

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO SECTION 18
OF THE PROTOCOL ON THE ACCESSION OF THE
PEOPLE'S REPUBLIC OF CHINA ("CHINA")**

Questions and Comments from the United States to China

The following communication, dated 14 October 2005, is being circulated at the request of the Delegation of the United States.

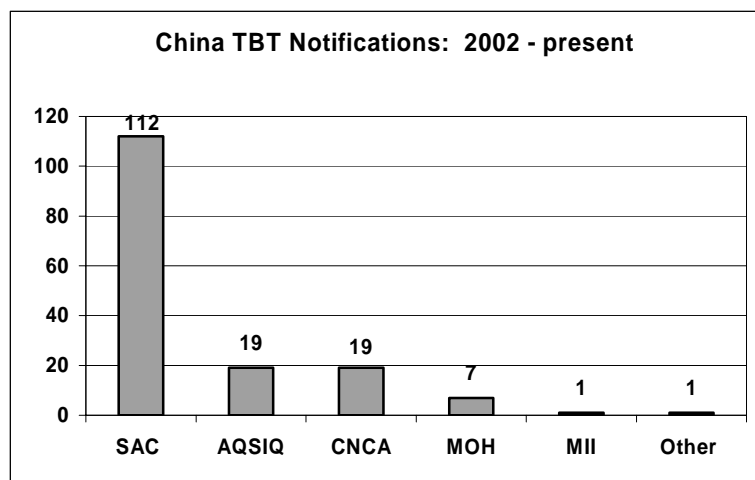
I. NOTIFICATIONS

1. The United States has observed a significant increase in the number of Chinese TBT notifications. To date for 2005 (through notification CHN/159), China has notified 96 proposed technical regulations, compared with 23 in 2004 and 28 in 2003.

2. The vast majority of China's notifications indicate the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) or its subordinate organizations, the Standardization Administration of China (SAC) and the Certification and Accreditation Administration of the People's Republic of China (CNCA), as the "agency responsible" (see chart on page 2).

3. The United States remains concerned that very few of the trade-related technical regulations promulgated by China's other ministries have been notified to the WTO TBT Committee. Since China's accession to the WTO, only seven trade-related technical regulations of the Ministry of Health (MOH) have been notified and one from the Ministry of Information Industry (MII). Several ministries, including the State Environmental Protection Administration (SEPA), and the State Food and Drug Administration (SFDA), have not notified any trade-related technical regulations (see chart on page 2). Several of these ministries have informed U.S. stakeholders of regulatory activities informally on an *ad hoc* basis. The United States appreciates these efforts to share their regulatory activities with certain industry and government representatives. However, in order to ensure that all interested persons receive the full benefit of China's WTO transparency obligations, the U.S. urges China to notify the WTO TBT Committee of all draft technical regulations and conformity assessment requirements that may affect trade, and to provide a reasonable period for comment.

4. In paragraph 325 of the 10 November 2001 Report of the Working Party on the Accession of China, in response to Members concerns with China's lack of regulatory transparency, China's representative indicated that laws and regulations relating to foreign trade issued by the State Council and rules issued by China's departments were published in the "Gazette of the State Council," the "Collection of the Laws and Regulations of the People's Republic of China" and the "MOFTEC Gazette." Do these journals continue to include information on all laws and regulations relating to foreign trade, such as trade-related technical regulations? Likewise, do these journals include proposed laws and regulations relating to foreign trade? If so, does China use this information to identify relevant proposals to notify to the WTO?



II. CHANGES IN CHINA'S STANDARDIZATION AND REGULATORY SYSTEM

5. On 18 June 2004, SAC circulated a draft report entitled "The Study on the Construction of National Technical Standard System" for public comment. The draft report indicates that transparency is a key element in China's standards system. It states that one of the basic requirements is that "the process of standards formulation and modification shall be open and transparent so that all relevant parties from both advantaged and disadvantaged sides can participate." On 24 September 2004, SAC issued another draft report, entitled "The Study of China Technical Standard Development Strategy." This draft report focuses on the high-tech sector and China's industrial competitiveness, and it also emphasizes the importance of the "opening" and "transparency . . . of the standardization mechanism" and making "a full reflection of comments made by each of the interested parties in the standards."

- (a) We would appreciate updated and detailed information on changes China is contemplating in its standards-setting process, in particular any steps to implement the important principles of openness and transparency and to allow meaningful participation by interested parties. To what extent is it envisioned that interested parties from other WTO Members will be able to participate in the standards-setting process in China?
- (b) Will new regulations or other mechanisms be put in place to better ensure coordination between ministries and agencies in the development of standards and technical regulations?

III. INTERNATIONAL STANDARDS

6. Information provided during the last review (G/TBT/W/246) indicated that, in April 2004, SAC began an anticipated 14-month review of the 21,000 existing national standards to "check their relevance to market requirements and alignment with international standards." Could China provide further information on the status of this review and its results?

IV. CONFORMITY ASSESSMENT PROCEDURES

7. In the Services Schedule accompanying its Protocol of Accession, China committed to permit foreign service suppliers that have been engaged in inspection services in their home countries for more than three years to establish minority foreign-owned joint venture technical testing, analysis and freight inspection companies upon accession, with majority foreign ownership no later than two years after accession (and wholly foreign-owned subsidiaries four years after accession). In paragraph 195 of its Working Party Report, China further committed as follows: "Concerning foreign and joint venture conformity assessment bodies, certain members of the Working Party noted that China should not maintain requirements which had the effect of acting as barriers to their operation, unless otherwise specified in China's Schedule of Specific Commitments. The representative of China replied that China would not maintain such requirements. Some members also observed that all foreign or joint venture conformity assessment bodies that met China's requirements should be eligible for accreditation and accorded national treatment. The representative of China confirmed that the accreditation requirements would be transparent and provide national treatment to foreign conformity assessment bodies. The Working Party took note of these commitments."

8. The United States understands that, to date, China has not accredited or otherwise recognized the competence of any foreign conformity assessment bodies for purposes of obtaining the Chinese Compulsory Certification (CCC).

- (a) When does China plan to accredit or otherwise recognize the competence of foreign conformity assessment bodies for purposes of obtaining the CCC certification?
- (b) The United States thanks China for granting authority to perform annual follow-up assessment to select foreign enterprises and allowing this testing to be performed outside China. Does China intend to extend this authority to additional foreign enterprises? If not, why not?

9. China's *First Catalogue of Products Subject to Compulsory Certification* lists products requiring the CCC mark (132 product categories). In response to questions raised in the context of the 2004 transitional review, China indicated that two categories had been added to the CCC catalogue: decorative building products (e.g., paints, coatings and tiles) and security products. China indicated that these changes had not been notified to the TBT Committee as they would not affect trade.

10. The United States understands that China has recently begun enforcing these and other additions to the CCC catalogue, and U.S. shipments of the relevant products are now unable to enter the Chinese market without the CCC mark. As the addition of the two above-described product categories affects trade, the United States requests that China notify these and any other additions to the CCC catalogue and that these changes not be enforced until all WTO Members have been allowed an adequate period for comment and suppliers have been provided a reasonable period to comply, as required by the TBT Agreement. Will China consider taking those steps?

11. The United States notes that China has recently notified the addition of six categories of toys to the CCC catalogue.

- (a) Does China plan on making further revisions to the list of products requiring the CCC mark and notifying the proposed changes for comment to WTO Members?
- (b) Will China consider removing products (e.g., low-risk products and/or components) that may no longer justify mandatory certification? If not, why not?

12. U.S. suppliers continue to express concerns with the operation of the CCC program and associated costs. Concerns have also been expressed regarding certification requirements for components that will be re-exported as a finished product and with inconsistencies in the process for obtaining exemptions. Are there plans to review the overall operation of the CCC program?

V. DISTILLED SPIRITS

13. China maintains a mandatory standard on distilled spirits (GB2757-81) that sets maximum limits in products of naturally occurring substances, known as superior alcohols or fusel oils, that result from the production process. However, the Joint UN FAO/WHO Expert Committee on Food Additives, like U.S. regulators of alcohol, has recognized that superior alcohols are safe for human consumption. China's Ministry of Health has also adopted regulations which allow superior alcohols to be used as additives in food products without limitations on the quantity of those alcohols. The United States thus strongly encourages China to eliminate this standard unless it can justify the standard on the basis of scientific evidence that superior alcohols are harmful in some way to human health.

- (a) What scientific evidence does China use to justify the need to set a limit on superior alcohols in distilled spirits in products?
- (b) The United States understands that China is considering revisions to this standard. If so, what would be the time frame for such an action? When does China intend to notify the proposed revisions?
- (c) Given that China currently allows superior alcohols to be used as additives in food products, please explain why China does not allow products containing naturally-occurring levels of superior alcohols above a certain level.

14. China also imposes various labelling requirements for distilled spirits. For example, it requires that spirits product labels include a "bottling date." Under international practice relating to wines and spirits, however, the date of manufacture (production or bottling date) is not required. As many spirits products consist of a blend of spirits that are aged for varying periods, a single "date of manufacture" is often not possible to specify, would not represent the actual age of the product, and would confuse consumers regarding the actual age of the product. Please explain the rationale for requiring that spirits product labels include a "bottling date."

15. With regard to China's regulations on safety labelling, the United States recognizes that font size for mandatory information in Chinese may be regulated for the purposes of legibility, but it is not clear why the font size on the safety label cannot be adjusted to fit onto the bottle in a way that does not obscure the producer's label. What is China's rationale for this requirement?

16. In order to help protect spirits products against counterfeiting, would China consider permitting only the trademark owner/producer to apply for the mandatory Chinese safety label? If not, why not?

VI. CHEMICALS

17. China's *Provisions on the Environmental Administration of New Chemical Substances*, issued by SEPA on 12 September 2003, require that all new chemical substances be tested and registered before being introduced into the Chinese market. The United States applauds China's efforts to protect the environment, SEPA's efforts and continued technical exchanges with the U.S. Environmental Protection Agency (EPA) on the issue, and increases of approved new chemicals. However, problems with the implementation of this regulation continue to exist.

- (a) Before implementation of the *Provisions on the Environmental Administration of New Chemical Substances* on 15 October 2003, China created the Inventory of Existing Chemical Substances in China (IECSC) consisting of all chemicals previously in the Chinese market. The United States understands that not all chemicals in commerce before implementation are recorded on this registry, however. What is the procedure for adding these substances to the registry?
- (b) There appears to be insufficient scientific evidence to justify that eco-toxicological tests of unique plant and animal species indigenous to China be performed in Chinese laboratories. Will China therefore accept eco-toxicological tests performed in other regulated countries?
- (c) The United States understands that a low-volume exemption is granted for research and development purposes. When will SEPA issue a list of chemicals that would qualify for a low volume exemption?
- (d) Once the Executive Review Committee has approved a chemical substance, please describe the process for adding it to the IECSC.

VII. REDUCTION OF HAZARDOUS SUBSTANCES AND WASTE IN ELECTRONICS AND ELECTRICAL EQUIPMENT (ROHS AND WEEE)

18. While the United States applauds China's efforts in environmental protection and to solve the electronic waste problem, concern exists about the upcoming guidelines for RoHS and WEEE in China. We appreciate the recent notification of MII's *Administration on the Control of Pollution Caused by Electronic Information Products* (G/TBT/N/CHN/140).

19. Regarding the WEEE guidelines, there are concerns about a China-specific labelling process that will be burdensome for WTO Member countries who import electronics into China. What steps is China taking to minimize such burdens on industry?

VIII. RADIO FREQUENCY IDENTIFICATION

20. During the last review, the United States noted its understanding of work underway in China's Radio Frequency Identification (RFID) Working Group to develop a RFID policy for China and noted our expectation that, in formulating this policy, China will choose a policy that is as least trade restrictive as necessary to achieve China's legitimate policy objectives. The United States would be very concerned if China pursued a policy imposing a mandatory RFID standard that was incompatible with international standards and would limit the ability of firms and consumers to adapt RFID technologies to their current and possible future needs. We appreciated China's clarification at that time that a draft regulation for RFID did not yet exist and its confirmation that it would take into consideration relevant international standards and, as appropriate, provide notification of its proposal to WTO Members. Is our understanding correct that the situation has not changed since the last review?
