WORLD TRADE ORGANIZATION

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Committee on Technical Barriers to Trade

FIFTH 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 Fifth 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 9 November 2006 meeting of the Committee.

2. In the context of the Fifth Annual Review, submissions were made by the European Communities (G/TBT/W/272), Japan (G/TBT/W/270) and the United States (G/TBT/W/271). Questions raised included the following elements: the Chinese Compulsory Certification system (CCC); China's national standard-setting process and the use of international standards; the technical regulation of wireless LAN (WAPI); ICT products; automobiles; pharmaceuticals; cosmetics; medical devices; textiles; toxic chemicals; the environmental management of new chemical products; food labelling; the administration on the control of pollution caused by electronic information products; transparency; conformity assessment procedures; and, distilled spirits.

3. Submission was made by the People's Republic of China on 9 November 2006 (G/TBT/W/274) 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/40 (excerpt attached).

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ATTACHMENT – EXCERPT FROM G/TBT/M/40

AGENDA ITEM 3: FIFTH 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 would undertake an annual review for eight years of the implementation by China of the TBT Agreement.

2. The representative of Japan introduced her delegation's submission contained in document G/TBT/W/270. She drew the Committee's attention to the China Compulsory Certification system (the "CCC System"); under this system, no foreign conformity assessment bodies ("CABs") had been accredited by China according to Article 13 of the Regulations of the People's Republic of China on Certification and Accreditation, which permitted only Chinese CABs to engage in CCC certification activities. Japan considered this provision inconsistent with the objective of Article 6.4 of the TBT Agreement and with China's commitment in Paragraph 195 of the Report of the Working Party. Japan requested China to permit foreign CABs to participate in CCC certification activities under conditions no less favourable than those accorded to Chinese CABs in light of the TBT Agreement.

3. It was noted that spare parts and components to which the CCC system was applied were not subject to the CCC certification when *incorporated* in final exported products. However, the CCC certification was required when these products were exported as a *single* unit for repair, even if they were finally incorporated in CCC certified final products. Japan requested China to exempt single parts and components which would ultimately be incorporated in CCC certified final products from CCC certification.

4. The representative of Japan pointed out that problems remained with respect to the conformity assessment procedures of the CCC system. At the previous TRM, China had stated that if factories decided to stop manufacturing products which were subject to the CCC certification and notified the CABs of this, periodical factory inspections would be automatically halted. However, Japan was of the view that this procedure was not working properly.

5. The representative addressed China's Administration on the Control of Pollution Caused by Electronic Information Products, which Japan understood would be enforced from March 2007. The representative asked whether and when China intended to make a WTO TBT notification.

6. With respect to the issue of China's Registration of Initial Imports of Chemical Products and System for Environmental Management on the Import and Export of Toxic Chemicals, while Japan appreciated China's efforts regarding enforcement of provisions on the environmental administration of new chemical substances, Japan had some concerns. First, Japan understood that the simplified notification was approved only in the case of the importation of chemical substances for the purposes of research and technological development. However, requiring the same range of data from all importers regardless of import volume would impose an excessive economic burden on importers of small amounts. Japan wished to see the prompt introduction of the simplified notification for the importation of small amounts of new chemical substances. Second, the new regulation had a provision to the effect that eco-toxicological data of new chemical substances had to include those obtained through biological tests performed in China using China's testing facilities. However, OECD Member countries mutually accepted testing results based on the GLP (Good Laboratory Practice) system. Japan enquired on the progress achieved so far for China to join the GLP system. Third, certain chemicals were exempt from the notification. However, the procedure for exemption of notification was too burdensome and Japan requested China to simplify its procedure.

7. With respect to the technical regulation of wireless LAN (WAPI), Japan noted that it had been reported that China's relevant authority would disclose to domestic manufactures the technical content of WAPI six months *before* foreign manufacturers receive this information. In addition, WAPI was not presently accepted as an international standard because Japan was concerned that such a measure could be inconsistent with the TBT Agreement. Japan requested China's views on this point.

8. The representative of the United States introduced her delegation's submission (G/TBT/W/271) and noted that the Fifth Transitional Review showed there were areas of progress and areas where questions remained. In recent reviews, the United States had raised questions about China's ability to ensure all notifications from all their agencies which developed technical regulations were made pursuant to the TBT Agreement. The US submission included a chart showing the range of agencies involved; most of the notifications were made by the Standardization Administration Commission of the People's Republic of China (SAC) and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ).

9. The United States had previously brought to the attention of the Committee its concerns with respect to China's toxic chemicals regulation. The United States appreciated efforts China was making to notify the range of relevant regulations. Regarding international standards, the United States had ongoing discussions in the TBT Committee as well as bilaterally. The United States encouraged China to continue considering the list of standards from a broad range of bodies and not only those which it had classified in its law on standards. The United States also noted the cooperative activities that China had engaged in with standards bodies from the United States. Like Japan, the United States also had concerns and questions in the area of conformity assessment. It was recalled that during the 2005 transitional review, China had indicated it was exploring the possibility of adopting different conformity assessment procedures including supplier's declaration of conformity (SDoC); the United States asked China to update the Committee on any steps taken in this regard.

10. The representative of the United States noted that information had been provided to the Committee on some 20 mutual recognition agreements China had signed; many of these appeared not to have been notified pursuant to Article 10.7 of the TBT Agreement. China was asked to clarify. China was also asked whether it considered providing alternative approaches to facilitate the acceptance of conformity assessment results from bodies located in countries other than those with which it had concluded MRAs.

11. In respect of medical devices, the representative of the United States noted her understanding that China would remove duplicative testing and certification requirements. However, the United States remained concerned that a number of duplicative requirements remained. China was asked to provide an update on its plans to eliminate remaining testing and certification redundancies for medical devices.

12. The representative of the United States noted that, like Japan, she still had a number of outstanding questions related to China's administration on the control of pollution caused by electronic information products. While the general framework had been notified to the WTO, with less than five months before the implementation date, a number of the details on processes that the United States would need to comply with remained outstanding. In particular, the United States was concerned that suppliers would be unable to meet the labelling requirements as well as testing and certification requirements. China was asked to respond to the questions contained in the US submission in this respect.

13. The representative of the United States recalled that in past transitional reviews, questions has been raised in respect of China's regulation on distilled spirits. The United States was pleased that on 28 August 2006 China had notified, pursuant to the SPS Agreement, a draft revision on its hygienic standard for distilled spirits and swizzle for public comments; the United States was also encouraged by the proposed revision, which, if adopted, would satisfy the concerns that the United States had expressed previously in the TBT Committee. Other issues were also raised in the US submission.

14. The representative of the European Communities introduced his delegation's submission (G/TBT/W/272). He was pleased to note an increase in cooperation between China and the European Communities on TBT issues; formal cooperation mechanisms had been established which worked well. Nevertheless, a number of concerns remained – some of which were highlighted in his statement (G/TBT/W/272 contained more detail on these concerns and addressed also other issues).

15. Like the two previous speakers, the European Communities had a general concern with respect to China's Compulsory Certification system (CCC). Despite several changes over the years, it remained a burdensome, expensive and time consuming conformity assessment procedure. Moreover, it was not transparent and left room for interpretation. The European Communities was also concerned that China appeared to be enlarging the list of products which fell under this scheme – rather than reducing this list. Similar to Japan, the representative of the European Communities was concerned as well about spare parts certification and believed the CCC requirements could be simplified. On confidentiality, the European Communities was of the view that the scheme required too much documentation to be supplied and could also be simplified. The European Communities had listed a number of other concerns in G/TBT/W/272 but, in summary, the technical requirements of the CCC system were not always relevant to the level of risk the product posed – which implied that the CCC system was more trade restrictive than necessary.

16. A second main area of concern to the European Communities was horizontal in nature and related to standardization – in particular with respect to the development of domestic standards, especially in areas where internationally recognised standards already existed and in particular in the ICT field. The European Communities preferred to see China's standardization efforts integrated more into the established international standardization organizations and consortia. For instance, the European Communities was concerned with the so-called compulsory standards used in China's system which mainly focused on fields of specific public interest covering health and safety and environmental protection. However, these standards often include issues such as performance and interoperability requirements which the European Communities considered went too far. China was urged to consider restricting compulsory standards to a few well defined areas where there was a clear public interest to have such standards. The European Communities was also concerned about the ability of European companies to participate in China's standardization work. There was also a need for greater transparency with respect to deviations of Chinese standards from corresponding international standards.

17. With respect to ICT products, the European Communities' main concerns related to the fact that there existed multiple procedures for approval which were managed by different authorities. China was urged to consider simplifying the current system, if possible by merging existing separate procedures into a single approval procedure overseen by one authority.

18. On automobiles, the European Communities fully supported the objective of regulating for safety, health and environmental protection. Nevertheless, the European Communities was of the view that these goals could best be achieved by harmonization under the UN-ECE 1958 Agreement on Motor Vehicles and China was therefore urged to become a contracting party to this Agreement. In fact, the EC's own assessment was that many of China's regulations in this sector were very similar to the UN regulations under the 1958 Agreement.

19. The issue of active pharmaceutical ingredients (APIs) remained of concern to the European Communities and specifically the fact that each imported API batch into China remained subject to routine multi-sampling and testing practise carried out by ports and drug authorities. In other words, batches were sometimes sampled and tested six or seven times which was both very expensive and overly complex. Regarding cosmetics, the European Communities' concern was that there was a difference between the approval procedures in place for domestic products and for imported products. On medical devices, the European Communities was concerned about double certification requirements. Moreover, the European Communities was of the view that new or fully refurbished medical devices needed to be treated in the same way; the ban on refurbished products was not justified.

20. On textiles, the representative of the European Communities noted with respect to exports of raw silk that there was a requirement to provide compulsory certification of silk quality which was needed before the silk could actually be exported. However, this requirement did not appear to apply in the same way to domestic buyers of raw silk. On conformity assessment procedures for textiles and footwear, the compliance of products with Chinese standards was verified at the borders and the European Communities urged China to progressively replace customs control at the border as this represented duplicative checking of imported goods. The European Communities was also of the view that the labelling requirements for clothing were excessive and could be simplified.

21. The representative of China introduced his delegation's submission (G/TBT/W/274). In respect of transparency, it was stressed that China had always paid great attention to the implementation of the transparency obligations of the TBT Agreement and had been consistently improving its domestic mechanisms in this respect since accession. Immediately after its accession, implementation by all related government agencies of the WTO transparency obligations, including notifications, had been required. Moreover, authorities responsible for WTO notifications and enquires had been designated. Notification guidelines on TBT measures had been provided and training courses and seminars had been held to introduce the TBT Agreement. It was pointed out, however, that there were always possible differences in understanding and interpretation when the notification obligations were applied in specific cases. It was noted that compulsory standards in China constituted the majority of the technical regulations which were required to be notified according to the WTO TBT Agreement and since all these standards had to be registered with the Standardization Administration Commission of the People’s Republic of China (SAC), which was within the General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China (AQSIQ), it was normal that notifications from AQSIQ accounted for most of the TBT notifications from China.

22. Regarding the CCC system, the representative of China was of the view that the principle of unification was applied in CCC certification and that national treatment was guaranteed. Moreover, the list of products covered by the CCC scheme was developed in a manner that was based on sufficient analysis, as well as risk assessment. SDoC could only be applied together with crucial elements such as efficient market surveillance, product liability law and administrative involvement in control to ensure quality and safety of products. China agreed that the application of SDoC would facilitate trade and served the interests of manufacturers; in fact, China had been studying this issue and intended to further improve its facilities so as to be prepared to apply SDoC in the future. Regarding confidentiality, the representative of China confirmed that confidentiality requirements were in place in both legal documents and conformity assessment procedures in the current certification system.

23. On the issue of complexity and the high costs of CCC procedures, China was of the view that the procedures were prepared and published in a transparent way, in line with the TBT Agreement. In the course of implementation of the CCC system, China had already taken measures to simplify the procedures and improve efficiency, such as recognition of test results, reclassification of products

module, online certification application and the commitment to complete certification within 90 days. However, as the factory inspection in the CCC system contained not only requirements related to general quality management systems, as specified in IS09001, but also process control and product conformity assessment, China was of the view that IS09001 could not replace the factory inspection requirement in the CCC system. Moreover, factory inspection was common practice worldwide.

24. The representative of China reaffirmed that standards and procedures for fees charged in the certification process were transparent; he noted also that the fee charged for CCC certification was significantly lower than the average world level. As for recognition of foreign certification bodies and their testing results, pursuant to the Regulation on Certification of the PRC, certification bodies established in China could be qualified as CCC certification bodies by way of official authorization by Certification and Accreditation Administration (CNCA). For foreign certification bodies, qualification could only be acquired through inter-government agreements, agreements recognized by the Chinese government or agreements with competent authorities of the Chinese government.

25. On recognition of test results, pursuant to the TBT Agreement, China recognized, to the extent China was a participant, the test results of the IECEE/CB Scheme. Moreover, China had signed agreements with agencies or certification bodies from more than 20 countries or regions on recognition of factory inspection and test results. With respect to the initial factory inspection and certification time limit, the whole process included: the submission of a formal application with relevant documents; the factory review after sample testing; and the issuance of certification. China had undertaken substantial efforts to shorten the period of time for the certification process, and, since coordination and cooperation from relevant parties had to be achieved, China had committed to complete this process within 90 days, which applied both to domestic and foreign manufacturers.

26. Regarding the requirement for both type test and initial factory inspection, the representative of China observed that these two tests could be conducted simultaneously; however, failure to pass the type test could invalidate the test result of initial factory inspection, which could lead to another time-consuming testing process. Regarding the frequency of periodic factory inspection, since the CCC system was carried out on the basis of international guides and practice, annual inspection was a basic requirement for factories holding their own CCC certificate; for high-risk products more inspections were required. Since toys related to children's health and safety, they were considered high-risk products subject to mandatory certification.

27. Regarding the definition of international standards, the representative stressed that China had no restriction on the adoption of standards set by international standard-setting bodies including ISO, IEC or ITU. To the contrary, China had always encouraged the adoption of standards which were deemed appropriate and applicable for China.

28. With respect to the amendment to Decree No. 5, since China was still at a stage of public opinion solicitation and collection, and since the changes were rather more of a procedural nature rather substantial, China was deliberating on whether it was necessary to notify the amendment to the WTO. If substantial changes were made to Decree No. 5, China would fulfill its obligation to notify to the WTO.

29. Regarding WAPI, the representative of China stressed that the current Chinese WAPI standards addressed the safety concerns of China which the relevant international standards failed to do. It was recalled that the TBT Agreement allowed Members to adopt measures in compliance with legitimate objectives under the Agreement. China was of the view that the Chinese WAPI standard fulfilled the objectives specified in the TBT Agreement. Moreover, China had already published the calculating methods used in WAPI and if Members were interested they could visit the relevant website: www.oscca.gov.cn.

30. Regarding the issue of duplicative certification, the representative of China drew the Committee's attention to the fact that the Chinese government had made enormous efforts to uniform the certification system. Announcement No. 70, issued on 30 April 2006, by SFDA and AQSIQ eliminated duplication in certification of eight categories of medical devices. It was noted, however, that the compulsory *certification* of products and the *registration* of products were two systems that focused on different sides of the same coin: CCC certification mainly focused on safety while registration was about its clinical performance. This was common practice in many other Members, such as the EMC certification and UL certification for electric devices in the United States.

31. On Measures for Controlling Pollution Caused by Electronic Information Products, which, in China's view should not be called "Chinese RoHS", China had fully abided by the TBT Agreement in respect of notification requirements. Currently, there was no new information available regarding certification bodies, products catalogue or timeframe. China would respond to comments received. In fact, some comments had been accepted and integrated in the measure. Regarding requirements for Concentration Limits for Certain Hazardous Substances in Electronic Information Products and the Marking for Control of Pollution Caused by Electronic Information Products, it was pointed out that these two requirements, which would enter into force, were only recommending sectoral standards. The notification of these two standards was under consideration by the relevant authority of the Chinese government. In addition, information regarding the latest progress of the Measure could be found on the website of the Ministry of Information Industry (www.mii.gov.cn). Regarding the implementation of the Measure, since China had provided a one year adaptation period for manufacturers, China did not intend to postpone the implementation of the Measures for Controlling Pollution Caused by Electronic Information Products.

32. On the issue of the mandatory labelling, this requirement aimed at informing consumers and those who recycled products about possible poisonous content of such products (used electronic information products). China was of the view that the requirement was reasonable, necessary, appropriate and in compliance with the WTO TBT Agreement.

33. Regarding the subject of standardization, China had established both compulsory and voluntary standards. When drafting compulsory standards, legitimate objectives specified in the TBT Agreement were taken into account.

34. Regarding the participation of foreign enterprises in the domestic standards development process, the Standardization Administration of China (SAC) had promulgated Document No. 40 of 2005, namely: Opinions on Participation of Foreign Enterprises in China in Domestic Standardization. This document specified conditions for foreign enterprises in China to participate in the standards development process; hence, comments could be taken into account and interested Members could visit the website of the Standardization Administration of China to download the document. Regarding the refusal of applications for participation in domestic standardization process by European Union companies, the representative of China pointed out that foreign enterprises could submit applications to the competent authorities for participation, and make complaints to the Standardization Administration of China with sufficient reasons and justification in case an application was turned down. At present, the SAC had not yet received any complaints or such appeals from any foreign enterprises.

35. Regarding the adoption of international standards, China had made efforts to increase the percentage of adopted international standards in Chinese standards. Regarding ICT products, all technical tests requirements under the CCC system could be completed within one test laboratory. It was true that for a few products, such as telecommunication terminal products, in addition to the CCC requirement, these products also needed to meet the network entry requirement of the Ministry of Information Industry. Nevertheless, with the joint efforts of the relevant authorities in China, an understanding for coordination between the two requirements had already been reached: the CCC

focused on the safety and EMC test while the network entry requirement focused on network performance; this guaranteed two requirements without duplication.

36. On issues regarding imported cosmetics, the representative of China confirmed that in the past there had been an approval requirement for imported cosmetics not used for special purposes. However, it was pointed out that after 1 August 2004, the Ministry of Health had promulgated announcement No. 217 of 2004, which stipulated that imported cosmetics not used for special purposes only had to go through a registration process which would take 20 days. Therefore, China was of the view that both domestic and imported cosmetics not used for special purposes enjoyed the same treatment.

37. Regarding automobiles, the CCC certification served the same purpose as the ECE certification, which was to guarantee consumers' safety. However, compared to ECE certification, the Chinese CCC system was more simple and cost effective. Chinese auto makers at present could not adapt themselves well to the ECE system mainly due to the fact that the cost of application was too high and far beyond the capacity of those auto manufacturers. Moreover, different member States within the European Communities had different standards of implementation of the ECE system. China understood the positive effect of the 1958 Agreement and was considering joining as a contracting party to the Agreement at an appropriate time in the future.

38. Regarding labelling, there were cases where local inspection and quarantine administrations had different understandings on implementing the same standard. The Committee was informed that the Chinese government took note of this situation and was currently establishing a nation-wide registration system to ensure uniform application of food labelling standards.

39. On issues of medicines, China currently applied double examination in the registration of imported active pharmaceutical ingredients (APIs) to ensure that the quality of imported products met the domestic standard. However, it was pointed out that the double examination requirement was relevant not only for imported API but also for domestic medicines. This requirement was conducted before the medicines were distributed in the market. For clinical trial requirements, China confirmed that the requirement applied equally to domestic and imported medicines.

40. The Chairman thanked all delegations for their statements and the Committee adopted its report to the Council for Trade in Goods (G/TBT/20).

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