



Setting Standards for Excellence

September 27, 2010

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
U.S. Trade Representative

Submitted via www.regulations.gov

Re: China's Compliance with WTO Commitments

Dear Ms. Blue:

The following comments are in response to the August 3 *Federal Register* request for stakeholder regarding China's compliance with its World Trade Organization (WTO) commitments.

NEMA is the association of electrical and medical imaging equipment manufacturers. Founded in 1926 and headquartered near Washington, D.C., its approximately 430 member companies manufacture products used in the generation, transmission, distribution, control, storage and end use of electricity. These products are used in utility, industrial, commercial, institutional, and residential applications. The association's Medical Imaging & Technology Alliance (MITA) Division represents manufacturers of cutting-edge medical diagnostic imaging equipment including MRI, CT, x-ray, and ultrasound products. Annual worldwide sales of NEMA-scope products exceed \$120 billion. In addition to its headquarters in Rosslyn, Virginia, NEMA also has offices in Beijing and Mexico City.

Counterfeiting and Intellectual Property Rights Protection

China needs to keep on strengthening its anti-counterfeiting measures and enforcement. As previously indicated at multiple levels, the U.S. electrical industry has fundamental, ongoing concerns about Intellectual Property protections in the People's Republic of China. Our members are all too often victimized by repeated, vast trademark infringement and piracy. In this respect, we have strongly supported USTR's World Trade Organization cases against China's anticounterfeiting laws.

Export Quotas, Tariffs and Bans

China imposes significant export tariffs and quotas on certain rare earth elements (REEs) mined and processed in China. Some of these REEs are used in energy efficient lighting products, certain electric motors, and certain electrical-current-carrying wire and cable products. One of our members' production plants puts \$2-3 million into their budget to account for the export tariffs. The export restrictions threaten viability of U.S.-based manufacturing of certain products. NEMA views the export restrictions as a part of China's

approach to encourage more manufacturing on the ground in China, since final products domestically made in China containing REEs do not have an export quota or tax.

Potential Government Procurement Restrictions Based on “Indigenous Innovation”

NEMA has joined many other U.S. business groups in raising serious concerns about policies under consideration in Beijing that would limit restrict government purchasing to products accredited as having resulted from so-called “indigenous innovation”. In short, we fear that such requirements would go directly against multiple commitments of China’s leadership to resist trade and investment protectionism and promote open government procurement policies. Moreover, such an approach is doubly remarkable in that it coincides with Beijing’s negotiations to join the WTO Government Procurement Agreement. In particular, we are concerned about purchasing by state-owned enterprises, including the state-owned utilities, since they could also be included under the same “indigenous innovation” accreditation acquisition policy.

The China Compulsory Certification (CCC) Mark

Most NEMA members have been able to obtain this mark. However, the process is expensive, requires unnecessary duplicate testing, and is time-consuming, impeding the introduction of new products into the Chinese market. Further, despite the “national treatment” now afforded to non-Chinese products, for most electrical items the CCC only accepts goods built to either Chinese national (GB) standards or standards developed and published by the International Electrotechnical Commission (IEC) and International Standards Organization (ISO). (The latter still frequently does not include products built to U.S. requirements.) It should also not be necessary to obtain exemptions for non-CCC inputs coming in to China that will soon thereafter be leaving again as part of finished goods; plus, both the process for obtaining exemptions and the actual length of exemptions granted appear to be inconsistent in practice. Finally, China should agree to accept test data from internationally recognized laboratories, a practice that is accepted throughout the world.

Potentially “Subsidized” Product Coming Into the U.S.

Some of our members have been observing competition from extremely low-priced Chinese electrical imports. Since the goods in question are frequently not labor-intensively produced, these member companies are concerned that the Chinese government may be subsidizing the purchase of raw materials and/or providing them below cost via state-owned enterprises. China has made WTO accession commitments regarding state-trading enterprises and subsidies; we appreciate the USG’s efforts in encouraging China to meet and keep those commitments, which include eliminating specific export subsidies and providing full information on the pricing mechanisms of its state trading enterprises for exported goods.

Medical Devices

China is generally still years behind in the adoption of state-of-the-art standards, often making it necessary for manufacturers to comply with both old and (sometimes conflicting) new versions of norms at the same time. Beijing has also not yet followed through on its 2006 Joint

Committee on Commerce and Trade commitment to eliminate the need to obtain approvals from both the certification authorities (CNCA) and the Chinese Food and Drug Administration (SFDA).

Transparency in the Development of Regulations and Standards

While NEMA enjoys excellent working relations with Chinese counterparts and has had many opportunities to discuss issues of concern to our industry, we do encourage Beijing to adopt a formal public consultation process that features proper notification of emerging requirements with suitable opportunity for comment by all interested parties. In addition, any new requirements should allow for an appropriate transition time before becoming mandatory.

Thank you for your consideration of these remarks.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Updyke', with a long horizontal line extending to the right.

Craig Updyke
Manager, Trade and Commercial
Affairs
NEMA