

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

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Washington, DC—The World Trade Organization (WTO) Appellate Body today upheld a panel report issued earlier this year which found that China's restrictions on the exports of rare earth elements and other raw materials violate its obligations under the WTO. Wiley Rein International Trade Practice partners Alan H. Price and Timothy C. Brightbill and associate Laura El-Sabaawi represent a number of domestic interests in the case.

"This is a strong win for the U.S. industry and it sends a stern message to China that export restrictions run contrary to its obligations to the WTO in the international community," said Mr. Price, who chairs the International Trade Practice. "We commend the Office of the U.S. Trade Representative (USTR) for its effective advocacy over several years of involvement in the dispute settlement proceeding."

In March 2014, the WTO dispute settlement panel issued its report, *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, which 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 tungsten, molybdenum, and rare earth elements—a group of 17 minerals used in various chemical and electronics manufacturing applications. 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.

Related Professionals

Alan H. Price
Partner
202.719.3375
aprice@wiley.law
Timothy C. Brightbill
Partner
202.719.3138
tbrightbill@wiley.law
Laura El-Sabaawi
Partner
202.719.7042
lel-sabaawi@wiley.law

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The initial report was conducted in response to challenges by the United States, the European Union, Japan, and Canada.

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.

In the decision released today, the WTO Appellate Body found that the Panel objectively assessed the matter, and in particular that China's export quotas and duties are not justified pursuant to Article XX of the GATT.

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.

In announcing the win, U.S. Trade Representative Michael Froman said: "We are very pleased that America has prevailed in this important case. We have sent a clear signal to our trading partners that we will be tenacious in protecting American businesses, American workers, and the rule of law."

To read the entire Appellate Body report, including a summary of key findings, [click here](#).