

**INTELLECTUAL PROPERTY RIGHT (IPR) ISSUES
IN STANDARDIZATION**

Communication from the People's Republic of China

The following communication, dated 23 May 2005, is being circulated at the request of the Delegation of the People's Republic of China.

I. BACKGROUND

1. WTO Agreement on Technical Barriers to Trade (TBT Agreement) points out in its Preamble that international standards and conformity assessment systems can make important an contribution to further the objectives of GATT 1994 by improving efficiency of production and facilitating the conduct of international trade. Meanwhile, Article 2.4 of TBT Agreement stipulates that "Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations...".

2. In the context of the TBT Agreement implementation, especially the provision of the Agreement that Members shall adopt international standards as much as possible, it is necessary to ensure, in the process of international standards preparation, the efficiency and quality of international standards and also to take into account the difficulties Members may encounter in the application of international standards so as to facilitate Members' adoption of international standards and implementation of the TBT Agreement.

3. International standardization bodies such as the International Organization for Standardization (ISO), the International Electrotechnical Committee (IEC) and the International Telecommunication Union (ITU) have already noticed that, to enhance efficiency and quality of international standards, relations between standards and technologies covered by IPR ought to be treated properly. Therefore, these bodies have established policies concerning IPR in standardization which encourage concerned parties to disclose IPR information related to proposed standards in a timely manner. These organizations also recommended that IPR holders declare their acceptance of RAND principle, i.e., they would negotiate licensing terms with potential applicants in a reasonable and non-discriminatory manner. These have provided Members with a good technical base and a roadmap to follow for possible work of the WTO in this field.

4. However, limited by their functions and due to the complexity of the issue itself, there are still many issues which could not be solved efficiently with the above IPR policies in standardization. For example, standardization bodies declare that they shall not be responsible for concerned information about essential IPRs to be integrated into standards. There should be more concrete measures to encourage concerned parties to disclose related information. If the interests of concerned parties could not be effectively coordinated, not only the process of standardization will be impaired, but also the

quality of standards will be negatively effected. More effective measures, aside from withdrawing or redrafting standards, should be explored once international standards preparation could not be carried forward due to divergence on IPR positions. Interpretations of related parties for RAND principles are inconsistent and therefore it is often difficult to achieve consensus among IPR holders and applicants, which increases uncertainty of international standard adoption.

5. International standard preparation should include technologies reflecting present technique development level in order to assure the quality of standards. Technologies protected by IPR in standards should be given sufficient and reasonable protection to safeguard IPR holder's interests. IPR policies in standardization should help strike a balance between standardization needs and IPR protection.

II. PROPOSAL

6. China is of the view that, IPR issues in preparing and adopting international standards have become an obstacle for Members to adopt international standards and facilitate international trade. It is necessary for the WTO to consider negative impacts of this issue on multilateral trade and explore appropriate trade policies to resolve difficulties arising from this issue.

7. The TBT Committee is not supposed to be responsible for all of the above complex questions. However, the TBT Agreement encourages Members to adopt international standards, and those issues are significant not only for the efficiency and quality of international standards development, but also for Member's standards adoption. The issue of IPR in standardization is of close relevance to the TBT Agreement.

8. Therefore, China proposes that TBT Committee should take advantage of the discussion nature of the Triennial Review and discuss this issue so as to develop proper approaches and policies to promote the development and implementation of international standards as well as more effective implementation of the TBT Agreement.

9. IPR issue in standardization has important development implications. The TBT Committee should fully discuss this issue. This will help enhance developing Members' participation in the work of international standardization and in international trade. In this process, difficulties that developing Members may encounter and their needs for technical assistance and capacity building should be given sufficient consideration.
