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European Electrical and Electronics Industry's Positions and Proposals on the Draft of Callback (Recalls) Administrative Regulations for Household Appliance Products

In order to further enhance the transparency of the legislation and improve the quality of the legislation, on July 02, 2010, the Legislative Affairs Office of the State Council published a full text of the Draft for Approval of the *Callback (Recall) Administrative Regulations for Household Appliance Product (hereinafter referred to as 'Callback Regulations')* which was submitted by the General Administration of Quality Supervision, Inspection and Quarantine (hereinafter referred to as 'AQSIQ') for deliberation and descriptions thereof on its official website, to solicit opinions from all levels of society so that it can further study the Regulations, make due alterations. As the European Electrical and Electronics Industry, we support standardization of defective household appliance products recalls for maintaining social security, public interests and economic order and protecting health and security of consumers. For the Draft for Approval, we hereby propose the following detailed and concrete opinions and suggestions:

I. Article 3 (Definition) 'Home appliances products' refers to the products provided to consumers for the purpose of family or similar circumstance use, and powered by electrical current or magnetic-field, including cables and cords, circuit switches and circuit protection and connection equipment, etc.

'Defects' refers to the unreasonable danger, arising out of design, production or instruction, of a universal trait lying in products from the same batch, style or category and which may hurt consumers' physical health and personal and property safety.

'Recall', as herein defined refers to the activity of the producer or other relevant organizer in supplementing or amending consumption description and methods of product returning, changes or repairs etc, based on stipulated procedures and requirements, to effectively reduce or eliminate the potential damages that might be brought about.

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As we well know, household appliances means appliances which are used in family or similar circumstances such as refrigerators, washing machines and TV sets etc. We do not think the description of Clause 1 in this article is appropriate and exact, so

1. We oppose description of ‘...including cables and cords, circuit switches and circuit protection and connection equipment, etc.’, and propose cancellation of this statement from the definition of household appliances. The reasons are as follows:

- a. The household appliances and cables, cords, circuit switches and circuit protection and connection equipment have different requirements for design, manufacturing and use. Definitions in standards of each product were formulated very clearly and differently. Since they belong to different types of products. The household appliances scope cannot cover other mentioned products.
- b. Most house appliances in China are required to have CCC certification. In the standards adopted by CCC, the product description and definition are also makes it very clear that these products are covered by different product catalogues.
- c. Consumers and public in China widely believed that the household appliance scope doesn't include the cables, cords, circuit switches and circuit protection and connection equipment.

2. The definition of defective products in Article 3 in the draft of the Regulations on Defective Products Recall published for comments by the Legislative Affairs Office of the State Council on April 8, 2009, states that “defective products refer to products of a certain batch, model or series, which have common defects, endanger the health and safety of consumers or are unreasonably dangerous to the health and safety of consumers due to defective design, production or instructions”.

We propose cancellation of the description of “...property safety” from clause 2, in order to keep it consistent with its upper level regulations.

II. Article 5 (The recall party) Producers shall bear the responsibility of recalling their home appliance products. Related business operators, including sellers, menders shall assist and cooperate with the producers in fulfilling the recall obligation.

The importer of home appliances products or the domestic agent of the foreign producer should be ‘the producer’ referred to in the above article.

The producer shall bear the cost of eliminating the defect and reasonable transportation cost. Their recall measures in the domestic market should be equal to those in their foreign market.

We consider that the formulation of clause 3 is not reasonable because we believe every clause is not capable of regulating everything, and that expense taking place during the recall of defective products cannot be listed in one clause. The scope description of related cost should better be more

generalized. We think the transportation cost, are naturally included in the cost of eliminating the defect, so it should not appear again into the same clause.

Meanwhile, Article 38 in the *Draft of the Regulations on Defective Products Recall* has defined the cost scope as 'expenses for defect investigation, inspection and identification and expenses for defect control and elimination'.

We propose that Clause 3 in the article should maintain the same description with its upper level regulations, and cancel the description of "reasonable transportation fees" from Clause 3.

III. Article 8 (Information collecting and processing by local quality inspection department) The quality inspection departments at local various levels are responsible for collecting and processing information related to quality safety of home appliances products, and shall report to its upper level according to related regulations.

We don't agree that the quality inspection departments at various local levels are responsible for collecting and processing all information related to quality safety of home appliances products, because most house appliances in China are required to have CCC certification, and are allowed to be manufactured and sold in China after getting a CCC certificate. We believe they should have the responsibility to collect and process information related only to defect. During the process of certification, appliances must satisfy the requirements of compulsory safety tests and all information related safety of product were reported to test institutes and certification bodies, so the quality inspection departments can collect and process this information directly from test institutes and certification bodies.

We believe that the quality inspection departments at various local levels collect and process the information related to defective products, and that they should inform manufacturers who produce defective products, apart from their report to its upper level according to related regulations, in order to reduce and avoid any harm which the defective product could bring to the market.

IV. Article 9 (Information preservation obligation) The producer shall record and preserve information related to the design, material purchase, manufacture, sale and labeling of the home appliances products, as well as information about consumer complaint, dispute about product damage and product recalls in foreign markets, to establish and perfect related information archives.

This article is not clear. What degree is satisfactory for information preservation? We hope that this article can identify its exact requirements, because this closely relate to the legal liability which manufacturers shall have undertaken in Article 32. If this article can not achieve this purpose, it will result in situation of discretionary of implementation in different districts and levels. We propose more detailed specification with more operability for this article be stipulated.

V. Article 10 (Information report obligation) The producer should report to the local quality inspection department information about consumer complaint, product damage, dispute about product damage, product recall on foreign markets and potential defects existing in the products in a timely manner.

See opinions on Article 9 above.

VI. Article 18 (Initiation of the recall) Once the appliance products are confirmed defective, the producer should immediately stop production, import and sales; the producer should also inform the seller to stop selling the defective products and inform consumers to stop using them. At the same time, the producer should actively recall the defective products and report to the local quality inspection department in a timely manner.

We consider that 'Recall', as herein defined, refers to the activity of the producer or other relevant organizer in supplementing or amending consumption description and methods of product returns, replacement or repairs, etc, based on stipulated procedures and requirements, to effectively reduce or eliminate the potential damages that might be brought about. Currently according to Article 3, many different measures for recall are defined and manufacturer can adopt different measures based on the actual defective situation to recall their defective product and exclusively to stop the production.

We propose to modify this article to 'Once the appliance products are confirmed defective, the producer should immediately adopt appropriate recall measures commensurate with defect risks. The producer should also inform the seller to stop selling the defective products and inform consumers to stop using them. At the same time, the producer should actively recall the defective products and report to the local quality inspection department in a timely manner'.

VII. Article 22 (Summary and effect assessment) The producer shall submit an active recall summary report to the local quality inspection department within 15 working days upon the recall completion date written in the recall plan.

The local quality inspection department shall review the report submitted by the producer and assess the recall result. If the recall did not achieve the expected results, the local quality inspection department may require producer to more effective recall measure or take other measures according to the law.

We believe that the manufacturer has to finish related statistics, analysis and assembly work for recalled defective products. For them, submitting an active recall summary report to the local quality inspection department within 15 working days upon the recall completion date written in the recall plan is so difficult. Fifteen days' time limit is too tight and might impede the submission of an exact, complete and reliable report.

We propose that modify '15 working days' to '30 working days' in Clause 1 of this article.

VIII. Article 24 (The producers' obligation to stop production and sales and submit recall report)
After receiving the recall order issued by the AQSIQ, the producer shall immediately stop the production, import and sale of the defective products; and submit to the AQSIQ the recall report within 5 working days upon the date of receiving the recall order.

We believe this article can be replaced by a reasonable description of 'After receiving the recall order issued by the AQSIQ, the producer shall immediately adopt appropriate measures commensurate with the defect risks, and the import and sale of the defective products', See opinions on Article 18.

Apart from the above proposal, we consider that submitting to the AQSIQ the recall report within 5 working days upon the date of receiving the recall order is too tight to fulfill in practice; therefore, we propose that the wording of '5 working days' be modified to '5 working days'.

IV. Article 29 (Obligation of the producer to keep record and submit the recall summary) **The producer should create and keep in completion the recall records, and submit to the AQSIQ the recall summary within 15 days upon the expiration date of the recall.**

We believe this article should keep the same description with its upper level regulations---Regulations on Defective Products Recall in the field of time limit requirement.

We propose that this article should be modified to 'Producer should create and keep complete the recall records, and submit the recall summary to the AQSIQ within 15 days upon the expiration date of recall'.

Detailed see opinions on Article 22.

IIV. Article 38 (Main body of implementation of administrative penalty) **The provisions of the administrative penalty shall be implemented according to law by the quality supervision departments at or above the county level.**

We believe that the products recalls always take place because of serious defects, and there may be a lot of potential factors. Because this may involve areas such as design, manufacturing and logistics. This requires professional inspection and judgment. This will undoubtedly require that enforcement officials of quality inspection department to have professional knowledge of these products. But actually, the enforcement officials at county level lack professional knowledge and are not capable fulfilling these responsibilities. On the other hand, the draft of the Regulations on Defective Products Recall stipulates that the management body for investigation and implementation of defect recalls shall be quality inspection department at provincial levels or above. If this draft stipulates the quality inspection department at county or above shall be the enforcement body for defect recalls, it will result in a gap and separation between the management and enforcement body. In addition, regions in China are so large, if the quality inspection department at county level or above is the enforcement body for the defect recall, it is easy to generate duplication and deviation on administrative penalty.

We propose article be amended to read 'The provisions of the administrative penalty shall be implemented according to law by the quality supervision departments at the provincial level or above'.

VI. Article 42 (Reference implementation) Other home appliances products which are not included in the product catalogue can be recalled by referring to this regulation if necessary.

We consider that if the management of product catalogue is adopted for the implementation of legislation, products not listed in the catalogue do not have to follow the legislation, just like CCC and China Energy Labeling. If the government intends to regulate some products based on the development of the actual situation, the government can extend the scope of the product catalogue by adding these products to it.

If other household appliances not listed in the product catalogue required referred to this article for the implementation of defect recalls, it will expand the randomness and the discretionary power of enforcement by local quality inspection departments. It will lead to inconsistency and instances of irregular enforcement.

We propose to cancel this article.

In conclusion

We do hope that legislators can fully heed opinions and suggestions from industry and enterprises, and scientifically and reasonably formulate the Callback (Recalls) Administrative Regulations for Household Appliance Product to ensure that it can play an important role in standardizing defective product recalls, maintaining social security, public interest and economic order. We pleased to provide further details or information if you would like to.