

E-ALERT | International Trade

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CHINA'S EXPORT RESTRICTIONS VIOLATE WTO RULES

According to news reports, a World Trade Organization (WTO) panel has found that China's restraints on exports of certain raw materials violate WTO rules. This finding could directly affect any future challenge to China's trade restrictions on rare earths, tungsten, and antimony.

A story published last week in *Inside U.S. Trade* provides the first glimpse into the panel's reasoning in the raw materials case.¹ According to sources familiar with the ruling, the panel found (i) that the affirmative defenses of GATT Article XX do not extend to China's accession commitments on export duties; (ii) that China failed to demonstrate that its quotas and licensing requirements on raw materials exports fall within the scope of an Article XX exception; and (iii) that China failed to administer at least one measure in a uniform, impartial, and reasonable manner, as required by GATT Article X.²

If accurate, the story suggests that China may not be able to invoke GATT Article XX to defend certain export duties on rare earths, tungsten, and antimony. The account also implies that China may need to marshal more persuasive evidence in support of any claim that its quantitative and licensing restrictions on such exports are either "necessary to protect human, animal or plant life or health" or "relat[ed] to the conservation of exhaustible natural resources [and] made effective in conjunction with restrictions on domestic production or consumption."

The WTO panel report in the raw materials case will reportedly be issued as soon as final translations are complete, perhaps within two weeks. At that time, we will issue a more detailed alert summarizing the decision and its implications for any future WTO case involving rare earths, tungsten, and antimony.

Meanwhile, please click [here](#) for our February 2011 client alert regarding the confidential interim panel report in the raw materials case, and its potential implications regarding the WTO-inconsistency of China's export restrictions on rare earths, tungsten, and antimony.³

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¹ "Raw Materials WTO Panel Strikes Down Chinese Defense Under Article XX," *Inside U.S. Trade* (17 June 2011).

² *Id.*

³ "China's Export Restrictions on Rare Earths, Tungsten, and Antimony and The World Trade Organization," *E-Alert*, Covington & Burling LLP (22 Feb. 2011).

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