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Dr. Tian Shihong
Vice Minister
State Administration for Market Regulation (SAMR)
No. 9 Madian East Road
Haidian District
Beijing, 100088
P. R. China

Dear Vice Minister Tian:

On behalf of the American National Standards Institute (ANSI), I am pleased to share ANSI's comments on SAMR's Administrative Measures for Mandatory National Standards ("the Measures"). These comments were also submitted to SAMR through the official notice for comments.

ANSI is grateful for its long history of cooperation with China, in particular with SAC. As you know, ANSI has closely monitored the details of the reform of China's standardization system, including the revision of the PRC Standardization Law which was finalized in 2017.

To prepare these comments, ANSI solicited input from across its membership and leveraged the ANSI experience as well as the principles of the U.S. standards system. These principles are articulated in the *ANSI Essential Requirements: Due Process Requirements for American National Standards* (available [here](#); a Chinese translation has also been provided to SAC), and the U.S. Standards Strategy (available [here](#)). As discussed in ANSI's previous submissions, other important documents that create the framework for the U.S. standards system include the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (available [here](#)) and the White House Office of Management and Budget (OMB) Circular A-119 (available [here](#)).

The following are key points from ANSI's comments:

- First and foremost, ANSI strongly recommends that China reference the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement and its relevant articles within the Measures' Chapter 1. The TBT Agreement contains a number of relevant rules for notice and comment, and international standards that should be appropriately referenced and upheld within this document.
- ANSI is also concerned with the lack of language on fair and open participation on mandatory standards development, particularly for foreign participants. Some language was included in the final PRC Standardization Law, but we strongly suggest China go a step further and include language on fair and open participation within these Measures.

- A final concern to mention is that Article 36 of the Measures notes that mandatory standards shall be published free of charge. This presents a conflict when mandatory standards reference international or foreign standards which are often copyrighted. ANSI recommends amending the language to make mandatory standards reasonably available to the public.

ANSI is very grateful to SAC for its openness and receptiveness to not only ANSI's comments, but all stakeholder feedback on these Measures. We would be pleased to answer any questions or further discuss these comments at your convenience. We hope you will continue to think of us as partners in ensuring the successful implementation of this document and the reform overall. We look forward to working together to plan future dialogues, visits and cooperative events in pursuit of this goal.

Sincerely,

A handwritten signature in black ink, appearing to read "JPL Tretler Jr.", with a stylized flourish at the end.

Joseph Tretler Jr.

Enclosure



ANSI comments
 Administrative Measures for
 Mandatory National Standards
 (Draft for comments)

Article	ANSI comment/suggestion
7	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 is pleased to see reference to certain provisions of the TBT Agreement in Article 26, but ANSI recommends specific reference to China’s WTO commitments in Chapter 1, as a key general principle to implementing mandatory national standards. Specifically, Article 2 of the WTO TBT Agreement "Preparation, Adoption and Application of Technical Regulations by Central Government Bodies" applies.
15	ANSI recommends that China acknowledge and reinforce its WTO TBT Agreement commitments with respect to referencing international standards in regulation (mandatory standards) in this article. The text of Article 15 should include stronger language based on the TBT Agreement, 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 that this article specifically mention international standards in addition to relevant international and foreign laws and regulation, for instance, “Where international standards exist, they shall be used as the basis for the standard except where they would be ineffective or inappropriate.”
20	Regarding the last sentence, it is not clear how the domestic authoritative professional institutions will be defined. Instead, ANSI respectfully recommends that China consider the benefits of fair and open participation in standards development in accordance with the TBT Agreement, through published procedures that allow engagement of all relevant stakeholders, domestic and foreign. ANSI also remains concerned that, in the case technical committees do not exist, domestic authoritative professional institutions will undertake the drafting and technical review of mandatory standards but are not subject to the same rules as technical committees. ANSI recommends that this Article clarify that the institutions are subject to the same rules as technical committees. This includes, but is not limited to, rules on membership (which should be assembled in a fair and impartial way), due process, intellectual property protection, etc.
22	ANSI requests clarification on how inspection and testing institutions may obtain the qualification certification necessary to perform verification of technical content. Please define this explicitly, and include a fair and open process for institutions to apply for the necessary approval.



ANSI comments
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23	ANSI recommends the addition of consideration of copyright and intellectual property rights, especially related to relevant international and foreign standards which are typically copyrighted.
26	ANSI commends China for including notification to the WTO as a requirement in this Article. WTO TBT notifications are the primary tool used by U.S. and foreign industry to stay abreast of changes to technical requirements that affect their business. As such, ANSI recommends that China notify mandatory national standards even when they reference relevant international standards, as a measure of transparency consistent with WTO principles.
28	Please see comments to Article 20. ANSI also remains concerned that, in the case technical committees do not exist, review expert groups will undertake the technical review of mandatory standards but are not subject to the same rules as technical committees. ANSI recommends that this Article clarify that the expert groups are subject to the same rules as technical committees. This includes, but is not limited to, rules on membership (which should be assembled in a fair and impartial way), due process, intellectual property protection, etc.
35	ANSI commends China for including in this Article "a reasonable period of time between the date of publication and the date of implementation." 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 further recommends including language requiring "The length of this transition time should take industry input into consideration."
36	To the extent that mandatory national standards incorporate copyrighted standards, Article 36's statement that "the standardization administrative department of the State Council shall publish the standard text free of charge" appears in direct tension with the rights of the copyright owner. Additionally, standards may incorporate technology covered by patents whose owners have voluntarily contributed them to a voluntary, consensus-based standards development process, governed by a written policy on the licensing of such patents. Accordingly, ANSI recommends China consider the following alternative language: "Mandatory standards shall be made reasonably available to the public."