

Court/Tribunal: World Trade Organization Panel

Case: UNITED STATES – MEASURES AFFECTING IMPORTS OF CERTAIN  
PASSENGER VEHICLE AND LIGHT TRUCK TYRES FROM CHINA

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This World Trade Organization (WTO) report was issued by a panel formed pursuant to a January 2010 request by the People’s Republic of China (China). The basis for China’s request was that the United States (US) violated certain provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Protocol on the Accession of the People's Republic of China (Protocol). China argued that the US violated Paragraph 16 of the Protocol and Articles I:1 and II:1(b) of the GATT 1994 when it implemented certain safeguard measures designed to protect the US domestic market from an increasing amount of Chinese imports. The safeguard measures were imposed by the President of the United States as a result of a United States International Trade Commission (USITC) investigation which concluded that Chinese tire imports were disrupting the US domestic market. The safeguard measures consisted of imposing additional duties on “certain passenger vehicle and light truck tires” imported from China. It went into force in September 2009 and was to continue for a term of three years.

China requested that the WTO Panel (Panel) make five findings with respect to the US safeguard measures under Paragraph 16 of the Protocol: first, that the US failed to properly evaluate whether the Chinese imports were in “such increased quantities” and were “increasing rapidly” so as to permit the use of safeguard measures; second, that the US statute implementing the Protocol contained an inconsistent causation standard; third, that the US failed to properly evaluate whether the Chinese imports were a “significant cause” of material injury to the domestic economy; fourth, that the safeguard measures imposed by the US went beyond the “extent necessary;” and fifth, that the safeguard measures lasted beyond the period of time

necessary. China also requested that the Panel find that the US safeguard measures were inconsistent with the GATT 1994. The Panel found for the US on each of China's arguments.

First, the Panel found no error in the USITC's conclusion that Chinese imports were "increasing rapidly," as is required by Paragraph 16 of the Protocol to permit a Member country to use safeguard measures. In its investigation, the USITC found that, from 2004 to 2008, Chinese tire imports increased absolutely by 215.5%. The USITC also found that Chinese imports increased in relative market share and also increased relative to US domestic production. The Panel found the USITC's evaluation, which utilized both absolute and relative measures, to be proper in determining whether Chinese imports were "increasingly rapidly."

Second, the Panel found that language used in the US statute implementing Paragraph 16 of the Protocol into US law did not create inconsistent standards. China argued that the US statute weakened the causation standard contained in the Protocol. The implementing US statute uses the phrase "contributes significantly" instead of "significant cause" to describe the causal link that must exist between an increase in imports and a "material injury" to the domestic market to permit a Member country to use safeguard measures. China contended the standards were inconsistent in that the US standard allows for increased imports to be one of several factors leading to an injury of the domestic market, whereas the Protocol standard requires that the increase in imports be independently sufficient to cause such an injury. The Panel disagreed with China's interpretation of the Protocol standard. The Panel emphasized that Paragraph 16 refers to "*a significant cause.*" Interpreting the Protocol's text literally, the Panel concluded that the implementing statute was not inconsistent because both the Protocol and the statute permit the use of safeguard measures when there may be factors contributing to the injury other than increased imports.

Third, the Panel found that the USITC properly concluded that rapidly increasing imports were a significant cause of material injury to US markets. China argued that the Protocol requires the use of correlation analysis to determine causation of injury. The Panel stated that no particular methodology is imposed on the importing Member in determining causation of injury. Rather, the Protocol requires only the consideration of certain objective factors in determining causation and that using a methodology that takes into account additional factors in establishing causation is not in violation of the Protocol. China argued further that the USITC did not isolate the injurious effects caused only by increased imports in its analysis and therefore improperly attributed some of the causation to increased imports. The Panel did not find the USITC's analysis to be deficient in this way. Looking to prior WTO precedent, the Panel stated that a finding of causation is proper where "rapidly increasing imports have injurious effects that cannot be explained by the existence of other causal factors." The Panel discussed other factors, which China considered to be relevant injury factors, including US plant closures, the relatively lower costs of goods sold from Chinese versus US producers, and the US industry's business strategy. Ultimately, the Panel found that "the USITC was entitled to support its determination of 'significant cause' with a finding of overall coincidence between an upward trend in subject imports from China and downward trends in the relevant injury factors."

Fourth, the Panel rejected China's claims that the safeguard measures imposed went beyond the extent necessary to remedy the market disruption. China's main argument was that because the USITC analysis did not isolate the effect that the Chinese imports had on the domestic economy, the safeguard measure was necessarily excessive because it was calculated to cure injuries not caused by factors within the domestic market. The Panel determined that the duty was increased to a level calculated to improve the condition of the domestic market, which

it found satisfied the requirements of Paragraph 16. Further, the Panel pointed to the fact that the USITC found that the Chinese imports were being undersold in the US market and that the US was therefore justified to raise the duty to a level that would increase the price of those imports as a means to improving the domestic market.

Fifth, the Panel found that China failed to meet its burden of showing that the three-year term placed on the measure was excessive. China argued that the US did not provide an explanation for why it chose to put the measure in place for a three-year term. The Panel stated that there is no obligation on the US to defend its choice of the term length; rather, China has the burden of establishing that three years is *prima facie* excessive.

The Panel also responded to China's argument that the US safeguard measure violated the GATT 1994. Since China's claims under the GATT 1994 were entirely dependent upon their claims under the Protocol, the Panel held for the US on this argument.