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

**NOTIFICATION OF AN 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 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following notification, dated 8 April 2014, 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 20 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 on *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum* (WT/DS431/R) and certain legal interpretations developed by the Panel in this dispute. If China were not to appeal the Panel Report, or if the Appellate Body were not to modify or reverse the legal findings or conclusions of the Panel pursuant to an appeal by China, then the Appellate Body would not need to reach the following issues.

1. The United States seeks review by the Appellate Body of the Panel's legal conclusion that it should reject exhibits submitted by the complainants with their comments on China's responses to the Panel's questions after the second meeting pursuant to Article 3.3 of the DSU and paragraph 7 of the Panel's Working Procedures.¹ This finding is in error and is based on erroneous findings on issues of law and legal interpretations, including, for example: the Panel's conclusion that acceptance of such evidence would have presented "due process" concerns for China;² the Panel's conclusion that "the submission of new expert reports" would have interfered with the prompt settlement of the dispute;³ and the Panel's conclusion that to be accepted as rebuttal evidence an exhibit must "rise to the required level of necessity."⁴ In reaching these conclusions, the Panel erroneously applied DSU Article 3.3 and failed to provide sufficient time to the United States to prepare its submissions pursuant to DSU Article 12.4.

2. The United States also requests the Appellate Body to find that the Panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the facts by excluding exhibits submitted by the complainants with their comments on China's responses to the Panel's questions after the second meeting; by finding that "the evidence [in question] could and should have been submitted at an earlier date;"⁵ and by finding that the evidence in question does not rebut arguments made by China at the second meeting of the Panel.⁶

¹ See Panel Report, paras. 7.11-7.28.

² *Id.*, para. 7.23.

³ *Id.*, para. 7.24.

⁴ *Id.*, para. 7.25.

⁵ *Id.*, para. 7.21.

⁶ *Id.*, para. 7.22.