Unless otherwise indicated, all charts are from the 2016 AmCham China Business Climate Survey.

若无特别说明，文中所有图表皆来自于中国美国商会2016年度商务环境调查。

All monetary conversions are based on the average 2015 exchange rate of US $1.00=RMB 6.28.
所有的人民币换算为美元都是依据2015年6.28:1的平均汇率计算的。
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Chairman’s Message

This 18th edition of the American Business in China White Paper reflects AmCham China member companies’ general commitment to the China market but also illustrates how they are continuing to weather and adapt to a challenging and constantly evolving business environment as China continues on a path of economic reform and sustainable development. These chapters reflect the experiences of our over 1,000 member companies, spanning 20 industries and 20 cross-sector industrial and regional policy areas, in addition to contributions from our regional chapters in Northeast China, Tianjin, and Central China and from the American Chamber of Commerce in Shanghai and the American Chamber of Commerce in Southwest China.

As reflected in the 2016 White Paper, serious and systemic challenges remain, particularly around the key issues of market access and barriers to investment, opaque rules and regulatory practices, and the overall development of and respect for the rule of law. Indeed, unclear laws and inconsistent regulatory interpretation tops the challenges our members are facing daily.

Rulemaking that is opaque, unclear, or inconsistent is a key concern for many of our member companies and impacts their ability and willingness to invest in China. We believe that China’s legal and regulatory framework can be improved through greater commitment to rule of law and when laws are applied with fairness and transparency.

AmCham China supports the streamlining of laws and regulations that impact foreign-invested enterprises (FIEs) and the way they operate in China. We also support regulatory revisions that will ease the approval procedures for the establishment and operation of FIEs in China, as well as to provide for greater market access and the reduction of trade barriers that impact American companies.

AmCham China further encourages the Chinese government to continue to build a foundation that supports an open and dynamic investment environment, which benefits both foreign and Chinese companies, and helps the government meet its long-term economic objectives. Economies benefit from the provision of a level playing field in an environment based on open competition for all companies through the transparent enforcement of regulations in accordance with the rule of law. Indeed, sound investment generates economic activity regardless of the country of origin, and creates jobs, raises skills, expands consumer choice, and grows the economy.

Our members implore the government to move forward in developing an environment that encourages fair and market-based innovation. Innovation flourish only in an environment where intellectual property is protected from infringement and excessive government regulation, and standards are set with broad participation. Policies encouraging innovation should be implemented in a fair and nondiscriminatory manner for both foreign and domestic companies. We thus encourage the Chinese government to ensure that FIEs are allowed to participate in all phases of standards development activities, as such activities have increasingly been used to discriminate against and limit market access for FIEs.
主席致辞

今年已是中国美国商会推出年度《美国企业在中国白皮书》（简称《白皮书》）的第十八年。今年的《白皮书》不仅反映了商会会员企业普遍致力于发展中国市场，还展现了他们如何在中国继续推行经济改革和努力实现可持续发展过程中，持续应对和适应充满挑战且日新月异的商业环境。今年的《白皮书》凝聚了商会1000多家会员企业的商业经验和观察，探讨了20个具体行业、20个跨部门产业政策及区域政策问题。此外，我们还撰写了中国东北、天津和武汉章节，上海美国商会和中国西南美国商会也贡献了相关地方章节。

正如2016年《白皮书》所反映的，重大、系统性的挑战依然存在，特别体现在市场准入、投资壁垒、法律法规和监管实践缺乏透明度，法治的总体发展以及对法治的尊重等关键问题方面。事实上，法律规定不明确、监管部门对法律的解释缺乏一致性等问题，是我们会员企业在日常运营中经常碰到且最为突出的问题。

立法程序缺乏透明度、清晰度或一致性是许多会员企业关注的主要问题，因为这直接影响到他们在华投资的能力和意愿。我们相信，中国能够通过法治建设改进立法程序和监管框架，从而提升法律适用的公平性和透明度。

中国美国商会支持中国政府简化影响外商投资企业及其在华运营的法律和法规。我们也支持中国政府修改相关法律，以扩大市场准入，简化外资企业在华设立和运营的审批程序，并减少影响美国企业的贸易壁垒。

中国美国商会还鼓励中国政府继续推进有助于营造开放且充满活力的投资环境的基础性工作。如此不仅惠及外资和内资企业，还能协助政府实现长期经济目标。依法公开透明执法、营造保障所有企业公平竞争的市场环境有利于经济发展。事实上，不管来自哪个国家和地区的投资，只要稳妥可靠，都有助于激发经济活力、增加就业、提升技能、扩大消费者选择范围并最终促进经济增长。

我们的会员企业敬请中国政府继续推进营造鼓励公平及市场导向型创新。创新只有在一个保护知识产权、打击知识产权违法行为、避免政府过度管制、各方主体广泛参与制订标准的环境下才能繁荣兴盛。实施鼓励创新政策时应当遵循公平和非歧视原则，对内外资企业一视同仁。因此，鉴于标准制订活动日渐成为歧视外资和限制外资市场准入的手段，我们鼓励中国政府允许外资企业参与各个阶段的标准制订工作。
We remain optimistic that the authorities recognize the problems and anticipate continued progress on the reforms in 2016. And, as long as China continues to recognize the benefits of global engagement and continues down the path of economic reform and establishment of consistent rule of law, opportunities will remain and American business will survive and grow.

There is hope that the two largest economies in the world can work together to their mutual benefit. If the US and China can quickly complete a high-standard bilateral investment treaty (BIT) – which has been under negotiation since 2008 – this would reduce trade barriers and open markets further for American goods and services. Indeed, the US-China BIT would likely be the largest market liberalization exercise since China’s accession to the World Trade Organization in 2001. The US-China Bilateral Investment Treaty continues to be a critical component for future growth opportunities going forward.

Our companies understand and appreciate the complexities and difficulties that the Chinese leadership is confronted with as it balances its economy and drives reform. But much work lies ahead for all of us in 2016 and beyond as the Chinese economy continues to mature and the government implements and enforces a host of new laws that have been in the pipeline for years.

The 2016 White Paper further reflects that our member companies desire to play a positive and constructive role in the development of the country in a manner that is mutually beneficial to our companies and the communities in which they operate. We look forward to an open and candid dialogue with the Chinese leadership with respect to the issues raised in this White Paper.

James Zimmerman
Chairman
The American Chamber of Commerce in the People’s Republic of China
April 2016
中国美国商会相信，中国政府将会积极关注存在的问题，并在 2016 年继续推进相关改革，我们对此持乐观态度。只要中国继续认可国际参与的益处、继续推行经济改革并建立协调一致的法治体系，机会就会继续存在，美国企业就会继续在中国生存和壮大。

我们希望世界上两个最大的经济体能够通过相互合作，实现互利共赢。如果中美两国能够结束自 2008 年以来一直进行的谈判，迅速签订一份高质量的双边投资协定，将有助于减少贸易壁垒，进一步向美国的商品和服务开放市场。事实上，美中双边投资协定有可能是自 2001 年加入世界贸易组织以来最大的市场开放举措。美中双边贸易协定依然是刺激未来经济增长的一个重要机遇。

我们的会员企业清楚并理解中国领导层在平衡经济和推动改革的过程中面临的复杂情况和各种困难。随着中国经济继续走向成熟，一系列酝酿多年的新法规即将生效实施，在 2016 年及将来，中国政府领导层依然任重而道远。

2016 年《白皮书》进一步反映了我们的会员企业希望能对中国的发展起到积极和建设性的作用，实现企业和他们运营地所在社区的互利共赢。我们期待与中国领导层就《白皮书》中提出的问题进行坦诚开放的对话。

吉莫曼
中国美国商会主席
2016 年 4 月
Part One: Business Climate Overview
Domestic Reform Pressures Rise as China’s Global Influence Expands

In 2015, American businesses in China continued to face challenges arising from slowing economic growth, the refocusing of the Chinese economy from manufacturing to service industries, an unclear timeline for the implementation of announced reforms, and the introduction of a host of legislation that set an uncertain tone regarding the stability and openness of the investment environment. That said, our members also note progress in many areas, including the increased streamlining of administration and regulations, and in general remain committed to the Chinese market. This 18th edition of the American Business in China White Paper explores the major themes, challenges, and developments that shaped the business environment in 2015 and includes practical recommendations for addressing these challenges that will benefit our members, domestic companies, and the Chinese economy as a whole.

China in the Region and at Home: Highlights from 2015

China as a Global Leader

As the global economy continues to experience ups and downs and China increasingly asserts itself as a global leader, the opportunities for the US and China to cooperate or encounter friction on the international stage increase. The US and 11 partner countries around the Pacific Rim concluded negotiations on the Trans-Pacific Partnership (TPP) in 2015, an agreement that, if ratified, will have a major impact on trade and investment flows in the Asia Pacific and globally. AmCham China welcomes and encourages China’s accession to the TPP as soon as China is prepared to meet the standards of the agreement. Discussion on China’s potential accession to the TPP and the US’s potential accession to the Regional Comprehensive Economic Partnership are important to avoid the emergence of competing regional trade blocs.

China is also charting a new course in global development efforts through initiatives such as the “One Belt, One Road” regional integration plan and the Asian Infrastructure Investment Bank (AIIB).

The “One Belt, One Road” initiative is touted as a means of integrating China more deeply, both politically and economically, with its neighbors to the south and west and to increase regional trade flows. Our members see potential opportunities to participate in and benefit from this initiative (e.g., directly participating in infrastructure projects, supplying equipment, through the further streamlining of customs procedures). However, members are also concerned that the Chinese government may give priority to domestic project contractors, construction machinery manufacturers, financial institutions, and other potential contributors. We trust that opportunities will be made available in a transparent and market-oriented manner. Indeed, our members look forward to working with Chinese companies as they increase their investments both through this initiative and globally, including in the US.

Regarding the AIIB, although the US is not a member, we believe that it presents an opportunity for China to demonstrate to the world that it can build and lead an institution that meets internationally recognized standards. Equally important, the AIIB presents an opportunity to create a homegrown precedent and model for Chinese domestic governmental agencies and institutions.

Looking forward, China will host the September 2016 G20 Summit and has set the theme of “towards an innovated, invigorated, interconnected, and inclusive world economy.” We look forward to engaging with China in these efforts, particularly during the accompanying B20 meetings, and expect them to provide China with important opportunities to further demonstrate its commitment to engage constructively within established institutions of global governance.

Bilateral Engagement

In addition to the annual bilateral negotiations held during the Strategic and Economic Dialogue and the Joint Commission on Commerce and Trade, the US and Chinese governments further engaged on economic issues in 2015 both as part of the ongoing bilateral investment treaty (BIT) negotiations and during President Xi Jinping’s state visit to the US in September.

Regarding the BIT negotiations, our members remain hopeful that a high-standard treaty that includes a narrowly drawn negative list can be negotiated and believe – as indicated in our 2016 Business Climate Survey Report – that a high-stan-
2015 年，在华美资企业继续面临诸多挑战，运营受到多种因素影响，如中国经济增速放缓、经济结构调整、制造业向服务业转移，已公布的改革措施缺少明确的实施时间表，以及出台的一系列法律法规可能影响投资环境的稳定性。同时，中国美国商会的会员企业也表示中国在多个领域取得进展，例如简政放权得以继续推进。总体上，我们的会员企业继续致力于发展中国市场。2016 年的《美国企业在中国白皮书》探讨了 2015 年中国的商业环境，包括主要议题、相关挑战和进展等，同时对如何应对这些挑战提出了切实可行的建议，以期有助于会员企业、内资企业和中国的总体经济发展。

中国的地区发展和国内发展：
2015 年发展亮点

作为全球领袖的中国

随着全球经济持续震荡，中国不断强化其全球领袖地位，美中两国在国际舞台上开展合作或遭遇摩擦的机会也随之增加。2015 年，美国同太平洋地区 11 个国家合作国完成谈判，达成建设太平洋经济合作协定（TPP），该协定一经批准，将对亚太和全球贸易和投资流动造成重大影响。中国美国商会欢迎并鼓励中国待符合协定标准后尽早加入 TPP 协定。推动中国加入 TPP 和美国加入区域经济全面伙伴关系的磋商对于避免两大区域贸易集团相互竞争对抗的局面有重要作用。

中国也在积极探索全球化发展的新路径，通过“一带一路”区域一体化战略（简称“一带一路”）和亚洲基础设施投资银行（亚投行），来推动经济全球化进程。

“一带一路”构想被视为中国深化与南亚和东南亚国家政治与经济融合、增加区域贸易流动的战略。我们的会员企业认为“一带一路”也会给他们带来更多参与和受益的机会。如会员企业可以直接参加或者通过提供相关设备来参与基础设施项目及进一步优化海关通关程序等，但会员企业同时也担心中国政府会优先选用内资项目承包商、工程设备生产商、金融机构和其他相关机构。我们认为上述机会应当以市场化方式公开、透明地运作。事实上，我们的会员企业正期待与那些计划增加“一带一路”战略实施相关投资以及增加全球性对外投资（包括对美投资）的中国企业开展合作。

在亚投行方面，尽管美国未加入该银行，但是我们相信该银行为中国提供了一次重要机会，从而向世界展示中国有能力建设并领导一个符合全球公认标准的机构。同时，亚投行也有机会为中国国内政府部门和机构的运作提供一个本土先例，树立一个榜样。

展望未来，中国将于 2016 年 9 月主办 20 国集团峰会（G20 峰会），并确定本次 G20 峰会的主题为“构建创新、活力、联动、包容的世界经济”。我们期待在本次峰会上，特别是二十国集团工商峰会（B20）期间，就此次主题与中国各方开展广泛深入的探讨和合作，并期待这些活动为中国提供重要机遇，进一步向世界展示中国致力于在全球现有治理机制下发挥建设性作用。

双边活动

除了在每年的战略与经济对话以及美中商贸联委会上进行年度双边磋商外，2015 年美中两国政府还在双边投资协定（BIT）谈判以及 9 月习近平主席访美期间继续就相关经济议题展开磋商。

在 BIT 谈判方面，我们的会员企业依然希望美中双方能够达成一份高标准的协定，尽量缩减负面清单中的内容。正如我们在 2016 年《商务环境调查报告》中指出的，高标准的 BIT 对于中国未来经济发展至关重要，也将成为中国改善监管环境、为投资者提供公平竞争环境的一项重要工具。调查中近 3/4 的受访者表示他们希望 BIT 能够在 2018 年甚至之前签署。具体而言，我们的会员企业希望 BIT 协
standard BIT is essential for China’s economic future and will be an important tool for improving the regulatory environment and providing a level playing field for investment. Nearly three-quarters of survey respondents stated that they expect the BIT to be completed by 2018 or sooner. In particular, our members hope that the BIT will provide:

- requirements for transparency in administrative procedures and due process in enforcement and dispute settlements,
- limitations on performance requirements, including data and IP localization requirements, and expanded protection against forced technology transfer,
- disciplines on state-owned enterprises (SOEs) and designated monopolies,
- clarified definitions of national security to limit the overly broad application of regulations, and
- guarantees for non-discriminatory application and development of standards.

More information on the BIT can be found in the Investment Policy chapter.

In September 2015, amidst rising tensions between the US and China over cybersecurity issues, President Xi made a state visit to the US. During this trip, Xi met with business leaders and President Barack Obama and made several joint announcements of interest to our members. Of particular note, China committed to:

- limit the scope of national security reviews on investment,
- refrain from cyber-enabled theft of intellectual property (IP),
- uphold WTO agreements regarding market access for information and communications technology (ICT) products, and
- avoid using competition law enforcement actions to pursue industrial policy goals.

President Xi further affirmed the value of adopting international technology product standards that have been developed in an open, transparent, market-driven, and balanced manner. Both leaders committed to shortening their respective negative lists as part of the ongoing BIT negotiations and to create a high-level joint dialogue mechanism to fight cybercrime. President Obama also committed to further facilitate RMB trading and clearing in the US while both leaders reaffirmed the US-China Joint Announcement on Climate Change that led to the Paris Agreement in December.

AmCham China applauds these positive outcomes and hopes that they will create a better environment for our members in 2016. However, active enforcement and verification from both sides is needed to ensure progress.

Planning for the Looming Economic Challenges

With the continuing effort to tackle pollution, extreme volatility in the stock market, further debt accumulation, and a political environment that has instilled a high fear of risk in many government officials, 2015 was a challenging year in many respects.

Since the 2013 Third Plenum, the groundwork has begun to be laid in preparation for what is known as the “New Normal,” outlining plans to improve the administrative system and clarify the roles of the market and the state. At that time, our members expressed hope that China was truly on a path to fully liberalizing and opening its market to foreign investment. Certainly, much progress has been made in the following two-plus years, particularly regarding the streamlining of administration and the reduction of overlapping and contradictory rules and regulations.

The 2014 Fourth Plenum offered further encouraging themes around the promotion of transparency, rule by law, and overall good governance. However, as with the Third Plenum’s proposed reforms, members remained disappointed with the slow pace of implementation and the sense that there have been limited efforts to truly open the market.

The 2015 Fifth Plenum concluded with an emphasis on five key concepts to guide development and reform going forward: innovation as a driver of economic development and a tool to push for higher-quality growth, coordination to ensure balanced development between industries and between urban and rural areas, green development through environmentally friendly economic growth, openness in respect to China’s utilization of both foreign and domestic markets and taking an active role in global governance, and inclusive development that expands social services. The proposal for the 13th Five-year Plan (FYP), which sets targets for economic and social policy for the 2016-2020 period, was also released, though it primarily included existing policies and natural expansions of the reform goals outlined in the Third Plenum. Other key points from the Fifth Plenum include:

- emphasis on nurturing innovation and entrepreneurship and ensuring better allocation of resources,
- further support for the “Made in China 2025” and “Internet +” initiatives (which are further discussed in the ICT and Machinery Manufacturing chapters),
- announced plans to adopt a nationwide negative list approach,
- emphasis on product quality, including aligning domestic quality and safety standards with international standards,
- a target of 60 percent urbanization by 2020, and
- a relaxation of the one-child policy to allow two children per couple and expansion of the coverage of urban...
国际影响力上升倒逼中国深化改革

定中能够包括：

- 加强行政程序透明度以及执法和争议解决正当程序的执行；
- 减少经营要求，包括对数据和知识产权本地化要求，以及越来越多的强制技术转移要求；
- 对国有企业和指定垄断行为的约束；
- 明确国家安全的定义，限制过分宽泛地套用保护国家安全相关规定；
- 保障在适用和制定标准时遵循不歧视原则。

有关 BIT 的更多内容请参见“投资政策”一章。

2015 年 9 月，在美中两国因网络安全部门关系日渐紧张之际，习近平主席正式访美并与工商领袖及奥巴马总统进行座谈，并多次发表与我们的会员企业利益密切相关的联合声明。特别值得一提的是，中国承诺：

- 限制对投资进行国家安全审查的范围；
- 避免网络盗窃知识产权行为；
- 保证在 IMT 准入中有关信息和通信技术（ICT）产品市场准入的承诺；
- 避免利用竞争法执法活动实现产业政策目标。

习主席还进一步肯定了采用以开放、透明、平衡的市场化方式制定的国际技术产品标准的价值。两国领导人都承诺在 BIT 谈判中缩减各自的负面清单，并建立高层联合对话机制以打击网络犯罪。奥巴马总统还承诺将进入人民币在美交易和清算业务。两国领导人都重申美中气候变化联合声明，并共同推动去年 12 月巴黎协定的签署。

中国美国商会对上述积极成果表示赞赏，并希望其在 2016 年能为我们的会员企业提供一个更好的经商环境。然而，两国都需积极执行并检验相关进展。

应对可能的经济挑战

2015 年对中国来说是一个充满挑战的年份：治理环境污染迫在眉睫、股市剧烈震荡、地方债问题进一步加剧、政治生态环境的建设也使得很多政府官员惶恐不安。2016 年中国实现了 6.7% 的经济增长率，但经济增长的质量和可持续性仍然存在疑问。2016 年中国的 GDP 增长率预计将低于 6.5%。如果不出台新的经济刺激措施，上述经济增长目标将难以实现。

2016 年 3 月召开的“两会”就上述问题进行了研究讨论，并正式通过“十三五”规划纲要。然而各行业具体规划出台还需要等待一段时间，到时候它们对外商投资的影响才会完全展现。今年两会上，李克强总理在政府工作报告中表示今年发展面临的问题“更多更大”，宣布 2016 年经济增速目标区间为 6.5%~7%。然而，其主要内容依然是在重复已经出台的政策以及对三中全会提出各项改革目标作自然延伸。此外，五中全会提出的其他重点内容包括：

- 强调创新和创业，优化资源配置；
- 进一步支持“中国制造 2025”和“互联网+”规划（详细内容请参见“信息通信技术”和“机械制造业”两章）；
- 宣布将在全国推行负面清单制；
- 强调产品质量，包括使国内产品质量和安全标准符合国际标准；
- 到 2020 年城镇化率达到 60%；
- 放宽计划生育政策，允许一对夫妇生育两个孩子，并扩大城镇社会福利和社会保障覆盖范围，应对老龄化挑战。

2016 年《商务环境调查报告》中，近一半的受访者认为中国 2016 年 GDP 增速将会低于 6.25%。事实上，如果出台新的经济刺激措施，上述增
welfare services and social security to help address the challenges posed by an aging society.

These themes continued into the March 2016 “Two Sessions” or liang hui, where the 13th FYP was officially adopted, though it will take time for the multiple industry-specific guidelines to be released and for its full impact on foreign investment to become apparent. When delivering the liang hui work report, Premier Li Keqiang remarked that “there will be more and greater difficulties” this year, and announced a target range for economic growth in 2016 at between 6.5 and seven percent, with an annual target of 6.5 percent over the next five years. In contrast, almost half of the respondents to our 2016 Business Climate Survey expect China’s GDP to grow in 2016 by less than 6.25 percent. Indeed, reaching this target may prove difficult without additional stimulus efforts that may exacerbate the challenges of overcapacity and bad debt and ultimately hurt the economy. However, Li indicated that central fiscal and monetary policies would be the key tools utilized to reach this goal.

The liang hui also reemphasized the “decisive role” of market forces and made further reference to the need for “supply side” reforms, a buzz term in 2015, referring to the scaling back of inefficiencies and promoting market forces through efforts including SOE and tax system reforms, reducing overcapacity, streamlining bureaucracy, and lowering corporate costs. While such market-focused reforms continue to be promoted, our members remain concerned about the continuance of industrial and other protectionist policies that conflict with these stated goals.

The Chinese government also laid the building blocks of a sweeping, often broadly cast national security and cybersecurity regime in 2015 that our members fear may, to some extent, be used to implement discriminatory economic policies or otherwise constrain their ability to do business in the country. If promulgated, these policy developments may also negate or reduce the potential benefits from the Third Plenum reforms and BIT negotiations. As explained in further detail in the Investment Policy and ICT chapters, such policies of concern include the National Security Law, Draft Cybersecurity Law, Counterterrorism Law, and data localization and “secure and controllable” regulations.

Additionally, as further discussed in our Business Sustainability and Community Engagement chapter, a draft “Foreign Non-governmental Organization Management Law” was released in May 2015, offering an overly broad definition of NGOs and placing oversight of such organizations under the Ministry of Public Security. Our members have expressed strong concern regarding the breadth and content of the Draft NGO Law, as it has the potential to seriously disrupt the operations of a wide variety of organizations that provide positive services to China and its people, including foreign universities, charities, business associations, and even the corporate social responsibility activities of many commercial enterprises. We were pleased by the recently announced decision to withdraw the draft for further review.

Taken together, it is clear that, despite the calls for reform and market liberalization, the implementation process of China’s stated reforms will prioritize the support and development of domestic enterprises and will continue to proceed incrementally and in a piecemeal fashion. However, we continue to believe that China needs to accelerate its opening and reform efforts to effectively address domestic economic pressures and ensure that it remains competitive in the global market. According to Ministry of Commerce statistics, as reported by Xinhua, the over 830,000 foreign-invested enterprises (FIEs) operating in China have made significant contributions and, by the end of 2015, accounted for one-half of foreign trade, one-quarter of industrial output, one-seventh of urban employment, and one-fifth of tax revenues. Despite the clear benefits of foreign investment, many FIEs continue to be unfairly squeezed out of the market.

Business Climate Overview

A Difficult Year for Growth and Profits

According to our 2016 Business Climate Survey Report, although many member companies continued to experience growth in 2015, almost one in four reported declining revenues and another one in five reported flat revenues compared with 2014. Companies in the services sector were most likely to report growth, while the industrial and resources sector had the toughest year, with almost half of companies reporting declining revenues. At the same time, the overall proportion of companies characterizing their business as financially profitable in 2015 fell to 64 percent, the lowest level in the past five years.

Economic, Regulatory, and Human Resource Challenges

China’s economic challenges are clearly impacting member companies. For example, industry overcapacity was reported as a top five business challenge. For the past four years, China’s construction machinery industry has experienced considerable overcapacity, resulting in high inventories, cash-flow constraints, and large account receivables. That said, many respondents remain optimistic about China’s domestic market growth potential.

In addition to the economic challenges, member companies report the regulatory environment as being a key factor hindering their ability to invest and grow. For the first time in five years, member companies cited “inconsistent regulatory interpretation and unclear laws” as the top business challenge. “Obtaining required licenses” also returned to the list of top five business challenges.
年度影响力上升倒逼中国深化改革

2016年的“两会”上再次强调了市场的“决定性作用”，并进一步阐述了2015年热议的“供给侧”改革的必要性，即通过国有企业改革和财税体制改革来提高效率和强化市场作用，去库存、优化政府体制机制和降低企业成本等。尽管上述市场化导向的改革将持续推进，但我们的会员企业担心现有的部分产业政策和其他保护性政策会与上述改革目标相冲突。

2015年，中国政府全面建设国家安全和网络安全体系制度基础，而国家安全和网络安全的外延往往又过于宽泛。因此，我们的会员企业担心国家安全和网络安全可能会在一定程度上被用来实施歧视性经济政策或者限制他们在华运营的其他政策。相关政策、法律一旦出台，很多都可能抵消或降低十八届三中全会和BIT谈判中涉及的潜在改革红利。上述令人担忧的政策包括《国家安全法》、《网络安全法》草案、《反恐怖主义法》以及数据本地化和“安全可控”相关政策法规。详细内容请参见“投资政策”和“信息通信技术”两章。

另外，我们在“商业可持续性和社区参与”一章中还将继续探讨《境外非政府组织管理法》征求意见稿已于2015年5月发布，其中对非政府组织的界定过分宽泛，并要求非政府组织接受公安部监管。我们的会员企业对上述法律草案宽泛的适用范围表示了强烈担忧。因为它可能会严重影响一大批为中国和中国人民提供积极有益服务的组织，其中包括外国大学、慈善机构、行业协会的运作以及很多商业机构的企业社会责任活动。我们很高兴获知，近期中国已决定不再将该草案继续提交审议。

总而言之，很显然，虽然中国需要进行改革和市场自由化，但上述改革实施进程将优先支持和发展内资企业，并将继续稳步推进。我们认为中国需要加快改革开放进程，方能有效缓解国内经济压力和保持国际市场竞争力。据新华社报道，商务部数据显示，截至2015年，中国共有超过830,000家外商投资企业，创造了中国近1/2的对外贸易、1/4的工业产值、1/7的城镇就业和1/5的税收收入。尽管外商投资贡献显著，却一直有不少外资企业因遭遇不公平的待遇而被挤出中国市场。
Human resource issues also continue to challenge member operations, with labor costs and a shortage of qualified employees both making the list of top five challenges. However, there are signs of progress. For example, labor costs have historically increased 10 percent per year or more; if suggested changes in mandatory employer-contributed social benefits are put into effect on a local basis, such increases may slow to below 10 percent for the first time in years. More information on related issues can be found in the Human Resources chapter.

**Though China Remains a Top Priority, Fewer Companies are Increasing Levels of Investment**

China remains a top-three investment priority for six of 10 member companies. This, however, marks a decline from our 2012 report, in which almost eight of 10 companies named China a top-three investment priority. Consumer and services companies are the most likely to prioritize China in growth plans, while industrial and resources companies are the least likely. Approximately one-third of member companies are not planning to increase their investments in China during 2016. Slower economic growth, rising costs, and market access barriers or disadvantageous government policies are the top three cited reasons for decreasing investment levels.

By the end of 2015, 25 percent of respondents had either already moved or were planning to move capacity outside of China.
经济、监管和人力资源挑战

中国经济增速下滑对我们的会员企业造成显著影响。例如，行业产能过剩被受访企业列在所面临商业挑战的前五名之内。在过去四年里，中国建筑工程机械行业面临严重的产能过剩现象，导致库存居高不下、资金流动紧张和大量应收账款难以收回。不过，许多受访企业依然对中国国内市场发展潜力表示乐观。

除了经济挑战外，会员企业反映监管环境也是影响他们投资和增长能力的一个关键因素。五年来会员企业首次将“法律法规执行不一致/不清楚”列为第一大商业挑战。“取得相关许可证件困难”也重返商业挑战前五位。

人力资源问题依然困扰着我们的会员企业，劳动力成本上升和缺少合格员工双双进入商业挑战前五位。不过这方面也出现了一些积极信号。比如，劳动力成本的年增长率目前已达到了历史性的 10% 或更高，但如果各地雇主缴纳社会福利的要求正式实施，则有望在今年首次将其增速减至 10% 以下。相关信息请详见“人力资源”一章。

60% 的会员企业依然将中国列为前三大投资目的地，而在我们 2012 年的调查中，则有 80% 的会员企业将中国列为他们的前三大投资目的地。消费和服务型公司计划优先发展中国市场的比例最高，而工业和资源类企业则相对最低。近 1/3 的会员企业不打算在 2016 年增加在华投资，三大主要原因分别是经济放缓、劳动力成本上升和市场需求萎缩或不利于外资企业的政府政策。

截至 2015 年底，25% 的受访企业已经或准备将产能移出中国，其中的一半表示将移至“亚洲发展中国家”，40% 表示移往美国、加拿大或墨西哥。

在中国投资方面，会员企业表示将优先投资北部和东部沿海地区，其次是南部沿海地区和西南地区。尽管受访者表示西南地区经济增长潜力巨大，但他们认为该地区经营便利度相对较差。更多区域投资问题详见《白皮书》区域性问题相关章节。

会员企业优先投资创新

绝大多数我们的会员企业将创新作为优先发展的重点业务。超过 90% 的受访企业相信在中国开展创新将会成为他们企业未来在华业务增长的重要驱动力。受访企业还表示品牌、技术、知识产权及研发创新位列他们相对于国内竞争者所拥有的竞争优势的前五名。创新有助于抓住新客
DOMESTIC REFORM PRESSURES RISE AS CHINA’S GLOBAL INFLUENCE EXPANDS

### Technology & Other R&D Intensive Sector

**Top Five Business Challenges**

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inconsistent regulatory interpretation and unclear laws</td>
<td>53%</td>
</tr>
<tr>
<td>Rising labor costs</td>
<td>47%</td>
</tr>
<tr>
<td>Increasing Chinese protectionism</td>
<td>44%</td>
</tr>
<tr>
<td>Obtaining required licenses</td>
<td>42%</td>
</tr>
<tr>
<td>Requirements to comply with Chinese standards/Inability to participate in standard setting</td>
<td>35%</td>
</tr>
</tbody>
</table>

**Examples from the White Paper**

- **The lack of a clear definition for medical device SKU leads to inconsistent understanding among local CFDA branches and manufacturers.**
  - 缺少对医疗器械最小销售的明确定义，导致各地方医疗器械监管分局和制造商对此医疗器械最小销售的理解不一致。

- **Distrust of foreign technologies and governments and the unclear distinction in China between commercial and government information systems often gives rise to exclusionary policies that increase reliance on indigenous technology.**
  - 对外国技术和政府的不信任及中国商业和政府信息系统区别的不明确而产生排他性的政策，均增加了对本土技术的依赖。

- **Certification and validation in CAAC aircraft and engine certification centers may differ from international standards, resulting in inconsistent and uncertain product approval processes.**
  - 中国民航局航空器适航审定中心和发动机审定中心进行审定及验证时遵循的标准与国际标准不符，导致了产品审批环节的一致性和不确定性。

- **Continued limits to FIE participation in technical committees effectively means that the majority of FIEs are largely absent throughout the process of developing important ICT security-related standards.**
  - 但是限制外资企业参与技术委员会意味着大部分外商投资企业在重要的信息技术领域等领域的安全标准制定流程中缺席。

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### Member Companies Prioritizing Innovation

Innovation is an important business priority for most member companies. More than nine in 10 respondents believe that innovation in China will be important to their company’s future growth here. Respondents also report that brands, technology and IP, and development and innovation are among the top five competitive advantages member companies have relative to domestic competitors. Innovation can help capture growth opportunities in new customer segments and is required for launching new products or services, both of which are listed as primary business objectives for most member companies. Such innovation is increasingly designed for China, with 40 percent of companies reporting that more than half of their revenue comes from products or services designed, developed, or tailored to local requirements, a significant increase from 32 percent last year.

AmCham China member companies are also innovating in line with changes in the technology environment. Respondents report that “digitalization” will be a top priority, with more than 70 percent rating digitalization of sales, marketing, distribution, and customer relationship management as very or extremely important to enhancing their competitiveness. This is consistent with companies in most sectors reporting that China’s “Internet +” and the growth of e-commerce present important growth opportunities. Similarly, many of the industry-specific chapters within the White Paper note the increasing importance of digitalized distribution and customs processes and the role of e-commerce and related policies in sale and distribution of products.

In order to innovate in China, member companies are hiring domestically and investing in employee training. Hiring and developing talent are also reflected as the top two human resource priorities for all companies in 2016. In addition, more than 40 percent of companies with 250 or more employees in China have established an R&D center in China to support their innovation strategies. Furthermore one-third of respondents have established partnerships with...
国际影响力上升倒逼中国深化改革

越来越多的企业开始针对中国市场开展创新，40% 的受访企业表示他们的企业营收中超过一半来自专门针对本地需求设计、开发或定制的产品或服务，相较去年的 32% 有了显著的增长。

同时，中国美国商会会员企业也正在顺应技术环境变化积极开展创新。受访企业表示，“数字化”将是首要发展领域。超过 70% 的企业认为销售、市场营销、配送和客户关系管理的数字化对提高企业竞争力极其重要。这一点也表现在大多数行业内企业的表示中国“互联网+”战略和电子商务的繁荣为他们带来重要的业务增长机会。另外，《白皮书》中的行业各章也突显出配送和报关数字化、电子商务和产品销售及配送等相关政策的重要性。

为了在中国开展创新，我们的会员企业雇用本土人才并加大了员工培训的投入。雇用和开发人才也是所有受访企业 2016 年在人力资源方面的两大工作重点。另外，在华雇用 250 名及以上员工的会员企业中有超过 40% 的企业表示已经在中国建立研发中心用以为公司实施创新战略提供支持。另外，1/3 的受访企业表示已经与中国相关机构或企业建立合作关系。然而，数据本地化要求可能会对这些创新活动造成阻碍，进而影响中国经济增长。因为外资企业不能继续使用现有信息技术供应商和基础设施，导致成本被推高，同时，本地化要求也切断了本土企业与全球市场上的潜在客户的联系。

政策趋势

尽管会员企业表示，法律法规执行不一致和不清楚以及取得许可证件困难使他们面临重大商业挑战，但如果将今年的调查结果与往年比较，会发现会员企业也认为中国在知识产权保护、数据安全环境和反腐败等方面取得一定进展。虽然这些问题对许多受访企业来讲依然构成挑战，但从发展趋势角度看，总体是乐观的。
What percentage of your China revenues comes from products or services that were locally designed, developed or at least tailored to local requirements?

Chinese organizations or companies. However, proposed data localization requirements threaten to hinder these innovation efforts and will hamper China’s economic growth by increasing costs for foreign companies that can no longer use their existing IT suppliers and infrastructure and simultaneously cutting domestic companies off from a global marketplace of potential customers.

Innovation is also stunted by Internet controls. Nearly four in five members report that Internet controls – including the slower speed of accessing websites outside of China, the inability to access certain websites and sources of crucial data, unreliable or inconsistent access and speed, and the inability to use certain online tools – negatively impact their ability to conduct business normally in China.

Policy Trends

Although member companies report significant business challenges due to inconsistent regulatory interpretation and unclear laws and difficulty obtaining licenses, comparing this year’s survey responses with prior years suggests progress on protection of intellectual property rights (IPR), the data security environment, and anti-corruption. These areas continue to be pressing concerns for many survey respondents, but the trends are positive.

Regarding IPR, a majority of respondents view patents, copyright, and trademark laws and regulations as being

What types of investment or actions have you taken to innovate in China? (Select all that apply.)

48% of large companies established an R&D center

43% of 大型企业已经设立研发中心
多数受访企业认为商业秘密相关法律法规执行不力，没有发挥其效用。虽然知识产权执法施行效果目前依然差强人意，但是仍有90%的受访企业对过去五年间中国知识产权执法的持续提升表示认可。同时，52%的受访企业认为中国境内的知识产权诉讼风险和信息技术数据安全威胁要高于其他地区，但相较去年的60%还是有所改善。腐败问题之前一直位列商业挑战前五位，但截至今年，已经连续两年没有列入商业挑战前十位。

> 2016年的投资低于2015年

尽管取得上述进展，但仍有77%的受访企业表示，与以往相比，外资企业在中国的受欢迎程度正在不断降低。这是所有行业普遍反映的问题，不过工业、资源和技术及研发密集型企业反映得更为突出。上述行业均表示对产能过剩问题和总体监管环境更为担忧。其中技术和研发密集型企业对监管环境表示出强烈的担心和悲观情绪，并表示中国政府重点支持创新的政策实际上尚未完全适用于外资企业。

### 中国美国商会2016年工作重点

面对上述挑战，我们促请中国加快改革进程，以保持全球市场竞争力。已宣布的改革却一直缺乏明确性和不解决外国投资者面临的根本性问题，这导致外资企业对政府是否真的愿意推进改革和开放经济产生了怀疑。中国持续使用产业政策限制外资参与中国经济、执法缺乏透明度和自由裁量权过大以及过于宽泛地适用国家安全相关法律法规等，都是我们会员企业十分担忧的问题。这些久悬不决的根本性问题，反映出中国发展方向与国际通行做法之间的分歧。

我们坚定地相信，中国在未来发展中，应当继续坚持个人、组织和政府层面的国际互动和合作，同时还应该采
Which of the following are important opportunities for your China business? Please select your top three opportunities.

<table>
<thead>
<tr>
<th>Industrial &amp; Resources</th>
<th>Technology &amp; Other R&amp;D Intensive</th>
<th>Consumer</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urbanization and continued support for infrastructure investments</td>
<td>Growth in domestic consumption/Rise of an increasingly sizeable and affluent middle class</td>
<td>Growth in domestic consumption/Rise of an increasingly sizeable and affluent middle class</td>
<td>Globalization of Chinese companies and increased outbound investment</td>
</tr>
<tr>
<td>Growth in domestic consumption/Rise of an increasingly sizeable and affluent middle class</td>
<td>&quot;Internet +” and growth of e-commerce</td>
<td>&quot;Internet +” and growth of e-commerce</td>
<td>Growth in domestic consumption/Rise of an increasingly sizeable and affluent middle class</td>
</tr>
<tr>
<td>Addressing environmental challenges/environmental protection</td>
<td>Increasing capabilities in China for innovation (R&amp;D, etc.)</td>
<td>Ongoing economic and social reforms, e.g., Shanghai Free-Trade Zone</td>
<td>&quot;Internet +” and growth of e-commerce</td>
</tr>
</tbody>
</table>

effective. However, trade secret laws and regulations are viewed by a majority as being ineffective. And while the effectiveness of the actual enforcement of IPR is rated somewhat lower than the laws and regulations themselves, nine in 10 respondents believe that China’s enforcement of IPR has improved over the last five years. Similarly, while 52 percent of respondents believe the risk of IP leakage and IT or data security threats is greater in China than in other regions, this percentage is below last year’s 60 percent. Corruption, which has historically ranked among the top-five business challenges, did not rank among the top ten business challenges for the second year in a row.

Despite this progress, 77 percent of respondents feel that foreign businesses are less welcome than before in China. This response is consistent across industries, but most frequently cited by companies in the industrial and resources technology and R&D-intensive sectors. Such industries are facing the greatest challenges posed by issues of overcapacity and report a greater concern over the regulatory environment overall, respectively. Of note, the strong concerns and pessimism over the regulatory environment from technology and R&D intensive companies suggest that the government’s stated priority to support innovation in China is not yet fully available to foreign businesses.

AmCham China’s Priorities for 2016

In light of these challenges, we urge China to increase the pace of its reform process to remain competitive in the global economy. The continued lack of clarity surrounding its stated reforms and reluctance to address the fundamental concerns of foreign investors has led to doubt regarding the Chinese government’s stated intentions to reform and open the economy. The continued use of industrial policies that restrict foreign participation in China’s economy, the lack of transparency and excessive discretion in the enforcement of regulations, and the implementation of overly broad national security regulations are of great concern to our members. The persistence of these funda-
国际影响力上升倒逼中国深化改革

我们对中国的国际参与表示欢迎，并期待中国继续推进国际合作，造福中国和全球经济。我们强烈鼓励中国为实现上述目标，积极地向国际通行做法和规则靠拢。

具体而言，我们促请中国政府继续推进以下领域的有关工作并取得成效，这些领域也是2016年中国美国商会的工作重点：

**公平性和透明度**

只有遵循法治，透明执法，建立所有企业公开公平竞争的市场环境，才能实现经济可持续发展。

具体而言：

- 我们认为中国应当履行承诺：不论法律法规具体名称如何，只要属于法律法规，其草案就应留足30天的公示及征求意见期。
- 我们鼓励中国政府通过发布反垄断相关调查结果和过往案例来提高透明度。

**充满活力、开放的投资环境**

不论来源国如何，健康的投资都可以产生经济活动，创造就业，提升技能，扩大消费者选择范围，促进经济增长。

具体而言：

- 我们鼓励中国政府在完成BIT谈判签署前，进一步开放服务业和消费行业，从而促进经济更快增长。
- 我们鼓励两国政府优先推进美中BIT谈判进程，缔结一个负面清单短、例外条款少、适合中国独特市场条件且可使两国都从中实现利益最大化的完善的美中双边投资协定。

**公平、市场导向型创新**

只有在一个保护知识产权、有效打击知识产权违法行为、没有过度政府管制、各界广泛参与标准制订的环境下，创新才可能蓬勃发展。实施鼓励创新政策时，应当对内外资企业一视同仁，营造公平且非歧视的执法环境。

具体而言：

- 我们认为不管在哪个国家，本土化要求都会限制创新和竞争。中国美国商会促请中国政府明确表示欢迎外资企业作为平等主体参与目前正在推进的各项战略计

### Rate China’s IPR laws and regulations across the following categories:
以下范畴中，中国知识产权法律法规的有效性如何？

<table>
<thead>
<tr>
<th></th>
<th>Patents</th>
<th>Copyright</th>
<th>Trademark or brand protection</th>
<th>Trade secrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective</td>
<td>62%</td>
<td>53%</td>
<td>58%</td>
<td>41%</td>
</tr>
<tr>
<td>Ineffective</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Very effective</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Very ineffective</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
</tbody>
</table>

### Rate the effectiveness of China’s enforcement of IPR laws and regulations.
以下范畴中，中国知识产权法律法规的执行效率如何？

<table>
<thead>
<tr>
<th></th>
<th>Patents</th>
<th>Copyright</th>
<th>Trademark or brand protection</th>
<th>Trade secrets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective</td>
<td>12%</td>
<td>18%</td>
<td>17%</td>
<td>20%</td>
</tr>
<tr>
<td>Ineffective</td>
<td>34%</td>
<td>34%</td>
<td>32%</td>
<td>40%</td>
</tr>
<tr>
<td>Very effective</td>
<td>51%</td>
<td>45%</td>
<td>47%</td>
<td>36%</td>
</tr>
<tr>
<td>Very ineffective</td>
<td>3%</td>
<td>3%</td>
<td>4%</td>
<td>4%</td>
</tr>
</tbody>
</table>
mental concerns indicates a divergence between the direction of China’s development and international norms.

We strongly believe that China should continue to embrace the benefits of global interaction and cooperation between people, organizations, and governments as it continues to develop. It should also actively pursue investment and trade policies that will allow it to participate in and benefit from these global developments. We welcome China’s global engagement and look forward to continued cooperation that will benefit both China and the global economy. We strongly encourage China’s convergence with international norms and rules to successfully achieve these goals.

In particular, we urge progress in the following three areas, which have been established as AmCham China’s priorities for 2016:

**Fairness and Transparency**

Economies benefit from the provision of a level playing field in an environment based on open competition for all companies through the transparent enforcement of regulations in accordance with the rule of law.

Specifically:

- We believe that China should implement across the board its multiple commitments for 30-day notice and comment periods on draft laws and regulations, regardless of how the regulations are labeled.
- We encourage the Chinese government to improve transparency by releasing formal findings and case histories of anti-monopoly-related investigations.

**Dynamic and Open Investment Environment**

Sound investment generates economic activity regardless of the country of origin and creates jobs, raises skills, expands consumer choice, and grows the economy.

Specifically:

- We encourage the Chinese government to implement further market opening in the services and consumer sectors prior to the completion of a BIT to foster greater growth.
- We encourage both governments to prioritize negotiation of a robust US-China BIT with a short negative list, narrowly crafted exceptions, and text that ensures the full benefits of the treaty can be effectively reached within China’s unique market.

**Fair and Market-based Innovation**

Innovation flourishes only in an environment where IP is protected from infringement and excessive government regulation and standards are set with broad participation. Policies encouraging innovation should be implemented in a fair and nondiscriminatory manner for both foreign and domestic companies.

Specifically:

- We believe that indigenization hampers innovation and competitiveness in any country and urge the Chinese government to expressly welcome FIEs as equal participants in ongoing initiatives including “Made in China 2025.”
- We encourage the Chinese government to remove requirements for IP localization and to allow foreign companies to participate in standards development organizations on an equal basis with domestic companies.
- We also encourage the Chinese government to build upon the progress made in improving the IPR environment through the expansion of the IP courts and the creation of a comprehensive trade secrets law.

We believe that the adoption of these recommendations, in addition to the more specific recommendations outlined throughout the chapters of this 2016 White Paper, will result in a better investment and economic environment overall, not only for the benefit of our members but also as a vital component of the Chinese government’s overall reform efforts.

An outline of more industry-specific recommendations within these three priority categories can be found in the White Paper Summary Report.
国际影响力上升倒逼中国深化改革

我们鼓励中国政府取消对知识产权本地化的要求，并允许外资企业与内资企业一样，在平等的基础上，加入标准制定组织。

我们还鼓励中国政府在已经取得的知识产权环境改善的相关成就的基础上，继续增加知识产权法院的数量，并制定一部综合性商业秘密法律。

我们相信，采纳上述建议以及2016年《白皮书》中相关章节提出的具体建议，将有助于中国改善总体投资和经济环境。这不仅将惠及我们的会员企业，也将在中国政府总体改革进程中发挥关键作用。

上述三大重点领域中的具体行业建议大纲参见《白皮书概要》。
# 2016 White Paper Recommendation Scorecard

The Recommendation Scorecard is an important tool that helps AmCham China track the progress made each year in its top areas of concern. The following table is an index of the priority recommendations from each of the 2015 and 2016 AmCham China White Paper chapters.

The progress rating indicates our members’ perception of the level of progress – either high, moderate, or low – achieved by relevant government officials in resolving the priority challenge designated in each chapter of the 2015 White Paper. The final column indicates each chapter’s priority recommendation for 2016.

<table>
<thead>
<tr>
<th>Chapter</th>
<th>2015 Recommendation</th>
<th>Progress Rating</th>
<th>2016 Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agriculture</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese Government</td>
<td>Reduce barriers to foreign participation and investment in agriculture, in particular by moving more agricultural products to the Encouraged section of the Foreign Investment Catalogue, and removing most agricultural segments from the negative lists of the Shanghai FTZ and BIT.</td>
<td>Moderate</td>
<td>Improve the sustainability and competitiveness of Chinese agriculture by encouraging foreign investment in seed technology, modern agricultural processing, and bulk transportation.</td>
</tr>
<tr>
<td>US Government</td>
<td>Work with Chinese officials through bilateral dialogues, including the JCCT, S&amp;ED, and US-China BIT negotiations, to address investment restrictions faced by US agriculture producers.</td>
<td>Moderate</td>
<td>Work with Chinese officials through bilateral dialogues, including the JCCT, S&amp;ED, and US-China BIT negotiations to address the investment restrictions faced by US agriculture producers.</td>
</tr>
<tr>
<td><strong>Automotive Industry</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese Government</td>
<td>Consider the level of industry development and the overall market environment when adopting international rules or developing unique standards, and allow enough lead time for businesses to make adjustments and ensure compliance.</td>
<td>Moderate</td>
<td>Consider the level of industry development and the overall market environment when adopting international rules or developing unique standards and allow enough lead time for businesses to make adjustments and ensure compliance.</td>
</tr>
<tr>
<td><strong>Banking and Capital Markets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese Government</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Bonds Market</strong></td>
<td>Level the playing field for investors, strengthen market infrastructure, and promote greater transparency to develop a healthy and well-functioning bond market.</td>
<td>High</td>
<td>Further open China’s bond markets, including the Panda Bond market, to foreign issuers through market-based reforms to create diverse markets.</td>
</tr>
<tr>
<td><strong>Commercial Banking</strong></td>
<td>Better coordinate reporting requirements under the guidance of the respective regulators’ head offices; increase efficiency in data collecting and reduce or simplify the numerous reporting requirements.</td>
<td>Low</td>
<td>Allow US banks to enter the interbank bond market through the removal of technical barriers and to provide OTC commodities derivatives to Chinese clients.</td>
</tr>
<tr>
<td><strong>Credit Ratings</strong></td>
<td>Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.</td>
<td>Low</td>
<td>Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.</td>
</tr>
<tr>
<td><strong>Private Equity and Venture Capital</strong></td>
<td>Optimize tax policies for limited-partnership VC/PE funds, accelerate the growth of qualified institutional investors, and improve QDLP pilot policies.</td>
<td>Low</td>
<td>Explore avenues to improve the policy environment for investing local pension funds and enterprise annuities in VC/PE funds.</td>
</tr>
<tr>
<td><strong>Securities</strong></td>
<td>Fully liberalize foreign investment in the securities sector as soon as possible, and do not include securities on the US-China BIT negative list.</td>
<td>Low</td>
<td>Fully liberalize foreign investment in the securities sector as soon as possible, before conclusion of US-China BIT negotiations.</td>
</tr>
</tbody>
</table>
2016年《白皮书》主要建议一览表

此主要建议一览表帮助中国美国商会追踪重点关注领域的年度发展进程。下表列出了中国美国商会2015及2016年白皮书各章节提出的主要建议。

相关政府官员积极应对2015年《白皮书》各章节所提及的挑战，并取得一定进展，进展评分正是表明了会员公司对政府相关改革进展的评价——进展明显、有所进展或进展较慢。最后一栏列出2016年《白皮书》各章节的主要建议。

<table>
<thead>
<tr>
<th>章节</th>
<th>2015年白皮书主要建议汇总</th>
<th>进展评价</th>
<th>2016年白皮书主要建议汇总</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>农业</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>中国政府</strong></td>
<td>减少对外资参与和投资农业的限制，特别是将更多的农产品移至外商投资目录之“鼓励”类，同时将大多数农业产业从上海自贸区和双边投资协定的负面清单中去除。</td>
<td>有所进展</td>
<td>鼓励外资投资现代加工、粮食散货运输和种子技术，从而提高中国农业的可持续性和竞争力。</td>
</tr>
<tr>
<td><strong>美国政府</strong></td>
<td>通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。</td>
<td>有所进展</td>
<td>通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。</td>
</tr>
<tr>
<td><strong>汽车行业</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>中国政府</strong></td>
<td>采纳国际规则或制定特定标准时，考虑行业发展水平和市场总体环境，并给出足够的提前期，使企业有充分的时间做出调整，确保合规。</td>
<td>有所进展</td>
<td>采纳国际规则或制定特定标准时，考虑行业发展水平和市场总体环境，并给出足够的提前期，使企业有充分的时间做出调整，确保合规。</td>
</tr>
<tr>
<td><strong>银行和资本市场</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>中国政府</strong></td>
<td>• 债券市场 为投资者提供公平的环境，加强市场基础设施建设，提高透明度，从而建立一个运行良好的健康的债券市场。</td>
<td>进展明显</td>
<td>通过市场改革进一步优化面向外国发债人的中国债券市场，包括熊猫债券市场，创建多元化市场。</td>
</tr>
<tr>
<td></td>
<td>• 商业银行 在各管理总部的指导下，统一管理要求，提高信息收集效率，减少或简化各类申报要求。</td>
<td>进展缓慢</td>
<td>取消技术壁垒，允许美国的银行进入银行间债券市场并为中国客户提供场外交易商品衍生产品。</td>
</tr>
<tr>
<td></td>
<td>• 信用评级 取消或放宽对外资 CRA 中外资比例的限制。</td>
<td>进展缓慢</td>
<td>取消或放宽对外资 CRA 中外资比例的限制。</td>
</tr>
<tr>
<td></td>
<td>• 私募股权 通过落实本章提出的相关建议，优化对有限合伙人 VC/PE 的税收政策，促进合格机构投资者的发展，改善 QDLP 试点政策。</td>
<td>进展缓慢</td>
<td>探索各种渠道来改善投资地方养老基金和企业年金配置 VC/PE 基金的政策环境。</td>
</tr>
<tr>
<td></td>
<td>• 证券 尽快完全实现外商投资证券业的完全自由化，且不将证券列入中美双边投资协定负面清单中。</td>
<td>进展缓慢</td>
<td>尽快完全实现外商投资证券业的完全自由化，且不将证券列入中美双边投资协定负面清单中。</td>
</tr>
</tbody>
</table>
## Chapter 2015 Recommendation | Progress Rating | 2016 Recommendation

### Business Sustainability and Community Engagement (formerly Civil Society)

<p>| | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>Chinese Government</strong></td>
<td>Broaden and clarify the scope of what constitutes a public interest charity that can be registered directly with the local bureau of civil affairs, and provide clear and specific registration guidance that is implemented consistently nationwide.</td>
<td><strong>Moderate Progress</strong></td>
</tr>
<tr>
<td><strong>US Government</strong></td>
<td>Establish a US-China collaboration mechanism on social innovation to bring civil society organizations together and exchange ideas on how the government can work with civil society organizations to outsource certain services, seed new ideas, and scale proven, demonstrated success stories. Such collaboration should seek to promote and expand ideas for addressing social problems based on learned experiences from both countries.</td>
<td><strong>Low Progress</strong></td>
</tr>
</tbody>
</table>

### Chengdu

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Sichuan and Chengdu Governments</strong></td>
<td>Establish more waste disposal vendors in Sichuan province and allow the transportation of industrial waste across provincial borders to nearby disposal facilities.</td>
<td><strong>Low Progress</strong></td>
</tr>
</tbody>
</table>

### Chongqing

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</thead>
<tbody>
<tr>
<td><strong>Chongqing Government</strong></td>
<td>Re-evaluate the social insurance tax on FIEs to accommodate companies already providing insurance to their employees.</td>
<td><strong>Moderate Progress</strong></td>
</tr>
</tbody>
</table>

### Clean Technology

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</thead>
<tbody>
<tr>
<td><strong>Chinese Government</strong></td>
<td>Continue to set targets and provide preferential policies and incentives for green and energy-efficient building construction and retrofit.</td>
<td><strong>Moderate Progress</strong></td>
</tr>
<tr>
<td><strong>US Government</strong></td>
<td>Consider diversifying funding beyond the CERC in order to create opportunities for SMEs and early-stage companies looking for project and partnership development opportunities within the Chinese market. Supporting multiple investments and consulting platforms fosters both diversity and specialization.</td>
<td><strong>Low Progress</strong></td>
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</tbody>
</table>

### Competition Law

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<tbody>
<tr>
<td><strong>Chinese Government</strong></td>
<td>Issue formal guidelines confirming that foreign-qualified lawyers (PRC-qualified lawyers working in foreign law firms) and foreign counsel will be allowed to attend meetings and investigations of MOFCOM, NDRC, and SAIC, alongside local counsel to implement China’s JCCT commitment.</td>
<td><strong>Low Progress</strong></td>
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### Compliance

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<tbody>
<tr>
<td><strong>Chinese Government</strong></td>
<td>Build on the goals laid out in the Fourth Plenum to further develop rule of law, with the goal of a consistent and predictable legal and regulatory environment for all enterprises, foreign or domestic.</td>
<td><strong>Moderate Progress</strong></td>
</tr>
<tr>
<td><strong>US Government</strong></td>
<td>Work with Chinese officials through bilateral dialogues, including the JCCT, S&amp;ED, and US-China BIT negotiations, to address the full range of compliance issues and their enforcement.</td>
<td><strong>High Progress</strong></td>
</tr>
<tr>
<td>章 节</td>
<td>2015年《白皮书》主要建议汇总</td>
<td>进展评价</td>
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<tr>
<td>企业可持续性和社区参与（前称“公民社会”）</td>
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<tr>
<td>中国政府</td>
<td>扩大并明确可向当地民政机构直接申请登记的公益性慈善机构的范围，并制定全国统一的、明确且具体的登记指南。</td>
<td>有所进展</td>
</tr>
<tr>
<td>美国政府</td>
<td>建立中美社会创新合作机制，聚合公民社会组织，与政府交流如何与公民社会组织合作进行外包服务，培育新方法和评价现有公私合作的成功经验。上述合作应当努力推广以便基于两国现有经验解决社会问题。</td>
<td>进展缓慢</td>
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<tr>
<td>成 都</td>
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<tr>
<td>四川省和成都市政府</td>
<td>在四川省内建立更多废物处理厂，允许工业废物运出省，由附近的废物处理厂处理。</td>
<td>进展缓慢</td>
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<tr>
<td>重 庆</td>
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<tr>
<td>重庆市政府</td>
<td>充分考虑外资企业已经为其员工购买商业保险的现状，对外资企业适用社会保险法进行重新评估。</td>
<td>有所进展</td>
</tr>
<tr>
<td>清洁技术</td>
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<tr>
<td>中国政府</td>
<td>继续为新建和改造的绿色和节能建筑设定目标并提供优惠政策和激励措施。</td>
<td>有所进展</td>
</tr>
<tr>
<td>美国政府</td>
<td>考虑在中美清洁能源联合研究中心（CERC）之外建立新的、多样化的合作机制，为中美企业和创新型项目在中国市场寻找合作机会而获得更多机会。支持多元投资和融资平台，既保障多样化又突出专业性。</td>
<td>进展缓慢</td>
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<tr>
<td>竞争法</td>
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<tr>
<td>中国政府</td>
<td>兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。</td>
<td>进展缓慢</td>
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<tr>
<td>合 规</td>
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<tr>
<td>中国政府</td>
<td>根据四中全会提出的目标，进一步推动法治进程，为外资和内资企业创造一个统一的、可预测的法律和监管环境。</td>
<td>有所进展</td>
</tr>
<tr>
<td>美国政府</td>
<td>与中方展开双边对话，包括中美商贸联委会会议、战略与经济对话以及美中双边投资协定谈判，共同解决各种合规问题及合规政策的执行问题。</td>
<td>进展明显</td>
</tr>
<tr>
<td>Chapter</td>
<td>2015 Recommendation</td>
<td>Progress Rating</td>
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<tr>
<td>Construction, Engineering, and Design</td>
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<tr>
<td>Chinese Government</td>
<td>Apply more flexibility when reviewing design and construction contracts filed with local authorities to allow use of non-standard forms of contract.</td>
<td>Low Progress</td>
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<tr>
<td>Cosmetics</td>
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<tr>
<td>Chinese Government</td>
<td>Focus on the trend toward global industry harmonization and the limitations of the “Cosmetic Supervision and Administration Rules” during its revision; Reduce technical barriers to trade to prevent trade disruptions and barriers against international cooperation.</td>
<td>Low Progress</td>
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<tr>
<td>Customs</td>
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<tr>
<td>Chinese Government</td>
<td>Strengthen and promote the “Implementation Plan of China Customs for Comprehensively Deepening Reform” and press forward such reforms as the “single window,” regional clearance integration, and paperless customs clearance.</td>
<td>Moderate Progress</td>
</tr>
<tr>
<td>US Government</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>Direct Sales</td>
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<tr>
<td>Chinese Government</td>
<td>Revise service center requirements from one per urban district to one per city and simplify the service center approval process.</td>
<td>Low Progress</td>
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<tr>
<td>Electronic Payment Services</td>
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<tr>
<td>Chinese Government</td>
<td>Formulate market access regulations with reasonable requirements to allow international bank card clearing networks to provide RMB denominated services.</td>
<td>High Progress</td>
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<tr>
<td>Express Delivery Services</td>
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<tr>
<td>Chinese Government</td>
<td>Grant FIEs more opportunities to participate in the regulatory process based on the principal of transparency and provide timely feedback to industry recommendations by holding symposiums or through other channels.</td>
<td>Moderate Progress</td>
</tr>
<tr>
<td>Food and Beverage</td>
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<tr>
<td>Chinese Government</td>
<td>Specify in the revision of the Food Safety Law that the producer of food products and not the retailer should assume primary responsibility in food safety incidents; Ensure regulators examine the entire supply chain.</td>
<td>High Progress</td>
</tr>
<tr>
<td>Government Procurement</td>
<td></td>
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<tr>
<td>Chinese Government</td>
<td>Address the significant remaining gaps in the revised GPA offer and accelerate negotiations toward accession to the GPA.</td>
<td>Low Progress</td>
</tr>
<tr>
<td>章节</td>
<td>2015年《白皮书》主要建议汇总</td>
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<tr>
<td>建筑、工程和设计</td>
<td>中国政府</td>
<td>地方当局审查已备案的设计和建设合同时应当更加灵活。</td>
</tr>
<tr>
<td>化妆品</td>
<td>中国政府</td>
<td>关注《条例》修订的可操作性和行业全球一体化发展的诉求，避免技术壁垒和贸易争端。</td>
</tr>
<tr>
<td>海 关</td>
<td>中国政府</td>
<td>加快推进海关全面深化改革实施方案的具体落实。</td>
</tr>
<tr>
<td></td>
<td>美国政府</td>
<td>N/A</td>
</tr>
<tr>
<td>直销</td>
<td>中国政府</td>
<td>将服务网点设立的要求从每年区/县修订为每年市，简化服务网点审批流程。</td>
</tr>
<tr>
<td>电子支付</td>
<td>中国政府</td>
<td>制定市场准入法规，设定合理要求，允许国际银行卡清算网络提供人民币业务。</td>
</tr>
<tr>
<td>快递服务</td>
<td>中国政府</td>
<td>根据透明原则为外资企业提供更多参与法规制定过程的机会，通过举办研讨会或者其他渠道及时回应业界提出的建议。</td>
</tr>
<tr>
<td>食品饮料</td>
<td>中国政府</td>
<td>新食品安全法中规定食品生产经营者是食品安全第一责任人。确保监管部门对供应链全程实行监督检查。</td>
</tr>
<tr>
<td>政府采购</td>
<td>中国政府</td>
<td>根据本章提出的建议解决修改后的《政府采购协定》出价清单仍然存在的显著差距。</td>
</tr>
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</table>
## Business Climate Overview

<table>
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<tr>
<th>Chapter</th>
<th>2015 Recommendation</th>
<th>Progress Rating</th>
<th>2016 Recommendation</th>
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<tbody>
<tr>
<td><strong>Healthcare Services, Medical Devices, and Pharmaceuticals</strong></td>
<td></td>
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</tr>
<tr>
<td>Chinese Government</td>
<td>Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities, at least for facilities in the same city.</td>
<td>Low Progress</td>
<td>Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities.</td>
</tr>
<tr>
<td>• Healthcare Services</td>
<td>Adopt a risk-based approach for medical device clinical trials.</td>
<td>Low Progress</td>
<td>Adopt a risk-based approach to medical device clinical trials.</td>
</tr>
<tr>
<td>• Medical Devices</td>
<td>Put in place a quality grading system for the tendering process to enhance patient access to innovative and quality drugs.</td>
<td>Moderate Progress</td>
<td>Set up tiered product quality categories based on scientific criteria and internationally accepted standards, including a category for originators/ reference drugs with the highest price premium.</td>
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<tr>
<td>• Pharmaceuticals</td>
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<tr>
<td><strong>High-Tech Trade Promotion and Export Controls</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.</td>
<td>Low Progress</td>
<td>Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.</td>
</tr>
<tr>
<td>US Government</td>
<td>Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.</td>
<td>Moderate Progress</td>
<td>Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.</td>
</tr>
<tr>
<td><strong>Human Resources</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Establish or clarify mechanisms for foreign employees to receive benefits under China’s social insurance programs, or allow foreign employees to opt out of participation.</td>
<td>Low Progress</td>
<td>Establish or clarify mechanisms for foreign employees to receive benefits under China’s social insurance programs, or allow foreign employees to opt out of participation.</td>
</tr>
<tr>
<td><strong>Information and Communications Technology</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Eliminate technology localization mandates and ensure that programs and measures designed to foster innovation and technology development in China are fair, non-discriminatory, transparent, open to foreign participation, and do not distort global markets.</td>
<td>Low Progress</td>
<td>Lift equity cap restrictions on FIEs and market entry barriers to the direct delivery of cloud services.</td>
</tr>
<tr>
<td>Both Governments</td>
<td>N/A</td>
<td>N/A</td>
<td>Actively implement the outcomes from the Xi-Obama state visit, including those regarding the development of appropriate norms of state behavior in cyberspace and refraining from cyber-enabled theft of IP.</td>
</tr>
<tr>
<td><strong>Insurance</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.</td>
<td>Moderate Progress</td>
<td>Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.</td>
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<tr>
<td><strong>Intellectual Property Rights</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties.</td>
<td>Low Progress</td>
<td>Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, and make it available regardless of the level of fame associated with the pirated mark.</td>
</tr>
<tr>
<td><strong>Investment Policy</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Continue to seek and actively consider input from the foreign business community regarding foreign investment management system reform initiatives nationwide and in the various FTZs under development, and regarding proposed revisions to the draft Foreign Investment Law.</td>
<td>Moderate Progress</td>
<td>Rapidly pursue substantial and actionable openings that will allow foreign investors to expand their operations in China.</td>
</tr>
<tr>
<td>Both Governments</td>
<td>N/A</td>
<td>N/A</td>
<td>Pursue the rapid completion of a high-standard BIT that ensures the intended benefits of the treaty can be reached within China’s unique market.</td>
</tr>
<tr>
<td>章节</td>
<td>2015年白皮书主要建议汇总</td>
<td>进展评价</td>
<td>2016年白皮书主要建议汇总</td>
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<tr>
<td>医疗服务、医疗器械和医药</td>
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<tr>
<td>中国政府</td>
<td>• 医疗服务 降低私立医疗机构的纳税税率，允许连锁医疗机构合并现有成熟医疗点和新设医疗点的税收报表。</td>
<td>进展缓慢</td>
<td>降低私立医院税率，允许连锁医院对老医疗结构合并报销。</td>
</tr>
<tr>
<td></td>
<td>• 医疗器械 对医疗器械临床试验采取基于风险的做法。</td>
<td>进展缓慢</td>
<td>采用基于风险的医疗器械临床试验方法。</td>
</tr>
<tr>
<td></td>
<td>• 药物行业 设立招标过程的质量分级制度，提高患者获取创新型高质量药物的能力。</td>
<td>有所进展</td>
<td>在药物招标过程中，依据科学标准和国际通行准则，实施质量分层，并将原研药/首仿药单独设立一个质量层次。</td>
</tr>
<tr>
<td>高科技贸易促进和进口管制</td>
<td></td>
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<tr>
<td>中国政府</td>
<td>加大和中国企业的合作从而促进企业合规计划的实施和提高透明度，籍此获得美国的高科技战略产品。</td>
<td>进展缓慢</td>
<td>加强与中国的沟通，从而促进企业合规计划的实施和提高透明度，籍此获得美国的高科技战略产品。</td>
</tr>
<tr>
<td>美国政府</td>
<td>通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡议。</td>
<td>有所进展</td>
<td>通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡议。</td>
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<td>人力资源</td>
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<tr>
<td>中国政府</td>
<td>在中国社保体系中建立或明确外籍雇员享受福利制度，或者允许外籍雇员不参加社保。</td>
<td>进展缓慢</td>
<td>在中国社保体系中建立或明确外籍雇员享受福利制度，或者允许外籍雇员不参加社保。</td>
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<tr>
<td>信息通讯技术</td>
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<tr>
<td>中国政府</td>
<td>取消技术本地化要求，允许外国企业在公平、非歧视、透明和开放的基础上参与旨在促进中国创新和技术发展的项目和措施。</td>
<td>进展缓慢</td>
<td>上调外资投资企业的股本上限，减少市场进入障碍，以便直接交付云服务。</td>
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<tr>
<td>两国政府</td>
<td>N/A</td>
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<tr>
<td>保险</td>
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<tr>
<td>中国政府</td>
<td>外资保险公司申请设立分支机构时，在审批手续和审批进度上应享受和内资保险公司同等的待遇。</td>
<td>有所进展</td>
<td>外资保险公司申请设立分支机构时，在审批手续和审批进度上应享受和内资保险公司同等的待遇。</td>
</tr>
<tr>
<td>知识产权</td>
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</tr>
<tr>
<td>中国政府</td>
<td>将恶意抢注商标作为判定第三方申请商标无效的明确依据。</td>
<td>进展缓慢</td>
<td>将恶意抢注商标作为判定第三方申请商标无效的明确依据。</td>
</tr>
<tr>
<td>美国政府</td>
<td>分享美国联邦和州的有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。</td>
<td>进展明显</td>
<td>分享美国联邦和州的有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。</td>
</tr>
<tr>
<td>投资政策</td>
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</tr>
<tr>
<td>中国政府</td>
<td>坚持就全国和各自贸区的外资投资管理制度改革计划，就《外国投资法》草案的修订工作，征求并积极考虑外资企业的意见。</td>
<td>有所进展</td>
<td>尽快推动切实可行的开放性政策，允许外国投资者扩大中国的业务。</td>
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<tr>
<td>两国政府</td>
<td>N/A</td>
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<tr>
<td>Chapter</td>
<td>2015 Recommendation</td>
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<tr>
<td><strong>Legal Services</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers and not require them to give up their PRC lawyer’s license when they join a foreign law firm.</td>
<td>Low Progress</td>
<td>Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers and not require them to give up their PRC lawyer’s license when they join a foreign law firm.</td>
</tr>
<tr>
<td><strong>Machinery Manufacturing</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested companies.</td>
<td>Low Progress</td>
<td>Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.</td>
</tr>
<tr>
<td><strong>Media and Entertainment</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control. In particular, reclassify foreign investment in media and entertainment from “restricted” to “permitted” and increase all quotas for foreign films.</td>
<td>Low Progress</td>
<td>Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Increase and then remove all quotas for foreign films.</td>
</tr>
<tr>
<td><strong>Northeast China</strong></td>
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<tr>
<td>Liaoning Government</td>
<td>Further engage with foreign businesses to discuss the regulatory and operational challenges faced in the region and practical solutions moving forward.</td>
<td>Moderate Progress</td>
<td>Create a scheduled plan for further engagement with foreign businesses to discuss the regulatory and operational challenges they face in the region, and find practical solutions for addressing the top challenges presented in this chapter.</td>
</tr>
<tr>
<td><strong>Oil and Gas, Energy, and Power</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Make concrete plans (including a time table and specific steps/milestones) to open upstream acreage/resources to all types of foreign investors – including foreign companies and Chinese private investors. In the near term, provide specific and practical guidelines for foreign investors to participate in the exploration and production of unconventional resources.</td>
<td>Moderate Progress</td>
<td>Strengthen the application of regulations on tendering and bidding activities to ensure a level playing field. [NDRC]</td>
</tr>
<tr>
<td>US Government</td>
<td>Relevant US government agencies, including the Department of State, Department of Energy, and Department of Commerce, should engage their Chinese counterparts to lobby for open acreage and resource access in China for IOCs.</td>
<td>Low Progress</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Real Estate</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Regulatory authorities should work with the real estate industry to deliver robust and timely market data, analysis, and information, in keeping with national initiatives already underway.</td>
<td>Low Progress</td>
<td>Promote a transparent and equitable market to ensure healthy competition and sustainability over the long term.</td>
</tr>
<tr>
<td><strong>Retail and E-Commerce</strong></td>
<td></td>
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</tr>
<tr>
<td>Chinese Government</td>
<td>Regulate the retail industry, in all its business formats, under the same regulatory system, using consistent enforcement standards nationwide.</td>
<td>Moderate Progress</td>
<td>Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across China.</td>
</tr>
<tr>
<td><strong>Shanghai</strong></td>
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<tr>
<td>Shanghai Government</td>
<td>Reduce the number of restrictions on the negative list for the Shanghai FTZ and further engage the American business community on ways it can help drive the reform process.</td>
<td>Moderate Progress</td>
<td>Introduce significant financial service, administrative, and trade facilitation reforms in the China (Shanghai) Pilot Free Trade Zone and reduce restrictions in the negative list that constitute market access barriers, especially in the services area.</td>
</tr>
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## 2016年《白皮书》主要建议一览表

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<tr>
<td><strong>中国政府</strong></td>
<td>修改现行法律法规，允许外国律师事务所雇用中国执业律师并持用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。</td>
<td>进展缓慢</td>
<td>修改现行法律法规，允许外国律师事务所雇用中国执业律师并持用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。</td>
</tr>
<tr>
<td><strong>机械制造业</strong></td>
<td>取消对外资企业投资机械制造业的限制，并给予外资与内资企业同等待遇。</td>
<td>进展缓慢</td>
<td>取消对外资企业投资机械制造产业的限制，给予内外资企业同等待遇。</td>
</tr>
<tr>
<td><strong>传媒娱乐</strong></td>
<td>减少各类外国媒体进入中国市场的非关税壁垒，减少外国媒体提供商的市场准入壁垒，包括媒体审查与控制。特别是要将媒体与娱乐业的外国投资由“限制”改为“允许”，增加外国电影的整体配额。</td>
<td>进展缓慢</td>
<td>减少各类外国媒体进入中国市场中的非关税壁垒，减少外国媒体提供商的市场准入壁垒。增加外国电影的整体配额，并逐渐取消配额限制。</td>
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<tr>
<td><strong>中国东北</strong></td>
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<tr>
<td><strong>辽宁省</strong></td>
<td>继续邀请外资企业讨论其在该地区经商所面临的法律和运营挑战，共商具有操作性的解决方案。</td>
<td>有所进展</td>
<td>制定一份与外资企业讨论其在该地区所面临的监管和经营挑战的计划，找到这一章节中提到的主要挑战的解决方案。</td>
</tr>
<tr>
<td><strong>石油、能源和电力</strong></td>
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<tr>
<td><strong>中国政府</strong></td>
<td>制定关于包括外资企业在内的各类投资者开放上游区块/资源的具体计划（包括时间表和具体步骤及重大节点）。近期内针对外国投资者参与非常规资源勘探的开发制定具体可行的办法。</td>
<td>有所进展</td>
<td>加强相关法规在招投标活动中的落实，以确保建立公平的竞争环境。[国家发改委]</td>
</tr>
<tr>
<td><strong>美国</strong></td>
<td>包括国务院、能源部和商务部在内的美国相关政府部门应该积极与中国对口部门联络，游说对国际石油公司开放更多油气区块和资源。</td>
<td>进展缓慢</td>
<td>N/A</td>
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<tr>
<td><strong>房地产</strong></td>
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<tr>
<td><strong>中国政府</strong></td>
<td>监管机构应与房地产行业协作以提供详实及时的市场数据、分析资料和信息，从而与已经开展的国家举措保持同步。</td>
<td>进展缓慢</td>
<td>提升市场透明度和公平度，确保市场健康竞争和长期可持续发展。</td>
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<tr>
<td><strong>零售业和电子商务</strong></td>
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<tr>
<td><strong>中国政府</strong></td>
<td>将各种形式的零售业务模式纳入统一的监管体系，实行全国统一的执行标准。</td>
<td>有所进展</td>
<td>在全国范围内对零售业，包括所有经营模式，适用统一监管制度，实施持续稳定的标准。</td>
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<tr>
<td><strong>上海</strong></td>
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<tr>
<td><strong>上海市政府</strong></td>
<td>减少中国（上海）自由贸易试验区负面清单中的限制，提高美资企业帮助推进改革进程的参与度。</td>
<td>有所进展</td>
<td>在中国（上海）自由贸易试验区出台重要的金融服务、行政贸易便利化改革措施，减少负面清单中构成市场准入障碍的限制，尤其是在服务领域。</td>
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<tr>
<td>Chapter</td>
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<td>Progress Rating</td>
<td>2016 Recommendation</td>
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<tr>
<td><strong>Standards, Certification, and Conformity Assessment</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Broaden recognition of international SDOs beyond the ISO, IEC, and ITU to any organization which follows the WTO/TBT principles on international standards development.</td>
<td>Moderate Progress</td>
<td>Broaden recognition of international SDOs beyond the ISO, IEC, and ITU to any organization which follows the WTO/TBT principles on international standards development.</td>
</tr>
<tr>
<td><strong>Tax Policy</strong></td>
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<tr>
<td>Chinese Government</td>
<td>The SAT should increase the number of employees in its Anti-avoidance Division.</td>
<td>Low Progress</td>
<td>Provide taxpayers and tax authorities at all levels with detailed guidance on the implementation of Public Notice 16.</td>
</tr>
<tr>
<td><strong>Tianjin</strong></td>
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<tr>
<td>Tianjin Government</td>
<td>Provide a clear roadmap for Tianjin’s role in the regional integration strategy with Beijing and Hebei province, including a strategic plan to endorse certain sectors in which Tianjin has or can gain competitive advantage, such as service industries, in the broader region.</td>
<td>Moderate Progress</td>
<td>Market Tianjin to foreign investors through the use of a professional PR agency and by coordinating with foreign business chambers as first steps in order to help address the challenges of 2015, including the slowdown of economic growth and general market instability.</td>
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<tr>
<td><strong>Visa Policy</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Shorten the holding period of passports by the PSB when processing residence permits from 15 to five working days.</td>
<td>Moderate Progress</td>
<td>Shorten the holding period of passports by the PSB when processing residence permits from 10 to five working days.</td>
</tr>
<tr>
<td>US Government</td>
<td>Add at least four visa-issuing posts in China.</td>
<td>Low Progress</td>
<td>Add at least four additional visa-issuing posts in China.</td>
</tr>
<tr>
<td><strong>Work Safety</strong></td>
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<tr>
<td>Chinese Government</td>
<td>Place high attention on work safety issues emerging as a product of accelerated urbanization, prioritizing aerial work safety in all industrial sectors, particularly the construction industry.</td>
<td>Low Progress</td>
<td>Continue to emphasize work safety legislation and enforcement at the highest government levels with a focus on work at height.</td>
</tr>
<tr>
<td>US Government</td>
<td>Collaborate with the Chinese government and industry experts in sharing the latest laws and regulations for work at height.</td>
<td>Low Progress</td>
<td>Facilitate the sharing of the most recent work at height laws and regulations in the US (e.g., the 2016 revisions of the ANSI work at height standards) with the Chinese government, and continue to advocate through the SCWSC and SAWS for a consistent set of work at height standards across industries.</td>
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<tr>
<td><strong>Wuhan</strong></td>
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<tr>
<td>Hubei and Wuhan Governments</td>
<td>Provide transparent and equal enforcement of government rules and regulations.</td>
<td>Low Progress</td>
<td>Provide more transparent and uniform enforcement of government rules and regulations.</td>
</tr>
<tr>
<td>US Government</td>
<td>Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.</td>
<td>Moderate Progress</td>
<td>Increase the services available to both US and Chinese citizens at the US Consulate General in Wuhan.</td>
</tr>
</tbody>
</table>
### 章节 2015年《白皮书》主要建议汇总 进展评价 2016年《白皮书》主要建议汇总

#### 标准、认证和许可

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<tr>
<th>政府</th>
<th>2015年《白皮书》主要建议内容</th>
<th>进展评价</th>
<th>2016年《白皮书》主要建议内容</th>
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</thead>
<tbody>
<tr>
<td>中国政府</td>
<td>扩大对国际标准制定组织的认可范围，从ISO、IEC和ITU扩大至其他遵循世贸组织贸易技术壁垒协议（WTO/TBT）关于国际标准制定原则的标准制定组织。</td>
<td>有所进展</td>
<td>扩大对国际标准制定组织的认可范围，从ISO、IEC和ITU扩大至其他遵循世贸组织贸易技术壁垒协议（WTO/TBT）关于国际标准制定原则的标准制定组织。</td>
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#### 税收政策

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<th>进展评价</th>
<th>2016年《白皮书》主要建议内容</th>
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<tbody>
<tr>
<td>中国政府</td>
<td>国家税务总局应增加反避税处工作人员数量。</td>
<td>进展缓慢</td>
<td>向纳税人和各级税务机关提供第16号公告实施细则。</td>
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</table>

#### 天津

<table>
<thead>
<tr>
<th>政府</th>
<th>2015年《白皮书》主要建议内容</th>
<th>进展评价</th>
<th>2016年《白皮书》主要建议内容</th>
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<tbody>
<tr>
<td>天津市政府</td>
<td>制定一套清晰的路线图，确保在京津冀区域一体化战略中的作用，包括支持服务业和天津具有的或者能够获得竞争主优势的产业在该地区发展的战略计划。</td>
<td>有所进展</td>
<td>首先，通过专业公关机构向外国投资者推介天津，与外国商会协调行动，共同应对2015年面临的包括经济增长放缓和市场反应存在的困难等挑战。</td>
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#### 签证政策

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</thead>
<tbody>
<tr>
<td>中国政府</td>
<td>把公安机关处理居留许可时留存申请人护照的期限从15缩短为5个工作日。</td>
<td>进展缓慢</td>
<td>将公安管理部门受理居留许可申请的时间从10个工作日缩短至5个工作日。</td>
</tr>
<tr>
<td>美国政府</td>
<td>中国至少再增加四至五处签证申发地。</td>
<td>进展缓慢</td>
<td>在中国至少增设四个签证签发点。</td>
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#### 安全生产

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<th>2016年《白皮书》主要建议内容</th>
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<tbody>
<tr>
<td>中国政府</td>
<td>高度关注城镇化过程中的安全生产问题，重点是加强建筑行业和工业行业领域的高空作业安全监管。</td>
<td>进展缓慢</td>
<td>继续强化安全生产的立法和执行，并重点关注高空作业的立法和执行。</td>
</tr>
<tr>
<td>美国政府</td>
<td>与中国政府和行业专家进行合作，分享最新的高空作业法律和法规。</td>
<td>进展缓慢</td>
<td>进一步与中国政府分享美国最新的高空作业安全法律和法规（如2016年新修订的美国国家标准学会高空作业标准），并继续通过中国国家安委会和国家安全总局建议建立一套跨行业的高空作业安全统一标准。</td>
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#### 武汉

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<tr>
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<th>2015年《白皮书》主要建议内容</th>
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<tr>
<td>湖北省与武汉市市政府</td>
<td>实现透明和公正的政府法规实施。</td>
<td>进展缓慢</td>
<td>提高政府法规透明度和一致性。</td>
</tr>
<tr>
<td>美国政府</td>
<td>扩大美国驻武汉领事馆对美国和中国公民的服务范围。</td>
<td>进展缓慢</td>
<td>扩大美国驻武汉领事馆对美国和中国公民的服务范围。</td>
</tr>
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</table>
Part Two: Industrial Policy and Market Access
产业政策和市场准入
Introduction

Business sustainability involves companies developing and implementing strategies that are economically, socially, and environmentally sustainable. Companies that adopt a comprehensive sustainability approach integrate the impact of their activities on local communities and the environment into their strategic decision making. Social, non-profit, inter-governmental, and non-governmental organizations (hereafter collectively referred to as NGOs) play a crucial role in fostering sustainable business practices by:

1. providing an independent source of accountability and expertise for businesses and governments, and
2. partnering with businesses and governments in local communities to provide support and services to implement sustainability and community engagement initiatives.

Although an increasing number of businesses actively seek out opportunities to partner with NGOs in China, the current regulatory environment still limits deeper partnerships and more impactful outcomes.

A thriving non-profit sector can contribute significantly to solving China’s broader sustainability challenges for the benefit of the Chinese people as well as businesses. These benefits include: helping to provide an educated and healthy workforce, improving and protecting the environment, expanding access to services such as health and finance, advocating for food safety, developing productive labor relations, fostering active participation in society through volunteerism, providing social services to marginalized populations, and supporting the government in monitoring corporate compliance.

The US and many other countries, with long traditions of philanthropy, have active civil society sectors that work effectively with both the government and businesses to address local and national issues. Though China’s rapid growth has produced many economic, social, and environmental challenges, there is an opportunity to unleash the potential of this sector to make positive contributions, especially in the area of sustainable development.

Ongoing Regulatory Issues

Despite some progress, there are a number of challenges facing NGOs in China, including the following regulatory issues:

Registration Process and Taxes

NGOs are required to register at local civil affairs bureaus in each province in which they want to open a branch. However, many types of NGOs are unable to register because they cannot obtain the necessary acquiescence by a government entity to sponsor or supervise them, or struggle to register due to the lack of a transparent process, inconsistent criteria, and lack of capacity by local civil affairs bureaus. Positive reforms to registration regulations that have been made over the past two years have been limited to NGOs working in certain favored fields (e.g., service provision) and regions (e.g., Guangdong) and vary widely across the country. Moreover, most of these reforms are not relevant to international NGOs. Moreover, even registered NGOs in all but a few cases are required to pay taxes on the donations they receive. Such restrictions could make it more difficult for businesses to find suitable NGOs that can operate nationwide and increase the financial burden on NGO partners.

Restrictions on Public Fundraising

Only a very limited number of domestic NGOs (including public foundations) and their partners that are directly supervised by government agencies are allowed to publicly fundraise (international NGOs may not do so). This handicap restricts their ability to grow and expand their competence as full-fledged partners with businesses. In pilot cities that are experimenting with somewhat relaxed fundraising restrictions, such as Guangzhou, domestic NGOs are being allowed to raise funds from the public. This could lead to wider fundraising capabilities by domestic NGOs and eventually be expanded to international NGOs.

Limitations on Tax Deductions for Individuals and Corporations

With the exception of NGOs directly supervised by the government, tax deductibility benefits are generally not available for donations to NGOs. We are concerned that this
企业可持续性和社区参与

引言

企业可持续性是指企业制定和实施的具有经济、社会和环境可持续性的战略。奉行全面可持续政策的企业在制定战略决策时，会考虑企业活动对本地社区和环境的影响。由社会、非营利、政府间或非政府组织（以下统称为“非政府组织”）能够：①向企业和政府提供独立来源的责任和专业知识，并且②与本地社区的企业和政府合作为可持续和社区参与项目提供支持和服务，从而促进可持续方面发挥至关重要的作用。

在中国，虽然有越来越多的企业开始寻求机会与非政府组织合作，但是，目前的监管环境仍然制约着双方进一步的合作，削弱了合作产生的更深远的影响。

兴旺繁荣的非盈利组织有助于大大缓解中国面临的可持续发展的挑战，符合中国民众和企业的利益。具体的好处包括：提高劳动力的教育和健康水平、改善和保护环境、扩大医疗和金融服务行业的准入、倡导食品安全、发展有助于提高生产力的劳资关系、通过志愿服务推动社会的积极参与、向边缘化群体提供社会服务、支持政府对企业合规的监督等。

在美国和其他许多国家，慈善有着悠久的历史，公民社会的各个领域与政府和企业积极合作，独立地解决本地和全国性的问题。虽然中国面临诸多经济、社会和环境挑战，本地民间组织的数量也迅速增加，但是中国有机会释放这一领域的潜力，使其做出更大的贡献，特别是在可持续发展方面。

现存监管问题

虽然有所进展，但是，中国的非政府组织仍然面临一系列长期挑战，具体包括以下监管问题：

登记程序和税费

非政府组织需要在北京设立分支机构的省份的民政部门登记。然而，因为无法取得政府机构支持或监督的必要支持，很多类别的非政府组织无法完成登记，或者因为当地民政部门缺少透明的程序、一致的标准以及必要的能力而让登记变得异常困难。在过去的两年中，登记领域方面的改革只局限于特定领域（例如，服务提供）和地区（例如，广东），且全国范围来看差异很大。而且，很多改革没有涉及到国际非政府组织，另外，即使是已经登记的非政府组织，在很多情况下也需要为其收到的捐赠缴纳税费。上述限制使得企业很难找到合适的能够在全国范围内开展活动的非政府组织，增加了非政府组织合作伙伴的财务负担。

限制公开募款

只有数量有限的由政府机构直接监管的境内非政府组织（包括公共基金会）及其合作伙伴可以公开筹集资金（国际非政府组织不可以这么做）。这一限制制约了非政府组织的融资以及和企业开展全面合作的能力。在募款限制稍有放松的城市，如广州，已经允许募内非政府组织向公众募集资金。我们希望，这能进一步拓宽境内非政府组织的筹资能力，并且最终延伸到国际非政府组织。

限制个人和企业减税

除了政府直接监管的非政府组织，其他非政府组织收到的捐赠通常没有减税待遇。我们担心这会妨碍慈善事业的发展，制约公民社会的参与，缩小了能够获得企业捐款的非政府组织的范围。

非政府组织缺少政府支持

虽然中央政府提出要提高社会组织在中国社会中的作用，许多地方政府部门，特别是民政部门，却以涉及国家安全、维护社会稳定和非政府组织工作范围的敏感性质（例如
discourages philanthropy, limits the participation of civil society, and restricts the pool of NGOs to which businesses are allowed to provide funds.

**Uneven Government Support of NGOs**

Contrary to messaging from the central government calling for an enhanced role for social organizations in Chinese society, many local government departments across the country, particularly civil affairs departments, have cracked down on NGOs for reasons regarding national security, maintenance of social stability, and the reportedly sensitive nature of various NGOs’ scope of work (e.g., ensuring the enforcement of anti-discrimination or labor laws). One of the long-term issues is a general lack of awareness, trust, and support for civil society within some parts of the Chinese government. We hope that the Chinese government at all levels will recognize the role that civil society can play in enhancing social stability, contributing to China’s reform agenda, and serving as trustworthy, capable, and credible partners to the business community.

**Recent Developments**

Two important regulatory developments in 2015 will have significant impact on business-NGO relationships going forward: the Draft NGO Law and the Draft Charity Law.

**Draft NGO Law**

On May 5, 2015, China released for public comment the “Foreign Non-Governmental Organization Management Law of the People’s Republic of China (Second Reading for Comments)” (Draft NGO Law). As previously detailed in a Joint Submission to the National People’s Congress by AmCham China and the U.S. Chamber of Commerce, AmCham China members are concerned about the breadth and content of the Draft NGO Law because it has the potential to seriously disrupt the operations of a wide variety of organizations that provide positive and important services to China and its people.

Foreign NGOs are integral to AmCham China members’ daily operations in China. Our members frequently work with foreign industry associations, universities, environmental organizations, science and technology institutes, and other organizations for such purposes as information sharing, research, market development, and innovation creation. These foreign NGOs also play a critical role in guiding and implementing business sustainability and community engagement activities of commercial enterprises – both foreign and Chinese.

In many respects, the Draft NGO Law could undermine China’s efforts to increase its soft power and recent progress in people-to-people exchanges. Furthermore, as China’s domestic NGOs seek to establish a presence overseas, China should reciprocate by welcoming foreign NGOs in China. Of specific concern are:

- the overly broad definition of NGOs which covers not only NGOs in the conventional sense but universities, international professional associations and interest groups, artistic groups, athletic associations, and others (as specified in Article 2),
- the shift towards the Ministry of Public Security as main regulator and a move away from sector-specific industry supervisory units towards a security-focused registration and supervision system (as specified in Articles 7, 47, 57, 59, and 62), and
- the new registration process for foreign NGOs that presents excessive administrative and financial burdens which will reduce the capacity of many foreign NGOs to conduct their activities in China (as specified in Article 11).

AmCham China members respect the right of the Chinese government to regulate foreign NGOs within the country but, at the same time, are concerned that the Draft NGO Law in its present form will limit their ability to conduct activities which aim to contribute to China’s development.

**Draft Charity Law**

On October 31, 2015, the “Charity Law of the People’s Republic of China (Draft)” (Charity Law) was released for public comment. AmCham China commends the Chinese government for moving forward on this landmark legislation which aims to strengthen China’s philanthropic sector and clarify rights and responsibilities of NGOs, donors, beneficiaries, and the government. Specifically, it aims to ease and unify the registration process for NGOs (abandoning the dual registration process), promote public reporting and disclosure obligations of local governments and NGOs, ease approval for public and non-public fundraising (e.g., non-public fundraising directly after registration, public fundraising after second year of operation and with approval from the Ministry of Civil Affairs), and clarify tax exemption and deduction procedures.

AmCham China is hopeful that many of the challenges faced by NGOs outlined in this chapter will be addressed once the Charity Law comes into full effect. However, as the law must undergo three rounds of review, and is not expected to enter effect until 2017 (or even later), we do hope that many of these challenges may be proactively resolved or minimized in the interim. AmCham China appreciates the opportunity to submit a more formal review and comments on the first draft of the Charity Law in a separate document.
如，确保反歧视或劳动法的执行等理由，对非政府组织进行打击。长期以来，中国的一些地方政府对公民社会缺乏认识、信任和支持。我们希望中国各级政府都能认识到公民社会在促进社会稳定、推进中国改革进程、为企业界提供可靠、可靠、可信的合作伙伴等方面发挥的作用。

最新进展

2015 年，监管方面的两个重要进展将对企业与非政府组织关系产生重要影响，即：《非政府组织法》草案和《慈善法》草案的进展。

《非政府组织法》草案

2015年4月4日，中国发布《中华人民共和国境外非政府组织管理条例》（草案二次审议稿）（《非政府组织法》草案），向社会各界公开征求意见。正如中国美国商会和美国商会之前联合向全国人大提交的意见中所指的，中国美国商会的会员企业对《非政府组织法》草案的范围和内容表示担心，因为它有可能对积极向中国和中国民众提供重要服务的各类组织的运营造成严重破坏。

境外非政府组织对于中国美国商会会员企业在华开展日常运营不可或缺。我们的会员企业经常与境外的行业协会、大学、环保组织、科研机构和其他组织在信息共享、研究、市场开发以及创新和创造方面开展合作。这些境外非政府组织在指导中外企业开展企业可持续性和社区参与活动方面也发挥着至关重要的作用。

在中国方面而言，《非政府组织法》草案将会破坏中国提高自身软实力的努力以及在民间交流方面取得的进展。而且，随着中国境内的非政府组织寻求在海外发展，中国应当警惕，对在华的境外非政府组织表示欢迎。我们的担心具体包括：

- 非政府组织的定义过于宽泛，不仅涵盖传统意义上的非政府组织，还包括大学、国际专业协会和利益集团、艺术团体、运动协会及其他组织（见第2条）；
- 改由公安部作为主要的监管机构，由特定行业监管单行改为注重安全的登记监管制度（见第7条、第47条、第57条和第59条）；
- 境外非政府组织新的登记程序将可能造成沉重的管理和财务负担，降低许多境外非政府组织在华开展活动的能力（见第11条）。

中国美国商会的会员企业尊重中国政府管理在华境外非政府组织的权利，但是担心《非政府组织法》草案，按照现在的形式，将会限制它们开展旨在推动中国发展活动的能力。

《慈善法》草案

2015年10月29日，《中华人民共和国慈善法（草案）》（《慈善法》草案）公布，向社会各界公开征求意见。中国美国商会赞赏中国政府推动制定这一具有里程碑意义的法规。这法旨在加强中国的慈善事业，明确非政府组织、捐赠人、受益人和政府部门的权利和责任。特别是，该法希望简化和统一非政府组织的登记程序（放弃双重登记），推动地方政府和非政府组织履行公告和披露义务，简化公开和非公开募款的审批要求（例如，完成登记后即可进行非公开募款），并且明确税收减免程序。

中国美国商会预计，《慈善法》生效实施之后，此处所说的非政府组织面临的诸多挑战将能够得到解决。不过，因为法律必须经过三轮审查，估计此法在2017年（或者更晚）才会生效，所以，我们希望中国在此之前能采取积极举措解决这些挑战。中国美国商会很荣幸有机会针对《慈善法》初稿提交正式的评论和意见。

建议

对中国政府：

- 根据中国美国商会和其他国际和国内利益相关方的意见修改《非政府组织法》草案。[民政部、公安部]
- 2017年之前颁布《慈善法》。[民政部]

对美国政府：

- 在与中国相关政府机构交换意见时继续重申对《非政府组织法》草案的关注。[国务院]
- 扩大分享与公民社会组织透明度和评级有关的最佳实践做法，提高公民社会市场的开放性、竞争性和透明度。[国税局、国务院]
- 直接或者通过美国非政府组织间接加大对在华公民社会组织的财务支持。[国务院]
Recommendations

For the Chinese Government:

• Revise the Draft NGO Law to incorporate the concerns raised by AmCham China and many other international and domestic stakeholders. [MoCA, MPS]
• Enact the Charity Law by 2017. [MoCA]

For the US Government:

• Continue to reiterate concerns regarding the Draft NGO Law in exchanges with relevant government stakeholders in China. [DOS]
• Expand sharing of best practices on civil society organizations’ transparency and ratings approaches to foster an open, competitive, and transparent civil society marketplace. [IRS, DOS]
• Expand financial support for civil society organizations in China directly or indirectly through US NGOs. [DOS]
• Establish a mechanism to support US civil society organizations wishing to enter China, or to support those already operating in China, and find ways to encourage those organizations to work through multi-stakeholder platforms that involve civil society organizations, rather than working solely with government-affiliated organizations or public institutions such as universities. [DOS]
建立一种机制，对希望进入中国或者已经在华开展运营的美国公民社会提供支持，采取措施鼓励这些组织通过包含公民社会组织等多个利益相关方的平台开展工作，而不是单纯依赖政府的附属组织或大学等公共机构。[国务院]
Introduction

In 2015, China’s antimonopoly regulators – the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC) – enforced the Anti-Monopoly Law (AML) to regulate competition in China. In particular, AmCham China welcomes MOFCOM’s successful development of the simple merger review procedure and the partial lifting of its unique hold-separate remedy.

Despite this progress, concerns persist regarding:
- the disproportionately heavy role of industrial policy in AML enforcement;
- insufficient transparency and observance of due process in investigations (particularly those led by the NDRC);
- insufficient appreciation with respect to the exercise of intellectual property rights (IPR); and
- selective admittance of foreign counsel to meetings and hearings with relevant enforcement authorities (especially in the NDRC).

The NDRC is aware of these concerns and appears to be open to addressing them (see discussion below related to NDRC enforcement activities).

Ongoing Regulatory Issues and Updates

MOFCOM’s Enforcement Activities

AmCham China congratulates MOFCOM for taking important steps in 2015 to streamline and accelerate its merger review process. Most notably, MOFCOM has restructured its review teams and successfully continued to develop the simple procedure introduced in 2014.

In September 2015, MOFCOM eliminated the previous system by which pre-acceptance and subsequent merit reviews were undertaken by separate teams. To improve efficiency and develop industry-specific expertise in each review division, MOFCOM transformed its Consultation Division – previously responsible only for pre-acceptance review – into a third merit review team, together with what was formerly known as the Legal and Economics Divisions. Renamed Divisions One (formerly Legal), Two (formerly Economic), and Three (formerly Consultation), each division will now be individually responsible for the entire review of a given case, from pre-acceptance to conclusion. This will eliminate inefficiencies created by requiring two separate teams to learn the background of the products and competitive landscapes unique to each case. Moreover, cases involving the same industries (e.g., semiconductors, aviation, pharmaceuticals) can be consistently referred to a single division, increasing the level of expertise and decreasing the time needed for review. AmCham China commends MOFCOM for these important steps.

MOFCOM’s simplified review procedure also received significant acceptance and appreciation from the business community at large. Introduced in the first half of 2014, the simple procedure significantly reduced the review time for cases that do not present material competition or industrial policy concerns. Through December 2015, 240 simple cases have been cleared unconditionally, an average of 60 cases per quarter. The table below details MOFCOM’s average review pace in the simplified procedure:

<table>
<thead>
<tr>
<th>2015</th>
<th>Cases Cleared in Phase I / Total Cases Cleared</th>
<th>Percentage</th>
<th>Average Time to Clearance (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>35/42</td>
<td>83</td>
<td>29.3</td>
</tr>
<tr>
<td>Q2</td>
<td>61/71</td>
<td>86</td>
<td>32.2</td>
</tr>
<tr>
<td>Q3</td>
<td>52/60</td>
<td>86</td>
<td>28.1</td>
</tr>
<tr>
<td>Q4</td>
<td>64/67</td>
<td>96</td>
<td>25.7</td>
</tr>
<tr>
<td>Total</td>
<td>212/240</td>
<td>88</td>
<td>28.8</td>
</tr>
</tbody>
</table>

As shown in the table above, during 2015, most simple cases were concluded within 30 days. The shortest review took only 11 days, and cases were commonly cleared within 20 days. In the longest example, Toyota Industries Corporation waited 162 days for MOFCOM’s approval of its bid for a 55 percent stake in LT Wuliao Banyun Holdings. Meihua Group’s acquisition of Ningxia Eppen
引言

2015年，中国的反垄断监管部门——商务部、国家发展和改革委委员会（发改委）和国家工商总局（工商总局）展开《反垄断法》执法，监管中国竞争状况。特别是对于商务部成功出台、实施简易并购审查程序，并部分取消其特有的“保持独立”的救济措施，中国美国商会表示欢迎。

尽管中国已取得了上述进展，但依然存在如下问题：
1. 产业政策在《反垄断法》执法过程中影响力过大；
2. 调查程序缺乏透明度且不能完全奉行程序正义（发改委调查案件中尤为突出）；
3. 执法中对知识产权保护不够重视；
4. 相关执法部门（特别是发改委）选择性地允许外国律师参加会议和听证，但发改委已认识到上述问题并且对解决这些问题表现出开放的姿态（见下文“发改委的执法活动”一节的相关论述）。

现存监管问题和最新进展

商务部的执法工作

中国美国商会祝贺商务部在2015年推出多项重要举措改进并加快并购审查速度。特别值得一提的是，商务部完成了审查人员和机构调整，并继续推进2014年引进的简易程序实施工作。

2015年9月，商务部摒弃了之前立案前审查和实质审查分别由不同处室负责的机构设置。为了提升每个审查处室的工作效率和行业专门知识水平，商务部将其原来仅负责立案前审查的处室（即商谈处）调整为第三个负责实质审查的处室，另外两个实质审查的处室分别为原法律处和原经济处。调整后的三个处室分别为审查一处（原法律处）、审查二处（原经济处）和审查三处（原商谈处），这三个处室如今分别单独负责相应案件的整个审查过程，从立案前审查到结案。这避免了因为要求两个处室都需学习因案件不同的产品背景和竞争格局而导致的低效率。另外，这种安排还可以使涉及同一行业的案件（如半导体、航空和医药行业）归口到同一个处室审查，从而有助于提升审查所需的专业水平，并缩短审查时间。中国美国商会对商务部作出以上重要调整表示赞赏。

商务部的简易审查程序也获得了业内的广泛认可和好评。简易审查程序于2014年上半年起实施，大大缩短了不具有重大竞争或产业政策问题案件的审查时间。截至2015年12月，商务部共无条件批准简易案件240件，平均每季度60件。下表详细列出了商务部简易案件审查的平均速度：

<table>
<thead>
<tr>
<th></th>
<th>审结案件 / 全部审结案件</th>
<th>比例</th>
<th>平均结案时间（天）</th>
</tr>
</thead>
<tbody>
<tr>
<td>第一季度</td>
<td>35 / 42</td>
<td>83</td>
<td>29.3</td>
</tr>
<tr>
<td>第一季度</td>
<td>61 / 71</td>
<td>86</td>
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<td>28.1</td>
</tr>
<tr>
<td>第一季度</td>
<td>64 / 67</td>
<td>96</td>
<td>25.7</td>
</tr>
<tr>
<td>总计</td>
<td>212 / 240</td>
<td>88</td>
<td>28.8</td>
</tr>
</tbody>
</table>

如上表所示，2015年全年绝大部分简易案件都在30天内审结。最快的一次审查仅用时11天，且案件经常在20天内批准。就用时最长的案件看，丰田自动织机等了162天获得商务部对其竞标收购LT物料搬运控股有限公司55%股权的批准。梅花生物科技集团收购宁夏伊品生物科技案审查时间超过了120天，同时进一步延长了第二阶段审查的时间。

总体而言，无争议案件的审结时间得到大幅度缩减，中国美国商会对商务部执行并不断完善上述制度表示赞赏。
Biotech, which took more than 120 days, also extended the Phase II review period.

Overall, review times for non-controversial cases have substantially improved, and AmCham China commends MOFCOM for implementing this increasingly effective system. However, simple case applications, especially those based on market share thresholds, experience longer pre-acceptance reviews. In addition, MOFCOM’s broad discretion to accept or reject a simple case application creates substantial uncertainty for parties considering whether to apply. A rejection from MOFCOM could cause parties to lose significant time, as they would need to restart the entire review procedure. MOFCOM should follow the bright-line rules for published acceptances (rather than reserving total discretion to accept or reject a case), or eliminate the timing penalty for cases that must be converted from the simple to the ordinary procedure.

Conditional Decisions

Through December 2015, MOFCOM completed review of 1,634 cases. Of these, MOFCOM unconditionally cleared 1,509 (92 percent), imposed remedies in 26 cases, and blocked two. The number of merger notifications grew substantially in 2015: MOFCOM received 338 notifications and concluded 312, increases of 37 and 27 percent, respectively, compared to 2014. Although 2015 witnessed a significant increase in the number of merger filings, according to MOFCOM, the time taken to handle a case fell by 14 percent on an average.

Restrictive conditions were imposed on Nokia’s acquisition of Alcatel-Lucent (Nokia/ALLU) and on NXP’s acquisition of Freescale (NXP/Freescale).

- Nokia/ALLU: On October 19, 2015, MOFCOM published its conditional approval, raising no competitiveness concerns, but expressed concern over the licensing market for communication standard-essential patents (SEPs), and required Nokia to: 1) on a reciprocal basis, not prevent implementation of fair, reasonable, and non-discriminatory (FRAND) principles for SEPs by seeking injunctions, unless FRAND licensing terms had already been offered but rejected by the potential licensee; 2) promptly notify existing Chinese licensees after a transfer of SEPs to a third party; and 3) only transfer its SEPs if the new owner accepts the FRAND obligations already binding on Nokia. MOFCOM was the only competition regulator to impose any conditions on the transaction, although it was reviewed in all major jurisdictions, including the US, EU, Brazil, and Japan.

- NXP/Freescale: On November 27, 2015 MOFCOM published its conditional approval, raising competitiveness concerns on the radio frequency (RF) power transistor product market. Given that the parties’ market shares are far larger than their competitors, MOFCOM concluded that the transaction would further strengthen NXP’s market power in this segment, remove the fierce competition between the top two market players, reduce options for customers and increase procurement risks, as well as further increase barriers to entry. Based on these conclusions, MOFCOM required NXP to divest its RF power transistor business to a Chinese asset management company selected by NXP, and to ensure the continuity, competitiveness, and merchantability of the divested business, including providing transitory services during the interim. The conditions imposed were identical to those required by other mature competition regulators, such as the US Federal Trade Commission and the European Commission.

For the first time, MOFCOM modified conditions imposed on previously approved transactions in 2015. On January 9, 2015, MOFCOM removed the equal-treatment condition imposed on Google’s acquisition of Motorola Mobility in 2012, which stated that Google should treat all original equipment manufacturers in a non-discriminatory way with respect to its Android platform. The removal of this condition largely resulted from Lenovo’s acquisition of Motorola’s smartphone manufacturing business. After completion of the Lenovo/Motorola deal in October 2014, MOFCOM determined that Google would no longer be engaged in any smartphone manufacturing-related business. Hence the equal-treatment condition could be lifted, although the other conditions remain effective.

Removal of Hold-Separate Remedies

In October 2015, MOFCOM announced the removal of hold-separate remedies imposed on Western Digital/Hitachi and Seagate/Samsung. In Western Digital/Hitachi, the removal was only partial, with hold-separate obligations remaining for sales and brands. In Seagate/Samsung, MOFCOM lifted the hold-separate remedy entirely.

MOFCOM’s hold-separate remedy was a new and unique merger-control tool first introduced in late 2011 in two separate decisions involving the nearly simultaneous global acquisitions of hard disk drive (HDD) businesses by Western Digital and Seagate. MOFCOM approved the two transactions but imposed conditions that, inter alia, strictly required the acquirer to indefinitely maintain the independence of the target with respect to all aspects of the target company’s business (essentially prohibiting integration), including research and development (R&D), production, procurement, sales and marketing, and other functions. The remedies applied to the businesses globally, and monitoring trustees were appointed to ensure strict compliance.

The procedures to remove the remedies took substantially longer than generally anticipated (more than two years). During each review, MOFCOM met with the applicants multiple times to discuss removal and required the applicants to submit detailed evidence. MOFCOM engaged its
但是简易案件申请，特别是基于市场份额门槛的案件，需要经历较长的立案前审查期。另外，商务部在决定是否受理一项简易案件的申请上拥有宽泛的自由裁量权，这给相关主体在考虑是否申请简易案件审理上造成很大的不确定性。一旦商务部决定驳回申请，相关主体将花费更多时间，因为他们需要重新启动整个审查程序。商务部应当对公示的受理申请的案件适用明线规则（而不是完全保留受理或拒绝单一案件申请的自由裁量权），或者取消对简易程序转普通程序案件的时间惩罚。

**附条件批准**

截至2015年12月，商务部共审结1634件案件。其中无条件批准1509件（占92%），附加限制性条件批准26件，禁止2件。2015年经营者集中申报数量大幅上升：商务部共收到338个申报，审结其中312个，分别比2014年增长37%和27%。商务部表示，尽管2015年经营者集中申报数量大幅上升，但案件平均审结时间却下降了14%。

在诺基亚收购阿尔卡特朗讯案（诺基亚／阿尔卡特朗讯案）和恩智浦收购飞思卡尔案（恩智浦／飞思卡尔案）中，商务部分别予以附加限制性条件。

- **诺基亚／阿尔卡特朗讯案**：2015年10月19日，商务部公布对该案的附加限制性条件批准，没有提出竞争问题，但认为该项集中对通讯标准必要专利（SEPs）许可市场可能具有排除、限制竞争效果。因此，商务部：①要求诺基亚确认其支持以下原则：在对等的前提下，不应通过执行基于标准必要专利的禁令来阻止所有公平、合理、无歧视（FRAND）许可标准的实施，除非专利权人已经提供了符合FRAND原则的许可条件，而潜在被许可人却没有善意签订FRAND许可并遵守这些许可条款；②当诺基亚在未来将标准必要专利转让给第三方时，诺基亚将在这些专利转让完成后，将专利转让的情况及时通知其现有的被许可人以及任何正在与其积极进行许可谈判的中国公司；③当诺基亚在未来将标准必要专利转让给新的所有人时，诺基亚仅会在新所有人接受诺基亚就这些标准基本专利已对标准化组织承诺的FRAND义务约束的条件下进行转让，从而将FRAND义务同时转移给新所有人。尽管该案在全球主要司法管辖区，包括美国、欧盟、巴西和日本都接受审查，中国商务部却是针对该案附加限制性条件的唯一一个竞争执法机关。

- **恩智浦／飞思卡尔案**：2015年11月27日，商务部发布了对此案的附条件批准公告，认定该交易对射频功率晶体管市场可能具有排除、限制竞争的效果。鉴于交易双方的市场份额远远超过其竞争者，商务部认定该交易将使恩智浦在相关市场的市场控制力得到进一步增强，将消除该领域最领先的两个紧密竞争者之间的竞争，减少客户的选择范围，增加采购风险以及进一步提高相关市场的进入壁垒。基于以上结论，商务部要求恩智浦将其射频功率晶体管业务全部剥离，并出售给由智恩浦选定的北京一家资产管理有限公司，确保该剥离业务的存续性、竞争性和可销售性，包括在过渡期间提供相关服务。商务部采取的上述附加条件与其他成熟竞争监管部门，如美国联邦贸易委员会和欧盟，所列出的附加条件一致。

2015年，商务部还首次修改了对之前已批准交易案所附加的条件。2015年1月9日，商务部取消了其在2012年对谷歌收购摩托罗拉移动一案所附加的平等对待之条件，该条件要求谷歌应在安卓平台方面以非歧视的方式对待所有原始设备制造商。上述条件被取消主要是因为联想收购了摩托罗拉移动的智能手机制造业务。2014年10月联想／摩托罗拉移动收购案完成过户后，商务部判定谷歌从此不得不再从事任何智能手机制造相关业务。因此取消对其平等对待之条件，尽管其他条件依然有效。

**取消“保持独立”义务**

2015年10月，商务部宣布解除对西部数据／日立案和希捷／三星案的“保持独立”救济方法。在西部数据／日立一案中，商务部部分解除了此义务，但在销售和品牌方面依然需要履行“保持独立”的义务。在希捷／三星一案中，商务部完全取消希捷“保持独立”的义务。

商务部采取的“保持独立”救济是一种全新且独特的并购控制措施，于2011年底在西部数据与希捷这两起几乎同时进行的硬盘驱动器业务的全球收购案件中首次实施。商务部批准了上述两起交易，但同时也附加相关条件，包括严格要求收购方必须无条件地保持目标公司各项业务的独立性（实质上禁止了集中），包括研发、生产、采购、销售和市场以及其他职能的独立性。这一救济措施适用于全球业务，且商务部还指定了监督受让人专门监督确保公司严格遵守上述义务。

解决上述义务的时间远比普遍预期要长得多（超过两年）。在每个案件审查期间，商务部都与申请人进行多次
own economists and focused primarily on recent changes
in the relevant market. MOFCOM also consulted with
other Chinese government agencies, industrial associa-
tions, and customers to understand the market changes.
In the end, MOFCOM concluded that market condi-
tions for HDDs had indeed changed, but not enough to
justify complete removal of the hold separate for Western
Digital, as its combined share with Hitachi Global Storage
Technologies still gave it a dominant position. MOFCOM
therefore removed the hold separate remedy with regard
to R&D and production but imposed new conditions
preserving the separation between the two brands’ sales
and marketing teams, to expire automatically (without
application) two years from the date of the decision. Given
the less prominent position of Seagate, its hold separate
remedy was removed entirely.

In light of these two removal decisions, it seems that even
though MOFCOM’s Draft Merger Remedy Guidelines has
not been formally released, MOFCOM has indeed followed
the Guidelines’ framework by evaluating whether 1 the
parties underwent any significant change; 2 market condi-
tions changed significantly; and/or 3 the conditions have
become unnecessary or impossible to implement.

AmCham China will observe MOFCOM’s review of
applications to lift the hold-separate remedies applied in
Marubeni/Gavilon and MediaTek/MStar, in particular whether
MOFCOM will continue to apply this unpredictable condi-
tion. Indeed, the imposition of potentially indefinite condi-
tions prior to publication of guidelines addressing removal
of those conditions placed affected parties in an untenable
position, given the absence of certainty and clear guidance
at the time of imposition.

Enforcement Campaign to Penalize Failures
to Notify

MOFCOM has also penalized failures to notify qualifying
transactions. Through October 2015, MOFCOM completed
investigation of 52 cases of possible failures to notify
resulting in the punishment of 23 companies. Approximately
20 probes were said to remain ongoing. The majority of
the punishments appear to have fallen on Chinese private
companies and state-owned enterprises (SOEs), although
foreign companies have been punished as well.

On September 29, 2015, MOFCOM published four decisions
penalizing companies for failing to notify qualifying trans-
actions. Two of these failures involved the establishment of
separate joint ventures (JVs) by Microsoft and Bombardier
with their respective Chinese partners, while the other
two targeted multi-step acquisitions and levied penalties
for premature implementation (partial acquisition) prior to
MOFCOM’s approval for the transaction as a whole. In
both JV decisions, MOFCOM acknowledged with appreci-
ciation the fact that the parties rectified their failures by
preparing and submitting a supplemental notification to
MOFCOM, and by proactively cooperating during the inves-
tigation. These two multi-step acquisition cases suggest that
MOFCOM will interpret its worldwide bar on closing and
implementation strictly, such that no subsidiary part of an
overall change of control transaction should be implemented
prior to approval.

NDRC’s Enforcement Activities

The NDRC continued to investigate both domestic and
foreign companies for price-related anti-monopoly concerns,
despite increased attention from foreign governments and
international media on the investigations’ impact on foreign
companies. The NDRC has increased transparency of its
investigations as a result of the March 2015 “Provisions
on the Disclosure of Price-Related Administrative Penalty
Decisions” (Disclosure Provisions), which requires disclo-
ure of decision information on the NDRC website as well
as through press briefings, newspapers, television, or the
Internet. Full disclosure will be limited if there are issues
related to trade secrets, personal privacy, or issues that
might jeopardize “national, public, and economic security
and social stability.”

In September 2014, the Director General of the NDRC’s
AML Enforcement Department stated that, among all of
the AML cases which the NDRC and its local authorities
investigated, those involving foreign companies only
accounted for approximately 10 percent. However, most
cases involving only domestic companies remain unpub-
lished, while those involving foreign companies are
generally high profile and involve larger fines. Thus, the
following case studies primarily focus on cases involving
foreign companies.

Price-Fixing

- In April 2015, the NDRC found that Mercedes-Benz
dealers in Nanjing, Wuxi, and Suzhou entered into
agreements to fix the prices of certain car components.
Under the leniency provision, some dealers were
exempted from penalties while others merely saw their
fines reduced.
- In June 2015, the NDRC’s Yunnan Province Bureau
found that, on the basis of the dispute resolution
provision of the rules formulated by the Yunnan
Communications Administration (see discussion in
the Abuse of Administrative Power section), the four
state-owned telecommunications carriers entered into
agreements to fix prices of promotional gifts in violation
of the AML.
- In September 2015, the NDRC found that Dongfeng
Nissan dealers in Guangzhou had entered into agree-
ments to fix the prices of certain car models. Under the
leniency provision, some dealers were exempted from
penalties while some dealers’ fines were only reduced.
会面，讨论取消上述义务并要求申请人提交详细证据。商务部聘请了自己的经济学家且重点关注相关市场的变化。商务部还征求了中国其他国家部委、行业协会和消费者的意见了解判断市场变化。商务部还征求了中国其他国家部委、行业协会和消费者的意见来了解判断市场变化。最终商务部判定传统硬盘市场的状况确实已经发生变化，但不足以支持完全解除西部数据“保持独立”之义务。因为西部数据与日立全球存储技术的合计市场份额依然使其处于支配地位。为此商务部解除了其生产、研发等方面的“保持独立”义务，继续保持两家企业在品牌和销售上的独立，上述义务自公告发布之日起2年终止。鉴于希捷在市场上的地位相对不显著，因此完全解除其“保持独立”义务。

就上述两项解除义务决定看，尽管商务部并购救济指南草案尚未正式出台，然而商务部事实上已经在使用该指南的框架来评估案件的如下方面：

1. 相关主体是否经历重大变化；
2. 市场状况是否发生重大变化；和/或
3. 所附条件是否已经再无必要或不可能实施。

中国美国商会将关注商务部对丸红/高鸿 案以及联发科技/晨星 案当事人申请解除保持独立义务的审查进展，尤其重点关注商务部是否会继续适用这一不可预期的条件。事实上在未出台解除这些附加条件的指引之前就施加这种有可能是无限期的条件，是将相关各方置于无处立足的境地，因为在附加条件之时既无确定性也缺乏明确的指引。

**价格垄断**

- 2015年4月，发改委认定奔驰与江苏省南京、无锡和苏州三地的经销商达成并实施了固定部分汽车配件价格的垄断协议。根据宽大条款，对主动报告达成垄断协议有关情况并提供重要证据的经销商，依法免除或者从轻处罚。
- 2015年6月，云南省发改委认定四大国有电信运营商依据云南省通信管理局相关规定的争议解决条款（见下文“滥用行政权力”一节的论述）订立垄断条款销售价格价格的做法违反《反垄断法》。
- 2015年9月，发改委认定东风日产与广州的经销商订立部分车型的价格垄断协议。根据宽大条款，对主动报告达成垄断协议有关情况并提供重要证据的经销商，依法免除或者从轻处罚。

**转售价格维持**

- 2015年4月，江苏省物价局认定奔驰通过转售价格维持计划，要求其经销商对部分车型和零配件执行最低转售价格，违反了《反垄断法》。
- 2015年9月，广东省发改委认定东风日产通过实施转售价格维持计划，要求其经销商对部分车型执行最低转售价格，违反了《反垄断法》。

**滥用行政权力**

- 2015年6月，云南省发改委认定云南省通信管理局停止并纠正与四大国有电信运营商的合谋行为。云南省通
Resale Price Maintenance

- In April 2015, the NDRC’s Jiangsu Province Price Bureau found that Mercedes-Benz violated the AML through resale price maintenance (RPM) programs where dealers were required to adhere to minimum resale prices for certain cars and spare parts.

- In September 2015, the Guangdong Province Bureau found that Dongfeng Nissan violated the AML through RPM programs where dealers were required to adhere to minimum resale prices for certain car models.

Abuse of Administrative Power

- In June 2015, the Yunnan Province Bureau instructed the Yunnan Communications Administration to cease and correct its behavior relating to four state-owned telecommunications carriers. The Yunnan Communications Administration organized meetings with the Yunnan branches of the state-owned telecommunications carriers where they agreed on a variety of issues, including the types, values, and ways of giving promotional gifts. The agreement included provisions on how the four companies would monitor and report violations to the Yunnan Communications Administration.

Abuse of Dominance: Excessive Pricing

- In February 2015, the NDRC fined Qualcomm around US $975 million (RMB 6.09 billion) for allegedly violating the AML through excessive pricing, tying essential patents to non-essential patents and unreasonable sales conditions. In addition to paying a fine, Qualcomm agreed to a rectification plan that included terms related to licensing practices, royalties, and conditions of licensing agreements. The fine represents 92.17 percent of total fines of around US $1.067 billion (RMB 6.7 billion) according to an October 15, 2015 NDRC press release. It is understood that through the end of 2015, the NDRC imposed total fines of over US $1.11 billion (RMB 7 billion).

NDRC Approach in General

Last year, AmCham China recommended that the NDRC provide more detail in its announcements regarding investigations. Increased transparency gives companies more guidance regarding what is and is not acceptable, enabling them to better comply with the AML.

According to the Report on Competition Law and Policy of China 2015, the NDRC completed 12 investigations in 2015. This year, the NDRC appears to be moving in the direction of more transparency (e.g., the aforementioned Disclosure Provisions). In addition, the NDRC leadership has shown an openness to increased dialogue with foreign companies. This opinion was initially expressed in April 2015 when an AmCham China delegation met with the new Director General. In September 2015, the Deputy Director General together with two deputy directors held an event at AmCham China and answered questions posed by our members. In December 2015, in a meeting with representatives from the embassies of Japan, South Korea, United Kingdom, and US as well as organizations such as AmCham China, US-China Business Council, and European Union (Trade Delegation), the NDRC leadership repeated its commitment to using economic analysis when assessing how the targeted company’s conduct affects competition in the relevant market. Furthermore, the NDRC is no longer opposed to having foreign counsel present at meetings and hearings.

SAIC’s Enforcement Activities

The SAIC published 14 decisions in 2015, only one of which was conducted by the central SAIC. The other 13 were conducted by local administrations of industry and commerce (AIC) in Beijing, Hainan, Ningxia, Inner Mongolia, Liaoning, Chongqing, Guangdong, Anhui, Hubei, and Hunan. Among the 14 decisions, six investigations were terminated after the party proposed corrective measures – including commitments to immediately stop wrongdoing, provide recourse to injured customers, and provide legal training for sales employees. In contrast to the NDRC’s enforcement activities, all 14 SAIC cases focused on domestic companies and local industries (e.g., telecommunications, pharmaceuticals, water supply, quarries, tobacco).

For the ongoing investigations, the central SAIC’s probe into Microsoft, which began in 2014 for alleged abuse of dominance, still appears to be in the evidence-gathering stage. On January 6, 2016, the SAIC published a press release on questioning Microsoft executives to explain critical issues arising from the electronic data the agency has acquired. Also, in the SAIC’s investigation of Tetra Pak (ongoing since 2013), it is understood that the investigation is winding down with a final decision expected soon.

On October 21, 2015, the Anhui AIC issued the nation’s first penalty decision regarding failure to cooperate with an antimonopoly agency’s investigation. In February 2015, Sunyard System Engineering, a software engineering firm, was investigated for suspected antimonopoly conduct relating to payment ciphers. The Anhui AIC directed the company to submit relevant correspondence, accounting, and other documents. However, instead of providing the requested materials, the company only submitted a letter rebutting the agency’s allegations. The company was eventually fined approximately US $33,000 (RMB 200,000) for failure to cooperate.

Abuse of Intellectual Property Rights as an Enforcement Focus

Abuse of IP rights remains a focus of China’s antimonopoly enforcement activities, although inconsistent and selective enforcement remain a concern. As previously discussed, in 2015 MOFCOM only imposed conditions on issues
信管理局曾牵头四大国有通信运营商云南分公司多次召开会议达成协议，对赠送的类型、幅度和方式等多个方面达成协议。该协议还对四大电信运营商互相监督及向云南省通信管理局报告地方的违约行为作出了规定。

### 滥用支配地位：超高定价

- 2015年2月，发改委对高通公司处以约9.75亿美元（60.9亿元人民币）的巨额罚款，理由是高通公司收取不公平的高价专利许可费，没有正当理由搭售非无线通信标准必要专利许可，在基带芯片销售中附加不合理条件，违反了《反垄断法》。除支付罚款外，高通公司还同意执行包括许可实践、专利许可费和许可协议条件等内容的规定。2015年10月15日发改委新闻发布会信息显示，对高通公司的罚款金额占发改委当时已开罚单总额（约10.67亿美元/66.05亿元人民币）的92.17%。而截至2015年底，发改委开出的罚单总计超过11.2亿美元（70亿元人民币）。

### 发改委的总体思路

去年，中国美国商会建议发改委进一步细化调查相关公告内容，提高透明度有助于引导企业了解哪些可为哪些不可为，从而帮助他们更好地遵守《反垄断法》。根据《2015年中国竞争法律与政策研究报告》，2015年发改委共完成12项调查。今年发改委似乎在提升执法透明度方面有所进步（例如上述《公示规定》）。另外，发改委领导层对加强与外资企业沟通对话也持开放态度。早在2015年4月中国美国商会的一个代表团与新上任的局长座谈时该局长就初步表达了上述态度。2015年9月，该局的副局长及两名副处长在中国美国商会主办的一场活动，回答了我们的会员企业提出的问题。2015年12月，在与来自日本驻华使馆、韩国驻华使馆、英国驻华使馆、美国驻华使馆及包括中国美国商会、美中贸易委员会和欧盟（贸易代表团）在内的相关组织的会面活动中，发改委的领导层重申发改委承诺使用经济分析法评估受调查企业行为对相关市场内竞争状况的影响。发改委也不再反对外国律师参加相关会议或听证。

### 将滥用知识产权作为执法重点

滥用知识产权一直是美国反垄断执法行动的一项重点工作。然而执法标准不统一和选择性执法的问题依然存在。如前所述，2015年商务部仅对标准必要专利问题这类问题做了一般性规定。今年，发改委对高通公司开出的60.9亿元罚款，该案也成为全球最值得关注的反垄断调查案件之一。发改委收到中兴公司的举报后，对总部位于美国的专利运营公司Vringo启动调查程序，据称目前已经进入关键阶段。此调查的重点是Vringo在多个司法辖区针对中兴的专利侵权行为而向中兴做出的专利侵权诉讼。发改委的调查还表明Vringo在多个司法辖区针对中兴的专利侵权行为而向中兴做出的专利侵权诉讼。发改委的调查还表明Vringo在多个司法辖区针对中兴的专利侵权行为而向中兴做出的专利侵权诉讼。
surrounding SEP-related issues. Also, the NDRC imposed record-high fines on Qualcomm, ending one of the world’s most noteworthy antitrust investigations.

Triggered by a complaint filed by ZTE, NDRC’s investigation of Vringo, a US-based non-practicing entity is reported to have entered a critical stage. The focus of the investigation is whether Vringo abused its dominance when seeking injunctions against ZTE in multiple jurisdictions to force ZTE to enter into licensing agreements regarding certain SEPs. The company reportedly refused to engage in an NDRC-facilitated mediation with ZTE, and the NDRC sent the company a “notification of issues” in September 2015 detailing its alleged antimonopoly violations.

After several rounds of revision, the “Provisions of the SAIC on Prohibiting the Abuse of Intellectual Property Rights to Preclude or Restrict Competition” was issued on April 7, 2015 and entered into effect on August 1, 2015. To date, the SAIC has yet to publish any decisions based on the new provisions.

Additionally, the three antimonopoly agencies, together with China’s State Intellectual Property Office (SIPO), have continued to work on draft IP rights-related guidelines. The NDRC is reported to be taking the lead of this significant legislative project. On December 31, 2015, the NDRC published an updated draft on its own part in October 2015 and released it for public comment. SAIC also circulated its draft among a small group. This draft is said to be significantly different from an earlier version considered by the SAIC. However, it is understood as not yet being final. Earlier in the year, MOFCOM completed its own version on the merger dimension and sought comments among experts. The SAIC is reported to be also working on a separate one and, in late November 2015, shared it among a small group for discussion and input. Additionally, SIPO has come up with a draft and is revising it based on feedback received from antitrust experts. However, it is reported that SIPO’s draft is only intended as a reference for the Anti-monopoly Commission, and may not be published for public consultation. It is understood that the Anti-monopoly Commission under the State Council will ultimately consolidate the various parts of the guidelines into a unified set applicable to all the three anti-monopoly enforcement agencies (AMEAs).

AmCham China believes that a single set of guidelines is vital to avoid confusion and inefficiency. As a general principle to the guidelines, it should be made clear that competition and innovation are not in conflict with each other. IP rights are legitimate rights granted as a reward to innovation efforts, which China has been learning to respect. We hope that the guidelines will provide a solid framework for the agencies to follow during merger reviews and/or investigations and reduce the number of controversial cases in which IP rights are a central issue yet not of any real competition concern. In particular, we hope that the guidelines can provide some guidance on evaluating the strength of patents and potential anti-competitive effects they can bring (if any) while acknowledging the fact that such analysis should be conducted on a case by case basis.

### Ongoing Regulatory Issues

#### Exclusion of Foreign Counsel

In the absence of implementing regulations, over the past several years, foreign counsel have often been barred or discouraged from attending meetings with the NDRC and SAIC. This is true even when the lawyers in question are accompanied by local counsel and are not engaging in the practice of Chinese law. This is inconsistent with international practice wherein parties are routinely permitted to instruct international counsel and local counsel to appear together before competition authorities, thus ensuring more efficient communication of evidence and analysis across jurisdictions.

Granting foreign counsels the ability to meet with relevant authorities will provide an important and beneficial aid to the NDRC and SAIC, particularly as cartel conduct increasingly extends across borders. This benefit has been explicitly recognized in the progress made by the JCCT commitments in the end of 2014 that, upon request from the party involved, the AMEAs should grant approval, as normal practice, to allow foreign counsels and/or representatives of foreign law firms’ Chinese offices to attend meetings with the AMEAs. AmCham China encourages the AMEAs to formally implement the JCCT commitments in binding guidelines safeguarding parties’ right to representation by counsel of their choice.

#### Increasing Transparency

Transparent and predictable enforcement allows companies to plan commercial strategies that comply with competition law. Implementing regulations, interpretive guidelines from regulators, and the published decisions of agencies and courts are critical to these efforts. Published decisions provide guidance and an opportunity to educate companies about compliance.

MOFCOM has greater transparency compared to the other regulatory agencies given that publication by the NDRC and SAIC is still, to a certain extent, selective, delayed, and lacking specificity. However, in March 2015, the NDRC published its penalty decision against Qualcomm, setting a new precedent for detailed competition analysis. In the same month, the NDRC promulgated the aforementioned Disclosure Provisions. However, the NDRC conditioned disclosure on exemptions for certain sensitive information. Without clear exemption standards, publication will still be subject to the NDRC’s already broad discretion.
目在 2015 年 8 月 1 日起生效实施。到目前为止，国家工商总局尚未依据上述新规定作出任何决定。

另外，上述三大反垄断执法机构与国家知识产权局一同致力于制定滥用知识产权相关反垄断案件指南。据报道，发改委是这项重要的立法工作的牵头部门。2015 年 12 月 31 日，发改委公布了其所起草的指南最新版并公开征求意见。该最新版是在 2015 年 10 月版的基础上所进行的修改。国家工商总局也在小范围内发布了其所制定的指南草案。据称该草案与国家工商总局之前起草的版本之间存在巨大差异，但可以理解的是，该版毕竟不是最终版。今年初，商务部也完成了并购领域滥用知识产权反垄断指南的起草工作，并征求专家意见。另外，国家知识产权局也起草了一版，并且正在根据反垄断专家们的反馈意见进行修改。不过报道国家知识产权局起草的版本将仅供反垄断委员会参考，可能不会公开发布并征求意见。据我们了解，国务院下设的反垄断委员会将整合以上各个版本的指南草案，出台统一的最终版本并适用于上述三家反垄断执法机构。

中国美国商会认为一套统一的指南对避免产生疑惑和效率低下十分重要。而该指南应当始终贯彻的一项普遍原则便是竞争和创新二者并不冲突。知识产权是一项鼓励创新活动的法定权利，而中国也一直在学习尊重知识产权。我们希望该指南能够为相关执法机构的并购审查和/或反垄断调查提供坚实的框架，同时承认上述分析都应具体案件具体对待。

现存监管问题

排斥外国律师

由于没有颁布实施条例，在过去的几年中，外资律师事务所聘用的外国律师，即便在有中国律师事务所的本地律师陪同下不寻求在中国执业的情况下，也时常无法参加发改委和工商总局的会议。这一做法不符合国际惯例，国际上的通行做法是，允许当事人要求所聘请的国际律师和本地律师一同会见竞争监管部门，从而确保更加有效地传达不同司法管辖区的证据和分析。

允许外国律师与相关反垄断主管部门会面将对发改委和工商总局的执法活动提供重要且有益的帮助。特别是在卡特尔行为日益呈现国际化趋势的背景下，2014 年底中贸联商会承诺也明确肯定了上述益处，其中指出：作为常规做法，经涉案方申请，反垄断执法机构应当允许外国律师和/或外资律师事务所的代表参加与反垄断执法机构召开的会议。美国商会鼓励反垄断执法机构正式执行中贸联商会承诺，出台有约束力的指南，保障各方自主选择代理律师的权利。

提高透明度

透明且可预期的执法使得广大企业能够制定符合相关竞争法律的商业战略。实施细则、主管机关的解释性指导意见以及行政法规和法院公布的决定对此起着关键性作用。公布执法决定能够为相关企业提供指导，教育企业遵守法律。商务部在透明度方面比其他两家执法机构做得要好，而发改委和国家工商总局在某种程度上依然秉持选择性公开的做法，信息公开滞后且不够详细。不过，2015 年 3 月，发改委公布了对高通公司的处罚决定，在决定书中首次详细披露了竞争分析过程。同月，发改委还出台了前述《公开规定》。然而发改委也规定相关敏感信息在特定条件下不予公开。由于没有明确规定免于公开的判定标准，事实上决定是否公开最终还是取决于发改委的自由裁量权。

中国美国商会建议发改委和国家工商总局应当及时全面公开执法决定，其中包括经过有实质意义概括的相关证据、分析和结论。不能公开完整的执法决定时，相关部门可以公开案件概要或执法报告，为执法实践提供指导。

程序正义

中国美国商会建议发改委制定明确的救济指导意见和措施，确保接受调查或审查的内资企业或跨国公司：

- 明确知晓问题之所在并有机会抗辩；
- 有权并且能够实际征求国内和国际法律顾问的意见；
- 被明确告知调查的法律和事实依据；
- 相关方与调查人员和作出决定的部门之间进行有意义的接触；
- 执法机构内部在作出决定方面应建立制衡机制。
AmCham China recommends that full enforcement decisions of the NDRC and SAIC be published as they occur, including meaningful summaries of the relevant evidence as well as analysis and conclusions. To the extent that full enforcement decisions cannot be published, case summaries or enforcement reports can provide guidance.

**Due Process**

AmCham China recommends that clear guidelines and measures for redress be made available to ensure that both domestic and multinational undertakings under investigation or review have:

- clear identification of issues and the opportunity to defend,
- the right and practical access to domestic and international legal counsel,
- notification of the express legal and factual basis for any investigation,
- direct and meaningful engagement between the parties, the investigative staff, and decision makers, and
- internal checks and balances on decision making within the enforcement agencies.

**Recommendations**

**For the Chinese Government:**

- Issue formal guidelines confirming that foreign-qualified lawyers (i.e., PRC-qualified lawyers working in foreign law firms) and foreign counsel will be allowed to attend meetings and investigations of all three agencies, alongside local counsel, to implement China’s JCCT commitment.
- Ensure that all regulations and measures are published in draft form and allow formal and publicized opportunities for meaningful comment by interested parties.
- Continue to clarify and streamline AML procedures, especially for ordinary merger review (e.g., clarify the division of regulatory authorities and when MOFCOM decisions will be subject to review by other authorities).
- Protect IPR for both domestic and foreign rights holders and ensure that the AML is not used as a means to circumvent IP protection, including through compulsory licensing.
- Publish and guarantee due process rights of companies under review or investigation.
建议

对中国政府：

- 兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。
- 确保所有的法规和措施在正式公布前能以草案形式对外公布，使得相关方都有机会提出有意义的意见。
- 继续阐明和简化《反垄断法》有关程序，尤其是普通并购审查的相关程序（如明确监管权限的划分以及商务部的决定何时需要接受其他部门的审查）。
- 保护国内外知识产权持有人的权益，确保《反垄断法》不会通过强制许可等方式成为规避知识产权保护的手段。
- 公布和保障被审查或调查企业享有程序正义权利。
Compliance

Introduction

AmCham China member companies face important and complex compliance concerns in China. In addition to the traditional anti-corruption focus of their China compliance departments, the operating challenges of many member companies require that they focus on a variety of other compliance areas, including competition law, customs, third-party compliance, data security and sovereignty, privacy, labor laws, national product technical standards, taxes, and free trade/investment regulations.

A foreign-invested enterprise (FIE) must not only comply with the wide range of laws and regulations enforced by China’s central and local governments, including laws and regulations relevant to its particular industry, but also with laws and regulations of the legal jurisdiction of its parent company and, in some cases, other legal jurisdictions in which the parent company operates.

A key objective of FIE compliance policies is to effectively guide employees with regard to compliance with applicable laws and regulations. To achieve this objective, companies require a legal environment that supports the rule of law, including reliable and transparent regulatory enforcement. Effective rule of law, therefore, is of central importance to AmCham China’s member companies.

AmCham China understands the need for our member companies to abide by the laws of the US, China, and wherever else they operate. Below, we focus on foundational issues necessary to support an effective compliance environment in China: rule of law, transparency, and due process.

Ongoing Challenges

Macro-Level Challenges

Given the importance of compliance for FIEs in China, there is a strong need to train employees to understand the application of local and foreign laws and regulations to a company’s business. Chinese and international anti-corruption laws are an important element of such training. As business and legal cultures vary across international borders, compliance policies must conform to a company’s global internal standards and procedures, while accommodating local regulatory regimes. In-house professionals face the difficult task of harmonizing an FIE’s global compliance culture to local legal and regulatory requirements and training employees accordingly.

As part of their compliance programs, companies must also develop appropriate procedures to enable them to respond when management discovers that employees or specific actions of the company are not compliant with applicable regulations. The most successful compliance procedures are developed when there is a strong understanding of the regulatory and enforcement environment. If the legal and regulatory environment is predictable, transparent, stable, and specifies accountability for both business and government, with legal due process provided to those under investigation, compliance is both simpler and more robust.

The regulatory environment in China has matured dramatically over the last two decades, as China has developed its governance framework in tandem with its rapidly evolving economy. However, predictable enforcement is sometimes lacking, and understanding and navigating the legal system continues to be a top concern for AmCham China members. In our annual Business Climate Survey, inconsistent regulatory interpretation and unclear laws have ranked among the top three business challenges in each of the last seven years. Inevitably, any lack of clarity regarding implementation and interpretation of laws and regulations by administrative authorities increases the regulatory compliance burdens for FIEs. Sometimes these difficulties are exacerbated by uneven and inconsistent implementation of laws and regulations by provincial, municipal, and lower level enforcement agencies.

Rule of Law

As discussed above, inconsistencies in the application of Chinese laws and regulations create obstacles for companies seeking to comply. The World Justice Project’s annual “Rule of Law Index” assesses and ranks countries around the world according to their constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. The 2015 report ranked coun-
国美国商会的会员企业在华面临重要而复杂的合规问题。除了作为在华合规部门传统关注对象的反腐败问题外，鉴于其自身面临的经营挑战，许多会员企业还需要关注很多其他合规领域，其中包括竞争法、海关、第三方合规、数据安全和完整、隐私、劳动法、产品的国家技术标准、税务和自由贸易/投资监管等。

外资企业（外资企业）不仅必须遵守中国中央和地方政府实施的各种法律法规，其中包括相关行业法规，还必须遵守对母公司具有法定管辖权的地区的法律法规，在某些情况下，还需要遵守母公司经营所在地的法律法规。

外资企业合规政策的一个主要目的就是有效地指导员工遵守适用的各领域法律法规。为了实现这一目的，企业需要一个支持法治的法律环境，包括可靠和透明的监管环境。因此，有效的法治对中国美国商会的会员企业来说至关重要。

中国美国商会理解，会员企业需要遵守美中两国及其其它经营所在地的现行法律。下面，我们将重点探讨几个能够支持中国保持有效合规环境的根本性问题——法治、透明度以及程序正义。

现存挑战

宏观挑战

鉴于合规对其在华业务的重要性，外资企业亟需对员工进行培训，使其了解中外法律法规对企业经营的适用性。培训的重要内容之一就是中国和国际反腐败法规。鉴于不同国家的企业文化和法律文化不同，合规政策不仅需符合企业内部的全球标准和程序，还需考虑当地监管制度，因此，外资企业内部专业人员面临的任务很艰巨，需要根据当地法律和监管要求协调企业的全球合规文化，并就此对员工进行培训。

作为合规计划的一部分，企业还必须制定适当的政策，以便管理层在发现企业某些员工或行动不符合适用法规要求时，能够做出应对。只有熟知监督环境和执行环境，才能制定出合适的合规程序。如果法律和监督环境可预测、透明、稳定，企业和政府的责任明确，并且调查程序合法公正，合规也就更加简单、有力。

过去二十年中，随着中国经济的快速发展，中国已逐渐建立起了自己的治理体系，使其监管环境得以显著完善。但是，执法有时还是不可预测。对于中国美国商会会员企业而言，了解并掌握这一法律体系仍然是主要挑战之一。

中国美国商会的年度《商务环境调查报告》显示，在过去七年中，法律解释相互矛盾和法律不明确始终是三大主要商业挑战之一。管理机构对法律法规的执行和解释不明确，不可避免地增加了外资企业遵守监管制度的负担。尤其当省市和更低层面的执行机构对法律法规的执行有失公正和统一性，合规会变得难上加难。

法治

正如上面所提到的，中国法规应用存在不一致现象，这给依法遵守法律法规的企业造成了障碍。世界正义工程每年根据政府权力的制约、贪腐程度、政府开放程度、基本权利、秩序和安全、法规执行、民事诉讼和刑事诉讼等因素对世界各国进行排名，发布“法治指数”。2015年，按照综合平均值排名，在102个被评估的国家中，中国排名第71位，与2014年相比上升了四位。鉴于中国市场规模和其对全球经济的重要性，我们促请中国政府信守2014年在党的十八届四中全会（四中全会）做出的并在“十三五”规划（2016-2020年）中重申的承诺，进一步加强对经营环境的法律和监管支持，完善法治建设。
Top five business challenges in China:

企业运营的五大主要挑战:

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tries on their combined average value, with China ranking 71st among the 102 assessed countries, up four spots from its 2014 ranking. Considering the size of China’s market, and its importance in the global economy, we urge the government to further strengthen legal and regulatory support for the business environment and improve the rule of law in accordance with the commitments announced at the Fourth Plenary Session of the Central Committee of the Communist Party of China in 2014 (the Fourth Plenum) and reiterated in the 13th Five-Year Plan (2016-2020).

In 2012, the U.S. Chamber of Commerce’s Coalition for the Rule of Law in Global Markets pointed to five key factors applicable to the rule of law that help to attract business investment and operations to a country (see box). AmCham China believes that as economic reform in China continues, and the rule of law is strengthened throughout the country, these points will be essential in ensuring that the trade and investment environment remains open to foreign business and that foreign investments are treated fairly in accordance with the rule of law. Two key factors in relation to the implementation of the rule of law, transparency, and due process are discussed in more detail below.
2012年，中国美国商会在“联合推动全球市场法治进程”报告中指出，法治的五个关键因素能够帮助一个国家吸引企业投资和经营（见下表）。中国美国商会认为，随着中国继续推进经济改革并在全国范围内加强法治，这几个因素对确保中国的贸易和投资环境、继续对外资企业保持开放以及依法公平对待外商投资都非常重要。下文中，我们将就透明度和程序正义这两个与法治实施有关的关键因素进行详细探讨。

### 法治

1. **透明**：企业适用的法律法规必须易于获得并清晰易懂。
2. **可预测**：法律法规的实施必须符合逻辑并且不因时间、地点或当事方的不同而有所不同。
3. **稳定**：政府监管企业的基本原则必须长期保持一致，确保各届政府制度的一致性，避免武断或追溯性的修改。
4. **问责**：投资者确信法律在政府和私营部门的执行具有统一性。
5. **程序正义**：发生争议时，必须按照公平、透明和既定的程序解决。

#### 透明

透明的法律制定和执行能够提高人们对监管和法律框架的可预测性和确定性的信心，并且能够帮助投资者、企业和个人更加高效地满足市场需求。相比之下，不确定性会增加企业运营成本，有时还会在企业进行生产活动和有益活动时，造成不必要的阻碍。

在过去，中国的法律和法规对成品或执行过程缺乏授权，管理机构在执行时享有很大的自由裁量权，甚至不需对其所做决定的理由进行详细的说明。在某些情况下，不同管理机构发布的规章制度可能会相互冲突，致使人们不清楚具体应当适用哪一个规则。而且，管理机构通常不公布行政裁决和判决，使得企业无法有效执行自己的决定，从而无法确定如何更好地遵守相关法律法规。

近年来，未公布的“内部”规定之间存在冲突的风险已经大幅降低，但是，外资企业仍然经常遇到通过未公布的内部措施来传达和执行政策的情况。中国美国商会对近年来采取的提高透明度和程序正义的措施表示认可和赞赏，并希望中国今后能够全面公布行政裁决和法院判决。

### 法律程序正义

法律程序正义允许企业了解和评估自身所面临的行政执法诉讼或刑事指控以及之前针对其他公司实施的类似诉讼或指控。唯有如此，企业才能修正自身的政策，确保不会无意间触犯法律。对行政行为或法院判决的质询权和上诉权也很重要，能够确保企业不会遭受不公平的待遇或者毫无理由的指控。

目前，中国政府时常通过不明确的和程序正义薄弱的规定，采取行政、法律和法外等手段，有选择性地对跨国企业开展主观的执法行动。而且，许多企业表示，在指控不明确时，很难履行举证责任，有时甚至会在没有被告知调查原因的情况下，就被要求向当局提供证明文件。

许多会员企业担心，政府机构对外资企业的执法要比对本国企业更加严厉，致使外资企业必须遵守未对本国企业严格执行的法律法规。当地媒体关于企业涉嫌违规经营的报道，似乎已经致使政府机构针对外资企业开展前后矛盾、有时缺乏合法证据的调查和执法活动。这种公开的且有失公正的执法行为会对企业声誉造成严重损害。据悉，会员企业始终担心可能存在要求政府机构在特定领域针对外资企业开展执法活动的具体命令。

有针对性的执法不一致以及法律规定模糊不清等因素，使得外资企业管理层难以估计潜在的问题，增加了合规风险。我们支持中国政府制定政策、提高监管和司法体系的透明度和程序正义，公布行政裁决和法院判决的执行情况，包括处罚情况。

### 最新进展

#### “十三五”规划关注法治

在2014年10月召开的四中全会上，中国共产党和（中共）强调要加强法治和司法改革。基于这一决定，中共于2015年发布的“十三五”规划将更进一步推进法治建设。
**Rule of Law:**

1. **Transparency**: Laws and regulations applied to business must be readily accessible and easily understood.
2. **Predictability**: Laws and regulations must be applied in a logical and consistent manner regardless of time, place, or parties concerned.
3. **Stability**: The government’s rationale for the regulation of business must be cohesive over time, establishing an institutional consistency across administrations, and free from arbitrary or retroactive amendment.
4. **Accountability**: Investors must be confident that the law will be upheld and applied equally to government as well as private actors.
5. **Due Process**: When disputes arise, they must be resolved in a fair, transparent, and predetermined process.

**Transparency**

Transparency in the development and enforcement of laws strengthens confidence in the predictability and certainty of the regulatory and legal framework. Transparency in the legal and regulatory environment assists investors, companies, and individuals to meet the needs of the marketplace more efficiently. By contrast, uncertainty and opacity in the legal and regulatory environment increase the cost of doing business and sometimes deter companies from pursuing productive, beneficial activities.

Historically, Chinese laws and administrative regulations have been broadly drafted and substantial discretion is available to administrative authorities regarding their implementation. Further, administrative authorities have not been required to provide detailed reasons for their decisions. In some instances, regulations and interpretative guidelines released by different administrative agencies potentially conflict, leading to a lack of clarity regarding which rules apply. Furthermore, administrative rulings and judgments are often not made public and administrative authorities are reluctant to give prospective guidance on the requirements of specific measures, preventing companies from determining the legality of proposed courses of action. Consequently, when government agencies fail to publish their decisions, companies cannot effectively monitor enforcement actions to determine how best to comply with relevant laws and regulations.

Although the risk of falling foul of “internal” unpublished regulations has diminished considerably in recent years, some foreign companies still encounter policies disseminated and enforced on the strength of unpublished internal measures. AmCham China recognizes and applauds steps that have been taken to promote disclosure and transparency in recent years, and hopes to see the comprehensive publication of administrative rulings and court judgments in the coming years.

**Legal Due Process**

Legal due process permits a company to understand and evaluate any administrative enforcement actions or criminal charges that have been brought against it, as well as similar actions or charges brought against other companies in prior cases. This is essential if a company is to correct its policies and ensure that it does not unwittingly follow a course of action that will lead to violations of law. The right to address and appeal any administrative action or court judgment and receive a fair hearing is vital in order to ensure that companies are not targeted unfairly or without cause.

Currently, there is a perception that multinational companies are often under selective and subjective enforcement by Chinese government agencies using a range of administrative, legal, and extra-legal approaches, through regulations that are not clearly applied in an environment where due process is sometimes weak. Further, many companies cite the complication of carrying the burden of proof when the accusations are unclear, and sometimes being required to make statements to government authorities without having been informed of the grounds for the investigation.

Many member companies are concerned that FIEs are subject to more stringent enforcement than domestically invested companies by government authorities, with the consequence that foreign companies must comply with laws and regulations that are not as rigorously enforced against their domestic competitors. In some cases, local media coverage targeting alleged questionable operations by companies appears to have resulted in inconsistent investigations and enforcement against FIEs by government authorities, sometimes with little legal evidence to back up the investigation. Such public and disproportionate enforcement can result in serious reputational harm. Indeed, there is ongoing concern among member companies that specific mandates for government agencies may target enforcement against FIEs in designated sectors.

Cases of targeted and inconsistent enforcement and unclear regulations make it difficult for FIE management to anticipate potential problems, thereby increasing compliance risks. We support the Chinese government’s policies to increase both transparency and legal due process in its administrative and judicial systems, and to provide disclosure regarding the enforcement of administrative rulings and court judgments, including information regarding penalties and punishments.
《中国反贿赂法》执法力度加大

第三方咨询机构已经注意到，中国2014年和2015年启动的反行贿案件数量大幅增加。这也可能表明监管将变得更加清晰和可预测。中国美国商会的会员企业支持这一变化，并认为除了强大的反腐执法行动，还需要改进法治的主要要素，包括透明度、一致性和程序正义等。一个强大、稳定和平衡的法律和监管环境能够提高合规项目的有效性、鼓励外资在华投资。

2015年中美商贸联委会

第26届中美商贸联委会（JCCT）会议期间，中美双方政府官员和企业家举行了关于企业治理和透明度的圆桌会议。中国美国商会赞赏在中美商贸联委会上提出推进透明度和程序正义的倡议。

建 议

对中国政府：

• 根据四中全会和“十三五”规划提出的目标，
  进一步推动法治进程，为外资和内资企业创造
  一个一致的、可预测的法律和监管环境。

• 提高法律法规起草、实施和执行的透明度，增强
  人们对法律和监管环境可预测性和确定性的信
  心。

对美国政府：

• 与中方开展双边对话，包括中美商贸联委会会
  议、战略与经济对话以及美中双边投资协定谈
  判等，共同解决各种合规问题及合规政策的执
  行问题。

• 继续与中国相关监管机构开展富有成效的合作，
  相互交流经验，增进对彼此行动的理解。

• 开展双边对话、研讨会以及深度科学的交流，以
  支持执行透明、可预测的监管体系。
Recent Developments

13th Five-Year Plan Includes Focus on Rule of Law

At its Fourth Plenum in October 2014, the Communist Party of China (CPC) focused on enhancing the rule of law and legal reform. This initiative was built upon in the 13th Five-Year Plan published by the CPC in 2015, which specifically references the rule of law.

Increase in Chinese Anti-bribery Law Enforcement

Third-party consultancies have noted that China’s initiation of domestic anti-bribery cases increased significantly in 2014 and 2015. This increase in cases may also signify a move toward greater clarity and predictability in regulatory enforcement. AmCham China member companies support this change and believe that, in addition to robust anticorruption enforcement, it is important to improve the key components of the rule of law, including transparency, consistency, and due process. A robust, stable, and balanced legal and regulatory environment will improve the effectiveness of compliance programs and encourage foreign investment in China.

2015 Joint Commission on Commerce and Trade

The 26th Joint Commission on Commerce and Trade (JCCT) included a roundtable discussion on corporate governance and transparency featuring US and Chinese government officials and CEOs. AmCham China appreciates such initiatives at the JCCT to support transparency and due process.

Recommendations

For the Chinese Government:

• Further build on the goals laid out at the Fourth Plenum and in the 13th Five-Year Plan to develop the rule of law, with the goal of a consistent and predictable legal and regulatory environment for all enterprises, both domestic and foreign.

• Improve transparency in the drafting, implementation, and enforcement of laws and regulations to strengthen confidence in the predictability and certainty of the legal and regulatory environment.

For the US Government:

• Work with Chinese officials through bilateral dialogues, including the JCCT, Strategic and Economic Dialogue, and US-China Bilateral Investment Treaty negotiations, to address the full range of compliance issues and their enforcement.

• Continue to work productively with relevant Chinese regulatory authorities to exchange best practices and increase understanding of the actions taken by both sides.

• Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent and predictable regulatory systems.
Introduction

In 2015, the global economy remained sluggish and Chinese imports and exports faced significant downward pressure. However, in a positive development for trade, including for foreign-invested enterprises (FIEs) in China, the Chinese government accepted the World Trade Organization’s (WTO) Trade Facilitation Agreement on September 4, 2015, indicating the determination and confidence of the General Administration of Customs (GAC or China Customs) to fully implement WTO trade facilitation policies, including provisions to expedite the movement, release, and clearance of goods, including goods in transit, and cooperate on customs compliance.

AmCham China commends the progress made by China Customs in 2015 to streamline administrative processes, delegate powers, revoke charges, reduce clearance costs, integrate regional clearance policies, and carry out the “Three Ones” (one declaration, one inspection, one release) and “Three Mutuals” (mutual recognition of controls, mutual assistance of enforcement, mutual exchange of information) policies.

In early August 2015, China Customs authorities met with AmCham China’s Customs and Trade Committee. We appreciate the spirit of these talks and welcome continued engagement by Chinese regulatory authorities in constructive, frank, and pragmatic discussions with the business community.

Ongoing Regulatory Issues

While AmCham China remains fully confident in China Customs’ determination to facilitate trade, we request continued opportunities to collaborate on international business, trade logistics, processing, and manufacturing developments to ensure the smooth implementation and optimization of institutional reforms.

Paperless Clearance

The nationwide paperless clearance system was expanded beyond exports in 2015 to include most imported goods, reducing the time required for import declarations by about 10 hours. While we commend China Customs’ efforts to facilitate trade, we hope further improvements can be made by:

- implementing the credit management system and increasing the percentage of declaration and accompanying documents that can be stored by enterprises,
- reducing and simplifying the requirements for accompanying documents, and
- delivering digitized rather than scanned accompanying documents.

Regional Clearance Integration

AmCham China appreciates China Customs’ expansion of regional clearance zones in 2015 beyond the Beijing-Tianjin-Hebei integrated region and the Yangtze and Pearl River Deltas to include coverage in northeastern China and along the proposed route for the New Silk Road Economic Belt and look forward to eventual nation-wide clearance integration. As China maintains a dual clearance system, we hope that there will be greater coordination between China’s customs departments and quality supervision departments. We also hope that there will be greater coordination between and harmonization of the efforts of different Customs offices when handling the same consignment.

Clearance Costs

Reducing clearance fees is imperative for administrative departments to help enterprises improve international competitiveness and encourage business in China. In 2015, China Customs adopted a series of related measures, including:

- cancelation of declaration entrustment agreements as recommended in the 2015 White Paper,
- reduction or cancelation of charges on electronic declaration data transmission at different ports,
- suspension of intellectual property (IP) right registration fees,
- exemption of import and export enterprises from inspection charges provided that nothing problematic is identified during customs inspection,
引言

2015年，全球经济低迷，中国进出口面临巨大下行压力。9月4日，中国政府宣布接受WTO《贸易便利化协定》。这一决定标志着中国海关全面实施WTO贸易便利化政策，包括加快货物包括过境货物的流动、放行和清关并配合海关合规等的决心和信心。对包括在华外资企业的各企业的商贸发展而言，都是一个令人振奋的举动。

中国美国商会密切关注中国海关2015年在简政放权、取消部分收费、降低企业通关成本以及区域通关一体化、“三个一”（“一次申报，一次查验，一次放行”）、“三互”（口岸监管部门的信息互换、监管互认和执法互助）等方面所做的各项工作，并对其取得的进展和成就高度赞赏。

2015年8月初，海关总署领导安排和商会海关贸易委员会进行了对话。商会对这些对话精神表示赞赏，并欢迎中国市场监管部门与商界继续进行有建设性、坦诚、务实的交流。

现存监管问题

中国美国商会确认中国海关在实现制度创新、不断推进贸易便利化方面的信心和能力的同时，期待有机会为中国海关贡献更多国际商务、贸易、物流、加工制造方面的实践知识和意见建议，以保证制度变革和完善的顺利实施。

无纸化通关

2015年，通关无纸化制度应用范围由去年的出口全覆盖进一步扩大到大部分进口商品，有数据显示，进口通关无纸化可缩短通关时间十小时左右，贸易便利化成效显著。商会希望此项制度在以下几个方面有进一步的改善：

- 通过企业信用管理制度的实施，提高企业自存报关单以及随附单据比例；
- 减少、简化报关随附单据要求；
- 报关随附单据采用数字化传送代替扫描件传送。

区域通关一体化

2015年，中国海关在去年实现京津冀、长三角、珠三角三个区域的通关一体化改革的基础上，又扩大了东北地区、新丝绸之路经济带两个区域的通关一体化建设。商会赞赏中国海关在通关一体化方面的成就，并期待全国通关一体化目标的早日实现。商会同时认为，鉴于中国目前实施海关/质检“双卡”通关体制，海关的通关一体化改革如果能够得到质检机构的响应和配合，其实际效能将会得到进一步的实现。商会希望企业同一批货物的通关处理接受申报、审单、查验情况下关际协调能够得到加强。

通关费用

减少通关费用是行政机构帮助企业提高国际竞争力，鼓励贸易的一个重要方面。中国海关年内采取了一系列措施，包括：

- 2015年中国美国商会《白皮书》提出的有关取消委托报关协议的建议得到采纳；
- 各口岸海关取消或降低了报关数据电子传输的收费；
- 暂停海关知识产权备案费；
- 海关查验没有发现的，免除进出口企业查验费用；
- 关税纳税第三方式电子支付平台设置上引入竞争；
- 取消报关员考试、资格认定、报关水平测试；
- 调整社会化验核企业资格认定。

中国美国商会高度赞赏中国海关采取切实有效的措施，降低企业经营成本所显示的大度和决心，同时认为：作为通关执法的主导机构，海关依然有必要通过行业协会或其
• introduction of competition into third-party electronic platforms for duties payments,
• cancelation of the declarer examination, qualification certification, and proficiency test, and
• adjustment of the certification of advanced classification service enterprises.

AmCham China appreciates China Customs’ willingness and determination to take effective measures to reduce enterprises’ operating costs. However, it is still necessary for China Customs to guide and help enterprises, via industry associations or other suitable third-party organizations, to properly train employees in customs declaration compliance, goods classification, and other relevant matters.

Anti-Smuggling

A variety of foreign goods are regularly smuggled into China to circumvent inspection, customs duties, and import/export regulations, heightening potential consumer health and safety risks. We recommend that China Customs establish closer cooperation with foreign producers, manufacturers, and authorized suppliers, and share information to better prevent smuggling.

Manifest System

In December 2014, AmCham China submitted written comments on China Customs’ manifest system (Announcement No. 70), expressing concerns regarding prolonged declarations and increased cost burdens. Though formal adoption of this system was postponed, most ports began to implement the system during the second half of 2015. The concerns which we initially expressed have become a reality, resulting in significant negative impact. While AmCham China recognizes the motivation behind the Announcement (e.g., to strengthen supervision and close loopholes), we hope that China Customs can establish a proper balance between overly burdensome regulations and convenient and lawful import and export. Therefore, we recommend the following:

• Align the purpose and the functionality of the manifest system while taking into account international trade norms and import/export logistics best practices and apply these lessons to future reforms.
• Expand the limit for each declaration form from 20 items to 120 items.
• Cancel the road manifest application as it is ineffective for strict customs supervision.

Business Community Participation in the Legislative Process

On April 22, 2015, AmCham China members attended a China Customs hearing regarding the amendment of measures for the administration of unit consumption of processing trade. We appreciate such opportunities to engage in formal dialogue with China Customs and further recommend the following:

• Expand the scope of hearings to attract more enterprise participation.
• Complete review of and implement pending laws and regulations as soon as possible, including the “Implementing Regulations of Customs on Administrative Penalties,” “Voluntary Disclosure by Enterprises,” “Measures for the Administration of Goods and Articles Imported or Exported by E-commerce Providers,” “Measures for the Administration of Unit Consumption of Processing Trade,” “Measures for the Import/Export Administration of Perishable Goods,” “Measures for the Administration of Goods Exported for Processing,” and “Measures for the Administration of Maintenance and Remanufactured Import Goods.”
• Entrust a third party to assess Customs’ enforcement activities.

Authorized Economic Operators

The “Provisional Measures for the Administration of Enterprise Credit” (GAC No. 225), published in October 2014, accelerated the adoption of international customs administration practices. Furthermore, in 2015 China Customs worked with the business community to hold several forums on Authorized Economic Operators (AEOs), expand its influence in this area in China and abroad, and negotiate mutual AEO recognition arrangements with international authorities. Local Customs, to varying degrees, have implemented measures to provide for Category AA and Category A enterprise conversion and certification. To achieve further progress in this area we suggest the following:

• Further refine, expand, and strengthen preferential facilitation measures for advanced AEO enterprises under international AEO mutual recognition arrangements.
• Subject the overall development of advanced AEO certification to scientific planning and encourage more enterprises to grow in a healthy and compliant manner.
• Leverage third parties to provide AEO-related coaching and formulate detailed rules for relevant operations and training.

Calculation of Freight Charges

International express carriers continue to be burdened by a lack of uniform procedures to calculate freight charges on imported goods, leading at times to questioning by local authorities. Express carriers are also increasingly concerned by tax compliance issues arising from these unclear calculations. As there is no clear and uniform procedure for
他合适的第三方机构，对企业合规所需的相关流程、商品归类等方面的专业人才培养提供指导和帮助。

### 海关缉私

不同来源的国外产品经由走私渠道进入中国的情况一直存在，不仅逃避关税及国家的进出口管理，还增加了潜在的消费者健康及安全风险，建议海关和国外产品生产、制造以及正规渠道供应商之间建立更加密切的合作关系，共享行业信息，提高海关打击走私的效率。

### 舱单系统

2014年10月公布的《企业信誉管理办法》(225号署令)标志了中国海关在和国际海关先进管理制度接轨上的重大进步。一年来，海关总署举办多次面向商界的AEO专题论坛活动，国内外影响得到相应扩大，和国际海关之间的AEO互认谈判也取得积极成效，各地方海关不同程度完成了AA类以及A类企业的资格转换认定工作。为在这一领域取得进一步进展，商会建议:

- 对国际海关AEO互认项下的AEO高级认证企业的优惠便利措施能够更加具体并得到进一步扩大和增强；
- 将现有的报关单商品申报每份20项限制扩大为120项；
- 取消对严密海关监管并无实际功效的公路舱单应用。

### 商界立法进程参与

2015年4月22日，海关总署组织举行了有关加工贸易单耗管理办法修订的立法听证会，商会成员积极参与并坦诚提出了企业对单耗管理制度的期望和合理化建议，商会对此高度赞赏。商会提议:

- 增加立法听证范围，吸引更多企业参与其中；
- 尽快启动、完成《海关行政处罚实施条例》、《企业主动披露》、《电商进出口货物、物品管理》、《加工贸易单耗管理》、《易腐货物进出口管理》、《出境加工货物管理》、《维修及再制造进口货物管理》、《加工贸易单耗管理》等企业需求急迫的法律制度制定、修订工作；
- 委托第三方开展对海关执法活动的专项评估活动。

### 运费计算

我们会员中的国际快递企业承运的进口快件货物运费计算问题一直是困扰快递行业的难题，部分地方海关也曾就进口货物中运费到付的货物申报运费问题对我们的会员企业进行质询。进口快件运费引起的税款计算问题，实际上是一个普遍存在的问题，已引起诸多快递公司关注，遗憾的是迄今尚未找到有效的解决方法。原因是快递各段费用难以截然区分，加之报关动作前置(货到当日申报)，结算后置(月结)，造成时差难以实施，而按照海关目前的规定与执法要求，由于我们不能给出详细的数据，海关就会按“门到门”全额收费计算漏缴关税额，致使我们的会员面临巨大的稽查与合规风险，甚至遭受非主动性漏缴关税等情形的处罚。我们恳请海关在此问题上予以研究并作相关政策修订，以解决此行业普遍面临问题。详情请见快递服务章节。

### 商品归类

中国海关于2001年12月以92号署令发布《海关预裁定暂行管理办法》，对有关行政预裁定的性质、申请范围、条件、处理程序、撤销等相关内容做出了具体规定。因种种原因，该《办法》自2002年至2014年的13年间，没有得到实施。

2015年6月开始，海关总署先后两次公告了观光车、X光扫描架等4项商品的归类裁定。中国美国商会对中国海关预裁定制度高度关注，对中国海关启动实施预裁定制度
apportioning the freight charges to the different delivery phases, it is difficult for regulators to find an effective solution. Additionally, express carriers are required to make customs declarations before freight charges are collected and settled (i.e., declarations must be made on the item’s date of arrival, charges are collected and settled after the end of each month), resulting in time lags and difficulties in practice. However, according to existing customs regulations and enforcement requirements, if express carriers cannot provide detailed figures during declaration, customs authorities may calculate the amount of tax owed based on the full “door-to-door” rate, resulting in significant compliance risks. In some cases, companies have been subjected to questionable penalties for the non-willful evasion of customs duties, adversely affecting their credit standings. We urge China Customs to further explore this issue and revise relevant policies. Please see the Express Delivery Services chapter for more issues impacting this particular industry.

**Goods Classification**

China Customs promulgated the “Interim Measures on the Administration of the Administrative Customs Rulings” (GAC No. 92) in December 2001, specifying the nature, scope of application, conditions, processing procedures, and revocation of such an administrative ruling. However, the Interim Measures have yet to be implemented.

As of June 2015, China Customs had twice ruled on the classification of four categories of goods, including sightseeing vehicles and X-ray scanner frames. AmCham China is greatly concerned with China Customs’ administrative ruling and applauds implementation of the advanced ruling system. Meanwhile, AmCham China suggests that China Customs:

- prepare the necessary resources (e.g., designate the responsible department, organize relevant officials, formulate procedures) for full implementation of the administrative ruling system,
- lower the application threshold and expand the scope of benefits for advance applications, enterprise regional qualifications, and application channels,
- expand allocated resources to ensure system functionality while supporting pre-classification,
- not deem inconsistent classification, due to a lack of technical and professional skills or variance in the application of relevant rules by importers, exporters, or pre-classification service providers as a false declaration, and
- formulate and publish a proper mechanism to coordinate inconsistent classifications of the same goods by different Customs offices and facilitate enterprises in resolving practical matters.

**Processing Trade and Bonded System**

On November 9, 2015, the Central Leading Group for Comprehensively Deepening Reforms reviewed and adopted the “Several Opinions on Accelerating Innovative Development of Processing Trade,” which establishes a national policy for innovation in trade processing. Processing and manufacturing is still a critical part of the global value chain, and it is a healthy pathway for China to maintain its status as a renowned manufacturer and eventually progress from “made in China” to “designed in China.” We appreciate China Customs’ consistent efforts to improve processing trade regulations over the past year, and look forward to resolving the remaining problems, including as follows:

**Circulation of Bonded Goods between Special Supervision Zones**

In 2014, China Customs considerably simplified the circulation of bonded goods between special supervision zones, which was welcomed by enterprises. However, there was no substantial progress on this issue in 2015 and the facilitation measure does not cover all types of bonded goods and zones. The existing transit mode severely restricts the efficient transfer of goods in special supervision zones and does not align with the government’s push for environmental protection. We recommend that China Customs expand the applicable scope of this system as soon as possible, revise existing policies, and allow enterprises to truly realize “batch delivery, centralized Customs declaration, and self-transportation.”

**Destruction of Goods for Processing Trade**

China Customs’ Announcement No. 2014-33 regarding the destruction of goods for trade processing is inconsistently implemented.

**Material Substitutions**

To address difficult-to-avoid material substitutions during processing trade, China Customs put forth the relatively flexible “Three Sames and One No” (same variety, same specification, same quantity, no profit) policy; however, a requirement was later added limiting the applicability of this policy to materials with a zero import duty rate. We recommend that this restriction be canceled as very few goods meet this requirement.

**Maintenance and Remanufacturing**

We urge China Customs and relevant authorities to open up import maintenance and remanufacturing regulations of electronic, engineering, and mechanical products as long as environmental protection requirements are met.
度给予积极评价。与此同时，商会建议中国海关：

- 就预裁定制度的全面实施做出相应的资源（如，指定责任部门，组织相关官员，制定程序）安排；
- 从提前申请时间、企业区域资格范围以及申请渠道等方面，降低预裁定申请门槛，扩大受益面；
- 扩大配置资源来确保支持预裁定的系统功能性；和支持；
- 对进出口企业以及提供社会化预归类服务机构仅仅由于技术及专业技能欠缺或规则应用差异导致的商品归类不一致，不宜认定为申报不实；
- 针对同一商品在不同海关归类不一致的问题，制定并公布相应的协调机制，方便企业解决实际问题。

### 加工贸易及保税制度

2015年11月9日，中央全面深化改革领导小组审议通过《关于促进加工贸易创新发展的若干意见》，为中国的加工贸易创新发展奠定了政策基础。全球经济一体化发展过程中，加工制造业依然是全球价值链中具有关键作用的一环，保持中国“世界工厂”地位并逐步发展“中国创造”是一条健康的发展道路。商会会员中从事加工贸易业务的企业众多，高度赞赏过去一年中海关不断完善加工贸易管理制度的工作, 也期待目前依然存在的问题得以解决。

#### 特殊监管区保税货物流转

2014年，海关对特殊监管区保税货物流转制度做出了重大的简便化调整，受到企业欢迎。但此项措施在2015年期间，由于系统原因该便利措施不能覆盖所有类型的保税货物和保税区域而未见实质性推进。现有的转关转口转单转为和转为“三同”（同品种，同规格，同数量，不同利）的制度性安排，但海关又在这个要求之上增加了商品关税税率为零的规定，商会将这一限制性规定取消。

#### 维修和再制造

维修和再制造是加工制造的延伸且技术含量高。海关对加工贸易中难以避免的串料曾经作出了较为通融的“三同一不”（同品种、同规格、同数量，不牟利）的制度性安排，但海关又在这个要求之上增加了商品关税税率为零的规定，商会将这一限制性规定取消。

#### 成品出口价格

不同品质差异，同一种加工制成品的价格往往有差异，部分海关对此不予认可，造成出口收汇核销障碍，商会建议允许企业按照实际成交价格申报出口。

#### 跨境电商

跨境电子商务市场对中国而言愈发重要。2015年，中国跨境电商增速高于全球平均增幅，保持并增强其出口竞争优势。我们鼓励中国政府进一步降低成本和提高对外贸易效率。对于跨境电商，商会在提出以下建议供相关部门参考：

#### 完善制度环境

由于电子商务进出口在交易方式、货物运输、支付结算等方面与传统贸易方式差异较大，目前配套的政策监管体系不完善以及政策支持力度较低。我们建议：在通关监管、检验检疫、出口退税及结汇、知识产权等方面建立配套的体系、施行出口退税和结算及IP保护措施。目前所谓的“网络水客”，利用欺诈或盗取的身份证进行囤积销售，造成国家税款流失。关键的挑战是，如何在长期的跨境电子商务法规制定期间，避免此类问题和其它违法问题的发生。

#### 扩大试点区域

根据海关总署《关于加强跨境电子商务网购保税进口监管工作的通知》58号公告，只有郑州等8个试点城市的海关特殊监管区和保税物流中心才能开展跨境电商网购保税进口业务，在非试点城市及非试点区域内禁止开展跨境电商进口业务。我们建议，可以采用设定门槛、动态考评的模式，对软件条件好、达到电商发展基础的城市，允许其进入到跨境电商领域。
Export Price of Finished Products

The price of the same type of product may vary depending on quality; however, some China Customs officials do not recognize such distinctions and impede the verification and receipt of export-related foreign currency revenues. We recommend that enterprises be allowed to declare export products per their actual price.

Cross-border E-commerce

Cross-border e-commerce remains an increasingly important market in China, achieving a higher growth rate in 2015 than the global average for this sector. To remain competitive in cross-border e-commerce and strengthen competitive export advantages, we encourage the Chinese government to continue to reduce costs and inefficiencies associated with foreign trade. Accordingly, we recommend the following:

Improve the Institutional Environment

A comprehensive policy supervision or support system for e-commerce does not yet exist in China while traditional import and export trade regulations (e.g., cargo transportation, payment settlement, trading method) do not address the unique challenges of this emerging sector. We suggest, for example, the establishment of support systems in customs clearance supervision, inspection, and quarantine; export rebates and settlement; and IP protection. Currently, so-called “online smugglers” use fraudulent or stolen ID cards to hoard goods imported online, resulting in a loss of tax revenue. The key challenge is preventing these and other illegal actions while developing long-term cross-border e-commerce regulations.

Expand the Pilot Area for Cross-border E-commerce

According to the “Letter on Strengthening Bonded Supervision over Cross-border E-commerce Online Imports,” (GAC Announcement No. 58), only eight pilot cities have special zones with bonded logistics centers and supervised by customs officials that are allowed to engage in cross-border imports. Other cities and zones, including bonded warehouses, are not allowed to conduct cross-border e-commerce. We recommend that a dynamic appraisal model be developed and applied to determine if cities that meet a minimum infrastructure threshold may participate in cross-border e-commerce.

Relax Limits on Online Shopping

Overall, low tax rates on passenger luggage and personal postal parcels have reduced the cost of importing goods. However, cross-border e-commerce regulations have failed to adapt to changes in shopping patterns. According to the “GAC Notice on Issues Related to Cross-border E-commerce Service Pilot Online Bonded Imports,” the threshold value of commodities for pilot program online shopping is RMB 1,000 (approximately US $160) and, if the value exceeds this threshold, it must be cleared by the relevant Customs authority. As domestic consumption continues to grow, we suggest that this threshold value be increased to RMB 5,000 (US $796).

Recommendations

For the Chinese Government (China Customs):

• Regularly consult with the business community on important concerns in accordance with the Trade Facilitation Agreement.
• Initiate and complete as soon as possible the formulation and amendment of the imperative laws and regulations as discussed in this chapter.
• Organize and invite enterprises to participate in discussions on the administration of processing trade.
• Actively promote the “single window.”
• Strengthen anti-smuggling efforts.
• Support development of cross-border e-commerce by improving the institutional environment, expanding the pilot area for cross-border e-commerce, and relaxing limits on online shopping.

For the US Government (US Customs and Border Protection):

• Promote AEO/Customs Trade Partnership Against Terrorism recognition negotiations with China Customs.
• Encourage business community participation in bilateral exchanges with China Customs.
适度放宽网购限额

由于跨境电商网购保税进口政策利用的是行邮税的低税率，使得进口商品降低成本。但是，根据《海关总署关于跨境贸易电子商务服务试点网购保税进口模式有关问题的通知》，“试点网购商品每次限值为 1000 元人民币（约 160 美元），超出规定限值的，应按照货物规定办理通关手续”。随着国内消费能力日益增长，这一限值是否偏低，建议将限值适度放宽，例如由 1000 元上升为 5000 元（约 796 美元）。

建议

对中国政府：

- 按照《贸易便利化协定》要求，就商界普遍关注的重要事项开展机制性的定期磋商活动；
- 尽快启动、推进本章谈及的法律制度制定、修订工作；
- 就加工贸易管理组织企业参与的专题研讨会；
- 积极推进“单一窗口”；
- 加强海关缉私工作的开展；
- 通过完善制度环境，扩大跨境电商的试点区域，放宽网购限额，支持跨境电商的发展。

对美国海关：

- 积极推进和中国海关之间 AEO/CTPAT 互认协定谈判；
- 鼓励企业参与同中国海关间的双边交流。
Government Procurement

Introduction

Since beginning negotiations to join the WTO Agreement on Government Procurement (GPA) in December 2007, China has submitted five offers, with the latest revised offer submitted in December 2014. China has not made any commitments to submit another revised offer.

AmCham China recognizes the progress China has made with each revised offer and appreciates that its 2014 offer provides coverage that is in many respects commensurate with the coverage of GPA parties, such as with respect to certain threshold levels and coverage of sub-central government entities. However, AmCham China urges the Chinese government to focus on closing the remaining gaps in the few key areas identified below in order to allow China to be in a position to conclude its accession to the GPA in 2016.

Opening China’s government procurement market to foreign competition is in China’s interest. Doing so would allow relevant Chinese government entities to acquire high-quality goods and services at competitive prices. Joining the GPA would also provide China with tools to combat local protectionism and corruption. AmCham China encourages the Chinese government to further open its government procurement market on a reciprocal basis with the US and many other countries by accelerating the process of its accession to the GPA.

Background of China’s Accession to the GPA

Threshold Levels

In its 2014 offer, China proposed, after a two-year phase-in period with higher transitional thresholds, to apply permanent thresholds that are the same as those used by two or more GPA parties. For goods and services procured by its central government entities, China proposes the same threshold (130,000 Special Drawing Rights (SDRs)), as that of all GPA parties, except Japan and the Netherlands with respect to Aruba. China also follows the parties’ use of a construction threshold of five million SDRs. China’s proposed transitional thresholds would be 200,000 SDRs for goods and services and 10 million SDRs for construction services.

For goods and services purchased by its sub-central government entities, China would apply the same threshold as the US and Canada (355,000 SDRs), following application of a two-year threshold of 500,000 SDRs. For goods and services procured by state-owned enterprises (SOEs) and other entities, China would apply the 400,000 SDRs threshold used by most parties, including the US, for entities at the sub-central level. That threshold would be applied after a 600,000 SDRs transitional threshold. For construction services procured by both its sub-central entities and other entities, China would initially apply a 25 million SDRs threshold for two years before applying the 15 million SDRs threshold used by Japan and Korea, rather than the five million SDRs used by most parties.

Coverage of Central and Sub-Central Government Entities

China increased its coverage of central government entities from 50 entities in its initial offer to 63 entities in its 2014 offer. That coverage appears comparable to that of the parties, with a significant exception. China has not offered its Ministry of Defense or defense-related entities. The only GPA party that does not cover its defense entities is Israel.

With respect to sub-central coverage, China offers 15 of its 22 provinces and all of its four provincial-level municipalities (Beijing, Chongqing, Shanghai, and Tianjin). This coverage is generally comparable to that of GPA parties, such as the US, that list their sub-central entities, but not to those that provide more comprehensive sub-central coverage, such as the EU, which covers categories of entities.

Coverage of SOEs and Other Entities

With regard to the coverage of SOEs and other entities, China’s 2014 offer includes 22 entities, only three of which are SOEs: Agricultural Development Bank of China, China Central Depository and Clearing Co., Ltd., and China Post Group (coverage limited to procurement for universal postal services).
政府采购

引言

自2007年12月启动加入世界贸易组织《政府采购协定》（GPA）谈判以来，中国已经提交五份出价清单，出价清单最新修改的提交时间为2014年12月。此后中国未再就进一步修改提交最新出价清单作出任何承诺。

中国美国商会对中国提交的每一份出价单的改进表示认可，并对2014年出价清单出价范围与《政府采购协定》参加方一般出价水平在很多方面大体相当表示赞赏，例如部分门槛价降至参加方水平以及次中央实体列入采购主体。不过中国美国商会促请中国政府重点缩小下文所讨论的少数关键领域内仍存在的差距，从而使中国能够顺利地在2016年加入《政府采购协定》。

中国对外开放政府采购市场、引入国际竞争符合中国的利益，并有助于中国相关政府实体获取质高价优的商品和服务。加入《政府采购协定》还将为中国提供消除地方保护主义和腐败的工具。中国美国商会鼓励中国政府在互惠的基础上向美国及其他国家继续开放政府采购市场，从而加速加入《政府采购协定》的进程。

中国加入《政府采购协定》的相关背景

门槛水平

在2014年提交的出价清单中，中国提出在实行较高过渡门槛的两年渐进期过后，方适用《政府采购协定》两方或多方同等的永久性门槛，在中央政府实体采购货物或服务方面，中国提出的门槛价与除日本及荷属阿鲁巴岛之外的《政府采购协定》全体参加方相当，即13万特别提款权。中国还采用了参加方通用的500万特别提款权的工程门槛。

中国还提出过渡期门槛，即货物和服务采购采用20万特别提款权，工程服务采用1000万特别提款权。在次中央政府实体采购货物和服务方面，中国将采用与美国和加拿大相同的门槛价（35.5万特别提款权），在两年过渡期内门槛为50万特别提款权。在国有企业及其他实体采购货物和服务方面，中国计划采用大多数参加方（包括美国次中央实体）都采用的门槛价，即40万特别提款权。且在两年过渡期内该门槛为60万特别提款权。

次中央实体及其他实体采购工程服务时，中国将采用2500万特别提款权的两年过渡期门槛价，过渡期过后采用的门槛价为日本和韩国所适用的1500万特别提款权，而不是绝大多数参加方所使用的500万特别提款权。

中央和次中央政府实体的范围

中国将中央和次中央政府实体从初步出价清单中的50个增加至2014年出价清单中的63个。上述覆盖范围看起来与参加方的相当，但却存在一个显著的例外情形，中国的采购实体并不包括国防部和国防相关实体，而在《政府采购协定》参加方中只有以色列将国防实体排除在外。

在次中央实体范围方面，中国将其22个省份中的15个省加上4个直辖市（北京、重庆、上海和天津）纳入采购实体名单。上述范围与具体列明次中央实体的《政府采购协定》参加方，如美国的覆盖水平大致相当，但与欧盟等更广泛地规定次中央实体类别的参与方相比尚有差距。

国有企业和其他实体的范围

在国有企业和其他实体的覆盖范围方面，中国在其2014年的出价清单中列出了22家实体，其中只有3家是国有企业：中国农业银行、中国中央国债登记结算有限责任公司和中国邮政集团（仅限采购邮政普遍服务）。

服务业的范围

中国与除美国和新西兰之外的所有《政府采购协定》参加方一样，以正面清单的形式列明采购服务的范围（仅适用列明的服务类别）。美国和新西兰则采取负面清单形式，
Coverage of Service Sectors

China, like all GPA parties except the US and New Zealand, bases its coverage of services on a positive list (covering only listed service categories). China’s offer is not as comprehensive as that of the US and New Zealand, which cover all services except those listed. A comparison of China’s offer with the services covered by the other parties is difficult because their coverage is spread among various categories and sub-categories. China follows the other parties that condition their services coverage on the limitations and conditions specified in its commitments under the WTO General Agreement on Trade in Services.

With respect to construction services, China has gradually expanded its coverage, adding seven new subsectors in its 2014 offer. But that coverage still falls short of the GPA parties, which cover all construction services, with the exception of the exclusion of dredging by the US and Canada.

Within these constraints, China’s coverage is generally commensurate with that of the GPA parties. However, some of its proposed exceptions still serve as obstacles to its accession.

Problematic Exceptions

The first of China’s problematic exceptions is its reservation of the right to deviate from the principle of national treatment when a specific procurement may “impair important national policy objectives.” Such an open-ended exclusion would render China’s coverage unpredictable and subjective. Second, China wants to be able to require the incorporation of domestic content, offsets, or transfer of technology in any procurement. Such a reservation would be contrary to the GPA’s prohibition of offsets, except as a transitional measure.

Third, China has qualified its sub-central coverage with an exclusion of procurement of construction services “using special funds of the central government.” The scope of this restriction is unclear, but it could significantly undermine their coverage if it applies to most or all construction undertaken in the provinces.

Proposed Transitional Measures

China’s offer proposes three types of transitional measures: 1) higher thresholds for all entities for two years after it implements the GPA, 2) phased-in coverage of two-thirds (10) of its covered provinces three years after the GPA enters into force for China, and 3) a three-year delay in implementing obligations after its accession.

To facilitate accession by developing countries, the GPA permits the use of transitional measures, with the approval of the parties. Such measures include price preferences, offsets, the phased-in addition of specific entities or sectors, and higher temporary thresholds. The GPA also allows for deferred implementation of specific provisions. But it does not allow for an acceding country to delay its entire implementation of the Agreement after its accession.

Overview of Status of China’s GPA Accession

China has indicated that its 2014 offer includes all of the substantive concessions that it is authorized to make at this time. Any further expansion of coverage would depend on future reforms, such as those underway for SOEs and the military. But the timetable for such reforms is not known.

With its last offer, China has moved closer to the coverage of the GPA parties. Its permanent thresholds are the same as those used by two or more parties. Its central government entity coverage is generally in line with that of the GPA parties, with the exception of its exclusion of defense entities. China’s coverage of sub-central government entities and other entities is generally comparable to the coverage of the GPA parties that base their coverage on a list of covered entities. China’s services offer follows most parties in its use of a positive list and appears to offer generally comparable coverage. On construction services, however, China’s offer falls short of the comprehensive coverage of the parties.

With the removal of its proposed transitional measures and exclusions and certain improvements, as discussed in the following section, China could be in a position to conclude its accession to the GPA in 2016.

Fourteen years have elapsed since China committed to join the GPA. China’s GPA accession negotiations are now entering their ninth year. It is time that they were brought to a close. For US firms, China’s accession would mean that they would have opportunities to participate in China’s government procurement on a transparent, predictable, and non-discriminatory basis. For China, its accession would fulfill a WTO commitment and provide it with access to the procurement of the GPA parties, as well as an opportunity to participate in the development of international procurement standards and practices.

Proceeding from the Current Stalemate

As noted above, China has indicated that it will not submit additional revised GPA offers until it completes ongoing reforms to its SOEs and military procurement practices. China has warned other GPA members that if they intend to hold out and not accept its current accession offer, they may be forced to wait an unspecified period of time until China’s domestic reforms are completed.

China’s most recent offer has pushed it within striking distance of concluding its accession negotiations. If China were to focus on closing the remaining gaps and improving its existing offer in the key areas identified below, it could provide a basis for its accession to the GPA and a way forward from the current stalemate.
所有未列人负面清单的服务都属于采购服务范围。相比之下，中国的采购服务范围没有美国和新西兰的全面，与其他参与者也缺乏可比性，因为其他参与者规定的采购服务范围涉及更广、分类更细。中国还沿用其他参与者的做法，规定采购服务的范围还需遵守中国在WTO《服务贸易总协定》谈判中规定的限制和条件。

在工程服务方面，中国已逐步扩大了采购范围，在2014年的出价清单中新增七个子行业，但扩大后的工程服务采购范围依然达不到《政府采购协定》参与者的覆盖水平。除美国和加拿大将疏浚业排除在采购范围之外，其他参与者所涵盖的工程服务范围更广、分类更细。中国还沿用其他参与者的做法，规定采购服务的范围需遵守中国在WTO《服务贸易总协定》谈判中规定的限制和条件。

在这些限制条件下，中国的采购覆盖范围与《政府采购协定》参与者的范围基本相当，但出价清单中规定的例外情形依然是中国加入《政府采购协定》的障碍。

**问题众多的例外规定**

中国的出价清单中首当其冲存在的问题的例外规定便是对于“有可能损害国家重要政策目标”的特殊采购保留不执行国民待遇的权利。这种开放式的排除性规定会导致中国政府采购的范围变得不可预测且相当主观。第二个问题是希望政府对政府采购项目的本国民度、补偿交易或者技术转移提出要求。这种保留规定与《政府采购协定》所推行的“除过渡性措施外，禁止采用补偿交易”的规定背道而驰。

第三，中国已经提出其中央实体采购项目不包括采购“使用中央政府专项基金”的工程服务。上述排除规定虽然并不明确，但如果适用于大部分或全部省级工程，则会严重缩小采购项目范围。

**提议的过渡性措施**

中国在出价清单中提出了三种过渡性措施：

1. 在履行《政府采购协定》之后的2年内，对所有实体实行较高的门槛价；
2. 中国在履行《政府采购协定》之后的3年内，针对阶段、逐步地在清单列明的省份中三分之二（10个）的省份推进适用协议；
3. 中国在加入《政府采购协定》之后开始履行协议。

为了方便发展中国家加入，《政府采购协定》允许使用过渡性措施，但须经过参与者同意。上述措施包括价格优惠补偿交易和特定实体或行业分阶段、逐步适用协议，以及暂时提高门槛价等。《政府采购协定》还允许延迟执行特定条款，但并不允许申请加入国在加入协议后推迟履行整个协议。

**中国加入《政府采购协定》现状综述**

中国表示2014年出价清单已列明当前所能作出的全部实质性让步，进一步扩大采购范围有待相关改革的继续深入，如正在推进的国企改革和军队改革，但上述改革时间表尚不明确。

在最新出价清单中，中国的产品范围与《政府采购协定》参与者的范围基本一致，但中国产品的范围没有美国和新西兰的全面，与其他参与者缺乏可比性，因为其他参与者所涵盖的产品范围更广、分类更细。中国还沿用其他参与者的做法，规定采购服务的范围需遵守中国在WTO《服务贸易总协定》谈判中规定的限制和条件。

如果中国能够取消出价清单中有关过渡性措施和例外情形等内容，并就下文所讨论的内容加以改进，中国有望在2016年完成加入《政府采购协定》的工作。

14年前中国承诺加入《政府采购协定》，9年前中国启动加入《政府采购协定》谈判，如今也到了瓜熟蒂落的时刻。对美国企业而言，中国加入《政府采购协定》意味着它将有机会在透明、可预期且非歧视的基础上参与中国政府采购市场。对中国而言，加入《政府采购协定》意味着不仅能在WTO框架下维护其利益，而且还能在国际采购标准和实践的更新中发挥更大作用。
**Additional Provinces**

China’s coverage of 15 of its 22 provinces and all four provincial-level municipalities (Beijing, Chongqing, Shanghai and Tianjin) is generally comparable to that of GPA parties, such as the US. However, its coverage falls short when compared to parties like the EU, which provides more comprehensive sub-central coverage. As a result, China should at least ensure that its list includes the most important provinces. For example, Sichuan is a large, economically significant province that is currently missing from China’s offer. In addition, China should make an effort to include a few more less-developed provinces where significant government investment and infrastructure projects are currently taking place, such as Qinghai and Gansu.

**Additional Services and Construction Services Coverage**

If China insists on basing its services and construction services coverage on a positive list, we suggest that China engage in dialogue with US industries through AmCham China in an effort to ensure meaningful coverage and achieve support from the US. Services that China should consider covering that are of importance to US industries include the following:

- all financial services, including insurance, banking, and e-payment services
- all construction, engineering, equipment installation, and design services and construction-related consulting services
- express delivery services
- healthcare services
- all information and communications technology (ICT) services
- media and entertainment services
- real estate services
- retail and e-commerce services
- accounting, auditing, and bookkeeping services and services related to management consulting

**Eliminating Broad Exceptions**

AmCham China also urges China to eliminate the exception that would reserve China’s right to deviate from national treatment principles when a specific procurement may “impair important national policy objectives.” Such a broad and open-ended exception would render China’s entire offer and coverage unpredictable and subjective. Moreover, China should eliminate the exception that would enable it to require the incorporation of domestic content, offsets, or transfer of technology in any procurement. Such a reservation would be contrary to the GPA’s prohibition of offsets, except as a transitional measure.

**Eliminating Proposed Transitional Measures**

As noted above, China has proposed three types of transitional measures: higher thresholds for all entities for two years after it implements the GPA, phased-in coverage of two-thirds (10) of its covered provinces three years after the GPA enters into force for China, and a three-year delay in implementing obligations after its accession. AmCham China urges China to eliminate these proposed transitional measures, which would delay China’s overall implementation of the Agreement for many years after its accession. Given China’s economic stature, it would be difficult to justify its use of transitional measures.

**Clarifying Coverage of SOEs**

While China has added a few SOEs to its list of covered entities in its most recent offer, AmCham China urges China to include major SOEs that appear to procure regularly for governmental purposes (i.e., not with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale). We encourage the Chinese government to clarify its position on SOEs by either issuing an unambiguous directive confirming that SOE purchases are non-government procurements that are based solely on commercial considerations, in line with China’s commitments regarding the commercial independence of SOEs in its Working Party Report during its accession to the WTO; or expanding GPA coverage to include additional major SOEs that procure for governmental purposes.

**Commitment to Expanding Coverage**

If China addresses the above key issues, and commits to exploring the possibility of expanding coverage further in the next three to five years, China could be in a position to conclude its accession to the GPA in 2016.

**Improvements to China’s Domestic Procurement Regime**

**Government Procurement Law**

The “Implementing Regulations of the Government Procurement Law” entered into effect on March 1, 2015. AmCham China applauds the regulation’s aim to standardize the procurement process, improve efficiency, and promote transparency. Meanwhile, supervision and management of procurement will be improved through public scrutiny (e.g., procurement information, information concerning the bidding results and transactions will be published in the media). More specifically, the finalized regulations deleted wording found in Articles IX and X of the 2010 draft on national Indigenous Innovation Products (IIPs), including the 20 percent preference for domestic goods, and further clarified the handling process for queries and complaints.
增加省份

中国出价清单中次中央实体包括 22 个省份中的 15 个，外加 4 个直辖市（北京、重庆、上海和天津），范围与《政府采购协定》参与方美国基本相当。然而与欧盟等更为广泛地划定次中央实体范围的参与方相比，还存在差距。因此，中国应当至少确保次中央实体名单中包括中国最重要的几大省份。例如，面积广大、经济地位高的四川省目前就不在清单之列。另外，中国应当尽量将大规模开展政府投资和工程建设的欠发达省份，如青海省和甘肃省，也纳入政府采购次中央实体名单。

扩大服务和工程服务采购项目范围

如果中国坚持采用正面清单限定政府采购服务和工程服务项目的范围，我们建议中国政府通过中国美国商会与美国相关企业开展对话，从而合理地划定上述范围，并取得美国方面的支持。中国应当考虑纳入清单的且对美国较为重要的服务行业如下：

- 全部金融服务业，包括保险业、银行业和电子支付服务业
- 全部工程、机械、设备安装、设计服务和工程相关的咨询服务
- 快递服务业
- 医疗服务业
- 全部信息通信技术服务业
- 传媒和娱乐服务业
- 房地产服务业
- 零售和电子商务服务业
- 会计、审计和记账服务业以及管理咨询相关服务业

取消宽泛的例外情形规定

中国美国商会还促请中国取消对于“有可能损害国家重要政策目标”的特殊采购，保留不执行国民待遇的权利这一例外情形规定。这种宽泛且开放式的例外情形规定可能导致中国的整个报价清单和采购项目范围变得主观且不可预测。另外，中国应当取消“中国有权对政府采购项目的本国比例、补偿交易或技术转移提出要求”这一例外情形规定，因为这种保留措施违背了《政府采购协定》“对非过渡性措施不得采用补偿交易”的规定。

取消过渡性措施

如前所述，中国的出价清单中提出三种过渡性措施：

1. 在履行《政府采购协定》之后的 2 年内，对所有实体实行较高的门槛价；
2. 中国在加入《政府采购协定》之后的 3 年内，分阶段逐步地在清单列明的省份中三分之二（10 个）的省份推进适用协议；
3. 中国在加入《政府采购协定》之后开始履行协议。上述措施会在中国加入《政府采购协定》数年后才开始全面执行协议。考虑到中国目前的经济形势，中国采取上述过渡性措施的理由很难成立。

明确国有企业的范围

尽管中国在最新修改报价清单的采购实体中增列了几家国有企业，中国美国商会还是促请中国将所有国有企业纳入《政府采购协定》的范围。除了明确国有企业名单外，中国美国商会还促请中国取消“中国有权对政府采购项目的本国比例、补偿交易或技术转移提出要求”这一例外情形规定，因为保留措施会违背《政府采购协定》的“对非过渡性措施不得采用补偿交易”的规定。

承诺扩大覆盖范围

如果中国能够解决上述几大问题，并承诺在下个 3-5 年内探索扩大覆盖范围的可能性，中国就有望在 2016 年完成加入《政府采购协定》的工作。

完善国内政府采购体制

《政府采购法》

2015 年 3 月 1 日，《政府采购法实施条例》正式实施。该条例旨在统一采购程序标准，提高采购效率并促进采购公开透明，中国美国商会对此表示赞赏。与此同时，条例规定将通过加强公众监督（例如，通过媒体公布采购信息、中标结果信息和交易信息）来强化采购监督管理。更具体来说，《条例》的终稿删除了 2010 年草案第九条和第十条中关于本国自主创新产品的规定，其中包括给予本国货物 20% 的价格倾斜的规定，并进一步阐明了处理质疑或投诉事宜的程序。
Definition of “Domestic Product” in Government Procurement Measures

As discussed in previous editions of the White Paper, release of a revised “Administrative Measure for the Government Procurement of Domestic Products” (Measure) remains pending following issuance of a draft for comment in 2010. Thus, there is still no clear definition of “domestic product.” AmCham China encourages China to release as soon as possible a revised draft that provides a clear, consistent, and reasonable definition of “domestic product” in order to establish a level playing field which enables foreign companies to participate in China’s government procurement in line with international practice. We look forward to reviewing and commenting on the revised draft before final promulgation to ensure that goods and services provided by all legal entities in China will be treated equally during procurement processes, regardless of ownership.

JCCT Government Procurement Developments

During the 26th US-China Joint Commission on Commerce and Trade held in Guangzhou on November 21-23, 2015, the Chinese government confirmed that a revised draft of “the banking sector’s guidelines for promotion of the use of safe and controllable information technology (2014-2015)” will be released for a 30-day public comment period and implemented after revision. In addition, banks in China and the US are free to purchase and use ICT products regardless of their country of origin. AmCham China welcomes this clarification but encourages China’s continued commitment to not impose nationality-based conditions and restrictions on government procurement at the national and local level. Additional concerns on this issue are discussed in greater detail in the Banking and ICT chapters.

Recommendations

For the Chinese Government:

• Focus on addressing the remaining gaps in China’s fifth revised GPA offer as identified in this chapter and accelerate negotiations toward accession to the GPA in 2016. [MOFCOM, MOF, SASAC]

• Clarify the definition of “domestic product” in the “Administrative Measure for the Government Procurement of Domestic Products” in order to ensure goods and services provided by all legal entities in China will be treated equally during procurement processes regardless of ownership.

• Ensure that nationality-based conditions and restrictions on government procurement at the national and local level are not imposed.
《政府采购实施条例》中“本国产品”的定义

如往年《白皮书》中所述，2010年中国公布《政府采购实施条例》草案（管理办法）公开征求意见，但目前尚未公开修改草案。因此，所谓“本国产品”的定义并不明确。中国美国商会建议中国尽快公布该管理办法草案修订稿，并对“本国产品”给予一个明确一致且合理的定义，从而为外资企业参与中国政府采购、按照国际惯例开展竞争营造一个公平的市场环境。我们希望中国正式颁布并实施上述管理办法前，能够继续公布修订草案并公开征求意见，确保在华经营的所有法律实体，无论所有权结构如何，都能在政府采购程序中得到公平对待。

美中商贸联委会政府采购进展

第26届美中商贸联委会于2015年11月21-23日在杭州举行。会上，中国政府承诺将修订《银行业应用安全可控信息技术推进指南（2014-2015年度）》，并向社会公布草案及公开征求意见，意见征求期为30天，待修订完成后实施该指南。另外，在华和在美银行可以自由采购和应用信息技术产品而不用考虑其来源国。中国美国商会对上述这类澄清行为表示欢迎并建议中国继续就“不会对全国和地方层面的政府采购活动设定国籍条件和施加限制”给予承诺。与此相关的其他问题将在“银行业”和“信息通信技术”等章节中进行详细讨论。

建 议

对中国政府：

• 重点缩小本章所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于2016年加入《政府采购协定》。【商务部、财政部和国资委】

• 明确《政府采购本国产品管理办法》中“本国产品”的定义，确保在华经营的所有法律实体，无论所有权结构如何，都能在政府采购程序中得到公平对待。

• 确保不对全国和地方层面的政府采购活动设定国籍条件和施加限制。
High-Tech Trade Promotion and Export Controls

**Introduction**

China is the most important import partner for the US and the third largest export destination behind Canada and Mexico. Bilateral trade in goods between the US and China grew from US $147 billion (RMB 910 billion) in 2002 to almost US $600 billion (RMB 3.5 trillion) in 2015. The total value of licensed dual-use exports from the US to China continues to grow at an even faster rate. As the US and China look to capitalize on the potential future growth in bilateral high-tech trade, both countries seek to promote mutual understanding and increase cooperation on export controls.

Despite efforts by both sides, problems still pervade the discussion on export controls and negatively impact high-tech trade cooperation. Export controls affect high-tech trade between the US and China in the following ways:

- Misperceptions by the Chinese government and among Chinese industry representatives about the restrictions imposed by US export controls deter Chinese companies from seeking US-origin products.
- US export control policies do not fully account for foreign and indigenous availability, resulting in:
  - decreased national security benefits for the US when the same items can be obtained without license domestically or through another country, and
  - loss of sales by US firms to foreign competitors, negatively affecting the US defense industrial base.
- A lack of transparency in China’s export control regime has led to diversion concerns with regard to dual-use items.
- The lack of an established compliance culture among Chinese businesses hinders the ability of Chinese firms to persuade US licensing officers to authorize particular licenses, hindering the firms’ ability to acquire certain US export-controlled items.

To address these issues, the Export Compliance Working Group (ECWG), comprised of members from AmCham China and AmCham Shanghai (hereafter referred to collectively as “AmCham”), strive to facilitate civilian bilateral high-tech trade by serving as the liaison between government and industry.

Since its inception, the ECWG has evolved to focus on compliance promotion and industry-government cooperation, while emphasizing best practices and the importance of transparency and compliance. As US companies develop more research and development and intellectual property in China, the ECWG also focuses on understanding Chinese export regulations and best practices in China-based compliance.

**Ongoing Regulatory Issues**

**US Export Controls**

**Foreign Availability and Non-US Suppliers**

In some circumstances, US export controls require dual-use export licenses for items that are already available indigenously in China or that may be exported from non-US countries under easily obtainable export licenses. AmCham believes it is unnecessary for either the US or multilateral regimes to control items that are already available in China. Such restrictions do not provide a national security benefit to the US nor do they have a positive impact on preventing the proliferation of weapons of mass destruction or conventional weapons. AmCham thus requests that the US government take the lead in reviewing the list of items controlled by all multilateral regimes (except for the Nuclear Suppliers Group, of which China is a member) and remove those items that are produced in China.

Regarding items that are available in China from non-US firms, AmCham stresses that having items exported under a US export license is of much greater benefit to US national security than if those equivalent items are exported from another country. In other countries’ export control regimes, the license review process, conditions imposed on any license, and ongoing controls and monitoring are not the same as those associated with the US export control system. In addition to this direct national security impact, there is a secondary impact related to the economic disadvantage that US companies experience when they lose sales to non-US companies due to dual-use export controls.
引言

中国是美国最重要的进口贸易伙伴，也是仅次于加拿大和墨西哥的第三大出口目的地。中美双边货物贸易额从2002年的1470亿美元（9100亿元人民币）跃升至2015年的6000亿美元（3.5万亿元人民币），而获准对华出口的美国两用产品的贸易总额持续以更快的速度增长。鉴于中美两国都期望从未来的高科技双边贸易增长中受益，两国都已努力在出口管制领域促进相互理解，加强合作。

尽管两国已作出巨大努力，但在出口管制问题上依然存在各种问题，并对高科技贸易合作造成了负面影响。出口管制在下述方面影响着中美两国的高科技贸易：

- 中国政府及业内人士对美国出口管制的限制措施存在的误解，阻碍了中国企业对美国原产地产品的进口。
- 美国出口管制政策未能充分考虑外国（第三国）及本土是否已有类似产品的情况，这将导致：
  - 如果可以本土或第三国不经过许可证获得同样产品，美国的国家安全利益将受到损害，以及
  - 美国公司的销售份额流向外国竞争对手，从而使美国国防工业基础造成负面影响。
- 美国出口管制制度缺乏透明度，造成对两用物项产品的被滥用的担忧。
- 中国企业尚未建立合规文化，降低了中国企业说服美国许可证审批官员向其颁发特定许可证的可能性，从而削弱其获取美国出口管制产品的可能性。

为了解决这些问题，2006年中国美国商会和上海美国商会（以下统称“美国商会”）的成员企业组成出口合规工作组（ECWG），旨在增进政府和行业之间的联络，推动双边民用高科技贸易的发展。

高科技贸易促进和出口管制

自其成立之时起，出口合规工作组就一直通过强调最佳实践以及透明度和合规的重要性，来促进合同以及行政政府间合作。随着美国企业越来越多地在华开展研发并取得知识产权，出口合规工作组也在致力于理解中国出口管制制度和在华企业合规最佳实践。

现存监管问题

美国出口管制

外国产品的存在和非美国供应商

在某些情况下，美国出口管制政策对认为中国已能自主生产或通过简单手续即可从美国之外的国家获取许可证并出口的产品，仍然要求两用产品出口许可证。美国商会认为，美国或任何体系无需管制中国已能自主生产的产品。这种限制既不会为美国提供安全保障，也不会对防止大规模杀伤性武器或常规武器扩散产生积极作用。因此美国商会呼吁美国政府率先审核所有多边体系管制下的产品清单（中国作为成员国之一的核供应国集团的管制清单除外），并从中清除中国自主生产的产品。

对于中国从美国以外国家进口的产品，美国商会强调，相比中国从另一个国家进口同等产品，从美国进口已取得美国出口许可证的此类产品对美国国家安全更有利。在其他国家出口管制制度中，许可证审核流程、许可证的授予条件以及持续管理和监控均不同于美国出口管制制度的相关规定。除造成直接国家安全影响之外，还会因两用物项出口管制导致销售份额流向美国以外企业。因此，美国商会敦请美国政府核查许可证处理时间和颁发两用物项出口许可证的
Each item that China acquires from a non-US business represents a lost US export opportunity and, in turn, harms US job creation, economic growth, and the stability of the US military industrial base. AmCham, therefore, requests the US government to review its processing times and approval criteria for issuing dual-use export licenses and bring these more in line with the practices of other multilateral regime members.

**End-Use Checks**

The Bureau of Industry and Security (BIS) published several changes to the US Unverified List (UVL) process that went into effect in January 2014 that could directly impact Chinese companies purchasing dual-use items from the US. While AmCham understands the need for the US government to conduct end-use visits, we believe expanding the UVL would be an absolute last resort for addressing the inability of the US government to visit an end-user.

Instead, AmCham asks that both the US and Chinese governments increase their efforts to find a solution to any questions regarding end-use visits. AmCham welcomes the opportunity to facilitate the bringing together of US companies and their Chinese partners with both governments to work together to find a positive solution to any end-use visit concerns. AmCham also respectfully requests that the Chinese government continue to increase its support for timely end-use visits, which are critical to facilitating high-tech trade.

**Validated End-User Program**

In 2013, the BIS added several new validated end-users (VEUs) in China, bringing the total number of VEU entities to 12. AmCham fully supports the VEU program as an important tool for facilitating legitimate exports to civilian end-users. The main advantage of VEU authorization is that it allows the export, re-export, and transfer of eligible items to specified end-users in China without needing to apply for an individual license for each transaction. This program puts US companies at a competitive advantage and incentivizes civilian Chinese end-users to invest in trade compliance in order to reap significant business benefits. We urge the US government to continue strengthening and expanding the VEU program and making it more accessible to entities in China willing to commit to compliance and civil end-use only.

**Education and Training**

Export control myths continue to create misunderstandings that result in lost opportunities for US-China high-tech trade. Bringing together qualified commercial importers and exporters working on trade deals and educating them on export controls and the compliance process can be an effective path to debunking these myths and increasing US-China high-tech trade. In fact, many domestic Chinese companies have expressed an interest in learning about internal control processes to enhance their own compliance. Education and training can also help focus government-to-government discussion on the primary issues, such as US license processing times and criteria in relation to other multilateral regime countries, instead of the incorrect assumption that the US has more license requirements for list-based items than other multilateral regime countries.

To address these misconceptions, the ECWG has previously facilitated educational seminars for US exporters, Chinese importers, and government officials on how to maximize commercial trade opportunities by minimizing compliance risks. Current US and Chinese government budgetary restraints, however, pose a challenge to maintaining a consistent rhythm for these exchanges. AmCham asks both the US and Chinese governments to look for opportunities to support and fund such programs, as they are necessary to dispel export control myths and open new trade opportunities. In particular, we suggest adding such educational activities to existing bilateral government engagements.

**Chinese Export Controls**

**Diversion of Dual-Use Items**

The lack of transparency in China’s export control laws and regulations continues to cause concern regarding the diversion of items to harmful end-users or end-uses (e.g., entities and countries of proliferation and terrorism concerns). AmCham recommends that Chinese officials reach out to the US government, among others, to further explain the detailed processes of its export control system, especially as it relates to enforcement.

In addition, AmCham requests the Chinese government to conduct more outreach and training to US industry with a presence in China. A clear and transparent Chinese export control system is critical for US-China relations and will help US-based companies comply more completely and effectively with Chinese export controls. In addition, AmCham urges China to clearly separate civilian and military programs in state-owned entities, to ensure dual-use items are not diverted from civil to military programs, thereby constraining high-tech commercial trade.

**Joining Multilateral Regimes**

China’s absence from influential multilateral regimes has a negative impact on high-tech trade between the US and China, as China’s control lists are not in line with all of the multilateral lists, especially the Wassenaar List. Full membership would put China on par with its biggest trade partners and have a positive impact on high-tech exports from the US to China. AmCham recommends that the Chinese government actively pursue membership in these multilateral export control regimes, such as the Australia Group and the Missile Technology Control Regime, while also taking an...
通过标准，使该流程更加符合其他多边体系成员的做法。

最终用途审查

美国产业与安全局（BIS）发布了对2014年1月起开始生效的“美国未核实名单”（UVL）流程的几次修改，这可能会直接影响企业从美国购买两类产品。尽管美国商会理解美国政府需要进行最终用途审查，但我们相信，扩充UVL应该是解决美国政府因无法访问最终用户的最后补救措施。

然而，美国商会同时促请美国政府和中国政府加大力度，寻找与最终用途访问的相关问题的解决方案。美国商会非常乐于促进美国企业及中国贸易伙伴与两国政府的合作，以共同寻找解决任何有关最终用途访问问题的积极方案。美国商会也诚请中国继续加大力度，支持对最终用途的及时访问，这对促进高科技贸易至关重要。

验证的最终用户项目

2013年，美国产业与安全局在中国新增了几家验证最终用户，使其实体总数达到十二家。美国商会全力支持将验证最终用户项目作为一个重要工具来促进民用最终用户合法出口。此项目授权的主要优势是在于允许与中国特定的最终用户出口。再出口和转让符合标准的产品时，无需就每次交易单独申请许可证。该项目让美国企业处于竞争优势，激励中国民用最终用户投资贸易合规，以便获得高额的商业利润。我们敦促美国政府继续加强验证最终用户项目，并拓展其范围，使致力于合规建设和承诺限民的中国实体有机会成为验证的最终用户。

教育和培训

美国出口管制导致美中两国高科技贸易机会流失的误解一直存在。消除这种误解的有效途径就是对所有有资质的企业和出口商进行教育和培训，以及改进流程方面的培训，从而促进中美高科技贸易。事实上，中国本土企业也许有兴趣学习有关的法规和流程，从而提高其自身合规水平。教育和培训将有助于两国政府关注的主要问题，如美国许可证的发放时间、标准和其他多边体系，而不仅是假设与其他多边体系相比，中国有更多产品许可证需求。

为消除这些误解，出口合规工作组已推动开展针对美国出口商、中国进口商以及政府官员的教育培训班，以期通过合规风险的最小化实现贸易机会的最大化，从而为中国和美国企业创造更多的贸易机会。

中国出口管制

两用物项转移

中国出口管制法律法规缺乏透明度，继续导致人们担忧产品是否会转移到有危害的最终用途（如：担心二次转让与恐怖主义的实体和国家）。美国商会建议中国政府主动与中国及其他有关政府沟通，进一步解释其出口管制体系的详细流程，尤其是关于执行方面。

此外，美国商会敦促中国政府主动与中国拥有业务的美国企业加强沟通和培训力度。消除这种误解的有效途径就是对所有有资质的企业和出口商进行教育和培训，以及改进流程方面的培训，从而促进中美高科技贸易。事实上，中国本土企业也许有兴趣学习有关的法规和流程，从而提高其自身合规水平。教育和培训将有助于两国政府关注的主要问题，如美国许可证的发放时间、标准和其他多边体系，而不仅是假设与其他多边体系相比，中国有更多产品许可证需求。

加入多边体系

由于中国尚未加入具有影响力的多边体系，中国的管制清单与所有多边清单均不一致，尤其是瓦森纳清单，这对美国和中国的高科技贸易造成了负面影响。成为其正式会员可使美国企业更全面、更有效地遵守中国出口管制法规。此外，美国商会还希望中国政府明确区分国有企业民营企业和军用项目，确保两用物项产品不会从民用项目转为军用项目，从而限制高科技贸易。

建议

对美国政府：

- 通过提供奖金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进中美高科技贸易的倡议。
- 美国政府在推进出口管制改革第三阶段时，应考虑到中国是否可以从国内和国外获得相关产品。
active leadership role in the multilateral regimes in which it is already a member.

Recommendations

For the US Government:

• Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.

• Take into account the availability of items in China from both domestic and foreign sources as the US government moves into phase three of export control reform.

For the Chinese Government:

• Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.

• Improve transparency on China’s export control system and conduct more outreach to and training of US industry with a presence in China on China’s export controls.

• Continue to support BIS end-use checks to facilitate trade between the US and China.

• Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.

• Promote further compliance with global export control norms by adopting export control laws and regulations in line with all multilateral export control regimes.
**对中国政府：**

- 加强与中国企业的沟通，从而促进企业合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。

- 提高中国出口管制体系的透明度，加大对在中国拥有业务的美国企业在中国出口管制制度方面的推广和培训力度。

- 继续支持美国工业安全局最终用途审查，以促进美中两国的贸易。

- 通过提供资金、发言人，并由相关决策部门和机构的官员给予支持，推进美中高科技贸易的倡议。

- 采用符合所有多边出口管制体系的出口管制法律法规，以进一步促进对全球出口管制规范的合规。
**Human Resources**

**Introduction**

Human resource issues continued to be a top business challenge for AmCham China members in 2015. According to the AmCham China 2016 Business Climate Survey, rising labor costs and labor shortages once again posed some of the greatest challenges to our members’ China operations. Sustained strong year-over-year increases in wage rates for front-line labor and managerial employees were exacerbated by increasingly rapid wage increases and mandatory social benefit costs for foreign staff.

Looking forward, multinational corporations (MNCs) face little choice but to adjust their local operations in order to operate profitably in China. Many China-based companies that produce for the domestic market have reacted by moving operations inland to take advantage of somewhat lower costs, boosting productivity in higher-cost coastal areas, or passing on labor cost increases to their consumers. Others have simply decided to shift operations outside China as other countries in the region offer more attractive investment opportunities. In the 2015 Business Climate Survey, 15 percent of our members reported plans to move their operations outside of China due to rising labor costs, up slightly from 11 percent in 2013. The 2016 report shows that 25 percent of members plan to or have already moved capacity outside of China, for reasons including, but not limited to, rising labor costs. Of this 25 percent, 14 percent report having already relocated capacity outside of China.

**Recent Developments**

**Two-Child Policy**

On October 29, 2015, the CPC Central Committee further relaxed the more than three-decade-old One-Child Policy, unveiling a universal Two-Child Policy. This move is designed to address the challenges of an ageing population and increase the supply of the workforce in the long run.

While large numbers of Chinese citizens may desire more than one child, the policy’s impact on current maternity regulations remains uncertain. Localities will reportedly have their detailed implementation plans for the Two-Child Policy in place by May 2016. However, it remains unclear how the regulations will apply to second children born during the

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**In the past three years, has your company moved capacity outside of China? What is the most important reason for moving capacity outside of China?**

在过去的三年中，贵公司是否曾向中国境外转移过产能？贵公司向中国境外转移产能最关键因素是什么？

<table>
<thead>
<tr>
<th>Plan (计划)</th>
<th>Reasons (原因)</th>
</tr>
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<tbody>
<tr>
<td>No (but planning to move)</td>
<td>Yes 是</td>
</tr>
<tr>
<td>No (not planning to move)</td>
<td>Others 其他</td>
</tr>
</tbody>
</table>

- Rising labor costs 劳动力成本上升
- Regulatory challenges 中国的监管难题
- Less attractive local demand in China 中国当地的需求缺乏吸引力
- Lack of competitiveness vs. local competitors 与本地竞争对手相比缺乏竞争力
- Strategic re-prioritization of other countries 调整了其他国家的战略优先级别
- Rising non-labor operating costs 非劳动力的运营成本上升

**Table:**

- 25% No (but planning to move)
- 20% No (not planning to move)
- 15% Yes 是
- 5% Others 其他
人力资源

引言
2015年，人力资源仍然是中国美国商会会员企业面临的最为严峻的商业挑战之一。根据中国美国商会2016年度《商务环境调查报告》，劳动力成本上升和劳动力短缺再次成为会员企业在华运营面临的最严峻挑战。近年来一线工人和管理人员年薪增长率不断加快，加上中国出台的外籍员工缴纳强制性社会保险的规定，使得一线工人和管理人员的年薪增长率越发呈现出强劲、持续的特点。

为了在中国市场上盈利，跨国公司除了调整本地经营策略之外，几乎没有其他选择。对此，很多在中国生产并销售产品的企业选择将企业迁至劳动成本相对低廉的中国内陆地区，或在劳动成本较高的沿海地区提高生产力，或选择将增加的劳动力成本转嫁给消费者。由于本地区的其他国家能够提供更具吸引力的投资机会，有些企业直接选择将其部分运营业务迁出中国。2015年度《商务环境调查报告》显示，15%的会员企业表示因为劳动力成本上升而计划将运营业务迁出中国，比2013年的11%略有上升。2016年度《商务环境调查报告》显示，25%的会员企业计划或曾向中国境外转移过产能，原因包括但不限于劳动力成本上升。在这25%的会员企业中，有14%表示已经将产能转出中国。

最新进展
二胎政策
为了应对人口老龄化的挑战，增加劳动力的长期供应，2015年10月29日，中共中央进一步放宽实行了三十几年的独生子女政策，出台了全面二胎政策。新政策对现有生育法规的影响尚不明确。各地的二胎政策实施细则预计将在2016年5月之前陆续出台。然而，尚不清楚在新政公布之后和实施之前的窗口期出生的二孩该如何适用法规，包括用人单位是否仍然需要支付独生子女奖励，以及如何确保政策在全国范围内得到一致的实施等。中国美国商会鼓励中国政府针对这些问题发布临时性指导意见。

延迟退休方案
鉴于中国人口老龄化的现实，加上人均寿命延长，2015年，人力资源和社会保障部开始审查现有的《中华人民共和国劳动保险条例》。该条例于1951年发布，通常要求男性60岁退休，女性50岁或55岁退休。与此同时，各地也正在实施地区性的退休方案。例如，上海在2010年公布了一份柔性退休方案，允许用人单位自行决定延迟退休年龄。在此方案下，员工最长可以延迟五年退休，并且在延迟退休期间可以参加养老保险。

中国美国商会促请中国政府在征求各行业协会的意见后，发布进一步的指导意见（例如，允许用人单位灵活决定延迟退休，为社保基金提供一个优化的能够确保盈利的投资渠道，通过减税和退税鼓励用人单位创造性地投资商业保险和开发长期储蓄计划）。

劳动争议司法解释征求意见稿
2015年3月，最高人民法院在网上发布了《劳动争议司法解释（五）》征求意见稿，共150条，与之前四版司法解释相比内容更为详实。下面将重点讨论其中一些值得关注的条款：

用人单位延迟提交证据
用人单位在仲裁过程中无正当理由未提交证据的，可能导致不利后果。即使在诉讼阶段提交的证据，人民法院也可以不予认定。这一规定使得法院在决定延迟提交证据是否有正当理由时有较大自由裁量权，因此，需要明确什么情形下延迟提交证据才算有正当理由。
window between the announcement and implementation of the new policy, including whether or not employers are still required to pay the “one-child” reward, and how to ensure that the policy will be implemented consistently nationwide. AmCham China encourages the Chinese government to issue interim guidance to address these issues.

**Prolonged Retirement Proposal**

Given the realities of China’s ageing population, coupled with increased longevity, the Ministry of Human Resources and Social Security (MOHRSS) began in 2015 to review the existing Labor Insurance Regulations, dating back to 1951, that generally require men to retire at the age of 60 and women to retire at the age of 50 or 55. In the meantime, localities are implementing their own retirement plans. For example, in 2010, Shanghai released a retirement plan allowing a maximum five-year extension of the retirement age while employees remain enrolled in pension programs, subject to termination at the employer’s discretion.

AmCham China encourages the government to release further guidance (e.g., providing employer flexibility to allow extended retirement at their discretion, developing an optimized channel to invest social insurance funds to ensure profitability, and providing employers with tax reductions or rebates to encourage creative means of investing in commercial insurance or developing long-term savings plans) in consultation with industry associations.

**Judicial Interpretation on Labor Disputes**

In March 2015, the Supreme People’s Court released online the first draft version of its Fifth Interpretation of Labor Disputes. This version, containing 150 articles, includes significantly more content than the previous four Interpretations. Some clauses of note are highlighted below.

**Employer’s Late Submission of Evidence**

If an employer fails to submit evidence during labor arbitration without a justifiable reason, it may be subject to unfavorable consequences. Even evidence submitted during litigation is subject to court acceptance. This clause leaves significant leeway for the court to decide whether a late submission is justified. A clear definition of what constitutes a justifiable late submission is needed.

**Three Categories of Labor Dispatch Positions Excluded from the Scope of Labor Disputes**

Definition of a position as “temporary,” “auxiliary,” or “supplementary” is deemed by the court to be beyond the scope of a labor dispute and the court will not rule on such claim. We believe that, instead of intervening in daily enterprise management, the court should focus on legal interpretations and applications in larger issues.

**Clarification of Criteria to Identify Cases of “Fake Outsourcing”**

According to the Interpretation, regarding cases of labor dispatching under the guise of outsourcing, the seller’s scope of business is deemed irrelevant and it is the “buyer” who determines the work time and place and provides the labor materials. However, we note that there are multiple examples where, when outsourcing, the worker needs to physically be in the “buyer’s” place of work, for example, for the provision of security and cleaning services. It is challenging to isolate such workers from the “buyer’s” workplace. A more comprehensive matrix needs to be introduced to distinguish instances of labor being dispatched under the guise of outsourcing.

**Support of Employers’ Right to Adjust the Position and Workplace**

The Interpretation supports the employer’s right to adjust an employee’s position and workplace for legitimate reasons and does not support an employee’s claim to severance under such circumstance. We applaud this step as it is not unusual, after the cancellation of a position, for an employer’s offer of a similar or the same position (e.g., pay, scope, responsibilities) to be rejected by the employee who then bargains for severance. This does not encourage company productivity or employment policy stability.

**Reinforcement of Employee Discretion to Set Permanent Contract Terms Following Conclusion of a Second Fixed-Term Contract**

Shanghai uniquely grants employees an additional opportunity to forgo contract renewal following the expiration of a second fixed term. If this new rule becomes effective nationwide, Shanghai’s approach will likely be subject to further review to ensure consistency with the Interpretation. A consistent nationwide approach on this issue is needed in order to minimize misunderstanding and the frequent need to clarify policy with local governments.

**Introduction of a Flexible Solution to the Suspension of Contracts under Special Circumstances**

The Interpretation introduces useful examples under which a contract may be suspended (e.g., employee deprived of personal liberties due to suspected illegal act, mutual agreement, force majeure). This clarification is welcome and will grant employers greater flexibility to address particular circumstances (e.g., new hires who are on sick leave during their probation period and cannot be adequately evaluated, employees who cannot perform their duties while being investigated by an authority). It also provides support to employers with respect to non-payment of remuneration, ceasing social insurance contributions, and not deeming a suspension period as a valid service year.
### 行业

#### 产业政策和市场准入

中国美国商会认为，法院应当将重点放在重大问题的司法解释和适用上，而不是干预企业日常管理上。

#### 人力资源

中国美国商会一直建议各地政府在决定 2011 年发布的《在中国境内就业的外国人参加社会保险暂行办法》（《暂行办法》）实施细则时，能够考虑以下问题：

- **离开中国时返还养老金**
  - 《暂行办法》第 5 条规定，如果外籍雇员在达到可以领取养老金的年龄之前离开中国，可申请返还养老金账户中的余额，但只能申请返还的仅为个人账户的储存额。我们呼吁中国政府允许外籍雇员回国时返还雇员和雇主双方缴纳的全部养老金。

- **不参加医疗和生育保险**
  - 《暂行办法》只允许外籍雇员在公立医院或收费水平与公立医院相当的私立医院就医。由于许多外籍雇员不具备有效利用中国医疗资源所需的汉语水平，其中大多数人选择缴纳医疗保险。中国美国商会建议，在外籍雇员能证明自己已经参加与之相当的医疗保险的情况下，允许他们不参加社会保险中的医疗和生育保险。如果此例不可行，我们建议至少允许外籍雇员在他们选择的医疗机构使用社会医保并按公立医院的收费标准予以报销。

- **免于参加失业保险**
  - 《暂行办法》要求在华外籍雇员在其所在公司同时缴纳失业保险。按照中国的劳动和社会保险法规，如果外籍雇员在华工作的外籍人士失业，其工作签证将失效，因而不能继续在中国居留。为解决这一矛盾，外籍雇员应免于参加失业保险。如果必须参加，我们建议允许失业外籍人士继续在中国居留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24 个月），或者允许外籍人士在海外领取失业保险金。

### 现存监管挑战及其他挑战

中国美国商会支持全国各地的劳动法规实现标准化和统一化。目前各省、市都有其与劳动相关的法规，增加了企业遵守法规义务的难度。中国政府继续颁布新的法律法规，同时加强现有法律的执行。关于这一点，前几版的《白皮书》有详细的介绍。我们对以下关键问题依然表示关注：

#### 外籍雇员加入中国社保制度

中国美国商会一直认为，外籍雇员应加入中国社保制度，中国美国商会支持全国各地的劳动法规实现标准化和统一化。目前各省、市都有其与劳动相关的法规，增加了企业遵守法规义务的难度。中国政府继续颁布新的法律法规，同时加强现有法律的执行。关于这一点，前几版的《白皮书》有详细的介绍。我们对以下关键问题依然表示关注：

- **离开中国时返还养老金**
  - 《暂行办法》第 5 条规定，如果外籍雇员在达到可以领取养老金的年龄之前离开中国，可申请返还养老金账户中的余额，但只能申请返还的仅为个人账户的储存额。我们呼吁中国政府允许外籍雇员回国时返还雇员和雇主双方缴纳的全部养老金。

- **不参加医疗和生育保险**
  - 《暂行办法》只允许外籍雇员在公立医院或收费水平与公立医院相当的私立医院就医。由于许多外籍雇员不具备有效利用中国医疗资源所需的汉语水平，其中大多数人选择缴纳医疗保险。中国美国商会建议，在外籍雇员能证明自己已经参加与之相当的医疗保险的情况下，允许他们不参加社保中的医疗和生育保险。如果此例不可行，我们建议至少允许外籍雇员在他们选择的医疗机构使用社会医保并按公立医院的收费标准予以报销。

- **免于参加失业保险**
  - 《暂行办法》要求在华外籍雇员在其所在公司同时缴纳失业保险。按照中国的劳动和社会保险法规，如果外籍雇员在华工作的外籍人士失业，其工作签证将失效，因而不能继续在中国居留。为解决这一矛盾，外籍雇员应免于参加失业保险。如果必须参加，我们建议允许失业外籍人士继续在中国居留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24 个月），或者允许外籍人士在海外领取失业保险金。
Ongoing Regulatory and Other Challenges

AmCham China supports the nationwide standardization of China’s labor regulations. Currently, each province and city has its own labor-related legislation which burdens businesses with the obligation to comply with disparate regulations. The Chinese government continues to enact new labor regulations and increase enforcement of existing laws, as described in detail in previous White Paper editions. Key remaining concerns are summarized below.

Foreign Employee Participation in China’s Social Insurance Schemes

We continue to recommend consideration of the following issues as local governments consider specific policies to implement the 2011 “Interim Measures for the Participation in Social Insurance of Foreigners Employed in China.”

• Refund of Pension Benefits upon Departure from China - Article 5 of the Interim Measures state that if a foreign employee leaves China before the age at which she or he qualifies for pension benefits, the employee may apply to receive a refund of the account balance; however, only employee contributions may be refunded. We urge the Chinese government to allow a full refund of both employee and employer pension contributions upon an employee’s return to her or his home country.

• Ability to Opt out of Healthcare and Maternity Coverage - The Interim Measures allow foreign nationals as well as Chinese employees to receive care only at public hospitals or at private hospitals which charge the same prices as public hospitals. As many foreign national employees lack the Chinese language skills needed to navigate the Chinese medical system effectively, most will need to retain their existing private coverage despite mandatory enrollment in China’s insurance system. We recommend that foreign employees be allowed to opt out of healthcare and maternity coverage upon proof that they have equivalent or superior medical insurance coverage. Failing that, we recommend at a minimum that foreign national employees be allowed to use their social healthcare insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme.

• Exemption from Unemployment Insurance - The Interim Measures require unemployment insurance contributions from both foreign nationals working in China and their employers. According to China’s labor and visa regulations, once foreign expatriates working in China become unemployed, they no longer hold a valid work visa and are therefore no longer permitted to reside in China. To address this contradiction, foreign employees should be exempt from participation in China’s unemployment insurance scheme. If participation is required, we recommend that foreign employees be allowed to remain in China up to the maximum period during which Chinese nationals can enjoy unemployment benefits (24 months), or that benefits be payable overseas.

Shortage of Qualified Talent

Chinese nationals constitute an important component of our member companies’ human resources and contribute positively to the US-China commercial relationship. Indeed, according to the 2015 Business Climate Survey, for 66 percent of our member companies, at least three-quarters of management positions are held by local Chinese citizens.

That said, both multinational and domestic employers in China continue to confront a severe shortage of qualified employees. According to the 2016 Business Climate Survey, a shortage of qualified employees ranked as the number four business challenge. This problem is especially acute in the services sector, where 41 percent of member respondents cite this as a top business challenge, coming in at number three on the sector’s list of top-five challenges.

The Chinese government is developing plans to deepen education reforms and expand post-secondary enrollment to equip citizens with the skills necessary to work in China’s rebalancing economy. MOHRSS has enacted a program to train six million high school graduates with vocational skills and allocated approximately RMB 6 billion (US $955
What are your top-three human resource challenges?
请选出贵公司目前面临的三大人力资源挑战。

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<tr>
<th>Industrial &amp; Resources</th>
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<td>Difficulty training and developing executive/ managerial staff</td>
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合格人才短缺

中国籍员工是我们会员企业人力资源的重要组成部分，对促进中美商业关系做出了积极贡献。事实上，2015年度《商务环境调查报告》显示，在66%的会员企业中，至少有四分之三的管理职位由中国籍本土员工担任。

尽管如此，在华的外资和内资企业仍然面临合格员工严重短缺的现状。根据2016年度《商务环境调查报告》，缺少合格的员工是第四大商业挑战。这一问题在服务行业尤为严重：其中有41%的受访企业将其列为主要挑战，在服务行业面临的五大商业挑战中位列第三。

中国政府正在制定深化教育改革和扩大高职招生的计划，帮助国民获得中国经济再平衡所需要的技能。人力资源和社会保障部已经出台了一项旨在培养600万名具有职业技能的高等学校毕业生计划，同时还拨款60亿人民币（约9.55亿美元）用于为外来务工人员提供职业培训。中国美国商会支持中国政府提升中高等院校以及职业教育和培训水平。通过EducationUSA项目，大批中国学生赴美国高
million) to provide vocational training for migrant workers. AmCham China supports the Chinese government’s efforts to improve secondary, post-secondary, and vocational education and training. Through the EducationUSA program, a large number of Chinese students have traveled to the US to attend universities for undergraduate, graduate, and advanced degrees. The return of these educated individuals to China will add talent to the labor pool.

AmCham China applauds the Chinese government’s announced reforms to the hukou system that aim to register 13 million people who are currently unregistered and ineligible for basic social services. This has the potential to enable migrant workers to more easily settle in regions where production facilities are located and to facilitate employee retention and social stability.

Rising Labor Costs

Human resource issues continue to rank highly among the top challenges facing AmCham China members. In the 2016 Business Climate Survey, over 50 percent of members cite rising labor costs as a top-five challenge to their business in China (Please refer to the Compliance chapter for the corresponding chart).

More specifically, members’ top three human resource challenges include “difficulty attracting skilled executive/managerial staff,” “rising salary and wage expenses,” and the “cost of social benefits.” “Expectations of salary/package [that are too high]” was cited by respondents as the top challenge to attracting talent in China.

The continued economic slowdown will likely do little to relieve upward pressures on compensation, according to a September 2015 survey of AmCham China human resource executives conducted ahead of the 16th Annual AmCham China Human Resources Conference. While 65 percent of respondents said it was likely or very likely that the economic transition may result in more realistic employee expectations, only 23 percent said the same about the chance of wage pressures falling, suggesting that it will remain increasingly expensive to find and retain talent. Additionally, human resource executive respondents overwhelmingly report a preference for implementing hiring freezes to cut costs, followed by layoffs. Pay freezes were the least favored method of cutting costs, with half of respondents calling them a last resort. While the threat of layoffs remains distant for many companies, with only about 14 percent reporting having such plans, companies do report concern about the potential costs of severance packages and the potential for employee litigation. While layoffs can ease labor costs in the long term, these potential short-term expenses can present immediate challenges, particularly when many companies pay market-competitive severance rates to reach mutual separation agreements with employees under China’s pro-employee administrative and judicial environment.

Regulatory changes also have the potential to increase companies’ labor cost burdens. One example is the March 1, 2014 “Interim Provisions on Labor Dispatch,” requiring many companies to directly hire contract workers, adding costs relating to the addition of management, changes to benefits, and employee relations issues.

Lastly, some companies reported increasing cost pressures resulting from air pollution in China. Pollution, traffic, and other infrastructure issues create concerns about accidents and illness, and companies are facing increasing public pressure to protect employee health, as further discussed below.

Potential Consequences of Pollution

In December 2015, Beijing issued its first ever “red alert” for pollution. Kindergarten, primary, and secondary school classes were suspended, traffic was restricted, and companies were encouraged by the Chinese government to consider flexible working arrangements. Air pollution in Beijing and elsewhere in China negatively impacts companies’ labor supplies, workforce retention, productivity, and employment practice compliance. Air quality has become a consideration for employers when choosing office buildings, expatriate housing, and company cars, requiring increased investment in these areas.

Some companies have established policies and protocols for days when pollution levels exceed a healthy standard and are considered to have a negative impact on daily operations. Additionally, some MNCs are offering additional salary allocations to attract and retain employees in light of the pollution risks. According to the 2016 Business Climate Survey, “quality of life” (e.g., living costs, pollution, education) was selected by nearly 38 percent of respondents as a top challenge to retaining employees. Additionally, 52 percent of our members reported difficulties in recruitment and retention of talent in 2015 due to air quality.

In terms of potential legal implications, under Article 88 (4) of the Labor Law, employers that “provide poor working conditions or a severely polluted environment, resulting in serious damage to the physical and mental health of the employee,” are liable for the consequences and subject to administrative penalties. This provision raises the possibility that companies hiring employees in areas known to have high levels of pollution, such as Beijing, would be at risk of litigation if they do not effectively limit the effects of air pollution. The Chinese government has not identified corrective measures that a company must take to avoid liability. The increased public awareness of air pollution is dramatically changing people’s expectations and companies are under pressure to have proper policy and protocols in place to deal with the negative impact of air pollution.
校攻读本科、硕士和高等学位。这些毕业回国的学生将补充中国的人才储备。

中国政府已经宣布将改革户口制度，让目前高达1300万因为没有户口而无法获得基本社会服务的人获得登记，中国美国商会对此表示赞赏。这项改革有可能让外出务工人员随着工厂的搬迁更方便地迁徙定居，从而能够留住更多员工、保证社会稳定。

### 劳动力成本上升

人力资源问题继续成为中国美国商会会员企业面临的最大挑战之一。根据2016年度《商务环境调查报告》，超过50%的会员企业表示，劳动力成本上升是其在华面临的五大商业挑战之一（请参见“合规”章节中的相应图表）。

具体来说，会员企业面临的三大人力资源挑战分别是：“难以吸引经验丰富的高管/管理人员”，“薪资费用不断上涨”和“社会福利成本”。“对薪酬/待遇的期望过高”是在中国吸引人才时面临的主要挑战之一。劳动力成本上升和薪资费用上涨是企业面临的两大挑战之一。根据2016年度《商务环境调查报告》，有超过50%的会员企业表示，劳动力成本上升是其在华面临的五大商业挑战之一（请参见“合规”章节中的相应图表）。

2015年9月，在第16届中国美国商会人力资源会议召开之前，中国美国商会对人力资源管理人员做了一项调查。调查发现，经济增长继续放慢不太可能缓解薪资上涨的压力。虽然有65%的受访者表示，经济转型可能或非常有可能让劳动者的期望更加现实，但是，只有23%的受访者表示薪资上涨压力减轻。这表明，招留人才仍然变得越来越昂贵。此外，人力资源管理人员大都表示，与裁员相比，他们更愿意通过冻结招聘来降低成本。工资冻结是最不受欢迎的削减成本的办法，有半数的受访者将其称为最后手段。对于很多企业来说，裁员的威胁还很遥远，只有大约14%的受访者表示有裁员计划，但是，企业确实表示担心可能发生的离职赔偿以及员工可能提起的诉讼。虽然从长期来看，裁员能够缓解成本压力，但是，短期来说可能产生的费用却会带来更大的挑战。特别是鉴于中国行政和司法环境更偏向劳动者，企业因此面临着压力，需要针对空气污染的不利影响制定适当的应对政策和方案。

### 法规变动也有可能加重企业的劳动力成本负担。例如，根据2014年3月1日起施行的《劳务派遣暂行规定》，许多企业需要直接雇佣合同工，由此带来的管理人员增加、福利变动和劳动关系等问题导致企业的成本增加。

最后，一些企业表示因为中国的空气污染而面临成本上升的压力。污染、交通和其他基础设施问题导致人们对事故和疾病存在担心，公众对这些企业施加更大的压力，要求它们保护员工的健康，详情请见下文。

### 污染可能造成的后果

2015年12月，北京发布首个空气污染“红色警报”。幼儿园和中小学停课，对交通实施限制，中国政府还鼓励企业考虑弹性工作制。北京和其他地方的空气污染对企业的劳动力供给和保留、劳动生产率以及用工合规性均造成了不利影响。用人单位在选择办公地点、外派人员住房及公司车辆时，空气质量已经成为一个考虑因素，这就需要增加对这些地区的投入。

对于污染程度超过健康标准并且被认为对日常运营具有不利影响的工作日，部分用人单位已经进行了应对政策方案。另外，考虑到存在的污染风险，为了吸引和留住员工，一些跨国公司还提供了额外的薪资补贴。根据2016年度《商务环境调查报告》，有近38%的受访者表示“生活成本”（例如，生活成本、污染、教育）是留住员工面临的一项主要挑战。另外，在2015年有52%的会员企业表示由于空气质量而难以实施招聘和留住人才。

### 建议

对中国政府：

- 在中国社保体系中建立或明确外籍雇员享受福利制度，或者允许外籍雇员不参加社保。
- 对《劳动合同法》进行解释，明确“临时”、“辅助”和“替代”岗位的定义。
- 继续评估户籍制度改革，确保外来劳动力能够顺利并长期定居在劳动力最缺乏地区，减少外来工
Recommendations

For the Chinese Government:

- Establish or clarify mechanisms for foreign employees to receive benefits under China’s social insurance programs, or allow foreign employees to opt out of participation.
- Issue an interpretation of the Labor Contract Law that clearly defines “temporary,” “auxiliary,” and “substitute” positions.
- Continue to assess hukou reforms that enable sufficient and long-term relocation of migrant labor to areas facing the most severe labor shortages, with fewer obstacles to migrants settling in these areas and thus reducing continued rapid turnover and labor instability faced by many employers.
- Establish concrete guidelines for companies to mitigate liability stemming from the health issues caused by pollution.
- Consult with industry before issuing new laws and regulations and their interpretations.
- Conduct labor market analysis (e.g., regarding labor supplies and shortages, comparisons between industries) and provide guidance to enterprises. [MOHRSS]
在这些地区定居所面临的障碍，从而降低高居不下的离职率，增强劳动力稳定性。

- 减少因污染造成劳动者健康问题时企业所需承担的法律责任，并就此出台具体指引。
- 在发布新的法律法规及解释之前征求行业的意见。
- 开展劳动力市场分析（例如，劳动力供给和短缺，行业比较），为企业提供指导。[人社部]
Introduction

AmCham China members continued to face intellectual property (IP) challenges in 2015, particularly in the areas of trade secrets, patents, copyrights, rewards and remuneration for service inventions, and trademarks. Though each area continues to receive increased attention from Chinese authorities, this chapter details the key issues which continue to challenge both foreign and domestic companies operating in China.

Ongoing Regulatory Issues and Recent Developments

Trade Secrets

Trade secrets remain one of the most vulnerable forms of IP in China, in part because Chinese government authorities jeopardize the value of trade secrets by demanding unnecessary disclosure of confidential information for product approvals. Compromising a trade secret reduces its economic value, undermines trust, and threatens even longstanding business relationships. Over time, inadequate trade secret protection hampers cross-border technology transfers, dampens investment in research and development (R&D), and hinders China’s bid for an innovation-driven economy. More directly, however, effective trade secrets protection is much cheaper than patent prosecution – a potentially crucial cost differential and advantage, especially for small and medium-sized enterprises (SMEs).

Currently, Chinese trade secret protection depends on a patchwork of laws and regulations, including the Anti-Unfair Competition Law (AUCL) and the Criminal Law. Both laws no longer reflect contemporary commercial realities, especially innovative methods of trade secret misappropriation. A typical trade secret owner attempting to enjoin disclosure of stolen trade secrets or recover adequate damages faces a disproportionately low success rate in the People’s Courts, and an even more unattainable threshold for criminal trade secret violations. Onerous burdens of proof and constrained powers of discovery pose significant obstacles to effective enforcement.

At the 26th US-China Joint Commission on Commerce and Trade (JCCT) in Guangzhou in November 2015, China clarified that it is in the process of amending the AUCL, intends to issue model or guiding court cases, and intends to clarify rules on preliminary injunctions, evidence preservation orders, and damages. The AUCL constituted China’s first major effort to protect trade secrets 20 years ago, but the protection provided by the AUCL is outdated and inadequate. On February 25, 2016 the State Council Legislative Affairs Office (SCLAO) published for public comment draft revisions to the AUCL, which include several positive changes for trade secret enforcement. Revised Articles 16 and 17 expand the scope and powers of the investigation authorities, while Article 22 increases potential fines more than tenfold and shifts the burden of producing evidence once similarity and access to the trade secrets have been proven.

The US and China also agreed at the 2015 JCCT to jointly share experiences and best practices in the areas of protecting trade secrets from disclosure during investigations and in court proceedings. For example, China clarified that commercial secrets obtained in the process of Anti-Monopoly Law (AML) enforcement are protected as required under the AML and shall not be disclosed to other agencies or third parties, except subject to a waiver of confidentiality by the submitting party or under circumstances as defined by law. We strongly encourage Chinese courts to establish written guidelines to likewise ensure trade secrets are protected in civil and criminal litigation.

Patents

The State Intellectual Property Office (SIPO) released the draft fourth amendment to the Patent Law in August 2012. The draft purports to enhance administrative protection and enforcement of patents, including imposition of financial penalties and determination of damages for infringement. AmCham China continues to be very concerned about this trend of administrative expansion. Unlike other branches of IP, patent disputes are inherently and necessarily technical, complex, and time-consuming in order to ensure their effective resolution. As such, stronger judicial protection is a better approach, as administrative action would interfere with private disputes and make the process more complicated and protracted, potentially resulting in even more disputes.
引言

中国美国商会的会员企业在2015年依旧面临知识产权的挑战，尤其是在商业秘密、专利、著作权、职务发明的奖励和报酬以及商标等领域。虽然中国各有关部门正日益加强对上述领域的关注度，但是在中国和华运营的内外资企业依旧共同面临很多挑战。我们将在本章中对此作详细说明。

现有监管问题和最新进展

商业秘密

商业秘密仍然是中国最为脆弱的知识产权形式之一，部分原因是中国政府各部门在产品审批时要求披露其保密信息，包括不必要揭露的信息，从而损害了商业秘密的价值。在商业秘密问题上的妥协将降低其经济价值、破坏信任，甚至危及长期存在的商业关系。长期以来，商业秘密保护不力会妨碍跨境技术转让、抑制研发方面的投资，并且阻碍中国发展创新型经济。然而，更直接的影响在于，商业秘密的有效保护作为一种潜在的重要成本差异和优势，比专利起诉要便宜得多，尤其是对中小型企业（SME）而言。

目前，中国保护商业秘密所使用的法律法规比较混乱，其中包括《反不正当竞争法》和《刑法》。这两部法律已经不能充分反映当代商业的现实情况，特别是商业秘密滥用的各种创新方法。如果商业秘密所有人试图通过人民法院来禁止窃取者披露商业秘密或寻求充分的损害赔偿，通常胜诉的几率很低，而商业秘密案件构成刑事犯罪的门槛则更是高不可攀。繁重的举证责任以及受到限制的取证权力对有效执法形成了重大阻碍。

2015年11月，在广州举行的第26届中美商贸联委会（JCCT）上，中国表示其正在修订《反不正当竞争法》，并计划明确关于预先禁令、证据保全命令和赔偿的规定。《反不正当竞争法》是20年前中国为保护商业秘密所做的第一次重要努力，但《反不正当竞争法》所提供的保护已经过时且不够充分。

中美两国还在2015年中美商贸联委会上商定共享关于如何在调查和法庭诉讼中保护商业秘密免于泄露的经验和最佳解决方案。比如，中国明确表示在执行《反垄断法》（AML）的过程中收集的商业秘密将根据反垄断法的要求受到保护，不得泄露给任何机构或第三方，提交方放弃保密权和法律另行规定的除外。我们强烈建议中国的法院做出书面规定，确保商业秘密在民事和刑事诉讼中也能受到保护。

专利

2012年8月，国家知识产权局公布了《专利法》第四次修订草案。该草案旨在加强对专利的行政保护和执法工作，包括施加经济处罚和做出专利侵权损害赔偿裁决。中国美国商会对这一行政权力扩大的趋势深感担忧。与知识产权的其它方面不同，专利争议本质上必然会涉及复杂的技术性问题，解决方案费时又费力。而行政和解相比诉讼争议是更好的办法。

另外，面对激增的工作量，行政主管部门也缺少所需的专业知识和资源。由此可能带来行政程序拖延，造成争议纠纷拖延或导致行政程序滥用。我们注意到，中国的有些研究报告中使用了外国事例，尤其是将美国联邦贸易委员会和国际贸易委员会作为专利行政保护的参考。然而，自2008年以来，专利侵权诉讼案件在中国法庭的管辖范围内明显增多。
In addition, administrative authorities may lack the expertise and resources to handle the substantial increase in workload which can overwhelm the administrative process, cause delays in resolving disputes, or lead to abuse of the administrative process. We note that some Chinese studies use foreign examples, such as the US Federal Trade Commission and International Trade Commission, as references for the administrative protection of patents. However, these examples are not inherently applicable to the Chinese context as these agencies exercise jurisdiction only in very special and limited cases rather than patent disputes generally, are quasi-judicial in the exercise of their jurisdiction, and must follow strict procedures.

On April 1, 2015, SIPO released the draft “Amendments to the Patent Law of China” for public comment. The draft included substantial revisions to 30 articles and added a new chapter on patent applications. Major changes included:

- expansion of administrative powers in investigating patent infringement, issuing injunctions, and levying fines;
- introduction of “punitive damages” and double or triple the compensation amount for the purpose of “punishing,” rather than simply “compensating,” in cases of willful infringement; and
- strengthening of the legal system for patent attorneys and patent agencies and imposing strict regulations on unlicensed patent attorneys/ agencies.

On December 2, 2015 the SCLAO released the “Revised Draft of the Patent Law (Draft for Review)” for public comment. Key amendments included: greater patent protection through enhanced punishment for infringement, promotion of exploitation and application of patents to realize their value, implementation of the statutory requirements of government functions, and improvements to the patent review system and the legal systems concerning patent agents.

Another issue of continued concern is the quality of patents, especially utility model patents (UMPs). We applaud SIPO’s recent measures and plans to eliminate the fiscal incentives that inappropriately induce a flood of UMP applications and grants, many of which are not motivated by utility but solely to take advantage of monetary subsidies. However, there are alternative means to enhance patent quality. For example, the Patent Law could be amended to set a higher bar for the inventiveness of UMPs, limit the remedies (particularly injunctive relief and damages) for UMPs, require examination and assessment upon the UMP patentees’ initiation of infringement proceedings, and limit the assignability of UMPs. Stimulation of true innovation and the provision of fair treatment require proper institutions and mechanisms.

**Copyrights**

AmCham China is disappointed that there were no significant legislative developments regarding copyrights in 2015. As such, many of the concerns raised in the 2015 White Paper persist, in particular, those regarding the capping of statutory damages, unreasonably high evidentiary thresholds, widespread enterprise end-user software piracy, and the refusal of Chinese authorities to prosecute pre-installed unlicensed software violations. We urge revision of both the Copyright Law and the Criminal Law in 2016 to provide effective deterrence against software piracy.

However, despite an absence of legislative developments in 2015, there were a number of important judicial and regulatory developments, the most noteworthy including the release of the following:

- “Notice of the Beijing High People’s Court on Printing and Distributing the ‘Answers of the Beijing High People’s Court to Questions on Certain Issues Concerning the Trial of Disputes Involving Copyright of Variety Shows”’ (April 8, 2015);
- “Notice of the Supreme People’s Court on the Publication of the Tenth Installment of Guiding Cases” (April 15, 2015);
- “Notice of the General Office of the National Copyright Administration (NCA) on Regulating the Copyright Order for Reproduction Through Internet” (April 17, 2015);
- “Beijing Sina Internet Information Services Co., Ltd. v Beijing Tianying Jiuzhou Network Technology Co., Ltd. (2014) (Chaoyang Civil (IP) First Instance No. 40334)” (June 30, 2015 decision of the Beijing Chaoyang District People’s Court establishing copyright protection for sports broadcasts);
- “Notice of the NCA on Stopping Online Music Services from Disseminating Unauthorized Music” (July 8, 2015);
- “Measures for the Implementation of Copyright Administrative Penalties (Revised Draft for Comments)” (released by the NCA on September 8, 2015); and
- “Notice of the NCA on Regulating Copyright Order in Network Disk Services” (December 14, 2015).

AmCham China welcomes these developments, particularly the focus on clarifying the liability of and notice and take-down obligations of online music services, as well as network and data hosting service providers. AmCham China members are also very pleased by the Beijing Chaoyang District People’s Court decision confirming that sporting events are protectable as work similar to cinematography, and that the unauthorized broadcast of such works is an infringement under the Copyright Law.
而，这些事例在本质上并不适用于中国的环境，因为此类机构仅在非常特别而且有限的案件中行使管辖权，而不会干预一般性质的专利争议，它们在行使其管辖权时都是准司法性的，并且必须遵守严格的程序。

2015年4月1日，国家知识产权局发布了《中华人民共和国专利法（征求意见稿）》向社会公开征求意见。该草案包括对30条条款的实质性修订，并增加了关于专利申请的新章节。主要的更改包括：

- 扩大了调查专利侵权、发布禁令和征收罚款的行政权力；
- 引入了“惩罚性赔偿”，并将故意侵权的“惩罚性赔偿”赔偿金额提高了两倍或三倍，而不是只是“赔偿”；
- 加强了关于专利律师、专利代理机构的销售规定和对未经授权的专利律师/代理机构实施严格监管，

2015年12月2日，国务院法制办公室发布了《专利法修订草案（送审稿）》，向社会公开征求意见。主要修订内容包括：加强对侵权行为的处罚，促进专利的开发和应用使其实现其价值，满足政府职能的法定要求，以及改进专利审查制度和专利代理人等相邻法律内容。

另外一个让人十分担忧的问题是专利的质量，特别是实用新型专利的质量。我们对国家知识产权局最近取消财政激励的措施和计划表示赞赏，因为这些激励措施使用不恰当而导致大量的实用新型专利申请和授予中的许多申请的动机不是因为实用，而是因为能够获得财政补贴。但是，还有其他方式来提高专利质量。例如，《专利法》的修订案可以对实用新型专利的创造性设定更高的标准要求；限制对实用新型专利的救济（尤其是禁令性救济和赔偿）；要求对实用新型专利的专利权人启动侵权诉讼程序进行审查和评估，并且限制侵害新型专利的可转让性。要激励真正的创新和做到公平对待，就需要建立适当的制度和机制。

《著作权》

中国美国商会希望中国政府在2016年对《著作权法》做出进一步的修订。为了修订《著作权法》，中国国家版权局（NCA）召开了多轮讨论，公开征求意见，发挥了领导作用，中国美国商会对此表示赞赏，并希望未来能有更多的这样的机会。中国美国商会之前针对《著作权法》提出的意见依然适用，并特此提出以下几点：

- 在最新的修订草案中，我们会员企业就执法问题提出的修订意见，例如提高法定损害赔偿金额和重量举证责任...
Amendment of the Copyright Law

AmCham China looks forward to further amendment of the Copyright Law in 2016. We applaud the leadership of the NCA in hosting previous rounds of discussion for public feedback on Copyright Law amendments, and we look forward to further opportunities going forward. AmCham China’s prior recommendations for the Copyright Law remain relevant, and we note the following in particular:

Increased statutory damages and a reallocated burden of proof, among other proposed changes with respect to enforcement, have been adopted in the most recent amended draft. These additions should be preserved in the final version of the law. AmCham China members strongly urge the SCLAO and National People’s Congress to expedite the process of updating the Copyright Law. We welcome continuing dialogue with both agencies and frequent discussions on salient issues.

We urge the SCLAO to provide in the Copyright Law that commercial use of unlicensed software is an infringement of reproduction rights. This is critical to setting a foundation for deterring unlicensed software use by enterprises supporting the development of cloud computing. In the context of subscription and cloud computing, temporary reproductions play a very important role. Failure of the Copyright Law to recognize the need for legal protection of cloud computing may hamper development of the software industry in the cloud era.

Rewards and Remuneration for Service Inventions

AmCham China members continue to view employee remuneration requirements for service inventions as too rigid. Upon the granting of a patent, the Patent Law requires employers to pay employees “reasonable remuneration” for patents filed by employers which were predicated on technical achievements by their employees in the course of employment. These technical achievements are referred to in PRC law and practice as “service inventions.” The “Implementing Regulations of the Patent Law of the PRC” permit employers to determine by agreement or internal policy the amounts of remuneration payable to the employee for such service inventions. Absent any such agreement or policy, statutory minimum amounts apply, but even established policies have come under collateral attack by employees.

In April 2015, the SCLAO published for public comment draft Service Invention Regulations (SIR) broadening the scope of inventions requiring remuneration, increasing minimum payment amounts, and imposing additional administrative requirements on employer remuneration programs. In October 2015, the “Law on Promoting Commercialization of Scientific and Technological Achievements” was amended to require that revenue from the investment, sale, or licensing of research results, including unpatented ideas, be divided equally among contributing personnel if the employer had not previously established a reward mode and amount in consultation with staff.

A February 2016 Legal Weekly (法治周末, fazhi zhoumo) article featured interviews with Chinese IP practitioners and scholars discussing the nearly four-year history of the draft SIR. Those interviewed held similar opinions that new regulations are unnecessary, with one academic expressing that SIR matters should be managed by enterprises rather than through further government regulation. AmCham China members generally believe that the draft SIR is administratively burdensome and provides insufficient flexibility to enterprises in different industries. We encourage regulators to reconsider whether a new SIR is necessary and recommend allowing market forces to determine how to best incentivize and reward employee innovation according to variances in technological characteristics.

Trademarks

Online Counterfeiting

In 2015, the central government increased efforts to address the longstanding issue of online counterfeiting. These efforts have resulted in increased transparency and improvements in the notice and take-down processes of key offending e-commerce platforms. However, the problem of online counterfeiting remains acute and repeat offenders can easily change identities in order to circumvent detection. Additionally, the benefits of recent improvements are generally only available to those brand owners who can invest significant sums to regularly monitor e-commerce sites and proactively petition the e-commerce sites to take down links to infringing products.

We encourage the Chinese government to continue to address this important and pressing problem, in particular by:

- continuing to apply pressure on e-commerce platforms to implement strict, transparent, and user-friendly repeat offender policies (preferably adopting simple two- or three-strike rules);
- encouraging e-commerce platforms to adopt best practices to make it easier to identify counterfeiters and more difficult for counterfeiters to operate under multiple false identities; and
- encouraging e-commerce platforms to cultivate a culture of IP protection on their platforms, and to take proactive measures to make it more difficult for counterfeiters to list products on their sites (e.g., instituting a system of random IP authorization audits of high volume vendors).
等，已经得到了采纳。这些增补内容应该在《著作权法》最终版本中得到保留。商会会员企业强烈促请国务院法制办和全国人民代表大会（全国人大）加快对《著作权法》的更新。我们希望与这两大机构进行持续对话，并就重要问题进行更多讨论。

我们促请国务院法制办在《著作权法》中明确规定未经授权软件的商用行为属于侵犯复制权行为。这对于打击企业用户使用未经授权的软件，支持企业发展云计算等都具有十分重要的意义。在订阅和云计算领域，临时复制发挥着重要作用。若《著作权法》认识不到为云计算提供法律保护的重要性，必将严重阻碍未来软件行业在云计算领域的发展。

### 职务发明的奖励和报酬

商会会员企业依然认为职务发明的员工补偿要求过于严格。在授予一项专利后，《专利法》要求雇主就其申请的专利向员工支付“合理的报酬”，这种报酬基于其员工在雇用过程中的技术成就。这些成就在中国的法律和实践中称为“职务发明”。《中华人民共和国专利法实施细则》允许雇主通过协议或内部政策来决定向员工支付职务发明报酬的额度。如果没有任何此类协议或政策，则适用法定的最低金额，不过即使是确定的政策也会遭到员工的附诉。

2015年4月，国务院法制办公室（国务院法制办）公布《职务发明条例草案（送审稿）》，向社会公开征求意见，扩大了要求支付报酬的发明的范围，提高了最低支付金额，并对雇主报酬机制做出了更多管理规定。2015年10月，《促进科技成果转化法修正案》规定如果雇主与员工协商之后，未能对奖励办法和数额做出明确规定，研究成果，甚至包括未获得专利的创意的投资、销售或许可收入，将在贡献人员之间平分分配。

2016年2月，《法制周末》发表了一篇对中国知识产权从业者和学者的访谈文章，探讨了起草《职务发明条例》长达四年的漫长历程。受访对象普遍认为新法规是不必要的，其中一名学者认为《职务发明条例》事务应该由企业管理，而不是由政府监管。中国美国商会的会员企业普遍认为《职务发明条例草案》会带来管理负担，并且限制了各个行业的企业的灵活性。我们建议监管机构考虑实施新的《职务发明条例》是否必要，并建议让市场力量来决定如何根据不同行业的技术特点来最大程度地激励和奖励员工创新。

### 商标

#### 在线售假

2015年，中央政府加大了处理长期存在的在线售假问题的力度。这些努力提高了透明度，迫使一些重要的违规电子商务平台的警告和下架流程得到完善。不过，对在线售假问题依然严峻，惯犯能够轻松改变身份以逃避检查。此外，从最近的改进中获益的主要是品牌所有者，他们可以投入大量资金定期监控电子商务网站，并积极请求电子商务网站屏蔽侵权产品的链接。

我们鼓励中国政府继续采取措施解决在线售假这一严重而紧迫的问题，并提出如下具体建议：
- 对电子商务平台施加更大压力，促使他们执行严格、透明且用户友好的累犯处罚政策（最好是直接实行两次或三次即出局的政策）；
- 鼓励电子商务平台采用最佳实践，更加便利地剔除制假售假者，并增加制假售假者利用多个虚假身份从事售假行为的难度；
- 鼓励电子商务平台在其平台上培育知识产权保护文化，并采取积极措施加大制假售假者在其网站上发布产品的难度。可以采取的一种积极措施是，对大交易量商家实行随机IP授权审计。

#### 异议

2014年5月1日生效实施的新修订的《中华人民共和国商标法》（商标法）未就争议商标在商标局注册登记后的上诉程序做出规定。在现行的异议程序下，如果异议方在商标局败诉，存在异议的商标将被注册。如果败诉方对商标局的决定不满意，它必须向商标评审委员会提出申请，要求宣告该商标无效。

正如我们在2015年《白皮书》中所述，商会会员企业仍然担心现行异议程序会放大恶意抢注商标的第三方申请人获得优势，除非商标局进行异议审查的能力得到显著提升。2015年，商标局开始根据2014年《商标法》发布异议决议，尽管异议决议的发布速度显著提高，商会会员企业还是表示商标局的决议水平并没有提高，尤其当涉及到恶意抢注商标时。

中国美国商会强烈建议国家工商管理总局（SAIC）改善商标局异议申请处理程序，包括在异议程序中纳入证据
Oppositions

Under the amended Trademark Law, which entered into effect on May 1, 2014, there is no appeal process if the opposed trademark is allowed registration by the Trademark Office (TMO). Under the current opposition procedure, an opposed mark will become registered if an opponent loses before the TMO. If the losing party is dissatisfied with the ruling, it must file a request with the Trademark Review and Adjudication Board (TRAB) to invalidate the trademark.

As stated in the 2015 White Paper, AmCham China members remain concerned that current opposition procedures tend to advantage the applicants of third-party trademarks filed in bad faith unless the quality of the TMO’s examination of oppositions is significantly improved. In 2015, the TMO began issuing opposition decisions under the 2014 Trademark Law and, while opposition decisions were issued much more quickly than before, AmCham China members report that the quality of TMO decisions has not improved, particularly for matters that involve the filing of identical trademarks in bad faith.

AmCham China strongly recommends that the State Administration for Industry and Commerce (SAIC) improve procedures for handling oppositions before the TMO and include an evidence exchange process or an opportunity to comment as part of opposition proceedings. We further recommend that the Chinese government issue guidelines for the proper handling of bad faith pre-emptive filings of third-party trademarks, to provide SMEs with little or no fame in the PRC market effective tools for challenging pirate filings of their trademarks by third parties.

Recent Updates

A number of important substantive and procedural changes under the 2014 Trademark Law were implemented in 2015. Several noteworthy trademark-related legislative, administrative, and judicial developments in 2015 include the following:

- the publication of 2014 “model cases” by the TRAB, the Beijing Higher People’s Court, the Supreme People’s Procuratorate, and the General Administration of Customs (April 2015);
- adoption by the TMO of the “Guidelines for the Recordal of Trademark Licenses, the Recordal of Name Changes for Trademark Licensors and Licensees, the Recordal of the Prior-Termination of Licenses, and the Cancellation of Trademark License Recordals,” effective August 26, 2015; and
- issuance by the SAIC of the “Opinions on Strengthening and Standardizing the Inspection of the Quality of Products Traded Online,” effective November 17, 2015.

Despite this progress, the long-awaited draft “Regulations on Certain Issues Related to the Trial of Administrative Cases Involving the Grant and Affirmation of Trademark Rights” (Draft Trademark Regulations) issued by the Supreme People’s Court (SPC) on October 14, 2014, have not been finalized, nor has an updated judicial interpretation on trademark infringement been issued. We hope that these important documents will be updated following industry consultation and issued by the SPC in 2016.

In addition to concerns regarding the quality of opposition decisions, AmCham China members note that a number of concerns that were raised in the 2013 and 2014 White Papers remain outstanding, specifically regarding enterprise name infringements and bad faith filings.

Enterprise Name Infringements

It is not uncommon for Chinese companies to register and use enterprise names that incorporate famous foreign trademarks, but local Administrations for Industry and Commerce (AICs) have generally been reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The 2014 Trademark Law provides a cause of action to the registrants of trademarks that are not well known when the use of a trademark as an enterprise name is liable to mislead the public and otherwise constitutes unfair competition. Such acts are to be handled under the AUCL, and the recent draft AUCL contains some encouraging language, including the following:

- Article 5 (3) specifically addresses the misleading use of a registered trademark or unregistered well-known trademark as the trade name portion of a registered enterprise name; and
- Article 18 provides that AICs shall order violators of Article 5 (3) to change their enterprise names within one month, and provides for fines and removal of the name from the registry if the local entity fails to comply.

In 2015, AmCham China members encountered numerous instances of pushback from local AICs in matters involving the attempted enforcement of trademark rights in cases involving registered enterprise names, and have reported multiple instances in which local AIC enterprise name authorities advised infringers not to capitulate to the demands of trademark owners to change their infringing enterprise names.

Bad Faith Filings

Article 7 of the 2014 Trademark Law provides that applications for the registration of trademarks must comply with the principles of honesty and good faith. The addition of a positive obligation of good faith in the 2014 Trademark Law was welcomed by AmCham China members. In the 2014 White Paper, we expressed concern that Article 7 was not
交换过程并提供更多发表意见的机会。此外，我们建议中国政府发布关于正确处理恶意抢注第三方商标行为的指导方针，为在中国市场内没有名气的中小企业提供有效的工具，以应对第三方对其商标的恶意抢注。

最新进展

2014 年《商标法》中的许多重要的实质性及程序性变更在2015年都得到了实施。2015年，一些值得关注的商标相关立法、行政和司法进展包括：

- 中国商标评审委员会、北京高级人民法院、最高人民检察院和海关总署发布2014年“典型案例”（2015年4月）；
- 商标局采用“申请注册商标使用许可备案、变更许可人／被许可人名称备案、商标使用许可提前终止备案、撤回商标使用许可备案”指导方针，2015年8月26日生效；
- 国家工商管理总局发布《关于加强和规范网络交易商品质量抽查检验的意见》，2015年11月17日生效。

尽管取得了这些进展，最高人民法院于2014年10月14日发布的《关于审理商标授权确权行政案件若干问题的规定》（征求意见稿）仍未定稿，而且关于商标侵权的最新司法解释也未发布。我们希望最高人民法院在2016年通过行业磋商更新并发布这些重要文件。

除了对异议决议质量的担忧，中国美国商会的会员企业注意到2013和2014年《白皮书》中提出的许多问题仍然存在，特别是关于企业名称侵权和恶意抢注的问题。

企业名称侵权

中国企业注册并使用含有知名外国商标的企业名称并不罕见，但地方工商局（AIC）通常却不愿意处理涉及注册商标和企业名称相冲突的案件。2014《商标法》中为非著名商标持有者提供了诉讼权，规定了若使用商标作为企业名称的行为产生误导公众和构成不正当竞争时，商标注册人可提起诉讼，对这些行为的处理将依据《反不正当竞争法》执行。最新的《反不正当竞争法》草案包含了一些鼓励性的语言，其中包括：

- 第5条第3款：将他人注册商标、未注册的驰名商标作为企业名称中的字号使用，误导公众，导致市场混淆的；
- 第18条第1款规定违反本法第5条第3款规定的，工商局应当责令当事人在一个月内进行企业名称变更登记，期满未执行的，将进行处罚，并将其从注册表中删除。

2015年，中国美国商会的会员企业遇到了许多涉及注册企业名称的案例，并试图行使商标权，却遭到当地监督检查部门的推诿。据中国美国商会的会员企业报告，在许多案例中，当地监督检查部门企业名称登记机关甚至建议侵权人不要屈从于商标所有者提出的要求其变更侵权企业名称的要求。

恶意抢注

2014年《商标法》第7条规定，申请商标注册必须遵守诚实信用的原则。2014年《商标法》增加了诚实信用的积极责任，中国美国商会的会员对此表示欢迎。在2014年的《白皮书》中，我们曾经指出第7条并没有被列为反对注册或导致商标无效的独立理由，因此无法确定当被侵权人向商标局和中国商标评审委员会提出异议和无效诉时，这一规定能够产生的实际效果。

2015年，中国商标评审委员会和北京知识产权法院在许多涉及品牌所有者控告恶意抢注的决议中都提到了第7条，并基于第7条解释了许多更传统的打击恶意抢注的法律条文（比如10条（1）（7）、10条（1）（8）、32和44等条款）。鉴于当前国家工商管理总局和最高人民法院在处理涉及恶意抢注的案件时缺乏明确指导，中国商标评审委员会和北京知识产权法院在涉及恶意的初步证据时积极利用了第7条，中国美国商会对此表示赞赏。

不过商标局在2015年表现不佳，并没有提高对异议争议的决策质量，特别是涉及恶意抢注商标的争议。商会会员企业注意到商标局往往忽视恶意证据，甚至在争议商标的申请人未对异议提交回应的情况下，这是一个严重的问题，而且糟糕的是如果起诉方提出的异议被驳回，将不再有申诉途径，因此让人对这种针对恶意抢注的异议程序的实用性和有效性产生疑问。

中国美国商会强烈建议中国美国商会解决商标局异议审议程序存在的问题，并在异议程序中纳入证据交换过程并提供更多发表意见的机会。此外我们建议中国政府发布关于正确处理恶意抢注第三方商标行为的指导方针，为中国市场内没有名望的中小企业提供有效的工具，从而在异议环境中有效地应对第三方对其商标的恶意抢注。我们还建议如果某个商标被指称为恶意抢注，并且提出异议者也称其
listed as an independent ground for opposition or invalidation, and thus were uncertain as to the practical effect of this provision in opposition and invalidation proceedings before the TMO and the TRAB.

In 2015, the TRAB and the Beijing IP Court referenced Article 7 in multiple decisions involving challenges brought by brand owners against pirate filings, and has interpreted many of the more traditional bases for challenging bad-faith filings (such as Articles 10 (1) (7), 10 (1) (8), 32 and 44) in light of Article 7. AmCham China applauds efforts by the TRAB and the Beijing IP Court to make use of Article 7 in matters involving prima facie evidence of bad faith, particularly in light of the current paucity of clear guidance by the SAIC and the SPC on the handling of cases involving preemptive bad faith filings.

The TMO, however, was very inconsistent in 2015 and has, unfortunately, failed to improve the overall quality of its review of opposition disputes and, in particular, disputes that involve trademarks filed in bad faith. AmCham China members note a frequent disregard by the TMO of evidence of bad faith, even in cases where an applicant of an opposed mark failed to file a response to the opposition. This is a significant issue and unfortunately there is no longer an appeal option for the petitioners of failed oppositions, calling into question the practicality and effectiveness of filing oppositions against pirate marks in the first place.

AmCham China strongly encourages the Chinese government to address the issue of TMO opposition review and to add an evidence exchange process or an opportunity to comment as part of the opposition proceedings. In addition, we recommend that the Chinese government issue guidelines for the proper handling of preemptive filings of third-party trademarks in bad faith, and that those guidelines provide SMEs that have little or no fame in the PRC market with effective tools for challenging pirate filings of their trademarks by third parties in the opposition context. We also suggest that marks that are alleged to have been filed in bad faith and are opposed as such be rejected by default if the applicant fails to respond to an opposition.

We noted in the 2014 White Paper our encouragement by language in the Draft SPC Trademark Regulations that addressed serial piracy and appeared to strengthen Article 32 of the Trademark Law (prohibiting, inter alia, preemptively registering a third party’s mark by “improper means”) to address bad faith filings. We continue to hope that the SPC will take the lead in addressing this issue through the issuance of relevant regulations in the coming months, and that the SAIC will follow through by supporting consistent review standards for the TMO and TRAB that will make it more difficult for trademark applicants to take advantage of the first-to-file principle to obtain rights to third-party trademarks in bad faith.

**Recommendations**

**For the Chinese Government:**

- Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, and make it available regardless of the level of fame associated with the pirated mark.
- Finalize the Copyright Law amendments in an expedited manner, reform the Criminal Law to include the criminal liability of enterprise end-user piracy, implement stronger civil remedies against piracy, and expressly criminalize the commercial use of pirated software.
- Undertake comprehensive review of current trade secret protection laws, streamline and clarify procedural rules among courts, and restrain administrative agencies from requesting unnecessary disclosure of proprietary trade secret information.
- Refrain from further expanding administrative power in civil patent disputes and focus on improving patent quality in the new amendment to the Patent Law.
- Ensure that local enforcement agencies have clear responsibilities and centralized reporting lines and that they proactively and transparently implement rules.
- Introduce a process for determining appropriate amounts of remuneration by using clear guidelines that take into account the respective field of industry and balance an employee’s contribution to the invention with the contributions of the employer.
- Issue review standards for the TMO and the TRAB that make it more difficult for trademark applicants to take advantage of the first-to-file principle to obtain rights to third-party trademarks in bad faith.

**For the US Government:**

- Share best practices from US federal and state trade secret laws and national trade secret strategy.
为恶意抢注，在商标申请人未对异议做出回应的情况下，将默认此商标被驳回。

我们在2014年的《白皮书》中曾经提到《关于审理商标授权确权行政案件若干问题的规定》草案中的有关解决连续剽窃行为的规定让我们深受鼓舞，它似乎也强化了《商标法》第32条（不得以不正当手段抢先注册第三方商标）中的相关规定，从而解决恶意抢注问题。我们希望最高人民法院接下来能够尽快出台相关规定来解决这一问题。这样国家工商管理总局就会跟进统一和优化商标局和商标评审委员会的审查标准，从而使商标申请人难以利用先来先注册的原则恶意抢注第三方商标。

### 建议

#### 对中国政府:

- 将恶意抢注商标作为判定第三方申请商标无效的明确依据，并且无论被剽窃商标的知名度如何，都以此为依据。
- 加快确定《著作权法》的最终修订，改进《刑法》，把企业最终用户软件盗版行为列为刑事责任，对盗版行为实施更为有力的民事救济，并且把商业使用盗版软件明确规定为违法行为。
- 对目前的商业秘密保护法律进行全面审查，简化并在明确法院间的程序规则，并且限制行政机构对专有商业秘密信息不必要地披露要求。
- 防止进一步扩大民事专利争议中的行政权力，新的《专利法》修订案的重点应放在如何提高专利质量上。
- 确保地方执法机构责任清晰，有统一的报告责任制度，以及积极主动和透明地执行相关规定。
- 通过明确的规定提出一种确定适当报酬金额的程序，该规定要考虑到各个行业领域并且要平衡员工和雇主对发明所做的贡献。
- 为商标局和中国商标评审委员会发布审查标准，从而使商标申请人难以利用先来先注册的原则来恶意抢注第三方商标。

#### 对美国政府：
- 分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。
Introduction

AmCham China strongly supports the commitments made at the 2013 Third Plenum and the 2014 Fourth Plenum to further open and reform the economy by giving market forces a decisive role in the economy and institutionalizing the rule of law. We appreciate the complexity of the reform process, and encourage the further implementation of these ambitious reforms that will benefit China’s economy and the ability of our members to contribute to China’s continued development.

In 2015, foreign investors in China faced a challenging environment. While the Chinese government has consistently affirmed its support for market reforms and greater market-based competition, recent regulatory and policy developments have increased concern in the foreign business community regarding the trajectory of reforms, including those that would allow foreign-invested enterprises (FIEs) to provide goods and services to the Chinese people on a level playing field with their Chinese competitors. We urge the Chinese government to hasten such reforms in order to support China’s continuing economic development and to facilitate successful negotiation of a high-standard US-China Bilateral Investment Treaty (BIT).

There were some signs in 2015 that the Chinese government is genuinely committed to carrying out the reforms set during the Third Plenum. The draft unified Foreign Investment Law released in January and the revised Pilot Free Trade Zone (PFTZ) Negative List released in April were both greeted with cautious optimism. We welcome and encourage the stated intent of these initiatives and believe such reforms have the potential to substantially improve the business environment and draw further investment into China’s economy. To date, however, it is still unclear how these initiatives will be implemented, and the fundamental concerns of foreign investors in China remain largely unaddressed.

Indeed, economic reform efforts have not kept pace with the continued decline in investor sentiment caused by macroeconomic trends and perceived discriminatory treatment. The new reality of moderating growth, rising input costs, and the continued presence of market restrictions – both through written measures and unofficial practices – increasingly impacts companies’ investment decisions in China. The continuation of such barriers, exacerbated by a series of disconcerting developments during the year, present foreign investors with what is in many respects a less-favorable environment.

Our members are hopeful that the economic outcomes of President Xi Jinping’s September 2015 visit to the US, including commitments to limit the scope of national security reviews of foreign investments to actual national security concerns (rather than also considering economic and public interest issues) and to avoid using competition law enforcement actions to pursue industrial policy goals, will create a better environment for our members in 2016. In particular, we are hopeful that progress announced by the two governments regarding the shortening of their respective negative lists will continue apace, so that the two governments can conclude negotiations on a high-standard and comprehensive BIT as soon as possible.

Recent Developments

Over the past year, the Chinese government has increased its support for Chinese companies investing abroad, as made visible in developments including the Asian Infrastructure Investment Bank, the “One Belt, One Road” initiative, and the “Several Opinions of the State Council on Accelerating the Development of Service Trade.” Our member companies look forward to working with Chinese companies as they increase their investments globally, including in the US, provided that our members are also granted access to the opportunities these initiatives present.

Additionally, as Chinese investment in the US continues to increase each year and surpass new US investment into China, it is important to note the relative openness of US markets in comparison to the market access restrictions faced by many of our member companies in China (see graph). We fully support greater Chinese investment in the US, to the benefit of both of our economies, but urge China to provide foreign investors with market access opportunities comparable to those enjoyed by Chinese companies investing in the US.
引 言

美国商会非常支持中国在 2013 年十八届三中全会和 2014 年十八届四中全会上做出的承诺，即承诺通过发挥市场在经济中的决定性作用和依法治国，进一步开放和改革经济。我们理解改革过程的复杂性，支持中国进一步推进这些艰巨但有利于国内经济的改革，也鼓励我们的会员企业为中国的持续发展贡献力量。

2015 年，中国在经济改革方面的努力未能有效缓解投资者对中国宏观经济走向和感受到的不公正待遇而导致的日益低落的情绪。继续存在的壁垒，以及年内一系列令人不安的发展动态，令外国投资者感到中国的投资环境差强人意。

事实上，中国在经济改革方面的努力未能有效缓解投资者对中国宏观经济走向和感受到的不公正待遇而导致的日益低落的情绪。增长放缓、投入成本上升以及持续存在的市场限制（无论是成文的规定还是非正式的做法）对外国企业在华的投资决策影响越来越大。继续存在的壁垒，以及年内一系列令人不安的发展动态，令外国投资者感到中国的投资环境差强人意。

最新进展

在过去一年内，中国政府加大了对中国企业海外投资的支持力度，诸如设立亚洲基础设施投资银行、制订“一带一路”倡议以及《国务院关于发展服务贸易的若干意见》等多项举措。我们的会员企业期待与中国企业合作，不仅为中国企业扩大了在全球范围内（包括美国在内）的投资，同时也因为这些措施所带来的市场机会。

此外，随着中国对美投资额逐年增长并超过美国对华新增投资额，必须注意到，相对于美国市场的开放性，我们的许多会员企业在中国仍然面临各种市场准入限制（如图所示）。我们完全支持中国扩大在美国的投资，这对中美两个经济体都有利，但是我们敦促中国为外国投资者提供与中国企业在美投资所享受到的同等市场准入机会。

在 2015 年，美国商会继续强调中国加快改革开放力度的必要性，从而有效应对国内经济压力并确保其在全球市场的竞争力。尽管有着巨大的市场增长机会和扩大的投资，许多外商投资企业正面临不公平待遇，并被挤出市场。世界其他地区都在磋商区域性和贸易与投资协定，而调查数据和访问经验表明，越来越多的会员企业已经在寻求机会将投资转向中国以外的市场。
Throughout 2015, AmCham China continued to emphasize the need for China to accelerate its opening and reform efforts so that it can effectively address domestic economic pressures and ensure that it remains competitive in the global market. Many FIEs are being unfairly squeezed out of the market, despite great opportunities for market growth and increased investment. Regional trade and investment agreements are being negotiated elsewhere in the world, and survey data and anecdotal experiences indicate that more of our members are already looking to diversify their investments away from China.

In particular, we continue to voice concerns about a number of policies and practices that restrict opportunities for our members to access and compete in the market, including:

- industrial policies that discriminate against FIEs, including those that have fully localized production,
- opaque investment approval procedures,
- lack of effective administrative and legal recourse when an investment approval is delayed, conditioned, or denied,
- lack of transparency and due process in enforcement, and
- increased application of national security provisions in economic and commercial rules and regulations.

Market openings and reforms by the Chinese government in the near term, prior to the completion of a BIT, would benefit the Chinese economy and consumers and provide concrete signals of China’s intent to provide meaningful market access for foreign companies. Immediate progress is essential to create the momentum and public support needed to secure passage of a BIT once negotiations are completed. In addition, transparent and open communication with the business community is critical to ensure continued confidence in the policy intentions of the government.

However, in 2015, the Chinese government laid out the building blocks of a sweeping, often broadly cast national security and cybersecurity regime that our members fear may, to some extent, be used to implement discriminatory economic policies or otherwise constrain their ability to do business in the country. If promulgated, these policy developments may also negate or reduce the important benefits potentially derived from the Third Plenum reforms and BIT negotiations. Together with government actions in the domestic economy during the Shanghai stock market turbulence in mid-to-late 2015 and further devaluation of the RMB in the second half of the year, the legal and regulatory developments and trends we discuss below have increased uncertainty among foreign investors.
我们尤其对限制会员企业进入并在参与市场竞争的诸多政策和做法表示担忧，包括：

- 针对外国投资企业的歧视性产业政策，包括那些已经完全实现本地化生产的企业；
- 投资审批程序不透明；
- 当申请投资审批被延误、加设条件或否决时，缺乏有效的行政和法律追偿制度；
- 执法过程中缺乏透明度和正当程序；
- 在经济和商业规章制度中越来越多地应用国家安全规定。

在达成双边投资协定之前，中国政府在近期内推进市场开放和改革将有利于中国经济和消费者，同时也是向外界发出明确信号，表明中国允许外国企业获得切实的市场准入。这种直接的推进不仅能提供动力并赢得公众支持，还能确保双边投资协定在谈判完成后得到顺利通过。此外，与企业界保持透明、公开的沟通也是确保外界对中国政府的政策导向有信心所迫切需要的。

2015年，中国政府设置了一整套具有深远影响且涉及领域广泛的国家安全和网络安全保障体系。我们的会员企业担心，这套体系可能在某种程度上会被用来实施歧视性经济政策或束缚他们在华开展经营活动的能力。一旦正式颁布，这些政策可能会抵消或削弱三中全会改革和双边投资协定谈判带来的重大利好。法律和监管政策的变化和将在下文探讨的趋势、2015年中下旬股市动荡期间政府针对国内经济采取的行动以及2015年下半年人民币的进一步贬值，都增加了外国投资者对在华投资的不确定性。

**设立前：目录和负面清单**

2015年3月，国家发展与改革委员会和商务部联合颁布新版《外商投资产业指导目录》（《外商投资目录》）。虽然其中对某些领域的限制收紧，利好消息也不如预期之多，但新目录仍标志着中国在向更加开放的市场迈进的一大步。作为向三中全会就公布了开放服务业市场准入的决议。

我们鼓励中国政府将外商投资管理制度从基于目录的管理改变为基于负面清单形式的管理，而非不修订《外商投资产业指导目录》。
**Pre-Establishment: Catalogues and Negative Lists**

In March 2015, the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) jointly released a new edition of the “Guiding Catalogue on Foreign Investment in Industry” (Foreign Investment Catalogue). The new Foreign Investment Catalogue constitutes a modest step forward, though restraints were tightened in some areas and positive news was not as extensive as anticipated, particularly given the Third Plenum’s mandate for opening market access in the services sector.

In lieu of issuing new editions of the Foreign Investment Catalogue in the future, we encourage the Chinese government to work toward its announced goal of moving from a catalogue-based system of foreign investment management to a negative-list approach – as already begun in the PFTZs and as foreshadowed in the draft Foreign Investment Law issued in 2015 (both of which are discussed below).

We applaud China’s adoption of a negative list approach for regulating inbound foreign investment in China’s four PFTZs (Shanghai, Tianjin, Guangdong, and Fujian). The stated goal of the PFTZs is to serve as a testing ground for economic and administrative reforms contemplated for nationwide implementation, including reform of the foreign investment, foreign capital, and currency control regimes. In particular, the PFTZs have experimented with various financial reforms and have tested opening various sectors to foreign investment – a few of which have since been expanded to the national level.

While we remain cautiously optimistic regarding the role of PFTZs in introducing market reforms, we continue to be discouraged by the slow pace of implementation to date, with reforms thus far focused more on streamlining administrative procedures than on identifiable and immediately utilizable market opening. Reductions in items listed on the PFTZ negative lists in large part reflect an alignment of negative list items with other national laws and regulations guiding foreign investment or the consolidation of listed items, rather than genuine opening.

In addition to moving towards a negative list approach for regulating foreign investment, the State Council issued opinions in October 2015 to introduce a market access negative list that applies to all market participants. This market access negative list is intended to be an all-inclusive list of sectors in which investment is prohibited, and those in which investment is restricted and requires administrative approval (e.g., project approval from relevant Development and Reform Commission departments). Sectors not listed in the market access negative list are supposedly open to investment, with the caveat that foreign investors must also check the foreign investment negative list to ensure that no special prohibitions or restrictions apply. The Chinese government announced plans to pilot this market access negative list in certain regions of China starting December 1, 2015, with nationwide implementation expected by 2018. We expect the Chinese government to release detailed regulations and policies in 2016.

**Draft Unified Foreign Investment Law**

In January 2015, MOFCOM released a draft unified Foreign Investment Law for public comment. The draft seeks to implement the Third Plenum’s call for unifying domestic and foreign investment laws and regulations. Once finalized, this law would replace the three existing legal frameworks governing foreign investment – the Law on Chinese-Foreign Equity Joint Ventures, the Law on Chinese-Foreign Contractual Joint Ventures, and the Law on Wholly Foreign-Owned Enterprises – which are at times redundant, inconsistent, or in contradiction to other laws and regulations. The introduction of a unified Foreign Investment Law is a positive and important indication of China’s continuing desire to reform and open its economy.

We are pleased that the draft Foreign Investment Law would implement the national treatment principle, allowing foreign investors to make investments on the same terms as Chinese investors, and welcome the adoption of a nation-wide negative list, which would set out which foreign investments are subject to approval and at what level. We ask that regulators clarify and unify the restricted and prohibited categories within the Foreign Investment Catalogue and the proposed Catalogue of Special Management Measures under the draft Foreign Investment Law into a simple, efficient, and narrow negative list.

**National Security Law**

The NPC enacted the National Security Law in July 2015. While we recognize the need for balance between the twin objectives of protecting national security and maintaining openness to foreign investment, we are disappointed to see that the National Security Law favors protecting national interests that fall outside the widely accepted scope of essential national security concerns. Our members are deeply concerned about the implications of China’s overly broad definition of national security in the Law, which includes economic security, cultural security, societal security, and public morality. Read together with other draft and existing Chinese regulations relating to the screening of inbound foreign investment, this definition could result in an expansive approach to national security reviews that will further restrict and discourage foreign investment and, in turn, reduce the benefits that such investment delivers to China’s economy.

The sweeping conception of national security outlined by the Law is also inconsistent with international norms governing investment reviews and raises fundamental questions about whether future commitments by China to open its markets to foreign investment will produce the intended results, including under the proposed US-China BIT and
商务环境综述

|   行业   |
产业政策和市场准入
|   投资政策   |

《外商投资法（草案）》

2015年1月，商务部公布统一的《外商投资法（草案征求意见稿）》，旨在落实三中全会关于统一内外资法律法规的倡议。该草案一旦定稿，则将取代现有的三大外资投资管理法律框架——《中外合资经营企业法》、《中外合作经营企业法》以及《外资企业法》。这三部法律有时会出现与其他法律法规重复、不一致或相互矛盾的情况。

《国家安全法》

全国人大于2015年7月颁布了《国家安全法》。尽管我们认为有必要在保护国家安全与保持外资开放这两个目标之间维持平衡，但是，遗憾的是，这部《国家安全法》倾向于保护的国家利益，未在国际上被认定为核心国家安全问题。根据中国《国家安全法》，国家安全包括经济安全、文化安全、社会安全和公共道德等。该定义过于宽泛，商会会员企业对此表示担忧。如果与中国拟定的及现行的有关入境外资筛选的法规结合起来，这一定义可能会导致国家安全审查办法的扩大化。这将进一步限制和阻碍外国投资，从而导致这类投资对中国经济的贡献也会相应减少。

《网络安全法（草案）》

2015年7月，全国人大发布《网络安全法（草案）》向社会公开征求意见。这显示了中国政府对网络入侵、网络攻击、恐怖主义行为以及保护个人信息和敏感数据的关注。我们相信，这部草案对中国网络安全法律制度的一些方面进行了完善。但《网络安全法（草案）》的现有措辞有很大的不确定性，并且在国际上被认定为核心国家安全问题。根据中国《国家安全法》，国家安全包括经济安全、文化安全、社会安全和公共道德等。该定义过于宽泛，商会会员企业对此表示担忧。如果与中国拟定的及现行的有关入境外资筛选的法规结合起来，这一定义可能会导致国家安全审查办法的扩大化。这将进一步限制和阻碍外国投资，从而导致这类投资对中国经济的贡献也会相应减少。
the Comprehensive Agreement on Investment under negotiation with the EU. We ask that further revisions be made to clarify the definitions of national security and remove economic security (or related economic references) from the definitions to be consistent with the principles of a high standard BIT and OECD Guidelines. We ask for the provision of narrowly tailored definitions within laws or measures governing national security reviews to provide the greatest opportunity for inbound investment flows.

**Draft Cybersecurity Law**

In July 2015, the NPC released a draft Cybersecurity Law for public comment, which displayed the Chinese government’s attention to addressing network intrusions, network attacks, and terrorist acts, as well as the protection of personal information and sensitive data. We believe the draft improves some aspects of the legal system for network security in China but, without revisions and clarifications, the draft Cybersecurity Law as currently worded generates significant uncertainty and may overly burden companies currently doing business in China as well as network users. It may, in fact, negatively impact cybersecurity despite the law’s intention to protect it. In particular, our members are concerned about the lack of clear standards and scope of applicability regarding companies that may be required to comply with often vague terms, the lack of integration with global cybersecurity standards and certifications, and the data localization requirements – all of which may be used to discriminate against FIEs. We ask that the definitions and scope of applicability of this law be clarified to guard against potential inconsistent and unclear enforcement.

**Data Localization**

Over the last few years, the Chinese government has introduced a series of both legally binding regulations and voluntary standards with the aim of restricting access to certain data. These developments indicate a policy trend that is counter to the principles driving the BIT negotiations and will hinder China’s efforts to be a leader of innovation.

We believe such data localization policies will hamper China’s economic growth through increased costs for foreign companies that can no longer use their existing IT suppliers and infrastructure while simultaneously cutting domestic companies off from a global marketplace of potential customers. Requirements to store data in-country will require that foreign companies build costly data centers in multiple countries, and are particularly damaging for foreign small and medium-sized companies seeking to do business in China that are unable to bear the costs of localization. Finally, data localization can significantly undermine many innovative information industries and applications such as the Internet-of-Things, cloud computing, and big data. We urge legislators to refrain from issuing data localization policies that limit trade and prevent the seamless flow of data across borders.

**“Secure and Controllable” Regulations**

In September 2014, the China Banking Regulatory Commission (CBRC), Ministry of Industry and Information Technology, Ministry of Science and Technology, and NDRC jointly released the internal “Guiding Opinions on the Application of Secure and Controllable Information Technology to Strengthen Banking Industry Network Security and Informatization” (Opinions), which was circulated among banking institutions – but not open to public comment – requiring banks to ensure that 75 percent of their ICT products are “secure and controllable” by 2019. This term was more publicly emphasized within the National Security Law referenced above. In December 2014, the CBRC issued “The Guidelines on Banks Using Secure and Controllable Information Technology,” requiring banking institutions to implement “secure and controllable” information technology products.

The guidelines effectively require foreign companies to surrender key technologies such as source code and encryption algorithms to Chinese authorities, increase substantially their manufacturing and research facilities in China, and comply with Chinese standards (as opposed to global standards). Such immensely burdensome policies would overwhelmingly disadvantage foreign IT companies through such performance requirements, creating barriers for their investments in China. In addition, they effectively create an unbearable cost burden to most foreign banks and limit Chinese banks’ ability to compete globally and securely, given that they will have a limited pool of software from which to choose.

After their eventual suspension in April 2015, China committed at the 2015 US-China Strategic and Economic Dialogue (S&ED) “that such bank ICT regulations will be nondiscriminatory, are not to impose nationality-based requirements, and are to be developed in a transparent manner.” While we appreciate these commitments and note that in the intervening months some meetings have been held with foreign companies to discuss further revisions to the regulations, these meetings have been announced at very short notice and without informing participants of the issues to be discussed beforehand. Meanwhile, the draft regulations have yet to be released to the public, and similar references to “secure and controllable” technologies have since begun to appear in guidelines and announcements for other industries, including telecoms, medical devices, e-commerce, and insurance. The non-transparent application of such industrial policy is of great concern to our members, and creates doubt over China’s commitments to the principles of non-discrimination, fairness, and openness. We ask that any existing “secure and controllable” policies, specifically CBRC Documents 37 and 319, be published for comment in advance and that any future revisions or newly issued policies be pursued in an open and transparent manner with clear opportunities for public consultation with both the foreign and domestic business community.
**数据本地化**

在过去的几年中，中国政府出台了一系列具有法律约束力的规范和自愿性标准，旨在限制对某些数据的访问。该政策表现出来的趋势与推动双边投资协定谈判的原则相悖，会阻碍中国成为创新领导者。

我们认为，这类数据本地化政策使得外国企业无法继续使用其现有的IT供应商和基础设施，从而导致成本增加；同时也切了国内企业与全球市场潜在客户的联系，从而将会束缚中国的经济增长。数据存放于中国境内的要求，将迫使外国企业必须在多个国家建立昂贵的数据中心，尤其会给那些尝试在中国做生意但无力承受数据本地化成本的中小企业带来不利影响。最后，数据本地化可能极大地损害众多创新型信息产业和应用，如物联网、云计算和大数据等的发展。我们敦促立法部门停止出台这种制定贸易并防止跨境数据无缝流动的数据本地化政策。

**“安全可控”条例**

2014年9月，中国银监会（CBRC）、国家工业化和信息化部（MII）、科技部（MOST）以及国家发展和改革委员会（NDRC）联合发布了一份仅在金融行业内部流通而不向社会公开征求意见的内部文件，即《关于应用安全可控信息技术加强银行业网络安全和信息化建设的指导意见》（《意见》）。《意见》要求各金融机构应确保到2019年之前75%的信息通信技术（ICT）产品是“安全可控”的。如前文所述，这个词在《国家安全法》中也曾多次公开强调。2014年12月，银监会发布了《银行业应用安全可控信息技术推进指南（2014-2015年度）》，要求各金融机构落实使用“安全可控”的信息技术产品。

上述指导意见要求外国企业向中国主管机构交出源代码及加密算法等关键技术，大幅增加了外国企业在中国的生产和研究设施，并且执行有悖于全球标准的中国标准。这类繁冗的政策通过诸如此类的要求，给外国IT企业在中国的投资制造了障碍，使其处于压倒性的劣势。此外，上述规定不仅给大多数外资银行造成难以承受的成本负担，同时也因为可供选择的软件库有限，从而限制了中国银行业在全球范围内进行安全竞争的能力。

在上述规定于2015年4月最终暂缓执行后，中国在2015中美战略与经济对话（S&ED）中进一步承诺：“保证这类银行信息通信技术规定是非歧视性的，不会强加国籍要求，并会保证政策制定的透明性。”虽然我们对这些承诺表示赞赏，并注意到在此期间有关部门几次约见外国企业，就相关政策的进一步修订进行讨论，但是这些会议都是临事通知，而且也未事先告知参与者会上将讨论的问题。同时，这些规定的草案未在社会公开征求意见，而有关“安全可控”的类似原则就已经开始在电信、医疗、电子商务、保险等其他行业中使用。商会会员企业对中国在实行这类行业政策上的不透明感到非常担心，并对中国政府承诺的非歧视、公平和开放的原则产生疑问。我们请求，任何现有的“安全可控”政策，特别是银监会第37号和第319号文件的出台，都应事先公开征求意见，现有政策的进一步修改或任何新政策的出台也均应采取公开透明的方式，为国内外企业界参与公众咨询，提供明确机会。

会员企业对《国家安全法（草案）》、数据本地化和安全可控政策的担忧，将于“金融和资本市场”、 “信息与通信技术”以及“保险”等章节进行更多阐述。

**《反恐法》**

2015年12月，在第一部《反恐法（草案）》对外公布向社会公开征求意见的一年之后，全国人大常委会正式通过《反恐法》，并且该法案已于2016年1月1日开始生效。该法案强化了政府调查和防止恐怖主义事件的广泛权力，要求公民和企业协助、配合政府部门开展反恐怖主义工作。在各项要求中，该法案特别要求电信运营商和互联网服务提供商实行内容监控，并与主管机关报告含有恐怖主义、极端主义内容的信息；金融服务机构必须遵循关于冻结特定恐怖主义组织或个人资金和资产的新规定。违反规定或拒不配合的组织或个人将从重处罚，包括对企业处以罚款和对相关人员处以刑事责任或处以拘留等。

中国有权力，同时也有义务采取措施保护本国人民免受恐怖主义活动的侵害，对此我们表示认同。但是，令我们感到担忧的是，该法案的很多规定过于宽泛，很容易被有反恐以外目的的机构和官员滥用。我们注意到草案最终版本删除了许多相互矛盾的规定，如要求电信运营商和互联网服务提供商在产品中安装信息安全“后门”、向中国政府进行加密密匙备案以及将与中国用户有关的数据存贮在中国境内等。然而，对于法案的实施，我们仍然表示担忧。我们依然在密切关注类似要求是否会加回于实施细则或其他管理办法中。我们要求明确监控内容的类型、电信和互联网服务企业需要实施的安全程序和要求，并会保证政策制定的透明性。”
More information on member concerns regarding the draft Cybersecurity Law and data localization and secure and controllable policies can be found in the Banking and Capital Markets, Information and Communications Technology, and Insurance chapters.

**Counter-Terrorism Law**

In December 2015, a year after a first draft was released for public comment, the NPC Standing Committee enacted a Counter-Terrorism Law, which entered into effect on January 1, 2016. This law reinforces the government’s broad powers to investigate and prevent incidents of terrorism, and requires citizens and companies to assist and cooperate with the government in dealing with such matters. Among other things, it requires telecommunications and Internet service providers to monitor content and report terrorism or extremism-related content to the authorities, providing all necessary technical support and assistance. Financial services companies are subject to new rules regarding the freezing of funds and assets of designated terrorist organizations and individuals. Non-compliance or non-cooperation can lead to significant penalties, including fines on companies and criminal charges or detention for responsible individuals.

We recognize that the Chinese government has a right and a duty to take steps to protect its people from terrorist activities. However, we remain concerned that many provisions of this law are overbroad and susceptible to misuse by agencies and officials with motives other than purely preventing terrorism. We recognize that some of the more controversial provisions from the draft were removed in the final text – including those requiring telecommunications and Internet service providers to install “backdoors” into their products, register encryption keys with the government, and keep data related to Chinese users on servers within China. Nevertheless, concerns about implementation remain, and we remain watchful that such requirements are not later inserted into implementing regulations or other measures issued by regulating agencies. We ask for clarification regarding the types of content monitoring and security programs that telecommunications and Internet service companies will be required to implement and for assurance that controversial requirements – including for “backdoors,” encryption key registration, and data localization – that were removed from the draft version of the law are not imposed on ICT companies and other entities through implementing regulations or other measures.

**US-China Bilateral Investment Treaty**

We strongly support the ongoing bilateral BIT negotiations and believe that agreement on a comprehensive, high-standard BIT would constitute the most decisive step the two countries could take to deepen bilateral economic and commercial relations. We are encouraged that Presidents Obama and Xi have agreed to intensify negotiations and work expeditiously to conclude a high-standard agreement.

An effective and successful BIT would result in increased US investment into China, leading to higher-value products and lower prices for consumers, as well as introduce valuable managerial and technical expertise into China. Similarly, it would also boost the confidence of Chinese investors in the US and support the growth of China’s outbound foreign investment, bringing job creation and other economic benefits to the US. The recent lackluster pace and substance of reform and opening unfortunately create doubt amongst our members about China’s commitment to the principles that would be included in the BIT.

The most important outcome sought by both sides in a BIT is continued economic growth, which can only be achieved through expanded and sustained investment openness. A critical measure of openness, as well as China’s level of commitment to the negotiations, is China’s approach to the negative list. Through discussions with Chinese and US government officials, we understand that China’s negative list remains much longer than would be expected by the US business community. Furthermore, numerous companies have reportedly been told by Chinese government officials that any further market opening will be held off until the completion of the BIT. We believe both countries should pursue a rapid negotiation process, but also believe that market opening and implementation of reforms by the Chinese government prior to the completion of a BIT will benefit the Chinese economy and consumers while providing measurable signals of China’s intent to achieve meaningful market access for foreign companies. This will, in turn, help to build broader business support in the US for the ongoing treaty negotiations.

A short and narrow negative list offer – coupled with a high-standard core text that embodies the principles of non-discrimination, fairness, openness, and transparency – is necessary to ensure that the BIT addresses our countries’ shared commercial concerns, expands our investment ties, and bolsters the bilateral economic relationship. We strongly support a treaty that not only addresses market access but also disciplines actions that create an uneven playing field or undermine the rules-based system for foreign companies. In particular, our members hope that the BIT will include:

- requirements for transparency in administrative procedures and due process in enforcement and dispute settlements,
- limitations on performance requirements, including data and IP localization requirements, and expanded protection against forced technology transfer,
- disciplines on SOEs and designated monopolies,
- clarified definitions of national security to limit overly broad application of regulations, and
- guarantees for non-discriminatory application and development of standards.
序，并且希望中国政府能保证，一些此前已从草案中删除的相互矛盾的规定，包括安装“后门”、加密密匙备案和数据本地化等，将不会以实施细则或管理办法的形式，再次加给信息通信技术公司和其他企业。

**中美双边投资协定**

我们坚决支持中美双方就签订全面且高标准的双边投资协定加快谈判进程，并且认为这是为两国深化双边经济和商业关系所迈出的最具决定性的一步。令人鼓舞的是，奥巴马总统和习近平主席一致同意加快谈判进程，尽快达成一份高标准的协议。

一份有效的、成功的双边投资协定会吸引更多的美国投资进入中国，从而为消费者带来更为物美价廉的产品，并向中国引入宝贵的技术和人才。同样，它也将增强中国投资者对美国的信心，支持中国境外投资的增长，为美国创造就业机会及其他经济利益。遗憾地是，目前中国改革开放举步蹒跚，内容乏善可陈。因此，我们的会员企业对于中国能否切实履行双边投资协定中的原则承诺深感疑虑。

在一份双边投资协定中，双方最看重的成果是经济的持续增长，而这只能通过扩大并保持投资的开放性来实现。中国采用负面清单的做法既是保持开放的一项重要措施，也体现了中国对谈判的责任感。然而，从与中美两国政府官员的讨论中，我们了解到，中国列出的负面清单仍然比美国商界的预期要长很多。此外，许多企业都报告说，中国政府官员表示，在达成双边投资协定前将暂缓进一步的市场开放。我们认为，两国应努力加快谈判进程，同时，中国政府在双边投资协定达成之前，应继续推进市场开放和实施改革。这将有利于中国的经济并使消费者受益，同时也将激励美国企业获得更多的市场份额，赢得美商界更广泛的支持。

提供一份简明的负面清单和一份能够体现非歧视、公正、开放和透明原则的高标准文本是确保双边投资协定既定目标、解决商界关切、扩大投资关系以及加强双边经济关系所不可或缺的。我们坚决支持双方达成一个不仅能解决市场准入问题，同时也能约束造成不公平竞争或破坏游戏规则的行为，商会会员企业尤其希望双边投资协定能解决以下问题：

- 要求通过行政程序确保执法和解决争端过程中的透明度和程序正当性；
- 在性能要求方面加以限制，例如数据和IP本地化，以及加强对强迫性技术转让的保护；
- 对国有企业和特定垄断领域加以约束；
- 明确国家安全的定义，限制相关法规被过于宽泛地应用；
- 保证标准的应用和制定不具有歧视性。

**建 议**

**对中国政府**：
- 尽快推进切实可行的开放性政策，允许外国投资者扩大在中国的业务。
- 删除《外商投资产业指导目录》中“鼓励类”投资项目需要获得行政审批和许可证的全国性规定。
- 尽快兑现双方在第四和第五轮中美战略与经济对话上扩大服务及其他行业开放的承诺，以适应中国经济发展的需要。
- 明确《外商投资产业指导目录》和根据《外商投资法（草案）》拟定的《特别管理措施目录》中的“限制类”和“禁止类”产业，并统一成一份简明高效的负面清单。
- 明确本章节中提及的信息安全和与数据相关的法规草案的定义和适用范围，并确保在进一步完善此类规定时，均采取公开透明的方式，并根据高标准双边投资协定和经合组织指导原则设定的原则，为内外资企业界参与公众咨询提供明确的机会。

**对中美两国政府**：
- 争取尽快达成一个高标准的双边投资协定，确保协定的预期利好能够在中国这个独一无二的市场实现。
- 确保两国政府列出简短的负面清单，只对少数几个重要部门作出明确界定以限制投资。
Recommendations

For the Chinese Government:

• Rapidly pursue substantial and actionable openings that will allow foreign investors to expand their operations in China.

• Remove nationwide administrative reviews and licensing requirements for investments listed as “encouraged” in the Catalogue Guiding Foreign Investment.

• Create immediate market openings for service sectors and other industries as committed in the fourth and fifth S&ED, and in line with China’s immediate economic needs.

• Clarify and unify the restricted and prohibited categories within the Foreign Investment Catalogue and the proposed Catalogue of Special Management Measures under the draft Foreign Investment Law into a simple, efficient, and narrow negative list.

• Clarify the definitions and scope of applicability of the draft security and data-related regulations as described in this chapter and ensure that further development of such regulations is pursued in an open and transparent manner with clear opportunities for public consultation with both the foreign and domestic business communities and in accordance with the principles of a high-standard BIT and the OECD Guidelines.

For Both the US and Chinese Governments:

• Pursue the rapid completion of a high-standard BIT that ensures the intended benefits of the treaty can be reached within China’s unique market.

• Ensure the negative lists from both governments are short with only narrowly-crafted exceptions that limit investment in only a few essential sectors.

• Utilize bilateral dialogues to discuss areas of opportunities for foreign companies in China’s economy and areas for improvement that can build support for the ongoing BIT negotiations.
利用双边对话机会探讨外资企业在中国经济有机发展的领域以及需要做出改进的方面，为正在进行的双边投资协定谈判夯实基础。
Introduction

Alongside significant changes in standardization strategy and policy in 2015, China’s standardization system continues to expand rapidly, both in terms of the development of new standards and the revision and implementation of existing ones. While AmCham China welcomes these positive developments, China’s standardization system still imposes a number of barriers to market entry that remain a concern for member companies. In order of significance, these barriers include:

1. the refusal by some Chinese standardization committees to adopt existing international standards, including those created by the US-based standards bodies that are largely made up of and driven by international industry, such as the Institute of Electrical and Electronics Engineers and ASTM International, despite encouragement from the Chinese government to do so;
2. the inability of foreign-invested enterprises (FIEs) to fully participate in all phases of China’s standards development; and
3. China’s inconsistency in providing full transparency across all standards development and implementation processes.

Ongoing Regulatory Issues

Recognition and Adoption of International Standards and Due Process

Over the past several years, China’s government and its industries have increasingly embraced a number of international standards. By the end of 2014, about 75 percent of Chinese national standards (GB, guojia biaozhun) were derived or developed by adopting standards from the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU). Meanwhile, China continues to increase its efforts to promote international standards by leading standards development work on the Internet-of-Things in the ISO and IEC joint technical committee (JTC1).

While AmCham China is pleased by China’s increased involvement in international standards development, we believe that much more progress is necessary.

The partial harmonization of international and Chinese standardization remains a serious concern for many foreign companies in China. Many Chinese standards committees continue to excerpt fragments of internationally accepted technical standards to create unique Chinese standards that are unnecessarily duplicative, create trade barriers restricting market entry and foreign imports, and hinder the export of Chinese goods and technology to the global market, increasing cost and time-to-market for all parties.

Equally challenging is China’s continued reluctance to accept globally oriented standardization coalitions as valid standards development organizations (SDOs). From a practical standpoint, no government, individual, or group of SDOs can singularly lead standards development for the innumerable technologies and their applications in the global market. It is essential that regulators consider all existing globally recognized SDOs, including those that are US based. Regulators should also base the decision to adopt a standard on internationally accepted standards development principles and due process, which include open participation, transparency, impartial voting rights, and consensus. In particular, the technical quality and market relevance of the standard, as accepted by users in the marketplace, should be given weight. By accepting these SDOs and by following these principles for adopting standards, we believe the Chinese government will not only improve its standardization system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

We therefore strongly urge the Chinese government to officially broaden its recognition of international SDOs beyond the ISO, IEC, and ITU to any organization that follows the World Trade Organization Technical Barriers to Trade (WTO/TBT) principles of transparency, openness, impartiality and consensus, relevance and effectiveness, coherence, and incorporation of developing country interests as detailed in WTO G/TBT/1/Rev.8. We are confident that US-based SDOs meet these qualifications and urge the Chinese government to engage with and accept those SDOs on the same basis as it does with the ISO, IEC, and ITU.
引言

2015年，随着标准化战略和政策的重大调整，中国标准化体制的变革，无论是新标准的制定还是现有标准的修订和实施，都在继续快速展开。中国美国商会欢迎这些积极的进展，但是，中国的标准化体制仍然对市场准入设置了一些让会员企业担心的障碍。按照重要性排序，这些障碍包括：

1. 虽然中国政府鼓励采用国际标准，但是，中国的一些标准化委员会仍然拒绝采用现有的国际标准，包括总部设在美国的、主要由国际产业界参与和驱动的标准制定机构制定的标准，比如，电气与电子工程师协会（IEEE）和ASTM国际标准组织制定的标准；
2. 外资企业不能充分地全程参与中国标准制定的所有阶段；
3. 不能在所有标准制定和实施过程中始终保持完全透明。

现存监管问题

国际标准和程序正义的认可和采用

在过去的几年中，有很多国际标准得到了中国政府和各个行业的认可。截至2014年年底，在中国国家标准（GB）中，大约有75%源自或采用了国际标准化组织（ISO）、国际电工技术委员会（IEC）和国际电信联盟（ITU）制定的标准。同时，中国在ISO和IEC的联合技术委员会（JCT1）中承担物联网标准制定工作，以继续加大力度推进国际标准制定。中国美国商会很高兴看到中国对国际标准制定的大力参与，当然，尚需努力以取得更大的进步。

在华的很多外资企业非常担心国际标准和中国标准只是部分统一。中国的许多标准化委员会继续以摘录的方式，部分地采用国际认可的技术标准，并以此为基础制定独特的中国标准，这造成了不必要的的重复，阻碍了对市场准入和外国进口形成限制的贸易壁垒，阻碍了中国商品和技术向国际市场的出口，还增加了所有相关方的成本和产品上市时间。

另外一个挑战是，中国仍然不愿意接受面向全球的标准化联盟作为正当的标准制定机构（SDO）。从实践角度讲，由于全球市场上的技术及其应用多种多样，政府、个人或标准制定机构中的任何一方都无法单独承担全球市场上所有标准的制定任务，因此，监管机构需要考虑接受所有现有的国际认可的标准制定机构，包括总部设在美国的标准制定机构。监管机构决定是否采用一项标准时，还应当基于国际认可的标准制定原则和程序正义要求，包括开放参与、透明、公正投票权和协商共识，尤其应当考虑标准的技术品质和市场相关度，即市场上用户的接受程度。通过认可这些标准制定机构并遵循这些标准制定原则，我们相信，中国政府不仅能够改进自己的标准化体制，还能够提高中国技术和产品在国际市场的竞争力。

我们促请中国正式放宽认可国际标准制定机构的范围，从ISO、IEC和ITU扩大至其他遵守世界贸易组织技术贸易壁垒协定（WTO/G/TBT/1/Rev.8）中规定的六大原则的所有标准制定组织。这六大原则包括透明、公开、公正与协商共识、相关性与有效性、协调性以及兼顾发展中国家利益。我们相信那些总部设在美国的标准制定机构均符合上述资格要求，并促请中国政府像对待ISO、IEC和ITU一样认可并与其他标准制定机构合作。

外资企业参与标准制定

在很多情况下，外资企业要么完全被禁止参与，要么只能以“观察员”的身份参与，通常没有或仅有有限的投票权。技术委员会选举资格或能力去参与标准的制定，很多讨论和会议仅限特定的境内企业参加，外资企业则被排除在外。而且，外资企业常常需要缴纳比境内企业更高的会费。

2014年5月，中国通信标准化协会网络与信息安全技术
Participation of Foreign-Invested Enterprises in Standards Setting

There are still a number of critical China-based SDOs that limit FIE participation. In many cases, FIEs’ participation is often either outright prohibited or granted under “observer” status, which usually means limited or no voting rights, technical committee (TC) electorate eligibility, or ability to participate in standards drafting. FIEs are also often excluded from discussions and meetings that are limited to a select group of domestic members and membership fees for FIEs are often higher than those of their domestic counterparts.

In May 2014, the China Communications Standards Association formally opened its Network and Information Security Technical Committee (TC8) to foreign companies, allowing wider FIE participation but as observers only. In 2015, the National Information Security Standardization Technical Committee (TC260) also allowed participation by a few select FIEs, though a transparent application process remains lacking for the majority of foreign companies. Even for current members, the right to initiate or develop standards is not clearly defined. While we view these steps as positive developments, the continued limits to FIE participation in these TCs effectively means that the majority of FIEs are largely absent throughout the process of developing important ICT security-related standards such as Mobile OS Security Assessment, Mobile Terminal Security Protection, Smart Phone Application Software Security, and Smart Phone Personal Information Protection.

We urge the Chinese government to develop standards in cooperation with all relevant stakeholders, including FIEs, to ensure that the resulting standards are widely accepted and supported both domestically and internationally. Presidents Xi and Obama affirmed the value of adopting international technology product standards that have been developed in an open, transparent, market-driven, and balanced manner during their September 2015 summit.

Association Standards

China’s standards development process has traditionally been centralized and government driven, but proposed reforms to decentralize and streamline the administrative process will give associations (societies, chambers, and other consortia) a leadership role in the drafting process. The first draft of the Chinese national (GB) standard “Association Standardization – Part I: Guidelines for Good Practices” was released for public comment by the China National Institute of Standardization in fall 2015. The Standardization Administration of China (SAC) and Ministry of Science and Technology also established pilot programs last year to encourage associations to participate in standards development. Thus far, 39 associations and societies have joined.

AmCham China commends efforts by the Chinese government to include industry in standards development. Such collaboration is necessary if the standards are to address market requirements. However, as the process moves forward, AmCham China remains concerned about the formulation of “association standards.” According to discussions with the SAC, it appears that the term “association” is intended to be limited to the approved legal bodies regulated by the Ministry of Civil Affairs as “social organizations.” As such, companies may find it difficult to set up an “association” as an SDO that meets legal requirements.

Although nominally intended to be open to all interested parties, there is a significant risk that an SDO could be dominated by a powerful participant that acts to exclude competitors from participating. AmCham China encourages any relevant regulation to make clear that Association SDOs should be open to all parties and follow international best practices. An Association SDO that is not open to all parties may be inconsistent with the Anti-Monopoly Law.

Association Standards will coexist with national standards and industry standards, which may have a complex impact on the market. A fast track process is being contemplated to convert Association Standards to National Standards and Sector Standards. AmCham China emphasizes the importance of clarity in the fast track guidelines and for the process to be well administered to prevent low quality standards as well as SDO standards that do not follow international best practices.

Although AmCham China encourages the development of association standards, we believe that the Chinese government should provide a clear set of rules and requirements to prevent industry abuse of select interests.

Enterprise Standards

In September 2014, the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and SAC, along with local quality supervision bureaus, began to actively urge enterprise standards management reform, emphasizing self-disclosure and compliance.

In early 2015, the AQSIQ and SAC launched pilot programs for the enterprise product standard self-disclosure system in 12 regions. In September 2015, the AQSIQ and SAC distributed the “Work Plan for Developing the Enterprise Product” and “Service Standards Self-Declaration System for Disclosure and Public Supervision,” with the aim of accelerating enterprise standard management system reform.

The new system will replace the current file-for-the-record management system with the goal of enabling enterprises, consumers, government, and third-party institutes to jointly participate in market supervision. AmCham China welcomes the Chinese government’s efforts to ensure market participants play a key role and optimize standardization efforts in the commercial sector. However, AmCham China remains concerned in several respects.
行业政策和市场准入

2015年，全国信息安全标准化技术委员会（TC260）也允许少数外资企业参与。然而，对于绝大多数外资企业来说，仍然缺少一个透明的审核过程。而且，在当前的审批政策中，外资企业的申请虽得到批准，但仍然是以观察员的身份参与。2015年，全国信息安全标准化技术委员会（TC260）也允许少数外资企业参与。然而，对于绝大多数外资企业来说，仍然缺少一个透明的审核过程。而且，在当前的审批政策中，外资企业的申请虽得到批准，但仍然是以观察员的身份参与。我们建议这些举措是积极的。但是，继续限制外资企业参与这些技术委员会意味着，大多数外资企业都无法参与信息技术安全等领域的标准制定。例如，移动操作系统安全评估标准、移动终端安全保护标准、智能手机应用软件安全标准、智能手机个人信息保护标准等。我们促请中国政府与包括外资企业在内的所有利益相关方合作制定标准，从而确保所制定的标准在国内和国际获得广泛的认可和支持。2015年9月，在中美首脑峰会上，习近平主席和奥巴马总统都肯定了采用根据开放、透明、市场驱动和利益平衡原则制定的国际技术产品标准的重要性。

团体标准

中国的标准制定过程一直以集中化和政府驱动为基础，计划实施的去中心化和简政放权改革会让团体（学会、商会和其他团体）在标准制定过程中发挥主导作用。2015年秋，中国标准化研究院发布《团体标准化第1部分：良好行为指南》国家标准征求意见稿。国家标准化管理委员会（国家标准委）和科技部去年也通过试点项目鼓励团体参与标准制定，目前已经有39个团体和学会参加。中国美国商会赞赏中国政府允许行业参与标准制定的举措，要想让标准满足市场要求，就必须要有一种合作。但是，随着这一过程的推进，中国美国商会对“团体标准”的制定仍然存在担忧。根据与国家标准委的沟通，“团体”似乎只限于民政部管辖的、经过批准的、合法的“社会组织”。所以，企业很难设立符合法律要求的“团体”标准制定机构。

新制度将取代现有的备案管理制度，使得企业、消费者、政府和第三方共同参与市场监督。由于中国对确保市场参与者发挥关键作用以及优化商业领域的标准化工作做出的努力，中国美国商会表示欢迎，同时仍然存在几方面的担忧。

新制度要求企业披露产品和服务标准信息，但是没有说明需要披露什么标准信息。我们对信息披露的水平，特别是商业秘密的保护以及披露的信息无法更新的问题表示担忧。由于网络服务和产品不断地更新和变化，信息和通信技术行业更是如此。

新制度鼓励多个企业联合开发和制定高于国家和行业标准的更先进技术的标准。然而，中国需要进一步明确企业联盟制定的标准的法律地位以及企业联盟和社会团体之间的区别。中国美国商会建议将企业联盟制定的标准转为国家标准和行业标准。中国美国商会想强调的是，为了防止出现低质量以及与国际最佳实践的标准（SDO）制定的标准，需要明确“快速通道”规则和流程并予以妥善实施。虽然中国美国商会鼓励制定团体标准，但是，我们认为，中国应当明确相关规则和要求，以防止少数团体选择性地滥用行业规则。

团体标准与国家标准和行业标准共存，可能对市场产生复杂的影响。中国正在考虑通过“快速通道”程序将团体标准转换为国家标准和行业标准。中国美国商会想强调的是，为了防止出现低质量以及与国际最佳实践的标准（SDO）制定的标准，需要明确“快速通道”规则和流程并予以妥善实施。
While the new system requires enterprises to disclose product and service standards information, it is unclear what standards information needs to be disclosed. We are concerned about the level of information to be disclosed, particularly with respect to trade secrets protection and the inability to update disclosed information. This is especially true in the ICT sector where network services and products are constantly being upgraded and changed.

ICT companies generally utilize specifications in lieu of enterprise standards. Specifications are company internal references for product/service development which vary greatly by company and are often regarded as trade secrets. If the new system requires disclosure of such specifications, it will not only impose onerous costs on companies but also lead to intellectual property protection concerns. AmCham China recommends that enterprise specifications be excluded from the scope of disclosure and, when information involves trade secrets, enterprises are able to refrain from disclosing such information.

The new enterprise standards management system encourages enterprises to collaborate and develop standards with more advanced technologies than national and industry standards. However, the legal status of enterprise alliance standards and the distinction between an enterprise alliance and a social organization needs to be further clarified by the Chinese government. Standards developed by an enterprise alliance are now categorized as enterprise standards instead of association standards, and are adopted only by the members of the alliance, while association standards are encouraged to be open to all. In addition, while a social organization must register with the relevant civil affairs department and must obtain a technical capacity qualification, an enterprise alliance does not require registration or evaluation.

We are concerned that the differentiation between enterprise alliance standards and association standards will complicate the standardization system, potentially undermining the principles of openness, transparency, and equal participation, and lead to monopoly risks. We also question whether there will be a process by which enterprise standards or standards developed by an alliance between enterprises can be transformed to become a recommended standard or a compulsory standard. If so, due process, transparency, and openness and equality for all parties become even more critical.

**Further Deepening China Compulsory Certificate Reforms**

For years, China has restricted and controlled which organizations are allowed to perform testing for the China Compulsory Certificate (CCC) process. To fulfill its commitment made at the 23rd Joint Commission on Commerce and Trade in December 2012, the Certification and Accreditation Administration of China (CNCA) has since accredited several non-Chinese testing organizations to perform CCC testing for specific product categories.

The CCC now covers 20 categories and 158 types of products, with testing and certification services provided by 22 certification organizations (CO) and 180 testing labs (TO). In September 2015, the CNCA took another step forward and designated two more foreign-invested TOs to provide testing services for certain types of CCC products, increasing the number of foreign-invested TOs to four of the total 180.

AmCham China welcomes this action, as it will further facilitate trade between the US and China and provide more alternatives for manufacturers to comply with related testing and certification requirements in the China market. AmCham China is encouraged to see the CNCA expediting the opening of the CCC market and evaluating the impact of foreign players accessing the local market by shortening the notification process, increasing designation frequency, piloting some product categories for application at any time, and applying for existing CCC testing labs to offer one-stop services at any time.

We believe, however, that additional concrete steps need to be taken to deepen CCC reforms, including allowing foreign-invested TOs to perform CCC testing for all product categories and enabling foreign-invested organizations to be a CO for the CCC. In that way, all stakeholders can participate in building a fair and sound CCC certification system.

**Recent Developments**

**Standardization System Reform**

In March 2015, the State Council published the “Measures on Strengthening Standardization System Reform,” which initiated a program to reform the current standards system originally implemented in 1989.

The mission of the reform is to set up a new market-driven standards system that coordinates government and industry in standards setting. One of the most important elements of the reform is to give industry a significant role in standards setting for the first time. All standards setting work was previously drafted and administered by government or government-affiliated agencies. The reform provides that social organizations such as societies, associations, chambers of commerce, federations, and industry alliances may be authorized to develop standards to better meet ever-changing and diverse market and technology needs. This reform is scheduled to be completed by June 2016.

AmCham China believes that a market-driven standardization system and standardization reforms will facilitate China’s further integration into the international standards-setting process. We hope that China will increase its adoption of internationally accepted standards and support
而团体标准则被鼓励向所有相关方开放。此外，社会团体必需在相关民政部门登记并取得技术能力资质，而企业联盟则不需要登记或评估。

我们担心，企业联盟的标准和团体标准之间的差别会将标准化体制变得复杂，可能有损开放、透明和平等参与原则，并导致垄断风险。我们也想了解，是否有相应的程序将企业标准或企业联盟制定的标准转换成推荐标准或强制标准。如果有这样的程序，那么，程序正义、透明、开放和各方的平等参与等原则就变得更重要。

继续深化中国强制性产品认证改革

中国长期以来严格限制从事强制性产品认证（3C认证）检测认证机构的指定范围。为了兑现2012年在第23届美中商贸联委会所做出的承诺，中国国家认证认可监督管理委员会（国家认监委）开始允许几家外资机构做为指定实验室，对特定类别的产品提供3C认证检测服务。

目前，3C认证涵盖20大类和158种产品，提供检测认证服务的有22家认证机构和180家实验室。2015年9月，国家认监委进一步增加两家外资机构为3C认证产品的指定实验室。在全部180家实验室中，有4家是外资机构。

中国美国商会对此表示欢迎，因为此举将进一步促进中美贸易，企业在中国市场遵守相关检测认证要求时也能够有更多的选择。中国美国商会很高兴看到国家认监委在加快开放3C认证市场，简化通知流程，提高指定授权次数，对一些产品类别试点提供随时申请，以及允许现有3C认证实验室申请随时提供一站式服务，从而对外资机构进入本地市场的影响加以评估。

我们相信，为了深化3C认证制度改革，还需要采取其他切实有效的措施，包括允许外资机构做为3C认证的指定认证机构为所有产品类别提供3C检测认证服务。由此所有利益相关方才能共同参与建设一个公平、健全的3C认证制度。

最新进展

标准化体制改革

2015年3月，国务院印发《深化标准化工作改革方案》（《方案》），开始对现行的始建于1989年的标准制度实施改革。改革的目标是建立新型的市场驱动的标准体系，来协调政府和企业在标准制定活动中的角色。改革最重要的亮点之一就是首次允许行业在标准制定中发挥重要作用。在此之前，所有的标准制定工作都是由政府和政府下属的机构负责实施和管理的。《方案》规定，可以允许学会、协会、商会和行业联合会等社会组织制定标准，以满足不断变化和多样的市场和技术需求。这项改革计划2016年6月底完成。

中国美国商会认为，通过市场驱动的标准化体制和标准化改革，中国能够进一步与国际标准制定流程接轨。我们希望中国采用更多国际认可的标准，为所有努力遵守中国标准化体制的企业提供一个公平和无歧视的平等环境。

《专利法》草案

2015年4月，国家知识产权局发布《中华人民共和国专利法修改草案（征求意见稿）》（《草案》）。我们很高兴看到国家知识产权局加强中国专利保护的决心，并且欢迎对《专利法》进行修改。但是，从标准化的角度来看，我们对《草案》的一些内容表示担心。

《草案》第八十五条规定，参与国家标准制定的专利权人在标准制定过程中不披露其拥有的标准必要专利的，视为其许可该标准的实施者使用其专利技术。虽然《草案》规定，许可使用费由双方协商，但是，对不披露的处罚过重，没有认识到实践中存在不要求披露专利的一般性声明。即使因疏忽没有披露，即使标准必要专利的权利人愿意纠正疏失并在“公平、合理和无歧视”的基础上实施许可，也要向实施者强制许可（表面上该许可是自然发生的，且发生在诸如防御性终止和互惠原则等所有条款已协商之前），这样的措辞显得过于随意。

中国美国商会认为，《专利法》不适合讨论标准制定机构的标准政策，因此，建议标准必要专利披露的法律安排最好由具体的标准制定机构的知识产权政策来处理，而不是通过一刀切的立法。《草案》还要求国家知识产权局和各级专利行政部门裁驳有关企业内部争议，这将对贸易发展和技术传播造成不利影响。中国美国商会认为，解决争议的最好方式就是通过法院提起民事诉讼。
Draft Patent Law

In April 2015, the State Intellectual Property Office (SIPO) released the Draft Patent Law for public comment. We are heartened by SIPO’s resolve to strengthen patent protection in China and welcome the law’s revision. However, from a standardization perspective, we are concerned with some elements in the Draft Patent Law.

Draft Article 85 provides that where a patentee participating in national standard formulation fails to disclose its standard-essential patents (SEPs), it is deemed to license users of the standard to use its technologies covered by the patents. Although the law states that the amount of royalties to be paid will be subject to consultation between licensor and licensee, the penalty for non-disclosure is excessive and fails to recognize the existence of general declarations where patents are not required to be disclosed. The language is arbitrary in requiring a compulsory license to any user (apparently automatically and before all terms such as defensive suspension and reciprocity have been negotiated), even for inadvertent non-disclosure, and even if the SEP holder is willing to correct the inadvertent omission and to grant a “fair, reasonable, and non-discriminatory” (FRAND) license.

AmCham China believes that the Patent Law is not the correct place to discuss SDO standard policies. AmCham China suggests that the legal arrangements for SEP disclosure are best handled by the IPR polices of individual SDOs, rather than a one-size-fits-all legislative approach. In addition, the Draft requires SIPO and its local counterparts to adjudicate private matters such as licensing terms. This will be counterproductive for facilitating trade and dissemination of technologies. AmCham China believes civil litigation in the courts is the best approach in the event of a dispute.

Recommendations

For the Chinese Government (SAC):

• Broaden recognition of international SDOs beyond the ISO, IEC, and ITU to any organization that follows the WTO/TBT principles on international standards development.

• Adopt existing global technical standards whenever available and avoid creating duplicative national standards or standards that diverge from prevailing global standards.

• Adhere to international norms of transparency and openness in the association standards development process.

• More closely monitor the activities of TC- and subcommittee-level standard working groups to ensure that FIEs are allowed to participate in all phases of standards-development activities on an equal basis with domestically invested enterprises.
建议

对中国政府（国家标准委）：

- 扩大对国际标准制定机构的认可范围，从ISO、IEC和ITU扩大至其他遵循世界贸易组织贸易技术壁垒（WTO/TBT）关于国际标准制定原则的标准制定机构。

- 尽可能采用现有的国际技术标准，避免制定重复的国家标准或者偏离现有国际标准的标准。

- 在团体标准制定过程中遵循透明和公开的国际标准。

- 更加密切地监督各技术委员会和技术分委会标准工作组的活动，确保外资企业能够与内资企业平等全程参与标准制定活动。
Introduction

Tax base erosion and profit sharing (BEPS) remained an important topic in 2015 as China sought to enhance its international tax administration and address tax avoidance. The BEPS framework attempts to harmonize international tax administration systems to combat tax avoidance at the international level through the Organisation for Economic Cooperation and Development (OECD). While the State Administration of Taxation (SAT) has expressed broad support for the BEPS project, it also faces certain challenges in applying this framework to China’s unique characteristics.

On September 17, 2015, the SAT released the draft “Implementation Measures of Special Tax Adjustment,” which incorporates several BEPS recommendations (e.g., issuance of national implementation guidelines) and will guide transfer pricing and anti-tax avoidance issues in China. Some BEPS recommendations are also being incorporated into the separate bilateral tax treaties that China is pursuing (e.g., the permanent establishment article in its latest bilateral treaty signed with Chile). Domestically, China continued to advance value-added tax (VAT) reforms in 2015, although slowing rates of economic growth have stalled these efforts.

Recent Developments

Outbound Payments: Public Notice 16

On March 18, 2015, the SAT released Public Notice 16 along with its official interpretation regarding transfer pricing (TP) in outbound payments. Whereas the previous guidance on TP (Circular 146) only focused on outbound service and royalty fees, Public Notice 16 addresses all types of outbound payments to overseas related parties. Public Notice 16 also reiterates that outbound payments to overseas related parties should follow the arm’s length principle and, more importantly, specifies four types of payments that should not be deductible for corporate income tax (CIT) purposes.

Article 3 states that “payments to an overseas related party which do not undertake functions, bear risks, or have no substantial operation or activities shall not be deductible for CIT purposes.” However, neither Public Notice 16 nor the SAT’s interpretation provide clear instructions on how to assess functions, risks, and operations. For example, it is unclear whether an overseas related party that only functions as a clearing center for intercompany payments between group companies falls under Article 3. Use of clearing centers is common among intra-group companies and if the payment made to the overseas clearing center has a reasonable commercial purpose and operates in accordance with the arm’s length principle, it appears that it will be eligible for CIT deductions; however, greater clarity is needed from the SAT on this issue.

Article 4.2 states that “intragroup services relating to the protection of the investment interests of the direct or indirect investor of the enterprise, including control, management, and supervising activities for the enterprise, are not deductible for CIT purposes.” This appears to focus on shareholder activities, according to the SAT’s official response to the UN and Circular 146, and not include services in support of the operations of Chinese subsidiaries. Greater clarity on this issue is also needed from the SAT.

According to Article 5: “For royalties in compensation for usage of intangible assets provided by an overseas related party, the contribution of each party to the value creation of the intangible assets should be considered to determine the economic benefits to which each party is entitled. Royalties paid to an overseas related party which only owns the legal rights of the intangible asset but having no contribution to its value creation, are not in compliance with the arm’s length principle, and therefore are not deductible for CIT purposes.”

In practice, some corporations may make sub-licensing or multi-licensing arrangements to use certain intangible assets. For example, the headquarters of a multinational corporation (MNC) may license an intangible asset to one of its group members (e.g., Company A in China), and Company A will further license the intangible asset to other group subsidiaries. After Company A receives the royalty payments from related parties, it will transfer the payment to the headquarters. Based on this situation, it is uncertain whether such arrangement would fall directly under Article 5 and hence whether the royalty payments made by the
税收政策

引言

2015年，中国进一步加强国际税收管理，打击逃避税。税基侵蚀与利润转移（BEPS）依然是年度工作重点。BEPS框架致力于通过经合组织（OECD）协调全球税收管理制度，打击国际逃避税。尽管国家税务总局表示全面支持BEPS项目，但在如何在中国特定国情下适用该框架的问题上，依然面临一定挑战。

2015年9月17日，国家税务总局发布《特别纳税调整实施办法（征求意见稿）》，该办法草案中纳入了数条BEPS相关建议（如颁布全国实施指南等），并将指导解决中国境内的转让定价和反逃避税等问题。部分BEPS建议还写入了中国正在谈判签署的双边税收协定中（如中国与智利签订的最新双边协定中的常设机构条款）。国内方面，2015年中国继续推进营改增改革，但受经济增速放缓的影响，上述改革进度有所停滞。

最新进展

关于企业向境外关联方支付费用：第16号公告

2015年3月18日，国家税务总局发布第16号公告以及转让定价相关问题的官方解释。此前有关转让定价的指导意见主要体现在146号文，但146号文仅适用于境外服务费和特许权使用费，而第16号公告则适用于企业向境外关联方支付全部类型的费用。第16号公告还重申了企业向境外关联方支付的费用必须符合独立交易原则，更重要的是，规定四种支付费用在计算企业应纳税所得额时不得扣除。

第二条规定“企业向未履行功能、承担风险、无实质性经营活动的境外关联方支付的费用，在计算企业应纳税所得额时不得扣除”。然而第16号公告和国家税务总局的解释中都未就如何判定功能、风险和经营活动做出明确说明。例如，仅从事集团企业间费用支付清算工作的境外关联方是否属于上述规定主体就不明确。集团下属各企业间通过清算中心进行资金清算是普遍情况，如果向境外关联方支付的费用出于合理商业目的且符合独立交易原则，就应该予以扣除。不过上述问题还有待国家税务总局进一步明确解释。

第四条第二款规定“企业因接受关联方为保障企业直接或间接投资方的投资利益，对企业实施的控制、管理和监督等提供劳务活动而向关联方支付的费用，在计算企业应纳税所得额时不得扣除”。根据国家税务总局对联合国及第146号文的官方回复，此条似乎主要针对股东行为，并不包括支持中国子公司运营所提供的相关服务。该问题也有待国家税务总局作进一步明确解释。

第五条规定“企业使用境外关联方提供的无形资产需支付特许权使用费的，应当考虑关联各方对该无形资产价值创造的贡献程度，确定各自应享有的经济利益。企业向仅拥有无形资产法律所有权而未对其价值创造做出贡献的关联方支付特许权使用费，不符合独立交易原则的，在计算企业应纳税所得额时不得扣除”。

在实践中，一些企业可能采用分许可或多重许可安排来使用部分无形资产。比如，一家跨国企业总部可能将某项无形资产许可给下属某家企业（如在中国境内的A企业）使用，A企业又继续将该项无形资产许可给其他集团子公司使用。在A公司收到关联方支付的特许权使用费后，它又将该费用支付给总部。在这种情况下，上述安排是否属于第五条规定的分许可就不明确。因此该特许权使用费在计算企业应纳税所得额时是否应当被扣除也就不明确。我们建议该条不采用分许可或多重许可安排，因为这种情况下无形资产的价值创造是由境外企业贡献，而非中国企业贡献。

第16号公告代表了中国为回应BEPS行动计划而制定的一项重要执法指南。我们促请国家税务总局出台细化实施要点，继续明确上述问题，以便纳税人和各级税务机关遵守和落实。

related parties are deductible for CIT purposes. We recommend that sub-licensing or multi-licensing arrangements not be captured by this article on the basis that the value creation of the intangible asset is contributed by an overseas company and not a Chinese company.

Public Notice 16 represents an important enforcement guide in response to the BEPS Action Plan. We urge the SAT to issue detailed implementation guidelines that further clarify the above issues to assist both taxpayers and all levels of tax authorities.

**Transfer Pricing: Draft Circular 2**

On September 17, 2015, the SAT released the revised draft “Implementation Measures for Special Tax Adjustments” (Draft Circular 2) for public comment, in an effort to achieve greater clarity and transparency on certain issues raised within the original Circular and to provide implementation mechanisms for various BEPS Action Plan recommendations.

Draft Circular 2 proposes new TP documentation requirements using a three-tier approach (e.g., local, master, and special issues files). Affected taxpayers will be required to prepare and maintain contemporaneous documentation each year in Chinese for submission to the relevant tax authorities upon request. Draft Circular 2 significantly expands the scope of the local file to include items not currently required (e.g., value chain, foreign investment, intragroup equity transfer, and intragroup services), increasing taxpayer burden. Master file requirements are also expanded to require that taxpayers disclose information concerning organizational structure, business description, intangibles arrangements, financing arrangements, and financial and tax positions, consistent with the BEPS report on Action 13, guidance on TP documentation, and country-by-country reporting (CbCR).

The special matters file is a new and additional requirement for TP documentation that focuses on intragroup services, cost sharing agreements, and thin capitalization. In addition, taxpayers that meet the CbCR requirements may be required by the Chinese tax authorities to disclose their MNC group’s allocation of global income, taxes paid, and relevant economic activities. We recommend that the SAT reconsider the complexity of the revised TP documentation requirements, particularly regarding group transactions, and eliminate unnecessary compliance burdens.

Draft Circular 2 includes some newly added sections, including Chapter 7 on “Intercompany Services.” This chapter reiterates that intra-group transactions should be in line with the arm’s length principle. If domestic taxpayers make payments for non-beneficial services, the relevant tax authorities shall make tax adjustments to deny the deduction of the payment for CIT purposes. Such principle and adjustment methods are consistent with Public Notice 16. Chapter 7 also provides detailed documentation requirements regarding the special matters file in relation to intercompany services. However, it is not clear as to whether the threshold for preparing TP documentation (i.e., annual amount of other related party transactions below RMB 40 million – approximately US $6.4 million) is applicable to the special matters file. We encourage the SAT to further clarify this issue.

In addition, it is unclear when many of Draft Circular 2’s disclosure requirements will apply to taxpayers. We request that the SAT take all submitted comments into consideration before finalizing Draft Circular 2 and make revisions to reduce the compliance costs for taxpayers.

**VAT Reform**

China’s VAT reforms were originally launched as a pilot program in Shanghai on January 1, 2012 and continued through 2015. VAT reforms were expected to be completed by the end of 2015, with all industries making the switch from the business tax (BT) regime (B2V reform). However, as of the date of this writing, B2V reforms in the consumer services, financial services, real estate, and construction sectors remain incomplete, but are expected to be completed in 2016.

Taxpayers may face various challenges following the VAT reforms, including:

- Increased tax compliance costs. VAT regime compliance requirements are more rigorous than those of the BT regime, and the relevant finance and tax information systems require upgrading.
- Impacts on business operations and procedures. Enterprises may need to modify or upgrade their current business models and operations to adapt to the VAT regime’s detailed tax regulations.
- The need to negotiate with suppliers and clients. The ability of suppliers to issue special VAT invoices and whether clients are willing to accept the additional tax burden passed on to them will, to a large extent, impact an enterprise’s income, profit, tax burden, and cash flow.

Given the breadth of B2V reform, it was inevitable that certain tax issues would emerge that could not be interpreted by current tax laws and regulations, and some local variations remain. We recommend that the SAT summarize remaining uncertain tax issues under the B2V scheme and provide detailed implementation procedures. AmCham China members are prepared to assist in these efforts.

**New Rules on Indirect Transfers of Assets by Nonresident Enterprises: Bulletin 7**

On February 6, 2015, the SAT issued Bulletin 7 providing guidance on the tax treatment of an indirect transfer of assets by a nonresident enterprise. Bulletin 7 does not entirely replace Circular 698, Bulletin 24, or the 2009 or 2011 sets of
转让定价：第2号文修订草案

2015年9月17日，国家税务总局公布《特别纳税调整实施办法（征求意见稿）》（2号文），并公开征求意见。此次修改旨在进一步公开、明确原文件中的相关问题，对各类BEPS行动计划建议提供执行机制。

2号文修订草案中规定新的转让定价同期资料包括三种（即主体文档、本地文档和特殊事项文档）。企业应按照纳税年度准备、保存并按照相关税务机关的要求提供同期资料。2号文修订草案中规定了本地文档的范围，增加了未在原有内容中被提及的事项，同时扩大了主体文档的范围。要求纳税人披露有关组织结构、行业描述、无形资产安排、融资安排和财务及税务状况等。这些与BEPS第13项行动计划报告、转让定价同期资料指引和分国信息报告指引等要求相一致。

转让定价：第2号文修订草案中还有一些新增的要求，包括针对关联劳务、成本分摊和资本弱化等事项。另外，符合国税总局披露的纳税人中中国税务机关的要求还应当披露其跨国公司集团的全球所得分配、纳税额和相关经济活动等信息。要求企业披露所有关联交易的细节，以实现相关税务机关的完全透明。

二号文修订草案中还新增了一些章节，包括第七章“关联交易”。该章中对关联交易必须符合独立交易原则。企业向关联方支付的价款，税务机关有权实施特别纳税调整，在计算企业应纳税所得额时不予扣除。上述原则与调整方法在第16号公告中也做出了同样的规定。第七章还对关联交易特殊事项文档做出了详细要求。

然而，尚不清楚转让定价资料准备门槛【即与其他关联方的年交易额在4000万元人民币（合640万美元）以下】是否适用于特殊事项文档。我们鼓励国家税务总局进一步明确该事项。

另外，纳税人适用于二号文修订草案中的众多披露要求的时间也尚未确定，我们提请国家税务总局在出台二号文修订草案前考虑所有征集到的意见建议，对相关条款进行修改，减轻纳税人的合规成本。

增值税改革

中国的增值税改革始于2012年1月1日在上海启动的改革试点，并持续至2015年。此项改革原预期于2015年底完成对所有企业从营业税改征增值税（营改增）。然而，截至本文完成之日，消费服务、金融服务、房地产和建筑业的营改增改革尚未完成，预计将于2016年内完成。

增值税改革将给纳税人带来多项挑战，包括：

- 增加税务合规成本。增值税制度下的合规要求比营业税制度更严格，且相关财务和税务信息系统也需要更新。
- 影响企业运营和程序。企业可能需要改变或更新现有的业务流程和程序，以适应增值税制度下更为细致的法律要求。
- 需要与供应商和客户进行协商。供应商是否能够开具特殊增值税发票以及客户是否愿意接受由此产生的额外税务成本，将很大程度上将影响企业的收入、利润、税负和现金流。

鉴于营改增改革范围广泛，难免会出现现行法律法规未作规定或解释的税务问题，且各地在改革实施上也会存在地区差异。我们建议国家税务总局总结营改增改革中遗留的尚未确定的税务问题，并提供详细的实施步骤程序。对中国美国商会的会员企业已经做好提供协助的准备。

非居民企业间接转让财产新规定：第7号公告

2015年2月6日，国家税务总局发布第7号公告，对非居民企业间接转让财产企业所得税若干问题做出规定。第7号公告并未完全取代698号文、24号文以及2009年和2011年有关间接转让的系列文件。不过该公告废止了部分条款，对一系列问题做出更为全面的指引。

第7号公告规定，非居民企业通过实施不具有合理商业目的的安排，间接转让中国应税财产，规避企业所得税纳税义务的，应当依法重新定性该间接转让交易，确定为直接转让中国居民企业股权等财产。上述规定与698号文的规定一致。698号文中并未出现的“中国应税财产”包括三种，即中国境内机构、场所财产，中国境内不动产以及在中国居民企业的权益性投资资产等。698号文中仅涉及间接转让中国居民企业股份的相关事项。因此，第7号公告实际上扩大了应当在中国纳税的间接转让财产的范围。

第7号公告对698号文中的强制报告改为自行报告，并扩大了可以进行报告的主体的范围。第698号文中规定的直接转让中国居民企业股份的相关事项，而第7号公告规定交易任意一方，或者交易中被间接转让股权的中国企业在
guidance on indirect transfers. Instead, it abolishes certain provisions and provides more comprehensive guidelines on a number of issues.

Bulletin 7 states that when a nonresident enterprise engages in an indirect transfer of “Chinese-taxable assets” through an arrangement that does not have a bona fide commercial purpose in order to avoid paying enterprise income tax, the transaction should be re-characterized as a direct transfer of the Chinese assets. This description is consistent with Circular 698. The term “Chinese-taxable assets,” which does not appear in Circular 698, is further defined to indicate three types of assets, including assets attributed to an establishment in China, immovable property in China, and shares in Chinese resident enterprises. Circular 698 only makes reference to indirect transfers of shares in Chinese resident enterprises. As a result, Bulletin 7 effectively expands the scope of indirect transfers subject to Chinese tax.

Mandatory reporting requirements in Circular 698 are made voluntary under Bulletin 7 which also expands the scope of parties that may report a transaction. While Circular 698 imposed the reporting obligation only on the transferor, under Bulletin 7, a transaction may be reported by either party to a transaction or by the Chinese enterprise whose shares are to be indirectly transferred. Bulletin 7 also provides more detailed guidance on the determination of bona fide commercial purpose than found in Circular 698, detailing specific factors that need to be considered, specifying characteristics of blacklisted transactions, and establishing a safe harbor for qualifying group reorganizations.

While Bulletin 7 potentially improves the administration of the indirect transfer rules by the PRC tax authorities and provides more certainty for taxpayers, remaining ambiguities may hinder its successful implementation. For example, one of the seven specific factors that need to be considered is whether the equity value of the nonresident intermediary enterprise is “mainly” derived from Chinese-taxable assets. Taxpayers and local tax authorities have different understandings of the definition of “mainly.” We therefore recommend that the SAT provide further guidance or publish case examples to provide taxpayers with greater certainty.

**New Rules for Claiming Treaty Benefits: Bulletin 60**

On August 27, 2015, the SAT issued Bulletin 60 which replaces Circular 124 and provides procedural guidance on claiming tax benefits under China’s double taxation agreements (DTAs) and international transportation agreements (ITAs). Bulletin 60, which entered into effect on November 1, 2015, aims to substantially simplify the process for obtaining treaty benefits.

We commend efforts by the Chinese government to liberalize and simplify the regulatory regime to improve efficiency and stimulate the economy. For example, in May 2015, the State Council abolished the approval requirement in Circular 124 (see Guofa [2015] No. 27). Bulletin 60 is the SAT’s response to this elimination of the approval requirement, formally shifting from an approval/registration system to a self-assessment system to obtain treaty benefits.

Bulletin 60 also relaxes the procedures for nonresident enterprises and individuals to obtain benefits under DTAs and ITAs by removing the approval/registration requirements under former regulations. Specially, Bulletin 60 will allow treaty benefits to be enjoyed based on assessments made by the non-resident taxpayer or the withholding agent under the following circumstances:

- A nonresident that considers itself qualified for benefits under DTAs or ITAs will be able to enjoy such treatment at the time it files its tax return; or  
- Where there is a statutory or designated withholding agent, Bulletin 60 will require a nonresident that considers itself qualified for treaty benefits to proactively inform the withholding agent and provide the agent with the forms and documents mandated in the Bulletin. The withholding agent will be allowed to apply the reduced rates or exemptions under the treaty if it determines that the information provided by the nonresident meets the relevant treaty requirements; otherwise, the withholding agent will be required to withhold tax according to PRC law.

Notably, Bulletin 60 does not make any changes to the substantive requirements (e.g., beneficial ownership, purpose test) that must be met to qualify for treaty benefits. Thus, determinations made by taxpayers and withholding agents will be subject to subsequent review by the tax authorities and could potentially be challenged.

Additionally, the responsibilities of withholding agents under Bulletin 60 may substantially increase. To determine whether a nonresident recipient of income is eligible for the treaty benefits based on the information provided will require a certain level of tax and legal knowledge as well as practical experience.

The tax authorities may subsequently conduct their own review of the submitted information and request additional information from the nonresident or the withholding agent. If the tax authorities determine that a nonresident improperly obtained benefits under a DTA/ITA, they will require the nonresident to make a supplemental payment for taxes underpaid in a given period. If the nonresident fails to pay, the tax authorities will be authorized to claim underpaid taxes from the nonresident’s other China-source income pursuant to the Enterprise Income Tax Law, or to use other measures in accordance with the Tax Collection and Administration Law.

Bulletin 60 eliminates the preapproval and preregistration requirements for obtaining treaty benefits in favor of a subse-
行业

产业政策和市场准入

税收政策

非居民纳税人享受税收协定待遇新规：第 60 号公告

2015年8月27日，国家税务总局发布第60号公告，该公告取代124号文，对享受中国避免双重征税协定（DTAs）待遇以及国际运输协定（ITAs）的相关程序做出规定。第60号公告自2015年11月1日起施行，旨在实质性地简化享受协定待遇的程序。

我们对中国政府放开并简化此项监管制度、提高效率并刺激经济增长的做法表示赞赏。例如，在2015年5月，国务院取消了124号文中的审批要求（参见国发[2015]27号）。第60号公告就是国家税务总局对国务院取消该项审批决定的具体落实，正式将享受税收待遇程序从审批/登记制改为自行评估制。

第60号公告取消了此前相关规定中的审批/登记要求，同时也放宽非居民企业和个人享受DTAs和ITAs协定待遇的程序要求。具体而言，第60号公告允许非居民纳税人或扣缴义务人在下列情形下自行判断并申报享受协定待遇：

• 非居民纳税人认为自己符合享受DTAs或ITAs协定待遇条件的，可在纳税申报时，自行享受协定待遇。

• 在认定扣缴和指定扣缴的情况下，第60号公告规定非居民纳税人认为自身符合享受协定待遇条件并需要享受协定待遇的，应当主动向扣缴义务人提出，并向扣缴义务人提供该公告规定的相关报告表和资料。扣缴义务人认为非居民纳税人符合享受协定待遇条件的，应当按照协定进行税收抵免；不符合条件的，扣缴义务人应当依据中国国内税收法律规定扣缴。

值得注意的是，第60号公告并未对享受协定待遇条件（如受益所有权、目的标准等）做出实质性修改。因此，非居民纳税人及扣缴义务人所决定的享受协定待遇，最终还是要经由税务机关后续检查，且可能被质疑。

另外，第60号公告大幅加重扣缴义务人的责任。扣缴义务人需要掌握一定水准的税务和法律知识并拥有相关实际经验，才能基于非居民纳税人所提交的相关材料，正确判断该纳税人收入是否符合享受协定待遇的条件。

税务机关后续可能会根据非居民纳税人或扣缴义务人所提交材料以及要求他们提供的补充信息来决定是否应当享受协定待遇做出自己的判断。如果税务机关认定非居民纳税人不符合协定待遇条件而享受了协定待遇的，将通知非居民纳税人限期补缴税款。非居民纳税人逾期未缴纳税款的，主管税务机关可依据企业所得税法，从该居民纳税人来源于中国的其他所得款项中追缴该非居民纳税人应纳税款，或根据税收征管法的有关规定采取强制执行措施。

第60号公告中取消了享受协定待遇的事前审批和登记要求，转而采用税务机关后续管理。因此，从程序上看，非居民纳税人享受DTAs或ITAs协定待遇更为容易，但第60号公告并没有修改非居民纳税人享受协定待遇的实质条件，也没有修改纳税义务发生情形。因此，第60号公告可能会给非居民纳税人和扣缴义务人带来新的挑战。

税基侵蚀和利润转移

2015年10月5日，秘鲁利马G20财长会议召开前夕，OECD公布了13份文件和一份解释性声明列举了BEPS行动计划的行动共识。上述文件包括并整合了2014年在澳大利亚布里斯班召开的G20领导人峰会上提出并受到各方欢迎的首批7份报告。

上述各项BEPS行动计划成果是构建一个全面且有凝聚力的国际税收框架，包括OECD税收条约范本和转让定价指引下的国内立法建议和国际原则。这些行动计划的成果主要可分为“最低标准”、“最佳实践”或“建议”，供各国政府采纳。

2015年10月10日，即OECD公布上述文件5天前，国家税务总局在北京召开了为期半天的BEPS项目2015年成果宣讲会。在此次会议上，国家税务总局表示中国将坚持以下三项立场：

• BEPS项目必须结合中国实际。国家税务总局今后发
quent monitoring approach by the tax authorities. Thus, procedurally, it should be easier for nonresidents to obtain benefits under a DTA or an ITA. However, Bulletin 60 does not alter the substantive standards by which a nonresident qualifies for treaty benefits, or when a tax payment obligation arises. Thus, Bulletin 60 may present new challenges for nonresident taxpayers and withholding agents.

**Base Erosion and Profit Sharing**

On October 5, 2015, ahead of the G20 finance ministers’ meeting in Lima, Peru, the OECD published 13 papers and an explanatory statement outlining consensus actions under the BEPS project. These papers include and consolidate the first seven reports presented to, and welcomed by, the G20 Leaders at the Brisbane, Australia Summit in 2014.

The output under each of the BEPS actions is intended to form a comprehensive and cohesive approach to the international tax framework, including domestic legal recommendations and international principles under the OECD model tax treaty and transfer pricing guidelines. The output is broadly classified as “minimum standards,” “best practices,” or “recommendations” for governments to adopt.

On October 10, 2015, five days after the OECD released the papers, the SAT organized a half-day conference in Beijing to introduce parts of the BEPS Action Plan that were newly published in 2015. During the conference, the SAT announced that it would insist on the following three basic principles for China:

- The BEPS project must be integrated with China’s realities. Future guidance issued by the SAT will adopt some of the conclusions of the OECD reports, although some recommended measures may be tailored to align with China’s circumstances. It also is possible that China will introduce entirely new rules.
- A balance must be struck between economic development and safeguarding Chinese interests. The SAT aims to target tax avoidance activities, but also to protect cross-border business activities that facilitate outbound investments by Chinese enterprises.
- A balance must be struck between strengthening administration and encouraging compliance.

The next legislative actions that the SAT will take include:

- revising domestic laws (e.g., Tax Collection and Administration Law, Individual Income Tax Law),
- implementing the BEPS measures (e.g., those found in Draft Circular 2),
- reforming the international tax administration system,
- centralizing the administration of large enterprise tax issues in the tax bureau where the headquarters of a given enterprise is located, beginning with pilot programs in Beijing and Shanghai, and
- increasing the publicization of related information.

The SAT is expected to finalize its efforts towards comprehensive tax modernization by 2020, including development of a strong international tax administration that both accounts for China’s fundamental interests and is in line with global economic trends.

**Recommendations**

*For the Chinese Government:*

- Provide taxpayers and tax authorities at all levels with detailed guidance on the implementation of Public Notice 16.
- Take full consideration of the comments submitted on Draft Circular 2 before its final release and make amendments to reduce taxpayers’ compliance costs.
- Summarize remaining tax issues that remain unclear under the B2V scheme and provide detailed implementation procedures.
- Provide further guidance or publish case examples on indirect transfers to provide taxpayers with more certainty.
- Develop a post-BEPS tax administrative system that is in line with both China’s fundamental interests and global economic trends.
布的相关指引将采纳OECD报告中的部分结论，但会根据中国国情对相关建议措施进行修改，同时中国也可能会制定全新规则。

- 必须在经济发展和保障中国利益间找到平衡点。国家税务总局计划打击逃税行为，但同时需要保护跨境商业活动，促进中国企业境外投资。
- 必须在强化监管和鼓励合规之间实现平衡。

国家税务总局下一步将开展的立法活动包括：

- 修订国内相关法律（如《税收征管法》和《个人所得税法》）；
- 实施BEPS措施（如2号文修订草案中的相关规定）；
- 改革国际税收征管制度；
- 对大企业税收事项实行总部所在地税务机关集中管理，并将先行在北京和上海进行试点；
- 加大相关信息的公开力度。

国家税务总局计划在2020年实现全面税收现代化的目标，包括建立一套既维护中国根本利益，又符合全球经济趋势的强有力国际税收征管体系。

### 建议

对中国政府：

- 向纳税人和各级税务机关提供第16号公告实施细则。
- 在最终出台实施二号文修订案之前能够充分考虑各方提交的意见，从而降低纳税人的合规成本。
- 总结营改增改革中遗留的税务问题，提供详细实施程序。
- 针对间接转让进一步提供详细指引或发布典型案例，为纳税人提供更多确定性。
- 建立一套既维护中国根本利益，又符合国际经济趋势的后BEPS税收管理体系。
Visa Policy

Introduction

New visa policy developments in 2015 offer increased opportunities for the movement of people and goods between the US and China. However, despite these important and positive developments, many challenges remain.

Recent Developments: China Visas

Short-Term Assignment Rules

Effective January 1, 2015, a foreigner entering China for a short-term assignment (STA) of no longer than 90 days is required to apply for a work authorization. The assignee and employer are both subject to sanctions by the Public Security Bureau (PSB) if this regulation is violated.

Engaging in any of the following types of work in China for less than 90 days would constitute an STA:

- certain technical, scientific research, management, or guidance work,
- training at a sports institution,
- film shooting,
- fashion show,
- commercial performance, and
- any other circumstances designated by the relevant human resource and social security department.

If granted an STA, a foreigner must also obtain an employment license, employment certificate, Z visa, and/or residence permit to stay in China. The employment certificate cannot be renewed. For work that will exceed 90 days, the foreigner must apply for a work permit and residence permit.

The following circumstances are not regarded as STAs:

- maintaining, installing, debugging, dismantling, guiding, and providing training to support machinery or equipment purchased by a Chinese party,
- providing guidance, supervision, or inspection over a bid-winning project in China,
- being dispatched to a branch company, subsidiary company, or representative office in China for short-term assignment (less than 90 days per calendar year),
- participating in a sports event,
- entering China to engage in unpaid work or to serve as a voluntary worker whose salary is paid by an overseas institution, and
- participating in a “foreign-related commercial performance” when the relevant culture department does not indicate the words “foreign-related commercial performance” in the approval document.

If a foreigner stays in China for not more than 90 days and meets the circumstances specified in items a, b, c, or d, he or she is required to apply for an M visa; an F visa is appropriate for items e and f. Under items a, b, c, or e, if the foreigner spends more than 90 days in a stay, he or she will be required to obtain a work permit and residence permit.

In cases of illegal employment, previous penalties remain unchanged (i.e., employees can be fined up to RMB 20,000 (US $3,185) and/or detained for five to 15 days, while employers can be fined up to RMB 100,000 (US $15,924)).

Foreign visitors to China for short work periods and their employees need to be aware of this new STA immigration procedure. Most importantly, a mutual agreement between the overseas company and the cooperative party in China should be executed to ensure compliance with the new STA rule.

As the validity of an employment certificate and Z Visa is very short, it will be necessary for the visa holder to closely monitor his or her period of stay in China to ensure that the holder does not inadvertently overstay the approved period. In this regard, we recommend that employers track and monitor STA immigration compliance very closely.
引言

2015年出台的签证新政策为促进中美两国之间的人员往来和货物贸易提供了更多机遇。尽管取得了这些重要且积极的进展，但挑战依然存在。

最新进展：中国签证

短期工作规则

根据2015年1月1日生效的相关规定，外国人入境完成不超过90天的短期工作任务的，必须申请工作许可。违反该规定从事短期工作的外国人及其雇主都要受到公安机关的处罚。

外国人入境从事以下工作，且在境内停留不超过90日的，构成上述规定中所定义的短期工作任务。

- 完成某项技术、科研、管理、指导等工作；
- 到体育机构进行试训；
- 拍摄影片；
- 时装表演；
- 人力资源和社会保障部门认定的其他情形。

当被认定为短期工作任务后，相关外国人还必须取得工作许可证、工作证明、邀请函或邀请确认函，Z字签证和/或工作类居留证明等证件方可在中国停留。上述工作证明不可续签。一旦工作时间超过90天的，该外国人必须申请取得工作许可证和居留许可。

下述情形不视作短期工作任务：

- 对在中国境内中标项目进行指导、监督、检查的；
- 派往中国境内分公司、子公司、代表处完成短期工作的（每年不超过90天）；
- 参加体育赛事；
- 入境从事无报酬工作或由境外机构提供报酬的义工和志愿者工作；
- 入境参加文化主管部门在批准文书上未注明“涉外商业演出”的演出。

如果某外国人符合a、b、c或d项情形，且停留时间不超过90日的，应当申请办理M字签证；符合e或f项情形，且停留时间不超过90日的，应当申请办理F字签证；符合a、b、c或e项情形且每次入境停留时间超过90日的外国人，应当申请就业证和居留许可。

如果存在非法就业的，之前的相关处罚规定依然有效（如对就业人员最高可处以20000元人民币（3,185美元）的罚金和/或处以5-15天的拘留，对用人单位则最高处以10万元人民币（15,924美元）的罚金。）

来华从事短期工作的外国人及其雇主都应当了解上述短期工作任务入境申请程序。更重要的是，海外公司与其中国境内的合作方应当签订相关协议以确保遵守上述短期工作任务入境申请规则。

鉴于上述工作许可证、工作证明和Z字签证的有有效期都很短，相关签证持有人应密切关注其在华停留的有效期，避免因疏忽造成签证过期。因此，我们建议相关雇主应登记并密切关注上述短期工作任务入境管理合规状况。
Variations in Reginal Immigration Rules and Practices

Beijing

i. Reduced Residence Permit Processing Time

From August 1, 2015, the application period for a residence permit was reduced by the PSB from 15 to 10 business days. This reduces the inconvenience to applicants, as passports are held by the PSB while applications are pending. AmCham China encourages further reduction of processing times both in Beijing and nationwide to five business days, as is the current practice in Shanghai.

ii. Long-term Residence and Stay Permits

Foreign individuals may be eligible for a residence permit valid for two to five years for employment purposes, or for a multiple entry visa also valid for two to five years (for F business or R talent categories) with a limit of 180 days per visit. To qualify for these new visas, one of the following requirements must be met:

• the individual must hold the position of vice president or higher in an overseas enterprise,
• the individual must be considered a “technology expert” by the Administrative Committee of Zhongguancun Haidian Science Park, or
• the individual must be a member of the government-backed “Recruitment Program for Global Experts” or the “Sea Poly Project for Beijing Overseas Talent.”

iii. Residence and Work Permits for Graduates of Beijing Universities with Advanced Degrees

Foreigners who lack the required two years of post-graduate work experience but have obtained a master’s degree or higher from a Beijing university and are hired by a company (foreign or domestic) in Zhongguancun are eligible for a certification letter by the Zhongguancun management committee that can be used to apply to the Beijing Human Resources and Social Security Bureau for an employment license and work permit.

Shanghai

In an effort to establish Shanghai as a global center for science and innovation, the Shanghai municipal government and the Ministry of Science and Technology have issued new regulations to attract and retain foreign talent by relaxing the eligibility criteria to obtain permanent residence status and simplifying visa application procedures. The new rules have been in effect since July 1, 2015.

i. Permanent Residence and Long-term Residence Permits

Under the new regulations, foreign individuals who obtain employer recommendation will be eligible for a permanent residence permit if they have:

• worked in Shanghai for more than four consecutive years and resided in China for at least six months in each of those years; and
• earned a gross salary of at least RMB 600,000 (US $95,541) and paid more than RMB 120,000 (US $19,108) in personal income tax each year. These thresholds will be adjusted annually based on the prior year’s average annual salaries and taxes paid in Shanghai.

Highly skilled foreigners (including Hong Kong, Macao, and Taiwan residents) in certain fields who possess a “proven talent certificate” issued by the municipal government, and individuals employed by high-tech and innovative businesses or institutions listed by the Shanghai Science and Technology Commission, can apply for a five-year residence permit. Such individuals will be eligible to apply for a permanent residence permit after three years. Foreigners who have already twice extended their stay in Shanghai and have no legal violations will be issued work-type residence permits of up to five years upon their third application.

ii. S-Type Residence Permit

Previously, foreigners were not permitted to be employed as domestic helpers in China. The new regulation allows qualified foreigners to apply for residence permits provided they have an employment contract as a domestic helper and written guarantees from the employer.

Foreign students who have graduated from Chinese colleges and intend to stay in Shanghai to set up a new business can also apply for a two-year S-type residence permit. Foreign investors and entrepreneurs without employment licenses, but with statements of their investments or business plans and source of funds, can apply for a 30-day S visa with Shanghai’s exit-entry authorities and further apply for an S-type residence permit before their visa expires.

iii. Simplified Visa Application Procedures

Foreigners residing overseas can apply for a 30-day work visa with the Shanghai exit-entry authorities provided they hold an appropriate alien employment license and can apply for their work and residence permits within the visa validity period.

Foreigners employed in Shanghai after entering the country on a non-work visa can apply for a one-year work-type residence permit with the exit-entry administration bureau of Shanghai and complete the requested work permit application or expert permit at a later time.
各地所执行的不同的入境规定和实施细则

北京

1. 缩短居留许可签发时间

从 2015 年8月1日起，北京市公安局将外国人申请居留许可的签发时间从 15 个工作日缩短至 10 个工作日。因申请处理期间外国人的护照交给了公安局，此举降低了由此给申请人带来的不便。中国美国商会促请北京乃至全国的公安部门继续缩减处理时间，达到上海目前所执行的 5 个工作日的水平。

2. 长期居留许可

外籍个人可以申请 2~5 年的工作居留许可或申请有效期为 2~5 年的多次往返，每次入境停留不超过 180 天的多次往返签证（F 字商务签证或 R 字人才签证），但必须满足以下条件之一：

- 在跨国企业担任副总裁及以上职务；
- 是中关村科技园区海智项目办认定的“技术专家”；
- 属于“海外高层次人才引进计划”或“北京海外人才聚集计划”引进的计划。

3. 北京市外籍高学历毕业生居留许可和工作许可

外籍学生毕业后未满两年工作经验，但拥有北京高校授予的硕士及以上学位，且受雇于中关村内外资企业或中资企业的，可凭中关村管委会出具的证明书，向北京市人力源和社会保障局申请就业许可证和工作证。

上海

为了将上海打造成为全球科技和创新中心，上海市政府和科技部出台了一系列旨在吸引和留住外国人才的新法规，主要包括放宽申请永久居留身份的门槛和简化签证申请程序。这些新法规已于 2015 年 7 月 1 日起正式实施。

1. 永久居留和长期居留许可

根据最新的规定，外国人符合以下条件的，经其所在单位推荐，可以申请永久居留：

- 在上海连续工作 4 年以上且每年在中国累计居住时间不少于 6 个月的；
- 工资性年收入达到 60 万元人民币（95,541 美元）以上，上述工资和税收标准参照上一年度上海市人均工资水平的倍数和纳税标准进行调整。

在特定领域取得上海市认定并出具证明的外籍人才和港澳特殊人才的外籍高层次人才（包括香港人才），以及科创“职业清单”所属企业招聘并担保的外籍人才、港澳特殊人才可以申请五年期的居留许可，上述人才在三年后即可申请永久居留许可。在上海工作的外国人，如其已连续两次申请办理工作类居留许可，并申请中国法律法规的，第三次可以申请有效期 3 年的工作类居留许可。

2. S 类居留许可

按照原规定，外籍人员在中国不得受聘从事家政服务。新法规规定符合认定标准的外籍人才可以申请为聘雇的外籍家政服务人员办理家事服务类居留许可，但须提供与作为外籍家政服务人员而签订的劳务合同和由雇主为其提供书面担保。

外国留学生从中国高校毕业且有意向在上海创业的，可以申请两年期的 S 类居留许可，但须提供投资证明或商业计划及资金来源的外国投资者或企业家，可以向上海市出入境管理局申请 30 天的 S 类签证，凭上述签证到期前可继续申请 S 类居留许可。

3. 简化签证申请程序

居住在国外，但持有合法外国人就业许可的外籍人士可以向上海市出入境管理局申请一年工作类许可并在之后补齐工作证或专家证申请。

在上海工作的外国人持非工作签证入境的，可以向上海市出入境管理局申请一年期工作类签证并在之后补齐工作证或专家证申请。

4. 144 小时过境免签政策

自 2016 年 1 月 30 日起，来自特定国家的旅客证明其目的是前往“第三国或地区”的，可以在上海免签证停留 144 小时，该时间是北京规定的两倍。
Simplified visa procedures were also introduced for individuals from Hong Kong, Macau, and Taiwan and their dependents who work and reside in Shanghai.

iv. 144-hour Visa Waiver Program

With immediate effect from January 30, 2016, tourists from specified countries with proof of onward travel to a “third country or region” can stay in Shanghai for 144 hours, twice as long as in Beijing.

Ongoing Regulatory Challenges: Chinese Visas

AmCham China continues to note with concern the issues raised in the 2015 White Paper regarding original document requirements for work and resident permit processing, the inability to convert an L or F visa to a Z visa/work permit within China, unclear definitions of what constitutes a criminal act for the purpose of obtaining a work visa, and unnecessarily strict visa application requirements (e.g., for substitute teachers, nursery school workers) that make recruitment efforts at international schools a challenging process.

Visa on Arrival

US passport holders have always been denied the right to obtain a visa on arrival (VOA) at the port of entry in China. Recently, ports like Shanghai are including more visa types (e.g., L tourist visa, F/M business visiting visa) that can be obtained at the port of entry. For example, foreigners may obtain Z visas from the port of entry in Shanghai. VOA is particularly valuable in urgent situations where obtaining a visa outside China is not possible. AmCham China recommends that US nationals be allowed to obtain VOA in China, at least in certain emergency situations.

New Graduates and Older Workers

Work authorization applications submitted by foreign nationals nearing or above the official employment age limitation (e.g., men over 60 and women over 55 years of age) may be subject to longer processing times, additional requests for documentation, and ultimately be denied because of their age. Although enforcement of age-related policies has been relatively lenient in the past, we have observed that Chinese authorities are now adhering to these policies much more closely. Many of these “age-unqualified” workers hold critical skills and rich experiences needed by companies. As China faces the challenges of an aging population, we recommend that the age limitation be lifted as the retirement age is raised, if not sooner.

Recent graduates also face difficulty obtaining work authorization as they often lack the required two years of relevant work experience. As such, many foreign graduates of Chinese universities must return to their home country to find work opportunities. As discussed, the Beijing and Shanghai governments have introduced limited opportunities to allow foreign graduates of local schools to undertake internship or employment opportunities. Such opportunities should be expanded nationwide.

Immigration and E-Channel Usage

Between the Beijing and Shanghai airports alone, immigration authorities handle approximately 50 million international passengers annually. This is no small task and, generally speaking, the actual entry process is handled efficiently and quickly. However one of the regular frustrations of foreign business travelers with Z work visas and frequent visitors with M visas is the need to queue in what are frequently very long lines at the airports, especially at peak times.

In order to reduce the workload of immigration officials and expedite processing times for foreign residents with Z visas or frequent business travelers, we suggest that the relevant officials follow regional best practices and allow frequent travelers expedited entrance through an e-channel system, as is utilized in Hong Kong.

There would be very little cost involved in doing so given that e-channel facilities already exist, but are underutilized and primarily reserved for entry by permanent residents with PRC green cards, who constitute a small percentage of foreign residents.

Ongoing Regulatory Challenges: US Visas

AmCham China continues to applaud the steps taken by the US government to reduce the visa application and processing times for Chinese nationals. We also reiterate concerns and recommendations from the 2015 White Paper regarding the lack of a Chinese version of Form DS-160 Nonimmigrant Visa Application, discriminatory per-country caps on employment-based green cards, and barriers to permanent residents taking assignments abroad.

H-1B Visa Cap

AmCham China advocates raising the annual numerical limit on H-1B temporary worker visas, which are available to professionals whose services are sought by a US employer in a specialty occupation. On April 7, 2015, the U.S. Citizenship and Immigration Services (USCIS) announced that it had already received enough H-1B petitions to fill the statutory cap of 65,000 visas for fiscal year 2016. The USCIS also received more than the limit of 20,000 H-1B petitions filed under the advanced degree exemption, also known as the master’s cap.
**现存监管挑战：中国签证**

中国美国商会继续对2015年《美国企业在中国白皮书》中提出的问题表示担忧，如有关工作和居留申请要求提交材料原件，L字或F字签证无法转换为Z字签证，申请工作签证时如何定义犯罪行为，以及签证申请中存在不必要的过严要求（如对代课教师、护士学校员工等的要求）对国际学校招聘造成障碍等。

**行业**

**产业政策和市场准入**

**签证政策**

现存监管挑战：中国签证

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**落地签证**

美国护照持有人之前一直无法享有在中国口岸入境时获得落地签证的权利。近期上海等口岸推出了更多种可以在入境口岸时获取的签证类型（如L字旅游签证，F/M字商务访问签证等）。例如，外国人可以在从上海入境时取得Z字签证。落地签证对于处理出现紧急情况而又无法从中国境外获得签证的情况尤为重要。中国美国商会建议允许美国公民在华获取落地签，至少在特定紧急情况下允许获得落地签。

**新毕业生和年长员工**

临近或超过中国官方退休年龄（即男性超过60岁，女性超过55岁）的外国公民申请工作许可往往要面临更长的受理时间，提交更多的材料，最终还会因为年龄而被拒。尽管以往中国在执行年龄相关政策方面一直都相对宽松，但我们注意到中国政府如今收紧了对这些政策的执行尺度。很多此类“年龄不合格”的劳动者往往掌握着企业所需要的重要技能和丰富经验。而中国目前正面临着老龄化问题，我们建议应当随着退休年龄的提高而相应地提高上述年龄限制。

新毕业的大学生在申请工作许可方面也面临困境，因为他们普遍缺少两年相关工作经验。为此，很多在中国高校毕业的外籍大学生必须返回自己的母国找工作。如前所述，北京市和上海市政府已经为本地毕业的外籍毕业生提供有限的实习和就业的机会。这种机会应当拓展至全国范围。

**入境和电子通道使用**

仅北京和上海的机场，出入境管理部门负责处理的国际旅客数量就达到了每年近五千万人次。这并不是一个小数字，而且一般来说上述处理过程都很高效迅速。但让无数持有Z字工作签证的外籍商务乘客和持有M字签证的常旅客头疼不已的事宜之一，便是经常需要在机场排很长的队伍通过边检，人流高峰时段更甚。

为了减轻人流量工作人员的工作量，缩短Z字签证持有入境和等候的通关时间，我们建议相关人员应当学习地区最佳实践，效仿香港的做法，允许部分常旅客经由电子通道通关。

采用上述做法几乎也不涉及额外成本，因为目前机场都已经安装了电子通道设备，而只有持有中国绿卡的永久居民才能使用此设备，而这些永久居民中外国人所占比例很低，从而造成设备使用率不高。

**现存监管问题：美国签证**

中国美国商会继续支持美国政府在减少中国公民签证申请和处理时间方面所采取的诸多举措，我们同时也重申在2015年《白皮书》中所提出的有关DS-160非移民类签证申请表格缺少中文版本、按国别分配工作绿卡的歧视性政策，以及永久居民完成海外工作任务面临阻碍等方面的担忧和建议。

**H-1B签证上限**

中国美国商会呼吁，提高每年向美国雇主所需雇佣从事特殊职业的专业人士发放的H-1B临时工作签证的数量限制。2015年4月7日，美国公民及移民服务局宣布2016财年内65,000个法定签证配额的申请指标现已收满。同时公民及移民服务局收到的高等教育文凭人士的豁免计划下的H-1B申请也远超20,000份。

事实上，公民及移民服务局在申请期内共收到近233,000份H-1B申请，该申请期起始于4月1日。获得者完全是以随机抽取的方式决定，从而加剧了美国企业人员雇佣程序的不可预期性。中国美国商会呼吁执行《边境安全、经济机会和移民现代化法案（2013）》（S.744）中有关H-1B签证的相关规定，其中主要内容包括将H-1B签证上限的基线水平提高至115,000份，且如果需求量超出上限且管理人数、专业人数和相关职业的失业率低于4.5%的，应当采用新的计算公式，将一财年内增长额度从5,000份提高至20,000份（总数不超过180,000份）。美国高等教育文凭豁免计划也应提高至25,000份，但仅适用于科学、技术、工程和数学专业的毕业生。

取消上述限制有助于美国企业获得一流申请人，提高竞争力和生产力。一直以来相关研究均显示，提高H-1B签证发放数量有助于提升创新水平，且不会降低国内发明水准。H-1B申请费也为中国劳动者在科学、技术、工程和数学方面的教育水平提供了资金支持。
In fact, USCIS received nearly 233,000 H-1B petitions during the filing period, which began April 1. Winners were selected through a random lottery, creating unpredictability for American companies’ hiring processes. AmCham China supports implementation of H-1B provisions as set forth in the “Border Security, Economic Opportunity and Immigration Modernization Act of 2013” (S. 744). Key provisions include a higher H-1B cap baseline of 115,000 and a new formula that will allow for quota increases of 5,000 to 20,000 (with an absolute ceiling of 180,000) within a fiscal year if demand exceeds the cap and the unemployment rate for managerial, professional, and related occupations is less than 4.5 percent. The US advanced degree exemption would be raised to 25,000 but limited to science, technology, engineering, and math (STEM) graduates.

Lifting the cap would give US companies access to the best candidates, spurring competitiveness and productivity. Studies consistently show that an increase in H-1B admissions leads to increased levels of innovation without reducing the level of domestic invention. H-1B filing fees also create a significant fund earmarked for STEM education of US workers. An H-1B cap that is too low drives skilled workers to competitor nations and drives US employers to consider shifting projects to workers abroad.

**Recommendations**

**For the Chinese Government:**

- Shorten the holding period of passports by the PSB when processing residence permits from 10 to five working days.
- Accept notarized or legalized copies of original documents (authenticated by a local Chinese embassy or consulate) for work permit and residence permit applications nationwide.
- Resume the conversion of other types of visas to a Z work visa within China.
- Grant visas on arrival to US citizens, at least in emergency situations.
- Raise maximum age limits for purposes of work authorization in China and expand opportunities for new graduates of Chinese universities to work in China without the need to first accumulate two years of work experience abroad.
- Allow those possessing Z visas as well as frequent business travelers to enter the country via an expedited e-channel.

**For the US Government:**

- Add at least four additional visa-issuing posts in China.
- Design a Chinese language version of the online Form DS-160 Nonimmigrant Visa Application that is user-friendly, printable, and savable.
- Increase the annual H-1B cap and allow adjustments based on the demands of the economy.
- Abolish discriminatory per-country caps on employment-based green cards.
- Reduce barriers to permanent residents taking assignments abroad with US companies by allowing reentry permit applicants to schedule biometrics appointments at international USCIS offices and US consular posts abroad, and by deleting the requirement that N-470 applicants have one year of continuous physical presence in the US.
额度过低会导致高技能劳动者流向美国的竞争国，进而导致美国企业考虑将项目转移至海外。

### 建议

**对中国政府：**

- 将公安管理部门受理居留许可申请的时间从10个工作日缩短至5个工作日。
- 在全国范围内允许申请工作许可证和居留证时提交经公证或具有法律效力的复印件（如经当地中国使领馆认证的复印件）。
- 恢复在中国境内把其它类别签证转换为Z字签证的做法。
- 为美国公民签发落地签证，至少在紧急状况下允许落地签证。
- 提高对在中国境内申请工作许可的外籍人士的最高年龄上限，同时扩大中国高校的外籍毕业生在中国工作的机会，放宽对其在境外有两年以上工作经验的要求。
- 允许Z字签证持有人和商务常旅客经由便捷的电子通道通关入镜。

**对美国政府：**

- 在中国至少增设四个签证签发点。
- 设计一份中文版DS-160非移民签证申请表，使该表格更易于填写、打印和保存。
- 提高每年H-1B签证上限，允许根据经济需要调整发放额度。
- 取消按国别分配工作绿卡的歧视性制度。
- 减少对永久居民外派工作的障碍，允许在美申请者在美公民和移民服务局的国际办公室和全球美国使领馆进行生物识别指纹录取，并且取消对N-470申请者必须在美国实际连续居住一年的要求。
Introduction

The State Administration of Work Safety (SAWS) is directly tasked with reducing work safety-related fatalities in the coal mining, metal and non-metal mining, and petrochemical industries and coordinates safety supervision by other ministries with respect to the industries under their direct administration. Since enactment of the Work Safety Law (WSL) in 2004, the coal mining, metal and non-metal mining, and petrochemical industries have seen drastic reductions in work safety-related fatalities.

However, as China continues to urbanize and invest in the upgrading of energy and transport infrastructure, construction-related fatalities – consistently over 2,000 each year – have become a growing concern for SAWS, despite significant decreases in fatality ratios in unit construction work force numbers, square meterage, and output values. Ministry of Housing and Urban-Rural Development (MOHURD) statistics indicate that over 60 percent of urban construction industry fatalities are related to falls from height. There is no central source for statistics on falls from height fatalities in non-urban construction industries such as energy and transport infrastructure as they are not centralized under SAWS.

The 2014 amendment of the WSL marked a milestone for the State Council Work Safety Committee (SCWSC) and many positive efforts were made by central authorities in 2015 to ensure its enforcement. The SCWSC further streamlined the work safety responsibilities and liabilities of the 36 ministry-level committee members via a matrix management structure under SAWS for the first time to improve the effectiveness of enforcement. We commend these efforts to improve work safety conditions and are encouraged that work safety will remain a priority during the 13th Five-Year Plan (FYP) period.

Issues raised in AmCham China’s 2015 White Paper, including the absence of consistent legislation governing non-construction work at height practices and the absence of a quantifiable risk assessment mechanism for enforcement on which transparent safety licensing inspections can be conducted, remain a concern. That said, we commend the collaborative efforts of the SCWSC, SAWS, and other government departments to reduce and eliminate fatalities caused by falls from heights of two meters and above across all industries.

Ongoing Regulatory Issues

The fragmented ownership of work safety legislative and enforcement responsibilities assumed by various ministries over industries and state-owned enterprises (SOEs) and the legacy of a centrally planned economy challenge the effective implementation of work safety regulations. Although some industries (e.g., petrochemicals, shipbuilding) revised their work at height standards in 2015, a consistent set of cross-industry safety rules governing work at height (beyond urban construction) is still lacking. We encourage the Chinese government to consider model legislation and best practices from developed countries in pursuing this goal.

In 2015, China experienced three unfortunate accidents resulting in significant numbers of fatalities:

- In June, a cruise ship sank in the Yangtze River near Wuhan, resulting in 442 fatalities.
- In August, a bonded warehouse storing concentrated chemicals exploded in the port of Tianjin, resulting in at least 165 fatalities.
- In December, the poor management of a construction waste dump site in a Shenzhen industrial zone caused a landslide, resulting in 76 fatalities.

These accidents illustrate the challenges of fragmented work safety legislation and especially highlight the importance of streamlining areas where SAWS exercises only auxiliary and indirect executive power, such as river transport, port area chemical storage, and urban dump site waste management. Although work at height accidents rarely result in such high death tolls as in the above examples, they are similarly affected by the challenges of individual ministry responsibility for ownership of certain legislative and industry-based enforcement.

AmCham China continues to encourage the Chinese government to refer to international best practices, legislation, and enforcement mechanisms. Specifically, the US, EU, and other Asia-Pacific countries can serve as models for cross-industry work at height regulations that are applicable to the current governmental supervision and inspection system for work at height safety.
### 引言

国家安全监督管理总局（安监总局）直接负责减少煤矿、金属和非金属矿山以及石化行业安全生产相关死亡事故，以及协调其他部委对主管行业的安全监督管理。自 2004 年《安全生产法》颁布实施以来，煤矿、金属和非金属矿山以及石化行业安全生产相关事故死亡人数大幅减少。

然而，随着中国不断推进城镇化建设，投资升级改造能源和交通运输基础设施，建筑相关安全生产死亡——每年均超过 2000 人——日益成为安监总局的关注重点，尽管单位建筑施工劳动力死亡率、每平方米死亡率和单位产值死亡率均明显下降。国家住房和城乡建设部（住建部）相关数据显示，超过 60% 的城镇建筑业死亡事故都与高空坠落相关。能源和交通基础设施业等非城镇建设业则缺少高空坠落死亡事故方面的中央统计数据，因为这项统计工作并未归口安检总局统一管理。

2014 年修改的《安全生产法》对加强国务院安全生产委员会（安委会）工作具有里程碑式的重要意义。2015 年，中央相关主管部门也积极采取措施保障新《安全生产法》的实施。安委会进一步理顺并明确 36 个部级成员单位各自安全生产职责和义务，并首次建立由安监总局牵头的矩阵式管理结构，提高了执法效率。我们赞赏上述工作对提高安全生产水平的重要作用，并对安全生产仍位列“十三五”时期重点工作而倍感振奋。

中国美国商会在 2015 年《美国企业在中国白皮书》中指出的安全生产领域存在的问题今年依然存在，包括缺乏规范。
Recent Developments

Government Actions

The SCWSC released policy No. AW2015-5 in September 2015 to clearly define the work safety responsibilities of the 37 ministries, including SAWS, within the management matrix. We see this as a very positive step towards ensuring effective enforcement among the various stakeholders.

The October 2015 Fifth Plenary Session of the 18th Party Congress clearly outlined work safety strategies in Section Eight of the 13th FYP, calling for clarified responsibility for safety enforcement, more comprehensive safety assessment processes, and early warning and prevention mechanisms against severe safety accidents.

The Party Politburo in January 2016 emphasized the importance of further improving work safety legislation and enforcement mechanisms. Work safety issues are now consistently treated as important central-level concerns.

State of the Economy and Safety Equipment Opportunities

Despite the ongoing slowdown in rates of economic growth, enforcement of the WSL is expected to intensify alongside the push for urbanization and government spending in the upgrading of energy and transport infrastructure. We therefore foresee little or no negative impact on the near-term growth prospects for safety equipment used in urban construction and transport and energy infrastructure.

In particular, China’s aerial equipment market is expected to hit double digit growth rates year-over-year for the next several years. Growth prospects are bolstered by the combined effects of the increased penalties for work safety violations under the revised WSL and the emerging productivity advantages of aerial equipment usage compared to the increasing cost of construction labor. Aerial applications are increasingly accepted in industries such as automotive, electronics, energy, transport infrastructure, and urban construction, with rental companies being the major channel of distribution.

Standards

JGJ80-1991 and JGJ160-2008

Amendments to MOHURD’s JGJ80-1991 and JGJ160-2008 standards, as discussed in the 2015 White Paper, were completed in 2014 for final review and approval by MOHURD’s Department of Standards and were expected to be released in late 2015. However, as of this writing, neither standard has been released. Release of the two standards will greatly facilitate the spread of aerial applications as a safe alternative for work at height in urban and industrial construction industries.

SAC/TC335

SAC/TC335, a national technical committee under the Standardization Administration of China (SAC) that develops standards for elevating work platforms in correspondence with ISO/TC214, has been authorized by the SAC to streamline and consolidate the overarching mandatory national “Safety Rules of Aerial Work Machinery.” Throughout 2015, AmCham China’s Work Safety Committee has engaged with the TC335 Drafting Committee leaders to provide recommendations on sections governing mobile elevated work platforms (MEWPs). The draft standards have been completed for review and approval and are expected to be released in late 2016.

Other Work at Height Industry Standards

There is no cohesive procedure for the development of industry-specific work at height standards, which have thus far been released in a sporadic fashion. While we would prefer establishment of a central, consistent set of work at height regulations to govern all industries, we note that these industry-specific standards have positively impacted the safety of their respective industries. That said, we believe the best way to improve work at height legislation and cross-industry enforcement is through coordinated oversight by the SCWSC, supported by the 11 ministries that govern industries with work at height environments. Relevant ministries/industries/SOEs include, but are not limited to the following:

- Civil Aviation Administration of China – airline maintenance and airports (construction and operations)
- General Administration of Quality Supervision, Inspection, and Quarantine Bureau of Special Equipment Safety Supervision – cranes, elevators, pressure vessels, recreational equipment
- Ministry of Industry and Information Technology – automobile, aerospace, and electronics facilities
- Ministry of Transportation – ports, highways, marine and river transport (construction and operations)
- Ministry of Water Resources – hydropower (construction and operations)
- National Development and Reform Commission and National Energy Association – power generation, nuclear power (construction and operation)
- National Railway Administration and China Rail – railways, rolling stock, rail stations (construction and operations)
- SAWS – AQ (An Quan) standards and uniform executive power over metal and non-metal mining, petrochemicals, and other industries (e.g., industrial and transport infrastructure construction)
- State Administration of Coal Mine Safety – coal mining
- State-owned Assets Supervision and Administration Commission – top SOEs of national importance (across urban, energy, and transport construction)
范非建筑行业高处作业的统一立法，缺少一套有助于公开透明地实施安全许可检查的风险量化评估机制等。因此，我们建议国务院安委会、安监总局和其他相关部委通力合作，减少和消除所有行业及高处作业坠落死亡事故。

现有监管问题

安全生产立法权和执法权分散，多个部委和国有企业各自承担对应行业和领域的立法或执法职责，加上高度集中的计划经济体制下的遗留问题，都对安全生产法律法规的有效实施构成了重大挑战。尽管部分行业（如石化和造船行业）在2015年修改了各自的高处作业标准，目前仍然缺少一套跨行业的高处作业（城镇建筑业之外）统一安全规范。我们促请中国政府考虑借鉴发达国家相关成熟立法和最佳实践。

2015年，中国发生了三起特大伤亡事故：

- 6月，长江武汉段一艘客轮发生翻沉事故，导致442人死亡。
- 8月，天津港保税仓库内堆放的高浓度化学品发生爆炸，导致165人死亡。
- 12月，深圳一工业园区建筑废土堆场因疏于管理导致土堆垮塌，造成76人死亡。

这些事故反映出安全生产立法分散导致的诸多问题，特别凸显了对那些安检总局仅起辅助和间接监管作用的领域——如河道运输、港口地区化学品存储和城市垃圾处理场管理等领域——进行集中优化管理的重要性。尽管高处作业事故很少出现如上述案例那么庞大的死亡人数，但也存在着各行业主管部委制定本行业安全立法并开展本行业执法的立法执法分散化问题。

中国美国商会继续鼓励中国政府借鉴国际最佳实践、立法和执法机制。特别是借鉴美国、欧盟和亚太地区其他国家有关高处作业跨行业通行安全规则，以及政府监督检查体系等。

最新进展

政府行动

2015年9月，国务院安委会公布安委（2015）5号文件，对包括安监总局在内的37个部委各自安全生产责任及安委会管理框架做出明确规定。我们认为这是确保各利益相关单位有效执法的一项积极、重要举措。

2015年10月，十八届五中全会上提交的“十三五”规划草案第八章对安全生产战略做出明确规定，要求明确安全执法责任，建立更为全面的安全评估程序和重大安全事故预防机制等。

2016年1月，中央政治局会议强调进一步完善安全生产立法和执法机制的重要性。认真贯彻落实安全生产已经成为中央各部委的普遍共识和重点工作。

经济现状和安全设备市场机会

尽管中国经济增速持续放缓，但是随着中国加快城镇化进程以及政府投资升级改造能源和交通基础设施，《安全生产法》执法必将更加严格。因此，针对城镇建设和交通及能源基础设施中所使用的安全设备的市场需求增长，我们预测短期内经济增速放缓对其不会造成或只造成极小的负面影响。

具体而言，未来几年中国的高处作业设备市场年增长率有望达到两位数。鉴于修改后的《安全生产法》将加强对安全生产违法行为的处罚力度，而相对于不断攀升的建筑施工劳动力成本，高处作业设备高效的生产力优势正在逐步显现，这些因素奠定了高处作业设备市场广阔的发展前景。此外，高处作业设备正越来越多地被汽车、电子、能源、交通基础建设和城镇建设行业所接受，从而使租赁公司成为了主要的供应渠道。

标准

JGJ80-1991 和 JGJ160-2008


SAC/TC335

全国升降工作平台标准化技术委员会（SAC/TC335）是国家标准化管理委员会（国家标准委）下属的全国性技术委员会之一，专门负责开发制定符合ISO/
Work at Height Regulation

Taking both the aforementioned WSL and technical standards into account, there is a further need for the development of ministerial rules to govern work at height safety. According to China’s legal system, the government requires four levels of rules to guide enforcement: laws, State Council regulations, ministerial rules, and technical standards. AmCham China encourages SAWS and MOHURD to work together and draft specific work at height safety rules that will then be open to comment from the other 35 industrial authorities. Work at height safety would benefit from higher priority at the State Council level.

Recommendations

For the Chinese Government:

- Continue to emphasize work safety legislation and enforcement at the highest government levels with a focus on work at height.
- Revise industry-specific work safety standards through coordinated efforts with SAWS and other SCWSC member ministries/SOEs and include MEWPs as work at height equipment.
- Expedite the release of the 2015 amendments to standards JGJ80-1991 and JGJ160-2008 for work safety practices and equipment inspection in the urban construction industry [Department of Standards, MOHURD] and the 2015 “Safety Rules of Aerial Work Machinery” to include our recommended GB references on MEWP technical standards [SAC/TC335 Drafting Committee Secretariat].
- Adopt a quantifiable safety risk assessment mechanism along with consistent cross-industry work at height safety standards and implement a transparent safety licensing system across all ministerial, industrial, provincial, and SOE levels.
- Draft specific work at height safety rules [SAWS, MOHURD].

For the US Government:

- Facilitate the sharing of the most recent work at height laws and regulations in the US (e.g., the 2016 revisions of the ANSI work at height standards) with the Chinese government, and continue to advocate through the SCWSC and SAWS for a consistent set of work at height standards across industries.
- Support operational and technical training demonstrations for work at height equipment applications in various industries.
高处作业其他行业标准

由于缺乏统筹规范各行业高处作业标准制定的程序，长期以来各行业都是零星地自行制定相关高处作业标准，尽管我们倾向于由中央部门制定一套适用于所有行业的高处作业统一标准，但我们也认为这些行业标准对保障其所存在的行业安全发挥了积极作用。因此，我们认为提升高处作业标准立法和跨行业执法水平的最佳途径是由国家安委会统一协调监管，11个涉及高处作业行业的部委具体负责相关立法和实施。相关部委 / 行业 / 国企包括但不限于：

- 中国民航局——飞机维修和机场（建设与运营）
- 国家质量监督检验检疫总局特种设备安全监察局——起重机、电梯、压力容器和休闲器材等
- 工业和信息化部——汽车、航空和电子设备
- 交通运输部——港口、高速公路、海运和水运交通（建设和运营）
- 水利部——水电站（建设和运营）
- 国家发展和改革委员会及国家能源局——发电站、核电站（建设和运营）
- 国家铁路局和中国铁路总公司——铁路、轨道车辆、火车站（建设和运营）
- 国家安监总局——安全标准及对金属和非金属矿山、石化及其他行业实施统一安全监管
- 国家煤炭安全监察局——煤矿
- 国有资产管理委员会——具有国家战略意义的大型国有企业（涉及城镇建设、能源和交通运输建设）

高处作业法规

除了上述《安全生产法》和相关技术标准之外，我们认为有必要由相关部委制定高处作业安全部门规章。在中国的法律体系下，政府实施法律需要通过四个层次的规则：法律、国务院法规、部门规章和技术标准。中国美国商会鼓励国家安监总局和住建部共同起草高处作业安全具体规则，并向其他 35 家部委征求意见。国务院应当更加重视推动高处作业安全法规的制定工作。

建议

对中国政府：

- 国务院应继续强化安全生产立法和执法，并重点关注高处作业安全立法和执法。
- 国家安监总局与安委会其他成员单位通力合作，修改安全生产行业标准，并将移动升降工作平台纳入高处作业设备范围。
- 尽快出台 2015 年完成修订的 JGJ80—1991 和 JGJ180—2008，指导城镇建设安全生产和设备检查实践（住建部标准司），尽快出台《高处作业机械安全规则》，并吸收我们所建议的移动升降工作平台安全标准国标参考（SAC/TC335起草委员会秘书处）。
- 建立一套高处作业安全具体规章（国家安监总局，住建部）。

对美国政府：

- 进一步与中国政府分享美国最新的高处作业安全法律法规（如 2016 年新修订的美国国家标准学会高处作业标准），并继续通过中国国家安委会和国家安监总局建议建立一套跨行业的高处作业安全统一标准。
- 支持在多个行业开展高处作业设备应用操作演示和技术培训演示。
Part Three: Industry-Specific Issues
Introduction

Food security and food safety remained top priorities for China in 2015. China has achieved record grain harvests for 12 consecutive years and is not only the largest producer, but also remains the largest consumer and buyer of agricultural commodities in the world despite facing the “new normal” of slowing economic growth. Strong domestic production together with healthy agricultural trade between China and the world can help the Chinese people obtain an affordable, diversified, and nutritious diet.

The central Chinese government has pledged to reform its agricultural product price formulation mechanism by restraining government influence and allowing market forces to play a bigger role. In 2014, China launched a pilot “target price” program for soybeans and cotton in northeast China and Xinjiang, respectively. It also reduced the floor price for corn in 2015, the first downward adjustment since the floor price policy was introduced in 2007. AmCham China welcomes these reforms as they will lead to a more market-based pricing mechanism.

In 2015, China also made some initial progress in opening its agricultural sector to foreign investment. Agricultural processing (including corn deep processing), wheat flour milling, oilseed crushing and refining, and rice processing were all removed from the revised 2015 negative lists of the four pilot free trade zones: Shanghai, Tianjin, Fujian, and Guangdong. We welcome this initial progress in relaxing investment restrictions and strongly believe that foreign investment will increase the competitiveness of Chinese agriculture by introducing new technologies and adding value to agricultural raw materials through deep processing. We hope that these piloted reforms will be extended nationwide.

We also witnessed enhanced US-China bilateral government-to-government and government-to-business communications on food security and food safety in 2015. The first US-China Strategic Agricultural Innovation Dialogue was held in Washington, DC in September 2015 and China’s Ministry of Agriculture (MOA) and the US Department of Agriculture renewed their Memorandum of Understanding on bilateral agricultural cooperation. Senior officials and business executives met again on November 22, 2015 at the US-China Agriculture and Food Conference which took place on the sidelines of the US-China Joint Commission on Commerce and Trade (JCCT) held in Guangzhou. AmCham China members were also strong supporters of the Third China Food Security and Food Safety Forum organized by the Development and Research Center of the State Council on November 14-15, 2015. The robust participation of both governments and industry in these forums signifies the importance of US-China agricultural cooperation.

Nevertheless, challenges remain for China’s agriculture industry, including growing stockpiles of national grain reserves, high production costs, a deteriorating natural environment, and struggling agricultural processors. American agribusinesses also encounter various difficulties in entering or operating in the Chinese market, including investment restrictions, trade barriers, and unfair competition.

Regulatory Challenges and Developments

Seed Industry

Seed Industry Reforms and Modernization

The Chinese government made positive efforts to revise important seed regulations and policies in 2015. The amended “Seed Law of the People’s Republic of China,” enacted on November 4, 2015 with effect from January 1, 2016, promises to clarify the management roles of different agencies, reinforce germplasm protection, and mandate simplified variety registration processes for non-major crops. AmCham China believes that further reforms are needed to accelerate the modernization of the seed industry. We continue to emphasize the importance of ensuring that the new Seed Law treats all industry participants equally, including seed companies fully or partially owned by MNCs.

Variety Registration

Administrative procedures for promoting registered varieties in the same registration zone are expected to be eased. The number of crops subject to variety registration requirements was reduced from 28 species to five major crops: rice, wheat, maize, cotton, and soybeans. This is a very positive
商务环境综述

引言

2015年，粮食安全和食品安全继续成为中国面临的最重要的议题。虽然面临经济增速放缓的“新常态”，但是中国作为世界农产品的最大生产国，粮食产量已经连续十二年创新高。同时中国也是最大的农产品消费国和进口国。国内农业生产势头强劲，连同与世界其他国家保持健康的农业贸易，将有助于为中国人民提供价格实惠、品种多样和营养丰富的食物。

中国政府提出通过减少政府干预，发挥市场更大的作用来改革农产品价格形成机制。2014年，中国分别在东北和新疆对大豆和棉花实施“目标价格”试点。2015年，中国下调了玉米的临时收购价格，这是自2007年开始实施玉米临时收购价格政策以来的首次下调。这些改革举措将推动市场导向定价机制的形成，中国美国商会对此表示欢迎。

2015年，中国在外商投资开放农业领域方面取得了一定的进展。2015年修订的上海、天津、福建和广东四个自由贸易试点区域的外商投资负面清单首次将农产品加工（包括玉米深加工、面粉生产、油籽压榨和精炼以及稻米加工）删除。我们对放宽投资限制的这一进展表示欢迎，并且坚信外商投资能够通过引进新的技术、深加工农产品原材料增加其附加值、增强中国农业的竞争力。我们希望这些改革试点可以在未来实现全国推广。

2015年，我们还见证了中美双边政府间以及政府和企业间加强了关于粮食和食品安全的沟通。2015年9月，首届中美农业创新战略对话在华盛顿举行，中国农业部和美国农业部续签了关于双边农业合作的谅解备忘录。中美商贸联委会在广州召开期间，两国高级官员与企业代表还参加了2015年11月22日召开的中美农业与食品研讨会。中国美国商会会员企业还大力支持国务院发展研究中心于2015年11月14日到15日组织召开的第三届中国粮食与食品安全战略峰会。政府和企业界积极参加这些会议，表明了中美农业合作的重要性。

但是，中国农业仍然面临挑战，包括国家粮食储备不断增加、生产成本过高、自然环境恶化、农产品加工企业举步维艰。美国农业企业在进入中国市场或者在中国市场经营过程中仍遇到投资限制、贸易壁垒、不公平竞争等各种困难。

监管挑战和进展

种子行业

2015年，中国政府修订了种子相关的重要法规和政策。2015年11月4日修订的《中华人民共和国种子法》于2016年1月1日生效，其中明确了相关部门的管理职责、加强了种质资源保护、规定了对非主要农作物品种实行品种登记制度、简化了品种审定的相应程序。中国美国商会相信，加快种子行业的现代化需要进一步的改革。我们希望，修订后的《种子法》可以对种子行业中的所有参与单位一视同仁，包括跨国公司设立的独资或合资企业。

品种审定

相同审定区域的品种审定的管理程序会有望简化。需品种审定的农作物数量从28种减少到5种主要作物：水稻、小麦、玉米、棉花和大豆。这是一项非常积极的进展。非主要作物实行品种登记制度，不再需要审定程序。且根据新修订的《种子法》，将通过某一地区审定的品种引种到同一适宜生态区域的其他地区，现只需向相关主管部门备案即可。中国美国商会期待农业部制定进一步相关实施细则，并促进农业部将中外合资种子企业与国内种业公司一视同仁，允许符合条件的合资企业申请享受绿色通道政策。外资种业公司和中外合资种业公司通过给中国农民引进先进

农业
development. Non-major crops will now be subject to a filing process instead of a registration process. Moreover, introducing a variety registered in one geographic territory to other geographic territories within the same registration zone will now, under the amended Seed Law, be subject only to filing for the record with the competent authority. AmCham China looks forward to further implementation guidelines from the MOA and urges the MOA to ensure that joint ventures (JVs) are treated the same as local seed companies and, if qualified, allowed access to the Green Channels. Foreign seed companies and JVs can significantly contribute to China’s goal of food security by introducing advanced varieties and hybrids to Chinese farmers.

Import and Export of Seed and Breeding Materials

Significant changes to regulations regarding the import and export of seed and breeding materials are necessary to streamline the currently lengthy and complex approval processes. Germplasm exports from China are restricted if endogenous germplasm is used. Even when endogenous germplasm is not used, exporting seeds for research purposes is cumbersome—particularly for MNCs with breeding stations around the world that must obtain multiple approvals on a crop-by-crop and sample-by-sample basis.

This process includes obtaining approvals from multiple authorities within the MOA, registering with the Ministry of Commerce (MOFCOM), obtaining phytosanitary certification from the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), and approvals from provincial authorities. Approval processes at the provincial level are especially time consuming and unpredictable, which slow technology exchange and research cooperation between MNCs and the local seed industry and hamper new variety development in China. Moreover, the MOA recently further tightened germplasm export controls, in some cases requiring MOA-authorized lab testing reports, which further increase the burden on companies and slow the development of seed varieties.

Counterfeit Seeds and Intellectual Property Protection

The amended Seed Law reinforces germplasm protection for the first time by “establishing a new plant variety protection (PVP) system.” In order to promote the seed industry in China, it is critical to further enhance intellectual property (IP) protection including for essentially derived varieties.

One important area for improvement is the application time necessary to receive basic IP protections. For example, breeders of new plant varieties can apply for PVP under the “New Plant Variety Protection Regulations” effective since October 1997. However, MNCs have had great difficulty obtaining PVP. Stronger IP protection would discourage counterfeiters, foster more rapid introduction of new plant varieties, and benefit legitimate, innovative companies, including the Chinese seed industry and farmers. Another important area for improvement is law enforcement at the provincial level.

Restrictions to Foreign Investment in Seed Biotechnology

AmCham China appreciates the removal of biotech research and development (R&D) as “prohibited” in the 2015 “Guiding Catalogue on Foreign Investment in Industry” (Foreign Investment Catalogue). However, restrictions on biotech crop breeding and seed production, which are integral components for high quality seeds, are still in place. Allowing only R&D while prohibiting breeding and production discourages the investments needed to modernize the Chinese seed industry and widens the gap between China and advanced countries in biotechnology. AmCham China is also looking forward to the MOA’s formal explanation for the removal of biotech R&D from the “prohibited” section of the Foreign Investment Catalogue, ensuring that MNCs can continue their applications for safety certificates and bring advanced technology into China.

Agricultural Processing and Grain Trade

Industry Integration and Modernization

China has hundreds of thousands of scattered production food processing companies with small scales of production, making food safety supervision a challenge. International experience demonstrates that, for any industry sector, a balance between efficiency and competition can best be achieved with a limited number (i.e., between four and six) of leading players. Food industry consolidation could be accelerated if China simplified its anti-monopoly review process and removed restrictions on foreign investment. MOFCOM’s lengthy monopoly review procedure hampers business mergers and acquisitions. The low filing threshold makes mergers or other transactions around the world involving two companies with fairly minimal sales in China reportable under the Anti-Monopoly Law (AML). The AML also requires enforcement agencies to consider elements that are beyond the scope of classic antitrust analysis. As a result, non-antitrust issues often color MOFCOM’s analysis and delay the review. Please see the Competition Law chapter for more information on these issues.

Foreign investment in China’s grain processing sector was originally encouraged in the 2004 Foreign Investment Catalogue, but was removed from the “encouraged” category in 2007 while corn processing was newly classified as “restricted.” Continued investment restrictions lead to a range of unintended consequences, including inefficient and outdated production capacity, diminished incentives to develop new technologies, and high costs of consolidation (license fees). The economic “new normal” will provide China with a unique opportunity to accelerate food industry consolidation through policy adjustments.
的种子和杂交品种，可为中国实现粮食安全目标做出重大贡献。

**种子和育种材料的进出口**

为了改变现行冗长且复杂的审批程序，当前的种子和育种材料进出口制度亟待重大改革。如果某出境种质中使用了中国原产种质，那么该项出境将受到严格限制。即使未使用原产种质，为研究目的而进行的种子出境审批程序也十分繁琐，特别是对于育种基地遍布全球的跨国公司，每一种作物和每一份样品都需要完成多道审批程序。

上述审批程序包括：获得农业部多个司局的批文，完成商务部登记备案，从国家质检总局（“国家质检总局”）取得植物检疫证书，以及获得省级相关部门的审批。省一级的审批程序尤为耗时且不可预知，从而延缓了跨国公司与中国地方种子行业之间的技术交流和科研合作的步伐。此外，农业部近期进一步加强了对种质资源出口的监管，有时甚至会要求出示农业部授权的实验室出具的试验报告，大大增加了相关企业的负担，也减缓了种子品种开发的进程。

**假冒种子和知识产权保护**

新修订的《种子法》“确立了植物新品种保护制度”，首次强调加强新品种保护。为了促进中国种子行业的发展，需要进一步加强对实质衍生品种的知识产权保护。

基本知识产权保护的申请期限，是一个亟待改进的重要领域。例如，根据1997年10月起生效的《中华人民共和国植物新品种保护条例》，新品种的育种者可以申请知识产权保护，即“植物新品种保护权”。然而，跨国公司很难获得植物新品种保护权。加强知识产权保护将有助于打击假冒产品，促进新品种保护，保护中国种子行业、中国农民以及合法创新企业的利益。省级执法是另一个亟待改进的重要领域。

**限制外资投资种子生物技术**

2015年《外商投资产业指导目录》（《目录》）将生物技术研发从“禁止”目录中删除，美国商会对此表示欢迎。但是，对提升种子质量相关的生物技术农作物选育和种子生产的限制仍然存在，只允许研发却禁止育种和生产将会阻碍中国种业现代化所需要的投资，拉大中国和发达国家在生物技术领域的差距。美国商会也期待农业部对将生物技术研发从《目录》“禁止”目录中删除
Food value chain fragmentation is another source of food safety concern, as it increases the risk of contamination during transportation and storage and introduces additional inefficiencies into the value chain. A more integrated value chain in which larger, experienced players maintain control over their supply chains from raw-material origination to finished product delivery would help safeguard China’s food supply and minimize the threat of adulteration. However, leading food industry players face policy barriers to build an integrated business. For example, AmCham China members are restricted from investing in corn origination and storage and corn wet milling in China. As China strives to save energy and ensure food safety, AmCham China urges that investment restrictions that impede the integration of the food value chain be removed.

**Bulk Transportation**

High logistics costs make Chinese domestic agricultural products less competitive. At present, only 25 percent of cross-provincial grain movement in China is handled in bulk. Although China has modern world class ports, silos, and railways, the logistics system as a whole underperforms due to fragmentation. China can realize bulk transportation for agricultural commodities by improving certain links such as rail bulk loading and unloading facilities in the logistic network that currently lack bulk-handling capabilities. If China loosened restrictions and opened grain trading and logistics investments to all investors, large and efficient grain distributors could emerge.

Low cost integrated logistic solutions could become available if China were to break the state-owned enterprise monopolies for certain infrastructure like railways and ports. AmCham China members are willing to share their experiences, for example, in operating a tugboat system in major US rivers for bulk grain transportation, with their Chinese counterparts and duplicate this efficient model within the Yangtze River. However, the 2015 Foreign Investment Catalogue continues to restrict foreign investment in water transportation and grain origination.

**Value-added Agricultural Processing**

Lowering production and transportation costs is only part of the challenge to improving China’s agricultural efficiency. The value of raw agricultural products can be multiplied through processing into value-added products. However, China’s agricultural processing industry struggles due to high input costs and over-capacity. China introduced a “floor price” policy on rice and wheat in 2004, and on corn, soybeans, cotton, and sugar in 2007 to raise farmers’ incomes. However, this policy generated unintended consequences, including artificially increasing input costs for processors. Many Chinese processors struggle to compete in the over-capitalized low-end market.

The Chinese government is encouraging industries to innovate and upgrade from low-end to high-end manufacturing. Officials in provinces with high levels of agricultural production have demonstrated an interest in attracting foreign investment to create jobs and enhance the value of agricultural raw materials. Extending pricing mechanism reforms to other crops like corn and removing agricultural processing from the “restricted” portion of the Foreign Investment Catalogue would help China to develop high-end processing and produce value-added products.

**International Agricultural Commodity Trade**

**Import Approvals of Biotech Products**

Since 2010, China’s agricultural biotech approval process has regressed from being slow but relatively predictable to even slower and unpredictable. Delayed approvals weaken China’s ability to secure stable sources of grain. In addition, hesitation to approve biotech products does not help to build Chinese consumer confidence in and acceptance of biotech products.

According to MOA regulations, three windows are to be offered each year for biotech product registration submissions and approvals. However, since 2012, the MOA has only provided decisions on biotech products once a year. From November 1, 2014 through January 2016, AmCham China member companies submitted 11 applications for import usage final safety certificates. Although in-country studies have been completed for all 11 products, only three products have received approval as of February 2016. Such delays in the approval of biotech commodities increase the risk of trade disruptions.

In addition to obtaining the Biosafety Certificate to approve a GMO event for food/feed use in China, the MOA requires agricultural traders to obtain a new Biosafety Certificate for each specific shipment to a specific customer, at a cost of RMB 3,000 (approximately US $477) per application. Thus, traders would need to apply for over 10 Biosafety Certificates for a vessel delivering grain in containers to more than 10 customers even though all containers are loaded from the same terminal with identical grain. This requirement to obtain shipment-specific and customer-specific biosafety certificates does not improve product safety, and only increases costs for traders and ultimately results in higher prices for consumers. We encourage the MOA to remove this unnecessarily repetitive requirement.

AmCham China applauds recent efforts by the MOA and the Chinese academic and media communities to improve public understanding of biotech-derived products. For example, the MOA’s 2015 “Document No. 1” calls for public education in biotechnology. AmCham China member companies have also increased biotech public education efforts by launching social media campaigns and sponsoring media workshops.
中国物流网络的某些环节例如铁路装卸目前缺少散货处理能力。因此，通过提升铁路散装散卸设施等环节，中国可以实现农产品的散货运输。如果中国能够放宽限制，向全体投资者开放粮食贸易和物流投资，高效的大型粮食经销企业就会出现。

如果中国能够打破国有企业对铁路和港口等基础设施的垄断，低成本的集成物流解决方案就会成为可能。中国美国商会的会员企业愿意与中国同行分享自己的经验，比如在美国主要河流普遍通过拖船实现粮食的散货运输，这一高效率的模式完全可以在长江流域复制。然而，2015年《外商投资产业指导目录》却继续限制外商投资水运和粮食收储。

增值农产品加工

如何降低生产和运输成本只是提高中国农业生产效率所面临的挑战之一，通过加工转化成高附加值的产品，可以大幅提升农产品原材料的价值。但是，由于原料成本过高以及产能过剩，中国农业加工行业举步维艰。2004年，中国开始对大米和小麦实行“最低收购价格”，并在2007年将这一政策推广到玉米、大豆、棉花和糖以增加农民收入。这一政策却产生了意想不到的后果，其中包括人为增加加工企业的原料投入成本。许多加工企业在产能过剩的低端市场中竞争惨烈。

中国政府正在鼓励产业创新并实现低端制造向高端制造的升级。许多农业大省的官员已经表现出通过吸引外资创造就业和提升农产品原材料价值的强烈意愿。若能将农产品定价机制改革推广到玉米等其他作物且将农产品加工从《目录》的“限制类”中删除，将有助于中国发展农产品高端加工和生产具有高附加值的产品。

国际农产品贸易

生物技术产品的进口许可

2010年以来，中国生物技术安全证书审批程序变得更缓慢难以预测。审批延误削弱了中国从其它国家获取稳定的粮食供应源的能力。另外，审批生物技术产品时表现出来的迟疑无助于让中国消费者信任和接受生物技术产品。

根据农业部的现行规定，生物技术产品申报每年会有三次提交申请和审批的时间。但自2012年起，农业部只向技术开发商提供一年一次的审批决定。从2014年11月1日到2016年1月，中国美国商会的会员企业提交了11份进口使用安全证书申请。11项产品的国内研究已经全部完成，但是只有3项产品于2016年2月获得了安全证书。生物技术产品审批的迟延增加了贸易中断的风险。

在中国，一个食品/饮料使用转基因产品除了技术开发者需要获得产品的生物安全证书外，按照农业部的要求，农产品贸易商还需要为每个产品每批次进口的每个客户重新取得生物安全证书，每次申请需要缴纳477美元（人民币3000元）。因此，如果通过集装箱进口的一批粮食有十几个客户，即使所有的集装箱都来自同一地点、装载相同的粮食，贸易商仍然需要申请十几份生物安全证书。要求为每批次进口的每个客户取得生物安全证书无益于提高产品的安全性，只能增加贸易商的交易成本并最终抬高消费者支付的价格。我们鼓励农业部取消这一非必要的重复审批要求。

中国政府正在采取各种举措提高公众对生物技术产品的了解，尤其是2015年中央“一号文件”中特别要求对公众加强生物技术科学普及。中国美国商会的会员企业也通过社交媒体和研讨会的方式对公众加大生物技术科学普及的力度。

供求透明度

鉴于中国在国际农产品市场上的地位，政策突变或者设置新的贸易壁垒会破坏农产品贸易，给价值链的所有相关方造成重大损失。这种变动会侵害中国作为可靠买家的声誉，并最终影响到其他国家对中国需求做出回应的意愿和能力。2008年，南亚国家禁止出口大米，从而引发市场对供应短缺的恐慌，加剧了大米市场的波动性，迫使大米进口国增加国内生产。数年之后，大米进口国的稻农遇到了产品难以销售的问题。

中国可公布自身的供求数据，从而更好地利用自身的购买力影响全球农产品市场和促进全球农业生产。现在，中国已经不再将石油储备作为国家机密，而是定期发布全国能源储备数据。我们鼓励中国在国家粮食储备方面也能做到如此透明。如果中国能够增加对数据的透明度，全球市场就能更好地满足中国的需求，更加有计划地生产，中国买家入市面临的市场波动性就会降低。

农产品关税配额

为了保护农民和满足进口需要，中国在入世谈判时对主要农作物实施关税配额管理制度（TRQ），但是，若干问题阻碍了关税配额制度实现这两项政策目标，其中包括：
**Transparency in Supply and Demand**

Given China’s status in international agriculture markets, disruption to agricultural trade due to abrupt policy changes or the erection of new trade barriers will cause significant loss to all players along the value chain. Such changes could erode China’s reputation as a reliable buyer and eventually affect other countries’ willingness and ability to respond to Chinese demand. Rice export bans by South Asian countries in 2008 fueled panic about supply shortages, escalated volatility in rice markets, and forced rice-importing countries to increase domestic production. Rice farmers in these export countries also experienced difficulty selling their products a few years later.

China could better leverage its purchasing power to influence the global agriculture market and stimulate global production by publishing its supply and demand data. China changed its practice of classifying petroleum reserves as a state secret, and now regularly publishes national energy reserve data. We encourage China to expand such transparency to national grain reserves. If China made its supply and demand data more transparent, global markets would be able to better meet Chinese demand, and Chinese buyers would enjoy a less volatile market when they enter the market.

**Tariff Rate Quota on Agriculture Commodities**

China introduced a tariff rate quota (TRQ) system on major crops during its WTO entry negotiations to protect its farmers and meet its import needs. However, a number of issues prevent TRQs from supporting these two policy objectives, including the following:

1. TRQ quota levels have not been adjusted since China’s accession to the WTO in 2001 and do not meet the increasing demand in China for agricultural commodities.

2. A majority of import quotas are reserved for state trade. The TRQ volume allocated to each private applicant is often too small to be commercially viable for making even one shipment.

3. A lack of transparency in the administration of TRQs inhibits efficient utilization of quotas and increases the cost of agricultural trade. Traders find it difficult to find out who has received TRQs and how much was allocated.

4. Quota distributions are unpredictable and often at odds with the needs of the market. Quotas are often released at times when importers do not need to import, while quotas are often not released at other times when importers do need to import.

Corn TRQ allocation became even more problematic in 2015 through the linking of applicant eligibility and TRQ volume to corn purchase volumes from the national corn reserve auctions. AmCham China recommends that the Chinese government regularly review TRQ levels according to actual market demand and establish a more transparent and market-oriented TRQ allocation system. We also recommend reducing the number of agricultural commodities subject to TRQs, especially feed grains, so that demand can be met more efficiently by the market, allowing Chinese access to less expensive agricultural commodities. Chinese processors including cotton spinning mills, sugar refineries, and feed mills heavily rely on imports to keep their operations globally competitive.

**Feed Ingredient Import Approvals**

The import of feed ingredients like distiller’s dried grains with solubles (DDGS) and other byproducts of fermentation to China is subject to redundant registration and approval processes that involve feed ingredient registration by the MOA and product safety evaluation and exporter registration by the AQSIQ. Since January 2013, the MOA has further expanded its scope of feed ingredient registration to cover traditional feed products like soybean meal and canola meal, which previously did not require registration. These redundant registration requirements and the introduction of new approval requirements are inconsistent with the Chinese central government's call to streamline and cut administrative licensing requirements. Such new administrative licensing requirements do little to improve food safety, and instead result in additional economic costs to Chinese consumers.

MOFCOM launched an antidumping and countervailing duty investigation against the import of DDGS from the US on January 12, 2016. AmCham China members are concerned that this investigation may be politicized with the Chinese government’s pressure to sell out the record high corn reserve.

**Beef, Pork, and Poultry Trade**

Significant potential exists to increase trade in beef and pork between the US and China. This will allow Chinese consumers to access high quality, lower-priced, safe, and nutritious products. AmCham China is encouraged by China’s release of national standards for food safety that resulted in China formulating more than 2,000 national, 2,900 industry, and 1,200 local standards that are related to food and additives.

Due to increased demand and constrained domestic beef supplies, China’s 2015 imports of frozen, fresh, and chilled beef between January and November 2015 totaled 410,554 metric tons, a large increase from the 2014 total of 297,949 metric tons (frozen, fresh, and chilled). This dynamic has also been reflected in rising beef prices in China, with prices averaging US $10 (RMB 63) per kilogram in December 2015. China will continue to import large volumes of beef in 2016 due to firm demand.
关税配额水平自2001年中国加入世界贸易组织(WTO)之后就未作过调整，无法满足中国对农产品日益增长的需求。

绝大多数进口配额都留给了国有贸易企业。私有企业所能获得的关税配额额度过小，甚至无法满足一次进口贸易的需求。

关税配额管理缺乏透明度，抑制了配额使用的效率并增加了农业贸易成本。贸易商很难获知哪些人获得了配额以及具体数量等信息。

配额分配缺乏可预测性，经常与市场的实际需求不符。配额往往在进口商没有进口需求时发放，而等到他们需要进口时往往又迟迟不发放。

2015年，玉米关税配额分配的问题变得更加棘手，中国将配额申领条件和配额数量与申请者通过竞标从国家粮食储备购买的玉米数量挂钩。中国美国商会建议中国政府根据市场实际需求定期评估关税配额水平，并建立更加透明、以市场为导向的关税配额分配制度。同时我们还建议减少需要配额的农产品数量，从而使市场能够更加有效地满足需求，使中国消费者能够继续享用到价格更加实惠的农产品。

饲料原料的进口许可

中国进口诸如DDGS(玉米酒精糟粕)和其他发酵副产品在内的饲料原料需要经历繁琐的登记和审批程序，其中饲料原料登记在农业部，产品安全性评估和出口商登记在国家质检总局。自2013年1月起，农业部进一步扩大了饲料原料登记范围，要求原先不需要登记的大豆粕和菜籽粕进行登记。上述繁琐的登记要求以及新增加审批项目的行为，将使市场更加有效的满足需求，使中国消费者能够在价格更加实惠的农产品。

2016年1月12日，商务部对从美国进口干玉米酒糟(DDGS)启动反倾销和反补贴调查。中国美国商会会员企业担心，面临再创新高的玉米储备的出售压力，中国政府可能会将这项调查政治化。

牛肉、猪肉和家禽贸易

中美牛肉和猪肉贸易存在巨大的提升空间。中国消费者将能够获得物美价廉、安全和有营养的产品。令中国美国商会深受鼓舞的是，中国发布了全国性食品安全标准，制定了与食品和添加剂有关的国家标准、行业标准和地方标准分别超过2000项，2000项和1200项。

鉴于需求增加和国内牛肉供给有限，2015年1月到11月，中国总计进口冷冻、鲜冷和冷鲜牛肉410,554公吨，较2014年的297,949公吨（冷冻、鲜冷和冷鲜牛肉）大幅增长，这种供需不平衡的现象造成中国牛肉价格上升，2015年12月中国的牛肉平均价格为10美元（人民币63元）/公斤。由于需求坚挺，中国在2016年将继续大量进口牛肉。

然而，美国并不是中国进口牛肉的主要来源。自从十几年前美国检出牛脑海绵状病（疯牛病）之后，中国和美国一直就重启进口美国牛肉一事展开谈判。虽然2006年6月中国单方面宣布有条件地进口30月龄以下的无骨牛肉，但由于2015年12月，由于中美在争论双方认可的的标准和科学条件的内容，所以，尚无一家美国肉商向中国出口牛肉。我们希望正在进行的美中政府谈判能够尽快恢复美国对中国牛肉的出口。

中美两国扩大猪肉贸易的潜力也十分巨大。2015年秋，鉴于美国政府针对中国猪肉满足中国进口标准做出新的保证和承诺，包括要求产品不得含有莱克多巴胺残留，中国政府出了一份新的猪肉准入名单，虽然中国对莱克多巴胺的零容忍不符合这种残留的安全残留的国际标准，但是，美国政府希望，保证遵守中国标准的承诺有助于提高国际竞争力。

其他贸易壁垒包括限制进口美国冷冻猪肉以及目前禁止进口美国加工肉类产品。我们鼓励中美两国政府就美国加工肉类出口资格达成一致，使得中国消费者能够获得更多安全价优的猪肉产品。

中国美国商会担心中国政府会继续对美国出口至中国的多种家禽产品征收高额的反倾销税和反补贴税。对美国的出口家禽征收如此高昂的关税实属不公，而且对市场以及中国的消费者都造成了负面影响。

世界贸易组织争端解决小组2013年9月做出的裁决认定，商务部在反倾销和反补贴税调查中存在多处实质性问题和程序性错误，我们促请商务部接受上述裁决结果。我们鼓励中国取消对美国出口家禽征收反倾销和反补贴税，或者至少在未来的中期复审中考虑降低对美国出口商的上述税额。

我们承认，中国同行也提出，中国的某些肉类／家禽产品在美国市场也面临类似的问题，为了进
One key source of supply that remains untapped is US beef. Since the detection of bovine spongiform encephalopathy in the US over 10 years ago, China and the US have engaged in negotiations to reestablish importation of US beef. Limited conditions for the importation of boneless beef from cattle less than 30 months of age were unilaterally announced by China in June 2006, however, as of December 2015, no US product has been shipped due to continuing debate over what constitutes mutually acceptable science-based conditions that assure safe imports. We hope that ongoing negotiations between the US and Chinese governments will soon conclude with the resumption of US beef exports to China.

There is potential for expanded trade in pork between the US and China. In the fall of 2015, China re-listed a number of US pork processing establishments in response to new US government programs and assurances that US pork would meet China’s import standards, including one that requires products to be free of ractopamine residues. Although China’s zero tolerance for ractopamine is not aligned with international guidelines on safe residues for this feed additive, the US is hopeful that new assurances on compliance with China’s standards will result in more normalized trade.

Other impediments include unclear restrictions on the import of US chilled pork and a current ban on US processed meat imports. We encourage the US and Chinese governments to engage on US processed meat export eligibility to allow Chinese consumers access to a greater range of safe and affordable pork products.

AmCham China is concerned that the Chinese government continues to impose substantial anti-dumping and countervailing duties (AD/CVDs) against a wide range of US poultry exports to China. Levying such prohibitively high duties on US poultry exports is unnecessary and has a disruptive effect on the market and Chinese consumers.

We urge MOFCOM to accept the findings of the WTO Dispute Settlement Panel final ruling in September 2013 that identified several substantive and procedural errors in MOFCOM’s AD/CVD investigation. We encourage China to eliminate AD/CVDs on US poultry imports or, at a minimum, give US exporters the opportunity to reduce these duties through future interim reviews.

We acknowledge that our Chinese counterparts have also voiced concerns regarding market access for certain Chinese meat/poultry products in the US. To promote more robust and mutually beneficial bilateral trade, AmCham China urges US authorities to allow American consumers access to a greater range of safe food and review Chinese requests for US market access for meat, fish, and cooked poultry products.

**Agricultural Machinery**

Since 2004, sales of agricultural mechanization equipment in China have grown rapidly, driven by relevant subsidies and other favorable policies resulting in improved efficiency of Chinese farmers. The detailed subsidy schedule is revised periodically, encouraging farmers to purchase equipment that is advanced, safe, reliable, and environmentally friendly. However, industry is not included in the revision process and, as a result, businesses have very limited lead time to adjust their R&D and manufacturing plans once the revision is officially released. We recommend that the responsible authority reveal the direction of the new schedule well in advance so that manufacturers can quickly respond and bring the appropriate technologies to Chinese farmers.

In 2015, the MOA made a number of public “equipment subsidy compliance investigation” announcements, which suspended the availability of the subsidy scheme for certain products without prior notification to the affected party. A “guilty-until-proven-innocent” approach to enforcement creates unnecessary anxiety amongst global companies who invest heavily not only in bringing new agricultural technologies to China, but also in policy and regulatory compliance. Also, as recent subsidy compliance cases have focused exclusively on foreign agricultural equipment companies, this has created a perception of biased targeting of foreign companies. As a result, some AmCham China member companies have already begun to re-evaluate the risk of bringing their cutting edge agricultural mechanization technologies into China.

We are pleased to see that the MOA is considering adoption of a more market-oriented approach to subsidy management with several significant changes to be made in 2016. To enhance the effectiveness of China’s agricultural machinery subsidy program and sustainably develop agricultural mechanization, AmCham China urges the MOA to improve the fairness and transparency of the agricultural equipment procurement subsidy process and ensure policy consistency at both the national and provincial levels. We encourage simplification of the approval process to allow new technologies to enter the market more quickly and improvement to the current compliance investigation process, which will improve agricultural productivity and lead to more affordable food for Chinese consumers. In addition, we encourage improvements to be made in the fairness and transparency of the subsidy compliance enforcement process.
一步提升中美农业贸易的健康、互惠发展水平，中国美国商会促请美国相关监管部门允许美国消费者能够获得更多安全食品，能够依据科学的方法审批中国肉类、鱼类和熟制家禽产品的市场准入申请。

**农业机械**

自 2004 年起，受相关补贴和其他优惠政策的刺激，中国农民的效率得到提高，中国的农用机械销售额迅速增长。政府会定期修改具体的补贴计划，鼓励农民购买先进、安全、可靠、环境友好型设备。然而，修改计划并不涵盖整个产业，这就意味着在修改正式发布之前，企业仅有非常有限的筹备周期来调整研发和生产计划。我们建议主管机关提前公布新计划的方向，使得制造商可以作出迅速反应，向中国农民介绍合适的技术。

2015 年，农业部数次公告启动“设备补贴合规调查”，在事先没有通知受影响各方的情况下暂停向某些产品提供补贴。这种“有罪推定”式的执法方式给那些投入巨额资金向中国市场引进新技术以及确保政策和监管合规的国际企业造成不必要的担忧。由于近期的补贴违规案件涉及的都是外资农机企业，已经让人感觉是专门针对外资企业。因此，中国美国商会的一些会员企业已经开始重新评估向中国引进先进农业机械化技术的风险。

我们高兴地看到，农业部正在考虑采用更加市场化的方向来改进补贴管理，2016 年将做出许多重大改变。为了提升中国农机补贴项目的有效性以及尽快实现农业机械化，中国美国商会促请农业部提高农机购置目录相关的农机补贴登记程序的公正性和透明度，以及在全国和省级范围内政策的一致性。我们鼓励简化审批流程，使新技术能更快被投入市场，改进目前的合规审查过程，提高农业生产效率，为中国消费者提供更实惠的食品。我们还鼓励提高补贴合规执法过程的公平性和透明度。

**建议**

**对中国政府**

- 鼓励外资投资现代农业加工、粮食散货运输和种子技术，从而提高中国农业的竞争力。
- 将中外合资种子企业与内资种业公司一视同仁，允许符合条件的合资企业申请享受绿色通道政策。
- 改革关税配额制度，公布粮食储备数据，提高在国际农产品市场上的影响力。
- 提高生物技术制品安全证书审批的及时性和可预测性，取消多余的进口审批要求，达到降低交易风险和成本的目的。
- 简化种子和育种材料的进出口程序。
- 取消对美国牛肉、禽类和猪肉进口限制。
- 在全国和省级层面提升农业部农机购置目录相关农机补贴登记程序的速度、公正性和透明度。
- 在公布全国“合规调查”之前与受影响的各方沟通，提高设备补贴合规调查过程的公平性和透明度。
- 加强与美国相关企业的合作，使中国农民能够学习全球最佳的实践经验，进行更具可持续性的粮食生产。

**对美国政府**

- 通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。
- 采用科学的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨和鲶鱼）的美国市场准入要求。
Recommendations

**For the Chinese Government:**

- Improve the sustainability and competitiveness of Chinese agriculture by encouraging foreign investment in seed technology, modern agricultural processing, and bulk transportation.
- Ensure that JVs are treated the same as domestic seed companies and, if qualified, allowed access to the Green Channels.
- Increase influence on international agricultural markets by reforming the TRQ system and publishing grain reserve data.
- Reduce trading risks and costs by approving biotech commodities in a more timely and predictable manner and removing the redundant requirement for shipment-specific approvals.
- Simplify import and export procedures for seed and breeding materials.
- Remove restrictions on the importation of US beef, poultry, and pork.
- Improve the speed, fairness, and transparency of the agricultural equipment subsidy registration process for the MOA’s equipment procurement catalogue, both at the national and provincial level.
- Enhance the fairness and transparency of the equipment subsidy compliance investigation process by communicating with affected parties prior to making nationwide “compliance investigation” announcements.
- Increase cooperation with US companies to enable Chinese farmers to produce food more sustainably and in line with global best practices.

**For the US Government:**

- Work with Chinese officials through bilateral dialogues, including the JCCT, Strategic and Economic Dialogue, and US-China BIT negotiations to address the investment restrictions faced by US agriculture producers.
- Employ a science-based approach to Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish.
Automotive Policy

Introduction

The automotive industry’s overall growth rate of 4.7 percent in 2015 marked a three-year low, due in part to decelerating economic growth and rising inventories. While a record number of passenger vehicles were sold in 2015 – 21.1 million units for a growth rate of 7.3 percent – the rate of sales has significantly declined in recent years, down from 10 percent in 2014 and 16 percent in 2013. The rate of sale of commercial vehicles in 2015 similarly declined by 10 percent.

Ongoing Regulatory Issues and Recent Developments

New Energy Vehicle Policies

Subsidy Programs

New Energy Vehicles (NEVs) are widely promoted around the world for their decreased dependence on oil and environmentally friendly and sustainable attributes. The Chinese government strongly supports the development of NEVs by subsidizing their research and development (R&D), purchase, and infrastructure construction. Such policies have expedited NEV development in China, especially since 2014 and give foreign-invested enterprises (FIEs) greater confidence to invest in this field.

We are pleased to notice that some of the tax subsidy programs are being applied to imported vehicles in addition to domestically produced NEVs. However, there are still a number of interlocking policies that only benefit domestically produced NEVs and limit full FIE participation. Imported NEVs are an indispensable segment of a diversified market and bring advanced technologies to the Chinese market. FIEs must increase the proportion of NEVs in their vehicle fleet in order to meet increasingly stringent fuel consumption and low emission mandates. As FIEs comply with the same relevant Chinese laws and regulations as all other local original equipment manufacturers (OEMs), we encourage the Chinese government to grant FIEs equal treatment in NEV subsidy programs.

Charging Standards

China has adopted unique NEV charging standards, some of which are now under revision. AmCham China recommends a harmonization of China’s unique standards with their international equivalents. Such harmonization will allow new NEV models to enter the China market more quickly, providing consumers with greater choice and easing the process for domestic NEV producers looking for export opportunities.

Lithium-Ion Battery Testing Requirements and China’s Export Policies

Automobile manufacturers have invested millions of dollars designing, testing, and certifying lithium-ion batteries to international standards for use in their hybrid-electric and full electric vehicles. Numerous automobile manufacturers and other manufacturers of lithium batteries have been informed by freight forwarders in China that, in order to export their lithium-ion batteries (including vehicles with lithium-ion batteries installed) from China, the batteries must be tested by an approved Chinese test lab. China is the only country in the world that requires such in-country testing for purposes of export, resulting in significant and unnecessary costs for automobile manufacturers.

The United Nations Manual of Tests and Criteria mandate that lithium-ion batteries be tested in accordance with Section 38.3 before they are shipped and placed on the international market. This lithium-ion battery testing scheme is a self-certification process, meaning that tests may be conducted by the lithium-ion battery manufacturer, automobile manufacturer, or a third-party test lab. Once a lithium-ion battery design type has met the UN testing requirements, any company may offer that battery for transport anywhere in the world by any mode of transport (i.e., air, sea, rail, road). This means the test data generated by the battery or automobile manufacturers or a third-party test lab are recognized internationally by all transport authorities.

China requires certification laboratories in China to certify proper classification for all dangerous goods to be exported from China. Since testing is necessary for the proper classification of lithium-ion batteries, test reports are necessary to confirm that the batteries have been tested. However,
引言

由于经济增速放缓，库存增加，2015年中国汽车业总体增速为4.7%，创三年来新低。尽管2015年乘用车销售数量创历史新高，达到2110万辆，增速为7.3%，但增速与前几年相比有较大幅度下滑，2014年增速为10%，而2013年为16%。商用车销售增速2015年也同比下降10%。

现存监管问题与最新进展

新能源汽车政策

补贴项目

由于具有对燃油依赖程度低、环保和可持续的特点，世界各地都在大力发展新能源汽车。中国政府也大力支持新能源汽车行业的发展，对新能源汽车的开发、购置和基础设施等予以补贴。上述政策，特别是2014年之后，加速了新能源汽车在中国的发展，同时也给外资企业投资该领域增加了更大的信心。

我们很高兴地注意到，中国开始对除国产新能源汽车之外的进口新能源汽车实施某些税收补贴政策。然而目前仍有一些相互关联的政策受益对象仅限国产新能源汽车，并限制外资企业的全面参与。进口新能源汽车是一个多样化市场中不可或缺的部分，并且能够为中国市场带来先进技术。外资企业必须提高新能源汽车在其中销售的汽车中的比例才能满足日益严格的低能耗和低排放的要求。鉴于外资企业与其他本土原始设备制造商需要遵守同样的相关中国法律和法规，我们鼓励中国政府在实施新能源补贴项目时能够对外资和本土企业一视同仁。

充电标准

中国采用了特有的新能源汽车充电标准，中国美国商会建议中国能够将自己特有的标准与国际标准进行协调统一。此举能够使新能源汽车的最新车型更迅速地进入中国市场，为消费者提供更多的选择，同时也更便于国内新能源汽车生产企业寻找出口机会。

锂电池检测要求及中国的出口政策

汽车生产厂商通常投资数以百万计美元来设计、测试并证明其所生产的混合电动车或纯电动车所使用的锂电池符合国际标准。许多汽车生产商和其他锂电池生产商都接到国内货运代理商的通知，中国出口的锂电池（包括安装有锂电池的汽车）必须通过有资质的中国测试实验室的检测。中国是全球唯一一个规定出口锂电池必须进行境内检测的国家，使得汽车生产商需额外承担沉重和不必要的费用。

《联合国危险品运输试验和标准手册》中规定锂电池在国际市场运输和投放前必须按照第38.3项条款的规定进行检测。这种锂电池检测规定是一种自我认证程序，即测试是由锂电池生产商、汽车制造商或第三方检测机构自行负责开展。只要锂电池设计类型符合联合国测试要求，任何公司都可以在全世界范围内通过任意一种交通方式（如空运、海运、铁路运输和公路运输）运输锂电池。这也意味着锂电池生产商、汽车生产商或者第三方检测机构开展锂电池测试所得到的数据均可获得全球范围内所有交通运输主管部门的认可。

中国要求由中国境内认证实验室对所有从中国出口的危险品分类是否适当进行认证，由于锂电池的适当分类需要先对锂电池进行检测，要证明锂电池已经经过测试就必须提供检测报告，但中国的认证实验室仅接受中国境内获批准的实验室出具的分类数据（包括检测报告）。另外，中国的锂电池测试实验室不愿认可非中国检测机构出具的检测报告。因此，汽车生产商如果想从中国出口锂电池，则必须付费在中国境内额外付费做锂电池测试。不仅如此，
certification laboratories in China only accept classification data (including test reports) from approved laboratories, currently all located in China. Furthermore, the lithium-ion battery testing laboratories are unwilling to “validate” non-Chinese test reports. Thus, automobile manufacturers that want to export lithium-ion batteries from China must pay for the additional testing of their batteries in China. In addition, China requires annual re-certification of lithium-ion batteries. Moreover, there is no assurance that test data generated from a test lab in one Chinese province will be accepted by a transport authority in a different province nor is there adequate assurance that proprietary data will be secure.

Emissions Standards

AmCham China supports the Chinese government’s efforts to draft and implement more stringent emissions standards (e.g., Stage VI emission regulations). In order to implement emissions standards and reduce vehicle emissions more efficiently, fuel supply and pull-ahead emissions standards should be revised to match vehicle emissions standards. We applaud and anticipate implementation of the Chinese government’s new initiatives to tighten enforcement through conformity of production for commercial vehicle National Standard IV and its plans to use the revised “Air Pollution Prevention and Control Law,” approved by the National People’s Congress with effect from January 1, 2016, to safeguard enforcement and punish violators.

AmCham China hopes that the Chinese government will also consider the feasibility of the vehicle certification process for automotive manufacturers and adopt a consistent system (e.g., test cycles, pollutant testing, reference fuels) for the upcoming Stage VI emission regulations, and grant OEMs a minimum of five years to prepare for the new regulations. We urge the Chinese government to apply on-board diagnostics to strengthen compliance.

The revised “Air Pollution Prevention and Control Law” encourages local governments to implement national emission standards at the earliest possible date. We encourage the Beijing Municipal Bureau of Environmental Protection to follow these national standards and not develop a separate, inconsistent Beijing Stage VI emission standard.

Many cities are considering pull-ahead implementation of Stage VI emissions regulations. AmCham China requests for the pull-ahead implementation timetables to be announced at least six months in advance to ensure that OEMs have enough time to prepare and compete for a stable share of the market.

Fuel Consumption Regulations

AmCham China supports the Chinese government’s policies on energy conservation and emissions reduction, as evidenced by the efforts of OEMs in recent years to reduce fuel consumption. Initiatives to actively promote more stringent fuel consumption standards and regulations, such as the corporate-average fuel consumption (CAFC) standard (GB 27999-2014) for passenger car fuel consumption limits, are worthwhile. However, we hope that detailed implementation rules for CAFC Stage IV will be issued as soon as possible in order to facilitate OEM compliance. Additionally, we hope to see more flexibility in practice, allowing OEMs to use diverse measures to reach the CAFC targets (e.g., buying positive CAFC credits from other OEMs, using estimated surplus CAFC credits in advance to compensate for negative credits).

Regarding Phase IV (2016-2020) Standards development, AmCham China believes that state-of-the-art auto industry energy-saving technologies and Phase III Standards implementation results (e.g., transfer of Phase III “CAFE” credits to Phase IV) should be fully considered. Adoption of appropriate, realistic, and scientific goals will further encourage the development of China’s automotive industry and also support China’s fuel consumption targets. We further suggest that the Ministry of Industry and Information Technology take into consideration OEM product cycle plan restrictions and allow flexible lead times to adopt the new standards during the early stages of Phase IV (i.e., 2016-2017).

Regarding commercial vehicle fuel economy, we urge China and the US to work together to share best practices on achieving measurable fuel economy gains. China currently regulates fuel consumption limits and test methods on vehicles as a whole. We believe the best way to achieve real and sustainable vehicle CO₂ reductions is by separately regulating engine fuel consumption. Commercial vehicle fuel economy is subject to a wide variety of variables (e.g., engine efficiency, weight, resistance to wind or rolling). Simply changing a vehicle’s tires can alter its fuel efficiency. The establishment of a separate efficiency standard for engine fuel economy will allow for the preservation of engine efficiency gains even when the purpose or major features of the vehicle are altered. Additionally, as China considers new fuel economy regulations, we recommend the further streamlining of collaboration between the various agencies with jurisdiction over this issue.

Automotive End-of-Life Policies

China’s current End-of-Life Vehicle (ELV) policy is detailed in the National Development and Reform Commission’s “Auto Recovery Technology Policy.” This policy provides guidance for scrapping and recycling vehicles. Some follow-up policies, standards, and implementing details are being discussed and updated. ELV-related requirements and prohibited substances are included in the Government Procurement Catalogue.

AmCham China hopes these follow-up implementation measures will be harmonized with relevant international
中国还要求每年对锂电池进行再认证。此外，一个省的检测实验室所出具的数据还不一定会被另外一个省的交通运输主管部门认可，同时专有数据安全性保障方面也存在隐患。

### 排放标准

中国美国商会支持中国政府起草和实施更为严格的排放标准（例如国六排放标准），以了更加有效地实施排放标准和减少汽车尾气排放。与汽车尾气排放标准相匹配的燃料供应和提前实施要求也应该进行统一。我们赞赏并期待中国政府采取《车辆生产企业及产品生产一致性监督管理办法》要求汽车企业严格执行国四标准，并计划运用全国人大新修订的旨在 2016 年 1 月 1 日正式生效的《大气污染防治法》来实施法规。严格执法行为。

中国美国商会希望政府能够考虑汽车认证过程对汽车生产企业的可行性。在未来的国六标准中实施一致的标准（例如，测试循环、污染物限定、基准燃料），至少给原始设备制造商五年的等待期和准备期。我们敦促中国政府使用车载诊断系统加强合规监控。

修订后的《大气污染防治法》鼓励地方政府尽早执行国家标准。我们鼓励北京环保局采用国家标准，不再单独制定与国家标准不一致的京六排放标准。

很多城市正在考虑提前实施国六标准。中国美国商会希望至少能够提前六个月公布提前实施时间表，确保原始设备制造商有足够的准备时间做好市场份额的准备。

### 燃料消耗法规

中国美国商会支持中国政府制定并实施节能减排政策，近年来原始设备制造商努力降低燃料消耗即为此例。中国政府有必要制定并积极推广更为严格的燃料标准和法规，例如制定乘用车企业平均燃料消耗量（CAFC）标准（GB27999-2014）就很有必要。该标准于 2014 年 12 月出台，但 CAFC 第四阶段的管理办法一直未能出台。鉴于目前汽车市场增长放缓，各车企 2016 年度的生产计划和技术规划已完成，希望 CAFC 第四阶段管理办法发布后，自 2018 年起对 2017 年度企业积分情况进行核算，并对 2016 年度企业积分给予考核。另外，我们希望在实施相关标准的过程中能够更加灵活，允许原始设备制造商采用不同的方式来达到 CAFC 的目标（如允许从其他原始设备制造商处购买 CAFC 正积分以及用预计 CAFC 积分盈余提前冲抵负积分等）。

在制定第四阶段（2016-2020）的标准时，中国美国商会认为，应当充分考虑引进最先进的汽车节能技术以及第二阶段标准的实施结果（例如，转让第二阶段的 CAFE 积分至第四阶段）。制定严格恰当、务求实际的目标不仅能够逐步促进中国汽车行业的发展，而且有助于中国实现燃料消耗目标。我们还建议工业和信息化部应当充分考虑原始设备制造商产品周期计划方面存在的种种限制，在第四阶段初期（即 2016-2017），允许灵活设定投产准备时间以适应实施新标准。

我们敦促中国和美国就商用车燃料经济性问题进行合作，分享在取得与车辆燃料经济性效益的最佳实践。中国目前将燃料消耗量和检测方法视作一体来监管，我们认为单独监管发动机燃料消耗量，是取得车辆碳排放真实、可持续减少的最好方法。商用车燃料经济性受到多种因素的影响，例如发动机效率、重量、风阻和滚动阻力。仅仅是更换车辆的轮胎就能改变它的燃料效率。单独制定针对发动机燃料经济性标准法规，确保当车辆的用途或主要特性改变时，发动机效率也能得到提升。此外，如果中国研究制定新的燃料经济性法规，我们建议在该议题上进行更简政放权，确保不同机构间合作的畅通。

### 汽车报废政策

发改委制定的《汽车产品回收利用技术政策》提供了现行汽车报废政策的细则并为汽车报废和回收提供指导。一些后续的政策、标准和实施细则正在讨论和制定中。政府采购目录也对汽车报废和禁用物质也有所规定。

中国美国商会希望中国在制定后续措施时，能够与相关国际规则和标准保持一致，在确保合规的同时也要避免给原始设备制造商增加不必要的负担。

### 监管透明度、协调和法治

中国美国商会认为中国近期采取的提高透明度的举措表示欢迎，特别是与高度管制的汽车行业有关的政策，并且鼓励中国政府继续努力。在某些情况下，无论是在草案讨论还是审议过程中，外资企业都无法公平地参与政策制定过程，向公众征集的意见也不予共享。另外，法规的终稿可能会加入征求意见稿中原本没有，但对企业经营有重大影响的一些要求。

中国的汽车法规政策仍然较为复杂，中央和地方政府实施的规定存在重复和/或不一致，部门之间仍然缺少协调和沟通。各个监管机构应当加大合作，明确主要概念、
regulations and standards to ensure compliance while avoiding unnecessary burdens on OEMs.

**Regulatory Transparency, Coordination, and Rule of Law**

AmCham China welcomes recent improvements in transparency by the Chinese government and encourages continued efforts, particularly with policies relating to the highly regulated automotive industry. In some cases, FIEs are not granted equal access to the policy making process, whether in draft discussions or during review, while draft opinions collected from the public are not available for sharing. In other cases, final versions of regulations have included the addition of requirements that significantly impact business operations that were not initially part of the draft version released for public comment.

China’s automotive regulations remain complex, with duplicative and/or inconsistent regulations being applied by central and local authorities. Coordination and communication between the various authorities remains inadequate. Greater cooperation amongst Chinese regulators to define and clarify key concepts, requirements, and roles and responsibilities would improve efficiency and transparency, promote the rapid and healthy development of the Chinese automotive industry, and enhance its competitiveness in the global market.

To further promote the spirit of transparent policy making, AmCham China encourages the Chinese government to establish a formal automotive policy development mechanism to ensure the rule of law. Such mechanism would provide for the public sharing of proposals, seek legitimate comments, and provide adequate time for industry to adjust to new regulations prior to their implementation. A similarly transparent process for project approvals would also greatly benefit the industry.

**Achieving Desired Policy Outcomes via Government Supervision and Market Implementation**

To better align with international practices, the Chinese government has recently formulated a number of policies that set high standards for the regulation of the domestic auto industry. However, when implemented, some of these policies and standards have failed to deliver their intended outcomes due to a lack of market supervision.

A fully open market without a well-established credit system and effective measures against non-compliant actions will place rule-abiding companies at a competitive disadvantage when authorizations are no longer required in the auto sales, import, and aftersales markets. Issues such as intellectual property rights protection, counterfeit products, and liability of infringement need to be addressed.

AmCham China strongly recommends that Chinese officials consider the level of industry development and the overall market environment when adopting international rules or developing unique standards. The implementation of rules and supervision measures to ensure the achievement of desired policy outcomes are of equal or even greater importance than the releasing of a policy or guideline.

**Approval of Administrative Licenses for Vehicle Maintenance and Repair**

Central government agencies are currently revising and formulating a number of regulations to further open and encourage investment in the automotive aftermarket. In light of this and considering the ongoing streamlining of administrative approvals at all levels, we recommend that the long-standing administrative licensing requirements for vehicle maintenance and repair be eliminated. Furthermore, as the after-sales service industry has already been opened to foreign investment through the Ministry of Commerce’s (MOFCOM) 2005 “Branded Auto Distribution Policy,” any regulations in conflict with these positive developments (e.g., the January 11, 2014 revised “Administrative Rules on Foreign Investment in the Road Transportation Industry” released by the Ministry of Transportation) should be harmonized.

**Import of Used Vehicles and Parts for Research and Development**

Global OEM automotive R&D centers in China need to import used vehicles and used components in order to develop globally competitive vehicles and participate in international R&D projects. However, according to the “Machinery Product Import Administration Rules” and the “Catalogue of Used Machinery Products Prohibited from Import” released by MOFCOM in 2001, used complete vehicles, engines, and most automotive components are not allowed to be imported via any form of import measure. These regulations also prevent R&D centers in China from participating in international collaboration projects, thus confining the product and its development experience within China.

Though R&D centers in China may import new vehicles or components for some tests, the high associated costs weaken the products’ competitiveness. In most international collaboration projects, Chinese partners must continue tests on used vehicles. We thus urge MOFCOM, the General Administration of Customs, and the General Administration of Quality Supervision, Inspection and Quarantine to revise the 2001 Catalogue to allow for the importation of used vehicles and parts. Such revision will contribute to the globalization of Chinese-made vehicles and parts and strengthen China’s R&D capabilities.
要求和职责。这将有助于提高中国汽车行业的效率和透明度，推动中国汽车行业实现健康快速发展，提高其在全球市场上的竞争力。

为了进一步提高政策制定的透明度，中国美国商会鼓励中国政府建立一套正式的汽车政策制定机制，以符合法治要求。这样的机制有利于在全社会范围内共享所有者，公开征求意见，使企业和业界在新政策实施前有充分的时间根据新政策进行必要的调整，从而提高政策的透明度。同样，透明的项目审议程序也能够极大地惠及整个行业。

通过政府监管和市场实施实现预期的政策目标

为了更符合国际惯例，中国政府近期制定了一些政策，为国内汽车行业的监管设置了高标准。然而，在具体执行过程中，因为缺少市场监督，有些政策的标准没有实现预期目标。

如果市场完全开放，不再对汽车销售、进口和后市场实施市场管理，在没有完善的信息体系和能够有效防止违规行为的措施的情况下，遵守法规的企业将处于竞争中处于不利地位。知识产权保护、假冒产品、侵权责任等问题都需要解决。

中国美国商会强烈建议中国官员在采纳国际标准或制定特有标准时考虑行业发展水平和市场总体环境。为了实现预期的目标，需要政策的实施和监管措施与政策或指导方针的发布同等重要，甚至更加重要。

汽车维修的行政许可审批

中央政府各部门正在修改和制定一系列规定，以期进一步放开和鼓励汽车售后市场投资。有鉴于此，并考虑到各省政府正在简化行政审批程序，我们建议取消对汽车维修行业长期实行的行政许可要求。根据 2005 年施行的商务部《汽车品牌销售管理实施办法》，售后服务业已经对外国投资开放，与这些积极举措存在冲突的规定（例如交通运输部 2014 年 1 月 11 日开始实施的《外商投资道路运输业管理规定》）应当予以协调和统一。

进口研发用旧汽车和零部件

在中国的汽车研发中心需要进口旧汽车和旧零部件来开发具有全球竞争力的汽车或参与全球研发项目。然而，根据《机电产品进口管理办法》和商务部 2001 年发布的《旧机电产品进口管理办法》，旧的整车、发动机和大部分汽车零部件禁止以任何形式进口。这些规定阻碍了在中国制造的汽车和零部件走向世界并提高中国的研发能力。

建议

对中国政府：

• 采纳国际规则或制定特有标准时，考虑行业发展水平和市场总体环境，并给予足够的前期期，确保企业有充分的时间做出调整，确保合规。

• 确保公平竞争和政策制定的透明度，使外资企业享有与内资企业相同的参与权利和待遇。

• 确保各省级以及不同政府部门在政策制定和实施方面保持一致。

• 修订《旧机电产品禁止进口目录》和《机电产品进口管理办法》，允许进口旧汽车和零部件用于研发，或发文明确表示试验用二手整车和零部件可以暂时进口的方式进入中国，并将六个月的暂时进口期限延长至一到两年。

• 建议中国能够将自己特有的新能源汽车和充电标准与国际标准相协调和统一。

• 取消汽车维修的行政许可要求，统一相关规定，以全面反映中央政府鼓励汽车售后市场投资的倡议。
Recommendations

For the Chinese Government:

• Consider the level of industry development and the overall market environment when adopting international rules or developing unique standards and allow enough lead time for businesses to make adjustments and ensure compliance.

• Ensure a level playing field and a transparent policy making process in which FIEs enjoy the same level of government engagement and treatment as domestic companies.

• Ensure consistent policy making and implementation at various levels and among different government agencies.

• Revise the “Catalogue of Used Machinery Products Prohibited from Import” and the “Machinery Product Import Administration Rules” to allow the import of used vehicles and parts for R&D purposes.

• Ensure that any revisions to China’s charging standards focus on their alignment with international standards for the betterment of the NEV industry.

• Eliminate administrative licensing requirements for vehicle maintenance and repair and harmonize relevant regulations to fully reflect central government initiatives to encourage investment in the automotive aftermarket.
Introduction

The financial industry and capital markets encountered turbulence in 2015 – including currency devaluation – further complicating China’s efforts to adjust to the “new normal” of slowing economic growth. However, the year also saw positive developments, including removal of a cap on bank deposit rates in October 2015. Additionally, in December 2015, the “Notice on Improving Individual Bank Account Services and Strengthening Account Management” was promulgated, introducing new categories of individual RMB bank accounts with different functions and requirements for opening such accounts and requiring banks to impose classified management of individual bank accounts based on the real name system. AmCham China welcomes these developments and firmly believes that market liberalization will contribute to the sustainable development of the Chinese economy. We further welcome moves by banking regulators in 2015 to encourage self-regulation and other market-driven policies such as the steps taken to liberalize interest rates, remove loan-to-deposit ratio (LDR) requirements, and open some new areas to foreign banks.

Sector Developments and Ongoing Regulatory Challenges

Commercial Banking

We remain discouraged by the slow implementation of the 2013 Third Plenum reforms, particularly as foreign banks continue to face operational challenges, leading to mediocre growth and a decline in market share from two percent to around 1.5 percent in 2015. We therefore encourage tangible reforms in the areas of financial innovation, transparency and predictability, regulatory efficiency, and cybersecurity.

Financial Innovation

As one of the world’s largest commodities marketplaces, China’s industry chains pose significant systemic price risks that can be protected against through the development of onshore hedging solutions. Financial intermediaries like major US banks can help to further develop this market by offering risk management products and liquidity and market-making services. Additionally, many US banks have had a long history with commodities futures exchanges, over-the-counter (OTC) securities, and physical markets, and possess deep and extensive knowledge of commodities markets.

The interbank bond market offers another opportunity for innovation. Although government approval is not formally required for US banks to underwrite interbank bonds in the Chinese market, in practice, only members of the National Association of Financial Market Institutional Investors (NAFMII), “a self-regulatory organization” under the People’s Bank of China (PBOC), are permitted to underwrite corporate bonds. Currently, only two foreign banks are included as interbank bond market sub-underwriters and no foreign bank is qualified to act as lead underwriter despite their extensive experience.

We urge regulators to grant foreign banks greater access to help China establish a liquid interbank bond market and provide more cost-efficient options. We urge NAMFII to revise its current underwriter application scoring mechanism to include the business volume of foreign banks’ offshore parent companies when considering business capacity.

Additionally, while we recommend that an inter-government agreement be signed as soon as possible between China and the US on issues regarding withholding tax and the Foreign Account Tax Compliance Act, AmCham China urges Chinese regulators to make necessary reconciliations and not limit bond underwriting opportunities for US companies by excluding the US Generally Accepted Accounting Practices from their acceptable accounting standards. Allowing their use will grant equal treatment to US companies as Chinese accounting systems are already accepted by US financial regulators.

Transparency and Predictability

While Chinese banking regulators made efforts to establish rules-based and self-regulatory schemes in 2015, some of these efforts lacked sufficient clarity. For example, we are concerned about the many “window guidances” that were issued in the form of telephone calls or verbally communicated in ad hoc meetings. Such “window guidance” lacks
银行和资本市场

引言

2015年，中国金融业和资本市场遭遇包括人民币贬值在内的剧烈波动，使得中国经济增速放缓的“新常态”任务更加艰巨复杂，不过依然有不少积极进展值得注意。例如，2015年10月取消商业银行存款利率上限；2015年12月出台的《关于改进个人银行账户服务加强账户管理的通知》，对个人人民币账户做出新的分类，并规定各类账户的功能和开立条件，同时要求银行对不同类别的个人银行账户进行实名制分类管理。中国美国商会对上述进展表示欢迎，并坚信市场自由化将有助于实现中国经济可持续发展。我们还对中国在2015年推出诸多鼓励自律监管和其他市场化政策表示欢迎，如采取措施推动利率自由化、取消存贷款比要求以及扩大外资银行进驻地域等。

行业进展及现存监管挑战

商业银行

我们依然对2013年十八届三中全会做出的诸多重大决策的缓慢实施表示失望。特别是外资银行依然面临诸多运营挑战，业务增长速度平平，市场份额不断萎缩，从2%下降至2015年的1.5%左右。因此我们认为中国需要在金融创新、透明度和可预测性、监管效率和网络安全等领域切实地实施改革。

金融创新

中国作为全球最大的商品市场，其产业链可能引发的重大系统性价格风险，可以通过制度在岸对冲解决方案进行防范。包括美国各大银行在内的金融中介机构都能够提供风险管理产品、流动性及做市服务，帮助进一步推动该市场的发展。另外，许多美国银行具有多年从事商品期货交易、场外交易和现贷市场的经验，拥有深入广泛的全球市场交易经验。

银行间债券市场则为金融创新提供了另一大机遇。尽管美国银行要想作为承销商参与中国银行间债券市场时不需要正式的政府审批，但实际上只有中国银行间市场交易商协会（NAFMII）认可的未来中国债券市场的“自律监管组织”的会员才可以承销公司债券。迄今为止，只有两家外资银行可以在银行间债券市场分销债券，并且尽管外资银行具有丰富的经验，但目前尚无一家可以以主承销商身份参与银行间债券市场。

我们促请相关监管部门允许更多的外资银行进入来帮助中国建立一个流动性充沛的银行间债券市场，提供更多更具成本效益的交易选择。我们还促请NAFMII修改现行承销商申请计分办法，将外资银行离岸母公司的营业额纳入外资银行经营实力评估因素。

另外，我们建议中美两国政府尽快就预扣税及海外账户纳税法案达成共识，并希望中国监管机构作出必要让步，如同美国财政制度接受中国会计制度一般，不再将美国通用会计准则剔除出中国会计制度，进而取消对美国企业分销债券的机会的限制，使美国在华企业能够享受平等的待遇。

透明度和可预测性

2015年，尽管中国银行监管部门大力推进建立基于规则的自律监管机制，但部分工作还不够清晰。例如，监管部门的许多“窗口指导”都是通过打电话或临时开会通知的形式进行的，我们对此表示非常关切。上述“窗口指导”缺乏透明度，也没有一个明确、正式的程序规定，例如：以“窗口指导”控制人民币利率及暂停部分外资银行跨境业务，均对银行业务造成严重影响。在华合法投资经营的机构都应当有权开展外汇交易，而不应当遭受地域要求或其它“不成文”规定的限制。

监管效率

2015年，中央政府在部分地区加大取消行政许可和审批权下放的力度，对此我们深感鼓舞。例如，中国银行业
transparency and a clear, formal process. For example, the “window guidance” on RMB interest rate controls and the suspension of some foreign banks’ cross-border business have significantly hindered banking operations. All legal investment operations should be entitled to engage in foreign exchange (FX) transactions without having geographical requirements or other unwritten restrictions imposed upon them.

**Regulatory Efficiency**

We are encouraged by the central government’s efforts in 2015 to streamline the regulatory approval process and delegate approval authority to lower levels. For example, the China Banking Regulatory Commission (CBRC) released a revised draft of the “Measures for Administrative Licensing of Foreign-funded Banks” for public comment on April 10, 2015. However, since the final version of the Measures entered into effect on June 5, 2015, we have noted inconsistent interpretation and implementation among regulators, resulting in an unclear and time-consuming approval process.

We recommend that local governments undergo necessary training before implementing new rules. We also recommend that appropriate timelines be established and that local governments maintain effective working channels with the central authorities. Overly burdensome reporting requirements remain one of the top challenges for a foreign bank’s compliance team.

**Cybersecurity**

In the second half of 2015, the CBRC revived internal deliberations on the draft “Guidelines on Banks Using Secure and Controllable Information Technology” governing “secure and controllable” information and communication technology used by banks operating in China. Further action on the rule was suspended in April 2015 shortly after its internal circulation in late December 2014. These guidelines were at no point made publicly available.

Foreign governments, companies, and trade associations have repeatedly raised operational, security, and legal concerns about these measures in bilateral and multilateral forums with the Chinese government. The CBRC has been open to industry input and met directly with industry association representatives in December 2015, indicating plans to adopt some of the industry-proposed principles (e.g., developing a risk-based, rather than a product-based, regulatory regime). A risk-based regime would provide banks with greater flexibility to assess how to best respond to emerging risks and ever-changing threats. The CBRC has not provided a timetable for when a new draft regulation will be published for comment, but we request that any future drafts allow a 30-day comment period to which China committed in the 2015 US-China Strategic and Economic Dialogue (S&ED).

**Macro-prudential Management**

The National People’s Congress (NPC) Standing Committee announced the release of an amendment to the Commercial Banking Law, removing the LDR requirement for commercial banks beginning October 1, 2015 to boost bank lending amid slowing economic growth. Prior to this amendment, banks were restricted to lending no more than 75 percent of their deposits.

This removal will likely ease competition for deposits, especially among small and medium-sized banks, many of which feature LDRs of around 75 percent. It will also indirectly benefit the government-approved China Security Finance Corporation, which is funded by the banking industry. Partly as a result of the LDR removal, it is estimated that about RMB 1.5 trillion (US $239 billion) was pumped into the stock market as combined “rescue efforts” to cope with the market crash of June 2015. It appears that liquidity was mainly provided by the commercial banks.

LDR removal will also ease pressure on local government debts, which pose significant risks to financial stability, and potentially provide local governments with greater leeway to support infrastructure spending. While the amendment downgraded LDR to merely an “indicator” of commercial bank liquidity, the CBRC’s liquidity rules on implementing Basel III, which entail stricter requirements for the holding of high-quality liquid assets, remain unchanged. China adopted the liquidity coverage ratio (LCR) for the management of short-term liquidity in February 2014, and is considering adopting the net stable funding ratio, an indicator to complement LCR, to ensure stable funding. But with liquidity risk management and LCR calculations still in the early stages (coupled with the reduced emphasis on LDR), we believe that liquidity management in the banking system is particularly important for both large financial institutions and smaller banks.

**Rate Liberalization and RMB Internationalization**

We were encouraged by the PBOC’s removal of the cap on deposit interest rates in October 2015, lowering both the one-year lending rate and one-year deposit rate by 25 basis points to 4.35 and 1.5 percent, respectively. However, verbal guidance from regulators set an “invisible ceiling,” preventing commercial banks, including foreign banks, from practicing market-based pricing. We urge the actual removal of the cap in practice so that more long-term products can enjoy similar market-based pricing. We urge the actual removal of the cap in practice so that more long-term products can enjoy similar flexibility. While we support regulators’ efforts to curb speculation, we ask that legitimate foreign investments be exempt.

The Deposit Insurance Regulation, signed on March 31, 2015 by Premier Li Keqiang with effect from May 1, 2015, aims to discipline banks and protect depositors, covering both the RMB and foreign currency deposits of individuals and institutions. We welcome this important step as a prelude to interest-rate liberalization in China.
监督管理委员会（银监会）于 2015 年 4 月 10 日发布《外资银行行政许可事项审批实施办法》修订稿草案并公开征求意见，并于 2015 年 6 月 5 日正式颁布实施。不过自该办法实施以来，我们注意到不同监管部门对该办法的解释和适用并不一致，导致审批程序依然耗时且不明确。

我们建议地方政府在实施新规之前先接受必要的培训。同时，确定合理的实施时间表并与中央级监管部门保持有效顺畅沟通渠道十分必要。过度的监管报文要求依然是外资银行合规部门面临的最大挑战之一。

网络安全

2015 年下半年，银监会重新开始内部审议《关于应用安全可控信息技术加强银行业网络安全和信息化建设的指导意见》草案，对在中国境内银行业应用“安全可控”信息和通信技术进行管理。上述指导意见曾于 2014 年 12 月内部下发后于 2015 年 4 月被暂停实施，对外公布尚无时间表。

外国政府、企业和行业协会在与中国政府的各个双边和多边论坛上已经反复表达了对该管理办法可能造成经营、安全和法律等问题的担心。银监会一直注重广泛听取吸收业内意见，并在 2015 年 12 月召集行业协会面对面商议，表示拟出台的新办法将吸纳业内人士倡导的部分原则（如建立一个基于风险而非基于产品的监管制度）。基于风险的管理制度的可取之处在于，它为银行提供了更大的灵活性，使其能够最有效地应对层出不穷的风险和瞬息万变的威胁。中国政府尚未就何时出台新规草案和征求意见给出明确时间表，但我们要求银监会今后出台任何意见草案时，都应遵照中国在 2015 年美中战略与经济对话中所承诺的 30 天内公布无时间表。

宏观审慎管理

全国人大常委会通过了修改后的《中华人民共和国商业银行法》，取消了对商业银行存贷比的要求，并于 2015 年 10 月 1 日起生效实施。此举旨在激励银行在经济增速放缓的同时，增加信贷投放量。在该法修改前，商业银行贷款不得超过其存款的 75%。

取消存贷比将有助于缓解银行之间，特别是中小银行之间日益激烈的争夺存款的竞争，而这些中小银行的存款比很多都已接近 75%。此举还间接利好由银行业出资、政府背景的中国证券金融股份有限公司（证金公司）。存贷比要求取消后，估计证金公司在 2015 年 6 月“股灾救市”时，共向证券市场注入了 1.5 万亿元人民币（2390 亿美元）的资金，增强了市场的流动性。显而易见，该流动性主要由商业银行提供。

取消存贷比还将缓解金融稳定造成严重风险的地方政府债务压力，从而给地方政府支持地方基础设施建设留出更多空间。尽管修改后的《商业银行法》将存贷比由法定监管指标降级为流动性风险监管指标，但银监会执行巴塞尔协议 II 所规定的流动性规定对持有高质量流动资产的要求更为严格的要求并未改变。2014 年 2 月，中国引入流动性覆盖率（LCR）目标后流动性。中国也正在考虑引入静稳定融资比例（NSFR）目标作为 LCR 的补充，稳定融资。但流动性风险管理与 LCR 计算依然处于起步阶段（再加上存贷比降为流动性风险监管指标），中国美国商会相信银行系统的流动性管理对大型金融机构和中小银行均具有特殊而重要的意义。

利率自由化和人民币国际化

2015 年 10 月中国人民银行取消存款利率上限，一年期贷款利率和一年期存款利率分别降低 25 个基点，降息后的年期存款利率和一年期存款利率分别为 4.35% 和 1.5%，对此我们深受鼓舞。然而，监管部门的口头指导意在无形“上限”依然存在，同时商业银行业（包括外资银行）无法开展利率市场定价。我们促请真正取消存款利率上限，允许长期产品也能适用类似灵活政策。同时，我们要求对银行适当放行为外资银行提供贷款。

2015 年 3 月 31 日，李克强总理签发了《存款保险条例》。该条例于 2015 年 5 月 1 日生效实施，旨在规范银行及保护存款人，适用范围包括个人和机构的人民币及外币存款。我们对该条例的出台表示欢迎，并认为它为中国实现利率自由化奠定了重要基础。

2015年 9 月，奥巴马总统和习主席共同承诺进一步推进人民币在美交易和清算业务，以适应国际贸易中日益增长的人民币使用需求。中国大力推动跨境人民币投资，提高人民币价值和加快资本账户可兑换进程。例如，10 月 8 日，中国人民银行在沪推出中国综合支付系统（CIPS），为境内和境外客户提供跨境人民币清算服务；另外一项具有里程碑意义的事件是国际货币基金组织决定自 2016 年 10 月 1 日起，将人民币纳入其特别提款权（SDR）货币篮子。

绿色金融和互联网金融

绿色金融改革是“十三五”规划草案中的一个亮点，也是 2016 年中国主办的 G20 团体峰会及 G20 互联网金融峰
In September 2015, Presidents Obama and Xi committed to further facilitate RMB trading and clearing in the US in recognition of its increased use in global transactions. China has made great efforts to boost cross-border RMB investments, increase the value of the RMB, and accelerate capital account convertibility. For example, the PBOC launched the China International Payment System (CIPS, later referred to by PBOC officials as the Cross Border International Payment System) on October 8, 2015 in Shanghai for cross-border RMB clearing for both onshore and offshore participants. Another significant sign of progress was the International Monetary Fund decision to include the RMB in its Special Drawing Rights basket, which will take effect on October 1, 2016.

Green Finance and Internet Finance

Green finance reform was highlighted in the October 2015 “Proposal on Formulating the 13th Five-Year Plan” and has been designated a top agenda item for the 2016 China-hosted G20 and B20. In April 2015, the PBOC laid out a roadmap to implement expansion of a green bond market and establishment of a National Green Development Fund, green banking system, and the China Green Finance Committee (GFC), in which our members are pleased to be able to participate and share international best practices.

The development of information and communication technologies has pushed the finance industry to rapidly innovate and adapt, increasing efficiency but also generating risk. The PBOC together with nine other central agencies promulgated the “Guidelines on Promoting the Healthy Development of Internet Finance” in July 2015 to set regulatory boundaries on Internet payment services, online peer-to-peer (P2P) lending, Internet trusts and Internet sales of financial products, and Internet insurance. Given the inherent risks of Internet finance (especially P2P lending), we recommend that the Chinese government adopt international best practices in addressing Internet banking fraud.

Securities

Despite the liberalization of some financial services, the pace of liberalization of the securities sector falls behind the expectations of foreign investors. In the 2015 “Guiding Catalogue on Foreign Investment in Industry,” foreign investment in securities firms and investment fund management companies remained capped at 49 percent and in JV commercial banks at 25 percent (on a combined basis). Foreign investment in futures companies remained restricted to minority shareholders. Even as the long-anticipated “Further Advancing Open Innovation in the Shanghai PFTZ to Accelerate the Building of Shanghai into an International Finance Center” – containing 40 measures for financial reforms – was jointly released by financial regulators and the Shanghai municipal government in October 2015, foreign investment in securities JVs remains capped at 49 percent, although the requirement that a securities firm retain a Chinese partner is no longer required.

One encouraging breakthrough was the November 2015 announcement marking the first time that a foreign bank was allowed to be the majority partner in a securities JV under the Closer Economic Partnership Arrangement (CEPA) between Hong Kong and mainland China. Although this represents a significant step towards market access liberalization for securities JVs, key requirements under the CEPA precludes foreign investors of other jurisdictions (i.e., not Hong Kong-funded). Many challenges that remain in China’s securities market – including over-speculation in the A-share market, inefficient capital allocation, a lack of new product development and innovation, and the inability of mergers and acquisitions to move beyond the initial stages – are related to insufficient competition and participation from international peers. These issues also comprise some of the underlying factors to the stock market turmoil seen in mid-2015, as discussed in greater detail in the Shanghai chapter.

Securities Dealer

Allowing the world’s leading foreign investment banks to establish wholly foreign-owned subsidiaries will benefit the Chinese economy. In the meantime, foreign brokers should be given access to different capital markets (e.g., third board, OTC market, derivatives), depending on demand and the degree of progress in opening capital markets and accounts, as a means of introducing overseas competition into the securities sector.

Securities Dealer

Such liberalization will provide foreign investment banks with incentives to transfer knowledge, technology, human capital, risk management, financial innovation, and product lines (e.g., bond futures, mezzanine financing, asset-backed securities, derivatives) to China, or to relocate their subsidiaries from other parts of Asia, bringing with them jobs and tax revenues. As a result, Shanghai and other large Chinese cities will see continued development as international financial hubs.

Securities Dealer

Importantly, even if such subsidiaries are permitted, foreign brokers will still face challenges to gaining market share. Limited branch networks will make it difficult for foreign firms to compete with domestic brokers in retail services (which account for approximately 85 percent of market turnover) and in servicing local corporates, thus they will need to focus on high-end institutional clients. A comparable example is that more than 30 years after the opening of China’s commercial banking sector, foreign banks – which have been permitted to establish 100 percent wholly-owned subsidiaries since 2007 – hold only a 1.5 percent deposit market share, as previously discussed. The securities dealer sector is opening at an even slower pace than the banking sector. We believe that the potential risk from foreign capital flows on China’s capital markets is limited and manageable due to China’s significant FX reserve of around US $3 trillion (approximately RMB 19 trillion), and the State
会将重点讨论的事项。2015年4月，中国人民银行制定出台一份路线图，扩大绿色债券市场，并成立全国绿色发展基金，建立绿色银行体系，成立中国金融学会绿色金融专业委员会（GFC）。中国美国商会会员企业非常愿意加入GFC，分享最佳国际实践经验。

信息和通信技术的发展推动了金融行业的快速创新和发展，提高了效率的同时也带来了风险。2015年7月，中国人民银行联合九部委出台了《关于促进互联网金融健康发展的指导意见》，划定了互联网支付、P2P借贷、互联网信托、互联网消费信贷、股权众筹、互联网基金销售和互联网保险等的监管边界。鉴于互联网金融（特别是P2P贷款）的内在风险性，我们建议中国政府借鉴国际最佳实践经验，解决互联网银行欺诈问题。

行业具体行业问题
| 银行和资本市场 |

尽管部分金融服务实现自由化，但证券行业自由化速度却低于外国投资者的预期。2015年版《外商投资产业指导目录》中，外商投资证券公司和投资基金管理公司的比例依然不得超过49%，中外合资商业银行外资比例总计不得超过25%，期货公司外资不得控股。2015年10月，金融监管部队及上海市政府共同推出市场期待已久的《进一步推进中国（上海）自由贸易试验区金融开放创新试点加快上海国际金融中心建设方案》，其中包括40条金融改革执行措施。该方案规定外商投资中外合资证券公司的股权比例上限依然是49%，但取消了中方合资者必须是证券公司的规定。

另一项令人鼓舞的突破是2015年11月，中国首次允许一家外资银行控股一家根据《内地和香港关于建立更紧密经贸关系安排》（CEPA）设立的合资证券公司。尽管这是中国开放证券合资企业市场准入的一项重要举措，但CEPA安排仅适用于港资金融机构，不适用于其他地区的外国投资者（即非港资企业）。中国的证券市场目前仍然存在诸多挑战，包括A股市场过度投机、资金分配效率低、缺少新产品开发和创新以及并购交易难以推进到下一阶段等，这些都与缺少国际市场主体的参与和竞争有关。2015年中发生的股灾也与上述因素不无关系，“上海”章节还将就该问题另作详细讨论。

在中国允许全球领先的外国投资银行在华设立全资子公司，中国经济将从中受益。与此同时，应当允许外国经纪券商进入不同的资本市场（如新三板、场外交易市场、衍生品交易市场等），对外开放和资本账户开放的需求和进展情况而定，由此在证券业内引入海外竞争。

中国与美国及欧盟正在进行的双边投资协定（BIT）谈判，为中国提供了一个良好的契机，以检验其金融行业是否已经做好了进一步开放的准备。然而，我们建议中国不要等到BIT谈判结束后才开始进一步开放证券业。中国现行的证券业政策框架主要是基于2001年中国加入世界贸易组织备忘录中的相关内容。尽管中国在总体上兑现了其WTO承诺，但中国证券业的开放程度远远不能满足资本市场发展的需要。我们相信开放证券业将为中国资本市场的发展引入健康竞争机制，并确保中国高效地融入国际市场。

债券

2015年，中国的债券市场进行了诸多重大改革举措，包括稳步改善监管环境和法律框架，积极减少证券交易行政管控措施并鼓励拓展市场深度和宽度。然而，尽管中国的债券市场是仅次于美国和日本的全球第三大市场，但就中国经济的规模及与全球债券市场的关联来看，中国债券市场的范围依然十分有限。

以下债券市场的进展值得留意：

- 2015年1月，中国证监会出台了《公司债券发行与交易管理办法》，第一次允许非上市公司在交易市场发
Administration of Foreign Exchange’s (SAFE) prudent regulation of all inward and outward FX remittances.

The ongoing investment treaty negotiations between China and both the US and EU provide China with an opportunity to evaluate the readiness of its financial industry for further opening. However, we recommend that China not wait for the conclusion of the US-China Bilateral Investment Treaty (BIT) negotiations before further liberalizing its securities sector. The framework of China’s current securities sector policy is primarily based on the 2001 Protocol on the Accession of China to the World Trade Organization (WTO). Although China has generally fulfilled its WTO commitments, the opening of its securities sector is far from sufficient to meet the needs of capital market development. We believe liberalization will introduce healthy competition to China’s capital markets and ensure China’s efficient integration into the international market.

**Bonds**

In 2015, significant reforms were made in China’s bond markets, including a steady improvement of the regulatory environment and legal framework, active reduction of administrative control measures in bond trading, and encouraged expansion of market depth and width. However, although China’s bond market is the third largest in the world behind the US and Japan, it is still limited in scope, particularly when compared to the size of China’s economy as a whole and in relation to the global bond market.

The following developments are particularly noteworthy:

- In January 2015, the China Securities Regulatory Commission announced the “Management Rules on Corporate Bond Issuance and Transactions,” allowing firms not listed on a stock exchange to issue bonds in exchange markets for the first time. This will encourage market diversification and provide investors with greater investment choices.
- In May 2015, the PBOC issued an announcement cancelling examination and approval rules for the circulation of new bonds in the interbank bond market, reducing administrative intervention.
- In July 2015, the PBOC released the “Notice on Access to Interbank Bond Markets with RMB Funds by Foreign Central Banks, Sovereign Wealth Funds and International Financial Organizations,” setting the procedure for these three types of institutions to directly register with the PBOC before investing in the interbank bond market. This will further open the interbank bond market to foreign investors and help increase the size and range of the investor base.
- In September 2015, the Panda Bond market was widened, another crucial step towards the convergence of China’s onshore and offshore bond markets. We applauded steps taken to expand the participation of foreign investors in the Panda Bond market, signaling progress and reaffirming China’s commitment to liberalizing its financial markets and accelerating its comprehensive capital market reforms.
- In December 2015, the National Development and Reform Commission issued the “Opinions on Simplifying Enterprise Bond Declaration Procedures, Reinforcing Risk Prevention, and Reforming the Supervision Mode,” clarifying the requirements for enterprises to issue bonds and reinforcing the information disclosure responsibilities of intermediary institutions. This should help accelerate enterprise applications to issue bonds.
- In February 2016, the PBOC published an announcement “Regarding the Opening up of China’s Interbank Bond Market to Overseas Institutional Investors,” allowing most types of overseas financial institutions to invest in the interbank bond market. Qualified investors including Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII) are able to carry out RMB/FX transactions related to investments. The new rules removed prior approval and quota requirements for all participants. This landmark move will attract more mid-term or long-term inflows. We welcome this move as the inflow of capital from investments in the interbank bond market will, to some extent, offset capital outflows.

Ultimately, the facilitation of greater investor participation is key to developing a healthy and sustainable bond market, which is still the most efficient and effective risk-pricing channel for bringing together debtors and creditors to allocate capital to investment opportunities. At present, foreign investors hold limited amounts of domestic bonds in China, far below the shares seen in other Asian markets. Furthermore, steady capital account opening could substantially increase foreign participation in the Chinese bond market and allow foreign institutions to contribute their pricing expertise.

Additionally, China’s regulatory agencies must increase their coordination and transparency to reduce uncertainty and foster confidence in the market. The Chinese bond market remains fragmented, hurting its development and resulting in regulatory arbitrage, inefficiency, and higher financing costs. A transparent debt management framework may spur a significant rise in the issuance of bonds.

Furthermore, a default-resolution process that protects bond investors’ rights is vital to the efficient functioning of market mechanisms and reducing moral hazard. Creating an investor-led environment requires steady improvement by increasing the transparency of the default resolution process. A lack of transparency results in sub-optimal outcomes and increased risks.
行业问题
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具体行业问题
| 银行和资本市场 |

行债券。此举有助于实现市场多样化并为投资者提供更多投资选择。

- **2015年5月**，中国人民银行发布公告，取消银行间债券市场证券交易的行政干预。
- **2015年7月**，中国人民银行公布《关于简化企业债券审批流程加强风险防范和改革监管方式的意见》。该意见明确了企业发行债券要求，强化了中介机构信息的披露责任，有助于加速企业上市。
- **2015年9月**，中国人民银行发布《关于进一步放开境内机构投资者投资银行间债券市场的公告》，允许大多数类型的境内机构投资者投资中国银行间债券市场。合格投资者包括合格境外机构投资者（QFII）和人民币合格境外机构投资者（RQFII），可以开展与投资相关的人民币/外汇交易。上述新规定取消了之前对所有参与者的审批要求和额度限制。该规定具有标志性意义，将吸引更多中长期资金进入中国市场。我们对此表示赞赏。

- **2015年11月**，国家发改委发布《关于简化企业债券申报程序加强风险防范和改革监管方式的意见》。该意见明确了企业发行债券要求，强化了中介机构信息的披露责任，有助于加速企业发债申请。
- **2016年2月**，中国人民银行发布《关于进一步放开境内机构投资者投资银行间债券市场的公告》，允许大多数类型的境内机构投资者投资中国银行间债券市场。合格投资者包括合格境外机构投资者（QFII）和人民币合格境外机构投资者（RQFII），可以开展与投资相关的人民币/外汇交易。上述新规定取消了之前对所有参与者的审批要求和额度限制。该规定具有标志性意义，将吸引更多中长期资金进入中国市场。我们对此表示赞赏。

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最后，为投资者更多参与创造便利对建立一个健康、可持续的债券市场至关重要。债券市场是目前公认的最有效的风险定价渠道，有助于汇聚借贷双方有效地分配资本。目前外国投资者可以持有的中国境内债券数量有限，远远低于他们在亚洲其他市场上的债券持有额。另外，稳步开放资本市场将大幅提升外资在中国境内债券市场的参与度，使外国机构能够贡献出其在定价方面的专业知识。

另外，中国各个监管部门必须加强彼此之间的协调和透明度来减少不确定性，培育市场信心。中国的债券市场目前仍然不完整，阻碍着中国债券市场的发展，导致监管套利、效率低下和提高成本等问题。建立一个透明的债券监管框架可以大幅度刺激债券的发行。

并且，建立一个保护投资者的债券违约解决程序对保障债券机制有效运行、降低信用风险至关重要。创造一个由投资者主导的环境需要通过不断提高违约解决程序的透明度、稳步改善环境，减少透明度则会导致次优结果并增加风险。

最后，要想营造并强化债券市场信用文化，保障债券市场资源得到有效分配，投资者同样需要获得尊重，成为平等的市场主体。金融市场还需进一步推进中介服务，包括发展透明、客观和独立的信用评级行业（详见下文），改革应当旨在保护投资者权利，确保信用评级机构业务的健康竞争，允许国际信用评级机构开展国内公司和债券评级业务。此举将提升市场透明度，改善市场的公信力、质量和效率。

**信用评级**

国际信用评级机构（CRAs）会成为沟通中国境内外资本双向流动的桥梁，同时协助中国政府实现建立更加规范的境内债券市场。具体方法包括：

- 增加为全球投资者提供的有关中国发债人和债券的信息流；
- 扩大相关程序、技术和方法对标准的范围；
- 加速知识传递和人力资本流动。

随着外商在华投资活动不断增加，外商对开展中国发债人及其债券发行评级业务的兴趣越来越浓厚。然而，到目前为止，几乎没有信号显示中国近期将放松对外资参与信用评级行业的限制。目前上述限制主要表现为两种形式：

1. **外商投资中国信用评级机构**（CRA）的所有权比例不得高于49%；
2. **相关规则和实践中做法**，不管是书面还是口头的，时常将有外商投资的国内 CRA 置于不利境地，关于第二个方面的限制，在 2015 年中国战略与经济对话的联合声明中，中国政府允许外商投资信用评级机构开展地方债券评级业务，对此我们表示欢迎。最后，中国监管部门制定或建议的某些行为守则也与国际标准显著不同，例如，要求信用评级机构验证第三方资料的真实性和准确性，并对信用评级机构如何准备和开展实地考察和访谈做出了详细规定。
Finally, to build a stronger credit culture and enable effective resource allocation in the bond market, investors need to be an equally respected and empowered partner. Further reform of the financial markets should facilitate intermediary services, including a credit ratings industry that exemplifies transparency, objectivity, and independence, as further discussed below. Reforms should aim to protect investors’ rights and encourage healthy competition in the credit ratings industry, including full international credit rating agency (CRA) coverage of domestic bond markets. This will promote greater transparency and improve the quality, credibility, and efficiency of the market.

Credit Ratings

International CRAs can serve as a bridge for capital flows in and out of China and support the Chinese government’s goal of developing a more disciplined domestic bond market by:

- increasing flows of information to global investors regarding Chinese issuers,
- broadening the range of processes, technology, and methodological approaches, and
- increasing transfers of knowledge and movement of human capital.

Commensurate with increased foreign investment in China, interest in Chinese issuer ratings and debt issuance activities has grown. However, to date there is little sign that the restrictions on foreign participation in the credit rating industry will be eased in the near future. Such restrictions appear in two major forms: 1) an ownership cap of 49 percent on foreign investment in Chinese CRAs; and 2) rules and practices, written or otherwise, which sometimes put domestic CRAs with foreign shareholders at a disadvantage. With respect to the second form of restriction, we welcome the joint statement following the 2015 S&ED in which China committed to allow foreign-invested CRAs to rate local government bonds. Finally, some of the conduct rules adopted or proposed by Chinese regulators appear to deviate significantly from international standards by, for example, requiring CRAs to verify the authenticity and accuracy of third-party materials and prescribing detailed requirements on how CRAs must prepare and conduct onsite visits and interviews.

AmCham China recommends that the relevant government agencies remove/ease ownership restrictions for foreign CRAs. AmCham China further recommends that the regulators adopt conduct rules consistent with international standards to further encourage foreign participation.

Private Equity and Venture Capital

In the 2015 White Paper, we proposed the expansion of “preferential tax policies” on limited partnership venture investment enterprises from the Suzhou Industrial Park and Zhongguancun Zone to other areas.” We were thus pleased by the October 2015 release of Cai Shui [2015] No. 116 by the Ministry of Finance and State Administration of Taxation which officially extended these preferential tax policies nationwide.

Chinese government efforts in 2015 to promote innovation and entrepreneurship and to boost economic transformation highlighted the unique role that venture capital and private equity (VC/PE) funds can play to enhance these efforts. Thus, the VC/PE industry has received unprecedented attention from both the central and local governments. Due to the preliminary success of national efforts to establish a multi-level capital market, especially the rapid development of the National Equities Exchange and Quotations for Small and Medium-Sized Enterprises (SMES), the VC/PE industry is no longer plagued by problems of enterprises exiting the market. However, difficulties in raising VC/PE funds have not been effectively addressed.

The following policies and measures had a profound impact on the VC/PE industry in 2015:

- The number of enterprises listed in the National SME Share Transfer System increased by more than 3,400, with the total number exceeding 5,000. The number of enterprises within the National Equities Exchange and Quotations (NEEQ) far exceeded the number listed on the Shanghai and Shenzhen Stock Exchanges. Approximately 95 percent of the NEEQ-listed enterprises are private micro, small, and medium-sized enterprises, with one-third supported by VC/PE fund investments. This system has provided the VC/PE industry with an unobstructed exit channel and abundant investment opportunities.
- In June 2015, SAFE expanded reforms regarding the voluntary settlement of FX by foreign-invested enterprises nationwide, effectively enhancing the efficiency and predictability of the examination and approval of foreign-invested VC/PE funds.
- In its December 2015 executive meeting, the State Council reviewed and adopted the “Implementation Opinions on Further Increasing the Proportion of Direct Financing and Optimizing Financial Structures,” which outlines specific measures, proposes the establishment of a Strategic Emerging Industries Board in the Shanghai Stock Exchange, and supports the financing of innovative and startup enterprises. This effort will greatly optimize the exit environment of the VC/PE industry.
中国美国商会建议相关政府部门取消或放宽对外商信用评级机构所有权的限制，采用符合国际标准的行为守则，从而进一步鼓励外资参与。

私募股权和风险投资

在2015年度《美国企业在中国白皮书》中，我们建议将“苏州工业园区和中关村对有限合伙制风险投资企业的税收优惠政策推广至其他地区。”这项建议得到了财政部和国税总局的高度重视，并通过财税【2015】116号文件，将我们的建议正式转化为法规，在全国范围内实施，对此表示赞赏。

过去一年，中国政府大力支持创新创业，积极推动经济转型。这使得风险投资/私募股权基金（VC/PE Funds）在提升社会直接融资、促进创新创业、推动实体经济转型的独到作用凸显。风险投资/私募股权（VC/PE）行业的发展获得中央和地方政府前所未有的重视。随着国家多层次资本市场建设初见成效，特别是全国中小企业股份转让系统的快速发展，困扰VC/PE行业多年的退出环境得到有效缓解。但VC/PE基金的募资难问题，并没有得到有效改善。

2015年，对VC/PE行业产生深刻影响的政策与措施包括：

- 全国中小企业股份转让系统挂牌企业超过5000家，年内增加挂牌企业超过3400家，全市场企业数量远超沪深交易所上市企业数量，95%挂牌企业为股份制中小微企业，其中1/3企业背后有VC/PE基金投资。全国中小企业股份转让系统为VC/PE行业提供了畅通的退出通道和丰富的投资机会。
- 2015年6月，国家外汇管理局将外商投资企业外汇资本金意愿结汇改革扩至全国范围。这项改革有效提升了外资VC/PE基金的投资审批效率和可预见性。
- 2015年12月23日，国务院常务会议审议通过《关于进一步显著提高直接融资比重优化金融结构的实施意见》，确定进一步显著提高直接融资比重措施，提出建立上交所战略新兴产业板，支持创新创业企业融资。注册制和战略新兴产业将进一步极大地优化了VC/PE行业的退出环境。

此外，我们期待在以下方面能够取得一定突破，也愿意与政府主管机构进行深入的交流与研究。

探索地方养老金和企业年金配置VC/PE基金

2015年8月，国务院出台《基本养老保险基金投资管理办法》（简称《管理办法》），为加快基本养老保险基金的市场化投资运营基本铺平了道路。《管理办法》对养老金投资范围进行了明确规定：投资股票、股票基金、混合基金、股票型养老金产品的比例，合计不得高于养老金资产净值的30%。但没有提出可以配置VC/PE基金。

从国外经验来看，美国最大的养老金之一，加州公共雇员退休系统（CalPERS）所有资产类别中，VC/PE投资净回报最高。20年期的净回报达12.3%。养老金配置VC/PE资产不但可行，而且能够多赢。能够促进实体经济、创新创业和养老金增值。

中国养老金投资政策的制订，要改变单纯的风险厌恶思维。要用资产管理的理念看待养老金的投资领域。不同风险属性资产的配置，可能比低风险属性产品的风险更小，收益更高。

完善全国社会保险基金配置VC/PE的政策环境

我们建议尽快出台相关政策，允许全国社会保险基金将其管理的一定比例的资金用于投资海外VC/PE。从国外养老金机构的经验来看，VC/PE投资收益在整个资产类别中最高，但也是成本最高的资产。专业化的内部团队建设和投入是成功的基础，建立与市场化接轨的薪酬体系与决策体系是全国社会保险基金配置VC/PE取得长期投资回报的关键。

认真研究商业银行从事VC/PE业务的可行性

美国禁止银行在私募基金中的持股超过3%，并禁止银行在对冲基金和PE基金的合计投资超过银行核心一级资本（Tier I）的3%。假如中国采用3%的核心一级资本，截至2015年3季度末，中国商业银行可以从事VC/PE业务的规模达3134亿人民币（约500亿美元），可以撬动1.5万亿~3万亿元人民币（约2,390~4,780亿美元）的社会资本。这对于中国实体经济、企业转型、自主创新、创业、私募基金行业发展都会发挥非常重要的作用。

在允许中国商业银行从事VC/PE业务之前，一定要建立一个有效的监管制度以保证其连续性和稳定性。要吸取美国的经验，不要像2008年美国金融危机之前放得太松，而现在又管得太紧，造成一系列不必要的分拆和监管成本。在制度设计中，有资格从事VC/PE业务的银行，
Additionally, we hope for breakthroughs in the following areas and are willing to share our expertise and collaborate with the relevant government agencies in these efforts:

**Explore avenues for investing local pension funds and enterprise annuities in VC/PE funds.**

The State Council’s release of the “Management Measures for Investment in Basic Endowment Insurance Funds” in August 2015 paved the way for expediting the market-based investment operations of basic endowment insurance. The Measures clearly provide that the proportion of total investment in stock, equity funds, hybrid funds, and equity-oriented pension products may not exceed 30 percent of net asset value in the pension funds. However, there was no mention of incorporating VC/PE funds within this scope.

According to the California Public Employee’s Retirement System, one of the largest pension funds in the US, the allocation of VC/PE funds provides the highest net return on investment in all asset categories, with a net annual average rate of return of 12.3 percent over 20 years. The investment of pensions in VC/PE assets is not only feasible, but also ensures mutually favorable outcomes; promotes development of the real economy, innovation, and entrepreneurship; and adds value to pension funds.

When developing a pension investment policy, China needs to avoid purely risk-averse thinking and consider pension fund investments through the lens of asset management. Utilization of products with dispersed risk levels may result in lower risks and higher yields than when only low-risk products are used.

**Improve the policy environment for investing National Social Security Funds in VC/PE.**

We recommend that relevant policies be developed as soon as possible to allow for a portion of National Social Security Funds (NSSF) to be invested in overseas VC/PE funds. Although VC/PE boasts the highest return on investment (ROI) in the full spectrum of assets, it also requires the highest initial expense. Thus, development of an internal NSSF team is key. Establishment of a market-oriented salary and decision-making system will help ensure long-term ROI.

**Study the feasibility of allowing commercial banks to allocate VC/PE assets.**

Commercial banks in the US are prohibited from holding more than three percent of a PE fund’s shares and from making investments in hedge and PE funds that exceed three percent of its core Tier-I capital. If China were to adopt a three percent threshold, based on Q3 2015 figures, the scale of Chinese commercial banks’ VC/PE business could reach RMB 313.4 billion (approximately US $50 billion), enough to support RMB 1.5-3 trillion (approximately US $239-478 billion) in social capital. This would play a very important role in the development of China’s real economy, enterprise transformation, independent innovation, entrepreneurship, and the PE fund industry.

An effective regulatory system should be established before allowing Chinese commercial banks to provide VC/PE services to ensure stability. The US experience should be drawn upon to avoid a repeat of similar problems. While US regulations were too lax prior to the 2008 financial crisis, companies feel that the subsequent tightening of regulations has resulted in a series of unnecessary spinoffs and unreasonable regulatory cost. Chinese regulators need to provide clear and operable guidance on a wide range of issues (e.g., the banks that are qualified for VC/PE business, the proportion cap for the capital that may be invested, the specific fields of investment, the method of setting up subordinate VC/PE institutions, the salary system, risk prevention and control, the stop mechanism) and to establish a proper risk monitoring system.

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**Recommendations**

**For the Chinese Government:**

**Commercial Banking**

- Allow US banks to enter the interbank bond market through the removal of technical barriers and to provide OTC commodities derivatives to Chinese clients.
- Clarify regulatory expectations and reduce the number of verbal “window guidances.”
- Maintain consistent interpretation of guidelines and directives, and reduce overlapping regulatory reporting.
- Consult with industry and provide a 30-day comment period before issuing further regulations on secure and controllable technology.

**Securities**

- Fully liberalize foreign investment in the securities sector as soon as possible, before conclusion of US-China BIT negotiations.

**Bonds**

- Further open China’s bond markets, including the Panda Bond market, to foreign issuers through market-based reforms to create diverse markets.
- Increase regulatory coordination and transparency to reduce uncertainty and foster confidence in the market.
- Increase the transparency of the default resolution process to foster creation of an investor-led environment.
用于投资的资本比例上限、投资的具体领域、下属 VC/PE 机构设立及薪酬体系的方式、风险防控和叫停机制等，都需要监管部门给出明确的可操作指引并进行事后的监控。

### 建议

**对中国政府：**

**商业银行**

- 取消技术壁垒，允许美国的银行进入银行间债券市场并为中国客户提供场外交易商品衍生产品。
- 澄清监管部门的期许，减少以口头形式进行的“窗口指导”的数量。
- 对指导意见和指示保持一致的解释，并减少过度的监管报文要求。
- 在出台有关安全可控信息技术的其他规定之前，向行业人士征求意见，并提供 30 天草案意见征求期。

**证 券**

- 在中美双边投资协定（BIT）谈判结束之前，尽快向外资全面开放证券业。

**债 券**

- 通过市场改革进一步优化面向外国发债人的中国债券市场，包括熊猫债券市场，创建多元化市场。
- 加强监管部门之间的协调和透明度来减少不确定性，培育市场信心。
- 增强违约解决程序的透明度，培育创造一个由投资者主导的环境。
- 推进中介服务，包括全面允许国际信用评级机构开展国内公司和债券评级业务。

**信用评级**

- 取消或放宽对外商信用评级机构所有权的限制。

- 制定符合国际标准的行为守则。

**私募股权和风险投资**

- 探索各种渠道来改善投资地方养老基金和企业年金配置 VC/PE 基金的政策环境。
- 认真研究商业银行从事 VC/PE 业务的可行性。
• Facilitate intermediary services, including full international CRA coverage of domestic bond markets.

**Credit Ratings**
• Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.
• Adopt conduct rules consistent with international standards.

**Private Equity and Venture Capital**
• Explore avenues to improve the policy environment for investing local pension funds and enterprise annuities in VC/PE funds.
• Study the feasibility of allowing commercial banks to pursue VC/PE business.
Introduction

AmCham China commends China for the sustained growth and superb safety record of its aviation sector. Although China’s GDP growth is slowing, this has had limited impact on air traffic which continues to grow at a strong annual rate of 12 percent. This is a direct result of China’s gradual transition to a consumption-based economy and the growing importance of the service sector, which is a key contributor to aviation growth.

In 2015, air transportation capacity between China and the US grew by approximately 22 percent. Chinese carriers surpassed US airlines in 2015 to become the biggest player in US-China air transportation. Passenger volume between the two countries is forecast to triple in just the next five years thanks to improved US visa policies and the designation of 2016 as the “US-China Tourism Year,” and could conceivably grow even faster if bilateral aviation agreements are further liberalized.

China’s civil aviation system is forecast to grow as large as the US system by the early 2030s and China’s top three airlines are already among the world’s top 10 carriers in terms of passenger volume. Additionally, China is expected to overtake the US as the world’s largest commercial aircraft market in the next 10 years. Boeing’s Current Market Outlook for China forecasts a need for 6,300 new commercial aircraft in the next 20 years valued at US $950 billion (RMB 5.97 trillion). US companies engaged in general aviation and the provision of a wide variety of aviation services are seeing similar opportunities to serve the vast Chinese market.

US companies are important suppliers of aviation technology, services, and know-how, and have committed significant resources to help China reduce its capacity constraints and fulfill a wide variety of training needs. US companies are also key partners for China’s own commercial aircraft programs including the Commercial Aircraft Corporation of China (COMAC) ARJ-21 and C919 and the Aviation Industry Corporation of China (AVIC) Aircraft MA700, and have much to offer as partners in developing China’s fledging general aviation industry. China benefits from its growing role as a supplier of aviation parts and components to customers around the world and as a major source of financing and investment for the global aviation sector. Many US aerospace companies have formed joint ventures (JVs) with AVIC and other Chinese entities for Chinese domestic and overseas opportunities.

The close aviation partnership between the US and China continues to flourish. The US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) enjoy a close partnership that has benefited both sides for many years. AmCham China’s affiliated US-China Aviation Cooperation Program (ACP) brings together US industry and government agencies from both countries – the CAAC, Air Traffic Management Bureau (ATMB), FAA, US Trade and Development Agency, US Embassy, Foreign Commercial Service, and US Transportation Security Administration – in a unique and active forum for bilateral cooperation.

While the trend to reduce barriers on the sustainable development of civil aviation in China has been largely successful, challenges remain. Further systematic efforts are needed to open up and modernize China’s airspace system, reduce inefficiencies and congestion, realize environmental benefits from the adoption of new technologies and procedures, and accommodate growth.

Ongoing Regulatory Challenges

Reforming China’s Airspace System and Improving Operational Efficiency

Reforming China’s national airspace management system is critical to meeting China’s aviation growth, enabling improved system efficiencies, and reducing the environmental impact of the aviation industry. More efficient, system-wide airspace utilization and management will help to reduce fuel burn, air pollution, flying time, and delays, while simultaneously accommodating new air carrier entrants, growth in airplane operations, and new and expanded routes.

The surge in air traffic has significantly increased demands on the country’s large and complex airspace system. Although the system has a world-class safety record and continues to grow in passenger and cargo aircraft operations, it exhibits signs of stress, including persistent delays at airports nation-
民用航空

引言

中国美国商会对中国航空业的持续性增长和出众的安全记录表示赞赏。尽管中国GDP增长放缓，但航空业所受影响有限，仍然保持12%的年增长率。这是因为中国已经逐渐转向以消费为主导的经济，加上服务业比重逐渐加大，更加促进了航空业增长。

2015年，中美航空市场运力增长了约22%。2015年中国航空公司首次超过美国航空公司，成为中美航空市场的最大承运方。由于美国签证政策有所改进以及2016中美旅游年的开幕，预计接下来的五年中，中国客运量将会增至原来的三倍，如果双边航空协议可以进一步放宽，预计增长速度会更快。

预计21世纪30年代初，中国民航系统的规模有望与美国并驾齐驱。同时，中国的三大航空公司在客运量方面现已跻身全球十大航空公司之列。另外，未来十年里，中国还有望取代美国成为全球最大的商用飞机市场。根据波音公司的《当前市场展望》报告显示，未来20年内，中国对新造商用飞机的需求量为6300架，总价值9500亿美元（人民币5.97万亿元）。中国市场需求巨大，美国通用航空公司以及其他航空服务公司同样看到了机遇。

美国有诸多企业是航空技术、服务及专业知识的重要供应商，它们长期以来投入了大量相关资源帮助中国民航扩容增效，满足中国范围广的培训需求。美国公司也是中国商用飞机项目的重要伙伴，包括中国商飞ARJ-21和C919项目，以及中航工业MA700项目。美国公司还是中国刚刚起步的通用航空工业的战略合作伙伴。中国是航空零部件供应大国，其客户遍布世界各地，同时，中国也是全球航空业投资融资的主要来源地。在这一领域的不断壮大，也使中国从中获益。许多美国航空航天企业已经与中航工业及其他中国实体合作成立了合资企业，以充分利用中国国内及海外的机会。

中美两国在航空领域建立的合作伙伴关系持续发展。美国联邦航空局（FAA）和中国民用航空局（民航局）多年来一直保持着密切的互惠合作关系。中国美国商会下属的中美航空合作项目（ACP）为美国产业界和中美两国相关政府部门——民航局、FAA、中国空中交通管理局、美国贸易发展署、中国驻美大使馆、美国贸易服务局以及美国运输安全管理局提供了一个独一无二且活跃的双边合作平台。

尽管中国在消减民航业可持续发展所面临的障碍方面已经取得了长足的进步，但挑战依然存在。中国尚需进一步系统地推进中国空域系统的开放和现代化，提高效率和缓解拥堵，采用新技术和程序实现环保利益，从而促进中国经济发展。

现存监管挑战

改革中国空域系统，提高运行效率

满足航空业增长的需求，改进系统效率以及减少航空业对环境的影响，关键在于要改革中国空域管理系统，降低油耗、减少空气污染、缩短飞行时间和避免航班延误的最好办法是提高空域利用率和管理效率，从而得以容纳更多航空公司的加入，增加运营航班，以及拓展新航线。

空中交通流量的快速增长对中国庞大而复杂的空域系统提出了更高要求。尽管该系统有着世界顶级的安全记录，客机及货机运营数量也在持续增长，但已呈现一定压力。如全球大型机场普遍存在的航班延误及持续的航班时刻短缺现象，这些延误及航班时刻短缺主要源于民航的空域使用受限，现有空域管理及流量管理效率偏低，缺少统一的国家流量管控体系，众多连锁反应造成了机场飞机起飞与降落的交通拥堵。

为满足中国民航不断增长的需求，改革提高空域利用率、机场运营效率以及管理水平非常重要。缺少灵活性的
wide and a continuing shortage of slots. These delays and slot shortages are due primarily to the limits placed on the use of China’s national airspace for civil aviation purposes, attendant inefficiencies in airspace operations, capacity management that relies on a command and control structure, and the multiple ripple effects from the resulting congested airspace when arriving at or departing from airports.

Improving airspace and airport operational efficiency and management is the most essential reform for China to meet the increasing demand for aviation services. The lack of air traffic management flexibility often results in delays, inefficiencies, and potentially unsafe situations. ACP’s Massive Delay Response System (MDRS) project with the CAAC identified several positive steps that the CAAC has already taken to better manage some of the air traffic problems and passenger expectations; other improvement plans are under consideration.

One of the key MDRS recommendations is for China to adopt and implement a national Air Traffic Flow Management (ATFM) and System Wide Information Management (SWIM) system utilizing a collaborative decision making (CDM) model. These tools can provide decision makers with real-time information shared among aviation system users, and help authorities to more effectively and efficiently manage China’s airspace and reduce flight delays. Co-locating military and civilian controllers to better share system information and create common situational awareness is also recommended. There is a need for a system change that focuses on flexible, safe, and efficient system management to achieve delay prevention rather than delay response to accommodate anticipated growth in the aviation system.

**Climate Change Obligations: Advance ECER and Sustainability**

Climate change is an important global issue. Starting in 2011, the CAAC issued guidance intended to accelerate energy conservation and emissions reduction (ECER) in the aviation industry. Guidance included goals to reduce energy consumption and carbon dioxide emissions through technology and management innovation.

US companies were pleased to see progress in specific areas such as fuel savings and efficiency, development of aviation biofuels, new incentives for clean ground service equipment, and the installation and application of new technologies. The CAAC is also providing annual funding to subsidize Chinese airline, airport, and air traffic management ECER projects.

More can be done to advance ECER and aviation sustainability. Despite the continued increase in state of the art building materials and green airport building standards, there is still a lack of awareness of the impacts of construction processes on energy and the environment. With the development of new airports and expansion of existing airports in first and second-tier cities, the adoption of standards for clean construction equipment and processes would contribute to significant improvements in air quality for these areas.

Additional progress could be achieved through the development of more cooperative programs. Airports, airlines, China’s ATMB, and the CAAC might be helped by a framework to integrate their individual efforts. To our knowledge, there are no official joint agency programs for this purpose. Experience shows that greater gains can be achieved through a more integrated approach.

Progress and attention on effective and efficient national airspace system management will also have direct benefits on capacity, energy savings, and emissions reduction. Thoughtful airfield taxiway and gate layout design can significantly reduce aircraft taxi times. ATMB procedures and airline operations that utilize the capabilities of airplanes equipped with the latest navigation technologies can enable greater benefits with respect to aviation sustainability.

AmCham China recommends that the CAAC and ATMB continue the effective utilization of NextGen (US) and Single European Sky ATM Research (SESAR) (EU) technologies and work on procedures, measurements, and reward systems to encourage air traffic centers, airlines, and airports to increase the use of new procedures and technologies to gain efficiency in operations.

**Air Carrier Operations and Issues**

China is one of the largest markets for US passenger and air cargo airlines, and the reverse applies as well. AmCham China recommends the following to strengthen the air transportation sector. Many of these recommendations will equally benefit Chinese airlines.

**Optimize Flight Slot Utilization**

Slot constraints at China’s major hub airports, including Beijing, Shanghai, and Guangzhou, pose increasingly serious impediments to growth. While strict limitations remain on the limited portion of airspace devoted to civil aviation, optimizing slot allocation procedures and utilization are necessary to meet the growth and efficiency targets set by the State Council. The CAAC and ATMB continue to make improvements by increasing airport capacity, opening new and more flexible flight paths, introducing online slot monitoring, and policing the allocation and utilization of slots more carefully. US airlines commend the CAAC’s continuing efforts to strengthen the slot allocation process, but would respectfully recommend the following steps to further improve air services:

- Continue to improve and optimize slot allocation procedures and slot utilization in accordance with the International Air Transport Association Worldwide Slot Guidelines.
交通流量管理经常会导致航班延误、低效率和安全隐患。ACP 与民航局空管局合作的《大面积航班延误应急响应机制（MDRS）》项目显示出民航局已经积极采取多种措施，改善空中交通管理问题和乘客预期管理，同时还在考虑出台其他改进计划。

MDRS 项目的主要建议之一便是使用协同决策机制（CDM），采用并实施全国空中交通流量管理（ATFM）和空管信息系统（SWIM）。上述机制及工具能够在航空系统使用者之间分享实时信息，帮助监管机构更加高效地管理空中交通流量，减少航班延误。另一项建议是加强军民航空管沟通。中国可以参照 FAA 的空中交通管理指挥中心的模式，使军航与民航空管人员在同一指挥中心工作，以便更好地共享航班信息数据，统一对情况进行识别和判断。工作重点应放在落实灵活、安全和高效的系统管理上，事前有效预防和事后响应航班延误，从而更加顺应航空系统的预期增长趋势。

应对气候变化的责任：推进节能减排和实现可持续发展

气候变化是一项重要的全球性议题。2011 年起，民航局出台了一项旨在加速航空业节能减排的指导意见，该意见中提出了通过技术和管理创新，实现减少能耗和二氧化碳排放的各项具体目标。

美国企业很欣喜地看到中国在燃油节约和增效、发展航空生物燃料、新增地勤设备清洁燃料激励政策以及安装应用新技术等具体领域取得的积极进展。民航局每年向国内民航企业和机构提供补贴，以支持航空公司、机场和空管等节能减排项目的实施。

中国在推进节能减排和实现民用航空可持续发展方面依然大有可为。尽管高新建筑材料数量增加，机场建设环保标准持续提高，但人们对于建设流程对能源和环境的影响仍然缺乏认知。随着一和二线城市的扩建和新建机场，采用环保建筑设备和流程，能够大幅改善这些地区的空气质量。

发展更多合作项目将进一步促进可持续发展。各大机场、航空公司、空管局和民航局还需要建立一个合作伙伴关系整合各方的努力。据我们所知，目前尚未推广涉及机场、航空公司及空管的可持续发展项目。中国民航业需要加大整合力度，以便取得更大发展。

改进和重视空域系统的管理效率，对于扩大运能和节能减排也有着直接的促进作用。完善的机场滑行道设计及登机口布置可以大大减少飞机滑行时间，空管管制规程以及航空公司飞行新技术的使用，将直接有助于实现节能减排。

中国美国商会建议民航局和空管局继续高效利用美国下一代空中运输系统技术（NextGen）以及单一大欧洲天空空中交通管理研究（SESAR）技术，同时开发相关规程、考核和奖励系统。来鼓励空中交通管理中心、航空公司和机场在日常运行中加大对新规则和新技术的使用力度进而提升效率。

航空公司的运营和问题

中国是美国客运及货运航空公司最大的市场之一，同样地，美国也是中国客运及货运航空公司的最大市场之一。中国美国商会的航空公司会员企业提出如下建议以增强航空运输业。其中许多建议会为国际和国内航空公司带来更多互惠机遇。

优化航班时刻使用

中国主要的枢纽机场的发展，包括北京、上海和广州，都因航站楼的限制而受到严重阻碍。尽管民航可利用空域有限，但环境的限制依然存在。航班时刻的优化分配及利用是实现国务院提出的经济增长和提升效率目标的必由之路。

民航空管局已在如下领域不断取得新的进展：提高机场运力、开通灵活的新航路，以及引入航班时刻在线监管系统，周密监控航班时刻的使用及分配。美国的航空公司赞赏民航局优化航班时刻分配流程所做的努力，同时还建议采取以下措施，改进空运服务：

- 根据国际航空运输协会（IATA）制定的《全球时刻指引》，继续改善和优化航班时刻分配程序及利用。
- 延长枢纽机场的运营时间，在不增加设施的基础上提高运力。
- 放宽或取消未考虑实际使用状况的随机性日常运营限制。鼓励更多使用非高峰时段。
- 放宽或取消对货运航班日间运营的时刻限制以及对国内航班串飞的限制。
- 进一步减少或消除各大机场的地面延误。此类延误会对中国航空业产生严重影响。增加成本并给用户造成不便。长时间的延误会导致更多排放，增加空气污染。
• Extend airport operating hours at key airports to add capacity without the need for additional facilities.
• Ease or eliminate arbitrary limitations on daily operations which do not consider actual use patterns and encourage more use of off-peak hours.
• Ease or eliminate limitations on day-time slots for all-cargo operations, as well as restrictions on co-terminal operations.
• Continue to reduce or eliminate ground delays at major airports. Such delays have a significant impact on down-line connections, impact costs, and inconvenience customers. Lengthy delays also generate more emissions that will increase air pollution.
• Increase hub efficiency by allowing baggage check for transfer passengers in Beijing and Shanghai Pudong. This will generate more jobs and revenue for airports and help to attract more passengers who are transferring from other cities in northern Asia.
• Improve the use of long-term weather forecasting in the ground delay decision-making process, and provide more frequently updated data available in the CDM system.

Need for Gateway Airport Improvements

Continued emphasis on improving the operation of China’s international gateway airports is needed to make them more efficient and cost-effective. Development of Beijing, Shanghai, and Guangzhou as true hub airports is a high priority for US and Chinese air carriers alike. Airlines have found that the US and China are both losing market share to third-party countries whose airlines are capturing US-China passengers and bypassing China’s primary international gateways.

The implementation of more efficient hubbing operations and code-share cooperation could result in carrier gains for both the US and China. Policies that facilitate timely transfers of cargo and passengers as well as streamlined baggage handling should be developed to help China capture a larger share of Pacific Rim air traffic from other regional hubs. More efficient hub operations will also improve customer experience and can open up new secondary markets between the US and China. More than 40 percent of China’s second-tier cities are served by third-country carriers hubbed outside of China. Both Chinese and US airlines are losing business because of this.

More Efficient, Flexible Procedures Needed for Air Cargo Operations

i. Slots

The international logistics industry, which depends on just-in-time air transportation, will play an increasingly important role as China moves up the value chain in exports. The policy against awarding any new day-time landing and take-off slots for all-cargo operators at the major hub airports of Beijing, Shanghai, and Guangzhou, and the policy against co-terminal operations between these airports due to restricted airspace and a lack of slots, already impedes timely express deliveries. This has arbitrarily and adversely affected the growth of express services that are essential to China’s export and import trade and is already affecting its competitiveness in global supply chains.

ii. Customs

As discussed in the 2015 White Paper, cumbersome customs regulations that affect the efficiency of just-in-time operations continue to hamper the evolution and growth of the logistics industry in China. The lack of practical customs procedures to allow goods in-bond to flow through China’s gateway airports in a realistic aviation timeframe discourages the growth of international air cargo to China’s central and western regions. This is prompting affected carriers to move or limit hub operations to airports outside of China or not serve these internal regions at all. Additionally, the imposition of value-added tax (VAT) has the potential to prompt all-cargo carriers or integrators to move essential sorting and consolidation activities to hub airports in other nearby countries that do not have a VAT.

As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility increases. Demand for cargo services is not static, but fluctuates widely in response to holidays, seasons, and consumer demand. More flexible and timely procedures are needed to allow air cargo carriers to match schedules to demand and also recover from schedule disruptions elsewhere in their networks.

iii. Coordinating Efforts for Service Efficiency and Cost-Effectiveness

The already high costs at major Chinese airports continue to increase, further impeding cargo operations. Aviation fees are already among the highest in the region and local monopolies on the provision of necessary supplies and services, such as fuel, cargo handling, and government filings, are an expensive drag on efficiency. The CAAC, airports, border agencies, and airlines must work together to lower costs at China’s international airports.

Enforcement of Dangerous Goods Regulations

AmCham China recommends that the Chinese government impose stricter oversight on manufacturers and/or shippers of dangerous goods (e.g., lithium batteries). Airlines work hard to meet CCAR 276RI compliance requirements, but remain concerned that other parties may not be following the regulations. Greater enforcement of China’s dangerous goods regulations on other parties such as manufacturers or shippers would be helpful.
• 允许对在北京和上海浦东中转的旅客进行行李转运，以提高枢纽机场运营效率，此举将为相关机场创造更多的就业和收入，有助于吸引更多旅客从亚洲北部其他城市中转。

• 在航班起飞延误决策中，应更好地运用长期气象预测结果，及时提供CDM（协同决策机制）系统中更新的数据。

### 改进门户机场的必要性

有必要持续改进国际性门户机场的运营，使之成为更高效的国际国内枢纽。大力发北京、上海以及广州机场，使之成为真正意义上的枢纽。这将对于美中两国的航空运输企业而言，都具有重要意义。航空公司发现，第三国航空公司通过绕行中国门户机场运送中美两国乘客，从而逐渐瓜分中美航线市场。

提升机场枢纽运行效率，加强代码共享会让中美两国的航空公司在受益，政府应制定政策，推动航空和乘客按时转移，简化行李托运程序。这将有助于中国从其他地区性枢纽机场中争取更多的太平洋地区的客资源。提升枢纽机场运营效率不但可以提升用户体验，还能吸引更多二线城市旅客。超过40% 的中国二线城市旅客是通过搭第三国航空公司经国外中转到达美国，这导致了中国大陆和美国航空公司的业务流失。

### 航空货运运营需要更加高效灵活的程序

1. **航班时刻**

随着中国在出口价值链上地位的提升，国际物流业将发挥日益重要的作用，而物流业的发展主要依赖及时的空运运输。货运航班无法获得日间在北京、上海和广州等主要机场枢纽的起降时刻。此外，有限的国内机场时刻短缺造成的国内机场串飞的限制，都影响了快递货物的及时送达。快递行业对中国进出口贸易至关重要，而上述政策限制了快递货运航空公司的生存，从而也削弱了中国在全球供应链上的竞争力。

2. **海关**

海关作为2015年白皮书中所论述，海关规章繁琐，影响了及时交货的效率，使国际物流业的发展。由于没有高效的海关程序，使保税货物难以在设计的航空时间内通过中国的门户机场，使得中国中西部地区的国际货运业的发展受到阻碍。一些国际航空货运企业受此影响，正着手将航空枢纽运营功能转移到中国地区，或者不再向这些内陆地区提供服务，同时，中国的增值税制度也可能会促使货运航空公司和货运集成商将基本分拣与集中委托业务移至周边宁波等增值税国家的枢纽机场。

鉴于对货运服务需求日益增长以及航线网络日趋复杂，使其对更加灵活和航空调度的要求也随之增加。货运服务的需求并非是静态的，而是会随着节假日的到来、季节变化和客户的需求而大范围波动。因此需要更加灵活和实时的程序，以使货运航空公司根据需求来调配航班，并能及时应对航线网络中其它航段计划的调整。

### 《危险品规则》执行情况

中国美国商会建议中国政府对危险品（如锂电池）制造商或者承运商施行更为严格的监管。虽然航空公司本身努力遵守《中国民用航空危险品运输管理规定》（CCAR 276RI）的合规要求，但其仍对其他各方遵守规定的行为表示担忧。进一步执行中国危险品各项条例并要求包括危险品制造商或承运商在内的各方遵守这些条例将大有裨益。

### 美中航空服务自由化

中国美国商会全力支持美中双方按照双边民航协议，推进两国航空客运和货运市场自由化。两国需相互开放门户，向对方提供商业可行的航空时刻。在此基础上推进自由化，将使美中两国的航空公司受益，为旅客和承运商提供更多选择并使两国关系更为密切，从而提振两国经济。

### 采取积极措施促进通用和商用航空业发展

通用航空是指除了军用或定期商用航空业务之外的其他所有航空活动，包括个人和企业航空部门运营的私人和商用飞机、包机/空中计程商用航空业务、空中游览、民用直升机空中作业、救灾飞机和航空医疗运输机。

中国政府承诺继续大力发展通用航空产业，中国民航
**US-China Air Services Liberalization**

AmCham China fully supports liberalization of passenger and cargo services pursuant to the US-China bilateral civil aviation agreement. Further liberalization, based on the premise of equitable access to each country’s gateways and commercially viable slots, will benefit airlines on both sides of the Pacific, giving passengers and shippers more choices and allowing the economies of both countries to benefit from strengthened ties.

**Actions Needed to Strengthen Development of the General and Business Aviation Industry**

General aviation (GA) includes all aviation except military and scheduled commercial carriers. It includes private and business aircraft operated by individuals and corporate flight departments, charter/air taxi on-demand commercial operations, air tourism, civil helicopter aerial work, and disaster relief/aeromedical transportation.

We applaud China’s commitments to the continued development of general aviation through the CAAC’s and ACP’s commitment to stronger collaboration efforts in this field. Recent GA progress has been made including loosening regulations on low altitude airspace to enable safe and efficient operations of small aircraft and simplification of permitting procedures for general and business aviation operations. As China looks to implement its 13th Five-Year Plan (2016-2020), we hope that the challenge of incorporating GA into China’s national airspace system will remain a priority. GA growth depends heavily on Chinese government actions to improve the physical and policy infrastructure.

Further efforts are needed to:

- Liberalize airspace at all altitudes to allow for more direct routings and enable GA aircraft to operate at optimum altitudes for greater fuel efficiency.
- Develop GA airports, improve and integrate GA access to commercial airports, and support competition among Fixed Base Operators with standards for fueling and maintenance facilities and all other functions.
- Differentiate safety regulations based on types of GA as well as for air carriers to accurately match the mitigation of safety risk to the cost of regulation.
- Develop and train a suitable workforce to oversee GA activities and enforce GA regulations.
- Facilitate the use of foreign pilots and take steps to train more pilots and mechanics to support general and business aviation growth.
- Reduce the import duty (six percent) and VAT (17 percent) on GA aircraft to a level consistent with that imposed on transport aircraft and eliminate any proposed consumption tax.
- Improve the Flight Service Station system to provide online weather and other flight planning information and filing services.
- Provide air carriers access to domestic aeronautical information such that it can be utilized to create the required charts and maps necessary to support safe flight throughout China. The Aeronautical Information Publications for Visual Flight Rules (VFR) must be more widely available even if everything must be done with an approved flight plan. The safety of VFR flights will rely on the availability of the navigational data and charts.
- Adhere to the tiered structure for medical certifications and requirements so that the opportunity to fly is open to a greater portion of the population.

**Aligning Certification Processes with International Standards**

The CAAC has an aircraft certification center in Shanghai and an engine certification office in Beijing. It is important that their certification and validation activities align with international practices to ensure a consistent and predictable process for obtaining product approvals. However, companies report that certification and validation activities in China are often handled differently from those in other nations.

Examples of observed behavior include requirements for documents and technical data that are not typically required and adoption of certification-style processes in validation procedures. Additionally, the amount of time required to complete the administrative aspects of an application are not in line with international standards, and may threaten the on-time delivery of products. Members recommend adopting standard flow times to help with planning, recognizing that sometimes these flows will not be met. Companies have found this to be mutually beneficial in projects with other agencies, such as the FAA and European Aviation Safety Agency (EASA), that have established flow times.

Understanding the difficulties that certification centers face in commencing operations and coping with initial heavy workloads, we commend the CAAC on the gains that have been made. We encourage the CAAC to continue working closely with the FAA, EASA, Transport Canada, and other aviation authorities to ensure that the certification center consistently aligns its practices with other regulatory bodies around the world, and increases its resources and/or delegates responsibilities to help manage the workload and expedite certification efforts. The CAAC will also benefit from such cooperation in areas like conformity inspection and manufacture approval of US products and management of aerospace JVs, among other areas.

Again in 2015, US companies witnessed inconsistent interpretations of product inspection requirements for aircraft...
具体行业问题

民用航空

局 (CAAC) 和中美航空合作项目 (ACP) 进一步承诺，加强该领域合作，对此我方深表赞赏。最近通用航空业取得了诸如放宽低空空域使用规定的多项进展，此举有助于保障小型飞机安全、高效运营，简化通用及商用航空经营许可程序。中国即将施行“十三五”规划 (2016-2020)，中国美国商会希望优先考虑将通用航空引入中国国家空域系统，因为通用航空行业的发展很大程度取决于中国政府在改善基础设施以及优化政策方面的努力。

除此之外还需要：

- 开放所有高度的空域，允许开设更多直航线路，允许通用航空的飞机在最优高度飞行以提升燃油效率。
- 开发使用新的机场，降低通用航空对商用机场的使用率以及通过制定燃油和设施维修标准及其他功能标准，支持固定基地运营商 (FBO) 竞争。
- 基于通用航空的种类以及航空承运人区分安全法规，以更准确地减少对管制成本的安全风险。
- 发掘培养合格的监管队伍，监管通用航空活动并执行通用航空法规。
- 为公务航空运营商雇佣外籍飞行员提供便利条件并逐步培训飞行员和机械工程师，以支持通用航空和公务航空增长。
- 削减对航空飞机销售征税的进口关税 (6%) 和增值税 (17%)，使其与运输飞机所适用的税率相当并放弃拟议的征收消费税的计划。
- 改进飞行服务站 (FSS) 系统，以提供在线气象和其他飞行计划信息并实现网上提交服务申请。
- 应向航空公司提供国内航空信息，来创建航空器审定中心，以此保证安全飞行。广泛推广目视进近 (VFR)。即使仅在拥有获得批准的飞行计划时，才可以获取国内航空信息，但是因为目视进近 (VFR) 飞行的安全性有赖于导航数据和航图，所以 VFR 需要获取更加广泛的国内航空信息。
- 对飞行员的体检要求和资格认证实施分层管理，扩大飞行员的选拔范围。

使航空器审定程序符合国际标准

中国民用航空局零部件制造人批准书 (PMA) 程序的制定

中国美国商会促请民航局制定零部件制造人批准书 (PMA) 程序，允许中国商用飞机有限责任公司 (中国商飞公司 COMAC) ARJ-21 项目及 C919 项目的外国零部件供应商可以直接向中国商飞公司的航空公司客户销售更换件。在没有该批准程序的情况下，支持飞机交付后航空公司运营所需的零配件就需要通过中国商飞公司，这是不现实的。而且从航空公司角度来看，这不利于中国商飞公司的飞机运营。

相关工作可以从风险最低的零部件开始做起。全球 PMA 行业目前发展到可以生产非常复杂的零部件的阶
deliveries to Chinese airlines, as well as inconsistencies in the airworthiness safety processes. We encourage the CAAC to work closely with the FAA, EASA, and Transport Canada to help their inspectors to gain experience in taking delivery of aircraft. More broadly, we encourage the CAAC to align their practices with other regulatory bodies around the world. US companies are also in a position to provide knowledge and training to CAAC inspectors regarding the delivery of aircraft.

**CAAC Parts Manufacturing Authorization Process Needed**

We encourage the CAAC to establish a parts manufacturing authorization (PMA) process to permit foreign suppliers of parts and components for the COMAC ARJ-21 and C919 aircraft to sell replacement parts directly to COMAC's airline customers. Without a PMA process, parts required to support post-delivery airline operations would need to flow through COMAC, which is impractical and will be viewed by airlines as a disadvantage in operating COMAC aircraft types.

Initial efforts should focus on the lowest risk parts. The global PMA industry has evolved to produce very complex parts and parts with significant system interactions including parts that influence boundary conditions for life limited parts (LLP). We recognize that the CAAC will need substantial time to build the technical capability to support PMA applications.

Before releasing PMA rules, we recommend that the CAAC ensure that sufficient rules and guidance materials are in place to address corollary processes, including Instruction for Continued Airworthiness approvals, analysis of system effects (especially with parts impacting thermally balanced systems), validation of airworthiness limitations when PMA parts are introduced on parts that influence LLP boundary conditions, establishment of ownership for failure investigations when operating configurations have been modified away from the type design, and Failure Message Description reporting requirements for PMA holders.

It also is essential that PMA rules and guidance materials address assessment of design changes – intentional and unintentional – that create untested operating configurations at the system level to ensure compliance to all certification requirements.

Prior to launching any PMA effort, the CAAC should review the recent guidance material issued by the FAA to address turbine engine PMA where the FAA has determined that part level approval processes are inadequate for assessing system interactions that can be impacted by design changes introduced through PMA. The FAA has made this determination despite having had PMA approval processes available for many years.

**Increase Regulatory and Technical Inspection Staff at the CAAC**

The relatively low number of regulatory staff at CAAC headquarters poses a risk to China’s excellent safety record and a constraint on the industry’s sustainable growth. Increased staffing will help reduce the impact on operations caused by difficulties in receiving timely CAAC approvals.

In addition, AmCham China encourages the CAAC to add staffing to provide official English translations of CAAC documentation for suppliers who must comply with these regulations. Each company is forced to translate the regulations on its own, leading to potential safety hazards caused by inconsistent translations.

**Recommendations**

**For the Chinese Government:**

- Adopt an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to enable growth and efficiency and manage and alleviate delays.
- Align certification processes with international standards.
- Develop a parts manufacturing authorization process.
- Optimize slot utilization and operational procedures at China’s major hub airports and increase scheduling flexibility for air cargo carriers.
- Continue to strengthen the physical and policy infrastructure to enable GA growth within China’s national airspace system, including by introducing more favorable tax policies for the import of GA aircraft.
- Continue the effective utilization of efficiency-boosting NextGen and SESAR procedures and technologies and develop plans to encourage their system-wide use.
段，包括和重要系统互联的以及影响寿命件（LLP）临界条件的零部件。中国美国商会理解中国民航局还需要一定的时间来建立相应的技术能力以支持 PMA 的审批。

发布 PMA 规则前，中国美国商会建议中国民航局首先建立充分的规章和指导性材料，以建立实施流程，其中包括适航文件的批准、系统效应分析（特别是对于带有影响热平衡系统的零部件）、PMA 零部件安装到影响寿命件（LLP）临界条件的部件时适航限制的评估、运行构型改装偏离型号设计后故障调查归属权的制定以及对于 PMA 持有人的故障信息描述报告要求等。

同时，对于那些有意或无意产生的、没有在系统层面进行过测试的运行构型的设计更改，要确保 PMA 规章和指导材料能够对该更改进行评估，以保证定要求的符合性。

在开展 PMA 相关工作前，民航局可以参考最近 FAA 发布的关于涡轮发动机 PMA 的指导材料，尤其是关于 FAA 判定对于设计更改可能影响到的系统互联的评估仅仅执行零部件层面的批准流程并不足够的这一部分。尽管已经有了多年的 PMA 批准流程，FAA 依然做出了如上决议。

增加中国民用航空行政法规和监察人员

民航局机关行政法规和技术监察人员编制数量相对较少，这对他们所保持的优异安全记录造成潜在风险，也制约了中国民用航空业的可持续发展。已有诸多中国美国商会会员企业反映，由于难以及时取得民航局的各类批准，已经在很大程度上影响了他们的业务运营，因此，增加民航局工作人员数量将大有裨益。

另外，中国美国商会促请中国民航局增加专门从事民航局官方法律文件翻译的人员，并将译文提供给那些必须遵守上述法规的供应商，目前各个公司各自翻译上述法律法规，容易造成安全问题。

建议

对中国政府:

• 利用空中交通流量管理（ATFM）框架，使广域信息管理系统（SWIM）和空管部门、航空公司、机场当局间的协同决策机制（CDM）相结合，以提高容效，减少航班延误。
• 使航空器审定程序符合国际标准。
• 进一步完善零部件制造人授权程序。
• 优化中国主要枢纽机场的起降时刻分配和运行程序，增加货运航空公司的航班时刻的灵活性。
• 继续加强通用航空业基础设施和政策建设，促进中国国家空域系统内的通用航空业发展，包括对进口通用航空飞机实施适用优惠税收政策。
• 继续高效利用下一代航空运输系统技术（NextGen）以及单一欧洲天空空中交通管理研究（SESAR）技术并创立计划将其推广到整个系统。
Clean Technology

Introduction

According to the Ministry of Environmental Protection, based on 2010 data, the cost of China’s pollution is estimated at RMB 1.5 trillion (approximately US $238 billion), roughly 3.5 percent of its GDP. China continued to take aggressive actions in 2015 to curtail pollution and become a leader in green and clean technologies. In 2015, it set two world records, installing 30.5 gigawatts (GW) of wind and 16.5 GW of solar. Even as China’s growth slows, tremendous potential for net GDP benefits from green buildings and energy efficiency remain. According to the State Council Energy Research Institute and the China National Renewable Energy Center, by 2050, China may obtain over half of its primary energy from renewable sources at little or no cost compared to the “business as usual” baseline with enormous benefits to public health and economic welfare. This presents a tremendous opportunity for China.

Recent Developments

Particularly commendable developments in 2015 include:

• Presidents Xi and Obama reaffirmed the US-China Joint Announcement on Climate Change during Xi’s September 2015 US state visit, leading to a ground-breaking set of global commitments at the Paris Climate Change Conference in December 2015.
• As part of the US-China Joint Announcement, China confirmed that its new carbon emissions trading system will cover “key industry sectors such as iron and steel, power generation, chemicals, building materials, paper-making, and nonferrous metals” scheduled to begin in 2017.
• The State Council released “Document No. 9” on deepening power sector reform in March 2015.
• The People’s Bank of China (PBOC) created a green bond program to help finance clean energy and energy efficiency investments.
• The State Council set a cap on coal consumption at 4.2 billion metric tons by 2020.

AmCham China strongly supports the Chinese government’s pursuit of these goals and policies. Member companies stand ready to bring new business models, experience, and technology to help China capture this opportunity for sustainable economic growth. The US-China Energy Cooperation Program (ECP) and the Clean Energy Research Center (CERC) are examples of US public and private sector commitments to clean technology investment and innovation in China.

Level competition and fair treatment for both private domestic and foreign companies, which is currently lacking, will be important to achieving China’s overall objectives. Foreign participation in these new clean technology programs and markets will help spur China’s economic growth. In this regard, AmCham China further emphasizes the importance of:

• market mechanisms (to eliminate inefficiency/waste);
• transparency (to encourage compliance and greater competition);
• participation by foreign technology companies (as a catalyst for higher quality domestic equipment and projects); and
• protection of intellectual property (IP) rights (to support greater technology transfer into China and greater domestic innovation).

Market Reforms and the 13th Five-Year Plan

In March 2015, “Document No. 9” on Deepening Reform of the Power Sector was issued by the Central Committee of the Communist Party and the State Council. This document signifies a significant policy shift to meet China’s goals of reducing emissions, promoting renewables, and boosting energy efficiency. It emphasizes:

• increased use of market mechanisms;
• increased energy savings, emissions reductions, demand-side management, and use of renewable and distributed generation;
• grid company reform including improved generator dispatch, direct access, and retail competition; and
• improved power sector planning, including taking account of environmental carrying capacity.
引言

根据中国环境保护部（以下简称环保部）2010年的数据统计，中国的污染成本约为1.5万亿元（约为2380亿美元），约占国内生产总值的3.5%。在2015年，中国继续采取严厉措施控制污染，成为绿色和清洁技术的领导者。2015年，中国创造了两项世界记录，风力发电和太阳能发电装机容量分别达到3050万千瓦和1650万千瓦。即使中国经济增长放缓，绿色建筑和节能仍然是国内生产总值的巨大推动力。根据国务院能源研究所和国家可再生能源中心的研究，到2050年，与常规底线相比，中国将有超过一半的一次性能源来自较小成本或零成本的可再生能源，从而极大地促进公众健康和经济福祉。对中国来说，这是一个巨大的机会。

最新进展

2015年中国取得的以下进展尤其值得称道：

- 2015年9月, 习近平主席对美国进行国事访问期间，习近平主席和奥巴马总统重申《中美气候变化联合声明》，在此基础上，2015年12月的巴黎气候大会取得突破性的成果，各国就减排承诺达成协议。
- 作为《中美联合声明》的一部分，中国确认计划于2017年启动新的碳排放交易体系，将涵盖“钢铁、发电、化工、建材、造纸和有色金属等关键行业”。
- 2015年3月，国务院印发《关于进一步深化电力体制改革的若干意见》的“9号文件”。
- 中国人民银行推出绿色金融债券项目，为清洁能源和节能投资项目融资。
- 中国能源基金会和保尔森基金会已发布研究报告支持清洁技术

中国美国商会大力支持中国政府制定的这些目标和政策。我们的会员企业愿意与中国分享新的业务模式、经验和技术和帮助中国抓住这一实现经济可持续发展的机遇。中美能源合作项目（ECP）和中美清洁能源联合研发中心（CERC）就是美国公共和私营部门承诺在华开展清洁能源投资和创新的例证。

要想实现总体目标，中国需要公平对待境内私营企业和境外企业，允许它们公平竞争，而这正是中国目前所缺乏的。允许外资参与新的清洁能源项目和市场将有助于推动中国实现经济增长。在这一方面，中国美国商会进一步强调下列因素的重要性：

- 市场机制（消除低效/浪费）；
- 透明度（鼓励合规，促进竞争）；
- 允许境外技术公司参与（作为境内更优质设备和项目的催化剂）；
- 知识产权保护（支持加大对中国的技术转让，促进国内创新）。

市场改革和十三五规划

2015年3月，中共中央和国务院印发《关于进一步深化电力体制改革的若干意见》的“9号文件”，对政策进行了重大调整，以实现中国减少排放、促进可再生能源和节能的目标。文件强调：

- 更多发挥市场机制的作用；
- 坚持节能减排和需求侧管理，提高可再生能源和分布式发电的应用比例；
- 电网企业改革，包括改进电力调度、直接并在网和零售渠道的竞争；
- 电力行业规划改进，包括考虑环境承载力。

美国能源基金会和保尔森基金会已发布研究报告支持
The US-based Energy Foundation and the Paulson Institute have published research in support of these policies and AmCham China encourages further Chinese government engagement with the clean technology industry to ensure robust implementation. AmCham China specifically emphasizes the importance of:

- having well-defined payment mechanisms and transparent approval processes for renewable energy projects;
- addressing the problem of unevenly enforced policies at the local level which hinders the development of fair and transparent markets;
- enforcing strict limits on new coal plant construction and coal plant emissions;
- prioritizing green power dispatch onto the grid;
- greater use of electricity time-of-use pricing and separation of demand costs from energy costs; and
- promoting the national emissions trading scheme to cover key industry sectors including iron and steel, power generation, chemicals, building materials, paper-making, and nonferrous metals.

Green Bonds

In December 2015, the PBOC created a green bond program for project finance: 40 kinds of projects in a “Green Bond Project Catalogue” in the categories of energy-saving, pollution prevention, resource conservation and recycling, clean transportation, clean energy, ecological protection, and climate change adaptation will be eligible to issue bonds. The PBOC estimates that RMB 2 trillion (US $318 billion) will be needed by 2020 to effectively address pollution, but the government will only be able to meet about 15 percent of this total, so green bond and other private sector investments will be critical to success.

Electricity Generation and Dispatch

China’s electricity system still prioritizes coal plants over renewable energy production by guaranteeing minimum operating hours to coal plants to recoup capital investment. This in turn leads to curtailment of wind and solar generation. Market-based reforms to dispatch, including consideration of efficiency and emissions, would help eliminate this problem. In November 2014, the National Development and Reform Commission (NDRC) launched a “transmission and distribution pricing” pilot in Shenzhen that in part decouples grid company profits from electricity sales while encouraging efficiency and demand-side management. As noted by the Energy Foundation, there are several ways to improve this model as it is rolled out to the national level, such as establishing mechanisms for financing energy efficiency and establishing a revenue cap regulatory regime for large generation companies.

Energy Generation

The 13th Five-Year Plan sets aggressive targets for wind (reaching 240 GW installed) and solar power (150 GW solar and 60 GW distributed solar). The solar and wind industries in China have had substantial accomplishments in building scale and capacity for manufacturing. However, if the cost of wind and solar continues to decrease, thereby allowing feed-in-tariffs to be further lowered, innovation beyond the standard photovoltaic (PV) modules and 1.5 MW size wind turbines that currently dominate the market will be required. AmCham China member companies have experience with advanced PV cell design and larger wind turbine rotors. Allowing foreign companies to participate in Chinese government R&D and pilot programs will encourage greater installation of more advanced and more efficient equipment in China.

Wind and PV equipment installed in China frequently underperforms relative to installations in the US and Europe. Supporting equal access and “national treatment” for foreign renewable energy development and equipment manufacturing companies on a par with domestic Chinese companies will promote competition and result in better lifecycle analysis and performance.

Solar Photovoltaic

Some major US corporations have already made commitments to install PV at their own and their suppliers’ facilities in China, setting an example and proving new business models. AmCham China encourages continued Chinese support for green bonds and other financing mechanisms to further encourage such developments, particularly for local small and medium-sized enterprises which can most effectively undertake distributed generation project development. Transparency in awarding local project approvals is a key component to attracting project finance.

Solar Thermal

Solar thermal is a highly efficient means of producing steam for industrial and power generation applications and can be integrated with natural gas or coal plants to reduce carbon intensity. When thermal energy storage is included, it becomes a valuable resource to help maintain grid reliability and reduce system costs while enabling greater penetration of wind and PV-generated energy.

China is forecast to be the largest concentrating solar power (CSP) market in the world, with a potential capacity of over 16,000 GW. In December 2014, China’s “Renewable Energy Development Roadmap 2050” targeted five GW of CSP installed by 2020. It is expected that the 13th Five-Year Plan will increase this goal to 10-15 GW. On September 30, 2015, the National Energy Administration released a notification to select one GW of CSP commercial pilot projects by the end of 2015. While the selection process was completed in late...
上述政策，中国美国商会进一步鼓励中国政府参与到清洁技术行业中，确保这些政策得到有力的实施。中国美国商会特别强调下列因素的重要性：

- 明确可再生能源项目的支付机制，确保项目审批程序保持透明；
- 解决各地政策执行不一致的问题，这一问题会妨碍公平、透明市场的发展；
- 对新建偷电厂和偷电厂的排放实施严格的限制；
- 优先调度绿色电力入网；
- 更多地采用电力分时定价，将需求成本和能源成本分开；
- 推动建立全国碳排放交易计划，涵盖钢铁、发电、化工、建材、造纸和有色金属等关键行业。

### 绿色金融债券

2015年12月，中国人民银行推出绿色金融债券，《绿色债券支持项目目录》列出的节能、污染控制、资源保护和再利用、清洁交通、清洁能源、生态保护和气候变化等40项项目可以发行债券为项目融资。按照人民银行的估算，为了有效地解决污染问题，到2020年，中国大约需要投入2万亿元（3180亿美元），但是中国政府只能提供其中约15%的资金，因此，绿色金融债券和其他私营部门的投资将关乎到项目的成败。

### 发电和电力调度

中国的电力体制优先考虑的仍然是煤电厂，而不是可再生能源发电，通过设立最低运转时间来确保煤电投资的回收，从而限制了风力发电和太阳能发电的发展。通过市场化改革，电调度将考虑效率和排放等因素，将有助于解决这一问题。2014年11月，国家发展和改革委员会（发改委）在深圳试点进行“输配电价”改革，将电网企业的利润与电力销售脱钩，并鼓励效率和需求侧管理。正如能源基金会指出的，随着这项改革在全国范围内推行，可以通过设立节能融资机制，建立大型发电企业收入上限的监管机制。

### 能源发电

十三五规划制定了风力发电（装机容量达到2.4亿千瓦）和太阳能发电（太阳能发电1.5亿千瓦，分布式太阳能发电6000万千瓦）这一宏大的目标。在建设规模和制造能力方面，中国的太阳能和风力发电行业已经取得丰硕成果，但是，如果风力发电和太阳能发电的成本继续下降，从而进一步分摊上网电价，就需要在目前市场上占据主导地位的光伏模块和1.5MW风力发动机产品之外进行创新。中国美国商会的会员企业拥有在先进的光伏电池设计和大型涡轮发动机转子方面的经验，若允许外资企业参与中国政府的研发和试点项目，将会鼓励在中国安装更多更加先进和高效的设备。

与美国和欧洲的设备相比，中国安装的风力发电和光伏发电设备运行效果通常会略逊一筹。若能支持给予外资可再生能源开发和设备制造商与在中国境内企业同等的市场准入、公平竞争和“国民待遇”，将有助于促进竞争以及改进生命周期分析和表现。

### 太阳能光伏发电

美国的一些大企业已经树立榜样并提供新的商业模式，它们承诺在自己或者供货商设在中国的工厂中配备光伏发电。中国美国商会鼓励中国继续通过绿色金融债券和政府融资机制，对其相关项目的发展予以进一步鼓励，特别是当地那些能够最有效地实施分布式发电项目开发的中小企业。地方政策审批的透明度是吸引项目融资的关键因素。

### 太阳能热发电

太阳能热发电是一种能够高效地生产出工业和发电所用的蒸汽的方式，可以与天然气或煤电厂整合，实现降低碳强度的目的。再加上热光能量储存，太阳能热发电可谓是一种很有价值的资源，不仅能够加大风力发电和光伏发电的市场渗透程度，还有助于维护电网的稳定和降低系统成本。

中国预计将成为全球最大的聚光太阳能发电（CSP）市场，潜在容量超过160亿千瓦。根据2014年12月发布的《2050年中国可再生能源发展路线图》报告，到2020年，聚光太阳能发电装机容量为500万千瓦。在十三五规划中，这一数字预计将会增加到1000~1500万千瓦。2015年9月30日，国家能源局印发通知，要求各地在2015年底前申报一个百万千瓦聚光太阳能发电商业示范项目。2015年底，已经完成了项目申报过程，但是结果尚未公布。为了确保能够实现2020年的目标，中国政府需要向试点企业提供电价激励的措施。此外，为了确保行业可持续发展，我们建议2016年启动新一轮项目审批。
2015, the results have yet to be announced. Chinese government issuance of electricity tariff incentives for these pilot projects is crucial to ensuring that the 2020 targets are met. In addition, we recommend approval of another round of projects in 2016 to ensure sustainable industry development.

Wind Power

According to the China Renewable Energy Association Council, 30.5 GW of new wind power capacity was installed in 2015, a nearly 32 percent increase from 2014. However, curtailment remains a problem, with nearly 15 percent curtailment reported for the first half of 2015. Poor turbine performance additionally hinders energy output. The harmonization of Chinese wind turbine certification standards with internationally accepted International Electrotechnical Commission standards would improve turbine performance and support greater Chinese turbine exports. Regarding distributed energy and microgrids, distributed wind turbines ≤ 100kW can be an important contributor, and policy support for “behind-the-meter” feed-in-tariffs should be considered at this power size.

Energy and Water Infrastructure

Smart Grid, Demand-Side Management, and Energy Efficiency

China has set aggressive goals for the development of a nationwide smart grid network by 2020, including promotion of micro-grids and deployment of smart meters across 90 percent of the grid. The 13th Five-Year Plan includes targets for decreasing industrial energy intensity by 18 percent and decreasing industrial water intensity by 23 percent. AmCham China member companies have extensive experience with smart grid management, energy services, and demand-side management, which can bring tremendous efficiency gains to overall grid operations.

Energy Storage

Energy storage offers a critical means of balancing the increasing amount of wind and solar power on the grid. China has set a target of 67 MW of energy storage by 2020. Establishment of this initial target is important; however, the 67 MW would represent a tiny fraction of the storage needed to help balance the over 1,300 GW of grid-connected generation. A target of 1,000 MW of storage by 2020 and introducing an incentive of RMB 1.00 per watt (approximately US $0.16, similar to current solar feed-in-tariffs) for installed storage capacity would support more stable market development.

Water

China’s revised Environmental Protection Law became effective in January 2015 and in April the State Council released the Water Pollution Prevention and Control Action Plan, setting the following targets:

- By 2020, over 70 percent of the water in China’s seven key river basins will reach level III or above (high quality), and will rise to 75 percent by 2030.
- By 2020, the amount of foul water in urban built-up areas will not exceed 10 percent and, by 2030, there will be no foul water in urban built-up areas.
- By 2020, over 93 percent of drinking water in urban areas will reach level III or above (high quality), and will rise to 95 percent by 2030.

Reaching these targets will require major investments and ongoing maintenance in the water and wastewater treatment industry.

AmCham China member companies applaud the Chinese government’s push for “eco-civilization” and are committed to helping China meet these targets with advanced technologies. Increasing energy efficiency across the water sector is also an important measure to reduce air pollution. According to an industry report, China’s annual total abatement potential is nearly 13 Mt CO2e (metric tons of carbon dioxide equivalent), and nearly 100 percent of the abatement opportunities in China’s wastewater sector can be achieved at zero or negative cost. We encourage China to consider an enabling framework to incentivize investment and accelerate widespread adoption of high efficiency, sustainable solutions in its water and wastewater sector. We also encourage development of standards or tariffs to support urban wastewater recycling and reuse.

Pollution/Emissions Control

Clean Coal

In addition to the announcement of the overall cap on coal consumption, several actions were taken to limit coal combustion emissions, including a plan to shut down under-performing coal power plants by 2020. In addition, the 13th Five-Year plan targets average coal power plant consumption at 300 grams/kWh and a 60 percent reduction in pollution. The NDRC also implemented a subsidy of RMB 0.01/kWh (approximately US $0.0016/kWh) for power plants that can satisfy ultra-low emission requirements. AmCham China applauds these efforts, and encourages even more aggressive limits on coal plants and emissions as mentioned above.

Carbon Capture, Utilization, and Storage

Use of enhanced coal bed methane is useful for reducing CO2 emitted from coal-fired power plants, while still ensuring the viability of the coal industry. Coal bed methane utilization is an important tool for addressing a lack of sufficient methane recovery. However, such carbon capture, utilization, and storage projects are not widely used in China. AmCham China member companies are keen to assist the Chinese government in its goal to reduce CO2 emissions and
风力发电

根据中国可再生能源协会理事会的数据统计，2015年，中国风力发电新增装机容量达到3050万千瓦，与2014年相比增长将近32%。但是弃风现象仍然存在，2015年上半年弃风比例接近15%。加上涡轮机性能较差，也影响到能源输出。将中国的风力涡轮机认证标准与国际认可的国际电工技术委员会制定的标准加以统一，将会改善涡轮机的性能，扩大中国的涡轮机出口。至于分布式能源和微网，规格≤100kW的分布式风力涡轮机可以成为重要的推动者，入网电费计价应当予以考虑。

能源和水务基础设施

智能电网、需求侧管理和节能

中国已经制定了宏大的目标，计划到2020年在全国范围内建成智能电网网络，其中包括促进微网的发展，为90%的电网调度智能电表。十三五规划要求工业耗能和耗水分别下降18%和23%。中国美国商会的会员企业在智能电网管理、能源服务以及需求侧管理方面拥有丰富的经验，能够为电网的总体运行带来巨大的效率增益。

能量储存

为了平衡电网中日益增长的风力发电和太阳能发电，能量储存是关键。中国计划到2020年能量储存将达到67MW。设定这一初始目标很重要，但是与平衡超过13亿千瓦的人网发电量所需的能量相比，67MW实在是微不足道。建议将目标定为到2020年能量储存达到1000MW，并按照1元/瓦（约为0.16美元，与太阳能发电现行的入网电价类似）的标准激励装储容量，这将有助于市场实现更加稳定的发展。

水资源

2015年1月，中国新修订的《环境保护法》生效，2015年4月，国务院印发《水污染防治行动计划》，确定了以下目标：

- 到2020年，七大重点流域水质优良（达到或优于Ⅲ类）比例总体达到70%以上，到2030年，七大重点流域水质优良比例总体达到75%。
- 到2020年，城市建成区黑臭水体的数量将会控制在10%以内，到2030年，城市建成区的黑臭水体将会得到消除。
- 到2020年，超过93%的城区饮用水的水质将会达到或者优于Ⅲ类的水平，并且到2030年这一比例将会上升到95%。

为实现这些目标，需要对水和污水处理行业进行重点投资和日常维护。

中国美国商会的会员企业赞赏中国政府推动的生态文明建设，并且愿意通过提供先进的技术帮助中国实现这些目标。减少空气污染，还需要提高整个水行业的节能水平。根据行业报告，中国每年的减排潜力接近1300万吨二氧化碳当量，在中国的污水处理行业中，接近100%的减排机会可以在零成本或者负成本下得以实现。我们鼓励中国政府建立一个有效的框架，用以激励水和污水处理行业发展以及加快推广高效的并且可持续的解决方案。我们还鼓励通过制定标准或价格表的方式来支持城市污水的回收和再利用。

污染/排放控制

清洁能源

除了宣布对煤炭消耗总量实施限制外，中国还采取几项措施限制煤炭燃烧，包括计划到2020年关闭表现不佳的煤电厂。此外，根据十三五规划，平均每千瓦小时的成本为300元，污染减少60%。对于满足最低排放标准的电厂，发改委还按照0.01元/千瓦小时的标准提供补贴，中国美国商会赞赏中国政府作出的这些努力，并鼓励中国对煤电厂和污染排放设定更加严格的限制。

碳捕获、利用和存储

使用强化煤层气在确保煤炭行业生存的同时还能够有效地降低煤电厂的二氧化碳排放。面对甲烷回收不足的问题，利用煤层气不失为一种解决之道。但是，这种碳捕获、利用和存储项目在中国还没有得到广泛运用。中国美国商会的会员企业愿意协助中国政府实现二氧化碳的减排目标，并且敦促政府提供必要的政策支持，以鼓励在中国加大部署碳捕获和存储技术。

碳排放交易计划

中国在七地区（两省五市）的试点工作中，中国在建立和加强碳排放交易计划基础设施和机制方面已经积累了重要经验。对于中国制定的在2017年建成全国性碳排放交
urge the government to provide necessary policy support to encourage greater deployment of carbon capture sequestration technology across China.

**Emissions Trading Scheme**

China’s implementation of a pilot program in seven regions (five cities and two provinces) has yielded important experience in developing the infrastructure and mechanisms for a more robust emissions trading scheme (ETS). AmCham China supports China’s goal to launch a national ETS by 2017 with potential full implementation by 2020.

**Green Buildings and Urbanization**

China introduced a three-star green building rating system in 2006, and the standard now offers certifications for both design and operation. However, as of July 2015, green buildings accounted for only one percent of existing buildings, and only six percent of those buildings have received green operation certification. Given that buildings account for about one-third of final energy consumption in China, AmCham China supports Chinese government efforts to promote green building (e.g., the State Council plan to increase the number of urban green buildings in new construction to 50 percent and the Paulson Institute and the State Council’s Leading Group of Economics and Finance’s establishment of a Building Energy Efficiency Fund to shift investment away from a low-first-cost approach). Additionally, we recommend that all green buildings be required to meet green operation certificate requirements, new incentives be offered for the retrofitting of existing buildings, and for the development of energy reporting and disclosure for buildings to encourage transparency and market development.

**Intellectual Property**

As discussed further in the Intellectual Property Rights chapter, a revised draft of the Patent Law has been released for public comment. Some aspects of the draft would potentially inhibit technology development in or technology transfer into China, including Article 14, which we recommend deleting to avoid inconsistency with Article 55 of the Antitrust Law, which already addresses IP and patent abuse. Additionally, the “863 Program” is a flagship program in China’s science and technology development efforts, especially for clean-technology R&D, however, foreign companies are not allowed to participate in this program. In order to further advance China’s goals of increasing innovation, we recommend that China open participation in the “863 Program” to foreign firms investing in clean technology R&D within China.

**Environmental Goods Agreement**

China, the US, EU, and 17 other WTO members continue to negotiate an Environmental Goods Agreement (EGA). The market for environmental goods, including solar, wind, hydroelectric, air pollution, recycling machinery, carbon dioxide scrubbers, and other equipment is collectively worth nearly US $1 trillion (RMB 6.3 trillion). Both the US and China are leading exporters of such goods, and 70 percent of China’s environmental goods are exported to fellow EGA members. However, China’s tariffs on such environmental goods remain substantially high. If the agreement is completed and tariffs are dropped to zero across all EGA signatories, Chinese companies will be able to take advantage of the reduced costs of exporting to other partner countries. AmCham China’s clean technology members hope that negotiations will be concluded in 2016, potentially by the G20 summit this September, where many EGA negotiating partners will be present.

**Bilateral Cooperation Programs**

**US-China Energy Cooperation Program**

The ECP was established by Presidents Obama and Hu in 2009 as a public-private partnership including US and Chinese companies pursuing business opportunities that advance sustainable energy development and combat climate change. ECP membership includes over 30 leading US companies that invest in R&D in China, seek business partnerships with Chinese companies, and pursue market access for their advanced clean technology products.

When ECP member companies compete for and win contracts with both Chinese public and private sector entities they:

- provide healthy competition for Chinese companies, resulting in higher performance, greater efficiency, and better quality standards;
- drive domestic innovation in China; and
- help China to reach its aggressive emissions reduction targets.

Achievements in 2015 include:

- seven commercial contracts for member companies;
- two MOUs with local government agencies, including the Shanxi Development and Reform Commission and Shandong Development and Reform Commission on distributed energy, renewable energy, and energy efficiency; and
- six MOUs with Chinese business associations and enterprises, including the Ministry of Industry and Information Technology’s Center on Industrial Energy Efficiency and the Ministry of Housing and Urban-Rural Development’s (MOHURD) Center of Science and Technology Industrialization Development, to promote energy efficiency opportunities and standards development.
易计划并在2020年全面实施的目标，中国美国商会表示支持。

绿色建筑和城镇化

2006年，中国引进了三星绿色建筑评价体系，目前可以
提供设计和施工认证。然而，截止到2015年7月，在现有
建筑中，绿色建筑仅占百分之一，其中只有百分之六拥
有绿色施工认证。鉴于建筑在中国的最终能耗中大约占三
分之一，中国美国商会支持中国政府努力推行绿色建筑（例
如，国务院计划将城市新建绿色建筑的比例提高到50%。
保尔森基金会和国务院财经工作领导小组设立建筑节能基
金，使投资不再偏重降低初始成本）。此外，我们建议要
求所有绿色建筑必须达到绿色施工认证的要求，对现有建
筑翻修以及对建筑的能源报告进展和披露提供新的激励机
制，从而鼓励透明和市场开发。

知识产权

中国已经印发《专利法》草案并向社会公开征求意见
和建议，详情见“知识产权”部分。《草案》的一些规定
有可能限制在中国开发技术或向中国转让技术，其中包
括第十四节，因为《反垄断法》第五十五节已经对知识产
权和专利滥用做出规定。为了避免冲突，我们建议将第
十四节删掉。此外，"863"计划是中国科技发展，特别是
清洁技术研发的旗舰项目，然而外资企业并不被允许参与
该项目，为了进一步推动中国增加创新项目这一目标，我
们建议中国向在华开展清洁技术研发投资的外资企业开放
"863"计划。

《环境产品协定》

中国、美国、欧盟和其他17个世贸组织的成员国继续
就《环境产品协定》展开谈判。环境产品包括太阳能、风力、
水电、空气污染、再生设备、二氧化碳洗涤器及其他设备，
整个市场的价值将近1万亿美元（6.3万亿元）。美国和
中国都是环境产品的出口大国，中国有70%的环境产品出
口到《环境产品协定》的成员国。但是，中国对环境产品
仍然征收较高的关税。如果《协定》最终达成，对所有签
约国实行零关税，向伙伴国出口的成本就会降低，中国企业
就能够从中获益。美国中国商会来自清洁技术行业的会
员企业希望在2016年的谈判中可以得出结论，因为有可能
在2016年9月G20峰会期间，《环境产品协定》的很多
谈判国都会到场。

双边合作项目

中美能源合作项目

2009年，奥巴马总统和胡锦涛主席建立中美能源合作
项目（ECP），作为一项公营部门和私营部门之间的合作
项目，吸引了致力于寻求推动可持续的能源开发和应对气
候变化的美国企业和中国企业。中美能源合作项目（ECP）
的成员包括十几家美国大公司，这些企业在中国都有研
发投资，寻求与中国企业开展业务合作，并寻求将先进的
清洁技术产品引入中国市场的机会。

在从中国公营和私营部门获得合同的同时，参与中美
能源合作项目（ECP）的企业还能够：
• 为中国企业提供健康的竞争，促使它们提高业绩、效
率和质量标准；
• 加快中国的创新步伐；
• 帮助中国实现宏大的减排目标。

2015年取得的成就包括：
• 为会员企业签订了七份商业合同；
• 与山西发改委和山东发改委这两家政府部门机构签订了
两份关于分布式能源、可再生能源和节能的谅解备
忘录；
• 与中国行业协会和企业（其中包括工业和信息化部工
业能效中心以及住房和城乡建设部科技与产业化发展
中心）签订了五份关于促进能效机遇和标准发展的谅
解备忘录。

中美清洁能源联合研究中心

自2009年成立以来，中美清洁能源联合研究中心
（CERC）在促进中美能源技术开发和能源使用标准合作
方面发挥着主导作用。除了美国能源部、中国科技部、国
家能源局以及住房和城乡建设部的支持外，还有私营部门
提供的总额为1.5亿美元（9.42亿元）的资金支持（最初
五年由两国平分）。2015年，中美清洁能源联合研究中心
延期五年。从2016年到2020年，它的目标还是以三方面
为主：建筑节能、清洁汽车、先进用煤技术以及独特的知
识产权框架。它还将推出新的能源、水和重型卡车的效率
指标。
US-China Clean Energy Research Center

Since its founding in 2009, CERC has played a leading role in fostering greater US-China cooperation on energy technology development and energy use standards. Supported by the US Department of Energy (DOE) and China’s Ministry of Science and Technology, National Energy Administration, and MOHURD, along with private funding totaling US $150 million (RMB 942 million) (split evenly between the two countries over the initial five years), CERC was renewed for another five years in 2015. Its mandate for 2016-2020 will continue to emphasize three tracks: Building Efficiency, Clean Vehicles, and Advanced Coal, plus a unique IP framework. It will also launch new tracks on Energy and Water and Heavy-Duty Truck Efficiency.

Recommendations

For the Chinese Government:

• Further engage with the ECP on pilot programs that allow US companies to participate on a level basis with domestic state-owned and private companies in clean technology initiatives and market development.
• Improve transparency in the local approval process for renewable energy projects.
• Require operation certificates for participation in China’s three-star green building rating system, including for building retrofits.
• Allow foreign companies investing in clean technology R&D within China to participate in the “863 Program.”
• Reduce tariffs on all product lines to encourage similar momentum among all EGA partners and promote freer trade in environmental goods across the Asia-Pacific.
• Introduce feed-in tariffs for solar thermal projects.
• Apply an energy efficiency rating for energy use in the water sector.

For the US Government:

• Continue to fund the ECP to support deployment of US clean technologies and services in the Chinese market. [DOE, Department of Commerce, US Trade and Development Agency]
• Continue to support CERC. [DOE]
建 议

对中国政府：

• 进一步和美中能源合作项目合作开展试点项目，允许美国企业能与境内国有和私营企业一样公平地参与清洁能源技术创新和市场开发。
• 提高地方可再生能源项目审批的透明度。
• 要求包括建筑翻修在内的参加中国三星绿色建筑评级体系的企业，取得施工认证。
• 允许在华开展清洁技术研发投资的外资企业参与“863”计划。
• 全线降低关税，以鼓励《环境产品协定》其他国家采取类似措施，促进亚太地区环保产品的自由贸易。
• 引进太阳能热发电项目入网电价。
• 对水行业的能源使用实行节能评级。

对美国政府：

• 继续为美中能源合作项目融资，支持在中国市场部署美国清洁技术和服务。[ 美国能源部、商务部、贸易和发展署 ]
• 继续支持中美清洁能源联合研究中心。[ 美国能源部 ]
Construction, Engineering, and Design

Introduction

Although the Construction, Engineering, and Design (CED) industry was negatively impacted in 2015 by China’s economic slowdown, there are still some positive areas to highlight. For example, the Ministry of Housing and Urban-Rural Development (MOHURD) encouraged the adoption of green building standards nationwide. MOHURD also issued regulations further clarifying the qualification application procedure for construction enterprises.

On the other hand, the relatively restrictive regulatory environment for foreign-invested enterprises (FIEs) in the CED industry generally remains unchanged. As the construction market increasingly globalizes, AmCham China continues to believe that FIEs can enhance China’s construction market by introducing advanced technology and management skills to local operations, especially in areas like green building or energy efficiency. We therefore urge the Chinese government to implement policies to enable the participation of FIEs in this market.

Ongoing Regulatory Issues

Engineering and Design Sector

Open Grade A Classification to More FIEs

The legal regime applicable to foreign-invested design enterprises (FIEs) remained unchanged in 2015. When applying for a Design Qualification (DQ), an FIE may initially apply only for a Grade B or lower DQ, regardless of its size, experience, or international track record. An FIE can apply directly for a Grade A DQ only if it already holds a Grade One (or higher) construction qualification in the same industry.

These restrictions unfairly discriminate against qualified and experienced foreign companies that otherwise already satisfy the relevant requirements for a Grade A DQ. Such companies are generally neither interested nor competitive in Grade B engineering projects and, therefore, have little reason to apply for a Grade B DQ. Similarly, because of the nature of their business (and the onerous capital and staffing requirements for obtaining a Grade One construction qualification, as discussed below), most qualified and experienced foreign companies do not already hold a Grade One (or higher) construction qualification in the same industry.

To resolve this conundrum, AmCham China recommends that the Chinese government allow FIEs which otherwise meet the requirements to apply directly for a Grade A DQ without first applying for and obtaining a Grade B DQ.

Permanently Relax Hiring and Residency Requirements for FIEs

When China relaxed certain residency requirements for foreign staff and allowed a greater percentage of qualified Chinese nationals to work for FIEs in 2007, FIEs were able to more quickly expand operations and employ more Chinese professionals. However, as the relaxed regulations were introduced as temporary measures, many FIEs remain reluctant to take advantage of these policies due to uncertainty as to how long they will remain in effect.

AmCham China believes the “Implementation Rules to the Administrative Regulations on Foreign-Invested Construction Engineering Design Enterprises” (Circular 18) should be permanently revised to eliminate the requirements that FIE staff must be at least 25 percent foreign and that foreign staff must reside in China for at least six months per year.

Construction Sector

Improve Laws Regarding Capital Requirements and Staffing for FICEs

Foreign-invested construction enterprises (FICEs) entering China face unusually burdensome regulations regarding capital requirements and staffing for certain professional positions.

In order for foreign investors to undertake construction activities within China, the “Administrative Provisions for Foreign-Invested Construction Enterprises” (Decree 113) and its implementing regulations require foreign construction companies to establish a local presence in China by creating either a wholly foreign-owned enterprise or a joint venture.
引言

2015年，虽然受到中国经济增长减速的影响，建筑、工程和设计行业仍然有一些积极的亮点。例如，住房和城乡建设部（住建部）鼓励在全国范围内实施绿色建筑标准，并且颁发规定，进一步明确建筑企业资质申请程序。

另一方面，建筑、工程和设计行业的外商投资企业（外资企业）仍然面临相对限制性的监管环境。随着建筑市场全球化程度日益提高，中国美国商会仍然相信，外资企业能通过向本地经营者引进先进技术和管理技巧，促进中国建筑市场的发展，尤其是在绿色建筑或节能等领域。因此，我们促请中国政府推行能够促进外资企业参与这一市场的政策。

现存监管问题

工程及设计行业

向更多外资设计企业开放甲级资质认证

2015年，适用于外资设计企业的法律制度保持不变。在申请设计资质时，无论其规模、经验和国际业绩记录如何，外资设计企业的初始申请只能为乙级或以下。只有在其申请前在相同行业获得一级或以上的建筑资质的情况下，外资设计企业才能直接申请甲级设计资质。

这些限制对符合条件并具有行业经验的外资公司是一种歧视，因为这些外资公司已经满足申请甲级设计资质的所有条件。这些公司一般对于乙级工程项目的限制兴趣也没有竞争优势，因此没有理由申请乙级设计资质。同理，因为业务性质的原因（以及取得一级建筑资质所需要满足的过重资本要求和人员要求，详见下文），多数符合条件并具有行业经验的外资公司并未在相同行业获得过一级或以上级别的建筑资质。为了解决这一难题，中国美国商会建议中国政府允许符合要求的外资设计公司直接申请甲级设计资质，而无需先获得乙级资质。

彻底放宽外资设计企业的雇用及居住限制

2007年，中国放宽了对外资企业外籍员工的居住限制，同时允许其加大雇用中国员工的比例。外资设计企业因此得以加快扩张业务，雇用更多中国员工。但是，这些宽限规定只是临时性的，由于不确定这些临时措施的有效期限，很多外资设计企业不愿意利用这些政策。

这种不确定性使经营计划更加复杂，人才招聘也更加困难。《外商投资建设工程设计企业管理规定实施细则》（18号令）规定，外资设计企业的从业人员至少应有25%来自于国外，且外籍员工每年应在中国居住6个月以上。中国美国商会认为应该彻底取消此规定。

建筑行业

改进关于外资建筑企业资本金和人员配备要求的法规

外资建筑企业进入中国需要受到有关资本金和部分专业岗位人员配备异常繁重的规管。

根据商务部《外商投资建筑业企业管理规定》（113号令）及其实施细则的要求，准备在华从事建筑业的外资投资者首先需要在中国建立独资企业或与中方企业合作建立合资公司，然后必须申请相关的建筑资质，方可成为外资建筑企业。

与国际惯例不同的是，中国法律不接受使用银行担保、履约保证或母公司担保等标准金融工具充当成立外资建筑企业的资本金。此外，获得外资建筑企业资质的人员配备先决条件，尤其挑战性：对于某些领域关键职位（例如工程师、建筑师等）要求的最少人数，只有本地具有相关执业资格的专业人员算在内，而具有相应资质的外籍员工则不算在内。
with a Chinese firm. They then must apply for the appropriate construction qualification in order to become a FICE.

Contrary to international practice, Chinese law does not allow standard financial instruments such as bank guarantees, surety bonds, or parent company guarantees to satisfy capital requirements for establishing a FICE. In addition, the staffing prerequisites to qualify as a FICE are particularly challenging as they stipulate that, in certain key personnel categories (e.g., engineers, architects), only locally qualified professionals can be counted towards the required minimum number while highly qualified expatriate professionals on the payroll cannot.

AmCham China believes that internationally accepted standard financial instruments should be allowed to satisfy capital requirements for establishing a FICE in China, and that the staffing requirements should be modified to include appropriately qualified foreign professionals.

**Remove Market Exclusions for FICEs**

FICEs operating in China continue to face restrictive regulatory burdens, with market exclusion ranking among the biggest challenges. Wholly foreign-owned FICEs are restricted to undertaking foreign-funded projects or projects with foreign investment equal to or greater than 50 percent, except for projects that cannot be undertaken by Chinese construction enterprises because of technical difficulties. This regulation restricts FICEs to a limited segment of the construction market.

In 2013, such market exclusions were partially removed in the China (Shanghai) Pilot Free Trade Zone. AmCham China believes that the removal of such exclusions should be expanded to all four pilot free trade zones and nationwide, as they prevent FICEs from playing a substantive role in the Chinese market and from introducing advanced technology and expertise to the local market.

**Project Management Sector**

**Clarify Project Management Qualifications**

Conflicting regulatory regimes make it difficult for FIEs to provide project management services. The National Development and Reform Commission (NDRC) under the “Measures for Recognizing the Qualifications of Engineering Consulting Entities” (Circular 29) requires companies wishing to provide engineering consulting services, including project management, to obtain an Engineering Consulting Enterprise Qualification Certificate. Separately, MOHURD, under the “Trial Measures for the Administration of Construction Engineering Projects” (Circular 200), requires FIEs that wish to provide project management services to establish a local entity and obtain qualifications in at least one of six categories (i.e., survey, design, construction, supervision, tendering agency, or cost control). It is not clear whether FIEs must satisfy the regulations of both the NDRC and MOHURD before they can offer project management services.

In addition, FIEs attempting to satisfy MOHURD’s regulations are further burdened by the selective application of the “Provisions on the Administration of Foreign-Invested Construction Engineering Service Enterprises” (Decree 155), jointly promulgated by the Ministry of Commerce and the Ministry of Construction, which allows an enterprise that is not a FICE or a FIDE to provide project management services. FIEs can satisfy Decree 155 by obtaining one of three qualifications (i.e., supervision, tendering agency, or cost control) and qualifying as a foreign-invested engineering services enterprise (FIESE). However, guidelines for the implementation of Decree 155 have yet to be issued and local authorities in many cities have cited this as a reason for refusing to accept FIESE applications.

AmCham China urges the Chinese government to issue clarifying rules on project management qualifications as soon as possible in order to enable companies to operate effectively within a consistent regulatory environment.

**Engineering Procurement Construction Sector**

**Clarify Regulations for EPC Contracting**

Construction projects with an engineering, procurement, and construction (EPC) contracting component are expanding around China, but the current qualification system does not effectively address such projects. Both the “Guiding Opinions Concerning Nurturing and Development of Project General Contractor and Engineering Project Management Enterprises” (Circular 30) and the “Explanation Letter Concerning Market Entry for Project General Contracting” (Circular 161) appear to allow EPC contracting, provided that the contractor holds an appropriate supervision, engineering design, or general construction qualification and contracts the construction activities to appropriately qualified subcontractors. However, many local officials still do not accept the filing of such EPC contracts if the contractor holds only a DQ. This apparent discrepancy effectively prevents entities with only a DQ from undertaking EPC contracting, which is expressly permitted by Circular 30 and Circular 161.

AmCham China urges elimination of this inconsistency in order to enhance transparency and regulatory uniformity within the industry.

**Contract Filing with Local Government Authorities**

Various engineering, design, and construction contracts that govern the life cycle of a construction project must be filed with local authorities. Both national and local level governments have issued a series of model texts for such
中国美国商会认为，中国应准许使用国际上通用的标准金融工具充当成设立外资建筑企业的资本金，还应修改人员配备要求，承认具有相应资质的外籍专业人员。

取消对外资建筑企业的市场排斥

在华经营的外资建筑企业仍然面临种种监管限制，市场排斥是其中最大挑战之一。外资独资建筑企业只能参加外商投资项目或外资比例达到或超过百分之五十的项目，中国建筑企业因为技术困难而无法参加的项目除外。这一规定使得外资建筑企业对建筑市场的参与非常有限。

2013年，中国（上海）自由贸易试验区部分取消了这种市场排斥。中国美国商会认为，应当在全国范围内取消这种市场排斥，因为它们会妨碍外资建筑企业在华市场发挥实质性作用及向本地市场引进先进技术和专业知识。

项目管理行业

明确项目管理资质

相互冲突的监管制度使得外资公司难以提供项目管理服务。国家发展和改革委员会（国家发改委）颁布的《工程咨询单位资格认定办法》（29号令）要求从事工程咨询服务（包括项目管理）的企业必须获得工程咨询单位资格。住建部颁布的《建设工程项目管理试行办法》（200号令）则要求从事项目管理服务的外资企业需在本地建立实体企业，并至少获得六大门类（即勘察、设计、工程、监理、招标代理及造价咨询）中的一项专业资质。至于外资企业是否必须同时满足国家发改委和住建部的要求才能提供项目管理服务，仍不清楚。

在尝试满足住建部标准的同时，外资企业还面临着商务和当时的建设部共同发布的《外商投资建设工程服务企业管理规定》（155号令）的选择性适用，负担进一步加重，因为该法规允许非外资建筑企业和外资设计企业提供项目管理服务。外资企业虽然获得监理、招标代理和造价咨询一项的专业资质，可满足155号令的要求，成为外商投资建设工程服务企业。然而，由于155号令的具体实施细则尚未出台，许多地方的商务和建设部拒绝接受外资工程服务企业的申请。

中国美国商会促请中国政府尽快出台明确的项目管理资质制度，为企业运营创造一个统一的政策环境。

设计、采购、施工行业

明确工程总承包法规

中国已逐步在建设项目中纳入设计、采购、施工服务（工程总承包），但现有的资质认证系统还不能有效地满足这类项目的需求。《关于培育发展工程总承包和工程项目管理企业的指导意见》（30号令）以及《关于工程总承包市场准入问题说明的函》（161号令）似乎均允许工程总承包，只要承包商具有相应的监理、工程设计或总承包资质，并将建筑工作适当分包给具有资质的分包商。然而，有许多地方官员不接受只具有设计资质的承包商提交的设计采购施工承包申请。这实际上阻碍了只具有设计资质的主体参与工程总承包，显然不符合30号令和161号令的明文规定。

中国美国商会促请消除这种不一致，提高行业透明度和监管的一致性。

向地方政府当局备案合同

项目生命周期期间的各种工程、设计和服务合同必须向地方政府当局备案。中央和地方政府已经发布一系列合同示范文本，旨在指导各方合同签订活动。虽然通常鼓励采用示范合同并备案，但中国法律也允许当事人使用其制定的合同或者对示范合同进行必要的修改。然而，在实践中，许多外资企业发现，一些地方当局会对合同内容做一些进一步的限制（例如，要求使用示范合同，要求当事人在网上系统输入所有相关信息并签订由此生成的合同文本，拒绝接受其他合同形式）。

中国美国商会希望，除了严格遵循合同范本的合同外，地方当局还能够接受中国《合同法》所允许的其他形式的合同。

最新进展

住建部《建筑业企业资质标准》

2014年11月6日，住建部发布《建筑业企业资质标准》（修订），取代2001年发布的标准。新标准将旧标准中不同的资质类别加以整合，反映了市场的当前需求和现状。例如，专业承包资质类别从60个减少为36个，劳务资质从过去13个类别变成不再划分类别和等级。各种资质要求（例如，职业经验、业绩记录、技术设备）也有调整。
contracts, for the purpose of guiding contracting activities between different parties. While model texts are normally encouraged to be adopted and filed, Chinese law allows the parties to use their own form of contract or make necessary amendments to the model texts. However, the experience of many FIEs is that some local authorities place additional restrictions on content of the contracts (e.g., requiring the use of a model text, requiring parties to input all relevant information into an online system which will generate a form of contract for the parties to sign, refusing to accept separate forms of contracts).

AmCham China hopes that local authorities will accept different forms of contracts, in addition to those following a strict model text format, in accordance with the Contract Law.

Recent Developments

**MOHURD’s “Construction Enterprise Qualification Standards”**

MOHURD issued the “Construction Enterprise Qualification Standards” (Revised Standards) on November 6, 2014, replacing the predecessor standards issued in 2001. The Revised Standards consolidate different qualification categories from the previous version, reflecting the current needs and realities of the market. For example, specialized contracting qualifications were decreased from 60 to 36 disciplines and labor service qualifications decreased from 13 disciplines to one comprehensive discipline. Various qualification requirements (e.g., professional experience, track record, technological equipment) have been adjusted. AmCham China welcomes the Revised Standards and believes that they are consistent with the evolution of the construction market.

**MOHURD’s “Opinions on the Implementation of Construction Enterprise Qualification Administration Regulations and Standards”**

To better implement the revised Standards, MOHURD promulgated the “Opinions on the Implementation of Construction Enterprise Qualification Administration Regulations and Standards” (Opinions) on January 31, 2015. The Opinions further clarify procedures for construction qualification application, including required personnel, application documents, and track record. The detailed rules provided by the Opinions create more transparent guidelines for the construction qualification application process, which we hope will fully address the problem of local construction authorities utilizing different practice standards when processing local applications. AmCham China applauds such clarification and transparency at the provincial level, which will provide construction enterprises, including FIEs, with greater certainty.

**Nationwide Promotion of Green Building Standards**

In 2015, MOHURD continued its efforts to promote green building standards, including actions to certify green buildings, promote existing buildings’ transformation into energy efficient buildings, accelerate the use of green building materials, implement smart city pilot programs, and strengthen international cooperation in the development of energy efficient green buildings. On March 27, 2015, Jiangsu province promulgated a Green Building Development Ordinance, the first provincial regulation regarding the implementation of green buildings. This ordinance covers the planning, design, construction, operation, and entire life-span of green buildings. AmCham China views this as a positive sign for CED FIEs to enter and introduce world-class technology to the Chinese market, to the benefit of all.

**Recommendations**

**For MOHURD:**

- Apply more flexibility when reviewing design and construction contracts filed with local authorities.
- Formally issue regulations clarifying qualifications required to undertake EPC contracting.
- Allow FIDEs to directly apply for a Grade A DQ without first applying for and obtaining a Grade B DQ.
- Clarify the requirements for non-FICEs/FIDEs to qualify as providers of project management services.
国美国商会对新标准表示欢迎，相信这是符合建筑市场发展需求的。

**住建部《建筑业企业资质管理规定和资质标准实施意见》**

为了更好地实施新标准，2015 年 1 月 31 日，住建部发布《建筑业企业资质管理规定和资质标准实施意见》（《意见》）。《意见》进一步明确了建筑资质申请程序，包括人员、申请文件和业绩记录要求。《意见》为建筑资质申请流程提供了更加透明、详细的指导，我们希望其能够全面解决地方当局在处理申请时各行其是的作法。中国美国商会赞成在省一级保持明确和透明，为建筑企业，包括外资企业，提供更大的确定性。

**在全国范围内推行绿色建筑标准**

2015年，住建部继续着力推广绿色建筑标准，包括进行绿色建筑认证，促进现有建筑的节能改造，加快绿色建筑材料的使用，开展智慧城市试点项目，在节能绿色建筑开发方面加强国际合作。2015年3月27日，江苏省发布《绿色建筑发展条例》，这是首个关于实施绿色建筑的省级规范。《条例》涵盖绿色建筑规划、设计、建造、经营和整个生命周期。中国美国商会认为这对于想进入并从事中国建筑、工程和设计市场引进世界一流技术的外资企业来说是一个积极的信号，各方都能从中受益。

**建 议**

**对住建部：**

- 地方当局审查已备案的设计和建筑合同时应当更加灵活。
- 颁布正式的法规，明确承揽工程总承包项目的资质要求。
- 允许外资设计企业直接申请甲级设计资质，而无需先申请并获得乙级资质。
- 明确非外资建筑业企业和非外资设计公司从事项目管理服务的要求。
Introduction

AmCham China urges Chinese regulators to make further efforts to establish a scientific, rational, and effective supervisory system that ensures product safety, promotes technological innovation, and allows the cosmetics industry to continue developing in a healthy and rapid manner.

As a player in the so-called fast-moving consumer goods sector, the cosmetics industry is closely following the Chinese government’s macroeconomic development strategy on the business environment. We are pleased in general that the State Council continued to encourage development of e-commerce in 2015, proposing reform measures such as the unblocking of commodity import channels (especially for popular consumer goods) and removing other obstacles to e-commerce to increase consumption.

Recent Developments

AmCham China was pleased to see the “Regulations Concerning the Supervision and Administration of Cosmetics (Revised Draft for Review)” (Draft Revised Supervision Regulations) released by the State Council Legislative Affairs Office (SCLAO) on July 20, 2015 for public comment. This move signals a major breakthrough in cosmetics regulatory reform. Similarly, in 2015, the China Food and Drug Administration (CFDA) sought public comment on a variety of regulations in an effort to improve the administration and supervision of the cosmetics industry, including the draft “Adjusted Requirements for the Application Documents Needed for the Administrative Licensing of New Plant-based Cosmetic Ingredients” [November 10, 2015] and the draft “Guidelines for the Assessment of Cosmetics Safety Risk” [November 11, 2015]. The CFDA additionally released announcements on the cosmetic manufacturing license integration plan [December 15, 2015], issued new safety and technical standards for cosmetics (2015 version) [December 15, 2015], issued new safety and technical standards for cosmetics (2015 version) [December 23, 2015], and issued the 2015 inventory for China’s used cosmetic ingredients [December 23, 2015].

Revision of the “Regulations Concerning the Supervision and Administration of Cosmetics”

The Draft Revised Supervision Regulations reflect the central government’s call to streamline government functions and base regulation on the scientific supervision concepts of “problem orientation and risk management” and “accounting for national conditions and drawing from international practices.” However, there remains room for improvement, including issues around administrative licensing, the role of corporate responsibility, and industry product features. More specifically, we recommend the following:

- Define limitations on the administrative licensing of new raw material categories for preservatives, sun-screen agents, colorants, hair dyes, and skin pigmentation correcting agents, and delete the catch-all sub-clause “and other new higher-risk raw materials” which could subject all new materials to regulation even if they are low risk. Implement a notification procedure for low-risk raw materials excluded from the “Catalogue of Permitted Raw Material Categories” without pre-market review.

- Clarify the categories and definitions of special cosmetics; remove wording that allows the State Council Drug Supervision and Administration Department to adjust the range of special cosmetics; shorten the time limit for the evaluation of special cosmetic technologies; implement advance record-filing management for special cosmetics that conform to the “Permitted Efficacy Ingredient Catalogue”; and expressly include products that conform to the categorical definition of cosmetics (e.g., products for hair growth, breast enhancement, bodybuilding, deodorization, hair removal) as part of the normal cosmetics management system.

- Separate categorization of oral cleaning and care cosmetics and implement a system for filing such products for the record. Maintain use of existing management requirements on raw materials, quality, and efficacy assertions.

- Cancel the cosmetic manufacturing licensing system and implement a supervisory system that integrates cosmetic enterprise information reporting, mandatory
引言

美国商会敦促中国监管部门在建立一个科学、理性、有效的监督体系方面做出更大努力，从而确保产品安全，又促进技术创新，最终促进中国化妆品产业继续健康、快速地发展。

作为迅速发展的快消行业一部分，化妆品产业紧跟中国政府在商业环境方面的宏观经济发展策略。我们很欣喜地看到国务院在2015年度继续大力倡导鼓励电子商务发展、以消费升级促进产业升级，并提出以改革创新破除制约消费扩大的体制障碍、优化消费环境以及畅通商品进口渠道，扩大群众欢迎的日用消费品进口的政策改革方向。

最新进展


条例修订（化妆品监督管理条例）

2015年7月，国务院法制办就《化妆品监督管理条例（修订草案送审稿）》公开征求意见，这具有重要的里程碑意义。《条例（修订稿）》体现了中央政府对落实转变政府职能的承诺，以及“问题导向、风险管理、立足国情、借鉴国际经验”的科学监管理念。但在依法设立行政许可、落实企业责任主体原则、立足行业产品特点等方面，具体监管要求仍有调整空间。具体包括：

- 明确将实施行政许可的新原料类别限定在防腐剂、防晒剂、着色剂、染发剂和祛斑剂，删除“以及其他具有较高风险的新原料”。对准用原料目录类别外的低风险原料实施真正的告知性备案管理。
- 明确特殊化妆品的具体类别和定义，删除国务院食品药品监督管理部门可以调整特殊化妆品范围的有关表述，缩短特殊化妆品技术审评时限，对符合功效成分准用目录的特殊化妆品实施事前备案管理；明确将符合化妆品定义范畴的原育发、美乳、健美、除臭、脱毛化妆品纳入普通化妆品管理。
- 单独设立口腔清洁护理化妆品类别，实行产品备案制度，保留现有原料、质量安全和功效宣称的相关管理要求。
- 取消化妆品生产许可制度，对化妆品生产企业实施企业信息报备、强制实施良好生产规范（GMP）与日常飞行检查相结合的监管模式。
- 标签与功效宣称管理应充分参考国际惯例，强调企业主体责任，发挥行业自律作用；在保证产品安全、满足消费者知情权的基础上给予行业发展空间。

宜采用创新政策管理网购保税跨境进口的化妆品

网购保税跨境进口是一种国家大力推进的新型贸易模式，充满生机和活力，有独特的规律。如果沿用旧的、以审批、许可为主的管理思路，会使该政策完全失去先进性。建议政府继续积极探索，在充分把握其规律后，出台相应的政策，让国家的“互联网+”战略落到实处。
implementation of good manufacturing practices, and random daily inspections.

• Follow international practices in the management of labeling and efficacy claims; emphasize the corporate responsibility of enterprises and promote industry self-regulation; and create greater room for industry development while securing product safety and consumers’ right to information.

**Adopt Innovative Policies to Manage Bonded Cross-border Imports of Cosmetics Purchased Online**

Bonded cross-border importation of products for sale over the Internet is a new mode of trade which presents distinctive regulatory concerns. As this form of commerce grows in popularity, it has also garnered strong support from the Chinese government. However, continued use of the current administrative tools of examination, approval, and licensing run counter to the progressive nature of this new mode of trade. We recommend that officials continue to explore and understand the patterns of cross-border e-commerce before rolling out new regulations in order to more effectively implement the “Internet +” strategy.

Management of the cross-border import of cosmetics should fully take into consideration the characteristics of such products (e.g., for external use, for use in small amounts, low risk) and not indiscriminately utilize policies for drugs, foods, or other health products.

**Imported Non-special Cosmetics Reform**

Reforms to the record-filing management system for non-special cosmetics should be expedited.

We are pleased that the Draft Revised Supervision Regulations include a plan to implement a notification process for imported non-special cosmetics without having to undergo pre-market review. This indicates that the government and industry agree that such products pose relatively lower risks. With the rapid development and competitive advantage of cross-border e-commerce, traditional markets urgently need to increase their competitiveness. Thus, we recommend that the Chinese government expedite these reforms and simplify the recording process for imported non-special cosmetics before final revision of the Draft Revised Supervision Regulations to ensure equal treatment of online and offline businesses. Doing so will expand consumer choice by widening channels for marketing cosmetic products.

**Recommendations**

*For the Chinese Government:*

• Promote industry development and innovation as basic rules of the Draft Revised Supervision Regulations.

• Promote corporate responsibility and industry self-regulation while encouraging stakeholders to establish social organizations that are active in cosmetics supervision and administration.

• Separate scientific management from administrative management and include the proposed expert advisory committee within the Draft Revised Supervision Regulations’ chapter on general principles in order to support government decision making on issues related to cosmetic safety and science.

• Employ advanced management concepts and technologies through informatization and sharing resources to reduce costs and enhance supervision efficiency.

• Streamline administration and delegate power to lower levels for pre-approval; focus management on raw materials and products with special functions in order to make the most economical and efficient use of government resources.
管理跨境进口的化妆品，应该充分考虑其皮肤外用、用量较低、安全性风险小的特点，不宜简单地套用或者参照药品、食品或保健食品的政策。

进口非特改革

进一步加快进口非特殊用途化妆品备案管理改革。

我们非常高兴地看到，《化妆品监督管理条例》（修订草案送审稿）中计划对进口非特殊用途化妆品实施告知性备案管理。这说明政府和行业对此类产品安全风险相对较低的特点达成了共识。面对跨境电商商务的快速发展和竞争优势，提高传统市场竞争力的需求变得更为迫切。行业期待政府能够加快改革步伐。在《条例》修订完成之前，先行简化进口非特殊用途化妆品备案程序，设置更合理的市场准入要求，使消费者能够在不同渠道获得产品的机会趋于平等。

建 议

对中国政府：

- 建议条例在三大基本原则的基础上还应加入推动行业发展与创新的原则。
- 社会共治是国务院提出的方向，企业主体、行业自律、社会监督等内容建议增加鼓励利益相关者依法成立社会组织，参与化妆品的监督管理，一起并入社会共治里面。
- 强调科学与行政管理分开，把条例提出的设立专家咨询委员会增加到总则中。专业委员会为政府在化妆品安全及科学问题上提供决策建议和依据，提高政府决策的科学性，减轻政府责任。
- 建议政府主管部门运用先进的管理理念和技术，使用先进的技术和手段，节省政府执法成本，提高监管效率，包括信息化建设，信息资源的公开与共享。
- 目前前置审批模式的模式有待进一步简政放权，管理关注点应更好的聚焦在具有特殊功能的原料及产品，从而以最经济、有效的方式利用政府资源。
Direct Sales

Introduction

Direct selling was first introduced to the Chinese market in the early 1990s and expanded rapidly across the country. According to State Administration of Industry and Commerce statistics, by the end of 1995 there were 163 direct sales companies. From the very beginning, direct selling has been conflated with so-called pyramid schemes (chuanxiao). Despite the Chinese government’s commitment to eradicating chuanxiao, such schemes remain a widespread problem. One reason for this is that pyramid schemes often masquerade as legitimate direct selling businesses to confuse the market and regulatory authorities. In an effort to curb the spread of pyramid schemes, the government oftentimes imposes strict regulations that adversely affect the direct sales industry.

In fact, the entire direct sales industry was banned from 1998 until 2005 when the “Regulation on the Direct Sales Administration” (Direct Sales Regulation) and the “Regulation on the Prohibition of Pyramid Selling” (Anti-Chuanxiao Regulation) were promulgated. According to the Ministry of Commerce, as of December 2015 there were 71 enterprises approved for direct selling in China. By the end of 2014, the business volume of the direct sales industry stood at nearly US $21.5 billion (RMB 135 billion), an increase of 68.7 percent from 2011. According to the Peking University Research Center for Direct Selling, direct selling plays a positive role in promoting employment, consumption, investment, supply chains, tax revenue, public service activities, and small and micro businesses. Compared with the conventional brick-and-mortar retail industry, the direct sales industry, though of moderate size, has a positive and unique social impact as it offers low entry barriers and the capability to employ large numbers of people. Given the “new normal” of slower economic growth, the direct sales industry is in a unique position to promote consumption and stimulate domestic demand. Active promotion of the direct sales industry can also help China to reach its 13th Five-Year Plan goal of improving living standards.

Ongoing Regulatory Issues

The effective enforcement of the Direct Sales and Anti-Chuanxiao Regulations (the Regulations) over the past decade has led to positive outcomes: total industry sales have risen, business operations have become increasingly standardized, and the public has developed a better understanding of direct selling. However, there have been many fundamental economic and social changes since 2005. With the maturation of the direct sales market, the government, industry, and public, when distinguishing between legal direct selling and illegal pyramid schemes, have shifted their focal point from the mode of sale to identification of “real sales to consumers.” In the present environment, the Regulations fail to accommodate current social demands and address developments that have been made regarding self-regulation and consumer protection. Their stringent nature hampers the adoption of innovative new business models and may impede fair market competition as exemplified below.

Unfair Competition between Industries

Following the 18th National Party Congress, regulatory restrictions were relaxed in some sectors, fostering rapid growth in these areas. Compared to conventional retail and e-commerce, direct selling is subject to stricter regulation and, at times, faces legislative and regulatory discrimination.

Strict Regulations Result in Vicious Cycle

Legitimate companies are unjustly fettered by regulations. To viably compete in the market, legitimate companies are often forced to adopt policies which, while not violating the letter of the law, often reside in a legal grey area. This exposes legitimate companies to (sometimes economically driven) challenges by interest groups, the media and, at times, local authorities, producing a vicious cycle where overly tight controls induce distorted practices, resulting in further public misunderstanding and suspicion.

Market Confusion Caused by Unlicensed Direct Sales Companies

Many companies, including some Internet companies, do not claim to be engaging in direct sales nor do they own a
直销

引言

20世纪90年代初，直销进入中国，并在短时间内即获得迅猛的发展。据统计，截至1995年12月底，中国已有163家直销公司。直销行业自进入中国以来一直受到很多误解。尽管政府不断致力于消灭“金字塔诈骗”（又称“传销”），但传销仍猖獗发展，他们经常谎称自己是直销，混淆市场和监管机构视听。导致政府对整个直销行业采取严格监管的方式，希望通过限制直销行业的发展遏制传销的蔓延。

尽管从1998年开始，中国经历了为期7年的全面禁止直销、传销的阶段，但2005年颁布了《直销管理条例》和《禁止传销条例》以后，直销行业进入了一个稳健发展的新时期。截至2015年12月，商务部网站公示全国共有71家企业通过审批获得直销经营许可。截至2014年底，中国合法直销企业的营业额接近215亿美元（1350亿人民币），较2011年增长了68.7%。根据北京大学直销研究中心的调查，直销行业对于促进就业、驱动消费、拉动投资、拉动供应链、增加税收、带动公益事业以及孵化小微企业等方面，都表现出了十分积极的影响。与传统的零售业相比，尽管直销行业的规模并不很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。特别是在当前中国经济步入新常态的局面下，直销行业能够发挥更为显著的作用，与传统的零售业相比，尽管直销行业的规模并不是很大，但是其从业人数众多、执业门槛较低等特点，使直销行业具有积极且十分独特的社会影响力。
direct sales license. By not identifying themselves as direct sales entities, these companies remain outside the relevant regulations even though their business practices are in essence direct sales. This is unfair to the licensed companies and also confuses the public.

**Local Regulatory Challenges**

In October 2011, the Chinese government announced a change that affects the supervisory authority over direct selling. Under Directive 2011(48), the State Council announced that the administrations for industry and commerce (AIC) and quality supervision bureaus below the provincial level will no longer be “vertically” managed by the provincial bureaus. Concurrently, the government announced structural changes including the merger or abolition of departments, which were not uniformly implemented in different provinces and cities.

These changes mean that provincial-level AIC officials, who are more experienced in overseeing direct selling, no longer have supervisory authority over local issues, and that many new officials with no prior knowledge of direct sales are now supervising the industry. Ambiguity in relevant regulations at times results in widely varying enforcement of regulations, leading to unwarranted harassment, even penalization, of direct selling companies’ local operations or sales personnel. With thousands of districts and townships in China, it is very difficult for direct selling companies to confront this new challenge.

**Further Difficulties Created by Existing Regulations and Administrative Directives**

**Compensation Restrictions**

The Direct Sales Regulation limits compensation for sales agents to commission on no more than 30 percent of personal sales. The Anti-Chuanxiao Regulation issued by the State Council calls compensation based on the total volume of a sales team (commonly called group compensation) a characteristic of chuanxiao, and defines it as illegal. Both restrictions run counter to market-based economic practices and are discriminatory and unfair to the direct sales industry, as market-based compensation and multi-level calculation are common practices in all other industries. This regulation should be relaxed and brought in line with market economy and international best practices, for example, by basing sales compensation on a company’s total revenue, rather than on a proportion of individual sales. We further recommend that the compensation limit for a direct sales agent be raised over 30 percent of personal sales.

In November 2013, the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security jointly issued a judicial interpretation which, for the first time, provided that “chuanxiao activities based on the sale of goods and for which sales performance is the basis for ‘team compensation’ will not be treated as criminal” and provided a judicial distinction between “multilevel selling” and “pyramid schemes.” In line with this decision, appropriate amendments should be made to relevant direct sales regulations to better distinguish direct selling from chuanxiao beyond the simple measure of “single level” or “multilevel” marketing.

**Restrictions on Product Categories and Scope of Direct Sales Products**

Limits on the products direct sales companies can sell should be minimized and brought in line with international practice. A better alternative is to define what cannot be sold through direct sales, such as products forbidden in the open market (e.g., firearms, drugs), livestock and fresh produce, large commodities (e.g., cotton, grains, metals), and products whose value is difficult to determine by the average consumer (e.g., gems, precious metals, financial services).

According to relevant regulations, direct sales companies cannot directly sell original equipment manufacturer (OEM) products. However, from both the legal and consumer rights perspectives, we recommend that OEM products be treated the same as a company’s own products, or at least allow a certain percentage of a company’s products to be comprised of OEM products.

**Restrictions on Direct Sales Agent Training**

The Direct Sales Regulation sets strict and detailed provisions (e.g., training methods and targets, trainer qualifications, filing and record keeping), many of which are impractical and burdensome at the working level. Such limits on direct sales training are overly detailed to the point of hindering business development and self-discipline. We hope that regulatory authorities will, in line with the central government’s goal of streamlining administration and delegating power, specify prohibited circumstances while providing enterprises with the freedom to set training specifics in accordance with their actual needs.

**Recruitment Fees**

China currently prohibits direct sales agent recruitment fees. While large fees should be prohibited, a nominal fee is necessary to limit new agent applications to those who are genuinely interested in becoming direct sales agents and we recommend that such fee be allowed.

**Market Access and Licensing Issues**

At present, to be approved and licensed for direct selling, an enterprise must satisfy a number of strict requirements. Additionally, some areas are restricted for initial operations while a service center must be established in each district/county where products are sold, which is costly and impractical prior to realizing sales. These requirements and the
的监管视野内。他们一些不负责任的经营行为时常引发市场混乱，导致持有许可的企业遭受不公平待遇且处于竞争的劣势，还造成了公众对直销概念的混淆。

监管机构属地化管理使企业面临潜在挑战

2011年10月，中国政府宣布了一项改变直销监管权的新规定。国务院办公厅2011年第48号文宣布取消工商、质监省级以下垂直管理。同时，政府还宣布进行机构调整，撤销或合并多个部门，不同省市根据自身特点会出现不同的整合情况。

这些变化将意味着，直销监管经验相对丰富的省级工商行政管理部门将不再监管地方一级出现的问题，而由之前对直销并不了解的基层综合市场执法人员接手监管。由于相关法规尚不明晰，这一权力下放可能最终导致各地出现执法不一的情况，并可能给直销企业在各地的分支机构以及当地的营销人员带来不必要的干扰，甚至是处罚。中国有两千多个区县一级和数万个乡镇一级行政单位，直销企业因此将面临极大的挑战。

当前条例和行政指令带来的问题

团队计酬和报酬限制

《直销管理条例》对于直销员可以获得的报酬类型及数额加以限制，规定直销员报酬总额不得超过其所售产品收入的30%，《禁止传销条例》规定基于新招募直销员销售业绩（常称为“团队计酬”）的计酬方式，属于传销的特征。这两种限制违背了以市场为基础的经济实践。以市场为基础的计酬方式和多层次计酬方式是其他行业的普遍做法，因此以上两项规定是对直销行业的歧视和不平等待遇，应予以放宽。建议参考国际惯例，不针对销售人员个人奖金和个人销售的比例做出限制，而对企业整体拨付的销售奖金与整体销售收入的比例进行规制，并考虑适当提高30%的计酬比例。

2013年11月，最高人民法院、最高人民检察院、公安部联合颁布的司法解释中首次明确规定“以销售商品为目的、以销售业绩为计酬依据的单纯的‘团队计酬’式传销活动，不作为犯罪处理”，更是在市场为基础的经济实践。以市场为基础的计酬方式和多层次计酬方式是其他行业的普遍做法，因此以上两项规定是对直销行业的歧视和不平等待遇，应予以放宽。建议参考国际惯例，不针对销售人员个人奖金和个人销售的比例做出限制，而对企业整体拨付的销售奖金与整体销售收入的比例进行规制，并考虑适当提高30%的计酬比例。

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招募费用

目前，中国禁止收取直销员招募费用。大额费用应当禁止收取，但是象征性的费用，有助于确保提交加入申请者是真正对直销感兴趣的人，建议允许适当收取。

市场准入、许可审批

当前企业必须达到多项严格的要求才能取得直销许可，限制初期经营地域，且在其销售产品的每个城区/县都必须设立服务网点设立这么多网点不仅耗资巨大，且在尚未确定有销售成绩之前投入设点也不现实。这些要求以及过长的审批时间存在诸多负面影响，导致部分企业不愿申领直销许可，以及未经许可即开展直销经营活动等。这不仅对直销企业不公平，还会给政府带来监管难度，且容易给消费者和公众造成误解。

跨境电子商务

中国政府已经公开表达了支持跨境电子商务的立场，并允许在某些保税区内的公司，自由贸易区内的公司，自由进口大量海外产品，并通过网络订单卖给中国的消费者。这成为政府许可的平
A lengthy approval process result in a general reluctance to apply for the necessary approvals with some enterprises engaging in direct selling without obtaining approval. This is unfair to legitimate direct sales companies, may make government regulation more difficult, and could lead to public misunderstanding.

**Cross-Border E-Commerce**

The Chinese government has openly stated its support for cross-border e-commerce, beginning with certain bonded zones. Companies in these zones can freely import overseas products and sell to Chinese consumers directly via online ordering, which makes it a government-sanctioned channel for parallel imports. This practice represents a blatant disregard for brand ownership. It creates price challenges for the brand owners who have paid various duties, invested in production facilities, and employed Chinese workers to produce and market their products. In relation to products which require strong registration controls, such as nutritional supplements, it bypasses China Food and Drug Administration requirements and presents hazards to consumers. All of these issues are unfair to companies that have invested in plants, research and development, and spent years registering their products in China. They also discourage future investments and negatively affect employment in China. We understand the need for China to build its e-commerce infrastructure quickly and to promote domestic consumption, but there is an equally important need to coordinate different sectors and different policies prior to implementation.

**Recommendations**

*For the Chinese Government:*

- Review and revise the Direct Sales Regulation, the Anti-Chuanxiao Regulation, and their associated administrative directives, bringing them in line with China’s WTO commitments, standard international practices, the 2013 Judicial Interpretation, and the business realities of the China market. Specifically:
  - Relax restrictions on compensation calculations and group-based compensation.
  - Relax product category restrictions and remove limits on the sale of OEM products.
  - Relax restrictions on direct sales agent training.
  - Allow provision of nominal recruitment fees.
  - Expedite the establishment of a Chinese direct selling industry association.
  - Remove discriminatory practices to create a fair business environment that treats the direct sales industry the same as all other industries in terms of market access and licensing requirements.
  - Review existing cross-border e-commerce policies and ensure fair competition between brand owners, investors, and e-commerce operators.
### 建议

**对中国政府：**

- 修订《直销管理条例》、《禁止传销条例》以及配套法规，使之符合中国的入世承诺、国际惯例、2013 司法解释和中国市场的行业现状。
  - 具体包括：
    - 开放团队计酬和报酬限制。
    - 放宽产品范围和委托加工产品限制。
    - 放宽直销员培训管制。
    - 允许适当收取招募费用。
    - 尽快建立中国直销行业协会。
    - 消除对直销行业的歧视性作法，在市场准入、许可审批方面给予直销行业和其他行业同等的待遇。
    - 审核现行的跨境电子商务政策，保证品牌所有者、投资者和电商之间的公平竞争。
Electronic Payment Services

Introduction

Driven by robust consumption, booming e-commerce, and industry innovation, electronic payment services (EPS) continued to evolve in China in 2015, including significant improvements regarding market access. AmCham China members are greatly encouraged by the continuous efforts made by Chinese regulators to open China’s EPS industry. However, regulatory hurdles continue to impede the development of an open and competitive EPS market. As China enters its 13th Five-Year Plan period and continues to focus on e-commerce as a growth engine, AmCham China members encourage regulators to continue to optimize the regulatory environment to further promote the digitalization of commerce and build an efficient and safe payment system, which is essential to China’s financial infrastructure.

Recent Developments

Market Access

In April 2015, the State Council published the “Decision on Implementing Access Administration of Bank Card Clearing Institutions (BCCI)” (Guo Fa [2015] 22, hereinafter the State Council Decision) allowing domestic and international entities to offer RMB-denominated bank card clearing services in China. In addition to the State Council Decision, the People’s Bank of China (PBOC) in July 2015 released the “Draft Administrative Measures for Bank Card Clearing Institutions” (Draft BCCI Measures) for public comment. AmCham China applauds these significant steps toward a more open and competitive BCCI market. We urge finalization of the BCCI Measures to allow qualified applicants to submit applications as early as possible. It is also important for the “Technical Requirements on Technology Infrastructure for BCCIs” to be in place in advance to provide clear guidance for BCCI applicants as they develop their technology infrastructures.

Bank Card Swiping Fee

In May 2015, the National Development and Reform Commission (NDRC) released the “Draft Consultation Paper on the Optimization of Bank Card Service Fee Mechanisms” (Draft Consultation Paper) for public comment. We are pleased to see that the bank card service fee structure will be optimized by replacing the existing merchant-based fee structure with a card type based structure (i.e., credit and debit cards). Currently, the merchant-based fee structure has led many merchants to fraudulently classify themselves by using improper merchant category codes in order to pay lower or no fees. The new fee structure will largely address this merchant miscoding issue and improve the transparency and governance of the bank card market.

With pressure from merchants, the pricing regulator further cut bank card service fees in 2015. The previous fee cut in 2013 brought China’s fee level significantly below that of other developing markets, including BRIC countries. Further fee reductions will discourage both issuers and acquirers from investing in a more innovative and secure payment ecosystem. Merchants and policy makers should not view bank card swiping fees as a mere cost to merchants, but as an investment essential to create value for merchants and further cultivate the payment industry (which is still in the early stages of development). AmCham China urges policy makers to exercise caution when further reducing bank card service fees. We further recommend, in the long run, that price controls be lifted, in line with China’s movement towards a market-driven economy.

Chip Standards

In 2015, the PBOC continued to accelerate the migration of magnetic stripe cards to its PBOC 3.0 chip standard. Starting from January 1, 2015, all new RMB-denominated bank cards were shifted to PBOC 3.0 in economically developed geographical areas. To provide a better consumer experience and strengthen the competitiveness of chip cards, the PBOC further stipulated that, by September 2016, 85 percent of acceptance terminals should be upgraded to enable contactless payment. For the sake of cost efficiency, it is advisable for acquirers to upgrade the terminals based on both PBOC 3.0 and the internationally accepted EMV (EuroPay, MasterCard, and Visa) chip card standard at one time. This will also allow international travelers to experience contactless payment. By 2020, China will have 500 million outbound travelers and 150 million inbound travelers. A compatible acceptance environment is important both for PBOC 3.0 cardholders traveling abroad and EMV cardholders visiting China.
商务环境综述

行业

具体行业问题

电子支付服务

引言

2015年，在消费需求强劲、电子商务蓬勃发展、产业创新等因素推动下，中国电子支付服务业（EPS）继续快速发展，银行卡清算业务市场准入方面取得了重大进展。中国相关监管部门持续开放中国电子支付行业的诸多举措使中国美国商会的会员企业倍感振奋。但建立一个开放和竞争的电子支付服务市场依然面临着诸多监管障碍。中国已进入“十三五”时期，电子商务作为经济增长引擎之一将继续得到重视，因此中国美国商会会员企业鼓励监管部门继续优化监管环境，为中国金融基础设施的建设奠定坚实基础。

最新进展

市场准入

2015年4月，国务院发布《关于实施银行卡清算机构准入管理的决定》（国发2015年第22号文，以下简称《国务院决定》），允许国内和国际主体在中国开展人民币银行卡清算服务。除上述《国务院决定》之外，中国人民银行在2015年7月公布《银行卡清算机构管理办法（征求意见稿）》（以下简称《银行卡清算机构管理办法草案》）并公开征求意见。中国美国商会对中国为建立一个更加公开、竞争的银行卡清算机构市场而出台的上述重要举措表示赞赏和欢迎。我们促请尽快出台《关于实施银行卡清算机构准入管理的决定》的实施细则，尽早允许合格申请人提交准入申请。同时，还应提早出台相关的清算机构的基础设施方面的技术要求，为申请人开发建立技术基础设施提供明确指引。

银行卡刷卡手续费

2015年5月，国家发展改革委继续降低银行卡刷卡手续费。中国银行卡刷卡手续费经2013年削减后已远远低于其他发展中国家，包括其他金砖国家的水平。继续降低手续费会造成发卡行和收单商不愿意继续投资提升支付系统的技术创新性和安全性。商户和政策制定者们应当将银行卡刷卡手续费仅仅视作商户的成本负担，还应当认识到刷卡手续费是创造商户价值和进一步培育支付市场（目前仍处于起步阶段）的一项基础性投资。中国美国商会促请政策制定者在继续降低银行卡刷卡手续费方面应当慎之又慎。我们还建议长期来看应当取消此项价格管制，这才符合市场化改革方向。

芯片标准

2015年，中国人民银行继续加快磁条卡换PBOC3.0芯片卡的换发工作。从2015年1月1日起，经济发达地区新发的人民币银行卡都是PBOC3.0芯片卡。为了给消费者提供更好的用卡体验并提高芯片卡的竞争力，中国人民银行还规定，到2016年9月，85%的收单终端都应当完成升级，支持非接触支付。出于节约成本的考虑，建议收单商在进行终端设备升级时应实现同时兼容PBOC3.0和国际通行的EMV（EuroPay、MasterCard和Visa）的芯片卡标准。这将有助于国际游客体验非接触支付。到2020年，中国的出境游和入境游人数将分别达到5亿人次和1.5亿人次。收单兼容环境对方便PBOC3.0芯片卡持卡人出镜旅游和EMV持卡人来华旅游都具有重要意义。
Third-Party Payment Providers

A provider of third-party payment (3PP) services in China must hold a payment-services license (also known as a Payment Clearance Operator or PCO License) issued by the PBOC, as well as an approved business license on the business scope for different payment services and geography. The rules that impose this requirement do not expressly prohibit foreign-invested enterprises (FIEs) from becoming PCOs, but they do state that separate provisions will be issued to regulate FIEs in this space. While the 3PP Regulations were issued in 2010, the special rules regulating FIE providers of 3PP services have yet to be issued.

Since 2011, 270 domestic companies have received 3PP licenses, 100 of which are licensed to operate nationally. In July 2013, the PBOC issued 3PP licenses to two French FIEs—the only two such licenses on the public record to have been issued to FIEs. However, these two licenses are very limited in scope—allowing prepaid card services in a limited geography and not, for example, online payment services.

Without a payment license, FIEs are restricted from operating online marketplaces that require payment acceptance for third-party sellers. China-based FIE marketplaces also cannot settle in foreign currency to overseas sellers when products are imported and sold domestically. Instead, the State Administration of Foreign Exchange (SAFE) requires a 3PP and SAFE-authorized company to settle foreign currency overseas. This restriction also applies to currency exchange from a foreign currency to RMB for sellers based in China that sell on overseas marketplaces. Additionally, payment data for products imported through the pilot free trade zones (PFTZs) must be sent directly to the General Administration of Customs (GAC) by a 3PP-licensed company. For both foreign exchange and customs clearance, the e-commerce marketplace must send proprietary information such as seller, product, and transaction information to the 3PP licensed company for reporting to SAFE and the GAC. We recommend that FIEs be allowed to obtain licenses permitting them to engage in online payment services and do not require them to partner with domestic 3PP providers in order to launch new payment-related products.
第三方支付供应商

在中国从事第三方支付服务业务必须获得中国人民银行颁发的第三方支付牌照（也称支付清算运营商牌照或PCO牌照），以及经批准的开展不同支付服务和经营地域的营业执照。上述规则虽没有明确规定外资企业成为支付清算运营商，但却表示将针对外资企业单独出台相关规则。上述第三方支付监管法规2010年即已颁布，但针对外资企业从事第三方支付服务的相关特别规定却一直没有公布。

自2011年起，已有270家内资企业获得第三方支付牌照，其中100家可在全国范围内开展第三方支付业务。2013年7月，人民银行向两家法资企业颁发第三方支付牌照，这也是迄今为止唯一两家可以公开查询到取得第三方支付牌照的外资企业。但这张牌照许可的业务经营范围十分有限，仅限于在特定地区开展预付卡服务，而不得从事包括在线支付服务在内的其他服务。

没有支付牌照，外资企业就无法从事需要代第三方卖家收款付款的网络市场业务。中国境内的外资企业进口并在中国境内销售进口商品的，也无法用外币向境外卖家结算货款，而是要根据国家外汇管理局（外管局）的规定，通过一家获得第三方支付牌照的公司或者外管局授权公司在境外进行外币清算。这一限制规定也适用于向海外市场出口的中国境内卖家进行外币兑换人民币的情况。另外，经由自由贸易试验区（自贸区）进口产品的支付数据必须由一家获得第三方支付牌照的公司直接报送给海关总署。根据外管局和海关总署的要求，电子商务市场主体必须将卖家、产品和交易信息等专有信息提供给第三方支付公司，由该公司再报给外管局和海关总署。我们建议允许外资企业获得从事在线支付服务的牌照，不再要求外资企业必须与国内第三方支付供应商合作才能推出新的支付产品。

跨境交易标准化

2015年12月，国务院公布《关于加快实施自由贸易试验区战略的若干意见》，对统一各自由贸易试验区报关要求做出了规定。2015年11月，国家质量监督检验检疫总局也发布第137号令，旨在统一规范跨境电子商务经营者和商品备案管理。然而跨境交易支付相关数据申报依然缺乏统一性。中国美国商会鼓励各海关统一要求并简化跨境交易中的支付、物流和商品信息申报程序。
Express Delivery Services

Introduction

Several Chinese government reforms have aimed to devolve certain powers to lower levels of government, increase the role of market forces in the economy, and streamline administrative bureaucracy. Indeed, some progress has been made in these areas. Relevant regulatory bodies have simplified the approval process for express delivery permit applications and canceled courier accreditation qualifications. The Chinese government has also increased transparency by publicly releasing draft laws and regulations for industry comment and has become more responsive to industry recommendations. However, a number of challenges remain. Citing security concerns, regulatory authorities substantially reinforced supervision over the express delivery service (EDS) industry through the promulgation of compulsory criteria and strengthened security checks. While enterprises are responsible for compliance with all laws and regulations, AmCham China is concerned that overly broad measures which fail to fully account for industry-specific conditions may increase enterprise costs and impede normal business operations. We hope that a balance can be found wherein compliant enterprises will not be overburdened by regulations.

Ongoing Regulatory Issues

SCLAO Drafting of the “Express Regulation”

Two years on, the State Council Legislative Affairs Office (SCLAO) is still researching and drafting the “Express Regulation.” Arguably the most important EDS regulation since the enactment of the 2009 Postal Law, the Regulation will be of major importance to the industry. AmCham China member companies have maintained good communication with the State Post Bureau (SPB), the Ministry of Transport, and other relevant departments during the drafting process. We commend the Chinese government’s acknowledgement of the important role of foreign EDS providers and look forward to continued dialogue and participation in subsequent drafting rounds, particularly regarding important areas such as administrative licensing, security regulations, and standards formulation.

EDS Safety Standards

On September 1, 2015, the SPB released the first ever compulsory EDS safety standards, the “Safety Equipment Configuration Specifications,” which contain very detailed provisions requiring installation of security and monitoring equipment at operating and handling facilities and regarding vehicle allocation. This new regulation is quite burdensome for EDS enterprises as compliance will require investment in the upgrade or purchase of expensive new devices and a rethinking of personnel management and hiring strategies. The new regulation lacks detailed implementation guidelines and contains many other ambiguities that could result in their inconsistent interpretation by local SPBs.

At the same time, additional compulsory industry standards are being drafted by the Ministry of Public Security, including the “Regulations on the Safe Operations of EDS” and “Requirements Ensuring the Security of Mail Delivery.” These new standards subject EDS providers to more security pressure and compliance challenges. Given that foreign EDS providers operate differently than their domestic counterparts, with vigorous security checks already in place at the airports through which these packages have transited, many of the new compulsory standards – particularly those regarding placement of X-ray machines and other security-related equipment – are irrelevant, redundant, and unduly burdensome.

“Administrative Measures for the Management of Express Delivery Code Numbers”

The SPB released the draft “Administrative Measures for the Management of Express Delivery Code Numbers” and the “Regulations on Express Delivery Coding” on August 6, 2015 for public comment. EDS companies are concerned that these regulations may have a serious impact on the industry, particularly in the areas detailed below.

Legal Basis of the Draft Regulation

According to State Council guidelines to “comprehensively advance a law-based administration and accelerate the building of a law-based government,” we believe that relevant policies should be clearly expressed in laws and regulations, have sufficient legal basis, and
快递服务

引言

中国政府简政放权，市场发挥决定作用的指导原则指引下，相关行业监管部门在一些行政管理领域采取了改革措施，包括简化快递许可申请审批流程、取消快递员资质认定等，并且在相关法律法规制定过程中充分听取外资企业意见和建议，商会的成员企业对此表示欢迎和支持。同时由于快递行业在安全领域面临越来越多的挑战，监管部门也通过制定行业强制标准、加强安全检查等举措，明显加强了对行业生产安全的监管力度。企业有责任配合相关部门的监管，同时也期望相关措施能够严格按照相关法律法规的要求执行，相关部门不能超越法律授权范围进行执法，而且相关措施应该充分考虑行业特点和情况，避免一些过度监管措施严重妨碍企业正常运营，从而额外增加企业负担和运营成本。中国美国商会衷心希望能在有效监管和为合规企业提供便利之间取得平衡。

现存监管问题

国务院法制办对于《快递条例》的立法工作

《快递条例》目前正处于由国务院法制办进行前期调研和起草的阶段，作为快递行业自《邮政法》之后最为重要的法规，该条例一直得到全行业的高度关注。其中涉及的内容将在行业今后健康良性的发展起到重要的指导作用。在前期的起草过程中，商会的会员企业已经与包括国家邮政局、交通部等在内的各个部门进行了深入良好的交流，也期待在新一稿的起草过程中，能够有机会与起草单位就相关内容进行深入沟通，特别是在行政许可、安全监管、标准制定等重要领域。

快递行业安全标准

国家邮政局在2015年发布了行业第一个强制性安全标准——《安全生产设备配置规范》，并于同年9月1日开始实施。由于此规范是快递行业第一个强制性标准，对于企业营业场所和处理场所安全生产设备、监控设备、车辆配置等，都制定了非常详细的要求，导致企业需要对现有场地、人员进行重大调整，重新购买或升级许多设备，从而增加巨大的额外投入。特别是考虑到规范的强制性效力，各企业对此都非常重视和关注，而目前规范还缺乏具体实施细则，许多规定笼统模糊，很容易造成各地方在执行过程中由于不同的解读，产生执法不统一、企业无所适从的情况。

同时，公安部起草了新的强制性行业标准，包括《快递安全生产操作规范》和《寄递单位重要部位安全防范要求》。这些新标准等多个行业强制标准处于起草过程中，企业在配合安全要求方面存在越来越大的压力和挑战。特别是由于国际快递业务有别于国内业务的特点，加之国际包裹在机场转运时已通过严格的安全检查，因此对于X光机等设备的配置应该充分考虑行业特点，而不应该强制要求所有场地都配备，既重复投入，又增加企业负担。

《快递号码资源管理办法》

最近，国家邮政局曾在2015年8月6日就《快递号码资源管理办法》和《快递号码资源编码规则》向公众征求意见。快递企业担心上述法规将对该行业产生严重影响，尤其在如下方面。

法规草案的法律依据

根据国务院要求的“深入推进依法行政，加快建设法治政府”的指导方针，中国美国商会认为相关政策出台前应基于相关法律法规的明确规定，具备充分的法律依据并开展深入论证，以确保政策制定的科学性、合法性和合理性。
be subject to thorough discussion to ensure their scientific, lawful, and reasonable nature. However, it is not yet clear if there is a specific legal basis to support the formulation of these policies.

**Practicality and Effectiveness of Regulating Parcel Coding**

The indicated purpose of the two draft regulations is to track, search, and supervise information and ensure the security of user information. However, it is not clear whether there are problems resulting from EDS providers’ utilization of their own coding practices, nor how these regulations would resolve any of these unknown problems. At present, most EDS providers already provide tracking and search services, comply with government data reporting regulations, and take various measures to protect user information. To our knowledge, similar regulations on parcel coding are not found in other developed countries. Indeed, if every country regulated coding in this way, each parcel would be assigned a unique country-specific code, making international EDS impossible. We hope that regulators will continue to study the necessity of these regulations before their implementation.

**Consistency of Code Length**

While most EDS providers utilize 12-digit coding, both draft regulations propose utilization of a 17-digit general code and a 22-digit code for online retailers. Throughout the course of parcel collection, sorting, delivery, and inquiry, a code will be repeatedly scanned and referenced. Codes that are overly long will result in confusion, inefficiency, and an undue burden placed on EDS providers which may have to manually input these longer codes. Another concern is that the new regulations would continue to be modified after their initial adoption, further burdening enterprises and wasting administrative resources.

**Burdening of Overall Supply Chain**

Most EDS providers have incorporated coding systems and rules throughout their business systems. Furthermore, many large and medium-sized enterprises utilize automated label printing and shipping for their orders, including adoption of the coding rules of their EDS providers. A change in Chinese regulations would therefore affect not only the EDS provider but would also disrupt the operations of their clients who rely on the EDS coding system. This would burden many global companies by necessitating large capital investments and increased labor costs and could seriously disrupt the normal operations of EDS providers and their clients around the world.

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**Recommendations**

**For the Chinese Government:**

- Hold meetings and exchanges with international EDS providers to gain a deeper understanding of the specific challenges faced by our member companies. [SCLAO]
- Provide opportunities for industry to discuss recent draft regulations with relevant officials.
- Allow industry to meet with regulatory authorities before drafting new standards and carefully research the reasonableness and ease of compliance with security regulations in order to prevent disruption to normal business operations and the increase of costs.
- Work with industry when promulgating new standards to create a mechanism for consistent interpretation and implementation by law enforcement and regulatory authorities nationwide.
- Implement the express delivery coding regulation as a recommended industry standard, rather than a compulsory administrative requirement, to provide industry the freedom to choose whether or not to adopt this standard.
然而目前企业尚不清楚是否有具体的法规依据支持相关政策的制定。

### 监管包裹编码的可操作性和效果

上述法律的征求意见稿提到其目的是便于信息跟踪、查询和监督，保证用户信息安全。目前，在以快递企业自行编码的情况下，以上各方面存在什么问题，以及这些问题何以通过规制编码得以解决，都不得而知。市场上绝大多数快递企业都可以提供跟踪、查询服务，也通过定期数据报送配合主管部门的监督，并采取各种措施保护用户信息安全；另外，发达国家并没有对快递号码进行类似管理。事实上，如果各个国家都出台类似规定，国际快递业务将由于快递号码对每个包裹的唯一性而无法开展。因此我们期待能对管理编码资源的重要性进行进一步的慎重研究。

### 编码长度的一致性

市场上绝大多数快递企业都在业务系统中设置了编码系统和规则；此外，很多采用自动化托单制作和打印的大中型客户也在其相关系统中采用快递服务商的编码规则。这些客户遍布国内外，如果要对这些系统和规则进行修改，这将是一个巨大的工程项目，需要巨额的资金投入、人力成本和漫长的时间，对快递企业及其客户的正常经营造成极大的困扰。

### 整体供应链的负担

另外，目前很多企业采用12位编码，而征求意见稿的普通快递码长则长达17位，电商自营快递码长更长达22位，一个编码在包裹收寄、分拣、投递和查询环节需要多次扫描和使用，码号过长将加大系统的负担并降低业务效率，特别是在存在手工录入编码的情况下。一旦根据征求意见稿对码号使用进行管理，不仅需要有最初的申报，还需要后续的变更、注销以及应监管部门要求的调整。这样不仅会无谓地增加企业负担，也会造成行政资源的浪费。

### 建议

对中国政府：

- 期待国务院法制办能够专门就国际快递领域的现状与企业进行座交谈交流，深入了解行业特点。
- 为企业提供机会就新一稿内容进行专题讨论。
- 企业希望能够在标准前期起草过程中与监管部门进行充分交流，特别是对安全要求的合规性、合理性和执行的可行性进行审慎研究，避免相关措施影响企业正常运营，增加企业成本。
- 在相关标准颁布阶段，建议监管部门开展与行业对话，细化执行方案，避免由于各地监管人员理解不同而造成执法不统一。
- 建议可以将编码规则作为推荐性的行业标准，供企业自由选择使用与否，而不适宜作为行政要求强制实施。
Introduction

China continued to make significant progress on food safety in 2015, experiencing no major food safety incidents. AmCham China applauds efforts at all levels of the Chinese government in coordination with society to improve the scientific supervision and advance a law-based administration of food safety.

Positive Regulatory Developments

Increased Supervision and Regulation of Production and Operations

On April 25, 2015, China enacted the revised Food Safety Law (FSL) which entered into effect on October 1, 2015. Through its implementation, the China Food and Drug Administration (CFDA) has encouraged food enterprises to proactively take responsibility for their operations.

The FSL grants increased oversight responsibility to the CFDA, specifically in the supervision of important products such as dairy and meat, end-to-end supply chain management, and the implementation of a pilot traceability system in preparation for the development of a larger scale traceability system. The CFDA also developed new regulatory methods to supervise operations in 2015, incorporating international practices such as the promotion of “open and transparent” kitchens, which helped to increase consumer confidence in food safety.

In 2015, under the principle of “the most stringent standards, supervision, punishment, and tracing,” the CFDA sampled 168,000 batches of food, of which over 80 percent met required standards. The CFDA also increased the frequency with which sampling data is publicly released from quarterly to weekly, and now includes scientific explanations on top food safety-related issues to increase public awareness and consumer confidence.

Continued Improvements in Policies, Standards, and Regulations

AmCham China commends China’s continued food safety legislative developments. In response to the 2014 Fourth Plenum’s emphasis on the rule of law, relevant government authorities promulgated many new regulations in a short period of time, though detailed implementation rules for the FSL have not yet been released. Ultimately, the FSL sets a legal foundation for government supervision of the food supply chain and will make food security regulatory mechanisms more scientific and reasonable.

By the end of 2015, the National Health and Family Planning Commission (NHFPC) had promulgated 674 food safety standards. Additionally, according to relevant authorities, over 5,000 food standards were revised and integrated into a compulsory standard system and are awaiting final approval and issuance at the national level.

Meanwhile, we are pleased that the Chinese government has elevated the “Healthy China” initiative to a national strategy and will continue to research the feasibility of establishing nutrition-related legislation through the initiation of the “Healthy China” portion of the 13th Five-Year Plan and a new edition of the “Guide to the Diet of Chinese Residents.”

Increasingly Frequent International Exchanges

Chinese regulatory authorities held frequent exchanges with their foreign counterparts in 2015, enhancing mutual understanding. The CFDA held China’s first international food safety conference during Food Safety Week in June 2015, which was attended by four international food safety organizations, regulators from over 20 countries and regions, Chinese government officials, and over 100 international scholars and industry representatives. Following the conference, several memorandums of cooperation were signed by the CFDA and its international counterparts.

Moreover, with the support of the CFDA Department of Food Supervision III, the China Center for Food and Drug International Exchange and AmCham China co-hosted the “2015 Food Safety Risk Seminar” on June 26, 2015. Participants, including regulators from both the CFDA and the US Food and Drug Administration, and over 80 representatives from food safety organizations, academia, industry, and both foreign and domestic media, shared their experiences and discussed stakeholder responsibility in mitigating food safety risks.
食品与饮料

引言

在中国各级政府的重视和共同努力之下，2015年食品安全领域不仅成功防范了重大恶性食品安全问题的发生，更在科学监管、依法行政、社会共治等各个领域取得了一系列的成果。

监管的积极发展

严格监管，生产经营更趋规范

2015年4月25日，国家发布了新修订的《食品安全法》，并于2015年10月1日起正式实施。随着新法的实施，国家食品药品监督管理总局(食药监总局)推动了食品企业主体责任的完善。此外，该法还要求食药监总局加强对食品生产经营全过程的监管，特别是针对一些重点产品类别，如乳制品、肉类等，完成了可追溯体系的试点建设，为更大范围内推广可追溯体系积累了经验。食药监总局还积极创新监管方式，推进经营过程监管。结合国际经验，倡导餐饮企业“明厨亮灶”，在一定程度上起到了餐饮生产过程透明化、公开化、增强社会公众对餐饮企业食品安全的信心的作用。

2015年，食药监总局按照“最严谨的标准、最严格的监管、最严厉的处罚、最严肃的问责”强化食品安全监管，共安排抽检食品16.8万批次，平均抽检合格率为80%以上。抽检信息从原来每个季度公布一次改为每周公布一次，配合热点问题的科学解读，达到了化解恐慌、普及知识和指导消费者的目的。

制度建设不断完善，标准法规日趋健全

中国美国商会欣喜地看到中国政府在2015年制定食品安全相关的法律法规中的积极努力及其成效。相关政府机构响应十八届四中全会提出的“依法治国”的方略，展开了密集的法律法规修订工作，在新《食品安全法》正式实施后，其各项实施细则也在陆续制定实施中。新《食品安全法》为政府实施食品安全供应链监管奠定了法律根基，新的制度设计使中国食品安全管理体系更加趋向科学、合理。

同时，经过数年的清理整顿，截至2015年底，国家卫生与计划生育委员会(卫计委)已经陆续发布了674项食品安全标准。另据权威人士表示，针对现有5000多项食品标准清理、整顿，并整合成为一套强制性国家标准的相关技术层面工作已在2015年底完成，尚需在国家层面进行最后审核和发布。

与此同时，我们非常高兴地看到中国政府已将“健康中国”上升为国家战略，并将通过制定“健康中国”十三五规划和新版《中国居民膳食指南》，为营养立法展开积极的可行性研究。

国际交往日益频繁

2015年，食品与饮料领域对外交流非常频繁，有效增进中国监管机构与其国外对应部门的相互了解和深入交流。在2015年6月食品安全周期间，食药监总局成功举办了首届国际食品安全会议，四个食品安全国际组织、二十多个国家或地区的监管机构、中国相关部委官员以及百余名全球学术机构和产业界代表共同参与。此后，食药监总局还陆续与多家国际机构签订了合作备忘录，计划就食品安全监管等相关问题展开深入的国际交流和合作。

另外，针对《食品安全法》首次提出的食品安全风险交流概念，总局食品安全监管三司的支持下，中国食品药品国际交流中心和中国美国商会于2015年6月26日成功举办了“2015年食品安全风险交流国际研讨会”。来自中美食品安全监管部门、学术界、产业界以及媒体共80余名代表参与了研讨会，就食品安全风险交流中各利益相关方应该承担的责任进行了充分讨论并分享了国际上其他国家开展食品安全风险交流的相关经验。
International Food Trade Boosted through Improved International Trade Mechanisms

According to the “2010-2014 Safety Conditions of Imported Foods in China” released by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) in October 2015, China nearly doubled its food imports during this five-year period at an average annual growth rate of 17.4 percent. Additionally during this period, 4.3 million shipments of imported foods valued at US $200 billion (RMB 1.3 trillion) were subject to inspection and quarantine. We commend the AQSIQ’s efforts to improve the regulation of imported foods, preventing the occurrence of any major incidents.

However, despite these positive developments, regulatory and enforcement challenges remain.

Ongoing Regulatory Challenges and Developments

Continued Improvement of New Food Safety Standard System Needed

Full Coverage, Distinct Classifications Yet To Be Fully Accomplished

Though work on establishing a standardized food safety system has begun, it does not yet cover all areas and it is difficult for some industries to determine the applicable standards. We therefore offer the following recommendations:

- Relevant authorities should investigate and issue a list of any non-covered products. For example, local-level food safety standards should be applied to non-covered products specific to a given region. In the absence of an applicable food safety standard for foods, including imported foods, enterprises should be allowed to independently formulate company-level food safety standards in accordance with existing international standards. Meanwhile, efforts should simultaneously be launched to formulate such national standards.

- For any product that is difficult to classify, the relevant authorities should provide guidance clarifying the classification and notify relevant industry associations and enterprises of this guidance in writing.

- For any product covered by horizontal standards but lacking relevant product standards, relevant authorities should clarify that horizontal standards may be used for the administration of imported products while implementation standards may be applied to domestic enterprise production.

- For any newly promulgated standard that has not yet entered into effect, relevant authorities should authorize and encourage enterprises to operate and produce in accordance with the new standard prior to its formal implementation.

- Relevant authorities should provide a question and answer platform to issue written responses to industry questions regarding standard implementation, in particular addressing the ambiguities and potential misinterpretations by local-level law enforcement, providing a source that both industry and the local authorities can refer to when necessary.

Harmonize Local and National Standards

While local standards help ensure the safety of local specialty products, they may also be used as protectionist tools to restrict competition by other enterprises. We therefore recommend establishing a preliminary review and approval process to reform local standards. We further recommend that local standards for products without local characteristics or for products already covered by national or industry standards be abolished and that pre-review procedures be added for local product approvals; products for which a national standard is applicable should not be approved under the local standard.

Reasonably Distinguish and Administer Non-food Safety Standards

We recommend the reduction of national food safety standards that do not directly impact food safety in order to avoid compulsory adherence to non-food safety related requirements in the name of food safety. For example, we recommend that standards that forbid the use of nutritional supplements in certain categories, standards on label format and font size and nutritional labeling errors, and national food safety standards on nonpathogenic bio-parameters be considered recommended industry standards. We additionally recommend that testing methods for national food safety standards only be used in arbitration.

Establish a Full-Range and Uniform Food Standards System

Unify Non-Food Standards

According to the new food safety standards system, the current total of nearly 5,000 standards will be reduced to 1,062. Enterprises presently face challenges caused by the implementation of food safety standards (e.g., how to harmonize quality indexes and corporate inspection methods). Use of a single authority to harmonize all relevant food safety standard systems will enable enterprises to more effectively ensure food safety, product quality, and use advanced testing methods.

Moreover, a universal standards system would clarify the relationship between national, local, and company-level food safety standards and recommended national and industry standards. We recommend that enforcement not be based on recommended standards and that enterprises be granted the authority to determine for themselves the applicability of recommended standards.
贸易便利化举措极大促进了国际食品贸易的开展

根据质检总局于2015年10月发布的《2010-2014年中国进口食品安全状况》白皮书，随着我国居民生活水平的不断提高，对进口食品需求逐年增加。2010-2014年的5年间，进口食品贸易额翻了近一番，年均增长率达17.4%。2010-2014年，全国出入境检验检疫机构共检验检疫进口食品430万批，价值2000亿美元（合1.3万亿元人民币）。在质检总局的努力下，我们欣喜地看到，进口食品安全监管体系得到进一步完善，有效地保障了进口食品安全，没有发生重大进口食品问题。

在取得亮眼成绩的同时，美商会的会员企业也在不断改善的商业环境中发现了一些仍有改进空间的监管和执法问题。

现存监管挑战及进展

新食品安全标准体系仍有改进空间

现有标准体系仍待完善，以实现全面覆盖、归类清晰

尽管食品安全标准体系初步建成，依然存在现行标准体系尚未覆盖或者行业不清楚应执行哪项标准的问题。因此，我们提出以下建议：

- 对于尚未覆盖的产品，建议相关部门组织行业调查，梳理出尚未覆盖到的产品清单，如果是地区特色产品，建议建立食品安全地方标准；如果是没有食品安全标准的，建议允许企业参照国际标准自主负责制定食品安全企业标准并可用于进口食品的管理，同时立项制定食品安全标准。
- 对于归类不清晰的产品，建议相关部门进行指导，进行明确，并以书面函复的形式给到行业协会或企业。
- 对于横向通用标准覆盖但未有相关产品标准的产品，建议相关部门明确横向标准可用于进口食品管理以及国内企业组织生产的执行标准。
- 对于已发布的新标准，建议相关部门明确在新标准发布后和实施前的过渡时期，允许并鼓励企业可以执行、参照新的标准组织生产。
- 对于企业在执行标准中遇到的疑问，比如标准在执行过程中出现的模糊、易混淆、被误读的概念和做法，建议广泛征求行业协会意见，汇总答复后公布在政府官网上，作为企业合规和地方执法的参考依据。

协调处理好国家标准与地方标准的关系

食品安全地方标准为解决地方特色性产品没有标准的问题发挥了巨大作用，但我们也看到很多食品安全地方标准沦为地方保护的工具，限制了其他企业的发展，建议尽快开展食品安全地方标准的清理；对于非地方特色性产品和已有国家标准和行业标准的地方标准进行废止，增加对地方标准立项的事前审查程序，对国家食品安全标准体系可以覆盖的立项一律不予批准。

合理区别管理非食品安全标准

对食品安全国家标准中的非食品安全相关要求进行梳理，尽量减少非食品安全内容，避免出现借食品安全标准名义将非食品安全要求进行强制化的情况，比如在营养强化剂使用标准中出现的、依据膳食指南内容制定的禁止部分食品类别进行营养强化的条款；建议将标签标准中关于格式、字体大小、营养值标识误差等要求作为规范企业行为的推荐性条款来制定；建议将食品安全国家标准中的非致病性微生物指标作为推荐性条款；建议将食品安全国家标准检测方法仅规定为仲裁方法。

建立完善统一的食品标准体系

对非食品标准实施统一管理

根据新的食品安全标准体系，原有近5000项标准将被浓缩到1062项，由此产生的食品安全标准的执行问题，也给企业带来了新的挑战，比如质量指标和企业自用的检测方法应该如何协调管理等。如果可以由一个部门同时协调管理食品安全标准体系以及其他相关标准，形成一个有机统一的食品标准体系，将有助于鼓励企业在确保食品安全的底线上不断提升产品质量，采用先进检测方法。

另外，这个统一的标准体系中还需明确各级食品安全标准（国家，地方，企业）和国家及行业推荐性标准之间的关系，并进一步明确推荐性标准不得作为执法依据，企业可自主选择是否执行推荐性标准。
Reconcile Food Safety Standards and Import Regulations

Inconsistencies between the standards applied in the import and export processes and other relevant food safety standards hinder the establishment of a uniform food safety standards system. Moreover, existing standards fail to cover all types of imported foods and some new raw food materials or ordinary foods approved by relevant departments lack concrete safety/hygiene requirements, hindering the ability of officials to properly assess the safety of imported and exported products.

Even with national regulations that address the lack of national standards on imported foods or raw food materials, difficulties in the customs declaration process discourage many enterprises from importing such products. We therefore recommend establishing a joint working mechanism by forming a cross-departmental task force to address the lack of national standards on imported foods or raw food materials.

Address Incompatibilities between Food Safety Standards and Processing Regulations

When establishing a unified food standards system, we recommend that authorities clarify that enterprises may inspect their products in a manner suitable to their specific product properties and manufacturing conditions and that there is no need to require the performance of all test items under the food safety standards. Such clarification will improve standards implementation.


We recommend that the policy developments to elevate health concerns to the national level be based on scientific data and survey findings; promote use of comprehensive treatment and prevention as guiding principles; and take into account the perspectives of experts, trade associations, and opinion leaders. We additionally recommend that officials refer to international experiences to develop policies and guidelines that are just, reasonable, and have been proven effective at promoting healthy lifestyles.

Our food and beverage member companies believe that they share responsibility in promoting the health of consumers. Top global food and beverage companies throughout the world have jointly committed themselves to: ① developing new products to address public health challenges caused by malnutrition or overnutrition; ② providing consumers with clear and scientific nutrition information; ③ implementing measures to restrict the sale of foods high in fat, sugar, and salt to children under 12; ④ advocating for a balanced diet and lifestyle; and ⑤ supporting all sectors of society in jointly responding to public health issues.

Non-communicable diseases (NCDs) result from many factors and should be treated with an integrated approach. AmCham China supports the efforts of relevant Chinese authorities to prevent NCDs and our members also stress their own social responsibility. Such efforts are of no benefit when blame for the cause of such diseases is attributed to one or more industries. We firmly believe that with the concerted efforts of society as a whole, the spread of NCDs can be effectively contained. Our members are willing to take the lead in their relevant industries and cooperate with the government and all sectors of society to promote the health of Chinese consumers.

Review and Approval of New Varieties of Raw Materials and Food Additives

The development of new varieties of raw materials and food additives is an important component of food industry development and is addressed by all relevant food safety regulations. Each regulation outlines procedures for review and approval, which have continued to be revised and improved. Since 2008, 81 new raw food materials have been approved.

Under Article 37 of the FSL, the Health Administration Department under the State Council is required to review and either approve or reject in writing such applications within 60 days of their receipt. However, since late January 2015, no enterprise has been notified of an application’s acceptance or rejection. This suspension of the review and approval of new raw materials and food additives severely inhibits enterprise production and operations.

We therefore request that relevant authorities consistently apply the FSL and approve materials that have passed technical reviews and undergone the public comment process as soon as possible.

According to the “Administration Rules for the Safety Review of New Food Materials,” “new food materials” refers to animals, plants, or microorganisms that are not traditionally consumed as foods in China. We recommend that relevant authorities issue guidance for cases in which enterprises are unable to confirm whether given imported fruits, plants, or plant parts are considered to be traditionally consumed foods or “new food materials” (e.g., how many years something must be consumed to be designated “traditionally consumed,” how to treat items consumed only in certain regions, whether or not import documentation can count towards meeting necessary requirements).
解决食品安全标准与加工环节法规的衔接问题

在建立完善统一的食品安全标准体系时，还需明确出厂检验项目和型式检验项目应由企业根据自身产品特性和生产条件制定，不得强制要求出厂时进行食品安全标准项目的全项检验。明文规定这些原则将有助于监管部门执行相关标准。

营养健康立法情况及相关问题：政府、社会和企业共同应对健康挑战

我们支持政策制定部门在营养健康政策制定过程中充分尊重科学数据和证据，流程公正，并听取各方专家、行业协会、意见领袖等的意见，参考国际经验，制定综合有效的、公正合理的政策和指南，引导行业自律，更大力度地推动全国人民建立良好的生活习惯。

中国美国商会食品和饮料行业的会员企业认为他们也承担着促进消费者健康的责任。国际著名的食品和饮料公司已在全球范围内联合做出了五个方面的承诺：

1. 研发新产品来帮助大众应对营养不良和营养过剩带来的健康挑战。
2. 向消费者提供清晰的、科学的营养信息。
3. 采取措施限制高脂肪、糖和盐食品对 12 岁以下儿童销售。
4. 倡导平衡膳食和吃动平衡的健康生活方式。
5. 积极支持社会各界共同行动应对公共卫生问题的行动。

慢性病是由综合因素造成的，也应当综合治理。中国美国商会积极支持中国相关部门开展慢性病防控，并践行自身企业社会责任。但我们应当看到，慢性病的高发原因不在于一个或几个行业是片面的，而且不利于在政府主导下开展切实有效的慢性病综合防控措施。我们坚信，在全社会的共同努力下，慢性病的发展能够得到有效遏制。我们的会员企业愿意做出表率，带领相关产业，与政府和社会各界积极合作，履行对社会的健康承诺，并最终为促进中国消费者的健康贡献自己的力量。

食品安全产业链有关的法制建设和监管问题

合理分配政府监管资源，食品安全监管从供应链源头抓起

《食品安全法》第 42 条要求，建立食品安全全程追溯体制，且规定该体制覆盖从种植及养殖、生产及加工、储存及运输、零售及餐饮、到消费等食品安全供应链的各环节，使中国食品安全管理体系更加趋向科学、合理。中国美国商会支持中国政府持续推动科学有效的食品安全监管制度，有效提高中国整体食品安全水平。

国务院办公厅于 2016 年 1 月 12 日发布了《国务院办
**Food Safety Supply Chain Regulations**

*Reasonably Distribute Government Resources and Supervise the Entire Supply Chain*

Article 42 of the FSL requires the establishment of the national food safety traceability system that covers the complete food supply chain, including planting, breeding, production, processing, storage, transport, retailing, dining, and consumption. Such a system improves the scientific and rational nature of the food safety administration system. AmCham China supports the government’s efforts to increase accountability and ensure food safety across the supply chain.

On January 12, 2016, the General Office of the State Council issued the “Opinions on Accelerating the Establishment of a Significant Products Tracing Mechanism,” requiring the establishment of a tracing mechanism for “significant products,” including edible agricultural products and foods; specifically, “the relevant administrations and local governments may establish an information administration platform for different industries and regions utilizing existing facilities.” While we understand the government’s intention to safeguard food safety and enhance tracing capabilities, under the current regulatory system, local governments implement different tracing rules, even requesting enterprises that have established their own effective tracing mechanisms to adopt further electronic tracing mechanisms. This may result in a given enterprise operating under standardized methods of production and operation being required to implement different tracing methods in different parts of the country, increasing compliance and operational costs with little direct benefit to food safety. The purpose of establishing a tracing mechanism is to ensure food safety and safeguard legitimate consumer rights. To ensure these goals are achieved and to prevent the waste of social resources, we recommend that enterprises be allowed to apply technical measures (whether in paper or electronic form, e.g., purchase or sales records, ledgers, lot numbers) at their own discretion under government supervision.

In order for AmCham China member companies’ many branch operations located throughout China to be able to adhere to unified management and operating standards, the overarching regulatory system and mode of implementation need to be unified nationwide and across all levels of government. Our members continually strive to ensure regulatory compliance, particularly regarding food safety. Therefore, our members are prepared to participate in joint research efforts with relevant authorities to enhance food safety legislation, policies, and standards across governmental levels and entities. We recommend pursuit of a research project to advance the adoption of scientific, reasonable, and effective technical solutions to improve product tracing.

**Existing Problems in Food Production, Operations, and Management**

*Further Standardize and Simplify Regulatory Procedures*

The food and beverage industry requires appropriate lead time to adjust operations to comply with new regulations. At the operational level, review and approval procedures need to be further standardized and simplified.

The newly promulgated “Administrative Rules for Food Production Licenses,” with effect from October 1, 2015, may inhibit product innovation. For example, the license categories do not cover all products on the market, resulting in an absence of detailed rules and regulations for examining and licensing some health products (e.g., salad, which in some regions is not classified as eligible for a food license). Additionally, some local governments require additional registration procedures for the production of any new products and the adding of such product’s name as an appendix to the production license. Oftentimes, these “new” products are modified versions (e.g., revised flavor) of licensed products produced under the originally licensed conditions. This results in a waste of resources and delay in placing new products on the market. Conversely, the required use of a production conditions license will reduce the number of hygienic standards and unnecessary administrative licenses, reduce the waste of enterprise resources, and encourage enterprises to innovate new products that meet consumer demand and improve quality of life.

**Compliance Challenges**

While we commend the Chinese government’s recent efforts to upgrade food safety regulations and standards, many inconsistencies and incompatibilities between various standards and regulations remain, resulting in continued high industry compliance costs. For example, industry and local authorities were not given sufficient opportunity to provide comment before certificate numbers were changed in the new “Administrative Rules for Food Production Licenses,” released on August 31, 2015. Detailed implementation rules were not issued in a timely manner, hindering the licensing of some enterprises.

Additionally, the “Interim Regulations for the Publication of Food Advertisement (Draft for Comment)” released on July 9, 2015, specifies that the “advertisement of foods other than fitness foods should not publicize their tonic effects or explicitly or implicitly suggest tonic effects through the promotion of the effects of certain ingredients.” However, this requirement conflicts with a provision in the “National Food Safety Standards: General Code of Labels of Nutritional Facts of Prepackaged Foods (GB28050-2011)” effective since January 1, 2013, on “standard wording of energy and nutritional claims” and may confuse enforcement and industrial standardization.
公厅关于加快推进重要产品追溯体系建设的意见》，要求
针对包括食用农产品和食品在内的重点产品建立追溯体系，
其中特别提出“有关部门和地区可根据需要，依托已有设
施建设行业或地区追溯管理信息平台”。我们理解政府保
护食品安全、加强可追溯的初衷，但在现行法规体系下，
许多地方政府已开始出台不同的追溯规定，甚至有地方要
求已建立自身有效可追溯系统的企业采用某一特定的电子
追溯系统，由此可能产生的局面就是同一家企业、同样的
标准化生产与经营，在不同地区要采用不同的可追溯系统，
此举势必大大增加企业的运营负担，提高合规成本，但却
并不一定能确保食品安全。建立食品安全可追溯系统的目的
是为了保护食品安全、维护消费者正当权益，只要能达到
这样的目的，那么具体采用何种技术手段（无论是纸质的
或是电子的，如进货和销售记录、台账、生产批号等），
应当由企业根据自身情况自主选择，政府主管部门加强督
查，才是更为有效的方法，同时也能大大减少社会资源的
浪费。

中国美国商会的会员企业在中国的不同城市、省份和
地区有不少连锁经营业务，势必要求政府各部门间的法律
法规、标准协调统一，国家与地方法律法规、标准协调统一。
这些企业长期以来非常重视企业的合法合规，特别是食品
安全方面。因此，中国美国商会希望在涉及跨政府部门、
跨省市的食品安全法律法规、政策及标准方面与相关监管
机构加强合作，建议组织开展广泛调研，积极推动采用科学、
合理、有效的技术解决方案加强产品追溯。

食品生产经营和管理现存问题

监督流程仍待进一步规范简化

食品和饮料行业需要适当的前置时间以调整经营方式
从而遵守新的规定。从操作层面上看，审批流程仍有待进
一步规范简化。

根据新颁布的《食品生产许可管理办法》，于2015年
10月1日开始使用食品类别许可，从而限制了产品创新。
例如，许可类别未能涵盖市场上的所有产品，导致有些健
康营养的产品无相关食品生产许可审查细则而无法取得食
品生产许可证，如沙拉类产品在某些地区认定为非食品生
产许可类别内，不能取得食品生产许可证，再如部分地方要
求任何新品的生产都要进行生产许可增项，将新品的产
品名称标注在生产许可副页中，很多情况仅是同一种类的
口味更新，生产条件未发生实质性变化，而申请相关生
产许可变更造成企业资源浪费，上市时间延后。反之，如
果要求使用生产条件许可，则可以减少卫生规范类标准的
数量，减少不必要的行政许可导致的政府和企业资源的浪
费，鼓励企业新品创新满足市场需求，提升人民生活质量。

合规挑战

我们欣赏中国政府近年来修改食品安全法规和标准所
做的努力，但由于很多历史的原因，很多规范制度不一致
不兼容，导致食品饮料业的合规成本居高不下。比如，新
版《食品生产许可管理办法》对证书编号的变化未能在出
台之前充分征求行业及地方相关部门的意见，配套的实施
细则未能及时出台，给企业办证造成相当的困扰。

另外，正在制定中的《食品广告发布暂行规定》初次
征求意见稿中，明确规定“除保健食品外的食品广告不得
宣传保健功能，也不得借助宣传某些成分的作用暗示或者
暗示其保健作用”。但该规定要求与已在使用的《食品安全
国家标准：预包装食品营养标签通则》（GB 28050–
2011）中关于“能量和营养成分声称标准用语”的表述产
生矛盾，有可能引起理解上的混淆，不利于规范行业和现
实执法。

此外，根据新颁布的《食品生产经营许可管理办法》及审
查通则，企业在办理经营许可的过程中，由于各地方制定
的审查细则要求不一，法规不明确，解读千差万别，遇到
很多困难。以申请表为例，各地在主体业态、经营项目等
方面的细分要求有所不同，审查要求亦不一致，导致同
一家企业的同一种主体业态和同样的经营项目，在不同地
区的许可中体现出非常不同的内容，大大增加了企业的行
政负担和日后的合规成本，并且还面临着由此可能带来的
职业投诉人挑战（如认为企业“超范围经营”等）。建议相
关主管部门对于各地细则制定和执行给予指导，使其
在大方向上保持一致，避免矛盾。

中国美国商会建议中国政府在相关法规和标准的修改
完善过程中，考虑与现行法规和标准的统一兼容性，尽量
减少执行方面的差异，并广泛征求行业意见，鼓励企业参
与相关法规和标准的修改和改进，改善合规环境。

进一步推动实施细则出台

根据《食品安全法》：“食品生产经营者受到处处罚
三次以上的，由食品药品监督管理部门责令其停产，并
保留吊销其许可证的权利。”该规定缺少详细的实施细则，
将为食品生产企业带来不确定性。此外，已经颁布实施的
In addition, enterprises may encounter many difficulties due to differences in detailed review rules promulgated by local governments when applying for business licenses in accordance with the “Administrative Rules for Food Production Licenses” (e.g., different application form requirements regarding the classification of business model and scope of business), resulting in instances where subsidiaries of the same company with the same business model and scope may obtain very different food production licenses in different regions. This significantly increases enterprises’ administrative burden and compliance costs, and enterprises also face challenges from professional claimants who allege that enterprises are engaged in “illegal operations.” We therefore recommend that relevant authorities provide guidance on the local promulgation of these detailed review rules to ensure consistency and avoid conflict.

AmCham China recommends that the Chinese government, when developing and revising standards and regulations, consider their uniformity and compatibility with existing regulations and standards, minimize variation in implementation, solicit industry comments, and encourage industry to participate in the revising and improving of relevant regulations and standards to improve the compliance environment.

**Further Promote Detailed Implementation Regulations**

According to the FSL: “Where any food manufacturer or operator is penalized more than three times, the food and drug administration shall order it to halt production and reserves the right to suspend its license.” However, the lack of detailed implementing procedures for this provision generates uncertainty for food manufacturers. In addition, the “Administrative Rules for Food Production Licensing” contain provisions needing further explanation in order to standardize the actions of local law enforcement officers.

**Further Standardize Sampling Inspections**

We applaud recent improvements in food inspection and testing procedures, however, some challenges remain regarding sampling implementation. According to the FSL, food and drug administrations at the county level and higher are responsible for conducting sampling inspections on food products while quality supervision administrations are responsible for sampling inspections on food-related products in accordance with the FSL. However, quality supervision administrations are accustomed to conducting sampling inspections in accordance with the Product Quality Law (PQL). In practice, enterprises are treated differently by these two administrations. Moreover, the FSL and the PQL set different legal responsibilities for sampling inspection failure. Local quality supervision administrations penalize enterprises that unwittingly use a food-related product in violation of the PQL, even if the enterprise has fully complied with licensing and certification requirements. We recommend that the Food Safety Committee of the State Council coordinate the implementation of these laws between the different administrations.

**Discrepancies in Local Sampling and Inspection**

Local inspection authorities interpret governing standards of sampling and inspection regulations differently. As this is the main method for supervising products and their manufacturers, the fairness, equity, openness, and transparency of the sampling and inspection process directly affects food manufacturers, their brand image, and public confidence in food safety. AmCham China member companies want to strengthen communication with the relevant test organs and share experiences and data in order to jointly promote the professionalism and scientific nature of the inspections.

**Law Enforcement Issues**

To address law enforcement challenges, AmCham China encourages the food safety supervision authorities to strengthen the professional training of law enforcement officials, harmonize law enforcement procedures across regions, and enhance the standardization of law enforcement at the local level to address law enforcement conflicts between grassroots administrations, as further discussed below.

**Increase the Professionalism of Local Law Enforcement Officials**

AmCham China commends the continuous efforts to strengthen and increase the professionalism of testing organizations and law enforcement teams, as the quality of law enforcement officials directly impacts the effectiveness and justness of law enforcement. The CFDA has developed and is actively implementing a strategy for building law enforcement teams. We would be pleased to cooperate with related government departments in these efforts and provide any needed training assistance. Our members can share with relevant regulatory departments their experiences in international law enforcement and provide training and educational programs for grassroots law enforcement organizations.

**Align Inconsistent Policy Interpretations and Law Enforcement Standards**

Local law enforcement authorities’ inconsistent interpretation and implementation of laws and regulations remains a challenge. When local understanding of some standards, laws, or food safety regulations differs from the more widely understood intentions of central government regulations, local government officials are typically unwilling to seek interpretation from higher authorities. Enterprise requests to the relevant departments for policy interpretation often receive no written response and authoritative policy interpretations from related government websites or other open channels are not easily available. AmCham China recommends that the Chinese government clarify that the law
《食品生产许可管理办法》中有一些规定有待进一步解释，以规范地方执法机构的执法行为。

**进一步规范统一产品抽检**

食品检验检测流程近期已得到改善，对此我们表示赞赏，但是抽样检测方面仍然面临一些挑战。根据《食品安全法》相关规定，县级以上人民政府食品药品监督管理部门依据《食品安全法》负责对食品进行抽样检验，质量监督部门负责对食品相关产品进行抽样检验，而质量监督部门习惯于依据《产品质量法》对食品相关产品进行抽样检验。现实中，企业在面对两个不同的监督时，也遇到不同的执法对待。另外，《食品安全法》和《产品质量法》针对抽样不合格承担的法律责任的界定也不同。若企业在不知情的情况下使用了《产品质量法》的食品相关产品，即使企业完全符合许可及认证要求，各地质量监督部门也会对其做出经济处罚。建议国务院食品安全委员会可以出台协调跨部门的相关法律法规的执行，以避免或减少多部门共同执法标准不一的问题。

**各地抽检标准不一**

地方检测机构对于产品抽检的适用标准方面存在不同的理解，尤其是产品抽检是监管部门对产品及其生产企业实施监管的主要方式，抽检过程的公平公正、公开透明都将直接影响食品生产企业，影响其产品品牌的形象，以及社会对食品安全问题的信心。中国美国商会的会员企业愿意加强与相关检测机构和监管部门的沟通，分享经验和相关数据，共同促进检测机构提升其专业水平，提升检测的科学性。

**执法问题**

针对执法问题，中国美国商会希望食品安全监管部门考虑加强对食品安全执法队伍的专业技能培训，协调不同地区的执法流程，努力推进地方执法程序标准化，化解因基层监管执法水平不一或过于严苛造成的矛盾。

**地方执法人员专业能力建设**

中国美国商会赞赏中国政府不断加强检测机构和执法队伍建设的做法，执法人员的执法水平将直接影响执法效率、执法公正和执法环境的改善。食药监总局制定了落实执法队伍建设的战略，正在积极贯彻执行。中国美国商会及其会员企业愿意与相关部门合作，并帮助提供相关培训。我们的会员可以与相关监管部门分享国际执法经验，为基层执法机构提供相关的培训教育项目。

**统一政策解读和执法标准**

各地执法机关在解释和执行相关法规时仍然存在缺乏一致性的事实。地方政府官员在对某些食品安全标准或法规的解释与中央政府法规本意存在出入时，通常不愿意同意上级主管部门寻求解释。而企业寻求有关文件的解读通常也无法得到书面回应，也很难在政府相关网站或其他公开渠道中得到政策的解释。中国美国商会希望中国政府能明确立法部门为法规解读的权威机构，充分发挥行业协会这类专业化组织的桥梁作用，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，同时加强对地方基层执法人员的培训，推进“清单式”标准化执法程序。

新《食品安全法》规定地方政府属地监管责任，各地政府纷纷出台相关法律法规、政策及要求。有些规定并没有法律法规依据，比如，要求餐饮企业建立在线快速检测实验室。目前，检测结果的可靠性和检测范围的覆盖性方面仍然需要科学基础。我们建议在这一方面相关监管部门能够做出具体可行的指导。

**明确界定“尽职免责”条款**

《食品安全法》第一百三十六条规定，食品经营者如有充分证据证明其不知道所采购的食品不符合食品安全标准，并能如实说明其进货来源并提供查检证明，则不应承担相应责任。但是我们了解到即使食品经营者按照规定完成索票索证，提供明确的进货记录，地方执法人员往往非常慎重使用本条免责条款。我们希望在法律条款中规定明确的证据证明，以便于食品经营者对供应商进行更为严格管理。

**职业索赔人**

2014年1月9日，最高人民法院发布了《关于审理食品药品纠纷案件适用法律若干问题的规定》，明确规定消费者“知假买假”不影响其主张权力。但是该条款也给予了一些职业索赔人以法律保障。随着新修订的《消费者权益保护法》和《食品安全法》强化了惩罚性赔偿条款，职业索赔的规模迅速扩大和分化。

比如，广东省质监局披露，2014年该局受理举报投诉共443宗，其中职业举报373宗。广东省食品药品监督管理局指出，该局受理的行政复议案件中，约97%由职业索赔人
Department is the top authority for the interpretation of laws and regulations. We also continue to call for establishing open channels and mechanisms for enterprises to communicate with the legislative departments and, in the meantime, strengthening training of grassroots law enforcement officials and promoting standardization in law enforcement (e.g., utilizing a standardized and uniform check list in onsite inspections).

Under the FSL, local governments are responsible for supervision of local food safety and have therefore promulgated additional laws, regulations, policies, and requirements. Some such regulations have been promulgated without any legal basis, for example, requiring restaurants to establish on-site rapid test labs. The reliability of such test results and their scope lack scientific basis and we recommend that the central-level authorities provide further guidance.

Clarify the “Due Diligence Exemption”

According to Article 136 of the FSL, food operators are not to be held liable for any purchased product’s nonconformity to food safety standards if sufficient evidence proving the nonconformity was unknown and if proof of inspection and demonstration of source can be provided. However, local law enforcement officials are very cautious in applying this exemption clause even if the food operator has fulfilled all license and certificate verification obligations and provided definitive procurement records. We recommend that the relevant government departments clarify the requirements on evidence collection so that food operators can more stringently manage their suppliers.

Professional Claimants

The Supreme People’s Court promulgated the “Regulations on Some Issues Relating to Laws Governing Food and Drug Dispute Cases” on January 9, 2014, specifying that consumers’ “intentional purchase of fake goods” shall not affect their rights to make a claim. However, this clause also provides so-called professional claimants (as discussed in more detail in the 2015 White Paper) with legal assurances. Together with the punitive measures of the 2014 “Consumer Rights and Interests Protection Law” and the FSL, professional claims have rapidly increased and diversified.

For example, in 2014, the Guangdong Provincial Administration of Quality Supervision received a total of 443 claims, including 373 professional claims. According to the Guangdong Provincial Food and Drug Administration, approximately 97 percent of the administrative reconsideration cases it has handled were initiated by professional claimants. Thus, balancing the non-consumption claims of these professional claimants and the legitimate claims of ordinary consumers is a big challenge for Chinese regulators.

Distinguishing between Label Defects and Food Safety Issues

We applaud the FSL’s distinction of label defects that do not affect food safety and the provision for enterprises to correct labeling errors. However, the definition of label defect remains unclear, creating loopholes that can be taken advantage of by profit-seeking malicious claimants. Food label claims account for nearly half of those filed by professional claimants. Such complaints distract focus from actual food safety issues and, in reality, are oftentimes merely attempts to gain monetary compensation.

Furthermore, individual problems are often filed with multiple food safety regulators, wasting public resources. Recently, some local food and drug administration departments have removed products from store shelves based only on professional claimants’ reports on non-food safety related issues without first communicating the concern to the enterprise in question. In such cases, the enterprise can suffer large reputational and financial losses.

Such complaints also waste the time and energy of enterprises’ internal personnel. We are concerned that the persistence of this phenomenon will negatively impact the healthy development of the food industry.

Production and Expiration Dates

Local food safety administrations have promulgated or announced regulations regarding the “administration of nearly-expired foods,” including requiring food sellers to establish a special zone or counter for the sale of nearly expired foods and apply special labels to the exterior packaging of such products. Shelf life is an important consideration for consumers when selecting foods and oftentimes requests for replacement or compensation are made upon discovery of purchase of any expired food. Meanwhile, the FSL entitles purchasers of expired goods to a minimum compensation of RMB 1,000 (approximately US $160), incentivizing more activity by professional claimants focused on shelf life.

However, as shelf life does not necessarily equate to food safety, we believe that consumer interest in shelf life can be utilized to jump start joint supervision (by industry and society) of food safety, encouraging consumers to “supervise” shelf life as an effective substitute to regulations on the administration of nearly-expired foods. Together with food sellers’ disposal of nearly-expired foods, such efforts can greatly improve regulatory efficiency while allowing the food safety administrations to concentrate energy and resources on true food safety events.

Food Import and Export Regulations

In 2015, we observed that the Chinese government has been committed to exploring best practices and increasing customs clearance efficiency by shortening inspection and
商务环境综述

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区分标签瑕疵与食品安全问题

我们将最新修订的《食品安全法》中将不影响食品安全的标签瑕疵问题与真正的食品安全问题加以区分的做法，给予企业一定的整改机会。但是“标签瑕疵”的界定往往并不清晰，给少数以牟利为目的的职业索赔者留下空隙。在全部职业索赔人投诉中，关于食品标签的投诉占了近一半。此类投诉并非针对真正的食品安全问题，而是意在谋利。

此外，投诉人经常就同一问题向多地食品安全监管部门进行内容相同或不内容相同的反复投诉，浪费了大量宝贵的公共行政资源。近期有些地方药监部门仅凭职业索赔人对于不涉及产品安全的标签内容的举报，在未与企业充分沟通、结论未明的情况下，即下架有关产品，给企业造成了较大的名誉损害和经济损失。

为处理和应对这些投诉事件，企业内部的相关人员往往需要花费大量时间和精力，我们担心长此以往，食品行业的健康发展将大受影响。

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生产日期和保质期问题

各省市的食品安全监管部门已经出台和即将出台《关于临近保质期食品管理规定》，要求食品销售者设立临近保质期食品销售专区或销售专柜，或者在外包装制作特别贴条标志，消费者往往将保质期做为选购食品的最重要参考因素，一旦发现过期食品都会要求销售者调换甚至赔偿。同时，由于《食品安全法》规定只要发生一起销售过期食品的事件，消费者最低就可获取一千元人民币（折合160美元）的赔偿，大量专门针对食品保质期的“职业索赔人”应运而生。

鉴于食品安全与食品的保质期并无必然的联系，我们完全可以借助消费者对保质期的关注，作为食品监管工作的切入点，意义重大。目前，各地已出台《关于临近保质期食品管理规定》，要求食品销售者设立临近保质期食品销售专区或销售专柜，或者在外包装制作特别贴条标志，消费者往往将保质期做为选购食品的最重要参考因素，一旦发现过期食品都会要求销售者调换甚至赔偿。同时，由于《食品安全法》规定只要发生一起销售过期食品的事件，消费者最低就可获取一千元人民币（折合160美元）的赔偿，大量专门针对食品保质期的“职业索赔人”应运而生。

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进出口食品法规

2015年，我们看到中国政府在致力于加强进口食品安全监管的同时，不断积极探索可以提高通关效率、缩短检验检疫时间和有益实践，陆续出台了一系列促进贸易、通关便利化的措施，成效显著。

分类管理与信用管理结合提高通关效率

应当通过进口原物料供应商分类管理与进口企业信用管理相结合的方式，促进企业通关便利，实现《食品安全法》所要求的加强有效监管的目的。建议将进口原物料的风险分析、境外供应商的管理规范等纳入分类管理机制中，结合进口企业信用记录进行统一评估。针对不同评估情况，采用不同的检验方法和抽查比例，如缩减非直接食用低风险产品（如食品添加剂、食品原料）的检验项目。

加快推广地方成功经验

很多地方政府先期积累了一些成功经验，促进了监管资源的优化配置和监管效率的提高。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。我们建议中央政府考虑在制度层面出台相关条例在全国范围推广这类成功经验，鼓励各地监管部门建立“职业索赔人”制度，从而降低职业索赔人行为的负面影响。
quarantine times and implementing a series of measures to facilitate trade and customs clearance.

**Combine Classified and Credit Management to Increase Customs Clearance Efficiency**

The classified management of suppliers of imported raw materials and the credit management of import enterprises should be combined to facilitate customs clearance and strengthen regulatory effectiveness as required by the FSL. We recommend incorporating the risk analysis for imported raw materials and the management of overseas suppliers into the classified management mechanism, and making evaluations more uniform by also referring to the credit record of import enterprises. Different inspection methods and sampling ratios should be utilized based on evaluation results (e.g., reducing the number of inspection items for low-risk products not directly consumed, such as food additives and raw materials).

**Accelerate Promotion of Local Successes**

Based on accumulated successful experiences, many local governments have promoted optimized allocation of supervision resources and efficiency. We recommend that the central government promote such experiences nationally through the introduction of relevant regulations. For example, local governments in Shanghai and other areas have implemented classified and credit management over imported raw materials, reduced sampling quantities, and concentrated more resources on the supervision of key enterprises and raw materials. Meanwhile, 11 creative inspection and quarantine policies implemented in China (Guangdong) Pilot Free Trade Zone, including the “advance inspection of imported foods,” also merit nationwide promotion.

**Institutionalize and Promote Third-party Collection of Credit Information**

China’s increasing trade volume has posed many challenges to the inspection and quarantine authorities. Promotion of third-party collection of credit information can effectively assist the government in its inspection and quarantine work. At present, third-party inspection results are already accepted in some cities and provinces but are yet to be accepted or promoted on a national level by the central government. We recommend that the Chinese government consider introducing relevant regulations to guide the national promotion and standardization of third-party inspections.

Meanwhile, we recommend that the Chinese government consider cooperating with qualified overseas third-party organs in the preliminary inspection of imported/exported goods. During the 2015 US-China Joint Commission on Commerce and Trade, leading officials from both countries stated their intention to establish uniform food supervision standards, strengthen the interfacing of Chinese and American import/export food safety systems, and promote the smooth development of food trade. We believe that the mutual recognition of preliminary inspection results of exported products can increase customs clearance efficiency while ensuring food quality supervision.

**Provide Green Channels for Pre-packaged Foods, Raw Food Materials, and Food Additives for R&D Purposes**

Many food companies import prepackaged foods, raw materials, and food additives for the purpose of product innovation and development. However, current import registration formalities are complicated and time-consuming, hindering product innovation. Considering that such products are not used for the production of final consumer products and do not pose food safety risks, we recommend that the CFDA provide a green channel for such pre-packaged foods, raw food materials, and food additives that are not intended for production or sale purposes; simplify the registration process; and then concentrate resources on the traceability of raw materials to achieve effective regulation.

**Improve the Registration System for Food Importers and Exporters and Protect Enterprise Data**

In 2015, the Chinese government issued a series of new measures relating to the traceability of imported and exported foods. In particular, enterprises are required to file their import records and sales records in the food importer and exporter registration system. Such data is sensitive and enterprises are concerned about the possible leakage of their business information to competitors. We hope that the Chinese government can further improve and optimize the registration system and strengthen the management of enterprise information.

**Further Diversify the Monitoring and Inspection of Food Exports**

We are pleased that the Chinese government is actively implementing classified risk management of exported foods by conducting sampling inspections according to risk level to ensure their safety. However, we note that different localities utilize different testing requirements. While the data of third-party test organs recommended by enterprises are recognized in some localities, tests must be conducted by the designated laboratory in others. We urge the Chinese government to allow more flexibility in the testing and monitoring of exported foods by allowing enterprises to determine whether to utilize the officially designated organization or an enterprise-recommended organization. For some low-risk products, we recommend that an enterprise’s own laboratory test data be accepted.

More information on these issues can be found in the Customs chapter.
阻碍产品创新。鉴于此类产品并非用于最终消费品的生产，不会造成食品安全风险，我们建议国家监管机构可对此类非生产销售用途的预包装食品，食品原料及食品添加剂进口开通绿色通道，简化备案手续，将监管重点放在原材料使用的可追溯性方面，从而实现有效监管目的。

**完善进口食品进出口商备案系统保护企业资料安全**

2015年，中国政府在进出口食品追溯方面推出了一系列新的举措，特别是在进口食品进出口商备案系统中强调，要求企业填报食品进口记录和销售记录。这些资料是企业的敏感信息，企业也担心商业信息会泄露给竞争者。我们希望中国政府可以进一步完善和优化备案系统，特别是要求加强对企业资料的管理。

**进一步推动出口食品监管检测方式的多样化**

我们很高兴地看到，中国政府正在积极采用风险分级的管理模式，对出口食品进行监管，根据风险高低制定相应的抽样计划来保证出口食品的安全，对这种基于科学的做法我们感到十分振奋。同时，我们也看到各地在对出口食品检测的要求不尽相同，有的口岸认可企业自荐的第三方检测机构的数据，有的口岸则要求必须到指定实验室进行检测。我们希望中国政府对于出口食品监管的检测可以采用较为灵活的方式，企业可以自行选择官方指定或企业自荐的机构，对于风险较低的产品，甚至可以认可企业实验室的检测数据。

更多相关信息请见“海关”章节。

**建 议**

**对中国政府：**

- 不断加强检测机构和执法队伍建设，提高执法人员专业水平，推进“清单式”标准化执法，以加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。
- 在全国范围内加快推行检验检疫通关一体化、进出口食品安全风险分级分级监管体系、第三方采信制度；简化学术研究用于进口样品检验检疫的流程。
- 继续完善食品安全国家标准体系，结合国内基层食品安全的水平、食品行业的复杂性和进口食品的标准适用性等问题不断加快完善该标准体系，并加强与非食品安全标准的协调和统一管理，最终建成一个全面覆盖、分类清晰的食品标准体系。
Recommendations

For the Chinese Government:

• Continue to strengthen the development of testing organs, the professionalism of law enforcement officials, and the standardization of law enforcement in order to ensure the uniform and accurate interpretation and implementation of regulations nationwide; additionally, call for the establishment of a public channel and mechanism for communication between enterprises and legislative bodies and provide timely interpretations on the implementation of relevant legislation.

• Facilitate the integration of inspection, quarantine, and customs clearance; adopt an import/export food safety risk classification monitoring system and a third-party credit information collection system; and simplify the testing and inspection procedures for the import of samples for R&D purposes nationwide.

• Continue to improve the national system of food safety standards while keeping in mind the level of grassroots food supervision, the complexity of the food industry, and the applicability of standards to imported foods; strengthen harmonization with non-food safety standards and manage them uniformly; and establish an all-encompassing and clearly classified food standard system.
Introduction

The “Proposal on Formulating the 13th Five-Year Plan” (13th FYP), released in November 2015, emphasizes inclusive development that expands social services as one of the five tenets underpinning China’s policy direction through 2020. Similarly, the “Healthy China 2020” initiative set a goal to provide equitable access to healthcare services by 2020 by improving the affordability and accessibility of quality and innovative medical products and healthcare services.

In order to create a policy environment and market conditions that promote innovation in the healthcare industry, we propose the following for the development of China’s healthcare, medical device, and pharmaceutical industries in the 13th FYP period:

- Encourage innovation to satisfy the needs of all people from different financial backgrounds and organically integrate the development of the healthcare industry with the “patient-first” concept.
- Promote market-oriented enterprise innovation with enterprises as the pillar and driving force of these efforts. Refer to overseas experience in promoting innovation, simplify the registration of innovative products and encourage their use, enhance enterprise innovation initiatives, and promote cooperation between creative domestic and overseas enterprises.
- Further optimize cooperation between different ministries and commissions and ensure the conformity and continuation of innovation policies under the guiding principles of “international standards, scientific nature, reasonableness, openness, and transparency.”

Healthcare Services

The healthcare services sector benefited from policy improvements in 2015. For example, the National Health and Family Planning Commission’s (NHFPC) “Opinions on Promoting and Standardizing Physicians’ Multi-Site Practice,” released in January 2015, allows hospital associations to share physicians internally without requiring the physicians to register their licenses at each facility within the association.

Corporate Tax Rates

Despite the Chinese government’s stated encouragement of private investment in healthcare during the 12th FYP period, healthcare remains excluded from the list of “Encouraged” industries in the “Guiding Catalogue on Foreign Investment in Industry” (Foreign Investment Catalogue), many of which enjoy a reduced corporate tax rate of 15 percent. Thus, private healthcare enterprises continue to pay the standard maximum rate of 25 percent.

Moreover, foreign joint venture medical providers are not permitted to open branches and must register each facility separately. They also cannot consolidate the accounts of their facilities, including facilities within the same city. Consequently, financial losses at one facility cannot be offset by profits at another. This may lead to an effective tax rate of over 100 percent for the company as a whole, particularly during the three- to four-year startup period of new hospitals. We recommend that foreign-invested healthcare providers be eligible for the lower tax rate and allowed to consolidate all accounts.

Cap on Foreign Ownership

While private healthcare providers were allowed to establish wholly foreign-owned hospitals in pilot cities starting in August 2014, this provision was unexpectedly withdrawn when healthcare institutions reappeared as “Restricted” in the revised Foreign Investment Catalogue in 2015. We recommend that the establishment of wholly foreign-owned private hospitals be permitted in China, in line with the policy of liberalizing foreign investment in healthcare.
医疗卫生服务、医疗器械和医药

引言
2015年11月公布的“十三五”规划纲要草案（“十三五”规划草案）中强调实现包容性发展，把社会服务纳入到2020年政策目标重点方向之一。同时，“健康中国2020”战略提出，通过提高医疗卫生服务和保健水平，确保到2020年实现人人享有基本医疗卫生服务的重大战略。

为营造促进医疗卫生产业创新的政策环境和市场条件，我们为“十三五”期间中国医疗卫生产业发展提出了以下建议：

• 鼓励创新以满足不同支付能力人群的差异化需求，将推动医疗卫生产业的发展和以患者为中心的发展点有机地结合起来；
• 推动以市场为主导的企业创新，将企业作为创新的主体和原动力。借鉴国外在推动创新方面的经验，通过简化创新产品的注册和鼓励创新产品的使用调动企业创新的积极性，促进国内外创新企业的合作；
• 以“国际接轨，科学合理，公开透明”为指导原则，进一步优化跨部委合作机制，以确保鼓励创新政策的一致性和连贯性。

建立一个可持续的，以价值为基础的医疗卫生体系，保障高质量和高效率的医疗服务，是目前正在进行的医疗卫生改革的重要基石。我们鼓励并赞赏中国在医疗卫生行业发展取得的一系列进展，但与此同时，我们医疗服务、医疗器械和药品行业的会员企业在华运营依然面临诸多挑战。

医疗卫生服务
2015年，中国改进了多项惠及医疗卫生服务行业的政策。例如，国家卫生和计划生育委员会（国家卫计委）于2015年1月出台了《关于推进和规范医师多点执业的若干意见》，允许医院联合体内部共享医师资源，医师无需在联合体内每一家医疗机构执业时都进行执业注册。

企业所得税税率
尽管中国政府表示在“十三五”期间鼓励私人投资医疗卫生行业，但医疗卫生行业目前仍未纳入《外商投资产业指导目录》（外商投资目录）“鼓励投资”类行业。许多鼓励投资类行业都可以享受15%的企业所得税优惠税率，而私人医疗卫生企业只能继续按照25%的普通税率缴纳企业所得税。

另外，中外合资医疗服务提供者不得开设分支机构，且必须对每一家医疗点单独进行注册登记。他们也不能合并处理旗下医疗点的账目，包括同一城市内的医疗点。因此，一家医疗点的利润不能冲抵另外一家医疗点的亏损。这样可能导致企业总体负担的实际税率超过100%，特别是在新医院开设后3-4年的起步期内。我们建议允许外资医疗卫生服务供应商享受优惠税率并可以合并处理旗下所有医疗点账目。

外商投资所有权限制
尽管自2014年8月起，私人医疗卫生服务供应商可以在试点城市设立外商独资医院，但2015年最新版《外商投资产业指导目录》却将医疗机构重新列为“限制外商投资”类，外商设立独资医院的规定也就此被叫停。我们建议允许在中国境内设立外商独资私立医院，这才符合向外资开放医疗卫生行业的政策精神。

纳入医保报销范围
私立高端医疗机构目前仍未纳入基本医疗保险（医保）报销范围，限制了其对许多中国患者特别是医保累积待遇较高的患者群体的吸引力。尽管其质量控制成本较高，且无法享受政府补贴，私营医疗机构系统不可能将医疗服务价格降低至医保报销水平。然而，为了在私立医疗机构享受高端医疗服务，很多患者都愿意自费支付或者通过补充私人
**Eligibility for Social Health Insurance**

Premium private healthcare facilities remain ineligible for coverage by the basic government medical insurance scheme (医保, yibao), limiting their appeal to many Chinese patients, particularly older individuals who have accrued substantial yibao benefits. Given the high cost of systemic quality control and the absence of government subsidy benefits, it is financially unfeasible for private providers to set their prices low enough to qualify for yibao reimbursement. However, in order to receive the premium services offered at private facilities, many healthcare consumers are willing to pay for the difference out-of-pocket or with supplementary private insurance. AmCham China recommends that private hospitals be allowed to set prices freely while receiving yibao reimbursement up to the price ceilings of public hospitals.

**Medical Devices**

**Product Registration**

AmCham China appreciates that the China Food and Drug Administration (CFDA) has openly engaged with and offered constructive feedback to industry concerns and hopes such engagement will continue. We especially welcome opportunities to discuss strategies for improving the review process, particularly regarding the limited number of sufficiently knowledgeable reviewers, rigid clinical trial requirements that are inconsistent with international practices, unclear submission guidelines, and the disproportionately high risk classification of Class III products in comparison with other countries.

**Country-of-Origin Approval Requirements**

In August 2015, the State Council proposed new measures to improve the clinical approval process for pharmaceuticals and medical devices. According to this new regulatory framework, innovative devices must first be approved in the country-of-origin, contrary to the stated goals of encouraging innovation and fair competition practices and reforming the medical device and pharmaceutical approval process.

Currently, most Category II and III products are required to undergo clinical testing in China. However, given the size and experience of other large markets, we recommend that policymakers consider the country-of-origin approval process stipulated by the International Medical Device Regulators Forum (IMDRF) and in other major markets (e.g., Australia, Singapore, Canada, Japan).

**Product Instruction and Labeling Issues**

We continue to propose the following recommendations regarding product instruction and labeling to ensure the reasonable implementation of the CFDA’s October 2014 “Regulations on the Administration of Instructions and Labeling of Medical Devices” (Regulations).

1. The Regulations require that instructions and labels of all medical devices include a manufacture date and shelf life or expiration date. However, in practice, such information is not equally relevant for all medical devices. Thus, we recommend that the CFDA clarify its definition of shelf life. For example, the usage period for electronic medical devices depends on how long the manufacturer will offer maintenance parts. We recommend instead that manufacturers be allowed to include a warranty guaranteeing the provision of maintenance parts during a fixed period of time instead of labeling the expiration date on the product. Additionally, non-sterile reusable polymer equipment, manufacturers should be allowed to identify a sterilization period (e.g., a product may be sterilized up to 30 times).

Furthermore, instructions are product version-based and any changes must undergo extensive internal reviews and approvals before taking effect. Requiring the production date to be added to instructions will not strengthen control over product quality but will increase production costs. We recommend that the requirement to include production and expiration dates or shelf life on instructions be removed, except when instructions are included on the label.

2. The Regulations also include the concept of stock keeping unit (SKU) for the first time and specify that medical device SKUs shall include instructions, but do not require the inclusion of a Chinese label (Circular No. 6). However, this provision is inconsistent with the requirements of the CFDA’s Circular No. 26 and Circular No. 43 (which address SKU labeling), and does not provide a specific definition of SKU, leading to inconsistent understanding of SKU among local CFDA branches and manufacturers. We recommend that the medical device supervisory authorities clarify the definition of medical device SKU. The requirement for providing SKU labeling in Class I medical device filing records and Class II/III medical device registration documents should be based on the representative principles.

**Clinical Trial Requirements**

We welcomed the CFDA’s release of the exemption lists for Class II and III medical devices in August 2014 based on the State Council’s release of the “Regulations for the Supervision and Administration of Medical Devices” (State Order 650) in April 2014 which cover 567 medical devices. We were also pleased to learn that the CFDA will be issuing
具体行业问题

### 医疗器械

#### 产品注册

中国美国商会感谢国家食品药品监管总局（国家食药监局）公开并充分听取业内建议并给出建设性反应。我们希望总局能够继续坚持上述做法。我们尤其希望能够在有机会与总局探讨如何改进审评程序，特别是在以下问题：如何充分具备相关的专业知识和数量、临床试验要求严格等国际实践经验不符、审批办法不明确以及与其他国家相比中国的第三类产品分类比例过高等。

#### 原产地审批要求

2015年，中国国务院就临床药品医疗器械审批制度的问题，提出了若干改进意见。新规定要求创新医疗器械的临床试验需首先获得原产地的上市批准。这与鼓励创新、公平竞争以及国家关于改革药品器械审批制度的改革理念背道而驰。

同时，大部分二类和三类产品需要在中国境内实施临床试验。但考虑到其他国家的庞大市场和丰富经验，中国美国商会建议政策制定者在制定政策时，可以考虑参考采用获得任一作为国际医疗器械监管者论坛（IMDRF）成员国的原产国以及一些主要市场（如澳大利亚、新加坡、加拿大、日本）审评审批制度的经验。

#### 产品的说明书和标签

为了推动国家食品药品监督管理总局发布并于2014年10月1日起正式实施的《医疗器械说明书和标签管理规定》（法规）得到顺利和合理地执行，中国美国商会建议进一步对以下领域的工作进行改进：

1. 该法规规定了所有医疗器械的说明书和标签上应标明生产日期和使用期限或者生产日期和失效日期。但在实际操作过程中，标明使用期限或失效日期并非适用于所有医疗器械。建议食药局明确各类产品有效期的含义。例如，对医疗电子设备而言，产品的使用期限取决于设备生产商提供的维修服务日期。中国美国商会建议可由企业提供维修服务的期限，承诺在固定期限内提供维修服务。对于非金属无菌手术工具，不易老化，制造商可以标明允许使用的次数，例如重复消毒使用30次，而无需提供该类产品的使用期限或者失效日期。

2. 第一次修订中第八次提出了“医疗器械最小销售单元”，提出“医疗器械最小销售单元应当附有说明书”的要求，但并未对其中文标签的定义（6号文），但该规定与国家食药监局第26号公告和第43号公告（关于最小销售单元标签）中的相关规定不一致，且并未对“最小销售单元”作出具体明确的定义。容易造成各地食药监管部门和相关厂家对于医疗器械最小销售单元的理解不一致。另外，对第一类医疗器械备案材料和第二类、第三类医疗器械的注册材料中最小销售单元标签的提交要求也应当遵循代表性原则。

### 临床试验要求

我们欢迎国家食药监局在2014年8月基于国务院于2014年4月出台的《医疗器械监督管理条例》（国务院第650号令）和公布涉及567种医疗器械免于进行临床试验的第二类和第三类医疗器械目录。我们也非常高兴地了解到，国家食药监局将在公开征求意见后于今年下半年发布第二批免于临床试验的第二类和第三类医疗器械目录。

然而，尽管国家食药监局在2015年5月发布的《医疗器械临床评价技术指导原则》（指导原则）中规定了临床试验的要求，但大部分医疗器械类型仍未纳入《免于进行临床试验的第二类医疗器械目录》或《免于进行临床试验的第三类医疗器械目录》。基于上述指导原则的实施情况，并经向审评中心咨询，我们认为仅依靠非临床试验数据很难达到中国的临床试验要求。例如，很难找到符合指导原则定义的标准，性能类似且已经获得中国上市核准的同品种医疗器械。另外，如果该同品种医疗器械是由不同企业生产，也很难满足16项比较条件（如结构组成、生产工艺等）。

因此，我们根据目前会员企业的实践及其反馈，不难推断出在新法规体系下，绝大多数新型医疗器械在中国上
a second clinical trial exemption batch for additional Class II and Class III medical devices later this year after collecting public feedback.

However, the majority of medical device types are not included on either exemption list though some guidance was provided in the CFDA’s May 2015 “Technical Guidance Principles on the Clinical Trial of Medical Devices” (Guidance Principles). Based on implementation of the Guidance Principles and following consultation with the Center for Medical Device Evaluation, we believe that it will be very difficult to meet China’s clinical evaluation requirements with nonclinical data. For example, it is almost impossible to find equivalent devices (EDs) that meet the guidance criteria, possess similar functionality, and have already obtained Chinese market approval. Other requirements to match 16 areas of comparison (e.g., structural composition, manufacturing process) are impossible to meet if the ED was produced by a different enterprise.

Thus, based on current practice and member feedback, it appears that a majority of innovative devices will have to undergo clinical trials under the new regulatory system if they are to be launched in China. Certainly, clinical trials are important and necessary for ensuring product safety and efficacy. But regulations should emphasize a risk-based approach that addresses this need while minimizing disruption to the deployment of life-saving medical technology to patients. Unnecessary clinical trials strain the limited capacities of qualified clinical trial sites and divert limited regulatory resources away from other, more impactful areas. They also create significant burdens for industry (e.g., predictability, cost, and time-to-market). Time-to-market is particularly key as the medical device industry has an average innovation cycle of 18 months. As most clinical trials last at least two to three years, enforcement of unnecessary trials will result in the China market falling two or more generations behind.

We recommend that China’s regulatory authorities and technical departments further incorporate the best regulatory practices in clinical trial requirements by taking a risk-based approach that requires clinical trials only if safety and clinical efficacy have not been otherwise demonstrated or when there is a specific justifiable benefit to patient health. Such approach best aligns the interests of regulator, industry, and patient.

**Supervision and Administration Measures**

Though we appreciate China’s reform efforts to streamline administration, delegate power, and strengthen regulations, this has devolved much of the pre- and post-market supervision authority to the provincial and municipal levels where local CFDA supervisors lack sufficient technical knowledge regarding medical device issues.

The CFDA implemented stricter marketing supervision in 2015, increasing the frequency of inspections. However, in many cases, the provincial and municipal personnel lacked sufficient training and experience to establish a clear interpretation of certain medical device regulations, resulting in reduced inspection efficiency and increased inconsistency among local healthcare authorities.

We recommend that the CFDA issue a clear and universal interpretation for important regulations and policies and further train local medical device supervisors to reduce confusion and inconsistent enforcement. We welcome the CFDA’s continuous efforts to improve inspections and crisis complaint mechanisms and our members stand ready to support these efforts.

**Unique Device Identification**

During the September 2015 IMDRF, a welcome update on unique device identification (UDI) systems was issued by the CFDA, which also re-committed to investigate and promote a UDI system aligned with international best practices to eventually reach one globally accepted UDI Standard for Medical Device Traceability. Discussions on China UDI among the CFDA, medical device manufacturers, third parties, and hospitals remained ongoing in 2015.

We encourage the CFDA to continue referring to the work of the IMDRF and US Food and Drug Administration on the implementation of a globally standardized barcoding system for medical devices marketed in China. We also recommend close consultation with industry while investigating and developing the UDI system so that manufacturers can remain in alignment. Our member companies are prepared to assist the Chinese Technical Committee’s engagement with key international technical committees and hope that relevant parties in China and the US will continue discussing this issue and sharing their experiences.

**Centralized Procurement and Tendering of Consumable Medical Supplies**

AmCham China supports and eagerly anticipates implementation of the State Council’s 2015 “Implementing Opinions on Fully Promoting the Comprehensive Reform of County-level Public Hospitals” (Circular No. 33) and the June 2015 “Guiding Opinions on the Pilot Comprehensive Reform Program for Urban Public Hospitals” (Circular No. 38) that dictate that “high-value medical consumables shall be procured transparently via the provincial centralized procurement platform” and that a “national comprehensive management information platform of drug supply and assurance” will be established. To ensure that a fair, efficient, and standardized model for the procurement of medical consumables is established according to the principles of “quality first, reasonable price, and appropriate performance-to-price ratio” and the principles of the Third Plenum, we offer the following recommendations:
市之前都必须经过临床试验。临床试验对于保障产品安全性和有效性当然十分重要且必要。但相关监管措施应当侧重基于风险的临床试验模式，既要保障产品的安全性和有效性，又要尽量减少患者获得救治所需的医疗技术的等待。不必要的临床试验会占用宝贵的临床试验机构的资源，也会消耗有限的监管资源，造成监管部门无法对其它领域有效的实施有效监管。同时也给本行业造成沉重负担（如可预见性、成本和上市时间）。上市时间对医疗器械行业至关重要，因为该行业的平均创新周期为18个月，而绝大多数临床试验至少持续2－3年，实施不必要的临床试验将导致中国市场至少落后两代。

我们建议中国相关监管部门和技术机构进一步吸收临床试验要求最佳监管实践，采用基于风险的试验模式，只在尚未证明产品安全性和临床有效性，或产品对病患健康具有具体且可证明的益处时才要求进行临床试验。这种方式才能兼顾监管者、行业和病患的最大利益。

医疗器械上市后统一监管标准

尽管我们赞赏中国简政放权和强化监管的各种改革措施，但简政放权也使得很多事前和事后监管职权下放到省市一级，但地方食药监管局却往往缺乏开展医疗器械监管所需的技术知识。

2015年，国家食药监局加强市场监管，提高了执法检查的频率。然而，很多时候省市一级执法人员由于未经充分培训且经验不足，不能对医疗器械监管相关法律法规做出明确的解释，导致执法活动缺乏效率，各地执法也缺乏一致性。

我们建议国家食药监局对重要法规和政策做出统一、明确的解释，并加强对地方医疗器械监管人员的培训，减少执法不力和不统一的现象。我们欢迎国家食药监局继续加强执法检查和改进危险投诉机制，我们的会员企业也随时准备为此贡献自己的力量。

医疗器械唯一标识

在2015年9月举办的中国国际医疗器械监管论坛(IMDRF) 上，国家食药监局宣布将研究推进唯一器械标识(UDI)体系，承诺该体系将符合国际最佳实践，并最终建立一套国际通行的UDI标准，实现医疗器械可追溯。2015年，国家食药监局、医疗器械生产商、第三方和医院继续讨论制定中国的唯一器械标识体系。

我们鼓励国家食药监局继续借鉴国际医疗器械监管论坛和美国食品和药品管理局的相关经验，对中国市场的医疗器械适用全球统一的标准化编码体系。我们还建议在研究和推进UDI体系设计时广泛征求业内意见，使相关生产商能够随时了解近期动态并保持沟通。我们的会员企业已经取得准备，随时可以协助中国技术委员会与主要国际技术委员会保持沟通协作，并希望中美相关各方能够继续探讨该问题并分享经验。

医用耗材的集中采购与招标

在过去一年，我们看到《国务院办公厅关于完善公立医院药品集中采购工作的指导意见》国办发【2015】7号文对于药品集中采购的广泛而深远的影响，中国美国商会非常支持《国务院办公厅关于全面推进公立医院综合改革的实施意见》国办发〔2015〕33号文件、《国务院办公厅关于城市公立医院综合改革试点的指导意见》国办发〔2015〕38号文件中对“高值医用耗材应通过省级集中采购平台进行阳光采购”的要求以及建立“国家药品供应保障综合管理信息平台”的作法。因此，我们非常期待医用耗材集中采购指导意见的出台，也期待国家耗材综合管理信息平台的建立，我们希望相关政策决策者本着“质量优先、价格合理、性价比适宜”为原则，贯彻三中全会会议精神，建立一套公平、公正、高效、规范化的标准化的医用耗材集中采购模式。以下是中国美国商会针对中国医用耗材集中采购问题所提出的建议:

采购模式

与药品采购相比，高值医用耗材的招标过程更加复杂多样，相同目录分类下的产品会根据其工艺设计、材质、规格、型号、适应症等区分出不同的产品系列，“双信封”模式将所有相同二级目录下的产品进行简单评比，但对创新产品、高端技术产品、特殊适应症的产品因不合理的技术标得分或价格得分过低而出局，不利于更好的服务临床各类病患。针对一些复杂的类别，如骨科，通常需要组套使用，而“双信封”模式无法应对千变万化的产品组套，竞价组的划分也因为缺乏科学统一的标准，评审工作极其复杂，难以推进。

医用耗材集中采购模式应三中全会精神领导下，由过多的行政干预模式，向更加强调市场作用、透明的监督机制和服务平台转化。通过“公开、公平、公正”的采购方式形成合理的市场价格，改革高值医用耗材集中采购模式,
Procurement Process

Compared to drug procurement, the bidding process for high-value medical consumables is more complex and diverse. Products of the same category are divided into sub-series according to technical design, material composition, use specifications, model number, and target indicators. Although the “two envelope” system sets a relatively simple appraisal model for all Category II innovative products, when applied to high-end technology or when products with special indications are disqualified due to unreasonable technical and pricing evaluation standards, patients may be denied access to the best medical services. Additionally, the “two envelope” model cannot account for product groups that are required for certain categories (e.g., orthopedics). A lack of unified scientific standards further complicates assessments.

Excessive administrative intervention should be reduced according to the spirit of the Third Plenum, and an open and fair procurement model bolstered by market forces and transparent regulatory mechanisms should be emphasized. We recommend that the following concrete actions be taken by the relevant officials:

**Procurement Catalogue and Innovation**

1. Update and standardize the Procurement Catalogue. The 2008 “National Catalogue for the Centralized Procurement of High-Value Medical Supplies” no longer meets industry needs and does not include a number of new technologies and products.
2. Organize industry and expert discussions to formulate a supplementary list of innovative products to the 2008 Catalogue. Since the true value and features of new products cannot be fully accounted for during tendering due to their absence from the 2008 Catalogue, said value is determined by the Catalogue’s conventional equivalents, negatively impacting the products and services available to patients and companies’ willingness to innovate.
3. Promote the Fifth Plenum concept of open development and a fair and equitable procurement process. Some tendering notifications place limitations on imported products, denying Chinese patients access to advanced products and creating an environment of unequal competition.

**Procurement Policies**

1. Utilize international best practices regarding the disclosure of bidding process information. In the provincial procurement of medical supplies, key information (e.g., quantity, payment period) is often times unclear or not disclosed, preventing development of appropriate bidding strategies.
2. Clarify provincial procurement procedures for new products and set timelines according to product characteristics. Currently, each province’s centralized medical supply procurement period is set at a minimum of at least two years, during which new products cannot be efficiently launched due to a lack of relevant procedures. This shortens the period in which a new product may be used and increases the cost of market access. While some provinces have plans to allow bidding in three-month intervals, this may not be suitable for medical device procurement. A further difference between medical devices and pharmaceuticals is that clinicians must receive professional training, potentially over the course of several years, to ensure proper medical device usage. Such a frequent rate of product replacement may result in improper physician training/understanding of device usage, increasing patient risk.
3. Collect and analyze relevant data in a transparent manner to formulate procurement mechanisms that avoid overly high rates of elimination. The elimination rates during some provinces’ commercial evaluations are very high – sometimes reaching 70 percent – often resulting in the shortlisting of only one or two bidders within a given bidding group. Additionally, high-value medical devices lack uniform and scientific Catalogue categorization codes and thus lack unified assessment indexes and methods. Further considering the diversification of medical device accessories, individual patient needs, and unique operating methods, it is difficult for a given product to substitute for another product, even within the same bidding group. Such excessively high elimination rates restrict the reasonable use of and patient access to medical devices while reducing government bargaining power in future procurement rounds and industry willingness to innovate.

**Qualification Documents**

1. Establish a nationwide standard set of qualification documents to increase the efficiency of qualification declaration and review. The present enterprise qualification documentation requested by each province during centralized medical supply procurement is overly complex, and different standards and processes are applied. Bidders must invest much labor, time, and financial resources to satisfy these location-specific requirements.

**Evaluation Standards**

1. Formulate scientific and fair evaluation indices to accurately evaluate high-quality products. Recent tendering documents award points to winners of the State Council’s “National Scientific and Technological Progress Award” while the patents and awards of imported products are often disregarded during bidding evaluations, disadvantaging imported products in the scoring system.
推广阳光挂网采购或更为合理的其它模式，以取代“双信封”模式。

### 采购目录及创新

1. **采购目录的更新及标准化。** 2006年的《全国高值医用耗材集中采购目录》已无法满足临床需求，该目录缺少许多新技术和新产品的内容，急需更新和完善。

2. **定期组织行业、专家讨论，及时增补创新产品目录。** 目前产品目录分类中仅能找到常规产品目录，新产品在招标时只能贴靠老产品目录，这使得新产品的创新价值和新的功能不能被体现，影响了创新产品服务于患者，同时也使企业的创新意愿受挫。

3. **贯彻十八届五中全会精神，坚持开放发展的理念，构建公平、公正的新秩序：** 有些地方发布招标公告时，出现了限制“进口产品”投标的条款，这不仅使一些中国患者得不到使用需要的先进产品的机会，也使得进口企业失去公平竞争的环境。

### 采购规则

1. **借鉴最佳国际经验，在招标医用集中耗材采购公告发布时公开披露信息。** 各省医用集中耗材采购开始时，未明确披露招标采购的数量、付款周期等关键信息，使得投标企业无法做出相应的投标策略。

2. **明确新产品增补时间、流程和规则，并充分考量医疗器械产品的特殊性，制定合理、恰当的采购周期。** 目前，各省的集中医用耗材采购期有的是2年，但新产品增补流程、使用年限等在多个省市采购周期的限制往往无法及时上市，缩短了新产品的使用周期，这加大了创新产品市场准入的成本。虽然有些省计划以3个月为一个周期进行增补，但可能不适用于医疗器械采购。医疗器械与药品的不同即便是临床医生必须在专业人员的指导下进行专业技能培训，医生对于医疗器械使用的需要严格遵守规定。

3. **采用阳光采购形式充分收集和分析实际数据，制定避免过高的淘汰率的机制，使市场因充分竞争得到优化。** 医疗器械的分类目录编码以及一致性评价指标和方法，加上考虑到医疗器械的使用存在组件配伍差异，患者个性化需求、手术方式不同等原因，同一竞价组中的产品往往难以互相替换，这种过高的淘汰比例限制了临床使用和患者的合理治疗，降低了政府在未来相关采购时的议价机会，也削弱了创新企业创新的意愿。

### 资质文件

1. **建立标准化、规范化的资质文件，提高资质申报和审核的效率。** 目前，各省医用耗材集中采购时，要求企业提交的资质文件繁琐复杂、标准不一、形式不同。投标方需要耗费大量人力、时间和财力来满足各地迥异的要求。

### 评价标准

1. **专利与奖项：** 制定科学、公正的评价指标，为高质量产品做出正确评价。近年来招标标书中出现“获得国家级科学技术进步奖”得分为条款，而进口产品专利和其他奖项在评估过程中却不被认可。

2. **创新产品：** 在制定创新产品评价指标时，可以根据新技术、新材料和新工艺等创新要素，制定合理、恰当的采购周期。目前，大部分省计划以3个月为一个周期进行增补，但可能不适用于医疗器械采购。医疗器械与药品的不同即便是临床医生必须在专业人员的指导下进行专业技能培训，医生对于医疗器械使用的需要严格遵守规定。

### 招标费用

1. **所有与招投标相关的收费应该获得物价主管部门批准，并公示批准文件及收费标准以及向企业提供合法正规票据。** 参与医用耗材集中采购的投标企业需要支付的费用有很多种：保证金、管理费、投标费、中标服务费、合同担保金等。这些收费不仅名目繁杂，更缺乏统一的标准。

### 价格控制

1. **制定采购限价时，应充分调研和考虑医疗市场实际情况，或采用阳光采购形式充分收集和分析数据。** 采购限价应在考量采购数量、回款时间、采购周期等基础上，科学、合理的反映产品的实际市场价格。各省在商务标评价时，采用产品的“全国最低价”或采用同一竞价组最低价产品的“全国最低价”作为限价，再按照淘汰率规则进一步降价，这使得投标企业参加不同省市的招标项目时，会面临连续降价。而中国幅员辽阔，各省不但经济和医疗技术水平发展水平差异巨大，对终端
Consider relevant international evaluation credits when setting evaluation indices for innovative products (e.g., new technologies, materials, techniques). Because innovative products are not widely included in clinical practice, they are often disadvantaged in coverage and expert evaluations.

**Tendering Expenses**

1. All bid-related expenses should be approved by the commodity price authority, all standards and approval documents should be published, and legally accepted receipts should be provided to winning bidders. Presently, bidders must pay a wide variety of complicated fees (e.g., deposit, management fee, bidding fee, service fee, contract bond). There is no uniform standard for the charging of these fees.

**Price Controls**

1. Set purchase price limits according to actual market prices that consider relevant factors (e.g., purchase quantity, payment period, purchase period) after conducting a transparent survey of diverse medical market conditions. Presently, the “lowest national price” or the lowest-priced product within a bidding group is used to set price limits. The price is often-times then further lowered through elimination policies as bidders participate in different bidding projects across the country. China’s size and its substantially varying levels of economic and medical technological development lead to many potential factors (e.g., purchase quantity, payment period, distribution costs) that can significantly impact the final price.

2. Adopt a scientific evaluation system according to the principle of “quality first, reasonable price, and appropriate performance-to-price ratio.” The “two envelope” model gives too much weight – as high as 60 percent in some provinces – to commercial bids. Furthermore, the lowest-priced product in a given group may automatically be shortlisted or be given a full score. Thus, it is difficult for high-scoring products to compete with the lowest-price product during commercial bid evaluations. This “price first” principle reduces bidder willingness to invest in innovative product development, and counters the pharmaceuticals industry development plan as outlined in the “Made in China 2025” initiative.

3. Eliminate hospital re-negotiations and set central procurement of medical consumables at the provincial and municipal level. Currently, after winning a provincial bid, municipal authorities or relevant hospitals may seek to re-negotiate the final price, resulting in a vicious cycle of “no lowest price, only even lower price” negotiations, at times resulting in the abandonment of bids and unmet clinical needs. Re-negotiations increase the workload of municipal authorities and hospitals and frustrate bidders.

**Localization**

1. Clarify the definition of “domestic product” in central procurement. As China increasingly incentivizes innovation and the development of higher-quality products, increasing numbers of Chinese medical device companies are increasing investments in R&D and seeking to move up the value chain. This trend is also creating opportunities for multinational corporations (MNCs) to work with local partners in the research, manufacturing, and distribution of high-quality products.

However, some recent policies and practices tend to promote local brands, resulting in contradictions and ambiguities for MNCs wanting to adapt their localization strategies and access the market. For example, the lack of a clear and centrally agreed-upon definition of “domestic product” is a key concern. In some regions, only “local brands” are defined as “domestic products.” Some localities have even issued policies that explicitly favor local brands and are implemented through the entire process of product distribution. Other examples include:

- Tendering: In a few extreme cases, only local brands have been allowed to bid. Local products are often favored.
- Hospital listings: Some hospitals set specific requirements for the application rate of local products.
- Reimbursement: Local products often enjoy better reimbursement policies (e.g., higher reimbursement ratios and reimbursement amounts based on the local product price).

While we understand the Chinese government’s desire to promote local brands and companies, we firmly believe that sustainable and healthy industry growth requires a competitive and fair market environment in which innovation is encouraged and foreign companies are not burdened by administrative barriers. We therefore encourage the Chinese government to clarify the definition of “local products.” Together with domestic partners, MNCs’ localized R&D and manufacturing efforts will bolster China’s goals of promoting innovation and improve the overall quality of healthcare.

**Pricing and Yibao Payment Policies**

In October 2015, the CPC Central Committee and State Council promulgated “Some Proposals on Promoting Price System Reform” (Proposals), revising medical service pricing requirements. However, these reforms still empha-
价格存在显著性影响的因素,如采购数量、回款时间、配送成本等也存在巨大的差异。

以“质量优先、价格合理、性价比适宜”为原则,建立科学的评价体系。在当前的“双信封”模式中,商务标的权重较高,有的省份商务标权重高达60%,同时,规定同组最低价直接入围或最低价商务标满分。这导致经济技术标分数高的产品,在商务标评价时,难以与最低价产品抗衡。这种“唯价格论”导致劣币驱逐良币的现象,降低了投标企业对创新产品投入的信心,与中国制造 2025 的医药产业发展规划相违背。

取消二次议价,以省、市为单位开展适宜的医用耗材集中采购模式。近期陆续出现在省标中标后,还要以市、医院为单位开展二次的价格谈判,使得投标企业的价格进一步降低,造成“没有最低只有更低价格”的情况发生,导致许多投标企业被迫弃标,带来投标企业对创新产品投入的信心,与中国制造 2025 的医药产业发展规划相违背。

国产化问题

明确中央采购中“国产产品”的定义。随着中国不断激励创新和开发更高质产品,越来越多的中国医疗器械企业会不断加大研发投资力度,力争向价值链高端转移。这一趋势也会给跨国公司更多机遇,有助于他们与中国企业在高质量产品的研发和销售等领域扩大合作。

然而,近来的政策出现了一些推高国产品牌的动向,为跨国企业发展本土化策略和进入市场增加不确定性。例如,主要的相关政府机构缺乏对“国产产品”明确而一致的定义,在一些省市,国产产品被定义为国产品牌产品,并在招标、医院采购、医保报销环节都执行有利于“国产品牌”的政策。例如:

- 招标:在某些极端情形下,只允许国产品牌参加投标,且倾向于采购国产品。
- 医院采购:部分医院对国产产品的使用率设置具体的指标。
- 医保报销:国产产品经常适用更优惠的报销政策(如适用更高的报销比例以及根据价格确定的报销额度)。

定价和医保支付制度

2015 年 10 月,中共中央、国务院发布了《关于推进价格机制改革的若干意见》,修改了医疗卫生服务定价要求,然而改革方向依然强调“成本”而非“价值与医疗质量”。这种主流的定价方法普遍适用于医疗耗材定价和手术耗材一揽子定价,无法准确反映中国医疗机构的需求。各地目前正在推进的地方医疗服务价格调整主要以 2012 版《全国医疗服务价格项目规范》为指导,该规范虽然强调在范围内统一医疗服务标准、编码和操作流程,但对为病患提供最佳诊疗选择的相关程序却不够重视。另外,新医疗服务和诊疗技术的应用准入缺乏明确的指导原则和机制,导致医保支付和临床应用之间存在时间差。该规范还进一步限制了医生和病患对新型医疗器械的选择权,一些特定的病患或疾病所必需的使用器械并未纳入单独的收费项目。一些医疗机构可能会因为无力支付所需的高价技术,只得依赖低价低质的产品。

2015年12月25日,国家发展改革委发布的《关于加快新增医疗服务价格项目受理审核工作有关问题的通知》,要求各地加快受理新增医疗服务价格项目申请,不再受2012年版《全国医疗服务价格项目规范》的限制。但各地仍需明确审核程序、受理条件、审核时间、审核原则、审核范围、审核内容和部门职责等规则。

这种做法仅考虑了高新诊疗技术在诊断和治疗方面产生的一次性费用,却忽视了它们在治疗疾病方面公认的高度安全性和有效性以及对总费用的影响。采用适宜的高值医疗技术,可以使患者得到更为及时有效的治疗,降低复发的概率或者其他副作用的风险,总体上反而会降低医疗费用。

同时,现行的医保制度将绝大多数报销项目限制在治疗领域,而对用于疾病预防和家庭康复所需要的诊疗项目基本不予报销。这种支付制度不仅与医疗改革提出的“提
size “cost” rather than “value and healthcare quality.” The universal application of this pricing method to medical consumables pricing and the packaged pricing of surgical tools cannot effectively serve the demand of China’s local clinics. Price adjustments currently promoted in various regions are generally based on the 2012 “Standard of Medical Service Price Items” (Standard), which emphasizes stringent and uniform national service standards, codes, and operating procedures, but does not effectively emphasize procedures for serving patients with the best treatment options. Additionally, without clear guiding principles and mechanisms for the adoption of new medical services and diagnostic and treatment technologies, there is a time-lag between yibao payment and clinical application. The 2012 Standard further restricts the right of clinicians and patients to choose medical devices, which means certain medical devices required for any given disease are not classified as an item eligible for independent charging. Some medical institutions cannot afford needed technologies and must rely on low-price or low-quality products.

The National Development and Reform Commission’s (NDRC) December 2015 “Notice on Facilitating the Review and Approval of the Price of New Medical Service Items” requires local authorities to accept and efficiently process new medical service item pricing applications without limitation by the 2012 Standard. However, application acceptance conditions (e.g., procedure, time, principles, scope of review, approval process, authorities’ respective duties) still need to be clarified by the various local authorities.

High-tech diagnostic and therapeutic technologies are often viewed by the relevant authorities as burdensome to yibao funds rather than as vital solutions to disease. Therefore, innovative technologies are usually restricted from reimbursement. Such thinking only considers the initial one-time expense of high-tech diagnostic and therapeutic technologies and disregards their proven safety and efficacy for disease treatment and their impact on overall costs. Appropriate and high-value medical technologies can treat patients more effectively and efficiently, minimizing the probability of recurrence and side effects, and reducing overall medical expenses.

Additionally, yibao reimbursements are primarily limited to therapeutic treatments while preventive care and home recovery are not reimbursable. Such system runs counter to the national reform goals of “improving the level of health” and “controlling total health expenses” and limits the effective use of yibao funds. Diversified forms of payment have been adopted as part of health insurance payment system reforms (e.g., global budget, diagnosis-related group, per-diem, and capitation), requiring coordination among multiple departments. Policy makers normally determine the current-period hospitalization or outpatient reimbursement quota based on a simple weighed mean of the current health insurance payment without consideration of the total potential savings through complete process solutions and diagnosis or treatment procedures offered by appropriate techniques. In the long run, this approach will aggravate the overall economic burden of patients and health insurance funds, waste resources, inhibit innovation, and hinder overall healthcare reforms.

To address the above problems, we recommend the following:

- Ensure transparent policy making, prioritizing patient service and achieving targets through policy design.
- Emphasize the principle of “efficacy first, reasonable pricing.” Encourage industry to participate in all payment system reforms on the health payment system to avoid the exclusion of medical technologies that meet market conditions.
- Use the 2012 Standard as a guideline for medical service payments rather than as a strict requirement for clinical practice and payment calculations. Allow products of significant efficacy and safety to be priced separately to protect patients’ right of choice.
- Urge local authorities to revise the procedures for the acceptance, review, and approval of new medical service item applications as soon as possible and remain open to the frequent addition of new items. Promote market access for new technologies and services.
- Establish a system for the inclusion of diagnostic and treatment techniques and medical devices in the yibao payment system through technical assessments based on evaluation of the technology and device’s value to the complete process of disease diagnosis and treatment.

Pharmaceuticals

Drug Review and Approval

Per State Council request, the CFDA released a number of regulations in 2015 to address drug approval backlogs. We welcome the steps taken to streamline and expedite drug approval procedures, with special attention given to innovative and high-quality drugs that meet urgent clinical demands.

We also applaud the CFDA’s Drug Market Authorization Holder Mechanism Pilot Program established in November 2015 as a breakthrough initiative to reward innovation. We urge the Chinese government to push forward the provisions included in the January 2015 CFDA draft “Guidance for International Multicenter Clinical Trials” to further improve the drug registration process and support the advancement of national guidelines.

To address the remaining challenges, we recommend that a clear definition for new drugs, aligned with international standards and practices, be issued. Greater clarity around this concept will enhance consistency in law enforcement
高人民群众健康水平”和“控制医疗支出总费用”的目标背道而驰，限制了医保基金使用的效率和效果。目前推进的医疗保险支付体系改革中，已经开始采用支付方式，如总额预付、按病种分组支付、按床日支付、按人头支付和按诊断相关分组支付等，需要多部门协调联动。有关部门在制定政策时往往对当前医疗保险费用开支进行简单加权平均来测算当期的住院或门诊报销的额度，却忽视了适宜技术在为病患提供全程解决方案及其诊疗手段、节约治疗总费用方面的作用，从长远而言，这种方法会加重医保基金和患者的总体经济负担，加剧资源浪费，阻碍医改的总体实施。

为解决上述问题，我们提出以下建议：

- 确保政策制定的透明度，以服务患者为第一要务，通过相关政策整体规划来实现其目标。
- 强调“疗效优先，价格合理”的原则，鼓励业界参与医保付费制度改革，避免将符合市场准入条件的医药技术拒之门外。
- 将《全国医疗服务价格项目规范》（2012版）作为医疗服务收费的指导意见，而非严苛的临床实践要求和计费依据；允许安全性和效果显著的产品单独计费，保障病患选择权。
- 敦促各地尽快修改新医疗服务项目受理和审批程序，并及时更新增加新项目。推动更多新技术和服务入市。
- 建立完善的制度，基于疾病诊疗全过程对相关诊疗技术和医疗器械进行技术评价，并将合格诊疗技术和医疗器械费用纳入医保支付范围。

**药品**

**药品审批**

2015年，经国务院要求，国家食药监局出台了一系列解决药品审批积压问题的法规规章。我们对出台这些有利于改进和加快药品审批的政策，并特别关注加快临床急需的创新药物和高质量药物审批的举措表示欢迎。

我们也对2015年11月国家食药监局启动药品上市许可持有人制度表示赞赏，这项制度允许药品上市许可持有人与生产企业相分离，有利于充分调动研发者的积极性，促进药品创新。我们促请中国部署制定和实施2015年1月国家食药监局发布的《国际多中心临床试验指南》草案相关条款，进一步加快药品注册程序，支持出台全国性指导意见。

最后，我们建议对新药品做出明确界定，确保该定义符合国际标准和实践，提高该定义的明确性有助于实现执行的统一性并鼓励创新。我们的会员企业希望有机会参与制定药品目录和能力建设项目，推动相关法律法规的有效实施。

**药品的招标与采购**

2015年2月，国务院发布了《国务院办公厅关于完善公立医院药品集中采购工作的指导意见》，确定公立医院药品采购新机制。随后国家卫生计生委发布了落实政策并要求省级卫生主管部门在2015年底之前启动新一轮药品招标。

为了确保招投标流程完全遵循“质量优先，价格合理”的原则，监管部门仍需继续关注医疗器械一节中所指出的问题。首先，目前“唯低价是取”的招投标模式会使医生和患者的选择权受到限制。第二，医院二次议价依然存在。第三，企业在省级招标过程中需要经历重复的资质审核，导致竞争变长，投标成本升高。

为了解决上述问题，我们提出如下建议：

- 在全国性招投标程序中允许每个竞价组决出至少两家人入围。
- 给予医院自主采购权，可随时采购新批准上市的药品。
- 将同一产品最新推出的剂型和规格纳入招标采购范围，鼓励创新，确保病患能够及时使用更多优质创新药。
- 改进“双信封”制度，建立开标前对所有产品进行评估，增加公平性。
- 在药品招标过程中，按照科学标准和国际通行准则，实施质量分层，并将原研药/首仿药单独设立一个质量层次。
- 建立全国性阳光采购平台，避免医院二次议价及企业进行重复资格审查。
- 投标评价体系不仅要考虑药品单片/单位价格，还要考虑药物使用的经济性和合理性。

我们欢迎相关部门在改革推进过程中为所有医药利益相关方提供更多提供建议的机会。
and encourage innovation. Our members welcome the opportunity to collaborate with the CFDA in personnel capacity building projects to facilitate the effective implementation of relevant regulations.

**Tendering**

Following the release of Circular No. 33, the NHFPC issued implementing regulations outlining a new procurement mechanism for public hospitals that required provincial authorities to start a new round of tendering by the end of 2015.

To ensure that the principle of “quality first, reasonable price” is fully implemented in the tendering process, some issues, like those stated in the medical devices section, still require attention from regulators. First, the current “winner-takes-all” tendering model limits the choices available for practitioners and patients. Second, hospital price re-negotiation still exists. Third, bidders face duplicative qualification reviews for tendering at the provincial level, which results in longer and costlier bidding processes.

To help address these issues, we propose the following recommendations:

- Allow at least two winners per bidding group in the national tendering model.
- Enable off-cycle procurement by giving hospitals discretion to procure newly approved medicines.
- Allow the newly launched specification and dosage into the bidding list to encourage innovation and improve patient access to innovative and high-quality drugs.
- Optimize the “two envelope” system by developing a comprehensive multi-criteria evaluation.
- Set up tiered product quality categories based on scientific criteria and internationally accepted standards, including a category for originators/reference drugs with the highest price premium.
- Establish a transparent and online national bidder registration system to avoid hospital re-negotiations and duplicated qualification reviews.
- Consider not only one tablet/unit price in the bidding evaluation system, but also the economic and rational use of drugs.

We welcome further opportunities for all healthcare stakeholders to provide comments on future reforms.

**National Reimbursement Drug List and Reimbursement Price**

The Ministry of Human Resources and Social Security (MOHRSS) is leading reform of the yibao system and payment mechanisms, both vital to the success of China’s ongoing healthcare reforms. In addition to the goal of obtaining near full coverage of the general public, patient access to high quality and innovative drugs also requires government attention, despite limited medical insurance funds and the downward economic trend. As both the “National Reimbursement Drug List” (NRDL) and reimbursement pricing will also play important roles in the reform process, we recommend the following to help accelerate the reform process and improve patient access to innovative and high quality drugs:

**National Reimbursement Drug List**

The NRDL has not been updated since 2009, hindering patient access to higher quality and more efficient drugs. We recommend more timely and predictable NRDL updates in the future. In addition, the Chinese government should consider greater NRDL access for high-value, innovative drugs. At the national level, a “C List” could be set up for premium-value medicines, allowing flexibility for local implementation and negotiations based on both provincial economic situations and funding pools.

At the provincial level, we recommend that local governments show more discretion with innovative measures that could determine market access levels to ensure that the needs of Chinese patients are met and to facilitate timely access to high-quality medicine.

**Reimbursement Standard**

The “Opinions on Promoting Drug Price Reform” (Opinions), released in May 2015 by the NDRC together with other government entities, lifted pharmaceutical retail pricing caps. This move aims to grant the market a larger role in price setting, gradually establish a market-dominated drug pricing mechanism, and minimize direct government intervention on drug prices. MOHRSS and several other government entities are currently formulating reimbursement standards in line with the goal of moving towards a market-driven pricing mechanism.

We welcome these efforts and note the following to ensure patient access to innovative drugs once the reimbursement standards are in place:

- In the short term, brand-based pricing or tendering pricing is the most effective way to determine reimbursement pricing, due to quality differences between different brands.
- International Nonproprietary Name-based Reimbursement Standards should be implemented only after all drugs can be guaranteed to be high-quality products.
- Reimbursement pricing should reward innovative and high-quality products.
全国医保报销药品目录和报销价格

人力资源和社会保障部（人社部）正在牵头实施医保制度和医保费用支付方式改革，这两项改革对正在实行的医改能否取得成功至关重要。目前，在国家经济增幅下行以及医保实现全覆盖和保障水平不断提升的背景下，医保基金面临越来越大的支付压力，如何保障病患能够获得优质药和创新药仍然需要政府的关注。因此，我们针对如何加快医改进程，保障病患获得更多优质创新药提出如下建议：

全国医保报销药品目录

《国家基本医疗保险、工伤保险和生育保险药品目录》（简称药品目录）自2009年后就未作更新，导致患者无法及时使用优质创新药品。我们建议今后相关部门能定期、及时更新药品目录。另外，中国政府应当考虑将更多创新药品纳入药品目录。在全国层面应考虑建立一个“C目录”，将高价优质药品纳入该目录，从而使地方可以根据本省经济和医保资金状况灵活地执行药品目录，通过开展价格谈判等方式将药品纳入地方药品目录。

在省级层面，我们建议地方政府能够进一步考虑采取创新举措，合理确定市场准入门槛，从而确保中国病患的需求能够得到满足，及时获得优质药品。

医保支付标准

2015年5月，发改委联合其他部委出台《推进药品价格改革的意见》（简称意见），该意见取消了绝大部分药品的政府定价权。此举旨在使市场在药品定价过程中发挥更大的作用，逐步建立一个市场化药品定价机制，尽可能减少政府直接干预药品定价。人社部和其他各相关部委目前正在制定医保支付标准，努力实现药品定价市场化的目标。

我们对上述改革举措表示欢迎，并就医保支付标准出台后如何保障病患获得创新药品提出如下建议：

• 短期内，考虑到不同品牌药品存在的质量差异，依据品牌定价或招标定价是确定医保支付标准最有效的方法。
• 基于通用名的医保支付标准只有在确保所有药品实现质量一致的情况下方可靠实施。
• 医保支付标准应当奖励创新药和优质药。

药品质量一致性评价

国家食品药品监管总局出台一系列旨在加快推进仿制药质量一致性评价的规章草案。我们很荣幸地看到上述文件中将生物等效性研究列为开展质量一致性评价的一项重要内容。针对上述规章草案及其今后实施，我们提出如下建议：

• 建立科学的评价方法，包括体外溶出度曲线测定以及生物等效性研究。
• 建立严格的生产环节监管机制，鼓励企业自主开展质量一致性评价，确保其评价结果的准确性和可靠性。
• 建立严格的仿制药质量监管机制，密切监控通过质量一致性评价的仿制药质量，及时清退不再符合质量标准的产品。

美中医疗卫生合作项目

美中医疗卫生合作项目旨在加强中美两国在医疗卫生领域合作的项目。该项目自启动以来，与相关行业协会保持密切合作，支持中国政府实现提高病患获得优质医疗服务的能力的目标。

2015年，医疗卫生合作项目继续与医疗卫生领域相关方密切合作，支持中国引进最新的医疗卫生理念和技术，在陕西、北京和成都举办美中医疗卫生合作研讨会。这些研讨会为美中两国医疗卫生专业人士就医疗信息化、医院管理，转化医学和非传染性疾病等议题交流经验提供了宝贵的平台，推动政府和行业就如何使病患获及最新医疗的技术开展了讨论。迄今为止，美中医疗卫生合作项目已经在25个省市联合举办了此类研讨会。美中医疗卫生合作项目在2015年美中商贸联委会卫生保健合作性活动，美中两国政府高级官员均出席并共同探讨了医改、养老、国家食药监局监管趋势、公私合作模式、医疗创新、商业医疗保险和加强中美双边合作等议题。

此外，美中医疗卫生合作项目还与其他行业协会合作，汇聚资源支持行业与政府开展监管研讨，与26个相关监管部门分享国际经验和最佳实践。2015年3月，医疗卫生合作项目和中国美国商会医疗卫生工作组邀请了中美两国专家与中国保监会、卫计委和中国保险学会相关人士共同研
**Drug Quality Consistency Evaluation**

The CFDA released four draft regulations to accelerate the quality consistency evaluation of generic drugs. We were pleased to see bioequivalence studies mentioned in the draft regulations as an important step in proper evaluations. Regarding the draft regulations and their future implementation, we recommend the establishment of:

- scientific evaluation methodologies, including in-vitro dissolution testing, Good Manufacturing Practice (GMP) compliance, and pharmaco-equivalence and bioequivalence studies,
- strict supervision mechanisms for pharmaceutical manufacturers to conduct self-tests and ensure that results are both accurate and reliable, and
- a supervision mechanism that closely monitors the quality management system of generics that have passed evaluations and that includes the option to remove those that fail to meet quality standards.

**US-China Healthcare Cooperation Program**

As a collaborative initiative working to build closer working relations between the US and Chinese governments and industry in the healthcare sector, the US-China Healthcare Cooperation Program (HCP) has worked closely with industry associations and supported the Chinese government’s goal of enhancing patient access to healthcare services.

In 2015, the HCP continued to work with key healthcare stakeholders to support the introduction of new healthcare concepts and technologies to China and organized bilateral healthcare cooperation symposiums and workshops in Shanxi, Beijing, and Chengdu. These workshops are a valuable platform for US and Chinese healthcare professionals to exchange ideas on topics such as healthcare IT, hospital management, translational medicine, and non-communicable diseases, and to facilitate government-industry discussions on enhancing patient access to new technologies. So far, the HCP has co-organized such workshops in more than 14 provincial-level or planned city-level jurisdictions, including Beijing, Chongqing, Hainan, Henan, Hubei, Hunan, Liaoning, Heilongjiang, Guangxi, Yunnan, Shandong, Shaanxi, Chengdu, and Guangdong. The HCP also co-organized the 2015 Joint Commission on Commerce and Trade Healthcare Cooperative Event in Guangzhou, which hosted high-level US and Chinese government officials and covered China’s healthcare reforms, senior care, CFDA regulatory trends, public-private partnerships, healthcare innovations, commercial medical insurance, and further bilateral cooperation.

In addition, the HCP has worked with other industry associations to pool resources and support regulatory discussions between industry and government to share international experiences and best practices with Chinese authorities. In March 2015, the HCP and the AmCham China Healthcare Forum invited Chinese and US experts to discuss the commercial medical insurance status and outlook in China’s 13th FYP with the China Insurance Regulatory Commission, NHFPC, United Healthcare, and Insurance Society of China.

In September and October 2015, the HCP and the US Trade and Development Agency organized a study tour for Chinese health officials and hospital administrators to the University of Illinois at Chicago and the University of Pittsburgh Medical Center for training in hospital management and public health, and developed workshops on healthcare innovations and precision medicine as a part of the US-China People-to-People Exchange Initiative.

**Recommendations**

**Healthcare Services**

- Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities.
- Make premium private healthcare providers eligible for yibao reimbursement.
- Remove caps on the foreign ownership of private healthcare enterprises.

**Medical Devices**

- Adopt a risk-based approach to medical device clinical trials.
- Consider the medical device approvals of IMDRF members and other recognized authorities during local clinical trials and registration applications.
- Use the 2012 Standard as a guideline for medical service payments rather than as a strict requirement for clinical practice and payment calculations; allow products of determined quality and safety to be priced separately to protect patients’ right of choice.
- Reform the central procurement process of high-value medical consumables by replacing the “two envelope” model with a transparent procurement model and establish a standardized bidding process on the basis of “quality first, reasonable price” to increase patient access to innovative, high-quality products at fair prices.
- Clarify the definition of “local products” and create a policy environment that encourages innovation of high-quality products.
讨了“十三五”期间中国商业医疗保险现状与展望。

2015年9、10月，美中医疗卫生合作项目和美国贸易
发展署联合组织了国家卫生计生委官员和医院管理人员赴
芝加哥伊利诺伊大学和匹兹堡大学医学中心进行医院管理
和公共卫生培训学习，并在中美元文交流项目下开展了以
医疗创新和精准医疗为主题的研讨活动。

### 建议

#### 医疗卫生服务

- 降低私立医院税费，允许连锁医院对新老医疗机构合并报税。
- 允许高端私立医疗服务供应商纳入医保报销范围。
- 取消对私立医疗卫生企业外商投资所有权限制。

#### 医疗器械

- 采用基于风险的医疗器械临床试验方法。
- 在进行本国临床试验和注册申请时考虑国际医疗器械监管者论坛（IMDRF）成员国或其他权威机构的做出的医疗器械审批。
- 将《全国医疗服务价格项目规范》（2012版）作为医疗服务收费的指导意见，而非严苛的临床实践要求和计费依据；允许安全性和效果显著的产品单独计费，保障患者具有选择权。
- 改革高值医用耗材集中采购模式，以阳光挂网采购或更为合理的其它模式取代“双信封”模式，按照“质量优先、价格合理、性价比适宜”的原则，让质量优异、价格合理的创新产品更好地服务广大患者。
- 明确“国产产品”的定义，营造鼓励创新和优质产品的政策环境。

#### 药品

- 在药品招标过程中，依照科学标准和国际通行准则，实施质量分层，并将原研药/首仿药单独设立一个质量层次。
Pharmaceuticals

- Set up tiered product quality categories based on scientific criteria and internationally accepted standards, including a category for originators/reference drugs with the highest price premium.
- Ensure more timely and predictable NRDL updates in the future and grant greater NRDL access for high-value, innovative drugs.
- Establish a set of scientific evaluation methodologies for drug quality consistency evaluation.
Information and Communications Technology

Introduction

During Xi Jinping’s September 2015 state visit to the US, Presidents Xi and Obama made a number of commitments focused on ICT issues, including: cooperating on “malicious” cyber activity and cybercrime, refraining from “cyber-enabled theft of intellectual property (IP)” with the intent of providing competitive advantages to companies or commercial sectors, developing appropriate norms of state behavior in cyberspace, limiting the scope of national security reviews on investments, and creating a high-level joint dialogue mechanism to fight cybercrime. More specifically, it was agreed that “generally applicable measures to enhance information and communications technology cybersecurity in commercial sectors should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily.” AmCham China applauds these positive outcomes but recommends active enforcement and verification from both sides. At the November 2015 Joint Commission on Commerce and Trade (JCCT), our members participated in discussions on related issues and will continue to assist both the US and Chinese government in furthering these bilateral agreements in 2016.

We additionally welcome China’s efforts to promote a more connected and secure economic development trajectory. However, many related policies raise concern as they incorporate design and localization mandates and investment restrictions that would instead isolate the Chinese economy from global sources of growth. We look forward to working with China to achieve its economic objectives and encourage Chinese policymakers and regulators to continue to work with their global counterparts to ensure that domestic policies are indeed consistent with international obligations, narrowly tailored, non-discriminatory, and take into account international norms. In this way, policymakers can ensure opportunities for both economies to benefit from advances in the global ICT ecosystem.

Ongoing Regulatory Challenges and Developments

Internet+ and “Made in China 2025”

On March 5, 2015, Premier Li Keqiang announced the “Made in China 2025” initiative, emphasizing the integration of manufacturing and the Internet. Industry reports estimate that the development of China’s Industrial Internet will boost GDP growth by at least US $3 trillion (RMB 19 trillion) over the next 20 years. Additionally, the first draft of the Chinese Manufacturing Industry Development Outline (2015-2025) emphasizes the importance of deeply integrating informatization and industrialization and touches on a variety of industries, including information technology, bio-pharmaceuticals and bio-manufacturing, high-end equipment manufacturing, and energy. A central manufacturing leading group will be set up to orchestrate and enhance the plan’s development. This plan will certainly impact foreign-invested enterprises (FIEs) in China (e.g., outlined targets in the production of core components and key materials aim to reach 40 percent “self-sufficiency” by 2020 and 70 percent by 2025).

In particular, Industrial Internet is recognized as the key focus of the plan to integrate the Internet+ and “Made in China 2025” policies. This is reflected by the newly established Industrial Internet Alliance, which is chaired by the Ministry of Industry and Information Technology (MIIT) Minister Miao Wei and includes a mix of ICT and traditional industry participants. AmCham China views this as a positive development as it may result in the Chinese government utilizing more resources to promote the integration of traditional industries and ICT technologies.

Cybersecurity

China continues to implement a number of cybersecurity and information security-related policies that restrict FIEs, including polices regarding product certification, encryption, critical information infrastructure protection, and market access for ICT products in commercial and non-sensitive government sectors. China’s distrust of foreign technologies and governments often gives rise to unilateral approaches and exclusionary policies that increase reliance on indigenous technology. This is exacerbated by the unclear distinc-
信息和通信技术

引言

在习近平主席 2015 年 9 月对美国进行国事访问期间, 习主席与奥巴马总统就信息和通信技术事务做出了一系列承诺, 包括在“恶意”网络活动和网络犯罪方面开展合作, 打压“网络知识产权剽窃”, 以求为公司或商界提供竞争优势, 制定相应的网络空间国家行为规范, 限制对投资的国家安全审查范围, 建立打击网络犯罪的高层联合对话机制。具体而言, 双方商定“以提高商界信息技术网络安全和信息技术网络安全为目标的普遍适用措施应符合 WTO 协议, 严谨规范, 考虑国际惯例, 一视同仁, 不对商业企业采购、销售或使用信息和通信技术产品施加以国籍为基础的不必要条件或限制。” 中国美商会认为这些积极成果表示欢迎, 但建议双方均积极执行和检验这些成果。2015 年 11 月, 商会会员参与了中美商贸联合委员会 (JCCT) 相关事务的讨论, 并将在 2016 年继续协助美国和中国政府深化这些双边协议。

此外, 商会欢迎中国致力于提升经济发展路径的开放性和安全性, 然而许多相关政策令人担忧, 这些政策内含设计和本地化指令以及投资限制, 会使中国经济脱离全球经济增长的来源。我们期望与中国合作实现其经济目标, 并鼓助中国与全球的决策者和监管机构继续合作, 保证国内政策严谨规范, 一视同仁, 且符合国际基本准则。在这样的基础上, 中国应继续提高其国内市场的开放性, 如此, 决策者方可能保证两个经济体均有机会学习全球信息技术生态系统先进的经验。

现存监管挑战和最新进展

“互联网+” 和 “中国制造 2025”

2015 年 3 月 5 日, 李克强总理宣布了以融合制造业与互联网为亮点的“中国制造 2025” 计划。据工业报告预测，中国工业互联网的发展将在接下来的 20 年中促成至少 3 万亿美元（19 万亿人民币）的 GDP 增长。此外，《中国制造业发展纲要（2015-2025）》（草案）第一版强调了将信息化与工业化深度融合的重要性, 触及各行各业, 包括信息技术、生物制药和生物制造、高端设备制造和能源等行业, 中央制造业领导小组将协同和促进该计划的发展为使命。该计划必将成为影响中国外资企业的趋势 (例如, 计划中要求关键材料与关键零部件的生产“自足率”在 2020 年达到 40%, 2025 年达到 70%)。

具体而言, 为了融合“互联网+”和“中国制造 2025”政策, 工业互联网已被认为是计划中的关键点。新成立的工业互联网联盟也反映了这一点。该联盟的主席由工业和信息化部 (工信部) 部长苗圩担任, 参加者则包括信息和通信技术行业以及传统工业的从业人员。中国美国商会认为这是一积极发展, 因为这将帮助中国政府利用更多资源, 促进传统工业和信息与通信技术的融合。

网络安全

中国仍在实施众多限制外资企业的网络安全和信息安全政策。这些政策涉及商业和非敏感政府行业内的产品认证、加密、保护信息基础设施保护以及信息和通信技术产品的市场准入等问题。中国对外国技术和政府的不信任经常导致单边的处理方法和排外政策出台，且增加了对中国国内技术的依赖，而中国在商业和政府信息系统之间以及信息安全和国家安全之间模糊的区分，则会导致情况进一步恶化。与此同时，中国歧视性的安全政策为国内的利益相关者带来了市场机遇 (如下文所述)。

《网络安全法》（草案）

2015 年 7 月，全国人大发布《网络安全法》（草案），向社会征求意见。《网络安全法》草案包括针对任何信息和通信技术供应商（即与信息和通信技术相关的产品和服务, 以电信和网络安全供应商为重点）的许多重要要求, 包括要求这些供应商按照国家安全要求改变或修改中国市场上的产品和服务，其中对国家安全要求的规定中包括与数据
tion in China between commercial and government information systems and between information security and national security-related concerns. Meanwhile, domestic stakeholders benefit from the market opportunities created by China’s discriminatory security-based policies, as detailed below.

**Draft Cybersecurity Law**

In July 2015, the National People’s Congress released a Draft Cybersecurity Law for public comment. The Draft Cybersecurity Law includes numerous significant requirements for any ICT supplier (i.e., ICT-related products and services with a focus on telecom and Internet providers) to alter or modify their products and services for the China market based on national security concerns. Provisions of concern include those related to data localization and source code review. Source code is generally considered proprietary information and an IP asset that companies are not obligated to share. It additionally makes clear reference to the national cybersecurity review regime and the “Multi-level Protection Scheme” (MLPS), suggesting the gradual implementation and expansion of this overly restrictive scheme.

Data transfer restrictions do not result in the stated objective of data security. Protecting data security does not require the wholesale cut-off of cross-border data flows; to the contrary, data transfer restrictions compromise security and stunt innovation. A better alternative is to explore ways of maintaining international exchanges of information through systems that also promote information security, for instance under the auspices of the APEC Cross-Border Privacy Rules System. Another alternative is to foster the emergence and development of domestic data security accreditation networks within China. Source code review not only compromises IP protection, but also introduces potential opportunities for security to be compromised.

Additionally, AmCham China remains concerned about the broad and vague nature of the proposed Chinese national cybersecurity review regime and mandatory product assurance testing to unique Chinese requirements. No other major economy has a similar review mechanism in place that governs the transaction of commercial ICT goods within the private sector market. It is excessively prescriptive and would restrict the ability of consumers to purchase technologies considered safe everywhere else in the world.

Similarly, AmCham China recommends the removal of restrictions set in the MLPS as well as mandatory product assurance testing requirements for ICT products sold into all MLPS levels to meet unique Chinese standards. We are particularly concerned that China has continued to gradually implement and expand the MLPS for classification and protection of critical infrastructure information systems, restricting use of foreign security technology in the top three of the five MLPS-ranked levels. We were, however, encouraged to see China commit at the 2015 JCCT to strengthen exchange and dialogue with the US on this issue.

**Secure and Controllable Regulations**

The Chinese government has introduced a systematic action plan to promote the use of “secure and controllable” ICT within the commercial market. Generally speaking, “secure and controllable” policies, such as requirements to turn over source code, provide very little security benefit and inhibit innovation. A troubling example of “secure and controllable” policies was rolled out by the China Banking Regulatory Commission (CBRC) in September 2014 for China’s banking ICT sector, and similar policies have since been released for a variety of industries, including telecommunications and medical devices. China’s development plans for the semiconductor industry are based, at least in part, on the intent of developing “secure and reliable” ICT products. More broadly, we are also concerned by the Cyberspace Administration of China’s efforts to establish an overarching “Cybersecurity Review Regime” to assess Internet and ICT products and services for security risks through a testing and auditing process that emphasizes security and controllability.

Foreign industry and governments actively engaged with Chinese regulators following the release of these cybersecurity regulations, ultimately leading to the suspension and ongoing revision of the aforementioned CBRC guidelines. In addition, the Chinese government committed at the 2015 US-China Strategic and Economic Dialogue (S&ED) to ensure that any future bank ICT regulations will be nondiscriminatory, not impose nationality-based requirements, and be developed in a transparent manner. We ask that this commitment also be applied to cybersecurity regulations in the telecom and insurance industries.

In light of these clear commitments by top PRC officials, including the aforementioned commitment following the 2015 Presidential Summit, AmCham China was surprised and concerned to see the release of a draft regulation by the China Insurance Regulatory Commission in October 2015 that presents some of the same problems (as further described in the Insurance chapter) as the CBRC regulation. AmCham China urges the Chinese government to develop cybersecurity policies using an open and transparent process that takes serious consideration of industry input, and recommends that relevant Chinese government agencies recognize that cyber risks transcend national borders. Countries need to work together through their governments and private sector institutions to develop safeguards that protect the integrity of global markets and commerce.

**Commercial Encryption Regulation**

The ICT industry anticipates the release of a revised “Commercial Encryption Regulation” (Regulation), which has been in effect since 1999. Under the Regulation, encryption is classified as a state secret and entities importing, developing, and selling encryption technology in China must obtain licenses from the State Encryption Management Bureau (SEMB), including a special license to use foreign encryption
本地化和源代码审查相关的规定。源代码一般被认为是公司无偿分享的专有信息和知识产权资产。这再一次指出国家网络信息安全审查制度和“多层保护计划”（MLPS），并暗示着此过度限制的方案将逐步实施并扩大。

数据转移限制并不能实现计划中的数据安全目标。保护数据安全不应当大规模地限制跨国数据流，而且，数据转移限制还会损害安全，阻碍创新。探索促进信息安全的体系，以求维持国际信息交流，将是更好的替代方案。例如接受亚太经合组织的跨境隐私规则体系或促进中国国内数据安全认证网络的兴起和发展。源代码审查不但损害知识产权保护，还有可能对安全带来潜在损害。

此外，中国国家网络信息安全审查体制和中国独有的产品质量保证强制性测试并不能实现计划中的数据安全目标。保护数据安全不应当大规模地限制跨国数据流，而且，数据转移限制还会损害安全，阻碍创新。探索促进信息安全的体系，以求维持国际信息交流，将是更好的替代方式，例如接受亚太经合组织的跨境隐私规则体系或促进中国国内数据安全认证网络的兴起和发展。源代码审查不但损害知识产权保护，还有可能对安全带来潜在损害。

与之类似，中国美国商会主张解除“多层保护计划”中的限制，不再要求对所有属于“多层保护计划”层次的信息和通信技术产品进行产品质量保证强制性测试，以满足中国独有的标准。中国以保护关键基础设施信息安全体系和将其分类为安全，不断地实施和扩大“多层保护计划”，并在五个“多层保护计划”级别中的前三个限制对国外安全技术的使用，我们对此尤为关注。然而，我们担心中国在2015年中美商贸联合委员会上承诺与美国在此问题上加强交流深受鼓舞。

**安全可控监管**

中国政府已采取系统的行动计划，促进商业市场内“安全可控”的信息和通信技术的使用。总体而言，“安全可控”政策，例如上交源代码的要求，并不能帮助提升安全性，反而会阻碍创新。中国银行业监督管理委员会2014年9月针对中国商业市场和通信技术领域出台的政策，就是一种过度的控制，将限制消费者在世界其他地方购买技术安全产品的可能性。

与之类似，中国美国商会主张解除“多层保护计划”中的限制，不再要求对所有属于“多层保护计划”层次的信息和通信技术产品进行产品质量保证强制性测试，以满足中国独有的标准。中国以保护关键基础设施信息安全体系和将其分类为安全，不断地实施和扩大“多层保护计划”，并在五个“多层保护计划”级别中的前三个限制对国外安全技术的使用，我们对此尤为关注。然而，我们担心中国在2015年中美商贸联合委员会上承诺与美国在此问题上加强交流深受鼓舞。

这些网络安全法规发布后，外国行业和政府与中国监管机构积极沟通，最终促使银监会中止和不断修订上述指导方针。此外，中国在2015年中美战略与经济对话中承诺，任何进一步的信息和通信技术法规将不再具有歧视性，不包括基于国别的要求，并以透明的方式制定。我们要求，此承诺也应适用于电信和保险行业的网络安全法规。

在中国高层领导做出包括在2015年悉尼峰会上宣布上述承诺在内的明确承诺后，我们看到中国保险监督管理委员会于2015年10月发布的法规草案中仍然存在与银监会相同的问题（详见“保险”章节），这令我们感到惊讶和担忧。中国美国商会致信中国银保监会和中国银监会表示，需要通过国家政府和私营行业机构合作建立保障措施，以保护全球市场和商业的完整性。

**商用密码管理条例**

信息和通信技术行业正期望出台《商用密码管理条例》修订版（以下简称“条例”），原条例于1999年生效。按照该条例，密码是国家秘密，进口、开发和销售密码技术的实体必须从国家密码管理办公室取得许可，其中包括使用国外密码技术的特殊许可。此外，条例还要求在中国出售的国外密码产品接受包含源代码披露在内的测试。虽然条例已修订多年，但国家密码管理局和国家保密局的修订版尚未发布修订版向社会征求意见。

中国美国商会继续建议可广泛获取的商业密码产品不应受到监管。商业密码的分类不应是国家机密，不应要求公司取得在中国进口、开发或销售商业密码产品的许可，也不应要求披露源代码和专利知识产权的产品安全测试和评估。中国官员在2015年中美经贸联合委员会上进一步澄清，表示“属于《商用密码管理条例》范围内的、含密码技术的密码产品和设备仅限于以加密和解密作为核心的软件和硬件”，我们对此表示赞赏。

**云服务安全评估**

我们意识到，中国网络安全办公室的强制性云服务安全评估计划是为政府采购而制定的，也了解其制定操作应是以国际最佳实践为依据，并抑制了规定性的技术采用要求。然而，我们担忧的是此次评估计划将被其他市场，例如国有企业和其他行业市场所采用。我们相信这样不但
technology. Furthermore, the Regulation also requires foreign encryption products sold in China to undergo testing that includes disclosure of source code. Although the Regulation has been under revision for a number of years, the SEMB and the State Council Legislative Affairs Office have not yet released a revised version for public comment.

AmCham China continues to advocate that widely available commercial encryption products should not be regulated, that commercial encryption not be classified a state secret, and that companies should not be required to obtain a license to import, develop, or sell commercial encryption products in China, or to undergo product security testing and evaluation that requires disclosure of source code and proprietary IP. We appreciate the further clarification provided by Chinese officials at the 2015 JCCT specifying that “encryption products and equipment containing encryption technology included in the scope of ‘Regulations on Commercial Cryptography Administration’ are only limited to software and hardware that, at their core, are dedicated to encryption and decryption operations.”

Cloud Service Security Assessment

We are aware that the Cybersecurity Administration of China’s mandatory Cloud Service Security Assessment Scheme has been set up for government procurement and also understand the need for its establishment assuming that it operates according to international best practices and refrains from prescriptive technology adoption requirements. However, we are concerned that this assessment scheme will be adopted by other markets as well (e.g., state-owned enterprises, other commercial market procurement), which we believe is not only unnecessary but will also place huge cost burdens on service providers. Additionally, we note that some government-affiliated agencies are developing certification schemes on cloud service level agreements, cloud reference architectures, and cloud insurance businesses. We hope that these initiatives will be operated voluntarily and in a market-driven manner.

Market Access for Telecom and Internet Services

Foreign and foreign-invested companies face severe challenges competing in China's telecommunications and Internet sectors due to investment restrictions, security controls, and a range of protectionist measures. More troubling, China is extending this restrictive regulatory framework beyond traditional telecommunications services into any IT sector that utilizes Internet connectivity, including:

- equity caps and restrictions on VATS, including cloud computing, information security, and import and procurement of hardware and software; and

- technical standards that often diverge from global standards, Internet content restrictions, and privacy and cross-border data flow restrictions.

Foreign investment in telecommunications services is currently capped at 49 percent for basic services and 50 percent for VATS. Moreover, high minimum capital requirements and opaque approval standards continue to effectively prevent foreign investment in China’s telecommunications sector.

In 2013, the MIIT released two draft regulations that significantly expand the scope of “telecom businesses,” as detailed in previous White Paper editions, raising concerns that FIEs will be unable to provide cloud computing (including software-as-a-service, infrastructure-as-a-service, and platform-as-a-service), big data, “Internet of Things,” and other new, innovative business services in China, except through partnerships with licensed domestic companies. The imposition of additional restrictions will significantly hamper foreign investment in China’s ICT sector, curtail competition, and hinder the introduction of new technologies and services. Such limits to foreign investment will restrict competition in China’s domestic market, adversely affecting the competitive capabilities of Chinese companies as they increasingly go abroad.

Initial reforms adopted in the China (Shanghai) Pilot Free Trade Zone (Shanghai PFTZ) have the potential to further open China’s telecommunications industry to foreign investment. AmCham China urges additional steps to open the telecommunications industry to foreign investment in the Shanghai PFTZ, and welcomes the creation of additional zones open to foreign investment in the telecommunications industry.

Cloud Computing

Cloud computing continues to reshape China’s ICT industry as customers increasingly focus on cloud services instead of procuring software licensing or hardware boxes to build their own infrastructure.

On January 30, 2015, the State Council published the “Guiding Opinions for Promoting the Innovation and Development of Cloud Computing to Cultivate New Types of Information Industry Services.” This document establishes China’s national policy and strategy for developing China’s cloud computing industry. Key objectives include:

- building a reputable domestic cloud industry and ecosystem deployed across multiple sectors by 2017 and expanded to all sectors of China’s economy by 2020;
- improving the adoption level of cloud computing for enterprises and government;
- developing indigenous innovation capabilities for domestic cloud computing;
- implementing pilot cloud applications;
- optimizing infrastructure, including broadband and data center development; and
- prioritizing the security, including personal privacy and regulation of cross-border data, of cloud deployment.
商务环境综述

|   行 业   |
具体行业问题
|   信息和通信技术    |

毫不必要，而且会给服务供应商带来沉重的成本负担。此外，我们注意到一些政府附属机构正在制定有关云服务水平协议、云参考架构和云保险业务的认证计划。我们希望这些举措可以自发形成，并由市场自行决定是否实施。

电信和互联网服务的市场准入

由于投资限制、安全控制和一系列保护主义措施，外资公司和外商投资公司在中国的电信和互联网行业面临着严峻的挑战。更令人困扰的是，中国正在将这种限制性的监管框架从传统的电信服务行业扩大到任何使用互联网连接的IT行业，包括：

- 股本上限和增值服务限制，包括云计算、信息安全和硬件与软件的进口和采购；
- 通常背离全球标准的技术标准，设置互联网内容限制及隐私与跨境数据限制。

目前，电信服务业务外资投资的基本服务上限为49%，增值服务为50%。此外，较高的最低资本要求和不透明的审批标准仍在阻挠外商投资进入中国电信行业。

2013年，工信部发布了两项法规草案，如前几年《美国企业在中国白皮书》中所述，这两项草案均显著扩大了“电信业务”的范围，我们担心外商投资企业将无法在中国提供云计算（包括软件即服务、基础设施即服务和平台即服务）、大数据、“物联网”和其他新的创新业务服务，除非通过与有许可证的中国公司合作。施加额外的限制将显著阻碍外商对中国 ICT 业务产业的投资，降低竞争程度，妨碍新技术和新服务的引入，损害中国公司及其对全球市场的竞争能力。中国美国商会敦促中国采取额外措施，对电信行业实行外商投资开放，并对中国建立其他开放电信行业的区域表示欢迎。

云计算

由于客户越来越关注云服务，而不是通过购买软件许可或硬件产品搭建自己的基础架构，所以云计算在继续改造着中国的信息和通信技术行业。

2015年1月30日，国务院发布《国务院关于促进云计算创新发展培育信息产业新业态的意见》，此文件制定了发展中国云计算行业的国家政策和战略。其主要目标包括：

- 构建信誉良好的国内云产业和生态系统，截至2017年在多个行业部署，并在2020年扩大至中国经济所有行业；
- 提升企业和政府的云计算利用水平；
- 培养国内云计算的自有创新能力；
- 实施云应用试点；
- 优化基础架构，包括频谱和数据中心发展；
- 优先关注安全问题，包括云部署中的个人隐私和跨境数据监管。

2015年12月28日，工信部正式更新了2003年版《电信业务分类目录》，并于2016年3月1日生效。在2000年版《电信条例》建立的框架中，该目录构成了关键部分，其规定了中国电信业务运营的许可证要求，基本定义了外国公司的市场准入参数。目录修订版保留了2013年5月草稿修订版首次提出的改变，即扩大中国电信监管体制的范围，将许多新兴信息和通信技术服务包含在内，例如云计算、互联网数据中心服务和内容分发网络服务。与2013年版目录相比，2015年的修订版对服务行业的划分更加精细，尤其是将电信服务类、面对高度监管且严格禁止国外公司进入服务纳入了更为明确的体系，涵盖了更多如虚拟网络等新型业务。

对中国政府促进创新，加深传统行业与新兴技术的融合，重新思考如何在修订版目录中更加合理且出色地为云计算等新兴互联网业务分类，我们表示欢迎。然而，我们建议中国监管机构对目录中的定义做出更加明确的解释，并努力保证外商投资企业有机会参与中国的信息化和发展举动。

此外，许可要求仍然限制这些公司进入中国的上述云计算市场。不断出现的云认证和严苛数据政策将对国内云服务的健康发展产生不利影响。《网络安全法》草案也可能阻碍云服务的发展，尤其是在隐私措施、数据中心托管和跨境数据流限制领域。

中国美国商会建议采用不同的监管方法区别对待各类云计算，尤其是那些代表计算业务演变的云计算业务（如企业资源规划软件即服务），不应作为电信服务而受到监管。我们还建议上调外商投资企业的股本上限、放宽投资限制并消除市场进入障碍，以便直接交付云服务。中国已做出
On December 28, 2015, the MIIT officially released the long awaited update to the 2003 Telecommunications Services Classification Catalogue, which entered into effect on March 1, 2016. The Catalogue constitutes a key part of the framework established by the 2000 “Regulations on Telecommunications,” which set licensing requirements for the operation of telecommunications businesses in China, essentially defining market access parameters for foreign companies. The revised Catalogue enshrines some of the changes first proposed in a May 2013 draft revision, namely, expanding the scope of China’s telecommunications regulatory regime to include many emerging ICT services, such as cloud computing, internet data center services, and content distribution network services. Compared to the 2013 Catalogue, the 2015 revisions contain even greater granularity and segmentation of services, particularly in the Value-Added Telecommunications Service (VATS) categories, providing greater clarity regarding services that are tightly regulated and effectively off-limits to foreign companies and covering more emerging businesses with the development of the Internet.

We welcome the Chinese government’s efforts to promote innovation and deepen the integration of traditional industries and emerging technologies and the rethinking of how to best and reasonably categorize emerging Internet businesses like cloud computing in the revised Catalogue. Nevertheless, we recommend that Chinese regulators provide greater clarity on the interpretation of definitions within the Catalogue and make genuine efforts to ensure opportunities for FIEs to participate in China’s informatization and development initiatives.

Additionally, licensing requirements still stand for those companies that provide the aforementioned various types of cloud computing in the China market. The continuous creation of cloud certifications coupled with strict data policies will negatively impact the healthy growth of cloud services in China. The Draft Cybersecurity Law may also impede such development, particularly in the areas of privacy measures, data center colocation, and cross-border data flow restrictions.

AmCham China recommends differentiating between the various types of cloud computing with different regulatory methods and that those cloud computing businesses that represent the evolution of computing business in particular (e.g., enterprise resource planning software-as-a-service) not be regulated as telecom services. We also recommend the lifting of equity cap restrictions on FIEs, investment restrictions, and market entry barriers to the direct delivery of cloud services. China has made numerous bilateral and multilateral commitments to provide foreign enterprises with fair and equitable participation in the development of strategic emerging industries (SEIs), including cloud computing, and to develop SEI policies in a manner compliant to WTO requirements. In addition, China committed to establish relevant mechanisms led by the Ministry of Commerce to conduct compliance reviews. AmCham China recommends that the Chinese government fulfill these commitments in an expeditious manner, removing investment and other restrictions that prevent foreign investment in cloud computing in China, as well as facilitating China’s deployment of cloud computing technologies by adopting global standards and policies that reflect the international and borderless nature of this emerging industry.

**Data Policy**

**Big Data**

On September 5, 2015, the State Council formally published a notice concerning implementation of the “Action Plan to Promote Big Data Development.” The plan highlights the critical role of big data in China’s macroeconomic development and outlines the four primary objectives of:

- open government data,
- boosting R&D and industry,
- enhancing government and public domain applications, and
- increasing privacy and data protection.

Big data continues to change the digital world, challenging long standing data governance concepts and even, through its potential to re-identify personal data that has been anonymized, the very concept of what constitutes personal data. China has accepted a number of internationally recognized data privacy concepts (e.g., notice and consent requirements and the definition of personal data) in the “Law on the Protection of Consumer Interests” and its supporting regulations. These provisions will become increasingly challenging to administer as big data applications become more common in China.

As a new field, the implications of big data are only beginning to be understood. It is not yet known how best to regulate big data processing and norms have yet to emerge, both for state and non-state actors. Instead of undertaking a rapid new round of rulemaking in an attempt to bring big data processing into compliance with existing privacy laws, China should first allow new norms to emerge. New frameworks for understanding the impact of big data processing are now being developed, evaluated, and refined. These include projects for the clarification and categorization of the risks involved in big data processing, and for the development of a data governance framework that bases data processing decisions on an evaluation and prioritization of these risks. They also include a project to develop a system of data processing ethics that would guide big data processors to the best decisions on whether and how to process personal data.

The adoption of the new norms that emerge from these projects will require a sustained international collaborative effort. Once emerged, widespread reference to the new
无数双边和多边承诺，承诺在发展云计算等战略新兴行业中给外资企业提供公平合理的参与机遇，并制定符合WTO要求的战略新兴行业政策。此外，中国承诺建立由商务部领导的相关机制，以便进行合规性评审。中国美国商会建议，中国政府迅速践行这些承诺，消除投资限制和其他阻碍外商投资进入中国云计算市场的限制，并采取全球标准与反映此新兴行业国际性和无国界性的政策，改善中国的云计算技术部署。

### 数据政策

#### 大数据

2015年9月5日，国务院正式发出有关实施《促进大数据发展行动纲要》的通知。该纲要强调了大数据在中国宏观经济发展中关键作用，并概括了四大目标：

- 开放政府数据；
- 促进研发和工业发展；
- 加强政府和公共领域应用；
- 改善隐私和数据保护。

大数据继续改变着数字世界，挑战着长久以来的数据管理概念，甚至拥有重新识别匿名个人信息、改变私人数据构成的概念的潜力。中国已在《消费者权益保护法》及相关条例中接受一系列国际公认的数据隐私概念（例如通知和同意要求以及私人数据的定义）。由于大数据应用在中国日益常见，所以这些规定将给行政管理带来越来越多的挑战。

作为一个全新领域，大数据的重大意义也只是初露端倪。国家和非国家机构尚不明确如何能够更好地监管大数据处理，而规范也尚未出台。中国应首先允许新规范出台，而不是迅速开始新一轮法律制定程序，以便让大数据处理符合现有隐私法律。认识大数据处理影响的新框架现在正在制定、评估和细化当中，相关的项目包括阐明大数据处理中涉及的风险，及其会计用同要求以及私人数据的定义。由于大数据应用在中国日益常见，所以这些规定将给行政管理带来越来越多的挑战。

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### 信息和通信技术标准政策

#### 外商投资企业充分参与标准制定组织

外商投资企业（外资企业）经常被禁止参与标准制定组织，或者仅限于“观察员”身份。外资企业被授予观察员身份的许多标准组织中，外资企业没有投票权，成员大会中没有参与技术委员会选举的资格，外资企业没有投票权，成员大会中没有参与技术委员会选举的资格，外资企业没有投票权，成员大会中没有参与技术委员会选举的资格。中国美国商会建议，中国政府迅速践行这些承诺，消除投资限制和其他阻碍外商投资进入中国云计算市场的限制，并采取全球标准与反映此新兴行业国际性和无国界性的政策，改善中国的云计算技术部署。

#### 对中国政府：

- 上调外商投资企业的股本上限，减少市场进入障碍，以便直接交付云服务。
- 撤销技术本地化命令，确保旨在促进中国创新和技术研发的程序与措施（包括信息和通信技术相关标准的制定）公平、一视同仁，透明，允许外资企业参与，不扭曲全球市场。
- 避免过于仓促地管理大数据处理；反之，应通过相关国际论坛的合作与参与，监督并参与大数据
norms will enable consistent rules for big data governance to be made in a rational, thoughtful, and experienced manner. China should monitor, and even participate in, these forward-looking projects.

**Standards Policy in ICT**

*Full Participation of FIEs in Standards Development Organizations*

FIE participation in Standards Development Organizations (SDOs) is often prohibited or limited to “observer” status. In many SDOs where FIEs are granted observer status, they have no voting rights, are not eligible to stand for election at member conferences for technical committees, are not eligible to participate in the drafting of standards, and are often charged higher fees than domestic counterparts. Furthermore, FIEs are barred from standards-drafting discussions where only a select group of domestic companies and organization are allowed to participate. However, we were pleased to note in 2015 the opening of the National Information Security Standardization Technical Committee (TC260) to participation by a few select FIEs, though a transparent application process remains lacking for the majority of foreign companies.

While we view this as a positive development, the continued limits to FIE participation in technical committees effectively means that the majority of FIEs are largely absent throughout the process of developing important ICT security-related standards such as big data security standards, specifications for the implementation of Cybersecurity Review Technology for IT products, source code reviews, security requirements for operating systems, mobile terminal security protection, IT product security and controllability assessment metrics, and smart phone personal information protection.

AmCham China recommends that ICT-related standards be developed with full participation and sufficient discussion and input from all relevant industry, including FIEs, to ensure that the resulting standards are widely accepted and supported by both domestic and international vendors. Full participation of FIEs in the standards development process will also facilitate the transfer of global expertise and experience, improving the quality and applicability of standards developed in China. This recommendation echoes the outcomes of the Xi-Obama state visit affirming the value of adopting international standards that have been developed in an open, transparent, market-driven, and balanced manner. More information on related issues can be found in the Standards, Certification, and Conformity Assessment chapter.

**Recommendations**

*For the Chinese Government:*

- Lift equity cap restrictions on FIEs and market entry barriers to the direct delivery of cloud services.
- Eliminate technology localization mandates and ensure that programs and measures designed to foster innovation and technology development in China, including the development of ICT-related standards, are fair, non-discriminatory, transparent, open to foreign participation, and do not distort global markets.
- Avoid overly hasty attempts to govern big data processing; instead, monitor and participate in the development of new governance frameworks for big data through collaboration and participation in relevant international forums.
- Apply the S&ED commitment to ensure that any future bank ICT regulations will be nondiscriminatory, not impose nationality-based requirements, and be developed in a transparent manner; similarly apply this commitment to cybersecurity regulations in the telecom and insurance industries and to any further revisions to the Cybersecurity Law.
- Adopt transparent regulatory approaches to cross-border flows of digital data and technologies and avoid measures that restrict the legitimate flow of data across borders or link commercial benefit to local investment.
- Work with existing global institutions, stakeholders, and standards organizations to develop policies in an open and transparent manner that meet security needs while preserving interoperability, openness, and a global market.

*For Both the US and Chinese Governments:*

- Actively implement the outcomes from the Xi-Obama state visit, including those regarding the development of appropriate norms of state behavior in cyberspace and refraining from cyber-enabled theft of IP.
- Continue dialogues to improve the current trade and investment environment for American ICT companies and ensure opportunities to participate in China’s informatization and development initiatives.
新管理框架的建立。

- 践行中美战略经济对话承诺，保证未来的任何银行业信息和通信技术条例无歧视性，公开透明，不施加基于国籍的要求，同样要以透明的方式制定电信和保险业的网络安全法规，并将这些原则应用至未来任何《网络安全法》的修订中。

- 对跨国数字数据和技术流动采取透明的监管方法，避免出台限制合法数据跨国流动或将商业利益与地方投资挂钩的措施。

- 与现有全球机构、利益相关者和标准组织合作，以开放透明的方式制定满足安全需求但保留互操作性、开放性且允许产品进入全球市场的政策。

对中美两国政府：

- 积极落实习主席与奥巴马总统国事访问期间的成果，包括制定相应的网络空间国家行为规范，打压知识产权网络剽窃行为。

- 持续对话，改善当前美国外商投资企业的贸易和投资环境，保证提供参与中国信息化和发展举动的机遇。
Introduction

AmCham China was pleased by the “Several Opinions of the State Council on Accelerating the Development of the Modern Insurance Service Industry in the People’s Republic of China” (State Council Opinion) released in August 2014. The State Council Opinion recognized that “accelerating the development of the modern insurance service industry is an important part of improving the modern financial system” in China and endorsed a market orientation featuring fair competition and the opening of China’s insurance market. AmCham China views this as an important step toward a more developed and fairer insurance market, which can advance the safety and security of China’s people and the stability of the economy.

As further discussed in this chapter, however, the overall pace of reform has often been too slow, hampering the ability of foreign-invested insurance companies to grow the market and offer consumers wider choice of products and services.

Moreover, the draft “Administrative Regulations on the Informatization of Insurance Institutions” (Draft Informatization Regulations) issued for public comment in October 2015 would require insurance companies to give priority in procurement of information technology hardware, software, and encryption to domestic products in the vague name of “secure and controllable.” AmCham China believes that this would risk denial of access by insurers to the most reliable and secure technologies, thereby adversely affecting informatization and information security.

Ongoing Regulatory Issues

Market Access

US insurance companies, many of which have decades of experience serving consumers around the world, want to deliver their products to Chinese consumers. But, in order to do so, foreign-invested insurance companies need both to acquire a license to operate in China and be accorded national treatment in order to compete on a level playing field with their domestically invested counterparts. Unfortunately, foreign-invested insurers continue to face delays in the issuance of licenses and new product approvals, as well as artificial ownership caps and other barriers. AmCham China continues to favor removal of these barriers in the four pilot free trade zones (PFTZs) and nationwide.

Seasoning Requirements

The 2006 “Administrative Measures for the Representative Offices of Foreign Insurance Institutions” require that a foreign insurance company be in continuous existence for at least 20 years, and the “Administrative Rules on Foreign-Invested Insurance Companies” require that the insurer be in continuous existence for at least 30 years and maintain a representative office for at least two years before it can establish an insurance company in China. AmCham China believes that the 20- and 30-year seasoning requirements are unreasonably long, constitute unfair market entry barriers compared to domestically invested companies (which can be established de novo), and take no account of a company’s reorganization through merger and acquisition even if the core business remained intact. Several of our members report inexplicably lengthy and indefinite delays, extending several years in some cases, in obtaining operating licenses for unclear reasons even after satisfying all seasoning requirements. Moreover, although the two-year representative office seasoning requirement for foreign-invested banks was deleted in the “Decision on Amending the Regulations on the Management of Foreign-Invested Banks,” effective January 1, 2015, such requirement inexplicably remains in place for foreign-invested insurers. AmCham China recommends that seasoning requirements be shortened (including by elimination of the representative office seasoning requirement), corporate reorganizations be taken fully into account when determining continuity, and, after seasoning requirements have been satisfied, licenses be issued promptly without delay.

Mergers and Acquisitions

Growth in insurance, like in other industries, occurs through mergers and acquisitions as well as organically. This is particularly important in the insurance industry as companies are generally organized along separate policy lines rather than as single companies covering all types of insurance. AmCham China welcomed the 2014 “Administrative Measures for
引言

引言

中国美国商会很高兴看到，2014年8月国务院颁布了《关于加快发展现代保险服务业的若干意见》（以下简称《国务院意见》）。《国务院意见》指出，在中国“加快发展现代保险服务业对完善现代金融体系具有重要意义”，确定坚持市场主导的基本原则，营造公平竞争的市场环境，提升中国保险市场的开放水平。中国美国商会认为，该《国务院意见》出台意味着中国向建立更加完善发达和公平的保险市场迈出了重要一步，有利于提高中国人民的生命和财产安全与保障水平，促进中国经济稳定发展。

不过，正如后文所述，中国美国商会也注意到此项改革的总体步伐过慢，削弱了外资保险公司在华开拓市场、为中国消费者提供更多产品和服务的能力。

另外，2015年10月发布并公开征求意见的草案《保险机构信息化监管规定（征求意见稿）》（以下简称“信息化规定草案”）要求保险公司在采购信息技术时应当优先采购国产品牌的硬件设备、软件产品及加密技术，而作此要求的原因却十分含糊：“安全可控”。中国美国商会认为此举可能会造成保险公司无法获取安全可靠的技术的风险，反而对信息化和信息安全造成负面影响。

现存监管问题

市场准入

许多美国保险公司拥有几十年的保险行业经营管理经验，在世界各地拥有众多客户，他们希望将自己的产品提供给中国消费者。但是，为了在中国开展保险业务，外资保险公司需要获得在华经营牌照，并得到平等的国民待遇，以便与中资保险公司在平等基础上进行竞争。遗憾的是，外资保险公司仍面临着经营牌照发放和新产品审批迟缓、难以突破外资股东持股比例上限及其他障碍。中国美国商会将继续支持中国政府在四大自由贸易试验区（以下简称“自贸区”）以及全国范围内清除这些障碍。

经营年限要求

2006年颁布的《外国保险机构驻华代表机构管理暂行规定》中规定，外国保险公司持续经营20年以上才能在中国设立保险公司。根据《外资保险公司管理暂行规定》，外国保险公司持续经营30年以上且在中国境内已经设立代表机构2年以上才能在中国设立保险公司。中国美国商会认为，现行的20年或30年的经营年限要求过长且不合理，与外资保险公司可以很快起步相比，这对外资保险公司而言不公平的市场准入障碍，同时，未考虑企业通过合并或收购进行重组但核心业务保持不变的情况。另外，中国美国商会多家会员企业反映，在获取经营牌照时，即使满足了所有条件，仍然可能会因不明原因遇到无限期拖延，有时甚至需等待数年。另外，虽然2015年1月1日生效实施的《关于修改外资银行管理条例的决定》中删除了外资银行在中国境内已经设立代表机构2年以上的要求，但对外资保险公司的类似要求却依然存在。中国美国商会建议缩短在中国设立保险机构的母公司经营年限要求（包括取消对代表机构存续年限的要求），并且在确定持续经营年限时应充分考虑公司重组的情况，同时，在申请企业满足条件后，相关部门应当及时、无拖延地颁发牌照。

收购与合并

与其他行业一样，保险业的发展除了内生增长方式外，也需要通过并购与合并来不断壮大。不仅如此，并购对保险业的发展尤为重要，因为保险行业内，不同公司的经营风险不同，而单一公司则难以承受所有风险。2014年颁布的《保险公司收购合并管理办法》中承认了上述结构化差异，中国美国商会对此表示欢迎。但是该管理办法中却对外资保险公司实施差别对待，其中规定：在华
Mergers and Acquisitions of Insurance Companies” for acknowledging this structural distinction. The Measures discriminate against foreign insurers, however, by requiring that foreign insurers with a subsidiary in China that fails to meet the requisite profitability requirement must itself have a representative office licensed in China for at least two years. This requirement is redundant as the foreign insurer will have already met the two-year representative office seasoning requirement through its existing subsidiary while that rule remains in place. AmCham China urges that these two-year seasoning requirements be eliminated.

Life Insurance

Foreign insurers remain subject to a 50 percent cap on foreign ownership in life insurance joint ventures (JVs), of which there has yet to be any relaxation even in the four PFTZs. This cap, set in 2001 to protect domestic life insurers after China was admitted to the World Trade Organization, no longer has any justification. Domestic life insurers in aggregate had a 93.75 percent market share in 2015 while all foreign life insurers combined had only a 6.25 percent market share. The equity cap handicaps the ability of foreign insurers to serve the China market and has caused operational problems in managing such JVs. Removing this equity cap is in alignment with China’s broad market-oriented reform goals, including internationalization of financial services and increased financing of retirement needs. AmCham China continues to recommend lifting the 50 percent cap on foreign ownership in life insurance.

Insurance Asset Management Companies

AmCham China applauds the increased issuance of licenses for insurance asset management companies (IAMCs) in the last four years and the newly established Insurance Asset Management Association of China. However, the China Insurance Regulatory Commission (CIRC) continues to regulate this industry on the basis of the 2004 “Interim Provisions on the Regulation of IAMCs,” which requires that IAMCs have at least two founding shareholders, even though the Company Law, as amended in 2005, effectively requires only one founding shareholder. In other words, all insurance companies are required to partner with a second company to manage their own funds. AmCham China urges deletion of the second founding shareholder requirement to bring the IAMC regulations into alignment with the Company Law which allows one founding shareholder.

Health Insurance

AmCham China welcomes CIRC’s September 29, 2013 decision to support the establishment of specialized foreign-invested health insurance institutions in the Shanghai PFTZ. Several US-invested specialist health insurers with many years of experience, who wish to help expand China’s health insurance market, have remained on the sidelines while waiting years for a license to be issued under de facto barriers to market entry. We hope that applications to approve foreign-invested health insurance institutions in the Shanghai PFTZ will be reviewed on a non-discriminatory basis, allowing US-invested health insurers to bring their expertise to China. We further hope that the Shanghai PFTZ approval procedure will soon be extended to the other PFTZs and then nationwide.

Sales and Service Channels

Branching

AmCham China recognizes that branch application procedures have formally leveled the playing field between foreign-invested and domestically invested insurers with respect to branch as well as sub-branch approvals. However, foreign-invested insurers still suffer from more rigorous and lengthier branch approval procedures, including the effective refusal to consider concurrent applications, in comparison to domestically invested insurers. Such slow pace hampers the ability of foreign-invested insurers to serve consumers. AmCham China continues to urge CIRC to promptly review foreign-invested insurers’ branch applications, including concurrent branch applications of qualified foreign-invested insurers.

Internet Insurance

The development of Internet insurance presents a tremendous opportunity for China to effectively promote innovation and financial reform, and a unique opportunity for foreign insurers to acquire new customers cost-effectively and build brand awareness. AmCham China applauds CIRC’s issuance of the “Interim Measures on the Administration of Internet Insurance Business” in July 2015, which allows insurers to conduct Internet insurance of specified products under certain conditions, even in provinces where they do not maintain a branch, expanding consumer choice. AmCham China recommends further opening this channel by expanding the range of products permitted to be sold online nationwide, which will further contribute to China’s ambitious goals of reforming the financial sector and enhancing financial inclusion by providing greater access to financial services for underserved segments of the populace.

Bancassurance

The withdrawal of insurance personnel from bank branches since the regulatory change in 2011 has adversely impacted bancassurance sales for many non-bank-linked insurers. Banks have only been able to satisfactorily serve “walk-ins” and are adequately skilled to offer only simplified insurance products. AmCham China urges that qualified insurance companies be allowed to station sales representatives, clearly identified as insurance company representatives rather than bank personnel, in bank offices to assist with consumer inquiries.
拥有分支机构的外国保险公司若未能满足必备的盈利要求，则该外资保险公司必须已经在华领取代表机构牌照至少两年。这一要求实属多余，因为该外资保险公司已经设立存续的分支机构本身就可以确保该外国保险公司满足两年代表机构的时限要求。中国美国商会促请取消上述两年期限要求。

**人寿保险**

根据相关规定，合资寿险公司中的外资持股比例不得超过50%，这一限制即使在四大自贸区内也未出现任何松动。中国政府在2001年对外资保险公司的股权比例做出限制，主要为了在中国加入世贸组织后对内资寿险公司加以保护，但时至今日，该规定已失去存在的合理性。截至2015年，内资寿险公司合计市场份额达93.75%，而所有外资寿险公司加起来的市场份额不过6.25%。上述50%的股权比例上限限制了外资寿险公司为中国保险市场提供服务的能力，同时会造成合资企业经营管理方面的问题。取消上述股权比例上限符合中国市场化改革的总体目标，包括符合金融服务国际化以及退休人员养老金来源多样化的需求。中国美国商会再次建议取消人寿保险公司外资股东持股比例不得超过50%的限制规定。

**保险资产管理公司**

过去四年中，保险资产管理公司牌照的发放数量有所增加，并且新设立了中国保险资产管理协会，中国美国商会对此表示欢迎。但另一方面，中国保险监查委员会（以下简称“保监会”）却继续依照2004年6月实施的《保险资产管理公司管理暂行规定》进行行业监管，该规定要求保险资产管理公司应当至少有两家发起人股东，而2005年修订的《公司法》则只要求单一发起人股东。换句话说，所有保险公司均需与另外一家公司合作管理自己的资金。中国美国商会促请取消上述至少两名发起人股东的要求，从而使保险资产管理公司管理规定与《公司法》的要求相一致，允许一名发起人股东发起设立保险资产管理公司。

**健康保险**

对于保监会2013年9月29日颁布的关于支持在上海自贸区设立外资专业健康保险机构的决定，中国美国商会表示欢迎。多家经验丰富的外资专业健康保险公司均表示愿意帮助中国开拓健康保险市场，但这些公司却一直面临事实在上的市场准入障碍，因迟迟拿不到牌照而不得不徘徊在中国市场的大门之外。我们希望在审批外资进驻

上海自贸区设立健康保险机构时能够做到无区别对待，允许外资专业健康保险机构将专业经验带到中国市场，也希望能够上海自贸区的审批程序能够很快推广至其他自贸区，进而推广到全国。

**销售和服务渠道**

**设立分支机构**

外资保险公司在申请设立分支机构时，原则上享有与内资保险公司同样的待遇，对此中国美国商会表示认可。但在实际操作层面，相比内资保险公司，外资保险公司在申请设立分支机构时往往需要面临更为严格和漫长的审批流程，包括直接驳回外资保险公司同时设立多家分支机构的申请，造成外资保险公司在开设分机构方面进展缓慢，无法为更多中国消费者提供服务。中国美国商会将继续敦促保监会加快外资保险公司设立分支机构的审批速度，其中包括允许符合条件的外资保险公司同时设立多家分支机构。

**互联网保险**

互联网保险业务的发展为中国有效推动创新发展、深化金融体制改革带来了巨大机遇，也为外资保险公司以较低成本获取新客户和提升品牌知名度创造了难得的机会。中国美国商会对保监会于2015年7月出台的《互联网保险业务监管暂行办法》表示赞赏，该暂行办法允许保险公司在全国范围内在线销售保险产品，从而拓宽了消费者的保险选择面。中国美国商会建议，中国美国商会将进一步放开该渠道，扩大允许保险公司在全国范围内在线销售保险产品的范围，使金融服务供给不足的人群能够享受更多的金融服务，从而推动中国尽早实现金融体系改革和提高金融包容性的战略目标。

**银行业**

自2011年银保渠道销售监管政策调整以来，保险公司驻点销售人员纷纷撤出银行网点，影响了非银行背景的保险公司的银保业务。中国银保监会近年来在银行网点的销售中采取了一系列措施，中国美国商会敦促监管机构能够允许合格的保险公司派驻销售代表到银行网点协助解答客户的咨询并明确自己的身份是保险公司员工而不是银行职员。
A stricter regulation on bancassurance, the “Notice on Further Regulating the Sales Activity of Commercial Banks as Insurance Agents,” introduced by CIRC and the China Banking Regulatory Commission and in effect since April 2014, reinstated the “three insurers rule” that a bank branch be allowed to sell insurance products of only three different insurance companies in any fiscal year. This restriction imposes particular difficulty on foreign-invested insurance companies as some banks have their own insurance subsidiaries and many banks choose to cooperate with larger domestic insurers. AmCham China continues to recommend relaxing the restriction on bancassurance cooperation to enable banks to cooperate with additional insurers.

**Investment of Insurance Funds**

AmCham China applauds the continued loosening of restrictions on investment vehicles that has opened new investment channels and markets. However, AmCham China urges that the size and investment experience of the corporate parents of insurance companies be taken into account when determining qualifications to invest insurance funds in the capital market. Taking these factors into account would greatly assist in transferring knowledge from mature markets to China. It would also help to mitigate the shortage of local talent with adequate experience and sophistication for investing in new asset classes. We also hope that related regulatory policies will be issued to provide the necessary risk-hedging tools for these new asset classes and for insurance capital in general.

**Products**

**Foreign Currency-Denominated Life Insurance Products**

As China’s population rapidly becomes more affluent, cross-border investment is becoming an additional assets allocation choice. At present, however, only limited products are available in the market because of the tight supervision of private cross-border investment. Opening the market to long-term foreign currency-denominated life insurance products will enable consumers to diversify their assets and better protect themselves and their families after retirement without moving funds offshore. AmCham China believes that this would be consistent with the State Council Opinion which endorses innovative insurance products and services. We therefore urge CIRC together with the State Administration of Foreign Exchange to allow insurers to sell long-term foreign currency-denominated life insurance products, beginning with pilot programs, if necessary, in the four PFTZs.

**Property Insurance**

AmCham China believes that experience shows that the 2012 opening of the mandatory third-party liability automobile insurance market to foreign-invested insurers benefited consumers by offering greater choice and generally raising the quality of products and services. However, other mandatory insurance businesses — including carrier liability insurance, which is required to be insured according to Article 36 of the “Road Transportation Regulation of the PRC” — seemingly remain barred to foreign-invested insurers. AmCham China believes that this bar is a disservice to consumers and urges that it be lifted to allow foreign property insurers to make their expertise available to the China market.

**Reinsurance**

AmCham China is pleased that the onerous draft requirements for reinsurance transactions between foreign-invested insurers and their affiliates were replaced in 2006 by a routine registration procedure under CIRC’s “Notice on the Strengthening of Information Disclosure Work on Affiliated Reinsurance Transactions by Insurers.” However, while more systematic regulation of solvency in the insurance industry is appropriate, AmCham China believes that the China Risk Oriented Solvency System (C-ROSS), which was fully implemented on January 1, 2016, will impose unreasonable capital charges and collateral requirements on cross-border transactions between Chinese ceding insurers and reputable offshore reinsurers with financially sound ratings in their home jurisdictions. AmCham China believes that such capital charges and collateral requirements are unnecessary because CIRC has other means to ascertain the soundness of such offshore reinsurers, including by established means of consultation with their home country supervisors. Moreover, the adverse weighting of cross-border reinsurance transactions will discourage cross-border cedance transactions with the perverse consequence of concentrating risk in China rather than dispersing such risk more widely. AmCham China urges CIRC to reconsider C-ROSS Chapter 8 Credit Risk Minimum Capital to prevent such unfortunate concentration of risk.

AmCham China is also concerned that the draft C-ROSS solvency framework will concentrate risk onshore and adversely affect international reinsurers by overweighting credit risk and imposing collateral requirements even for international reinsurers which are subject to International Association of Insurance Supervisors-compliant supervision in their home jurisdictions.

**Brokerages**

In the 2015 revised “Guiding Catalogue on Foreign Investment in Industry,” foreign investment in insurance brokerages is no longer classified as “Restricted.” However, AmCham China is disappointed by CIRC’s failure to adopt regulations to implement this reclassification. CIRC’s nearly year-long delay continues to deny Chinese consumers the opportunity to choose foreign-invested brokerages for broking smaller scale commercial risks, automobile insurance, and individual life and accident insurance.
商务环境综述

保险

在《关于商业银行代理保险业务销售行为的通知》（自2014年4月起实施）。该通知进一步加强了对银保业务的监管，重申“3家保险公司规定”，即商业银行的每个网点在同一会计年度内不得与超过3家保险公司开展保险业务合作。该规定对外资保险公司造成了一定影响，因为部分银行已经成立了自己的保险公司，且大多数银行更倾向于与大型内资保险公司合作。中国美国商会再次建议放宽银保渠道合作限制，允许银行与更多的保险公司合作。

保险资金投资

中国美国商会赞同中国政府持续放宽对投资工具的限制，这一举措有助于开拓新的投资渠道和市场。但是，中国美国商会呼吁，在确定保险公司使用保险资金投资资本市场的资质时，应充分考虑该保险公司母公司的规模和投资业绩。考虑这些因素有助于推动成熟市场专业知识输入中国，更能够缓解中国在新兴资本投资领域缺乏具备专业经验、能力和本土人才问题。中国美国商会还希望，中国能尽快出台相关监管政策，为上述新兴资产类别及保险资金提供必要的风险对冲工具。

产品

外币计价人寿保险产品

随着中国人民富裕程度快速提高，跨境投资日益成为中国居民新的资产配置手段。不过由于中国对私人跨境投资实施严格监管，目前市场上可供选择的此类投资产品十分有限。开放长期外币寿险保单将有助于消费者分散配置资产，从而不需要向海外转移资产就可在退休后更好地为自身和家人提供保障。中国美国商会认为此举也符合《国务院意见》中提出的支持保险产品和服务创新的要求。我们因此提议中国保险基金会同国家外汇管理局允许保险公司销售长期外币寿险保单计价人寿保险长期产品，必要时可以在四大自贸区开展项目试点。

财产保险

中国美国商会认为，实践证明自2012年将对外资保险公司开发机动车第三方强制责任险的举措为消费者提供了更多更好的选择，且普遍提升了产品和服务的质量，为消费者带来了实惠。然而，其他强制保险业务依然禁止外资保险公司经营，其中包括承运人责任险。（《中华人民共和国道路交通安全法》第36条规定必须投保承运人责任险。），中国美国商会认为上述禁止外资保险公司开展相关强制保险业务的做法不利于消费者，并促请取消上述限制，允许外资财产保险公司为中国市场贡献自己的专业知识和服务。

再保险

中国美国商会很高兴看到中国保监会发布的《关于加强保险公司关联再保险交易信息报告工作的通知》中用一顶例行登记程序取代了之前外资保险公司与其关联公司进行再保险交易所需完成的繁复的书面报告要求。

然而，尽管对保险行业偿付能力进行更为系统的监管实属必要，但中国美国商会认为中国在2016年1月1日开始全面推行的风险导向的偿付能力体系（C-ROSS）草案中，对分出保险公司与在本国声誉良好且经济实力雄厚的海外再保险公司进行跨境交易施加了不合理的技术资本和资本要求。中国美国商会认为上述资本费用和资本要求并无必要，因为他们保监会可以和其他途径来验证上述海外再保险公司的财务实力，包括可以通过现有的沟通渠道与母国监管机构进行核查。另外，对跨境再保险交易的过度监管会抑制跨境分出交易，反而造成风险集中于中国，而不是广泛分散风险。中国美国商会认为上述禁止外资保险公司开展相关强制保险业务的做法不利于消费者，并促请取消上述限制，允许外资财产保险公司为中国市场贡献自己的专业知识和服务。

税收优惠

养老保险

2013年12月6日，财政部、人力资源社会保障部、国家税务总局联合下发《关于企业年金职业年金个人所得税有关问题的通知》（财税[2013]103号文），对此中国美国商会表示欢迎。《通知》规定，自2014年1月1日起，实施企业年金、职业年金个人所得税递延纳税政策，企业和
**Tax Incentives**

**Pension Insurance**

AmCham China welcomed *Caishui* [2013] No. 103 (Circular 103), jointly issued by the Ministry of Finance, the Ministry of Human Resources and Social Security, and the State Administration of Taxation on December 6, 2013. Circular 103 defers individual income tax for enterprise and occupational annuities as of January 1, 2014. Tax-deferred annuities are an important means for people to provide financial security for themselves and their families after retirement and under other circumstances that affect their ability to work. AmCham China supports tax-deferred treatment for retirement accounts and hopes that the ceiling on such contributions will be raised to further alleviate the burden of supporting an aging population currently borne by the government and retirees’ families, while increasing savings for investment.

**Individual Tax-Deferred Pension Pilot Program**

To develop China’s pension system and encourage people to buy commercial pensions, Shanghai has been preparing an individual tax-deferred pension insurance pilot program since 2009, but the launch has been postponed as the preferential tax policies involve the interests of many government bodies. We applauded the indication in the August 2014 State Council Opinion that this long-awaited pilot program would be initiated in Shanghai by no later than the end of 2015, and urge the relevant departments to implement this policy promptly. However, as of the date of this writing, the program has not yet been initiated, though we hope that it will be launched soon. We also hope that foreign-invested insurers will be allowed to participate in the program to the same extent as domestically invested insurers.

**Health Insurance**

AmCham China welcomes the Chinese government’s approval of a pilot plan to encourage the purchase of private supplemental health insurance through tax incentives by allowing policyholders to deduct up to US $370 (RMB 2,400) per year from their individual income taxes for health insurance premiums. Each provincial-level jurisdiction will designate one municipal-level jurisdiction to host the pilot plan. This policy recognizes the importance of commercial health insurance as a supplement to the government-supported basic health insurance system. AmCham China believes that a robust system of private health insurance will enhance healthcare, increase employment, and generally benefit social and public interests.

Tax incentives are an important stimulus to the purchase of commercial health insurance, especially indemnity products. US specialist health insurers have rich experience in this field and are eager to be licensed so that they can assist its development.

**Advisory Councils**

A number of local governments in China have established international business advisory councils to obtain advice from international business leaders. AmCham China recommends that CIRC follow suit in order to access the knowledge and experience of international industry leaders to promote the development of the insurance industry in China on a sound and prudent basis.

**Regulatory and Compliance Costs**

Our members, who have extensive international experience, find that the costs of operating in China are very high compared to most other markets. Administrative and compliance burdens are particularly onerous, including information technology requirements and rules regarding claims, finance, and compliance personnel for new branches. AmCham China urges CIRC to simplify costly burdens wherever possible.

**Recent Developments**

**Draft Administrative Regulations on the Informatization of Insurance Institutions**

The aforementioned Draft Informatization Regulations would adversely affect competition by requiring that insurers give priority in the procurement of information technology hardware and software and encryption to domestic products in the name of “secure and controllable” technology. AmCham China firmly believes that no one country’s products are inherently superior in this respect and that insurers should retain the discretion to decide among different vendors on the basis of security and reliability of information technology systems.

The Draft Informatization Regulations would have a particularly adverse impact on foreign-invested insurers by requiring that they procure domestic products for their China operations. This would increase costs and create interoperability problems with their non-China operations. Data localization requirements specified in the Draft Informatization Regulations would also have anti-competitive effects on foreign-invested insurers.

**Transparency**

In 2015, AmCham China continued to observe that CIRC frequently published regulations for comment involving foreign investment without allowing the minimum 30-day comment period to which the Chinese government has committed. AmCham China urges CIRC to comply with this requirement and generally be more transparent with respect to regulatory developments.
保险

个税递延型养老保险试点项目

为发展中国的养老保险体系，鼓励人们购买商业养老保险，上海自2009年起开始筹备个税递延型养老保险试点项目。但由于实行相关税收优惠政策涉及多个政府部门的利益，项目启动一再延迟。我们很高兴地看到2014年8月《国务院意见》出台预示着这个期待已久的试点项目有望在2015年底前于上海启动，并呼吁相关政府部门届时迅速落实该项政策。但截止本稿成文之日，该项目仍未启动，我们也希望外资保险公司能同内资保险公司一样参与到该项目中来。

健康保险

中国美国商会欢迎中国政府批准鼓励购买个人补充健康保险的试点方案，该方案允许商业健康保险投保人每人每年可享受最高370美元（人民币2400元）的健康保险保费的个税税前扣除，各省可根据自身实际制定自己的试点方案。该项政策肯定了商业健康保险是政府出资的基本医疗保险体系的重要补充。上述批准开展试点方案的决定是在多年来广泛研究的基础上作出的。中国美国商会相信，一套健全的个人健康保险体系将有助于提升卫生保健水平，提高就业率，从而惠及全社会和公共利益。

最新进展

保险机构信息化监管规定（征求意见稿）

如前所述，信息化规定草案要求保险公司在优先采购安全可控的信息技术硬件、软件和国产密码，此举将对市场竞争造成负面影响。中国美国商会坚决认为没有哪一国的产品在安全可控方面天然地低于其他国家的产品，并且认为保险公司应当在确保信息技术系统安全和可靠的基础上，保留自主选择供应商的权利。

信息化规定草案要求外资保险公司的中国运营机构购买国产产品，这将对外资保险公司造成负面影响。上述要求不仅会增加外资保险公司的成本，还可能导致外资公司在中国的运营机构与国外的运营机构出现互联互通方面的障碍。该信息化规定草案中的数据本地化要求也会对外资保险公司造成抑制竞争后果。

透明度

2015年，中国美国商会观察到，保监会经常发布涉及外商投资的新法规征求意见稿，但未能坚守中国政府承诺的向社会广泛征求意见的30天期限规定。中国美国商会呼吁保监会能够遵守这一30天期限规定，并进一步提高监管动向披露的透明度。

中国美国商会认可中国监管工作取得的进步，但我们对外资保险公司依然面临的市场准入和机构拓展障碍还是感到失望。内资保险公司和内资保险经纪公司，尤其是大型保险企业，在所有权结构和资本运作方面仍然享有更多监管优惠并因此受益，但却损害了外资保险公司和消费者的利益。

在这样的政策环境下，尽管去年外资保险公司在华市场份额略有提升，但其市场份额的总体趋势却是日渐萎缩。截止2015年底，外资保险公司在华市场份额仅为4.8%，比2004年的6%有所下降，仅比2014年的4.5%略有上升。
While AmCham China recognizes several regulatory advances, we remain disappointed by the persistence of barriers to market entry and expansion that foreign-invested insurers face. Domestically invested insurers and insurance brokerages, particularly larger companies, continue to enjoy more regulatory favor with respect to ownership structure and access to capital, allowing them to benefit at the expense of foreign-invested insurers and to the disadvantage of consumers.

Consequently, foreign-invested insurers have generally lost market share in China despite a modest uptick last year. As of year-end 2015, the market share of foreign-invested insurers stood at a mere 4.8 percent, down from six percent in 2004 and up only slightly from 4.46 percent in 2014. The decline in life insurance has been particularly sharp, falling from 8.9 percent in 2005 to 5.8 percent in 2014 and increasing modestly to 6.25 percent in 2015. Even the largest foreign-invested life insurer’s market share is less than one percent. The market share of foreign-invested property and casualty companies, which were previously excluded from the mandatory third-party liability insurance market, continued to barely register at 2.07 percent in 2015. Foreign-invested health and pension insurers continue to be excluded from the market altogether.

**Recommendations**

**Sales and Service Channels**

- Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.
- Expressly remove all limits on the number of insurance companies whose products may be sold by commercial bank branches.
- Further open the channel of Internet insurance by allowing more types of insurance products to be sold online nationwide.

**Licenses**

- Increase competition in pension and health insurance by licensing foreign-invested applicants.

**Ownership**

- Lift the 50 percent cap on foreign ownership of life insurers.
- Shorten and rationalize seasoning requirements.
- Allow insurance asset management companies to be established by a single founding shareholder in accordance with the Company Law.

**Tax Incentives**

- Expand tax incentives for tax-deferred annuities.

**Structural**

- Revise the Draft Informatization Regulations to delete requirements to give priority to domestic information technology hardware, software, and encryption vendors.
- Establish a separate department in CIRC to regulate health insurance at the same level as the life insurance and property insurance departments.
- Remove unnecessary capital charges and collateral requirements on cross-border reinsurance transactions.
人寿保险市场份额下降尤其严重，从 2005 年的 8.9% 跌至 2014 年的 5.8%，而 2015 年略有增长，为 6.25%。即使是在中国规模最大的外资人寿保险公司，其市场份额也不足 1%。以前不允许外资财产和意外险公司参与开展机动车第三者责任险业务，现在获准经营之后，2015 年市场份额也仅为 2.07%。目前，外资健康保险和养老保险公司仍无法进入中国市场。

### 建议

#### 销售和服务渠道

- 外资保险公司申请设立分支机构时，确保在审批手续和审批进度上享受与内资保险公司同等的待遇。
- 明确取消与商业银行进行保险业务合作的驻点销售银保产品的合作保险公司的数量限制。
- 进一步开放互联网保险销售渠道，允许更多类型的保险产品可通过互联网在线进行全国性销售。

#### 牌照

- 通过向外资保险公司发放经营牌照，提高养老保险和健康保险的市场竞争力。

#### 所有权

- 取消寿险公司外资股东持股比例不得超过 50% 的上限规定。
- 缩短经营年限资格要求，使其更合理化。
- 依照《公司法》规定，允许单一发起人股东设立保险资产管理公司。

#### 税收优惠

- 扩大个税递延型养老保险的税收优惠的范围。

#### 监管结构

- 修改信息化规定草案，取消优先购买安全可控的国产信息技术硬件、软件和加密技术的规定。
Industry-Specific Issues

Introduction

Non-PRC law firms face a wide range of market access constraints in mainland China, especially: 1 the inability to employ PRC-qualified lawyers so that they can provide comprehensive legal services to their clients; 2 prohibitions against participation in important meetings at government departments involving their clients; 3 discriminatory taxation; and 4 an unnecessarily slow, complicated, and unpredictable registration process for the establishment of offices.

The Chinese government’s continued restrictions in this sector significantly limit the options available to mainland Chinese and foreign companies seeking sophisticated legal advice and counsel and deprive PRC-qualified lawyers of the opportunity to work for, receive world-class training in, and become principals of foreign law firms. Moreover, the current restrictions are inconsistent with international best practices and result in the unwillingness of many foreign investors and parties to financial transactions to accept Chinese law as the governing law of contracts, or to submit themselves to the jurisdiction of Chinese courts or arbitration tribunals for dispute resolution. These restrictions also conflict with the general principle of reciprocity, given that most of China’s major trading partners allow PRC law firms to establish full service offices in their jurisdictions.

Ongoing Regulatory Issues

Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms

AmCham China continues to urge the Chinese government to revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers with active PRC licenses, so that they may provide comprehensive legal services to their clients. Removing this prohibition would:

• significantly expand training and future employment opportunities for mainland Chinese law students and lawyers, which would in turn expand the pool of trained and experienced PRC-qualified lawyers for PRC law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds;
• allow Chinese companies to expand more efficiently and successfully by enabling integration of their counsel in China with a worldwide team of legal specialists; and
• enhance foreign law firms’ capacity to represent clients doing business in mainland China and Chinese companies looking to expand their global commercial and investment activities.

Restricted Appearance before Government Agencies

AmCham China urges the Chinese government to implement its commitment made at the 25th Joint Commission on Commerce and Trade (JCCT) to allow representatives of foreign law firm representative offices established in China to attend and participate in meetings as normal practice with each of the three anti-monopoly enforcement agencies upon request from the party involved. AmCham China further urges the Chinese government to implement this commitment across all government enforcement agencies in other areas of law.

Presently, appearance and participation by foreign lawyers in many types of meetings involving their clients and mainland Chinese government departments is often prohibited, restricted, or permitted only conditionally on a non-transparent and case-by-case basis. This lack of clear and consistently enforced regulations:

• deprives both foreign and Chinese clients of adequate representation in these meetings relating to areas of non-Chinese law;
• prevents clients from determining the composition of their own legal teams in meetings with Chinese government officials;
• limits clients’ ability to understand government proceedings in their international context;
• limits the quality of information clients are able to provide to mainland Chinese government officials relating to the clients’ activities and obligations in China and abroad;
• creates an uneven playing field;
引言

国律师事务所在中国大陆面临着诸多市场准入限制，重点包括：①无法雇用中国律师，所以无法为客户提供全方位的法律服务；②不允许出席客户与政府部门之间的重要会议；③差别的税收政策；④成立代表机构的注册手续过于繁杂、过程漫长而且结果难以预料。

中国一直在上述领域对外国律师事务所进行限制，这不仅严重阻碍了中国内地企业和外国企业获得高度专业化的法律意见和咨询服务的机会，更剥夺了中国执业律师在外国律师事务所工作、接受国际水准培训并获得升迁的机会。除此之外，现有的限制也不符合国际最佳实践，导致许多外国投资者和交易各方不愿意使用中国法律作为合同的适用法律，也不愿意选择中国法院或仲裁庭解决争端。这些限制还有违互惠原则，因为大多数中国的主要贸易伙伴都允许中国律师事务所在其境内设立提供全面服务的分所。

现存监管问题

中国律师在外国律师事务所的执业范围受限

中国美国商会一直敦促中国政府修订现行法规，允许外国律师事务所雇用持有有效中国律师执业证的中国律师或任用其为合伙人，为客户提供全面的法律服务。取消该项限制将会带来以下结果：

• 在一定程度上扩大中国法律专业学生和律师接受培训和未来就业的机会，从而增加训练有素且经验丰富的中国执业律师的数量，以便中国律师事务所和公司能够更好地雇用这些律师成为其法律顾问或担任其他需要法律专业背景的职位；
• 允许中国公司将中国的法律顾问和由法律专家组成的国际团队进行整合，更加有效且成功地进行公司扩张；
• 提高外国律师事务所在中国内地的业务能力，协助中国公司寻求扩大全球业务与投资活动的机会。

外国律师参与政府会议受限

中国美国商会敦促中国政府履行其在第 25 届中美商贸联委会上做出的承诺，即按照通行的做法，允许外国律师事务驻华代表处的代表应相关方的要求参与三大反垄断执法机构的会议。中国美国商会也促请中国政府的所有执法部门在其他法律领域也履行这一承诺。

目前，在客户与中国政府部门之间举行的各类会议上，中国通常会禁止、限制或者根据个案或在不透明的基础上有条件地允许外国律师出席和参与。对是否允许外国律师参与上述会议的规定不明确或者不一致会带来以下后果：

• 导致外国和中国客户在上述会议中无法就非中国法律问题充分阐明自己的观点和立场；
• 妨碍了客户自主选择法律团队成员参与中国政府官员进行会谈的权利；
• 限制了客户在国际环境下理解政府程序的能力；
• 影响了客户向中国政府官员提供的其在中国及境外活动和义务等相关信息的质量；
• 造成了不公平的竞争环境；
• 容易给外界造成中国政府可能武断地、区别地对待外资企业的印象；
• 妨害了外国律师事务所向外国客户就中国法制环境提供咨询的权利——而这一权利已经明确写入了中国入世承诺以及中国国务院的相关法规中。

据了解，全球其他主要经济体中都没有上述限制和局限，或者仅在不统一、不透明的基础上允许外国律师会见政府官员。
• fosters the impression that the Chinese government may engage in arbitrary and discriminatory treatment with respect to foreign companies; and
• frustrates the right of international law firms to advise foreign and Chinese clients on the impact of the Chinese legal environment – a right that is clearly established in China’s Protocol of Accession to the World Trade Organization (WTO) as well as in State Council regulations.

To the best of our knowledge, no other leading economy limits, restricts, or permits only such inconsistent, non-transparent access by foreign lawyers to government officials.

**Discriminatory Taxation**

Representative offices of foreign law firms are subject to higher PRC income taxes than PRC law firms carrying out the same activities – as discussed in detail in the 2015 White Paper – because foreign law firms are denied the ability to be treated as partnership enterprises for PRC tax purposes. In addition, foreign firms are denied the preferential tax calculation method granted to PRC law firms that significantly drives down the domestic firms’ effective income tax rate.

To address this inequity and comport with the principles of non-discrimination in the US-China bilateral tax treaty, AmCham China recommends that the Chinese government provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

**Burdensome Representative Office Registration**

Foreign law firms face burdensome regulatory approval procedures not applicable to PRC law firms. When applying to establish a representative office, a foreign law firm must demonstrate “a need to establish a representative office to start legal service operations.” Authorities evaluate such need based in part on the “social and economic development conditions” of the proposed location, the “development needs” for legal services in such location, and other similarly vague considerations that are potentially inconsistent with China’s WTO commitment to eliminate geographic and quantitative limitations on the number of representative offices that foreign law firms can establish in mainland China, and unnecessarily and unreasonably lengthen the approval process by up to nine months. Moreover, the length of the approval process is unpredictable and often subject to protracted delays. The application process for establishing an office can and should be substantially streamlined.

Furthermore, a foreign law firm must wait three years after establishing a representative office before opening an additional office, thus limiting its growth. Foreign law firms have reported substantial difficulties and delays in the processing of these applications as well. This restriction impairs the ability of foreign law firms to serve clients in interior provinces, which are a key priority of the central government to boost economic development.

**Other Market Access Problems**

Foreign law firms also face other restrictions that impair their ability to operate in China. These include: 1 an unnecessarily difficult process to change the chief representative of a firm and for foreign lawyers to transfer firms; 2 an inability to, or difficulty in, hiring foreign non-legal professionals; 3 the limit on duration of work visas to one year at a time for foreign lawyers (especially chief representatives); and 4 protracted procedures (sometimes up to a year and a half) for obtaining work permits.

We encourage the Chinese government to address these issues in order to improve foreign law firms’ ability to effectively serve their clients, both foreign and domestic, in China.

**Foreign Investment Catalogue Restrictions**

In the revised “Guiding Catalogue on Foreign Investment in Industry,” released March 2015, “consulting on Chinese legal matters” was classified as “Prohibited,” whereas it was classified as “Restricted” in the previous Catalogue. The provision of information regarding the impact of Chinese laws is nevertheless permitted in accordance with China’s commitments in the 2001 Protocol on the Accession of the PRC to the WTO. It does not, however, address the need for further liberalization of access for foreign law firms and their Chinese national lawyers as discussed elsewhere in this chapter.

**Recent Developments**

**Small Step of Legal Liberalization in the Pilot Free Trade Zones**

While some positive developments have been pursued within the China (Shanghai) Pilot Free Trade Zones (e.g., the November 2014 “Implementing Measures of the Shanghai PFTZ for the Mutual Assignment of Lawyers as Legal Consultants by Chinese and Foreign Law Firms,” “Implementing Measures of the Shanghai PFTZ for Joint Venture Operations between Chinese and Foreign Law Firms”; see the 2015 White Paper for more details on these measures), we have yet to see any real benefits from such Measures.

**Other Forums for Dialogue**

There are a number of opportunities for the US and China to communicate on the issues raised herein, including the JCCT, the Strategic and Economic Dialogue, and the Bilateral Investment Treaty negotiations. AmCham China trusts that the legal service dialogue to be initiated as agreed in the 25th JCCT will result in positive measures to open the Chinese legal services market to foreign law firms at an early date. China agreed to conduct research and discussions in 2015 to
### 差别性税收

与从事同样业务活动的中国律师事务所相比，外国律师事务所代表处在华缴纳的所得税更高。根据2015年《美国企业在中国白皮书》（2015年《白皮书》），这是因为中国现行法律不承认外国律师事务所在中国税法上的合伙企业地位。另外，外国律师事务所也不享受中国律师事务所享受的优惠税收计算方法，而这一计算方法能够大幅降低中国律师事务所的实际所得税税率。

为解决这种不公平现象并与《中美税收协定》中的各项非歧视性原则保持一致，中国美国商会建议中国政府在中国所得税征收方面应当给予外国律师事务所与中国律师事务所同等的待遇。

### 代表处注册程序繁琐

外国律师事务所面临比中国律师事务所更为繁琐的监管审批程序。外国律师事务所在申请设立代表处时，必须证明其“设立代表处从事法律服务业务的必要性”。相关政府部门在评估其必要性时，通常会考虑拟设地的“社会经济发展情况”、对法律服务的“发展需求”以及其他类似的模糊因素，这在一定程度上可能违反了中国在世界贸易组织下有关消除外国律师事务所在中国大陆设立代表处的地域和数量限制方面的承诺，审批流程可能延长至9个月之久，这是不必要且不合理的。此外，审批时间也难以预料，且通常久拖不决。设立代表处的审批程序可以而且应该进行大幅度的简化。

此外，外国律师事务所设立一个代表处之后，必须等待至少三年才能再增设新的代表处，这种规定限制了外国律师事务所的发展。很多外国律师事务所均表示，其在该类申请过程中遭遇了重重困难和拖延现象，内陆省份是中国政府提出的重点经济发展区域，而这些限制损害了外国律师事务所为中国客户提供服务的能力。

### 其他市场准入问题

外国律师事务所还面临很多其他限制，这削弱了他们在中国的执业能力。其中包括：1. 律所首席代表变更和外国律师变换其任职律所时所需履行的程序过于繁杂；2. 外国律师事务所在中国进行法律服务时的经营范围受到限制；3. 外国律师在中国执业时需要通过考试和注册；4. 取得工作许可证的时间相对较长（有时甚至需要一年半的时间）。

### 最新进展

自由贸易试验区开放法律服务市场的些许进步

虽然中国（上海）自由贸易实验区已经开始实施了一些积极举措（例如，2014年11月上海市政府发布的《中国（上海）自由贸易试验区中外律师事务所互派律师担任法律顾问的实施办法》和《中国（上海）自由贸易试验区中外律师事务所联营的实施办法》；详见2015《白皮书》），但我们至今还未看到此类措施带来的实际收效。

### 其他论坛对话

中美双方有诸多机会就此问题进行探讨，包括中美商贸联委会、战略与经济对话和双边投资协定谈判。中国美国商会相信，第25届中美商贸联委会同意启动的法律服务对话将会促进积极的举措产生，力争让中国尽快向外国律师事务所开放法律服务市场。中国同意在2015年就开放中国法律服务市场进行研究和讨论，并吸取外国法律界的意见，据司法部将领导该项目但我们尚未看到与此相关的具体行动。

本章包含的大部分问题连续几年均由美国商会提出，但总体上未取得进一步的改善。我们希望双方政府能够加强对这些问题的关注，确保中国法律服务市场能得到进一步的开放，并取得上述的收效。
introduce the process of opening the Chinese legal services market and to invite suggestions from the foreign legal community. The Ministry of Justice is reported to now lead this effort but, as of this writing, we are not aware of any concrete action that has been taken in this regard.

The majority of the issues included in this chapter have been raised by AmCham China for several years but these barriers on the whole remain unchanged. We hope that increased attention on these issues by both governments will help ensure further opening of the Chinese legal services market in order to bring about the aforementioned benefits.

**Recommendations**

*For the Chinese Government:*

- Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers without requiring them to give up their PRC lawyer’s license when they join a foreign law firm.
- Clearly provide in regulations that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments.
- Simplify the requirements, eliminate the unpredictability, and reduce the review period for the establishment of representative offices as well as the opening of additional offices.
- Provide foreign law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.
- Allow foreign law firms to hire foreign non-legal professionals, improve the procedures for registering and transferring representatives, increase the length of time visas are valid for representatives, and decrease work permit approval times.
建议

对中国政府：

- 修改现行法律法规，允许外国律师事务所雇佣中国执业律师并任用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。

- 在相关法规中明确允许外国律师参与其客户与政府部门间的所有会议。

- 简化设立代表处的要求，尽可能消除不可预测性因素，缩短设立代表处及开设新代表处的审核时间。

- 在征收中国所得税方面，为外国律师事务所提供与中国律师事务所同等的待遇。

- 允许外国律师事务所聘请外籍非法律专业人士，改进代表的注册及调动程序，延长代表的签证有效期，缩短工作许可的审批时间。
Machinery Manufacturing

Introduction

China’s machinery manufacturing industry faced strong headwinds in 2015 with declining growth rates and falls in fixed asset investments, production volumes, and exports. At the same time, the Chinese government issued its “Made in China 2025” plan in May 2015, which aims to develop China into a “manufacturing powerhouse” by 2049 by focusing on innovative, intelligent, and green manufacturing and talent development.

Despite significant improvements made by the Chinese government in recent years, including efforts to promote reform, openness, and cooperation, AmCham China member companies continue to face policy challenges, including investment restrictions, industry overcapacity, and a lack of regulatory consistency. AmCham China encourages the Chinese government to consider the issues addressed in this chapter to support the manufacture of higher value machinery.

Ongoing Regulatory Issues

Restrictions on Foreign Investment

AmCham China applauds the efforts made by the Chinese government to further liberalize the investment approval regime, including the decisions to pilot a negative list approach in select regions and further open the general manufacturing industry to foreign investment. However, foreign-invested enterprises (FIEs) are still prevented from establishing wholly foreign-owned enterprises or holding majority ownership in several key manufacturing sectors (e.g., medium- and low-speed marine diesel engines, crankshafts). Such restrictions limit FIEs’ ability to contribute to the broader development of China’s machinery manufacturing sectors. AmCham China recommends that the Chinese government implement equal investment standards for both domestically invested enterprises and FIEs and urges the US and Chinese governments to expedite negotiations on the Bilateral Investment Treaty in this regard.

Construction Machinery

The “Non-road Diesel Engine Tier III Emission Regulation” (Emission Regulation) issued by the Ministry of Environmental Protection entered into effect on April 1, 2016. We welcome this regulation and the broader efforts of the Chinese government to upgrade the industry and improve air quality. We believe that strict enforcement of the Emission Regulation is very important to achieve the goals of creating a level playing field for all manufacturers and improving air quality. AmCham China encourages the Chinese government to take concrete steps to ensure that all industry players comply with the Emission Regulation.

For the past four years, China’s construction machinery industry has experienced considerable overcapacity, resulting in high inventories, cash flow constraints, and large account receivables. Two years ago, China unveiled its “One Belt, One Road” initiative, which presents many opportunities for construction machinery manufacturers. However, we remain concerned that the Chinese government may give priority to domestic project contractors, construction machinery manufacturers, and financial institutions. AmCham China recommends that the Chinese government promote this initiative in a transparent and market-oriented manner.

Clean Energy Machinery

High-efficiency gas-fired distributed energy and combined heat and power (DE and CHP) systems can play a significant role in energy conversion and emission reduction, improving circular economy systems. AmCham China has long been supportive of China’s considerable efforts to tackle energy efficiencies and emissions issues. We welcome the November 2015 decision by the National Development and Reform Commission to lower non-residential-use natural gas gate-station prices.

AmCham China recommends that the Chinese government focus on development of small/medium-sized (less than 50 MW) and multiple-unit DE and CHP systems in industrial and commercial areas to ensure high system operation reliability and efficiency (above 70 percent annual average). In the meantime, AmCham China urges expedited development of DE and CHP power grid connection regulations.
引言
2015年，中国的机械制造业遭遇严峻考验，不仅增长速度下滑，而且在固定资产投资、产量和出口方面均呈下降态势。与此同时，2015年5月，中国政府出台了“中国制造2025”规划，旨在通过强调“创新驱动、质量优先、绿色发展、结构优化和人才为本”来实现2049年将中国建设成为制造强国的目标。

虽然近年来中国政府在推进制造业发展方面取得长足进步，包括大力推进改革开放和合作，但中国美国商会的会员企业依然面临诸多政策挑战，包括投资限制、产能过剩和监管措施缺乏一致性等问题。中国美国商会促请中国政府考虑本章所讨论的问题，从而推进高端制造业的发展。

现存监管问题
对外商投资的限制
中国美国商会对中国政府在进一步推进简化投资审批制度，包括在部分地区采取负面清单试点，以及进一步放开一般制造业的外资准入限制所作的大量工作表示赞赏。然而，目前在几个重要制造业部门（如中低速船舶柴油机和曲柄轴）依然禁止外商投资企业（外资企业）设立外商独资企业或实现外资控股。上述限制政策制约了外资企业为中国机械制造行业的整体发展贡献力量的能力。中国美国商会建议中国政府对中资外资企业执行统一的投资标准，并促请美中两国政府加快双边投资协定中这一领域的谈判。

机械制造业

我们相信严格实施上述排放标准对实现所有制造业企业进行公平竞争环境和改善空气质量这两项目标具有重大意义。中国美国商会促请中国政府采取切实措施，确保所有行业主体都遵守上述排放标准。

在过去的四年中，中国的工程机械行业产能过剩，导致库存居高不下、现金流短缺以及应收账款数量巨大。两年前，中国出台了“一带一路”战略，为工程机械制造企业带来了诸多机遇。不过中国美国商会依然担心中国政府可能会优先照顾国内工程承包商、工程机械制造商和金融机构。中国美国商会建议中国政府采取透明且市场化的实施前述战略。

清洁能源机械

高效的燃气分布式能源热电联产系统（DE和CHP）能够在实现节能减排、推进循环经济等方面发挥重要作用。中国美国商会长期支持中国大力发展能源效率和排放问题，并于2015年11月发改委宣布降低非居用天然气门站价格的决定表示欢迎。

中国美国商会建议中国政府在工业和商业领域重点发展中小型（低于50兆瓦）和多机组分布式能源热电联产系统，以确保系统运行具有高度的可靠性和效率（年平均70%以上）。与此同时，中国美国商会希望中国尽快制定分布式能源热电联产系统的电网接入管理条例，加大对地方公用水事业企业的支持。上述条例应当鼓励中央和地方政府通过各种激励措施促进分布式能源热电联产系统的部署，包括但不限于较低的燃气价格、税收减免、低息贷款及/或项目启动资本补贴等措施。中国美国商会建议中国在煤改气锅炉改造过程中，推动燃气分布式能源热电联产系统，从而在全国范围内有效地减少雾霾。

再制造产业

2009年1月出台的《循环经济促进法》是中国再制造产业发展的一个重要里程碑。“中国制造2025”规划中提
through increased support from local utility companies. Such regulations should encourage both the central and local governments to provide incentives including, but not limited to, lower gas prices, tax credits, low interest loans, and/or subsidization of a project’s first capital cost to promote DE and CHP deployment. We recommend that the Chinese government promote gas-fired DE and CHP applications in coal-to-gas boiler replacement initiatives as one of the most effective technologies to reduce smog throughout China.

**Remanufacturing**

Promulgation of the “Circular Economy Promotion Law” in January 2009 was an important milestone for the development of China’s remanufacturing industry. China’s “Made in China 2025” plan indicates further promotion of the remanufacturing industry, including introduction of high-end manufacturing and intelligent remanufacturing and the healthy development of the industry.

AmCham China is encouraged by improvements made to the management system of the remanufacturing industry in 2015. To ensure the healthy and rapid development of this emerging industry in China, we recommend that the Chinese government clarify and align the definition of remanufacturing among different ministries, specify that remanufactured finished goods (RFG) are not used goods, allow the free flow of core (material that is to be remanufactured) across borders, and join the Asia-Pacific Economic Cooperation Pathfinder for Remanufacturing, alongside most other economies in the region.

**Mining**

China’s coal mining industry faced many difficulties in 2015 due to severe excess capacity and profit losses. AmCham China welcomes Chinese government efforts to consolidate the industry and improve safety by raising the technological and operational standards of the domestic mining industry.

Embracing mechanization and international best practices will help create a safer, more efficient, and more sustainable industry. Foreign-invested machinery manufacturers have valuable experience in providing safe, high-quality, and advanced technology. Closer cooperation among international and domestic players could further improve mine safety, efficiency, and sustainability.

Methane explosions are a major hazard for coal mining and methane is also a major contributor to global climate change. According to the Ministry of Land and Resources, China ranks third internationally in coal bed methane and coal mining methane (CBM/CMM) resources contained in coal field depths above 2,000 meters. AmCham China applauds the 2007 Chinese government policy to subsidize CBM/CMM drainage and utilization at a rate of US $0.03/m³ (RMB 0.2/m³). Power generation is an ideal means of utilizing CBM/CMM. However, considering the high cost of CBM/CMM drainage and production, we recommend that the Chinese government consider further reform of subsidies to improve mine safety and reduce the environmental impact.

**Financial Leasing of Equipment**

Financial leasing services resolve funding issues and improve customer access to expensive equipment for business expansion. The penetration rate of financial leasing for equipment purchasing in developed countries ranges from 15 to 30 percent, while China’s rate remains below five percent.

Credit histories are vital to screen potential renters. AmCham China applauds the 2015 issuance by the People’s Bank of China of the “Notice Regarding the Adjustment of the Process for Accessing the Company Credit Reporting System,” enabling financial leasing companies to access its Credit Reporting System. However, not all cities have taken substantive measures to implement this policy. Additionally, financial leasing companies cannot receive tax credits for their loss reserves, which is a common practice in developed countries. AmCham China recommends that the Chinese government ensure financial leasing companies are able to access the Credit Reporting System and allow them to enjoy tax credits for their loss reserves.

**Recent Developments**

**“Made in China 2025”**

In March 2015, Premier Li Keqiang announced the “Made in China 2025” initiative, the plan for which was issued by the State Council in May. This program seeks to remake Chinese manufacturing by reducing labor-intensive production in favor of high-tech machinery and goods. China aims to increase innovation and manufacturing efficiency to achieve basic industrialization by 2025, become an intermediate manufacturing powerhouse with full industrialization by 2035, and become a global leader in manufacturing by 2049.

According to the plan, China intends to raise the domestic content of core components and materials to 40 percent by 2020 and 70 percent by 2025. The plan also calls for a strengthening of intellectual property (IP) rights protection for small and medium-sized enterprises, more effective use of IP in business strategy, and allowing firms to self-declare their own technology standards to help them better participate in international standards setting. Specific details of how China intends to reach these targets are unclear, as is how FIEs – particularly those that are developing and producing goods and products in China for China – will be able to participate in this plan and its sub-programs.

Given the existence of numerous indigenous innovation policies mandated by the central government, our members are
出要进一步促进再制造产业的发展，包括引入高端制造业和智能化再制造，并促进该行业的健康发展。

2015年，中国制造2025规划，并于同年5月，由国务院正式公布该规划。这项规划旨在改革中国制造业，降低劳动密集型制造业，重点扶持高科技机械和产品。中国的目标是提升创新能力，到2025年实现基本工业化，到2035年制造业整体达到世界制造强国阵营中等水平，到2049年综合实力进入世界制造强国前列。

根据上述战略规划，中国提出到2020年和2025年，分别有40%和70%的核心基础零部件和关键基础材料实现自主保障。该规划还提出要继续加强中小企业知识产权保护，在企业战略中更有效地使用知识产权，允许企业自主申报自有技术标准，以帮助他们更好地参与国际标准制定。目前，有关中国将如何实现上述目标的具体细节尚不清楚，而外资企业，特别是在华外资企业，如何参与到上述规划及其相关子项目也尚不明确。

鉴于中国中央政府已经颁布了众多自主创新政策，我们的会员企业担心上述政策将会被用于扶持内资企业，并执行产业政策为由，迫使外资企业错失部分机会。目前，外资企业已经成为中国经济不可分割的一部分。根据商务部的数据，外资企业为中国分别贡献了五分之一的贸易额和四分之一的工业产值。中国美国商会建议中国政府在执行该项政策时，能够对所有产业主体一视同仁，提供同等的机会。如此中国方能顺利实现成功转型，跻身制造业强国行列。

最新进展

中国制造业

2015年3月，李克强总理宣布中国将推出“中国制造业2025”规划，并于同年5月，由国务院正式公布该规划。这项规划旨在改革中国制造业，降低劳动密集型制造业，重点扶持高科技机械和产品。中国的目标是提升创新能力，到2025年实现基本工业化，到2035年制造业整体达到世界制造强国阵营中等水平，到2049年综合实力进入世界制造强国行列。

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设备融资租赁

融资租赁服务能够为扩大生产的企业解决资金难题，并帮助他们获得昂贵的设备。发达国家市场上购买设备用于融资租赁的比例约为15%~30%，而在中国，这一比例却在5%以下。

出要进一步促进再制造产业的发展，包括引入高端制造业和智能化再制造，并促进该行业的健康发展。

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concerned that this policy will be used to support domestic companies and that FIEs will be excluded from some opportunities as an exercise of industrial policy. Considering that FIEs have become an integral part of China’s economy and, according to MOFCOM, are responsible for one-half of China’s trade and one-quarter of China’s industrial output, we recommend that the Chinese government provide all industry players with the same opportunities when implementing this policy. Only by doing so will China be able to attain its manufacturing aspirations.

Recommendations

For the Chinese Government:

• Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.

• Encourage development of small/medium-sized and multiple-unit DE and CHP systems in industrial and commercial areas with high system efficiency.

• Allow the free flow of core and RFG across borders and confirm that remanufactured products may follow the same technical standards as original new products.

• Encourage mechanization of coal mining and further improve subsidies for CBM/CMM drainage and utilization to improve mining safety, efficiency, and sustainability.

• Ensure transparent, open, and nationwide access to the PBOC’s Credit Reporting System.


建议

对中国政府：

- 取消对外资企业投资机械制造产业的限制，给与内外资企业同等待遇。
- 鼓励在工业区和商业区发展高效的中小型和多机组分布式能源热电联产系统。
- 允许毛坯和再制造成品的自由跨境流通，确保再制造产品的技术标准与新产品保持一致。
- 鼓励实现煤矿开采机械化，进一步提高对煤层气/煤矿瓦斯抽采使用的补贴水平，提升煤矿安全、开采的效率和可持续性。
- 保障全国范围内的企业，都能公开、透明地接入人民银行征信系统。
Media and Entertainment

Introduction

The media and entertainment industry plays an increasingly important role in China, providing information to Chinese citizens and meeting their demand for world-class entertainment and cultural activities. As China’s international footprint grows, this industry will play an increasingly prominent role in the development of China’s global image, reputation, culture, and economy.

While some positive developments for the industry were instituted in China’s pilot free trade zones in 2015 – including relaxation of restrictions on performances brokerages, entertainment venues, and the making and sales of gaming consoles, which were recently extended nationwide – censorship and other restrictions threaten to undermine China’s efforts to promote cultural and artistic development. China’s rich heritage of excellence in entertainment and the arts can best be perpetuated and brought to international attention by fostering initiatives that educate, regulate, and reinforce the commercial value of creative works, while emphasizing the need to protect intellectual property rights (IPR).

Ongoing Regulatory Issues

Cross-Sector Issues

Piracy

AmCham China applauds the progress in legislation and enforcement of IPR and the establishment of intellectual property (IP) courts, as discussed in the IPR chapter. However, for the media and entertainment industry, IP violations remain significant, as evidenced by the huge market for pirated products and content, both on- and offline. Despite these problems, there is a growing trend in favor of legitimate consumption of properly licensed content online, especially online television content. This is driven, at least in part, by improvements in IPR protection.

Occasional enforcement campaigns demonstrate that authorities have the ability to disrupt illegal channels, but organized piracy continues. Despite current Internet controls, it is still possible to illegally download music, images, and even whole television programs and films through Chinese search engines.

AmCham China encourages the Chinese government to build on the progress made in the protection of online television content by continuing to strengthen IPR enforcement, increase damage awards, and fight Internet piracy by requiring all online platforms to protect IPR and assist in enforcement efforts.

Censorship

The Chinese government argues that censorship and other restrictions on media and entertainment are necessary because of their cultural impact. However, it appears that censorship is also often used to restrict market access for foreign television programming, music, and films, which has the undesirable side effect of fostering piracy.

Censorship policies routinely delay film, television, and music entry into the Chinese market, creating an environment in which pirated products can thrive. For example, legitimate DVD/Blu-Ray film discs require censorship approval by the State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT), which takes at least one month. Meanwhile, pirated DVDs appear within a few days of their initial foreign release, stealing the market from legitimate businesses. In effect, such censorship only encourages piracy while unsuccessfully protecting the Chinese market from competition, undermining the sector’s profitability and inhibiting its ability to create new entertainment and cultural works.

Additionally, censorship of the Internet through website blockages and technical bottlenecks disadvantages both international and Chinese media and entertainment companies. Foreign companies are forced to base servers and information systems offshore, and many foreign and large Chinese companies must utilize virtual private networks in order to access information necessary to conduct business. This raises costs and affects investment decisions by foreign companies. Meanwhile, small Chinese operators and end-users suffer a competitive disadvantage because they cannot access vital information and content in a timely fashion. According to AmCham China’s 2016 Business Climate...
引言

媒体与娱乐业在中国扮演着越来越重要的角色，为中国公民提供信息，满足其对世界级娱乐和文化活动的需求。随着中国国际影响力不断扩大，媒体与娱乐业将对中国的全球形象、声誉、文化影响力和经济产生重要影响。

2015年，中国自由贸易实验区在促进媒体与娱乐行业发展方面取得了长足的进步，自贸区放宽了对演出经纪、娱乐场所和游戏机、游艺机生产及销售三个领域的外商投资限制，并推行至全国各地。然而中国依然存在审查制度和其他限制，有可能削弱中国在促进文艺事业发展上的努力。中国应采取积极举措来宣传、规范并增强创意作品的商业价值，并强调知识产权保护的重要性，从而更好地保护中国丰富而优秀的娱乐与艺术传统，吸引国际社会的关注。

现存监管问题

跨行业问题

盗版

正如“知识产权”一章所述，中国美国商会对中国在知识产权立法和执法方面取得的进步以及设立知识产权法院的做法表示赞赏。但是，媒体与娱乐行业的知识产权侵权问题仍然非常严重，线上与线下盗版产品与内容所拥有的庞大市场就是明证。虽然存在这些问题，中国合法消费正版网络内容的趋势仍日趋明显，特别是网络电视内容。这种趋势至少在一定程度上是由知识产权保护推动的。

不时开展的知识产权执法行动表明当局有能力阻断非法渠道，但有组织的盗版行为仍在继续。尽管中国政府对互联网进行了管控，用户仍可通过中国搜索引擎非法下载音乐、图片甚至完整的电视节目与电影。中国政府在保护网络电视内容方面取得了一定成就，中国美国商会建议中国应在此之上继续加强知识产权执法、提高损害赔偿金、要求所有在线平台保护知识产权、协助执法行动，以对抗互联网盗版行为。

审查制度

中国政府表示，考虑到媒体和娱乐行业的文化影响力，有必要对其设立审查制度和其他限制制度。然而，审查制度似乎也经常用于限制外国电视节目、音乐和电影进入中国市场，这样做助长了盗版活动，是中美双方不愿意看到的。

审查政策通常会推迟电影、电视和音乐作品进入中国市场，造成盗版产品肆虐。例如，合法的DVD/蓝光电影光碟需要通过国家新闻出版广电总局的审批，审批过程至少需要一个月。另一方面，盗版DVD在几天之内就会出现在市场上，盗取合法产品的市场。实际上，这种审查制度只会助长盗版气焰，并不能在竞争中保护中国市场，且降低了娱乐业的利润率，限制了从业者创造新的娱乐与文化作品的能力。

此外，通过关停网站和技术瓶颈对互联网进行审查的行为使国际和国内的媒体与娱乐业受到不利影响。外国公司被迫将服务器和信息系统移至国外，许多外国公司和中国大公司需要通过虚拟专用网络才能访问所需信息。这提高了成本，也成为阻碍外资企业投资中国市场的一个因素。另一方面，小型中国运营商和终端客户因无法及时获取重要信息与内容而处于不利的地位。2016年度《商务环境调查报告》指出，79%的受访者认为互联网审查制度对其在华业务造成了不同程度的影响。

缺乏监管透明度与执法力度

中国有多个政府部门表示其拥有监管媒体、娱乐与文化业的权利，多项法律法规也对这个行业实施监管与市场准入限制。监管权责与法规不明确以及执法不一致不仅影响了
Survey Report, 79 percent of respondents report that Internet censorship negatively or somewhat negatively impacts their ability to conduct business normally in China.

**Lack of Regulatory Clarity and Enforcement**

Many Chinese government agencies claim a role in regulating media, entertainment, and culture, and a wide variety of laws and regulations place regulatory and market access restrictions on the industry. Lack of clarity about these various roles, on the regulations themselves, and their inconsistent enforcement, inhibits the development of the media and entertainment industry in China. Moreover, as the Ministry of Culture (MOC), SAPPRFT, and other regulators issue conflicting proclamations in a battle for oversight, the lucrative trade in online piracy continues.

Vague and inconsistent regulations complicate the planning and implementation of business initiatives. In addition, outdated regulations fail to take into account the rapid development of Internet and wireless technology, leaving vast areas of online content and service offerings to operate under uncertainty. Unclear regulations and inconsistent investment approval processes also cause China to lag far behind international standards, particularly in the retail distribution of books and periodicals.

AmCham China recommends that the relevant regulatory agencies, including the Ministry of Industry and Information Technology (MIIT), SAPPRFT, MOC, and State Council Information Office (SCIO), establish clearer lines of authority as well as transparent regulatory drafting processes that allow for public comment at an early stage, with at least 30 days notice as China has repeatedly committed at the highest levels. In addition, we recommend expediting approval processes for foreign participation and investment in the Chinese media and entertainment market.

**Sector-Specific Issues**

**Film**

Non-market barriers continue to hinder the film industry. The number of films that can be imported on a revenue-sharing basis is limited to 34 a year, of which 14 must be enhanced format (e.g., 3D, IMAX). An additional 30 foreign films are permitted per year on a low, flat-fee, or “buy-out” basis. China also maintains an import and distribution duopoly, managed by the SAPPRFT and China Film Group, which dictates what films may be imported and when they may be released.

During President Xi’s US state visit in September 2015, a long-form version of a 2012 bilateral agreement between the US and China allowing the import of the aforementioned enhanced format films was negotiated and will enter effect in 2016. The revised agreement clarifies, among other things, that studios’ 25 percent share of box office revenue is to be calculated on an after-tax basis and that studios may audit the financial records of their Chinese distributors. The Independent Film and Television Alliance argues that China has not complied with the original 2012 agreement, as private companies that could compete with the China Film Group have not been issued film distribution licenses.

In 2012, China became the second largest box office in the world and, by 2013, the country’s box office was US $3.6 billion (RMB 22 billion). According to the Motion Picture Association of America, as of September 2015, China’s box office was US $4.8 billion (RMB 30.73 billion), equal to all of 2014. According to the China Research Institute of Film Science and Technology, there were approximately 29,000 movie screens in China in late 2015. Considering such growth, an effective distribution system and antipiracy control measures will be central to the commercial viability of new venues.

Increased distribution of foreign films, without market manipulation or arbitrary blackout periods, combined with a robust campaign to curb piracy, would benefit the domestic industry by building market demand for quality entertainment products. It would also increase the importance of the Chinese audience within the overall international market, encouraging foreign filmmakers to cater to this audience.

**Television**

Non-market mechanisms severely restrict foreign television content in China. The government effectively prohibits Chinese cable operators from carrying foreign channels, limiting such channels to hotels and residential compounds where a high percentage of foreigners live. Meanwhile, imported content is barred from Chinese stations during prime timeslots, with additional restrictions and quotas making it difficult for those in China to watch international content. At the same time, foreign channels are required to assist China Central Television with access to their home markets.

In October 2014, SAPPRFT announced restrictions on foreign content on Chinese streaming sites. Foreign content must be registered and is restricted to 30 percent of each streaming site’s total offerings. Since early 2015, US content has been limited to 40 percent of the 30 percent quota for all foreign content, effectively limiting streamed US content to 12 percent of all streamed content. Furthermore, entire series must be submitted for approval before a single episode can be made available.

In November 2015, SAPPRFT banned certain set-top boxes and streaming applications that are downloaded and installed on smart TV boxes and allow access to foreign content at prices cheaper than those charged by cable providers. Under the ban, smart box manufacturers must now apply to authorized state-owned enterprises before allowing distribution of content (including audiobooks, audio, radio, TV, and sports) in this way. Additionally, restrictions regarding distribution of foreign television content via
中国媒体与娱乐业的发展。此外，在中外交文化、国家新闻出版广电局和其他监管机构发布互相矛盾的公告以争夺监管权的同时，利润丰厚的网络盗版行为亦在继续。

模糊而不统一的规管使业务的规划与实施变得复杂。同时，过时的法规没有考虑到互联网与无线技术的迅速发展，使大量网络内容和服务产品的运营缺乏明确的指导原则。监管不明确与投资审批不统一也使中国远远落后于国际标准，特别是在书籍与期刊的零售发行方面。

中国美国商会建议相关部门，包括工业和信息化部、国家新闻出版广电局、文化部、国务院新闻办公室明确权责和公开监管法规制定流程，允许政策制订初期接受公众意见，并且保证中国高层多次承诺的30天以上公示期。此外，我们还建议加快外资企业参与及投资中国媒体与娱乐市场的审批流程。

**行业特定问题**

**电影**

有些非市场因素也阻碍了电影产业的发展。每年可以进行票房分账的进口电影数量限定34部，其中14部必须为“全新格式”电影（比如3D电影和巨幕电影），另有30部国外电影可以较低的固定价格或“买断”（buy-out）价格引进。在中国，电影的进口与发行市场仍是两家独大，国家新闻出版广电总局和中国电影集团可决定进口哪些电影以及何时放映。

2015年9月，习近平主席访美之时，美中代表团就2012年双边协议的详尽版本加以商议，这一协议允许进口上述“全新格式”电影，并将于2016年生效。修订后的协议指出，首先，美方票房收入的分账比例是25%，应按照税后基准计算，美方制片厂可以审计中方电影发行商的财务记录。独立电影电视联盟表示，美方未能遵守原有的2012年《中美电影协议》，因为美方一些有能力与中国电影集团竞争的公司未能取得电影发行经营许可证。

2012年，中国成为全球第二大电影票房国，到2013年，中国的电影票房已达到36亿美元（折合220亿人民币）。美国电影协会（Motion Picture Association of America）称，中国电影在2015年9月的票房是48亿美元（折合307.3亿人民币）相当于2014年全年的票房收入。中国电影科学技术研究所表示，2015年末，中国电影银幕总数约达29,000块。鉴于如此可观的增长，高效发行制度和反盗版措施将是实现新建影院商业可行性的关键因素。

杜绝市场操控或随意规定禁发期外，外国电影发行量将会增加，加之高制造版的有效行动，将激发优质娱乐产品的市场需求，使国内媒体与娱乐业受益，同时还将提高中国观众在国际市场上的影响力，促使外国电影制作者迎合中国观众的需求。

**电视**

非市场机制严重阻碍了外国电视内容进入中国。中国政府禁止中国有限电视运营商引入外国频道，只限在外人居住比例较大的酒店和住宅区播放此类频道。此外，中国的电视台不需在黄金时段播放境外电视剧，另外还有其他限制和配额要求存在，使中国观众很难收看到国外节目，而外国频道则被要求协助中国中央电视台进入其本土市场。

2014年10月，国家新闻出版广电局宣布限制境外电视剧在中国的视频网站播放。境外片必须登记，并且数量不得超过各网站播出总数的30%。从2015年初开始，每部剧集仅能占到全部境外剧总数的40%。这一限制相当于限制每部境外剧集数目的12%。此外，在所有季度的每部剧集送审批准之前，中国网站不能播出任何一集。

2015年11月，广电总局发布禁令限制在智能电视上安装某些牌子的机顶盒或者安装某些视频应用软件，这些机顶盒可以播放境外电视剧，收取价格比有线电视运营商便宜。按禁令规定，机顶盒生产商必须向官方授权的国有企业申请审核，审核内容包括有声书、音视频、电视节目以及体育节目，除此之外，通过卫星电视频道播放境外电视剧也有相关限制，此前的《白皮书》都有提及，这一点仍令人担忧。

与电影市场类似，实际上，监管与审查制度未能阻止中国观众获得国际电视内容，因此非市场化机制只会助长盗版行为。

中国美国商会建议中国政府大幅减少对外国电视节目的配额限制，同时公布详细监管法规来规范国内电视与外国内容制作商的合作与协作。这样做有助于通过监管透明和相互合作促进行业竞争，使中国观众看到更多优质电视节目。

**现场娱乐**

由于缺乏透明度、过度监管、官僚主义以及其他抑制行业增长的管制措施存在，现场娱乐市场的准入仍然受限。
satellite television channels as discussed in previous White Paper editions remain a concern.

Since regulation and censorship do not actually prevent the Chinese people from obtaining international television content, as with film, the effect of non-market mechanisms is simply to foster piracy.

AmCham China recommends that the Chinese government sharply reduce quotas and restrictions on foreign television content, as well as publish detailed regulations on domestic television partnerships and collaborations with foreign content producers. This would ensure a competitive industry driven by transparency and mutual cooperation, and increase the quality of aired programming for the benefit of the Chinese public.

**Live Entertainment**

Market access for live entertainment continues to be restricted by a lack of transparency, excessive regulation and bureaucracy, and other restrictive practices that stifle industry growth. For example, live events require a license or piwen (批文) in advance. This process requires submission of information, such as event crew and support staff rosters, not typically available until a show is nearly ready to open. No reason is given when a license application is rejected. Providing an official explanation for rejected piwen applications would be very helpful to managers, artists, and agents for future planning.

Additionally, until a piwen is approved, ticket sales cannot be advertised or marketed. As a result, the customary international practice of selling shows as a package is rendered virtually impossible, and chances to acquire corporate sponsorships that require budgeting in advance are diminished.

After the piwen is approved, visa-granting officials must receive a notification letter based on the same event crew and performer names submitted for the piwen request. However, most international tour promoters do not know which contracted personnel will visit China more than one month prior to the show opening, let alone six to nine months in advance when the piwen is requested. As a result, tour promoters are forced to seek exceptions and crisis-management in order to obtain necessary visas.

Touring personnel are also required to obtain a “commercial performance” work visa, which must then be converted into a year-long residence permit. This is despite the fact that most tours remain in China for less than three months. This visa requires a local performance permit, issued by the municipal cultural bureau, and a letter of invitation for a commercial performance, issued by the local municipal foreign affairs office. Foreign-owned companies are currently not allowed to directly apply for commercial performance permits from Cultural Bureaus in China, but rather must work with local companies that have this capability.

Lack of transparency in the Public Security Bureau’s (PSB) policies regarding the provision of security at live events also constitutes a barrier. For any given event, it is not clear what the scope of the PSB’s role or the fees it charges will be as they are unpublished. Meanwhile, the number of seats set aside for security purposes usually exceed the number of security personnel attending the event, and the number of seats required varies without explanation. Such practices reduce the selling capacity of an event, while the set-aside tickets in a form of corruption often find their way to scalpers who sell them at a discount, driving consumers away from legitimate sales channels and undermining the commercial viability of the event.

The lack of transparency and clear guidelines regarding the piwen, compounded by other issues from security to visas, deter world-class performers from coming to China. AmCham China urges the Chinese government to streamline and clarify relevant procedures and regulations, not only for the benefit of live entertainment venues, producers, and artists, but also for the overall benefit of China’s cultural industry.

**Music**

Important sources of income generally available for those in the music industry in the West, such as royalties from the sale, public performance, and broadcast of music, remain mostly unavailable in China. Weak copyright protection and enforcement in China fosters an environment in which consumers are less willing to pay for music downloads. Additionally, the limited availability of legitimate download sources and the unwillingness of Chinese broadcasters to pay music royalties weaken potential sources of income. To the extent that music downloads generate income at all, that income is often merely a function of money spent on advertising on the platform from which the download occurs.

Continuing restrictions on international record companies that want to make and sell music in China also foster piracy and hinder the development of China’s own music industry. The presence of US companies would bring jobs and expertise, leading to market growth and development of locally produced music, as has happened in other nations. In addition, it would allow domestic musical artists to acquire international contacts, which would lead to more opportunities for China to expand its cultural footprint abroad.

AmCham China urges the Chinese government to permit foreign sound recording companies to invest and operate in all facets of the music business in the same manner as Chinese companies. This includes the right and ability to sign artists and to record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.
例如，举办现场活动需要提前获得许可或批文。这个过程需要主办方提交相关信息，比如活动工作人员和协助人员名册，而此类信息往往在活动开始前才会到位。监管机构拒绝发放许可并不提供拒绝理由。如能提供拒绝发放批文的官方解释，将有助于经理人、艺术家和中介机构更好地规划未来活动。

此外，在获得批文之前，活动主办方不得开展售票宣传活动。因此，作为国际惯例的整套销售展示活动几乎不可能开展，也就减少了获得企业赞助（需要提前预算）的机会。

获得批文后，活动主办方需向发放签证的官员发送通知书，列出与批文中相同的工作人员和演员姓名。然而，多数主办方在表演开始一个月前仍不能获取准确的访华人员名单，而申请批文时距活动尚有六至九个月。因此，为了获得签证，主办方被迫采取例外措施和危机管理措施。

除此之外，外国演员还需取得“商业表演签证”，该签证属于工作签证，访华人员必须将其工作签证转换为一年居住许可证。而实际上多数访华人员在华逗留时间不足三个月，申请工作签证需要准备由市或省级文化当局发放的本地表演许可和由市级外事办公室发放的商业表演邀请信。外国公司目前无法直接向中国文化当局申请商业表演许可，必须与具备该项能力的本地公司合作。

公安局为现场活动提供安保的政策缺乏透明度，这也为活动举办造成了一定困难。公安局对特定活动的职责范围及收费情况并不公开。此外，为安保人员提供的摊座往往超过参加活动的安保人员实际数量。安保人员数量的座数量经常加不准确的访华人员名单，而申请批文时距活动尚有六至九个月。因此，为了获得签证，主办方被迫采取例外措施和危机管理措施。

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音乐

西方音乐界的常见主要收入来源包括销售版税、公开表演与音乐广播，而在中国，此类渠道大多无法为音乐界带来收入。由于中国知识产权保护不力、执法不力，导致中国消费者不愿付费下载音乐。除此之外，合法下载资源有限以及中国广播商不愿支付音乐版税这两点原因也导致收入来源减少。即使音乐广播能够带来收入，这种收入也通常来源于音乐下载平台的广告收入。

国际唱片公司想要在中国制作和销售音乐，却面临多重限制。此次也阻碍了中国本土音乐产业的发展。美国公司不仅可为中国带来工作岗位和专业技能，还可拉动经济增长，促进本土音乐发展。这在其他国家已经成为现实。此外，国际唱片公司进驻中国可以将本土音乐家推向国际，为中国海外文化推广创造更多机会。

中国美国商会敦促中国政府允许外国音乐制作公司与中国公司相同的方式投资并运营中国音乐业务，包括签约艺人、录制、制作、和推广音乐作品、以及通过实体形式或借助互联网与移动平台发行音乐作品。

新闻媒体

中国政府为提高信息可用性开展了一些工作，但就提高在中国开展工作所需要的透明度而言，政府仍在不断增加障碍。

不过，中国仍存在多种障碍影响外国新闻机构记者收集有关中国商业环境的重要信息。2014 年《外国记者在中国工作条件意见书》（Position Paper on Working Conditions for Foreign Correspondents in China）中，驻华外国记者俱乐部提出的一个重要问题是：中国政府将已经公之于众的信息武断地划分为“国家机密”。这种做法使在官方发布日期之前公布经济信息的新闻机构受到威胁。虽然这些信息已经在公共活动中被公开讨论。尽管对于小型或非敏感型主题，向中国政府获取信息也非常困难。多数相关官员对记者避而不见，大部分政府部门对新闻界的质询反应迟缓。政府机构或相关组织的代表经常对外国媒体区别对待、对外国媒体隐瞒数据，禁止其参加新闻活动、出于以上及其他原因，海外投资者和公司通常很难获得有关中国的可靠信息，加大了他们在中
News Media

While the Chinese government has made some progress in increasing access to information, it continues to erect barriers preventing the kind of transparency necessary to do business in China.

Moreover, numerous obstacles hinder the ability of foreign news journalists to gather information critical to understanding the business environment in China. In its 2014 “Position Paper on Working Conditions for Foreign Correspondents in China,” the Foreign Correspondents’ Club of China cites as a chief concern the apparently arbitrary classification of previously public information as a “state secret.” This practice has led to threats against news agencies that have released economic information ahead of its official publication date, even if that information had been openly discussed at a public event. Even on topics of little or no sensitivity, obtaining information from the Chinese government is unnecessarily difficult. Most officials of interest remain unavailable, and ministries in general are slow and unresponsive to inquiries. Representatives of government agencies or affiliated organizations often discriminate against foreign media, withholding data and denying access to press events. For these and other reasons, it is often difficult for overseas investors and companies to get reliable information about China, making it more risky to do business here.

It has also become increasingly difficult for foreign news providers to do business in China. Over the last three years, it has become clear that foreign media companies will only be allowed to expand into this market if they play by the Chinese government’s rules on what stories to cover, and what not to cover. The English language websites of multiple foreign news providers continued to be blocked in China in 2015, and Chinese authorities appeared to target entire news organizations for intimidation and punishment, especially after investigative reporting on so-called “sensitive” topics.

AmCham China urges that foreign news agencies and journalists not be targeted, intimidated, or excluded in their efforts to provide potential investors with the information needed to conduct business in China.

Recommendations

For the Chinese Government:

• Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Increase and then remove all quotas for foreign films.

• Abolish the new restrictions on the streaming of foreign television content, eliminate the television quota system, ease restrictions on prime time broadcasts and foreign channels’ market access, and publish detailed regulations for foreign content producers regarding television partnerships and collaborations.

• Fight IP violations in all media and entertainment sectors, and increase judicial damage awards in order to enhance their deterrent capabilities.

• Establish clearer lines of authority among the MIIT, SAPPRFT, MOC, SCIO, and other media and entertainment regulatory agencies, and institute a transparent regulatory drafting process that allows for public comment.

• Reconcile piwen and visa application procedures for live entertainment personnel to support China’s goals of cultural exchange and development, for example by allowing personnel from abroad to enter China on business visas instead of work visas.

• Allow the foreign sound recording industry to sign artists and record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.

• Prevent the targeting, intimidation, and exclusion of foreign news agencies and reporters to enable them to provide investors with the information needed to conduct business in China.
话题进行调查报道之后。

中国美国商会督促中国当局不要针对、威胁、排斥外国新闻机构与记者，从而为潜在投资者提供在中国开展业务所需要的信息。

**建 议**

**对中国政府：**

- 减少各类外国媒体进入中国市场的非关税壁垒，减少外国媒体提供商的市场准入壁垒。增加外国电影的整体配额，并逐渐取消配额限制。

- 取消限制外国电视节目在中国播出的新规定，取消电视配额体系、减少黄金时间播放限制和外国频道进入中国市场的限制，同时公布详细监管法规来规范国内电视与外国内容制作商的合作与协作。

- 在所有媒体与娱乐领域打击知识产权违法行为，提高法定损害赔偿限额，以提高震慑力。

- 明确工业和信息化部、国家新闻出版广电总局、文化部、国务院新闻办公室和其他媒体与娱乐监管机构的职责权限，建立透明的规则起草流程，允许征求公众意见。

- 协调现场娱乐活动参加人员的批文与签证申请流程，为中国实现文化交流与发展目标提供支持，例如允许外国人士持商务签证而非工作签证入境。

- 允许外国音乐行业签约艺人，以及录制、制作、推广音乐作品并通过实体形式与互联网与移动平台发行音乐作品。

- 避免针对、威胁、排斥外国新闻机构与记者，从而为潜在投资者提供在中国开展业务需要的信息。
**Introduction**

In 2015, China’s energy sector focused on oil and gas reform as it prepped for the transition to the 13th Five-Year Plan (FYP) period. A draft version of the industry reform policy was released in October 2015 and the final version is scheduled to be issued in early 2016 (though not yet released at the time of this writing). AmCham China welcomes the achievements already made in several areas. For example, the first public bidding of exploration rights to six oil and gas blocks in Xinjiang was launched in July 2015. This was a major step forward in upstream access which was a key concern outlined in the 2014 White Paper.

Meanwhile, the gas price adjustment in April 2015 simplified the gas pricing structure and promoted direct gas sales from producers to industrial users. The Shanghai Petroleum and Natural Gas Exchange commissioned in July 2015 has further promoted open, transparent, and market-based gas trading and pricing. In addition, China has given more attention to health and safety equipment and anti-pollution measures in the process of economic development, with two important laws coming into effect, namely, the 2014 Production Safety Law and 2015 revised Environmental Protection Law. We are particularly encouraged by the positive regulatory development in the unconventional resources development and downstream sectors. However, many challenges remain that limit foreign investment.

**Ongoing Regulatory Issues**

**Tendering and Bidding Process for Oilfield Service Projects with National Oil Companies**

The primary objectives of China’s 2000 Tendering and Bidding Law is to ensure that the contracting process involving the government or state-owned enterprises is fair, transparent, and consistent with international standards and market practices and that tendering and bidding activities conform to the principles of openness, fairness, impartiality, and good faith. Recently, the National Development and Reform Commission (NDRC), the lead supervisor of tendering and bidding activities, announced a plan, together with six other government agencies, to unify the tendering and bidding process in China and further improve regulation of tendering and bidding activities. AmCham China recommends that the NDRC further strengthen the application of regulations on these activities to ensure a level playing field for all bidders. In practice, the principles of openness, fairness, and impartiality are not strictly followed. For example, not all relevant information is officially disseminated among all bidders, placing foreign-invested enterprises (FIEs) at a disadvantage compared to local suppliers affiliated with tendering companies.

In addition, FIE’s such as international oilfield service providers face the enormous challenge of applying international standards and market practices while contracting with National Oil Companies (NOCs). Some NOCs are unwilling to assume responsibility for extraordinary and catastrophic risks even though this is a prevailing industry practice generally accepted by all international major oil companies (which generate the most profit from the operations and are in a much better position to prevent such losses from occurring in the first place).

Even if international service providers raised deviations to such contract clauses during the standard tendering/bidding process, such deviations would likely be ignored during the contract negotiation stage. Furthermore, it may at times take months to close out a contract as international service providers must comply with their own contracting policies which are based on international industry standards. AmCham China recommends that NOCs improve the speed and fairness of the contracting process in order to encourage international service providers to introduce more cutting-edge technology to the Chinese market which will, in turn, help the NOCs to improve productivity and efficiency in their operations.

**Pricing Mechanisms**

In March 2015, Document No. 9 (“Deepening Reform of the Power Sector”) was released, the first such document related to the power industry to be released since the 2002 Document No. 5 (“Power Industry Reforms”). Document No. 9 seeks to address the challenges that have arisen since 2002, including the inefficient utilization of renewable energy resources, opaque and conflicting pricing mechanisms, and a lack of competition in the generation and transmission and distribution of electricity.
引言
2015 年，中国能源领域为了向“十三五”规划过渡，集中精力进行了油气改革。行业改革政策草案也于 2015 年 10 月公布，最终版本预计将于 2016 年初发布。中国美国商会对在若干领域取得的成就表示欢迎，例如，2015 年 7 月首次对新疆六个油气区块的探矿权进行了公开招标。这是油气产业上游向前推进的重要一步，也是 2014 年《美国企业在中国白皮书》中所关注的一个重点。

与此同时，2015 年 4 月的天然气价格调整也简化了天然气的定价结构，促进了天然气直接由生产商出售给工业用户。上海石油天然气交易中心已于 2015 年 7 月运行，进一步促进了开放、透明、由市场为主导的天然气贸易和定价。此外，在经济发展过程中，中国更加关注健康和安全的设备与防污措施，并有两部重要法律生效，即 2014 年的《安全生产法》和 2015 年的《环境保护法》修订版。非常规资源开发和下游领域的监管有了积极的进展，对此中国美国商会倍感鼓舞。然而，外商投资仍然面临着诸多限制和挑战。

现存监管问题
国有石油企业油田服务项目的招投标流程
中国政府于 2000 年出台《招标投标法》，其首要目标是确保涉及政府或国有企业的承包流程公平、透明，符合国际标准和市场实践。确保招投标活动遵守开放、公平、公正和诚实信用原则。最近，国家发展和改革委员会（国家发改委）——招投标活动的主要监督机关——与其他六个政府机构联合宣布了一项计划，以统一中国的招投标流程，进一步改善招投标活动的监管。中国美国商会建议，国家发改委应进一步加强法律法规在这些活动中的应用，以确保所有投标者公平竞争。实际上，开放、公平和公正的原则并未得到严格遵循，例如，并非所有相关信息都能在所有投标者中正式传播，与附属于招标公司的当地供应商相比，外资企业处于不利地位。

此外，国际油田服务供应商等外资企业与国有石油公司在签订合同时，面临着无数国际标准和市场实践难以应用的挑战。中国美国商会建议，国家发改委应进一步加强法律法规在这些活动中的应用，以确保所有投标者公平竞争。实际上，开放、公平和公正的原则并未得到严格遵循，例如，并非所有相关信息都能在所有投标者中正式传播，与附属于招标公司的当地供应商相比，外资企业处于不利地位。

定价机制
2015 年 3 月，中国政府发布了《关于进一步深化电力体制改革的若干意见（中发〔2015〕9 号文）》（简称九号文件），这是自 2002 年《电力体制改革方案（国发〔2002〕5 号）》（简称五号文件）发布以来，第一次发布涉及电力行业的文件。九号文件力图解决 2002 年以来出现的挑战，包括可再生能源资源利用率低，定价机制模糊且矛盾，发电和市场输配电缺乏竞争。最近，国家发改委规定了上网电价（电网公司从发电厂购电），其规定的电价均有利于（所有国有）电网企业和发电公司。定价缺乏公平意味着中国电力市场的发电业迅速增长，导致目前过度供给，而这恰恰是因为发电公司几乎必然盈利。

九号文件还试图通过实施以市场为导向的改革解决这些问题。主要的变化则是允许用电大户（年用电量超过 1 亿
bution side of the market. Until recently, the on-grid price (for grid companies buying power from generation plants) was set by the NDRC, who set prices that were favorable to the (all state-owned) grid enterprises and generation companies. This lack of fair pricing meant that the generation side of China’s power market grew rapidly, resulting in the current oversupply, as generating companies were almost always guaranteed a profit.

Document No. 9 attempts to solve these problems by implementing market-oriented reforms. The main change has been the allowance of large power users (those whose annual electricity consumption exceeds 100 million kWh) to negotiate directly with generation plants. This system is similar to the bilateral contracts used in the US. However, China’s system is still in its infancy, and lacks some of the measures needed to address issues that commonly arise in freely traded electricity markets. This presents an opportunity for Chinese generating companies to learn from their US counterparts, including regarding use of tools such as financial transmission rights that hedge against risk when delivering energy. We applaud this development as it will allow FIEs to negotiate their electricity price. It will also create a buyer’s market, where market competition among generating companies is given more free-reign.

**Power Generation**

**Coal-fired Power Generation**

While the share of coal in China’s primary energy mix is decreasing, it is still very high, at 66 percent at the end of 2014, about 40 percent above the world average. In late 2015, China released new statistics modifying several key figures for coal released between 2005 and 2013; for example, overall raw coal consumption in 2012 was revised from the originally reported 3.5 billion Mt to 4.1 billion Mt. This shows the need for China to increase the accuracy of its data, as specified in the 2015 US-China Strategic and Economic Dialogue. The key trend for coal in China is the closure of small power stations as larger plants with better technology are being built. Although this practice has been ongoing over the last few years, the current push for supply-side reforms will continue the drive to cut overcapacity in coal mining. However, while China is cutting small coal-fired power plants, it is simultaneously approving the construction of many new coal-fired power plants. From January to November 2015, thermal power stations accounted for about 52 percent of new construction. With the aid of US technology, China is building more ultra-supercritical units, as well as building coal gasification plants to boost natural gas.

On the operational side, AmCham China member companies engaging in coal-related joint ventures (JVs) note challenges posed by the staff quotas and employment targets issued by some local governments. This affects the efficient operation of plants and discourages FIEs from entering this sector.

**Natural Gas**

Natural gas is viewed by the Chinese government as a viable replacement for coal-fired power generation, due to its lower emissions. Gas fired plants are still few in number, although Beijing has commissioned natural gas burning power plants to replace all of its coal power plants by 2016.

AmCham China welcomes pricing reforms for residential gas prices. China’s three step reform process to allow the market to play a role in the city gate gas price formulation was completed in March 2015. The gas price is currently derived from the price of fuel oil and liquified petroleum gas (LPG) as well as a transmission tariff and is adjusted periodically. Although the NDRC issues directives setting the start date for when a new price is to be implemented, it does not specify how long prices will be used, and when they will next be revised. For example, the time difference between the first and second price adjustments was 417 days, while the gap between the second and third revision was 212 days. Additionally, there has been no clarification of the circumstances that prompt a revision of gas prices. This is problematic for both foreign and domestic companies as they have no clear means of understanding pricing.

In terms of industry, power, and space heating (which accounts for over 50 percent of gas demand), changes to the gas pricing system may result in making gas prices more expensive than alternative fuel sources, thereby creating conflict with government goals to increase gas usage. In particular, both oil and coal prices are at recent historic lows, making it hard for gas to compete. One reason for the higher gas price for industrial users is the relatively high level of cross-subsidies, where the lower price for residential users is subsidized by the higher price for industrial users and power generators.

A further issue affecting gas pricing for end-users in the power generation industry is that prices are set by different regulators. The gas price at the end-user side of the distribution chain is set by local governments, while electricity prices are (in part) set by the central government. In China, the three state-owned oil and gas companies dominate natural gas supply. In order to create an efficient natural gas market in China, it is important that private companies have the same rights as state-owned companies in terms of access to natural gas pipelines, LNG facilities, and gas storage facilities. This would have the effect of reducing gas prices.

**Nuclear**

China has 30 nuclear power stations in operation and 21 under construction. A key goal for nuclear power generation is to become self-sufficient. While the big three nuclear utilities are becoming increasingly vertically integrated and can produce 80–95 percent of generation II equipment themselves, the main challenge will be how quickly generation III nuclear equipment can be successfully constructed, and to achieve this China needs the help of foreign companies.
千千瓦时)直接与发电厂谈判。这种体系类似美国使用的双边契约。然而，中国的体系仍然处于婴儿期，缺乏解决电力自由贸易市场中存在问题的措施。中国发电公司则可借此机会学习美国同行的经验，包括诸如抵御能源交付风险的金融服务工具的使用。中国美国商会对这种发展趋势表示赞赏，因为这样一来，外资企业也可以进行电价谈判。这还可以创造出买方市场，发电公司之间的市场竞争也会受到更多的约束。

### 发电

#### 燃煤发电


在运营侧，中国美国商会中参与煤炭合资企业的会员公司也注意到，一些当地政府提出了员工配额和就业目标要求，这会影响工厂的有效运转，阻挠外资企业进入此领域。

#### 天然气

由于排放量低，天然气被中国政府认为是煤炭发电切实可行的替代品。虽然北京已承诺在2016 年年末用燃气发电厂替代所有燃煤发电厂，但是燃气发电厂的建设数量仍然较少。

中国美国商会对居民天然气价格的定价改革表示欢迎。中国的“三步走”改革进程在2015年5月完成，其允许市场在城市天然气价格形成中扮演角色，天然气价格目前仍然由政府制定，但其价格水平在未来几年将逐步市场化。中国政府在 2015 年 3 月完成了多年的改革，其允许市场在城市天然气价格形成中扮演重要角色，天然气价格目前仍然由政府制定，但其价格水平在未来几年将逐步市场化。

中国有30 所核电站正在运行，21 所核电站正在修建。由国家核电公司主导的核电发电的一个重要目标就是能够自给自足。中国三大核电施政者均实现垂一体化，二级核电设备已可实现产能的 80%~95%。现在的直接挑战是如何能够迅速增加用于发电的装置，而要实现这一目标，中国需要外资企业的帮助。

根据中国的《能源发展战略行动计划(2014-2020年)》，中国的主要核电项目将主要集中在沿海地区进行，而在内陆的发展则取决于可行性研究的结果。理论上，外资企业可以采用合资形式开始核电站的建设和管理。然而，实际上，由于核电站的重要性，外资企业在此行业中的角色被限制在提供服务、仪器和设备，以及关键技术。一些中国美国商会会员企业提出的另一个挑战是增加核电行业服务的许可要求，这会影响工厂的有效运转，阻挠外资企业进入此领域。
According to China’s Energy Development Strategy Action Plan 2014-2020, China’s main nuclear construction will take place along the east coast, while inland development depends on the results of feasibility studies. In theory, foreign companies may begin to construct and manage nuclear power plants under a Chinese-dominated JV format. However, in reality, as nuclear power is a strategically important industry, FIEs’ role in this sector is limited to providing services, instruments and equipment, and key technology. Another challenge raised by some AmCham China members is that licensing requirements for performing nuclear services are not transparent. Currently, foreign companies are required to have five years of experience in the Chinese nuclear industry, and related international experience is not always acknowledged. In this context, the best policy to drive nuclear power generation will be to fully ensure that FIEs’ intellectual property (IP) rights are protected, and by creating a transparent licensing procedure for foreign companies. This may at times seem in conflict with China’s aim of upgrading its own domestic nuclear abilities. However, without the help of foreign partners in areas like safety, best practices, knowledge of nuclear power management and operations, and sharing of new technology, China’s nuclear industry will not be able to grow as fast as required to meet the goals for developing non-carbon energy sources.

Foreign Investment

In March 2015, the NDRC published a revised “Guiding Catalogue on Foreign Investment in Industry.” AmCham China was pleased to see that Section IV of the Catalogue vastly expands the scope of foreign investment into the power industry. Construction and operation of some facilities including nuclear power plants and electrical grid networks require a Chinese company to be the controlling investor, while others like new energy power stations (e.g., solar, wind, tidal) do not have these requirements. As the US and China continue to negotiate a Bilateral Investment Treaty, one issue that could be raised alongside the development and sharing of technology, is the issue of ownership in JVs. We recommend that both sides aim to develop a framework in which the Chinese company is not required to be the dominant JV partner in the power generation sector.

Anti-Monopoly Law and IP Issues

A common complaint regarding China’s AML is that solutions often appear designed to advance industrial policy and boost national champions at the expense of FIEs. A clear example of this is the shale gas industry, where many of the best lots in the Sichuan Basin have been auctioned off to the NOCs instead of to private domestic or foreign companies. This has led to slower gas extraction, with some Chinese wells taking 11 months to begin extraction. The benefits of international market entry and competition are clear: in the US, companies need only two to three weeks to begin gas extraction, while US-Chinese JVs require 100 days. Foreign technology licensors also face a range of challenges including IP, restrictions on technology imports, under-reporting of royalties, difficulties with audits, and difficulties with dispute resolution. More information on these issues can be found in the Competition Law and Intellectual Property Rights chapters.

E-documentation in the Mining Sector

Mining companies increasingly transact their shipments electronically across their portfolio of bulk and container commodity exports. AmCham China member companies operate in this way on multiple export routes and on various trade terms, both those secured by documentation/letter of credit and unsecured bilateral trade. However, variations in the documents required by customs officials at major ports around China present a challenge to these electronic transactions. For example, some ports require original bills of lading to support importation transactions; while at other ports a signed and stamped Delivery Order is considered sufficient. We recommend that customs documentary requirements for imported dry bulk commodities be standardized across all ports, with an emphasis on e-documentation. Additionally, incentives should be provided to dry bulk industry participants (particularly the banking industry) to actively shift to electronic transaction practices. Standardized use of e-documentation will reduce costs, benefit the environment through reduced use of paper, reduce the likelihood of manual errors, increase transparency and efficiency, and increase security. Please refer to the Customs chapter for more information on related issues.

Recent Developments

LNG and Energy Importation

Following the October 2015 Fifth Plenum, a twenty page communique was issued to establish the themes and framework for the upcoming 13th FYP. The energy industry expects reforms in the oil and gas sector, based on the FYP theme of greater openness and integration with the global economy. The reform plans are now emerging, as China’s National Energy Administration (NEA) holds sessions to define the required reforms, which could be issued by the NDRC or NEA, and are expected to be released in 2017. The key focus areas of the reforms are expected to include:

- deregulating and opening midstream and downstream functions to additional private Chinese companies;
- opening up oil and liquefied natural gas (LNG) importation to private Chinese companies;
- new regulations for third-party pipeline access;
- natural gas pricing reforms that will allow gas prices to better reflect the supply and demand balance, provide the right investment signals, and enhance gas competitiveness in the marketplace; and
伙伴在安全、最佳实践、核能管理和运营方面的帮助以及在新技术上的分享，中国的核电将无法如此迅速地增长，从而无法满足开发无碳能源的目标。

外商投资

2015年3月，国家发改委发布了《外商投资产业指导目录》（《目录》）修订版。中国美国商会很高兴看到《目录》的第四节极大地扩大了外商投资范围，将其延伸至电力行业。核电站和电网等设施的施工和运营要求是中国公司必须是控股股东，然而新能源（例如太阳能、风能和潮汐能）发电站等并无此类要求。中国和美国仍在进行双边投资协定的谈判，除了技术的开发和共享外，美方还将提供合资企业所有权问题。我们建议，双方应建立“在电力领域合资企业中，中方公司不需要作为主导人”的框架为目标。

《反垄断法》和知识产权

对中国《反垄断法》的常见抱怨是解决方案似乎通常都以牺牲外资企业利益为代价来提升产业政策和促成全国性龙头企业的诞生。页岩气就是明显例子，四川盆地许多非常出色的地块都被拍卖给了国有石油公司，而不是国内私营企业或外资企业。这延迟了天然气的开采，一些中国的天然气井甚至在11个月后才开始开采。进入国际市场和开放竞争的好处非常明显：在美国，公司仅需要两至三周就可以开始开采天然气，而中美合资企业则需要100天。

外国技术许可方还面临着一系列挑战，包括知识产权、技术进口的限制、许可费漏报、审计困难和争议解决困难。有关这些内容的更多信息，请参见竞争法规和知识产权章节。

矿业领域的电子交单

矿业公司越来越多地采用电子交单方式来处理其大宗商品和集装箱货物出口贸易的装运。中国美国商会的会员公司正在各种出口路线和贸易过程中，使用电子交单来进行交易，并通过信用文件/信用证和无抵押双边贸易授信进行担保。然而，中国各大港口海关清关所需文件的差异使电子贸易受到了限制。例如，某些港口需要正本提单方能进口报关，而有些港口则只要求签字盖章的交货单便已足够。我们建议，所有中国港口对进口大宗商品的海关通关文件实现标准化，并采取电子交单这一贸易方式。此外，政府还应为大宗商品行业参与者（尤其是银行业）提供激励政策，鼓励其积极地采用电子交易这种新的交易模式。使用标准化的电子交单可有助降低成本、通过无纸化交易促进环境保护、最大限度的减少人为错误、提高透明度和效率、还改进了安全控制。

最新进展

液化天然气和能源进口

2015年10月召开的五中全会发布了一份二十页的公报，公报中为即将到来的“十三五”规划确立了主题和框架。由于“五年规划”的主题是提高开放程度和全球经济融合，所以能源行业预计将对油气领域进行改革。因为中国国家能源局已召开明确改革内容的会议，所以改革计划的范围正在制定之中，预计由国家发改委和国家能源局于2017年发布。改革的重点领域预计将包括：

- 解除对中下游产业的监管，并对中国其他私营企业开放；
- 向中国私营企业开放石油和液化天然气进口；
- 针对第三方管道准入的新规定；
- 天然气定价改革，允许天然气价格更好地反映供需平衡，提供正确的投资信号，加强天然气的市场竞争；以及
- 对目前上游开采和生产领域实行有限的修改，为中国边缘盆地的私营企业提供额外的使用权。

这些改革可能会增加天然气在中国整体能源结构中的比例，达到2020年10%的目标，为人口密集区域如京津冀一体化地区提供更加清洁的能源。中国美国商会对这些举措表示支持。

虽然外资企业取得石油和液化天然气进口许可受到限制，但监管方面的预期变化将对希望在中国销售能源的美国企业产生积极影响，因为这些变化鼓励竞争，并将扩大石油产品和液化天然气供应的客户群体。此类变化还将对公司在中国的工程设备和技术/工程服务供应商产生积极影响，因为这些服务的市场将扩大，且新公司也可进入能源进口市场。我们相信，外资企业和中国私营企业开放这些形式的能源进口也会有利于中国的发展。

与液化天然气进口紧密相关的还有中国国内天然气市场的监管问题，尤其是第三方运输商的天然气运输机遇和天然气的定价。这些问题对于中国天然气业务的改革至关
Industry-Specific Issues

- Limited modifications to current upstream exploration and production, allowing some additional access to Chinese private companies in marginal basins.

These reforms could increase the penetration of natural gas in China’s overall energy mix to targeted levels of 10 percent by 2020, providing cleaner energy for already populated areas such as the Beijing-Tianjin-Hebei integrated area. AmCham China supports such initiatives.

Although the ability to obtain oil and LNG importation licenses for foreign companies will be limited, the expected changes in the regulations will have a positive effect on US companies looking to sell energy in China, as it encourages competition and expands the customer base for oil products and LNG supplies. Such changes will also have a positive impact on US-based providers of engineered equipment and technical/engineering services as the market for such services expands and new players enter the energy importation market. We believe that it is in China’s best interest to open up importation of these forms of energy supplies to foreign companies as well as private Chinese firms.

Linked closely to LNG importation are the regulatory issues surrounding the Chinese domestic gas market, with specific emphasis on gas transportation opportunities for third party shippers and natural gas pricing. Both of these issues are important to the reformation of the natural gas business in China, and can lead to the supply of greater volumes of natural gas to a greater number of customers at competitive rates. A significant amount of this natural gas, certainly within the coastal provinces, will be supplied by LNG imports. As China evolves its energy markets to a more market-based structure, end-user pricing and transportation tariffs for gas supplies are two critical issues that must be addressed. AmCham China applauds the NDRC and NEA for proactively addressing these pricing and transportation issues as a healthy gas market is dependent upon having transparent gas prices and transportation tariffs that are reactive to market signals.

Clear and consistently enforced regulations are needed in order to achieve the goals of green growth and environmental protection, as outlined in both the Fifth Plenum and the 13th FYP. At present, many regulations regarding petrochemical storage and handling are unclear and applied inconsistently, preventing investors from being able to fully understand the impact of these regulations on their businesses. Project investors, both foreign and Chinese, note that provincial and local regulators often apply personnel, operational, and process safety standards in different ways and with different requirements. Others note that the regulations regarding safe operations and environmental protection are unnecessarily bureaucratic, difficult to understand, or are unnecessarily restrictive. AmCham China recommends that a nationwide regulatory framework be established for the importation of LNG, LPG, petrochemicals, and oil products that ensures personal and environmental safety, while being clear enough for both foreign and Chinese investors to be able to make informed decisions.

Recommendations

For the Chinese Government:

- Strengthen the application of regulations on tendering and bidding activities to ensure a level playing field. [NDRC]
- Improve the speed and fairness of the contracting process.
- Establish a nationwide regulatory framework for the importation of LNG, LPG, petrochemicals, and oil products that assures personal and environmental safety, while being clear enough for investors, both foreign and Chinese, to make informed investment decisions.
- Recognize FIEs’ international expertise when bidding for nuclear service contracts.
- Price pollution into energy prices, making higher polluting fossil fuels more expensive than less polluting alternatives like natural gas and nuclear power.
- Develop a framework where Chinese companies are not required to be the dominant partner in power generation sector JVs.
- Standardize customs documentary requirements for imported dry bulk commodities across all Chinese ports, with an emphasis on e-documentation; provide incentives to dry bulk industry participants to actively shift to electronic transaction practices.
重要，会为更多客户带来数量更大且具有竞争力价格的天然气供应。数量巨大的天然气将通过液化天然气进口供应，但仅限沿海省份。由于中国能源市场已演变地更加以市场为导向，因此对最终用户的定价和天然气供应的运输关税是必须要解决的两个关键问题。由于健康的天然气市场依赖于能够反映市场信号的透明天然气价格和运输关税，所以中国美国商会对国家发改委和国家能源局积极解决这些定价和运输问题表示赞赏。

为了实现五中全会与“十三五”规划中规定的绿色增长和环保目标，中国需要明确且始终如一地落实法规要求。现在，许多涉及石化产品存储和搬运的法规并不明确，应用也并不一致，使得投资者无法充分理解这些法规对企业的影响。项目投资者，无论是国外还是国内，均注意到省级和地方监管机构经常以不同的方式和要求执行员工、运营和过程安全标准。还有企业注意到，有关安全运营和环保的法规是否必要地与监管体系扯上关系，或者出现并无必要的限制。中国美国商会建议，建立确保人身安全和环境保护的液化天然气、液化石油气、石化产品和石油产品进口全国监管框架，同时明确告知对中外投资者的要求，使其能够了解情况，做出合理决定。

**建 议**

**对中国政府：**

- 加强相关法规在招投标活动中的落实，以确保建立公平的市场竞争环境。[国家发改委]
- 加快承包过程，提高公平程度。
- 建立确保人身安全和环境保护的液化天然气、液化石油气、石化产品和石油产品进口全国监管框架，同时明确告知对中外投资者的要求，使其能够了解情况，做出合理决定。
- 在核能服务合同招标中承认外资企业的国际专业知识。
- 在能源价格中加入污染治理费用，使污染更高的化石燃料比污染更低的备选能源（例如天然气和核能）更加昂贵。
- 建立不要求中方公司在发电领域中占据合资企业主导地位的框架。

- 使所有中国港口进口干散货的海关文件要求标准化，并以电子文件为重点，给干散货业从业者提供激励，促使其积极地采用电子交易。
China’s real estate sector was affected in 2015 by slowing economic growth and the fact that China’s investment-led growth model has nearly run its course. Additionally, overcapacity led to diminishing returns on the construction of infrastructure and physical buildings. The Chinese government responded with multiple interest rate cuts to reduce the financing pressures shouldered by highly indebted firms. The housing market benefited from the loosening of some policies, such as the release of more generous mortgage policies to encourage homebuyers to re-enter the market, leading to price growth in tier-one markets.

In the commercial real estate sector, the continued growth of e-commerce put pressure on shopping centers. Chinese consumers increasingly turn to the three “O”s — online, overseas, and outlets — and away from the traditional brick and mortar stores. The focus of physical shopping centers continued to shift away from the sale of clothing and luxury products towards food, entertainment, and children-related goods and services.

In the office market, a growing share of new leasing demands emerged from domestic finance companies. Inefficiencies in the traditional banking sector have led to a rapid expansion of shadow banks and wealth management companies and, in many tier-two markets, peer-to-peer lending firms and other forms of unregulated individual finance services now comprise the primary source of demand for office space. However, the stability of space demand from peer-to-peer lenders is uncertain, as witnessed by the recent failure of the Anhui Yucheng Group. Foreign investment into commercial real estate has become increasingly concentrated in tier-one cities like Beijing and Shanghai as investors turn away from other markets that are viewed as oversupplied and offering limited potential for rental growth.

Foreign investors remain at a disadvantage compared to their domestic competitors. Inconsistent taxation and other transaction costs create uncertainty around financial returns and profitability, which discourage foreign investment in China. Foreign developers often find it difficult to purchase suitable land due to zoning restrictions and unfair land auctions. For example, during land auctions, the price of land may be intentionally “bid-up” by government-backed developers as land sales account for a large percentage of government tax receipts. These measures impede entry of foreign developers and constrain their presence in the market.

With ample capital available from domestic sources, China’s property market does not need the foreign capital itself. However, opening the market to increased foreign competition will help elevate investor sophistication and increase market transparency. For example, standards for property management and other soft skills will improve in the market if more foreign competition is allowed. Transparency of market performance will also increase if foreign-listed vehicles complete more building acquisitions in the market. Long-term advancement of market standards should be encouraged rather than restricting foreign investors due to fears of asset-price inflation. We advise that the policy-making agenda favor promotion of a transparent and equitable market to ensure healthy competition.

China is ranked “semi-transparent” in JLL’s 2014 Global Real Estate Transparency Index, below such countries as Greece, Romania, and Turkey. This annual index has revealed only minimal improvements in China’s transparency scores over the past decade. While growing international investment into
引言

2015年，中国经济增速放缓以及投资拉动式增长模式难以为继等因素影响了中国房地产行业的发展。另外，产能过剩造成基础设施建设和建筑业投资回报率下降。为了应对上述情况，中国政府几次降息以缓解高负债企业的融资压力。国内楼市得益于部分宽松政策的出台，例如旨在鼓励购房者重新进入楼市的优惠贷款政策，导致了一线城市的房价上涨。

在商业地产领域，电子商务的持续增长给购物中心的生存造成压力。越来越多的中国消费者开始三“O”式购物，即网购、海淘和逛奥特莱斯，越来越少去传统实体店铺购物。实体购物中心的重心也从销售服装和奢侈品转向餐饮、娱乐和提供儿童相关商品和服务。

在办公地产方面，本土金融公司的兴起催生了新的租赁需求且占比不断扩大。传统银行业的低效催生影子银行和财富管理公司的快速扩张，在很多二线城市市场上，P2P贷款公司以及其他形式的不受监管的个人金融服务公司如今成为办公空间的主要需求主体。然而P2P借贷公司对办公空间的需求存在不确定性，近期安徽钰诚集团事件即是明证。外资对商业资产的投资日益集中在北京、上海等一线城市，并逐渐撤离那些被认为供大于求、租金增长潜力有限的市场。

现存监管问题和最新进展

外商投资壁垒

2015年9月，中国政府将外商投资企业大型房地产项目的注册资本比例降低至40%。另外，中国政府取消了对个人购买房产数量的限制，但各地限购令依然适用。

在房地产行业，外国投资者与内资同行相比依然处于劣势，标准不统一的税赋以及其他交易成本造成了房地产投资回报和盈利的不确定性，也打击了外商投资中国房地产行业的积极性。分区限制和不公平的土地拍卖程序造成外资房地产开发商很难购买到合适的土地，例如，在土地拍卖过程中，拥有政府背景的开发商往往有意地推高地价，因为土地出让金是地方政府财政收入的重要来源。上述措施影响了外资开发商进入中国市场，限制了他们的市场份额。

由于国内资金充足，中国的房地产市场则不需要国外资本。然而对外开放房地产市场，提高市场竞争力有助于提升投资者成熟度和市场透明度。例如，扩大外资参与房地产市场的深度和广度有助于提升物业管理标准水平和其他软技能。如果海外上市实体能完成更多房产收购也有助于提升市场业绩透明度。长期来看，应鼓励外资参与市场竞争以提高市场标准，不应因担心资产价格飙升而限制外商投资房地产行业。我们建议在制定相关政策时应优先考虑提高市场透明度和公平度，确保市场竞争健康有序。

透明度和监管环境

仲量联行2014年全球房地产市场透明度指数将中国列为“半透明”级，排在希腊、罗马尼亚和土耳其等国家之后。上述年度指数表明，过去10年来中国透明度水平只有略微提升。尽管国际投资不断涌入中国一线城市并提升了市场透明度，但二线城市却未呈现类似进展。中国在房地产交易程序透明度上的得分尤其低，原因在于房地产中介有关售前信息披露和协商惯例等方面的规范依然十分落后。随着信托贷款和影子银行渠道的日益兴起，中国在房地产债务方面的会计核算准确性也让人日渐担忧。另外，相关政策也会促使有政府背景的开发商隐瞒其可能存在问题的房地产投资项目的相关信息。

因此，上述现象可能会造成违约率上升，并促使监管部门采取措施降低道德风险，这些因素会最终促使投资者要求房地产企业披露更加详细透明的信息。我们促请
China’s tier-one cities has led to more transparent markets, tier-two cities have not seen similar advances. China scores especially low in terms of transaction processes as real estate agent standards regarding the disclosure of pre-sale information and negotiation practices remain poor. The accurate accounting of real estate debt is also increasingly concerning due to the onset of trust lending and shadow banking channels. Additionally, real estate investments that may be deemed questionable, principally by government-backed developers, have incentivized the concealment of such information.

Consequently, mounting pressure from rising default rates and attempts by regulators to reduce moral hazard have led investors to demand clearer information. We encourage the Chinese government to make records more readily available to help the market distinguish and understand the performance of key players and associated risks of their investments. We applaud announced plans by the Chinese government to introduce property registry and taxes in 2016. Property taxes will be critical to boosting local tax receipts and reducing reliance on land sales. Additionally, upgraded technology is needed to strengthen the availability of real estate data. For example, online crowdsourcing platforms, such as China’s fang.com, enables real-time transaction data to be easily shared between market participants.

Zoning and urban planning should be better calibrated to actual supply and demand conditions. The old model of building first and letting demand materialize is no longer tenable in the slower-growth environment of the “new normal.” Greater transparency will also enable more informed decisions to be made by developers regarding how much commercial real estate can be built at a profit instead of relying on blind faith as is current practice.

In May 2015, China CITIC Bank International won approval from the China Securities Regulatory Commission (CSRC) to launch China’s first publically traded real estate investment trust (REIT). We applaud this move by the Chinese government, which will allow individual investors greater access to commercial real estate. REITs are important for transparency in real estate as they require the public disclosure of financial statements. We believe that Australia, where a high percentage of built stock is owned by REITs, offers a good model. We recommend that the Chinese government continue to create steps to provide open data systems, encourage REIT structures, and implement a property tax that is consistently enforced nationwide.

Decentralization of Congested Cities

As of 2015, the population of Beijing city proper stood at over 21 million. Service sector job opportunities and high quality public services, such as education and health care, attract residents from all over the country. As a result, Beijing suffers from overcrowding, resulting in poor livability. Decentralization is a mechanism for large-scale cities to mitigate congestion, overcrowding, air pollution, and other urban problems. We encourage further decentralization of China’s major cities as a means to stimulate heavy development of the construction and real estate industry, which is good for GDP growth. We believe that decentralized areas of major cities will enjoy greater demand for lower-cost property than will the small third and fourth-tier cities, which lack large and diversified economic engines.

In 2014, the central government announced the Jing-Jin-Ji regional integration policy, aiming to create a “mega-region” by integrating Beijing, Tianjin, and Hebei province. The policy in part is intended to relieve overbuilding pressures in downtown areas and foster growth in underdeveloped portions of the region. Such policies should be carefully executed. Rapid development has historically led to poor construction quality as developers neglect building standards or use substandard materials and the rise of “ghost towns” in small towns and cities that require prolonged periods to reach full occupancy. Also, adequate investment in public services is a pre-requisite to developing communities of highly skilled workers in distant areas. We applaud the recent announcements regarding investment in public services in Beijing’s Tongzhou District which will further the area’s development and connectivity with Hebei and serve as an example for future efforts.

Air Quality in Commercial Buildings

As further detailed in the Human Resources chapter, indoor air pollution is of increasing concern to both employers and employees, foreign and domestic. The negative impact of air pollution (e.g., on individual health, productivity, bottom lines) is clear and a variety of recent studies show that many buildings in China are ineffective at preventing outdoor air pollution from seeping indoors.

Given that practical and affordable solutions to improve indoor air quality are available in the market, there is a real opportunity for the Chinese government to lead tenants and landlords in the right direction through market incentives. There is also an opportunity for China to become a technology exporter of clean indoor air solutions to other emerging markets that are also facing air pollution challenges in South Asia and beyond.

While improving China’s pollution problem is a long-term endeavor, the implementation of effective interim indoor solutions should be expedited and relevant members stand ready to bring these solutions to the Chinese market.

Recycling of Building Materials

In December 2015, a catastrophic landslide occurred in Shenzhen as a result of years of deposited loose fill and construction waste that was destabilized by heavy rainfall. This tragedy highlights the importance of construction waste management.
中国政府登记并提供相关信息，帮助市场分摊并了解重要市场主体的业绩及其投资风险。我们对中国政府宣布计划在2016年公布房产登记和房产税的做法表示欢迎，房产税对提高地方政府税收收入、减少土地出让金的依赖度至关重要。另外，提高房地产数据的可得性需要进行技术升级和更新。例如，中国的房天下网站（Fang.com）等在线众筹平台为用户提供实时交易数据，使市场参与者可以便利地共享信息。

城市分期和规划应当更加符合市场实际供需状况。先建房屋后刺激需求去库存的旧模式在经济增长放缓的“新常态”下难以维继，提升透明度有助于开发商基于充分的信息做出商业地产开发决策，从而使确保盈利能力，而不是像现在这样盲目开发。

2015年5月，中国证监会批准中国中信银行（国际）推出中国首个公开交易的房地产投资信托（REITs）。我们对中国政府的上述举措表示赞赏，此举将方便个人投资者投资商业地产。REITs对提高房地产行业透明度十分重要，因为REITs要求公开披露财务报表。我们相信，澳大利亚能够为中国提供有益的借鉴，因为该国新建成的房产中，绝大部分由REITs拥有。我们建议中国政府继续采取相关措施提供公开数据系统，鼓励推行REIT结构，以及在全国范围内实施统一的房产税。

## 拥堵城市去中心化

2015年，北京市人口总量超过了2100万人，服务业的就业机会及高质量的公共服务，如教育和医疗，吸引了全国各地的人来北京发展。由此造成北京过度拥挤问题，宜居度较低。去中心化是缓解大城市拥堵、过度拥挤、空气污染及其他城市问题的一种机制。我们鼓励对中国的大城市继续推进去中心化，以此来大力发展建筑业和房地产业，促进GDP增长。我们相信与三、四线城市相比，民众对于大城市去中心化的接受度的需求更高，因为三、四线城市缺少大型且多样化的经济引擎。

2014年，中央政府出台“京津冀一体化”战略，旨在对北京、天津和河北进行整合，打造一体化“超级区域”。该政策的目的之一是缓解中心城市边缘地带的过度拥挤，同时也能够促进该地区经济的发展。执行上述政策时应当慎重。历史经验表明，快速开发会导致建筑业低质量低下，因为开发商往往会忽视建筑标准或使用不合格的材料，从而使小城市、城镇“鬼城”数量增多，从而需要很长时间才能消化库存。另外，对于偏远地区，大力投资和完善公共服务是开发高技能员工居住社区的一项重要前提。我们对中国政府近期宣布投资改善北京周边区公共服务表示赞赏，此举将大大推进该区域发展，加强北京与河北省的互联互通，也为未来该城市去中心化提供了一个良好榜样。

## 商业楼宇中的空气质量

正如白皮书《人力资源》一章中将进一步详细论述的那样，室内空气污染日益成为困扰内外资雇主及其员工的问题。空气污染的危险（如对个人身体健康、生产力和企业盈利）显而易见，且近期大量研究表明中国很多建筑不具备防止室外空气污染渗入室内的功能。

鉴于目前市场上已经存在实用且价格公道的改善室内空气质量的解决方案，中国政府应当抓住这个机会，通过市场激励措施引导租户和房东利用上述解决方案。在此过程中，中国还有机会成为提供室内空气净化解决方案的技术大国，向东南亚及其他同样饱受空气污染之苦的新兴市场出口相关设备。

尽管改善中国污染问题是一项长期工作，但短期内改善室内空气质量的工作应当加快，且相关会员企业也已做好将相应解决方案引入中国市场的准备。

## 建筑材料回收

2015年12月，深圳发生一起滑坡灾害事故，起因是多年堆放的土地和建筑废料经大雨冲刷发生滑坡，这一悲剧凸显建筑废料管理的重要性。

据媒体报道称，在建筑废料处理方面，大陆远远落后于香港、台湾和日本。目前处理建筑废料和多水泥及渣土的方法（如用垃圾车将废料运至排水沟、公园等脚下进行掩埋或堆放）很不恰当。另外，建筑企业经常将处理建筑废料的工作外包给不负责任的第三方。

2015年，建筑废料总量预计达到5亿到7亿立方米，处理起来成本高昂，也会影响房地产企业的繁荣和发展。针对这一日益严重的问题，中国政府推出了一项更为灵活且系统的垃圾收集和处理机制，其中包括升级更新各地垃圾压实和转移站点，以及推出一个更为高效有序的垃圾回收计划，分类收集可回收和普通垃圾。

尽管中央政府出台上述高标准的宏伟计划，但各级地方政府及中央各部门在计划执行上存在较大差距。中国美国商会建议中国政府建立一项规范各级政府部门严格执行政策的机制。
Within the region, mainland China recycles much less construction waste than Hong Kong, Taiwan, and Japan, according to media reports. Current practices for dealing with waste from construction materials and excess concrete and soil (e.g., utilizing dump trucks to deposit waste in public areas like drainage ditches, parks, or on mountainsides) are inadequate. Additionally, construction companies frequently outsource the disposal of construction waste to irresponsible third parties.

In 2015, the volume of construction-generated waste was estimated at 500 to 700 million cubic meters. The magnitude of this burden affects the prosperity of the real estate industry. The Chinese government has responded to this growing problem by implementing a more flexible and integrated mechanism for collecting and disposing waste that will involve upgrading regional waste compaction and transfer stations as well as establishing a more efficient and orderly schedule for waste collection that distinguishes recyclables from ordinary waste.

While the central government has an ambitious vision for setting higher standards, there remain large inconsistencies in regulatory enforcement by local, regional, and national authorities. AmCham China recommends that the Chinese government establish a strong and practical framework for construction supervision and waste management at all levels. We also suggest that the various levels of government establish partnerships with experienced consulting institutes to accelerate the introduction of best practices and improve overall quality in the industry.

**Recommendations**

**For the Chinese Government:**

- Promote a transparent and equitable market to ensure healthy competition and sustainability over the long-term.
- Establish a more feasible way to supervise construction and waste management at all levels; various levels of government should establish partnerships with experienced consulting institutes to accelerate the introduction of tried and tested practices and improve overall quality in the industry.
- Inform investors about government-sponsored opportunities in decentralized regions or new cities.
- Provide open data systems, encourage REIT structures, and implement a property tax that is consistently enforced nationwide.
- Amend Chinese labor laws to include specific rules and guidelines on indoor air quality at work to improve the health and safety of indoor working environments for employees across China.
施建筑施工监督和废料管理的有力且可行的框架。我们还建议各级政府与经验丰富的咨询机构开展合作，尽快引进最佳实践并提高行业整体质量。

建 议

对中国政府：

• 提升市场透明度和公平度，确保市场健康竞争和长期可持续发展。

• 采用更为可行的方法监督各层级建筑施工和废料管理。各级政府应与经验丰富的咨询机构开展合作，尽快引进最佳实践并提高行业整体质量。

• 将去中心化区域或新城建设中由政府出资的项目机会告知投资者。

• 提供公开数据系统，鼓励 REIT 结构，以及开征全国统一的房产税。

• 修改中国《劳动法》，增加有关要求在全国范围内确保工作场所室内空气质量、提高工作场所环境健康和安全水平的具体规则或指引。
Introduction

China is adjusting to a “new normal” in which the overall economy has shifted gears to a more moderate growth rate and export growth has flattened. Nevertheless, consumption of both locally manufactured and imported products continues to grow and is becoming a key driver of the economy. Demand for overseas products and the growth of online marketplaces are fueling an increasing need for clear cross-border policies. In 2015, China’s consumption performed well with total retail sales of consumer goods expanding at a double digit rate while income and consumption growth both outpaced GDP in the past four quarters.

Low shipping costs, an increase in mobile shopping, and heavy promotions have created a competitive e-commerce environment that is driving greater integration between both online and offline channels. For all retailers, the keys to winning this competition are a return to the fundamentals of retail success: customer service, product selection, product value for the price, and a reliable supply chain.

The continued growth of consumption is crucial for China to achieve its ambitious goals of doubling both GDP and average incomes per capita by 2020. In 2015, the Chinese government made remarkable progress in terms of removing regulatory barriers to market access and simplifying market regulations. AmCham China hopes that the Chinese government will continue those efforts to create a level playing field for competition and enforce standard regulations in the online and offline retail industries in a consistent and predictable manner.

Ongoing Regulatory Issues

Promoting a National Unified Large Market by Reforming the Retail Tax Structure

Pressure to Set up New Wholly Foreign-Owned Enterprises

It is not uncommon for municipal governments, and sometimes even district governments, to require foreign retailers to set up wholly foreign-owned enterprises in their jurisdictions when opening new stores or distribution centers for tax, investment, and political considerations. Some local governments may leverage promises of support or even administrative approvals as a bargaining tool.

As result, large retailers with chain stores in China often operate over one hundred legal entities and value-added tax (VAT) reporting units in China. Such complex and redundant legal entity and tax reporting structures create significant operational inefficiencies that remain one of the main challenges to building a large unified market across China.

Increasing Costs of Tax and Administration

Moving goods between different legal entities creates additional tax and management burdens and expenses that constrain a retailer’s freedom to distribute commodities within its own network.

With such complicated legal structures, retailers must manage VAT on an individual store basis, increasing the costs of administration. Complicated and inconsistent legal structures necessitate store-by-store management of VAT, which significantly increases operational costs. Regarding corporate income tax (CIT), such multi-entity structure leads to higher effective tax rates in China as retailers are less able to offset losses against profits.

AmCham China recommends that the Ministry of Finance (MOF), State Administration of Taxation (SAT), National Bureau of Statistics (NBS), and provincial governments consolidate national and provincial VAT and CIT regulations, and further optimize their internal statistical and fiscal reporting systems.

Food Safety

AmCham China recognizes the progress reflected in the amended Food Safety Law, effective since October 1, 2015, which governs all stakeholders and further clarifies and distinguishes different parties’ legal liabilities. However, current enforcement mechanisms still concentrate on the downstream, customer-facing food operators in the food supply chain, particularly large retailers.
引言

中国目前正步入经济由高速增长转向中高速发展、出口增长减缓的“新常态”。本土和进口商品消费继续扩大，日益成为中国经济发展的主要推动力。旺盛的海外产品需求及日益壮大的网购业务都要求尽早出台明确的跨境政策。2015年，中国消费业绩良好，社会消费品总额实现两位数增长，并且在过去的四个季度里消费增长率均超过GDP增长率。

低廉的运费、手机购物日益普及以及各种大型促销活动共同创造了高度竞争的电子商务环境，也促使线上线下销售渠道日益融合，对所有零售商而言，在竞争中取胜的关键是回归销售的根本：售后服务、精选商品、物有所值和可靠的供应链。

中国要实现到2020年GDP和人均收入双翻番的目标，消费持续增长至关重要。2015年，中国政府在打破市场准入监管壁垒、简化市场监管程序方面取得了长足进步。中国美国商会希望中国政府能够继续推进上述工作，营造公平的竞争环境，并且持续、稳定地执行线上及线下零售行业的标准法规。

现存监管问题

改革零售税制结构，推进建立全国统一大市场

新设外商独资企业面临压力

市级政府，有时甚至区政府，出于增加税收、吸引投资和做出政绩的考虑，会要求外资零售企业在开设新店或物流中心时要在其辖区内设立新的外商独资企业。有些地方政府可能利用给予支持的承诺甚至行政批件作为谈判条件。

因此，在华经营连锁店的大型零售企业旗下往往有100多个独立中国法人实体，需要分别缴纳增值税。上述复杂且冗余的法人实体结构和税务制度结构严重降低了外资零售企业的运营效率，始终是建立全国性统一大市场的主要障碍之一。

税务和管理费用日增

不同法人实体之间的货物流转过程产生了额外税负和管理成本，限制了零售企业在其网络内部配送商品的自由。

由于上述复杂的法律结构，零售企业必须分别对每个店铺进行增值税纳税管理，从而增加了管理成本，复杂且不统一的法律结构需要逐店实施增值税管理，极大地增加了运营成本。在企业所得税方面，这种多个法人实体的结构导致零售企业在中国需要缴纳更多的所得税，因为在计算应纳税额时上述企业无法进行盈利亏损的抵扣。

中国美国商会建议中国财政部、国家税务总局、国家统计局以及各省政府理顺合并中央和地方有关增值税和企业所得税方面的相关法律法规，并进一步优化内部统计和财务申报制度。

食品安全

中国美国商会对2015年10月1日起生效实施的修订后的《食品安全法》所带来的进步非常认可。该法对食品安全所有利益相关方均有管辖，进一步明确和区分了不同主体的法律责任。然而现行执法机制却依然集中针对下游企业，主要是食品供应商需要直接面对消费者的食品销售方，特别是大型零售企业。

为了实现新《食品安全法》提出的构建“从田间到餐桌”的食品安全防线的目标，中国美国商会建议相关执法部门（如国家食品药品监管总局、农业部）能够制定一套适用于食品安全产业链上所有相关主体的更统一的检查体系。

行业

具体行业问题

零售和电子商务

多个独立中国法人实体，需要分别缴纳增值税。上述复杂且冗余的法人实体结构和税务制度结构严重降低了外资零售企业的运营效率，始终是建立全国性统一大市场的主要障碍之一。

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To realize the new Food Safety Law’s objective of ensuring food safety “from the farm to the dinner table,” AmCham China recommends that the several enforcement agencies (e.g., China Food and Drug Administration (CFDA), Ministry of Agriculture (MOA)), introduce a more consistent inspection regime across all players along the industrial food chain.

**Product (Non-Food) Inspection**

The Product Quality Law, last amended in 2009, specifies requirements for product producers and operators. However, regarding punitive provisions, the law fails to distinguish between producer and operator liability.

Thus, when regulators find fake products on retail shelves as a result of producer failure to meet relevant standards or fraudulent conduct (e.g., by forging certificates), retailers are often penalized for the product without a showing of collusion or negligence. Furthermore, due to the establishment of the National Enterprise Credit Management Information System which since 2014 records and publishes all enterprise penalties, retailers also face increased risk of reputational damage.

AmCham China recommends that the National People’s Congress (NPC) and the State Council amend the Product Quality Law to further define and distinguish the legal liabilities of operators and producers, and to excuse retailers from penalty when it can be shown that they have fulfilled their obligations.

**Professional Complainants**

Professional complainants (also known as professional faultfinders) remained a key challenge for AmCham China members in 2015. These complainants actively seek out retail outlets and online vendors for mistakes in pricing, labeling, or product quality. Professional complainants sometimes extort retailers for compensation by threatening to report the problem to the government or media.

**Awareness Gaps among Regulators**

Regulator awareness of and attitude toward this phenomenon varies widely among and within different agencies, preventing integrated efforts to address retailer concerns. One cause is a lack of in-depth data on the phenomenon which could create alignment regarding the legal, social, and economic impact of professional complainants on Chinese consumers and the market.

AmCham China suggests that relevant Chinese agencies (e.g., the State Administration for Industry and Commerce (SAIC), China Consumer Association (CCA), and National Development and Reform Commission (NDRC)), comprehensively study, align perspectives, and develop effective measures to tackle this issue.

**Regulatory Loopholes**

Professional complainants often take advantage of unclear provisions in market supervision laws and regulations (e.g., the aforementioned Product Quality Law) to seek compensation for retailers’ random and unintentional mistakes. AmCham China recognizes that some progress has been made to optimize the regulatory system in this regard, as exemplified below.

**Recent Developments regarding Professional Complainants**


The Circular contains several positive revisions that clarify some terminology in the Provisions, significantly reducing the opportunities for professional complainants to extort retailers in certain areas (e.g., price tags, price promotions) and helping retailers to avoid becoming entangled in allegations of price fraud. More information on professional complainants can be found in the Food and Beverage chapter and in the 2015 White Paper.

**E-Commerce**

E-Commerce continued to be the powerhouse of Chinese domestic consumption in 2015. According to the Ministry of Commerce (MOFCOM), from June through October 2015, cross-border e-commerce for business-to-business transactions achieved an export value of US $627 million (RMB 3.9 billion) while the total import and export value of business-to-consumer transactions reached US $440 million (RMB 2.8 billion) over the same period. AmCham China highly appreciates:

- the Chinese government’s efforts to remove market access barriers to foreign investment in e-commerce – particularly the removal of the 50 percent cap on investing in Value-Added Telecoms Services,
- MOFCOM’s implementation of innovative policies supporting cross-border e-commerce, and
- the signing of the Pilot Free Trade Zone (PFTZ) memorandum of understanding between major PFTZs to establish a collaborative governance mechanism for customs, inspection, and quarantine.

However, incompatibility between the existing regulatory system and the rapid evolution of technology and business patterns presents a key challenge for both regulators and operators.
(非食品)产品的检查

2009年最后修订的《产品质量法》明确了对产品生产商和经营者的各种要求，然而在惩罚规定方面，该法却未区分生产商和经营者之间的责任。

因此，当监管部门在零售商的货架上发现因生产商没有达到相关标准或存在欺诈行为(如伪造相关证明)造成的假冒伪劣产品时，零售商即使没有与生产商勾结或存在过失疏忽也往往因此受到处罚。另外，由于全国企业信用信息公示系统于2014年初开始详细记录并公布所有企业受罚情况，零售商因此而面临的信用受损风险越来越高。

中国美国商会建议全国人民代表大会和国务院修改《产品质量法》，进一步界定和区分运营者与生产商各自的法律责任，并且在零售商能够证明已经履行应尽的法律义务后，免除对零售商的处罚。

职业投诉人

2015年困扰中国美国商会会员企业的一大难题便是职业投诉人(亦称职业打假人)现象。这些人专门到零售市场和在线商店寻找店家在价格、标签或产品质量方面的过错。这些职业投诉人有时还以向政府部门或媒体举报为要挟，对零售商进行敲诈，索取赔偿。

监管部门认识上的差异

不同监管部门之间甚至同一监管部门内部对职业投诉人的认识以及处理态度上存在较大差异，从而难以形成合力根除该项问题。原因之一便是缺乏针对该现象的深入数据分析，从而无法从法律、社会和经济等方面对职业投诉人对中国消费者和消费市场造成的影响形成一致。

中国美国商会建议中国相关监管部门(如中国工商总局、中国消费者协会和国家发改委)共同开展全面研究，统一各方观点，并制定有效措施解决这一问题。

监管漏洞

职业投诉人常常利用现行市场监管法律、法规中不明确的规定（例如前述《产品质量法》）针对零售商随机和无心的过错索取赔偿。中国美国商会非常肯定中国在完善相关监管制度方面已经取得了一定的进展，具体事例见下文。
Online and Offline Regulation

Regulation of online commercial activities remained a controversial issue in 2015. Two opposing views appeared to emerge on the issue – one suggests developing separate, specialized laws and regulations for e-commerce, and the other argues that the Chinese government should revise existing regulations to unify online and offline retail under the same regulatory system.

AmCham China members prefer the second option as the regulatory convergence of online and offline retail will create a more consistent shopping experience for customers and allow for consumer-friendly intellectual property controls to be implemented in a more uniform manner. Customers expect that, no matter where or how they buy products, their rights and the safety of their purchases will be guaranteed by consistent laws and regulations. In addition, retailers developing omni-channel capabilities expect to be able to operate both their online and offline businesses under a unified regulatory system with standardized processes that will both improve the customer experience and simplify operational requirements.

AmCham China recommends that the NPC and State Council accelerate their efforts to optimize the existing regulatory systems on market supervision (e.g., the Pricing Law, Anti-Unfair Competition Law) and review the necessity of on-going activities regarding the development of specialized e-commerce legislation (e.g., the E-Commerce Law).

Recommendations

For the Chinese Government:

• Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across China.

• Promote a national unified large market by pursuing national or provincial VAT and CIT consolidations, and further optimize internal statistical and fiscal reporting systems. [The State Council, MOF, SAT, and NBS]

• Introduce more consistent inspection systems that regulate all players along the industrial food chain. [CFDA and MOA]

• Amend the Product Quality Law to further refine and distinguish the legal liabilities of operators and producers, and relieve retailers from penalties when they fulfill their obligations. [NPC and the State Council]

• Conduct comprehensive studies on professional complainants, align perspectives on and adapt effective measures to tackle this issue. [SAIC, CCA, and NDRC]

• Optimize the existing regulatory systems to be compatible for both online and offline retailers and review the necessity of on-going legislation focused on e-commerce. [NPC, the State Council, and MOFCOM]
规都能对其权益和所购产品的质量提供同样稳定的保障。另外，全渠道零售企业希望线上和线下业务经营可以遵循统一的监管制度和标准化的监管程序，从而可以提升客户体验，简化运营要求。

中国美国商会建议全国人大和国务院加快完善现行市场管理制度（如《价格法》、《反不正当竞争法》），审核目前正在进行的制定专门电子商务相关立法活动的必要性。

**建 议**

**对中国政府：**

- 在全国范围内对零售业，包括所有经营模式，适用统一监管制度，实施持续稳定的标准。
- 努力合并中央或地方增值税及企业所得税，推进构建全国统一大市场，优化内部统计和财务报告体系。（国务院、财政部、国家税务总局和国家统计局）
- 使食品产业链上的所有主体适用更加持续一致的检查制度。（国家食品药品监管总局和农业部）
- 修改《产品质量法》，进一步界定和区分运营者与生产者的法律责任，对履行法定义务的销售者免于处罚。（全国人大和国务院）
- 对职业投诉人现象开展全面调研，统一观点并采取有效措施解决这一问题。（国家工商总局、中国消费者协会和发改委）
- 完善现有监管制度，将线上和线下销售活动纳入同一监管框架，并审核目前正在进行的制定专门电子商务相关立法活动的必要性。（全国人大、国务院和商务部）
Part Four: Regional Issues
区域性问题
Respondents to the 2016 AmCham China Business Climate Survey were asked to compare regions in China on their expected growth rates, ease of doing business, investment plans, and the receptiveness of local governments to foreign business. The coastal regions continue to rate the highest while other growth regions such as the Yangtze River Area and the Southwest are perceived as weaker on some dimensions. These two regions rate relatively high on expected growth rates, but the Yangtze River region did not receive high ratings as a priority for investment or as being welcoming to foreign business. The Southwest Region did rate noticeably well as a prioritized investment area and for being welcoming to foreign business, but lagged behind on overall ease of doing business.

This regional section of the 2016 White Paper highlights some of the challenges and progress experienced in 2015 in the cities of Chengdu, Chongqing, Shanghai, Tianjin, Wuhan, and in the northeast China region and provides further context for these survey results. Contributions were submitted by AmCham China’s chapters in Central China, Northeast China, and Tianjin, as well as our fellow chambers, the American Chamber of Commerce in Shanghai and the American Chamber of Commerce in Southwest China. Though each region has its unique challenges and opportunities, certain issues resonate throughout the country to varying degrees, including:

- **Investment challenges:** In addition to the stresses of the nationwide economic slowdown and the transition from a manufacturing to services and consumer-based economy, companies in these regions overwhelmingly reported challenges created by a lack of transparency, inconsistent application of regulations at the local level, and the unfair application of policies that advantage local companies over their foreign competitors. Although some localities, such as Shanghai and Tianjin, have benefited from experimental investment reforms, it remains unclear how foreign companies in other
在2016年的《美国企业在中国白皮书》中，关于区域的章节重点突出了成都、重庆、上海、天津、武汉以及中国东北地区的一些城市在2015年遇到的一些挑战和取得的成绩，为调查结果提供了进一步的资料。中国美国商会华中地区、东北地区、天津等地的分会以及我们的兄弟商会上海美国商会和中国西南美国商会都贡献了资料。尽管每个地区都有其独特的挑战和机遇，一些特定的问题尽管程度不尽相同，但整个国家具有普遍性。这些问题包括：

- 投资挑战：除了全球经济放缓以及从制造型经济向服务型和消费型经济转型带来的压力，这些地区的企业还纷纷表示面临如下挑战：缺乏透明度，地方当局对法规的执行不一致，在实施政策时优待当地企业，对外资企业不公平。尽管上海和天津等地区受益于实验性的投资改革，目前尚不清楚其他地区的外国企业将如何从投资促进政策（比如“一带一路”倡议）中得到惠益，甚至在上海和天津的试点自贸区，一些会员企业也没有看到能够吸引他们在此投资的有力激励措施。

### 省市和地方投资环境

在中国哪个区域最易经营业务？（从列表中选3个）

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Which regions do you rate highest for “local government most welcoming to foreign business”? (Please pick up to three from the list.)

哪个区域的当地政府最欢迎外国企业？（从列表中选3个）
regions will benefit from investment-promotion policies (e.g., the “One Belt, One Road” initiative). Even within Shanghai and Tianjin’s pilot free trade zones, some member companies do not see strong incentives for setting up operations in these areas.

• Business operation and human resource challenges: While labor costs are comparatively low in second and third-tier cities, member companies in these areas are still affected by the nationwide trend toward higher labor and operational costs. Additionally, many members cite difficulties in attracting and maintaining qualified employees, more so than in tier-one cities. Operational challenges posed by underdeveloped logistics services and infrastructure and unevenly applied customs regulations also negatively impact operations in certain regions.

• Quality of life challenges: Second and third-tier cities in particular report challenges posed by air pollution, lack of sufficient educational and medical facilities, and underdeveloped transportation infrastructure. These issues feed into the human resource challenges and play into an individual’s or a company’s decision to locate in a given region in addition to negatively impacting the overall image of these cities.

However, despite these challenges, members express overall optimism for their continued ability to find success in their given cities and regions. Certainly, a notable increase in local government willingness to engage in meaningful discourse with the foreign business community supports these sentiments. We applaud local government efforts to adapt to the shifting environment and members from all of the regions covered in the following chapters appreciate these efforts and hope to build upon these relationships to further improve the business environment and quality of life in these regions.
• 业务运营和人力资源挑战：尽管二三线城市的劳动力成本相对较低，但这些地区的会员企业仍然受到了全国范围内的劳动力和运营成本上涨趋势的影响。此外，许多会员企业还谈到了在吸引和留住合格员工方面的挑战甚至更甚于一线城市。落后的物流服务和基础设施、海关法规执行的不一致所带来的运营挑战，也对一些地区的运营带来了不利影响。

• 生活质量挑战：二三线城市的会员企业特别谈到了如下挑战：空气污染、教育和医疗设施不足以及落后的交通基础设施。除了影响这些城市的整体形象，这些问题还加剧了人力资源挑战，影响个人的定居和企业的选址决定。

不过，尽管存在这些挑战，会员企业依然表示对整体前景持乐观态度，相信他们能够在所在的城市和地区继续取得成功。当然，当地政府与外资企业进行有意义对话的意愿明显增强，这在一定程度上也增强了会员企业的乐观情绪。商会以及后续章节所涉及地区的会员企业赞赏当地政府为适应环境变化所做出的巨大努力并希望能加强联系，进一步改善这些地区的商业环境和生活质量。
Introduction

As the wealthiest and most advanced city in southwest China, Chengdu should be well positioned to deal with the headwinds of China’s slowing economy. The capital of Sichuan province, Chengdu comprises over 30 percent of provincial gross domestic product (GDP), according to both the Chengdu municipal government and the Sichuan provincial government. Chengdu ranks highest in the southwest region in almost every metric, including number of Fortune 500 companies, foreign trade volume, and airport passenger and cargo throughput. It also boasts the most foreign consulates and the largest foreign community in the region. Chengdu’s GDP grew eight percent in 2015 to about US $170 billion (RMB 1.08 trillion).

Given the long time frame and number of countries involved in China’s ambitious “One Belt, One Road” initiative, it is too early to predict the initiative’s final shape and local benefits. However, the central government continues to promote infrastructure investment and other measures in southwest China with a view to the initiative’s broad implementation. Chengdu’s foreign-invested enterprises (FIEs) already report receiving favorable tax breaks and government-backed investment promotion related to the initiative. In the interim, this chapter highlights the key concerns of Chengdu-based AmCham Southwest members.

Ongoing Issues

Access to Markets and Market Information

Unequal Treatment of Foreign Companies

As elsewhere in China across many industries, foreign companies in Chengdu report that they do not receive the same treatment as local companies regarding investment preferences. For example, local and district governments occasionally announce rent discounts and tax breaks ostensibly for both local and foreign-invested companies but may, in reality, only accept local applicants. Similarly, FIEs are occasionally blocked from submitting bids for government projects, seemingly for no reason other than the nationality of the investor.

Local companies in the transportation sector also receive preferential or protectionist treatment from the Chinese government. For example, local airlines receive government subsidies, resulting in lower operating costs compared to their foreign competitors. Similarly, ports tend to be dominated by Chinese state-owned enterprises (SOEs), excluding logistics companies from business opportunities. This also hampers development of port areas, as both private and foreign companies are barred from market entry.

Slow Acceptance of Technological Innovations

FIEs in a variety of industries in Chengdu note that local companies are often slow to adopt new and innovative products and services.

i. Unconventional Architecture

Most local developers are unwilling or unable to transition from all-concrete to all-steel construction, limiting development of the affordable housing industry. Although developers are slowly becoming aware of the cost savings and increased safety that steel construction offers, government support is needed to encourage adoption of this innovation. AmCham Southwest appreciates the increased interest from local officials in this area. Companies using such framing have been able to more quickly receive permits and the provincial government has updated building standards to include steel frame construction. However, feedback on and approval of construction plans from local officials is often delayed until after the plans have been completed, forcing companies to backtrack and disrupting development schedules.

ii. Green Technologies

Similarly, the region lacks a general understanding of the impact of indoor air quality on personal health, so developers do not install indoor air filtration systems and other green technologies. Because international and domestic policies and media focus on outdoor air quality, indoor air quality issues and solutions are often overlooked. This not only hampers the green technology industry, it also increases the potential that Chengdu will lose foreign talent due to a diminished quality of life.
引言

都中国西南地区最富裕、最发达的城市，自然也应中国改革集团办城的排头兵。成都是中国最省会，根据成都市政府和四川省政府的相关数据，成都在全省 GDP 的占比超过 30%。成都市的综合指标位居西南地区首位，包括财富 500 强企业数量、外贸总额、机场乘客和货物吞吐量等都名列前茅。成都拥有中国西南地区最多的外国领事馆及最大的外国人社区。2015 年，成 GDP 增长率为 8%，GDP 总量达到约 1700 亿美元（1.08 万亿人民币）。

鉴于中国“一带一路”战略规划地理覆盖面广、跨度大、周期长，目前预测该规划的最终形态和受益区域为时尚早。然而中央政府持续加大对西南地区基础设施投资并采取其他相关措施，在一定程度上服务了“一带一路”战略的实施。成都市的外资企业均表示已得到“一带一路”战略相关税收优惠并享受到了政府促进投资的利好政策。本章重点探讨中国西南美国商会对成都的企业所反映的共性问题。

现存问题

市场准入和市场信息

外资企业受到不公平待遇

与中国的其他地区一样，在成都的外资企业也反映在投资优惠方面无法享受与本地企业同等的优惠待遇，其中涉及众多行业。例如，地方政府和区政府有时会出台针对企业的房租优惠和税收减免措施，表面上对内外资企业一视同仁，但在实际操作中往往只接受本地企业的优惠申请。此外，外资企业有时还被禁止参加投标政府项目。似乎只是因为投资者是外国国籍。

交通运输业内的企业通常受到中国政府优惠或保护。例如，当地航空公司可以享受政府补贴，与外国竞争对手相比运营成本更低。同时，港口通常由中国国有企业把持，限制了物流企业的商业机会。它还限制了港口开发，因为私营企业和外资企业被禁止进入该行业。

技术创新应用缓慢

在成都，许多行业的外资企业均反映当地企业在应用新型及创新产品和服务上通常较为缓慢。

1. 非常规架构

由于中国“一带一路”战略规划地理覆盖面广、跨度大、周期长，目前预测该规划的最终形态和受益区域为时尚早。然而中央政府持续加大对西南地区基础设施投资并采取其他相关措施，在一定程度上服务了“一带一路”战略的实施。成都市的外资企业均表示已得到“一带一路”战略相关税收优惠并享受到了政府促进投资的利好政策。本章重点探讨中国西南美国商会对成都的企业所反映的共性问题。

2. 绿色科技

虽然，成都公众普遍缺乏有关室内空气质量对人体健康影响的了解，因此开发商并不安装空气净污染系统或采用其他相关环保技术。由于国内外政策及媒体的关注焦点都是室外空气质量，室内空气质量问题往往被忽视。这不仅阻碍了成都绿色技术产业发展，而且还增加了成都因生活质量日益转差而导致外国人才流失的风险。

3. 石油天然气

油气行业也面临新技术应用有限的问题。因为外资企业只能与国有企业设立合资企业，造成页岩油开采技术应用范围有限。中国的私营企业无法与外国企业合作开采，因此也难以获得这方面的新技术。这不仅限制了外资企业
iii. Shale Oil and Gas

The oil and gas industry is also experiencing a limited uptake of new technologies. Because foreign companies can only form joint ventures with state-owned companies, adoption of shale oil extraction technologies has been limited. Chinese privately owned companies do not have the opportunity to partner with foreign companies and thus do not have easy access to this new technology. This not only limits business partner options for FIEs, it also prevents China from capitalizing on its shale resources.

Resource companies face challenges entering the local market, especially in shale development. Currently, the initial lease term for auctioned shale blocks is three years and companies must spend an average of US $2.34 million (RMB 15 million) and drill two wells per year in order to retain an area of 500 km². However, this initial lease period is insufficient. In order for resource companies to thoroughly explore and develop shale blocks, the Ministry of Land and Mineral Resources should allow at least five years for the initial lease. The requirement to build two wells per year is also unreasonable, especially given the lack of available information about shale blocks. The current restrictions make it difficult for companies to ensure that they are making a solid investment, leaving many FIEs unwilling to participate in the auctions.

Limited Market Information

Many industries lack the market information necessary for doing business and competing effectively. For example, real estate companies do not have access to sufficient market sector and government information, making it difficult to advise clients. Similarly, limited information about areas available for shale development makes it difficult for resource companies to make informed decisions about how and where to drill wells. FIEs may even be unable to obtain business information from clients.

A lack of available business information also prevents level competition. Whereas US companies report operating costs in their annual financial reports, Chinese companies are not required to disclose all of the same information. This gives Chinese companies an advantage over their foreign competitors. Similar opacity regarding the requirements and procedures for obtaining government subsidies also makes it difficult for FIEs to request equal treatment.

Customs Reforms Slow to Reach Southwest China

Recent Electronic Data Interchange (EDI) reforms on China’s east coast have greatly simplified the customs process for manufacturers, who formerly had to register each imported/exported product with Chinese customs and import/export bureaus every year. However, this reform is inconsistently implemented in southwest China. Manufacturers have been told to apply for this simplified process through provincial government commerce departments. However, companies have found this application process to be long and difficult.

AmCham Southwest asks that the Chinese government extend and fully implement customs reforms in Southwest China as soon as possible.

Human Resource Challenges

Shortages of Qualified Employees

AmCham Southwest members face shortages of qualified technical staff, due in part to overly burdensome licensing requirements. For example, in 2010, the Chengdu Real Estate Governance Bureau instituted the “Chengdu Real Estate Sales Personnel Qualification Exam,” subjecting potential real estate consultants to unnecessarily restrictive licensing requirements. The policy requires real estate consultants to obtain the same broker licenses as real estate agents, even though they will not be selling property, preventing otherwise qualified real estate consultants from entering the industry. Additionally, real estate companies in Chengdu face difficulty finding qualified local talent to fill upper-level management positions. AmCham Southwest suggests that the local government actively promote Chengdu as a good place to live and work and also promote and support internship programs between local universities and companies to increase the local talent supply in the long run.

Additionally, as in many parts of the country, the local education system does not effectively train students for work in many Chengdu-based FIEs. For example, local architectural and engineering schools still lack courses in the innovative industrial skills required to build steel-frame housing. Member companies in a position to introduce innovative construction methods have had difficulty finding qualified architects and construction crews. This in turn contributes to lower standards for local modular and prefabricated housing construction.

Similarly, as local technical schools do not offer training programs for oil field technicians, employees typically obtain training onsite by working for state-owned oil companies. As it is difficult for these company-specific credentials to transfer over to new employers, oil and gas industry FIEs must re-train any technicians hired from SOEs.

High Turnover Rates

Though not specific to Chengdu, AmCham Southwest member companies also note the challenges caused by high employee turnover fostered by a lack of regulations to govern employee severance. Frequent and sudden labor shortages create higher recruitment costs as companies must fill positions at short notice. Moreover, high employee turnover makes it difficult for companies to guarantee product quality and hurts companies’ ability to compete and grow. These problems make the national trend of rising minimum wages especially burdensome for the manufacturing industry in Chengdu.
选择合作伙伴的范围，也阻碍了中国页岩资源的开发利用。

资源公司在进入当地市场方面面临诸多挑战。进入页岩资源开发行业更是困难重重。目前公司拍得页岩区块后的初始租赁期为3年，必须每年投入约234万美元（约1500万人民币），每年钻探两个油气井才能保住500平方千米的区块。然而初始租赁期往往是不够的。为了使资源企业更加彻底地勘探和开发页岩区块，国土资源部应当将初始租赁期延长至至少五年。此外，要求企业每年钻探两个油气井也不合理，特别是在页岩区块信息不足的情况下。现行各种限制措施导致企业不敢加大投资开发力度，很多外资企业也因此不愿意参加页岩资源区块竞拍。

**市场信息有限**

很多行业内缺少保障商业经营和有效竞争的必备市场信息。例如，房地产企业无法获取充分的市场行业信息和政府信息，造成企业难以向客户提供建议。同样，页岩油气区块开发相关信息不足导致资源企业无法基于全面信息决定钻探页岩油气井的地点和方式。外资企业甚至无法从客户那里取得商业信息。

缺乏商业信息也妨碍了公平竞争。美资企业被要求在其年度财务报表中报告运营成本，而中国企业则不用。这使得中国企业在与外国同行竞争时处于优势。政府补贴申请条件的不明确也导致外资企业难以申请获得同等待遇。

**西南地区海关改革进展缓慢**

近期在中国东部沿海地区开展的电子数据交换（EDI）改革大幅简化了制造企业报关程序，而在此之前制造企业需要每年向中国海关和进出口局登记每一项进出口产品。然而这项改革在中国西南地区却未得到有效实施。制造企业被告知需要向省商务厅申请简化手续。但企业在实践中发现，这项申请程序耗时长且很难获批。中国西南美国商会促请中国政府尽快在西南地区全面推行海关管理改革。

**人力资源挑战**

**合格员工短缺**

中国西南美国商会会员企业面临合格技术员工短缺的问题。造成该问题的原因之一是过于繁琐的职业资格审核要求。例如，2010年成都市房地产管理局推出的“成都房地产销售服务人员资格考试”，给未来的房地产咨询行业增加了不必要的限制性职业资格条件。该政策要求房地产咨询师即使未来不从事房地产销售，也必须取得与房地产经纪人同样的经纪资格，这阻碍了原本合格的房地产咨询师进入该行业。另外，成都的房地产企业还面临难以找到合格本土人才担任高层管理职务的问题。中国西南美国商会建议成都市政府采取积极措施，将成都打造成为宜居宜业的城市，同时通过推动和支持本地大学与企业联合开展实习项目，提高成都人才长期供应。

另外，与与其他地区一样，成都当地教育体系培养出的学生并不有效地契合成都外资企业的工作要求。例如，当地建筑和工程学校缺少有关钢铁结构建筑施工的创新性行业技术课程，有的会员企业甚至在当地为建筑施工方法，却发现很难找到合格的建筑师和施工人员。这同时也造成当地模块式和预制装配式房屋建造标准低下等问题。

**离职率高**

与其他地区一样，中国西南美国商会会员企业也反映，由于员工离职补偿金规定不完善，导致员工离职率居高不下。经常性和突发性员工短缺推高了企业的雇佣成本，因为企业需要在短时间内招招募填补空缺职位。另外，高离职率还导致企业很难保证产品质量，削弱了企业的竞争力和成长性。加之全国范围内最低工资标准呈现不断上升的趋势，这些问题均给成都的制造企业造成尤为沉重的负担。

**困扰所有行业的生活质量问题**

和其他地区一样，成都也面临因生活质量恶化而导致对合格外国人才吸引力下降的问题。例如，成都交通管理不力导致严重交通拥堵问题。红绿灯设置不合理导致经常出现全城大堵车，而主干道行驶的司机几乎在过每个红绿灯时都需要等待。

和许多其他中国城市一样，过去几年成都空气质量状况急剧恶化，人们每天都在谈论空气污染水平。空气质量和技术拥堵问题相互作用，使得成都很难吸引和留住外籍人才。成都投资促进局表示当地政府将重点促进环境保护，
Quality of Life Concerns across Industries

In Chengdu as elsewhere in China, quality of life concerns make it difficult to attract qualified foreign talent. For example, lax traffic regulations contribute to disruptive traffic congestion. The timing of Chengdu’s traffic lights creates frequent gridlock, often forcing drivers to stop at every traffic light on major thoroughfares.

As in many Chinese cities, Chengdu’s air pollution has spiked over the past few years and comments about pollution levels have become common in daily conversations. Air quality and traffic issues go hand in hand and make attracting and retaining foreign talent difficult in Chengdu. The Chengdu Investment Promotion Bureau has stated that the local government will begin promoting environmental protection, air pollution prevention, and energy conservation as priority industries. However, we are still awaiting release of a concrete plan to implement these goals.

While industrial parks such as Chengdu’s Tianfu New Area are hotspots of business activity, particularly for the manufacturing and IT industries, they offer fewer social services like schools, hospitals, restaurants, and shopping centers. Public security is also not as visible in such industrial parks, making employees feel less safe. Moreover, commuting to and from these parks is inconvenient due to lack of service by major transit routes, frequent traffic jams, and ongoing construction. These factors make it difficult to draw talent out of the city center and into the new areas.

Mismatch between Supply and Demand

Oversupply of Commercial and Office Real Estate

Chengdu suffers from high Grade A office and retail vacancy rates. Malls in the area no longer aim for 100 percent occupancy at the time of their grand openings. The central government’s commercial land transfer system favors commercial developments over other types, leading real estate companies to develop a disproportionate amount of commercial space. This, combined with the government’s lack of regional construction and business plans, results in the overdevelopment of commercial and retail space.

Rather than simply driving growth in commercial real estate, the local government should promote sustainable growth in a variety of industries to sustain high real estate demand. For example, the government could incubate local companies to become global competitors, creating more demand for commercial space and attracting more consumers to the region. Moreover, the government should create a unified regional building plan based on actual real estate conditions to prevent oversupply and resulting vacancies in office and commercial space.

Logistics: Input Procurement and Product Distribution

Chengdu’s manufacturing base is not as developed as its counterparts in coastal cities and therefore several industries cannot procure specialized inputs from local sources. A lack of high-quality materials and sufficient technology means that many items must be shipped from China’s coasts or from overseas, resulting in increased costs and delays.

One reason for frequent delays when shipping items between Chengdu and the coast is that the region’s transportation infrastructure is still underdeveloped. Inland geographic conditions can increase logistics costs and many potential logistics hubs are still underdeveloped in southwest China. For example, port facilities in third-tier cities need expansion. Logistics hubs should be developed at the Yibin and Luzhou Ports to facilitate shipping throughout the region and decrease delays.

Recommendations

For the Sichuan and Chengdu Governments:

- Continue expanding trade and market opportunities for US companies and promote equal treatment of US and local companies by:
  - Reducing market barriers for and increasing awareness of new innovations such as indoor air quality monitoring systems, steel construction techniques, and shale extraction technologies.
  - Expanding training programs, especially in technical and vocational schools, to prepare Chinese for IT and technician work in US logistics, construction, real estate, and other companies.
  - Creating a unified regional building plan based on actual real estate conditions to prevent oversupply and vacancy of office and commercial space.
  - Reviewing and critiquing construction plans ahead of time to minimize disruption to construction schedules.
  - Extending the initial lease term of shale blocks to allow for thorough exploration and development.
  - Making market information more transparent and available, especially for the real estate and resource development industries.
  - Devoting more efforts to improve quality of life issues such as indoor and outdoor air quality and traffic congestion.
空气污染防治和节能减排等相关行业的发展。然而，我们还在等待成都市政府就出台切实可行的实施办法。

尽管成都天府新区等工业园区成为商业热点地区，吸引不少制造业和 IT 企业进驻。但是园区往往缺少学校、医院、餐馆和购物中心等社会服务设施。公共安全问题也成为导致园区员工缺乏安全感的问题之一。另外，园区交通道路配套服务不足，经常出现交通拥堵以及在建施工工地较多等问题，使得去园区上下班交通十分不便。以上因素导致人才不愿离开市中心到新区工作。

供需错配
商业用房和写字楼供大于求

成都的 A 级写字楼和商用租赁房空置率较高。当地政府应努力降低商业用房出租率。中央政府的商业用地出让制度偏好商业开发而不是其他用途，导致房地产企业过度开发商业和租赁用房。当地政府不应当单纯促进商业房地产发展，而是应当推进多个行业可持续发展，从而保持对房地产的高需求。例如，成都市政府应当大力培育本土企业成长为具有竞争力的国际企业，从而创造更多的商业空间租赁需求，吸引更多消费者来成都消费。另外，政府应当基于房地产行业的真实现状对本地区建筑规划进行统筹安排，防止出现写字楼和商业用房供大于求、空置率高的现象。

物流：原材料采购和产品配送

成都的制造业基地并不如中国沿海城市制造业基地这般发达。因此，很多行业都无法从当地采购原材料。这意味着需要从中国沿海或国外购买当地缺乏的高质量原料和配套技术，由此抬高了生产成本并经常出现运输迟延。

从中国沿海水域到成都经常出现迟延的原因之一是成都地区交通基础设施不够发达。中国西南地区的内陆地理条件增加了物流成本，且该地区很多规划中的物流枢纽尚未建成。例如，某些三线城市的港口设施需要扩建。同时应该在宜宾和泸州港口建立物流枢纽，便利该地区的水运交通，减少运输迟延。

| 建 议 |

对四川省政府和成都市政府：

- 继续扩大美国企业的贸易和市场机会，采取下列措施，保障美国企业和当地企业享有同等待遇：
  - 减少有关室内空气等质量监控系统的市场壁垒，并提高对上述创新技术的应用。
  - 扩大培训范围，特别是扩大技工院校和职业学校的教育培训范围，为美资物流、建筑、房地产和其他行业的公司培养更多合格 IT 员工和技术人员。
  - 基于房地产行业的现状对本地区建筑规划进行统筹安排，防止出现写字楼和商业用房供大于求、空置率高的现象。
  - 提前评估和修改施工计划，尽可能减少对施工进度的影响。
  - 延长页岩油气区块初始租期，并确保其对相关区块进行全面勘探和开发。
  - 提高市场信息透明度和可得性，特别是提高房地产行业和资源开发行业的信息透明度和可得性。
  - 加大对改善本地居住生活质量的投入，重点解决室内室外空气质量差和交通拥堵等问题。
  - 加大对基础设施的投入，降低内陆物流运输成本。
  - 大力推进必要的市场化改革措施，应对经济增速放缓问题。
- Developing a wider variety and larger number of regional logistics hubs to offset costs associated with inland logistics.
- Promoting needed market reforms more aggressively to address slowing economic growth.
Chongqing

This chapter was contributed by the American Chamber of Commerce in Southwest China.

Introduction

As the only southwestern municipality directly under central Chinese government control, Chongqing has enjoyed high rates of growth due to large government-funded investments in infrastructure and high levels of FDI in manufacturing, among other factors. Preferential policies have attracted 236 Fortune 500 companies and other prominent local and foreign-invested enterprises (FIEs) to locate in the municipality. However, as China experiences slower economic growth as it adjusts to the “new normal,” Chongqing’s economy is expected to similarly grow at a slower pace. According to the Chongqing Statistics Bureau, in 2015 Chongqing’s GDP grew at 11 percent to reach approximately US $245 billion (RMB 1.6 trillion). The automotive and chemical medicine industries led Chongqing’s secondary sector in 2015, growing 20 percent and 13.7 percent, respectively.

As a major logistics hub in southwest China, Chongqing continues to benefit from government support. The government announced in November 2015 that the Third Sino-Singapore government-to-government project would launch in Chongqing, aiming to further develop the city into a node for the “One Belt, One Road” initiative. This project has the potential to improve the city’s infrastructure and institutions and expand business opportunities for US companies.

Despite these prospects, Chongqing’s development remains slow in other respects. Given the over-riding role of the government in Chongqing’s economy, many FIEs remain concerned about bias in favor of their domestic competitors. Thus, they are still cautious when launching or expanding operations in Chongqing.

US businesses in Chongqing also face ongoing operational challenges. For example, the city lacks a sufficient pool of qualified local and foreign talent. The local government’s interpretation and enforcement of visas and flexible staffing policies hinder the attraction of talent to the region. We hope that, in the international spirit of “One Belt, One Road,” southwest China’s local governments will not only reduce such restrictions but also craft policies that actively welcome FIEs and allow them to expand their contributions to the region’s growth.

Ongoing Issues

Restricted Talent Pool

Barriers to Entry in the Education Industry

Foreign Expert Permit requirements are unclear and highly restrictive in Chongqing, making it difficult for international schools to hire teachers and other staff from abroad. For example, candidates educated at prestigious institutions in the US or UK but holding passports from other countries are prevented from obtaining a Foreign Expert Permit. The Chongqing Bureau of Foreign Expert Affairs’ publicly available written rules do not include any restrictions based on nationality. Rather, the Bureau only requires a bachelor’s degree and two years of relevant work experience for language teachers, and a bachelor’s degree and five years of work experience for other professionals. Moreover, according to AmCham Southwest members, Heads of School and human resource (HR) teams in Nanjing, Wuxi, Shanghai, and other cities report that their Foreign Expert Bureaus do not reject candidates based solely on nationality.

These restrictive criteria put Chongqing at a disadvantage when competing for high-quality teachers with other cities across China. The restrictions exacerbate the already limited talent pool that many second-tier cities face due to a lack of awareness about the cities or fears concerning quality of life issues. We recommend that the Chongqing government ensure consistent interpretation and application of Foreign Expert Certificate requirements. Moreover, greater transparency and the addition of an appeals process for denied applicants would increase opportunities for high-quality professionals to contribute to Chongqing’s growth.

Shortage of Qualified Chinese Graduates

Given the difficulty and expense of attracting foreign talent to the region, most FIEs located in Chongqing rely heavily on local staff. However, recent college graduates in the region often lack practical job skills and experience. For example, local law schools over emphasize theory, especially regarding international investment and trade, and under-emphasize practical exercises. Therefore, local Chinese law firms must spend considerable time training lawyers before they can assist US clients. This problem could also be alle-
引言

作为中国西南地区重要的物流枢纽，重庆继续获得政府的大力支持。中国政府于 2015 年 11 月宣布中国和新加坡第三个政府间项目将在重庆启动，旨在进一步将重庆市发展为“一带一路”倡议中的一个节点。该项目有助于改善城市的基础设施和体系，并扩大美国企业的商业机会。

虽然前景乐观，但重庆在其他方面的发展依然缓慢。鉴于政府在重庆经济领域中发挥着重要作用，许多外资企业担心政府偏袒其国内竞争对手。因此，他们对于在重庆创业或扩大经营业务仍然态度谨慎。

在重庆的美国企业同样面临着持续的运营挑战。例如，城市缺乏充足且合格的本地和外国人才储备。当地政府对签证的解释和执行以及人事政策的随意性阻碍了整个区域对人才的吸引力。我们希望，本着“一带一路”的国际精神，中国西南各级地方政府不仅要减少此类限制，而且还要制定政策积极招募外资企业，以便于其扩大对区域经济增长的贡献。

现存问题

受限制的人才储备

进入教育行业的壁垒

重庆的《外国专家许可证》要求含糊其辞，并且存在诸多限制，致使国际学校难以从国外招聘教师和其他工作人员。例如，毕业于美英著名教育机构，但持有他国护照的应聘者不予颁发《外国专家许可证》。重庆外国专家事务局公开可查询的书面规则中不包括基于国籍的任何限制。更确切地说，该局对于语言类教师的要求仅为学士学位和两年相关工作经验，而对其他专业人士的要求仅为学士学位和 5 年工作经验。此外，根据中国西南美国商会会员提供的信息，在南京、无锡、上海和其他城市中，学校负责人和人力资源（HR）团队报告称，他们所在地区的外国专家事务局并不会仅仅因为国籍而拒绝应聘人员。

当与中国其他城市竞聘高素质教师时，这些制约性准则使得重庆处于不利地位。因为缺乏对城市的了解或对生活质量等问题的担忧，这些制约因素加剧了许多二线城市本就面临的人才储备问题。我们建议重庆市政府确保对《外国专家许可证》要求的诠释和应用始终保持一致性。此外，提高透明度和增加被拒申请人申诉程序，将增加高素质专业人士为重庆的发展作出贡献的机会。

合格的中国毕业生短缺

鉴于本区域吸纳外国人才的难度大、费用高，大多数位于重庆的外资企业只得更多倚重于当地员工。然而，近年来本区域的大学毕业生往往缺乏实际工作技能和经验。例如，本地法律院校过分强调理论，尤其是国际投资和贸易，而对实际运用重视不够。因此，中国本土的律师事务所必须花费大量时间培训律师才能为美国客户提供帮助。如果允许国际律师事务所雇佣本地合格的中国律师，也可以缓解这个问题。
viated by allowing international law firms to hire locally qualified Chinese lawyers.

Overseas study and internships offer Chinese students practical work experience which they may not receive at their university. However, Chinese graduates who have studied overseas prefer to work in more developed coastal cities, not in southwest China. Therefore, Chongqing experiences an outflow of its most qualified talent. The graduates remaining in the region tend to lack the necessary skills to work at FIEs, including adequate English levels.

Local Legal Personnel Lack International Expertise

Furthermore, as FIEs have only recently developed a strong presence in Chongqing, some local Chinese law firms lack specialists to assist international clients. Chongqing court personnel also lack experience with international cases, causing delays and uncertainties in legal proceedings. We recommend that the government create a platform for US and Chinese law firms to communicate and exchange staff to increase cross-border understanding of the countries’ respective legal systems.

Shortage of Financial Industry Talent

Chongqing’s financial industry faces particular talent shortages at multiple position levels. Financial service companies are looking to expand their online operations, particularly in the realm of third and fourth-tier city consumer finance, but face challenges finding and recruiting qualified local programmers. This makes it difficult for FIEs in the financial industry to fully capitalize on new digital business opportunities.

Financial companies also find it difficult to recruit sales teams who possess both financial expertise and marketing experience. Marketing skills alone do not suffice; employees must be able to discuss highly technical financial topics with client companies’ finance executives. Chongqing has a shortage of such highly qualified local employees, requiring companies to expend time and money to train new hires internally.

Restrictions on Flexible Staffing

Since the global recession, companies increasingly utilize flexible staffing solutions to keep hiring and training costs low and broaden their access to talent. However, the Chinese government limits flexible staffing capabilities, decreasing business for HR companies and making it difficult for companies to find qualified employees. Under the 2014 “Interim Provisions on Labor Dispatch,” there is a limit to the number of employees that companies may hire through an HR agency. Therefore, local companies still prefer traditional staffing techniques over the outsourcing and flexible staffing services HR agencies can offer, despite their advantages. AmCham Southwest member companies find that potential local clients do not fully understand these advantages, causing the flexible staffing industry in Chongqing to lag behind other cities in China.

 Preferential Policies Benefit Local Companies

While China’s Western Development Strategy, launched in 2000, offers incentives for companies to locate in Southwest China, FIEs do not always enjoy the same benefits as local companies. The policy stipulates a 15 percent tax rate for manufacturing companies in the region, but the list of covered companies excludes FIEs. Therefore, US companies are taxed at a rate of 25 percent, putting them at a disadvantage relative to the majority of their competitors. AmCham Southwest recommends that all manufacturing companies receive the same tax breaks, regardless of the nationality of their shareholders, to allow for more open market competition in the region.

It is difficult for US non-bank financial institutions to obtain the necessary operating licenses. FIEs either need close connections with top local officials or strong international brand recognition to receive licenses, making the process more difficult for them than for local competitors. Moreover, non-bank financial institutions have been largely shut out of the guarantee business in Chongqing because local banks refuse to work with private guarantee companies. State-owned enterprises and large insurance companies now dominate the guarantee business and land the largest domestic clients, decreasing opportunities for FIEs.

Import Difficulties Hinder Education Industry

As an inland city, Chongqing faces logistics challenges that complicate business operations. For example, high transport costs and long delays limit the types of textbooks and other classroom materials available to teachers and students at international schools. The limited number of licensed importers discourages competition and keeps costs high. Furthermore, opacity in customs procedures makes it difficult to estimate arrival times. AmCham Southwest suggests that local and central governments create a means of authorizing certain businesses (both inside and outside China) to be pre-screened for fast-tracked customs operations. To improve transparency, we suggest that the central government implement a nationwide online system to track items through customs clearance procedures and to communicate to businesses and organizations when issues arise.

Recent Developments

Central Government Announces Government-to-Government Project with Singapore in Chongqing

In November 2015, the Chinese and Singaporean governments announced that their third government-to-government project would be based in Chongqing. In line with
商务环境综述

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### 行业

#### 区域性问题

**重庆**

海外留学和实习可为中国学生带来他们在大学里可能接触不到的实习工作经验。然而，海外留学的中国毕业生愿意到更发达的沿海城市而并非中国西南部工作。因此，重庆正经历着最合格人才外流的现象。留在本区域的毕业生往往缺乏在外企工作的必要技能，其中就包括较高的英语水平。

### 当地法律人员缺乏国际专门知识

此外，由于外资企业在近期内才大量进驻重庆，一些当地中国律师事务所缺乏能为国际客户提供援助的专家。重庆法院的法官们也缺乏处理国际案件的专业知识。导致法律诉讼的延期和不确定性。我们建议政府创建一个平台，以便于美中两国律师事务所开展信息交流和人员交换，从而增加对两国各自法律体系的交叉理解。

### 金融行业人才短缺

重庆的金融行业面临着多种岗位层次上特殊人才短缺的问题。金融服务公司正在寻求扩大其在中国的业务，特别是在三、四线城市消费金融领域中，但在招募本地合格程序员时也十分棘手。这使得金融行业的外资企业更难充分利用新型数字化商业机会。

金融公司也很难招募到同时具备金融专业知识和营销经验的销售团队。员工不仅需要具备营销技能，还必须能够与客户的财务主管讨论具有一定技术含量的金融话题。重庆非常缺乏这种高素质的本地员工，这导致企业内部需要花费更多时间和金钱来培训新员工。

### 对灵活用工的制约

自从全球经济衰退以来，企业越来越多地利用灵活用工方案，以维持较低的招聘和培训成本及拓宽招聘人才的途径。然而，中国政府则限制灵活用工能力，从而减少了人力资源（HR）公司的业务，使企业难以招聘到合格的员工。根据 2014 年《劳务派遣暂行规定》，对企业通过人力资源（HR）代理机构雇佣的员工数量有所限制。因此，尽管人力资源（HR）代理机构具有优势，但较之于可提供委托外和灵活用工服务，本土企业仍然更倾向于传统的人员安置办法。中国西南美国商会会员企业发现，本地的潜在客户不能充分理解这些优势，导致灵活用工行业落后于中国其他城市。

### 优惠政策使当地企业受益

虽然中国西部大开发战略于 2000 年启动，并给予位于中国西南的各企业诸多激励措施，但是外资企业并不总是能享受到当地企业的优惠。根据政策，本区域制造企业税率15%，但涵盖的公司名目并不包括外资企业。因此，美国企业的税率为25%，相较于大多数竞争对手，这使他们在本地处于不利地位。中国西南美国商会建议，不论其股东是何种国籍，所有制造企业应得到相同的减税，使本区域的市场竞争更加开放。

美国非银行金融机构难以获得必要的经营许可证。外资企业或是需要与当地高级官员建立密切联系，或是要拥有强有力的国际品牌认知度，才能获得许可证，这使整个过程较之于当地竞争对手更加困难。此外，非银行金融机构基本上被排除在重庆担保业务之外，因为当地银行拒绝与民营担保公司合作。现在，国有企业和大型保险公司主宰着担保业务并拥有最大的国内客户，从而减少了外资企业的机会。

### 进口难阻碍教育产业

作为一个内陆城市，重庆面临着物流复杂化带来的物流方面的挑战。例如，高额运输成本和长期延误制约着国际学校的师生们所使用的教科书和其他学习材料的种类。同时，数量有限的持照进口商不利于竞争并导致成本居高不下。此外，海关程序不透明还导致难以估计到达时间。中国西南美国商会建议，地方和中央政府应建立一种授权机制，使用这些企业（中国与外国）获得事先甄别以开展快速跟踪通关业务。为了提高透明度，我们建议中央政府实施全国性联网系统，通过海关程序以跟踪物品，并在出现问题时及时为企业和组织进行沟通。

### 最新进展

#### 中央政府宣布与新加坡政府间合作项目

**落户重庆**

2015年11月，中国和新加坡政府公布中新第三个政府间项目将落户于重庆。契合“一带一路”和“西部大开发战略”，该项目重点集中在金融服务、航空、运输和物流以及信息和通信技术等行业。各公司预计本项目为重庆的制度发展提供依据，其将在不久的将来可能会吸引更多企业落户重庆。
“One Belt, One Road” and the Western Development Strategy, the project will focus on the financial services, aviation, transport and logistics, and information and communications technology industries. Companies expect this project will provide the basis for institutional development in Chongqing and will likely attract more companies to locate in Chongqing in the near future.

This project is also expected to increase Chongqing’s prospects for becoming China’s first inland pilot free trade zone. Moreover, Singapore Management University is developing a relationship with Chongqing universities and industry partners as part of the initiative, which may improve Chongqing’s talent pool. It is not yet clear what opportunities this project will provide FIEs operating in the region.

**Slow Development of New Financial Center**

Ratified in 2010, Chongqing’s Liangjiang New Area includes the Jiangbeizui Financial Center, located across from Chongqing’s main central business district, Jiefangbei. The new financial center aims to attract international banks and other financial companies. However, financial companies already operating in Chongqing have been slow to relocate to the new financial center due to ongoing construction and traffic congestion problems. The area is not expected to be completed until 2018 so, for now, occupancy may remain low.

**Recommendations**

*For the Chongqing Government:*

- Clarify the visa and Foreign Expert Permit application process and make it more inclusive, to attract qualified foreign talent to the region.
- Reform the local higher education system to teach more practical skills, require hands-on internships, and create more study and work abroad opportunities for students in Chongqing universities, and provide incentives for students with such experiences to return to Chongqing to work.
- Expand the Western China Development tax policy to include FIEs, taxing Chinese companies and FIEs within the same industry at the same rate.
- Create a list of pre-screened or trusted importers in China and in the US to streamline import procedures and implement an online system to track items through customs and link businesses with relevant authorities to increase transparency.
- Create a platform for Chinese law firms to interact with potential international clients and with law firms in the US to increase understanding of the respective countries’ legal systems.
预计该项目将促使重庆成为中国首个内陆试点自贸区。此外，作为该项目倡导计划的一部分，新加坡管理大学将与重庆各大学和行业合作伙伴建立关系，此举有可能加强重庆的人才储备，但该项目会给外资企业提供何种机遇，目前尚不明确。

缓慢发展的全新金融中心

2010 年批准建立的重庆两江新区包括坐落于重庆主要中央商务区解放碑的江北嘴金融中心。全新的金融中心旨在吸引国际银行和其他金融公司。然而，由于持续的建设和交通拥堵问题，已经在渝经营的金融公司迁址到新金融中心的进度缓慢。该区域预计到 2018 年才能完工，现在看来，入驻率仍然很低。

建议

对重庆市政府：

• 明确签证、外国专家许可证的申请程序，使其更具包容性，以吸引合格的外国人才来渝。

• 改革本地高等教育系统，教授更多的实践技能，要求动手能力和实践实习，为重庆各大学的学生创造更多的海外留学和工作机会，并为有此等经历的学生回渝工作提供奖励政策。

• 拓展中国“西部大开发”税收政策，纳入外资企业，同一行业的中国企业和外资企业税率相同。

• 创建一份中美事先甄别的或受托的进口商名录以简化进口手续；实施联网系统以追踪物品通关，并加强企业与相关部门的联系以增加透明度。

• 为中国律师事务所创建一个平台，与潜在的国际客户和美国律师事务所开展互动，以增加对各自国家法律制度的理解。
Northeast China

Introduction

Although Liaoning province, home of AmCham China’s Northeast China Chapter, has experienced steady GDP growth over the past three years, it is now feeling the headwinds of China’s slowing economy. Government statistics show that, in 2015, growth declined from 5.8 percent in 2014 to three percent – the lowest among all 31 provinces and the lowest in the past 23 years, due in large part to the province’s longstanding reliance on older manufacturing industries, investment in infrastructure, and overbuilt real estate. Future prospects depend in large part on whether the province can shift fast enough to newly emerging sectors, including services, and take advantage of new efforts to promote innovation. While the government has expressed strong support for these changes, reform has been slow and much still needs to be done.

This chapter summarizes the key results of the AmCham China Northeast Chapter members’ responses to the 2016 AmCham China Business Climate Survey. We hope that these results will be viewed positively by the Liaoning government and will lead to further discussion and direct feedback from local government leaders on these issues.

Advantages to Doing Business in Liaoning Province

AmCham China Northeast Chapter members cited several advantages to doing business in Liaoning’s tier-two cities, including lower labor costs, lower housing costs, the availability of qualified employees, and the lack or scale of competition.

Regarding labor costs, 56 percent of respondents view the average wage (including base salary, benefits, and taxation) of a direct employee to be a clear advantage for doing business in Liaoning. Of course, as in most cities, labor costs are rising and expected to rise further with the promotion of policies to increase wages in an effort to counter deflation, raise the standard of living, and address other social challenges. However, there still are clear advantages in the province compared to tier-one cities, including lower costs of living and labor.

Both the availability of skilled employees and the lack/scale of competition were the second most frequently cited advantages. Members also report less concern with employee turnover. Any instances of employee turnover were attributed to migration back to tier-one cities due to family concerns such as children’s education and hukou-related issues.

In addition to these business advantages, local government support of foreign business was also cited as favorable, with 62 percent of survey respondents rating local government support as “satisfactory” or “very satisfactory.” Survey respondents noted that many changes to government policies have positively impacted the business environment, related to the continuing promotion of FDI in Liaoning and other relevant incentives and measures.

What are the biggest advantages to doing business in Liaoning compared to Tier 1 cities?

与一线城市相比，在辽宁经商的最大优势是？

- Labor costs
- Available employees
- Lack/scale of competition
- Input costs
- Size of market for product/service
行业

区域性问题

中国东北

引言

办公室所在地，辽宁省在过去的三年里实现了国民生产总值的稳步增长，但如今正面临中国经济增长放慢的不利影响。政府统计数据表明，主要的经济问题是由于长期依赖老旧的制造业和过度的投资在基础建设和房地产行业。辽宁省的经济增长率从2014年的5.8%下降至2015年的3%，在全部31个省市中是最低的，也是过去23年中最低的。辽宁省未来的发展前景，很大程度上取决于是否能够迅速地转向服务行业等新兴领域以及是否能够采取新的措施促进创新。虽然政府已经表示大力支持这些变革，但改革的步伐仍然缓慢，诸多事宜仍亟待解决。

这一章节简要介绍了中国美国商会《2016年度商务环境调查报告》中关于东北办公室会员企业的主要调查结果。我们希望辽宁省政府能够认真看待这些结果，并期待当地政府能够进一步讨论这些问题并给予直接反馈。

辽宁省的经商优势

根据对中国美国商会东北办公室会员企业的调查，辽宁省的二线城市经商具有劳动力、住房成本较低、拥有合格的员工以及竞争压力小等优势。

关于劳动力成本，56%的受访者表示，直接雇员的平均工资水平（包括基本工资、福利和税收）是辽宁省经商的一个明显优势。当然，如绝大多数城市一样，劳动力成本在增加，随着旨在抑制通货紧缩、提高生活水平以及应对其他社会挑战而增加工资的政策的推行，劳动力成本有望进一步增加。不过，与一线城市相比，辽宁省在生活成本和劳动力成本方面仍然具有明显的优势。

第二个经常提到的优势就是拥有熟练的员工以及竞争压力小。会员企业对员工流失不是很关心。员工流失被归因于子女教育和户口相关问题而重新回到一线城市。

除此之外，当地政府对外资企业的支持也是一项优势。62%的受访者对当地政府的支持表示“满意”或“非常满意”。受访者表示，辽宁省政府继续促进外商直接投资并采取其他相关激励和措施，其中很多政策的调整有利于改善商务环境。

辽宁省的经商挑战

虽然在辽宁省经商具有诸多优势，我们的会员企业仍面临着一些挑战，其中劳动力成本增加（虽然基数较低）却是最为紧迫的挑战。如上所述，虽然劳动力成本增加是该地区吸引新投资的一个重要因素，劳动力成本增加仍然
Challenges to Doing Business in Liaoning Province

While there are still many positive aspects to doing business in Liaoning, several challenges were also highlighted by our members, with rising labor costs—even with the lower base—identified as the most pressing. While lower labor costs have been a significant factor attracting new investment in the region, as noted above, such cost increases are still a cause of concern. Even with the more positive skill base, there are still gaps in many of the newer sectors. Like the rest of China, Liaoning also suffers from inconsistent or unclear laws and regulations and bureaucracy. Fifty-eight percent of our members report taking measures to innovate and invest in training to improve the skills of their own employees.

Members also noted access to capital as a challenge in Liaoning. The process for raising funds on the local market still remains undeveloped and non-transparent, slowing the pace of growth. There is also a perceived gap between northeast China-based expats’ ability to obtain permanent residency visas compared to those based in Shanghai (as discussed in more detail in the Visa Policy chapter), just one example of inconsistent/unclear laws and regulations. There is also a perception that returning overseas Chinese and local entrepreneurs have greater access to government support than their foreign counterparts. AmCham China looks forward to working with the Liaoning government to create more opportunities for foreign businesses to grow and further contribute to the local economy.

Although these challenges are not new nor necessarily region-specific, it is very clear that these are significant challenges facing any American company going forward.

Air pollution was the most frequently cited challenge affecting quality of life, selected by 63 percent of respondents. Although air pollution is a problem throughout China, Dalian used to be identified as a green city known for its beaches and clean air. However, over time, the region has seen a significant increase in air pollution, affecting our members to the extent that the issue has become a decisive factor for many expatriates when determining whether or not to accept an assignment in Liaoning or leave the region. The August 2015 explosion in Tianjin, which reportedly resulted in air pollution blowing across the Bohai region, and the proximity of a chemical plant in the Dalian Development Area were also cited as examples of safety-related concerns that members have in the region.

The second most frequently cited challenge affecting quality of life was traffic congestion. Following years of significant growth and a rise in disposable income, the number of cars on Dalian’s roads has also significantly increased. Though city planning officials have been working to adjust municipal infrastructure, their efforts have not been fast enough to keep pace with the growth of vehicular traffic. Commuting times in peak hours have doubled, and the light rail trains have become overcrowded to the point of posing safety concerns. Also, the recently opened subway line does not yet connect to major locations such as the airport, other light rail train stations, or other major transportation infrastructure. AmCham China encourages the Liaoning government to further develop transportation infrastructure to address these concerns.

How would you characterize local government support of foreign businesses in Liaoning?

您如何评价地方政府对在辽宁经商的外资企业的支持力度？

Satisfactory 满意
Unsatisfactory 不满意
Very satisfactory 非常满意

5% 39% 56%

Recommendations

For the Liaoning Government:

• Create a scheduled plan for further engagement with foreign businesses to discuss the regulatory and operational challenges they face in the region, and find practical solutions for addressing the top challenges presented in this chapter.
• Streamline and clarify laws and regulations throughout Liaoning using more innovative procedures to expedite decision making, reduce bureaucratic delays, and automate in the spirit of the “Internet+” initiative wherever possible.
• Develop more innovative policies to attract and retain qualified management and employees, while keeping the province’s cost advantages wherever possible.
What are your top five business challenges in Liaoning?

贵公司在辽宁省面临的五大商业挑战是什么？

<table>
<thead>
<tr>
<th>2015</th>
<th>2016</th>
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<tbody>
<tr>
<td>Labor costs 劳动力成本</td>
<td>Labor costs 劳动力成本</td>
</tr>
<tr>
<td>Corruption 腐败</td>
<td>Shortages of qualified employees 缺少合格的员工</td>
</tr>
<tr>
<td>Industry overcapacity 行业产能过剩</td>
<td>Inconsistent / Unclear laws and regulations 法律法规执行不一致 / 不清晰</td>
</tr>
<tr>
<td>Shortages of qualified management 管理层人才匮乏</td>
<td>Bureaucracy 官僚主义</td>
</tr>
<tr>
<td>Shortages of qualified employees 缺少合格的员工</td>
<td>Industry overcapacity 行业产能过剩</td>
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让人担心。虽然技能基础相对较好，但很多新的领域仍然存在技能缺口。与中国其他地方一样，辽宁还存在法律法规执行不一致 / 不清楚和官僚主义的问题。58% 的会员企业表示为了提高员工技能会选择对培训形式和内容进行创新和投资。

还有一家企业表示，资金获取也是在辽宁省经商面临的一项挑战。资本市场仍然不发达，不透明，其增长步伐也受到影响。作为法律法规执行不一致 / 不清楚的一个例证，东北地区的外籍员工获得永久居留资格的能力与上海相比存在明显差异（详情见“签证”一章）。海归华人和当地企业家似乎比外资企业同行更有可能获得政府支持。中国美国商会期待与辽宁省政府合作，为外资企业提供更多推动当地经济增长的机会。

这些问题虽然不是新出现的或者该地区特有的，但却是美国企业实现发展需要面临的重大挑战。

在影响生活质量的挑战的调查中，有 63% 的受访者选择了空气污染，被提及的频率最高。空气污染是一个全国性的问题。大连曾经是以拥有优质沙滩和清新空气闻名的绿色城市，但随着时间的推移，这一地区的空气污染明显加重。许多外籍员工在决定是否接受外派到辽宁或是否离开时，都会着重考虑空气质量，可见空气污染已成为影响会员企业的一个主要因素。在谈到安全问题时，该地区很多会员会以 2015 年 8 月天津发生的爆炸以及大连开发区附近的一家化工厂为例，据悉前者造成了环渤海地区的空气污染。

第二个常被提及的影响生活质量的因素就是交通拥堵。随着多年来经济的大幅增长和可支配收入的增加，大连道路上行驶车辆的数量大幅增加。虽然城市规划部门的官员已经开始调整城市基础设施，但是，他们的步伐赶不上车辆交通的增长速度。高峰期的通勤时间已经增长了一倍，轻轨列车过于拥挤甚至威胁到了安全。而且，最近开通的地铁线路还没有将机场、其他轻轨车站或其他交通设施等主要地点连接起来，为了解决这些问题，中国美国商会鼓励辽宁省政府继续推进交通基础设施建设。

建 议

对辽宁省政府:

• 制定一份与外资企业讨论其在该地区所面临的监管和经营挑战的计划，找到这一报告中提到的主要挑战的解决方案。
• 简化和明确辽宁省的法律和法规，通过程序创新加快决策进程，减少官僚延误，根据“互联网+”的精神尽可能推行自动化。
• 通过政策创新吸引和留住合格的管理人员和员工，并尽可能保持辽宁省的成本优势。
• 提高外资企业获得政府支持的能力，其中包括入驻孵化器和企业基础设施园区。
• 提高该地区关于企业许可申请程序、筹资和关乎企业发展或其他措施的透明度。
• 根据其目前实行的简化程序，简化外籍员工申请工作签证和永久居留身份的程序。
• Improve foreign business access to government support including incubation and business infrastructure parks.

• Make the procedure for obtaining required business licenses, access to capital, and other key measures for growing a business in the region more transparent.

• Ease the process for foreign employees to apply for work visas and permanent residence status, according to the simplified procedures now utilized in Shanghai.

For the US Government:

• Encourage the Consulate’s commercial and other staff to reach out to local governments in more collaborative and creative ways to help US business find solutions to the challenges raised in this chapter, which will simultaneously benefit the broader economy.
对美国政府：

- 鼓励领事馆的商务和其他人员与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到这一报告所提到的挑战的解决方案，促进整体经济的增长。
Shanghai

**Introduction**

Shanghai is the largest and most prosperous city in the world’s second-largest economy. It remains at the forefront of China’s economic reform agenda, is the home of the Shanghai Stock Exchange, and hosts China’s first pilot free trade zone (PFTZ). However, Shanghai’s ambitions are not limited to the domestic economy. As laid out in Shanghai’s “four center” policy, the city aspires to be a global center of economics, finance, shipping, and trade. But further reform is needed for Shanghai to attain its international ambitions.

**Despite Slowdown, American Businesses Still Find Opportunities**

Like many cities in China, Shanghai’s economic growth slowed over the past year. Shanghai abandoned its GDP target in 2015, in part because pressure to reach this target was distorting the government’s investment decisions. According to Shanghai officials, without a target the city can focus on better quality growth. Despite the slowing economy, American companies in Shanghai remain focused on the business opportunities. According to AmCham Shanghai’s 2015 China Business Report, which is based on survey responses from nearly 400 AmCham Shanghai member companies, nearly three-fourths of respondents were profitable and enjoyed revenue growth and 9 of 10 boasted a growing or stable market share. Approximately 67 percent planned to increase their investment levels in China in 2015 although, for many, the increase of planned investment was expected to be at a lower rate than in previous years.

Foreign investment is critical to Shanghai’s economy. According to the Shanghai Municipal Commission of Commerce’s Invest Shanghai Guide 2015, foreign-invested enterprises (FIEs) contributed two-thirds of the city’s import-export volume and industrial output. Furthermore, one-third of the city’s tax revenues and employment are attributable to FIEs. Paid-in foreign investment from the US accounted for 5.5 percent of Shanghai’s foreign direct investment (FDI).

**Ongoing Regulatory Issues**

**Market Access**

In 2015, regulatory challenges continued to limit the growth of American businesses in Shanghai. Market access obstacles exist in virtually every sector of the Chinese market, and AmCham Shanghai members in the financial services, e-payment, agriculture, healthcare services, medical devices, pharmaceutical, and e-commerce industries in particular are hobbled by equity caps, lack of implementing measures, import restrictions, lengthy and unequally applied approval procedures, and preferential policies for domestic competitors, among other market access restrictions. More details on the specific challenges can be found in each industry’s respective White Paper chapter.

**Recent Developments**

**Developing Shanghai into an International Center for Innovation**

As outlined in Shanghai’s 12th Five-Year Plan, which was approved in 2010, Shanghai wants to host four “international centers” – a financial center, a trade center, a shipping center, and an economic center – by 2020. In May 2015, the Shanghai government announced it would also turn the city into a “technological innovation center” by 2020, a move choreographed to coincide with Li Keqiang’s new “Internet+” strategy.

Seeking to emulate the entrepreneurial spirit of Palo Alto, the Shanghai government will launch specific schemes to establish itself as a start-up hub. One such effort, referred to as the “Entrepreneurship in Pujiang Action Plan,” aims to encourage 200,000 technology entrepreneurs by 2020 by building entrepreneurship schools throughout the city. The municipal government expects at least 3,000 angel investors and more than 100 venture capital firms to be doing business in the city by 2020.

While these measures will address the ‘hardware’ of innovation and entrepreneurship, strict controls on the educational curriculum, a lack of avenues for industry-university collabor-
上海

本章由上海美国商会提供。

引言

上海是全球第二大经济体中最大、最繁华的城市，它位于中国经济改革进程的前沿，是上海证券交易所所在地，还拥有中国首个自由贸易试验区（自贸区）。然而，上海的雄心壮志并不局限于国内经济发展。正如上海“四个中心”政策所述，这座城市殷切期望着成为全球经济、金融、航运和贸易中心，但上海需要开展进一步的改革才能实现其国际愿景。

尽管经济减速，美国企业仍可在此找到机遇

就像中国的许多城市那样，上海的经济增长增速在去年也有所放缓。它放弃了2015年的GDP目标，部分原因是实现此目标的压力会扭曲政府的投资决策。据上海官员表示，如果没有这个目标，上海可以聚焦于更好的质量型增长，尽管经济增长增速放缓，但在上海的美国公司仍然可以专注于商业机遇。上海美国商会曾根据近400位商会成员公司的调查反馈编制了2015年《中国商业报告》，该报告显示，有接近四分之三的调查对象盈利，并且收入有所增长。尽管中国在许多行业面临着市场准入障碍，但它发展迅速，吸引了许多创新型企业。

外商投资对于上海的经济至关重要。上海市政府发布的《2015年上海投资指南》显示，外资企业（FIE）的贡献占上海进出口额和工业产值的三分之二，此外，上海三分之二的税收收入和就业都源于外资企业。实际上，美国企业投资占上海外商直接投资（FDI）的5.5%，

现存监管问题

市场准入

2015年，监管方面的挑战仍然限制着美国企业在上海的成长。市场准入障碍几乎存在于中国市场的每个行业。上海美国商会的金融服务业、电子支付业、农业、医疗服务业、医疗器械制造业和药品制造业的成员，尤其是电子商务成员，由于股本上限的约束、实施措施的缺乏、进口限额、漫长的审批流程以及中国国内竞争者的优惠政策等其他市场准入限制而举步维艰。有关这些挑战的更多信息，请参见《白皮书》中各行业相关章节。

近期发展

将上海建设成为国际创新中心

如上海2010年批准的“十二五”规划所述，上海要在2020年之前成为四个“国际中心”——金融中心、贸易中心、航运中心和经济中心。2015年5月，上海市政府宣布将在2020年前将这座城市打造为“科技创新中心”，这一举措与李克强总理提出的全新“互联网+”战略不谋而合。

上海政府正在努力模仿帕洛阿尔托的创业精神，并提出了将自身建设成为创业中心的具体方案。上海发布了“创业浦江”行动计划，其目标是通过建立创业学校，到2020年，将有至少3000名天使投资人和100多家风投公司在上海开展业务。虽然这些措施将解决创新和创业的“硬件”问题，但对教育课程的严格控制、产学合作渠道的缺失以及知识产权保护的不足都将降低上海发展具有突破性和颠覆性的企业的能力。

中国（上海）自由贸易试验区

中国（上海）自由贸易试验区（上海自贸区）创办于2013年9月，是中国经济改革的一块试验田。在2015年，上海自贸区出台了一系列措施，包括放宽人民币跨境转移的改革、贸易便捷化和签证监管。该试验区的地理位置也已扩大。然而，在上海自贸区推出两年多之后，有73%的
oration and research commercialization, and shortcomings in IPR protection and enforcement will hobble Shanghai’s ability to develop breakthrough and disruptive entrepreneurial businesses.

**China (Shanghai) Pilot Free Trade Zone**

Launched in September 2013, the China (Shanghai) Pilot Free Trade Zone (Shanghai PFTZ) serves as a testing ground for economic reforms. In 2015, a series of initiatives were introduced in the Shanghai PFTZ, including reforms that eased cross-border transfers of renminbi, trade facilitation, and visa regulations. The zone’s geographic boundaries were expanded as well. However, more than two years after the launch of the Shanghai PFTZ, 73 percent of respondents cited in AmCham Shanghai’s 2015 China Business Report say that it offers no tangible benefits.

The Shanghai PFTZ was one of the first areas to use a negative list approach to manage foreign investment. Under this approach, foreign investment is permitted within the Shanghai PFTZ in some sectors that are otherwise prohibited nationwide. The number of items on the PFTZ negative list has been reduced twice, down from an initial list of 190 items to the current 122 items. Many of the changes, however, are largely cosmetic. Many items “eliminated” from the list were merely consolidated into groups. Still, the list reduction has opened some minor areas to foreign investment, namely in the agriculture, real estate, telecommunications, and pharmaceutical sectors. The State Council announced in 2015 that, by 2018, the negative list approach would be adopted nationwide. The negative list is also being used in negotiations for the US-China Bilateral Investment Treaty, which is discussed in further detail in the Investment chapter.

The Shanghai PFTZ has ushered in a number of other reforms, several of which have been rolled out nationwide. For instance, companies in the Shanghai PFTZ are now permitted to use Free Trade Accounts to conduct cross-border transfers of foreign currency and renminbi. The FTZ has also implemented 23 regulatory measures that simplify the clearance procedures for Shanghai Customs and Entry-Exit Inspection and Quarantine and allow relaxed visa policies for foreigners working in the Shanghai PFTZ. Though most reforms in the Shanghai PFTZ are viewed positively by foreign investors, the State Council’s April 2015 announcement on national security review is seen by many as a means of limiting investment. All of China’s PFTZs (including those in Guangdong, Tianjin, and Fujian, which were established in April 2015) will pilot procedures for a national security review of foreign investment, which covers a broad scope including cyberspace security, cultural security, and public morality.

In 2015, China considerably expanded its PFTZs. The Shanghai PFTZ grew from 28.78 km² to 120.72 km² to include the Lujiазui Financial District. On October 30, 2015, the Shanghai Government, People’s Bank of China, Ministry of Commerce, and four other agencies committed to carry out reforms in the Shanghai PFTZ to increase RMB internationalization and provide more access to China’s capital markets. The statement did not provide details on how the reforms would be implemented, such as a timeline or implementing legislation.

**The Shanghai Stock Exchange**

The Shanghai Stock Exchange (SSE) had a tumultuous 2015. Its index doubled from November 2014 to June 2015, rising from 2,486 to 5,166 points. The Shanghai composite then suffered a three-week rout, losing one-third of its value and bottoming out at 3,507. The decline wiped out more than US $3.5 trillion (RMB 22 trillion) in value within one month. The months following the initial crash saw the market seesaw, and it was again punctured by “Black Monday,” when stocks drastically dropped on August 24. By August 26, the index’s 2015 gains had been erased.

The sharp increase from November 2014 to June 2015 was a result of misjudged government efforts to stimulate the economy by talking up the market. In particular, cuts to the reserve ratio requirement and a flood of first-time retail investors were seen as contributing factors.

Following the initial fall, the China Securities Regulatory Commission intervened by suspending IPOs, banning the sale of shares for six months by investors holding over five percent in a company, and suspending trading across 90 percent of Chinese stocks. While the government acted out of fear that the stock market decline would spread to the broader economy and dampen consumer demand, its actions were met with criticism from the international investing community. By encouraging investment during the market’s rise and then seeking to stop the rout when the market correction began, the government’s economic management skills and its commitment to allowing market forces to play a greater role in the economy were called into question.

Although the losses have been substantial, the impact on overall consumer behavior has been limited. At the time of the crash, less than seven percent of the national population was invested in stocks. Also, 85 percent of trades on the SSE were made by retail investors, unlike developed stock exchanges where institutional investors make the majority of trades. This limited the impact of the market on the greater Chinese economy.

**Trade Facilitation**

Shanghai Customs and the Shanghai Import and Export Quarantine Bureau (CIQ) piloted 23 new initiatives in the Shanghai PFTZ in 2015 that have had a positive impact on companies within the zone. These new initiatives, which include a single window clearance system and third-party testing, have significantly reduced clearance times. In some cases, clearance times have decreased from 24 hours to a few
调查对象在上海美国商会 2015 年 《中国商业报告》中表示，试验区并未给他们带来切实的利益。

上海自贸区是首批使用负面清单方法管理外商投资的区域之一。按照该方法，外商投资可以在上海自贸区中进入在中国其他地区禁止进入的一些行业。试验区负面清单的项目数量曾被削减过两次，从最初的 190 项降至目前的 122 项。然而，许多变化往往流于表面。许多从清单中“消除”的项目只是合并成组而已，清单的缩减仍然为外商投资开放了一些领域，如农业、房地产、电信和药品制造业。国务院在 2015 年 4 月宣布，到 2018 年，负面清单方法将在全国范围内推行。负面清单也在中美双边投资协定谈判中得到了使用，我们将在“投资”章节对此作进一步讨论。

上海自贸区出台了大量其他改革措施，其中几项已在全国范围内开展。例如，试验区中的公司现在获准使用自由贸易账户进行外汇和人民币的跨境转移，试验区还实施了 23 项监管措施，简化上海海关和出入境检验检疫的通关手续，并对在试验区内的工作外国人放松了签证政策。虽然上海自贸区的大部分改革措施受到外国投资者的正面评价，但仍有许多人认为国务院 2015 年 4 月宣布的国家安全审查是一种限制投资的方式。所有中国自贸区（包括 2015 年 4 月在广东、天津和福建建立的试验区）将作为试点，对外商投资实施国家安全审查程序，其涵盖了诸多领域，包括网络安全、文化安全和公共道德。

2015 年，中国大幅扩大了自贸区的范围。上海自贸区面积从 28.78 平方公里增加至 120.72 平方公里，将陆家嘴金融区也纳入其中。2015 年 10 月 30 日，上海市政府、中国人民银行、商务部和其他四家机构承诺在上海自由贸易试验区执行改革措施，以增加人民币的国际化程度，提供更多进入中国资本市场的途径。这项声明并未详细介绍如何实施改革，例如时间安排或实施立法。

### 上海证券交易所


### 贸易便利化

上海海关和上海进出口检验检疫局 (CIQ) 2015 年在上海自由贸易试验区试点推行了 23 项对试验区内的公司起到积极影响的新举措。这些新举措包括单一窗口通关新模式，显著缩短了通关时间。在某些情况下，通关时间甚至可以从 24 小时降到几分钟。跨境电子商务区域的改革则是另一个亮点。上海于 2013 年 12 月开始试行跨境电子商务的试点，在推行类似试点计划的城市相比，上海的经营规模和交易数量都相对滞后。上海海关在 2015 年通过重组内部流程和改善效率解决了这些问题。例如，网店现在可以对进口产品进行批量清关。此外，2015 年 10 月，长江三角洲的 12 家检疫局联合推出了清关检验一体化模式，“B 类”或以上级别企业可以申请进行一体化清关检验。

### 建议

#### 对上海市政府

- 在中国（上海）自由贸易试验区出台重要的金融服务、行政和贸易便利化改革措施，减少负面清单中构成市场准入障碍的限制，尤其是在金融领域。
Reforms in the cross-border e-commerce area were another bright spot. Shanghai began trialing cross-border e-commerce initiatives in December 2013. But, compared to cities with similar trial programs, Shanghai lagged behind in both business scale and volume of transactions. Shanghai Customs addressed this challenge in 2015 by reorganizing their internal processes and improving efficiency. For example, online shops can now clear imported products in batches. In addition, in October 2015, 12 quarantine bureaus in the Yangtze River Delta jointly launched an integrated customs clearance and inspection system that allows enterprises with a “Category B” ranking or above to apply for integrated customs and clearance inspections.

Recommendations

For the Shanghai Government:

• Introduce significant financial service, administrative, and trade facilitation reforms in the China (Shanghai) Pilot Free Trade Zone and reduce restrictions in the negative list that constitute market access barriers, especially in the services area.

• Expand the use of Free Trade Accounts and other vehicles to increase capital account convertibility.

• Support e-commerce growth by providing American companies increased access to e-commerce platforms and accelerating e-commerce clearances by Shanghai Customs and CIQ.

• Accelerate and expand reform efforts within and beyond the Shanghai PFTZ wherever possible.
• 扩大自由贸易账户和其他载体的使用，以增加资本账户的通用性。

• 为美国公司提供更多进入电子商务平台的途径，加速上海海关和检验检疫局的电子商务通关速度，从而支撑电子商务的增长。

• 如有可能，加速并扩大上海自由贸易试验区内内外的改革。
Tianjin

Introduction

Tianjin is a provincial-level major metropolitan area located along Bohai Bay in northeastern China, approximately 120 km southeast of Beijing. The city, with a population of approximately 15 million, continues to grow and further integrate with Beijing and the surrounding areas.

Known for its strong advanced manufacturing base and port, Tianjin continues to see growth in this area, but is also diversifying its economy. In 2015, Tianjin’s service sector surpassed the size of the manufacturing sector for the first time. Major manufacturing industries include aerospace, automobiles, electronics, equipment manufacturing, pharmaceuticals, and petroleum. Service sector industries include education, hospitality and tourism, logistics, and retail.

The Tianjin economy has been among the fastest growing in China over the past decade. However growth rates are slowing and there is concern regarding overinvestment and overbuilding in several sectors. A greater focus on balanced development is required to ensure project sustainability and viability.

New investments in the city are visible, especially in commercial real estate. New office towers, shopping malls, and hotels continue to be completed, transforming several areas of the city. One side effect of these new openings has been the closure of a number of older department stores and more traditional retail outlets as they have been eclipsed by more modern shopping malls.

Over 60 percent of Tianjin Chapter members, a record number, responded to the 2016 AmCham China Business Climate Survey, which was conducted in late 2015. Any data in this chapter, unless otherwise specified, is based on Tianjin members’ responses to this survey.

Recent Developments

Binhai Explosion

In August 2015, there was a disastrous fire and subsequent explosion at a hazardous goods warehouse near the port area, 40 miles east of central Tianjin. As reported by various media outlets, at least 173 people died and 17,000 apartments were damaged as were some factories, other commercial property, and a light rail station. The local government was criticized for a lack of transparency regarding the cause of the explosion and the ongoing environmental impact. A follow-up investigation led to the arrests of a number of people related to the facility, including some government officials. The site has now reportedly been cleaned up, but Tianjin’s reputation has suffered as a result. AmCham China is concerned about the extent of efforts to prevent future catastrophes to alleviate concern regarding safety and transparency and the consequent impact on the investment environment.

Negative Side Effects of Anti-Corruption Campaigns

In the wake of the Binhai explosion and other unrelated corruption investigations, a number of Tianjin government officials were removed from their posts in 2015. The fight against corruption is a welcome trend, but the result has
引言

天津是一个省级大都市，位于中国东北方的渤海湾地区，在北京东南方向约120公里，人口约1500万，天津继续保持增长态势并与北京及周边地区不断融合。

天津以其先进的制造业基地和优良的港口而闻名。除此之外，其经济也正在实现多元化发展。2015年，天津服务业规模首次超过制造业，主要的制造业包括航空、汽车、电子、设备制造、医药和石油等行业，服务业则包括教育、酒店和旅游、物流和零售业等。

在过去的十年中，天津一直是中国经济增长最迅速的地区之一。但是，其经济增长率正在放缓，且有行业可能存在过度投资和建设的问题。为了保证项目的可持续性和可行性，需要着力推动其均衡发展。

在天津，新投资非常活跃，特别是在商业地产领域，不断有新的写字楼、购物中心和酒店落成，给这座城市的几个区域带来了巨大变化。随之而来的负面效应是，在更先进的购物中心面前，老式的百货公司和传统的零售店铺难免相形见绌，很多不得不关门大吉。

2015年末，中国美国商会开展2016年度商务环境调查，天津分会有超过60%的会员参加了调查，创造了新的参与纪录。除非另有说明，本章中的数据均来自对天津会员企业的调查结果。

最新进展

滨海新区爆炸事故

2015年8月，天津中心城区以东40英里，靠近港口的一处危险品仓库发生火灾并引发爆炸，根据多家媒体报道，事故至少造成165人丧生，8人失踪，17000间房屋受损，其中包括工厂、其他商业地产和轻轨车站。当地政府因为没有说明爆炸原因及其对环境的持续影响而受到批评。随着调查的进行，包括一些政府官员在内的相关人员被逮捕，现场据说已经清理完毕。但是，天津的声誉也因此受损。中国美国商会希望天津能够采取措施，防止将来再发生类似灾难，减轻人们对安全和透明度的担心以及由此带来的对投资环境的影响。

反腐行动的负面效应

2015年，随着滨海爆炸事故的发生及其他与之没有关联的腐败调查的推进，天津市政府的一些官员被免职。虽然反腐行动受到普遍欢迎，但也导致政府和企业间的沟通进程放慢。政府新调任的官员，在某些情况下，似乎不愿或无法做出与企业有关的决定。
been a slowdown in government-to-business communications as new personnel are transferred into government positions and, in some cases, appear reluctant or unable to make business-related decisions.

**Pilot Free Trade Zone and Jing-Jin-Ji**

Two main policies are often touted by the Tianjin government as drivers of additional investment and development. These include the creation of the China (Tianjin) Pilot Free Trade Zone (Tianjin PFTZ) and the Beijing-Tianjin-Hebei (jing-jin-ji) integration program. Work on, and education about, both programs need to continue.

The Tianjin PFTZ includes three areas: the Dong Jiang Port Area, the Airport Economic Area, and the Yu Jia Pu Central Business District. These zones have been active in marketing their individual efforts but there is still great confusion as to the overall Tianjin PFTZ strategy. The Tianjin government has also indicated that few companies are taking advantage of the benefits of the PFTZ policies, a clear indicator that more information and promotion is needed.

The perception in Tianjin is that the Beijing-Tianjin-Hebei integration program heavily favors Beijing and that additional work needs to be done to benefit all areas. We have yet to see a clear strategy for Tianjin to develop a key set of objectives that will best position the city in the increasingly integrated region.

**Tianjin’s Investment Climate**

**Competitiveness of Tianjin**

Among Tianjin members, 45 percent reported breakeven or worse financial results in 2015. Further, 76 percent of members reported that the investment environment in China is staying the same or getting worse. Moreover, 62 percent of members responded that their investment plans in 2016 will increase by less than 10 percent or that they have no plans to increase investment. Additionally, 70 percent feel that foreign investors are less welcome than in previous years. While this negative sentiment can be understood in the context of a declining economy, we feel it critical that the Tianjin municipal government enhance its commitments to foreign investors, particularly in light of the Binhai accident.

**Most Important Business Opportunities**

Members still feel that there are business opportunities available in Tianjin, with 65 percent citing the rising and more affluent middle class as the biggest opportunity for their firms. This growth in domestic consumption is a critical component of our members’ business strategies. As continued urbanization is also noted as a key feature in companies’ growth strategies, Tianjin’s policies should account for the increase in urbanization.

**Labor Costs**

Rising labor costs are again the biggest business and human resource challenges cited by 65 and 70 percent of our members, respectively. While labor costs in Tianjin are still lower than in other first-tier cities, cost pressures in the face of a slowing economy will lead to job losses and delays in hiring. This situation needs to be addressed by the government in order to prevent more companies leaving Tianjin.

**Regional Corporate Migration**

There have been several cases of both foreign and domestic manufacturing firms moving their operations from Beijing to western Tianjin as higher prices and a changing investment environment in Beijing encourage firms to relocate. This has generated a modest but positive increase in firms moving to Tianjin.

**Ease of Doing Business**

Seventy-seven percent of our members reported satisfaction with the Tianjin government’s support of foreign business. However, membership was split on how much negative or positive impact the policy changes and enforcement of such policies had on their firms. Furthermore, 59 percent said that inconsistent regulations and enforcement ranked as their top business challenge. Given the complexities of the past year,
自由贸易试验区和京津冀

建立中国（天津）自由贸易试验区（天津自贸区）和北京－天津－河北（京津冀）一体化规划，这两大政策时
常被天津市政府用来促进投资和发展。与这两方面有关的工作和教育还需要继续开展。

天津自贸区包括东疆港区、空港经济区和于家堡中心商务区三大区域。这几个区域已经在积极进行推介活动，
但是，天津自贸区的总体战略仍不清晰。天津市政府也曾表示，利用自贸区的优惠政策并从中获益的企业并不多，
这也说明了提供更多信息和加大推介力度的必要性。

从天津的角度看，北京才是京津冀一体化规划的主要受益方。要想整个地区都能从中获益，还需要推进其他工作。
我们希望看到天津制定明确的战略，确定一组关键目标，争取在区域一体化进程中占据有利地位。

天津的投资环境

天津的竞争力

45% 的天津会员企业表示，2015 年实现了盈亏平衡或遭受了亏损。76% 的会员企业表示，中国的投资环境保持
不变或不断恶化。另外，62% 的会员企业表示，2016 年计划增加投资 10% 或者没有扩大投资的计划。70% 的会员
企业认为，外国投资者在中国不如以往受欢迎。在经济下滑的大背景下，这种负面的情绪是可以理解的。中国美国
商会认为，关键在于，天津市政府需要进一步兑现对外国投资者的承诺，特别是在滨海爆炸事故上。

最重要的商业机会

会员企业依然认为天津蕴含着大量商机，其中有 65%
的企业就表示，“中产阶层规模扩大，收入水平提高”
是最大的机会。“国内消费增长”是会员企业业务制定战
略的关键因素。城镇化进程也是企业增长战略的主要参数，
因此天津的政策也应当考虑城镇化水平的提高。

劳动力成本

劳动力成本再次成为受访会员企业最大的商业和人力
资源挑战，这一比例分别为 65% 和 70%。与其他一线城市
相比，天津的劳动力成本仍然较低，但是，在经济增长
放缓的背景下，成本压力会导致失业和招聘推迟。政府需
要解决这一状况，以防有更多的企业离开天津。

区域企业迁移

由于北京的物价水平较高并且投资环境发生变化，有
几家外资和内资制造企业已经将业务转移到天津西部。这
些迁到天津的企业数量正呈现温和增长。

Which of the following are important business
opportunities for your China business?
下列哪些因素被贵公司视为在华运营的重要机会?

<table>
<thead>
<tr>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Growth in domestic consumption</td>
<td>Growth in domestic consumption/Rise of an increasingly sizeable and affluent middle class</td>
</tr>
<tr>
<td>Sustained rapid economic growth</td>
<td>Urbanization and continued support for infrastructure investments</td>
</tr>
<tr>
<td>Ability to increasingly develop win-win relationships with Chinese business partners</td>
<td>Globalization of Chinese companies and increased outbound investment</td>
</tr>
<tr>
<td>Rise of an increasingly sizeable and affluent middle class</td>
<td>Addressing environmental challenges/environmental protection</td>
</tr>
<tr>
<td>Urbanization</td>
<td>“Internet+” and growth of ecommerce</td>
</tr>
</tbody>
</table>

| 国内消费增长                             | 国内消费增长/ 中产阶层规模扩大，收入水平提高 |
| 持续快速经济增长                       | 城镇化和对基础设施投资的持续支持 |
| 与中国业务伙伴发展双赢关系的能力日益提高 | 中国公司全球化和境外投资增长 |
| 中产阶层规模扩大，收入水平提高        | 解决环境挑战/ 环境保护 |
| 城镇化                                   | “互联网+”和电子商务增长 |

| "国内消费增长/ 中产阶层规模扩大,收入水平提高" | "国内消费增长/ 中产阶层规模扩大并且收入水平提高" |"国内消费增长" |"中产阶层规模扩大,收入水平提高" |
| "城镇化和对基础设施投资的持续支持" | "城镇化和对基础设施投资的持续支持" | "中国公司全球化和境外投资增长" | "中国公司全球化和境外投资增长" |
| "解决环境挑战/ 环境保护" | "解决环境挑战/ 环境保护" | ""互联网+”和电子商务增长" | ""互联网+”和电子商务增长" |
| ""互联网+”和电子商务增长" | ""互联网+”和电子商务增长" | "城镇化" | "城镇化" |
we recommend that the Tianjin government conduct further outreach with AmCham China and other foreign investors.

**Development of the Service Economy**

**Tourism Sector**

The Binhai accident has negatively impacted the entire city, particularly business and tourism. Slowing economic growth and global market turmoil provided further headwinds for growth in this sector. Tianjin should devote significant resources to improve the “Tianjin Brand” on which we all rely in marketing our companies’ goods and services.

**Financial Sector**

In September 2015, the startup phase of the Yu Jia Pu Central Business District opened to much fanfare. The area is currently home to a dozen commercial buildings that will host some of the functions of the PFTZ government and a broad mix of state-owned and private enterprises. The plan is for the area to become the central business district for the Binhai New Area. However, this remains an underutilized region of the city.

**Other Professional Services**

Steady growth in this sector has improved the level of services for member companies. However, with unsteady growth projections, many firms are reducing headcount and further support is required to ensure that service providers do not lose the talent that is vital to Tianjin’s future.

**Quality of Life Issues**

**Pollution**

Eighty-eight percent of our members stated that pollution was their biggest concern impacting quality of life. While the Binhai accident certainly contributed to this perception, Tianjin continues to experience unhealthy levels of air pollution at a high frequency. Pollution is a major issue limiting the attraction of talent to Tianjin and is becoming a factor in attracting investors. We strongly support the further integration of central policies and responses but also support Tianjin putting forward its own agenda to improve the environment. These efforts also need to be more transparent to ensure public support.

**Traffic Congestion and Transportation Infrastructure**

Traffic congestion is a major concern, with 45 percent of members citing it as having a negative impact on Tianjin’s quality of life. Mass transit still holds the most appeal and has the greatest potential to relieve congestion. Located in the Yu Jia Pu Central Business District, the Binhai Rail Station opened in September 2015, linking the Binhai area to both Tianjin and Beijing via high speed rail. This new infrastructure is a welcome addition to the city. Additional work is continuing to further link Tianjin to other areas in Jing-Jin-Ji.

Construction continued on subway lines Five and Six in central Tianjin and their completion in 2016 or later will provide a welcome expansion of Tianjin’s subway network. Line Nine, the light rail line linking central Tianjin to parts of Binhai was damaged in the August blast and service was disrupted for most of the second half of 2015 with partial service restored in December.

**Recommendations**

**For the Tianjin Government:**

- Market Tianjin to foreign investors through the use of a professional PR agency and by coordinating with foreign business chambers as first steps in order to help address the challenges of 2015, including the slowdown of economic growth and general market instability.
- Provide a clear roadmap for Tianjin’s role in the regional integration strategy with Beijing and Hebei province, including a strategic plan to identify and promote those sectors in which Tianjin has or can gain competitive advantage, such as service industries, in the broader region.
- Be bold and open in designing the Tianjin PFTZ, providing opportunities for timely consultation with the business community; make clear PFTZ policies and promote their benefits among the business community.
- Implement more flexible policies to ensure that Tianjin remains cost-competitive with its peers.
- Conduct a city-specific sustainability study to ensure that problems are matched with best-practice solutions.
- Continue to reduce traffic congestion by developing practical and enforceable policies, along with continued focus on developing public transportation solutions.
- Continue efforts to make Tianjin a better tourism and conference destination by improving service capabilities and developing Tianjin’s image as a global city.
### 经商便利度

77% 的会员企业对于天津市政府对外企的支持表示满意。但是，会员企业对于政策变化及其对企业产生的不利或有利影响却持有不同的意见。而且，59% 的企业表示，法律法规执行不一致是其面临的最大商业挑战。考虑到过去一年的复杂环境，我们建议天津市政府进一步与中国美国商会和其他外国投资者开展合作。

### 服务类经济的发展

#### 旅游业

滨海事故对整个天津市造成了不利影响，其中商业和旅游业尤为明显。再加上经济增长放缓和全球市场动荡，旅游业的处境愈发困难。天津应当整合重要资源，从而提升企业推介其商品和服务时所依赖的“天津品牌”形象。

#### 金融业

2015 年 9 月, 于家堡中心商务区启动阶段盛大开启。这一地区目前有十几座商业楼宇，自贸区的一些政府机构以及众多国有和私营企业也将入驻。按照计划，这一地区将成为滨海新区的中心商务区，但是，目前这一地区还未得到充分的利用。

#### 其他专业服务

其他专业服务业的稳定增长提高了对会员企业的服务水平。但是，鉴于增长预期不稳定，许多企业正在裁员或裁员。所以，企业还需获得进一步的支持，以确保服务供应商不会流失有助于天津未来发展的人才。

### 生活质量问题

#### 污染

88% 的会员企业表示，最担心污染对生活质量造成影响。虽然滨海事故直接影响了这一数据，但是，天津确实频繁遭遇严重的空气污染。污染成为天津吸引人才的主要障碍，也是吸引投资者需要考虑的一个因素。我们强烈支持政府对相关中央政策及其反馈的进一步评估，并支持天津提出自己的环境改善计划。然而，为了获得公众的支持，这些举措需要更加透明。

### 建议

#### 对天津市政府：

- 首先，通过专业公关机构更加积极地向外国投资者推介天津，与外国商会协调行动，共同应对 2015 年面临的包括经济增长放缓和市场普遍存在的不稳定因素的挑战。
- 制定一份清晰的路线图，确定天津在区域一体化战略中的作用，包括固定和支持服务业等天津具有的或者能够获得竞争优势的产业在该地区发展的战略计划。
- 以大胆和开放的方式设计天津自贸区，并及时征求企业界的意见和建议，明确自贸区的政策，使企业界能从中受益。
- 实施更有弹性的政策，确保天津对其他城市保持成本竞争优势。
- 对城市特色的可持续性进行研究，确保问题得到最佳的实践解决方法。
- 继续制定切实可行的政策减少交通拥堵，并继续关注公共交通的解决方案。
- 通过提升天津的服务能力和作为“全球性城市”的形象，继续将天津打造成更佳的旅游和会议集散地。
**Introduction**

AmCham China’s Central China Chapter members continue to view the city of Wuhan and Hubei province as promising business environments. Although growth in 2016 will likely moderate from the much higher rates reported in previous years, the two also appear relatively well-positioned to resist the worst headwinds slowing China’s over-all economy. Green industries and companies with advanced technologies should also benefit from government support. According to the results of the 2015 AmCham China Business Climate Survey, a majority of central China members say the business environment is improving.

The Wuhan and Hubei governments continue to enhance the living environment, and have taken significant measures to improve air quality and traffic. New highways have reduced commute times, and another subway line began operation at the end of 2015.

AmCham China welcomes further government efforts to clarify and consistently apply laws and regulations, attract world-class managerial talent, protect air quality, improve traffic and pedestrian safety, and develop international-standard medical care. We also look forward to expanded services (e.g., passport and visa services) available to both US and Chinese citizens at the US Consulate General in Wuhan.

**Quality of China’s investment environment**

![Quality of China’s investment environment](chart)

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deteriorating</td>
<td>42%</td>
<td>16%</td>
</tr>
<tr>
<td>Staying the same</td>
<td>16%</td>
<td>28%</td>
</tr>
<tr>
<td>Improving</td>
<td>42%</td>
<td>56%</td>
</tr>
</tbody>
</table>

**Ongoing Regulatory Issues and Recent Developments**

**Inconsistent and Unclear Laws and Regulations**

AmCham China recognizes the progress the Chinese government has made in enacting and implementing new laws and regulations to maintain a positive business environment. More than two-thirds of central China members said changes in and enforcement of government policies have improved the business environment. Nevertheless, for the first time, AmCham China members cite inconsistent/unclear rules and regulations as the biggest challenge to doing business in central China. American-invested companies also seem to be held to a higher standard than their domestic competitors, especially in the area of environmental protection, adding to their cost burden. This differential treatment of foreign companies compared to their domestic counterparts in other areas like labor courts is particularly acute in the smaller cities and counties of Hubei province. More uniform application of laws and regulations would encourage American businesses to invest more in central China. AmCham China recommends that the Hubei and Wuhan governments utilize experts from Wuhan or other regions to better educate and train enforcement and arbitration officials to have a common understanding and application of laws and regulations.

**Difficulty Recruiting Talent**

Among AmCham China Central China members, shortages of qualified employees remain a top-five business challenge, though the issue dropped in priority compared to the previous year’s survey. AmCham China applauds
武汉

引言

中国美国商会华中地区会员企业继续认可武汉市和湖北省的良好商务环境。尽管预计2016年的增长率较前几年的高增长率略有下降，但在中国总体经济增长放缓的大趋势下，武汉市和湖北省依然保持着相对较强的增长势头，绿色产业和高科技企业也将从政府扶持政策中受益。中国美国商会2015年《商务环境调查报告》结果显示，多数华中地区会员企业认为商务环境在持续改善。

武汉市政府和湖北省政府继续改善生活环境，并采取了有力措施改善空气质量；新建成的高速公路缩短了市民的通勤时间，2015年底一条新开通的地铁线路也投入使用。

中国美国商会欢迎政府采取措施，进一步明确相关法律法规并保证其实施工作的一致性，吸引世界一流的人才，提高空气质量，改善交通条件，保障行人安全，以及发展符合国际标准的医疗服务。中国美国商会还希望美国驻武汉总领事馆能为美国和中国公民扩大其服务范围，如护照和签证服务等。

现存监管问题及最新进展

法律法规缺乏一致性和明确性

中国美国商会认可中国政府在颁布和实施新法律法规，以及保持良好商务环境方面所取得的进步。超过三分之二的华中地区的会员企业认为，政府政策的调整和相关执法活动的推进改善了商务环境。然而，中国美国商会的会员企业今年首次将法律法规缺乏统一性和明确性视为在华中地区开展商业经营所面临的最大挑战。美资企业执行的标准比中国本土同行高，特别是在环境保护领域，这推高了美资企业成本负担。其他领域中，如劳动仲裁，也存在类似的对内外资企业采取差别对待的现象，此类现象在湖北省的小城市和县区尤为突出。提高法律法规适用的一致性有助于鼓励美资企业扩大对华中地区的投资。中国美国商会建议湖北省政府和武汉市政府充分利用武汉或其他地区的专家资源，对相关执法人员和仲裁人员进行培训，强化他们对法律的统一理解，并规范其执法行为。

图：过去两年内政府政策调整及相关执法活动对贵公司所处的商务环境有何影响？

- 政府政策修改
  - 改善：48%
  - 极大改善：32%
  - 恶化：20%

- 政府政策执行
  - 改善：20%
  - 极大改善：60%
  - 恶化：20%
the efforts of local and provincial governments to attract talented personnel to Hubei. Current policies that have focused on attracting global top-level technical experts and leaders are helpful, but not as effective in attracting talented senior managers and team leaders in other areas, whether foreign or Chinese. The talent pool at local universities does not yet match either the government’s ambitions for the high-tech sector or the specific skill needs of relevant foreign enterprises. This also puts pressure on companies’ retention of existing staff, once again adding to costs. Managers who work in Wuhan also face housing, education, healthcare, and many practical problems, making it difficult to recruit managers from other cities. Government offices seem unable to resolve these practical issues or are unclear as to which department has the authority to do so.

AmCham China recommends that the Hubei and Wuhan governments provide clear, systematic procedures detailing how Chinese staff from other cities may obtain a hukou, education for their children, health care, and housing. Again, designating the government department responsible for processing these requests would be helpful.

Air Quality Concerns

Since designating air quality as one of the top 10 priorities to improve the quality of life for residents, the Wuhan government has taken several measures to improve the environment. These include finding the source of volatile organic compounds, eliminating 70,000 yellow license cars and older vehicles, monitoring construction site dust pollution, and reducing the amount of emissions from buses, coal boilers, and kitchens. The Wuhan government has also sped up public transportation and facility construction, such as metro lines, and the third additions to both the Tianhe airport and the Wuhan International Container Terminal.

AmCham China applauds such progress and recommends that the Wuhan government make greater efforts to monitor and control enterprise pollution compliance (e.g., in shipyards and waste treatment plants), encourage higher utilization of green public transportation, promote new energy vehicles, and also upgrade environmental protection awareness within local communities.

Improving Medical Care

In 2015, the local government made progress in improving medical care for the foreign community in Wuhan. In January 2015, the Union Hospital launched an International Outpatient Department servicing expatriates and their families. The newly developed department provides around 40 specialized medical services, English-speaking staff, and foreign-trained doctors. During the past year, approximately 1,200 patients visited this department and it seems to have improved the convenience and quality of medical care for foreigners in Wuhan. However, a separate survey among the foreign community in Wuhan shows that the level of awareness of the new services remains relatively low. A stronger marketing campaign would be helpful in this regard, as would a more suitable medical insurance settlement plan. Additionally, while the International Outpatient Department is based in Hankou, many foreigners live in Wuchang and Hanyang. Therefore, the development of international-standard medical services in those areas would also help to alleviate the problem.

There is still a shortage of foreign doctors and primary care physicians who can coordinate patient care among hospital departments. The one international clinic with an American doctor is only open two half-days a week. Fiscal incentives that encourage international-standard medical care providers to offer additional services would facilitate medical developments in Wuhan, thus encouraging more foreigners to invest, live, and work here.

Addressing Traffic Challenges

AmCham China applauds the significant investments that the Hubei and Wuhan governments made in 2015 to improve traffic conditions, including adding international air routes, international cargo transportation via train and waterway, and additional expressways, subways, and Bus Rapid Transit routes. One safety concern is that during construction of this infrastructure, sidewalks are often removed, increasing the danger for pedestrians and cyclists.
难以招聘合格人才

中国美国商会华中地区的会员企业依然将合格人才短缺列为他们所面临的五大商业挑战之一，但该问题的严重性排名与去年相比有所下降。中国美国商会对华中政府在吸引人才就业方面所作的诸多努力表示赞赏。目前有关吸引世界顶级技术专家和领导者的政策效果显现，但在吸引其他领域的中外高级管理人才和团队方面却少有成效。本地高校培养的人才既不符合政府发展高科技行业的宏伟目标的要求，也不能满足相关外资企业的专业技能需求。这也给企业留住在职员工造成了压力，从而进一步推高企业运营成本。在武汉工作的管理人员还面临住房、教育、医疗及其他许多实际问题，从而造成企业难以从其他城市招聘人才来武汉工作。政府部门似乎无力解决上述实际问题，或不清楚具体该由哪个部门来解决这些问题。

中国美国商会建议湖北省政府和武汉市政府出台明确、系统的相关规定，详细说明外来其他城市的中国员工如何取得本地户口，如何解决子女教育、医疗和住房等问题。另外，还应当专门指定一个政府部门来负责处理相关申请。

空气质量问题

自从将改善空气质量、提高居民生活质量列入政府十一大重点工作以来，武汉市政府采取了多种措施改善环境质量。上述措施包括：找出挥发性有机物源头、禁行70,000辆黄标车辆和老旧车辆、控制建筑工地尘土污染状况，以及减少公交车辆、燃煤锅炉和厨房污染气体排放等。武汉市政府还加快了其公共交通和设施建设，如新建地铁线路、武汉天际机场三期和武汉国际集装箱转运中心三期建设等。

中国美国商会对上述进展表示赞赏，并建议武汉市政府继续加大力度监控企业污染物排放的合规情况（如船厂和垃圾处理厂等），鼓励更多人乘坐绿色公交，推广新能源汽车，以及增进当地社区的环保意识。

提升医疗卫生服务水平

2015年，武汉市政府在提升市内外国人社区医疗卫生服务水平方面取得了进展。2015年1月，协和医院设立国际门诊部，专门为外籍人士及其家人提供医疗服务。该新设立的国际门诊部可以提供约40种医疗服务，且配备了会说英语的员工和受过海外医学培训的医生。去年，约有1,200名病人到该门诊就诊，外籍人士在武汉就医的便利度和服务质量似乎都得到了提升。但另外一份面向武汉外籍人士的调查报告显示，上述新门诊部及其服务的社会认知度还相对较低。因此，应当加大对其市场营销和宣传的力度，同时还应做好其与医疗保险报销的衔接。另外，由于国际门诊部座落在汉口，而很多外国人住在武昌和汉阳，因此也应该在这些地区提供类似的国际标准医疗服务，从而缓解外籍人士看病难的问题。

目前外籍医生和能够协调医院各科间病人看护的初级护理医师依然处于短缺状态。武汉仅有一家由美国医生坐诊的国际诊所，且每周只开放两个半天。因此，中国美国商会建议政府出台财政激励措施、鼓励国际标准医疗服务供应商扩大服务范围，促进武汉医疗卫生发展，从而吸引更多外国人到武汉投资、居住和工作。
AmCham China recommends that safety regulations and measures to protect passengers be better enforced as these efforts continue, a multi-mode public transportation system based on the experience of other cities be built, Internet and big data technology be leveraged to make the use of public transportation more efficient, and citizens be better educated on traffic regulations.

**Recommendations**

*For the Hubei and Wuhan Governments:*

- Provide more transparent and uniform enforcement of government rules and regulations.
- Expand the current strategy of attracting top talent to include senior managers and team leaders.
- Provide platforms for universities and global companies to work together to better equip university students for work in global companies. [Hubei and Wuhan Commercial Bureaus and Education Bureaus]
- Encourage international-standard healthcare facilities to operate in Wuhan by providing relevant incentives to qualified operators.
- Continue to encourage the use of mass transit systems to reduce traffic congestion, parking problems, and pollution.
- Ensure pedestrians have safe places to walk throughout the city.

*For the US Government:*

- Increase the services available to both US and Chinese citizens at the US Consulate General in Wuhan.
解决交通问题

中国美国商会很高兴看到湖北省政府和武汉市政府在2015年大力投资改善交通环境的举措，包括新增国际航线、国际铁路和水运货物交通线路，新建高速公路、地铁和快速公交线路等。但基础建设施工过程中，经常存在占用人行道的问题，增加了行人和自行车骑行者的通行风险。

中国美国商会建议继续严格执行相关安全法规和措施，保护行人安全；借鉴其他城市的经验，建立多模式公共交通体系；利用互联网和大数据技术提高公共交通运营效率；同时加强公民交通法规教育。

建议

对湖北省政府和武汉市政府：

• 提高政府法律法规的透明度和一致性。
• 扩展当前人才战略，吸引高级管理人才和团队领袖。
• 为大学和国际企业提供平台，共同培养适合国际企业需求的大学生。
• 建立激励机制来鼓励符合国际标准的医疗服务机构在武汉开设分支机构。
• 继续鼓励公民使用公共交通系统，解决交通拥堵问题、停车问题和污染问题。
• 确保行人在市内拥有安全的人行道。

对美国政府：

• 扩大美国驻武汉总领事馆对美国和中国公民的服务范围。
### Acronyms

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>3PPP</td>
<td>Third-Party Payment Provider</td>
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<tr>
<td>ACP</td>
<td>US-China Aviation Cooperation Program</td>
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<td>AD/CVD</td>
<td>Anti-Dumping and Countervailing Duty</td>
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<td>AIIB</td>
<td>Asia Infrastructure Investment Bank</td>
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<td>APEC</td>
<td>Asia-Pacific Economic Cooperation</td>
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<td>AQSIQ</td>
<td>Administration of Quality Supervision, Inspection, and Quarantine</td>
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<td>ATFM</td>
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<td>DDGS</td>
<td>Distiller’s Dried Grains with Solubles</td>
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<td>Distributed Energy and Combined Heat and Power</td>
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<td>DQ</td>
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<td>FRAND</td>
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<td>Description</td>
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<tr>
<td>GMO</td>
<td>Genetically Modified Organism</td>
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<td>Good Manufacturing Practice</td>
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<td>People’s Republic of China</td>
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<td>PSB</td>
<td>Public Security Bureau</td>
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<td>PVP</td>
<td>Plant Variety Protection</td>
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<td>Research and Development</td>
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<td>Real Estate Investment Trust</td>
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<td>Remanufactured Finished Goods</td>
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<td>Renminbi</td>
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<td>ACRONYMS</td>
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<td>SDO</td>
<td>Standards Development Organization</td>
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<td>Strategic Emerging Industry</td>
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<td>State Encryption Management Bureau</td>
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<td>SEP</td>
<td>Standard-Essential Patent</td>
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<td>SESAR</td>
<td>Single European Sky ATM Research</td>
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<td>State Intellectual Property Office</td>
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<td>Service Invention Remuneration</td>
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<td>Stock Keeping Unit</td>
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<td>State-Owned Enterprise</td>
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<td>STA</td>
<td>Short Term Assignment</td>
</tr>
<tr>
<td>STEM</td>
<td>Science, Technology, Engineering, and Math</td>
</tr>
<tr>
<td>SWIM</td>
<td>System Wide Information Management System</td>
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<td>TMO</td>
<td>Trademark Office</td>
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<tr>
<td>TP</td>
<td>Transfer Pricing</td>
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<tr>
<td>TPP</td>
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<td>TRAB</td>
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</tr>
<tr>
<td>TRQ</td>
<td>Tariff Rate Quota</td>
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<td>UDI</td>
<td>Unique Device Identification</td>
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<td>UMP</td>
<td>Utility Model Patents</td>
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<td>USCIS</td>
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<tr>
<td>USTDA</td>
<td>US Trade and Development Agency</td>
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<tr>
<td>UVL</td>
<td>Unverified List</td>
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<tr>
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<td>Value-Added Tax</td>
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<td>Value-Added Telecommunications Service</td>
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<td>VEU</td>
<td>Validated End-User</td>
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<tr>
<td>VFR</td>
<td>Visual Flight Rules</td>
</tr>
<tr>
<td>VOA</td>
<td>Visa on Arrival</td>
</tr>
<tr>
<td>VPN</td>
<td>Virtual Private Network</td>
</tr>
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<td>WFOE</td>
<td>Wholly Foreign-Owned Enterprise</td>
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<td>WSL</td>
<td>Work Safety Law</td>
</tr>
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<td>WTO</td>
<td>World Trade Organization</td>
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</table>
The American Chamber of Commerce in the People’s Republic of China

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