

WTO Panel Releases Finding that China's Rare Earths Export Restrictions Violate its WTO Obligations

March 26, 2014

Today, a World Trade Organization (WTO) dispute settlement panel publicly released its report in *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, finding that China's restrictions on the exports of rare earth elements and other raw materials violate its obligations under the WTO. Wiley Rein LLP welcomed the WTO panel's decision and commended the Office of the U.S. Trade Representative (USTR) for its effective advocacy over several years of involvement in the dispute settlement proceeding.

In response to challenges by the United States, the European Union, Japan, and Canada, the WTO panel investigated China's application of export duties, export quotas, minimum export price requirements, export licensing requirements, and additional requirements and procedures to limit exports of rare earth elements—a group of 17 minerals used in various chemical and electronics manufacturing applications—as well as tungsten and molybdenum. The panel's favorable ruling found that China's imposition of these export barriers violated its WTO commitments, including various General Agreement on Tariffs and Trade (GATT) provisions and specific obligations China undertook when it acceded to the WTO.

"This decisive ruling by the WTO confirms that China cannot impose export quotas, export taxes, and other restrictions on these raw materials," said Alan H. Price, partner and chair of the International Trade Practice at Wiley Rein, which worked with USTR and represented key affected domestic industries in preparing the case and analyzing the relevant legal arguments. "We urge China to promptly comply with the WTO's decision and remove these trade-

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distortive export restrictions.”

Specifically, the WTO panel found:

- That China's export duties (taxes) were inconsistent with the Accession Protocol agreed to by China when it joined the WTO, and that China's export quotas were inconsistent with Article XI of the GATT, which prohibits quantitative restrictions.
- That China's restraints were not justified pursuant to Articles XX(b) and (g) of the GATT, which permit exceptions necessary to protect health and for legitimate environmental protection and conservation measures.
- That China's restrictions were applied in a manner that created arbitrary and unjustifiable discrimination between countries, and constituted a disguised restriction on international trade.
- That China's restrictions were not applied in an even-handed manner, but rather served as “a kind of consumption assurance” for China's domestic industries. According to the panel, a WTO member's “sovereign right over its natural resources” does not allow it “to control international markets and the domestic and international allocation and distribution” of raw materials.

Removal of these export restrictions by China should result in greater global availability and fairer pricing for the affected rare earth elements and other raw materials. In a prior WTO case brought by the United States, *China – Measures Related to the Exportation of Various Raw Materials*, China's export quotas and export taxes were found to be WTO-inconsistent, and China complied with the ruling by removing the measures.