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# CONSULTATION AS POLICYMAKING INNOVATION: COMPARING GOVERNMENT TRANSPARENCY AND PUBLIC PARTICIPATION IN CHINA AND THE UNITED STATES

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NOVEMBER 2019

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# *Consultations as Policymaking Innovation: Comparing Government Transparency and Public Participation in China and the United States*

## ABSTRACT

This article compares government transparency and public participation in consultation—a prominent instrument of policymaking innovation—across China and the United States. The analysis specifically focuses on consultation at the Chinese Ministry of Commerce (MOC) and United States Environmental Protection Agency (EPA)—leading agencies in the implementation of consultation in policymaking in their respective countries—as a means of evaluating best practices in China relative to a corresponding benchmark in the United States. Through the collection and coding of information regarding hundreds of proposed policies and thousands of comments submitted in response during the 2002-2016 period, the analysis reveals both similarities and differences in transparency and participation at the MOC and EPA. Levels of transparency and participation are generally lower at the MOC than in EPA consultations. Within such constraints, however, there is evidence of standardization in the administration of consultation by the MOC. These findings suggest that differences in the Chinese and American political systems, rather than issues of administrative capacity, are the primary limitations of consultation as a policymaking innovation in contemporary China.

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## ACKNOWLEDGEMENTS

We gratefully acknowledge the research assistance of Julie Balla and financial support of The George Washington University Confucius Institute and Regulatory Studies Center.

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## INTRODUCTION

In 2016, the Ministry of Commerce in China circulated and asked for public feedback on a draft regulation governing the management of automobile sales. That same year, the United States Environmental Protection Agency solicited comments from interested parties on a proposed rule on renewable fuel standards for passenger vehicles.<sup>1</sup> At first glance, the similarity between these policymaking episodes—prior notice of government action and an invitation for public involvement—is striking and perhaps surprising given fundamental differences in the Chinese and American political systems.

These two instances, however, are by no means exceptional in their similarity. Both China and the United States regularly utilize consultation in their policymaking processes (Horsley 2009, Kerwin and Furlong 2019). What are the substantive implications of such procedural similarity for government transparency and public participation? For example, what information and opportunities do government organizations in China and the United States provide to parties interested in proposed policies? What are the characteristics of the feedback submitted in response to draft policies in these respective political systems?

Such questions are particularly salient in the context of consultation in the Chinese policymaking process. Consultation is a prominent instrument of policymaking innovation in contemporary China (Kui 2018). Two decades ago, the National People’s Congress established the broad principle that citizens have the right to participate in policymaking (Horsley 2018). Consistent with this principle, the State Council has adopted the practice of using “the Internet as a standard method of inviting public opinion on draft laws and regulations” (Xinhua 2008a). Dozens of agencies have experimented with consultation, using their websites to circulate proposed policies and solicit feedback from interested parties (Balla 2017).

Given this accumulation of experiences, the evaluation of consultation in Chinese policymaking is a pressing concern for both researchers and practitioners. Public attention has focused on the operation of consultation in instances of particular importance to government and society (Ford 2012). Research has examined the institutionalization of consultation, focusing on changes over time in government transparency and public participation (Balla and Xie 2019). Another salient assessment is the juxtaposition of consultation in China with the experiences of other countries.

This article is a step toward such an assessment, comparing consultation across China and the United States. The analysis specifically focuses on consultation in the Chinese Ministry of Commerce (MOC) and United States Environmental Protection Agency (EPA). The MOC and EPA are commonly regarded as leading agencies in the implementation of consultation practices

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<sup>1</sup> These announcements can be accessed at <http://tfs.mofcom.gov.cn/article/as/201601/20160101227922.shtml> and <https://www.govinfo.gov/content/pkg/FR-2016-05-31/pdf/2016-12369.pdf#page=1>, respectively.

in their respective countries (Balla 2017, Kerwin and Furlong 2019). A comparison of the MOC and EPA is therefore a means of evaluating best practices in government transparency and public participation in China, relative to a corresponding benchmark in the United States.

Although the Chinese and American political systems are divergent in a number of fundamental respects, a comparison of best practices is salient in the specific context of consultation. China's framework for consultation has been adapted in no small part from decades of experiences in the United States (Horsley 2009). The article therefore investigates the implications for government transparency and public participation of the implementation of similar consultation practices in different political systems.

The analysis compares information drawn from consultations conducted by the MOC and EPA during the 2002-2016 period. This information consists of hundreds of draft regulations and thousands of public comments submitted in response to these proposed rules. These documents are utilized to juxtapose levels of, and variation in, government transparency and public participation at the MOC and EPA, thereby enhancing understanding of the promise and limitations of consultation as a policymaking innovation in the Chinese political system.

The analysis reveals both similarities and differences across the MOC and EPA in government transparency and public participation. Levels of transparency and participation are generally lower at the MOC than in EPA consultations. Within such constraints, however, there is evidence of standardization in the administration of consultation by the MOC. MOC consultations, for example, exhibit consistency in the information communicated in draft regulations and opportunities provided for public feedback. Taken together, the findings suggest that differences in the Chinese and American political systems, rather than issues of administrative capacity, are the primary limitations of consultation as a policymaking innovation in contemporary China.

## I. Consultation in Policymaking

The framework for consultation in contemporary Chinese policymaking was established in the 2000 Law on Legislation. This statute states that agencies of the State Council must “gather opinions” when drafting administrative regulations, actions that implement laws enacted by the National People's Congress.<sup>2</sup> One primary means of gathering opinions is the notice and comment process. In this process, agencies announce proposed rules and open comment periods during which interested parties are invited to submit feedback. The notice and comment process has been a hallmark of rulemaking in the United States since the 1946 enactment of the Administrative Procedure Act.<sup>3</sup> Today, in both countries, the notice and comment process predominantly occurs

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<sup>2</sup> The text of the Legislation Law is accessible in both Chinese and English at <https://www.cecc.gov/resources/legal-provisions/legislation-law-chinese-and-english-text>.

<sup>3</sup> The text of the Administrative Procedure Act is accessible at <https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf>

over the Internet, with proposed rules posted to government websites and comments submitted via email and other methods of digital communication.

The Legislation Law is short on details regarding the specifics of consultation. For example, what is the appropriate duration of comment periods? In 2018, the State Council mandated that comment periods, as a general matter, be open for a minimum of 30 days (Horsley 2018). This mandate broadly resembles the call of recent presidential administrations in the United States for comments periods of at least 60 days under most circumstances.<sup>4</sup>

Given such legal and administrative similarities, the article compares the practice of notice and comment rulemaking in China and the United States. In particular, the comparison focuses on two dimensions of consultation. First, to what extent are draft regulations announced by the MOC characterized by transparency, relative to notices of proposed rulemaking issued by the EPA? Second, what is the nature of the participation that occurs during MOC rulemaking, relative to comments submitted in response to EPA proposed rules? In what follows, existing research on consultation is reviewed, with a focus on establishing expectations and metrics for comparing government transparency and public participation across China and the United States.

#### a. Consultation in China

The legal environment within which the notice and comment process operates in China has become increasingly permissive in recent years (Horsley 2018, Kui 2018). Under current State Council procedures, agencies are generally expected to circulate proposed policies and solicit public feedback. There remain, however, significant limitations to this presumption of government transparency and public participation. For example, the notice and comment process can be waived when “the State Council decides not to publish the draft.”<sup>5</sup>

Research has investigated the practice of the notice and comment process in particular policymaking contexts. These cases typically focus on policies attracting substantial attention, such as procedures governing the undisclosed detention of criminal suspects (Ford 2012). Analysis has specifically illuminated a variety of elements of participation in the making of health care reform. Public feedback was extensive, with nearly 30,000 comments submitted in response to the proposed reform (Balla 2012). Participants were for the most part highly knowledgeable about issues in health care and willing to express criticisms of the government’s proposed course of action (Balla and Liao 2013).

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<sup>4</sup> This expectation is articulated in Executive Order 12866, which is accessible at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

<sup>5</sup> This quotation is accessible at [https://law.yale.edu/sites/default/files/documents/pdf/china/2018\\_sc\\_en\\_rev\\_admin\\_regulation\\_procedure.pdf](https://law.yale.edu/sites/default/files/documents/pdf/china/2018_sc_en_rev_admin_regulation_procedure.pdf), which also provides a link to the original Chinese text.

As this discussion suggests, case studies have emphasized the transparency of government policymaking and robust nature of public participation. Do such characterizations, however, hold for consultation in general? According to an audit of the transparency practices of more than one hundred government organizations, substantial differences exist in the information disclosed regarding proposed policies. Some organizations circulate the full texts of draft laws and regulations, while others provide summaries of proposed policies (Balla 2017). Although 30-day comment periods are common, organizations in some instances provide two weeks or less for the submission of feedback on prospective courses of action (Balla and Xie 2019).

Public participation in the notice and comment process varies in a number of respects. Although draft policies occasionally prompt the submission of large volumes of comments, participation is generally rather limited (Balla and Xie 2019). There is also variation in the extent to which feedback incorporates information derived from professional experiences, as well as expresses sentiments critical of government proposals. For example, the following excerpt from a much lengthier comment illustrates the referencing of occupational expertise: “I am a lawyer from the Shanghai Huguang Law Firm. As a lawyer, I have some comments on the ‘national security screening system’ that is mentioned in the draft law” (Balla and Xie 2019, 11). Such comments are greatly outnumbered by feedback that is relatively short in length and does not communicate professional knowledge and information.

Research indicates that government transparency in consultation has increased over the years. Draft laws and regulations have become more detailed as government organizations have accumulated experiences with the notice and comment process (Balla and Xie 2019). Public participation, by contrast, has not exhibited such growth and development. The volume of feedback generated by proposed policies has typically been rather modest, even in organizations that have conducted consultations for a number of years (Balla and Xie 2019).

In sum, research on consultation in China has generated a variety of insights regarding government transparency and public participation over time and across policies. What is absent is a comparison of the notice and comment process in China with experiences in other countries, such as the United States. Such comparison is a logical next step in assessing the performance of consultation as a policymaking innovation in the Chinese political system.

## b. Consultation in the United States

Over the course of three-quarters of a century, expectations and practices regarding government transparency and public participation in rulemaking in the United States have become well established. In addition to the foundational Administrative Procedure Act, the notice and comment process is governed by a wide array of presidential, congressional, and judicial requirements. The White House audits proposed rules for consistency with presidential priorities and a variety of analytical standards (Balla, Deets, and Maltzman 2011). Some of these standards are imposed in congressional statutes, such as the Regulatory Flexibility Act’s mandate that

agencies assess the impact of proposed rules on small businesses and explore less burdensome alternatives (McGarity 1992). The courts have also weighed in on rulemaking, requiring that agencies respond to comments passing a “threshold requirement of materiality” (i.e., relevant, significant feedback).<sup>6</sup> Through such instruments, institutions in the United States separation of powers system have imposed strict requirements of transparency and participation on the notice and comment process.

### c. Expectations for Comparisons

The overarching orientation for the comparison of consultation in China and the United States is derived from a pair of political and administrative conditions. First, the notice and comment process in China occurs within the context of a one-party state dominated by the Chinese Communist Party, as opposed to being governed by independent institutions in the United States separation of powers system. Second, the notice and comment process in China has been in use for a relatively short amount of time and is not as procedurally well established as rulemaking in the United States.

The first condition provides the impetus for a political hypothesis concerning differences in levels of government transparency and public participation in consultation across China and the United States.

#### i. Politics Hypothesis: Levels of government transparency and public participation in consultation are generally lower in China than the United States.

The justification for this hypothesis is that the notice and comment process in China is ultimately oriented toward serving the objectives of the party-state. It is well established that policymaking innovation—of which consultation is a prominent manifestation—is primarily an instrument for enhancing the legitimacy of the Chinese Communist Party (Kornreich, Vertinsky, and Potter 2012; Manion 2014; Meng, Pan, and Yang 2014). Research demonstrates that, given this rationale, innovations typically experience substantive limitations in implementation. For example, political interference in candidate nominations has been commonplace in village elections (Lu 2012). It is expected that, in the context of consultation, such motivations manifest through limitations in government transparency and public participation, relative to rulemaking in the United States, which is governed by separate institutions sharing political power.

A variety of metrics are utilized to assess this hypothesis through a comparison of consultation at the MOC and EPA. Government transparency is operationalized as (1) the length of draft regulations and (2) the duration of comment periods. It is presumed that transparency generally increases with the length of proposed rules and duration of comment periods. Public

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<sup>6</sup> Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553 (1978).

participation is measured in four ways: (1) the volume of comments, (2) the length of comments, (3) the professional expertise of comments, and (4) the sentiment of comments (i.e., positive and negative judgments of proposed rules).<sup>7</sup> It is expected that the notice and comment process in China, in comparison to rulemaking in the United States, is on average characterized by shorter draft regulations and comment periods of shorter duration, as well as the submission of fewer comments, comments of shorter length, comments incorporating less professional expertise, and comments expressing lower levels of criticism of proposed rules.

The second condition—that consultation is a relatively recent and not well-established innovation in the Chinese policymaking process—motivates an administrative hypothesis concerning variation in government transparency and public participation in China, relative to the United States.

**ii. Administration Hypothesis: Variation in government transparency and public participation across consultations is generally higher in China than the United States.**

Although experiences have accumulated in recent years, Chinese agencies have conducted a small number of consultations in comparison to the United States, where thousands of rules are developed through the notice and comment process on an annual basis (Dudley and Brito 2012). It is presumed that such limited experience is associated with variation in government transparency and public participation across instances of consultation. Variation is also fostered by the fact that the structural and procedural standards within which consultation in China occurs are not as well specified as in the United States, where presidential, congressional, and judicial requirements have for decades strictly governed transparency and participation in the notice and comment process.

The two indicators of government transparency and four measures of public participation described above are utilized as metrics for assessing this hypothesis. Rather than focus on average levels, however, the comparison concerns variation in transparency and participation across consultations. It is expected that there is greater variation in China, in comparison to rulemaking in the United States, in the length of draft regulations, duration of comment periods, volume of comments, length of comments, professional expertise of comments, and sentiment of comments.

As the discussion indicates, the analysis does not explore agency responsiveness to comments submitted in response to draft regulations. Case studies have documented—through detailed process tracing—examples of consultations in China in which feedback is associated with changes in the content of policies (Ford 2012, Kornreich 2019). Due to the general opaqueness of the Chinese policymaking process, however, it is not feasible to examine the influence of public participation on government policymaking in the context of large numbers of proposals and comments (Kui 2018).

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<sup>7</sup> The manner in which professional expertise and sentiment are operationalized is discussed below.



## II. Data Collection and Coding

The analysis requires comparable information regarding MOC and EPA draft regulations, as well as comments submitted in response to proposed rules. As detailed below, the source of this information is government websites. The assembled information is organized and coded to facilitate the operationalization of government transparency and public participation.

### a. Collecting MOC Information

The MOC has a consultation and feedback section on its website.<sup>8</sup> From this website, draft regulations and public comments were collected, from the time the MOC began reporting the use of the notice and comment process in 2002 through 2016. Collectively, these documents constitute a record of proposals and feedback posted to the Internet by the MOC. Given the dictates of Chinese government censorship (MacKinnon 2012), it is not necessarily the case that the MOC posts all documents associated with the rulemaking process. Draft regulations and comments not made publicly available fall outside the scope of the analysis.

During the period under study, the MOC invited feedback on 564 documents. Not all of these documents, however, are relevant in the context of the notice and comment process. For example, a number of documents do not consist of draft regulations, but rather announcements of intergovernmental meetings. Such documents were eliminated from the data collection process, leaving 189 proposed rules for analysis. Information was also extracted for comments submitted in response to these policy proposals. This process resulted in the collection of 2,657 comments.

### b. Collecting EPA Information

In the United States, proposed rules and public comments are generally accessible via [regulations.gov](http://www.regulations.gov), a repository of documents pertaining to the activities of agencies from across government. From [regulations.gov](http://www.regulations.gov), information was assembled regarding the operation of the notice and comment process at the EPA. For time comparability with the MOC, this information is drawn from the 2002-2016 period.

During this period, the EPA solicited comments on 2,220 documents. A number of these documents consist of the approval of state plans for controlling and cleaning up air pollution. Under the Clean Air Act, such plans must be ratified by the EPA after a period of public feedback. As a means of excluding such routine activities, the analysis is limited to EPA proposed rules subject to White House regulatory review. For decades, the Office of Information and Regulatory Affairs, located within the Executive Office of the President, has been charged with auditing draft regulations deemed to be significant either because of anticipated economic effects or political

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<sup>8</sup> This section is accessible at <http://www.mofcom.gov.cn/article/au/>.

ramifications.<sup>9</sup> In the period under study, 390 EPA proposed rules were subject to White House regulatory review and published in the Federal Register.<sup>10</sup>

These proposed rules collectively generated millions of public comments. The distribution of the number of comments is asymmetric, with the majority of proposed rules receiving a modest amount of feedback and a small number of draft regulations resulting in the submission of hundreds of thousands or millions of comments. Such outlying instances are mainly driven by the occurrence of mass comment campaigns. Mass comment campaigns consist of collections of identical and near-duplicate comments developed by organizations—such as firms, trade associations, and advocacy groups—and submitted by group members and supporters (Balla, Beck, Cubbison, and Prasad 2019).

Given the level of feedback generated by EPA proposed rules, it is necessary to sample public comments. For scope comparability with the MOC, a stratified sample of 2,000 comments was constructed. A purely random procedure was eschewed, as such a process would result in a sample primarily composed of feedback submitted in response to a small set of draft regulations that attracted extraordinarily large numbers of comments. The proposed rules were divided into five groups, based on the number of comments submitted.<sup>11</sup> Within each group, 400 comments posted to regulations.gov were randomly selected for inclusion in the analysis. Although there is no expectation of EPA censorship based on political sensitivities, agencies in the United States reserve the right to redact comments containing objectionable material (e.g., pornography) and—at the request of participants—confidential business information (Balla 2011).

### c. Coding

The indicators of government transparency and public participation are for the most part calculated directly from information available on government websites. The length of draft regulations is measured as the number of characters and number of words contained in MOC and EPA proposed rules, respectively. The duration of comment periods is operationalized as the number of days policy proposals are open for feedback. The volume of feedback consists of the number of comments submitted in response to draft regulations. The length of comments is measured as the number of characters (for MOC feedback) and number of words (for EPA submissions).

The professional experience of public comments is coded as a dichotomous indicator—either the feedback manifests professional experience or it does not. It is not uncommon for

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<sup>9</sup> This charge was articulated in 1993 in Executive Order 12866.

<sup>10</sup> Information about White House regulatory review is available at <https://www.reginfo.gov/public/>. The Federal Register (<https://www.federalregister.gov/>) is the daily journal of the United States federal government.

<sup>11</sup> These groups are proposed rules receiving (1) between 0 and 30 comments, (2) between 31 and 100 comments, (3) between 101 and 10,000 comments, (4) between 10,001 and 100,000 comments, and (5) more than 100,000 comments.

organizations to reference expertise pertaining to particular industries and policy areas. For example, the American Association of State Highway and Transportation Officials submitted a comment on a proposed EPA air quality regulation that highlighted the group's expertise in "planning, programming and coordination of federal highway and transit investments."<sup>12</sup> Individuals at times ground comments in expertise derived from occupational experiences. The "as a lawyer" comment excerpted earlier provides an illustration of such feedback. By contrast, submissions in which individuals cite relevant information in a capacity as informed citizens are not considered indications of professional experience.

As a means of assessing the sentiment of public comments, submissions were coded according to a three-point scale. The categories of this scale are positive, neither positive nor negative (neutral), and negative. The scale summarizes the overall sentiment of the comment toward the draft regulation in response to which it was submitted. If feedback does not render either a positive or negative judgment, then the submission is coded as neutral. A comment is also deemed neutral if the feedback contains approximately equivalent expressions of both positive and negative sentiment. If the positive tone in the comment outweighs the negative sentiment, then the submission is coded as positive, and vice versa if negative tone is more pronounced than positive sentiment.

The professional experience and sentiment of public comments submitted to the MOC were evaluated according to a process of consensus coding. Two coders examined comments independently, coming up with preliminary assessments. The coders then compared these judgments and came to agreement on final determinations. Any remaining uncertainties or discrepancies were resolved by a coding supervisor. The professional experience and sentiment of EPA comments were evaluated by individual coders. A subset of comments, however, was examined by pairs of coders, as a means of assessing intercoder reliability. The level of agreement across coders is substantial for professional experience and moderate (nearly substantial) for sentiment.<sup>13</sup>

### III. Analysis

The analysis entails two sets of comparisons across the MOC and EPA regarding government transparency and public participation in the notice and comment process. The first comparison—grounded in political considerations—focuses on the extent to which, as hypothesized, levels of transparency and participation are lower in China than the United States. The second comparison—derived from administrative experiences—examines variation in

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<sup>12</sup> This comment is accessible at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0068>.

<sup>13</sup> For professional experience, Cohen's kappa is .76, well within the .61-.80 range of substantial agreement. This statistic is .58 for sentiment, on the high end of the .41-.60 category of moderate agreement (Cohen 1960, Landis and Koch 1977).

transparency and participation across consultations within both countries, with the expectation of greater variation in China than the United States.

### a. Politics of Transparency and Participation

The politics hypothesis reflects overarching differences across China and the United States in the political context within which the notice and comment process occurs. It is expected that the one-party state in China operates as a limiting factor on government transparency and public participation, relative to the United States separation of powers system. As Table 1 indicates, the analysis offers wide-ranging evidence in support of the politics hypothesis.

Levels of transparency are generally lower at the MOC than the EPA. Draft regulations circulated by the MOC are typically shorter in length than EPA proposed rules. The average MOC draft regulation consists of 7,581 characters. By contrast, the mean EPA proposed rule is composed of 49,294 words.<sup>14</sup> Similarly, MOC comment periods are as a general matter shorter in duration than comment periods associated with EPA proposed rules. The mean duration is 22 days for the MOC, while the EPA offers interested parties 66 days on average to submit feedback. This difference suggests the importance of political influences in the operation of the notice and comment process, as durations in both countries are broadly consistent with the respective recommendations—referenced earlier—of the State Council (30-day comment periods) and the White House (60-day comment periods).

These comparisons were also conducted for two subsets of MOC consultations: (1) draft regulations circulated in 2012 or later, and (2) rules proposed by the Department of Treaty and Law. For both subsets, the notion is to limit the analysis to contexts in which the MOC notice and comment process is likely to be particularly transparent. By 2012, the MOC had accumulated a decade of experience with the notice and comment process. The Department of Treaty and Law has utilized the notice and comment process with greater regularity than any other organization within the MOC.<sup>15</sup> Research has demonstrated that such experiences are associated with increases in government transparency (Balla and Xie 2019). Despite such growth and development, the length of draft regulations and duration of comment periods are shorter for these subsets of MOC consultations, relative to rulemaking at the EPA.<sup>16</sup>

Public participation also generally occurs at a lower level in the MOC than the EPA. Of the 189 MOC consultations under analysis, comments are available for 135 proposed rules. For

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<sup>14</sup> Assuming a ratio of 1,000 English words to 1,600 Chinese characters ([http://www.tianhengtranslations.com/word\\_count.htm](http://www.tianhengtranslations.com/word_count.htm)), the average EPA proposed rule contains 78,871 characters. Analysis of the length of draft regulations and length of comments is conducted with EPA proposed rules and comments measured both in words and characters. The results are robust across operationalizations.

<sup>15</sup> The Department of Treaty and Law is responsible for 110 of the 189 MOC draft regulations in the analysis.

<sup>16</sup> These subsets were examined for all analyses. Unless otherwise noted, the results are robust across time and departmental contexts.

the remaining consultations, there are two explanations—among which definitive adjudication is not readily apparent—for the absence of comments. Either the MOC did not post feedback to its website or no comments were submitted in response to these 54 draft regulations.

Given this uncertainty, the analysis of the volume of comments submitted in response to MOC draft regulations was conducted both including and excluding proposed rules for which feedback was not visible on the Internet. For comparability, both approaches were also utilized in the context of EPA proposed rules, even though there is no expectation of agency censorship of public comments.<sup>17</sup> Regardless of approach, the average number of comments received by the MOC is smaller than the mean number of comments submitted in response to EPA draft regulations.<sup>18</sup>

Similar results hold for the length of public comments. The average MOC comment consists of 203 characters. By contrast, the mean number of words is 5,151 for feedback submitted in response to EPA proposed rules.<sup>19</sup> Given this difference, it is not surprising that professional experience is less commonly articulated in MOC comments than EPA feedback. Seven percent of MOC comments communicate information derived from occupational expertise. Such expertise is six times as prevalent—42 percent—in feedback received by the EPA.

Contrary to expectation, MOC public comments were no less likely than EPA feedback to express sentiments critical of draft regulations. The prevalence of negative comments was 30 percent and 31 percent for the MOC and EPA, respectively. The level of negativity in MOC feedback is perhaps surprising, given that—in the context of the one-party state—criticism of proposed government policies in effect expresses opposition to courses of action favored by the Chinese Communist Party. Previous research, however, suggests that negative feedback is a widespread phenomenon in the Chinese notice and comment process, as case studies conducted in a variety of policy areas have uncovered relatively high levels of criticism (Balla and Liao 2013, Ford 2012).

As illustrated in Figure 1, the distinction in sentiment across MOC and EPA public comments concerns expressions of positive feedback. More than half of EPA comments are supportive of the proposed rules in response to which they were submitted. By contrast, fewer than one-fifth of MOC comments manifest such positive sentiments. One explanation for this difference is the occurrence in EPA rulemaking of mass comment campaigns mobilized by organizations seeking to influence public and congressional opinion in favor of draft regulations.<sup>20</sup> In 2015, for example, EPA administrator Gina McCarthy testified before the United States Senate

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<sup>17</sup> An absence of comments was reported for 14 EPA proposed rules.

<sup>18</sup> The averages compared in Table 1 exclude draft regulations with no available feedback.

<sup>19</sup> This average is equivalent to 8,242 Chinese characters.

<sup>20</sup> The EPA does not list each and every submission in mass comment campaigns on regulations.gov, but rather posts a single illustrative submission. As a result, mass comment campaigns are underrepresented in the analysis, relative to the prevalence of campaigns in EPA rulemaking.

on behalf of a proposed water regulation. In her testimony, McCarthy highlighted the positive sentiment expressed in the vast majority of feedback: “We have received over one million comments, and 87.1 percent of those comments...are supportive of this rule” (Lipton and Davenport 2015). Such mass expressions of support did not occur during the comment periods of the MOC draft regulations under analysis. As this example—and the analysis of the politics hypothesis in general—suggests, differences across the MOC and EPA in levels of government transparency and public participation are to some degree a reflection of the respective political systems within which the notice and comment process occurs.

## b. Administration of Transparency and Participation

The administration hypothesis is a reflection of differential experiences across China and the United States regarding the operation of the notice and comment process. It is expected that limited experiences, in combination with not well-established structural and procedural standards, are associated with greater variation in government transparency and public participation across instances of consultation in China, relative to the United States. As Table 2 indicates, the analysis does not offer support for the administration hypothesis with respect to transparency. The evidence for greater variation in participation at the MOC is mixed across indicators.

Given that the means and ranges of the length of draft regulations, duration of comment periods, volume of comments, and length of comments differ substantially across the MOC and EPA, these indicators are normalized to a 0 to 1 scale in the analysis of the administration hypothesis. Such normalization facilitates direct comparison of variation by transforming MOC and EPA indicators onto common scales. Levene’s test is utilized to determine if the variances of the normalized indicators are different for MOC rulemaking than for consultations conducted by the EPA (Derrick, Ruck, Toher, and White 2018).

Contrary to the administration hypothesis, there is no evidence for greater variation in government transparency across MOC consultations, relative to EPA rulemaking. The length of MOC draft regulations does not exhibit larger variance than the number of words contained in EPA proposed rules.<sup>21</sup> In addition, the difference across the MOC and EPA in the variance of the duration of comment periods is not statistically significant.

This null finding suggests standardization in the administration of transparency by the MOC in the notice and comment process. Contrary to expectation, transparency at the MOC is no more variable across proposed rules than at the EPA, a leading rulemaking agency in the United States, the country from which China has largely adapted its framework for consultation. Such standardization has occurred even though the MOC has limited experience (relative to the EPA) with consultation in the policymaking process and the structural and procedural environment

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<sup>21</sup> When the analysis is restricted to consultations occurring in 2012 or later, variance in the length of MOC draft regulations is statistically larger than EPA variance.

within which rulemaking in China occurs is not well established (in comparison to the United States). Standardization in administration, however, has manifested at relatively low levels of transparency, given that (as discussed earlier) the length of draft regulations and duration of comment periods are both shorter on average for the MOC than in the context of EPA consultations.

The analysis also suggests that standardization has occurred in public participation in MOC rulemaking, as measured by the professional experience and sentiment of feedback submitted in response to draft regulations. Given that these variables consist of a dichotomous indicator and three-point scale, respectively, the proportion of comments falling into each category was calculated for all consultations. For example, a proposed MOC rule on management methods in the warehouse industry generated 17 comments. A single comment (a proportion of .06) incorporated information derived from professional experiences, while six comments (a proportion of .35) expressed negative sentiments toward the draft regulation. Levene's test is used to determine if the variances of such calculated proportions are different for the MOC than consultations conducted by the EPA. Neither the proportion of comments grounded in professional experiences nor the proportion of feedback articulating negative sentiments exhibit larger variance for MOC draft regulations, relative to EPA proposed rules.<sup>22</sup>

By contrast, the analyses of variation in the volume and length of public comments are consistent with the administration hypothesis. The variance of the volume of comments submitted in response to MOC draft regulations is larger than the variance for EPA proposed rules. Similarly, the variance of the length of comments is greater across instances of MOC feedback, in comparison to comments generated by EPA draft regulations.

These differences indicate that public participation in the notice and comment process at the MOC has standardized neither in terms of quantity (the volume of comments) nor content (the length of comments). Although (as highlighted earlier) both elements of participation generally occur at low levels in comparison to EPA rulemaking, variation across proposals and comments is a characteristic of consultation at the MOC. One explanation for such variation is the design, limitation, and oversight by the Chinese Communist Party of the development of domestic civil society (Teets 2014). In the relative absence of independent trade associations and advocacy groups, organizations are not well-positioned to operate as standardizing agents of participation and, therefore, comments are generally submitted by individuals unaffiliated with broader social movements (Balla and Liao 2013).

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<sup>22</sup> Given that EPA feedback consists of a sample of comments, the robustness of the professional experience and sentiment results were examined with alternative analysis. EPA consultations with fewer than five sampled comments were excluded, on the argument that such small samples might not be representative of the feedback received on these proposed rules. The results are unaffected by this restriction.

If this account has merit, then it remains uncertain why standardization of public participation has occurred in the professional experience and sentiment of MOC comments. Such uncertainty in particular holds for the expression of negative sentiments in response to MOC draft regulations. Sentiment at the MOC has standardized at a level of negativity that is no different from the EPA, which operates in a political system with fundamentally different norms and practices regarding criticism of government actions. Furthermore, such negativity occurs in the context of MOC feedback unaccompanied (relative to EPA comments) by information derived from professional experiences. One explanation is that negative feedback, even criticism not substantiated by expertise, is tolerated because economic issues addressed by the MOC do not threaten—in contrast to territorial and politically sensitive areas of policy—the existential legitimacy of the Chinese Communist Party (Balla 2012).

## CONCLUSIONS & IMPLICATIONS

This article has evaluated the operation of the notice and comment process, a prominent instrument of policymaking innovation in contemporary China. The analysis specifically compares government transparency and public participation at the Chinese Ministry of Commerce with consultation in policymaking at the United States Environmental Protection Agency. The goal has been to juxtapose the notice and comment process across a pair of leading agencies in the implementation of consultation (Balla 2017, Kerwin and Furlong 2019), so as to assess best practices in China in the context of corresponding benchmarks in the United States.

The analysis of hundreds of draft regulations and thousands of public comments highlights both political differences and administrative similarities in government transparency and public participation in MOC and EPA consultations. As expected, levels of transparency and participation are generally lower at the MOC—an organization operating within the context a one-party state dominated by the Chinese Communist Party—than at the EPA, which is governed by presidential, congressional, and judicial institutions sharing political power. By contrast, variation in transparency and participation is for the most part not greater at the MOC (relative to the EPA), an indication of standardization in the administration of the notice and comment process. MOC consultations, for example, exhibit consistency in the length of draft regulations and duration of comments periods. Such practices, however, have standardized at levels that are low in transparency and participation, in comparison to rulemaking at the EPA. Taken together, these findings suggest that differences in the Chinese and American political systems, rather than limitations in administrative capacity, are the primary factors separating consultation at the MOC from the EPA notice and comment process.

A comparison of government transparency and public participation across China and the United States is salient, given that China’s framework for consultation has been adapted in no small part from decades of experiences in the United States (Horsley 2009). Nevertheless, the notice and comment process in the United States—well established structurally and procedurally—



is a challenging standard against which to evaluate consultation as a policymaking innovation in China. Furthermore, rulemaking in the United States is characterized by a variety of well-documented difficulties, thereby limiting the utility of the EPA as a measure of best practices. For example, mass comment campaigns increase levels of participation in the United States, but such increases are not necessarily beneficial for either rulemaking processes or outcomes (Balla, Beck, Cubbison, and Prasad 2019). Evidence demonstrates little consistency between mass comment campaigns and the content of EPA regulations, thereby suggesting that campaigns have not enhanced participatory democracy (Balla, Beck, Meehan, and Prasad 2019).

Such considerations highlight the importance of comparing government transparency and public participation in China with rulemaking processes in countries other than the United States. The notice and comment process has to some extent globalized in recent decades. In the European Union, interested parties are given the opportunity to comment on regulatory options and prospective impacts (Dudley and Wegrich 2015). Although the Brazilian Administrative Procedure Act, enacted in 1999, does not mandate the solicitation of feedback, agencies have the discretion to open comment periods on draft regulations. Evidence indicates that participation in Brazil is dominated by firms and industries, with other types of stakeholders noticeably absent from the notice and comment process (Palma 2013).

Within China, analysis is needed regarding the operation of consultation in policymaking across a variety of dimensions. It is uncertain the degree to which the notice and comment process at the MOC is representative of other policy areas, in particular issues characterized by political sensitivities and concerns regarding the fundamental legitimacy of the Chinese Communist Party. Apart from a small number of case studies (Ford 2012, Kornreich 2019), it is not yet established whether comments submitted in response to proposals affect the content of policies issued by Chinese government organizations. Finally, the attitudes of Chinese officials and citizens toward government transparency and public participation in the notice and comment process have largely gone unexamined (Balla and Liao 2013).

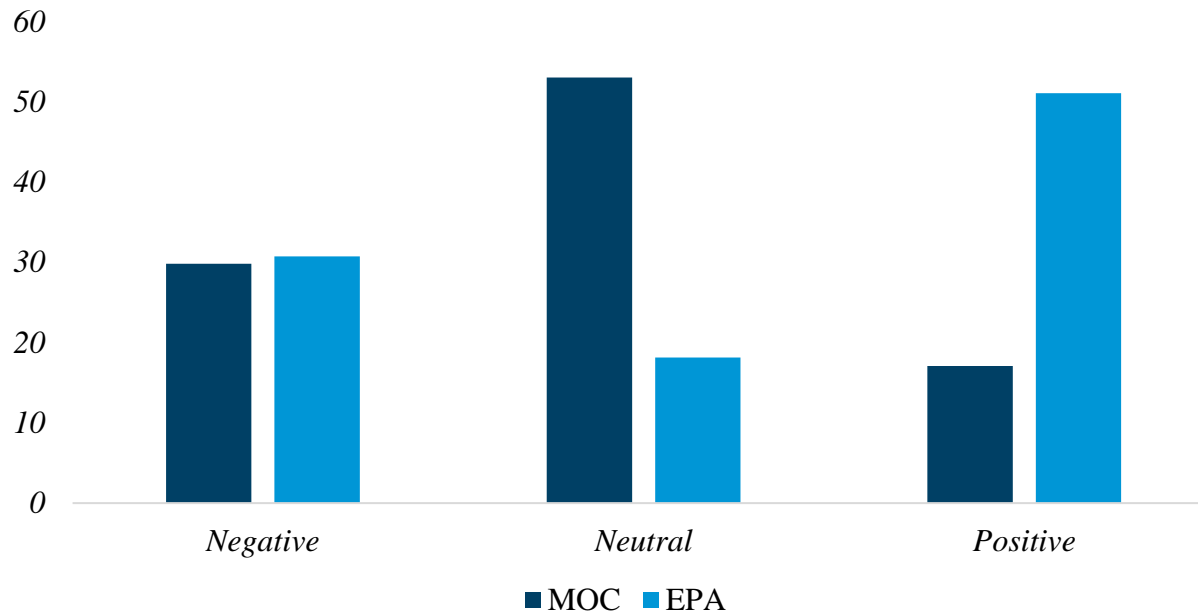
Within such constraints, the article has advanced understanding of both the promise and limitations of consultation as a policymaking innovation in contemporary China. Standardization in the administration of consultation at the MOC is an unexpected development, given the agency's (and country's) relatively modest experience with the notice and comment process. Although such standardization is in some respects a positive development, government transparency and public participation is circumscribed by the fact that consultation—as is typical of policymaking innovations—is ultimately oriented toward enhancing the legitimacy of the Chinese Communist Party. Such political imperatives are likely to restrict the growth and development of consultation in the policymaking process for the foreseeable future.

**Table 1: Comparing Levels of Transparency and Participation**

	<i>MOC</i>	<i>EPA</i>	<i>Statistical Significance</i>	<i>Support for Politics Hypothesis</i>
<i>Transparency</i>				
Length of draft regulations	7,581.18	49,294.15	***	Yes
Duration of comment periods	22.18	66.15	***	Yes
<i>Participation</i>				
Volume of comments	19.68	46,682.59	*	Yes
Length of comments	203.17	5,151.27	***	Yes
Professional experience of comments	6.89	41.69	***	Yes
Sentiment of comments (negative)	29.84	30.75	n.s.	No

Notes: The numbers are MOC and EPA means for the first four continuous indicators (length of draft regulations, duration of comment periods, volume comments, and length of comments). The directional differences for these variables hold when the median is used as a measure of central tendency. The bottom two rows consist of the percentage of comments that exhibit professional experience and negative sentiment toward proposed rules, respectively. \*\*\* = difference is statistically significant at  $p < .01$ . \* = difference is statistically significant at  $p < .10$ . n.s. = difference is not statistically significant.

**Figure 1: Sentiment of Participation**



*Note:* The y-axis represents the percentage of comments expressing a particular sentiment toward the draft regulations in response to which they were submitted.

**Table 2: Comparing Variation in Transparency and Participation**

	<i>MOC</i>	<i>EPA</i>	<i>Statistical Significance</i>	<i>Support for Administration Hypothesis</i>
<i>Transparency</i>				
Length of draft regulations	.0054	.011	***	No
Duration of comment periods	.017	.022	n.s.	No
<i>Participation</i>				
Volume of comments	.025	.0043	***	Yes
Length of comments	.014	.0012	***	Yes
Professional experience of comments	.027	.15	***	No
Sentiment of comments (negative)	.066	.11	***	No

*Notes:* The numbers are MOC and EPA variances for the normalized versions of the first four indicators (length of draft regulations, duration of comment periods, volume comments, and length of comments). The bottom two rows consist of variances across consultations in the proportion of comments grounded in professional experiences and articulating negative sentiments, respectively. \*\*\* = difference is statistically significant at  $p < .01$ . n.s. = difference is not statistically significant.

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