

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 15 October 2007, is being circulated at the request of the delegation of Japan.

1. Japan notes with appreciation China's efforts in relation to the implementation of the Agreement on Technical Barriers to Trade ("TBT"). Japan would especially like to highlight the continuing alignment of China's domestic technical regulations and standards with international standards, as well as its constructive and rapidly increasing presence in the realm of international standardization. Bilateral cooperation between China and Japan in TBT-related fields has also progressed steadily, and Japan hopes for a fruitful continuation of this trend.

2. The Transitional Review Mechanism ("TRM") is a useful method for confirming and furthering these efforts, and it is a pleasure for Japan to contribute to this process. In accordance with Paragraph 18 of the Protocol of 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", Japan requests that China provide, on the occasion of the meeting of the TBT Committee, responses and relevant information with regard to the following concerns.

I. CONFORMITY ASSESSMENT

3. Conformity assessment bodies ("CAB") of foreign countries had not been allowed to engage in certification activity in China according to the Article 13 of the regulations of the People's Republic of China on Certification and Accreditation, permitting only Chinese CABs to conduct such activities. However, in this regard, we have obtained information that China has opened the certification market to foreign-owned CABs in China for certification activities for exports. Japan would like to express its appreciation for such positive developments.

4. On the other hand, no foreign CAB has yet been allowed to engage in certification activities under the CCC system. Pursuant to the provision in Article 6.4 of the TBT Agreement and the commitment in Paragraph 195 of the Protocol of Accession, Japan would like to request that local foreign-owned CABs, as well as foreign-based CABs, be eligible for accreditation under the CCC system without discrimination.

II. STANDARDIZATION

5. As far as Japan understands, China's domestic standardization system consists of four levels, namely National Standards, Sector Standards (also known as Industrial Standards), Local Standards, and Enterprise Standards. National Standards, Sector Standards, and Local Standards can each be

further subdivided into non-compulsory and compulsory types. The former, known as Recommended Standards, are distinguishable by the "/T" suffix at the end of the standard code (e.g., GB/T xxxx, JB/T xxxx). Those without "/T" suffixes are known as Compulsory Standards and function as technical regulations of a mandatory nature (e.g., GB xxxx, YD xxxx).

A. EFFECTIVE DIFFERENCES BETWEEN COMPULSORY STANDARDS AND RECOMMENDED STANDARDS

6. Paragraph 181 of the "Report of the Working Party on the Accession of China" ("Report")(WT/ACC/CHN/49) mentioned a concern among WTO members regarding China's interpretation of the terms "technical regulations" and "standards" as defined in Annex 1 of the TBT Agreement. In Paragraph 182, China responded that it would adhere to the definitions in Annex 1 for the purpose of notifying the TBT Committee. (It is Japan's understanding that China treats Compulsory Standards as "technical regulations" and Recommended Standards as "standards" with regard to the said definitions.)

7. However, Japanese industry has reported numerous instances whereby administrative measures were taken when Recommended Standards were not met. These incidents have caused a certain level of confusion regarding the effective difference between Recommended Standards and Compulsory Standards. As a result, many Japanese companies have come to the unfortunate conclusion that it would be prudent to assume that *all* Chinese standards are in fact compulsory, thereby hindering trade between the two countries.

8. Japan, in recognition of the commitment in Paragraph 182 of the Report, urges China to make a clear differentiation between "technical regulations" (including Compulsory Standards) and "standards" (including Recommended Standards), not just in the notification process but also in actual implementation and enforcement. Pursuant to this concern, Japan would like to ask for clarification from China on the following points:

- (a) Would it be correct to assume that companies are not legally bound to adhere to standards with "/T" suffixes, i.e. Recommended Standards?
- (b) If there are standards with "/T" suffixes that companies must adhere to on a compulsory basis (perhaps through citation in a separate law), Japan would like to ask China to provide a list of such standards.
- (c) In such cases, would it not be more appropriate to remove the "/T" suffixes?

B. THE SCOPE OF COMPULSORY STANDARDS

9. Under the Chinese standardization system, Compulsory Standards are created in response to a need for the protection of human health and safety, property, or the environment. Japan urges China to maintain this principle and to avoid the creation of Compulsory Standards that cover unrelated topics such as generic performance requirements.

C. STANDARDS AND SPOT INSPECTIONS

10. Spot inspections of products in China are governed by the "Rule on the Monitoring of the Quality of Marketed Products" (the "Rule"), Article 11 of this Rule stipulates that the "quality criteria of spot inspections and monitoring are to be based on the relevant National Standards, Sector Standards, Local Standards and Enterprise Standards". In addition, Article 26 stipulates that companies must immediately stop the sales of products which do not pass the quality criteria.

11. It can be inferred from these articles that *all* Chinese standards, encompassing all four levels, and regardless of whether they are Compulsory Standards or Recommended Standards, serve as quality criteria for the spot inspections. Given that such spot inspections entail administrative measures such as a ban on sales, and in some cases, forced recalls, the Rule effectively makes all Chinese standards compulsory.

12. Spot inspections of products in China are a serious concern for Japanese industry. Japan would like to ask China for clarification on the Rule and that spot inspections be undertaken in a more focused manner.

III. THE ADMINISTRATION OF THE CONTROL OF POLLUTION CAUSED BY ELECTRONIC INFORMATION PRODUCTS

13. It is Japan's understanding that China's regulation on the "Administration of the Control of Pollution Caused by Electronic Information Products" (the "Regulation") stipulates that electronic and IT products listed in the "Heavy Control Catalogue for Pollution Caused by Electronic and Information Products" must undergo mandatory conformity assessment through the CCC scheme. Japan urges China to provide a sufficient comment period in accordance with the TBT Agreement to secure transparency in the development of this list and the standards for such conformity assessment procedures.

14. Article 3.3.4 of the Regulation prohibits "the import of electronic and information products that do not meet the national or industrial standards pertaining to the restriction of hazardous substances in electronic and information products." As it is difficult for Japanese companies to understand from this text which are the standards that must be met, Japan requests that China be more specific and provide a list of the standards referred to in this article.

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

15. Japan has continuing concerns with regard to this issue. The Chinese State Environment Protection Agency, SEPA, released a revision of "Highly Restricted Imported and Exported Toxic Chemicals" on 28 December 2005, with an entry into force date of 1 January 2006. 158 chemicals were recently added to the revised list of toxic chemicals, some of which are widely used in the chemicals industry. The "Regulations System for Environmental Management on the Initial Imports of Chemical Products and the Import and Export of Toxic Chemicals" (the "System") requires companies to pay US\$10,000 to SEPA in order to obtain a Registration Certificate for exporting the chemicals on the list to China.

16. Firstly, according to China, under the "System", the Registration Certificate is valid for two years per contract. Japan is concerned about the rationale for such an amount and validity period in terms of consistency with the TBT Agreement. Japan therefore requests China to provide the calculation basis for the sum of US\$10,000 as well as the rationale behind the two-year validity period.

17. Secondly, Japan would like to know how China intends to implement this regulation in the near future. Japan is interested in knowing what would happen at the end of the two-year validity period. A large number of Registration Certificates will expire in January 2008, and any uncertainties for foreign companies would cause an adverse effect on China's trade in chemicals.

18. Lastly, Japan would like to enquire about the progress of a new system for the import and export of chemicals. A draft regulation entitled "Import and Export Registration Regulation of Dangerous Chemicals" was released by SEPA in September 2002, and Article 33 of this draft regulation clearly stipulates 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 the enforcement of a new regulation. Japan would strongly welcome the immediate implementation of such a new regulation. Japan would like to enquire again regarding the schedule for the implementation of the new regulation, as it did not receive a response from China in the last TRM.
