

WORLD TRADE ORGANIZATION

G/TBT/W/271
16 October 2006

(06-4963)

Committee on Technical Barriers to Trade

Original: English

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

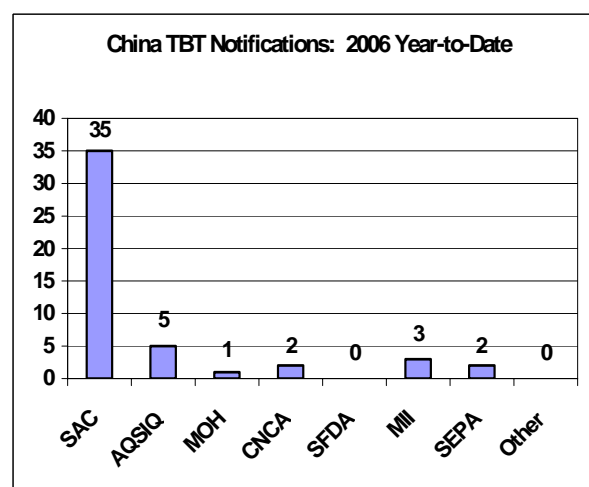
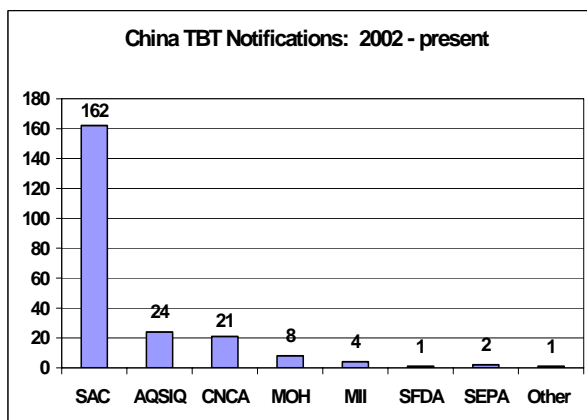
Questions and Comments from the United States to China

The following communication, dated 12 October 2006, is being circulated at the request of the delegation of the United States.

I. TRANSPARENCY

1. A significant number of technical regulations continue to be introduced or amended without the advance notification required by the TBT Agreement. This is particularly the case for regulations issued outside the control of the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ).

2. The vast majority of China's notifications are still from AQSIQ and its sub-unit, the Standardization Administration of China (SAC). Few of the trade-related technical regulations promulgated by China's other ministries (Ministry of Health (MOH), Ministry of Information Industry (MII), State Environmental Protection Administration (SEPA), and the State Food and Drug Administration (SFDA)) are consistently notified to the TBT Committee. The United States urges China to notify the TBT Committee of all draft technical regulations and conformity assessment procedures that may affect trade and to provide a reasonable period for comment and a reasonable interval between publication and entry into force. The charts below provide a breakdown of notifications by agency.



3. The problems relating to transparency, moreover, are not limited to availability of information on new regulations. Even when information is available on new regulations or regulatory proposals, the opportunity for foreign stakeholders to comment is either limited or does not exist at all.

4. A recent example illustrates the United States' concern about China's notification practices. In both the March 2006 and June 2006 meetings of the TBT Committee, several Members including the United States expressed concern about new requirements on toxic chemicals in China that had entered into force on 1 January 2006, five days after the measure was announced. Specifically, Members asked China to notify the regulations to the WTO TBT Committee, provide opportunity for comment, and allow a reasonable period of time to comply. Despite these repeated requests in the Committee and through bilateral channels, China notified the measure on 12 June 2006, with no opportunity for comment and no transition period.

5. The United States continues to urge China to notify the TBT Committee of all draft technical regulations and conformity assessment requirements that may affect trade, and to provide a reasonable opportunity for comment and compliance.

II. INTERNATIONAL STANDARDS

6. The United States appreciates the information provided by China last year on the results of its review of its existing national standards to ascertain their relevance to current market requirements and alignment with international standards. We note that implementation documents associated with China's Law on Standards limit its definition of "international standards" to standards issued by the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), International Telecommunication Union (ITU) and other international organizations recognized and publicized by ISO. China will recall that in response to questions raised at previous TBT Committee meetings, the ISO indicated it did not have in place procedures or criteria to evaluate the bodies it had identified in its publication of international standards bodies. As noted in previous reviews, we remain concerned that China may be unnecessarily restricting itself to the use of standards from certain identified bodies. We appreciate the explanations that have already been provided. Nevertheless, we recall that the TBT Committee has agreed upon a Decision containing principles for international standards (G/TBT/1/Rev.8, IX) to assist Members in implementing relevant obligations in the TBT Agreement. In considering future amendments to its Law on Standards and/or implementing measures, we encourage China to take these principles into consideration. That being said, we welcome the serious efforts that China has made to contribute to the development of standards from a broader range of bodies, and we welcome China's utilization of these standards in its domestic regulatory system. We encourage China to continue to consider the use of these standards from a broader range of bodies when appropriate for domestic purposes, while continuing to take into consideration the principles of G/TBT/1/Rev.8, IX.

III. CONFORMITY ASSESSMENT PROCEDURES

7. U.S. suppliers continue to express concerns with the operation of the China Compulsory Certification (CCC) system and associated costs. The United States welcomed the statement by China during last year's transitional review that it was giving serious consideration to the concerns Members had raised. China noted that while ensuring that the goal of safety protection was met, it was exploring the possibility of adopting different conformity assessment procedures, including supplier's declaration of conformity. Can China provide an update of its review and whether any concrete steps have been taken to make adjustments in the light of concerns raised?

8. The United States understands from information provided at the last review that China's, "Regulations on Certification and Accreditation" limit its ability to recognize foreign bodies to undertake compulsory certification work to a framework of mutual recognition agreements (MRAs)

signed between China's certification and accreditation authorities or authorized bodies under the State Council and the foreign counterparts. In addition, the Committee was informed that China had signed cooperation agreements with more than 20 countries or regions. Have any of China's MRAs provided for the acceptance of testing or certification performed by competent bodies located in other countries? Has China notified any of these MRAs pursuant to Article 10.7? Has China considered providing alternative approaches to facilitate the acceptance of conformity assessment results from bodies located in other countries?

9. Recently, the United States sought clarification from Chinese authorities as to why revisions to the "Administrative Measures for Compulsory Product Certification" issued by the Certification and Accreditation Administration (CNCA) had not been notified to WTO members for comment. China's response was that the revision is a draft for comment. This response is troubling as the purpose of the WTO notifications is to make others aware of proposed changes and to afford an opportunity for comment on them before a final decision is taken. The response creates doubt as to whether China will consider comments it receives if and when it does make a notification to the WTO. Could China please clarify the status of the proposed amendments which have been made public but which have not yet been notified pursuant to the TBT Agreement?

IV. MEDICAL DEVICES

10. The United States recognizes China's efforts to eliminate duplication in certification of eight categories of medical devices, as stated in Notice Number 70 issued on 30 April 2006 by SFDA and AQSIQ. However, the United States remains seriously concerned that a number of duplicative requirements remain, specifically, two application processes, two application fees, and two on-site factory inspections and audits. At the June 2006 TBT Committee Meeting, China noted that it would provide a reply to this concern at the next meeting of the TBT Committee. Can China provide an update on its plans to eliminate remaining testing and certification redundancies for medical devices?

V. ADMINISTRATION ON THE CONTROL OF POLLUTION CAUSED BY ELECTRONIC INFORMATION PRODUCTS (G/TBT/N/CHN/140)

11. The United States continues to have serious concerns about China's "Management Measures for Controlling Pollution Caused by Electronic Information Products," scheduled to go into effect on 1 March 2007. With less than five months before the 1 March 2007 implementation date, no measures except a general framework for the proposal frequently referred to as "China RoHS" regime (given its similarity to the European Union's regulation) have been notified to the WTO. It seems unlikely that China can implement such a regulatory framework on 1 March 2007 requiring labelling, as well as testing and certification of a catalogue of products. Further, it seems unlikely that a less-than-five month period provides domestic and foreign companies, especially those producing products not subject to EU RoHS, with sufficient time to research and prepare a detailed hazardous substance table to ensure that all products are properly labelled. Also, currently there are no details on the testing and certification protocols for the catalogue of products. Companies need sufficient time to adapt their products or methods of production to the requirements of China.

- (a) The United States is aware of two draft documents related to China RoHS that were issued by the Ministry of Information Industry but have not been notified to the WTO: (a) "Requirements for Concentration Limits for Certain Hazardous Substances in Electronic Information Products"; and, (b) "Marking for Control of Pollution Caused by Electronic Information Products." What is their status? Are they available for comment, and if so, why has China not notified the measures to the WTO? Was notice of their availability published and, if so, when and in which publication? Does China intend to notify these two measures to the WTO, provide an

opportunity for comment, and allow a reasonable period of time to comply? If not, why not?

- (b) Please explain the necessity for China's requirement for mandatory labelling on all products on a lengthy list of electronic information products that will apparently go beyond the scope of the actual product catalogue which will require a testing and certification process.
- (c) Please provide a list of all laboratories that are currently accredited to perform hazardous substance testing for China. How many more laboratories does China anticipate accrediting?
- (d) Will China accredit for RoHS certification laboratories physically located in China that are wholly-foreign owned facilities or majority-foreign owned facilities? If not, why not?
- (e) Will China accredit for RoHS certification bodies located in other countries or recognize bodies in other countries which have been accredited by other accreditation bodies? If not, why not?
- (f) Please provide an update on when the product catalogue for products requiring RoHS certification will be issued.
- (g) Please reconfirm that the product catalogue will be notified to the WTO and that China will allow a reasonable interval between the publication of the final product catalogue and its entry into force.
- (h) Please provide information on the status of the testing standards that will be used for RoHS certification.
- (i) Will China use relevant international standards for RoHS testing?
- (j) Will China institute a system for Supplier's Declaration of Conformity for RoHS compliance?

VI. DISTILLED SPIRITS

12. In past transitional reviews (e.g., G/TBT/W/257), the United States has raised questions concerning China's regulation of distilled spirits. On 28 August 2006, China notified to the WTO, under G/SPS/N/CHN/99, a draft revision on Hygienic Standard for Distilled Spirits and Swizzle (GB2757-1981) for public comment. We are pleased that China updated this notification on 20 September 2006. The revision "deletes the tolerance for higher alcohol." Would China please confirm our understanding that this updated notification, would eliminate the requirement for tolerance levels of superior alcohols or "fusel oil"? As stated in the notification, the comment period will end "60 days after circulation by WTO Secretariat". By our calculation, comments are now due on 15 November 2006 and the standard will be adopted 30 days thereafter. The final standard will be published six months after adoption. The United States notes China's statement at last year's transitional Review that it was conducting a study assessing the human health effects of superior alcohols. It appears that scientific data gathered in the last year has guided China to eliminate tolerance levels for superior alcohols in line with international practice, including the guidelines of the Joint UN FAO/WHO Expert Committee on Food Additives, and China has notified its revised standard in line with its WTO obligations for public comment and transparency. The United States looks forward to evaluating the final standard that will be issued after the comment period is complete,

and the United States hopes that China's finalized standard reflects the intent of the notified draft regulation which recognizes that superior alcohols pose no risk for human consumption. The United States appreciates China's responsiveness to Member concerns on this issue.

VII. TOXIC CHEMICALS

13. The United States has continuing concerns about China's issuance of Circular 65 on the "Highly Restricted Import/Export Toxic Chemicals List" issued on 27 December 2005 and effective 1 January 2006. In addition to the concerns expressed about notification of the measure in paragraph 3 above, the United States has several substantive concerns and related questions about the measure. Many of these concerns were also expressed in U.S. industry comments submitted in response to the notification, despite the lack of comment period.

- (a) The required \$10,000 registration fee per product, per contract appears to be inconsistent with international practice and the fee's rationale is not explained in the Circular. What is the purpose of the fee and on what basis is it calculated? Do analogous fees and requirements apply to domestic chemical products? If not, why not?
 - (b) China's Customs is the primary enforcement agency for exporters and importers. If this measure is applied domestically, who is the enforcement authority for domestic producers marketing within China?
 - (c) For domestic producers of trichloroethylene (HS: 290322000) who sell domestically in China, what fees for registration apply?
 - (d) The regulation appears to apply to "pure" substances as opposed to mixtures. However, there is a concern that mixtures could be captured by this measure if a listed substance is identified (by CAS number) on the mixture's material safety data sheet. Could China confirm that this measure is not intended to address mixtures?
 - (e) The Circular is supposed to implement the obligations of the Prior Informed Consent (PIC) and Persistent Organic Pollutants Agreements but seems to go beyond the chemicals listed in those agreements to include chemicals widely used in commerce. Could China explain the reasoning behind these additional listings and the criteria used for including them in the Circular?
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