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

**UNDERSTANDING BETWEEN CHINA AND THE EUROPEAN UNION
REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU**

The following communication, dated 18 January 2013, from the delegation of China and the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

The European Union and the People's Republic of China would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between the European Union and the People's Republic of China with respect to the dispute *China – Measures Related to the Exportation of Various Raw Materials*" (WT/DS395).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

China – Measures Related to the Exportation of Various Raw Materials" (WT/DS395)Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *China – Measures Related to the Exportation of Various Raw Materials*" (WT/DS395) on 22 February 2012.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") the People's Republic of China ("China") and the European Union ("EU") agreed that the reasonable period of time to implement the DSB recommendations and rulings would be 10 months and 9 days, expiring on 31 December 2012 (WT/DS395/17).

China and the EU ("the parties to the dispute") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either party's views on the correct interpretation of the DSU:

1. Should the EU consider that the situation described in Article 21.5 of the DSU exists, the EU will request that China enter into consultations with the EU. The Parties agree to hold such consultations within 15 days from the date of receipt of the request. After this 15-day period has elapsed, the EU may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. At the first DSB meeting at which the EU's request for the establishment of an Article 21.5 panel appears on the agenda, China shall accept the establishment of that panel.
3. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties to the dispute shall cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB. Further, either party to the dispute may request the DSB to adopt its recommendations and rulings at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
6. The EU may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU in the event that the DSB rules as a result of a proceeding under Article 21.5 of the DSU that a measure taken to comply does not exist or is inconsistent with a covered agreement. China shall not assert that the EU is precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to China's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
7. If the EU requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, China shall have the right to object under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.
8. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
9. If any of the original panellists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), or any person serving in such proceeding becomes unavailable to serve, the parties to the dispute will promptly consult on a replacement, and

either party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panellist is unavailable to serve in either of the proceedings, or a person serving in such proceeding becomes unavailable to serve, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.

10. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

Signed in Geneva, 18 January 2013

For the People's Republic of China

For the European Union

(Signed)
H.E. Mr. YI Xiaozhun
Ambassador, Permanent Representative to
the WTO

(Signed)
Mr. Detlev Brauns
Chargé d'affaires a.i., Deputy Permanent
Representative to the WTO
