

WTO Panel Says China's Raw Materials Export Restrictions Violate WTO Obligations

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On July 5, 2011, a World Trade Organization (WTO) dispute resolution panel publicly released its report in the *China - Measures Related to the Exportation of Various Raw Materials* proceeding, finding that China's restrictions on the exports of nine raw materials violate its international obligations. [1] This decision is a substantial rejection of China's attempts to favor and benefit its domestic industries by restricting the export of materials used to produce many products, and sets the stage for future litigation concerning China's efforts to limit exportation of rare earth elements and other raw materials.

In response to challenges by the United States, the European Union and Mexico, a WTO panel was formed in December 2009 to examine China's use of export quotas, export taxes and other measures to limit exports of coke, bauxite, fluorspar, zinc, silicon carbide and other materials. The panel ruled that China's use of these measures violates specific commitments China undertook when it joined the WTO and general WTO rules, including various provisions of the General Agreement on Tariffs and Trade 1994 (GATT).

The panel determined that China's imposition of export duties on certain raw materials was inconsistent with the obligations it undertook when it joined the WTO in 2001. In particular, use of such export duties violates China's agreement to eliminate all taxes and charges applied to exports, with a few narrowly-delineated exceptions. [2] The WTO panel has specifically rejected China's arguments that its export taxes were permitted as measures necessary to protect human, animal or plant life or health [3] and as measures relating to the conservation of exhaustible natural resources. [4]

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The panel next ruled that China's export quotas on five of these raw materials violate provisions of the GATT that prohibit WTO member countries from instituting or maintaining prohibitions or restrictions other than duties, taxes or other charges on the exportation of any product destined for the territory of any other member country (such as export quotas). Again, China's attempts to justify its restrictions with environmental arguments were unconvincing, as the panel found that China did not demonstrate that its export quotas would lead to a reduction of pollution and thereby contribute to an improvement in the health of its people.

In addition, the panel found that certain aspects of China's export licensing regime, applicable to several of the raw materials, are inconsistent with WTO rules. Further, the panel agreed with the European Union that China violated the GATT's requirements concerning prompt publication of duty rates, taxes or other charges by failing to promptly publish the total amount and allocation procedure for its zinc export quota. However, China did successfully defend against U.S. and Mexican claims that certain aspects of its export quota regime violated the GATT because they were not administered in a uniform, impartial and reasonable manner.

The panel recommended that the WTO Dispute Settlement Body request that China bring its WTO-violative measures into conformity with its obligations. China must now decide whether to implement the panel's ruling by eliminating the export restrictions or appeal the ruling to the WTO's Appellate Body for review.

Wiley Rein's International Trade Practice advises U.S. companies and interests on a full spectrum of international trade issues. On behalf of a variety of clients, Wiley Rein has been actively engaged in addressing China's restrictions on raw materials before the Office of the United States Trade Representative and the WTO. We would be pleased to address any questions that you may have.

[1] The panel's report is available at http://www.wto.org/english/news_e/news11_e/394_395_398r_e.htm.

[2] See Protocol on the Accession of the People's Republic of China, WT/L/432 (Nov. 23, 2001).

[3] See GATT Article XX(b).

[4] See GATT Article XX(g).