

AmCham China

QUARTERLY

Issue 2
2020

Executive insights, interviews, and intelligence for business in China

P08 Expats Stranded Abroad

P12 Kroeber on China's Economy

P41 Nine Pitfalls for Foreign Companies



Global Growth:

*How Amway's CEO Is Revolutionizing
His Company's Business Model*



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天津和睦家医院

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AmCham China

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The American Chamber of Commerce in the People's Republic of China

AmCham China Leadership

AmCham China's success is rooted in the vision, hard work, and dedication of its members. Through their efforts, these volunteer leaders make it possible to provide the information and intelligence, business services, networking opportunities, and events that benefit all members and the advocacy initiatives that help shape the business environment in China. At AmCham China's national level, the chairman, two vice chairs, and 10 governors comprise the organization's Board of Governors. Additionally, AmCham China's three Chapters each have their own local executive committee to ensure they are responsive to the needs of local AmCham China members.

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Working to Reunite the Community

As China moved from its front-line pandemic response to a full focus on revitalizing the economy, the US business community here pledged to show support in a multitude of ways. We've been here for decades – with many of us deeply invested in the country both personally and professionally – and we plan to be here improving US-China commercial relations for the next 100 years.

However, a significant portion of our wider membership remains stuck outside of China's borders. Getting these expats back home to China has been extremely challenging and a painstaking process. Much was put on hold until the rearranged annual Two Sessions parliamentary meetings concluded at the end of May, but we have made good progress since then. In early July, we secured permission for close to 80 of our members to return to China and resume their professional lives (*see pages 8-11 for more*). There are, however, many more still awaiting regulatory permission to return.

We will continue to advocate on behalf of those in need. In our most recent Flash Survey on the business impact of COVID-19 (*see pages 14-16 for more*), 90% of respondents cited "global travel disruption" as a key business concern. Our first informal survey on this topic received more than 500 responses, showing the enormous ongoing interest in this issue; we are currently collecting a second set of data from our members on this to fully evaluate which needs are most pressing, and how we can best help. In the meantime, we are doing everything possible – including frequent contact with relevant Chinese government departments and meetings with high-level officials from the Ministry of Finance (MOF), the Ministry of Commerce (MOFCOM), and the ministry of Foreign Affairs (MOFA) – in an attempt to resolve the situation.

We hosted an excellent sharing session on the topic of getting expats back into China, with speakers from Boeing, United Airlines, the U.S. Embassy, and the German Chamber. We have also distributed a member-only *Frequently Asked Questions* (FAQ) document for expats stranded abroad, a handy guide that answers many of the questions we have received and has quickly become an essential reference tool.

But this is not just about getting executives back to China. We are a community, and so with executives come spouses, children, medical professionals, educators, and other vital support staff. The start of the next school year is just around the corner, and many are hopeful that the disruptions faced so far in 2020 will soon be a thing of the past.

At its core, though, this issue is not simply a matter of convenience, but a matter of critical infrastructure for China's investment environment. If our senior executives cannot be on-the-ground to inform their company's China strategy or plans, it stands to reason that investment decisions will be delayed, or – worse – canceled.

I and my family have remained in Beijing since the start of the year, but those of us in China want and need the rest of you to come back. Our community has always thrived on strength in numbers and, together, we will keep working until we have secured every member's safe return. Please know our President Al Beebe, the AmCham staff he leads, and I all remain laser-focused on doing everything we can to assist the return of you, your families, and essential support personnel.

Greg Gilligan

AmCham China Chairman

AmCham China Chairman's Circle

AmCham China Chairman's Circle is a select group of premium membership holders that provide the chamber with exceptional support and leadership. The current Circle members are:



Homeward Bound: Getting Expats Back to China During COVID-19

By Andrew Scott

Towards the end of March 2020, China was turning the corner on its effort to bring the COVID-19 epidemic under control. Having significantly invested in combatting a COVID-19 outbreak within its borders since January, by March it appeared those efforts had started to bear fruit. At the same time, COVID-19 was already spreading globally by late March, and the situation was worsening in multiple countries around the world. In an effort to limit the prospect of “imported cases” from abroad, the Chinese authorities released the *Announcement on the Temporary Suspension of Entry by Foreign Nationals Holding Valid Chinese Visas or Residence Permits in China* on March 26. Per this announcement, effective March 28, China suspended entry for all foreign nationals into China, including those holding valid work and/or residence permits, until further notice.

For the AmCham China community, this announcement continues to pose a significant challenge. *The Announcement* provided foreign nationals outside of China with only 48 hours to re-enter before the ban went into effect, an unrealistic timeframe for many with families. Many foreign nationals had already left China for the Spring Festival holiday at the end of January, while others had departed and chose to remain outside of China given the spread of COVID-19 domestically in February and early March. Some even enrolled their children in local schools in response to the widespread closure of schools in China. Consequently, in the wake of the announcement, many in the AmCham China community suddenly found themselves stranded outside of China’s borders. Expatriate staff and executives were unable to return to the office, and their family members had their lives placed on hold indefinitely. Families have found themselves separated from their pets, which can be, as one employee with Dow Chemical described it, “devastating.” With the new school year due to resume in the fall, some AmCham China members are having to arrange alternative plans for their children’s schooling

Getting foreign nationals back to China during the COVID-19 pandemic has been a sometimes painful – and ongoing – process, but AmCham China has recently had close to 80 members approved to return, with others having already landed back in China.

to contend with the very real possibility that they will not be able to return to China in time for the start of the fall term.

Beyond the direct impact to those affected by these policies, AmCham China has also been closely tracking the impact of the COVID-19 pandemic on business operations for our members through a series of monthly surveys. The most recent survey, conducted in May, revealed two important trends. The first being that operations of the foreign business community in China are increasingly returning to normal, as compared with survey results collected earlier in the year. At the same time, the survey also

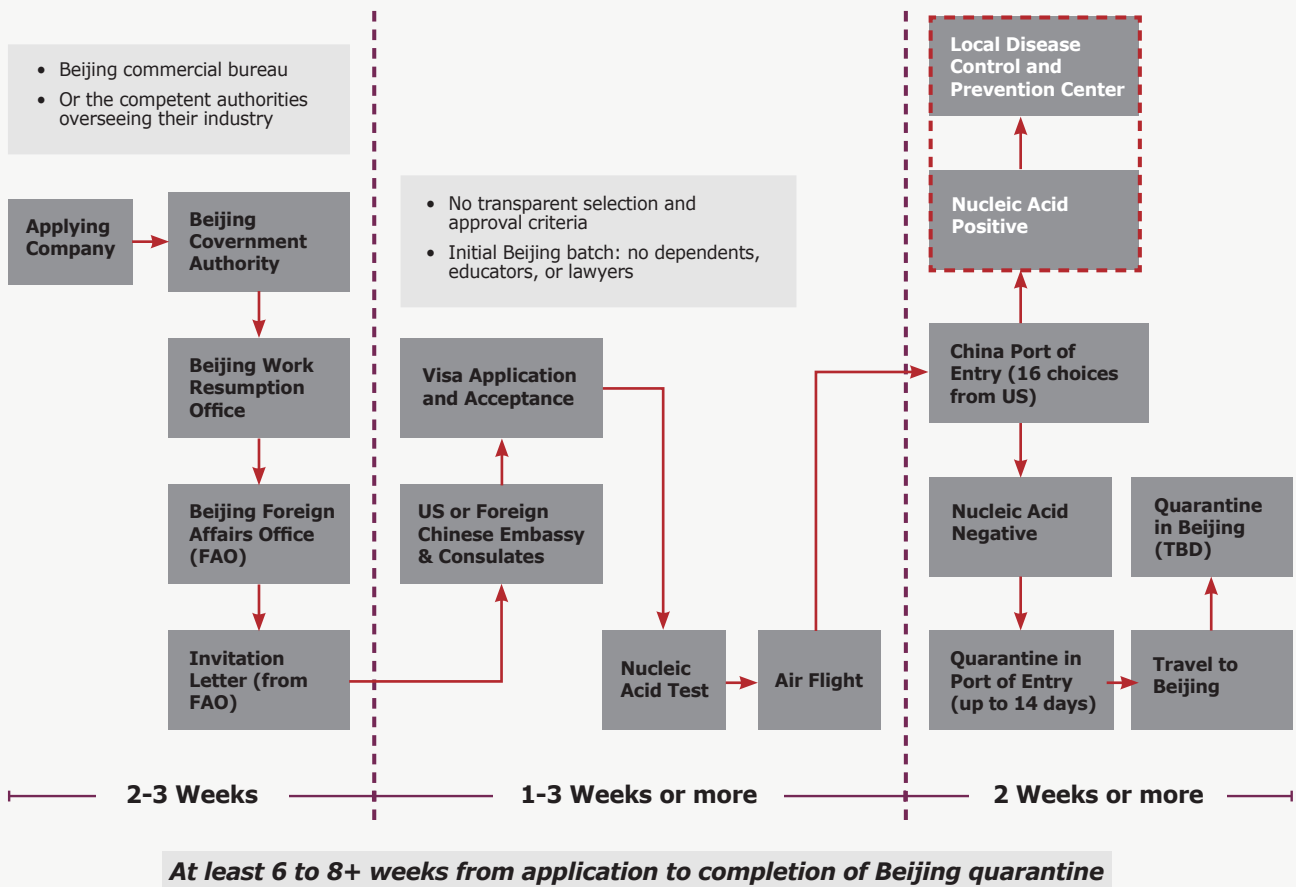


Above:

An Omni Air International plane, chartered by Universal Studio, touches down in Tianjin after flying in 159 employees from Orlando International Airport.

Photo courtesy of Universal Weather and Aviation, Inc.

Step-by-Step Guide to Returning to China



revealed that global travel disruptions caused by COVID-19 have impacted or continue to impact the operations of 90% of our members. In particular, 55% cited the inability to repatriate foreign staff as a key challenge hindering their business operations.

Given the widespread impact to the AmCham China community, helping members return to China has been a top priority of the Chamber through much of Q2 this year. Since early April, AmCham China has been in close contact with our counterparts in the Chinese government at both the central and local levels to understand and influence the process to return to China. We understand that many of the procedures and necessary approvals for return have been devolved to the local and/or municipal level. Consequently, application procedures and approval processes vary widely. With that in mind, this

article attempts to provide some insight into the return process based on information AmCham China has gathered and testimony provided by AmCham China members who have successfully returned to China since the ban.

The Return Process

Step 1. The Application: How to Initiate Your Return

The Announcement rendered any existing visas and residence permits held by those outside of China invalid for entry into China. Therefore, any foreign nationals seeking return to China are required to apply for a new visa, regardless of the status of their existing visa and residence permit. Visa applications require a government-issued invitation letter. The

application for an invitation letter should be made on behalf of the applicant by a sponsoring entity in China, such as the applicant's employer. The application must then clear several rounds of approval from the local Commerce Department, the local Work Resumption Office, and the local Foreign Affairs Office.

The timeline for an application's approval varies depending on the local government receiving the application; some AmCham China members have received approval after one week to one month after applying. Once approved, the applicant receives their official invitation letter which can be used to apply for a visa from the local Chinese embassy or consulate. If there is no Chinese embassy or consulate where you reside, you will need to either mail your passport and invitation letter to an Embassy/Consulate to be processed, or make travel plans to

do it in person. Keep in mind that travelers across borders may be subject to local quarantines upon arrival, which will further delay the application process.

Flights to China are more limited than usual given that China's current "Five-One" Policy limits the number of international flights arriving in China. The process of actually obtaining an airline ticket has proven to be incredibly challenging. According to an employee with Dow Chemical who is applying to return to China, they have booked tickets on no less than 10 flights to China, none of which ultimately ended up departing. This employee told AmCham China that the uncertainty around their travel plans is "exhausting," and imposes a significant personal financial cost as ticket fees are paid out-of-pocket and refunds for canceled flights can take months to be processed given the sheer demand at present.

The number of successful returnees under the new application process is small but growing. Young Ahn, who works for an AmCham China member company in the healthcare industry and successfully returned from abroad via Shanghai noted that "a strong HR team is important," because "many levels of approval are needed." AmCham China member Lee Allen, a Professor of Trombone at the Tianjin Juilliard School who is currently applying to return reaffirmed this sentiment, noting that "scenarios [on-the-ground] are changing quickly." He further emphasized that a "strong relationship between the company [applying for the visa] and the city" is important, and that it helps if the company emphasizes its contributions to and investments in the local economy as part of the visa application.

Echoing that point, the Chairman and CEO of Microsoft Greater China, Alain Crozier, who returned to Beijing via Tianjin said that having "essential business activities in China" is a key factor in influencing the government's decision to issue an invitation letter. He noted that his application listed several projects he is leading with Microsoft's joint venture partner in China and emphasized his return was critical to the continuing implementation of these projects.

Another important aspect of the visa application process is to ensure that foreign nationals returning for work include their family members together in the



Clockwise from top left:

A sign on arrival at Shanghai's Pudong Airport; the bus used to transfer to quarantine; a typical family meal during quarantine; inside the transfer bus.

Photos courtesy of Young Ahn

same application, otherwise it is unclear whether families will be permitted to travel to China together. This situation in itself creates the prospect of some difficult decisions.

Step 2. Traveling back to China: You are Halfway There!

At this point you have obtained your visa from the local Embassy/Consulate and secured your flight. The day of your flight to China has arrived! We recommend giving yourself ample time to check in for your flight, as it will require the normal check-in procedures, and could include additional verification of your documents, and a pre-departure health screening, including temperature checks.

In addition to the limited number of commercial flight routes to China, charter flights can also be arranged, though approval will be issued on a case-by-case basis by the Chinese aviation authorities. Certain US-based airlines are available to work with individuals, companies, or organizations that wish to charter flights

to China. In general, we understand that the deplaning and quarantine procedures described below will apply to those returning to China via either a commercial or charter flight. AmCham China is aware of some members who have successfully chartered flights to China, and any passengers on a charter flight will be required to show proof of a negative COVID-19 test prior to boarding a flight in the country of origin.

A lengthy deplaning, testing, immigration, and transportation procedure upon arrival awaits the lucky passengers who arrive in China. One AmCham China member on a commercial flight told us that nearly four hours passed between touching down and departing for the hotel to complete quarantine. Another reported the same process took two and a half hours. However long it is, be prepared for a long haul!

The airport arrival process involves registering your health status via mobile QR codes, submitting to a COVID-19 test, standard customs and immigration procedures, and collecting your belongings

at baggage claim. These mobile QR codes link to apps used widely across China to track the health status of the general population. Both foreign nationals and Chinese citizens in China will often be required to produce their health status via these QR codes in order to enter restaurants, offices, and other public buildings in China. COVID-19 tests are conducted by medical staff in the airport and results will be analyzed on site. Once you reach the arrivals hall, the final step is to register with officials from the district in which you reside. AmCham China member Young Ahn, who returned via Shanghai Pudong Airport, told us that the regular arrivals hall had been converted into a “district center triage,” with all arriving passengers shuffled along to register with their home district.

Those who have experienced the arrival process found the staff to be as helpful, professional, and as efficient as possible given the circumstances. All airport staff are dressed in full personal protective equipment (PPE). COVID-19 has created an unconventional and unprecedented situation, and every individual or family’s experience is likely to be different.

Step 3: Prepare to Quarantine

Now you have your baggage, your passport, and are on your way to the hotel to undergo quarantine. All passengers arriving into China from abroad are required to quarantine in a government-sanctioned hotel upon arrival. The duration of any given quarantine varies, depending on the local regulations. We understand that the typical quarantine period is 14 days upon arrival, however, AmCham China is aware that quarantine periods can last up to 21 days. Passengers on a charter flight into China who provide a negative COVID-19 test prior to departure and a negative test upon arrival may only be required to undergo a 14-day quarantine.

The quality of quarantine accommodations can vary widely. For most, the hotel experience would best be described as “suitable for the purposes of quarantine,” but it is no Ritz Carlton, and you probably would not leave a five-star review on TripAdvisor. Meals are prearranged and delivered to the hotel room at least three times a day; obtaining outside food can be challenging. The meals are not likely to be Michelin-starred cuisine or as good as some of the dishes from your favorite

neighborhood spot, but they will fill a hungry stomach.

Reflecting on his experience in quarantine in Tianjin, Microsoft’s Crozier recalled that “I had to stay in my room exclusively and was not even permitted to go out into the corridor for 14 days.” As the hotel services were limited, he joked “I had to do everything myself. It was like being a bachelor again!”

Step 4. Home... Nearly

Upon completing quarantine, individuals and families are then transported to their homes. For those returning foreign nationals whose point of arrival and quarantine in China differs from their final destination (i.e. home city), they may be required to have transportation arrangements approved in advance and to undergo an additional seven days of quarantine in their home upon arrival in their final destination.

Lessons Learned


If you have made it this far in the story, one of the key themes that has hopefully emerged is that a return to China at the moment is an arduous, fluid, and evolving process. The entire return process from the initial application to the end of quarantine is likely to take several months, and as Professor Lee Allen told us, returnees will benefit from a healthy dose of patience and a little good luck.

Below are some of the overarching reflections from members of the AmCham China community who have successfully returned to China:

- **Proactive HR Department.** Much of the authority for visa approvals and quarantine regulations has been concentrated in the local government. Given the situation’s evolving nature and the authority given to local governments, it is essential to have an involved and proactive HR department throughout the entire return process. Crozier also stressed the importance of “explaining what role you can play in China’s [economic] recovery” during the visa application process.
- **Local staff are trying to make the best of a tough situation.** Once you arrive in China, all airport staff that

you interact with will be fully dressed in PPE. Frequently working in a hot and uncomfortable environment may take a toll on the staff’s mentality. At the same time, airport staff are kind, efficient, and working to minimize the hassles of this process to the best of their ability. According to Ahn, “everyone is really trying their best with this process.”

- **Develop contingency plans if you are traveling with family.** If a family member tests positive for COVID-19 upon arrival, it is possible that families will be forced to separate. If a child tests positive, one parent is allowed to accompany him or her to the hospital, but that same parent will have to stay with the child throughout the entire treatment process. Additionally, local hotel quarantine regulations advise against the entire family living together during quarantine. Typically, one adult and one child can stay together in a hotel room; other family members will need to stay in separate room(s). Given these circumstances, Ahn advised that families should develop contingency plans for how to handle any of the above situations should they arise and consider their risk tolerance for any potential separation of family members.
- **Prepare for the conditions of your hotel quarantine.** Hotels may be less clean than the standards to which some guests are accustomed. Reflecting on his quarantine experience, Ahn told us that it is helpful to pack your own bedding, including bed sheets, pillowcases, shower slippers, and disinfectant wipes. If you are traveling with young children, it is helpful to pack games and activities that keep them occupied during quarantine. Others have noted that the quality of their hotel Wi-Fi was not great, even with a portable Wi-Fi unit. Thus, it is best to plan accordingly.

AmCham China will continue to follow this situation closely as it unfolds and to provide our members with the latest information to help them return to China. 

Andrew Scott is a Manager with AmCham China’s Government Affairs and Policy Team

China's Economic Prospects in the Aftermath of COVID-19

With the pandemic complicating global economic opportunities, it will be important in the long run for China to assess its economic position and interface with other countries.

By Arthur Kroeber

Since January, the COVID-19 epidemic has ravaged all major countries of the world and has produced a global economic downturn more severe than that of the financial crisis of 2008-09. Rather than inspiring a move to international cooperation in the face of a common enemy, it intensified trends that were evidenced before the epidemic's outbreak: notably the more intense geopolitical rivalry between the US and China and the nationalist backlash against globalization.

China was the first country to experience the epidemic, among the first to successfully suppress the coronavirus, and among the leaders in subsequent economic recovery. With its property, infrastructure, and industrial sectors rebounding briskly, and its export sector significantly outperforming the global average, China's economy is likely to post positive GDP growth for the full year. Most other major regions—including the US, the European Union and other big developing economies such as India, Brazil, and Russia—will see their economies shrink. In a narrow sense, China looks set to weather this storm more successfully than any other large country, just as it did in 2008-09.

Global Growth and Integration

Despite this success, the aftermath of the COVID-19 epidemic leaves China facing two important challenges to its ability to

sustain economic growth and integration with the global economy.

First, China's economic recovery has been deeply imbalanced and has further exposed the country's long-standing inability to make broad-based consumer spending the core of growth. In the past few months, industrial production has rebounded nicely, as have construction, and household purchases of big-ticket items such as houses and cars. Purchases of consumer staples (food, beverages, alcohol, and tobacco) have had a more modest recovery and now seem stalled out at a growth rate of around 5%, half their average pace in 2019. And services such as catering, tourism, and entertainment have been hit hard and are still running far below last year's level.

In part, these patterns reflect a problem not unique to China: the impact of the epidemic fell most heavily on the bottom half of the income spectrum, while leaving high earners relatively unscathed. These high earners kept their jobs and have returned to buying the big-ticket items they really prize, such as houses and cars. But they have cut back expenditures on discretionary services, and many of these cutbacks may be long lasting.

The providers of these services—mainly small businesses that run on small margins—have been hit hard, and many small companies either have had to go out of business or cut staff. Laid-off workers have suffered immediate loss of income and poor job prospects, and have received relatively little state support. China's fiscal response to the crisis—in stark contrast to 2008-09—was among the smallest in the world, amounting to less than 5% of GDP. The average among G20 countries was 6% of GDP in direct fiscal spending plus an equal amount in loans and guarantees to help households and small



Arthur R. Kroeber is head of research at Gavekal, a financial-services firm based in Hong Kong and founder of the China-focused Gavekal Dragonomics research service. He divides his time between Beijing and New York. Before founding Dragonomics in 2002, he spent fifteen years as a financial and economic journalist in China and South Asia. He is a senior non-resident fellow of the Brookings-Tsinghua Center, an adjunct professor at the Columbia University School of International and Public Affairs and at the NYU Stern School of Business, and a member of the National Committee on US-China Relations. His book *China's Economy: What Everyone Needs to Know* was published by Oxford University Press in April 2016.

"China's development has been vastly aided by its participation in a free and open global trading system, yet China has failed in many respects to extend reciprocity to its trading partners"

businesses survive the hit to their income. In the United States, Japan, Germany, Italy, and the UK total fiscal support packages ranged from 15%-40% of GDP.

Increased Consumption or Improved Spending Power?

Beijing's caution partly stemmed from an understandable reluctance to add to the national debt pile. Previous bouts of stimulus have left China with a debt load of around 260% of GDP, which is not unusual for a rich country but quite high for a middle-income one. But, it also reflected the long-standing bias towards policies that favor the economy's production side, while leaving the consumption side to fend for itself. Despite a decade's worth of public commitment to "rebalancing" the economy in favor of consumption, and the rapid growth of many individual consumer-oriented sectors, China's economy still disproportionately relies on industry, investment, and the production of physical goods. Sustained, high-quality growth in the long run requires a greater emphasis on increasing consumer spending power across a wider range of goods and services.


This leads directly to the second challenge, which is China's role in the global trading system. In the two years before COVID-19 broke out, the story that most obsessed analysts of the Chinese economy was the trade war with the United States, which reached an uneasy truce with the "Phase One" trade deal signed in mid-January. It was obvious that this trade deal was not so much an economic breakthrough as a political finesse, designed to put the trade war on pause until after the November presidential election in the United States. Most of the substantive complaints that

led the Trump Administration to launch the trade war—including market access, discriminatory regulations, and subsidies favoring domestic firms, and the conditions for technology transfer—were either incompletely addressed or ignored.

Trade War Temporarily Sidelined, Yet Exacerbated

Like many other analysts, I have been harshly critical of the tactics and methods of the Trump administration's trade war, of its confused and shifting objectives, and of its tendency to impose a zero-sum national security logic on what should be a positive-sum commercial negotiation. But, plenty of the grievances that motivated the trade war were valid. China's development has been vastly aided by its participation in a free and open global trading system, yet China has failed in many respects to extend reciprocity to its trading partners. This lack of reciprocity is deeply embedded in macro-economic policy, with its continued emphasis on production-side support rather than ramping up its consumer economy and opening it fully to foreign participation.

The COVID-19 epidemic has temporarily pushed the trade problems into the background, but it has also exacerbated the underlying pressures. Thanks to shortages of medical equipment and pharmaceuticals, there is now increased political pressure throughout the world to reduce reliance on foreign supply chains, especially those in China, and increased support for nationalist, anti-globalist economic policies. In the short and medium term, it is clear that foreign companies will resist these pressures and maintain a high level of presence in China in order to take advantage of its production efficiencies and exploit its growing market. But in the longer run, the fact remains that China is making an unsustainable demand on the global trading and investment system: that the rest of the world stay completely open to China's goods and capital, while China keeps tight control on the terms of entry to its own market. If the global trading system is to survive in anything close to its current form, China needs to move decisively to a more genuinely reciprocal posture.

As has been frequently been pointed out, not least by many Chinese economists, greater openness would serve China's own development ends, by increasing the pace of innovation and technological upgrading. The same can be said of a shift from a production emphasis to a consumer one. In a modern economy, innovation is driven most by the rapidly evolving demands of consumers. China managed the short-term crisis of COVID-19 well and has the potential to maintain a trajectory of solid growth in the coming decade. But it can only realize that potential by squarely facing the deep structural problems that the epidemic has intensified. 

Travel Restrictions and Reduced Budgets Pose Challenges for US Companies in China

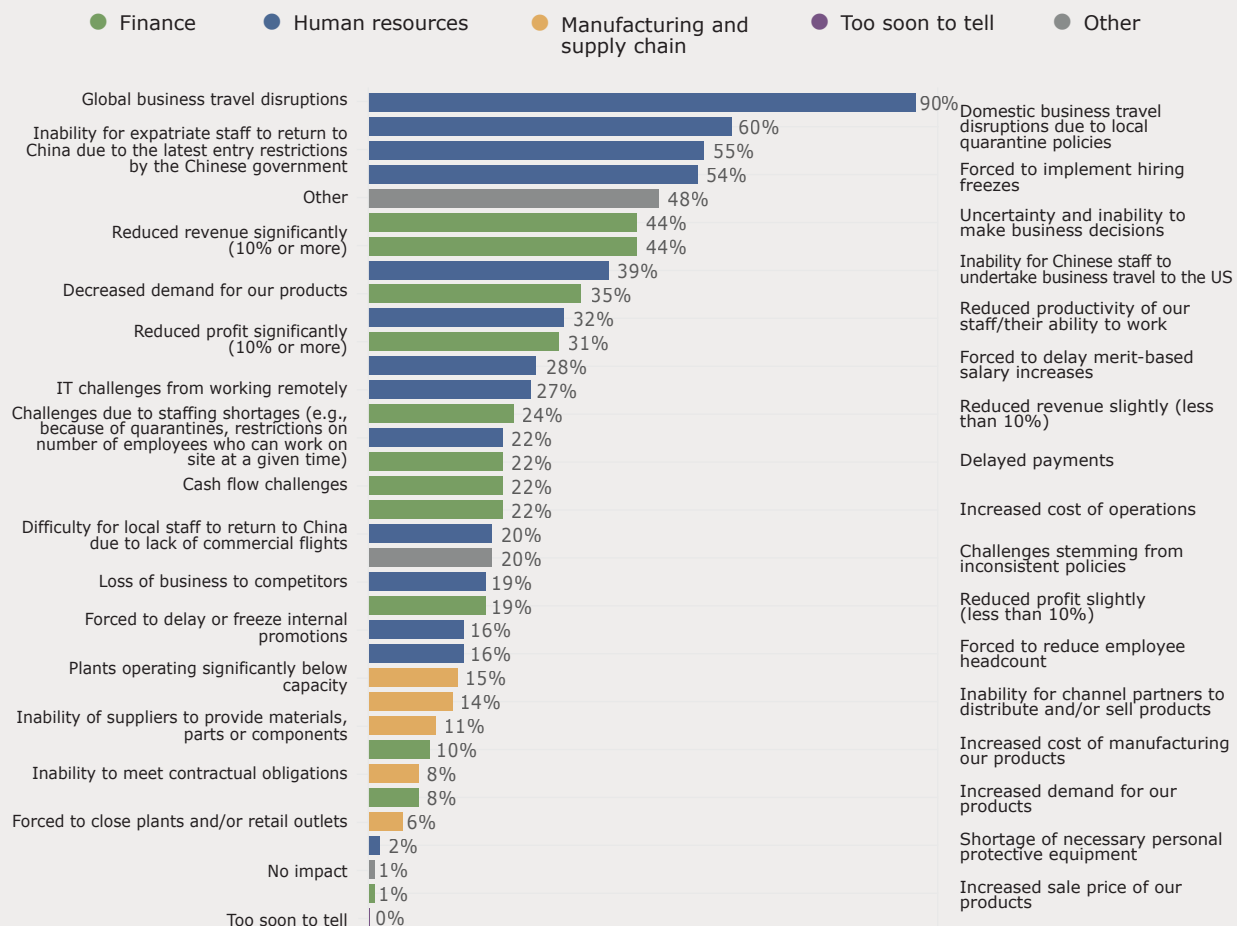
This Flash Survey – AmCham China’s fourth member survey on the business impact of COVID-19 – was conducted between May 19 and 23, 2020, and 109 member companies completed the majority of the questions. Survey respondents represent large, medium, and small-sized enterprises.

In late May, AmCham China released the results of a fourth monthly Flash Survey that evaluates the impact of the COVID-19 outbreak on its member companies. With more than 100 companies responding

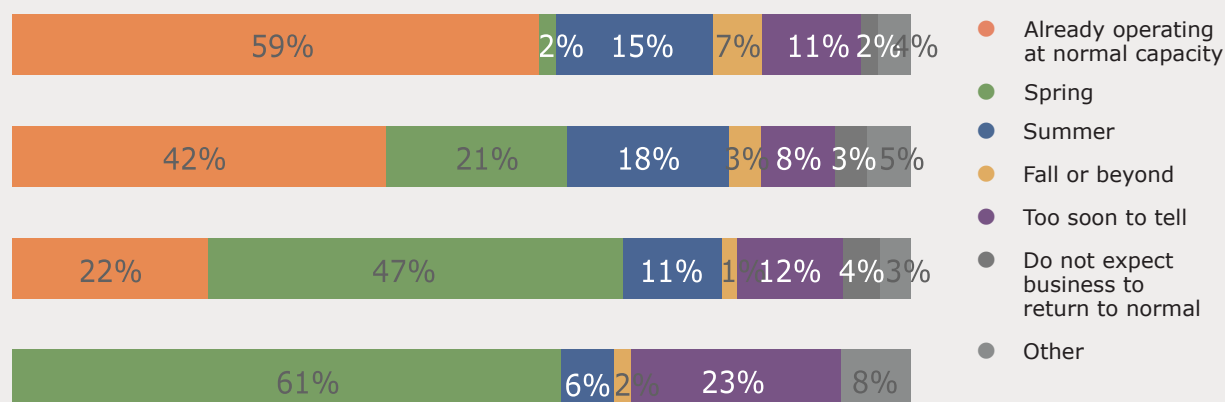
to the survey, these results continue to provide invaluable insight into the ongoing impact on American and multinational companies in China, as well as providing the US and Chinese governments with

suggested policy support. Additionally, by comparing the results of the four monthly surveys, the data now shows how the pandemic has continued to develop for the US business community in China.

How is the COVID-19 pandemic impacting your business operations in China? (Check up to three within each category)



By when do you expect your company's business operations to return to normal?



Global travel disruptions remain the top concern for American companies in China, with 90% of respondents saying this has impacted their business operations, up from 77% in the previous month. Meanwhile, both the short and long-term effects of the pandemic are now becoming clearer to companies, with 60% of respondents cutting costs (up 10pp from last month). 47% of respondents said they may adjust their long-term business plans (up 11pp from last month).

HR-related Impact Translating into Action

The fourth Flash Survey also looked at the longer-term impact on HR departments. More than half of the respondents said they had been forced to implement hiring freezes, while almost as many reported their companies were either planning to reduce employee compensation or had already done so. Meanwhile, over one-third of respondents – rising to 53% in the Technology sector – said they were allowing managers to implement flexible work policies; just under one-third said they would not continue flexible work policies going forward. Nearly one-third of respondents said they were freezing or deferring internal promotions, while 28% of respondents said they will cancel or defer salary increases, and 18% said they will reduce or cancel bonuses in 2020.

“Four months into this pandemic, it is no

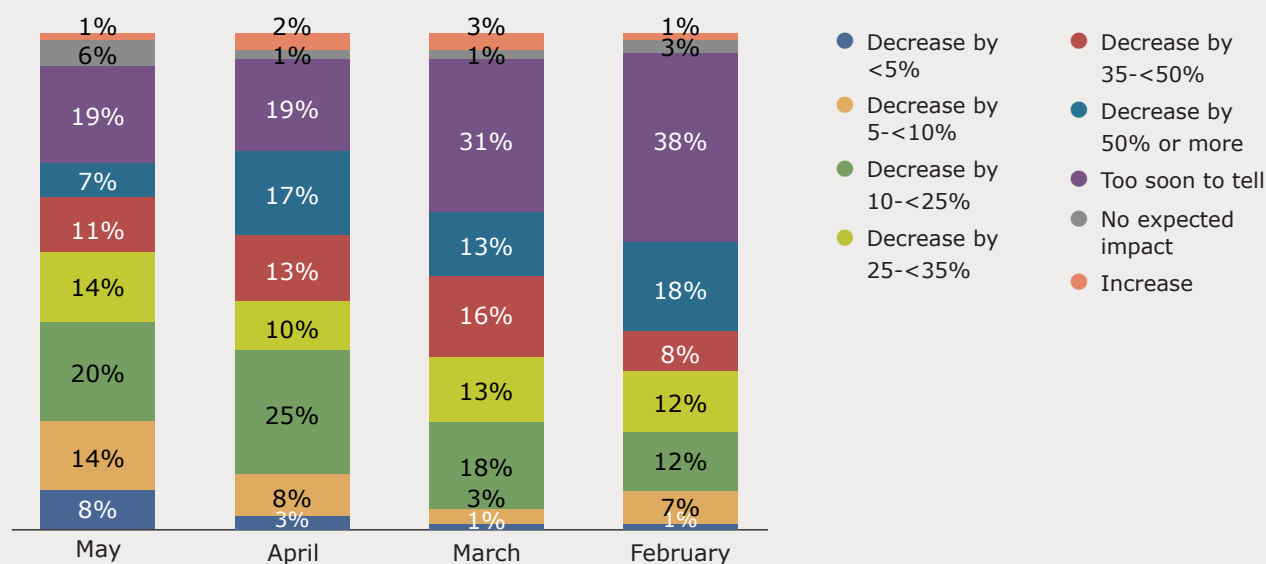
surprise that companies are taking more decisive action as the business impact of COVID-19 becomes ever clearer,” said AmCham China Chairman Greg Gilligan. “While it is positive that some of the changes brought about by COVID-19, such as flexible work policies, will remain in place going forward, our member companies are sensibly re-evaluating their balance sheets in a quest to be as efficient as possible. However, many key factors lie out of their hands, with thousands of senior executives still stranded outside of China, and we will continue to work closely with the relevant government authorities in a bid to bring them back as soon as possible.”

Revenue Forecasts Becoming Sharper

AmCham China members are gaining increasing clarity on the financial impact of pandemic-related operational disruptions. 20% said they expect revenue from their mainland China operations to decrease by 10-25% if the pandemic extends through August 30. The Consumer sector could be particularly hard hit, with 21% of Consumer companies predicting China revenue to shrink by at least 50% this year.

This month's results again show a wide split across sector lines when it comes to market growth. While 18% of respondents said they expect to see their China industry market growth decrease by

If the COVID-19 pandemic impact within China extends through August 30 and business operations still have not returned to normal, what impact do you expect it to have on your company's estimated mainland China 2020 revenues?



25-50% (up 10pp month-on-month), the tech sector remained bullish with 30% of Technology sector respondents saying they expect industry market growth in China to increase in 2020, up from 13% month-on-month. Meanwhile, half of Consumer sector respondents said they expected industry market growth to decrease by more than 25%, up from 33% in April's survey.

Visas, Return of Expats Among Requests to Governments

Requests for support from the US government remained consistent with April's results, with the restoration of regular visa processing services (23%) topping the list of actions that would help member companies. In terms of Chinese government support, survey respondents said they were most concerned about the return of senior expatriate executives (19%), while 16% want to see further tax alleviation policies.

Also consistent with the previous month's results, 38% of respondents said they will maintain planned or increase existing investments, while 37% planned to decrease investments, up 13pp from March, when the second Flash Survey was

released. Meanwhile, 49% of respondents said their manufacturing facilities were operating at 100% normal capacity (up 14pp month-on-month), and 24% of respondents reported an increased need for their China team to support global operations (up 10pp month-on-month).

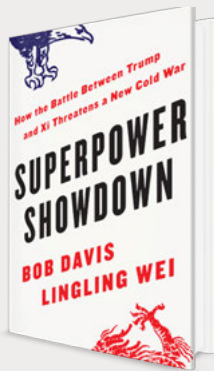
The survey also found that 20% of respondents are planning to reduce payroll costs by implementing flexible labor policies, while another 12% said they were considering doing so. 59% of respondents reported they have resumed normal operations, while another 17% (down 7pp month-on-month) said they did not expect normal operations to resume before the fall. 85% of Consumer sector respondents reported they had already resumed normal business operations, while just one quarter of Resources & Industrial sector respondents reported the same. ¹¹

The full data contained in the 31-page report is available to AmCham China members only. If you are a member and did not receive a link to download the report via email, please email bcsc@amchamchina.org.

To become a member of AmCham China and get free access to all our exclusive reports and more, please email the Membership team at membership@amchamchina.org.

Superpower Showdown: The Inside Story of the US- China Trade Dispute

Superpower Showdown is the tale of how relations between these superpowers have unraveled, darkening prospects for global peace and prosperity, as told by two Wall Street Journal reporters. Bob Davis is based in Washington, DC, while Lingling Wei is based in Beijing – or at least she was until she was expelled alongside nearly a dozen other American journalists just weeks before the release of the book, collateral damage in a relationship that is showing increasing strain. Davis and Wei spoke to the AmCham China Quarterly in June to discuss the expulsion, the trade war, and where both sides go from here.



Superpower Showdown: *How the Battle Between Trump and Xi Threatens a New Cold War* stems from hundreds of interviews with government and business officials conducted by Bob Davis and Lingling Wei in both nations over the seven years they have worked together for The Wall Street Journal. They describe today's tipping point in US-China relations, provide the context of the trade war, and prepare readers for what may come next.

Lingling, *let's start with your most recent journey. How many days have you been in the US?*

Lingling Wei: I've been in New York for three weeks now. The one message I want to get across is this really is not in China's interest to expel American journalists because of the Chinese government's continued goals of opening up and liberalization. A lot of times, foreign investors and businesses look to media outlets like ours for information about China. In terms of credibility and quality of information, the American press traditionally has served as a key channel to understand what's going on in China. This is the time when [China] should welcome more foreign journalists to help people better understand their system and be more sympathetic with their situation or position. China should give reporters greater access as opposed to cutting them off.

It's a big loss for our member companies and for many people in China as well. How can you successfully cover China from afar?

Bob Davis: I ran our coverage in Brussels and in Latin America. I was lucky enough to go to China and cover the economy there. The first thing I always say to reporters in whatever foreign setting is don't try to cover Washington from afar. I also always tell the reporters in Washington to send [China-related articles] to the China bureau, otherwise you'd just get a distorted view. It's so easy to

talk to a few economists and form a view, but it isn't necessarily an informed one at all.

The two sides have talked about retaliatory measures for journalists. The current measures are obviously not having the desired effect in terms of keeping people on the ground. What should the US administration be doing in this particular area?

Bob Davis: I think it's just a losing fight. There's an old saying, "an eye for an eye, a tooth for a tooth" – and you wind up blind and toothless. The complaints the American press has with the Trump administration are legion and legitimate, but it's nothing like dealing with the Chinese government, where there's no tradition of freedom of the press and no tradition of having to answer to the public in a critical fashion. The way [the Chinese government] looks at it, it's fine if there are no American journalists. It was just a bad strategy [from the US] and it's working out terribly.

Lingling, *you used the phrase "bomb ashes" in a recent piece for the Journal, which detailed the personal side of your enforced move to the US. Can you explain the history of that phrase and how it relates to you?*

Lingling Wei: In Chinese, the words for bomb

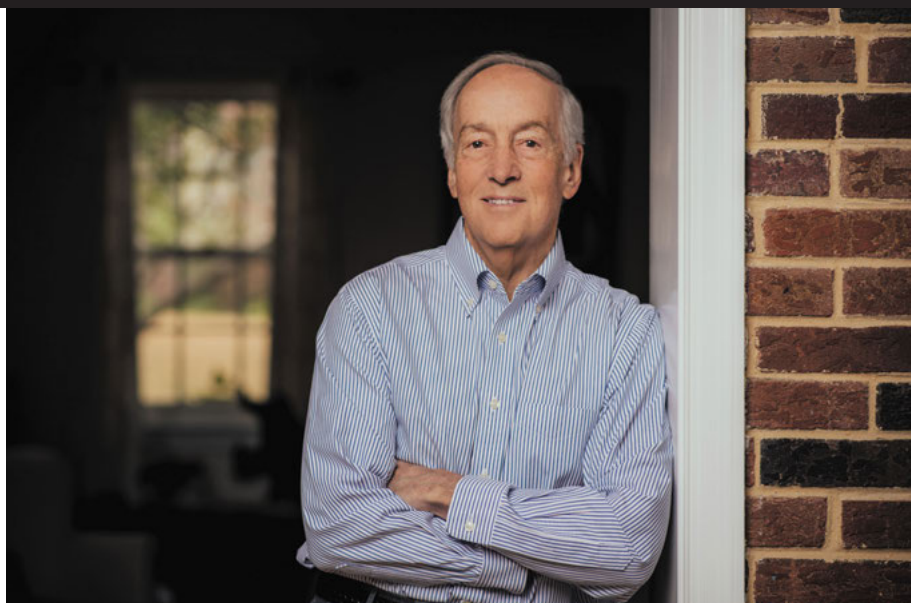
ashes are pao hui, which means collateral damage. Some of my friends in China called me that when they heard about my expulsion. I was devastated after hearing that I was getting kicked out of China because it meant I had to leave my parents. They're both in their 70s and have taken pride in being connected to modern China's revolutionary history. In the end, my family thought that I should pursue what I believe in. My parents' generation didn't even have a choice. Their whole life was about survival, from surviving the Cultural Revolution to other kinds of political upheaval in China. I at least had the choice to leave China and come back to New York. China will always be in me, and I'm going to try my hardest to do a good job covering it.

Let's move on to where we are today in the trade war. Bob, you've talked about the Trump tactic for not attacking President Xi personally. Why is that a key strategy and do you think it's working from a US perspective?

Bob Davis: Trump looks at it in two ways. He's The Art of the Deal guy, so he believes he can cut a deal with anyone. Firstly, the aim is not to attack [Xi] personally and try to cut a deal with him. Second, if you don't attack President Xi, you'd be giving him political space if he was to concede. I don't see any evidence that it's working. I think the second part is pretty delusional; the Chinese leadership is sophisticated enough to see what's going on and realistic enough to know that there's no real friendships among leaders or, even if there are friendships, it's the classic "countries have interests, they don't have friends".

Both countries have talked about their nationalist priorities in terms of the "China Dream" and "Make America Great Again." Is it realistic to think that they can work together for mutual benefit? Or are both countries always going to try to get the upper hand in this trade war?

Bob Davis: The way things are going, it's like a football game. Somebody wins, somebody loses. It doesn't have to be that way. Clearly, the effort in the beginning was to find areas where both countries could work together. If anything, the China-WTO era [around 2001] was too naïve. I think Americans deluded themselves that economic rapprochement would lead to a political change. It seems naïve now, but that's only with the benefit of hindsight. If you go back to the early 90s, the Soviet Union had collapsed, South Korea and Taiwan had shucked off dictatorships, the same thing was happening in Latin America, so why not think that China would be the next one to change? If anything, it was overly optimistic on the US side. But they're now moving in a direction in which the sources of conflict far outweigh the sources of mutual cooperation.



Above Left:
Bob Davis

Above Right:
Lingling Wei

Photos courtesy of
the authors

Lingling, you talked about Liu He caring about China's global reputation. But there is a contrasting view that the domestic audience is far more important and that China doesn't really care what the rest of the world thinks. How do you weigh up those two sides?

Lingling Wei: The trade war has definitely stirred up hardline sentiment in China. The Communist Party leadership's top priority is to maintain and strengthen the Party's rule of the country. There's also a global component to Xi's "China Dream" policies. He obviously continues to want China to develop economically, but the "China Dream" agenda is broader than that. It focuses on developing China as a strong nation militarily, technologically, and geopolitically.

There's this vicious cycle of the US pressuring China, leading to growing anti-American sentiment in China, and that further feeds into this hardline stance among Chinese leaders that China should never be pressured and won't cave under pressure. I think the Chinese leadership also needs to take a step back from this rhetorical fight and determine exactly what kind of relationship they want to have with the United States. Right now, the trust on both sides is nonexistent.

Bob, you've compared this trade war to a baseball game, poised at 3-3 in the bottom of the 17th inning. So, who scored the runs so far, and how many innings are we going to?

Bob Davis: Well, I can't say I worked out the metaphor quite to that degree! But in a baseball game, you never know how many innings you go, right? It was more the idea that this has just gone on and on and on, with no particular end in sight.



Do you see the US continuing this offensive against China, both before and after the elections?

Bob Davis: Certainly *before* the election, without a doubt. The only thing that's a restraining influence on Trump is that he wants to take credit for the Phase One deal. Until the election, there will be a lot of China bashing. What will hold things together is this amazing irony that the point of contention – the trade arena – has now become the very thin glue holding this relationship together. After the election, I do think that the two countries will move in a direction that's separating or derailing. I think there would be a difference if Biden is elected. He's bound to try to put out feelers to at least tamp down the hostility. But, he might be forced by Democrats in Congress to take the issues of human rights, environment, labor standards, and Taiwan more seriously.

In the book, you chart out the whole history of how we got to this point in time. There have been some pretty memorable moments throughout the history of US-China relations. Where does this current period fit into that overall history?

Bob Davis: I think it's a huge moment. That's one of the reasons we wrote the book. This is a gathering storm; it wouldn't be fair to blame it only on Trump. We had generally been on a path of engagement, even though it was weakening, and now it's moving to a point where we're moving in opposite directions. I think it's enormously important.

Lingling Wei: I agree. We tried to document China's rise since the reform era of Deng Xiaoping. Over the years, China has accomplished one of the biggest economic miracles in the world. But a mature world power doesn't just celebrate its successes, it should also

reflect on things to improve. In today's China, there's this desire to have its voice heard throughout the world and be recognized in other parts of the world, especially the US. If China takes actions that fall in line with the changing needs of the Chinese public, China will get recognized.


Chinese society has changed fundamentally over the past four decades. There's a growing middle class that is increasingly unsatisfied with reading state media and wants their rights and their property to be protected. That's a fundamental shift in society that's really challenging the leadership's skills and capabilities to keep the story of China's rise going for the next couple of decades. They have come a long way, but I think the biggest issue for the Party going forward is balancing its own need to stay in control with the changing needs of the public.

How do you see the trade war affecting the foreign business ecosystem in China moving forward? Is a Phase Two deal just a dream at this stage?

Bob Davis: There won't be a Phase Two deal anytime soon. The US is happy enough to be able to trumpet Phase One, and the issue is, will that survive? I think, politically, it's better to promise [Phase Two] in the next administration, as opposed to get stuck in a grinding negotiation. There could be a Phase Two agreement in the next administration, but I don't see any interest in it from Beijing at all.

Lingling Wei: The issues that should be included in Phase Two are really issues that the Chinese side has been resisting to address throughout this trade war. Structural issues like industrial policy and SOE reform are really bumping up against the Party's own interests. There's a higher bar for reform now, so that's a big question mark in terms of any incentives on the Chinese side to have a Phase Two dialogue.

You talked about the commercial side of the relationship being the glue holding everything together at the moment. What do you think AmCham China should be doing to try to maintain that stickiness?

Lingling Wei: I really feel for you guys, because I suspect most of your members still want to remain in China. Keep engaging with them and keep engaging with the Chinese authorities. Try to make the authorities see that some of the measures and demands you are asking for are actually in China's interests. That's probably the only piece of advice I would give, and I'm sure you're already doing that. 

Superpower Showdown was published by Harper Business on June 9, 2020.

Global Growth: How Amway's CEO Is Revolutionizing His Company's Business Model

By Mark Dreyer

Milind Pant joined Amway in January 2019 as Chief Executive Officer. He leads the overall management of Amway and is responsible for setting the company's strategic vision and growth strategies. Pant reports directly to and holds a seat on Amway's Board of Directors. He is the first non-family member to run the business since its founding in 1959.

In his role as CEO, Pant serves on Amway's Global Leadership Team, Amway's key executive decision-making body focused on global strategy development and delivering meaningful ABO and customer experiences. He also serves on Amway's Executive Staff comprised of top cross-functional executive leaders focused on enhancing company culture, talent capabilities, and global market needs.

Most recently, Pant was President of Pizza Hut International with Yum! Brands. In this role, he led the international division across 109 countries with more than 9,000 Pizza Hut stores. He was also previously President – Yum! China, served as Managing Director, Yum! Thailand and Chief Marketing Officer – Yum! Indian Subcontinent.

Prior to joining Yum! Brands, Pant spent 14 years with Unilever in a variety of executive roles, including Vice President – Foods for Africa, Middle East, Turkey.

He holds a Master of International Business from the Indian Institute of Foreign Trade and a Master of Management Studies from Birla Institute of Technology & Sciences, India.



Photo courtesy of Amway

Ranked last year as the world's number one direct selling business, Amway remains a family-owned business, but recently broke with 60 years of tradition by installing Indian executive Milind Pant as CEO. Pant spoke to the AmCham China Quarterly about his own professional journey, COVID-induced challenges, and the company's growth potential in China, which is Amway's top market worldwide.

Started in Ada, Michigan, in 1959 by two friends – Rich DeVos and Jay Van Andel – Amway may have started as a uniquely American idea. Indeed, the name itself is short for “American Way”. But with the company, which is focused on beauty, nutrition, and home products, now in more than 100 markets worldwide and 90% of revenue coming from outside the US, it has long since left those confines and has clearly become a truly global concept.

Last year, Indian executive Milind Pant became the first non-family member to run the business when he was installed as CEO, replacing co-CEOs Doug DeVos and Steve Van Andel – both sons of the founders – in a landmark move. But Pant says the unique nature of the company has made that transition easier. “I think my role would have been much more challenging had I been part of a listed company,” he says. “To be part of a family-owned company with their commitment to the long term is a really important aspect of our transformation.”

Additionally, with 75% of Amway's revenue coming from between Tokyo and Mumbai, an Asian head makes perfect sense, though Doug and Steve remain involved as co-Chairmen. More specifically, Amway has been in China for 25 years, where it has grown into the company's largest single market – a fit that works so well, Pant argues, because of three intersecting ideas on which Amway was founded that remain relevant in China today – entrepreneurship, social connectivity, and health and wellness.

Three Core Pillars in China

“The idea of Amway is that it's for everyone,” says Pant. “You don't need capital, professional skills, or even a professional degree. Everyone is welcome. Our annual global entrepreneurship study of countries and markets across the world shows that 85% of Chinese society believes it's a good idea to be an entrepreneur. So, the first idea of Amway fits in very well with China.”

The second core idea of Amway, Pant says, is a social one, which strikes a chord in China, where a new ecosystem is developing, borne from the successful fusing of e-commerce and social platforms. “It takes the easy frictionless experience of e-commerce and the humanity in engaging on social platforms to build this new model, which is getting massive traction and investment in China,” Pant says. “Though it was born in an offline, face-to-face, door-to-door community, Amway was built for social commerce because at its core are entrepreneurs who love building communities.”

The third pillar is Amway's focus on health and wellness – “a true need of Chinese society”, in Pant's words,

an area further fueled by product innovation. “Health and wellness, especially when it comes to holistic wellness, is a concept similar to that of traditional Chinese medicine, which is also very holistic and very preventive in nature,” says Pant. “So, we are now getting products combining the best of East and West. For example, our team recently launched a product in China that helps with long-term immunity called “Triple Protector”, which has got turmeric and licorice, two very eastern ingredients, combined with Acerola cherries, which is about as western as you can get.”

Personal and Professional Growth

Milind Pant's own journey has combined both eastern and western experiences, and he's found some similarities between the two that he's put to good use in his professional career. “When I was growing up in India, my parents would essentially inculcate in us, what in West Michigan we call family values, and what in India we call sanskar. But we had modest material means; we didn't have air conditioning at home through our years growing up and India is a hot country. So I'm very grateful for all the opportunities that I got in life.”

Pant goes on to list three areas of his professional life that he's learned to develop over the years and that he would seek to apply across any role or situation. “I think one thing is to be open to every opportunity that comes one's way, and see it almost like an adventure. My first role at Unilever India was not in a glamorous marketing or strategy role, but rather in a division that made leather shoes for exports. In 1994, leather was in short supply in India, so as a young cocky man in my first role at Unilever, I decided to go to China to get leather. I had never traveled outside of India. My first visit to any place outside India was to Hong Kong. We took the wooden bridge from immigration in Hong Kong over to Shenzhen. From there, I went to Dongguan and Zhengzhou. I was fascinated with what was happening in China in 1994 and I became a fan and a student of China - for life in some sense.”

“I never expected then that it would all come full circle some 25 to 30 years later. When I was a part of Yum! China, for example, I had the privilege of traveling to over 25 of the provinces in China. But that's something which is important, and there's a book called *Range* which I read recently where the author David Epstein captures it really well in terms of the range of experiences that set people up for better success in a

world that is so complex and changing. That's the first thing – the openness and the adventure to have different experiences in one's life."

The second key area that Pant lists is the importance of a growth mindset, which he says make him continue to learn every day. Growing up in India, English was not his first language, but each morning in Ada, Michigan, he reads five to seven English-language newspapers. "I do it every day, I keep learning, and I think that's what a growth mindset is all about," he says.

Pant has lived and worked all over the world, and his third key learning comes from his stint in Thailand as Managing Director for Yum! Brands. "I learned from my mistakes when I was running Thailand in my first GM role. That is, to lead from the heart and not from the mind, not to get enveloped by pride or fear, but to lead with love and humility. The Thais taught me that everything in Thailand is about the heart. The Amway culture at its core is all about the heart, too. Leading with your heart, living life with a growth mindset, and just being open to whatever comes one's way and experiencing that adventure are the three things that I would take from my life and my professional career thus far."

Potential in International Markets

Thailand is one of Amway's key growth markets, as is China. But with China already Amway's top market, and the company employing 7,000 staff there in addition to many more independent Amway Business Owners, or ABOs, how much potential growth could be left?

"Let's look at Korea, another successful business of Amway's in Asia," says Pant. "Korea has a population of 50 million people. We have a business that's almost a billion dollars, so that works out as \$20 for every Korean citizen. That's how we view our per capita sales. Our China business is roughly \$2.5 billion dollars, a third of our global business. That's about \$2 to every Chinese citizen. Now, granted, there's a difference in per capita incomes. But Tier 1 and Tier 2 cities in China are very close to Korea's per capita income. So, we'd like China to achieve success on par with Korea, and there is no reason why it won't."

Policy Challenges

The policy environment in any sector can be challenging in China, but the company is fortunate enough to have a seasoned professional at the reins. Frances Yu has served as President of Amway China since 2018, but has been with the company for two decades, and now sits on Amway's Global Leadership and Executive Staff teams. A lawyer by training, Yu has previously worked as Amway China's VP of Public Affairs and



Top:

Amway China President Frances Yu (second from right) sits at the top table at the 2019 Annual Appreciation Dinner, with U.S. Ambassador to China Terry Branstad (far left) and then AmCham China Chairman Tim Stratford (second from left)

Photo courtesy of AmCham China

worked in the legal section of China's Internal Trade Bureau, prior to joining Amway, roles that have equipped for crucial dealings with Chinese agencies, such as MOFCOM, SAMR, and others.

"At the fundamental level, our global interest and that of China's are fully aligned," says Pant. "We are obsessed with consumer safety and with high governance standards – we have that in every market that we operate in – so we are fully aligned with the priorities that the Chinese government has put forward, and we do it in ways that fit in very well with China's priorities. We are into health and wellness, and we provide long-term prevention and immunity. It's as much about fitness and good sleep and laughter and relationships as it is about vitamins and supplements. We are into digitizing and modernizing our business by embracing and investing in social commerce. All these are fairly aligned to the needs of China and the business that Amway is in. Our purpose is to help people live better, healthier lives. That's been our purpose for the last 60 years, and that will be our purpose for the next 60 years."

Mindlessly Global, Hopelessly Local

As with any multinational company, keeping alignment between, say, Michigan and China can be tricky, as Pant concedes: "I think most companies have this paradox, this swing between at times being mindlessly global and at times being hopelessly local, and everyone's trying to get the balance right." But he credits the firm's operating framework as a great help in this area, with Amway's approach being to empower those that are closest to the entrepreneur and the customer. "I had a chance to listen to General McChrystal recently and also read his book, *Team of Teams*. There's a concept in the book where it talks about how the

“China remains a huge opportunity and there is enormous potential for Amway through our combination of entrepreneurship, social, and health and wellness.”

organization as a network is an empowerment in decision making, with full information being available to those where rubber hits the road – in our case, that’s the market. So, we provide a high degree of empowerment to our China team, with alignment both on a vision and strategy and on culture and leadership.”

Technology as a Tailwind

Another potential obstacle keeping CEOs awake at night are looming – but as yet unknown – disruptions from technology and innovation, but Pant maintains that technology trends are a “tailwind” for the business. “There was this perception of Amway being a door-to-door business,” he says, “But over 90% of our sales in China are online, and more than 90% of ABO or customer queries that come to us in China are resolved by bots. What keeps me up at night, though, is that our conventional competition has changed. We are reinventing direct selling on a journey to social commerce. But in that journey, we are now competing with other companies that have significantly larger resources and have been doing this for a longer time than Amway. Are we moving fast enough? Are we testing and learning enough things so that we know if we’ve failed or what we can scale up?”

“All our competitors in the area of e-commerce in social platforms have amazing capabilities,” he continues. “They’ve got much larger capital budgets than we can ever match. But they don’t have one thing that Amway has, and that’s the entrepreneur. That’s our secret. The reason for our success in the past, today, and going forward, is that entrepreneurial spirit of someone who’s working with her own freedom and flexibility. We hope to move forward in building communities around her passion. That’s something that none of the players I know – be it Amazon here in the US, or Alibaba in China – have yet.”

COVID Challenges

Many US-headquartered companies with a large presence in China breathed a sigh of relief when the bilateral Phase One trade deal was signed in January. But just days later, the full extent of the COVID-19 pandemic was becoming clear, with firms affected in many and varied ways. “Our biggest priority was to keep our people safe,” says Pant. “The Chinese government gave us special permission during the Lunar


New Year holiday to keep our Guangzhou manufacturing facilities functional. We also had permission to operate in the US, where we have two key manufacturing plants in Ada and Buena Park. So, our colleagues were going to work every day and our top concern was to make sure we kept them safe.”

That said, supply chain challenges soon kicked in, with both packaging supplies and ingredient supplies disrupted, including in China, a situation that Pant says took some time to resolve. “But as we were having those challenges in China, we ramped up our production facilities here in Buena Park and Ada, and then supplied to China. But the biggest benefit of what has remained a tough and volatile time across a number of countries is that the best of Amway got unleashed. We did an employee engagement survey, right in the middle of the pandemic. 94% – the highest number ever – said they were proud to be working at Amway.”

Geopolitical Headwinds

Despite the successful signing of the Phase One trade deal, COVID-19 has also put further strain on a bilateral relationship that had been looking to recover after 18 months of retaliatory tariffs, with some of the more pessimistic analysts raising talk of a decoupling of sorts between the world’s two largest powers.

“We acknowledge the reality of the dynamics that are going on and this pandemic has accelerated the trends that were already bubbling before it came along,” says Pant. “That’s happening in digital, and it’s happening for the challenges of globalization, too. That’s the reality. The idea of Amway is that Amway is for everyone. We have a million distributors across the world – across every age group, every ethnicity, every religion, every race, every language. There’s ten of us on the leadership team, including me, and we come from seven different countries across a range of ethnicities. This just reflects the global nature of the Amway idea and the global nature of Amway.”

“But we are all in, in terms of looking for areas of similarities across societies, looking for areas of similarities across culture, looking for areas of cooperation, while acknowledging that there are serious differences today, and that those differences are going to be tough to resolve in the months and years to come. Overall, though, we remain committed to helping entrepreneurs across China, especially the younger generation, succeed in the coming years ahead.” 



Intellectual Property Rights Garner New Focus

The COVID-19 pandemic has rewritten business models across the globe. As a result, it is more important than ever to focus on addressing problems regarding intellectual property.

By Victoria Lee

As the world slowly considers what it means to reopen, many companies are looking for ways to adapt their business models to reach consumers. Still, others are looking at how to go back to business as usual in a decidedly less than usual way. While discussions over force majeure may continue for the near future, there are a few key intellectual property-related considerations for companies, whether they are seeking to expand into new markets or looking to preserve their place in an existing market.

Intellectual Property Protection

While companies consider how to bring their work forces back into offices, having some employees continue to work from home on a regular basis may go on for some time. As a result, there may continue to be a heightened risk for inadvertent disclosure of a company's intellectual property, especially a company's trade secrets and key data assets (as well as personal information). Companies in sectors where intellectual property is a key asset are encouraged to consider formalizing their mobile device, intellectual property, and information security policies.

As government workers and agencies around the world start to get back to work, changes in filing deadlines for prosecution and registration of intellectual property rights are likely to continue. For those companies seeking to register or continue the prosecution of their intellectual property, regular monitoring of filing deadlines will be critical to ensure that a required filing is not missed.

Access to Intellectual Property

Access to intellectual property and developments will continue to be important in

"Even when economies slowly reopen, it is unlikely that anything will be as it was before COVID-19"

technology collaboration or joint development projects. If one party to a collaboration or joint development project has not survived the turbulent economy due to fallout from the coronavirus disease 2019 (COVID-19) pandemic, the ability of the other party to either continue the project on its own or transition to another collaborator may be challenging without access to the work product and intellectual property developed to date. Reviewing agreements for transition obligations, robust knowledge transfer obligations, as well as disaster recovery and business continuity plans, are important steps to mitigating the risk over the investment in the project.

Source Code Escrows

Software is a key asset of many technology companies. Technology companies providing software or services are often asked to deposit their software into a third-party escrow account, which provides that the source code of the software will be released on the occurrence of certain specified trigger events. Though software vendors typically seek to negotiate release triggers that are limited to bankruptcy and insolvency, sometimes software vendors must concede to broader release triggers that may also include a failure to perform contractual obligations or other financial insecurity short of bankruptcy and insolvency.

Technology companies facing uncertain times might proactively review their escrow arrangements and take steps to minimize the risk of a source code release, which can often be a red flag in a financing or a prospective sale of the company. Licensees of software, on the other hand, should consider taking the opportunity to review their ability to access the software source code if ongoing performance by the software vendor may be at risk. For licensees of mission critical technologies, it may be worthwhile to consider the establishment of a bankruptcy remote entity to mitigate against the risks of losing

access to the technology in the event of a bankrupt licensor.

Cyber Readiness

Cybercriminals haven't taken a break while the global pandemic continues to rage and cyber risk will not likely decrease once we all go back to work. Cybercriminals will continue to be opportunistic. With the benefit of hindsight, companies are encouraged to have renewed focus on locking down systems to ensure confidentiality, availability, and integrity of their company's critical systems and data. Technology companies with data-centric business models that need to maintain the confidential nature of key pieces of information (such as pricing, customer lists, bills of materials, and other sensitive information) are encouraged to review their cybersecurity practices.

New Digital Platforms

While we have sheltered in place, restaurants shuttered for dine-in meals have reopened for takeout-only orders; gyms and fitness studios faced with membership cancellations and refunds have made virtual workouts available to members; musicians are streaming music and concerts; religious institutions are streaming messages; retail stores that did not prioritize their online presence or channel now have no other way to reach potential customers; and distance learning/teaching may be turning into a more permanent fixture in education than anyone ever anticipated. Even when economies slowly reopen, it is unlikely that anything will be as it was before COVID-19. With these new markets and platforms available, businesses are encouraged to consider intellectual property, privacy, and commercial issues that they likely never had to consider previously:

- The content and material that is available on a website may be considered

proprietary, so companies are encouraged to ensure there are online terms protecting the intellectual property on their websites.

- Producing and making video content available will require appropriate consent and release from participants appearing in the video. If music is also available, then the appropriate music rights should be secured, and in some cases, appropriate royalty payments made.
- Data privacy and breach notification laws are ubiquitous across the globe, and compliance is sometimes seen as a necessary annoyance. But adopting best practices in privacy compliance and implementing and maintaining robust data security also builds consumer trust and reinforces brand reputation at a time when consumers are increasingly concerned about their privacy.
- Launching web-based promotions to reach a new and expanded base requires compliance with a distinct set of rules regarding the disclosure of the details of offers, timing of offers, expiration of offers, and treatment of information.

We all hope that business and life will slowly resume, though it is becoming clear that it is unlikely business and life will resume as we knew it. At least for the near term, teleworking, distance learning, virtual workouts, and virtual social gatherings may be with us for a while. With these changes, some fundamental issues related to intellectual property will be relevant for old and new business models alike and across multiple sectors. Focusing on adequately addressing those issues can help businesses remain open and play a role in restarting the global economy. **Q**

Victoria Lee is a Partner at law firm DLA Piper, based out of Silicon Valley, and is a member of the firm's Executive Committee.

Bridging the Gap, One Car at A Time: In Conversation with Albert Xie



Albert Xie was appointed vice president, Public Policy and Government Relations, for GM China, effective February 2014. Based in Beijing, he is responsible for building and maintaining GM's strong relationship with key government agencies, interpreting China's political environment to support management decisions, promoting GM's corporate image, and fostering strong relationships with GM's partners to enhance its government relations strategies.

Xie joined GM after a 17-year career with General Electric in China. He most recently served as general manager, China Government Affairs, for GE Aviation. He also held several leadership roles in sales at GE. Xie has a Bachelor of Science degree from the Beijing Aeronautical Institute and a master's degree in business administration from the China Program of City University in Seattle, Washington.

In the latest in the series profiling current Board members, Albert Xie discusses his career, work with AmCham China, the auto industry, and the future of US-China relations.

Please outline your career to date.

Albert Xie: I come from fairly humble beginnings. I started my career as an instructor at the Civil Aviation University in Tianjin, then worked at GE Aviation, and I've been with GM China for six and a half years. All my educational background has been in China, and I've never lived outside the country for long.

How long have you been connected to AmCham China, either as a member or board member?

Albert Xie: I've been engaged with AmCham China long before I joined GM. I spent 17 years working for GE Aviation and was a founding member of the US-China Aviation Cooperation Program [one of AmCham China's four cooperative programs] in 2004. That was a very good platform to facilitate collaboration among industry players on common issues and was very influential in addressing key industry issues. I didn't think I would ever be a board member, because I thought that AmCham China was more for Americans, and not for Chinese. But then I realized I could better represent my company's business in China – this is now my fourth consecutive year as a board member. I'm also the co-chair of the Chamber's Automotive Forum.

What are some of the ways in which you engage as a board member?

Albert Xie: We talk about common policy issues and discuss how we can better serve US companies invested in China to be more profitable and sustainable, to better understand Chinese policies, and to promote advocacy. I participated in many White Paper delivery meetings [with Chinese government officials] alongside other board members to discuss a variety of issues that US companies are facing in China. I have learned a lot from the other board members, which has been very helpful. It is great to serve our members, but I've also learned a lot myself and become a better leader.

Our board members come from different industries and have different backgrounds. I've never lived in the US, so when we talk about the current US-China relationship, other board members have a deeper understanding of the US perspective and how politicians there think. Conversely, as a board member, I'm able to take part in meetings with US Embassy officials to explain and update policies from more of a Chinese perspective, so that has proved very helpful in both ways.

Can you share any stories about how your involvement in AmCham China has directly helped one or more members?

Albert Xie: In the auto industry, there is a long value chain and a long lead time for production. More often than not, we want to have transparent policies to aid with our planning. In the Automotive Forum, we discussed China's new emissions standards, as the standards were raised last year. However, the new policy did not provide enough lead time for companies to react. We discussed as a group and through AmCham China, we reflected these comments from our industry to the relevant government agency and industry associations. Fortunately, our voice was heard. The government then allowed us a longer lead time by six months, which was very significant and helped us fully prepare for production.

The composition of the AmCham China membership has become much more diverse over the years, with now more than 50% of our card-holding members estimated to be Chinese nationals. How important is it for the board composition to be equally diverse and how does that diversity help AmCham carry out its mission?

Albert Xie: It is a positive and encouraging fact that more card-holding members are non-US citizens. This trend represents the influence of the US-China relationship and shows that US companies are deeply invested in China and are becoming part of the Chinese economy. I like that the Board is well represented with diverse cultural backgrounds. This year, we have four Chinese board members. We are able to read between the lines and better understand certain messages. A multicultural background

is important. The concept of globalization is facing some challenges, but AmCham China is a good example of people from varied backgrounds working together.

What does AmCham China mean to you and how would you like to see the organization develop in the future?

Albert Xie: I always think about one question – how can AmCham China better represent its members, rather than just represent the board members and their companies? Of course, some people engage more and will therefore likely get more out of it. One measurement is to see how engaged and involved members are in AmCham. How many members are asking for AmCham's help and support? The more questions we receive from the members, the better our member engagement, which shows that what AmCham is doing is related to members' interests and benefit. The more AmCham serves its members, the more support it will get from their members and the more people and companies will join AmCham in the future.

What do you see as the most crucial aspects about the US-China business relationship? What are you most optimistic and pessimistic about today?

Albert Xie: I look at this from two aspects. Firstly, I'm more pessimistic for the short term, because this is the year of the US Presidential Election. We know that the next 5+ months will be tough because during the election period, people will use China as one of the topics to attract attention – it's always been like that. But I feel very optimistic for the long term, because China is such a huge country and there is huge potential for market development with so many US companies deeply invested in China. These companies provide quality jobs in China, generate a decent portion of tax for the Chinese government, deliver products for Chinese consumers, and are part of the overall Chinese society.

From the beginning of my time with AmCham and having the chance to talk with Chinese government officials, I was advocating to them that they should always think about those US companies as Chinese companies. There's a term in China about "foreign company policies". This eventually should be changed. Once you register here in China, you follow all the rules and regulations, and you're now [considered] a Chinese company. China should treat all companies the same, just as Chinese companies should be treated as equals to local companies elsewhere.

Below:

Albert Xie speaks at an AmCham China event on connected vehicles at Microsoft's campus in Beijing.

Photo courtesy of AmCham China



What do you believe is necessary for a mutually beneficial relationship between the US and China?

Albert Xie: There should be more governmental dialogue between the two countries. There are a lot of potential opportunities that could be beneficial for both countries. But only through the dialogue and conversations can we find solutions. I would like to see a more constructive and sustainable US-China relationship. I believe that is in the fundamental interests of both countries.

We could create more opportunities to bring more Chinese government officials in to talk to our members and have US government officials come in and talk to our industry leaders. The two governments could also discuss similar issues and present different views on the same topic via our platform. I have the general feeling that Chinese officials have a better understanding about the US than US officials have about China, especially those in Congress. For example, there are more Chinese people learning English than there are American people learning Chinese. When you learn the language, you learn the culture.

Talk about the auto industry in the context of US-China relations. The industry's joint venture (JV) model could be seen as controversial in other countries, but in some ways it's a great example of the two sides working together for mutual benefit. How do you view this?

Albert Xie: I see the joint venture model as unique to China, but over the decades, we have seen the Chinese auto industry develop very fast and very dramatically. The number of people driving cars is growing much faster than anywhere else. So, this joint venture structure brings in a huge market opportunity for foreign companies, and, at the same time, helps to develop the automobile market. Chinese local OEMs developed very quickly over the same period. Considering the history, these joint ventures have really benefitted both China and foreign countries. As for the future of the JV model, I don't know the answer to that right now. The Chinese government is currently promoting a market approach, so let's see how that goes.

What are some of the key trends in the automotive industry in China that GM is paying attention to and/or excited about?

Albert Xie: This is a transitional period in the auto industry. Our CEO has said that over the next five years, we'll see more technology usage than we've seen over the past 50 years. EVs, autonomous driving, smart vehicles – those are the new changes.



Above


Albert Xie receives the President's Award for Advocacy on behalf of the Chamber's Automotive Forum at the 2018 Annual General Meeting.

Photo courtesy of AmCham China

Consumer habits could also be changing. Consumers used to want to own cars, but now perhaps they will start car sharing more. There will be lots of changes, and it's a very interesting time, particularly with regard to the environmental consciousness for many people. This is a time of change. A battery engine vehicle is very different to a combustion engine vehicle, so GM is putting a lot of focus on, and investment into, NEVs and smart vehicles.

How is GM adjusting its strategy and operating procedures to cope with the changing times – both to keep up with industry trends and in today's post-COVID world?

Albert Xie: The first thing to mention is that we're putting a lot of attention on employee safety, both our own employees and employees in the joint venture. We also put a lot of attention on the supply chain. COVID-19 has impacted not just China, but the whole world. With globalization, our global suppliers have all been affected in turn. Even though China has recovered, much of our overseas production is still affected. So, we have put a lot of attention on making an effective recovery and ensuring smooth production.

There is also lots of attention on the overall economy, especially on consumer behavior. We saw that auto sales in March improved versus those in February. We saw a better recovery in April than we did in March, but May was fairly flat. Given the overall economic impact, consumers may choose to postpone their purchases. Maybe some of them will scrap their earlier plans to buy a new car altogether. We are watching this dynamic closely and adjusting our production accordingly. But overall, I think China still has great potential in this market and we're optimistic for the long run. 

Data Driven Perspectives into US-China Business Connections

With US-China tensions magnified by COVID-19, it is imperative for the United States to maintain constructive communication with China.

*By Anne Alvernhe
and Jason Zhu*

Despite the optimism surrounding the signing of the Phase One trade agreement between the US and China, serious disputes remain unresolved. These tensions have been further aggravated by COVID-19, which has triggered a new wave of anti-China sentiment in the US and concerns of over-reliance on China as the dominant and critical link in global supply chains. The recent introduction of China's new national security law in Hong Kong has added to tensions between the two countries.

Brunswick Group has been tracking public sentiment, both in China and the US, towards companies from both countries and the bilateral relationship overall. This data signals that American companies operating in China face significant challenges, both in China and at home. And the data also highlights a clear need for US companies to engage stakeholders to ensure they understand the value they bring to both countries.

Anti-China Sentiment Calls Business Ties Into Question

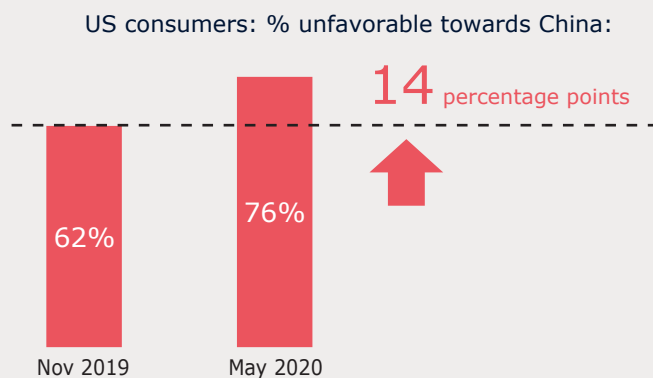
American public perceptions towards China were already unfavorable prior to COVID-19, and attitudes have further deteriorated as a result of the pandemic. In polling of the US public that the Brunswick Group conducted in November 2019, 62% were found to have an unfavorable view of China, compared to 38% that had a favorable view. In our most recent poll, which was conducted at the end of May 2020, we found that unfavorable views towards China had increased by 14 percentage points to 76% of the US public.

Analysis of social media conversation related to China further illustrates how COVID-19 has led to an increase in anti-China sentiment in the US. From early this March, as COVID-19 began to spread rapidly across the world, there was a surge in online discussion about China, with China four times more likely to be mentioned as compared to pre-pandemic levels. This peaked to eight times more mentions during the height of COVID-19 in mid-March. In more recent weeks, there remains an elevated level of discussion around China, signaling sustained attention on the topic.

During the peak of the China social media conversation in mid-March, 64% of the tweets towards China were negative. While negative sentiment towards China has dropped in more recent weeks to 49%, it remains high versus the pre-March weekly average level of 32%.

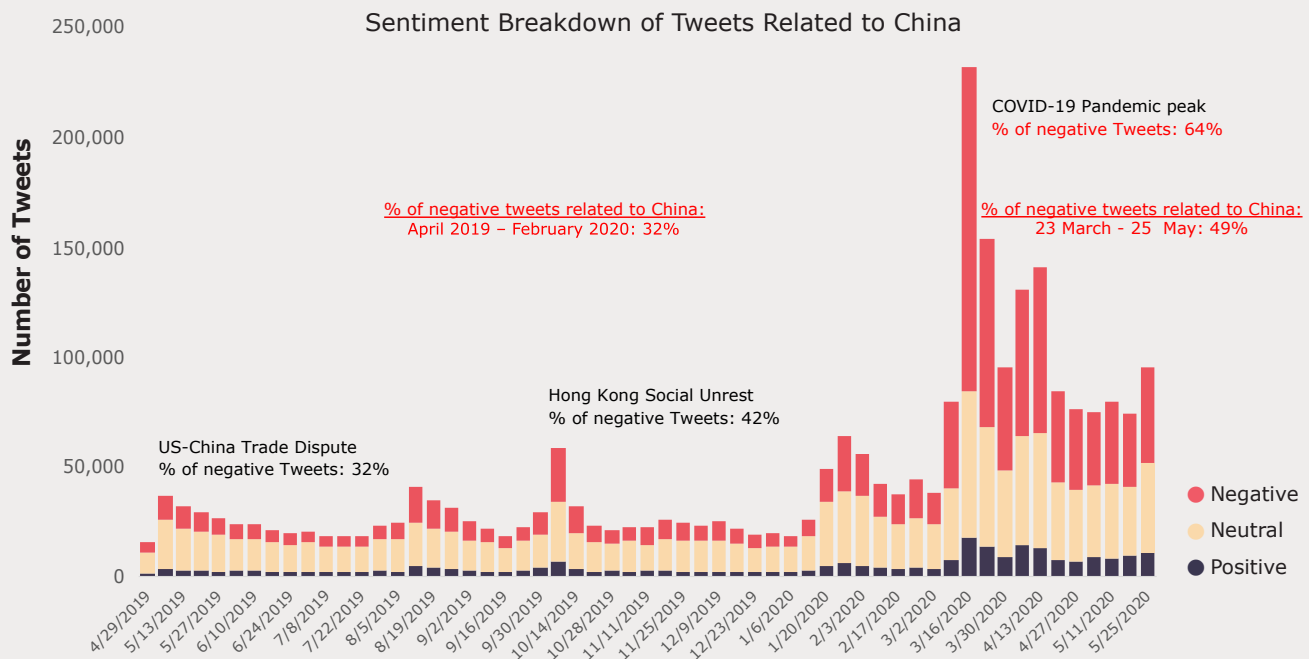
This analysis indicates that many Americans are assigning blame to China for the outbreak, and this is elevating their level of concern towards China as a whole. Similar sentiment is apparent in Washington D.C., where politicians from both parties are increasingly adopting a position that is tough on China. This could lead to American businesses in

Anti-China sentiment is growing among US consumers



Source: Brunswick Group

China has received a substantial uplift in negative attention since the COVID-19 outbreak.



Source: Brunswick Group

China receiving more questions about their operations and business goals from US stakeholders.

Politicized Tensions Impacting Chinese View of US Companies

Equally as crucial as understanding US public opinion is for US companies to gauge how Chinese consumers feel about the United States and its companies and the actions taken by the public to make these sentiments clear.

A poll published by the Brunswick Group in November 2019 shows that, even before COVID-19, anti-US sentiment in China ran high. Almost half (48%) of consumers stated that they avoided buying US products as a result of the trade dispute, with many feeling increasingly negative towards US businesses (46% and +3 points versus June 2019).

These types of boycotts and increasingly negative views have serious consequences for US companies operating in China. It is vital for these companies to be sensitive to local public sentiment, anticipate concerns, and be aware of political

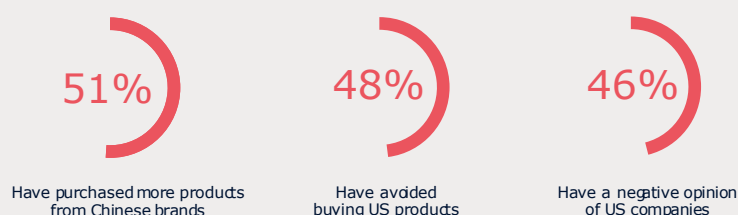
sensitivities. They should look to continue engaging with the Chinese public by crafting and communicating their own local corporate stories. This will help distance their business away from geopolitical rhetoric and instead demonstrate their customer understanding, strong local partnerships, and provide reassurance on their continued “in China for China” commitment.

Balancing China’s Importance with Diversifying Supply Chains

China’s role as a central player in global supply chains over the past two decades is undisputed. COVID-19 has exposed the potential risks of this over-reliance, resulting in a ‘rallying cry’ to diversify supply chains away from China, with some voices even calling for US companies to leave China. Indeed, a poll conducted by the Brunswick Group in November 2019, revealed that 60% of the American public believe that US companies should move their operations and supply chains out of China, to other countries.

Anti-US sentiment is high among Chinese consumers

Chinese Consumers:



Source: Brunswick Group US-China Trade Tracker: Wave 2, November 2019

US companies must expect increased tensions

70%

of US firms have no short-term plans to relocate production outside of China because of COVID-19.

Source: AmCham China, March 2020

60%

of American public believe that US companies should move their operations and supply chains out of China.

Source: Brunswick Group, November 2019

However, many others acknowledge that China will continue to have an irreplaceable role to play due to its big advantages in manufacturing and logistics. This is reflected in the American Chamber of Commerce in China's own survey in March 2020 (in partnership with PricewaterhouseCoopers) which shows that over 70% of US companies have no short-term plans to relocate production outside of China because of COVID-19.

US companies can therefore expect to face increasing tension in balancing the importance of the Chinese economy to their business interests.

Therefore, it is essential for US companies that operate in China to be sensitive about topics that could stir up political sentiment in either country and clearly communicate their business plans and the value of their continued presence in China to both sides.

Communicating and Engaging with Investors is Key

With concerns and questions over global companies' continued reliance on China as the critical link in manufacturing supply chains rising substantially since the COVID-19 crisis, US companies need to be prepared to proactively engage and be transparent with investors and analysts on their China strategy rationale and crisis protocol in place to handle any future supply chain challenges.

Brunswick analyzed earnings call transcripts of US-listed companies from Jan. 1-Mar. 13, 2020 to understand how, and to what extent, corporations are talking about COVID-19 to investors and analysts. When speaking to Chinese companies (listed on a US stock exchange), analysts were found to prioritize questions about the impact of COVID-19 in the context of customers, workforce, and plans for recovery. Other (non-Chinese) US-listed companies are more likely to be asked about COVID-19's disruption to their supply chain, reflective of the level of concern around this topic.

US companies may need to look beyond China to mitigate supply chain risks in the long run. An expected adoption of a "China-plus-one strategy", whereby international businesses active in China set up a second production base in at least one other country, may help. This will ensure that US companies continue to benefit from their strong and established relationships in China, while providing re-assurance to their global and domestic stakeholders. ¹¹

Anne Alvernhe is a Director at the Brunswick Group. Jason Zhu is an Executive at the Brunswick Group.

Three key take-aways for US companies with operations in China

1

In China, US companies need to be more cognizant of local perceptions about them and increase their engagement through storytelling to minimize misperceptions, distance themselves from geopolitical rhetoric, and reassure the Chinese public on their continued 'in China for China commitment'.

2

In the US, US companies must recognize the risks associated with growing anti-China sentiment among the US public. They must ensure that the rationale of China operations is well understood by the US public and the direct benefits it brings to the US domestic market.

3

Among all its stakeholders, it is crucial for US companies to proactively engage and be transparent on their China strategy rationale and their crisis procedures in place to handle any future supply chain challenges. They will need to adopt a "China-plus-one" strategy to look beyond China and mitigate supply chain risks.

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Once you have joined the EDP program, we will create an individual page to promote your products and services, with your company logo featured on our EDP landing page

Then, your products, services, and company logo will be shared in our:

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WeChat post

Monthly promotional
email to over 10K
recipients

EDP partner list sent out
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and membership card to
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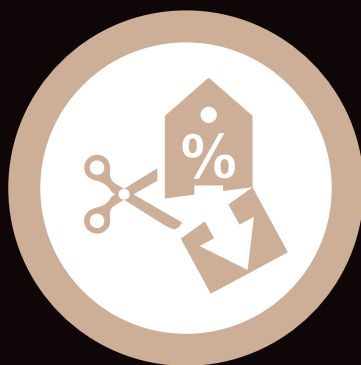
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When Layoffs Are Imminent, What's the Best Course of Action?

By Alex Xing

An article in the March-April 2020 issue of Harvard Business Review (HBR) by JetBlue Chairman Joel Peterson offered ten pieces of advice on firing employees with compassion. According to Peterson, who is also a Professor of Management at Stanford, fairness and empathy, rather than the fear of being sued, should drive termination best practices. Specifically, employers must act quickly in firing underperforming employees, prepare and practice difficult layoff conversations, and offer frequent feedback to employees on their performance. In this article, Alex Xing from HR consultancy LABOURS gives his thoughts on Peterson's advice and offers some China-specific context of his own.

I agree with many of the points Peterson makes in his article, such as constantly assessing the organization and its members, offering frequent feedback so as not to surprise workers, and maxims that include “Don’t Wait for a ‘Firing Offense’”; “Inform Employees in Advance”; “Don’t Surprise People”; “Do Prepare and Practice”; and “Do Deliver the Message Immediately and Clearly”. A termination meeting is a time to communicate a decision – not to debate it, defend it, or negotiate it. The top priority is letting employees understand the company’s decision.

Empathy and humanity also need to be addressed when developing a communication plan. Generous compensation plans, solid help in the following stages, and a well-prepared communication plan will allow employees to feel more respected. These points emphasize the importance of proactive communication to fully understand both parties, internal training, and unified talking points, and provide comprehensive solutions that are legal, reasonable, and fair. In short, they are necessary conditions for a smooth and efficient layoff process.

Managers have come to realize that improper layoffs are detrimental, and that hesitation or misinformation can

complicate the entire process. Social responsibility drives entrepreneurs to adopt a more humane and respectful approach to overcome difficulties in the layoff process.

How Qualified Consultants Can Improve the Experience

The HBR article advised against “hand[ing] off the dirty work”, noting that when the responsibility of communication is managed by outsiders or even by HR, layoffs themselves can be “a cold, harsh, and uncaring practice.” Peterson suggests that bosses should communicate with employees themselves, and that “not doing your own firing is a failure to ‘clean up after yourself’”.

However, due to the varying legal environments of labor laws and labor protections between China and the US, best practices for Chinese managers can be fundamentally different. Considering the complex legal requirements, even HR professionals may find it difficult to answer all of an employee’s detailed questions.

Plan design and communication are

two essential aspects that make up efficient and respectful layoffs. Professional external teams must be able to design a full set of severance, communication, execution, and contingency plans and also must be able to communicate with employees face-to-face, and deliver the company’s decision to employees in a legal and professional way.

Using Career Change Consultants

A few years ago, we dealt with a joint venture company in Jiangsu that was laying off nearly 800 people. Hundreds of employees were taking collective action against the management, the board, and the local government. The Chairman had confided in me that his company may not be in such dire straits if only they had implemented some redundancies earlier. Four years previously, the company had an opportunity to turn itself around by laying off 300 employees and increasing its efficiency, but the management faced several challenges. Lawyers were brought in who argued that the company was not suffering from severe economic loss. Meanwhile, there was fear

Peterson's Top 10 Tips

1	Don't Wait for a "Firing Offense"
2	Do Be Willing to Fire Friends or Family
3	Don't Surprise People
4	Do Prepare and Practice
5	Don't Hand Off the Dirty Work
6	Do Deliver the Message Immediately and Clearly
7	Don't Overexplain the Decision
8	Do Be Human
9	Don't Shift the Blame
10	Do Be Generous

among line managers and HR staff surrounding the communication of the plan with a large number of employees, as well as concern from the regional headquarters that voluntary layoffs could cause a mass exodus of excellent employees.

Eventually, the plan was canceled and the long-term hopes of the company ended there. The Chairman told me that his top concern about bringing us in as consultants to support communication with his employees was whether his staff would perceive the company to be heartless and cowardly, by avoiding that talk directly with them. It was our resolute intention to help employees with a well-prepared contingency plan that both the company management and our team could rely on, and by working together, eventually employees realized that the severance package was the best the company could offer. 95% of employees came back to sign the mutual agreement within three days of our negotiating.

I asked the Chairman what his experience was after perceiving how consultants work. He replied, "Without a consultant's help and their firm stance on the frontline dealing with employees, I cannot imagine my managers could have gone through this tough situation and achieved the same result."

Bosses Prioritize the Business, Consultants Comply with the Law

Labor laws are indeed very complicated in China. Unlike the full freedom of employment and non-employment entitled to employers in Western countries like the UK and the US, there are only 14 situations in which companies can terminate labor relations provided by the Chinese Labor Law and the Labor Contract Law. In these laws, only five articles can be used to support a company's layoff decision. Limited provisions of the Chinese labor laws and their complicated local implementation result in misunderstandings on how to enforce the law.

Company management should be capable of making important decisions regarding layoffs, but it takes much more effort and expertise to explain to employees why their layoff is legitimate from a legal perspective. In America, a boss who firmly and clearly announces the company's layoff decision has already done half the work. But in China, a boss' announcement of a layoff serves as only the first of many steps. Layoff discussions conducted by managers must be communicated clearly to company executives, as any evidence of miscommunication in a company's official statement may result in a PR disaster.

What if employees disagree with the company's decision? What rights or obligations do employers and employees have? Even if managers offer clear answers, employees may remain skeptical about the integrity of the decision. Career change consultants, operating as a specialized third party, facilitate professionalism and integrity in the layoff process. In the process, they effectively protect employees and offer strong support to employers.

Comprehensive Coverage of All Issues

Layoffs are comprised of detailed issues that include calculating severance packages and deciding how differences between gross and net income affect employees' severance packages. For management teams or HR professionals not specialized in employee relations, the answers

to these detailed questions can be quite difficult to grasp after only a couple of training sessions.

Experienced career change consultants will clarify all these details including severance packages, compensation and benefits, and settlement of salary during two-way communication. They are also able to offer psychological guidance and support. When dealing with disputes between employers and employees, consultants have appropriate ways to protect the legal rights of both parties. In effect, this minimizes friction and resolves the problems faced by managers when conducting layoffs.

In addition, the overall design of compensation, communication, execution, and contingency plans must balance the interests of all stakeholders involved in the layoff process. Consultants can offer a more neutral voice in explaining the best way forward for all parties.

Different Historical Views of Fairness

The top principle for career change consultants is to facilitate the hiring process using a clear and legal standard. One of our clients was challenged by a top sales rep as to why he was being laid off after ranking second in the yearly sales list. Instead of complicated discussions that quickly turn personal, consultants are able to explain, for example, that layoffs were enacted according to different lines of the business, and not based on individual performance. In-house managers may pay more attention to individual relationships when making decisions. To the contrary, career change consultants focus more on managing overall risks.

Dismissing employees is never pleasant. When executed poorly, the layoff process may affect the relationships built between employers and employees. This, above all, is the best reason to involve professional consultants to handle this difficult interaction, so that both employers and employees can maintain a cordial relationship long into the future. **Q**

Alex Xing is a Partner at LABOURS, the first HR consulting company to specialize in legal consulting for labor affairs in China.

Pandemic Motivates Innovation in Online Education

Online learning has begun to replace the traditional education structure in response to educational challenges brought on by COVID-19. However, we shouldn't forget the advantages of in-person schooling in shaping values and creating strong character.

By Zhong Ling



Zhong Ling is an Assistant Professor of Economics at the Cheung King Graduate School of Economics (CKGSB). She received her PhD in Economics from Yale University in 2019. Her fields of specialization are labor economics, economics of education, and public economics. She is particularly interested in household decisions in China and graduate education in the US.

School shutdowns brought on by the COVID-19 pandemic have affected millions of learners in over 100 countries, but it has not shut down the desire to learn.

Many educational programs have gone online amidst the coronavirus pandemic, tremendously expanding the market for online education. It provides students and parents with an opportunity to observe a full spectrum of education quality. The cost of online education, however, is fairly similar under government intervention. As a result, students who know what good teaching is like will be more demanding and have higher expectations of their instructors than before.

This sudden change in the education market structure generates interesting economic implications. School quality does not matter so much at this point as resources from within and outside of the schools are both available to students. This means the price premiums that parents have paid for housing in reputable primary and secondary school districts might not pay off. A good teacher's one-time lecture may provide a higher level of social gains by benefiting many more than 50 students once it is recorded and is available for unlimited replay by the general public. Despite these externalities of online education, what is the effect of a sharply increased demand for online education on this industry?

Many educators and researchers, including myself, have been thinking and debating about how the internet may increase the efficiency and quality of education. I want to discuss three aspects of the future of online education based on my understanding of the economics of education and

recent observations of people's short-term solution towards moving traditional classrooms online.

Industrializing the Online Education

Preparing for online teaching is a very tiring task. According to a research article conducted by two analysts at Washington State University, online teaching requires much more time investment in preparation and after-class interactions with students, not to mention the additional time cost and pressure if the teachers want to further improve their teaching quality per request by the students.

What does it take to offer a good online course? One must be familiar with the students' academic background, know the course material, prepare, teach, and interact with the students, evaluate their work, record grades, and tackle technical challenges. Adam Smith would be very disappointed if he knew that this diverse set of tasks belong to one individual, and that there are hundreds of millions of these multi-tasking individuals on earth in this modern economy. Unlike producing offline education, which is limited by class size, online education can be more efficient via teamwork with specialized team members, each taking care of a teaching task in which they have a competitive advantage.

Existing online education platforms show some preliminary features of industrialized online education. The Massive Open Online Course platforms of many prestigious

**Above:**

Magna Yang, a seven-year-old primary school girl in Beijing, uses 17 different websites for online study

Photo courtesy of CKGSB

universities and companies have their own websites, in which instructors are only responsible for presenting the course material, while other staff market the course, interact with students, and take care of technical issues.

The next step in the industrialization of the online education industry is to further break down the teacher's task. Ideally, the "producer" of online course material is a group of production units consisting of the course designer, lecture notes or slides provider, on-camera instructor, and other essential roles. Then, the outputs of these online education production companies are purchased by customers – education service companies that provide education material and services to students. These service providers also have one-on-one tutoring supplementing the online lectures. The education material producer and the service provider interact dynamically. The tutors in the "server" collect common questions, and then order a standardized short video or reading material from the "producers." Individual questions are then sifted repeatedly, leaving fewer and more diverse questions for the tutors.

Personalizing Knowledge, Teaching Style, and Learners

When people can mix-and-match education material from a variety of resources, they can make the education bundle a better fit of what they really need. A tailored curriculum is almost always preferred to a uniform schedule. It requires fewer education resources than one-on-one tutoring, thus is cheaper in a market-oriented economy. In reality, parents are personal curriculum planners for their children.

But in the future, parents may be absolved from it. A curriculum planner would be a neutral consultant independent of any platform, and would pick the necessary resources in assembling the client's learning agenda.

Personalization is more than choosing subjects, courses, and knowledge points for the student – it is also about choosing the right teaching style. In offline teaching, the teacher chooses one single teaching style to optimize the average of students' learning experiences. Online education platforms allow students to study the same topic but with different learning approaches and depth. Students who have had online lectures and one-on-one tutoring, yet still want to learn more, may find a ten-minute discussion at a professor's virtual office hours incredibly beneficial. Students who prefer social learning may need an active virtual community with good peers rather than an amazing teacher.

Integrating the Components

Online platforms such as Canvas and Blackboard form a natural oligopoly with high entry costs and rigid consumers, while the online education industry has much lower entry costs and tends to be a competitive market. In China's case, education resource producers find that having their own platform is a profitable marketing strategy and that access to technical support is not costly. Online education organizations rarely share platforms; this results in a huge administrative cost on the learner's end. Unintegrated educational resources are as inefficient as geographically discrete university campuses.

Children are more affected by technological complications than are adults. This implies that producing online education resources for adults would generate larger marginal returns than producing for children. It would lead to unequal investment and development in online education resource for children. Luckily, some companies are moving towards integrating multiple online education components in one platform.

In-person schooling offers the opportunity for young people to socialize. However, we have not seen the contribution of online education programs to this. As automation, which is largely promoted because of the pandemic, reshapes the labor demand towards jobs that require interaction with people, we are finding that social skills are more important than ever.

Can online education replace in-person schooling? The answer is no. Online education may have aided learning due to the coronavirus over the past four months, but the role of traditional education in shaping children's character is irreplaceable. **①**

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Business Risk Management in the Era of COVID-19

In challenging economic times like the one we are currently in, businesses may feel the urge to commit fraudulent acts to stay atop their game. It is imperative to understand the types of fraud and ways to combat against it.

By Ines Liu

In challenging economic times like the one we are currently in, businesses may feel the urge to commit fraudulent acts to stay atop their game. It is imperative to understand the types of fraud and ways to combat against it.

Companies are facing significant operational, financial, and strategic challenges due to the COVID-19 outbreak, although the spread of the virus has slowed down and the situation appears to be stabilizing in different regions around the world. As countries restart their economies, businesses need to evaluate the risk of infection and effectively manage their liquidity to survive this difficult period.

Such times of economic turmoil, however, is when most businesses become vulnerable to acts of fraud. In the era of COVID-19, where employees are troubled by travel restrictions and where working-from-home (WFH) is the new normal, multinational companies (MNCs) in China are finding themselves particularly exposed to the risk of fraud. It is thus more critical than ever for them to assess possible fraudulent risks within the

organization and see through fraudsters' schemes in advance.

Fraud Triangle in the Context of COVID-19

The fraud triangle shows that when fraud is committed, there are three elements: pressure, opportunity, and rationalization.

• Internal and External Pressure

Many people have either lost their jobs or have had their salaries cut since the coronavirus outbreak. Financial pressures on families will increase with the further downturn of the global economy. This may create or increase motivations to commit fraud, and may have an impact on your business' survival during a prolonged public health crisis.

• Opportunities

Due to the WFH arrangements and travel restrictions, many key business functions are presently understaffed or lack supervision. Especially when switching and onboarding third parties (suppliers, customers, etc.), a



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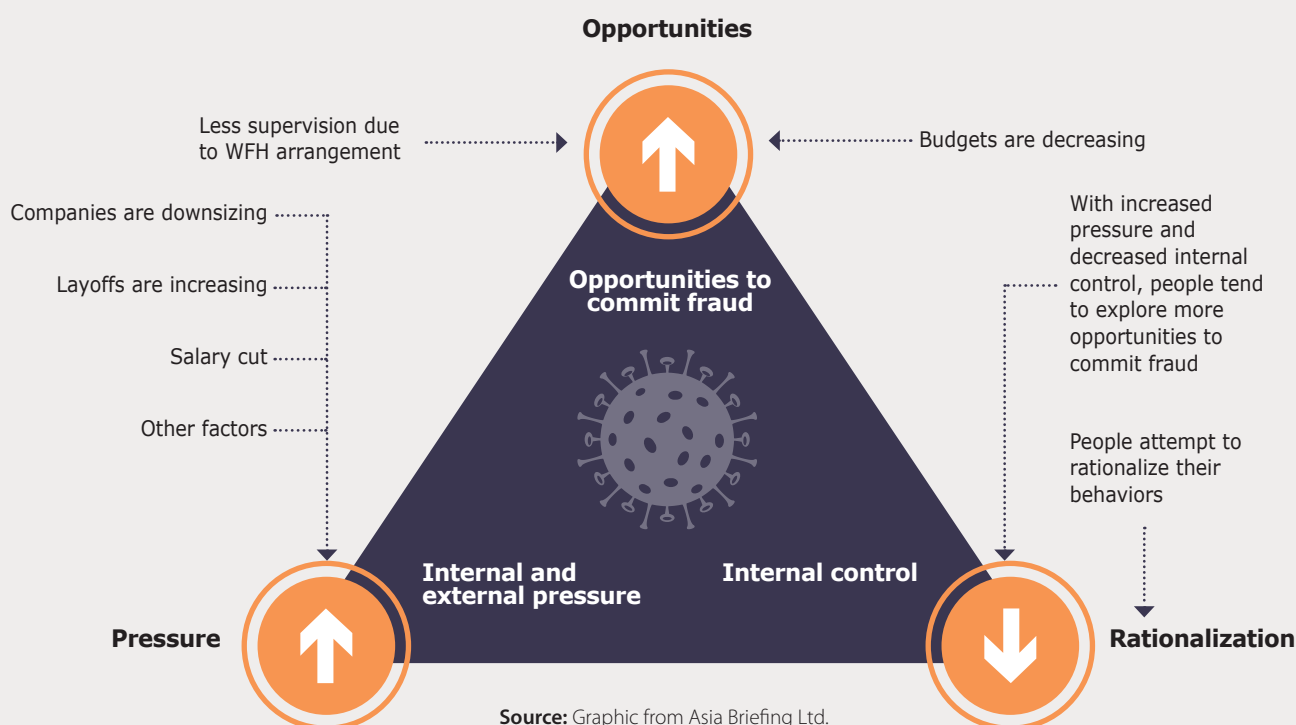
full and effective screening process is usually lacking. Opportunists may take advantage of these circumstances to manipulate the process of supplier selection and pricing.

• Rationalization

With increased pressure and decreased internal control, it is easier for fraudsters to use their physical, mental, or financial hardship to justify unethical behavior.

Given the increase of fraudulent activities under COVID-19, it is essential for every MNC to conduct a self-assessment and identify areas most at risk for fraud to improve the firm's resilience level. Meanwhile, it's also important

Fraud Triangle in the Context of COVID-19



for employees to be aware of ways to protect themselves and their companies from the fraudulent risks.

Below, we list out some of the top COVID-19-related fraud schemes that employees or vendors may commit as well as suggest preemptive precautions and solutions.

• Procurement Fraud

Different companies are subject to different forms of fraud risks. Take for example, trading and manufacturing companies when sourcing from China. These companies are advised to pay closer attention to their purchase and payment systems because the sourcing team and the local management are most prone to collude with suppliers against the promise of bribes. Local members on the sourcing team may also select companies operated by friends and relatives to be the preferred suppliers. These conflicts of interest are extremely common situations in China. The current COVID-19 induced

economic crisis may provide further impetus to indulge in fraudulent activities. Under such circumstance, MNCs should strengthen the control and supervision of the supplier selection and pricing process. More specifically, to combat the risk of bribes and collusion with suppliers, companies should assign different steps of the purchasing process to different members of staff, and launch an investigation if there are discrepancies in the pricing of goods and services as handled by different members.

• Cash Theft

MNCs with a lean China team should pay attention to the proper segregation of duties, especially for matters related to the issuance of cash receipts and cash disbursement. If the initiation and approval of e-banking payments are controlled by the same person, or if one individual holds both the company chops and the corporate cheque book, there is a real risk of cash theft. Similarly, if the company does not segregate the duties properly

between the accounting and cashier functions, the accuracy and completeness of the revenue expenditure and capital expenditure records can be jeopardized, which can possibly lead to fraudulent disbursements or other forms of economic crime.

• Falsification of Expense Claims

Conversely, companies with large China teams should carefully monitor the local payroll system, or else they might be subject to fraudulent payroll and reimbursement schemes. If the general manager is colluding with or bypassing the HR team on payroll matters, they could channel money to their personal bank account by making up 'ghost employees' or by issuing fictitious bonuses. If the headcount is large and payroll figures are significant, it could be difficult to spot this type of fraud. Likewise, opportunistic employees may take advantage of the low supervision level to make fraudulent reimbursement schemes and increase their personal remuneration

by overstating their work-related expenses. Here are some suggestions to reduce risk exposure and solutions.

Segregation of Duties

The segregation of duties is essential to limit the incidence of cash theft. Initiation and approval of e-banking requests should be segregated to different employees. One practical solution could be that the finance manager at the headquarter level holds the e-banking token required to approve payments.

The cashier holding the corporate cheque book should not have free access to the company chops, otherwise they will have opportunities to initiate undetected payments at the bank. Likewise, to ensure that all bank transactions and cash movements are properly recorded, the cashier and bookkeeper should not be the same person.

Additionally, businesses should record any item shipped out with the relevant invoice, to avoid back-channel sales profiting individuals rather than the company. The consistency between inventory data, shipping records, invoicing, and the sales figures in the company books should be carefully monitored, and the relevant duties should be appropriately segregated.

Building an Effective and Clear Reporting Line

Lured by the benefits of a leaner and more efficient decision-making structure, foreign businesses in China often entrust considerable authority to a sole employee – usually the legal representative, which paves the way to a loss of transparency and control. When an employee can perform important duties without supervision, there is always a risk that this individual ends up abusing their power and acts in their self-interest. On an ongoing basis, the shareholders should monitor whether each person is fulfilling their duty in accordance with the company's Articles of Association and relevant laws and regulations.

In terms of sales pricing, the price ranges for different products should be firmly set. For businesses who rely on their sales teams to bring in new customers, it's important to set an internal policy in this

“When starting a new business venture in China, it is vital to plan ahead and embed an effective control mechanism into the company's governance structure”

regard; some products or services might have a set price, while others are negotiable with each individual client.

In the latter case, businesses should set a clear price boundary in which employees can sell a given product or service, such as whether it is a certain range for all sales or it is a set of different ranges based on the quantity sold. And if there is a need to proceed with a sale price outside the pre-decided range, the sales team should be requested to get additional approval from a senior manager in advance. This will also reduce the risk of cash theft or collusion with customers.

Re-checking your Inventory Management System

Implementing internal controls on inventory management is essential. For trading and manufacturing companies, it is very critical to implement proper IT systems to monitor and automate inventory management since it has become extremely difficult to accurately consolidate purchase orders received from customers, inventory movement records, and accounting records.

While having an automated warehouse management system significantly reduces the risk of inventory misappropriation, physical stock counts should also be performed periodically to verify the accuracy of the electronic data.

It is also essential to appropriately segregate the duties between the purchasing manager and the warehouse manager, to limit the risk of collusion of a sole decision-maker with suppliers. There should be a clear reporting line defined whereby the warehouse manager instructs the purchasing manager to place new orders with suppliers. No orders should be made

without receiving appropriate authorizations from a senior manager.

Re-assessing the Corporate Governance Structure

When dealing with a high-risk market such as China, foreign companies must ensure that their compliance programs are implemented at the local level. Passive supervision from the top is simply not enough.

When starting a new business venture in China, it is vital to plan ahead and embed an effective internal control mechanism into the company's governance structure. By appropriately constructing a corporate governance structure that allows for the segregation of duties with a clear and effective reporting line, the shareholders will have a better control over their China operations in the long term. Shareholders should carefully define the roles and responsibilities of key management personnel in case the corporate governance structure needs to be changed in the future.

To mitigate potential business management risks associated with the COVID-19 pandemic, companies in China are all advised to develop a thorough internal control mechanism, and periodically review their internal control procedures to ensure the effectiveness of the system over time.

As such, many foreign companies choose to engage an audit firm to perform periodic reviews of the internal control system of their Chinese subsidiaries. Meanwhile, fraud prevention programs must also be backed by training delivered to the local teams, to make sure that the tone from the top trickles down to the operational level and that the Chinese employees are aware of the company's code of good conduct. **Q**

9 Fallacies Foreign Companies Face Doing Business in China

With China's myriad economic opportunities, many foreign companies find themselves wanting to invest in building operations in the country. However, it is essential for these companies to fully realize what they're getting into by doing business in China.

By Pierre Wong

Many foreign businesses have been swayed by exciting opportunities in China. Some may now advise against entering China given the recent slowdown in economic growth. However, those who disregard the Chinese market completely are guaranteed to miss some valuable opportunities.

In this new millennium, China is no longer just a choice for outsourcing like it had been in the past. Today, China is a growing market, in which about 60% of its GDP growth is driven by domestic consumption and a growing middle class of over 200 million consumers. As a result, China is beginning to rival the market potential of established markets like those of the US and the European Union.

Yet, the truth is that businesses need to be prepared before coming to China – not just financially prepared but also organizationally prepared. Foreign businesses often face several common fallacies in China that challenge their success. While these fallacies have prevailed leading up until now, their effects are greatly exacerbated during crises such as the pandemic we are currently experiencing.

Unfortunately, it takes more than simply injecting capital and building “relationships” to seize these delicate opportunities. Below, I summarize some of the common fallacies held by foreign enterprises in China which often turn out damaging to businesses in the long run.

1. Insufficient Time and Attention from the Top

A typical case for business expansion: the CEO or BD director of a foreign company will come to China to “scout” for opportunities. It is very likely that their first stop will be in Beijing, Shanghai, or Hong Kong. What they see in these megacities will likely pique their interest: modern skyscrapers, high-speed trains, and Maglevs, an uncountable number of Starbucks, McDonald's, and luxury brands rivaling those of major European and North American cities.

The BD team will push their agenda forward until they finally arrive in China. Every member of the management team will eventually get a chance to visit China and experience the adventure firsthand. At some point, after everyone from the management has experienced China, their enthusiasm for China will begin to fade. With the amount of money invested, the lower than expected growth of their business, and the difficulties they faced in terms of people, progress, and profits – their interest in China will have diminished.

When it comes to making decisions for the China business, there will be many “ifs, ands, or buts.” This is often when the finger-pointing and scapegoats begin as they try to identify the cause of their business losing money in China.

Inevitably, the current pandemic will lead many foreign businesses to close down for good in China, citing the pandemic as the leading factor. However, a business with hardened insight and sufficient

136,997

Foreign-invested companies registered in China

Source:
National Bureau of Statistics, 2018

US \$135 billion

Total amount of foreign capital invested in China in 2018 alone

Source:
Ministry of Commerce, 2019

US \$13.45 trillion

China's GDP in 2018

Source:
IMF

41.58%

Percentage of Volkswagen's passenger cars sold in China

Source:
Volkswagen

attention from the top will be able to capture the new opportunities created during the crisis and secure their continuity in China.

It is possible that over time the board of directors will fail in investing enough time and attention. There are thousands of possibilities that could cause businesses in China to fail. The question I often ask is: "Can your company fully invest both time and energy in China?"

2. Companies Built Around the "China Guy"

There is a "China guy" in every company; this person is usually someone who speaks English very well and has established contact with the companies on the ground that look to expand their business in China.

They may be a good friend of the CEO or a stranger who happens to know China very well. Their background is often not important, as long as they are fluent in English and Chinese and have gained the CEO's trust. They go on to build a branch in China based off their contacts. This type of engagement relies heavily on trust, as it is difficult for members of the board of directors to observe themselves whether decisions being made are in their best interest.

Interestingly, when these companies operate in developed markets, they usually have detailed and comprehensive contingency plans – but in China, these are few and far apart.

Today, there are many talents in China who both understand business and speak good English. What's more, they are familiar with this land and understand what should be structured in China. Never exclude the possibility of meeting others or hiring a person simply because they happened to be your first contact in China.

3. No Sense of Urgency

Every organization should have clear goals and a sense of urgency towards achieving them. In fact, one of the most important factors for successful management is to mobilize everyone's enthusiasm. However, China always seems to rank at the bottom of the list, especially when there are other issues requiring management's attention.

The Chinese market favors flexibility and speed. If your business was struggling in China already, the effects will be even greater

when uncertainty hits, especially one of global proportion.

4. No Long-Term Planning

A common anecdote about China is that "doing business in China is all about relationships". While this rings true to many, I would argue that it is equally true in China as it is in the rest of the world.

In China, a more practical approach is knowing who you are dealing with before starting anything. Chinese people value long-term cooperation more than Westerners. There is a saying that "100 years is nothing in China, but one 100 kilometers is pretty far away; whereas 100 kilometers is nothing in America, but 100 years is an eternity." There must be a long-term plan for the company's strategic decisions.

Foreign companies will often hire a local manager or CEO to run their China operations. I have seen many cases where individuals attempt to appease their overseas bosses with big decisions, yet little explanation of the strategic importance of these decisions. This is how foreign enterprises begin to lose their footing in China by the manager they hired in the first instance.

You need a strategic plan in China, but it is equally important to be flexible and adaptable to the environment.

5. Choosing the Wrong Person

A good plan only makes sense if it is carried out by the right person. You should choose the person you hire based on qualifications, not ethnicity. Choose someone who has experience in managing a business with a track record of excellence and success. You can gain by hiring local people with relationships, but you can't rely on them alone. Operational leadership and relationships are equally important.

One of the key success factors for doing business in China is localization. Train your local staff and let your expatriates return home as early as possible.

Nowadays there are so many excellent candidates in China's talent market, both local and overseas returnees. Find a trusted HR agency or headhunter who can help you to find the right people from the very beginning.

"If you're in an industry actively encouraged by the government, it will be much easier to conduct business. If you catch the wave where the government and consumers are, all you need to do is fasten your seat belt and get ready to roll."

6. More Haste, Less Speed

China is not a single market, rather it is an aggregation of regional markets that require different strategies. Foreign companies often feel that they need a single business plan that captures the entirety of China. This is usually not an easy task to accomplish.

A better way is to choose a city or a region in China to test the market. It is usually where your customers or suppliers are located, allowing you to gradually build your business on it. Once the business is established and has a proven working model, adopt this model more widely and fine tune it to fit local customs and preferences.

There will be lots of local customizations and adjustments before the consumers can fully appreciate your products. Remember, Rome was not built overnight. It just takes time to get things done!

7. Dare Not to Make Major Decisions

China is a place where you have to make major decisions to succeed. You may have heard a phrase common in China's business community – "you need to be flexible and adaptable to the ever-changing environment in order to succeed in China".

You need to be flexible and be bold enough to make decisions in face of difficult situations. No bad situation can be reversed by simply burning money. If you only do what you have been doing in the past, chances are you will be stuck in the same position and won't drive your business too far.

If the COVID-19 epidemic has taught us anything, it's that the ability to make major decisions is crucial in the event of a crisis. Many businesses were able to seize new opportunities despite such a major disruption to their existing way of doing business.

8. Choosing the Wrong Partner

You often hear what a father would have told to his daughter: "the most important decision in your life is not which university you attend or your first job – it is the person you are going to marry". The person that you have chosen to live your life with will have a huge impact on your future growth and decisions on your career choice.

The same applies to doing business. Spend more time deciding who you will work with. Sometimes it's not a mistake to "date" several potential partners at the same time. I have always been in favor of creating a little tension with potential partners to improve their "efficiency".

It's wise to allow trust to carry you most of the way as long as you have a system of checks and balances in place – such as an outside financial advisor independent from local management's influence – to safeguard your assets along the way.

9. Over Emphasis on "Business Model"

Some industries in China you just can't get involved in, such as TV broadcasting, public transportation, compulsory education, to name a few. This is the reality. You cannot simply override the rules and regulations set out by the government authorities, and doing so could land you in trouble.

On the flip side, if you are engaging in an industry actively encouraged by the government, it will be much easier to conduct business. If you catch the wave where the government and consumers are, all you need to do is fasten your seat belt and get ready to roll.

Being mindful of these fallacies can help you gain more traction in the Chinese market – or if you already have a presence in China, then they can help you reexamine some of the driving forces behind your business. Nobody enters the Chinese market planning to make a loss. The truth is China rewards dedication and sufficient attention from management on their China business. If not, you should rather stay at home than waste time and money.

Pierre Wong is the founder and Managing Director of Integra Group.

Trade Secret Enforcement in the Phase One Trade Deal

Given some of the articles contained within this year's Phase One trade deal, the Chinese government's commitment to protecting confidential information in administrative proceedings may have even wider implications for the confidence of foreign investors. But, as is often the case, only time will truly tell.

By Zou Wen, Jerry Xia,
and He Jing

In the US-China Phase One trade deal signed on January 15, 2020, content related to trade secrets stands out as a significant opportunity for China reforms, while many of the agreed points have been implemented through Chinese legislations. Arguably, quite a few legal barriers have been successfully handled, paving the way to obtaining effective civil remedies and criminal prosecution. But more important than ever is to test how these new changes will work. This article provides a brief overview of these key changes.

Definition of Trade Secrets and Prohibited Acts

Article 1.2 defines the “trade secret” in its footnote as “processes, operations, style of works, or apparatus, or to the production, business transactions, or logistics, customer information, inventories, or amount or source of any income, profits, losses, or expenditures of any person, natural or legal, or other information of commercial value, the disclosure of which is likely to have the effect of causing substantial harm to the competitive position of such person from which the information was obtained.” This definition mirrors the recent amendments to China's Unfair Competition Law in its open-ended scope of protectable trade secrets, i.e., not only including the traditionally listed “technical information” and “operational information”, but also now extending to other “business information”.

Articles 1.3 and 1.4 define the scope of actors and acts subject to liability of trade secret misappropriation. Article 1.3 specifies that individuals may be liable for stealing trade secrets, which,

until recent amendments, was unclear under the old laws.

Article 1.4.2 includes additional acts such as electronic intrusion and inducement of a breach of confidential duty to disclose. Additional acts were also explicitly mentioned in the amendment to China's Unfair Competition Law in April 2019. The inclusion of the inducement act will be useful to go after third parties who lure ex-employees to steal trade secrets.

Burden-Shifting in a Civil Proceeding

Article 1.5 provides that when the trade secret holder has produced prima facie evidence to reasonably indicate trade secret misappropriation, the burden of proof shifts to the accused party as to why the trade secret identified is not supposed to be trade secret. The prima facie evidence maintains that the accused party had access to information that is materially the same as the trade secret. If the burden of proof shifts, the accused party must demonstrate that the information in question is readily accessible or otherwise is not a trade secret. All the above changes are also now present under Article 32 of the 2019 Amendment of China's Unfair Competition Law. In the amendment, the holder must prove it has taken measures to protect the confidentiality in the first place, which is an inherent requirement in all the trade secret proceedings.

Preliminary Injunctions

Article 1.6 requires the parties to adopt provisional measures to prevent the use of trade secrets and seems to try to make a clearer standard about what counts as “urgent situation” to justify issuance of preliminary injunctions. In the past, Chinese courts



granted preliminary injunctions (behavior preservations in Chinese legal jargon, often in the form of interlocutory injunctions) in a handful of cases, but the real standard is never clear. Article 100 of the Civil Procedural Law of China allows the issuance of preliminary injunctions within 48 hours in “urgent situations”, although such expedient decisions are rarely made. In cases where preliminary or interlocutory injunctions are sought, many courts take much longer than 48 hours to deliver the decision. The judges generally believe the situation must be “urgent” to justify the necessity, in addition to the proof of apparent infringement, irreparable harm, and balance of interests including no harm to public interest.

The China Supreme Court’s judicial interpretation previously defined an “urgent situation” on the grounds of “the imminent disclosure of trade secrets”. Now, Article 1.6 also defines the “use or attempted use of claimed trade secrets” as “an urgent situation”, which is a step further and provides more favorable grounds for the trade secret holder to ask for preliminary injunctions. Hopefully, we may see some real cases where the courts issue a decision within 48 hours.

Threshold for Initiating Criminal Enforcement

Article 1.7 is intended to use a stage-by-stage approach to eliminate the financial threshold for initiating criminal enforcement, i.e. in the future the trade secret holder may not need to demonstrate its actual losses. It has long been criticized that China’s prosecution standards require proof of an actual loss of up to RMB 500,000 (around USD 70,000) in order for the police to begin criminal investigation in a trade secret case. This often results in the possibility of no criminal enforcement if someone stole a trade secret worth millions of dollars, but has not made enough money from its use or disclosure.

The Phase One deal seems to make some compromise without requiring China to remove the numerical threshold overnight, probably because that would impose excessive pressure on the existing practice. Article 1.7.2(a) provides the interim step prior to the implementation of Article 1.7.1, that remedial costs such as “those incurred for mitigating damage to business operations, computer systems, etc.” due to trade secret misappropriation may be taken into account in determining the actual loss for initiating criminal enforcement. This interim step lowers the barriers for the police to initiate criminal investigation and is very encouraging. We are keen to see its adoption in real cases. The hope is that more investigations will lead to docket-openings and eventually result in more prosecution. As a practical approach, criminal enforcement is


always a recommendation for trade secret protection in China due to the lack of a robust evidence discovery systems for civil actions. Even if a criminal enforcement fails in the middle, any evidence collected by the police may still support a potential civil lawsuit afterwards.

After the interim stage, China seems to agree that it shall eliminate the establishment of actual losses, given that a precondition to initiate criminal enforcement is the subsequent step. This change would probably require operational changes within the police and more detailed deliberation. Nobody wishes to have loose standards in starting criminal investigation in trade secret cases, given the possibility of abusive use. Even after removing the actual loss as the sole standard to initiate criminal investigation, China would have to do a lot more to set boundaries for police discretion when evaluating complaints between rival companies.

Unauthorized Disclosure in Legal or Regulatory Proceedings

Article 1.9 prohibits the unauthorized disclosure of undisclosed information, trade secrets, and confidential business information by government personnel or third-party experts or advisors in any criminal, civil, and regulatory proceeding. The commitments here are likely a major focus in the future. The good news is that the new Foreign Investment Law directly echoes these requirements by dictating that government personnel shall protect all the confidential information obtained in the government proceedings. China would probably think its current legal framework has provided sufficient warranties and remedies under the due process.

What is important to note is that the commitments in this section seem to be more specific under Article 1.9.2. The subparagraph (a) limit requests for information to no more than necessary for the legitimate exercise of investigative or regulatory authority; the subparagraph (b) limits access to submitted information to only government personnel necessary for the exercise of legitimate investigative or regulatory functions. Subparagraph (e) requests the government authorities to establish a process for exemption from disclosure and a mechanism for challenging disclosures to third parties. All these detailed commitments will likely have immediate implications in some of the government regulatory proceedings, e.g., those in antitrust investigations.

In summary, the Phase One deal on trade secrets could yield some very profound results, which we hope will help develop the trust in the business community and incentivize deeper business cooperation in technology and other sectors. When China reveals its future action plan in implementing the agreement, the way the new commitment plays out in real cases will be what truly makes a difference. 

The authors work at AnJie Law Firm and contributed this article on behalf of Lexis Nexis, an AmCham China member company.

AmCham China Forums and Committees

AmCham China's Forums and Committees are the lifeblood of our advocacy, industry relations, and community development. We have Forums and Committees focusing on industry sectors, corporate functions, and special issue-based interests that well represent American businesses operating in China as well as the active membership of our community. Forums and Committees allow members to:

- Use AmCham China as a platform to drive foreign companies and industry-based advocacy efforts
- Hold dialogues with regulators and industry stakeholders to influence the business environment
- Share information and ideas specific to their industries
- Meet like-minded people for professional development
- Generate contacts for business development

If you are interested in joining any of our **Forums and Committees**, please contact the corresponding member of staff listed below.

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Photo courtesy of AmCham China

Online GA Conference Hailed A Success

By Bai Yang

This year's Government Affairs Annual Conference centered on the US-China relationship, globalization, and the role of multi-national corporations against the backdrop of a spreading pandemic and a deteriorating bilateral relationship. The conference set apart two panel discussions with one comprising four government affairs professionals from AmCham China member companies to share best practices and the evolving profession.

This year, COVID-19 has wrecked businesses across all industries. As AmCham China Chairman Greg Gilligan indicated in his opening remarks,

AmCham China hosted the 2020 Government Affairs Annual Conference online on June 5, 2020. The conference featured several well-respected government affairs professionals who discussed the next steps that should be taken in the China-US relationship.

AmCham China's most recent Flash Survey on the impact of COVID-19 found that, "even while the operations of member companies are starting to return to normal across the board in China, a significant portion, almost 20% of members expect their China revenues to decline from 10-25% in



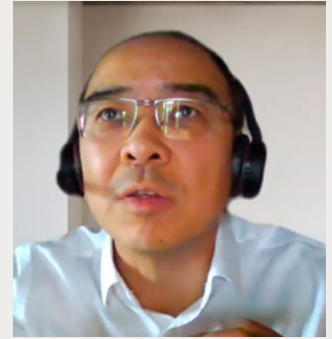
Greg Gilligan, Chairman, AmCham China



Wan Li, VP for Government Affairs, Audi China



Su Ling, VP for Public & Government Affairs, ExxonMobil China



Zhou Bing, VP for Government Affairs, Dell Greater China



Dr Henry Wang, Founder and President, Center for China and Globalization (CCG)



Dr Yukon Huang, Senior Fellow, Carnegie Endowment for International Peace



David Hoffman, Senior VP for Asia and MD, The Conference Board



Dr Jie Li, Executive VP for Government Affairs & Alliance Office, Jaguar Land Rover China



Terry Branstad, US Ambassador to China



Huang Qifan, Vice Chairman at the China Center for International Economic Exchanges and former mayor of Chongqing

All photos courtesy AmCham China

2020, which is forcing many to continue to assess both their short-term and long-term strategies.”

AmCham China’s “Crucial Role”

Recognizing the challenges COVID-19 imposed upon the whole world and the cooperation forged between the US and China to fight against the pandemic, US Ambassador to China Terry Branstad, in pre-recorded remarks, thanked the US business community and AmCham China for playing a crucial role in contributing to coronavirus relief efforts. Since the outbreak of COVID-19 in December 2019, he noted that AmCham China has tracked donations made by community members totaling over RMB 600 million in donations and PPE to the most severely impacted areas in Hubei province. In terms of the Phase One trade agreement, which many member companies are closely following up on, Ambassador Branstad pointed out that the two sides are committed to implementing the deal.

Although businesses are currently teetering, some still remain hopeful and bet on the interdependence of the US-China trade relations. Among those mildly hopeful is Mr. Huang Qifan, Vice Chairman at the China Center for International Economic Exchanges

and former mayor of Chongqing. In his keynote remarks, he argued that the cost of supply chain relocation, labor cost, difficulties of rebuilding supporting industrial clusters and infrastructures are among several major reasons that there likely won't be a wave of radical relocation of supply chains. As COVID-19 continued to wreak havoc on the global economy, upholding and strengthening globalization, which optimizes the allocation of resources through interconnected global supply chains, should be the right way out, Huang contended. He believed that globalization, notwithstanding experiencing a strong headwind today, would eventually be in an upward spiral.

For the American business community in China, the past few years have been nothing but turbulent – a US-China trade dispute, a subsequent agreement that is off to a rocky start, fierce competition and expanding distrust in fields such as technology and academia, and the spread of a global pandemic compounds these existing issues.

Decoupling of Ideas

When asked about the heated confrontation between the world's two largest economies, Dr. Yukon Huang, a Carnegie Asia Program Senior Fellow, argued that decoupling is already happening across technology, people, investment, economics, and scientific cooperation. The biggest impact will be a decoupling of "ideas" between borders. With respect to supply chains, the short-term impacts will be capacity changes and shifts in production decisions. The longer-term impact is on the potential for relocation of manufacturing operations from China to other jurisdictions, with implications for costs and global economic growth.

David Hoffman, Senior Vice President for Asia at the Conference Board, pointed out that fundamentally the US-China contest was one of economic and political system incompatibility, not so much about which will win, but how the two will co-exist, or not. The focus for business leaders should not be on who is right or wrong, but rather on how these deep structural tensions will evolve and shape business environments in China, in the US, and globally.

Dr. Huiyao Henry Wang, Founder and President of Center for China and Globalization, disagreed with the notion that China is taking advantage of the US. Wang argued that China did not converge with western norms, and yet China's economy had contributed significantly to global growth. China needed a new narrative from the US about China and its place in the world, Wang remarked. The growing distrust between China and the US, he said, now requires improved constant communication between the business community and between both governments.




Above:

AmCham China President Alan Beebe opened the 2020 Government Affairs Annual Conference – the first one to be held online.

Photo courtesy of AmCham China

GA Professionals for the Modern Era

During the second panel discussion, four long-time government affairs professionals, Bing Zhou, Vice President of Government Affairs at Dell Greater China, Dr. Jie Li, Executive Vice President of Government Affairs & Alliance Office at Jaguar Land Rover China, Ling Su, Vice President of Public & Government Affairs at ExxonMobil China, and Li Wan, Vice President of Government Affairs at Audi China, shared their perspectives and experiences in regard to communicating with both Chinese and the US governments.

Today, an excellent government affairs professional should also be a firefighter who fights off corporate crises, a policy analyst who clarifies policies for decision makers within the firm, an adviser who provides great assistance to the senior management, and a fortune teller who foresees and charts pathways for corporation, all four panelists summarized. Most of all, in today's environment, as the panelists agreed, "we are lubricants to reduce friction and smooth the communication." 

Bai Yang is a Manager in AmCham China's Government Affairs and Policy Team



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