

## COMMENTS FROM THE EUROPEAN UNION CONCERNING NOTIFICATION

### G/TBT/N/CHN/1329

#### MANAGEMENT MEASURES FOR COMPULSORY NATIONAL STANDARDS (REVIEW DRAFT)

The European Union (EU) would like to thank the Chinese authorities for providing the opportunity to comment on the proposed "Management Measures for Compulsory National Standards (Review draft)" (hereinafter, "the notified draft"), notified on 1 May 2019 under the reference G/TBT/N/CHN/1329.

After the analysis of the notified draft, the EU would like to send the following comments.

#### General remark

The EU would like to bring to the attention of the Chinese authorities that the notified draft addresses neither the protection of intellectual property nor the particular case of "standard-essential patents". Whenever the implementation of mandatory standards requires the use of protected technology (intellectual property), the Chinese authorities have to ensure that all the respective conditions and, in particular, the financial compensation of the holder of the intellectual property (IPR holder) are respected. The EU would highly recommend that these respective conditions are defined and integrated in the final text.

#### Review draft - article 3

The EU would like to propose restricting the use of mandatory standards to the areas, as recommended by WTO/TBT, which refer —*inter alia*— to the "*protection of human, animal or plant life or health, of the environment*". The areas of the notified draft are too broad and highly conducive to mis-interpretation.

#### Review draft - article 6

The EU would recommend to extend this section so that the "mandatory national standards *shall be formulated in full alignment with the international standards developed by ISO, IEC and ITU*". The restriction "in combination with China's actual situation" should be made more precise and reworded as "*in combination with China's climatic situation*".

The EU would like to recall Article 2.4 of the TBT Agreement, according to which members should use international guidelines where they are available.

#### Review draft - article 20

The EU would like to point out that the WTO/TBT principle of "openness" for standards setting does not seem to be applied. According to the EU, both the "*professional standardisation technical committee*" as well as the "*drafting group*" should be accessible to all parties ready to contribute to standards setting, including

all foreign companies lawfully registered in China and regardless of whether or not they are wholly foreign-owned companies or Sino-joint ventures. Full access to standardisation work, including voting rights, should be granted in reciprocity for the accessibility of Chinese companies to the European standardisation bodies.

#### Review draft - **article 24**

The EU recommends that the time allowed for public commenting should be aligned with the WTO/TBT conditions and extended to 60 days. To this extent, the restriction to only “30 calendar days” is likely to impede full and substantive commenting.

#### Review draft - **article 29**

Finally, the EU would like to highlight that the period between the implementation of the mandatory standards and the actions against those products already on the market but incompliant with this new mandatory standards should be defined, taking due account of the level of risk. Any immediate product withdrawal seems to be justified only when health and safety of human lives are threatened.

In all other circumstances, during the transition between the previous, out-dated version of a standard and its new version, both standard versions (previous and present) should be valid and applicable.

In the EU, the typical transition periods are 1 to 1.5 years; during this interval, both standard versions, the previous and the updated one, are applicable. Such transition periods give both, manufactures and vendors, the opportunity to adapt to the new requirements in a non-disruptive fashion.

The EU would be grateful if the above-mentioned comments could be taken into account and replied to before the adoption of the notified draft.

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