

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO SECTION 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 22 October 2009, is being circulated at the request of the delegation of Japan.

I. FILTERING SOFTWARE

1. China decided to mandate the installation of the Green Dam software on all computers sold in China effective 1 July 2009. We have serious concern regarding this issue because the Green Dam raises significant questions of security and system reliability, and because computer makers have no choice to select filtering software other than Green Dam. Although China announced the postponement of the issue in June, we would like to offer China to make this measure not trade restrictive than necessary after exhaustive discussions with related countries. For example, we request China to give the freedom of choice of the filtering software both to consumer and to computer makers.

II. INSTRUCTIONS ON FACTORY INSPECTIONS

2. On the website of the designated certification body under the China Compulsory Certification (CCC) scheme, "Instructions on factory inspections", which are intended to be referred to when conducting factory inspections, has been uploaded. We would like to confirm the relation between such instructions and the mandatory requirement (provision of certification) of CCC in terms of legal status.

3. Concerning the mandatory requirements of CCC, our understanding is as follows: according to Article 4 of the 'Regulation on Compulsory Product Certification' (AQSIQ No. 117), 'the state shall unify the mandatory requirement of technical standards'. Therefore we understand that the mandatory requirement shall be provided by the statement of the state. Thus, our view is that the 'Instructions on factory inspections' uploaded on the website of the certification body is just a reference and it does not prescribe the mandatory requirement (provision of certification). If 'Instructions on factory inspections' intends to prescribe the mandatory requirement of CCC, the instruction shall be published by the state and shall not be uploaded on the website of each certification body based on the its own decision. In addition to these points, if the state publishes the mandatory requirement, the state shall have a transitional period before enforcement and notify all WTO Members of this, according to the Article 2.9 of the Agreement before enforcement.

4. We would like to know the Chinese view about the relation between mandatory requirement and 'Instructions on factory inspections' in terms of legal status.

III. RESTRICTIVE MEASURE WITHOUT LEGITIMATE OBJECTIVE

5. With respect to the Logistics issue, Japan acknowledged that China unnecessarily adopts the national standard which differs from the corresponding international standard and it subsequently gives rise to the needless confusion among distribution companies.

6. Concretely speaking, in the certain mandatory standard, GB5296.2:2008, China refers GB/T191:2008, voluntary national standard of labeling in which calculation method for maximum allowance of piling up of cardboard box differs from international standard, and thus it results in unnecessarily confuses among distributors who export to other countries which adopts the international standards and to China, which adopts the different standard.

7. Although GB/T191:2008 itself may literally be a voluntary standard, Japan is of the view that it must be, in fact, also regarded as mandatory standard as far as being referred in another certain mandatory standard and therefore, according to the Article 2.5 of the TBT Agreement, Japan request China to explain its legitimate objective and rationality of making GB/T191:2008 referred in another standard. Moreover, according to the Article 2.4 of the Agreement, Japan also request China to align this standard with the corresponding international standard.

IV. IT SECURITY PRODUCTS

8. With respect to the proposed regulations mandating certification on IT security products, Japan appreciates China obliging to dialogue with its Trade partners as well as its efforts such as the postponement of its implementation.

9. However, Japan is still concerned about the scheme and believes this regulation substantially goes beyond global norms concerning the certification of IT security products. Although China has stated that such compulsory certification will only apply to government procurement and thus is not within the scope of the TBT Agreement, Japan is concerned that the regulations could be actually applied to commercial areas that are subject to the TBT Agreement due to the lack of clarity in the scope of government procurement in China. Japan requests China to clarify the accurate scope that will be subject to the regulations and to satisfy the Trade Partners' concerns by following global norms including those regarding the certification of information security products.
