

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

Request for Consultations by the European Communities

The following communication, dated 23 June 2009, from the delegation of the European Communities to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request 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 restraints on the export from China of various forms of bauxite<sup>1</sup>, coke<sup>2</sup>, fluorspar<sup>3</sup>, magnesium<sup>4</sup>, manganese<sup>5</sup>, silicon carbide<sup>6</sup>, silicon metal<sup>7</sup>, yellow phosphorus<sup>8</sup> and zinc<sup>9</sup> (the "materials").

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<sup>1</sup> Bauxite includes but is not limited to items falling under the following HS numbers, as listed in Attachment 1 of Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs (2008) No. 100, 1 January 2009) ("2009 Export Licensing List") and/or Table 7 of Notice of the State Council Tariff Policy Commission Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui 2008 No. 40, 1 January 2009) ("2009 Export Duty List"): 2508300000/25083000, 2606000000/26060000, 26204000.

<sup>2</sup> Coke includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 2704001000/27040010.

<sup>3</sup> Fluorspar includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 2529210000/25292100, 2529220000/25292200.

<sup>4</sup> Magnesium includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 81041100, 81041900, 81042000.

<sup>5</sup> Manganese includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 26020000, 8111001010/81110010, 8111001090/81110010.

<sup>6</sup> Silicon carbide includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 2849200000, 3824909910.

<sup>7</sup> Silicon metal includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 28046900.

<sup>8</sup> Yellow phosphorus includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 28047010.

<sup>9</sup> Zinc includes but is not limited to items falling under the following HS numbers, as listed in the 2009 Export Licensing List and/or the 2009 Export Duty List: 2608000001/26080000, 2608000090/26080000, 7901119000/79011190, 7901120000/79011200, 7901200000/79012000, 79020000, 26201100, 26201900.

China imposes quantitative restrictions on the export of bauxite, coke, fluorspar, silicon carbide and zinc.

China also imposes export duties on bauxite, coke, fluorspar, magnesium, manganese, silicon metal, yellow phosphorus and zinc.

China imposes additional requirements and procedures in connection with the export of the materials, including, but not limited to, restricting the right to export based on, for example, prior export experience; establishing criteria that foreign-invested enterprises must satisfy in order to export that are different from those that domestic entities must satisfy; and requiring exporters to pay fees. China administers these requirements and procedures through its ministries and other organisations under the State Council, as well as chambers of commerce.

China maintains a minimum export price system for the materials and requires the examination and approval of export contracts and export prices. China administers this system and these requirements through its ministries and other organisations under the State Council, as well as chambers of commerce.

The measures through which China imposes these restraints on exports include but are not limited to<sup>10</sup>:

- Foreign Trade Law of the People's Republic of China (adopted at the 8<sup>th</sup> Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004, promulgated on 1 July 2004)
- Customs Law of the People's Republic of China (adopted at the 19<sup>th</sup> Meeting of the Standing Committee of the Sixth National People's Congress on 22 January 1987, amended 8 July 2000)
- Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (passed at the forty-sixth executive meeting of the State Council on 31 October 2001, 1 January 2002)
- Measures for the Administration of Licence for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, 1 July 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on 20 December 2001, 1 January 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on 20 December 2001, 1 January 2002)
- Measures for the Administration of the Organs for Issuing the Licences of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, 21 September 1999)

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<sup>10</sup> There also appear to be unpublished measures through which China imposes these restraints on exports.

- Regulations of the People's Republic of China on Import and Export Duties (Order of the State Council (2003) No. 392, adopted at the 26<sup>th</sup> executive meeting of the State Council on 29 October 2003, 1 January 2004)
- Provisional Measures on Customs Price Examination for Exported Products (Order of the General Administration of Customs (1995) No. 51, 1 February 1995)
- Implementing Regulations for the Measures on Customs Price Examination for Exported Products (General Administration of Customs, 1 February 1995)
- Measures for the Administration over Foreign Trade and Economic Social Organisations (Ministry of Foreign Trade and Economic Cooperation, 26 February 1991)
- Interim Regulations of the Ministry of Foreign Trade and Economic Cooperation on Punishment for Conduct at Exporting at Lower-than-Normal Price (Ministry of Foreign Trade and Economic Cooperation, 20 March 1996)
- Working Rules on Issuing Export Licences (Ministry of Commerce, shangpeifa (2008) No. 398, 9 October 2008)
- Rules on the Administration of Import and Export Licence Certificates (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeizi (1999) No. 87, 6 December 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, 8 November 2001)
- Charter of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, 1 January 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, 1 January 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, 13 October 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, 1 January 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded Licence-Issuing List of Commodities Subject to Export Licence Administration" (Ministry of Commerce, Notice (2008) No. 124, 1 January 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licences" (Ministry of Commerce, shangpeifa (2008) No. 398, 9 October 2008)

- Announcement of Ministry of Commerce on Matters Regarding the First Bidding for Export Quotas of Industrial Products in 2009 (Ministry of Commerce, Announcement (2008) No. 85, 30 October 2008)
- Announcement of Ministry of Commerce on the Notice for the Second Invitation for the Bidding for Industrial Product Export Quotas in 2009 (Ministry of Commerce, Announcement (2009) No. 42, 9 June 2009)
- Circular of the Ministry of Foreign Trade and Economic Cooperation on Distribution of the "Implementation Rules of Export Quota Bidding for Industrial Products" (Ministry of Foreign Trade and Economic Cooperation, issued on 8 November 2001)
- Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, 1 January 2009)
- Notice Regarding the Trial Administration of 36 Types of Products such as Citric Acid (Ministry of Commerce and General Administration of Customs, Notice (2003) No. 36, 29 November 2003)
- Notice Regarding Printing and Distribution of Several Regulations for Personnel Management of Chambers of Commerce for Importers and Exporters (Ministry of Foreign Trade and Economic Cooperation, 23 September 1994)
- Notice for the Adjustment of the Catalogue of Export Products Subject to Price Review by Customs (Ministry of Foreign Trade and Economic Cooperation and the General Administration of Customs, wajingmaomaofa (2002) No. 187, effective 1 May 2002)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for Bid for Export Commodity Quotas, 11 December 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for Bid for Export Commodity Quotas, 10 December 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for Bid for Export Commodity Quotas, 11 December 2008)

as well as any amendments, replacements, related measures or implementing measures.

China's measures appear to be inconsistent with the following provisions:

- Articles VIII, X, and XI of the GATT 1994, and,
- Paragraphs 5.1, 5.2, 8.2 and 11.3 of Part I of the Protocol on the Accession of the People's Republic of China ("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, 84, 162 and 165 of the Report of the Working Party on the Accession of China) and its commitments referred to in paragraph 342 of the Working Party Report.

China's measures also appear to nullify or impair the benefits accruing to the European Communities directly or indirectly under the cited agreements.

The European Communities reserves the right to address additional measures and claims regarding the above matters in the course of the consultations.

The European Communities looks forward to receiving China's reply in due course to this request for consultations. The European Communities is ready to consider with China mutually convenient dates for consultations in Geneva.

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