

Transparency in China: A Work in Progress

The PRC government has made strides to boost regulatory transparency, but progress remains inconsistent.

Francesca Baruffi



Regulatory transparency consistently ranks as one of the top concerns of US companies in China, according to annual US-China Business Council (USCBC) membership surveys. Because regulatory and policy-making procedures shape the investment environment for foreign and domestic companies, the degree of transparency in the regulatory system can be favorable or detrimental to the interests of enterprises. Over the past several years, the PRC central government has made a considerable effort to improve transparency and has bolstered policies for soliciting public feedback on new and revised laws and regulations, opened government decisionmaking processes, and boosted the public's ability to access price index and market information.

As part of ongoing bilateral discussions on transparency, China at the 2008 Strategic Economic Dialogue (SED) pledged to release drafts of all economic laws and regulations for 30-day public comment periods. At the May 2011 Strategic and Economic Dialogue (S&ED) in Washington, DC, the PRC government further pledged to publish its 2008 SED transparency commitments as domestic regulations. China's transparency record from mid-April 2010 through mid-March 2011 showed mixed results, however. Though China's recent commitments are a positive step, enhancing regulatory transparency depends on effective implementation.

Tracking transparency

USCBC in 2008 began tracking and reporting on PRC central-government efforts to increase transparency and public participation in government rule-making (see p.55). USCBC's analysis has examined areas in which the central government has stated, either on its own or through bilateral agreements, its intentions to improve transparency:

- Compliance with the PRC National People's Congress (NPC) Standing Committee's April 2008 announcement that it would solicit public comments on most draft laws and amendments it reviews to promote open participation in the legislative process;
- Adherence to the June 2008 SED 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; and
- Other ministry efforts to increase transparency, including policies implemented in accordance with the May 2008 State Council's Regulations on the Disclosure of Government Information.

Findings based on these criteria from mid-April 2010 to mid-March 2011 suggest that the PRC government could further improve transparency efforts, particularly in the formulation of rules and regulations by the State Council and its agencies.

NPC transparency commitments

The USCBC analysis finds the NPC has complied reasonably well with the transparency measures it outlined in April 2008. Most draft laws were released for a 30-day comment period at least once during their standard three rounds of NPC Standing Committee review. Out of 14 laws (including amendments) passed in the period analyzed, 11 were posted to the NPC website for comment, a higher percentage than the State Council and its ministries and agencies.

Quick Glance

- Lack of regulatory transparency is a major concern for foreign companies in China.
- China in 2010 made progress toward meeting its transparency commitments, but further improvements are needed.
- Companies should participate in the formulation of regulations by the State Council and its agencies, including by submitting comments on draft regulations at the government's request.

State Council and SED transparency commitments

In comparison, the publication of trade and economic-related rules and regulations for comment on SCLAO's information website has been inconsistent. According to USCBC analysis, using the broad definition of administrative rules and regulations, less than one-quarter of relevant documents (70 of 338) issued from mid-April 2010 to mid-March 2011 were posted for public comment to SCLAO's dedicated webpage, and only three were posted for the full 30 days.

Using the narrower definition of administrative rules and regulations, less than half of the relevant documents (72 of 165) were posted for public comment on a designated SCLAO website. Of these, 11 were posted for the full 30-day period. An additional 20 percent of these documents (33 of 165) were posted on the websites of their respective drafting ministries (but not the SCLAO websites), with 12 of these posted for comment for the full 30 days. The average comment period for all documents posted to the State Council or relevant ministry websites during this period was 17 days.

These numbers are an improvement from the results of USCBC's 2010 transparency report, which found that roughly one-quarter of the documents issued (51 of 209) between mid-June 2009 to mid-April 2010 were posted for comment on the SCLAO website under the narrow definition (see the *CBR*, September–October 2010, p.38). Only three of these were posted for a full 30 days and the average comment period was 18 days.

The frequency of comment solicitation on draft rules and regulations varies greatly among ministries under the State Council. Two agencies with fairly consistent records of soliciting comments are the Ministry of Transportation (MOT) and the Ministry of Agriculture (MOA).

These agencies posted most of their respective circulated or issued documents for comment on the SCLAO comment pages, with MOT posting four out of five total documents issued on the SCLAO webpage, and MOA posting four out of four total documents issued on the SCLAO webpage.

Recent developments in PRC transparency

The PRC government continues to emphasize its commitment to increase transparency through various statements and regulations aside from the NPC and SCLAO commitments.

Ministries report on transparency efforts

Multiple PRC government ministries under the State Council—including the Ministry of Foreign Affairs, the Ministry of Industry and Information Technology, and the National Development and Reform Commission—published reports on their own information disclosure mechanisms in 2010. The agencies used 2010 statistics to analyze transparency initiatives, including efforts to encourage intra-agency information disclosure, solicit public

to report regulations, the disclosure of 14 national regulations in 2010 for public comment, and the release of legislation and other regulations through media, local conferences, and television. SCLAO aims to improve legislation to encourage government information disclosure in 2011.

Chinese Academy of Social Sciences (CASS) ranks government transparency

CASS in February 2011 ranked government ministries by their progress on transparency commitments in 2010. The Ministry of Science and Technology, MOA, and MOT were ranked among the most transparent agencies. The CASS report ranked Ningbo, Zhejiang; Fuzhou, Fujian; Dalian, Liaoning; Qingdao, Shandong; and Zhuhai, Guangdong, as having the most transparent local governments. CASS also found that top transparency problems included complicated, malfunctioning, or outdated public comment websites.

State Council pledges to strengthen rule of law

The State Council in October 2010 released the

Though the US government has advocated for increased regulatory transparency and the rights of US companies in China, there remains much room for improvement.

comments for draft regulations, and pinpoint areas for improvement within the agencies. Each agency indicated that they had improved certain areas, such as media broadcasting of regulatory developments. They also emphasized goals to increase transparency and post more documents for comment in 2011.

Ministry of Health (MOH) adopts information disclosure mechanism

The August 2010 Interim Measures on the Information Disclosure of Healthcare Service Entities stipulate that healthcare services institutions should release information that reflects the functions, rules, and procedures of healthcare institutions; and information that must be publicized under other PRC rules and regulations. Moreover, the measures require healthcare institutions to release to patients information on the medical products and devices healthcare providers use.

SCLAO reports transparency efforts

SCLAO in March 2011 reported that it had expanded efforts to increase transparency, citing 12 press conferences

Opinions on Strengthening the Construction of a Law-Based Government, which were implemented in early 2011 at the local level as guidelines for promoting rule of law, including transparency efforts. The opinions encourage local governments to publicize processes and regulations, disclose the conduct of state-owned services and industries, and strengthen government oversight of individual and agency conduct.

State Council releases security review notice without comment period

The State Council on February 3, 2011 announced that all merger and acquisition deals that include a foreign investor would be subject to a review process to assess the transaction's effects on China's national security. Deals found to threaten PRC national security will be terminated or approved conditionally. This notice was released without a comment period, in contradiction to China's transparency commitments. In addition, the PRC Ministry of Commerce, as one of the supporting agencies to the security review, began soliciting comments for provisional regulations while concurrently implementing the regulations.

Recommendations

Transparency will likely remain a long-term hurdle for US companies that invest in China. The PRC government’s transition to a transparent legal system presents unique challenges without easy or quick solutions. Though the US government has advocated for increased regulatory transparency and the rights of US companies in China, there remains much room for improvement.

■ **Work with Chinese industry associations and other stakeholders to locate drafts for public comment** Many of these associations have strong ties to key PRC government agencies that can be leveraged to help foreign companies communicate regulatory suggestions. Associations may also have access to drafts or other regulatory information that are unavailable to the broader public.

Meanwhile, USCBC cites a few ways in which the State

Transparency will likely remain a long-term hurdle for US companies that invest in China.

To work as effectively as possible in China’s regulatory environment and promote transparent legal processes, companies should

■ **Submit public comments and feedback as requested by the relevant PRC agencies** Timely comments from foreign companies will help inform the PRC government about potential issues and reinforce the value of transparent processes.

■ **Provide relevant and timely feedback on transparency issues to US government agencies** Useful feedback may include information on recent transparency roadblocks US investors have encountered in China or positive developments that the PRC government has made in regulatory transparency. On-the-ground reports from US companies may serve as useful talking points for US government negotiators in bilateral meetings, as demonstrated at the most recent S&ED.

Council could improve the current submission process and increase public participation:

■ Ensure 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 government regulators’ consideration.

■ Consider requiring other broadly defined documents—such as catalogues, notices, and opinions, which often affect industry significantly—to be posted for public comment, in addition to the rules, regulations, and measures that currently must be posted for comment periods.

■ Explain in detail, and within the bounds of confidentiality, the economic methodology and rationale

Continued on page 58

Methodology

To track PRC government compliance with its transparency commitments, the US-China Business Council (USCBC) monitored the drafting and issuance of ministry and State Council government regulations and laws from mid-April 2010 through mid-March 2011 and identified whether they had been posted for comment on the State Council Legislative Affairs Office (SCLAO) comment pages or ministry website pages. Documents that had been issued but not posted for comment were

considered documents that did not meet China’s 2008 Strategic Economic Dialogue (SED) commitment to transparency. USCBC also tracked whether documents were posted for the full 30-day comment period.

For the purposes of this analysis, USCBC used two separate filters for “trade and economic-related administrative regulations and departmental rules” used in China’s 2008 SED commitment:

■ A narrow definition that includes only documents explicitly labeled as State Council or departmental administrative regulations, such as “provisions” (*guiding*), “regulations” (*tiaoli*), and “measures” (*banfa*); and

■ A broader category that adds other administrative regulations that appear to function as State Council or departmental administrative regulations, such as “opinions” (*yijian*), “notices” (*tongzhi*), and “guides” (*zhiyin*).

—Francesca Baruffi

Understanding Chinese Consumers

Continued from page 23

do not have a local partner. To meet central-government development targets, local governments may provide incentives to attract more foreign investment to their region.

Local regulators may deduct taxes, coordinate with real estate developers to reduce or eliminate rent, offer discount utility fees, speed up approval processes, or help companies find local suppliers and secure loans. In exchange for these measures, local governments sometimes ask foreign retailers to open more stores or establish regional headquarters in the area. In general, such negotiations may be more difficult in larger cities, where the local government has a greater choice of foreign direct investment options.

■ Localization is key

Facing such a unique group of consumers, foreign companies should focus on localizing operations. Localization does not simply involve opening an office and using Chinese packaging, but it also includes marketing, maintaining patience, and investing in research and

development. Though the PRC government no longer requires foreign retailers to form joint ventures with local companies, many foreign retailers still favor partnering with local companies, which have more regional knowledge.

Demand for quality to skyrocket

Chinese consumers demonstrate different shopping patterns depending on their wealth, age, and location. Though many Chinese consumers demand less expensive products, a small but significant proportion is willing to pay a premium for higher quality. The biggest change in Chinese consumer behavior comes from the young generation's rising wealth and increasingly Westernized lifestyle. As time goes on, the demand for higher-quality products, particularly among younger generations, will accelerate and present huge opportunities for foreign brands. 完

Yujun Qiu (yujun.qiu@planetretail.net) is a retail analyst at Planet Retail. He is based in Qingdao, Shandong.

TRANSPARENCY

Transparency in China: A Work in Progress

Continued from page 55

that underpin central government bodies' administrative reviews and decisionmaking, including antimonopoly merger reviews, countervailing duty and antidumping investigations and case rulings, and decisions made based on "national economic security" considerations.

Looking forward

China's remarkable economic development over the past 30 years has resulted in progress on transparency issues, as China has moved toward a rule of law-based system and has built the political, economic, and social systems necessary to promote and govern investment. Despite this progress, inconsistent regulatory transparency has remained a major issue for investors in China and a top discussion point between the US and PRC governments.

Though statistics regarding public comment periods and the number of drafts open for comment to investors did not substantially improve over the past year, the PRC government has shown greater political will to respond to foreign investors' concerns by building on its commitments to increase regulatory transparency and improve implementation of transparency rules. Progress on this issue is not speedy, but it is being made one step at a time—as evidenced by the outcomes of the most recent S&ED. US companies should use existing channels for regulatory transparency and seek opportunities to advocate for their expansion with the goal of promoting an open, transparent environment for Chinese and foreign businesses. 完

Francesca Baruffi (fbaruffi@uschina.org) is a research associate at the US-China Business Council (USCBC). She is based in Washington, DC.