



US-China Business Council Comments on the Revised Draft Standardization Law (for public comment)

June 13, 2017

The US-China Business Council (USCBC) represents 200 member companies that operate across all industry sectors, and are global leaders in producing high-quality, innovative products that are sold around the world. USCBC member companies are actively involved in standards-setting in China and globally, and have a strong interest in a fair and efficient system for setting and maintaining standards. As such, USCBC and its member companies appreciate the opportunity to provide comments to the National People's Congress on the revised draft of China's Standardization Law ("Draft Law").

USCBC supports an inclusive standards-setting process open to both foreign and domestic companies, and opposes the use of standards as a barrier to trade. USCBC believes the draft law demonstrates positive efforts to move away from a reliance on mandatory standards, and retains positive rhetoric in relation to participation in and adoption of international standards. The draft law could also go further by endorsing the principles of the WTO's Agreement on Technical Barriers to Trade and permitting manufacturers to adopt international standards from designated international standards organizations where there are not existing standards.

USCBC and its member companies are concerned about aspects of the draft law that may limit foreign company participation in the standards-setting process. The lack of information regarding rules pertaining to "expert groups," as well as the re-iteration of a mandatory self-disclosure system for enterprise standards are of concern. These enterprise standards have the potential of putting protected intellectual property at risk.

USCBC welcomes the opportunity to provide feedback on the draft law, and would like to raise the following specific recommendations:

Article 6

USCBC appreciates efforts to include outside organizations in the standards making process. USCBC recommends that this article be amended to encourage the relevant groups to "actively participate in" standardization efforts in order to clearly encourage consultation with non-government stakeholders as a part of standardization efforts.

Article 7

The draft law deleted language promoting the adoption of international standards; the draft law also adds language placing conditions on the adoption of international standards. We recommend that "alignment with international standards" be explicitly stated as being encouraged under the law. USCBC also urges China to adopt accepted international technical and testing standards, such as those of the International

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Organization for Standardization (“ISO”), in their entirety wherever possible. Using commonly understood standards will facilitate their implementation in China.

Article 9

Currently, multiple departments are responsible for the same mandatory standards, leading to conflicts between desired standards and R&D and production challenges for companies attempting to align with these standards. USCBC recommends that language be added to this article reading, “Given that one standard may involve many administrative departments, the departments should harmonize their requirements for mandatory standards. Every department involved in the standards review process should strenuously seek opinions from foreign and domestic industry.”

Article 10

As currently practiced, some mandatory GB standards also include recommended items which are themselves not mandatory. This lack of clarity can create confusion amongst industry. As such, USCBC recommends amending this article to include the following after the first sentence: “Recommended standards are purely elective. This includes situations wherein recommended standards are included as a part of a broader mandatory standard.”

Article 16

USCBC recommends that a corresponding penalty be added to Article 16’s prohibitions on the use of standards to implement market barriers, regional blockades, or other behavior that impair market competition.

Article 17

The current draft law calls for standards setting organizations to solicit feedback from industry, though it does not detail how such feedback will be reviewed or considered. In order to ensure that technical requirements can be feasibly implemented, USCBC recommends inserting the following clause regarding the solicitation of comments from non-government stakeholders: “At least 60 days should be provided during the consultation process to allow the drafters of mandatory standards to communicate effectively with industry and society, and include forums that allow for two-way communications between drafters and industry.” This will ensure that society and industry are adequately consulted and will not be negatively impacted by the release of new mandatory standards.

Article 18

USCBC recommends clarifying the term “broadly representative” when referring to membership in technical committees. This definition should explicitly aim to include and not exclude the participation of foreign companies. Subsequent drafts should also make clear that both technical committees and expert groups are subject to relevant rules and regulations.

USCBC also recommends that this clause include language promoting transparency and openness through the entire standards formation process. A lack of transparency and openness restrict company participation in the standards process and restricts innovation.

Article 21

This article removes language included in a previous draft of the law explicitly protecting copyrights embedded in standards. Given the importance of protecting intellectual property to the development of

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innovative new standards and technologies, USCBC recommends that drafters add this language back to emphasize the importance of protecting standards-related intellectual property.

Article 22

Enterprise standards can contain information about intellectual property that should be kept confidential. Describing performance instead of revealing sensitive information about specific performance indicators allows regulators to understand standards without forcing companies to give away proprietary information. As such, USCBC recommends that the phrase “performance indicators” be replaced with “performance description.” USCBC also recommends that a sentence be added clarifying that enterprise stakeholders may provide a redacted version of a standard for posting. This is the current practice for food enterprise standards, for example.

USCBC also recommends that it be made clear that production standards information about equipment imported from abroad be disclosed on a voluntary self-disclosure basis only.

Article 25

Maintaining outdated mandatory standards is detrimental to product innovation. As such, USCBC recommends amending this article to include a statement that “old and outdated mandatory standards which are not consistent with the current national conditions and current development of science and technology should be immediately abandoned.” Discarding out of date mandatory standards will help spur the development of new products and services.

USCBC welcomes the additional discretion provided by the elimination of the minimum penalty for minor violations of standards compliance. USCBC further recommends that the draft law itself give officials discretion not to impose penalties for minor violations of standards. Certain issues, such as minor labeling defects that do not affect product safety should not call for fines if resolved.

Article 34

USCBC recommends amending this article to limit the type of information shared on the “standards public information platform” in order to protect intellectual property and trade secrets. Specifically, Article 34 should be amended to read: “Where an enterprise fails to publish required relevant public information regarding its enterprise standards, or publishing standards in bad faith, the standardization administration department shall order it to rectify the violation...” Further, the law should clarify whether the information services platform is maintained centrally, or whether each enterprise should establish its own platform.

CONCLUSION

USCBC appreciates the opportunity to provide comments on the draft law. We look forward to further clarification of key implementation and procedural details once the draft law is completed. We hope that these comments are constructive and useful, and welcome opportunities for further dialogue on these issues.

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