



## **TRANSMITTED ELECTRONICALLY**

**Date:** June 12, 2009

**To:** Mr. Joshua Wu, United States Department of Commerce

**Cc:** Mr. Scott Matthews, United States Department of Commerce  
Mr. Timothy Wineland, United States Trade Representative

**From:** Elise Owen, Representative for China Affairs  
American National Standards Institute (ANSI)

**Re:** 2009 JCCT Input on Standards and Conformance Issues in China

Standards and conformance<sup>1</sup> continues to be a top issue for U.S. companies doing business in China, as outlined by the U.S. – China Business Council's annual surveys of member priorities<sup>2</sup>, by annual white papers published by AmCham China<sup>3</sup>, and others. When implemented well, standards and conformance can facilitate international trade and investment. Otherwise they can create barriers to trade and investment – either intentionally or inadvertently. Overall, stakeholders in the U.S. standards and conformance systems, as represented by the ANSI membership, have reported that China's standards and conformance policies have been moving in a positive direction since China's accession to the World Trade Organization in 2001; however, serious issues continue to hinder U.S. companies' ability to do business on a level playing field in China.

These concerns include both overarching or structural issues, as well as issues with individual policies or requirements that affect specific technologies or industry sectors. The following input focuses on overarching issues, and is intended to complement sector-specific input that may be submitted by other U.S. organizations. This input is closely aligned with results of a 2006 ANSI membership survey on overarching priorities in China<sup>4</sup>, and with overarching recommendations published by the U.S. – China Business Council in 2009.<sup>5</sup>

This input covers transparency, uneven enforcement, conformity assessment policies, revisions to the CCC Regulations, and foreign participation on Chinese technical committees. Background information on these issues, as well as specific recommendations for the U.S. government are provided with the aim of strengthening the 2009 Joint Commission on Commerce and Trade (JCCT) dialogue, and supporting outcomes that advance trade and investment between the U.S. and China.

Questions regarding this input should be directed to Elise Owen, ANSI Representative for China Affairs ([eowen@ansi.org](mailto:eowen@ansi.org); 202-331-3624).

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<sup>1</sup> The term "standards and conformance" is used to refer collectively to voluntary standards, technical regulations (sometimes referred to as "mandatory standards"), as well as conformity assessment (including testing, inspection, certification, etc.)

<sup>2</sup> [Click here](#) to access the summary report of the 2008 U.S. – China Business Council Member Survey online.

<sup>3</sup> [Click here](#) to access recent annual editions AmCham White papers online.

<sup>4</sup> *Summary Report: Survey on Overarching U.S. Priorities Regarding Standards, Conformity Assessment and Technical Regulations in China.*

[Click here](#) to access this report online directly

<sup>5</sup> *U.S. – China Business Council Recommended Changes to Standards Development and Conformity Assessment Policies and Practices in China.*  
[Click here](#) to access this document online

## U.S. – CHINA JOINT COMMISSION ON COMMERCE AND TRADE (JCCT)

### *American National Standards Institute (ANSI) Input on Overarching Standards and Conformance Issues in China*

#### Transparency

Transparency continues to be a major factor affecting the ability of U.S. companies to enter and compete in the Chinese market. Transparency in general has been consistently identified as a top priority by U.S. companies doing business in China, and ANSI members have identified transparency as one of their top concerns for standards and conformance in China. While inadequate transparency affects all companies doing business in China, the effects are most acutely felt by small and medium-sized enterprises (SMEs). These organizations generally do not have representative offices on the ground in China and do not have the resources to gain access to information through informal channels.

Since China's accession to the WTO, progress has been made in increasing transparency in China. For example, the number of annual Chinese TBT notifications continues to rise (China notified 40 proposed technical regulations in 2003, compared with 184 in 2008). In the 2006 meeting of the U.S. – China Joint Commission on Commerce and Trade (JCCT), China's State Council committed to requiring that all laws, regulations and other measures of all government agencies (federal, provincial, etc.) be published in a single official journal, *i.e.*, the *China Foreign Trade and Economic Cooperation Gazette*, issued by the Chinese Ministry of Commerce (MOFCOM). In 2007-2008, China made great strides in making more information on its standards system available through StandardsPortal ([www.standardsportal.org](http://www.standardsportal.org)), a cooperative initiative of the Standardization Administration of China (SAC) and the American National Standards Institute (ANSI). Through StandardsPortal, interested parties in the U.S. can now access the full catalog of Chinese national standards, view China's plans for future developments and amendments to national standards, and view policies and procedures on standards development in China.

While the JCCT and other bilateral and multilateral engagements have led to significant advances in increasing transparency in China, more needs to be done. Most notably, U.S. companies continue to encounter difficulties identifying and accessing standards and technical regulations that affect their products and services. While China's National "GB" standards have been consolidated into a centralized database, there is no similar centralized place where U.S. companies can find other technical regulations developed by Chinese regulatory agencies (e.g. State Food and Drug Administration (SFDA), Ministry of Health (MOH), State Environmental Protection Administration (SEPA), etc.), or Chinese Professional/Industry and Local/Provincial standards (which can be either voluntary or mandatory).<sup>6</sup> Further, these other requirements are frequently not notified to the WTO Secretariat. This is due in part to lack of interagency coordination between the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ, the PRC agency that oversees China's national standards systems, as well as China's TBT Enquiry Point), and other PRC agencies, as well as to the lack of a common definition or understanding among PRC agencies of what constitutes a "technical regulation". Mandatory technical requirements for products and services are often classified as "decrees", "announcements" or "circulars" and therefore do not get notified to the WTO.

**Recommendations for USG:** High-level Chinese government awareness of and commitment to addressing the transparency issues that affect U.S. industry in China is critical to making continued progress toward transparency in China. USG should raise transparency concerns in the 2009 JCCT, asking for the following commitments from China:

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<sup>6</sup> In the U.S., federal regulations are made available online through the Code of Federal Regulations (<http://www.gpoaccess.gov/cfr/>) and voluntary standards are made available through the NSSN ([www.nssn.org](http://www.nssn.org))

- Implement high-level (e.g. state council) Chinese government policy that anything meeting the definition for “technical regulations” outlined in the Annex 1 of the WTO/TBT Agreement<sup>7</sup> must meet all relevant requirements of the WTO Technical Barriers to Trade Agreement (including notification of new and amended technical regulations).
- Commit to implementing China’s commitment to translating all laws, regulations and other measures into one or more WTO languages (English, French or Spanish) and designating official journals which would regularly publish these requirements.<sup>8</sup>

USG should also build upon and continue efforts of the Strategic Economic Dialogue (SED) to offer training to the PRC State Council and other Chinese government agencies on how the U.S. Office of Management and Budget (OMB) enforces the Administrative Procedures Act (APA) and manages centralized information on regulations in the U.S. through the U.S. Code of Federal Register (CFR), the Unified Agenda (UA) and the Federal Register (FR).

### Uneven Enforcement

Recent public health scares with Chinese imports of tires, food and toys have raised pressure on the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and other Chinese regulators, and have created significant tension in the overall U.S. – China relationship.

China’s response to these concerns has generally been to focus on creating more stringent standards and technical regulations. This approach skims over the core issue of these problems, which is inadequate enforcement for domestic companies. China currently lacks adequate infrastructure to ensure compliance with its technical requirements, and lacks a “compliance culture” within its domestic industry.

In addition to creating a public health concern for the United States, this reality also places U.S. exporters at a significant disadvantage within the Chinese market. In general, U.S. companies exceed Chinese requirements and therefore have no concerns with the requirements themselves. However, the procedures required to demonstrate compliance (often imposed as part of the customs clearance process) can be unreasonably lengthy and onerous and place U.S. companies at a competitive disadvantage to their Chinese competitors who often fail to meet Chinese minimum requirements and who often do not complete the same procedures.

ANSI members have reported that some of their Chinese competitors not only fail to meet the Chinese minimum requirements, but that they also make false claims on the level of performance, safety, or efficiency of the products, creating consumer confusion in the Chinese market (and, increasingly, in the U.S. market) and undermining the differentiation and distinction of U.S. products. This encourages a real and dangerous “race to the bottom” in product quality and safety.

**Recommendations for USG:** High-level Chinese government awareness of and commitment to addressing issues of uneven regulatory enforcement is critical to making progress toward a fair and level playing field for U.S. companies in China. USG should stress that advancing even enforcement for foreign and domestic companies in China is in both countries’ best interest. In addition to reducing barriers for U.S. companies in China, progress in this area will increase the quality and global competitiveness of Chinese products, and will help to address import safety concerns for Chinese products in the U.S., EU and other countries internationally. USG should propose that China require Chinese regulators to conduct a risk analysis and impact assessment before new technical regulations are issued (as is done in the U.S.). These risk analyses and impact assessments should be publicly available for comment and review, and comments should be considered and addressed (these requirements are also in place for U.S. regulatory agencies under the U.S. Administrative Procedures Act). USG should also offer training to China on how various U.S. regulators carry out

<sup>7</sup> World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement. [Click here](#) to access the agreement online.

<sup>8</sup> These commitments were made in China’s Accession to the WTO. WT/L/432: [Accession of the Peoples’ Republic of China](#), November 10, 2001. Part I, Section 2.C.2.

risk analysis and impact assessments, as well as on the various mechanisms used by U.S. regulators to enforce their technical regulations.

### Conformity Assessment Policies

Indigenous conformity assessment requirements<sup>9</sup> in China have become a growing source of concern to ANSI members, conformity assessment work (e.g. testing, certification, etc.) that has already been conducted, and that is accepted for the U.S. and other international markets, must be repeated by Chinese test labs and certification bodies in order to access the Chinese market. More specifically, Chinese law requires that most certification and testing for regulatory compliance be performed in China, and only by designated Chinese bodies.<sup>10</sup> ANSI members feel that these requirements are more trade restrictive than necessary to achieve the legitimate objectives of protecting environment, health, safety and national security in China.

China's indigenous conformity assessment requirements create unnecessary burdens for a broad scope of U.S. companies doing business in China, and deny market access to a key segment of the Chinese market for U.S. testing and certification services. These requirements put U.S. manufacturers at a disadvantage vis-à-vis Chinese competitors, who enjoy more direct access to testing and certification services. U.S. companies have reported instances of preferential treatment for Chinese manufacturers (e.g. shorter process times for testing and certification services for Chinese manufacturers; also limited accommodation to non-Chinese speaking manufacturers). U.S. manufacturers also risk the compromise of proprietary product designs and manufacturing methods given the close ties that many Chinese testing and certification bodies appear to have with Chinese manufacturers.

Although not the only example, the implementation of product safety testing requirements for the China Compulsory Certification (CCC) program<sup>11</sup> exemplifies the problem of China's indigenous conformity assessment requirements. Over 20% of U.S. exports to China must obtain the CCC mark prior to market entry. There is typically only one designated certification body (DCB) that is authorized to perform testing, inspection and certification for any given scope under the CCC program, and these DCBs generally do not have a presence in the U.S. or other markets outside of China. Companies manufacturing product in the U.S. and exporting to China must arrange and fund travel for pre-market inspection at the manufacturer's location by a Chinese agent and submit to subsequent routine inspections after receipt of the CCC mark, and must in addition arrange to have their products tested and certified in China.

With regards to implementation of the CCC program, ANSI members have also expressed concerns that implementing requirements set by the DCBs are often introduced or changed without advance notice or ability for companies to provide comments. The Certification and Accreditation Administration of China (CNCA) and the China Quality Certification Center (CQC, China's largest DCB) have agreed to work with ANSI to carry out a dialogue on U.S. concerns with specific technical issues related to the CCC program, and it is hoped that this activity will be helpful in addressing implementation-related concerns relating to the CCC program.

**Recommendations for U.S. Government:** High-level Chinese government awareness of and commitment to addressing issues of Chinese conformity assessment policies is critical toward reducing unnecessary burdens for U.S. companies doing business in China. USG should raise U.S. concerns with China's indigenous conformity assessment requirements, and propose a high-level forum in which the U.S. and Chinese public and private-sectors can explore alternative approaches to reduce costly and duplicative testing and certification for foreign companies doing business in China.

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<sup>9</sup> "Indigenous conformity assessment requirements" refers to requirements that conformity assessment conformity assessment be conducted in a specific country, by local organizations.

<sup>10</sup> *Regulations of the People's Republic of China on Certification and Accreditation, Article 30* ([Click here to access the regulations online](#))

<sup>11</sup> While the majority of U.S. manufacturer concerns come from indigenous testing requirement under China's CCC program, it is worth noting that similar indigenous testing requirements also exist for other regulatory regimes covering specific industries (e.g. protective equipment, medical devices, etc.).

USG should also acknowledge China's positive steps toward addressing specific technical issues related to the CCC program and its implementation.

### Revisions to China's CCC Regulations

In June 2008, China notified the WTO of proposed revisions to a proposed amendment to Chinese "Regulations on Compulsory Product Certification" (regulations that authorize China's CCC program, commonly referred to as China's "CCC regulations").<sup>12</sup> These proposed revisions included the introduction of new provisions authorizing post market surveillance and recalls. Very little information has been provided – either in the proposed DRAFT regulation, or in responses to comments submitted through the U.S. WTO Enquiry Point – about how these new components would be implemented. If implemented well, these new components could improve China's CCC program and help to address uneven enforcement for foreign and Chinese companies (see above). However, if not implemented well, these new components could inadvertently create new burdens for U.S. companies doing business in China.

Many ANSI members also expressed concern about the new fee structure outlined in the proposed revisions to China's CCC regulations. The new fee structure would be based on the annual revenues of the company, rather than on the environment, health and safety (EHS) impact of the infringement. This is an increasingly common approach to penalties under Chinese regulations, and is problematic for U.S. companies both because it often calls them to disclose proprietary data about their business in China, and because it seems to discriminate against foreign companies doing business in China, as they typically tend to be much larger than Chinese companies.

**Recommendations for USG:** USG should thank China for its efforts to revise its CCC regulations in an open and transparent manner (notifying the WTO Secretariat of proposed DRAFT changes, considering comments, and providing a written response in English to comments submitted through the U.S. Enquiry Point). USG should encourage China to notify the WTO secretariat of the specific details on the new post market surveillance and recall systems in the proposed revisions to the CCC regulations, and should consider comments on these requirements before the revised CCC regulations go into effect. USG should also express concern to China over the approach to fee structures under the proposed revisions to its CCC regulations, and ask China to consider structuring fees and penalties in a way that more closely aligns with China's legitimate objective of protecting EHS.

### Foreign Participation on Chinese Technical Committees

In its efforts to increase transparency and consistency among Chinese national technical committees (*i.e.* the committees that develop Chinese National "GB" standards), the Standardization Administration of the People's Republic of China (SAC) released an announcement formalizing the operating procedures of Chinese Technical Committees (TCs) in 2008. Transparency in China's standards, conformity assessment and regulatory system has been a key area of concern for ANSI and its members, and China's efforts to formalize and publicly post Chinese TC Operating Procedures (as part of broader initiatives to make the Chinese system more transparent) is fundamentally a positive development.

However, one clause in the recent SAC announcement states that "it is permitted that the foreign enterprises can send people as observers to take part in activities of the related TCs." Typically in such Chinese documents, an option not explicitly "permitted" is allowed. This created significant concern for ANSI's membership, including many organizations that lost voting rights on Chinese technical committees.

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<sup>12</sup> Notification Number CHN399. June 24, 2008.

These concerns were raised with China in the 2008 JCCT. In early 2009, China posted a revised policy to its website. This policy appears to indicate that representatives of entities legally registered within China may participate in Chinese national technical committees as voting members, at the discretion of the TC Chair. Following the publication of this revised policy, ANSI polled its membership to determine whether the revision of this policy addressed their concerns regarding participation in Chinese technical committees. ANSI received several positive reports, and has not to date received any outstanding concerns from U.S. stakeholders who would like to participate as voting members in Chinese TCs, but who are unable to do so.

**Recommendations for U.S. Government:** USG should recognize China's positive efforts to increase transparency in China's standards system, its consideration of U.S. perspectives and concerns regarding foreign participation on Chinese TCs (as expressed in the 2008 JCCT and through other engagements with China), and its positive change in policies.

#### About ANSI

The American National Standards Institute (ANSI) is a private non-profit organization whose mission is to enhance the U.S. global competitiveness and the American quality of life by promoting, facilitating and safeguarding the integrity of the U.S. voluntary standardization and conformity assessment system. Comprised of organizations, government agencies, companies, and individuals, ANSI represents the interests of more than 125,000 companies and 3.5 million professionals worldwide.

The Institute is the official U.S. representative to the International Organizations for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC), and is a U.S. representative to the International Accreditation Forum.