

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

Constitution of the Panel Established at the Requests of the United States, the European Union and Japan

Note by the Secretariat¹

1. At its meeting on 23 July 2012, the Dispute Settlement Body (DSB) established a single panel pursuant to the requests of the United States in document WT/DS431/6, the European Union in document WT/DS432/6, and Japan in document WT/DS433/6, in accordance with Article 9.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

2. The Panel's terms of reference are the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the United States in document WT/DS431/6, the European Union in document WT/DS432/6 and Japan in document WT/DS433/6, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."

3. On 12 September 2012, the United States, the European Union and Japan requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. This paragraph provides:

"If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request."

4. On 24 September 2012, the Director-General accordingly composed the Panel as follows:

Chairperson: Mr Nacer Benjelloun-Touimi

Members: Mr Hugo Cayrús
Mr Darlington Mwape

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO Agreement.

5. Argentina, Australia, Brazil, Canada, Colombia, the European Union (with respect to WT/DS431 and WT/DS433), India, Indonesia, Japan (with respect to WT/DS431 and WT/DS432), the Republic of Korea, Norway, Oman, Peru², the Russian Federation³, the Kingdom of Saudi Arabia, Chinese Taipei, Turkey, the United States (with respect to WT/DS432 and WT/DS433), and Viet Nam, have reserved their rights to participate in the Panel proceedings as third parties.

² On 3 August 2012, more than ten days after the establishment of the Panel, the parties and the Secretariat received Peru's notification of its interest, dated 2 August 2012, to participate as a third party.

³ On 13 September 2012, more than ten days after the establishment of the Panel, the parties and the Secretariat received the Russian Federation's notification of its interest, dated 13 September 2012, to participate as a third party. At the time of the establishment of the Panel, the Russian Federation was not a Member of the WTO.