

WORLD TRADE ORGANIZATION

G/TBT/22
21 November 2007

(07-5125)

Committee on Technical Barriers to Trade

SIXTH ANNUAL TRANSITIONAL REVIEW MANDATED IN PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

1. This report reflects the results of the Sixth Annual Transitional Review mandated in Paragraph 18 of the Protocol of Accession of the People's Republic of China (WT/L/432) that took place at the 9 November 2007 meeting of the Committee.
 2. In the context of the Sixth Annual Review, submissions were made by Japan (G/TBT/W/278), the United States (G/TBT/W/279) and the European Communities (G/TBT/W/281). Questions raised included the following elements: the Chinese Compulsory Certification system (CCC); China's national standard-setting process and the use of international standards; ICT products; automobiles; pharmaceuticals; cosmetics; medical devices; textiles; China's registration system for environmental management on the import and export of toxic chemicals; measures on the environmental management of new chemical substances; food labelling; administration on the control of pollution caused by electronic information products; transparency; conformity assessment procedures; and battery standards.
 3. Submission was made by the People's Republic of China on 5 November 2007 (G/TBT/W/282) providing information relating to Annex 1A of WT/L/432. The statements made at the meeting, where discussions under the transitional review took place, will be reflected in the minutes of the meeting, to be circulated as G/TBT/M/43 (excerpt attached).
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ATTACHMENT – EXCERPT FROM G/TBT/M/43

AGENDA ITEM 3: SIXTH ANNUAL TRANSITIONAL REVIEW MANDATED IN PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

1. The Chairman recalled that, in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China (WT/L/432), the TBT Committee would undertake an annual review for eight years of the implementation by China of the TBT Agreement.
2. The representative of Japan highlighted some issues contained in his delegation's submission (G/TBT/W/278). He referred to the China Compulsory Certification system (the "CCC System"); under this system, no foreign conformity assessment bodies ("CABs") had yet been accredited by China according to Article 13 of the Regulations of the People's Republic of China on Certification and Accreditation, which permitted only Chinese CABs to engage in CCC certification activities. Japan considered this provision inconsistent with the objective of Article 6.4 of the TBT Agreement and with China's commitment in Paragraph 195 of the Report of the Working Party. Japan requested 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 the TBT Agreement. It was also recalled that cross-border designation of conformity assessment bodies was a useful mechanism for promoting mutual recognition of conformity assessment results.
3. The representative of Japan noted that problems remained with respect to China's domestic standardization system, particularly with the distinction between compulsory and recommended standards. Japanese industry had reported instances when administrative action had been taken when recommended standards had not been met, leading to the conclusion that recommended standards were in fact compulsory. The experience of Japanese industry was that any Chinese standard was regarded as sufficient criteria for spot checking and subsequent administrative action and that compulsory standards appeared to be applied in China to areas well beyond the scope of health, safety, property and environment. Japan referred to the commitment in Paragraph 182 of the Report of the Working Party on the Accession of China¹ and urged China to make a clear differentiation between "technical regulations" and "standards", not just in the notification process, but also in actual implementation and enforcement.
4. The representative addressed China's regulation on the Administration of the Control of Pollution Caused by Electronic Information Products, which listed electronic and IT products that were subject to mandatory conformity assessment with national or industrial standards under the CCC system. Japan requested China to be more specific about the required standards and to provide a sufficient comment period, in accordance with the TBT Agreement, for the development of the list of affected products and applicable standards.
5. The representative said Japan had continuing concerns with respect to China's Registration System for Environmental Management on the Initial Imports of Chemical Products and the Import and Export of Toxic Chemicals. The Chinese State Environment Protection Agency ("SEPA") had released a revision of "Highly Restricted Imported and Exported Toxic Chemicals" on 28 December 2005 which entered into force on 1 January 2006 and added a further 158 chemicals to the list. Furthermore, importers into China were required to pay an amount of USD10,000 to obtain a Registration Certificate valid for two years, in respect of the listed chemicals. Japan queried the basis for the cost and duration of the Registration Certificate and the process upon expiration of the two year period. Japan enquired about the progress on the implementation of the new draft regulation

¹ WT/ACC/CHN/49.

titled "Import and Export Registration Regulation of Dangerous Chemicals" released by SEPA in September 2002, which repeals the existing legislation.

6. The representative commented with regard to China's draft standard on mobile phone batteries, Japan shared concerns raised by the United States and European Communities in their respective submissions before the TBT Committee on the lack of clarity and information regarding the development of applicable standards. Japan indicated its willingness to provide input towards improving the draft standard on mobile phone batteries.

7. The representative of the United States highlighted some issues contained in his delegation's submission (G/TBT/W/279). He noted that the Sixth Transitional Review showed there were areas of progress and areas where concerns remained.

8. The United States was of the view that in the area of technical regulations and conformity assessment procedures, a significant number of measures continued to be introduced or amended without the advance notification required under the TBT Agreement. The United States requested China to update the Committee on steps taken or planned to increase the frequency of notifications and the use of notice and comment procedures in its regulatory process. Similar to other delegations, the United States was concerned about the use of "recommended standards" which China did not notify; in many instances, the United States had found that demonstrating compliance with such standards was effectively mandatory.

9. The United States joined Japan and the European Communities in encouraging China to accept certification and tests performed by accredited foreign conformity assessment bodies for the CCC mark and for other regulatory programmes. The representative welcomed China's acceptance of the IEC CB testing scheme for some electrical and electronic components, equipment and components for the CCC programme.

10. Concerning medical devices, the representative noted that proposed Decree 95 appeared to impose duplicative and burdensome requirements on imported medical devices and had not been notified to the WTO. The United States urged China to notify the proposed measure and suspend the 1 December 2007 implementation date until it had considered comments submitted by WTO Members and interested persons and had made appropriate modifications to the measure.

11. In respect of battery standards for mobile phones, the representative expressed concern that the development process for the applicable standards had not been open and transparent. He requested clarification from China as to whether demonstrating compliance with the battery standard would be a requirement for mobile phone manufacturers or battery manufacturers in order to obtain type approval, CCC mark registration or other approval before selling their products in China.

12. The representative had a number of outstanding questions relating to China's administration on the control of pollution caused by electronic information products. The United States requested that China inform the Committee when the product catalogue for products requiring certification would be issued.

13. The representative of the European Communities highlighted some issues contained in his delegation's submission (G/TBT/W/281). He noted an increase in cooperation between China and the European Communities on TBT issues; formal cooperation mechanisms had been established which worked well. Nevertheless, a number of concerns remained.

14. Like previous delegations, the European Communities had a general concern with respect to China's Compulsory Certification system (CCC). Despite several changes over the years, it remained a burdensome, expensive and time consuming conformity assessment procedure, particularly for small

and medium-sized enterprises (SMEs). Current requirements of the CCC system were not always relevant to the level of risk the products posed, which implied that the CCC system was more trade restrictive than necessary. The European Communities was of the view that the system needed to be streamlined and simplified. The European Communities noted work being carried out by the Chinese authorities to introduce a conformity assessment procedure linked to the level of risk posed by the products listed in the CCC Product Catalogue. The European Communities encouraged China to accelerate the process and indicated its willingness to share its experiences of managing conformity assessment procedures based on the supplier declaration of conformity for some products. Some specific proposals for the simplification of the CCC system were offered in the EC submission.

15. On standardization, the European Communities emphasized the importance of ensuring effective participation of foreign-owned enterprises established in China on the same conditions as Chinese-owned enterprises, in the domestic standards development process. The European Communities shared the concern of Japan and the United States on the lack of distinction between voluntary and compulsory standards and requested China to clarify the effective differences. Another area of concern related to the development of domestic standards, especially in areas where internationally recognised standards already existed and in particular in the ICT field. The European Communities preferred to see China's standardization efforts integrated more into the established international standardization organizations. The European Communities remained committed to support all respective activities of Chinese standardizing bodies.

16. On the subject of Chinese standards for mobile phones, the European Communities noted the growing trend to regulate detailed aspects of design and quality and urged China to limit the scope of compulsory standards to aspects related to the protection of public interest such as human health and safety, property, or the environment.

17. Regarding cosmetics, the representative expressed concern that there was a difference between the approval procedures in place for domestic products and for imported products. The European Communities urged Chinese authorities to unify multiple cosmetic labelling and to facilitate manufacturers' compliance.

18. On medical devices, the European Communities was concerned about double certification requirements. Moreover, the European Communities was of the view that new or fully refurbished medical devices needed to be treated in the same way; the ban on refurbished products was not justified. As a general principle, the European Communities urged the Chinese authorities to follow the guidelines developed by the Global Harmonisation Task Force for medical devices. Furthermore, unless the purpose of Order 95 was confirmed to be no more than to clarify the practical application of the existing rules, the European Communities requested that China notify the text under the relevant provisions of the TBT Agreement.

19. On textiles, the representative urged China to allow market forces to operate in its trade in raw materials in general and in particular to abolish the compulsory nature of raw silk testing and terminate discriminatory treatment of foreign buyers.

20. On the regulation of toxic chemicals, the European Communities joined Japan in their questions regarding China's new regulations governing environmental management of the import and export of chemicals and the consistency of the legislation with the TBT Agreement.

21. The representative of China introduced her delegation's submission (G/TBT/W/282). In respect of transparency, it was stressed that China had made more than 300 TBT notifications within the last six years, providing in each case a sixty day comment period and copies of full texts of notified measures upon request. The Chinese representative said China was an active participant in

the Committee's work on transparency and information exchange and would continue this engagement and would welcome support from other Members in order for it to meet transparency objectives.

22. Regarding conformity assessment procedures, the representative said China's basis for adopting a conformity assessment procedure had to do with whether it achieved the goal of ensuring effective protection of consumer interests and product safety. China was of the view that the CCC system was legally based on the objectives established by the TBT Agreement and addressed China's needs in the areas of management. On the other hand, the system of Supplier's Declaration of Conformity (SDoC) proposed by the European Communities necessitated additional management in the areas of market surveillance, product liability law, and administrative control. China had therefore not as yet made a decision to change its conformity assessment procedures. Furthermore, the representative pointed out that certification bodies established in China could be accredited as CCC certification bodies officially authorised by CNCA. Foreign certification bodies, however, could only be certified through government-to-government agreements.

23. On the subject of standardization, the Chinese representative said the Chinese authorities had made clear that mandatory standards were compulsory and recommended standards were not compulsory. She informed the Committee that China's harmonisation of its standards with international standards would be a priority in its standardization work.

24. In respect of the border examination of medical devices by the body for the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ), under Decree 95, the representative stated that the Decree was aimed at streamlining the inspection scheme and achieving uniformity of enforcement practices and procedures. China was of the view that AQSIQ's inspection and supervision at the port of entry was in accordance with international practice and pointed out that Chinese-made products had to meet the same inspection and certification requirements upon export to other countries and regions. Nevertheless, in the light of the confusion amongst China's trading partners in respect of the Decree, Members' comments would be conveyed to the competent Chinese authorities for consideration and in order to address the issues.

25. In respect of battery standards for mobile phones, the representative said the purpose of the standard was to achieve consumer convenience and address environmental concerns. She pointed out that the development process of the standard had been open and transparent and the standard itself was voluntary and sectoral rather than national. China took note of Members' concerns and would ensure the standard was in compliance with the WTO Agreement.

26. On the issue of toxic chemicals, the representative said China was of the view that toxic chemicals comprised a high pollution risk and potential harm to human, animal and plant life and health and as such, the Chinese government was entitled to exercise caution in the administration of the import and export of these products. Furthermore, compared with management of toxic chemicals in other Member countries which entailed superfund, risk deposit and liability insurance, China considered the two-year cycle and the USD 10,000 registration fee to be reasonable and an effective measure for environment protection purposes. China had made considerable effort since accession to improve the scheme and was considering revising the regulation of import and export registration of dangerous chemicals. During the revision process, comment and opinions would be solicited from all domestic and foreign government agencies, enterprises and/or individuals.

27. Regarding the Administration Measures on the Control of Pollution caused by Electronic Information Products, the representative of China informed the Committee that the compilation of the catalogue of products requiring certification was still being researched. China would notify the WTO once the catalogue was available and would allow sufficient time for comments before enforcement. It was noted that the list of laboratories that were currently accredited to perform hazardous substance testing in China could be accessed on the website (www.cnca.gov.cn). The list could be extended and

was not closed. In the event that bilateral recognition agreements were signed between China and other Members, foreign laboratories accredited in their countries could become accredited in China. China would review IEC standards as and when required and in accordance with future development of the IEC standards.

28. Regarding automobiles, the CCC certification served the same purpose as the UN/ECE certification, which was to guarantee consumers' safety. However, compared to UN/ECE certification, the Chinese CCC system was more simple and cost effective. Chinese auto makers at present could not adapt themselves well to the ECE system mainly due to the fact that the cost of application was too high and far beyond the capacity of those auto manufacturers. China understood the positive effect of the 1958 Agreement and was considering joining as a contracting party to the Agreement at an appropriate time in the future.

29. The Chairman thanked all delegations for their statements and the Committee adopted its report to the Council for Trade in Goods (G/TBT/22).
