

WORLD TRADE ORGANIZATION

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Committee on Technical Barriers to Trade

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TRANSITIONAL REVIEW MECHANISM IN CONNECTION WITH PARAGRAPH 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Questions and Comments from Japan to China

The following communication, dated 6 October 2006, is being circulated at the request of the delegation of Japan.

1. Japan welcomes that, in the fifth year after accession, implementation by China of its commitments on Technical Barriers to Trade (TBT) has progressed and entered into a cruising phase. The transitional review mechanism (TRM) could be useful for making those transitional efforts more efficient and productive, and it is a pleasure for Japan to contribute to this process.

2. In accordance with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, which states that "China shall provide relevant information to each subsidiary body in advance of the review" and in the spirit of cooperation to render the TRM process most efficient and effective, Japan requests China to provide, in advance of the meeting of the TBT Committee, the responses and relevant information to the following questions and comments.

I. CCC SYSTEM

3. Japan would like to raise the China Compulsory Certification (CCC) system as one of our concerns on China's implementation of its commitments on TBT. Japan has mainly two concerns on CCC system; one is uncertain application of national treatment in conformity assessment procedure, and the other is complicated and burdensome CCC procedure which would create unnecessary obstacles to international trade

A. ACCREDITATION OF FOREIGN CONFORMITY ASSESSMENT BODIES

4. Under the CCC system, no foreign conformity assessment bodies (CABs) have been accredited by China according to the Article 13 of the Regulations of the Peoples Republic of China on Certification and Accreditation, which permits only Chinese CABs to engage in CCC certification activities. Japan considers that such provision is not consistent with the objective of Article 6.4 of the TBT agreement and the China's commitment in Paragraph 195 of the Report of the Working Party. In this regard, China stated at the previous TRM that foreign CABs may engage in CCC certification activities as long as Mutual Recognition Agreement (MRA) is concluded. However, Article 6.4 of the TBT agreement does not require such a condition. Therefore Japan would like to request China to permit foreign CABs to participate in CCC certification activities under conditions no less favourable than those accorded to Chinese CABs in light of Article 6.4 of the TBT agreement.

B. INITIAL FACTORY INSPECTION

5. Japan understands that foreign testing laboratories are not permitted to conduct an initial factory inspection because the Certification Accreditation Administration (CNCA) has designated only Chinese domestic facilities as testing laboratories for the CCC marking. Although China stated at the previous TRM that China fulfilled its commitment of not exceeding 90 days with regard to the CCC certification period, in some cases it takes longer period than 90 days (sometimes 6 to 12 months) for factories located outside of China to obtain the CCC certification because they need to wait for a visit of Chinese auditors for initial factory inspection. In order to shorten the time period taken for certification, Japan would like to request China to designate foreign testing laboratories to conduct an initial factory inspection.

6. When CCC certified factories manufacture products which are outside the scope of already certified product category, they have to apply for another initial factory inspection. Japan would like China to abolish the duplicated initial factory inspection because such duplication causes unnecessary burden on manufacturers.

7. Initial factory inspection is conducted upon the completion of type test. Since the necessity of initial factory inspection can be determined prior to the type test, Japan would like to request China to conduct initial factory inspection in parallel with the type test.

C. PERIODIC FACTORY INSPECTION

8. All factories manufacturing products to which the CCC system is applied are subject to inspection by CABs once a year. Such frequent inspection puts a burden on Japanese manufacturers. Japan would like to know the explicit reason for necessity of such a frequent inspection and request China to reduce the number of inspections according to product type. In particular, Japan would like China to decrease the frequency of the periodic factory inspection for low- risk products.

9. At the previous TRM, China stated that if factories decide to stop manufacturing products which are subject to the CCC certification and notify the CABs of it, the periodical factory inspection would be automatically halted. However, Japan recognizes this procedure does not work properly. Therefore, Japan would like to request China to let Administration for Industry and Commerce and its subordinate organizations fully abide by the procedure.

D. CCC MARK

10. For the CCC mark labelling, companies are required to purchase stickers with the CCC mark from CNCA or apply to CNCA for permission to print/impress the CCC mark on their products. The large minimum purchase unit and the restriction on common use of CCC mark with other certified product models cause the unnecessary increase of purchase cost and burden of label management for Japanese companies. Japan would like to know the reason why the purchase and permission to use the CCC mark are required. In addition, Japan believes that it is possible for CNCA to identify the factory manufacturing the products also by introducing the system whereby a certified factory labels its products the CCC mark and the factory's identification number by itself. Japan would like to know whether China intends to introduce such a self-marking system in the future.

E. SPARE PARTS CERTIFICATION

11. Spare parts and components to which the CCC system is applied (such as fuse, relay and plug) are not subject to the CCC certification in case they are incorporated in final products which are exported to China. However, the CCC certification is required when they are exported as a single unit for repair even if they are finally incorporated in CCC certified final products. Japan would like to

request China to exempt single parts and components which will be ultimately incorporated in CCC certified final products from CCC certification.

II. THE ADMINISTRATION ON THE CONTROL OF POLLUTION CAUSED BY ELECTRONIC INFORMATION PRODUCTS

12. The Administration on the Control of Pollution Caused by Electronic Information Products (hereinafter referred to as the "Administration") promulgated on February 2006, will be enforced from March, 2007. Although some of Japan's comments on China's WTO/TBT Notification (G/TBT/CHN/140 dated 26 September 2005) were reflected in the Administration, some concerns still remain.

13. The Administration stipulates the establishment of national and sectoral standards. Japan understands the sectoral standards for the first step of control will provide threshold levels of designated harmful substances, requirements for labelling and etc. Those national or sectoral standards should be based on international standards and should not be trade-restrictive in accordance with the TBT Agreement.

14. Although we have heard that the TBT notifications of above-mentioned standards were scheduled between late August and early September of this year, we have not received such notifications yet. Japan, therefore, would like to know when China will make the TBT notification of these standards. Besides, if it is difficult for China to provide a reasonable interval between the TBT notification and the enforcement of the Administration, Japan would like China to postpone the enforcement of the Administration since certain period will be necessary for manufactures, importers and retailers to prepare for the new system.

III. REGISTRATION OF INITIAL IMPORTS OF CHEMICAL PRODUCTS AND SYSTEM FOR ENVIRONMENTAL MANAGEMENT ON THE IMPORT AND EXPORT OF TOXIC CHEMICALS

15. In paragraph 196(a) of the Report of the Working Party on China's accession to WTO, China has committed (i) to enact and implement, within one year after its accession, a new law and relevant regulations regarding assessment and control of chemicals for the protection of the environment, in which complete national treatment and full consistency with international practices will be ensured and (ii) to ensure that chemicals listed in the "inventory chemicals" annexed to the above new law and its regulations will be exempted from a registration obligation, and that a uniform assessment procedure will be established for domestic and imported products under the new law and its regulations.

16. To establish a new system, China drafted and published an initial version of the Import and Export Registration Regulations of Dangerous Chemicals in September 2002, and an initial version of the Provisions on the Environmental Administration of New Chemical Substances in December 2002 to collect tentative comments from interested parties in and outside of China. Japan understands that the final version of the draft of the Import and Export Registration Regulations of Dangerous Chemicals has not yet been published. On the other hand, the Provisions on the Environmental Administration of New Chemical Substances were enforced on 15 October 2003, and the detailed administrative rules (tentative) were published on 9 December 2003.

A. REGISTRATION OF INITIAL IMPORTS OF CHEMICAL PRODUCTS

17. We appreciate China's effort in enforcement of "Provisions on the Environmental Administration of New Chemical Substances". However, since there are some unclear points in the details and several problems as described below, they do not seem to be practically implemented.

18. First, Japan understands that the simplified notification is approved only in the case of importing chemical substances for the purposes of research and technological development. However, requiring the same range of data from all importers regardless of import volume would impose an excessive economic burden on importers of small amounts and might affect their importation. China answered at the previous TRM that it had been drawing up the detailed management rules including that on low-volume chemicals and chemicals with special uses, etc. Japan would like China to introduce promptly the simplified notification for importation of small amounts of new chemical substances.

19. Second, the new regulation has a provision that the eco-toxicological data of new chemical substances shall include those obtained through biological tests performed in China using China's test organisms. On the other hand, in order to enhance efficiency and speed of assessment as well as to avoid unnecessary test using vertebrate animals, OECD member countries mutually accept testing results with using the GLP (Good Laboratory Practice) system, and its mutual benefits are large for member countries. The GLP system is open to non-OECD member countries as well, and we understand that India has joined the system. Japan asked at the previous TRM whether China would join the GLP system or accept the testing results in which the biological tests are performed out of China by non-Chinese test organisms. China answered that they had made an effort to improve the capacity of testing institutes in order to join the GLP system. Japan would like to know the progress of China's preparation to join the GLP system.

20. Third, certain chemicals (such as certain polymers) are exempted from the notification. However, its procedure for exemption of notification is too burdensome. Japan would like to request China to simplify its procedure.

B. CHINA'S REGISTRATION SYSTEM FOR ENVIRONMENTAL MANAGEMENT ON THE IMPORT AND EXPORT OF TOXIC CHEMICALS

21. The Chinese State Environment Protection Agency, SEPA, announced on 28 December 2005 via the publication of circular 65 of 2005 that it had revised the "Highly Restricted Imported and Exported Toxic Chemicals" list, and that from 1 January 2006 it would be necessary to obtain both a Registration Certificate and a Clearance Notification in order to import chemicals contained on the list under the "Regulations for Environmental Management on the Initial Imports of Chemical products and the Import and Export of Toxic Chemicals". Several chemicals such as dichloromethane and chloroform, which are widely used in industry, were added to the revised list of toxic chemicals.

22. First, Japan considers that China's "Environmental Management Registration System for the Import and Export of Toxic Chemicals" has import restrictive nature, because only foreign exporters to China would be required to obtain a Registration Certificate from SEPA which would cost 10,000 US dollars, and a Clearance Notification for import. Japan considers that the regulation system may be inconsistent with TBT Agreement. Specifically, Article 2.1 which stipulates treatment no less favorable than that accorded to like products of national origin, with respect to products imported from the territory of any member, Article 2.2 which stipulates the prohibition of unnecessary import restrictions and Article 2.9 which stipulates notification of a proposed technical regulation to Members through the Secretariat at an early stage, as well as provision of reasonable time for Members to submit comments in writing. Japan would like to hear an explanation about our concerns mentioned above from China.

23. Second, Japan would like to ask about a China's future action. SEPA released a draft of "Import and Export Registration Regulation of Dangerous Chemicals" for public comment in September 2002, this regulation has not yet been implemented due to delayed coordination among government agencies. This new draft regulation clearly stipulates (in Article 33) the abolition of the present "Regulation for Environmental Management on the Initial Imports of Chemical Products and

the Import and Export of Toxic Chemicals” simultaneously with enforcement of the new regulation. Japan strongly welcomes immediate implementation of this new regulation by China. Japan would like to know the schedule for the implementation of new regulation.

24. Third, Japan has heard from SEPA that it had added 158 highly environmentally toxic chemicals selected from 4,200 chemicals listed on the “Regulation of Dangerous Chemicals” to the “Highly Restricted Imported and Exported Toxic Chemicals” list. Japan would like to ask China whether it has a plan to add any other chemicals on the list. If yes, Japan would like to know the schedule.

IV. THE TECHNICAL REGULATION OF WIRELESS LAN (WAPI)

25. In terms of consistency with the TBT Agreement, Japan is concerned with a new technical regulation of wireless LAN (WAPI) that China is planning to introduce into the domestic market.

26. China’s relevant authority is reported to make public the WAPI algorithm so that foreign manufacturers can enter the wireless LAN market in China. However, it is also reported that China’s relevant authority will disclose to domestic manufacturers the technical content of WAPI 6 months before foreign manufacturers can obtain this information from China’s relevant authority. If this is indeed true, Japan is concerned that such a measure might be inconsistent with Article 2.1 of the TBT Agreement because China seems to give preferential treatment to products of national origin. Japan would like China to provide the detailed information and the reason why China will take such a measure.

27. WAPI is incompatible with relevant international standards such as WPA (Wi-Fi Protected Access) developed by IEEE and the Wi-Fi alliance. In addition, WAPI is not international standard, either. As there would be a possibility that the technical regulation of WAPI might be inconsistent with 2.2 and 2.4 of the TBT Agreement due to the lack of compatibility, Japan would like China to explain its view on this point.
