



ANSI FINAL comments
PRC Standardization Law
MAY 2017 VERSION

Article	ANSI comment/suggestion
1	ANSI encourages reliance on a robust, diverse and open consensus standards development process, consistent with World Trade Organization (WTO) Technical Barriers to Trade Agreement (TBT) principles, in order to achieve China’s stated goals. To this end, ANSI recommends specific reference to China’s WTO commitments at the outset of this law.
5, 28	ANSI is concerned to the extent this article lacks the same scope as Article 34 of the March 2016 version of the draft law. Article 34 of the 2016 version called for the establishment of a national dispute resolution mechanism to address standards-related disputes upon request and coordinate all standards issues reflected from the public. Article 5 in the 2017 version calls for dispute resolution for interagency disputes only. ANSI requests that a dispute resolution mechanism be required for all levels of standards setting organizations and that all interested parties have a right to appeal on standards-related issues. The language should be similar to Article 34 of the March 2016 draft Standardization Law.
7	ANSI recommends that China acknowledge and reinforce its WTO TBT Agreement commitments with respect to international standardization in this article. The text of Article 7 should include stronger language based on the TBT Agreement, including reference to Annex 3 and language that upholds the globally accepted principles of international standardization set forth in the TBT Committee decision (G/TBT/1/Rev.8, 23 May 2002). ANSI also recommends China encourage coordination between national standardization work and national mirror committees to ISO and IEC.
2, 9	<p>ANSI recommends that China consider additional language to clarify mandatory versus non-mandatory requirements, and which types of standards (national, industry, association, local and enterprise) may contain which types of requirements. ANSI members have experienced confusing scenarios in which a mandatory standard includes both mandatory and non-mandatory content. ANSI further requests clarification on the extent to which “recommended” standards do or do not legally equate to “voluntary” standards, as defined in the WTO TBT Agreement.</p> <p>ANSI recommends the language be added to the Article stating, “Proposed mandatory technical requirements should be based on international standards unless ineffective or inappropriate, and should be notified to the WTO in accordance with TBT Agreement rules.”</p>

9, 10, 11, 12, 13	Regarding the development of national, industry, local, and social organization standards, ANSI urges China to apply relevant TBT rules prioritizing use of existing international standards. In particular, ANSI recommends language be added to each of these clauses stating, “Where international standards exist, they shall be used as the basis for the standard except where they would be ineffective or inappropriate.” ANSI also recommends that China’s international adoption process include a public review period with a mechanism for addressing claims of duplication or conflict with national, industry, local or other standards.
9, 10, 11, 12, 13	In delegating responsibility for the development of national, industry, local and social organization standards, ANSI respectfully recommends that China consider the benefits of fair and open participation in standards development, through published procedures that allow engagement of all relevant stakeholders, domestic and foreign. In the U.S., many stakeholders, including representatives of non-U.S. headquartered organizations, contribute to the success of the diverse standards system, including the American National Standards system, which is implemented in accordance with published procedures that reflect WTO principles. The U.S. economy and society have benefitted greatly from the open public-private partnership model our system reflects.
11, 12, 13	<p>With respect to this law’s guidance on industrial, local, and social organization standards, ANSI recommends that the WTO TBT principles be applied consistently, including rules on adequate public notice and comment included in the Code of Good Practice. Public notice and encouraging participation by diverse stakeholders at all levels of standards development will help with coordination efforts and the transition from one category of a standard to another. ANSI recommends editing this Article to state: “Industry, local, and social organization standards shall be based on relevant international standards except where such standards would be ineffective or inappropriate” and “Industry, local, and social organization standards shall ensure that their standards undergo a public review and comment period in accordance with the TBT Agreement before they are finalized.”</p> <p>ANSI further recommends that China educate all levels of government engaged in standards development activities about adherence with the WTO principles, the goal of global relevance and the long-term benefits and efficiencies that will result.</p>
14	ANSI recommends China further clarify the hierarchical relationship between not just national, industry, and local standards, but also between these three and the remaining two categories of standards, i.e., social organization and

	enterprise standards. In addition, ANSI strong urges China to indicate under what circumstances and through what process one type of standard may become another type of standard, <i>e.g.</i> , a social organization standard become an industry or national standard.
16	ANSI recommends China include language clarifying that every standard need not meet each and every requirement included in this clause. Such a requirement would be impractical. ANSI further recommends China make specific reference in this clause to the WTO TBT Agreement requirement that “standards shall not create unnecessary obstacles to international trade.”
17	<p>ANSI commends China for requiring a thorough investigation into stakeholder needs when developing mandatory or recommended standards. Though ANSI supports robust stakeholder outreach, our concern is that the proposed standards development process appears to be driving the outreach process. Instead, ANSI recommends China clarify that the stakeholder outreach process drives the standards development process. Since advanced public notice helps to raise awareness of standards activities, ANSI further recommends that organizations developing mandatory or recommended standards publish their work plans in accordance with the TBT Agreement.</p> <p>ANSI notes that the phrase “mandatory standards should be made public and accessible to the public free of charge” infers broad application of this requirement, including when mandatory standards are based on international standards. ANSI recommends China consider the following alternative language: “Mandatory standards shall be made reasonably available to the public.” ANSI makes this recommendation in light of the challenges associated with allowing across-the-board free access to standards, namely the protection of intellectual property.</p>
18	ANSI is concerned with the last sentence in this Article which states that, in the case technical committees do not exist, an “expert group” may be formed to undertake the drafting and technical review of relevant standards. This is concerning to the extent that such expert groups are allowed to develop standards but are not subject to the same rules as technical committees. ANSI recommends that this Article clarify expert groups are subject to the same rules as technical committees. This includes, but is not limited to, rules on membership (which should be wide-ranging, representative, and assembled in a fair and impartial way), process, intellectual property protection, etc.
21	ANSI is concerned to the extent Article 21 of the March 2016 version of the draft law has been eliminated from the

	<p>May 2017 version. In particular, the March 2016 version called for government agencies, social organizations, and enterprises to protect the copyright of standards as stated in the Copyright Law. ANSI recommends reinserting this language in the final version of the law.</p> <p>ANSI further recommends this article uphold related provisions under the WTO TBT Agreement calling for sufficient transition time in the implementation of technical regulations, or mandatory standards. A consistent and serious challenge faced by ANSI members operating in China is the short time period between the publication date and effective date of a standard. ANSI recommends including language requiring “sufficient lead time for implementation of a standard. The length of this transition time should take industry input into consideration. During the transition time, both the old and new versions of the standard should be valid.”</p>
<p>22</p>	<p>ANSI remains seriously concerned over provisions regarding so-called “enterprise” standards. There is no concept of enterprise standards in the U.S. Companies may develop proprietary specifications for their own use and may disclose them publicly if they choose. Because they are not the result of an open, multi-stakeholder process, they are not considered part of the broader U.S. standards system, and there is no overarching law or mechanism that requires companies to disclose their standards to the public.</p> <p>ANSI remains unconvinced that enterprise standards belong within the scope of this law. Since many of the disclosure requirements are intended to provide greater protections for consumers, ANSI recommends China instead consider including language on the disclosure of market specifications in its consumer protection law(s).</p> <p>If included, ANSI and its members strongly recommend China limit and refine language requiring enterprises to self-disclose all standards. It would be impractical and overly burdensome for enterprises to disclose a comprehensive list of implemented standards on a per-product basis. Any self-disclosure requirement should be limited in scope in order to protect the intellectual property rights of the contributing enterprise. The Standardization Law should not require a participating enterprise to lose its ability to protect its intellectual propriety. Finally, the Standardization Law should limit and clarify the requirements and liabilities associated with the implementation of disclosed standards.</p> <p>If no action is taken to limit and refine the law’s language on enterprise standards, self-disclosure of standards, and the related liability of enterprises, ANSI members predict the requirements could have grave implications for their</p>

	business in China.
24	ANSI members recommend this Article’s scope exclude tools and samples used in the process or research, improvement and technological upgrades. Such exclusion will ensure the application of this Article does not stifle innovation in the research and development process for enterprises.
25	ANSI is concerned to the extent this Article establishes “information feedback mechanisms” governing standards implementation that will serve as the basis for revising and abolishing relevant standards. ANSI recommends China clarify how these mechanisms will differ from regular review procedures undertaken by technical committees. ANSI also recommends China include language requiring these mechanisms be transparent and subject to public notice and comment.
30	ANSI urges China to ensure that conformity assessment procedures adhere to internationally-recognized norms and all relevant rules in the WTO TBT Agreement. Since this law covers standardization activities, ANSI further suggests China consider removing such rules from this law and instead include them in relevant conformity assessment laws.
31	ANSI suggests removing from the article mention of a monetary incentive for tip-offs of non-compliance with the law. Creating such an economic incentive may result in a proliferation of unfounded and unnecessary disputes and allegations.
32, 34	ANSI recommends China clarify that enterprises should only be punished if they don’t follow an enterprise standard that they self-disclosed and declared to be implemented within a specific product or service, and such non-compliance results in harm to personal safety or loss of property.