

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

Notification of an Other Appeal by Mexico
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 Mexico, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23(1) of the *Working Procedures for Appellate Review*, Mexico hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *China – Measures Related To The Exportation Of Various Raw Materials* (WT/DS398) ("Panel Report"), and certain legal interpretations developed by the Panel in this dispute.

2. Pursuant to Rule 23(2)(c)(ii) of the *Working Procedures for Appellate Review*, this notice of appeal includes and indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Mexico's ability to refer to other paragraphs of the Panel Report in the context of this appeal.

I. Conditional Appeal of the Panel's Recommendations on Annual Export Quota and Export Duty Measures

3. Mexico 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,"¹ 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 measures,"² 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 Mexico would seek review of the Panel's legal interpretation³ and conclusion⁴ 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and in effect on the date of panel establishment, *i.e.*, December 21, 2009, but that subsequently were replaced or superseded by other legal instruments.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, Mexico would contend that this interpretation and conclusion are in error

¹See China's Appellant Submission, Section III.

²China's Appellant Submission, para. 167.

³See, *e.g.*, Panel Report, paras. 7.26-7.32.

⁴See, *e.g.*, Panel Report, paras. 7.33(d), 8.22.

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. Mexico 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.

II. Appeal of the Panel Conclusion that China's Administration of its Export Quota through the Involvement of the CCCMC Complied With Article X:3(a) of GATT 1994

4. Mexico appeals various elements of the Panel's findings under Article X:3(a) of the GATT 1994 regarding the involvement of the China Chamber of Commerce on Metals, Minerals in the administration of export quotas.

5. Mexico addresses the following errors in the Panel's findings and conclusions concerning China's and CCCMC's administration of quotas⁵:

- a) First, the Panel erred in its interpretation of Article X:3(a) as requiring complainants to demonstrate, in an as such claim, that a challenged measure must necessarily lead to partial and/or unreasonable administration of export quotas.
- b) Second, the Panel erred in its interpretation of Article X:3(a) requiring evidence of partiality/unreasonableness when complainants argue that a measure is inherently partial/ unreasonable. Proper interpretation of Article X:3(a) leads to the conclusion that China's delegation of authority to CCCMC is inherently partial/unreasonable.
- c) Third, the Panel failed to make an objective assessment of the facts of the case as required by Article 11 of the DSU with respect to the role of CCCMC in the quota process. The CCCMC Secretariat's role in administering quotas is much more than purely administrative in nature. Specifically, the CCCMC gains access to confidential business information on applicants, exercises discretion in determining qualifying applicants, and is the sole verifier of certain eligibility data.

6. As a result, Mexico requests that the Appellate Body reverse the Panel's findings and conclusions at, e.g., paragraphs 7.784-7.787, 7.795-7.797, 8.18 c) and d) of the Panel Report.

⁵See Panel Report, paras. 7.774-7.797.