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Page: 1/10

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CHINA - EXPORT DUTIES ON CERTAIN RAW MATERIALS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES

The following communication, dated 13 October 2016, 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 July 2016 and 19 July 2016, 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 export of various forms of antimony,¹ chromium,² cobalt,³ copper,⁴ graphite,⁵ indium,⁶ lead,⁷ magnesias,⁸ talc,⁹ tantalum,¹⁰ and tin.¹¹ The United States held

¹ Forms of antimony include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in State Council Customs Tariff Commission Notice on Issuing the 2016 Tariff Adjustment Plan (State Council Customs Tariff Commission, Shui Wei Hui [2015] No. 23, issued December 4, 2015, effective January 1, 2016) (the "2016 Tariff Adjustment Plan") as listed in Annex 1, Section A. Forms of antimony also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue" (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016) (the "2016 Export Licensing Management Commodities Catalogue") as listed in Annex 1, Section B.

² Forms of chromium include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 2.

³ Forms of cobalt include, but are not limited to, the item falling under the eight-digit Chinese Customs Commodity Code identified in the 2016 Tariff Adjustment Plan as listed in Annex 3.

⁴ Forms of copper include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 4.

⁵ Forms of graphite include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 5.

⁶ Forms of indium also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the 2016 Export Licensing Management Commodities Catalogue as listed in Annex 6.

⁷ Forms of lead include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 7.

⁸ Forms of magnesias include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 8, Section A.

Forms of magnesias also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the 2016 Export Licensing Management Commodities Catalogue as listed in Annex 8, Section B.

⁹ Forms of talc include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 9, Section A.

Forms of talc also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the 2016 Export Licensing Management Commodities Catalogue as listed in Annex 9, Section B.

¹⁰ Forms of tantalum include, but are not limited to, the item falling under the eight-digit Chinese Customs Commodity Code identified in the 2016 Tariff Adjustment Plan as listed in Annex 10.

¹¹ Forms of tin include, but are not limited to, items falling under the eight-digit Chinese Customs Commodity Codes identified in the 2016 Tariff Adjustment Plan as listed in Annex 11, Section A.

consultations with China on September 8 and 9, 2016. Unfortunately, those consultations did not resolve the dispute.

I. EXPORT DUTIES

China imposes export duties on various forms of antimony,¹² chromium,¹³ cobalt,¹⁴ copper,¹⁵ graphite,¹⁶ lead,¹⁷ magnesia,¹⁸ talc,¹⁹ tantalum,²⁰ and tin.²¹

The legal instruments through which China imposes export duties on these products, operating separately or collectively, include but are not limited to the following:

- *Foreign Trade Law of the People's Republic of China* (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004, effective 1 July 2004)
- *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 28 December 2013, in Order No. 8)
- *Regulation of the People's Republic of China on Import and Export Duties* (State Council, Order No. 392, adopted at the 26th executive meeting of the State Council on 29 October 2003, amended February 6, 2016, in Order No. 666)
- *State Council Customs Tariff Commission Notice on Issuing the 2016 Tariff Adjustment Plan* (State Council Customs Tariff Commission, Shui Wei Hui [2015] No. 23, issued 4 December 2015, effective 1 January 2016)
- *General Administration of Customs Notice on the 2016 Tariff Implementation Plan* (General Administration of Customs, Zong Shu Gong Gao [2015] No. 69, issued 28 December 2015, effective 1 January 2016)
- as well as any amendments, or related, successor, replacement, or implementing measures.

These materials subject to China's export duties are not listed in Annex 6 of the Protocol on the Accession of the People's Republic of China (WT/L/432) ("Accession Protocol"). 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 imposes restrictions, such as quotas, on the export of various forms of antimony,²² indium,²³ magnesia,²⁴ talc,²⁵ and tin.²⁶

Forms of tin also include, but are not limited to, items falling under the 10-digit Chinese Customs Commodity Codes identified in the 2016 Export Licensing Management Commodities Catalogue as listed in Annex 11, Section B.

¹² As listed in Annex 1, Section A.

¹³ As listed in Annex 2.

¹⁴ As listed in Annex 3.

¹⁵ As listed in Annex 4.

¹⁶ As listed in Annex 5.

¹⁷ As listed in Annex 7.

¹⁸ As listed in Annex 8, Section A.

¹⁹ As listed in Annex 9, Section A.

²⁰ As listed in Annex 10.

²¹ As listed in Annex 11, Section A.

²² As listed in Annex 1, Section B.

²³ As listed in Annex 6.

²⁴ As listed in Annex 8, Section B.

²⁵ As listed in Annex 9, Section B.

²⁶ As listed in Annex 11, Section B.

The legal instruments through which China imposes restrictions, such as quotas, on these products, operating separately or collectively, include but are not limited to the following:

- *Foreign Trade Law of the People's Republic of China* (adopted 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 46th executive meeting of the State Council on 31 October 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)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, Shang Wu Bu Ling [2012] No. 1, issued 4 February 2012, effective 5 March 2012)
- *Ministry of Commerce Notice on the Printing and Distributing of the "Working Rules on Issuing Export Licenses"* (Ministry of Commerce, Shang Pei Fa [2008] No. 398, issued 9 October 2008)
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Measures on the Administration of the Organs for Issuing the Licenses of Import and Export Commodities"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Pei Guan Han Zi [1999] No. 68, issued 21 September 1999, amended 12 September 2010)
- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued 20 December 2001, effective 1 January 2002)
- *Measures for Quota Bidding for Export Commodities* (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on 20 December 2001, effective 1 January 2002)
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Implementation Rules of Export Quota Bidding for Industrial Products"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Mao Fa [2001] No. 626, issued 8 November 2001)
- *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued 29 December 2015, effective 1 January 2016)
- *Ministry of Commerce 2015 Public Notice No. 79 on Announcing the "2016 Graded License-Issuing Catalogue of Commodities Subject to Export License Administration"* (Ministry of Commerce 2015 Public Notice No. 79, issued 31 December 2015, effective 1 January 2016)
- *Ministry of Commerce 2015 Public Notice No. 53 on Announcing the "2016 Agricultural Products and Industrial Product Export Quota Total Amount"* (Ministry of Commerce 2015 Public Notice No. 53, issued 29 October 2015)
- *Ministry of Commerce Notice on Announcing the 2016 List of Tungsten, Antimony, and Silver Exporting State Trading Enterprises and Tungsten, Tin, and Phosphate Rock Export Quota Enterprises* (Ministry of Commerce, issued 30 November 2015)

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- *Ministry of Commerce 2015 Public Notice No. 50 on Announcing the "Requirements and Procedures for Applying for Export Quotas of Indium and Tin in 2016"* (Ministry of Commerce 2015 Public Notice No. 50, issued 28 October 2015)
 - *Ministry of Commerce 2015 Public Notice No. 49 on Announcing the "Application Requirements and Procedures for Export of Tungsten, Antimony and Silver by State Trading Enterprises in 2016"* (Ministry of Commerce 2015 Public Notice No. 49, issued 28 October 2015)
 - *Ministry of Commerce 2015 Public Notice No. 55 on the 2016 Magnesia and Talc Export Quota Bidding Qualifications* (Ministry of Commerce 2015 Public Notice No. 55, issued 4 November 2015)
 - *Ministry of Commerce Public Notice on Bid Invitation for the First 2016 Magnesia Export Quota* (Ministry of Commerce, issued 30 November 2015)
 - *Ministry of Commerce Public Notice on Bid Invitation for the First 2016 Talc (Powder) Export Quota* (Ministry of Commerce, issued 30 November 2015)
 - *Ministry of Commerce Public Notice on Bid Invitation for the Second 2016 Magnesia Export Quota* (Ministry of Commerce, issued 6 July 2016)
 - *Ministry of Commerce Public Notice on Bid Invitation for the Second 2016 Talc (Powder) Export Quota* (Ministry of Commerce, issued 6 July 2016)
 - *Ministry of Commerce Notice on Announcing the Export Quotas of the First Batch of Industrial Products in 2016* (Ministry of Commerce, Shang Mao Han [2015] No. 1012, issued 25 December 2015)
 - *Ministry of Commerce Notice on Announcing the Export Quotas of the Second Batch of Industrial Products in 2016* (Ministry of Commerce, Shang Mao Han [2016] No. 323, issued 28 June 2016)
 - *Ministry of Commerce Notice on Supplementing the Export Quotas of the First Batch for Silver and Indium in 2016* (Ministry of Commerce, Shang Mao Han [2016] No. 131, issued 29 March 2016)
 - *Ministry of Commerce Notice on Printing and Distributing the "List of Bid-winning Enterprises and Their Quotas in the First Bidding for Export Quotas of Magnesia and Talc in 2016"* (Ministry of Commerce, Shang Mao Pi [2015] No. 1030, issued 22 December 2015)
 - *Ministry of Commerce Notice on Printing and Distributing the "List of Bid-winning Enterprises and Their Quotas in the Second Bidding for Export Quotas of Magnesia and Talc in 2016"* (Ministry of Commerce, Shang Mao Pi [2016] No. 674, issued 26 July 2016)
 - *Guidelines of the Ministry of Commerce on Items Requiring Approval [18013] Application Guidelines: Qualification Recognition of State Trading Enterprises for Import and Export of Goods*
 - *Application Guidelines: Qualification Recognition of State Trading Enterprises for Import and Export of Goods*
 - *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Provisional Measures on Administration of the Export Operations of Tungsten and Tungsten Products and of Antimony and Antimony Products"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Guan Fa [2000] No. 649, issued 4 December 2000, effective 1 January 2001)
 - as well as any amendments, or related, successor, replacement, or implementing measures.

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 of the export quotas on various forms of indium,²⁷ magnesite,²⁸ talc,²⁹ and tin,³⁰ China imposes restrictions on the trading rights of enterprises seeking to export various forms of indium, magnesite, talc, and tin, such as prior export performance requirements.

The legal instruments through which China imposes restrictions on the right to export these products, operating separately or collectively, include but are not limited to the following:

- *Foreign Trade Law of the People's Republic of China* (adopted 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 46th executive meeting of the State Council on October 31, 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)
- *Rules on the Administration of Import and Export License Certificates* (Ministry of Commerce, Shang Wu Bu Ling [2012] No. 1, issued 4 February 2012, effective 5 March 2012)
- *Ministry of Commerce Notice on the Printing and Distributing of the "Working Rules on Issuing Export Licenses"* (Ministry of Commerce, Shang Pei Fa [2008] No. 398, issued 9 October 2008)
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Measures on the Administration of the Organs for Issuing the Licenses of Import and Export Commodities"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Pei Guan Han Zi [1999] No. 68, issued 21 September 1999, amended 12 September 2010)
- *Measures for the Administration of Export Commodities Quotas* (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, issued 20 December 2001, effective 1 January 2002)
- *Measures for Quota Bidding for Export Commodities* (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on 20 December 2001, effective 1 January 2002)
- *Ministry of Foreign Trade and Economic Cooperation Notice on Printing and Distributing the "Implementation Rules of Export Quota Bidding for Industrial Products"* (Ministry of Foreign Trade and Economic Cooperation, Wai Jing Mao Mao Fa [2001] No. 626, issued 8 November 2001)

²⁷ As listed in Annex 6.

²⁸ As listed in Annex 8, Section B.

²⁹ As listed in Annex 9, Section B.

³⁰ As listed in Annex 11, Section B.

- *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the "2016 Export Licensing Management Commodities Catalogue"* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued 29 December 2015, effective 1 January 2016)
- *Ministry of Commerce 2015 Public Notice No. 79 on Announcing the "2016 Graded License-Issuing Catalogue of Commodities Subject to Export License Administration"* (Ministry of Commerce 2015 Public Notice No. 79, issued 31 December 2015, effective 1 January 2016)
- *Ministry of Commerce 2015 Public Notice No. 53 on Announcing the "2016 Agricultural Products and Industrial Product Export Quota Total Amount"* (Ministry of Commerce 2015 Public Notice No. 53, issued 29 October 2015)
- *Ministry of Commerce Notice on Announcing the 2016 List of Tungsten, Antimony, and Silver Exporting State Trading Enterprises and Tungsten, Tin, and Phosphate Rock Export Quota Enterprises* (Ministry of Commerce, issued 30 November 2015)
- *Ministry of Commerce 2015 Public Notice No. 50 on Announcing the "Requirements and Procedures for Applying for Export Quotas of Indium and Tin in 2016"* (Ministry of Commerce 2015 Public Notice No. 50, issued 28 October 2015)
- *Ministry of Commerce 2015 Public Notice No. 55 on the 2016 Magnesite and Talc Export Quota Bidding Qualifications* (Ministry of Commerce 2015 Public Notice No. 55, issued 4 November 2015)
- *Ministry of Commerce Public Notice on Bid Invitation for the First 2016 Magnesite Export Quota* (Ministry of Commerce, issued 30 November 2015)
- *Ministry of Commerce Public Notice on Bid Invitation for the First 2016 Talc (Powder) Export Quota* (Ministry of Commerce, issued 30 November 2015)
- *Ministry of Commerce Public Notice on Bid Invitation for the Second 2016 Magnesite Export Quota* (Ministry of Commerce, issued 6 July 2016)
- *Ministry of Commerce Public Notice on Bid Invitation for the Second 2016 Talc (Powder) Export Quota* (Ministry of Commerce, issued 6 July 2016)
- *Ministry of Commerce Notice on Announcing the Export Quotas of the First Batch of Industrial Products in 2016* (Ministry of Commerce, Shang Mao Han [2015] No. 1012, issued 25 December 2015)
- *Ministry of Commerce Notice on Announcing the Export Quotas of the Second Batch of Industrial Products in 2016* (Ministry of Commerce, Shang Mao Han [2016] No. 323, issued 28 June 2016)
- *Ministry of Commerce Notice on Supplementing the Export Quotas of the First Batch for Silver and Indium in 2016* (Ministry of Commerce, Shang Mao Han [2016] No. 131, issued 29 March 2016)
- *Ministry of Commerce Notice on Printing and Distributing the "List of Bid-winning Enterprises and Their Quotas in the First Bidding for Export Quotas of Magnesite and Talc in 2016"* (Ministry of Commerce, Shang Mao Pi [2015] No. 1030, issued 22 December 2015)
- *Ministry of Commerce Notice on Printing and Distributing the "List of Bid-winning Enterprises and Their Quotas in the Second Bidding for Export Quotas of Magnesite and Talc in 2016"* (Ministry of Commerce, Shang Mao Pi [2016] No. 674, issued 26 July 2016)
- as well as any amendments, or related, successor, replacement, or implementing measures.

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.

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 standard terms of reference as set out in Article 7.1 of the DSU.

Annex 1

Antimony

Section A

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

26171090

Section B

(List of ten-digit Chinese Customs Commodity Codes, as identified in the 2016 Export Licensing Management Commodities Catalogue)

2617101000 2617109090

2617109001

Annex 2

Chromium

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

26100000 81122200

81122100

Annex 3

Cobalt

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

26050000

Annex 4

Copper

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

26030000

74010000

Annex 5**Graphite**

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

25041010	25049000
25041099	

Annex 6**Indium**

(List of ten-digit Chinese Customs Commodity Codes, as identified in the 2016 Export Licensing Management Commodities Catalogue)

8112923001	8112923090
8112923002	8112993000

Annex 7**Lead**

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

78011000
78020000

Annex 8**Magnesia****Section A**

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

25191000	25199020	25199099
25199010	25199030	25309099

Section B

(List of ten-digit Chinese Customs Commodity Codes, as identified in the 2016 Export Licensing Management Commodities Catalogue)

2519100000	2519902000	2519909910	2530909930
2519901000	2519903000	2530909910	3824909200

Annex 9**Talc****Section A**

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

25261020 38249091

25262020

Section B

(List of ten-digit Chinese Customs Commodity Codes, as identified in the 2016 Export Licensing Management Commodities Catalogue)

2526102000 2526202090

2526202001 3824909100

Annex 10**Tantalum**

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

81033000

Annex 11**Tin****Section A**

(List of eight-digit Chinese Customs Commodity Codes, as identified in the 2016 Tariff Adjustment Plan)

80011000

80020000

Section B

(List of ten-digit Chinese Customs Commodity Codes, as identified in the 2016 Export Licensing Management Commodities Catalogue)

2609000000 8001100000 8001202900 8003000000

2825903100 8001201000 8001209000 8007002000

2825903900 8001202100 8002000000 8007004000
