

IX. Findings and Conclusions in the Appellate Body Report WT/DS394/AB/R

362. In the appeal of the Panel Report in *China – Measures Related to the Exportation of Various Raw Materials* (complaint by the United States, WT/DS394/R) (the "US Panel Report"), for the reasons set out in this Report, the Appellate Body:

- (a) finds that the Panel erred under Article 6.2 of the DSU in making findings regarding claims allegedly identified in Section III of the United States' panel request; and therefore declares moot and of no legal effect the Panel findings in paragraph 8.4(a)-(d) in respect of claims concerning export quota administration and allocation; in paragraph 8.5(a)-(b) in respect of claims concerning export licensing requirements; in paragraph 8.6(a)-(b) in respect of claims concerning a minimum export price requirement; and in paragraph 8.4(e) of the US Panel Report in respect of claims concerning fees and formalities in connection with exportation.
- (b) finds that the Panel did not err in recommending, in paragraph 8.8 of the US Panel Report, that China bring its measures into conformity with its WTO obligations such that the "series of measures" do not operate to bring about a WTO-inconsistent result;
- (c) finds that the Panel did not err, in paragraph 7.159 of the US Panel Report, in finding that there is no basis in China's Accession Protocol to allow the application of Article XX of the GATT 1994 to China's obligations in Paragraph 11.3 of China's Accession Protocol; and therefore upholds the Panel's conclusion, in paragraph 8.2(b) of the US Panel Report, that China may not seek to justify the application of export duties to certain forms of fluorspar pursuant to Article XX(g) of the GATT 1994 and the Panel's conclusion, in paragraph 8.2(c) of the US Panel Report, that China may not seek to justify the application of export duties to certain forms of magnesium, manganese and zinc pursuant to Article XX(b) of the GATT 1994;
- (d) with respect to Article XI:2(a) of the GATT 1994:
 - (i) upholds the Panel's conclusion, in paragraph 7.355 of the US Panel Report, that China had not demonstrated that its export quota on refractory-grade bauxite was "temporarily applied", within the meaning of Article XI:2(a) of the GATT 1994, to either prevent or relieve a "critical shortage";

- (ii) finds that China has not demonstrated that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter as required by Article 11 of the DSU; and
- (e) finds that the Panel erred in interpreting the phrase "made effective in conjunction with", in Article XX(g) of the GATT 1994, to require that the purpose of the export restriction must be to ensure the effectiveness of restrictions on domestic production and consumption, and therefore reverses this interpretation by the Panel in paragraph 7.397 of the US Panel Report.

363. The Appellate Body recommends that the DSB request China to bring its measures, found in this Report and in the US Panel Report, as modified by this Report, to be inconsistent with China's Accession Protocol and the GATT 1994, into conformity with China's obligations thereunder, such that the "series of measures" do not operate to bring about a WTO-inconsistent result.

Signed in the original in Geneva this 10th day of January 2012 by:

Ricardo Ramírez-Hernández
Presiding Member

Jennifer Hillman
Member

Shotaro Oshima
Member

IX. Findings and Conclusions in the Appellate Body Report WT/DS395/AB/R

362. In the appeal of the Panel Report in *China – Measures Related to the Exportation of Various Raw Materials* (complaint by the European Union, WT/DS395/R) (the "EU Panel Report"), for the reasons set out in this Report, the Appellate Body:

- (a) finds that the Panel erred under Article 6.2 of the DSU in making findings regarding claims allegedly identified in Section III of the European Union's panel request; and therefore declares moot and of no legal effect the Panel findings in paragraph 8.11(a)-(e) in respect of claims concerning export quota administration and allocation; in paragraph 8.12(a)-(b) in respect of claims concerning export licensing requirements; and in paragraph 8.13(a)-(b) of the EU Panel Report in respect of claims concerning a minimum export price requirement;
- (b) finds that the Panel did not err in recommending, in paragraph 8.15 of the EU Panel Report, that China bring its measures into conformity with its WTO obligations such that the "series of measures" do not operate to bring about a WTO-inconsistent result;
- (c) finds that the Panel did not err, in paragraph 7.159 of the EU Panel Report, in finding that there is no basis in China's Accession Protocol to allow the application of Article XX of the GATT 1994 to China's obligations in Paragraph 11.3 of China's Accession Protocol; and therefore upholds the Panel's conclusion, in paragraph 8.9(b) of the EU Panel Report, that China may not seek to justify the application of export duties to certain forms of fluorspar pursuant to Article XX(g) of the GATT 1994 and the Panel's conclusion, in paragraph 8.9(c) of the EU Panel Report, that China may not seek to justify the application of export duties to certain forms of magnesium, manganese and zinc pursuant to Article XX(b) of the GATT 1994;
- (d) with respect to Article XI:2(a) of the GATT 1994:
 - (i) upholds the Panel's conclusion, in paragraph 7.355 of the EU Panel Report, that China had not demonstrated that its export quota on refractory-grade bauxite was "temporarily applied", within the meaning of Article XI:2(a) of the GATT 1994, to either prevent or relieve a "critical shortage";

- (ii) finds that China has not demonstrated that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter as required by Article 11 of the DSU; and
- (e) finds that the Panel erred in interpreting the phrase "made effective in conjunction with", in Article XX(g) of the GATT 1994, to require that the purpose of the export restriction must be to ensure the effectiveness of restrictions on domestic production and consumption, and therefore reverses this interpretation by the Panel in paragraph 7.397 of the EU Panel Report.

363. The Appellate Body recommends that the DSB request China to bring its measures, found in this Report and in the EU Panel Report, as modified by this Report, to be inconsistent with China's Accession Protocol and the GATT 1994, into conformity with China's obligations thereunder, such that the "series of measures" do not operate to bring about a WTO-inconsistent result.

Signed in the original in Geneva this 10th day of January 2012 by:

Ricardo Ramírez-Hernández
Presiding Member

Jennifer Hillman
Member

Shotaro Oshima
Member

IX. Findings and Conclusions in the Appellate Body Report WT/DS398/AB/R

362. In the appeal of the Panel Report in *China – Measures Related to the Exportation of Various Raw Materials* (complaint by Mexico, WT/DS398/R) (the "Mexico Panel Report"), for the reasons set out in this Report, the Appellate Body:

- (a) finds that the Panel erred under Article 6.2 of the DSU in making findings regarding claims allegedly identified in Section III of Mexico's panel request; and therefore declares moot and of no legal effect the Panel findings in paragraph 8.18(a)-(d) in respect of claims concerning export quota administration and allocation; in paragraph 8.19(a)-(b) in respect of claims concerning export licensing requirements; in paragraph 8.20(a)-(b) in respect of claims concerning a minimum export price requirement; and in paragraph 8.18(e) of the Mexico Panel Report in respect of claims concerning fees and formalities in connection with exportation;
- (b) finds that the Panel did not err in recommending, in paragraph 8.22 of the Mexico Panel Report, that China bring its measures into conformity with its WTO obligations such that the "series of measures" do not operate to bring about a WTO-inconsistent result;
- (c) finds that the Panel did not err, in paragraph 7.159 of the Mexico Panel Report, in finding that there is no basis in China's Accession Protocol to allow the application of Article XX of the GATT 1994 to China's obligations in Paragraph 11.3 of China's Accession Protocol; and therefore upholds the Panel's conclusion, in paragraph 8.16(b) of the Mexico Panel Report, that China may not seek to justify the application of export duties to certain forms of fluorspar pursuant to Article XX(g) of the GATT 1994 and the Panel's conclusion, in paragraph 8.16(c) of the Mexico Panel Report, that China may not seek to justify the application of export duties to certain forms of magnesium, manganese and zinc pursuant to Article XX(b) of the GATT 1994;
- (d) with respect to Article XI:2(a) of the GATT 1994:
 - (i) upholds the Panel's conclusion, in paragraph 7.355 of the Mexico Panel Report, that China had not demonstrated that its export quota on refractory-grade bauxite was "temporarily applied", within the meaning of Article XI:2(a) of the GATT 1994, to either prevent or relieve a "critical shortage";

- (ii) finds that China has not demonstrated that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter as required by Article 11 of the DSU; and
- (e) finds that the Panel erred in interpreting the phrase "made effective in conjunction with", in Article XX(g) of the GATT 1994, to require that the purpose of the export restriction must be to ensure the effectiveness of restrictions on domestic production and consumption, and therefore reverses this interpretation by the Panel in paragraph 7.397 of the Mexico Panel Report.

363. The Appellate Body recommends that the DSB request China to bring its measures, found in this Report and in the Mexico Panel Report, as modified by this Report, to be inconsistent with China's Accession Protocol and the GATT 1994, into conformity with China's obligations thereunder, such that the "series of measures" do not operate to bring about a WTO-inconsistent result.

Signed in the original in Geneva this 10th day of January 2012 by:

Ricardo Ramírez-Hernández
Presiding Member

Jennifer Hillman
Member

Shotaro Oshima
Member

ANNEX I

**WORLD TRADE
ORGANIZATION**

WT/DS394/7
9 November 2009

(09-5564)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Request for the Establishment of a Panel by the United States

The following communication, dated 4 November 2009, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 23 June 2009, the United States requested consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") with respect to China's restraints on the exportation from China of various forms of bauxite¹, coke², fluorspar³, magnesium⁴, manganese⁵,

¹ Bauxite includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes, as listed in Attachment 1 of Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009) ("2009 Export Licensing List") and/or the following eight-digit HS numbers as listed in Table 7 of Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009) ("2009 Export Duty List"): 2508300000/25083000, 2606000000/26060000, 26204000.

² Coke includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2704001000/27040010.

³ Fluorspar includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2529210000/25292100, 2529220000/25292200.

⁴ Magnesium includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 81041100, 81041900, 81042000.

⁵ Manganese includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 26020000, 8111001010/81110010, 8111001090/81110010.

silicon carbide⁶, silicon metal⁷, yellow phosphorus⁸, and zinc⁹ (the "materials"). The United States held consultations with China on 31 July 2009, and 1-2 September 2009. Those consultations unfortunately did not resolve the dispute.

I. Export Quotas

China subjects the exportation of bauxite, coke, fluorspar, silicon carbide, and zinc to quantitative restrictions such as quotas.

The United States understands that these Chinese measures are reflected in, among others:

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, wajingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)

⁶ Silicon carbide includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2849200000, 3824909910.

⁷ Silicon metal includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28046900.

⁸ Yellow phosphorus includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28047010.

⁹ Zinc includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2608000001/26080000, 2608000090/26080000, 79011111000/7901111100, 7901119000/79011190, 7901120000/79011200, 7901200000/79012000, 79020000, 26201100, 26201900.

- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, wajingmaopeizi (1999) No. 87, December 6, 1999)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)

- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, shangzihan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The United States considers that these measures are inconsistent with Article XI:1 of the GATT 1994 as well as China's obligations under the provisions of paragraph 1.2 of Part I of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ("Accession Protocol"), which incorporates commitments in paragraphs 162 and 165 of the *Working Party Report on the Accession of China* (WT/MIN(01)/3) ("Working Party Report").

II. Export Duties

China subjects the materials to export duties.

China imposes export duty rates, "temporary" export duty rates, and/or "special" export duty rates of various magnitudes on bauxite, coke, fluorspar, magnesium, manganese, silicon metal, yellow phosphorus, and zinc. These export duties are imposed either on materials that are not listed in Annex 6 of the Accession Protocol, or on materials that are listed in Annex 6 of the Accession Protocol, but at rates that exceed the maximum rates designated in Annex 6.

In addition, as discussed in Section III below, China allocates the quotas¹⁰ imposed on the exportation of bauxite, fluorspar, and silicon carbide through a bidding system. In connection with the administration of this bidding system, China requires enterprises to pay a charge in order to export these materials. However, bauxite, fluorspar, and silicon carbide are not listed in Annex 6 of the Accession Protocol.

The United States understands that these Chinese measures are reflected in, among others:

- Customs Law of the People's Republic of China (adopted at the 19th Meeting of the Standing Committee of the Sixth National People's Congress on January 22, 1987, amended July 8, 2000)

¹⁰ Discussed in Section I above.

- Regulations of the People's Republic of China on Import and Export Duties (Order of the State Council (2003) No. 392, adopted at the 26th executive meeting of the State Council on October 29, 2003, January 1, 2004)
- Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009)
- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)

- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The United States considers that these measures are inconsistent with paragraph 11.3 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments referred to in paragraph 342 of the Working Party Report.

III. Additional Restraints Imposed on Exportation

In addition to the export quotas and export duties discussed in Sections I and II above, China imposes other restraints on the exportation of the materials, administers its measures in a manner that is not uniform, impartial, and reasonable, imposes excessive fees and formalities on exportation, and does not publish certain measures pertaining to requirements, restrictions, or prohibitions on exports.

China administers the export quotas imposed on bauxite, coke, fluorspar, silicon carbide, and zinc discussed in Section I above, through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of the quotas for these materials, China imposes restrictions on the right of Chinese enterprises as well as foreign enterprises and individuals to export.

China allocates the export quotas imposed on bauxite, fluorspar, and silicon carbide discussed in Section I above, through a bidding system. China administers the requirements and procedures for this bidding system through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of this bidding system, China also requires foreign-invested enterprises to satisfy certain criteria in order to export these materials that Chinese enterprises need not satisfy. Further, China requires enterprises to pay a charge in order to export these materials that is excessive and imposes excessive formalities on the exportation of these materials.

China does not publish the amount for the export quota for zinc or any conditions or procedures for applying entities to qualify to export zinc.

In addition, China restricts the exportation of bauxite, coke, fluorspar, manganese, silicon carbide, and zinc by subjecting these materials to non-automatic licensing. China imposes the non-automatic export licensing for bauxite, coke, fluorspar, silicon carbide, and zinc in connection with the administration of the export quotas discussed in Section I, as an additional restraint on the exportation of those materials.

China also imposes quantitative restrictions on the exportation of the materials by requiring that prices for the materials meet or exceed a minimum price before they may be exported. Further, through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, China administers the price requirements in a manner that restricts exports and is not uniform, impartial, and reasonable. China also does not publish certain measures relating to these requirements in a manner that enables governments and traders to become acquainted with them.

The United States understands that these Chinese measures are reflected in, among others:

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeizi (1999) No. 87, December 6, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)

- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for Bid for Export Commodity Quotas, September 16, 2009)

- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, ShangZiHan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- Charter of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters
- Charter of the China Coking Industry Association
- Measures for the Administration over Foreign Trade and Economic Social Organizations (Ministry of Foreign Trade and Economic Cooperation, February 26, 1991)
- Notice Regarding Printing and Distribution of Several Regulations for Personnel Management of Chambers of Commerce for Importers and Exporters (Ministry of Foreign Trade and Economic Cooperation, September 23, 1994)
- Interim Regulations of the Ministry of Foreign Trade and Economic Cooperation on Punishment for Conduct at Exporting at Lower-than-Normal Price (Ministry of Foreign Trade and Economic Cooperation, March 20, 1996)
- Notice Regarding Rules for Contract Declaration for Chemicals-Related Verification and Stamp Products (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters Petroleum and Chemicals Products Department, December 30, 2003)
- Online Verification and Certification Operating Steps (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters)
- Rules for Coordination with Respect to Customs Price Review of Export Products, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice of the Rules on Price Reviews of Export Products by the Customs, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice on the Issuance of "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- Decision of the State Council on Various Questions on the Further Reform and Improvement of the Foreign Trade System (State Council, guofa (1990) No. 70, January 1, 1991)

- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The United States considers that these measures are inconsistent with Article VIII:1(a) and VIII:4, Article X:1 and X:3(a), and Article XI:1 of the GATT 1994 and paragraphs 2(A)2, 5.1, 5.2 and 8.2 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments in paragraphs 83, 84, 162, and 165 of the Working Party Report.

* * * * *

Accordingly, the United States respectfully requests that, pursuant to Article 6 of the DSU, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

ANNEX II

**WORLD TRADE
ORGANIZATION**

WT/DS395/7
9 November 2009

(09-5567)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Request for the Establishment of a Panel by the European Communities

The following communication, dated 4 November 2009, from the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 23 June 2009, the European Communities requested consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") with respect to China's restraints on the exportation from China of various forms of bauxite¹, coke², fluorspar³, magnesium⁴, manganese⁵,

¹ Bauxite includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes, as listed in Attachment 1 of Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009) ("2009 Export Licensing List") and/or the following eight-digit HS numbers as listed in Table 7 of Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009) ("2009 Export Duty List"): 2508300000/25083000, 2606000000/26060000, 26204000.

² Coke includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2704001000/27040010.

³ Fluorspar includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2529210000/25292100, 2529220000/25292200.

⁴ Magnesium includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 81041100, 81041900, 81042000.

⁵ Manganese includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 26020000, 8111001010/81110010, 8111001090/81110010.

silicon carbide⁶, silicon metal⁷, yellow phosphorus⁸, and zinc⁹ (the "materials"). The European Communities held consultations with China on July 31, 2009, and September 1-2, 2009. Those consultations unfortunately did not resolve the dispute.

I. Export Quotas

China subjects the exportation of bauxite, coke, fluorspar, silicon carbide, and zinc to quantitative restrictions such as quotas.

The European Communities understands that these Chinese measures are reflected in, among others:

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, wajingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)

⁶ Silicon carbide includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2849200000, 3824909910.

⁷ Silicon metal includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28046900.

⁸ Yellow phosphorus includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28047010.

⁹ Zinc includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2608000001/26080000, 2608000090/26080000, 790111111000/7901111100, 7901119000/79011190, 7901120000/79011200, 7901200000/79012000, 79020000, 26201100, 26201900.

- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, wajjingmaopeizi (1999) No. 87, December 6, 1999)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)

- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, shangzihan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The European Communities considers that these measures are inconsistent with Article XI:1 of the GATT 1994 as well as China's obligations under the provisions of paragraph 1.2 of Part I of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ("Accession Protocol"), which incorporates commitments in paragraphs 162 and 165 of the *Working Party Report on the Accession of China* (WT/MIN(01)/3) ("Working Party Report").

II. Export Duties

China subjects the materials to export duties.

China imposes export duty rates, "temporary" export duty rates, and/or "special" export duty rates of various magnitudes on bauxite, coke, fluorspar, magnesium, manganese, silicon metal, yellow phosphorus, and zinc. These export duties are imposed either on materials that are not listed in Annex 6 of the Accession Protocol, or on materials that are listed in Annex 6 of the Accession Protocol, but at rates that exceed the maximum rates designated in Annex 6.

In addition, China allocates the quotas¹⁰ imposed on the exportation of bauxite, fluorspar, and silicon carbide through a bidding system. In connection with the administration of this bidding system, China requires enterprises to pay a charge in order to export these materials. However, bauxite, fluorspar, and silicon carbide are not listed in Annex 6 of the Accession Protocol.

The European Communities understands that these Chinese measures are reflected in, among others:

- Customs Law of the People's Republic of China (adopted at the 19th Meeting of the Standing Committee of the Sixth National People's Congress on January 22, 1987, amended July 8, 2000)

¹⁰ Discussed in Section I above.

- Regulations of the People's Republic of China on Import and Export Duties (Order of the State Council (2003) No. 392, adopted at the 26th executive meeting of the State Council on October 29, 2003, January 1, 2004)
- Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009)
- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)

- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The European Communities considers that these measures are inconsistent with paragraph 11.3 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments referred to in paragraph 342 of the Working Party Report.

III. Additional Restraints Imposed on Exportation

In addition to the export quotas and export duties discussed in Sections I and II above, China imposes other restraints on the exportation of the materials, administers its measures in a manner that is not uniform, impartial, and reasonable, imposes excessive fees and formalities on exportation, and does not publish certain measures pertaining to requirements, restrictions, or prohibitions on exports.

China administers the export quotas imposed on bauxite, coke, fluorspar, silicon carbide, and zinc discussed in Section I above, through its ministries and other organisations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of the quotas for these materials, China imposes restrictions on the right of Chinese enterprises as well as foreign enterprises and individuals to export.

China allocates the export quotas imposed on bauxite, fluorspar, and silicon carbide discussed in Section I above, through a bidding system. China administers the requirements and procedures for this bidding system through its ministries and other organisations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of this bidding system, China also requires foreign-invested enterprises to satisfy certain criteria in order to export these materials that Chinese enterprises need not satisfy.

China does not publish the amount for the export quota for zinc or any conditions or procedures for applying entities to qualify to export zinc.

In addition, China restricts the exportation of bauxite, coke, fluorspar, manganese, silicon carbide, and zinc by subjecting these materials to non-automatic licensing. China imposes the non-automatic export licensing for bauxite, coke, fluorspar, silicon carbide, and zinc in connection with

the administration of the export quotas discussed in Section I, as an additional restraint on the exportation of those materials.

China also imposes quantitative restrictions on the exportation of the materials by requiring that prices for the materials meet or exceed a minimum price before they may be exported. Further, through its ministries and other organisations under the State Council as well as chambers of commerce and industry associations, China administers the price requirements in a manner that restricts exports and is not uniform, impartial, and reasonable. China also does not publish certain measures relating to these requirements in a manner that enables governments and traders to become acquainted with them.

China also imposes excessive fees and formalities in relation to the exportation of the materials.

The European Communities understands that these Chinese measures are reflected in, among others:

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeizi (1999) No. 87, December 6, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)

- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for Bid for Export Commodity Quotas, September 16, 2009)

- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, ShangZiHan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- Charter of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters
- Charter of the China Coking Industry Association
- Measures for the Administration over Foreign Trade and Economic Social Organizations (Ministry of Foreign Trade and Economic Cooperation, February 26, 1991)
- Notice Regarding Printing and Distribution of Several Regulations for Personnel Management of Chambers of Commerce for Importers and Exporters (Ministry of Foreign Trade and Economic Cooperation, September 23, 1994)
- Interim Regulations of the Ministry of Foreign Trade and Economic Cooperation on Punishment for Conduct at Exporting at Lower-than-Normal Price (Ministry of Foreign Trade and Economic Cooperation, March 20, 1996)
- Notice Regarding Rules for Contract Declaration for Chemicals-Related Verification and Stamp Products (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters Petroleum and Chemicals Products Department, December 30, 2003)
- Online Verification and Certification Operating Steps (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters)
- Rules for Coordination with Respect to Customs Price Review of Export Products, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice of the Rules on Price Reviews of Export Products by the Customs, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice on the Issuance of "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- Decision of the State Council on Various Questions on the Further Reform and Improvement of the Foreign Trade System (State Council, guofa (1990) No. 70, January 1, 1991)

- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The European Communities considers that these measures are inconsistent with Article VIII:1 and VIII:4, Article X:1 and X:3(a), and Article XI:1 of the GATT 1994 and paragraphs 2(A)2, 5.1, 5.2 and 8.2 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments in paragraphs 83, 84, 162, and 165 of the Working Party Report.

* * * * *

Accordingly, the European Communities respectfully requests that, pursuant to Article 6 of the DSU, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

The European Communities asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 19 November 2009.

ANNEX III

**WORLD TRADE
ORGANIZATION**

WT/DS398/6
9 November 2009

(09-5568)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Request for the Establishment of a Panel by Mexico

The following communication, dated 4 November 2009, from the delegation of Mexico to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 21 August 2009, Mexico requested consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") with respect to China's restraints on the exportation from China of various forms of bauxite¹, coke², fluorspar³, magnesium⁴, manganese⁵, silicon carbide⁶, silicon metal⁷, yellow phosphorus⁸, and zinc⁹ (the "materials"). Mexico held

¹ Bauxite includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes, as listed in Attachment 1 of Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009) ("2009 Export Licensing List") and/or the following eight-digit HS numbers as listed in Table 7 of Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009) ("2009 Export Duty List"): 2508300000/25083000, 2606000000/26060000, 26204000.

² Coke includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2704001000/27040010.

³ Fluorspar includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2529210000/25292100, 2529220000/25292200.

⁴ Magnesium includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 81041100, 81041900, 81042000.

⁵ Manganese includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 26020000, 8111001010/81110010, 8111001090/81110010.

⁶ Silicon carbide includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2849200000, 3824909910.

consultations with China on September 1-2, 2009. Those consultations unfortunately did not resolve the dispute.

I. Export Quotas

China subjects the exportation of bauxite, coke, fluorspar, silicon carbide, and zinc to quantitative restrictions such as quotas.

Mexico understands that these Chinese measures are reflected in, among others:

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)

⁷ Silicon metal includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28046900.

⁸ Yellow phosphorus includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28047010.

⁹ Zinc includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2608000001/26080000, 2608000090/26080000, 79011111000/790111100, 7901119000/79011190, 7901120000/79011200, 7901200000/79012000, 79020000, 26201100, 26201900.

- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, wajingmaopeizi (1999) No. 87, December 6, 1999)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)

- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, shangzihan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- As well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

Mexico considers that these measures are inconsistent with Article XI:1 of the GATT 1994 as well as China's obligations under the provisions of paragraph 1.2 of Part I of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ("Accession Protocol"), which incorporates commitments in paragraphs 162 and 165 of the *Working Party Report on the Accession of China* (WT/MIN(01)/3) ("Working Party Report").

II. Export Duties

China subjects the materials to export duties.

China imposes export duty rates, "temporary" export duty rates, and/or "special" export duty rates of various magnitudes on bauxite, coke, fluorspar, magnesium, manganese, silicon metal, yellow phosphorus, and zinc. These export duties are imposed either on materials that are not listed in Annex 6 of the Accession Protocol, or on materials that are listed in Annex 6 of the Accession Protocol, but at rates that exceed the maximum rates designated in Annex 6.

In addition, as discussed in Section III below, China allocates the quotas¹⁰ imposed on the exportation of bauxite, fluorspar, and silicon carbide through a bidding system. In connection with the administration of this bidding system, China requires enterprises to pay a charge in order to export these materials. However, bauxite, fluorspar, and silicon carbide are not listed in Annex 6 of the Accession Protocol.

Mexico understands that these Chinese measures are reflected in, among others:

- Customs Law of the People's Republic of China (adopted at the 19th Meeting of the Standing Committee of the Sixth National People's Congress on January 22, 1987, amended July 8, 2000)
- Regulations of the People's Republic of China on Import and Export Duties (Order of the State Council (2003) No. 392, adopted at the 26th executive meeting of the State Council on October 29, 2003, January 1, 2004)
- Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009)

¹⁰ Discussed in Section I above.

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)

- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- As well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

Mexico considers that these measures are inconsistent with paragraph 11.3 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments referred to in paragraph 342 of the Working Party Report.

III. Additional Restraints Imposed on Exportation

In addition to the export quotas and export duties discussed in Sections I and II above, China imposes other restraints on the exportation of the materials, administers its measures in a manner that is not uniform, impartial, and reasonable, imposes excessive fees and formalities on exportation, and does not publish certain measures pertaining to requirements, restrictions, or prohibitions on exports.

China administers the export quotas imposed on bauxite, coke, fluorspar, silicon carbide, and zinc discussed in Section I above, through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of the quotas for these materials, China imposes restrictions on the right of Chinese enterprises as well as foreign enterprises and individuals to export.

China allocates the export quotas imposed on bauxite, fluorspar, and silicon carbide discussed in Section I above, through a bidding system. China administers the requirements and procedures for this bidding system through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of this bidding system, China also requires foreign-invested enterprises to satisfy certain criteria in order to export these materials that Chinese enterprises need not satisfy. Further, China requires enterprises to pay a charge in order to export these materials that is excessive and imposes excessive formalities on the exportation of these materials.

China does not publish the amount for the export quota for zinc or any conditions or procedures for applying entities to qualify to export zinc.

In addition, China restricts the exportation of bauxite, coke, fluorspar, manganese, silicon carbide, and zinc by subjecting these materials to non-automatic licensing. China imposes the non-automatic export licensing for bauxite, coke, fluorspar, silicon carbide, and zinc in connection with the administration of the export quotas discussed in Section I, as an additional restraint on the exportation of those materials.

China also imposes quantitative restrictions on the exportation of the materials by requiring that prices for the materials meet or exceed a minimum price before they may be exported. Further, through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, China administers the price requirements in a manner that restricts exports and is not uniform, impartial, and reasonable. China also does not publish certain measures relating to these requirements in a manner that enables governments and traders to become acquainted with them.

Mexico understands that these Chinese measures are reflected in, among others:

- Foreign Trade Law of the People's Republic of China (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, promulgated on July 1, 2004)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeizi (1999) No. 87, December 6, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)

- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Announcement of Ministry of Commerce on Matters regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, October 30, 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, June 9, 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for Bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, ShangZiHan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)

- Charter of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters
- Charter of the China Coking Industry Association
- Measures for the Administration over Foreign Trade and Economic Social Organizations (Ministry of Foreign Trade and Economic Cooperation, February 26, 1991)
- Notice Regarding Printing and Distribution of Several Regulations for Personnel Management of Chambers of Commerce for Importers and Exporters (Ministry of Foreign Trade and Economic Cooperation, September 23, 1994)
- Interim Regulations of the Ministry of Foreign Trade and Economic Cooperation on Punishment for Conduct at Exporting at Lower-than-Normal Price (Ministry of Foreign Trade and Economic Cooperation, March 20, 1996)
- Notice Regarding Rules for Contract Declaration for Chemicals-Related Verification and Stamp Products (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters Petroleum and Chemicals Products Department, December 30, 2003)
- Online Verification and Certification Operating Steps (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters)
- Rules for Coordination with Respect to Customs Price Review of Export Products, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice of the Rules on Price Reviews of Export Products by the Customs, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice on the Issuance of "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- Decision of the State Council on Various Questions on the Further Reform and Improvement of the Foreign Trade System (State Council, guofa (1990) No. 70, January 1, 1991)
- As well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

Mexico considers that these measures are inconsistent with Article VIII:1(a) and VIII:4, Article X:1 and X:3(a), and Article XI:1 of the GATT 1994 and paragraphs 2(A)2, 5.1, 5.2 and 8.2 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2

of Part I of the Accession Protocol, which incorporates commitments in paragraphs 83, 84, 162, and 165 of the Working Party Report.

Accordingly, Mexico respectfully requests that, pursuant to Article 6 of the DSU, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

ANNEX IV

**WORLD TRADE
ORGANIZATION**

**WT/DS394/11
WT/DS395/11
WT/DS398/10**
2 September 2011
(11-4301)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Notification of an Appeal by China under Article 16.4 and Article 17
of the Understanding on Rules and Procedures Governing the
Settlement of Disputes (DSU), and under Rule 20(1)
of the Working Procedures for Appellate Review

The following notification, dated 31 August 2011, from the Delegation of the People's Republic of China, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review* (WT/AB/WP/6, 16 August 2010), the People's Republic of China ("China") hereby notifies the Dispute Settlement Body ("DSB") of its decision to appeal certain issues of law and legal interpretations in the Panel Reports in *China – Measures Related to the Exportation of Various Raw Materials* (WT/DS394, WT/DS395, WT/DS398) ("Panel Report"). As set out in this notice of appeal, and pursuant to Article 17.13 of the DSU, China requests that the Appellate Body reverse or modify various legal findings and conclusions of the Panel, as a result of the errors identified below.

2. Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review*, this notice of appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to China's ability to refer to other paragraphs of the Panel Report in the context of its appeal.

I. APPEAL OF THE PANEL'S FINDING THAT SECTION III OF THE COMPLAINANTS' PANEL REQUESTS "PRESENTS THE PROBLEM CLEARLY" BY PROVIDING SUFFICIENT CONNECTIONS BETWEEN THE 37 LISTED MEASURES AND THE 13 LISTED TREATY PROVISIONS

3. The Panel erred in its interpretation and application of Article 6.2 of the DSU, in finding, in paragraph 77 of its Second Preliminary Ruling of 1 October 2010 and paragraph 7.3(b) of the Panel

Report, that Section III of the Complainants' Panel Requests¹ complies with the requirement to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly".

4. China requests that the Appellate Body reverse this finding, and find that Section III of the Panel Requests does not comply with Article 6.2 of the DSU, with the exception of the Complainants' claims under Article X:1 of the GATT 1994 regarding non-publication of measures concerning zinc.

5. As a consequence of this reversal, China also requests that the Appellate Body reverse the Panel findings regarding claims purportedly made by the Complainants on the basis of Section III of the Panel Requests, including the findings in paragraphs 7.669; 7.670; 7.678; 7.756; 7.807; 7.958; 7.1082; 7.1102; 7.1103; 8.4(a)-(b); 8.5(b); 8.6 (a)-(b); 8.11(a), (c), (e) and (f); 8.12(b); 8.13(a)-(b); 8.18(a)-(b); 8.19(b) and 8.20(a)-(b) of the Panel Report.

II. APPEAL OF THE PANEL'S DECISION TO MAKE RECOMMENDATIONS WITH RESPECT TO THE "SERIES OF MEASURES" THAT HAVE AN ONGOING EFFECT THROUGH ANNUAL REPLACEMENT MEASURES

6. China appeals the Panel's recommendations in paragraphs 8.8; 8.15 and 8.22 of the Panel Report that China must bring its export duty and quota measures into conformity with its WTO obligations, to the extent that the Panel's recommendations apply to annual replacement measures regarding export quotas and export duties on products at issue in these disputes.

7. In making recommendations extending to measures excluded from the dispute, the Panel acted inconsistently with Article 7.1 of the DSU; failed to make an objective assessment of the matter under Article 11 of the DSU; and, made recommendations on measures that are not part of the matter, inconsistently with Article 19.1 of the DSU.

8. China requests that the Appellate Body reverse the Panel's recommendations in paragraphs 8.8; 8.15 and 8.22 of the Panel Report to the extent that they apply to annual replacement measures.

III. APPEAL OF THE PANEL'S FINDING THAT CHINA DOES NOT HAVE THE RIGHT TO INVOKE ARTICLE XX OF THE GATT 1994 IN DEFENSE OF A CLAIM UNDER PARAGRAPH 11.3 OF CHINA'S ACCESSION PROTOCOL

9. China appeals the Panel's erroneous interpretation and application of Paragraphs 1.2 and 11.3 of China's *Accession Protocol*² and Paragraphs 170 and 342 of China's *Working Party Report*³ as not according China the right to invoke Article XX of the GATT 1994 in defense of a claim under Paragraph 11.3 of China's *Accession Protocol* and Paragraph 170 of China's *Working Party Report*.

¹China – *Measures Related to the Exportation of Various Raw Materials* – Request for the Establishment of a Panel by the European Communities, WT/DS395/7 (9 November 2009); China – *Measures Related to the Exportation of Various Raw Materials* – Request for the Establishment of a Panel by Mexico, WT/DS398/6 (9 November 2009); China – *Measures Related to the Exportation of Various Raw Materials* – Request for the Establishment of a Panel by the United States, WT/DS394/7 (9 November 2009).

²*Protocol on the Accession of the People's Republic of China*, WTL/432 (23 November 2001) ("*Accession Protocol*").

³*Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) ("*Working Party Report*").

10. As a result of these errors, China requests that the Appellate Body reverse the Panel's findings, in paragraphs 7.158; 7.159; 8.2 (b)-(c); 8.9 (b)-(c) and 8.16 (b)-(c) of the Panel Report, that China may not seek to justify export duties pursuant to Article XX of the GATT 1994.

IV. APPEAL OF THE PANEL'S INTERPRETATION AND APPLICATION OF THE TERM "TEMPORARILY" AND THE PANEL'S INTERPRETATION OF THE TERM "CRITICAL SHORTAGES" IN ARTICLE XI:2(A) OF THE GATT 1994, AND THE PANEL'S ASSESSMENT OF THE MATTER, UNDER ARTICLE 11 OF THE DSU

11. China appeals the Panel's erroneous interpretation and application of the term "temporarily" and the Panel's erroneous interpretation of the term "critical shortages", in Article XI:2(a) of the GATT 1994. The Panel also failed to make an objective assessment of the matter, as required under Article 11 of the DSU. Specifically, the Panel failed to assess properly evidence that China's export restriction is annually reviewed and renewed, and employed internally inconsistent and incoherent reasoning in its assessment of the possibility to prevent or relieve critical shortages of exhaustible natural resources through the temporary application of export restrictions.

12. As a result of these errors, China requests that the Appellate Body reverse the Panel's interpretation and application of the term "temporarily" and the Panel's interpretation of the term "critical shortages", as set out in paragraphs 7.257-7.258; 7.297-7.302; 7.305; 7.306; 7.346; 7.349; 7.351; 7.354 and 7.355 of the Panel Report.

V. APPEAL OF THE PANEL'S INTERPRETATION OF THE PHRASE "MADE EFFECTIVE IN CONJUNCTION WITH" IN ARTICLE XX(G) OF THE GATT 1994

13. China appeals the Panel's erroneous interpretation of the phrase "... made effective in conjunction with ...", in Article XX(g) of the GATT 1994. Specifically, the Panel erred in interpreting this phrase to require a showing that the "purpose" of a challenged measure is to make effective restrictions on domestic production or consumption. As a result of this error, China requests that the Appellate Body reverse the Panel's finding in paragraph 7.397 of the Panel Report.

VI. APPEAL OF THE PANEL'S INTERPRETATION AND APPLICATION OF PARAGRAPHS 1.2 AND 5.1 OF CHINA'S ACCESSION PROTOCOL AND PARAGRAPHS 83 AND 84 OF THE WORKING PARTY REPORT IN CONNECTION WITH THE PRIOR EXPORT PERFORMANCE AND MINIMUM CAPITAL REQUIREMENTS

14. China appeals the Panel's erroneous interpretation and application of Paragraphs 1.2 and 5.1 of China's *Accession Protocol*, read in combination with Paragraphs 83(a), 83(b), 83(d), 84(a), and 84(b) of China's *Working Party Report*, to prohibit *any* "examination and approval system" for WTO-consistent export quotas operated subsequent to 11 December 2004, including elimination of "export performance" and "prior experience requirements" and minimum registered capital requirements. As a result of these errors, China requests that the Appellate Body reverse the Panel's findings in paragraphs 7.655; 7.665; 7.669; 7.670; 7.678; 8.4(a)-(b); 8.11(a); 8.11(c) and 8.18(a)-(b) of the Panel Report.

VII. APPEAL OF THE PANEL'S INTERPRETATION AND APPLICATION OF ARTICLE XI:1 OF THE GATT 1994, AND ITS ASSESSMENT OF THE MATTER UNDER ARTICLE 11 OF THE DSU, IN CONNECTION WITH CHINA'S EXPORT LICENSING REGIME

15. China appeals various elements of the Panel's findings under Article XI:1 of the GATT 1994 in connection with China's export licensing requirement.

16. First, the Panel erred in interpreting Article XI:1 to prohibit a measure *as such*, even where, as a matter of municipal law, the measure can always be—and has always been—interpreted and applied in a WTO-consistent manner.

17. Second, the Panel also erred in applying its erroneous interpretation of Article XI:1 to China's export licensing requirement. Specifically, the Panel erroneously found that Article 11(7) of China's *Measures for the Administration of License for the Export of Goods* and Articles 5(5) and 8(4) of China's *Working Rules on Issuing Export Licenses*, *as such*, are inconsistent with Article XI:1, because they accord discretion to request undefined or unspecified documents or materials of applicants for export licenses.

18. Third, the Panel erred in its assessment of the matter, under Article 11 of the DSU. Specifically, the Panel had no evidentiary basis on which to find that any documents requested of an applicant pursuant to Article 11(7) of China's *Measures for the Administration of License for the Export of Goods* and Articles 5(5) and 8(4) of China's *Working Rules on Issuing Export Licenses* would be of such a nature as to impose an export restriction.

19. As a result of these errors, China requests that the Appellate Body reverse the Panel's findings and recommendations, at paragraphs 7.921; 7.946; 7.948; 7.958; 8.5(b); 8.8; 8.12(b); 8.15; 8.19(b) and 8.22 of the Panel Report.

VIII. APPEAL OF THE PANEL'S INTERPRETATION AND APPLICATION OF ARTICLE X:3(A) OF THE GATT 1994, AND ITS ASSESSMENT OF THE MATTER UNDER ARTICLE 11 OF THE DSU, IN CONNECTION WITH THE "OPERATION CAPACITY" CRITERION FOR EXPORT QUOTA ADMINISTRATION

20. China appeals various elements of the Panel's findings under Article X:3(a) of the GATT 1994 in connection with the "operation capacity" criterion for export quota administration, under Article 19 of China's *Measures for the Administration of Export Commodities Quotas*.

21. First, the Panel erred in interpreting Article X:3(a) to prohibit a measure *as such*, even where, as a matter of municipal law, the measure can always be—and has always been—interpreted and applied in such a way as to avoid WTO-inconsistent administration.

22. Second, the Panel also erred in applying its erroneous interpretation of Article X:3(a) to China's "operation capacity" criterion. Specifically, the Panel erroneously found that Article 19 of China's *Measures for the Administration of Export Commodities Quotas*, *as such*, is inconsistent with Article X:3(a), because the term "operation capacity" is undefined, thus reserving the discretion for China to interpret and apply the term in such a manner as to constitute WTO-inconsistent administration.

23. Third, the Panel erred in its assessment of the matter, under Article 11 of the DSU. Specifically, the Panel had no evidentiary basis on which to find that the term "operation capacity" would be interpreted and applied in a manner that would constitute WTO-inconsistent administration.

24. As a result of these errors, China requests that the Appellate Body reverse the Panel's findings and recommendations, at paragraphs 7.708; 7.742-7.746; 7.748-7.752; 7.756; 8.11(e) and 8.15 of the Panel Report.

ANNEX V

**WORLD TRADE
ORGANIZATION**

WT/DS394/12
12 September 2011

(11-4373)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Notification of an Other Appeal by the United States
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 6 September 2011, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel in *China – Measures Related to the Exportation of Various Raw Materials* (WT/DS394/R) ("Panel Report") and certain legal interpretations developed by the Panel.

1. The United States seeks review by the Appellate Body of the Panel's legal conclusion that China's requirement that enterprises pay a quota allocation fee (also referred to as the total award price or bid-winning price) in order to export bauxite, fluorspar, and silicon carbide under its export quota regime¹ is not inconsistent with Article VIII:1(a) of the *General Agreement on Tariffs and Trade 1994* or Paragraph 11.3 of China's Protocol of Accession to the WTO. These conclusions are in error and are based on erroneous findings on issues of law and legal interpretations of the fees and charges subject to Article VIII.² The United States requests the Appellate Body to reverse the Panel's legal interpretation and conclusion and to find that China's requirement that enterprises pay a total award price in order to export bauxite, fluorspar, and silicon carbide under its export quota regime is inconsistent with Article VIII:1(a) of the GATT 1994 and Paragraph 11.3 of China's Protocol of Accession to the WTO.

¹See Panel Report, Section VII.C.2(b). Relevant legal instruments include the *Import and Export Regulations*, *Quota Bidding Measures*, *Quota Bidding Implementation Rules*, *2009 First Round Fluorspar Bidding Procedures*, *2009 First Round Bauxite Bidding Procedures*, and *2009 First Round Silicon Carbide Bidding Procedures*.

²See, e.g., Panel Report, paras. 7.827-7.839, 7.844-7.851, 7.859-7.861, and 8.4(e).

2. The United States also seeks conditional review by the Appellate Body relating to the Panel's recommendations. If the Appellate Body, pursuant to China's appeal of the Panel's "recommendation with respect to the 'series of measures' that have an ongoing effect through annual replacement measures,"³ were to grant China's request to "reverse the Panel's recommendations in paragraphs 8.8; 8.15 and 8.22 of the Panel Report to the extent that they apply to replacement measures,"⁴ and if the Appellate Body were to find that no recommendation should have been made on the "series of measures" as they existed as of the date of panel establishment, then the United States would seek review of the Panel's legal interpretation⁵ and conclusion⁶ not to make a recommendation on the export quota and export duty measures that were annually recurring and in effect on the date of panel establishment, *i.e.*, December 21, 2009, but that subsequently were replaced or superseded by other legal instruments. In that event, the United States would contend that this interpretation and conclusion are in error and based on erroneous findings on issues of law and related legal interpretations of Articles 6.2, 7.1, 11, and 19.1 of the DSU. The United States would request the Appellate Body to reverse the Panel's legal conclusion and to make the recommendation provided for in DSU Article 19.1. However, the Appellate Body would not need to review this legal interpretation and conclusion if the condition precedent to this appeal is not met.

³See China's Appellant Submission, Section III.

⁴China's Appellant Submission, para. 167.

⁵See, *e.g.*, Panel Report, paras. 7.26-7.32.

⁶See, *e.g.*, Panel Report, paras. 7.33(d), 8.8.

ANNEX VI

**WORLD TRADE
ORGANIZATION**

WT/DS395/12
12 September 2011

(11-4371)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Notification of an Other Appeal by the European Union
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the *Working Procedures for Appellate Review*

The following notification, dated 6 September 2011, from the Delegation of the European Union, is being circulated to Members.

Pursuant to Article 16.4 and Article 17 of the DSU, the European Union hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel and certain legal interpretations developed by the Panel in its Report in the dispute *China – Measures relating to the exportation of various Raw Materials* (WT/DS395/R). Pursuant to Rule 23(1) of the *Working Procedures for Appellate Review*, the European Union simultaneously files this Notice of Other Appeal with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submissions to the Appellate Body, the European Union appeals, and requests the Appellate Body to reverse and/or modify the findings, conclusions and recommendations of the Panel, with respect to the following errors of law and legal interpretations contained in the Panel Report.¹

- I. THE EUROPEAN UNION NEVER REQUESTED THE PANEL "NOT TO MAKE FINDINGS OR RECOMMENDATIONS ON THE LEGAL INSTRUMENTS TAKING EFFECT ON 1 JANUARY 2010". THE EUROPEAN UNION NEVER "NARROWED THE PANEL'S TERMS OF REFERENCE DURING THE COURSE OF THE PROCEEDINGS".**

¹Pursuant to Rule 23(2)(c)(ii)(C) of the *Working Procedures for Appellate Review* this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of the European Union to refer to other paragraphs of the Panel Report in the context of its appeal.

- (a) In paragraph 7.21 of its Report, the Panel found that the European Union requested the Panel not to make findings or recommendations on the legal instruments taking effect on 1 January 2010. In paragraph 7.22 of its Report, the Panel found that the European Union narrowed the Panel's terms of reference during the course of the proceedings. The Panel makes reference to these erroneous findings in various other paragraphs of its Report, such as paragraph 7.24.
 - (b) In reaching these erroneous legal interpretations and findings, the Panel acted inconsistently with its obligations under Articles 7.1, 11 and 19.1 of the DSU.
 - (c) The European Union appeals these erroneous Panel legal interpretations and findings and requests the Appellate Body to reverse them. The European Union also requests the Appellate Body to complete the analysis and find that the relevant measures are inconsistent with China's obligations under the covered agreements and to recommend that China brings its measures into compliance with its WTO obligations.
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ANNEX VII

**WORLD TRADE
ORGANIZATION**

WT/DS398/11
12 September 2011

(11-4372)

Original: English

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Notification of an Other Appeal by Mexico
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 6 September 2011, from the Delegation of Mexico, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23(1) of the *Working Procedures for Appellate Review*, Mexico hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *China – Measures Related To The Exportation Of Various Raw Materials* (WT/DS398) ("Panel Report"), and certain legal interpretations developed by the Panel in this dispute.

2. Pursuant to Rule 23(2)(c)(ii) of the *Working Procedures for Appellate Review*, this notice of appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Mexico's ability to refer to other paragraphs of the Panel Report in the context of this appeal.

I. Conditional Appeal of the Panel's Recommendations on Annual Export Quota and Export Duty Measures

3. Mexico also seeks conditional review by the Appellate Body relating to the Panel's recommendations. If the Appellate Body, pursuant to China's appeal of the Panel's "recommendation with respect to the 'series of measures' that have an ongoing effect through annual replacement measures,"¹ were to grant China's request to "reverse the Panel's recommendations in paragraphs 8.8; 8.15 and 8.22 of the Panel Report to the extent that they apply to replacement measures,"² and if the Appellate Body were to find that no recommendation should have been made on the "series of

¹See China's Appellant Submission, Section III.

²China's Appellant Submission, para. 167.

measures" as they existed as of the date of panel establishment, then Mexico would seek review of the Panel's legal interpretation³ and conclusion⁴ not to make a recommendation on the export quota and export duty measures that were annually recurring and in effect on the date of panel establishment, *i.e.*, December 21, 2009, but that subsequently were replaced or superseded by other legal instruments. In that event, Mexico would contend that this interpretation and conclusion are in error and based on erroneous findings on issues of law and related legal interpretations of Articles 6.2, 7.1, 11, and 19.1 of the DSU. Mexico would request the Appellate Body to reverse the Panel's legal conclusion and to make the recommendation provided for in DSU Article 19.1. However, the Appellate Body would not need to review this legal interpretation and conclusion if the condition precedent to this appeal is not met.

II. Appeal of the Panel Conclusion that China's Administration of its Export Quota through the Involvement of the CCCMC Complied With Article X:3(a) of GATT 1994

4. Mexico appeals various elements of the Panel's findings under Article X:3(a) of the GATT 1994 regarding the involvement of the China Chamber of Commerce on Metals, Minerals in the administration of export quotas.

5. Mexico addresses the following errors in the Panel's findings and conclusions concerning China's an CCCMC's administration of quotas⁵:

- a) First, the Panel erred in its interpretation of Article X:3(a) as requiring complainants to demonstrate, in an as such claim, that a challenged measure must necessarily lead to partial and/or unreasonable administration of export quotas.
- b) Second, the Panel erred in its interpretation of Article X.3(a) requiring evidence of partiality/unreasonableness when complainants argue that a measure is inherently partial/ unreasonable. Proper interpretation of Article X:3(a) leads to the conclusion that China's delegation of authority to CCCMC is inherently partial/unreasonable.
- c) Third, the Panel failed to make an objective assessment of the facts of the case as required by Article 11 of the DSU with respect to the role of CCCMC in the quota process. The CCCMC Secretariat's role in administering quotas is much more than purely administrative in nature. Specifically, the CCCMC gains access to confidential business information on applicants, exercises discretion in determining qualifying applicants, and is the sole verifier of certain eligibility data.

6. As a result, Mexico requests that the Appellate Body reverse the Panel's findings and conclusions at, e.g., paragraphs 7.784-7.787, 7.795-7.797, 8.18 c) and d) of the Panel Report.

³See, e.g., Panel Report, paras. 7.26-7.32.

⁴See, e.g., Panel Report, paras. 7.33(d), 8.22.

⁵See Panel Report, paras. 7.774-7.797.