

China

Environmental Regulation of Electrical Appliances and Information Products in China

The People's Republic of China has in a short time become a world leader in the manufacture and consumption of electrical appliances and information products. The Chinese Government now recognizes that such products present serious environmental and energy issues in addition to their many benefits. The Government has consequently begun to formulate regulations that draw heavily upon regulatory models from developed countries, particularly the European Union's Directive (2002/96/EC) on Waste Electrical and Electronic Equipment (WEEE) and Directive (2002/95/EC) on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS).

China's own legislative foundation in this regard rests primarily on the Law on the Prevention of Environmental Pollution by Solid Wastes (1995, amended 2004) and Law on the Promotion of Clean Production (2002), the latter of which was intended to enhance environmental protection by shifting the focus from end-of-pipe waste treatment to the adoption of environmentally benign and efficient materials and technologies. With the powerful National Development and Reform Commission in the lead, China in 2004 promulgated the Measures for the Administration of Energy Efficient Labels, which took effect on March 1, 2005.

The Government is now preparing to promulgate the Regulations on Recycling and Disposal of Waste and Used Household Electrical Appliances (often referred to as "China WEEE"), which will establish a manufacturer and seller responsibility system beginning with televisions, refrigerators, washing machines, air conditioners and computers. These regulations are intended to require and incentivize recycling and disposal in an approved and environmentally sound manner, in contrast to the haphazard operations that currently litter the Chinese countryside.

The Government is also preparing to promulgate the Measures for Administration of the Control of Pollution by Electronic Information Products (often referred to as "China RoHS"), which will cover electronic radar products,

electronic communications products, radio and television products, electronic instrumentation and metering products, specialized electronic products, electronic components and parts, electronic materials, and software products and accessories in addition to computer products and home electronics products. The purpose of these regulations, for which the Ministry of Information Industry will be the lead agency, is to foster the redesign of products to reduce or eliminate the use of toxic and hazardous substances in their manufacture, regulate sales channels for this purpose, and provide information to consumers on the environmental and energy features of such products.

Toxic and hazardous substances to be prohibited, except when substitutes are not feasible, are initially expected to include lead, mercury, hexavalent cadmium, polybrominated diphenyls (PBD) and polybrominated diphenyl ether (PBDE). As with respect to several other policies, covered products will be listed in catalogues. Any product for which the use of such substances is unavoidable will be required to satisfy applicable national or industry standards.

China RoHS in particular is likely to be promulgated early this year, with an effective date likely to be six months or more after the date of promulgation. China RoHS will likely be confined at the outset to labeling requirements with respect to toxic and hazardous substances, with an extension to outright bans put off until safer products become available.

China acknowledges their impact on international trade and China's WTO obligations with respect thereto, and has instituted reviews of their compatibility with the WTO's Agreement on Technical Barriers to Trade. China, on September 28, 2005, notified the WTO's Committee on Technical Barriers to Trade of its intention to promulgate China RoHS.

Perhaps the biggest challenges facing China with respect to China WEEE are monitoring compliance by all relevant

manufacturers and sellers for all covered products and creating the necessary waste disposal and recycling infrastructure, which is likely to require a mixture of financial subsidies, tax preferences and credit enhancements.

Foreign manufacturers will be concerned that the regulations and accompanying standards are clear, transparent, uniform in their application yet not unduly burdensome, non-discriminatory, and harmonized with respect to international practice, particularly in the European Union. China has

shown a tendency, particularly in the technology industry, to promulgate regulations and standards that are inconsistent with international practice, whether in response to protectionist forces or out of a perception that China's uniqueness trumps any need for harmonization. Of particular concern is the potential for more stringent inspection requirements at China's borders for imports under China RoHS than requirements that apply to domestic products, and of disproportionate disposal costs on foreign manufacturers under China WEEE.

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