

Committee on Technical Barriers to Trade

**NINTH 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 Ninth 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 10-11 November 2011 meeting of the Committee.
 2. In the context of the Ninth Annual Review, submissions were received from Japan (G/TBT/W/342) and the European Union (G/TBT/W/344). Issues raised in the Japanese submission included: (i) sector/professional and local standards; (ii) conformity assessment procedures; and (iii) certification of information security products. Issues raised by the European Union included: (i) regulatory practice and transparency; (ii) level of regulation; (iii) internal regulatory coordination; and (iv) standardization.
 3. The People's Republic of China provided information relating to Annex 1A of WT/L/432. This was circulated in document G/TBT/W/343. 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/55.
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ATTACHMENT – EXCERPT FROM G/TBT/M/55

AGENDA ITEM 3: NINTH ANNUAL TRANSITIONAL REVIEW MANDATED IN PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

1. The Chairperson 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 after ten years of the implementation by China of the TBT Agreement.

2. The representative of Japan said that his delegation appreciated past dialogues with the Chinese Government, at regional and bilateral levels and through this Committee. These efforts contributed to more transparent introductions of TBT measures. His delegation observed that China had made progress but still did not appear to notify all new or revised standards, technical regulations and conformity assessment procedures as required by WTO rules.

3. He highlighted some points from document G/TBT/W/342. First, China appeared to continue to pursue the development of unique Chinese national standards as a means of protecting domestic companies from competing foreign technologies and standards. In addition, his delegation understood that, in China, there were not only national standards, but also sector/professional standards established by each department of standardization administration under the State Council or the local government, and local standards of the local government. These also had a huge impact on international trade. Japan would like to know how the central government had fulfilled its obligations under Article 3.1 of the TBT Agreement.

4. Secondly, Japan had asked about conformity assessment measures several times under this agenda item. It was not clear that China could directly accept Certification of Conformity of the China Compulsory Certification (CCC) system, issued by foreign based certification bodies, if the Chinese Government concluded an MRA with a foreign government. In addition, Japan understood that China did not accept EMC (Electro-Magnetic Compatibility) test results conducted by foreign based laboratories under international frameworks, such as IECEE/CB Scheme. His delegation would appreciate China's view on this question.

5. Thirdly, Japan observed that China, despite modifications regarding the certification scheme of information security products, still seemed to be pursuing policies that hindered the use of foreign information security products in China. As Japan and other concerned countries had continually expressed, it was expected of China to exercise prudence in such policies and to conform to global practices. This issue was also important because of the intellectual property protection aspect and his delegation was looking carefully at any progress in this area.

6. He noted finally that, according to China's "Regulations of the People's Republic of China on Certification and Accreditation" and "Measures for the Administration of Certification Bodies", certification bodies must receive approval of each scope of certification practices from the CNCA in order to carry out certification practices in China. However, his delegation understood that there were some certification practice fields where certification rules were not provided by CNCA. His delegation asked whether certification bodies in China could conduct a certification practice by registering their own certification rules with the CNCA under the "Measures for the Administration of Certification Bodies" in cases where the CNCA had not yet formulated the certification rules. He reiterated the importance of dialogue with the Chinese Government here and in other relevant fora in order to facilitate legitimate international trade.

7. The representative of the European Union, noted that since joining the WTO, China's economic transformation and its leading role in international trade was spectacular. China was now a

global economic power whose domestic policies and measures increasingly affected international trade. With power went responsibility and his delegation believed it essential that China take full ownership of its international trade and seek to integrate global regulatory practices in a systematic way in this regulatory process.

8. His delegation's paper focused on four areas of systematic concern. Each was illustrated with some examples taken from the specific trade concerns currently on the agenda of the TBT Committee meeting. The first area was good regulatory practices and transparency. His delegation welcomed the improvements in transparency in China's regulatory process and, in particular, welcomed the increasing number of public calls for comments. However, it considered that these practices were still not uniform and the application very much depended on the regulatory body in charge. In addition, old systems in certain areas remained which were detrimental to the predictability business needed to operate. His delegation, therefore, requested China to consistently call for public consultation on all new, draft laws and administrative measures that might have a significant effect on trade, and to allow for a reasonable period for comments on these drafts. His delegation also encouraged China to expand its use of regulatory impact assessment analysis in order to ensure that technical legislation was not more burdensome than necessary to achieve a legitimate objective. His delegation's paper provided some illustrative examples. He mentioned the ICT sector, information security, and cosmetics, which offered food for thought on what kind of measures could be taken to enhance good regulatory practice in China.

9. The second area of focus in his delegation's paper was about the level of regulation. His delegation noted with concern that China's regulatory framework in the TBT area was characterised by the systematic use of mandatory standards that were almost always combined with a third party conformity assessment. The best illustration was the CCC system which remained a major obstacle for foreign companies, in particular for SMEs. The CCC was complex, costly and lengthy. Since its implementation in 2003, its scope had steadily grown and now CCC extended well beyond its original objective of protecting consumer safety to new areas such as environmental protection or information security. The EU appreciated China's efforts to alleviate some of the administrative burdens of the CCC. However, his delegation stressed the need for China to consider a comprehensive review of the system to abandon the approach of "one size fits all" and to embrace one that took account of products having different levels of risk and safety, by applying a risk based approach to conformity assessment, and by considering lighter approaches such as Suppliers' Declaration of Conformity for products which posed a very low level of risk like office equipment, most electrical equipment, and ICT equipment. The potential introduction of mandatory third party conformity assessment in relation to the management of legislation on the restriction of hazardous substances was also a concern which had been covered in detail under the specific trade concerns. His delegation also recommended that regulation be focused on what was necessary to ensure health and safety, and not extend into things like qualitative aspects of products that should be left to the market to decide.

10. The third area of focus in the paper was regulatory coordination. In some areas, his delegation observed that several ministries or agencies exercised concurrent regulatory powers over the same products and for the same objectives like safety. This led to situations where the products which had been tested and certified by one regulatory body needed approval from another regulatory body. This led to duplicative procedures and added to the burden for companies. His delegation, therefore, underlined the need for improved coordination to eliminate this overlap in requirements. His delegation's paper provided illustrative examples in IT security, medical devices, and motor vehicles. For the latter, the situation was particularly revealing with no less than four entities having regulatory competence over almost the same regulatory aspects.

11. The fourth and final area of focus was standardisation. With regard to participation of foreign stakeholders in the domestic standardisation process, his delegation noted that in some sectors, like ICT, participation of foreign companies, although they were established and incorporated in China

under Chinese law, was still constrained to observer status. In other sectors, more involvement of foreign companies was allowed. As some of the standards underpinned mandatory certification schemes such as the CCC system, foreign companies were, in effect, deprived of providing input in the regulatory process. His delegation, therefore, called for more transparency, more inclusiveness of the standard setting process, and sufficient time for public enquiries which would allow stakeholders to react to draft standards. Concerning the implementation of international standards, his delegation noted with appreciation China's achievement concerning the adoption of international standards and the commitment in the 12th five year-plan to the continued alignment of domestic technical regulations and standards with international standards. One area of concern however was deviations from international standards without such deviations being justified on the ground that international standards were inadequate or ineffective for the objective pursued.

12. Another aspect his delegation asked China to consider was the timely adoption of international standards or the latest versions thereof. Outdated versions of standards would obviously cause trouble to manufacturers, especially foreign manufacturers, who were already used to working with the latest version of the standard. His delegation continued to encourage China's increased participation in international standard setting bodies, particularly in areas where issues were global and there was common interest in developing common global solutions instead of divergent national ones. Such areas included green technology, information security, smart grids, etc. One additional area of remaining concern in the IT sector was the emergence of home-grown standards that featured unique Chinese technologies. This resulted in blacklisting certain features of products by preventing innovative products that did not incorporate the technology embedded in the standard from being placed on the Chinese market.

13. Finally, in some areas, his delegation observed a tendency to make voluntary investor standards mandatory through conformity assessment procedures without any prior warning about this change in the status of the standard. When this occurred, the obligation to notify under the TBT Agreement should be triggered. In conclusion, his delegation welcomed China's efforts to anchor its system in the WTO Agreements. Again it stressed that the effects of the regulatory process were no longer limited to Chinese territory but had prolific effects on global trade. In this regard, his delegation insisted on good regulatory principles to be systematically followed in the Chinese regulatory process. His delegation would continue to use all bilateral opportunities for regulatory cooperation to work with China towards achieving this goal.

14. The representative of the United States said that his delegation would like to share its observations on the first ten years of China's WTO membership within the TBT context. He recalled that the TRM was created largely because China was admitted to the WTO before it had rendered all of its trade related laws and regulations WTO compatible; China was able to accept certain WTO obligations because of the variety of transition periods it was given. The annual TRM meetings, therefore, provided Members with opportunities to review with China, in a multilateral setting, the efforts China was making so as to implement specific commitments made in its Protocol of Accession. In the area of TBT, the Protocol was straight forward in requiring the key commitment of transparency, followed by the other obligations that all WTO Members had to meet.

15. His delegation agreed with many of the points raised by the EU both orally and in its submission. He wished to focus on two areas in particular: the continued lack of transparency in the development of China's technical regulations, standards and conformity assessment procedures, and China's policies on conformity assessment. In the area of transparency, China had made progress but had not yet implemented all of the commitments that it had made upon accession. Transparency was perhaps the most important TBT discipline in that it enabled regulators to have better access to the information they needed to make evidence-based determinations that would achieve the desired policy objective in the least trade restrictive way possible. It increased the accountability of the regulator to the public, and enhanced the legitimacy of the final results and the rule of law.

16. Early notice of impending proposals also enabled regulatory cooperation activities; regulator-to-regulator discussions could minimize unnecessary divergences between regulatory approaches and facilitate harmonization of technical regulations. Serious concerns remained about China's compliance with the WTO transparency obligations even after ten years of WTO membership. In several TRM discussions in different WTO Committees, his delegation had described concerns about China's efforts to comply with the cross-cutting commitments made in its Protocol that were designed to ensure that trade with China would be predictable and transparent.

17. First, with regard to China's commitment to publish laws, regulations and other measures, his delegation noted that, while China complied with the commitment in many respects, it did not appear that China published measures that provided "internal guidance". Second, with regard to China's commitment to publish measures for comments before implementing them, his delegation noted that China had made improvements over the years, but still did not institutionalise a notice-and-comment mechanism for all Chinese agencies. Third with regard to China's commitments to make available all laws and regulations and other measures pertaining to or affecting trade in one or more WTO language, it appeared that China had only made limited progress implementing this commitment. With respect to TBT, China had made considerable progress towards fulfilling its WTO notifications obligations. He acknowledged that China had notified over 800 measures to the TBT Committee and the number of annual notifications continued to rise. In particular, China's national "GB" standards, issued by the Standardisation Administration of China (SAC) under the jurisdiction of the General Administration of Quality Supervision, Inspection and Control (AQSIQ), had been consolidated into a centralised database and appeared to be regularly notified to the WTO.

18. He considered it regrettable, though, that China had not put in place such a database for proposed technical regulations, standards, and conformity assessment procedures issued by other Chinese government agencies. Perhaps not coincidentally, China rarely notified such proposals, (including mandatory industrial standards) and conformity assessment procedures issued by Chinese government agencies other than AQSIQ and its sub-ministries such as SAC. For example, the United States was able to identify 25 measures proposed by the State Food and Drug Administration (SFDA) in 2010 that could have been but were not notified to the WTO. The US also discovered five measures developed by the Ministry of Industry and Information Technology (MIIT) in 2009-2010, as well as numerous measures developed by China's Association of Automobile Manufacturers that were not notified. It appeared that China also failed to notify thousands of mandatory industrial professionals' standards to the WTO for comment. Such standards, which were frequently developed by Chinese agencies when GB standards did not exist, covered at least 58 industry sectors from oil and gas to textiles, automobiles and for environmental protection. Through its research, the US had identified unofficial listings for 15 of these sectors which set out over 20,000 industrial standards of which over 20 per cent (approximately 4000) were mandatory. For instance, the Ministry of Environmental Protection (MEP) developed 123 industrial standards from 2008 -2010 and none of them appeared to be notified to the WTO.

19. Lack of WTO notification for mandatory industrial standards was particularly problematic because in most cases they must be purchased through authorized resellers in China. The cost was nominal but such resellers generally did not accept international credit cards and required the use of a Chinese bank account. In practice, this requirement had made it impossible for even the largest US companies and trade associations to obtain copies of the Standards if they did not maintain a presence in China. His delegation strongly urged China to take immediate steps to remedy this situation and allow persons located outside China to purchase these documents without requiring them to maintain a Chinese presence.

20. In addition, the US had compiled a list of over 50 conformity assessment procedures developed by CNCA covering wires and cables, motors, electrical products, power tools, welding equipment, audio-visual equipment, information technology products, lighting fixtures, and motor-

vehicles and parts, telecommunications, toys and other products that were never notified to the WTO. The US had provided this non-exhaustive list of examples to China for its consideration. This list did not include, for example, the MIIT requirement that mobile handsets be dual-enabled with China's WAPI wireless standard. The US had raised this measure in the Committee on numerous occasions without resolution. That particular measure had not been published nor notified to the WTO. This list demonstrated what the US believed to be systematic flaws in China's notification system. Perhaps China's enquiry point lacked the necessary authority to notify measures either in whole or in part that were developed in or by other Chinese agencies. There could be insufficient internal coordination between AQSIQ and the relevant agencies developing technical regulations and conformity assessment procedures that resulted in a lack of notifications of measures developed by certain agencies. Alternatively, non-transparent development of technical regulations and conformity assessments procedures by specific Chinese agencies could mean that AQSIQ was unaware of these measures because the agencies did not publicize them until they had already been finalised. Whatever the cause, the US urged China to resolve the issue so that China notified proposed technical regulations and conformity assessment procedures to the WTO irrespective of the agency that developed them.

21. He added that China's development of a centralised database for GB standards had been extremely helpful for enhancing a number of WTO notifications for such measures. Perhaps that would be a useful model for China to follow for other agencies or, better still, on a global basis. In the US, maintaining a daily official journal of most central government measures, as well a separate official journal for each US state, had greatly facilitated regulatory transparency as well notifications to this Committee. Since most measures needed to be published in draft form in these journals, US enquiry point officials could access them directly each day without having to search for them on separate agency websites, call agency officials to ask them what they were working on, or request permission to notify them. His delegation would be happy to provide assistance based on its experience. If China opted instead for maintaining a number of journals on its website rather than having a centralised source, it must take steps to ensure that proposed technical regulations and conformity assessment procedures were made available at an early, appropriate stage so that Chinese enquiry point officials could access them and notify them to the WTO automatically. To the extent that the enquiry point lacked authority to notify certain types of proposed measures developed by certain agencies, his delegation urged China to clarify internally through appropriate means that it must notify these measures to comply with its WTO obligations and that AQSIQ had the authority to notify them.

22. The second area of serious concern for the US was conformity assessments. He cited Article 6.4 of the TBT Agreement while noting that China did not permit US suppliers to use competent conformity assessment bodies (CABs) (e.g. testing laboratories, product certifiers, and inspection bodies) located outside China's territory to demonstrate that their products complied with China's compulsory certification (CCC) and other technical requirements. This policy was highly disruptive to supply chains and competitiveness in the interdependent US and Chinese economies. This was an issue that his delegation had raised as a specific trade concern in many Committee meetings, and would probably continue to raise in the future. He stressed that the issue was China's failure to recognise conformity assessment bodies in the absence of mutual recognition arrangements.

23. China claimed that MRAs could be used to recognise CABs located in the US. But his delegation did not see any willingness by China to actually negotiate such arrangements, which were often unnecessary in any case given that Article 6.3 of the Agreement did not require MRAs for such recognition to be provided pursuant in Art. 6.4. China had also previously noted that US regulators regularly recognised conformity assessments bodies located in China to perform tests and services, and MRAs were not even required. While negotiation of MRAs in certain contexts may be appropriate, his delegation's experience found that the insistence of an MRA in other contexts was a policy that had less to do with ensuring regulator confidence and conformity assessment results, but

more to do with protecting domestic suppliers of conformity assessment services and the fees that they could charge. This increased costs, burden and delays for foreign producers and much of the resulting costs were passed on to Chinese consumers. Government-to-government MRAs could also be infeasible in situations where one Member regulated and the other Member did not maintain a comparable scheme. As noted in previous Committee meetings, the US believed, bearing in mind its obligations under Articles 5.4 and 9.1 of the TBT Agreement, that the best way for China to liberalize its approach to recognising conformity assessment bodies as competent was either to use accreditation by ILAC MRA or IAF MLA signatories or relevant international standards, guides or recommendations as a basis for direct recognition of foreign CABs. US product safety regulators had employed both methods where relevant, effective, and appropriate. As a result, many CABs from outside the US enjoyed such recognition, and the ability of US regulators to protect public health, the environment, consumer safety and other objectives had not been compromised. The US urged China to take a similar approach. He noted that earlier in the meeting, China urged Korea to recognise conformity assessment procedures in China, showing that China recognised the importance of having its conformity assessment bodies recognized by foreign regulatory schemes.

24. The US also noted that China's national accreditation service for conformity assessment (CNAS) was a signatory to both ILAC MRA and the IAF MLA and, had a responsibility under the rules of those systems to promote their use in China. The complementary responsibility to WTO obligations in Article 9.1 of the Agreement was to adopt wherever practicable international systems for conformity assessment in instances where positive assurances of conformity with technical regulations of standards was required. The US would be interested in learning what programmes China and CNAS in particular had in place to promote the ILAC MRA, IAF MLA in China, and if China could report on any success that it had achieved in persuading Chinese agencies to adopt such schemes as a basis for their conformity assessment procedures.

25. Going forward, the US urged China to take steps to improve transparency in the development of technical regulations, standards, and conformity assessment procedures. This would include ensuring that proposed mandatory industrial standards and proposals developed by agencies outside AQSIQ such as SFDA, MIIT, and MEP were notified to the WTO. Improving internal coordination, centralizing publication and dissemination and ensuring that the enquiry point had the authority it needed to perform its functions was critical in this regard. Secondly, the US urged China to revise its policy on recognition of foreign CABs in light of its WTO commitments and begin to allow non-Chinese CABs to be recognised to perform conformity assessments services within the Chinese market just as other WTO Members allow such bodies located in China to perform such services for export. This could best be done through reliance on relevant international standards guides, recommendations and international systems for conformity assessments. His delegation proposed, with respect to CCC, that China ensure that no rules, regulations or other legal measures prevented non-Chinese organisations from being designated by CNCA to conduct product testing, initial inspection, follow-up audits and certification for each CCC product category; that China publish the process by which organizations could be designated by CNCA to conduct product testing, initial inspection, follow-up audits and certification under the CCC system on the CNCA website; and that non-Chinese organisations be allowed to conduct such conformity assessment activities for the CCC by using the same equivalent procedures and criteria that CNCA applied for other designated Chinese organizations. The US would continue to engage China both here at the WTO bilaterally until these outstanding issues were satisfactorily resolved.

26. The representative of Mexico congratulated China for this ninth transitional review at the tenth anniversary of China's implementation of the Agreement. His delegation thanked the Chinese authorities for all the efforts made to notify the Members of both new and existing technical regulations, and the efforts towards conformity in line with the commitments they had made. His delegation added that there were instances, however, where it did not seem that China was complying with its transparency commitments. A number of companies had experienced related problems. His

delegation invited China to strengthen efforts to make its relevant legislation available in the official WTO languages, and to strengthen the notification activities as previous delegations had stated.

27. The representative of China said that during the past decade, China had spared no efforts to fulfil most comprehensively and seriously its tremendous commitments made upon accession to the WTO. China had eliminated all non-tariff measures and reduced its average tariff on goods from 15.3 per cent at its accession to 9.8 per cent today. China had overhauled 2300 laws, regulations and departmental rules at the central level and 190,000 trade-related regulations, policies and measures at the local level. The above-mentioned, hard-won achievements not only contributed to China's full compliance with WTO rules, including the rules stipulated in the TBT Agreement, but also had a very positive effect on trade promotion and facilitation at the multilateral level.

28. As a developing country, China had tried its best to overcome great capacity constraints in order to fully honour the principle of transparency of the multilateral trading system during the past decade. Up to now, China had notified 842 TBT measures, and responded to more than 3000 enquiries on China's TBT measures mainly through the China WTO Notification and Enquiry Center, in particular, through China's WTO TBT Enquiry Point. China had also dedicated huge human and financial resources to publish in a timely manner its TBT measures, including through the official website of the China TBT/SPS National Enquiry Point. Furthermore, China had made its best endeavor to provide a sufficient comment period for new TBT measures, and to translate as many TBT measures as possible into at least one WTO working language in order to achieve greater transparency. In the same open and cooperative spirit, China had submitted to this Committee in document G/TBT/W/343 the information requested by Annex 1A in China's Protocol of Accession. China was committed to conducting effective and constructive discussions with other Members both under this final TRM and in the regular Committee in the future.

29. The Chinese delegation noted the questions received from Japan under this agenda item prior to this meeting. He also noted that the Chinese Mission received an informal email from the EU with a 5-page draft attachment of questions two days prior to the meeting, which left Beijing just two working days to translate and respond. He apologized to the EU because his delegation was willing but unable to cover all of the EU's concerns at such short notice. For the concerns expressed by the US delegate, he considered that some of the problems could have resulted from misunderstanding and confusion and warranted further clarification from China and further dialogue between the two countries.

30. Regarding standards in China, the Chinese Government had taken a series of measures to ensure the fulfilment of its obligations under the TBT Agreement. First, while formulating and revising technical standards, including industrial and local standards, China implemented strict requirements for adopting international standards as stipulated in the Administrative Measures for the Adoption of International Standards (AQSIQ's No. 10 Order in 2001). Secondly, pursuant to the Standardization Law of China, China's industrial and local standards, once formulated, shall be reported to the competent governmental authority for the record. Third, in 2009, in order to strengthen the administration over mandatory standards in accordance with the requirements of the TBT Agreement, China started overhauling its industrial standards and launched a national standardization programme.

31. With respect to conformity assessment measures in China, there had been no change with the policies and guidelines governing the mutual recognition of the China Compulsory Certification system (the CCC system) since the last review. The mutual recognition of CCC was based on the mutual recognition agreements signed between the Chinese Government and foreign governments. Based on the bilateral agreements, the designated certification bodies could entrust foreign bodies to conduct follow-up checking. Under the Memorandum signed between China and Japan in 2007, such a mutual recognition mechanism had been put in place. He also clarified that China's membership in

the IECEE/CB Scheme did not cover EMC product category. According to the rules of IECEE/CB Scheme, China did not recognize or accept IECEE EMC Test Results (and Certificates).

32. As to questions on the restriction of hazardous substances (RoHS), China's Ministry of Industry and Information Technology had published on its official website the Catalogue for Products subject to Voluntary Certification under RoHS in August 2011. In the meantime, he confirmed that, as suggested by the EU, a "lighter" approach similar to the system of Supplier's Declaration of Conformity had been integrated into the Certification process under China's RoHS legislation regulation.

33. Regarding internal regulatory coordination, China had made great progress in enhancing the clarity, transparency and predictability of its TBT regulatory framework during the last ten years. He mentioned medical devices, as an example. In 2008, the AQSIQ and the SFDA of China jointly published the Announcement on the Market Access Related Questions regarding some of the Imported Medical Devices (No. 94, in 2008), which fully addressed the problem of duplicative conformity assessment practices by streamlining the regulatory work to carry out one time inspection, one time on-site test of quality system of the product concerned, and one time collection of fees by only one of the competent agencies in charge. Finally, regarding regulation for information security, since this question had been fully addressed earlier under Specific Trade Concerns, he did not wish to repeat China's remarks. He believed he had covered everything and reassured Members that his Government was ready and willing to continue its discussions in all appropriate fora in future.

34. The Committee adopted its report of the Ninth Annual Transitional Review (G/TBT/30).
