language of "in such increased quantities" requires increased imports to have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Thus, the context reveals that a finding of increased imports is not a mere mathematical calculation, or simple end-point-to-end-point analysis.

B. THE USITC DID NOT COMPLY WITH THE "IN SUCH INCREASED QUANTITIES" AND "INCREASING RAPIDLY" REQUIREMENTS OF ARTICLES 16.1 AND 16.4

5. The United States did not respect the requirements of Articles 16.1 and 16.4 for finding increasing imports under the Protocol. Instead, the USITC devoted just a single page of its

determination to this issue and failed to address adequately the most recent period of time and trends within the period. The USITC also failed to find an increase in imports qualitatively and quantitatively sufficient as required by Articles 16.1 and 16.4. Thus, the USITC analysis failed to meet the higher standard for product-specific safeguards against China under Article 16.

6. Although the Appellate Body requires an adequate explanation of findings, none was provided by the USITC. The USITC never discussed the implications of the low base-level of imports from China that existed at the beginning of the period. The USITC also relied too heavily on an "end-point-to-end-point" analysis, and ignored trends – an approach the Appellate Body has condemned as insufficient. Had the USITC properly analyzed the more recent trends, it would have found a sharp difference between trends over the earlier periods and the more recent 2007 to 2008 period. In 2008, both the increase in quantity and the percentage of increase in imports fell. The increases in imports from China were the smallest of the period during 2008. The average increase in imports from China from 2004 to 2007 in quantity was 9 million tyres, and the average rate of increase was 42.1 percentage points. Yet in 2008, the increase in quantity was just 4.5 million tyres and the average rate of increase was only 10.8 percentage points. A quarterly breakdown of imports from China demonstrates even more dramatically that imports were not rapidly increasing.

7. Moreover, the USITC ignored its standard practice and refused to gather data for the first quarter of 2009, data which show a sharp decline in imports from China – i.e. over 2 million tyres. The data show that over the most recent two-year period, from Q2 2007 to Q1 2009, imports from China fell by 14.2 per cent. Notably the USITC gathered interim data in every other Section 421 safeguard investigation in which an interim period was completed, and even collected interim data in a separate investigation that commenced the same month as this case, only *11 days prior*.

8. The USITC findings also did not explain why the import trends over the most recent two years were sudden enough, sharp enough, or significant enough to qualify as "increasing rapidly" as required by Article 16. The imports from China were not "sudden enough" because the modest increase over the period was steady, not sudden. The largest jump in imports occurred in Q2 2007 – two years before the USITC decision, and approximately 86 per cent of the increase in volume of imports occurred between 2005 and 2007, not 2008. Nor were the imports from China "sharp enough," as increases in market share were consistently in the 2 to 3 percentage point range during the period. Imports peaked in Q2 2008, and then declined 7.8 per cent relative to Q2 2008 over the next two quarters. Increasing imports from China were not "significant enough" to meet the high standards of Article 16. The rate of increase declined in 2008 (53 per cent to 10.8 per cent), with a further, absolute decline (-14.7 percentage points) in import levels in first quarter of 2009 as compared to Q1 2008.

II. THE U.S. IMPLEMENTING STATUTE'S CAUSATION STANDARD IS INCONSISTENT AS SUCH WITH ARTICLE 16.1 AND ARTICLE 16.4 OF THE PROTOCOL

9. The U.S. statute implementing the causation standard of Article 16 into U.S. law is inconsistent "as such" with Articles 16.1 and 16.4 of the Protocol. Article 16 expressly requires that imports from China be "a significant cause" of the material injury being alleged. Yet the U.S. statute defines "a significant cause" to mean merely "a cause that contributes significantly" to the material injury. This language, "contributes significantly," has no basis in the text of Article 16, and impermissibly lowers the standard for "significant cause."

10. The text of Article 16 is explicit and unambiguous as to the conditions under which the transitional product-specific safeguard mechanism can be implemented. Article 16.1 requires that imports from China "cause or threaten to cause market disruption." And Article 16.4 states that "market disruption" may exist only if rapidly increasing imports from China are a "significant cause" of material injury. Thus, the ordinary meaning of the language requires a strong causal connection to

show that rapidly increasing imports are a "significant cause" of injury. As with increasing imports, this causation standard is more demanding than the standard for global safeguards. The context supports this interpretation as the Working Party Report on the Protocol of Accession confirms that Article 16 requires a "causal link" between imports and injury. The term "causal link" appears at Article 4.2(b) of the *Agreement on Safeguards*, and has been interpreted by the Appellate Body to require "a genuine and substantial relationship of cause and effect" between the imports and the alleged injury. Moreover, Article 16.4 further strengthens and raises this basic requirement, by modifying the term "cause" with "significant" and thus creating a higher standard.

11. The U.S. statute that implements Article 16.4 departs from the text of the Protocol and defines "a significant cause" to mean merely "a cause that contributes significantly." In this manner, the U.S. statute attempts to weaken the standard for causation, even though Article 16 uses the word "significant" to raise the causation standard for China-specific safeguards under Article 16 as compared to global safeguards under the *Agreement on Safeguards*. The ordinary meaning of "contributes significantly" conveys a meaning that is weaker than both "significant cause" and the requirement in global safeguards that there be "a genuine and substantial relationship of cause and effect." Moreover, the U.S. statute provides that a "significant cause" can be less important than any other cause that may also be affecting the domestic industry. By eliminating any requirement of causal comparison, it becomes impossible to determine whether imports from China are indeed a "significant cause" of material injury. The U.S. definition thus contradicts the express language of Article 16.4, and is inconsistent "as such" with the WTO Agreement. This statutory definition requires the U.S. to apply a flawed definition of "significant cause" in all Section 421 cases and, as such, is inconsistent with Article 16 of the Protocol of Accession.

III. THE USITC FAILED TO EVALUATE PROPERLY WHETHER IMPORTS FROM CHINA WERE A "SIGNIFICANT CAUSE," AS REQUIRED BY ARTICLES 16.1 AND 16.4

12. Article 16 imposes a strict standard under which "rapidly" increasing imports from China must be a "significant cause" of alleged material injury. The USITC's causation analysis, however, used the WTO-inconsistent definition of "significant cause" contained in the U.S. statute. The obligation to apply this standard resulted in the USITC's causation analysis being inconsistent as applied with Article 16. The USTIC's lack of discretion fundamentally forced its causation analysis to be flawed.

13. The USITC determination is inconsistent with Article 16 of the Protocol as applied. The USITC failed to evaluate properly whether imports from China were a "significant cause" of material injury. The USITC did not consider adequately the conditions of competition in the domestic tyre market and failed to establish any correlation between rapidly increasing imports from China and material injury to the U.S. tyre industry. Absent this correlation, the USITC failed to provide a "compelling analysis" of why causation still exists. Finally, the USITC failed to assess alternative causes of alleged injury. Thus, the USITC determination was inconsistent with Articles 16.1 and 16.4.

A. THE USITC FAILED TO SHOW THAT THE CONDITIONS OF COMPETITION SUPPORT A FINDING OF CAUSATION

14. The USITC misinterpreted and distorted the conditions of competition in the domestic tyre market. This failure undermined its entire causation analysis. In the context of global safeguards, the Appellate Body and panels have repeatedly affirmed the importance of a thorough examination of the conditions of competition in the relevant market, especially in cases, such as this, where the relevant market encompasses a broad range of products and market segments. Bare reliance on industry-wide statistics is insufficient for purposes of assessing the conditions of competition, as is excessive reliance on subjective questionnaire responses.

15. The USITC failed to acknowledge the importance of changing demand patterns in the U.S. tyre market – especially the role of declining demand in explaining the drop in industry performance in 2008. The USITC also failed adequately to consider the U.S. producers' long-term strategy which shifted production in the United States towards the higher-end segments of the market. Even though the U.S. producers testified that they were engaged in a global sourcing strategy, entailing a shift in the U.S. market away from lower-end tyres to premium production, the USITC rejected this testimony and the relevance of this strategy's impact on the domestic industry.

16. The USITC also failed to appreciate the attenuated nature of competition between Chinese and domestic tyres in the U.S. market. During the period, U.S. producers had between 17.7 per cent and 23.3 per cent of their shipments in the OEM market, whereas imports to the OEM market accounted for only 0.8 per cent to 7.3 per cent of the total imports from China. In turn, imports from China accounted for just 0.2 per cent to 4.9 per cent of all OEM shipments in the U.S. market. Furthermore, in 2008, there were approximately nine times as many non-subject import tyres in the OEM market than imports from China, and over the period non-subject imports grew from 30.2 per cent to 43.5 per cent of the U.S. OEM market. The USITC also failed to offer an adequate or reasoned explanation of why rapidly increasing imports from China were a "significant cause" of material injury, given that U.S. production in the replacement market is predominately in the higher-end segment, whereas imports from China are predominately in the lower-end segment. In its faulty analysis, the USITC asserted that there was "significant competition" between imports from China and domestic tyres, finding that there was "close substitutability" between them. This assertion, however, rests principally on a faulty questionnaire, in which no differentiation was sought for product category, characteristics, or market segment. The USITC should not have relied upon such subjective questionnaire.

17. Each of these conditions of competition – declining demand, an industry strategy to globalize production, and attenuated competition between imports from China and domestic tyres – individually sever the requisite causal link. They also work together to create the overall conditions of competition in the market place and, when assessed cumulatively, the extent to which they sever the causal link is even more dramatic. To justify the imposition of a product-specific safeguard under Article 16 in this case, the United States needed to show that, even in the face of these interrelated conditions of competition, imports from China were still themselves a "significant cause" of material injury. The United States has not made, and cannot make, that showing.

B. THE USITC FAILED TO ESTABLISH A CORRELATION BETWEEN RAPIDLY INCREASING IMPORTS AND MATERIAL INJURY TO THE DOMESTIC INDUSTRY

18. The USITC failed to establish that there is a temporal correlation, or "coincidence," between rapidly increasing imports from China and injury. In the context of global safeguards, the Appellate Body has explained that "coincidence" analysis plays a "central" role in determining whether or not a causal link exists. Coincidence analysis is equally important when evaluating the application of a product-specific safeguard under Article 16 of the Protocol. Under Article 16.4 of the Protocol, the injury correlation is between "increasing rapidly" imports that are a "significant cause" of material injury. In other words, the correlation must be between the period of time when imports were increasing rapidly and the adverse trends being identified. Moreover, there must be a "significant" causal link.

19. In determining whether "market disruption" exists, an investigating authority should gauge the extent of any correlation between rapidly increasing imports and (a) price, and (b) "the effect of imports on the domestic industry." When import trends and the USITC's ten factors relating to the condition of the domestic industry are properly examined, it is clear that there is no correlation between them.

20. ***Price***: There is no temporal correlation between rapidly increasing imports and domestic prices in this case. Average annual unit price for tyres shipped by U.S. producers increased over the period while quantities of imports from China also rose. Indeed, average unit value rose from $47.90 in 2004 to $68.59 in 2008. Prices rose by 10.9 percentage points during 2007, when the rate of increase in imports was at its highest of the period. Conversely, the rate of increase in prices fell in 2008, when the rate of increase in imports from China witnessed a precipitous decline. To get around this absence of correlation, USITC posited a "cost-price squeeze" hypothesis, but this speculative theory does not correlate with movements in COGS/sales ratio as the ratio dropped by 5.3 percentage points in 2007 (when imports from China were at their highest) and rose 5.8 percentage points in 2008 (when imports dropped precipitously). Thus, no "cost-price squeeze" is attributable to imports from China. Furthermore, non-subject imports "dwarfed" imports from China during the period. U.S. market share of non-subject imports ranged from 66.9 to 87.1 per cent by quantity during the period, whereas imports from China amounted to just 12.9 to 33.1 per cent.

21. ***Production***: Data concerning production volume also does not correlate with rapidly increasing imports from China as the decline in production was the smallest of the period (-2.4 percentage points) in 2007, when imports from China were at their highest. In 2008, production fell by its greatest extent during the period, while imports from China also fell to their lowest level during the period.

22. ***Net Sales***: Net sales also fail to demonstrate a correlation with imports from China as net sales (value) increased by 2.7 percentage points over the period. In 2007, net sales (quantity) fell by their lowest margin in the period (-5.5 percentage points) when the rate of increase in imports from China was at its highest level of the period. In 2008, net sales witnessed their largest year-to-year decline (-11.7 percentage points) of the period, while imports from China grew at their lowest rate of the period.

23. ***Market Share***: As to market share, the USITC relied heavily on aggregate data to assume that imports from China "displaced" U.S.-produced tyres, but this displacement theory is unsupported by the record. First, there is no "close substitutability" of Chinese and U.S. tyres due to attenuated competition. Second, the USITC failed to take into account the U.S. industry's long-term business strategy of shifting towards branded, higher-end tyres which resulted in U.S. producers importing up to 25 per cent of total imports from China themselves. Indeed, this strategy allowed U.S. producers to achieve their highest profits in 2007 – the year in which they experienced the second-highest decline in domestic market share. Furthermore, the U.S. displacement theory does not distinguish between market share for different types of tyres, and ignores the fact that total consumption of tyres in the United States declined over the period. Year-to-year declines in U.S. producer market share mirror annual declines in consumption, and further undermine the suggestion that imports from China were causing the declines in market share.

24. ***Profits***: Profits also do not correlate with rapidly increasing imports from China, as operating income was positive for U.S. producers in 3 of the 5 years of the period while imports from China increased. In 2006, before the allegedly rapidly increasing imports, the industry had its second-worst performance of the period, with operating losses of -1.1 per cent. But in 2007, when imports from China increased at their highest rate, operating income rose to 4.5 per cent – the highest level of the period and the highest year-to-year increase of the period.

25. ***Productivity***: Trends in productivity also do not correlate with imports from China. Productivity declined by a mere 0.2 tyres per hour from 2004 to 2007. Only in the year of the recession, 2008, was there a significant drop (a 5.3 per cent decline) and that drop was not caused by imports from China. Furthermore, productivity increased at its highest rate of the period (1.3 percentage points) during 2007 when imports from China were increasing at their fastest rate of the period.

26. ***Capacity***: Changes in the levels of imports from China over the period also do not correlate with data concerning U.S. producer capacity. Neither capacity utilization nor plant closure data correlate with rapidly increasing imports from China. Domestic capacity utilization increased by 6 percentage points in 2007, when imports from China were increasing at their fastest rate, and then dropped in 2008, when increased imports from China were the lowest. There is no temporal coincidence between plant closures and imports from China, and there is no record evidence to suggest that imports from China caused any of these closures. Additionally, the USITC failed to account adequately for capacity increases in the U.S. market, and improperly relied on data concerning increases in capacity in China.

27. ***Employment***: The USITC also incorrectly inferred causation from employment data. Consistent with the U.S. producers' rationalization strategy, hours worked per PRW jumped from 2,049 to 2,109 between 2006 and 2007. Restructuring measures, such as reduced hours, were part of a global restructuring strategy to improve profitability and shareholder value for the domestic producers. These restructuring measures bore fruit in the greater profitability witnessed in 2007, and it was only due to the recession in 2008 that hours worked per PRW declined.

28. ***Capital Expenditures***: The USITC noted that trends in capital expenditures do not support a finding of causation, much less material injury. The USITC stated that capital expenses "trended upwards," and "were at their highest level in 2008."

29. ***R&D Expenditures***: Furthermore, the USITC also noted that R&D expenditures do not support a finding of causation because they, too, trended upwards and increased from 2004 and 2008. As with capital expenditures, R&D investments are consistent with the industry's shift towards premium, higher-end production in the United States. Moreover, average return on investment rose to 4.8 per cent in 2007 when imports from China were at their highest.

C. ABSENT A CORRELATION BETWEEN RAPIDLY INCREASING IMPORTS AND ALLEGED MATERIAL INJURY, THE USITC FAILED TO PROVIDE A "COMPELLING ANALYSIS" OF WHY CAUSATION WAS STILL PRESENT

30. The USITC failed to recognize the absence of a meaningful correlation between industry performance and imports from China, much less offer a "very compelling" account of why causation is nonetheless present. Instead, the USITC principally focused on end-point-to-end-point comparisons of performance indicators over the period. This approach was highly misleading, particularly given the profound recession that occurred in 2008. The USITC did not engage in a meaningful year-to-year analysis of the data. The USITC made no attempt to explain the absence of correlation between imports and various injury factors in this year-to-year data. Instead, the USITC relied on the bare juxtaposition of frequently aggregate, undifferentiated data on imports and injury factors. It was incumbent on the USITC to provide a "very compelling" explanation of why causation still exists in the face of this clear lack of correlation. Such explanation must be express, reasoned and adequate. WTO jurisprudence confirms that panels should not have to hunt for "implicit" findings or explanations in an investigating authority's report. The USITC's failure to provide such an express explanation was inconsistent with Appellate Body jurisprudence and WTO obligations.

D. THE USITC IGNORED OR FAILED TO ASSESS FULLY OTHER CAUSES OF INJURY

31. The absence of correlation between trends in imports from China and the condition of the domestic industry strongly suggests that other factors are responsible for the domestic industry's injury. Yet the USITC dismissed the array of alternative causes noted by respondents, asserting that under the U.S. statute, it did not need to engage in a "weighing of causes." This approach was not only intellectually flawed, but also inconsistent with the Article 16's requirement that a Member demonstrate a "causal link" between imports and injury, and that rapidly increasing imports (and not other factors) are a "significant cause" of material injury. Contrary to the USITC's determination, the

evidence shows that trends in industry conditions reflect, among other factors, fundamental changes in demand and the industry's strategic shift to higher-end production in the United States.

32. The USITC barely acknowledged alternative causes of injury despite the fact that Article 16 of the Protocol requires there be a "causal link" between increasing imports and injury, defined as a "genuine and substantial relationship between cause and effect." It is impossible to make such a determination without considering the role played by causes other than subject imports. The "assumption" that other factors are not causing the alleged injury cannot be made consistently with the obligation to find a "causal link" – a "genuine and substantial" relationship of cause and effect. An authority thus cannot conclude that a "causal link" exists without first assessing whether other factors are actually responsible, or better explain the data. Had the USITC investigated alternative causes, it would have determined that the domestic producers would have experienced the same conditions and trends even without imports from China. This is because other factors – such as falling demand and industry business strategy – provide a much more compelling interpretation of the data, and disprove any notion that imports from China are a "significant cause" of material injury to U.S. producers.

33. The USITC failed to consider important changes in demand for tyres in the United States. First, the U.S. tyre market experienced a prolonged contraction in demand as apparent consumption of all passenger vehicle and light truck tyres (by volume) fell by 10.3 percentage points during the 2004-2008 period. The recession of 2008, and the near-collapse of the U.S. auto industry, greatly accelerated this contraction in demand. Consumer demand for vehicles fell dramatically in 2008 and manufacturing of light vehicles declined 4.3 percentage points over the 2005-2007 period – only to drop an additional 15.2 percentage points in 2008. At the same time, consumer demand shifted in favour of larger tyres, even for smaller, fuel-efficient vehicles. Finally, from 2007-2008, total consumption dropped by about 20 million tyres, and total U.S. producer shipments dropped by almost 19 million tyres during the same time. This was an almost one-to-one correspondence between the decline in the overall U.S. market and the decline in U.S. domestic shipments. The USITC barely acknowledged these changes in demand and did not offer a reasoned and adequate explanation of why, in light of these changes, imports from China were still a "significant cause" of material injury.

34. The USITC also chose to attribute plant closings and other indicators of industry performance to imports from China, when the record in fact demonstrates that domestic producers were engaged in a long-term strategy that shifted production in the United States towards the higher-end segments of the market. For the U.S. producers, imports from China (and other lower-cost jurisdictions) were, and are, a *positive* factor. Far from being injured by imports from China, the producers were themselves responsible for manufacturing and importing many of these tyres. Accordingly, the producers stated that they would not reverse this strategy and increase lower-end manufacturing in the United States, *even if* the President imposed tariffs or took other action against imports from China. Remarkably, the USITC rejected the testimony of the U.S. producers concerning their own business strategy. Notably, each alternative cause individually severs the necessary causal link, yet they also operate collectively and are mutually reinforcing in breaking the causal link.

IV. THE U.S. TARIFF REMEDIES WERE BEYOND THE "EXTENT NECESSARY" AND THUS ARE INCONSISTENT WITH ARTICLE 16.3 OF THE PROTOCOL

35. The requirements for applying a transitional product-specific safeguard under Article 16 have not been met in this case. Because the USITC failed to establish that rapidly increasing imports from China were a "significant cause" of market disruption, no remedy is appropriate. Even if the United States had complied with the other requirements of Article 16, and thus had the theoretical right to apply safeguard measures, the tariff remedies imposed were nonetheless inconsistent with the requirements of Article 16.3 of the Protocol because they were beyond the "extent necessary" to "remedy" the alleged market disruption. The obligations of Article 16.3 limit the extent of any such safeguard measures to "such" market disruption, which is limited to that disruption properly attributed to "increasing rapidly" imports from China. Neither the USITC nor the President drew this important

distinction, and instead imposed an excessive remedy that addressed the entire problem facing the domestic industry, and not only the market disruption significantly caused by rapidly increasing imports from China. This error led to an excessive, three-year remedy that was beyond the "extent necessary" and therefore inconsistent with Article 16.3.

V. THE U.S. TARIFF REMEDIES HAVE BEEN IMPOSED FOR A PERIOD OF TIME LONGER THAN PERMITTED UNDER ARTICLES 16.3 AND 16.6 OF THE PROTOCOL

36. The requirements for applying a transitional product-specific safeguard under Article 16 have not been met in this case. Because the USITC failed to establish that rapidly increasing imports from China were a "significant cause" of market disruption, no remedy for any period of time is appropriate. Even if the United States had complied with the other requirements of Article 16, and thus had the theoretical right to apply safeguard measures, the tariff remedies imposed were nonetheless inconsistent with the requirements of Articles 16.3 and 16.6 of the Protocol because the three-year tariff period is beyond "such period of time" that is "necessary." The obligations of Article 16.3 and Article 16.6 limit the duration of any remedy measure imposed. Article 16.3 obligation limiting the "extent" of remedies applies to their duration, which is further reinforced by Article 16.6's obligation to limit remedies to only "such period of time" that is "necessary." Yet the decision by the United States to impose tariffs for three years ignores both of these obligations. Because the requirements for imposing safeguards was not been met, no remedy was appropriate. Subsequently, the U.S. imposition of excessively high tariffs for three-years is inconsistent with the durational limitations of Article 16.3 and Article 16.6 of the Protocol.

VI. THE U.S. TARIFF REMEDIES DO NOT ACCORD CHINA THE SAME TREATMENT AS OTHER COUNTRIES, AND ARE INCONSISTENT WITH ARTICLE I:1 OF GATT 1994

37. The U.S. tariff remedies do not accord China the same treatment as other countries. Accordingly, China considers these higher tariffs, not having been justified as emergency action under relevant WTO rules, to be inconsistent with Article I:1 of the GATT 1994. The United States does not accord the same treatment it grants to passenger and light truck tyres originating in other countries to the like products from China. The U.S. tariff measures are "customs duties" within the meaning of Article I:1 and must comply with the disciplines of this provision. Yet the U.S. measures ignore the requirements of Article I:1. The imposed 35 per cent tariffs apply only to China. Other countries still enjoy the benefits of much lower applied tariffs of 4.0 per cent for radial tyres in HTS codes 4011.10.10 and 4011.20.20.10, and at 3.4 per cent for other tyres in HTS codes 4011.10.50 and 4011.20.50. The 35 per cent tariffs applied only to China are much higher than the lower rates applied to other countries, and thus are inconsistent with Article I:1 of GATT 1994 because they have not been justified by the United States. Because the U.S. measures are inconsistent with Article 16 of the Protocol, they are also inconsistent with Article I:1 of GATT 1994.

VII. THE U.S. TARIFF REMEDIES EXCEED THE BOUND RATES OF THE U.S. SCHEDULE OF CONCESSIONS, AND ARE INCONSISTENT WITH ARTICLE II:1(B) OF GATT 1994

38. The U.S. tariff remedies exceed the bound rates specified in the U.S. Schedule of Concessions. Accordingly, China considers these higher tariffs, not having been justified as emergency action under relevant WTO rules, to be inconsistent with Article II:1(b) of GATT 1994. These higher tariffs consist of unjustified modifications of U.S. concessions on passenger and light truck tyres under the GATT 1994. The U.S. tariff measures are "customs duties" within the meaning of Article II:1(b) and must comply with the disciplines of this provision. Yet the U.S. measures ignore the requirements of Article I:1. The United States has bound its tariffs on such tyres at 4.0 per cent for radial tyres in HTS codes 4011.10.10 and 4011.20.20.10, and at 3.4 per cent for other tyres in

HTS codes 4011.10.50 and 4011.20.50. The imposed 35 per cent tariffs are dramatically in excess of these bound rates, and thus are inconsistent with Article II:1(b) of GATT 1994 because they have not been justified by the United States. Because the U.S. measures are inconsistent with Article 16 of the Protocol, they are also inconsistent with Article II:1(b) of GATT 1994.

ANNEX A-2

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF THE UNITED STATES

I. INTRODUCTION

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

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

II. NO SPECIAL INTERPRETIVE APPROACH IS REQUIRED BY THE PROTOCOL

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

III. PARAGRAPH 16 DOES NOT INCORPORATE GATT 1994 ARTICLE XIX OR THE SAFEGUARDS AGREEMENT

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

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

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

IV. THE ITC REASONABLY CONCLUDED THAT IMPORTS FROM CHINA WERE "INCREASING RAPIDLY" UNDER PARAGRAPH 16 OF THE PROTOCOL

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

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

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

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

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

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

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

V. ITC'S CAUSATION ANALYSIS WAS IN ACCORDANCE WITH THE REQUIREMENTS OF THE PROTOCOL

1. Causation standard of U.S. Statute is fully consistent with Protocol

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

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

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

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

2. ITC's causation analysis, as applied, was in accordance with the Protocol

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

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

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

21. In terms of volume, the ITC found that subject imports increased in each year of the period and were at their highest levels of the period in 2008. The record also showed that subject imports increased by 215.5 per cent over the period, with the greatest and most rapid increases occurring after 2006. The Commission noted that the large increase in the volume of subject imports was also reflected in the large and growing share of the U.S. market held by subject imports. Subject imports increased their share of the U.S. market more than three-fold over the period of investigation, growing from 4.7 per cent in 2004 to 16.7 per cent in 2008. The record showed that more than half of this increase has occurred since 2006.

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

23. To conduct its pricing analysis, the ITC collected quarterly data over the period examined for six specific products, each of which was defined by specific dimensions, load indexes, and speed ratings of each to ensure compatibility. These comparisons showed underselling by the subject imports in 119 out of 120 comparisons, with the average margins of underselling at their highest in 2007 and 2008, coinciding with the largest volumes of subject imports. As the ITC found, the consistent underselling by the large and rapidly increasing volume of subject tyres displaced domestic shipments by U.S. producers, and eroded the domestic industry's market share, leading to a substantial reduction since 2004 in domestic capacity, production, shipments, and employment during the period

examined. The ITC also found that continued underselling by the subject imports prevented domestic producers from raising prices sufficiently to offset higher production costs and thus suppressed prices.

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

3. ITC reasonably concluded that other factors did not sever the causal link

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

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

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

28. Second, China's arguments are mistaken because they claim the ITC "apparently refused to investigate alternative causes," or that "[it] barely acknowledged" them in its analysis. The ITC investigated, considered, and analysed all of the factors that could reasonably be considered

significant enough to break the causal link between imports and material injury. Indeed, the ITC directly considered and addressed the industry's alleged "business strategy" of shifting their U.S. production away from low-end tyres to high-end products and the declines in demand in the U.S. tyres market over the period, the two main factors cited by China as breaking the causal link between imports and injury. The ITC also specifically considered other alleged causes of injury, such as increases in the industry's raw material costs, changes in its productivity levels, changes in the levels of non-subject imports, and the impact of rising gas prices on demand, and found that they too did not indicate that the subject imports from China were not a significant cause of material injury to the industry.

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

30. The ITC also considered and discussed the effect that increases in raw materials pricing had on the industry, finding that the industry's ratio of cost of goods sold to net sales increased considerably over the period. The ITC nonetheless concluded that the presence of the growing levels of lower-priced subject imports prevented the U.S. producers from passing these "increasing raw materials costs on to their customers," thus leading to a decline in the industry's operating margins over the period of investigation. Finally, with respect to the impact that higher gasoline prices had on driving habits, the ITC specifically acknowledged this factor in its analysis, stating that "demand for replacement tyres fell in 2008 as the number of miles driven decreased, consumers tried to get more miles from current tyres, and the economy weakened." The ITC reasonably found, however, that demand declines resulting from these factors did not sever the causal link between imports and injury.

VI. THE UNITED STATES APPLIED A REMEDY CONSISTENT WITH THE PROTOCOL REQUIREMENTS

1. The additional duties are only to the "extent necessary" per paragraph 16.3

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

32. The United States agrees that any remedy under paragraph 16.4 of the Protocol may only remedy the material injury that results from the rapidly increasing imports from China. The United States also agrees that the Appellate Body's analysis of the phrase "no more than the extent necessary to prevent or remedy serious injury" in Article 5.1 of the Safeguards Agreement can provide useful reasoning in interpreting the similar phrase in paragraph 16.3 of the Protocol. The United States does not agree with China's conclusion that the Appellate Body's findings signify that "the remedy measure provision has an exceedingly narrow reach." Although the authority to impose a measure is circumscribed by the extent of the injury caused by the relevant imports, where imports have a broad injurious effect, the authority would be correspondingly broad. It is also significant that paragraph 16.3 of the Protocol provides that a Member facing rapidly increasing imports from China that cause market disruption is "free, in respect of such products, to withdraw concessions or otherwise to limit imports. . . .". This authority grants a Member latitude in crafting an appropriate remedy.

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

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

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

36. China's argument that the ITC disregarded the testimony from U.S. producers that they were not materially injured by Chinese imports and would not change their behaviour if there were to be a remedy is also misguided. China relies on the views of the dissenting Commissioners. However, their reasoning reveals that there was a difference of opinion among the Commissioners as to the appropriate weight to give to the evidence on this issue, with the two dissenters believing that more weight should have been given to the views presented by some of the U.S. producers. This is a matter for the fact-finder – the ITC as a whole. Four Commissioners evaluated the evidence differently. The ITC's determination before this Panel is that reflected in the majority opinion.

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

as it has been affected by the market disruption found. The impact on individual companies will necessarily vary.

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

2. The U.S. measure is consistent with paragraph 16.6 of the Protocol

39. Based on the ordinary meaning of paragraph 16.6, any safeguard measure must be limited to the period of time as is necessary to prevent or remedy the material injury caused by rapidly increasing Chinese imports. The United States does not agree with China's attempts to heighten the burden under this requirement based on comparisons to the Safeguards, Anti-dumping, and SCM Agreements. China also argues that a remedy may remain in place "only for the exact amount of time" to address the market disruption. This level of exactitude is neither required nor possible. The Protocol requires competent authorities to make decisions regarding safeguard measures based on evidence and formal proceedings providing for participation by interested parties. Those authorities cannot know at the time of taking a measure the "exact amount of time" it will be necessary. The Working Party Report recognized that a Member taking a safeguard need not identify an exact time period by explicitly allowing them to extend a measure based on a finding that action continues to be necessary to prevent or remedy market disruption.

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

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

VII. CONCLUSION

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

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