

Committee on Technical Barriers to Trade

**FOURTH 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 Fourth 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 thirty-eighth meeting of the Committee on 2 November 2005.
 2. In the context of the Fourth Annual Review, submissions were made by Japan (G/TBT/W/255), the European Communities (G/TBT/W/256) and the United States (G/TBT/W/257). Questions raised included the following elements: notifications; conformity assessment procedures; China's national standard-setting process; the use of international standards; intellectual property rights; the Chinese Compulsory Certification system (CCC); automobiles; digital cameras; chemical products; pharmaceuticals; cosmetics; distilled spirits; the reduction of hazardous substances and waste in electronics and electrotechnical equipment (ROHS and WEEE); and, radio frequency identification.
 3. Submission was made by the People's Republic of China on 31 October 2005 (G/TBT/W/260) 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/37 (excerpt attached).
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ATTACHMENT – EXCERPT FROM G/TBT/M/37

**AGENDA ITEM 3: FOURTH 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 was to undertake an annual review for eight years of the implementation by China of the TBT Agreement. He opened the floor for comments or questions from Members.

2. The representative of Japan welcomed the fact that four years after accession, the implementation by China of the TBT Agreement had progressed. However, Japan still had concerns in a number of areas, such as with respect to: the CCC marking system, the automobile sector, digital cameras, and chemicals. It was noted that more detail was set out in Japan's submission (G/TBT/W/255).

3. The representative of the European Communities introduced his delegation's submission (G/TBT/W/256). Like Japan, the European Communities appreciated the efforts made by China, particularly in the area of transparency. Nevertheless, the European Communities was of the view that the consultation procedure could be further improved; there were a number of outstanding concerns raised by EC manufacturers with regard to the lack of participation of foreign stakeholders in the drafting of new technical regulations. In particular, the representative of the European Communities urged China to refrain from developing national standards in areas where international standards existed.

4. In terms of the *CCC System* (China Compulsory Certification) the European Communities was of the view that, despite improvements, the system remained burdensome, expensive and time-consuming; it also left too much room for interpretation. The system could be further streamlined and simplified. The European Communities welcomed the initiative of China to launch, in 2005, a comprehensive review of the CCC System. On the specifics, the European Communities was concerned with the uncertain application of national treatment. Moreover, exemption procedures were far from being transparent. On the list of products subject to CCC, the representative of the European Communities suggested that low-risk products should not need to be subject to the CCC System and that simplified procedures could be explored. In the area of certification requirements for spare parts, components and sub-assemblies, the European Communities was of the view that there was considerable room for simplification. Also, on confidentiality, the required information under the CCC System could be simplified. Moreover, there appeared at times to be double certification requirements; this occurred where different parts of the Chinese administration required checks for different product aspects (a common occurrence in the case of radio and telecom equipment, cosmetics and car components). In the area of factory inspections, the European Communities was of the view that an exemption could exist for factories which had been certified to ISO 90001.

5. In terms of *ICT products*, certification remained a concern. Again, this related to the fact that most ICT products were low-risk and the existing three-step certification procedure incurred significant delays and costs. The European Communities was also concerned with the use and development of national standards where international standards existed, for instance in the WAPI case. The European Communities was also concerned about the participation of European companies in the Chinese standardization work; here the issue was to allow equal rights in Chinese standardization forums to external participants in order to allow a full contribution to the development of standards by European companies. Finally, in the ICT sector, the intellectual property rights (IPRs) was also a concern. The European Communities stressed that this was a separate issue from that addressed in the statement made by China contained in document G/TBT/W/251. Instead, the key

issue here was the need to encourage direct, unencumbered negotiations between Chinese and foreign ICT companies regarding patent licences.

6. In terms of *automobiles*, the European Communities was of the view that many of the regulations used by China were very similar to the UN regulations under the 1958 Agreement; to avoid small variations, it would therefore be beneficial if the Chinese regulations could be based directly on the UN ECE 1958 regulations.

7. Regarding *active pharmaceutical ingredients*, the issue was that there were different quality standards used depending on whether the product was domestic or imported. Moreover, the EC representative pointed out that there was a higher fee structure for imported products. Hence, the European Communities requested that a way be found to apply the same standards to imported and domestic products in this area.

8. On *cosmetics*, the European Communities welcomed the fact that China was taking note and account of the scientific findings of the European Scientific Committee for Cosmetic Products. However, again, market access for European countries was difficult due to requirements related to the registration of new products and to the labelling of products. The European Communities urged China to give an equal application of the same requirements for domestic and imported products.

9. The representative of the United States stressed that the TRM mechanism was useful and important, serving both the interests of China as well as those of WTO Members. It provided Members with the opportunity to seek clarifications regarding China's policies and practices. China, in turn, was given an opportunity to clarify its approaches and actions with the goal of preventing misunderstandings that could lead to trade frictions; it was, in essence, a useful exercise in transparency. The representative of the United States highlighted some of the issues set out in more detail in its submission (G/TBT/W/257).

10. One question that the United States had raised with China was the fact that most of the *notifications* from China tended to come from the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) or its subordinate organizations, the Standardization Administration of China (SAC) and the Certification and Accreditation Administration of the People's Republic of China (CNCA). It was the US understanding that MOFCOM was responsible for the overall coordination of notifications to the WTO, and that it relied largely on AQSIQ, but also on other agencies, to provide it with the notifications. The United States had brought, and would continue to bring to China's attention, proposals that they believed needed to be notified. The United States appreciated China's willingness to accept such information.

11. It was the US understanding that China had engaged in a review of all *standards* it had in place with a view to ensuring compliance with TBT obligations. It was understood that this review had recently been concluded with the result that some standards would be withdrawn, and that this information would be publicly available on the web site.

12. The United States had, similar to Japan and the European Communities, raised concerns about *conformity assessment*. The issue here was whether China would provide national treatment for conformity assessment bodies. It was, for instance, not clear whether China would actually accredit foreign conformity assessment bodies. Recently, a shipment had been held up by a customs authority in China with the concern that it was not properly CCC marked. It later turned out that, in fact, the product was not subject to CCC marking and the shipment was released. This illustrated the concerns (also noted by the European Communities) that there continued to be a certain lack of transparency in the operation of the programme. The United States welcomed a continued review of this programme and the consideration of removing low-risk products that might no longer justify mandatory certification.

13. The representative of Korea noted that many of his delegation's concerns had been covered by previous statements. Nevertheless he wished to emphasize concerns with the CCC System. First, in terms of time periods, Korean companies had faced similar problems as those raised by Japan: sometimes more than six months was taken for the certification procedures. This entailed considerable costs for the companies. Second, the issue of confidentiality had already been raised in the EC submission. Since during the certification process, technical specification information was released, it was important that confidentiality be maintained. Third, Korea was concerned about the issue of certification requirements for spare parts, components and sub-assemblies (also set out in the EC submission).

14. The representative of China noted that her delegation had stepped up efforts to improve inter-governmental coordination and cooperation through further defining the responsibilities of authorities concerned, upgrading working mechanisms and holding workshops and seminars, etc. Since its WTO accession in the end of 2001, China had notified, to the TBT Committee, a total of 160 proposed technical regulations and conformity assessment procedures, among which 84 had been notified from January to October in 2005, with comment periods provided strictly according to WTO Agreements. Stakeholders, both in China and abroad, were provided with full access to consultations on the formulation of proposed regulations and conformity assessment procedures; they could either submit comments or were invited to public hearings or symposia. Comments and opinions were taken into serious consideration by the Chinese Government. Furthermore, in full compliance with China's accession commitments, the technical regulations and conformity assessment procedures were published on the competent authorities' gazettes and web sites, as well as on the Foreign Trade and Economic Cooperation Gazette of the Ministry of Commerce.

15. The representative of China stressed that China encouraged the use of international standards as the basis for the development or amendment of its national technical regulations. Since April 2004, the SAC had undertaken an overhaul of all existing national standards, as well as those under drafting, to ensure their consistency with relevant WTO commitments. This task was facilitated by the rapid development of the Chinese economy and progress in its standardization administration. As a result, AQSIQ and SAC had issued a joint notice on 14 October 2005, proclaiming that a total of 1,416 national standards had been nullified, among which 114 were mandatory. These were some examples of China's faithful endeavour to fulfil its WTO obligations, and this endeavour had been well acknowledged by Members.

16. In respect of *transparency*, China's technical regulations, mostly in the form of mandatory standards, were uniformly examined by the SAC and published jointly by SAC and AQSIQ. China's relevant competent authorities, including AQSIQ, the CNCA, the Ministry of Information Industry (MII), the Ministry of Health (MOH) and the State Environmental Protection Administration (SEPA), etc., carried out the conformity assessment procedures, such as supervision, certification, accreditation and inspection, on both domestic and imported products, according to their respective functions and responsibilities. The proposed draft of these technical regulations, notified with the SAC as the "agency responsible", in fact, included the regulations within the scope of these different other relevant authorities mentioned. Therefore the latter did not need to notify the regulations again under their own name.

17. In respect of *CCC Certification*, China had acceded to the IECEE/CB system under IEC, and consistent with its scope of participation, China's CCC system recognized the CB testing reports by foreign certification bodies who had also acceded to the IECEE/CB system. According to paragraph 36 of the Regulations of the People's Republic of China on Certification and Accreditation, as well as according to the international practices, foreign bodies had to undertake compulsory certification work within the framework of mutual recognition agreements (MRAs) signed between China's certification and accreditation authorities or authorized bodies under the State Council and the foreign counterparts. So as to avoid duplicative testing and certification, and to remove technical barriers to trade, the Chinese authorities were willing to enhance the mutual recognition of certification and

accreditation pursuant to the TBT Agreement. Currently, China had signed cooperation agreements with more than 20 countries or regions, and, meanwhile, a number of foreign organizations had undertaken CCC certification tasks concerning routine factory tracking.

18. The representative of China pointed out that the problem of the mismatch between the First Catalogue of Products Subject to the Compulsory CCC Certification with the HS codes used by the customs had already been solved. China was now working on the detailed description of the listed products, the completion of which would facilitate the judgment whether or not a product was subject to the CCC certification. When deemed necessary, China would make adjustments to the Catalogue of Industrial Products Subject to Compulsory CCC Certification. Members' concerns on specific products were noted and would be taken into serious consideration when China reviewed the existing system. While ensuring that the goal of safety protection was met, China was exploring the possibility of adopting different conformity assessment procedures, including SDoCs. China was willing to take into account Members' successful experiences in this regard.

19. In the practice of various product certification bodies, the requirements for factory inspection were different from those for the certification system (ISO9001). The ISO9001 inspection could not replace the factory inspection. Therefore, China would not exempt equipment manufacturers who had obtained an ISO9001 certificate from the obligation of factory inspection. When an enterprise decided that it would no longer manufacture a product subject to CCC certification, it had to notify the certification body responsible to withdraw or suspend the certification, and the periodical factory inspection would be automatically halted upon completion of such a procedure. China would make necessary adjustments as to the manner of conformity assessment, according to the results of risk assessment, and decide whether to reduce the number of factory inspections for low risk product manufacturers. China was willing to exchange, with relevant Members, their experiences and information on CCC certification concerning risk assessment.

20. The representative of China stressed that her country strictly fulfilled its commitment of not exceeding 90 days with regard to the CCC certification period. In the meantime, China hoped that enterprises and trading parties concerned would contact and cooperate with the relevant certification bodies so as to shorten the period of certification. Generally speaking, the implementation of the CCC System was satisfactory and certifications could be accomplished within the specified time-limit. In terms of spare parts and components intended for incorporation in a finished product and then exported to China, these were not subject to individual certification.

21. With respect to the transitional period of standards, comments from all stakeholders on newly developed or amended standards were invited before they were published, and allowed a transitional period after their publication. In addition, another transitional period was envisioned for products meeting the present national standard.

22. With respect to the certification fee and exemptions, in 2005, China had lowered the certification fee, and in March 2005, CNCA had published a new notice concerning exemptions. This was a transparent and equitable regulation to simplify and facilitate exemption procedures. The inspection and quarantine bodies directly under AQSIQ were entrusted to accept exemption applications. To date, most of the relevant trading parties were positive about this new system. The whole exemption process was brought under CNCA's direct supervision to ensure that it was properly and compatibly conducted. According to the new exemption system, re-exported spare parts (as components of a finished product) were exempted from certification at the time of import.

23. Regarding the English versions of technical measures, the TBT Agreement imposed no obligations for Members whose official language was not one of the three WTO working languages to translate parts or the full text of their technical measures into English. However, to facilitate foreign manufacturers to better understand China's technical regulations, AQSIQ and CNCA provided on

their web sites some official English versions of the CCC-related implementation regulations, which were updated when the amendments and improvements were made to the original documents.

24. With regard to the CCC marks, according to the Regulations on the Marking of Products Subject to the Compulsory Certification System, CNCA alone was to design and publish the unified CCC marks. Certified enterprises applied the certified marks to their specific products in accordance with the relevant implementation regulations applicable.

25. In terms of confidentiality, and taking account of the safety of the product and responsibility for the consumers, the certification procedure required necessary information which was treated in a confidential manner, for the accurate description of the product only.

26. The representative of China stressed that there was no duplication in certification of medical equipment, nor in any other sector. It was necessary to clarify the relationship between CCC certification and the registration as required by the State Foods and Drugs Administration (SFDA). According to the Regulations on Certification and Accreditation and the Regulations on Monitoring Medical Equipment, medical equipment was subject to the compulsory certification system. CCC certification and the SFDA registration did not overlap: SFDA registration recognized the CCC inspection results on the basis of which SFDA added some clinical verification items.

27. With regard to specific products, and, more specifically *cosmetics*, it was stressed that the MOH Import Licensing was a safety assessment procedure meant for safety and hygienic items of cosmetics, while AQSIQ carried out the checking of the Chinese labelling of the cosmetics which was meant to ascertain the authenticity of the labelled content. Hence, there was no duplicative certification. With regard to MOH's administration and supervision on cosmetics, both the imported and domestic "special use cosmetics" products were subject to review and approval. Whereas on the "ordinary cosmetics products", in order to further perfect the regulating and supervision system on cosmetics, China had engaged in the simplification of the approval procedures. In July 2004, MOH had issued a public notice to simplify the approval procedures on imported non-special use cosmetics which provided that, since 1 August 2004, the approval requirement were reduced from review and approval to just keeping records within 20 working days. This policy had greatly enhanced the import of cosmetics. In fact, as a result, imports of cosmetics from January to July 2005 had reached a 67 per cent increase over that of the same period last year. On the other hand, according to the Implementation Regulations of the Law of the People's Republic of China on Import and Export Commodities, AQSIQ carried out the examination on the Chinese labelling of imported cosmetics pursuant to the national mandatory standard GB5296.3-1995. All cosmetics products put on the market within the territory of China, including both the domestic and imported products, were subject to this standard. The examination of labelling, including the examination of the content and compliance inspection of the label, had to be completed within 48 working days. The time limit could not be extended to 4-6 months.

28. On *distilled spirits*, the representative of China pointed out that studies by Chinese experts had shown that fusel oils posed a potential risk to human health. Currently, a study was being carried out to assess the potential harm to human health of fusel oils, and the results of this assessment would serve as the basis for the amendment of relevant standards. Both the General Standard for the Labelling of Pre-packed Foods and the General Standard for the Labelling of Pre-packed Alcoholic Beverage provided that Pre-packed foods had to mark the date of production with the exception of wines and spirits, which, for their special characteristics concerning the nature of the products and their specific process of production, were allowed to mark their "date of filling". Considering that spirits were a mixture of products produced at different times, China required only the "date of filling" label instead of "date of production/manufacture". Chinese customers had the right to know when the spirits were filled. To facilitate the identification by consumers, especially by those with weak eye sights, China had developed mandatory requirements in respect of the safety items on foods labelling,

such as the size of characters, symbols and numbers. Enterprises were free to decide the size of other non-mandatory marking items.

29. In terms of *automobiles*, the Auto Industry Policy was a guideline addressing the development of China's auto industry given the many problems, such as the weakness in technical innovation and the low degree of industrial concentration in this sector. Limits of Fuel Consumption for Passenger Cars was the first mandatory national standard controlling the fuel consumption of automobiles and was notified to the WTO. The representative of China stressed that there were currently no specific plans to develop other technical requirements. In terms of China's accession to the UN 1958 Agreement, China had been actively supporting the harmonization of the international technical regulations and China's Government had always attached great importance to the facilitation of international trade of auto products and would carry out positive studies on these matters; China would consider its membership of this agreement at an appropriate future time. With a view to follow and trace certified products and so as to prevent fake products – as well as to protect the interests of both manufacturers and consumers – the CCC system required the application of a mark on the certified product. This was also a universal international practice, and it was in line with the US DOT certification, the UL and the EU CE mark certification. There would be no replacing of the CCC mark with another. In addition, if these spare parts and components were certified separately, time and cost for the certification of the whole automobile could be spared.

30. With respect to *digital cameras*, the representative of China stated that all the digital camera standards that China was developing were voluntary national standards instead of technical regulations. China based the development of such standards on five relevant international standards, i.e. ISO12231:1997, 12232:1998, 14524:1999, 12233:2000 and ISO/CD 12232:2003. Since standards under development were voluntary, China had no obligation to notify them to the WTO. Nevertheless, at the initial stage of the formulation of the standards, the China Technical Committee on Camera had conducted a thorough exchange of views with the interested companies and the Association of the members.

31. In terms of *ICT Products*, China agreed with Members that the scope of regulatory requirements should be confined only to essential requirements and that verification of compliance with other requirements could be left as a matter between buyers and vendors. CNCA was currently discussing these issues with other authorities. However the representative of China wished to draw the Committee's attention to a number of facts. There were many critical security defects in the existing international standards, which had raised serious concerns in China. China's WAPI was an enhancement to the existing international standard and was therefore not in any sense in conflict with WTO or ISO/IEC principles. China's WAPI was an advanced technology. The fact that WAPI had been allowed to the ISO/IEC fast track balloting procedure to become an alternative security solution had already proved this point. Therefore, China did not see any ground to withdraw the WAPI standard. When international standards could not fulfil a legitimate objective, Members had the right to adopt their own standards. This was both a WTO-TBT and ISO/IEC principle. Therefore, China did not see any inappropriateness for the sake of better performance or special need to develop standards based on more advanced technology to enhance, modify or even replace existing international standards.

32. In terms of *radio frequency* identification, at present, there was no updated information on the draft standard of the RFID.

33. On the re-cycling of end-of-life household appliances, the so-called *Chinese WEEE*, on the basis of in-depth study and public consultation, the draft of the Rules for Recycling of End-of-Life Household Appliances, had been submitted to the State Council for approval. As this was still under review, China was not in the position to provide any more details at the moment.

34. In terms of *chemical products*, and, more specifically, the registration of initial imports of Chemical products, China was working hard to improve the capacity of testing institutes in order to join the GLP system of the OECD. The Registration Centre for Chemicals of the State Environmental Protection Administration, SEPA, was carrying out a survey on testing institutes in order to include more qualified testing institutes for applicants to choose from. Yet, in fact, the seven existing testing institutes were far from operating at full capacity. There had been no cases of slowing down the application process. The website of Registration Centre for Chemicals provided contact information on the testing institute on ecological toxicity testing institutes (www.cre-sepa.org.cn). In terms of the sixth enlargement submission, the relevant authority was currently examining the enlargement cases. As the new regulation system for chemicals in China had just been established, the authorities were working out the detailed management rules, including that on low-volume chemicals and chemicals with special uses, etc. The regulation system on new chemicals of different countries could vary from one another in details. China's system took polymers as one kind of chemical for regulation; at present, Chinese authorities were not planning to cancel the regulation on polymers.

35. Finally, in terms of *pharmaceuticals*, at present there was no unified regulation on the production of API in China, the only requirements for enterprises were the basic standards provided in Chinese Pharmacopoeia. Therefore, China's inspection authority would test products, both domestic and imported, in accordance to the enterprises' standards filed by the enterprises. The filed standards of the domestic products would be reviewed comprehensively after a required trial period by the competent authority. In terms of the standards for imported products – these were also subject to examination and once the filed standards of the imported pharmaceuticals were approved there was no need to transform the standards. As for the charges relating to the tests, these were set jointly by the competent authorities of the finance and pricing departments under the state council based on the cost of the tests. The price of charges were published in the announcement of MOF and MDRC in 2003; the same prices applied on imports and domestic products. The representative noted that this issue had been extensively discussed and resolved by China's competent authority in Beijing and the Embassy of the concerned Member. This was, in China's view, a much more open and efficient channel to communicate and address the issue at question.

36. The representatives of the United States, the European Communities and Japan thanked the Chinese delegation for the detailed information provided in response to the questions posed.

37. The representative of China pointed out that most of the points raised by Members were about requesting China to improve its implementation of the TBT Agreement. From China's point of view, the Review offered an opportunity to clarify its positions and for further exchanges on points that were of concern to Members. Nevertheless, China was of the belief that other channels were more efficient to exchange concerns relating to the TBT Agreement. Therefore, China encouraged Members, in raising specific concerns with China, to shift away from this Transitional Review Mechanism as this could facilitate a better and more efficient communication with regard to the issues of concern to Members under the TBT Agreement.

38. The Chairman thanked all delegations for their statements and the Committee adopted its report to the Council for Trade in Goods (G/TBT/17).
