

# CHINA – RAW MATERIALS<sup>1</sup>

(DS394, 395, 398)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	<i>European Union, Mexico, United States</i>	<i>DSU Art. 6.2 GATT Arts. VIII:1(a), X:1, X:3(a), XI:1, XI:2(a), XX(b) and XX(g)</i>	Establishment of Panel	<i>21 December 2009</i>
			Circulation of Panel Report	<i>5 July 2011</i>
Respondent	<i>China</i>	<i>China's Accession Protocol and Working Party Report</i>	Circulation of AB Report	<i>30 January 2012</i>
			Adoption	<i>22 February 2012</i>

## 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Export restraints imposed on the different raw materials: (i) export duties; (ii) export quotas; (iii) export quotas management (iv) minimum export price requirements; (v) export licensing requirements; and (vi) administration and publication of trade regulations. The complainants identified 40 specific Chinese measures in connection with their claims.
- **Product at issue:** Certain forms of bauxite, coke, fluor spar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorous, and zinc.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS<sup>2</sup>

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body found that the section of the respondents' panel requests that related to "additional restrictions imposed on exportation" did not comply with the requirements of Art. 6.2 to "identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly". Based on these procedural grounds, the Appellate Body declared a number of the Panel's findings with respect to the additional restrictions "moot and of no legal effect": findings with respect to paras. 1.2, 5.1 of China's Accession Protocol, read in combination with paras. 83(a), 83(b), 83(d), 84(a), 84(b) of China's Working Party Report (trading rights); para. 5.2 of China's Accession Protocol (national treatment for foreign enterprises); GATT Arts. VIII (export fees); X:1 (trade regulations – prompt publication (minimum export prices)), X:3(a) (trade regulations – uniform, impartial and reasonable administration) and XI:1 (prohibition on quantitative restrictions – minimum export prices).
- **China's Accession Protocol, para. 11.3 (elimination of export taxes and charges):** The Appellate Body upheld the Panel's recommendation that China bring its export duty and export quota measures into conformity with its WTO obligations such that the "series of measures" did not operate to bring about a WTO-inconsistent result.
- **GATT Art. XX (general exceptions):** The Appellate Body upheld the Panel's finding that there is no basis in China's Accession Protocol to allow the application of Art. XX to China's obligations under para.11.3 of the Protocol. The Panel had concluded that China's export restraints were not justified pursuant to Arts. XX(b) and (g). These findings were not appealed. In this context China only appealed the Panel's interpretation of the phrase "made effective in conjunction with" in Art. XX(g). The Appellate Body concluded that the Panel erred and stated that these terms mean that the export restrictions and the restrictions on domestic consumption or production "must "work together".
- **GATT Art. XI:2(a) (prohibition on quantitative restrictions – authorization of temporary export restrictions):** The Appellate Body upheld the Panel's conclusion that China had not demonstrated that its export quota on refractory-grade bauxite was "temporarily applied" to either prevent or relieve a "critical shortage", within the meaning of Art. XI:2(a).
- **GATT Art. X:1 (trade regulations – prompt publication):** The Panel concluded that the failure by China to publish promptly the decision not to authorize an export quota for zinc was inconsistent with Art. X:1. This conclusion was not appealed.

<sup>1</sup> *China – Measures Related to the Exportation of Various Raw Materials*

<sup>2</sup> Other issues addressed: panel's terms of reference (DSU Art. 7.1); objective assessment of the matter before a panel (DSU Art. 11); DSU Art. 19.1 and GATT Art. XX(i).