

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

Request for the Establishment of a Panel by the United States

The following communication, dated 4 November 2009, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 23 June 2009, 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 restraints on the exportation from China of various forms of bauxite¹, coke², fluorspar³, magnesium⁴, manganese⁵, silicon carbide⁶, silicon metal⁷, yellow phosphorus⁸, and zinc⁹ (the "materials"). The United States

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

² Coke includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2704001000/27040010.

³ Fluorspar includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2529210000/25292100, 2529220000/25292200.

⁴ Magnesium includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 81041100, 81041900, 81042000.

⁵ Manganese includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 26020000, 8111001010/81110010, 8111001090/81110010.

⁶ Silicon carbide includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2849200000, 3824909910.

⁷ Silicon metal includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28046900.

⁸ Yellow phosphorus includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 28047010.

held consultations with China on 31 July 2009, and 1-2 September 2009. Those consultations unfortunately did not resolve the dispute.

I. EXPORT QUOTAS

China subjects the exportation of bauxite, coke, fluorspar, silicon carbide, and zinc to quantitative restrictions such as quotas.

The United States understands that these Chinese measures are reflected in, among others:

- 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 April 6, 2004, promulgated on July 1, 2004)
- 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 October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeizi (1999) No. 87, December 6, 1999)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)

⁹ Zinc includes but is not limited to items falling under the following ten-digit Chinese Commodity Codes as listed in the 2009 Export Licensing List and/or the eight-digit HS numbers as listed in the 2009 Export Duty List: 2608000001/26080000, 2608000090/26080000, 79011111000/790111100, 7901119000/79011190, 7901120000/79011200, 7901200000/79012000, 79020000, 26201100, 26201900.

- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 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, October 30, 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, June 9, 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 November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, shangzihan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)

- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The United States considers that these measures are inconsistent with Article XI:1 of the GATT 1994 as well as China's obligations under the provisions of paragraph 1.2 of Part I of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ("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").

II. EXPORT DUTIES

China subjects the materials to export duties.

China imposes export duty rates, "temporary" export duty rates, and/or "special" export duty rates of various magnitudes on bauxite, coke, fluor spar, magnesium, manganese, silicon metal, yellow phosphorus, and zinc. These export duties are imposed either on materials that are not listed in Annex 6 of the Accession Protocol, or on materials that are listed in Annex 6 of the Accession Protocol, but at rates that exceed the maximum rates designated in Annex 6.

In addition, as discussed in Section III below, China allocates the quotas¹⁰ imposed on the exportation of bauxite, fluor spar, and silicon carbide through a bidding system. In connection with the administration of this bidding system, China requires enterprises to pay a charge in order to export these materials. However, bauxite, fluor spar, and silicon carbide are not listed in Annex 6 of the Accession Protocol.

The United States understands that these Chinese measures are reflected in, among others:

- 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 January 22, 1987, amended July 8, 2000)
- Regulations of the People's Republic of China on Import and Export Duties (Order of the State Council (2003) No. 392, adopted at the 26th executive meeting of the State Council on October 29, 2003, January 1, 2004)
- Notice Regarding the 2009 Tariff Implementation Program (State Council Tariff Policy Commission, shuiweihui (2008) No. 40, January 1, 2009)
- 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 April 6, 2004, promulgated on July 1, 2004)
- 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 October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)

¹⁰ Discussed in Section I above.

- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- 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, October 30, 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, June 9, 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 November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The United States considers that these measures are inconsistent with paragraph 11.3 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 referred to in paragraph 342 of the Working Party Report.

III. ADDITIONAL RESTRAINTS IMPOSED ON EXPORTATION

In addition to the export quotas and export duties discussed in Sections I and II above, China imposes other restraints on the exportation of the materials, administers its measures in a manner that is not uniform, impartial, and reasonable, imposes excessive fees and formalities on exportation, and does not publish certain measures pertaining to requirements, restrictions, or prohibitions on exports.

China administers the export quotas imposed on bauxite, coke, fluorspar, silicon carbide, and zinc discussed in Section I above, through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of the quotas for these materials, China imposes restrictions on the right of Chinese enterprises as well as foreign enterprises and individuals to export.

China allocates the export quotas imposed on bauxite, fluorspar, and silicon carbide discussed in Section I above, through a bidding system. China administers the requirements and procedures for this bidding system through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, in a manner that restricts exports and is not uniform, impartial and reasonable. In connection with the administration of this bidding system, China also requires foreign-invested enterprises to satisfy certain criteria in order to export these materials that Chinese enterprises need not satisfy. Further, China requires enterprises to pay a charge in order to export these materials that is excessive and imposes excessive formalities on the exportation of these materials.

China does not publish the amount for the export quota for zinc or any conditions or procedures for applying entities to qualify to export zinc.

In addition, China restricts the exportation of bauxite, coke, fluorspar, manganese, silicon carbide, and zinc by subjecting these materials to non-automatic licensing. China imposes the non-automatic export licensing for bauxite, coke, fluorspar, silicon carbide, and zinc in connection with the administration of the export quotas discussed in Section I, as an additional restraint on the exportation of those materials.

China also imposes quantitative restrictions on the exportation of the materials by requiring that prices for the materials meet or exceed a minimum price before they may be exported. Further, through its ministries and other organizations under the State Council as well as chambers of commerce and industry associations, China administers the price requirements in a manner that restricts exports and is not uniform, impartial, and reasonable. China also does not publish certain measures relating to these requirements in a manner that enables governments and traders to become acquainted with them.

The United States understands that these Chinese measures are reflected in, among others:

- 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 April 6, 2004, promulgated on July 1, 2004)

- 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 October 31, 2001, January 1, 2002)
- Measures for the Administration of License for the Export of Goods (Order of the Ministry of Commerce (2008) No. 11, July 1, 2008)
- Measures for the Administration of Export Commodities Quotas (Order of the Ministry of Foreign Trade and Economic Cooperation No. 12, adopted on December 20, 2001, January 1, 2002)
- Measures of Quota Bidding for Export Commodities (Decree of the Ministry of Foreign Trade and Economic Cooperation No. 11, adopted on December 20, 2001, January 1, 2002)
- Measures for the Administration of the Organs for Issuing the Licenses of Import and Export Commodities (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeiguanhanzi (1999) No. 68, September 21, 1999)
- Working Rules on Issuing Export Licenses (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 2008)
- Rules on the Administration of Import and Export License Certificates (Ministry of Foreign Trade and Economic Cooperation, waijingmaopeizi (1999) No. 87, December 6, 1999)
- Implementation Rules of Export Quota Bidding for Industrial Products (Ministry of Foreign Trade and Economic Cooperation, November 8, 2001)
- Notice Regarding 2009 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2008) No. 83, January 1, 2009)
- Notice Regarding Passing Down the 2009 First Batch Regular Trade Coke Export Quota (Ministry of Commerce, shangmaohan (2008) No. 140, January 1, 2009)
- 2009 Coke Export Quota Declaration Conditions and Declaration Procedures (Ministry of Commerce, Notice (2008) No. 76, October 13, 2008)
- Notice "2009 Export Licensing Management Commodities List" (Ministry of Commerce and General Administration of Customs, Notice (2008) No. 100, January 1, 2009)
- Announcement of the Ministry of Commerce Issuing the "2009 Graded License-Issuing List of Commodities Subject to Export License Administration" (Ministry of Commerce, Notice (2008) No. 124, January 1, 2009)
- Announcement Regarding Printing "Working Rules on Issuing Export Licenses" (Ministry of Commerce, shangpeifa (2008) No. 398, October 9, 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, October 30, 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, June 9, 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 November 8, 2001)
- Quotas of Fluorspar Lump (Powder) of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Quotas of Bauxite of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 10, 2008)
- Quotas of Silicon Carbide of 2009 (Committee for the Invitation for bid for Export Commodity Quotas, December 11, 2008)
- Announcement on the Second Invitation for the Bidding of Select Industrial Product Export Quotas in 2009 (Committee for the Invitation for bid for Export Commodity Quotas, September 16, 2009)
- Quotas of Silicon Carbide of 2009, Second Round (Committee for the Invitation for Bid for Export Commodity Quotas, September 16, 2009)
- Notice Regarding Passing Down the 2009 Second Batch Regular Trade Coke and Rare Earth Export Quota (Ministry of Commerce, ShangZiHan (2009) No. 73, September 8, 2009)
- Notice Regarding Announcement of the 2010 Export Quota Amounts for Agricultural and Industrial Products (Ministry of Commerce, Notice (2009) No. 88, October 29, 2009)
- Charter of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters
- Charter of the China Coking Industry Association
- Measures for the Administration over Foreign Trade and Economic Social Organizations (Ministry of Foreign Trade and Economic Cooperation, February 26, 1991)
- 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, September 23, 1994)
- 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, March 20, 1996)
- Notice Regarding Rules for Contract Declaration for Chemicals-Related Verification and Stamp Products (China Chamber of Commerce of Metals, Minerals and

Chemicals Importers and Exporters Petroleum and Chemicals Products Department,
December 30, 2003)

- Online Verification and Certification Operating Steps (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters)
- Rules for Coordination with Respect to Customs Price Review of Export Products, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice of the Rules on Price Reviews of Export Products by the Customs, (Ministry of Foreign Trade and Economic Cooperation guanzonghanzi No. 21, 1997)
- Notice on the Issuance of "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- "Various Provisions on the Strengthening of Export Product Coordination and Management" (Ministry of Foreign Economic Relations and Trade, jinchufa (1991) No. 52, February 22, 1991)
- Decision of the State Council on Various Questions on the Further Reform and Improvement of the Foreign Trade System (State Council, guofa (1990) No. 70, January 1, 1991)
- as well as any amendments or extensions; related measures; replacement measures; renewal measures; and implementing measures.

The United States considers that these measures are inconsistent with Article VIII:1(a) and VIII:4, Article X:1 and X:3(a), and Article XI:1 of the GATT 1994 and paragraphs 2(A)2, 5.1, 5.2 and 8.2 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, 84, 162, and 165 of the Working Party Report.

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