

**\*\*\* AS DELIVERED \*\*\***

***CHINA – MEASURES RELATED TO THE EXPORTATION OF RARE  
EARTHS, TUNGSTEN AND MOLYBDENUM***

**(DS431)**

**CLOSING STATEMENT OF THE UNITED STATES  
AT THE SECOND SUBSTANTIVE MEETING OF  
THE PANEL WITH THE PARTIES**

**June 19, 2013**

1. Thank you Mr. Chair. The United States would once again like to thank the members of the Panel, the Secretariat, and the delegations from China, the European Union (“EU”) and Japan for their hard work over these past two days and over the course of this dispute.

2. As noted in a document provided by one of China’s experts, WTO Members live in a world that is increasingly threatened by the rise of resource nationalism. This resource nationalism manifests itself in this dispute in the form of export restrictions, which divide the world into “two resources, two markets,” putting resources and consumers into two categories – domestic and foreign – with domestic being favored. And most sadly, it divides the world into the endowed and the un-endowed.

3. But resource nationalism was not envisioned in the multilateral trading system as a basis for excusing the use of trade barriers clearly proscribed by the rules. Rather, the GATT 1994 set forth a regime in which export restrictions would not be used for protectionism.

4. This is the regime that China signed up to when it joined the WTO, a regime of which China has become an integral stakeholder and perhaps its biggest beneficiary. And these are the rules of the regime that the complaining parties ask China to adhere to both for the benefit of our economies, and in the long run, China’s economy.

5. And in the long run, resource nationalism does not benefit developed or developing countries, both of which depend on free trade in natural resources, subject only to the narrow exceptions set forth in Article XX of the GATT 1994. Such a world also does not benefit the resource endowed who, despite their geological good fortune, must still import various natural resources to support their economies. And while the export restrictions at issue in this dispute have benefitted downstream Chinese companies today, we question if these types of policies – in

which conservation means taking care of domestic industrial interests – benefits a country that is projected to become the world’s largest importer of other resources tomorrow.

6. China argues that, at least for the export quotas on rare earths, which is the only export restriction China seems truly interested in still defending at this point in the dispute, resource nationalism is, in fact, resource conservation.

7. But China cannot recast 14 years of history regarding the rare earth export quotas. China cannot avoid the fact that, according to a long-time China observer for the New York Times, “until [recently] Chinese officials said that the export quotas [on rare earths] were designed to foster the development of value-added industries. But they have emphasized environmental concerns [more recently] as trade frictions have increased.”

8. China also cannot explain why its export quota is structured to cover so many products or why it chooses to restrict lower value-added products while, at the same time, promoting the export of higher value-added products. Both types of products are internationally traded; both types of products contain rare earths. The only difference is the amount of added value, not the impact on conservation. And the focus on added value is why the export quotas on rare earths are resource nationalism, not resource conservation.

9. Article XX(g) of the GATT 1994 has other safeguards that protect it from being used as a tool of resource nationalism – specifically the requirement of even-handedness, domestic restrictions on production or consumption and, of course, the chapeau. As we have shown, China fails to meet any of these requirements.

10. China's measures are not evenhanded because Chinese and foreign consumers are both impacted by the domestic restrictions, but only foreign consumers suffer under the export quota.

11. China's domestic production restrictions have had no impact on Chinese production. All of this is confirmed by the massive price differences in 2012.

12. China wants export restrictions for one reason to safeguard China's downstream producers from facing higher prices if they were forced to compete with foreign consumers when buying rare earths. That is plainly not an Article XX(g) justification. It, again, is resource nationalism.

13. China not only insists that Article XX(g) allows it to set aside materials for domestic consumption. China also claims that it is entitled in addition to impose a tax on the exports of these materials. And China further claims that it is permitted to limit which companies may export the materials. Again, the underlying theme is not conservation, or sustainable development. The underlying theme is protection of China's industry and discrimination against all other Members. This is the crux of our challenge.

14. This concludes our remarks at this meeting. We would like to thank you again for your engagement and commitment in this important matter.