



**Dispute Settlement Body
8 November 2016**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 8 NOVEMBER 2016

Chairman: Mr. Xavier Carim (South Africa)

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1 CHINA – EXPORT DUTIES ON CERTAIN RAW MATERIALS

A. Request for the establishment of a panel by the United States (WT/DS508/6)

1.1. The Chairman recalled that, at its meeting on 26 October 2016, the DSB had considered this matter and agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS508/6 and invited the representative of the United States to speak.

1.2. The representative of the United States said that, as had been explained at the 26 October 2016 DSB meeting, the United States was concerned that China continued to impose export restraints on raw materials – antimony, chromium, cobalt, copper, graphite, indium, lead, magnesite, talc, tantalum, and tin – that were important inputs to industries in the United States and in other Members. China's restrictions on the exports of these materials were similar to the restrictions which the DSB had found, in two prior disputes, to be inconsistent with WTO rules. The export restraints at issue included China's export duties, export quotas and restrictions on the rights of enterprises seeking to export. As had been described in more detail in the US panel request, these restraints appeared to be inconsistent with provisions of the GATT 1994 and China's Protocol of Accession. Accordingly, the United States requested that the DSB establish a panel to examine the matter set out in the US panel request with standard terms of reference.

1.3. The representative of China said that her country wished to express its disappointment with the US decision to request the establishment of a panel, for the second time. First, as had been expressed at the 26 October 2016 DSB meeting, after the United States had filed the request for consultations and supplementary request for consultations, China had held consultations in good faith and had tried to find appropriate solutions to resolve this dispute with the United States. Second, China had reiterated its steadfast stance on respecting WTO rules and abiding by the commitments it had undertaken upon its accession to the WTO. Given the increasing pressure on the protection of exhaustible natural resources and the environment, China's policies concerning the products at issue were an integral part of the comprehensive measures taken to promote the scientific management of natural resource products and strengthen ecological environment protection, with the purpose of achieving sustainable development. Third, on 31 October 2016, China had published its Total Export Quotas of Industrial Products and Agricultural Products

of 2017. Regrettably, the United States had not carefully reviewed the new measures and had decided to move this dispute into the panel stage.

1.4. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

1.5. The representatives of Brazil, Canada, the European Union, India, Indonesia, Japan, Kazakhstan, Korea, Mexico, Norway, the Russian Federation, Singapore, Chinese Taipei and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

2 CHINA – DUTIES AND OTHER MEASURES CONCERNING THE EXPORTATION OF CERTAIN RAW MATERIALS

A. Request for the establishment of a panel by the European Union (WT/DS509/6)

2.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS509/6 and invited the representative of the European Union to speak.

2.2. The representative of the European Union said that the EU regretted the fact that it had to request the establishment of a panel in this dispute. The WTO dispute settlement system had already dealt twice with the same type of export restrictions imposed by China on different raw materials. Each time, the WTO dispute settlement system had confirmed that such restrictions were inconsistent with China's obligations under the covered agreements and had asked China to bring its measures into compliance with its obligations. The EU expressed its disappointment about the fact that China continued to impose such export restrictions on a number of raw materials, despite the DSB's recommendations and rulings on this point. The EU regretted China's unwillingness to bring its legislation concerning the export of raw materials in-line with its WTO-commitments. This forced the EU to, once again, bring China's export regime before the WTO dispute settlement system. The EU considered that China's export restrictions on raw materials undermined core principles of the multilateral trading system, as they discriminated against foreign users of these materials and provided substantial and unfair advantages to Chinese firms. China's position as a leading global producer of these raw materials meant that its export restrictions affected global supply and pricing. These measures could provide important advantages to Chinese firms that used the raw materials, to the detriment of the EU and other foreign counterparts. These measures could also create substantial pressure on foreign producers to move their operations, jobs, and technologies to China. The EU had already held consultations with China on these measures. While the consultations had been constructive in clarifying the Chinese measures and their application, there had been no basis for a negotiated solution to this dispute. The EU was, therefore, requesting the establishment of a panel to examine these measures, with standard terms of reference.

2.3. The representative of China said her country wished to express its disappointment with the EU's decision to request the establishment of a panel to examine this matter. First, after the EU had filed the request for consultations and supplementary request for consultations, China had held consultations in good faith, and had tried to find appropriate solutions to resolve this dispute with the EU. Second, China had reiterated its steadfast stance on respecting WTO rules and abiding by the commitments it had undertaken upon its accession to the WTO. Given the increasing pressure on the protection of exhaustible natural resources and the environment, China's policies concerning the products at issue were an integral part of the comprehensive measures taken to promote the scientific management of natural resources products and strengthen ecological environment protection, with the purpose of achieving sustainable development. Third, on 31 October 2016, China had published its Total Export Quotas of Industrial Products and Agricultural Products of 2017. She said that China was not in a position to accept the establishment of a panel at the present meeting.

2.4. The representative of the United States said that, as mentioned under the previous Agenda item, the United States shared the concerns of the EU that China's export duties, export quotas and restrictions on the rights of enterprises seeking to export were inconsistent with WTO rules. The United States recognized that China had exercised its right under the DSU to block the establishment of a panel to consider the EU's complaint. Nonetheless, it would have been more efficient for China and the DSB had China accepted establishment of a single panel at the present

meeting, as had happened in a number of previous disputes, such as in "China – HP-SSST". The United States said that it looked forward to prompt establishment of a panel to consider the EU's complaint at a future DSB meeting so that both the US and EU complaints, covering the same matter, could move forward together.

2.5. The DSB took note of the statements and agreed to revert to this matter.
