

**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.

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

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).

³See China's Appellant Submission, Section III.

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.

⁴China's Appellant Submission, para. 167.

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

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