

***CHINA – MEASURES RELATED TO THE EXPORTATION OF VARIOUS  
RAW MATERIALS***

**(DS394/ DS395 / DS398)**

**OPENING ORAL STATEMENT OF THE COMPLAINANTS  
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES**

**August 31, 2010**

1. Good morning, Mr. Chairman and members of the Panel. On behalf of the complainants, we would like to begin by thanking the Panel and the Secretariat staff for taking on this task. Our delegations look forward to working with you, and with the delegation of China, as you carry out your work.

2. In order to facilitate and maximize the efficiency of the Panel's consideration of this dispute at this first substantive meeting of the Panel with the Parties, in the limited time available to prepare for this meeting, the complainants have attempted to consolidate their views in a joint statement, to be read by the three complaining parties. This statement will be supplemented by statements by individual complaining parties, to draw attention to other aspects of the dispute, which are supported by the other complaining parties.

#### **I. INTRODUCTION**

3. We are here today because we have engaged with China, over several years, on the matter of the restraints that it imposes on the exportation of key industrial raw materials for which China is one of the world's leading producers. However, despite the years of engagement, China has neither removed the measures nor otherwise addressed our concerns. In fact, China's export restraints have increased in number and in restrictiveness.

4. Accordingly, we have turned to the WTO dispute settlement system to help us resolve a dispute with respect to whether certain, specific Chinese measures are consistent with China's obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and China's Accession Protocol.

5. The measures at issue in this dispute restrain the exportation of nine types of industrial raw materials from China. These raw materials are important inputs for the manufacture of steel,

aluminum, and chemicals – and their downstream products. China is a leading world producer of each of these raw materials.

6. China’s export restraints are barriers to trade that severely distort the conditions of competition in the global marketplace. China’s measures undermine the core principles of the multilateral trading system by discriminating against foreign users of these raw materials and providing substantial, artificial, and unfair advantages, through WTO-inconsistent means, to Chinese users when they compete with foreign industries and workers.

7. In our first submissions, complainants demonstrated that the export duties and export quotas imposed on the products at issue in this dispute, are inconsistent with China’s obligations under the WTO Agreement. In China’s first submission, China has not even attempted to rebut complainants’ *prima facie* showing. In particular, China does not contest the existence of the export duties and export quotas that it applies to the products at issue in this dispute. And, China does not contest that these measures are inconsistent, respectively, with its obligations in paragraph 11.3 of its Accession Protocol and its obligations under Article XI:1 of the GATT 1994.

8. Accordingly, with respect to export duties and quotas, the Panel’s task is narrowed to consideration of whether China has met its burden of establishing the existence of one or more exceptions that might excuse its breaches of paragraph 11.3 of the Accession Protocol and Article XI. As complainants will discuss, China has not met – and cannot meet – this burden.

9. China presents two basic arguments in an attempt to justify its export restraints that amount to *prima facie* breaches of its WTO obligations. Neither argument is sound.

10. China’s first basic argument is an economic one: namely, that China has the right to impose export restraints – regardless of its obligations under GATT Article XI and the Accession

Protocol – as long as the restraints assist China in achieving its goal of “promot[ing] the production of more sophisticated processed products.”<sup>1</sup> This argument is just as flawed and far-reaching as the argument that a WTO Member may impose import restraints, and break its tariff bindings, whenever it serves the goal of promoting the production of sophisticated processed products. The WTO Agreement contains no principle that Members may adopt otherwise WTO-inconsistent trade restraints whenever those restraints are supportive of their domestic economic policies. And if it did, fundamental obligations under the WTO Agreement would be rendered meaningless.

11. China’s second basic argument is an environmental one: China argues that restraints on exports of a raw material reduce the environmental impact of producing the raw material. As complainants will discuss, this argument has two major flaws, and several others. The first major flaw is that the argument is fundamentally illogical – the environmental effect of producing a unit of raw material is exactly the same whether or not that unit of raw material is used domestically or exported to other WTO Members.

12. The second major flaw with China’s environmental argument is that it is a *post hoc* rationalization developed solely for the purpose of this dispute. China can cite to no pre-existing study showing that exportation of a raw material has a greater environmental impact than the use of that raw material for further production within China. And this is not surprising, because no serious environmental analysis would make use of China’s line of reasoning.

13. China has attempted to paper over the fundamental flaw in the logic of its environmental argument by adopting a hidden and unwarranted assumption. Namely, China’s analysis considers

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<sup>1</sup> China’s First Written Submission, para. 130.

the environmental effects associated with the production of raw material used by China’s domestic industries to be a baseline, and considers the effects of the production of raw materials used for export use to be an additional environmental harm. But China’s distinction is baseless, and adopted solely for the purpose of its *post hoc* justification. The raw materials used domestically and used for export are fungible, and – as noted – the environmental effects of the production of a unit of raw material are the same regardless of the destination of the raw material. If China wishes to reduce the environmental impact associated with production of a raw material, China can simply adopt production restrictions that would affect equally both domestic and foreign users. China cannot present any environmental justification for discriminating against industrial users located outside of China in favor of industrial users within China.

14. China tries to use these flawed economic and environmental arguments to invoke a number of exceptions in the GATT 1994. China depicts its export restraints as tools for the conservation of natural resources, the protection of health through protection of the environment, and the prevention of a critical shortage of supply. Of course, WTO Members may rightfully pursue these objectives, and the GATT 1994 contains provisions addressed to these matters. As complainants will explain, however, China’s measures do not fall within the applicable exceptions contained in the GATT 1994.

15. Before completing this introduction, we would like to emphasize that high-level documents of the Government of China provide a simple and straightforward explanation for why China has adopted its export restraints: China restrains the exportation of industrial raw materials to favor its industry and provide a competitive advantage over the industries of its trading partners.

16. China's economic growth is guided and directed by various plans and policies formulated and issued by its central government. China addresses raw materials directly in its 2001 *National Mineral Resources Plan*, where it states:

The extraction, smelting, processing, and total export amount of mineral resources with an export advantage shall receive effective control, *thereby increasing and solidifying their advantageous position in the international market;*<sup>2</sup>

and

In accordance with the principle of comparative advantage, the configuration of mineral products imports and exports should be adjusted *to increase their profitability.*<sup>3</sup>

17. An example of a plan addressing downstream production can be found in the 2008 *Blueprint for the Adjustment and Revitalization Plan for the Steel Industry*, where China states:

We shall improve the import and export environment for steel products, implement suitably flexible export tax policies, stabilize our share of the international market, encourage the indirect export of steel . . . .<sup>4</sup>

18. These economic development policies flow from China's *Eleventh Five-Year Plan*. In that plan, China identifies thematic goals for its social and economic development for the period 2006 to 2011. Among those goals is to accelerate the changes in the growth model of China's foreign

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<sup>2</sup> *National Mineral Resources Plan*, Section 4(3) (JE-17). (Emphasis added.)

<sup>3</sup> *Id.*, Section 7(4) (JE-17). (Emphasis added.)

<sup>4</sup> *Blueprint for the Adjustment and Revitalization Plan for the Steel Industry*, Section III.1 (JE-9).

trade, which entails “optimizing China’s export structure.”<sup>5</sup> In order to achieve these goals, China states:

We will support the export of independent high-tech products, electromechanical products, and high-value added and labor-intensive products. . . . We shall strengthen the dynamic supervision of the price, quality, and quantity of export commodities, *so as to build a quality and efficiency-oriented system for the promotion and regulation of foreign trade.*<sup>6</sup>

19. In short, according to the Government of China itself, China’s export restraints serve an industrial policy to promote the production of higher value-added goods and increase their export and international market share.

20. Of course, there is nothing wrong with promoting trade. However, the multilateral trading system ensures that WTO Members do so in accordance with agreed-upon rules, and not solely for the benefit of one Member to the detriment of other Members’ economies and development.

21. And that is the heart of this dispute – that the benefits of these export restraints for China come from one-sided advantages that are artificially created through measures that are not consistent with China’s WTO obligations. The fact that there are three complainants before the Panel, supported by multiple third parties, is testament to the serious concerns raised by China’s restraints on exports of these key raw materials.

22. In this statement, we will proceed as follows:

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<sup>5</sup> *Eleventh Five Year Plan Outline for Social and Economic Development*, Part 9, Chapter 35, Section 1, JE-8 at 17.

<sup>6</sup> *Id.* (Emphasis added)

- First, we will describe China's export restraints, including its export duties, export quotas, export licensing, minimum export pricing, and related administration;
- Second, we will define the relevant time frame for the Panel's review;
- Third, we will address the defenses China offers for its export duties and export quotas under
  - Article XX of the GATT 1994; and
  - Article XI of the GATT 1994.

## **II. China's Export Restraints**

### **A. Export Duties**

23. The first form of export restraint the complainants have asked the Panel to examine is a duty applied to exports. In paragraph 11.3 of its Accession Protocol, China broadly committed to eliminate all taxes and charges applied to exports. Yet China imposes duties of 10% to 40% on the exportation of various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon metal, and zinc, even though China did not reserve the right to impose export duties on any of these products. For one other product at issue, yellow phosphorus, China did reserve the right to impose export duties up to 20%. However, China's frequently changing export duties on yellow phosphorus ranged between 70% and 120% in the year leading up to the filing of the consultations requests in this dispute, and stood at 70% on the date of filing, well in excess of the permitted level of 20%. The export duties at issue therefore are inconsistent with the commitments that China made upon accession.

24. While not relevant to the complainants' legal claims, we note that the the immediate and direct impact of China's export duties is typically to raise the cost of the raw materials at issue for



foreign producers that use these inputs, whether or not they purchase their inputs from China.

Because of China's position as a leading world producer of each of the raw materials, any restraint that China imposes on exports can impact prices worldwide. This impact can be substantial, depending on the level of the export duties imposed. At the same time, the export duties provide a competitive advantage to Chinese producers who can source the raw materials at a lower price.

25. As noted, China has not contested that these export duties are inconsistent with China's obligations under paragraph 11.3 of the Accession Protocol.

#### **B. Export Quotas**

26. The second form of export restraint we have asked you to examine is an export quota.

Article XI:1 of the GATT 1994 prohibits such export quotas. Yet China subjects the exportation of bauxite, coke, fluorspar, silicon carbide, and zinc to quotas. China has made these quotas more and more restrictive over time. For bauxite, coke, and fluorspar, China imposes export quotas simultaneously with export duties. For zinc, while China subjects its exportation to quotas, China assigns no quota amount for zinc – amounting to a complete ban on zinc exports.

27. While not relevant to the complainants' legal claims, we note that the immediate and direct impact of the export quotas is to restrict the quantity of the raw materials available to foreign producers that use these inputs. These quotas establish hard limits on China's supply to the global market. Because of China's position as a leading producer of the raw materials, and depending on their amount, the export quotas can significantly impact the world market, including world prices and production behaviors, for these materials and their many downstream products. And again, the export quotas also provide a competitive advantage to Chinese producers who as a result are able to source the raw materials at a lower price.

28. As noted, China has not contested that these export quotas are inconsistent with China's obligations under Article XI of the GATT 1994.

**C. Non-Automatic Export Licensing**

29. The third form of export restraint we have asked you to examine is export licensing that is by nature non-automatic. Article XI:1 of the GATT 1994 also prohibits such licensing. Yet China subjects the exportation of bauxite, coke, fluorspar, manganese, silicon carbide, and zinc – products China has designated for restricted exportation – to export licensing that is not automatic. That is, exportation of these raw materials is contingent on the granting of approval for export licenses and such approval is not automatically granted. China also subjects these same raw materials to export quotas, which are made effective through the use of the export licenses.

30. The immediate and direct impact of this non-automatic licensing is to signal that the exportation of these raw materials is subject to conditions and limitations that China has decided to impose. They can impact world markets by affecting the plans, expectations and behavior of foreign consumers, including foreign producers that use these inputs. Because of China's position as a leading producer of the raw materials, and depending on the types of conditions China chooses to impose on the approval of these export licenses, the export licensing can impact world prices and availability.

**D. Minimum Export Prices**

31. The fourth form of export restraint is minimum export pricing. China subjects the exportation of bauxite, coke, fluorspar, manganese, magnesium, silicon carbide, yellow phosphorus, and zinc to a minimum export pricing system. Specifically, exportation of these raw materials is subject to a system that prevents exportation unless the seller meets or exceeds the

minimum export price. Because it restricts exports, the measure is *prima facie* inconsistent with Article XI:1 of the GATT 1994.

32. The immediate and direct impact of this minimum export price system for these raw materials is to control the prices charged to foreign purchasers and, in particular, foreign producers that use these inputs. Because of China's position as a leading producer of the raw materials, the minimum export price system impacts prices and distorts world market conditions for these raw materials.

#### **E. Administration of the Export Restraints**

33. The complainants have also asked the Panel to examine a number of requirements China imposes in the administration of its export restraints. As Complainants explained in their first submissions, these requirements are inconsistent both with China's obligations under the trading rights commitments in China's Accession Protocol and Working Party Report, and with China's obligations under Article X of the GATT 1994.

34. For example, in its administration of the export quota for coke, which is allocated directly, and the quotas for bauxite, fluorspar, and silicon carbide, which are allocated through a bidding process, China requires exporters to satisfy certain criteria in order to be eligible to export including minimum registered capital and prior export experience requirements. These requirements breach China's trading rights commitments to give all foreign enterprises and individuals, as well as enterprises in China, the right to export most products. China also committed to eliminate its examination and approval system and to eliminate certain eligibility criteria for the right to export.

35. In addition, under Article X:3(a) of the GATT 1994, China is required to administer its laws and regulations pertaining to restrictions on exports in a uniform, impartial and reasonable manner. However, China administers aspects of the export quotas at issue in this dispute and certain aspects of its minimum export price system through the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (“CCCMC”), which renders China’s administration of these restraints partial and unreasonable in contravention of Article X:3(a).

36. Finally, many of China’s measures related to its minimum export price system are not published, in breach of China’s obligations under Article X:1 of the GATT 1994.

37. Having summarized the main concerns that led to this dispute, we will now turn to the assertions China has made on these matters in its first submission. In light of the large number of measures at issue in this dispute, our oral statement this morning will focus largely on two matters:

- (1) The export restraints measures within the Panel’s terms of reference comprising the matter referred to the Panel by the Dispute Settlement Body (“DSB”), and
- (2) China’s proffered justifications for its WTO-inconsistent export duties and export quotas.

We will be pleased to address the issues China raises in its submission in more detail in our responses to the Panel’s questions and in our second written submissions.

**III. The Measures within the Panel’s Terms of Reference Are Those Set Out in the Panel Requests, Which Frame the “Matter” Referred to the Panel by the DSB**

38. Next, we would like to address the issue of the “identity of the measures at issue” in this dispute.

39. China describes certain measures challenged by the complainants, which were in effect in 2009, as “expired.” We note that China does not contest the fact that these measures are properly within the Panel’s terms of reference. China only asks that the Panel “refrain from” making findings regarding these measures and argues that the Panel lacks the authority to make recommendations on these measures because none of these measures is in effect today. Complainants disagree with China’s request and arguments.

40. According to China, the Panel should decline to make findings on these measures either because they were no longer causing the nullification or impairment of benefits when the Panel was established or because they can no longer violate China’s WTO obligations or cause the nullification or impairment of benefits today. As a result, China asserts that findings on these measures would “serve no purpose.”

41. In response to China’s request for the Panel to disregard China’s export restraint measures in 2009, the Complainants would like to underscore the following points.

42. First, all of the 2009 measures were very much at issue when consultations were requested and when the Panel was established. Complainants requested the establishment of this Panel on November 4, 2009 and this Panel was established on December 21, 2009. The matter that the DSB referred to the Panel, and thus the Panel’s terms of reference, is the consistency of those 2009 export restraint measures with China’s WTO obligations. Obtaining findings – and recommendations – regarding the consistency or inconsistency of the measures that were in effect during 2009 is the purpose of this dispute. In accordance with Article 7.1 of the DSU, this Panel’s terms of reference are:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the United States in document WT/DS394/7, the European Communities in document WT/DS395/7 and Mexico in document WT/DS398/6, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.<sup>7</sup>

The complainants are therefore entitled to findings and recommendations on these measures.

43. Beyond these considerations, findings regarding both categories of measures serve the purpose of securing a positive solution to this dispute. While, *e.g.*, the 50% special export duty on yellow phosphorus, 15% export duties on bauxite, and the export quota for fluorspar may not be in force today, the prospect of their reintroduction is very real.

44. China typically changes the level of export duties once or twice a year. With regard to yellow phosphorus, China actually changed the duty level four times between May 2008 and July 2009. China typically announces its export quotas annually at the end of the calendar year, but China has, as recently as 2007, introduced quotas on products for the first time in the middle of the year. As these actions reflect, and as China’s continuing use of export duties and export quotas on many other products make clear, China remains very active in trying to manage export flows through the use of export duties and export quotas and a variety of other measures.

45. In addition, failure to examine and make findings regarding the 2009 measures would effectively create a “moving target” for both the complainants and the Panel in this dispute. As

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<sup>7</sup> Constitution of the Panel Established at the Requests of the United States, the European Communities and Mexico, Note by the Secretariat (WT/DS394/8, WT/DS395/8, WT/DS398/7).

just discussed, China typically changes export duties and export quotas on an annual basis and sometimes more frequently. According to China, findings on the 2009 measures would be useless because they are no longer in effect today. Should the Panel then also refrain from making findings on any export restraints that China decides to modify or replace tomorrow, next month, or in 2011 when the findings and recommendations in this dispute are likely to be adopted? Indeed, if the Panel were to confine its review to the measures in effect in 2010, as China urges, it is likely that those measures will not be in effect when the Panel circulates its report in 2011. Plainly, it would not help resolve the dispute to avoid making findings on the measures at issue, and could effectively shield from review any measure that a Member terminates in the course of panel proceedings, even where that measure could be reinstated the day after the DSB adopts its recommendations and rulings.

46. China argues that the Panel is barred by Article 19 of the DSU from making recommendations regarding these two categories of measures because they are not currently in effect. Once again, this is not an accurate reading of Article 19.

47. Article 19 of the DSU states that

Where a panel . . . concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement.

In actuality, therefore, Article 19 requires panels to make recommendations where it finds inconsistencies.

48. Accordingly, the Panel can and should make findings and recommendations on the measures within its terms of reference, including those that were in effect in 2009 – regardless of whether they remain effective currently or in the future.

49. At the same time, complainants draw the Panel’s attention to the fact that China has proffered many legal instruments as part of the defense of its export restraints and that a number of these legal instruments were not promulgated for the first time until 2010 – some of them until well into the current proceedings. These measures include:

- Legal instruments that appear to create production “targets” for bauxite and fluorspar, which were promulgated for the first time over the course of 2010; and
- Legal instruments that repealed or retrospectively confirmed the repeal of the Price Verification and Chop procedure associated with the enforcement of yellow phosphorus, which were promulgated for the first time over the course of 2010.

50. We consider that these legal instruments are generally not relevant to the Panel’s review of the measures at issue, which were in effect in 2009, when this Panel was established and before these legal instruments were introduced. These 2010 measures can only be relevant to the Panel’s review to the extent that they confirm their absence in 2009.

51. In addition, we note that, as already discussed, omitting from the Panel’s review measures that cease to have effect after panel establishment creates “moving target” problems. In the same way, including in the Panel’s review other legal instruments introduced by the respondent after panel establishment in an effort to obfuscate the effects of the measures at issue in this dispute, results in the same “moving target” problems. This appears inconsistent with China’s stated concerns in the preliminary ruling process where China – without proper basis – sought to exclude



certain measures and claims from the Panel’s terms of reference based on the alleged potential for a “moving target.”<sup>8</sup> As the dispute settlement proceeding moves forward, China could continue to promulgate more legal instruments. Under China’s approach, these would need to be taken into consideration and potentially influence the Panel’s analysis of the consistency of the measures at issue with the covered agreements. As the Appellate Body stated in *Chile – Price Bands*, a complaining party need not “adjust its pleadings throughout dispute settlement proceedings in order to deal with a disputed measure as a ‘moving target’.”<sup>9</sup> A positive solution to this dispute requires a firm definition of the boundaries of the Panel’s terms of reference, including the legal instruments that the respondent may introduce as evidence in its defense.

52. Accordingly, the various legal instruments China has promulgated and may continue to promulgate after the establishment of the panel are irrelevant to the legal question before the Panel – that is, whether the export restraints in effect in 2009 are consistent with China’s WTO obligations.

#### **IV. China’s Proffered Justifications for Its Imposition of Export Duties and Export Quotas on the Raw Materials**

##### **A. Export Duties**

53. China imposes temporary export duties of 10% to 40% on bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc. At the time complainants requested consultations in this dispute, China imposed a special export duty of 50% on yellow

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<sup>8</sup> China’s Comments on the Complainants’ Joint Response to China’s Request for a Preliminary Ruling, para. 27

<sup>9</sup> Appellate Body Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/AB/R, para. 144 (adopted 23 October 2002).

phosphorus which, combined with an ordinary export duty of 20%, results in a combined export duty of 70%.

54. China does not contest that these export duties are imposed inconsistently with its obligations in paragraph 11.3 of the Accession Protocol to “eliminate all taxes and charges applied to exports.” Nor does China contest that these export duties fall outside of the exceptions explicitly provided in paragraph 11.3, *i.e.*, these export duties or duty rates are not “specifically provided for in Annex 6” of the Accession Protocol nor, as export duties, are they “applied in conformity with the provisions of Article VIII of the GATT 1994.”

**1. Article XX Exceptions of the GATT 1994**

55. Instead, China invokes exceptions under the GATT 1994 as justifications for breaching its commitments on export duties under its Accession Protocol. Specifically, China asserts that the export duties imposed on fluorspar are justified under Article XX(g) of the GATT 1994 and that the export duties imposed on the various forms of coke, magnesium, manganese, and zinc are justified pursuant to Article XX(b) of the GATT 1994. Notably, China does not, in its first submission, offer any justification for the export duties on bauxite, certain forms of manganese, silicon metal, or yellow phosphorus. China’s reliance on Article XX of the GATT 1994 is misplaced, however, since Article XX does not apply as an exception to China’s Protocol commitments on export duties.

**2. Article XX Does Not Apply to China’s Commitment to Eliminate  
Export Duties in Paragraph 11.3 of the Accession Protocol**

56. As a threshold matter, China’s attempt to justify its export duties on coke, fluorspar, magnesium and manganese metal, and magnesium, manganese and zinc scrap, through the

exceptions contained in Article XX of the GATT 1994, is misplaced. China bears the burden of demonstrating the applicability of Article XX of the GATT 1994 to paragraph 11.3 of its Accession Protocol. China has not done so. Indeed, the GATT 1994 exceptions are not applicable to the commitment in paragraph 11.3 of China’s Accession Protocol.

57. By its terms, Article XX applies strictly to the GATT 1994. In its *chapeau*, Article XX states, in relevant part: “. . . nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . .” (Emphasis added.) The referenced “Agreement” in Article XX is the GATT 1994. Thus, if Article XX is to apply to an obligation in an accession protocol, the language and the context of that particular obligation must provide a basis for the applicability of Article XX.

58. In this regard, the Appellate Body report in *China – Audiovisual Products* is instructive. In that dispute, the issue was whether the Article XX exceptions applied to China’s trading rights commitment in paragraph 5.1 of the Accession Protocol. The Appellate Body found that Members agreed to apply the Article XX exceptions to paragraph 5.1, however, the Appellate Body’s reasoning was based on the specific language of paragraph 5.1.

59. Paragraph 5.1 begins: “Without prejudice to China’s right to regulate trade in a manner consistent with the WTO Agreement . . . .” The Appellate Body reasoned that the explicit reservation of a “right to regulate trade in a manner consistent with the WTO Agreement” included a right to adopt regulations justified under Article XX, and thus concluded that the Article XX

exceptions of the GATT 1994 are available as justifications for contravening the trading rights commitments in paragraph 5.1.<sup>10</sup>

60. The language of paragraph 11.3 is in sharp contrast with the language in paragraph 5.1 of the Accession Protocol. The language in paragraph 11.3 describing both the obligation and its two exceptions, is specific and narrowly circumscribed, unlike the language in paragraph 5.1.

61. Paragraph 11.3 of the Accession Protocol sets out the obligation for China to “eliminate all taxes and charges applied to exports.”

62. This language is also in sharp contrast with the language in the paragraphs directly preceding paragraph 11.3. Paragraphs 11.1 and 11.2 of the Accession Protocol affirm China’s obligation to apply or administer certain measures “in conformity with the GATT 1994.” Accordingly, the obligations in paragraphs 11.1 and 11.2 emphasize China’s commitment to abide by all of its GATT 1994 obligations. The nature of the obligation in paragraph 11.3 is qualitatively different. Paragraph 11.3 sets out an entirely new obligation, not contained in the GATT 1994.

63. Paragraph 11.3 sets out an obligation that “China shall eliminate all taxes and charges applied to exports.” (Emphasis added.) Paragraph 11.3 provides for its own exceptions to this distinct obligation. Pursuant to paragraph 11.3, there are two, narrowly circumscribed circumstances when China’s failure to eliminate all taxes and charges applied to exports is excused:

- (1) Inclusion on the list of reserved products, below the corresponding capped duty rates set out in Annex 6; or

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<sup>10</sup> Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Products*, WT/DS363/AB/R, paras. 218-233 (adopted 19 January 2010).

(2) Application in conformity with Article VIII of the GATT 1994.

Accordingly, the GATT 1994 is only relevant to the obligation in paragraph 11.3 insofar as the obligation in Article VIII of the GATT 1994 serves as an exception to the obligation in paragraph 11.3.

64. The context provided by China’s Working Party Report confirms that Members did not intend for the Article XX exceptions to apply to China’s Protocol commitments on export taxes and charges. In paragraphs 155 and 156 of the Working Party Report, members of the Working Party voiced concerns over China’s practice of applying taxes and charges exclusively to exports and expressed the view that such taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in Annex 6 of what was then the Draft Protocol. China responded that, at that time, it maintained export duties on only 84 items. In turn, 84 items were reserved by China in Annex 6 as an exception to the paragraph 11.3 commitment.

65. In the *2009 Tariff Implementation Plan*, China imposes export duties on 337 products. Nothing in the Protocol provides that the GATT 1994’s General Exceptions apply to the paragraph 11.3 commitment and thereby make possible an expansion of the list of 84 products on which China may impose export duties.

**B. Export Quotas**

66. China restricts the amount of bauxite, coke, fluorspar, silicon carbide, and certain forms of zinc that can be exported through the use of export quotas. China does not deny that these quotas contravene the obligation in Article XI:1 of the GATT 1994 that “[n]o prohibitions or restrictions . . . made effective through quotas . . . shall be instituted or maintained . . . on the exportation or sale for export of any product destined for the territory of” another Member.

67. Instead, China claims that the export quotas on coke and silicon carbide are justified under Article XX(b) of the GATT 1994 and that the export quota on refractory grade bauxite is justified pursuant to Article XI:2(a) or, failing that, Article XX(g) of the GATT 1994. Notably, China does not offer any justification in its first submission for the export quota on fluorspar, or certain forms of bauxite and zinc.

**V. China Has Failed to Establish that Its Measures Fulfill the Criteria Set Out in Article XX of the GATT 1994**

68. In this section of the oral statement, the complainants will demonstrate that China has failed to establish that its export quotas fulfill the criteria set out in the Article XX exceptions that it invokes. In addition, although the complainants have established that the exceptions of GATT 1994 Article XX do not apply to the commitments China undertook in paragraph 11.3 of its Accession Protocol with respect to export duties, the complainants will demonstrate that China has failed to establish that its export duties fulfill the criteria set out in Article XX.

69. China seeks to justify its export duties and export quotas on various products under the exceptions provided in Article XX(g) and Article XX(b). As the Appellate Body reasoned in *US – Gasoline*, the analysis under Article XX is “two-tiered: first, provisional justification by reason of characterization of the measure under [the sub-paragraph]; second, further appraisal of the same measure under the introductory clauses of Article XX.”<sup>11</sup> The quotas and duties are restraints that directly limit supply of these raw materials to foreign users. For China to justify these measures under Article XX, it is China’s burden to demonstrate not only that each measure satisfies the

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<sup>11</sup> Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, p. 22 (adopted 20 May 1996).

specific conditions set out in sub-paragraphs (g) and (b) of Article XX, but that it also satisfies the requirements of Article XX’s *chapeau*.

**A. China Has Not Demonstrated that Its Export Duties on Fluorspar or Export Quota for Refractory Grade Bauxite Satisfy the Criteria Set Out in Article XX(g)**

70. A measure that is inconsistent with obligations in the GATT 1994 may nevertheless be permitted under Article XX(g). Here, the language of sub-paragraph (g) establishes the basic requirements that the measure at issue must first satisfy:

- (1) The measure must “relate to the conservation of an exhaustible natural resource,” and
- (2) The measure must be “made effective in conjunction with restrictions on domestic production or consumption.”

The measure must then also satisfy the requirements of the Article XX *chapeau* that it not be applied in a manner that would constitute “arbitrary or unjustifiable discrimination,” or “a disguised restriction on international trade.”

71. China’s duties on fluorspar exports and China’s quota on refractory grade bauxite exports fail to satisfy the requirements of Article XX(g). They are, contrary to China’s arguments and assertions, neither related to the conservation of fluorspar or refractory grade bauxite; nor made effective in conjunction with domestic restrictions on the production or consumption of fluorspar or refractory grade bauxite; nor are they applied in a manner so as not to constitute arbitrary or unjustifiable discrimination or a disguised, restriction on international trade.

72. As a threshold matter, the co-complainants note that while China appears to assert a defense under Article XI:2(a) and Article XX(g) in relation to the export quota on “refractory-grade bauxite,”<sup>12</sup> China does not explain the relationship between the product, refractory-grade bauxite, and the two products, collectively referred to as “bauxite,” in the complainants’ first written submission, and on which China imposes an export quota.<sup>13</sup>

**1. “Related to the Conservation of an Exhaustible Natural Resource”**

73. China asserts that the export duties on fluorspar and the export quota for refractory grade bauxite are measures that are related to the conservation of fluorspar and refractory grade bauxite, respectively. Beyond this assertion, however, China provides no argument or support for the proposition that these export restraints “relate to” the conservation of these raw materials.<sup>14</sup>

74. This is a particularly critical omission since, as trade measures that have the immediate and direct effect of limiting the supply of these raw materials to foreign users, the export restraints do not appear to bear any inherent relationship to conservation. Indeed, the export duties on fluorspar and the export quota for refractory grade bauxite do not even come close to satisfying the “relating to” requirement of Article XX(g), which has been interpreted as meaning “primarily aimed at” the conservation of a natural resource<sup>15</sup> and having a “close and substantial relationship of means and ends” between the means presented by the measure at issue and the ends of conservation.<sup>16</sup>

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<sup>12</sup> China’s First Written Submission, paras. 366.

<sup>13</sup> Mexico’s First Written Submission, para. 103, n. 131 and Exhibit JE-6.

<sup>14</sup> See China’s First Written Submission, paras. 154-192, 498-523.

<sup>15</sup> See, e.g., GATT Panel Report, *Canada – Herring and Salmon*, L/6268, BISD 35S/98, para. 4.6 (adopted March 22, 1988); Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, p. 19 (adopted 20 May 1996).

<sup>16</sup> See, e.g., Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, para. 136 (adopted 6 November 1998).



75. The measures that impose the export duties on fluorspar and the export quota for refractory grade bauxite do not provide any indication that the export duties and export quota “relate to” a conservation purpose.

76. China has therefore not established that the export duties on fluorspar and the export quota for refractory grade bauxite satisfy this element of Article XX(g)

**2. “Made Effective in Conjunction with Restrictions on Domestic  
Production or Consumption”**

77. China does not directly address the question of whether the measures at issue are made effective in conjunction with restrictions on domestic production or consumption of fluorspar and refractory grade bauxite. Instead, China’s asserts that it has “adopted a comprehensive set of measures relating to the conservation” of fluorspar and refractory grade bauxite.<sup>17</sup> China provides a list of 13 measures that it considers “manage the supply, production and use” of fluorspar and refractory grade bauxite.<sup>18</sup>

78. Of these 13 measures, five came into effect or were first promulgated in 2010. As discussed earlier, these measures are not relevant to the Panel’s examination of the WTO consistency of the export restraints effective in 2009.

79. Of the eight remaining measures, only two contain provisions that explicitly address conditions relating to the mining of fluorspar or refractory grade bauxite in particular. Those provisions designate the rate of the mineral resource tax and the amount of the compensation fee applicable to fluorspar and refractory grade bauxite mining.

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<sup>17</sup> China’s First Written Submission, sections V.B.3.b and VI.D.3.

<sup>18</sup> China’s First Written Submission, paras. 167 and 501.

80. Despite copious reference to dictionary definitions in English, French, and Spanish for the various words used in the provisions of the GATT 1994 in the rest of its first submission, China does not examine at all the meaning of the word “restriction” in the phrase “restrictions on domestic production or consumption” in Article XX(g). China also fails to address how the measures that it posits as forming a comprehensive conservation program, constitute “restrictions” on domestic production or consumption of fluorspar or refractory grade bauxite.

81. Article XX(g) also requires that the measure for which justification is sought is “made effective in conjunction with” the restrictions on domestic production or consumption. Panels and the Appellate Body have reasoned that “made effective in conjunction with” requires that the measure at issue be “primarily aimed at making effective” the domestic restrictions on production or consumption<sup>19</sup> and requires “*even-handedness* in the imposition of restrictions, in the name of conservation, upon the production or consumption of exhaustible natural resources.”<sup>20</sup>

82. China does not demonstrate that the export duties on fluorspar and the export quota for refractory grade bauxite are “made effective in conjunction with” domestic production or consumption measures. Instead, China simply presents the measures imposing the restraints together in a list with other measures, and then asserts that these measures together constitute a “comprehensive” conservation program. Beyond doing this, however, China offers no explanation in its first submission regarding how the export restraint measures operate in relation to the other

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<sup>19</sup> GATT Panel Report, *Canada – Herring and Salmon*, L/6268, BISD 35S/98, para. 4.6 (adopted March 22, 1988).

<sup>20</sup> Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, p. 21 (adopted 20 May 1996) (emphasis in original).

measures. China makes no showing of even-handedness in the imposition of restrictions on the production or consumption of fluorspar or refractory grade bauxite.

83. The closest China comes to addressing this question is its declaration that, in relation to the export duties on fluorspar: “[w]ithout China’s export restrictions, the burden of China’s supply limitations would be borne unduly by China’s domestic users, which would undermine China’s development.”<sup>21</sup> However, China fails to explain what these “supply limitations” consist of, and how they are unduly borne by China’s domestic users. With respect to China’s export quota for refractory grade bauxite, China declares: “The export quota ensures that China is not deprived of its limited supply of refractory grade bauxite.”<sup>22</sup> However, China fails to explain how China would be deprived of refractory grade bauxite without an export quota. Mere conclusory assertions do not meet China’s burden of demonstrating that its export restraints fall within the scope of Article XX(g). Furthermore, these assertions appear to directly contradict the requirement of even-handedness in Article XX(g)’s requirement that the measure at issue be “made effective in conjunction with” domestic restrictions on production or consumption

84. In sum, the availability of Article XX(g) as a justification for China’s export duties on fluorspar and export quota for refractory grade bauxite is contingent on China’s ability to demonstrate that it satisfies the requirements of Article XX(g). China has not so demonstrated.

### **3. China’s Erroneous Interpretation of Article XX(g) Rests on a Flawed Foundation**

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<sup>21</sup> China’s First Written Submission, para. 188.

<sup>22</sup> China’s First Written Submission, para. 521.

85. China devotes a great deal of time and effort to underscoring China's belief that its economic justification – that is, a purported right to adopt measures regarding the use of natural resources to pursue domestic economic policies regardless of WTO obligations – is somehow reflected in Article XX(g). China characterizes this as an issue of “sovereignty” over its natural resources, and also purports to find support in the principles of “conservation” and “sustainable development.”

86. The sovereignty of a WTO Member over its natural resources is not at issue under Article XX(g). Neither is the right of a WTO Member to choose its economic policies at issue under Article XX(g).

87. Instead, what is at issue under Article XX(g) is whether a measure that is otherwise inconsistent with the GATT 1994 fits within the plain terms of the Article XX(g) exception: that is, whether it (1) relates to the conservation of an exhaustible natural resource; (2) is made effective in conjunction with domestic restrictions on production or consumption; and (3) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

88. In addition, China draws the Panel's attention to the language in the Preamble of the WTO Agreement recognizing the importance of the social and economic benefits of trade, the optimal use of the world's resources, sustainable development, protection and preservation of the environment, and that there are differences in the needs and concerns of Members at different levels of economic development. None of these WTO objectives indicate in any way that China should be exempted from complying with the terms of Article XX(g) in order to be able to discriminate in favor of its domestic users of raw materials against users in every other WTO

Member. Indeed, the Preamble calls for the optimal use of the world’s resources, and the same Preamble expresses the desire of WTO Members to contribute to the objectives of the WTO by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.

**4. Chapeau: “Arbitrary or Unjustifiable Discrimination or a Disguised Restriction on Trade”**

89. Regarding the requirements of the *chapeau* of Article XX, China has made no serious attempt in its first submission to satisfy its burden.<sup>23</sup>

90. In fact, China fails to present any facts or arguments regarding how it considers the application of its export quota and export duty can constitute anything other than arbitrary or unjustifiable discrimination between China and its trading partners.

91. Complainants do not consider that China has substantiated that it meets the criteria for any of the elements of the *chapeau*. We look forward to any additional presentation or further elaboration on these matters that China may choose to proffer in these proceedings.

**B. China Has Not Demonstrated that Its Export Duties on Coke, Magnesium, Manganese, and Zinc and Its Export Quotas on Coke and Silicon Carbide Satisfy the Criteria Set Out in Article XX(b)**

92. China maintains export duties on various forms of *inter alia* coke, magnesium, manganese, and zinc in contravention of China’s obligations in paragraph 11.3 and Annex 6 of its Accession

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<sup>23</sup> China’s First Written Submission, paras. 193-195 and 524-526.

Protocol. China also maintains export quotas on coke and silicon carbide, which are inconsistent with Article XI:1 of the GATT 1994. Based on its flawed environmental argument, China asserts that these export duties and quotas are justified pursuant to Article XX(b) of the GATT 1994. As discussed, the exceptions in Article XX of the GATT 1994 are not available as a defense for a breach of the obligations in paragraph 11.3 of China’s Accession Protocol. However, even assuming *arguendo* that Article XX(b) is available as a defense, China has not demonstrated that its export duties satisfy the criteria set out in Article XX(b) of the GATT 1994. Similarly, China has not demonstrated that its export quotas on coke and silicon carbide satisfy the criteria under Article XX(b).

#### **1. The Meaning of Article XX(b) of the GATT 1994**

93. We recall that in order for a measure to be justified under Article XX(b), the measure must be “necessary to protect human, animal or plant life or health.” To show that a measure is “to protect” life or health, the responding party must show that (i) there is a risk to human, animal, or plant life or health; and (ii) the underlying objective of the measure is to reduce the risk. If so, the Panel should conclude that the measure’s policy falls within the range of policies designed to protect human, animal, or plant life or health.<sup>24</sup>

94. In analyzing the meaning of “necessary” in Article XX, the Appellate Body has stated that “an assessment of ‘necessity’ involves ‘weighing and balancing’ a number of distinct factors relating both to the measure sought to be justified as ‘necessary’ and to possible alternative measures that may be reasonably available to the responding Member to achieve its desired

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<sup>24</sup> Panel Report, *Brazil – Tyres*, para. 7.43; See also Panel Report, *EC – Tariff Preferences*, para. 7.199.

objective.”<sup>25</sup> The Appellate Body provided further elaboration stating that the factors to be weighed and balanced include the contribution of the measure to the realization of the ends pursued by it.<sup>26</sup> Moreover, in *Korea – Beef*, the Appellate Body reasoned that in order for a measure to be “necessary,” it must be located significantly closer to the pole of “indispensable” than to the opposite pole of simply “making a contribution to”.<sup>27</sup> Finally, the Appellate Body has reasoned that a panel should take into account WTO-consistent, reasonably available alternative measures.<sup>28</sup>

95. In addition to being justified under Article XX(b), the measure at issue must also satisfy the requirements of the *chapeau* of Article XX, namely it must not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

96. China’s export duties and export quotas on these products are not necessary to protect human, animal, or plant life or health. According to China, the production of coke, magnesium metal, manganese metal, silicon carbide and zinc results in environmental pollution, which in turn results in risks to health. China argues that its export duties and quotas on coke, magnesium metal, manganese metal, silicon carbide and zinc result in less production of these products in China, and therefore, less pollution. With respect to magnesium scrap, manganese scrap, and zinc scrap, China contends that the export duties on scrap products promote a more steady supply of scrap

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<sup>25</sup> Appellate Body Report, *China – Audiovisual Products*, para. 239 citing Appellate Body Report, *Korea – Various Measures on Beef*; Appellate Body Report, *US – Gambling*; Appellate Body Report, *Brazil – Tyres*.

<sup>26</sup> Appellate Body Report, *China – Audiovisual Products*, para. 240.

<sup>27</sup> Appellate Body Report, *Korea – Various Measures on Beef*, para. 161.

<sup>28</sup> Appellate Body Report, *US – Gambling*, para. 307; Appellate Body Report, *Korea – Various Measures on Beef*, para. 166.

products within China to encourage a decrease in primary production in favor of more environmentally friendly, scrap-based, production. For the reasons we will discuss today and in our second written submission, China’s arguments are fundamentally flawed.

97. China argues that it has an interest in improving environmental protection, an interest that many WTO Members undoubtedly share. However, the exportation of the products at issue is, in fact, entirely unrelated to environmental pollution. As China itself argues, it is the production of these products, not their export, that causes pollution. Thus, restraints on the export of the products at issue bear no direct relationship to China’s environmental goals, nor are they, by any measure, “necessary” to accomplish those goals. The restraints, however, do have a direct economic effect in terms of meeting China’s economic goals of providing a competitive advantage to its industrial users of raw materials. As complainants explained, China’s export duties and quotas are part of an effort to secure a steady supply of important raw materials for its manufacturing industries in order to encourage their shift to higher, value-added manufacturing.<sup>29</sup>

98. At most, the restraints could have indirect environmental effects. But, regardless of the net, theoretical result of these indirect environmental effects, a usage restraint that excludes domestic users could not be considered “necessary” for achieving any environmental goals. If usage restraints are effective, they would be equally or more effective if they applied to both domestic and foreign users. Thus, it is not necessary under Article XX(b) for China to discriminate against foreign users of a raw material.

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<sup>29</sup> U.S. First Written Submission, paras. 29-31.



99. Furthermore, as we will discuss in the context of specific products, despite the export duties and export quotas, production of the materials at issue has increased, and a number of WTO-consistent alternatives are reasonably available that would allow China to accomplish its stated objective.

100. China's arguments under Article XX(b) also raise serious systemic concerns. Under China's approach, Article XX(b) would justify a WTO-inconsistent export restriction on any product whose production causes pollution. China's arguments with respect to its export duties on scrap products is similarly flawed. China's defense under Article XX(b) as it relates to scrap products is essentially premised on the notion that scrap is a more economically advantageous and energy efficient industrial input than other inputs, and, therefore, China seeks to maintain a steady supply of scrap. Under China's approach, Article XX(b) would justify a WTO-inconsistent export restriction on any economically advantageous or energy efficient product. These approaches to Article XX(b) are untenable, and China's arguments with respect to its own measures are not supported by the text of the provision or by the reasoning in past panel and Appellate Body reports.

101. We will begin by addressing China's defense under Article XX(b) as it relates to export duties. China divides the products subjects to export duties into two categories and asserts a different theory under Article XX(b) as it relates to each of the two categories. The first category comprises magnesium scrap, manganese scrap, and zinc scrap. The second category consists of magnesium metal, manganese metal, and coke. We will address each of these in turn.

**2. China's Export Duties on Scrap Products Are Not Justified under Article XX(b)**

102. According to China, export duties on scrap will ensure a steady supply of scrap and lead to a shift away from primary production (or production from crude ores) and toward increased secondary production. China argues that secondary production is more environmentally friendly than primary production, and, therefore, increased secondary production will lead to a reduction in health risks associated with primary production. Based on this, China concludes that its export duties on the scrap products are “necessary to protect human, animal or plant life or health.”

103. As we have noted, however, there is no evidence that China’s objective in imposing these export duties is in fact the reduction of health risks associated with pollution. China’s economic studies in its submission were developed solely for the purpose of this dispute. In terms of pre-existing materials, China only points to a single statement in one document, the *National Eleventh Five-Year Plan for Environmental Protection*. However, this statement draws no link between the export duties at issue and health or environmental concerns.<sup>30</sup> To the contrary, as the co-complainants demonstrated in their first written submissions, China’s own statements and policies demonstrate that the export duties at issue in this dispute are in pursuit of the economic benefits associated with increased production of higher value-added industrial products, by controlling the supply of important raw material inputs.<sup>31</sup> Thus, China’s contentions regarding the supposed objective underlying its export restrictions are directly contradicted by China’s own statements.

104. Second, China has failed to establish that the export duties are contributing to, let alone necessary to, accomplishing China’s purported objective. China presents no evidence that any secondary production is actually occurring in China. Instead, China merely estimates a particular

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<sup>30</sup> China’s First Written Submission, para. 256.

<sup>31</sup> See Mexico’s First Written Submission, paras. 28, 33.

rate of secondary production that would result from an export duty on scrap, and provides no basis for the assumptions underlying that estimate.<sup>32</sup> Thus, the Panel has no actual evidence that the export duties are resulting in any increased secondary production.

105. Even taking China’s economic analysis on its own terms, the estimated increase in secondary production that supposedly could result from the export duties is decidedly modest.<sup>33</sup> China’s economist estimates that the export duty on magnesium scrap will lead to 963 tons of additional secondary magnesium production,<sup>34</sup> which represents approximately .002% of China’s 2009 primary magnesium production.<sup>35</sup> China’s economist also estimates that the export duty on zinc scrap will lead to 2,730 tons of additional secondary zinc production<sup>36</sup>, which represents approximately 6.2 percent of China’s 2009 primary zinc production.<sup>37</sup> Even if these increases in secondary production were accurate, the minor increases in secondary production belie China’s argument that the export duties at issue are making a “material contribution” to China’s health objectives.

106. In generating these estimates, China’s economist also assumes that all scrap goes into secondary production of the metals. China has failed to provide any support for this assumption. Indeed, this assumption is fundamentally flawed as it relates to manganese scrap. As China’s own minerals economist, Dr. Humphreys, recognized, manganese is not, as a practical matter, recycled

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<sup>32</sup> Exhibit CHN-124, Table 1, p. 2.

<sup>33</sup> Exhibit CHN-124, Table 4.

<sup>34</sup> Exhibit CHN-124, Table 1, p. 2.

<sup>35</sup> See Exhibit CHN-289, p. 7.

<sup>36</sup> Exhibit CHN-124, Table 1, p. 2.

<sup>37</sup> See Exhibit CHN-289, p. 10.

from manganese scrap.<sup>38</sup> Thus, secondary production of manganese simply does not occur.

China's defense under Article XX(b) as it relates to manganese scrap fails for this simple reason.

107. Much of the production and trade data presented by China's own economist also illustrates the flaws in China's reasoning. For purposes of this discussion, we have included certain data about manganese although China's argument regarding manganese scrap fails for the reasons just discussed. Primary production of all of the metals has increased in recent years as shown by China's own data.<sup>39</sup> Since 2000, magnesium production increased in China each year until 2009.<sup>40</sup> And, as we will elaborate in our second written submission, China has announced plans to add new magnesium primary production capacity.

108. In addition, China's arguments are further contradicted by the fact that China has increased imports of the inputs used for primary production. For example, imports of manganese ores and zinc ores, used for primary manganese and zinc production respectively, have increased significantly in recent years.<sup>41</sup> These facts expose the fallacy of China's contention that the export duties are contributing to a shift from primary production to secondary production, let alone to reducing health risks. To the contrary, China continues to increase its primary production of these metals.

109. Third, the supposed supply constraints associated with scrap that China discusses are irrelevant to the analysis under Article XX(b), and China's related discussion merely illustrates that

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<sup>38</sup> Exhibit CHN-11, n. 26; *Mineral Commodities Summaries 2010*, U.S. Geological Survey, January 2010 at 98 (Exhibit JE-43).

<sup>39</sup> Exhibit CHN-289 (See p. 11, import statistics for manganese ores (260200000) and p. 12, import statistics for zinc ores (26080000)).

<sup>40</sup> Exhibit CHN-289.

<sup>41</sup> Exhibit CHN-289.

China’s policy is designed to “guarantee” a “steady supply stream” of a raw material<sup>42</sup> for the benefit of Chinese downstream producers. By virtue of China’s export duties, the Chinese downstream producers have access to lower-priced inputs, and therefore an advantage over competing downstream producers in other Members. The supposed supply constraints that China identifies include scarcity of scrap within China, the need to “liberate” scrap from durable products and consumer goods, and the volatility of the import market for scrap.<sup>43</sup>

110. However, these apply to many WTO Members, and in the case of the volatility of imports of scrap, all WTO Members. China states that its resource base for scrap is limited because it is a large country with recent economic growth.<sup>44</sup> But, of course, many Members of the WTO have large geographic areas and are experiencing economic growth. Thus, these factors – to the extent they are relevant at all – do not support China’s arguments that it is uniquely entitled to breach its WTO obligations in order to secure preferential access to a raw material.

111. Fourth, with respect to the trade restrictiveness of its export duties, China argues that since export duties do not alter the quantities available for purchase, but simply increase the “market price,” the “allocation of resources is still based on demand and supply.”<sup>45</sup> However, this argument ignores the fact that even if resources are allocated according to supply and demand, the amount of the supply and demand are being distorted by China’s imposition of an export duty, because the export duty reduces the price of these products for Chinese manufacturers and increases the price for manufacturers outside China.

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<sup>42</sup> China’s First Written Submission, para. 267.

<sup>43</sup> China’s First Written Submission, paras. 264-67.

<sup>44</sup> China’s First Written Submission, para. 264.

<sup>45</sup> China’s First Written Submission, para. 261.

112. Fifth, especially in light of the fact that any environmental effects of China's export duties are at most indirect, there are a number of reasonably-available, WTO-consistent alternatives that China could employ to accomplish China's desired level of health protection. Since China's stated concerns with life and health relate to the pollution associated with primary production, these alternatives could include the imposition of pollution controls on primary production of the metals. In contrast to China's discriminatory export restraints, these measures would more directly address the pollution effects of primary production. China could also require recycling of consumer goods in China to promote the development of a stable supply of scrap domestically. Or, China could require domestic producers in China to shift from primary production to secondary production. In sum, China is imposing discriminatory trade measures that control who has access to the products at issue, rather than adopting policies that effectively reduce pollution associated with certain production processes.

113. For the foregoing reasons, China has failed to demonstrate that its measures satisfy the requirements of subparagraph (b) of Article XX of the GATT 1994.

114. In addition, China has failed to demonstrate compliance with the requirements of the *chapeau* of Article XX. Rather than adduce any argumentation or evidence, China merely asserts that its measures satisfy the requirements of the *chapeau*. China fails to address how the application of its measures does not result in arbitrary or unjustifiable discrimination between China and other Members where the same conditions prevail. Thus, China has failed to meet its burden of establishing how its measures satisfy the requirements of the *chapeau*.

**3. China's export duties on magnesium metal, manganese metal, and coke are not justified under Article XX(b)**

115. China also asserts that its export duties on magnesium metal, manganese metal and coke, are justified under Article XX(b). China contends that it imposes export duties on these products in order to bring about reduced production of these products and, therefore, reduced pollution associated with their production. However, China has failed to show that the requirements of Article XX(b) are met by its measures with respect to these products.

116. First, China's measures – export duties – are not designed to address specific environmental concerns associated with these products. To the contrary, statements by China illustrate that in fact the export duties are designed to ensure China's control over its supply of raw materials and encourage higher value-added production using the raw materials.<sup>46</sup>

117. Second, China significantly downplays the effects of China's policies downstream and the environmental damage that results from increased downstream production using magnesium, manganese, and coke. As the co-complainants discussed in their first written submissions, magnesium metal is principally used in the production of aluminum.<sup>47</sup> Manganese metal is primarily used in the production of aluminum, steel, and other alloys.<sup>48</sup> Finally, coke is used to make both iron and steel.<sup>49</sup> Because the export duties on magnesium metal, manganese metal, and coke reduces the price of those inputs for downstream producers within China, demand for these inputs increases, resulting in increased downstream production. The increased downstream production activity in turn also causes environmental pollution, which China fails to address.

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<sup>46</sup> U.S. First Written Submission, paras. 28-31.

<sup>47</sup> European Union's First Written Submission, para. 42.

<sup>48</sup> Mexico's First Written Submission, paras. 54-56.

<sup>49</sup> U.S. First Written Submission, para. 40.

118. China's economist acknowledges the increased consumption of the metals as a result of the export duties.<sup>50</sup> However, he does not account for the fact that the reduced price in China for these industrial inputs will stimulate demand for these inputs by downstream producers. Indeed, the production of steel and aluminum has increased significantly while China has maintained an export duty on the inputs, a point on which we will elaborate further in our second written submission. China addresses the products on which it imposes export duties and the pollution associated with their production in isolation and simply ignores the pollution that would result from increased downstream production. This exposes the fallacy of China's argument that the export duties are making a contribution to a reduction in pollution, let alone that the measures are necessary to accomplish that objective.

119. It is noteworthy that China ignores the downstream impact of its export duties since increased downstream consumption resulting from an export duty is an essential component of China's Article XX(b) defense related to scrap products. Just as the export duties on scrap could be said to help ensure a steady supply of scrap for secondary production, so too the export duties on magnesium metal, manganese metal, and coke promote a steady supply of those products for producers in China of aluminum and steel. Moreover, if China's theory were correct that increased consumption of scrap promotes cleaner, more environmentally friendly production, the export duties on the metals and coke could only have the opposite effect. They stimulate increased downstream consumption, which itself results in pollution.

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<sup>50</sup> Exhibit CHN-124, p. 8.



120. Third, China’s production of manganese metal, and coke have in fact increased in recent years according to the data China submitted.<sup>51</sup> Magnesium metal production increased steadily until the global economic downturn in 2009. And, as discussed, China has announced plans to add significant magnesium production capacity. This directly contradicts China’s contention that its export duties contribute to reduced production of the materials. China’s own argument recognizes this as China presents estimates of reduced production based on an economic model,<sup>52</sup> but no evidence of actual decreases in production. Thus, there is no evidence production of the products at issue is decreasing, let alone that the export duties are contributing to a reduction of the health risks associated with pollution.

121. Finally, China’s measure must be analyzed in light of WTO-consistent, reasonably available alternatives. To the extent that China seeks to control environmental pollution associated with the production of magnesium metal, manganese metal, and coke, China could, for example, require producers of those products to comply with environmental regulations that control the polluting effects of their production processes in China and require producers to shift to less environmentally harmful production processes. For the foregoing reasons, China’s export duties on magnesium metal, manganese metal, and coke are not justified by Article XX(b) of the GATT 1994.

122. In addressing the *chapeau* of Article XX, China again fails to provide any argumentation in support of its assertion that its measures satisfy the requirements of the *chapeau*. China fails to explain how its measures are not applied in a manner that constitutes arbitrary or unjustifiable

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<sup>51</sup> Exhibit CHN-289.

<sup>52</sup> Exhibit CHN-124.

discrimination between China and other Members where the same conditions prevail. Thus, China has failed to meet its burden under the *chapeau*.

**4. China’s Export Quotas on Coke and Silicon Carbide are not justified under Article XX(b)**

123. Contrary to China’s contentions, China’s export quotas on coke and silicon carbide are also not justified pursuant to Article XX(b) of the GATT 1994.

124. China’s argument in support of this defense is based on the same theory that China uses to argue that its export duties on magnesium metal, manganese metal, and coke are justified pursuant to Article XX(b). To briefly summarize, China states that the export quotas on coke and silicon carbide are “necessary” to protect human, animal, plant life or health because the export duties result in less production of these products and, therefore, less pollution.<sup>53</sup>

125. For the reasons discussed in the context of the export duties on magnesium metal, manganese metal, and coke, this line of reasoning does not withstand scrutiny. China’s failure to address the pollution associated with downstream production illustrates that China’s arguments regarding the supposed effects of the export quotas are misleading and incorrect. Furthermore, production of coke and silicon carbide have increased in China in recent years contradicting China’s argument that the export quotas are making a material contribution to reducing pollution.<sup>54</sup> Thus, China has failed to demonstrate that the export quotas are contributing to, let alone “necessary to protect human, animal or plant life or health.” Finally, China has also failed to establish that the export quotas satisfy the requirements of the *chapeau* of Article XX.

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<sup>53</sup> China’s First Written Submission, paras. 542-558.

<sup>54</sup> Exhibit CHN-289.

**VI. China’s Export Quota on Bauxite Is Not Justified Under Article XI:2(a) of the GATT 1994**

126. China contends that the export quota on refractory-grade bauxite is justified by Article XI:2(a) of the GATT 1994. Accordingly, we would welcome China’s clarification of the product to which its defenses under Article XI:2(a) and XX(g) apply. China’s defense under Article XI:2(a) fails because it is based on a flawed reading of Article XI:2(a), a misstatement of the relevant facts, and a heavy reliance on the statements and laws of other Members, none of which are within the Panel’s terms of reference.

**A. Proper Reading of Article XI:2(a)**

127. China begins the discussion of Article XI:2(a) by contending that a complaining party, in establishing a *prima facie* case under Article XI:1, must establish that the measure in question is not justified pursuant to Article XI:2(a). As we will discuss, China’s argument in this regard does not withstand scrutiny. Second, China proceeds to discuss the meaning of Article XI:2(a). China notes that no GATT or WTO dispute settlement report has addressed the meaning of Article XI:2(a). However, China then proceeds to offer an interpretation of the provision that includes merely dictionary definitions of the individual words in Article XI:2(a) in isolation, and a supposed interpretation of this provision by the United States and the European Union. China’s interpretation is incorrect and this approach falls far short of an application of the customary rules of treaty interpretation reflected in the *Vienna Convention on the Law of Treaties* (“Vienna Convention”). Moreover, having provided a catalog of individual dictionary definitions, China’s actual analysis of the export quota on refractory grade bauxite is then completely divorced from

this catalog, and, in any event, flawed in several respects. Thus, China has failed to establish that the export quota on refractory-grade bauxite is justified pursuant to Article XI:2(a).

128. As a threshold matter, China’s arguments that the complaining party bears the burden of demonstrating that the responding party’s measures are not justified by Article XI:2(a) are without merit. Article XI:2(a) should be viewed as an affirmative defense, for which China bears the burden of adducing evidence and argumentation to establish the defense. While China relies on the Appellate Body reports in *Brazil – Aircraft* and *India – Additional Duties* in which the Appellate Body was considering claims under the *Agreement on Subsidies and Countervailing Measures* and Article II of the GATT 1994 respectively, neither of these reports supports China’s argument with respect to Article XI:2(a). Contrary to China’s argument, Article XI:2(a) sets out an exception to the obligation in Article XI:1, not a separate obligation. This analysis is confirmed by the Appellate Body’s reasoning in *U.S. – Shirts and Blouses*, stating:

We acknowledge that several GATT 1947 and WTO panels have required such proof of a party invoking a defence, such as those found in Article XX or Article XI:2(c)(i), to a claim of violation of a GATT obligation, such as those found in Articles . . . XI:1. Articles XX and XI:(2)(c)(i) are limited exceptions from obligations under certain other provisions of the GATT 1994, not positive rules establishing obligations in themselves. They are in the nature of affirmative defences. It is only reasonable that the burden of establishing such a defence should rest on the party asserting it.<sup>55</sup>

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<sup>55</sup> Appellate Body Report, *U.S. – Shirts and Blouses*, p. 16 citing *Japan - Restrictions on Imports of Certain Agricultural Products*, adopted 22 March 1988, BISD 35S/163, para. 5.1.3.7; *EEC - Restrictions on Imports* (continued...)

129. The Appellate Body’s reasoning applies equally to China’s defense under Article XI:2(a), which also contains an exception rather than a separate obligation. Thus, as China has invoked the exception under Article XI:2(a), China bears the burden of demonstrating that its export quota on bauxite satisfies the requirements therein. For the reasons we will turn to now, China fails to meet its burden.

130. Article XI:1 of the GATT 1994 prohibits Members from maintaining *inter alia* prohibitions or restrictions, defined as including quantitative restrictions, on the exportation of any product. However, Article XI:2(a) of the GATT 1994 provides an exception whereby a Member may maintain “[e]xport prohibitions or restrictions temporarily applied to prevent or relieve a critical shortage of foodstuffs or other products essential to the exporting contracting party.”

131. The question of whether China’s export quota on refractory-grade bauxite is justified by Article XI:2(a) of the GATT 1994 turns on whether (a) the quota is temporarily applied; (b) refractory grade bauxite constitutes a product that is essential to China; and (c) the quota is applied to prevent or relieve a critical shortage of refractory grade bauxite.

**B. China’s Export Quota on Bauxite is Not Temporarily Applied to Prevent or Relieve a Critical Shortage of an Essential Product**

132. China’s arguments in support of its defense under Article XI:2(a) are based largely on the measures of other WTO Members. These measures are, of course, not in the Panel’s terms of reference, not subject to this dispute, and irrelevant to the question of whether China’s export quotas are justified pursuant to Article XI:2(a). China’s arguments also depend heavily on the

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<sup>55</sup> (...continued)

of *Dessert Apples*, adopted 22 June 1989, BISD 36S/93, para. 12:3; and *Canada - Import Restrictions on Ice Cream and Yoghurt*, adopted 5 December 1989, BISD 36S/68, para. 59.

supposed methodology employed by “criticality” assessments developed by the United States and the European Union. These studies do not purport to address the requirements of Article XI:2(a) of the GATT 1994 and in fact are not relevant – let alone authoritative – as to the question of whether China’s measures satisfy the requirements of Article XI:2(a). This fact renders much of China’s discussion of the export quota on refractory-grade bauxite beside the point as it relates to Article XI:2(a).

133. In addition, perhaps recognizing the shortcomings in its own position, China fails to present any argumentation supporting the existence of a “critical shortage” of refractory-grade bauxite. Instead, China merely collapses the “essential products” and “critical shortage” inquiries in Article XI:2(a), essentially reading “critical shortage” out of the provision. Finally, China fails to show that its export restriction is “temporarily applied.” Thus, China’s export quota on refractory-grade bauxite is not justified by Article XI:2(a).

**1. China Fails to Demonstrate That Refractory-Grade Bauxite Is an “Essential Product”**

134. China’s assertion that refractory-grade bauxite is essential to China appears to be based on the following elements. First, according to China, refractory-grade bauxite “is indispensable for the production of iron and steel, as well as other products such as glass, ceramics, and cement.”<sup>56</sup> China does not explain why this is sufficient to satisfy the “essential to the exporting Member” requirement in Article XI:2(a). Indeed, this line of reasoning would appear to suggest that any input into large-scale industrial operations would qualify as an essential product under Article

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<sup>56</sup> China’s First Written Submission, para. 431.

XI:2(a). Second, China asserts that because it is experiencing rapid growth in its manufacturing industry, China needs to ensure a “stable supply” of the basic inputs for manufacturing.<sup>57</sup> Here, too, China does not explain how this is any way determinative of whether a product is “essential to the exporting Member” in the context of Article XI:2(a). Under this theory, any country seeking to grow a particular industry could deem an input for that industry to be an “essential product.”

135. In China’s discussion of the meaning of “essential products,” China begins by setting forth the definition of the term “product.” Then, based on the broad definition of “product,” China misleadingly states that an “essential” “product” “may be a raw material, such as a mineral, or a manufactured processed material.”<sup>58</sup> However, China draws this conclusion based solely on the definition of “product” seemingly ignoring the fact that the term “essential” serves to limit the scope of “products” that are subject to Article XI:2(a). Even if a raw material, such as a mineral, or a manufactured processed mineral could be an “essential product,” China fails to explain why refractory-grade bauxite is an “essential product” to China.

136. The term “essential” is defined as “[o]f or pertaining to a thing’s essence”; “absolutely indispensable or necessary”; “constituting or forming part of a thing’s essence.”<sup>59</sup> Thus, reading the terms together, “other products essential to the exporting Member” refers to products, other than foodstuffs, that are indispensable to or pertaining to the essence of the exporting Member, in this case, China. The explicit inclusion of “foodstuffs” in the scope of the provision is important context for conveying the level of importance of the product that is contemplated by this provision.

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<sup>57</sup> China’s First Written Submission, para. 456. *See generally* China’s First Written Submission, paras. 449-71.

<sup>58</sup> China’s First Written Submission, para. 379.

<sup>59</sup> *New Shorter Oxford English Dictionary*, p. 852.

137. In support of its erroneous contention that refractory-grade bauxite is “essential,” China also introduces the “criticality assessments” prepared by agencies of the United States government and the European Union. These reports analyze certain products and their role in the economies of the United States and the European Union. None of these studies addresses the specific requirements of Article XI:2(a), let alone the implications of their reports for satisfying the requirements of the WTO obligations such as Article XI:2(a). Nevertheless, China contends that these reports set forth “standard criteria for determining the importance in use of minerals.”<sup>60</sup> Regardless of whether that is so, and China provides no evidence supporting that assertion, these reports are not relevant, let alone authoritative, to the question of whether a product is “essential” within the meaning of Article XI:2(a).

138. China states that “Dr. Humphreys, [who prepared a report on bauxite for China,] concludes that the relative scarcity of refractory-grade bauxite, the conservation-related restrictions placed on extraction of the product in China, other supply constraints, and the importance in use of the product to the Chinese economy, make the product essential to China, and the shortage of the product critical.”<sup>61</sup> China seems to suggest that merely because a product is important and faces supply constraints, it is essential and faces a critical shortage. This statement reflects China’s conflation of the “essential products” and “critical shortage” inquiries, as we will discuss. In addition, the numerous criteria cited by Dr. Humphreys, could be used to designate any number of industrial inputs as “essential” and do not shed light on the question of whether China faces a critical shortage of an essential product as those terms are used in Article XI:2(a). In addition,

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<sup>60</sup> China’s First Written Submission, para. 443.

<sup>61</sup> China’s First Written Submission, para. 444.



regardless of the utility of the information contained in these “criticality assessments,” China fails to explain how the analysis of “criticality” in these assessments is consistent with the text of Article XI:2(a). China merely substitutes the methodology in these assessments for a textual analysis in Article XI:2(a).

## **2. China Confuses the “Essential Products” and “Critical Shortage” Inquiries**

139. China then purports to discuss the “critical shortage” element of Article XI:2(a). In fact, China simply collapses the “essential product” and “critical shortage” inquiries, by merely relying on its analysis of “essentialness” as a basis for arguing that there is a “critical shortage.” China’s arguments in this regard are based almost entirely on a report prepared by Dr. David Humphreys.

140. We recall that “critical” means in the nature of or constituting a crisis or of decisive importance. In addition, “shortage” means a deficiency in quantity.<sup>62</sup> Thus, taking the terms together, a “critical shortage” refers to a deficiency in quantity that is in the nature of or constituting a crisis or of decisive importance. Throughout the discussion of Article XI:2(a), China neglects to meaningfully analyze the term “critical shortage.” China merely states that based on the French version of Article XI:2(a), the “circumstances or situation arising from the shortage should be critical.”<sup>63</sup> Of course, the mere restatement of the words in the relevant legal provision does not assist in discerning the meaning of the provision at issue.

141. Certain relevant statements of negotiators do, however, shed light on the meaning of “critical shortage.” Article 32 of the Vienna Convention provides that “[r]ecourse may be had to

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<sup>62</sup> China’s First Written Submission, paras. 391-92.

<sup>63</sup> China’s First Written Submission, para. 393.

supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31.” In considering certain examples of existing export restrictions, the negotiators explained that those measures “would suggest that [export restrictions] could be temporarily applied to cope with the consequences of a natural disaster, or to maintain year to year domestic stocks sufficient to avoid critical shortages of products . . . which are subject to alternate annual shortages and surpluses.”<sup>64</sup> This illustrates that in order for a “shortage” to be “critical,” it must rise to a level beyond mere “relative scarcity.” The existence of “supply constraints,” which virtually all goods face, similarly is not sufficient to establish the existence of a “critical shortage.”

142. China’s reliance on the “criticality studies” is also misplaced. Aside from containing a version of the word “critical”, the “criticality” studies are not designed to identify or predict a “critical shortage,” including those examples of “critical shortage[s]” that the negotiating history references, such as “sudden or acute” shortages arising from exogenous shocks or cyclical factors.

143. The negotiating history further reveals that Members specifically cautioned against the type of reasoning that China is urging here. In response to a proposal to delete the word “critical” from Article XI:2(a), a representative of the United Kingdom stated, “if you take out the word ‘critical’, almost any product that is essential will be alleged to have a degree of shortage and could be brought within the scope of this paragraph.”<sup>65</sup> This statement reveals both the danger of conflating the concepts of an “essential product” and a “critical shortage,” and the drafters’ recognition that the nature of the shortage should be “critical”. A mere “degree of shortage” is not sufficient.

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<sup>64</sup> Exhibit CHN-180, para. 19.

<sup>65</sup> Exhibit CHN-181.

144. Yet, China’s arguments with respect to Article XI:2(a) seek to justify an export quota on the grounds that there is a mere “degree of shortage”. For example, China points to the “relative scarcity”<sup>66</sup> or the “finite and limited amount of refractory-grade bauxite”<sup>67</sup> or the fact that refractory-grade bauxite is an “exhaustible natural resource.”<sup>68</sup> China’s arguments would serve to exempt export prohibitions or restrictions on any “scarce” or “finite” good from the disciplines of Article XI:1. Such a reading of Article XI:2(a) is untenable.

145. China further conflates the “essentialness” and “critical shortage” inquiries by stating that “[t]he more essential or important in use a product, and the greater the supply constraints, the more likely it is that a shortage will have critical implications for an economy.”<sup>69</sup> This statement reveals that China’s assertion of a “critical shortage” merely relies on the assertion that the product is “essential.” In collapsing the “essential” and “critical shortage” inquiries, China simply reads “critical shortage” out of Article XI:2(a) entirely.

146. In addition, China identifies a number of supposed “supply constraints” on the availability of refractory-grade bauxite. These supply constraints include China’s environmental protection regulations, barriers to entering the mining sector, the acceptance of local communities, the demand of other WTO Members, and the difficulty of exploiting reserves outside China (as well as China’s own proffered domestic caps on mining and production, created in 2010).<sup>70</sup> While we will address these supply constraints in more detail in our second written submission, we would like to

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<sup>66</sup> China’s First Written Submission, para. 444.

<sup>67</sup> China’s First Written Submission, para. 477.

<sup>68</sup> China’s First Written Submission, para. 469.

<sup>69</sup> China’s First Written Submission, para. 463.

<sup>70</sup> China’s First Written Submission, paras. 476-486.

take this opportunity to point out that there is no textual basis for asserting that these factors are relevant to, let alone reveal the existence of, a critical shortage of a product for a WTO Member.

**3. China’s Export Quota Is Not “Temporarily Applied” within the  
Meaning of Article XI:2(a)**

147. Finally, China also fails to demonstrate that its export quota on refractory-grade bauxite is “temporarily applied.” China states that “temporarily applied” means that the export restriction may only be applied as long as necessary to prevent or relieve a critical shortage. As we have discussed, there is no basis on which to conclude that a critical shortage of refractory-grade bauxite exists. Thus, the application of the export quota is also not appropriately limited in time.

**VII. Conclusion**

148. China took on obligations as part of its negotiated accession to the WTO and to the benefits of its membership in this organization. Those obligations included ones that would ensure that China did not prevent access by other WTO Members to its supplies of raw materials. China now, for reasons that do not appear to be anything other than industrial policy, appears to want to forego those obligations. We regret that through dialogue over many years, we have been unable to persuade China to change course. We ask the Panel to help ensure that China abides by its commitments. This concludes the joint oral statement of the complainants.

**TABLE OF EXHIBITS**

<b>Joint Exhibit No.</b>	<b>Description</b>
JE-134	China's Proffered Justifications for the Export Duties and Export Quotas Imposed on the Products at Issue