

Trade & Manufacturing Alert

March 1, 2012

China Loses Raw Materials Case In World Trade Organization's Appellate Body; Possible Implications For China's Rare Earth Metals Quotas

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The World Trade Organization ("WTO") Appellate Body found that China's export restrictions on a variety of raw materials violate WTO trade rules. The restrictions at issue limit China's exports of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc. These products are used as inputs in the steel, aluminum, and chemicals industries. The Appellate Body's report, circulated on January 30 and adopted by the WTO's Dispute Settlement Body on February 22, largely affirmed the earlier WTO Panel Report circulated in July 2011. China will enter into negotiations with the complaining parties -- the United States, the European Union, and Mexico -- regarding how it will bring its measures into compliance with the Appellate Body's report, bringing to a close this dispute that began in 2009.

Representatives of both the United States and the European Union commended this ruling, with U.S. Trade Representative Ron Kirk noting that the Chinese export restrictions not only make it more expensive for U.S. manufacturers to obtain the raw materials they need, but also artificially lower input costs for competing Chinese producers.

China's export restrictions on these raw materials include export duties and export quotas. The Panel found that both types of restrictions violate commitments China made upon its accession to the WTO. China did not appeal these findings. Both the Panel and the Appellate Body also rejected China's defenses that these restrictions were nevertheless justified because they are needed to protect human health, conserve exhaustible natural resources, or manage critical shortages of supply. The Appellate Body found that these exceptions are generally not available to China in this context under the terms of its accession.

Speculation abounds that the United States and the European Union might mount a similar WTO challenge to China's export quotas on rare earth metals. Rare earth metals include 17 elements that are used in high-tech products such as hybrid cars, flat panel displays, mobile phones, disk drives, MP3 players, iPods, and various defense technologies. China

currently produces more than 95 percent of all rare earth metals. Unlike with the raw materials at issue in the recent Appellate body decision, China also places some restrictions on domestic production on rare earth metals. This fact may strengthen somewhat China's argument that its restrictions are necessary to protect the environment, but it nevertheless appears that the Appellate Body decision could help support a challenge to China's exports restrictions on rare earth metals.

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