

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

Questions from the United States to China

I. NOTIFICATIONS

1. The United States welcomes China's submission of 18 notifications under the TBT Agreement in 2004. The United States encourages China's continued implementation of TBT notification requirements. However, nine of the 18 notifications in 2004 were received after the regulation had already been adopted (G/TBT/N/CHN/59, 58, 57, 56, 55, 54, 44, 42, 41) and one notification allowed only a two-week comment period (G/TBT/N/CHN/45). The United States is also aware of Chinese technical regulations and conformity assessment procedures that have not been notified as required by the TBT Agreement, in particular those promulgated by ministries and agencies other than China's State Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), or the Standardization Administration of China (SAC). For example, the *Provisions on the Environmental Administration of New Chemical Substances*, issued by the State Environmental Protection Administration (SEPA) on September 12, 2003 (effective October 15, 2003), were not notified to WTO members for comment, and SEPA's draft *Regulations on the Import and Export Registration of Hazardous Chemicals* have not yet been notified to WTO members for comment.

- (a) What steps is China (specifically MOFCOM) taking to ensure that it identifies and notifies all proposed technical regulations and conformity assessment procedures meeting TBT Agreement criteria, and not just those issued by AQSIQ or SAC?
- (b) What mechanisms does China have in place to ensure that its ministries and agencies (i.e., those identified in para. 14 of G/TBT/2/Add.65) provide a reasonable period of time to receive comments on proposals?
- (c) What steps is China taking to ensure that future notifications are provided on a timely basis, once a draft is available and when amendments can still be taken into account?

II. CHANGES IN CHINA'S STANDARDIZATION AND REGULATORY SYSTEM

2. On June 18, 2004, SAC circulated a draft report entitled "The Study on the Construction of National Technical Standard System" for public comment. The draft report indicates that transparency is a key element in China's standards system. The draft report states that one of the basic requirements is that "the process of standards formulation and modification shall be open and transparent so that all relevant parties from both advantaged and disadvantaged sides can participate." On September 24, 2004, SAC issued another draft report, entitled "The Study of China Technical Standard Development Strategy." This draft report focuses on the high-tech sector and China's

industrial competitiveness, and it also emphasizes the importance of the “opening” and “transparency . . . of the standardization mechanism” and making “a full reflection of comments made by each of the interested parties in the standards.”

- (a) We would appreciate updated information on changes China is contemplating in this area. To what extent is it envisioned that interested parties from other WTO members will be able to participate in the standards-setting process in China?
- (b) Will new regulations or other mechanisms be put in place to better ensure coordination between ministries and agencies in the development of standards and technical regulations?

3. In June 2004, SAC issued Document No. 19, Response to the Request for Adjustment of Administrative Agencies for Domestic and Foreign Trade Standardization (effective July 1, 2004). Document No. 19 describes changes in standardization responsibilities within the government of China, and it also describes a new classification scheme for standards, i.e., “WM” for foreign trade-related standards and “SB” for domestic trade-related standards. According to Document No. 19, both WM and SB trade-related standards now appear to be handled by China’s Ministry of Commerce (MOFCOM).

- (a) How do the WM and SB classifications relate to the GB classification? Will SB and WM standards be voluntary or mandatory?
- (b) Document No. 19 indicates that MOFCOM will be involved in “formulating trade-related standards, [and] promoting and applying trade-related standards.” What are “trade-related” standards?
- (c) What is the distinction between “foreign trade-related” and “domestic trade-related” standards described in Document No. 19? Which ministry or agency determines which category a particular standard falls in? What are the criteria used in making that determination? Why is there a distinction between “foreign trade-related” and “domestic trade-related” standards?
- (d) Will any responsibilities for conformity assessment (e.g., the CCC Mark administered by the Certification and Accreditation Administration) change?

III. INTERNATIONAL STANDARDS

4. In paragraph 184 of its Working Party Report, in response to Members’ concerns that China did not use relevant and available standards as the basis for some of its existing technical regulations, China committed, upon accession, to publish procedures to implement Article 2.7 of the Agreement on Technical Barriers to Trade, which directs Members to give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations. China also indicated that it had increased its use of international standards as a basis for technical regulations to 40 percent.

- (a) What is the status of China’s efforts to publish procedures to implement Article 2.7?
- (b) What is the current percentage of technical regulations based on international standards?

5. Measures that China has promulgated since its WTO accession, including Measures for the Administration of Adoption of International Standards, as well as comments during previous TBT Committee meetings, would appear to limit China's definition of international standards to those promulgated by the ISO, IEC and ITU. However, the TBT Agreement does not limit Members to using standards from particular bodies, nor does it contain a list of bodies deemed appropriate for purposes of implementing its provisions. Instead, the TBT Committee decided upon principles which should guide Members' participation in the work of international bodies as well as the use of their standards, recommendations and guidelines (G/TBT/1/Rev.8 (Part IX)). Responsibility for implementing the TBT Committee decision rests with WTO members (and not the international bodies themselves). As we have previously stated bilaterally and at meetings of this Committee, we are concerned that China's restricted approach will limit its ability to comply with its WTO obligations and will deny it the possibility of choosing the best standard that is available, effective and appropriate for achieving its legitimate objective. We have identified examples in prior comments on specific Chinese notifications. We note that, in recent discussions with the U.S. government and U.S. industry groups, Chinese government officials have indicated that China will use "advanced foreign standards" when no "international" (as defined by China in the Measures for the Administration of Adoption of International Standards to be ISO, IEC and ITU) standards exist or they are not relevant.

- (a) Please clarify China's policies with regard to the use of international standards other than those promulgated by ISO, IEC and ITU.
- (b) Has China adopted any measures governing the use of international standards other than those issued by ISO, IEC and ITU? If so, please identify and describe them.

IV. CONFORMITY ASSESSMENT PROCEDURES

6. In paragraph 192 of the Working Party Report, China agreed not to maintain multiple or duplicative conformity assessment procedures, and not to impose requirements exclusively on imported products. For example, every year CCC testing includes product safety testing requirements which are almost identical to those done every four years by the State Food and Drug Administration. Currently, Chinese labs that conduct these safety tests submit the same set of results to both agencies and still charge the companies for two tests. Please provide an update on the steps China has taken, or China plans to take, to eliminate the remaining duplicative conformity assessment requirements, such as between the CCC Mark requirements and those of the Ministry of Information Industry, or between the CCC Mark requirements and those of the State Food and Drug Administration? Does China have plans to expand its participation in the CB scheme to include medical devices?

7. The United States understands that, since its accession to the WTO on December 11, 2001, China has entered into a Mutual Recognition Agreement with Brazil (GTBT/10.7/N/41) concerning Calibration and Testing Laboratory Accreditation Procedures. Has China entered into any additional agreements for the recognition of results of conformity assessment procedures? If so, please list and describe those agreements.

8. In the Services Schedule accompanying its Protocol of Accession, China committed to permit foreign service suppliers that have been engaged in inspection services in their home countries for more than three years to establish minority foreign-owned joint venture technical testing, analysis and freight inspection companies upon accession, with majority foreign ownership no later than two years after accession (and wholly foreign-owned subsidiaries four years after accession). In paragraph 195 of its Working Party Report, China further committed as follows: "Concerning foreign and joint venture conformity assessment bodies, certain members of the Working Party noted that China should not maintain requirements which had the effect of acting as barriers to their operation, unless otherwise specified in China's Schedule of Specific Commitments. The representative of China

replied that China would not maintain such requirements. Some members also observed that all foreign or joint venture conformity assessment bodies that met China's requirements should be eligible for accreditation and accorded national treatment. The representative of China confirmed that the accreditation requirements would be transparent and provide national treatment to foreign conformity assessment bodies. The Working Party took note of these commitments.”

9. The United States understands that, to date, China has granted 68 Chinese enterprises authority to test and certify for purposes of the CCC mark, but has not granted such authority to any foreign-invested enterprises. China has also indicated that it will be giving this authority to more enterprises.

- (a) When does China plan on granting this authority to additional enterprises?
- (b) Does China intend to abide by the non-discrimination obligation and grant this authority to foreign-invested enterprises?
- (c) The United States thanks China for granting authority to perform annual follow-up to select foreign enterprises and allowing this testing to be performed outside China. Does China intend to extend this authority to additional foreign-invested enterprises?

10. China's *First Catalogue of Products Subject to Compulsory Certification*, the list of products requiring the CCC Mark, currently has 132 product categories. China has indicated that it will be revising this list in the future.

- (a) When does China plan on revising the list of products requiring the CCC Mark and notifying the proposed changes for comment to WTO members?
- (b) Will China's review of the list of products requiring the CCC Mark include a consideration of removing products (e.g., low-risk products and/or components) that may no longer justify mandatory certification?
- (c) How long is the anticipated transition period before the CCC mark is required on any new products?

V. SCRAP RECYCLING REGULATIONS

11. Near the end of 2003, AQSIQ issued Notice No. 115-2003, which announced the creation of a new requirement that exporters of recycled scrap to China must register with AQSIQ. Although this notice established a deadline of July 1, 2004, it was not until May 8, 2004, that AQSIQ issued Notice No. 48-2004, which establishes the procedures and substantive requirements that recycled scrap exporters must satisfy to register with AQSIQ. And it was not until July 14, 2004 that WTO members received notification (G/TBT/N/CHN/56, 57 and 58) and then without an opportunity for comment. AQSIQ subsequently showed some flexibility by agreeing to extend the deadline for filing an application to August 1, 2004. At the same time, however, it is the United States' understanding that exporters that missed the August 1, 2004 application deadline are precluded from applying for registration until some indefinite time in the future. Is the United States' understanding correct that AQSIQ will refuse to accept applications filed after August 1, whether from existing shippers or new shippers? If so, please explain AQSIQ's reasoning for precluding these exporters from applying for registration. While the United States believes that AQSIQ may have a legitimate basis for insisting that these exporters complete the registration process and obtain a registration number before exporting to China, it does not understand what legitimate basis there would be for barring their registration by not allowing them to apply.

12. The United States understands that AQSIQ only allowed exporters that filed applications by the August 1 deadline one chance to correct incomplete applications and that all corrections had to be received by AQSIQ by September 30, 2004.

- (a) Please explain AQSIQ's rationale for providing exporters only one, time-limited opportunity to correct incomplete applications.
- (b) Will exporters that miss the September 30 correction deadline be prohibited from shipping recycled scrap to China after November 1, 2004?

VI. DISTILLED SPIRITS

13. China maintains a mandatory standard on distilled spirits (GB2757-81) that sets maximum limits on naturally occurring substances, known as superior alcohols or fusel oils, that result from the production process. However, the Joint UN FAO/WHO Expert Committee on Food Additives, like U.S. regulators of alcohol, has recognized that superior alcohols are safe for human consumption. The United States strongly encourages China to eliminate this standard unless it can justify it on the basis of scientific evidence that superior alcohols are harmful in some way to human health.

- (a) What scientific evidence does China use to justify the need to set a limit on superior alcohols in distilled spirits?
- (b) The United States understands that China is considering revisions to this standard. If so, what would be the time frame for such an action? When does China intend to notify the proposed revisions?

14. China also imposes various labelling requirements for distilled spirits. For example, it requires that spirits product labels include a "bottling date." Under international practice relating to wines and spirits, however, the date of manufacture (production or bottling date) is not required. As many spirits products consist of a blend of spirits that are aged for varying periods, a single "date of manufacture" is often not possible to specify, would not represent the actual age of the product, and would confuse consumers regarding the actual age of the product. Please explain the rationale for requiring that spirits product labels include a "bottling date."

15. Can China confirm that the requirements for the listing of ingredients/additives only apply to ingredients/additives present in the final product and expressly exempt single ingredient spirits drinks, per Alimentarius Commission's General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985 (Rev. 1-1991))?

16. With regard to China's regulations on safety labelling, the United States recognizes that font size for mandatory information in Chinese may be regulated for the purposes of legibility, but it is not clear why the font size on the safety label cannot be adjusted to fit onto the bottle in a way that does not obscure the producer's label. What is China's rationale for this restriction? Will China consider allowing producers freedom to decide on the format of required Chinese-language information on safety labels as long as the objective of consumer information is met?

17. In order to help protect spirits products against counterfeiting, would China consider permitting only the trademark owner/producer to apply for the mandatory Chinese safety label?

VII. CHEMICALS

18. China's Provisions on the Environmental Administration of New Chemical Substances, issued by SEPA on September 12, 2003, require that all new chemical substances be tested and registered before being introduced into the Chinese market. The United States applauds China's efforts to protect the environment, but recognizes significant problems with the implementation of this regulation.

- (a) Before implementation of the *Provisions on the Environmental Administration of New Chemical Substances* on October 15, 2003, China created the Inventory of Existing Chemical Substances in China (IECSC) consisting of all chemicals previously in the Chinese market. The United States understands that not all chemicals in commerce before implementation are recorded on this registry, however. What is the procedure for adding these substances to the registry?
- (b) The United States is unaware of sufficient scientific evidence of unique plant and animal species to require indigenous eco-toxicological tests performed in Chinese laboratories. Will China therefore accept eco-toxicological tests performed in other regulated countries?
- (a) The United States understands that a low-volume exemption is granted for research and development purposes. Would China consider extending this low-volume exemption to other new chemical substances being imported in small quantities (i.e., less than one ton per year)?
- (b) The United States understands that final approval of chemical substances is granted by an Executive Review Committee. Please identify the members of this committee.
- (c) Please identify the factors used by the Executive Review Committee to make its determinations.
- (f) Once the Executive Review Committee has approved a chemical substance, please describe the process for adding it to the IECSC.

VIII. RADIO FREQUENCY IDENTIFICATION

19. The United States understands that China's Radio Frequency Identification (RFID) Working Group is currently drafting an RFID policy for China. The United States expects that, in formulating this policy, China will choose a policy that is as least trade restrictive as necessary to achieve China's legitimate policy objectives. The United States would be very concerned if China pursued a policy imposing a mandatory RFID standard that was incompatible with international standards and would limit the ability of firms and consumers to adapt RFID technologies to their current and possible future needs.

- (a) When does China anticipate notifying a proposed RFID standard or regulation so that interested WTO members can provide comments on it?
- (b) Does China intend to use relevant international standards as a basis for any future standards or regulations on RFID? If not, please explain why relevant international standards would be ineffective or an inappropriate means for the fulfilment of China's legitimate objectives.

IX. COSMETICS

20. The United States understands that, while domestic producers must only submit a notification after a product has been introduced to the market, importers must complete a pre-market registration, which is costly and time-consuming. How does China justify this burdensome and differential treatment for imported products in light of China's national treatment obligation?

21. The United States is concerned about redundancies that exist in the cosmetics registration requirements. For example, foreign products registered for import must submit to further local registration for sale outside Beijing. In addition, some duplication exists between the registration procedures required by AQSIQ and the Ministry of Health. What are China's plans for removing these redundancies from the registration process?
