

# Case study: DS399: United States — Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tires from China

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# History and Context

- Following a US Presidential decision additional duties were imposed on subject tires imports for a three year period in the amount of 35% ad valorem (tax based on the value of a transaction or of property) in the first year, 30%ad valorem in the second year and 25% ad valorem in the third year (the tires measure).
- This measure took effect on 26 September 2009.

# History and Context

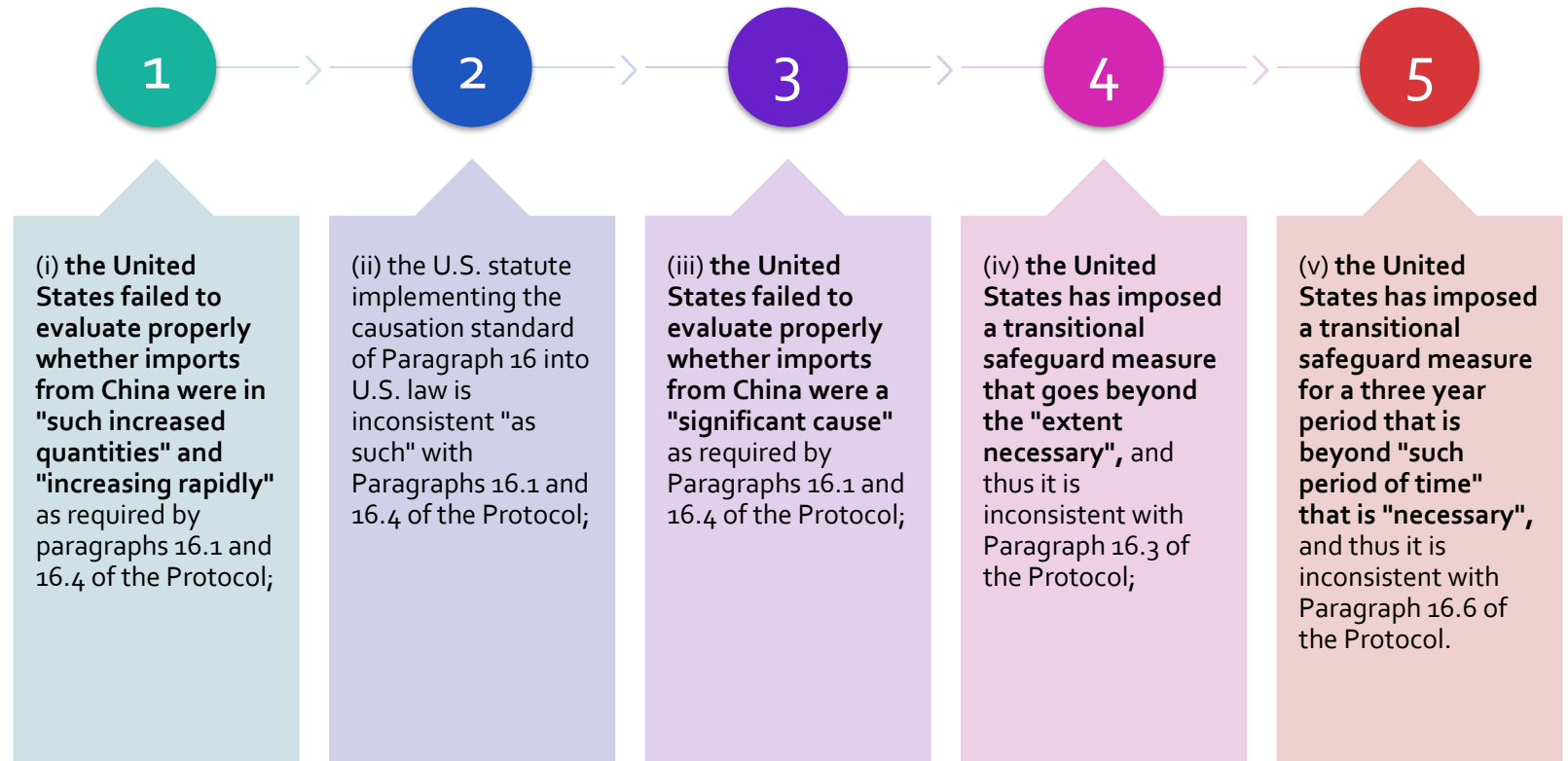
September 14, 2009- China requested consultations with the US concerning increased tariffs on certain passenger vehicle and light truck tires (subject tires) from China

Pursuant to Article XXIII: 1 of the GATT 1994 and Article 14 of the *Safeguards Agreement*

- *Safeguards Agreement*- restrict imports of a product temporarily if a domestic industry is seriously injured or threatened with serious injury caused by a surge in imports.
- There are restrictions on imposing new tariffs, you can't restrict foreign products coming in unless you can use the safeguard agreement

China claimed that the US took measures to affect the import of certain passenger vehicle and light truck tires from China

# China's Position



## China's Position cont'd

China also claims that the transitional safeguard measure is inconsistent with the GATT 1994 and requests the Panel to find that:

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the transitional safeguard measure is inconsistent with Article I:1 of the GATT 1994 as the **US does not accord the same treatment that it grants to passenger vehicle and light truck tires originating in other countries to like products originating in China;**

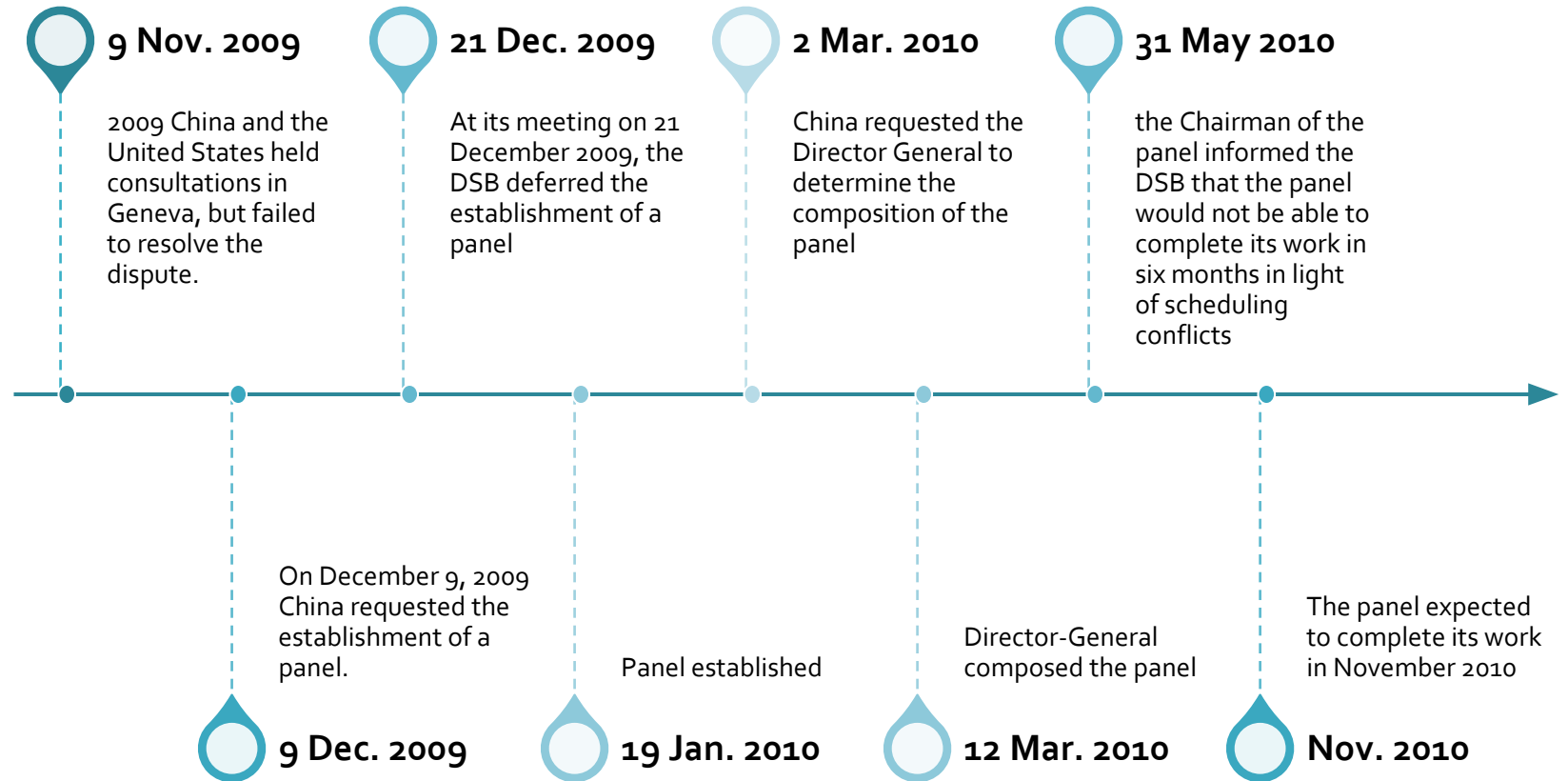
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(vii) the transitional safeguard measure is inconsistent with Article II:1(b) of GATT 1994 **as the tariffs consist of unjustified modifications of US concessions on passenger vehicle and light truck tires under the GATT 1994**

# United States Position

- The United States asks the Panel to reject China's claims in their entirety

# Prior Proceedings



# Business and Political Context

- **Business context:**

- US claims that China was surging imports of Chinese passenger vehicles and light truck tires
- Causing market disruptions to U.S. tire producers
- The International Trade Commission (ITC) in June 2009 voted 4-2 that imports of the subject tires were causing domestic market disruption and recommended that the President impose the tax

- **Political Context:**

- The case raised questions that had not yet been dealt with in a WTO dispute settlement proceeding;
- The case marked the first WTO dispute in which a challenged safeguard was upheld by the Appellate Body; the first in which an accession protocol was used successfully as a defense; and the first that China lost as a complaining party
- The safeguard was sought by a labor union, not the domestic industry



# Decisions of the Appellate Body and Panel

- The Appellate Body upheld the Panel's finding that the United States International Trade Commission ("USITC") **properly established that imports of subject tires from China met the "increasingly rapidly" threshold**. The Appellate Body reasoned that such increases in imports must be occurring over a short and recent period of time, and must be of a sufficient magnitude in relative or absolute terms so as to be a significant cause of material injury to the domestic industry.
- The Appellate Body upheld the Panel's finding that the USITC **properly demonstrated that subject imports were a "significant cause" of material injury**.
- The Panel found that **China failed to establish that (i) the measure exceeded the extent necessary to prevent or remedy the market disruption** caused by rapidly increasing subject imports contrary to para. 16.3; and **(ii) the measure exceeded the period of time necessary to prevent or remedy the market disruption** under para. 16.6.

# WTO Agreement and Specific Provisions

- **GATT: Article 14: Non-discriminatory Administration of Quantitative Restrictions:**
  - No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product
- **GATT: Article 19: Emergency Action on Imports of Particular Products:**
  - Any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers...such time as may be necessary to prevent or remedy such injury, to suspend the obligation
  - Agreement on Safeguards: A WTO member may restrict imports of a product temporarily (take “safeguard” actions) if its domestic industry is injured or threatened with injury caused by a surge in imports
- **China’s Protocol of Accession:**
  - paragraphs 16.1 and 16.4 because (a) imports from China were not “in such increased quantities” and were not “increasing rapidly”; (b) imports from China were not a “significant cause” of material injury or threat thereof; and (c) the domestic tire producers were not experiencing “market disruption” or “material injury”;
  - paragraph 16.3 because the restrictions are being imposed beyond the “extent necessary to prevent or remedy” any alleged market disruption; and
  - paragraph 16.6 because the restrictions are being imposed for a period of time longer than “necessary to prevent or remedy” any alleged market disruption.

**Are they  
consistent or  
are they  
inconsistent?**

- The Appellate Body did not find that the United States acted inconsistently with its WTO obligations in imposing a product-specific safeguard measure on subject tires from China.

# Implementation of Sanctions

- DSU Art. 19.1 (Panel and Appellate Body's recommendations – suggestion on implementation): The Appellate Body did not find that the United States acted inconsistently with its WTO obligations in imposing a product-specific safeguard measure on subject tyres from China. Hence, the Appellate Body made no recommendation under Art. 19.1.

# Implementation of Sanctions

- President Obama introduced a stiff 35% tariff on Chinese tires in 2009 after American companies complained about unfair competition
- China was flooding America with tires at low prices making it tough for U.S. companies to compete.
- The tire tariff gradually waned, and finally ended in 2012.
- China fought back by imposing penalties on U.S. shipments of chicken parts.
- Peterson Institute of International Economics estimates that China's retaliation cost American chicken producers \$1 billion in sales.
- US Tire Companies praised Obama Administration for tariffs (i.e. Morry Taylor, CEO of Titan International)

# Observations on Resolution

- "Tire safeguards did not change Chinese policies in a helpful way, nor did they boost U.S. employment," wrote Gary Hufbauer, a trade expert at Peterson, who authored the report.
- Although the tariffs did not bring back the tire industry, they did help stem the job losses
- The question is then, is a short-term or minor game worth the possible negative externalities? (i.e. chicken losses)
- Morry Taylor, CEO of US tire making company states that the tariffs saved his US-based business
  - By 2012, Taylor still had 1,800 tire-making workers, about the same amount as before the tariffs. Today, however, his firm only has a little more than 900 workers.

# Observations on Resolution

- U.S. tire production recovered but didn't surge. Instead, U.S. tire imports from all other countries excluding China rose dramatically, Hufbauer found. In other words, the Chinese tire jobs didn't come to the U.S. -- they went to the next cheapest countries.
- In the end, Hufbauer argues the tariffs didn't make a difference
  - "The best thing about the tire tariffs is that they expire," Hufbauer wrote in 2012.
- International Economics vs. International Politics debate

Box 2 Summarizing the cost to US consumers of protection against Chinese tire imports, 2011	
Annualized cost to consumers for switching from imported radial car tires from China to tires from other foreign countries, in million dollars (table 3)	\$716
Annualized cost to consumers for switching from imported radial light truck tires from China to imported tires from other foreign countries, in million dollars (table 3)	\$100.70
Annualized cost to consumers for the safeguard tariff's impact on the price of US-made tires, in million dollars (table 5)	\$295
<b>Total cost to consumers, in million dollars (excluding the tariff revenue collected from consumers)</b>	<b>\$1,111.70</b>
Total jobs saved by tariffs, September 2009–11 (figure 5)	1,200
Annualized cost to consumers per manufacturing job saved by the safeguard tariffs on Chinese tire imports, in thousand dollars (\$1,111.7 million cost divided by 1,200 jobs)	<b>\$926.5</b>
Sources: US Bureau of Labor Statistics, Bureau of Economic Analysis, International Trade Commission, authors' calculations.	