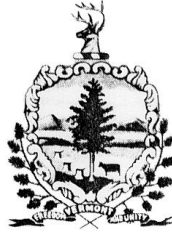


115 STATE STREET
MONTPELIER, VT 05633
TEL: (802) 828-2228
FAX: (802) 828-2424



REP. KATHLEEN C. KEENAN, CO-CHAIR
SEN. VIRGINIA "GINNY" LYONS, CO-CHAIR
DAN BRUSH
DAVID ANGER
JOHN BOOMHOVER
LAWRENCE BRUCE
ELLIOT BURG
JOLINDA LACLAIR
BRENT RAYMOND
STEVEN SHEPARD

STATE OF VERMONT
GENERAL ASSEMBLY

Vermont Commission on International Trade & State Sovereignty

Ambassador Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Froman:

On behalf of the Vermont Commission on International Trade and State Sovereignty we are writing to bring to your attention our significant concerns with the implementation of the "Administrative Measures for Controlling Pollution by Electronic Information Products" adopted by the government of China, more commonly referred to as the "China RoHS regulation."

As you are no doubt aware, since its inception in March of 2007, and with the slate of new requirements that took effect in the first quarter of 2011, the China RoHS regulation purports to impose multiple mandates on U.S. companies that manufacture "electronic information products (EIP)" entering the Chinese market. If fully enforced by the Chinese government, these requirements would significantly increase the costs of EIP production, put at risk confidential and proprietary intellectual property and business information of U.S. companies, and in some cases put U.S. companies at risk of violating U.S. laws and regulations on certain semiconductor technologies.

While the Commission fully supports targeted international standards for EIP to ensure the protection of the environment and human health, China RoHS includes several provisions that are unique to China, adding costs to U.S. firms operating in international markets without necessarily improving environmental safety. By way of example, under the 2007 regulation, EIP must be labeled to indicate the presence of certain toxic and hazardous substances, to indicate a product's "Environmentally Friendly Use Period," and to provide "Pollution (recycling) Code Symbols." Beyond these labeling requirements, the 2011 provisions of the regulation impose a "voluntary" certification process whereby U.S. businesses must submit to testing by pre-selected Chinese labs; must disclose process materials, manufacturers, suppliers, and alternates; must submit a complete bill of materials and raw material trade names; and must submit to mandatory factory compliance audits. This certification process not only applies to new products covered under the regulation "catalogue," but also is triggered whenever any "material change" to a product triggers the re-certification of that product.

Based on testimony the Commission has received concerning this “voluntary” certification process, including testimony from Thomas Jagielski, Manager of Construction, Planning Systems and Technology based at the IBM facility in Essex Junction, VT, full implementation of China RoHS would cause significant adverse effects for U.S. businesses. Compliance with Chinese requirements that materially differ from the requirements under the European Union’s RoHS provisions could cause potential delays to a product’s time-to-market schedule and raise cycle time implications for product introductions. By requiring disclosure of materials and suppliers, the China RoHS regulation could jeopardize a company’s supply chain relationships and competitive viability. Moreover, key features of the certification process—including factory inspections, on-site sampling, and required use of specified Chinese laboratories—not only would raise uncertainty over the financial impacts and practical ability of labs to handle the large volume of certification applications, but would also threaten the intellectual property protections for all U.S. semiconductor companies that are subject to the regulation. In many cases, a U.S. company that discloses certain semiconductor technologies or allows an audit of certain production areas would not only expose the proprietary material composition of its products, but may also violate U.S. laws restricting the dissemination of military critical technologies.

The current environment for U.S. businesses vis-à-vis implementation and enforcement of the China RoHS regulation is not fully explained or understood. Although the 2007 and 2011 provisions of the regulation are nominally in effect, representatives of the U.S. information and communications technology industry, including the trade association TechAmerica, are actively engaged in negotiations with trade representatives of the Chinese government. TechAmerica has proposed four key negotiation points concerning the future of EIP regulation: (1) that China adopt a conformity assurance system based on self-declaration and post-market surveillance and enforcement; (2) that China utilize international test methodology standards and accept laboratory data generated from certified labs regardless of location; (3) that China remove the factory inspection requirement of China RoHS; and (4) that China avoid conformity assurance programs that result in the disclosure of supplier proprietary business information, including the identity of raw materials, supplier names, and material trade names.

To date, Chinese representatives have been open to continuing dialogue with TechAmerica concerning implementation of the China RoHS regulation, but have neither indicated acceptance or rejection of these points, nor offered any counter-proposals. As the primary voice of the State of Vermont on international trade issues, the Commission on International Trade and State Sovereignty has resolved that the future implementation and enforcement of China RoHS is of critical importance to the many intellectual property-based businesses in Vermont and the broader United States that operate in the Chinese market. By this letter we hope to elevate the significance of this issue for the Office of the U.S. Trade Representative and other relevant federal entities involved in international trade, and we respectfully request that your Office utilize its resources and engage in the ongoing Chinese RoHS negotiations to the fullest extent possible to ensure the continued protection of the intellectual property rights of U.S. information and communication technology businesses.

We thank you in advance for your time and attention to this substantial matter, and we offer any assistance we might provide in support of your Office and the U.S. businesses affected by the China RoHS regulation.

Sincerely,

Handwritten signatures of Ginny Lyons and Kathleen Keenan in cursive script.

Ginny Lyons
Co-Chair
Senator, Chittenden County

Kathleen Keenan
Co-Chair
Representative, St. Albans

cc: _____