WORLD TRADE ORGANIZATION

WT/DS483/R/Add.1

25 April 2017

(17-2252)

Page: 1/82

Original: English

CHINA – ANTI-DUMPING MEASURES ON IMPORTS OF CELLULOSE PULP FROM CANADA

REPORT OF THE PANEL

Addendum

This *addendum* contains Annexes A to D to the Report of the Panel to be found in document WT/DS483/R.

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INTERIM REVIEW AND WORKING PROCEDURES OF THE PANEL

ANNEX A-1

INTERIM REVIEW

1 INTRODUCTION

In compliance with Article 15.3 of the DSU, this Annex sets out the Panel's discussion of the arguments made at the interim review stage. We have modified certain aspects of the Report in light of the parties' comments where we considered it appropriate, as explained below. In addition, the Panel has made a number of changes of an editorial nature to improve the clarity and accuracy of the Report or to correct typographical and other non-substantive errors, certain of which were suggested by the parties.[1]

As a result of the changes that we have made, the numbering of footnotes in the Final Report has changed from the Interim Report. References to footnotes and paragraph numbers in this section relate to the Final Report.

2 SPECIFIC REQUESTS FOR REVIEW SUBMITTED BY THE PARTIES

2.1 Footnote 9

China requests that the Panel identify relevant provisions of the DSU and the Working Procedures for deciding to admit Canada's letter dated 15 September 2016. Canada objects to China's request, noting that were the Panel to grant China's request, it could refer to Article 12.1 of the DSU and paragraph 26 of the Working Procedures.

We have decided not to grant China's request. The DSU does not establish strict rules regarding the timing of parties' submissions. Panels adopt their working procedures after consulting with the parties to the dispute, and may adapt their procedures where warranted. In this instance, the Panel provided China with an opportunity to comment on Canada's letter. In its response dated 23 September 2016, China both objected to receipt of Canada's letter, and set out China's views on the substance of the letter. The Panel accepted both Canada's letter and China's response in the exercise of its authority over the conduct of the proceedings.

2.2 Paragraph 7.6

China suggests referring to "Panel" instead of "panels" in the last sentence of paragraph 7.6 in order to take into account the reference to "the present dispute" at the end of the sentence. Canada objects to China's suggestion and requests that the Panel replace "the present dispute" with "disputes", which would ensure consistency, because the word "panels" is used throughout Section 7.2.2 "Standard of Review".

We have modified paragraph 7.6 to be grammatically and logically correct.

2.3 Paragraph 7.8

China notes that the reference to both "at issue" and "it challenges" in the second sentence of paragraph 7.8 may be duplicative and suggests deleting one of them. Canada agrees.

We have modified the second sentence of paragraph 7.8 to avoid the duplication.

2.4 Footnote 59

China suggests adding the word "economic" to the phrase "all relevant factors" in the first sentence of footnote 59 in order to reflect the precise language in Article 3.4 of the Anti-Dumping Agreement. Canada agrees.

[1] These include changes in paragraphs 7.66, 7.84, 7.172, 7.182, 7.183, and 8.2, and in footnotes 183, 256, 286, 334, and 338.

We have amended footnote 59 accordingly.

2.5 Paragraph 7.25

China suggests that the phase "an investigating authority" in the second sentence of paragraph 7.25 should be changed to "investigating authorities" in order to be grammatically accurate with the succeeding text in the block quote. Canada agrees.

We have modified the quoted text to eliminate the inconsistency.

2.6 Paragraph 7.52

China notes that paragraph 7.52 reflects its procedural objection and requests that the Panel modify this paragraph by adding its non-procedural arguments. Canada objects to China's request, submitting that the arguments China suggests adding relate to its substantive position on Article 3.2 and are not relevant for Panel's consideration of the procedural objection.

Given that we address Canada's arguments on the substance of its allegation after resolving the procedural objection, we have decided to grant China's request and modified paragraph 7.52 accordingly.

2.7 Paragraph 7.58

China requests that the Panel add a new paragraph after paragraph 7.58 to fully reflect its arguments on MOFCOM's price effects analysis. Canada objects to China's request, noting that paragraph 7.57 summarizes Canada's claims regarding MOFCOM's consideration of price effects and paragraph 7.58 summarizes China's response to Canada's claims. According to Canada, the new paragraph suggested by China is not necessary, because it includes arguments that do not directly address Canada's claims.

We have modified paragraph 7.58 to better reflect China's arguments.

2.8 Paragraph 7.67

China requests that the Panel modify paragraph 7.67 to fully reflect its arguments. Canada objects to China's request, asserting that paragraph 7.67 comprehensively summarizes China's arguments regarding Canada's claim on parallel price trends and additional information is not necessary. Canada also notes that the arguments China suggests adding refer to MOFCOM's examination of pricing documents and meeting minutes and are not relevant for the examination of parallel price trends.

We have modified paragraph 7.67 and added footnote 143 to paragraph 7.77 to better reflect China's arguments.

2.9 Paragraph 7.82

China suggests including additional arguments it made at the end of paragraph 7.82 or as a new paragraph. Canada objects to China's request, asserting that paragraph 7.82 succinctly summarizes China's arguments and further summary proposed by China is not necessary.

We have decided to deny China's request. Paragraph 7.82 relates to our analysis of MOFCOM's consideration of the fact that dumped imports were sold at higher prices than the domestic like product. The arguments China wishes to add relate to other aspects of our analysis, and are reflected and addressed elsewhere in the Report. Specifically, MOFCOM's consideration of pricing documents and meeting minutes is addressed in Section 7.5.6 of the Report, and China's argument that all factors and evidence were considered by MOFCOM collectively is addressed in Section 7.5.7 of the Report.

2.10 Footnote 164

Canada requests that the Panel clarify the third sentence in footnote 157 (footnote 164 in the Final Report), submitting that it is unclear whether the third sentence refers to the findings in *China – Autos (US)* discussed in that footnote or the facts before the Panel in the present dispute. China objects to Canada's request, maintaining that the sentence clearly refers to the present dispute and Canada's request is not justified.

The third sentence as originally drafted referred to the findings in the present dispute. In order to eliminate any confusion, we have modified the footnote.

2.11 Paragraphs 7.104, 7.111 and 7.118

Canada suggests that the Panel revise the last sentence of paragraph 7.104, the third sentence of paragraph 7.111 and the last sentence of paragraph 7.118 to replace the phrase "the explanatory force of the dumped/subject imports for" with the phrase "whether the dumped/subject imports have explanatory force for". China objects to Canada's requests, considering that the proposed changes alter the meaning conveyed by the sentences.

The sentences as originally drafted express the meaning intended by the Panel, and we have therefore decided to deny Canada's requests.

2.12 Paragraph 7.144

Canada requests that the Panel replace the phrase "[i]n the alternative" with the phrase "in addition" in the second sentence of paragraph 7.144, asserting that Canada's argument mentioned in that sentence was a separate and additional argument, rather than an alternative one. China objects to Canada's request. For China, the Panel's reference to Canada's argument as one made "[i]n the alternative" is reasonable in light of the language used by Canada, noting that paragraph 133 of Canada's first written submission introduces this argument with the phrase "[e]ven if MOFCOM's volume effects and prices effects analysis were found to be consistent …".

The paragraph as originally drafted expresses the Panel's understanding of Canada's argument as proposing an alternative basis for a finding that MOFCOM's causation analysis is inconsistent with Articles 3.1 and 3.5 to that referred to in the first sentence of this paragraph. We therefore deny Canada's request.

2.13 Paragraph 7.145

China requests that the Panel add a new paragraph following paragraph 7.145 to fully reflect MOFCOM's key findings on causation. Canada objects to China's request, submitting that paragraph 7.145 provides a succinct summary of China's response to Canada's claims regarding MOFCOM causation analysis and the additional paragraph suggested by China would be repetitive.

The additional detailed data underlying MOFCOM's causation analysis China seeks to add in a new paragraph is reflected elsewhere in the Report and discussed in the Panel's analysis as relevant. Thus, we consider it superfluous to include that detailed data in either this or a new paragraph. However, we have modified this paragraph to more fully reflect China's arguments and added relevant references in footnote 244 to indicate where the detailed data China seeks to add can be found in MOFCOM's determination.

2.14 Paragraph 7.155

Given the Panel's finding in paragraph 7.155 that the Anti-Dumping Agreement does not provide guidance as to the structure of an investigating authority's final determination, China suggests that the first sentence of this paragraph be amended to replace the phrase "the context of" with the phrase "section of the Final Determination concerning/on the." Canada's did not comment on this suggestion.

As this proposed change does not affect our views as set out in this paragraph, we have decided to grant China's request and amended paragraph 7.155 accordingly.

2.15 Paragraph 7.161

Canada suggests adding the word "while" in the second sentence of paragraph 7.161, after the first quotation. China did not comment on this suggestion.

We have modified paragraph 7.161 accordingly.

2.16 Paragraph 7.162

China suggests clarifying that the fourth sentence of paragraph 7.162 refers to *cotton* cellulose pulp. Canada agrees.

We have modified paragraph 7.162 accordingly.

2.17 Paragraph 7.171

China requests that the Panel revise the last sentence of paragraph 7.171. Canada agrees with China's request and further requests that the sentence be re-ordered and re-worded to improve its clarity.

We have modified paragraph 7.171 in line with the parties' suggestions.

2.18 Footnote 304

China requests that the Panel add a reference to para. 135 of China's second written submission in footnote 296 (footnote 304 in the Final Report). Canada agrees with China's request.

We have added the reference requested by China.

2.19 Paragraph 7.178

China requests that the Panel delete the word "never" in the penultimate sentence of paragraph 7.178. Canada agrees with the China's request.

We have amended paragraph 7.178 accordingly.

2.20 Paragraph 7.184

China suggests that the Panel replace the phrase "increased demand" with the phrase "the increase in the total domestic demand" in the penultimate sentence of para. 7.184 to more accurately reflect the data. Canada agrees, but proposes a different formulation of the replacement phrase, "the increase in total domestic demand". China also suggests inserting a footnote reference to the Final Determination following the first and second sentences of paragraph 7.184. Canada agrees with China's suggestion.

We have modified paragraph 7.184 in accordance with the suggestions of the parties and added footnote 314.

2.21 Paragraph 7.186

China requests that the Panel delete the reference to the dumped imports from Canada in paragraph 7.186, since MOFCOM's conclusion that the non-dumped imports did not break the causal link between the dumped imports and the material injury to the domestic industry refers to the dumped imports generally, i.e. from all investigated countries. Canada agrees with China's request.

We have made the requested change.

2.22 Footnote 320

China suggests changing the reference in footnote 311 (footnote 320 in the Final Report) to paragraphs 172-174 of Canada's first written submission. Canada agrees with China's suggestion.

We have made the requested change.

2.23 Paragraph 7.201

China requests that the Panel clarify the second sentence of paragraph 7.201 by adding the phrase "during certain parts of the POI". Canada agrees with the suggested change.

We have made the requested change.

2.24 Footnote 331

China suggests that references to the Final Determination in footnote 322 (footnote 331 in the Final Report), be changed from pages 74 and 75 to pages 74 and 76. Canada agrees that the reference in this footnote should be changed, but requests that it be changed to pages 74-76.

We have changed the reference in the footnote to pages 74-76 of the Final Determination.

ANNEX A-2

WORKING PROCEDURES OF THE PANEL

Adopted on 8 January 2016

1. In its proceedings, the Panel shall follow the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In addition, the following Working Procedures shall apply.

General

2. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in the DSU or in these Working Procedures shall preclude a party to the dispute (hereafter "party") from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted to the Panel by another Member which the submitting Member has designated as confidential. Where a party submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public. The parties shall treat business confidential information in accordance with the procedures set forth in the Additional Working Procedures of the Panel Concerning Business Confidential Information.

3. The Panel shall meet in closed session. The parties, and Members having notified their interest in the dispute to the Dispute Settlement Body in accordance with Article 10 of the DSU (hereafter "third parties"), shall be present at the meetings only when invited by the Panel to appear before it.

4. Each party and third party has the right to determine the composition of its own delegation when meeting with the Panel. Each party and third party shall have the responsibility for all members of its own delegation and shall ensure that each member of such delegation acts in accordance with the DSU and these Working Procedures, particularly with regard to the confidentiality of the proceedings.

Submissions

5. Before the first substantive meeting of the Panel with the parties, each party shall submit a written submission in which its presents the facts of the case and its arguments, in accordance with the timetable adopted by the Panel. Each party shall also submit to the Panel, prior to the second substantive meeting of the Panel, a written rebuttal, in accordance with the timetable adopted by the Panel.

6. A party shall submit any request for a preliminary ruling at the earliest possible opportunity and in any event no later than in its first written submission to the Panel. If Canada requests such a ruling, China shall submit its response to the request in its first written submission. If China requests such a ruling, Canada shall submit its response to the request prior to the first substantive meeting of the Panel, at a time to be determined by the Panel in light of the request. Exceptions to this procedure shall be granted upon a showing of good cause.

7. Each party shall submit all factual evidence to the Panel no later than during the first substantive meeting, except with respect to evidence necessary for purposes of rebuttal, answers to questions or comments on answers provided by the other party. Exceptions to this procedure shall be granted upon a showing of good cause. Where such exception has been granted, the Panel shall accord the other party a period of time for comment, as appropriate, on any new factual evidence submitted after the first substantive meeting.

8. Where the original language of exhibits is not a WTO working language, the submitting party or third party shall submit a translation into the WTO working language of the submission at the same time. The Panel may grant reasonable extensions of time for the translation of such exhibits

upon a showing of good cause. Any objection as to the accuracy of a translation should be raised promptly in writing, no later than the next filing or meeting (whichever occurs earlier) following the submission which contains the translation in question. Any objection shall be accompanied by a detailed explanation of the grounds of objection and an alternative translation.

9. In order to facilitate the work of the Panel, each party and third party is invited to make its submissions in accordance with the WTO Editorial Guide for Panel Submissions attached as Annex 1, to the extent that it is practical to do so.

10. To facilitate the maintenance of the record of the dispute and maximize the clarity of submissions, each party and third party shall sequentially number its exhibits throughout the course of the dispute. For example, exhibits submitted by Canada could be numbered CAN-1, CAN-2, etc. If the last exhibit in connection with the first submission was numbered CAN-5, the first exhibit of the next submission thus would be numbered CAN-6.

Questions

11. The Panel may at any time pose questions to the parties and third parties, orally or in writing, including prior to each substantive meeting.

Substantive meetings

12. Each party shall provide to the Panel the list of members of its delegation in advance of each meeting with the Panel and no later than 5.00 p.m. the previous working day.

13. The first substantive meeting of the Panel with the parties shall be conducted as follows:

a. The Panel shall invite Canada to make an opening statement to present its case first. Subsequently, the Panel shall invite China to present its point of view. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written version of its statement. In the event that interpretation is needed, each party shall provide additional copies for the interpreters, through the Panel Secretary. Each party shall make available to the Panel and the other party the final version of its opening statement as well as its closing statement, if any, preferably at the end of the meeting, and in any event no later than 5.00 p.m. on the first working day following the meeting.

b. After the conclusion of the statements, the Panel shall give each party the opportunity to ask the other party questions or make comments, through the Panel. Each party shall then have an opportunity to answer these questions orally. Each party shall send in writing, within a timeframe to be determined by the Panel, any questions to the other party to which it wishes to receive a response in writing. Each party shall be invited to respond in writing to the other party's written questions within a deadline to be determined by the Panel.

c. The Panel may subsequently pose questions to the parties. Each party shall then have an opportunity to answer these questions orally. The Panel shall send in writing, within a timeframe to be determined by it, any questions to the parties to which it wishes to receive a response in writing. Each party shall be invited to respond in writing to such questions within a deadline to be determined by the Panel.

d. Once the questioning has concluded, the Panel shall afford each party an opportunity to present a brief closing statement, with Canada presenting its statement first.

14. The second substantive meeting of the Panel with the parties shall be conducted as follows:

a. The Panel shall ask China if it wishes to avail itself of the right to present its case first. If so, the Panel shall invite China to present its opening statement, followed by Canada. If the China chooses not to avail itself of that right, the Panel shall invite Canada to present its opening statement first. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written

version of its statement. In the event that interpretation is needed, each party shall provide additional copies for the interpreters, through the Panel Secretary. Each party shall make available to the Panel and the other party the final version of its opening statement as well as its closing statement, if any, preferably at the end of the meeting, and in any event no later than 5.00 p.m. of the first working day following the meeting.

b. After the conclusion of the statements, the Panel shall give each party the opportunity to ask the other questions or make comments, through the Panel. Each party shall then have an opportunity to answer these questions orally. Each party shall send in writing, within a timeframe to be determined by the Panel, any questions to the other party to which it wishes to receive a response in writing. Each party shall be invited to respond in writing to the other party's written questions within a deadline to be determined by the Panel.

c. The Panel may subsequently pose questions to the parties. Each party shall then have an opportunity to answer these questions orally. The Panel shall send in writing, within a timeframe to be determined by it, any questions to the parties to which it wishes to receive a response in writing. Each party shall be invited to respond in writing to such questions within a deadline to be determined by the Panel.

d. Once the questioning has concluded, the Panel shall afford each party an opportunity to present a brief closing statement, with the party that presented its opening statement first, presenting its closing statement first.

Third parties

15. The Panel shall invite each third party to transmit to the Panel a written submission prior to the first substantive meeting of the Panel with the parties, in accordance with the timetable adopted by the Panel.

16. Each third party shall also be invited to present its views orally during a session of this first substantive meeting, set aside for that purpose. Each third party shall provide to the Panel the list of members of its delegation in advance of this session and no later than 5.00 p.m. the previous working day.

17. The third-party session shall be conducted as follows:

a. All third parties may be present during the entirety of this session.

b. The Panel shall first hear the arguments of the third parties in alphabetical order. Third parties present at the third-party session and intending to present their views orally at that session, shall provide the Panel, the parties and other third-parties with provisional written versions of their statements before they take the floor. Third parties shall make available to the Panel, the parties and other third parties the final versions of their statements, preferably at the end of the session, and in any event no later than 5.00 p.m. of the first working day following the session.

c. After the third parties have made their statements, the parties may be given the opportunity, through the Panel, to ask the third parties questions for clarification on any matter raised in the third parties' submissions or statements. Each party shall send in writing, within a timeframe to be determined by the Panel, any questions to a third party to which it wishes to receive a response in writing.

d. The Panel may subsequently pose questions to the third parties. Each third party shall then have an opportunity to answer these questions orally. The Panel shall send in writing, within a timeframe to be determined by it, any questions to the third parties to which it wishes to receive a response in writing. Each third party shall be invited to respond in writing to such questions within a deadline to be determined by the Panel.

Descriptive part

18. The description of the arguments of the parties and third parties in the descriptive part of the Panel report shall consist of executive summaries provided by the parties and third parties, which shall be annexed as addenda to the report. These executive summaries shall not in any way serve as a substitute for the submissions of the parties and third parties in the Panel's examination of the case.

19. Each party shall submit an integrated executive summary of the facts and arguments as presented to the Panel in its first written submissions, first opening and closing oral statements and responses to questions following the first substantive meeting, and a separate integrated executive summary of its written rebuttal, second opening and closing oral statements and responses to questions following the second substantive meeting, in accordance with the timetable adopted by the Panel. Each integrated executive summary shall be limited to no more than 15 pages. The Panel will not summarize in a separate part of its report, or annex to its report, the parties' responses to questions.

20. Each third party shall submit an executive summary of its arguments as presented in its written submission and statement in accordance with the timetable adopted by the Panel. This summary may also include a summary of responses to questions, where relevant. The executive summary to be provided by each third party shall not exceed 6 pages.

21. The Panel reserves the right to request the parties and third parties to provide executive summaries of facts and arguments presented by a party or a third party in any other submissions to the Panel for which a deadline may not be specified in the timetable.

Interim review

22. Following issuance of the interim report, each party may submit a written request to review precise aspects of the interim report and request a further meeting with the Panel, in accordance with the timetable adopted by the Panel. The right to request such a meeting shall be exercised no later than at the time the written request for review is submitted.

23. In the event that no further meeting with the Panel is requested, each party may submit written comments on the other party's written request for review, in accordance with the timetable adopted by the Panel. Such comments shall be limited to commenting on the other party's written request for review.

24. The interim report, as well as the final report prior to its official circulation, shall be kept strictly confidential and shall not be disclosed.

Service of documents

25. The following procedures regarding service of documents shall apply:

a. Each party and third party shall submit all documents to the Panel by filing them with the DS Registry (office No. 2047).

b. Each party and third party shall file 2 paper copies of all documents it submits to the Panel. Exhibits may be filed in 2 copies on CD-ROM or DVD and 2 paper copies. The DS Registrar shall stamp the documents with the date and time of the filing. The paper version shall constitute the official version for the purposes of the record of the dispute.

c. Each party and third party shall also provide an electronic copy of all documents it submits to the Panel at the same time as the paper versions, preferably in Microsoft Word format, either on a CD-ROM, a DVD or as an e-mail attachment. If the electronic copy is provided by e-mail, it should be addressed to DSRegistry@wto.org, with a copy to xxxxx@wto.org. If a CD-ROM or DVD is provided, it shall be filed with the DS Registry.

d. Each party shall serve any document submitted to the Panel directly on the other party. Each party shall, in addition, serve on all third parties its written submissions in advance of the first substantive meeting with the Panel. Each third party shall serve any document submitted to the Panel directly on the parties and all other third parties. Each party and third party shall confirm, in writing, that copies have been served as required at the time it provides each document to the Panel.

e. Each party and third party shall file its documents with the DS Registry and serve copies on the other party (and third parties where appropriate) by 5.00 p.m. (Geneva time) on the due dates established by the Panel. A party or third party may submit its documents to another party or third party in electronic format only, subject to the recipient party or third party's prior written approval and provided that the Panel Secretary is notified.

f. The Panel shall provide the parties with an electronic version of the descriptive part, the interim report and the final report, as well as of other documents as appropriate. When the Panel transmits to the parties or third parties both paper and electronic versions of a document, the paper version shall constitute the official version for the purposes of the record of the dispute.

26. The Panel reserves the right to modify these procedures as necessary, after consultation with the parties.

ANNEX A-3

ADDITIONAL WORKING PROCEDURES OF THE PANEL CONCERNING BUSINESS CONFIDENTIAL INFORMATION

Adopted on 8 January 2016

The following procedures apply to any business confidential information (BCI) submitted in the course of the Panel proceedings in DS483.

1. For the purposes of these Panel proceedings, BCI is any information that has been designated as such by the party submitting the information and that was previously treated as confidential within the meaning of Article 6.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 by the Chinese investigating authority in the anti-dumping investigation at issue in this dispute. However, these procedures do not apply to any information that is available in the public domain. In addition, these procedures do not apply to any BCI if the person who provided the information in the course of the aforementioned investigation agrees in writing to make the information publicly available.

2. As required by Article 18.2 of the DSU, a party or third party having access to BCI submitted in these Panel proceedings shall treat it as confidential and shall not disclose that information other than to those persons authorized to receive it pursuant to these procedures. Any information submitted as BCI under these procedures shall only be used for the purposes of this dispute and for no other purpose. Each party and third party is responsible for ensuring that its employees and/or outside advisors comply with these working procedures to protect BCI. An outside advisor is not permitted access to BCI if that advisor is an officer or employee of an enterprise engaged in the production, sale, export, or import of the products that were the subject of the investigation at issue in this dispute, or an officer or employee of an association of such enterprises. All third party access to BCI shall be subject to the terms of these working procedures.

3. No person may have access to BCI except a member of the Secretariat or the Panel, an employee of a party or third party under the terms specified in these procedures, or an outside advisor to a party or third party for the purposes of this dispute.

4. The party submitting BCI shall mark the cover and/or first page of the document containing BCI, and each page of the document, to indicate the presence of such information. The specific information in question shall be placed between double brackets, as follows: [[xx,xxx.xx]]. The first page or cover of the document shall state "Contains Business Confidential Information", and each page of the document shall contain the notice "Contains Business Confidential Information" at the top of the page.

5. Any BCI that is submitted in binary-encoded form shall be clearly marked with the statement "Business Confidential Information" on a label of the storage medium, and clearly marked with the statement "Business Confidential Information" in the binary-encoded files.

6. In the case of an oral statement containing BCI, the party or third party making such a statement shall inform the Panel before making it that the statement will contain BCI, and the Panel will ensure that only persons authorized to have access to BCI pursuant to these procedures are in the room to hear that statement. The written versions of such oral statements submitted to the Panel shall be marked as provided for in paragraph 4.

7. If a party or third party considers that information submitted by the other party or a third party contains information which should have been designated as BCI and objects to such submission without BCI designation, it shall forthwith bring this objection to the attention of the Panel, the other party, and, where relevant, the third parties. The Panel shall deal with the objection as appropriate. Similarly, if a party or third party considers that the other

party or a third party submitted information designated as BCI which should not be so designated, it shall forthwith bring this objection to the attention of the Panel, the other party, and, where relevant, the third parties, and the Panel shall deal with the objection as appropriate.

8. Any person authorized to have access to BCI under the terms of these procedures shall store all documents containing BCI in such a manner as to prevent unauthorized access to such information.

9. The Panel will not disclose BCI, in its report or in any other way, to persons not authorized under these procedures to have access to BCI. The Panel may, however, make statements of conclusion drawn from such information. Before the Panel circulates its final report to the Members, the Panel will give each party an opportunity to review the report to ensure that it does not contain any information that the party has designated as BCI.

10. Submissions containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Panel's Report.

ANNEX B

ARGUMENTS OF CANADA

ANNEX B-1

FIRST INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF CANADA

I. CANADA'S FIRST WRITTEN SUBMISSION[1]

1. China's measures imposing duties on cellulose pulp from Brazil, Canada and the United States were set out in the Ministry of Commerce of the People's Republic of China (MOFCOM) Notice No. 75 [2013] and Notice No. 18 [2014]. Cellulose pulp is the product subject to MOFCOM's dumping investigation, produced through the chemical treatment of plant fibre substances, such as wood fibre, cotton and bamboo. Cellulose pulp is primarily used for the production of viscose fibres, such as VSF.

A. Legal Argument

2. China's anti-dumping measures on imports of cellulose pulp from Canada are a result of flawed findings on injury and causation by (MOFCOM). MOFCOM's findings in relation to volume, price effects, impact, causal link and non-attribution constitute violations of China's obligations under Articles 3.1, 3.2, 3.4 and 3.5 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (ADA).

1. Standard of Review

3. The applicable standard of review is set out in Article 11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Article 17.6 of the ADA. These provisions require the Panel to make an objective assessment of the facts of the case and to determine whether MOFCOM's finding conforms to the requirements of the ADA. Moreover, the Appellate Body has found that panels must determine whether an investigating authority (IA) has made "reasoned and adequate" conclusions "in the light of the evidence on the record". While an investigating authority has discretion in considering conflicting arguments and evidence, panels must ensure that explanations by an IA reflect the conflicting arguments and evidence considered.

2. Article 3 Provides a Mandatory Framework for Determining whether Subject Imports Caused Injury

4. The paragraphs of Article 3 provide "the relevant framework and disciplines" that an IA must follow when conducting an injury and causation analysis. These paragraphs form a "logical progression" for the IA to follow in order to answer the "ultimate question" of whether subject imports are causing material injury to the domestic industry. The analyses required by these paragraphs are "interlinked"; the outcome of each must provide a "meaningful basis" to perform the analysis required by the subsequent paragraph. Although Article 3 does not prescribe a specific methodology that an IA must use in making its injury determination, a finding of injury can only be sustained if an IA can demonstrate that it has met the requirements of each discrete paragraph of Article 3[2].

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[1] Canada has summarized its first written submission and opening statement at the first meeting of the Panel. The latter also constitutes a summary of Canada's closing statement. Summaries of Canada's responses to the Panel's questions are contained in relevant footnotes throughout.

[2] **Response to Question 8i:** The Appellate Body in *China – GOES* explained that the phrase "through the effects of dumping, as set forth in paragraphs 2 and 4" in Article 3.5 makes it clear that the inquiries set forth in Articles 3.2 and 3.4 are necessary in order to answer the ultimate question in Article 3.5 of whether subject imports are causing injury to the domestic industry". Furthermore, the outcomes of the Article 3.2 and 3.4 analyses "form the basis for the overall causation analysis" in Article 3.5. While Article 3 does not prescribe a specific methodology, the Appellate Body in *China – HP-SSST (Japan and EU)* has described the disciplines of Article 3 as "necessary, interlinked elements of a single, overall analysis". Thus, while the inquiries set out in Articles 3.2, 3.4 and 3.5 do not need to be performed in any particular order, it may be reasonable for an IA to simultaneously consider many of these inquiries.

3. MOFCOM's Volume and Price Effects Analyses are Inconsistent with Articles 3.1 and 3.2 of the ADA

5. The Appellate Body has established that an IA's consideration[3] of the volume of subject imports and their price effects pursuant to Article 3.2 is subject to the overarching principles of Article 3.1 that it involve an objective examination and that it be based on positive evidence. An IA's consideration of these elements must be reflected in the relevant documentation, such as the Final Determination.

6. MOFCOM's volume analysis is inconsistent with Articles 3.1 and 3.2 of the ADA because MOFCOM failed to analyze whether the increase in subject imports was "significant". By failing to do so, MOFCOM also failed to consider positive evidence indicating that the increase in subject imports was not significant. Accordingly, China acted inconsistently with Articles 3.1 and 3.2 of the ADA.

7. Articles 3.1 and 3.2 require MOFCOM to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in China[4]. However, in its Final Determination, MOFCOM found that the volume of subject imports increased by 43.82% over the period of investigation (POI). It also calculated the market share of

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That said, many aspects of Article 3.4's list of economic factors suggest that a consideration of a volume and price effects may logically precede an examination of "decline in sales, profits, output, market share" and "inventories". An IA may therefore conduct its Article 3.2 consideration prior to its Article 3.4 examination.

Response to Question 8ii: In accordance with Article VI:6(a) of the GATT 1994 and Article 1 of the ADA, an IA must make a determination that satisfies the obligations in Article 3 before it may impose anti-dumping duties. Given that Article 3.5 requires the ultimate demonstration that subject imports caused injury "through the effects of dumping as set forth in paragraphs 2 and 4", it is clear that an Article 3.5 determination relying on Articles 3.2 and 3.4 analyses is required to impose duties.

In particular, the obligation in the first sentence of Article 3.2 is to consider <u>whether</u> there has been a significant increase in imports. An IA could conclude that there has not been a significant increase or that there was a significant increase, but no price effect under the second sentence. Nevertheless, in order to apply duties, the IA is obliged to conduct Articles 3.4 and 3.5 analyses.

In this case, MOFCOM found, although improperly, that there was a significant increase in dumped imports and price depression. Thus, there is no question that MOFCOM was required to perform impact and causation analyses; it failed to do so in a manner consistent with Articles 3.4 and 3.5.

Response to Question 8iii: The last sentences of each of Articles 3.2 and 3.4 do not provide guidance with respect to the order of an Article 3 analysis or whether an IA must continue its analysis under subsequent paragraphs if it finds no significant increase in volume or no significant price effects. Rather, these provisions clarify that, within these analyses, the listed factors do not necessarily give decisive guidance.

[3] **Response to Question 5:** Pursuant to Articles 3.1 and 3.2, an IA must demonstrate that it has properly considered whether any increase in subject import volume is significant. The Appellate Body has explained that the obligation to "consider" in Article 3.2 requires an IA to take something into account in reaching a decision; it does not require the IA to make a definitive determination. However, this does not diminish the rigour required of the inquiry. The "consideration" must also be reflected in relevant documentation.

The exact nature of the statements required in a final determination depend on a number of factors, including: (i) the importance of the conclusion on volume to the subsequent conclusions regarding prices effects, impact and causation; (ii) whether there is competing positive evidence regarding the significance of the increase; or (iii) whether interested parties provided alternative explanations of the evidence.

In this case, all three of these factors were present. Thus, MOFCOM was obliged to more fully demonstrate that it had objectively considered whether the increase in subject imports was significant. It did not. It merely asserted that subject imports increased in absolute terms without providing an adequate explanation of whether this increase was significant as required by Articles 3.1 and 3.2.

[4] **Response to Question 7:** An analysis of whether there has been a significant increase in subject imports does not require an IA to consider the effect or impact of the volume of subject imports on the domestic like product. Rather, the relationships between the volume and market share of subject imports and the domestic like product or the domestic industry are dealt with in subsequent analyses under Article 3.

In particular, the second sentence of Article 3.2 requires an IA to consider the effect of subject imports on prices of the domestic like product; this includes a consideration of the absolute volume and market share of subject imports. Article 3.4 requires an IA to examine the impact of subject imports on the state of the domestic industry; this includes an examination of the volume and market share of the subject imports on the economic factors and indices listed in Article 3.4. Article 3.5 requires an ultimate determination of the relationship between subject imports and injury to the domestic industry. It specifically refers to the "effects of dumping as set forth in paragraphs 2 and 4" – making it clear that the IA's much broader Article 3.5 analysis of consideration must incorporate its initial consideration of volume under 3.2. However, these later analyses of the effect or impact of the subject imports are not required to be conducted under the first sentence of Article 3.2.

subject imports to have increased by 1.31 percentage points over the POI. On this basis, MOFCOM determined that the absolute and relative quantity of the dumped imports showed a growth trend during the POI. In Canada's view, this determination fails to meet the standard articulated in Article 3.2 as MOFCOM failed to analyze whether the increase in subject imports was significant.

8. Moreover, the Appellate Body has confirmed that the term "significant" in Article 3.2 means "noteworthy, important, consequential". With respect to a consideration of volume, an IA must objectively examine all positive evidence relating to the magnitude of any increase in volume and the circumstances in which subject imports entered the domestic market to determine whether an increase is significant. An IA may not disregard evidence suggesting that volumes of subject imports are not significant.

9. MOFCOM did not meet this standard. MOFCOM simply set out data with regard to volume and market share and determined that these data showed a growth trend in subject imports. It provided no qualitative or contextual analysis of the magnitude or any other aspect of this trend. In addition, MOFCOM failed to consider the circumstances surrounding the increases in absolute and relative volumes that demonstrated that the increase was not significant, i.e. trends in total domestic demand, volume of sales from the domestic industry and non-subject imports.

10. Positive evidence regarding these trends showed that subject import volumes generally increased in proportion to domestic demand, but only half as quickly as the volume of sales from domestic production or non-subject imports. Also, while the market share of subject imports remained essentially stable over the POI, the market share of both sales from domestic production and sales by non-subject imports increased significantly, by 6.54 and 6.79 percentage points respectively. MOFCOM is silent about these trends that could have provided insight into the circumstances surrounding the increase in subject import volume and helped assess whether any growth in subject import volume was actually significant.

11. MOFCOM's price effects analysis is inconsistent with Articles 3.1 and 3.2 of the ADA because it is based on an improper consideration of the effect of the subject imports on the price of the domestic like product.

12. Articles 3.1 and 3.2 require MOFCOM to consider, based on positive evidence and through an objective examination, whether the effect of the subject imports was to depress prices of the domestic like product to a significant degree or to prevent price increases. The Appellate Body has explained that an IA is required to consider whether subject imports have explanatory force for the occurrence of significant price depression or suppression of domestic prices[5].

13. MOFCOM found that from the second half of 2011 to the end of the POI, subject imports depressed the prices of the domestic like product through a continuing decline in subject import pricing and a rapid increase in subject import volume. MOFCOM's finding is flawed for the following four reasons.

14. First, MOFCOM failed to explain how identifying parallel trends in pricing could substantiate a finding of significant price depression. In its price effect analysis, MOFCOM referred to the prices of subject imports and the domestic like product following the same trend. Both prices first rose and then declined, showing an overall downward trend during the POI. However, as was the case with

[5] **Response to Question 11:** Canada paraphrased the Appellate Body in its opening statement (para. 33) that an IA "should have explained how subject imports explained significant price depression".

The Appellate Body in *China – GOES* explained that while the obligation to "consider" in Article 3.2 does not require the IA to make a definitive determination such as that required in Article 3.5, nevertheless, this does not diminish the rigour required of the inquiry. Such consideration must be reflected in relevant documentation. The Appellate Body has also found that an IA "may not disregard evidence that calls into question the explanatory force of [subject imports] for significant price depression [of domestic prices]".

Therefore, under an Article 3.2 analysis an IA "is required to consider the relationship between subject imports and prices of the like products, so as to understand whether subject imports provide explanatory force for the occurrence of significant price depression […] of domestic prices". This consideration must provide a meaningful basis for the IA's determination as to whether the subject imports, through such price effects, are causing injury to the domestic industry. Thus, the Appellate Body has clearly distinguished a "consideration" of price effects under Article 3.2 from a definitive determination under Article 3.5.

MOFCOM's price effects analyses in *China – GOES*, *China – Autos (US)* and *China – GOES (Article 21.5 – US)*, simply identifying parallel trends in pricing is insufficient[6].

15. Second, MOFCOM failed to conduct an objective examination of the positive evidence that the prices of subject imports were higher than those of the domestic like product during the period in which MOFCOM found price depression. Also, at no time does MOFCOM explain how subject imports, that had prices significantly higher (by as much as 29%) than the domestic like products, could have explanatory force for the depression of the prices of the domestic like product. Instead, MOFCOM appears to have simply relied on its parallel price trend assertions to find price depression.

16. Third, MOFCOM failed to conduct an objective examination of the positive evidence that the market share of the subject imports remained essentially stable, while the market share of the domestic like product increased significantly. In *China – Autos (US)*, the panel found that an IA should consider variations in market share levels and movements of the participants in the market before reaching its conclusions. Similarly, here, MOFCOM failed to explain how subject imports could have depressed the price of the domestic like product when the latter increased its relative market share by a factor of more than 2.5 times that of subject imports.

17. Fourth, MOFCOM failed to refer to any positive evidence demonstrating that subject imports depressed the prices of domestic like products. MOFCOM claimed that meeting minutes and pricing reports gathered during on-the-spot verifications showed that starting in the second half of 2011, the decline in subject import prices made it difficult for the domestic industry to clinch deals, forcing it to adjust its price downward. However, MOFCOM failed to explain the exact nature[7] of this apparent evidence or how it explains that the domestic industry was forced to lower its prices. MOFCOM also failed to explain how the domestic industry could have difficulty in clinching deals at a time when its sales and output increased by 78.41% and 62.98%, respectively. Further, it did not explain how higher priced imports could have forced the prices of the domestic industry downward.

4. MOFCOM's Impact Analysis is Inconsistent with Articles 3.1 and 3.4 of the ADA

18. MOFCOM's impact analysis is inconsistent with Articles 3.1 and 3.4 of the ADA. These articles require MOFCOM to consider, based on positive evidence and through an objective examination, the impact of the subject imports on the state of the domestic industry. This involves an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. Jurisprudence confirms that an evaluation of a given factor requires an IA to analyze and interpret this factor in a process that requires judgement. In exercising judgement, an IA must assess the role, relevance and relative weight of each factor. A proper evaluation must involve an analysis of the data pertaining to each factor individually and in relation to other factors as well.

19. While Article 3.4 does not prescribe any methodology, the Appellate Body has clarified that IA's must choose a methodology that enables it to understand the impact of the subject imports

[6] **Response to Question 9:** Pursuant to Articles 3.1 and 3.2 of the ADA, MOFCOM was required to consider whether subject imports had explanatory force for the occurrence of significant price depression of the domestic like product. MOFCOM's consideration of price effects was required to involve an objective assessment based on positive evidence.

While the Appellate Body has accepted that parallel pricing trends might support a price depression finding, an IA is still under an obligation to set out an explanation or reasoning regarding the role of such trends in its price effects analysis and findings.

In this case, MOFCOM did not explain: (i) whether and how any parallel price trends showed that one price exerted downward pressure on the other; (ii) the extent to which these trends demonstrated importer pricing behaviour; or (iii) how significantly higher priced subject imports exerted a depressive effect on the lower priced domestic product. Thus, MOFCOM failed to provide sufficient reasoning as to "what explanatory force parallel price trends had for the depression […] of domestic prices".

[7] **Response to Question 12:** While MOFCOM provided a general statement that the pricing documents and meeting minutes demonstrated that the "decline in foreign dissolving pulp prices […] led to difficulty in [making] sales", it failed to reconcile this with positive evidence showing that the domestic industry increased its sales and output by 78% and 63%, respectively, during the same period. MOFCOM failed to explain: (i) how these documents showed any difficulty in making sales when they did not disclose a single lost sale; and (ii) how general pricing information was relevant to an analysis of the price effects of subject imports. See also para. 59 and fn. 16.

on the domestic industry as a whole. Moreover, Article 3.4 requires an examination of the "explanatory force" of subject imports for the state of the industry. The inquiry under Article 3.4 must also contribute to, and provide a "meaningful basis" for, the overall determination required under Article 3.5.[8]

20. MOFCOM failed to meet these requirements for three reasons. First, MOFCOM failed to examine whether subject imports explained the state of the domestic industry. In its Final Determination, MOFCOM simply set out data regarding factors having a bearing on the state of the domestic industry, assessed whether certain factors other than those listed in Article 3.4 explained the state of the domestic industry and then concluded that the domestic industry suffered injury. Yet, MOFCOM failed to even mention subject imports, much less examine their impact, if any, on the injury that it had found the domestic industry to have suffered.

21. Second, MOFCOM failed to objectively examine the domestic industry's market share. MOFCOM concluded that the domestic industry had suffered injury in part on the basis that the domestic industry's market share was "consistently depressed". MOFCOM pointed to no evidence on the record to support this characterization. In fact, this characterization contradicted MOFCOM's data that the market share of the like product of the domestic industry increased by 6.54 percentage points during the POI.

22. Third, MOFCOM failed to analyze and interpret data relating to factors that showed an improvement in the state of the domestic industry. MOFCOM found factors that showed positive growth trends: domestic demand; production capacity; output; sales volumes and sales revenue; number of employees; labour productivity and per capita wages. MOFCOM failed to address these positive factors in its analysis of whether the domestic industry was injured. Similar to *China – X-Ray Equipment*, MOFCOM failed to assess the weight of each factor. In particular, it failed to describe why the weight given to the factors showing a negative result was greater than that given to those factors showing positive trends. MOFCOM also failed to analyze the evolution of the data relating to each factor individually or within the context of other factors.

5. MOFCOM's Causation Analysis is Inconsistent with Articles 3.1 and 3.5 of the ADA

23. Under Article 3.5, an IA is required to undertake a two-step causation analysis. First, an IA must conduct a "causal link" analysis demonstrating that subject imports caused injury through the volume effects, price effects and impact of dumping. Second, an IA must also conduct a "non-attribution examination" to ensure that injury caused by any other known factors is not wrongly attributed to the dumped imports. As a result, an IA must "separate and distinguish the injurious effects of the dumped imports from the injurious effects of those other factors" and must provide a satisfactory or meaningful explanation of the nature and extent of the other factors' injurious effects.

24. Any determination under Article 3.5 must also comply with the overarching requirement found it Article 3.1 that it be based on "positive evidence" and conducted through an "objective examination".

25. MOFCOM's causal link analysis is inconsistent with Articles 3.1 and 3.5 of the ADA because it relies on its deficient volume and price effects analyses.

26. MOFCOM's finding that subject imports caused injury to the Chinese domestic industry is, in part, based on its earlier finding that there had been an increase in the volume of subject imports. MOFCOM also relies heavily on parallel pricing trends on which it based its price effect findings to make its causal link finding. However, as Canada demonstrated above, MOFCOM's volume and price effects findings are inconsistent with Article 3.1 and 3.2. By relying on its flawed volume and price effects analyses, MOFCOM's Article 3.5 causal link analysis is equally flawed.

[8] **Response to Question 18:** While an IA is required to "examine" the impact of dumped imports under Article 3.4, it is not required to "demonstrate" that the dumped imports are causing injury. That demonstration is required under Article 3.5. An IA is also not required to examine non-attribution factors in its examination of the impact of dumped imports. However, if an interested party argues or provides evidence suggesting that subject imports do not have explanatory force for the state of the domestic industry, the IA must objectively examine these arguments and evidence.

27. Even if MOFCOM's volume and price effects analyses were found to be consistent with Articles 3.1 and 3.2, MOFCOM nevertheless failed to conduct an objective examination based on positive evidence of whether there was a causal link between subject imports and injury to the domestic industry. Specifically, MOFCOM failed to demonstrate how subject imports resulted in the indicators of injury it itemized (e.g. decline in pre-tax profit, return on investment and net cash flow, a slump in market share, a low operating rate, increasing ending inventory, a shrinking of profitability of the like product of the domestic industry and a worsening of the operational and business situation). It also failed to provide a reasoned and adequate explanation in this regard.

28. MOFCOM's assertion that subject imports caused injury to the domestic producers of the like products is also contradicted by the evidence demonstrating that subject import prices were significantly higher than those of the domestic like product during the POI. The domestic like product also gained significant market share during the same period while that of subject imports remained essentially stable. Yet, similar to *China – X-Ray Equipment*, MOFCOM offered no explanation as to how subject imports with essentially stable market share and significantly higher prices could have caused injury to the domestic industry.

29. MOFCOM failed to conduct a proper non-attribution analysis as required by Articles 3.1 and 3.5 of the ADA. MOFCOM failed to objectively examine evidence showing that any injury suffered by the domestic industry should be attributed to other factors.

30. First, MOFCOM failed to objectively examine positive evidence showing that the primary cause of both the domestic like product's historic high prices and the decline in price to normal levels was a result of variations in the price of cotton and VSF. MOFCOM also failed to separate and distinguish the injurious effects of these factors from any impact of the subject imports.

31. With respect to the effect of cotton prices, MOFCOM found that the price of cotton "was not the primary factor" affecting the price of the like product of the domestic industry. MOFCOM arrived at this conclusion by asserting that VSF had superior dyeing and moisture absorption qualities than cotton and that, therefore it "possesses a certain degree of non-substitutability". However, MOFCOM failed to cite any evidence to support this conclusion. It also ignored submissions by Chinese VSF producers showing that there is a high degree of substitutability between cotton and VSF and that VSF is the best substitute for cotton. MOFCOM's finding of a certain degree of non-substitutability also implied that there is some degree of substitutability between cotton and VSF. MOFCOM failed to address this degree of substitutability in its Final Determination.

32. MOFCOM then commented on how the price of cotton in China was "higher and more stable" than global cotton prices due to Chinese government policies. However, MOFCOM failed to explain the relevance of Chinese domestic cotton prices. Because VSF producers compete in both domestic and international markets for their sale, the domestic and international markets for viscose fibre are integrated and affected by the same market forces, including the impact that global cotton prices have on VSF. Therefore, it is global cotton prices that matter[9].

33. With respect to the effect of VSF prices on those of cellulose pulp, MOFCOM stated that foreign exporters had failed to provide any evidence demonstrating that there is a direct link between VSF and the like product of the domestic industry. This statement is patently false. Foreign exporters submitted ample positive evidence that VSF prices and cellulose pulp prices were intimately linked[10]. MOFCOM itself conceded that there was a relationship between VSF and

[9] **Response to Question 25:** China's *post hoc* rationalization that MOFCOM identified a disconnect between global cotton prices and domestic cotton prices in China is undermined by the arguments and the evidence submitted by interested parties. Moreover, MOFCOM failed to provide an adequate and reasoned explanation of how domestic Chinese cotton prices were relevant to the purchasing decisions of VSF producers who compete in a global textile market.

[10] **Response to Question 28:** These arguments and evidence are identified in fn. 208 of Canada's first written submission. For example, Fortress provided the chart reproduced in Canada's first written submission as Figure 1. This Figure illustrates the strong positive relationship between cotton, viscose and cellulose pulp price. The American Forest & Paper Association (AFPA) also reproduced a graph from the RISI World Dissolving Pulp Monitor demonstrating a strong correlation between global cotton prices and Chinese cellulose pulp price. The AFPA also quoted another RISI publication, which reported that the decline of cotton prices is a "strong indicator" that dissolving pulp prices will also decline. Moreover, Rayonier presented evidence demonstrating the relationship between cotton, VSF and cellulose pulp prices. Rayonier also cited a

cellulose pulp when it derived the total demand for cellulose pulp by applying a constant coefficient to VSF demand.

34. MOFCOM also noted that the "rapid growth trend" of viscose fibre production during the POI led to a rapid growth trend in total domestic demand for cellulose pulp. MOFCOM then asserted that the total production capacity and total demand for cellulose pulp was "basically in balance". However, MOFCOM failed to explain how this comparison relates to the question of whether there is a correlation between VSF and cellulose pulp prices. MOFCOM's finding of capacity and demand being in balance is also false. Domestic demand increased by 35.26% over the POI, whereas the production capacity of the domestic industry increased by 122.46% during the same period[11].

35. MOFCOM then asserted that total output of the domestic industry was not able to meet the demand. Given this, MOFCOM found that the price of the domestic like product should have remained stable. Again, MOFCOM failed to explain its finding which subjectively presumes that the domestic like product should fulfill domestic demand with little or no import contribution.

36. Second, MOFCOM failed to objectively examine positive evidence concerning the effects of the domestic industry's overexpansion, overproduction and inventory buildup. MOFCOM also failed to separate and distinguish the injurious effects of these factors from any impact of the subject imports.

37. MOFCOM found that the domestic cellulose pulp industry's production capacity increase was "basically equal" to the total domestic demand for cellulose pulp. MOFCOM also noted that the domestic industry's total output never exceeded total domestic demand. MOFCOM then concluded that any impact was insufficient to negate the impact of subject imports on the domestic industry.

38. However, in its discussion on expansion of production capacity, MOFCOM skewed the true magnitude of the capacity expansion of the "domestic industry" as defined by selectively focussing on the total production capacity of the entire domestic cellulose pulp industry. As mentioned above, while the total demand for cellulose pulp increased by 35.26% over the course of the POI, the production capacity of the "domestic industry" as defined increased by 122.49%. Specifically, in 2012, the domestic industry increased its capacity by 62.98%. This expansion occurred during the period in which capacity utilization rates were low (53.35%). MOFCOM never addressed why the domestic industry would undertake such expansion in light of such market conditions.

39. With respect to the issue of overproduction and inventory overhangs, MOFCOM attempted to explain that the increased output of the domestic industry was not the direct cause of the increasing ending inventories because output was essentially in balance with cellulose pulp demand and sales volumes. Again, MOFCOM ignored its own data. While total domestic demand increased by 24.27% from 2011 to 2012, the domestic industry's production capacity increased by

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CITIC Securities International which reported that "[i]n 2010, soaring cotton prices fuelled a sharp rise in prices of viscose staple fibre (substitute product) and dissolving pulp raw material". This same report speculated that if cotton prices declined below RMB 20,000 per tonne, any price advantage for cellulose pulp would be eliminated. Canada notes that the cotton price declined below this level in August 2011. This coincides with the period in which MOFCOM found price depression.

[11] **Response to Questions 29i and ii:** China's explanation that MOFCOM considered production capacity of all producers because changes in cellulose pulp prices would be driven by the total production capacity and output of all producers of cellulose pulp is a *post hoc* rationalization. For this reason alone, it should be rejected by the Panel. Moreover, Article 3.5 expressly requires a demonstration of a causal relationship between the dumped imports and the injury to the "domestic industry". Article 4.1 defines the "domestic industry" as the "domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". MOFCOM defined the "domestic industry" in the latter manner. As a result, it was precluded from relying on data for all domestic producers of cellulose pulp in its injury analysis. Doing so constitutes a *prima facie* violation of MOFCOM's obligation to conduct an objective examination.

The Appellate Body in *US – Hot Rolled Steel* found that Article 3 directs IAs to investigate and examine imports in relation to the "domestic industry" as defined. While the panel in *EC – Fasteners (China)* acknowledged that there may be instances in which an IA may be warranted in using information regarding all domestic producers, the panel noted that an IA must explain and justify its use of such information. MOFCOM failed to provide an explanation. Moreover, MOFCOM's assertion that the capacity of domestic producers was in balance with demand is incorrect. This is the case whether one looks at the data: (i) in percentage or in absolute terms; or (ii) for all domestic producers or the "domestic industry" as defined.

62.98% and the domestic industry had a 115.35% increase in ending inventories from 2011 to 2012.

40. Third, MOFCOM failed to objectively examine positive evidence of the impact of non-subject imports on the domestic industry showing that 1) non-subject imports prices were much lower than those of subject imports and in fact comparable to those of the domestic like product and 2) that any market share loss suffered by the domestic industry was to non-subject imports. MOFCOM also failed to separate and distinguish the injurious effects of this factor from any impact of the subject imports[12].

41. MOFCOM noted that non-subject imports accounted for over 50% of the total volume of China's imports of cellulose pulp throughout the POI. It then held that the price difference between the subject imports and the non-subject imports was "not large". It did so without presenting any volume or price data. MOFCOM then examined the lower priced imports from South Africa but asserted that the proportion of imports from this country was relatively small during the POI, i.e. between 8.5% and 9.8% of China's total imports. Likewise, MOFCOM also dismissed the impact of imports from Indonesia and Sweden by asserting that any difference in price between them and subject imports was "not large" and their proportion of the total volume of imports showed a downward trend. Again, it did so without presenting any data.

42. MOFCOM's analysis was subjective and did not contain a reasonable and adequate explanation supporting its findings. Non-subject import sales volumes increased by 78.43% during the POI, nearly matching the domestic industry's own 80.23% increase. In contrast, subject imports showed a 43.82% increase over the POI. In terms of market share, sales from non-subject imports increased by 6.79 percentage points, higher than the domestic industry's own increase of 6.54 points and far above that of the subject imports market share which stayed essentially stable.

43. MOFCOM also failed to provide any positive evidence in its Final Determination of non-subject import pricing. Non-subject import pricing reported by China Customs was submitted by an interested party; it showed that the prices of non-subject imports were significantly below those of subject imports and the domestic like product during the period in which MOFCOM found price depression.

44. Fourth, MOFCOM failed to objectively examine positive evidence regarding the shortage of cotton linter and its impact on the domestic industry's low capacity utilization rates. MOFCOM also failed to separate and distinguish the injurious effects of this factor from any impact of the subject imports.

45. MOFCOM found that a shortage in cotton linter supply was not the cause of the domestic industry's low capacity utilization rates. It arrived at this conclusion by noting that cotton linter had no direct impact on the production of wood or bamboo pulp, which at their peak accounted for nearly 70% of the total sales volume of the domestic like product. However, MOFCOM failed to cite any positive evidence to support this finding. It also failed to consider positive evidence showing that cotton linter pulp production formed more than 30% of the total domestic industry dissolving pulp capacity.

46. MOFCOM also found that the total domestic supply of cotton linter far exceeded the domestic cotton linter pulp industry's output and that, on the basis of the supply of cotton linter during the

[12] **Response to Question 36:** Several interested parties raised the impact of non-subject imports as a factor causing injury to the domestic industry. Cosmo presented volume and market share data of subject imports, non-subject imports and the domestic like product in arguing that any loss of market share by the domestic industry was as a result of non-subject imports. It also showed that subject imports had higher pricing than the domestic like product during the second half of 2011 and 2012. The AFPA also presented import pricing and volume data demonstrating that subject import pricing was higher than the domestic like product. It also submitted annual non-subject import pricing and volume data from China Customs that Canada used to calculate the non-subject import data presented in Table 3 of Canada's first written submission.

MOFCOM was required by Articles 3.1 and 3.5 to conduct an objective examination based on positive evidence of the volume and prices of non-subject imports. MOFCOM was required to consider the arguments and evidence presented to it. This obligated MOFCOM to consider data on sales volume, market share and prices of non-dumped imports, and to compare these data to those of subject imports and domestic like product. MOFCOM failed to comply with these requirements.

POI, the domestic cotton linter pulp industry's capacity utilization rate should have been significantly higher than it actually was.

47. These reasons and this conclusion are unsupported by positive evidence and fail to reflect an objective examination of evidence demonstrating that total domestic demand for cotton linter surpassed total domestic cotton linter supply for each year of the POI. Moreover, in its calculation of whether the total domestic supply of cotton linter was sufficient, MOFCOM erroneously assumed that cotton linter pup producers would have had access to the entire domestic supply of cotton linter. Positive evidence indicated that there were other users of cotton linter in the market.

48. MOFCOM stated that data regarding total production capacity and output of the domestic cotton linter pulp industry was gathered in the course of on-the-spot verification. However, MOFCOM failed to identify this evidence or to explain how information obtained from the parties would have provided verifiable information regarding producers not participating in the investigation. Also, when calculating the output that could have been produced with the available domestic cotton linter, MOFCOM used a unit consumption ratio of 1 tonne of cotton linter pulp to 1.3 tonnes of cotton linter. While MOFCOM stated that this consumption ratio was industry-recognized, it pointed to no evidence on the record to support this description. In contrast, evidence from an independent analyzing organization defined the ratio differently[13].

B. Conclusion

49. Canada requests that the Panel find that MOFCOM's measures are inconsistent with China's obligations under Articles 1 and 3 of the ADA and Article VI of the GATT 1994. Canada asks that the Panel recommend that China bring its measures into conformity with the GATT 1994 and the ADA.

II. CANADA'S ORAL STATEMENTS AT THE FIRST MEETING OF THE PANEL

A. China's Accusation of a De Novo Hearing is Baseless

50. Canada has asked the Panel to hold MOFCOM to the same standard of review it has been held to in many other recent cases. MOFCOM has repeatedly failed to objectively establish and assess facts and to undertake an unbiased evaluation of the facts and arguments before it. MOFCOM also failed to provide reasoned and adequate explanations in light of the positive evidence on the record. Ultimately, MOFCOM's finding is a string or repetitive assertions of isolated facts. Requesting that this Panel examine these failures does not amount to a request for a *de novo* review.

B. China Failed to Comply with Articles 3.1 and 3.2 in its Volume and Price Effects Analyses

51. Canada has demonstrated that MOFCOM's volume analysis failed to meet the standard set by Articles 3.1 and 3.2. China recasts Canada's position as requiring MOFCOM to consider the increase in volume of subject in both absolute and relative terms, extending the volume analysis beyond what contemplated in Article 3.2. China's interpretation is incorrect.

52. An objective examination of whether an increase in the volume of subject imports is significant requires the IA to consider the circumstances in which any increase occurred. Such an interpretation that Article 3.2 is supported by the panel decisions in *US – Washing Machines* and

[13] **Response to Question 42:** MOFCOM's use of the unit consumption ratio of 1 to 1.3 provided by petitioners rather than the unit consumption ratio provided by an independent source is an example of how MOFCOM subjectively favoured certain evidence over more objective, verifiable and credible evidence.

MOFCOM's conclusion with regard to the sufficiency of the cotton linter is based on more errors than just the use of the petitioner's ratio. These conclusions are also based on the false assumption that the domestic cotton linter pulp industry would be the only consumer of the entire cotton linter supply. See para. 47. These errors must be corrected before a determination can be made as to whether MOFCOM's conclusion regarding the sufficiency of the cotton linter supply would have been affected. However, MOFCOM's calculations cannot be modified in a manner that properly accounts for additional sources of demand. Another method would need to be used. However, it is not necessary for the Panel to identify this other method for it to conclude that MOFCOM's examination of the supply of cotton linter was not objective.

US – Upland Cotton. It is also supported by the Appellate Body's interpretation of the various paragraphs of Article 3 form part of a "logical progression". In particular, the volume analysis must provide a "meaningful basis" for an IA to perform subsequent analyses. To provide a "meaningful basis", the volume analysis must account for relevant market circumstances. Furthermore, this requirement exists whether an IA considers an increase in volume on an absolute or relative basis[14].

53. In the present case, MOFCOM failed to examine the circumstances in which the increase in absolute volume occurred. In particular, it failed to consider the rapidly expanding Chinese cellulose pulp market and the fact that the volume of the domestic like product and non-subject imports increased significantly more than that of subject imports during the POI.

54. MOFCOM also failed to provide a reasoned and adequate explanation for its finding of a significant increase in absolute volume. China argues that this finding was supported by the margin of dumping and the context provided by the subject imports' share of the total imports. However, MOFCOM does not mention the margin of dumping anywhere in its volume analysis. In addition, the subject imports' share of total imports declined over the POI. MOFCOM failed to explain why, despite this positive evidence, it found subject imports' increase in absolute volume to be significant.

55. With respect to MOFCOM's price effects analysis, Canada has demonstrated that MOFCOM's finding of price depression fails to meet the standard set by Articles 3.1 and 3.2. China claims that MOFCOM's observation of parallel pricing is undisputed[15] and supports its finding of price depression as a "matter of simple logic". China is mistaken.

56. A proper price effect analysis requires that MOFCOM consider and explain the relationship between subject imports and the prices of the domestic like product. This is necessary in order to determine whether subject imports have explanatory force for the occurrence of significant price depression. Here, MOFCOM failed to explain how any parallel pricing trends resulted in price depression.

57. In fact, MOFCOM failed to objectively examine the pricing and market share of subject imports during the POI. With regards to pricing, MOFCOM failed to address arguments and evidence presented by interested parties showing that non-subject imports were priced

[14] **Response to Question 4:** Article 3.2 requires an IA to consider whether there has been a significant increase in subject imports in absolute terms or relative to production or consumption. An IA must conduct and objective examination and provide reasoned and adequate explanations of its findings. It must thus take sufficient account of the positive evidence that supports a conclusion that is different from the one it reaches and it must respond to competing plausible explanations. Doing so may require an IA to take into account evidence or explanations of more than one "perspective" regarding any significant increase.

Moreover, as mentioned in paragraph 52, a volume analysis must provide a meaningful basis for the IA to continue the logical progression of its injury analysis. This requires an IA to take relevant factual circumstances into account. This does not amount to requiring an IA to consider an increase in both absolute and relative terms. Rather, factual circumstances provide context such as trends and other data that an IA can compare to any absolute or relative increase in subject imports so as to objectively reach a conclusion.

[15] **Response to Question 10:** Canada's claim regards MOFCOM's substantive failure to explain how any parallel price trend provides explanatory force for price depression. There is no question that in the period in which MOFCOM found price depression, both subject import and like product prices were declining. However, China misrepresented Canada's argument by suggesting that "Canada does not claim that there is not substantial evidence of parallel pricing trends". As a result, Canada responded to China's defence in its opening statement at the first meeting of the panel and in reply to further questions from the Panel.

By definition, parallel means two lines that never meet. Figure 1 of Canada's opening statement shows that prices of subject imports and the domestic like product were not parallel at the beginning of the POI (i.e. the lines crossed). Canada also showed that during the first half of the POI, subject import prices rose at a much faster rate than those of the domestic like product. Then, when market prices began to decline, the prices of the domestic like product declined much faster than those of subject imports. These facts support a conclusion that when prices were declining, it was the domestic like product price that was depressing the price of subject imports.

In *China – Autos*, there were also diverging price movements during the POI, and the panel emphasized MOFCOM's failure to adequately explain the relevance of these divergences and differences in its analysis and conclusions on parallel pricing. The Appellate Body in *China – GOES* also addressed similar issues when it questioned MOFCOM's lack of explanations or reasoning as to the significance of parallel pricing trends when the magnitude of changes in prices were significantly divergent. As a result, the "substantial" evidence on the record demonstrates a lack of parallel pricing.

significantly below subject imports throughout the POI. In response, China claims that Canada has argued that MOFCOM was required to find price undercutting in order to make a finding of price depression. Canada has argued nothing of the sort. Rather, Canada has demonstrated that it was incumbent on MOFCOM to explain how significantly higher priced subject imports had explanatory force for significant price depression.

58. Moreover, MOFCOM failed to objectively examine the positive evidence regarding the effect of subject import market share. In particular, MOFCOM's analysis does not contain a reasoned and adequate explanation of how subject imports, having maintained an essentially stable market share, caused price depression while the market share of the domestic industry and non-subject imports grew significantly.

59. Finally, China has now submitted the pricing documents and meeting minutes MOFCOM relied on to make its price depression findings. These documents are unreliable. Of the 10 documents, only four actually refer are even superficially relevant to MOFCOM's analysis. Canada also objects to the translation of these four documents because China neglected to translate a critical word. These four documents were also produced by the same Chinese domestic producer and none actually provide specific relevant information. Furthermore, it is not surprising that customers would use purported lower pricing from other competitors to negotiate better prices. Even if one accepts, *arguendo*, the conclusions that MOFCOM drew from these documents, MOFCOM failed to reconcile these documents with the positive evidence that subject import prices were significantly higher than those of the domestic like product and non-subject imports[16].

C. MOFCOM Failed to Comply with Articles 3.1 and 3.4 of the ADA in its Impact Analysis

60. Canada has shown that MOFCOM failed to objectively examine the domestic industry's market share. China now claims that Canada is mistaken as a result of a translation error; the description of the domestic industry's market share should have been translated as "remained low" rather than as "consistently depressed".

61. Regardless of which translation is used, MOFCOM's analysis is improper for two reasons. First, contrary to the requirement set out in Article 3.4, MOFCOM did not consider whether there was a decline or potential decline in market share. Whether the domestic industry's market share was high or low, MOFCOM was required to evaluate the trend in market share. It did not. Second, by describing the domestic industry's market share as either "consistently depressed" or "remained low", MOFCOM mischaracterized this market share which actually increased significantly during the POI. It thus failed to make an objective examination of the evidence.

62. MOFCOM also failed to analyze and interpret data relating to factors that showed an improvement in the state of the domestic industry in a manner consistent with Articles 3.1 and 3.4. MOFCOM simply juxtaposed the positive factors with the negative factors, rather than providing a "thorough and persuasive" explanation as to how the positive factors were outweighed by the negative factors. MOFCOM also failed to assess the role played by each factor in its investigation.

D. MOFCOM Failed to Comply with Articles 3.1 and 3.5 in its Causation Analysis

63. Canada has established that MOFCOM's finding of a causal link was based on its flawed volume and priced effects analyses. China made no attempt to refute these arguments. China simply replicates MOFCOM's discussion of parallel pricing and increased volume and its reliance on pricing documents and meeting minutes. It then asserts that this constitutes an explanation of how subject imports caused injury. However, China fails to explain how recycling this flawed analysis demonstrates a causal relationship between subject imports and injury.

[16] **Response to Questions 12i and ii:** An IA should consider such pricing documents and meeting minutes as evidence in its investigation. However, with respect to these documents, MOFCOM failed to conduct an objective examination based on positive evidence. Whether evidence is positive is determined by its quality. Positive evidence is evidence that is "affirmative, objective, verifiable and credible". For the reasons cited in paragraph 59, an IA could not have considered these documents "affirmative, objective, verifiable and credible".

64. China also offers a *post hoc* explanation whereby MOFCOM found that "the market share of the like product declined in the second half of 2012 and that the dumped subject imports gained that lost market share on a one-to-one basis." This statement cannot be found in the Final Determination. Even the pricing documents and meeting minutes filed by China disclose no lost sales by the domestic industry.

65. Canada has demonstrated that MOFCOM failed to objectively examine the impact of: cotton and VSF prices; the domestic industry's overexpansion, overproduction and inventory build-up; and non-subject imports. MOFCOM also made no attempt to properly "separate and distinguish" any injury caused by these factors or to provide a satisfactory explanation of their nature and extent. As a result, there is no rational basis for concluding that subject imports caused injury to the domestic industry.

66. First, China has failed to rebut Canada's demonstration that VSF is a close substitute for cotton and that prices of cotton and VSF are closely related. Also, because pulp is primarily used to produce VSF, there is an equally strong relationship between the prices of VSF and cellulose pulp. The primary cause of both the domestic like product's historic high prices and the decline in prices to normal levels during the POI was a result of variations in the prices of cotton and VSF[17].

67. With respect to the relationship between the prices of cotton and VSF, China repeats MOFCOM's assertion that VSF is superior to cotton because of its dying and absorption properties and that therefore "they are not substitutable in the market to a certain extent". China does not rebut any of Canada's arguments with regards to this unsupported assertion. Similarly, China repeats MOFCOM's discussion of Chinese domestic cotton support policies without addressing Canada's argument that it is global cotton prices that matter.

68. With respect to the relationship between the prices of VSF and cellulose pulp, China claims that MOFCOM found data submitted by foreign exporters to be insufficient because it only showed parallel price trends. MOFCOM made no such finding in its Final Determination. As such, China cannot rely on such an explanation now. In addition, this theory is entirely divorced from the ample positive evidence which clearly explains the economic rationale for the price linkages between VSF and cellulose pulp prices.

69. Finally, MOFCOM found that cotton prices "were not the main factor" and that the prices of downstream VSF "were not the direct cause" affecting the prices of the like product. Such conclusory statements do not meet the requirements of Articles 3.1 and 3.5 which required MOFCOM to provide a "satisfactory explanation" of the "nature and extent of the injurious effects" of cotton and VSF prices and to "separate and distinguish" that injury from any caused by the subject imports.

70. Second, China failed to objectively examine the injury caused by the domestic industry's overexpansion, overproduction and inventory buildup. Canada showed that the Chinese domestic industry undertook significant capacity expansion during the POI and this capacity increase far exceeded the increase in total domestic demand. It also occurred in a period where the domestic industry's capacity utilization rates were low and its ending inventories were increasing significantly.

71. In response to this evidence, China criticizes Canada for using data that reflects only the "domestic industry" as defined. China claims that MOFCOM more appropriately relied on the total production capacity of the entire domestic industry. This is a good example of the lack of objectivity of MOFCOM's determination. The purpose of a non-attribution analysis is to examine injury caused by "other known factors" to the "domestic industry" as defined.

[17] **Response to Question 27:** Movements in demand for cellulose pulp and VSF output are directly relevant for an analysis of the impact of VSF prices on cellulose pulp prices. During the first half of the POI, when demand and output spiked due to a shortage of cotton, demand for and the price of cellulose pulp spiked. Similarly, when cotton prices began to stabilize in the second half of 2011, so did VSF prices. Coupled with newly added capacity, which led to overcapacity in both Chinese domestic production of VSF and cellulose pulp, this caused cellulose pulp prices to decline. MOFCOM conceded the relationship between VSF and cellulose pulp (see para. 33). Yet, it wrongly concluded that VSF output and prices were not the main factor affecting cellulose pulp prices in China.

72. China also asserts that MOFCOM's finding that the domestic industry's overexpansion may have had some impact, but was not sufficient to break the causal link, meets the requirements of "separating and distinguishing" the injurious effects of domestic overexpansion. China's claim fails. MOFCOM's examination of this factor was not objective. MOFCOM neither explained the "nature and extent" of the domestic industry's overexpansion, overproduction and inventory buildup, nor attempted to "separate and distinguish" this injury from that caused by the subject imports.

73. Third, China failed to rebut Canada's demonstration that non-subject imports were more likely to have caused injury to the domestic industry. China reiterates MOFCOM's analysis and conclusions. China also claims that by comparing prices of subject and non-subject imports, MOFCOM addressed the primary issues raised by foreign respondents. China mischaracterizes the arguments presented to MOFCOM. These arguments went beyond a cursory comparison of the relative proportion and prices between subject and non-subject imports. They called for a comprehensive assessment of changes in non-subject imports sales volumes, market share and price as well as a comparison of these data to those of subject imports and the domestic like product.

74. China also claims that MOFCOM found that "the injurious effects of the non-subject imports were not more than or similar to those caused by the dumped imports and thus, did not break the causal link". This is another *post hoc* explanation. While MOFCOM did conclude that non-subject imports could not break the causal link, it did not explain the "nature and extent" of the injury caused by non-subject imports. Nor did it "separate and distinguish" these injurious effects from those caused by subject imports.

ANNEX B-2

SECOND INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF CANADA

I. INTEGRATED SUMMARY OF CANADA'S SECOND WRITTEN SUBMISSION, ORAL STATEMENTS AT THE SECOND MEETING, RESPONSES TO PANEL QUESTIONS AND COMMENTS ON CHINA'S RESPONSES

A. Standard of Review

1. There is no merit to any of the tactics China utilizes in order to distract the Panel's attention from the inconsistency of the measures at issue with the Anti-Dumping Agreement (ADA).

2. First, China's attempt to diminish the Panel's standard of review and overemphasize the discretion owed to an investigating authority is meritless. It is settled law that this Panel must be guided by the general standard of review set out in Article 11 of the DSU, the particular rules contained in Article 17.6 of the ADA, as well as the standard set out in Article 3.1 of the ADA. Therefore, the Panel's standard of review is broad.

3. Second, China's accusation that Canada is requesting a *de novo* review is disingenuous as Canada's claims are entirely congruent with the Panel's standard of review.

4. Third, China repeatedly attempts to rehabilitate MOFCOM's injury determination with *post hoc* explanations and references to evidence that were not part of the determination. These explanations merely highlight the portions of MOFCOM's findings that China implicitly admits failed to meet the standards of an "objective examination" based on positive evidence and "reasoned and adequate" conclusions.

5. Finally, China also claims that Canada has a burden of demonstrating how MOFCOM should have conducted various analyses pursuant to Article 3 of the ADA. However, there is no such burden on Canada. Moreover, Canada has met its burden to establish a *prima facie* case of violation by demonstrating that MOFCOM's volume, price effects, impact, causal link and non-attribution analyses failed to meet the standards set by the ADA.

B. MOFCOM's Volume Analysis is inconsistent with Articles 3.1 and 3.2

6. MOFCOM's volume analysis is inconsistent with Articles 3.1 and 3.2 because MOFCOM failed to consider the factual circumstances surrounding the increase in subject imports and failed to provide a reasoned and adequate explanation for its conclusion that this increase was significant.

7. China's claim that MOFCOM was not required to consider contextual elements when considering the significance of an absolute increase in subject imports is meritless.

8. First, the ordinary meaning of the term "significant", which is "important, notable or consequential", connotes a broader analysis than just a consideration of the numerical quantity or amount of an increase. In the context of the first sentence of Article 3.2, this broader analysis includes consideration of the factual context or circumstances in which an increase in subject imports occurred. Although the factual context or circumstances relevant to this analysis will vary from case to case, context or circumstances relevant to an inquiry of absolute volumes may include trends in domestic demand, the volume of the domestic like product and the volume of non-subject imports.

9. Appellate Body and panel decisions support this interpretation of the term "significant". In *China – HP-SSST (Japan and EU)*, the Appellate Body explained that an investigating authority must consider whether price undercutting is "significant". It found that "[w]hat amounts to *significant* price undercutting […] will […] depend on the circumstances of each case." The Appellate Body's reasoning relating to the proper interpretation of "significant" under the second sentence of Article 3.2 is equally applicable to its interpretation in the first sentence. The panels in *US – Upland Cotton* and *US – Washing Machines* also considered that factual circumstances may be relevant to the assessment of "significance". Although the panel in *US – Washing Machines* rejected the specific type of qualitative analysis advocated by Korea, its statement that "[i]n

certain factual circumstances, the size or scale of a price difference may need to be assessed in light of the prevailing factual circumstances" shows that it did not reject all qualitative analyses. Finally, the Appellate Body in *EC and certain member States – Large Civil Aircraft* and *US – Large Civil Aircraft* confirmed that the term "significant" has both quantitative and qualitative dimensions. The Appellate Body accepted reliance on primarily qualitative reasons to find "significant" lost sales.

10. Second, Canada's interpretation of the first sentence of Article 3.2 is confirmed by its context. The Appellate Body has found that the paragraphs of Article 3 must be viewed holistically. Each paragraph forms part of a "logical progression"[1]. These paragraphs are "interlinked" and the outcome of each must provide a "meaningful basis" for subsequent analyses under Article 3. An investigating authority can ensure that its conclusion will provide a "meaningful basis" for subsequent analyses only by considering whether an increase in volume is "significant" in light of the factual circumstances that will by necessity be relevant to subsequent analyses.

11. The obligation under Article 3.1 to make an injury determination on the basis of "positive evidence" and an "objective examination" further confirms that MOFCOM was required to consider the factual circumstances in its volume analysis. Article 3.1 required MOFCOM to consider all relevant evidence, including conflicting evidence and competing plausible arguments of that evidence raised by interested parties, in an unbiased manner. It also required MOFCOM to conduct an investigation in a manner that conforms to the principles of "good faith and fundamental fairness". MOFCOM failed to do so when it failed to take into account: (i) evidence that subject import growth occurred in a rapidly expanding market and that the volume of the domestic like product increased by 80%; and (ii) arguments raised by interested parties that the increase in subject imports, either in absolute or relative terms, was not significant.

12. Canada's interpretation of the first sentence of Article 3.2 does not contain an effects-based test; it does not require an investigating authority to consider the effect or impact of the volume of subject imports on the domestic like product or the domestic industry. Such analyses are conducted under the second sentence of Article 3.2 and under Articles 3.4 and 3.5[2]. Moreover, even though there must be a "logical progression" between Articles 3.2 and 3.5, this does not mean that an affirmative response to the volume analysis must lead to an affirmative response to the causation analysis.

13. This interpretation also does not conflict with the words "either […] or" in Article 3.2 as it does not require an investigating authority to consider the significance of an increase in both absolute and relative terms. An investigation authority has the discretion to consider the significance of an increase on either basis. Nevertheless, this discretion is not unlimited - an investigating authority must take into account positive evidence conflicting with its conclusion and must respond to competing plausible explanations of the evidence. Objectively examining such evidence and explanation does not convert an absolute volume analysis into a relative one or alter the scope of the analysis[3]. The investigating authority would simply be using relevant evidence about the market to inform its analysis of whether an increase in volume is significant and to ensure that its analysis is objective.

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[1] Question 43: It is settled law that the WTO Agreements and the ADA must be interpreted according to Article 31 of the Vienna Convention. The Appellate Body clarified in *US – Continued Zeroing* that discerning the ordinary meaning of a word or term in isolation is only the beginning of the interpretation exercise and that recourse must be made to context and object and purpose in order to elucidate the ordinary meaning of a word or term. This shows that a consideration of context is necessary and essential to proper treaty interpretation. In its interpretation of Article 3 generally and Article 3.2, second sentence, specifically, the Appellate Body in *China – GOES* demonstrated the importance of accounting for context in a proper interpretation of the Article 3 paragraphs.

[2] Question 44: Although the texts of the first and second sentences of Article 3.2 are different in that the first does not contain an effects-based test, they are similar in that: (i) both require an investigating authority to "consider" the "significance" of a particular phenomenon; (ii) both are subject to the same overarching obligation in Article 3.1 to conduct an objective examination based on positive evidence; and (iii) both are part of the logical progression of the injury and causation analysis in Article 3. Moreover, the panel's interpretation of "significant" in Article 2.4.2 of the ADA in *US – Washing Machines* confirms that the ordinary meaning of the word "significant" does not change because the first sentence in Article 3.2 does not contain an effects-based test.

[3] Question 45: This is confirmed by the panel in *Thailand – H-Beams*, which found the investigating authority's analysis of absolute volume to be consistent with Article 3.2 specifically because the investigating authority had considered the context in which the increase occurred. The panel did not find that this consideration of the context turned the analysis of absolute volumes into an analysis of relative volumes.

14. The Panel should reject China's groundless argument that one can consider whether the increase in the volume is "significant" in absolute terms without having to also consider other circumstances. If the Panel accepts China's position, then the 44% increase found by MOFCOM to be significant in this case would effectively become a numerical threshold for future cases. If this threshold is reached, the increase in absolute volume would be significant, regardless of the context in which the increase occurred. Such a result would be inconsistent with Article 3.1 because it would bar an investigating authority from considering anything more than the magnitude of the increase; the investigating authority would no longer be able to conduct an objective examination and on the basis of all positive evidence.

15. Furthermore, the Panel should reject China's groundless argument that the requirement to consider the factual circumstances conflicts with other textual elements in the first sentence of Article 3.2. The terms "absolute", "relative to production" and "[relative to] consumption" have a more limited scope than that ascribed to them by China. They describe only the manner in which subject imports are to be measured – either by quantity, in the case of absolute volume, or by quantity expressed as a percentage of domestic consumption or production, in the case of relative volume. They do not describe or limit the scope of the entire volume analysis.

16. Finally, the Panel should reject China's claim that there is no basis in Article 3.2 to require an investigating authority to consider the trends in domestic demand, the volume of the domestic like product and the volume of non-subject imports. The legal bases for considering this factual context are Article 3.2's requirement to consider whether an increase is "significant" and Article 3.1's obligation to conduct an objective examination based on positive evidence. Although consideration of these particular trends may be unnecessary in some cases, Canada has demonstrated that these elements were relevant to MOFCOM's inquiry in this case.

17. MOFCOM also failed to provide a "reasoned and adequate" explanation for its conclusion that there was a significant increase in subject imports[4]. China's argument that this finding was supported by the margin of dumping and the context provided by the subject imports' share of total imports is meritless. First, MOFCOM did not mention the margin of dumping anywhere in its volume analysis or suggest anywhere else that the margin of dumping was relevant to its volume analysis. Second, MOFCOM failed to explain how its finding regarding subject imports' share of total imports supported its conclusion that the increase in volume was significant.

18. China's assertion that the Panel should reject this claim because Canada failed to mention it in our first written submission or panel request is meritless. This claim is part of Canada's claim under the first sentence of Article 3.2. Moreover, it is within the Panel's jurisdiction as Canada's panel request states that "China failed to properly consider whether there had been […] a significant increase in dumped imports".

C. MOFCOM's Price Effects Analysis is Inconsistent with Articles 3.1 and 3.2

19. MOFCOM's price effects analysis is inconsistent with Articles 3.1 and 3.2 because it is based on an improper consideration of the effect of the subject imports on the price of the domestic like product. MOFCOM was required to consider, based on positive evidence and through an objective examination, whether subject imports depressed prices of the domestic like product significantly or prevented price increases.

20. First, China failed to demonstrate that MOFCOM objectively examined whether there was a parallel price trend between subject imports and the domestic like product. In fact, the price trends of subject imports and the domestic like product moved at significantly different rates and even met in 2010. Even if MOFCOM had properly found a parallel price trend, it failed to provide a reasoned and adequate explanation of how such a trend significantly depressed the price of the domestic like product. The mere existence of a parallel price trend may indicate a link in prices but, as the Appellate Body in *China – GOES* confirmed, it does not necessarily support a finding that a decline in the price of one product was caused by the price of the other. Thus, MOFCOM's conclusion that subject import prices caused the price decline in the domestic like product is far from a matter of "simple logic" and exposes MOFCOM's subjectivity. MOFCOM neither explained

[4] Question 46: The Appellate Body's description in *US – Softwood Lumber VI (Article 21.5 – Canada)* of the requirements of a "reasoned and adequate" explanation shows that MOFCOM's explanation was required to demonstrate that MOFCOM took proper account of the complexities of the data before it and the conflicting evidence. Its explanation was also required to show why it rejected the alternative explanations of record evidence advanced by Rayonier and Cosmo.

how these trends "indicated the nature of competition" nor how they explained "the extent to which factors relating to the pricing behaviour of [purchasers] have an effect on domestic prices".

21. Second, MOFCOM failed to conduct an objective examination of the positive evidence showing that subject imports were priced significantly higher than the domestic like product during the period in which MOFCOM found price depression. MOFCOM does not explain how higher priced subject imports could have depressed domestic like product prices or whether it was in fact the domestic like product that dragged market prices down. The only explanation provided by China is its repeated observation of parallel pricing, which it stated could be an indicator of a link, and its reference to unreliable pricing documents and meeting minutes. Moreover, China failed to point to any specific discussion by MOFCOM addressing the interested parties' arguments and evidence of the impact of higher priced subject import pricing.

22. Third, MOFCOM failed to conduct an objective examination of the positive evidence showing that the market share of the subject imports remained essentially stable because it did not consider both the absolute volume and market share of subject imports as part of its price effects analysis. Canada has demonstrated that the text of Article 3.2, second sentence, refers to "whether the effect of [subject] imports is otherwise to depress prices to a significant degree". Therefore, consideration of changes in absolute volume, market share and prices are all relevant to a price effects analysis, which the Appellate Body has described as a "dynamic comparison" between subject imports and the domestic like product.

23. China claims that MOFCOM properly considered market share. However, MOFCOM failed to explain how essentially stable subject import market share could have depressed prices of the domestic like product when the latter increased its market share by nearly eight percentage points. Since MOFCOM based the volumetric aspect of its price effects conclusion on the increased market share of subject imports, it was under the obligation to do so objectively.

24. Finally, MOFCOM failed to conduct an objective examination of positive evidence in determining that subject imports depressed the price of the domestic like product[5]. The evidence on which MOFCOM relied is of limited probative value and cannot be considered "positive evidence" of price depression. As the Appellate Body has explained in the context of Article 3.2, "an IA is required to consider whether […] subject imports – has explanatory force for the occurrence of significant price depression of […] domestic prices". Positive evidence of price effects must therefore support a connection between (i) subject imports and (ii) depressed domestic prices[6]. However, the pricing documents and meeting minutes do not constitute positive evidence that subject imports explain price depression. First, only four even mention subject imports. Second, documents collected from only two out of seven petitioners cannot be representative of a meaningful volume of the domestic like product. Third, there is no evidence that MOFCOM verified any of the domestic companies' pricing documents against relevant sales contracts or purchase orders. Finally, these documents failed to disclose an actual lost sale, a specific instance of subject imports alone depressing domestic producers' prices or a confirmed pattern of price depression by the subject imports.

25. China offers little new in its second written submission to justify MOFCOM's flawed price depression analysis. First, in an attempt to rebut Canada's demonstration that subject import and domestic like product prices did not display a parallel price trend, China provides misleading calculations suggesting that the level of decline in the prices of subject imports and the domestic like product were "at basically the same level" and "nearly identical". China's comparisons between disparate and unconnected time periods fail to capture the relative movement in prices. Instead, as Canada has demonstrated, the pricing trends of subject imports and the domestic like product were quite different: while market prices were escalating, subject import prices were rising at a

[5] Question 47: In its second written submission, China pointed to the margin of dumping as evidence that MOFCOM relied on to support its price depression finding. In response to this question, China now appears to concede that MOFCOM did not rely on margins of dumping. Canada agrees with this concession. Moreover, Canada considers that dumping margins are irrelevant to an investigating authority's price effects analysis and therefore MOFCOM could not have properly relied on them.

[6] Question 48: A finding that subject imports explain the occurrence of price depression must be supported by evidence that is credible and that is "of an affirmative, objective and verifiable character", i.e. it must be supported by "positive evidence". Canada's argument was not meant to imply that evidence that does not support a conclusion is not "positive evidence". Whether evidence is "positive" refers to its quality and "positive evidence" may support or undermine a conclusion that subject imports have explanatory force for price depression.

much faster rate. Moreover, as raised by interested parties, the fact that the price of the domestic like product declined almost four times faster than that of the subject imports suggests that the domestic like product led the price decline.

D. MOFCOM's Impact Analysis in Inconsistent with Articles 3.1 and 3.4

26. Canada demonstrated that MOFCOM's characterization of the domestic industry's market share as "consistently depressed" contradicts positive evidence on the record that this market share increased over the period of investigation. Canada also demonstrated that MOFCOM failed to analyze and interpret data relating to factors showing an improvement in the state of the domestic industry in a manner consistent with Articles 3.1 and 3.4.

27. Although China argued that Canada's claim that MOFCOM mischaracterized the domestic industry's market share is based on a translation error, Canada demonstrates that its translation of "*shizhong … dimi*" is preferable to China's because it is a more complete translation. Further, China's response with regard the translation of these Chinese words demonstrates that there is no material dispute between the parties regarding their translation.

28. More importantly however, MOFCOM's characterization of the domestic industry's market share is improper regardless of which translation is used. First, Article 3.4 required MOFCOM not simply to compile market share data but to "analyze and interpret" it by analyzing trends in this data in the context of their own development and the development of other factors. Contrary to this requirement, MOFCOM's analysis appears to have simply assessed the amount or level of the domestic industry's market share rather than its trends. Second, MOFCOM's characterization of the domestic industry's market share as "consistently depressed" or "remained low" contradicted positive evidence on the record. The domestic industry's market share did not stay at a depressed or lower-than-normal level during the period of investigation but rather rose from 19.68% in 2010 to 26.22% in 2012, or by 6.54 percentage points[7].

29. MOFCOM also failed to properly analyse and interpret data relating to factors that showed an improvement in the state of the domestic industry[8]. It failed to properly assess and explain the role, relevance and weight of each factor even though several panels have found a requirement to do so. MOFCOM did not adequately place data relating to particular positive factors within the context of the other factors examined. MOFCOM discussed only the relationship between domestic demand and the construction and renovation of production facilities. With regard to the rest of the positive factors, it simply acknowledged that they showed increases.

30. Furthermore, MOFCOM failed to properly assess the role of the domestic industry's market share and investing and financing ability and improperly considered that these two factors supported a finding of injury[9]. With regard to the domestic industry's investing and financing ability, MOFCOM failed to explain how it could find that some domestic producers had to reduce output, shut down or sell assets when positive evidence on the record showed that production capacity and output increased dramatically over the period of investigation and that the domestic industry had constructed and renovated production facilities[10].

[7] Comment on Question 53: The fact that the domestic industry market share increased while that of subject imports stayed essentially stable suggests that subject imports were not responsible for the injury suffered by the domestic industry.

[8] Question 52: MOFCOM was required to ensure that its reasoning with regard to the relationship between subject imports and the state of the domestic industry was reflected in its Final Determination in such a way that an interested party could verify that it had conducted this analysis. Here, an interested party would not have been able to conclude that MOFCOM's assessment of whether subject imports explained the state of the domestic industry is in the causation section without China's *post hoc* explanation. This is because MOFCOM does not provide any indication that it conducted this part of the impact analysis in the causation section. Thus, MOFCOM failed to comply with its obligation to provide a "reasoned and adequate" explanation of its conclusion.

[9] Question 49: The last sentence of Article 3.4 does not prevent an investigating authority from finding that one or more factors gives decisive guidance as to whether the domestic industry is injured.

[10] Question 51: MOFCOM could not conclude that the "fact" that some domestic producers had to reduce output, shut down or sell assets was a negative factor supporting a finding of injury because this "fact" is contradicted by MOFCOM's findings that the domestic industry increased production capacity, constructed and renovated a number of production facilities, and increased output and because this "fact" does not reflect an understanding of the domestic industry as a whole as required by Article 3.4.

31. MOFCOM's conclusion that the domestic industry was injured is premised, in part, on an improper understanding of the domestic industry's market share and investing and financing ability. Thus, MOFCOM's failure to objectively examine these factors undermines its overall assessment of the state of the domestic industry. Similar to the conclusion in *China – X-Ray Equipment*, this Panel should find MOFCOM's impact analysis to be inconsistent with Article 3.4 even though it is not based exclusively on market share or investing and financing ability.

32. Furthermore, MOFCOM did not identify the relative contribution of the domestic industry's market share or investing and financing ability to its finding on injury or suggest that its finding on injury could be reached without the support of its conclusions regarding these two factors. Accordingly, the Panel should refrain from attempting to conduct these analyses as otherwise it risks engaging in a *de novo* review. Because the Panel cannot conclude that MOFCOM's findings regarding the impact of subject imports can be upheld on the basis of the negative impact factors other than market share and investing and financing ability, it must conclude that MOFCOM's analysis is inconsistent with Article 3.4. This conclusion is consistent with the Appellate Body's decision in *China – GOES,* where the Appellate Body upheld the panel's decision not to conduct an analysis of whether subject imports' volume effects were, on their own, sufficient to sustain MOFCOM's finding that there was significant price depression when MOFCOM had not conducted such an analysis.

33. MOFCOM also failed to provide a "thorough and persuasive explanation" of how the positive factors were outweighed by the negative factors even though such an explanation was required by the panel in *Thailand – H-Beams*. MOFCOM did little more than recognize the presence of positive injury factors before simply juxtaposing these factors against the negative factors and then concluding that the domestic industry had been injured. MOFCOM provided no explanation, much less a "thorough and persuasive explanation", regarding how, despite rapid and large improvements in many injury factors, the domestic industry was injured. Furthermore, MOFCOM did not provide an explanation of the weight given to the positive factors, either individually or collectively.

E. MOFCOM's Causation Analysis is Inconsistent with Articles 3.1 and 3.5

1. MOFCOM's Causation Analysis

34. MOFCOM causal link analysis fails because it was based on MOFCOM's flawed volume and price effects analyses. China merely recites the evidence MOFCOM relied on in its causal link analysis, which was the very same evidence MOFCOM relied on in its flawed volume, price effects and impact analyses[11]. MOFCOM's conclusory assertions do not provide a reasoned and adequate explanation of how subject imports, through the effects of dumping, caused injury to the domestic industry. As was concluded in *China – X-Ray Equipment*, it was incumbent on MOFCOM to explain how subject imports could have caused injury to the domestic industry, particularly when: (a) the prices of subject imports were significantly higher than those of the domestic like product; (b) the absolute volume of the domestic like product increased twice as much as that of the subject

[11] Question 54i: Canada has also demonstrated that even if the Panel found that MOFCOM conducted volume, price effects and impact analyses consistently with Articles 3.2 and 3.4, MOFCOM still failed to demonstrate the causal relationship through which subject imports caused injury to the domestic industry (i.e. MOFCOM failed to demonstrate how subject imports caused injury)[11]. Simply reciting that volume increased, that subject imports had the effect of depressing prices or that the domestic industry suffered negative impacts does not amount to a demonstration of the causal relationship through which subject imports caused the specific forms of injury the domestic industry suffered. The causal link analysis, "by definition, covers a broader scope" and must go beyond simple reliance on volume, price effects and impact analyses.

Question 54ii: As a result, evidence different from that considered under Articles 3.2 and 3.4, may need to be examined in the context of Article 3.5. Moreover, the nature of that evidence will be driven by the different scope and content of Article 3.5, which is focused on a demonstration of the causal relationship between subject imports and the specific injury suffered by the domestic industry. Thus, it is likely that evidence relevant to demonstrating the causal relationship between subject imports and the specific injury suffered by the domestic industry will be different from that used, for example, to consider whether there was a significant increase in volume or whether subject imports had the effect of significantly depressing the prices of the domestic like product. For instance, nothing in these prior analyses would have necessarily required MOFCOM to have considered evidence relevant to how a significant increase in imports or significant price depression by subject imports caused declines in the domestic industry's pre-tax profits, returns on investment or net cash flows.

imports; and (c) the market share of the domestic like product increased by nearly eight percentage points while that of subject imports remained essentially stable.

2. MOFCOM's Non-Attribution Analysis

35. MOFCOM failed to conduct an "objective examination" based on "positive evidence" of four "other known factors" that caused injury to the domestic industry. MOFCOM also failed to "separate and distinguish" the injuries caused by them from any injury caused by subject imports. As a result, MOFCOM failed to provide reasoned and adequate conclusions for its non-attribution findings.

36. With respect to the appropriate legal standard, while – as China recognizes – there is no specific prescribed methodology in the ADA, the Appellate Body in *US – Hot Rolled Steel* ruled that a proper non-attribution analysis of other known factors required an investigating authority to provide a satisfactory explanation of the nature and extent of the injurious effects of the other known factors and to separate and distinguish those effects from any caused by the subject imports. Moreover, while the Appellate Body recognized that it may not be easy as a practical matter to isolate the injurious effects of the other factors or to separate and distinguish them, this analysis is nevertheless required by Article 3.5.

37. Moreover, as noted in *EC – Countervailing Measures on DRAM Chips*, an investigating authority must do more than simply list other known factors and then dismiss their role with bare qualitative assertions, such as the factor did not contribute in any significant way to the injury.

38. China relies on three prior panel decisions to support its position that MOFCOM's non-attribution analysis was consistent with Article 3.5. China also attempts to undermine Canada's reliance on the panel's findings in *EC – Countervailing Measures on DRAM Chips*. These arguments are unconvincing. First, China relies on *EC – Tube or Pipe Fittings*, *China – HP-SSST* and *EU – Footwear (China)* because the panels in those cases endorsed a "break the causal link methodology". However, Canada's claim is not with respect to the form of MOFCOM's conclusions. Rather, Canada's position is that MOFCOM failed to comply with the substantive legal requirement to provide a satisfactory explanation of the nature and extent of the injurious impact of the non-attribution factors and to separate and distinguish that injury from any caused by subject imports. Second, the panel decision in *China – HP-SSST* does not support China's position because it correctly articulates the substantive "nature and extent" and "separate and distinguish" legal standard advanced by Canada. Third, China claims that the *EC – Countervailing Measures on DRAM Chips* case is an "outlier to the extent that it implied that a quantitative or economic modeling analysis was required". However, in contrast to the cases on which China relies, the panel in this case articulated and applied the full and correct legal standard.

39. We now turn to MOFCOM's treatment of each other known factor. First, contrary to China's claims, MOFCOM's Final Determination failed to provide a non-attribution analysis of international cotton and VSF price declines. While it does contain a discussion of cotton and VSF prices in the context of its price effects analysis, it contains no analysis of whether international cotton and VSF prices caused injury to the domestic industry or otherwise indicate that the discussion of cotton and VSF prices is a non-attribution analysis. As such, MOFCOM could not have provided a satisfactory explanation of the injury caused by this other known factor or separated and distinguished its effects from those of the subject imports. China's claim to the contrary is no more than *post hoc* explanation. Nevertheless, even if this analysis is found to constitute a non-attribution analysis, MOFCOM failed to conduct an objective examination based on positive evidence.

40. China argues that whether international cotton prices affect VSF "is not directly relevant" to factors driving the price of Chinese cellulose pulp and, as a result, MOFCOM was not required to examine these prices. However, Articles 3.1 and 3.5 required MOFCOM to examine any known factors other than the dumped imports which were causing injury at the same time as the subject imports. There is no limitation on this requirement that absolves MOFCOM from examining a known factor.

41. Regarding the relationship between the prices of cotton and VSF, China repeats MOFCOM's assertion that VSF is superior to cotton because of its dying and absorption properties and that

therefore "they are not substitutable in the market to a certain extent". However, Canada has demonstrated that MOFCOM ignored positive evidence of the substitutability of cotton and VSF[12]. China fails to rebut any of Canada's arguments in this respect. Similarly, China repeats MOFCOM's discussion of Chinese domestic cotton support policies without addressing Canada's argument that it was global cotton prices that mattered. Moreover, MOFCOM never considered the "positive evidence" submitted by interested parties demonstrating that, because Chinese VSF producers sold into a global marketplace in competition with other VSF and cotton producers, it was global, rather than domestic, cotton prices that affected VSF prices.

42. Moreover, independent empirical evidence and commentary confirmed that both the increase and decline of cellulose pulp prices in China was caused by the international cotton price spike and subsequent decline. MOFCOM only examined Chinese domestic cotton prices without providing a "reasoned and adequate" explanation of how these prices were relevant.

43. MOFCOM also failed to provide a satisfactory explanation of the nature and extent of the injury caused and failed to separate and distinguish the injurious effects of this factor from any impact of the subject imports. MOFCOM also failed to conduct an objective examination of positive evidence that VSF prices caused injury to the domestic industry and failed to provide an adequate and reasoned explanation of its finding.

44. MOFCOM failed to consider substantial argument and evidence demonstrating that the decline in VSF prices led to the decline in cellulose pulp prices. Moreover, China mischaracterized the evidence of the causal relationship between VSF and cellulose pulp prices by claiming that evidence of parallel price trends between VSF and cellulose pulp was the only evidence demonstrating that the downward trend in VSF prices led to the downward trend in cellulose pulp prices. Evidence of parallel price trends creates a *prima facie* presumption that the price of VSF had a causal impact on the price of cellulose pulp. Moreover, Canada demonstrated that there was significant evidence on MOFCOM's record demonstrating the causal relationship between VSF and cellulose pulp prices that MOFCOM failed to evaluate.

45. China also attempts to justify MOFCOM's finding that changes in VSF prices were not the "direct cause" of the decline in cellulose pulp prices by pointing to MOFCOM's examination of changes in VSF output and total domestic cellulose pulp production capacity and output. However, MOFCOM failed to consider the impact of the significant decline in VSF prices in its purported examination of cellulose pulp market dynamics. Yet, substantial "positive evidence" on the record clearly demonstrated that while VSF output increased significantly during the period of investigation, VSF prices plummeted in the second quarter of 2011 and continued to decline throughout the rest of the period of investigation.

46. Second, MOFCOM failed to provide a satisfactory explanation of the nature and extent of injury caused by domestic industry overexpansion, overproduction and inventory build-up and failed to separate and distinguish this injury from any caused by the subject imports. MOFCOM also failed to objectively examine positive evidence concerning the effects of this other known factor.

47. While, it may have been appropriate to consider the impact of total capacity in the context of assessing whether domestic industry capacity overexpansion had an impact on market prices, MOFCOM itself never adequately explained or justified its use of data relating to the total production capacity of all domestic producers in this manner. Such an explanation would have been particularly important for an objective investigating authority to make because the production capacity of the "domestic industry" as defined increased significantly during the period of investigation, whereas that of domestic producers not included in the "domestic industry" as defined declined. Furthermore, MOFCOM's analysis of capacity failed to account for any import contribution and was therefore subjective and incomplete. Moreover, it is far from clear from MOFCOM's discussion that it was actually assessing whether capacity expansion depressed market prices and thereby caused injury; rather, it is China's *post hoc* comments that explain this. Ultimately, an analysis of a non-attribution factor must relate to the domestic industry as defined.

[12] Question 56: MOFCOM's analysis of international cotton and VSF prices was confined only to a discussion of whether cotton and VSF prices were responsible for any price depression. In this respect, despite China's *post hoc* concession that cotton and VSF prices "played some role", MOFCOM's Final Determination contains no analysis of whether cotton and VSF prices caused injury to the domestic industry.

48. MOFCOM also failed to objectively examine the positive evidence related to the increase in production costs caused by the domestic industry's overexpansion[13]. The impact of an expansion in production capacity will be felt specifically on manufacturing costs and not on production costs generally. The evidence showed that manufacturing costs, which would include capital expenses incurred to expand production capacity, increased by over 70% over the course of the period of investigation. In addition, Canada established that MOFCOM ignored data on its record when it concluded that domestic industry overproduction was not the direct cause of the domestic industry's increasing inventory overhang. The significant increase in ending inventories, as well as the domestic industry's low utilization rate of 52.35% in 2012, both constitute positive evidence that the domestic industry's overexpansion led to surplus capacity.

49. Third, MOFCOM failed to provide a satisfactory explanation of the nature and extent of injury caused by non-subject imports or to separate and distinguish that injury from any caused by subject imports. It also failed to conduct an objective examination of the impact of non-subject imports based on positive evidence.

50. MOFCOM's analysis of the impact of non-subject imports is flawed because it was focused entirely on comparing subject and non-subject imports, rather than being focused on the impact of non-subject imports on the domestic industry[14]. Moreover, MOFCOM did not provide a reasoned and adequate explanation of how an analysis focused solely on non-subject and subject imports was relevant to the question of whether non-subject imports injured the domestic industry.

51. China's attempt to justify the difference in price between subject and non-subject goods because of a quality difference is not supported by any MOFCOM analysis[15]. While some interested parties had argued that there was a quality difference between pulp produced using hardwood and pulp produced using softwood, MOFCOM clearly rejected the relevance of such a difference.

52. Moreover, MOFCOM failed to objectively examine the positive evidence on the record as well as plausible arguments presented by interested parties showing that non-subject imports were more likely to have directly competed with the domestic like product and, as a result, were more likely to have injured the domestic industry. In particular, MOFCOM ignored the significant increases in the volume and market share of non-subject imports and their significantly lower prices[16]. This evidence on the record and the related interested parties' arguments clearly required

[13] Question 57: Canada's view is that overexpansion caused increased competition in the market due to the increase in supply. This increased competition drove down market prices and thereby negatively affected the profitability of the cellulose pulp producers in the market. The fact that the domestic industry was already suffering from injury in a declining market and decided to add 63% more capacity strongly suggests that its injury was self-inflicted. However, MOFCOM failed to account for any of these facts in its flawed non-attribution analysis of this factor.

[14] Question 63: China's claim that the panel's decision in *EC – Tube or Pipe Fittings* supports MOFCOM's findings on non-subject imports is incorrect because a careful reading of this panel decision shows that the investigating authority in that case actually examined and explained the injurious effects of non-subject imports on the domestic industry. Moreover, in *EC – Tube or Pipe Fittings*, non-subject import volumes decreased by 14%, market share was essentially stable and prices were higher than average market prices. These facts sit in stark contrast to the facts of the case before MOFCOM.

[15] Question 65: Even when asked, China failed to shed light on the nature of the quality difference between subject and non-subject imports beyond describing it as "differences in fiber content". Furthermore, China failed to provide details regarding the evidence underlying MOFCOM's conclusion on the quality difference.

[16] Question 66: China presented no references demonstrating where any of the data came from. In addition, the data demonstrates that MOFCOM's conclusion that the differences in quantity and price "were not big" is patently false. In fact, during a period exhibiting price depression allegedly caused by subject imports, non-subject import volumes were between 22 and 25% higher than those of subject imports and non-subject import prices were between 11 and 13% lower than those of subject imports. This evidence suggests that non-subject imports were far more likely than subject imports to be a cause of injury to the domestic industry.

These issues with the data presented by China call into question whether MOFCOM's purported non-attribution analysis of non-subject imports was conducted in an objective manner. First, it is unclear how MOFCOM could have properly compared prices of non-subject imports in USD with those of the domestic like product in RMB. Second, it is equally unclear how MOFCOM could have properly compared full-year non-subject import prices with half-year domestic like product prices. Third, MOFCOM's Final Determination clearly states that it obtained import data directly from China Customs. However, in its non-attribution analysis, MOFCOM relied on customs data from the Petition instead of data directly from China Customs. Finally, "MOFCOM's internal calculation document" of the non-subject import prices does not appear to have been submitted into evidence to this Panel. As a result, neither Canada nor the Panel has had an opportunity to review or verify this apparent data source.

an analysis beyond a cursory comparison of the relative quantity and prices of non-subject imports, as they relate to subject imports.

53. Fourth, MOFCOM failed to objectively examine positive evidence regarding the shortage of cotton linter and its impact on the domestic industry's low capacity utilization rates. As a result, it failed to properly consider the shortage of cotton linter as another known factor of injury to the domestic industry requiring a non-attribution analysis.

54. China failed to rebut Canada's assertion that total domestic demand for cotton linter surpassed total supply. China subjectively relied on evidence from the CCF Viscose Industry Chain Report that indicated that the supply of cotton linter was sufficient in 2012. Moreover, its use of data for the period in which the use of cotton linter as a feedstock was at its lowest was inherently subjective. Positive evidence on MOFCOM's record suggested that cotton linter pulp accounted for considerably more than 30% of total sales in both 2010 and 2011. Furthermore, MOFCOM failed to properly account for other sources of cotton linter demand; demand from these sources was hardly "very small". If MOFCOM had properly considered this additional demand, it could not have concluded that there was a sufficient supply of cotton linter. MOFCOM also stated that data regarding the total production capacity and output of the domestic cotton linter pulp industry was gathered in the course of on-the-spot verification. However, MOFCOM failed to identify this evidence or to explain how information obtained from the parties would have provided verifiable information regarding producers not participating in the investigation.

ANNEX C

ARGUMENTS OF CHINA

ANNEX C-1

FIRST INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF CHINA

I. INTRODUCTION

1. China's Ministry of Commerce (MOFCOM) conducted a detailed and thorough injury analysis in its anti-dumping investigation of cellulose pulp from Canada. MOFCOM's determination was based on an objective examination of positive evidence on the record and is fully consistent with China's obligations under the Anti-Dumping Agreement.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

2. The standard of review applicable in this dispute is set out in Article 11 of the DSU and Article 17.6 of the Anti-Dumping Agreement. Canada is improperly seeking to re-litigate the underlying anti-dumping investigation of cellulose pulp and asking the Panel to carry out a *de novo* review, instead of examining whether MOFCOM's determination was based on an objective examination of positive record evidence.

3. Canada, as the complaining party, bears the burden of demonstrating a violation of the Anti-Dumping Agreement. Canada must establish a *prima facie* case of inconsistency with a provision of a WTO covered agreement before MOFCOM, as the defending party, has the burden of showing consistency with that provision.[1]

III. ARGUMENT

A. Article 3 of the Anti-Dumping Agreement Does Not Prescribe a Specific Methodology for Injury Determinations

4. Article 3 "does not prescribe a specific methodology to be relied on by an investigating authority in its determination of injury."[2] Article 3 also does not provide a "prescribed template or format that an investigating authority must adhere to in making its determination of injury, provided that its determination comports with the disciplines that apply under the discrete paragraphs of Article 3."[3] Thus, "it is for the investigating authorities in the first instance to determine the analytical methodologies that will be applied in the course of an investigation."[4]

B. MOFCOM's Volume Analysis Was Fully Consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement

5. MOFCOM objectively examined positive evidence concerning the significant increase in the volume of imports over the period of investigation (POI), consistent with the requirements of Articles 3.1 and 3.2 of the Anti-Dumping Agreement.

6. The use of the disjunctive "or" in the first sentence of Article 3.2 indicates that the investigating authority need not consider whether there has been a significant increase in dumped imports from *both* an absolute and a relative perspective.[5] MOFCOM considered that the increase in dumped imports in absolute terms was significant, and specifically stated that "the quantity of the dumped imported product showed the significant growth."[6] MOFCOM explained that dumped imports amounted to 421,000 tons in 2010, 419,100 tons in 2011, and 605,500 tons in 2012.[7]

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[1] Appellate Body Report, *EC – Hormones*, para. 109 (citing Appellate Body Report, *US – Wool Shirts and Blouses*, at pp. 14-16); see also Panel Report, *China – Broiler Products*, para. 7.6.

[2] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.141; see also *EC – Bed Linen (Article 21.5 – India)*, paras. 113 and 118.

[3] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.141.

[4] Panel Report, *Thailand – H-Beams*, para. 7.159.

[5] Panel Report, *Thailand – H-Beams*, para. 7.171.

[6] Final Determination, Exhibit CHN-01, at pp. 59-61, 77.

[7] Final Determination, Exhibit CHN-01, at p. 59.

This represented a significant increase of 43.82 per cent in the volume of dumped imports during the POI. In light of this increase, MOFCOM found that there had been a "quick increase of the quantity of the dumped imported product," and that "the quantity of the import increased quickly…"[8]

7. Furthermore, MOFCOM explained that the subject imports were a significant portion – nearly one half – of total imports.[9] MOFCOM thus looked at the growth in the volume of subject imports in the context of total imports. Moreover, even though not required under Article 3.2, MOFCOM also looked at the volume of dumped imports in relation to consumption.[10]

8. Thus, MOFCOM took account of whether there was a significant increase in the volume of dumped imports. Canada refers to the *Thailand – H-Beams* panel's interpretation of "significant" as meaning "noteworthy, important, consequential".[11] China notes that in the anti-dumping investigation in this case, the volume of dumped imports increased 43.82 per cent during the POI, in a context in which dumped imports represented almost half of total imports and where the margins of the dumped imports had been significant. An increase of 43.82 per cent in the volume of dumped imports during the POI, in light of the share of dumped imports in total imports and the margin of dumping that had been determined by MOFCOM, is "noteworthy, important, consequential," and therefore "significant".

9. Canada erroneously faults MOFCOM for failing "to consider the trends in total domestic demand, the volume of sales from domestic industry production and the volume of sales from non-subject imports".[12] As noted, under Article 3.2, an investigating authority may consider the volume of dumped imports from either an absolute *or* relative perspective. MOFCOM found that there was a significant increase in the volume of dumped imports in absolute terms. MOFCOM was not required to additionally consider whether the increase in the volume of dumped imports in relative terms was also significant.

C. MOFCOM's Price Effects Analysis Was Fully Consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement

10. MOFCOM found that the dumped subject imports and the domestic like product were "competitive and substitutable to each other."[13] MOFCOM then objectively examined positive evidence indicating that the rapidly rising volume of dumped imports at declining prices pushed down the domestic producers' prices during the second half of the POI.

1. MOFCOM Explained the Relevance of the Undisputed Parallel Pricing Trends

11. Canada first claims that MOFCOM failed to explain the relevance of the undisputed parallel pricing trends between subject imports and the domestic like product.[14] Substantial record evidence supported MOFCOM's finding of parallel price trends. MOFCOM examined price trends for the dumped subject imports and the domestic like product[15] and concluded that prices for both "…first increased and then decreased, showing a decreasing trend in general" over the POI.[16] MOFCOM also found that the prices of the dumped imported product and the like product "first increased and then decreased, showing a same trend of changes".[17] MOFCOM then focused further on price trends in the second half of the POI, when the volume of subject imports increased dramatically from 220,000 tons in the second half of 2011 to 310,400 tons in the second half of 2012, and concluded that "[i]n the same periods, both the Price of the Dumped Imported Product and the Price of the Like Product of the Domestic Industry showed a continuous decreasing trend."[18] MOFCOM noted further that over this same time period, "the Price of the Dumped

[8] Final Determination, Exhibit CHN-01, at pp. 65, 77.
[9] Final Determination, Exhibit CHN-01, at pp. 74, 75.
[10] Final Determination, Exhibit CHN-01, at p. 59.
[11] Canada's first written submission, para. 70 (referring to Panel Report, *Thailand – H-Beams*, para. 7.163).
[12] Canada's first written submission, para. 73.
[13] Final Determination, Exhibit CHN-01, at p. 65.
[14] Canada's first written submission, para. 84.
[15] Final Determination, Exhibit CHN-01, at p. 63.
[16] Final Determination, Exhibit CHN-01, at p. 63.
[17] Final Determination, Exhibit CHN-01, at p. 64.
[18] Final Determination, Exhibit CHN-01, at p. 64.

Imported Product continuously decreased and the Price of the Like Product of the Domestic Industry also decreased…"[19] MOFCOM also found that "there was a certain relevance between the price of the dumped imported product and the price of the like product of the domestic industry" over this same time period. Canada does not dispute the existence of substantial record evidence of parallel price trends.

12. Prior WTO cases have confirmed that a finding of parallel price trends can evidence a causal link.[20] In addition, MOFCOM also examined the relevance of the parallel pricing trends it found. MOFCOM found that "the decline of the import prices of foreign dissolving pulp had led to the difficulty in the sale of the like product of the Domestic Industry, forcing the Domestic Industry to reduce the price."[21] MOFCOM also examined in an objective and thorough manner confidential pricing reports and minutes of business meetings that MOFCOM obtained at the verification of the Chinese domestic producers. MOFCOM noted in its Final Determination that the "[i]nvestigating authority had collected evidences from many domestic producers during its on-site verifications, including the minutes of the business analysis meetings and the pricing reports, which showed that since the second half of 2011, the decline of the import prices of foreign dissolving pulp had led to the difficulty in the sale of the like product of the Domestic Industry, forcing the Domestic Industry to reduce the price."[22]

13. Exhibit CHN-02 provides translations of the pricing reports that MOFCOM examined at verification and discussed in its Final Determination. These documents provide confirmation that the domestic producers were forced to reduce their sale prices in order to compete with the rapidly rising volume of dumped subject imports. A number of the documents refer specifically to imports from Brazil, Canada and the U.S.

14. China disputes Canada's translation of the word "deng" that appears after each reference to the subject countries in the specified pricing documents. The more accurate interpretation of the word "deng" that appears after each reference to the subject countries (Brazil, Canada, and the U.S.) is that it is being used to conclude the list and is not to be translated as "etcetera." As China explained during the First Substantive Meeting, in reviewing page 1 of Exhibit CAN-29, the word "deng" is followed by a specific percentage – i.e., "more than half of China's total imports of cellulose pulp." This demonstrates that "deng" is being used to conclude the preceding list of subject countries. Moreover, regardless of the translation of the word "deng", the pricing documents specifically identify the three subject countries when demonstrating that imports from these countries depressed domestic prices.

2. MOFCOM Was Not Required To Find Price Undercutting In Order To Make a Finding of Price Depression

15. Canada next claims that the absence of price undercutting "calls into question" MOFCOM's finding that subject imports depressed the prices of the domestic like product.[23] The plain text of Article 3.2 demonstrates that the existence of price undercutting is not required in order to find price depression. The three possible findings of price undercutting, price depression or price suppression are disjunctive, and any one of them alone can support an adverse price effects finding.[24] Both the panel reports in *Korea – Certain Paper*[25] and in *EC – Salmon (Norway)*[26] and the Appellate Body[27] have supported this plain text interpretation.

16. MOFCOM's price analysis explained how imports pushed down domestic prices. MOFCOM fully explained how on the facts of this case domestic producers were forced to lower prices to compete with the rapidly rising volume of dumped subject imports. MOFCOM found that the interaction between the declining prices for the dumped subject imports and the domestic like product forced the domestic producers to lower prices. MOFCOM found there was positive evidence

[19] Final Determination, Exhibit CHN-01, at p. 65.
[20] Appellate Body Report, *China – GOES*, para. 210; Panel Report, *China – Autos (US)*, para. 7.261.
[21] Final Determination, Exhibit CHN-01, at p. 65.
[22] Final Determination, Exhibit CHN-01, at p. 65.
[23] Canada's first written submission, para. 94.
[24] See Panel Report, *US – Countervailing Duty Investigation on DRAMS*, (as modified by Appellate Body Report), para. 7.265.
[25] Panel Report, *Korea – Certain Paper*, para. 7.242.
[26] Panel Report, *EC – Salmon (Norway)*, para. 7.638.
[27] Appellate Body Report, *China – HP-SSST (Japan and EU)*, paras. 5.149 and 5.156.

on the record in the form of the verification documents demonstrating that the dumped subject imports forced the domestic industry to reduce prices, thereby depressing the domestic prices. Moreover, the interested parties that had alleged that lower domestic prices demonstrated domestic producers were the price leaders made assertions but did not provide supporting evidence. Objectively examining the evidence on the record, MOFCOM concluded that the dumped subject imports depressed the domestic prices.

3. MOFCOM Properly Considered the Volume Effects on Prices of the Like Product of the Domestic Industry

17. Canada's claim that MOFCOM failed to consider evidence that the market share of the subject imports allegedly remained "stable" also lacks merit.[28] Even though MOFCOM's price depression finding was based on movements in the absolute quantity of subject imports, MOFCOM also considered movements in market share in its price effects analysis.

(a) Article 3.2 Does Not Require an Investigating Authority to Consider Both the Absolute Volume and Market Share of Subject Imports

18. Article 3.2 allows an investigating authority to "consider" whether there has been a significant increase in dumped imports "either in absolute terms *or* relative to production or consumption in the importing Member." Therefore, the plain text makes clear that an investigating authority is not obligated to consider relative increases in subject imports, as Canada argues. As a matter of logical progression, the authority set out in the first sentence for an investigating authority to consider whether there has been an increase in dumped imports either in absolute or relative terms must likewise extend to the investigating authority's consideration of price effects in the second sentence. Consideration of a relative increase in imports – market share – thus cannot be a compulsory mode of analysis when considering the price effects of subject imports.

(b) MOFCOM's Price Depression Finding Was Based on Movements in Absolute Quantity

19. MOFCOM's price effects analysis focused on movements in the absolute volume of subject imports rather than on market share. MOFCOM found that, "[f]rom the second half of 2011 to the second half of 2012, the continued decline of the Price of the Dumped Imported Product and the quick increase of the quantity of the dumped imported product forced the Domestic Industry to compete with them in terms of prices, leading to a fast and continuous decline of the Price of the Like Product of the Domestic Industry. Based on these facts, the Investigating authority determined that the dumped imported product had a depressing effect on the Price of the Like Product of the Domestic Industry".[29] Similarly, MOFCOM's price effects analysis noted that "…due to the increase of quantity and the decrease of price of the dumped imported product, the Domestic Industry was forced to continuously reduce the Price of the Like Product".[30]

20. It is undisputed that the volume of the subject imports dumped at significant margins increased dramatically over the POI. In addition, prices of subject imports plummeted in the second half of the POI, from RMB 12,313/ton in the second half of 2011 to only RMB 7,024/ton at the end of the POI.[31] It is simply not reasonable that such a massive increase in dumped subject import volume at rapidly declining prices could not have had an adverse price effect in the Chinese market.

(c) MOFCOM Also Considered Market Share Data, Even Though It was Not Required to

21. Even though MOFCOM properly based the volume effects portion of its price depression finding on movements in the absolute volume of subject imports, and was not required under Article 3.2 to consider movements in market share, it nonetheless still did so. MOFCOM found that the market share of subject imports increased from 18.96 per cent in 2011 to 22.01 per cent

[28] Canada's first written submission, para. 95.
[29] Final Determination, Exhibit CHN-01, at pp. 65-66.
[30] Final Determination, Exhibit CHN-01, at p. 65.
[31] Final Determination, Exhibit CHN-01, at p. 63.

in 2012.[32] MOFCOM further observed that the "quantity of the dumped imported product showed an increasing trend in general…and its market share also showed an increasing trend in general".[33] MOFCOM also noted that "…the Investigating authority concluded that both the quantity and the market share of the dumped imported product…showed a general trend of increase during the Period of investigation".[34]

22. China notes that a price depression finding can be valid even in the case of small increases in market share. The *EC – Bed Linen (Article 21.5 - India)* panel noted that when a price depression analysis is based on the absolute increase in imports, it does not matter that the market share of subject imports did not increase significantly.[35]

23. The fact that the domestic industry did not lose even more market share was due to the fact that the domestic producers were forced to lower their prices in order to continue making sales. The meeting minutes examined at verification and discussed above demonstrates this reality concretely. MOFCOM thus reasonably found that "in order to prevent a further decline of the market share,… the Domestic Industry reduced the price".[36]

4. MOFCOM's Finding of Price Depression Was Based on an Objective Examination of Positive Evidence

24. Canada next argues that MOFCOM's price depression finding was not based on an objective examination of positive evidence because MOFCOM only referred generally to certain evidence gathered during the verification of the Chinese domestic producers.[37] MOFCOM's price depression finding was fully based on positive evidence and a reasoned explanation set out in MOFCOM's Final Determination. MOFCOM's Final Determination documents and explains its reasoning that subject imports and the domestic like product were directly competitive and competed on price.[38] MOFCOM observed that the absolute quantity of the dumped subject imports kept growing significantly and that the market share of subject imports increased generally at the same time as the prices for dumped subject imports declined significantly, beginning in the second half of 2011.[39] MOFCOM further based its analysis on the fact that prices of the dumped imported product fell dramatically in the second half of the POI[40], and that prices for the dumped subject imports and the domestic like product moved in tandem in the second half of the POI.[41] MOFCOM noted that "…in order to prevent a further decline of the market share…the Domestic Industry reduced the price of the like product…"[42] In its causation analysis, MOFCOM noted further that the prices of the dumped subject imports decreased continually and the quantity of the subject imports increased quickly, "forcing the Domestic Industry to compete with it on…prices; as a result, the Price of the Like Product of the Domestic Industry decreased quickly and continuously; therefore, the dumped imported product depressed the Price of the Like Product of the Domestic Industry".[43]

25. MOFCOM's analysis of the meeting minutes examined at verification and discussed previously, shows that the rapidly rising volume of subject imports forced the domestic producers to lower prices. Canada claims that MOFCOM's conclusion that the domestic industry had "difficulty in clinching deals" contradicts the fact that the domestic industry's sales in fact increased.[44] But the "difficulty in clinching deals" referenced in the meeting minutes is a reference to the fact that the domestic industry was forced to reduce prices in order to make sales and thus avoid losing further market share.

[32] Final Determination, Exhibit CHN-01, at p. 59.
[33] Final Determination, Exhibit CHN-01, at p. 64.
[34] Final Determination, Exhibit CHN-01, at p. 61.
[35] Panel Report, *EC – Bed Linen* (*Article 21.5 - India*), para. 6.230.
[36] Final Determination, Exhibit CHN-01, at p. 65.
[37] Canada's first written submission, paras. 101 and 103.
[38] Final Determination, Exhibit CHN-01, at p. 58.
[39] Final Determination, Exhibit CHN-01, at pp. 59, 63.
[40] Final Determination, Exhibit CHN-01, at p. 63.
[41] Final Determination, Exhibit CHN-01, at pp. 63-65, 77-78.
[42] Final Determination, Exhibit CHN-01, at p. 65.
[43] Final Determination, Exhibit CHN-01, at pp. 77-78.
[44] Canada's first written submission, para. 102.

D. MOFCOM's Examination of the Impact of Dumped Imports on the Domestic Industry Was Fully Consistent with Articles 3.1 and 3.4 of the Anti-Dumping Agreement

26. Canada errs in claiming that MOFCOM's injury determination failed to comply with Articles 3.1 and 3.4 of the Anti-Dumping Agreement. MOFCOM did not fail to examine whether subject imports explained the state of the domestic industry.[45] MOFCOM properly examined the domestic industry's market share, and adequately considered factors showing improvement in the domestic industry's condition.

1. MOFCOM Properly Examined Whether Subject Imports Explain the State of the Domestic Industry

27. While Article 3.4 requires an examination of the impact of the subject imports on the domestic industry, it does not require an investigating authority "to demonstrate that subject imports are causing injury to the domestic industry".[46] Moreover, Article 3.4 "does not address the manner in which the results of this evaluation are to be set out, nor the type of evidence that may be produced before a panel for the purpose of demonstrating that this evaluation was indeed conducted".[47]

28. Contrary to Canada's assertion, MOFCOM did examine the impact of dumped imports. Canada's claim that "MOFCOM entirely failed to evaluate the relationship between the subject imports and the state of the domestic industry or…whether subject imports explain the state of the domestic industry as required by Article 3.4 of the ADA" is simply incorrect.[48]

2. Canada's Argument that MOFCOM Failed to Objectively Examine Market Share Is Based on a Translation Error

29. Canada's assertion that MOFCOM improperly found that "the domestic industry's market share of the like product was consistently depressed" is based on an incorrect translation of the Final Determination and therefore is groundless.[49] The correct translation of the Final Determination, submitted as Exhibit CHN-01, shows that MOFCOM found that "[d]uring the Period of investigation, the market share of the Like Product of the Domestic Industry remained low…"[50]

3. MOFCOM Properly Examined Factors Showing Improvement in the State of the Domestic Industry

30. MOFCOM examined numerous indicia of the domestic industry's condition, including production capacity, output, sales volume, sales revenue, labor productivity and per capita salaries.[51] MOFCOM found that despite the positive factors, dumped imports were pushing prices downward and this led to a continuous decline in the pre-tax profit, return on investment and net cash flow. MOFCOM also found the domestic industry's market share and operation rate were low, and its ending inventory had increased substantially.[52]

31. MOFCOM considered both the positive and negative injury factors and the interplay between them. In doing so, MOFCOM assessed the various factors, conducted an overall analysis of those factors, and placed the data for the various factors in context. MOFCOM's conclusion is based on its overall assessment of the factors.

32. Article 3.4 expressly provides that none of the factors listed in Article 3.4, individually or several combined, necessarily give decisive guidance. Thus, MOFCOM was entitled to find that dumped imports negatively affected the domestic industry on the basis of its overall assessment of

[45] Canada's first written submission, paras. 111, 112 and 114.
[46] Appellate Body Report, *China – GOES*, paras. 149-150. (emphasis omitted)
[47] Appellate Body Report, *EC – Tube or Pipe Fittings*, para. 131.
[48] Canada's first written submission, para. 111.
[49] Canada's first written submission, para. 112 (quoting Canada's translation of the Final Determination at Exhibit CAN-3, at p. 78).
[50] Final Determination, Exhibit CHN-01, at p. 76. (emphasis added)
[51] Final Determination, Exhibit CHN-01, at pp. 71-74.
[52] Final Determination, Exhibit CHN-01, at p. 78.

the factors, even if some factors showed positive trends. Previous panels have confirmed that "there is no requirement in Article 3.4 that each and every injury factor, individually, must be indicative of injury".[53]

E. MOFCOM's Causation Analysis Was Fully Consistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement

33. MOFCOM conducted an objective examination of the record evidence concerning causation. MOFCOM's causation analysis was based on several factors, including the fact that the quantity of the dumped subject imports skyrocketed. Moreover, the price of the dumped imported product declined precipitously in the second half of the POI. This combination of significant increases in import volume and rapid declines in prices forced the domestic industry to compete on prices, and as a result the price of the like product of the domestic industry was depressed.[54] The domestic industry lost market share on an almost one-to-one basis in 2012 in the price depression period.[55] The price depression caused by the dumped subject imports led to a continuous decline of the pre-tax profit, return on investment and net cash flow from operating activities of the domestic industry.[56]

1. MOFCOM's Causation Analysis Properly Relied On Its Volume and Price Effects Findings

34. Canada alleges that MOFCOM's causal link analysis relies on faulty volume and price effects findings. As discussed above, MOFCOM's volume and price effects findings were fully consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement. MOFCOM thus properly based its causation analysis in part on its prior volume and price effects findings.

2. MOFCOM Appropriately Considered Whether There Was A Causal Link Between Subject Imports and the Material Injury Suffered by the Domestic Industry

35. Canada next alleges that MOFCOM "asserted that subject imports caused injury to the domestic producers of like goods, [but] it failed to demonstrate *how*".[57] MOFCOM objectively considered positive evidence demonstrating a causal link between subject imports and the material injury suffered by the domestic industry, and explained that link fully.

36. MOFCOM found that the absolute volume of the dumped subject imports increased dramatically, from 421,000 tons in 2010 to 605,500 tons in 2012, an increase of 43.82 per cent over the POI. MOFCOM also found that the market share of the dumped subject imports increased, from 18.96 per cent in 2011 to 22.01 per cent in 2012.[58] MOFCOM found that prices of the dumped subject imports declined dramatically from the first half of 2011 to the end of the POI, from RMB 13,040/ton to RMB 7,024/ton.[59] MOFCOM found further that the domestic market share of the like product "was generally in an increasing trend",[60] but that the market share of the like product declined in the second half of 2012 and that the dumped subject imports gained that lost market share on a one-to-one basis.[61] MOFCOM found further that the prices of the dumped imports and the like product generally moved in parallel during the period of price depression.[62] MOFCOM also found that "from the second half of 2011 to the second half of 2012, the continued decline of the Price of the Dumped Imported Product and the quick increase of the quantity of the dumped imported product forced the Domestic Industry to compete with them in terms of price, leading to a fast and continuous decline of the Price of the Like Product of the Domestic Industry.

[53] Panel Report, *EC – Bed Linen (Article 21.5 – India)*, para. 6.163. See also Panel Report, *EC – Tube or Pipe Fittings*, para. 7.329.
[54] Final Determination, Exhibit CHN-01, at p. 77.
[55] Final Determination, Exhibit CHN-01, at pp. 63-65.
[56] Final Determination, Exhibit CHN-01, at p. 77-78.
[57] Canada's first written submission, para. 133.
[58] Final Determination, Exhibit CHN-01, at p. 59.
[59] Final Determination, Exhibit CHN-01, at p. 63.
[60] Final Determination, Exhibit CHN-01, at p. 63.
[61] Final Determination, Exhibit CHN-01, at p. 65.
[62] Final Determination, Exhibit CHN-01, at pp. 63-66, 77-78.

Based on these facts, the Investigating authority determined that the dumped imported product had a depressing effect on the Price of the Like Product…"[63]

37. MOFCOM in the "Causal Relationship" section of its determination focused on the significant growth of the quantity of the dumped imported product, as well as the precipitous price declines of the dumped imported product, which had the effect of "forcing the domestic industry to compete with it on the prices…"[64] MOFCOM found further that documents examined at verification and discussed above demonstrated the price depressing effect that the increase in volume of significantly dumped imports had on domestic prices, as domestic producers were forced to lower their price to maintain sales in the Chinese market.[65]

38. MOFCOM also carefully examined the various economic factors and indices concerning the condition of the domestic industry.[66] MOFCOM examined both those economic indicators that showed the domestic industry was suffering from material injury, and other factors that showed more positive trends.[67] MOFCOM took this whole constellation of economic factors and indices into account.

39. MOFCOM's causation analysis thus examined the relationship of the dumped imports to those economic indicators showing more positive financial results for the domestic industry, as well as those that showed that the domestic industry was in fact suffering material injury. MOFCOM's causation analysis stated that "due to the impact of the dumped imported product, the domestic industry had to reduce significantly the price of its like product, resulting in the significant decline of the profitability and the sharp decline of the pre-tax profit and ROI. In 2012, the pre-tax profit and ROI of the Like Product of the Domestic Industry both dropped to the lowest level during the Period of investigation and both were negative values; the domestic industry suffered serious losses…[b]ased on the comprehensive consideration of the above facts and evidence, the Investigating authority determined that…the dumped imported product had caused the material injury to the Domestic Industry".[68]

3. MOFCOM's Analysis of Any Other Known Factors Was Fully Consistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement

40. In addition to linking the rapidly growing volume of dumped imports at steeply declining prices with the material injury suffered by the domestic industry, MOFCOM also thoroughly examined the role played by other known factors.

41. The other known factors identified in Canada's submission can be classified into two categories. The first are the known factors other than the dumped imports which at the same time are injuring the domestic industry, but which MOFCOM determined in its Final Determination did not break the causal link between dumped imports and the material injury suffered by the domestic industry. These are cotton and VSF prices, the domestic industry's capacity expansion, and non-subject imports. The second category that Canada challenges is the known factor – cotton linter – that MOFCOM determined did not cause injury to the domestic industry.

(a) MOFCOM Properly Separated and Distinguished the Injurious Effects of Certain Other Known Factors from the Injurious Effects of the Dumped Imports

42. With respect to the first category of factors identified in Canada's submission, subject imports need only be a "cause," and not the sole cause of material injury to the domestic industry. The Appellate Body has stated that the non-attribution language in Article 3.5 of the Anti-Dumping Agreement "applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry *at the same time*."[69] In order to ensure that the

[63] Final Determination, Exhibit CHN-01, at pp. 65-66; see also Final Determination, Exhibit CHN-01, at pp. 73, 77-78.
[64] Final Determination, Exhibit CHN-01, at pp. 77-78.
[65] Final Determination, Exhibit CHN-01, at p. 65.
[66] Final Determination, Exhibit CHN-01, at pp. 71-74.
[67] Final Determination, Exhibit CHN-01, at pp. 71-74.
[68] Final Determination, Exhibit CHN-01, at p. 78.
[69] Appellate Body Report, *US – Hot-Rolled Steel*, para. 223.

injurious effects of the other known factors are not "attributed" to dumped imports, the investigating authority's non-attribution analysis "requires 'separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports'."[70] However, as long as an investigating authority carries out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors, the "particular methods and approaches" are not prescribed by the Anti-Dumping Agreement.[71]

(i) MOFCOM's Examination of the Effects of Cotton and VSF Prices on Cellulose Pulp Was Based on an Objective Examination of Positive Evidence

43. Canada argues that there is an alleged correlation between global cotton fibre, global VSF and Chinese cellulose pulp pricing.[72] Contrary to Canada's claims, MOFCOM conducted an objective examination based on positive evidence before determining that cotton prices were not the main factor that determined the price of VSF, and cotton prices were also not the main factor that affected the price of cotton pulp in the domestic industry.[73]

44. As MOFCOM explained in the Final Determination, evidence indicated that VSF has superior dyeing and moisture absorption properties as compared to cotton fiber.[74] Therefore, based on an objective examination of the positive evidence, MOFCOM reached the conclusion that the different properties between VSF and cotton fiber rendered them "not substitutable in the market to a certain extent".[75] As a result, because VSF and cotton fiber are, to a certain degree, not substitutable in the market, MOFCOM reasonably found that there is no necessary relationship between the prices of VSF and cotton.[76]

45. In addition, as MOFCOM explained in the Final Determination, during the POI, China's import quotas on cotton and other Chinese Government policies created a disconnect between global cotton prices and the domestic cotton prices in China. Thus, domestic cotton market dynamics differ from the global market dynamics relied on by Canada, and MOFCOM properly reviewed *domestic* Chinese cotton prices instead of global cotton prices when analysing whether cotton prices impacted *domestic* VSF prices in China.

46. In reviewing domestic cotton prices, the data demonstrated that the domestic VSF and cotton pulp prices in China did not follow the trends in domestic cotton prices in China. As a result, based on the above data, MOFCOM reasonably concluded that during the POI, cotton prices were not the main factor that determined the price of VSF, and cotton prices were also not the main factor that affected the price of cotton cellulose pulp.

47. In any event, Canada's arguments concerning the alleged relationship between cotton and VSF prices are not even directly relevant to an analysis of factors driving cellulose pulp prices. The more even hypothetically relevant question is whether there is a relationship between VSF and cellulose pulp prices.

48. Canada argues that Figure 1 in its first written submission, which is based on data submitted by foreign exporters, demonstrates there is a causal relationship between cotton, VSF, and cellulose pulp prices.[77] However, MOFCOM reasonably found that the information on the record did not constitute sufficient evidence demonstrating the alleged direct *causal* relationship between VSF and overall cellulose pulp prices.[78] The parallel price trends on their own do not demonstrate that the downward trend in VSF prices led to the downward trend in cellulose pulp prices. Balancing all positive evidence, including data showing strong total domestic demand for cellulose pulp during the POI as discussed below, demonstrates that MOFCOM reasonably concluded that the evidence did not show a direct *causal* relationship between VSF and cellulose pulp prices.

[70] Panel Report, *China – GOES*, para. 7.618; Appellate Body Reports, *US – Hot-Rolled Steel*, para. 223 and *EC – Tube or Pipe Fittings*, para. 188.
[71] Appellate Body Report, *US – Hot-Rolled Steel*, para. 224.
[72] Canada's first written submission, paras. 3-6 and 157.
[73] Final Determination, Exhibit CHN-01, at p. 67.
[74] Final Determination, Exhibit CHN-01, at p. 67.
[75] Final Determination, Exhibit CHN-01, at p. 67.
[76] Final Determination, Exhibit CHN-01, at p. 67.
[77] Canada's first written submission, para. 157.
[78] Final Determination, Exhibit CHN-01, at p. 68.

49. MOFCOM reasonably demonstrated that an examination of VSF output and total domestic demand for cellulose pulp is relevant to an analysis of the ultimate alleged impact of VSF prices on cellulose pulp prices. In the Final Determination, MOFCOM found that the output of VSF during the POI rapidly increased.[79] MOFCOM reasonably explained that the rapid growth in output of VSF as the downstream product in turn resulted in the rapid growth of total domestic demand for cellulose pulp.[80] In addition, MOFCOM also found that the total output could not always meet the total demand of cellulose pulp. As a result, the price of cellulose pulp should have at least remained stable. But it did not. Therefore, MOFCOM reasonably concluded that factors other than VSF output or prices, which are intimately linked with output, were the direct cause of the decline in cellulose pulp prices.[81]

50. Therefore, MOFCOM's findings that (1) cotton prices were not a main factor in affecting VSF prices or cellulose pulp prices, and (2) changes in VSF prices were not the direct cause of the decline in cellulose pulp prices were based on an objective examination of positive evidence, consistent with the standards of the Anti-Dumping Agreement.

(ii) MOFCOM's Examination of the Domestic Industry's Capacity Expansion and Inventory Build-up Was Based On an Objective Examination of Positive Evidence

51. Contrary to Canada's claim, MOFCOM fully examined and addressed the issues relating to the increased production capacity of the domestic industry during the POI. MOFCOM determined that the domestic industry added capacity due to the significant "increase of the demand of the domestic cellulose pulp market."[82] MOFCOM noted that the domestic production capacity increased to match the significant growth in total domestic demand for cellulose pulp, which increased from 2.03 million tons in 2010 to 2.75 million tons in 2012. MOFCOM further concluded that the "slightly proactive increase of their production capacity" was reasonable in order to meet the expected growth in demand.[83] In addition, MOFCOM concluded that the industry's production capacity even after the increase in 2012 "was basically equal to the total domestic demand for cellulose pulp."[84] MOFCOM then compared capacity and demand levels, and noted that the total output of the domestic cellulose pulp industry was "always far less" than the total domestic demand.[85]

52. In addition, MOFCOM determined that some of the new capacity was not put in place until the end of the POI, further reducing the impact of that increased capacity on the state of the domestic industry during the POI.[86] MOFCOM then further examined the impact of increased capacity on the domestic industry's per unit costs. MOFCOM found that the unit production costs of the domestic industry *declined* in general over the POI, further indicating that expenditures for increased production capacity did not harm the financial performance of the domestic industry.[87]

53. Canada next alleges that MOFCOM inappropriately used production capacity of the entire domestic industry, not merely that for the domestic industry as defined by MOFCOM.[88] However, when examining the overall relationship between production capacity and demand, MOFCOM's use of total production capacity for the entire industry in relation to total demand better reflects the overall market dynamics.

54. Canada claims that MOFCOM failed to adequately examine the relationship between the domestic industry's increased production capacity and the increase in inventory.[89] However, MOFCOM's determination states that "the investigating authority also took into consideration the obvious increase of the inventory of the Domestic Industry."[90] MOFCOM examined the increase in production and sales volume from 2012 compared with 2011, and reasonably concluded that the

[79] Final Determination, Exhibit CHN-01, at p. 68.
[80] Final Determination, Exhibit CHN-01, at p. 69.
[81] Final Determination, Exhibit CHN-01, at p. 69.
[82] Final Determination, Exhibit CHN-01, at p. 76.
[83] Final Determination, Exhibit CHN-01, at p. 81.
[84] Final Determination, Exhibit CHN-01, at p. 81.
[85] Final Determination, Exhibit CHN-01, at p. 81.
[86] Final Determination, Exhibit CHN-01, at p. 81.
[87] Final Determination, Exhibit CHN-01, at pp. 81-82.
[88] Canada's first written submission, para. 164.
[89] Canada's first written submission, para. 168.
[90] Final Determination, Exhibit CHN-01, at p. 82.

increased portion of production due to the expansion of production capacity was not the direct cause of the increase of the ending inventory.[91]

55. MOFCOM concluded its analysis by acknowledging that while the increase in production capacity may have had some impact, the record evidence did not demonstrate that the increased capacity was sufficient to break the causal relationship between the dumped imported product and the material injury suffered by the domestic industry.[92]

(iii) MOFCOM's Examination of the Impact of Non-Subject Imports Was Based on an Objective Examination of Positive Evidence

56. Contrary to Canada's claims, MOFCOM specifically examined in detail the role played by non-subject imports, and concluded that they could not break the causal relationship between the dumped subject imports and the material injury suffered by the domestic industry.

57. MOFCOM analysed the relative proportion of non-dumped imports in relation to total imports, and concluded that they were a significant proportion of total imports, over 50 per cent in each year of the POI.[93] MOFCOM then examined the price relationship between dumped and non-dumped imports, and concluded that the difference in prices were "not big."[94] MOFCOM also noted that it learned in the investigation from the downstream customers that the dumped imports were "generally better…in terms of the quality and consumer comments" than were the non-dumped subject imports.[95] The fact that the dumped imports were better quality further supported MOFCOM's conclusion that the not large differences in price between them and the non-dumped imports would not break the causal link between the dumped imports and the injury suffered by the domestic industry.

58. MOFCOM acknowledged that the price of the cellulose pulp imported from South Africa was lower than the price of the dumped subject imports, but that the quantity of imports of cellulose pulp from South Africa were relatively small, and less than 10 per cent of total imports in each year of the POI. MOFCOM further analysed relative prices, and noted that cellulose pulp imported from Indonesia and Sweden were imported at similar prices to those of the dumped imported product, but that their quantities as a portion of total quantity of imports into China was declining over the POI.[96]

(b) MOFCOM Properly Determined that the Supply of Cotton Linter Was Not Causing Injury to the Domestic Industry

59. The other known factor challenged by Canada is the alleged shortage of domestic cotton linter supply and its alleged injurious effects on the domestic industry.[97] MOFCOM reasonably determined that the supply of domestic cotton linter was not another known factor that was at the same time injuring the domestic industry.

60. Canada claims that an insufficient quantity of domestic cotton linter, an input to the production of cotton linter cellulose pulp, was a significant cause of the domestic industry's low capacity utilization rates.[98]

61. Canada first argues that MOFCOM failed to examine evidence indicating that total domestic demand for cotton linter surpassed total domestic cotton linter supply for each year of the POI.[99] However, in the paragraph following the table in the China Viscose Industry Chain Report 2012 that Canada relied on,[100] CCFGroup indicates that any shortage in cotton linter supply was mainly filled by waste cotton linters. Coupled with the latter, the supply of cotton linter in 2012 was in fact

[91] Final Determination, Exhibit CHN-01, at p. 82.
[92] Final Determination, Exhibit CHN-01, at p. 82.
[93] Final Determination, Exhibit CHN-01, at p. 84.
[94] Final Determination, Exhibit CHN-01, at p. 85.
[95] Final Determination, Exhibit CHN-01, at p. 85.
[96] Final Determination, Exhibit CHN-01, at p. 85.
[97] Canada's first written submission, para. 178.
[98] Canada's first written submission, para. 178.
[99] Canada's first written submission, para. 181.
[100] See CCFGroup China Viscose Industry Chain Report 2012, Exhibit CAN-4, at p. 6.

"relatively sufficient."[101] As a result, MOFCOM properly concluded that there was sufficient total domestic cotton linter supply in 2012.

62. Canada next argues that MOFCOM's analysis assumes that cotton linter pulp producers would have access to the entire domestic supply of cotton linter.[102] As demonstrated above, MOFCOM considered the information in the CCFGroup China Viscose Industry Chain Report 2012 that indicated cotton linter supply was in fact sufficient. MOFCOM then reasonably explained that because cotton linter was mainly used for the production of cotton linter pulp, as shown in Table 4 of Canada's submission, MOFCOM properly applied a unit consumption ratio of 1 ton of cotton pulp to approximately 1.3 tons of cotton linter, in order to determine what the domestic output of cotton pulp should have been over the POI.[103] However, the actual output of cotton pulp, as well as the capacity utilization rate of the domestic cotton pulp industry, were much lower. As a result, MOFCOM properly determined that the low capacity utilization rate of the domestic industry was not caused by changes in the supply of cotton linter.

63. Finally, MOFCOM properly relied on positive evidence derived from injury questionnaire responses demonstrating that during the POI, the sales volumes of wood and bamboo cellulose pulp, at their highest level in 2012, accounted for nearly 70 per cent of the total sales volume of the like product of the domestic industry.[104] As cotton linter is not a raw material for the production of wood pulp or bamboo pulp, MOFCOM reasonably found that changes in the supply of cotton linter were not the cause of the overall domestic cellulose pulp industry's low capacity utilization rates.[105]

64. MOFCOM reasonably found that the supply of cotton linter was sufficient, and therefore was not a factor that caused injury to the domestic industry. Because the supply of cotton linter was not a factor contributing at the same time to the situation of the domestic industry, there was no need to "separate and distinguish" any injurious effects.

IV. CONCLUSION

65. For the reasons set forth in this submission, China requests that the Panel find that MOFCOM's determinations in the underlying investigations were fully consistent with China's WTO rights and obligations.

[101] See CCFGroup China Viscose Industry Chain Report 2012, Exhibit CAN-4, at p. 6.
[102] Canada's first written submission, para. 185.
[103] Final Determination, Exhibit CHN-01, at p. 75.
[104] Final Determination, Exhibit CHN-01, at p. 74.
[105] Final Determination, Exhibit CHN-01, at p. 76.

ANNEX C-2

SECOND INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF CHINA

I. INTRODUCTION

1. As China's prior submissions have demonstrated, MOFCOM objectively examined positive evidence and fully complied with its obligations under the Anti-Dumping Agreement. MOFCOM found that the volume of significantly dumped imports increased dramatically over the period of investigation (POI), over 40 per cent. MOFCOM also found that the prices of those rapidly growing dumped imports plummeted, and forced domestic producers to lower their prices in the face of severe price competition with those dumped imports. In addition, MOFCOM properly examined the various factors having a bearing on the state of the industry, both positive and negative, and the impact of the dumped imports on the domestic industry. Finally, China has also demonstrated that Canada's arguments concerning MOFCOM's non-attribution analyses should be rejected. There is no prescribed methodology, approach, or qualitative or quantitative analysis. Each such analysis must be judged on its own merits.

II. ARGUMENT

A. MOFCOM's Volume Analysis Was Fully Consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement

2. Canada has failed to establish that MOFCOM's volume analysis is inconsistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement. Article 3.2 provides an investigating authority with the option of considering whether there has been a significant increase in the volume of dumped imports in either absolute or relative terms.

3. The use of the disjunctive "or" in the first sentence of Article 3.2 indicates that the investigating authority need not consider whether there has been a significant increase in dumped imports from *both* an absolute and a relative perspective. Rather it is sufficient for the investigating authority to consider one of the two perspectives. That the investigating authority need not consider *both* perspectives is confirmed by the use of the term "either" before "in absolute terms or relative to production or consumption". It is also consistent with the ordinary meaning of "absolute".

4. Canada recognizes that the first sentence of Article 3.2 "gives an investigating authority the discretion to consider this increase in absolute terms or relative to production or consumption".[1] However, Canada still argues that an investigating authority is required to consider the "relevant circumstances in a manner that provides a meaningful basis to conduct subsequent analyses".

5. First, there is no textual basis in Article 3.2 for the "requirement to consider the relevant circumstances". Second, Canada's strained attempt to find a textual basis for its requirement in the term "significant" does not work. It is perfectly possible to consider whether the increase in the volume of dumped imports is "significant" in absolute terms without having to additionally consider other circumstances. Here, the volume of dumped imports increased more than 40 per cent during the POI. Therefore, it is perfectly possible to give effect to the term "significant" while respecting the ordinary meaning of the other terms used in the first sentence of Article 3.2, such as "or, "either" and "absolute".

6. Canada also attempts to find support for its "requirement" in "the context provided by the other paragraphs of Article 3." However, Canada does not explain how the text of those provisions provides support for its overly expansive interpretation of the first sentence of Article 3.2. Having strayed completely from the text of Article 3.2, and more generally from the text of Article 3, Canada argues that "[t]o provide a 'meaningful basis' for subsequent analysis under Article 3, the volume analysis must account for relevant market circumstances and not consider subject imports

[1] Canada's response to Panel question No. 4, para. 1.

in isolation".[2] This statement reveals another fundamental flaw that is at the core of Canada's argument. As it does repeatedly throughout this case, Canada is collapsing the various obligations set out in Article 3 and improperly trying to import into the first sentence of Article 3.2 analyses that are contemplated only in other provisions of Article 3.

7. Canada is essentially arguing that MOFCOM was required, under the first sentence of Article 3.2, to consider whether the increase in the volume of dumped imports was such that it was the cause of injury to the domestic industry. This, however, is not the analysis that is contemplated under the first sentence of Article 3.2. And, while there may be a "logical progression" between Articles 3.2 and 3.5 and the two provisions may be "interlinked", this does not mean that the requirements of both are the same. Canada's argument would seem to be that a volume analysis is only consistent under Article 3.2 if it *necessarily* leads to an affirmative finding of causation. However, an investigating authority is entitled to consider that the increase in the volume of dumped imports is significant and yet arrive at a negative finding of causation.

8. Canada's argument implies that an absolute increase in the volume of dumped imports, no matter how large in numerical terms, could not by itself, provide a meaningful basis for the subsequent analysis under Article 3, unless the increase is coupled with lost sales or the substitution of market share of the domestic industry. This is incorrect both in light of the plain text of the first sentence of Article 3.2 and the provisions that follow.

9. Moreover, Canada specifically asserts that MOFCOM failed to consider three factors under the first sentence of Article 3.2, namely, domestic consumption, domestic sales and non-dumped imports. The first two factors are mentioned in the first sentence of Article 3.2 in connection with the option of considering whether there has been a significant increase in dumped imports in relative terms. The fact that these two factors are expressly referred to in connection with relative import volume, and are not mentioned in connection with absolute volume, further undermines Canada's contention that the consideration of volume in absolute terms requires an investigating authority to consider market share. Moreover, even with respect to relative volume, the first sentence of Article 3.2 refers to production or consumption. The use of the disjunctive "or" means that, even in the case of relative volume, an investigating authority is not required to consider both. Furthermore, the reference to production or consumption is exhaustive – there is no "for example" or "including" in the first sentence of Article 3.2. Thus, there is no basis for Canada's contention that an investigating authority is also required to consider trends in non-subject imports as part of the analysis undertaken under the first sentence of Article 3.2.

10. Canada seems to suggest that the requirement to consider the three additional factors is case-specific.[3] However, in practice, Canada's proposed approach would impose an obligation on all investigating authorities in all investigations to consider whether there is a significant increase in the volume of dumped imports in relative terms or to assess the volume of dumped imports against "relevant circumstances". Furthermore, in order to consider whether such "relevant circumstances" exist, the investigating authority would be required to consider factors other than the absolute volume of the dumped imports, including, but possibly not limited to, the factors raised by Canada in this dispute. Only after the investigating authority has conducted such analysis and has concluded that the "relevant circumstances" do not require examining other factors, could the investigating authority consider whether there has been a significant increase in the volume of dumped imports in absolute terms. This effectively makes consideration of the relative increase in the volume of the dumped imports obligatory for all investigating authorities in all investigations.

11. Finally, at the First Substantive Meeting, Canada claimed that MOFCOM "failed to provide a reasoned explanation for its finding of a significant increase in absolute volume". Canada did not include this claim in its panel request.[4] Therefore, the Panel should reject Canada's claim on this

[2] Canada's opening statement at the first meeting of the Panel with the Parties, para. 15.

[3] Canada's response to Panel question No. 4, paras. 5 and 8-9. See, Japan's response to Panel question No. 1, para. 1.

[4] See Canada's request for the establishment of a panel, para. 4.

basis alone. In any event, Canada's allegation is once again grounded on a misunderstanding of the requirements of the first sentence of Article 3.2.[5]

B. MOFCOM's Price Effects Analysis Was Fully Consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement

12. MOFCOM's finding of price depression was consistent with MOFCOM's obligations under Articles 3.1 and 3.2 of the Anti-Dumping Agreement.

1. MOFCOM Reasonably Relied on a Variety of Record Evidence To Support Its Price Depression Finding

13. MOFCOM examined a variety of evidence that supported its conclusion that the dumped subject imports had a depressing effect on the prices of the domestic like product in the second half of the POI. MOFCOM found that the dumped subject imports and the domestic like product were directly competitive because they were "basically identical in terms of the product's performance, the quality, the sales area and the group of clients."

14. MOFCOM also relied on the significant increase in the absolute volume of dumped imports over the POI, which increased dramatically from approximately 421,000 tons in 2010 to 605,500 tons in 2012, an increase of 43 per cent.[6] MOFCOM further relied on the drastic fall in prices for subject imports over the second half of the POI. Prices for subject imports fell from 13,040 RMB/ton in early 2011 to only 7,024 RMB/ton at the end of the POI.

15. In addition, MOFCOM had calculated significant dumping margins for the dumped subject imports, ranging from 13 to 23.7 per cent for Canadian producers, to 16.9 and 17.2 per cent for the investigated U.S. producers, and an all-others margin of 33.5 per cent for other U.S. producers. MOFCOM also calculated a margin of 6.8 per cent for the Brazilian respondents and an all-others rate of 11.5 per cent for all other Brazilian exporters.

16. In addition, MOFCOM reasonably found that there were parallel pricing trends. MOFCOM concluded that prices for subject imports and the domestic like product over the POI "…first increased and then decreased, showing a decreasing trend in general."[7] MOFCOM also found parallel price trends in the second half of the POI, and noted that "[i]n the same period, both the Price of the Dumped Imported Product and the Price of the Like Product of the Domestic Industry showed a continuous decreasing trend."

17. In addition, as discussed further below and in China's prior submissions, MOFCOM also relied in part on the pricing minutes, which demonstrated concretely that subject imports forced the domestic producers to reduce prices for the domestic like product.

18. China notes that the plain text of Article 3.2 requires only that MOFCOM "shall *consider* whether…the effect of such imports is otherwise to depress prices to a significant degree…" (emphasis added). The text does not define how the investigating authority "shall consider" these factors, which provide an investigating authority discretion when undertaking its price depression analysis so long as it undertakes an objective examination based on positive evidence. Moreover, the Appellate Body has stated that an investigating authority "is not required to make a definitive determination of significant price depression and suppression, such as the determination contemplated in [Article 3.5 to] 'demonstrate' the causal relationship between dumped imports and injury to the domestic industry." The Appellate Body has stated that "…the authority's consideration of price effects must be reflected in relevant documentation produced by the

[5] China recalls that the obligation under the first sentence of Article 3.2 is to "consider" whether there has been a significant increase in the volume of dumped imports. The Appellate Body has found that the term "consider" in Article 3.2 connotes an obligation "to take something into account", but does "not impose an obligation on an investigating authority to make a definitive determination on the volume of subject imports". Appellate Body Report, *China – GOES*, para. 130. (emphasis omitted)

[6] Final Determination, Exhibit CHN-01, p. 60.

[7] Final Determination, Exhibit CHN-01, p. 64.

authority in its investigation, and must be based on positive evidence and involve an objective examination…"[8] MOFCOM's price effects analysis fully meets this standard.

2. MOFCOM Reasonably Found Parallel Price Trends and Explained Their Relevance

19. Canada has shifted its argument, and now attempts to argue that subject imports and the domestic like product did not exhibit parallel price trends, at least not over the entire POI. Canada's claim in this regard is unavailing. MOFCOM found parallel price trends both early in the POI, and also in the more critical period later in the POI during which MOFCOM found price depression. MOFCOM did not rely on a price depression finding only in a single isolated period of the overall POI, but rather, appropriately, looked at longer-term price trends and general movements in prices over longer time periods. In contrast, Canada improperly focuses on only a single point in time early in the overall POI in which the lines showing prices for subject imports and the domestic like product cross.

20. Canada also incorrectly argues that "the price of the domestic like product declined much faster than those of subject imports" once prices began to decline. During the second half of the POI, the prices for the domestic like product declined 47.38 per cent, while the dumped imports declined at basically the same level, 46.14 per cent. Over the first half-year of 2011 compared with the first-half year of 2012, the price of the dumped subject imports declined by 39.59 per cent, while the price for the domestic like product declined by a nearly identical 38.80 per cent, providing further confirmation of parallel price trends and contradicting to Canada's claim that the price of the domestic like product "declined much faster" than those of subject imports.

21. Canada also now claims that the panel's finding in *China – Autos (US)*, which concerned a finding of parallel prices in a different case, applies equally here.[9] The *China – Autos (US)* case, however, is not applicable. In that case, the panel noted that the prices moved in different directions and the average unit values declined at a "considerably different" rate of change.[10] And in *China – GOES*, prices for subject imports declined only 1.25 per cent, while prices for the domestic like product declined by 30.25 per cent.[11] In this case, however, there is clear evidence both of parallel pricing and of similar movements in average unit value between subject imports and the domestic like product. Moreover, the panel in *China – Autos (US)* stated that an investigating authority does not need to find "perfect correlation in prices" to support a finding of parallel pricing. And the Appellate Body stated in *China – GOES* that it could "conceive of ways in which an observation of parallel price trends might support a price depression or suppression analysis.

22. Canada continues to argue that MOFCOM "gave no explanation or reasoning regarding how any parallel price trend indicated the nature of competition between subject imports and the domestic like product."[12] The existence of parallel price trends can be an indicator of a link between prices for subject imports and the domestic like product. The fact that prices for subject imports and the domestic like product move in tandem can be evidence of a causal relationship. In addition, the pricing minutes that MOFCOM examined demonstrated concretely that the dumped subject imports were forcing the domestic producers to lower prices.

3. The Pricing Documents and Meeting Minutes are Reliable, Concrete Evidence of Price Depression

23. Contrary to Canada's assertions, the pricing documents and meeting minutes that MOFCOM examined concretely demonstrated that domestic producers were forced to lower prices in the face of the rapidly rising volume of significantly dumped imports at rapidly declining prices. Those documents are reliable, contemporaneous accounts of the adverse pricing pressure that the domestic producers faced in the normal course of their business operations during the POI.

[8] Appellate Body Report, *China – GOES*, para. 158.
[9] Canada's response to Panel question No. 10, para. 32.
[10] Panel Report, *China – Autos (US)*, paras. 7.262-7.263.
[11] Appellate Body Report, *China – GOES*, fn. 350.
[12] Canada's response to Panel question No. 9, para. 26.

24. Canada's translation of the phrase "deng" is not correct. The dictionary definition of "deng" in Exhibit CHN-06 indicates that the phrase has two uses, and that the word can mean either "et cetera" when a preceding list of items is not complete and there are other items that are not identified, or it can be used to finish or wind up the list of items preceding "deng." In the present case, the list of items preceding the phrase "deng" is closed or complete, and there are no other items that form part of the specified list. In this respect, the "deng" can be translated as "namely" or "as such." In addition, the phrase "deng" is followed by a specific percentage, *i.e.,* "more than half of China's total imports of cellulose pulp." Thus, the phrase "more than half of China's total imports of cellulose pulp" can *only* make sense if the phrase "Brazil, Canada and USA" is an exhaustive list. The import data also confirms that imports from Brazil, Canada and the United States do indeed account for approximately one-half of total imports of cellulose pulp into China. For these reasons, Canada's translation of the phrase "deng" in the context of these pricing documents is inaccurate.

25. Canada claims further that the pricing documents and meeting minutes are not reliable. However, the Final Determination states that "[the] investigating authority had collected evidences from many domestic producers during its on-site verifications, including the minutes of the business analysis meetings and the pricing reports…" There is thus no question that MOFCOM examined these documents during the verification. Moreover, the documents are representative of the situation for the domestic industry, because the companies that submitted these documents are some of the most important producers and their total production and sales accounted for a considerable portion, approximately one-third, of total domestic production.

26. The documents were also all dated well before the initiation of the investigation, demonstrating that they were authentic records recorded in the company's normal course of business, and were not prepared for the investigation itself. Moreover, the documents covered a significant portion of the overall POI. In addition, the pricing minutes and meeting documents from the multiple companies' records included in Exhibit CHN-02 corroborated each other.

27. In light of all these circumstances, there was no requirement that MOFCOM undertake any specific, pre-determined method to verify or examine the pricing documents and meeting minutes that MOFCOM in part relied on. Indeed, the panel in *EC – Fasteners (Article 21.5 – China)* stated that while Article 6.6 of the Anti-Dumping Agreement generally requires an investigating authority to "satisfy [itself] as to the accuracy of the information supplied by interested parties upon which [its] findings are based," the Anti-Dumping Agreement "does not prescribe specific ways in which this general obligation has to be observed." Canada has not pursued claims under Article 6 of the Anti-Dumping Agreement.

28. Canada also argues that MOFCOM failed to explain how the pricing documents "showed any difficulty in making sales…" Similarly, Canada claims that MOFCOM's conclusion that the domestic industry had "difficulty in clinching deals" contradicts the fact that the domestic industry's sales increased over the POI. But the "difficulty in clinching deals" referenced in the meeting minutes refers to the fact that the domestic industry was forced to reduce prices in order to make sales, and thus avoid losing even more sales and further market share. This is the very essence of price depression.

4. MOFCOM Reasonably Found Price Depression and Was Not Required to Also Find Price Undercutting

29. Canada continues to argue that MOFCOM could not objectively find price depression when subject imports were priced somewhat higher than the domestic like product. However, the plain text of Article 3.2 and relevant case law demonstrate that price depression can be found in the absence of price undercutting.[13] There is simply no requirement that an investigating authority must find price undercutting before it can find price depression.

30. MOFCOM also examined relative price levels and the arguments of interested parties in the underlying investigation that prices for the dumped subject imports were higher than prices for the domestic like product. MOFCOM rejected the arguments of foreign producers Cosmo and Fortress that the dumped imports could not have caused injury because prices of the dumped imported product from the U.S. and Canada were higher than the price of the domestic like product.

[13] China's response to Panel question No. 16, paras. 49-53.

MOFCOM concluded that the argument failed because MOFCOM appropriately was conducting a cumulative assessment of prices, and that "the investigating authority would not conduct a separate analysis and assessment on the import price of individual countries."

5. MOFCOM Also Considered Market Share Information, Even Though it Was Not Required to Do So

31. Canada argues that subject imports could not have even conceivably caused price depression when their market share did not increase. China again notes that MOFCOM properly focused the volume effects portion of its price depression finding on movements in the absolute volume of subject imports, and was not required under Article 3.2 to also consider movements in market share.

32. Prior panels have noted that in a price depression analysis based on an absolute increase in import volume, it does not matter that the market share of subject imports did not increase significantly. Even though MOFCOM was not required under Article 3.2 to also consider movements in market share, it nonetheless still did so. Moreover, the Final Determination notes that at the height of the period of price depression, "particularly in the second half of 2012, the dumped imported product squeezed the market share of the like product of the domestic industry which declined to 25.73 percent from 26.71 percent and the lost 0.98 percentage points were all taken by the dumped imported product."

C. MOFCOM's Examination of the Impact of Dumped Imports on the Domestic Industry Was Fully Consistent with Articles 3.1 and 3.4 of the Anti-Dumping Agreement

33. Canada alleges that MOFCOM failed to: (i) to objectively examine the domestic industry's market share; and (ii) properly analyze and interpret data relating to factors that showed an improvement in the state of the domestic industry.[14] Neither allegation has merit.

1. MOFCOM Objectively Examined Market Share Data

34. In its Final Determination, MOFCOM found that the market share of the domestic industry "remained low."[15] Canada asserts that MOFCOM's statement concerning the market share of the domestic industry should be translated as "consistently depressed", rather than "remained low." However, Canada appears to acknowledge the tenuousness of its position when it argues that "more importantly, regardless of which translation is used, MOFCOM's analysis is improper". Both reasons put forward by Canada to support this contention are groundless. First, Canada asserts that MOFCOM should have considered the trend in the market share rather than whether the domestic industry's market share was high or low. MOFCOM, however, did in fact examine trends in market share. Second, Canada submits that "MOFCOM's characterization of the domestic industry's market share as remaining low contradicts positive evidence on MOFCOM's record that the domestic industry's market share increased". There is no contradiction between MOFCOM's statement and the evidence on record. MOFCOM's statement does not indicate that the domestic industry's market share was decreasing. Rather, MOFCOM simply made a general statement about the share of the overall market held by the domestic industry.

35. Regardless, MOFCOM found that the increasing volumes of dumped imports at steeply declining prices were impacting negatively on the state of the industry because the dumped imports were pushing prices downward and this led to a continuous decline in the pre-tax profit, return on investment and net cash flow, among other factors.[16] Thus, even assuming *arguendo* that MOFCOM erred in its characterization of market share, this does not invalidate MOFCOM's Article 3.4 analysis, which did not turn on market share.[17]

[14] Based on its opening statement at the first meeting of the Panel with the parties, it would appear that Canada no longer intends to pursue its allegation that MOFCOM failed to examine whether subject imports explained the state of the domestic industry. Canada's opening statement at the first meeting of the Panel with the Parties, paras. 47-57.

[15] Final Determination, Exhibit CHN-01, p. 76.

[16] See, China's response to Panel question No. 17, para. 58.

[17] China's response to Panel question No. 53, para. 11.

2. MOFCOM Properly Examined Factors Showing Improvement in the State of the Domestic Industry

36. MOFCOM considered both the positive and negative factors in its Article 3.4 analysis. MOFCOM found that, even though not all of the factors showed a negative trend, the increasing volumes of dumped imports at steeply declining prices were impacting negatively on the state of the industry because the dumped imports were pushing prices downward and this led to a continuous decline in the pre-tax profit, return on investment and net cash flow. MOFCOM additionally noted that, as the volume of dumped imports increased, the market share of the domestic industry remained low and inventory increased continuously. Finally, MOFCOM noted that the operation rate of the domestic industry remained low, and also referred to its findings that the domestic industry had to put on hold its plans for expansion. Therefore, MOFCOM's Final Determination demonstrates that MOFCOM properly examined the various factors having a bearing on the state of the industry, both positive and negative, and the impact of the dumped imports on the domestic industry, in accordance with Articles 3.1 and 3.4 of the Anti-Dumping Agreement.

37. It is incorrect in these circumstances for Canada to allege that MOFCOM "simply juxtaposed the positive with the negative factors".[18] Rather, MOFCOM identified how the impact of the dumped imports manifested itself more clearly in some factors than in others because the effect of the dumped imports was mainly being felt in the prices of the domestic like product. These reduced prices, in turn, negatively affected other factors, such as profits, return on investment and cash flow.

38. Canada, moreover, once again improperly expands the analysis required under Article 3.4 when it argues that MOFCOM was required "to assess each factor's role, relevance and relative weight".[19] Article 3.4 calls for an overall examination of the impact of the dumped imports on the domestic industry. While this examination includes an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, it does not require the individualized assessment of "each factor's role, relevance and relative weight" as proposed by Canada. Canada has failed to distinguish its overly expansive view of what it argues is required under Article 3.4 from the non-attribution requirement of Article 3.5. Canada's statement of what an investigating authority must do under Article 3.4 reads very much like a requirement to perform a non-attribution analysis.

39. The Panel asked Canada to explain how its proposed analysis under Article 3.4 is different from the analysis required under Article 3.5. Canada has not been able to explain the difference between the two in concrete terms. This is not surprising given that Canada is effectively conflating the requirements of Article 3.4 and those of Article 3.5.

40. Canada also raises the panel reports in *Thailand – H-Beams* and in *EC – Tube or Pipe Fittings*, but a close look at these reports shows that neither supports Canada's position. As regards *Thailand – H-Beams*, Canada simply cites a statement made by the panel without referring to the panel's actual analysis. This analysis shows that the facts before that panel were dramatically different from the facts in this case. The panel in that case concluded that there was an "absence of even a minimally satisfactory explanation of how the factors relied upon by the Thai authorities support their affirmative injury determination". By contrast, in this case, MOFCOM provided an adequate explanation of how the factors it relied upon supported its affirmative injury determination and Canada has not challenged MOFCOM's analysis of any these factors with the exception of market share.

41. Turning to *EC – Tube or Pipe Fittings*, Canada paraphrases the panel as having stated that "an investigating authority may not simply disregard factors that are not relevant or have little weight in the determination but must explain its conclusion regarding their lack of relevance or weight". However, in this case MOFCOM did not "simply disregard factors", nor did it fail to explain its conclusions. Rather, MOFCOM examined production capacity, output, sales volume, sales revenue, labor productivity and salaries, and recognized that they were positive. MOFCOM found that, despite these positive factors, the rapidly rising volume of dumped subject imports at declining prices were forcing the domestic producers to reduce prices, which led to a significant decline in pretax profit, return on investment, and cash flow.

[18] Canada's opening statement at the first meeting of the Panel with the Parties, para. 54.
[19] Canada's opening statement at the first meeting of the Panel with the Parties, para. 57.

42. Finally, China recalls that Article 3.4 provides that none of the factors listed in Article 3.4, individually or several combined, necessarily give decisive guidance. Thus, the fact that some of the Article 3.4 factors were positive did not preclude MOFCOM from finding injury.

D. MOFCOM's Causation Analysis Was Fully Consistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement

43. Canada continues to allege that MOFCOM's causation analysis was deficient because it relied on faulty volume and price effects analyses, and because it conducted an inappropriate non-attribution analysis. As discussed below, both of Canada's claims fail.

1. MOFCOM's Volume and Price Effects Analyses Fully Supported Its Causation Analysis

44. Canada claims that MOFCOM's volume and price effect analyses were faulty. For the reasons discussed above, MOFCOM's volume and price effects findings were consistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement. MOFCOM therefore properly based its causation analysis in part on its prior volume and price effects findings.

2. MOFCOM's Analyzed the Role Played by Other Known Factors Consistent With Articles 3.1 and 3.5 of the Anti-Dumping Agreement

45. Canada has continued to claim that MOFCOM failed to objectively examine the impact of cotton and VSF prices, the domestic industry's capacity expansion, non-subject imports, and the supply of cotton linter as a raw material in its non-attribution analysis, as required by Articles 3.1 and 3.5 of the Anti-Dumping Agreement. While the Anti-Dumping Agreement requires investigating authorities to "separate and distinguish" the injurious effects of other known factors, it does not prescribe "the particular methods and approaches by which WTO Members choose to carry out the process."[20]

46. During the First Substantive Meeting, Canada incorrectly asserted that it did not have the burden of demonstrating what China should have done differently in its non-attribution analysis in order to be consistent with the Anti-Dumping Agreement. As the complainant in this proceeding, Canada does in fact have this burden and has failed to meet it. Canada merely asserts that MOFCOM's analysis is insufficient. In fact, far from Canada's blanket allegation that MOFCOM "made *no attempt* to properly 'separate and distinguish' any injury caused by these factors,"[21] MOFCOM thoroughly examined the role played by other known factors, in accordance with Articles 3.1 and 3.5 of the Anti-Dumping Agreement.

(a) MOFCOM Objectively Examined the Effects of Cotton and VSF Prices on the Domestic Industry

47. MOFCOM objectively assessed the role played by movements in cotton and VSF prices in its Final Determination. Canada continues to argue that there is a correlation between global cotton fibre, global VSF and Chinese cellulose pulp prices. MOFCOM, considered the arguments presented by the parties and the evidence on the record concerning trends in cotton and VSF prices.[22]

48. Canada continues to argue that global cotton prices impacted VSF prices. The only hypothetically relevant question is whether VSF prices impacted cellulose pulp prices. Examining whether VSF prices impacted cellulose pulp prices does not mean that the investigating authority had to then also consider the further upstream factors that may have impacted VSF prices. Nevertheless, MOFCOM still considered the submissions by interested parties on the impact of cotton prices on VSF prices and addressed this factor.

49. With respect to MOFCOM's analysis of cotton prices, Canada continues to argue that MOFCOM failed to consider evidence allegedly indicating that VSF is a close substitute for cotton,

[20] Appellate Body Report, *US – Hot-Rolled Steel*, para. 224.

[21] Canada's opening statement at the first meeting of the Panel with the Parties, para. 64. (emphasis added)

[22] Final Determination, Exhibit CHN-01, pp. 66 and 68.

and that therefore prices of VSF and cotton are related. However, MOFCOM explained in the Final Determination[23] that evidence presented during the investigation showed that VSF has superior dyeing and moisture absorption properties as compared with cotton fiber. Because VSF and cotton fiber have different chemical properties, MOFCOM reasonably concluded that VSF and cotton fiber are "not substitutable in the market to a certain extent."

50. In addition, Canada argues that fluctuations in global cotton prices caused similar fluctuations in VSF prices, which then impacted cellulose pulp prices in China. However, MOFCOM reasonably explained in its Final Determination that the domestic cotton prices in China differed significantly from global cotton prices. This disconnect between cotton prices on the international market and cotton prices in China is explicitly addressed in the Final Determination, and is not, as Canada argues, a *post hoc* rationalization. In addition, according to positive evidence on the record, VSF exports encompassed only between 5 and 10 per cent of total domestic VSF output in China. Therefore, the impact on domestic VSF prices from global cotton prices, if any, would be minimal, and MOFCOM properly examined domestic Chinese cotton prices to determine any impact on domestic VSF prices. The data demonstrated that domestic VSF and cotton pulp prices in China did not follow the trends for domestic cotton prices in China.

51. Canada continues to argue that there is a direct, causal relationship between VSF prices and cellulose pulp prices. However, evidence of parallel price trends on their own do not demonstrate there was a causal or direct relationship between VSF and cellulose pulp prices. MOFCOM considered the evidence submitted by interested parties but also carefully examined the supply and demand relationship between VSF and cellulose pulp.

52. MOFCOM found that the rapid growth in output of VSF as the downstream product in turn resulted in the rapid growth of total domestic demand for cellulose pulp during the POI. The demand was strong, such that the total output of cellulose pulp could not meet the total demand for cellulose pulp. Thus, MOFCOM noted that the price of cellulose pulp should have at least remained stable, but it instead declined. MOFCOM reasonably concluded that factors other than VSF output or prices were the "direct cause of the decline of the Price of the Like Product of the Domestic Industry."

53. MOFCOM's examination of the total domestic production capacity, the total domestic output, and the total domestic demand of cellulose pulp in China is central to its analysis, as they all drive cellulose pulp prices in China. This is a matter of simple economic logic, and not *post hoc* rationalization, as Canada argues.

54. Canada still asserts that MOFCOM was incorrect when it stated that the total production capacity of domestic producers was in balance with domestic demand. The absolute levels of the total production capacity and total demand in each year of the POI are indeed quite close. Canada continues to improperly focus instead on the *change* or *variation* in production capacity and demand between each year of the POI.

55. Finally, Canada continues to challenge MOFCOM's use of total production capacity data for all domestic producers, instead of production capacity for the domestic industry as defined by MOFCOM.[24] In support of its argument, Canada cites to the panel in *EC – Fasteners (China)*. However, in *EC – Fasteners (China)*, the panel found it improper to examine export data for all EU producers of fasteners when assessing the potential injurious effects of poor export performance to the domestic industry as defined by the Commission. In contrast, MOFCOM was not determining whether total production capacity was another known factor causing injury to the domestic industry. Rather, total production capacity was an intermediate data point for determining trends in cellulose pulp prices.

56. Ultimately, cellulose pulp prices in China would be driven by the total production capacity, total output, and total demand of the entire domestic Chinese cellulose pulp industry. In addition, unlike in *EC – Fasteners (China)*, it would not have been possible for MOFCOM to determine separately the demand for only the defined domestic industry, as there is only one unified demand for products of all domestic producers, including producers not within the defined domestic

[23] Final Determination, Exhibit CHN-01, p. 67.
[24] Canada's response to Panel question No. 29, paras. 65-68.

industry. As a result, MOFCOM reasonably relied on total production capacity of all domestic producers in order to conduct an apples-to-apples comparison with total domestic demand.

57. In conclusion, MOFCOM's findings that (1) cotton prices were not a main factor in affecting VSF prices or cellulose pulp prices, and (2) changes in VSF prices were not the direct cause of the decline in cellulose pulp prices were consistent with Articles 3.1 and 3.5.

(b) MOFCOM Objectively Examined the Domestic Industry's Capacity Expansion and Inventory Build-up

58. MOFCOM examined the role played by the expansion of production capacity of the domestic industry.[25] First, MOFCOM's Final Determination sets out the growth and production capacity of the domestic industry as defined by MOFCOM, and acknowledges the significant growth of that production capacity.[26]

59. Second, MOFCOM objectively analyzed whether the expansion of capacity of the domestic industry as defined by MOFCOM increased its own per unit costs. MOFCOM found that "during the period of investigation, the unit production costs of the like product of the domestic industry increased first and then dropped, showing a decline in general." Thus, the costs of the domestic industry as defined by MOFCOM in fact *declined*.

60. MOFCOM in its Final Determination then noted that while the "manufacturing costs" increased, other elements of its costs, such as material, labor and raw materials, declined even more substantially. Through the verification of the accounting books of the domestic industry as defined by MOFCOM, MOFCOM found that per unit sales costs declined from 9768 RMB/ton in 2011 to only 6474 RMB/ton in 2012. Thus, the very small increase in manufacturing overhead expenses in 2012 (of 259 RMB/ton) represented only approximately four per cent of the total per unit sales costs in 2012.[27]

61. Finally, MOFCOM objectively examined whether the capacity expansion caused prices to decline. When undertaking such a price analysis, prices in the market logically will be a function of total domestic capacity (and output) and total demand. In these circumstances, it was reasonable for MOFCOM to examine the relationship between the total production capacity of the total domestic industry and total domestic demand. Canada claims that MOFCOM's approach showed a "lack of objectivity."[28] In fact, MOFCOM's analysis was the only appropriate way to analyze the impact of capacity expansion on price.

62. MOFCOM's Final Determination demonstrated that total production capacity over the POI was essentially in balance with total domestic demand. MOFCOM also recognized that although the total production capacity of the domestic industry was slightly higher than the total demand in 2011 and 2012, in light of the explosive growth in demand, the "slightly proactive increase of the production capacity was of certain reasonability in order to meet the demand in the timely manner."[29] In addition, when analyzing the impact of expansion on market prices, market prices will be driven more directly by the actual supply or output of product in the market. MOFCOM then further noted that during the POI, the total output of the domestic cellulose pulp industry was always far less than the total domestic demand.

63. Finally, Canada now claims that MOFCOM "never explained the 'nature and extent' of the injury to the domestic industry as a result of its overexpansion…"[30] But as discussed above, Canada has affirmatively declined to state how *specifically* any such non-attribution analysis allegedly should be performed in practice. MOFCOM's analysis of the role played by the capacity expansion of the domestic industry as defined by MOFCOM was based on positive evidence. MOFCOM reasonably concluded that while the expansion of capacity may have played some role, it was not sufficient to break the causal link between subject imports and the material injury suffered by the domestic industry.

[25] Final Determination, Exhibit CHN-01, pp. 81-83.
[26] Final Determination, Exhibit CHN-01, p. 73.
[27] China's response to Panel question No. 31, para. 96.
[28] Canada's opening statement at the first meeting of the Panel with the Parties, para. 78.
[29] Final Determination, Exhibit CHN-01, p. 81.
[30] Canada's opening statement at the first meeting of the Panel with the Parties, para. 81.

(c) MOFCOM Objectively Examined the Impact of Non-Subject Imports

64. MOFCOM also objectively examined the role played by non-subject imports and concluded that while the non-dumped imports may have played some role, they did not break the causal relationship between subject imports and the injury of the domestic industry.[31]

65. Canada argues that MOFCOM was "obligated" to follow a specific and detailed methodology when assessing the role played by non-subject imports, and that MOFCOM was required to "consider data on sales volume, market share and prices of non-dumped imports and to compare those data to those of subject imports and domestic like product."[32] Canada has cited only to the general admonitions under Article 3.1 and 3.5 that the analysis should be based on an objective examination of positive evidence. However, there is no specific methodology, approach or analysis that is required for undertaking a non-attribution analysis.

66. MOFCOM did, nonetheless, conduct a comprehensive analysis of the role played by non-subject imports. In fact, MOFCOM compared data on the volume and prices of non-subject and subject imports, and in essence undertook the very tests that Canada proffers.

67. MOFCOM examined the relative proportion that non-subject imports represented of total import volume. MOFCOM also examined the actual volume of non-subject and subject imports, and concluded that "the differences between the quantity…of the imported product that was not sold at the dumped price and those of the dumped imported products were not big."[33] The actual data confirms that the non-subject and subject import volumes followed similar trends over the POI.[34] MOFCOM also found that the percentage of total imports that non-subject imports represented grew considerably from 2010 to 2011, which was early in the POI and which pre-dated the period of price depression found by MOFCOM. In contrast, during the period 2011-2012 in which MOFCOM found price depression, MOFCOM found further that the non-subject import's share of total imports in fact *declined*, further confirming that non-subject imports did not break the causal link between subject imports and the material injury suffered by the domestic industry.

68. In addition, MOFCOM compared prices for subject and non-subject imports during the POI. MOFCOM concluded that "the differences between the quantity and price of the imported product that was not sold at the dumped price and those of the dumped imported products were not big." MOFCOM examined in further detail the prices from the three largest non-subject countries, South Africa, Sweden and Indonesia. MOFCOM noted that the price of the South African cellulose pulp was lower than that of subject imports, but South Africa was a "relatively small" source of imports. MOFCOM further noted that the prices for pulp from Indonesia and Sweden "were similar" to the price of the subject imports, but their volumes "showed a declining trend" and their proportion of total imports also declined. MOFCOM has also provided the underlying pricing information, which confirms its conclusions that the price differences "were not big."[35]

69. In addition, MOFCOM's analysis also showed that the dumped imported product was generally better than the non-dumped imports in terms of the quality and consumer preferences. Thus, MOFCOM found that any price differences would be mitigated somewhat by the quality differences between dumped and non-subject imports.[36]

(d) MOFCOM Objectively Examined the Role of Cotton Linter Supply

70. Canada continues to claim that an insufficient supply of domestic cotton linter, an input to the production of cotton linter cellulose pulp, was a cause of the domestic industry's low capacity utilization rates. MOFCOM thoroughly examined this issue and reasonably determined that there was no shortage of domestic cotton linter and thus the domestic industry's low capacity utilization rate was not caused by changes in cotton linter supply.

[31] Final Determination, Exhibit CHN-01, p. 86.
[32] Canada's response to Panel question No. 36, para. 78; Canada's opening statement at the first meeting of the Panel with the Parties, para. 85.
[33] Final Determination, Exhibit CHN-01, p. 86.
[34] China's response to Panel question No. 35, paras. 103-104.
[35] China's response to Panel question No. 35, para. 105.
[36] China's response to Panel question No. 65(iii).

71. Positive evidence on the record indicated that any shortage in cotton linter supply was mainly filled by waste cotton linters and that the supply of cotton linter in 2012 was in fact "relatively sufficient."[37] Regardless, MOFCOM proceeded further to consider whether changes in cotton linter supply could explain the low capacity utilization rate of the domestic industry. Canada continues to argue that MOFCOM's analysis improperly assumes cotton linter pulp producers would have access to the entire domestic supply of cotton linter. Contrary to Canada's claim, MOFCOM's approach was reasonable given the fact that the other sources of demand for cotton linter were very small compared to total cotton linter supply.

72. MOFCOM then applied a unit consumption ratio to determine what the domestic output of cotton pulp should have been over the POI, given the available supply of cotton linter. MOFCOM found that the actual output of cotton pulp, as well as the capacity utilization rate of the domestic cotton pulp industry, were in fact much lower than they should have been given the supply of cotton linter available. As a result, MOFCOM reasonably determined that the low capacity utilization rates of the domestic industry were not caused by changes in the supply of cotton linter.

73. MOFCOM reasonably used the unit consumption ratio provided in petitioners' injury comments. However, Canada has argued that alternative calculations would need to be conducted "in order to fully assess the impact on MOFCOM's conclusion of using" other proposed ratios.[38] Canada does not further explain what "alternative calculations" would be needed to account for "the competition among producers of the various products for the available supply," or indeed what that would even entail.

74. Finally, MOFCOM proceeded further and found that during the POI, the sales volumes of wood and bamboo cellulose pulp, at its highest level in 2012, accounted for nearly 70 per cent of the total sales volume of the like product of the domestic industry. MOFCOM reasonably considered this 2012 data to be most significant, as 2012 represents most of the price depression period relevant to MOFCOM's injury analysis. As cotton linter is not a raw material for the production of wood pulp or bamboo pulp, MOFCOM reasonably found that changes in the supply of cotton linter were not the cause of the overall domestic cellulose pulp industry's low capacity utilization rates.[39]

III. CONCLUSION

75. For the reasons set forth in this submission, China requests that the Panel find that MOFCOM's determinations in the underlying investigation are fully consistent with China's WTO rights and obligations.

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[37] See, China Viscose Industry Chain Report 2012, Exhibit CAN-04, p. 8.
[38] Canada's response to Panel question No. 42, para. 81.
[39] Final Determination, Exhibit CHN-01, p. 77.

ANNEX D

ARGUMENTS OF THE THIRD PARTIES

ANNEX D-1

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF BRAZIL

INTRODUCTION

1. According to the Working Procedures of the present case, Brazil would like to present its Executive Summary to the Panel, focusing on the most important issues of law being discussed. As a major cellulose pulp producer and exporter, Brazil has deep-rooted interest on the results of these proceedings.

(I) Volume of dumped import analysis (Articles 3.1 and 3.2 of the ADA)

2. In Brazil's view, under the ADA there is no requirement for the investigating authority to consider whether there was a significant increase in the volume of dumped imports both in absolute terms and relative to production and consumption in the importing Member. As the wording of the text makes clear, the obligation is to make an assessment considering the increase either in absolute terms or relative to production or consumption in the importing Member. Although no provision in the ADA prevents the investigating authority to assess more than one of the methods, in Brazil's opinion, it cannot be stated that there is an automatic violation of Article 3.2 of the ADA just because the investigating authority has utilized only one of the alternative methods presented by the rule.

3. Furthermore, Brazil recalls that the Appellate Body has confirmed[1] the finding of the panel in *Thailand – H-Beams* regarding the meaning of the word "consider" in Article 3.2. Likewise, Brazil understands that there is no obligation for the investigating authority to determine the existence of a significant increase in the volume of imports, it is only necessary that it considers such existence. In the present case, it appears to Brazil that MOFCOM demonstrated in the relevant documents that the significant increase was considered, as the complainant itself recognized[2]. Thus, it does not seem to Brazil that MOFCOM acted inconsistently with its obligations under Article 3.2 of the ADA.

4. As for the contention that MOFCOM provided no qualitative or contextual analysis of the magnitude of the increase trends and did not consider the circumstances surrounding the increases, Brazil understands that, since the Agreement is clear about the necessity to consider the increase in dumped imports either in absolute or relative to domestic production or consumption, it would make no sense to compel the investigating authority to consider all methods in considering whether there was a significant increase in dumped imports, particularly when an increase in absolute terms has occurred. This contextual analysis may of course be relevant, depending on the case, for the causation assessment, but it is not a requirement for establishing the consistency of an investigating practice with Article 3.2 of the ADA.

(II) Price effect analysis (Articles 3.1 and 3.2 of the ADA)

5. As for the claim related to price effect analysis, Brazil understands that the matter is intrinsically inserted in the context of the relationship between correlation vs. causality. Drawing on definitions from statistics theories, it could be said that while the correlation is a necessary condition for the causality, it is not sufficient for its determination.

6. In Brazil's view, in order to assess the effect of dumped imports in prices, Article 3.2 requires that the investigating authority establishes more than a mere correlation between the price reduction of the subject imports and the domestic like product. The language of Article 3.2 is clear: "the investigating authority shall consider whether there has been a significant price undercutting by (emphasis added) the dumped imports".

[1] Appellate Body Report, *Thailand – H-Beams*, para. 139 (e).
[2] Canada FWS paragraph 67.

7. In this regard, a conclusion about the price depression of the domestic like products being caused by the downward trend of the prices of the subject imports could not be based merely on the existence of the parallel trend between them. Indeed, the correlation between subject imports and the domestic like products prices could be due to different reasons: (a) subject imports prices affect the prices of domestic like products; (b) prices of domestic like products affect the price of subject imports; (c) an external factor (e.g. raw material prices are affecting both prices); or (d) mere coincidence.

8. For Brazil, the lack of an "objective examination" of the "positive evidence" that the price effect was caused by the dumped imports constitutes a breach of Article 3.2 and, consequently, of Article 3.1. In *US – Hot-Rolled Steel*, the Appellate Body defined "positive evidence" as related "to the quality of the evidence that an investigating authority may rely upon in making a determination"[3], and consider the term "positive" as meaning that "the evidence must be of an affirmative, objective and verifiable character, and that it must be credible"[4]. Moreover, "objective examination" means that an investigation must be held in "an unbiased manner, without favouring the interests of any interested party, or group of interested parties"[5].

9. As asserted in Brazil's Third Party Submission and answers to the panel's questions, Brazil is not convinced that the evidence presented in business "meeting minutes" and "internal pricing reports" would be sufficient to meet an adequate standard for the determination of a causal link, as argued in MOFCOM's investigating report. These documents do not seem to be technically grounded, or to involve external or impartial opinions. They may be used in an investigation, exceptionally, as a means to support a more technical and impartial kind of evidence.

(III) Impact and causation analysis (Articles 3.4 and 3.5 of the ADA)

10. Another contentious issue under the present dispute is whether the examination of the impact of the dumped imports under Article 3.4 of the ADA requires the investigating authorities to assess the "explanatory force" of the subject imports on the state of the domestic industry and the relationship of such an analysis with the causation analysis under Article 3.5.

11. Brazil recalls that Article 3.4 is concerned with the state of the domestic industry and its relationship with subject imports. It requires an investigating authority to examine the impact of subject imports on the domestic industry on the basis of all relevant economic factors and indices having a bearing on the state of the industry. In other words, under Article 3.4 the investigating authority is required to conduct "an examination of the explanatory force of subject imports for the state of the domestic industry; (…) but is not required to demonstrate that subject imports are causing injury to the domestic industry. Rather, the latter analysis is specifically mandated by Article 3.5".[6]

12. The text in Article 3.5 makes clear that the considerations set forth in Article 3.2, and the examination required in Article 3.4, are necessary in order to answer the ultimate question in Article 3.5 as to whether subject imports are causing injury to the domestic industry. The outcome of these inquiries thus form the basis for the overall causation analysis contemplated in Article 3.5.[7] This analysis also requires separating and distinguishing the injurious effects of other factors from the injurious effects of the dumped imports (non-attribution).

13. Therefore, under Article 3, the obligation for the "demonstration of a causal relationship" appears clearly and solely in paragraph 5. This is the moment were a causation analysis is demanded. Paragraphs 2 and 4 mention the "effects" and the "impact" of the dumped imports on prices and on the domestic industry, respectively, and make no reference to a "demonstration of causal relationship" in that context.

14. Brazil believes that the Agreement does not set forth a specific manner in which an investigating authority should conduct the examination and the determination of the impact of the dumped imports on the domestic industry. What matters is whether the investigating authority

[3] Appellate Body Report, *US – Hot-Rolled Steel*, para. 192.
[4] *Id*.
[5] *Id.*
[6] Appellate Body Report, *China – GOES*, para. 149.
[7] *Id.*, para. 143.

does conduct a proper examination of the impact of the dumped imports on the domestic industry or not, as it is required under Article 3.4 of the ADA, and not if this examination is conducted in conjunction with the assessment of the state of the domestic industry or separated from it, for example, under the causation analysis.

15. Brazil understands that under Section VI (Causal link) of its Report, MOFCOM did conduct an analysis of the impact of the dumped imports on the domestic industry. The fact that this analysis was not in the part of the report dedicated to the assessment of the economic factors required by Article 3.4 is, in our view, irrelevant for establishing per se a violation of this article.

ANNEX D-2

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF THE EUROPEAN UNION

1. INTRODUCTION

1. In this executive summary, the European Union summarizes its positions in respect of the Parties' legal claims and its responses to the Panel's questions.

2. EU OBSERVATIONS ON THE PARTIES' LEGAL CLAIMS

2.1. MOFCOM'S VOLUME AND PRICE EFFECTS ANALYSES

2. Article 3.2 requires an investigating authority to "consider" the volume and price effects of the relevant imports. By the use of the word "consider", Article 3.2 does not impose an obligation on an investigating authority to make a *definitive* determination on the volume of dumped imports and the effect of such imports on domestic prices. Nonetheless, an authority's consideration of the volume and price effects of the imports must be based on positive evidence and requires an objective examination, which is the overarching obligation under Article 3.1.

3. With respect to import volumes, the Panel in *Thailand – H-Beams* has found that "significant" in the first sentence of Article 3.2 means "noteworthy, important, consequential". That Panel has also noted that investigating authorities shall consider whether there has been a significant increase in dumped imports, *either* in absolute terms *or* relative to production *or* consumption in the importing Member. The Panel held that it is enough for an investigating authority to consider whether there has been a significant absolute increase. Thus, the European Union considers that under Articles 3.1 and 3.2 of the AD Agreement, MOFCOM was required to consider whether, either in absolute or relative terms, the increase in dumped imports was "significant".

4. With respect to price effects, Article 3.2 requires a dynamic assessment of price developments and trends in the relationship between the prices of the dumped imports and those of like domestic products over the duration of the period of investigation. An investigating authority's inquiry regarding the price effects listed in Article 3.2 must provide it with a meaningful understanding of whether subject imports have explanatory force for the significant undercutting, depression or suppression of domestic prices that may be occurring in the domestic market, without disregarding any evidence that may call into question such explanatory force. Therefore, the European Union considers that merely identifying parallel pricing trends is not sufficient, when it is not accompanied by a consideration of whether and how the parallel pricing trends have "explanatory force" for the price depression. The Panel thus needs to consider whether MOFCOM did more than simply noting parallel pricing trends.

5. The European Union also considers that in a situation where import prices were significantly higher than the domestic prices during the POI, an investigating authority should be particularly careful to explain how higher import prices explain the effects on domestic prices.

6. Further, the European Union considers that, as part of its analysis of the price effects, the investigating authority may also consider the developments in the market shares during the POI. If such evidence is available, it may not be disregarded if it may call into question the explanatory force of the subject imports for the price effects.

2.2. MOFCOM'S ASSESSMENT OF THE STATE OF THE DOMESTIC INDUSTRY

7. As the Appellate Body noted in *US – Hot-Rolled Steel from Japan*, Articles 3.1 and 3.4 of the AD Agreement are interlinked insofar as an important aspect of the objective examination required by Article 3.1 is further elaborated in Article 3.4 as an obligation to examine the impact of the dumped imports on the domestic industry through an evaluation of all relevant economic factors and indices having a bearing on the state of the industry.

8. Article 3.4 contains a mandatory – rather than illustrative – list of fifteen factors which must *always* be evaluated by the investigating authorities in every investigation. The Panel in *Egypt – Steel Rebar* held that, for an investigating authority to "evaluate" evidence concerning a given factor in the sense of Article 3.4, it must not only gather data, but it must analyse and interpret those data. Only on the basis of the evaluation of data in the determination would a reviewing panel be able to assess whether the conclusions drawn from the examination are those of an unbiased and objective authority.

9. The Appellate Body in *US – Hot-Rolled Steel from Japan* and *China – HP-SSST (Japan) / China – HP-SSST (EU)* have stressed that, according to Articles 3.1 and 3.4, investigating authorities must determine, objectively, and on the basis of positive evidence, the importance to be attached to each potentially relevant factor having a bearing on the state of the industry and the weight to be attached to it. In assessing the state of the domestic industry, investigating authorities must evaluate all factors listed in Article 3.4 and any other relevant factors having a bearing on the state of the domestic industry in the case at hand. This analysis cannot be limited to a mere identification of the "relevance or irrelevance" of each factor, but rather must be based on a thorough evaluation of the state of the industry.

10. Therefore, the Panel should examine whether MOFCOM's analysis explains in a satisfactory way why the evaluation of the injury factors set out under Article 3.4 leads to the determination of material injury, including an explanation of why factors which would seem to lead in the other direction do not, overall, undermine the conclusion of material injury.

2.3. MOFCOM'S CAUSATION ANALYSIS

11. In concert with the Article 3.1 requirement of an "objective examination" of "positive evidence", Article 3.5 requires that an investigating authority establish a "causal relationship" between dumped imports and the injury to the domestic industry. This issue can be separated into two principal sub-issues: (i) the determination that a causal relationship exists between dumped imports and any injury ("causation"); and, (ii) the treatment of other possible causal factors ("non-attribution").

12. With respect to causation, investigating authorities are required to demonstrate that dumped imports are causing injury "through the effects of" dumping "[a]s set forth in paragraphs 2 and 4". Thus, the inquiry set forth in Article 3.2 and the examination required in Article 3.4 are necessary in order to answer the ultimate question in Article 3.5 as to whether subject imports are causing injury to the domestic industry.

13. With respect to non-attribution, Article 3.5 mandates the investigating authorities to examine other known factors and gives an illustrative list of such factors. In addition, it mandates the authority not to attribute to dumped imports injury caused by such other factors which are injuring the domestic industry at the same time. The authority must make an assessment that involves "separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports".

14. Thus, pursuant to Articles 3.1 and 3.5 AD Agreement, investigating authorities are called upon to make a determination that the material injury found was caused by the dumped imports. Moreover, investigating authorities have to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.

15. In light of this, the Panel should investigate whether MOFCOM's establishment of the facts was proper and their evaluation of those facts unbiased and objective so that MOFCOM's explanations are reasonable and supported by the evidence cited. In addition, the Panel should examine closely whether MOFCOM's causal link finding is based on an objective examination of positive evidence, and whether it constitutes a reasoned and adequate explanation of a causal relationship between the subject imports and the injury suffered by the domestic industry. The European Union has doubts whether MOFCOM sufficiently explained how the subject imports with essentially a stable market share and significantly higher prices caused injury to the domestic industry.

16. Concerning the non-attribution analysis, Canada refers to a number of other known factors which, when objectively examined, would provide an explanation for injury suffered by the domestic industry. The European Union is not yet fully convinced that China has fully addressed Canada's claims. The Panel should carefully consider the different arguments raised by Canada and China, and whether MOFCOM's explanations are reasonable and supported by the evidence relied on.

ANNEX D-3

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF JAPAN

I. Introduction

1. In this dispute, Canada challenges the anti-dumping measures imposed by China on cellulose pulp from Brazil, Canada and the United States, raising a number of claims pertaining to the application of Article 3 of the WTO Anti-Dumping Agreement (ADA).

2. Japan considers that this dispute raises issues of fundamental and systemic importance regarding the manner in which the World Trade Organization (WTO) Members conduct their injury determinations under Articles 3.1, 3.2, 3.4 and 3.5 of the ADA. Japan submits that these provisions should not be interpreted in isolation but in light of the fact that these provisions contemplate a "logical progression of inquiry".[1]

II. The Logical Progression of Inquiry Under Article 3 of the ADA

3. The Appellate Body has clarified that the paragraphs of Article 3 of the ADA contemplate a "logical progression of inquiry" in the investigating authority's examination of injury and causation.[2] The Appellate Body has also emphasized that the inquiries under Articles 3.2, 3.4 and 3.5 should "not viewed in isolation", but rather be logically interlinked with each other so as to form "a single, overall analysis addressing the question of whether dumped imports are causing injury to the domestic industry".[3] Specifically, the analyses under Articles 3.2 and 3.4 must provide a "meaningful basis" for the ultimate determination of injury and causation pursuant to Article 3.5.[4] In addition, when examining the impact of the dumped imports on the state of the domestic industry under Article 3.4, an investigating authority may be required to take into account the outcomes of its Article 3.2 volume and price effects analyses.[5]

III. The Article 3.2 Volume Analysis

4. With respect to the volume of dumped imports, the first sentence of Article 3.2 provides that investigating authorities shall consider whether there has been a significant increase in dumped imports, *either* in absolute terms *or* relative to production *or* consumption in the importing Member. However, this provision does not provide an investigating authority *unlimited* discretion as to the choice between an absolute increase and a relative increase. Rather, in order to assess whether or not the increase in dumped imports is "significant", i.e. "important, notable, consequential",[6] an investigating authority may be required to examine any positive evidence pertaining to the characteristics of the market and/or interaction between the dumped imports and domestic production/consumption. Indeed, a given degree (e.g. 5%) of increase in dumped imports in absolute terms may bear different significances, depending on whether the domestic consumption has expanded or shrunk.[7] Furthermore, a mere increase in dumped imports may not necessarily constitute a "meaningful basis" for an ultimate determination of injury and causation, because such imports may have increased by replacing products *other than* the like domestic products. In addition, Article 3.2 read together with Article 3.1 requires that the volume analysis be based on "positive evidence" involving an "objective examination", i.e. a "fair" and "unbiased" analysis.[8] Such an analysis would be compromised if an investigating authority was able to cherry-pick evidence submitted to its review and disregard evidence pointing toward the absence

[1] Appellate Body Report, *China – GOES*, para. 128.
[2] Appellate Body Report, *China – GOES*, para. 128.
[3] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.141.
[4] Appellate Body Reports, *China – GOES*, paras. 144-145 and 154; *China – HP-SSST (Japan and EU)*, paras. 5.170 and 5.211.
[5] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.209; see also para. 5.211.
[6] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.161.
[7] See Panel Reports, *US – Washing Machines*, paras. 7.48-7.50; *US – Upland Cotton*, paras. 7.1328-7.1330, which emphasized the relevance of the factual market circumstances in the assessment of "significance".
[8] Appellate Body Report, *US – Hot-Rolled Steel*, para. 193.

of "significance" from a relative perspective. Accordingly, Article 3.2 may require an examination of the *interaction* between the dumped imports and the domestic production/consumption, especially where the facts show that a mere numerical increase of the volume of dumped imports would not "necessarily give decisive guidance"[9] as to the examination of the volume under Article 3.2.

IV. The Article 3.2 Price Effects Analysis

5. Turning to the analysis of the effect of dumped imports on the domestic prices under Article 3.2, the Appellate Body has established that the consideration of significant price undercutting under Article 3.2 must involve a "dynamic assessment" of the "relationship between the prices of the dumped imports and those of the domestic like products".[10] Similarly, with respect to significant price depression and price suppression, an investigating authority must assess whether the dumped imports have "explanatory force" for the observed price depression or price suppression. As the prior WTO jurisprudence has made clear, the mere existence of parallel price trends is insufficient for a finding of "explanatory force" of the dumped imports for the purported significant price depression or price depression under Article 3.2, without further explanation as to why the parallel price trends can indeed explain the depression or suppression of domestic prices.[11]

V. The Impact Analysis Under Article 3.4

6. Japan notes that Articles 3.1 and 3.4 of the ADA require the investigating authority to examine the "impact" or "consequent impact" of the dumped imports on the state of the domestic industry, or in other words, whether the dumped imports have "explanatory force" for the state of the domestic industry. [12] The 15 factors and indices listed in Article 3.4 must not be seen in isolation because Article 3.4 is "concerned with the relationship between subject imports and the state of the domestic industry".[13] In this regard, as the Appellate Body found in *China – HP-SSST (Japan and EU)*, an investigating authority may be required, as appropriate, to take into account the outcomes of its Article 3.2 analyses.[14] For example, a finding that the subject imports did not significantly increase or did not have an effect on domestic prices should be taken into account when considering the state of the domestic industry.[15]

VI. Determination of Injury and Causation Under Article 3.5

7. Japan considers that the analysis under Article 3.5 consists in a holistic and conclusive evaluation, encompassing "all relevant evidence before the authorities" in order to determine (i) whether the trends identified under Article 3.4, taken as a whole, amount to "material" injury in the sense of footnote 9 of the ADA, and (ii) whether the dumped imports "through the effects of dumping, as set forth in paragraphs 2 and 4" are causing such injury. Furthermore, the investigating authority must perform, under Article 3.5, a non-attribution analysis. Thus, while the inquiries under Articles 3.2 and 3.4 must involve assessment of the *relationship* between the dumped imports and the like domestic products or the state of the domestic industry, such assessment provides a "meaningful basis"[16] for, or "*contributes to*, rather than duplicates",[17] the ultimate determination of injury and causation under Article 3.5. Taken altogether, the analytical steps of Article 3 contemplate the "logical progression of inquiry" that form "a single, overall analysis".[18]

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[9] Article 3.2, final sentence.
[10] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.161.
[11] Appellate Body Report, *China – GOES*, para. 210; Panel Report, *China – Autos (US)*, para. 7.265.
[12] Appellate Body Report, *China – GOES*, para. 149.
[13] Appellate Body Reports, *China – GOES*, para. 149; *China – HP-SSST (Japan and EU)*, para 5.203.
[14] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.209; see also para. 5.211.
[15] See Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.211.
[16] Appellate Body Reports, *China – GOES*, paras. 144-145 and 154; *China – HP-SSST (Japan and EU)*, paras. 5.170 and 5.211.
[17] Appellate Body Report, *China – GOES*, para. 149.
[18] Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.141.

VII. Conclusion

8. Japan respectfully requests the Panel to consider the views that Japan has expressed above, and carefully examine whether MOFCOM's injury analyses conform to the concept of the "logical progression of inquiry" contemplated under Article 3 of the ADA.

ANNEX D-4

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF NORWAY

1. According to Canada, MOFCOM's determination "that subject imports, both in absolute and relative terms, 'showed a growth trend' fails to meet the standard […] with respect to the rigorous inquiry required by Article 3.2.[1]

2. The Appellate Body has stated that Article 3.1 of the Anti-Dumping Agreement "is an overarching provision that sets forth a Member's fundamental, substantive obligation concerning the injury determination, and informs the more detailed obligations in the succeeding paragraphs".[2] According to this provision, the investigating authority is required to conduct an "objective examination" of the economic state of the "domestic industry" on the basis of "positive evidence". The Appellate Body, in *EC – Bed Linen (India - 21.5)*, ruled that an "objective examination" requires authorities to reach a result that is "*unbiased, even-handed*, and *fair*".[3] In *US – Hot-Rolled Steel (AB)*, the Appellate Body found that it would not be "even-handed" for investigating authorities:

> to conduct their investigation in such a way that it becomes *more likely* that, as a result of the fact-finding or evaluation process, they will determine that the domestic industry is injured.[4]

3. According to Canada, MOFCOM's determination "that subject imports, both in absolute and relative terms, 'showed a growth trend' fails to meet the standard […] with respect to the rigorous inquiry required by Article 3.2.[5]

4. Furthermore, the Appellate Body stated in the same appeal, that "an 'objective examination' requires that the domestic industry, and the effects of dumped imports, be investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation".[6]

5. Among others, Article 3.1 requires the investigating authority to examine objectively "the volume of the dumped imports". Article 3.2 elaborates on this obligation, stating that the authority must examine whether there has been a "significant increase in dumped imports". The term "significant" was interpreted by the panel in *Thailand – H-Beams* to mean "noteworthy, important, consequential".[7]

6. Canada contends that China violated Articles 3.1 and 3.2 of the *Anti-Dumping Agreement* by failing to "objectively examine all positive evidence relating to the magnitude of any increase in volume and the circumstances in which subject imports entered the domestic market, including trends in domestic demand, domestic like product volumes and non-subject import volumes, to determine whether an increase is significant".[8] China does not appear to contest the factual matter, but argues that "Article 3.2 does not require the investigating authority to make a 'determination' but rather to 'consider'".[9] This is supported by Brazil in its written and oral third party submission.[10] Both China and Brazil appear to base their arguments on the panel's remarks in *Thailand – H-Beams*.[11] In the first part of paragraph 7.161 of that report, the panel

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[1] Canada's First Written Submission, para. 69.
[2] Appellate Body Reports, *China – HP-SSST (Japan and EU),* para. 5.137; *China – GOES*, para. 126; *Thailand – H-Beams*, para. 106.
[3] Appellate Body Report, *EC – Bed Linen (Article 21.5 – India)*, para. 133 (emphasis original).
[4] Appellate Body Report, *US – Hot-Rolled Steel (AB)*, para. 196 (emphasis added).
[5] Canada's First Written Submission, para. 69.
[6] Appellate Body Report, *US – Hot-Rolled Steel (AB)*, para. 193 (emphasis added).
[7] Panel Report, *Thailand – H-Beams*, para. 7.163.
[8] Canada's First Written Submission, para. 70.
[9] China's First Written Submission, para. 42.
[10] Brazil's Third Party Submission, para. 6.
[11] Panel Report, *Thailand – H-Beams*, para. 7.161.

noted that a definition of the term "consider" does not entail an "explicit 'finding' or 'determination'".

7. In Norway's view, one must bear in mind that even though there is no obligation to *make an explicit determination*, it is a prerequisite in the provision that the increase to be considered is in fact significant. In order to complete the analysis required in Article 3.2, it is necessary to either directly or indirectly note the existence of a significant increase for it to be possible to consider this. This is also in line with the panel report in *Thailand – H-Beams*, which held that even though the term "significant" need not necessarily "appear in the text of the relevant document", it "[n]evertheless, […]must be *apparent* in the relevant documents in the record that the investigating authorities have given attention to and taken into account whether there has been a significant increase in dumped imports".[12]

8. Norway would caution against overemphasising the meaning of the first part of paragraph 7.161 of the panel report in *Thailand – H-Beams.* Reading the first sentences of that paragraph without taking into account the proper context of the following sentences of the same paragraph, could lead to an interpretation of Article 3.2 which would render the provision void. Additionally, such an interpretation would be contrary to the obligation in Article 3.1 of the *Anti-Dumping Agreement* to carry out an "objective examination".

[12] Panel Report, *Thailand – H-Beams*, para. 7.161 (emphasis added).

ANNEX D-5

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF THE UNITED STATES

EXECUTIVE SUMMARY OF U.S. THIRD PARTY WRITTEN SUBMISSION

I. CANADA'S CLAIMS REGARDING PRICE EFFECTS UNDER ARTICLES 3.1 AND 3.2 OF THE AD AGREEMENT

1. The United States agrees with Canada and China that the obligations of Article 3.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement") must be considered in conjunction with the overarching principles of Article 3.1 of that Agreement.

2. Article 3.1 of the AD Agreement sets forth two overarching obligations that apply to multiple aspects of an authority's injury determination. The first overarching obligation is that the injury determination be based on "positive evidence." The Appellate Body has endorsed a description of "positive evidence" as "evidence that is relevant and pertinent with respect to the issue being decided, and that has the characteristics of being inherently reliable and trustworthy." The second obligation is that the injury determination involves an "objective examination" of the volume of the dumped imports, their price effects, and their impact on the domestic industry. The Appellate Body has stated that, to be "objective," an injury analysis must be "based on data which provides an accurate and unbiased picture of what it is that one is examining" and be conducted "without favouring the interests of any interested party, or group of interested parties, in the investigation." The plain text of Article 3.1 makes clear that these obligations extend to an authority's price effects analysis.

3. Article 3.2 of the AD Agreement outlines the examination that authorities must conduct to determine the price effects of dumped imports on the domestic market. The text contemplates three inquiries with regard to the effects of dumped imports on prices: price undercutting, price depression and price suppression.

4. The United States observes that Article 3.2 requires that an authority "consider" the volume and price effects of the relevant imports. The United States recalls that the Appellate Body in *China – GOES* found that Article 3.2 does not require an authority "to make a *definitive determination*" on price effects, recognizing the distinction between use of the verb "consider" in Article 3.2 of the AD Agreement and the verb "demonstrate" in Article 3.5. However, the fact that no definitive determination is required "does not diminish the scope of *what* the investigating authority is required to consider." The Appellate Body has explained that the inquiry must provide the authority with a "meaningful understanding of whether subject imports have explanatory force" for price depression or suppression, and, as required by Article 3.1, that understanding must be based on positive evidence and an objective examination.

5. In assessing price depression or suppression, the authority may not confine its consideration to an analysis of domestic prices. Rather, the plain text of Article 3.2 envisions an inquiry into the relationship between subject imports and domestic prices. Article 3.2 introduces the obligations on price effects by clarifying that the nature of the inquiry is to understand the "effect of the dumped imports on prices." An authority's analysis of the three delineated price effects – price undercutting, price depression, and price suppression – must necessarily be in reference to the dumped imports. The Appellate Body has endorsed this interpretation that it is not enough for an authority to simply observe what is happening to domestic prices.

6. Although the United States does not address the factual underpinnings of MOFCOM's cellulose pulp injury determination, the United States recalls that prior panels and the Appellate Body have considered the analysis by investigating authorities under Articles 3.1 and 3.2 of pricing parallels between subject imports and domestic like products, and of overselling by subject imports. The Appellate Body in *China – GOES* explained that Article 3.2 requires an investigating

authority in its final determination to provide sufficient reasoning as to what explanatory force parallel pricing trends have for the depression or suppression of domestic prices.

7. As China has observed, the AD Agreement does not prescribe a particular methodology to be used in an investigating authority's price effects analysis. Nevertheless, Article 3.2 does set certain parameters for how the analysis is to be performed, as elaborated above. Based on these parameters, the Panel must evaluate whether the investigating authority provided a reasoned and adequate explanation as to how the evidence on the record supported its factual findings, and how those factual findings supported the overall determination of price depression.

II. CANADA'S CLAIMS REGARDING ARTICLES 3.1 AND 3.4 OF THE AD AGREEMENT

8. Any determinations or findings made in connection with Article 3.4 must be based on "positive evidence" and "involve an objective examination," as required by Article 3.1 of the AD Agreement.

9. Article 3.4 of the AD Agreement sets out an authority's obligation to ascertain the impact of dumped imports on the domestic industry. The United States observes that Article 3.4 imposes an obligation on the authority to conduct an "examination" of the impact of the dumped imports on the domestic industry. And the text of Article 3.4 expressly requires investigating authorities to examine the "impact" of subject imports on a domestic industry, and not just the state of the industry.

10. As recognized by Articles 3.1 and 3.2 of the AD Agreement, subject imports can influence a domestic industry's performance through volume and price effects. Thus, to examine the impact of subject imports on a domestic industry, an authority would need to consider the relationship between subject imports – including subject import price undercutting, and the price depressing or suppressing effects of subject imports – and the domestic industry's performance during the period of investigation.

11. This interpretation is supported by the Appellate Body's observations in *China – GOES*:

> Articles 3.4 and 15.4…do not merely require an examination of the state of the domestic industry, but contemplate that an investigating authority must derive an understanding of *the impact of* subject imports on the basis of such an examination. Consequently, Articles 3.4 and 15.4 are concerned with the relationship between subject imports and the state of the domestic industry, and this relationship is analytically akin to the type of link contemplated by the term "the effect of" under Articles 3.2 and 15.2.

12. Thus, as both Canada and China observe, in examining "the relationship between subject imports and the state of the domestic industry" pursuant to Article 3.4 of the AD Agreement, an authority must consider whether changes in the state of the industry are the consequences of subject imports and whether subject imports have explanatory force for the industry's performance trends. The "examination" contemplated by Article 3.4 must be based on a "thorough evaluation of the state of the industry" and it must "contain a persuasive explanation as to how the evaluation of relevant factors led to the determination of injury."

13. Article 3.4 does not dictate the methodology that should be employed by the authority, or the manner in which the results of this evaluation are to be set out. However, the United States observes that the Panel must be able to discern that the authority's examination of the impact on the domestic industry – an examination that necessarily includes an evaluation of relevant economic factors – is based on positive evidence and an objective examination.

III. CANADA'S CLAIMS REGARDING ARTICLES 3.1 AND 3.5 OF THE AD AGREEMENT

14. As with Articles 3.2 and 3.4 of the AD Agreement, the Appellate Body has recognized that it is appropriate to read the obligations of Article 3.5 in conjunction with Article 3.1 of the AD Agreement. That is, any determinations or findings made in connection with Article 3.5 must be based on "positive evidence" and "involve an objective examination," as required by Article 3.1 of the AD Agreement.

15. As Canada observes, Article 3.5 of the AD Agreement involves a two-part analysis: (1) an authority's demonstration that dumped imports are causing injury to the domestic industry ("causation"); and (2) an authority's examination of known factors other than dumped imports that could be the cause of injury to the domestic industry ("non-attribution").

16. The United States does not take a position on Canada's claims that MOFCOM's findings on volume and price depression are inconsistent with Article 3.2 of the AD Agreement. With respect to the interpretation of Articles 3.2 and 3.5, however, the United States agrees with Canada's argument that a deficient volume or price effects analysis could compromise a causation analysis where the findings on volume or price effects serve as a key element of the causation analysis. As the Appellate Body explained in *China – GOES*, the provisions in Article 3 "contemplate a logical progression in an authority's examination leading to the ultimate injury and causation determination." Fatal deficiencies in a volume or price effects analysis could compromise the objective nature of the causation analysis.

17. The first sentence of Article 3.5 sets out the general requirement for a demonstration that dumped imports are causing injury under the AD Agreement, and contains an explicit link back to Articles 3.2 (volume and price effects) and 3.4 (impact on domestic industries). If the volume or price effects findings are found to be inconsistent with Articles 3.1 and 3.2, or the impact findings are found to be inconsistent with Articles 3.1 and 3.4, an Article 3.5 causal link analysis relying on such findings would fail. That is, if an authority relies on a volume or price effects finding to support its impact and injury determinations, its decision must be supported by positive evidence on these counts. In such circumstances, a failure to demonstrate volume or price effects or significant impact would constitute a failure to demonstrate that dumped imports are causing injury, as required by the first sentence of Article 3.5 of the AD Agreement.

18. As the panel in *China – Autos (US)* explained "it would be difficult, if not impossible, to make a determination of causation consistent with the requirements of Articles 3 and 15 of the Anti-Dumping and SCM Agreements, respectively, in a situation where an important element of that determination, the underlying price effects analysis, is itself inconsistent with the provisions of those Agreements." The panel properly recognized that a final injury determination is the product of multiple intermediate determinations, each of which must be supported by positive evidence and an objective examination.

19. The third sentence of Article 3.5 of the AD Agreement provides that, in addition to examining the effects of the dumped imports, an authority must examine other known factors which at the same time are injuring the domestic industry. As the Appellate Body has found, if a known factor other than dumped imports is a cause of injury, the third sentence of Article 3.5 requires the authority to engage in a non-attribution analysis to ensure that the effects of that other factor are not attributed to the dumped imports. If there are no known factors other than the dumped imports that are injuring the domestic industry, Article 3.5 does not require an authority to conduct a non-attribution analysis. Indeed, in such circumstances, the authority can appropriately attribute all injury to the dumped imports.

20. The AD Agreement does not specify the particular methods and approaches an authority may use to conduct a non-attribution analysis. The question of whether an investigating authority's analysis is consistent with Article 3 should turn on whether the authority has in fact evaluated these factors and whether its evaluation is supported by positive evidence and reflects an objective examination, as required by Article 3.1.

21. The United States takes no position on Canada's factual assertions regarding MOFCOM's analysis under Article 3.5. Based on the above discussion of the applicable provisions, however, the United States observes that the Panel must determine whether the investigating authority demonstrated that it examined other "known factors" within the meaning of Article 3.5 of the AD Agreement, and based its causation analysis on an objective examination of all relevant evidence.

EXECUTIVE SUMMARY OF THE RESPONSES OF THE UNITED STATES OF AMERICA TO THE PANEL'S QUESTIONS TO THE THIRD PARTIES

22. Under the text of the AD Agreement, a difference exists between the volume consideration in the first sentence of Article 3.2, and the consideration, under Articles 3.4 and 3.5, of whether there is a causal relationship between subject imports and the state of the domestic industry. With regard to the application of the first sentence of Article 3.2, the use of the word "or" indicates that for this element of the analysis, an absolute increase could suffice. In particular, Article 3.2 states that "the investigating authorities shall consider whether there has been a significant increase in dumped imports, *either* [1] in absolute terms *or* [2] relative to production *or* [3] consumption in the importing Member" (emphasis added). As these three methods of measuring change in volume are expressed in the alternative, in any particular investigation, Article 3.2 does not require an investigating authority to consider volume in all three contexts if the authority considers volume to be significant in one of the contexts.

23. The AD Agreement contains a distinction between the volume analysis required under the first sentence of Article 3.2, and the analysis required under Articles 3.4 and 3.5. Accordingly, the United States does not agree that any kind of "mini-causation" analysis is required in connection with the consideration of the volume of dumped imports under the first sentence of Article 3.2. With respect to volume, Article 3.2 requires an investigating authority to consider a single question: whether there has been a significant increase in subject imports when viewed in any of several possible contexts. Articles 3.4 and 3.5, on the other hand, respectively address the multifaceted relationship among "all relevant factors having a bearing on the state of the [domestic] industry" and predicate an affirmative determination on "[t]he demonstration of a causal relationship between the dumped imports and the injury to the industry. . . based on an examination of all relevant evidence before the authorities."

24. In the United States' view, an investigating authority is required to consider and examine all of the factors listed in the provisions of Article 3, and to carry out the obligations contained therein, in a manner consistent with the overarching obligations of Article 3.1. To that end, the AD Agreement does not set out a specific sequence in which these considerations and examinations must occur.

25. The obligations to consider price effects, in Article 3.2, and the impact of dumped imports on the domestic industry, in Article 3.4, are not contingent on whether an investigating authority considers a volume increase to be significant. Thus, even if an investigating authority considers that there is no significant increase in subject imports, either in absolute or relative terms, the authority must consider price effects and impact.

26. The last sentences of Articles 3.2 and 3.4 recognize that an authority should weigh the evidence developed in an investigation based on the particular conditions of the industry being investigated and the conditions of competition in which that industry operates, and that some of the factors discussed may be more important in certain investigations than in others. These sentences also underscore that authorities should consider and examine *all* of the relevant evidence in an investigation, and not give undue weight to isolated factors.

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