

## 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.<sup>1</sup> 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.

## Proposed Next Steps

While initiatives to enforce China's transparency obligations must be led by the U.S. government, they will be most effective if carried out in partnership with the private sector. Representing the interests of companies and other organizations across all industry sectors, ANSI is well-positioned to serve as the private sector focal-point organization on initiatives relating to transparency for technical regulations. The following steps could be carried out by the U.S. government and ANSI to effectively address concerns with China's transparency for technical regulations:

- Follow up with PRC (State Council and/or MOFCOM) to get an update on the effects of the memorandum that was issued to all national and provincial regulators in March 2006, and determine the status of development or implementation of the "China Foreign Trade and Economic Cooperation Gazette." Request that the Gazette be posted online, or request permission to digitize contents and post on [www.standardsportal.org](http://www.standardsportal.org). (Lead: USG; Timeline: 2007 Q2)
- Encourage the PRC to provide English reference translations for all technical regulations in effect in the Chinese market. Working with ANSI, SAC has already committed to providing English translations for all of its mandatory national (GB) standards. Provide quarterly updates to U.S. private-sector on PRC progress. (Lead: USG; Timeline: gain commitment for all technical regulations by 2007 Q2)
- Establish and publicize a single point of contact to collect private-sector input, monitor China's efforts to improve transparency for technical regulations, and provide a quarterly update to stakeholders in the U.S. government and private sector. (Lead: ANSI; Timeline: 2007 Q2)
- Conduct outreach to U.S. private sector organizations to encourage business and other organizations to provide the USG with information on technical regulations that are not included in China's Gazette. (Lead: ANSI; Timeline 2007 Q2 and ongoing)

## About the ANSI

Throughout its history, the [American National Standards Institute](http://www.ansi.org) (ANSI) has maintained as its primary goal the enhancement of global competitiveness of U.S. business and the American quality of life by facilitating voluntary consensus standards and conformity assessment systems and promoting their integrity. ANSI is the official U.S. representative to the International Accreditation Forum (IAF), the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), via the U.S. National Committee. The Institute also provides a forum for hundreds of ANSI-accredited standards developers that work cooperatively to develop American National Standards (ANS). Comprised of businesses, professional societies and trade associations, standards developers, government agencies, and consumer and labor organizations, the ANSI Federation represents the diverse interests of more than 125,000 companies and 3.5 million professionals worldwide.

In general, ANSI outreach programs are intended to foster discussions between the Institute's members and constituents and their counterparts in other countries (e.g., companies, trade associations, government and non-government institutes, etc.). The ANSI China Program is focused on identifying opportunities — both venues and audiences — where ANSI and its members can meet with their counterparts to discuss and resolve the standards-related technical and policy issues that are impacting cross-border trade between the two nations. ANSI works closely with its counterpart organizations, the [Standardization Administration of China](http://www.sac.gov.cn) (SAC) and the [Certification and Accreditation Administration of China](http://www.cnca.gov.cn) (CNCA), as well as other Chinese public and private-sector organizations to achieve these objectives. Domestically, ANSI will identify, develop or otherwise provide the information and resources that its members need to engage more effectively with their contacts 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)

### 17<sup>th</sup> 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](#))

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<sup>1</sup> 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.