

DS394: RAW MATERIALS

MEASURES RELATED TO THE EXPORTATION OF VARIOUS RAW MATERIALS

Complainant: *United States*

Respondent: *China*

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Dispute Snapshot

Parties		Agreement	Timeline of the Dispute	
Complainants	United States	GATT 1994. VIII:1 (a), X:1, X:3 (a), XI:2(a), XX (b) and XX(g)	Establishment of Panel	21 December 2009
Third Party	Argentina; Brazil; Canada; Chile; Colombia; Ecuador; European Union etc.		Circulation of Panel Report	5 July 2011
Respondent	China	<ul style="list-style-type: none"> China's Protocol of Accession to the WTO ("Accession Protocol") Report of the Working Party on China's Accession to the WTO ("Working Party Report") 	Circulation of AB Report	30 January 2012
			Adoption	22 February 2012
Products at Issue	Bauxite, Coke, Fluorspar, Magnesium, Manganese, Silicon Carbide, Silicon Metal, Yellow Phosphorus, and Zinc			

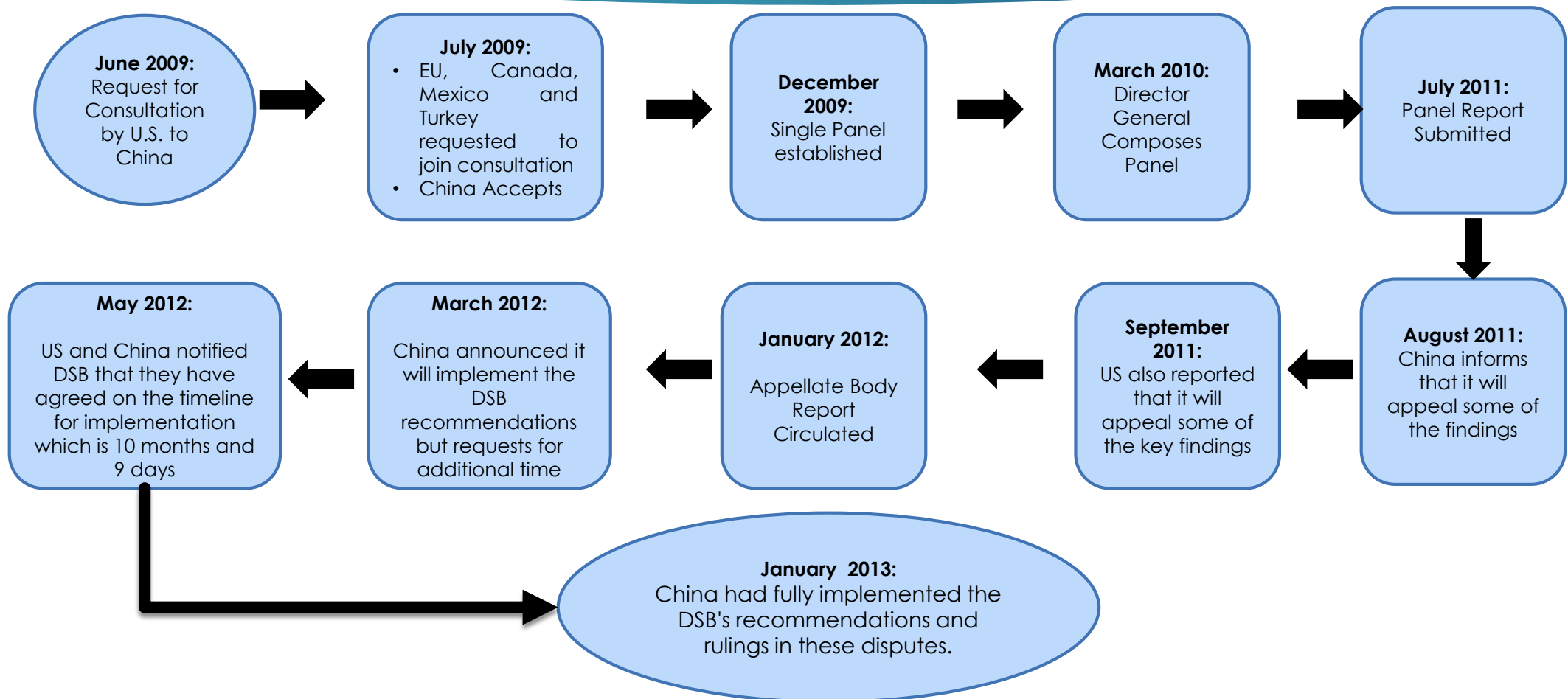
“U.S. Trade Representative Ron Kirk announced today (06.23.2009) that the United States has requested World Trade Organization (WTO) dispute settlement consultations with the People's Republic of China regarding China's export restraints on numerous important raw materials.”

Background

- ▶ China is the leading global producer of all nine of these raw materials
- ▶ Developing countries including China achieved remarkable industrial growth and development, increasing demand for *raw materials*
- ▶ China's production of industrial raw materials *increased* dramatically
- ▶ China's exports of processed, value-added goods also *increased* simultaneously
- ▶ China began maintaining *exporting restraints* of industrial raw materials
- ▶ China's export restraints have *proliferated* in number and kind despite committing to limit or eliminate the use of export restraints during its *negotiation to accede to the WTO*



Timeline



Business and Political Context

- ▶ Complainants *argued* that export restraint is part of China's Industrial Policy and Strategy
- ▶ Puts China's *domestic producers* in an advantageous position, but *distorts* international economic marketplace, particularly for downstream industries
- ▶ Export restraints increased availability in China, lowering domestic prices, resulting in cost saving measures for China's manufacturers
- ▶ Strategy is *inconsistent* with China's obligation under:
 - ▶ General Agreement on Tariffs and Trade 1994 ("GATT 1994")
 - ▶ China's Protocol of Accession to the WTO ("Accession Protocol")

Issue at Hand

- ▶ *Complainant* cites **40** measures through which China allegedly imposes restraints on the exports in question
- ▶ Challenged **four** types of export restraints imposed on the different raw materials at issue:
 - ▶ *export duties*
 - ▶ *export quotas*
 - ▶ *minimum export price requirements*
 - ▶ *export licensing requirements*

Issues Contd.

Export Duty

- Paragraph 11.3 of Part 1 of the Accession Protocol require that China not impose export duties on products that are not listed in Annex 6 of the Accession Protocol
- Export duty ranges from 10 to 40 percent

Export Quotas

- Article XI:1 of the GATT 1994 explicitly prohibits members from instituting or maintaining a restriction or prohibition made effective through quota on the exportation of any product

Minimum Pricing Requirements

- China prohibits exportation of bauxite, coke, magnesium etc. if minimum price is not met, thus violating Article XI:1 of the GATT 1994

Export Licensing System

China restricts exportation of bauxite, coke, silicon carbide, zinc, etc. through export licensing system which is inconsistent with Article XI:1 of the GATT 1994 and paragraph 162 and 165 of Worker Party's Report, paragraph 1.2 of the Accession Protocol which all calls for elimination of export licensing

Complaints by the United States

- ▶ Each type of export restraint is, in itself and sometimes also in the manner in which is administered, *inconsistent* with China's obligations under the GATT 1994 and China's Protocol of Accession to the WTO.
- ▶ The United States considers that the measures also appear to nullify or *impair the benefits accruing to the United States* directly or indirectly under the cited agreements.

Legal Issues/Discussion

- ▶ *China's Administration of its Export Quotas Is Inconsistent with Article X:3(a) of the GATT 1994*
 - ▶ China's administration of its export quotas on bauxite, coke, fluorspar, and silicon carbide through the direct involvement of the CCCMC is not impartial or reasonable.
- ▶ *China's Total Award Price Requirement Under the Export Quota Bidding Regime Is Inconsistent with Article VIII:1 (a) of the GATT 1994*
 - ▶ China's requirement that successful bidding enterprises pay a total award price in order to export the materials subject to the quota bidding system is inconsistent

Legal Issues/Discussion (cont.)

- ▶ *China's Export Licensing for Products Subject to Restricted Exportation Is Inconsistent with China's Obligations under Article XI:1 of the GATT 1994*
 - ▶ China did not eliminate its export restrictions upon accession
 - ▶ China continues to maintain restrictions on the exportation of bauxite, coke, fluorspar, manganese, silicon carbide, and zinc through export licensing. This export licensing is not in conformity with WTO rules
- ▶ *China's Minimum Export Price Requirement Is Inconsistent with China's Obligations under the GATT 1994*
 - ▶ Under Article XI:1
 - ▶ Under Article X:3
 - ▶ Under Article X:1

Some Key Panel/Appellate Findings

- ▶ China's export duties were inconsistent with the commitments that China had agreed to in its Protocol of Accession under part 1 paragraph 11.3
- ▶ The Appellate Body upheld the Panel's recommendation that China bring its export duty and export quota measures into conformity with its WTO obligations
- ▶ The Panel acknowledged that China appears to be headed towards the right direction in adopting a framework to justify its quotas under WTO rules, but that the framework is not yet WTO-consistent
- ▶ Panel declared that China was unable to demonstrate that its export duties and quotas would lead to a reduction of pollution in the short- or long-term and therefore contribute towards improving the health of its people

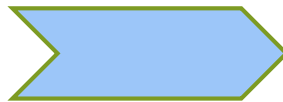
China's Response

GATT Exceptions:

Article XX (b) and Article XX(g) of GATT 1994:

(b): necessary to protect human, animal or plant life or health;

(g): relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption



- ▶ China had claimed that its export quotas and duties were necessary for the protection of the health of its citizens
- ▶ China argues that its export duties and export quotas are justified pursuant to GATT Article XX(b), because the export restraints result in less production of the products, and therefore, *less environmental pollution*.
- ▶ Also asserts that it has a "*conservation policy*" consisting of a number of measures "to manage the supply, production
 - ▶ ***China was unable demonstrate that it imposed these restrictions on domestic production or consumption of the raw materials so as to conserve the raw materials.***

Implementation of adopted reports

- ▶ Reasonable period of time
 - ▶ March 23, 2012
 - ▶ May 24, 2012
- ▶ On January 17, 2013, China and the United States informed the DSB of Agreed Procedures under Articles 21 and 22 of the DSU
 - ▶ December 28, 2012 : 2013 Tariff Implementation Program
 - ▶ December 31, 2012 : 2013 Catalogue of Goods Subject to Export Licensing Administration
 - ▶ January 1, 2013

China fully implemented the DSB's recommendations and rulings in these disputes.

Observations

“Today’s report is a tremendous victory for the U.S. — particularly its manufacturers and workers...”

- ▶ Rulings Appeared Fair
- ▶ Total Time: 2y 7m (With Appeal)
- ▶ Useful article:
 - ▶ Article XI of the GATT 1994: Managing export restrictions on scarce products
 - ▶ Article XX of the GATT 1994: Managing the issue of intersection of environment and trade
- ▶ In 2012, a similar case related to export restrictions was filed by US and EU and Japan against China for measures related to Rare Earths: Removed the restrictions
- ▶ In 2016, a similar case, was filed by US and EU against China on different type of raw materials which is currently ongoing

Takeaways

- ▶ **Success of DS394** offers sufficient evidence that enforcement of international trade rules is possible by challenging unfair trade practices that gives unfair advantage of Chinese manufacturers
 - ▶ Win-win situation for U.S. as it can protect national interest like *protecting jobs* in manufacturing sector (that otherwise would have to be relocated in China)
 - ▶ Encouraged U.S. to file yet another raw material dispute, **DS508** in July, 2016 (graphite, magnesia)
 - ▶ However, dispute settle system needs to have a mechanism to deal with repeat offenders
 - ▶ Raw materials export measures in urgent need

THANK YOU!