

The American Chamber of Commerce in China 2020 Policy Priorities

Introduction

In 2019 AmCham China's Policy Priorities acknowledged that the US-China bilateral relationship had reached an inflection point. Events in 2019 only served to reinforce this sentiment and further suggest that the bilateral relationship is undergoing a fundamental recalibration.

Foreign-invested enterprises (FIEs) in China continue to face a challenging and uncertain policy environment, and events in 2019 only deepened the uncertainty. The simmering trade dispute between the U.S. and China intensified, with both sides imposing tariffs on billions of dollars of the other country's goods and services. These tariffs directly harm businesses, consumers, and both the US and Chinese economies. New regulations came into effect in the US designed to modernize regulatory oversight over foreign investment on the basis of national security considerations. The US added multiple Chinese companies to its Entity List, including Huawei, the world's largest maker of telecommunications equipment. U.S. companies are banned from doing business with companies on the Entity List. In May 2019, China announced the creation of its own "Unreliable Entity List," the details of which have yet to be announced but which only served to deepen the uncertainty.

And yet, towards the end of 2019 the US and China announced they had reached the contours of a negotiated deal. On January 15, 2020, President Donald Trump and Vice Premier Liu He signed the *Economic and Trade Agreement Between the US and China* (Phase One Deal). The Phase One Deal includes provisions regarding a range of intellectual property protections, commitments by China to end its practice of pressuring companies to transfer technology as a condition of market access, removal of non-tariff barriers to US agriculture products, removal of foreign equity restrictions in the financial services industry, commitments to transparency on issues around currency and exchange rates, commitments by China to import US goods and services worth a total of US \$200 billion above annual 2017 levels in 2020 and 2021. The Phase One Deal also establishes the framework for a dispute resolution mechanism.

AmCham China welcomes the signing of the Phase One Deal as an opportunity to stabilize the bilateral relationship, provide a foundation for bilateral trust-building measures, and stop the escalating cycle of bilateral tariffs. We remain focused on acting as a resource for both sides to facilitate implementation of the Phase One Deal and lay the groundwork for Phase two negotiations.

These 2020 Policy Priorities are also being developed in light of the new challenges arising as the world is currently contending with the far-reaching impacts of the COVID-19 pandemic. Although the immediate public health threat of COVID-19 in China appears to be receding, the virus is spreading around the world, with consequences for global public health and the global economy. Many of China's major export markets will be impacted. Formulating and enacting a global response

to COVID-19 will require cooperation and collaboration between China, the US, and heavily affected countries. Moreover, when the immediate public health threat posed by COVID-19 eventually recedes, cooperation will be needed between both sides to create the conditions to facilitate bilateral foreign direct investment (FDI) in the aftermath of the COVID-19 pandemic.

Our 2020 Policy Priorities aim to promote that crucial cooperation. These priorities reflect 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. They are drawn from multiple discussions among AmCham China members and supported by analysis of the annual *Business Climate Survey* and the *American Business in China White Paper*.

As a focus of our advocacy efforts, these priorities will guide our conversations with Chinese government, US government, media, academics and other stakeholders throughout the year. We acknowledge that the challenges are significant and may not be resolved within the short-term. We hope, however, that we will see meaningful progress during the coming months building on the Phase One Deal and non-withstanding the disruption caused by COVID-19, and that such progress will form a solid basis for longer-term engagement and dialogue.

Priority One: Rebuilding Trust through Concrete Actions Leading to Greater Transparency and Evenhandedness of Regulatory Processes

Restoring and rebuilding trust is essential to creating the positive environment necessary to resolve the structural issues at the heart of the trade dispute. Following many years of bilateral discussions when commitments were often made and not fully implemented, restoring trust will require concrete, measurable actions from both sides. Given the heightened political scrutiny facing the US-China relationship in both countries, the foreign business community has an important role to play in helping to call attention to and address underlying economic issues, and to do so in a manner that is neutral, objective, and fact-based. The business community is particularly well-positioned to monitor and provide input with respect to implementation of the Phase One Deal.

For China to act on its promises of greater economic opening, to boost its economy, to navigate the transition towards an economy of high value-add goods and services, and to continue to improve the livelihood of ordinary Chinese citizens, addressing the structural economic issues facing the foreign business community will be important. The foreign business community also has a role to play in communicating the reality of operating in the Chinese market in an accurate, objective, and timely manner to counterparts in both governments. To that end, government access for AmCham China and our member companies is essential.

The stability and predictability provided by a transparent and evenhanded regulatory environment will be important for the continued growth of both foreign and domestic businesses in China, and we urge the Chinese government to take further steps to adopt a more fully inclusive and accountable process for the formulation and implementation of laws and regulations. The *Foreign Investment Law Implementing Regulations* provide for creation of a “complaint settlement mechanism” to

address disputes or complex issues raised by FIEs. This is a positive development, and fair and transparent implementation of such mechanism would go some way to rebuilding trust in China's commitment to a level-playing field for FIEs. At the same time, member companies will likely need on-the-ground evidence, beyond rhetorical commitments, that attempting to address disputes via the mechanism will not result in retaliation from the government or related entities.

Finally, greater transparency and accountability among regulators would not only aid 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 regulations and enforcement is still one of the major challenges for AmCham China members and has been the leading or number two business challenge for members for over seven years. In 2020, "regulatory compliance risks" returned as a top five business challenge, last appearing in 2018. (2020 Business Climate Survey)*
- *"Greater transparency, predictability and fairness of the regulatory environment" was cited by 41 percent of members as a "very" or "extremely significant" potential driver of new investment. (2020 Business Climate Survey).*
- *Despite progress, China still ranks only 67 among 128 countries for regulatory enforcement in the 2020 Rule of Law Index. (World Justice Project).*
- *China ranks 101 among 214 countries and territories for regulatory quality in the 2018 Worldwide Governance Indicators from the World Bank.ⁱ*

To rebuild trust in the bilateral relationship, we recommend that:

- *The Chinese government prioritize greater access for AmCham China, other foreign chambers of commerce, and their members to address both general industry-wide challenges and also technical issues relating to normal business operations.*
- *Commitments to meaningful reform include clear benchmarks, timelines and intensive monitoring to ensure lasting changes to China's legal and regulatory architectures and impartial implementation of laws and regulations. Similarly, coordinated and consistent policy development, implementation, and enforcement between Chinese government ministries must be prioritized.*
- *Transparency be improved by releasing formal findings and case histories of anti-monopoly and other compliance-related investigations.*
- *The use of "window guidance" be eliminated and public directives be released instead.*
- *Written explanations be provided whenever administrative agencies deny or provide conditional approvals for license and other applications.*
- *Foreign companies be given equal opportunity to participate in the drafting and review of relevant laws and regulations, including ensuring draft "comment periods" are provided with reasonable timelines and made public far enough in advance to ensure full participation by the domestic and foreign business communities.*
- *The "complaint settlement mechanism" referenced in the FIL be developed in close consultation with the business community and the Chinese government demonstrate in practice that entities which use the mechanism will not then be subject to retaliatory action.*
- *Both sides endeavor to create more opportunities for foreign and domestic businesses to collaborate on global issues of common interest, particularly public health. The COVID-19 pandemic will have wide-*

ranging impacts on the Chinese, US, and global economy. Mitigating the impact of the COVID-19 pandemic will require close cooperation between China and the US and their respective business communities. When the immediate public health emergency created by the virus eventually recedes, both sides should work together to cultivate conditions to promote bilateral FDI and trade.

- *Both governments prioritize bilateral communication at the working level and with strong business community engagement on both sides, as well as high-level dialogue, particularly with respect to implementation of the Phase One Deal.*

Priority Two: Promoting Development through Policies of National Treatment and Competitive Neutrality

The Chinese government has committed to further market opening in 2020 across a number of sectors. In the financial services sector, foreign equity caps are scheduled to be phased out throughout 2020 in the investment banking, credit ratings, electronic payment services, financial asset management, insurance, securities, fund management, and futures sectors. In the automotive sector, foreign equity caps on the production of commercial vehicles are due to be removed this year (although joint venture requirements for other vehicles still exist).

AmCham China welcomes these reforms. At the same time, market access policies should not only open previously restricted industries to FIEs, but also ensure a level playing field for all foreign and domestic firms *within* those industries.

To that end, policies that emphasize national treatment benefit the entire economy – not just foreign enterprises. We believe that government policy should place all parties in China – including both FIEs, state-owned, and domestically-invested private companies – on an even, competitive footing. Enacting a policy of “competitive neutrality” is especially important given the increasing scrutiny facing 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 FIEs have in China.

- *The economic and technological impact of FIEs, and the ripple effects through their supply chains and the spending of employees, averaged 33% of China’s GDP from 2009 to 2013. Despite a decline in global FDI flows in 2017 and 2018, China remained the second largest global recipient of FDI in 2018. (Developing China: The Remarkable Impact of Foreign Direct Investment; UNCTAD 2019 World Investment Report)*
- *In 2017 FIEs accounted for 44.8 percent of China’s total imports and exports, contributed to an estimated 9.7 percent of GDP, and did so while employing only about 3.2 percent of the total labor force (Invest in China, World Bank, and China Statistical Yearbook 2018).^{ii,iii,iv}*
- *Half of respondents say the investment environment is “deteriorating” (19 percent) or “staying the same” (30 percent), while the other half report the investment environment is improving (50 percent), an improvement as compared with 2019 (2020 BCS).*

And yet:

- *Market access (63 percent), government financial support (42 percent), and public procurement (39 percent) are the top three areas where unfair treatment occurs according to AmCham China members (2020 BCS).*
- *According to the 2020 Index of Economic Freedom compiled by the Heritage Foundation, China ranked in the bottom third of all 187 countries with respect to “investment freedom, with a score of 20 out of 100. The U.S. scored 85 on the same index.”*
- *China’s licensing and approval regimes forestall or deny market access even in nominally open sectors.*
- *Informal practices and other non-tariff barriers such as anti-trust and standard-setting processes, and lengthy customs licensing procedures, limit US companies’ ability to compete equally in the market.*
- *China has multiple Special Economic Zones (SEZs) that offer preferential investment policies and are often used to pilot market-oriented reforms. However, these pilot reforms often lack a clear roadmap implementation nationwide, raising the concern that SEZs are being used to restrict the rollout of market-oriented policies to limited geographies, rather than serving as a staging ground for nationwide implementation.*
- *China has shown a distressing propensity to retaliate without legal justification against FIEs and imports from particular countries which are perceived to have displeased China.*
- *Nearly 82 percent of respondents report that market access restrictions inhibit their operations in China (2020 BCS).*
- *Some 37 percent of respondents believe foreign companies are treated unfairly, and 38 percent feel less welcome than before, and another 35 percent report “no change.” (2020 BCS)*

To promote creation of a truly level playing field, we recommend that:

- *Foreign investors be provided treatment no less favorable than the best treatment offered to any domestic Chinese company, whether private, state-owned or state-controlled.*
- *Laws and regulations, enforcement activities, approval processes, procurement preferences, and other requirements that treat foreign entities, products, and services less favorably than domestic firms be eliminated.*
- *Market opening be implemented in more sectors, particularly areas in which previous commitments have already been made, 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 subject to the same terms and conditions.*
- *The Chinese government substantially narrow its foreign investment Negative List in close consultation with the business community, bringing it in line with those in other advanced economies.*
- *The Chinese government should open its markets to FIEs on equal terms in emerging sectors such as the cloud computing service business to both enhance competitiveness and ensure the sector develops in tandem with emerging globally accepted standards and practices. Such reform should be prioritized as part of any Phase Two negotiations between China and the US.*
- *China should abandon the use of implicit, unpublished, or internal guidance to replace US and foreign-made products/ services with domestically-made equivalents. National security reviews and “secure and controllable” technology requirements be narrowly applied and not used for economic protectionism or in support of industrial policy.*

- *The Chinese government use its SEZs to pilot market-oriented policies and reforms with a clear timetable for implementation nationwide. Ensure that successful pilot policies and reforms are then implemented nationwide in a transparent manner according to the agreed-upon timetable.*
- *The Chinese government reduce overcapacity, fully declare subsidies and eliminate those that are non-WTO compliant, and remove other policies that promote unfair competition.*

Priority Three: Stimulating Innovation through Global Cooperation and Intellectual Property Protection

Innovation has ripple effects that bring broad benefits to the economies of both China and the US in areas like economic competitiveness, human capital development, ability to attract investment, and quality of jobs in knowledge-intensive sectors.^{vi} Research and Development (R&D) activities are a critical activity for both domestic and foreign companies operating in China. Sustained creativity, however, can only be realized on a level playing field with equal protection of rights under law – both on paper and in practice – for foreign and domestic companies alike. To realize its innovation goals, China needs 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 technology-neutral standards are set with broad participation and IP 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. Moreover, R&D will be most effective when it is subject to intellectual property protection and equitable standards for all innovators. To that end, the *Foreign Investment Law* includes provisions specifically to enhance IP protections for FIEs and to ensure their IP receives equal treatment in standards setting, a promising development.

- *Although China’s IP protection regime improved significantly towards the end of the last decade, the level of IPR protection has since slowed. In 2019 China was ranked 28 of 53 countries with respect to IP protection. (The International Intellectual Property Rights Index, 2020)^{vii}*
- *Innovation is a top-three priority for nearly half of our respondents (45 percent). (2020 BCS)*
- *Lack of sufficient IP protection remains the No. 1 (26 percent) barrier to increasing innovation in China, though this is an improvement on last year where 35 percent of members reported it was the number one barrier (2020 BCS).*
- *In addition to IP protection, increased restrictiveness of cybersecurity-related policies constitutes a significant barrier (25%) to increasing innovation in China. (2020 BCS).*

We recommend that:

- *The Internet be promoted as a platform for global interaction and restrictions on cross-border data flows such as those provided in the Cybersecurity Law be limited to encourage international collaboration and innovation.*
- *A comprehensive trade secrets law be developed.*

- *The successful development of IP courts be continued and the power of administrative bodies (e.g., NIPA) to investigate and punish infringement be balanced alongside the continued development of IP courts.*
- *A clear, unified system of penalties be established to deter IP theft including through cyber-enabled means.*
- *All standards development technical committees be open to FIEs so that they can participate on an equal basis with domestic companies. Where possible, standards development processes should seek to bring China's domestic standards in line with internationally accepted standards and best practices.*
- *The Chinese government consult closely with the foreign business community during the development of IP protection mechanisms detailed in the FIL including a punitive compensation system, mechanisms for better coordination of IP protections, and a dispute settlement mechanism for IP.*
- *The US government seek participation from US and Chinese companies as it determines what will be covered as emerging and foundational technologies with respect to export controls and make determinations based on global availability as well as the critical nature of the technology.*

中国美国商会 2020 年政策重点

引言

2019 年，中国美国商会（商会）在政策重点中指出，美中双边关系走到了转折点，2019 年间发生的种种更是佐证了这一评论，也表明美中关系正处于重大调整期。在华外资企业仍然面临着政策环境中的重重挑战和不确定性，2019 年发生的一切更是进一步加深了它们的困境。随着美中贸易争端愈演愈烈，两国不断相互加码，对价值数十亿美元的商品和服务征收关税，这直接损害了两国企业和消费者的利益以及美中两国的经济发展。美国施行新规，目的是以保护国家安全为基础，实现对外国投资的现代化监管。美国将数家中国公司列入实体名单，包括全球最大的电信设备制造商华为公司，并禁止美国公司与实体名单上的公司发生业务往来。2019 年 5 月，中国宣布建立“不可靠实体清单”，清单具体内容尚未公布，但这只是进一步加深了不确定性。

然而，2019 年底，美中两国宣布已通过谈判初步达成贸易协定。2020 年 1 月 15 日，美国总统特朗普和中国副总理刘鹤共同签署《*美国和中国经济贸易协议*》（第一阶段协议），协议内容涵盖一系列知识产权保护相关条款和中国的其他承诺，例如，不再向企业施压以技术转让作为市场准入条件，取消对美国农产品的非关税壁垒，取消金融服务业的外资股权限制，在货币和汇率问题上保持透明，并在 2020 年和 2021 年，在 2017 年的基数之上，再进口价值 2000 亿美元的美国商品和服务。第一阶段协议同时也确立了争端解决机制的框架。

商会乐见协议的签署，这是稳定双边关系的良机，为建立双边互信提供了基础，而且终结了互征关税不断升级的恶性循环。商会将继续为双方提供帮助，促进第一阶段协议的执行，并为第二阶段谈判作准备。

2020 年的政策重点也考虑到了当前的新挑战，即新型冠状病毒肺炎疫情的全球性爆发。现在各国都在与其造成的深远影响进行抗争。虽然病毒对中国公共卫生的威胁逐渐减缓，但由于其在全球范围内的扩散已经给全球公共卫生和经济造成了严重冲击，因此中国的许多主要出口市场也势必会受到影响。制定新冠肺炎全球应对措施需要中国、美国和其他受影响严重国家之间的合作与协调。此外，新冠肺炎对公共卫生带来的直接威胁消退之后，双方应通力合作，创造条件，推动双边直接投资。

商会 2020 年的政策重点旨在推动这一关键领域的合作。今年的政策重点反映了商会 900 家会员企业中 3300 名成员（一半都是中国人）的一致看法。会员企业的总部遍布美国、欧洲、澳大利亚和亚洲其他地区。商会与会员之间组织过多次讨论，并且是基于对年度《*中国商务环境调查报告*》和《*美国企业在中国白皮书*》分析，才总结出 2020 年的政策重点。

本文的政策重点也是商会今年的工作重点，是商会在 2020 年与中国政府、美国政府、各大媒体、学术界人士及其他相关方沟通的指导原则。商会认识到这些重大挑战无法在短期内解决，但依然希望在未来几个月里，在应对新冠肺炎的破坏之余，美中能在第一阶段协议的基础上取得进展，并为长期交流和对话奠定坚实基础。

重点一：通过实际行动重建信任，提高监管流程透明度和公平性

恢复并重建信任是打造良性环境的关键。解决贸易争端中的核心结构性问题，良性环境必不可少。多年双边讨论的结果往往是做出承诺却不充分执行，因此恢复信任需要双方采取具体且可量化的行动。鉴于中美两国在双边关系中都十分重视政治审查，外国商界可以发挥重要作用，以中立、客观、实事求是地呼吁人们关注并解决潜在经济争议问题，而且商界很适合监督第一阶段协议的执行并提出建议。

中国要兑现相关承诺，包括扩大经济开放、提振经济、转向高附加值商品和服务型经济以及继续改善民生，就必须解决外国商界面临的结构性经济问题。外国商界还要准确、客观、及时地把在中国市场运营的情况汇报给两国政府相关部门，为此，商会和会员企业必须建立与政府之间的沟通渠道。

透明、公平的监管环境所提供的稳定性和可预测对于在华经营的内外资企业的实现持续增长至关重要。因此，商会敦请中国政府，进一步强化法律法规制定过程的包容度和可问责性。《外商投资法实施条例》提出设立“投诉解决机制”来解决外商投资企业提出的争端或复杂问题。这一进展具有积极意义，此类机制的公平和透明实施有助于重建他方对中国关于“对外商投资企业一视同仁”这一承诺的信任。同时，除口头承诺外，会员企业还需要看到中方用实际行动来证明，一旦在现实中利用该机制解决争议，政府或相关实体不会进行报复。

最后，监管机构更高的透明度和更有力的问责不仅有益于政府的反腐行动，还能增强内外资私企的信心，确保他们的投资受到法律保护。

- 法律法规解释执行不一致/不明确仍是商会会员面临的主要挑战，而且已经连续 7 年位列首要或第二大业务挑战。2020 年，“监管合规风险”在 2018 年后再次成为五大商业挑战之一。（2020 年《商务环境调查》）
- 41%的会员称“监管环境更透明、更可预测、更公平”是可能增加新投资的一个“很重要”或“极其重要”的因素。（2020 年《商务环境调查》）
- 中国虽然已经取得相应进展，但在 2020 年的法治指数排名中，中国在 128 个国家中仅位列第 67。（世界正义工程）
- 在 2018 年世界银行的全球治理指标中，在监管质量方面，中国在 214 个国家和地区中排名第 101。

为重建美中双边互信，商会建议：

- 中国政府优先给予商会、其他外国商会及其会员企业更大权限，以应对一般性行业挑战和日常业务运营中的技术问题。
- 承诺进行有意义的改革，制定明确的基准、时间表和重点监测，以确保中国的法律和监管结构有长久性改变，法律法规得到公正的实施。同样地，中国政府部委之间就政策制定、实施和执行要保持协调一致，这一点同样重要。
- 对于反垄断和其他合规类调查，正式调查结果和案例记录要予以公开，以提高透明度。
- 不再使用“窗口指导”，并发布公共指令代替。
- 对于许可或其他申请，行政机构拒绝批准或有条件的批准时，应提供书面解释。
- 为外国公司提供平等参与起草和审核相关法律法规的机会，并确保草案的“征求意见期”时间表合理，并提前公布，以便国内外商界充分参与。
- 《外商投资法》中提到的“投诉解决机制”应与商界协商建立，中国政府还要证明，实际应用该机制的实体将不会受到报复。
- 双方应努力为两国企业创造机会，就共同关心的全球问题开展合作，尤其是在公共卫生领域。新冠肺炎大流行病的爆发将会对中国、美国和全球经济带来广泛的影响，减轻新冠肺炎的影响需要

中美两国及企业之间密切合作。此次病毒引发的突发公共卫生事件结束后，双方应共同合作，创造条件，推动双边直接投资和贸易。

- 两国政府要重视工作层面的双边沟通，并确保双方商界的积极参与，开展高层对话，尤其是关于第一阶段协议实施的对话。

重点二：通过国民待遇和竞争中立政策推动发展

中国政府承诺在 2020 年进一步开放多个市场领域。在金融服务领域，投资银行、信用评级、电子支付服务、金融资产管理、保险、证券、基金管理和期货行业的外资股比限制将在 2020 年逐步取消。在汽车行业，商用车生产的外资股比限制将于今年取消（但是对其他车型的合资要求仍然存在）。

商会支持此类改革，同时，市场准入政策不仅要向外商投资企业开放之前限制的行业，还要确保在这些行业内对内资企业一视同仁。

为实现上述目标，国民待遇相关的政策应当不仅对外企有利，还将惠及整体经济。商会相信，政府政策应确保中国境内各方，包括外商投资企业、国企和国内私企的公平竞争。制定“竞争中立”的政策尤其重要。美中商业关系受到的关注日益增加，加之，与外商投资企业在中国的市场准入相比，中国企业在海外享受的市场准入更大，国际社会对此质疑不断。

- 2009–2013 年，外商投资企业的经济和技术影响，及其供应链和员工支出产生的连锁反应，平均占中国 GDP 的 33%。2017 年和 2018 年全球外国直接投资流量有所下滑，但中国在 2018 年仍是全球第二大外国直接投资接受国。（发展中的中国：外国直接投资的巨大影响；联合国贸易和发展会议，《2019 年世界投资报告》）。
- 2017 年，外商直接投资企业贡献了中国总进出口的 44.8%，大概相当于 9.7% 的 GDP，而且只雇用了总劳动力的 3.2%（投资中国，世界银行，《2018 年中国统计年鉴》）。
- 半数的受访者称投资环境在“恶化”（19%）或“保持不变”（30%），另一半称投资环境在改善（50%），与 2019 年的情况相比有所提升（2020 年《商务环境调查报告》）。

但是：

- 商会成员称他们遭受不公平待遇的三大领域分别是市场准入（63%）、政府财政支持（42%）和政府采购（39%）（2020 年《商务环境调查报告》）。
- 在美国传统基金会编写的《2020 年经济自由度指数》中，在“投资自由度”一项，中国在 187 个国家中排名倒数第三，100 分满分，中国得分 20，而美国该指数的分数是 85。
- 即便是在名义上开放的领域，中国的许可证和审批制度也会使得企业难以或无法获得市场准入。
- 非正式做法和其他非关税壁垒，如反托拉斯、标准制定程序以及漫长的海关许可流程限制了美国企业在市场上的公平竞争。
- 中国在多个经济特区中提供优惠投资政策并将其作为试点进行市场化改革。但是此类试点改革往往缺乏清晰的全国实施路线图，令人担忧经济特区是用来将市场化政策限制在特定地区，而不是为全国实施进行试点。
- 中国倾向于在没有法律依据的情况下，对外商投资企业和令中国不满的某些国家的进口进行报复，这是令人担忧的。
- 将近 82% 的受访者称市场准入限制阻碍了其在中国的运营。（2020 年《商务环境调查报告》）
- 约 37% 的受访者认为外企受到了不公正待遇，38% 感到没以前那么受欢迎，还有 35% 认为“没有改变”。（2020 年《商务环境调查报告》）

要打造真正公平的竞争环境，商会建议：

- 外国投资者的待遇不应低于任何中国私有、国有或国有控股企业的最优待遇。

- 对外国实体、产品和服务与中国企业区别对待的法律法规、执法活动、审批流程、采购偏好和其他要求都应取消。
- 在更多领域实行市场开放，尤其是已经承诺开放的领域，来建立更平衡的投资关系。如果中国企业可以在美国投资，美国企业也应该可以依照同样的条款和条件在中国投资。
- 中国政府与商界密切磋商，以大幅缩减其外国投资负面清单，并与其他发达经济体保持一致。
- 对于云计算等新兴领域，中国政府应当按照相同的条款对外商投资企业开放，来增强竞争能力，并确保该领域的发展符合新形成的全球公认的标准和做法。此类改革应当是中美两国未来第二阶段谈判的重点。
- 中国应当放弃使用暗示性、未公开或内部指导文件要求用国产的同等产品/服务取代美国和外国制造的产品/服务。国家安全审查和“安全可控”的技术要求应在严格的情况下使用，不应当用于经济保护主义或支持产业政策。
- 中国政府应使用经济特区作为市场化政策的试点，并制定清晰的全国实施时间表，确保对成功的试点政策和改革进行全国推广，并按照定好的时间表透明开展。
- 中国政府减少过剩产能，全面申报补贴，取消不符合世贸规定的补贴，并废除导致不公平竞争的其他政策。

重点三：通过全球合作和知识产权保护激励创新

创新产生的连锁反应将会对中美两国经济均大有裨益，这类益处主要集中在经济竞争力、人力资本开发、吸引投资能力以及知识密集型行业工作质量等领域。研发活动对于在华经营的内外资企业都至关重要。但是，内外资企业保持公平竞争是实现持续性创新的基本前提。而且各方的权利在理论和实际上都受到法律的同等保护。中国要实现其创新目标，必须要加强基础设施建设，放开制度，允许信息更加自由地流动。创造力是多元思想在特定环境下的产物，在这种环境中，技术中立标准由多方参与制定，知识产权得以受到保护、免遭窃取。

商会认为，创新发展之迅猛已经超过了任何一个政府能够单独管理的程度。因此，管控技术需要各国公私领域通力合作。此外，只有当知识产权受到保护，所有创新者享受同等标准，研发才最有效。为此，《外商投资法》中特别加入保护外商投资企业知识产权的条款，以确保其知识产权在标准制定中享有同等待遇，这是非常积极的进展。

- 中国的知识产权保护制度在近十年来取得了长足的进步，但是知识产权保护水平却有所下降。2019年，在知识产权保护方面，中国在53个国家中排名28。（《2020年国际知识产权指数报告》）
- 将近一半的受访者（45%）将创新视为三大重点之一。（2020年《商务环境调查报告》）
- 对很多企业来说（26%），知识产权保护不足仍是在中国持续创新的最大障碍，这一比例较上年的35%有所下降，表明情况略有改善。（2020年《商务环境调查报告》）
- 除知识产权保护外，网络安全相关政策的限制不断增加，成为很多企业（25%）在中国持续创新的一大障碍。（2020年《商务环境调查报告》）

商会建议：

- 利用互联网平台促进全球交往，放宽《网络安全法》里规定的跨境数据流动限制，鼓励国际合作与创新。
- 制定全面的商业机密法。
- 基于现有成功，持续建设知识产权法院：行政机构（例如国家知识产权局）查处侵权行为的权力要和知识产权法庭的发展保持平衡。
- 建立明确统一的惩罚制度，并借助网络手段遏止知识产权盗窃。

- 所有标准制定技术委员会要向外商投资企业开放，以便其与国内企业平等参与。如果可能的话，标准制定程序应当确保中国国内标准与国际公认标准和最佳做法保持一致。
- 中国政府按照《外商投资法》制定知识产权保护机制时，应当与外国商界密切磋商，引入惩罚性赔偿制度，以便更好地协调知识产权保护的机制以及知识产权纠纷解决机制。
- 在出口管制方面，美国政府与美、中国企业携手合作，确定新兴技术和基础技术的覆盖范围，并依据全球可用性和技术的关键性质进行决策。

ⁱ World Bank. Worldwide Governance Indicators (WGI) Project. The World Bank, Washington DC, USA (2011) <https://datacatalog.worldbank.org/dataset/worldwide-governance-indicators>

ⁱⁱ Invest in China. 2020. http://www.fdi.gov.cn/1800000121_10000041_8.html (accessed January 14, 2020).

ⁱⁱⁱ Zhang, Chunlin. 2019. How Much Do State-Owned Enterprises Contribute to China's GDP and Employment? (Chinese). Washington, D.C. : World Bank Group.

<http://documents.worldbank.org/curated/en/390691565249400884/How-Much-Do-State-Owned-Enterprises-Contribute-to-China-s-GDP-and-Employment>.

^{iv} China Statistical Yearbook. 2018. <http://www.stats.gov.cn/tjsj/ndsj/2018/indexeh.htm> (accessed January 14, 2020)

^v Heritage Foundation. 2020 Index of Economic Freedom. <https://www.heritage.org/index/visualize> (accessed January 14, 2020).

^{vi} U.S. Chamber of Commerce. U.S. Chamber International IP Index | 7th Edition.

https://www.theglobalipcenter.com/wp-content/uploads/2019/03/023593_GIPC_IP_Index_2019_Full_04.pdf (accessed January 14, 2020).

^{vii} Ibid.