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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS431]

WTO Dispute Settlement Proceeding Regarding China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that the United States has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”). That request may be found at www.wto.org contained in a document designated as WT/DS431/6. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 27, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR-2012-0005. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Jared Wessel, Assistant General Counsel, or Ben Kostrzewa, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (“URAA”) (19 U.S.C. § 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by the United States

On June 27, 2012, the United States requested the establishment of a panel regarding China's restraints on the export from China of various forms of rare earths, tungsten and molybdenum (collectively, the “materials”). These export restraints include export duties on the materials; quantitative restrictions such as quotas on the export of the materials; and additional requirements that impose restrictions on the trading rights of enterprises seeking to export various forms of rare earths and molybdenum, such as prior export performance and minimum registered capital requirements. In addition, China administers these export quotas on the materials in a manner that is not uniform, impartial, or reasonable, such as by the use of criteria in the application and allocation process that lack definition or do not contain sufficient guidelines or standards in how

they should be applied.

Forms of rare earths include, but are not limited to, items falling under the following eight-digit HS numbers identified in the *Announcement No. 27 Issuing the 2012 Tariff Implementation Program* (State Council Customs Tariff Commission, shuiweihui, No. 27, issued December 9,

2011, effective January 1, 2012) (hereinafter, the “*2012 Tariff Implementation Program*”):

25309020, 26122000, 28053011, 28053012, 28053013, 28053014, 28053015, 28053016, 28053017, 28053019, 28053021, 28053029, 28461010, 28461020, 28461030, 28461090, 28469011, 28469012, 28469013, 28469014, 28469015, 28469016, 28469017, 28469019, 28469021, 28469022, 28469023, 28469024, 28469025, 28469026, 28469028, 28469029, 28469031, 28469032, 28469033, 28469034, 28469035, 28469036, 28469039, 28469041, 28469042, 28469043, 28469044, 28469045, 28469046, 28469048, 28469049, 28469091, 28469092, 28469093, 28469094, 28469095, 28469096, 28469099, 72029911, 72029919,

72029991 and 72029999. Forms of rare earths also include, but are not limited to, items falling under the following 10-digit Chinese Customs Commodity Codes (“CCC Codes”), as identified in the *Notice on Issuing the “2012 Export Licensing Management Commodities List”* (Ministry of Commerce and General Administration of Customs Notice No. 98 (December 30, 2011)),

(hereinafter the “*2012 Export Licensing Management Commodities List*”): 2530902010, 2530902090, 2612200000, 2805301100, 2805301200, 2805301300, 2805301400, 2805301510, 2805301590, 2805301600, 2805301700, 2805301913, 2805301914, 2805301915, 2805301990, 2805302110, 2805302190, 2805302910, 2805302990, 2846101000, 2846102000, 2846103000, 2846109010, 2846109090, 2846901100, 2846901200, 2846901300, 2846901400, 2846901500, 2846901600, 2846901700, 2846901920, 2846901930, 2846901940, 2846901970, 2846901980,

2846901991, 2846901992, 2846901999, 2846902100, 2846902200, 2846902300, 2846902400, 2846902500, 2846902600, 2846902810, 2846902890, 2846902900, 2846903100, 2846903200, 2846903300, 2846903400, 2846903500, 2846903600, 2846903900, 2846904100, 2846904200, 2846904300, 2846904400, 2846904500, 2846904600, 2846904810, 2846904890, 2846904900, 2846909100, 2846909200, 2846909300, 2846909400, 2846909500, 2846909600, 2846909910, 2846909990, 7202991100, 7202991200, 7202999191 and 7202999199.

Forms of tungsten include, but are not limited to, items falling under the following eight-digit HS numbers, as identified in the *2012 Tariff Implementation Program*: 26209910, 28259011, 28259012, 28259019, 28418010, 28418020, 28418030, 28418040, 28418090, 28499020, 72028010, 72028020, 81011000, 81019400 and 81019700. Forms of tungsten also include, but are not limited to, items falling under the following 10-digit CCC Codes, as identified in the *2012 Export Licensing Management Commodities List*: 2611000000, 2620991000, 2825901100, 2825901200, 2825901910, 2841801000, 2841802000, 2841803000, 2841804000, 2849902000, 8101100010, 8101100090, 8101940000 and 8101970000.

Forms of molybdenum include, but are not limited to, items falling under the following eight-digit HS numbers, as identified in the *2012 Tariff Implementation Program*: 26131000, 26139000, 28257000, 28417010, 28417090, 72027000, 81021000, 81029400 and 81029700. Forms of molybdenum also include, but are not limited to, items falling under the following 10-digit CCC Codes, as identified in the *2012 Export Licensing Management Commodities List*: 2613100000, 2613900000, 2825700000, 2841701000, 2841709000, 7202700000, 8102100000, 8102940000 and 8102970000.

USTR believes that these export restraints and China's administration of and manner of imposing these export restraints are inconsistent with China's obligations under Articles X and XI of the *General Agreement on Tariffs and Trade 1994*; paragraphs 2(A)2, 5.1 and 11.3 of Part I of the *Protocol on the Accession of the People's Republic of China* (“Accession Protocol”); and the provisions of paragraph 1.2 of Part I of the Accession Protocol (which incorporates commitments in paragraphs 83, 84, 162 and 165 of the *Report of the Working Party on the Accession of China*).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR-2012-0005. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2012-0005 on the home page and click “search”. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Submit a Comment.” (For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page.)

The www.regulations.gov site provides the option of providing comments by filling in a “Type Comments” field, or by attaching a document using an “upload file” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter –

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. § 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at www.regulations.gov, docket number USTR-2012-0005. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's website at www.ustr.gov, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the website of the World Trade Organization, www.wto.org. Comments open to public inspection may be viewed on the www.regulations.gov website.

Bradford L. Ward,

Assistant United States Trade Representative

for Monitoring and Enforcement

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