

THE US-CHINA BUSINESS COUNCIL

美中贸易全国委员会

September 17, 2012

Trade Policy Staff Committee
Office of the US Trade Representative
600 17th Street NW
Washington, DC 20510

Re: China's WTO Compliance, FR Doc. 2012-20430

To the members of the TPSC:

The US-China Business Council (USCBC) is pleased to submit its analysis of China's compliance with its World Trade Organization (WTO) commitments and requests to testify at your October 3, 2012 hearing.

Please find attached our most recent reports on several WTO-related issues:

- China's Innovation and Government Procurement Policies, July 2012
- China's Ownership Restrictions on US and Other Foreign Investors, May 2012
- China Regulatory Transparency Scorecard, April 2012
- USCBC Standards Review and Recommended Changes to the Development and Implementation of China's Standards and Conformity Assessment Policies and Processes, December 2011

In addition, USCBC's annual member survey on the business environment in China will be released soon, which will provide important context on how American companies are performing in China and describe the key issues and barriers they encounter. Some of these issues are relevant to China's compliance with WTO rules. We will submit the survey report as an addendum to this submission as soon as it is completed.

As you will see in these reports and USCBC's survey, China is often in compliance with the letter of its WTO commitments, yet falls short of the spirit of the WTO in critical areas such as non-discrimination. These shortcomings create an unlevel playing field for many foreign companies in both the terms of market entry as well as in post-establishment operations in China.

Several other issues warrant the TPSC's attention as well. In particular, it is very important to work with China to improve its accession offer so that it is able to join the WTO Government Procurement Agreement on meaningful terms as soon as possible. We encourage negotiators to

seek expansion of the sectors that are covered by the agreement and increase the number of provincial and local governments that will be bound by the agreement.

China's maintenance of foreign ownership restrictions in nearly 100 business sectors is also a prominent example of discriminatory treatment, even if not in violation of its WTO entry terms. USCBC's membership is increasingly frustrated with the continuation of these restrictions nearly 11 years into China's WTO membership. This issue will rightly get more attention as China seeks to invest in the United States. We encourage the resumption of discussions with China on a Bilateral Investment Treaty, with equal treatment in ownership ("pre-establishment") and a negative list approach being critical components of a meaningful treaty.

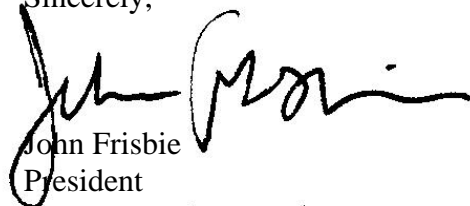
USCBC is also in the process of analyzing China's policy developments in support of Strategic Emerging Industries (SEIs). We are still compiling information on the provincial and local programs that will promote SEIs, but initial indications are that qualification requirements, including those based on local ownership of intellectual property, will likely impact the ability of foreign companies to participate in the programs. We will share our analysis on these issues as soon as it is complete.

USCBC estimates that the China is a \$250 billion market for US companies. It continues to grow and support US exports and jobs in the manufacturing, services, and agricultural sectors. At the same time, the market is probably not as big as it should be because of a variety of market access and other barriers that impact American companies.

China's discriminatory commercial policies that create unfair disadvantages for American companies should be addressed through a smart combination of focused, well-coordinated dialogue via channels such as the Strategic and Economic Dialogue, the Joint Commission on Commerce and Trade, and other bilateral mechanisms; and, when dialogue fails to achieve results, using internationally-accepted, legally-sound trade tools to level the playing field. These tools include another beneficial aspect of China's WTO membership: the use of the WTO dispute settlement mechanism. The Obama administration has a good record of success in pursuing WTO cases with China. USCBC encourages the use of this neutral, third party mechanism when cases when well-defined, winnable and supported by industry.

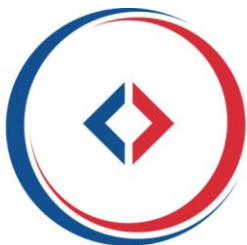
In the meantime, please let us know if you have questions on the reports included in this submission.

Sincerely,



John Frisbie
President

Attachments



Status Report: China's Innovation and Government Procurement Policies

July 26, 2012

Executive Summary

PRC officials made a series of commitments in 2011 to break existing links between indigenous innovation and government procurement preferences – a significant concern for the US-China Business Council and its member companies. These included a State Council notice, issued in November, requiring provincial and local governments to halt implementation of any measures that link innovation and government procurement within regulatory documents, to review existing regulatory documents for provisions that may need to be eliminated, and to report results to the State Council before the end of December 2011.

Not all such sub-national governments have yet announced their compliance with these requirements. To facilitate continued discussion on China's full implementation of its pledges, USCBC is regularly updating a report covering the central, provincial, and local policy changes on indigenous innovation. This report is designed to ensure full implementation of China's commitments at the provincial and local level since January 2011, with a particular focus on those documents released since the November 2011 notice.

- As of mid-July 2012, 17 provinces have released notices and announcements to comply with central government requirements. Thirteen provinces – Anhui, Beijing, Chongqing, Guangdong, Guizhou, Hunan, Inner Mongolia, Jiangsu, Jiangxi, Liaoning, Tianjin, Xinjiang, and Yunnan – have complied after the November State Council notice was issued. An additional 4 provinces – Fujian, Gansu, Shandong, and Shanghai – did so before the notice.
- An additional 30 sub-provincial units – ranging from Chengdu, Sichuan to Wuxi, Jiangsu – have issued notices and announcements to comply with central government requirements.
- USCBC has found no new local regulations formally linking indigenous innovation and government procurement released since the State Council's November 17 notice, suggesting that the central government's efforts have seen a measure of success.
- However, significant work still remains: 14 provinces have not released any measures since January 2011 to implement central-level pledges, including some notable locations where foreign companies have investment, such as Hebei, Sichuan, and Zhejiang provinces.
- USCBC recommends that US government officials continue to raise this issue to ensure full and consistent compliance, including raising this issue at the 2012 Joint Commission on Commerce and Trade and other relevant bilateral meetings.

In January 2011, PRC President Hu Jintao committed his administration to breaking links between China's innovation and government procurement policies, including removing government procurement preferences for products on "indigenous innovation" catalogues. This was followed by subsequent commitments at the May 2011 Strategic and Economic Dialogue and the November 2011 Joint Commission on Commerce and Trade to eliminate regulations and policies linking innovation and government procurement. The US-China Business Council (USCBC) has prioritized the elimination of discriminatory innovation-related procurement rules at all government levels in its advocacy work and has provided various PRC government agencies with a list of rules and policies that need to be revised or revoked.

In the intervening months, central and provincial governments have taken specific steps toward implementing these commitments. In June the PRC Ministry of Finance (MOF) and other agencies published notices invalidating three regulations linking indigenous innovation and government procurement and removed the draft accreditation rules for indigenous innovation products in July. These national regulations had composed important parts of the PRC regulatory framework promoting government procurement of indigenous innovation products and had spurred national, provincial, and local government agencies to release similar policies.

Such discriminatory links, however, remained at the sub-national level, with policies and regulations such as the accreditation rules for indigenous innovation products and catalogues for those products. As confirmed at the JCCT, the State Council on November 17, 2011 released a notice stating that sub-national governments at all levels must halt implementation of any measures that link innovation and government procurement within regulatory documents by December 1, 2011. The notice also requires these governments to announce to the public which regulatory documents remain in effect, which are eliminated and which are suspended, and to report progress to the State Council by the end of December 2011. (For a copy of the notice, see zfxq.cq.gov.cn/zfxqgk/jsp/view/infoview.jsp?xxbid=59679).

Recent government actions to amend or eliminate some of these regulations and catalogues demonstrate that the government is keeping its commitments. Based upon publicly available information, 21 of China's provinces and provincial-level cities can show some kind of specific, concrete action since early 2011 to implement pledges at the provincial or local level, with many of those doing so in direct response to the November 2011 circular.

Not all provincial and municipal governments, however, have publically announced the results of their work, and USCBC and other industry groups will continue to watch for new local policies and regulations where such links between indigenous innovation and government procurement persist. To date, USCBC has uncovered only one new policy newly released since the November 2011 State Council notice requiring provincial and local governments to halt implementation of any such measures. This document, a set of June 2012 [rules to support local enterprises](#) released by the local government in Zhenjiang, Jiangsu, encourages use of the indigenous innovation product catalogue and government procurement to support local enterprises.

In addition, despite the central government push to delink indigenous innovation and government procurement, data from USCBC's just-concluded 2012 member company survey reveals that 85% of companies surveyed said they had seen no positive change in sales opportunities to PRC government entities at the national, provincial, or local levels since the 2011 release of the State Council notice, implying [that the delink effort on paper has yet to translate into real change](#). In direct advocacy with the PRC government and in government-to-government meetings and dialogues, USCBC will continue to ensure that resolution of this issue remains a priority.

To facilitate continued discussion on China's full implementation of its pledges, USCBC has compiled – and is regularly updating – the following report covering the central, provincial, and local policy changes designed to ensure full implementation of China's commitments at the provincial and local level since January 2011, with a particular focus on those documents released since the November 2011 notice.

I. Provincial- and Local-Level Government Actions Designed to “Delink” Indigenous Innovation and Government Procurement

Anhui

- On July 8, 2011, the Anhui Finance Bureau announced that it would suspend the implementation of 2007 provincial rules that regulate government procurement of indigenous innovation products, including provisions that cover drafting and use of provincial catalogues. www.ahcz.gov.cn/portal/zwgk/zbcg/1321546398264922.htm

- In late November or early December 2011, the Anhui provincial government issued a circular that is believed to order all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.
(Full text unavailable; referenced in www.czzwggk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html)
- On November 30, 2011, four Anhui governmental agencies – including the Anhui Commission of Science and Technology and the Anhui Finance Bureau – jointly released a circular announcing that it would halt implementation of the 2007 Anhui Provisional Indigenous Innovation Product Accreditation Management Rules as of December 1, 2011.
www.ahzwwgk.gov.cn/xxgkweb/showGKcontent.aspx?xxnr_id=95297
- On December 8, 2011, the Chuzhou municipal government released a circular announcing the launch of its work to eliminate measures linking innovation and government procurement. The notice required relevant departments to draft a list specifying which regulatory documents would remain in effect, and which would be discarded or suspended. Departments should eliminate such documents by December 12, 2011, and should report results to the public and to the Anhui provincial government.
www.czzwggk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html

Beijing

- On September 7, 2011, the Beijing Finance Bureau released a circular, which referenced the June MOF circular, calling on municipal government agencies to implement MOF government procurement policies. It also stated to stop implementation of three local measures transmitting the central-level notices invalidated in the June MOF circular: the 2007 Evaluation Measures on Indigenous Innovative Products for Government Procurement, the 2007 Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products, and the 2007 Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products..
www.ccgp-beijing.gov.cn/zxd/t20110915_334013.htm
- On March 15, 2012, the Beijing municipal government released a circular announcing that it would suspend the implementation of some related measures linking innovation and government procurement, including specific provisions in the 2006 Opinions on Strengthening Indigenous Innovation Capacity and Building an Innovative City, the 2008 Opinions on Pilot Work to Develop Government Procurement of Indigenous Innovation Products in Zhongguancun Science & Technology Park, the 2009 Opinions on Scientific Promotion of Industry Development in Ecological Conservation Development Zones, and the 2010 Opinions on Promoting the Establishment of Industry Development Guidance in Beijing.
cwc.bjedu.gov.cn/publish/portal13/tab784/info18781.htm

Chongqing

- On July 14, 2011, the Chongqing Finance Bureau announced that it would no longer award extra points for indigenous innovation products in the Chongqing municipal government procurement process. The bureau also said it would eliminate such points from the 2010 standard text for tendering documents.
www.cqgp.gov.cn/portal/documentView.do?method=view&id=478226
- On November 29, 2011, the Chongqing municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies and district governments must submit lists of regulations that will remain in effect, as well as those that will be eliminated or suspended, to the city government by December 15. The Chongqing Legislative Office will summarize progress reports and submit its final report to the State Council by December 25.
www.cqfzb.gov.cn/Pro_General/ContentShow.aspx?ProID=49&myid=8655

- On December 5, 2011, the Banan district government under Chongqing city released a circular announcing that government entities within the district must halt implementation of any regulations linking innovation and government procurement by December 1, 2011, and must also halt implementation of any regulations based on related regulations now invalidated by NDRC, MOST, and MOF. Agencies must submit suggested regulations to eliminate to the Banan Legislative Office by December 12, which must then report the results of such work to the Chongqing Legislative Office by December 15.
zfxq.cq.gov.cn/zfxqgk/jsp/view/infoview.jsp?xxbid=59679
- On January 17, 2012, the Chongqing municipal government announced the results of its round of regulatory changes, stating that county governments had eliminated five regulatory documents linking innovation and government procurement and had revised two others. Chongqing's government is also currently revising Article 8 of the 2008 Opinions on Encouraging Enterprises to Expand Research & Development Investments to Increase Indigenous Innovation Capabilities.
zfxq.cq.gov.cn/zfxqgk/jsp/view/infoview.jsp?xxbid=58948

Fujian

- On July 11, 2011, the Fujian Finance Bureau announced that it would suspend implementation of 2007 provincial rules regulating government procurement of indigenous innovation products, as well as all policies on government procurement preferences for indigenous innovation products.
www.fjicpa.org.cn/article.cfm?f_cd=56&s_cd=404&id=82FB052A-D605-5850-CBD6FFA4714C7316
- On July 11, 2011, the Xiamen Bureau of Science and Technology released a circular announcing that the city would "temporarily suspend" its 2011 work on accrediting indigenous innovation products in light of the July central-level interagency circular. Xiamen's circular made no reference to existing catalogues in Xiamen.
www.xminfo.net.cn/index.php?m=content&c=index&a=show&catid=12&id=17176
- On August 24, 2011, the Fujian Finance Bureau announced that it would suspend implementation of the 2007 Fujian Trial Administrative Measures on the Accreditation of Provincial Indigenous Innovation Products.
www.shanghang.gov.cn/dzzw/dwzw/gfxwj/sjwj/201108/t20110829_97301.htm

Gansu

- On July 6, 2011, the Gansu Finance Bureau announced that it would suspend implementation of indigenous innovation-related provisions included in broader provincial measures on procurement of energy saving, environmental, and indigenous innovation products.
www.gsdfcg.gansu.gov.cn/web/147/110287.html

Guangdong

- On August 2, 2011, the Guangdong Finance Bureau announced that it would suspend implementation of the 2009 guidance on government procurement of indigenous innovation products.
www.caigou2003.com/news/notice/20110817/notice_190868.html
- In late 2011, the Guangdong provincial government released a circular that is believed to order on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents.
(Full link not available, but referenced in zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html)
- On January 9, 2012, the Chaozhou municipal government released a circular calling for governments at or below the municipal level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Chaozhou Finance Bureau by February 15, 2012.
zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html

- On March 8, 2012, six Jiangmen municipal government agencies, including the Jiangmen Science and Technology Bureau and the Jiangmen Finance Bureau, released a circular announcing revisions to the 2009 Jiangmen Provisional Management Rules for Indigenous Innovation Product Accreditation, including the elimination of Article 10, which had called for advantages in government procurement for indigenous innovation products.
fzj.jiangmen.gov.cn/FileDiscuss.aspx?Id=639
- On March 13, 2012, the Zhuhai municipal government released a circular calling for all relevant government agencies to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed before December 1, 2011, and must be posted for the public on the municipal government website as well as reported to the Zhuhai Finance Bureau and the Zhuhai Legislative Office.
www.zhcz.gov.cn/ljcz/gzdt/201203/t20120313_279376.html
- On April 17, 2012, the Guangzhou municipal government released a circular announcing that the city would immediately halt the implementation of Guangzhou Management Rules for Indigenous Innovation Product Accreditation.
sfzb.gzlo.gov.cn/sfzb/file.do?fileId=2C9089253734F024013739EB5CC90000

Guangxi

- On January 5, 2012, the Liuzhou municipal government autonomous region released a circular announcing that the city would start cleaning up regulatory documents linking innovation and government procurement. The notice stated that the municipal government would halt implementation of any such regulatory documents by December 1, 2011. Agencies must submit suggested regulations to eliminate to the Liuzhou Legislative Office by January 20; that office must then report the results of such work to the municipal government by January 16.
www.liuzhou.gov.cn/zwgk/fggw/ysq/lzf/201202/t20120223_519915.htm
- On January 9, 2012, the Liunan district government under Liuzhou city released a circular announcing that the district would start cleaning up regulatory documents linking innovation and government procurement. The notice stated that the district government would halt implementation of any such regulatory documents by December 1, 2011.
www.liuzhou.gov.cn/lzgovpub/lzsf/gqzf/A090/201203/t20120331_523792.html
- On February 13, 2012, the Fangchenggang municipal government announced the results of its work to clean up regulatory documents linking innovation and government procurement released before December 20, 2011. According to its report, the review included five documents released by the municipal government, all of which remain in effect, and four departmental documents, of which one remains in effect and three have been suspended.
www.gx-law.gov.cn/news_show.asp?id=14540

Guizhou

- On November 29, 2011, the Guizhou provincial government released a circular announcing that it would halt implementation of any measures linking innovation and government procurement included in the 2008 Implementing Opinions for Guizhou Government Procurement of Energy-saving and Environmental Protection Products to Promote Indigenous Innovation and the 2008 Provisional Rules of Conduct for Government Procurement by Guizhou Provincial-Level Units.
www.caigou2003.com/news/notice/20111209/notice_214101.html

Hunan

- On December 1, 2011, the Hunan provincial government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that

link innovation and government procurement within regulatory documents no later than December 1, 2011. Government entities must complete this work by December 31, 2011 and report results.
www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html

- On December 14, 2011, the Yueyanglou district government under Yueyang city released a circular announcing that government entities, in accordance with Hunan provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011.
www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html
- On December 19, 2011, the Hengyang municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies must submit suggested regulations to eliminate to the Hengyang Legislative Office by December 20. Regulatory changes must be completed by December 25, 2011.
www.hengyang.gov.cn/main%5Chyzw/zfxxgk/fggw/szfbgswj/1_17888/default.shtml
- On December 19, 2011, the Beihu county government (Chenzhou city) released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be completed by December 20, 2011.
www.czbeihu.gov.cn/dttx/tzgg/content_61384.html
- On December 31, 2011, the Taoyuan municipal government released a circular announcing that it had completed the required document removal work, confirming that the two existing regulations dealing with government procurement were both valid and that there were no documents that required elimination or suspension.
www.taoyuan.gov.cn/html/2011/12/31/22016.html
- On February 20, 2012, the Hunan provincial government released a circular announcing the results of its work to clean up regulatory documents linking innovation and government procurement, including revisions to the three provincial measures: the Notice on Certain Supporting Measures for the Implementing the State Council's Medium- and Long-Term National Plan for Science and Technology Development (2006-20), the Notice on Certain Opinions for Supporting New Energy Industry Development, and the Implementing Opinions on Further Strengthening and Reforming Government Procurement Management Work.
www.hnfgw.gov.cn/xxgk/sdfxfg/27119.html
- On January 29, 2012, the Xiangtan municipal government released a circular announcing that it would immediately halt the implementation of four regulatory documents linking innovation and government procurement: the 2003 Critical Notice on Prohibiting Secret and Uncontrolled Construction of Tombs, the 2007 Implementing Opinions on Supporting the Development of Independent Brand Automobiles and its clarification circular, and the 2010 Notice Issuing the Implementing Plan for Government Procurement of Indigenous Innovation Products and the Administrative Measures of the Certification of Indigenous Innovation Products.
www.xiangtan.gov.cn/new/wsfz/wjgz/zfwj/szfgfxwj/content_26596.html

Inner Mongolia

- On December 21, 2011, the Inner Mongolia autonomous regional government issued a circular referencing the November 17 State Council notice and calling on governments below the provincial level to implement the policy and submit progress reports to the Inner Mongolia Legislative Office by January 31, 2012.
www.nmfzb.gov.cn/information/fzb17/msg548586222.html

- On February 24, 2012, the Inner Mongolia health department announcing that it would halt implementation of a 2007 notice aimed at implementing the spirit of MOF rules on indigenous innovation and government procurement.
www.nmwst.gov.cn/html/ywlm/ghcw/ztxx/201202/27-46596.html

Jiangsu

- In November 2011, the Jiangsu provincial government released a circular that is believed to order on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.
(Full link not available, but referenced in
www.jscz.gov.cn/pub/jscz/zfxxgk/zfxxgkml/zfcg/11/201112/t20111231_22292.html)
- On November 29, 2011, the Qidong municipal government released a circular announcing that any measures that link innovation and government procurement within regulatory documents should be eliminated and implementation halted no later than December 1, 2011. Regulatory changes should be completed by December 10, 2011, with progress reports given to the Qidong Legislative Office the same day.
www.qidong.gov.cn/art/2011/11/30/art_1768_125686.html
- On December 6, 2011, the Wuxi municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should submit progress reports to the Wuxi Legislative Office by December 10, 2011. That office will summarize and submit a final report to the municipal government by December 15, 2011.
www.wuxi.gov.cn/zfxxgk/szfbgs/index.shtml?url=/BA01/B/03/5401094.shtml
- On December 8, 2011, the Donghai municipal government released a circular announcing that government entities, in accordance with Jiangsu provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011.
xxgk.jsdh.gov.cn/zhengfuxinxigongkai/xianzhengfubangongshi/2011-12-31/2583.html
- On December 27, 2011, the Jiangsu Finance Bureau released a circular announcing that it would halt implementation as of December 1, 2011 of three provincial notices: the 2006 Jiangsu Provincial Administrative Measures Indigenous Innovation Product Accreditation, the 2007 Jiangsu Implementing Opinions on Indigenous Innovation Products and Government Procurement, and the 2010 Jiangsu Provisional Implementing Measures for Initial Government Procurement and Ordering of Indigenous Innovation Products.
www.jscz.gov.cn/pub/jscz/zfxxgk/zfxxgkml/zfcg/11/201112/t20111231_22292.html
- On January 18, 2012, the Nanjing municipal government issued a decision announcing the elimination and revision of a broad mix of documents – including some of those related to innovation and government procurement. These changes include the elimination of 2008 measures to promote innovation in enterprises and revisions to 2009 measures on promoting enterprise growth and stable, rapid development and to 2010 policies for promoting the software and information service industries. While revisions removed explicit ties between government procurement and innovation, the notices do still call for government support and promotion of indigenous innovation software products and services.
www.js.gov.cn/xxgk/bmhsxwj/sxwj/201201/t20120119_712053.html
- On February 3, 2012, the Xuzhou municipal government announced the results of its round of regulatory changes designed to eliminate or revise regulatory documents linking innovation and government procurement, stating that city government agencies had eliminated specific provisions in

the 2006 Circular on Encouraging and Promoting Scientific and Technological Innovation and Start-ups and the 2009 Outline of Xuzhou's Intellectual Property Strategy.
xxgk.xz.gov.cn/xzxxgk/nrglIndex.action?catalogID=ba5a42a118c5c8140118c5ef68980046&type=2&messageID=ff80808135a7cddd0135ebc1c7f604a2

Jiangxi

- On December 31, 2011, four Jiangxi governmental agencies – including the Jiangxi Commission of Science and Technology and the Jiangxi Finance Bureau – jointly released a circular announcing that it would halt implementation of the 2009 Jiangxi Provisional Indigenous Innovation Product Accreditation Management Rules as of July 10, 2011.
www.ncinfo.gov.cn/Newsite/content_detail.asp?id=40904

Liaoning

- On December 23, 2011, the Liaoning Finance Bureau announced that it would halt implementation of the 2006 Opinions on Vigorously Promoting Government Procurement Policies to Promote Indigenous Innovation, as well as specific provisions in the 2009 Liaoning Provisional Management Rules for Indigenous Innovation Product Accreditation, the 2008 Implementing Opinions on Further Modeling Government Procurement Bidding and Tendering Activities, and the 2009 Guiding Opinions for the Promoting Small- and Medium-Sized Enterprise Development through Government Procurement Policies.
www.fd.ln.gov.cn/web/detail.jsp?id=8a98819d34cfac22013540d6d25b02d1
- On January 11, 2012, the Shenyang Finance Bureau released a circular announcing that it would halt implementation of 2009 implementing measures to promote model government procurement bidding activities no later than January 1, 2012.
www.ccgp-shenyang.gov.cn/syzfcgweb/Notice_view.aspx?news_id=335

Ningxia

- On December 21, 2011, the Yanchi county government released a circular calling for governments at or below the county level to eliminate or revise regulatory documents linking innovation and government procurement. All departments and agencies should report suggestions for regulatory changes or results of such work to the Yanchi county government by December 25, 2011.
xxgk.yanchi.gov.cn/detial.asp?id=1592
- On January 18, 2012, the Dawukou autonomous regional government announced that it would halt the implementation of the Administrative Regulations for Dawukou Government Procurement.
www.dwk.gov.cn/news/2012-1/2012011838292.html

Shandong

- On July 4, 2011, the Shandong Finance Bureau released a circular, which referenced the June MOF circular, calling on provincial government agencies to implement MOF government procurement policies.
www.ccgp-shandong.gov.cn/fin_info/servlet/attach?type=site&id=832

Shanxi

- On December 13, 2011, the Anze county government called for governments at all levels to eliminate or revise regulatory documents linking innovation and government procurement in line with China's external commitments. Such regulatory changes must be completed by December 25, 2011, and should post online a list of which documents are still in effect and which have been eliminated or suspended. Regulatory documents that are not listed online in this manner should cease implementation after January 1, 2012.
www.anze.gov.cn/shows.jsp?urltype=news.NewsContentUrl&wbtreid=1007&wbnewsid=2697

- On February 12, 2012, the Gujiao municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents, and must begin work to eliminate or revise regulatory documents linking innovation and government procurement. Results of the work must be reported to the Gujiao Legislative Office by February 20, 2012.
www.sxgujiao.gov.cn/gfgw/bgtwj/2010bgt/201203/561314199.html

Shanghai

- On July 1, 2011, the Shanghai branches of MOST and MOF announced the immediate invalidation of Shanghai's catalogue of indigenous innovation products.
www.czj.sh.gov.cn/zcfg/gfxwj/zfcg/201107/t20110708_128211.html

Sichuan

- On July 11, 2011, the Chengdu Government Procurement Service Center announced that it would no longer award extra points for indigenous innovation products during the evaluation process for five specific municipal-level government procurement projects as of July 1.
www.cd-procurement.gov.cn/zfcgsite/Secondary/BulletinInfo.aspx?nav_id=03010000&id=611

Tianjin

- On July 1, 2011, the Tianjin Finance Bureau announced that it would no longer award extra points for nationally and locally accredited indigenous innovation products in the evaluation process for government procurement programs starting July 1, and released a list of bidding projects prior to July 1 that would need to be reviewed for compliance with the new notice.
www.tjgpc.gov.cn/InfoDetail.aspx?id=W20110701174317
- On November 30, 2011, four Tianjin governmental agencies – the Tianjin Finance Bureau, Tianjin Commission of Science and Technology, Tianjin Intellectual Property Office, and the Tianjin Development and Reform Commission – released a circular announcing that it would halt implementation of the 2010 Tianjin Indigenous Innovation Product Government Procurement Catalogue 1 and the 2011 Tianjin Indigenous Innovation Product Government Procurement Catalogue 2, as of December 1, 2011.
www.tjj.gov.cn/upload/File/20111215160915059.pdf
- On June 26, 2012, Tianjin municipal government released a circular, announcing that the city would halt implementation of the 2009 Tianjin Provisional Management Rules for Indigenous Innovation Product Accreditation Management Rules.
www.tjzfxgk.gov.cn/tjep/ConInfoParticular.jsp?id=33352

Xinjiang

- On November 23, 2011, the Bayingolin Mongol autonomous prefectural government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be complete by December 13, 2011, and reported to the Bayingolin Legislative Office.
www.xjbz.gov.cn/fzb/html/tzgg/2011-11/25/10_55_20_462.html
- On November 30, 2011, the Xinjiang Science and Technology Bureau released a circular announcing that it would halt implementation of the 2009 Xinjiang Provisional Indigenous Innovation Product Accreditation Management Rules as of December 1, 2011.
www.xjkjt.gov.cn/www.xjkjt.gov.cn/kjdt/tztg/2011/40592.htm
- On December 8, 2011, the Hutubi county government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should complete regulatory changes and report to the Hutubi Legislative Office by December 10, 2011.
www.htb.gov.cn/10016/10016/00012/2011/34896.htm

Yunnan

- In late November or early December 2011, the Yunnan Legislative Office released a circular that is believed to call on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.
(Full link not available, but referenced in www.cxlaw.gov.cn/show.asp?id=4674)
- On December 8, 2011, the Chuxiong Yi autonomous prefectural government issued a circular, referencing a similar notice from the Yunnan provincial government, calling on that government entities to carry out regulatory changes and should submit progress reports to the Chuxiong Legislative Office by December 16, 2011.
www.cxlaw.gov.cn/show.asp?id=4674
- On December 20, 2011, the Qujing municipal government in a report released on its performance in 2011 stated that it had begun the work of eliminating or revising documents that link innovation and government procurement measures.
qj.xxgk.yn.gov.cn/canton_model25/newsview.aspx?id=1645716
- On January 17, 2012, the Yongshan county government released a notice, soliciting comments on the results of work to eliminate or revise regulatory documents linking innovation and government procurement. The government asked for comments on elimination or revision of eleven relevant documents. Comments and recommended changes are due to the government by February 20, 2012.
zt.xxgk.yn.gov.cn/ztmode/newsview.aspx?id=1666995



China's Ownership Restrictions on US and Other Foreign Investors

May 2012

While China's entry into the World Trade Organization in 2001 opened many sectors to foreign investment, significant ownership restrictions remain in many sectors. The list below details foreign ownership restrictions in approximately 90 product and service categories, and is compiled from China's Catalogue Guiding Foreign Investment and other policies and regulations.

Note 1: All items are from the December 2011 Catalogue Guiding Foreign Investment except those marked with an asterisk, indicating that ownership restrictions are found in other policies and regulations.

Note 2: China made commitments at the May 2012 Strategic & Economic Dialogue to increase the foreign ownership limit in securities firms from 33 percent to 49 percent, and to allow foreign investment in the trading of commodity and financial futures via joint ventures, with the foreign equity share limited to a maximum of 49 percent. Although these commitments are included in this list, USCBC cannot confirm whether they have been incorporated into Chinese laws and regulations yet.

SECTOR	Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
Manufacturing			
<i>Agricultural food processing</i>			
1. Processing of edible oils from soybeans, rapeseeds, peanuts, cottonseeds, tea seeds, sunflower seeds, and palm oil seeds		X	
2. Manufacture of biofuels (ethanol and biodiesel)		X	
<i>Beverage manufacturing</i>			
3. Manufacture of yellow rice wine and famous and high-quality distilled spirits		X	
<i>Tobacco processing</i>			
4. Cellulose diacetate fiber and strip processing	X		
<i>Papermaking and paper product industry</i>			
5. Production of chemical wood pulp derived from overseas lumber with single assembly line capacity of 300,000 tons or more annually and chemical mechanical wood pulp with single assembly line	X		

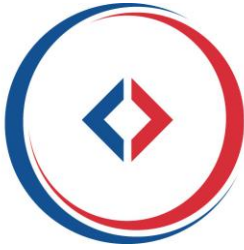
SECTOR	Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
capacity of 100,000 tons or more annually, as well as high-quality paper and cardboard produced simultaneously			
<i>Printing and copying</i> 6. Printing of published materials		X	
<i>Medical and pharmaceutical products manufacturing</i> 7. Manufacture of anesthetics and Type I psychoactive drugs		X	
<i>Nonferrous metal smelting and processing manufacturing</i> 8. Smelting and separation of rare earths	X		
<i>General equipment manufacturing</i> 9. Manufacture of wheeled and crawler cranes	X		
<i>Specialized equipment manufacturing</i> 10. Manufacture of large-scale coal chemical industrial equipment sets	X		
<i>Transportation vehicle and equipment manufacturing</i> 11. Manufacture of automobiles, specialized motor vehicles, agricultural transportation vehicles, and motorcycles*	X		50%
12. Manufacture of R&D of electronic equipment for autos: vehicle electronic bus and networking technology	X		
13. Manufacture of R&D of electronic equipment for autos: electronic controllers for electric-powered steering devices	X		
14. Manufacture of R&D of electronic equipment for autos: integrated electronic circuit systems	X		
15. Manufacture of key components of new-energy autos: energy-type batteries (energy density ≥ 110 Wh/kg, life cycle $\geq 2,000$ times)	X		50%
16. Production of critical spare parts for motorcycles with high-volume engine displacement (displacement of more than 250 ml): motorcycle electronically controlled fuel injection technology	X		
17. Railway transportation equipment	X		
18. Design, manufacture, and maintenance of civil aviation airplanes: airplanes for main and branch lines		X	
19. Design, manufacture, and maintenance of civil aviation airplanes: planes for general use	X		

SECTOR	Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
20. Design and manufacture of civil aviation helicopters: more than 3 tons		X	
21. Design and manufacture of civil aviation helicopters: less than 3 tons	X		
22. Manufacture of aircraft for ground or water surface effects		X	
23. Design and manufacture of unmanned aircraft and aerostats		X	
24. Design, manufacture, and maintenance of airplane engines and critical parts and auxiliary power systems	X		
25. Design and manufacture of civil aviation carrier-borne equipment	X		
26. Design of cruise ship and deep ocean (deeper than 3,000 meters) engineering devices	X		
27. Repair and manufacture of oceanic engineering equipment (including modules)		X	
28. Design of low- and medium-speed diesel engines and related parts for ships	X		
29. Manufacture of low-, medium-, and high-speed diesel engines and related parts for ships		X	
30. Design and manufacture of machinery for ship cabins and decks		X	
31. Manufacture and design of yachts	X		
32. Repair, design, and manufacture of ships (including parts)		X	
<i>Power generating machinery and equipment manufacturing</i>			
33. Manufacture of key auxiliary devices for supercritical thermal power plants exceeding 1 million kW	X		
34. Manufacture of power transmission and transformer equipment	X		
35. Manufacture of complete sets of equipment and key equipment for new-energy power generation	X		
36. Manufacture of large pump storage units at 350 MW and higher rated power	X		
<i>Communication equipment, computer, and other electronics manufacturing industry</i>			
37. Design and manufacture of civil satellites		X	
38. Manufacture of satellite payloads		X	
39. Manufacture of air-traffic control equipment	X		

SECTOR	Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
Finance and Insurance			
40. Banking (shareholding in an existing Chinese bank)*		X	20% for any one foreign investor; 25% for all foreign investors
41. Life insurance companies	X		50%
42. Securities companies (limited to underwriting A shares and underwriting and transacting B shares, H shares, and government and corporate securities)		X	49% (see note 2)
43. Stock investment fund companies		X	49%
44. Futures trading companies		X	49% (see note 2)
Leasing and Business Services			
45. Accounting and auditing	X		
46. Market research	X		
Transportation, Shipping, Storage, Telecommunications, and Postal Industries			
47. Construction and operation of main line railroad networks		X	
48. Construction and management of branch railway lines, local railways and bridges, tunnels, ferry facilities, and station yard facilities	X		
49. Construction and management of civil airports		X	
50. Air carrier shipping companies		X	
51. General purpose airline companies serving the agriculture, forestry, and fisheries industries	X		
52. Periodic and aperiodic international marine transportation services		X	
53. Passenger train transportation companies		X	
54. Water transportation companies		X	
55. General-use airline companies for photography, prospecting, and industrial purposes		X	
56. Telecom companies: value-added telecom services	X		50%
57. Telecom companies: basic telecommunication services		X	49%
Wholesale and Retail Trade			
58. Retail operations of more than 30 chain stores that sell different types and brands from multiple suppliers (with sample operations including wholesale, retail, and distribution of grain, cotton,		X	

SECTOR		Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
	vegetable oil, sugar, tobacco, crude and refined oil, pesticides, agricultural film, and fertilizers)			
	59. Distribution of audio-visual products (except films)	X		
	60. Shipping agents		X	
	61. Foreign freight forwarders	X		
Mining				
	62. Exploration and development of coal bed methane; use of mining gas	X		
	63. Exploration and development of oil and natural gas	X		
	64. Development of low-permeation oil and gas fields (deposits)	X		
	65. Development and application of new and other relevant technology to increase crude oil extraction	X		
	66. Development and application of new technology in oil exploration and development, such as exploring, drilling, well logging, measuring while logging, and down-hole operations	X		
	67. Exploration and development of oil shale, oil sand, heavy oil, ultra heavy oil, and other non-conventional oil resources	X		
	68. Exploration and development of unconventional natural gas resources such as shale gas and seabed gas hydrate	X		
	69. Surveying and mining of special and rare coal		X	
	70. Surveying and mining of barite	X		
	71. Mining of manganese (polymetallic) nodules and sea sand		X	
Real Estate				
	72. Development of land	X		
Electricity, Gas, and Water Production and Supplies				
	73. Construction and management of nuclear power stations		X	
	74. Construction and operation of electricity grids		X	
	75. Construction and management of gas, heat supply, and water drainage networks in cities with a population of more than 500,000		X	
Water Conservancy, Environment, and Public Infrastructure Management Services				
	76. Construction and management of comprehensive water-conservancy hubs		X	
	77. Construction and management of metro, light rail, and other urban rapid transit systems		X	

SECTOR	Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
Agriculture, Forestry, Animal Husbandry, and Fishery			
78. Cultivation and breeding of Chinese medicinal crops	X		
79. Selection and breeding of new types of agricultural goods, and production of seeds		X	
80. Processing of precious wood	X		
Scientific Research, Technology Services, and Geological Survey Industries			
81. Surveying and mapping companies		X	
82. Photography services (including aerial photography and other stunt photography services, but not aerial photography for surveying and mapping)	X		
Education			
83. Institutions of higher education	X		
84. Basic secondary (high school) educational institutions	X		
Culture, Sports, and Entertainment Industries			
85. Operation of performance venues		X	
86. Radio and television program and film production	X		
87. Construction and management of movie theaters		X	
88. Performance agent companies		X	
89. Operation of entertainment venues	X		



China Regulatory Transparency Scorecard

Updated April 2012

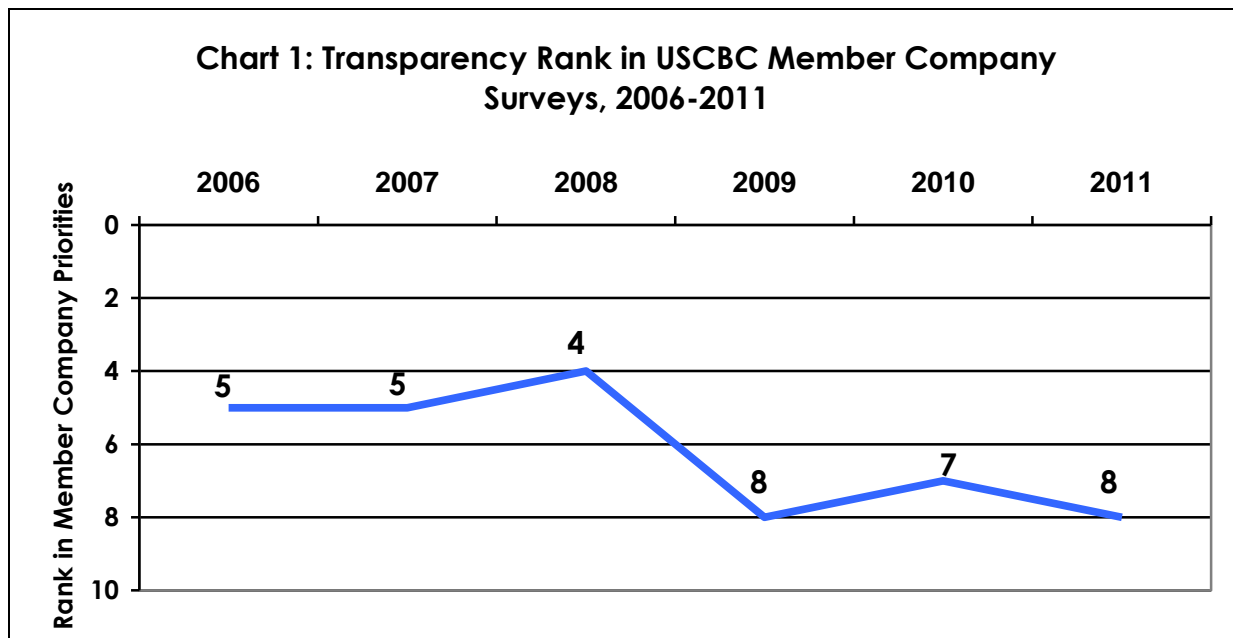
Executive Summary

Regulatory transparency in China consistently ranks as one of the top 10 concerns for US-China Business Council (USCBC) member companies in USCBC's annual membership survey. USCBC compiles an annual review of transparency progress in China by tracking PRC government agencies' record in increasing transparency in their rule-making processes.

- Both the National People's Congress (NPC) and the State Council have made commitments to improve regulatory transparency. In 2008, the NPC announced that it would solicit public comments on most draft laws and amendments it reviews. The State Council pledged in 2008 and 2011 to release drafts of all trade- and economic-related administrative regulations and departmental rules for 30-day public comment periods.
- Since 2008, the NPC has had a mixed record of posting draft laws and keeping them open for comment for a full 30-day period. For example, 33 percent of laws passed over a recent 12-month period had been published to the NPC website for comment at some point during their drafting process.
- The State Council has also had an inconsistent record of meeting its transparency commitments. Although the State Council is still not meeting the government's overall transparency goals, it has shown a better record of compliance over the most recent 12-month period. During this time, about 62 percent of the administrative regulations and departmental rules circulated or issued by the State Council and its ministries were posted for comment on either the State Council or ministry websites. The average comment period for these regulations was 24.9 days, but only 54 percent of these documents were posted for the full 30 days.
- The State Council in 2010 issued a new directive to "strengthen" compliance with its transparency commitments, and there has been some positive progress since that time. It has followed up with self-inspection initiatives to further its transparency goals (see "Recent Developments in PRC Transparency," p. 5). However, it has not implemented its 2011 commitment to publish a State Council circular requiring that all proposed trade- and economic-related administrative regulations and departmental rules be published for at least 30 days.
- USCBC recommends that the PRC government ensure that all administrative regulations and departmental rules are posted on the designated State Council Legislative Affairs Office information website comment page for a full 30-day public comment period, if not for a longer comment period of

Transparency – which includes solicitation of public feedback during the creation of new laws and regulations, open government decision-making, and the ability to access information – consistently ranks as one of the top 10 concerns raised by member companies during the US-China Business Council's (USCBC) annual survey of the operating environment in China (see

Chart 1). Over the past several years, the PRC central government has made considerable effort to improve rule-making transparency. USCBC commends PRC regulators for these important efforts, which have contributed to a regulatory system that increasingly reflects and includes many of the procedures for more transparent government.



In 2008, USCBC began tracking and reporting on PRC central government efforts to increase transparency and public participation in government rule-making. USCBC's analysis has focused on areas in which the central government has stated, either on its own or through bilateral agreements, its intentions to improve transparency, focusing on the following:

- Compliance with the National People's Congress (NPC) Standing Committee's April 2008 announcement that, to promote open participation in its legislative process, it would solicit public comments on most draft laws and amendments it reviews. (www.npc.gov.cn/npc/flcazqyj/2008-04/22/content_1464905.htm)
- Adherence to the June 2008 Strategic Economic Dialogue (SED IV) transparency commitment to "publish for public comment all trade and economic-related administrative regulations and departmental rules" for at least 30 days on the State Council's Legislative Affairs Office (SCLAO) information website comment pages.¹

¹ SCLAO posts documents for public comment on several web pages, including <http://yijian.chinalaw.gov.cn/lisms/action/guestLoginAction.do> (State Council documents); <http://bmyj.chinalaw.gov.cn/lisms/action/guestLogin>

(www.uschina.org/public/documents/2008/12/sed_outcomes.pdf)

- Adherence to the State Council's 2010 directive to "strengthen" compliance with its transparency commitments. (www.gov.cn/zwggk/2010-11/08/content_1740765.htm)
- Adherence to the May 2011 Strategic & Economic Dialogue (S&ED) commitment to "issue a measure this year requiring that all proposed trade- and economic-related administrative regulations and departmental rules be published" for at least 30 days on the SCLAO website. (www.treasury.gov/press-center/press-releases/Pages/TG1172.aspx)
- Other efforts to increase transparency, including policies implemented in accordance with the State Council's Regulations on the Disclosure of Government Information (www.gov.cn/zwggk/2007-04/24/content_592937.htm), which was issued in May 2008.

Action.do (ministry-level documents); and www.chinalaw.gov.cn/article/cazjgg/ (lists most laws posted on the above web pages and links to their respective comment pages).

Findings based on these criteria suggest that the PRC government needs to make further improvements, particularly in the transparent formulation of rules and regulations by the State Council and its agencies.

Methodology

To track PRC government compliance with these regulations and commitments, USCBC monitors the drafting and issuance of State Council and ministry laws and regulations and identifies whether they had been posted for comment on the SCLAO comment pages or ministry website pages. For the purposes of this report, documents that were issued but not posted for comment are considered documents that did not meet the bilateral commitments to transparency. Documents that were found to be posted for comment were evaluated as to whether they had been posted on either the main SCLAO comment page or the ministry page, and were also assessed based on whether the comment period met the 30-day commitment.

This is the fourth report USCBC has issued on China's transparency efforts since 2009 and covers the period from mid-March 2011 to mid-March 2012.

Separately, the question arises of how to define "trade and economic-related administrative regulations and departmental rules" used in China's June 2008 SED IV and May 2011 S&ED transparency commitments. The commitment itself did not formally define which regulatory documents would fall under these rules. Other PRC laws and regulations provide guidance on what types of regulations and departmental rules should be included. For the purposes of this report, USCBC used two separate filters.

- A "narrow" interpretation that includes only those documents explicitly labeled as State Council or departmental administrative regulations, such as "provisions" (规定), "regulations" (条例), and "measures" (办法). (For categories of administrative regulations and departmental rules, see Appendix 1.)
- A "broad" interpretation that includes not only those regulations included in the "narrow" interpretation but also other administrative regulations that appear to

function as State Council or departmental administrative regulations, such as "opinions" (意见), "notices" (通知), and "guides" (指引).

Although PRC regulations do not provide explicit guidance as to what formally constitutes a "trade and economic-related" measure, USCBC staff filtered government websites, press sources, and a broad mix of information channels to identify measures that directly or indirectly related to business concerns in China, in line with specific interactions with USCBC member companies and broad institutional knowledge about business and operating issues in China.

(For categories of administrative regulations and departmental rules and a full list of the types of documents included under "administrative regulations and departmental rules," see Appendix 1.)

Implementation of NPC Transparency Commitments

The NPC has been inconsistent in complying with the transparency measures it outlined in April 2008, and its compliance deteriorated significantly this year. During the USCBC's previous three tracking periods (2008-2011), the NPC released most draft laws for a 30-day comment period at least once during their standard three rounds of NPC Standing Committee review, which reflected consistency in China's highest legislative body to improve transparency. However, out of 9 laws (including amendments) passed during the 12-month period covered in this update, only three (33 percent) were posted to the NPC website for comment during their drafting or revision process.

This 33 percent was lower than that of PRC ministries under the State Council during this mid-March 2011 to mid-March 2012 transparency tracking period, as well a lower percentage than the NPC's postings during USCBC's mid-April 2010 to mid-March 2011 tracking period (when the NPC record was 11 of 14 (78 percent)). Notably, the other six laws that were not released for public comment were all amendments to existing laws. (For methodology and sources, see Appendix 2.)

Implementation of State Council and SED IV Transparency Commitments

In comparison, USCBC analysis shows that the publication of trade and economic-related rules and regulations for comment on SCLAO's information website has been inconsistent, but improving since 2009.

- Using the “broad” interpretation of administrative rules and regulations, roughly one-half of relevant documents (130 of 259, or 50 percent) issued between mid-March 2011 to mid-March 2012 were posted for public comment to SCLAO's dedicated webpage, with an additional 12 percent of documents (31 of 259) posted on their ministry sites (but not on a designated SCLAO site). Of the documents posted on either site, more than one-half (87 of 161, or 54 percent) were posted for the full 30 days. This is an improvement from the figures profiled in USCBC's April 2011 Transparency Tracker (www.uschina.org/public/documents/2011/04/transparency_tracking.pdf), which covered mid-April 2010 to mid-March 2011. During that period, just under one-third of relevant documents (142 of 503 total documents, or 28 percent) were similarly posted to a designated SCLAO website.
- Using the “narrow” interpretation of administrative rules and regulations, just under three-quarters of the relevant documents (120 of 164, or 73 percent) issued from mid-March 2011 to mid-March 2012 were posted for public comment on a designated SCLAO website, and an additional 10 percent (16 of 164 documents) were posted to ministry websites. Of these total documents posted, less than half were posted for the full 30-day period (77 of 164, or 47 percent). These figures are still far short of the goal but show an improvement from previous periods, and a larger improvement since 2008. The figures from the mid-April 2010 to mid-March 2011 period showed that less than half of relevant documents (72 of 165, or 44 percent) were posted, with only 11 of those posted for a full 30 days. In the 2008 to 2009 tracking period, only one-third (44 of 135, or 33 percent) were posted.

- The adjusted average comment period for all documents posted to either ebsite during this period was 24.9 days.² This was an increase from USCBC's previous report, which showed an average of 17 days.

The frequency of comment solicitation on draft rules and regulations varies greatly among ministries under the State Council. Three agencies with fairly consistent records of soliciting comments are the Ministry of Transportation (MOT), Ministry of Agriculture (MOA), and State Administration of Work Safety (SAWS). These agencies posted most of their respective circulated or issued documents for comment on the SCLAO comment pages, with MOT posting nine out of nine total documents issued, MOA posting eight out of 9 total documents, and SAWS posting 16 out of 17 total documents issued.³

Challenges to tracking transparency

Tracking the transparency performance of the State Council and its ministries is complicated by several factors. First, as discussed above, the 2008 SED IV agreement does not define key terms such as “trade and economic-related” or “administrative regulations and departmental rules,” allowing multiple interpretations of the commitments and multiple ways of measuring compliance. Furthermore, the 2011 S&ED commitment states that posting rules and regulations is “subject to limited exceptions,” but does not provide clarification on what these exceptions are. While the PRC government may consider certain documents to be exceptions to this commitment, such exceptions must remain limited. This rationale is insufficient to justify such a low rate of compliance.

² USCBC found that a number of documents had been posted for longer than 30 days, skewing the figure for the average number of days posted for comment. To present a more accurate average, USCBC adjusted the data such that comment periods longer than 30 days were treated as comment periods that had been posted for exactly 30 days. This lowered the average from 27.5 days to 24.9 days. USCBC concluded that the 24.9 days is a more honest representation of average public comment periods for drafts posted.

³ These figures refer to the documents that USCBC was able to find and does not necessarily reflect the total number of documents issued or posted for comment.

Second, the URLs to which some administrative items are initially posted expire after a short time, especially for those posted on agency websites, making it difficult to locate regulations later. This is particularly common with administrative items released by the Ministry of Finance. Such issues hinder the effectiveness of government efforts to improve transparency.

Finally, because no centrally maintained record of items that have been released for comment appears to exist, the only way to verify whether laws and regulations issued for implementation were published for comment may be to check the SCLAO and departmental websites regularly for the release of new documents. This makes it difficult for anyone – public and private sector alike – to track transparency in a comprehensive fashion, and very difficult without a significant time commitment. USCBC tracks the activity of PRC agencies that are most relevant to US industry issues and concerns, but recognizes that such lists may not be all-inclusive due to the nature of China’s transparency challenges. (For the full list of agencies that USCBC regularly tracks, see Appendix 3.)

Recent Developments in PRC Transparency

The PRC government has continued to emphasize its commitment to increase transparency through various statements and regulations, despite its uneven implementation of existing commitments. Some recent developments pertaining to information disclosure follow.

- **State Council notice to increase administration of government websites** The State Council in April 2011 issued a notice calling on all government agencies to strengthen their website administration. This entails sharing non-confidential documents with the public, posting policies related to public interests on government websites, and improving the operation and technical support maintenance of websites. (www.saic.gov.cn/zcfg/xzfggfwj/xxb/201105/t20110505_105834.html)
- **State Council statement to strengthen budget transparency efforts** The State Council in May 2011 stated at a meeting that PRC government

and Chinese Communist Party departments should provide more details in released financial information and budget expenditures, particularly spending on government receptions and entertainment, overseas trips, and vehicles (known as the “three publics”). According to the comments, government and party departments should publicize their budgets prior to approval by the NPC. (www.china.org.cn/china/2011-05/04/content_22496403.htm)

- **Peking University report on government agency transparency** The Peking University Center for Public Participation Studies and Supports in September 2011 published a report that measured the transparency of 43 State Council departments. The report assigned failing grades to 35 out of the 43 departments, and noted that the State Council needed to improve the disclosure of and access to information. (www.chinadaily.com.cn/china/2011-09/29/content_13814407.htm)
- **The Chinese Academy of Social Sciences (CASS) government transparency rankings by ministry** CASS ranked government ministries by their progress on transparency commitments in February 2011. The Ministry of Commerce, National Population and Family Planning Commission, Ministry of Environmental Protection, State Administration of Work Safety, and Ministry of Transport were ranked among the most transparent agencies. The CASS report ranked Beijing, Tianjin, Jiangsu, Fujian, and Shanghai as having the most transparent provincial governments. (See Appendix 4 for a list of top ranked central government agencies and local PRC governments, as well as an explanation of the methodology.) (www.legaldaily.com.cn/index_article/content/2012-02/20/content_3362246.htm?node=6148)
- **Standing Committee of the NPC Work Report** NPC Chairman Wu Bangguo delivered the NPC Standing Committee’s work report on March 9, 2012 during the NPC’s annual meeting. Wu highlighted the importance of taking further steps to improve the PRC legal system, including the need to

“further improve the methods for seeking public comments on draft laws.”
(www.china.com.cn/policy/txt/2012-03/09/content_24853675.htm)

USCBC Recommendations

USCBC welcomes the State Council’s requirement for agencies to solicit public comment on all administrative documents, and offers the following recommendations for improving the process and increasing public participation:

- Ensure that all administrative regulations and departmental rules are posted on the designated SCLAO information website comment page for the full 30-day comment period. An even longer comment period of 60 or 90 days would be preferable and result in

better comments for the consideration of government regulators.

- Publish a clear definition of the documents covered under the State Council’s transparency commitments that include documents such as catalogues, notices, and opinions, which often affect industry significantly.
- Explain in detail, and within the bounds of confidentiality, the economic methodology and rationale that underpin administrative reviews and decisionmaking by central government bodies, including antimonopoly merger reviews, countervailing duty and antidumping investigations and case rulings, and decisions made based on “national economic security” considerations.

Appendix 1

USCBC has identified more than 700 administrative items since mid-June 2009 that have been circulated or issued by PRC central government agencies but not released for comment on SCLAO comment pages. Of these items, none have used the specific terms referred to in the SED IV commitment as “administrative regulations” or “departmental rules” (行政法规和部门规章). These items may have been posted for comment on their drafting agencies’ or other PRC government websites before USCBC tracking efforts began.

Administrative regulations and departmental rules may include a variety of documents:

- Articles 89 and 90 of the PRC Constitution (www.law-lib.com/law/law_view.asp?id=2530) stipulate that State Council administrative regulations (法规) may be titled “provisions” (规定), “decisions” (决定), and “orders” (命令), and departmental rules (规章) may be titled “orders” (命令) and “directives” (指示).
- Article 4 of the 2001 Regulations on the Procedures for the Enactment of Administrative Regulations (www.law-lib.com/law/law_view.asp?id=16619) states that State Council administrative items may be titled “regulations” (条例) and “measures” (办法).
- Article 2 of the 1990 Decision on the Registration of Regulations and Rules (www.law-lib.com/law/law_view.asp?id=6358) states that departmental administrative items may be titled “provisions” (规定), “measures” (办法), “rules” (细则), and “general rules” (规则).

If the categories “administrative regulations” and “departmental rules” include documents with all of the above titles, SCLAO has posted on its comment pages roughly one-half (129) of the relevant items (263).

Terms Used for Administrative Items Circulated or Issued but Not Released for Comment on the SCLAO Comment Pages, Mid-March 2011–Mid-March 2012

Terms specified in PRC law as administrative regulations and departmental rules	Number issued*	Other commonly used titles	Number issued*
Provisions (规定)	9	Opinions (意见)	24
Decisions (决定)	2	Notices (通知)	36
Orders (命令)	0	Guides (指引)	2
Regulations (条例)	4	Standards (标准)	4
Measures (办法)	27	Catalogues (目录)	3
Directives (指示)	0	General Rules (通则)	2
Rules (细则)	2	Requirements (条件)	0
General Rules (规则)	0	Measures (方法)	0
		Other	14
Total	44		85

*These numbers are estimates based on USCBC’s detection of administrative items released on PRC State Council and ministry websites. These numbers also include administrative items that were circulated/issued but not posted to either the SCLAO or the drafting ministries’ websites.

Appendix 2

USCBC tracks laws passed by the NPC on the NPC’s website: www.npc.gov.cn/npc/xinwen/node_12488.htm

In addition to ascertaining which and how many laws were passed in a given period of time, USCBC looks at which drafts of these laws were posted for comment on NPC’s public comment portal: www.npc.gov.cn/npc/flcazqyj/node_8176.htm

Consequently, USCBC is able to track which drafts are posted for comment out of the total laws passed and which draft laws were not posted for comment.

Appendix 3

USCBC regularly tracks the activities of the following PRC agencies:

- Administration of Quality Supervision, Inspection, and Quarantine
 - Beijing Municipal Government
 - China Banking Regulatory Commission
 - China Insurance Regulatory Commission
 - China Security Regulatory Commission
 - General Administration of Customs
 - Ministry of Agriculture
 - Ministry of Commerce
 - Ministry of Environmental Protection
 - Ministry of Finance
 - Ministry of Health
 - Ministry of Human Resources and Social Security
 - Ministry of Industry and Information Technology
 - Ministry of Science & Technology
 - National Development and Reform Commission
 - People's Bank of China
 - Shanghai Municipal Government
 - Standardization Administration of China
 - State Administration of Foreign Exchange
 - State Administration of Industry and Commerce
 - State Asset Supervision and Administration Commission
 - State Council
 - State Council Legislative Affairs Office
 - State Food and Drug Administration
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Appendix 4

The Chinese Academy of Social Sciences (CASS) Report on PRC Government Transparency:

CASS evaluated the transparency of ministries directly under the State Council, including ad hoc organizations, institutions, state bureaus, departments related to foreign affairs, and departments that have direct responsibility for the well-being of PRC citizens. The evaluation was conducted by a combination of phone, mail, and self-surveys by ministries.

CASS ranked ministries on a scale of 1 to 100 points. Points were based on five criteria: government information disclosure catalogue (20 points), government information disclosure guidelines (20 points), disclosure portals and implementation (20 points), annual reports on information disclosure (20 points), and budget information disclosure (20 points). Selected rankings for ministries that USCBC regularly tracks are listed below.

Selected Ministry Transparency Rankings, 2011

State Council Ministry	Rank	Score
Ministry of Commerce	1	67.0
Ministry of Environmental Protection	3	64.0
State Administration of Work Safety	4	62.0
Ministry of Transportation	5	61.0
China Insurance Regulatory Commission	8	59.5
National Development and Reform Commission	9	59.0
State Asset Supervision and Administration Commission	10	58.5
Ministry of Finance	12	57.5
Ministry of Industry and Information Technology	13	56.0
Ministry of Agriculture	16	55.0
Ministry of Science and Technology	20	53.5
Ministry of Health	23	51.0

CASS ranked also ranked local governments on a scale of 1 to 100 points. These points were based on six criteria: government information disclosure catalogue (20 points), government information disclosure guidelines (15 points), disclosure portals and implementation (20 points), annual reports on information disclosure (15 points), housing deconstruction information disclosure (15 points), and food safety information disclosure (15 points).

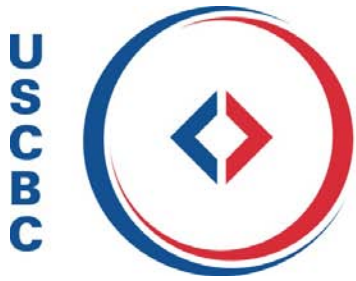
Provincial-Level Government Transparency Rankings, 2011⁴

Local Government	Rank	Score
Beijing	1	72.5
Tianjin	2	69.0
Jiangsu	3	66.5
Fujian	4	65.5
Shanghai	5	63.5
Guangdong	6	62.5
Chongqing	7	61.0
Jilin	8	61.0
Sichuan	9	60.0
Hebei	10	59.0

City Government Transparency Rankings, 2011

Local Government	Rank	Score
Fuzhou, Fujian	1	75.8
Xi'an, Shaanxi	2	69.0
Wuxi, Jiangsu	3	65.9
Dalian, Liaoning	4	65.7
Qingdao, Shandong	5	64.7
Ningbo, Zhejiang	6	63.6
Xiamen, Fujian	7	63.5
Jinan, Shandong	8	63.5
Zhuhai, Guangdong	9	61.2
Guangzhou, Guangdong	10	61.1

⁴ CASS's rankings includes provinces (省) and the four centrally-administered municipalities (直辖市) – Beijing, Shanghai, Tianjin, and Chongqing. It does not include any of China's autonomous areas (自治区) – Inner Mongolia, Xinjiang, Tibet, Ningxia, or Guangxi – or either of its two specially administered regions (特别行政区) – Hong Kong and Macao.



THE US-CHINA BUSINESS COUNCIL

美 中 贸 易 全 国 委 员 会

USCBC Standards Review and Recommended Changes to the Development and Implementation of China's Standards and Conformity Assessment Policies and Processes

December 2011

Standards and conformity assessment procedures have gained global attention among regulators and companies alike in recent years. The procedures provide a set of tools for regulators to achieve policy objectives, such as improved public health and environmental protection. Such procedures also serve as critical thresholds for how companies can enter new markets and as guidelines for how they can succeed in those markets.

PRC government officials have significantly increased standards and conformity assessment-related activities in recent years, and officials are working to build a modern system of standards and conformity assessment procedures comparable to those in other countries. For example, according to the latest figures publicly available from the Standardization Administration of China (SAC), in June 2009 China had 23,843 national standards, 39,686 industry standards, and 14,142 local standards. The number of national standards rose from 20,906 in 2003 and included more than 12,000 standards that were under revision at that time.

Many foreign companies, however, still confront significant barriers in their attempts to understand, participate in, and comply with China's standards and conformity assessment regimes. The US-China Business Council's (USCBC) annual membership survey results show that US companies continue to identify standards and conformity assessment as one of their top overall challenges when doing business with China. They face problems that range from inadequate transparency to inadequate harmonization with international standards, and from limited market access to high costs of compliance. Though the individual standards in question differ across industries, the broader structural issues faced by US companies remain common. Ultimately, such barriers hinder the development of China's economy and of individual companies, and in some cases the barriers limit or slow the availability of products and innovations in the marketplace.

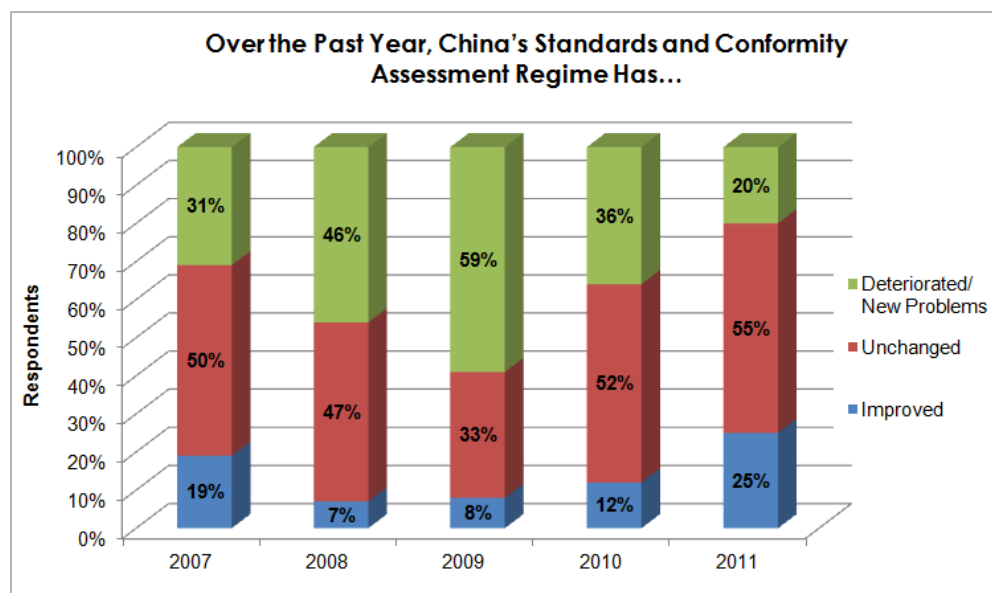
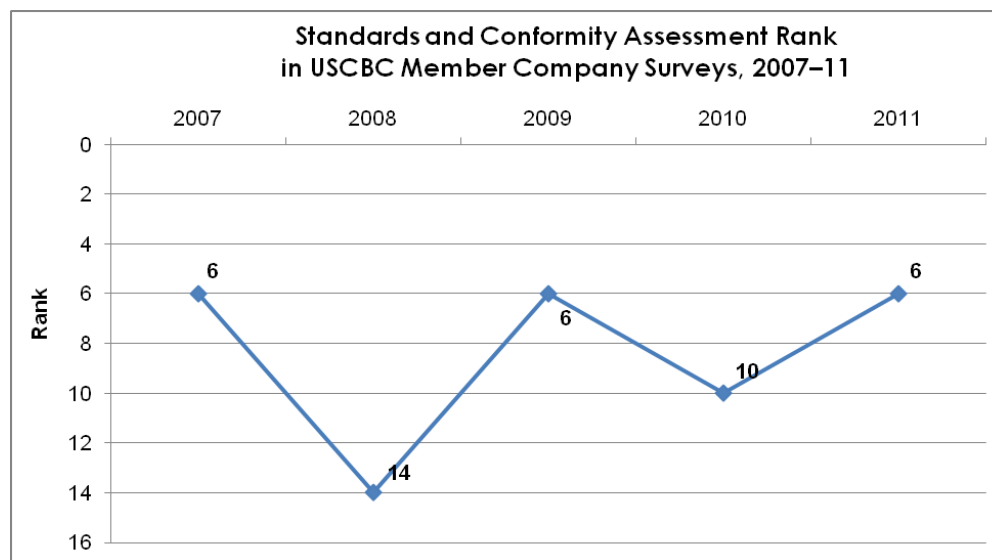
Standards and Conformity Assessment as a Top 10 Issue

China has shown some improvement in standards and conformity assessment areas in recent years, yet improving China's standards regime remains a top priority for US companies. In USCBC's annual member company survey, standards and conformity assessment has ranked among US companies' top 15 operating challenges for each of the past five years, and it generally ranks in the survey's list of top 10 challenges. As with other operating issues, however, the level of concern will vary based on the industry and the company's situation. For companies impacted by rapidly evolving standards, such as companies in the information technology sector or whose plants or products are impacted by environmental pollution standards, this remains a top concern. The subject may concern sectors in which standards and conformity assessment activity is lower, such as financial services, less.

Though a small group of companies (less than one in four) have indicated some improvement on this matter in recent years, most companies have indicated that the issue has remained unchanged, or that they have seen deterioration or new problems. In 2011, for example, 20 percent of survey respondents indicated that the situation had worsened, 55 percent stated that the problem was unchanged, and only 25 percent indicated that they had seen some improvement in standards and conformity assessment.

Challenges of Participation in Standards and Conformity Assessment in China

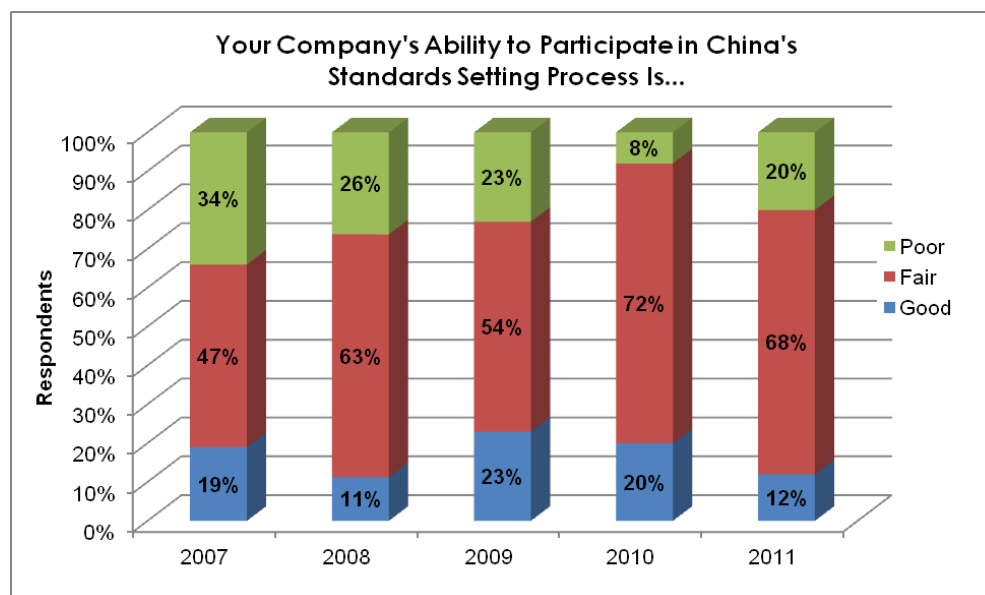
Of note, many respondents in USCBC's membership surveys indicate that they do not participate in China's standards and conformity assessment system. For example, in 2011, only half of respondents (50 percent) who would likely be able to



Source: USCBC

participate in China's standards-setting system indicated they do so, while the other half of respondents indicated that they do not participate. These statistics were actually down from 2010, when 57 percent of respondents indicated they do participate versus 43 percent who do not.

Those companies that do participate or seek participation continue to face significant barriers. The percentage of respondents who characterize their ability to participate in standards setting as "good" – that they are able to obtain information, participate in the process, and influence standards – was only 12 percent in 2011, down from 20 percent in last year's survey. Most companies – 68 percent – answered "fair" (in Chinese, "一般") indicating that they had some ability to participate, but that ability remained limited; this number was down somewhat from 72 percent last year. The number of companies rating their ability to participate in standard setting as "poor" was 20 percent, up from 8 percent last year.



Source: USCBC

Specific Challenges and Concerns

Within the area of standards and conformity assessment, companies raised a wide variety of concerns. Again, some of the diversity is due to the broad impact of standards and conformity assessment regimes on company operations. For a company seeking to provide testing or certification services, market access barriers for these services in China may be their top concern, whereas for a manufacturer producing high-tech goods, the inability for foreign companies to participate appropriately on standards-related technical committees may be most vexing.

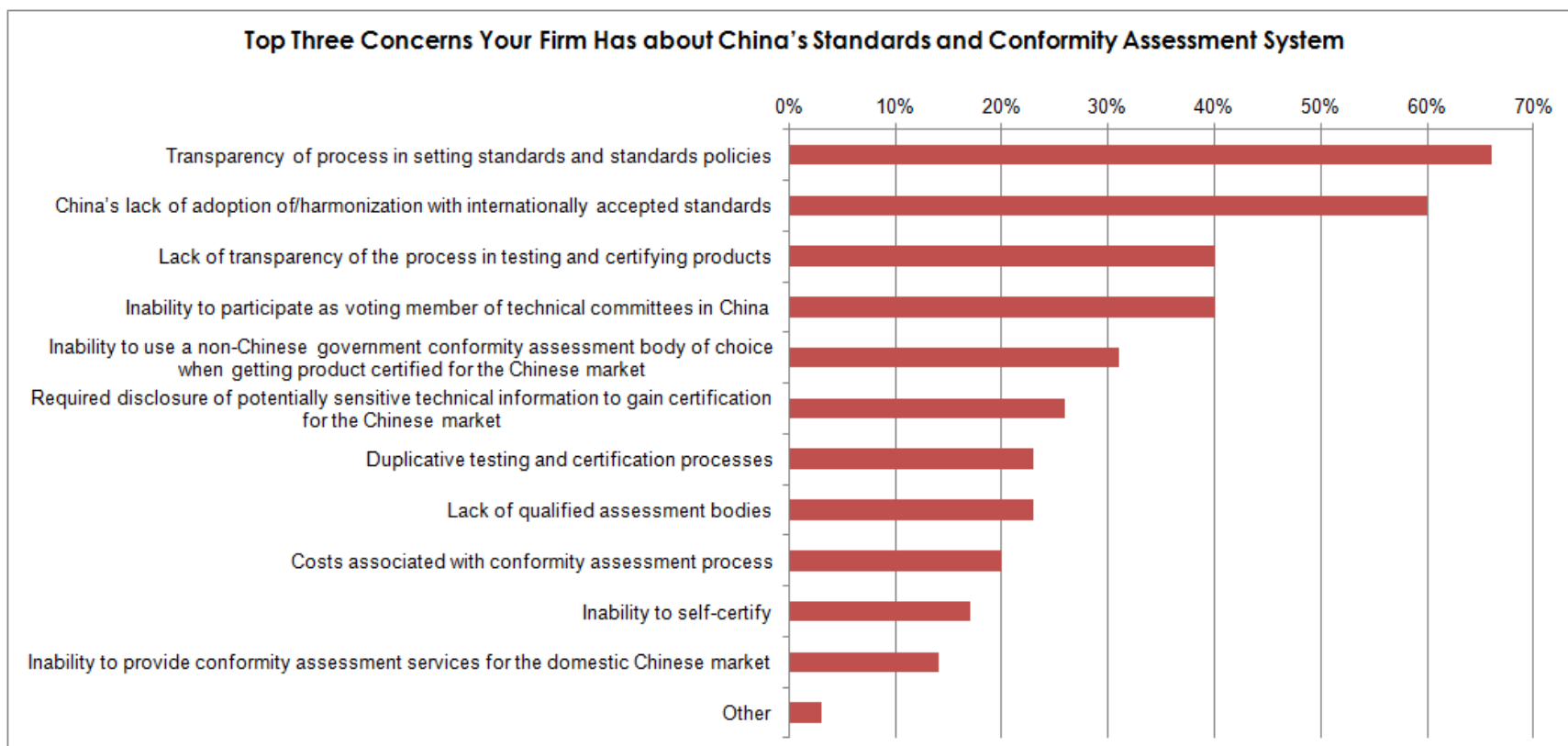
Despite this diversity of problems, however, the top concerns reflect a number of common themes, including:

- Inadequate transparency for draft and finalized standards and conformity assessment-related regulations and policies;
- Barriers to participation in standards-setting activities;
- Lack of harmonization with international standards;
- Inefficiencies and high costs for testing and certification; and
- Lack of testing and certification capacity coupled with an inability for foreign companies to fill the gaps.

USCBC's 2011 survey asked respondents to list their top three concerns with China's standards and conformity assessment system. The top concern, as in years past, was transparency in setting of standards and standards policies (66 percent of respondents). This was followed by

China's lack of harmonization with internationally accepted standards (60 percent), and transparency in testing and certifying products (40 percent). Other concerns named by at least one-quarter of respondents include the inability to participate as a voting member of technical committees in China (40 percent), the inability to use a non-PRC government conformity assessment body (31 percent), and required disclosure of potentially sensitive technical information to gain certification for the Chinese market (26 percent).

Each of these concerns can negatively affect PRC regulators' ability to build a robust, internationally accepted and respected system for standards and conformity assessment. Conversely, addressing these concerns in a meaningful fashion can help PRC government agencies to further improve China's standards and conformity assessment system. Removing such barriers will expand the range of products and technologies that companies are willing and able to bring to China, increase the likelihood that PRC authorities will produce broadly accepted standards and policies, and improve the ability of companies and regulators to comply with—and enforce—such standards and policies. In addition, in the long run, eliminating China-specific barriers will raise the ability of Chinese companies and products to compete in international markets.



Source: USCBC

Specific USCBC Recommendations

International experience shows that open and transparent standards and conformity assessment frameworks are essential to facilitate the creation of internationally accepted and globally competitive products, and such frameworks can drive innovation and technology advancement. The World Trade Organization's Technical Barriers to Trade (WTO/TBT) agreement and the WTO/TBT Code of Good Practice for the Preparation, Adoption, and Application of Standards provide valuable guides for international best practices in the setting and implementation of standards used by countries with robust, innovative standards regimes. US policies and procedures, such as use of the Semiannual Regulatory Agenda and Federal Register, the US Standards Strategy, and the National Conformity Assessment Principles, also provide useful guideposts for increasing transparency and open participation in standards and conformity assessment, promoting cooperation between the public and private sectors on standards and conformity assessment outcomes, and promoting efficiencies in testing and certification.ⁱ

For example, in looking at transparency issues, provisions in the WTO/TBT Agreement require WTO members to notify the WTO Secretariat of proposed new or revised technical regulations or conformity assessment procedures that are not directly based on relevant international standards and that have the potential to significantly affect trade. Many countries take additional steps to promote transparency in setting and implementing policy, including collecting and publishing all proposed new or changed regulations in one location (such as in a national gazette) and building and maintaining a centralized database or source for relevant regulations. In the United States, agencies take various steps to increase and foster transparency throughout the rulemaking process:

- The Administrative Procedures Act requires agencies to ensure transparency, including taking steps to inform the public of their policies and procedures, to permit the public to participating in the setting of said policies and procedures, and to establish uniform standards for the conduct of formal rulemaking and adjudication.
- The US Office of Management and Budget coordinates varying federal agencies to gather information about planned regulatory developments and publish these twice each year in the Semiannual Regulatory Agenda.

In addition, regulators provide information about proposed policies and regulations as well as their finalized versions through the US Federal Register. US regulators publish final federal regulations through the US Code of Federal Registrations. These publications are online, free, and open to all interested domestic and international stakeholders.

Undertaking further reforms in line with international best practices – such as those outlined above for transparency – can create more transparent and market-driven standards and conformity assessment systems and foster further participation by all relevant stakeholders in setting and implementing standards and conformity assessment procedures. Ultimately, such reforms will provide China with several economic benefits, which include maximizing its global commercial ties, attracting more products and technologies, and shaping global standards and conformity assessment rules and procedures. In addition, as Chinese firms expand their participation in global standards and conformity assessment regimes, their products will gain greater access to domestic and international markets. Greater market access can lead to greater international competitiveness and brand development for Chinese companies.

At the same time, standards and conformity assessment schemes that are open, transparent, non-discriminatory, and market-driven will help to attract further foreign investment and foster greater international cooperation. Foreign-invested enterprises contribute to China's economic growth, job creation, and tax base. Many foreign-based companies have established research and development (R&D) capabilities and conduct significant product development and innovation in China. An open and transparent system for developing and implementing technical standards and standards policies will signal to foreign and domestic companies alike that China truly desires to be an innovation hub. Foreign participation in the local product certification process can also drive improvements in product standards and conformity assessment processes, thus raising the quality and safety of goods produced and sold in China and the rest of the world while reducing the time and cost required to undergo such procedures.

USCBC member companies are global leaders in innovation and R&D across various industry sectors. They have a strong desire to work with China to develop its standards and conformity assessment framework. Based on our members' considerable experience around the world, we respectfully provide the following list of recommendations that USCBC hopes the PRC government will consider in its effort to develop its standards system and conformity assessment framework.

Development of Standards and Standards-Related Policies and Regulations Development

Issue

Representatives of all companies operating in China face difficulties gathering information about existing technical standards and standards-related laws, regulations, policies, and requirements that impact their products and operations. At present, there is no unified channel where these companies can find all standards and standards-related policies and regulations. Such a lack of transparency limits the ability of these companies to comply with PRC standards and regulations, and thus it creates a greater risk of non-compliant products reaching Chinese consumers.

Recommendation

Relevant PRC government and non-government bodies and organizations that are active in drafting and releasing mandatory standards should consider:

- Consistently publishing through a unified, dedicated information channel all standards and standards-related regulations set by government bodies or government-affiliated organizations, including mandatory and voluntary national, industry, and local standards, in addition to laws, regulations, and technical requirements.
- Encouraging non-governmental bodies and organizations that set standards, standards policies, or standards guidelines or that provide input to standards-related regulations, policies, and guidelines to increase transparency by making final versions of these documents freely and publicly available to members and non-members.
- Translating all laws, regulations, or other measures – including standards and technical regulations – related to trade in goods or services and issued by all levels of government into one or more of the World Trade Organization (WTO) languages no later than 90 days after they are implemented or enforced, as China committed during its WTO accession.

Representatives of companies operating in China often lack adequate opportunity to recommend and comment on draft versions of standards and standards-related policies and technical regulations before they are finalized. Presently, no unified channel exists for release of all proposed draft standards and standards-related policies, creating difficulties for domestic, foreign-invested, and foreign-based companies. Allowing all companies the opportunity to provide input on draft versions of standards and standards-related policies would result in stronger, more broadly accepted regulatory outcomes and help to ensure that such regulations are feasible for all stakeholders to implement.

Relevant PRC governmental and non-governmental bodies and organizations with standards policymaking authority should consider:

- Creating a designated unified channel to make draft versions of all standards (national, industry, and other types of standards) and standards-related policies and regulations set by government or government-affiliated organizations available to domestic, foreign-invested, and foreign-based companies for public comment for a period of at least 30 days. Such a channel would be consistent with the State Council's 2008 Regulations on Disclosure of Government Information and related transparency initiatives.
- Continuing to provide notification of all relevant standards and standards-related laws, policies, and regulations through the WTO's Technical Barriers to Trade (WTO/TBT) committee for at least 90 days before standards are finalized and implemented. Ensure that proper notification of all standards and standards-related laws, policies, and regulations that fall under the WTO/TBT umbrella occurs, regardless of the drafting government body or organization.
- Encouraging all non-governmental bodies and organizations that set standards and standards-related policies and guidelines to increase transparency by making draft versions of these documents freely available for public comment by all stakeholders regardless of nationality.

Although existing rules and practice allow foreign-invested enterprises (FIEs) some participation in standards development activities, FIEs are not consistently permitted full participation in China's standards development process, including as full voting members of technical committees responsible for standards setting. Permitting FIEs to seek participation in standards-setting activities on equal footing with their domestic counterparts would promote a more robust standards-setting process and may be more likely to produce standards that address Chinese and global market needs. Such consideration would also be in keeping with the WTO principle of national treatment.

Relevant PRC government and non-governmental bodies and organizations that are active in drafting and releasing standards should consider:

- Allowing FIEs to appropriately participate in standards-setting activities, such as government-sponsored or government-led standards development initiatives, based on membership criteria that do not discriminate against companies based on their nationality.
- Revising policies that inappropriately withhold access to participation or voting rights in standards-setting groups based on where the company or organization is headquartered.
- Working actively with FIEs to investigate claims or complaints about inappropriate limitations on membership or voting rights in standards-setting groups, and – if such claims are found to be valid – working with FIEs and standards groups to address the complaints.
- Continuing to promote exchanges among FIEs and relevant governmental and

non-governmental bodies and organizations – including Chinese industry associations, standards organizations, and government-supported institutes – responsible for standardization at the central, provincial, local, and sector levels to foster stronger and more broadly accepted standards outcomes.

Some PRC standards and standards-related laws, regulations, and policies that aim to improve China’s innovative capabilities or to boost PRC government objectives, such as national security (including China’s multilevel protection scheme), may impose overly broad requirements on governmental and non-governmental agencies and organizations as well as commercial entities, and may serve as effective market barriers. Such policies and standards could limit foreign companies’ ability to introduce products into the China market and restrict China’s access to technology used globally.

Relevant governmental and non-governmental bodies and organizations that are active in drafting and releasing standards should consider:

- Ensuring that technology policies and regulations – and practices related to developing technology policies and regulations – are developed in ways consistent with global best practices for openness, transparency, cooperation, and feasibility, and do not discriminate against companies based on where they are headquartered. In addition, such policies and regulations should comply with trade treaties and international organizations’ best practices so that the breadth of technology available to China is not unnecessarily narrow. This will enable Chinese companies to take better advantage of the global standards community and advancements in global innovation, and it will allow Chinese consumers access to a wider variety of products and technologies in a timely manner.
- Promoting a standardization environment that fully recognizes the role of the market in determining the best technologies and standards, and encouraging an approach to standards development that promotes standards and technologies based on technical merit and market potential, not on protectionist concerns.
- Ensuring that standards and standards-related laws, regulations, and policies are feasible, reasonable, and sufficiently targeted to achieve legitimate standards-related goals without imposing requirements on unrelated commercial bodies. Also, such regulations should not function as market access barriers by favoring domestic companies or manufacturers over foreign-based or foreign-invested companies.

At times, standards-related policies place unnecessary or unmanageable requirements related to intellectual property (IP) that place IP rights at risk. Such policies limit the interest and ability of FIEs to contribute positively to standards-setting activities and can harm Chinese companies that are developing their own IP and seeking to protect it in increasing numbers.

Relevant PRC governmental and non-governmental bodies and organizations with responsibility for standards-related policies should consider:

- Carefully reviewing the IP-related implications of existing and proposed standards-related policies and regulations to ensure that IP is properly respected and adequately protected.
- Adopting standards and IP policies that align with pro-competitive international principles for standards setting and that would allow Chinese

standards-setting bodies to be a fully participating part of the global standards development eco-system (such as global, industry-led, voluntary consensus-based standards that respect valid IP rights and are open and transparent to all interested parties).

- Consulting with industry participants by making draft versions of policies, regulations, and guidelines related to IP and standards available for comment before such documents are finalized, so that IP is treated appropriately and the rights of Chinese and foreign IP rights holders, IP users, and the public at large are balanced.
- Ensuring that any future draft versions of Standardization Administration of China and China National Institute of Standardization policies, regulations, and guidelines for incorporation of IP into national standards reflect concerns raised by USCBC and other stakeholders about patent disclosure, zero-royalty or low-royalty rates for licensed IP, and other areas.
- Encouraging technical committees and other standards-setting groups to draft and release clear policies to govern protection of IPR during the standards-setting and implementation process that incorporate international best practices and norms for effective development of standards. The China Electronics Standardization Institute's 2006 IP Policy Template provides a useful reference of a template that is aligned with international best practices.

Representatives of companies operating in China, including domestic companies, foreign-invested companies, and foreign-based companies, continue to experience challenges stemming from inconsistent interpretation and uneven enforcement of standards and standards-related policies across agencies and jurisdictions in China. The situation confuses companies and regulators alike and limits the ability of those who enforce standards and standards-related policies to set and implement effective policies.

Authorities who are responsible for standards-related policies should seek to ensure that standards and standards-related policies are applied uniformly and consistently to domestic and foreign companies and do not effectively function as market-access barriers. They should also consider:

- Engaging with local government officials on capacity-building programs for standards enforcement in ways that promote open, non-discriminatory, efficient regulatory practices.
- Working with stakeholders during the drafting process for standards and standards-related laws, regulations, and policies to ensure that implementation and enforcement of standards regimes is feasible, reasonable, and targeted to achieve legitimate regulatory goals, and does not favor domestic companies or manufacturers over foreign-based or foreign-invested companies.
- Ensuring that planned schedules for implementing regulations consider the availability of complete documentation and other resources necessary for

industry compliance.

China's increased participation in, and engagement with, international standards and international standards groups represents a positive step forward. Despite this progress, foreign companies continue to observe the persistence of Chinese "homegrown" standards and the adoption of revised versions of international standards that serve as effective barriers for foreign products in the China market. Such barriers again hinder the ability of Chinese consumers to benefit from the latest products and technologies and may hinder the ability of Chinese markets to access foreign markets.

Authorities who are responsible for standards-related policies should consider:

- Aligning Chinese standards (including national, industrial, and local standards) with international standards and using international standards as the basis of Chinese standards and standards-related regulations wherever practical. China should limit modification of international standards only to those cases where permitted and justified to achieve legitimate objectives, such as to protect consumer safety, the environment, health, or national security.
- Broadening recognition of international standards to include any standard that meets the principles for the development of international standards identified by the WTO/TBT Committee.

Development and Implementation of Conformity Assessment Processes

Issue

China's domestic test laboratories do not accept foreign laboratory test data as evidence of certification for regulatory compliance in accordance with internationally accepted agreements, causing companies to face unnecessary and costly testing requirements and delays in getting their products to market. Ultimately, these inefficiencies have a negative effect on end users and consumers in China by increasing product costs and slowing their access to the latest products.

Despite provisions in the Regulations on Certification and Accreditation that require at least two choices of designated certification bodies (DCBs) for each product area in the China Compulsory Certification (CCC) regime, many product areas continue to have only one DCB. Foreign-based certification and testing companies cannot offer CCC conformity assessment services, limiting the ability of

Recommendation

China's certification authorities should consider:

- Removing requirements that overseas factory audits must be conducted by Chinese conformity assessment bodies and allow qualified foreign-based certification and testing organizations to conduct initial and follow-up factory inspections related to mandatory certification in overseas markets so that Chinese inspectors do not have to travel overseas to conduct these inspections.
- Accepting laboratory test data from qualified foreign-based certification and testing organizations and test laboratories. Acceptance of this data would reduce duplicative testing and data creation and would lower product costs for users and consumers in China.

The China National Certification Administration (CNCA) should consider:

- Ensuring that there are at least two choices of DCBs per CCC product scope by allowing qualified non-Chinese testing and certification organizations to be accredited and designated to conduct product testing, initial inspections, follow-up audits, and certification work for mandatory and voluntary governmental conformity assessment regimes. Such accreditation and designation would increase capacity and reduce delays that domestic and

domestic and foreign companies to choose among DCBs. Foreign-based companies that seek certification in China are limited in their choices for certification labs. Both of these serve to add to increased time and cost for companies and ultimately create time delays, increased costs, or limitations in product availability to Chinese end users.

foreign companies currently face in obtaining certification. Such reforms would also promote greater economic efficiencies in China and would be consistent with WTO principles of national treatment.

- Reducing or eliminating unnecessary bureaucratic procedures associated with CCC administrative processing, testing inspections/audits, and certification procedures. In addition to accepting factory inspection and test data from foreign-based certification and testing organizations mentioned above, CNCA should:
 - Allow all companies to apply simultaneously for both initial type testing and a factory inspection, thus shortening the product certification process and shortening the time to market for products.
 - Allow all companies to test by product family, instead of by shipment or individual product model, to decrease the time and cost burden for companies seeking to bring products to Chinese consumers.

Duplicative requirements between overlapping testing and conformity assessment schemes (such as CCC and Network Access License requirements in telecommunications) present companies with unclear – and frequently conflicting – procedures and rules, which often leave companies with significant questions about compliance. This not only raises the costs for companies and consumers, but it also increases the chances of non-compliant products entering the Chinese marketplace.

CNCA and other relevant testing and certification authorities (such as the Ministry of Industry and Information Technology, State Food and Drug Administration, and Ministry of Environmental Protection) should consider:

- Eliminating duplicative, overlapping, or conflicting government conformity assessment programs, including duplicative testing in areas ranging from telecom to medical devices.
- Coordinating more closely among relevant certification authorities during the drafting process for government conformity assessment programs to streamline and avoid duplicative testing problems prior to release and implementation of conformity assessment programs.

The CCC mark program is expanding to encompass additional product categories and to include different types of testing and certification, such as certification for information security products, energy efficiency products, and compliance with restrictions on hazardous substances (“China RoHS”). Qualified non-Chinese testing and certification organizations, however, continue to be blocked from providing these services.

CNCA and other relevant testing and certification authorities should consider:

- Accrediting – and designating – qualified foreign conformity assessment bodies to test for, and certify compliance with, all relevant existing standards related to CCC certification.
- Ensuring that future conformity assessment regimes or expansions of the CCC system similarly allow qualified foreign conformity assessment bodies to participate in the market and provide conformity assessment services.

China's conformity assessment regime relies on third-party certification models to determine conformity, and it excludes the possibility of self-certification, such as a suppliers' declaration of conformity.

CNCA and other relevant testing and certification authorities should examine broadening China's current conformity assessment model by:

- Accepting foreign-based companies' suppliers' declaration of conformity for certain products, based on acceptable levels of known product risk.
- Accepting supervised manufacturing test data already obtained by the manufacturer. If a manufacturer is deemed proficient by an appropriately qualified conformity assessment body, it should be able to submit test data directly to PRC conformity assessment authorities for a certification body certificate.

Representatives of companies operating in China often lack adequate opportunity to recommend and comment on draft conformity assessment policies and procedures set by government agencies before they are finalized. No unified channel exists for release of all proposed policies related to conformity assessment. The contribution of broad stakeholder views and international best practices will provide these government agencies that have conformity assessment policymaking authority with additional input for consideration and may result in better policy outcomes for China.

Government agencies with conformity assessment policymaking authority should consider:

- Creating a designated, unified channel to make draft versions of all conformity assessment policies and procedures set by government agencies available to domestic, foreign-invested, and foreign-based stakeholders for public comment for a period of at least 30 days.

Representatives of companies operating in China report difficulty confirming with non-CNCA officials, including local Customs agents and local representatives of the Administration of Quality Supervision, Inspection, and Quarantine, whether products must be CCC-certified. This can lead to unnecessary costs and delays for companies, as well as regulatory burdens to resolve these issues.

CNCA and other CCC-related government agencies should consider:

- Coordinating closely and regularly at multiple levels to promote an aligned interpretation of rules, tackle regulatory gaps and issues between the agencies, and establish set processes to handle disputes and questions quickly and easily.
- Engaging in dialogue on how to harmonize existing catalogues—for example, standardizing CCC product scope and the Harmonized System codes used by local Customs officials—and working to educate local officials on standard case handling in these situations.

Representatives of companies operating in China are inconsistently able to access or comment on conformity assessment policies and procedures set by individual DCBs. DCBs lack a common set of best practices for promoting transparency. This results in difficulties for those companies

CNCA and other relevant government agencies should encourage DCBs to solicit feedback from stakeholders on relevant conformity assessment policies for a sufficient period of time.

in ensuring full compliance with PRC conformity assessment policies and procedures, and thus it increases the chances that Chinese consumers may see non-compliant products.

ⁱ For more on these and other features of the US system and about the WTO/TBT regime, see the American National Standards Institute's "US Best Practices for Standards and Conformance."