

Transparency in China

Transparency continues to be a major factor affecting the ability of U.S. companies to enter and compete in the Chinese market. The issue has been consistently identified as a top priority in the [U.S. – China Business Council's Member Priorities Surveys](#), [AmCham China White Papers](#) and other reports. While inadequate transparency affects all companies doing business in China, the effects are most acutely felt by small and medium-sized enterprises (SMEs). These organizations generally do not have representative offices on the ground in China and do not have the resources to gain access to information through informal channels.

The U.S. government has made significant progress in gaining concrete commitments from China in the area of transparency. In its accession to the WTO, China committed to translating all laws, regulations and other measures into one or more WTO languages (English, French and Spanish) and designating official journals which would regularly publish these requirements and provide additional relevant information. These commitments were further developed in the 2006 meeting of the U.S. – China Joint Commission on Commerce and Trade (JCCT) in which China's State Council committed to requiring that all laws, regulations and other measures of all government agencies (federal, provincial, etc.) be published in a single official journal, *i.e.*, the *China Foreign Trade and Economic Cooperation Gazette*, issued by the Chinese Ministry of Commerce (MOFCOM). The U.S. and China agreed to enhance cooperation on transparency issues. (See complete overview of China's obligations on page 3)

In spite of such positive developments, little progress has been made in improving China's business climate in the area of transparency. 70% of respondents to the 2006 *U.S. – China Business Council's Member Priorities Survey* reported that China's transparency was either unchanged or worse in the past year.¹ This is understandable considering the challenges related to the broad scope of transparency issues, and significant cultural and capacity challenges faced by China in implementing its obligations. For example, China currently does not even share the United States' concept of what constitutes a law or regulation. Requirements that would be considered laws or regulations in the United States are commonly issued and enforced under the radar in China, labeled as "opinions," "decrees," or "announcements."

In an effort to enforce China's overarching commitments on transparency, U.S. interests would be most effective by first identifying and focusing on one concrete, manageable aspect within this broad scope. Immediate-term progress within a single area would establish a foundation for successful efforts to address other aspects of transparency in the future. Transparency for technical regulations in China would be an excellent area of initial focus for several reasons:

- As WTO members, both the United States and China have agreed upon a common definition for *technical regulations* that is outlined in Annex 1 of the [Technical Barriers to Trade Agreement](#).
- China has already made progress in increasing its transparency for technical regulations. For example, Chinese notifications of proposed and revised technical regulations to the WTO Secretariat have steadily increased since China's accession to the WTO. The U.S. could work with China to build upon progress made through existing Chinese structures for collecting data on technical regulations, rather than working to create new structures from scratch.
- Transparency for Chinese technical regulations has been identified as a top priority in ANSI's 2006 [Survey on Overarching Concerns Regarding Standards, Conformity Assessment and Technical Regulations in China](#). Progress in this area would have positive effects on other ANSI member priorities for China, including increased Chinese interagency coordination.
- ANSI, working with its members and partners, is able and willing to partner with the U.S. government to improve transparency for technical regulations in China.

China's Obligations on Transparency

Terms for China's WTO Accession – December 2001

Accession to the WTO will be “on terms to be agreed” between the acceding government and the WTO. Accession to the WTO is essentially a process of negotiation. After examining all aspects of the existing trade and legal regimes of the acceding government, it engages in substantial negotiation with other WTO members, both multilaterally and bilaterally, on the terms of accession. These agreed upon terms form the “[Report of the Working Party on the Accession of China](#)” which outlines the following relevant obligations:

- China will translate all laws, regulations or other measures, at all levels of government, relating to trade in goods or services into one or more of the WTO languages (English, French and Spanish), including the hundreds of laws, regulations and other measures that it will have to modify or adopt to become WTO-compliant.
- China will designate official journals, which will regularly publish these laws, regulations and other measures and provide additional relevant information, such as the identity of the responsible government authorities and the effective date for a particular measure.
- China will also establish enquiry points where any WTO member or foreign company or individual can request more information about these laws, regulations and other measures. These enquiry points will normally provide responses to inquiries within 30 days.

(Source: [WTO Website](#))

WTO Technical Barriers to Trade Agreement (TBT) – December 2001

The [Agreement on Technical Barriers to Trade](#) is agreed upon by all WTO members and tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. The TBT outlines several obligations related to transparency, including:

- WTO Members shall notify the WTO Secretariat of proposed or revised technical regulations which are not based on international standards and which would have a significant effect on trade. (Article 2.9)
- WTO Members shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents regarding any technical regulations adopted or proposed within its territory by central or local government bodies. (Article 10.1.1)

17th U.S. – China Joint Commission on Commerce and Trade (JCCT) – April 11, 2006

Established in 1983, the U.S.-China Joint Commission on Commerce and Trade (JCCT) is a government-to-government consultative mechanism that provides a forum to resolve trade concerns and promote bilateral commercial opportunities. In recent years, the JCCT has been held on an annual basis and has at the cabinet level for the U.S. and at the Vice-Premier-level for the PRC.

As a significant outcome of the 2006 Plenary Meeting of the JCCT, The General Office of the State Council of the Chinese government has issued a notice requiring that all laws, regulations and other measures of all government ministries and agencies at all levels pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange shall be published in a single official journal, *i.e.*, the China Foreign Trade and Economic Cooperation Gazette, issued by the Ministry of Commerce.

(Source: [USTR Website](#))

U.S. – China Strategic Economic Dialogue (SED) - December 14-15, 2006

The United States and China held the first Strategic Economic Dialogue, with the theme of "China's Development Road and China's Economic Development Strategy." Enhancing cooperation on transparency issues was identified as one strategic area of focus over the next six months.

(Source: [U.S. Treasury Department website](#))

¹ See Figure 10: 58% of respondents indicated that China's regulatory transparency was unchanged in the past year; 6% reported that transparency had deteriorated and 6% reported that new problems had developed in this area.