

The American Chamber of Commerce in China

2017 Policy Priorities

Introduction

Even as China's economy slows, the influence of the world's second largest economy on global trade and financial flows is undeniable. Chinese companies have become increasingly important overseas investors, and concern over asset bubbles, rising debt and capital flows are now topics for discussion around the world. With such importance, the question has become whether China is taking adequate steps to weather the increasing headwinds facing its economy?

AmCham China members are clearly disappointed in the pace and nature of China's economic reform. It has been more than three years since the so-called "Third Plenum" offered so much promise in helping China transition into a modern economy. Since then, much-heralded initiatives such as the Shanghai Pilot Free-Trade Zone (PFTZ) have fizzled, and negotiations on a US-China Bilateral Investment Treaty continue to drag on.

Meanwhile, political transitions in the US and China are increasing uncertainty at a time when companies most value stability. In particular, questions are being raised in the US about China's willingness to engage fairly on trade and investment issues, especially as Chinese companies expand overseas into areas in which foreign companies are restricted in China.

AmCham China has long been a strong supporter of China's engagement in the global economic system, most notably through its intense lobbying efforts with the US Congress to support China's admission to the World Trade Organization. China has benefitted greatly from this global economic integration, as well as the contributions of foreign companies. It has been estimated that the capital stock of combined investments by US companies in China has now reached almost \$230 billion, and for much of the past decade the majority of China's exports were produced by foreign-invested enterprises. Despite this transfer of knowledge, skills, intellectual property and money, there is an increasing perception of resentment toward foreign business that belies their contributions to China's development.

Set against this background, our policy priorities – **Building Trust through Clarity and Consistency**, **Promoting Development through Open Investment** and **Stimulating Innovation through Global Cooperation** – are the culmination of discussions among AmCham China members and supported by data drawn from the annual Business Climate Survey of member companies and the American Business in China White Paper of policy issues. These priorities reflect, therefore, the opinions of the chamber's 3,000 members (half of whom are Chinese nationals) from 900 member companies headquartered not just in the US, but also Europe, Australia and other parts of Asia.

While it is easy to focus on the negative, these priorities seek to emphasize the opportunities for all parties to be created by continued opening and reform of China's economy. The chamber also recognizes the improvements already made not just in economic development in general, but also in specific areas such as protection of intellectual property rights. Nevertheless, it remains concerned that many policies

continue to hamstring the economy, especially in areas that, with greater investment, could drive tomorrow's economic growth.

Building Trust through Clarity and Consistency

The stability and predictability provided by an unambiguous regulatory environment will be important for China's continued growth, and we urge the Chinese government to close the effectiveness gap between legislation and its enforcement through an inclusive process for participation in the formulation and implementation of laws and regulations. Moreover, greater transparency would not only assist the government's fight against corruption, but also boost confidence in private companies, both domestic and overseas, that their investments will be fairly protected under law.

- *Inconsistent/unclear laws and enforcement are still the No. 1 challenge for AmCham China members. (2017 Business Climate Survey)*
- *If realized, greater transparency, predictability and fairness of the regulatory environment was cited by more than half of members as a potentially very or extremely significant driver of new investment. (2017 Business Climate Survey)*
- *China ranks 78 out of 190 in the Ease of Doing Business index for 2016, just ahead of San Marino. (The World Bank)*
- *In terms of regulatory quality and rule of law in the Worldwide Governance Indicators, China deteriorated between 2010 and 2015. (The World Bank)*
- *China ranks 80 out of 113 countries for regulatory enforcement in the 2016 Rule of Law Index, just ahead of Uzbekistan, compared with 71 out of 102 countries the previous year. (World Justice Project)*

To improve transparency and equal enforcement of laws and regulations, we recommend that the Chinese government:

- *Continue progress in providing 30-day notice and comment periods for all draft laws and regulations across the board, and preferably 60 days where needed.*
- *Extend to all courts the commitment to online publication of all court cases within seven working days of a ruling as required by 2016 regulations.*
- *Improve transparency by releasing formal findings and case histories of anti-monopoly related investigations.*
- *Clarify customs and tax regulations so that foreign companies can fully comply and make more informed investment decisions.*
- *End the use of "window guidance" and release public directives instead.*
- *Provide written explanations whenever administrative agencies deny or provide conditioned approvals for license applications or other approval applications, and adhere to decision deadlines provided for in relevant laws and regulations.*

Promoting Development through Open Investment

The benefits of open, vibrant markets extend well beyond foreign-invested enterprises. We believe government policy should help all parties in Chinese society – including consumers, farmers, and private companies. This is especially important given the increasing scrutiny of the US-China commercial relationship and the questions being raised internationally about the greater market access enjoyed by Chinese companies overseas compared to the access foreign-invested companies have in China.

- *The economic and technological impact of foreign-invested companies, and the ripple effects through their supply chains and the spending of employees, averaged 33% of China's GDP from 2009 to 2013. (Developing China: The Remarkable Impact of Foreign Direct Investment.)*

And yet:

- *China ranked 59 out of 62 countries in the Total FDI Restrictiveness Index in the last review in 2016, just ahead of Myanmar. (Organization of Economic Cooperation and Development)*
- *A record low number of companies (56%) say China is among their top 3 investment destinations. (2017 Business Climate Survey)*
- *More companies say the investment environment is deteriorating rather than improving (31% vs. 24%). (2017 Business Climate Survey)*
- *More than half of members (55%) believe foreign companies are treated unfairly; 81% feel less welcome than before. (2017 Business Climate Survey)*

To improve the investment environment, we recommend that the Chinese government:

- *Implement market opening in more sectors to achieve a more balanced investment relationship. If Chinese businesses can make an investment in the US, American companies should be able to make the same investment in China without equity caps.*
- *Ensure that national security reviews and "secure and controllable" technology requirements are narrowly applied and are not used for economic protectionism or to implement industrial policy.*
- *Actively work with the US to negotiate 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.*
- *Make bold reforms in PFTZs and implement successful reforms nationwide on an expedited basis.*
- *Ensure equal participation for foreign and domestic firms in the "Made in China 2025" initiative and take measures to ensure that the initiative focuses on high-quality innovation and does not cause market-distorting overcapacity in its target industries.*

- *Allow foreign companies to participate on an equal footing with domestic competitors when bidding for government procurement contracts.*

Stimulating Innovation through Global Cooperation

To realize its innovation goals, China will need to strengthen its infrastructure and open its institutions to allow information to flow more freely. Creativity is the product of diverse ideas combined in an environment where standards are set with broad participation and intellectual property is protected from theft. We believe the rapid pace of innovation exceeds the ability of any single government to manage, meaning that technology regulation requires public-private engagement across borders.

- *Innovation is a top 3 priority for half (50%) of our members, up from 44% last year. (2017 Business Climate Survey)*
- *Lack of sufficient IP protection is the No. 1 (45%) barrier to increasing innovation in China. (2017 Business Climate Survey)*
- *After strong improvements at the end of the last decade, the standard of intellectual property rights protection in China has stagnated. (The International Property Rights Index 2016)*

We recommend that the Chinese government:

- *Develop a comprehensive trade secrets law.*
- *Continue the successful development of intellectual property courts and limit administrative enforcement in patent disputes.*
- *Open all standards development technical committees to FIEs so that they can participate on an equal basis with domestic companies.*
- *Promote the Internet as a platform for global interaction and limit restrictions on cross-border data flows such as those proposed in the Cybersecurity Law to encourage international collaboration and innovation.*

中国美国商会

2017 年政策重点

简介

尽管中国经济增长减缓，但其作为世界第二大经济体对全球贸易和金融流量的影响仍不容小觑。中国公司正在成为越来越重要的国外市场投资人，然而资产泡沫、债务增加及资本流动也引发了广泛关注。作为如此重要的角色，我们需要问的是：中国是否采取了充分措施保证其经济能经受得住重重考验？

中国美国商会（商会）会员对中国经济改革的进度和形式感到失望。十八届“三中全会”针对中国向现代化经济转型做出了诸多承诺，至今已有超过三年的时间。然而随后的许多先行举措（包括建立上海自由贸易区）并未达到预期效果，有关中美双方投资协定的谈判也止步不前。

同时，在会员企业亟需稳定之时，中美双边的政治变革却愈加不确定。特别是，美国方面开始怀疑中国是否愿意展开公平的贸易与投资，尤其是在中国公司在海外可从事的贸易领域，外国公司在中国却遭到了限制。

商会一向积极支持中国参与全球经济活动，这一点能充分体现在商会曾努力游说美国国会支持中国加入世界贸易组织。中国从全球经济一体化和外国公司的支持中获益匪浅。据估计，美国公司在中国市场内的联合投资资金总额目前已达将近 2300 亿美元，同时，在过去十年间，中国的大部分出口产品均由外资企业生产。尽管外资公司向中国传输知识、技术、知识产权及资本，但是中国对外资企业的负面情绪却日益明显，完全不顾外资公司对中国经济发展所做的贡献。

在此背景下，我们根据商会年度《商务环境调查报告》及《美国企业在中国白皮书》中的相关数据，在同商会会员进行讨论后将政策重点定为：**提高明确性和一致性以建立互信；开放投资、促进发展；全球合作，鼓励创新**。该政策重点反映出商会遍及美国、欧洲、澳大利亚及亚洲其他地区的 900 家会员企业中 3000 名会员（其中一半为中国人）的共同呼声。

虽然这些政策重点很容易聚焦各种负面因素，但它们其实着重强调了中国经济持续开放和改革给各方带来的机遇。商会不仅认可经济发展领域已取得的整体进展，同时也强调了包括保护知识产权在内的个别领域所取得的进步。尽管如此，中国仍有诸多妨碍经济增长的政策，特别是在那些加大投资便可促进经济增长的领域。

提高明确性和一致性以建立互信

明确的监管规则所带来的稳定性及可预见性对中国经济的持续增长有着莫大的帮助；我们敦促中国政府通过允许多方参与的法律制定及法律执行过程，缩小立法与执行之间的效力差距。此外，提高透明度不仅有助于政府对抗腐败，也有助于鼓励中国及海外的私营企业，使企业相信其投资将依法受到公正保护。

- 商会会员面临的**最大挑战**依旧是**法律规定和法律执行的**不一致性**** / 模糊性。（2017年《**商务环境调查报告**》）
- 过半数的会员认为，**实现监管环境的透明化、可预见性和公平性**将在极大程度上吸引**新投资**。（2017年《**商务环境调查报告**》）
- 2016年，中国的**营商便利指数**在**190个国家**中排名第**78位**，仅在**圣马力诺**之前。（世界银行）
- 在全球治理指标中的**监管质量和法治**方面，中国在**2010年至2015年间**不断下滑。（世界银行）
- 在**2016年法治指数**中的**监管执法**方面，中国在**113个国家**中排名第**80位**，仅在**乌兹别克斯坦**之前，而**2015年**其则在**102个国家**中排名第**71位**。（世界正义工程）

为了提高**执法透明度和公平性**，我们建议中国政府：

- **所有法律法规草案**提前**30天**向**行业企业**通告并**征集意见建议**，政府在此方面仍需**进一步提高**，并建议视情况提前**60天**向**企业**通告。依照**2016年**法规，法院**裁决后7天**之内，**案件**需要在**网上**发布，且此要求应**适于用所有法院**。
- **发布反垄断**相关调查的**案件分析**和**正式调查结果**，从而**提高透明性**。
- **明确海关和税务**相关法规，以便**外企**能够更好地**遵从规定**，并**制定相应的投资策略**。
- **摒弃“窗口指导”**监管机制，发布**公众导向性文件**。
- **行政部门**拒绝**执照申请**或其他类型的**申请**，或仅提供**条件性许可**时，请提供**书面解释**，并**遵从相关法律法规**中规定的**批复期限**。

开放投资，促进发展

- 开放且活跃的市场不仅仅对外资企业有益。我们相信，政府政策应使中国社会中的每一方均受益，包括消费者、农民及私营公司。考虑到如今中美商业关系日益谨慎，且国际社会对中国公司在海外和外资公司在华的**准入领域的不对称性**已经提出质疑，此等举措显得尤为重要。**外资公司**所带来的**经济和科技影响**，以及经由他们的**供应链和雇员的消费**所引发的**涟漪效应**在**2009年至2013年间**在**中国GDP**中平均占**33%**。（**发展中的中国：外商直接投资带来的巨大影响**）

但是：

- 2016 年，中国的外商直接投资总量限制指数在 62 个国家中排名第 59 位，仅领先于缅甸。（经济合作与发展组织）
- 将中国列为其首选的三大投资目的地之一的公司数量创历史新低。（2017 年《商务环境调查报告》）
- 有更多的公司认为（中国的）投资环境正在恶化而不是改善（31%对 24%）（2017 年《商务环境调查报告》）
- 超半数的会员（55%）认为外国公司遭受了不公平对待，同时，81%的会员认为外国公司不如以往受欢迎。（2017 年《商务环境调查报告》）

为提升投资环境，我们建议中国政府：

- 在多种行业领域开放市场，以促进投资关系平衡。如果中国企业能在美国进行投资，那么美国企业也应该能在中国不受资本上限限制的进行相同的投资。
- 确保国家安全审查和其他“安全与可控”技术要求在只小范围内执行，而不是用于经济保护主义，或用于实施行业政策。
- 与美方积极合作，商讨进一步加强中美双边投资协定中的条款，列出简短的负面清单，并列举例外情况，确保在中国这一独特市场中双边投资协定带来的所有好处能充分落实。
- 在自由贸易试验区中大胆改革，其中的成功案例在全国范围内加速实行。
- 确保中外企业均能平等参加《中国制造 2025》规划，采取措施确保该规划着重于高质量创新，避免在目标行业中导致扭曲市场的产能过剩现象。
- 在政府采购合同招标时，允许外国企业与中国企业平等参加竞标。

全球合作，鼓励创新

为实现创新目标，中国必需加强其基础设施建设并开放其相关机构，以使信息得以更加自由地流通。创造力是多元观念相互交融的产物，在这样的环境中，标准的制定来自多方的参与、知识产权得到有力的保护。我们认为，创新的急速发展超出了任何单个政府管理的能力，这意味着技术规范需要境内外国有和私营企业的通力合作。

- 半数会员（50%）认为创新是三大要务之一，与去年的 44%相比有所上升。（2017 年《商务环境调查报告》）

- 阻止中国进行创新的第一大障碍（45%）就是缺乏针对知识产权的保护。（2017年《商务环境调查报告》）
- 在十年前的快速发展后，中国针对知识产权的保护便停滞不前。（2016年国际产权指数）

我们建议中国政府：

- 制定全面的商业秘密法。
- 进一步加强知识产权法院建设和发展，限制行政执法在专利诉讼中的干涉。
- 将所有标准化技术委员会向外商投资企业开放，让外企能与中资企业一起公平参与标准制定。
- 将互联网打造成国际交流平台，通过减少对跨境数据流的限制（如网络安全法中规定的限制条款）来鼓励国际合作和创新。