



19 June 2014

(14-3569)

Page: 1/2

Original: English

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

**COMMUNICATION FROM THE APPELLATE BODY**

The following notification, dated 17 June 2014, from the Chair of the Appellate Body addressed to the Chair of the Dispute Settlement Body, is circulated to Members in accordance with Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

---

I am writing to you pursuant to Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which stipulates that, as a general rule, the Appellate Body will circulate its report no later than 60 days after the appellant has formally notified the Dispute Settlement Body (DSB) of its decision to appeal. Article 17.5 states, furthermore, that when the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

The United States notified the DSB on 8 April 2014 of its decision to appeal certain issues of law covered in the Panel Report WT/DS431/R, and legal interpretations developed by the Panel in this dispute. The Appellate Body was not able to circulate its Report within 60 days of the initiation of the appeal. Moreover, the Appellate Body expects that it will not be able to circulate its Report within the 90-day timeframe provided for in the last sentence of Article 17.5 of the DSU. As explained below, this is due to several reasons, including the unfilled vacancy on the Appellate Body, the Appellate Body's significant workload, the volume and complexity of the issues raised by the participants, the large number of participants and third participants, and the consolidation of this appeal with the appellate proceedings in DS432 and DS433.

On 25 April 2014, China filed a Notice of Appeal with respect to the Panel Reports in *China – Measures related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, WT/DS432/R (complaint by the European Union) and WT/DS433/R (complaint by Japan). Before the Panel, the proceedings in DS431, DS432, and DS433 were consolidated and followed the same timetable. In a Procedural Ruling dated 1 May 2014, the Division hearing these appeals, having heard the views of the participants and third participants, decided to consolidate the three appellate proceedings. These consolidated proceedings thus encompass appeals by the United States and China (as other appellant) in DS431, as well as appeals by China in DS432 and DS433. In conjunction with this consolidation, the Division further decided to modify and extend certain time periods for the filing of submissions in these appeals, and to hold a single oral hearing for all three appeals.

Moreover, as you are aware, for the last six months the Appellate Body has been composed of only six, rather than the full complement of seven, Appellate Body Members. The Appellate Body has faced a substantial workload during the first half of 2014, and there has been significant overlap in the composition of the Divisions that have been composed to hear different appeals during this period. Due to the scheduling issues arising from this situation, the consolidation of the three appeals and the subsequent extended Working Schedule, as well as the time required for translation of the Report so that it can be circulated in all three official languages, it will not be possible for the Appellate Body to circulate its Report in this appeal within the 90-day timeframe provided for in Article 17.5 of the DSU.

Having consolidated the appellate proceedings in this dispute with those in DS432, and DS433, the Appellate Body intends to communicate the expected date of circulation for the Appellate Body Reports in all three disputes upon expiry of the 60-day period specified in Article 17.5 of the DSU for DS432 and DS433. Such 60-day period will expire on 24 June 2014.

---