

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

Request for the Establishment of a Panel by the United States

The following communication, dated 27 June 2012, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 13 March 2012, the United States requested 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* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") with respect to China's restrictions on the exportation from China of various forms of rare earths¹, tungsten² and molybdenum³. The United States held consultations with China on 25 and 26 April 2012. Those consultations unfortunately did not resolve the dispute.

I. EXPORT DUTIES

China subjects various forms of rare earths⁴, tungsten⁵ and molybdenum⁶ to export duties. These materials are not listed in Annex 6 of the Protocol on the Accession of the People's Republic of China (WT/L/432) ("Accession Protocol").

¹ Forms of rare earths include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the *Announcement No. 27 Issuing the 2012 Tariff Implementation Program* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued 9 December 2011, effective 1 January 2012) (hereinafter, the *2012 Tariff Implementation Program*) as listed in Annex 1 Section A. Forms of rare earths also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the *Notice on Issuing the "2012 Export Licensing Management Commodities List"*, Ministry of Commerce and General Administration of Customs Notice No. 98 (30 December 2011) (hereinafter, the *2012 Export Licensing Management Commodities List*) as listed in Annex 1 Section B.

² Forms of tungsten include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the *2012 Tariff Implementation Program* as listed in Annex 2 Section A. Forms of tungsten also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the *2012 Export Licensing Management Commodities List* as listed in Annex 2 Section B.

³ Forms of molybdenum include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the *2012 Tariff Implementation Program* as listed in Annex 3 Section A. Forms of molybdenum also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the *2012 Export Licensing Management Commodities List* as listed in Annex 3 Section B.

⁴ As listed in Annex 1 Section A.

⁵ As listed in Annex 2 Section A.

⁶ As listed in Annex 3 Section A.

The United States understands that these Chinese measures are reflected in the following:

- *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 8 July 2000)
- *Regulations of the People's Republic of China on Import and Export Duties* (Order of the State Council No. 392, adopted at the 26th executive meeting of the State Council on 29 October 2003, effective 1 January 2004)
- *Announcement No. 27 Issuing the "2012 Tariff Implementation Program"* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued 9 December 2011, effective 1 January 2012)
- *Announcement No. 79 Regarding the "2012 Tariff Implementation Program"* (General Administration of Customs, No.79, issued 22 December 2011, effective 1 January 2012)
- as well as any annexes or schedules thereto, amendments, supplements, or extensions; and implementing measures in force to date.

The United States considers that these measures are inconsistent with Paragraph 11.3 of Part I of the Accession Protocol because these measures constitute taxes and charges applied to exports.

II. EXPORT QUOTAS

China subjects the exportation of various forms of rare earths⁷, tungsten⁸ and molybdenum⁹ to quantitative restrictions such as quotas.

The United States understands that these Chinese measures are reflected in the following:

- *Foreign Trade Law of the People's Republic of China* (adopted as amended 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 forty-sixth executive meeting of the State Council on 31 October 2001, effective 1 January 2002)
- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued on 20 December 2001, effective 1 January 2002)
- *Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities* (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi, No. 68, 21 September 1999, amended 12 September 2010)
- *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)

⁷ As listed in Annex 1 Section B.

⁸ As listed in Annex 2 Section B.

⁹ As listed in Annex 3 Section B.

- *Working Rules on Issuing Export Licenses* (Ministry of Commerce, shangpeifa No. 398, 9 October 2008)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, shangwubuling, No. 1, issued 4 February 2012, effective 5 March 2012)
- *Notice on Issuing the "2012 Export Licensing Management Commodities List"* (Ministry of Commerce and General Administration of Customs Notice No. 98, 30 December 2011)
- *Announcement Issuing the "2012 Graded License-Issuing List of Commodities Subject to Export License Administration"* (Ministry of Commerce No. 103, 31 December 2011, effective 1 January 2012)
- *2012 Notice on the Total Export Quota Quantity for Agricultural and Industrial Products in 2012* (Ministry of Commerce No. 71, issued 31 October 2011, effective 1 January 2012)
- *Notice Publishing the List of Enterprise Applying for the Export Quota for Rare Earths and Coke in 2012* (Ministry of Commerce, 14 December 2011)
- *Notice Publishing the List of the State Trading Export Enterprises of Tungsten, Antimony and Silver, the Enterprises Exporting and Supplying Tungsten and Antimony, and the Enterprises of Applying for the Export Quotas for Indium and Molybdenum in 2012*, (Ministry of Commerce, 14 December 2011)
- *2012 Notice on List of Rare Earth Export Enterprises and First-batch Rare Earth Export Quota* (Ministry of Commerce, shangmaohan, No. 1133, 26 December 2011)
- *2012 Notice on List of Export (Supply) Enterprises and First-batch Export Quota of Tungsten, Antimony and Other Nonferrous Metals* (Ministry of Commerce, shangmaohan, No. 1131, 26 December 2011)
- *Announcement on 2012 Application Conditions and Procedures for Qualification for Rare Earth Export Quota* (Ministry of Commerce, No. 77, 11 November 2011)
- *Announcement Regarding the Qualification Standards of State Owned Tungsten, Antimony and Silver Trade and Enterprises, Tungsten and Antimony Export and Supply Enterprises and Declaration Procedures in 2012* (Ministry of Commerce, No. 80, 11 November 2011)
- *Announcement on Application Conditions and Procedures for 2012 Indium, Molybdenum and Tin Export Quotas* (Ministry of Commerce No. 79, 11 November 2011)
- *Notice on the Supplement to the 2012 First Batch of Rare Earth Export Quota* (Ministry of Commerce No. 618, 16 May 2012)
- as well as any annexes or schedules thereto, amendments, supplements, or extensions; and implementing measures in force to date.

The United States considers that these measures are inconsistent with Article XI:1 of the GATT 1994 and China's obligations under the provisions of Paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments in Paragraphs 162 and 165 of the Working Party Report

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.

III. EXPORT QUOTA ADMINISTRATION AND ALLOCATION

With respect to the administration and the allocation, including through export licensing, of the export quotas on various forms of rare earths¹⁰, tungsten¹¹ and molybdenum¹²:

1) China imposes restrictions on the trading rights of enterprises seeking to export various forms of rare earths and molybdenum, such as prior export performance and minimum registered capital requirements.

The United States understands that these Chinese measures are reflected in the following:

- *Foreign Trade Law of the People's Republic of China* (adopted as amended 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 forty-sixth executive meeting of the State Council on 31 October 2001, effective 1 January 2002)
- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued on 20 December 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)
- *Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities* (Ministry of Foreign Trade and Economic Cooperation, wajingmaopeiguanhanzi, No. 68, 21 September 1999, amended 12 September 2010)
- *Working Rules on Issuing Export Licenses* (Ministry of Commerce, shangpeifa No. 398, 9 October 2008)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, shangwubuling, No. 1, issued 4 February 2012, effective 5 March 2012)
- *Notice on Issuing the "2012 Export Licensing Management Commodities List"* (Ministry of Commerce and General Administration of Customs Notice No. 98, 30 December 2011)
- *Announcement Issuing the "2012 Graded License-Issuing List of Commodities Subject to Export License Administration"* (Ministry of Commerce, No. 103, 31 December 2011, effective 1 January 2012)

¹⁰ As listed in Annex 1 Section B.

¹¹ As listed in Annex 2 Section B.

¹² As listed in Annex 3 Section B.

- *2012 Notice on the Total Export Quota Quantity for Agricultural and Industrial Products in 2012* (Ministry of Commerce No. 71, issued 31 October 2011, effective 1 January 2012)
- *Notice Publishing the List of Enterprise Applying for the Export Quota for Rare Earths and Coke in 2012* (Ministry of Commerce, 14 December 2011)
- *Notice Publishing the List of the State Trading Export Enterprises of Tungsten, Antimony and Silver, the Enterprises Exporting and Supplying Tungsten and Antimony, and the Enterprises of Applying for the Export Quotas for Indium and Molybdenum in 2012*, (Ministry of Commerce, 14 December 2011)
- *2012 Notice on List of Rare Earth Export Enterprises and First-batch Rare Earth Export Quota* (Ministry of Commerce, shangmaohan, No. 1133, 26 December 2011)
- *2012 Notice on List of Export (Supply) Enterprises and First-batch Export Quota of Tungsten, Antimony and Other Nonferrous Metals* (Ministry of Commerce, shangmaohan, No. 1131, 26 December 2011)
- *Announcement on 2012 Application Conditions and Procedures for Qualification for Rare Earth Export Quota* (Ministry of Commerce, No. 77, 11 November 2011)
- *Announcement on Application Conditions and Procedures for 2012 Indium, Molybdenum and Tin Export Quotas* (Ministry of Commerce No. 79, 11 November 2011)
- *Notice on the Supplement to the 2012 First Batch of Rare Earth Export Quota* (Ministry of Commerce No. 618, 16 May 2012)
- as well as any annexes or schedules thereto, amendments, supplements, or extensions; and implementing measures in force to date.

The United States considers that these measures are inconsistent with Paragraph 5.1 of Part I of the Accession Protocol, as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol, which incorporates commitments in paragraphs 83 and 84 of the Working Party Report, because these measures limit the right to trade.

2) China administers these export quotas on various forms of rare earths, tungsten and molybdenum in a manner that is not uniform, impartial, or reasonable, such as by the use of criteria in the application and allocation process that lack definition or do not contain sufficient guidelines or standards in how they should be applied.

The United States understands that the export quotas are administered through the following:

- *Foreign Trade Law of the People's Republic of China* (adopted as amended 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 forty-sixth executive meeting of the State Council on 31 October 2001, effective 1 January 2002)

- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued on 20 December 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)
- *Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities* (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi, No. 68, 21 September 1999, amended 12 September 2010)
- *Working Rules on Issuing Export Licenses* (Ministry of Commerce, shangpeifa No. 398, 9 October 2008)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, shangwubuling, No. 1, issued 4 February 2012, effective 5 March 2012)
- *Notice on Issuing the "2012 Export Licensing Management Commodities List"* (Ministry of Commerce and General Administration of Customs Notice No. 98, 30 December 2011)
- *Announcement Issuing the "2012 Graded License-Issuing List of Commodities Subject to Export License Administration"* (Ministry of Commerce No. 103, 31 December 2012)
- *2012 Notice on the Total Export Quota Quantity for Agricultural and Industrial Products in 2012* (Ministry of Commerce No. 71, issued 31 October 2011, effective 1 January 2012)
- *Notice Publishing the List of Enterprise Applying for the Export Quota for Rare Earths and Coke in 2012* (Ministry of Commerce, 14 December 2011)
- *Notice Publishing the List of the State Trading Export Enterprises of Tungsten, Antimony and Silver, the Enterprises Exporting and Supplying Tungsten and Antimony, and the Enterprises of Applying for the Export Quotas for Indium and Molybdenum in 2012*, (Ministry of Commerce, 14 December 2011)
- *2012 Notice on List of Rare Earth Export Enterprises and First-batch Rare Earth Export Quota* (Ministry of Commerce, shangmaohan, No. 1133, 26 December 2011)
- *2012 Notice on List of Export (Supply) Enterprises and First-batch Export Quota of Tungsten, Antimony and Other Nonferrous Metals* (Ministry of Commerce, shangmaohan, No. 1131, 26 December 2011)
- *Announcement on 2012 Application Conditions and Procedures for Qualification for Rare Earth Export Quota* (Ministry of Commerce, No. 77, 11 November 2011)
- *Announcement Regarding the Qualification Standards of State Owned Tungsten, Antimony and Silver Trade and Enterprises, Tungsten and Antimony Export and Supply Enterprises and Declaration Procedures in 2012* (Ministry of Commerce, No. 80, 11 November 2011)

- *Announcement on Application Conditions and Procedures for 2012 Indium, Molybdenum and Tin Export Quotas* (Ministry of Commerce No. 79, 11 November 2011)
- *Notice on the Supplement to the 2012 First Batch of Rare Earth Export Quota* (Ministry of Commerce No. 618, 16 May 2012)
- as well as any annexes or schedules thereto, amendments, supplements, or extensions; and implementing measures in force to date.

The United States considers that China's administration of the export quotas is inconsistent with Article X:3(a) of the GATT 1994 and Paragraph 2(A)(2) of Part I of the Accession Protocol because it is done in a manner that is not uniform, impartial, or reasonable.

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Accordingly, the United States respectfully requests that, pursuant to Article 6 of the DSU, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Annex 1

Rare earths

Section A

(List of Chinese Customs Commodity Codes identified in the 2012 Tariff Implementation Program¹³)

25309020	28461090	28469028	28469048
26122000	28469011	28469029	28469049
28053011	28469012	28469031	28469091
28053012	28469013	28469032	28469092
28053013	28469014	28469033	28469093
28053014	28469015	28469034	28469094
28053015	28469016	28469035	28469095
28053016	28469017	28469036	28469096
28053017	28469019	28469039	28469099
28053019	28469021	28469041	72029911
28053021	28469022	28469042	72029919
28053029	28469023	28469043	72029991
28461010	28469024	28469044	72029999
28461020	28469025	28469045	
28461030	28469026	28469046	

Section B

(List of Chinese Customs Commodity Codes identified in the 2012 Export Licensing Management Commodities List¹⁴)

2530902010	2846101000	2846901999	2846904300
2530902090	2846102000	2846902100	2846904400
2612200000	2846103000	2846902200	2846904500
2805301100	2846109010	2846902300	2846904600
2805301200	2846109090	2846902400	2846904810
2805301300	2846901100	2846902500	2846904890
2805301400	2846901200	2846902600	2846904900
2805301510	2846901300	2846902810	2846909100
2805301590	2846901400	2846902890	2846909200
2805301600	2846901500	2846902900	2846909300
2805301700	2846901600	2846903100	2846909400
2805301913	2846901700	2846903200	2846909500
2805301914	2846901920	2846903300	2846909600
2805301915	2846901930	2846903400	2846909910
2805301990	2846901940	2846903500	2846909990
2805302110	2846901970	2846903600	7202999110
2805302190	2846901980	2846903900	7202999191
2805302910	2846901991	2846904100	7202999199
2805302990	2846901992	2846904200	

¹³ *Announcement No. 27 Issuing the 2012 Tariff Implementation Program* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued 9 December 2011, effective 1 January 2012).

¹⁴ *Notice on Issuing the "2012 Export Licensing Management Commodities List,"* Ministry of Commerce and General Administration of Customs Notice No. 98 (30 December 2011).

Annex 2

Tungsten

Section A

(List of Chinese Customs Commodity Codes identified in the 2012 Tariff Implementation Program¹⁵)

26209910	28418010	28418090	81011000
28259011	28418020	28499020	81019400
28259012	28418030	72028010	81019700
28259019	28418040	72028020	

Section B

(List of Chinese Customs Commodity Codes identified in the 2012 Export Licensing Management Commodities List¹⁶)

2611000000	2825901910	2841804000	8101940000
2620991000	2841801000	2849902000	8101970000
2825901100	2841802000	8101100010	
2825901200	2841803000	8101100090	

¹⁵ *Announcement No. 27 Issuing the 2012 Tariff Implementation Program* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued 9 December 2011, effective 1 January 2012).

¹⁶ *Notice on Issuing the "2012 Export Licensing Management Commodities List,"* Ministry of Commerce and General Administration of Customs Notice No. 98 (30 December 2011).

Annex 3

Molybdenum

Section A

(List of Chinese Customs Commodity Codes identified in the 2012 Tariff Implementation Program¹⁷)

26131000	28417010	81021000
26139000	28417090	81029400
28257000	72027000	81029700

Section B

(List of Chinese Customs Commodity Codes identified in the 2012 Export Licensing Management Commodities List¹⁸)

2613100000	2841701000	8102100000
2613900000	2841709000	8102940000
2825700000	7202700000	8102970000

¹⁷ *Announcement No. 27 Issuing the 2012 Tariff Implementation Program* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued 9 December 2011, effective 1 January 2012).

¹⁸ *Notice on Issuing the "2012 Export Licensing Management Commodities List,"* Ministry of Commerce and General Administration of Customs Notice No. 98 (30 December 2011).