

**CHINA - MEASURES RELATED TO THE EXPORTATION OF
RARE EARTHS, TUNGSTEN AND MOLYBDENUM**

Request for Consultations by the United States

The following communication, dated 13 March 2012, from the delegation of the United States to the delegation of China and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request 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 restrictions on the export of various forms of rare earths,¹ tungsten,² and molybdenum.³

¹ Forms of rare earths include, but are not limited to, items falling under the following eight-digit Chinese Customs Commodity Codes identified in the *Announcement No. 27 Issuing the 2012 Tariff Implementation Program* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued December 9, 2011, effective January 1, 2012) (hereinafter, the *2012 Tariff Implementation Program*): 25309020, 26122000, 28053011, 28053012, 28053013, 28053014, 28053015, 28053016, 28053017, 28053019, 28053021, 28053029, 28461010, 28461020, 28461030, 28461090, 28469011, 28469012, 28469013, 28469014, 28469015, 28469016, 28469017, 28469019, 28469021, 28469022, 28469023, 28469024, 28469025, 28469026, 28469028, 28469029, 28469031, 28469032, 28469033, 28469034, 28469035, 28469036, 28469039, 28469041, 28469042, 28469043, 28469044, 28469045, 28469046, 28469048, 28469049, 28469091, 28469092, 28469093, 28469094, 28469095, 28469096, 28469099, 72029911, 72029919, 72029991, 72029999, 72051000. Forms of rare earths also include but are not limited to items falling under the following 10-digit Chinese Customs Commodity Codes, as identified in the *Notice on Issuing the "2012 Export Licensing Management Commodities List,"* Ministry of Commerce and General Administration of Customs Notice No. 98 (December 30, 2011), (hereinafter the *2012 Export Licensing Management Commodities List*): 2530902010, 2530902090, 2612200000, 2805301100, 2805301200, 2805301300, 2805301400, 2805301510, 2805301590, 2805301600, 2805301700, 2805301913, 2805301914, 2805301915, 2805301990, 2805302110, 2805302190, 2805302910, 2805302990, 2846101000, 2846102000, 2846103000, 2846109010, 2846109090, 2846901100, 2846901200, 2846901300, 2846901400, 2846901500, 2846901600, 2846901700, 2846901920, 2846901930, 2846901940, 2846901970, 2846901980, 2846901991, 2846901992, 2846901999, 2846902100, 2846902200, 2846902300, 2846902400, 2846902500, 2846902600, 2846902810, 2846902890, 2846902900, 2846903100, 2846903200, 2846903300, 2846903400, 2846903500, 2846903600, 2846903900, 2846904100, 2846904200, 2846904300, 2846904400, 2846904500, 2846904600, 2846904810, 2846904890, 2846904900, 2846909100, 2846909200, 2846909300, 2846909400, 2846909500, 2846909600, 2846909910, 2846909990, 7202991100, 7202991200, 7202991900, 7202999110, 7202999191, 7202999199, 7202999900. Forms of rare earths may also include the following Chinese Customs Commodity Codes listed in the *Announcement Regarding Export Declarations for Rare Earth Products,* (General Administration of Customs, No. 37, issued May 27, 2011, effective June 1, 2011): 25309020, 26122000, 280530, 2846, 32065000, 36069011, 36069019, 38249099, 72029911, 72029912, 72029919, 72029991, 72029999, 72044900, 72051000, 72052100, 85051110.

China imposes export duties on various forms of rare earths, tungsten and molybdenum.

China imposes quantitative restrictions such as quotas on the export of various forms of rare earths, tungsten and molybdenum.

China imposes additional requirements and procedures in connection with the administration of the quantitative restrictions on various forms of rare earths, tungsten and molybdenum, including but not limited to fees and formalities, restrictions on the right to export such as prior export experience requirements and minimum capital requirements, and other conditions that appear to treat foreign-invested entities differently from domestic entities.

China imposes other restrictions such as licensing requirements on the export of various forms of rare earths, tungsten and molybdenum, including in connection with the administration of the quantitative restrictions that China imposes on the export of various forms of rare earths, tungsten, and molybdenum.

China maintains a minimum export price system for the export of various forms of rare earths, tungsten and molybdenum, and also requires the examination and approval of export contracts and export prices, including in connection with the administration and collection of the export duties for various forms of rare earths, tungsten and molybdenum.

China administers all these export restrictions on various forms of rare earths, tungsten, and molybdenum and the requirements and procedures in connection with these export restrictions through, *inter alia*, its ministries and other organizations under the State Council and various chambers of commerce and industry associations. Furthermore, it appears that China administers these export restrictions on various forms of rare earths, tungsten, and molybdenum and the requirements and procedures in connection with these export restrictions in a manner that is not uniform, impartial, reasonable, or transparent.

It appears that China imposes and administers these restrictions on exports of various forms of rare earths, tungsten, and molybdenum also through measures that are not published.

The legal instruments through which China imposes and administers these restrictions on exports of various forms of rare earths, tungsten, and molybdenum, operating separately or collectively, include but are not limited to:

² Forms of tungsten include, but are not limited to, items falling under the following eight-digit Chinese Customs Commodity Codes, as identified in the *2012 Tariff Implementation Program*: 26209910, 28259011, 28259012, 28259019, 28418010, 28418020, 28418030, 28418040, 28418090, 28499020, 72028010, 72028020, 81011000, 81019400, 81019700. Forms of tungsten also include, but are not limited to, items falling under the following 10-digit Chinese Customs Commodity Codes, as identified in the *2012 Export Licensing Management Commodities List*: 2611000000, 2620991000, 2825901100, 2825901200, 2825901910, 2841801000, 2841802000, 2841803000, 2841804000, 2849902000, 3824300010, 7202801000, 7202802000, 8101100010, 8101100090, 8101940000, 8101970000.

³ Forms of molybdenum include, but are not limited to, items falling under the following eight-digit Chinese Customs Commodity Codes, as identified in the *2012 Tariff Implementation Program*: 26131000, 26139000, 28257000, 28417010, 28417090, 72027000, 81021000, 81029400, 81029700. Forms of molybdenum also include, but are not limited to, items falling under the following 10-digit Chinese Customs Commodity Codes, as identified in the *2012 Export Licensing Management Commodities List*: 2613100000, 2613900000, 2825700000, 2841701000, 2841709000, 7202700000, 8102100000, 8102940000, 8102970000, 8102990000.

- *Foreign Trade Law of the People's Republic of China* (adopted as amended at the 8th Session of the Standing Committee of the Tenth National People's Congress on April 6, 2004, effective July 1, 2004)
- *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 No. 392, adopted at the 26th executive meeting of the State Council on October 29, 2003, effective January 1, 2004)
- *Regulation of the People's Republic of China on the Administration of the Import and Export of Goods* (Order of the State Council No. 332, adopted at the 46th executive meeting of the State Council on October 31, 2001, effective January 1, 2002)
- *Notice on Issuing the "2012 Export Licensing Management Commodities List,"* (Ministry of Commerce and General Administration of Customs, No. 98, issued December 30, 2011, effective January 1, 2012)
- *Measures for the Administration of Licenses for the Export of Goods* (Order of the Ministry of Commerce No. 11, adopted May 7, 2008, effective July 1, 2008)
- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued December 20, 2001, effective 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, No. 68, September 21, 1999, amended September 12, 2010)
- *Working Rules on Issuing Export Licenses* (Ministry of Commerce, shangpeifa No. 398, October 9, 2008)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, shangwubuling, No. 1, issued February 4, 2012, effective March 5, 2012)
- *Announcement No. 27 Issuing the "2012 Tariff Implementation Program,"* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued December 9, 2011, effective January 1, 2012)
- *Announcement No. 79 Regarding the "2012 Tariff Implementation Program,"* (General Administration of Customs, No. 79, issued December 22, 2011, effective January 1, 2012)
- *2012 Notice on the Total Export Quota Quantity for Agricultural and Industrial Products in 2012,* (Ministry of Commerce, No. 71, issued October 31, 2011, effective January 1, 2012)
- *2012 Notice on List of Export (Supply) Enterprises and First-batch Export Quota of Tungsten, Antimony and Other Nonferrous Metals,* (Ministry of Commerce, shangmaohan, No. 1131, December 26, 2011)
- *Notice Publishing the List of the State Trading Export Enterprises of Tungsten, Antimony and Silver, the Enterprises Exporting and Supplying Tungsten and Antimony, and the Enterprises of*

Applying for the Export Quotas for Indium and Molybdenum in 2012, (Ministry of Commerce, December 14, 2011)

- *Announcement on Application Conditions and Procedures for 2012 Indium, Molybdenum and Tin Export Quotas*, (Ministry of Commerce, No. 79, November 11, 2011)
- *Announcement Regarding the Qualification Standards of State Owned Tungsten, Antimony and Silver Trade and Export Enterprises, Tungsten and Antimony Export and Supply Enterprises and Declaration Procedures in 2012*, (Ministry of Commerce, No. 80, November 11, 2011)
- *2012 Notice on List of Rare Earth Export Enterprises and First-batch Rare Earth Export Quota*, (Ministry of Commerce, shangmaohan, No. 1133, December 26, 2011)
- *Announcement on 2012 Application Conditions and Procedures for Qualification for 2012 Rare Earth Export Quota*, (Ministry of Commerce, No. 77, November 11, 2011)
- *Notice Publishing the List of Enterprise Applying for the Export Quota for Rare Earths and Coke in 2012*, (Ministry of Commerce, December 14, 2011)
- *Announcement Regarding Export Declarations for Rare Earth Products*, (General Administration of Customs, No. 37, issued May 27, 2011, effective June 1, 2011)
- *Announcement Issuing the "2012 Graded License-Issuing List of Commodities Subject to Export License Administration,"* (Ministry of Commerce, No. 103, December 31, 2011, effective January 1, 2012)
- *State Council's Reply on Relevant Questions Regarding Work Report on Developing Examination of Export Pricing and Continuing Examination of Import Pricing*, (State Council Letter No. 95 of 1994)
- *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)
- *Provisional Measures on Customs Price Examination for Exported Products* (Order of the General Administration of Customs, No. 51, January 22, 1995, effective February 1, 1995)
- *Implementing Regulations for the Measures on Customs Price Examination for Exported Products* (General Administration of Customs, December 31, 1994, effective February 1, 1995)
- *Measures for the Administration over Foreign Trade and Economic Social Organizations*, (Ministry of Foreign Trade and Economic Cooperation, February 26, 1991)
- *PRC Customs Rules on Determination of Dutiable Value of Import and Export Goods*, (General Administration of Customs, No. 148, March 28, 2006)
- *Charter of the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters (2010)*
- *China Tungsten Industry Association Charter (2008)*

- *China Nonferrous Metals Industry Association Charter (2011)*
- Unpublished measures through which China imposes and administers these export restrictions

as well as any amendments, supplements, extensions, replacement measures, renewal measures, related measures, or implementing measures.

China's measures appear to be inconsistent with the following provisions:

- Articles VII, VIII, X, and XI of the GATT 1994; and
- Paragraphs 2(A)2, 2(C)1, 5.1, 5.2, 7.2, 8.2 and 11.3 of Part I of the Protocol on the Accession of the People's Republic of China (WT/L/432) ("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 Report of the Working Party on the Accession of China (WT/MIN(01)/3)).

China's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
