



25 July 2016

(16-3949)

Page: 1/5

Original: English

CHINA - EXPORT DUTIES ON CERTAIN RAW MATERIALS

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

Addendum

The following communication, dated 19 July 2016, 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* and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), with respect to China's restrictions on the export of various forms of antimony, chromium, indium, magnesia, talc, and tin. This request supplements and does not replace the U.S. request for consultations with China dated 13 July 2016, on other export restrictions.¹

China imposes export duties on various forms of chromium.²

China imposes quantitative restrictions such as quotas on the export of various forms of antimony, indium, magnesia, talc, and tin.³

China imposes additional requirements and procedures in connection with the administration of the quantitative restrictions on various forms of antimony, indium, magnesia, talc, and tin, including but not limited to restrictions on the right to export such as prior export requirements.

Further, it appears that China administers these quantitative restrictions on various forms of antimony, indium, magnesia, talc, and tin and the requirements and procedures in connection with these quantitative restrictions in a manner that is not uniform, impartial, reasonable, or transparent.

The legal instruments through which China imposes export duties on various forms of chromium, operating separately or collectively, include but are not limited to:

¹ WT/DS508/1.

² The forms of chromium subject to duties include, but are not limited to, items falling under the Chinese Customs Commodity Codes identified in the *State Council Customs Tariff Commission Notice on Issuing the 2016 Tariff Adjustment Plan* (State Council Customs Tariff Commission, Shui Wei Hui [2015] No. 23, issued 4 December 2015, effective 1 January 2016) as listed in the attached Annex.

³ The forms of antimony, indium, magnesia, talc, and tin subject to quantitative restrictions include, but are not limited to, items falling under the Chinese Customs Commodity Codes identified in the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued 29 December 2015, effective 1 January 2016) as listed in the attached Annex.

- *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 6 April 2004, effective 1 July 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 22 January 1987, amended 28 December 2013, in Order No. 8)
- *Regulation of the People's Republic of China on Import and Export Duties* (State Council, Order No. 392, adopted at the 26th executive meeting of the State Council on 29 October 2003, amended 6 February 2016, in Order No. 666)
- *State Council Customs Tariff Commission Notice on Issuing the 2016 Tariff Adjustment Plan* (State Council Customs Tariff Commission, Shui Wei Hui [2015] No. 23, issued 4 December 2015, effective 1 January 2016)
- *General Administration of Customs Notice on the 2016 Tariff Implementation Plan* (General Administration of Customs, Zong Shu Gong Gao [2015] No. 69, issued 28 December 2015, effective 1 January 2016)

as well as any amendments, or related, successor, replacement, or implementing measures.

The legal instruments through which China imposes and administers quantitative restrictions on the export on various forms of antimony, indium, magnesite, talc, and tin, operating separately or collectively, include but are not limited to:

- *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 6 April 2004, effective 1 July 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 31 October 2001, effective 1 January 2002)
- *Measures for the Administration of Licensing for the Export of Goods* (Order of the Ministry of Commerce No. 11, adopted 7 May 2008, effective 1 July 2008)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, Shang Wu Bu Ling [2012] No. 1, issued 4 February 2012, effective 5 March 2012)
- *Ministry of Commerce Notice on the Printing and Distributing of the "Working Rules on Issuing Export Licenses"* (Ministry of Commerce, Shang Pei Fa [2008] No. 398, issued 9 October 2008)
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Measures on the Administration of the Organs for Issuing the Licenses of Import and Export Commodities"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Pei Guan Han Zi [1999] No. 68, issued 21 September 1999, amended 12 September 2010)
- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued 20 December 2001, effective 1 January 2002)
- *Measures for Quota Bidding for Export Commodities* (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on 20 December 2001, effective 1 January 2002)
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Implementation Rules of Export Quota Bidding for Industrial*

Products" (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Mao Fa [2001] No. 626, issued 8 November 2001)

- *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective 1 January 2016)
- *Ministry of Commerce 2015 Public Notice No. 79 on Announcing the "2016 Graded License-Issuing Catalogue of Commodities Subject to Export License Administration"* (Ministry of Commerce 2015 Public Notice No. 79, issued 31 December 2015, effective 1 January 2016)
- *Ministry of Commerce 2015 Public Notice No. 53 on Announcing the "2016 Agricultural Products and Industrial Product Export Quota Total Amount"* (Ministry of Commerce 2015 Public Notice No. 53, issued 29 October 2015)
- *Ministry of Commerce Notice on Announcing the 2016 List of Tungsten, Antimony, and Silver Exporting State Trading Enterprises and Tungsten, Tin, and Phosphate Rock Export Quota Enterprises* (Ministry of Commerce, issued 30 November 2015)
- *Ministry of Commerce 2015 Public Notice No. 50 on Announcing the "Requirements and Procedures for Applying for Export Quotas of Indium and Tin in 2016"* (Ministry of Commerce 2015 Public Notice No. 50, issued 28 October 2015)
- *Ministry of Commerce 2015 Public Notice No. 49 on Announcing the "Application Requirements and Procedures for Export of Tungsten, Antimony and Silver by State Trading Enterprises in 2016"* (Ministry of Commerce 2015 Public Notice No. 49, issued 28 October 2015)
- *Ministry of Commerce 2015 Public Notice No. 55 on the 2016 Magnesite and Talc Export Quota Bidding Qualifications* (Ministry of Commerce 2015 Public Notice No. 55, issued 4 November 2015)
- *Ministry of Commerce Public Notice on Bid Invitation for the First 2016 Magnesite Export Quota* (Ministry of Commerce, issued 30 November 2015)
- *Ministry of Commerce Public Notice on Bid Invitation for the First 2016 Talc (Powder) Export Quota* (Ministry of Commerce, issued 30 November 2015)
- *Ministry of Commerce Public Notice on Bid Invitation for the Second 2016 Magnesite Export Quota* (Ministry of Commerce, issued 6 July 2016)
- *Ministry of Commerce Public Notice on Bid Invitation for the Second 2016 Talc (Powder) Export Quota* (Ministry of Commerce, issued 6 July 2016)
- *Ministry of Commerce Notice on Announcing the Export Quotas of the First Batch of Industrial Products in 2016* (Ministry of Commerce, Shang Mao Han [2015] No. 1012, issued 25 December 2015)
- *Ministry of Commerce Notice on Announcing the Export Quotas of the Second Batch of Industrial Products in 2016* (Ministry of Commerce, Shang Mao Han [2016] No. 323, issued 28 June 2016)
- *Ministry of Commerce Notice on Supplementing the Export Quotas of the First Batch for Silver and Indium in 2016* (Ministry of Commerce, Shang Mao Han [2016] No. 131, issued 29 March 2016)
- *Ministry of Commerce Notice on Printing and Distributing the "List of Bid-winning Enterprises and Their Quotas in the First Bidding for Export Quotas of Magnesite and Talc in 2016"* (Ministry of Commerce, Shang Mao Pi [2015] No. 1030, issued 22 December 2015)

- *Guidelines of the Ministry of Commerce on Items Requiring Approval [18013] Application Guidelines: Qualification Recognition of State Trading Enterprises for Import and Export of Goods*
- *Application Guidelines: Qualification Recognition of State Trading Enterprises for Import and Export of Goods*
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Provisional Measures on Administration of the Export Operations of Tungsten and Tungsten Products and of Antimony and Antimony Products"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Guan Fa [2000] No. 649, issued 4 December 2000, effective 1 January 2001)

as well as any amendments, or related, successor, replacement, or implementing measures.

China's export duties on various forms of chromium appear to be inconsistent with:

- Paragraph 11.3 of Part I of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ("Accession Protocol"), because China has not eliminated all taxes or charges applied to exports of those products, and China's export duties are not specifically provided for in Annex 6 of the Accession Protocol.

China's export restrictions in the form of quantitative restrictions and of procedures and requirements in connection with those quantitative restrictions appear to be inconsistent with:

- Article XI:1 of the GATT 1994 and China's obligations under Paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments in paragraphs 162 and 165 of the Report of the Working Party on the Accession of China (WT/MIN(01)/3) ("Working Party Report"), because these measures constitute export restrictions other than duties, taxes, or other charges; and
- Paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments in paragraphs 83 and 84 of the Working Party Report, and Paragraph 5.1 of Part I of the Accession Protocol, because these measures limit the right to trade.

In addition, China appears to have acted inconsistently with its obligations under Article X:3(a) of the GATT 1994 and Paragraph 2(A)(2) of Part I of the Accession Protocol because China's application and administration of these measures is done in a manner that is not uniform, impartial, or reasonable.

China's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements. Pursuant to Paragraph 1.2 of Part I of the Accession Protocol and Article XII:1 of the *Agreement Establishing the World Trade Organization* ("WTO Agreement"), the Accession Protocol is an integral part of the WTO Agreement.

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

ANNEX

Antimony: Forms of antimony subject to this request include, but are not limited to, items falling under the following ten-digit Chinese Customs Commodity Codes identified in the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016): 2617101000, 2617109001, 2617109090.

Chromium: Forms of chromium subject to this request include, but are not limited to, items falling under the following eight-digit Chinese Customs Commodity Codes identified in the *State Council Customs Tariff Commission Notice on Issuing the 2016 Tariff Adjustment Plan* (State Council Customs Tariff Commission, Shui Wei Hui [2015] No. 23, issued December 4, 2015, effective January 1, 2016): 26100000, 81122100, 81122200.

Indium: Forms of indium subject to this request include, but are not limited to, items falling under the following ten-digit Chinese Customs Commodity Codes identified in the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016): 8112923001, 8112923002, 8112923090, 8112993000.

Magnesia: Forms of magnesia subject to this request include, but are not limited to, items falling under the following ten-digit Chinese Customs Commodity Codes identified in the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016): 2519100000, 2519901000, 2519902000, 2519903000, 2519909910, 2530909910, 2530909930, 3824909200.

Talc: Forms of talc subject to this request include, but are not limited to, items falling under the following ten-digit Chinese Customs Commodity Codes identified in the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016): 2526102000, 2526202001, 2526202090, 3824909100.

Tin: Forms of tin subject to this request include, but are not limited to, items falling under the following ten-digit Chinese Customs Commodity Codes identified in the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016): 2609000000, 2825903100, 2825903900, 8001100000, 8001201000, 8001202100, 8001202900, 8001209000, 8002000000, 8003000000, 8007002000, 8007004000.
