

TRANSITIONAL REVIEW MECHANISM

Submission by the European Communities

I. TRANSPARENCY

1. The EC would like to emphasize the importance of transparency with regard to the proper functioning of the TBT Agreement. The obligations under paragraphs 2.9 and 5.6 of the Agreement to notify proposed technical regulations and conformity assessment procedures that are not in accordance with relevant international standards and that may have a significant effect on trade of other WTO Members is a vital element in the functioning of the Agreement.

2. An important aspect of notifying is to do it before the measures are adopted so as to leave time for third country comments to be taken into account. Furthermore, a reasonable period of time for third country exporters to adapt to the proposed measures needs to be guaranteed. It was agreed in Doha that this period should be understood to mean not less than six months.

3. Emphasizing the importance of transparency in the TBT Agreement, the EC welcomes China's implementation of the notification requirements in the Agreement during the first months of its WTO membership. The EC would like to note that China has so far made 12 notifications under the TBT Agreement. The EC considers that the Chinese notifications have contributed to the proper functioning of the Agreement and have offered the EC, and other WTO Members, an opportunity to study new Chinese regulations.

4. The EC would like to encourage China to continue its implementation of TBT notification requirements.

5. With this regard:

- What has China done to ensure that notices of adopted and proposed technical regulations – including list of products subject to mandatory certification, standards, and conformity assessment procedures are published?
- Has China put in place a minimum timeframe for allowing comments on proposed technical regulations - including list of products subject to mandatory certification, standards, and conformity assessment procedures as set out in the TBT Agreement?

II. TRANSPOSITION AND APPLICATION - INTERNATIONAL STANDARDS AND CONSISTENCY

6. The EC emphasizes the importance of the obligation under paragraph 2.4 of the Agreement for WTO Members to use relevant international standards as basis for their technical regulations. The EC would like to emphasize that the imposition of technical regulations not in accordance with relevant international standards, and which may have a significant impact on trade, needs to be justified upon the request of another Member.

7. With this regard:

- What policy and what schedule has China envisaged to align Chinese technical regulations, conformity assessment procedures and standards with relevant international standards where appropriate?
- Has China brought the Statutory Inspection Law and its implementing regulation in conformity with the TBT Agreement?

8. To avoid unnecessary technical barriers to trade, the uniform and consistent application of technical regulations and conformity assessment procedures is vital.

9. With this regard:

- How does China ensure a consistent and uniform application of their regulations and standards throughout their country, avoiding unnecessary additional regional/local regulations and standards imposed by regional/local authorities?
- What has China done to unify the current certification marks?
- What has China done to ensure that the obligations concerning confidentiality stated in Article 5.2.4 of the TBT Agreement are fully implemented?

10. Furthermore, the consistent use of agreed TBT terminology is one of the ways to increase transparency towards other WTO Members.

11. With this regard:

- What has China done in practice to ensure the terms technical regulations and standards are used according to their meaning under the TBT Agreement?

III. TRANSPOSITION AND APPLICATION - NON-DISCRIMINATION AND NECESSITY

12. The EC emphasizes the importance of the preamble of the TBT Agreement that reserves the right of WTO Members to take regulatory measures at the level they consider appropriate in order to meet legitimate policy objectives. It is equally important that such measures are non-discriminatory and do not constitute unnecessary barriers to trade.

13. The EC welcomes China's statement (see G/TBT/2/Add.65) that "China will apply the same standards and conformity assessment procedures to both imported and domestic products. This is stipulated in Article 14 of the Standardisation Law, Article 2 of the Law on Product Quality and Article 4 of the Regulatory Provisions on Compulsory Product Certification." The EC would welcome information on the implementation of these laws.

14. With this regard:

- To what extent has China unified regulations and standards applied to domestic and imported products?

15. Furthermore, China has recently revised its certification system and expanded the scope of products that are subject to it. The EC has some concerns as regards the coverage of this new regime as well as the transparency of the related fees.

16. With this regard:

- Can China provide a full list of products subject to mandatory certification?
- Can China provide a full list of domestic and foreign bodies accredited to provide mandatory certification?
- What has China done to ensure that the principle of necessity with regard to these products is fully respected?
- What has China done to eliminate multiple or duplicative conformity assessment procedures and to avoid imposing requirements exclusively on imported products?
- What has China done to ensure that the same conformity assessment procedures apply to both imported and domestic products?
- What legal acts set out certification fees?
- Are these fees applied to both Chinese and imported products?

IV. UNEXPECTED DIFFICULTIES

17. The EC would like to emphasise that in order to avoid unnecessary barriers to trade, WTO Members should choose, in cases when alternatives to meet chosen objectives exist, the less trade-restrictive regulatory measure. The EC is concerned that this does not seem to have been the case with regard to Chinese notification, G/TBT/N/CHN/2, concerning food and cosmetics.

18. With this regard:

- Has China considered other less trade restrictive means to achieve the objective of consumer information in relation to the indication of production and expiry dates for wine and spirits products?
- Has China taken into account relevant international standard by the Codex Alimentarius [CODEX STAN 1-1985 (REV 1-1991)]?

19. To avoid unnecessary technical barriers to trade, the uniform and consistent application of technical regulations and conformity assessment procedures is vital. This seems to have not been the case for some EC exporters that have faced situations where different departments have been administering slightly different rules on the same product or ingredients or that there have been inconsistencies with regard the rules. This has been the case with regard to Active Pharmaceutical Ingredients (APIs). The EC would like to encourage China to ensure the uniform and consistent application of its technical regulations and conformity assessment procedures.

20. With this regard:

- Does an import licence issued by one of the Chinese authorities to a manufacturer cover the whole Chinese territory and is there a need for a separate licence for each province?

21. In the applications for the Import Drug Licence (IDL) for APIs issued by the State Drug Administration, the requirements and specification for the applications change every time a new applicant includes one or more specifications that are additional or stricter compared to the already

granted IDLs. The required standard for all existing and new IDLs will be raised to include these specifications. All existing application holders must then adhere to the changed standard or have their IDL withdrawn.

22. With this regard:

- Why does China consider that stable requirements and specifications do not meet their objectives with regard to IDLs?

23. Furthermore, the EC reiterates the importance of Article 2.2 of the Agreement that obliges Members to take into account available scientific information, related processing technology or intended end-uses of products when preparing technical regulations. It is of great importance that the scientific basis of measures is justified where appropriate.

24. With this regard:

- Why does China not think that the internationally recognized standards (WHO and OIE) in connection with quarantine certificates for cosmetics containing ingredients derived from cattle and sheep tissues coming from countries and regions affected by BSE do not fulfil the objectives set by China?
- What is the scientific justification for this?

25. Furthermore, with regard to the telecommunications sector:

- What is the justification of China's plans to introduce standards for radiation emissions from mobile phones that are much stricter than the standards in force in other parts of the world? These higher standards would create a very significant technical barrier to trade for handsets and related equipment.
- Has China considered other less trade restrictive alternatives?

26. With regard to the automobile sector:

- Regarding the new Compulsory Certification System for cars there are strong EU concerns about the transparency and timelines that were/are applied. They impose tremendous technical and financial difficulties to EU manufacturers in meeting the new requirements that hardly contribute to the attempts of international harmonisation in this area.
- Can China explain in any detail that its new Compulsory Certification System for cars, unifying the formerly separate certification systems for domestically produced and imported cars does not impose additional/unique requirements to imported cars (especially in the field of passive security and testing in China) that are not in line with international standards which are the basis for new standards or the review of current ones.

27. With regard to the chemicals sector:

- Has China prepared any draft law regarding the assessment and control of chemicals?
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