

## The American Chamber of Commerce in China

### 2018 Policy Priorities

#### Introduction

China's economic development has progressed along a unique path as a product of historical tradition, technological context and government intervention. The result is an economy that now differs from others, sometimes significantly, in many respects. There is a lot to commend adopting novel approaches to novel situations, but it is also important to recognize what is different, and what is ineffective, inefficient or just plain wrong.

Our Policy Priorities aren't a prescription for making China's economy look that of the United States. Rather, they recognize China's current state of development, but also aspire to something much greater. They 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 3,300 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. As a focus of our advocacy efforts, these priorities form a core part of conversations with Chinese government, US government, media, academics and other stakeholders throughout the year.

It is important to note the collaborative nature of the priorities, by building trust, opening up and cooperating globally. China may be big, but the globalization that has fueled its success so far will remain an important factor in future development. We hope, therefore, that these priorities will be seen as a starting point for finding common ground and constructive discussions on China's future.

#### 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. (2018 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. (2018 Business Climate Survey)*

- *China ranks 78 out of 190 in the Ease of Doing Business index for 2017, just ahead of Panama and Kenya. (The World Bank)*
- *Concerning regulatory quality in the Worldwide Governance Indicators in 2016, China continued to deteriorate between 2010 and 2016 but experienced an improvement in terms of rule of law compared to previous years. (The World Bank)*
- *China ranks 69 out of 113 countries for regulatory enforcement in the 2017-2018 Rule of Law Index, compared with 80 out of 113 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 65 out of 68 countries in the Total FDI Restrictiveness Index in the last review in 2017, just ahead of Indonesia. (Organization of Economic Cooperation and Development)*

- *More companies say the investment environment is deteriorating or staying the same rather than improving (65% vs. 35%). (2018 Business Climate Survey)*
- *Around half of members (46%) believe foreign companies are treated unfairly; 75% feel less welcome than before. (2018 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 (49%) of our members. (2018 Business Climate Survey)*
- *Lack of sufficient IP protection is the No. 2 (27%) barrier to increasing innovation in China. (2018 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 2017)*

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

### 2018 年政策重点

#### 简介

鉴于历史传统、技术背景和政府的干预，中国的经济发展沿着独特的道路前进。这导致了中国经济的发展模式与其他国家有诸多的不同。在经济发展中采用创新的方法处理新问题非常值得赞扬，但认识到何处不同、何处低效甚至规划有误也同样重要。

商会的政策重点不是让中国向美国看齐。恰恰相反，商会会员认可中国目前的发展现状，同时也对更广阔的未来寄以深切的期望。这些是中国美国商会会员关注的焦点议题，并得到了来自商会年度《商务环境调查报告》和商会年度政策建议《美国企业在中国白皮书》中的数据支持。

因此，这些政策重点反映了商会 3,300 名会员（其中一半是中国公民）对总部位于美国，以及欧洲、澳大利亚和亚洲其他地区的 900 家会员公司的意见。作为我们政策工作的重点，这些政策重点构成了商会全年与中美政府、媒体、学术界和其他利益相关者进行对话的核心部分。

意识到这些旨在建立信任、推动开放和全球合作的重点政策的协作性十分重要。中国也许的确很大，但到目前为止，全球化仍将是推动其在未来发展中取得成功的重要因素。因此，我们希望这些政策重点能有助于各方寻求中国未来发展的共同点，并以此展开富有建设性的讨论。

#### 以明确性和一致性建立信任

提高透明度不仅有助于政府对抗腐败，同时也可以鼓励中国及海外私营企业，让他们相信其投资将依法受到同等保护。明确的监管规则所带来的稳定及可预见性对中国经济的持续增长有着莫大的帮助；我们希望相关部门可以通过允许多方参与法律法规的制定及实施的方法消除立法和执法之间的空隙。

- 中国美国商会会员面临的**最大挑战**依旧是法律法规不清晰以及执行不一致。（2018 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。（2018 年《商务环境调查报告》）
- 2017 年 6 月，中国的营商便利指数在 190 个国家中排名第 78 位，仅在巴拿马和肯尼亚之前。（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 2016 年间不断下滑，但与往年相比，法治方面有所改善。（世界银行）
- 在 2017-18 年法治指数中的监管执法方面，中国在 113 个国家中排名第 69 位，相较于 2016 年中国在 113 个国家中排名第 80 位提升了 11 位。（世界正义工程）

为了提高法律法规的透明度和平等执行，商会建议中国政府：

- 继续对所有法律法规草案提供 30 天的通知期和评论期，并视需要延长至 60 天。
- 根据 2016 年法规的要求，在裁决后 7 个工作日内，将所有法庭案件在网络公布的承诺扩展到所有法院。
- 通过发布有关反垄断调查的正式调查结果和案例，来提高透明度。
- 明确海关和税务条例，使外国公司能够完全遵守并作出更明智的投资决策。
- 停止使用“窗口指导”，发布公共指示。
- 行政机构拒绝或批准许可申请或批准其他有条件性申请时，需提供书面解释，并遵守相关法律和法规所规定的决定期限。

### 通过开放投资促进发展

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，而非仅为少数人的利益而制定。这一点尤其重要，因为中美商业关系会受到越来越多的审视，而国际上对中国企业在海外能进入的市场远多于外资企业在华的情况颇有微词。

- 外商投资企业的经济和技术影响，以及其供应链和员工支出产生的连锁反应，从 2009 年至 2013 年平均占中国 GDP 的 33%。（《发展中中国：外商直接投资的显著影响》）

然而：

- 2017 年，中国的外商直接投资总量限制指数在 68 个国家中排名第 65 位，仅领先于印度尼西亚。（经济合作与发展组织）
- 更多公司认为（中国的）投资环境正在恶化或持平而不是改善（65%对 35%）（2018 年《商务环境调查报告》）
- 大约半数的会员（46%）认为外国公司遭受了不公平对待，同时，75%的会员认为外国公司不如以往受欢迎。（2018 年《商务环境调查报告》）

为了改善投资环境，商会建议中国政府：

- 在更多行业实施市场开放，实现更加平衡的投资关系。如果中国企业能够在美国投资，美国公司也应该能够在没有股权上限的情况下在中国进行同样的投资。
- 确保国家安全审查和“安全可控”技术要求得到正确和有限地应用，而不是出于经济保护主义或实施产业政策的目的。

- 积极地与美国协商和制定一个强大的中美双边贸易协定，精简负面清单，精确定义各种例外情况，同时把协定中的条款以最大程度在国内市场落实到位。
- 在自贸区内进行大胆改革，加快推进全国范围内改革的成功。
- 确保国内外公司平等参与“中国制造 2025”倡议，并采取相关措施，确保该倡议专注于高质量创新且不会造成目标行业市场扭曲的产能过剩。
- 允许外国公司在竞标政府采购合同时，与国内竞争者平等参与。

### 以全球合作刺激创新

为了实现创新目标，中国需要加强基础设施建设，开放机构，让信息更加自由地流动。创造力是在广泛参与制定标准并保护知识产权免受盗窃的环境下，将不同的想法结合起来的产物。商会认为创新的快速步伐超出了任何单一政府的管理能力，这意味着技术监管需要跨国界的公私合作。

- 创新是近半数（49%）商会会员的三大优先事项之一。（2018 商务环境调查）
- 会员企业认为，阻碍在华创新的因素有：知识产权保护的缺乏，数据安全相关政策和标准规定的局限性的增加以及本土化政策的抵触情绪的上涨。（2018 商务环境调查）
- 经过过去十年的有效改善，中国的知识产权保护标准出现了停滞。（国际产权指数 2016）

商会建议中国政府：

- 制定全面的商业机密法。
- 继续建设、完善知识产权法庭，限制专利纠纷的行政执法。
- 向外资企业开放所有标准制定技术委员会，使其能够同国内公司一样能够平等参与。
- 推动互联网成为全球互动的平台，并减少对跨境数据流的限制，如在《网络安全法》中建议的一样，政府应鼓励国际合作与创新。