

AMERICAN BUSINESS IN CHINA

2012 White Paper 白皮书

美国企业在中国



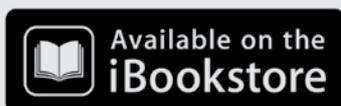
AMERICAN BUSINESS IN CHINA

美国企业在中国

2012 White Paper

READ DIGITALLY*

Visit the following digital bookstores and read AmCham China's *2012 American Business in China White Paper*:



For more information, and to download to the iPad with one click,
please visit www.amchamchina.org/wpebook.

* Coming in May 2012

All currency is converted based on a US \$1=RMB 6.35 exchange rate.
文中的所有币值均按照 1 美元 = 6.35 元人民币进行换算。

All Charts without a source cited are from the 2012 AmCham China *Business Climate Survey*.
文中所有未注释资料来源的图表皆来自于中国美国商会 2012 年度《商务环境调查》。

The American Chamber of Commerce
in the People's Republic of China
中国美国商会

The Office Park, Tower AB, 6th Floor,
No. 10 Jintongxi Road, Chaoyang District,
Beijing, 100020, the People's Republic of China
Tel: (8610) 8519-0800
Fax: (8610) 8519-0899
Website: www.amchamchina.org

中国北京市朝阳区金桐西路 10 号,
远洋光华国际 AB 座 6 层
邮政编码: 100020
电话: (8610) 8519-0800
传真: (8610) 8519-0899
网址: www.amchamchina.org

© 2012 by the American Chamber of Commerce in the People's Republic of China (AmCham China), all rights reserved. This report may not be reproduced either in part or in full without the prior written consent of AmCham China.

中国美国商会拥有本报告的版权 ©, 并保留其他一切权利。未经中国美国商会书面授权, 不得对本报告或本报告中的部分章节进行复制。

Table of Contents 目录

Chairman's Message 主席致辞	II	Business Process Outsourcing 业务外包流程	174
Part One: Business Climate Overview 商务环境综述		Civil Aviation 民用航空	184
China's Course Over the Next 10 Years 未来十年中国的发展方向	2	Construction, Engineering, and Design 建筑、工程和设计	194
Business Climate Survey Data 《商务环境调查》数据	14	Cosmetics 化妆品	202
2012 White Paper Priority Recommendations Scorecard 2012年《白皮书》重点关注问题一览表	28	Direct Sales 直销	208
Part Two: Industrial Policy and Market Access 产业政策和市场准入		Electronic Payment Services 电子支付服务	214
Competition Law 竞争法规	38	Express Delivery Services 快递服务	218
Government Procurement 政府采购	48	Healthcare 医疗卫生	222
Innovation Policy 创新政策	58	Information and Communications Technology and Cyber Security 信息通信技术和网络安全	238
Intellectual Property Rights 知识产权	66	Insurance 保险业	248
Standards, Certification, and Conformity Assessment 标准、认证与合格评定	76	Legal Services 法律服务	256
Part Three: Cross-Sector Issues 跨行业问题		Machinery Manufacturing 机械制造业	262
Business Sustainability 企业可持续性	88	Media and Entertainment 传媒和娱乐	268
Customs 海关	96	Real Estate 房地产	278
Food Safety 食品安全	102	Retail and E-Commerce 零售与电子商务	284
High-Tech Trade Promotion and Export Controls 高科技贸易促进和出口管制	106	Part Five: Regional Issues 区域性问题的	
Human Resources 人力资源	112	Provincial and Local Investment Environment 省市及地方投资环境	294
Tax Policy 税收政策	122	Chengdu 成都	298
Visa Policy 签证政策	130	Chongqing 重庆	304
Part Four: Industry-Specific Issues 具体行业问题		Dalian 大连	312
AmCham China Cooperation Programs 中国美国商会合作项目	140	Shanghai 上海	320
Agriculture 农业	152	Tianjin 天津	328
Bond Markets 债券市场	162	Wuhan 武汉	336
		Abbreviations 缩写表	344

Chairman's Message

The American Chamber of Commerce in the People's Republic of China (AmCham China) is pleased to present the 14th annual *American Business in China White Paper*, with contributions from The American Chamber of Commerce in Shanghai (AmCham Shanghai) and The American Chamber of Commerce in Southwest China (AmCham Southwest).

Since the publication of the 2011 *White Paper*, China marked the 10th anniversary of its entry into the World Trade Organization. China's entry into the global, rules-based trading system has been good for China, good for our members, and good for the US. It has resulted in growth in trade and investment, and our members have profitably expanded businesses across China, increasingly tapping domestic demand rather than viewing China as an export platform. As our members' businesses have grown, they have contributed to China's development and become stakeholders in China's continued success.

However, China's successes bring new challenges. The export- and investment-led model that drove the growth of the last 10 years is not a formula that will carry China successfully through the next decade. Chinese policy makers have recognized this and are committed to building an economy in which domestic demand, innovation, and services will play a greater role. The 12th Five-Year Plan offers a blueprint for this rebalancing.

As the Business Climate Overview section of this year's *White Paper* discusses, successful rebalancing will require fundamental reforms in China's energy, capital, and labor markets, as well as a renewed commitment to market opening. We believe implementing the policy recommendations presented in the *White Paper* will contribute to China's successful economic transition, benefiting not only foreign-invested firms, but all market participants. Limited market access leads to market distortions and denies consumers the benefits of competition and access to products and services they wish to purchase. Improved regulatory coherence, equitable licensing practices, more transparent and open government procurement policies and practices, and a more open investment approval system will create a more efficient, market economy for China. Better protection of intellectual property rights is a prerequisite for building a truly innovative economy.

The recommendations in the *White Paper* are offered in a spirit of cooperation and partnership. AmCham China member companies remain fully committed to China's continued success, believing that we all benefit by working together to tackle common problems and creating a business environment that fosters open and fair competition. One particularly successful

主席致辞

中国美国商会 (AmCham China) 十分高兴第 14 次推出年度《美国企业在中国白皮书》，其中包括了上海美国商会 (AmCham Shanghai) 和西南美国商会 (AmCham Southwest) 提供的章节。

自 2011 年《白皮书》发布之后，中国迎来了加入世贸组织的 10 周年。中国加入这一全球性的、基于规则的贸易体系不仅有利于中国，也有利于我们的会员企业、有利于美国。入世带来了贸易和投资的增长，我们的会员企业也成功地将业务拓展至整个中国，他们不断发掘中国的内需，而非仅仅将中国看做一个出口平台。随着其业务的增长，会员企业为中国的发展做出了应有的贡献，同时也成为中国持续成功发展的利益相关者。

然而，中国的成功也带来了新的挑战。过去的 10 年中，出口及投资拉动模式促进了中国经济的增长，但在今后的 10 年中，这一模式难以继续为中国的成功保驾护航。中国的决策者们已经意识到了这一点，并开始致力于打造一个强调内需、创新和服务业的经济体系。“十二五”规划便为这一调整提供了蓝图。

正如今年《白皮书》“商务环境综述”章节所提到的，为使调整奏效，中国需要对其能源、资本和劳动力市场进行根本性的改革，同时继续致力于开放本国市场。我们认为实施《白皮书》中与政策有关的建议将有利于中国经济成功过渡，并造福外资企业和所有市场参与者。限制性的市场准入导致了市场失衡，不利于消费者受益于市场竞争以及选购其所需的产品和服务。增强政策监管的一致性、实行公平的许可证制度、提高政府采购政策和实践的透明度和开放度、以及推出一个更加开放的投资审批制度将为中国带来一个更为高效的市场经济。加强知识产权保护是打造真正创新经济的前提。

《白皮书》中的建议是基于互助与合作精神而提出的。中国美国商会会员企业仍将致力于帮助中国继续获得成功，我们相信通过合作的方式来解决共性问题，以及打造一个培养开放、公平竞争的商务环境将使大家共同受益。今年的《白皮书》中所提及的一个互利合作的典型莫过于合作项目平台，包括“航空合作项目”，“能源合作项目”，“出口合规工作组”以及刚刚开展的“医疗合作项目”。这些项目建立在中国美国商会平台上，由在中、美两国政府的合作协议或框架下的美国公司联合承办。这是一种新型的政企合作模式，它既能为中国的发展提供援助平台，又能展示美国的产品、服务和技术。

model of mutually beneficial cooperation highlighted in this year's *White Paper* is the cooperative program platform. These programs hosted by AmCham China, including the Aviation Cooperation Program, the Energy Cooperation Program, Export Compliance Working Group, and the newly launched Healthcare Cooperation Program, are coalitions of US companies operating under an umbrella of agreements or cooperative arrangements between the US and Chinese governments. They are a new type of public-private partnership providing platforms for assisting China's development while showcasing American goods, services, and technologies.

AmCham China appreciates the ongoing dialogue with the Chinese government that we maintain throughout the year, and we look forward to continuing this dialogue with the *White Paper* as a reference.

Finally, I would like to express my thanks to AmCham China members in Beijing, Dalian, Tianjin, Wuhan, and across China, for the commitment, time, and energy that they have invested in drafting this *White Paper*. This is a unique document drafted by our members as they share their first-hand experience operating on the ground in China. It is a testament to our members' commitment to this initiative that they take time from running their businesses to devote countless hours to a document that takes on the broader policy questions covered here. And to our staff who also devote tireless hours to the preparation of this document, thank you for everything you do on behalf of our members.

I am also appreciative of the contributions from AmCham Shanghai and AmCham Southwest members.

We hope readers and policymakers in both the US and China will find the 2012 *White Paper* to be a valuable resource for understanding the business environment in China as viewed by AmCham China members.

A handwritten signature in black ink that reads "Ted Dean". The signature is fluid and cursive, with a large, stylized "D" at the end.

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

April 25, 2012

中国美国商会十分赞赏过去一年与中国政府所开展的持续对话，并期待着借助《白皮书》的发表继续推进这一对话。

最后，我希望对中国美国商会在北京、大连、天津、武汉以及全国各地的会员表示感谢，感谢他们在《白皮书》的撰写过程中所付出的心血、时间与精力。这份独特的文件由我们的会员撰写，其中融入了他们在中国实地经营的第一手经验。为了撰写这份涉及诸多政策性问题的文件，会员们从企业繁忙的经营工作中抽出了大量宝贵的时间，这体现了他们对此项举措的专注与投入。我还要感谢为《白皮书》的制作投入了大量时间的商会员工们，感谢你们为会员所做的一切。

我也感谢上海美国商会和西南美国商会会员所做的贡献。

我们希望通过中国美国商会会员的视角，2012年《白皮书》能成为美国和中国的读者及决策者们理解中国商务环境的良师益友。



狄安华
中国美国商会主席

2012年4月25日

Part One:
Business Climate Overview
商务环境综述



China's Course Over the Next 10 Years

Many challenges and uncertainties currently face the incoming Chinese leadership and AmCham China member companies. In early 2002, China had just joined the World Trade Organization (WTO) and there was a clear five-year path of market opening commitments to be implemented. In 2012, 10 years after WTO entry, China's accession program has long since been completed. The 12th Five-Year Plan offers high-level goals but little in terms of specific implementation commitments. External and internal factors both suggest the need for further economic reform, but the policy debate is unresolved and China's transition to the "fifth generation" of leadership is in progress. The strong commitment of AmCham China member companies to the Chinese market is thus subject to China's future policy choices and development path, as well as to external risks such as another global economic slowdown.

China is in a transitional phase and currently faces a choice of what kind of economy it should construct over the next 10 years. We encourage China to continue on the path of reform and opening that has served the country and the world so well over the past 30 years. Below are AmCham China's understanding of the difficulties China faces, how our member companies view the challenges and opportunities, and our recommendations for supporting the realization of the goals envisioned in the 12th Five-Year Plan.

External and Internal Factors Suggest the Need for Continued Economic Reform

In AmCham China's annual *Business Climate Survey*, our membership reflect on current market operating conditions and governance factors affecting business, and provide their views on future business prospects. Structural change in China's economy is already evident in our 2012 survey data, and this change is expected to accelerate, driven by both external and internal factors. At the same time, China is in the midst of a political transition to the next generation of leaders who will be in power for the next decade. A vigorous discussion is underway inside and outside of China regarding what policy mix would best support growth and development in the context of restructuring and rebalancing. Among the reports launched in the spring of 2012 are the Organisation for Economic Co-operation

and Development (OECD) report, *China in Focus: Lessons and Challenges*, and the joint report by the Development Research Center of the State Council and the World Bank, *China 2030: Building a Modern, Harmonious, and Creative High-Income Society*. Both of these reports highlight the need for China to embark on fundamental reforms with a sense of urgency.

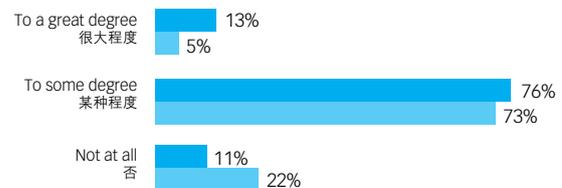
Many factors suggest China's economic model of the past thirty years is ready for change. The Chinese economy is now the world's second largest and has already successfully adopted many globally proven technologies. China is thus growing from a large base instead of a small one, and from a technological level that requires innovation instead of simple adoption of foreign technology. Moreover, the number of working-age people has begun to decline due to the effectiveness of the one child policy, while the number of retirees is growing rapidly. Finally, external demand is weak in the aftermath of the global economic crisis and is unlikely in the future to be large enough to drive Chinese growth. All of these factors' impact on the economy is likely to intensify.

Figure (图) 1

Do you feel that China is losing competitive advantages due to rising costs?

中国是否由于成本不断增加而逐渐失去竞争优势？

Company sample size: 2012 = 298 2011 = 340
企业样本规模



Given these factors, we should not be surprised that the market is characterized by human resource shortages and large compensation increases. Eighty-nine percent of our survey respondents believe that China is losing competitiveness because of rising costs and 82 percent report that rising labor costs are negatively affecting their own operations (see figure 1 above and figure 2 to the right). Management-

未来十年中国的发展方向

当前，有诸多挑战与不确定因素摆在中国下一届领导集体及中国美国商会会员企业的面前。2002 年年初，中国刚加入世界贸易组织（以下简称“世贸组织”），那时中国有一个清晰的实行市场开放承诺的五年发展路径。2012 年，在加入世贸组织 10 年后，中国的相关入世项目早已完成。“十二五”规划提出了高层次的目标，却鲜有具体的实施方案。种种外部与内部因素均表明进一步实行经济改革的必要性。但是，政策性讨论尚无结果，同时中国仍处于向“第五代”领导集体的过渡期。因此，中国美国商会会员企业致力于参与中国市场的承诺将取决于中国未来的政策选择与发展方向，并受到如全球经济再度放缓等外部风险的影响。

中国正处于转型阶段，且目前正面临着在未来十年应该构建何种经济模式的选择。我们鼓励中国继续坚持其改革开放的道路，这条道路在过去的 30 年间已使中国与世界获益匪浅。下文体现了中国美国商会对中国面临的困难的理解，商会会员企业如何看待种种挑战与机遇，以及我们针对如何实现“十二五”规划中提出的相关目标所作的建议。

内外部因素表明中国继续经济改革的必要性

中国美国商会的年度《商务环境调查》反映出我们的会员企业对目前影响其运营的市场经营条件及治理因素的思考，及其对商业前景的看法。2012 年的调查数据已明显显示出中国经济结构的变化，并且由于外部与内部因素的影响，这种经济结构的变化将有可能加速。同时，中国正处于政治过渡期，新一代领导人将在下一个十年中执政。国内外正激烈讨论中国在经济转型与重新平衡的背景下应采用何种政策组合为其成长与发展提供最好的支持。2012 年春发布的相关报告包括经济合作与发展组织（经合组织）的《聚焦中国：经验与挑战》，以及国务院发展研究中心与世界银行联合撰写的《2030 年的中国：建设现代、和谐、有创造力的高收入社会》。这两个报告均强调了进行根本性改革的必要性与紧迫性。

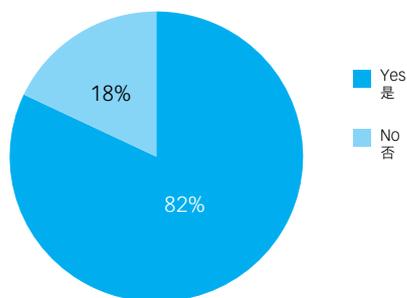
许多因素表明，改变中国过去 30 年的经济模式的条件已经具备。中国已成为世界第二大经济体，并成功采用了许多已在全球范围内得到验证的技术。因此，中国是在广泛而非狭小的基础上继续发展，其技术水平基础要求中国进行创新而不再是简单地采用国外技术。此外，独生子女政策所发挥的效力导致适龄工作人口的数量开始下降，而退休人口的数量却在快速上升。最后，外部需求在全球经济危机后疲软，可能无法在未来有足够力量推动中国经济增长。上述所有因素对经济的影响将有可能进一步加剧。

考虑到上述因素，我们不应该对目前市场上人才短缺与工资大幅上涨的现象感到意外。89% 的调查受访者认为上涨的成本正在使中国失去竞争力，同时 82% 的受访者认为上涨的劳动力成本为其经营带来了不利影响（见左页图 1 与本页面图 2）。管理层人才匮乏在调查中被认为是最大的运营挑战，而非管理层人才匮乏位列第三（见第 4 页图 3）。土地成本、租金、原材料、运输及其他方面的投入也在上涨。企业除了简单地管理其业务增长，这通常以国内生产总值（GDP）增长的倍数为目标，企业目前还必须考虑其成本

Figure (图) 2

Are rising labor costs affecting your business operations?
不断增长的人力成本是否影响企业运营?

Company sample size = 287
企业样本规模



level human resource constraints are the leading business challenge reported, and non-management level constraints rank third (see figure 3 below). The cost of land, rents, raw materials, transportation, and other inputs is also rising. Instead of simply managing growth, often at a multiple of GDP growth, companies must now also consider their cost structure. Pressure on profit margins is rising. Labor intensive industries are relocating to the interior or outside of China entirely. China's merchandise trade surplus peaked

in 2008 and has declined every year since, reflecting both soft external demand and rising imports to support internal investment and consumption (see figure 4).

In 2007, Premier Wen Jiabao famously characterized China's growth as "unsteady, imbalanced, uncoordinated, and unsustainable." In speaking about the global economic situation in November 2011, Vice Premier Wang Qishan stated "an unbalanced recovery would be better than a balanced recession," suggesting that China was then concerned first and foremost about recovery. Now that China successfully weathered the global economic crisis, the medium-term growth strategy has again come to the fore.

Figure (图) 3

Top business challenges.

企业在华运营的主要挑战

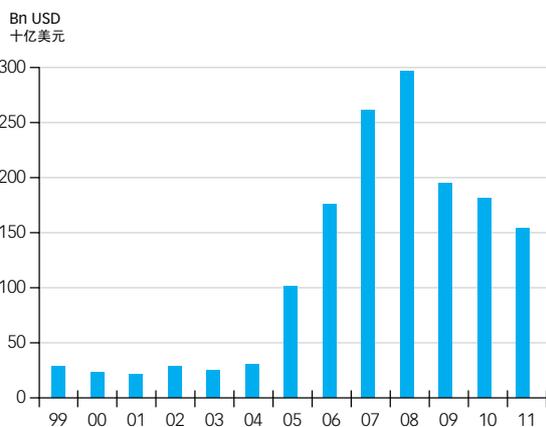
Company sample size: 2012=339 2011=250
企业样本规模



Figure (图) 4

China merchandise trade balance

中国商品贸易平衡



Source: JP Morgan Global Economic Research
数据来源: 摩根大通全球经济研究

How China can optimize growth while addressing sustainability is a monumental task, and one that clearly weighs on the minds of our membership. In our annual survey, concerns about an economic slowdown spiked 15 percentage points over the previous year, returning to almost the same level as in 2010 (see figure 5 to the right).

Strong Commitment of Our Members to the China Market

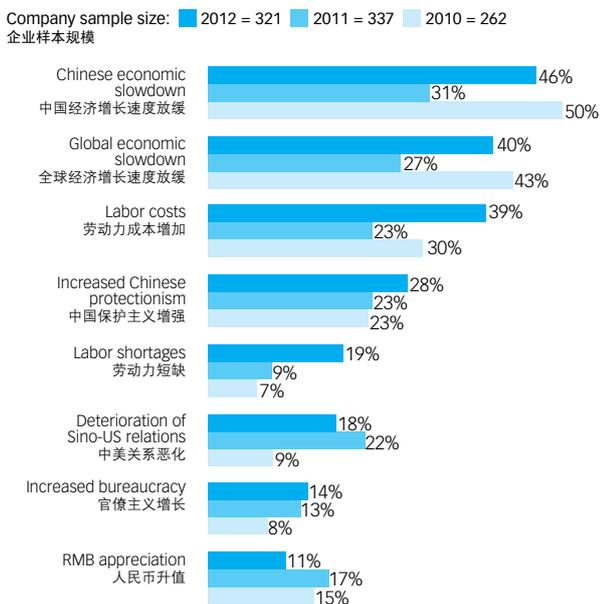
Despite these challenges, AmCham China member companies remain relatively optimistic about the future and committed to the China market. The operating environment continues to be strong, especially when compared to the rest of the world. Seventy-six percent of respondents to our member survey expect revenue to grow in 2012, with 26 percent expecting growth in the range of 11-20 percent (see figure 6 to the right). This compares to the consensus real GDP growth forecast for China of approximately 8.4 percent and the government's target of 7.5 percent. Most of our member companies expect to grow faster than real GDP, as was their experience in 2010 and 2011. Moreover, our members' businesses are profitable, with operating margins for 39 percent of survey respondents exceeding their global average in 2011. These results are consistent with last year's survey and indicate a continuation of recovery to pre-global economic crisis levels.

As in the past, our members focus on providing goods and services for the Chinese market. This year 81 percent identify being in China for the China market as their primary purpose (including production of goods and services in China for sale in China as well as importing into China), compared to 69 percent last year. The vast majority of these, 66 percent in 2012, produce or source goods or services in China for the China market. This is not a surprise given China's early recovery from the global economic crisis. This continental economy has the size and dynamism to scale a business profitably—unusually so in the midst of slow growth, uncertain recoveries, and concerns over macroeconomic stability in other major markets. In our survey, 78 percent of respondents cite China as among the top three global priorities of their company for near-term investment, with 20 percent of total respondents considering it the top priority.

Figure (图) 5

What do you think are the greatest risks facing your China organization?

企业在华运营面临的主要风险



结构。利润率方面的压力正在上升。劳动密集型行业正在向中国内地迁移或彻底迁出中国。中国的商品贸易顺差在2008年时达到最大，之后逐年下降，反映出外部需求的疲软以及为支持对内投资和消费的进口增长（见左页图4）。

2007年，温家宝总理著名的讲话曾将中国的经济增长概述为“不稳定、不平衡、不协调、不可持续”。2011年11月，在谈及全球经济形势时，王岐山副总理提到，“不平衡的复苏比平衡的衰退好”。这表明中国当时关心的首

要问题是经济复苏。由于成功地渡过了全球经济危机的难关，中国的中期发展战略再次受到关注。

中国在如何解决可持续性问题的同时实现优化增长已成为一项意义重大的任务，而这也是我们会员企业十分关注的。在我们的年度调查中，对经济放缓表示担忧的受访者比去年高出15个百分点，几乎达到2010年的水平（见图5）。

会员企业对中国市场的坚定承诺

尽管存在这些挑战，中国美国商会的会员企业对中国的未来仍保持相对乐观态度，并愿意继续致力于中国市场的发展。相对于世界其他地区来讲，中国的经营环境仍旧十分有利。有76%的调查受访者认为其收入在2012年有望增长，26%的受访者预期其收入增长幅度将在11%至20%之间（见图6）。这符合对中国实际国民生产总值（GDP）8.4%增长预期的共识及政府7.5%的增长目标。大多数会员企业认为与2010、2011年一样，其增长将有望超过实际GDP的增长。此外，我们会员企业是盈利的，39%受访者的营业利润率超过其2011年的全球平均水平。这些结果与去年的调查结果一致，表明经营环境正持续恢复到全球经济危机前的水平。

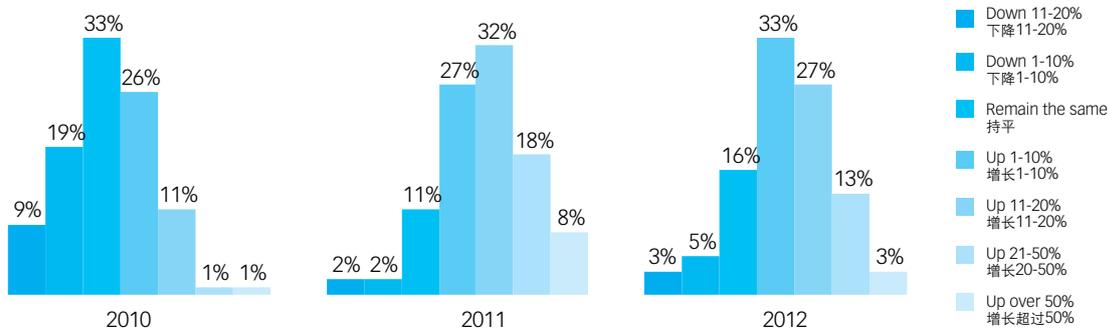
与过去相同，我们会员企业的业务仍集中在为中国市场提供产品与服务。今年，81%的受访者将立足于中国，以中国市场服务作为其主要目标（包括在中国本地生产产品及提供服务以及向中国出口产品及服务），而去年只有69%的受访者这样认为。2012年，这81%的受访者中的大部分（66%）在华生产或提供服务，或在华采购产品或服务提供给中国市场。这一结果并不让人感到意外，因为

Figure (图) 6

What is your forecast for 2012 China revenues compared to 2011?

企业2012年在华运营收入预期与2011年相比较

Company sample size: 2012 = 305 2011 = 324 2010 = 288
企业样本规模



Monthly data from the Ministry of Commerce, however, show a decline in 2012 in both transactions and utilized foreign direct investment from the US and EU. This is not reflected in our survey data and remains a subject for future analysis. It may be a short-term fluctuation in the data, or it may reflect uncertainty about medium-term prospects.

Challenges to China's Economic Development and Policy Goals for the Next 10 Years

Though AmCham China members are committed to the China market, uncertainty remains regarding the future direction of economic reform and how that will affect business operations in China. The long-term project of creating a market economy has slowed in recent years. Yet, the economy as well as the business community in China still face a variety of challenges that must be addressed in order for China to continue on its path toward economic restructuring and transformation into an innovative, service-based, developed, consumer economy.

Three primary areas of market reform that we hope will be accelerated within the term of the next generation of leaders are pricing of energy, cost of capital, and flexibility of the labor market.

Energy Pricing

Currently, the energy sector only partially reflects market pricing. China is a substantial importer of oil and natural gas at international market prices, and the price of coal is basically market determined. However, the price of power to end-users remains heavily controlled, resulting in very substantial losses to power generators, which are almost all state-owned enterprises (SOEs).

Our main concern is the availability of power. If the power industry does not have a reasonable return, investments necessary to assure long-term capacity may not be made, eventually resulting in shortages. A second concern is that effectively subsidizing the cost of electricity distorts the incentives to shift toward clean, renewable, low-carbon energy. A similar situation exists in China's petrochemical and fuel industry, where the inputs are close to global, market-determined levels, while the price of diesel fuel or gasoline is regulated. Economic distortions and negative environmental impacts caused by regulated prices of energy are becoming increasingly problematic. Since energy subsidies tend to favor the manufacturing sector, they also work against China's 12th Five-Year Plan goals of shifting the domestic economy towards services and consumption and rebalancing external trade relationships.

Cost of Capital

Likewise, controls on the cost of capital also give rise to large distortions in the economy. China's policy of regulating interest rates has subsidized investment for many

years. It has given the borrowers of bank loans—mainly SOEs—a low cost of capital and the banks a guaranteed net interest margin of about three percent, while bank depositors receive a negative real rate of return. This is effectively a tax on households for the benefit of banks and SOEs. And like energy subsidies, it also strongly favors manufacturing and infrastructure over services.

For many years this policy of financial repression was a useful tool of economic development, and the lack of a true yield curve did not much matter. But today, the economy is larger, more complex, and partially market-based. Mispricing of capital results in inefficient and wasteful capital allocation, prevents the development of a bond market, and makes the removal of capital controls and a transition to market-based exchange rates very difficult. This *White Paper's* Bonds Markets chapter contains detailed recommendations for creation of a substantial, deep, and liquid bond market. This is not a goal for its own sake. It is important at this stage of China's economic development to strengthen the effectiveness of monetary policy, price capital correctly, allocate capital efficiently, and ultimately fully internationalize the *yuan*. Interest rate reform is crucial and should precede foreign exchange rate regime liberalization.

Labor Market Flexibility

As mentioned above, human resource constraints are a top concern of our member companies. The Human Resources chapter of this *White Paper* outlines many of these concerns and provides suggestions for addressing them. In addition to implementing those recommendations, China should increase the flexibility of the labor market in order to mitigate the impact of demographic change. We hope that over the next 10 years there will be a complete reform of the household registration (*hukou* 户口) system. Social benefits should also be made more portable to facilitate movement from one city to another and from one employer to another. Such reforms would reduce the unequal treatment of rural and urban residents and improve the utilization of human resources.

The positive side of increasing wages and urbanization is the emergence of a large middle class of consumers, along with a significant group of wealthy individuals and families. Consumption patterns are changing dramatically, and new consumer markets are developing across China. Our member companies are building out their geographic presence rapidly and investing heavily in marketing to build brand identity and loyalty.

The price of energy and capital are the two most prominent examples of regulated, and mispriced, inputs in the Chinese economy today, while inflexible labor markets provide a third source of major market distortion. We hope this will no longer be true in 10 years' time. A shift to more market-based pricing and labor movements over this period would

中国很早便从全球经济危机中实现了复苏。这种大陆型经济有足够的规模及活力来保持业务盈利，在其他主要市场经济低速增长、复苏不明朗及宏观经济稳定性令人担忧的背景下，更是如此。在我们的调查中，78%的受访者将中国视为企业短期投资方面优先考虑的全球三大目的地之一，20%的受访者将中国视为第一优先考虑的投资目的地。

然而，中国商务部的月度数据显示2012年来自美国和欧盟的交易与使用外资均有所下降。这种情况并未在我们的调查结构中显示出来，需要在未来做进一步的分析。商务部的数据结果可能是一种短期的波动，或许反映出中期前景的不确定性。

中国经济发展面临的挑战及未来十年的政策目标

尽管中国美国商会会员企业致力于中国市场的发展，但未来经济改革的方向及其对企业在华运营的影响仍不明朗。建立市场经济的长期计划在近几年已经放缓。但中国要想继续坚持其经济转型道路，向创新、服务、消费型的发达经济转变，那么必须解决中国经济以及在华商界所面临的各种挑战。

我们希望下一代领导人在其执政期间能够加快三大主要领域的市场改革。这三大领域是：能源定价、资本成本及劳动力市场的灵活性。

能源定价

目前，能源产业只部分体现了市场定价。中国是石油与天然气的进口大国，其石油与天然气的进口均采用国际市场价格，煤炭的价格基本也由市场决定。然而，供终端用户使用的电力价格却被严格控制，导致发电厂商损失惨重，而这些发电厂商几乎全是国有企业。

我们主要担心的是电力的供应问题。如果电力行业无法获得合理的回报，长期发电能力所需的投资可能就无法保证，最终将导致供应短缺。其次，我们担心对电力成本的补贴会扭曲向清洁、可再生及低碳能源转变的优惠政策。同样的情况存在于中国的石油化工与燃料行业，其投入成本与国际水平相近，成本价格由市场决定，但柴油或汽油的价格却受到管制。由能源价格管制造成的经济上的扭曲及不利的环境影响变得日益严重。由于能源补贴倾向于制造业，这同样不符合中国“十二五”规划提出的实现国内经济向服务型、消费型转变及实现外部贸易关系重新平衡的目标。

资本成本

同样地，对于资本成本的控制也极大地扭曲了经济。多年来，中国的利率管控政策一直对投资进行补贴。该政策使银行贷款人（主要为国有企业）可以获得较低的资本成本，并确保银行可以得到3%的净息差，但却导致银行储户的实际收益率为负。这在实效上够成了为银行和国有企业的利益而对家庭征税。又如能源补贴，则更明显青睐于制造业和基础设施，而非服务业。

多年来，这种金融抑制政策对于经济发展来说曾是一种有效工具，因而真正的收益率曲线的缺失无关紧要。但时至今日，经济规模已经扩大，经济机构变得更为复杂，并且经济已实现部分市场化。对资本的错误定价会导致资本配置的低效与浪费，阻碍债券市场的发展，并使取消资本管制以及向汇率市场化的转变变得极为困难。《白皮书》中的“债券市场”一章对如何建立一个真正意义上的、交易活跃、且流动性良好的债券市场提出了具体建议。该目标并非出于债券市场本身的利益考虑。现阶段，中国在经济发展过程中加强其货币政策的有效性、实现资本的正确定价及配置的有效性、并最终实现人民币的全面国际化的意义重大。利率改革至关重要，并应优先于汇率制度的自由化改革。

劳动力市场的灵活性

如前文所述，人力资源匮乏是我们的会员企业关心的首要问题。《白皮书》中的“人力资源”一章概括了该领域存在的许多问题，并提出了应对建议。除了实行“人力资源”一章中提出的相关建议外，中国应提高劳动力市场的灵活性以减轻人口结构带来的影响。我们希望在未来10年内，能够对户口制度进行彻底的改革。社会福利也应该变得更加易于转移，以方便劳动力在不同城市间以及不同雇主间流动。这些改革将减少对城镇与农村居民的不公平待遇，并将改善人力资源的利用。

提高工资与城镇化规模的一个积极方面是出现了大规模中产阶级消费群体以及相当数量的富裕个人与家庭。消费结构正急剧变化，新的消费市场正在中国各地不断发展。我们的会员企业正在迅速构建其地理布局，在市场推广领域大举投资以建立其品牌认知度和忠诚度。

目前中国经济投入受到监管的同时又被错误定价，其中能源和资本价格是两个极为突出的例子，而不灵活的劳动力市场是市场扭曲的第三个源头。我们希望这种情况在

lead to more efficient use of capital, energy, and labor, and support China's transition away from an investment- and export-led growth model to one based on domestic consumption and growth in the services sector.

Improving the Business and Investment Environment

Aside from these three overarching areas for reform, China and AmCham China member companies face a variety of other problems that directly affect business operations and economic growth. In each of the areas below, it is possible to cite specific instances where a foreign-invested company has been negatively impacted—its access to a particular market blocked, its intellectual property compromised, or its operations complicated by an unfair licensing regime or the lack of regulatory coherence. Addressing these challenges will benefit China's economy and advance China's own development goals. Opening market access to the services sector will speed investment into an area of the economy that China is seeking to grow. Protecting intellectual property is a fundamental ingredient of an innovative society. And a fair playing field eliminates market distortions and drives more efficient growth.

Regulatory Coherence

In our survey after human resources challenges, the second ranking business challenge for 2012 is inconsistent, unclear regulations and the fifth is corruption. Both relate to the performance of the Chinese government. Historically the Chinese market has been large, but regionally and locally fragmented. Government is centralized in Beijing with respect to policy, but implementation is decentralized. Laws and regulations are therefore drafted so as to preserve wide administrative discretion. Implementing regulations and policies issued by both the central government and local governments also have an unusually broad scope allowing regulators to respond more flexibly to local conditions.

Given these practices, it is no surprise that even within the same industry, regulations and market practices vary widely by locality. This is exacerbated by the fact that in smaller cities, local protectionism and corruption are more often encountered than in Beijing or Shanghai. Such inconsistency, lack of clarity, and corruption not only slow growth of both foreign- and domestically-invested companies and the economy overall, but also hamper the government's ability to effectively implement policy and enact reforms.

In order for China to complete its transition into an efficient, modern, market-based economy with broadly integrated regional and national markets, China must improve regulatory coherence and transparency in central and local governments and decrease local protectionism over the next 10 years. This is particularly important with respect to the work of the State Administration of Industry and Commerce and the General Administration of Quality

Supervision, Inspection, and Quarantine, but it is also relevant to the work of all other ministries and government functions.

Licensing

Issues related to licensing create challenges for foreign-invested companies by restricting or slowing expansion. Obtaining required licenses for new locations and products is necessary to gain market access and grow. Unfortunately, licensing often restricts market access. Thirty-seven percent of survey respondents believe that obtaining licenses is becoming more difficult and only 22 percent believe they are awarded to foreign- and domestically invested enterprises on an equal basis (see figures 7 and 8 below). The significant majority, 68 percent, reports this administrative difficulty delays expansion and investment (see figure 9 to the right). As a result, job creation and economic growth overall are also dampened.

Figure (图) 7

How has awarding of licenses changed in your industry in the past couple of years?

过去几年企业所在行业获得许可证的变化情况

Company sample size = 178
企业样本规模

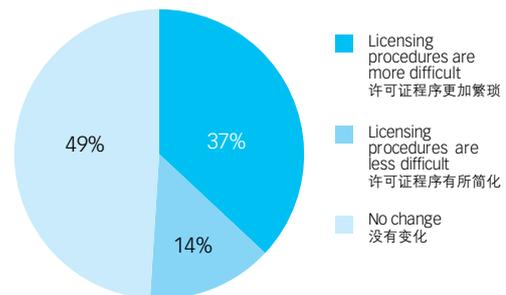
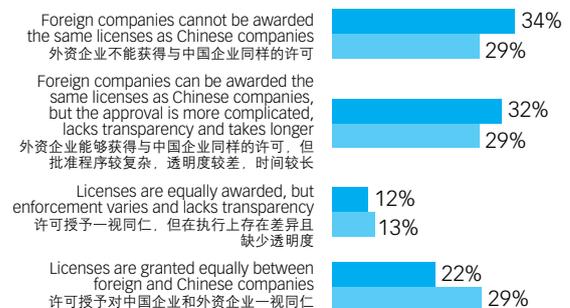


Figure (图) 8

How are the relevant licenses in your industry applied?

企业所在行业相关许可申请情况

Company sample size: 2012 = 175, 2011 = 248
企业样本规模



十年后将不复存在。在此期间，实现定价及劳动力的流动向市场化转变将使资本、能源、劳动力得到更有效地使用，并支持中国由投资和出口导向型的增长模式向由国内消费及服务发展拉动的增长模式转变。

改善商业和投资环境

除了上述三个至关重要的改革领域外，中国及中国美国商会会员企业面临着其他直接影响企业运营及经济增长的各类问题。以下的每个领域中，我们都能举出外资企业受到负面影响的例子——如其进入某一特定市场受到阻碍、其知识产权受到损害，或其经营由于不公正的许可制度或监管不一致而受到影响。解决这些棘手的问题将使中国的经济受益，并推动中国自身发展目标的实现。向服务领域开放市场将加速对中国正在寻求发展的经济领域的投入。保护知识产权是一个创新型社会的基本组成部分。而一个公平竞争的环境将消除市场的扭曲并推动更加高效的成长。

监管一致性

在我们的调查中，位列人力资源挑战之后的 2012 年第二大运营挑战是不一致、不明确的监管，第五大运营挑战则是腐败问题。这两者都涉及中国政府的表现。从历史上看，中国市场规模巨大，但一直处于区域与地方的分割状态。中央政府负责政策的制定，但政策的执行却分属于地方。因此，法律法规的拟定均为宽泛的行政裁量权保留了一定的空间。由中央政府和地方政府发布的相关实施规定与政策为监管机构按照其地方情况灵活开展执法留下广泛的空间。

考虑到上述实践，即使在同一行业内，相关规定与市场实践在地方之间存在很大差异的情况并不会让人感到意外。这种情况在小城市更加严重，因为小城市的地方保护主义与腐败现象较之北京或上海更普遍。这种监管上的一致、缺少明确性以及腐败不仅减缓了外资与内资企业及整个经济的发展，也降低了政府有效执行相关政策和推动改革的能力。

中国若要完成其向高效、现代化及市场经济的过渡，并实现全国与各地区市场的高度整合，则必须提高中央与地方政府在监管上的一致性与透明度，并在未来 10 年内减少地方保护主义。这对于中国国家工商行政管理总局与国家质量监督检验检疫总局的工作来讲尤其重要，但也关系到所有其他部委与政府职能部门的工作。

许可

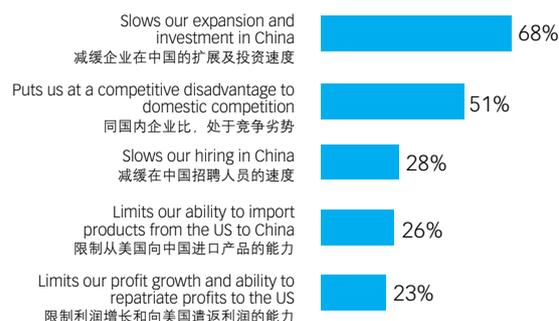
外资企业面临着与许可相关的挑战，限制或减缓了其发展。要求为新的场所和新产品取得相应的许可证对于企业进入市场与实现发展是必要的。遗憾的是，许可通常限制了市场准入。37% 的受访者认为取得许可证变得越来越困难，只有 22% 的受访者认为许可的授予对中国企业和外国企业一视同仁（见左页图 7、图 8）。绝大多数的受访者（68%）认为这一行政方面的困难延缓了其扩展及投资速度（见图 9）。结果是，增加就业和经济增长从整体上均受到了影响。

Figure (图) 9

How do licensing requirements impact your business? Check all that apply.

许可要求对企业经营的影响

Company sample size = 152
企业样本规模



政府采购

我们期待着中国能够在其各级地方政府作出坚定承诺的基础上加入世界贸易组织的“政府采购协议”（GPA）。加入政府采购协议能在对等的基础上，向外资企业开放中国政府采购市场以及向中国企业开放美国及其他国家与地区的政府采购市场，也将改善作出承诺的各级政府的采购流程，并提高其透明度。因此，加入政府采购协议也是一项反腐败的举措与机制，可大大促进监管方面的一致性。这将惠及包括中国国内企业与政府在内的所有市场参与者。

知识产权

知识产权长期以来都是受到关注的一个领域。我们的调查结果显示在打击知识产权侵权的执法方面已有缓慢

Government Procurement

We look forward to China's accession to the WTO Agreement on Government Procurement (GPA) on the basis of strong sub-central level commitments. In addition to opening the government procurement market in China to foreign-invested enterprises as well as opening markets in the US and elsewhere on a reciprocal basis to Chinese enterprises, accession to the GPA would improve procedures and transparency at all levels of government that make commitments. It is therefore also an anti-corruption measure and a mechanism to develop greater regulatory consistency. This will be to the advantage of all market participants, including domestic enterprises and the government itself.

Intellectual Property Rights

Intellectual property rights have long been an area of concern. Our survey data for several years has demonstrated slow but noticeable improvement in enforcement efforts against infringement. Rights owners now have access to legal and administrative systems that are much improved from a decade ago. Yet, more work needs to be done, with infringement still widespread, taking new forms based on online technologies, and flowing into new distribution channels of globalized criminal markets. Allowing such infringement to continue not only hurts foreign-invested companies but also domestically invested companies that have become increasingly innovative and concerned about protecting their intellectual property. We pledge our support to the Chinese government as it improves its enforcement of IPR. We hope that in 10 years China will have achieved a level of effective enforcement and deterrence and reduced the level of IPR infringement to be consistent with international standards and the needs of an innovative economy (see figure 10).

Aside from long-standing IPR concerns such as infringement, newer IPR concerns are becoming more prominent as China experiments with ways to enhance its innovation capabilities. The use of intellectual property as a tool of industrial policy to promote innovation independent of global networks, support national champion enterprises, and build market share in selected strategic industries has become more widespread. Such practices, however, are often costly and ultimately unsuccessful in generating truly profitable, innovative domestic companies and products. Furthermore, these policies frequently discriminate against or place unequal burdens on foreign-invested companies, particularly with respect to standards and standard setting, safety and quality inspections, the administration of the China Compulsory Certification mark, and technology transfer practices.

Many of these discriminatory practices appear to be becoming more common. For example in our member survey, 27 percent of respondents said forced technology transfer is increasing and 24 percent said it has stayed the same, while only four percent said it is decreasing (see

Figure (图) 10

How would you rate China's enforcement of IPR?

企业对中国政府保护知识产权执行力的评估

Company sample size: 2012 = 200 2011 = 251 2010 = 146
企业样本规模

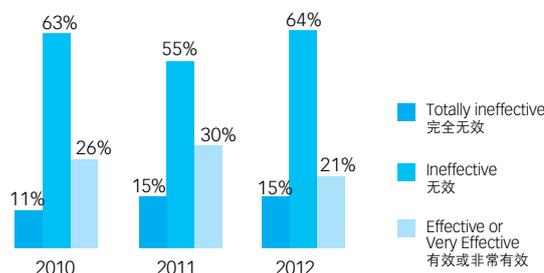


figure 11 to the right). Meanwhile, 33 percent responded that tech transfer negatively impacts their assessment of the business environment (see figure 12 to the right). For China to continue progress toward transformation into a modern, innovative economy, and to fully benefit from integration into global innovation and trade networks, China should reconsider such practices.

Foreign Investment

China's use of the "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalogue) to manage foreign investment flows also has a negative impact on the business and investment environment in China, and is a policy long overdue for reform. Foreign-invested enterprises were disappointed by the most recent revision of the Foreign Investment Catalogue, finalized in December 2011. Although one objective of the revision was reportedly to further open the economy for foreign investment, most of the commercially material changes were neutral or tightened market access.

As China advances economic reforms, we hope that over the next 10 years China will simplify its investment process and shift toward notification rather than approval of foreign investments. Eventually we hope the Foreign Investment Catalogue will be discarded as an outdated policy tool. Investments by foreign-invested companies should be made on the same basis as those by domestically invested companies, subject to review only in the case of those directly related to defense or national security reasonably and specifically defined.

Creating a fair and transparent process for foreign investment in China will become even more important for China's own economic interest as Chinese firms expand their own plans for investment abroad. The governments of other countries will more likely welcome Chinese investment if they perceive the Chinese market as equally welcoming and open to foreign investment.

Figure (图) 11

In your experience, forced technology transfer in China is:
在您看来，强迫性技术转让在华的状况为？

Company sample size = 301
企业样本规模

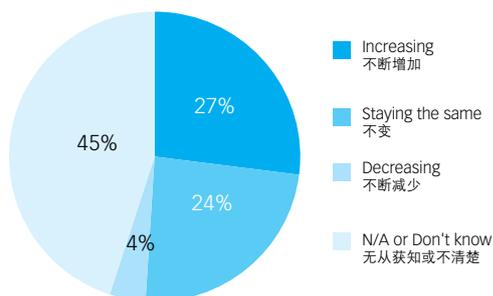
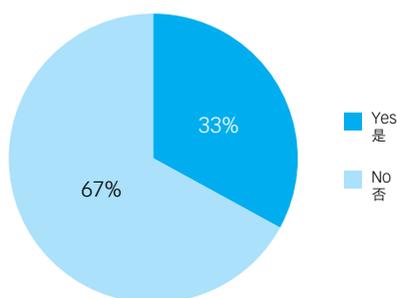


Figure (图) 12

At times, China has forced technology or knowledge transfers from foreign companies in exchange for market access. Are the effects of such practices negatively impacting your company or clients' assessment of the business environment in China?

中国有时以换取市场准入为条件迫使外企进行知识或技术转让。该做法是否对企业或客户评估在华运营环境时造成负面影响？

Company sample size = 297
企业样本规模



但明显的进步。知识产权所有者目前可利用法律与行政体系维护自己的权利，而 10 年前这些体系还不存在。不过还有更多的工作需要做，因为侵权行为仍大量存在，而且采取了以在线技术为基础的新形式，并且通过新的分销渠道流向国际化的犯罪市场。若允许该类侵权行为存在不仅将侵害到外资企业，也将危害到日益具有创新性并关注其知识产权保护的內资企业。我们将会支持中国政府改善其知识产权的执法环境，并希望中国在 10 年内能够实现高效执法和高度法律威慑力，并减少知识产权侵权，使其符合国际标准与发展创新型经济的需要（见左页图 10）。

除了长期存在的如侵权等知识产权问题，新的知识产

权问题在中国加强其创新能力的摸索过程中变得越来越突出。知识产权作为产业政策工具来推动独立于全球网络的创新、支持国家领军企业以及在选定的战略产业中建立市场份额已经越来越广泛。但这些实践通常花费较大，且在创建具有真正盈利与创新能力的国内企业和产品方面最终往往并不成功。此外，这些政策往往对外资企业存在歧视性待遇或使之承受不平等的负担，特别是在有关标准及标准设定、安全与质量检查、强制性产品认证标志的管理及技术转让实践等方面。

许多此类歧视性做法变得越来越普遍。例如，在我们的调查中，27% 的受访者认为强制性技术转让在不断增多，24% 的受访者认为没有变化，只有 4% 的受访者认为在不断减少（见图 11）。同时，33% 的受访者认为技术转让对其评估运营环境带来了消极影响（见图 12）。中国若要继续其向现代化、创新性经济的转变过程，并全面受益于全球创新与贸易网络，则应该对这些实践予以重新考虑。

外国投资

中国使用《外商投资产业指导目录》（《外商投资目录》）来管理外国投资流动，也给在华的运营与投资环境带来了消极影响，这也是长期以来亟待改革的一项政策。外资企业对于 2011 年 12 月完成的对《外商投资目录》的最新修订感到失望。尽管据称修订的目标之一是经济的进一步对外资开放，但大多数商业上的重大修改并没有变化，或收紧了市场准入条件。

随着中国经济改革的推进，我们希望未来 10 年中国能简化其投资程序并将外国投资由核准制转为通报制。最终，我们希望《外商投资目录》作为一项过时的政策工具不再使用。外资企业的投资应该与内资企业一样，只在其直接涉及到合理并具体界定的国防与国家安全领域的情况下，才需要接受审查。

随着中国企业海外投资计划的扩张，为在华外国投资创造一个公平、透明的过程对于中国自身的经济利益来说变得越来越重要。如果其他国家的政府认为中国市场对外国投资同样是欢迎与开放的，那么这些国家的政府对中国投资也会表示欢迎。

中国美国商会鼓励中国投资直接进入美国，同时我们希望并期待近期中国直接投资继续保持直线上升的趋势。中国投资进入美国市场将支持经济增长、就业和贸易发展。这一直是我们经贸关系中缺少的一个环节，并将如同美国

AmCham China encourages Chinese foreign direct investment into the US, and we hope and expect that the recent sharply upward trend will continue. Chinese investment in our home market supports growth, job opportunities, and trade. It has been the missing element in our commercial relationship, and will be mutually beneficial, just as American investment in China has been.

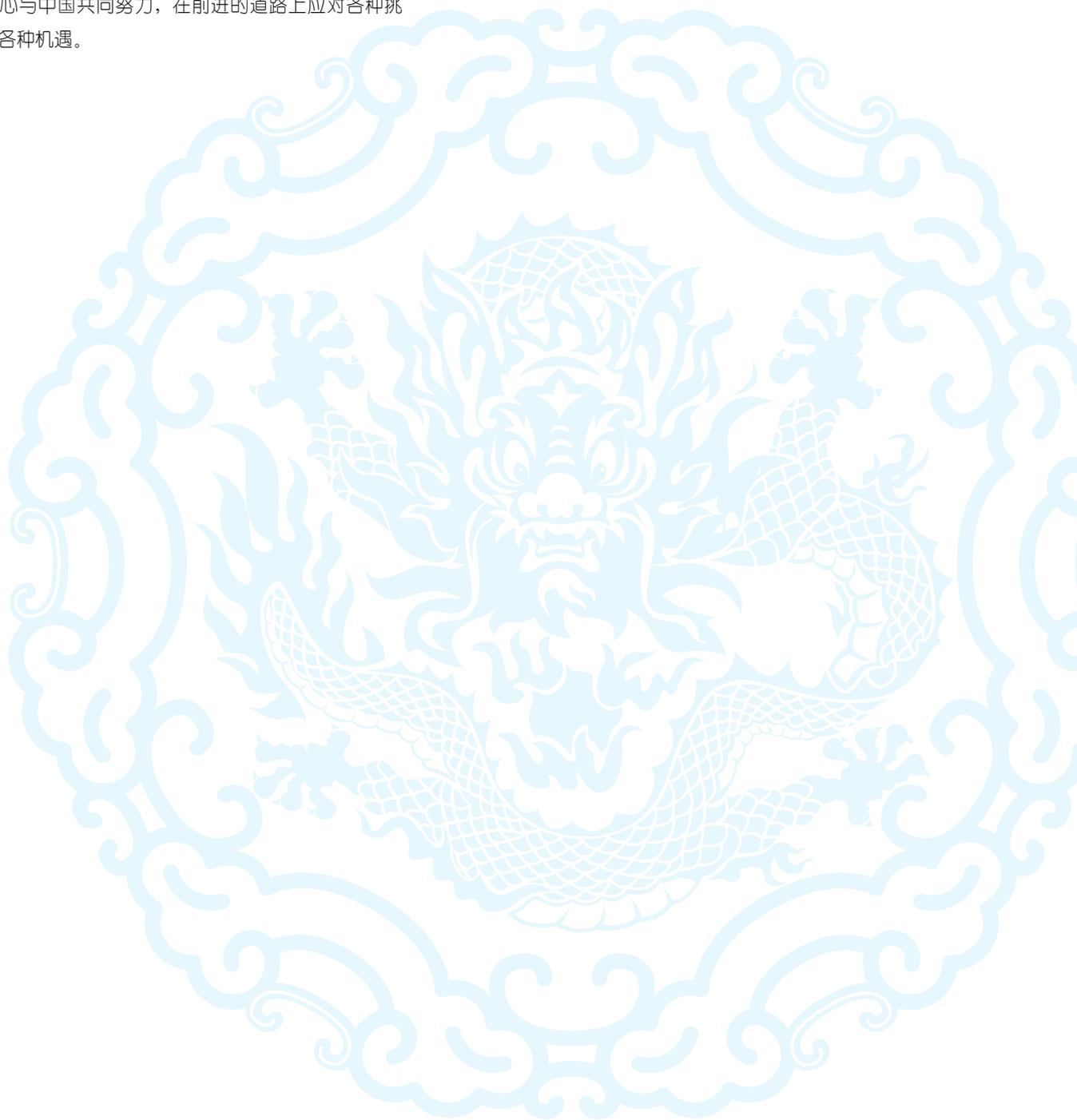
Mutual Progress Through Cooperation

AmCham China looks forward to continued cooperation and dialogue with the Chinese government as the fifth generation of leadership takes up their new positions and considers potential paths for economic reform and restructuring over the next 10 years. By addressing areas for reform as laid out above and in the following pages of this *White Paper*, China will help ensure its successful transformation into an innovative, service-based, developed, consumer economy, as so ambitiously laid out in the 12th Five-Year Plan. AmCham China member companies remain optimistic about the future, and are committed to working with China to overcome challenges and expand opportunities going forward.

在华投资一样，促进两国的互惠互利。

携手合作共同进步

随着第五代领导集体接任并思考未来 10 年经济改革与转型可能选择的道路，中国美国商会期待与中国政府继续合作和开展对话。通过对上文及《白皮书》以下各章节所阐述的相关领域进行改革，中国将确保成功实现其在“十二五”规划中提出的向创新、服务、消费型的发达经济的转变。中国美国商会会员企业对未来依然保持乐观态度，并决心与中国共同努力，在前进的道路上应对各种挑战并拓展各种机遇。



Business Climate Survey Data

Every year, AmCham China surveys its members to gauge the economic and regulatory situation they face on the ground in China. As in previous years, the 14th annual *Business Climate Survey* not only tracks year-on-year data to mark progress or decline, but also adds new questions in an attempt to measure the impact of recent policies or trends that members have raised in meetings throughout the year. This year, the *Business Climate Survey* added new questions about the Internet and technology transfer in order to get a better sense of anecdotal information we have received from member companies. All the responses help AmCham China pursue our advocacy efforts with a clearer image of our members' business environment.

We send the *Business Climate Survey* to our members between November and December each year in order to assess the year's performance. This year, we had 390 responses from our members in Beijing, and our chapters in Northeast China (Dalian), Tianjin, and Central China (Wuhan). Reports from this year's Survey indicate that AmCham China member companies still had good revenue growth and profits, similar to the strong performance from last year. However, concerns about economic slowdowns globally and in China rose to the levels surveyed during the financial crisis. Additionally, member companies continue to face obstacles in the protection of their intellectual property, obtaining licenses, attracting and retaining qualified employees, and managing rising costs. The data from the *Business Climate Survey* informs our members, the US and Chinese governments, and our own advocacy priorities going forward.

《商务环境调查》数据

中国美国商会每年都会对会员开展问卷调查，藉此评估他们当前在中国所处的经济和法规环境。与往年一样，第14次年度《商务环境调查》不仅进行了同期数据比较，提出了进步或不足，还增加了会员在全年各类会议中所提出的新问题，目的是为了衡量近期政策或趋势对会员所造成的影响。今年，《商务环境调查》增加了诸如互联网和技术转让等新问题，旨在更好地理解会员企业所反馈的一些信息。所有的这些反馈帮助中国美国商会更加清楚地了解会员企业所处的商务环境，从而有利于我们谏言献策。

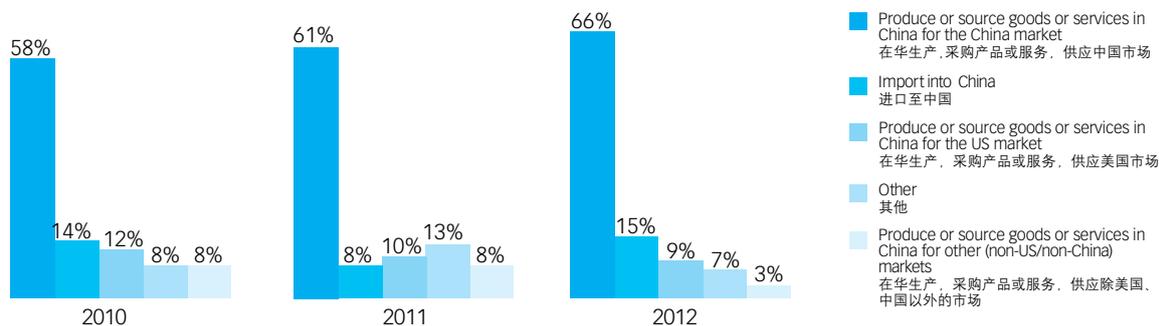
每年的《商务环境调查》会在11月到12月间对会员发放，以便了解其全年业绩。今年，我们从北京、东北（大连）、天津和华中（武汉）等商会设立办公室的地区收到了390家会员企业的调查反馈。今年的调查报告显示，中国美国商会会员企业继续保持了良好的收入和利润增长，与去年的优异表现持平。然而，对国际以及中国经济增速放缓的担忧已经达到了金融危机期间调查时的水平。此外，会员企业在知识产权保护、获取许可、留住合格人才以及控制成本增长等方面仍面临诸多问题。《商务环境调查》将继续对我们的会员企业，美、中两国政府以及商会未来谏言献策提供数据支持。

Key Charts 主要图表

What are your company's primary goals and strategies in China? Select all that apply in order of importance.

企业在华的首要目标和战略, 请按重要性排序

Company sample size: 2012 = 321 2011 = 326 2010 = 274
企业样本规模

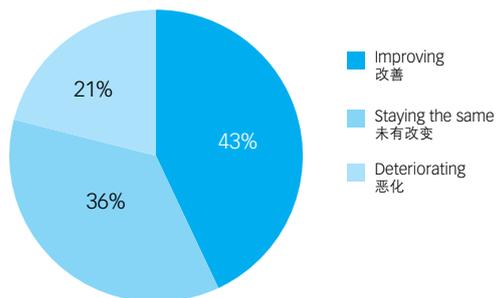


1

The quality of China's investment environment is:

中国投资环境质量

Company sample size = 333
企业样本规模

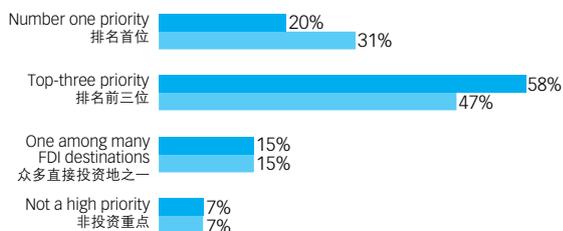


2

How does China rank in your company's near-term global investment plans?

中国市场在企业近期全球投资计划中的排名

Company sample size: 2012 = 306 2011 = 299
企业样本规模



3

Top business challenges.

企业在华运营的主要挑战

Company sample size: 2012=339 2011=250
企业样本规模



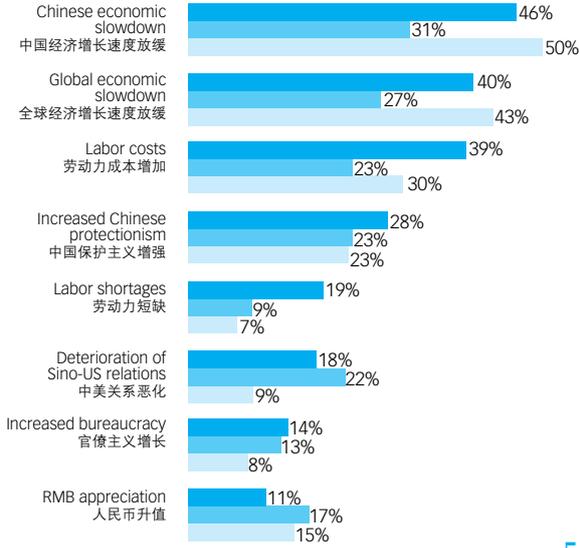
4

Key Charts 主要图表

What do you think are the greatest risks facing your China organization? 企业在华运营面临的主要风险

企业在华运营面临的主要风险

Company sample size: 2012 = 321 2011 = 337 2010 = 262
企业样本规模

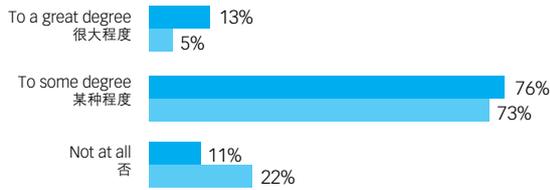


5

Do you feel that China is losing competitive advantages due to rising costs? 中国是否由于成本不断增加而逐渐失去竞争优势?

中国是否由于成本不断增加而逐渐失去竞争优势?

Company sample size: 2012 = 298 2011 = 340
企业样本规模



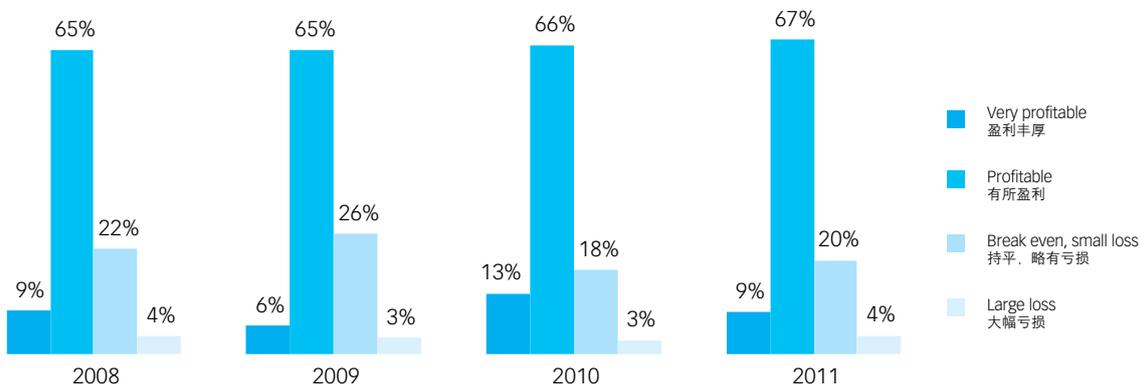
6

Economic and Company Performance 经济发展状况和公司业绩

How would you characterize your company's financial performance in China in 2011?

公司2011年在华财务状况

Company sample size: 2011 = 303 2010 = 336 2009 = 319 2008 = 338
企业样本规模

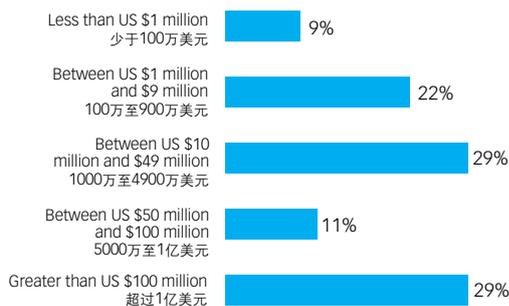


7

What are your forecasted total annual China revenues for 2011?

企业2011年在华总收入的预期

Company sample size = 305
企业样本规模

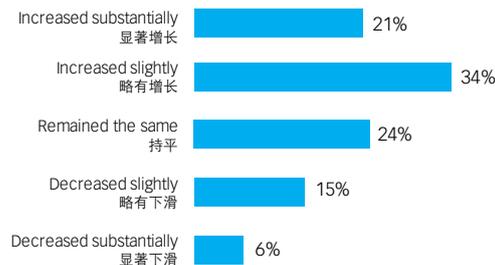


8

How do the overall 2011 operating margins of your China operations compare to those of 2010?

企业2011年在华运营净利润与2010年相比较

Company sample size = 294
企业样本规模

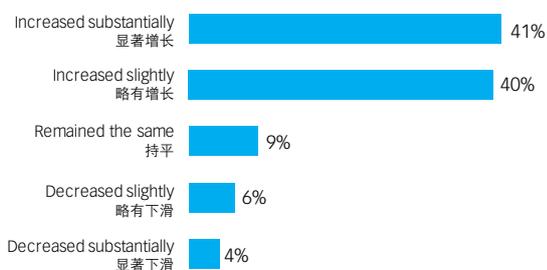


10

How does the 2011 revenue of your China operations compare to 2010 results?

企业2011年在华运营收入与2010年相比较

Company sample size = 308
企业样本规模

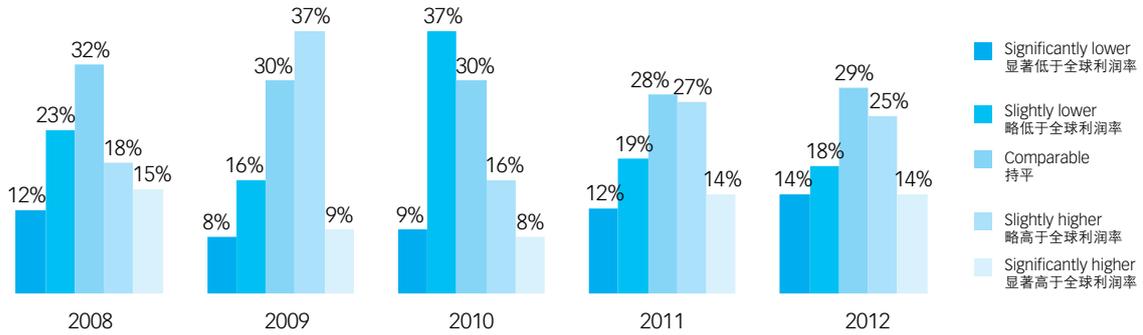


9

Economic and Company Performance 经济发展状况和公司业绩

How do the 2011 operating margins of your China operations compare to your company's worldwide operating margins? 2011年企业在华利润率与其全球利润率的比较

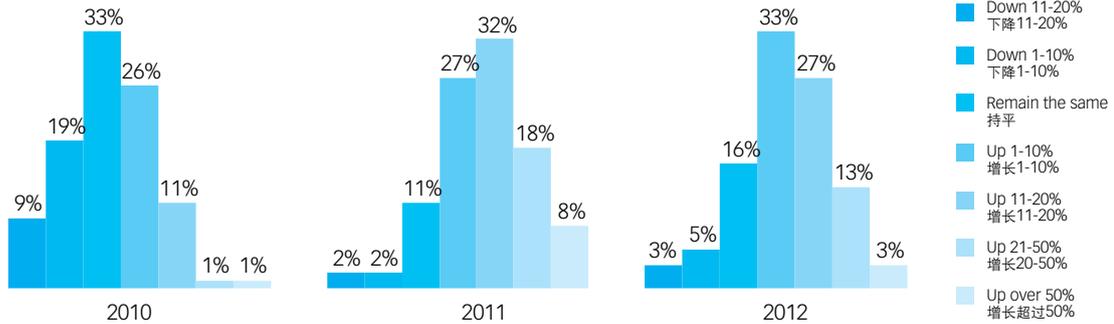
Company sample size: 2012 = 270 2011 = 321 2010 = 273 2009 = 240 2008 = 239
企业样本规模



11

What is your forecast for 2012 China revenues compared to 2011? 企业2012年在华运营收入预期与2011年相比较

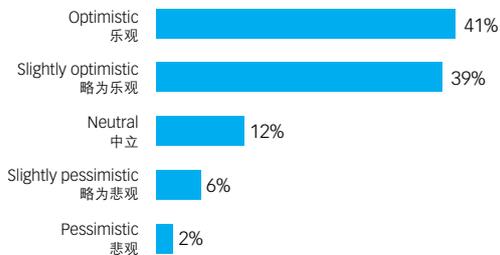
Company sample size: 2012 = 305 2011 = 324 2010 = 288
企业样本规模



12

How would you describe your two-year business outlook in China? 企业对其未来两年商业前景的预期

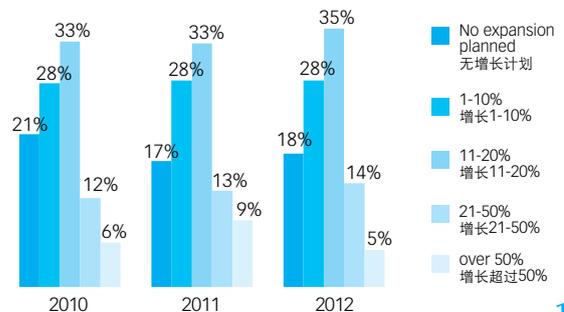
Company sample size = 333
企业样本规模



13

How much do you estimate your company will increase investment in China operations for 2012? 企业对2012年在华运营投资增长的预期

Company sample size: 2012 = 287 2011 = 281 2010 = 232
企业样本规模

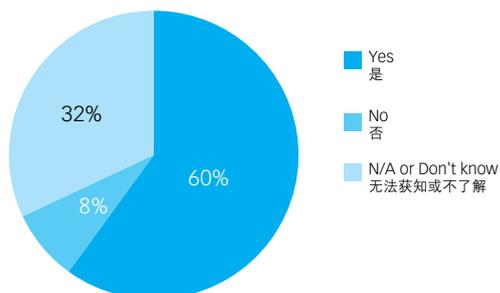


14

In the next year does your company plan to use China-generated profits to fund investments in your business in China?

公司明年是否计划将在华获得的盈利继续用于在华投资?

Company sample size = 328
企业样本规模

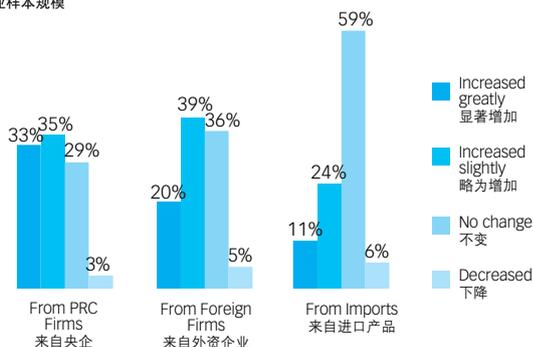


15

How would you rate competition for your company's products and services in China in 2011 versus 2010?

较2010年相比, 企业如何评价2011年在华的产品及服务所受到的竞争压力

Company sample size = 303
企业样本规模



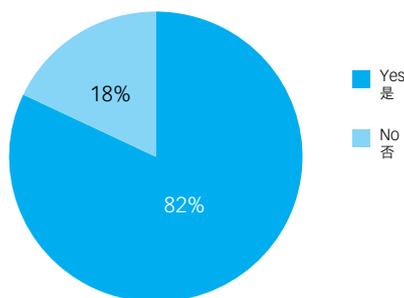
16

Labor Costs and Human Resources

Are rising labor costs affecting your business operations?

不断增长的人力成本是否影响企业运营?

Company sample size = 287
企业样本规模

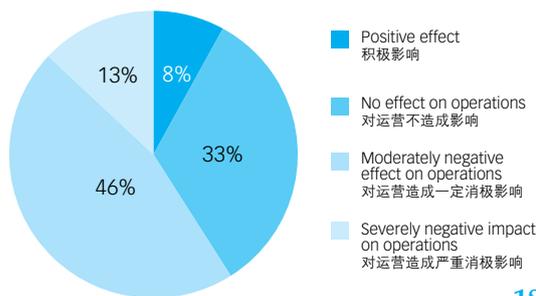


17

What effect will the implementation of the proposed social insurance taxes on foreign employees in China have on your business operations?

实施向在华就业的外国雇员征收社会保险将对企业运营造成何种影响?

Company sample size = 321
企业样本规模

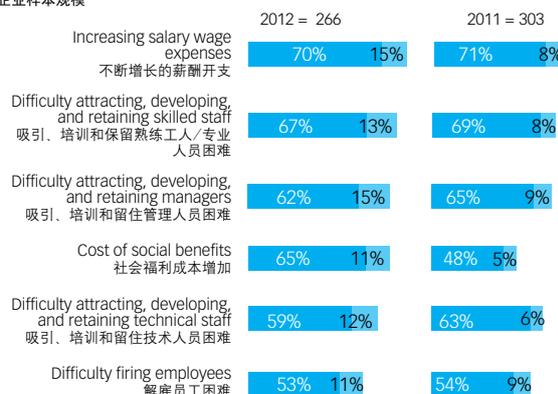


18

How do the following human resources issues affect your business operations in China?

下列相关人力资源问题对企业在华运营产生的影响

Company sample size:
企业样本规模



■ Negative impact (消极影响) ■ Material damage (实质性损害)

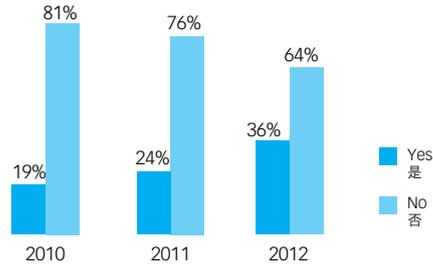
19

Labor Costs and Human Resources 劳动成本与人力资源

Have you or your organization experienced any difficulties in recruiting senior executive talent to work in China because of air quality issues?

企业是否因空气质量问题，招聘在华工作的高级管理人才时遇到困难？

Company sample size: 2012 = 210 2011 = 294 2010 = 244
企业样本规模

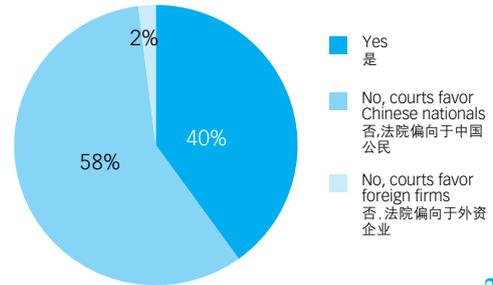


20

Have you found courts in China to provide equal treatment to local and foreign parties when it comes to labor litigation?

遇到劳工纠纷时，法院对本地和外国当事人是否一视同仁？

Company sample size = 88
企业样本规模

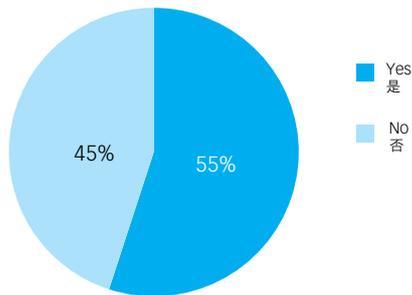


23

Has your company found it more difficult to dismiss employees since the adoption of the Employment Contract Law?

《劳动合同法》的实施，是否使企业解雇员工更加困难？

Company sample size = 247
企业样本规模

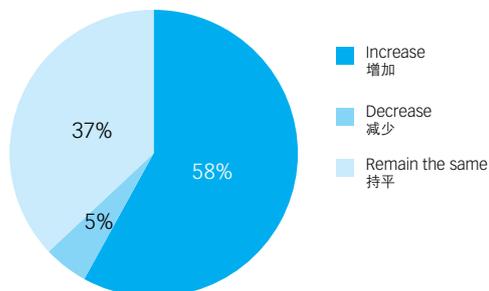


21

This year what do you see as the trend in the number of labor litigation cases brought to court?

企业对今年劳工纠纷诉讼案件数量趋势的预测

Company sample size = 138
企业样本规模



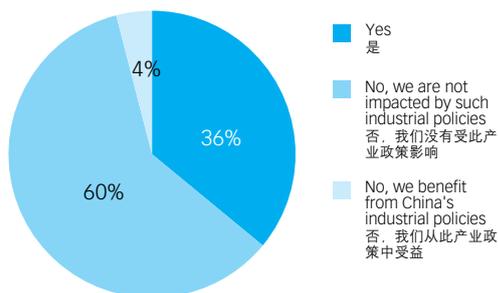
22

Industrial Policy, Tech Transfer, and Licensing 产业政策，技术转移与许可

Do you feel that your company is losing out on business in China as a result of industrial policies that promote and support Chinese companies over foreign companies?

您是否认为由于促进和支持中国本土企业多于外企的产业政策致使公司在华业务亏损？

Company sample size = 303
企业样本规模

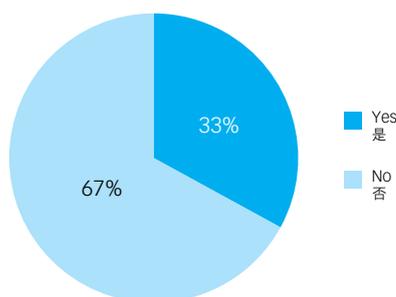


24

At times, China has forced technology or knowledge transfers from foreign companies in exchange for market access. Are the effects of such practices negatively impacting your company or clients' assessment of the business environment in China?

中国有时以换取市场准入为条件迫使外企进行知识或技术转让。该做法是否对企业或客户评估在华运营环境时造成负面影响？

Company sample size = 297
企业样本规模

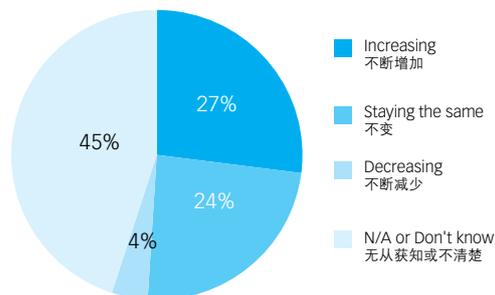


25

In your experience, forced technology transfer in China is:

在您看来，强迫性技术转让在华的状况为？

Company sample size = 301
企业样本规模

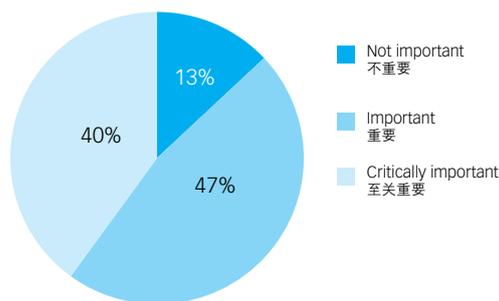


26

How important is the obtaining of licenses to your business (i.e., for the addition of new branches, retail outlets, products, or lines of service)?

获得许可对于企业经营的重要性（如新增分支机构，设立零售网点、产品及服务许可）

Company sample size = 254
企业样本规模

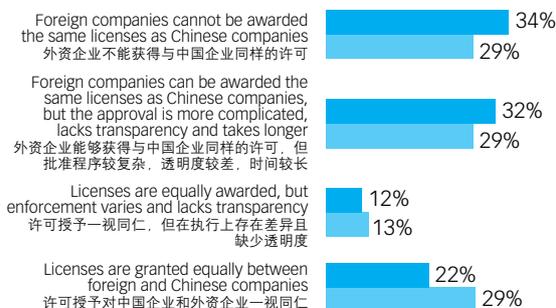


27

How are the relevant licenses in your industry applied?

企业所在行业相关许可申请情况

Company sample size: 2012 = 175, 2011 = 248
企业样本规模



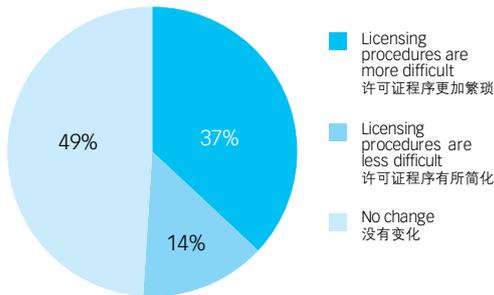
28

Intellectual Property Rights 知识产权

How has awarding of licenses changed in your industry in the past couple of years?

过去几年企业所在行业获得许可证的变化情况

Company sample size = 178
企业样本规模

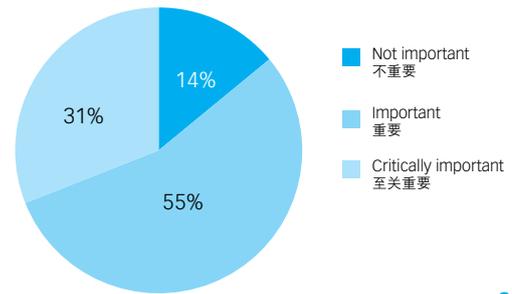


29

How important is the protection of intellectual property rights (IPR) to your business?

知识产权保护对企业发展的重要性

Company sample size = 277
企业样本规模

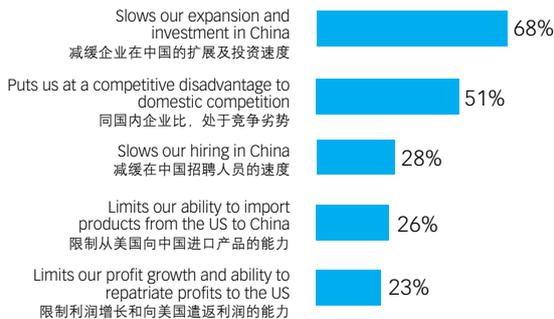


31

How do licensing requirements impact your business? Check all that apply.

许可要求对企业经营的影响

Company sample size = 152
企业样本规模

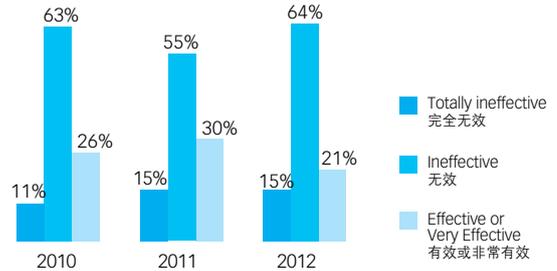


30

How would you rate China's enforcement of IPR?

企业对中国政府保护知识产权执行力的评估

Company sample size: 2012 = 200 2011 = 251 2010 = 146
企业样本规模

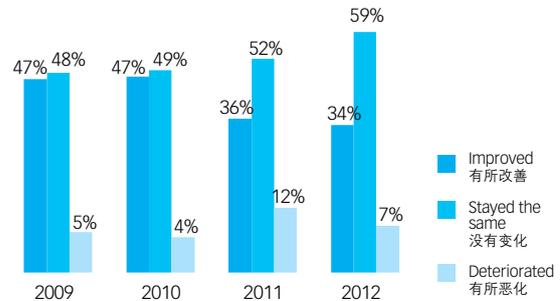


32

In the last year, China's enforcement of IPR has:

去年中国知识产权的执法情况

Company sample size: 2012 = 152 2011 = 149 2010 = 148 2009 = 131
企业样本规模

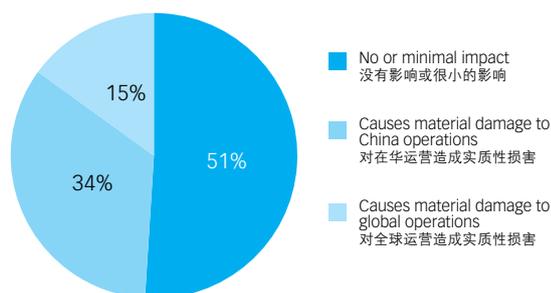


33

What is the extent of damage caused by China-originating IPR infringements of your company's products?

源于中国的知识产权侵权行为对企业产品造成的损害程度

Company sample size = 144
企业样本规模

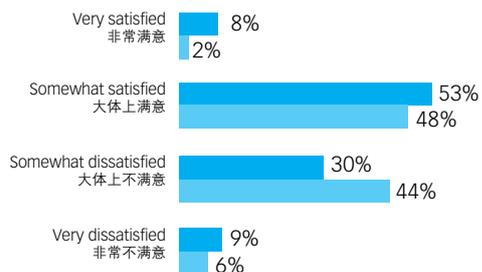


34

If you have taken administrative action, how satisfied were you with the level of cooperation from the relevant Chinese officials?

企业通过行政诉讼打击侵权行为时对中国政府相关官员合作情况的满意程度

Company sample size: 2012 = 154, 2011 = 184
企业样本规模

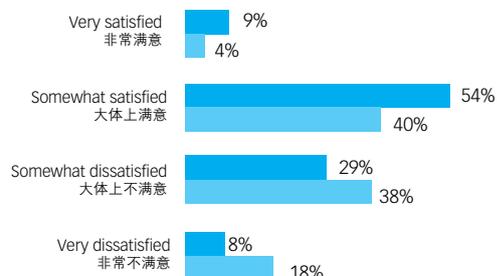


35

If you have brought any infringements to court, were you satisfied with the level of cooperation from the Chinese courts?

企业将侵权行为诉诸法律时对中国法院合作情况的满意程度

Company sample size: 2012 = 131, 2011 = 70
企业样本规模

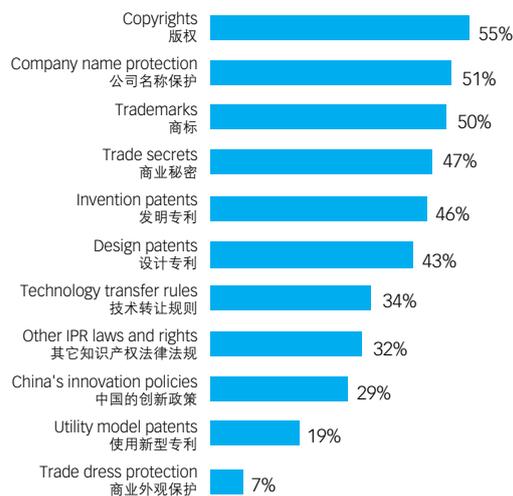


36

Please rank the following in terms of their importance with regard to protecting your company's intellectual property.

根据公司知识产权保护内容的重要性排序

Company sample size = 215
企业样本规模



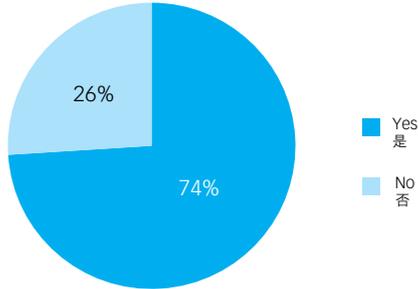
37

Internet and Cyber Security 互联网与网络安全

Does slow or unstable Internet access impede your ability to efficiently conduct business in China?

互联网网速慢或不稳定是否降低企业在华运营的效率

Company sample size = 301
企业样本规模

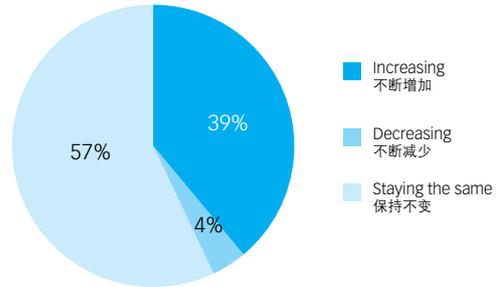


38

In your experience, the risk of a data breach to your China operations is:

您认为公司在华运营数据受到破坏的风险为

Company sample size = 201
企业样本规模

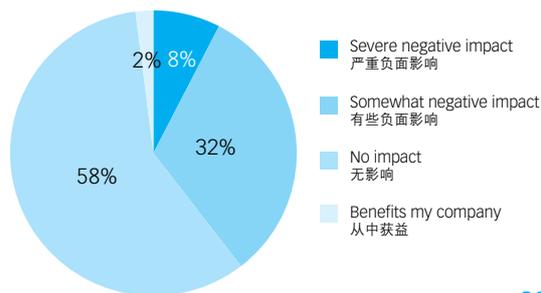


41

To what degree does Internet censorship impact your company's ability to conduct business normally in China?

网络审查对企业正常运营产生的影响

Company sample size = 299
企业样本规模

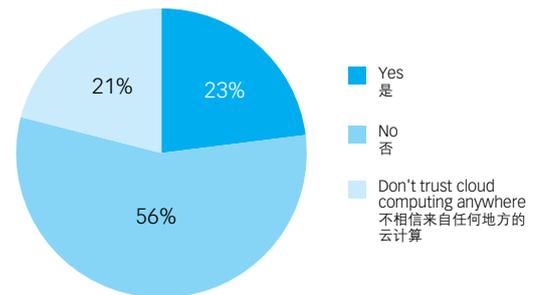


39

Does your company trust cloud computing in China?

企业是否信赖中国的云计算技术?

Company sample size = 134
企业样本规模

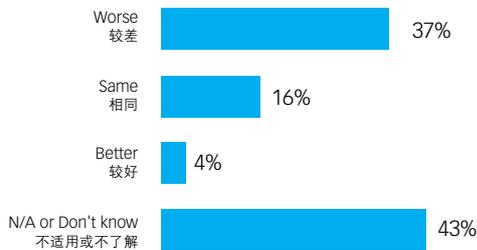


42

How does the cyber security environment in China compare with that of other countries?

中国的网络安全环境与其他国家相比

Company sample size = 319
企业样本规模

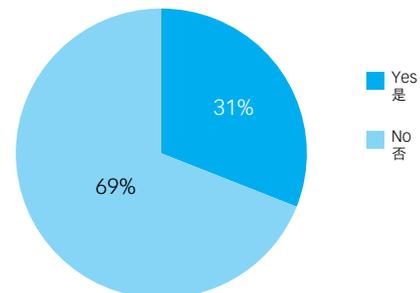


40

Is your company shifting resources or services to the cloud?

企业是否正向云计算转移资源或服务?

Company sample size = 232
企业样本规模



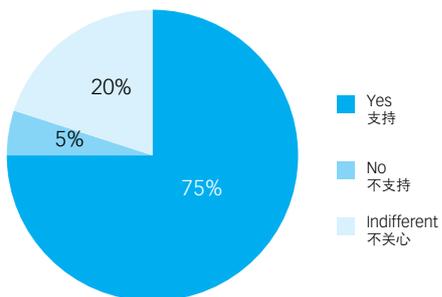
43

Other Charts of Interest 其他相关图表

Do you support Chinese investment in the US?

是否支持中国在美国投资

Company sample size = 333
企业样本规模

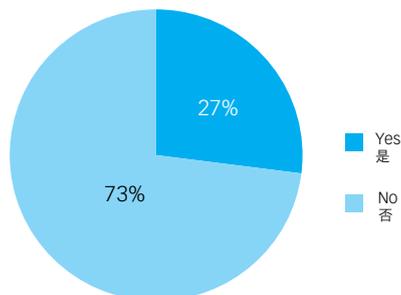


44

Have your intentions changed in regards to M&A in China as a result?

企业并购本土企业的目标是否有改变?

Company sample size = 44
企业样本规模

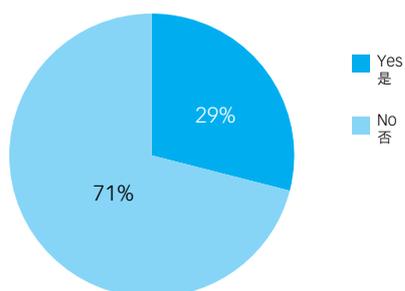


47

Have you pursued any mergers or acquisitions (M&A) in China in the last two years?

企业在过去两年中是否并购过本土企业?

Company sample size = 234
企业样本规模

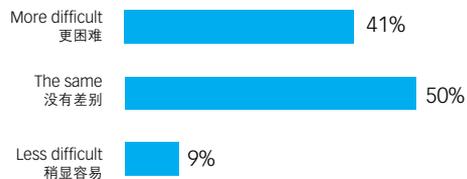


45

In comparison to previous years, pursuing M&A in China is:

和前几年相比，在华并购本土企业的状况?

Company sample size = 116
企业样本规模



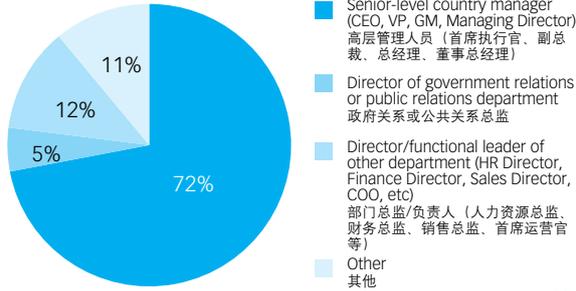
46

Survey Profile 受访者基本情况

As the survey respondent, please tell us about your position in your company.

问卷反馈人员的职务

Company sample size = 387
企业样本规模

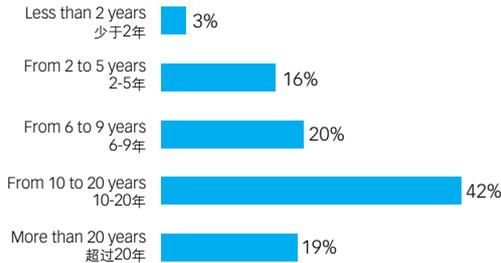


48

How long has your company had a physical presence in China?

企业在华实体成立多长时间?

Company sample size = 384
企业样本规模

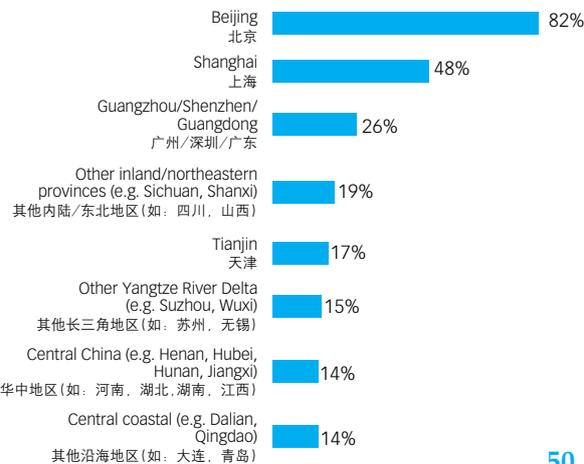


49

Where does your company have a legal presence? Please check all that apply.

企业在以下哪些地方建立了合法实体? 选择所有适用项

Company sample size = 384
企业样本规模

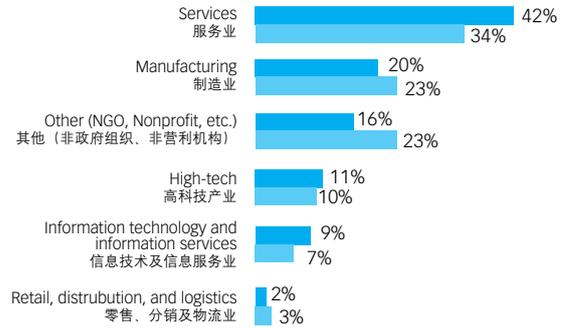


50

Which of the following categories best describes your main line of business in China?

企业在华主要业务范畴

Company sample size: 2012 = 390 2011 = 388
企业样本规模

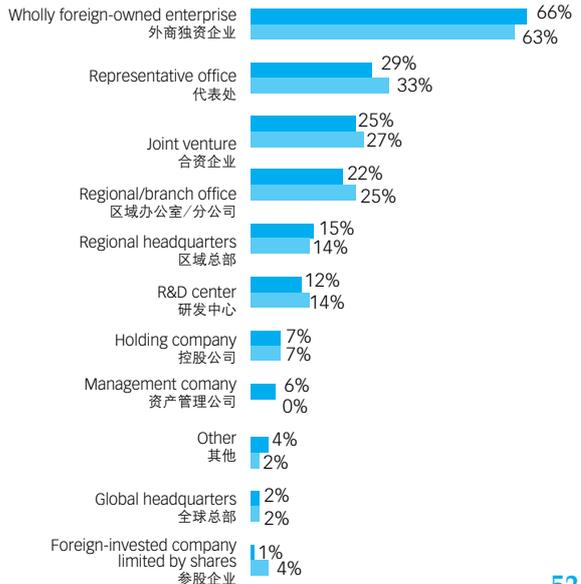


51

Which of the following legal entities does your company have in China? Please check all that apply.

企业在华法律实体的具体形式为? 选择所有适用项

Company sample size: 2012 = 384 2011 = 432
企业样本规模

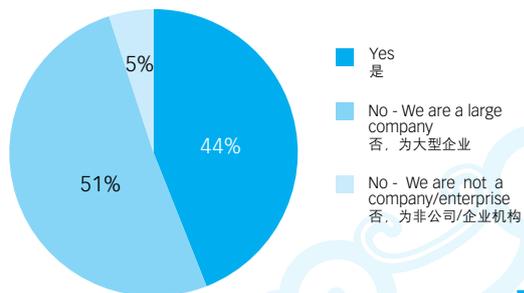


52

Would you identify your company as a small- or medium-sized enterprise (no more than 300 employees)?

企业是否自定义为中小型企业 (雇员人数不超过300人)

Company sample size = 390
企业样本规模

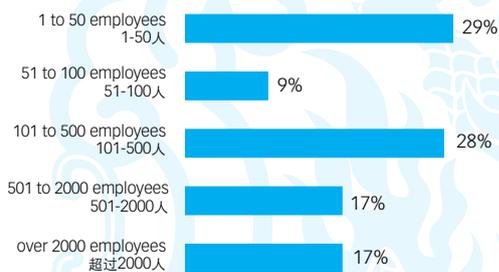


53

How many employees does your company have in China (including subsidiaries and joint ventures)?

企业在华雇员人数 (包括子公司及合资公司)

Company sample size = 380
企业样本规模



54

2012 White Paper Priority Recommendations Scorecard

The table below is an index of all priority recommendations in the 2011 and 2012 AmCham China *White Papers*. The progress on each issue from 2011 has been tracked throughout the past year and rated on a scale of zero to five according to following guidelines: (5) = Complete resolution; (4) = Partial resolution; If neither (5) nor (4) has been achieved, one point was added for each of the following: (+1) = Avenue for dialogue on issue established; (+1) = Received feedback from government; (+1) = Incremental progress; (0) = No progress.

Chapter	2011 Recommendation	Progress Rating	2012 Recommendation
Agriculture			
<i>US Government</i>	Employ a science-based approach to Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish.	4	Employ a science-based approach to Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish.
<i>Chinese Government</i>	Implement a more transparent and science-based regulatory system across all agricultural sectors, both for imported commodities and domestically cultivated crops.	3	Implement a more transparent and science-based regulatory system across all agricultural sectors, both for imported commodities and domestically cultivated crops.
Bond Markets			
<i>Chinese Government</i>	Implement policies to support national treatment for all banks and allow foreign banks to compete fully in domestic markets, particularly in the areas of underwriting and derivatives trading. [PBOC, NAFMII, CBRC, and CSRC]	1	Support national treatment for all banks and securities houses, including by allowing foreign-invested banks to compete fairly and fully in domestic markets (particularly in the areas of underwriting and derivatives trading) and removing limits on foreign ownership in all financial services sectors. [PBOC, NAFMII, CBRC, CSRC, and State Council]
Business Process Outsourcing			
<i>Chinese Government</i>	Create a government-sanctioned trade body that can act as a collective representative and advocate for central government, Model Cities, and domestic and multinational service providers. Empower this body to address common issues and provide both international and domestic marketing of the benefits offered by the Chinese outsourcing industry.	1	Create a government-sanctioned trade body that can serve as a clearinghouse, coordinator, and venue for dialogue among central government, Model Cities, and domestic and multinational service providers.
Business Sustainability			
<i>US Government</i>	Consult broadly with US companies operating in China when considering laws and regulations which may affect their Chinese operations.	2	Facilitate the dissemination of international knowledge, tools, and best practices for business sustainability.
<i>Chinese Government</i>	Consult broadly with business when designing policies, guidelines, and laws relevant to business to encourage compliance and help avoid unintended consequences of regulations.	3	Consult broadly with business when designing policies, guidelines, and laws relevant to business to encourage compliance, provide sufficient guidance, and level the playing field.
Chengdu			
<i>Chengdu Government</i>	Create incentives, subsidies, and preferential tax policies to support the development of the human resource industry and to attract and retain talent in the region, namely in the hospitality, information technology, and top management sectors.	3	Offer incentives, subsidies, and preferential tax policies for highly skilled technical and managerial talent in order to attract and retain such talent in Chengdu, particularly in the banking and IT industries.
Chongqing			
<i>Chongqing Government</i>	Maintain a consistent energy supply, increase transparency during times of energy shortages, and regularly release an energy situation report at least once every month.	4	Maintain a consistent energy supply, increase transparency during periods of shortage by releasing monthly energy situation reports, and otherwise improve mechanisms for energy pricing and distribution.
Civil Aviation			
<i>Chinese Government</i>	Adopt a full, nationally managed ICAO airspace classification standards system and grant greater influence to civilian authorities, where possible.	2	Continue increasing the amount of civil-use airspace and expanding the flexibility of air traffic operational procedures.
Competition Law			
<i>Chinese Government</i>	Allow foreign lawyers representing undertakings to attend and participate in hearings alongside local counsel.	0	Allow foreign lawyers to attend and participate in hearings alongside local counsel.

2012年《白皮书》重点关注问题一览表

下表列出中国美国商会 2011 及 2012 年白皮书中主要关注的建议。过去一年已对 2011 年白皮书中相关建议进展进行了追踪，并按下列评分标准予以排序：(5) = 彻底解决；(4) = 部分解决；若 (5) 或 (4) 均未实现，出现以下任一种情形即可加一分：(+1) = 就现存问题展开对话；(+1) = 从政府方面得到反馈；(+1) = 取得更多进展；(0) = 没有任何进展。

章节	2011年白皮书主要建议汇总	2011年进展评分	2012年白皮书主要建议汇总
农业			
美国政府	采用科学的方法，判定是否允许中国的肉类、鱼类和其他农产品（包括家禽熟食、苹果、梨和鲑鱼）进入美国市场。	4	采用科学的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨和鲑鱼）的美国市场准入要求。
中国政府	不论对进口产品还是本国培育的农作物，均实施更为科学、透明的农业产业监管体系。	3	不论对进口还是国产农作物，均实施更为透明、科学的农业产业监管体系。
债券市场			
中国政府	实施相关政策，以支持对于所有银行的国民待遇并允许外资银行在中国市场中开展全面竞争，尤其是在承销和衍生产品交易领域。[中国人民银行、交易商协会、银监会、证监会]	1	支持对于所有银行及证券公司的国民待遇，并允许外资银行在中国市场中开展公平的、全面的竞争，尤其是在承销和衍生产品交易领域。取消所有金融服务领域中外资所有权的限制。[中国人民银行、交易商协会、银监会、证监会和国务院]
业务流程外包			
中国政府	经政府批准，设立一个专门的行业协会担任集体代表，为中央政府、示范城市和国内及国际服务供应商代言。授权该团体处理普遍性问题，并在国际和国内开展营销，宣传中国服务外包产业的各项优惠政策和措施。	1	在中央政府，“示范城市”，国内外供应商间设立一个由政府授权的行业协会，进行协调，清算及对话。
企业可持续性			
美国政府	就可能影响在华美国企业运营的法律法规方面，广泛征询在华经营的美国企业的意见。	2	促进企业可持续性发展的国际知识、工具和最佳实践的推广。
中国政府	在制定与企业相关的政策、指引和法律时广泛咨询企业意见，从而鼓励企业合规，有助于避免法规的非预期后果	3	在制定与企业相关的政策、指引和法律时广泛咨询企业意见，从而鼓励企业合规，为企业提供充分的指引，并营造公平的环境。
成都			
成都市政府	制定激励措施、提供补贴和税收优惠政策以支持人力资源产业的发展，为本地区吸引和留住人才，特别是在酒店业、信息产业和高级管理层。	3	为高素质的技术型和管理型人才提供激励措施、补贴和税收优惠政策，藉此吸引人才、留住人才，尤其是在银行和 IT 产业。
重庆			
重庆市政府	确保持续供电，增加供电短缺时的信息透明度，至少每月一次定期通报供电状况。	4	保持能源持续供应，在能源短缺时期提升透明度，包括公布月度能源状况报告，或改善能源定价和分配机制。
民用航空			
中国政府	全面采用国际民航组织空域分类标准体系，并尽可能赋予民用航空管理部门更大的影响力。	2	继续增加民用空域的范围，加大空中交通运营程序的灵活度。
竞争法规			
中国政府	允许代表经营者的外国律师与本土法律顾问一同出席听证会	0	允许外国律师与本地法律顾问一同出席和参与听证会。

Chapter	2011 Recommendation	Progress Rating	2012 Recommendation
Construction, Engineering, and Design			
<i>Chinese Government</i>	The regulation allowing design firms to apply for Grade A Design Qualifications excludes a majority of FIDEs. Allow initial Grade A establishment for FIDEs meeting qualification requirements.	0	Formally issue regulations clarifying qualifications required to undertake EPC contracting.
Cosmetics			
<i>Chinese Government</i>	Amend the "Regulations Concerning Hygiene Supervision of Cosmetics" to simplify the administration of the industry and to ensure that safety is a priority in both cosmetics administration and licensing.	0	SFDA should release further guidance detailing the key criteria and technical evaluation rules in the "Guide to Registration and Evaluation of New Ingredients for Cosmetics."
Customs			
<i>Chinese Government</i>	Develop a nationwide guideline on advance valuation rulings for enterprises to follow.	2	Improve the management system over processing operations.
Dalian			
<i>Dalian Government</i>	Encourage international-quality healthcare facilities to open in Dalian by offering tax and financial benefits to qualified operators.	3	Implement changes under China's Social Insurance Law in a manner consistent with other administrative regions and cities throughout China, including by retaining a cap on employer contributions.
Direct Sales			
<i>Chinese Government</i>	Revise service center requirements from one per district to one per city and delegate service center approval authority to the provincial level.	2	Revise service center requirements from one per urban district to one per city. Simplify the license approval process by requiring only provincial-level approval of service center establishment plans. Eliminate multi-level government approvals and sales initiation approvals.
Electronic Payment Services			
<i>Chinese Government</i>	N/A	N/A	Open market access to other domestic and international EPS providers in addition to China Union Pay. [PBOC and MOFCOM]
Express Delivery Services			
<i>Chinese Government</i>	Return to the more flexible procedures for the import and export of sales samples and advertising articles that were in place before the implementation of Notice No. 33.	1	Ensure timely processing of EDS domestic license approvals, and apprise applicants of their application status in a timely manner.
Food Safety			
<i>US Government</i>	Continue to support the US FDA and CPSC's missions in China and provide expanded resources for them to cooperate and collaborate with Chinese counterparts on food and product safety.	4	Provide expanded resources for the US FDA to collaborate with Chinese counterparts on food safety issues.
<i>Chinese Government</i>	Improve enforcement of and compliance with food and product safety regulations through building capacity of and allocating sufficient resources for relevant agencies at all levels of government.	4	Continue efforts to inform and educate regulators, manufacturers, and distributors about accepted international standards, best practices, and conditions related to food safety in the global market.
Government Procurement			
<i>Chinese Government</i>	Submit a new, revised GPA accession offer.	4	Submit a revised GPA accession offer in line with those of current parties, including fuller sub-central and SOE coverage.

章节	2011年白皮书主要建议汇总	2011年进展评分	2012年白皮书主要建议汇总
建筑、工程和设计			
中国政府	根据相关条例，大部分外商投资设计企业均无法申请甲级设计行业资质认证。有关部门应初步建立针对外商投资设计企业的甲级行业资质认证体制。	0	颁布正式的法规，明确承揽工程采购施工一体化项目的资质要求。
化妆品			
中国政府	修订《化妆品卫生监督条例》，简化行业行政管理，确保安全性是化妆品行政管理和许可的首要考虑。	0	建议国家食药局在目前《化妆品新原料申报与审评指南》的基础上，进一步出台细化的主要标准和技术审评规则。
海关			
中国政府	制定全国统一的预估价制度指导规定，便于企业遵循。	2	进一步完善加工贸易管理制度。
大连			
大连市政府	向具有国际水准的医疗保健运营商提供税收和其它财政优惠政策，鼓励其落户大连。	3	在中国《社会保障法》框架下，继续实施与国内其他行政区域和城市相一致的政策变化，包括保留用人单位缴纳上限的规定。
直销			
中国政府	将关于服务网点的规定从每个城区设立一个修改为每个城市设立一个，并将服务网点的审批权下放至省级主管部门。	2	将关于设立服务网点的规定从每个城区设立一个修改为每个城市设立一个。 简化许可审批过程，只要求服务网点方案通过省级审批。同时撤销多级政府审批和销售启动审批。
电子支付			
中国政府	无	N/A	向除中国银联外的其它国内外 EPS 供应商开放市场。[中国人民银行、商务部]
快递服务			
中国政府	恢复海关总署第 33 号公告实施之前采取的更为灵活的进出口货样及广告品清关流程，设定货物的低值免税额，并取消收发货人的注册要求。	1	确保企业提出的国内快递许可申请获得及时审批，并及时将审批进展情况告知申请人。
食品安全			
美国政府	继续支持美国食品药品监督管理局（US FDA）和消费品安全委员会（CPSC）在中国的发展宗旨，向其提供更多的资源，支持它们与中国同行在食品和产品安全领域开展合作。	4	为美国食品药品监督管理局提供更多资源，以支持该机构与中国同行在食品安全领域开展合作。
中国政府	对各级政府相关部门进行能力建设并配以足够的资源，提高食品和产品安全法律执法效率和合规度。	4	继续对监管者、生产商和分销商进行有关国际市场食品安全国际通行标准、最佳惯例和状况方面的培训。
政府采购			
中国政府	提交一份新的、经进一步修改后的中国加入《政府采购协定》的出价清单。	4	提交一份重新修改后的中国加入《政府采购协定》的出价清单，并与其他现有缔约方保持一致，并应更全面地将地方政府和国有企业纳入覆盖范围。

Chapter	2011 Recommendation	Progress Rating	2012 Recommendation
Healthcare			
<i>Chinese Government - Healthcare Services</i>	N/A	N/A	Further encourage private investment in healthcare by fully implementing the initiatives in Document 58 at all government levels and add healthcare services to the encouraged category of the Foreign Investment Catalogue.
<i>Chinese Government - Medical Devices</i>	Streamline registration processes for medical devices, including by removing the requirement for country-of-origin manufacturing approvals for medical devices, in favor of an approach recognizing other foreign approvals.	0	Develop integrated medical device tendering evaluation with less emphasis on cost, eliminate artificial tendering constraints, increase industry engagement in policy making related to medical device tendering, and conduct tenders in a transparent, standardized way, guided by MOH centralized policies.
<i>Chinese Government - Pharmaceuticals</i>	N/A	N/A	Apply a pharmaceuticals pricing policy that rewards innovation and high-quality rather than focusing primarily on price cuts, by implementing a differentiated pricing system for innovative, patented drugs, and safe generic drugs.
High-Tech Trade Promotion and Export Controls			
<i>US Government</i>	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.	4	Formally recognize the ECWG as the public-private partnership mechanism for dialogue in the US-China trade control exchange.
<i>Chinese Government</i>	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.	3	Formally recognize the ECWG as the public-private partnership mechanism for dialogue in the US-China trade control exchange.
Human Resources			
<i>US Government</i>	N/A	N/A	Negotiate a tax totalization treaty with China.
<i>Chinese Government</i>	Provide detailed guidance from MOHRSS and the Supreme People's Court to clarify the ambiguities in the Labor Contract Law and its implementation rules.	0	Establish or clarify mechanisms for foreign employees to receive benefits under China's social insurance programs, or allow foreign employees to opt out of participation.
Information and Communications Technology and Cyber Security			
<i>US Government</i>	Initiate strategic and high-level dialogue with relevant Chinese stakeholders, including the Ministry of Public Security, on security issues which directly affect international trade, specifically MLPS, CCCi, and encryption codes.	1	Relevant agencies of the US government, including the Department of State, Department of Commerce, and the FCC, should coordinate to engage with China on information security policy as it relates to trade and innovation.
<i>Chinese Government</i>	For systems not related to national security (i.e., non-military, financial, educational, and other networks), remove MLPS and encryption regime requirements that call for review of source codes and procurement of only domestic proprietary technology.	0	Delink product security credentials from the origin of its IP, including for foreign encryption technology and products at MLPS level three and above.
Innovation Policy			
<i>Chinese Government</i>	Withdraw and modify discriminatory innovation, procurement, standards, tax, IP, IT security, and other policies to allow full participation of foreign companies.	4	Ensure that China's new strategic emerging industries and other indigenous innovation policies are non-discriminatory in all aspects, including procurement, standards, tax, IP, IT security, and technical innovation.
Insurance			
<i>Chinese Government</i>	Grant multiple new branch licenses on a concurrent rather than consecutive basis for both foreign and domestic companies.	0	Review and approve branch applications by foreign-invested insurers (as has now been done with respect to sub-branch applications) in the same manner and at the same pace as applications by domestically invested insurers.
Intellectual Property Rights			
<i>US Government</i>	Address the complex linkages among IP, innovation, standards, and antitrust policies to ensure that China enforces its laws in a non-discriminatory manner.	4	N/A
<i>Chinese Government</i>	Amend the Criminal Code or issue a new Supreme People's Court judicial interpretation as early as possible to establish appropriate thresholds for copyright piracy without a profit motivation, as well as criminal prosecution of corporate end-user software piracy and online piracy.	3	Fully implement bilateral commitments on software legalization in state-owned enterprises and all levels of government.

章节	2011年白皮书主要建议汇总	2011年进展评分	2012年白皮书主要建议汇总
卫生保健			
中国政府 - 医疗服务	无	N/A	在各级政府中全面实行 58 号文件中的相关计划，以进一步鼓励医疗领域的民间投资，并将医疗服务纳入《外商投资目录》的“鼓励类”。
中国政府 - 医疗器械	优化医疗器械注册程序，包括取消医疗器械注册申请中的原产国要求，并认可其他国家的相关批准文件。	0	制定医疗器械招标的综合评价制度，减少对价格的强调，取消人为的招标限制，提高医疗器械招标政策制定过程中行业的参与度，遵循卫生部的集中化政策实行透明化、标准化的招标程序。
中国政府 - 药物	无	N/A	对创新型药品、专利药品及安全非专利药物实行差异化的定价体系，采用鼓励创新及高质量药品生产，而非主要关注降价的定价政策。
高科技贸易促进和出口管制			
美国政府	提供资金、发言人以及相关政策制定部门官员的支持，促进在美中两国开展高科技贸易推介活动。	4	正式认可出口合规工作组作为推动美中贸易管制交流对话的政企合作机制。
中国政府	为中国企业提供更多的服务，激励中国企业实行合规和透明度计划，以获得美国高科技战略出口产品的进口资格。	3	正式认可出口合规工作组作为推动美中贸易管制交流对话的政企合作机制。
人力资源			
美国政府	无	N/A	与中国政府就税务加总协议展开协商。
中国政府	人力资源和社会保障部、最高人民法院颁布详细的《劳动合同法》实施指引规则，对该法及其实施细则的模糊规定作进一步的明确。	0	在中国社保体系中建立或明确外籍雇员享受福利的制度，或者允许外籍雇员不参加社保。
信息通讯技术和网络安全			
美国政府	与中国有关的利益相关者（包括公安部）就直接影响国际贸易的安全问题，特别是信息安全等级保护制度、中国信息安全产品强制认证和加密问题展开战略性的高级别对话。	1	相关美国政府机构，包括美国国务院、美国商务部、联邦通信委员会应该在信息安全政策方面与中国进行沟通，因为信息安全政策关系到贸易与创新。
中国政府	对与国家安全无关的系统（即非军事、金融、教育和其他网络），取消要求审核源代码和只有国内专有技术采购的信息安全等级保护制度和加密机制要求。	0	将产品安全凭证与其知识产权来源地脱钩，这包括取消针对信息安全等级保护制度中对在三级及以上级别单位中使用外国加密技术和产品的限制。
创新政策			
中国政府	撤销和修改有关创新、采购、标准、税收、知识产权、信息技术安全和其他方面的歧视性政策，允许外资公司充分参与市场竞争。	4	确保中国新的战略新兴产业和其他自主创新政策中不含任何对采购、标准、税收、知识产权、信息技术安全和技术创新方面的歧视性政策。
保 险			
中国政府	对中资和外资保险公司一视同仁，准予同时提交多个新分支机构的设立申请，无需再进行逐一申请。	0	在审批分支机构设立申请方面应对外资保险公司（如同目前针对分公司以下分支机构审批所实施的措施）和中资保险公司一视同仁。
知识产权			
美国政府	厘清知识产权、创新、标准以及反垄断政策相互间的复杂关联性，以确保中国以非歧视性方式执法。	4	无
中国政府	尽早修订《刑法》或颁布新的最高人民法院司法解释，针对无营利动机版权盗版以及企业终端用户软件盗版和网络盗版的刑事诉讼设立合理的立案门槛。	3	全面履行在国有企业及各级政府中实现软件合法化的双边承诺。

Chapter	2011 Recommendation	Progress Rating	2012 Recommendation
Legal Services			
<i>Chinese Government</i>	Revise current regulations to allow foreign law firms to provide comprehensive legal services to their clients through qualified PRC lawyers.	0	Revise current regulations to allow foreign law firms to provide comprehensive legal services to their clients through qualified PRC lawyers.
Machinery Manufacturing			
<i>Chinese Government</i>	MIIT, MOFCOM, and NDRC should allow foreign companies to establish wholly foreign-owned enterprises or joint ventures with majority shares to produce truck crane and certain specialized vehicles, including in western and central China.	1	NDRC and MOFCOM should eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both foreign- and domestically invested companies.
Media and Entertainment			
<i>Chinese Government</i>	Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control.	1	Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control.
Real Estate			
<i>Chinese Government</i>	Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171, and streamline the approval process.	0	Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171, and streamline the approval process.
Retail and E-Commerce			
<i>Chinese Government</i>	Apply the same regulations and standards for both foreign and domestic retailers.	2	Apply the same regulations and standards to both foreign- and domestically invested retailers.
Shanghai			
<i>Shanghai Government</i>	Engage central government authorities to loosen capital market controls as China moves toward having a fully convertible renminbi.	1	Support Shanghai's 2020 goals, engage central government authorities to review personal income tax policies, and address other lifestyle concerns in order to ensure Shanghai's talent competitiveness with other Asian business hubs while at the same time building industry-academia partnerships to develop native talent.
Standards, Certification, and Conformity Assessment			
<i>Chinese Government</i>	SAC should more closely monitor the activities of TC- and SC-level standards working groups to ensure that all Chinese-registered foreign companies are allowed to participate in standards development activities on an equal basis with domestic enterprises.	3	Broaden recognition of international SDOs beyond ISO, IEC, and ITU, to any organization which follows the WTO/TBT principles on international standards development.
Tax Policy			
<i>Chinese Government</i>	Foster greater transparency and predictability in tax policy making and tax administration.	3	Clarify business purpose, treaty application in case the intermediate company is disregarded, and the tax treatment of declared but undistributed dividends post-closing, and harmonize the internal restructuring rule in Circular 59 and Circular 698.
Tianjin			
<i>Tianjin Government</i>	Teach and enforce professional standards for taxi drivers and require universal acceptance of the "City card" by taxis.	0	Improve training programs catering to key sectors, specifically finance, services, IT, and manufacturing, to support growth of Tianjin's tertiary industry.
Visa Policy			
<i>US Government</i>	Create a strategic plan to marshal human resources and facilities to meet the rapidly increasing demand for visas to the US in 2011 and in the years to come.	3	Increase the capacity of the US Mission in China to meet rapidly increasing demand for nonimmigrant visas by qualified applicants.
<i>Chinese Government</i>	Unify visa application rules across various regions and publish all rules in writing, creating a transparent approach that does not hamper business activities.	2	Make visa application requirements and procedures uniform nationwide and publish them so they are transparent.
<i>Both Governments</i>	High-level officials from both countries should advance negotiations on reciprocal agreements to issue nonimmigrant visas, especially visitor and student visas, valid for longer periods.	2	Extend visitors' visa validity to 10 years.
Wuhan			
<i>US Government</i>	N/A	N/A	Offer American citizen services, such as notary, tax, and other services, at the US Consulate in Wuhan.
<i>Wuhan Government</i>	Encourage a vibrant and stable foreign investment community in Wuhan by facilitating the establishment of international-quality schools and hospitals.	3	Encourage international-standard healthcare facilities to operate in Wuhan through the provision of incentives to qualified operators.

章节	2011年白皮书主要建议汇总	2011年进展评分	2012年白皮书主要建议汇总
法律服务			
中国政府	修改现有条例，允许外国律师事务所聘请合格的中国律师为其客户提供全方位的法律服务	0	修改现有条例，允许外国律师事务所聘请合格的中国律师为其客户提供全方位的法律服务。
工程机械制造业			
中国政府	工信部、商务部、发改委应该允许外国企业建立生产汽车起重机和部分特种车辆的独资公司或控股合资公司，包括在中国中西部地区。	1	发改委和商务部取消对外资企业投资机械制造业的限制，并给予外资与内资企业同等的待遇。
传媒娱乐			
中国政府	减少对所有外国传媒企业进入中国的非关税壁垒，并将外国媒体供应商的市场准入壁垒，包括媒体审查和管控，降至最少。	1	减少对所有外国传媒企业进入中国的非关税壁垒，并将外国媒体供应商的市场准入壁垒，包括媒体审查和管控，降至最少。
房地产			
中国政府	取消 171 号文件针对外资企业的市场准入限制，简化审批手续。	0	取消 171 号文件针对外资企业的市场准入限制，简化审批手续。
零售业和电子商务			
中国政府	对内外资零售企业采用相同的监管要求和标准	2	对内外资零售企业采用相同的监管要求和标准。
上海			
上海市政府	随着中国正力争实现人民币可完全自由兑换，应与中央政府有关部门协作以放松对资本市场控制。	1	支持上海 2020 年计划，中央政府有关部门合作评估个人所得税政策，并解决其他民生问题，以保证上海人才的竞争力与其他亚洲商业中心相比具有优势，同时建立校企合作机制培养本土人才。
标准、认证和许可			
中国政府	国标委应更密切地监督各技术委员会和技术委员会分会级标准工作组的活动，确保所有在华登记注册的外资企业都能够在本国企业平等的基础上参与标准制定活动。	3	扩大对国际标准制定组织的认可范围，从 ISO、IEC 和 ITU 扩大至其他遵循世界贸易组织贸易技术壁垒 (WTO/TBT) 关于国际标准制定原则的标准制定组织。
税收政策			
中国政府	提高税收政策制定和税收监管的透明度和可预见性。	3	对商业目的、中间公司被忽略情形下税收协定的适用及交易结束后公布但未发布的股息的处理等问题予以明确，并使 59 号文和 698 号文的相关内容协调一致。
天津			
天津市政府	宣传并执行针对出租车司机的职业标准，要求出租车统一接受“城市一卡通”	0	为主要行业，尤其是金融、服务、IT 和制造业完善培训项目，以支持天津第三产业的发展。
签证政策			
美国政府	制定战略规划，优化人力资源和设施配置，满足 2011 年及未来不断增长的赴美签证的需求。	3	提高美国驻华领事机构的能力以应对符合条件申请人快速增长的非移民签证需求。
中国政府	统一各地的签证申请规定，公布所有书面签证规定，提高签证申请程序的透明度，减少其对商务活动的阻碍。	2	在全国范围内实现签证申请要求与程序的统一，并对其予以公布以保证其透明度。
两国政府	两国高层应推进非移民签证签发，尤其是旅行签证和学生签证的互惠协议谈判，延长签证有效期。	2	将旅行签证的有效期延长至 10 年。
武汉			
美国政府	无	N/A	驻武汉的美国领事馆提供美国公民服务，如公证、税务和其它服务。
武汉市政府	推动建立国际化质量的学校和医院，鼓励武汉打造充满活力且稳定的外商投资环境。	3	为合格的医疗机构提供鼓励措施来推动建立符合国际标准的医疗设施。

Part Two:
Industrial Policy and Market Access
产业政策和市场准入



Competition Law

Introduction

“The Anti-Monopoly Law of China” (AML), China’s first comprehensive competition law, took effect in August 2008. Although the AML incorporates key principles and practices drawn from the competition laws of the US, EU, and other jurisdictions, the AML left open many critical issues to be addressed through subsequent implementation. Through recent rulemaking initiatives and enforcement activities, Chinese authorities have made substantial progress in clarifying China’s new competition rules, underscoring the value of continued bilateral dialogue, capacity building, and exchange. Nevertheless, concerns persist regarding: (1) application of the AML in a manner inconsistent with its stated purpose of protecting consumer welfare and enhancing economic efficiency; (2) selective or discriminatory enforcement to promote domestic interests (often at the expense of foreign parties); (3) inadequate staffing and non-transparent decision making resulting in lengthy review even for “no issue” mergers; and (4) blocking of international counsel from attending meetings and hearings.

Significant Developments

China’s AML addresses: anti-competitive horizontal or vertical agreements; exclusionary and predatory conduct by firms with substantial market power (“abuse of dominance”); and mergers, acquisitions, and other transactions that may restrict competition. The AML also touches on “administrative monopoly”—abuse of official authority eliminating or restricting competition.

The Anti-Monopoly Bureau of the Ministry of Commerce (MOFCOM) conducts merger review. The Price Supervision and Anti-Monopoly Bureau of the National Development and Reform Commission (NDRC) reviews price-related violations of anti-competitive agreements and abuse of dominance. The Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce (SAIC) reviews non-price related violations. In addition, parties injured by violations of the AML may sue for damages in Chinese courts.

Recent Regulations and Measures

The enforcement agencies were active in rule-making during 2011:

- **January 5:** “Anti-Price Monopoly Regulations” and “Anti-Price Monopoly Administrative Enforcement Procedural Regulations” (NDRC);
- **January 7:** “Measures on the Prohibition of Monopoly Agreements” and “Measures on the Prohibition of Abuse of Dominant Market Position” (SAIC), articulating SAIC’s substantive approach and enforcement procedures for anti-competitive agreements and abuse of dominance cases;
- **January 7:** “Measures on the Prohibition of Abuse of Administrative Powers to Eliminate or Restrict Competition” (SAIC), addressing anti-competitive misuse of administrative powers;
- **June 2:** “Draft Provisions on Relevant Issues Concerning the Application of Law in Civil Monopoly Dispute Cases” (Supreme People’s Court);
- **August 25:** “Regulations on the Implementation of Security Review for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors” (MOFCOM), establishing the process for review of foreign investment implicating China’s security interests;
- **September 2:** “Interim Rules on Evaluating Competitive Effects of Concentrations of Business Operators” (MOFCOM), providing guidance on evaluating the competitive effects of proposed transactions.

Recent Enforcement Activities

MOFCOM’s merger review remains the most visibly active component of Chinese anti-monopoly enforcement. Although MOFCOM clears most transactions without conditions, nearly all notifications encounter substantial delays.

Three 2011 decisions are of particular interest:

- MOFCOM cleared, subject to conditions, the acquisition of OAO Silvinit by OAO Uralkali, two Russian potash producers in an industry of importance to agriculture and in which China is heavily import-dependent. Although the geographic market was established as

竞争法规

引言

2008年8月生效的《中华人民共和国反垄断法》（以下简称“《反垄断法》”）是中国第一部有关竞争的综合性法律。虽然《反垄断法》包含了取自美国、欧盟及其他司法管辖区有关竞争法律的主要原则与实践，但仍有许多重要问题需要在法律执行过程中加以解决。通过近期的新制定与执法活动，中国主管部门在明晰中国新的竞争制度方面已经取得了实质性进步，彰显出持续性双边对话、能力建设及沟通交流的价值。尽管如此，在以下几个方面仍存有忧虑，即(1)《反垄断法》的运用是否与其所宣称的保护消费者福利及提高经济效率的目标相符；(2)带有选择性或歧视性的执法以促进本国利益（通常以牺牲外方利益为代价）；(3)由于人员配备不足及尚不透明的决策过程导致即使是“毫无问题”的并购也要经历冗长的审查过程；(4)阻碍国际法律顾问参加会议和听证。

重大进展

中国《反垄断法》规制的内容包括：横向与纵向的反竞争性协议；具有实际市场支配地位的经营者的排他性及掠夺性行为（“滥用市场支配地位”）；及可能限制竞争的各种合并、收购和其他交易行为。《反垄断法》还涉及到滥用官方行政职权排除或限制竞争的“行政垄断”行为。

中国商务部（以下简称“商务部”）反垄断局负责并购审查。国家发展和改革委员会（以下简称“发改委”）价格监督检查与反垄断局负责审查与价格有关的反竞争性协议及滥用市场支配地位方面的违法行为。国家工商行政管理总局（以下简称“工商总局”）反垄断与反不正当竞争执法局负责审查价格以外的其他垄断违法行为。另外，遭受反垄断违法行为损害的相关方还可以向中国的法院提起诉讼，要求损害赔偿。

近期出台的规定及办法

2011年中国各执法机构积极开展相关法律法规的制定工作：

- 1月5日：发改委颁布《反价格垄断规定》与《反价格垄断行政执法程序规定》；
- 1月7日：工商总局公布《工商行政管理机关禁止垄断协议行为的规定》和《工商行政管理机关禁止滥用市场支配地位行为的规定》。两项规定阐明了工商总局对反竞争性协议及滥用市场支配地位执法的实体及程序；
- 1月7日：工商总局公布了《工商行政管理机关制止滥用行政权力排除、限制竞争行为的规定》，对滥用行政权力损害竞争的违法行为做出了规定；
- 6月2日：最高人民法院公布《最高人民法院关于审理垄断民事纠纷案件适用法律若干问题的规定（征求意见稿）》；
- 8月25日：商务部公布《外国投资者并购境内企业安全审查制度的规定》，确定了审查涉及中国安全利益的外国投资的流程；
- 9月2日：商务部公布了《关于评估经营者集中竞争影响的暂行规定》，该规定为评估申报交易的竞争影响提供了指导。

近期的执法活动

商务部的并购审查程序仍是中国反垄断执法中显而易见最为活跃的部分。尽管商务部无条件批准了大多数交易，但几乎所有的获批通知都遭遇过相当程度的延迟。

2011年有三项决定值得关注：

- 商务部有条件地批准了俄罗斯两大钾肥生产企业：乌拉尔钾肥公司与希尔维尼特公司的合并。钾肥对于农业发展十分重要而中国在钾肥生产方面严重依赖进口。

a global one, the decision nonetheless focused almost exclusively on the impact on China. After extensive hearings, MOFCOM imposed several behavioral remedies as conditions, obliging the merged firm to maintain existing trading relationships and supply of product to China subject to ongoing monitoring by MOFCOM.

- MOFCOM also cleared, subject to conditions, the acquisition by Alpha Private Equity Fund V (France) of Savio Textile Machinery (Italy). Alpha V held a 27.9 percent interest in Uster Technologies Ltd. which, together with a Savio subsidiary, were the only two manufacturers of automated yarn clearers in the world. MOFCOM required Alpha V to divest its interest in Uster and to commit not to participate in or influence Uster's operations.
- MOFCOM cleared without conditions US-based Yum Brands Inc.'s acquisition of the popular China-based restaurant chain Little Sheep Group Ltd. However, the review period was particularly lengthy, extending into the 60-day extended Phase II review period. As it is unlikely that acquisition of one restaurant chain by another without overlapping menus could by itself create a competition concern, it seems that the delay may have been due to concern over the acquisition of a popular brand to foreign ownership (recalling the blocked Coca-Cola/Huiyuan deal). The consideration of such concern is permissible under the AML but is generally inconsistent with international practice.

Where Sino-foreign joint ventures trigger the relevant revenue thresholds, they will be subject to both anti-monopoly review and foreign investment approval. Under these auspices, MOFCOM cleared, with conditions, a proposed clean coal technology joint venture between General Electric and Shenhua, the large state-owned energy enterprise. Concerned about the potential to restrict competition with respect to the licensing of liquefied coal gasification technology in a highly concentrated industry, MOFCOM cleared the transaction only after a near six-month review, and barred the joint venture from tying technology licensing to access to coal as a fuel source. This may indicate that even important investment projects undertaken with large state-owned enterprises will be subject to more than just nominal review by MOFCOM.

The NDRC has investigated domestic undertakings for price-fixing, announcing an investigation of China Telecom and China Unicom for monopolizing broadband services and engaging in price discrimination against competitors. The NDRC also issued its first significant fines (more than RMB 7 million, or US \$1.1 million) against two Shandong-based pharmaceutical companies for colluding to raise blood pressure medication prices by nearly 700 percent after cornering the market on raw materials.

Bilateral Cooperation on Anti-Monopoly Law Seminars

AmCham China supports transparent, credible, and fair enforcement of China's AML, and strives for mutual understanding between the government of China and other major jurisdictions on AML issues. Toward these ends, since 2008 AmCham China has facilitated 11 technical exchange seminars between the US and Chinese governments. Program stakeholders for the US government have included: US Trade and Development Agency, US Chamber of Commerce, Office of the US Trade Representative, Federal Trade Commission, US Department of Justice, US Department of State, US Embassy in Beijing, US Agency for International Development, and US Department of Commerce. Program stakeholders for the Chinese government have included: MOFCOM, NDCRC, SAIC, and the State Council Legislative Affairs Office (SCLAO). A new series of four workshops began in December 2011. The seminars bring technical experts, corporate managers, and a number of other experts from the public and private sectors of both countries to highlight best practices and assist in the implementation of the AML. Seminar topics have included: monopoly agreements, the evaluation of cartels, abuse of market dominance, relevant market definition, leniency systems, and the use of intellectual property rights to restrict competition, among others. AmCham China is pleased that MOFCOM, SAIC, NDRC, and SCLAO have been actively engaged as crucial partners in these efforts.

Specific Issues

Enforcement Coordination

Although the AML provides that the Anti-Monopoly Commission (AMC) of the State Council shall coordinate policymaking and enforcement among the enforcement agencies, the AMC's visible role to date has been limited. No published regulations provide guidance on the handling of cases involving both price and non-price misconduct, which ostensibly could be handled by NDRC or SAIC. Neither are there published regulations on the extent to which "ancillary restraints" to a concentration approved by MOFCOM may later be challenged as anti-competitive agreements. Moreover, the agencies may have different approaches to defining markets, gauging market power, and balancing policy goals when applying the many public interest exceptions of the AML.

Published guidelines delineating the division of authority would enhance regulatory certainty and facilitate compliance with the AML.

Transparent Rulemaking and Enforcement

Transparent enforcement allows companies to plan commercial strategies that comply with competition laws. Implementing regulations, interpretive guidelines from

尽管地理位置上该市场属于全球性的，但批准决定主要考虑的是对中国市场的影响。经过密集的听证过程，商务部对并购施加了若干行为性补救办法作为条件，要求并购后的公司继续在商务部的监督下保持现有的贸易关系并继续向中国供应产品。

- 商务部也有条件地批准了（法国）阿尔法私募股权基金与（意大利）萨维奥纺织机械股份有限公司的合并。阿尔法私募股权基金持有乌斯特技术有限公司 27.9% 的股份。乌斯特技术有限公司与萨维奥旗下的子公司曾是世界上仅有的二家自动清纱器生产商。商务部要求阿尔法股权基金剥离其所持有的乌斯特技术有限公司的权益并承诺不参与或影响乌斯特技术有限公司的经营。
- 商务部无条件批准了总部位于美国的百盛全球餐饮集团与中国著名的餐饮连锁集团小肥羊有限公司的合并。但是，审查期限格外漫长，初期审查结束后又要求进入为期 60 天的第二阶段审查。由于两家餐饮连锁企业的菜品完全没有重叠，合并本身并不会引起竞争问题。因此，审批时间延迟可能是对外国企业收购本土著名品牌所有权的担忧所致（让人回想起被否决的可口可乐公司收购汇源公司案）。按照《反垄断法》的相关规定，对上述担忧给予考虑是允许的，但不符合国际的通行做法。

如果中外合资企业触及到相关的资金额度，其须接受反垄断审查和外商投资审批。在此政策下，商务部有条件地批准了通用电气与大型国有能源企业神华集团关于成立清洁煤炭技术合资公司的方案。考虑到在一个高度集中的行业进行液化煤炭气化技术的转让可能具有限制竞争的影响，商务部直到六个月的审查期限几乎结束的时候才完成了交易方案的审批，但禁止合资公司将技术转让与获得煤炭燃料捆绑在一起。这也许表明，即使是大型国企开展的重大投资项目，商务部的审批也不只是走过场。

发改委已经展开了针对国内市场价格垄断活动的调查，宣布对中国电信和中国联通涉嫌垄断宽带服务市场并以价格歧视手段打击竞争对手进行调查。发改委近期开出了针对两家山东医药公司垄断行为的第一份巨额罚单（超过 700 万元人民币，或 110 万美元）。这两家公司合谋通过控制药品原料，迫使抗高血压类药品的销售价格超出平均市场价格近七倍。

双边合作举办《反垄断法》研讨会

中国美国商会支持中国《反垄断法》透明、可信和公平的执法，并努力推动中国政府与其他主要国家和地区的司法管辖区（下简为：司法辖区）之间在反垄断法问题上的相互理解。为了实现上述目标，自 2008 年起中国美国商会已经协助举办了 11 次中美政府之间的技术交流研讨会。参与该项目的美国相关方包括：美国贸易和开发署、美国商会、美国贸易代表办公室、美国联邦贸易委员会、美国司法部、美国国务院、美国驻华大使馆、美国国际开发署和美国商务部。参与该项目的中国政府相关部门包括：商务部、国家发改委、工商总局和国务院法制办公室。2011 年 12 月又新启动了四个系列专题研讨会。研讨会邀请了技术专家、公司管理人员以及来自两国公共与私营部门的众多其他专家，集中交流最佳实践经验及探讨如何协助反垄断法有效实施。研讨会的议题涵盖了垄断协议、卡特尔垄断的评估、市场主导地位的滥用、相关的市场概念、宽恕政策体系、以知识产权为手段来限制竞争的行为和相关更广泛的领域。中国美国商会很高兴中国商务部、工商总局、国家发改委及国务院法制办作为这些方面的重要合作伙伴积极参与了这些交流合作。

具体问题

执法的协调

尽管《反垄断法》规定由国务院反垄断委员会（反垄断委）负责协调执法部门之间有关政策制订和执法的工作，但目前反垄断委已显现出的职责仍很有限。已公开的规定尚未明确对同时涉及价格和非价格因素违法行为的处理方式。这些违法行为看似既可由发改委负责处理又可由工商总局负责处理。公开的规定也未明确“附属限制”在其相关经营者集中已获得商务部批准之后是否仍会受到“反竞争性协议”的质疑。此外，当各主管机关使用《反垄断法》的公众利益例外条款时，在市场定义、市场支配力判定、及政策目标平衡等方面的做法可能都会不同。

发布相关的指导界定职权划分，将有助于增强法规的确定性，并有助于各方遵守《反垄断法》。

透明的规则制定与执法

透明的执法使得广大企业能够制定符合相关竞争法律的商业战略。实施细则、主管机关的解释性指南和行政部门及法院公布的决定对此起着关键性作用。公布执法决定

regulators, and the published decisions of agencies and courts are critical to these efforts. Published decisions provide guidance and an opportunity to educate companies about compliance.

The only enforcement decisions required to be published are those by MOFCOM blocking transactions or imposing conditions. Publication of all other enforcement decisions is discretionary.

AmCham China recommends that the authorities continue to improve their practice of issuing written enforcement decisions in a timely and fully reasoned manner. We further recommend that other enforcement decisions be published. While published decisions must protect confidential business information, they should include meaningful summaries of the relevant evidence, as well as analysis and conclusions. To the extent that full enforcement decisions cannot be published, the authorities should consider publishing case summaries or enforcement reports providing guidance.

The competition agencies have made significant efforts to solicit input from the public in connection with draft implementing measures. More formal and widely publicized opportunities to comment should be encouraged.

Distinguishing Anti-Competitive Misconduct from Lawful Competition

Existing measures provide insufficient guidance to distinguish lawful market competition from anti-competitive conduct in violation of the AML or other relevant legislation.

The AML's provisions against anti-competitive agreements are structured as sweeping prohibitions qualified by broad exemptions for arrangements that: (1) serve beneficial purposes designated under Article 15, (2) benefit consumers, and (3) do not eliminate competition in the relevant market. The scope of exemptions is extremely broad, including exemptions for so-called crisis and export cartels, and an open-ended public interest exemption. Conversely, the AML has no appreciability or materiality requirement.

None of the final implementing rules adopted by NDRC or SAIC prescribe general principles for weighing anti-competitive effects against pro-competitive benefits. This lack of guidance raises concerns that many common arrangements (such as distribution, franchising, patent pools, and research and development collaborations) that are lawful in other jurisdictions may face prohibition or inconsistent treatment in China.

The AML prohibits firms from "abusing" a dominant position by engaging in certain conduct "without justification." Although NDRC rules provide illustrative justifications for certain abuses, they do not clarify the *general* principles to guide distinction of abuses from competitive conduct.

Conversely, the SAIC rules provide some limited general principles but no specific justifications. Moreover, NDRC and SAIC rules diverge in some areas, and Chinese courts have recognized justifications for challenged conduct which may not comport with the approaches of either agency.

Without further guidance, Chinese and foreign companies alike face significant uncertainty regarding the scope of permissible conduct.

Prohibition of Unfair Pricing

The AML prohibits dominant firms from making sales or purchases at "unfair" prices. NDRC's new rules outline factors to be considered in evaluating pricing based on comparisons to past prices, competitors' prices, and general cost and pricing trends in the industry. These provisions expose firms to an *ad hoc* review by NDRC of their pricing practices benchmarked against their own profit margins or against their competitors' pricing. Such rules may deter efficient and pro-competitive conduct by leading firms and should not be enforced until their scope is explicitly defined with reference to objective, economically recognized measures of cost and behavior.

Mandatory Minimum Penalties

The AML's provisions for mandatory minimum fines raise risks of excessive penalties and over-deterrence. For violations of the rules against anti-competitive agreements and abuse of dominance, the AML prescribes fines between one and 10 percent of the undertaking's sales revenue (without clarifying whether these are revenues achieved in China and/or the relevant affected market).

AmCham China urges specification that the relevant revenues are sales in the relevant product market in China. This would make the AML consistent with US and EU competition law practice. Moreover, the one percent mandatory minimum penalty may result in grossly disproportionate penalties in minor cases. This could constitute a basis for abusive enforcement, and potentially force otherwise law-abiding companies from the market.

Leniency Program

The AML allows for waiver or reduction of penalties for participants in anti-competitive agreements who disclose misconduct and cooperate with authorities. Similar programs have succeeded in uncovering cartels in other jurisdictions, but such programs rely on concrete assurances of leniency. Procedures should be clarified to provide such assurances.

Merger Review

MOFCOM continues to refine its substantive approach to merger analysis and strengthen its review procedures.

能够为各公司提供指导，也能教育各公司遵守法律。

目前唯一规定需要公开的是商务部有关阻止交易继续或附加条件的执法决定。而其他行政执法决定的公开则完全由行政执法机关自行定夺。

中国美国商会建议执法机关继续完善其目前的做法，及时并以完全合理的方式发出书面执法决定。另外，我们还建议公开其他行政执法的决定。虽然公开决定时必须保护商业秘密，但应包括对相关证据有意义的总结和分析以及结论。不公开完整的执法决定时，相关部门可以考虑公开案件综述或执法报告，为执法实践提供指导。

政府主管部门在征求公众对实施细则草案的意见上已做出了很大的努力。希望在草案进行公开征求意见时，给予企业更多正式、广泛的提供意见和评论的机会。

区分反竞争的不正当行为与合法竞争

现有规定并未对如何区分合法的市场竞争与违反《反垄断法》的反竞争行为提供充分的指导。

《反垄断法》中针对反竞争性协议的条款构成了大量的禁止性规定，同时又包含宽泛的豁免情况，只要协议的安排满足以下情况即可：(1)《反垄断法》第15条规定服务于有益目的的，(2)有利于消费者的，和(3)并未在相关市场排除竞争的。适用豁免的范围极广，其中包括所谓的危机状况及出口卡特尔免除和无限制的因公共利益而适用的豁免。相反，《反垄断法》没有提供任何可评估性或实质性的要求。

发改委及工商总局最终采用的实施细则均未就衡量限制竞争效果对促进竞争利益影响的一般原则做出规定。缺少此类指导让我们担心很多在其他司法辖区均为合法的普遍安排（如流通、特许经营、专利共享集团及共同研发），可能会在中国遭到禁止或不一致的对待。

《反垄断法》禁止经营者“滥用”其市场支配地位从事某些没有“正当理由”的活动。发改委的规定虽对某些滥用行为提供了示例性的正当理由说明，但这些规定未能阐明区分滥用与合理竞争行为的一般性指导原则。另一方面，国家工商总局则规定了有限的一般性原则，却未提供具体的正当理由。此外，发改委和工商总局的规定在某些方面出现分歧，中国法院就受到质疑的行为已经认可了一些正当理由，但可能与发改委或工商总局的看法均不一致。

在缺少进一步指导的情况下，中国和外资公司对合法

行为的允许范围都同样面临重大的不确定性。

禁止不合理定价

《反垄断法》禁止具有市场支配地位的经营者“以不公平的价格”销售或购买商品。发改委最近公布的新规定列出了其评估定价公平性时考虑的因素，主要是基于与以往价格及竞争者的价格比较，以及行业一般的成本与价格趋势。这些规定使得占市场支配地位的经营者在其定价行为方面面临发改委的特别审查，即按照利润率或与竞争者的价格差对其定价进行的审查。这些规定可能会阻碍领军企业高效且促进竞争的行为，因此这些规定的范围应该参考其目的、以经济方式衡量的成本和行为来明确地界定，在其范围尚未明确界定前不应强制执行。

强制性最低处罚

《反垄断法》关于强制性最低罚款的规定存在过度处罚及过度威慑的风险。对于反竞争协议及滥用市场支配地位的违规行为，《反垄断法》规定应处以由该行为产生的销售额1%以上10%以下的罚款（但未明确规定这些销售额是在中国市场及/或受影响的相关市场内的销售额）。

中国美国商会呼吁中国对此予以明确，即有关的销售额是指中国境内相关产品市场的销售额。这将使《反垄断法》与美国及欧盟的有关竞争的法律法规保持一致。另外，以销售额1%的强制性最低处罚可能导致在轻微案件中处罚的严重失衡。这可能构成滥用执法的基础，并可能导致原本守法的企业被迫退出市场。

宽恕政策

当垄断协议的参与者披露其不当行为并与主管机关合作时，《反垄断法》允许免除或减轻对此类参与者的处罚。在其他司法辖区，类似的政策在揭发卡特尔方面取得了成功，但这些政策依赖的是对宽恕作出具体的保证。有关部门应该明确具体程序从而提供相应的保证。

并购审查

商务部继续完善其并购分析的实质方法并加强其审查程序。此外，商务部宣布其正在起草新的综合性实施条例以取代现行一系列的单独规则。中国美国商会鼓励商务部在起草新的实施条例的过程中考虑以下问题：

- 商务部审查的时间常常较其他司法辖区要长，即便在不存在任何明显的反竞争问题的情况下也时常延续到

Moreover, MOFCOM has announced the drafting of comprehensive implementing regulations to replace the current collection of separate rules. AmCham China encourages MOFCOM to consider the following issues in drafting the new implementing regulations.

- MOFCOM reviews frequently last longer than reviews in other jurisdictions, typically extending into Phase II even in the absence of any clear competitive concern. These delays may reflect procedural requirements for non-transparent consultations with other ministries and trade associations, and for approval at higher levels within MOFCOM, the AMC, or even the State Council. These delays may also reflect constraints on MOFCOM's resources. Unfortunately, the extension of review into Phase II is often viewed as indicating significant competition concerns. Moreover, unnecessary delay may itself jeopardize conclusion of a transaction. These risks might be mitigated by permitting parties to consent to a "suspension" of the deadlines for the various phases of merger review. Allowing parties to consent to brief extensions of Phase I in order to enable MOFCOM to conduct its internal clearance process could help the parties avoid unnecessarily entering Phase II.
- MOFCOM should adopt clear guidance on the concept of control. This would minimize the risk that customary protections for minority shareholders (such as the right to veto the unwinding of the business) could confer control, thereby unnecessarily subjecting ordinary financial investments to merger review. MOFCOM should also clarify its understanding of "joint control" with respect to the establishment of joint ventures.
- Although MOFCOM uses the EU definition of reportable concentration, MOFCOM has not adopted the corresponding EU practice of excluding from review joint ventures which are not independently autonomous. Consequently, many joint ventures not subject to review in other jurisdictions trigger review by MOFCOM.
- While MOFCOM merger review teams are increasingly familiar with international practice, participants in MOFCOM proceedings report that MOFCOM personnel continue to frame investigations in terms of competitiveness of countries or economies rather than undertakings (i.e., considering the impact on *China's* competitiveness rather than on the relevant market). Such concerns with national competitiveness or the fostering of national champions is outside the scope of merger review.
- MOFCOM should adopt explicit guidance on whether sales made into Chinese export processing zones for further manufacturing and re-export are considered "sales into China" for merger review jurisdiction. Such sales are not treated as imports into China for customs purposes or as foreign exchange transactions.
- MOFCOM should consider a policy allowing early termination of review of transactions raising no plausible competition concerns, rather than requiring lapse of the full review period.

- The enforcement agencies should adopt a shared policy specifying whether conditions for clearance imposed by MOFCOM may ever be subject to NDRC or SAIC review.
- MOFCOM should adopt a "short-form" procedure for required notifications that nevertheless pose no plausible effect on competition in China.

Attorney-Client Privilege

The scope of attorney-client confidentiality under the Chinese legal system differs from that in other jurisdictions, yet it plays an essential role in evaluating and facilitating the conduct of international transactions. AmCham China urges Chinese authorities to follow International Competition Network recommendations by giving due consideration to legal privileges applicable in foreign jurisdictions when assessing mergers and investigating potential AML violations.

Exclusion of Foreign Counsel

In the absence of implementing regulations, international counsel are often not permitted to participate in MOFCOM meetings in merger control proceedings. This is true even when the lawyers in question are accompanied by local counsel from Chinese law firms and do not seek to practice Chinese law. This is inconsistent with international practice, where parties are routinely permitted to instruct international counsel and local counsel to appear together before competition authorities, thus ensuring more efficient communication of evidence and analysis across jurisdictions. Permitting attorneys from international law firms to attend proceedings under the AML would likewise enable Chinese authorities to evaluate direct presentations of analysis developed under prevailing principles of international competition practice.

Industrial Policy and Protectionism

Most provisions of the AML seek to promote consumer welfare and economic efficiency. Nevertheless, concerns remain that the AML may sometimes be used to promote "national champions" and "indigenous innovation" while shielding domestic markets from foreign competition. Specific areas of concern are described below.

- Article 7 requires the state to "protect the lawful business activities" of state-owned enterprises (SOE) in industries "that implicate national economic vitality and national security" (although it also prohibits such SOEs from abusing dominant positions to harm consumers). Although Article 7 may appear to call for the AML to be interpreted in favor of SOEs in specific cases, AmCham China is encouraged by NDRC's recent willingness to address price collusion between China Telecom and China Unicom.
- Anti-competitive agreements advancing industrial

第二阶段的审查。这种拖延似乎映射出与其他部委和行业协会之间的非透明性协商，及在商务部内部、反垄断委或国务院的上级批准流程的程序要求。这些拖延可能还反映出商务部在资源方面的限制。不幸的是，审查若延续至第二阶段，常常被理解为存在重大竞争顾虑。此外，不必要的拖延本身就有可能危及交易的完成。这些风险可通过允许相关方同意“延长”合并审核各阶段的期限而降低。允许相关方同意短暂延长第一阶段审查以使商务部能够开展其内部批准程序，可以帮助相关方避免不必要地进入审查的第二阶段。

- 商务部应出台清晰的指引意见来界定“控制”这一概念。针对小股东的许多惯常保护措施（如否决歇业的权利）有可能被错误地认为需要受到控制，从而使一般性的金融投资也要接受不必要的并购审查。商务部还应明确其对合资企业设立过程中“共同控制权”问题的规定。
- 尽管商务部采用了欧盟对应当申报的集中的定义，但商务部没有采用欧盟的相应做法，即，未能将非完全独立的合资企业排除在审查范围之外。所以，许多在其他司法辖区不受反垄断审查的合资企业在中国却受到商务部反垄断审查。
- 尽管商务部负责并购审查工作的调查团队越来越熟悉相关领域的国际实践，但商务部参与审查的工作人员表示其倾向于调查国家或经济体的竞争力，而非经营者的竞争力（即考虑并购对中国竞争力的影响而非对相关市场的影响）。关于国家的竞争力或培育国家领军企业的问题应被置于反垄断审查范围之外。
- 在关于向中国出口加工区用于再加工和再出口的销售是否被视为需要进行并购审查的“向中国销售”这一问题上，商务部应该出台明确的指导。这些销售在办理通关和或外汇交易时不被视为进口，因此有必要加以澄清。
- 商务部应该考虑制定相关政策，允许提前终止审查那些没有任何似是而非竞争问题的交易，而非单纯等待审查期限届满。
- 各执法部门应该采用统一的政策，明确商务部制定的批准条件是否还需要经过发改委或工商总局的审查。
- 商务部应该就满足条件、且未对中国境内的竞争效果构成任何可信影响的申报采用“简易”程序。

律师—当事人特权

在中国的法律体系下，律师与当事人之间的保密范围有别于其他司法辖区。但是，律师与当事人特权对评估和推进国际交易行为起着至关重要的作用。中国美国商会呼吁中国政府机构采纳“国际竞争网络”组织的建议，在审核并购交易及调查涉嫌垄断行为时充分考虑在外国司法辖区所适用的法律特权。

国外律师受排斥

由于没有颁布实施条例，在并购规制程序中，外资律师事务所律师聘用的国际律师通常不被允许参加相关会议，即便这些律师有中国律师事务所的本地律师陪同、而且不寻求对中国法律执业亦是如此。这与国际实践不一致。在其他司法辖区，相关方通常被允许让其国际律师和本地律师在竞争事务主管当局面前一起出现，从而确保跨越了不同司法辖区的证据和分析传达更加高效。允许国际律师事务所的律师参与《反垄断法》程序，同样能使中国主管部门对直接呈交的、根据国际竞争政策普遍原则所做的分析给予评价。

产业政策和保护主义

《反垄断法》中多数规定旨在通过竞争来促进消费者权益并提高经济运行效率。尽管如此，仍然存在着这样的忧虑，即《反垄断法》有时可能被用来推进“国家领军企业”和“自主创新”，同时保护国内市场免受海外竞争。存在担忧的具体领域如下：

- 《反垄断法》第 7 条规定“国有经济占控制地位的关系国民经济命脉和国家安全的行业”，“国家对其经营者的合法经营活动予以保护”（虽然本条规定同时限制国有经济行业不得利用其控制地位损害消费者利益）。尽管第 7 条的规定有可能使《反垄断法》在特殊情况下做出有利于国有企业的解释，发改委近期坚决查处中国电信与中国联通涉嫌联合控制市场价格案件的决心使中国美国商会感到鼓舞。
- 推进产业政策的反竞争性协议可以适用一些豁免行为，包括：(1) 提升中小企业竞争力，(2) 对销量严重下降或产量增加做出反应，和 (3) “实现节能、环保、救灾等公共利益等”。
- 《反垄断法》中禁止滥用支配地位的规则禁止从事“没有正当理由”的某些活动。产业政策的考量可能会打

policies might be covered by exemptions, including practices: (1) enhancing the competitiveness of small- and medium-sized enterprises, (2) responding to severe decreases in sales volume or production increases, and (3) “achieving public interests such as saving energy, protecting the environment, providing disaster relief, etc.”

- The AML rules against abuse of dominance prohibit certain conduct undertaken “without justification.” Industrial policy concerns may tip the balance between abusive and “justified” practices, such that exclusionary practices by dominant domestic firms (including SOEs) may be tolerated, where similar practices by international firms would be penalized.
- The AML calls for the prohibition of concentrations that eliminate or restrict competition, unless pro-competitive effects outweigh any negative effects, or the transaction is otherwise “in the public interest.” This public interest exception could be used to excuse patently anti-competitive concentrations that nevertheless advance industrial policies.
- Article 55 of the AML provides that the law shall “apply to actions taken...to eliminate or restrict competition by abusing intellectual property rights (IPR).” There are concerns that enforcement of IPR by foreign companies in China may be construed as “abuses” to the extent that they interfere with industrial policies aimed to promote indigenous innovation.
- MOFCOM recently issued measures establishing mechanisms for reviewing transactions involving foreign investments in domestic Chinese enterprises on “national security” grounds. These rules permit consideration of a transaction’s impact on China’s “economic stability” and “social order,” raising concerns that transactions inconsistent with China’s industrial policies might be prohibited under this broad view of national security.

Conclusion

AmCham China recognizes that competition policy is a complex area of law and applauds China’s efforts to develop the AML regime. Continued engagement with foreign experts and increased transparency in rulemaking and enforcement procedures will benefit Chinese consumers and promote innovation and efficiency in China’s domestic economy.

Recommendations

- **Allow foreign lawyers to attend and participate in hearings alongside local counsel.**
- Adopt implementing measures embracing the recommendations of the International Competition Network and other prevailing best practices of competition authorities.
- Ensure that all regulations and measures are published in draft form to allow adequate time for meaningful comment by all interested parties.
- Apply and enforce the AML equally to SOEs, trade associations, and domestic, as well as foreign and foreign-invested companies.
- Protect the IPR of both domestic and foreign rights holders and ensure that the AML is not used as a means to circumvent IPR protection, including through compulsory licensing.
- Clarify and streamline AML procedures, especially for merger review.
- Increase the frequency and detail of published data on enforcement activities.

破滥用行为与“正当合理”行为的平衡，例如占市场支配地位的国内企业（包括国有企业）的排他性行为可能得到容忍，而国际企业的类似行为则可能受到惩处。

- 《反垄断法》要求禁止带有排除或限制竞争的经营集中，除非对竞争的有利影响超过了不利影响或交易“符合公共利益”。此符合公共利益的豁免对明显具有反竞争效果但却能推进产业政策的集中予以放行。
- 《反垄断法》第55条规定，“经营者滥用知识产权，排除、限制竞争的行为，适用本法”。因此有人担心，外资公司在中国实施知识产权可能会因妨碍旨在推动自主创新的产业政策而被解释为“滥用”。
- 商务部最近发布了建立出于“国家安全”理由，对涉及外资对中国国内企业投资的交易进行审查的办法。这些规则允许就交易对中国“经济稳定”和“社会秩序”的影响加以考量，从而引发人们担心与中国产业政策不符的交易可能因国家安全方面的宽泛考虑而被禁止。

结论

中国美国商会意识到有关竞争的政策是一个复杂的法律领域，并对中国政府在建设《反垄断法》体系方面的努力表示赞赏。继续与外籍专家合作以及增加规则制定和执法程序方面的透明度将有利于中国的消费者，并将促进创新和提升中国国内的经济效率。

建议

- 允许外国律师与本地法律顾问一同出席和参与听证会。
- 制定实施办法，并采纳“国际竞争网络”组织的建议和其他竞争监管机构通用的最佳实践。
- 确保所有规章制度和措施在正式公布前先以草案的形式对外公布，以留出充足的时间让所有相关方提供有意义的建议。
- 对国有企业、行业协会、外国公司以及国内外商投资企业一视同仁，公平地贯彻、执行《反垄断法》。
- 保护国内外知识产权持有人的权益，并确保《反垄断法》不会成为回避知识产权保护的手段，包括强制要求许可认证。
- 阐明并简化《反垄断法》有关程序，尤其是并购审查的相关程序。
- 增加执法活动相关资料的发布频率和细节。

Government Procurement

Introduction

China's government procurement market continued to grow in 2011, although the exact size of the market remains subject to debate. China's expanding economy, augmented by the government's lingering economic stimulus policies, spurred this expansion. Procurement was concentrated in infrastructure projects, including railways and airports. The total procurement market is even larger when sub-central (provincial and local) level government procurement is factored in. Moreover, purchases by state-owned enterprises (SOEs) in industries in which private competition is restricted should also be included.

China's government procurement is expected to continue to grow as the economy expands, even at the somewhat slower rate targeted in the 12th Five-Year Plan (2011-2015). In particular, the 12th Five-Year Plan calls for further rapid expansion of infrastructure projects in such industries as civil aviation, railways, and energy.

American businesses, some of which already participate in China's government procurement market, can supply many of China's government procurement needs with competitive, high-quality products. AmCham China encourages China to open its government procurement market and combat local protectionism and corruption on a reciprocal basis with the US and many other countries around the world by becoming a party to the World Trade Organization (WTO) Agreement on Government Procurement (GPA). While there has been incremental progress on this front, more than a decade after joining the WTO China has yet to submit an accession offer in line with those of other countries.

Significant Developments

Delinking Indigenous Innovation from Government Procurement

In April 2010, the Ministry of Science and Technology (MOST), National Development and Reform Commission (NDRC), and Ministry of Finance (MOF) issued the "Draft Notice on Launching the Accreditation of National Indigenous Innovation Products (IIPs)" and requested

comments from interested parties. If adopted, the draft notice would have required IIP accreditation applicants to be both China-registered enterprises and to have at least the right of use of related intellectual property and trademarks in China. Such rules would have made it difficult for the products of foreign companies—even those made in China—to be accredited as "indigenous innovation products." Furthermore, because accredited IIPs receive preferential treatment in China's government procurement, the draft notice, if officially adopted, would have seriously disadvantaged foreign companies in government procurement. As such, AmCham China called for the repeal of the draft notice in the 2011 *White Paper*. We are encouraged to see that as of March 2012 the draft notice has not been adopted.

Further, the most important development in Chinese government procurement in 2011 was the June 28 announcement by MOF revoking, effective July 1, 2011, three government regulations that linked indigenous innovation to government procurement. The regulations are "Evaluation Measures on Indigenous Innovation Products for Government Procurement," "Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products," and "Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products." The State Council also issued a measure requiring governments of provinces, municipalities, and autonomous regions to eliminate by December 1, 2011, any catalogues or other measures linking innovation policies to government procurement preferences.

The revocation of the three IIP measures and the adoption of the State Council measure indicate for the first time since 2007 the Chinese government's resolution to delink indigenous innovation from government procurement.

AmCham China applauds these important steps toward leveling the playing field in the government procurement market. Inconsistent practices still exist, however, among different localities with IIP certification regimes in place. We look forward to seeing the complete delinking of IIP accreditation from government procurement at the local level, and urge the Chinese government to take further steps in revising other relevant laws and regulations that still require prioritization of IIP in government procure-

政府采购

引言

2011年，中国的政府采购市场继续增长，虽然关于该市场的确切规模仍未有定论。在持续不断的政府经济刺激计划的推动下，中国经济持续增长，进而促进了政府采购市场的扩大。政府采购主要集中在基础设施项目，包括铁路和机场建设项目。如果考虑到地方政府（省级及以下政府）的采购，中国政府采购的总体市场规模会更大。另外，在界定中国政府采购市场的范围时，还应包括国有企业在民企竞争受限的行业中的采购。

尽管中国在“十二五（2011-2015）规划中调低了经济增长速度，但随着中国经济的进一步增长，特别是考虑到“十二五”规划中提出的将进一步加快民航、铁路和能源行业的基础设施项目建设等因素，政府采购必将继续保持增长态势。

美国企业，包括那些已经参与中国政府采购的美国企业，可以提供很多有竞争力的、高质量的产品，以满足政府采购的需求。中国美国商会鼓励中国加入世界贸易组织的《政府采购协定》，在互惠互利的基础上向美国及其他《政府采购协定》缔约方进一步开放政府采购市场、消除地方保护主义和腐败现象。尽管中国在这一方面有所进步，但在加入世贸组织超过十年之后，中国仍未能提交与其他国家出价相匹配的出价清单。

重大进展

政府采购与自主创新产品脱钩

2010年4月，科学技术部、国家发展改革委员会和财政部联合下发了《关于开展2010年国家自主创新产品认定工作的通知（征求意见稿）》并公开征求意见。一旦实施，该通知将要求自主创新产品的申请人必须是在中国注册的企业，而且至少有在中国使用相关知识产权和商标的权利。这项规定将使得外国公司的产品——即便产地是在

中国——很难获得“自主创新产品”认证。此外，由于中国政府将优先采购获得认证的自主创新产品，因此，如果该通知一旦得以正式实施，外国公司在政府采购中将处于十分不利的地位。因此，中国美国商会在2011年《白皮书》中呼吁有关部门撤销该通知。令人欣慰的是，截至2012年3月，该通知还未正式实施。

而2011年在中国政府采购领域中最重大的进展是，2011年6月28日，财政部宣布自2011年7月1日起，暂停执行三项将自主创新产品与政府采购挂钩的管理办法。这三项条例是：《自主创新产品政府采购评审办法》、《自主创新产品政府采购预算管理办法》和《自主创新产品政府采购合同管理办法》。此外，国务院还下发公告，要求各省、市、自治区政府在2011年12月1日之前废除将自主创新产品与政府优先采购挂钩的任何相关目录或措施。

上述三项管理办法的暂停执行和国务院公告的实施表明，自2007年以来，中国政府第一次下决心取消自主创新产品与政府采购之间的关联。

中国美国商会欢迎这些旨在为政府采购市场打造公平竞争舞台的重要举措。然而，一些地方的自主创新产品认证体制与中央政策不符的做法依然存在。我们期待看到地方自主创新产品认证能彻底与政府采购脱钩，并促请中国政府进一步修订其他给予自主创新产品政府采购优待的相关法规。（有关创新政策的详情，请参见“创新政策”章节。）

修改后的《政府采购协定》出价清单

2011年11月，中国提交了第二次修订后的《政府采购协定》出价清单。尽管如此，这份出价清单在中央及地方实体的覆盖范围、建议的中央实体门槛价、“其他”采购实体的覆盖范围和服务覆盖范围的设定方面，仍做得不尽如人意。中国的出价清单只包括171个地方实体，而且仅涉及30多个省、直辖市和自治区中的5个。中国只是略微下调了中央实体第一年对建筑服务的门槛价，并未改变最

ment. (For more information on innovation policy, see the Innovation Policy chapter.)

Revised Government Procurement Agreement Offer

China submitted its second revised GPA accession offer in November 2011. However, this offer remains deficient in terms of its coverage of both central and sub-central entities, its proposed central entity threshold, its coverage of “other” entities, and its services coverage. China’s offer includes only 171 sub-central entities in only five of the over 30 provinces, provincial-level municipalities, and autonomous regions. China only slightly lowered its central entity first-year threshold for construction services, and has not changed its final threshold level, which is three times higher than the highest existing central entity threshold of other GPA parties. China also failed to include in its accession offer coverage a list of its numerous SOEs, and only lists 14 “other entities.” Finally, China only added two additional service sectors to its coverage, which did little to increase the overall value of its offer.

This offer remains seriously lacking and will require significant improvements to meet the standards set by existing GPA parties, as described below in the Specific Issues section.

S&ED and JCCT Government Procurement Developments

Unfortunately, 2011 has seen very little positive development regarding government procurement within the Strategic and Economic Dialogue (S&ED) and the US-China Joint Commission on Commerce and Trade (JCCT). While China did agree during the May 2011 S&ED to “eliminate all of its government procurement indigenous innovation product catalogues” and “revise Article 9 of the ‘Draft Regulations Implementing the Government Procurement Law’ to eliminate the requirement to link indigenous innovation products to the provision of government procurement preferences.” However, these agreements were merely a reiteration of promises made during President Hu Jintao’s visit to the US earlier in January 2011. Moreover, to date it is unclear whether these two commitments have been fully implemented. Further, at the most recent JCCT in November 2011, China declined all requests by the US to discuss government procurement issues.

Specific Issues

Slow Accession to the GPA

China committed in its 2001 Protocol on Accession to the WTO to work towards becoming a party to the GPA “as soon as possible.” In the 2001 Protocol, China also committed:

1. To ensure that all of its central and sub-central government entities will “conduct their procurement in a transparent manner;”
2. Where procurement proceedings are open to foreign participants, China will provide all foreign entities “equal opportunity to participate” in the bidding process in accordance with the principle of most-favored nation treatment;
3. To “ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g., price, quality, market-ability, and availability, and that the enterprises of other WTO members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions;” and
4. To “not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value, or country of origin of any goods purchased or sold, except in a manner consistent with the GPA.”

To date, however, China has yet to make a credible offer for GPA accession. China only recently submitted its second revised GPA accession offer to the WTO. The initial offer was submitted in December 2007, six years after China joined the WTO. The first revised offer was not submitted until July 2010, three years later. The recent second revised offer was submitted November 30, 2011. Failure to improve the offer sufficiently in several areas makes it clear that China will not be able to accede to the GPA in the near future. Its most recent offer even still uses placeholders stating that it will be submitting additional exceptions to its coverage in “revised offer(s) in the future.” In short, the lengthy and piecemeal fashion by which China is revising its GPA accession offer raises questions regarding the seriousness of China’s efforts to accede to the GPA.

Most GPA parties have already expressed disappointment with the second revised offer, for the reasons outlined below.

Coverage of Central and Sub-Central Government Entities

The main addition to China’s second revised offer, compared to its first revised offer 16 months earlier, is the coverage of 171 additional sub-central entities within two provinces (Jiangsu and Zhejiang) and three provincial-level municipalities (Beijing, Shanghai, and Tianjin). This is insufficient, seeing as China has over 30 provinces and provincial-like divisions that should be covered (not including Hong Kong, which is already a party to the GPA). In the past, China has expressed concern about US coverage for only 37 of its 50 states and of the lack of coverage of other GPA parties’ sub-central entities. However, even when viewed in light of such limited sub-central coverage by other parties, China’s offer is still significantly less comprehensive.

终的门槛价，而这要比其他《政府采购协定》缔约方中央实体现有的最高门槛价高出三倍。另外，中国提交的出价清单并没有包括为数众多的国有企业，只是列出了14家“其他实体”。最后，中国在出价清单的覆盖范围中只增列了两种服务行业，而这对于中国出价清单来说价值并不大。

这份清单仍存在较大遗漏，需要进行重大调整，以与现有的《政府采购协定》缔约方所设定的标准保持一致。下文“具体问题”章节将对此进行剖析。

战略与经济对话以及商贸联委会有关政府采购的进展

遗憾的是，2011年，在战略与经济对话和中美商贸联委会的框架下，政府采购问题几乎没有取得任何进展。尽管中国曾在2011年5月举行的战略与经济对话中同意“取消所有政府采购自主创新产品的目录”，并“修改《政府采购法实施条例草案》第九条以取消自主创新品牌与政府采购优待之间的关联”，但这仅仅是重申了此前胡锦涛主席于2011年1月访美时所做的承诺。此外，至今我们仍不清楚这两个承诺是否已经完全兑现。另外，在2011年11月刚结束的中美商贸联委会中，中国拒绝了美国所有有关探讨政府采购问题的请求。

具体问题

加入《政府采购协定》进展缓慢

中国早在2001年《加入世界贸易组织议定书》中就承诺，将努力“尽快”加入《政府采购协定》。同时，中国还承诺：

1. 确保中央和各级政府都会以“透明的方式实施政府采购”；
2. 在面向外国参与者开放的政府采购活动中，将依照最惠国待遇给予所有外国实体“平等参与”投标的机会；
3. “保证所有国有和国家投资企业仅依据商业考虑进行购买和销售，如价格、质量、可销售性和可获性，并确保其他WTO成员的企业拥有在非歧视的条款基础上，与这些企业在销售和购买方面进行竞争的充分机会”；以及
4. 中国将“不直接或间接地影响国有企业或国家投资企业的商业决定，包括关于购买或销售的任何货物的数量、金额或原产国，除非与《政府采购协定》相一致”。中国至今尚未制定一个真正意义上的出价清单来加入

《政府采购协定》，仅在最近向世贸组织提交了第二次修改后的出价清单。中国于2007年12月，即加入世界贸易组织六年后提交了初步出价清单；三年后的2010年7月，提交了第一次修改后的出价清单；2011年11月30日提交第二次修改后的清单。不过，中国并未在清单的一些领域做出重大改动，这也明确意味着中国近期无法加入《政府采购协定》。在最近提交的清单中，中国仍在“未来的清单修改稿”的覆盖范围中有所保留，以便追加新的特例。简而言之，中国政府在《政府采购协定》出价清单的修改上耗时较长且步伐缓慢的做法引发了对其是否认真考虑加入该协定产生质疑。

大多数《政府采购协定》缔约方都对中国第二次修改后的出价清单表示失望，原因陈述如下。

中央政府和各级地方政府实体的覆盖范围

与16个月前第一次修改后的清单相比，中国第二次修改主要增加了两个省份（江苏和浙江）以及三个直辖市（北京、上海和天津）的171个地方政府实体。而这远远不够，因为中国有30多个省或省级行政区划（不包括香港，其已是《政府采购协定》的成员），这些省区都应成为覆盖对象。过去，中国不仅对美国仅覆盖50个州中的37个州的做法表示担忧，而且对其他《政府采购协定》缔约方地方政府实体覆盖不足的现象也表示担忧。然而，尽管其他缔约方地方政府实体的覆盖十分有限，但中国出价清单的覆盖范围仍相对局限。

此外，中国第二次修改后的清单中所提及的171个地方政府实体似乎是中央政府实体的区域行政办公室，而早些时候中国已经将其纳入覆盖范围。而且在很大程度上，这些行政办公室是中央实体的下设机构，并接受中央实体的预算管理，因此将它们纳入第二次修改后的清单似乎是多余的。我们特别注意到，就北京市而言，中国在先前清单中所提及的中央实体的覆盖范围已经明确覆盖了“上述所有中央政府实体及其在京的行政机构”。

中国的清单似乎并未覆盖已在名单之列的地方政府实体的下设机构或继任实体，这会由于采购权在各实体间的技术性转移而导致覆盖范围的减少。这似乎也是中央政府以及“其他”实体名单的一个问题。

另外一个问题就是，针对《政府采购协定》框架下的地方政府实体覆盖范围，中国所建议的门槛要比任何一个现有《政府采购协定》缔约方的门槛高得多。此外，中国

Furthermore, several of the 171 sub-central entities in China's second revised offer appear to be regional administrative offices of central government entities that China had offered to cover earlier. To the extent that the procurements made by such administrative offices are within the authority and budget of the central entities, their inclusion in China's second revised offer appears redundant. We note in particular that, with respect to Beijing municipality, China's previous offer of central entity coverage already specified coverage of "the above-mentioned central government entities proper and their administrative agencies located in Beijing."

It also appears that China's offer does not cover listed sub-central entities' subordinate or successor entities, which may result in loss of coverage simply through technical shifting of procurement authority within entities. This appears to be a problem for China's listings of central government and "other" entities as well.

Of additional concern are the thresholds China proposed to establish for coverage of sub-central entities under the GPA, which are still significantly higher than any of those established by existing GPA parties. Also, China is seeking an overly broad, sub-central-specific exemption from the disciplines of the GPA for any program "in pursuit of important regional economic and social policies." Such a unilaterally determined exception would be unworkable.

In its second revised offer, the only change China made to its central entity coverage was to lower the first-year threshold in its five-year transition period for construction services from 100 million special drawing rights (SDRs) to 80 million SDRs (from US \$154 million to US \$123.2 million or from RMB 972.7 million to RMB 778.2 million, as of March 9, 2012). This is an insignificant change, as China retains the same thresholds for the other four years in the transition period, and is still proposing a final threshold of 15 million SDRs (US \$23.1 million or RMB 145.9 million, as of March 9, 2012), three times the amount of the current highest central entity construction services threshold of other GPA parties. China also has declined requests by other GPA parties to include additional central government entities which are subject to China's Government Procurement Law and/or its Tendering and Bidding Law.

Coverage of "Other Entities," Including State-Owned Enterprises

China has previously indicated that it would add to the list of covered entities under GPA Annex 3, entitled "Other Entities Which Procure in Accordance With the Provisions of This Agreement." However, to date China has yet to update the list and appears unlikely to do so until mid-2012 at the earliest.

China's most recent GPA accession offer lists only 14 "other entities;" however, most, if not all, of these appear to be

central government entities that should already be covered elsewhere. In addition, certain GPA parties—including the EU—have already asked China to remove its exception from coverage of those entities that engage "in the field of drinking water, electricity, energy, transportation, telecommunications, or postal services." These sectors make up a substantial portion of the "other entities" lists in existing GPA schedules of other GPA parties, and thus cannot be ignored in China's schedule. Furthermore, China has resisted calls to include its numerous SOEs that appear to procure regularly for governmental purposes (i.e., not with intent for commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale).

Current GPA parties expect China to provide a fuller list of "other entities," including SOEs, in its next revised offer. MOF is presently undertaking study trips to meet with various foreign governments to inform and help establish domestic Chinese views on what entities should or should not be included on this list.

AmCham China urges China to conclude the study trips and to submit its next revised offer to the WTO as quickly as possible. The revised offer should be complete, with no intention of submitting additional elements subsequently piecemeal.

We also encourage China to either: (1) issue an unambiguous directive confirming that SOE procurements are non-government procurements, and ensure that all regulations and directives governing SOEs are consistent with China's commitments regarding the commercial independence of SOEs and other relevant WTO obligations; or (2) include in its next updated accession offer its numerous SOEs that procure for governmental purposes.

Other Concerns That Have Yet to Be Addressed

In the area of services, China's second revised offer adds two additional sectors for coverage: "noise abatement services" and "freight transportation." Unfortunately, this adds very little value to China's offer overall. As such, AmCham China continues to urge China to provide services coverage in line with that of the US, which is a "negative list" with minimal sector exclusions, resulting in high-value coverage of categories such as computer-related services and financial services. Alternatively, China should positively list services sectors more broadly, perhaps by two-digit customs procedure codes instead of four or five digits, as currently listed.

With respect to construction services, China's second revised offer does not alter China's unique and extraordinarily high thresholds, nor does it include "public works" services covered by China's Tendering and Bidding Law, omissions which remain extremely disappointing.

正在寻求一个过于宽泛的、针对地方政府实体的豁免，以将一切“涉及重大区域和社会政策”的项目置于《政府采购协定》约束之外。这种单方面确定例外情形的方式应该是行不通的。

在第二次修改后的清单中，中国对中央实体覆盖范围做出的唯一改变就是降低建筑服务五年过渡期的第一年准入门槛，即从1亿特别提款权降到8千万特别提款权（自2012年3月9日开始，从1.54亿美元降到1.232亿美元或从9.727亿元人民币降到7.782亿元人民币）。这一变化的作用实属微不足道，因为在过渡期的后四年，中国的门槛价并无变化。而且，中国仍建议最终的门槛价为1500万特殊提款权（自2012年3月9日开始，2310万美元或1.459亿元人民币），是其他《政府采购协定》缔约方中央实体建筑服务行业最高门槛价的三倍。其他《政府采购协定》缔约方要求中国增加适用《中国政府采购法》和/或《招标投标法》的中央政府采购实体，但遭到了拒绝。

“其他实体”（包括国有企业）的覆盖范围

之前，中国曾表示将按《政府采购协定》附录3之规定增列覆盖的采购实体名单，名为“根据该协定规定进行采购的其他实体”。但到目前为止，中国仍未更新名单，且在2012年年中之前更改的可能性不大。

中国最近提交的出价清单上仅列出了14个“其他实体”；然而，其中大部分或全部实体，似乎都属于已被覆盖的中央政府采购实体。除此之外，某些《政府采购协定》缔约方——包括欧盟——已经要求中国取消适用于“饮用水、电力、能源、交通、电讯或邮政服务”的实体覆盖范围的特别。在其他《政府采购协定》缔约方现有的出价清单中，这些领域占据了“其他实体”相当大的比例，因此在中国的清单中也不能忽视这些领域。此外，中国还拒绝了将为数众多的国有企业纳入出价清单的要求，而国企的采购似乎经常带有政府性质（例如，不以商业销售或转售为目的，或不用其生产产品或提供服务，继而用于商业销售或转售）。

现有的《政府采购协定》缔约方希望中国在以后修改的出价清单中提供一个更为完整的“其他实体”名单，并将国有企业纳入其中。财政部目前正在调研，并与多个外国政府共同研究确立相关国内意见，敲定应纳入该名单的实体。

中国美国商会促请中国完成调研，并尽快向世贸组织提交新的修改清单。新的修改清单应一步到位，而不是在

随后不断地进行追加补充。

我们还鼓励中国：(1) 可以颁布明确的行政条例，声明国有企业采购不属于政府采购，并确保所有国有企业相关规定和指导文件与中国国有企业商业独立的承诺一致，与对世贸组织的其他承诺一致；或(2) 将为数众多、带有政府采购性质的国有企业纳入新修改的出价清单之列。

尚未解决的其他问题

在服务业领域，中国第二次修改后的出价清单覆盖范围增加了两种行业：“消减噪音服务”和“货运”。遗憾的是，这对中国的清单来说价值并不大。鉴于此，中国美国商会继续促请中国参考美国的标准来提供覆盖范围清单。美国的清单是一个“否定式清单”，仅将少数领域排除在外，因此清单上有许多高价值的覆盖行业，例如计算机相关的服务和金融服务。或者中国应积极地、更为广泛地增列服务行业，可以用两位数的报关代码取代现行的四位或五位数代码。

关于建筑服务，中国第二次修改的清单中没有更改其独有的、过高的门槛价，也没有将《中国招标投标法》中所列的“公共工程”纳入其中，这一疏漏仍令人失望。

关于一般特别，中国一直没有更改其在第一次修改的清单中所涉及的种种问题。例如，中国继续建议，在某些采购可能会“损害重大国家政策目标”的情况下，中国可以在这“单一采购”中“不适用国民待遇原则”。在之前发表的《白皮书》中，中国美国商会认为该条款过于宽泛，完全可以借此来规避非歧视和市场准入这两项《政府采购协定》的核心原则。

中国还建议根据《政府采购协定》第十六条第2款，保留其作为发展中国家所享有的设置本国含量、采购抵消或技术转让要求的权利。同样，在之前发表的《白皮书》中，中国美国商会认为中国作为全球第二大经济体，就《政府采购协定》而言不应被视作发展中国家。

此外，在修改后的出价清单中，中国还进一步声明，直到中国认可相关缔约方已向“中国的货物和服务供应商提供了本国市场的准入之前”，中国不会将《政府采购协定》项下的相关利益授予该等《政府采购协定》缔约方的货物和服务供应商。这一表述反映了中国对世界贸易组织的争端解决规则的片面理解和判断，且与《政府采购协定》第二十二条规定不符。

With respect to its general exceptions, China has not rectified any of the concerns previously highlighted regarding its first revised offer. For instance, China continues to propose that it alone be granted the ability to “deviate from the principle of national treatment” in “singular procurement cases” when a specific procurement may “impair important national policy objectives.” As noted in previous AmCham China *White Papers*, this provision is extremely broad and would completely circumvent the core GPA principles of non-discrimination and market access.

China also maintains its exception to require domestic content, procurement offsets, or technology transfer along the lines permitted by developing countries in accordance with GPA Article XVI:2. Again, as noted in previous *White Papers*, China—as the world’s second largest economy—should not be treated as a developing country for GPA purposes.

In addition, China maintains its ability to extend the benefits of the GPA only to suppliers and service providers of GPA parties that have provided “access for Chinese suppliers and service providers to their own markets.” This provision appears to substitute China’s unilateral judgment for the WTO’s dispute settlement rules, and is thus inconsistent with Article XXII of the GPA.

Finally, China continues to propose a five-year transitional period across all annexes prior to implementing the five-year transitional monetary threshold phase. Such a transition period totaling 10 years is completely unwarranted, particularly given that 10 years have already passed since China first promised to accede to the GPA “as soon as possible.”

Domestic Government Procurement Regime

Tendering and Bidding Law

There has long been discussion about the reconciliation between China’s Government Procurement Law and its Tendering and Bidding Law, although there was little apparent progress in 2011. To date, the application of the Government Procurement Law is defined by the nature of the funds used, not by the nature of the purchasing entity. However, in practice in most cases discretion is left to the purchasing entity to decide which law to apply, adding more uncertainty to China’s government procurement regime. As part of China’s GPA accession negotiations, reconciling these two major laws governing China’s procurement practices will be critical, particularly regarding SOE procurement.

Government Procurement Law

China released two major draft regulations in 2010 to clarify the practice related to the procurement of domestic products. The two draft regulations are the “Implementing Rules

of Government Procurement Law” (State Council draft regulation) released by the State Council Legislative Affairs Office in January 2010, and the “Administrative Measures on Government Procurement of Domestic Products” (MOF draft regulation) released by MOF in April 2010.

For the first time, the State Council draft regulation proposed defining “domestic product” by the percentage of “domestic production cost,” and the MOF draft regulation quantified the percentage as 50 percent. However, the two draft regulations provided two similar but different equations for calculating the percentage of domestic production cost, with different Chinese terms used. In addition, MOF further revised its draft regulations in August 2010 to require that the cost of “other non-Chinese factors” (mainly the depreciation of imported manufacturing equipment and the amortization of royalties paid to foreign intellectual property owners) be deducted from the value added in China. This could make a major difference for multinational corporations (MNCs) operating in China when calculating the percentage of their products made in China.

To date, neither of the two draft regulations has been officially promulgated. However, it is essential for both WTO GPA parties and international business interests to assess China’s government procurement regime with a clearly defined concept of domestic product. Thus, AmCham China calls for further dialogue with the Chinese government on this important issue, and hopes the concept will be defined in a way that encourages MNCs’ participation in China’s government procurement market on an equal footing and in line with international practice.

Standards and Government Procurement

AmCham China members have observed in the past year that the Chinese government has increasingly linked various technical standards with government procurement in the name of information security, environmental protection, and energy conservation. Such standards, testing, and certification requirements include: (1) the CCCi certification applicable to 13 categories of “information security products;” (2) the proposed “information security standard for office equipments;” (3) the CECP certification and related “Catalogue of Government Procurement List of Energy Efficiency Products” and proposed “National Recommended Voluntary Certification for China RoHS Compliance;” and (4) the Chinese Trusted Computing Module.

AmCham China urges the Chinese government not to apply these standards to all government procurement, but only to those projects and areas where such standards are essential. In situations where these standards and conformity assessment qualifications are required, AmCham China hopes that a principle of “self-declaration for compliance,” which does not mandate the disclosure of source code or other proprietary information, be followed. (For more informa-

最后，中国还提出在执行五年内门槛价逐年递减之前，另设五年的过渡期。这一长达十年的过渡期是十分不合理的，然而自中国承诺“尽快”加入《政府采购协定》之后，十年已经过去。

政府采购本国产品体制

《招标投标法》

虽然关于理顺《中国政府采购法》和《招标投标法》之间关系的讨论为时已久，但2011年这方面的进展仍不明显。到目前为止，《政府采购法》的适用主要依据使用资金的性质，而非采购实体的性质。然而在实践中，就多数案例而言，采购实体可以自行决定适用哪部法律，这为中国政府采购体制带来了更多的不确定性。作为中国加入《政府采购协定》谈判的一部分，理顺这两部约束中国采购实践的主要法律之间的关系至关重要，尤其对于国企采购。

《政府采购法》

2010年，中国颁布了两部法规草案，旨在进一步明确有关本国产品采购的实践。这两部法规草案分别是2010年1月国务院法制办公室颁发的《政府采购法实施条例（征求意见稿）》以及2010年4月财政部颁发的《政府采购本国产品管理办法（征求意见稿）》。

在草案中，国务院首次建议按“本国生产成本”来定义“本国产品”，而财政部的草案将这一比例量化为50%。然而，两部草案提出了两种相似但又不同的计算本国生产成本比例的公式，而且中文表述也是截然不同。此外，2010年8月，财政部对其草案做出了进一步修订，并要求“其他非中国因素”（主要是进口生产设备的贬值以及外国知识产权版税的摊销）所带来的成本应从中国的增值部分中扣除。如遵照这一要求，在华运营的跨国公司在计算其中国制造产品的成本比例时会得到截然不同的结果。

到目前为止，这两部草案都还没有正式实施。但是，世贸组织《政府采购协定》缔约方和国际商界在评估中国政府采购体制时需要对本国产品有一个清晰的定义。因此，中国美国商会呼吁与中国政府就此项事宜开展进一步对话，并希望这一定义既能符合国际实践又能带动跨国公司参与中国政府采购市场，并使其享受公平待遇。

标准与政府采购

中国美国商会会员意识到，去年，中国政府以信息安全、环保和节能的名义将多项技术标准与政府采购挂钩。这些标准、测试及认证要求包括：(1)适用于13种“信息安全产品”的CCCI认证；(2)“信息安全技术办公设备基本安全要求”征求意见稿；(3)CECP认证和相关的“节能产品政府采购清单”以及“中国RoHS国推自愿性认证”实施意见；(4)中国可信计算模块。

中国美国商会促请中国政府在实施这些标准时仅针对那些需要采用此类标准的项目和领域，而不是所有政府采购。而当需要采用此类标准和合格评估认证时，中国美国商会建议采取“自我声明遵守”原则，而不是强制公开源代码或其他版权信息。（有关标准的更多信息，请参见“标准、认证和合格评定”章节。）

结论

美国的企业界致力于谋求在中国的长远发展，为此将继续保持与中国政府和美国政府的接触，确保中国以公平、迅速且有意义的方式加入《政府采购协定》。建立一个公平、透明和公开的政府采购体系符合中国自身的利益，也会扩大中国获得高品质的先进技术和产品的机会，从而促进中国经济的发展。

建议

- 提交一份重新修改后的中国加入《政府采购协定》的出价清单，并与其他现有缔约方保持一致。
 - 在中央政府实体方面：将所列实体的范围扩大至北京以外的机构，且覆盖《政府采购法》和《招标投标法》的适用主体。
 - 在地方政府实体方面：将更多的地方政府实体全面纳入《政府采购协定》出价清单的覆盖范围。
 - 在国有企业方面：可以(1)颁布明确的行政条例，声明国有企业采购不属于政府采购，并确保所有国有企业相关规定和指导文件与中国国有企业商业独立的承诺一致，与对世贸组织的其他承诺一致；或(2)将为数众多、带有政府采购性质的国有企业纳入出价清单之列。

tion on standards, see the Standards, Certification, and Conformity Assessment chapter.)

Conclusion

The US business community is pursuing long-term development in China. US companies will continue to engage the Chinese government and the US government to ensure that China's accession to the GPA is fair, prompt, and meaningful. A fair, transparent, and open government procurement system is in China's own interest, as it will expand China's access to high-quality advanced technology and products, thus accelerating China's economic development.

government procurement, follow a principle of "self-declaration for compliance," which does not mandate the disclosure of source code or other proprietary information.

Recommendations

- **Submit a revised GPA accession offer in line with those of current parties.**
 - **For central government entities:** Expand the list of covered central government entities to include those outside of Beijing, and cover all procurements that are subject to the Government Procurement Law and/or the Tendering and Bidding Law.
 - **For sub-central government entities:** Provide comprehensive GPA coverage for more sub-central government entities not already covered.
 - **For SOEs:** Either (1) issue an unambiguous directive confirming that SOE procurements are non-government procurements, and ensure that all regulations and directives governing SOEs are consistent with China's commitments regarding the commercial independence of SOEs and other relevant WTO obligations; or (2) include China's numerous SOEs that procure for governmental purposes.
 - Provide comprehensive coverage for construction and other services in the form of "negative" lists in China's GPA annexes.
 - Lower the contract value thresholds in each annex of China's revised offer to be commensurate with other GPA parties' existing thresholds.
- Repeal any remaining policies that provide preferences for domestic or indigenous innovation products in government procurement, at both the central and local government levels, and ensure full revocation of IIP preferences that the Chinese government has already committed to repeal.
- Immediately issue rules that make clear to government entities that products produced in China by FIEs are domestic products for purposes of government procurement.
- In situations where standards and conformity assessment qualifications must be required for

- 在中国《政府采购协定》附件中以“否定式”清单的形式全面扩大工程建设和其他服务的覆盖范围。
- 降低中国修改后出价清单每份附件中的合同门槛价，从而与《政府采购协定》缔约方现行门槛价一致。
- 取消中央和各级政府现行有关在政府采购中优先购买本国产品或自主创新产品的政策，确保全面废止已承诺取消的优先采购自主创新产品的政策。
- 立即出台相关规则，向相关政府实体说明在华外商投资企业生产的产品属于政府采购意义上的本国产品。
- 在适用标准和合格评估认证的场合，中国美国商会建议采取“自我声明遵守”原则，而不是强制公开源代码或其他版权信息。



Innovation Policy

Introduction

Indigenous innovation policies, first foreshadowed in the 2006 “Medium- and Long-Range Plan (MLP) for Science and Technology Development,” have moved from the planning to implementation stage. China’s goal of fostering innovation is commendable. However, AmCham China is concerned that recently introduced policies, initiatives, and practices are stifling genuine innovation by restricting foreign participation in the Chinese market.

China has made commendable progress in removing some of its protectionist policies linked to indigenous innovation, though many remain. The 2009 indigenous innovation product procurement catalogue has been abolished, and the State Council has required local governments to follow suit. This is a positive sign that the Chinese government recognizes the importance of the global nature of innovation in today’s economy.

AmCham China remains concerned about the overall direction of China’s policies to promote innovation and technology development. These policies increasingly appear to favor domestic Chinese entities through tax incentives; government procurement (GP) policies; standards setting and requirements; security regulations; subsidies; and

competition law policy. Such advantages, together with China’s failure to effectively enforce protection of foreign intellectual property rights (IPR), raise concerns that such policies may result in Chinese firms benefitting from access to proprietary intellectual property (IP) to develop competitive domestic alternatives, further disadvantaging foreign invested companies.

China is a central participant in and beneficiary of today’s global innovation system. AmCham China member companies have spent billions of dollars investing in world-class research and development (R&D) centers in China. China’s engineers and scientists have benefitted from this investment as they have been integrated into organizations which operate using global best practices. Indeed, many of China’s most successful technology companies have drawn on Chinese talent developed at multinational facilities in China.

Despite the significant gains that China has reaped from foreign investments in R&D in China, its policies increasingly limit the space for foreign participation in China’s economy. This is a loss for both foreign firms and for China. Foreign firms lose the opportunity to contribute cutting edge knowledge, and Chinese companies and workers lose opportunities to be part of global networks of collaboration. In the long run, discriminatory policies reduce competition in the marketplace and discourage innovation.

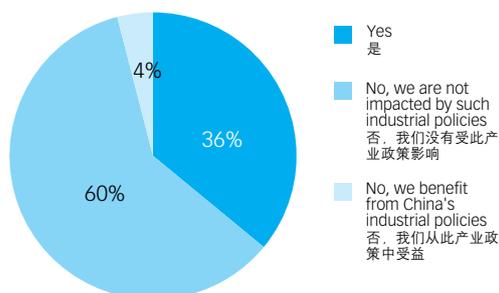
Innovation occurs in competitive markets which support IPR protection and are underpinned by strong pro-competition educational, financial, tax, and legal systems and policies. The experience of other countries suggests that if China embraced such policies, it would strengthen its competitiveness and accelerate its transformation from the world’s factory to a leading global innovator.

Figure (图) 1

Do you feel that your company is losing out on business in China as a result of industrial policies that promote and support Chinese companies over foreign companies?

您是否认为由于促进和支持中国本土企业多于外企的产业政策致使公司在华业务亏损？

Company sample size = 303
企业样本规模



Significant Developments

Progress Toward Delinking Indigenous Innovation and Government Procurement

At the December 2010 US-China Joint Commission on Commerce and Trade (JCCT), China made the commitment to “not adopt or maintain measures that make the location of the development or ownership of intellectual property

创新政策

引言

中国在 2006 年《科学技术发展中长期规划》（中长期规划）中首次提出自主创新政策，目前该政策已经从规划阶段进入实施阶段。中国推动创新的目标值得称赞。但是，中国美国商会担心近期实行的一些政策、举措与实践会限制外企参与中国市场，从而抑制了真正的创新。

中国在废除部分与自主创新相关的保护主义政策方面取得的进步令人称道，但仍有许多政策未被触动。2009 年出台的自主创新产品采购目录业已废除，且国务院要求各地方政府也照此办理。这堪称是一个积极的信号，说明中国政府已经认识到在当今经济发展中创新应该是全球性的。

中国美国商会对中国推动创新和技术发展的总体政策走向仍有担心。这些政策似乎通过税收优惠、政府采购政策、标准制定和要求、安全法规、补贴和竞争法律政策，给予中国国内企业越来越多的优惠待遇。这些优势地位连同中国在保护外国知识产权（IPR）方面执法不力，令人担心这些政策可能会使中国企业有机会获取专利知识产权，以开发出具有竞争力的本国替代方案，将外资企业进一步置于不利地位。

中国是当今全球创新体系的主要参与者和受益者。中国美国商会的会员公司已经投入数十亿美元在中国设立了世界一流的研发中心。中国的工程师和科学家已融入这些采用全球最佳实践的机构中，他们是上述这些投资的受益者。的确，中国许多最成功的科技公司都吸收了在华跨国机构所培养出的中国人才。

尽管中国已从外商在华进行的研发投资中取得巨大收获，但对外国主体参与中国经济的空间却作了越来越多政策方面的限制。这对于中国及在华外资企业来说都是一种损失。外资企业失去了在尖端知识方面做出贡献的机会，而中国的企业和工人则失去了全球协作交流的机会。从长

远的角度看，歧视性政策会削弱市场竞争并阻碍创新。

创新产生于竞争性市场中，而竞争性市场须支持知识产权保护，并得到各种鼓励竞争的教育、金融、税收和法律体系及政策的有力支撑。其他国家的经验显示，如果中国能采取这些政策，将有助于中国提高其竞争力，加速中国从世界工厂向全球领先创新者的转型。

重大进展

自主创新与政府采购脱钩方面取得的进展

在 2010 年 12 月召开的美中商贸联委会会议上，中国承诺“不再通过或保留将知识产权开发地或所有权归属作为判定产品或服务是否具有政府采购优先购买资格的一项直接或间接条件的措施。”另外，在 2011 年 1 月胡锦涛主席访美期间，中国进一步承诺将创新政策与政府采购优先待遇脱钩。

最近，中国已经根据上述承诺对其自主创新和政府采购规定进行了重大并令人称道的修改。2011 年 6 月 28 日，财政部发布通知，自 2011 年 7 月 1 日起，停止执行以下三项将自主创新与政府采购相挂钩的政策规定：《自主创新产品政府采购评审办法》、《自主创新产品政府采购预算管理办法》和《自主创新产品政府采购合同管理办法》。另外，中国国务院还发布一条内部通知，要求各省、自治区、直辖市地方政府废除有关将政府采购与自主创新挂钩的所有地方性法规。

上述举措尽管受到欢迎，但只部分落实了中国 2011 年 1 月做出的关于将自主创新政策与政府采购脱钩的承诺，并且尚未在全国范围内得以充分实施。（详见“政府采购”一章中的相关内容。）

全面实施战略性新兴产业发展规划

2010 年 10 月，中国国务院颁布了《关于加快培育和发

a direct or indirect condition for eligibility for government procurement preferences for products and services.” In addition, during President Hu Jintao’s visit to the US in January 2011, China further committed to delink its innovation policies from government procurement preferences.

China has recently taken significant and commendable steps to revise its indigenous innovation and government procurement rules in line with these commitments. On June 28, 2011, the Ministry of Finance (MOF) released a notice voiding, as of July 1, 2011, the following three policies that linked indigenous innovation to government procurement: “Evaluation Measures on Indigenous Innovation Products for Government Procurement,” “Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products,” and “The Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products.” In addition, China’s State Council issued an internal notice requiring provincial, municipal, and autonomous regional governments to eliminate all local regulations that link government procurement and indigenous innovation.

These moves, while welcome, only partially fulfill China’s January 2011 commitment to delink innovation policies from government procurement; full, nationwide implementation remains incomplete. (See the Government Procurement chapter for more information.)

Widespread Implementation of the Strategic Emerging Industries Initiative

In October 2010, China’s State Council promulgated the “Decision to Accelerate the Development of Strategic Emerging Industries (SEIs)” (decision). The decision calls for China to rapidly increase investments in seven strategically targeted, knowledge-based industries in order to move China up the global value chain. These industries include: new-generation information technology (IT); high-end equipment manufacturing; advanced materials; alternative-fuel cars and energy-saving; environmental protection; alternative energy; and biotechnology. The initiative is an extension of the indigenous innovation drive and a complement to the 2006 MLP. The goal of the decision is to increase the seven targeted industries’ share of GDP to 15 percent by 2020.

Since the 2010 State Council decision, various Chinese government ministries have published extensive guidance to promote SEIs. This includes dozens of sub-industry development plans targeted under the SEI initiative, and Ministry of Commerce (MOFCOM) guidance to encourage foreign investment in the seven strategic industries. These plans and policy documents clearly indicate that the government will use a broad range of policy incentives to encourage technology development. These policies support increased bank lending to high-tech sectors, the creation of government-backed venture capital funds, the formulation

of technical standards, and implementation of tax incentives for R&D, among others measures.

AmCham China welcomes specific recommendations in the decision to allow foreign enterprises to participate in the initiative, including opportunities for participation in Chinese government-funded R&D as well as standardization programs. We also note that the initial decision excludes any reference linking technology development to public procurement. AmCham China views these changes as a positive policy move. Our members look forward to being able to participate fully in the SEI, as envisaged in these recommendations, as implementation proceeds.

Specific Issues

Forced Technology Transfer

The transfer of technology and IP continues to be a source of concern regarding market access in many key sectors of China’s economy. The 2006 MLP and the SEI initiative both have a stated goal of “fostering the obtaining and re-innovation of foreign technology.”

In particular, in 2011 MOFCOM published detailed guidance to Chinese state-owned enterprises (SOEs) and government agencies on how to avoid IP disputes and World Trade Organization (WTO) complications in re-innovating acquired foreign technology. The State-Owned Assets Supervision and Administration Commission’s (SASAC) published guidance notes that SOEs should encourage foreign companies to transfer their technology for the purposes of “re-innovation.”

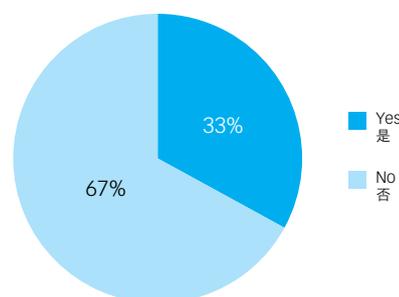
Forced technology transfers are against WTO rules and impede and discourage foreign investment in China. AmCham China urges China to allow the market to dictate

Figure (图) 2

At times, China has forced technology or knowledge transfers from foreign companies in exchange for market access. Are the effects of such practices negatively impacting your company or clients' assessment of the business environment in China?

中国有时以换取市场准入为条件迫使外企进行知识或技术转让。该做法是否对企业或客户评估在华运营环境时造成负面影响?

Company sample size = 297
企业样本规模



展战略性新兴产业发展的决定》（下称《决定》）。该《决定》要求中国快速增加对七大目标、知识型产业的投资，以提升中国在全球价值链中的地位。这些产业包括新一代信息技术（IT）、高端装备制造、新材料、新能源汽车和节能环保、新能源和生物技术。上述举措是自主创新政策的延伸，也是对2006年中长期规划的补充。该《决定》的目标是到2020年，将上述七大目标产业占GDP的比例提高到15%。

自2010年国务院颁布该《决定》以来，中国政府各部委已经公布了促进战略性新兴产业发展的广泛的政策指导。其中包括战略性新兴产业发展规划下的多个子行业发展计划以及商务部发布的鼓励外商投资七大战略产业的指导意见。上述计划和政策文件清楚地表明，中国政府将采用广泛的政策激励措施来鼓励科技发展。这些政策支持银行加大对高科技行业的贷款力度、政府担保风险投资基金的建立、技术标准的制定以及研发税收刺激政策的执行等。

中国美国商会对该《决定》中有关允许外国企业参与该计划的具体建议表示欢迎，其中包括给予外国企业参与中国政府资助的研发以及标准化项目的机会。我们也注意到该《决定》初稿中排除了任何将技术开发与公共采购挂钩的条款。中国美国商会认为这些变化是积极的政策举措。我们的会员企业期待着如同这些建议所预计的那样，随着该计划的实行，全面参与到战略性新兴产业中来。

具体问题

强制技术转让

在中国经济许多关键领域的市场准入方面，技术和知识产权转让依然是一个令人担忧的问题。2006年的中长期规划和战略性新兴产业发展规划都将“促进外国技术的掌

握与再创新”列为发展目标。

特别是2011年，商务部针对中国国有企业和政府机关在进行外国技术再创新时如何避免知识产权争议和世界贸易组织（WTO）纠纷发布了具体的指导意见。国务院国有资产监督管理委员会（国资委）发布了专门指导意见，提出国有企业应鼓励外资企业转让其技术进行“再创新”。

强制进行技术转让有悖世界贸易组织规则，阻碍并挫伤了外商投资中国的积极性。中国美国商会促请中国政府允许由市场来决定外资企业建立合资企业的合作伙伴，及其技术转让或许可的对象。

自主“技术替代品”和人为的国有企业需求

尽管中国鼓励外商在众多行业进行投资，但也一直在寻求开发公认的、商用技术的中国替代方案。这一长期目标在战略性新兴产业规划下则更显突出。如目前正在实施中的“核心高科技”项目即是一实例，该项目旨在未来十年内开发出可替代国外操作系统、半导体、民用飞机、可再生能源和其他“战略性新兴产业技术”的产品。

中国鼓励国有企业购买那些自主替代技术而非外国产品，旨在创造自主替代技术的商业需求并收回国内研发投入。例如，作为软件合法化工作的一部分，中国政府建议国有企业购买国产软件。中国还要求本国的信息通信技术企业购买中国具有自主知识产权的无线局域网（WLAN）技术标准，即无线局域网鉴别和保密基础结构（WAPI），而WAPI是中国针对国际通行的电气与电子工程师协会（IEEE）802.11i无线网络安全标准开发的中国替代品。

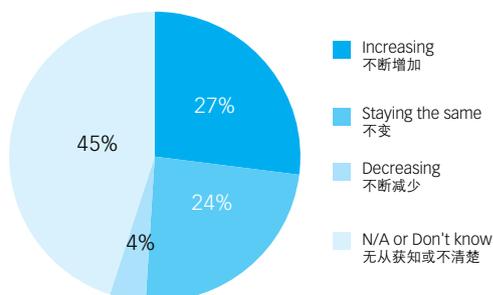
尽管中国政府在创造人为商业需求方面作了很多努力，但事实证明自主替代技术开发耗资巨大，商业运作上亦不成功。WAPI和TDSCDMA这两项自主无线标准就是耗资巨大的实例。这些举措同样直接违反了WTO所明确的义务，以及中国政府在2009及2010年美中商贸联委会和2009年中美战略与经济对话（S&ED）中有关国有企业仅基于商业考虑进行采购，不受政府干预的承诺。

中国美国商会建议中国重新考虑上述依靠国家影响力人为创造技术替代方案的战略。中国政府应努力创建一个充满活力、健康的金融系统，增加研发税收激励和退税政策，更重要的是加强知识产权保护力度，制定其它鼓励竞争、推动创新的政策，这样政府的资源才能得到更有效的利用。中国美国商会促请中国政府停止授意国有企业采购自主创新产品的做法，履行其在水世界贸易组织、美中商贸联委会和中美战

Figure (图) 3

In your experience, forced technology transfer in China is:
在您看来，强迫性技术转让在华的状况为？

Company sample size = 301
企业样本规模



decisions on appropriate joint venture partnerships for foreign-invested firms and to whom those foreign-invested firms transfer or license technology.

Indigenous “Technology Substitutes” and Artificial SOE Demand

Although China encourages foreign investment in a variety of industries, it also seeks to create Chinese alternatives for proven and commercially viable technology. This long-standing goal has become more focused under the SEI initiative. The ongoing “core high-technology” program serves as one example, aiming over the next 10 years to develop substitutes for foreign operating systems, semiconductors, civil aircraft, renewable energy, and other “strategic industrial technology.”

China has encouraged SOEs to purchase these indigenous alternative technologies instead of foreign products in an effort to create commercial demand and recoup domestic R&D investments. For example, SOEs have been advised to buy domestic Chinese software as part of China’s software legalization effort. Likewise, China has required Chinese information and communications technology firms to purchase the domestic proprietary wireless local area network (WLAN) technology standard, WLAN Authentication and Privacy Infrastructure (WAPI), as a Chinese alternative to the internationally accepted Institute of Electrical and Electronics Engineers (IEEE) 802.11i wireless Internet security standard.

Despite these artificial commercialization efforts, indigenous alternative technologies often prove to be costly to develop and commercially unsuccessful, with the indigenous wireless standards WAPI, EUHT, and TD-SCDMA as particularly costly examples. These actions also directly contradict an explicit WTO obligation and other commitments by the Chinese government at the 2009 and 2010 JCCT meetings and the 2009 US-China Strategic and Economic Dialogue (S&ED) that SOE purchasing be based solely on commercial considerations, without government influence.

AmCham China encourages China to reconsider this strategy of creating state-influenced technology substitutes. Government resources could be put to more productive use by creating a dynamic and robust finance system, expanding R&D tax incentives and rebates, and, most importantly, improving IPR protection and instituting other pro-competitive policies that foster innovation. AmCham China urges the Chinese government to rescind and cease further domestic innovation mandates on SOE procurement and comply with WTO, JCCT, and S&ED commitments to create a level playing for all companies.

Preferential Loans and Export Credits for Domestic Enterprises

To help make domestic, primarily state-owned Chinese

firms more competitive, the Chinese government has provided expansive preferential state loans and export credits. Such non-competitive, preferential practices appear common among Chinese companies operating abroad in Africa and Southeast Asia. Such practices are also becoming increasingly prevalent in China’s domestic market. For example, a major Chinese telecommunications company recently financed its own customer’s purchase of hardware with state loans. This creates an uneven playing field for foreign-invested companies, reducing competition in the marketplace and thus discouraging further innovation in China. AmCham China recommends that the Chinese government allow local enterprises to succeed or fail based on market conditions, not government fiscal support.

Subsidized R&D for Domestic Enterprises

Since the 1980s, the Ministry of Science and Technology (MOST), the Ministry of Industry and Information Technology (MIIT—and its predecessors), and the National Development and Reform Commission (and its predecessors) have sponsored incentive and benefit programs to promote R&D investment, particularly by SOEs. Recently, MIIT signed a strategic memorandum of understanding with the State Development Bank to expand funding at the provincial and local levels for basic and applied research in priority areas identified in the MLP.

While in October 2010 the Chinese State Council announced it would begin to allow selected foreign-invested companies to participate in these funding programs, to date, the majority of funds have been almost exclusively channeled to Chinese enterprises. AmCham China encourages China to provide foreign-invested companies equal access to R&D incentive programs. This will help expand R&D investment in China and further advance China’s innovation economy.

Standards as a Tool for Innovation Policy

China has adopted unique standards and requirements across a wide range of industry sectors and products, such as the high-tech and IT industries, in the name of environmental protection, energy conservation, and securing critical Chinese infrastructure. However, in many cases, these standards appear designed to protect domestic Chinese-invested companies from foreign competition. Application of such standards risks closing off access by foreign-invested companies to China’s government procurement market and the broader critical infrastructure sectors that comprise a large portion of China’s economy. China’s expansive definition of critical infrastructure in policies such as the Multi-Level Protection Scheme may extend these market access barriers to a range of both government and private sector activities that are generally open to foreign participation in other countries.

AmCham China encourages China to harmonize its standards regime with internationally recognized market-driven

略与经济对话上的承诺，为所有企业营造公平的竞争环境。

面向国内企业的优惠贷款和出口信贷

为了帮助国内企业、尤其是国有企业提高竞争力，中国政府为他们提供了多种优惠的国家贷款和出口信贷。这种非竞争性的优惠贷款和出口信贷似乎被在非洲和东南亚开展业务的中国公司普遍使用。如今这些做法在中国国内市场上也日益盛行。比如，一家中国大型通信公司近期将所获得的国家贷款用于资助自己的客户采购硬件设施。这种做法使得外资企业处于不公平的竞争地位，削弱了市场竞争，因此也抑制了中国创新事业的进一步发展。中国美国商会建议中国政府让市场而不是由政府的财政支持决定本土企业的成败。

给予国内企业研发补贴

自上世纪八十年代以来，科学技术部（科技部）、工业和信息化部（工信部，及其前身）和国家发展改革委员会（及其前身）就已经出台了多项激励和优惠计划，旨在促进国内企业，尤其是国有企业的研发投入。工信部近期与国家开发银行签订了一份战略谅解备忘录，旨在加大对科技发展中长期发展规划中重点领域基础和应用研究的省级和地方研发资助。

虽然 2010 年 10 月国务院宣布开始有选择地允许外资企业参与这些政府资助项目，但迄今为止大部分的资金依然几乎无一例外地投向了中国企业。中国美国商会鼓励中国政府允许外资企业平等参与重点研发项目。这将促使在华研发投入进一步扩大，并进一步促进中国创新经济的发展。

标准作为创新政策的工具

以环境保护、节约能源和保护重要基础设施为名，中国出台了针对广泛的行业领域和产品的独特标准和要求，其中如高科技和信息产业。然而，在很多情况下，这些标准似乎都旨在保护国内中资企业不受外资企业竞争的影响。这些标准的运用可能使外资企业无法进入中国政府采购市场以及占中国经济相当大比例的诸多重大基础设施部门。中国在诸如“信息安全等级保护制度”（MLPS）等政策中对“重大基础设施”定义非常宽泛，可能会将市场准入壁垒扩展至一系列国有和民营部门的行为，而这些行为在其它国家一般都对外资开放。

中国美国商会鼓励中国将其标准制度与国际认可的、市场驱动的标准相融合，而不再制定中国自己的标准。中国参

与国际标准制定过程有助于实现推动中国标准成为世界标准的目标，同时还能鼓励创新、提高市场效率、增加中国产品对外出口。（具体内容见“信息和通讯技术及网络安全”、“政府采购”和“标准、认证与合格评定”等相关章节。）

结论

中国美国商会非常支持中国发展创新型经济的目标。我们认为此举将有利于促进本国和全球市场的竞争和进步。然而，对于中国出台的创新政策与相关计划所显现出的保护主义色彩，令在华运营的外资企业仍然感到担心。这些政策将会压抑真正的创新，还有可能加剧贸易争端。虽然中国一直寻求从全球商业网络、研发和科学合作中受益，以增强自身创新能力，但如果同时对外资企业在华参与市场竞争设置壁垒，这无疑将会加大贸易摩擦。

中国美国商会促请中国继续奉行对所有中国境内的创新型公司提供国民待遇的政策。我们坚信，历史已经证明这种竞争环境是推动创新的最佳方式。我们还鼓励美中两国政府加强并扩大两国在创新领域的对话，以促进旨在鼓励外资与内资企业进行创新的政策。

建议

- 确保中国近期的战略性新兴产业和其他自主创新政策中不含任何对创新、采购、标准、税收、知识产权、信息技术安全和技术创新方面的歧视性政策。
- 允许由市场来决定外资企业建立合资企业的合作伙伴，及外资企业技术转让或许可的对象。
- 加强本国与外国的知识产权保护，在标准制定、竞争环境和知识产权执法活动中尊重相关知识产权权利的完整性。
- 不再将知识产权所有权国籍作为市场准入的一项条件或壁垒。
- 加强并拓展美中创新对话的参与深度和广度，以促进旨在鼓励外资与内资企业进行创新的政策。
- 废止进一步授意国有企业采购自主创新产品的做法。
- 允许外资企业在进入研发扶持项目方面享有平等权利。
- 将标准制度与国际认可的、市场驱动的标准接轨，不再制定重复性国内标准。

standards instead of creating its own. China's participation in the international standards development process would help it to realize its goal of promoting Chinese standards as international standards. It would also encourage innovation and market efficiency, and facilitate the export of Chinese products to the global market. (See the Information and Communications Technology and Cyber Security chapter, the Government Procurement chapter, and the Standards, Certification, and Conformity Assessment chapter for more information.)

Conclusion

AmCham China strongly supports China's mission to establish an innovation-based economy. We recognize the benefits this will bring in increasing competition and advancements in both the domestic and global business markets. However, foreign-invested companies operating in China remain concerned by the protectionist nature of published innovation policies and initiatives. These policies potentially will stifle the development of genuine innovation and have the potential to increase trade disputes. As China seeks to benefit from the global network of business, R&D, and scientific collaboration to increase its innovation capabilities, it cannot simultaneously raise barriers to foreign-invested company participation in the Chinese market without intensifying trade friction.

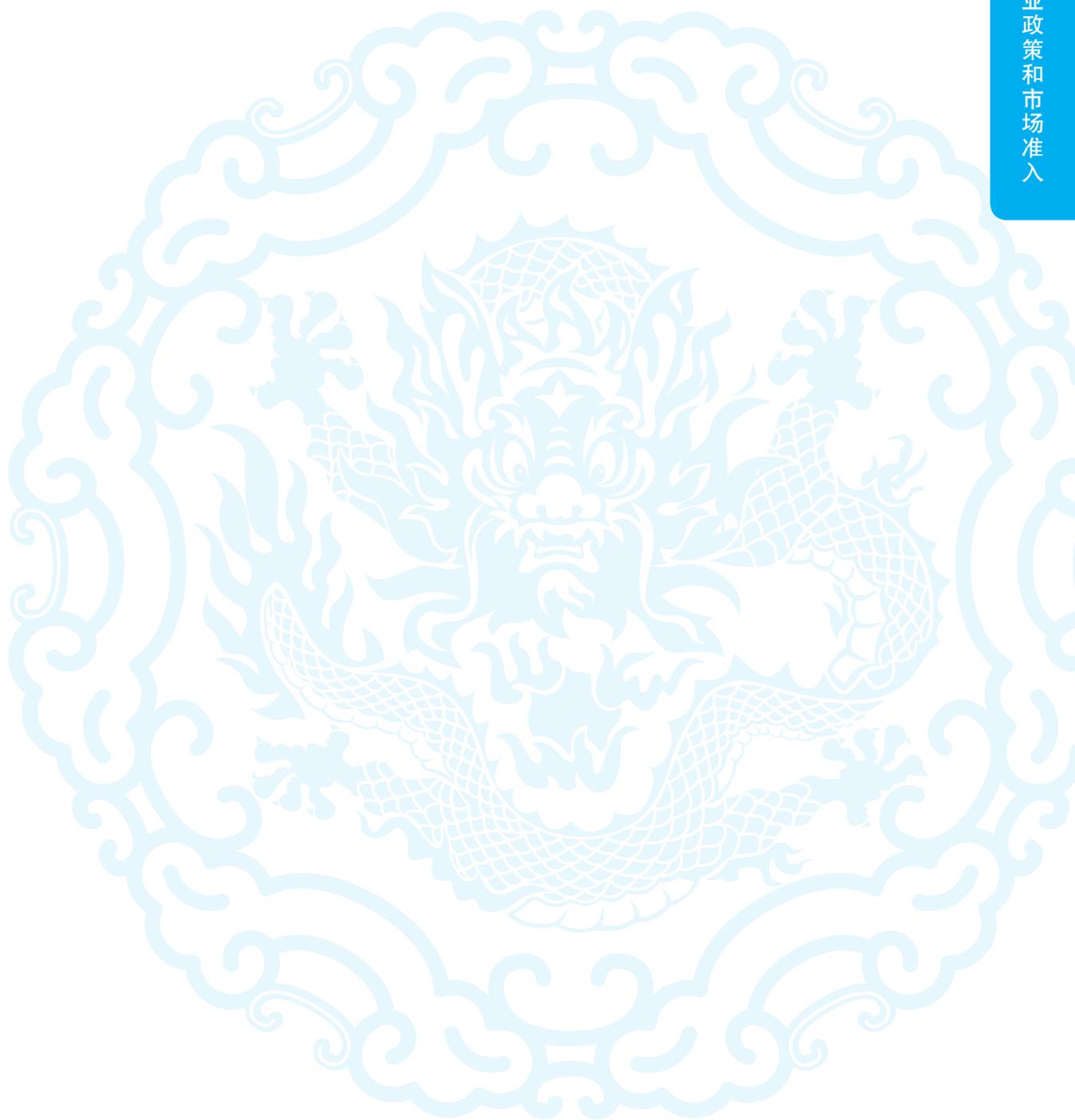
AmCham China urges China to pursue policies that provide national treatment for all innovative companies in China. We strongly believe that history has demonstrated this type of competitive environment to be the best stimulator of innovation. We also encourage the US and Chinese governments to strengthen and extend the mutual engagement of the US-China dialogue on innovation to promote policies that encourage innovation by both foreign- and domestically-invested firms.

policies that encourage innovation by both foreign- and domestically invested firms.

- Rescind and cease further domestic innovation mandates on SOE procurement.
- Allow foreign-invested companies equal access to R&D incentive programs.
- Harmonize the standards regime with that of internationally recognized, market-driven standards instead of creating duplicative domestic standards.

Recommendations

- **Ensure that China's new strategic emerging industries and other indigenous innovation policies are non-discriminatory in all aspects, including procurement, standards, tax, IP, IT security, and technical innovation.**
- Allow the market to dictate decisions on appropriate joint venture partnerships for foreign-invested firms and to whom those foreign-invested firms transfer or license technology.
- Enforce both domestic and foreign IP rights and respect the integrity of underlying IP rights in standards, competition, and IP enforcement.
- Cease using nationality of IP ownership as a market access condition or barrier.
- Strengthen and extend the mutual engagement of the US-China dialogue on innovation to promote



Intellectual Property Rights

Introduction

AmCham China was pleased that top levels of the Chinese government once again emphasized intellectual property rights (IPR) protection in 2011. The special IPR enforcement campaign led by an inter-ministerial group chaired by Vice Premier Wang Qishan from October 2010 to June 2011 brought visible improvements in some areas, especially on anti-counterfeiting. In addition, China repealed national regulations linking government procurement to domestic ownership of intellectual property (IP), and US-China bilateral talks resulted in a number of welcome commitments and joint programs to address important IPR issues.

AmCham China welcomes the commitment China made at the 22nd Session of the US-China Joint Commission on Commerce and Trade (JCCT) in November 2011 to make permanent the special IPR enforcement campaign's State Council-level leadership structure to coordinate IPR enforcement across China. We hope this commitment will create a sustainable mechanism that will provide increased IPR enforcement going forward at all levels of the government.

AmCham China firmly believes an IPR system that provides for strong and consistent protections regardless of the origin and nature of the IP will, in the long run, increase domestic innovation more than any other available regulatory mechanism. Effective IP protection also attracts investment capital, not only to firms that own IP, but to economies that protect it.

Significant Developments

22nd Session of the JCCT

AmCham China was pleased to see a number of IPR concerns addressed at the JCCT in November 2011. Some of the highlights from the JCCT IPR Working Group include commitments to establish a joint government-industry program to combat online counterfeiting, roundtables to discuss online copyright protection, increased dialogue on broadcast tariff rates, and cooperation on addressing bad-faith trademark registrations.

In addition, the JCCT's IPR Working Group agreed to deepen its dialogue on patent quality issues and examination time frames. It also committed to studying whether the receipt of government benefits is linked to where IP is owned or developed, and its affect on the licensing of IP by foreign entities, with a particular focus on identifying for removal activities that distort trade and investment.

AmCham China is also cautiously optimistic about the commitments laid out in the State Council's Opinions on Strengthening IP Protection, released at the same time as the JCCT. Commitments to incorporate protection of IP into annual performance indicators of government officials, establishing a "Leading Group" to coordinate national IP enforcement efforts, and improving cross-agency coordination are all laudable aims. AmCham China members will be carefully assessing whether these commitments are implemented during 2012.

Innovation Policy and IP

In line with China's 2011 JCCT commitments, the State Council issued in November 2011 an internal circular entitled "Notification Regarding Deepening the Work for Removal of Documents Linking Innovation Policies to Government Procurement Policies." This circular calls for repeal of national regulations that impose domestic IP requirements for government procurement.

AmCham China is encouraged by this development, and urges the Chinese government to enforce this circular nationwide, particularly at local government levels, to ensure equal treatment. Our members remain concerned, however, that many other aspects of China's national industrial development agenda include provisions for discriminatory treatment of foreign-owned IP. This is discussed in further detail in the below Specific Issues section.

"China's Action Plan on Intellectual Property Protection 2011"

In April 2011, the China National Intellectual Property Strategy Office published "China's Action Plan on Intellectual Property Protection 2011" (action plan). The action plan asserts intentions to amend many IP laws and regulations in order to increase IPR enforcement. Of

知识产权

引言

2011年中国政府高层领导再次强调了知识产权保护的重要性，中国美国商会对此感到高兴。由王岐山副总理任组长的包括多个部委在内的领导小组于2010年10月至2011年6月开展了保护知识产权专项行动，在一些重要领域，特别是打击制假方面带来了显著的改善。此外，中国取消了国家将政府采购与国内知识产权拥有权进行挂钩的规定；中美双边会谈达成了若干受欢迎的承诺及联合项目，以解决知识产权领域的重要问题。

中国在2011年11月召开的第22届美中商贸联合委员会（JCCT）会议上承诺，将知识产权专项行动的国务院层面的领导机构长期保留，以协调全国各地的知识产权执法工作，中国美国商会对此表示欢迎。我们希望此承诺可以建立一种可持续的机制，使知识产权执法力度能够在各级政府层面都得以加强。

中国美国商会坚信，一个强有力且对知识产权的性质与来源都给予一以贯之保护的制度从长远来讲比其它任何可利用的监管机制更能促进本国创新。有效的知识产权保护制度不仅会吸引对拥有知识产权企业的投资，也会吸引对保护知识产权的经济体的投资。

重大进展

第22届美中商贸联合委员会会议

中国美国商会很高兴看到许多知识产权问题在2011年的美中商贸联委会上得到了解决。美中商贸联委会知识产权工作组的工作要点包括以下几点承诺：建立政府与行业的联合项目以打击网络制假活动，建立圆桌会议机制商讨网络著作权的保护问题，加强有关广播关税税率问题的对话，在解决恶意的商标注册问题上进行合作。

此外，美中商贸联委会知识产权工作组同意就专利的质量问题及其审查时间深入对话。工作组将致力于研究政

府利益的获得是否与知识产权的拥有或开发地相挂钩，及其对外国实体知识产权许可产生的影响。其中，工作组特别关注如何认定并消除扭曲贸易和投资的行为。

在美中商贸联委会举行的同时，国务院发布了“关于加强知识产权保护的意见”，对其中作出的相关承诺，中国美国商会表示谨慎乐观。承诺包括：将知识产权的保护纳入政府官员年度业绩指标、建立“领导小组办公室”以协调全国知识产权执法工作、提高跨机构的工作协调等；这些目标值得称赞。中国美国商会会员将认真评估这些承诺是否能够在2012年落实。

创新政策与知识产权

按照2011年美中商贸联委会上作出的承诺，国务院于2011年11月发布了名为《关于深入开展创新政策与提供政府采购优惠挂钩相关文件清理工作的通知》的内部文件。文件要求取消国家有关政府采购中要求知识产权必须为中国所有的强制规定。

中国美国商会对这一进展感到鼓舞，并促请中国政府能够在全国，特别是各级地方政府层面上执行此文件规定，以确保提供平等待遇。然而，对于中国国家产业发展计划的许多其他方面，包括对外国所有的知识产权的歧视性待遇的相关规定，我们的会员仍然表示担心。下文的“具体问题”部分将对此做详细的论述。

《2011年中国保护知识产权行动计划》

2011年4月，中国国家知识产权保护战略办公室公布了《2011年中国保护知识产权行动计划》（以下简称《行动计划》）。《行动计划》主张对许多知识产权方面的法律法规进行修改，以加强知识产权执法力度。其中具有特别意义的是计划针对商业秘密保护机制这一长期以来令人担忧的领域出台更多的司法解释。《行动计划》同时要求加强中国与外国政府及国际机构之间的合作，从长远看，这

particular significance is a plan for the judiciary to issue additional interpretations on trade secret protection mechanisms, which has long been an area of concern. The action plan also calls for stronger cooperation between China and foreign governments and international institutions, which in the long-term could benefit all industries by making China's IPR system more transparent and consistent with international norms.

Patent Developments

AmCham China welcomes the State Intellectual Property Office's (SIPO) response to industry requests to publicize its internal patent examination guidelines, and to combine them with the publicly available Examination Guidelines to make them more transparent. We also welcome China's joining the Patent Prosecution Highway mechanism in order to provide for accelerated patent prosecution procedures. This will not only benefit foreign-invested companies in China, but also domestically invested companies that wish to file patents abroad. AmCham China also appreciates China's judicial practice of referencing US patent trial principles in various cases. Recent Supreme People's Court (SPC) judicial interpretations adopted a number of substantive techniques used to determine patent infringement in US federal courts.

Specific Issues

Patents

Proliferation of Low Quality Patents

AmCham China member companies have concerns about the large number of low quality, junk patents originating in China, particularly utility model patents (UMPs), and the risk that such patents could undermine invention patents and real innovation.

The relatively low inventiveness (non-obviousness) requirements for UMPs make such patents easier to obtain. China's low quality registration standard for UMPs combined with incentives paid by local governments for filing patents generates a large number of junk UMPs. Due to the lower threshold for inventiveness, the requirements that must be satisfied to invalidate UMPs are also much more stringent than those to invalidate invention patents. Too often UMPs are thus used in litigation with the intent to avoid patent infringement or coerce settlements. The current flood of low quality patents and the risk of unwarranted litigation could have the effect of stifling high-value innovation, disincentivizing investment in research and development (R&D), and raising the cost of patent protection for all companies in China, both foreign- and domestically invested.

In its 12th Five-Year Plan, China calls for doubling the per capita filing of patents from 1.7 per 10,000 to 3.3 per 10,000. It is unclear whether this goal applies to invention patents

or all patents, including UMPs. AmCham China believes it critical for SIPO to implement more rigorous examination standards and shift more resources to the thorough examination of patents to ensure that patent growth goals will not incentivize abusive filings of low quality patent applications, such as UMPs. We also recommend that SIPO clarify in writing that the 12th Five-Year Plan patent goal is for invention patents only. AmCham China encourages SIPO to adopt examination guidelines that are more consistent with international norms similar to those followed by the European Patent Office (EPO) and the US Patent and Trademark Office (PTO).

Furthermore, AmCham China encourages China to eliminate government subsidies for patent filings. We have heard anecdotally that some local Chinese companies file junk patents as a way to profit from the government subsidies. These resulting junk patents discourage real innovation, as well as the misuse of government funds.

Protection of Computerized Graphic User Interfaces and Icons

A graphic user interface (GUI) is a type of user interface in computing that enables users to interact with electronic devices with images and icons rather than through text alone. The current "Guidelines for Patent Examination" (guidelines) issued by SIPO prohibit icons and other GUIs used in computer programs, phones, and other handheld devices from being patented, even though the Patent Law has no such prohibition. As this industry is growing rapidly, the SIPO guidelines are a concern to many AmCham China members who have made significant innovations in this area.

In addition, the guidelines disallow registration of patents for GUIs that disappear after the device is turned off. This effectively excludes from patent protection the majority of icons and GUIs, which are applied to phones or computer screens. AmCham China encourages SIPO to remove this prohibition for icons and GUIs in its next amendment of the guidelines. This would not only bring China into conformity with its key trading partners regarding this issue, but would also benefit China's own creative technology industries.

Patent Infringement Damages

The Patent Law bases infringement damage calculations on the patent holder's losses, the infringer's profits, or patent royalties. As there is no discovery-type process in litigation proceedings before Chinese courts, it is difficult to obtain evidence proving lost or gained profits, leaving the patent holder with only statutory damages for compensation. The statutory damages available, capped at only RMB 1,000,000 (US \$157,480), often frustrate the ability of patent owners to receive adequate remedies through litigation for enforcement of their patent rights.

将使中国的知识产权体系更透明且更符合国际标准，因而使所有行业受益。

专利方面的进展

作为对行业要求的回应，国家知识产权局公布了其内部专利审查指南，并将其与已公开的审查指南合并，使之更加透明，中国美国商会对此表示欢迎。我们也欢迎中国加入“专利审查高速公路”机制，以提供快速的专利审理程序。这不仅将使在华的外资企业受益，也将使希望在国外申请专利的中资企业受益。中国美国商会也对中国在多种案例中参考美国专利审判原则的司法实践表示赞赏。最高人民法院近期的司法解释采用了若干曾在美国联邦法院中用于判定专利侵权行为的方法。

具体问题

专利

低质量专利的泛滥

对源自中国的大量的低质“垃圾”专利，特别是实用新型专利（UMP）及其在损害发明专利与真正的创新方面带来的风险，中国美国商会成员企业表示关注。

对实用新型专利的创造性（非显而易见性）相对较低的要求使这类专利更容易获得。中国在实用新型专利质量注册方面的低标准，加上地方政府对专利申请提供的优惠政策催生了大量的“垃圾”实用新型专利。由于创造性方面的要求门槛较低，认定实用新型专利无效所需满足的要求比发明专利更严格。而实用新型专利在诉讼过程中往往成为避免专利侵权判罚或强迫进行庭外和解的手段。目前低质量专利的泛滥以及无理的诉讼带来诸多后果，如阻碍高价值创新、挫伤对研发投资的积极性以及增加包括外资与内资企业在内的所有在华企业专利保护的专利成本。

中国在其“十二五”规划中要求人均专利申请数翻番，每万人申请数从 1.7 件增加到 3.3 件。目前此目标尚未明确其是否仅适用于发明专利，还是包括实用新型专利在内的所有专利。中国美国商会认为，当务之急是：国家知识产权局应实施更严格的审查标准，并将更多资源转用于彻底的专利审查，从而确保专利增长目标不会助长如实用新型专利等低质专利申请的滥用。我们也建议国家知识产权局以书面形式明确“十二五”规划中提出的专利目标只针对发明专利。中国美国商会鼓励国家知识产权局采用类似于欧洲专利局与美国专利商标局使用的、与国际标准一致

的审查指南。

此外，中国美国商会鼓励中国取消专利申请方面的政府补贴。据说，中国的一些地方企业将“垃圾”专利的申请当作获取政府补贴的一种手段。由此产生的“垃圾”专利将打击真正创新的积极性，也使政府资金得不到合理使用。

计算机图形用户界面与图标的保护

图形用户界面（GUI）是一种计算机用户界面类型，它可使用户通过图片与图标，而非单一的文本实现与电子设备的互动。尽管《专利法》中没有此类禁止性规定，目前由国家知识产权局发布的《专利审查指南》（下简为《指南》）禁止计算机程序、电话及其他便携式设备中的图标以及其它图形用户界面获得专利。由于该行业正在快速发展，很多在该领域已取得重大创新成果的中国美国商会会员对《指南》中的这一规定表示担忧。

此外，《指南》不允许注册随设备电源关闭而消失的图形用户界面的专利。这事实上是将大部分在电话与电脑屏幕上的图标与图形用户界面排除在专利保护之外。中国美国商会鼓励国家知识产权局在下一轮修订《指南》时取消对图标及图形用户界面的禁止性规定。这不仅将使中国在这一问题上与其主要贸易伙伴保持一致，也将使中国自己的创新技术产业从中受益。

专利侵权损害赔偿

《专利法》以专利持有人的损失、侵权者所获利益或专利使用费为基础来计算侵权的损害赔偿。由于中国法院的诉讼中没有类似证据开示的程序，因而证明损失或获利的取证很困难，这使专利持有人最终只能获得法定的损害赔偿。目前可获得的法定赔偿上限为人民币 100 万元（157480 美元），这使专利所有者不能通过诉讼来行使其专利权，以获得合理的赔偿。

中国美国商会鼓励中国政府提高对原告在专利侵权诉讼中可获得的法定赔偿的限额，并规定其它补救措施（如强制履行）以维护专利所有人的利益，防止其受到进一步侵害。

强制许可

世界贸易组织的《与贸易有关的知识产权协议》（下简为“TRIPS 协议”）在强制许可方面确立了狭窄的参照标准。按照该标准，政府可以不经专利所有人同意允许第三方使用其专利，导致一些未经注册的通用版本的产品流

AmCham China encourages the Chinese government to increase the cap on statutory damages available to plaintiffs in patent infringement lawsuits, and to provide additional remedies, such as specific performance, to safeguard the interests of and prevent further harm to patent owners.

Compulsory Licensing

The World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement establishes narrow parameters for compulsory licensing, under which a government may allow a third party to exploit a patent without the consent of the patent owner. The result is usually a generic copy of the product produced for domestic consumption. The patent owner retains rights to the patent, including the right to be paid for the authorized copies of the products based on the economic value of the patent.

Some of China's compulsory licensing provisions in the current Patent Law and implementing regulations lack the clarity of the relevant WTO TRIPS Agreement standards, creating significant concerns for AmCham China member companies. For example, the current law permits compulsory licensing where a patentee has failed to sufficiently exploit the patent or meet market demand, without providing guidance as to how "sufficient exploitation" is determined or who determines it. The law also appears to permit compulsory licensing for the unqualified "public interest," which can be defined very broadly. Compulsory licenses are only supposed to be granted on a case-by-case basis in narrow circumstances. SIPO recently issued the updated "Measures on Compulsory Licensing for Patent Exploitation," effective as of May 1, 2012. However, none of the amendments have rectified any of these concerns.

AmCham China also understands that the State Administration for Industry and Commerce (SAIC) has proposed Anti-Monopoly Law (AML) IPR enforcement guidelines that would subject companies with critical IP to possible AML violations for abuse of dominance if they refuse to license that IP to a third party that needs it to compete and innovate. This SAIC provision seems an attempt to implement a very broad "essential facilities" doctrine in a manner that would be inconsistent with the WTO TRIPS Agreement.

AmCham China urges SIPO to reference in its regulations and guidelines the prevailing international practices and clearly stipulate standards for the "sufficient exploitation" of a patent and the criteria for defining "public interest."

Copyright

Revision of the Copyright Law

During 2011, the Chinese government started making the first significant revisions to its Copyright Law in more than

10 years. We understand the government's timetable is to complete the amendment process in time for ratification by the National People's Congress (NPC) in March 2013. This provides an important opportunity for China to modernize its Copyright Law in a manner that will facilitate both civil and criminal enforcement against copyright infringement.

AmCham China hopes the Chinese government, during this revision process, can provide for higher statutory damages; punitive damages for knowing and repeated infringement; and more severe civil sanctions against those who breach court orders, hide or destroy evidence, or repeatedly infringe. We also hope the Chinese government can provide for more effective evidence collection measures, including adoption of civil discovery proceedings; lower the thresholds around accepting and conducting evidence preservation; and reduce the burden of proof on rights holders.

Government and SOE Software Legalization

AmCham China encourages the Chinese government to fully implement its bilateral commitments, most recently in November 2011, to use only legal software at all levels of government by certain dates. Continued use of pirated and unlicensed software by government offices in China undermines the software industry, and sets a standard for behavior that at best discourages development of technology in China, and at worst drives innovation to other global markets.

We strongly urge the Chinese government to demonstrate its commitment to developing an innovation economy by: (1) providing sufficient budget to government departments for software purchases; (2) instituting Software Asset Management (SAM) best practices, including audits of the software actually in use by government; and (3) targeting for legalization all types of software, not just operating system, productivity, and anti-virus software. Achieving legalization of all software used at all levels of government would send a powerful signal to industry, both foreign and domestic, that China supports innovation in the information and communications technology sector.

AmCham China also encourages the Chinese government to fully implement its bilateral commitments on software legalization by state-owned enterprises (SOEs) as outlined in the 22nd JCCT. We suggest instituting a process involving the use of International Organization for Standardization-certified SAM best practices and third-party audits. China should ensure relevant government agencies are adequately resourced in terms of funding, manpower, and appropriate audit tools in order to effectively implement the government's announced SOE legalization pilot program. We also encourage expansion of the SOE legalization pilot program to a broader group of SOEs, including major central-level SOEs.

入国内消费市场。专利所有者继续保有其专利权，包括从经过授权的产品复制中以专利经济价值为基础获得相应报酬的权利。

中国现行的《专利法》及其实施细则中有关强制许可的相关规定缺乏对世贸组织 TRIPS 协议中相关标准的明确解释，这引起了中国美国商会会员企业的极大担忧。例如：在专利权人无法充分利用其专利或无法满足市场需求的情况下，现行的法律允许对其专利进行强制许可，但就确定“充分利用”的方式及主体上却没有提供相应的指南。法律似乎允许为了未界定的“公共利益”进行强制许可，而“公共利益”的界定非常宽泛。强制许可的授予应在少数情形下按照“具体问题具体分析”的原则进行。国家知识产权局近期发布了新的《专利实施强制许可办法》，该法于 2012 年 5 月 1 日生效。但这些修订均未能对上述问题进行修正。

中国美国商会也了解，国家工商行政管理总局（下简为：工商总局）已在制订《反垄断法》有关知识产权执法的指南。按照该指南，如果拥有关键知识产权的企业拒绝将专利许可给需要此专利来进行竞争与创新的第三方，则该企业将可能因滥用其支配地位而违反《反垄断法》。工商总局的这一规定似乎是在尝试推行一项非常宽泛的“必要设施”原则，这是不符合世贸组织 TRIPS 协议规定的。

中国美国商会促请国家知识产权局在其规定与指导意见中参考国际主流实践经验，并明确规定专利“充分利用”的标准及“公共利益”的界定。

著作权

《著作权法》的修订

2011 年，中国政府开始了 10 多年来首次对《著作权法》的重大修订。我们目前了解到，中国政府计划在 2013 年 3 月前完成修订，以获得届时召开的全国人民代表大会的批准。这是中国的《著作权法》与时俱进的一个重要机遇，它将有利于针对著作权侵权开展的民事与刑事执法活动。

中国美国商会希望中国政府在此修订过程中能够对如下方面做出规定：提高法定赔偿额，出台针对恶意侵权及重复侵权行为的惩罚性损害赔偿，以及对不履行法院命令、藏匿或销毁证据或屡次侵权行为处以更加严厉的民事制裁。我们也希望中国政府能够推出更加有效的证据收集措施，包括采用民事证据开示程序、降低立案和进行证据保全的门槛以及减少权利持有人举证的负担。

政府与国有企业的软件合法化

中国美国商会鼓励中国政府全面履行其于 2011 年 11 月作出的双边承诺，即各级政府在特定期限内做到完全使用合法软件。中国政府办公机构继续使用盗版和未经许可的软件将损害软件行业，并会树立一种行为模式，轻则阻碍中国科技的发展，重则使创新被迫转向其他全球市场。

我们强烈促请中国政府通过以下举措展示其发展创新经济的决心：(1) 为政府部门采购软件提供充足的经费；(2) 实行软件资产管理最佳实践，包括对政府实际使用的软件进行审计；以及 (3) 实现所有类型软件的合法化，而非仅仅是操作系统、生产性软件和杀毒软件。实现所有类型软件在各级政府的合法化将为外国与国内行业传达一个强烈的信号，即中国支持信息和通信技术产业的创新。

中国美国商会也鼓励中国政府全面履行其在第 22 届美中商贸联委会中作出的关于国有企业实现软件合法化的承诺。我们建议制定相关流程，如采用经国际标准化组织认证的软件资产管理最佳实践及第三方审核。中国应该确保相关政府机构有充足的资金、人力及适当的审计工具来有效地实行政府宣布的国有企业软件合法化的试点项目。我们也鼓励国有企业软件合法化试点项目能够延伸至包括主要央企在内的更广泛的国有企业。

最终用户的软件盗版

中国美国商会依然关注中国存在的范围广泛且严重的最终用户软件盗版问题。尽管政府多年来一直通过行政与民事执法活动严厉打击盗版行为，但形势却未得到充分地改善。中国美国商会支持对《著作权法》与《刑法》进行必要的修订，为打击软件盗版开展有效的刑事执法活动提供便利。

商标

商标抢注与恶意申请

在中国，使用其他公司名称或品牌进行商标申请和注册的滥用行为大量存在，并且依旧是中国美国商会及中资企业主要关注的问题。商标申请与注册的滥用削弱了品牌的市场效应，并使抢注者能够从他人的知识产权中获益。

现行的《商标法》没有禁止商标抢注行为。事实上，它使抢注者能够不以使用商标为目的，而以阻止他人使用自身合法商标为目的进行商标注册。通常，抢注者申请的

End-User Software Piracy

AmCham China remains concerned about the existence of wide ranging and serious end-user software piracy across China. Although the government has exercised significant effort to combat the piracy through administrative and civil enforcement over the years, the situation has not sufficiently improved. AmCham China supports necessary amendments to the Copyright Law and Criminal Code to facilitate effective criminal enforcement against software piracy.

Trademarks

Trademark Squatting and Bad Faith Filings

In China, the problem of abusive trademark filings and registrations that use another company's name or brand is widespread, and remains a major concern for AmCham China members as well as domestically invested companies. Abusive trademark filings and registrations dilute brands in the marketplace, and permit squatters to profit from the IP of others.

The current Trademark Law does not prohibit trademark squatting. In fact, it allows squatters to register marks not for the purpose of using them but to block others from using their own rightful marks. Quite often, squatters' filed marks are similar to or the same as well-known trademarks belonging to other companies in China or overseas. Such behavior impedes the commercial interests of rightful mark owners and confuses Chinese consumers.

AmCham China urges the Chinese government to specifically address these issues in the currently proposed revision to Trademark Law by including provisions that prohibit the abusive registration of trademarks and closing existing loopholes for squatters.

Enterprise Names and Other Conflicts of Rights

It is common for local businesses to register enterprise names that incorporate famous trademarks of foreign-invested companies and use those names in misleading ways, often in association with goods or services for which the foreign-invested trademark owner is famous. While the current Trademark Law and its implementing regulations, as well as the "Enterprise Name Registration Administrative Regulations," provide administrative recourse to trademark owners who are the victims of such infringements, the SAIC is usually reluctant to take on such cases, and AmCham China members are forced to bear the high costs of litigating these disputes.

AmCham China urges the Chinese government to provide local Administrations for Industry and Commerce (AICs) with the necessary guidelines for handling these kinds of "conflict of rights" cases in order to save judicial resources. We hope the Chinese government will provide effective

legal mechanisms for the timely purging of copycat enterprise names in cases where local entities have registered and/or used enterprise names in bad faith. We also encourage China to eliminate the requirement that the petitioner's trademark be "well known" in China before taking enforcement measures. Finally, the Chinese government should provide guidance to local labor bureaus and civil affairs bureaus for the handling of similar matters involving the registration of infringing names for schools, institutions, and other entities under their jurisdictions. Such measures will benefit both foreign and Chinese rights holders, and promote the development of a fair and healthy market economy in China.

Indigenous Innovation Policies and IP

While we welcome the State Council's November internal circular repealing national regulations that impose domestic IP requirements for government procurement, AmCham China members are still concerned that many other aspects of China's national industrial development agenda include provisions for discriminatory treatment of foreign-owned IP. Some of these aspects are articulated in 12th Five-Year Plans, including the plans for information security and the software industry, often under the rubric of "indigenous innovation." Others are articulated in numerous provincial-level procurement directives.

AmCham China members are also concerned about IPR protection in the context of various mandatory testing and certification requirements in China, in particular when conformity assessment testing is carried out by government-owned or government-operated laboratories, or requires the submission of sensitive information, such as source code or other proprietary information, in order to obtain certification.

AmCham China would therefore like to gain further commitments from the Chinese government to suspend all "indigenous innovation" policies that provide for discriminatory treatment of foreign-owned IP at all levels of the government and sectors of industry.

Trade Secrets

The "Anti-Unfair Competition Law" provides the primary legal basis for trade secret protection in China, meaning that trade secrets may not even be considered intellectual property under Chinese law, as required by Articles 1.2 and 39 of the TRIPS Agreement.

Moreover, trade secret protection mechanisms in China are currently inadequate. The remedies available for trade secret holders include administrative enforcement, civil lawsuits, and criminal penalties. However, these remedies do not provide sufficient redress to trade secret holders who have had their secrets misappropriated. Once a trade secret is misappropriated, its entire value is lost.

商标与其他在华或海外企业的著名商标相似或相同。此行为妨碍了合法商标所有人的商业利益，并导致中国消费者的混淆。

中国美国商会促请中国政府在目前正在拟议的《商标法》的修订版本中增加相应规定专门解决上述问题，即禁止商标注册权的滥用和消除可能被抢注者利用的法律漏洞。

企业名称及其他权利冲突

地方企业注册的企业名称中含有外资企业的著名商标，并且这些名称往往被误导性地使用在外资商标所有者享有知名度的商品或服务中，这种现象较为普遍。尽管现行的《商标法》及其实施细则以及《企业名称登记管理办法》均给予侵权行为的受害方即商标所有人行政追索权，但工商总局却往往不愿受理此类案件，使中国美国商会会员企业不得不承担解决此类纠纷的高额诉讼费用。

中国美国商会促请中国政府向地方工商管理部门提供解决此类“权利冲突”案件必要的指南，以节省司法资源。我们希望中国政府将提供有效的法律机制，及时清除如企业恶意注册和/或使用企业名称等对企业名称进行模仿的行为。我们也鼓励中国取消在采取执法措施前要求原告的商标必须为在华“驰名商标”的要求。最后，中国政府应该向地方劳动人事部门与民政部门提供指导，解决涉及其司法辖区内学校、组织及其他实体名称注册中类似的侵权行为。这些举措将使外国与中国的权利人受益，并推动中国市场的经济公平和健康发展。

自主创新政策与知识产权

尽管我们对国务院在 11 月发布的取消国家有关政府采购中知识产权必须是国内拥有权的规定的内部文件表示欢迎，但对于中国国家产业发展计划的许多其他方面，包括对外国所有的知识产权的歧视性待遇的相关规定，中国美国商会的会员企业仍然表示担心。这些方面有一些在“十二五”规划中有所表述，包括信息安全与软件行业规划（通常被归在“自主创新”下），另一些方面则在众多的省级政府采购规定中有所表述。

中国存在多种强制性检测与认证要求，中国美国商会在这点上对知识产权的保护表示关注，特别是当合格评定检测由政府所有或政府运营的实验室负责，或者当企业为获得认证被要求必须提交如源代码或其他专有资料等敏感信息。

因此，中国美国商会希望中国政府能做出进一步承诺，停止各级政府和行业部门中对外籍知识产权有歧视性待遇的“自主创新”政策。

商业秘密

《反不正当竞争法》为中国的商业秘密保护提供了主要的法律基础，这意味着商业秘密在中国法律下甚至可能不会，如 TRIPS 协议第 1.2 与第 39 条款要求的那样，被视为知识产权。

此外，中国目前的商业秘密保护机制有所欠缺。商业秘密持有人可获得的补救包括行政执法、民事诉讼和刑事处罚。然而，这些补救措施并未给商业秘密遭受盗用的商业秘密持有人提供足够的补偿。商业秘密一旦被盗用，其价值即全部丧失。

虽然最高人民检察院与公安部出台了损失超过人民币 50 万元（80 万美元）即可进入刑事起诉的标准，但是此类损失的计算方式及证据规则在实际操作中却十分模糊且难以执行。这可能导致对商业秘密保护法律的滥用来恶意索取民事侵权损害赔偿。

此外，尽管理论上商业秘密持有人可以提请地方工商管理部门进行行政执法，但这些监管机构通常缺乏足够的专业知识和资源来对商业秘密的盗用进行调查，并且不能就造成的伤害下令赔偿。因此，行政执法的有效性成为了一个真正的问题。

在寻求商业秘密保护方面最大的挑战是缺少有效途径来满足商业秘密盗用行为中的举证责任。举证责任由要求进行商业秘密保护的原告承担，但由于中国缺乏民事诉讼中的证据公示程序，原告必须收集并提交自己的证据以证明其权利被侵害。尽管证据保全会有效，但中国法院的证据保全令很难获得。如果权利持有人没有更有力且更具操作性的取证方式，外国及本国原告在通过司法诉讼成功解决商业盗用仍面临巨大挑战。

最后，如果相关机构要求出示大量专有信息作为获得批准的前提条件的话，那么在新产品的批准及其他监管程序中，商业秘密会很容易泄露。我们促请政府方面减少披露要求，这将减轻政府在确保所提供的信息的保密性方面的负担。

网络盗版

内容盗版是数字付费电视行业发展的主要障碍。网络

Though the Supreme People's Procuratorate and Ministry of Public Security issued threshold of losses at more than RMB 500,000 (US\$80,000) for criminal prosecution, the calculation of such damages and evidence rules are quite vague in practice and difficult to implement. That results in the possibility that some may misuse trade secret protection to initiate civil infringement claims in bad faith.

Additionally, although in theory trade secret holders may initiate an administrative enforcement action through local AICs, those regulatory bodies usually lack sufficient expertise and resources to investigate acts of trade secret misappropriation and cannot order damages for the harm done. Thus, there is a real question as to the effectiveness of administrative enforcement actions.

The most difficult challenge in seeking trade secret protection is the lack of effective means to meet the burden of proof in a trade secret misappropriation action. The burden of proof rests on the plaintiff claiming trade secret protection; however, because of the lack of a discovery process in civil litigation in China, plaintiffs must collect and submit their own evidence to show that their rights have been violated. Although evidence preservation can be effective, it is difficult to obtain evidence preservation orders before Chinese courts. Without more robust and practical evidentiary collection options for rights holders, it will remain a huge challenge for foreign and domestic plaintiffs to successfully bring judicial actions to address trade secret theft.

Finally, trade secrets can easily be compromised in new product approval and other regulatory proceedings if the relevant agency demands extensive proprietary information as a condition of approval. We urge greater restraint in disclosure requirements on the part of the government, which will in turn reduce the burden on the government of assuring confidentiality of the information provided.

Online Piracy

Content piracy is a major obstruction to the development of the digital pay-TV industry. Two principal forms of online content piracy are unauthorized Internet rebroadcasting/streaming and decryption key sharing of pay-TV programming via circumvention devices.

Streaming piracy is typically achieved by capturing live decrypted digital pay-TV signals (satellite or cable) with a TV capture card and retransmitting those signals using freely available software through the Internet. Sharing piracy relies on satellite dishes, set-top boxes, and computers in multiple locations networked through the Internet. Circumvention devices enable viewing of broadcasts without authorization of or remuneration to the broadcaster or content owner. Hundreds of thousands of circumvention devices originating from China have been distributed worldwide.

Without an effective legal framework or enforcement measures for this developing technology, the rights of US and Chinese copyright owners are vulnerable to circumvention and infringement. AmCham China urges the Chinese government to effectively enforce the law to prevent the proliferation of circumvention devices and services, and provide for practical enforcement measures to enable closure of pirate servers and circumvention device manufacturing and distributing syndicates.

Conclusion

AmCham China is encouraged by the Chinese government's continuing efforts to develop its IPR protection regime, in particular the commitments made in 2011 by top-level Chinese leadership. An effective IPR regime is a fundamental prerequisite for collaboration and partnership in trade, economic development, and innovation. Weaknesses in China's IPR protection system undermine the potential of the US-China relationship. In 2012, we look forward to seeing the implementation of many of the commitments made in 2011.

Recommendations

- **Fully implement bilateral commitments on software legalization in state-owned enterprises and all levels of government.**
- Implement more rigorous patent examination policies and guidelines to ensure patent quality and reduce junk patents.
- Provide greater clarity on compulsory licensing requirements, and ensure their consistency with the TRIPS Agreement.
- Address trademark squatting, bad faith filings, and "conflict of rights" cases in the currently proposed revision to the Trademark Law, or associated regulations.
- Fully implement delinking of government procurement policies from domestic IP requirements, and provide for protection of IP in domestic standards development organizations and testing and conformity regimes, in line with global best practices.
- Revise the Civil Procedure Law to allow for a discovery process and more robust, timely preservation of evidence orders.

内容盗版的两个主要形式是未经授权的互联网转播 / 直播和通过破解设备进行的付费电视节目密钥的共享。

流媒体盗版主要使用电视捕捉卡获取经过加密的数字付费电视信号（卫星或电缆），并使用互联网上的免费软件对这些信号进行转播。共享盗版主要依靠分布于多处的卫星接收器、机顶盒及电脑通过联网实现。破解设备能够使广电节目在未经广电公司或内容所有人授权或在未给予其相应报酬的情况下被观看。源自中国的成百上千种破解设备已分销至全球各地。

如果针对这一发展中的技术没有有效的法律框架或执法措施，则美国与中国著作权的授权遭到规避或所有人的权利将很容易受到侵害。中国美国商会促请中国政府能有效执法以防止破解设备和服务的激增，并规定出具有可操作性的执法措施，以能够取缔盗版服务器和破解设备的生产和传播组织。

结论

中国在发展其知识产权保护制度方面的持续努力，特别是中国高层领导在 2011 年作出的相关承诺，使中国美国商会倍受鼓舞。一个有效的知识产权体系是贸易合作和贸易伙伴关系、经济发展及创新的基本前提。中国知识产权保护体系中的不足损害了中美关系的潜能。2012 年，我们期待着看到 2011 年作出的许多承诺能够得到履行。

建议

- 全面履行在国有企业及各级政府中实现软件合法化的双边承诺。
- 实行更加严格的专利审查政策与指南，以确保专利质量并减少“垃圾”专利。
- 为强制许可方面的要求提供更多的明确解释，并确保其符合 TRIPS 协议的规定。
- 在目前正在拟订的《商标法》修订版本及相关规定中，解决商标抢注、恶意申请及“权利冲突”方面的问题。
- 全面实行将政府采购与知识产权必须为中国所有的强制规定脱钩的政策，并按照全球最佳实践对国内标准开发组织及检测与合格评定制度中的知识产权保护做出规定。
- 修订《民事诉讼法》，采用证据开示程序，以及更加有力的、有时效的证据保全规则。

Standards, Certification, and Conformity Assessment

Introduction

China has placed added emphasis on standards development from a technical as well as regulatory standpoint under the 12th Five-Year Plan, allocating state funds for the development of indigenous Chinese technical standards in strategic sectors. The standardization system continues to grow rapidly, both in terms of the development of new standards and revision and implementation of existing ones. China's Standards Work Plan for 2011, announced by the Standardization Administration of China (SAC), identified 917 standards to be addressed in 2011.

AmCham China welcomes positive developments with regard to China's standardization system in 2011, including increased participation by foreign enterprises in standards development and increased transparency in the standards notification and development process. Despite this progress, China's standards system still imposes a number of barriers to market entry that remain a concern. In order of significance, these include: (1) China's refusal to accept US-initiated standards and advanced technical standards as international standards; (2) the disparate burden both in cost and time placed on foreign enterprises by the Chinese testing and certification process; (3) the inability of foreign-invested enterprises registered in China to fully participate in all of China's commercial standards development; (4) the inadequate protection of intellectual property rights (IPR) in the standards development and testing process as well as inadequate protection for copyrights of foreign-produced standards; and (5) inconsistency in providing full transparency across all standards development and implementation processes.

To address these issues, a cooperative approach would benefit both the US and China, as creating a strong standards system in China would not only help regulate the market, but also promote the development of advanced technology and the protection of intellectual property. To that end, AmCham China proposes increasing cooperation between US industry and its Chinese government and industry counterparts to promote the further integration of China into the international standards-setting process. China's adoption of internationally accepted standards and its acceptance of foreign testing and certifications would not

only benefit China's domestic innovation, but would also help China attract greater foreign investment and research and development, as well as lead to the acceptance of Chinese-developed standards internationally.

Significant Developments

2011 National Standards-Setting and Revision Work Plan

For the second consecutive year, SAC released its "Notice Regarding National Standards-Setting Plan (First Batch)" (Work Plan). AmCham China applauds SAC's efforts to publish this information as a reference for both foreign and domestic stakeholders in China's technical standardization process.

According to the Work Plan's introduction, the first batch included 917 standards, among which 398 standards were to be finalized, 281 standards were to be revised, and 238 technical reference materials/samples (*biaoyang* 标样) were to be submitted. In addition, the Work Plan identifies the corresponding departments, technical managing organizations, and drafting organizations for each standard. It also directs the respective departments in charge of each standard to carry out the following: organize and supervise the technical committees and main drafting organizations; improve coordination between relevant departments; collect comments on draft standards; and ensure the quality of the standards.

AmCham China is pleased to see the leadership role SAC has taken in increasing the transparency of China's standards-setting process, improving coordination between relevant departments, and requiring the collection of comments on draft standards.

China RoHS Implementation

Relevant authorities are moving forward to implement China's Reduction of Hazardous Substances (RoHS) testing and conformity assessment regime. In August 2011, the China National Certification and Accreditation Administration (CNCA) released the RoHS product catalogue. The same month, CNCA released the China RoHS Implementation Measures. Additionally, the Ministry of

标准、认证与合格评定

引言

中国在“十二五”规划中从技术和监管角度进一步强调了标准制定的重要性，国家财政拨款支持战略产业的本土技术标准的制定。中国标准化体系建设在新标准制定与现有标准的修订和实施两个方面继续迅速推进。中国国家标准化管理委员会（国标委）发布了2011年国家标准工作计划，确定了2011年要涉及的917项标准。

2011年中国标准化体系取得了积极进展，这些进展主要体现在外国企业对标准制定的参与度的提高和标准通报和制定过程透明度的增加，中国美国商会对此表示欢迎。尽管如此，中国的标准体系为市场准入设置的诸多障碍仍令人担忧。按照重要性排列，这些障碍包括如下几个方面：(1) 中国拒绝接受美国倡议制定的标准和先进技术标准为国际标准；(2) 中国的检测和认证程序给外国企业带来了成本和时间的双重负担；(3) 在华注册的外商投资企业不能充分参与中国所有商用标准的制定；(4) 在标准制定与检测程序中相关知识产权保护力度不够，对外国制定的标准的版权保护力度也不够；以及(5) 在所有标准制定和实施过程中不能始终保持完全透明。

用合作的方式处理上述问题将有益于中美两国，因为在中国建立完善的标准体系不仅有助于对市场的监管，而且能促进先进技术的开发和知识产权的保护。为此，中国美国商会建议加强美国业界与中国政府及中国业界的合作，以推动中国进一步融入国际标准制定体系的进程。中国采用国际公认标准并认可国外的检测与认证程序，将不仅有益于中国本土的创新，而且也将有助于中国吸引更多的外国投资和技术研发，以及使中国制定的标准得到国际认可。

重大进展

2011年国家标准制定与修订计划

国标委连续第二年发布了《关于国家标准制定计划的通知（第一批）》（《工作计划》）。中国美国商会对国标委发布该信息供中国技术标准化进程中的国内外利益相关方参考的做法表示赞赏。

据工作计划的引言部分介绍，第一批包含917项标准，其中398项新标准需要确定，281项标准需要修订，238项技术标准物质/样品（标样）需要上报。另外，工作计划还确定了负责每一项标准工作的相关部门、技术管理机构 and 标准起草单位，同时要求负责各项标准的相关部门开展以下工作：组织与监督技术委员会和主要起草单位的工作、提高相关部门工作的协调性、收集标准草案的相关意见和确保标准的质量。

中国美国商会高兴地看到国标委在提高中国标准制定过程的透明度，提高相关部门工作的协调性以及要求收集对标准草案意见的工作中所发挥的领导作用。

中国版 RoHS 的实施

有关部门正在积极推动实施中国的“减少电子电器设备中有害成分（RoHS）”的检测与合格评定制度。2011年8月，中国国家认证认可监督管理委员会（认监委）公布了RoHS的产品目录。同一个月，认监委公布了中国版RoHS的实施办法。此外，中国工业和信息化部（工信部）已将中国版RoHS的管理办法提交至该部的政策法规司进行最后审批。该办法还未公布，但据称办法包含了今后扩大RoHS制度规定的产品适用范围的指导原则。

2011年11月，美国商务部、中国认监委和美国业界就RoHS的实施进行了对话。在会议上，认监委通知美国商务部和业界，尽管RoHS制度仍属于自愿性标准，但在推行该制度时会采取财政激励手段。业界相信这些激励手段

Industry and Information Technology (MIIT) has submitted the China RoHS Administrative Measures to its Policy and Regulation Department for final approval. The measures have not yet been released, but they reportedly contain guidelines for the future expansion of the RoHS regime's product scope.

In November 2011, the US Department of Commerce (DOC), CNCA, and US industry held a dialogue about RoHS implementation. At the meeting, CNCA informed DOC and industry that, although the RoHS regime remains voluntary, financial incentives will be put in place. Industry believes these incentives would render the program *de facto* mandatory. AmCham China is concerned about the implementation of China RoHS in its current form, as discussed further in the Specific Issues section below.

China WEEE Implementation

China's "Administrative Measures for the Recycling and Treatment of Waste Electrical and Electronic Equipment" (China WEEE) went into effect on January 1, 2011. The Ministry of Finance released an updated draft of the "China WEEE Fund Collection Measures" in December 2011, but the program has not yet been implemented. AmCham China appreciates that Chinese authorities have coordinated with foreign industry stakeholders on specific aspects of the China WEEE policy. However, we remain concerned about the feasibility of implementing China WEEE on a national level.

TC260 Releases Six Information Assurance Standards

In July 2011, China's National Information Security Standards Technical Committee (TC260) released six information assurance standards which dictate internal processes for information security training, product procurement and auditing, and systems management. The standards reference other important information security-related policies and standards such as China's Trusted Computing Module (TCM), Commercial Encryption Regulations and related testing requirements, as well as the critical infrastructure information systems protection standard (Multi-Level Protection Scheme).

These standards were developed initially without input from foreign firms, who are also not authorized to participate in TC260 as voting members. AmCham China recognizes that TC260 gathered technical experts to discuss industry's comments to the six standards in August 2011, and hopes that this dialogue will continue. We also welcome TC260's revision of these six standards to exclude a domestic intellectual property (IP) requirement for government procurement of office productivity software.

Sino-Foreign Joint Standards Development

In October 2010, the State Council published a national directive, titled "Decision to Develop Strategic Emerging Industries," that outlined China's goal to develop seven high-tech industries. As part of this initiative the directive called for Chinese and foreign firms to work together on joint technology standardization projects that would be funded by the Chinese government. To date, however, AmCham China is not aware of any projects carried out per this directive. We hope to see the actual initiation of such projects in 2012.

Specific Issues

Recognition and Adoption of International Standards

Lack of harmonization of international and Chinese standards remains a serious concern for many foreign companies in China. In particular, SAC still refuses to recognize the standards of US-based standards development organizations (SDOs) as international standards, even though these SDO standards meet all World Trade Organization (WTO) requirements and are globally accepted as international standards. In contrast, SAC does recognize standards issued by the International Organization of Standardization (ISO), International Electrotechnical Commission (IEC), International Telecommunications Union (ITU), and some other ISO-recognized bodies.

In addition to this lack of recognition of US-based SDO-issued standards, many Chinese standards committees continue not to recognize some other internationally accepted standards (e.g., so-called "foreign advanced standards"). Instead they create a unique Chinese version of the existing international standard. The development of such unique Chinese standards is duplicative and creates a trade barrier that not only restricts entry into China of technology and products developed by multinational corporations, but also limits the export of Chinese technology and products to the global market.

AmCham China strongly urges China to broaden its recognition of international SDOs beyond ISO, IEC, and ITU, to any organization which follows the WTO Technical Barriers to Trade (WTO/TBT) principles on international standards development. Broader participation in and recognition by China of internationally recognized market-driven standards would not only benefit stakeholders in standards development, but would also integrate China into the international standards development process and help China realize its goal of promoting Chinese standards as international standards. To address these recommendations, AmCham China suggests that a standards working group be added to the US-China Joint Commission on Commerce and Trade (JCCT).

会导致 RoHS 实际上变为一种强制性标准。中国美国商会对中国版 RoHS 以目前形式实施表示担忧，并在下文“具体问题”部分中加以讨论。

中国版 WEEE 的实施

中国的《废弃电器电子产品回收处理管理条例》（以下简称“中国版 WEEE”）于 2011 年 1 月 1 日正式施行。中国财政部于 2011 年 12 月发布了最新的《废弃电器电子产品处理基金征收使用管理办法》修改草案，但该办法还未正式实施。中国美国商会感谢中国相关部门在中国版 WEEE 政策的具体方面与外资行业利益相关方所做的协调工作。但是，我们仍旧担忧中国版 WEEE 在全国范围内实施的可行性问题。

信息安全标委会公布六项信息安全标准

2011 年 7 月，中国的全国信息安全标准化技术委员会（信息安全标委会 TC260）公布了六项信息安全标准，该标准规定了信息安全教育培训、产品采购与审计以及系统管理等内部流程。该标准参考了其他信息安全领域的相关重要政策与标准，如中国可信计算模块（TCM）、《商用密码管理条例》及其他检测要求，同时也参考了关键信息基础设施保护标准（信息安全等级保护）。

这些标准在最初制定时并未征求外资企业意见，这些企业也没有获许以具有投票权的会员身份加入信息安全标委会。中国美国商会注意到信息安全标委会在 2011 年 8 月召集了技术专家就六项标准问题共同讨论了来自业界的意见，我们希望这种对话能够继续下去。我们也欢迎信息安全标委会对这六项标准进行的修订工作，取消有关政府采购办公应用软件必须满足国内知识产权相关要求的规定。

中外联合制定标准

2010 年 10 月，国务院颁布了《关于加快培育和发展战略性新兴产业的决定》，该《决定》指出中国的目标是重点培育七大高科技产业。该《决定》鼓励中资企业和外资企业在技术标准化项目上合作，这些项目将获得中国政府的资金支持。但是中国美国商会至今仍未看到任何根据这一决定实施的项目。我们希望 2012 年能看到此类项目真正启动。

具体问题

国际标准的认可和采纳

中国标准与国际标准不接轨仍然是很多在华外国企业

面临的严重问题。特别是国标委仍拒绝将设在美国的标准制定组织制定的标准认定为国际标准，即使这些标准符合世界贸易组织的所有要求并且在全球范围内被认可。相反，国标委却将国际标准化组织（ISO）、国际电工技术委员会（IEC）和国际电信联盟（ITU）以及部分 ISO 承认的其他机构制定的标准认定为国际标准。

除了不认可设在美国的标准制定组织制定的标准，中国许多标准委员会仍继续拒绝承认其他一些国际普遍认可的标准（如所谓的“外国先进标准”）。相反，他们会在已有国际标准的基础上建立独特的中国版本。制定这样独特的中国版标准是一种重复，并造成贸易壁垒，它不仅限制跨国公司开发的技术和产品进入中国，同时还限制中国的技术和产品对外出口。

中国美国商会强烈促请中国扩大对国际标准制定组织的认可范围，从 ISO、IEC 和 ITU 扩大至其他遵循世界贸易组织贸易技术壁垒（WTO/TBT）关于国际标准制定原则的标准制定组织。中国扩大对国际公认的、受市场驱动而制定的标准的认可范围和参与程度不仅有利于制定标准的利益相关方，还有助于中国融入国际标准制定进程，实现将中国标准提升为国际标准的目标。为商讨这些建议，中国美国商会建议在中美商贸联合委员会（JCCT）中增加一个标准工作组。

外资企业参与标准制定

根据国标委的相关规定，在华登记注册的外资企业有资格加入中国标准委员会或工作组，并参与中国标准的起草和投票。但是在实践中，是否允许外资企业加入的决定权实际上由各技术委员会和技术分委会保留，尽管上述委员会和分委会都归国标委主管。

有些技术委员会和技术分委会根本不允许外资企业参与标准及技术规定的起草工作。有的允许外资企业以有投票权的成员身份参加，有的则仅允许外资企业以没有投票权的观察员的身份参加标准工作组。特别来说，这种限制发生在信息安全标准和无线局域网（WLAN）鉴别与保密基础结构（WAPI）这一中国的国家 WLAN 标准的制定工作中。这些限制不但不公平，而且也与国标委允许外资企业参与标准的起草和制定工作的原则不一致。

国标委应对所有的标准委员会和工作组进行指导，确保他们根据国标委的相关规定，允许外资企业加入并充分参与标准制定工作。中国在起草标准时还应该征求跨国企

Participation of Foreign-Invested Enterprises in Standards Setting

According to SAC regulations, foreign-invested enterprises registered in China are qualified to join Chinese national standards committees or working groups, and to participate and vote in the drafting of China’s standards. However, the decision as to whether or not to allow participation by foreign-invested companies is in practice left to individual technical committees (TCs) and technical subcommittees (SCs), even though TCs and SCs fall under SAC authority.

Some TCs and SCs do not permit foreign-invested enterprises to participate in the drafting of standards and technical regulations at all. Others permit foreign-invested enterprises as voting members, and some offer foreign-invested enterprises the right to participate on a limited observer status without voting rights. In particular, these limitations have been applied by TCs and SCs working on the information security standards and wireless local area networks (WLAN) Authentication and Privacy Infrastructure (WAPI) standard, which is China’s national standard for WLAN. These restrictions are not only unfair, but are also inconsistent with the SAC principle of permitting foreign-invested enterprises to participate in the formulation and drafting of standards.

SAC should provide guidance to all standards committees and working groups to ensure they permit foreign-invested enterprises to join and fully participate in the drafting of the standards in accordance with SAC regulations. China should also solicit suggestions and opinions from members of global enterprises while drafting standards, which would in turn lead to Chinese standards having a better chance of being accepted in the global marketplace.

China Compulsory Certification

China’s General Administration for Quality Supervision, Inspection, and Quarantine in July 2009 issued Order No. 117, “Regulations Concerning the Management of Compulsory Product Certification,” which went into effect on September 1, 2009. The China Compulsory Certification (CCC), as the set of regulations is known, functions as a safety testing standard for a variety of products, and it is estimated that over 20 percent of US products exported to China require a CCC mark.

Obtaining a CCC mark can be onerous and expensive. Companies manufacturing in the US and importing into China must arrange and fund travel of a Chinese inspector for a pre-market inspection at the manufacturer’s location, as well as submit to subsequent routine factory inspections after receipt of the CCC mark. In addition, they must arrange to have their products tested and certified in China. All of this leads to significant additional costs and delivery delays for US companies in comparison to their Chinese domestic counterparts.

In addition, for many products, there is only one Designated Certification Body (DCB) that is authorized to perform CCC testing, inspection, and certification, thus creating critical bottlenecks for companies during the certification process. This is the case in many product areas even though regulations such as the “Regulations on Certification and Accreditation” state that there must be at least two choices of DCBs per CCC product scope. The fact that most Chinese DCBs do not have a presence outside of China also adds to the burden of having only one for a given product scope.

Further, companies encounter significant delays and administrative burdens as there are multiple agencies involved in enforcement of CCC (e.g., China Inspection and Quarantine, provincial Technical Supervision Bureaus, DCBs, and CNCA). Each of these agencies can have a different interpretation of whether a specific product falls within the CCC catalogue and/or whether it is eligible for an exemption – particularly for innovative and high-tech products. Without an ultimate authority to make the final determination of a product’s status vis-à-vis CCC, companies encounter significant administrative burden and delay, and face uncertainty in the market that can hinder the import of the newest and most innovative products.

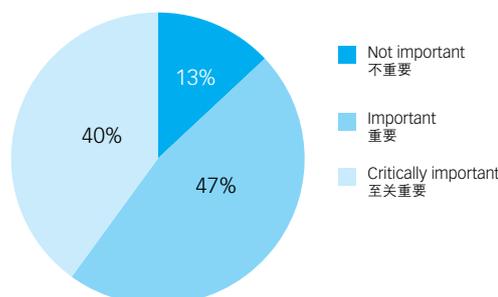
AmCham China recommends that China allow qualified non-Chinese organizations to be accredited and designated to conduct product testing, initial inspections, follow-up audits, and certification work for CCC. This would help bring China into compliance with its own requirements that there be at least two choices of conformity assessment bodies in the program. It would also significantly reduce barriers, burden, and cost for companies doing business in China, and would make it easier for international companies to make their most innovative products available in the Chinese market. Further, AmCham China recommends that the Chinese authorities make the CCC process fully trans-

Figure (图) 1

How important is the obtaining of licenses to your business (i.e., for the addition of new branches, retail outlets, products, or lines of service)?

获得许可对于企业经营的重要性 (如新增分支机构, 设立零售网点、产品及服务许可)

Company sample size = 254
企业样本规模



业成员的意见和建议，这样才更可能使中国的标准被国际市场所认可。

中国强制认证

中国国家质量监督检验检疫总局（质检总局）于2009年7月发布了第117号令，即《强制性产品认证管理规定》，该规定于2009年9月1日开始施行。中国强制认证（CCC）包含了一系列认证法规，旨在为各种产品提供安全的检测标准。据估计，从美国出口到中国的产品中有超过20%的产品需要获得CCC标志。

取得CCC标志需要经过繁复的程序且花费不菲。在美国生产制造产品且计划向中国出口的企业在产品进入中国市场前，必须先安排中国的检验员到产品生产地进行相关检查并支付该检验员的差旅费，在获得CCC标志后，还要负责安排并负担此后的定期现场检查。另外，他们还需要安排他们的产品在中国接受检测和认证。与中国国内的同行相比较，以上做法造成美国企业承担高昂的额外费用，并造成交货延迟。

此外，对很多产品而言，只有唯一一家指定认证机构（DCB）有权实施CCC检测、检查和认证，这给申请认证的企业造成了严重的瓶颈问题。虽然《认证认可条例》中规定CCC目录产品认证在每一产品领域必须至少有两家指定认证机构，但对许多产品领域却只有一家。而中国的大多数指定认证机构都没有设立境外机构，也使原本每一产品领域仅有一家认证机构造成的负担变得更重。

此外，企业往往会遭遇严重延迟和行政负担，因为CCC执行过程中参与的机构相当多（如国家检验检疫部门、

各省的技术监督局、各指定认证机构、认监委）。上述每一个机构对某种产品是否属于CCC目录所规定的产品，以及/或某创新类和高科技产品是否适用免除条款均可能有不同的解释。由于没有最高机构来对CCC标准下的产品规格进行最终裁定，企业将面临严重的行政负担、遭遇延迟，以及市场中的种种不确定性，这将阻碍最新或最具创新性产品的进口。

中国美国商会建议中国允许符合条件的外国组织获得授权和受到指派参与CCC认证中的产品检测、初步审查、追踪审计以及认证工作。这将有助于中国的CCC认证过程符合其自身制定的要求，即认证过程中至少有两家可供选择的合格评定机构。这也将有助于在中国经营的企业，极大地减少它们面临的各种障碍、负担和成本，同时也将鼓励国际企业将其最具创新性的产品推向中国市场。此外，中国美国商会建议中国主管部门将CCC审查过程的细节公布在其网站上以实现CCC认证过程的完全透明。这些举措将有助于建立CCC认证程序的国际声誉和取得认可。

标准和知识产权保护

尽管设在美国的标准制定组织和外资企业均渴望参与中国的标准化活动并愿意为之做出贡献，但中国美国商会仍旧担心专利的保护以及其他专有信息在标准制定的讨论中可能被泄露的问题。专利及其他知识产权问题可能会限制外国企业参与标准制定讨论的积极性，这将对国家标准制定程序产生潜在的消极影响。

此外，设在美国的标准制定组织仍面临在华版权及专利被侵权的问题，特别是其制定的标准的版权被严重侵犯。

Figure (图) 2

How are the relevant licenses in your industry applied?

企业所在行业相关许可申请情况

Company sample size: 2012 = 175 2011 = 248
企业样本规模

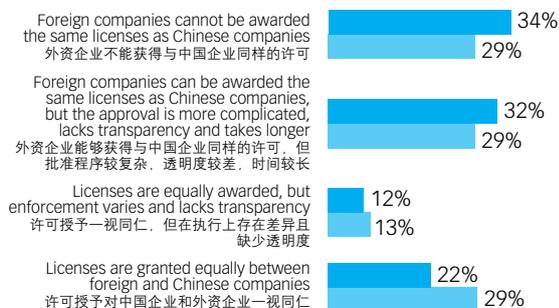
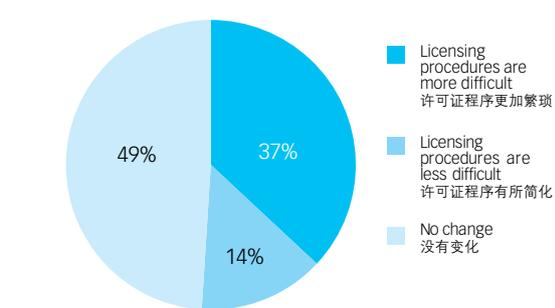


Figure (图) 3

How has awarding of licenses changed in your industry in the past couple of years?

过去几年企业所在行业获得许可证的变化情况

Company sample size = 178
企业样本规模



parent by posting details of the CCC inspection process on its website. Such steps will help build the reputation and acceptance of the CCC requirement internationally.

Standards and Intellectual Property Rights

Although US SDOs and foreign-invested companies are eager to participate in and contribute to China's standardization activities, AmCham China members are concerned about the protection of patents and other proprietary information that may be disclosed during standards-setting discussions. Patent and other IP concerns could limit foreign enterprises' ability to actively participate in these discussions, potentially negatively impacting the final result of China's standards development processes.

In addition, US SDOs still face significant problems with infringement of copyrights and patents in China, particularly with copyrights on the standards they develop. The unauthorized use and illegal duplication, distribution, sharing, online posting, and translation of their patents and copyrights undermine the value of their IPR. Efforts to raise awareness of this issue, especially regarding online infringement, need to be increased.

AmCham China strongly recommends that SAC enhance its collaboration with the National Copyright Administration of China (NCAC), the State Intellectual Property Office of China (SIPO), and relevant government agencies to improve the IP protection environment for standardization in China. We also encourage SAC to cooperate closely with international SDOs, including ISO, IEC, Institute of Electrical and Electronics Engineers (IEEE), Internet Engineering Task Force, ITU, ASTM International (formerly known as the American Society for Testing and Materials), and others to bring its IP protection regime in line with international best practices.

Additionally, AmCham China member companies are concerned about IPR protection in the context of various mandatory testing and certification requirements in China. Depending on the sector and end user, products sold in the China market must satisfy certain safety, information security, environmental, and type approval conformity assessment requirements. In most cases, government-owned or government-operated laboratories, not independent commercial entities as in other markets, carry out conformity assessment testing. Additionally, some conformity assessment requirements stipulate the provision of source code or other proprietary information in order to obtain certification. Given the immense value placed on IP and other trade secrets, US information and communications technology companies have chosen not to participate in certain conformity assessment regimes, in the process giving up access to public or other procurement markets.

Information Technology Office Equipment Security Standard

The Chinese government is developing a national-level printer security technical standard called the "Basic Security Requirement for Information Technology Office Equipment Security Standard" (Information Security Standard). Its scope encompasses printers, copiers, electro-photographic and inkjet systems, scanners, multi-function devices, and their associated supplies. Testing criteria will likely be based on this technical standard.

TC260, in conjunction with the China Electronic Standardization Institute (CESI) under MIIT, has been the primary drafter of the Information Security Standard and used IEEE 2600 as a template in the drafting process, along with input from Chinese companies. Foreign printer manufacturers have been allowed to join the working group developing this standard, but only as observers. The Information Security Standard is being portrayed as a national-level voluntary standard. However, foreign printer manufacturers anticipate it will become required in most requests for proposals (RFPs) in China, especially with regard to government procurement, which will *de facto* make this standard mandatory.

While AmCham China appreciates China allowing foreign participation in this information security-related standard, we hope China will take the next step and allow foreign companies to be full voting members in the future, not just observers. AmCham China, as represented throughout this chapter, hopes China will adopt existing international standards, such as IEEE 2600 in this instance, instead of taking the international standard and modifying it specifically for the China market. This again would enhance China's ability to influence international standards development and promote the acceptance of Chinese standards globally.

China RoHS

AmCham China member companies are very concerned about the implementation of China RoHS in its current form. First, unlike EU RoHS, China RoHS does not operate under voluntary Self-Declaration of Compliance (SDOC), but rather stipulates specific testing and labeling standards administered by CNCA-approved laboratories. As a result, companies are concerned about the protection of their IP and other proprietary information regarding the composition of products and identity of suppliers.

Companies are also concerned about the significant regulatory burden imposed by China RoHS, both from a logistical and cost perspective. The burden would likely increase if China follows through with plans to implement the National Recommended Electronic Information Products Pollution Control Voluntary Certificate (NRVC) for China RoHS, a certification which companies would have to obtain from the Chinese government.

对于版权和专利未经授权的使用、非法复制、非法发行和共享、非法网上张贴和传播以及未经授权的翻译等行为均会损害其知识产权的价值。还需继续努力提高知识产权意识，尤其是防止网络侵权的意识。

中国美国商会强烈建议国标委加强与国家版权局、国家知识产权局以及其他相关政府部门的合作，为中国的标准化工作提供一个良好的知识产权保护环境。我们也鼓励国标委与国际标准制定组织，包括 ISO、IEC、美国电气和电子工程师协会（IEEE）、互联网工程任务组、ITU、ASTM 国际标准组织（前称为：美国试验与材料协会）以及其他国际标准组织进行更加紧密的合作，使中国的知识产权保护制度与国际最佳实践接轨。

此外，中国美国商会成员企业对中国知识产权保护领域存在众多的强制性检测与认证要求表示担忧。在中国销售的产品，按照其生产部门以及终端用户的不同，需要满足一定安全性、信息安全、环境和类型批准的合格评定要求。大多数情况下，由政府所有或政府运营的实验室负责合格评定的检测工作，而不像在其他市场中往往由独立的商业机构进行检测。此外，一些合格评定的条款规定企业为获得认证必须出示源代码或其他专有信息。鉴于知识产权以及其他行业机密的巨大价值，美国的信息与通信技术企业已选择不加入某些合格评定体制，这意味放弃其进入公共或其他形式的采购市场的权利。

信息技术办公设备安全标准

中国政府正在制定国家级别的打印机安全技术标准，称为《信息技术办公设备基本安全要求》（《信息安全标准》），其范围涵盖了打印机、复印机、电子成像与喷墨系统、扫描仪、多功能一体机以及其他相关产品。相关的检测标准将可能以该技术标准为基础。

信息安全标委会连同工信部下属的中国电子技术标准化研究院是该《信息安全标准》的主要制定机构。两机构在标准起草过程中使用 IEEE 2600 标准作为范本并参考了中国企业的建议，而国外打印机生产商仅允许以观察员身份加入标准制定工作组。《信息安全标准》目前被描述成一项全国范围的自愿性标准。但是外国打印机生产商预期中国在大多数建议请求（RFPs）流程中将要求执行该标准，尤其在政府采购中，这将使该标准成为事实上的强制性标准。

中国美国商会感谢中国允许外国企业参与该信息安全相关标准的制定工作，我们希望中国在将来会进一步允许

外国企业以拥有充分表决权的成员而非观察员身份加入。正如本章全篇所表述的，中国美国商会希望中国采用现有的国际标准，如 IEEE 2600，而不是将国际标准进行修改使其仅适用于中国市场。这同样将提高中国在国际标准制定方面的影响力并促进中国标准为全球所认可。

中国版 RoHS

中国美国商会成员企业对中国版 RoHS 现有的实施方式非常担忧。首先，不像欧盟的 RoHS，中国版 RoHS 不按照自愿性的“自我合规声明”（SDOC）进行操作，而是规定具体的检测和标签标准必须由认监委批准的实验室来管理。因此，企业担心其知识产权的保护以及关于其产品组成和供货商身份方面的专有信息的保护问题。

从物流与成本角度来看，企业也担心中国版 RoHS 将给他们带来由监管而产生的严重负担。如果在中国版 RoHS 实施过程中中国坚持推行国家推荐的“电子信息产品污染控制自愿认证”（企业必须从中国政府获取该认证），上述负担可能会加重。

尽管中国版 RoHS 是作为一项自愿的检测与认证制度颁布的，但中国美国商会成员仍担心某些财政激励政策，如减税优惠或退税政策，会使中国版 RoHS 实际上成为一种强制性标准。中国美国商会鼓励中国在实施中国版 RoHS 的过程中采取自愿性的自我合规声明。此举将鼓励所有利益相关方积极参与该项目，并帮助中国实现将电子产品产生的有害物质对环境的不良影响降到最低的目标。

结论

美资企业界高兴地看到中国正努力将其制定的各项标准落到实处，在此方面也很愿意与中国政府和业界进行合作。尽管如此，中国美国商会仍想强调技术与市场知识对于制定既有效力又很高效的标准和检测过程的重要性，这些过程无疑将有益于中国及其消费者。中国采用现行国际标准，同时在新标准制定方面与外资企业合作，是建立中国标准化体系的绝佳方式。这将推动中国国内的创新，增加外国在华投资与研发，同时也为国内外企业提供平等的待遇。

建议

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

Although China RoHS has been promulgated as a voluntary testing and certification regime, AmCham China members are concerned that certain financial incentives, administered in the form of tax breaks or rebates, could make RoHS a *de facto* mandatory standard. AmCham China encourages China to adopt a voluntary SDOC system for China RoHS. Doing so will encourage all relevant stakeholders to actively participate in the program and help China achieve its goal of minimizing the impact on the environment of harmful substances originating in electronic goods.

Conclusion

American industry is glad that China is working diligently to put in place its standards system and would like to work cooperatively with the Chinese government and industry in that endeavor. However, AmCham China would like to emphasize the importance of technical and market knowledge to the drafting of effective and efficient standards and testing processes that can truly benefit China and its consumers. China's adoption of existing international standards, combined with partnering with foreign enterprises in the development of new standards, is an excellent method for creating a system of standards in China that would drive domestic innovation and increase foreign investment and research and development in China, while also providing equal treatment to both foreign and domestic companies.

Recommendations

- **Broaden recognition of international SDOs beyond ISO, IEC, and ITU, to any organization which follows the WTO/TBT principles on international standards development.**
- SAC should more closely monitor the activities of TC- and SC-level standards working groups to ensure that all Chinese-registered foreign companies are allowed to participate in standards development activities on an equal basis with domestic enterprises.
- CNCA should allow non-Chinese organizations to be accredited and designated to conduct product testing, initial inspections, follow-up audits, and certification work for CCC.
- Eliminate the on-site CCC inspection by Chinese inspectors of products manufactured at overseas plants, and instead recognize third-party inspections by qualified agent services located in the foreign jurisdiction.
- NCAC and SIPO should establish systems to protect IPR during the standards distribution, testing, and certification processes.
- Adopt a voluntary SDOC system for China RoHS.
- To address the above listed recommendations and foster greater dialogue on standards, add a standards working group to the JCCT.

标准制定组织。

- 国标委应更密切地监督各技术委员会和技术分委会一级的标准工作组的活动，确保所有在华登记注册的外资企业都能够在与本国企业平等的基础上参与标准制定工作。
- 认监委应允许外国机构获得认可和受到指派参与 CCC 认证中的产品检测、初步审查、追踪审计以及认证工作。
- 取消由中国检验员对境外工厂生产的产品进行现场检查的规定，而是认可由属地符合资质的代理检验机构代为进行第三方检验。
- 中国国家版权局和国家知识产权局应建立相关制度，保护标准发行、检测和认证过程中所涉及的知识产权。
- 在中国版 RoHS 的实施过程中采用自愿性“自我合规声明”体系。
- 为解决上述建议中提出的问题并促进标准制定方面更广泛的对话，应在中美商贸联合委员会 (JCCT) 中增加一个标准工作组。

Part Three:
Cross-Sector Issues
跨行业问题



Business Sustainability

Introduction

Over 2011, there were a number of positive developments and initiatives to promote and implement business sustainability practices in China. These included:

- Initiatives by local governments and business associations to build a business and regulatory environment supportive of sustainable business practices;
- Prioritized attention to environmental concerns through the establishment of targets, initiatives, and policies, and intensified dialogue among the various levels of government, the nonprofit sector, and stakeholders on these issues;
- Increased engagement by Chinese officials, the business community, and stakeholders in the development and application of international sustainability frameworks; and
- Improved transparency and new public information platforms on domestic philanthropy and nonprofit organizations (NPOs).

With business sustainability as an overarching priority for the chamber, in 2011 AmCham China collaborated with The Conference Board to conduct a comprehensive, survey-based research study titled “Business and Sustainability in China: Company Responses to a National Priority” (sustainability study). Many of the comments in this chapter are based on the data which emerged from this study.

In particular, the data reveals that domestic and foreign businesses alike view the lack of a level regulatory playing field as a major obstacle to both enhancing sustainability standards and ensuring compliance with existing standards. To this end, AmCham China urges the government to better define and enforce existing regulations, and work to develop a fair regulatory environment in which all companies are treated equally.

Significant Developments

Business Sustainability Survey-Based Research Study

As mentioned above, AmCham China collaborated with

The Conference Board in 2011 to conduct a survey-based research study on corporate sustainability practices in China. The study surveyed 476 firms operating in China, including both Chinese (75 percent) and foreign-invested (25 percent) enterprises. Combined, the companies surveyed have over 2,250 office or production sites across 30 Chinese provinces.

The objective of the study was to capture the scope of corporate sustainability practices and how companies define, manage, and measure their activities. In particular, it sought to identify the key factors driving and constraining corporate sustainability activities. The study provides insight into the maturity of corporate sustainability strategies and programs in China.

Developing Sustainable Business Practices

In 2011 there was an encouraging increase in initiatives by local governments, associations, academics, and other stakeholders to build a business and regulatory environment supportive of sustainable business practices. These initiatives touch on a wide variety of sustainability issues, including the China Chain Store and Franchise Association’s work on food safety and energy saving; Beijing Normal University’s new Social Responsibility Research Institute; and Capital Philanthropy Federation’s Charity Organization Management Guide. AmCham China member companies appreciate the opportunity to support, participate in, and benefit from, these initiatives, particularly those driven by industry associations in which member companies are active.

Implementing Environmental Programs and Policies

Progress has been made by the central government as well as the nonprofit sector in establishing new targets, initiatives, and policies to address environmental concerns. Wastewater treatment, energy efficiency, energy generation, and air pollution have all been the subject of new policies. The government has also sought to address environmental concerns by improving the system for measuring the nation’s aquifers and regulations on monitoring certain chemicals. Improved regulation in the environmental sector provides companies with greater guidance on investing in

企业可持续性

引言

2011年，中国在推动和实施企业可持续性实践方面推出了诸多举措，取得了积极的成效，具体包括：

- 各地方政府及企业联合会推出各项举措，建立有助于企业可持续发展的商业及监管环境；
- 通过设立相关指标，推出相关举措和政策，加强各级政府、非营利部门以及利益相关方的对话，重点加强环境保护工作；
- 政府官员、商界和利益相关方增强了开发和运用国际可持续性框架的力度；
- 加强国内慈善机构和非营利组织透明度和新公共信息平台建设。

企业可持续性是中国美国商会的工作重点。2011年，中国美国商会与世界大型企业联合会共同开展了一项名为“中国的企业与可持续性：公司对国家优先战略的回应”（可持续性调研）的综合调研。本章中的许多评论都基于该调研中获得的相关数据。

该调研中的数据显示，内资和外资企业均认为，缺乏一个公平的监管环境对提升可持续性标准和确保遵守现有标准构成了主要障碍。对此，中国美国商会促请中国政府更好地澄清和执行现有法规，努力构建一个公平的监管环境，对所有企业一视同仁。

重大进展

企业可持续性调研

如前所述，2011年，中国美国商会与世界大企业联合会共同开展了一次关于中国企业可持续性实践的调查研究。本次调研对象为476家在华运营的企业，包括中资企业（占被调研企业的75%；下同）和外资企业（25%）。被调研企业横跨中国30个省份，拥有超过2250间办公室或厂房。

本次调研的目的是掌握企业可持续性发展实践的范围，及企业如何规划、管理和评估其可持续发展相关的活动。特别是，本次调研试图明确推动和限制企业可持续性活动的主要因素。本次调研对中国现有可持续性战略和项目的成熟度进行了深入了解。

发展可持续性经营实践

2011年，各地方政府、企业联合会、学术机构和其他利益相关方均竭力营造一个有利于可持续经营实践的商业环境和监管环境。所实施的举措涉及广泛的可持续性问题，包括中国连锁经营协会对食品安全和节能领域的研究，北京师范大学新成立的社会责任研究院，以及首都慈善公益组织联合会制定的《慈善公益组织管理流程指引》。中国美国商会的会员企业对有机会支持、参与并受益于以上举措，尤其是那些由会员企业积极参与的行业协会所推动的相关举措表示感谢。

实施环境项目和政策

中央政府及非营利部门在通过设立新的指标、推出新的举措和政策来解决环境问题方面取得了很大进展。污水处理、节能、发电和空气污染等都成为新政策的关注重点。政府还通过优化蓄水层测量体系以及特定化学品检测体系来寻求应对环境问题的解决方法。环保层面法规的改进，为公司投资新技术提供了更多指导，并建立了为开展上述投资和更加有利的政策环境。

加强与国际社会的合作

中国政府在应对国际社会所表达的种种担忧方面日渐主动。近期与全球抗击艾滋病、肺结核和疟疾基金（全球基金）的互动即为一例。中国近期遭遇公众批评，称其将全球基金的部分资金配置给了官办的非政府组织，而不是独立的非营利组织。而官办的非政府组织在资金使用上的不透明加剧了这一问题。

new technologies, and a more supportive policy environment in which to pursue such investments.

Improved Cooperation with the International Community

The central government has been increasingly proactive in responding to concerns expressed by the international community. Recent interactions with the Global Fund to Fight AIDS, Tuberculosis, and Malaria (Global Fund) provide one example. China recently faced public criticism regarding the allocation of funding from the Global Fund when it was revealed that a percentage of the funding went to government-organized non-governmental organizations (GONGOs) instead of independent NPOs. The lack of transparency in spending by the GONGOs exacerbated the problem.

In response, the Chinese government worked with the Global Fund to benchmark and improve allocation and spending. Even with subsequent set backs regarding this funding (discussed in Specific Issues section below), this greater willingness to cooperate has been welcomed by the international community. AmCham China member companies take note of this example as they seek to continually improve governance and transparency standards, and facilitate increased funding to community-based groups.

China Supporting Sustainable Business Globally

Chinese government and academic organizations, as well as Chinese NPOs, are now seeking to utilize their expertise to help other countries develop sustainably. Chinese NPOs, including the China Youth Development Foundation, have been particularly active expanding into Africa. Other notable examples include the partnership between the Ministry of Science and Technology and the Gates Foundation to expand research on certain diseases, and the increased collaboration between various government departments, international development agencies, and multilateral organizations on how business can contribute to poverty reduction. Some of these collaborating organizations have included the US Agency for International Development, the United Kingdom Department for International Development, the Organisation for Economic Co-operation and Development's Development Assistance Committee, the UN Development Programme, and others.

AmCham China member companies, including NPOs, appreciate the opportunity to participate in these initiatives, and look forward to continuing to share their expertise and experiences with their Chinese counterparts.

Increasing Transparency

Several developments in 2011 reflected improvements in transparency in the nonprofit sector. The China Foundation Center, a private online information platform covering

domestic philanthropy, successfully launched its public access site to provide core information about foundations operating in each province, city, and town in China. In response to this project and its success in highlighting misuse of donor money in China, the Ministry of Civil Affairs has committed to developing a similar range of online services to ensure that official data on NPOs is publicly accessible. The Ministry of Civil Affairs has also published the inaugural China Philanthropy Transparency Report. AmCham China members welcome these initiatives and view them as important steps toward improving accountability standards.

International Standards and Guidelines

As the momentum for sustainability programs increases, companies and governments around the world are developing better standards and benchmarks to track progress. Over the last few years, a variety of international forums have encouraged tracking systems and standards for various sustainability indicators, including financial transparency, carbon emissions and reductions, social impacts, and social changes.

The role of international sustainability frameworks in China is gaining traction. Sustainability study respondents indicated that they often base their sustainability strategies or programs on more than one international framework. The standards most frequently used by respondents are the International Organization for Standardization (ISO) standards ISO 14000 (voluntary compliance standards for environmental management) and ISO 26000 (a non-certified standard providing guidance on social responsibility implementation), as well as the Global Reporting Initiative's (GRI) Reporting Framework for disclosing the economic, environmental, and social impacts of an organization through GRI Sustainability Reporting Guidelines G3.1 (GRI G3.1) (see figure 1 below).

Figure (图) 1

Which of the following reporting frameworks or voluntary compliance standards do your company's corporate sustainability measures in China adhere to?

在中国，贵公司的可持续发展措施遵照以下哪种汇报框架或自愿合规标准执行？

Company sample size: Chinese, 356; Foreign, 120
企业样本规模 中国公司 外国公司



Source: The Conference Board 2010 China Corporate Sustainability Survey. 数据来源：世界大型企业研究会 2010 中国企业可持续发展调查

对此，中国政府与全球基金进行合作，制定并优化了资金分配和使用标准。尽管该资金的不当分配和使用造成了一系列的问题（详见下文“具体问题”一节中的论述），但中国政府在该过程中表现出来的积极合作的意愿却得到了国际社会的认可。中国美国商会的会员企业对上述事件表示关注，因为这些合作正在不断提升监管和透明度标准的力度，并帮助社区组织获得更多资助。

中国在全球范围内支持可持续业务

中国政府和学术机构以及中国的非营利组织目前正努力运用自己的专业知识来帮助其他国家实现可持续发展。包括中国青少年发展基金会在内的中国的非营利机构，已积极活跃在非洲各国。其他典型项目还包括科技部和盖茨基金联合拓展对部分疾病的研究，以及各级政府部门、国际性开发机构和跨国公司在企业如何协助减少贫困方面开展日益密切的合作。这些合作机构包括美国国际开发署、英国国际开发署、经合组织发展援助委员会和联合国开发计划署等。

中国美国商会的会员企业，包括一些非营利组织，有机会参与上述项目表示感谢，并期待能够继续与中国同行分享自己的专长和经验。

提高透明度

2011年，中国非营利机构在提高透明度方面取得了不少成果。中国基金会中心网，一家致力于发布国内慈善信息的民营在线信息平台成功地向公众开放，为公众提供中国各省、市和乡镇基金会运营的核心信息。该项目在关注中国捐赠款滥用现象方面取得的成功推动了中国民政部承诺开发一系列类似的在线服务，确保公众对非营利机构相关官方数据的知情权。民政部还首次发布了《中国慈善透明报告》。中国美国商会的会员企业对上述举措表示欢迎，并将其视作改善问责制标准方面的重大进步。

国际标准和指南

随着可持续性计划的发展势头不断扩大，全球各国企业和政府都在开发更为完善的标准和基准来追踪进展状况。在过去的几年中，很多国际论坛都鼓励建立针对可持续性各项指标的追踪系统和标准，包括财务透明度、碳排放和减排、社会影响和社会变革。

国际可持续性框架对中国的影响也越来越大。可持续性调研的受访者表示，他们在制定其可持续性战略或计划

时通常会参考不止一种的国际框架。受访企业常用的国际标准包括国际标准组织（ISO）ISO14000（环境管理自愿合规标准）和ISO 26000（一项提供社会责任实施指南的非认证标准），以及全球报告倡议组织（GRI）在GRI可持续性报告指南G3.1（GRI G3.1）中提出的组织对经济、环境和社会影响的报告框架（见左页图1）。

具体问题

非营利机构的问责及公众信任

如上所述，中国美国商会对近期中国政府和包括中国基金会中心网在内的非营利组织在提高非营利组织透明度方面所作的努力表示欢迎。然而，部分非营利组织滥用善款并引起公众高度关注的事实也告诉我们，确保公众对非营利机构信任的工作任重道远。

目前相关法律对非营利组织的法律地位缺少明确解释，同样影响了公众对非营利组织部门的信任度，同时还限制了国内非营利组织的效能。虽然国内非营利组织的数量与日激增，但由于存在责任不明、透明度和法律障碍等问题，导致了国内非营利组织无法充分发挥其影响商界和整个社会的潜力。这一点在我们的可持续性调研结果里亦有体现，民间社团利益相关团体在推动企业可持续性发展方面仅发挥了十分有限的作用。

中国美国商会希望通过加强政府、企业和非营利机构内的问责制并提高它们之间的协调性来增强公众对非营利部门的信心。我们促请中国政府提高民间社团组织的法律地位，明确并简化非营利组织的登记程序，加强慈善捐赠透明度和激励措施建设。

中国美国商会也为中国非营利部门在行业自律管理方面所取得的成绩倍感鼓舞。其中一例即为加强公益和商业合作的自律性而出台的《公益与商业合作九大准则》。该准则由20多家国内基金会于2011年12月共同协商确定并签署。我们鼓励政府继续支持非营利部门在行业自律方面做的努力，并认可国际非营利组织在增强非营利行业的透明度和问责制方面的重要作用。

可持续性标准和合规差距

ISO 14000 和 GRI G3.1 等国际框架和标准填补了治理方面的一个重要空白，为企业实施可持续性制度提供了实用的方法。这些框架和标准为企业制定并确定重点实施举措，构建适当的企业可持续性评估指标提供了系统的方

Specific Issues

Accountability and Public Trust in the Nonprofit Sector

As discussed above, AmCham China welcomes recent efforts by the Chinese government and NPOs, including the China Foundation Center, to improve transparency in the nonprofit sector. High-profile cases of misspending of donor money by certain NPOs, however, tell us that more work still needs to be done to ensure public trust.

The current lack of certainty over the legal status of charities also inhibits public trust in the nonprofit sector and constrains the effectiveness of domestic NPOs. The number of domestic NPOs is burgeoning; however, accountability, transparency, and legal concerns prevent domestic NPOs from fulfilling their potential to positively impact the business community and wider society. This is reflected in our sustainability study results, which indicate that civil society stakeholder groups still play a rather limited role in setting corporate sustainability agendas.

AmCham China members are hopeful that greater public confidence in the sector can be achieved through more accountability in and better coordination of the government, business, and nonprofit sectors. We urge the government to improve the legal status of civil society organizations, clarify and simplify the process for registering NPOs, and strengthen the transparency of and incentives for charitable giving.

AmCham China is also encouraged by promising steps taken towards self-regulation in the sector. One example includes the Nine Rules of Conduct Concerning Charity-Business Cooperation, which promote self-regulation of charity-business cooperation. These rules were negotiated and signed by over twenty domestic foundations in December 2011. We encourage the government to continue to support efforts towards self-regulation and recognize the important role played by international NPOs in building transparency and accountability standards in the nonprofit sector.

Sustainability Standards and the Compliance Gap

International frameworks and standards like ISO 14000 and GRI G3.1 fill an important governance gap, assisting companies with practical implementation of sustainability systems. They provide a systematic approach for establishing and prioritizing initiatives and identifying appropriate indicators to measure business sustainability. They also provide guidance on how to best report and communicate the results. AmCham China encourages the participation of Chinese stakeholders in developing future international guidelines.

AmCham China member companies remain concerned about obstacles to implementing and improving sustainability standards. Among sustainability study responses from foreign-invested companies, four out of the top five concerns relate to actual or perceived deficiencies in regulations and their enforcement (see figure 2 below). A significant number of both domestic and foreign respondents cited the lack of a regulatory level playing field between foreign-invested and domestic companies. Other key obstacles included an inadequate regulatory environment, a general lack of enforcement of existing rules, and local Chinese companies not being sanctioned or penalized for noncompliance.

AmCham China encourages the government to consult broadly with business when designing policies, guidelines, and laws relevant to business to encourage compliance. We also urge the government to better define and enforce existing regulations, and impose standard penalties for offenses regardless of who commits them.

Environmental and Climate Targets

AmCham China applauds government intentions to establish more ambitious targets for environmental protection. However, greater elaboration and guidance on how these will be achieved is desirable, along with details on how affected companies may participate in the process to ensure such targets are met.

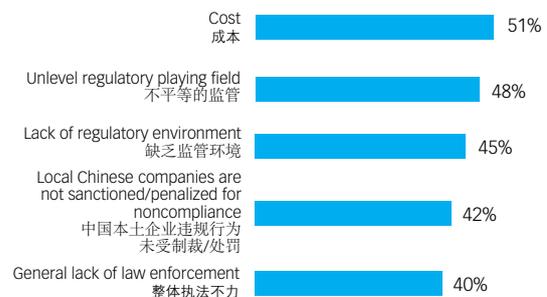
The sustainability study results show that the vast majority of companies responding (93 percent) believe a clean energy economy is the key to China's future growth (see figure 3 to the right). Around half of study respondents already have environmental measurement systems in place to track output across key indicators such as material usage (56 percent), logistics and transportation including business

Figure (图) 2

What are the biggest obstacles for your company to address corporate sustainability issues in China?

在中国，企业解决可持续发展问题时面临最大阻碍是？

Company sample size = 113-120 foreign companies
企业样本规模 113-120 家外国公司



Source: The Conference Board 2010 China Corporate Sustainability Survey.
数据来源：世界大型企业研究会 2010 中国企业可持续发展调查

法，同时也为如何更好地汇报和通告所取得的成果提供了指导。中国美国商会鼓励中国各个利益相关方积极参与今后此类国际准则的制定。

中国美国商会的会员企业仍对实施和提高可持续性标准时所面临的障碍担忧。在外资企业对可持续性调研的反馈中，前五大担忧中的四项涉及到实际或感知上的监管不力、执行不严等问题（见左页图 2）。很多受访的中资和外资企业都表示，在对外资和中资企业的监管力度上存在差异。其它的主要障碍包括，缺乏监管环境、整体执法不力及中国本土企业违规行为未受制裁或处罚。

中国美国商会鼓励中国政府在制定相关政策、指南或法律时能广泛地征求企业的意见，从而鼓励企业守法合规。我们还促请中国政府进一步明确和执行现有法律法规，对违法者能够依法进行处罚、一视同仁。

环境和气候目标

中国美国商会对中国政府设立更为雄心勃勃的环境保护目标表示赞赏。不过达成目标还需要更为具体的实施细则和指导意见及相应的明确相关企业如何参与实施的具体方案。

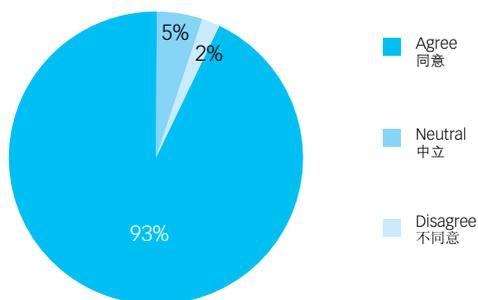
可持续性调研成果显示，绝大多数的受访企业（93%）认为清洁能源经济是中国未来经济发展的关键因素（见本页图 3）。近半数的受访企业已经建立了自己的环境测评体系，对诸如以下重点指标的输出情况进行追踪：物料消耗（56%）、物流和包括公务出差和通勤在内的交通（56%）、

Figure (图) 3

Do you agree that China needs to create a clean-energy-based economy to ensure its future growth?

您是否同意中国应为保持未来增长发展清洁能源经济？

Company sample size = 444 foreign and Chinese companies
企业样本规模 444 家中外公司



Source: The Conference Board 2010 China Corporate Sustainability Survey.
数据来源：世界大型企业研究会 2010 中国企业可持续发展调查

耗水量（55%）、废物产出量（47%）、能耗和节能（47%）、污水处理（46%）和垃圾管理/回收（45%）（见本页图 4）。

制定相关基准，特别是碳排放追踪基准来引导企业行为，将有助于实现环境目标。但只有 26% 的受访企业表示他们已经建立了碳排放追踪测量体系。在该领域若中美两国政府和企业之间能加强合作和分享最佳实践成果，也对环保有所帮助。

国际机构和本土非营利组织的合作

中国美国商会对中国政府与全球基金开展合作，改进对本土非营利组织的资金分配办法等举措表示赞赏。我们促请中国政府继续认可国内和国外非营利组织在促进健康、环境和社区社会经济发展方面所发挥的重要作用。

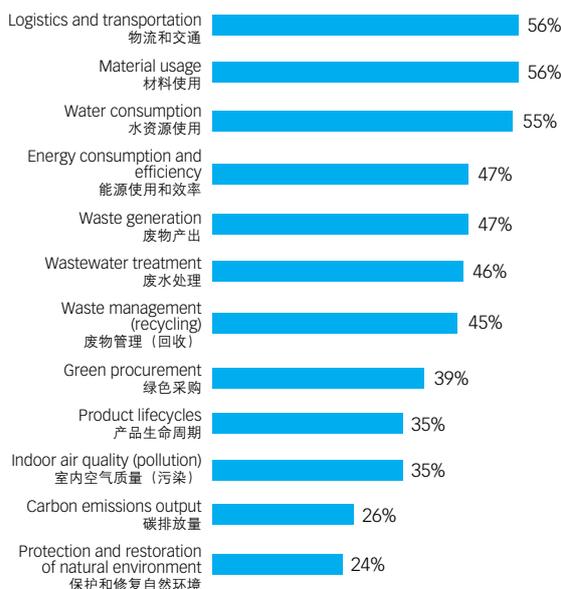
全球基金宣布将停止对所有二十国集团成员国的资助，这向中国的非营利部门提出了新的挑战。随着中国经济的不断增长，其他国际捐赠机构也可能会将其有限的资金转投其他更不发达的国家。中国美国商会促请中国政府逐步以国内基金（来自私人或政府）取代国际捐赠机构的资金，以确保健康、环境和社会经济发展领域能继续取得进展。

Figure (图) 4

Does your company in China have measurement systems in place to collect information in any of the areas listed below?

在中国，企业是否已在下列领域建立测量机制用作收集信息？

Company sample size = 476 foreign and Chinese companies
企业样本规模 476 家中外公司



Source: The Conference Board 2010 China Corporate Sustainability Survey.
数据来源：世界大型企业研究会 2010 中国企业可持续发展调查

trips and commuting (56 percent), water consumption (55 percent), waste generation (47 percent), energy consumption and efficiency (47 percent), wastewater treatment (46 percent), and waste management/recycling (45 percent) (see figure 4 on page 93).

Benchmarks to guide company behaviour would be helpful, particularly in carbon emissions tracking. Only 26 percent of respondents reported that they have a measurement system in place to track this. This is another area where more collaboration and sharing of best practices among the Chinese and American governments and companies would be useful.

Cooperation with International Agencies and Local Nonprofit Organizations

AmCham China applauds the Chinese government's cooperation with the Global Fund to improve the allocation of funding to local NPOs. We urge the government to continue recognizing the important role of domestic and foreign NPOs in contributing to the health, environment, and social and economic development of communities.

The Global Fund's announcement that it is ceasing funding to all G-20 nations presents a new challenge for China's nonprofit sector. As China's economy continues to grow, other international donors may also choose to reallocate their scarce funds to less developed nations. AmCham China urges the Chinese government to work towards replacing funding from international donors with domestic funding (both private and public), to ensure that the advancements in health, environment, and social and economic development continue. The continuation of China's work on AIDS is particularly important in an environment of shrinking international resources.

Conclusion

AmCham China is encouraged by the many important developments that have taken place over the past year to improve business sustainability in China. However, there remains much to be done, as significant public distrust of the nonprofit sector remains. AmCham China encourages the Chinese government to continue to strengthen the legal framework of NPOs, to recognize the role of international NPOs in contributing to improved transparency and accountability standards, and to encourage industry self-regulation to help build a strong, accountable, and transparent nonprofit sector in China.

AmCham China and its member companies look forward to working closely with the Chinese government, as well as Chinese counterparts and the local nonprofit sector, to further improve sustainability in the year ahead.

Recommendations

For the Chinese Government:

- **Consult broadly with business when designing policies, guidelines, and laws relevant to business to encourage compliance, provide sufficient guidance, and level the playing field.**
- Clarify and simplify the registration process for nonprofit organizations, strengthen the transparency of and incentives for charitable giving, and build public and corporate trust in the nonprofit sector.
- Engage in the development of international sustainability frameworks to ensure Chinese views are being heard.
- Establish clear environmental targets and operational guidelines, and develop better incentives for the measurement of carbon emissions.

For the US Government:

- **Facilitate the dissemination of international knowledge, tools, and best practices for business sustainability.**
- Consult broadly with US companies operating in China when considering new US laws and regulations that may affect them.
- Encourage greater participation by Chinese stakeholders in the development of international guidelines for sustainability.

在国际资助不断缩减的情况下，中国确保其在艾滋病领域的工作的连续性意义尤为重大。

结论

中国美国商会为中国近年来在提升企业可持续性方面所取得的重大成就深感鼓舞。然而，鉴于公众对非营利机构存在很大的不信任情况之下，需要改进完善之处依然大量存在。中国美国商会鼓励中国政府继续加强非营利组织法律框架的完善工作，认可国际非营利组织在提高透明度和问责标准方面的重要作用，并鼓励行业自律，在中国建立健康、可信、公开透明的非营利部门。

中国美国商会及其会员企业期待能够在下一年与中国政府、中国同行及本土非营利部门开展紧密合作，进一步提高企业可持续性。

建议

对中国政府

- 在制定与企业相关的政策、指引和法律时广泛咨询企业意见，从而鼓励企业合规，为企业提供充分的指引，并营造公平的环境。
- 明确和简化非营利组织的注册程序，加强慈善捐赠的透明度和激励措施，建立公众和企业对非营利部门的信任。
- 参与国际可持续性框架的制定过程，确保框架中体现中国的立场。
- 建立明确的环境目标和运营指导，建立更有效的碳排放测量激励措施。

对美国政府

- 促进企业可持续性发展的国际知识、工具和最佳实践的推广。
- 就可能影响在华美国企业运营的法律法规方面，广泛征询在华经营的美国企业的意见。
- 鼓励中国利益相关方更加广泛深入地参与国际可持续性指南的制定过程。

Customs

Introduction

The transition toward increased efficiency and transparency in China's trade management policies and customs administration continued over 2011. Both foreign and domestically invested firms view this as a positive development, and welcome greater alignment of China's customs policies with international best practices. AmCham China recognizes and applauds the accomplishments of the General Administration of Customs (GAC) and welcomes continued improvements to policies and procedures.

Foreign and domestically invested companies alike appreciate the ability to transport goods simply, quickly, cheaply, and reliably. Looking ahead, AmCham China believes policy changes in the following areas would immediately benefit China's trade and commerce during the next stage of its development: improve customs management over processing operations; adoption of a uniform, nationwide guideline for voluntary disclosure; expanded use of paperless declaration; streamlined customs procedures for the import of research and development (R&D) testing samples and equipment; adoption of a national Customs service model with extended hours; and increased availability of bonded air transfer programs.

Significant Developments

Transparency and Engagement

Since China's entry into the World Trade Organization, GAC has made great strides in increasing openness and transparency, allowing foreign-invested businesses to operate more efficiently and work with their Chinese partners and customers more effectively. Advances include wider availability of English translations of rules and regulations, ability to view and search regulations online, a public telephone hotline, and expanded availability of GAC consulting services.

Advance Valuation Rules

In January 2012, GAC internally released a master regulation on advance valuation to local Customs, with the intention of improving customs clearance efficiency. This master regulation is a general guideline from which local Customs

will develop corresponding advance valuation rules per their own local situation, which would normally only be effective in their respective Customs districts. We are aware that some local Customs (e.g., Shanghai, Qingdao, and others) have already developed and implemented advance valuation rules for their own jurisdictions.

We believe these rules will enable enterprises to better control pricing risk, while also enabling Customs to better streamline border operations for all concerned.

Specific Issues

Customs Management Over Processing Operations

Over the last 30 years, processing operations have become a major industry and have made China the largest manufacturing center in the world. The Customs management system over processing operations has been updated dramatically to adapt to the industry's development. Nevertheless, many aspects could still be improved, including reconciliation of imported inputs and exported products, factory transfer of products, disposal of waste, valuation of bonded goods for domestic sale, attrition rates, and others.

AmCham China members understand GAC will be conducting an extensive survey on the existing constraints in processing operations to find the root causes of the problems and form practical, simple, and unified solutions for improvement of the system.

Voluntary Disclosure

As discussed in last year's Customs chapter of the *White Paper*, China lacks national regulations for allowing foreign- and domestically invested companies to voluntarily disclose and resolve problems with their customs compliance. Although voluntary disclosure provides benefits to both enterprises as well as to the Chinese government (including Customs and the Tax Administration) through increased efficiency and customs and tax compliance, no significant progress has been made over the past year on this issue.

Voluntary disclosure is an accepted international practice allowing Customs authorities and companies a transparent

海关

引言

中国的贸易管理政策和海关行政的效率和透明度在 2011 年得到了进一步改善。中国海关政策正逐步向国际最佳实践靠拢，并取得了积极的进展，这让外资及内资企业感到欣慰。中国美国商会对海关总署所取得的成果表示认可和赞赏，并欢迎其继续改善政策和相关程序。

内、外资企业都希望能够更加简便、快捷、低成本、可靠地运输货物。展望未来，中国美国商会认为以下领域的政策变化将迅速使中国商贸在下一个发展阶段中受益：完善海关对加工贸易的管理制度；出台全国统一的自愿披露处理准则；扩大无纸化申报的使用范围；简化进口研发用测试样品和设备的海关申报程序；统一各海关加班作业制度；推广保税空运方案。

重大进展

透明度和参与度

自中国加入世贸组织以来，海关总署在提升开放度和透明度方面取得了长足的进步，这不仅提高了外资企业的运营效率，也使得外企能更有效地与中国贸易伙伴和客户进行合作。这些进步包括，法规英文译文数量的增加，在线阅读和搜索法规，公共热线以及海关系统咨询服务的增加。

预审价制度

为了提高海关通关效率，2012 年 1 月，海关总署向各地方海关下达了有关预审价的原则规定。该规定为各地方海关根据本关实际情况制定本关区有效的预审价决定规则提供了指导。我们注意到部分海关（如上海、青岛等海关）已经在其管辖区域范围内制定并实施了预审价制度。

我们相信，该制度将有助于企业更好地控制定价风险，对海关实施更加便捷的通关作业也十分有利。

具体问题

海关对加工贸易的管理制度

过去 30 年间，加工贸易已经成为中国的一个支柱性产业并成功地推动中国成为全球制造中心。在整个加工贸易产业的迅速发展过程中，中国海关的加工贸易管理制度及时跟进，不断调整完善。与此同时，不少方面依然有待改善，包括核销制度、深加工结转、废料处理、保税料件内销审价以及损耗率确定等等。

美商会成员深信海关总署会对加工贸易企业所面临的实际情况和问题开展广泛的调查，发现相关问题的结症所在并在此基础上形成更加切合实际、更加简便、更为规范统一的解决方案以促使该项管理制度的进一步完善。

自愿披露

正如去年《白皮书》中海关章节所提到的，中国缺少允许外国和本国企业就海关合规事项进行自愿披露并解决相关问题的全国性法规。自愿披露可以提高效率，提升海关和税收合规度，对企业和中国政府（包括海关和税务机关）都十分有益，然而这一问题在去年并没有取得太大的进展。

自愿披露是企业发现自己发生不合规情况时，鼓励企业主动向海关报告，以弥补缺陷的一种国际通行的办法。目前中国各地海关在自愿披露问题上的规定各不相同，企业并不了解其在自愿披露后会产生什么样的后果。这将阻碍企业自愿披露其在管理运营中发现的不合规问题。大部分企业都愿意面对一套透明、系统的自愿披露规则，使企业积极、自愿地披露不合规事项，在不引发重罚的前提下尽快解决相关问题。

中国美国商会建议中国出台一套全国统一的准则，对处理自愿披露相关问题做出明确的规定，使企业能够加快合规步伐。该准则应包括范围、条件以及自愿披露之后涉

and straightforward process to remedy situations where a company has found itself in noncompliance. Currently, local customs jurisdictions across China employ a wide range of approaches to voluntary disclosure, making it unclear what consequences will follow when a company makes a disclosure. This can deter companies from voluntarily disclosing noncompliance uncovered through their internal management processes. Most companies would prefer to have a transparent and institutionalized avenue for proactively and voluntarily disclosing noncompliance problems that arise, resolving the problems quickly while also avoiding higher penalties.

AmCham China recommends that China adopt a uniform, nationwide, and clearly defined guideline for handling voluntary disclosure, so that companies can quickly come into compliance. This guideline should explain the scope, conditions, and general procedures governing duties or penalties to be imposed upon voluntary disclosure. Such clearly defined guidelines would likely increase rates of voluntary disclosure, enhance efficiency, and improve overall compliance with customs procedures. It would also reduce the workload of Customs and potentially increase GAC duty collections.

Import of Samples for Use in Research and Development

Currently, R&D centers of multinational corporations (MNCs) that maintain a good record with Customs can take a simpler, streamlined route through the customs clearance process, giving them the ability to clear shipments with greater speed and in a more convenient manner. This streamlined process can include the following: the ability to file declarations in advance or online, expedited internal customs transit, door-to-door inspections, expedited customs clearance for urgent shipments, provision of guarantees and releases, and the payment of duties and taxes after release from customs. In addition, eligible MNC R&D centers are exempt from paying both duty and value-added tax when importing equipment, a reasonable quantity of spare parts, and technology for use in R&D operations.

However, the regulations do not apply to all MNC R&D centers. For instance, for a variety of reasons some centers are registered as an enterprise instead of as an R&D center, which greatly complicates their ability to import testing samples. To assist MNC R&D centers in this situation, Customs should make a certification available to enterprises with R&D characteristics that import equipment for testing. These enterprises could then use this certification to facilitate the Customs clearance process for equipment, parts, and technology used in their R&D projects. In addition, Customs should further improve clearance procedures for importing testing samples by establishing a special channel for clearing samples destined for R&D use. This would lead to a greater number of MNCs conducting R&D in China, as well as help to increase local employment and contribute to

China's goal of increasing innovation.

Another area in which Customs could assist relates to the "Temporary Import and Export Regulations." The current regime lacks clarity, which often makes it difficult for MNCs to import for R&D purposes. Customs should unify and simplify the approval criteria of the "Temporary Import and Export Regulations."

Post-Entry Corrections

Current regulations allow companies to make post-entry corrections, but companies find the existing process cumbersome and time consuming. By adopting a simpler process, Customs would increase compliance and operational efficiency. AmCham China encourages GAC to simplify the post-entry correction process for minor, inadvertent errors to allow enterprises to more easily make corrections.

Paperless Declaration

AmCham China fully supports GAC's efforts to promote "providing paperwork post-clearance," or paperless declaration of shipments. In 2010, GAC began allowing enterprises to apply for paperless declaration using Electronic Data Interchange, thus increasing efficiency and reducing costs for shippers. GAC Announcement No. 56 permits the exchange of electronic data and eliminates the need to present certain documents to Customs authorities prior to clearance. This reform has been applied nationwide for exports, and a pilot program for imports has been launched at several main ports.

AmCham China believes the initiative should be expanded and more enterprises should be allowed to go paperless. In particular, we propose that Customs change the criteria for "providing paperwork post-clearance" from only Grade A and AA importers and exporters to all importers and exporters Grade B and above. The paperless system is effective and benefits the business environment in China by increasing efficiency. However, currently Grade A and AA importers and exporters account for only two to three percent of the total number of companies registered with Customs. As a result, the benefits of this important program are not being maximized for China's business development.

While AmCham China recommends lowering qualifying criteria for importers and exporters to Grade B and above, no change should be made regarding the criteria for brokerage companies. Qualifying criteria for brokerages should remain at Grade A or AA. By expanding the number of importers and exporters that qualify for paperless clearance while maintaining the qualifying criteria for brokerage companies at the current level, more importers and exporters will be encouraged to choose Grade A or above brokerage companies to process their declarations. This will not only encourage Grade A and above brokerage companies to continue their high quality performance, but

及关税和惩罚的一般程序。上述明确界定的准则将有助于提高企业自愿披露比例，提高效率以及改善通关程序整体合规水平，同时还可以减少对海关工作量的需求，潜在地增加海关税额。

研发用样品的进口

目前，保有良好海关记录的跨国企业研发中心可以在通关过程中享受更为简单、便捷的通道，这使得它们能更加快速、便利地处理货件。简化的程序包括：提前或联网报关，海关内部转运加急，上门查验，凭保放行以及先放行，后缴税。此外，符合条件的跨国企业研发中心在进口设备、合理数量的零部件以及研发用技术时免交关税和增值税。

然而，这些规定并不适用于所有的跨国企业研发中心。例如，由于各种原因，一些中心以企业的名义而不是研发中心的名义注册，结果大大削弱了它们进口试验样品的能力。为帮助此类跨国公司研发中心，海关应该对进口测试设备的、具有研发性质特制的企业进行认证，以提高这类企业研发项目用设备、零部件和技术的通关效率。另外，海关是否可以进口研发用样品开辟一个专用通关通道，藉此进一步改善测试用样品的通关程序。这将吸引更多的跨国公司来华开展研发业务，增加就业机会，并帮助中国实现加大创新力度的目标。

有待改善的另一个方面是《暂时进出境货物管理办法》。目前的法规并不明确，使得跨国企业进口研发用样品的手续变得十分复杂。《暂时进出境货物管理办法》中的审批标准应进一步得到统一。

事后纠错

虽然目前的法规允许企业进行事后纠错，但是企业发现现有的程序较为复杂、耗时。通过简化程序，海关可以提高合规和工作效率。中国美国商会鼓励海关总署简化对由疏忽造成的细微错误的纠正程序，使企业能够更加便捷地纠正错误。

无纸化申报

中国美国商会全力支持海关总署有关推广“先通关，后交单”以及无纸化申报的举措。2010年，海关总署开始允许合格企业申请使用电子数据交换（EDI）系统进行无纸化报关，此举提升了通关效率，降低了承运商的成本。海关总署第56号公告中允许企业使用电子数据交换的“无纸报关”方式报关，而无需在通关之前向海关提交相关纸

质文件。中国全境的出口业务已经实施了此项改革，而进口业务的改革试点工作已在一些主要港口铺开。

中国美国商会认为应进一步扩大该措施的适用范围，允许更多的企业实行无纸化申报。我们尤其建议海关修改“先通关，后交单”企业资格核准标准，将这一仅适用于A级和AA级进出口商的标准扩大至B级和B级以上的进出口商。无纸化系统对于提高效率十分有效，有利于改善中国的商务环境。然而，A级和AA级进出口商仅占海关注册企业总数的2%到3%。因此，这一有利于中国商业发展的重要举措并没有得到最大化的利用。

虽然中国美国商会建议将进出口商的核准标准降至B级和B级以上，但与此同时海关总署应保持报关服务公司的现有标准不变，即A级或AA级。扩大适用无纸化申报的进出口商数量以及维持报关服务公司现有核准标准将鼓励更多的进出口商选择A级或以上级别的报关服务公司来代理其报关手续。这不仅会鼓励A级或A级以上级别的报关服务公司继续保持其高质量的服务，也会促使非A级或AA级报关行改善其报关服务质量和合规记录，藉此获取A级认证。

全天候海关服务模式

对比很多东南亚国家和世界其他地区，中国的海关通关速度较为缓慢。此外，随着近年来制造业向中国内地转移，中国的流通网络日益复杂，挑战日益加大。如今，市场需要更加快捷、更容易掌控的海关通关程序。

海关目前对外业务办公，包括工作日作息和周末安排是企业运营的一个制约因素，因通关时间延长且无法接触到海关官员，对企业供应链管理造成巨大压力。

中国美国商会建议在全国海关推行统一的对外办公作息制度，包括延长工作日的工作时间并适当增加周末的服务时间。

保税空运

中国高价值货件的运输量在不断攀升，由于货件在到达目的地之前会在不同承运商之间转手，而保税运输有利于确保货件的安全，因此，保税运输的需求量水涨船高。目前，保税卡车运输已经不足以满足客户对交货时间和安全的要求，中国美国商会认为开展高效的保税空运对于提高所有在华的中、外企业的供应链效率具有十分重要的意义。

it will also provide incentive for non-Grade A or AA brokers to improve their declaration quality and their compliance record in order to receive Grade A certification.

24x7 Customs Support Model

Customs clearance in China remains relatively slow compared to many Southeast Asian countries and other parts of the world. In addition, the shift of manufacturing inland in recent years has resulted in greater challenges and complexity for China's distribution network. Today, the market needs a faster paced and more predictable customs clearance processes.

Insufficient access to Customs personnel, including limited customs working hours on weekdays and over weekends, is one limitation significantly pressuring companies' bottom lines and hampering supply chain management. It results in longer clearance times and makes it more difficult for businesses to interact with Customs officials.

AmCham China recommends adoption of a single service model for Customs officials across the country that includes extending operating hours during the week and adding some weekend support.

Bonded Air

High-value goods are increasingly being transported throughout China, and with that has come higher demand for bonded transfers to help ensure and secure shipments as they change hands among shippers and move towards their final destination. Currently, transfer via bonded trucks is not sufficient for meeting the requirements for delivery lead times or security. AmCham China believes that developing a highly efficient bonded air transfer process is critical to improving the efficiency of supply chains for all companies in China, foreign and domestic.

In recent years, as a result of advocacy from MNCs and support from several Customs organizations, several successful bonded air transfer pilot programs have been established. Results have been encouraging and the programs have provided needed security while increasing transportation efficiency and shortening lead times. AmCham China believes the pilot programs should be expanded.

Transparency and Engagement

GAC and local Customs authorities have made great strides in improving transparency and engagement with the foreign business community in recent years. Building on this success, we encourage Customs to increase the number of English translations of rules and regulations. Many translations are currently available, but expanding their number would further facilitate foreign investment and improve companies' ability to comply with China's laws. We also encourage GAC to increase transparency by summarizing

and releasing executive penalty cases on an annual basis.

In addition, GAC Decree 180 gives companies the opportunity to comment on customs procedures and the ongoing development of customs regulations, but the decree has not been strictly implemented. AmCham China believes that insights and input from companies would help further improve trade management policies for the benefit of the entire business community. We encourage GAC to implement Decree 180 and allow companies additional opportunities to participate in the development of customs policy.

Conclusion

China's economic competitiveness is enhanced by the effective and efficient clearance of goods through customs. GAC's ongoing progress in modernizing systems and increasing transparency is impressive and substantial. GAC can build upon these successes by: improving its management system over processing operations; adopting a uniform, nationwide guideline for voluntary disclosure; expanding successful programs for bonded air transport and importation of R&D materials; improving transparency; and other recommendations described above. AmCham China looks forward to cooperating with GAC in the future to help achieve these goals and continue improving the business environment for all companies.

Recommendations

- **Improve the management system over processing operations.**
- Adopt uniform, nationwide, and clearly defined guidelines for handling voluntary disclosure.
- Expand the ability of MNC R&D centers to import testing samples and establish a separate customs clearance channel for R&D samples and other shipments that meet the unique characteristics common to R&D centers.
- Simplify the post-entry correction process for minor, inadvertent errors to allow enterprises to easily make corrections.
- Extend the scope of the "providing paperwork post-clearance" reform to include import and export companies of Grade B and above, while maintaining the criteria for brokerage companies unchanged at Grade A and above.
- Adopt a single service model for Customs offices and officials across the country that includes extended operating hours during the week and additional weekend support, ideally implementing a truly responsive 24x7 operating model.
- Expand efforts to develop a consistent process allowing high-speed bonded air transfer.

近几年来，在跨国公司的倡导和多家海关机构的支持下，多个保税空运试点方案得以成功开展。该方案在提供运输安全保障的同时提高了运输效率，缩短了交货时间，其效果令人欣慰。中国美国商会认为应进一步推广这些试点方案。

- 在全国推行统一的海关办公制度，包括延长工作日工作时间以及增加周末办公，最为理想的是能够根据企业需求，提供全天候通关作业制度。
- 推广高速高效的保税空运方案。

透明度和参与度

近几年来，海关总署和各地海关在改善透明度和与外资企业互动方面取得了长足的进步。在此基础上，我们鼓励海关加大对法规的英文翻译力度，以进一步增进外国投资和提升企业遵守中国法律的能力。我们还鼓励海关总署按年度汇总并公布行政处罚案件来提升透明度。

此外，海关总署 180 号令允许企业参与海关法规制度建设，但是该条例并没有得到严格实施。中国美国商会认为企业的意见和反馈有利于进一步提高海关规章质量，继而有利于整个企业界。我们鼓励海关总署贯彻 180 号令，允许企业有更多的机会来参与海关政策的制定。

总结

便捷、高效的海关通关提高了中国经济的竞争力。海关总署在系统现代化和透明度提升方面所取得的进步是巨大的，给人们留下了深刻的印象。在此基础上，海关总署通过进一步完善加工贸易管理制度，制定全国统一的自愿披露处理准则，推广保税空运和研发用货物进口成功方案，提高透明度以及采纳本文所提出的其他建议，必将取得更大成就。中国美国商会期待未来能够与海关总署就实现上述目标开展合作，改善企业的营商环境。

建议

- 进一步完善加工贸易管理制度。
- 出台一套全国统一的准则，对处理自愿披露相关问题做出明确的规定。
- 提高跨国企业研发中心进口测试用样品的能力，为研发用样品和其他具有研发中心测试用样品同类性质的货件开设专用通关通道。
- 简化因疏忽造成的细微错误的事后纠正程序，便于企业纠正错误。
- 加大“先通关，后交单”的改革力度，将 B 级和 B 级以上进出口商纳入适用范围，保持报关服务公司 A 级和 A 级以上的核准标准不变。

Food Safety

Introduction

Food safety remains a challenge for the Chinese government, as several high-profile cases in 2011 relating to tainted milk and meat highlighted continuing shortcomings in China's regulatory oversight in this area. As China's economy continues to grow rapidly and its consumers pay increasing attention to their health, adequately addressing their concerns remains an important priority for the government.

AmCham China was pleased to see the Chinese government continue to address food safety issues in 2011 by improving the regulatory framework and promulgating needed legislation, in particular, by releasing a series of new national standards. The government also strengthened supervision of food safety throughout the supply chain, from production, processing, and distribution to exporting and importing.

Still, inconsistency and lack of clarity remain in regulations, and coordination of efforts between different authorities needs improvement. As the government continues to address these issues, US companies with extensive experience in operating under comprehensive regulatory systems for food safety remain open to assisting. AmCham China member companies look forward to cooperating with the Chinese government on these issues.

Significant Developments

AmCham China applauds the Chinese government's many efforts to bolster food safety protection from "farms" to "common people's dining tables."

The government conducted several campaigns to crack down on illegal food manufacturing practices in 2011. The Ministry of Health issued a series of new national standards, filling important gaps in needed standards and empowering inspectors to more comprehensively enforce the Food Safety Law. In addition, the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) released notices and clarified regulations regarding food manufacturing and the stringent QS (short for *Qiyechanpin Shengchanxuke* or 企业产品生产许可) production permit certification process and inspec-

tions. Both AQSIQ and the Ministry of Agriculture (MOA) increased efforts to prevent illegal use of food additives, while MOA reinforced regulation of milk production and abuse of agriculture chemicals. The State Administration of Industry of Commerce (SAIC) strengthened its supervision over food distribution, especially for milk, oil, illegal use of food additives, and counterfeit products. In 2011, Chinese local governments at all levels also ramped up efforts to supervise food production and distribution with positive results.

Finally, in an important move by the Chinese government to ensure coordinated enforcement and implementation of the law, as well as seamless cooperation among the food safety supervision authorities, the State Council announced a change in the reporting line of local (provincial level and below) Administrations of Industry and Commerce (AICs) and AQSIQs. They will now report to the local government directly, instead of reporting to the central-level SAIC and AQSIQ.

Specific Issues

Inconsistent Interpretation of Food Safety Standards

In 2011, though China promulgated many new, much-needed food safety standards, ambiguity of some standards and inconsistent interpretation, both by government officials and those subject to the new regulations, prevent effective implementation of the standards.

Interpretations of standards made and penalties meted by local officials are often inconsistent with company or central-level government interpretations. Currently, AQSIQ has an online question and answer platform through which companies can request clarification on specific standards and regulations. However, clarifications made currently have no legal enforcement power at the local level. AmCham China recommends the AQSIQ strengthens this communication platform so that responses via the online system have legal effect. This will help make interpretation and implementation of food safety standards nationwide more consistent.

Furthermore, in cases where a certain food safety stan-

食品安全

引言

2011年，中国发生了数件备受关注的毒奶粉和肉制品食品安全事件，暴露了中国在这一领域法规监管体系中仍存在诸多薄弱环节，食品安全问题仍是中国政府面临的一大挑战。随着中国经济继续保持快速增长，中国消费者对自身健康的关注度也在不断提升，对政府来说，充分解决消费者所关心的食品安全问题是当务之急。

中国美国商会很高兴地看到，为进一步解决食品安全问题，2011年，中国政府继续完善产品质量安全监管框架，特别出台了一系列新的国家标准。中国政府还加强了整个食品供应链食品安全的监管，包括生产、加工、流通、和进出口等环节。

然而，法规中仍存在阐述模糊和不一致的地方，而且不同部门之间的配合也有待进一步改善。美国公司在食品安全综合监管体系方面具有丰富的经验，可在中国进一步解决食品安全问题的过程中助一臂之力。中国美国商会会员企业期待与中国政府在这些问题上开展合作。

重大进展

中国政府采取了诸多措施加强从“农场”到“普通百姓餐桌”的食品安全保护，中国美国商会对此表示欢迎。

2011年，中国政府发起多次食品打假行动。卫生部颁布了一系列新的国家标准，填补了重要标准缺失的空白，使检查人员能更加全面地执行《食品安全法》。除此之外，国家质检总局下发通知，进一步明确了有关食品生产和企业产品生产许可认证过程和检查的规定。国家质检总局和农业部纷纷加大了禁止非法使用食品添加剂的力度，同时，农业部还进一步完善了有关奶制品生产和滥用农业化学药品的规定。国家工商总局进一步加大了对食品流通的监管，尤其是对奶制品、食用油、非法使用食品添加剂和假冒产品的监管。2011年，中国各级地方政府也加大了对食品生产和流通的监管力度，并取得了积极成效。

最后，为确保法律执行和实施的统一性以及食品监管部门之间的无缝配合，国务院宣布对地方工商局和质检局（省级或以下）的汇报流程做出调整。各级地方部门将直接向当地政府汇报而不是向中央级别的相应部门汇报。这是中国政府所采取的一项重大举措。

具体问题

食品安全标准解释不一致

2011年，虽然中国出台了多项亟需的食品安全新标准，但其中一些标准含糊不清，且政府官员以及受新法律法规制约的业内人士对其解释不尽相同，阻碍了这些标准的有效执行。

地方官员对标准的解释和做出的处罚经常与企业或中央级别政府机构的解释不尽一致。目前，国家质检总局创建了一个在线问答平台，企业可通过这个平台要求质检总局明确解释具体标准和法规。但是，当前所做的解释在地方并无法律效力。中国美国商会建议国家质检总局进一步扩大交流平台的影响力，如此一来，在线系统所做出的答复也可具有法律效力，使国内食品安全标准的解释和执行更具一致性。

另外，当某项食品安全标准可能还未下发到地方执行部门或在地方实施时，企业往往难以更换所需的产品生产许可证，而事实是，没有相关标准就谈不上遵守标准。这往往会影业务运营并导致经济损失。在这种相关标准缺失的情况下，中国美国商会鼓励中央政府给予企业宽限期，并准许企业在相关标准得以确立之后的合理时间段内继续维持正常运营。

供应链管理

有效的供应链管理是保障食品安全的关键所在。因此，中国政府在治理食品安全问题时没有放过从农场到餐桌这条供应链的任何一个环节。美国公司是供应链管理领域

standard has yet to be promulgated or communicated to local enforcement authorities, companies sometimes meet difficulties in updating their required QS certificate, despite the fact that the lack of the relevant standard makes complying with it impossible. This at times impacts business operations and results in economic losses. In such cases when the relevant standards have yet to be established, AmCham China encourages the central government to grant grace periods that allow companies to maintain normal operations until a reasonable time period after the relevant standards are set.

Supply Chain Management

Effective supply chain management is key to ensuring food safety. As such, the Chinese government is aiming to address food safety issues in every link of the supply chain, from farms to dining tables. US companies, leaders in supply chain management, can assist the government in their efforts to ensure food safety by bringing best practices and international standards in supply chain management to their Chinese operations. For example, US companies practice risk management or mitigation approaches that reduce or eliminate risks in their supply chains, and domestic companies could model their own supply chains on such examples. US companies can also provide valuable expertise as China formulates new rules and regulations for enhancing food safety.

AmCham China member companies stand ready to assist the Chinese government in their efforts. In particular, we encourage the government to promote the development of world-class supply chain management practices, and to encourage investment in an efficient logistics network that supports food safety, including cold chain logistics. The US government, for its part, should increase opportunities for public-private cooperation to promote the sharing of best practices and improvements to supply chain management.

Intellectual Property Rights Enforcement

Lack of intellectual property rights (IPR) protection and rampant counterfeiting of famous food brands remain significant barriers to effective food safety enforcement. As long as counterfeiting continues, Chinese consumers will remain at risk, progress toward effective food safety will be further delayed, and the reputation of law-abiding US companies will be unfairly tarnished. AmCham China strongly urges China to take measures to prevent counterfeiting and punish counterfeiters.

Conclusion

The year 2011 saw much improvement in China's regulatory framework for ensuring safety and quality of China's food products. Both central and local governments have exerted great effort to ensure food safety, adjusting administrative structure and building the right organizational capacity.

However, deficiencies remain with regard to consistency and coordination in interpretation of regulations and national standards, generating confusion and impacting normal business operations. Efforts to improve supply chain management, clarify standards, and ensure IPR protection would create a better environment for ensuring food safety.

The increasingly global nature of supply chains mean that food safety concerns in China are also food safety concerns for US consumers. As such, the US government should continue to engage the Chinese government at a high level on food safety issues, and provide expanded resources for the US Food and Drug Administration (FDA) to collaborate with Chinese counterparts on food safety.

Recommendations

For the Chinese Government:

- **Continue efforts to inform and educate regulators, manufacturers, and distributors about accepted international standards, best practices, and conditions related to food safety in the global market.**
- Provide clear and specific interpretation of national food safety standards taking into consideration the impact on manufacturers' operations.
- Promote the development of world-class supply chain management practices and encourage investment in a logistics network to support food safety, including cold chain logistics.
- Fully enforce and protect IPR for all companies conducting business operations in China.

For the US Government:

- **Provide expanded resources for the US FDA to collaborate with Chinese counterparts on food safety issues.**
- Increase opportunities for public-private cooperation to promote sharing of best practices and improvements to supply chain management.
- Continue to engage at a high level with the Chinese government on food safety issues through economic dialogues.

的佼佼者，可通过向其在华业务引入最佳惯例和国际标准，帮助中国政府保障食品安全。例如，美国公司会通过风险管理或风险缓解方法来降低或消除供应链中存在的风险，中国企业则可以效仿这一方法打造自己的供应链。中国在制定提高食品安全的新法规时，美国公司还能提供宝贵的专业知识。

中国美国商会会员企业随时愿意在这一过程中助中国政府一臂之力。我们尤其鼓励政府推广世界一流的供应链管理实践，鼓励投资搭建高效的、能确保食品安全的物流网络，包括冷链物流。美国政府应尽自己的努力为政企合作创造更多机会，藉此推广最佳实践经验，完善供应链管理。

知识产权执法

缺乏知识产权保护以及假冒名牌食品泛滥依旧是影响食品安全执法效率的重大障碍。只要制假卖假现象继续存在，中国消费者就依然面临风险，食品安全领域的有效执法就会继续受阻，而那些遵纪守法的美国公司的声誉也会无端受损。中国美国商会强烈呼吁中国采取措施打击造假并惩罚造假者。

结论

2011年，中国在改善食品安全和质量的法规框架方面取得了不菲的成果。中央和地方政府纷纷下大力气来确保食品安全，调整行政结构以及加强组织能力建设。

然而，食品安全法规与国家标准在阐释的一致性和协调性方面仍存在问题，这对正常的企业运营造成了困惑和影响。因此，改善供应链管理、明确相关标准以及做好知识产权保护工作将为确保食品安全创造一个更好的环境。

在供应链日趋国际化的今天，中国食品的安全隐患也会引起美国消费者对食品安全的担忧。鉴此，美国政府应继续与中国政府就食品安全问题展开高层对话，并为美国食品药品监督管理局提供更多资源，以支持该机构与中国同行在食品安全领域开展合作。

建议

对中国政府的建议：

- 继续对监管者、生产商和分销商进行有关国际市场食品安全国际通行标准、最佳惯例和状况方面的培训。
- 考虑对生产商运营的影响，对国家食品安全标准给出明确、具体的解释。
- 推广世界一流的供应链管理实践，鼓励投资搭建能确保食品安全、包括冷链物流在内的物流网络。
- 为在华开展业务的所有企业全面实施和保护其知识产权。

对美国政府的建议：

- 为美国食品药品监督管理局提供更多资源，以支持该机构与中国同行在食品安全领域开展合作。
- 为政企合作提供更多机会，推广最佳实践经验，完善供应链管理。
- 继续与中国政府开展高层经济对话，探讨食品安全问题。

High-Tech Trade Promotion and Export Controls

This chapter was contributed by the Export Compliance Working Group (ECWG), a joint committee of member companies from the American Chamber of Commerce in China (AmCham China) and the American Chamber of Commerce in Shanghai (AmCham Shanghai).

Introduction

The US and China recognize that achieving a more balanced trade relationship can advance economic growth for both countries, positively impact global economic stability, and promote international security. To achieve this objective, both countries need to improve cooperation on export controls and clearly link this cooperation to tangible increases in high-tech and strategic trade.

Trade obstacles include: (1) misperceptions among industry representatives about the restrictions imposed by US commercial export controls on items for export to China; (2) US export control policies that do not fully account for foreign and indigenous availability factors and related security implications; (3) ineffective trade control implementation and enforcement by China that does not sufficiently stop proliferators; and (4) Chinese market access policies that discourage US companies from collaborating with Chinese partners.

To address these obstacles, AmCham China and AmCham Shanghai (hereafter referred to together as “AmCham”) ask that the US and Chinese governments engage more frequently in bilateral government-to-government dialogues on these issues. In addition, AmCham asks the two governments to support the Export Control Working Group (ECWG) in its efforts to serve as the platform for public-private sector dialogue and education on export compliance and high-tech trade facilitation. Without such targeted, China-based efforts, AmCham fears US-China high-tech trade will lag behind trade between China and its other trading partners. As a result, China will not have access to the vibrant high-tech products that US producers offer. The US in turn will not realize the full benefits that increasing high-tech trade with China would have on the trade deficit, job creation, and US economy overall.

Significant Developments

ECWG Promoting High-Tech Trade

In support of its mission to promote high-tech trade, in 2011 the ECWG focused on increasing cooperation between industry and government on export compliance training

and best practices sharing. The ECWG held its first trade promotion and compliance event in Beijing in March 2011 and is planning its second for 2012. The events provide training for US and Chinese partners on export controls and compliance practices, include interaction between industry leaders and senior US and Chinese government officials, and highlight the need for companies from both nations to build trade control compliance cultures. The ECWG asks the US and Chinese governments to continue their support for this initiative.

US Export Control Reform

In 2010, the US government began reforming its export control system through a three-phase process. Phase I, which has already been completed, settled the criteria for a single control list and laid the groundwork for a single enforcement coordination center and a single IT system. The interagency process is now in Phase II, which includes reviews and revisions of the control lists.

The US government has assured businesses that the reform effort is designed to enable trade with America's closest allies and not to punish or exclude other countries. The Obama administration has proposed migrating items from parts of the US Munitions List (USML) to the Commerce Control List (CCL) and re-organizing the USML. Reviews of some categories of the USML have already been completed.

While many of the changes are not directly applicable to China, they should still benefit US commercial high-tech exports to China as: 1) more US government resources are available to more efficiently process export licenses; and 2) the movement toward positive control lists moves non-critical commercial items into categories that may be available to China for commercial civil end use. Furthermore, the ECWG believes that if China and the US can cooperate on a few items, as further described in the Specific Issues section below, China will obtain even greater benefits within the context of the US export control system.

Chinese Export Controls

China has not issued any new export control regulations on dual-use or prohibited and restricted technology, nor made any great strides in its participation in multilateral

高科技贸易促进和出口管制

本章由出口合规工作组 (ECWG) 撰写，出口合规工作组系由中国美国商会 (AmCham China) 和上海美国商会 (AmCham Shanghai) 的会员企业组成的一个联合委员会。

引言

美 中两国都认为，两国贸易关系的进一步平衡不仅有利于推动两国经济的增长、对全球经济稳定产生积极影响，而且能够促进国际安全。为实现这一目标，美中双方需要加强在出口管制领域的合作，并且使该合作能够明确地促进两国高科技和战略贸易实质性的增长。

贸易障碍包括：(1) 对美国出口管制规定的误解。业内人士对美国方面就出口中国的物项采取的商业出口限制存有误解；(2) 美国的出口管制政策并未充分考虑国外及本国可获得性因素以及相关安全影响；(3) 中国的贸易管制政策没有得到有效的实施与执行，未能有效制止扩散；(4) 中国的市场准入政策不利于美国企业与中国贸易伙伴开展合作。

为了排除上述障碍，中国美国商会和上海美国商会（以下统称“美国商会”）呼吁美中两国政府更多地举行政府间对话来探讨这些问题。此外，美国商会还呼吁两国政府支持出口合规工作组的工作，使工作组成为就有关出口合规问题开展公私营领域对话和相互教育的平台，及促进高科技贸易的平台。倘若没有这些有针对性的、立足于中国的措施，美国商会担心美中两国之间的高科技贸易将落后于中国与其他贸易伙伴之间的贸易。其结果是中国将无法获得美国制造商所提供的极具活力的高科技产品。而美国则无法充分实现通过增加对华高科技出口贸易来减少贸易逆差、增加就业从而整体提振美国经济的目标。

重大进展

出口合规工作组积极促进高科技贸易

为了达成促进高科技贸易的目标，2011 年出口合规工作组一直致力于促进行业与政府在出口合规培训和共享最佳实践领域开展合作。2011 年 3 月，出口合规工作组在北京举行了第一次贸易促进与合规培训活动。目前，工作组

正在筹划于 2012 年举办第二次活动。此项活动为美中两国贸易伙伴提供出口管制和合规实践的培训，其中包括行业领袖和美中政府高级官员互动，强调美中两国企业树立贸易管制合规文化的必要性。出口合规工作组呼吁美中两国政府继续支持这项活动。

美国出口管制改革

美国政府于 2010 年开始分三个阶段改革其出口管制体系。第一阶段的工作已经完成，其包括确立单一管制清单的制定标准，单一执法协调中心和单一信息技术系统的基础建设工作目前已经完成。跨部门间的程序已进入第二阶段，包括对管制清单的审核和修订。

美国政府对企业作出承诺，改革目标旨在推动美国与其最亲近盟友之间的贸易，并非惩罚或排挤其他国家。奥巴马政府已建议将部分美国军需品清单 (USML) 纳入商业管制清单 (CCL)，并重新调整了军需品清单。部分军需品清单类目的审核已经完成。

虽然很多修订并不直接适用于中国，但它们仍有利于美国对华商业高科技出口，因为：(1) 美国政府有更多资源来更加高效地审批出口许可；(2) 通过制定积极的管制清单，非关键性商品项目被转移至其他类目，而这些类目有可能对中国民用商业终端敞开大门。此外，出口合规工作组认为，如果美中两国能在一部分项目上进行合作，中国将在美国出口管制体系所允许的范围内获得更大收益。这一点将在下文“具体问题”一节中进一步阐述。

中国出口管制

中国没有在两用或禁止性和限制性技术领域出台任何新的出口管制条例，也没有在多边出口管制体系中做出任何重大调整。但 2011 年中国商务部修改了《进口商及最终用户声明》(EUS) 的申办程序。商务部还将原来的纸质文件升级为电子在线申办系统。此外，商务部强调，要

export control regimes. In 2011, however, the Ministry of Commerce (MOFCOM) updated its guidelines to importers on the End-User Statement (EUS) process. MOFCOM also transitioned from a paper-based system to a largely electronic online application system. In addition, MOFCOM has emphasized requirements that importers account for and report the arrival or deferral of each item that is listed on its EUS, a development which AmCham believes will place greater strain on both company and Chinese government resources.

Specific Issues

Lost US Exports Compromise Security

Lost US export opportunities of items available to China either indigenously or through other foreign licenses pose security risks on top of economic disadvantages. Each item that China accesses from a non-US exporter is a lost opportunity to enhance security by enabling US compliance oversight within technology and product development programs around the world. US oversight measures include audit and observation rights granted through US licenses, and licensees' compliance cultures that are built by US companies.

AmCham values the importance of export controls in safeguarding regional stability, security, and foreign policy interests. High-tech trade can only be expanded in the context of a secure trading environment, where risk of proliferation and diversion of dual-use goods and technologies is reduced to the minimum. US regulatory restrictions and export controls ensure such a trading environment, more so than European counterparts' approaches. Moreover, lost US export opportunities slow US job creation and economic growth.

AmCham urges the US government to appropriately and consistently account for foreign and indigenous availability in China as it re-evaluates control levels. We also recommend using the ECWG as a reliable resource to access the most current information on China's market in this regard.

Chinese Government Policy Impact on Trade

Limitations on bilateral high-tech trade are not only a result of US export control policies. Chinese government policies and practices also limit the ability of US companies to cooperate with their Chinese partners in technology and product development. Such policies and practices include: (1) implementation of standards certification requirements, government procurement bids, and other measures that require the transfer of sensitive controlled technology in order to access certain markets; (2) insufficient protection of intellectual property (IP); (3) insufficient clarity on and ineffective enforcement of China's own export control laws and regulations; and (4) incomplete alignment with export

control systems of China's biggest trading partners.

Export controls on the transfer of technology are typically far more restrictive than those for the resulting or related products, so obtaining export licenses for compulsory technology transfers, as described in number one above, can be very difficult. This is especially true in light of the IP concerns highlighted in number two. AmCham requests that the Chinese government fully consider the impact these technology transfer requirements can have on high-tech and strategic trade and remove them as conditions for participating in the Chinese market.

The primary concern resulting from number three above is the increasing diversion of controlled items to other countries and parties. The ECWG recommends that China strengthen its legal framework, implementation, and enforcement to better prevent these diversions and demonstrate the effectiveness of China's export control system. Greater transparency and clarity, including the establishment of a single harmonized Chinese control list, would also help companies better comply with Chinese export controls. In addition, the ECWG urges the Chinese government to clearly separate civilian and military programs to ensure that dual-use items are not passed from civil to military programs.

Furthermore, China's export control system still does not fully align with global best practices. For example, China does not participate in certain multilateral export control regimes as do its biggest trade partners. AmCham recommends China take an active leadership role in those multilateral regimes where it is a member, and actively pursue membership in those where it is not a member. Adopting internationally accepted export control regulations, and improving implementation and enforcement of these laws and regulations, would enhance China's ability to procure sophisticated high-tech items from the US, while also enhancing China's own security.

Corporate Trade Compliance Programs

Corporate trade compliance programs and the willingness of Chinese partners or customers to cooperate with export control compliance measures serve as the most effective enabling factor to high-tech trade. Companies throughout China are adopting and implementing internal compliance programs that meet both US and Chinese export control laws. AmCham has observed that these companies with verifiable compliance systems receive many more approvals for transfers of technology and high-tech goods than companies without those systems. AmCham urges the Chinese government to enact outreach activities to encourage Chinese companies to adopt their own compliance programs.

求进口商负责解释和报告其最终用户声明项下每一类商品的到达或延期情况。美国商会认为这一举措将为企业和中国政府带来更大的资源压力。

具体问题

美国出口损失带来安全隐患

美国失去向中国出口商品的机会，不管是通过中国自主开发还是通过其他国外许可出口获取，除了经济上的不利因素之外，还会带来安全风险。中国从美国出口商获得的每件商品都在全球技术和产品开发计划中实施美国合规监管，但从非美国出口商获得的商品却不在美国合规监管之下，这就失去了增强安全性的机会。美国监管机制不仅包括美国许可所赋予的审计和观察权限，还包括美国企业所打造的许可持有人合规文化。

美国商会深知出口管制在保护区域稳定、区域安全以及外交政策利益上的重要性。高科技贸易只有在安全的贸易环境下才能得到进一步的发展，这种安全的环境也能将两用物资与技术扩散和转移的风险降到最低。相对于欧洲国家的做法，美国政策性限制以及出口管制能更好地营造这样的贸易环境。此外，美国出口机会的损失也会迟滞美国创造就业与经济增长。

在美国重新审视管制程度期间，美国商会呼吁美国政府始终酌情考虑外国和本国自主创新的产品在中国可获得性。我们还建议将出口合规工作组作为一个可靠的信息来源，获取中国市场此方面的最新信息。

中国政府政策对贸易的影响

双边高科技贸易不仅仅受到美国出口管制政策的限制，中国政府的政策和措施也会限制美国企业与其中国伙伴开展技术和产品开发合作的能力。这些政策和措施包括：(1) 实施标准和认证要求、政府采购招标以及其他措施，这些措施往往要求企业必须在进入某些市场领域之前转让其涉及管制的敏感技术；(2) 对知识产权保护力度不够；(3) 中国出口管制的法律和条例不够清晰、执法不力；(4) 与中国最大贸易伙伴的出口管制体系不完全匹配。

技术转让领域的出口管制比最终或相关产品的出口管制要严格得多，因此，取得强制性技术转让的出口许可（如上述第1点所提到的）就变得非常困难。尤其是考虑到上述第2点中涉及的知识产权保护状况，就难上加难。美国商会促请中国政府充分考虑技术转让要求对于高科技和战

略贸易的影响，并取消将之作为参与中国市场先决条件的相关规定。

受管制商品被转移到其他国家和第三方的情况在增加，这也是上述第3点的主要顾虑。出口合规工作组建议中国完善其法律基础框架，加强法律的实施和执行力度，藉此更好地避免此类转移的发生，并彰显中国出口管制体系的有效性。提高政策的透明度和清晰度以及建立统一的单一中国管制清单将有利于企业更好地遵守中国的出口管制。此外，出口合规工作组呼吁中国政府明确区分民用与军用项目，以保证两用物资不会从民用流向军用。

与此同时，中国出口管制体系并未充分与国际最佳实践接轨。例如，中国没有像其最大的贸易伙伴那样加入某些多边出口管制体系。美国商会建议中国在已加入的多边体系中发挥积极的领导作用，并主动加入新的多边体系。中国如采纳国际通用的出口管制规定，并提高相关法律法规的实施和执行力度，将有助于提高中国从美国采购更为先进的高科技产品的可能性，并提升中国自身的安全。

企业贸易合规计划

企业贸易合规计划，以及中国贸易伙伴或客户配合执行出口管制合规措施是促进两国高科技贸易最有效的手段。在华企业正在制定并实施符合美国和中国出口管制法律规定的内部合规计划。美国商会注意到，那些内部合规体系已得到验证的企业获取从事技术转让和高科技产品贸易许可证的数量要远远多于那些内部合规体系未得到验证的企业。美国商会呼吁中国政府开展企业宣传活动，以鼓励中国企业建立自己的内部合规计划。

最终用户验证项目

美国商会继续支持最终用户验证（以下简称 VEU）项目，这将激励中国民间最终用户投资贸易合规计划并藉此提高采购高科技产品的成功率。我们敦促美国政府继续加强 VEU 项目建设并拓展其范围。提高安全协议标准的透明度以及分享最佳实践也将大有裨益。出口合规工作组鼓励美国政府与相关行业和美国商会开展合作，共同确立这些标准和最佳实践。

教育和贸易促进

关于对美国出口管制的疑虑和误报也极大地阻碍了中国更多地从美国进口高科技产品和技术。召集合格的中国商贾进口企业和美国出口企业，为他们举办出口管制和合规

Validated End-User Program

AmCham continues to support the Validated End-User (VEU) program, which incentivizes civilian Chinese end-users to invest in trade compliance and improves their success in high-tech procurement. We urge the US government to continue and expand this program. Greater transparency around the standards for security protocols and compliance best practices would also be helpful. The ECWG encourages the US government to work with industry and AmCham to identify those standards and best practices.

Education and Trade Facilitation

Myths and misinformation about US export controls also act as a significant barrier to greater Chinese imports of US high-tech goods and technology. Bringing together qualified Chinese commercial importers and US exporters, and educating them on export controls and compliance, can help debunk myths and grow US-China high-tech trade. Such education and matchmaking would also minimize compliance risks.

AmCham asks both governments to formally recognize the ECWG as a mechanism for progress and dialogue in the US-China trade control exchange. Through this platform, the governments and industry representatives can support and fund programs that include the educational activities necessary to dispel export control myths and open new trade opportunities.

Conclusion

The ECWG strongly believes that closer cooperation between US and Chinese high-tech industries would materially enhance high-tech trade. Educating stakeholders on trade compliance provides great potential to not only expand bilateral high-tech trade, but also to improve national security and economic prosperity for both countries. The US and China can achieve their goals of eliminating the diversion of dual-use items to proliferation and other activities of concern while growing high-tech trade by implementing targeted US export control reforms, expanding VEU and corporate trade compliance programs, and implementing stakeholder education and outreach. AmCham looks forward to working with both the US and Chinese governments to achieve such win-win outcomes.

Recommendations

For the US Government:

- **Formally recognize the ECWG as the public-private partnership mechanism for dialogue in the US-China trade control exchange.**
- Support commercial high-tech trade promotion and education initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.
- Take into account the availability of items in China from both domestic and foreign sources as the US government evaluates control lists during export control reform.
- Streamline export licensing procedures and align with multilateral regime partners to increase security and reduce complexity.
- Continue strengthening and expanding the VEU program to incentivize civilian Chinese end-users to invest in trade compliance.

For the Chinese Government:

- **Formally recognize the ECWG as the public-private partnership mechanism for dialogue in the US-China trade control exchange.**
- Support high-tech trade promotion and education initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.
- Take a more active role in multilateral export control regimes and pursue membership in those regimes of which China is not yet a member.
- Remove technology transfer requirements as prerequisites for participation in the Chinese market.
- Strengthen the legal framework, implementation, and enforcement of China's export control system by:
 - Clearly separating civilian and military programs to ensure that dual-use items are not passed from civil to military use; and
 - Increasing transparency and clarity of Chinese export controls by streamlining all export control lists into a single harmonized dual-use export control list.
- Modify current EUS tracking requirements to reduce administrative burdens and increase supply chain flexibility.
- Enact government outreach activities to encourage more Chinese enterprises engaged in exporting and importing to adopt their own compliance programs.

培训，可以打消他们的疑虑并促进美中两国高科技贸易的增长。这种培训和交流也有利于最大限度地降低合规风险。

美国商会吁请美中两国政府正式认可出口合规工作组机制，并利用这一机制加强美中贸易管制之间的对话与交流。基于这个平台，政府和行业代表可以通过支持和资助相关计划，例如开展必要的培训活动，藉此消除对出口管制的疑虑并创造新的贸易机会。

结论

出口合规工作组坚信，美中两国高科技行业之间的紧密合作将切实促进高科技贸易的发展。对利益相关方进行贸易合规培训，不仅为拓展双边高科技贸易提供了巨大的潜能，还可以增强对国家安全的保障，促进两国的经济繁荣。通过开展有针对性的美国出口管制改革，扩大 VEU 项目的范围和推广企业贸易合规计划，以及对利益相关者的教育和宣传活动，美中两国可以消除两用物项转移的扩散以及其他担忧的问题，同时实现高科技贸易增长。美国商会期待与美国和中国政府开展合作，实现上述双赢局面。

- 取消将技术转让作为参与中国市场先决条件的相关要求。
- 通过以下途径夯实中国出口管制体系的法律框架，加强法律规定的实施和执行力度：
 - 明确区分民用和军用项目，确保两用物资不会从民用流向军用；
 - 将所有出口管制清单整合为统一的单一两用物资出口管制清单，提高中国出口管制的透明度和清晰度。
- 修改现行的 EUS 跟踪规定，减少行政负担并提高供应链的灵活性。
- 开展政府宣传活动，鼓励更多的中国进出口企业建立自己的合规计划。

建议

对美国政府的建议：

- 正式认可出口合规工作组作为推动美中贸易管制交流对话的政企合作机制。
- 由相关政策制定部门和官员提供资金、主讲人等方面的支持，推动美中商业高科技贸易的促进和教育活动。
- 在出口管制改革期间，美国政府评估管制清单时，考虑到中国是否可以从国内外获得相关产品。
- 精简出口许可证申请程序并与多边体系贸易伙伴国接轨，增加安全保障并降低手续的复杂性。
- 继续加强和拓展 VEU 项目，鼓励中国民间最终用户投资贸易合规计划。

对中国政府的建议：

- 正式认可出口合规工作组作为推动美中贸易管制交流对话的政企合作机制。
- 由相关政策制定部门和官员提供资金、主讲人等方面的支持，推动美中高科技贸易和教育活动。
- 在多边出口管制体系中发挥更加积极的作用，并争取加入新的多边体系。

Human Resources

Introduction

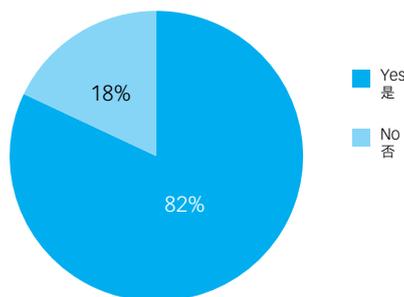
Human resource challenges continue to be top concerns for AmCham China members, with particular emphasis on the shortage of appropriately skilled people, labor costs, high turnover, and the impact of regulations.

Rising employee turnover and costs have been a fact of life in China operations for the past decade. Forecasters unanimously predict that these trends will continue. However, productivity gains, which had long risen at similar or faster rates than labor costs, have subsided, with labor costs now outpacing productivity improvements. A large majority of member companies feel the impact (see figure 1 below).

Figure (图) 1

Are rising labor costs affecting your business operations?
不断增长的人力成本是否影响企业运营?

Company sample size = 287
企业样本规模



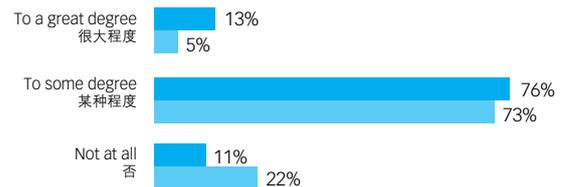
As these familiar challenges intensified in 2011, a significant new cost burden emerged with the extension of social insurance taxes to foreign employees with only partial extension of benefits coverage. In addition, uncertainties regarding the Labor Contract Law remain unresolved (especially in relation to dispatch employees) and many multinational employers continue to closely monitor practices related to employee representative councils (ERCs) and labor unions. As a result of these concerns, China's regional and global competitiveness accordingly deteriorated with respect to human resources (see figure 2).

Figure (图) 2

Do you feel that China is losing competitive advantages due to rising costs?

中国是否由于成本不断增加而逐渐失去竞争优势?

Company sample size: 2012 = 298 2011 = 340
企业样本规模



To ease some strain caused by human resource constraints, AmCham China encourages China to improve secondary, post-secondary, and vocational education and training. In particular, we recommend emphasizing development of critical thinking skills and creativity in students, as well as expansion of university-business partnerships and intern-

Figure (图) 3

Top business challenges.

企业在华运营的主要挑战

Company sample size: 2012=339 2011=250
企业样本规模



人力资源

引言

人力资源方面的挑战一直是中国美国商会会员企业最为担心的问题其中掌握适当技术的劳动者匮乏、劳动力成本上升、员工频繁跳槽以及监管法规影响等问题尤为突出。

十年来在华企业的员工离职率和成本不断上升，这一点已是不争的事实，预计这种趋势将延续下去。此前很长一段时间里，生产率增速一直接近或高于劳动力成本，但过去十年间，随着生产率增速的放缓，劳动力成本增长的步伐现已超过生产率。大多数会员企业都受到这一问题的影响（见左页图1）。

2011年，这些挑战日益严峻，对外籍雇员征收社保税但只提供部分福利成为在华企业又一个巨大的成本负担。此外，《劳动合同法》中一些问题尚未明确（特别是与派遣雇员有关的问题），许多跨国企业仍在密切关注如何处

理职工代表大会和工会方面的问题。鉴于这些顾虑的影响，中国在人力资源方面的区域和全球竞争力都有所削弱（见左页图2）。

为在一定程度上缓解人力资源制约因素带来的压力，中国美国商会建议中国加强中等教育、高等教育、职业教育和培训。我们特别建议着重开发学生的批判性思维技能和创造力，同时促进校企合作以及学生实习活动。在职业中介领域放松对外国企业的许可证要求并明确《劳动合同法》的相关规定也会大有裨益。此外，建立或明确外籍雇员在中国社保制度下享受福利的机制，或者允许外籍雇员不参加社保，这都能使公司更好地控制成本，进而有助于中国保持竞争力，吸引全球企业来华经营。

跨行业问题

Figure (图) 4

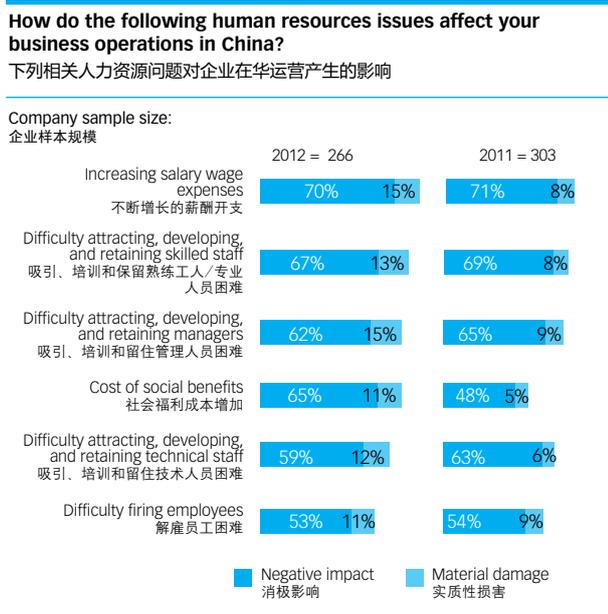
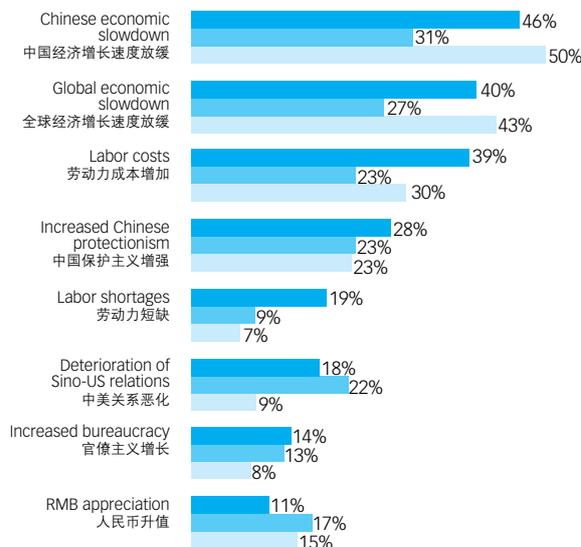


Figure (图) 5

What do you think are the greatest risks facing your China organization?

企业在华运营面临的主要风险

Company sample size: 企业样本规模 ■ 2012 = 321 ■ 2011 = 337 ■ 2010 = 262



ships. Easing licensing requirements for foreign enterprises in job intermediation and clarifying the Labor Contract Law would also help. Furthermore, establishing or clarifying mechanisms for foreign employees to receive benefits under China's social insurance programs, or allowing foreign employees to opt out of participation, would enable companies to better control costs. This in turn would contribute to continued competitiveness of China as an international business destination.

Significant Developments

Foreign Employee Participation in China's Social Insurance Schemes

At the national level, the most significant development in 2011 was the promulgation of the "Interim Measures for the Participation in Social Insurance of Foreigners Employed in China" (interim measures) by the Ministry of Human Resources and Social Security (MOHRSS). These interim measures require all foreign nationals employed in China, including those seconded to China by their foreign employers, to participate in the five categories of China's social insurance, i.e., pension, medical, work injury, unemployment, and maternity insurance. When the new measures are fully implemented, foreign employees and their employers will be taxed on the same basis as Chinese employees.

AmCham China supports the consistent application of Chinese regulations to local and foreign personnel. The interim measures, however, conflict with existing regulations that make equal receipt of benefits by foreign employees difficult or impossible. AmCham China is concerned about this, as further described below in the Specific Issues section.

Employee Representative Councils

More cities in China, including Shanghai and Chongqing, enacted local ordinances in 2011 requiring employers to set up ERCs. This brings to 24 the total number of local jurisdictions with ERC regulations. Under these regulations, the ERC represents all employees of a company, while the trade union represents only the interests of union members. The ERC representatives are elected by all employees, while union officials are elected by union members. The ERC is charged with review and approval of collective agreements and policies, rules of the company, and major decisions by the management regarding the future of the company (such as mergers and acquisitions) after these agreements, policies, rules, and decisions have received the review and endorsement of the trade union. ERCs meet less frequently than unions and their day-to-day affairs are handled by the unions. There is significant overlap in both members and functions with labor unions.

Additionally, the All-China Federation of Trade Unions

continued its campaign to unionize all enterprises in China, including multinational corporations, and to expand collective bargaining on wage increases through both the unions and ERCs.

Specific Issues

Human Resources

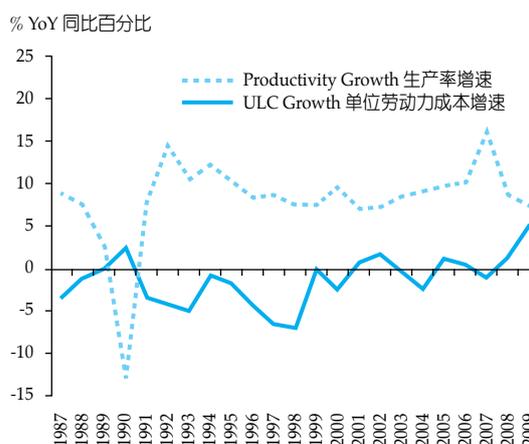
Increasing Labor Costs

Labor costs have grown at rates two to three times higher than the consumer price index (CPI) in China during the past decade, and 2011 was no different (see figure 6 to the right). In 2011, wages rose an average of 10.9 percent, the second highest annual increase in the past decade.

Provided that employee productivity is rising at an equal or faster rate, rapid wage increases can be sustained. While this was the case for much of the past two decades, since 2007 wages have risen at a faster rate than labor productivity, leading to an increase in unit labor costs (ULCs) (a ULC increase greater than zero percent indicates that wages are increasing faster than productivity) (see figure 7 below).

Figure (图) 7

Productivity growth and ULC growth 生产率和单位劳动力成本增速



Source: China: Inflation and Labor Productivity, DBS Bank, 2011.
数据来源: 《中国: 通胀与劳动生产率》, 星展银行, 2011年

Most forecasts indicate continued strong wage increases at both the low and high ends of the employment market. Continued government focus on social harmony and a declining working age population will sustain wage increases for those making close to minimum wage, while a shortage of skilled workers for senior positions will drive strong salary increases for managerial-level employees.

重大进展

外籍雇员加入中国社保体系

2011年，国家层面最重大的进展就是人力资源和社会保障部（下称“人保部”）公布实施《在中国境内就业的外国人参加社会保险暂行办法》（下称“暂行办法”）。暂行办法要求所有在华工作的外籍雇员（包括外国公司临时调派的外籍雇员）参加中国的五项社保，即养老、医疗、工伤、失业和生育保险。这项新措施全面实施后，外籍员工及其所在公司将按与中国员工相同的基数缴纳社保税。

中国美国商会支持在执行法规方面对中国雇员和外籍雇员一视同仁。但暂行办法与现行法规存在冲突，这使外籍雇员难以甚至无法享受与中国雇员同样的福利。下文的“具体问题”部分将进一步说明中国美国商会在这方面的顾虑。

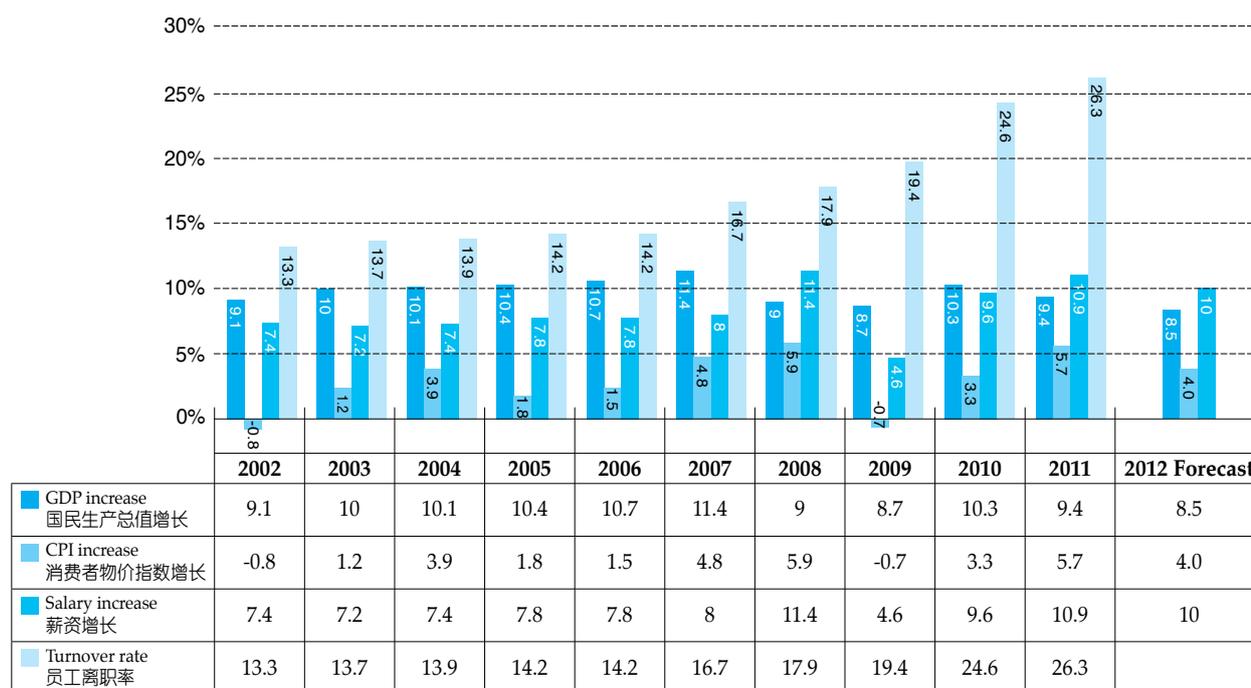
职工代表大会

2011年，要求公司建立职工代表大会的条例在上海和重庆等更多城市生效，这让实行这项条例的城市达到24个。这些条例规定，职工代表大会代表一家公司的所有雇员，而工会只代表工会成员的利益。职工代表大会成员由所有雇员选举产生，而工会负责人由工会成员选举产生。职工代表大会负责审核和批准工会代表与资方代表签订的公司协议、策略和规定以及管理层就公司未来发展（比如兼并和收购）做出的重大决定，工会则在职工代表大会之前对这些协议、策略、规定和决定进行审批。职工代表大会会议不像工会会议那么频繁，其日常事务由工会负责处理。职工代表大会和工会在成员及职能方面都有很大重叠。

此外，中华全国总工会继续致力于在国内所有企业（包括跨国企业）建立工会，并通过工会和职工代表大会两条渠道与资方就提高工资问题进行谈判。

Figure (图) 6

Rate of Salary Increases and Turnover Since 2002
自2002年薪资增长率与员工离职率



Source:

1. GDP and CPI increase rate: the People's Bank of China and National Bureau of Statistics of China (Jan. -Sep.)

2. Salary increase and turnover rate: 2011 Towers Watson General Industry Total Compensation Survey

3. 2012 forecast GDP and CPI rate: Report of the Economist Intelligence Unit Estimates, September 2011

数据来源:

1. 国民生产总值和消费物价指数增速: 中国人民银行和中国国家统计局 (1-9月份)

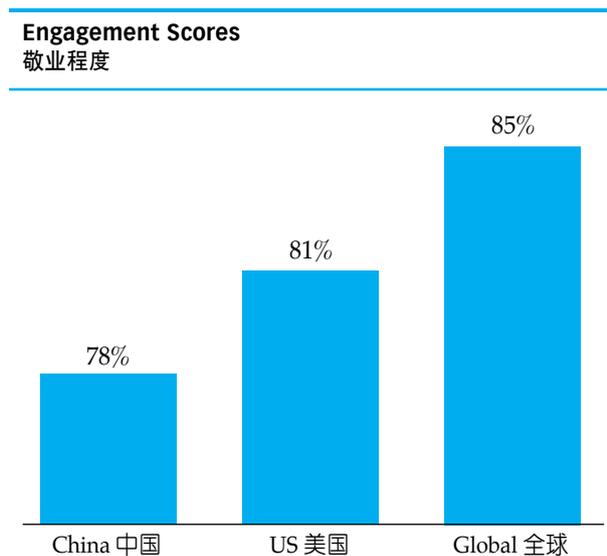
2. 工资涨幅和员工离职率: 韬睿惠悦 2011年普通行业总薪酬调查

3. 2012年国民生产总值和消费物价指数增长率预期: 经济学家信息部预测报告, 2011年9月

Turnover and Retention

Employers in China remain challenged by high employee turnover and comparatively low employee engagement levels, i.e., the degree to which employees are committed to their company, its culture, and its business objectives (see figure 8 below). Chinese employee engagement scores are below those of employees in the US and below the global average. This is largely attributed to the robust job market for both low- and high-wage employees. For example, recent reports indicate 1.2 openings for every one candidate in the manufacturing-intensive regions of east and south China. Engagement is especially low among younger Chinese employees (those born after 1980), with nearly 40 percent of them expressing intentions to leave their current positions within the next 12 months.

Figure (图) 8



Source: Towers Watson, 2011
数据来源: 韬睿惠悦, 2011 年

The combination of low engagement, high pay, and widely available opportunities drives continued high turnover rates among employees. Towers Watson reports that the typical employee receives a 30 percent salary increase when changing jobs, which doubtless contributes to the turnover rate.

Compensation and Benefits

In light of rising costs and high turnover, employers are revising compensation and benefit programs to increase retention and align employee actions with corporate goals. Compensation for professional positions includes opportunities for profit sharing, foreign training and work assignments, and reimbursement of education expenses. Instead of straight hourly pay, more employers are paying workers for reaching production targets.

Several multinational corporations are introducing lifestyle improvements into their benefits programs, which are aimed especially at the next generation of professional employees. For example, flexible working times—to avoid subway crowds and vehicle traffic during rush hour commutes—are an important retention benefit. Similarly, some AmCham China member companies are introducing flexible lunch hours, mid-day training sessions, and financial support for child care to retain trained personnel.

Development of Qualified Talent

Both multinational and local employers in China continue to confront a severe shortage of qualified employees, especially in more skilled positions. AmCham China supports the Chinese government's efforts to improve secondary, post-secondary, and vocational education and training. Effective programs will result in a flexible education system that equips China's students with the skills and knowledge needed to ensure China's competitive position in the world economy. Such programs also will enhance the global and domestic operations of US and other foreign-invested enterprises in China.

AmCham China offers the following observations based on the results of recent employer surveys, academic research, and discussions with entrepreneurs and leading human resources specialists:

- Education programs that emphasize critical thinking produce employees able to operate effectively in international corporations and organizations. Consulting with labor market participants in developing education curricula, and increasing emphasis and resources on communication, teamwork, problem solving, and analytical thinking curricula would help ensure students are taught skills relevant to China's modernizing economy.
- Programs that foster creativity, curiosity, and reflection in primary, secondary, and tertiary education are key for facilitating future innovation.
- University-business partnerships could provide practical internships that balance the theoretical knowledge of graduates. Internships in international companies offer excellent training in collaboration and cross-cultural projects. Internships for college students would facilitate their acquisition of practical work experience prior to entering the workforce. In the same vein, internships for foreign students in Chinese-based companies would contribute to improved knowledge exchange, communications, and understanding.

Many international engineers have noted that China's recent history resulted in the development of innovative products with limited material resources. Innovation was a complex result of hands-on skills and theoretical knowledge driven by growing markets with needs different from markets abroad. As China becomes increasingly prosperous,

具体问题

人力资源

劳动力成本上升

过去十年中，中国劳动力成本的增速一直是居民消费价格指数 (CPI) 的两到三倍，2011 年也不例外（见第 115 页图 6）。2011 年工资平均涨幅为 10.9%，是十年以来的第二高增速。

如果工资增速等于或低于员工生产率，工资就能保持快速增长。过去二十年中基本情况都是这样，但从 2007 年起工资涨幅开始超过劳动生产率，导致单位劳动力成本上升（单位劳动力成本增幅为正表明工资上涨速度高于生产率）（见第 114 页图 7）。

多数预期都表明就业市场的最低和最高工资都将持续走高。政府对社会和谐的持续关注以及适龄劳动力的持续减少将使收入水平接近最低工资的劳动者不断增收，而高级岗位技术工人的匮乏将推动管理层员工的工资大幅上涨。

离职和留住员工

离职率居高不下、员工敬业度（即雇员投入到所在公司及其文化与经营目标的程度）相对较低一直是在华企业面临的重大挑战（见左页图 8）。中国雇员的敬业度低于美国 and 全球平均水平。这在很大程度上是因为低工资和高工资劳动者所在的就业市场都很活跃。举例来说，近期报告显示，在华东和华南制造业集中的地区，职位空缺和求职者的比例为 1.2 比 1。在中国，年轻雇员（80 后）的敬业度尤其低，其中有近四成打算在未来 12 个月内辞去现有工作。

在敬业度低、工资水平高以及就业机会广泛等诸多因素的共同作用下，员工离职率居高不下。韬睿惠悦在报告中指出，员工跳槽时工资一般会上升 30%，这无疑会推高员工离职率。

薪酬和福利

在员工成本和离职率不断上升的情况下，用人单位都在修订薪酬和福利计划，以期更有效地留住人才，使员工的工作与企业的目标更加契合。对于专业人士，则在他们的薪酬和福利计划中加入利润分享、出国培训和工作分配以及报销在职进修费用等内容。越来越多的用人单位根据工人完成每日生产目标的情况支付报酬，一改以往按工作

小时数支付的做法。

一些跨国企业将改善生活条件纳入福利计划，以期留住人才，特别是下一代专业人才。比如，实行弹性工作制就是留住员工的重要福利之一，能使雇员避免上下班高峰期挤地铁和交通拥堵之苦。类似地，中国美国商会的部分会员企业已经开始通过弹性午餐时间、午间培训以及提供托儿费用以留住受过培训的员工。

培养合格人才

在华的外资和内资企业依然面临合格雇员、特别是技术人才严重匮乏的现状。中国政府目前正在加大对高等院校、职业教育和培训的重视和投入，中国美国商会对此表示支持。行之有效的举措将有助于营造一个灵活的教育体系，从而培训更多技能兼备的学生，巩固中国在全球经济中的竞争力。此类举措还将有助于改善美国和其他在华外资企业在中国和世界其他地区的运营。

基于最近的企业调查、学术研究以及与企业家、主要人力资源专家的交流，中国美国商会提出如下观点：

- 强调批判性思维的教育模式所培养出的人才才能在跨国企业和机构中卓有成效地开展工作。在开发教育课程时充分咨询就业市场人士的意见，增加对沟通、团队协作、解决问题和分析思维课程的重视和资源投入，确保学生所学的技能符合中国经济现代化进程的需要。
- 在初等、中等和高等教育中，培养学生创造力课程是推动未来创新的关键。
- 校企合作可以为毕业生提供与其理论知识相应的实习经验。在跨国企业中实习将为毕业生提供绝佳的合作机会与跨文化培训。支持大学生实习将有助于他们在正式就业之前获得实践工作经验。

许多国际工程师都意识到，在中国近期发展过程中，仅以有限的物质资源就能开发出创新产品。创新是一个复杂的过程，是实践技能和理论知识的结晶，是受不断壮大的国内市场所驱动——而这种市场需求不同于海外市场。随着中国日益繁荣，保护实践技能和理论知识的交互作用将对中国大有裨益，而保护途径就是强化中等学校职业培训以及与企业密切合作来培养技术型人才。

it would be beneficial to protect the interplay of hands-on skills and theory through enhanced vocational training for secondary school and technical staff developed in close coordination with industry.

Job Intermediation Licensing

Existing regulations in China inhibit foreign-invested companies from participating on equal terms with Chinese recruitment companies. The sector has low barriers to entry other than regulation, and there are large numbers of well-established, competitive domestic companies active in recruiting.

In China, as the markets change from low-cost manufacturing to higher value-added engineering, advanced sciences, and complex service provision, job intermediation will perform a vital function in allocating talent to new opportunities. International recruitment companies can assist by bringing both sector-specific expertise and the experience of working in global markets. In addition, international recruiting companies can be instrumental in helping Chinese companies find talent abroad as they expand global operations. In China, as in other countries, both domestic and foreign-invested companies would flourish under an open market.

AmCham China therefore recommends easing licensing requirements for foreign-invested enterprises in job intermediation.

Labor Regulations

Foreign Employee Participation in China's Social Insurance Schemes

As noted above in the Significant Developments section, AmCham China commends the legislative intent of the interim measures to treat foreign employees in China on an equal footing with Chinese employees and to ensure that all employees' social welfare needs are addressed. However, to ensure that this regulation achieves a fair and reasonable result for both the employees and their employers, we urge the government to consider the following important factors when drafting detailed implementing rules:

- **Refund of Pension Benefits Upon Departure from China**—Article 5 of the interim measures provides that if a foreign employee leaves China before the age at which s/he qualifies for pension benefits, the employee may apply to receive a refund of the account balance. Procedures have not yet been announced, but we understand from informal conversations between MOHRSS and AmCham China members that only employee contributions may be refunded. We urge the Chinese government to allow a full refund of both employee and employer pension contributions upon employees' return to their home country.
- **Allow Opt Out of Healthcare and Maternity Coverage**—The interim measures allow foreign nationals as well as Chinese employees to receive care only at public hospitals or at private hospitals which charge the same prices as public hospitals. As many foreign national employees do not have sufficiently advanced Chinese language skills to navigate the Chinese medical system effectively, most will need to retain their existing private coverage despite mandatory enrollment in China's insurance system. We recommend that foreign employees be allowed to opt out of healthcare and maternity coverage if they can prove they have the relevant medical insurance coverage. Failing that, we recommend at a minimum that foreign national employees be allowed to use their social healthcare insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme. The employee could then pay the excess cost of care out-of-pocket or through supplemental private insurance.
- **Exemption from Unemployment Insurance**—The interim measures require unemployment insurance contributions from both foreign nationals working in China and their employers. According to China's labor and visa regulations, once foreign expatriates working in China become unemployed, they no longer hold a valid work visa and are therefore no longer permitted to reside in China. It is unclear how foreign expatriates in China will be able to draw on unemployment insurance when they must leave the country upon becoming unemployed. To address this contradiction, foreign employees should be exempt from participation in China's unemployment insurance scheme. If participation is required, we recommend that foreign employees be allowed to remain in China for up to the maximum period during which Chinese nationals can enjoy unemployment benefits (24 months), or that benefits be payable overseas.

AmCham China also encourages the US government to request the opening of negotiations on a tax totalization agreement with China. We note that other countries have already concluded such agreements with China, thus enhancing the competitive advantage of their citizens in China.

Labor Contract Law and Dispatch Employees

The Labor Contract Law has continued to provide the major legal framework for employment relations in China. However, according to media reports, a recent report from the Legal Affairs Committee to the National People's Congress pointed to the gap between the implementation of the law and the goals it was adopted to achieve. One of the four major issues raised by the report is the unequal treatment of labor dispatch (temporary) staff in compensation and benefits as compared to headcount staff on the payroll of the company. Some legislators and labor scholars are

职业中介许可证

中国现行法规不允许外资企业从事与内资企业同样的职业中介业务。除法规问题外，职业中介行业的准入门槛很低，而且活跃于这一领域的实力雄厚的知名内资企业不胜枚举。

在中国，随着市场从低成本制造逐步向附加值较高的工程、先进科技与提供综合性服务转移，职业中介将在人才与就业机会的匹配方面发挥关键作用。跨国职业中介在为各行各业引进专门人才以及提供全球市场运作经验这两方面都能发挥作用。此外，跨国职业中介还将有助于中国企业在拓展国际业务的过程中招募到海外人才。国内企业和外资企业在开放的市场中都能蓬勃发展，在其他国家和地区是这样，在中国也是这样。

因此，中国美国商会建议中国政府放宽对外资职业中介的许可证要求。

劳动法规

外籍雇员纳入中国社保制度

如上文中的“重大进展”部分所述，暂行办法从法律角度对在海外籍雇员和中国雇员一视同仁并确保所有就业者的社会福利需求都得到满足，中国美国商会对此表示赞同。但为确保这项法规在雇员和公司层面都做到公平合理，我们呼吁政府在起草实施细则时考虑以下要点：

- **离开中国时返还养老金**——暂行办法第5条规定，如果外籍雇员在达到可以领取养老金的年龄之前离开中国，则可申请返还养老金账户中的余额。具体办理手续尚未出台，但我们通过与人保部的非正式接触了解到，这种情况下只会返还雇员缴纳的养老金。我们呼吁中国政府允许在外籍雇员回国时返还雇员及其公司缴纳的全部养老金。
- **允许不参加医疗和生育保险**——暂行办法只允许外籍雇员和中国雇员在公立医院或收费水平与公立医院相当的私立医院就医。由于许多外籍雇员的汉语水平不足以使其有效利用中国的医疗资源，其中大多数人在参加强制性医保后仍需保留现有的个人医保。我们建议，在外籍雇员能证明自己已经参加相应医疗保险的情况下，允许他们不参加社保中的医疗和生育保险。如果此举不可行，我们建议至少允许外籍雇员在他们选择的医疗机构使用社会医保并按公立医院的收费标

准予以报销。外籍雇员可以自行承担报销范围以外的费用，也可以通过补充性的个人保险来支付这些费用。

- **免于参加失业保险**——暂行办法要求在海外籍雇员及其所在公司同时缴纳失业保险。按照中国的劳动和签证法规，如果在华工作的外籍人士失业，其工作签证将失效，因而不能继续在中国境内逗留。失业外籍人士必须离开中国，这种情况下他们如何领取失业保险金尚无明确说法。为解决这一矛盾，外籍雇员应免于参加失业保险。如果必须参加，我们建议允许失业外籍人士继续在中国逗留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24个月），或者允许外籍人士在海外领取失业保险金。

中国美国商会还鼓励美国政府就税务加总协议与中国政府展开协商。我们注意到，其他国家已经与中国签署了此类协议，这使其公民在中国更有竞争优势。

《劳动合同法》和派遣雇员

《劳动合同法》一直是中国针对雇佣关系的主要法律框架。但据媒体报道，法制工作委员会最近向全国人大提交报告指出，《劳动合同法》的执行情况与实施目标存在差异。报告提出了四个主要问题，其中之一就是派遣临时雇员的薪酬和福利待遇与正式雇员不同。一些人大代表和就业问题专家呼吁采用更明确、更严格的劳动法规。

外资公司和中国公司一直都在通过劳务派遣公司来聘用员工。企业高度依赖劳务派遣的一个主要原因是《劳动合同法》中未对允许使用派遣雇员的“临时”、“辅助”和“替代”岗位给出明确定义。缺乏政府的明确指导，中国美国商会会员企业可能在本应使用派遣劳务的岗位上不安排派遣雇员（因而产生不必要的人力资源成本和复杂性问题），或者过度使用派遣雇员。

法律不明确一直是中国美国商会感到担忧的问题，但我们对中国政府为明确这些问题所做出的努力表示支持。我们建议相关部门在广泛咨询就业市场人士的基础上研究明确这些法律问题的方法。

结论

中国美国商会希望与中国相关政府部门尤其是人保部建立对话机制。这将有助于维持中国在全球劳动力市场的竞争力。

calling for adoption of clearer and tougher regulations.

Both foreign and Chinese employers continue to make use of employees through labor dispatch providers. A major reason for the high reliance on labor dispatch is the lack of clear statutory or regulatory definition of what constitutes “temporary,” “auxiliary,” and “substitute” positions that are permitted to be filled by labor dispatch staff under the Labor Contract Law. Without clear guidance from the government, AmCham China member companies are likely to either refrain from using dispatch labor where it is reasonable to use (thus incurring unnecessary human resource costs and complexities) or overusing dispatch labor beyond reasonable levels.

AmCham China remains concerned about a lack of clarity in the law and supports any effort by the government to clarify such ambiguities. We recommend that the relevant agencies study ways to clarify the law in broad consultation with labor market participants.

Conclusion

AmCham China hopes to establish a dialogue with the relevant agencies of the Chinese government, particularly MOHRSS, to work constructively to address these challenges and help maintain China’s competitiveness in the global labor market.

Recommendations

For the Chinese Government:

- **Establish or clarify mechanisms for foreign employees to receive benefits under China’s social insurance programs, or allow foreign employees to opt out of participation.**
 - Allow a full refund of both employee and employer pension contributions upon employees’ return to their home country.
 - Allow foreign employees to opt out of health-care and maternity coverage if they can prove they have the relevant medical insurance coverage, or allow them to use their social healthcare insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme.
 - Exempt foreign employees from participation in China’s unemployment insurance scheme, allow them to remain in China for up to the maximum period during which Chinese nationals can enjoy unemployment benefits (24 months), or make unemployment benefits payable overseas.
- Increase emphasis and resources on communication, teamwork, problem solving, and analytical

thinking curricula in the education system.

- Support internships for college students in order to facilitate their acquisition of practical work experience prior to entering the workforce.
- Closely consult with labor market participants in developing education curricula and internship programs in order to assure students are taught skills relevant to China’s modernizing economy.
- Issue an interpretation of the Labor Contract Law providing definitions of “temporary,” “auxiliary,” and “substitute” positions.

For the US Government:

- **Negotiate a tax totalization treaty with China.**

建议

对中国政府的建议：

- 在中国社保体系中建立或明确外籍雇员享受福利的制度，或者允许外籍雇员不参加社保。
 - 在外籍雇员回国时允许返还其本人及其公司缴纳的全部养老金。
 - 在外籍雇员能证明自己已参加相应医疗保险的情况下，允许其不参加医疗和生育保险，或者允许外籍雇员在他们选择的医疗机构使用社会医保并按照公立医院的收费标准予以报销。
 - 外籍雇员可免于参加失业保险，允许失业外籍人士继续在中国逗留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24个月），或者允许外籍人士在海外领取失业保险金。
- 在中国教育体系中增加对沟通、团队协作、解决问题和分析思维课程的重视程度和资源投入。
- 支持大学生实习，帮助他们在正式就业前获得实践工作经验。
- 在开发教育课程和实习计划时充分咨询就业市场人士的意见，确保学生所学的技能符合中国经济现代化进程的需要。
- 对《劳动合同法》进行解释，明确“临时”、“辅助”和“替代”岗位的定义。

对美国政府的建议：

- 与中国政府就税务加总协议展开协商。

Tax Policy

Introduction

China continues to modernize its tax laws to be more consistent with international standards, to carry out internal restructuring and to invest in the training of its vast cadre of local and provincial tax authorities. As a result, China is more able to effectively administer its tax laws and protect its tax base.

In 2011, China made progress in a variety of areas related to taxation. China took a significant step towards adoption of a full consumption-type value-added tax (VAT) system by rolling out a pilot VAT program in Shanghai. Related to mergers and acquisitions (M&A), the issuance of Announcements 13 and 51 reduces indirect tax costs. On international taxation, Announcement 24 clarifies certain aspects of the controversial Circular 698. China has also made progress in other areas of taxation, such as extending incentives for research and development (R&D) centers and granting preferential tax rates for offshore income earned by High and New Technology Enterprises (HNTE).

AmCham China hopes that China continues developing in a positive direction, which in the long run will provide a favorable tax environment for both foreign-invested and domestically invested companies. We hope that China will work in collaboration with taxpayers, tax advisors, and other stakeholders to avoid actions, such as retroactive implementation of regulations or unreasonable reporting requirements, that are likely to provide taxpayers with unnecessarily heavy burdens. Below we identify various key areas of concern, related to permanent establishment rules, taxation on indirect transfer of assets, and tax support for small businesses.

Significant Developments

VAT Reform Pilot Program Launched in Shanghai

Following the State Council's October 2011 decision to launch a VAT reform pilot program in Shanghai on January 1, 2012, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Circular 110 and Circular 111 to provide detailed implementation rules for the program. The pilot program will initially apply to

transportation and modern service industries in Shanghai with the intention of rolling it out nationwide when conditions permit. The VAT reform is expected to eventually extend to all service sectors.

Circular 110 sets out the basic rules of the pilot program while Circular 111 addresses the Shanghai pilot program. Although it is widely anticipated that the pilot may reduce the tax burden of affected companies by helping them to avoid double (or multiple) taxation, the actual extent of any reduction remains to be seen.

While the rolling out of the VAT pilot program is an encouraging step towards adoption of a full consumption-type VAT system nationwide, the pilot program will temporarily cause a disparity in tax burdens between enterprises operating in Shanghai and outside Shanghai. We encourage the Chinese government to expand the VAT system nationwide as soon as possible to minimize disruption to business operations.

VAT and Business Tax Treatment of Asset Restructuring Transactions

Multinational companies commonly engage in asset restructuring. Announcement [2011] No. 13 (Notice 13) published by SAT on February 18, 2011, clarifies that VAT does not apply to tangible assets and goods under qualified total or partial asset restructurings.

On September 26, 2011, SAT published a similar Announcement [2011] No. 51 (Notice 51) which further clarifies that the business tax (BT) also does not apply to qualified total or partial restructurings. In particular, it provides that the transfer of immovable property and land-use rights in asset restructurings is not subject to BT. Notices 13 and 51 offer lenient treatment from an indirect tax perspective.

AmCham China members applaud the direction of these notices, though guidance on how to take advantage of these benefits in particular cases is needed. Additionally, neither Notice 13 nor Notice 51 clarifies in general how taxpayers could (or should) prove to PRC tax authorities that all rights and obligations are indeed transferred together with the assets, or in particular, in cases of partial asset transfers. We also encourage SAT to confirm the exemption of intangible

税收政策

引言

中国继续推进税法的现代化进程，使之从整体上更加符合国际标准，并同时施行内部重组，投入资金对其庞大的地方和省级税务部门的干部队伍进行培训。因此，中国现在能够更加有效地开展税法管理及税基保护工作。

2011年，中国在与税收相关的多个领域取得了进展。中国在上海推出了增值税试点项目，在全面推行其消费型增值税制度方面迈出了至关重要的一步。在并购方面，13号公告和51号公告的出台降低了间接税成本。在国际税收方面，24号公告明确了受到争议的698号文中的相关规定。中国在其他税收相关领域也取得了进展，如：延长了针对研发中心优惠政策的有效期及给予高新技术企业的境外收入优惠税率等。

中国美国商会希望中国延续积极的发展方向。从长期来讲，这些积极举措将为外资及国内企业创造良好的税收环境。我们也希望中国能够与纳税人、税务顾问及其他利益相关方共同努力，并避免对相关规定的追溯执行及不合理的申报要求等行为；这些行为可能会给纳税人带来不必要的重负。我们在下文中将明确指出需要重点关注的领域，包括涉及有关常设机构的规定、对间接转让资产的征税及对小型企业的税收支持等相关的几个问题。

重大进展

增值税改革试点项目在上海启动

2011年10月，国务院决定于2012年1月在上海启动增值税改革试点项目。此后，财政部与国家税务总局联合发布了110号文和111号文，为项目的实施提供了具体规定。初期，试点项目的适用范围为上海的交通运输业和现代服务业，待条件成熟后，试点项目将在全国范围内展开。最终，增值税改革的范围有望扩展至其它所有服务行业。

110号文规定了试点项目的基本框架，而111号文则对上海的试点项目提供了具体的规定。尽管试点项目在避免双重（或多重）征税进而降低适用企业税收负担方面的效果广受期待，但实际降税减负的程度仍有待观察。

尽管增值税试点项目的开展是向在全国范围内全面推行消费型增值税制度迈出的令人鼓舞的一步，但试点项目会造成上海的企业与区外企业暂时性的赋税差别。我们鼓励中国政府尽快将增值税制度在全国范围内推广以最大程度的减少对企业运营的影响。

资产重组交易的增值税和营业税

跨国企业普遍涉足资产重组业务。国税总局于2011年2月18日发布了国税[2011]第13号公告（13号公告），明确了增值税不适用于符合条件的全部或部分资产转让中的货物转让。

2011年9月26日，国税总局发布了国税[2011]第51号公告（51号公告），进一步明确了营业税同样不适用于符合条件的全部或部分资产重组。公告还特别指明了营业税不适用于资产重组过程中不动产及土地使用权的转让。13号公告和51号公告在间接税方面提供了宽松处理的税收规定。

中国美国商会对上述公告所体现出的政策方向表示赞许，但目前仍缺少针对在某些特定情形下如何利用上述公告中的利好条件的指导意见。此外，无论是13号公告还是51号公告，均未从整体上明确纳税人能够（或应该）如何向中国的税务主管部门证明一切权利和义务已确实随资产一并进行了转让，尤其在部分资产转让的情况下。我们同样鼓励国税总局对知识产权等无形资产免征营业税，因为这些无形资产在资产重组过程中通常也会被一并转让。

间接转让股权

另一类重组活动涉及到的是股权的转让。国税总局于

assets, such as intellectual property, from BT as they are also commonly transferred during such asset restructurings.

Indirect Transfer of Equity Interests

Another type of restructuring involves the transfer of equity interests. SAT issued Circular 698 in December 2009 providing guidance on enterprise income tax administration on equity transfers executed by non-residents. On March 18, 2011, SAT released Announcement 24 to clarify certain non-resident taxation matters as well as other issues related to Circular 698, including the:

- Timing of revenue recognition for a direct transfer of equity that is settled by installments;
- Definition of key terms; and
- Reporting mechanism for indirect transfer that involves multiple offshore sellers or multiple PRC target companies.

Apart from matters relating to Circular 698, Announcement 24 also provides clarification on other non-resident taxation matters, which include:

- Timing of withholding tax on accrued payments;
- Withholding tax on guarantee fees;
- Withholding tax on gains recognized from the transfer of land use rights;
- Withholding tax on financial leases and rental income from immovable property; and
- Timing of withholding tax on dividends.

As outlined above, SAT has introduced several positive changes geared towards reducing the administrative burden of non-resident enterprises and providing more certainty in administrative procedures. However, concerns remain with the broad scope of Circular 698, lack of clarity in aspects of Announcement 24, and other matters as described further below in the Specific Issues section.

VAT Incentives for R&D centers

SAT issued *Cai Shui* [2011] No. 88 (Circular 88) on October 10, 2011, extending VAT incentives for R&D centers through December 31, 2015, for purchased equipment. The conditions set forth in Circular 88 are basically identical to those in Circular 115, released in October 2009. However, Circular 88 clarifies the definition of terms, bringing more certainty to the implementation of incentives for R&D centers. This will encourage increased investment in R&D.

Preferential Income Tax Rate for High and New Technology Enterprises (HNTE)

On May 31, 2011, *Cai Shui* [2011] No. 47 (Circular 47) was issued, specifying that non-China source income of an HNTE would qualify for the preferential enterprise income tax rate of 15 percent if HNTE status is granted. This

circular is in line with the spirit of China's 12th Five-Year Plan, which encourages high-tech enterprises and R&D activities. Circular 47 applies retroactively from January 1, 2010.

Participation by Foreigners in China's Social Insurance System

The Ministry of Human Resources and Social Security issued rules, effective as of October 15, 2011, that require foreign individuals working in China to contribute to China's social insurance system. The rules will have an adverse impact on companies employing foreigners in China. (Please refer to the Human Resources chapter for details.)

Tax Incentives for Small- and Medium-Sized Enterprises

In 2011, the Chinese government extended or released a variety of tax measures that support small- and medium-sized enterprises (SMEs).

The State Council Executive Meeting on October 12, 2011, extended through 2015 a 50 percent enterprise income tax reduction for small-sized enterprises whose annual taxable income does not exceed RMB 30,000 (US \$4,600). A series of measures providing financing and tax support to micro and small- and medium-sized enterprises (SMEs) were also approved. One of the measures raises the tax-free thresholds above which VAT and BT collection is triggered. This is very encouraging news for small businesses that are struggling to survive under rising costs.

It was also decided that stamp duty will be exempt on loan contracts between financial institutions and SMEs between November 1, 2011, and October 31, 2014. In addition, MOF and SAT extended the policy allowing loan impairment reserves provided for agriculture-related and SME-oriented loan offers to be deducted from financial institutions' taxable income through December 31, 2013. We believe these are positive steps towards offering more support for small businesses in China.

Specific Issues

Permanent Establishment Risk Under Secondment Arrangements

AmCham China members are concerned about the lack of clarity regarding how Circular 75 determines the real employer in secondment arrangements, and therefore when permanent establishment (PE) status may be triggered in such arrangements. This lack of clarity sometimes results in the inappropriate designation of real employer status to parent companies overseas that have assigned an employee to temporarily work in their Chinese subsidiary.

2009年12月发布第698号文，为加强非居民股权转让所得企业所得税的管理提供了指导。2011年3月18日，国税总局发布了24号公告旨在明确某些非居民税收事项及698号文涉及到的其他相关事宜，包括：

- 对于采用分期付款方式的股权直接转让，其收入实现的时间安排；
- 关键术语的界定；以及
- 涉及到境外多个卖方或多个中国目标公司的间接转让的申报机制问题。

除了698号文涉及到的相关问题外，24号公告明确了其他非居民税收事宜，包括：

- 应付未付款项所得税的代扣代缴的时间安排；
- 担保费的代扣代缴；
- 土地使用权转让所得税的代扣代缴；
- 金融租赁及出租不动产的租金所得税的代扣代缴；以及
- 股息、红利所得税的代扣代缴。

正如上文所概述的，国税总局在降低非居民企业行政负担以及确保行政程序更加确定方面已做出了积极改变。然而，698号文宽泛的适用范围、24号公告中相关条文的不明确及下文“具体问题”中提到的其他一些问题仍然令人担忧。

研发中心增值税优惠政策

国税总局于2011年10月10日颁布了财税[2011]第88号通知（88号文），将研发中心采购设备的增值税优惠政策的有效期限延长至2015年12月31日。88号文中提出的适用条件与2009年10月发布的115号文基本相同。但是88号文明确了相关术语的界定，为研发中心增值税优惠政策的施行提供了更多的确定性。此举将鼓励外商增加对研发中心的投资。

高新技术企业所得税优惠税率

2011年5月31日，财税[2011]第47号通知（47号文）出台，具体明确了取得高新技术企业地位的高新技术企业，其来源于境外的所得可以按照15%的优惠税率缴纳企业所得税。该文符合中国“十二五规划”的主要精神，鼓励高新技术企业的建立及其研发活动。47号文生效日期追溯自2010年1月1日。

外国人加入中国的社会保险体系

人力资源与社会保障部颁布了相关规定，要求从2011年10月15日起，在华工作的外国人加入中国的社会保险体系。这些规定将对企业在华雇佣外国人产生重大负面影响。详情请参阅“人力资源”一章的相关内容。

中小企业税收优惠政策

2011年，中国政府出台了许多扶持中小企业发展的税收措施，并延长了目前针对中小企业的税收措施的有效期限。

2011年10月12日召开的国务院常务会议将年应税收入不超过人民币30,000元（4,600美元）的小型企业减半征收企业所得税的政策延长至2015年底，同时通过了一系列为微型与中小企业提供融资与税收支持的措施。其中一项措施是提高增值税和营业税的起征点，这对因成本不断上涨而艰难求存的小型企业来说无疑是一个振奋人心的消息。

会议同时决定对金融机构向中小企业贷款合同自2011年11月1日至2014年10月31日的三年内免征印花税。此外，财政部与国税总局将金融企业涉农贷款和中小企业贷款损失准备金税前扣除政策的有效期限延长至2013年12月31日。我们相信这些举措是为在华小型企业提供更多支持所迈出的积极步伐。

具体问题

委派来华人员构成的常设机构风险

75号文中没有对如何确定委派人员的实际雇主及由此产生的常驻机构认定问题做出明确的解释，中国美国商会对此感到担忧。没有明确解释有时会造成已经委派雇员临时到其在华子公司工作的海外母公司被判定为实际雇主，这很不适当。

75号文在实际雇主的确定问题上设定了准则，即“实质重于形式”的原则。该文件规定，负责管理并受益于委派人员工作的本国子公司应被视为委派人员的实际雇主。但在实际操作中并没有按照该原则执行。

中国许多税务主管部门在委派人员实际雇主的确定问题上仍拘泥于形式。具体来讲，税务主管部门要求委派人员的报酬必须百分之百由本国子公司支付或承担，并且与委派人员个人所得税申报上的报酬相吻合。但对于合资公司来说，本国出资方一般并不支付委派人员的全部报酬，而这并非表示委派人员实质上仍在为其海外母公司工作。

Circular 75 sets a guideline for determining real employer status, known as the “substance-over-form” principle. It provides that the local subsidiary, which manages and benefits from the work of secondees, should be considered as the real employer. In practice, however, that principle is not followed.

Many Chinese tax authorities still base determinations of a secondees’ real employer on formalities. Specifically, the tax authorities require that the secondees’ compensation be paid 100 percent by or charged back to the local subsidiary, and exactly match the compensation in the secondees’ individual income tax returns. In joint venture arrangements, however, the local partners do not typically pay full compensation for secondees. Yet that does not necessarily mean in substance that the secondee still works for the parent company overseas. Nevertheless, the tax authorities still consider the parent company as the real employer. In addition, tax authorities recognize local subsidiaries as real employers only if a local employment contract between the Chinese subsidiary and the seconded employee is signed, regardless of who bears the risk or benefits from the work of the secondee. In these examples, the parent companies are not real employers in substance, yet the tax authorities still designate them as such.

AmCham China recommends consistency on and commitment to the substance-over-form principle in implementation of Circular 75. Ensuring consistent practice among different cities and tax authorities for PE issues under secondment arrangements is also important.

Indirect Transfer of Equity Interests

As discussed in the Significant Developments section, Announcement 24 added clarity to the implementation of Circular 698. However, AmCham China members remain concerned with the extremely broad scope of Circular 698 as well as its onerous reporting requirements. Additionally, we would like to see further clarifications on the business purpose of the treaty application in case the intermediate company is disregarded, the tax treatment of declared but undistributed dividends post-closing, and harmonization of the internal restructuring rule in Circular 59 and Circular 698, among other issues. SAT’s definitions of certain parameters such as “effective tax burden” and “not taxing foreign-sourced income” also may necessitate clarification for their fair and efficient implementation.

A recent Shenzhen case raised additional concerns for foreign investors. In September 2011, the Shenzhen local tax bureau collected PRC individual income tax (IIT) of about RMB 14 million (US \$2.2 million) on a capital gain from an indirect transfer of PRC equity through an offshore transfer of its Hong Kong parent by a Hong Kong resident individual. AmCham China members urge SAT to clarify whether Circular 698 will be extended to cover individual investors, or to issue rules regarding IIT treatments (if

applicable) for individual shareholders disposing PRC equity shares on an indirect basis.

Administrative Measures Related to Enterprise Reorganization

In July 2010, SAT issued Announcement [2010] No. 4 (Notice 4) which supplements the Income Tax Treatment of Enterprise Reorganization (Circular 59). Circular 59 originally attracted attention from the international investment community because it contains a potentially effective tool to defer the tax burden associated with special reorganization treatment (SRT). However, AmCham China members hope to see relaxation of some restrictive SRT requirements. For example, we encourage SAT to relax the 100 percent direct ownership requirement for cross-border transactions so that 100 percent indirect ownership would also qualify. In addition, there is currently no mechanism to obtain an advance ruling for SRT. AmCham China recommends that SAT implement an advance ruling mechanism in order to remove uncertainty for taxpayers involved in special reorganizations.

Raising Thresholds for Small Business Tax Incentives

As discussed in the Significant Developments section, AmCham China commends the implementation of tax incentives for small businesses. Many of these tax incentives, however, have annual revenue or taxable income thresholds that are too low, thus preventing a large number of SMEs from benefiting. For example, the State Council’s 50 percent reduction of the enterprise income tax only benefits companies with annual taxable income of less than RMB 30,000 (US \$4,600), much too low for most SMEs to benefit. Likewise, the 20 percent enterprise income tax rate for small companies only applies to companies with less than RMB 300,000 (US \$45,800) in taxable income. While AmCham China recognizes and commends China’s progress in standardizing the enterprise income tax regimes for most foreign-invested and domestic businesses at the flat-rate tax of 25 percent, higher taxable income thresholds for the 20 percent rate would benefit more SMEs and better enable them to generate jobs and economic growth.

Sometimes simply raising the qualification threshold for tax incentives is not enough, however. The State Council’s raising of the tax-free thresholds triggering VAT and BT was intended to support the development of SMEs. However, due to provisions in the VAT and BT implementing regulations that state that the tax-free values apply only to individual taxpayers, many SMEs cannot benefit. We therefore recommend that the government clarify whether the tax-free threshold applies to SMEs as well as individuals.

Conclusion

AmCham China welcomes the VAT pilot program in Shanghai and the recent issuance of a number of circulars

尽管如此，税务主管部门仍会将母公司视为委派人员的实际雇主。此外，无论因委派人员的工作所产生的风险或收益由谁来承担，税务主管部门只在海外母公司的委派员工与其中国子公司签订本国劳动合同时，才将其子公司认定为实际雇主。在上述情况下，母公司在实质上并非实际雇主，但税务主管部门却仍将其认定为实际雇主。

中国美国商会建议在 75 号文的实施过程中坚持并遵守“实质重于形式”的原则。同时，确保不同城市的税务主管部门在委派来华人员是否构成常设机构的认定执行上保持一致也是非常重要的。

间接股权转让

正如在“重大进展”一节中提到的，24 号公告为 698 号文的实施提供了更多的明确解释。然而，中国美国商会成员企业仍对 698 号文极为宽泛的适用范围以及繁重的报告要求表示担忧。此外，我们希望看到针对商业目的、中间公司可被忽略情形下税收协定的适用及交易结束后公布但未发布的股息的税务处理等问题有进一步的明确，以及 59 号文和 698 号文在内部重组规定上的协调一致。国税总局对于一些特定概念，如：“有效税收负担”及“境外所得不征税”的界定仍需明确，以便公平、高效的实施。

此外，近期发生在深圳的一起事件引起了外国投资者更大的忧虑。2011 年 9 月，一名香港居民通过其香港母公司的境外转让来间接转让其中国股权，深圳市地方税务局对该香港居民由此获得的资本利得征收了人民币 1400 万元（220 万美元）的中国个人所得税。中国美国商会成员企业促请国税总局澄清 698 号文的适用范围是否将包含个人投资者，或针对因个人股东间接处置其中国股权产生的个人所得税（如果适用）的处理问题出台相关规定。

企业重组相关税收管理办法

2010 年 7 月，国税总局颁布了国税 [2010] 第 4 号公告（4 号公告），对《企业重组业务企业所得税处理若干问题》（59 号文）的相关内容进行了补充。59 号文最初吸引了国际投资界的关注，因为其中包含了一项可以推迟企业特殊性重组（SRT）税负的规定。但中国美国商会成员企业希望针对企业特殊性重组的税务处理的限制性要求能够放宽。例如，我们鼓励国税总局放宽跨国交易情形下必须符合 100% 直接所有权的要求，使具备 100% 间接所有权也可适用于该处理。此外，目前也没有相关机制来取得企业特殊性重组税务处理的事先裁定。中国美国商会建议国税总

局建立事先裁定机制以消除企业特殊性重组中相关纳税人面临的不确定性。

提高小型企业税收优惠政策的最低收入门槛

正如在“重大进展”一节中提到的，中国美国商会对小型企业税收优惠政策的实施表示赞许。然而，许多税收优惠政策设定的年收入或应税收入的最低门槛过低，使许多中小企业无法从中受益。例如，国务院出台的将企业所得税减半的政策仅针对年应税收入低于人民币 3 万元（4,000 美元）的企业，使大多数中小企业根本无法从中受益。同样的，针对小型企业的 20% 的企业所得税率仅适用于应税收入低于人民币 30 万元（45,800 美元）的企业。中国美国商会对中国在企业所得税方面对大多数外资和国内企业采取统一的 25% 的税率制度表示认同和赞许，但提高 20% 税率优惠政策的最低应税收入门槛将使更多的中小企业受益，并有助于这些企业创造工作机会，推动经济增长。

然而，有时仅仅提高税收优惠政策的最低收入门槛是不够的。国务院为支持中小企业的发展已将可享受免缴增值税及营业税的最低收入门槛提高。但是，由于增值税及营业税实施规定的相关条款明文规定免税最低收入规定仅适用于个人纳税人，因而许多中小企业无法享受该政策。因此，我们建议中国政府明确享受免税政策的最低收入门槛既适用于中小企业也适用于个人。

结论

中国美国商会对上海增值税试点项目的开展以及近期旨在延长税收优惠政策有效期的一系列规章的出台表示欢迎。然而，在国际税收及并购领域的税收问题上却罕有进展。我们建议税务部门在出台新的法规前能够公开征询包括商界及税务专家在内的各方面的意见，以确保与国际标准一致。

建议

间接股权转让

- 对商业目的、中间公司可被忽略情形下税收协定的适用及交易结束后公布但未发布的股息的税务处理等问题予以明确，并使 59 号文和 698 号文的相关内容协调一致。
- 为 698 号文的适用范围是否包含个人投资者提供明确解释，或针对因个人股东间接处置其中国股

to extend tax incentives. However, regarding international taxes and taxes related to M&A, there has been limited progress. We suggest the tax authorities conduct more public consultation, including with the business community and tax professionals, before issuing regulations as a means to ensure consistency with international norms.

Recommendations

Indirect Transfer of Equity Interests

- Clarify business purpose, treaty application in case the intermediate company is disregarded, and tax treatment of declared but undistributed dividends post-closing, and harmonize the internal restructuring rule in Circular 59 and Circular 698.
- Provide clarification as to whether Circular 698 would also be extended to cover individual investors, or issue rules regarding IIT treatments (if applicable) for individual shareholders disposing PRC equity shares on an indirect basis.

PE Issues

- Focus on substance over form in practice to determine the real employer of secondees.

Enterprise Reorganization

- Relating to requirements for SRT qualification, relax the 100 percent direct ownership requirement for cross-border transactions so that 100 percent indirect ownership also qualifies.
- Establish an advance ruling mechanism for SRT.

VAT and BT Exemptions on Asset Restructurings

- Clarify BT treatment for restructuring involving transfers of intangible assets, rights, and obligations, such as trademarks and other intellectual property.

Small Business Incentives

- Raise annual taxable income thresholds for corporate income tax incentives so more SMEs can benefit.
- Clarify whether recently raised tax-free thresholds triggering VAT and BT apply to SMEs as well as individuals.

权产生的个人所得税处理（如果适用）问题出台相关规定。

常驻机构问题

- 在实践中秉承“实质重于形式”的原则来确定委派人员的实际雇主。

企业重组

- 在有关企业特殊性重组应符合的条件上，放宽跨国交易情形下必须符合100%直接所有权的要求，使具备100%间接所有权也可适用于该税务处理。
- 为企业特殊性重组建立事先裁定机制。

对资产重组免征增值税和营业税

- 明确说明涉及到如商标及其它知识产权在内的无形资产、权利、义务转让重组活动的营业税的税收待遇。

小型企业优惠政策

- 提高小型企业所得税优惠政策的最低应税收入门槛，使更多的中小企业能够从中受益。
- 明确享受免征增值税和营业税的最低收入门槛既适用于中小企业也适用于个人。

Visa Policy

Introduction

Both the US and China face major visa policy challenges as well as opportunities.

For the US, the challenge is that over the past decade, the US market share of spending by international travelers fell from 17 percent to 11 percent of the global market. A burdensome US visa system and lack of visa processing capacity drive millions of potential travelers to other countries at an enormous cost to the US economy. These barriers put the US at a great disadvantage when it comes to competing in the international travel market.

Chinese demand for US visas is “exploding,” according to a 2010 State Department report. With 52 million outbound travelers in 2010, China has surpassed Italy, Japan, France, and the United Kingdom to become the third largest spender on international tourism, after Germany and the US. The China National Tourism Administration estimates there will be 100 million outbound travelers by 2015. Prioritizing inbound Chinese travel can help the US recapture its historic share of the international tourism market while boosting tourism revenues and creating jobs. The average Chinese visitor to the US spends more than US \$6,000 (RMB 38,100) per trip. At that rate, every additional 23 Chinese visitors create one US job.

In January 2012, US President Barack Obama took an important and welcome step towards boosting the tourism market by issuing an executive order setting goals for increasing visa processing capacity and reducing visa processing times in China. Below we set forth AmCham China’s concrete recommendations for how President Obama’s goals can be achieved, by increasing the number of consular officers, opening additional visa-issuing posts, decreasing security check times, improving appointment scheduling, and improving the Chinese version of the application form.

China faces a different set of challenges. The country’s rapid growth, shifting demographics, and aging population have opened new opportunities for economic immigration to China from developed as well as developing countries. This underscores the need for China to modernize its regulatory framework and enhance administrative capacity in order to accommodate increasing immigration. The current

“Law on Entry and Exit of Foreigners” is over 25 years old, and administrative responsibilities are scattered across multiple departments, including public security, foreign affairs, human resources, commerce, education, and others. Furthermore, many immigration rules are not publicly available. This creates conflict and uncertainty in enforcement of the law, as well as confusion for employers and foreigners.

In December 2011, the National People’s Congress published a draft “Law on Entry and Exit Administration.” AmCham China welcomes efforts to overhaul the existing law. Below we explain our recommendations for making China’s visa policy more uniform and transparent.

Significant Developments

US Visa Adjudication Capacity and Executive Order 13597

For the last several years, the US Mission in China has struggled to deal with rising demand for visas. The mission added temporary staff and extended work hours during seasonal demand spikes, but waits for visa appointments at times still exceeded 100 days in 2010 and 70 days in 2011. Further, the call center sometimes was unable to answer the phone during business hours and told applicants to call back because no future appointment slots were open. And some applicants faced delays during “administrative processing” security checks conducted prior to visa issuance.

Fortunately, 2011 did see significant progress in visa processing capacity. The mission adjudicated more than one million visas during fiscal year 2011, a 35 percent increase over 2010. Approximately 88 percent of B1/B2 (visitors for business or pleasure) visas were approved. In October 2010, the State Department announced a goal of adjudicating 2.2 million nonimmigrant visa applications in China by fiscal year 2013, and recently authorized 50 more positions for consular officers adjudicating such applications, an almost 50 percent increase. The new officers should arrive in the spring and summer of 2012. The mission is also planning to add additional visa interview windows: 22 in Guangzhou, 20 in Shanghai, eight in Chengdu, and 21 in Beijing by 2014. AmCham China commends this progress.

签证政策

引言

美

中两国在签证政策方面均面临着重大挑战与机遇。

对于美国来说，挑战是在过去的十年里，国际旅行者赴美所产生的消费从占全球 17% 的市场份额下降至 11%。繁琐的美国签证体系以及签证处理能力的缺失使得数百万的旅行者转向其他国家，给美国经济带来了巨大损失。在国际旅游市场中，这些障碍将美国置于极大的不利境地。

2010 年美国国务院的一份报告显示：中国申请人对美国签证需求呈爆炸式增长。2010 年中国有 5,200 万出境旅游者，已经超过意大利、日本、法国及英国，成为仅次于德国和美国的第三大国际旅游消费大国。据中国国家旅游局预测，到 2015 年中国的出境旅行人数将达到 1 亿。优先处理中国游客的入境旅游申请，不仅有助于美国重拾其国际旅游市场中的原有份额，同时也将有助于提升旅游业收入并创造就业机会。中国游客每次赴美旅行的人均消费已超过 6000 美元（人民币 38100 元）。照此推算，每增加 23 名中国游客将为美国创造一个就业机会。

2012 年 1 月，美国总统巴拉克·奥巴马颁布了一项行政命令，为提高在华的签证处理能力及减少签证处理时间设定了目标，在抢占旅游市场方面跨出了重要与可喜的一步。我们在下文中将谈到中国美国商会就如何实现奥巴马总统的上述目标提出的具体建议。这些建议包括：增加领事官的数量、增设新的签证地点、缩短行政安全检查时间、改进面谈预约及中文版申请表。

中国则面临着一系列不同于美国的挑战。国家的快速发展、人口结构的变化以及人口老龄化，均为来自发达国家或发展中国家的经济移民创造了新的机会。这种形势凸显了中国必须实现其监管框架的现代化并提高其行政能力，以应对不断增长的移民数量。现行的《外国人入境出境管

理法》从颁布至今已逾 25 年，并且相应的行政责任分散在不同的部门，包括公安、外交、人力资源、商务、教育及其他相关部门。此外，许多移民规定仍未公开。这导致了执法过程中的冲突与不确定性，同时给雇主和外国人造成了理解上的混乱。

2011 年 12 月，全国人民代表大会公布了《出境入境管理法》草案。中国美国商会对中国在签证改革现行法律方面所做的努力表示欢迎。下文是针对如何使中国签证政策更加统一、透明所提出的建议。

重大进展

美国的签证裁定能力与 13597 号行政命令

在过去几年里，美国驻华领事机构一直竭力处理着不断增长的签证需求。尽管驻华领事机构在季节性需求的高峰期增加了临时工作人员并延长了工作时间，但 2011 年签证预约的等待时间有时仍会超过 70 天，2010 年甚至达到过 100 天。此外，呼叫中心偶尔在工作时间仍无法接听来电，有时则因为后面的面谈时段还未开放而告知申请者回呼。一些申请者在签证发放前的“行政安全审查程序”中会遇到延误。

值得庆幸的是，美国驻华领事机构签证处理能力在 2011 年有了很大的提高。2011 年财年，相应的签发了一百多万份签证，比 2010 年增加了 35%。其中，大约有 88% 的 B1/B2（商务或旅游访问者）签证获得签发。2010 年 10 月美国国务院宣布，到 2013 财年在华审查非移民签证的申请目标为 220 万份，并于近期批准增加 50 名领事官专门审查该类签证申请，实现了近 50% 的人员增长。新的领事官将相继于 2012 年春、夏季到任。同时，驻华领事机构计划增开新的签证面谈窗口，到 2014 年将在广州增开 22 个，上海增开 20 个，成都增开 8 个，北京增开 21 个。中国美国商会对这一进展表示赞许。

Furthermore in January 2012, President Obama issued the “Executive Order Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness” (EO 13597). This executive order announces the goal of reversing the decline in America’s share of inbound international travel and tourism by improving the State Department’s capacity to adjudicate visa applications from qualified applicants in China and Brazil. Specifically, the President asked the State Department to increase its visa adjudication capacity by 40 percent by fiscal year 2013, and to interview 80 percent of applicants within three weeks of booking an appointment. AmCham China applauds this development and looks forward to its implementation.

We also encourage the US Mission in China to carry this progress even further by building capacity to adjudicate four million visa applications per year by fiscal year 2015, as recommended by the US Travel and Tourism Advisory Board, an advisory board to the Secretary of Commerce. The Specific Issues section below recommends actions the US government should take to reach its stated goals and plan for the continuing steep rise in visa demand from China.

China’s New Draft “Law on Exit and Entry Administration”

China’s current “Law on Entry and Exit of Foreigners” was enacted in 1985. The National People’s Congress posted a draft update to the law on their website in December 2011, soliciting comments. Known as the “Law on Exit and Entry Administration,” the new draft law includes the following provisions:

- Foreigners entering China and applying for residence permits must be fingerprinted;
- Employers that unlawfully employ foreigners will be fined;
- Owners of foreign enterprises that owe back wages to employees may be prohibited from departing the country;
- Foreigners may be detained pending investigation of immigration violations;
- Foreigners may be detained and fined for visa violations; and
- Permanent residence rules have been codified.

AmCham China sees this legislative effort as an opportunity to meaningfully address a number of important visa policy issues. We are hopeful that the Chinese government will engage the foreign community in China, including AmCham China, on the draft legislation.

Specific Issues for the US Government

Establish a Maximum Wait Time of Five Days for Visa Processing

By law, almost all visa applicants not renewing visas must attend an appointment to be interviewed. EO 13597’s goal of interviewing most visa applicants within three weeks of when they book their appointment is a reasonable short-term target consistent with the State Department’s 2007 goal of granting applicants an interview within 30 days. The State Department reports that 90 percent of visa applications from emerging countries (including China) are already processed in less than three weeks. Yet in 2010 and 2011, visa appointment waits at times exceeded 70 to 100 days.

Over the medium term, visa processing times need to be reduced even further. According to the US Travel and Tourism Advisory Board, visa wait times for European countries with which the US competes for business and tourism visitors average five days. AmCham China supports the Board’s recommendation that US wait times be reduced to five days to enhance US market competitiveness.

Increase the Number of Consular Officers

As mentioned above, we believe the US Mission in China needs the capacity to adjudicate four million visa applications by fiscal year 2015 in order to accommodate increasing Chinese traveler demand. That would represent just four percent of the 100 million outbound Chinese travelers forecasted for 2015.

In order to reach that goal, which amounts to more than quadrupling capacity, while simultaneously reducing visa processing times, the US Mission’s consular sections will need to increase staffing significantly by 2015. AmCham China supports the US Travel and Tourism Advisory Board’s recommendation that staffing be increased from the current 105 officers to 617. The Advisory Board’s calculations are detailed in Table 1 below.

Table 1

Current Levels	
2011 officer total	105
2010 nonimmigrant visa applications (average 8,100 per officer)	745,195
Estimated Future Levels	
Target visa-issuing capacity for 2015	4 million
Required staffing with same productivity	494
Required staffing plus 25% increase to improve customer service	617
Recommendation	
Increase in number of officers over FY11 levels	512

Source: US Travel and Tourism Advisory Board

此外在 2012 年 1 月，奥巴马总统颁布了《建立签证与外国访问者的审理目标及成立旅行及竞争力专门小组的行政命令》（13597 号行政命令）。该行政命令宣布，要通过提高美国国务院及时审查符合条件的中国和巴西申请者签证申请的能力，来扭转美国在国际入境旅游业市场中份额下降的局面。具体来说，奥巴马总统已提请美国国务院到 2013 年财年时，将其签证审查能力提高 40%，并能够在申请者预约成功后的三周内面试其中 80% 的申请者。中国美国商会对这种进展表示赞许并期望这些提议能够顺利执行。

正如作为美国商务部长咨询委员会之一的美国旅游与观光咨询委员会所建议的那样，我们也鼓励美国驻华领事机构将进一步推进此进程，到 2015 年财年实现每年处理 400 万份签证申请的审查能力。下文“重大进展”部分将针对美国政府为实现上述目标采取何种措施，及面对中国连年直线上升的签证需求如何制定相应计划的两个方面给出具体建议。

中国的《中华人民共和国出境入境管理法（草案）》

中国现行的《外国人入境出境管理法》生效于 1985 年。全国人民代表大会于 2011 年 12 月在其网站上发布了该法律的新修订草案并征求意见。名为《中华人民共和国出境入境管理法（草案）》，该新法草案包括如下条款：

- 进入中国境内的外国人，申请居住证件需要留存指纹信息；
- 用人单位非法聘用外国人将处以罚款；
- 外国企业业主若拖欠其雇员工资，将被禁止离开中国国境；
- 非法入境的外国人可能被拘留审查；
- 违反该法中有关签证规定的外国人可能被拘留并处以罚款；
- 有关永久居留权的规定已被写入法律

中国美国商会将该立法举措视为有效解决诸多签证政策问题的一次机会。我们希望中国政府允许包括中国美国商会在内的在华外国组织 / 社团参与草案的立法过程。

美国签证的具体问题

建立等待期最长为五天的签证审理程序

法律规定：除续签之外，几乎所有申请人必须参加面谈。13597 号行政命令的目标是在签证申请人成功预约后三周内安排面谈。这一合理的短期目标与美国国务院在 2007 年制定的在 30 天内为申请者颁发签证的目标是一致的。美国国务院的报告显示已有 90% 的来自新兴国家（包括中国）的签证申请在三周之内得到了处理。但 2010 年与 2011 年，签证预约的等待时间曾一度达到了 70 天至 100 天。

从中期来看，签证审理时间需进一步缩短。美国旅游与观光咨询委员会的报告显示，在吸引商务及旅游访问者方面，与美国存在竞争的欧洲国家的签证平均等待时间为 5 天。中国美国商会支持该委员会提出的将美国的签证等待时间缩短为 5 天的建议，以增强美国市场的竞争力。

增加领事官数量

正如上文所述，我们相信美国驻华领事机构需要在 2015 年财年到来时具备审查 400 万份签证申请的能力，以应对中国旅游者不断增长的签证需求。而这也仅仅占到 2015 年预计的 1 亿出境中国人数的 4%。

为了达到将审查能力提高四倍，同时节省签证审理时间的目标，美国驻华领事机构需要到 2015 年时大幅度增加人员数量。中国美国商会支持美国旅游与观光咨询委员会作出将现有的 105 名领事官数量增加到 617 名的建议。咨询委员会的计算结果详见表 1。

表 1

现有水平	
2011 领事官总人数	105
2010 年非移民类签证申请数量（平均每个领事官要处理 8100 份申请）	745195
估算的未来水平	
2015 年目标签证处理数量	400 万
同等工作效率下，所需的人员数量	494
若提高 25% 的客户服务水平所需的人员数量	617
建议	
比 2011 年财年需要多增加的领事官数量	512

资料来源：美国旅游与观光咨询委员会

The net cost to US taxpayers of these additional officers would be zero as each officer generates net revenue from visa applications fees that is retained by the State Department and the Treasury general fund (see Table 2 below). As such, increasing the number of consular officers at the US Mission would benefit US and Chinese companies, the US economy, Chinese travelers, and the US budget.

Table 2

Economics of Increased Staffing in China (Per Officer Per Year)

8,100	(Nonimmigrant visa applications workload per year)
X US \$140	(Application fee per applicant)
<u>US \$1.13 million</u>	(Total revenue per officer)
US \$1.13 million	(Total revenue per officer)
<u>- US \$0.50 million</u>	(Cost per officer)
<u>US \$0.63 million</u>	(Net revenue per officer)
70% of the net revenue retained by = US \$0.44 million State Department	
30% of the net revenue remitted to = US \$0.19 million the Treasury	

Source: US Travel and Tourism Advisory Board

Open Additional Visa-Issuing Posts

With only five visa-issuing US consular posts in China, some Chinese applicants may currently be required to travel as much as 2,100 miles from their home to a consular post for a visa appointment. This significantly reduces visa demand by qualified applicants. In comparison, the United Kingdom has 12 visa processing centers in China.

AmCham China recommends, consistent with the US Travel and Tourism Advisory Board's recommendations, that four to six additional visa-issuing locations be added in China. Potential locations might include cities with more than two million urban inhabitants with no US consulate, such as Chongqing, Dalian, or Shenzhen. The simplest next step may be to begin visa processing in Wuhan, where there is already a US consulate. Opening consular posts in other locations will require authorization by US Congress and the Chinese government.

Decrease Security Check Times

The US employs what *Newsweek* magazine has called a "vast, opaque" system of visa security checks. Most relevant to AmCham China is the Visas Mantis check, which many applicants in high-tech sectors are subject to after their visa appointment in order to minimize risk of nonimmigrants illegally exporting sensitive US technologies. After spiking in 2009 to take between 16 to 17 weeks to complete, Visas Mantis

checks have since consistently taken three to four weeks.

While the overall percentage of visa applicants subject to Visas Mantis checks may be in the low single digits, the delays are a serious problem for US high-tech companies in China, including those in the aerospace and semiconductor industries. Fifty percent or more of the employees, customers, and partners of many such companies are subject to security checks. Delays mean that customer and project meetings and training sessions often have to be postponed or cancelled. Chinese customers' travel delays to the US are serious enough to jeopardize US companies' competitiveness with European rivals.

AmCham China appreciates the national security justification for administrative processing but encourages the US government to reduce unnecessary delays. First, the pool of persons subject to Visas Mantis checks should be narrowed. For example, persons with multiple past clearances should not be routinely rechecked. Second, the Technology Alert List should be kept up-to-date so that travel related to non-sensitive technologies is not delayed. Third, the State Department should collect all necessary data using the online visa application form and begin administrative processing before the visa appointment in order to reduce delays after the appointment.

Improve Appointment Scheduling

Effective November 2010, all US consulates in China require payment of a nonrefundable visa application fee prior to scheduling an appointment. This is a serious disincentive to applying for a US visa because applicants have no way of knowing whether an appointment will be available in time for their US conference, meeting, or scheduled holiday. As the Embassy clearly states,

"wait times vary hour-by-hour, and can change dramatically from one day to the next and even within the same day. The only authoritative source of wait-time information is the call center at the time you book your appointment."

The US Mission's public diplomacy efforts are set back each time an applicant pays the nonrefundable visa application fee only to learn that no timely appointment is possible. We recommend that a system be set up for applicants to both pay the application fee and schedule the appointment in a single phone or online transaction.

Chinese Version of the Visa Application Form

The State Department's online Form DS-160, Nonimmigrant Visa Application, was implemented in China in March 2010. Only English text is visible on the webpage. However, if the user hovers the cursor over a section of text, a Chinese translation pops up. This web design impedes careful reading, saving, and printing of the Chinese text.

增加这些领事官给美国纳税人带来的净成本为 0，因为每名领事官因签证申请费用而创造的净收入都将交由美国国务院及财政部的“一般基金”留用（参见下表 2）。因此，增加美国驻华领事机构的领事官数量将有益于美中企业、美国经济、中国旅行者以及美国的预算。

表 2

增加在华领事官数量的经济学意义 (以每个领事官 / 每年为单位计算)

8100	每年处理非移民签证申请的数量
X 140 美元	每位申请者缴纳的申请费
113 万美元	每名领事官创造的总收入
113 万美元	每名领事官创造的总收入
- 50 万美元	每名领事官产生的成本
63 万美元	每名领事官创造的净收入

其中 70% 的净收入交由美国国务院留用 = 44 万美元
其中 30% 的净收入划拨给美国财政部 = 19 万美元

资料来源：美国旅游与观光咨询委员会

增设新的签证地点

由于在华仅有五个签发签证的美国使领馆，一些申请者可能需要从其所在地跋涉 2100 英里到临近的美国使领馆参加签证面谈。这极大地降低了符合条件的申请人的签证需求。而相比之下，英国在华有 12 个签证办理中心。

遵照美国旅游与观光咨询委员会的提议，中国美国商会建议在华增设 4 至 6 个新的签证地点。可供选择的签证地所在的城市包括城镇居民已超过 200 万人，但尚未设立美国领事馆的城市，如：重庆、大连或深圳。最简单的方式是在已有美国领事馆的武汉设立签证处。在其它地点增设使领馆则需要经过美国国会及中国政府的批准。

缩短安全检查时间

目前美国执行的是被《新闻周刊》杂志描述为“繁琐而不透明的”签证安全检查体系。其中与中国美国商会紧密相关的是“曼特斯签证”（Visa Mantis）检查。是指针对从事高科技行业的申请人，在其完成签证预约后，为防止并将非移民人士非法出口敏感美国技术的风险降到最低而对其采取的检查。2009 年“曼特斯签证”的检查所需的时间曾达到 16-17 周，之后便保持在 3-4 周。

尽管需要接受“曼特斯签证”检查的签证申请人的总体比例可能处在低个位数，但其造成的延迟则成为美国在

华高科技企业，尤其包括航空和半导体行业企业所面临的一个严峻问题，其半数或半数以上的雇员、客户及合作伙伴需要接受安全检查。拖延意味着经常要推迟或取消客户会议、项目会议及培训。中国客户赴美旅行遭遇延迟将严重地损害美国企业与欧洲同业竞争者的竞争力。

中国美国商会理解，实施行政审查程序是出于保护美国国家安全的合理需要，但同时鼓励美国国务院减少不必要的拖延。首先，中国美国商会建议缩小接受“曼特斯签证”检查的申请人范围。例如：曾经多次接受过“曼特斯签证”检查并获得赴美签证的申请人不应再接受例行检查。其次，应保持“科技警戒清单”的时时更新，使不涉及敏感技术的旅行不会被拖延。再次，为了减少签证预约后的延迟，美国国务院应采用在线签证申请表收集所有必要信息，并在签证面谈前便开始相关的行政审查程序。

改进面谈预约

自 2010 年 11 月起，所有美国驻华领事馆要求申请人在预约面谈之前完成签证申请费的支付，该申请费是予以退还的。这将严重地阻碍美国签证的申请，因为申请者无法知道他们是否在赴美参加会议、会谈或按计划赴美度假前能够及时预约到面谈。美国大使馆曾明确表示：

“等候时间每小时都会不同，并且可能从一天突然变为二天甚至是当天。就等候时间唯一权威的信息来源就是在你预约面谈时呼叫中心提供给你的信息。”

每当申请者在得知其支付了不予退还的签证申请费后，却无法及时预约到面谈的情况发生时，美国驻华领事机构在公共外交方面的努力便会受挫。我们建议建立一种体系，使申请者可以只通过一次电话或者在线交易支付申请费的方式同时成功预约和交费。

中文版的签证申请表

美国国务院发布的非移民签证 DS-160 在线申请表于 2010 年 3 月在中国实施。网页上只显示英文的内容。但是，如果使用者将鼠标停在一段文字上，便会有相应的中文翻译跳出。这种网页设计妨碍了使用者仔细阅读、保存及打印中文内容。重新设计表格的中文版使其更便于使用者使用、打印与保存，将显著改善使用者的体验并提高使用者表格填写的准确性。

Redesigning the Chinese version of the form to be more user-friendly, printable, and savable would significantly improve user experience as well as the accuracy of form responses.

Specific Issues for the Chinese Government

Make Visa Rules Uniform and Transparent

AmCham China urges the Chinese government to make visa application requirements and procedures uniform and transparent nationwide. Publishing them and providing a period for public notice and comment before they become effective would facilitate compliance with the law and enable companies to better plan hiring and travel decisions. Consolidating administrative responsibilities in fewer departments would also help by reducing conflicts and uncertainty in enforcement as well as minimizing confusion among the subjects of the regulation.

Original Document Requirement

In some regions, including Beijing, individuals are required to submit an original diploma, birth certificate, or marriage certificate for visa processing. This has been an ongoing concern for several years. For most individuals who have not recently obtained such documents, locating and obtaining the originals can be problematic. This not only causes travel delays but also results in suspended business activities in China. AmCham China recommends that certified copies of original documents be accepted for visa applications across all regions in China.

Specific Issues for Both Governments

Extend Visa Validity to 10 Years

China and the US set nonimmigrant visa validity on a reciprocal basis. Currently, visas for tourist and business travel are valid for only one year. This contrasts with the issuance by the US of ten-year visas to nationals of other countries such as India and Brazil.

For the US government, increasing visa validity is key to encouraging travel and conserving limited consular resources. In particular, increasing visa validity could decrease the pace at which the US Mission needs to hire, train, and deploy officers to adjudicate nonimmigrant visas. For the Chinese government, extending visa validity is important for meeting the needs of Chinese companies doing business in the increasingly interconnected global economy as well as for fulfilling the desire of the growing Chinese middle class to travel abroad.

Conclusion

As China continues to develop and play a larger role internationally, the relationship between the US and China becomes even more significant. Updating, developing, and maintaining clear, efficient visa policies will foster cooperation on tourism and strengthen economic ties.

Recommendations

For the Chinese Government:

- **Make visa application requirements and procedures uniform nationwide and publish them so they are transparent.**
- Allow visa applicants to submit certified copies of birth and marriage certificates and diplomas rather than the originals.

For the US Government:

- **Increase the capacity of the US Mission in China to meet rapidly increasing demand for nonimmigrant visas by qualified applicants:**
 - Over the short-term, meet President Obama's goal of interviewing 80 percent of applicants within three weeks of booking an appointment, and
 - Over the medium-term, reduce total processing time to an average of five days to be comparable with European countries.
- Increase the number of consular officers adjudicating nonimmigrant visas in China to 617 by fiscal year 2015.
- Open additional visa-issuing posts.
- Decrease administrative processing security check times.
- Provide better customer service by improving appointment scheduling and providing a printable and savable Chinese translation of the visa application form.

For the Both Governments:

- **Extend visitors' visa validity to 10 years.**

中国签证的具体问题

实现签证规定的统一、透明

中国美国商会敦促中国政府在全国范围内实现签证申请要求与程序的统一与透明。公布签证申请的要求与程序，并在其正式生效前留出公示与意见征询时间，将使其更加符合法律规定，并使企业能够更好的制定招聘计划与旅行决定。将行政职责合并到更少的部门将有助于减少规定执行中的各种冲突与不确定性，同时将最大程度的减少签证规定所涉及的主体之间理解上的混乱。

文件原件的要求

包括北京在内的一些地区，签证申请人要求提交文凭、出生证明或结婚证明原件，这已成为多年存在的一个问题。对大多数不是近期才取得上述文件的申请人来说，找到并取回这些原件非常麻烦。这不仅导致出行延误，还妨碍在华的商务活动。中国美国商会建议中国的所有地区的签证签发机构接受经核实的上述文件副本。

对两国政府的具体问题

将签证有效期延长至 10 年

中美两国在互惠的基础上设定非移民签证的有效期。目前，旅游及商务旅行签证的有效期仅为一年。相比之下，很多其他国家，如印度和巴西的公民却可以获得有效期长达十年的美国签证。

对于美国政府来说，延长签证有效期是节约现有有限领事资源、鼓励两国往来的一个重要手段。延长签证有效期可使美国驻华领事机构放缓聘用、培训、部署专门处理非移民签证的领事官步伐。对于中国政府来说，延长签证有效期十分重要，因为它将满足中国企业在联结日益紧密的全球经济中从事商业活动的各种需要，同时也能满足中国不断增长的中产阶级出国旅游的愿望。

结论

随着中国的不断发展并继续在国际上扮演更为重要的角色，中美关系变得更加重要。制定和执行明确、有效的签证政策并对其进行不断更新，将促进两国旅游业的合作，并加强两国的经济联系。

建议

对中国政府：

- 在全国范围内实现签证申请要求与程序的统一，并对其予以公布以保证其透明度。
- 允许签证申请人提交经核实的出生、结婚证明及学位证书的副本，而非原件。

对美国政府：

- 提高美国驻华领事机构的能力以应对符合条件申请人快速增长的非移民签证需求。
 - 从短期来看，实现奥巴马总统提出的预约成功三周内面谈 80% 的申请者的目标。
 - 从中期来看，将总的签证审理时间缩短为 5 天，使美国在这一方面达到与欧洲国家相当的水平。
- 到 2015 年财年，将在华专门审查非移民签证的领事官数量增加到 617 人；
- 增设新的签证地点。
- 缩短行政安全检查程序的时间。
- 通过改善面谈预约来提供更好的客户服务，同时提供可供打印并保存的中文版签证申请表。

对两国政府：

- 将旅行签证的有效期延长至 10 年。

Part Four:
Industry-Specific Issues
具体行业问题



AmCham China Cooperation Programs

Introduction

AmCham China's four cooperation programs support the development of markets and industries and the aims of both the US and Chinese governments to increase business opportunities and bilateral collaboration. They are coalitions of US companies operating under umbrella agreements or cooperative arrangements between the US and Chinese governments. The collaborations showcase American goods, services, and technologies, and the resulting business opportunities enhance business growth and industry development in China while also increasing US exports to China and supporting jobs in the US.

The US Trade and Development Agency (TDA) is the key partner in the US government for three industry cooperation programs: Aviation Cooperation Program, Energy Cooperation Program, and Healthcare Cooperation Program. The Export Compliance Working Group facilitates high-tech trade between the US and China and is an AmCham China cooperation program engaging with the US Department of Commerce. Each of the programs works closely with key ministries and officials in the Chinese government.

Increased Business Opportunities

AmCham China's cooperation programs enable companies of all sizes to engage directly with industry leaders and the US and Chinese governments, as well as to facilitate business opportunities in the energy, aviation, healthcare, and high-tech industries. The cooperation programs offer a forum for companies to explain and demonstrate the effectiveness of their products, services, and technologies within the context of operational solutions and the Chinese government's developmental goals. For small- and medium-sized companies in particular, the programs often provide access to resources that might not otherwise be readily available.

Enhanced Industry Development

The programs provide a unique forum for industry leaders to share best practices by organizing high-level technical exchanges, conferences, and capacity-building exercises. They are also a framework whereby companies engage with policy makers to collaborate on issues such as standards, trade promotion, and regulations.

Substantive, Long-Term Government Cooperation

The programs provide a cooperative framework for government-to-government interaction with industry participation. Companies often organize training programs and trade missions to the US for Chinese partners and government officials, and participate in discussions with regulators as a group rather than by individual company. Collaborating on issues of mutual benefit strengthens the bilateral relationship between the US and China.

中国美国商会合作项目

引言



国美国商会的四项合作项目支持相关市场和行业的发展，以及美中两国政府扩大商机、双边合作的目标。这些项目由美国企业联合运作，在美中两国政府总体协议或合作计划下运行，并展示了美国的商品、服务和技术。随之而来的商业机遇不仅促进了中国商业的增长和行业的发展，且扩大了美国对华出口，增加了美国的就业机会。

美国贸易发展署是三大工业合作项目最主要的美国政府合作伙伴，这三大项目包括美中航空合作项目、中美能源合作项目和医疗卫生合作项目。以促进美中高科技贸易为目标的出口合规工作组是中国美国商会得到美国商务部支持的合作项目。每个项目都与中国政府的主要部委和官员互动密切。

与日俱增的商机

中国美国商会的合作项目使得各种规模的会员企业都有机会与行业翘楚和美中政府直接进行互动。与此同时，这些项目还为能源、航空、医疗和高科技行业创造了更多的商机。合作项目还针对运营解决方案和中国政府的发展目标设立了相关论坛，企业可以借此来讲解及演示其产品、服务和技术。尤其对中小企业而言，它们常常可以通过合作项目获得从其它渠道不易得到的资源。

行业发展的提升

通过组织高水准的技术交流、会议和能力建设活动，这些合作项目为行业翘楚分享最佳实践提供了独特的平台。企业也可以通过这些项目所提供的框架与决策者共同解决标准、贸易促进和法规当中所存在的问题。

实质性的长期政府合作

这些项目所提供的合作框架将政府之间的互动与企业参与结合在一起。企业经常为中方合作伙伴和政府官员组织培训项目和访美贸易代表团，并以团体而非单个企业的名义与监管机构进行协商。互惠互利的合作加强了美中双边关系。

AVIATION COOPERATION PROGRAM



Introduction

The US-China Aviation Cooperation Program (ACP) was launched in 2004 to facilitate cooperation between the US and Chinese governments, airlines, airports, and related sectors in order to achieve bilateral successes in aviation industry and market development. The US and China work together to improve aviation safety, capacity, and efficiency while also facilitating business opportunities for US aviation products and services in China.

ACP has six public members and over 50 corporate members from various sectors across the aviation industry. ACP is chaired by the US Federal Aviation Administration and Boeing.

Bilateral Cooperation

US Government

- Federal Aviation Administration
- Trade and Development Agency (TDA)
- Foreign Commercial Service
- Transportation Security Administration

Chinese Partners

- Civil Aviation Administration of China
- State Air Traffic Control Commission
- National Development and Reform Commission
- Chinese airlines and airports
- Aviation Industry Corporation of China

Committees

ACP members represent all sectors of the aviation industry and work in committees to coordinate initiatives with their Chinese counterparts and industry stakeholders. Committees include:

- Airspace and the Environment
- Leadership and Professional Development
- Manufacturing and Airworthiness
- General Aviation
- Airport
- Airline Economic Regulatory Group

Results

- Over 200 promising Chinese executives graduated from Executive Management Development Training in the US, and over 100 graduated from Air Traffic Management Executive Training.
- US Ambassador Gary Locke's Reception (March 2012)
- US-China Aviation Summit (September 2011)
- China Civil Aviation Development Forum
- Energy Conservation and Emission Reduction training

Quotes from Members



Since the Company joined ACP 18 months ago and participated in TDA-supported programs and workshops, we have been able to significantly boost awareness of our products in the China aerospace community and obtain a number of new opportunities to bid our products on new Chinese platforms. In time, we expect these new bids will result in new business for our company."

— From a Large US Aerospace Company



At least 25 percent of our new client contacts are related to our participation in ACP."

— From a Small/Medium-Sized US Airport Equipment Company

美中航空合作项目



引言

美中航空合作项目（ACP）始于 2004 年，旨在促进美中两国政府、航空公司、机场以及相关产业之间的合作，实现双方航空工业和市场发展的互利共赢。美中两国共同合作改善航空安全、运力和效率的同时也为美国航空产品和服务进入中国市场创造了商机。

美中航空合作项目现拥有 6 家公共会员和 50 余家企业会员，它们来自于航空业的各个领域。美中航空合作项目由美国联邦航空局和波音公司联席主持。

双边合作

美国政府

- 美国联邦航空局
- 美国贸易发展署
- 美国驻华大使馆商务处
- 美国运输安全管理局

中方合作伙伴

- 中国民用航空局
- 国家空中交通管制委员会
- 国家发改委
- 中国各地航空公司和机场
- 中国航空工业集团公司

委员会

美中航空合作项目的会员代表航空业的所有领域，并以委员会的工作形式与中方同行和行业利益方协调相关计划。委员会包括：

- 空域和环境委员会
- 领导力和专业发展委员会
- 制造与适航委员会

- 通用航空委员会
- 机场委员会
- 航空公司经济监管组

成果

- 高级行政人员管理培训培养了 200 多名大有前途的中国高管，空中交通管理高管培训班培养了 100 多名中国高管。
- 美国驻华大使骆家辉招待会（2012 年 3 月）
- 中美航空峰会（2011 年 9 月）
- 中国民航发展论坛
- 节能减排培训

会员语录

18 个月前，公司加入了美中航空合作项目和美国贸易发展署所支持的项目和研讨会，从这之后，我们的产品在中国航天界的认知度大增，企业也因此获得了很多投标中国新项目平台的机会。假以时日，我们希望这些新的投标会为企业带来新的业务。”

—— 一家美国大型航天企业

至少有 1/4 的新客户关系都是我们在加入美中航空合作项目之后才建立起来的。”

—— 一家美国中小型机场设备企业

ENERGY COOPERATION PROGRAM



Introduction

The US-China Energy Cooperation Program (ECP) is the commercial implementing arm of the US-China clean energy collaboration. Founded in September 2009 by a group of 24 US companies, ECP is a private sector-led nongovernmental organization dedicated to clean energy business development, market expansion, foreign direct investment, and job creation in both the US and China.

ECP's unparalleled bilateral cooperation stems from its official recognition by and support from the US and Chinese governments. US President Barack Obama and Chinese President Hu Jintao underscored ECP's vital role in bilateral clean energy cooperation in November 2009 and January 2011, followed by series of ministerial-level bilateral government pledges of support.

Leveraging the full spectrum of public and private resources, ECP provides a unique platform for US and Chinese companies to achieve transformative business development outcomes that can drive the commercialization of clean energy markets in both countries. ECP member companies, via various working groups, are empowered to be part of a total-solution industry consortium to pilot sector-based business models, advance technology deployment and investment, foster sector-based commercial partnerships, and secure commercial projects.

Bilateral Cooperation

US Government

- Department of Commerce
- Department of Energy
- Trade and Development Agency (TDA)

Chinese Government

- National Energy Administration (NEA)
- Ministry of Commerce

Working Groups

ECP working groups formulate their own missions, value chains, sector-based roadmaps, and business development objectives, which they use to identify and pursue targeted clean energy business and market development opportunities. The working groups include:

- Clean Coal
- Clean Transportation
- Decentralized Energy and Combined Cooling, Heat, and Power (DE&CHP)
- Energy Efficient Building and Design
- Energy Financing and Investment
- Industrial Energy Efficiency
- Renewable Energy
- Smart Grid

美中能源合作项目



引言

中美能源合作项目（ECP）是中美两国清洁能源领域合作的商业执行机构。作为一个由企业发起并出资的非盈利、非政府机构，ECP 于 2009 年 9 月由 24 家美国企业发起成立，致力于在中美两国推动清洁能源领域相关的商业开发、市场开拓、境外直接投资以及创造就业机会。

作为一个双边合作平台，ECP 的独特之处在于得到了中美两国的官方认可和大力支持。中国国家主席胡锦涛和美国总统巴拉克·奥巴马于 2009 年 11 月和 2011 年 1 月共同确定并强调了 ECP 在双边清洁能源合作中的重要作用。此外，两国政府的有关部委也签署了一系列的正式文件，以此对 ECP 的工作给予大力支持。

在全面有效地整合公共部门和企业资源的基础上，ECP 为中美两国企业提供一个独特的平台，以实现商业开发成果的转化，并以此推动两国清洁能源市场的发展。通过加入以产业价值链为基础的各个工作组，ECP 的成员公司组成了一个可提供全方位解决方案的行业联盟，并通过开展行业性商业模式的试点、推动技术应用及投资、促进行业性商业合作伙伴关系的建立以及构建获取商业项目的管道等工作，推动行业的发展。

双边合作

美国政府

- 商务部
- 能源部
- 贸易发展署

中国政府

- 国家能源局
- 商务部

工作组

ECP 的每个工作组拥有自己的行业发展使命、价值链、行业发展路线图和具体工作计划。藉此，工作组可以有针对性地寻求和把握清洁能源业务和市场发展机遇。工作组包括：

- 清洁煤炭工作组
- 清洁交通工作组
- 分布式能源冷热电三联供工作组
- 节能建筑与设计工作组
- 能源金融与投资工作组
- 工业能源效率工作组
- 可再生能源工作组
- 智能电网工作组

Results

Each year, ECP working groups identify business development objectives and concrete initiatives to implement. Some of the many achievements from 2011 include the following:

- An ECP mission led by US Ambassador Gary Locke to Shandong Province in November 2011 that resulted in over RMB 3 billion (US \$472 million) in commercial deals.
- The China Biofuel Inaugural Flight and Strategy and Development Study kicked off in October 2011 to provide a roadmap and policy advice for China's aviation biofuel industry.
- The US Wind Investment Workshop held in Beijing in June 2011 and the US Wind Investment Manual published in September 2011 to facilitate Chinese investment in the US wind market and knowledge- and resource-sharing with prospective Chinese investors.

Quotes from Members



The Smart Grid Demand Response Project started in January 2012 by our partnership with AECOM and CEPRI in the Tianjin Economic-Technological Development Area is China's first of its kind. It will help achieve the demand-side power grid management goal issued by the Chinese government. It is a critical first step to officially launching China's Demand Response System Pilot sponsored through the November 2011 TDA-NEA MOU to support the ECP."

— Honeywell



As part of the ECP Clean Coal Working Group sector-based industry development roadmap, the Sihe Coal Mine Methane Power Plant, the largest in the world, demonstrates Caterpillar's continuous efforts in advancing methane extraction technology, energy efficiency, and environment protection."

— Caterpillar

HEALTHCARE COOPERATION PROGRAM



Introduction

The US-China Healthcare Cooperation Program (HCP) was announced in March 2011 after the initial framework was established in January 2011 by US President Barack Obama and Chinese President Hu Jintao for a US-China Public-Private Partnership on Healthcare (PPPH). HCP is a collaborative initiative to build constructive working relations and long-term cooperation between the US and Chinese governments and industry in the healthcare sector.

HCP leverages US healthcare industry strengths in the areas of public health, policy research, training, research and development, and technology to support the Chinese government's goal of enhancing patients' access to healthcare services in China. Current projects that HCP is developing focus on technical collaboration and exchanges, personnel training and capacity building, and identifying and addressing market opportunities under China's healthcare reform framework.

成果

每年，ECP 工作组会制定商业发展计划和切实的实施办法，以下是 2011 年该项目所取得的众多成果的缩影：

- 美国驻华大使骆家辉率领的 ECP 成员公司代表团于 2011 年 11 月访问了山东省，访问期间签署了价值为额达 30 亿元人民币（4.72 亿美元）的商业合约。
- 中国生物燃料首次验证飞行暨可持续发展战略研究于 2011 年 10 月正式启动，旨在为中国航空生物燃油工业提供产业规划和政策建议。
- 2011 年 6 月在北京举办了美国风能投资研讨会，并在 2011 年 9 月发布了《投资美国风能指南》，以此促进中国企业对美国风电领域的投资，并同潜在的中国投资企业分享了投资经验与知识。

会员语录

智能电网需求响应项目始于 2012 年 1 月，由我们与 AECOM 和中国电力科学研究院在天津经济技术开发区共同实施。该项目将有助于实现中国政府提出的用电需求侧管理目标。此外，作为美国贸易发展署和中国国家能源局通过于 2011 年 11 月签署的合作《谅解备忘录》对中美能源合作项目所提供的支持框架的一部分，该项目迈出了启动中国需求响应系统试点的第一步。”

—— 霍尼韦尔

寺河煤矿甲烷发电厂是全球最大的甲烷发电厂。作为中美能源合作项目清洁煤炭工作组的产业发展路线图中的项目之一，该项目体现了卡特彼勒长久以来在推进甲烷萃取技术、提高能源效率和保护环境等领域的不懈追求。”

—— 卡特彼勒

医疗卫生合作项目



引言

2011 年 1 月，美国总统巴拉克·奥巴马与中国国家主席胡锦涛在会谈期间就建立美中医疗公私合作关系（PPPH）形成了初步框架。2011 年 3 月，双方公布了美中医疗卫生合作项目（HCP）。医疗卫生合作项目是基于双方各个层次的密切合作，旨在推动美中政府与相关行业在医疗卫生领域建立具有建设性的工作关系和长期合作机制。

医疗卫生合作项目平衡美国医疗行业在公共医疗、政策研究、培训、研发和技术上的资源来协助中国政府实现其提高医疗服务水平、改善医疗服务可及性的目标。合作项目目前正在开展的项目主要集中在技术合作与交流、人员培训、能力建设方面，同时协助提升中国的医疗卫生整体环境，并在中国医改框架下寻求和把握市场机遇。

Bilateral Cooperation

US Government

- Trade and Development Agency (TDA)
- Department of Health and Human Services
- Department of Commerce

Chinese Government

- Ministry of Health
- Ministry of Commerce

Working Groups

- Healthcare Information Technology (IT)
- Rural Healthcare
- Hospital Management Systems
- Emergency Response
- Disease Prevention and Health Management
- Healthcare Financing
- Traditional Chinese Medicine (TCM)
- Quality and Safety

Anticipated 2012 Programs

Initiate a pilot training project on County Hospital Physician Chronic Disease Management, aiming to train 1,000 physicians from 50 county-level hospitals.

Support the TDA-funded Healthcare Professional Personnel Exchange Program in the US for Chinese health professionals and relevant government agencies, including a hospital management orientation visit, healthcare IT orientation visit, and emergency response workshop (tentative).

Organize high-level healthcare forums, summits, and workshops in China to increase awareness of innovations in the healthcare sector, to provide support to healthcare policy makers on accessibility and affordability issues, and to strengthen US-China collaboration on various issues, including: non-communicable disease prevention; healthcare IT; emergency response; hospital management; healthcare reform; financing; TCM; rural healthcare; safety and quality, and other important areas.

Quotes from Members



As a responsible company, we continue to support the development of healthcare capacity in China that benefits patients. HCP offers a perfect platform for public-private cooperation through its constructive, project-based approach."

— Chindex



As part of this joint effort with various public and industry participants, we are able to participate in projects of larger scale and scope."

— GE Healthcare

EXPORT COMPLIANCE WORKING GROUP

AmCham China
中国美国商会

ECWG
Dedicated to Export Compliance & High-Tech Trade


AMCHAM
SHANGHAI
The American Chamber of Commerce in Shanghai
上海美国商会

Introduction

Established in 2006, the Export Compliance Working Group (ECWG) is a collection of companies whose mission is to facilitate high-tech trade between the US and China by: improving the export control environment for US companies to maintain their competitive edge amongst global competitors; promoting a security and compliance culture within the trade community in China; and assisting US companies in keeping up with the changes in China import and export regulations.

双边合作

美国政府

- 贸易发展署
- 卫生及公众服务部
- 商务部

中国政府

- 卫生部
- 商务部

工作小组

- 医疗信息技术
- 农村医疗
- 医院管理系统
- 应急响应
- 疾病防治及医疗管理
- 医疗融资
- 传统中医
- 质量与安全

2012 年预期项目

启动县级医院医师慢性病管理培训试点项目，培训 50 所县级医院的 1000 名医师。

支持美国贸易发展署资助的中国卫生专业人士和相关政府机构的医疗专业人员赴美交流项目，包括医院管理定向访问、医疗信息技术定向访问和应急响应研讨会（试行）。

在中国组织高级别的医疗论坛、峰会和研讨会，提高医疗行业的创新意识，为医疗决策者在医疗可及性和可负担性问题方面提供帮助，并加强美中两国在各个领域的合作，包括非传染性疾病防治、医疗信息技术、安全与质量以及其他重要领域。

会员语录

作为一个具有责任感的企业，我们将继续支持中国医疗能力的发展，从而造福患者。医疗合作项目通过其建设性的、基于项目的方式为公私合作提供了一个绝佳的平台。”

—— 美中互利医疗有限公司

作为这个政府相关机构与行业共同参与的合作项目的成员，我们能够参与开展具有更大规模和范围的项目。”

—— GE（中国）医疗集团

出口合规工作组

AmCham China
中国美国商会

ECWG
Dedicated to Export Compliance & High-Tech Trade

AMCHAM
SHANGHAI
The American Chamber of Commerce in Shanghai
上海美国商会

引言

出口合规工作组成立于 2006 年，由不同的企业组成，旨在促进美中两国之间的高科技贸易，改善出口管制环境。藉此维持美国企业在全球的竞争优势；在中国贸易界推广安全和合规文化；帮助美国公司适应中国进出口法规的变化。

合规工作组的工作重点之一就是向美国政府通报中国市场的技术可用性。该信息有助于美国政府制定出口管制政策和颁发相关执照。

The core component of ECWG's effort has been to inform the US government on technological availability within the Chinese market. Such information assists the US government in making export control policy and licensing decisions.

In support of its mission to promote high-tech trade, in 2011 the ECWG focused on increasing cooperation between industry and government on export compliance training and best practices sharing. The ECWG held its first trade promotion and compliance event in Beijing in April 2011 and is planning for its second to take place in Shanghai in 2012. The events provide training for US and Chinese business partners on export controls and compliance practices, feature interaction between industry leaders and senior US and Chinese government officials, and highlight the need for companies from both nations to build trade control compliance cultures. The ECWG works directly with the US and Chinese governments on these initiatives.

Bilateral Cooperation

ECWG's compliance advocacy aims to build an environment of increasing trade control reliability that will build trust between the US and China and improve the trade control climate between the two nations.

US Government

- Department of Commerce
- Department of Defense
- Department of State

Chinese Government

- Ministry of Commerce

Programs

- Annual ECWG Washington, DC, Outreach
- Annual seminar on trade promotion, compliance, and best practices co-hosted by US Department of Commerce and Chinese Ministry of Commerce
- ECWG market study reports
- Ongoing meetings with US and Chinese government officials
- Industry-specific trade compliance training and development courses

Results

- ECWG market study reports have strengthened bilateral trade and security, helping to expand US high-tech exports, while spreading compliance best practices.
 - ECWG's first cross-sector report in 2006 resulted in the removal and narrowing of unnecessary additional controls on US exports to China.
 - Reports have resulted in increased license approvals for controlled US exports to China.
- ECWG leveraged its close relationships with both the US and Chinese governments to host a trade promotion and best practices sharing event between top trade control officials at the US Department of Commerce and their counterparts at the Chinese Ministry of Commerce.

Quotes from Members

Reports by the ECWG are "not only desirable, but needed."

— former US Under Secretary of Commerce for Industry and Security, Mario Mancuso

The ECWG is "a model for industry-government cooperation."

— former US Assistant Secretary of Commerce for Export Administration, Christopher Padilla

为支持促进高科技贸易这一目标，2011年出口合规工作组将工作重点放在了加强行业与政府之间的出口合规培训和最佳实践分享上。2011年4月，出口合规工作组在北京举办了第一次贸易促进与合规活动，并准备于2012年在上海举办第二次活动。这些活动以行业翘楚与美中政府高级官员的互动为重点，为美、中贸易合作伙伴提供了出口管制和合规实践培训，并凸显了两国企业营造贸易管制合规文化的需求。出口合规工作组与中美两国政府密切合作来达成这一目标。

双边合作

出口合规工作组倡议合规的目的在于打造更加可靠的贸易管制环境，增强美中两国之间的信任，改善两国之间的贸易管制环境。

美国政府

- 商务部
- 国防部
- 国务院

中国政府

商务部

项目

- 华盛顿出口合规工作组年度推广活动
- 有关贸易促进、合规与最佳实践的年度研讨会，由美国商务部和中国商务部联合主办。
- 出口合规工作组市场调研报告
- 美中政府官员之间的持续对话
- 针对具体行业的贸易合规培训和拓展课程

成果

- 出口合规工作组市场调研报告加强了双边贸易和安全，有助于扩大美国高科技出口，推广最佳合规实践。
 - 出口合规工作组于2006年发布的第一份跨行业报告帮助取消并削弱了美国对华出口过程中所存在的一些不必要的额外管制。
 - 报告发布之后，美国增发了对华出口管制物品的执照。
- 出口合规工作组凭借与美中政府的密切关系举办了一次贸易促进与最佳实践分享活动，参与方为美国商务部负责贸易控制的高层官员与中国商务部同行。

会员语录

出口合规工作组的报告“既令人满意也有其必要性”。

——马里奥·曼柯索，美国商务部前任副国务卿部长，负责工业与安全事务

出口合规工作组是“行业与政府合作的典范”。

——克里斯托夫·帕蒂拉，美国商务部前助理国务卿，负责出口管理事务

Agriculture

Introduction

In 2011, China continued to see strong growth in agricultural trade, with a rise in both imports and exports. The China-US trade relationship strengthened as well, resulting in US agricultural exports to China of US \$18 billion (RMB 114.3 billion). AmCham China commends China's lifting of several import bans on products in 2011, a move which enabled China to enjoy safer, more secure, and sustainable food at reasonable prices.

AmCham China also welcomes China's goal set out in the 12th Five-Year Plan to modernize the country's agriculture industry. US agricultural companies are well positioned to cooperate with China to realize that goal, even in the face of continually decreasing amounts of arable land. Through market participation and investment in China, US agricultural companies can disseminate modern agricultural practices and assist in the development of a more sustainable Chinese farming sector.

Since its accession to the World Trade Organization (WTO), China has made noteworthy progress in liberalizing agricultural trade. Important work remains to be done, however. Restrictions on foreign investment in agriculture, unscientific market restrictions, and non-transparent, discriminatory trade policies prevent China from fully benefiting from open trade and investment. Such benefits include productivity and efficiency gains, increased food security and sustainability, and lower food prices. AmCham China applauds the progress made so far, and remains optimistic that China will continue to improve transparency and fair enforcement of rules.

Significant Developments

Revised Foreign Investment Catalogue Increases Restrictions on Agriculture

The National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) published the updated "Guiding Catalogue on Foreign Investment in Industry" in December 2011. Across many sectors, the updated catalogue increased restrictions on how foreign enterprises can participate in and aid in the devel-

opment of China's agricultural industry. AmCham China is extremely concerned about this, as discussed in the Specific Issues section below.

Promotion of Modern Crop Seed Industry Development

In April 2011, the State Council issued "Opinions on Further Promotion of the Modern Crop Seed Industry's Development," which intends to advance the long-term and stable development of agriculture in China and safeguard the national grain supply. As a next step, the Chinese Ministry of Agriculture then issued "Management Measures on Crop Seeds Production and Operating Permits." Foreign-invested seed companies look forward to more detailed measures in the near future, and are anxious to more fully participate in the commercial development of the modern crop seed industry in China.

Continued Talks on Beef Market Access

China imposed a ban on US beef in 2003 after a detection of bovine spongiform encephalopathy (also known as "mad-cow disease" or BSE) in the US, and US cattle producers have been shut out of China's market ever since. Following the 2010 US-China Joint Commission on Commerce and Trade negotiations, China and the US announced resumption of talks regarding reopening China's market to US beef, and a new round of talks took place in February 2011. AmCham China is hopeful that these discussions will pave the way for a speedy resolution of the issue based on a fair assessment of available data.

Lifting of H1N1 Import Ban on Pork

AmCham China welcomes China's decision in May 2010 to officially remove the import ban on pork from the US. Since the lifting of the ban, Chinese imports of US pork have grown substantially. This has benefited both the US and China, renewing American access to China's food market while reducing food inflation in China.

Trade Remedy Proceedings Against US Agricultural Exports

AmCham China notes with concern that China continues

农业

引言

2011年，中国的农业贸易继续保持强劲增长，农业进出口双双攀升。得益于中美贸易关系的进一步增强，美国对华农业出口额达180亿美元（1143亿人民币）。中国美国商会赞赏中国在2011年取消了对数种农产品的进口限制，此举使中国消费者能够以合理的价格享用到更安全、有保障且可持续的食品。

中国美国商会亦欢迎中国在其“十二五”规划中制定的中国农业产业现代化目标。尽管面临着耕地面积持续减少的挑战，但美国的农业企业已做好充分准备与中国开展合作，实现上述目标。通过扩大在中国市场的参与度和投资，美国农业企业可以推广现代农业实践，协助中国农业产业实现可持续发展。

自加入世界贸易组织以来，中国在放宽农业贸易方面取得了明显进展，但依然还有许多重要的工作要做。限制外商投资农业领域、不科学的市场限制以及不透明的歧视性贸易政策均阻碍了中国从开放贸易和投资中充分受益。上述受益包括生产力和效率的提高、食品供应保障和可持续性的增强、以及食品价格的降低。中国美国商会对迄今为止取得的进展表示赞赏，并对中国将继续提高规则实施的透明度和公平度持乐观态度。

重大进展

修订后的《外商投资产业指导目录》强化了对农业投资的限制

中国国家发展和改革委员会和商务部于2011年12月发布了最新的《外商投资产业指导目录》。该目录在很多领域增强了对外资企业如何参与和协助中国农业产业发展的限制。中国美国商会对此问题表示极为担忧，将在下文的“具体问题”部分予以详细讨论。

推进现代农作物种业发展

2011年4月，国务院下发了《关于加快推进现代农作物种业发展的意见》，旨在促进中国农业的长期稳定发展，保障国家粮食安全。中国农业部随后又发布了《农作物种子生产经营许可管理办法》。外资种业公司希望未来更详细的实施办法的出台，并迫切期待着更充分地参与中国现代农作物种业的商业化发展进程。

继续商谈牛肉市场准入

在美国牛肉中检出牛脑海绵状病（即“疯牛病”或BSE）后，中国于2003年决定禁止进口美国牛肉，之后美国的牛肉生产者就一直被阻挡在中国市场之外。经2010年美中商贸联委会磋商，中美两国宣布重启有关中国向美国开放牛肉市场的会谈，并于2011年2月开始了新一轮的谈判。中国美国商会希望这些会谈能够根据对现有数据进行公平的评价，为尽快出台解决该问题的办法铺平道路。

解除因H1N1病毒导致的猪肉进口禁令

中国美国商会对2010年5月中国正式取消对美国猪肉进口禁令的决定表示欢迎。自禁令解除以来，中国进口美国猪肉的数量显著增长。这对美中双方均有利，在使美国猪肉重返中国食品市场的同时，也降低了中国食品价格上涨的水平。

针对美国农产品出口采取的贸易救济措施

中国美国商会颇为担心地指出，中国继续对美国出口至中国的多种家禽产品征收高额的反倾销税和反补贴税，对美国肉鸡产品征收的反倾销和反补贴税率合计高达157.2%，两种税分别从2010年9月和10月开始实施。对此，美国已经要求在WTO框架下进行协商，并且已经发现商务部在开展此项调查时在实体上和程序上都存在多处瑕疵。

to impose substantial anti-dumping and countervailing duties against a wide range of US poultry exports to China. Combined anti-dumping and countervailing duties as high as 157.2 percent were imposed on US broiler chicken products, effective from September and October 2010 respectively. The US has requested consultations before the WTO on this case, and has identified several substantive and procedural flaws in the manner with which MOFCOM conducted this investigation.

In late December 2010, China also began an anti-dumping investigation into US exports of a type of livestock feed known as Distillers Dried Grains with Solubles (DDGS). In making the announcement, MOFCOM said it was responding to concerns from four domestic ethanol producers. This investigation is continuing, and to date, no determinations have been issued. AmCham China urges MOFCOM to conduct this investigation in accordance with its domestic laws and international obligations.

Specific Issues

Increasing Restrictions of Foreign Investment in Agriculture

AmCham China remains very concerned that China's restrictions on foreign investment in the agricultural sector limit competition and efficiency, and ultimately lead to underinvestment, a lack of innovation, slower industry development, and higher prices for food products.

As described above in the Significant Developments section, the recent revision of the "Guiding Catalogue on Foreign Investment in Industry" increased investment restrictions for the agricultural sector. Grain logistics was newly added to the restricted category. The restriction on corn processing was expanded to encompass value-added downstream products. The restriction on seed production was expanded to all crop seeds, and the restriction on oilseed processing was expanded beyond soybeans to all oilseed crops. The revised catalogue also continues a prohibition on foreign investment in "development and production of transgenic plant seeds," and for the first time now prohibits foreign companies from engaging in biotech research and development (R&D).

These new and continued restrictions/prohibitions prevent the full exploration of US-China cooperation in agriculture. This in turn prevents American technology from serving the Chinese farmer to create safe, secure, and sustainable food products at reasonable prices, while also significantly delaying the advancement of agricultural R&D in China.

AmCham China believes allowing greater foreign investment in the agricultural industry in China will further foster China-US trade relations, and will help introduce quality technology into the Chinese market. Opening up foreign investment is also consistent with the 12th Five-Year

Plan which emphasized the need to shift more resources to agriculture and food production.

Unscientific, Non-Risk-Based Market Restrictions

China maintains several quarantine, food safety, and regulatory measures that lack sound scientific basis and disrupt imports and market participation by US companies. In addition, these measures are often inconsistently enforced across China. Specific concerns are described below.

Beef Access

AmCham China members remain concerned that China continues to maintain a ban on US beef, as mentioned above in the Significant Developments section. China announced conditions for the importation of boneless beef from cattle under 30 months of age in June 2006, but the import requirements remain commercially unworkable.

The US cattle population received a controlled-risk status by the World Organization for Animal Health (OIE) in May 2007. For countries at controlled risk for BSE, the OIE guidance recommends trade of all beef and beef products with effective removal of specified risk materials. Nevertheless, China continues to maintain an overly restrictive approach to beef imports from countries with BSE.

We encourage China to permit a staged re-introduction of US beef that allows for immediate 30-month bone-in imports, moving to a full OIE import regime in later stages.

Ractopamine in Pork

In recent years, China delisted US pork plants from exporting to China due to the residual presence of ractopamine. Ractopamine is a US Food and Drug Administration (FDA) approved beta agonist feed ingredient that increases lean meat yield and is widely used in the swine industry in the US. It has been determined as safe by 27 regulatory authorities as well as the Joint Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives (JECFA).

Ractopamine is different from other beta agonists, often referred to as *shou rou jing* (瘦肉精). In China, *shou rou jing* is mostly associated with clenbuterol, another beta agonist which has caused human safety issues in meat production in China. Due to past food safety incidents involving severe illnesses from the ingestion of clenbuterol-tainted pork, China banned the use of all beta agonists in 2002, and specifically banned the production and sale of ractopamine in late 2011. It has justified the delisting of US pork plants based on its existing domestic ban of beta agonists.

In 2009 and 2010, China released studies, conducted locally and reviewed by JECFA, that support the safety of ractopa-

2010年12月下旬，中国还对美国出口至中国的一种动物饲料——干玉米酒糟饲料启动了反倾销调查。在启动该调查的公告中，商务部称此举是为了回应本国四家乙醇制造商的担忧。此项调查至今仍在进行，目前还没有作出任何决定。中国美国商会敦促商务部在开展调查的过程中注意遵守中国国内的法律和国际义务。

具体问题

外资投资农业的限制加大

中国美国商会十分担心，中国限制外国投资进入中国农业产业会限制竞争，降低效率，并可能最终导致该产业投资不足、缺乏创新、产业发展缓慢以及食品价格攀升。

正如“重大进展”部分所述，最新修订的《外商投资产业指导目录》提高了对投资农业产业的限制：粮食收储被新增至限制类别中，对玉米加工业的投资限制扩大到下游深加工产品，对种子生产的限制扩大到所有的农作物种子，对油籽加工的限制从大豆扩大到所有的作物油籽。修订后的产业目录继续禁止外商投资“转基因农作物种子开发和生产”，并且首次禁止外国公司从事生物技术的研发。

上述新增及继续保留的限制/禁止类条目阻碍了中美两国充分挖掘农业领域合作的潜力。此举还将阻止美国的相关技术为中国的农民服务，不能帮助他们以合理的价格生产出安全、有保障和可持续的食品，同时还会严重地阻碍中国农业研发水平的提高。

中国美国商会相信，允许更多的外国投资进入中国农业产业有助于将高品质的技术引入中国市场。开放外国投资同时也符合“十二五”规划的要求，规划中强调应将更多的资源投入农业和食品生产行业。

市场限制措施不科学、并非建立在风险基础之上

中国目前仍在实施的若干检疫、食品安全和监管措施缺乏合理的科学依据，妨碍美国农产品的正常出口和美国公司的市场参与。另外，这些制度在全国范围内的执行也不统一。具体问题详见下文。

牛肉市场准入

正如在“重大进展”部分所述，中国美国商会担心中国将继续维持对美国牛肉的进口禁令。2006年6月，中国宣布允许有条件进口30月龄以下的无骨牛肉，但这一进

口要求在商业实践中是无法操作的。

2007年5月，世界动物卫生组织（OIE）认定美国为疯牛病可控风险国家。根据该认定，被认定国家的所有牛肉和牛肉制品在有效去除规定的危险物质后，均可进行贸易。但目前中国继续对疯牛病爆发国家的牛肉出口实施过分严格的限制措施。

我们鼓励中国分阶段地重新进口美国牛肉，先允许30月龄以下带骨牛肉进口，之后全面实行世界动物卫生组织规定的进口体制。

猪肉中的莱克多巴胺

近年来，中国因在猪肉中发现了莱克多巴胺残留，将美国猪肉生产企业从进口商名单中去除。莱克多巴胺属于一种由美国食品药品监督管理局（FDA）批准的β肌肉生长饲料成分，因其可以提高猪的瘦肉产量，在美国的养猪行业广泛使用。莱克多巴胺的安全性已经得到了27个国家的监管机构 and 世界粮农组织/世界卫生组织食品添加剂联合专家委员会（JECFA）的确认。

莱克多巴胺不同于被称为“瘦肉精”的其它β肌肉生长剂。在中国，瘦肉精往往是指盐酸克仑特罗，这是另外一种β肌肉生长剂，曾在中国引发过威胁人身安全的肉类生产事件。鉴于曾发生过因食用受盐酸克仑特罗污染的猪肉导致严重疾病的食品安全问题，中国于2002年颁布了禁止使用所有β肌肉生长剂的禁令，并在2011年下半年又专门禁止生产和销售莱克多巴胺。依据该条国内禁令，中国使禁止美国猪肉生产企业向中国出口产品合理化。

2009年和2010年，中国发布了在本国进行并经JECFA审查的相关研究，其结论肯定了莱克多巴胺的安全性。中国美国商会促请中国政府(1)将各类β肌肉生长剂区分开，特别是与“瘦肉精”区别对待；(2)对肉制品中使用莱克多巴胺和其他安全的β肌肉生长剂进行全面的风险评估并建立安全残留标准。

种子和转基因生物监管体系

中国美国商会的会员企业对中国的种子和转基因生物的登记、批准与许可程序表示关切。我们认为中国需要对种子和转基因生物的监管体系进行重大改革。

与全球其他农业市场相比，中国的种子审定程序缺乏透明度且耗时较长。审定过程中存在的重大延误和不确定性影响了在种子研究和培育领域的投资，妨碍了中国种子

mine. AmCham China requests that the Chinese government (1) seek to differentiate amongst the beta-agonists, or *shou rou jing*; and (2) conduct a full risk assessment and establish safe residue standards for the use of ractopamine and other safe beta agonists in livestock production.

Seed and Genetically Modified Organism Regulatory System

AmCham China members have concerns about China's seed and genetically modified organism (GMO) registration, approval, and licensing processes, which we believe require substantial reform.

The registration process for seeds lacks transparency and is time consuming in comparison to the processes of other agricultural markets around the globe. Significant delays and uncertainty surrounding the process discourage investment in seed R&D, impeding the advancement and development of the Chinese seed industry and agricultural sector overall. AmCham China encourages China to reform the current seed genetics registration system to increase speed, fairness, and transparency for all industry participants.

Likewise, the problematic approval process for genetically modified (GM) crops, both for import and cultivation, creates inefficiencies in China's agriculture industry. China lacks a modern, scientific-based system to evaluate GM seed and commodities. China's GMO regulations also do not allow simultaneous approvals with other markets, thus resulting in repetitious studies and delays of approvals for imports of commodities containing biotech material.

One aspect of approval process reform should include establishment of a reasonable threshold for low-level presence of GM traits in products that is consistent with other Asian countries, such as Japan and South Korea. Consistent with China's goal of modernizing the country's agricultural sector, AmCham China encourages China to proactively develop and modernize the GMO sector by establishing a scientific-based registration and approval system for GMO products, increasing efficiency and confidence in the process.

Even when approvals for GMO products are received, companies still face regulatory barriers with regard to wholesale retailing and logistics of GMO products. Companies are required to obtain a license for importation of GMO products, and once imported, the products can only be used by the importer. Resale to other buyers is prohibited. This restriction is contrary to China's WTO commitments which call for China to allow wholly foreign-owned companies to engage in related wholesale and agency sales.

Trade Remedy Proceedings Against US Agricultural Exports

AmCham China believes China's levy of prohibitively high

anti-dumping and countervailing duties on US poultry imports was an unnecessary step that will have a disruptive effect on the market and Chinese consumers. China's anti-dumping investigation of US DDGS exports is also a concern. With respect to the DDGS investigation, AmCham China notes that China's livestock producers are buying ever-increasing volumes of grain and other animal feed to satisfy the nation's growing appetite for meat. It is in the interest of both producers and consumers to maintain an abundant supply of feed to keep pace with demand and keep prices low.

We urge Chinese and US officials to seek to resolve disputes of this nature through discussion and negotiation. If trade remedy proceedings become necessary, AmCham China urges MOFCOM to conduct these proceedings with transparency, and strictly in accordance with Chinese domestic law and WTO obligations. In these investigations, China should also take into account the broader public interest, as provided by Article 37 of MOFCOM's Anti-Dumping Regulations.

US agricultural companies acknowledge that our Chinese counterparts have likewise voiced concerns about market access for certain agricultural products in the US. In the interest of promoting more robust and mutually beneficial Sino-US agricultural trade, we urge US authorities to employ a science-based approach to Chinese requests for US market access for meat, fish, and produce (including cooked poultry, apples, pears, and catfish).

Opaque and Problematic Allocation of Tariff Rate Quotas

A tariff-rate quota (TRQ) is a trade policy tool used to protect a domestically produced product from competitive imports. Imports entering during a specific time period under the quota portion of a TRQ are usually subject to a lower tariff rate. Imports above the quota's quantitative threshold face a much higher (usually prohibitive) tariff. Chinese TRQs are used as a method to cooperate with importers to relieve the pressure of high domestic demand, while still protecting the market for domestic products.

However, there are currently a number of issues holding back Chinese TRQs from fulfilling their full potential to support China-US trade relations and the Chinese domestic agricultural market. First, TRQ quota levels are often set too low to be commercially viable for corn and other agricultural commodities, preventing importers from being able to meet the needs of booming domestic demand. Second, lack of transparency in the administration of TRQs inhibits efficient distribution of quotas and increases the cost of agricultural trade. Third, quota distribution is unpredictable, often not corresponding with the needs of the market. Sometimes high quota levels are set when importers do not need to import as much, and other times during periods of high demand, quota levels are set too low.

行业乃至农业产业的总体发展和进步。中国美国商会鼓励中国对现行的种子遗传注册体系进行改革，实现对所有参与企业登记注册的快速化、公平化和透明化。

同样，不论是进口还是本土培育的转基因农作物的审批程序也存在问题，影响中国农业产业效率。中国缺乏现代化的、科学的转基因种子和产品评估体系。中国的转基因监管法律也不允许与其它市场同步审批，因此导致了重复研究以及含有转基因成分的商品进口审批延迟。

审批程序改革包括效仿如日本和韩国等其他亚洲国家，为转基因产品低水平混杂设定合理的检出限量标准。为了实现中国政府提出的实现农业现代化的目标，中国美国商会鼓励中国建立科学的转基因产品登记和审批制度，提高产业效率以及业内对审批程序的信心，努力实现转基因产业的现代化。

即使转基因生物产品获得批准后，生产企业在转基因生物产品的批发零售和物流方面依然面临重重监管壁垒。企业必须取得转基因生物产品的进口许可证，且产品在进口后只能由进口商使用，不得再转售。上述限制违反了中国的人世承诺，该承诺要求中国允许外商独资企业参与相关批发和代销业务。

针对美国农产品出口采取的贸易救济措施

中国美国商会认为对美国禽畜进口征收高昂的反倾销和反补贴税并无必要，且会给市场和消费者造成严重的负面影响。中国对美国出口的干玉米酒糟饲料启动的反倾销调查也令人担心。在干玉米酒糟饲料遭遇反倾销调查的同时，中国美国商会注意到中国的畜禽养殖户正在购买越来越多的谷物和其他动物饲料，以满足中国日渐增长的肉类消费需求。保证充足的饲料供应以满足需求并降低价格符合生产者以及消费者的利益。

我们促请中国和美国官员通过讨论和协商来解决此类争议。如果确有必要采取贸易救济措施，中国美国商会促请商务部严格按照中国的国内法，遵守世界贸易组织相关义务，保证实施贸易救济措施的透明度。在启动此类调查时，中国还应该按照商务部《反倾销条例》第37条的规定，将更大范围的公共利益纳入考虑范围。

美国的农业企业也了解中国同行就某些农产品能否进入美国市场存在担忧。为了促进中美农业领域贸易的健康和互惠发展，我们促请美国当局采用科学的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨

和鲶鱼）进入美国市场的要求。

不透明且存在问题的关税配额分配制度

关税配额是一种贸易政策工具，用于保护本国生产的产品免受外国进口产品的竞争。在特定时间内且在关税配额额度内的进口产品通常会适用较低的关税税率。超过配额额度的进口产品的关税税率则要高得多，通常是高昂的抑制性税率。中国运用关税配额制度作为一种手段，通过与进口商合作以缓解国内需求旺盛导致的供应压力，同时保护国产商品市场。

然而，目前存在的诸多问题阻碍了中国关税配额制度充分发挥其潜力，以支持中美贸易关系和中国国内农业市场。首先，私人进口商的关税配额水平通常设置过低，使玉米和其他农产品的贸易不具备商业操作价值，造成进口商无法满足日益旺盛的国内需求。第二，关税配额管理缺乏透明度，抑制了配额分配的效率并增加了农业贸易成本。第三，配额分配缺乏预测性，经常与市场的实际需求不符，有时配额水平设定高而进口需求小，有时进口需求大而配额水平又设置过低。

为帮助中国满足国内市场对农产品的强劲需求，同时保障国内农产品的竞争力和安全性，中国美国商会建议中国根据市场需求和价格波动，建立一套更加透明、灵活的关税配额分配制度。我们还建议减少需要配额的农产品数量，从而更加有效地满足市场的需求。

实施上述转变将使中国的关税配额制度更加充分地发挥作用，实现中国人世的相关承诺。此举还将促进竞争，使国内买家能够以合理的价格选择更多产品，在保护中国国内市场的同时促进中美两国双边贸易的更大发展。

增值税

中国的增值税征收制度针对进口的农产品以及技术创新型化肥等进口农业原料实行差别对待。进口的农业产品需交纳13%或者17%的增值税，但是部分国内生产的农产品则享受增值税全额免征或减征的待遇。进口农产品较高的增值税负担使其在中国市场上处于非常不利的地位，这很可能违反了中国人世承诺的国民待遇原则。

中国美国商会支持中国制定更为透明和可预测的增值税政策并对国产和进口产品实行同等的增值税待遇。我们相信此举将有助于更多的中国农民获得具有国际竞争力的产品，从而进一步推进农业产业的健康、可持续发展。

To help China meet strong domestic demand for agricultural products, while keeping domestic products competitive and safe, AmCham China suggests China establish a more transparent, flexible system for allocating TRQs based on market demand and price fluctuations. We also recommend reducing the number of agricultural commodities subject to TRQs so that demand can more efficiently be met by the market.

Implementing these changes will enable Chinese TRQs to function more efficiently, as envisioned under China's WTO accession agreement. It will also increase competitiveness and selection of products for domestic buyers at reasonable prices, while fostering greater US-China bilateral trade and protecting the Chinese domestic market.

Value-Added Tax

China's rules on the collection of value-added tax (VAT) are applied in a manner that discriminates against imports of agricultural products as well as agricultural input products like innovative fertilizers with new technology. While imported agricultural products are subject to a 13 percent or 17 percent VAT, some domestic products receive favorable treatment, including VAT exemptions or deductions. The additional VAT charges put imported agricultural products at a significant disadvantage in the Chinese market, and likely violate WTO national treatment rules.

AmCham China supports a more transparent, predictable VAT policy in China and equal VAT treatment for both foreign and domestic enterprises. We believe this will enable more Chinese farmers to access internationally competitive products resulting in a healthier and more sustainable agricultural industry.

Inconsistent Policy Implementation of Local China Inspection and Quarantine Offices

Generally, importation of goods into China is smooth, with US companies complying with the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) regulations. However, there have been some issues regarding transparency and the consistency of implementation by local China Inspection and Quarantine (CIQ) offices.

Local CIQ offices generally follow standard AQSIQ procedures for processing imports into China. However, periodically they will deviate from standard procedures, verbally communicating the new requirements with no forewarning to the importer. For instance, most Chinese ports accept electronic signatures on phytosanitary certificates issued to indicate that plants and plant products meet specialized import requirements; however, at certain ports manually signed certificates are sometimes demanded indiscriminately, causing massive increased costs. Sometimes requirements for what needs to be included in contracts or certificates are arbitrarily changed as well.

AmCham China suggests that local CIQ offices in all ports throughout China consistently follow standardized AQSIQ regulations. The improved efficiency will help reduce costs for US exporters, savings which will ultimately be passed on to Chinese buyers.

Conclusion

The continued growth of Chinese agriculture throughout 2011 highlights the strength of the sector. Although US-China agricultural ties remain robust, AmCham China believes the Chinese government could implement a number of changes around foreign investment and imports for the benefit of both countries. Creating more scientific, transparent, and consistent methodologies would help improve efficiency, lower prices, and create a more competitive modern, safe, sustainable, and secure agricultural industry in China.

AmCham China also applauds the significant progress China has made in reforming its agricultural sector to date. In the interest of boosting productivity and modernizing Chinese farming and livestock production, US agricultural companies look forward to working with China to cooperate in areas such as row crops, animal genetics, and production technology. With the development of the US-China relationship in agriculture, the sector looks set to grow from strength to strength.

Recommendations

For the Chinese Government:

- **Implement a more transparent and science-based regulatory system across all agricultural sectors, both for imported commodities and domestically cultivated crops.**
- Reduce barriers for foreign participation and investment in agriculture and the food industry, including moving more agricultural products from prohibited to encouraged status in the "Guiding Catalogue on Foreign Investment in Industry."
- Improve the speed, fairness, and transparency of the seed registration process.
- Eliminate anti-dumping and countervailing duties on US poultry imports, or at a minimum, give US exporters the opportunity to reduce these duties through future interim reviews.
- Expand TRQ allocation and transparency in order to meet the growing demand for corn and other agricultural commodities.
- Remove unscientific restrictions on importation of US beef, poultry, pork, and GMO products.
- Make VAT policy more transparent and predictable, and provide equal VAT treatment to both foreign and domestic enterprises.

中国各地检验检疫局在政策执行方面存在差异

通常情况下，只要美国公司遵守国家质量监督检验检疫总局（国家质检总局）的相关法规和规章，其对华出口是比较顺畅的。但地方检验检疫局在执法的透明度和一致性上存在着一些问题。

地方检验检疫局一般都能按照国家质检总局规定的标准流程处理进口检验检疫。但是他们会时而出现不按照标准程序执行的情况，在未事先通知的情况下口头告知进口商执行新的要求。例如，大多数中国口岸都接受在植物检疫证书（该证书用于证明此厂商与产品符合特定进口要求）上采用电子签名，但某些口岸则要求该证书上必须采用手写签名，且有时对不同的公司实施差别对待，此举大大增加了进口商的成本。有时地方检验检疫局还任意改变合同或证书中应包括的内容。

中国美国商会建议中国所有口岸的地方检验检疫局都能统一执行国家质检总局规定的监管标准。执法效率的提高将有助于降低美国出口商的成本，并最终使中国的消费者受益。

结论

2011年中国农业保持持续增长，充分显现了农业产业的实力。尽管美中两国的农业合作保持健康势头，中国美国商会相信中国政府依然能够围绕外国投资和进口实施一些改革，使两国均能受益。建立一套更加科学、透明和统一的方法将有助于提高效率，降低价格，为中国建立更具竞争力的、安全、可持续和有保障的现代化农业产业。

中国美国商会对迄今为止中国在农业改革方面取得的成就表示赞赏。为了提高中国农业和畜牧业的生产力和现代化程度，美国的农业企业期待与中国在大田作物、动物遗传基因和生产技术领域开展合作。随着中美两国农业合作关系的不断加深，中国的农业产业必将越来越强盛。

建议

对中国政府：

- 不论对进口还是国产农作物，均实施更为透明、科学的农业产业监管体系。
- 减少对外商参与、投资农业和食品产业的限制，包括在《外商投资产业指导目录》中将更多的农

产品从禁止 / 限制类变更为鼓励类。

- 实现种子注册程序的快速化、公平化和透明化。
- 取消对美国出口家禽征收反倾销和反补贴税，或者至少通过未来的中期评审，给予美国出口商降低上述税收负担的机会。
- 提高当前关税配额额度和透明度，以满足对玉米和其他农产品日益增长的进口需求。
- 取消对美国牛肉、家禽、猪肉和转基因生物制品不科学的进口限制。
- 提高增值税制度的透明度和可预测度，并为进口和国产产品提供同等的增值税待遇。
- 全国各口岸的地方检验检疫局执行统一的监管标准。

对美国政府：

- 采用科学的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨和鲶鱼）的美国市场准入要求。
- 通过双边对话、研讨会和深入的科技交流，鼓励中国实施透明、科学的监管体系，实施透明且符合世贸组织规则的农业贸易政策，以及开放市场准入和投资机会。

- Implement standardized CIQ regulations consistently in all ports throughout China.

For the US Government:

- **Employ a science-based approach to Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish.**
- Encourage through bilateral dialogue, workshops, and in-depth scientific exchanges the implementation of a transparent, science-based regulatory system, transparent and WTO-compliant agricultural trade policies, and open market access and investment opportunities in China.



具体行业问题

Bond Markets

Introduction

AmCham China commends China's continued efforts to establish more open and transparent financial services markets and encourages Chinese regulators to initiate further bond market reforms to continue this positive momentum. The development of bond markets—both government and corporate—is an important part of the financial infrastructure and will contribute significantly to capital allocation efficiency and overall financial market expansion.

Fully functioning, open financial markets and efficient capital allocation depend on the strong foundation of a liquid and transparent government bond market in particular. The benefits of such government bond markets include: benchmark sovereign rates, necessary for pricing other instruments in a healthy financial system, including corporate bonds, bank loans, and derivatives; sound money markets; lower overall systemic risk within the financial system; cost-effective risk management; lower long-term government funding costs; and the development of an institutional savings sector, including pension funds.

In order to establish a strong government bond market, China will need to institute eight fundamental elements: (1) deregulated interest rates; (2) disciplined issuance/reissuance and retirement programs to support large, deep benchmark issuances; (3) a liquid “classic” bond repurchase (repo) market; (4) a liquid and active government bond futures market; (5) a broad range of liquid over-the-counter (OTC) derivatives contracts and exchange-traded derivatives contracts; (6) high quality, efficient, and cost effective electronic price discovery, trading, and settlement platforms; (7) market-friendly regulations and taxes; and (8) a broad and active domestic and foreign investor base. Most of these requirements are addressed below.

A lack of market-driven capital allocation, including a loan and deposit rate regime, and the absence of true national treatment for foreign-invested institutions in China's nascent bond markets—especially with respect to underwriting, market making, derivatives trading with corporate clients, and bond settlement agent licensing—remain significant obstacles to China's further progress. Detailed discussion follows of the technical aspects crucial

to functioning government bond markets, the underlying prerequisites of sound financial markets in general, China's recent accomplishments with respect to bond market development, and other issues for further consideration.

Significant Developments

Bond Volume Growth

Corporate and government bond volumes grew throughout 2011. Although China has become the largest corporate bond market in Asia, excluding Japan, corporate bonds still account for a relatively small portion of the total sector funding. At the end of 2011, China's interbank market bonds outstanding totaled approximately RMB 7.8 trillion (US \$1.24 trillion), consisting of RMB 1.7 trillion (US \$267.7 billion) in government bonds (21.8 percent), RMB 1.4 trillion (US \$220.5 billion) in central bank bills (17.9 percent), RMB 2.5 trillion (US \$393.7 billion) in financial institutional bonds (32.1 percent), and 2.2 trillion (US \$315 billion) in non-financial corporate debt financing instruments (28.2 percent).

Underwriting

In 2011, the National Association of Financial Markets Institutional Investors (NAFMII)—a People's Bank of China (PBOC)-sponsored entity with characteristics including those of a quasi-regulatory, self-regulatory organization, a financial services holding company, and a trade association—was instrumental in designing a market-oriented bond underwriting entry-and-exit mechanism through a process that included consultation with member committees. In principle, these new criteria should allow both local and foreign-invested banks to underwrite bonds in China. This will help establish greater clarity and simplify the process for foreign-invested bank participation as sub-underwriters initially, and later as lead underwriters, for commercial paper (CP) and medium-term note (MTN) bond markets.

However, in practice, as of late 2011, and despite the presence for many years in China of world leaders in bond underwriting, only one foreign-invested bank has been granted underwriter status as part of this process. As described below in the Specific Issues section, the new

债券市场

引言

中 国美国商会对中国建立更加开放和透明的金融服务市场所做出的不断努力表示赞赏，并鼓励中国监管机构进一步开展债券市场改革，以继续推进积极的发展势头。债券市场（兼含政府债券和企业债券）的发展是金融基础设施的重要组成部分，对资本配置效率与金融市场的整体扩展至关重要。

在市场运行完善的情况下，公开的金融市场以及有效的资本配置的实现，特别取决于有一个流动性良好和透明的政府债券市场作为坚实基础。该政府债券市场带来的好处包括：建立主权信用评级，在健康的金融系统内为其他金融工具（包括企业债券、银行贷款和衍生产品）提供定价依据；健全的货币市场；降低金融体系系统性风险；减少风险管理成本；减少政府长期融资成本；促进包括养老保险基金在内的机构性投资行业的发展。

为构建强大的政府债券市场，中国需具备八项基本要素：(1) 解除对利率的管控；(2) 规范化的发行 / 再发行计划与退休计划以便为大规模的、交易活跃的基准发行提供支持；(3) 流动性良好的“经典”债券回购市场；(4) 流动性良好、交易活跃的政府债券期货市场；(5) 范围广泛、流动性良好的衍生产品场外交易市场和衍生产品证券交易所交易市场；(6) 优质、高效且具经济效益的电子价格发现、交易和结算平台；(7) 有利于市场运作的法规和税收；及 (8) 广泛和活跃的国内外投资者群体。上述大部分内容将在下文讨论。

处于发展初期的中国债券市场中，目前资本配置市场程度较低、缺少一个存贷款利率体系、以及没有给予外资真正国民待遇，特别是在承销、做市、与企业客户进行衍生产品交易以及债券结算代理许可证等方面。这些都严重地阻碍着中国的进一步发展。下文将进一步讨论对于发挥政府债券市场作用至关重要的技术环节、一般情况下健全

金融市场的必要前提、中国最近在债券市场发展方面取得的成就、以及其他待考虑的问题。

重大进展

债券规模的增长

企业债券与政府债券规模在 2011 年全年保持增长。虽然中国已经成为亚洲（除日本外）最大的企业债券市场，但企业债券在债券融资中仍仅占相对较小的比重。截至 2011 年底，中国银行间市场发行在外债券总额约为 7.8 万亿元人民币（1.24 万亿美元），其中政府债券为 1.7 万亿元人民币（2677 亿美元）占比为 21.87%；央行票据为 1.4 万亿元人民币（2250 亿美元），占 17.9%；金融机构债为 2.5 万亿元人民币（3937 亿美元），占 32.1%；非金融企业债务融资工具为 2.2 万亿元人民币（3150 亿美元），占 28.2%。

承销

2011 年，中国银行间市场交易商协会（以下简称“交易商协会”）作为由中国人民银行主管的一个具有准监管、自律组织、金融服务控股公司及行业协会等特征的机构，在咨询其专业委员会、设计市场化债券承销业务的准入和退出机制方面发挥了重要作用。原则上讲，这些新的标准应当允许中资和外资银行都能在中国参与债券承销业务。这将有助于建立更加明确的标准并简化相关流程，使得外资银行能够在商业票据和中期票据债券市场中，起初以分销商的身份然后以主承销商的身份实现参与。

尽管世界主要外资银行已进入中国多年，但事实上，截至到 2011 年年底，仅有一家外资银行在此过程中被授予了承销商资格。正如下文“具体问题”部分中所描述的，新标准仅仅是朝着与发达金融市场所采用的方法一致，建立发行人选择和委任承销商流程所迈出的第一步。

criteria serve only as a first step toward developing an issuer-driven underwriter selection and appointment process consistent with the approach taken in advanced financial markets.

Retiring and Reissuance Process

In leading government bond markets, typically multiple issues of similar maturities exist, of which the most actively traded in a given maturity is called an “on-the-run” issue. Government bond markets maintain on-the-run issues to meet buyer and seller demands by maintaining deep, liquid issues. The depth is created by consistently reissuing targeted existing issues and retiring illiquid existing issues. An effective bond market management strategy creates deep on-the-run benchmark issues of maturities across the yield curve and contributes to overall market liquidity.

We applaud the Ministry of Finance (MOF) for increasing reissuances in 2011 which created deeper benchmark on-the-run government bonds and improved liquidity at certain points along the yield curves. In addition, we commend PBOC and MOF for publishing rules in April 2011, effective June 1, 2011, requiring market makers to show two-way quotes on the four nearest issued government bonds for each benchmark tenor, a move that also enhances market liquidity.

A Broad Investor Base

Over the course of 2011, PBOC steadily increased to around 40 the number of foreign-invested banks with limited individual quotas to invest directly in the over-the-counter (OTC) interbank bond market using offshore RMB funds, including one central bank as of November 2011. Though undisclosed, the size of the individual quotas is understood to remain modest; however, the aggregate sum is not insignificant. In December, the China Securities Regulatory Commission (CSRC), PBOC, and the State Administration of Foreign Exchange (SAFE) jointly announced a pilot program to allow RMB Qualified Foreign Institutional Investors (RQFIIs) to invest offshore RMB into mainland capital markets. By February 1, 2012, 21 RQFII licenses were reportedly issued with a combined total quota of RMB 20 billion (US \$3.17 billion). Of each RQFII’s individual quota, at least 80 percent must be invested in fixed income products, including on the OTC interbank bond market. China should build upon this progress in creating greater access for foreign investors in China’s markets, as described below in the Specific Issues section.

Specific Issues

AmCham China encourages China to use this positive momentum to eliminate the remaining impediments to bond market development and raise domestic bond markets to new levels of liquidity and efficiency.

National Treatment and Full Market Access for Foreign-Owned Institutions

As a fundamental issue that relates directly to most if not all of the issues covered in this chapter, China should treat foreign-invested and domestic banks and securities houses equally with regard to licensing, corporate form, regulation, and permitted products and services, allowing them to compete fully in domestic markets. Restricting national treatment impedes innovation, market development, and economic activity, among other things. Without providing such consistent and equal access to the marketplace, China remains vulnerable to increased criticism that its financial industry policies are protectionist and aimed at excluding foreign-invested institutions from its financial markets. Fuller engagement by international financial services companies will contribute to the further development of Chinese domestic markets through the transfer of best practices.

In particular, significant restrictions exist with respect to setting up wholly foreign-owned subsidiaries in China, and many financial sector businesses are required by regulation to enter into joint ventures with local partners and are subject to a limited scope of activity. Foreign-invested firms hoping to expand activities and branch networks or offer new products also face a complex, slow, opaque, and often futile approval process. In addition to the expanded expertise and technology transfer that inevitably follow broader participation by foreign-invested institutions, China’s financial services industry development and global financial market integration will also be accelerated.

AmCham-China urges China to grant foreign-invested firms full national treatment and market access and to maintain a level playing field for all businesses through efficient and transparent administrative processes.

Interest Rate Liberalization

China’s primary bond markets are among Asia’s largest, but the secondary markets are largely illiquid. Since PBOC currently sets interest rates through an administrative process, bonds are issued with coupons at negative real interest rates. China’s controlled interest rate regime also distorts primary market underwriting, because risk cannot be properly priced and issues are little more than private placements. AmCham China suggests the gradual liberalization of interest rates so that active trading can develop in true secondary markets based on a robust yield curve. The resulting enhancement of debt capital markets will allow banks to establish a market culture better equipped to address credit risk and better positioned to allocate capital efficiently.

回收与再发行流程

在领先的政府债券市场中，往往有发行时间不同、期限相似的债券存在。其中，同一期限的债券中交易最活跃的被称作“指标”（on-the-run）债券。政府债券市场通过不断新发债券来满足买方和卖方的需求，保持债券市场的规模和流动性。这种规模是通过定期再发行特定期限的现有债券，并回收流动性较差的现有债券来实现的。通过发行处于收益率曲线不同点位的指标债券，有助于提高市场整体流动性及有效扩大债券市场的深度。

我们对财政部在 2011 年提高了再发行数量表示赞许，这一举动扩大了指标债券的规模，同时增强了收益率曲线上某些点的流动性。此外，我们赞赏中国人民银行与财政部在 2011 年 4 月颁布了相关规定，要求做市商对每一关键期限下最新发行的 4 只政府债券进行双边报价，这一举措将于 2011 年 6 月 1 日生效，届时会增强市场流动性。

广泛的投资者群体

2011 年期间，中国人民银行逐步将能够以各自有限的配额，使用离岸人民币基金，参与场外交易的银行间债券市场的外资银行数量扩大到 40 家（截止到 2011 年 11 月，其中包含一家中央银行）。尽管具体数目还未公布，每家银行的额度规模不大，但其总计数目却相当可观。中国证监会、中国人民银行、国家外汇管理局在 12 月联合发布了一个试点办法，允许合格境外机构投资者用离岸人民币投资大陆境内资本市场。据报道，截止到 2012 年 2 月 1 日，获批的 21 家合格境外机构投资者的投资总额为 200 亿元人民币（31.7 亿美元）。其中每一家合格境外机构投资者必须将其额度的 80% 投资于固定收益产品，包括投资于场外交易的银行间债券市场。中国应该在此试点项目进展的基础上为投资中国市场的外国投资者创造更多的准入机会，下文“具体问题”部分还将对此问题进行讨论。

具体问题

中国美国商会鼓励中国利用此积极势头来消除债券市场发展中的遗留障碍，并将国内债券市场的流动性和效率提升到一个新水平。

对外资机构的国民待遇和完全市场准入

中国应当在发放许可证、企业组建方式、监管以及允许经营的产品和服务方面，对于外资银行、中资银行及证券公司一视同仁，使他们能够在同等条件下竞争，这是

一个直接关系到本章所涉及到的大部分（如果不是全部）内容的根本性问题。限制国民待遇会阻碍创新、市场发展和经济活动等等。若不对市场提供这种公平一致的参与渠道，中国将可能面临越来越多的指责，认为其金融行业政策具有保护主义色彩并且旨在将外资银行阻隔在中国金融市场大门之外。国际金融服务企业的全面参与将有助于中国国内市场通过掌握最佳实践从而获得进一步的发展。

特别是，外资公司在中国设立全资子公司方面面临着重大限制。根据相关法规规定，许多金融企业都必须通过与本地合作伙伴组建合资公司才能开展业务，并且其业务活动范围有限。此外，外资公司如果希望扩展其业务活动和分支网络并且提供新的产品，则将面临复杂、缓慢、不透明且通常是无益的审批流程。外资机构更广泛的参与将推动专业知识拓宽和技术转移，而这也加速了中国金融服务行业的进一步发展，使中国尽快融入到全球金融市场之中。

中国美国商会敦促中国授予外资企业完全的国民待遇和市场准入，并通过有效、透明的行政流程为所有企业提供一个公平的竞争环境。

利率自由化

中国的一级债券市场规模位于亚洲前列，但其二级市场却非常缺乏流动性。由于目前利率由中国人民银行通过行政手段设定，因此债券发行的票面利率实际为负利率。中国的利率管制也扭曲了一级市场的发行，因为价格不能恰当地反映风险，发行与非公开配售相差无几。中国美国商会建议逐步放开利率，以便二级市场能基于健全的收益率曲线实现活跃的交易。由此而强化的债券资本市场将使银行建立起一种能更有效地应对信贷危机，并更高效地实现资本配置的市场文化。

承销的市场化选择过程

尽管外资银行可以在中国场外交易的银行间市场对商业票据和中期票据进行交易，但它们进入票据承销市场的机会仍很有限。正如上文“重大进展”部分中描述的，交易商协会建立了更为市场化的债券承销业务的准入和退出机制。中国美国商会赞赏交易商协会在解决该问题上作出的努力。但是，在交易商协会现有的框架下，外资银行可能需要在提供数年的分承销商服务并满足附加标准之后，才能获考虑授予完全的承销资格。

此外，虽然草拟的定性和定量标准表面上看似中立，

Market-Driven Selection Process in Underwriting

Although foreign-invested banks can trade CP and MTN on the OTC interbank market in China, they still have very limited access to the market for underwriting these issues. AmCham China commends NAFMII's attempts to resolve this issue by designing a more market-oriented bond underwriting entry-and-exit mechanism, as described above in the Significant Developments section. However, under NAFMII's current proposal, it will still take years of service as a sub-underwriter in China and the meeting of additional criteria before a foreign-invested bank can be eligible for full underwriter status.

In addition, while the draft qualitative and quantitative criteria give the appearance of being neutral, in practice these requirements will exclude many foreign-invested banks. In fact, the new rules, in addition to amounting in practical terms to protectionist measures, establish a system whereby the regulator sets criteria for underwriter selection, an approach in stark contrast to standard best practices applied to issuers in developed financial markets. In these mature markets, issuers select lead underwriters, and lead underwriters select sub-underwriters with issuer approval based on commercial criteria, regardless of a bank's national origin. Foreign-owned banks, including Chinese banks, are eligible to underwrite issues in developed economies across the world, notably in the US, UK, and elsewhere in the EU. In such jurisdictions, banks selected through a commercial process need only meet minimum standard requirements, such as holding a specific banking license, retaining qualified staff, or having appropriate risk management systems, in order to act as an underwriter.

Allowing experienced foreign-invested banks into China's underwriting market will offer domestic issuers more choice and will lead to more cost-effective options, lower funding costs, raised disclosure standards, and expanded distribution channels, particularly when lead underwriter status becomes available. The broader competition and cooperation among underwriters typical of leading global markets will improve the functioning of the Chinese market and raise the quality of service to clients.

Debt-to-Net-Asset Ratio Limits

Although the corporate MTN and CP markets in China have continued to grow throughout 2011, the 40 percent debt-to-net-assets ratio limit for a corporate to issue debt hinders the development of the corporate bond market. It limits the activities of creditworthy corporate issuers, in turn diminishing the underwriting market and the transactions derived from the corporate credit market. Such a debt-to-net-assets ratio limit is unusual in the context of disclosure-based international bond markets. AmCham China encourages reconsideration of this limitation before it becomes a major impediment to the corporate bond market in China.

Retiring and Reissuance Process

Although China has made notable progress as described in the Significant Developments section above, China's government bond issuance program still lacks deep and liquid on-the-run benchmark bonds across the maturities spectrum, contributing to an uneven and inefficient yield curve. We encourage China to continue recent progress in increasing reissuances, and reinforce this activity through the targeted retiring of off-the-run government bonds. Such an approach would build market confidence in the consistent availability of such reference benchmarks, which in turn would enhance market liquidity in general.

Creditors' Rights and Bankruptcy Procedures

Overall, the rules governing creditors' rights in bankruptcy must be strengthened and improved in order to ensure market participant confidence in the enforceability of transactions and contracts. This is particularly important for those transactions and contracts related to repos, futures, and other derivatives typically traded under master agreements and often secured by collateral.

For example, under current Chinese bankruptcy law, an insolvency administrator has the right to decide whether to set aside or uphold any executory contract or disregard any contractual termination rights. The exercise of this discretion is commonly referred to as "cherry picking."

Another problem has to do with the enforceability of close-out netting for repo and derivatives transactions between counterparties, which is addressed with legal certainty in most other financial markets. Globally, such transactions are generally traded under internationally recognized master agreements, such as the Global Master Repurchase Agreement or the International Swaps and Derivatives Association master agreements. Under these agreements, if one party to a repo or derivatives transaction goes bankrupt, all transactions documented between the parties under the relevant agreement will be terminated by netting all transactions under which funds are owed to or due from the counterparties. Through this approach, the amounts owed by and due to each of the parties under each and every relevant transaction are calculated, resulting in the payment of one net amount.

Under the current system in China, Chinese banks seem to rely on implicit government guarantees as the primary form of risk management when dealing with each other. This creates systemic risk and leaves the derivatives market dangerously exposed in the event a Chinese bank defaults and the government does not step in to cover the obligation. Foreign-invested banks cannot rely on this implicit guarantee and as a result must reduce the capital they provide to the market.

Clarification through unambiguous legislation, written

但在实践中这些要求将导致许多外资银行被拒之门外。事实上，除了形成实际上的保护主义措施之外，这些新规则建立了一种特定体系，在该体系中监管机构将对承销商的遴选设定标准。这种做法与发达金融市场中发行人遵循的国际惯例截然不同。在成熟市场中，发行人负责选择主承销商，主承销商则基于商业标准并经发行人批准来选择分销商，而不涉及相关银行的国籍。包括中资银行在内的所有外资银行都有资格在世界发达经济体中开展承销业务，尤其是在美国、英国以及其他欧盟国家。在这些司法管辖区中，通过商业程序获选的银行只需满足相关的最低标准，如：拥有特定的银行业许可证、符合资格的员工以及适当的风险管理系统，就能担任承销商。

如果允许富有经验的外资银行进入中国承销市场，尤其是当外资银行有资格以主承销商身份进入市场时，将为国内发行人提供更多选择，并带来更具经济效益的选择、更低的融资成本、更高的信息披露标准以及更多配售渠道。全球领先市场所特有的承销商之间更广泛的竞争与合作模式，将帮助改善中国市场的运行，并提升客户服务的质量。

净资产负债率限制

尽管中国的企业中期票据和商业票据市场在 2011 年全年持续增长，但要求企业必须保持不超过 40% 的净资产负债率才可发行债券的规定阻碍了企业债券市场的发展。此规定也限制了信誉良好的发债企业的相关活动，最终将削弱承销市场以及企业信贷市场中的交易活动。这种对于净资产负债率的限制在以信息披露为本的国际债券市场上是不多见的。这种限制性规定有可能成为中国企业债券市场发展的主要障碍，中国美国商会鼓励在情况发生前，对该限制规定予以重新考虑。

回收和再发行流程

正如之前在“重大进展”部分中所描述的，中国在债券再发行数量方面已经取得了显著进步，但其政府债券发行计划在整个期限范围中仍缺乏交易活跃、流动性良好的指标政府债券，从而导致了收益率曲线的参差不齐与低效率现象。我们鼓励中国继续提高债券再发行数量，并通过定向回收已发行一段时期的新债券来加强这一举措。这种方法能通过稳定持续地提供指标债券参考基准，树立市场信心，从而增强市场整体流动性。

债权人权利和破产程序

总体而言，必须加强和改善适用于破产事件中债权人权利的规则，以确保市场参与者对于交易及合同强制性的信心，尤其是对于那些根据主协议并有质押物的回购、期货和其他衍生产品的交易及合同。

例如，根据目前的中国破产法，破产管理人有权决定撤销或继续履行现行合同，或决定是否不理睬合同所规定的任何终止权。该酌情选择权的操作通常被称为“摘樱桃”。

另一个问题与交易对手方之间回购和衍生产品交易的净额结算的强制性有关，而这一点在大多数其他金融市场都有明文规定。在国际上，此类交易往往根据全球回购主协议（GMRA）或国际掉期及衍生工具协会（ISDA）主协议等国际认可的主协议来进行。在这些协议的规定下，如果回购或衍生产品交易的一方遭遇破产，则交易双方的所有交易都必须实施净额结算，即计算双方应收应付资金。通过该方法，可以计算出每宗相关交易下各方的应收应付金额，从而得出应付净额。

在当前系统下，中资银行在相互交易时，似乎将政府的隐含担保作为其主要的风险管理形式，这样一旦某家中资银行发生违约而中国政府并不介入承担责任时，衍生产品市场就会面临重大的系统风险。外资银行不能依靠这种隐含担保，因此必须降低其注入市场的资本金额。

如果通过明确立法、成文的司法解释或行政规定净额清算的可强制性、抵押品的使用以及“摘樱桃”问题（有合格的金融协议时），则将能增强中国国内协议的可靠性。中国美国商会鼓励监管机构对该条例和其他单独法规重新予以考虑和拓展，以解决净额清算和“摘樱桃”的问题。

“经典”政府债券回购市场

“经典”债券回购市场是指一个特定体系，需要为风险敞口提供保证金，而且债券所有权会转移。这使得市场参与者能够将手中的债券用于其他目的，例如再回购、回补空头头寸、融券或是用作抵押。因此，传统回购协议中的标的债券能产生源源不断的市场流动性。

尽管已经取得了一些成果，但对于在中国实现一个流动性充足且交易活跃的传统回购市场来说，难度依然较大。回购交易规模在 2011 年持续增长，但其交易属于较短品种，85% 被用作抵押品，而且债券所有权没有转移，这意味着这些回购并未发挥真正作用。由于管理担保准备金能

judicial interpretation, or administrative regulation on the enforceability of close-out netting, the use of collateral, and the disapplication of cherry-picking powers in the context of qualified financial contracts, would strengthen Chinese domestic agreements. AmCham China encourages regulators to reinvigorate consideration and development of this or other stand-alone regulations to resolve netting and cherry-picking issues.

“Classic” Government Bond Repo Market

A “classic” bond repurchase (repo) market refers to a system within which margining of exposures is standard practice and the bond title is actually transferred as part of the agreement. This allows market participants to use the bonds they hold for additional purposes, such as further repos, covering short positions, securities lending, or collateral. As a result, the underlying bonds in classic repo agreements continue to generate market liquidity.

Although some progress has been made, a fully liquid and active classic repo market remains elusive in China. Repo transaction volumes grew throughout 2011 but remained relatively short term, with as much as 85 percent being pledged as security and involving no title transfer, meaning not functioning as true repos. The inability to manage collateral margins continues to inhibit the development of term repos (i.e., those longer than overnight). China’s bond market would be better served by a repo market that more closely mirrors the global best practices applied under the classic approach.

Chinese Master Repo Agreement

NAFMII took an important step toward development of a classic repo market in 2010 by producing an updated draft Chinese master repo agreement (CMRA). Once approved, the CMRA will support the further development of a classic repo market, including term repos, and also significantly facilitate repo negotiations.

AmCham China urges Chinese regulators to finalize the CMRA as soon as possible in 2012, as NAFMII’s document incorporates the classic repo approach and will dramatically enhance repo market development. Such a move would lay the foundation for a solid term repo market, extend liquidity across the government bond yield curve, and make more precise risk management hedging transactions possible.

Business Tax Rules

Other impediments to the development of a classic term repo market include accounting and tax rules. As China’s financial markets mature and transactions across the spectrum of repos, futures, interest rate derivatives, and bond trading become more interdependent, the failure of tax rules to keep pace with the industry creates concerns for

domestic as well as foreign-invested banks.

Business tax rules, which segregate transactions into four separate categories (foreign exchange, stocks/equities, bonds, and other), were developed long before financial markets reached their current level of sophistication. As the profit margins on the overall transactions are generally quite thin, the resulting gross tax on a transaction as a whole may be close to or even exceed the net profit, discouraging hedged transactions or relative-value trading.

Administration of these business tax rules should be amended as soon as possible to eliminate the four transaction categories and allow net gains and net losses to be carried forward. This approach would reflect modern business practices and promote market liquidity. Although a value-added tax pilot program was launched in January 2012 in Shanghai for specific industries, it may take years to implement comprehensively. In the meantime, we urge that China address these business tax rule issues without further delay.

Government Bond Futures Market

An active, liquid, and closely supervised government bond futures market would allow participants to hedge positions quickly and reduce risk more effectively, while at the same time deepening the underlying bond and derivative markets in China. Government bond futures markets are essential for the efficient functioning of market makers and primary dealers and are a key component of developed markets in general.

In early 2012, unconfirmed press reports indicated that the China Financial Futures Exchange had begun preparations for a pilot program to reintroduce the trading of government bond futures for a select group of financial firms, with a formal launch of the product anticipated by mid-2012. AmCham China welcomes this news and encourages China to re-launch a government bond futures market with regulatory, supervisory, and technological infrastructure. The growth of a classic term repo market in China will also require the development of a government bond futures market.

A Broad Investor Base

The existence of a broad and active investor base with foreign investor participation generates market activity and liquidity. China’s effort to develop an offshore RMB market supports the expansion of a foreign investor base in the longer term and creates additional channels through which such investors can participate more meaningfully in the domestic bond market.

As described in the above Significant Developments section, PBOC made further progress in 2011 and early 2012 by increasing the number of foreign-invested banks with limited individual quotas to invest directly in the OTC

力的不足，遏制了定期回购（即期限长于隔夜的回购）的发展。只有当回购市场能够按照经典回购市场采用的国际惯例运作，才能为中国债券市场提供更好的支持。

中国银行间市场债券回购交易主协议

交易商协会在 2010 年完成了《中国银行间市场债券回购交易主协议》（以下简称“回购交易主协议”）修订草案，从而朝发展经典回购市场迈出了重要一步。回购交易主协议一旦获得批准，将有利于经典回购市场（包括定期回购）的进一步发展，同时也将大大促进回购协商。

中国美国商会敦促中国监管机构在 2012 年尽快完成回购交易主协议，原因是交易商协会的文件中包含了经典回购方法，并将大大推动回购市场的发展。该举动将为形成一个坚实的定期回购市场打下基础，有助于扩展整个政府债券收益率曲线上的流动性，并使更精准的风险管理对冲交易成为可能。

营业税规则

其他阻碍传统定期回购市场发展的因素还包括会计与税收准则。随着中国金融市场逐渐成熟，回购、期货、利率衍生产品以及债券交易变得更加相互依赖，税务规则未能与行业发展保持同步的情况令中资和外资银行感到担忧。

将交易划分为四类（外汇交易、股票交易、债券交易及其他交易）的营业税规则是在金融市场达到当前成熟水平很早之前制定的。由于总体交易的利润率相当低，所以对一宗交易征收的税金总额可能会接近或甚至超出其净利润，从而对对冲交易和相对价值套利交易形成阻碍。

应当尽快对这些营业税规则的实施进行修订，以取消原先的四个交易类别，并允许净收益和净亏损的结转。该方法将会反映现代商业实践并促进市场流动性。尽管增值税试点项目已于 2012 年 1 月在上海的部分行业展开，该试点项目的全面施行则可能需要几年时间。与此同时，我们敦促中国不再拖延解决营业税领域存在的问题。

政府债券期货市场

一个交易活跃、流动性良好和受到密切监督的政府债券期货市场将使参与者能够迅速对冲头寸并更有效地降低风险，同时帮助深化中国的标的债券与衍生产品市场。政府债券期货市场对于做市商和一级市场交易商有效发挥职能来说十分重要，并且在总体上是发达市场的一个重要组成部分。

2012 年年初，据相关未经证实的新闻报道透露，中国金融期货交易所已开始准备在一批选定的金融企业中开展重新引入政府债券期货交易的试点项目，相关产品将在 2012 年中期正式推出。中国美国商会对此新闻报道所披露的做法表示欢迎，并鼓励中国重启具有监管、监督和技术基础设施的政府债券期货市场。同时，中国经典定期回购市场的成长也需要政府债券期货市场的发展。

广泛的投资者群体

有外国投资者参与在内的广泛、活跃的投资者群体会给市场带来活跃度和流动性。中国发展离岸人民币市场的举措将在更长时期内支持外国投资者群体的扩展，并且将会创建一些其它渠道，使得这些投资者能够更有意义地参与中国债券市场。

正如在上文“重大进展”部分中所描述的，中国人民银行在 2011 年及 2012 年年初继续拓宽投资者群体，增加了能够以各自有限的配额，使用离岸人民币基金，直接投资于场外交易的银行间债券市场的外资银行的数量，同时也启动了合格境外机构投资者计划的试点项目。中国应该通过扩大和增加现有投资渠道数量，以及通过增加投资额度的规模或彻底取消投资额度，来保持这一良好发展势头。至少，从最初批准外国投资者额度规模 300 至 500 亿美元（1900 至 3200 亿元人民币），逐步增加直接投资于场外交易的银行间债券市场的额度规模，将是朝着正确方向迈出的一步。

资产证券化市场

目前，中国有一个巨大的非正式且缺乏监管的证券化市场，信托公司在其中担当着资金提供者与借贷者之间的中介。在国际上，监管制度完善和有效的证券化市场被视为有效的融资机制。建立一个具有明确、统一和强制性规则以及周全信息记录和披露要求的正式证券化市场，则能更好地化解银行、监管机构和投资者的顾虑，同时可被用来推动政府的相关政策，尤其是经济适用房政策。

监管流程和通知

中国的监管和司法不确定性对于外资金金融机构构成严重障碍，并且实际形成了一个非关税贸易壁垒。监管透明度和连贯性、市场征求意见流程、有关新规则的充分通知以及给予公众评论的时间，这些对于完善的金融市场来说都是至关重要的。

interbank bond market using offshore RMB funds and by initiating the RQFII scheme pilot program. China should continue this momentum by expanding and increasing the number of existing investment channels and increasing the size of, or eliminating altogether, investment quotas. At a minimum, increasing the size of quotas for direct investment in the OTC interbank bond market, starting initially with quotas of US \$30-50 billion (RMB 190-320 billion) for approved foreign investors, would be a step in the right direction.

Securitization Market

At present, China has a significant informal and unregulated securitization market, through which trust companies act as intermediaries between fund providers and borrowers. Well-regulated and effective securitization markets are internationally recognized as efficient financing mechanisms. The establishment of a formal securitization market, with clear, consistent, and enforceable rules and sound documentation and disclosure requirements, would better address the concerns of banks, regulators, and investors. Further, it could be employed to aid government policy to promote low-cost housing, among other things.

Regulatory Process and Notification

China's regulatory and jurisdictional uncertainty is a serious impediment for foreign-invested financial institutions, effectively serving as a non-tariff trade barrier. Regulatory transparency and consistency, market consultation processes, sufficient notification of new rules, and time for public comment are vital to well-functioning financial markets.

A large number of regulatory and quasi-regulatory bodies govern the financial services sector in China (e.g., PBOC, SAFE, MOF, SAT, NDRC, CSRC, CBRC, CIRC, and NAFMII), each with its own priorities and processes. Notification of regulatory changes across these institutions is inconsistent, and the complex approval processes for new products or licenses continue to suffer from the absence of a coordinated regulatory approach. Also, rules are often unclear, reasons for denial or approval are not widely disclosed, and in some cases the rules themselves are not publicly available. At times it is not even clear which regulator's approval is required, and sometimes regulators themselves disagree about approval processes or procedures.

AmCham China urges regulators to establish a coordinated, clearly defined, and efficient regulatory process.

International Standard Commercial Practices

Additional limitations are imposed on the market by unusual incentive programs or other approaches to licensing that are not international standard practice. Two

examples include Chinese market-maker status and bond settlement agent licensing in derivatives trading.

Chinese Market-Maker Status and Derivatives Trading

Derivatives trading with corporate clients in China requires multiple regulator licenses and approvals, a privilege available on a very limited basis. One of the eligibility requirements is service as a PBOC-approved market maker. In the world's leading financial centers, market makers are financial institutions that offer two-way pricing quotes to buyers and sellers for various products, currencies, or commodities. There is simply no rationale for linking derivatives trading with corporate clients to market-maker status. In fact, this linkage impedes the growth and liquidity of the derivatives market. US, UK, and EU regulators do not require market makers to hold specific market-maker licenses; however, in China, PBOC grants such status and offers derivatives trading privileges to offset the burdens of market making. AmCham China urges regulators to abandon this linkage.

Bond Settlement Agent Licensing and Derivatives Trading

The only other way to trade derivatives with corporate clients in China is to acquire a Level "A" Bond Settlement Agent License, also granted by PBOC. In 2011, two foreign-invested banks succeeded in obtaining such licenses, and we appreciate this development. Nonetheless, clearer criteria and explanations for disqualifications would promote a better understanding of this process. Ultimately, AmCham China urges PBOC to allow participation by foreign-invested banks in expanded derivatives trading.

Conclusion

China appears well positioned to use its positive momentum to address these issues and bring domestic bond markets in line with globally accepted and tested practices. This will allow harmonization between Chinese and international bond markets and move China firmly toward full capital account convertibility in the future. Significant progress has already been made, although further advancement continues to be hindered by discriminatory rules and policies that disadvantage foreign-invested banks. AmCham China supports China's efforts to expand domestic bond markets in line with leading financial markets.

Recommendations

- **Support national treatment for all banks and securities houses, including by allowing foreign-invested banks to compete fairly and fully in domestic markets (particularly in the areas of underwriting and derivatives trading) and**

在中国，有大量监管机构和准监管组织对金融服务领域实施管制（如中国人民银行、国家外汇管理局、财政部、国家税务总局、发改委、证监会、银监会、保监会和交易商协会），且每个监管机构都拥有各自的重点事项和流程。这些监管机构下发的有关监管变化的通知是不一致的，同时针对新产品和许可证的复杂审批程序仍然缺乏协作性监管方法。此外，规则常常含糊不清，审批遭拒或通过的原因并不广泛披露，并在某些情况下，规则本身也未公之于众。有的时候，甚至不清楚需要获得哪个监管机构的审批，而且有时候监管机构本身对于审批过程或审批程序意见也不一致。

中国美国商会敦促监管机构建立一套协作性强、规定明确及有效的监管流程。

国际标准商业惯例

在发放许可证方面有一些特别的激励项目或方案造成了与国际惯例相悖的市场限制。其中有包括中国做市商资格和衍生产品交易债券结算代理许可的两个例证。

中国做市商资格和衍生产品交易

在中国，与公司客户进行的衍生产品交易需要由多个监管机构许可和批准，但只有极少数金融机构享有此特权。其中的一个资格要求是要作为中国人民银行批准的做市商。在世界主要金融中心，做市商是能够对买卖双方的各种产品、外汇及大宗商品提供双边报价的金融机构。简单地将与企业客户进行衍生产品交易和做市商资格联系在一起并无理由，这样只会阻碍衍生品市场的发展和流动性。无论是美国、英国或者欧盟市场的监管机构都没有要求做市商必须持有专门的做市商牌照，但在中国，需要由人民银行授予做市商相应资格，并赋予其进行衍生产品交易的特权，以抵销做市负担。中国美国商会敦促监管机构取消这种关联关系。

债券结算代理许可和衍生品交易

在中国，仅有的另一种与公司客户直接进行衍生品交易的方式是获得中国人民银行批准的甲级债券结算代理许可。2011年，有两家外资银行从中国人民银行成功地获得甲级债券结算代理许可，我们对这种进展表示赞赏。尽管如此，更明确的准入要求和对不符合资格的解释将有利于人们对这一批准过程的认识。最后，中国美国商会敦促中国人民银行能够允许外资银行参与更多的衍生产品交易。

结论

中国看来具备良好的条件，能够利用其积极发展势头来解决这些问题，并在国内债券市场采用国际普遍接受并经过检验的惯例，这将促进中国债券市场与国际债券市场的和谐发展，并稳固推动中国在未来实现完全的资本项目可兑换。目前为止中国已经取得了巨大进展，但前进步伐继续受到不利于外资银行的差别性规定和政策的阻碍。中国美国商会非常支持中国为扩大其国内债券市场向主要金融市场看齐所做的各种努力。

建议

- 支持对于所有银行及证券公司的国民待遇，并允许外资银行在中国市场中开展公平的、全面的竞争，尤其是在承销和衍生产品交易领域。取消所有金融服务业领域中对外资所有权的限制。[中国人民银行、交易商协会、银监会、证监会和国务院]
- 针对净额结算的可强制性、抵押品的使用以及破产管理人“摘樱桃”问题的消除，通过明确法规、立法或司法宣告阐明债权人权利。[财政部、中国人民银行、银监会和证监会]
- 发展经典定期回购市场，包括修订阻碍市场发展的现有规定、营业税和会计准则。[交易商协会、中国人民银行、财政部、证监会和国家税务总局]
- 允许外资对政府债券市场进行大规模的直接投资。[中国人民银行和国家外汇管理局]
- 重启具有监管、监督和技术基础设施的债券期货市场。[中国人民银行、财政部和证监会]
- 逐步取消对利率的管控。

removing limits on foreign ownership in all financial services sectors. [PBOC, NAFMII, CBRC, CSRC, and State Council]

- Clarify creditors' rights through unambiguous regulations, legislation, or judicial pronouncements regarding the enforceability of close-out netting, use of collateral, and elimination of cherry picking by insolvency administrators. [MOF, PBOC, CBRC, and CSRC]
- Develop a classic term repo market, including by amending existing regulations, business tax, and accounting rules that inhibit market development. [NAFMII, PBOC, MOF, CSRC, and SAT]
- Allow significant direct investment by foreigners in the government bond market. [PBOC and SAFE]
- Re-launch a bond futures market with regulatory, supervisory, and technological infrastructure. [PBOC, MOF, and CSRC]
- Gradually deregulate interest rates.



具体行业问题

Business Process Outsourcing

Introduction

The outsourcing services industry has benefited from increasing Chinese government support in the past decade. First officially identified by the government in its 11th Five-Year Plan as a priority industry for development, the sector continues to feature prominently in the 12th Five-Year Plan. The industry, encompassing both information technology outsourcing (ITO) and business process outsourcing (BPO), is recognized as a key component in China's long-term strategy to advance economic growth. By strengthening China's capabilities in information technology and business services-related industries and by offering large-scale employment opportunities for graduates, outsourcing can act as a strategic pillar for a more knowledge-based economy.

Continued focus on building a robust and sustainable industry foundation is critical, not only to support the increasing needs of the domestic Chinese market, but also to ensure that China gains a greater share of the booming offshore outsourcing market. AmCham China recognizes and appreciates that the Chinese government has provided a broad range of policies to cultivate growth in the outsourcing industry.

As the market has developed in recent years, however, a number of common critical challenges for service providers increasingly hinder growth. Mature international outsourcing providers play a valuable role in bringing best practices to market, fostering local talent, developing training initiatives, and establishing quality benchmarks. Yet, China's current policies, which restrict flexibility and growth of foreign-invested companies, risk discouraging foreign investment in this sector. Applying less restrictive policies will increase multinational service providers' commitment to China, and thus accelerate the depth of knowledge, management experience, and quality in the market that buyers of BPO services demand.

Additionally, procurement policies that favor domestic companies over multinational providers act as an explicit barrier to market entry and growth. These factors, combined with a lack of uniformity in policy and regulatory implementation across cities, raise serious questions for multinational providers seeking to build a business case for

further investment. These issues are further compounded by the highly fragmented nature of the market, limited buyer demand, talent shortages, and cost issues.

Finally, the current lack of a unified industry voice to engage with the government impedes the development of a channel through which service providers can address the above issues. Formation of an industry-wide trade body would allow both parties to work together in advancing a compelling marketing strategy for China's offshore and domestic outsourcing capabilities.

Significant Developments

1,000-100-10 Project

In 2006, the Ministry of Commerce (MOFCOM) launched the 1,000-100-10 Project with the stated aim of fostering the development of 1,000 domestic enterprises with outsourcing capabilities, encouraging 100 multinational companies (MNCs) to transfer their offshore outsourcing business to China, and developing a base of 10 internationally qualified "model cities" across China as outsourcing hubs.

Many objectives of this project have been achieved. Policies have continued to be issued and updated to create an attractive financial and business framework that encourages further development. Such policies include a wide range of tax incentives as well as financial, intellectual property rights (IPR), human resource, training, business and public services, and infrastructure support to attract providers and in-house shared services support centers. As a result of government efforts, China now boasts over 15,000 registered outsourcing service providers with over 2.8 million employees, and 21 cities have been approved as "model cities for service outsourcing."

Specific Issues

Policy, Geographic, and Market Fragmentation

China's efforts to encourage the development of the outsourcing market, both in terms of the creation of "model cities" and the establishment of thousands of service providers, undoubtedly offers choice. However, the rapid rise in options has also created challenges related to market

业务外包流程

引言

过 去的十年里，中国政府不断加大对服务外包产业的支持力度，使该产业获益。中国政府在“十一五”规划中首次正式将服务外包业列为优先发展产业，在“十二五”规划中继续强调了支持和推动该产业的发展。服务外包业包括信息技术外包和业务流程外包，现已成为推动中国经济增长的长期战略中的一项重要内容。服务外包能够增强中国在信息技术和商业服务相关产业的实力，为大学毕业生提供大规模的就业机会，是中国建设知识型经济的一个战略性支柱产业。

继续努力构建一个健康、可持续的行业基础意义重大，这不仅能够为中国国内市场增长的需求提供支持，还可以确保中国在日益繁荣的离岸外包市场中不断扩大市场份额。中国美国商会承认并赞赏中国政府为培育和发展外包产业所制定的一系列政策。

然而，由于近年来市场的发展，服务外包供应商所共同面临的一系列严重挑战越来越阻碍该产业的发展。成熟的国际服务外包供应商在引进市场最佳实践、培养本土人才、开展培训活动和建立质量标准等方面发挥着重要的作用。但是，目前中国的相关政策却缺乏灵活性，限制外商投资企业的发展，极大地抑制了其对外包产业的投资。放宽对跨国服务供应商的政策限制有利于提升他们在华投资的信心，从而提升中国服务外包市场的知识储备、管理经验和服务质量等这些业务流程外包服务的采购商所要求的市场要素。

另外，那些偏向国内企业，轻视跨国供应商企业的采购政策会对市场准入和发展构成明显障碍。这些因素，加之各城市在政策和法规实施上缺乏一致性，对跨国供应商在华探索成功商业案例，从而加大投资提出了严峻的问题。而该市场高度分割化的特点、买方需求有限、人才匮乏以及成本问题又使得这些问题进一步复杂化。

最后，目前缺少一个向政府沟通行业统一呼声的渠道，阻碍了服务供应商通过这样的渠道处理以上问题。建立一个行业协会将可以使政府和行业双方协调工作，共同制定一个有助于提高中国离岸和本国服务外包能力的令人信服的市场战略。

重大进展

“千百十”工程

2006年，商务部启动了“千百十”工程，该工程的目标是培育1000家中国的服务外包企业，推动100家世界著名跨国公司将其服务外包业务转移到中国，在全国建设10个具有国际竞争力的“示范城市”作为服务外包基地。

该项目的众多目标都得以实现。中国相继出台并完善相关政策，营造具有吸引力的财务和商业框架，以促进进一步发展。上述政策广泛涉及税收激励措施，以及在金融、知识产权、人力资源、培训、商业和公共服务以及基础设施等方面提供支持，以吸引供应商和企业内部共享服务支持中心。在上述政府的努力推动下，中国目前注册登记的服務外包供应商已超过15000家，拥有超过280万员工，同时已有21个城市被批准成为“服务外包示范城市”。

具体问题

政策、地域以及市场分割

创建“服务外包示范城市”，建立数千家服务供应商等促进外包市场发展的努力无疑提供了选择的机遇。但是，选择的突然增加带来市场分割和缺乏统一性的挑战。

为吸引业务，各示范城市之间实际上在相互竞争，纷纷争相出台各自的政策解读和激励措施。但由于缺少协调，各城市未能形成目标行业专业化或各自的价值定位。这就造成服务供应商需要投入大量人力物力开展尽职调查，比较各城市给予的优惠政策，确定开展经营活动的合适地点。另

fragmentation and lack of uniformity.

The model cities are essentially operating in competition with one another and have established varying policy interpretations and incentive options in order to attract businesses. There is a lack of coordination in differentiating the cities to allow targeted sector specialization or value propositions. This imposes significant due diligence efforts and cost on service providers in identifying suitable locations for their individual business needs, as well as in comparing the alternative incentive offerings each city provides. In addition, there is inconsistency in the licensing processing procedures and timeframes presented by each city, adding to the bureaucratic and administrative burden for businesses seeking to expand their footprint across China.

China could look to India as a model for success, where the early formation of an industry-wide trade body and chamber of commerce served as a voice for the industry. Known as the National Association of Software and Services Companies (NASSCOM), the organization serves both domestic and multinational enterprises. It supported the formation of uniform, country-wide policies and implementation procedures in India early in the sector's development. A significant additional benefit that such an organization could provide is the marketing power that a unified industry and government voice of this nature can employ in promoting China's outsourcing offerings.

Added to this overall geographical and promotional fragmentation is the additional burden on outsourcing buyers of identifying suitable providers from the thousands of newly established outsourcing companies. As an emerging market, it is inevitable that there will be dynamic growth of new businesses, but ultimately, industry consolidation would support the emergence of industry leaders that offer high-quality services and build a solid reputation for China and the industry's capabilities.

Incentive Timeframe Limitations

Tax and other financial incentives issued by the Chinese government to cultivate the growth of the outsourcing industry are notably shorter in timeframe than those issued by other countries seeking to attract outsourcing business. Again using India as an example, the various tax incentives and other favorable policies issued by India have been typically 10 to 15 years in length, giving companies entering the market a stable and clear landscape for financial and strategic planning.

It is understood by AmCham China that the Chinese government wishes to retain flexibility in adjusting regulations to support market growth. However, the short time frames (typically five years) of, and regular changes to, these policies and incentives only serve to increase uncertainty. They thereby act as disincentives to multinational providers comparing the investment opportunity of China

versus alternative locations. AmCham China recommends that China lengthen tax and financial incentive timeframes to at least seven to 10 years in accordance with the practices of other countries.

Complex and Ambiguous Licensing and Regulatory Environment

In addition to the lack of uniformity among the model cities, companies also face a wide range of sometimes conflicting ministerial policies and business categorizations. In 2007, and again in 2011, the revised "Guiding Catalogue on Foreign Investment in Industry," jointly issued by China's National Development and Reform Commission and MOFCOM, defined outsourcing as an "encouraged" sector. Its definition covered businesses engaged in "such information technology and business flow outsourcing services as system application management and maintenance, information technology supportive management, bank background service, financial settlement, human resource service, software development, call center, and data processing." Yet a number of these business areas are also subject to restricted or prohibited foreign investment categorizations, particularly in call center and human resources outsourcing.

Indeed, even where an area is explicitly encouraged, the multitude of licensing and accreditation agencies involved is problematic and excessively time consuming for foreign investors. For example, until recently, many foreign-invested businesses experienced delays of over one year in gaining recognition as "advanced technology services enterprises," delaying their ability to access the multitude of positive incentives available to companies that meet this criteria.

The situation is exacerbated by the requirement to again apply for relevant recognition and licenses when an enterprise seeks to expand into additional provinces or cities across China. While the current climate allows for incremental financial advantages to be gained by companies between different local governments, greater uniformity and minimized processing would be more advantageous in the longer term.

AmCham China recommends the creation of either a centralized recognition authority or a uniform approach and improved coordination between local governments in implementing rules and processing procedures related to licensing, accreditation, and incentive application requirements. In addition, AmCham China requests the re-evaluation of restricted and prohibited foreign investment categorizations impacting businesses engaged in call center and human resources outsourcing.

Increasing China's Attractiveness as an Offshore Destination

While China's visibility as an offshore outsourcing destination has increased extensively in recent years, the reality is

外，各城市在许可证发放程序和时间上的规定也各不相同，加重了企业在华跨地区拓展业务的审批和行政负担。

中国可以参考印度模式的成功经验，在行业发展初期就成立一家行业协会和商会，为整个行业代言。这一组织名为全国软件和服务企业协会（NASSCOM），其服务对象既包括本国企业也包括跨国公司，在印度发展外包产业的初期就协助制定统一的全国性政策和实施细则。成立上述组织的另一大益处在于统一行业和政府的声音，并凭借此类组织的营销力量，推进中国服务外包产业。

除了上述在地域和推广促进出现分割外，服务外包采购商面临的另一大问题是数千家新成立的服务外包公司中找到最合适的供应商。在这一新兴市场上，新成立的服务外包企业如雨后春笋般快速成长的局面是不可避免的。但是，最终唯有实现行业整合才能让提供高质量服务的龙头企业脱颖而出，并为中国及中国服务外包业赢得良好声誉。

激励措施的有效期限制

中国政府出台的旨在培育、发展服务外包产业的各项税收和其他财务激励措施的有效期明显短于其他国家类似激励措施的有效期。还以印度为例，该国出台的各种税收激励办法以及其他优惠政策的有效期一般都在10-15年，从而使计划进军该市场的企业能够根据这一稳定且清晰政策环境，制定自己的财务和战略规划。

中国美国商会理解中国政府为了支持市场发展，希望在法规调整上保留一定的灵活性。但目前中国服务外包产业中优惠政策的有效期较短（一般为五年），定期修改相关政策和激励办法只会增加政策的不确定性，也成为跨国企业供应商在比较中国和其他备选国投资机会时的不利因素。中国美国商会建议中国依照其他国家的做法，至少延长税收和财务激励政策的有效期至7-10年。

复杂且模糊的许可和监管环境

除了示范城市之间缺乏一致性外，公司还面临各部委各种政策和业务分类有时互相矛盾的情况。2007年与2011年，国家发展和改革委员会和商务部联合先后两次修订并发布了新的《外商投资产业指导目录》，该目录将服务外包业列为“鼓励”类，根据该目录的定义，鼓励外商投资的服务外包业包括“信息技术和业务流程服务外包，如系统应用管理和维护、信息技术支持管理、银行后台服务、财务结算、人力资源服务、软件开发、呼叫中心和数据处

理等”。但其中部分业务领域，特别是呼叫中心和人力资源外包，也属于限制或禁止外商投资的类别。

事实上，即使某业务领域被明确列为“鼓励类”，外国投资者还需要取得多个政府部门的审批和许可，而且申请过程漫长且困难重重。例如，直到最近，很多外商投资企业申请“技术先进型服务企业”认定时都经历了一年多的拖延，导致他们迟迟无法取得达到要求既可享有的各种优惠待遇。

还有规定要求，企业若计划将业务拓展至中国其他省份或城市，必须再次申请相关认定和许可，这一要求使得问题变得更为难办。尽管目前的环境能够使企业根据地方政府不同的激励政策措施获得更多财务优惠待遇，但从长期上看，加强各地政策间的一致性、减少行政程序更为有利。

中国美国商会建议建立一家中央级认定机构或统一程序，加强各地方政府在规则实施，以及许可、认证和优惠待遇申请的处理程序上加强协调。另外，中国美国商会建议重新评估对外国企业投资呼叫中心和人力资源外包领域进行限制和禁止的产业分类。

提高中国作为离岸服务外包目的地的吸引力

尽管近几年中国作为离岸服务外包目标国已经逐步得到广泛关注，却留下了服务文化淡薄以及能力强的合格供应商数量有限的负面口碑，需要对此加以消除。虽然很多跨国公司考虑选择中国作为其服务外包的供应国，但他们所承诺的数量和规模都很小，且与其他市场相比，参与范围也很有限。

为了吸引更多的企业将服务外包给中国的供应商，中国市场应该着重解决以下重点问题：

- 中国政府应继续加强培养员工的外语能力，尤其是英语水平；
- 高级人才和管理技能缺乏，且获得上述技能人才的成本越来越高；
- 知识产权执法不利的印象；
- 需要一个更先进的数据安全体系，提高对外商投资供应商数据托管管理法规的灵活性；
- 外汇管理体系过于复杂的负面看法；以及
- 劳动法规体系缺乏灵活性，不能满足外包行业的需求。

that it must still overcome a reputation for a weak service culture and a limited choice of quality providers with advanced capabilities. While many international companies are beginning to test China as an outsourcing destination, the size and scale of their commitment remains very small and limited in scope compared with engagements in other markets.

In order to attract offshore business from other countries offering outsourcing capability, the Chinese market needs to remain vigilant in continuing to address key concerns, including:

- The need for the government's ongoing commitment to the development of language capabilities, particularly English, in the workforce;
- Limitations in the availability of advanced human resource and management skills, and the escalating cost of sourcing these skills;
- Poor perceptions of IPR enforcement;
- The need for a more advanced data security framework and increased flexibility in data hosting regulations for foreign-invested providers;
- The negative perception of complex foreign exchange regulations; and
- Labor regulations which are perceived as being insufficiently flexible to meet the needs of the outsourcing industry.

AmCham China encourages the Chinese government to sustain its focus on improving the educational, training, legal, and regulatory framework in order to tackle these challenges. Without a significant positive shift in global perceptions of China's limitations in these areas, investment in China as a viable outsourcing destination will be impeded.

Talent Attraction, Development, and Management Challenges

While a number of policies have been published that support and subsidize the recruitment and talent training needs of the industry, both outsourcing and shared services organizations continue to face challenges in these and related areas. A talent bottleneck crisis is currently being faced by many businesses, both foreign- and domestic-invested, which threatens the rapid and healthy growth of the industry. A shortage of appropriately skilled managers and graduates, relevant training resources and institutes, combined with labor attraction and retention issues and escalating labor costs, are hindering the industry's advancement.

AmCham China encourages the development of programs across the model cities that increase talent attraction development through business and vocational training institutes, partnerships with internships, international training initiatives, management trainee training programs, and candidate relocation campaigns and incentives.

Barriers to the Domestic Market for MNCs

In order to achieve a sustainable business model, outsourcing companies rely on scale and volume across multiple clients and projects to create an efficient cost structure and justify ongoing investment. China's outsourcing capability is still perceived to be relatively immature. Moreover, the procurement of outsourcing services is largely led by a limited number of MNCs with relatively small-scale projects.

Creating a healthy and sustainable market will not only depend on increased offshore demand, but also the domestic market's acceptance of the outsourcing model. Currently the domestic market offers huge potential but this market remains relatively untapped and it has been reluctant to trust or engage with service providers. Recognition of the business benefits of outsourcing is expected to take many years. To ensure continuing progress, active government encouragement of the sector will remain essential.

Multinational service providers are extremely discouraged by government procurement (GP) policies which limit their ability to enjoy a share of the anticipated growth in the domestic market. GP policies currently favor domestic enterprises and explicitly discourage the purchase of services from foreign-invested companies. While AmCham China recognizes and encourages China's objective of fostering domestic business development and capability, it should also be recognized that mature foreign-invested companies can help to significantly accelerate perceptions of China as a high-quality destination for outsourcing services. With the government and state-owned enterprises (SOEs) representing a key market for potential large-scale outsourcing services, the restrictions in this market discourage investment by multinational providers and further undermine the development of the broader BPO market in China. AmCham China encourages China to lift these restrictions, including by implementing policies that are in line with China's World Trade Organization (WTO) commitments, and by fulfilling China's promise to join the WTO Agreement on Government Procurement on strong commercial terms.

The flexible investment models offered in India as it emerged as an offshore destination, particularly those allowing foreign companies 100 percent ownership options, long-term incentives, and stable regulatory environment, encouraged very large scale foreign investment. The training and best practice experience fostered by MNCs led to a cross fertilization of knowledge between multinational and local Indian companies as resources moved within the industry. This quickly cultivated a large talent pool of strong management and operational skills enabling India to establish its reputation as a high-quality services delivery location.

A more open model would similarly help China's rapid

中国美国商会鼓励中国政府继续加强教育培训工作，完善法律法规框架，着力消除以上弊端。如不能有效转变国际上对中国服务外包市场的上述负面看法，中国则难以作为可靠的服务外包目的地，在中国市场的投资将受到影响。

吸引、培养及管理人才的挑战

尽管中国已针对服务外包产业吸引及培训人才的需要出台了若干扶植与补贴政策，但无论是服务外包企业还是共享服务企业在这些及其他相关领域仍面临着挑战。目前，许多外资与中资企业均面临着人才瓶颈的危机，直接危及到整个行业的快速与健康发展。缺乏具有适当技能的管理人员及大学毕业生、相关的培训资源与培训机构、加上吸引和留住劳动力的问题、以及不断上升的劳动力成本，都已成为阻碍整个行业前进的因素。

中国美国商会鼓励在示范城市中开展相关项目，通过各种形式的人才培训计划来提高行业吸引人才的能力，如：企业与职业培训机构之间的合作及相应的实习机会、国际培训计划、管理人才培养项目以及跨地区人才流动计划与激励机制。

跨国公司进入国内市场的障碍

为了构建一种可持续的商业模式，服务外包公司通常为多家客户和项目提供服务，依靠规模和数量效应来实现有效的成本结构，并支撑持续的投资。中国服务外包市场的能力看起来依然相对不成熟，其提供的外包采购服务基本依靠少数跨国公司引导，且项目规模相对较小。

服务外包市场的健康可持续发展不能仅仅指望离岸需求的增长，还需要国内市场接受外包这一商业模式进而发展国内市场。目前，中国国内服务外包市场潜力巨大，但依然处于开拓不足的阶段，企业普遍不愿信任或将服务外包给服务供应商。预计中国企业逐步认同外包模式、了解其优点还需要许多年的时间。为保证该产业的发展，政府给予产业积极鼓励将是重要的。

中国的政府采购政策却限制了跨国服务供应商在中国国内市场的预期增长中分享市场的能力，令其失望。中国现行的政府采购政策偏向国内企业，并明显地不鼓励购买外商投资公司的服务。中国美国商会认同并鼓励中国培养国内企业发展和增强实力的目标，但是商会同时还认为成熟的外商投资公司能够极大地帮助人们转变对中国的认识，使其成为高质量服务外包目的地。政府和国有企业代表着

潜在的大规模服务外包的重要市场之一，跨国公司在该市场中所受的种种限制将直接影响他们在本产业的投资，进而影响中国整个业务流程外包市场的发展壮大。中国美国商会建议中国取消上述限制，包括落实符合中国加入世界贸易组织时承诺的相关政策，同时履行按照严格的商业条款加入世界贸易组织《政府采购协定》的承诺。

印度在发展离岸外包产业时采用了灵活的投资模式，特别是允许外国投资拥有企业 100% 的所有权，通过提供长期的激励措施以及稳定的监管环境，吸引了超大规模的外国投资。随着行业内资源的流动，跨国公司所开展的培训以及行业最佳实践经验也必然促成跨国公司和印度本国企业之间的知识交流和融合。这些做法快速培养了大批具有高超管理和运营技能的人才，使印度得以确立其优质服务供应国的声誉。

中国也需要采取更加开放的模式，迅速提高资源、管理和运营技能，打造提供优质服务外包所必备的各项能力。这将帮助中国树立其国家声誉，提升市场对采购其服务的信心并扩大市场规模，使中外企业均能从中获益。

进入外包呼叫中心服务市场的障碍

跨国公司进入中国外包呼叫中心市场时遇到重重困难。目前，打算经营呼叫中心的企业（包括外资企业和纯内资企业）必须先取得中国工业和信息化部（工信部）核发的电信业务许可证。直到最近，所有取得该许可证的外国企业均必须先组建一家合资公司，且所占比重不得超过该合资公司注册资本的 50%。这一政策在呼叫中心外包行业极其不受欢迎，因为在此行业中，合资公司的形式作为长期解决方案大多被证明并不成功，并且在全球的其他市场中已经失败。

2010 年 4 月，国务院宣布给予外资呼叫中心一个免除合资规定限制的例外，条件是外商呼叫中心在 21 个示范城市运营，并且其客户服务全部面向中国境外客户。中国美国商会认为此举提高了涉及呼叫中心服务供应商相关政策的灵活性，对此表示赞赏，但是事实上提供此类服务的跨国公司却认为上述变化对他们的业务增长作用有限。面向中国境外客户提供服务需要具备语言技能的人力资源，但与印度和菲律宾等公认的成功国家相比，中国的外语人力资源相对有限，且成本较高，销售机会将受到极大地限制。这样便进一步抑制了外商在中国市场的投资，因为对大多数成熟的服务外包供应商来说，选择在中国建立呼叫中心为英语国家核心市场提供大规模的英语支持服务目前还不

advancement in building the resource, management, and operational expertise to deliver proven outsourcing capabilities. This would, in turn, build China's reputation, encourage increased confidence in the procurement of its services, and create a greater market size which can be enjoyed by both domestic and multinational providers alike.

Barriers to Entry for Outsourced Contact Center Services

Entry to the outsource call center market in China is highly problematic for MNCs. Currently all companies seeking to operate call centers (both foreign-invested and wholly Chinese domestic-owned) must obtain a Telecommunications Business License issued by Ministry of Industry and Information Technology (MIIT). Until recently, all foreign enterprises obtaining such licenses were required to enter into a joint venture (JV) and could not exceed 50 percent of the JV's registered capital. This policy has been highly unpopular in an industry where JVs have, in most cases, proved unviable as a long-term solution and led to failure in other markets across the globe.

In April 2010, the State Council announced an exception to the JV requirement for foreign-owned call centers that operate in the 21 model cities and that render all services only to customers located outside China. While AmCham China commends the increased flexibility this policy offers call center service providers, the reality is that multinational providers believe this change will have a limited impact on their business growth. The services rendered will require resources with language skills to service foreign markets, and given the limited scalability and high cost of these resources relative to proven locations such as India and the Philippines, the sales opportunities are extremely restricted. This further depresses foreign investment in the market, as using China as a destination for the core market of high-volume English language support services is not yet considered a viable strategy for most mature outsource providers. Using China to service neighboring regional countries is a viable option, as seen in the success enjoyed by Dalian as an offshore hub for Korea and Japan, but ongoing scalability remains a concern to service providers.

In order to attract mature outsource providers to the China market, a strategy of offering wholly foreign-owned call center operations that can also service the domestic market is essential.

Barriers to Entry for Outsourced Human Resource Services.

MNCs operating in China in the provision of human resource outsourcing (HRO) services are subject to a range of restrictions. This sector is subject to oversight by many regulatory jurisdictions, including MOFCOM, MIIT, the Ministry of Education, the Ministry of Finance, and the Ministry of Human Resources and Social Security. Service

providers are required to navigate the policies issued across these ministerial jurisdictions, which, at times, can be in direct conflict in scope and direction for foreign-invested companies. The large number of bodies involved in regulatory approval and oversight and often conflicting policies and regulations has proved to be a challenge for MNCs. A single coordination point within the government or a sanctioned trade body is urgently needed to serve a clearinghouse and coordination function among central government, model cities, and domestic and multinational service providers.

HRO companies are seeing an evolving market need for value-added integrated human resources (HR) services for recruiting and retaining talent, cutting costs, managing the broad and complex range of HR services, adhering to labor regulations, meeting procedural provincial administrative requirements and navigating differences in tax and employment related law. In this environment, multinational providers are finding they are significantly disadvantaged in competing with domestic providers across the full portfolio of services. Dominant Chinese players such as the Foreign Enterprise HR Service Company (FESCO) and China International Intellectech Corporation (CIIC), due to state ownership, have access to privileged resources and information. Additionally, with certification services and certain transactions associated with the Labor Bureau provided only by domestic companies approved by the Ministry of Labor, they are effectively able to enjoy a monopoly.

Global HRO service providers that have made significant investment in China believe the lifting of multiple restrictions to their offerings is essential to facilitating ongoing investment in the market. With these companies bringing both best practices for the increasingly complex HR-related needs of businesses, and offshore business opportunities through their global client base, they can contribute significantly in establishing China's ability to deliver high-value, knowledge-based services in this space. The current absence of a level playing field is hampering the growth of global HRO players and the business case for ongoing investment in China.

Conclusion

The Chinese government is making ongoing efforts to develop the outsourcing industry in China. The significant investment in creating customized policies, subsidies, incentives, infrastructure, legal, and regulatory frameworks, and geographical location options has been greatly welcomed by service providers and buyers alike. This investment is widely acknowledged across the global outsourcing community and is reflected in the increasingly significant position that China enjoys in analysts' global location recommendations.

是明智之举。目前中国适合设立面向周边邻国提供离岸支持服务的呼叫中心，大连市就成了为韩国和日本客户提供离岸服务的基地并取得了成功，但服务供应商依然担心业务扩展空间的问题。

为了吸引成熟服务外包供应商进驻中国市场，至关重要的是采取措施允许成立外商独资企业经营呼叫中心且允许它们面向国内市场提供服务。

进入外包人力资源服务市场的障碍

跨国企业在华提供人力资源服务外包（HRO）受到各种限制。该行业需要接受包括商务部、工信部、教育部、财政部以及人力资源和社会保障部等众多政府部门的监管。服务供应商需要遵守上述部委制定的相关政策，但这些政策对于外商投资企业的经营范围和方向的规定有时存在明显的矛盾。跨国企业在华面临繁杂的监管以及审批，和相互矛盾的政策和规定的挑战。急需在中央政府，“示范城市”，国内外服务供应商间建立一个单一的政府协调部门或经授权的行业协会，以进行清算和协调。

人力资源服务外包公司面对着不断变化的市场需求，要求公司提供高附加值的人力资源整体服务方案，服务范围包括：招聘和留住人才，削减成本，广泛的人力资源管理服务、确保用工行为合法合规、满足各省级部门的行政程序规定、执行不同的雇员/雇主税务法规和劳动合同法。在这一背景下，从事人力资源服务外包的跨国企业与国内供应商竞争时，在提供上述一整套服务方面处于绝对的劣势。因为外企人力资源服务有限公司（FESCO）和中国国际技术智力合作公司（中智公司）这两大业内巨头凭借政府出资背景，在获取资源和信息方面享有特别优势。另外，涉及劳动证明及某些与劳动局相关的业务只能由人力资源和社会保障部批准的国内企业来做，中国公司实际上享受垄断地位。

已在中国进行了大量投资的国际人力资源服务外包供应商认为，取消对其业务范围上的各种限制，对于他们继续投资中国市场至关重要。国际人力资源服务外包供应商不仅可以引入最佳实践以满足商界日渐复杂的人力资源服务需求，还可以依靠其国际客户资源，扩展中国离岸服务外包的商机，从而为提高中国高附加值、知识型服务的能力做出重大贡献。当前缺乏一个公平竞争的平台，这阻碍了国际人力资源服务外包供应商在华业务增长，也不利于中国吸引更多的投资。

结论

中国政府在发展本国服务外包行业上做出了不懈努力。中国在制定相关政策、给予补贴和激励措施、基础设施建设、法律和监管体系、地点选择等方面进行的大力投资得到了服务供应商和采购商的热烈欢迎。上述投资得到了全球服务外包业界的一致认可，也反映在行业分析师对全球服务外包供应国的推荐评级中，中国作为全球服务外包目标国的地位在不断提高。

大多数尚未在中国开展业务经营的跨国企业都正在积极寻找中国服务外包市场的投资机会。他们坚信本文前面提及的各种挑战都能得到克服，中国最终能够建立一个健康蓬勃、不断扩大的服务外包市场，并且使国际和国内服务供应商都能从中获益。如前所述，其他国家外包和离岸服务产业蓬勃发展的案例证明，它离不开开放的商业环境和灵活的运营模式。跨国企业有信心通过与国内企业之间的资源和知识共享，能够大力支持中国引入先进理念和最佳实践的战略目标。

跨国供应商加大在华投资有赖于一个更加统一和开放的商业环境，使他们能够全面管控自己的业务并提供一整套的服务。中国美国商会强烈建议中国政府建立一个投资和监管框架，使外商投资企业能够协助提升中国服务外包的能力和信心。

建议

- 在中央政府，“示范城市”，国内外供应商间设立一个由政府授权的行业协会，进行协调，清算及对话。
- 延长税收减免等重点财务激励措施的有效期，使之不少于七年。
- 成立一个中央认定部门，或者在各地地方政府间制定统一、内部相协调的程序，确保各示范城市在实施有关补贴和税收优惠政策及申请程序时内容和程序上的一致性及易操作性。
- 取消政府和国有企业采购外国企业服务方面的限制和政策阻碍。包括执行符合中国人世承诺的政策以及加入《政府采购协定》。
- 通过各种形式的人才培训计划加快人才培养，如：企业与职业培训机构之间的合作及相应的实习机会、国际培训计划、管理人才培养项目以及跨地

Most MNCs, if not already operating in China, are seeking the opportunity to invest in the market. They believe that the challenges outlined above can be overcome to create a healthy, prosperous, and expanding market that will benefit both global and domestic service providers alike. As described herein, the examples of other countries that have seen a boom in outsourcing and offshore services have been based on open business environments which allow flexible operating models. MNCs are confident that they can support China's strategic objectives of knowledge and best practice sharing through cross fertilization of resources and knowledge between multinational and domestic enterprises.

Multinational providers' investment will only increase in a more uniform and less restricted business environment that allows them to fully control their businesses and offer a full suite of services. AmCham China strongly recommends that the Chinese government develop an investment and regulatory framework that will let foreign-invested companies contribute to the rapid growth of confidence in China's outsourcing service capabilities and quality.

Recommendations

- **Create a government sanctioned trade body that can serve as a clearinghouse, coordinator and venue for dialogue among central government, model cities, and domestic and multinational service providers.**
- Apply a minimum seven-year term life for key financial incentives, such as tax discounts and exemptions.
- Create either a centralized recognition authority or a uniform, coordinated approach between local governments for each Model City to create consistency in and ease of compliance with local implementing rules and application procedures for related subsidies and tax incentives.
- Lift restrictions and policy impediments on government and SOE procurement of services from foreign-invested enterprises, including by implementing policies that are in line with China's WTO commitments and by joining the GPA.
- Accelerate talent development through business and vocational training institute partnerships and internships, international training initiatives, management trainee training programs, and candidate relocation campaigns and incentives.
- Cancel the requirement for foreign-owned call center operators to enter into a JV with no more than 50 percent of the JV's registered capital if providing services to domestic customers.

区人才流动计划与激励机制。

- 取消在华面向中国国内客户提供服务的外国呼叫中心运营商必须成立一家合资公司且出资比例不超过合资公司注册资本 50% 的规定。



Civil Aviation

Introduction

AmCham China commends the Chinese government for its continued and successful efforts to develop a healthy and sustainable civil aviation sector. Strong economic growth, increased trade, rising personal incomes, and progress in market liberalization have also been key drivers behind growth in the sector.

China is well on its way to achieving its goal of transforming from a “large aviation nation” to a “powerful aviation nation.” China’s “Big Three” airlines (Air China, China Eastern, and China Southern) are now among the world’s top 15 carriers measured in terms of revenue passenger-kilometers. None was on the list in 2000. Beijing Capital Airport is now the world’s second busiest passenger airport. Both China’s in-service jet fleet and the number of passengers carried by Chinese airlines more than tripled between 2000 and 2010. Moreover, China has become an integral and growing part of the global aviation supply chain for a wide variety of aviation products and services, and is making great progress on its plans to enter the large commercial airplane manufacturing market.

In 2012, China will continue to be one of the largest and fastest growing markets for all sectors of civil aviation, with long-term growth forecasted to remain strong. To accommodate increasing demand for air travel, by 2015 China is expected to add 55 new airports, bringing the total available for commercial aviation use to at least 230. China’s airlines by 2030 will need 5,000 new airplanes valued at US \$600 billion (RMB 3.81 trillion). This expansion provides significant opportunities in airplane sales and airport design and construction, as well as in the rapidly emerging general aviation (GA) sector where experienced US companies have much to offer.

Meaningful cooperation between the US and Chinese governments on aviation is necessary to realize these business opportunities. The US Federal Aviation Administration (FAA) and China’s General Administration of Civil Aviation (CAAC) continue to enjoy a close, mutually beneficial partnership that has benefited both sides for many years. This includes the ongoing FAA technical assessment (shadow program) of CAAC’s ability to certify the ARJ-21 regional

jet to international certification standards. The AmCham China affiliated US-China Aviation Cooperation Program (ACP) also works closely with the FAA and the US Trade and Development Agency (TDA), contributing to a positive relationship between American aerospace companies and China’s government regulators, ministries, and aviation industry.

Efforts to reduce constraints on the healthy and sustainable development of civil aviation in China have been largely successful; however, significant challenges remain. Further efforts need to be made to open up and modernize China’s airspace system, reduce inefficiencies, realize environmental benefits, and accommodate growth. Addressing these challenges remains a top priority for AmCham China member companies.

Significant Developments

Airspace Reform

AmCham China commends the significant progress made in 2011 to accelerate airspace reform, including the steps noted below.

- The increased level of cooperation and collaboration among the military, State Air Traffic Control Commission (SATCC), CAAC, Air Traffic Management Bureau (ATMB), and users (airlines, GA entities, etc.) is noted and appreciated. Continued frequent dialogue among these stakeholders is the best way to address the challenges that constrain future growth.
- SATCC has initiated a low-altitude airspace reform pilot program in Guangzhou and Shenyang flight information regions (FIRs), and has begun defining airspace classification and airborne equipment requirements for aircraft operating at different altitude classes in these FIRs. By 2015, SATCC plans to expand the reform nationwide. This will greatly increase civil-use airspace capacity—a key first step to enabling GA growth nationwide. Central government commitment to this pilot program was laid out in the 12th Five-Year Plan for China Aviation Development as well as in the State Council and Central Military Commission’s (CMC) “Guidelines for Management Reform on Low-Altitude Airspace.”

民用航空

引言

中 国美国商会对中国政府持续成功地发展健康和可持续的民用航空业表示赞赏。经济的强劲增长、居民收入水平的提高以及市场自由化进程的加快也都成为推动民航业快速增长的重要因素。

中国目前正在努力实现从一个“航空大国”向“航空强国”转变。如今，中国“三大”航空公司（国航、东航和南航）在收入客公里数上已跻身全球前 15 大航空公司之列，而在 2000 年时三家航空公司还榜上无名。北京首都机场现已成为全球第二大最繁忙的客运机场。2000 年至 2010 年，中国的现役喷气机队及航空公司运送的乘客数均增长了三倍多。另外，中国也继续成为各种航空产品和服务全球供应链中快速成长、不可或缺的一环，并且在进军商用大飞机制造市场方面取得了长足的进步。

2012 年，中国依然是民用航空各相关领域最重要、发展最快的市场之一，长期保持强劲的增长势头。为了满足日益增长的航空旅行需求，预计到 2015 年，中国将新建机场 55 座，届时商用航空机场将达到至少 230 个。到 2030 年，中国各航空公司新增飞机需求将达到 5000 架，总价值 6000 亿美元（3.81 万亿人民币）。这一扩张势头将为飞机销售、机场设计与建设及通用航空这一快速发展的新兴领域带来巨大商机，而美国公司在该领域将大有可为。

实现该行业的商机需要中美两国政府开展积极有效的航空业合作。美国联邦航空局（FAA）和中国民用航空局（CAAC）多年来一直保持着密切、互利的合作关系。其中包括美国联邦航空局对于中国民航局按照国际标准对 ARJ-21 型支线喷气机进行认证能力的技术评估（影子审查）。中国美国商会所属的美中航空合作项目（ACP）亦与美国联邦航空局以及美国贸易发展署（USTDA）保持密切合作，促进美国航空企业和中国政府监管部门、相关部委和航空业保持积极的合作关系。

尽管中国在减少影响民航业健康可持续发展的方面已经取得了相当的成绩，但依然面临着巨大的挑战。中国需要进一步开放其空域系统，促进空域现代化，提高效率，实现环境效应，并适应行业增长的需要。应对以上挑战依然是中国美国商会会员企业的当务之急。

重大进展

空域改革

中国美国商会对 2011 年空域改革领域取得了如下显著成绩表示赞赏。

- 中国军方、国家空中交通管制委员会（国家空管委，SATCC）、中国民航局、空中交通管理局（ATMB）和用户（航空公司、通用航空组织机构等）之间的合作水平不断提高，值得称道。各利益相关方继续定期展开对话是解决限制未来空域发展所面临挑战的最佳途径。
- 国家空管委已在广州和沈阳飞行情报区（FIRs）启动了低空空域改革试点，并开始进行空域分类及制定航空器在各飞行情报区不同空域飞行时的机载设备要求。国家空管委计划到 2015 年底将该项改革推广至全国。这将极大地提高民用空域的容量，为通用航空在全国范围内的发展迈出关键的第一步。中央政府对此项试点的决心已写入《中国航空业发展“十二五”规划》，同时也写入国务院和中央军委联合印发的《关于深化中国低空空域管理改革的意见》。
- 2011 年 1 月，有关部门第一次开始允许在海南省进行低空空域商用直升机运营试点而无需事先取得军方的许可。这一举措代表着中国在通用航空领域的改革实践中迈出了坚实的第一步。
- 国家空管委正在积极考虑制定统一的军用和民用空中交通管制体系，实现管制领域的协同作业，信息共享。

- In January 2011, authorities began allowing commercial helicopters to operate in low-altitude airspace in Hainan province on a trial basis for the first time without requiring advance permission from the military. This small step is the first concrete example of airspace reform for GA being put into actual practice.
- SATCC is actively considering a unified military and civilian air traffic control (ATC) system with controllers working under the same roof and sharing information.
- FAA and ATMB continue to cooperate on various topics including Air Traffic Flow Management (ATFM), Required Navigation Performance (RNP), and System Wide Information Management (SWIM).

General and Regional Aviation

General aviation includes all aviation except military or scheduled commercial carriers. For example, GA aircraft encompasses private aircraft, air taxis, civil helicopters, disaster relief aircraft, and others. In the 12th Five-Year Plan (2011-2015), the Chinese government formalized its commitment to develop GA, including by providing direction to promote the GA industry's development, reform the airspace management system, and increase the efficiency of the allocation and utilization of airspace resources.

The growth of GA in China depends completely on actions by the Chinese government to improve the infrastructure necessary for GA operations. The 12th Five-Year Plan for China Aviation Development (Chapter 8, entitled "Accelerate the Development of GA: Improve the Environment for Development of GA") has laid out various ways to make that happen, including by:

- Enhancing infrastructure construction for the GA aircraft fleet, airports, and landing strips;
- Making commercial airports available for GA, and encouraging private sector maintenance services and fuel delivery, as well as private sector construction of GA airports and service facilities;
- Improving air traffic control for both slower piston engine GA and airline jet operations;
- Enhancing infrastructure for flight service stations (FSS), including for weather information and flight planning;
- Enlarging the scale of GA by incentivizing commuter, business, flight sightseeing, and private flights;
- Perfecting and standardizing regulations, procedures, and systems for GA airport construction standards as well as private GA aircraft registration and approval for new GA operations; and
- Reforming management of low-altitude airspace (including through the pilot program mentioned above) and revising the "Regulations for General Aviation Flight Control."

Furthermore, according to the CAAC, nearly 20 provinces and regions are making plans to develop the GA industry, and 14 of those have outlined such intentions in their

respective 12th Five-Year Plans. This is a recognition of the important role GA can have in further developing China's economy and infrastructure. AmCham China applauds these plans, and looks forward to cooperating with the Chinese government to help develop and achieve them. We encourage China to put them into operation beginning with the proposed test areas of Guangzhou and Shenyang FIRs in 2012.

US-China Aviation Cooperation Program

ACP is an AmCham China affiliated public-private partnership between six government agencies and 45 US aviation-related companies (as of December 2011) from all sectors of the aviation industry. ACP works to enhance cooperation between US and Chinese government regulators, departments/ministries, and aviation industries. The cooperation program's activities continue to expand, with highlights from 2011 listed below:

- Sixth round of Executive Management Development Training (EMDT) for up-and-coming CAAC leaders and initiation of the seventh round;
- Third round of Air Traffic Management Executive Training (ATMET) and initiation of the fourth round;
- ATFM National Playbook/Ground Delay Program;
- Initiation of the third phase of ACP/TDA General Aviation and Regional Aviation (GARA) study, with programs ongoing;
- CAAC High-Level Training for Energy Conservation and Emission Reduction visit to Boeing headquarters in Seattle, to FAA offices in Washington, DC, and to Houston airport;
- Support of the US-China Aviation Summit hosted by TDA and CAAC in Washington, DC, including by organizing four side trips for Chinese leaders;
- Human resources training for CAAC in the US;
- First joint CAAC-ACP workshop on airworthiness; and
- The addition of the US Transportation Security Administration as a new ACP government member.

Specific Issues

Reforming China's Airspace System

Opening up and reforming China's national airspace management system is critical to meeting the needs of China's forecasted aviation growth, enabling improved system efficiencies, and reducing the environmental impact of the aviation industry. Furthermore for airlines, more efficient airspace utilization is the best way to reduce fuel burn, flying time, and delays.

Due to the surge in air traffic, the country's large and complex airspace system is experiencing significant demand increases. Although the system has a remarkable safety record and is performing at a moderately efficient level, it exhibits signs of stress, including increasing delays at

- 美国联邦航空局和空中交通管理局继续在空中交通流量管理 (ATFM)，所需导航性能 (RNP) 和系统范围信息管理 (SWIM) 方面广泛开展合作。

通用航空业和区域航空业

通用航空是指除了军用或定期商用航空之外的所有其他航空活动。例如，通用航空飞行器包括私人飞机、空中计程包车、民用直升机、救灾飞机及其他飞行器。中国已将发展通用航空业的承诺正式写入“十二五”规划 (2011–2015)，包括为促进通用航空业的发展提供指导，改革空域管理体系，提高空域资源分配和使用的效率。

中国通用航空业的发展完全取决于中国政府在提高通用航空业运营所必需的基础设施方面所采取的措施。中国民航业发展“十二五”规划 (第八章 “加快通用航空事业发展：改善通用航空业发展环境”) 中提出了如下几项实施措施：

- 加强通用航空机队、机场和起降点等基础设施建设；
- 商用机场向通用航空开放，鼓励民营领域参与维修和航油配送服务，并鼓励民营领域参与通用航空机场和服务配套设施建设；
- 改善对通用航空慢速活塞引擎飞机和航空公司喷气式飞机的空中交通管制；
- 加强包括提供天气信息和飞行计划服务在内的飞行服务站的基础设施建设；
- 拓展通勤飞行、公务飞行、航空游览和私人飞机等业务范围；
- 健全通用航空规范标准，加快制定通用航空机场的建设标准，规范建设程序，优化私人通用航空飞机登记和批准航空运行程序；
- 改革低空空域管理 (包括通过上述试点项目)，修订《通用航空飞行管制条例》。

另外，据中国民航局称，中国近 20 个省市、自治区正在制定发展通用航空产业计划，其中 14 个省市、自治区已经在各自的“十二五”规划中列明了其通用航空产业意向。这充分说明了通用航空业在进一步促进中国经济发展和基础设施建设方面的重要意义。中国美国商会对上述计划表示赞赏，并期待与中国政府开展合作，帮助发展并实现上述目标。我们鼓励中国首先在 2012 年于广州和沈阳飞行情报区等试点区域开展运营。

美中航空合作项目

美中航空合作项目 (ACP) 由 6 家美国政府机构及来自航空业界的 45 家美国航空企业 (截至 2011 年 12 月) 组成，隶属于中国美国商会的政企合作项目。美中航空合作项目旨在增进中美政府监管部门、部门 / 部委以及航空相关产业之间的合作。该合作项目的规模不断扩大，在 2011 年取得的主要成绩包括：

- 完成针对中国民用航空局高级管理人员开设的第六期高级管理培训班 (EMDT)，并开始第七期培训；
- 完成第三期空中交通管理高管培训班 (ATMET)，并开始第四期培训；
- 空中交通流量管理国家计划 / 地面延误项目；
- 启动美中航空合作项目 / 贸易发展署通用航空和支线航空三期项目 (GARA III) 的研究；
- 完成了民航局节能减排高层培训班赴西雅图波音公司总部、美国联邦航空局华盛顿办公室和休斯顿机场的考察活动；
- 为贸易发展署和中国民航局在华盛顿共同主办的美中航空峰会提供支持，包括为中方领导组织了四次考察活动；
- 为中国民航局提供在美人力资源培训；
- 举办首届中国民航局 - 美中航空合作项目适航性研讨会；
- 发展美国运输安全局成为美中航空合作项目的政府会员。

具体问题

改革中国空域系统

中国国家空域管理系统的开放和改革是满足航空业预期增长的需求、提高系统效率以及减少航空业对环境的最根本需要。另外，对航空公司而言，提高空域利用效率是减少油耗、飞行时间和航班延误的最佳途径。

由于空中交通的快速发展，中国庞大而复杂的空域系统正面临着需求的急剧增长。尽管该系统安全记录良好，运营效率较好，但已明显面临压力，如全国各地的机场和航路延误现象越发突出。上述严重的延误现象主要是由于对民航使用国家空域的限制 (中国 80% 的空域由军方控制) 以及如北京、上海和成都等地机场拥挤造成的连锁反应。为了适应和满足民航业的预期增长，中国必须积极地制定

airports and airways nationwide. These delays are largely the result of limited availability of national airspace for civil aviation (over 80 percent of China's airspace is controlled by the military) and a ripple effect from overly congested airports such as Beijing, Shanghai, and Chengdu. In order to accommodate forecasted growth in the civil aviation sector, China must accelerate plans to improve airspace utilization and airport capacity, while also anticipating and addressing future needs.

Increasing Civil-Use Airspace and Capacity

Increasing the amount of civil-use airspace and expanding flexibility of operational procedures is the most often cited and essential reform necessary for China to meet increasing demand for aviation services. Having such a high percentage of airspace controlled by the Chinese military results in a rigid flight operation process with little leeway for flight maneuver requests in adverse weather. This often results in delays, inefficiencies, and potentially unsafe situations.

The State Council and CMC's "Guidelines for Management Reform of Low-Altitude Airspace" are a good first step toward better utilization of airspace resources for the nation's social and economic benefit. AmCham China hopes that this low-altitude reform will also lead to reform of mid- and upper-altitude airspace, which will bring even greater benefits to the commercial aviation sector and significantly increase overall airspace handling capacity.

In addition, one best practice of other International Civil Aviation Organization member states is to co-locate military and civilian controllers and share flight information data between them. We understand that this is already under active consideration by the leadership of SATCC, and encourage potential progress in this direction.

Enhancing Efficient Usage and Operational Flexibility of Airspace

Several other improvements could also facilitate efficient usage of airspace. Modernization of surveillance and navigation equipment and the construction of digital communications networks would benefit all users in China.

Adapting the Chinese Reduced Vertical Separation Minimum (RVSM) system, which regulates the vertical distance between aircraft, to use feet instead of meters would increase efficiency and safety. With Russia changing from a meters to feet system, China may be the only country with a metric-based RVSM system. Harmonizing with the global RVSM system based in feet will result in more efficient use of airspace and eliminate potential safety concerns caused by the existence of two systems.

US air carriers also strongly encourage the opening of new entry and exit air routes into and out of Chinese airspace

(similar to the Olympic Bypass B208 opened in 2008) in order to add flexibility and capacity to the system.

Air Carrier Operations

China represents a significant and growing market for US passenger and air cargo airlines. AmCham China's air carrier members have the following recommendations to strengthen the air transportation sector – many of which will also benefit Chinese airlines operating internationally.

Flight Slots Utilization

Take-off and landing slot capacity at the major Chinese international airports should continue to expand to accommodate growing demand. Procedures for allocating slots should be fair, transparent, and conducted in accordance with the International Air Transport Association's Worldwide Scheduling Guidelines.

Airport and Terminal Charges

US air carriers encourage China to adopt international norms for collecting airport and terminal charges. Terminal navigation charges at Chinese airports are currently collected twice, for arrival and departure, when the standard practice elsewhere is to only collect these charges once. Airlines also recommend that they be allowed to collect passenger service charges directly from the passengers instead of the current practice, which is nontransparent and requires the charge to be absorbed in ticket fares.

Air Cargo

The international logistics industry will play an increasingly important role as China moves up the value chain in product exports, since higher value-added products more heavily depend on just-in-time air transportation. However, cumbersome customs regulations and low process efficiency continue to hinder the growth of a modern logistics industry in China. For example, the lack of, or low priority given to cargo airlines for takeoff and landing slots at Chinese airports impedes timely express cargo delivery. This not only restricts growth of express cargo airlines and their Chinese and international customers in export industries, but also reduces China's competitiveness in the global supply chain.

Monopoly Arrangements That Impact Consumers and Airlines

Currently Chinese restrictions on who can provide jet fuel and computer reservation system operations increase prices for consumers and reduce efficiency.

Global distribution systems (GDS) are major computer reservation system operations that book and sell tickets for multiple airlines. Today, Travelsky is China's only provider

计划，既要增加空域使用率和机场运力，又要预计和满足未来需求。

增加民用空域，扩大容量

中国为满足不断增长的航空服务的需要而必须进行的改革便是增加民用空域的数量以及增强运营程序的灵活性。由于中国军方控制着绝大部分的空域，导致航班运营流程呆板，尤其当遭遇恶劣天气的时候，无法适应航班调整要求，也导致了延误、低效率和潜在的安全隐患。

国务院和中央军委联合发布的《关于深化中国低空空域管理改革的意见》是中国政府在更好地利用航空资源、促进社会和经济利益方面迈出的出色的第一步。中国美国商会希望上述低空空域改革将最终带动中、高空空域的改革，更好地促进商用航空业的发展，并明显提高整体空域处理能力。

另外，国际民用航空组织的其他成员国所采用的一项最佳实践便是统筹安排军用和民用管制，双方共享飞行信息数据。据我们了解，国家空管委已经在积极考虑此项事宜，并鼓励在这方面取得更大的进步。

提高空域使用效率和运营灵活度

其他若干项改进也有助于提高空域使用效率。监视设备、导航设备的现代化以及数字通信网络的建设将使中国所有的使用者受益。

采用中国的缩小最低垂直间隔（RVSM）系统来约定飞机之间的垂直距离，用英尺代替米有助于提高效率和安全性。随着俄罗斯将米制系统改为英尺，中国可能会成为采用米作为 RVSM 系统计数单位的最后一个国家。将单位修改为国际通行的英尺有助于更为高效地使用空域，消除因两个系统并行导致的安全隐患。

美国航空公司还强烈建议，中国开辟新的空域双向进出航路（类似 2008 年开辟的奥运 B208 支线），以便增加该系统的灵活度和能力。

航空公司的运营

对美国的客运和货运航空公司来说，中国是一个重要的且在不断增长中的市场。中国美国商会的航空公司会员企业对中国加强航空运输业建设提出了如下建议，其中很多也有助于中国航空公司拓展国际市场。

航班起降时刻的使用

中国主要国际机场的起降时刻容量还需要进一步扩大以满足不断增长的需求。时刻分配程序应做到公平、透明，并应遵照国际航空运输协会制定的《全球航班协调指南》执行。

机场和航站楼收费

美国各航空公司鼓励中国在机场和航站楼收费上能够采用国际操作标准。目前中国的机场在出发和到达时均征收航站楼导航费，而国际惯例是只征收一次。航空公司还认为目前在机票费用中一并收取机场建设费的做法不透明，建议应该允许他们直接向乘客收取机场建设费。

航空货运

由于高附加值产品的运输越来越依赖实时的航空运输方式，因而随着中国在出口产品产业链上位置的提升，中国的国际物流产业将发挥日益重要的作用。但由于中国海关通关程序繁琐，处理效率较低，一直阻碍着中国现代物流产业的发展。例如，中国的机场在货运航班的起降时间分配上没有或很少给予优先安排，从而影响了快递货物的及时送达。这不仅限制了货运航空公司及其出口行业中中国和国际客户的发展，同时也削弱了中国在国际运输产业链上的竞争力。

影响消费者和航空公司的垄断性安排

目前，中国对航空燃料和计算机订票系统的供应商的人选资格实行限制，不仅增加了消费者的成本，还降低了效率。

全球分销系统（GDS）是用于预订和销售多家航空公司机票的大型计算机预订系统。目前，中国民航信息集团公司是中国唯一的一家全球分销系统供应商。增加全球分销系统供应商将能为消费者提供更多选择，同时有助于改善为乘客和航空公司提供的服务。

同样地，中国只有少数几家国有石油公司可以向航空公司供应航空燃油。向其他国际石油公司开放航空燃油市场有助于将燃油价格降至国际市场价格水平，从而使全体中外航空公司受益。

机场

如前文所述，中国计划未来大规模地建造新机场，以满足不断增长的需求。然而，中国在建造新机场，扩建现

of GDS. Allowing more GDS providers will increase choices for consumers and lead to improved service for both passengers and airlines.

Likewise, jet fuel at Chinese airports is only provided by a limited number of state-owned oil companies. Opening the jet fuel market to other international providers would help bring jet fuel prices down to global market price levels and benefit all airlines, Chinese and foreign alike.

Airports

As mentioned above, China plans to significantly increase the number of airports in the coming years in order to accommodate increasing demand. However, as China builds new and expands existing airports, it is crucial that China also build a policy framework to implement energy efficiency and green airport practices. The US aviation industry stands ready to provide a wide range of expertise, technology, products, and services to help Chinese airports meet their growth projections in an energy efficient, environmentally sensitive, and financially sustainable manner.

Continued collaboration between CAAC and ACP could also help improve the operation of China's international gateway airports to more effectively and efficiently serve as international hubs. Development of Beijing, Shanghai, and Guangzhou as true hub airports is a high priority for US air carriers. China should consider developing China-US hub alliance operation policies that facilitate quick transfers and baggage clearance. In particular, domestic-to-international transfers need to be streamlined for both passengers and their baggage. This could help both countries' industries aggressively compete with other regional airlines and airports to capture an even larger share of Pacific Rim passengers and flights.

In addition, China should take the opportunity to incorporate its goals of GA development when implementing commercial airport expansion and renovation by including handling facilities in commercial airport projects. For example, when a new terminal is built, part of the old terminal could be renovated into a fixed base operator (FBO) facility for GA passenger handling, flight planning, flight training rooms, and maintenance and line service personnel. When new airports are built, the construction plan could also include a GA FBO.

Easing Joint Venture Requirements and Tax Policies for Civil Aircraft Programs

Foreign companies are required to form joint ventures (JVs) with Chinese-designated partners in order to participate in civil aircraft programs such as the COMAC C919. Such partnering requirements are not always aligned with China's World Trade Organization commitments for open markets. For instance, many US companies possess intellectual property (IP) that serves as their source of competitiveness

and profitability, yet they are sometimes required to transfer such IP to their JV partners. Since successful JVs require both partners to have common goals, Chinese entities' principal desire to acquire IP and foreign entities' goal to set up financially viable JVs do not readily create the right environment for long-term successful JV partnerships. More flexible requirements for foreign company participation in China's civil aircraft programs would ultimately benefit China as well as current and potential foreign partners going forward.

In addition, required JV arrangements are often further complicated by Chinese tax policies. Chinese civil aircraft programs involve complex business models balancing non-recurring payments, recurring costs, aftermarket sales, and tax implications, to achieve the most competitive pricing solution. Such models become even more complex when required JV arrangements involve importing components to the JV partner, resulting in higher tax obligations. More flexible tax policies, such as a withholding tax exemption for non-recurring payments, duties exemption for imported components, and value-added tax (VAT) exemption for JV finished goods, would help simplify tax implications of JV arrangements and improve the competitiveness of these programs for the benefit of both Chinese and foreign partners.

Increase Regulatory and Technical Inspection Staff at CAAC

The relatively low and inflexible headcount limit of approximately 300 regulatory staff at CAAC headquarters poses a risk to China's excellent safety record and a constraint on sustainable growth of the civil aviation industry. The headcount limit has remained in place since 1998 despite rapid growth of civil aviation in China.

Key CAAC departments in charge of safety, capacity, and efficiency are woefully understaffed compared to staffing levels at other aviation regulators around the world. FAA headquarters has approximately 4000 employees compared to CAAC's 300, despite the fact that CAAC also performs airline economic regulatory functions that in the US are performed by a separate entity. There is concern that China could repeat the mistake made by the US many years ago of under-investing in their aviation safety regulatory authority. The US saw several fatal accidents before taking strong action to reform, enlarge, and strengthen its safety authority.

CAAC also faces a lack of staffing to perform safety audit and validation/approval processes. With the growth of the Chinese aviation market including GA, CAAC has not maintained sufficient manpower to complete inspections of Maintenance, Repair, and Overhaul (MRO) facilities, Validated Type Certificate (VTC) and Validated Supplemental Type Certificate (VSTC) approvals, or production authority holders in a timely manner.

有机场的时候，应该建立一套执行节能和环保机场实践的政策框架。美国航空业随时愿意提供广泛的专项知识、技术、产品和服务，帮助中国机场达到节能、环保和财务可持续发展目标。

中国民航局和美中航空合作项目之间的持续合作也能够提高中国国际机场的运营效率和效能，使之成为合格的国际航空枢纽。将北京、上海和广州建设成为真正的空运枢纽，是美国各航空公司的另一项关注重点。中国应考虑开发中美枢纽联盟运营政策，以加快货运中转和行李清关的速度，特别是优化国内航班转国际航班的乘客及其行李的转机流程。此举将有助于两国的航空业与区域内其他航空公司和机场之间的竞争，从而争取到更多太平洋沿岸地区的乘客和航班。

另外，中国应以此为契机，将发展通用航空业的目标与商用机场新建和扩建计划相结合，在商业机场建造过程中增加装卸设施。比如，在建设新的航站楼时，可将现有航站楼的一部分改造成为一个固定基地运营商（FBO），用于通用航空乘客安置，航班计划、飞行训练室及供维护和航线维修人员使用。在建设新机场时，建造方案中同样可以包括一个通用航空固定基地运营商。

放宽民用飞机项目合资要求和税收政策

目前，外国企业需要与指定的中国合作伙伴组建合资公司，方能取得参与（如中国商用飞机公司 C919 等）国内飞机项目的资格。上述合资要求可能会不符合中国入世时有关开放市场的承诺。例如，很多美国企业若想参与中国航空业竞争，则需被迫转让那些属于企业核心竞争力以及利润之源的知识产权。鉴于成功的合资企业需要合作双方拥有共同的目标，而中方合作者的主要目标是获取知识产权，外方合作者的目标则是设立具有财务稳健度的合资公司，双方目标上的偏差必然使得该合资公司无法获得长久的成功。中国如放宽要求，让外国公司进入航空业的市场，则会使中国获益，也使现有及潜在的外国合作方共同获益。

另外，中国的相关税收政策也进一步增加了设立合资公司的难度。中国民用飞机项目往往涉及复杂的商业模式，需要在非经常性成本、经常性成本、二级市场销售和税赋之间作出平衡，以制定最具竞争力的定价方案。如果碰到合资安排中涉及从合资公司合作一方进口零部件时，商业模式更加复杂，并且会导致税赋增加。此时实行更为灵活的税收政策，如免除经常性支付预扣税，免除进口零件税以及免除合资公司成品增值税等措施都有助于简化合资公

司的税收影响，提升项目的竞争力，使中方和外方合作者均能从中受益。

增加中国民航局监管人员和技术检查人员的数量

中国民航局机关编制上限约 300 人，数量相对较少且没有弹性，这对中国保持的优异安全记录造成潜在风险，也对中国民用航空业的可持续发展形成了限制。尽管中国的民用航空业迅猛发展，编制限制从 1998 年至今却一直未动。

与全球其他国家航空监管部门的人员配备水平相比，中国民航局中负责安全、运力和效能等重点部门的人员配备严重不足。美国联邦航空局总部工作人员约 4000 名，而中国民航局只有 300 名。事实上，民航局还承担航空公司的经济监管职能，而在美国，这一职能则由单设的其他机构负责。有人担心中国会重蹈美国的覆辙——对安全监管部门的投资不足。美国正是在发生了数起致命事故后才重拳出击进行改革，扩充并加强航空监管部门的力量。

中国民航局还面临着缺乏专门人员执行安全审计和验证 / 批准流程的问题。随着包括通用航空业在内的中国航空市场的发展，中国民航局已经无法保证充足的人力来按时完成对维护、修理和维修单位（MRO）、型号认可证（VTC）、补充型号认可证（VSTC）以及授权制造单位的检查工作。

中国美国商会建议成立一个委员会，参考其他国家航空监管机构的人员配备水平，审查并增加中国民航局监管人员和检查人员的数量。中国美国商会和美中航空合作项目愿意随时提供相关协助。

结论

中国航空业的快速增长既标志着经济的繁荣发展，又警示着为确保航空业的安全和竞争力，存在各种需要填补的效率和现代化缺口。过去的一年里，美中两国通过美中航空合作项目加强合作，并制定了航空业的相关指导政策，使中国航空业朝着正确的方向发展。然而，空域的低效配置和管理，再加上低效率的航空公司和机场运营，沉重的合资和税收政策负担，以及民航局人员配备不足，这些都是中国需要进一步改善的地方。只有解决了这些问题，中国才能实现航空产业的发展计划。采用与国际标准一致的空域分类系统，实施环保节能的机场和航班标准，促进机场设施和运营的现代化，将促进中国航空产业的发展，同时确保未来具有竞争力的可持续增长。

AmCham China recommends the establishment of a commission to benchmark staffing levels of other countries' aviation regulators, and then review and increase regulatory and inspection staffing levels at CAAC. AmCham China and ACP stand ready to assist in this effort.

Conclusion

The rapid growth of China's aviation industry is both an indication of expanding economic prosperity as well as a warning sign that various efficiency and modernization gaps must be rectified to ensure a safe and competitive industry. Increased US-China cooperation through ACP and the development of aviation-related guidelines over the past year have moved China in the right direction. However, inefficient allocation and management of airspace, combined with inefficient air carrier and airport operations, burdensome JV and tax policies, and an under-staffed CAAC, are several areas in which China could improve to capitalize on projected growth in the industry. Adopting an airspace classification system in line with international standards, implementing environmentally efficient airport and airline standards, and modernizing airport facilities and operations would facilitate China's industry development as well as ensure sustainable, competitive future growth.

Civil Aircraft Programs

- Make the requirements for foreign company participation in China's civil aircraft programs more flexible by eliminating JV and IP transfer requirements.

CAAC Staffing

- Establish a commission to review the appropriate number of regulatory and inspection personnel in each safety regulatory department of CAAC according to the levels needed to effectively and safely regulate the growing industry.

Recommendations

Airspace Modernization

- **Continue increasing the amount of civil-use airspace and expanding the flexibility of air traffic operational procedures.**
- Open new entry and exit points into and out of Chinese airspace.

Air Carrier Operations

- Adopt international norms for collecting airport and terminal charges.
- Grant higher priority to cargo flights for slots at Chinese airports.

Airports

- Develop Beijing, Shanghai, and Guangzhou into true world-class hub airports with convenient transit facilities and baggage clearance.

General Aviation

- Aggressively implement the general aviation provisions of the 12th Five-Year Plan.

建议

空域现代化

- 继续增加民用空域的范围，加大空中交通运营程序的灵活性。
- 为进出中国空域开设新的进出点。

航空公司运营

- 根据国际规则征收机场和航站楼费。
- 中国机场为货运航班在时刻分配上提供更大的优先度。

机场

- 将北京、上海和广州建设成为真正的世界级航空枢纽，配备便利的转机设施，简化行李通关手续。

通用航空

- 积极落实“十二五”规划中有关通用航空事业发展的内容。

民用飞机项目

- 取消设立合资公司和转让知识产权等要求，增加外国公司参与中国民用飞机项目的灵活性。

中国民用航空管理局人员

- 设立一个委员会，根据有效、安全监管民航业的实际需要，确定民航局负责安全监管的每个部门需要合理配备的人员数量。

Construction, Engineering, and Design

Introduction

With the steady development of China's economy and the rapid increase of fixed assets investment, the construction, engineering, and design market in China had another year of growth in 2011. During the course of the past several years, the industry has completed a series of important and large-scale projects with advanced design concepts, complicated structures, and high-end technologies, which have drawn the attention of the world. Meanwhile, the industry built 10 billion square meters of residential housing, substantially improving the living conditions of many people in China.

Despite rapid growth of the industry overall, foreign-invested enterprises in China have not been able to participate fully in the expansion of the market due to various regulatory barriers. Some progress has been made, including an increase of foreign participation in certain specialized areas like petrochemical, chemical, and pharmaceutical engineering design and construction segments, due to the need for world-class technology and management skills. In addition, increasing numbers of foreign-invested design and construction companies have obtained design and construction qualifications. However, the above growth remains limited to a few specialized areas, with further expansion restricted by high capital and staffing requirements to obtain qualifications, as well as other limitations such as restrictions on the scope of projects for foreign-invested companies.

Significant Developments

"Model Text for Construction Project General Contracting Contracts"

The Ministry of Housing and Urban-Rural Development (MOHURD) issued several new regulations and industry guidelines during the course of 2011. In September, MOHURD issued a "Model Text for Construction Project General Contracting Contracts (For Trial Use)." This is the first official model text for general contracting contracts issued by the government since the general contracting sector first developed in China more than 20 years ago.

The model text will be applicable for various general contracting models, including engineering, procurement, and construction (EPC)/turnkey contracting, design build construction contracting, and others. Even though usage of the model text is not mandatory, its issuance sends a positive signal that the central government is recognizing and promoting regulation of the general contracting sector.

AmCham China welcomes the promulgation of this new model text, and looks forward to actual implementation by local construction authorities, many of whom still require the filing of separate contracts for survey, design, construction, and other types of contracting.

12th Five-Year Plan for the Construction Industry

In July 2011, MOHURD issued the "12th Five-Year Development Plan for the Construction Industry." Goals set out in the plan include the adjustment of industrial structure, improvement of new technology development, implementation of energy saving building practices, expedited pace of overseas contracting, and more. AmCham China welcomes the government's determination to improve the industry overall.

"Development Guidelines for the Engineering Survey and Design Industry"

MOHURD also issued the "2011- 2015 Development Guidelines for the Engineering Survey and Design Industry" in September 2011. The guidelines highlight major problematic issues in the industry, including China's lack of original architectural design talent, lack of research and development capability for new technology, unhealthy market competition, incomplete regulation of general contracting and project management, and more. Some of these issues have been addressed in previous AmCham China *White Papers*, for example, the general contracting and project management regulation issue. We look forward to new regulatory progress in the engineering design industry over the next year.

建筑、工程和设计

引言

随着中国经济的稳定发展以及固定资产投资的快速增长，中国的建筑、工程与设计市场在 2011 年再次实现增长。过去的几年间，该行业完成了一系列重大项目，这些项目设计理念先进、结构复杂并且技术高端，受到了全世界的关注。同时，该行业完成了 100 亿平方米住宅房屋的建设，大大地改善了许多中国人的居住条件。

尽管整个行业实现了快速发展，但由于多种监管障碍的存在，在华外资企业无法充分参与到市场的不断拓展进程中来。由于对世界一流技术与管理技能的需要，还是取得了一些进展，包括在某些专业领域外国参与度得到提高，如石油化工、化学、制药工程设计和施工领域。此外，取得设计与建筑资质的外资设计与建筑公司的数量也有所增加。但是，由于在取得相应资质方面对于资本金与人员配备的严格要求，以及对外资企业可经营项目范围的限制等因素，进一步的拓展受到限制，因此上述进展仅限于某些专业领域。

重大进展

《建设项目工程总承包合同示范文本》

中国住房和城乡建设部（住建部）在 2011 年颁布了一些新规定与行业指导意见。9 月，住建部发布了《建设项目工程总承包合同示范文本（试行）》。这是总承包行业在华发展 20 年来，政府第一次针对总承包合同出台官方的示范文本。

示范文本将适用于多种总承包模式，包括工程采购施工（EPC）/ 交钥匙合同、设计 - 施工承包等。尽管目前该示范文本的使用并非为强制性，但其出台传达出一个积极信号，即中央政府已认可并正在推广针对总承包行业制定的相关规定。

中国美国商会对该新的示范文本的颁布表示欢迎，并期望地方机构能够落实该示范文本的执行。目前针对勘察、设计、施工及其他承包形式，许多地方机构仍要求对其分别采用不同的合同。

建筑业“十二五”规划

2011 年 7 月，住建部发布了建筑业“十二五”规划。规划中提出的相关目标包括：实现行业机构的调整，加强新技术开发，推进建筑节能实践，加快对外承包步伐等。中国美国商会对政府提升整个行业的决心表示欢迎。

《工程勘察设计行业发展纲要》

住建部同时于 2011 年 9 月发布了《工程勘察设计行业 2011-2015 年发展纲要》。纲要强调了该行业面临的一些主要问题，包括中国缺少本土建筑设计人才与新技术研究与开发能力、市场的不规范竞争问题、总承包与项目管理的监管不力以及许多其他相关问题。其中一些问题，例如：总承包与项目管理的监管问题在以前的中国美国商会《白皮书》中已做论述。我们期望来年工程设计行业能够在监管方面取得进步。

具体问题

工程及设计行业

对更多外资设计企业开放甲级资质认证

适用于外资设计公司的法律制度在 2011 年继续保持不变。外资设计公司若要申请设计资质，无论其规模、经历与国外业绩记录如何，其初始申请只能为乙级或乙级以下。只有在其申请前已在相同行业获得一级或以上级别的建筑资质情况下，外资设计公司方能直接申请甲级公司设计资质。

这些限制性规定是对符合条件的并具有行业经验的外资企业的一种歧视，因为，这些外资企业已经完全满足申请甲级设计资质的所有条件。这些企业一般对于乙级工程

Specific Issues

Engineering and Design Sector

Open Grade A Classification to More FIDEs

The legal regimes applicable to foreign-invested design enterprises (FIDEs) remained unchanged in 2011. In order for an FIDE to apply for Design Qualification (DQ), its initial application must be for Grade B or below, regardless of its size, experience, and track record abroad. The only way an FIDE could apply directly for Grade A DQ would be if the FIDE already holds a Grade 1 or above construction qualification in the same industry.

These restrictions unfairly discriminate against qualified and experienced foreign-invested companies that otherwise already satisfy all relevant requirements for Grade A DQ. Such companies are generally neither interested nor competitive in Grade B engineering projects, and therefore have little reason to apply for Grade B DQ. AmCham China recommends China allow FIDEs to directly apply for Grade A DQ without first applying for and obtaining Grade B.

Clarify the Transfer of Qualifications Following M&A

More foreign-invested companies are seeking to obtain DQs through mergers and acquisitions (M&A), which provide an effective route for companies looking to enhance or expand their capabilities in China.

However, a 2007 MOHURD regulation states that when foreign investors acquire domestic enterprises, the qualifications and licenses possessed by the original enterprise(s) must be reassessed and reapproved. Since the criteria for reassessment are currently not known, risks increase for all parties involved and the continuity of the acquired company is endangered. When a license is reevaluated, and potentially revised down a level, the legal ability to conduct projects changes, and as such the approved business plan changes.

AmCham China encourages the Chinese government to allow DQs to be transferred through M&A without reassessment or reapproval.

Permanently Relax Hiring and Residency Requirements

When China relaxed certain residency requirements for foreign staff and allowed a greater percentage of qualified Chinese nationals to work for foreign-invested firms, FIDEs were able to expand operations faster and employ more Chinese professionals. However, the relaxed regulations were introduced as temporary measures, and as a result, many FIDEs have not been able to take advantage of the new rules.

Uncertainty around how long the measures will be in place complicates business planning and hampers hiring. AmCham China believes the “Implementation Rules to the Administrative Regulations on Foreign-Invested Construction Engineering Design Enterprises” (Circular 18) should be permanently revised to eliminate the requirements that FIDE staff must be at least 25 percent foreign and that foreign staff must reside in China for at least three to six months per year.

Construction Sector

Improve Laws Regarding Capital Requirements and Staffing

Foreign-invested construction firms entering China face unusually burdensome regulations regarding capital requirements and staffing for certain professional positions.

In order for foreign investors to undertake construction activities within China, Decree 113 and its implementing regulations require foreign construction companies to establish a local presence in China by creating either a wholly foreign-owned enterprise (WFOE) or a joint venture with a Chinese firm. They then must apply for the appropriate construction qualification in order to become a foreign-invested construction enterprise (FICE).

Contrary to international standards, Chinese law does not allow standard financial instruments such as bank guarantees, insurance bonds, or parent company guarantees to be used to satisfy capital requirements for establishing an FICE. In addition, the staffing prerequisites to qualify as an FICE are particularly challenging, as they stipulate that in certain key personnel categories (engineers, architects, etc.), only locally qualified professionals can be counted toward the required minimum number while highly qualified expatriate professionals on the payroll cannot be counted.

AmCham China believes that internationally accepted standard financial instruments should be allowed to be applied to satisfy capital requirements for establishing an FICE, and staffing requirements should be changed to recognize appropriately qualified foreign professionals.

Reduce Registered Capital Requirements

FICEs without special grade qualifications can only undertake projects valued at less than five times the company’s registered capital, according to the “Qualification Grading Standards for Construction Enterprises” (Decree 82). This minimum registered capital requirement hinders participation in the market and unnecessarily burdens FICEs by requiring them to invest significant registered capital to qualify for large-scale projects. As a result, qualified foreign-invested companies cannot contribute advanced technology and management expertise that would benefit important projects and the industry as a whole. AmCham

项目既无兴趣参与也没有竞争优势，因此没有理由申请乙级设计资质。中国美国商会建议中国允许外资设计公司直接申请甲级设计资质，而无需首先申请并获得乙级资质。

公司并购后资质转让问题有待明确

更多的外资企业正在寻求通过兼并与收购（并购）来获得设计资质，这对于希望在中国提高或扩充其实力的企业来说不失为一条可行的方案。

然而，住建部于 2007 年颁布的法规指出，如果外商并购本国企业，对于被并购企业所持有的资质认证和许可证必须经过重新审核和批准。由于重新审核所需的条件目前尚未明确，其中涉及到的所有相关方面所面临的风险将加大，并将危及被收购公司的业务连续性。当许可证被重新审核并且其等级有可能在修改后被降低一级时，企业执行项目的法律能力会发生变化，其已获批准的经营计划也会随之变化。

中国美国商会鼓励中国政府允许通过并购进行的设计资质的转让无需再经过重新审核或批准。

永久性地放宽雇用及居住限制

中国放宽了对对外商投资设计公司工作的外籍人士的居住限制，同时允许其加大雇用中国员工的比例。外商投资设计公司才得以加快扩张业务，雇用更多的中国员工。但是，此宽限只是暂时性的，结果导致很多外商投资设计公司无法从这一法规中获益。

新法规的时效性仍未明确，这为企业制定商业计划和雇用员工带来了很大困扰。根据《外商投资建设工程设计企业管理规定》(18 号令)的规定，外商投资设计企业的从业人员至少应有 25% 来自于国外，且外籍员工每年至少需在中国居住 3-6 个月。中国美国商会认为应永久性地取消此条例。

建筑行业

调整关于资本金和人员配备要求的法规

外资建筑企业进入中国需要面对十分繁重的政策负担，譬如资本金和部分专业岗位的人员配备要求。

外商若要在华从事建筑活动，113 号令要求准备从事建筑业的外资企业首先需要在中国建立独资企业或与中方企业合作才能来华投资，之后必须在申请相关的建筑资质后方可成为外商投资建筑业企业。

与国际标准不同的是，中国法律不接受使用如银行担保、保险债券或其母公司担保等标准金融工具用来充当成立外商投资建筑业企业的资本金。此外，公司在进行人员配备后才可获得外商投资建筑业企业资质，这一点无疑是为企业增添了特别困难。根据该条例，涉及到某些领域的关键职位（例如工程师、建筑师等）的最低人数要求的计算问题，只有本地具有相关执业资格的专业人员才能被计算在内，而外企具有相应资质的外籍员工则不计算在内。

中国美国商会认为中国应准许使用国际上通用的标准金融工具来充当成立外商投资建筑业企业的资本金，同时应修改人员配备要求从而承认具有相应适当资质的外籍专家。

降低注册资本金要求

根据《建筑业企业资质等级标准》(82 号令)，非特级资质的外商投资建筑业企业所承揽工程项目的造价不得高于企业注册资本金的 5 倍。最低注册资本金的要求阻碍了外资企业进入市场并给企业造成了不必要的负担，企业因此必须支付更多的注册资本金才能承揽大型项目。因此，优秀的外资企业没有机会贡献其先进的技术和管理经验，中国的很多重要项目和整个建筑行业也因此失去了受益的机会。中国美国商会认为应修改相应标准而允许使用国际通行的标准金融工具用于大型项目的财务担保，使其与国际惯例保持一致。

修订联合体资质认证

在中国乃至全球范围内，由两家或多家公司共同合作来承揽单个项目是很常见的经营行为。在中国，项目规模不得超过联合体中最低资质公司的承揽范围。而国际通用的准则是项目规模不得超过最高资质公司的承揽范围。鼓励资质差异较大的双方进行合作将使双方主攻各自擅长的领域，并藉此创造机会分享技术，从而为公司自身及整个行业的发展做出贡献。中国美国商会建议中国政府修订《中华人民共和国建筑法》中对联合体资质认证的相关要求使之与国际标准接轨。

项目管理行业

明确项目管理资质

由于相互冲突的监管制度的存在，现有的政策环境限制了外国企业提供项目管理服务。

一方面，国家发展和改革委员会（发改委）要求从事工程咨询服务的企业（包括项目管理）必须获得工程咨询

China believes the standards should be changed to allow internationally accepted standard financial instruments to provide financial security on large-scale projects, as is the case internationally.

Revise Consortium Qualifications

A consortium of two or more construction companies combining forces on a single project is a common practice in China and around the world. In China, the scope of the project must not exceed the qualifications of the lowest-ranked member of the consortium. The international standard, however, is for the scope of the project to not exceed the qualifications of the highest-ranked member. Encouraging the pairing of firms of different ranks allows each firm to specialize on its part of the project while creating an opportunity to cross-pollinate skills and technologies that benefit the individual firms as well as contribute to the overall development of the industry. AmCham China recommends that the Chinese government amend the consortium qualification requirement in the Construction Law to conform with international practice.

Project Management Sector

Clarify Project Management Qualifications

The current regulatory environment restricts foreign-invested companies from providing project management services, as conflicting regulatory regimes exist.

On the one hand, the National Development and Reform Commission (NDRC) currently requires companies wishing to provide engineering consulting services, including project management, to obtain an Engineering Consulting Enterprise Qualification Certificate. On the other hand, MOHURD requires foreign-invested companies that wish to undertake project management services to establish a local entity and obtain qualifications in at least one of six categories (survey, design, construction, supervision, tendering agency, or cost control).

It is not clear whether foreign-invested companies are required to qualify under both NDRC and MOHURD's differing regimes before they can offer project management services. The above confusion revolves around the NDRC's "Measures for Recognizing the Qualifications of Engineering Consulting Entities" (Circular 29) and MOHURD's "Trial Measures for the Administration of Construction Engineering Projects" (Circular 200). As this issue was recently raised by MOHURD in the above mentioned "2011- 2015 Development Guidelines for the Engineering Survey and Design Industry," we look forward to clarification on this regulatory environment in the near future.

In addition, foreign-invested companies attempting to satisfy MOHURD's regulations are further confused by

selective application of a separate law (Decree 155) allowing an enterprise that is not an FICE or an FIDE to provide project management services. Foreign-invested companies can satisfy Decree 155 by obtaining one of three qualifications (supervision, tendering agency, or cost control) and qualifying as a foreign-invested engineering services enterprise (FIESE). However, implementation rules for Decree 155 have yet to be issued and local authorities in many cities have cited this as a reason for refusing to accept FIESE qualifications.

AmCham China looks to the government to issue clarifying rules as soon as possible so companies will have a consistent regulatory environment in which to operate.

Engineering Procurement Construction Sector

Clarify Regulations for EPC Contracting

Construction projects with an EPC contracting component are expanding around China, but the qualification system does not currently address these projects effectively. Unclear regulations and inconsistent interpretation are prohibiting qualified companies from accessing this market and contributing their expertise.

Regulations seem to allow EPC contracting provided the contractor holds an appropriate DQ and hires qualified subcontractors. However, in practice registration requirements with local construction authorities for engineering design, construction, and other contracts vary, with the common interpretation being that only firms with corresponding qualifications can enter into and register such contracts.

Contrary to regulatory provisions, this local practice effectively prevents companies with only a DQ from undertaking EPC contracting. AmCham China hopes that with the newly issued "Model Text for Construction Project General Contracting Contracts (For Trial Use)", the qualifications will be clarified and implementation will be standardized in order to increase transparency and regulatory consistency to the industry.

Conclusion

While the majority of legal regimes applicable to foreign-invested enterprises in the construction, engineering, and design industry remained unchanged in 2011, the issuance of industrial guidelines and plans are positive signs that the Chinese government is willing and prepared to improve the overall regulatory environment in this sector. We believe that with the help of new regulations and a healthier market environment, foreign investment will be able to provide greater benefits to the Chinese market.

企业资质认证。另一方面，住建部则要求从事项目管理服务的外资企业需在本地建立实体企业并在以下六大门类中获得至少一项专业资质，这包括勘察、设计、建筑、监理、招标代理及造价咨询。

外资企业如需提供项目管理服务，是否需要同时符合发改委和住建部的不同要求，这一点尚未明确。而这一现象主要产生于发改委颁布的《工程咨询单位资格认定办法》（29号令）以及住建部颁布的《建设工程项目管理试行办法》（200号令）。政策的不明确性阻碍了外国企业参与市场并为之做出相应的贡献。由于住建部已于日前在上文中提到的《工程勘察设计行业 2011-2015 年发展纲要》提出过该问题，我们期望该政策环境能够在近期得到澄清。

在试图达到住建部标准的同时，外资企业发现通过选用适用的法规（155 号令），他们无须成为外商投资建筑业企业和外商投资设计企业便可以提供项目管理服务，而这也使外国企业感到困惑。外资企业只要拥有监理、招标代理或造价咨询三项其中的任一资质便可符合法律要求，并可成为外商投资建设工程服务企业。然而，由于 155 号令的具体实施细则尚未出台，许多城市的地方机构以此拒绝接受外企的工程服务资质的申请。

中国美国商会希望政府尽快出台明确的规章制度，为企业的运营创造一个统一的政策环境。

工程采购施工行业

明确有关工程采购施工承包的法规

在建筑项目中纳入工程采购施工承包的方法已逐步在中国使用，但现有的资质认证系统还不能有效地满足项目的需求。法规不清晰和法规解释不一致阻碍了有资质的企业进入市场并分享其专业技术。

只要承包商持有相应的设计资质并雇用合格的分包商，法律基本上就允许其进行设计采购施工承包。然而，在实践当中，对于工程设计、施工及其他合同的备案要求一直都是因地方机构的不同而存在差异。常见的做法就是只有拥有相应执业资质的企业才可以订立并备案相应的合同。

各地方的这种做法使得仅拥有设计资质的企业无法承包工程采购施工一体化的承包项目。中国美国商会希望随着《建设项目工程总承包合同示范文本（试行）》的出台，有关部门能够在明确相关资质的同时标准化实施办法，从而提升行业的透明度和一致性。

结论

尽管在 2011 年，建筑、工程与设计行业中大多数适用于外资企业的法律制度仍未改变，行业纲要与规划的出台是中国政府愿意并已准备好改善整个行业的政策环境方面的积极表现。我们相信在新规定与更加健康的市场环境的帮助下，外资将为中国市场提供更多益处。

建议

工程采购施工承包行业

- 颁布正式的法规，明确承揽工程采购施工一体化项目的资质要求

工程设计行业

- 允许外资设计企业直接申请甲级设计资质，而无需先申请并获得乙级资质。
- 永久性地放宽有关 25% 的员工配备限制以及外籍员工需常驻中国 3-6 个月的要求

建筑行业

- 与国际接轨，降低注册资本金门槛。准许运用母公司担保、债券及其他担保手段来部分或完全取代高额注册资本金
- 放宽关于承揽工程项目总造价不得高于注册资本额 5 倍的限制
- 与国际接轨，放宽关于联合体资质以联合方所拥有最低资质为最终资质的限制。

项目管理行业

- 颁布专门的项目管理资质标准，取消目前发改委与住建部法规当中存在争议的条款。
- 明确非外商投资建筑业企业和外商投资设计公司从事项目管理服务的要求。

Recommendations

EPC Contracting Sector

- Formally issue regulations clarifying qualifications required to undertake EPC contracting.

Engineering and Design Sector

- Allow FIDEs to directly apply for Grade A Design Qualification without first applying for and obtaining Grade B.
- Permanently relax the 25 percent requirement and the three- to six-month residency requirement for foreign service providers.

Construction Sector

- Reduce registered capital requirements in line with international norms by allowing the fiscal strength of the parent company, bonding, or other guarantee arrangement as an alternative to, or partial or complete replacement for, high registered capital requirements.
- Relax the registered capital requirement stating that the maximum value of work undertaken cannot exceed five times registered capital.
- In line with international norms, relax the requirement that consortia must default to the qualification level of the lowest qualified consortium member.

Project Management Sector

- Issue specific project management qualification standards that remove the ambiguity between current NDRC and MOHURD regimes.
- For companies that are not FICEs or FIDEs, clarify the requirements for qualifying as providers of project management services.



Cosmetics

Introduction

The rapid development of China's economy has led to sustained improvement in people's standard of living and their enhanced ability to afford products beyond the daily necessities. One such product is cosmetics, which have seen a rapid increase in demand to where they now have become almost indispensable daily necessities.

In 2011, the Chinese cosmetics market witnessed continued vigorous development and demand increases, not only for greater quantities of cosmetics but also for greater variety and higher quality. The Chinese cosmetics market grew by approximately 11 percent in 2011, with the number of cosmetics enterprises now exceeding 3,400. Nearly 25,000 varieties of cosmetics are available in the Chinese market and gross annual sales reached RMB 170 billion (US \$27 billion) in 2011.

Despite these great increases in demand and growth in the Chinese cosmetics industry, there are still some issues that need to be addressed. Ensuring the safety of cosmetics, decreasing areas of overlapping jurisdiction by multiple government departments over the industry, and eliminating redundant testing and approval processes would help the Chinese cosmetics industry continue to sustainably grow and advance. Furthermore, for more effective supervision in the cosmetics industry, new regulations should aim to shift the supervision focus from pre-market supervision to post-market supervision, with the government gradually allowing enterprises to bear more responsibility for their own products, so as to ensure the long-term health of the cosmetics industry.

Significant Developments

AmCham China appreciates the efforts the Chinese government has made to further development of the cosmetics industry. During the past year, government authorities and the cosmetics industry have worked ceaselessly to improve product quality and safety, upgrade the regulatory environment, and crack down on illegal activities. In particular, we are grateful for advances made through the following policies.

Release of New Regulations on the Import and Export of Cosmetics

In August 2011, the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) released the new "Administration Measures for Inspection, Quarantine, and Supervision of Imported and Exported Cosmetics" (Decree No. 143), officially implementing them on February 1, 2012. These measures help clarify the responsibilities of both the government and enterprises in the area of cosmetics product safety, outline requirements for inspections of substances with potential safety risks, as well as shift the focus of supervision from "quality" to "safety," in line with how regulation of the cosmetics industry is trending globally.

Restructuring of the Food Licensing Department of SFDA

In July 2011, the State Food and Drug Administration (SFDA) integrated the functions of cosmetics licensing and supervision under one department called the Healthcare, Food, and Cosmetics Regulatory Department. These functions were formerly divided among the Department of Food Licensing and other government agencies. This restructuring is a positive move towards clarifying which department has authority over cosmetics, and should improve efficiency in regulating the cosmetics industry.

Release of Registration Guide for New Ingredients

In May 2011, SFDA released the "Guide to Registration and Evaluation of New Ingredients for Cosmetics." In conjunction with the release, SFDA arranged several training events, which were very beneficial to industry and helped enterprises better understand the technical requirements regarding declaration of new ingredients.

Proposed Alternative to Animal Testing Released for Public Comment

On February 10, 2012, SFDA released for public comment a draft of 3T3 Neutral Red Uptake (3T3 NRU) phototoxicity test, an alternative method to animal testing. Industry sees this as a very positive step that could hopefully lead

化妆品

引言

随着国民经济的飞速发展，人民生活水平不断提高，对日用必需品以外产品的消费能力也有所增强。化妆品就是其中之一，其消费需求迅速增长，如今已成为百姓生活中不可或缺的生活必需品。

2011年中国化妆品市场又取得了蓬勃的发展，人们对化妆品的消费需求无论在数量、品种还是质量方面正在迅速增长。去年，中国化妆品市场销售额增速约11%，化妆品生产企业目前已超过3400家，化妆品品种多达2.5万余种，总销售额1700亿元人民币（270亿美元）。

尽管中国化妆品产业在需求和增长方面都有了极大发展，仍有一些问题亟待解决。确保化妆品的安全性，减少不同政府部门的多重监管、取消重复审批等问题将有助于中国化妆品行业的持续发展与进步。此外，为实现对化妆品行业更为有效的监管，新出台的相关规定应该将监管重点由事前监管转向事后监管，政府随之逐步允许企业对其自身产品承担更多的责任，以确保化妆品行业的长期健康发展。

重大进展

中国美国商会对中国政府为行业发展所作出的努力表示感谢。去年，政府主管部门和化妆品行业在提高产品质量安全、规范市场秩序、打击违法犯罪等方面做出了不懈的努力。我们尤其对于下述政策所带来的各方面的进步表示欢迎。

《进出口化妆品检验检疫监督管理办法》发布

2011年8月，国家质量监督检验检疫总局（下文简称“质检总局”）发布了新的《进出口化妆品检验检疫监督管理办法》（总局令第143号），自2012年2月1日起正式执行。新《办法》进一步厘清了政府、企业对产品安全的责任，概括了对具有潜在安全风险的原料进行审查的各项要求，

反映出监管思路从“质量”向“安全”的转变，体现出化妆品行业新规定与国际发展趋势的一致性。

原国家食药局食品许可司进行重组

2011年7月，国家食品药品监督管理局（国家食药局）将化妆品的许可和监管职能进行了整合，成立了保健食品化妆品监管司（保化司）。之前这些职能分别属于食品许可司和其他政府部门。此次机构调整是在明确各部门对化妆品的监管职责，提高其对化妆品行业的监管效率方面作出的积极举措。

《化妆品新原料申报与审评指南》发布

2011年5月，国家食药局发布了《化妆品新原料申报与审评指南》，并组织了多次培训，使申报企业明确、系统地了解了新原料申报的技术要求，对提高行业效率很有帮助。

动物实验替代方法发布并公开征求意见

2012年2月10日，国家食药局发布《化妆品用化学原料体外3T3中性红摄取光毒性试验方法（征求意见稿）》，公开征求意见。3T3中性红摄取光毒性试验方法是动物实验的一种替代方法。业界将此视为改变中国目前针对化妆品动物实验的各项要求方面所迈出的积极步伐。目前，中国是世界上唯一要求化妆品动物实验的国家。

技术审评要点的发布

国家食药局陆续发布了新产品、批件延续、许可资料受理的技术审评要点，这标志着国家食药局向加强化妆品行业监管透明化方向的迈进。

具体问题

《化妆品卫生监督条例》

《化妆品卫生监督条例》（以下简为《条例》）及其《实

to China changing the requirement for animal testing of cosmetics. At present, China is the only country in the world that requires animal testing of cosmetics.

Release of Key Technical Evaluation Criteria

SFDA took steps toward increasing transparency in the regulation of the cosmetics industry through the release of key criteria for the technical evaluation of new products, the extension of the validity of licenses, and increasing clarity regarding what information is accepted in the licensing process.

Specific Issues

“Regulations on the Supervision of Cosmetics Hygiene”

The “Regulations on the Supervision of Cosmetics Hygiene” and their corresponding “Detailed Rules for Implementation” were released in 1989 and 1991, respectively. Twenty years since these regulations were issued, they have clearly lagged behind developments in the cosmetics industry and latest advances in testing methods and supervision requirements.

AmCham China hopes that the government can initiate work on updating these regulations to make them more in line with current global norms and to address some of the administrative issues that are hindering the development of the cosmetics industry in China. Such issues include: (1) clarifying the duties of supervision departments and removing overlapping jurisdiction to avoid repetitive processing; (2) adjusting emphases in supervision and administration based on sound scientific data and safety risk assessment, so that pre-commercialization license requirements only target new ingredients and products that represent a higher safety risk; and (3) establishing an effective mechanism for post-commercialization supervision and administration.

Reclassification of Non-Special Purpose Cosmetics

The SFDA released for comments “Opinions on Classification Management of Non-Special Purpose Cosmetics,” which aims to strengthen the supervision of cosmetics safety through reclassification. However, recent cosmetics safety-related scandals exposed by the media indicate that it is the ingredients, rather than functionality, of the cosmetics that affects product safety. Moreover, the implementation of the regulation will eventually expand the scope of special-purpose products to include at least 70 percent of total cosmetics. More than 200,000 new products will likely need to be added to the category, all of which will be subject to administrative approval by SFDA prior to launching—10 times the current amount of products subject to the said approval. If administrative resources

are not ready or sufficient, the registration process and launch of new products could be greatly slowed down or postponed, thus impairing the operation, innovation, and rapid development of China’s cosmetics industry. Since the regulation is of high importance and long-term impact to the industry, we urge SFDA to consider industry comments and proceed with the implementation for different products in a gradual manner.

Administration of New Ingredients for Cosmetics

Licensing for New Ingredients

From April 2010 to December 2011, more than 100 applications for the registration of new cosmetics ingredients were filed. However, the approval process has been very slow. As of March 2012, only two new cosmetics ingredients were approved. There are several potential reasons for this. Although the newly released “Guide to Registration and Evaluation of New Ingredients for Cosmetics” stipulates specific requirements for information to be provided for registration of new ingredients, particularly regarding toxicity safety, the data required in the development reports, on the production process, in the sketch drawings, and on quality control and safety are still unclear. The related evaluation standards are also vague. Furthermore, officials continue to add new requirements during the registration evaluation process that are not listed in the guide. In some cases, these requirements do not take into account special circumstances of the cosmetics industry, and thus cannot be met by cosmetics producers.

To address these problems, AmCham China suggests that SFDA publish further guidance detailing the key technical points listed in the guide and the corresponding testing standards, in order to clarify exactly what data is required and the evaluation indices the Chinese officials are utilizing for the evaluation of cosmetic products.

In addition, AmCham China requests that SFDA arrange regularly scheduled training events covering the registration process under the guide for new cosmetics ingredients. For the training, we suggest SFDA invite affected enterprises; technical experts; officials from the examination and approval centers; and representatives from the Healthcare, Food, and Cosmetics Regulatory Department. Such government-industry cooperation would facilitate more effective government oversight while enabling enterprises to more efficiently comply with the requirements. This would in turn benefit the Chinese cosmetics market overall.

Revision of the Catalogue of Ingredients for Cosmetics

AmCham China understands that SFDA is in the process of revising in batches the “Catalogue of Ingredients for Use in Cosmetics in China.” As SFDA revises this catalogue,

施细则》先后发布于1989年和1991年，至今已经实施了二十多年。作为中国化妆品监管的主要法规，《条例》已经明显滞后于行业的发展和监管的需要。

中国美国商会希望政府尽早启动《条例》的修订，使其符合现行的各项全球标准，并解决目前一些严重阻碍中国化妆品行业发展的的问题。具体包括：(1)厘清监管部门的职责、避免重复监管；(2)以详实的科学数据、安全风险评估为基础，调整监管重点。仅针对安全风险较高的新原料、产品类别设置科学合理的市前许可要求；(3)建立有效的市后监管机制和体系。

非特殊用途化妆品重新分类

国家食药监局正在就《关于非特殊用途化妆品分类管理的意见》征求意见。该管理办法旨在通过重新分类达到加强化妆品安全管理的目的。然而，近年发生的化妆品安全性媒体事件说明，产品的安全性和功能无关，而是和原料有关，按照产品功能分类进行风险管理有缘木求鱼之嫌。此外，该管理办法的最终实施将使至少70%的化妆品都被纳入特殊用途化妆品，即必须取得行政许可才能上市。新增审批产品将超过20万件，审批数量相当于目前的10倍。如果行政资源不能满足，必将会降低产品注册速度、推迟产品的上市，从而影响行业的经营、创新和发展。鉴于该办法对行业影响深远，我们敬请国家食药监局充分听取行业意见，针对不同类型的产品逐步实施。

化妆品新原料的管理

新原料许可

自2010年4月到2011年12月止，已有超过100个新原料申请在注册审评中，但是审批过程极为缓慢。截至2012年3月，仅有两个原料申请获得批准。造成该结果的原因可能有如下几点：虽然国家食药局出台的《化妆品新原料申报与审评指南》规定了新原料注册资料尤其是毒理安全数据方面的具体要求，但是在研制报告、生产工艺简述及简图和原料质量安全控制要求等方面，新原料注册的具体资料要求以及相应的评审标准还不清晰。并且，在新原料注册实际评审过程中，评审标准不断涌现出新的要求，有些要求没有考虑化妆品新原料的特点和实际情况，令企业应接不暇甚至无从应对。

针对这些问题，中国美国商会建议国家食药局在目前《化妆品新原料申报与审评指南》的基础上，进一步出台

详细具体的化妆品新原料技术审评要点和细则，从而澄清数据方面的具体要求并使用统一技术评审尺度评估化妆品产品。

此外，我们建议国家食药局定期召开化妆品新原料注册申报培训会，邀请相关企业、技术专家、审批中心和保化司共同参与。这种政府与行业之间的合作将提升政府监管的有效性，同时使企业行为更符合相关要求，最终将使整个中国化妆品市场受益。

化妆品原料名称目录的修订

中国美国商会理解，国家食药局正在组织分批开展中国《已使用化妆品原料名称目录》的编写与修订工作。中国美国商会也提请国家食药局在目录的修订过程中注意以下几个问题：(1)化妆品被普遍认为对消费者人体安全风险性很小，不应该与风险较高的食品和药品化归一类；(2)随着化妆品行业的飞速发展和不断创新，大量的新型化妆品原料被广泛使用，并且大多数新原料在长期的使用过程中建立了安全的使用记录。中国在修订化妆品认证要求的过程中应该对这些使用记录予以考虑；(3)目前采用的过于宽泛的化妆品新原料定义、繁琐的注册制度以及由此可能造成的对化妆品原料采用肯定列表制度的管理模式（仅列表上的原料被允许在化妆品中使用），可能会不利于中国化妆品行业的可持续发展。

中国美国商会希望国家食药局在修订中国已使用化妆品原料名录过程中，与行业充分合作，摒弃不合时宜的要求，根据目前新原料的定义将所有已在中国上市的化妆品中使用过的原料纳入该名录中。进一步讲，中国美国商会同时希望国家食药局参照欧盟等地区的管理经验，将化妆品新原料限定于几类特殊功效原料（防腐剂、着色剂、防晒剂和染发剂）的范围内。

国产非特殊产品的备案工作

国家食药局于2011年4月26日正式发布《国产非特殊用途化妆品备案管理办法》（下文简为《办法》）。该《办法》旨在明确：(1)国产非特殊用途化妆品的注册备案及许可管理方面的相关要求；(2)指定检验机构应具备的资质条件；(3)对检验工作的要求；以及(4)对国产非特殊用途化妆品的备案要求。该办法于2011年10月1日起生效。

然而该《办法》在实际执行操作过程中遇到了诸多问题。首先，由于各省级食品药品监督管理局指定本行政区域内备案的检验机构分布不均匀，尤其是毒理试验的检测机

AmCham China respectfully requests that they keep in mind the following points: (1) cosmetics are considered a low health safety risk and therefore should not be categorized with higher risk foods and drugs; (2) due to rapid development and innovation in the cosmetics industry, a large number of new ingredients are being widely used in cosmetics and a significant amount of data on their safe use has been collected. This data should be taken into account when revising the certification requirements for cosmetics in China; (3) adopting an overly broad definition of new ingredients, an excessively onerous certification process, and the potential adoption of a positive list system under which only materials on the list can be used in cosmetics, may negatively impact sustainable growth of the Chinese cosmetics industry.

AmCham China hopes that SFDA will work closely with industry when revising this catalogue to remove out-of-date requirements, include all ingredients already commercialized in China, and appropriately accommodate the dynamic nature of this important industry. Going forward, AmCham China also hopes that SFDA will follow the practice of many EU countries by narrowing the management of new ingredients to only special purpose materials such as preservatives, colorants, sun-screening agents, and hair colorants.

Domestic Non-Special Purpose Product Filing

On April 26, 2011, SFDA officially released the “Measures for the Administration of Domestic Non-Special Purpose Cosmetics Filing.” The measures are meant to clarify: (1) the requirements for the administration of licensing and registration filings for domestic non-special purpose cosmetics; (2) the qualification requirements for designated testing centers or institutions; (3) the requirements for conducting inspections; and (4) the requirements for filing domestic non-special purpose cosmetics applications. These measures went into effect on October 1, 2011.

However, implementation of these measures has encountered a number of problems. First, the testing institutions, as designated by the provincial-level food and drug administrations, are not distributed evenly geographically. In particular, there are too few testing institutions for toxicology testing, thus preventing many domestic enterprises from obtaining product inspections pursuant to the requirements of the measures. In addition, the exact types of product testing required and the fees for testing remain unclear. Finally, the measures are not clear on how long inspections should take. Since the testing report must be submitted along with filing applications, and the new measures stipulate the filing applications must be submitted within two months after commercialization of new products, delayed inspections have caused many enterprises to be unable to file applications in time.

To improve implementation of these measures, AmCham

China respectfully requests that SFDA allow a 12-month transitional period before making the requirements in the measures mandatory. After this period, enterprises would provide SFDA with the relevant toxicology testing as detailed in the requirements, and the qualified inspection institutions would be ready to review them, as they will have matured in their implementation of the inspection processes. We recommend that during the transitional period, enterprises be able to submit a certification letter guaranteeing product quality and safety, in lieu of a report on toxicology inspection. AmCham China would also ask that SFDA use this transitional period to standardize the fees charged by the inspection institutions in order to reduce the economic burden on enterprises and ensure the smooth implementation of the measures.

Recommendations

- SFDA should release further guidance detailing the key criteria and technical evaluation rules in the “Guide to Registration and Evaluation of New Ingredients for Cosmetics.”
- When amending the “Catalogue of Ingredients for Use in Cosmetics in China,” SFDA should draw on the best practices of other countries and regions and include all cosmetics ingredients already commercialized in China.
- SFDA should provide enterprises with a reasonable transition period before mandating that they meet the requirements of the “Measures for the Administration of Domestic Non-Special Purpose Cosmetics Filing,” and institute temporary measures for enterprises to comply with in the interim.
- Amend the “Regulations on the Supervision of Cosmetics Hygiene” as soon as possible.

构偏少，导致许多国内企业无法按照《办法》的要求对产品进行检验。此外，样品的检验项目和费用至今尚未明确。最后，产品检测周期也不确定。由于规定要求检测报告的提交必须与申请的备案同时进行，并要求在新产品上市后两个月内进行备案，因而检测过程的拖延将造成许多企业无法及时对其申请进行备案。

为保证该《办法》的顺利实施，中国美国商会恳请国家食药局在强制推行该《办法》前给企业12个月的过渡期。在此过渡期后，企业便可按相关要求向国家食药局提交相关毒理检测报告，同时检验机构的检测条件也已成熟，可以进行检测报告的审阅工作。我们建议在此期间，企业提交产品安全质量承诺书替代毒理检测报告。中国美国商会同时希望国家食药局规范检验机构检测费用的范围，减轻企业的经济负担，以保证法规的顺利实施。

建议

- 建议国家食药局在目前《化妆品新原料申报与审评指南》的基础上，进一步出台细化的主要标准和技术审评规则。
- 建议国家食药局修订在修订《已使用化妆品原料名称名录》时，将所有已在中国上市的化妆品中使用过的原料纳入该名录中，并参考其他国家地区的先进管理经验。
- 为保证该《国产非特殊用途化妆品备案管理办法》的顺利实施，建议国家食药局在强制推行该办法前，给企业合理过渡期及合理的过渡期临时举措。
- 尽早启动《化妆品卫生监督条例》的修订。

Direct Sales

Introduction

Direct selling was recognized as a legitimate industry in China in 2005 with the promulgation of the Direct Sales Regulation (DSR). AmCham China applauds China's compliance with its World Trade Organization (WTO) obligation to open the direct sales market. More could be done, however, to further support the development of the industry, including by making the Direct Sales Regulation less cumbersome for industry to comply with and easier for the government to administer, as well as by making direct sales more accessible to consumers.

We believe the operations of licensed direct sales companies in recent years have demonstrated that direct sales benefits China not only by introducing new products and an alternative shopping channel for consumers, but also by bringing many new employment and income opportunities to hard-working Chinese citizens. These benefits complement each other and can help accelerate achievement of China's objective in the 12th Five-Year Plan to stimulate domestic consumption and increase the living standard of Chinese citizens.

Significant Developments

By the end of 2011, the Ministry of Commerce (MOFCOM) had granted 30 direct sales licenses, including 21 to foreign-invested enterprises (FIEs), 10 of which are US companies. It is estimated that the total size of the licensed direct sales business in China in 2010 exceeded US \$8.7 billion (RMB 55.2 billion).

Significant for the advancement of the direct selling industry, MOFCOM announced in the fall of 2011 that it has approved the establishment of a Direct Selling Industry Management Committee under the China Association of Enterprises with Foreign Investment (CAEFI). This management committee could serve the purpose of a direct selling industry association. AmCham China welcomes this development, as the direct selling industry needs a platform to enhance communication with the government, strengthen industry self-discipline for the benefit of consumers, and share best practices within the industry.

Specific Issues

Reputation of the Industry and the Need to Unfetter Direct Selling

Unfortunately, fraudulent scams (*chuanxiao* 传销) persist in spite of continued government efforts to eradicate them. Although the legitimate direct sales industry seeks to set itself apart from *chuanxiao*, the government tends to see the latter as inspired by the former. Consequently, the government maintains stringent regulations to limit the expansion of the industry and continues to hold a suspicious attitude toward direct sales. This results in many companies choosing to operate some form of direct selling, including via Internet, without applying for a license or adhering to the Direct Sales Regulation. This causes confusion in the market and is unfair for licensed companies that are put at a disadvantage. Likewise, for business to be viable under such conditions, companies are often forced to adopt policies which, while not violating the letter of the law, are often in a grey area of what is allowable. This exposes companies to challenges by interest groups, the media, or at times, even some local authorities.

Globally, developed market economies acknowledge that legitimate businesses should be permitted to operate using a wide variety of business structures. Rather than fettering legitimate direct sales businesses through overly stringent regulations, the government should specifically target fraudulent scams that are often disguised as legitimate businesses, identify them based on their use of specific fraudulent sales practices, and appropriately sanction them.

In China, the supervising authorities have overseen direct selling for nearly two decades. Given this experience, it should be clear that certain fundamental and distinctive differences exist between legitimate direct sales and fraudulent scams. For example, the requirement that sales personnel make upfront investments in inventory, the absence of a return-and-refund policy for consumers, the lack of a bona-fide fully implemented buy-back policy for the individual direct sellers, and compensation based purely on the number of people recruited, are the marks of *chuanxiao*. Legitimate direct selling businesses do not permit such practices and have adequate consumer safeguards in their operations. These distinctions should be clearly

直销

引言

2005年中国政府颁布《直销管理条例》(以下简称《条例》),标志着直销在中国已获得合法行业地位。中国能够切实履行其加入世贸组织的承诺开放国内直销市场,中国美国商会对此非常赞赏。但为了进一步促进该行业发展,我们也建议采取更多措施,包括简化《条例》以便于企业遵照执行和政府监管,并使直销行业更加贴近于消费者。

我们相信,近年来获批直销许可企业的经营情况已经表明,直销行业不仅在引进新产品和提供新的购物渠道方面有利于中国经济的发展,而且还为勤劳的中国人民带来了许多就业和创收的机会。同时,直销也有助于加快实现中国第十二个五年计划中拉动国内消费、提高民众的生活水平的目标。

重大进展

截至2011年底,已经有30家企业获批中国商务部的直销经营许可,其中外商投资企业21家,美资企业占10家。据估计,截至2010年在中国获批直销许可企业的总规模超过87亿美元(约合人民币552亿元)。

2011年秋,中国商务部批准成立中国外商投资企业协会直销行业管理委员会,此举对于直销行业的发展具有重要意义。该管理委员会可以行使直销行业协会的功能。中国美国商会赞赏这一举措,因为直销行业需要这样一个平台,以加强与政府的沟通、促进行业自律、维护消费者利益,以及分享业内最佳实践经验。

具体问题

行业声誉和放宽直销法规的必要性

遗憾的是,尽管政府严厉打击,金字塔诈骗(即“传销”)仍然猖獗。而且,虽然合法直销行业一直想要与传销划清界限,但是政府仍倾向于认为后者是前者的衍生物,始终

对直销行业持怀疑和限制态度。这就导致一些企业采用网上直销等方式,放弃申请许可,亦不遵循《条例》,从而引发市场混乱,导致处于劣势的持有许可的企业遭受不公平待遇。而企业要想在这样的条件下生存,往往被迫游走在法律边缘的“灰色地带”,虽然属于合法经营,但却会面临来自利益集团、媒体、有时甚至是某些地方政府的挑战。

在全球范围内,市场经济发达的国家都允许合法企业采用各种不同的业务模式。政府不会通过过于严格的法规限制合法直销企业的发展,而是通过辨别确认使用特定欺诈性销售方法,对那些伪装成合法企业的金字塔诈骗进行严惩。

在中国,监管部门已经监督管理直销市场近二十年,在区分直销与传销方面应该拥有丰富的经验。例如,传销的特点主要包括:要求销售人员加入时大量购货、对消费者无退货退款政策、未能完全实现人员退出机制、按招募人数计酬。合法直销从不允许这些做法,而且会在运营中通过完善的保障机制,确保消费者及从业人员的合法权益。这些区别除了应该在《条例》中得以充分反映外,也应该成为未来修订《条例》的基础,同时对于消费者和政府执法机构来说,这方面的公共教育也有待加强。

许可申请

企业必须达到多项严格的要求才能取得直销许可,这些要求包括最低1000万美元(约合人民币6350万元)的初期投资、外资企业必须拥有三年的直销行业经验、初期有限的经营地域且企业在其销售产品的每个区域都必须设立服务网点。这些要求以及过长的审批时间存在诸多负面影响,包括导致部分企业未经许可即可开展直销经营活动。如前所述,无许可企业通常不遵守《条例》,这不仅对合法的企业不公平,还会给政府的监管带来诸多挑战,同时也使得消费者和公众对此产生混淆。

reflected in the relevant laws and regulations and could form the basis of future regulatory reviews. In the meantime, there should be more education of consumers and government enforcement agencies on such distinctions.

License Application Process

Companies must meet several stringent requirements to obtain a direct sales license, including requirements for a minimum US \$10 million (RMB 63.5 million) initial investment, a three-year prior direct sales history for FIEs, limited geographic approval initially, and the requirement for service centers in every urban district in which a company sells products. These requirements, plus the unnecessarily lengthy approval period, have the negative effect of deterring license applications and inducing companies to operate direct sales without a license. As mentioned before, unlicensed companies do not comply with the Direct Sales Regulation. This is not only unfair to legitimate companies, but also makes government supervision very challenging, and creates confusion for consumers and the general public.

Service Center Establishment

Direct sales service center requirements continue to be a significant challenge, not only for companies applying for a license but also for already licensed companies.

The Direct Sales Regulation specifies that a direct sales company must have a branch office in every province in which it operates and a "service center" in every urban district in which it sells products. A company selling through sales personnel that by definition work outside of fixed retail locations could face the potential requirement of setting up a service center in every one of China's 2,861 urban districts. It is economically daunting to set up so many service centers, and impractical to have to do so prior to realizing sales. To abide by the regulation, companies must simultaneously adopt two different business models: one to meet the requirements of direct sales and the other for non-direct sales.

The current direct sales license approval process also requires a company to first submit a service center establishment plan for separate district-, city-, and provincial-level approvals prior to requesting MOFCOM approval. Once the license is granted by MOFCOM, the company must then set up the service centers according to the approved plan, and then again obtain district-, city-, and provincial-level approvals to initiate direct sales operations in that urban district. In addition, established service centers are required by local administrations for industry and commerce (AICs) to undergo an annual license audit and approval. This is tremendously burdensome in terms of time, cost, complexity and work, not only for companies, but also for the government.

AmCham China recommends revising the service center

requirement from one per urban district to one per city and simplifying the license approval process by requiring only provincial-level approval of service center establishment plans. In this way, we encourage the elimination of multi-level government approvals and sales initiation approvals.

Need to Update Direct Selling Regulations and Administrative Directives

The Direct Selling Regulation and many of its associated administrative directives have been in effect for six years. During this time, the ongoing operation and government supervision of direct selling businesses have provided a wealth of experience upon which the government and industry can draw to jointly develop an updated and improved regulation. Some of the current regulations are overly restrictive and some are completely disconnected from market or business reality. Examples of regulations in need of revision include:

- **Training requirements**—New sales agents must receive training and pass a training exam before receiving a license; all training materials must be kept on file for three years; and trainers must have graduated from college and been employed by the company for at least one year. Such specific requirements do not reflect industry needs, especially regarding trainers, as the best trainers are often experienced distributors that do not necessarily fit the above qualifications.
- **Recruitment fee requirements**—Currently China prohibits direct sales agent recruitment fees. While large fees should be prohibited, a nominal fee is necessary to limit new agent applications to only those who are genuinely interested in becoming direct sales agents.
- **Service center approval process**—The service center approval process should be streamlined as described in the separate section above.
- **Compensation restrictions**—Limits on the type and amount of compensation direct sales agents can receive should be relaxed and brought in line with international practice.
- **Permissible product categories**—Limits on products that direct sales companies can sell should be minimized and brought in line with international practice.
- **Geographic approval**—Current unwritten practice seems to indicate that companies entering the direct sales market in China can only receive initial geographic approval for one province. After an unspecified waiting period, companies have then only been able to receive approval for additional provinces, and normally no more than five provinces at a time. The government should grant geographic approvals based on market needs in order to avoid unauthorized operation or preventing more consumers from benefiting from direct sales.

Direct selling companies seek to revise these and other regulations, not to seek rapid business expansion, but to remove

设立服务网点

无论对于正在申请许可的企业还是已经持有许可的企业，有关直销服务网点的规定都继续是一项巨大的挑战。

现行《条例》规定，直销企业必须在其营业的各个省份设立一个分支机构，并且在开展直销经营的每个区域设立一个“服务网点”。如果一家企业要在全国通过直销人员在固定零售点以外地区开展业务，这家企业将面临着需要在 2,861 个区域设立服务网点的挑战。设立这么多网点不仅耗资巨大，而且在实际开展销售之前这样做也不现实，因此让企业完全遵循法规几乎不可能。为了遵守该法规，直销企业必须同时采用两种不同的经营模式：一种是直销业务模式，而另一种则是非直销业务模式。

其次，现有审批程序要求申请直销许可企业必须递交服务网点方案，而该方案必须分别先经过区级、市级和省级监管机构，最后被国家商务部批准。获得商务部许可之后，企业必须根据批准通过的服务网点方案设立服务网点，并再一次取得区级、市级和省级监管机构的批准，方可在城区范围开展直销业务。除此之外，地方工商行政管理局还要求已经设立的服务网点要接受年度许可审核。无论对企业还是对政府而言，这套程序要求时间长、成本高、过程复杂且工作繁重。

为此，中国美国商会建议修改对于服务网点的要求，将每个区域设立一个服务网点改为每个城市设立一个，同时简化许可审批程序，要求服务网点设立方案仅需通过省级审批，并撤销多级政府审批和销售启动审批。

完善《条例》和配套法规的必要性

《条例》及配套法规自生效实施至今已有 6 年，随着行业的发展和监管的深入，政府和行业都积累了丰富的经验，能够共同对《条例》进行完善。但是有些现行法规过于严格，有些甚至完全脱离市场实际。需进一步完善的样例包括：

- **培训要求**——《条例》要求新加入的直销员必须接受培训并通过考试才能获得许可；所有培训材料必须存档三年；直销培训员必须具有大学文凭，并受雇于该公司至少一年。这些具体要求并未体现行业实际需求，特别是关于直销培训员的要求，因为最好的培训师往往来自资深直销员，但他们未必符合上述条件。
- **招募费用要求**——目前，中国禁止收取直销员招募费

用。大额费用应当禁止收取，但是象征性的费用，有助于确保提交加入申请者是真正对直销感兴趣的人。

- **服务网点审批流程**——如前文所述，服务网点审批流程应该简化。
- **报酬限制**——对于直销员可以获得的报酬类型及数额的限制应该放宽并使之符合国际惯例。
- **获准产品类别**——对于直销企业的产品范围限制应该放宽并使之符合国际惯例。
- **地域审批**——根据当前不成文的惯例，进入开展直销经营的企业最初往往只能获得一个省份的审批。在经历了一个不确定的等待期后，才有可能获得其他省份的审批，但一般每次不超过五个省份。政府应根据市场需求进行地域审批，以避免无许可经营，同时避免阻碍更多的消费者受益于直销。

直销企业希望完善相关的直销法规，并不是为了快速扩张自身业务，而是为了改善不符合实际的规定，从而减少争议并制约传销和无许可企业的发展。

直销监管权力变化

2011 年 10 月，中国政府宣布了一项改变直销监管权力的新规。国务院办公厅 2011 年第 48 号文宣布取消工商、质检省级以下垂直管理。几乎同时，国家工商行政管理总局按照既定规划，将直销监管权力下放给各区县 / 乡镇级工商行政管理局。

这两项变化可能意味着更富有直销监管经验的省级工商行政管理部门将不再监管地方一级出现的问题。由于相关法规尚不明晰，并且低级别的工商行政管理部门对直销了解有限，这项权力的下放可能导致法规在各地执行情况迥异、尺度不一，并且可能给直销企业在各地的分支机构以及直销员带来不必要的麻烦甚至是处罚。中国有数千个区县 / 乡镇级行政单位，直销企业将面临极大的管理挑战。

结论

中国美国商会赞赏中国政府承认直销行业的合法地位，同时也希望中国政府能够减少对直销行业不必要的负担和限制。减少对合法企业的限制可以扩大行业发展空间，让公众能够更好地区分合法直销与欺诈性传销。

impractical provisions which cause disputes and facilitate the proliferation of *chuanxiao* and unlicensed companies.

Change in Supervision Authority Over Direct Selling

In October 2011, the Chinese government announced a change that impacts supervision authority over direct selling. Under Directive 2011(48), the State Council directed that the “vertical management” for AIC and Quality Supervision bureaus below the provincial level is no longer in effect. Almost concurrently, the State Administration for Industry and Commerce (SAIC) made known plans to delegate supervision authority for direct selling to AIC bureaus at the district/township level.

Implementation of these two changes could mean that provincial-level AICs that are more experienced in overseeing direct selling would no longer have any supervision authority over issues happening at the local level. Due to ambiguity in relevant regulations and relatively less familiarity of lower-level AICs with direct selling, this delegation of authority would likely result in widely varying implementation of the regulations and potentially unwarranted harassment, and even penalization, of direct selling companies’ local operations or sales personnel. With thousands of districts and townships in China, it would be very difficult for direct selling companies to manage these challenges.

Conclusion

While AmCham China appreciates China’s recognition of the direct sales industry as legitimate, we encourage the government to reduce unnecessary restrictions that burden the industry. Reducing restrictions could give the industry the opportunity to develop in a way that would enable the public to better distinguish between legitimate direct sales and fraudulent scams.

approval process and duly informing companies of their application status during processing.

- Continue support for and expedite the establishment of a China direct selling industry association.

Recommendations

- **Revise service center requirements from one per urban district to one per city.**
- **Simplify the license approval process by requiring only provincial-level approval of service center establishment plans. Eliminate multi-level government approvals and sales initiation approvals.**
- Review and revise the Direct Sales Regulation, the Regulation to Prohibit *Chuanxiao*, as well as their associated administrative directives, to bring them in line with China’s WTO commitments, standard international practices, and business reality in the China market.
- Enhance market access and transparency by simplifying and increasing the speed of the license

建 议

- 将关于设立服务网点的规定从每个城区设立一个修改为每个城市设立一个。
- 简化许可审批过程，只要求服务网点方案通过省级审批。同时撤销多级政府审批和销售启动审批。
- 审核并修订《直销管理条例》、《禁止传销条例》以及配套法规，使之符合中国的人世承诺、国际惯例和中国市场的行业现状。
- 通过简化审批程序、适时通知企业审批进程并加快审批速度，加快市场准入并增加透明度。
- 继续支持并加快建立中国直销行业协会。

Electronic Payment Services

Introduction

In 2011, China's electronic payment service (EPS) industry experienced exponential growth, driven by strong domestic consumption and innovation in online and mobile payments. The level of interbank transactions reached RMB 15.9 trillion (US \$2.5 trillion) in 2011, up over 40 percent year-on-year. The volume of online payments is estimated to have hit RMB 2 trillion (US \$315 billion) by the end of 2011, up from only RMB 27 billion (US \$4.25 billion) in 2002. Mobile payments are expected to jump from RMB 20 billion (US \$3.15 billion) in 2010 to RMB 150 billion (US \$23.6 billion) by 2013.

Despite this rapid growth, however, restrictions on foreign-invested EPS providers continue to prevent them from fully participating in, and contributing to, the industry's development. These limitations have already begun to leave Chinese consumers behind those in other markets, which have seen faster development as a result of greater competition.

Significant Developments

The People's Bank of China (PBOC), China Banking Regulatory Commission (CBRC), National Development and Reform Commission (NDRC), and Ministry of Commerce (MOFCOM) have closely monitored the potential risks that come along with a fast-growing EPS industry and have issued regulations to guide the industry toward healthy growth. Most new regulations were posted on official government websites for public comment, a practice that we welcome. AmCham China appreciates such opportunities to comment and contribute to the future development of regulations.

Following its rule on third-party payment providers (3PPPs) promulgated in 2010, the PBOC granted licenses in three batches to 101 3PPPs in 2011, bringing previously unregulated 3PPPs under supervision. Meanwhile, the PBOC issued a host of implementation measures to guide 3PPPs on how to comply with anti-money laundering rules, manage client depository fund accounts, and conduct business in online payments and the issuance and acquisition of pre-paid cards.

In 2011, the CBRC-issued "Administrative Measures on Credit Cards" went into effect, enhancing cardholder

protection and bank risk control. MOFCOM also stepped up regulation of online shopping in order to improve consumer protection and intellectual property rights enforcement.

Finally, in May 2011, the China Payment and Clearing Association was established to promote industry self-discipline and payment innovation.

Specific Issues

The positive developments discussed above have prepared a solid foundation for healthy industry development. However, several critical issues call for regulatory attention. These issues, if properly managed, would benefit consumers, industry participants, and the overall economy.

Building a Competitive Market

In 2011, China celebrated the 10th anniversary of its accession to the World Trade Organization as a contributor to and beneficiary of the global trade system. However, China remains the only G-20 or BRIC (Brazil, Russia, India, China) country that has only one EPS scheme available. China's domestic RMB electronic payment market remains closed to both international and domestic EPS players. China Union Pay (CUP) is the only EPS company permitted to operate. Since its inception in 2001, CUP has made remarkable progress by issuing 2.6 billion cards to card holders and expanding its merchant acceptance network in 128 countries and regions.

By issuing co-branded cards with international EPS providers such as MasterCard and Visa, CUP provides over 100 million Chinese cardholders with access to millions of merchants and ATMs worldwide that would otherwise be unavailable to them. This highlights the value of cooperation among domestic and international payment providers, especially in maximizing benefits to customers (both cardholders and merchants). Such cooperation also nurtures domestic innovation, benefits trade, and integrates China with global practices. Allowing a greater number of EPS companies direct access to China's domestic EPS market would provide even more benefits to China's consumers and economy, enabling diversification against potential network failures (which merchants and card holders suffered in 2006 and 2011) and ensuring the stability of the increasingly important retail payment network.

电子支付服务

引言

2011年，在强劲的国内消费及在线和移动支付技术创新的推动下，中国的电子支付服务（EPS）行业呈现迅猛增长。2011年跨行POS交易额达到15.9万亿人民币（2.5万亿美元），同比增长40%。据估计，在线支付金额将从2002年的270亿人民币（42.5亿美元）跃升至2011年底的2万亿人民币（3150亿美元）。预计到2013年，移动支付金额将从2010年的200亿人民币（31.5亿美元）跃升至1500亿人民币（236亿美元）。

尽管增长迅速，但中国对外资EPS供应商仍实施限制措施，使其不能充分参与行业发展并为之做出贡献。这些限制已开始使中国消费者在支付服务方面落后于其他一些市场的消费者，那些市场由于更加激烈的竞争已经取得更快的发展。

重大进展

中国人民银行（央行）、中国银行业监督管理委员会（银监会）、国家发展和改革委员会（发改委）及商务部一直密切关注EPS行业的快速发展可能导致的潜在风险，并已出台相关规定来指导该行业的健康发展。大部分新法规在出台前都会公布在政府的官方网站上公开征求意见，对这一做法我们表示欢迎。中国美国商会对有机会为新法规的出台提出意见并做出贡献深表感谢。

继2010年颁布第三方支付服务供应商（3PPP）的相关规定后，央行又在2011年分三批向101家3PPP颁发牌照，从而将此前不受监管的3PPP纳入监管范围。同时，央行还发布一系列实施办法，对3PPP如何遵守反洗钱规定、客户备付金存管以及开展在线支付业务和预付卡业务等提供指导。

2011年，银监会制定的《商业银行信用卡业务监督管理办法》正式公布实施，进一步加强对持卡人的保护及银行的风险控制。商务部也正在起草网络购物条例，以进一

步保护消费者权益和加强知识产权执法。

中国于2011年5月成立了中国支付清算协会，以促进行业自律和支付创新。

具体问题

上文提及的积极进展已为该行业的健康发展奠定坚实基础。但在行业监管方面仍存在亟待解决的几个重要问题。如能对这些问题加以妥善监管，将会使消费者、行业主体和整个经济发展受益。

建立竞争性市场

2011年，中国迎来加入世界贸易组织十周年，为全球贸易体系作出贡献并从中受益。但是，中国仍然是20国集团或“金砖四国”（巴西、俄罗斯、印度和中国）中唯一一个只有单一EPS系统的国家。中国国内人民币电子支付市场依然不对国内外EPS供应商开放。中国银联（银联）是目前唯一一家可以从事该项业务的EPS公司。自2001年成立以来，银联已经取得显著成就，共发行了26亿张银行卡，并将其受理网络扩展到了128个国家和地区。

通过与万事达和VISA等国际EPS供应商发行双币种双标识卡（双标识卡），银联使国内超过一亿的双标识卡持卡人在全球数以百万计的商户和ATM机上消费或取款，这是凭借银联自身的力量所难以实现的。这一事实充分说明了国内和国际支付供应商进行合作的重要性，特别是在实现客户（持卡人和商户）利益最大化方面。同时这种合作促进了国内创新，推动贸易发展，并使中国融入全球实践中。允许更多EPS公司直接进入中国EPS市场将为中国消费者和经济带来更多益处，通过主体多样化以降低潜在的网络中断风险（2006和2011年中国的商户和持卡人都受到该风险的影响），并保障日益重要的零售支付网络的稳定性。

中国美国商会促请央行开放EPS行业，引入更多竞争。最终，该行业的开放将有助于培育有实力的本土供应商、

AmCham China urges the PBOC to open the EPS industry to greater competition. Ultimately, liberalization of this industry will build strong local providers, benefit consumers, and serve the overall economy.

Bank Card Swiping Fees

In response to merchants' long-standing complaints about China's overpriced bank card swiping fees, NDRC proposed a regulation in October 2011 to lower fees by half and cap them. AmCham China members have some reservations about this development.

One of the fee components is the interchange fee, which is the amount of money transferred from the acquiring bank to the issuing bank each time a credit, debit, or pre-paid product is used. With regard to cuts and caps on interchange fees, it is important to understand that caps can lead to issuers reducing their participation in the market if they do not think they can earn enough revenue to cover their costs (e.g., cost of funds, fraud costs, network costs). Such rules can also limit the interest of issuers in investing in new acceptance and issuance if their revenue is limited while their costs and potential losses are not. Growth in new technologies for online transactions, contactless chips, mobile, or other technologies could be limited if issuers lack the funds or incentive to invest. Also, issuers would likely need either to increase cardholder fees and/or bank account fees or reduce benefits—as seen in the US after the Durbin Amendment (part of the Dodd-Frank Wall Street Reform and Commerce Protection Act of 2010). AmCham China suggests that Chinese price regulators consider the possible unintended consequences of regulatory price-fixing while continuing to identify ways to reduce the interchange fee burden placed on merchants and other businesses.

After banks expressed concern over the proposed regulation, NDRC has begun to take into account the potential impact of the reduced fees on all participants, including cardholders, merchants, issuers, and acquirers, and is said to be considering changes to the proposed regulation. For example, NDRC is said to be considering a less drastic reduction in the initially proposed fee to avoid hurting the issuers. Meanwhile, NDRC is also considering streamlining the business tax levied more than once on merchants, acquirers, and issuers in the issuing and acquiring process. NDRC has also proposed that CBRC and PBOC tighten enforcement to stop acquirers from classifying ineligible merchants into categories with a lower merchant service fee, a rampant abuse adopted by acquirers to attract and recruit merchants.

AmCham China believes these revised proposals are a step toward balancing the interests of market participants. We encourage NDRC to continue broad consultation as these proposals are refined.

Migration to PBOC 2.0

In March 2011, PBOC issued a guideline requiring that by 2015, all new RMB denominated bank cards in economically developed geographical areas must migrate to PBOC 2.0, a chip standard issued by PBOC. The move is aimed at migrating from magnetic strip bank cards to fraud-proof chip cards and integrating onto a single card financial transactions across multiple industries (e.g., mass transportation, electronic wallets, pre-paid cards, social benefits, etc.).

Though well intended, this migration project has triggered concerns about the compatibility of PBOC 2.0 with the internationally accepted EMV (Europay, MasterCard, and Visa) chip card standard. Although efforts are being made to ensure that the two standards operate compatibly on terminals, it is unclear if they can interoperate smoothly on a mass scale. By 2015, China will have 150 million inbound travelers and 88 million outbound travelers. A compatible acceptance environment is equally important both for PBOC 2.0 cardholders traveling abroad and for EMV card holders visiting China.

AmCham China encourages the PBOC to work with both domestic and international EPS providers to prepare for the interoperability of PBOC 2.0 and EMV, in order to ensure that inbound and outbound travelers experience smooth and secure card usage.

Conclusions

With 2.6 billion bank cards in circulation, 500 million Internet users, and 800 million mobile phone users, China is set to become the world's largest EPS market. If China intends to be at the forefront of global payment innovations, the regulatory groundwork must be established to foster increased competition and openness and help China keep pace with the progress that is taking place in other markets.

Recommendations

- **Open market access to other domestic and international EPS providers in addition to China Union Pay. [PBOC and MOFCOM]**
- Work with both domestic and international EPS providers to prepare for full interoperability between PBOC 2.0 and EMV chip standards. [PBOC]
- Avoid drastic reductions in bank card swiping fees to ensure that incentives remain to invest in growth of the payment and acceptance network. [NDRC, PBOC, CBRC, and MOFCOM]
- Prevent the misclassification of merchant service fees. [PBOC, CBRC, and MOFCOM]
- Reduce the double taxation of merchants, issuers, and acquirers. [NDRC, Ministry of Finance, and MOFCOM]

造福消费者并促进经济的整体发展。

银行卡刷卡费

为了解决长期以来商户抱怨银行卡刷卡收费过高的问题，发改委于 2011 年 10 月提出拟减半银行卡刷卡费用并对其上限作出规定。中国美国商会的成员企业对这一举措有所保留。

银行卡刷卡费构成中的一项是交换费，这是信用卡、借记卡和预付费卡产品跨行使用时，收单行向发卡行支付的费用。在降低交换费并设定其最高额方面，我们应充分理解设置上限将会导致发卡银行降低市场参与度，因为他们认为刷卡交易所得收入不足以支付发卡相关成本（如，资金成本、欺诈成本、网络成本等）。如果其收益有限而由此产生的成本和潜在损失却无限，那么这一降低交换费的规定还会挫伤银行加大受理和发卡业务投资力度的积极性。如果银行缺乏资金或投资动力，在线交易、非接触芯片、移动技术和其他技术的发展创新空间便十分有限。另外，银行还可能会增加持卡人的卡片年费和 / 或账户管理费或者减少持卡人奖励计划——美国颁布杜宾（Durbin）法案实施类似措施后的情况便是如此。中国美国商会建议，中国的价格主管部门在继续寻求降低商户刷卡费负担的途径时，考虑这一价格调整可能带来的意想不到的后果。

在银行方面表达了对此规定的担心后，发改委已经意识到降低刷卡费对所有各方，包括对持卡人、商户、收单方和发卡行，可能造成的影响，并据说已经开始考虑对即将出台的规定做适当的调整。例如，据称发改委已考虑降低银行卡收费的削减幅度，以避免对发卡银行造成的损害。同时发改委正在考虑减少在发卡和收单过程中对商户、收单机构和发卡行重复征收营业税的状况。发改委还建议银监会和央行加强监管，杜绝收单机构对高扣率商户套用低扣率的行为，这是收单机构为吸引和招揽商户而普遍滥用的手段。

中国美国商会相信这些举措的调整是朝着平衡市场参与各方利益的方向发展，我们鼓励发改委在修订这些提案时继续广泛征求各方意见。

向第二代金融 IC 卡 (PBOC2.0) 过渡

2011 年 3 月，央行公布指导意见，要求到 2015 年，经济发达地区新发行的所有人民币银行卡都必须采用 PBOC 2.0 这一由央行发布的芯片卡标准。此举旨在引导传统的磁条银行卡向具有防欺诈功能的芯片卡过渡，并将各个行

业内的金融交易功能整合到一张卡中（如，公共交通、电子钱包、预付卡、社会保障卡等）。

尽管这一举措的初衷良好，但 PBOC 2.0 同时存在与国际通行 EMV（欧洲支付、万事达卡和维萨卡）芯片卡标准的兼容问题。尽管各方已经在努力实现两套标准在终端运行上的兼容，但尚不清楚是否能在大规模使用下实现顺畅对接。到 2015 年，中国预计将迎来 1.5 亿的境外游客，同时出境游客也将达到 8800 万人，对于出国旅行的 PBOC 2.0 持卡用户和来华旅游的 EMV 持卡用户来说，实现境内外银行卡兼容同等重要。

中国美国商会鼓励央行加大与国内外 EPS 供应商合作，努力实现 PBOC 2.0 和 EMV 标准的兼容，确保出入境游客能够方便、安全地使用银行卡。

结论

目前中国流通的银行卡已达 26 亿张，同时拥有 5 亿网民和 8 亿手机用户，中国必将成为全球最大的 EPS 市场。如果中国想要走在全球支付创新的前列，就必须建立相关监管框架，促进竞争和开放，实现与其他市场的同步发展。

建议

- 向除中国银联外的其它国内外 EPS 供应商开放市场。[央行、商务部]
- 与国内外 EPS 供应商合作，努力实现 PBOC 2.0 和 EMV 芯片卡标准的全面兼容。[央行]
- 避免银行卡刷卡费的大幅下调，以保证银行对支付和受理网络投资建设的积极性。[发改委、央行、银监会和商务部]
- 防止对商户扣率的滥用。[央行、银监会、商务部]
- 减少刷卡过程中对商户、发卡行和收单行的重复征税。[发改委、财政部和商务部]

Express Delivery Services

Introduction

Logistics costs accounted for 18 percent of China's GDP in 2010, double the average for developed countries. High logistics costs in China result from many factors, including repeated unauthorized charges and penalties, rising oil prices, distribution difficulties in urban areas, and repeated tax collection. Rising costs in the logistics industry have become a major concern that affects the entire economy.

The logistics industry is the lifeline of economic operations. A logistics system that operates smoothly, efficiently, and conveniently can significantly promote commerce and trade, drive the development of relevant industries, and elevate the competitive edge of both the market and products. AmCham China encourages examination of the bottlenecks facing the logistics industry, and we welcome opportunities to work with the government in order to find effective solutions.

Significant Developments

The State Council issued a series of detailed measures in 2011 seeking to accelerate the development of full-fledged logistics companies ("Opinions of the General Office of the State Council for Policy Measures to Promote the Healthy Development of the Logistics Industry," August 2, 2011). The measures include: improving the logistics management system through streamlining and breaking down barriers between different levels of government; simplifying eligibility criteria and administrative processes for registration of logistics enterprises; simplifying processes for establishing branch offices of these entities; and addressing pressing issues such as difficulties in transit, distribution, and parking of goods vehicles in urban areas. The measures also include standards for green vehicles engaged in urban distribution and the prohibition of the conversion of passenger vehicles to commercial vehicles. The impact of these measures will depend on their effective implementation by the relevant government agencies.

Specific Issues

Postal Issues

Restrictions on Foreign Investment

Under Article 5 of the "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalogue), revised in December 2011, the transportation, warehousing, and postal industries, as well as domestic letters of express delivery services (EDS) all fall under the "prohibited" investment category. Such restrictions on foreign investment in these industries inhibit the ability of domestic clients and consumers to select and benefit from services based on quality and speed of service. Foreign-invested companies have been instrumental in raising standards of service in China; Their exclusion from the domestic letters market in these industries slows these industries' development. AmCham China encourages China to move transportation, warehousing, postal, and domestic letters express service to the "encouraged" category in the Foreign Investment Catalogue.

Delayed EDS Business License Approvals

Some AmCham China member companies have reported that their domestic license applications have been pending for over one year. Although the postal authority formally acknowledged receipt of the applications last year, these members have not received any updates on application status. Such delays have a negative impact on business operations for these companies.

Domestic business licenses are required in order to establish branches, apply for business registration, and carry out other procedures and business functions. Extended application processing times create huge uncertainties in normal operations. Furthermore, some enterprises that began domestic business before the Postal Law was promulgated have yet to receive license approval. As a result, many enterprises still awaiting licenses have been questioned by authorities, including local postal bureaus and Administrations for Industry and Commerce (AICs). In serious cases, enterprises have been required to submit self-criticisms and fines have been levied. These issues have been called to the attention of the relevant authorities repeatedly.

快递服务

引言

2010年，中国的物流成本占到国内生产总值的18%，是发达国家平均物流成本的两倍。中国物流成本高起的原因众多，包括乱收费、乱罚款，石油价格上涨，车辆进城难，重复征税等。物流行业成本上升已经成为影响整个经济发展的一个重大问题。

物流业是经济运行的生命线。一个平稳、高效、便捷的物流体系将大大促进商贸流通，推动相关产业的发展，并提高市场和产品的竞争力。中国美国商会期望相关政府部门对物流业发展面临的瓶颈问题进行研究，也希望有机会和中国政府一道探索有效的解决办法。

重大进展

2011年，国务院颁布了一系列具体措施来加快物流企业的全面成熟发展（2011年8月2日颁布《国务院办公厅关于促进物流业健康发展政策措施的意见》）。这些措施包括通过简化和消除各级政府部门之间的行政审批手续来完善物流管理体制，放宽对物流企业的资质要求，简化行政许可和审批流程，简化非法人分支机构的登记注册手续，解决包括城市中转配送难、配送货车停靠难等紧要问题。这些措施中还包括制定城市配送绿色车辆标准以及禁止将客运车辆改装为货运车辆。然而，上述措施最终能取得多大成效将取决于相关政府部门能否将这些意见有效地付诸实施。

具体问题

邮政问题

对外商投资的限制

2011年12月修订的《外商投资产业指导目录》（外商投资目录）第五条规定，交通运输、仓储和邮政业以及国内信件快递服务均属于外商不能参与投资的“禁止类”行

业。这些条款限制了国内客户和消费者根据服务的质量和速度自主选择服务并从中获益的权利。一直以来，外资企业对提高中国的服务标准起到了积极的促进作用。禁止外商投资企业投资国内信件市场将减缓相关产业的发展速度。中国美国商会敦促中国将交通运输、仓储和邮政业以及国内信件快递服务在《外商投资产业指导目录》中调整为“鼓励类”。

国内快递许可审批延期问题

中国美国商会的一些会员企业反映，自企业提出国内快递许可申请至今已有一年多时间，但仍未获得批准。尽管邮政管理部门去年正式受理了商会会员企业的申请，然而此后会员企业没有得到任何审批的进展情况，这严重影响了企业的业务运营。

设立分支机构、申请企业注册登记以及办理其它手续或开展其它业务都需要提供国内快递许可证。延长审批时限给企业的正常运行带来极大的不确定性。此外，一些在新《邮政法》颁布以前就已经开始从事国内快递业务的企业还需要再次获得许可批准。由于尚未获得许可，许多仍在等待审批的企业受到包括地方邮政管理局和工商管理局在内的相关政府部门的质疑。情况严重的，企业还被要求递交自查整改报告，甚至罚款。这些问题已经多次向相关政府部门反映。

中国美国商会强烈呼吁中国确保对企业提出的国内快递许可申请进行及时审批，并将审批进展情况及时告知相关申请人。

分支机构注册问题

网络型快递和物流企业申请在同一行政区域增设分支机构，相关地方管理部门往往不予支持。因此，网络型公司在新增分支机构时常会遇到各种障碍，使它们无法进一步拓展业务网络、提升服务水平。

AmCham China urges that China ensure timely processing of EDS license approvals and apprise applicants of their application status in a timely manner.

Registration of Branches and Sub-Branches

Local authorities are often not supportive of network express delivery and logistics companies seeking to set up new branches in their areas of jurisdiction. As such, networked companies often run into obstacles when setting up new branches, impeding their efforts to further expand their networks and provide better services.

Even after logistics and express delivery companies are legally established in provinces and municipalities, local AICs further require that these companies submit additional applications when they seek to establish affiliated sub-branches or outlets in these jurisdictions. This has added additional burden in terms of registered capital and operating costs. AmCham China encourages China to allow applications for the establishment of affiliated sub-branches, warehousing, or other operations that are within the scope of the business license (or within the area of the municipality where the companies are located), to simply be submitted for record with departments concerned.

Vehicle Access to City Centers

Thanks to the concerted efforts of local legislative bodies, postal administrations, and transport administrations over the past year, many provinces and municipalities have adopted measures to assist EDS vehicles to enter urban areas more easily. AmCham China member companies appreciate these measures. However, authorities in some first-tier cities in China, including Beijing and Shanghai, have yet to establish clear regulations in this area. In addition, many local requirements for the legal identification of EDS vehicles driving and parking in urban areas conflict with relevant national regulations, causing confusion and added costs. Addressing these concerns remains an important issue for the entire industry.

AmCham China recommends the Ministry of Communications, the Ministry of Public Security, and other relevant ministries formulate national vehicle identification standards and guidelines pertaining specifically to the EDS industry, ensuring vehicles that conform to these standards are allowed to operate at a maximum level of efficiency and convenience.

Conclusion

AmCham China recommends the Chinese government move toward greater consistency with global best practices with regard to regulation of the EDS industry. In particular, we encourage loosening control to allow market demand to play a more prominent role. This would help promote growth within China's EDS industry as well as in China's economy as a whole.

The global postal industry continues to move to improve basic public services through gradual market opening, mechanisms to ensure fair competition, and higher quality services. Protection of local industry through a monopolistic industry structure hinders the reform and development of postal enterprises, and is counter to the industry trend globally.

Recommendations

- **Ensure timely processing of EDS domestic license approvals, and apprise applicants of their application status in a timely manner.**
- Allow applications for the establishment of affiliated sub-branches, warehousing, or other operations that are within the scope of the business license (or within the area of the municipality where the companies are located), to be submitted for record with departments concerned.
- The Ministry of Communications, the Ministry of Public Security, and other relevant ministries should formulate national vehicle identification standards pertaining specifically to the EDS industry, ensuring vehicles that conform to these standards are allowed to operate at a maximum level of efficiency and convenience.
- Move transportation, warehousing, postal, and domestic letters express service to the "encouraged" category in the Foreign Investment Catalogue.

物流快递企业按照法律规定在各省、市设立分支机构后，再在同一行政区域内设立下属分支机构或网点，地方工商管理部门会要求企业再次提出申请并办理相关手续。这加重了企业在注册资本和运营成本上的压力。中国美国商会敦促中国允许企业在营业执照经营范围内，或是在公司所在的城市内建立下属分支机构、仓储网点或其它业务网点时，使用备案制度取代申请审批程序。

车辆进城问题

去年，在地方立法机构、邮政管理部门和交通管理部门的共同努力下，许多省市都已经采取了相关措施解决快递车辆进城的问题。对此，中国美国商会的会员企业深表感谢。但是，中国的一些一线城市，例如北京和上海，尚未就此制定明确的法规。此外，许多地方政府制定的允许快递车辆进入城区行驶并停靠的地方法规与相关国家法规相冲突，给企业造成了困惑，并增加了企业成本。解决上述困难仍然是整个行业面临的一个重要问题。

中国美国商会建议交通部、公安部和其它相关部委制定专门针对快递行业的全国性车辆标准和指导意见，确保符合相关标准的车辆享受到最大程度的通行便利。

结论

中国美国商会建议中国政府在快递服务行业的监管方面更加符合国际最佳做法。尤其是，我们鼓励中国政府放松管制，从而使市场需求发挥更突出的作用。这将有助于促进中国快递行业及整个中国经济的发展。

全球邮政业正在通过逐步开放市场、建立健全公平竞争机制和提升服务质量来完善其基本公共服务职能。通过垄断和专营来保护地方产业将阻碍邮政企业的改革和发展，也违背了全球邮政业发展的趋势。

建议

- 确保企业提出的国内快递许可申请获得及时审批，并及时将审批进展情况告知申请人。
- 允许企业在营业执照经营范围内，或是在公司所在的城市内建立下属分支机构、仓储网点或其它业务网点时，使用备案制度取代申请审批程序。
- 交通部、公安部和其它相关部委应该制定专门针对快递行业的全国性车辆标准，确保符合相关标准的车辆享受到最大程度的通行便利。

- 将交通运输、仓储和邮政业以及国内信件快递服务在《外商投资产业指导目录》中调整为“鼓励类”。

Healthcare

Introduction

The past year has seen continued challenges, as well as opportunities, for the pharmaceutical, healthcare services, and medical device industries in China. Encouraged by the emphasis on healthcare, standard of living, and innovation in the 12th Five-Year Plan, these industries are at the same time disheartened by a range of policy and regulatory measures which challenge their ability to deliver world-class, innovative medical and pharmaceutical products and services to patients throughout China.

Improving the affordability and accessibility of quality healthcare services to the public is one of the fundamental goals of the current healthcare reform plan in China, a goal which the industry fully supports. However, AmCham China is concerned that some of the specific developments occurring under the banner of healthcare reform may be contrary to the development of safe, innovative, and competitive markets in healthcare services, pharmaceuticals, and medical devices. Key challenges facing the pharmaceutical and medical device industries include current tendering processes and proposed fixed-price mark-ups on drugs and medical devices, which challenge the ability of foreign-invested enterprises to conduct viable business in China.

We also see considerable scope for additional reform to increase private sector—both domestic and foreign—participation in China’s healthcare services and medical equipment and device industries. To facilitate such private investment, we encourage clarification of the policy incentives for private healthcare, simplification of registration requirements for medical devices, reform to hospital sector reimbursement, and harmonization of China’s classification standards with international norms.

Significant Developments

Healthcare Cooperation Program

The Healthcare Cooperation Program (HCP), launched in March 2011, is a collaborative initiative to build closer working relations and long-term cooperation between the US and Chinese governments and industry in the

healthcare sector. It is based on the US-China Public Private Partnership on Healthcare (PPPH) framework announced in January 2011 during the summit between US President Barack Obama and Chinese President Hu Jintao.

HCP receives support from the US Trade and Development Agency and exists under the umbrella of AmCham China (see the AmCham China Cooperative Programs Chapter for more information).

HCP leverages US healthcare industry strengths in the areas of public health, policy research, training, research and development (R&D), and technology to support the Chinese government’s goal of enhancing patients’ access to healthcare services in China. Current projects that HCP is developing focus on technical collaboration and exchanges, personnel training and capacity building, and identifying and addressing market opportunities under the healthcare reform framework.

Healthcare Reform

In 2010, the State Council issued a blueprint for healthcare reform and made considerable new investments in healthcare. The blueprint promised greater, more equitable access to healthcare services; greater social benefits coverage for basic care; increased coverage of costs by the government; more investment in public health initiatives and community-based healthcare facilities; public hospital and payment reforms; and lower cost of delivery through regulation of the use and prices of drugs and consumables.

In 2011, the new 12th Five-Year Plan emphasized scientific decision making, with the goal of transitioning China from a focus on pure economic growth to sustainable development. With concerns for social livelihood moving to the forefront, healthcare became a central focus of the plan.

Medical Device Developments

Mark-Ups on Medical Devices

In August 2011, the National Development and Reform Commission (NDRC) released a revised draft of the “Provisional Measures for Administration of Implantable (Intervention) Medical Device Price,” which sets out price

医疗卫生

引言

对于中国的医药、医疗卫生服务及医疗设备行业而言，去年依然是充满挑战与机遇的一年。“十二五”规划强调了医疗、生活水平与创新的重要性，使上述行业受到鼓舞，但同时，他们也对一系列政策与监管措施感到失望，这些政策与措施使得它们为全中国患者提供世界一流、具创新性的医药产品及服务的能力受到了挑战。

提高公众获得和负担高品质医疗服务的能力是中国目前医疗改革计划的根本目标之一，全行业对此大力支持。然而，中国美国商会担心以医疗改革名义出现的一些具体变化也许有悖于发展具有安全性、创新性与竞争性的医疗服务、药物与医疗器械市场的目标。医药与医疗设备行业所面临的主要挑战包括现有的对药物与医疗器械的招标程序及建议的固定价格加成，这些方面危及外资企业在华的商业生存。

我们也看到，中国还需要进一步加大改革力度，以提高本国与外国私营部门在中国医疗服务与医药设备与器械行业的参与度。为了促进上述民间投资，我们鼓励中国政府明确对于私营医疗领域的政策优惠措施，简化医疗器械的注册要求，改革医疗费用报销制度并实现中国相关法律法规与国际标准的接轨。

重大进展

医疗卫生合作项目

于2011年3月发起的医疗卫生合作项目（HCP）是一项旨在在中美政府及医疗行业间建立更紧密且长期的合作关系的协作计划。此项目以美中公私医疗伙伴关系（PPPH）框架为基础，该框架于2011年1月美国总统奥巴马与中国国家主席胡锦涛的峰会期间公布。

医疗卫生合作项目得到了美国贸易发展署的支持，并在

中国美国商会的构架下运行。（更多信息详见“中国美国商会合作项目”章节。）

该合作项目借助美国医疗行业在公共卫生、政策研究、培训、研发（R&D）及技术领域的优势，为中国政府实现其使中国患者更容易获得医疗服务的目标提供了支持。医疗合作项目的重点是在医疗改革的框架下进行技术合作与交流、人员培训与能力建设以及发现并探讨市场机会。

医疗卫生改革

2010年，国务院制定了医疗改革蓝图，并加大了医疗领域的投资力度。该蓝图承诺提供更多、更平等的获得医疗服务的机会；扩大基本保险的社会福利覆盖面；提高政府对医疗费用的承担；增加对公共卫生计划及社区医疗设施的投资；对公立医院及付费方式进行改革；通过对药物及耗材类产品的价格及使用进行监管，来降低医疗服务的成本。

2011年，新的“十二五”规划强调了科学决策的重要性，提出了将中国的关注重点由单纯的经济增长转向可持续发展的目标。随着社会民生成为人们关注的首要问题，医疗已成为了“十二五”规划重点关注的领域。

医疗器械领域的进展

医疗器械价格加成

2011年8月，国家发展和改革委员会（以下简称“发改委”）发布了《植（介）人类医疗器械价格管理的暂行办法》的修订草案，该草案制定6类医疗器械的价格加成规定，这6类医疗器械包括：植入式心脏起搏器、血管内支架、血管内导管、人工关节、骨内固定器械及包括人工耳蜗、血管、人工水晶体与人工瓣膜在内的第六类器械。修订草案为价格加成设定了最高限额，并为省级价格部门提供了在最高限额内制定其当地价格加成的指导意见。

预计发改委将于2012年初发布最终办法，并且在随后的几个月内，省级部门须公布相应的地方执行规定，以实

mark-up provisions for six categories of medical devices: implantable pacemakers, endovascular stents, endovascular catheters, artificial joints, internal orthopedic fixing devices, and a sixth category including artificial cochlea, blood vessels, intraocular lenses, and heart valves. The revised draft provides the maximum mark-up allowed, and provides provincial pricing departments with guidance to set local mark-ups below the ceiling amount.

It is anticipated that the NDRC will release the final measures in early 2012, with provincial departments to release local implementation rules over the following months with the aim of national implementation by July 1, 2012. Business concerns about the proposed fixed mark-ups for medical devices are discussed further in the Specific Issues section below.

Electro-Safety Standards

The US and China recognize that timely transition from the second edition to the third edition of the International Electrotechnical Commission's (IEC) IEC 60601-1 series of safety standards for medical devices is an important area that could benefit from closer cooperation and exchange. As a part of its 2012 work plan, China's State Food and Drug Administration (SFDA) is currently conducting in-depth research and drafting transition procedures to make the switch to the third edition. The US and China will participate in an information exchange roundtable on this transition in September 2012.

Combination Products

The SFDA has also expressed its willingness to discuss with industry and the US Food and Drug Administration the current supervision of combination products, and in particular lessons learned and cases studies.

The SFDA and the US Department of Commerce have confirmed that the US-China Joint Commission on Commerce and Trade (JCCT) Medical Device Taskforce will hold a two-day workshop (scheduled for April 2012) on combination products. AmCham China welcomes the development of such bilateral communication as a means of deepening industry and government authorities' understanding of the classification and registration of combination products. We applaud the SFDA's willingness to discuss best practices in supervising cutting-edge combination products, and thus contribute to Chinese patients' more timely access to the most advanced medical technology and products.

Pharmaceuticals Developments

Pharmaceuticals Pricing Reform

In 2011, as part of an effort to reduce the overall cost of healthcare, China introduced two pharmaceutical price

reductions. This continues a general trend evident since 1998, during which period the NDRC has enacted 27 drug price reductions estimated to have impacted 1,265 types of drugs by an average of 21 percent. During the March 2011 National People's Congress, the NDRC announced plans to not only continue cutting prices, but also to further expand their initiative to eliminate price differentials between innovative drugs and generics. Many brands were also removed from the "innovative drug" pricing category, preventing them from reaching the allowed premium price level. In addition, the NDRC has sought to oversee the prices of non-reimbursable drugs, establishing reference prices for these drugs, largely based upon the price set for generic drugs. AmCham China members are concerned about the potential impact of price reduction measures on the industry, as described in the Specific Issues section below.

Institutional Reform in Drug Evaluation and Review

In 2011, China's drug review body, the Center for Drug Evaluation (CDE), underwent significant institutional reform. The reforms included: establishing separate departments of pharmacology and toxicology; introducing new review processes for drug applications (including parallel review, sequential review, single-disciplinary review, and simplified review processes); and implementing measures to improve communication among review professionals.

In conjunction with these reforms, the CDE publically issued the "Principles and Procedures for Drug Technical Review" in April 2011. These measures reflect the CDE's efforts to improve and enhance transparency, efficiency, and uniformity in China's drug review process.

Specific Issues

Healthcare Services Issues

Private Investment in Healthcare Services

Since 2006, the central government has recognized that private hospitals can play an important role in increasing the capacity, as well as diversity, of healthcare services, beyond that which can be provided by the public hospital system. In the "Opinions on Deepening Healthcare System Reform," published in 2009, the State Council set out a policy encouraging private investment in healthcare in order to better meet varied medical needs.

AmCham China applauds the recognition, at a policy level, of the importance of private investment in healthcare and the private hospital system. Our member companies particularly support the range of more specific initiatives set out in State Council Document 58, "Opinions on Further Encouraging and Guiding Social Capital to Invest in Healthcare Institutions," issued in December 2010. Such initiatives seek to:

现该办法于 2012 年 7 月 1 日前在全国范围内实施的目标。下文“具体问题”一章中将详细介绍业界对上述计划实施的固定价格加成制度的担忧。

安全用电标准

美国与中国认为通过进一步的合作与交流，及时将医疗器械的安全用电标准从国际电工委员会（IEC）的 IEC 60601-1 系列标准的第二版向第三版过渡是十分重要的。作为其 2012 年工作计划的一部分，中国国家食品药品监督管理局（下简为：国家食药监局）目前正进行深入研究并拟定过渡程序以便向第三版过渡。美中两国将于 2012 年 9 月参加针对此次过渡召开的信息交流圆桌会议。

药械组合产品

国家食药监局已表达出其就目前对药械组合产品的监督，特别是所获经验及案例研究方面与业界及美国食品与药物管理局共同进行商讨的意愿。

国家食药监局与美国商务部已确认美中商业贸易联合委员会（JCCT）医疗器械小组将就药械组合产品举行为期两天的研讨会（计划于 2012 年 4 月召开）。双边交流的发展可加深行业与政府主管当局对药械组合产品分类及注册的理解，中国美国商会对此表示欢迎。国家食药监局愿意就在尖端药械产品的监督中采用最佳实践问题进行讨论，以及由此在使中国患者能够及时获得最先进的医疗技术与产品方面做出的贡献，我们表示赞许。

药物领域的进展

药物定价改革

2011 年，作为降低整体医疗费用举措的一部分，中国两次下调了药品价格。自 1998 年以来，药品降价已明显成为总体趋势。期间，发改委曾实施了 27 次药品降价，估计涉及 1265 类药品，平均降价幅度达到 21%。在 2011 年 3 月召开的全国人民代表大会期间，发改委公布了其计划，即不仅要继续下调药品价格，并且还要扩大该计划的覆盖范围，进一步消除创新药物与非专利药物的价格差异。“创新药物”价格目录剔除了许多品牌，以防止其达到所允许的最高价格水平。此外，发改委已开始着手加强对非报销类药品价格的监管，并根据非专利药物的价格制定了此类药品的参考价格。正如在下文“具体问题”一节中所述的，中国美国商会会员企业对实施降价举措给行业带来的潜在影响表示担忧。

药品评价与评审领域的机构改革

2011 年，中国药品评审机构——药品评价中心（CDE）经历了重大的机构改革。这些改革包括：单独成立药理学与毒物学部门；在药品申请方面采用新的评审程序（包括平行评审、序贯评审、单专业评审及简易评审程序）；实行相关措施以提高评审专业人员之间的交流。

除这些改革措施外，药品评审中心于 2011 年 4 月公开发布了《药品技术审评原则和程序》。这些举措反应了药品评审中心在改善与提高中国药品评审程序的透明度、效率与一致性方面所做的努力。

具体问题

医疗服务问题

医疗服务领域的民间投资

自 2006 年以来，中央政府已认可了私营医院在公立医院体系之外，在提高医疗服务的能力与多样性方面发挥的重要作用。在 2009 年公布的《关于深化医药卫生体制改革的意见》中，国务院提出了一项旨在鼓励医疗领域中的民间投资的政策，以更好的满足多样化的医疗需求。

中国美国商会对这种从政策层面对民间投资在医疗与私立医院体系中发挥的重要作用的认可表示赞许。我们的成员企业对于 2010 年 12 月出台的国务院 58 号文件《关于进一步鼓励和引导社会资本举办医疗机构的意见》中提出的一系列更为具体的计划表示特别地支持。这些计划旨在：

- 放宽对外国投资的审批程序；
- 将在价格、税收与政策方面对公立与非盈利性私立医院的平等待遇写入法律；以及
- 确保盈利性医院在独立制定其价格、采购医疗设备及能够获得更多人力资源方面的权利。

然而，中央政府制定的许多计划还有待于地方政府主管部门来实行，我们对此表示担忧。鉴于民间投资所带来的这些已受到认可的益处，我们促请各级政府全面实行 58 号文件，以继续鼓励医疗领域的民间投资。

此外，尽管由发改委与商务部联合发布的《外商投资行业指导目录》（通常称为《外商投资目录》）已将医疗服务领域的民间投资从“限制类”中删除，但该目录还未将其列入“鼓励类”。我们促请政府对此进行修正，并取消在提供私立性医疗服务方面的多种限制。

- Liberalize the approval process for foreign investment;
- Codify equal treatment for public and private not-for-profit hospitals on pricing, taxation, and other policies;
- Ensure the right of for-profit hospitals to set their prices independently, purchase medical equipment, and have greater access to human resources.

However, we are concerned that many of the initiatives outlined by the central government have yet to be implemented by local governing authorities. We urge the government to continue encouraging private investment in healthcare in light of the recognized benefits of such investment, by fully implementing the initiatives in Document 58 at all government levels.

Further, although private investment in healthcare services was removed from the “restricted” list in the joint NDRC/Ministry of Commerce “Guiding Catalogue on Foreign Investment in Industry” (often referred to as the Foreign Investment Catalogue), it has not yet been placed on the “encouraged” list. We urge the government to rectify this, and to remove multiple obstacles for provision of private healthcare.

Insurance Reimbursement at Private Hospitals

The government has continued to extend social health insurance to reach a greater portion of the population, both Chinese and foreign. However, reimbursement for services is only available at hospitals that charge prices at or below those mandated for the public system. This precludes reimbursement at any international-standard private facilities, which, due to the high level of care they provide, charge prices above those in the public sector. Services at the VIP wards or clinics of public hospitals are also precluded from the reimbursement regime.

In light of the new “Interim Measures for the Participation in Social Insurance of Foreigners Employed in China” (interim measures) promulgated by the Ministry of Human Resources and Social Security in September 2011, the need to broaden the reimbursement regime to embrace private hospitals has become even more pressing. The interim measures require foreign employees of any company in China and their employers to pay social insurance premiums, including for health insurance. However, as many foreign national employees do not have sufficiently advanced Chinese language skills to navigate the Chinese public medical system effectively, most will need to retain their existing private health insurance coverage for use in private healthcare facilities, despite mandatory enrollment in China’s public social insurance system.

To address these problems, we recommend allowing employees to use their social health insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme. The employee could then pay the excess cost of care out-of-pocket or through

supplemental private insurance. This would improve patient access to, and choice of, healthcare providers. (For more information on the new Social Insurance Law measures, please refer to the Human Resources chapter.)

Diagnosis-Related Groups

Diagnosis-related group (DRG) charge schemes have been introduced as a means of scientifically and systematically managing healthcare costs by reimbursing hospitals according to case diagnosis rather than treatment. These, and other alternative payment systems, would be preferable to artificial price controls that distort the market for healthcare services. DRGs allow a systematic basis for public funding of and pricing reform in medical institutions. However, challenges remain to ensure that China’s use of DRG schemes delivers promised improvement in efficiency while not compromising the quality of hospital safety or service. Without proper oversight, DRGs may create incentives for healthcare providers to deliver reduced medical services to patients in order to lower hospital operating costs and maximize reimbursement rates.

Although DRGs are widely used internationally, they are relatively new to China. Significant developments in their use took place in 2011, including the launch of pilot DRG schemes in selected Beijing city hospitals and the identification of 104 diseases for inclusion in DRG pilot programs.

To ensure that Chinese patients continue to have access to world-class treatment and medical services, we encourage the government to implement strong monitoring and enforcement of DRG schemes. It is essential that authorities implementing and regulating the DRG charge scheme do so transparently, particularly in the pilot stage of the scheme. We also urge the government to fully consider industry recommendations, including, for example, regarding DRG payment add-ons that support innovative medical products and high-quality care.

Tax Rates for Private Hospitals

The corporate income tax rate for private healthcare remains at 25 percent, the highest level of any industry. In contrast, other “encouraged” industries have been granted tax rates of 12.5 percent and 15 percent. We urge the Ministry of Finance to consider lowering the corporate tax rate for private hospitals as one clear step towards encouraging private investment in healthcare.

Medical Device Issues

“Draft Supervision and Administration Measures for Medical Devices”

The State Council’s “Draft Supervision and Administration Measures for Medical Devices” was published online for industry comment in September 2010. The SFDA worked

私立医院的医保报销制度

政府继续扩大了社会医疗保险的覆盖范围，使其延伸至包括中国与外国人在内的更大比例的人口。然而，医疗服务的报销制度仅适用于收费标准等同或低于为公共体系制定的强制性价格标准的医院。这便将因提供高水平的医疗护理而采用高于公立机构的收费标准，并依照国际标准建立的私营机构排除在报销制度外。公立医院的VIP病房或诊所提供的服务也被排除在报销制度之外。

鉴于人力资源和社会保障部于2011年9月颁布的新的《中国境内就业的外国人参加社会保险暂行办法》（《暂行办法》）的相关内容，扩大报销制度适用范围，进而包含私立医院的必要性已变得越来越紧迫。《暂行办法》要求在中国境内任何公司就业的外国雇员及其雇主必须缴纳包括医疗报销在内的社会保险费。由于许多外籍雇员没有可以有效使用中国公共医疗体系所应有的中文语言能力，因此他们需要继续保留其现有的、在私立医疗机构就诊时使用的私人医疗保险。尽管如此，外国籍雇员还被强制要求参加中国的公共社会保险体系。

为解决这些问题，我们建议允许雇员可以在自己选择的医院或诊所使用其社会医疗保险，并对由此产生的费用按照公共定价计划规定的额度进行报销；对超过报销限额的费用，雇员可选择自付或使用其补充性的私人医疗保险支付。这将提高病人在选择医疗服务提供机构方面的便利度与自由度。（关于新的《社会保险法》相关规定的更多信息，请参阅《人力资源》一章的内容。）

疾病诊断相关分组

疾病诊断相关分组的付费制度（以下简称DRG）是管理医疗费用方面的一种科学性与系统性的手段，它根据实例诊断而非治疗为医院提供报销依据。该制度以及其他替代性的付费制度，均优于使用人为手段进行价格控制，因为后者会扭曲医疗服务市场。DRG为医疗机构公共经费的制定及其价格改革提供了系统性的基础。然而，在如何确保中国DRG付费制度在不牺牲医院安全性与服务质量的前提下，实现其所承诺的效率的提高这一方面仍充满了挑战。没有恰当的监管，DRG可能会驱使医疗服务机构降低提供给患者的医疗服务的质量，以减少医院的运营成本并尽量提高报销价格。

尽管DRG已在国际上被广泛采用，但在中国却是相对较新的一种方法。2011年DRG在使用方面取得了重大进

展，包括在选定的一些北京市医院进行DRG的试点项目，及确定了纳入DRG试点项目的104种疾病。

为了确保中国的患者能够继续获得世界一流的治疗与医疗器械，我们鼓励政府对DRG付费制度采取有力的监管与执行。同时主管当局在DRG付费制度的实行与监管中，特别是在付费制度的试行阶段确保监管与执法的透明度是很必要的。我们也促请政府充分考虑来自业界的建议，例如：关于DRG的补充付费等。这些建议将支持医疗产品的创新及高质量的医疗服务。

私立医院纳税税率

私立医疗的企业所得税税率仍然保持在25%，是所有行业中最高的。相比之下，其他“鼓励类”行业可享受12.5%与15%的优惠税率。我们促请财政部考虑降低私立医院的企业所得税税率，以进一步鼓励医疗领域的民间投资。

医疗器械问题

《医疗器械监督管理办法草案》

国务院的《医疗器械监督管理办法草案》于2010年9月在网上公布以征求行业意见。国家食药监局与国务院法制办公室紧密合作，以确保该办法列入国务院法制办公室2012年第一批立法计划。

中国美国商会对政府与行业在对该办法及相关规定的草拟及修订工作中做出的努力表示赞许。待该办法定稿时，我们鼓励中国能够对医疗器械“全球协调工作组”（GHTF）相关文件中提出的理念与原则有所体现。这些理念与原则包括：医疗器械的界定、原产国要求、临床实验要求及其豁免条件、医疗器械分类汇总、医疗器械安全及性能的基本要求、质量体系方面的要求、上市后监管的要求以及唯一器械识别（UDI）与可追溯性方面的要求。

医疗器械价格加成

正如在上文“重大进展”一节中提到的，发改委的《植（介）人类医疗器械价格管理的暂行办法》为医疗器械的价格加成制定了最高限额。发改委的价格加成限制性规定要求国产器械采用“出厂价”、进口器械采用“到岸价格”（以成本、保险和运费（CIF）为基础计算），并规定医疗器械的价格加成以此为基础在最高50%的范围内相应递减。该办法建议各省级发改委自己制定其相应的价格加成幅度，以进一步降低医疗器械的法定价格。价格加成的限制性规定

closely with the State Council Legislative Affairs Office (SCLAO) to ensure the measures are part of the SCLAO's first-tier legislative plan for 2012.

AmCham China applauds government and industry efforts in drafting and revising the measure and related rules. We encourage China, when finalizing them, to reflect the concepts and principles outlined in the Global Harmonization Task Force (GHTF) document concerning medical device lifecycle management, including the definition of a medical device, the country-of-origin requirement, the clinical trial requirement and its exemption criteria, medical device classification convergence, essential principles of safety and performance of medical devices, quality system requirements, post-market surveillance requirements, as well as unique device identification (UDI) and tractability requirements.

Medical Device Price Mark-Ups

As mentioned in the Significant Developments section above, the NDRC's "Provisional Measures for Administration of Implantable (Intervention) Medical Device Price" impose a maximum mark-up for medical devices. The NDRC restrictions operate by capping the mark-up on medical devices to a maximum of 50 percent on a reducing scale over the "ex-factory price" for domestically made devices or over the "port price" (a cost, insurance, and freight [CIF] based calculation) for imported devices. The proposed measures suggest that provincial-level NDRC offices will then set their own local respective percentages, which will further lower the legal price of medical devices. Based on previously released drafts and proposals by NDRC and local price control departments, the restrictions are expected to result in permitted mark-ups which are too low for multinational companies (MNCs) to cover the expenses of their operations in China, particularly for high-value consumables.

AmCham China member companies are particularly concerned that NDRC's proposed release of mark-up price controls disregards the reality of the costs and expense accounting procedures of foreign-invested companies operating as incorporated legal entities in China. It also underestimates the expenses required for carrying out medical device sales and marketing activities for MNCs in China.

Particular issues arise for foreign-invested companies, as the price mechanism sets a cap based on a percentage mark-up against the cost of medical devices assessed as a calculation based on the CIF import price without allowance for profit margin. In contrast, domestically invested companies are explicitly allowed to incorporate profit margin in their ex-factory price calculation. We are concerned that this gives unfair advantage to domestically invested companies and makes it difficult for foreign-invested companies to run viable operations in China.

AmCham China urges the government to consider the difficulties MNCs face in delivering medical devices to China under the proposed price mark-up system. Our members are concerned that, if implemented in its current form, the proposed price mark-up will discourage companies from bringing innovative products to the market, and will distort the sustainable development of the medical device industry in China in the long run.

Duplicative Product Registration and Testing

Industry continues to find current procedures for re-registration of medical devices to be duplicative and problematic. During the re-registration process, manufacturers must still secure product approval and type testing every four years. Such re-registration and type testing is required even for medical devices that have undergone little or minor changes which would not affect the product safety, functionality, indication, or materials.

In 2008, the SFDA signaled its willingness to reform aspects of the re-registration process, including allowing product re-registration for a medical device to be simplified when any changes to the device do not affect safety, efficacy, or the intended application of the product, and when the product is in compliance with the original registration standards. We would welcome such reforms, as they would ensure that only devices that undergo a significant change (i.e., a change in functionality), or have caused a serious adverse event, are required to submit full re-registration applications. However, the SFDA has yet to implement such reforms. As a result, the current system continues to overburden the SFDA, divert resources from new product registrations, and potentially disrupt patient access to existing approved technologies subject to the re-registration process.

We urge the SFDA to advance these highly necessary reforms, in order to increase efficiency of the SFDA registration process generally, and potentially increase medical device registration. This would allow patients and hospitals faster access to more innovative products and technologies.

Replacing Product Type Testing with Quality Management System

The SFDA requires product type testing for both initial medical device registrations and re-registrations. This product testing often adds considerable time to the registration process, ultimately delaying the availability of new medical devices to patients in China. AmCham China recommends that the SFDA transition away from type testing and fully adopt a quality management system (QMS) approach.

The QMS system is a regulatory approach based on ensuring quality throughout the design and manufacturing process, and is much more effective than testing individual

以发改委及地方价格管理部门与此前发布的草案与提议为基础，有可能造成允许的价格加成过低，而导致跨国企业无力负担其在华运营成本，特别是高价值医疗耗材的成本。

发改委公布由其提议的对价格加成进行的管控规定时，未能考虑到在华依法设立法人机构的外资企业成本与开销的会计核算，中国美国商会对此尤其表示担忧。该规定也低估了在华跨国公司开展医疗器械的销售与市场推广活动所需的费用。

外资企业面对以下的特殊问题：医疗器械成本的计算以 CIF 进口价格为基础，而不考虑利润率情况，且价格机制设有价格加成百分比的最高上限。相比之下，规定却明确允许内资企业在其出厂价的计算中将利润率考虑进去。我们对这种给予内资企业的不公平的优势地位，而使外资企业难以维持其在华运营的做法表示担忧。

中国美国商会促请政府考虑在拟议的价格加成体系下，跨国企业在为中国提供医疗服务方面面临的困境。我们的成员企业担心，如果依照其现有的形式实施拟议的价格加成体系，将阻碍企业将其创新产品带向市场，并且从长期来讲，将扭曲中国医疗器械行业的可持续发展。

重复的产品注册与检测

业界现有的医疗器械的再注册程序依然重复，且问题很多。在重新注册程序中，生产企业必须每四年提交一次产品注册标准并获得批准和进行产品型式检测。即使是那些没有发生变动或发生了不影响产品安全、性能、使用范围或材质的少量变动的医疗器械，也需要进行重新注册和检验。

2008 年，国家食药监局表达了其对重新注册程序进行改革的意愿，其中包括在医疗器械不产生影响器械安全、功效及应用且产品符合原始产品注册标准的情况下，简化其重新注册程序。我们对这些改革表示欢迎，因为这将确保只有那些发生了重大变化（即功能的变化）或出现明显不良反应的医疗器械才需要提交全面重新注册申请。但是，国家食药监局还未实行这些改革。因此，现有的体系加重了国家食药监管局的负担，分散了其进行新产品注册的资源，并潜在阻碍了患者使用现有的已获批准的医疗技术，因为这些医疗技术可能面临重新注册程序。

我们促请国家食药监局推进这些极为必要的改革，以实现国家食药监局注册程序的效率的整体提高，以及由此可能带来的医疗器械注册数量的增加。这将使患者和

医院能够尽快获得创新型产品和技术。

以质量管理体系取代产品型式检验

国家食药监局要求对医疗器械的首次注册与重新注册均采取产品型式检测。这种产品检测通常大大增加了注册程序的时间，最终延误中国患者获得新的医疗器械的机会。中国美国商会建议国家食药监管从型式检测向全面采用质量管理体系 (QMS) 方式转变。

质量管理体系是一种监管方法，它以确保产品在整个设计与生产过程的质量为基础，比在程序结束阶段对样本进行单独检测更为有效。在质量管理体系的设计与开发部分中，生产企业选择或开发并开展相应的必要检测以证明其器械满足安全与性能方面的具体要求。尽管国务院颁布的《医疗器械监督管理办法草案》中的一些相关规定要求推广质量管理体系，但该草案却不允许将生产企业提交的技术信息作为审批的基础，且型式检查必须由国家食药监局指定的机构来执行。

国家食药监局通过要求生产企业实行质量管理体系，进而进行认真监督企业的执行，可以将相应的责任负担转给生产企业，以便国家食药监局能够基于对器械在整个使用周期中的安全利益的考虑来运用其资源。我们强烈建议国家食药监局在其注册程序中取消型式检测，并采用质量管理体系方法，因为对生产程序中部分样本进行型式检测无法确保产品的安全性或功效。

审批中原产国要求

国家食药监局于 2009 年公布的第 82 号通知重申了国际制造商为必须从生产场所所在国取得预先批准的要求。这种原产国要求对于努力将其含有先进技术的产品尽快引入中国的外资企业来说是一个很大的问题，并阻碍了中国的医生与患者从那些以在世界其他地方面世的技术中受益。

许多外资医疗器械企业从全球市场的需求以及其全球运营活动的角度考量建厂与产品生产。在许多情况下，医疗器械无法在其生产地所在国进行注册，例如那些仅用于出口或专门为某一目的地国家（在本例中指中国）而生产的产品。然而，需要对其产品在中国进行注册的知名外资医疗器械企业往往已在如澳大利亚、加拿大、欧盟成员国、日本或美国等在内的 GHTF 成员国注册过其产品。GHTF 公告机构在对生产工厂进行审计时都遵循 GHTF 的同一种准则，无论其生产厂设在何处。

samples at the conclusion of that process. Under the design and development portion of QMS, manufacturers select or develop and carry out the testing necessary to show that the device meets appropriate specifications for safety and performance. Though some provisions in the State Council's "Draft Supervision and Administration Measures for Medical Devices" promote QMS, the draft does not allow the possibility for approval based on technical information submitted by the manufacturer, and type testing by an SFDA-designated institution is required.

By requiring manufacturers to implement a QMS, and then carefully overseeing their implementation of that system, the SFDA would shift the burden of responsibility to the manufacturers to deploy their resources in the best interest of ongoing safety throughout the device lifecycle. We strongly recommend that the SFDA remove type testing from its registration process and rely on the QMS approach, as type testing a few samples from a production process does little to ensure safety or efficacy.

Country-of-Origin Approval Requirements

The SFDA's Announcement No. 82, published in 2009, reiterated the requirement that international manufacturers must obtain prior approval of medical devices from the country of manufacturing. This country-of-origin requirement is problematic for many foreign-invested companies that try to introduce advanced technology products into China as quickly as they are available, and prevents Chinese physicians and citizens from benefiting from technology that is available elsewhere in the world.

Many foreign-invested medical device companies build manufacturing facilities and produce products depending on the needs of global markets and their global operations. There are many situations in which a medical device may not be registered in the place of its manufacture, for example when products are produced only for export or specifically for the destination country (in this case, China). Reputable foreign-invested medical device companies applying to register their products in China, however, invariably have an existing registration for the product in one of the GHTF member countries, such as Australia, Canada, Japan, the US, or European Union member countries. When the GHTF Notified Body audits the manufacturing facility, it follows the same GHTF guidelines wherever the manufacturing site is located.

AmCham China member companies appreciate the need for quality control of medical devices entering China. We urge the SFDA to amend Announcement No. 82 to accept registration applications of medical devices that are approved by one of the GHTF member countries under the GHTF guidelines, irrespective of the location of the factory of production.

International Harmonization of Product Classification

China applies more stringent product classification than many other nations, with the SFDA placing more products in high-risk categories than other major regulatory authorities. As a result, certain products are subject to more burdensome regulatory requirements in China than in other countries.

These requirements burden manufacturers and extend the amount of time needed in the technical review process. AmCham China urges the SFDA to follow the four-level, rules-based classification scheme recommended by GHTF to ensure greater flexibility and predictability in the registration process for both manufacturers and reviewers.

We applaud the SFDA's decision to consider lowering the risk classification of certain x-ray and in-vitro diagnostic (IVD) devices, and particularly welcome the SFDA's consultation with industry as part of this consideration. In 2012, the SFDA plans to issue a complete list of IVDs to be placed in a lower-risk category. Such moves will ensure that medical device classification will more appropriately reflect risk and will match international norms.

AmCham China also applauds efforts by the SFDA's Standards Center to look into the possibility of establishing a procedure and an online application platform so that industry can formally apply for product re-classification by providing technical and scientific supporting documents.

Procurement and Tendering

Competitive and transparent procurement of medical devices is essential to ensuring the accessibility of good quality medical products to consumers. The tendering system in China has evolved considerably over the last 10 years, becoming increasingly complex and resource-intensive for companies submitting tenders. While AmCham China supports the government's efforts to develop more sophisticated and rational regulations to continue improving the tendering process, we have concerns about the current focus of the tendering rules and the lack of industry involvement in creating such rules.

- **Utilizing Integrated Evaluation Not Primarily Based on Cost**—Ensuring the efficacy and safety of medical devices is essential for patients, and should be the primary consideration in tendering procedures. However, recently, cost-biased tendering has become the norm, especially within local governments. More integrated evaluation of product quality, as well as price, service, and innovation, will reward companies whose products are manufactured with the highest standards, and thus uphold the interest of patients. This evaluation method incentivizes innovation by freeing companies from cost reduction pressures and

中国美国商会成员企业对进入中国的医疗器械须接受质量管理管控的要求表示理解。我们促请国家食药监局对第 82 号通告进行修订，接受在 GHTF 准则下已获得 GHTF 成员国批准的医疗器械的注册申请，而无论其生产地在何处。

产品分类的国际协调

中国采用了比其他许多国家更加严格的产品分类标准。与其他主要监管当局相比，国家食药监局的产品分类体系中高风险类产品种类较多。因此，某些特定产品在中国面临的监管要求负担要比其他国家更多。

这些要求给生产企业带来了负担，并且延长了技术评审程序所需的时间。中国美国商会促请国家食药监局遵循 GHTF 建议的以规则为基础的四等级制分类标准，确保生产企业与评审人员在注册程序中享有更大的灵活度与可预见性。

我们对国家食药监局做出的考虑降低某些 X 光及体外诊断医疗器械 (IVD) 的风险等级的决定表示赞许。同时，国家食药监局在此决定的考虑过程中能与业界进行协商，我们将对此表示特别的欢迎。2012 年，国家食药监局计划出台可列入低风险等级目录的体外诊断医疗器械的完整清单。这些举措将确保医疗器械分类能更恰当地体现风险，并符合国际标准。

国家食药监局的标准中心正在研究建立一套程序及在线申请平台，行业可以通过该系统提交相应的技术及科学证明文件，正式申请其产品的重新注册。中国美国商会对此尝试表示赞许。

采购与招标

为确保消费者能获得高质量的医疗产品，一个竞争性且透明的医疗器械采购流程是必要的。中国的招标体系在过去 10 年中已有了很大的变化。对于投标企业来说，中国的招标体系变得越来越复杂且耗费资源。中国美国商会对政府为继续改善招投标程序而制定更为精细与合理的规定表示支持的同时，对现有的招标规定的重点以及在招标规定制定中行业参与度的缺失表示担忧。

- **进行综合评估，而非首先考虑价格**——确保医疗器械的功效率与安全性对患者来说是必要的，并且这应该是招投标程序中关注的首要问题。然而近期以来，特别是在各地方政府中，倾向于以价格来决定招标的结果方式已成为一种惯例。采用对于产品质量、价格、服务与创新性的综合评估将鼓励企业生产高水准的产品，

进而维护患者的利益。这些评价方法将企业从削减成本的压力中解脱出来，并允许其专注于开发价值高、具有创新性的产品，从而鼓励了创新。

- **取消人为的招标限制**——在招投标过程中不应该对参与招标的产品的数量、品牌、企业或经销商施以人为的限制。招投标程序应该允许企业在同一品牌下提交多种产品，且在招投标过程中不应在一种产品不符合中标要求时，取消其品牌下所有产品的中标资格。
- **提高行业参与度**——业界对获得更多参与中国招标政策制定的机会表示欢迎。中国美国商会成员企业希望能够通过分享我们具有建设性的反馈意见及国际经验参与到政策制定的过程中来，以便为中国招标体系的改进提供支持。

除了这些核心建议外，我们相信如果参照卫生部制定的清晰规定与标准，在招标过程中采用透明与标准化的程序与集中式方法，则医疗器械招标便可得到改善。招标的开展也应与全国贸易政策及包括世界贸易组织相关协议等在内的国际贸易协议保持一致。因而，应消除招投标过程中的偏向内资企业而歧视外资企业的做法。

此外，我们认为医疗器械招标应该在单一级别下开展（如：国家级或省级），以降低其复杂性并减少参与企业的重复工作。

采购批准

在采购 A 类设备前，医院必须获得由卫生部颁发的许可；在采购 B 类医疗设备前，则需获得由省卫生局颁发的许可。目前的公立医院改革鼓励医院管理与运营的分。中国美国商会促请卫生部遵循这一政策，解除对 A 类与 B 类医疗设备的采购许可的管制。重要医疗设备的采购应该由医院负责运营的主管部门，而非卫生行政机构来进行评估。此外，私立医院是自筹资金的机构，应该被允许自行按需采购合适的医疗设备。这将打开医疗设备市场、引入更多竞争。更重要地是，从长期看，这将提高中国的医疗服务质量与经济效益。

药物问题

药物定价改革

正如在上文“重大进展”一节中描述的，中国近期的药物定价改革措施有助于使药物价格更能令普通大众接受，这是值得赞许的。尽管中国美国商会成员企业对政府制定

allowing them to focus on developing high-value, innovative products.

- **Eliminating Artificial Tendering Constraints**—Tendering processes should not artificially limit the number of products, brands, companies, or distributors participating in the tender. The tendering process should allow a company to submit multiple products under the same brand name, and not disqualify all products within the brand if one product is disqualified during the tendering process.
- **Increasing Industry Engagement**—Industry welcomes opportunities to become more involved in the development of China’s tendering policies. AmCham China members hope to engage in this process by sharing our constructive feedback and international experiences in order to support the enhancement of China’s tendering system.

In addition to these central recommendations, we believe medical device tendering could be improved if conducted in accordance with transparent and standardized procedures, guided by clear rules and criteria from the Ministry of Health (MOH), and carried out in a centralized approach. Tendering should also be conducted in line with national trade policies and international trade agreements, including those of the World Trade Organization. Biases in the tendering process favoring domestically invested companies over foreign-invested companies should, therefore, be eliminated.

Further, we believe medical device tendering should be conducted at a single level (such as the national or provincial level), to lessen complexity and reduce redundant work for participating companies.

Purchasing Approvals

Hospitals are required to obtain licenses approved by the MOH for Class A medical equipment, or by provincial health bureaus for Class B medical equipment, prior to procuring such equipment. Current public hospital reform encourages the separation of hospital administration and operations. AmCham China urges MOH to follow this policy and deregulate procurement licenses for Class A and Class B medical equipment. Significant medical equipment procurement should be evaluated by the authorities for hospital operations, rather than health administration agencies. Additionally, private hospitals, as self-funded institutions, should be authorized to procure appropriate equipment as they deem necessary. Public hospitals should enjoy more flexibility as they understand medical service demands. This will open up the medical equipment industry to more competition, and more importantly, improve healthcare service quality and cost-effectiveness in China over the long-run.

Pharmaceuticals Issues

Pharmaceuticals Pricing Reform

China’s recent pharmaceuticals pricing reform measures, described in the Significant Developments section above, are commendable for helping make medicine more affordable for the general population. Although AmCham China members applaud the government’s objective of increasing citizens’ access to medical care, government-mandated drug price cuts represent a significant threat to the quality and supply of medicines available to Chinese patients. Price cuts challenge companies’ ability to ensure adequate quality control or to maintain production of vital and necessary medicines, which could lead to bottlenecks in production and result in shortages. In addition, price cuts discourage pharmaceutical companies from investing in research and development (R&D), especially in costly innovative drug R&D, and ultimately reduce patients’ access to high-quality medicines.

AmCham China urges the Chinese government to implement a pricing policy that rewards innovation and high-quality manufacturing rather than focusing primarily on price cuts. This could be achieved through a differentiated pricing system for innovative, patented drugs, and safe generic drugs. A drug pricing system that rewards innovation and high-quality drugs is beneficial for both China’s healthcare system and its innovation goals, and will help reduce overall healthcare costs. While we support the government in adopting flexible and differentiated pricing policies to meet regional needs, the public release of tendered bids should be smartly managed in order to safeguard companies’ ability to provide quality manufacturing while fulfilling differentiated tenders.

Regulatory Data Protection

China’s Drug Registration Regulation (DRR) currently grants a six-year clinical data protection period for products containing a new chemical agent, and protects data against unfair commercial use. The SFDA is responsible for upholding this aspect of China’s regulatory data protection (RDP). Unfortunately, the DRR is ambiguous on data protection implementation. For example, certain key concepts such as “new chemical ingredient” and “unfair commercial use” are not clearly defined, creating a regulatory and safety loophole in the DRR.

In addition, the DRR permits the SFDA to approve products that reference summary data of previously published material, or are compounds based on a foreign regulatory agency’s approval. Approving copy versions of drugs without manufacturers’ clinical data packages creates significant safety concerns, and prevents regulatory authorities from confirming if a compound meets the same quality and safety standards. This practice could lead to the

的提高国民获得医疗服务机会的目标表示赞许，但政府强制性的药品降价极大地威胁了中国患者可使用药品的供给及质量。药品降价对企业充分控制药品的质量或保持关键与必需药物生产的能力带来了挑战，这会导致生产方面的瓶颈并导致供应短缺。此外，药品降价阻碍了医药公司对研发，特别是高成本创新类药品研发的投资，最终将减少患者获得高质量药品的机会。

中国美国商会促请中国政府实行的政策能够更加鼓励创新及高质量药品生产，而非主要关注降价。该目标可通过建立一种对创新型药品、专利药品及安全的非专利药物采用差异化的定价体系来实现。一个鼓励创新与高质量药品生产的药品定价体系将使中国医疗体系受益，并有助中国创新目标的实现，也将有助于整体医疗成本的降低。尽管我们对政府采取具有灵活性与差异性的定价政策以满足不同地区需求的做法表示支持，但政府应巧妙地管理招标方案的公开发布，以保护企业在满足差异化的招标要求的同时提供高质量药品生产的能力。

行政审批数据的保护

中国《药品注册管理办法》（《管理办法》）日前给予了包含新化学药剂的产品六年的临床数据保护期，并对数据加以保护以防止其遭受不公平的商业利用。国家食药监局负责维护中国行政审批数据的保护（RDP）。遗憾的是，《管理办法》在数据保护工作的实施方法上含糊不清。例如，“新化学成分”与“不公平的商业使用”等关键概念并未被明确界定，这造成了《管理办法》在监管与安全方面的漏洞。

此外，产品若援引之前发表资料的综合数据或其成份已被外国监管机构批准，《管理办法》允许国家食药监局对其予以批准。在未参考生产厂家临床数据的情况下便对复制版药品予以批准会带来极大的安全隐患，监管机构也无法确认该药剂的成份是否满足了相同的质量与安全标准。这种做法会导致不安全药品被广泛使用，给患者带来风险。此外，行政审批数据保护的规定对非原创型企业有利，因为它允许该类企业不公平地从创新型企业的研发投入中获利。目前，一种新产品的研发一般需要10至15年时间，成本大约在13亿美元（人民币83亿元）。因此，中国《药品注册管理办法》实际是以牺牲中国患者的健康为代价，阻碍创新型企业在高成本创新药物的研发。

中国药物行业多年来一直在努力解决此问题，但目前该问题仍是阻碍行业内本国与外国创新的一大障碍。中国

美国商会促请国家食药监局开拓新的实践，并与国际通行的行政审批数据的保护标准及程序保持一致，以防止创新型企业的创新数据被不公平地使用。

药物招标

在“医疗器械采购与招标”一节中提出的一些招标建议同样适用于药物招标。例如：制定综合的评价制度，减少对价格的强调，增加患者获得临床中必要的高质量产品的机会，并提高招标相关政策制定过程中行业的参与度。这些举措在确保药物的招标程序鼓励质量与创新方面至关重要。

近期在招标政策与实践方面的进展，包括对价格竞争的强调以及将关键药物的招标范围扩大至二级、三级医院，均会对创新药品的竞争能力产生影响，会阻碍企业创新并由此减少患者获得高质量药物的机会。

结论

随着中国人口结构的变化，及国内对高品质医疗服务需求的增加，外资企业迫切希望能将其专业技术及资源贡献出来。中国美国商会高兴地看到医疗卫生改革方面的进展，并希望改革能朝着建立一个更加公开、透明与科学的监管制度方向发展。特别是，我们促请医疗服务部门允许更多的民间资本参与其中，并制定合理的医保报销规定以及适用于私营医疗服务机构的合理税率。对于医疗器械与药物而言，合理定价的改革、有效的招标体系以及合理监管制度的建立（审批与注册程序），将增加中国患者获得世界一流医疗产品与服务的机会，并提高中国医疗体系的效率。

建议

医疗服务

- 在各级政府中全面实行58号文件中的相关计划，以进一步鼓励对医疗领域的民间投资，并将医疗服务纳入《外商投资目录》的“鼓励类”。
- 允许在患者自己选择的医院或诊所使用其社会医疗保险，并对由此产生的费用按照公共定价计划规定的额度进行报销。对超过报销限额的费用，患者可选择自付或使用其补充性私人医疗保险支付。
- 降低私立医院的企业所得税税率。
- 对疾病诊断相关分组的付费制度实行有力且透明的监管与执行。

widespread availability of unsafe drugs, putting patients at risk. In addition, the RDP regulations favor non-originator companies by allowing companies to unfairly capitalize on the R&D expenditures of innovator companies. At present, R&D for a new medicine takes on average 10 to 15 years, and costs approximately US \$1.3 billion (RMB 8.3 billion). China's DRR thus discourages innovator companies from continuing to invest in costly innovative drug R&D, at the expense of Chinese patients' health.

China's pharmaceutical industry has struggled for years to address this issue, and it remains a significant barrier that prevents and discourages domestic and foreign innovation in the industry. AmCham China urges the SFDA to develop new practices in line with internationally accepted RDP standards and procedures in order to prevent the unfair use of originator data.

Pharmaceuticals Tendering

Several of the tendering recommendations outlined above in the medical devices Procurement and Tendering issues section also apply to pharmaceutical tendering. For example, developing an integrated evaluation with less emphasis on cost; increasing patients' access to clinically necessary, high-quality products; and improving industry engagement in policy making related to tendering are all important for ensuring the pharmaceutical tendering process encourages quality and innovation.

Recent developments in tendering policies and practices with an emphasis on price competition, and expansion of essential drug tendering to second- and third-tier hospitals will also affect the competitiveness of innovative drugs, discouraging companies to innovate and consequently reducing patient's access to quality medications.

Conclusion

With China's demographic change and domestic demand for higher quality medical services gaining pace, foreign-invested companies are eager to contribute their expertise and resources. AmCham China is pleased to see movement on healthcare reform, and hopes that the reform makes progress towards a more open, transparent, and scientific regulatory regime. In particular, we urge more private participation in the healthcare services sector, with appropriate insurance reimbursement provisions and appropriate tax rates applicable to private healthcare providers. For medical devices and pharmaceuticals, reasonable pricing reform, an effective tendering system, and an appropriate regulatory regime, including but not limited to approval and registration processes, will expand Chinese patients' access to world-class medical products and services, and improve efficiency in China's own medical system.

Recommendations

Healthcare Services

- **Further encourage private investment in healthcare by fully implementing the initiatives in Document 58 at all government levels and add healthcare services to the encouraged category of the Foreign Investment Catalogue.**
- Allow participants in the social insurance scheme to use their social health insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing level, with the patient paying the excess cost of care by themselves or through supplemental private insurance.
- Lower the corporate tax rate for private hospitals.
- Implement strong and transparent monitoring and enforcement of DRG schemes, and fully consider industry recommendations in implementation.

Medical Devices

- **Develop integrated medical device tendering evaluation with less emphasis on cost, eliminate artificial tendering constraints, increase industry engagement in policy making related to medical device tendering, and conduct tenders in a transparent, standardized way, guided by MOH centralized policies.**
- Deregulate procurement licenses for Class A and Class B medical equipment and delegate significant medical equipment procurement evaluation to the authorities for hospital operations rather than health administration agencies.
- Assure fair treatment of foreign- and domestically-invested companies in implementing the proposed price mark-up limitation scheme by allowing foreign-invested companies to factor profit margin into the "port price" used to calculate mark-up caps.
- When finalizing the State Council's "Draft Supervision and Administration Measures for Medical Devices," reflect the concepts and principles outlined in the GHTF document concerning medical device lifecycle management and the four-level, rules-based product classification.
- Accept registration applications of medical devices that are approved by a country/region with a mature regulatory system in place (e.g., GHTF member countries) under the GHTF guidelines, irrespective of the location of the factory of production.
- Allow product re-registration for medical devices to be simplified when any changes to the device do not affect safety, efficacy, or the intended

医疗器械

- 制定医疗器械招标的综合评价制度，减少对价格的强调，取消人为的招标限制，提高医疗器械招标政策制定过程中行业的参与度，遵循卫生部的集中化政策实行透明化、标准化的招标程序。
- 解除对 A 类与 B 类医疗设备的采购许可的管制。将重要医疗设备的采购的评估权交给负责医院运营的主管部门，而非卫生行政机构。
- 在实行建议的价格加成限制性计划时，允许外资企业将利润率因素计入“到岸价格”中，以此计算价格加成的最高限额，从而确保外资与内资企业能享受平等的待遇。
- 在国务院《医疗器械监督管理办法草案》定稿时，能够体现医疗器械“全球协调工作组”（GHTF）相关文件中提出的关于医疗器械使用周期管理及以规则为基础的四等级制分类标准的理念与原则。
- 对于已在 GHTF 准则下拥有成熟监管体系的国家 / 地区（如：GHTF 成员国）获得批准的医疗器械，接受其注册申请，无论其生产厂家设在何处。
- 在医疗器械不产生影响器械安全性、功效及应用，且产品符合原始产品注册标准的情况下，简化其产品的重新注册程序。
- 从型式检测向全面采用质量管理体系方式转变。

药物

- 对创新型药品、专利药品及安全非专利药物实行差异化的定价体系，采用定价政策来鼓励创新及高质量药品生产，而非主要关注降价。
- 制定综合评价制度，减少对费用的强调，增加患者获得临床中必要的高质量产品的机会，并提高招标相关政策制定过程中行业的参与度。
- 开拓与国际通行标准及程序相一致的新的行政审批数据的保护实践，明确界定如“新的化学成分”及“不公平的使用”等关键概念，对援引之前发表资料的综合数据或其成份已经由外国监管机构批准的产品不予批准。

application of the product, and when the product is in compliance with the original registration standards.

- Transition away from type testing and fully adopt a QMS approach.

Pharmaceuticals

- **Apply a pharmaceuticals pricing policy that rewards innovation and high-quality rather than focusing primarily on price cuts, by implementing a differentiated pricing system for innovative, patented drugs, and safe generic drugs.**
- Develop integrated pharmaceuticals tendering evaluation with less emphasis on cost; increase patients' access to clinically necessary, high-quality products; and improve industry engagement in policy making related to pharmaceuticals tendering.
- Develop new RDP practices in line with internationally accepted standards and procedures, clearly define key concepts such as "new chemical ingredient" and "unfair commercial use," and prohibit approval of products that reference summary data of previously published material, or are compounds based on a foreign regulatory agency's approval.



具体行业问题

Information and Communications Technology and Cyber Security

Introduction

China is one of the world's largest markets for American information and communications technology (ICT) goods and services, with total sales of ICT products in China for 2011 surpassing US \$245 billion (RMB 1.56 trillion), and over US \$54 billion (RMB 343 billion) in software alone. China is not only a destination for products, but it is increasingly a nexus for innovation as more homegrown Chinese companies compete at home and abroad.

The 12th Five-Year Plan's strategic emerging industries (SEIs) define China's overall industrial and economic goals. The 12th Five-Year Plan designates the ICT industry, or "next-generation information technology (IT)," as one of China's SEIs. Specific areas of focus include burgeoning sectors such as Internet of Things, cloud computing, integrated circuits (ICs), basic software, and broadband technology. Chinese planning authorities hope to create a homegrown industry in these sectors in an effort to transition from a manufacturing to a knowledge-based economy and realize technological breakthroughs to compete on a global stage.

Large challenges remain in the development of the ICT sector. Cyber security has become a challenge of global magnitude, as the information systems and networks required for the operation of governments, militaries, businesses, and critical infrastructure are increasingly interconnected and do not conform to traditional borders. Additionally, with the increased interconnectedness of the ICT industry, the importance of global interoperable standards has grown significantly, and they should play a greater role in directing China's own standards activities. Lastly, China should increase the protection of intellectual property, regardless of its source, in order to increase foreign direct investment and promote domestic innovation.

Significant Developments

Recent JCCT Commitments

During the 2011 US-China Joint Commission on Commerce and Trade (JCCT), US and Chinese trade officials discussed important ICT industry topics, including smart grid standards, telecommunication equipment type approval,

telecommunications services, cloud computing, indigenous innovation, intellectual property (IP) protection, software legalization, and investment in SEIs. Chinese trade officials agreed to release a revised version of the "Telecom Services Categories Catalogue" for public comment once a draft has been completed, and to hold a cloud computing seminar in 2012.

EUHT Wireless Broadband Standard

Ultra High-Throughput (UHT) and Extra Ultra High-Throughput (EUHT) are indigenous Chinese "next-generation" wireless local area network (WLAN) standards developed by a Chinese firm called Nufront with financial assistance from the Ministry of Science and Technology (MOST) and strong administrative support from the Ministry of Industry and Information Technology (MIIT). On February 13, 2012, MIIT formally approved the two standards. As described below in the Specific Issues section, AmCham China is concerned both about the standards' irregular drafting process in the China Communications Standards Association, and that China will ultimately mandate this technology as a *de facto* compulsory standard.

Multi-Level Protection Scheme

In 2007, the Ministry of Public Security (MPS), the leading body tasked with combating cyber crime and protecting critical infrastructure, promulgated the Multi-Level Protection Scheme (MLPS). Designed to secure critical Chinese infrastructure information systems, MLPS classifies information networks in China according to their relative impact on national security, social order, and economic interests if the system is damaged or attacked. The classification levels range from one to five, one being the least critical and five being the most critical.

MLPS continued to be rolled out in the China market in 2011. Last year, MPS issued specific notices regarding the scope of MLPS, including for centrally managed state-owned enterprises (SOEs) and the healthcare industry. Additionally, foreign industry identified over 100 requests for proposals stipulating MLPS compliance for certain IT products, many of which are at level three or above. In June 2011, the US Trade Representative's office met with MPS to discuss the rollout of MLPS, but MPS has not met with

信息通信技术和网络安全

引言

中国是美国信息通信技术商品和服务全球最大的市场之一，仅 2011 年一年中其信息通信技术产品的销售额已超过 2450 亿美元（1.56 万亿元人民币），其中仅软件类产品的销售额便超过 540 亿美元（3430 亿元人民币）。中国不仅是一个销售商品的目的地，而且随着越来越多的中国本土企业在国内外展开竞争，正日益成为一个创新中心。

“十二五”战略性新兴产业规划明确规定了中国产业与经济未来发展的整体目标。同时，“十二五”规划将信息通信技术产业，或“新一代”信息技术，确定为中国的战略性新兴产业之一。具体重点发展领域包括各种新兴产业，如：物联网、云计算、集成电路、基础软件与宽带技术等。负责规划的中国各相关部门希望在上述产业中创造出一个新的本土产业，努力将中国目前的制造型经济逐渐转向知识密集型经济，并实现技术水平的重大突破，从而竞争于全球舞台。

然而，信息通信技术产业的发展仍充满了各种严峻挑战。网络安全已成为全球范围的挑战，其原因在于政府、军事、商业和重要基础设施运行所需的信息系统和网络的相互联系日益紧密，并且不受传统界限的束缚。此外，随着信息通信技术产业的相互联系日益紧密，全球通用的技术标准变得越来越重要，并且应该在指导中国制定自己的标准的活动中扮演更为重要的角色。最后，中国应该加大对来自不同地域知识产权的保护力度，以便增加外商直接投资，促进国内创新。

重大进展

近期的中美商贸联委会承诺

在 2011 年中美商业贸易联合委员会 (JCCT) 会议期间，美国和中国的贸易官员讨论了信息通信技术产业的重要议

题，其中包括：智能电网的行业标准、电信设备型号核准体系的改革、电信服务、云计算、自主创新、知识产权保护、软件正版化以及战略性新兴产业领域的投资。中国贸易官员同意一旦相关草案完成，将发布修改后的“电信业务分类目录”并向社会征询意见，同时将于 2012 年召开中美云计算峰会。

增强型超高吞吐无线局域网的无线宽带标准

超高吞吐无线局域网 (UHT) 与增强型超高吞吐无线局域网 (EUHT) 是中国本土“新一代”无线局域网 (WLAN) 的新技术标准，由一家名为新岸线的中国公司自主研发。该技术的研发在资金上和行政上分别得到了中国科技部与中国工业和信息化部 (工信部) 的大力支持。2012 年 2 月 13 日，工信部正式批准了该两项标准。如在下文“具体问题”部分所说明的，中国美国商会既对中国通信标准化协会在起草上述标准过程中的若干不符合规范的程序表示关切，同时也担心中国政府最终在实际执行过程中将上述两项推荐性标准变为事实上的强制性标准。

信息安全等级保护制度

2007 年，中国公安部 (负责打击网络犯罪和保护重要基础设施的领导机构) 实施了信息安全等级保护管理办法 (MLPS)。该管理办法旨在确保中国主要基础设施信息系统的安全，它按照该系统在受损或遭受攻击时对国家安全、社会秩序和经济利益的相对影响来划分中国的信息网络。分类级别从一到五级，一级表示最不重要，五级表示最重要。

2011 年，信息安全等级保护制度继续在中国市场实施。去年，中国公安部针对信息安全等级保护制度的适用范围下发了若干通知，将中央直属国有企业和医疗服务行业明确列入等级保护制度的范围之内。此外，外资行业明确发现在 100 多份招标文件中，均包含有某些信息技术产品必须符合信息安全等级保护制度要求的规定，其中许多采购

other US government agencies or trade associations about this issue since that time.

Cloud Computing

China has taken major steps recently to promote its cloud computing industry. In September 2010, the joint MIIT and National Development and Reform Commission (NDRC) National Cloud Computing Pilot Cities project identified five cities to carry out nationally supported cloud computing development plans. In 2011, many cities included in the pilot program, including Beijing, Shanghai, and other Chinese cities, released their cloud computing pilot project implementation plans.

In October 2011, NDRC, MIIT, and the Ministry of Finance allocated RMB 1.5 billion (US \$236 million) to support cloud computing as a part of the next-generation IT SEI. Additionally, the NDRC, MIIT, and MOST have begun drafting “Guidelines to Accelerate the Development of the High-Tech Services Industry” to promote implementation of cloud services and technologies, as well as domestic standards.

Provisions Regulating Internet Information Services

On December 29, 2011, MIIT’s Telecommunication Administration Bureau promulgated the “Several Provisions on Regulating the Market Order of Internet Information Services.” The law contains various provisions regarding competition and Internet service delivery to customers, including software installation and updates, user and subscriber data privacy, the establishment of an Internet Code of Conduct, and setting of new Internet security standards. AmCham China is also aware of MIIT’s plans to publish similar provisions to regulate services delivered over smart phones.

Personal Information Protection

On January 30, 2011, MIIT published draft guidelines for public comment entitled “Information Security Technology—Guide of Personal Information Protection.” China’s National Information Security Technical Committee (TC260) also submitted a new internal draft for final approval to the Standardization Administration of China (SAC) for impending release for public comment under the title “Information Security Technology—Guideline for Personal Information Protection Within Information System for Public and Commercial Services.” AmCham China has some concerns about these guidelines, as further discussed in the below Specific Issues section. In addition, in the past year, an increase in criminal prosecutions for misuse of personal information, as well as the further development of personal information protection laws in certain provinces, have illustrated the growing seriousness with which personal information protection is viewed in China.

Specific Issues

Information and Communications Technology

Broadband and Three-Network Convergence

A rapid and reliable broadband network is critical for the deployment of advanced applications such as telemedicine and cloud computing, as well as advanced emergency response systems, efficient and reliable government systems, and cultural industries. AmCham China applauds China’s intention to develop a national broadband network and realize fixed broadband network convergence between cable, Internet, and telecommunications networks, known as Three-Network Convergence (TNC).

Despite these positive steps, lack of consensus between the broadcast and cable television regulator, State Administration of Radio, Film, and Television (SARFT), and the telecom regulator, MIIT, has not been resolved, notwithstanding guidance from the State Council under the TNC plan. AmCham China recommends that China explore models that merge resources between broadcasting, telecommunications, and Internet networks to create new markets and allow consumers to realize the network’s full potential. We also recommend creating an integrated spectrum management framework to maximize and harmonize valuable wireless spectrum resources. Finally, we encourage China to formulate and publish a national blueprint for ICT and broadband development.

Market Access to Cable, Telecom, and Telecom Value-Added Services

While foreign companies can currently provide hardware and services to telecom service providers and in some cases operate a value-added service joint venture, this is not the case for the cable television industry. The “Guiding Catalogue on Foreign Investment in Industry” specifically bars any form of foreign investment in the operation or provision of cable television services. AmCham China recommends that China revise the catalogue and grant foreign firms equal access to both the telecom and cable television markets in China.

Despite World Trade Organization (WTO) commitments made in 2001, China also continues to restrict access to the telecom market for foreign-invested firms outside of joint ventures. Foreign direct investment in the telecom market is limited to 49 percent for basic services and 50 percent for value-added services, and has high minimum capital requirements. For example, MIIT should permit foreign vendors to obtain value-added services licenses for multi-party audio/visual conferencing systems. AmCham China strongly urges China to allow market access for foreign firms, especially as Chinese telecom operators, including China Telecom, seek access to the US and other foreign markets.

单位的安全级别均被定为三级或以上的级别。2011年6月，美国贸易代表办公室与中国公安部会晤并商讨了信息安全等级保护制度实施工作的开展，但此后公安部再未与美国其他政府机构或产业协会会面商讨此事。

云计算

中国近期采取了一些重要措施来推动云计算行业的发展。2010年9月，由工信部和国家发改委联合启动的国家云计算试点示范城市项目确定了五座试点城市，实施此项由国家支持的云计算发展计划。2011年，北京与上海等几座计划中的城市已公布了其云计算试点工作的实施方案。

2011年10月，国家发改委、工信部和财政部联合拨款15亿元人民币（2.36亿美元），支持云计算作为新一代信息技术国家战略新兴产业的组成部分。同时，国家发改委、工信部与科技部已开始起草《关于加快发展高科技服务业的指导意见》来推动云服务和技術以及国内标准的实施。

《规范互联网信息服务市场秩序若干规定》

工信部电信管理局于2011年12月29日发布了《规范互联网信息服务市场秩序若干规定》。该规定制定了有关竞争及通过互联网提供客户服务的规定，包括软件安装与更新、用户和注册用户数据隐私、订立互联网行业自律规范以及新的互联网安全标准。中国美国商会也注意到工信部计划出台类似规定以规范智能手机的相关服务。

个人信息保护

工信部于2011年1月30日公布了《信息安全技术个人信息保护指南》草案，向社会公开征求意见。2012年2月中国国家信息安全标准化管理委员会（安标委）把此指南内部报批稿上报到中国标准化管理委员会审查部，并更名为《信息安全技术公共及商用服务信息系统个人信息保护指南》。中国美国商会对该指南存在一定的担忧，下文的“具体问题”部分将就此内容会进行更详细的讨论。此外，过去一年中，针对个人信息滥用的刑事起诉不断增加，同时一些省份也逐步出台针对个人信息保护的相关法律，这些均表明中国对于个人信息保护问题的日益重视。

具体问题

信息与通信技术

宽带和三网融合

快速且可靠的宽带网络对先进技术（如：远程医疗和云计算）的应用以及先进的应急响应系统、高效与可靠的政府系统和文化产业的发展至关重要。中国美国商会对中国发展国家宽带网络，以及实现有线电视网、互联网与电信网之间的固定宽带网络融合，即“三网融合”（TNC）的决定表示欢迎。

尽管有这些积极举措和国务院的指导，有线电视监管机构国家广播电影电视总局（广电总局）和电信监管机构工信部之间仍未达成共识。中国美国商会建议中国探索新的模式，将有线电视、电信和互联网等三网的资源进行整合，开创出新的市场，同时让消费者充分认识网络融合的巨大潜能。我们还建议建立一个综合的频谱管理框架以最大限度地协调利用宝贵的无线频谱资源。最后，我们鼓励中国制定并公布有关信息通信技术和宽带发展的国家蓝图。

有线电视、电信与电信增值服务的市场准入

虽然外资企业目前可以向电信服务提供商提供硬件和服务，并且在某些情况下可以运营提供增值服务的合资企业，但在有线电视领域的情况却并非如此。《外商投资产业指导目录》明确禁止外资以任何形式投资于有线电视服务的运营或节目播放。中国美国商会建议中国修订这一指导目录，给予外国企业参与中国的电信和有线电视市场平等的市场准入权。

尽管2001年做出了人世承诺，但中国还在继续限制外国投资公司（合资企业除外）进入中国电信市场。电信市场的外国直接投资比例限制为：基础服务49%，增值服务50%，同时这些投资需满足较高的最低出资要求。例如：工信部应当允许外国供应商获得提供多方音频/视频会议系统相关增值服务的许可。中国美国商会敦促中国给予外国企业平等的市场准入权，特别是在考虑到中国的电信运营商（包括中国电信）已被准许进入美国和其他外国市场的情况下。

EUHT Wireless Broadband Standard

Although EUHT was released by MIIT as a voluntary industry standard, AmCham China members are concerned that China will mandate this technology at the expense of the 802.11 Wi-Fi standard. US industry has consistently emphasized the importance of China adopting global standards in the wireless, telecommunications, and wider ICT space, and has encouraged the participation of Chinese entities in international standards organizations. We remind China of 1) its WTO Technical Barriers to Trade (TBT) commitments to base national voluntary standards and technical regulations on existing, relevant international standards; and 2) the commitment of Chinese standardization bodies that are supported by the central government to make every effort to avoid duplication or overlap with the work of international standardization bodies. AmCham China also strongly encourages China to avoid implementing the EUHT standard in any way that would prohibit Chinese end users from acquiring products supporting Wi-Fi or other WLAN technologies.

Cloud Computing

Cloud computing presents significant opportunities for businesses to access data more quickly and reliably and provide unprecedented services to customers. In China, where small- and medium-sized enterprises dominate the marketplace, access to low-cost and efficient ICT infrastructures such as cloud computing should be widely pursued.

As part of the next-generation IT SEI, China's growing domestic cloud computing sector has benefited from top-level funding and nationally sponsored pilot projects. The Chinese government has already invested RMB 600 million (US \$94.5 million) of the allocated RMB 1.5 billion (US \$236 million) in cloud computing projects, but all recipients have reportedly been domestic firms. AmCham China emphasizes that collaboration with experienced industry stakeholders will maximize success of any technology pilot program.

Although the market is ripe for growth, certain regulations could affect foreign firms' ability to provide the full extent of their services to Chinese customers, despite their extensive cloud computing service experience, technological capability, and willingness to enter the China market. These specific policy concerns are outlined below:

- Information security policies could render selling to certain end users overly burdensome or impractical.
- The development and implementation of domestic cloud computing technology standards that do not conform with international norms could create interoperability issues and thus raise unnecessary obstacles to trade (see TBT Agreement, Annex 3, Par. E). This problem could be exacerbated by the use of standards development processes that explicitly exclude foreign participation.

- Privacy and cross-border data flow regulations could prevent Chinese customers from realizing the full potential of cloud computing.
- China's Telecom Law and "Telecom Services Categories Catalogue" classify certain services as "value-added" and mandate onerous capital requirements and equity investment caps that prevent companies from offering public cloud services.

AmCham China hopes the Chinese government will collaborate with cloud computing industry stakeholders in a constructive, open fashion, and adopt global standards that reflect the international nature of this emerging industry.

Cyber and Information Security

AmCham China is increasingly concerned that the Chinese government is formulating policies that will create barriers for foreign technology providers in China. In particular, MLPS, commercial encryption products rules, and information security testing and certification regulations prevent foreign businesses from gaining full and fair access to the Chinese market. A competitive and globally aligned cyber security industry will help drive innovation and technology advancements in China, as well as help Chinese authorities achieve their goals of implementing secure systems. A good example of the essential collaboration needed in this area is China's commitment to abide by the encryption regulation best practices developed by the World Semiconductor Council (WSC) Joint Statement in 2010 and 2011. This will help avoid unnecessary regulation of encryption technologies contained in widely available ICT products manufactured in and exported from the six WSC members.

Multi-Level Protection Scheme Market Access Restrictions

According to MLPS regulations, systems classified at level three or above must procure IT security products containing only domestic IP. Most of China's SOEs and government agencies in the areas of finance, transportation, telecommunications, education, and many other areas not directly security-related are classified at least level three, as emphasized by a December 2010 MPS and State-Owned Assets Supervision Administration Commission joint circular. By 2012, MPS aims to achieve "full compliance" for systems classified at level three or above.

AmCham China members' ability to sell IT security goods and services to key Chinese customers has significantly diminished, demonstrating that MLPS directly blocks foreign-invested businesses from certain Chinese markets. Industry has documented that MLPS has appeared as a requirement on hundreds of requests for proposal, potentially impacting foreign firms' ability to bid for business.

AmCham China urges China to de-link MLPS level-three compliance from the Chinese IP origin requirement

增强型超高吞吐无线局域网的无线宽带标准 (EUHT)

尽管目前增强型超高吞吐无线局域网标准被工信部定位为推荐性行业标准，但中国美国商会成员担心中国将不惜以牺牲 802.11 Wi-Fi 标准为代价来强制推行此技术。美国业界始终认为中国在无线、电信及信息通信技术的更广领域采用国际标准非常重要，并且鼓励中国企业加入各种国际标准组织。我们希望对中国提出以下几点建议：(1) 遵守中国加入世界贸易组织后所作出的关于技术性贸易壁垒 (TBT) 承诺，即以现有的相关国际标准为基础制定中国的国家自愿性标准和技术规定；(2) 由中央政府支持的中国各标准化机构应作出承诺，竭尽可能避免与国际标准化机构工作的重复或交叉。中国美国商会鼓励中国在实施增强型超高吞吐无线局域网标准的同时不要阻碍中国终端用户获取支持 Wi-Fi 或其他无线局域网技术的产品。

云计算

云计算技术为商业机构快捷、可靠地获取数据提供了重要机会，也将为用户提供前所未有的服务。在中国，中小企业在市场中占据着主导地位。因此，应该广泛推广类似云计算这样低成本、高效率的信息通信技术基础设施。

作为新一代信息技术国家战略新兴产业的组成部分，中国国内不断发展的云计算领域已经受益于来自高层的资金支持，同时也受益于全国支持的云计算试点项目。中国政府拨款 15 亿元人民币 (2.36 亿美元) 发展云计算项目，其中已投入 6 亿元人民币 (9450 万美元)，但目前获得资金的均为中国国内企业。中国美国商会强调，与经验丰富的行业利益相关方合作将在最大程度上保证所有技术试点项目成功实施。

尽管市场发展的条件已经成熟，但某些规定仍会影响外国企业为中国用户全力提供服务的能力。而这些外国企业恰恰拥有在云计算服务领域的广泛经验、技术能力以及进入中国市场的意愿。这些具体政策简要概括如下：

- 信息安全政策可能会使得面向特定终端用户出售产品变得过分繁琐或无法进行。
- 与国际规范不相符的国内云计算技术标准的制定和实施，可能造成互操作性问题进而产生不必要的贸易障碍 (详见《技术性贸易壁垒协定》附件三第五条)。如果标准制定过程明确排斥外国企业参与的话，此问题可能会加剧。

- 有关隐私权保护和跨境数据流动的规定可能会限制中国用户充分利用云计算技术的全部潜能。
- 中国电信法与“电信业务分类目录”将某些服务归类为“增值”服务，同时强制规定了严格的出资要求与股本投资上限，阻碍了企业向公众提供云计算服务。

中国美国商会希望中国政府以一种建设性的、开放的方式与云计算行业的利益相关方合作，并采用能够反映出这个新兴产业国际本质的全球性标准。

网络与信息安全

中国美国商会日益担心中国政府正在制定的一些政策会形成外国技术提供商在中国的壁垒。特别是信息安全等级保护、商用密码产品的相关规定和信息安全产品测评及认证条等，会阻止外资公司全面、公平地进入中国市场。一个竞争性的及全球协调的网络安全行业将有助于推动中国的创新和技术进步，同时也有助于中国政府部门达到其实施安全系统的目标。中国已承诺遵守 2010 年与 2011 年世界半导体理事会联合声明提出的加密规定最佳实践，这是网络与信息安全国际合作非常必要的良好范例。这将有助于避免对世界半导体理事会六个成员国生产或出口的普及型信息通信技术产品中所包含的加密技术的不必要的监管。

信息安全等级保护所造成的市场准入限制

按照信息安全等级保护的规定，三级或以上级别的系统必须购买只包含国产知识产权的信息技术安全产品。2010 年 12 月中国公安部与国务院国有资产监督管理委员会联合下发通知强调：金融、交通、电信、教育和其他与安全无直接挂钩的很多领域的大多数国有企业和政府机构的级别被定为三级或以上。公安部的目标是，到 2012 年，凡是系统定为三级或以上级别的单位均实现“全面合规”。

中国美国商会会员向中国主要客户销售信息技术安全产品和服务的能力急剧下降，说明信息安全等级保护制度直接阻碍外资企业进入中国的某些市场。业界的文件表明，信息安全等级保护制度已成为上百份招标书中的一项明确要求，潜在影响外资公司参与商业竞标的能力。

中国美国商会敦促中国将信息安全等级保护的三级合规要求与信息技术安全产品必须具有国产知识产权这一要求脱钩。我们同时敦促中国取消信息安全等级保护制度中的这种规定，即国有企业和政府机构必须为与国家安全无直接关系的这些系统 (包括非军事、金融、教育和其他网络)

for IT security products. We also urge China to remove requirements within MLPS that SOEs and government agencies must procure domestic proprietary technology for systems not directly related to national security, including non-military, financial, educational, and other networks. Furthermore, we recommend elimination of the MLPS requirement that source code of IT security products be reviewed. By implementing these recommendations, China would ensure its access to the most advanced security technologies and thus the maximum security and reliability for its information systems.

Commercial Encryption Rules and Use of Indigenous Closed Algorithms

Despite transformational technological development over the last decade, China has failed to update its 1999 Commercial Encryption Regulations. The rules require:

- Entities importing, developing, and selling encryption technology in China to obtain a license from the State Encryption Management Bureau (SEMB);
- Encryption products to undergo testing by SEMB, which in many cases requires disclosure of source code;
- Foreign technology providers to use Chinese indigenously developed encryption technology, particularly algorithms.

The rules also classify encryption as a “state secret” in China and thus regulate it as such. This runs counter to the general industry belief that strong security technology is only trusted after a full public vetting. SEMB clarified in 2000 that the 1999 rules only apply to products in which encryption was the “core commercial functionality,” and MOFCOM has signed up to the WSC’s encryption regulation best practices that establish a presumption of no regulation for widely available ICT products containing encryption technologies. Nevertheless, foreign businesses remain concerned about the path China’s encryption authorities are pursuing with regard to licensing and restrictions of global technology.

China has made significant progress with regard to domestic encryption technology. The ZUC algorithm was reviewed and approved by 3GPP. In 2011, SEMB and State Grid also announced cooperation to implement China’s domestic encryption algorithms, SM2 and SM3, for electricity cards and smart meters in China’s new national smart grid. Although AmCham China supports the growth of China’s domestic information security industry, it does not support the mandate of any specific technology in the commercial market, especially if such mandates prevent import or use of global technologies, or impede the harmonization of encryption product testing with global norms.

CNCA Information Security Testing and Certification Regulations

In August of 2007, the Chinese National Certification and Accreditation Administration (CNCA) initiated a regulatory push to test and certify 13 types of information security products such as firewalls and anti-spam products. This testing and certification process placed burdensome requirements on foreign businesses to divulge source codes, product designs, and other forms of sensitive IP to the Chinese government for detailed review.

Though once finalized the reach of these regulations was ultimately reduced to only government procurement, AmCham China is still concerned the regulations create market restrictions for foreign information security products that are inconsistent with globally accepted norms and practices. For example to date, no products with a foreign brand name are on China’s published list of products approved by the China Compulsory Certification for Information Security Products, highlighting the fact that even in its reduced scope the scheme is discriminatory against foreign products.

Indeed, these CNCA regulations are not aligned with several of the Innovation Principles that China and the other 20 member economies of the Asia-Pacific Economic Cooperation forum recently adopted. We are not aware of any other government that requires disclosure of source codes, product designs, and other forms of sensitive IP for detailed review as part of a telecom accreditation program.

For the foregoing reasons, AmCham China strongly encourages China to adopt the Common Criteria approach to information security product certification.

Personal Information Protection

As mentioned in the above Significant Developments section, in early 2011 MIIT released draft guidelines and TC260 submitted a draft for final approval to SAC on the protection of personal information online. These guidelines contain mandates on software and IT vendors that may stunt or limit innovation. For example, the guidelines allow transfers of personal information to overseas entities only in instances where explicitly allowed by law or regulation, or with the consent of the appropriate administrative agency. The consent of the data subject is also required. In addition, the draft guidelines establish a basic presumption that data users should not transmit to other entities personal information which they have collected.

Data sharing is necessary for many legitimate business processes, including preventing risks, assessing risks, improving products, and managing relationships with customers. Privacy can be protected without creating heavy procedural burdens for the transfer and use of personal information that would stunt the growth of technology- and

采购国内专有技术。我们也建议取消信息安全制度中要求审核信息技术安全产品源代码的规定。通过执行这些建议，中国将会确保其有机会接触到最先进的信息安全技术，并由此尽可能增强其信息系统的安全性及可靠性。

商用密码管理条例与自主非公开密码算法

尽管过去十年技术革新有了重大发展，中国却没有修订其 1999 年颁布的《商用密码管理条例》。该条例要求：

- 任何单位在中国从事加密技术的进口、研发和销售必须取得中国国家密码管理局颁发的许可证；
- 商用密码产品必须经国家密码管理局的检测，该检测在大多数情况下会要求披露源代码；
- 外国技术提供商使用中国的国产加密技术，特别是计算机演算规则系统。

条例还将加密技术规定为中国的国家机密，并因按此监管。这与行业理念截然相反，行业理念通常是，一项强大的安全技术只有在全面公开后才得以采信。中国国家密码管理局在 2000 年澄清，1999 年条例只适用于对属于“核心功能”产品的加密，同时中国商务部也签署了世界半导体理事会倡导的加密监管最佳实践倡议书，该倡议书提出了对于已经普及的含有加密技术的信息通信技术产品不应加以监管的设想。尽管如此，外国企业仍旧担心中国加密管理机构在全球性技术的许可和限定方面所采取的途径。

中国国内的加密技术已经取得了重大的进展。祖冲之算法（ZUC）已经通过第三代合作伙伴计划（3GPP）的审核并得到批准。2011 年，国家密码管理局与国家电网公司宣布，双方将进行合作，在中国新建的国家智能电网中把中国的国产加密计算机演算规则系统 SM2 和 SM3 用于电卡和智能电表。中国美国商会支持中国国内信息安全产业的成长，但不支持在商业市场中强制推行任何特定技术，特别是在该强制性政策会阻碍全球性技术的引进或使用，并阻碍与国际密码产品测评接轨的情况下。

中国国家认证认可监督管理委员会信息安全检查和认证规定

2007 年 8 月，中国国家认证认可监督管理委员会（认监委）出台一项监管推动措施，旨在检测并认证 13 类信息安全产品，如防火墙和反垃圾信息产品。这一检测和认证过程因要求外国企业向中国政府公布源代码、产品设计和其他形式的敏感知识产权以进行详细审核而给这些外国企

业增加了繁重的负担。

尽管这一政策在最终确定时其覆盖范围被收窄为政府采购范畴，但中国美国商会仍极为关注。各项监管条例将形成对外国信息安全产品的市场限制，而其与全球认可的标准和实践不相符。例如，到目前为止，中国公布的“国家信息安全产品认证获证名单”中含有外国品牌数量为零，突出表明尽管政策范围已被收窄，但该政策依旧对外国产品予以歧视。

事实上，这些由认监委出台的规定与中国和亚太经济合作组织的其他 20 个成员国近期采纳的创新原则中若干方面均不相符。据我们所知，没有其他政府会在其电信官方认证项目中要求企业公布其产品源代码、产品设计和其他形式的敏感知识产权。

基于上述原因，中国美国商会强烈倡议中国在信息安全产品的认证方面采用共同准则中规定的方法。

个人信息保护

如上文“重大进展”部分中所提到的，工信部于 2011 年初在网上发布了《个人信息保护指南》草案，国家安标委把此指南内部报批书上报到国标委最终审批。该指南所包含的针对软件与信息技术提供商的强制性条款可能会阻碍或限制技术创新。例如，指南中规定：仅在法律或相关规定明确允许或相关的行政机构准许的情况下，个人信息才可以传送给外国的组织或机构，同时必须获得数据信息主体的同意。此外，指导意见草案还确立了一个基本设想，即数据信息的使用者不应该将其收集到的个人信息传输给其他单位。

数据共享对于许多合法的商业程序是十分必要的，诸如：风险防控、风险评估、产品改进以及客户关系维护管理。隐私权应该在不给个人信息的传输与使用程序造成沉重负担的前提下予以保护，因为不必要的过程控制可能会阻碍中国技术和信息行业的发展。

为了创造一个既高度安全又具有一定灵活性的隐私权制度，我们建议中国采用以“权责”为基础的方法保护个人隐私，这种方法已经被加拿大采用并即将在欧盟国家推行。以“权责”为基础的方法参考了“传统隐私权原则”，使政策制定者能够在实现传统的隐私权原则相关目标的基础上建立一套综合的隐私权保护计划。该方法强调个人信息的采集机构应该对防止个人信息滥用目标的具体实现承担责任，而不只是实证符合官方规定即可。

information-driven industries in China.

To create a highly protective but flexible privacy regime, AmCham China suggests an “accountability”-based approach similar to one already adopted by Canada and soon to be adopted by the EU. The accountability-based approach uses traditional privacy principles as a reference point for users to build comprehensive privacy programs to meet the objectives inherent in those principles. The collecting organization is charged with responsibility for actual achievement bears responsibilities for preventing the misuse of personal information in practice, rather than for mere compliance with formal rules.

The approach taken in MIIT’s draft guidelines reflects an awareness of existing personal information concepts and frameworks implemented in other countries, but does not yet allow for new ideas that may soon be implemented in response to actual experience. As such, the draft guidelines, or any subsequent binding rules that adopt their approach, would commit China to long-term compliance with the old framework even as the new one emerges. Those involved in further rule-making on personal information protection should avoid imposing excessive or unnecessary burdens on companies regarding the collection, transfer, or use of personal data in China.

Conclusion

As one of China’s seven strategic and emerging industries, next-generation IT will be a destination for large investment from central and local governments through a variety of channels in the coming years, particularly as China moves from a manufacturing to a value-added economy. Against this backdrop, the substantial restrictions imposed on foreign market participation will only limit China’s access to global-class technology and discourage foreign companies from developing their most sophisticated R&D in or with China.

Despite its focus on growth, many of China’s policies in the ICT arena prevent the sector from realizing its full potential. In certain specific IT sectors, glaring market access barriers continue to shut companies out of the market. Information security policies and standards based on the origin of a product’s IP or encryption technology are a worrying trend. AmCham China recommends relevant US government authorities, including the Department of State, Department of Commerce, the Federal Communications Commission (FCC), and others, initiate an ICT dialogue with central and provincial government stakeholders in China in order to engage proactively on broadband, information security, cloud computing, and other emerging fields, as well as data privacy law. We also encourage the US to promote the value of not only ICT technology trade, but also the free flow of information, for overall economic development in both countries. AmCham China urges the US and China to engage on ICT issues to ensure that the industry’s full

potential can be realized in a collaborative manner.

Recommendations

For the Chinese Government:

- **De-link product security credentials from the origin of its IP, including for foreign encryption technology and products at MLPS level three and above.**
- **Revise the 1999 Commercial Encryption Regulations to eliminate restrictions on foreign encryption technology imported, developed, used, or sold in China, and eliminate mandatory licensing for entities importing, developing, and selling encryption technology.**
- **Eliminate equity caps on foreign investment in value-added services and increase market access for foreign-invested enterprises.**
- **Avoid imposing burdensome regulations on companies relating to the collection, transfer, or use of personal information, and adopt an accountability-based approach to privacy law.**
- **Eliminate requirements for disclosure of source code or other proprietary information in testing and certification regimes, and discuss with industry stakeholders alternative methods to determine a product’s level of security.**
- **In emerging sectors such as cloud computing and wireless technology, allow all relevant industry stakeholders full voting rights in standards-setting bodies, and adopt international standards.**

For the US Government:

- **Relevant agencies of the US government, including the Department of State, Department of Commerce, and the FCC, should coordinate to engage with China on information security policy as it relates to trade and innovation.**
- **Undertake dialogue with Chinese counterparts to help ensure China’s new data privacy laws take into consideration international best practices.**
- **Continue to reform export control regulations to increase transparency and facilitate exports of non-sensitive technologies.**

工信部发布的指导意见草案反映了其他国家实施的个人信息保护方面的现有理念与框架，但未能包括为应对现实情况而或将实施的新理念、新方法。因此，即使出现新的保护个人信息的方法，如果该指导意见草案以及随之出台的约束性规则仍沿用现有方法，中国可能会长期遵照其旧有框架而不做任何改变。参与中国个人信息保护法规制定的相关人士应考虑避免在个人数据信息的采集、传输以及使用方面给企业形成过重的或不必要的负担。

结论

作为中国七大战略新兴产业之一，新一代信息技术产业将在未来几年成为中央与地方政府通过各种渠道进行大规模投资的领域，尤其是随着中国经济正从制造型经济模式转向拥有更多附加值的经济模式。对外国市场参与者的诸多严格限制仅会阻碍世界级技术进入中国并促使外国企业不愿意在中国或者与中国一起进行最先进的研发。

尽管中国重视信息技术产业的发展，中国针对信息技术领域的许多政策阻碍了这个领域全面发挥其潜能。在某些特定的信息技术领域，突出的市场准入壁垒将继续将许多企业拒之门外。以产品中使用的专利或加密技术的来源为基础制定的相关信息安全政策和标准就是一个令人担忧的趋势。中国美国商会建议，包括美国国务院、商务部、联邦通信委员会及其他相关机构在内的美国政府机构，应当与中国中央和地方政府相关部门建立信息通信技术领域的对话，以便美国政府和企业在宽带、信息安全、云计算等新型领域以及数据隐私法领域更加积极地与中国开展交流。为促进两国经济的全面发展，我们也鼓励美国不仅要倡导信息通信技术贸易的价值，也要倡导信息自由流动的价值。中国美国商会敦促中美两国共同参与信息通信技术问题的解决，通过积极合作来促进该行业市场潜力的充分发挥。

建议

对中国政府：

- 将产品安全凭证与其知识产权来源地脱钩，这包括取消针对信息安全等级保护制度中对在三级及以上级别单位中使用外国加密技术和产品的限制。
- 修订 1999 年的《商用密码管理条例》，取消对进口的或在中国开发、使用或销售的外国加密技术的限制，取消机构进口、开发以及销售加密技术的强制性许可。
- 取消增值服务行业外国投资的股权上限并增加外商投资企业市场准入的机会。
- 避免监管在个人信息的收集、传送或使用方面给企业带来沉重负担，并采用以“权责”为基础的方法制订隐私权法。
- 在检测与认证制度中取消披露源代码或其他专有信息的要求，同时与行业的利益相关者共同商讨确定产品安全等级的其它方法。
- 在云计算与无线技术等新兴领域中，允许行业所有利益相关方在标准制定机构中拥有完全的表决权，并采用国际标准。

对美国政府：

- 相关美国政府机构，包括美国国务院、美国商务部、联邦通信委员会应该在信息安全政策方面与中国进行沟通，因为信息安全政策关系到贸易与创新。
- 与中国对应机构进行对话以确保中国新的数据信息隐私法的内容能够考虑到国际最佳实践。
- 继续对出口管制规定进行改革以提高透明度并为非敏感性技术的出口提供便利。

Insurance

Introduction

China's insurance industry encountered some significant headwinds in 2011. Total insurance premiums fell to RMB 1.43 trillion (US \$225.8 billion), a decrease of 1.3 percent from RMB 1.45 trillion (US \$228.8 billion) in 2010. Primary property and casualty (P&C) premiums rose 18.5 percent to RMB 461.8 billion (US \$72.7 billion) on the back of an increase in motor vehicle sales, while life insurance premiums fell 8.57 percent to RMB 972.1 billion (US \$153.1 billion) due to policy changes affecting bancassurance distribution of insurance through banks, among other factors. This led several domestic insurers to increase their capital through both equity and debt issuances with the support of the Chinese Insurance Regulatory Commission (CIRC). Other problems were industry-specific, most notably the continuing problems in making the mandatory third party liability (MTPL) automobile liability insurance sector profitable. Restrictions on market entry, expansion, and product offerings by foreign-invested insurance companies and ancillary businesses, continued to impede innovation and deprive consumers of choice.

Significant Developments

There were several significant regulatory accomplishments in 2011. Among the most notable were the following: publication of the 12th Five-Year Plan for the Insurance Industry, including growth targets and the promotion of competition in the market; lifting of the four-year old *de facto* moratorium on the licensing of insurance asset management companies (IAMCs), which has already led to the licensing of three new IAMCs; the promulgation of additional measures to raise the quality of insurance industry practices and better protect the interests of the insured; and the issue for public comment of draft guidelines on insurance remuneration policies.

However, foreign-invested insurers continue to face barriers to market entry and expansion. Domestic insurers and insurance brokerages, particularly larger companies, continue to enjoy regulatory favor with respect to branch approvals, access to capital, and ownership structure, enabling them to benefit at the expense of foreign-invested insurers and to the disadvantage of consumers.

Consequently, foreign-invested insurers have continued to lose market share in China. As of year-end 2011, the market share of foreign-invested insurers stood at a mere 3.06 percent, down from six percent in 2004 and 4.37 percent in 2010. The decline in life insurance has been particularly sharp, falling from 8.9 percent in 2005 and 5.6 percent in 2010 to 4.04 percent in 2011. The market share of foreign-invested P&C companies, who are excluded from the MTPL insurance market, continues to barely register, falling from 1.3 percent in 2005 to 1.06 percent in 2010 before stabilizing at 1.09 percent in 2011. Foreign-invested specialist health and pension insurers continue to be excluded from the market altogether. Meanwhile, foreign-invested insurance brokerages are restricted to large-scale commercial risks and group life and accident insurance, and are essentially excluded from the automobile insurance market.

Specific Issues

US insurance companies, many of which have decades of experience serving consumers around the world, want to deliver their products to Chinese consumers. But in order to do so, they need to be allowed market entry and be granted a license to operate in China, after which their foreign-invested insurance company needs to be accorded national treatment and allowed to compete on a level playing field with their domestically invested counterparts. Unfortunately, as explained below, foreign-invested insurers continue to face barriers with respect to delays in the issuance of licenses, branch approvals, and new product approvals, as well as artificial ownership caps, and other barriers.

Licenses

AmCham China urges CIRC, the Ministry of Human Resources and Social Security (MOHRSS), and other concerned government departments to terminate all moratoria on the issuance of new licenses and treat foreign-invested applicants equally with their domestically invested counterparts.

Pension Insurance and Health Insurance

Although a number of US and other foreign-invested life and P&C insurers have received licenses to operate

保险业

引言

2011年，中国保险业遭遇了强势逆风，总保费收入下降至1.43万亿元人民币（2258亿美元），较2010年的1.45万亿元人民币（2288亿美元）下滑了1.3%。由于汽车销量不断攀升，财产及意外险（P&C）保费收入增长了18.5%，达到4618亿元人民币（727亿美元）。由于政策改变影响到银行保险的销售及其它因素，寿险保费收入降至9721亿元人民币（1531亿美元），下滑了8.57%。在中国保险监督管理委员会（保监会）的支持下，多家本土保险公司通过同时发行股票和债券来进行融资。其他问题则与行业种类密切相关，其中最主要的依然是如何使机动车交通事故责任强制保险（交强险）业务盈利。外资保险公司及其配套业务在市场准入、业务拓展和产品经营方面所面临的限制继续妨碍着行业创新，同时也剥夺了消费者的选择权。

重大进展

2011年中国实现了多项政策的重大改进，其中最重要的有以下几点：公布了保险行业的“十二五”规划，不仅设定了增长目标，而且还鼓励市场竞争；重启了在实际操作中已暂停四年之久的保险资产管理公司许可发放工作，而且已有三家新的保险资产管理公司拿到了许可；实施了一系列措施来提升保险业行业规范，藉此更好地保护被保险人的利益；公布保险行业薪酬标准，并在征求公众意见。

然而，外资保险公司在市场准入和业务拓展方面仍受到制约。中资保险公司和保险经纪公司，特别是规模较大的公司，在分支设立审批、融资和所有权结构方面继续享有政策优势，却损害了外资保险公司和消费者的利益。

在这样的政策环境下，外资保险公司在华市场份额继续下滑。截至2011年底，外资保险公司的市场份额仅为3.06%，低于2004年的6%和2010年的4.37%。寿险市场份额的下滑尤为明显，从2005年的8.9%到2010年的

5.6%再到2011年的4.04%。外资财产和意外险公司一直与交强险市场无缘，市场份额几乎没有增长，从2005年的1.3%跌至2010年的1.06%，2011年稳定在了1.09%。外资专业健康和养老保险公司仍无法进入中国市场。与此同时，外资保险经纪公司目前从事大型商业风险和团体寿险及意外险的经纪服务受到限制，而且完全无缘机动车保险市场。

具体问题

美国保险公司希望中国消费者也能享受到它们的产品，它们当中很多企业在服务全球消费者方面拥有几十年的丰富经验。然而要实现这一愿望，美国保险公司需要获准进入中国市场并获得在华经营许可，而且之后需获得平等的国民待遇，并有机会与中资保险公司在同一舞台进行竞争。但不幸的是，外资保险公司仍面临许可发放、分支机构设立、新品推出和硬性的所有权限制等各种障碍。

许可

中国美国商会促请中国保监会、中国人力资源和社会保障部（人保部）以及其他政府相关部门取消暂停发放新许可的做法，并对外资和中资保险公司一视同仁。

养老保险和健康保险

虽然一些美国和他国外资寿险及财产和意外险公司已经拿到了在华经营许可，但外资专业养老和健康险公司仍无法进入中国市场。中国人保部自2007年之后便再没有发放过企业养老金许可，这也使很多国际知名的金融机构无缘中国市场，中国消费者也因此无法享受到它们提供的产品和服务。一些专业的美资健康保险公司希望帮助拓展中国的健康保险市场，虽然它们拥有多年从业经验，但却一直徘徊在中国市场的大门之外，始终未获得许可的发放。

in China, specialist pension and health insurers continue to be denied market entry. MOHRSS has not issued any enterprise annuities licenses since 2007, excluding many internationally known financial institutions from the market and denying Chinese consumers access to their products and expertise. Several US-invested specialist health insurers with many years of experience who wish to help expand China's health insurance market remain on the sidelines while waiting for a license to be issued.

Insurance Asset Management Companies

The issuance of licenses by CIRC to a small number of IAMCs beginning in December 2010 is a welcome sign that the moratorium on the issuance of licenses in that particular segment of the industry has been lifted and that CIRC is willing to issue licenses to foreign-invested applicants in this segment. This is a welcome development.

Sales and Service Channels

Branch Expansion

No distinction exists in law or regulation between foreign-invested and domestically invested insurers with respect to branch approvals. Nevertheless, US-invested insurers continue to report that branch applications by foreign-invested insurers are subject to lengthier review periods and a *de facto* refusal by CIRC to review multiple branch applications at the same time. CIRC's published data confirms this as well. By contrast, domestically-invested insurers have enjoyed the competitive advantage of having multiple branch applications reviewed and approved concurrently.

AmCham China welcomes the February 2012 notice by CIRC's General Office to level the playing field between foreign-invested and domestically invested insurers with respect to sub-provincial branch and sub-branch approvals. Evidence shows that more equal treatment with respect to branch approvals benefits consumers by developing the market more rapidly and providing wider choice to consumers. Moreover, domestically invested insurers have no reason to fear more equal treatment with respect to branching, as the market share of foreign-invested insurers, even in the geographies where they have the largest market share, is still small.

Bancassurance

Bancassurance is an important channel for insurance product sales, particularly for medium- and small-sized insurance companies, including foreign-invested insurance companies. The China Banking Regulatory Commission (CBRC) issued a directive on November 1, 2010, restricting "in principle" a bank branch from selling the insurance products of more than three insurance companies. This has discouraged bank branches from selling the products of medium- and small-sized insurance companies. The

"Guidelines on the Supervision and Administration of Insurance Business Conducted by Commercial Banks as Agents," issued March 5, 2011, appeared to replace the quantitative limit with prudential criteria; however, member companies report that the limit continues to be applied in practice, restricting consumer choice.

Ownership

Life Insurance

AmCham China was disappointed to see that the 50 percent ownership cap on foreign-invested life insurers was left intact in the 2011 edition of the "Guiding Catalogue on Foreign Investment in Industry." AmCham China continues to urge a lifting of the cap. It has been in place since China was admitted to the WTO and is no longer justified, as domestically-invested life insurers have since grown large and established with ready access to capital markets. Foreign-invested life insurers meanwhile also suffer from governance shortcomings as a result of the cap, as all too often the domestic investors in such companies are unable or unwilling to make the additional investments needed to expand the business.

Moreover, the 2010 rule prohibiting investments by a single investor in two or more insurance companies in the same line has compelled several foreign insurers to exit one of their holdings. By forcing sales, this rule has negatively impacted the industry's development, hampering the development of specialist insurers and reducing equity value.

Insurance Asset Management Companies

While we applaud the lifting of the moratorium on new licenses for IAMCs, we note that CIRC continues to regulate this industry on the basis of a 2004 provisional regulation which antedates the 2005 amendment of the Company Law. Consequently, IAMCs must have at least two founding shareholders even though the amended Company Law allows them to be formed with only one founding shareholder. In other words, all insurance companies are required to partner with a second company to manage their own funds. This has a particularly serious impact on foreign investors in life insurance companies who are effectively forced to become a minority shareholder in their own IAMCs, an even more restrictive requirement than the 50 percent cap on foreign ownership in life insurers.

Products

Property Insurance

Foreign-invested insurers have been barred from issuing MTPL automobile insurance, which accounts for 70 percent of China's P&C insurance market. Exclusion from MTPL in turn substantially weakens the capability of foreign-invested insurers to offer supplemental automobile liability insurance.

保险资产管理公司

自2010年12月起，中国保监会对少数保险资产管理公司发放了许可，这不失为一个积极的信号，因为这意味着该行业的许可发放工作开始解冻，而且中国保监会也同意为该行业的外资申请企业发放许可。这一举措值得肯定。

销售和服务渠道

设立分支机构

在分支机构的设立和审批方面，法律或法规没有对外资保险公司和中资保险公司加以明确区分。尽管如此，仍有美资保险公司反映，外资保险公司分支机构设立申请的审批时间更长，而且对于提交的多个分支机构设立申请，中国保监会也不会同时审批。保监会发布的数据也证实了这一点。相反的是，中资保险公司却能同时获得多个分支机构设立的审批，享有这方面的竞争优势。

2012年2月，保监会办公厅下发通知，在副省级及以下分支机构设立的审批方面给予外资和中资保险公司同等对待，中国美国商会对此表示欢迎。事实证明，分支机构设立审批待遇的公平化将会促进保险市场的发展，并为消费者带来更多的产品选择，从而造福消费者。此外，中资保险公司无需对分支机构设立待遇的公平化感到担忧，因为外资保险公司的市场份额，即便是在业务做得最好的地区，也只占很小比例。

银行保险业

银行保险是保险产品销售的一个重要渠道，对包括外资保险公司在内的中小保险公司来说尤其如此。2010年11月1日，中国银监会下发通知，“原则上”只允许银行分支机构销售不超过三家保险公司的产品。这一政策阻碍了银行分支机构销售中小保险公司的产品。2011年3月5日，银监会出台了《商业银行代理保险业务监管指引》，用审慎的标准取代了这一数量限制；尽管如此，据会员企业反映，实际操作中数量限制依然存在，这一做法限制了消费者的选择。

所有权

人寿保险

2011年的《外商投资产业指导目录》中并未就50%的外资人寿保险公司持股比例限制做出任何修订，中国美国商会对此表示失望。中国美国商会继续促请取消该限制。

这一自中国人世之日起便已存在的限制已经不合时宜，因为中资人寿保险公司已经发展壮大，并已做好进军资本市场的准备。与此同时，该限制还会为外资人寿保险公司带来管理上的问题，因为在很多情况下，此类公司的中方投资者没有能力或者不愿追加必要的投资来拓展业务。

同时，2010年相关规定出台，禁止单个投资者投资两家或两家以上经营同一性质业务的保险公司，这迫使多家外国保险公司不得不撤回已经做出的一些投资。由于带有强制销售的性质，这一规定为保险行业的发展带来了消极影响，阻碍了专业保险公司的发展，并导致了股权价值的下跌。

保险资产管理公司

虽然我们对保险资产管理公司许可下发工作的解冻表示肯定，但是我们注意到，尽管2005年修订后的《公司法》已经实施，但就保险行业来说，保监会仍在沿用2004年的暂行规定。因此，保险资产管理公司必须拥有至少两个创始股东，而修订后的《公司法》允许单一创始股东成立公司。换句话说，所有保险公司必须与第二家公司合资来管理其资金。这对投资人寿保险公司的外商来说非常不利，因为在他们自己所成立的保险资产管理公司中，他们被迫成为小股东。这比人寿保险公司外资50%持股比例的限制更为苛刻。

产品

财产保险

中国禁止外资保险公司承保交强险，而该险种占据中国财产和意外险市场70%的份额。该禁令严重削弱了外资保险公司提供附加机动车责任险产品的能力。

该禁令不仅限制了消费者的选择，而且不利于产品创新和中资保险公司。2010年中资保险公司承保损失达97亿元人民币（15.3亿美元），几乎是2009年承保损失53亿元人民币（8.346亿美元）的两倍。

2011年8月，保监会首次明确表示将对开放交强险市场这一课题进行调研，并引进先进技术和管理经验。2012年2月，国家副主席习近平在访问美国时提到要向外资保险公司开放交强险市场，中国美国商会对此承诺表示欢迎。中国美国商会愿在相关规定的起草过程中给予协助，促进该承诺的实施。

Such exclusion has deprived consumers of choice and product innovation without benefitting domestically invested insurers, who reported underwriting losses of RMB 9.7 billion (US \$1.53 billion) in 2010, nearly double the figure of RMB 5.3 billion (US \$834.6 million) in 2009.

CIRC in August 2011 expressly stated for the first time its intention to research opening of the MTPL market and to introduce advanced technology and management expertise. AmCham China welcomes the commitment made by Chinese Vice President Xi Jinping on his visit to the US in February 2012 to open the MTPL market to foreign-invested insurers. AmCham China is willing to assist in the process of drafting the regulations to implement this commitment.

Brokerages

AmCham China was disappointed to see that insurance brokerages continue to be classified as a restricted industry in the 2011 edition of the “Guiding Catalogue on Foreign Investment in Industry,” a restriction that has no apparent justification. Foreign-invested insurance brokerages: 1) in the commercial P&C market are only allowed to broker large-scale commercial risks (annual premiums exceeding RMB 400,000 or US \$62,992), which amount to only about 20 percent of the market; 2) are excluded from the automobile insurance market, with the exception of some enterprise motor insurance; and 3) in personal insurance are only allowed to broker group life and accident insurance. The result is a drastic limitation on the scope of business of foreign-invested insurance brokerages to the detriment of consumers.

Tax Incentives

Pension Insurance

China faces serious problems as its population ages. In the US, institution of tax-favored treatment for contributions by individuals and their employers to pension or retirement funds (generally known as 401(k) accounts) has provided a financial foundation for millions of retirees. This helps alleviate some of the responsibilities of the government and the retirees’ families, while increasing savings for investment. Enterprise annuities fulfill this function in China, but tax deductibility of contributions is required to make them more popular. US specialist pension insurers have extensive experience in this field and are eager to be licensed so that they can assist its development.

Health Insurance

AmCham China welcomes the government’s expansion of healthcare through health insurance following promulgation of the National Healthcare Reform Guidelines. These guidelines recognize the importance of commercial health insurance as a supplement to the government-supported basic health insurance system. As with pension insurance,

we would note that tax incentives are an important stimulus to the purchase of commercial health insurance, especially indemnity products. If US specialist health insurers could obtain licenses, they could help advise further on how to promote industry development.

Structural

Health Insurance

Products, operations, and risk controls differ significantly between life insurers and specialist health insurers. The major products offered by specialist health insurers are indemnity products which have no parallel in life insurance. Health insurers have expertise in managing medical treatment to optimize health outcomes and control costs, while life insurers have expertise in investment management. Given the expansion in dependence on health insurance in China, AmCham China believes that regulating health insurance in a separate department, rather than as a division in CIRC’s Life Insurance Department, can further the efficient development of health insurance.

Remuneration

AmCham China’s member companies understand that CIRC is drafting remuneration standards for insurance company personnel. AmCham China acknowledges that the adoption of such standards is a prudential supervisory measure. We believe, however, that it would be inappropriate to set rigid remuneration standards based on “market levels,” as this would inhibit competition for talent to the detriment of service quality and competition. In general, we urge CIRC to allow insurance companies flexibility in formulating remuneration standards to reward performance while controlling risk.

Investment in Unsecured Bonds

Many high-quality corporate bond issuers have shifted from issuing secured bonds to unsecured bonds, causing the secured corporate bond market to shrink. To be able to trade unsecured bonds, an insurance company has to either meet the credit capability standards, which are hard for joint ventures to meet, or outsource their funds to IAMCs. However, when a company itself is not yet eligible to invest directly in unsecured corporate bonds, it can be difficult to outsource because IAMCs have not been expressly allowed to manage unsecured corporate bond investments for third parties.

Conclusion

China has made significant progress in developing an insurance industry that was virtually non-existent 30 years ago. There continues to be a need, however, for much greater reform and internationalization, as shown in this chapter.

保险经纪公司

在2011年的《外商投资产业指导目录》中，保险经纪公司仍被划分为受限的行业。这一限制并无明确的依据，中国美国商会对此表示失望。外资保险经纪公司：(1)在商业财产和意外险市场只能从事大型商业风险的保险经纪服务（年保费超过40万元人民币或62992美元），而此类业务总量只占总市场份额的20%；(2)无缘机动车保险市场，或仅能承保某些企业机动车辆保险；(3)在人身保险方面，只能为团体寿险或意外险提供经纪服务。这就使外资保险经纪公司的业务范围严重受限，消费者的利益也受到了损害。

税收优惠政策

养老保险

中国在人口老龄化问题上面临着严峻的考验。在美国，对个人和雇主共同缴纳的养老金或退休基金（笼统称为401(k)账户）实施税收优惠的制度一直是美国上千万退休人员的经济来源。该计划在一定程度上减轻了政府和退休人员的家庭负担，还增加了可用于投资的储蓄。中国企业所缴纳的年金也具有相同的功能，而年金减税将助推企业年金的缴纳。美国专业养老保险公司已从事这一业务多年，它们迫切希望得到在华经营许可，助推该行业的发展。

健康保险

中国政府在实施《深化医疗卫生体制改革的意见》后通过健康保险扩大了医保范围，中国美国商会对此表示欢迎。该方案承认商业健康保险是社会基本医保的补充，并肯定了其重要性。与养老保险类似，税收优惠政策是鼓励人们购买商业健康保险、特别是购买赔偿责任险的重要手段。如果美国专业健康保险公司能够得到在华经营许可，他们将能协助进一步推动该行业的发展。

结构性问题

健康保险

人寿保险公司和专业健康保险公司在产品、运营和风险控制方面都存在很大差异。专业健康保险公司提供的主要产品是赔偿责任险，这与人寿保险产品不同。健康保险公司的专长在于医疗方式的管理，藉此优化医治效果并控制成本，而人寿保险公司的专长在于投资管理。随着中国健康保险比重的增加，中国美国商会认为，为了更有效地促进健康保险行业的发展，保监会应成立单独的部门来监

管健康保险行业，而不是将该事务交由保监会人身保险监管部相关处室管理。

薪酬标准

中国美国商会的会员企业了解到保监会正在起草保险公司员工薪酬标准。中国美国商会认为此项标准的酝酿是实行审慎监管的表现，并对此表示赞同。然而，我们认为，这种根据“市场水平”所设置的薪酬标准是僵硬的，也是不合理的，因为这不利于保险人才的竞争，还会导致服务水平 and 竞争程度的下降。总之，我们促请保监会准许保险公司自行制定薪酬标准，这样既能褒奖优秀员工，又能控制风险。

投资无担保债券

很多有实力的公司债券发行人都已经由发行有担保债券转向发行无担保债券，有担保债券市场也因此日渐式微。而保险公司意欲从事无担保债券交易，要么需满足信用能力标准，而这对中外合资企业来说很难达到；要么外包给保险资产管理公司来做，但如果一家公司自身尚无交易资格的话，则很难外包给资产管理公司，因为目前尚未明确允许资产管理公司为第三方管理无担保公司债券投资。

结论

中国的保险业已经取得了长足发展，而这一行业在30年前几乎是一片空白。然而，如本章所述，保险业还需继续加大改革力度，进一步对外开放。

建议

销售和服务渠道

- 在审批分支机构设立申请方面应对外资保险公司（如同目前针对分公司以下分支机构审批所实施的措施）和中资保险公司一视同仁。
- 在商业银行分支机构销售保险产品方面，取消对合作保险公司数量的所有限制。

许可

- 通过为外资保险公司发放许可来提升养老金和健康保险行业的竞争。

所有权

- 放宽人寿保险公司外资方持股比例不得超过50%

Recommendations

Sales and Service Channels

- Review and approve branch applications by foreign-invested insurers (as has now been done with respect to sub-branch applications) in the same manner and at the same pace as applications by domestically-invested insurers.
- Remove all limits on the number of insurance companies whose products may be sold by commercial bank branches.

Licenses

- Increase competition in pension and health insurance by licensing foreign-invested applicants.

Ownership

- Lift the 50 percent cap on foreign ownership of life insurers.
- Allow insurance asset management companies to be established by a single founding shareholder in accordance with the Company Law.

Products

- Quickly implement regulations after a public comment period to allow foreign-invested insurers to offer MTPL automobile insurance.
- Allow foreign-invested insurance brokerages to broker commercial risks regardless of scale, automobile insurance, and individual life and accident insurance to the same extent as domestically-invested insurance brokerages.

Tax Incentives

- Create tax incentives to promote investment in enterprise annuities and for the purchase of private health insurance.

Structural

- Establish a separate department in CIRC to regulate health insurance at the same level as the life insurance and property insurance departments.
- Adopt remuneration standards that allow flexibility to insurance companies to reward performance while controlling risk.
- Relax restrictions on investment by insurance companies in unsecured bonds.

的限制。

- 与《公司法》保持一致，允许单一初始股东建立保险资产管理公司。

产 品

- 在征集公众意见后尽快实施相关措施，允许外资保险公司承保交强险。
- 允许外资保险经纪公司为任何规模的商业风险、机动车保险、个人人寿以及意外保险提供经纪服务，藉此享受和中资保险经纪公司同样的待遇。

税收优惠政策

- 制定税收优惠政策，鼓励投资企业年金，购买个人健康保险。

结构性改革

- 在保监会成立单独的部门来管理健康保险，该部门与人身保险监管部和财产保险监管部属于平级部门。
- 制定薪酬标准，允许保险公司自行制定奖励政策并控制风险。
- 放宽对保险公司投资无担保债券的限制。

Legal Services

Introduction

Since the early 80s, foreign law firms and lawyers operating in China, working with their Chinese counterparts in the government, academia, and law firms, have made substantial contributions to the development of legal institutions and practice in China. Yet international law firms in China still face a wide range of market access constraints, including: (1) an unnecessarily difficult, delayed, and unpredictable registration process for the establishment of offices (or the opening of new ones); (2) the inability to provide comprehensive legal services to their clients; (3) prohibitions against participating in meetings in important government departments involving their clients; (4) discriminatory taxation; and (5) other operational restrictions.

China's continued restrictions in this sector hurt both Chinese and foreign companies seeking legal advice and counsel, and deprive Chinese citizens of the opportunity to work for, or become principals in, international law firms. Moreover, the current restrictions are inconsistent with international standards and result in the unwillingness of many foreign investors to use Chinese law as the governing law of contracts, or to submit themselves to the jurisdiction of Chinese courts or arbitration tribunals for dispute resolution.

These restrictions are also in conflict with the general principle of reciprocity. This is particularly apparent when Chinese restrictions are compared to the practices of most of China's significant trading partners, which allow Chinese law firms to establish full service law firms in their jurisdictions.

AmCham China urges the Chinese government to ease market access restrictions on foreign law firms to increase employment and business opportunities for Chinese lawyers as well as facilitate the development of the Chinese legal market.

Significant Developments

People's Republic of China (PRC) law firms continue to open law offices outside of China and practice law in foreign jurisdictions. This trend is consistent with the demands of the increasingly global nature of their clients'

business needs. PRC law firms' growth abroad is also largely not subject to protective trade barriers that restrict their ability to practice law. In the US, Japan, and the EU, Chinese law firms are able to establish offices, hire local lawyers, and engage in comprehensive corporate law and litigation services. The clear trend around the Asia-Pacific region and the world is to open domestic legal services markets to participation from international law firms, including in Hong Kong, Japan, Singapore, and most recently South Korea.

Yet foreign law firms continue to be subject to new barriers in China (as will be discussed below in the Specific Issues section) and continue to find it difficult to even open an office which offers restricted legal services. Foreign law firms are also increasingly losing access to talented lawyers, both Chinese and foreign, due to the practice restrictions.

Specific Issues

Limited Scope of Practice for Chinese Lawyers in Foreign Firms

International law firms remain unable to hire or be owned by qualified PRC lawyers with active PRC law licenses in China. Under current regulations, any PRC national who possesses a national license to practice law in China and wishes to join the office of a foreign law firm in China, must first surrender his or her license to the PRC Ministry of Justice and may not practice PRC law. This rule applies to all foreign law firms which open a representative office in China, including those from the US, EU, Japan, Canada, and Australia. Removing this prohibition would expand employment opportunities for Chinese law students and lawyers, while enhancing foreign law firms' capacity to represent clients doing business in China as well as Chinese companies looking to expand their global commercial and investment activities.

International law firms provide the integrated, seamless service across different areas of law and jurisdiction that multinational companies often require. Giving Chinese companies access to such legal services would allow them to expand more efficiently and successfully by enabling integration of their counsel in China with a worldwide team of legal specialists. In addition, removing the prohibition on

法律服务

引言

白 二十世纪 80 年代初以来，进驻中国的外国律师事务所和律师们通过与中国政府、学术界和律师事务所的同行们开展合作，为促进中国法制和法律实践的发展做出了实质性的贡献。然而，外国律师事务所在中国仍面临着诸多市场准入制约，包括 (1) 成立或新增办事处所需的注册手续过于繁杂，过程漫长而且难以预料；(2) 无法为客户提供全方位法律服务；(3) 不允许出席有客户参与的由某些重要政府部门举行的会议；(4) 差别性的税收政策；(5) 其他运营限制。

这些持续存在的针对外国律师事务所的市场准入限制不仅妨碍中国和外国公司获取法律建议和咨询服务，更剥夺了中国公民在国际律师事务所工作的机会。除此之外，现有的限制未能与国际标准接轨，因此，很多外国投资者不愿意把中国法律作为合同适用法律，也不愿意在中国法庭或仲裁庭的司法框架下解决争端。

这些限制有悖于互利互惠原则。倘若把中国的限制与多数中国重要贸易伙伴国的做法相比，这一点尤为明显，因为这些国家允许中国律师事务所在其司法管辖区内设立事务所，并提供全方位服务。

中国美国商会敦促中国政府放宽对外国律师事务所的市场准入限制，藉此增加中国律师的就业和执业机会，并促进中国法律服务市场的发展。

重大进展

中国律师事务所继续拓展海外市场，并在外国司法管辖区内提供法律服务。这一趋势符合其客户日益增长的国际业务需求。中国律师事务所之所以能在海外发展，很大程度是因为当地政府并未出台限制其执业的保护性贸易壁垒。在美国、日本和欧盟，中国律师事务所可以在当地设立办事处，聘请当地律师，并提供全面的公司法律咨询和

诉讼服务。在亚太地区和世界其他国家，如香港、日本、新加坡以及不久前在韩国，开放国内法律服务市场、允许国际律师事务所提供法律服务已成为一个显著趋势。

并且，外国律师事务所仍受到中国种种新壁垒的制约（参见下文具体问题部分的讨论）。即便只是开设办事处、提供有限的法律服务，它们也感到困难重重。由于执业限制，外国律师事务所聘用中国及外国籍的优秀律师的难度不断加大。

具体问题

中国律师在外国律师事务所的执业范围受限

在中国，国际律师事务所既不能聘用持有有效律师执照的中国执业律师，也不能由中国执业律师所拥有。依据现行法律法规，任何持有中国律师执照，并在中国执业的中国公民，如希望加入在华经营的外国律师事务所，必须首先放弃执业并向中国司法部上缴其律师执照。这一规定适用于所有在华设立代表处的外国律师事务所，包括那些来自于美国、欧盟、日本、加拿大和澳大利亚的律师事务所。取消该项限制将会扩大中国的法律专业学生和中国律师的就业机会，同时也能提高外国律师事务所为其在华开展业务的国外客户和寻求扩大国际商业与投资活动的中国客户提供法律服务的能力。

国际律师事务所提供的是一体化的、无缝的、涉及不同法律类别和不同司法管辖区域之间的法律服务，这通常是跨国企业所需要的。如果中国公司也有机会获得此类法律服务，其中国的法律顾问便能与世界各地的法律专家团队一同合作，从而使该公司实现更高效、更成功的业务扩张。此外，如果取消禁止外国律师事务所聘用中国律师执业的限制，那么熟悉国外事务并具有相关经验的中国律师的数量将会增加，使得国内企业能够聘请他们担任企业内部法律顾问或其他需要专业法律背景的职业。

foreign firms' hiring of PRC lawyers would expand the pool of PRC lawyers with relevant experience and training available for domestic firms or companies to hire as in-house corporate counsel or in other positions requiring specialized legal backgrounds.

AmCham China recommends that China revise current regulations to allow foreign law firms to provide comprehensive legal services to their clients through qualified PRC lawyers.

Restricted Appearance Before Government Agencies

Foreign lawyers are currently barred from participating in certain types of meetings in certain government departments involving their clients. Unable to determine the composition of their own legal teams in meetings with Chinese government officials, foreign clients are thus limited in their ability to understand government proceedings and their context. There is no similar restriction, to the best of our knowledge, in any other leading economy. Furthermore, the restriction is inconsistent with the right of foreign law firms to provide advice on the impact of the Chinese legal environment, a right that is laid out in China's Protocol of Accession to the World Trade Organization (WTO) as well as in State Council regulations.

This creates an uneven playing field and fosters the impression that the Chinese government engages in arbitrary and discriminatory treatment with respect to foreign companies while their legal counsel is barred from proceedings. AmCham China urges the Chinese government to clarify in regulations that foreign lawyers are permitted to participate in meetings between their clients and Chinese government departments.

Burdensome Representative Office Registration

Foreign law offices face tighter scrutiny and more burdensome regulatory approval procedures than their domestic counterparts. When applying to establish a representative office, a foreign law firm must demonstrate "a need to establish a representative office to start legal service operations." Authorities evaluate such needs based, in part, on the "social and economic development conditions" of the proposed location, the "development needs" for legal services in such location, and other similarly vague considerations.

These opaque, undefined conditions unnecessarily lengthen the approval process to as long as nine months according to relevant regulations, as do many other overly complicated processing requirements. Moreover, the timing of an approval is unpredictable and often subject to protracted delays. The application process for establishing an office can and should be substantially streamlined.

Furthermore, a foreign law firm must wait three years

after establishing a representative office before opening an additional office, thus limiting the growth of foreign law firms. Foreign firms have reported substantial difficulties and delays in the processing of these applications as well. This impairs the ability of foreign firms to serve clients and provide much-needed global services to Chinese companies, particularly in interior provinces which are key targets of the 12th Five-Year Plan for economic development.

AmCham China urges the Chinese government to simplify the requirements, eliminate the unpredictability, and reduce the review period for the establishment of representative offices as well as the opening of additional offices.

Discriminatory Taxation

Representative offices of foreign law firms are subject to higher and more burdensome PRC taxes than domestic law firms carrying out the same activities. A foreign firm in China potentially suffers double taxation on its profits while a domestic firm only experiences one level of taxation on profits at a lower tax rate. This is because foreign law firms are prohibited from organizing in the form of partnership enterprises or being treated for PRC tax purposes as partnership enterprises. As a result, a foreign law firm is taxed twice: once on profits and a second time on repatriation of after-tax profits.

In addition, the rate of taxation imposed is strikingly higher than the rate applicable to domestic firms. Foreign law firms are subject to enterprise income tax on actual profits at the national rate of 25 percent. Repatriation of after-tax profits is also then taxed at a 10 percent rate in practice. Alternatively, foreign law firms may pay out profits directly to partners, but the individual partners then suffer an even higher 45 percent individual income tax rate. By contrast, domestic law firms, for example in Beijing, enjoy a low 8.75 percent effective rate of individual income tax on their profits based on a deemed profit method of taxation, with no other income tax imposed.

To address this inequity and comport with the principles of non-discrimination in the US-China bilateral tax treaty, AmCham China recommends that China treat American law firms as pass-through entities for income tax purposes at rates equal to those of domestic law firms.

Other Market Access Problems

In addition to the problems described above, foreign law firms face a number of other restrictions and regulatory burdens that impair their ability to operate in China. These include: (1) an unnecessarily difficult process to change the chief representative of a firm and for foreign lawyers to transfer firms; (2) inability to, or difficulty in, hiring foreign non-legal professionals; and (3) the limitation of one-year work visas for foreign lawyers (especially chief representatives).

中国美国商会建议修改现有条例，允许有从业资格的中国律师在外国律师事务所向客户提供全方位的法律服务。

律师参与政府会议受限

目前，外国律师被禁止出席涉及其客户的、在某些政府部门举行的某些会议。在与中国政府官员会面时，由于外国企业无法自由选择其律师团队，因此难以充分理解相关行政程序和背景。据我们所知，世界其他主要经济体均不存在类似的限制。此外，《中国加入世贸组织议定书》和国务院颁布的规章中均列明，外国律师事务所所有权利对中国法律环境提供咨询意见，而此类限制与上述规定不符。

外资企业的法律顾问被禁止参与相关程序的做法会催生不公平的竞争环境，也会使人们产生政府歧视性、差别对待外资企业的印象。中国美国商会因此敦促中国政府在法规中申明允许外国律师出席其客户与中国政府部门间的会议。

代表处设立注册程序繁琐

外国律师事务所代表处面临比国内同行更为严格的监管，以及更繁琐的行政审批程序。外国律师事务所申请设立代表处时必须证明“设立代表处从事法律服务业务的必要性”。而主管部门在对该“必要性”进行评估时，往往部分地根据模糊的考量因素，如，拟设立地点的“社会和经济状况”、该地点对法律服务的“发展需要”、或其它的模糊考量因素。

与其他繁琐的程序要求一样，这些缺乏透明度、定义不明确的审核条件会大大延长设立审批流程。根据相关法律法规，该过程可以长达9个月之久。此外，审批时间也难以预料，且常久拖延。设立办事处的申请程序可以而且应该进行大幅度的简化。

此外，外国律师事务所建立一个代表处后必须等待至少三年才能再开设另一代表处，这种规定限制了外国律师事务所的发展。很多外国律师事务所已汇报了其在该类申请过程中面临的重重困难和拖延现象。这些限制削弱了外国律师事务所服务其客户的能力，使它们难以向中国客户，尤其向“十二五规划”中经济发展重点的内陆省份的中国企业提供急需的国际法律服务。

中国美国商会敦促中国政府简化设立要求、消除不可预测性、并缩短设立代表处以及开设新代表处的各种审核周期。

差别性税收

与从事同样业务活动的国内律师事务所相比，外国律师事务所代表处在中国缴纳的税收更高、更繁重。在华外资企业极有可能受到对盈利额的双重征税，而内资企业却能享受单次征税和较低的税率。这是因为外国律师事务所不能采用合伙企业的形式设立，或者不能以合伙企业的名义来报税。因此，外国律师事务所需两次缴税：第一次是针对利润，第二次是针对税后利润返还国外的部分。

另外，向外国律师事务所征收的税率也明显高于国内律师事务所。外国律师事务所适用中国通用税率，即按实际利润的25%缴纳企业所得税。在实际操作中，税后利润的返还部分也需按10%的税率缴税。或者，外国律师事务所可以选择将利润直接分配给合伙人，但合伙人须按更高的45%税率缴纳个人所得税。相比之下，国内律师事务所合伙人所获利润的个人所得税税率要低得多，像在北京，有效税率仅8.75%，因为他们适用的是核准利润计税法，而且无需缴纳其他所得税。

为解决这种不平等并与《中美税收协定》各项非歧视性原则保持一致，中国美国商会建议，在征收所得税时，中国应将外国律师事务所看作“传递实体”，并对其实行国内律师事务所之适用税率。

其他市场准入问题

除上述问题外，外国律师事务所还面临很多其他限制和监管负担，这削弱了他们在中国的执业能力。其中包括：(1) 律所首席代表变更和外国律师变换其任职律所时所需履行的程序过于繁杂；(2) 不能或难以聘用外籍非法律专业人士；(3) 外国律师工作签证期为一年的限制（特别是首席代表）。

中国美国商会鼓励中国政府允许外国律师事务所聘请外籍非法律专业人士，完善首席代表的注册和调动程序，延长首席代表的签证有效时间。这样一来将会提高外国律师事务所在中国有效地为中外客户提供服务的能力。

结论

在加入世贸组织之后，中国的对外开放力度及随之而来的经济高速增长着实可圈可点，但中国的法律服务市场在很大程度上还没有向外国律师事务所敞开大门。在某些方面，特别是在中国加入世贸组织之后，外国律师事务所为其在中国的客户提供服务的能力反而受到了更多限制。

AmCham China encourages China to allow foreign law firms to hire foreign non-legal professionals, improve the procedures for registering chief representatives and transferring representatives, and increase the length of time visas are valid for representatives. Doing so will improve foreign firms' ability to effectively serve their clients, both foreign and domestic, in China.

Conclusion

Despite the remarkable opening of the Chinese economy following China's WTO accession and the resulting rapid economic growth, the legal services market in China remains largely closed to foreign law firm participants. In some respects, the ability of foreign law firms to work for their clients in China has actually become more restricted since China's entry into the WTO.

Reciprocity is a key principle motivating a substantial portion of international trade and investment rules for the modern global economy. Actions on the part of the Chinese government to open the legal services market to foreign law firms would be consistent with regional and global economic trends and would facilitate the outward-bound growth of Chinese law firms themselves. The failure to make progress on this front is harmful to both Chinese and foreign companies and inconsistent with global economic developments.

Recommendations

- **Revise current regulations to allow foreign law firms to provide comprehensive legal services to their clients through qualified PRC lawyers.**
- Clarify in regulations that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments.
- Simplify the requirements, eliminate the unpredictability, and reduce the review period for the establishment of representative offices as well as the opening of additional offices.
- Allow foreign law firms to hire foreign non-legal professionals, improve the procedures for registering and transferring representatives, and increase the length of time visas are valid for representatives.
- Address the discriminatory taxation of foreign law offices by treating them as pass-through entities for income tax purposes and equalizing their effective income tax rates.

在经济全球化的今天，互惠互利重要原则在促进和实现国际贸易与投资规则中发挥着十分重要的作用。中国政府对外国律师事务所开放法律服务市场的各项行动将符合区域和全球经济的发展趋势，并将促进中国律师事务所在海外的发展。若在这方面停滞不前，将会有损于中国和外国企业的发展，也与全球经济的发展相悖。

建议

- 修改现有条例，允许外国律师事务所聘请合格的中国律师为其客户提供全方位的法律服务。
- 在法规中申明允许外国律师参与其客户与政府部门间的所有会议。
- 简化代表处设立要求、尽可能消除不可预测性因素、并缩短设立代表处以及开设新代表处的各项审核周期。
- 允许外国律师事务所聘请外籍非律师专业人士，简化代表人的注册及调动手续，延长代表人的签证有效期。
- 解决外国律师事务所面临的差别性征税，将外国律师事务所看作传递性实体缴纳所得税，使其享受同样的有效所得税税率。

Machinery Manufacturing

Introduction

The Chinese construction equipment industry—the world’s largest in terms of revenue and sales volume—showed strong and active growth through the first quarter of 2011, owing to high fixed asset investment, rapid development of urban areas, and the country’s western development expansion. However, by the second quarter of 2011, as the global economy struggled, demand slowed, China’s monetary policy tightened, and evidence of overcapacity increased, construction equipment sales rapidly declined. Nevertheless, major players remain optimistic about longer-term prospects due to the country’s continuing urbanization and new regional development priorities under China’s 12th Five-Year Plan.

AmCham China encourages the Chinese government to consider these challenges when developing policy and regulating the industry. Foreign-invested companies look forward to contributing resources and expertise in order to help advance industry consolidation, improve work safety at heights, promote the development of remanufacturing, and contribute high-quality products for government procurement. This will not only benefit China’s end-users, but also ultimately increase the competitiveness of Chinese domestic players.

Significant Developments

12th Five-Year Plan

China’s 12th Five-Year Plan (2011-2015) sets out an ambitious roadmap for restructuring, optimizing, and upgrading the manufacturing sector. In regard to the equipment manufacturing industry, the plan calls for improvements in basic technology and materials, core component development, and integration and automation systems. The plan also emphasizes reorganization of the sector through merger, acquisition, and other market-based consolidation.

US-China Remanufacturing Dialogue

As an advanced form of recycling, remanufacturing takes used parts and equipment and restores them to original engineering specifications. This reduces waste and the

consumption of raw materials, while lowering end-user costs. The US and Chinese governments and their respective industries recognize the significance of remanufacturing for enhancing manufacturing sustainability and environmental conservation. The US-China Remanufacturing Dialogue, held in Beijing in October 2011, was a milestone in cooperative efforts to develop the remanufacturing sector in China.

Specific Issues

Restrictions on Foreign Investment

The newly revised “Guiding Catalogue on Foreign Investment in Industry” (Foreign Investment Catalogue), jointly issued by the Ministry of Commerce (MOFCOM) and the National Development and Reform Commission (NDRC), increased restrictions on foreign investments in certain machinery sectors.

Several types of equipment, including small- and medium-sized construction equipment and certain transportation equipment, were moved from the “encouraged” category to the “restricted” category. For certain sectors, such as hydraulic components, and construction machines, thresholds were increased, thus further narrowing the scope for investment. Foreign parties are also now prevented from setting up wholly foreign-owned enterprises or holding majority ownership in several key manufacturing sectors, including rail transportation equipment and marine diesel engine manufacturing. Foreign-invested firms have ample expertise to contribute to the development of China’s construction and transportation equipment manufacturing sectors; however, these new restrictions raise concerns that the scope for foreign participation in the industry is narrowing.

As hydraulic components are key parts of construction machinery, a lack of high-quality components hinders the industry’s development overall. Accounting for about 30 percent of the total cost of construction machinery, hydraulic components are important factors for the competitive position of Chinese companies. Lowering investment restrictions on hydraulic components would encourage foreign-invested companies to share technology and know-how, and thus reduce costs for domestically-invested companies, customers, and end-users.

机械制造业

引言

中国工程机械制造产业销售收入和销售量位居全球首位，其销售在2011年第一季度呈现出强劲、积极的增长态势，这主要得益于大量的固定资产投资、快速的城镇化进程、以及中国实施的西部大开发战略。然而，截止到2011年第二季度，随着全球经济不景气、市场需求减缓、中国货币政策紧缩、加之产能过剩迹象增多，工程机械销售量迅速下降。尽管如此，中国持续的城镇化以及“十二五”规划中突出区域发展的新举措使主要企业仍对该行业前景抱有乐观态度。

中国美国商会鼓励中国政府在制定政策和进行行业监管的过程中能考虑上述挑战。外资企业希望在促进行业整合、提高高空作业安全性、推动再制造产业发展、为政府采购提供高质量的产品等方面贡献自身的资源与专长。这不仅将使中国的终端用户受益，最终也将提高中国国内企业的竞争力。

重大进展

“十二五”规划

中国的“十二五”规划（2011-2015）为制造业的重组、优化及升级制定了宏伟的路线图。在装备制造领域，“十二五”规划要求在基础工艺与基础材料、核心零部件发展、集成与自动化系统方面实现提高。规划同时强调了通过兼并、收购及其他基于市场的整合活动实现行业重组的重要性。

中美再制造产业对话

作为循环利用的高级形式，再制造将废旧零件与设备进行修复使之达到其原本的各项工程规定。再制造过程减少了废料的产生以及原料的消耗，从而降低终端用户的使用成本。美国与中国政府及两国产业界均对再制造产业在提高制造业可持续性 & 环境保护方面的重要意义给予肯定。

2011年10月在北京召开的“中美再制造产业对话”是两国共同推动再制造产业在中国发展的一个里程碑。

具体问题

外商投资限制

新近修订并由中国商务部（商务部）和国家发展和改革委员会（发改委）联合发布的《外商投资产业指导目录（2011年修订）》（以下简称《外商投资目录》）增加了部分机械领域对外商投资的限制。

包括中小型工程设备和部分运输设备在内的若干设备类型从“鼓励类”调至“限制类”。特定领域如液压部件及工程机械的生产门槛被提高，导致外商可投资的范围缩小。在包括铁路运输设备及船用柴油机制造在内的若干重点领域，目前也不允许设立外商独资企业或外方成为大股东。外资企业拥有足够的技术专长为中国工程与运输设备制造领域的发展做出贡献，但上述新的限制性规定令人担心外资企业的行业参与度正因此而降低。

液压部件是工程机械的重要零部件，因此缺少高质量的液压部件将阻碍整个行业的发展。占到整个工程机械成本30%的液压部件是决定中国企业市场竞争地位的重要因素。减少液压部件的投资限制将鼓励外资企业分享其在该领域的技术与专长，进而减少内资企业、消费者和终端用户的成本。

中国美国商会也建议中国政府进一步明确对外资企业在轨道交通领域投资的态度。客运与货运运输是现代铁路系统的两大支柱。在2011年版本的外商投资产业指导目录中，虽然轨道交通设备，特别是铁路客运设备制造被列为鼓励类，但是铁路货运设备制造未有明确说明。我们建议中国政府在外商投资产业指导目录中明确将外资企业在铁路货运设备领域的投资列为鼓励类。

Also, AmCham China recommend further clarification on foreign investment in the rail industry. Passenger and freight are two pillars of the modern rail system. While rail equipment in general, as well as passenger rail equipment in particular, are encouraged in the Foreign Investment Catalogue, freight rail equipment is not specified. We recommend that freight rail equipment be clarified in the Foreign Investment Catalogue as an encouraged sector.

Regulation of Work Safety at Heights

There are more than 1,000 worksite accidental deaths every year in China. The Chinese authorities, including the Ministry of Housing and Urban-Rural Development, have sought to minimize this number by setting objectives to reduce scaffolding use by 50 percent and introducing safer non-scaffolding practices. Such non-scaffolding practices include using aerial work platform products for steel structure installation, cleaning and maintenance of building exteriors, and bridge and tunnel installation, testing, and maintenance.

There are many government recommendations pertaining to safety when working at heights using scaffolding, mast, and other lifting equipment. However, while these recommendations address issues relating to safe equipment operation by workers, the authorities have yet to promulgate regulations or mandatory rules on workers' safety when working at heights or on safety features of the equipment itself.

AmCham China recommends that the Chinese government engage with industry experts to discuss and develop more stringent or mandatory regulations regarding workers' safety when working at heights as well as the safety of the equipment itself to enhance worker protection and reduce work-related accidents. These regulations would complement existing regulations on equipment operation.

We also recommend introducing international standards for use of safety equipment during work at heights, for example, by implementing regulations as in Europe, the US, Brazil, Singapore, Hong Kong, Taiwan, and other countries that an aerial work platform must be used when working at heights over two meters. We also recommend requiring personnel working at heights over two meters to use safety equipment with fall protection such as guard rails, belts, and other safety protection. Requiring aerial work platforms to have overload brakes, inclination brakes, descend assistance systems, and operation signal lights would also enhance the safety of work at heights.

Industry Consolidation

The Chinese government places great emphasis on industrial consolidation in the 12th Five-Year Plan. As the construction equipment manufacturing industry develops, small companies will consolidate through mergers and

acquisitions to become bigger and more efficient. Such consolidations will lead to an upgraded and revitalized industry. With their leading technologies, experience, and know-how, foreign-invested construction equipment companies are poised and ready to play a key role as partners in consolidating and upgrading China's equipment manufacturing capacity. AmCham China encourages the Chinese government to welcome such participation by foreign-invested firms.

Risk of Overcapacity Through Government Incentives

The Chinese government actively promotes manufacturing of large machines, hydraulic components, and engines through subsidies supporting domestic investment. Unfortunately, this has led to overcapacity in the industry, particularly for low- and mid-tier machines and components. AmCham China recommends the Chinese government mitigate risk of overcapacity through better management of industry investment and incentives.

Remanufacturing

The January 2009 Circular Economy Law was a milestone for the development of the remanufacturing industry in China. However, the lack of a systematic management system hinders the development of the industry. AmCham China recommends that the Chinese government establish a practical operation system, including clear technical standards and an operational tax and incentive system to encourage free flow of cores and remanufactured products across borders.

Mining

AmCham China welcomes Chinese government efforts to improve safety and raise the technological and operational standards of the domestic mining industry. In particular, embracing mechanization and international best practices would help create a safer, more efficient industry. Foreign-invested machinery manufacturers have experience in providing safe, high-quality advanced technology. Closer cooperation among international and domestic players could further improve mine safety and efficiency.

Non-Road Diesel Engine Emissions Regulation

AmCham China supports China's efforts to develop sensible measures for further emissions reductions in the non-road engine industry. However, a better regulatory framework is needed to ensure readiness and compliance by the entire industry, particularly prior to implementing any future reductions, such as in the China Non-Road III (NR III) regulations. Regulators should also ensure that the fuel needed for NR III technologies is generally available, including in remote and rural areas, before new regulations are implemented. An assessment by regulatory officials of

高空作业管理法规

中国每年都有超过 1000 例发生在施工现场的意外死亡事故。中国政府部门，包括住房与城乡建设部，一直努力将意外死亡事故的发生概率降到最低，主要的措施是将脚手架的使用减半，并引进除脚手架之外更为安全的施工措施。除脚手架外的其他施工措施包括使用高空作业平台进行钢结构安装、建筑物外墙的清洁和维护、以及桥梁及隧道的安装、测试与维护。

针对高空作业中使用脚手架、桅杆及其他升降工具的安全问题，目前政府已出台了許多试用规定。然而，这些试用规定主要解决的是工人安全操作设备的问题，主管部门还未出台相关法规或强制性规定以解决工人高空作业安全问题或设备本身的安全性能问题。

中国美国商会建议中国政府与业内专家进行讨论并就设备本身的安全性和高空作业工人的安全性问题制定更加严格或者强制性的规定，以提高对劳动者的保护并降低工伤事故。这些新规定将成为对现有的设备操作相关规定的补充。

我们也建议在高空作业的安全设备的使用方面引入国际标准，例如：实施欧洲、美国、巴西、新加坡、香港、台湾和其他国家或地区的相关规定，即超过 2 米以上的高空作业必须使用高空作业平台。同时，我们建议，要求进行超过 2 米以上高空作业的工作人员使用护栏、安全带、及其他安全保护措施。另外，要求高空作业平台配备过载制动装置、下降辅助系统及操作信号灯同样会提高高空作业的安全性。

行业整合

在十二五规划中，中国政府重点强调了企业的整合。随着建筑机械制造业的发展，通过兼并和重组进行整合，中小企业可以做大做强。这样的整合将使行业升级换代、得以振兴。外资建筑机械制造企业凭借领先的技术、经验及技术专长，能够以合作伙伴的角色发挥关键作用，参与中国装备制造业的整合与升级。中国美国商会鼓励中国政府欢迎外资企业的参与。

政府激励政策可能造成产能过剩

中国政府通过补贴鼓励国内投资积极推动大型机械、液压部件和发动机的制造。遗憾的是，该做法导致了行业内，特别是中低端机器与零部件的产能过剩。中国美国商会建

议中国政府改善行业的投资管理及各种激励政策，减轻产能过剩的风险。

再制造产业

2009 年 1 月实施的《循环经济促进法》是中国再制造产业发展的一个里程碑。然而，缺乏系统性的管理体系阻碍着该行业的发展。中国美国商会建议中国政府制定切实可行的操作和管理体系，包括明确的技术标准和可操作的税收及优惠政策鼓励旧件和再制造产品的自由跨境流通。

采矿业

中国美国商会对中国政府在改善国内采矿行业安全性及提高技术与操作标准方面的努力表示欢迎。特别是，推广机械化并采用国际最佳实践将有助于行业安全性与效率的提高。外资制造商在提供安全和高质量的先进技术方面具有丰富的经验。国内企业与国际企业深入合作，会进一步提高采矿业的安全性及效率。

非道路移动机械用柴油机排气污染物法规

中国美国商会非常支持中国政府制定各项措施来减少非道路移动机械用柴油机排气污染物的排放。然而，政府需要建立更好的监管框架，以确保整个行业已做好准备并可遵守相关法规，尤其在实施进一步减排规定，如中国非道路移动机械用柴油机排气污染物排放标准第三阶段规定（NR III）之前，这一做法尤为重要。监管机构也应在实施新规定之前，应确保 NR III 技术所需的燃料在包括偏远与农村在内的地区均能有供应。监管官员可以对现有的非道路移动机械用柴油机排气污染物排放标准第二阶段规定的实施效果进行评估，这将同样有助于完善新规定。

政府采购

胡锦涛主席 2011 年 1 月访美时承诺将政府采购与自主创新政策脱钩，中央与地方政府正在着手进行落实，中国美国商会对此表示赞许。中国美国商会希望，其成员企业能够更多地参与中国政府的采购过程。这将提高中国国内经济的效率并有助于中国所有的，尤其是工程设备与机械产业的市场参与者与终端用户竞争力的提升。（更多信息，请参见“政府采购”一章。）

结论

由于基础设施、固定资产及城镇化领域投资强劲，中国的工程机械制造产业销量和产品开发方面都在近几年呈

the progress achieved under the current China Non-Road II regulations would likewise be helpful.

Government Procurement

AmCham China commends the central and local Chinese governments for taking steps to delink government procurement and indigenous innovation, as announced by President Hu Jintao during his state visit to the US in January 2011. AmCham China would welcome greater participation of its member companies in China’s government procurement. This would help improve efficiency in the domestic economy and facilitate competitiveness for all market players and end-users in China, particularly within the construction equipment and machinery sectors. (For more information, refer to the Government Procurement chapter.)

Conclusion

As a result of strong investments in infrastructure, fixed assets, and urban development, the Chinese construction equipment manufacturing industry grew significantly in both sales and product development in recent years. However, foreign-invested manufacturers are facing increasing investment restrictions in the industry. AmCham China urges MOFCOM and NDRC, together with provincial and local governments, to give national treatment to both foreign- and domestically invested companies.

Greater participation of AmCham China member companies in China’s government procurement and machinery manufacturing sectors will not only bring high-quality products to end-users at lower cost, but will also help facilitate the competitiveness of Chinese domestic players internationally.

assistance systems, and operation signal lights.

- A leading ministry should further coordinate with functional ministries to form workable systems and mechanisms for the development of remanufacturing in China.
- Allow more foreign participation with national treatment in China’s government procurement, especially with regard to the machinery manufacturing industry.

Recommendations

- **NDRC and MOFCOM should eliminate restrictions on foreign investment in the machinery manufacturing industry and provide national treatment to both foreign- and domestically-invested companies.**
- Allow foreign-invested enterprises to make a greater contribution to industry consolidation efforts.
- Avoid overcapacity in the construction equipment manufacturing industry through more effective management of investment incentives.
- Improve worker safety by requiring personnel who work at heights over two meters to use safety equipment with fall protection, such aerial work platforms with guard rails, belts, and other safety protection; and mandate that aerial work platforms have overload brakes, inclination brakes, descend

现出快速的增长态势。但外资制造商投资该行业所面临的限制却逐渐增多。中国美国商会促请商务部、发改委连同各省及地方政府给予外资与内资企业同等的待遇。

中国美国商会会员企业更多地参与中国政府采购机械制造产业将不仅为终端用户提供高质量低成本的产品，也将有助于提升中国国内企业的国际竞争力。

建议

- 发改委和商务部取消对外资企业投资机械制造业的限制，并给予外资与内资企业同等的待遇。
- 允许外资企业更多参与行业整合。
- 有效管理投资激励措施，避免工程机械制造行业产能过剩。
- 要求作业高度超过2米的高空作业人员使用带有坠落防护系统的安全设备，例如带护栏的高空作业平台，佩戴安全带，以及其他安全保护设备；并要求高空作业平台配备过载制动装置、下降辅助系统及操作信号灯，以提高劳动者的安全。
- 主管部委加强与其他职能部委的协调，制定切实可行的体系和机制促进再制造产业在中国的发展。
- 允许外资企业以内资企业同等待遇更多的参与政府采购，尤其是机械制造领域的政府采购。

Media and Entertainment

Introduction

China's media and entertainment industry plays a critical role in delivering information to participants in China's growing market, and in filling Chinese consumers' increasing demand for world-class entertainment and cultural activities. As China's international footprint expands, this industry will play a prominent role in developing China's image, reputation, cultural influence, and economic interests in the rest of the world.

While in 2011 the demand for international news media and entertainment content increased significantly, many regulations continued to restrict international participation in the sector. Although some copyright enforcement efforts have been effective, many regulations actually foster intellectual property rights (IPR) violations, and the spectacular growth of the Chinese Internet has led to a whole new set of piracy problems. Working conditions for journalists have deteriorated since the 2008 Olympics, making it more difficult for journalists to tell China's story to the world. And finally in the financial field, censorship and other regulations create transparency issues and foster nondisclosure, malpractice, and corruption.

These problems have ramifications not only in China, but also for China's influence on the rest of the world. Cultural and artistic development is a key element of the 12th Five-Year Plan, but censorship and other restrictions make it increasingly difficult for Chinese artists and entertainers to achieve international standards, and for Chinese culture to make a mark abroad. Transparency issues have led many foreign investors to pull back from Chinese companies in many other industries as well.

China's long heritage of excellence in entertainment and the arts can best be perpetuated and brought to international attention by fostering initiatives that educate, regulate, and reinforce the commercial value of creative works and emphasize the need to protect IPR.

AmCham China applauds the increasingly globalized orientation of China's media and entertainment industry, exemplified by the recent announcement of an agreement to increase the number of international films appearing

on Chinese movie screens. We believe improvements in the operating environment will not only benefit American companies, but will also improve the Chinese industry's reputation and ability to compete abroad. A healthy exchange of entertainment, culture, financial information, and general news will contribute to strong diplomatic and trade relations as well.

Significant Developments

Intellectual Property Rights

Much progress has been made in the fight against IPR violations in terms of legislation and enforcement, as well as better allocation of regulatory responsibilities among multiple government agencies. However, for the media and entertainment industry the overall picture remains dire, with a huge market in pirated products and content that is fostered in many cases by government regulations and censorship.

Under these circumstances, the rapid growth of online distribution has multiplied the possible ways to commit IPR violations. In some cases, where Chinese companies have bought rights for the use of IP online, IPR is beginning to be respected. Nevertheless, regulation and enforcement have not kept up with growing piracy via user-generated content and person-to-person platforms.

Working Conditions for Journalists

Reporting conditions for news media deteriorated significantly in 2011. Authorities reinterpreted existing rules, resorted to physical violence, and used visas as a tool to try to intimidate foreign reporters.

Regulations promulgated before the Olympics permitted foreign reporters to interview Chinese citizens without official permission. However, early in 2011 police and other authorities in Beijing said foreign reporters would need permission from the interviewee's work unit, neighborhood committee, or other agency.

Police used the new policy interpretations chiefly to keep reporters out of parts of Beijing where protests had been called, but some TV crews were also prevented from

传媒和娱乐

引言



中国的传媒和娱乐业发挥着许多重要的作用：向不断发展的国内市场中的参与者传播信息，满足中国消费者对世界水平娱乐和文化活动与日俱增的需求等。随着中国国际影响力的不断扩大，该行业在推动中国在世界各地的形象、声誉、文化影响和经济利益等方面的发展将发挥突出作用。

2011年中国对国际新闻传媒和娱乐内容的需求大幅增加，然而许多法规仍继续限制着该产业的国际参与度。尽管版权执法方面的一些努力取得了成效，但是有很多规定实际上促使侵犯知识产权行为的滋生，且中国互联网的迅猛发展已造成了一系列全新的侵权问题。自2008年北京奥运会以来，记者的工作环境在不断恶化，使得他们更加难以向世界报道中国。最后，在金融领域，审查制度和其他相关法规导致市场不透明，信息不公开、玩忽职守和腐败等现象。

这些问题所造成的后果不仅影响中国，且波及中国在世界其他地区的影响力。文化和艺术发展是“十二五”规划中的一个关键要素，但是审查制度和其他限制使得中国艺术家和演艺人员更难以达到国际标准，使中国文化难以在国外产生深远影响。透明度问题还使得外国投资者对很多其他行业的中国公司的投资止步不前。

只有通过推动各种举措来宣传、管理、增强原创作品商业价值并强调知识产权保护的必要性，才能使中国在娱乐和艺术方面历史悠久的优秀遗产得以最好地保护并获得国际重视。

中国美国商会赞赏中国传媒和娱乐业日趋国际化，最近宣布的一项以增加中国电影屏幕上国际电影数量的协议就是例证之一。我们相信，中国运营环境的改善不仅有利于在华经营的美国企业，还能提升中国传媒娱乐业的声誉及其海外竞争力。一个健康的娱乐、文化、金融、新闻等信息交流环境将有利于加强中国与世界各国的外交和贸易关系。

重大进展

知识产权

打击知识产权侵权行为在立法、执法以及多个政府部门间更好地分配监管职责等方面已经取得了长足进步。但是，对于传媒和娱乐业来说，总体情况依然不容乐观，盗版产品和内容的市场庞大，在某些情况下，政府的规定和审查制度起到了推波助澜的作用。

这种情况下，网络销售的迅猛发展大大增加了侵犯知识产权的可能。某些情况下，中国公司购买了知识产权网上使用权后，知识产权才开始得到尊重。然而，针对日益严重的通过用户生成的内容和人与人交流的平台来实施的盗版行为，监管和执法工作尚未跟上。

记者工作环境

2011年，新闻传媒的报道环境明显恶化。有关部门对现有规定重新进行了解释，实施赤裸裸的身体暴力，并利用签证作为工具来威胁外国记者。

奥运会前颁布的规定允许外国记者无需官方许可即可采访中国公民。然而2011年初，北京市警方和有关部门却称外国记者需要获得被采访人工作单位、居委会或其他部门的同意方可进行采访。

警方采用这种新解释主要是为了阻止记者进入北京市内曾举行过抗议活动的那些地区，不过有些电视记者也被阻止拍摄与抗议活动无关的市场和其他地区。令人震惊的是便衣警察竟对记者施暴，致使一名记者因严重受伤住院治疗。

与此同时，外交部放慢了对临时特派记者和新任常驻记者的签证审批。驻华外国记者协会进行的一项秋季调查发现，有13名记者等待常驻签证的时间已经超过了6个月，比过去十年中通常所需时间长一倍。此外，外交部官员和警方还威胁那些被认为报道过于严厉的常驻记者不予延长

filming in markets and other areas unrelated to acts of dissent. Alarming, plainclothes operatives used violence against reporters, with one sustaining injuries that required hospital treatment.

Meanwhile, the Ministry of Foreign Affairs (MOFA) slowed visa approvals for temporary assignments and new resident correspondents. A survey conducted by the Foreign Correspondents Club of China in autumn found that 13 journalists had been waiting more than six months for resident visas, twice the time normally needed over the past decade. MOFA officials and police have also threatened not to renew visas of resident correspondents over reporting deemed too critical. These restrictive practices come at a time when China's state media is expanding vigorously overseas.

Specific Issues

Multiple regulations continue to broadly restrict the establishment and development of international media businesses in China. They impact human resources, distribution of all kinds, and the ability of film, television, music, and other companies to cooperate with Chinese artists and entertainers in creating cultural works. These market barriers not only affect international businesses, but also diminish the Chinese public's access to information and media content, inhibit the development of China's cultural industry, and reduce the impact of China's own culture and media abroad.

Cross-Sector Issues

Piracy

AmCham China welcomes and applauds recent progress in fighting media and entertainment IPR abuses achieved through legislation, enforcement, regulatory role clarification, and awareness campaigns.

Censorship is often used to restrict market access for foreign television programming and films. Furthermore, China regularly imposes lengthy delays on film, television, and music entry, thus creating an environment in which a market for pirated products can thrive. As a result, Chinese consumers are watching or listening to the "forbidden" products regardless of the restrictions. In such cases, these restrictions only serve to undermine the sector's profitability and ability to create new entertainment and cultural works.

Occasional enforcement campaigns demonstrate that authorities have the ability to disrupt illegal channels, but organized piracy continues to be tolerated. Meanwhile, the rapid growth of online businesses has accelerated the speed and volume of illegal dissemination of films, music, and images, along with various printed and online works. Despite all of China's Internet controls, it is still possible to

illegally download music, images, and even whole television programs via Chinese search engines.

Monetization—or recovery of damages through fines—on infringed copyrighted works continues to face significant hurdles. Damages awarded to rights holders through the Chinese judicial system are quite small, and despite the large growth in digital content, awards for digital copyright infringement have been lowered. Meanwhile, legal costs remain high, lawsuits often take years to conclude, and even a successful court judgment can be difficult to enforce.

AmCham China recommends that China reduce censorship and other regulations that create an environment in which piracy can thrive. Furthermore, we suggest that China streamline the process for enforcing IPR, increase damage awards, and fight Internet piracy by requiring online platforms to protect IPR and assist in enforcement.

Lack of Regulatory Clarity and Enforcement

Many Chinese government authorities claim a role in regulating media, entertainment, and culture, but lack of clarity about these various roles, and in the regulations themselves, adds to the difficulty of developing international media businesses in China. Laws are often vague and enforcement inconsistent and unbalanced across industry players. While China's Ministry of Culture (MOC), General Administration of Press and Publications (GAPP), and other regulators have issued conflicting proclamations in a battle for oversight, the lucrative trade in online piracy continues.

Vague regulations make it difficult for international companies to plan and implement initiatives. Outdated regulations fail to account for the rapid development of Web 2.0 technologies, leaving vast areas of online content and service offerings operating with unclear guidelines. Unclear regulations and investment approvals also cause China to lag far behind international standards in retail distribution of books and periodicals.

AmCham China recommends regulatory agencies, including the Ministry of Industry and Information Technology (MIIT), State Administration of Radio, Film, and Television (SARFT), MOC, GAPP, State Council Information Office (SCIO), and others, establish clearer lines of authority. In addition, we recommend instituting a transparent regulatory drafting process that allows for public comment at an early stage, as well as expediting approval processes for foreign investment and participation in the Chinese media and entertainment market.

Internet Censorship

Censorship of the Internet through site blockages and technical bottlenecks is becoming a clear competitive disadvantage for both international and Chinese media and entertainment companies. Foreign companies are forced to base

签证。这些限制性做法发生之际正值中国的国家传媒在大力扩大海外影响力。

具体问题

多重法规仍继续对国际传媒企业在中国的建立与发展予以广泛限制。这影响到人力资源、各种类型的发行以及限制了影视、音乐的发展和其他公司与中国艺术家和演艺人员合作的文化作品创作。这些市场壁垒不仅影响了外国企业，而且还减少了中国公众获得的信息和传媒内容，限制了中国文化产业的发展，并且降低了中国自身文化与传媒的海外影响力。

跨行业问题

盗版

中国美国商会欢迎并赞赏最近通过立法、执法、监管责任澄清和宣传行动在打击传媒和娱乐知识产权侵权方面取得的进步。

鉴于传媒和娱乐的文化影响力，中国主张有必要对其实施审查制度和其他限制。但实际情况是审查制度常常被用来推进中国限制外国电视节目和电影市场准入的一贯政策。此外，中国对于影视音乐作品的进口经常是一推再推，从而使得盗版产品能够大行其道。因此，中国消费者看的或听的都是“受禁”的产品。在这种情况下，这些限制只会削弱该行业的赢利能力和创作新的娱乐和文化作品的能力。

偶尔进行的执法行动表明当局是有能力摧毁非法渠道的，但是有组织的盗版却继续得以生存。同时，在线业务的迅速增长也加快了电影、音乐、影像和各类打印及网上作品的非法传播速度，增加了传播量。虽然中国实施了各种互联网控制措施，但是依然可以通过中国的搜索引擎非法下载音乐、影像甚至完整的电视节目。

对被侵权的版权作品进行的货币化（即通过罚款来获得司法赔偿金）继续面临严重阻碍。通过中国的司法系统为权利人提供的司法赔偿金额非常少。尽管数字化内容有了大幅增加，但是对数字版权侵权行为的裁决却有所降低。同时，诉讼费用居高不下，而且打一场官司动辄要花费数年时间，即便胜诉，法院判决也难以执行。

中国美国商会建议中国减少导致盗版泛滥的审查和其他规定。此外，我们还建议中国简化知识产权的执法程序，提高司法赔偿金的数额，通过要求在线平台保护知识产权

和协助执法来打击互联网盗版。

监管制度缺乏透明度和执行力

很多中国政府部门都声称在传媒、娱乐和文化方面负有监管职责，但是由于这些职责和规定本身缺乏透明度，反而增加了在中国发展国际传媒业务的难度。法律往往含糊不清，执法对行业参与者不一致、不平衡。中国文化部、新闻出版总署和其他监管部门发布的公告相互矛盾，监管有所重叠，但是有利可图的网上盗版交易却依然如故。

模糊不清的规定使得国际公司难以制定并实施规划。各种过时的规定未能考虑到 Web 2.0 技术的迅猛发展，使得在线内容的广大领域和服务供应没有明确的指导原则。规定和投资审批不明确，还造成中国在书刊杂志的零售发行发面远远落后于国际标准。

中国美国商会建议各监管部门，包括工业和信息化部、国家广播电影电视总局、商务部、新闻出版总署、国务院新闻办等，应当确立更加清楚的权限划分。此外，我们还建议实施透明的规章起草程序，以便尽早征求公众意见，加快审批外商对中国传媒和娱乐市场的投资和参与。

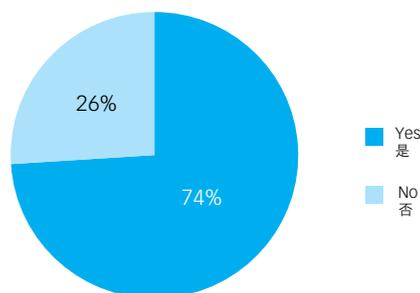
互联网审查制度

通过屏蔽网页和技术瓶颈来对国际互联网进行审查，正在变成国际和国内传媒娱乐公司的一个明显的竞争劣势。外国公司被迫在境外设立服务器和信息系统。很多外国和中国的大公司还建立起虚拟私人网络（VPNs），以便获得其需要的信息。这增加了费用，并成为企业考虑投资中国时的一个不利因素。与此同时，中国的小运营商和最终用户则处于竞争劣势，因为它们无法及时获得至关重要的信息和内容。

Does slow or unstable Internet access impede your ability to efficiently conduct business in China?

互联网网速慢或不稳定是否降低企业在华运营的效率

Company sample size = 301
企业样本规模



servers and information systems offshore. Many foreign and large Chinese companies also establish virtual private networks (VPNs) in order to access the information they need to conduct business. This raises costs and becomes a factor when companies consider investment in China. Meanwhile, small Chinese operators and end-users suffer a competitive disadvantage because they cannot access vital information and content in a timely fashion.

Sector-Specific Issues

Film Distribution

Government restrictions have long made it difficult to distribute international films on a commercial scale in China. Regulators limited the number of films that could be imported on a revenue-sharing basis to just 20 a year, with an additional 30 films permitted on a low, flat-fee basis. China has also maintained an import monopoly and distribution duopoly, managed by SARFT, which let the government dictate what films would be imported and when they would be released.

However, in February 2012, the US and Chinese governments announced an agreement that should loosen these restrictions. China agreed to allow another 14 imported 3D and large-format films, such as those produced by IMAX, onto China's screens each year on a revenue-sharing basis. In addition, revenue-sharing film imports will be able to claim as much as 25 percent of China's gross film revenue, up from the previous limit of 13.5 to 17.5 percent. The announced deal also increases by an unspecified amount the license fees available to "independent" films, and provides for new distributors to enter the Chinese film market.

AmCham China applauds the announcement of this agreement, and urges the Chinese government to fully implement all agreed measures as speedily as possible. At the same time, we note that even if the deal is fully implemented, it leaves a number of market barriers in place and does not resolve other problems that encourage IPR piracy.

For example, legitimate DVD/Blu-Ray film discs require censorship approval by GAPP, which takes at least one month. Meanwhile, pirated DVDs appear within a few days, stealing the market from legitimate businesses. Streamlining the censorship process will reduce the artificial bottlenecks that encourage piracy in the first place.

The Chinese film industry alone is estimated to have lost over RMB 10 billion (US \$1.57 billion) during 2009 as a result of piracy. This figure rises dramatically when foreign films are included. With the number of film screens rising by 42 percent in 2011 alone to a total of 9,286, and fast growth expected for the next five years, an effective distribution system and antipiracy controls will be central to the commercial viability of the new theaters.

The distribution of more foreign films, without market manipulation or arbitrary blackout periods, combined with a robust campaign to curb piracy, will benefit the domestic industry by building market demand for quality entertainment products. It will also make the Chinese audience a bigger factor in the overall international market, making it more likely that foreign filmmakers will cater to that audience.

Television

Foreign television content in China is severely restricted through non-market mechanisms. The government effectively prohibits Chinese cable operators from carrying foreign channels, which are relegated to hotels and residential compounds where a high percentage of foreigners live. Meanwhile, imported content is barred from Chinese stations during prime time, with additional restrictions and quotas that make it hard for Chinese viewers to watch international content. At the same time, foreign channels are required to "assist" CCTV (China Central Television) with access to the foreign channels' home markets.

It is important to note that this regulation and censorship does not actually prevent Chinese from obtaining international television (or other media) content. Chinese can watch every episode of many American television programs in pirated online versions, often with Chinese subtitles provided by online fans. In effect, many of these regulations encourage piracy while unsuccessfully protecting the Chinese market from competition.

AmCham China recommends that China sharply reduce quotas and restrictions on foreign television content, as well as publish detailed regulations on domestic television partnerships and collaborations with foreign content producers. This would ensure a competitive industry driven by transparency and mutual cooperation, and increase the quality of aired programming for the benefit of the Chinese public.

Live Entertainment

Market access for live entertainment continues to be restricted by a lack of transparency, excessive regulation and bureaucracy, and other restrictive practices that stifle growth in the industry.

China's approval process for live events requires obtaining a license, or *piwen* (批文), which involves submission of information, such as event crew and support staff rosters, that is not typically available until a show is nearly ready to open. It is not clear why this approval process is necessary. Furthermore, no reason is given when artists fail to get approval. Providing an official explanation for rejected *piwen* applications would be very helpful to managers, artists, and agents for future planning.

具体行业问题

电影发行

政府的限制长期以来已经使得国际电影在中国难以以商业规模发行。监管部门将按照收入分享模式进口的电影数量限制在每年 20 部，另外 30 部电影是按照很低的固定费率模式进口的。此外，中国还保持了通过广电总局实施的进口垄断和发行双头垄断，任由政府来规定所进口电影的种类和发行时间。

但是，2012 年 2 月，美国和中国政府宣布就放宽这些限制达成了一项协议。中国同意允许每年按照收入分享模式在中国屏幕上增加放映 14 部进口的 3D 巨幕电影，例如由 IMAX 制作的那些电影。此外，收入分享的进口电影将能够获得中国电影总收入的 25%，即从原来的 13.5% 限额提高至 17.5%。此项已宣布的协议还提高了“独立”电影可获得的许可费，但具体数额不详，并规定了哪些新发行商可以进入中国电影市场。

中国美国商会赞赏所宣布的这一协议，并敦促中国政府尽快全面执行所有商定的措施。同时，我们注意到，即便协议得到全面履行，但是它仍然留下了若干市场壁垒，且并未解决助长知识产权侵权的其他问题。

例如，合法的 DVD/蓝光光碟的发行要经过国家新闻出版署审批，至少需要一个月。而同时盗版 DVD 却只需几天时间就可以出现，从而占据了合法企业的市场。简化审查制度将首先减少助长盗版的人为瓶颈。

2009 年，中国电影业因盗版受到的损失超过 100 亿元人民币（15.7 亿美元）。如果将外国电影包括在内，该数字还将大幅上升。单单在 2011 年，电影屏幕的数量就增加了 42%，总数达到 9,286 块。未来五年预计还会有迅速增长。为确保这些新影院的生存和发展，必须实施有效的电影发行和反盗版管制措施。

发行更多的外国电影，取消市场操纵或任意设置的封锁期，同时采取积极行动打击盗版，将会增加对优质娱乐产品的需求，造福中国国内电影产业。这还将使得中国观众成为总体国际市场上的一个更重要因素，使外国电影制作商更加可能去迎合这些观众。

电视

中国一直通过非市场化机制严格限制外国电视节目登上中国的荧屏。政府禁止中国有线电视运营商播放外国频

道，而其只能在酒店和“外国人聚居区”播放。而且，进口的节目不允许在黄金时段播出，加上其他的限制及配额，使中国观众难以看到国际节目。同时，作为在以上有限渠道获得播放的条件，外国频道通常被要求“协助”中央电视台进入该外国频道的原产国市场。

但值得注意的是这种管制和审查制度实际上并未阻止中国人获得国际电视（或其他传媒）内容。中国人能够通过盗版在线版本收看很多美国电视节目的每一集，常常还配有粉丝提供的中文字幕。实际上，很多这样的规定既鼓励了盗版，又不能保护中国市场免于竞争。

中国美国商会建议中国大幅减少在外国电视内容上的配额和限制，且出台中外电视内容制作商合作制作电视节目的管理细则。这将确保形成一个透明、合作、竞争的 行业氛围，同时提高电视节目的质量，造福中国观众。

现场演出娱乐产品

现场演出娱乐产品的市场准入继续被透明度缺失、过多监管、官僚机构、限制性规定及其他扼杀市场成长的规章制度制约着。

中国要求现场演出娱乐产品必须经过审批，取得许可证，即“批文”，而批文程序要求提供的信息如演员和支持团队名单通常只有在演出即将开始之前才能确定。需要这一审批程序的原因尚不清楚。此外，对于艺术家未能获得批准也不说明原因。对被拒绝授予批文的申请提供官方解释将非常有益于管理者、艺术家和代理商进行今后的策划。

此外，在获得批文之前，不得售票、发布广告或进行营销。因此，以打包形式出售演出票的国际惯例几乎成为不可能，也减少了获得公司赞助的机会，因为这需要事先作出预算。

公安局为现场演出提供安全保障。但是，对于任何演出来说，公安局扮演什么角色、收取哪些费用都不清楚，因为这些都不公布。人们可能会以为针对家庭观众的演出收取的安保费用会低于对摇滚音乐会收取的安保费用。而实际情况往往并非如此。所支付的总体安保费用常常会超过适用于大型活动人群控制的国际标准。

同时，为安保目的留出的座位数量通常都会超过参加活动的安保人员的人数，而且所要求的座位数量常常变化，又不加以解释。这样的做法降低了演出活动的销售能力。

Additionally, until a *piwen* is approved, ticket sales cannot be advertised or marketed. As a result, the customary international practice of selling shows as a package is rendered virtually impossible, and chances to acquire corporate sponsorships that require budgeting in advance are diminished.

The Public Security Bureau (PSB) provides security for live events. However, for any given event, it is not clear what the scope of PSB's role or the fees it charges will be since they are not published. One might assume that fees charged for security at a family-oriented show would be less than for a rock concert, but that is often not the case. Frequently, the overall security provided also exceeds international standards for large-event crowd control.

Meanwhile, the number of seats set aside for security purposes usually exceeds the number of security personnel attending the event, and the number of seats required varies without explanation. Such practices reduce the sellable capacity of an event. Furthermore, seats set aside by the PSB for what it calls security reasons should typically remain empty but in practice these areas are usually full, especially for major events – a circumstance that is at odds with the PSB's security and safety concerns. In fact, the tickets often find their way to scalpers and are sold at a discount, driving consumers away from legitimate sales channels and undermining the commercial viability of the event.

The lack of transparency and clear guidelines regarding the *piwen* and the role of the PSB at live events undermines the commercial viability of events and venues, fosters illegal ticket sales, deters world-class performers from coming to China, and hurts consumers. AmCham China urges China to streamline and clarify relevant procedures and regulations, not only for the benefit of live entertainment venues, producers, and artists, but also for the benefit of China's cultural industry overall.

Music

Continuing restrictions on international record companies that want to make and sell music in China foster piracy and hinder the development of China's own music industry. The presence of US companies would bring jobs and expertise, leading to market growth and development of locally produced music, as has happened in other nations. In addition, it would allow domestic musical artists to acquire international contacts, which would lead to more opportunities for China to expand its cultural footprint abroad.

AmCham China therefore urges China to permit American and other foreign sound recording companies to invest and operate in all facets of the music business in the same manner as Chinese companies. This includes the right and ability to sign artists and to record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.

News and Financial Information

The deterioration in conditions for journalists, as noted in the Significant Developments section, creates a situation in which mistreatment of journalists itself becomes part of the story, tarnishing China's international image. It also means that foreign journalists are unable to fully report China's story abroad, creating a sense of mistrust and skepticism for even positive news about economic, cultural, and other developments coming out of China.

Other concerns also hamper both information gathering and distribution in the Chinese market, to the detriment of China's overall development and its influence in the outside world:

- Limitations on financial information providers and news media inside China create distrust and suspicion outside the country. Transparency issues have led many foreign investors to pull back from Chinese companies, making it more difficult for Chinese companies across industries to raise capital outside China. These same concerns often mean that Chinese companies are also greeted with suspicion when they attempt to expand operations outside China.
- China has become the world's second-largest economy, but releases much of its official economic data in an erratic way that is prone to embargo breaks, especially by well-connected Chinese media organizations. Accurate and timely data releases, with dates and times scheduled in advance, is important for effective policy planning, economic and business reporting, business forecasting and investment, and the economy as a whole. In addition, the definition of state secrets remains vague enough to encompass data routinely released in other societies. Thus, it is unclear whether financial information providers are liable for circulating economic and business data that has not been officially released.
- Theft of images, especially sports, entertainment, celebrity, and fashion images, remains a serious problem and is in practice a market entry barrier for major distributors. Lack of trust due to widespread piracy hurts domestic as well as foreign image creators and sources. China's photographers and image creators want to distribute their work in global markets, yet the uncertain local market prevents them from gaining experience and educational assistance or building strategic business relationships with major global distributors.
- China has a growing pool of highly talented, multilingual journalists, but they are forbidden to work as journalists for foreign media companies. Changing this regulation would create jobs, increase competition, and improve the quality of reporting on China, thereby also improving understanding of China abroad. Ironically, some international media organizations have hired Chinese reporters—but only for reporting outside their homeland.

此外，特别是每逢大型演出时，出于公安局所称的“安全原因”而为其留出的座位原本应当是空置的，但实际上却常常都坐了人。这种情况与公安局确保安全的职责背道而驰。事实上，那些座位的票往往落入了黄牛党手里，然后折价出售，将消费者带离了合法销售渠道，影响了演出活动的商业可行性。

对于批文和公安局在现场演出中的作用，缺乏透明度和明确的指导原则，影响了演出活动的商业可行性，助长了非法票的销售，阻碍了世界级演员来中国演出，损害了消费者利益。中国美国商会敦促中国简化并明确相关程序和规定，这不仅有益于现场娱乐演出会场、制作商和艺术家，而且也有益于中国的总体文化行业。

音乐作品

对那些想在中国生产并销售音乐作品的国际唱片公司的持续限制滋生了盗版，并阻碍了中国自己音乐行业的发展。如果美国公司可以在中国国内落地，将会带来就业机会和专业经验，引领市场增长和本地音乐作品的发展，正如在其他国家那样。此外，这还将使得国内音乐艺术家能够加强国际联系，使中国有更多机会来扩大其在海外的文化影响。

因此，中国美国商会敦促中国允许美国与其他外国录音公司同中国公司一样，投资并经营全方位的音乐业务，包括有权利和能力与艺术家签约、录制和制作实体形式的音乐作品并通过互联网和移动平台进行营销和发行。

新闻和金融信息

如“重大进展”一节中所述，记者工作环境的恶化，使得对记者的不公正待遇本身成为了报道的一部分，损害了中国的国际形象。这还意味着外国记者无法在海外全面报道中国的情况，从而对来自中国的经济、文化和其他方面的好的新闻也产生了不信任和怀疑。

其他的担心也妨碍了在中国市场的信息采集和发布，从而损害了中国的总体发展及其对外部世界的影响力：

- 对中国境内金融信息提供者和新闻传媒的限制在中国境外产生了不信任和怀疑。透明度问题使得很多外国投资人对中国公司敬而远之，使各行业的中国公司更加难以在境外筹集到资金。由于同样的问题，中国公司在试图将经营范围扩展至中国境外时也会受到怀疑。
- 中国已经成为世界第二大经济体，但是在发布其大多

数官方经济数据时却以没有一种规律的方式，而且常常被手眼通天的中国传媒机构泄漏。事先定好日期和时间的准确和及时的数据披露对于有效的政策规划、经济和商业报告、业务预测和投资以及总体经济都至关重要。此外，“国家机密”的定义依然模糊不清，甚至包括在其他社会中都是例行发布的数据。这样，就不清楚金融信息提供者是否要为传播尚未被正式发布经济和商业数据而承担责任。

- 盗用图片（尤其是体育、娱乐、名人和时装图片）问题依然严重，成为主要图片经销商的市场准入壁垒。由于盗版泛滥而导致信任缺乏，损害了中国和国外的图片创作人和图片来源的利益。中国的摄影师和图片创作人希望在国际市场上销售其作品，但国内图片市场的种种不确定性却使得他们无法获得经验和教育援助，或与国际大图片经销商建立战略和业务关系。
- 中国高素质、多语种的人才越来越多，但是他们被禁止担任外国传媒公司的记者。改变这一规定将会创造就业机会、加强竞争、提高有关中国的报道质量，此外还能够增进海外对中国的了解。具有讽刺意味的是，有些国际传媒机构聘用了中国记者，但是仅在中国境外从事报道。

中国美国商会建议中国实践 2008 年奥运会之前颁布的报道规定，起诉那些对记者施暴的人，恢复外国记者三个月的签证等待时间，允许外国新闻机构聘用中国记者。中国美国商会还建议中国按照定期时间表来正式公布经济数据。

结论

猖獗的知识产权侵权行为加上审查制度限制了传媒娱乐行业在中国的发展，威胁到了很多公司（包括中国和外国公司）的运营和收入。除此之外，市场准入壁垒和效率低下、不透明的监管环境妨碍了外国传媒娱乐公司为中国消费者服务，限制其为推动该产业在国内的发展助一臂之力。

中国美国商会敦促中国简化监管、增加透明度、改善知识产权保护、减少市场准入壁垒和审查制度。这些改进将有益于中国消费者、中国公司和外国公司的利益，使中国传媒娱乐业在全世界获得其理应具有的影响力。

AmCham China recommends that China live up to the regulations on reporting promulgated before the 2008 Olympics, prosecute those who use violence against reporters, reinstate a three-month waiting period for reporter visas, and allow foreign news organizations to hire Chinese reporters. AmCham China also recommends that China follow a regular schedule for the official release of economic data.

Conclusion

The combination of rampant IPR infringement and censorship is restricting the media and entertainment sector's development in China, threatening the operations and revenue of many companies, both Chinese and foreign. Moreover, market access barriers and an inefficient, opaque regulatory environment prevent foreign media and entertainment companies from serving Chinese customers and helping develop the domestic Chinese industry.

AmCham China urges China to streamline and increase transparency of regulations, improve IPR protection, and reduce market access barriers and censorship. These improvements will benefit Chinese consumers and the well-being of both Chinese and foreign companies, and will give the Chinese media and entertainment industry the influence and the impact that it deserves to have around the world.

- Prevent the harassment of reporters and sources, and prosecute those who use violence against reporters.
- Reduce delays in visa issuance and renewal for journalists, and eliminate the interview requirement prior to annual renewal.
- Further clarify and subject to reasonable limitations the types of information that are considered "state secrets."

Recommendations

- **Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control.**
- Fight IPR violations by reducing censorship and regulation in all media and entertainment sectors, and increase judicial damage awards in order to enhance their deterrent capabilities.
- Attack online IPR piracy by improving regulations and requiring online platforms to protect IPR, provide information on infringers to the government and to rights holders, and assist in enforcement actions.
- Establish clearer lines of authority among MIIT, SARFT, MOC, GAPP, SCIO, and other media and entertainment regulatory agencies, and institute a transparent regulatory drafting process that allows for public comment.
- Eliminate the television quota system, restrictions on prime time broadcasts, and restrictions on foreign channels' market access, and publish detailed regulations on television partnership and collaboration for foreign content producers.
- Allow the US sound recording industry to sign artists and record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.

建议

- 减少对所有外国传媒企业进入中国的非关税壁垒，并将外国媒体供应商的市场准入壁垒，包括媒体审查和管控，降至最少。
- 通过减少所有传媒和娱乐领域的审查制度和监管来打击知识产权侵权行为，提高知识产权侵权司法赔偿金的数额，增强其震慑力。
- 通过改进规章制度和要求在线平台保护知识产权来打击网上知识产权侵权，向政府和权利人提供侵权人的信息，协助开展执法行动。
- 明确划分工业和信息化部、国家广播电影电视总局、文化部、新闻出版总署、国务院新闻办以及其他媒体娱乐产业监管机构的权限，启动透明的可公开征求意见的规章起草程序。
- 取消电视配额制度、对黄金时段节目播出的限制和针对外国频道市场准入限制，公布有关与外国内容生产商建立电视合伙企业并开展合作的详细规定。
- 允许美国录音行业与艺术家签约、录制和制作实体形式的音乐作品并通过互联网和移动平台营销和发行这些作品。
- 阻止对记者和信息源的骚扰，起诉那些对记者施暴的人。
- 减少对记者签证发放和续签程序中的延误，取消年度续签前需接受面谈的要求。
- 进一步澄清并合理限制被视为“国家机密”的信息类型。

Real Estate

Introduction

As concerns of a potential residential property bubble in China continued through 2011, Beijing enacted more “tightening measures” on real estate transactions, resulting in a sharp drop in transaction volume and prices. China’s real estate market appears to be heading toward a “soft landing.” Various media reports speculate the government will relax restrictions to spur sales again if real estate prices drop a further 10 to 15 percent.

Despite unfavorable global economic conditions, China saw increased demand in the commercial real estate sector. Many companies expanded their operations pushing up demand for commercial property, with state-owned enterprises and large domestic firms, rather than foreign firms, providing most of the demand.

The year of 2012 should see continued enforcement of policies aimed at controlling residential prices. The commercial sector is expected to remain vibrant, but demand for expansion space will soften. The timing of any policy changes will continue to be a subject of discussion.

Under these conditions, AmCham China member companies are faced with several challenges in China’s real estate market. Most notably, significant barriers to market entry and participation continue to severely limit the ability of foreign-invested firms and individuals to enter, invest in, and compete in the real estate market. Circular 171, in particular, limits branches and representative offices of foreign entities to real estate purchases for their own use only. Quality issues in construction, as well as in management practices, continue to create unnecessary costs—and risks—for industry participants. Other major long-term issues include lack of transparency and poor regulatory and legal enforcement.

Given that real estate plays a large and critical role in China’s economy, it is important that the government remove barriers entry for foreign investors in the real estate sector, ensure the quality and professionalism of construction, and improve transparency and efficiency by creating publicly accessible property rights registries. These measures will lead to increased transparency and beneficial competition among all companies within the sector.

Significant Developments

Property Tightening Measures

Central government property tightening measures in 2011 included the following: Local Chinese residents currently owning one property may only purchase one additional property; Non-locals and foreigners, or locals with two or more properties, will not be allowed to purchase additional property; Minimum down payment on a second home increased from 50 percent to 60 percent; Owners who sell their property within five years of purchase will be required to pay a tax on sale. In addition, local governments are expected to create a cap on price growth, based upon changes in local income and various affordability measures. This especially targets second- and third-tier cities that are experiencing rapid development.

AmCham China believes that market forces should be allowed to serve as the main driver for the real estate industry in the medium and long term.

Affordable Housing

Premier Wen Jiabao stated that China still plans to build 36 million affordable housing units by 2015, despite cutting its target construction starts by 20 percent for 2012. In October 2011, Beijing’s Commission for Housing and Urban Development stated that 60,000 state-subsidized homes had been built targeting recent graduates seeking work in the city. The government will closely monitor implementation of the policy, stipulating that new developments designed for affordable housing to be rented instead of sold, following public outcry charging graft and exploitation. Private investors will have to wait for what could be several years to sell the residential units, and at a price approved by the government. For investors who do not sell, at current rental rates it would take 30 years on average to break even.

The Beijing municipal government also announced it will subsidize rent for 300,000 public rental apartments expected to be built in the city by 2015 for low- to mid-level income earners, recent graduates entering the job market, and Chinese citizens not registered in Beijing but who have lived there for a prescribed number of years. These measures will enable migrant workers and the foreign population

房地产

引言

2011年，人们对中国潜在的房地产泡沫仍心存戒虑。针对房地产交易，中央政府实施了更为严格的“紧缩措施”，房地产交易价格显著下降，交易量也大幅下滑。中国房地产市场似乎正在“软着陆”。众多媒体认为，如果房地产价格下滑幅度超过10%–15%，政府将放宽限制以刺激销售的增长。

尽管全球经济形势仍不容乐观，中国商业地产的市场需求却在进一步增长。很多公司的业务扩张推高了这一需求，其中绝大部分需求来自于国企和大型内资企业，而不是外企。

2012年，我们预计中国政府将继续推行遏制住宅价格的政策。商业地产有望继续保持发展活力，但企业的扩张性需求将趋于温和。任何政策的修改时间仍是人们讨论的焦点。

在此环境下，中国美国商会会员企业在中国房地产市场仍然面临诸多挑战。最主要的是，市场准入和参与的种种壁垒在很大程度上限制了外资企业和外国投资者进入、投资、逐鹿中国房地产市场的能力。尤其是根据《关于规范房地产市场外资准入和管理的意见》（171号），外国实体的分支和代表处只能购买自用性住房。建筑质量以及管理中存在的问题为行业参与者带来了不必要的风险和成本。其他一些久而未决的主要问题还包括缺少透明度和执法不严。

鉴于房地产在中国经济中所扮演的主要角色和发挥的重大作用，政府应取消外国投资者进入房地产市场的准入限制，确保建筑质量及专业性，并通过建立对公众开放的物权注册体系来改善透明度和效率。这几点十分重要，这些措施将提升行业透明度，促进行业内部的良性竞争。

重大进展

房产紧缩措施

中央政府2011年实施的房产紧缩措施包括：已拥有一套住房的当地居民只能购买一套新房产。非当地居民、外籍人员及拥有两套或两套以上住房的当地居民不允许购买新房产。购买第二套房的最低首付由50%增至60%。销售购买不足五年的住房征收全额营业税。要求当地政府设立房价增长上限，并按当地收入水平和负担能力进行调整。这项措施主要针对房价正在迅速攀升的二线及三线城市。

中国美国商会认为，市场应当主导房地产行业的中长期发展。

保障性住房

温家宝总理表示，尽管将2012年开工的保障房预计目标下调20%，中国仍计划在2015年年底之前修建3600万套保障房。2011年10月，北京市住房和城乡建设委员会宣布，北京已为应届打算来京求职的毕业生配建了6万套享受国家补贴的公租房。鉴于公众对保障房领域贪污渎职和以权谋私现象的抗议，政府表示将紧密监控这一政策的实施，并且声明，新建保障房只租不售。私人投资者须数年之后才能出售住宅，且售价需经政府批准。对于不出售房产的投资者来说，按目前的租金计算，一般需30年才能收回成本。

北京市政府还宣布，将为2015年年底之前完工的30万套公租房提供房租补贴，这些住房主要面向中低收入人群、应届求职毕业生以及在京工作达到一定年限的非北京户口的中国居民。这些措施将使农民工和非北京户口的人群享受到保障房和补贴房待遇。享受补贴的条件是：三口之家或三人户以下的家庭总收入不超过10万元人民币（15748美元），四人或多于四人户家庭总收入不超过13万元人民币（20472美元）。

to benefit from the affordable and subsidized housing market. Families totaling three people or less must have a household income of less than RMB 100,000 (US \$15,748), while families totaling four people or more must have a household income less than RMB 130,000 (US \$20,472) to be eligible for the subsidies.

AmCham China supports the government's decision to continue to create housing for various income levels. We hope the government also allows foreign-invested developers to benefit from the incentives provided by investing in this segment of the housing market.

Insurance Industry Investment in Real Estate

The China Insurance Regulatory Commission (CIRC) allows insurers to invest up to 10 percent of their total assets in real estate. Insurance industry assets total roughly RMB 5 trillion (US \$787.4 billion), with thus roughly RMB 500 billion (US \$78.7 billion) available to invest in real estate.

China's insurers have not yet invested aggressively in property, however, due to soaring prices and falling rental yields in commercial properties. They have also delayed due to a weak stock market and deteriorating solvency ratios, causing CIRC to worry that insurers do not have the liquidity required to pay all the claims owed to policy holders. The required solvency ratio, which measures insurers' ability to make payments to outstanding policy holders, is 150 percent. Insurers are issuing subordinated debt in Hong Kong's offshore yuan market to improve solvency.

Property Taxes in Shanghai and Chongqing

Shanghai and Chongqing have initiated a pilot project during which they will levy a property tax to slow the increase in housing prices and boost tax revenue. During the pilot project, second homes purchased by Chinese or foreign residents, or any homes purchased by non-residents will be subject to an annual tax. Tax rates typically range from 0.3 to 0.8 percent of a home's value. This is lower than property tax rates in the US, which cluster around 0.5 to 1.25 percent.

China's local governments have long relied on one-time land sales and development permits to fund their annual budgets. The property tax pilot project is an effort to move towards annual, recurring streams of income. If this pilot is deemed successful, it will likely be expanded to other first- and second-tier cities.

Sustainability and Green Building

Throughout 2011, Chinese national authorities have taken a number of important steps to lower the environmental impact of real estate construction and maintenance.

The Ministry of Finance and the Ministry of Housing and Urban-Rural Development (MOHURD) published a joint circular on March 11, 2011, outlining policy on the development of renewable energy architecture. Major pledges include raising the goal for construction of energy efficient buildings to 2.5 billion square meters by the end of 2015 and increasing subsidies to support green city projects.

On May 14, MOHURD issued the "Notice on Further Promoting Energy Saving Work for Public Buildings," in which it pledged to reduce energy consumption per unit area for public buildings by 10 percent and energy consumption per unit area for large public buildings by 15 percent during the 12th Five-Year Plan period (2011-2015).

Specific Issues

Market Entry Barriers

Still in effect after six years, the "Opinions on Regulating the Entry into and the Administration of Foreign Investment in the Real Estate Market" (Circular 171) continue to impose extensive restrictions on market entry by foreign investors. The regulation stipulates that branches and representative offices of foreign entities, as well as foreign individuals, may only purchase properties for their own use, while direct offshore ownership of PRC properties is otherwise not permitted. A foreign investor buying into a foreign-invested real estate enterprise or a domestically funded real estate project is subject to greater scrutiny, and current rules effectively bar their participation in the market.

AmCham China encourages the Chinese government to revisit Circular 171 and allow more foreign investors into the Chinese real estate market. This will help spread advanced management techniques and construction practices, and increase transparency overall in the sector.

Consistency of Quality and Regulatory Enforcement

The rapid development of real estate in China has not been without its challenges. Regulatory enforcement is inconsistent, construction materials are sometimes suspect, and professional real estate management is often lacking. This may lead to market destabilization, poor investment decisions, or defective construction. The government has recently proposed to increase site inspections and improve regulation on construction materials. If progress is made, it will result in a more stable real estate market and higher quality assets.

While there have been some improvements, development in these areas has been slow. AmCham China encourages the Chinese government and local development companies to partner with more experienced firms from the US and elsewhere to accelerate the introduction of international

中国美国商会对中国政府继续建设适用不同收入群体住房的这一决策表示支持。我们希望中国政府能允许外资开发商参与投资这一领域并享受相关政策优惠。

保险行业获准投资房地产

中国保险监督管理委员会（保监会）宣布允许保险公司投资房地产，上限为总资产的 10%。保险行业总资产约为 5 万亿元人民币（7874 亿美元），因此可用于投资房地产的资产约为 5000 亿元人民币（787 亿美元）。

然而，由于商业地产价格一路高歌和租金回报率的下滑，中国的保险公司尚未大举进军地产行业。股市的疲软和偿债能力比率的恶化也阻碍了保险公司的行动步伐，保监会担心保险公司没有足够的流动资金来偿付所有索赔。偿债能力比率是用于衡量保险公司偿付未偿保单持有人能力的工具。根据要求，这一比率应为 150%。目前，保险公司正通过在香港离岸人民币市场发行次级债务来提高偿债能力。

上海和重庆的房产税

为放缓房价上涨步伐并增加税收收入，上海和重庆已启动房产税征收试点，征收对象为本市居民新购的第二套住房或非本市居民及外籍人员新购住房。税率为房产总价的 0.3–0.8%，比美国 0.5–1.25% 的房产税要低。

长期以来，中国地方政府的年度财政收入一直依赖于一次性的土地出让收入和开发许可收入。房产税试行方案将提供一种经常性的年度收入。如果试行获得成功，该政策可能会在其他一线和二线城市进行推广。

可持续性发展和绿色建筑

2011 年，国家部委采取了一系列重要举措来降低房产建筑和维护对环境的影响。

2011 年 3 月 11 日，财政部以及住房和城乡建设部（住建部）联合下发通知，阐述了推进可再生能源建筑项目的政策。主要内容包括，对建筑节能型建筑提出了更高目标，即 2015 年年底之前将节能建筑面积增至 25 亿平方米，同时加大对绿色城市项目的补贴。

5 月 14 日，住建部下发了《关于进一步推进公共建筑节能工作的通知》。通知指出，争取在“十二五”计划期间（2011–2015）实现公共建筑单位面积能耗下降 10%，其中大型公共建筑单位面积能耗下降 15%。

具体问题

市场准入壁垒

《关于规范房地产市场外资准入和管理的意见》（171 号）自生效以来已近六年。至今，它仍然为外国投资者的准入设立了重重限制。根据该意见，外企分支机构、办事处及外籍个人只允许购买自用性住房，且不能直接跨境持有中国房产权。外国投资商入股房地产业外资企业或参与中资房地产项目需接受更为严格的审核，而且目前的法规实际上限制了外资的参与。

中国美国商会鼓励中国对 171 号意见做出修订，准许更多外国投资者进入中国房地产市场。这将有助于推广先进的管理方式和建筑实践，增加产业的透明度。

质量监管及法规执行的一致性

中国房地产在快速增长的同时也带来了诸多问题。例如，法规执行不一致，建筑用料有时存在质量问题，缺乏专业的房地产管理。这可能会导致市场失衡，投资决策失误或建筑缺陷。政府已于近日表示将加大现场审查力度，完善针对建筑材料的相关法规。如能奏效，这些措施将进一步稳定房地产市场并提高资产质量。

尽管中国房地产质量有所提高，但进展步伐缓慢。中国美国商会鼓励中国政府和房地产开发商与经验丰富的美国或其他企业合作，加速借鉴国际最佳实践，以提升行业与行业参与者的整体素质。

产权的执行及透明度

中国在改善产权管理以及执行的透明度和一致性方面并无太大进展，中国美国商会和其他机构都认为这不利于投资。

地方对于产权权益注册的管理，包括土地使用权、租赁、抵押和其他权益，以及与公众权益有关的条例都涉及多重繁杂的法规，而且执行起来也不尽统一。在此情况下，真正的产权、抵押权权益人由于无法掌握准确的信息，较难执行其权益并可能受到竞争第三方的侵害。地方法院在适用法律时也不尽一致，继而导致执法缺乏明确性和可靠性。中国媒体曾多次报道贪污行为，以及地方官员滥用职权左右地产项目审批的现象。媒体能对此进行曝光令人感到欣慰，但当务之急是加大执法力度，终止滥用职权的行为。

中国美国商会建议建立对公众开放的省级或国家级产

best practices, increasing the overall quality of the industry and its participants.

Transparency and Enforcement of Property Rights

Little progress has been made to address the lack of transparency and consistency in the administration and enforcement of property rights, an issue that has consistently been cited by AmCham China and others as discouraging investment.

The local administration of property rights and interests registration, including land use rights, leases, mortgages, and other rights and interests in real property, as well as rules governing the priority of public interest rights, involves a complex multiplicity of regulations that are neither clear nor consistently observed by local authorities. Due to the resulting limited availability of accurate information, *bona fide* holders of property rights or liens may have difficulty enforcing their rights or may find their rights undermined by competing third parties. This lack of clarity and reliability also carries over into enforcement, as local courts do not always apply laws consistently. Chinese media have reported cases of rampant corruption and abuse of power by local officials who hold enormous sway in decisions concerning the approval of real estate development projects. Although it is encouraging to see these cases illuminated by the media, stricter enforcement is essential to ending the abuse.

AmCham China encourages the creation of readily publicly accessible provincial or national property rights and interests registries, with a view towards improving urban planning, real estate transaction efficiency, and construction and quality standards.

Conclusion

The Chinese government has a goal to stabilize, regulate, and guide its real estate sector, including through policies relating to tightening measures, property taxes, affordable housing, and green housing initiatives. Over the long term, the government should focus on enacting and enforcing fair, feasible, and clear laws and regulations. Consistent implementation of laws and regulations will ultimately ensure a healthy and sustainable real estate sector in China. Foreign investment will contribute to the sector to the extent it is open and market-driven.

Recommendations

- **Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171, and streamline the approval process.**
- **Adopt effective measures to enhance transparency and enforcement of regulations and policies governing the real estate sector.**
- **Create readily publicly accessible provincial or national property rights and interests registries.**

权权益注册体系，这将有利于改善城市规划，提高房地产交易效率以及建筑质量标准。

结论

中国政府通过紧缩、房产税、保障房和绿色住房在内的政策达到稳定、规范和引导房地产市场。就长期来看，政府应致力于建立和执行公平、可行而又明晰的法律法规。法规执行的一致性将确保中国房地产行业健康、可持续的发展。如果房地产行业能够开放并以市场为主导，外国投资将有助于该行业的发展。

建议

- 取消 171 号文件针对外资企业的市场准入限制，简化审批手续。
- 采取有效措施提升有关房地产行业政策法规的透明度及执行力度。
- 建立对公众开放的省级或国家级产权权益注册体系。

Retail and E-Commerce

Introduction

The growing buying power of Chinese consumers and the corresponding expansion of the retail sector now play critical roles in China's economic development. The need to improve the competitiveness and openness of the retail sector will only become more urgent during the 12th Five-Year Plan period as the Chinese government strives to increase the role of the service industry and domestic consumption in the economy. In 2011, the Chinese government made great progress by regulating and promoting e-commerce development for both foreign- and locally-invested retailers. This positive move should improve product variety and lower consumer costs while improving China's economic structure.

Though China's retail sector has been growing in recent years and the regulatory environment has seen significant improvements, the sector still faces several hurdles that prevent its full maturation. Unequal regulatory practices unduly burden foreign-invested retailers, resulting in a marketplace that still lacks the benefits of full and fair competition. A lack of equal national treatment for foreign and domestic retailers creates particular concerns in the commercial zoning application process for new stores; in retail ownership and product restrictions; in retailer-supplier relations; and regarding store inspections. Addressing such issues will help promote the healthy development of the Chinese retail market, maximize choice for Chinese consumers, and increase employment opportunities and overall consumer consumption.

Foreign retailers play an important role in the retail industry in China, particularly in knowledge sharing, standards, job creation, corporate social responsibility, sustainability, and compliance. These contributions help China's retail industry develop in a sustainable manner. AmCham China therefore encourages Chinese government agencies to apply the same regulations and standards for both foreign and domestic retailers.

Significant Developments

Retail Sector Growth

The retail sector continues on a robust growth track. In 2011,

total consumption of retail commodities reached RMB 18.1 trillion (US \$2.87 trillion), up 17.1 percent from the previous year. It remains to be seen what continued impact the global economic recovery will have on the retail sector, though government estimates predict total retail sales of RMB 63 trillion (US \$10 trillion) by 2020.

Guiding Principles, Opinions, and Regulations Regarding E-Commerce

There is tremendous government support for e-commerce development in China. In its 12th Five-Year Plan, China emphasized developing e-commerce as a key tool for improving information technology applications in economic and social development. Premier Wen Jiabao in his government work report to the National People's Congress in 2011 and statements by other leaders have focused on the positive role that e-commerce can play in stimulating domestic demand and consumption.

In 2011, the Ministry of Commerce (MOFCOM) released "Guiding Opinions for E-Commerce Development During the 12th Five-Year Plan" and "Guiding Opinions for Creating National E-Commerce Demonstration Bases." In addition, at the end of 2011, the National Development and Reform Commission (NDRC) and seven other ministries recognized 21 cities as national e-commerce demonstration cities. The Chinese government has prioritized e-commerce in the establishment of inter-ministerial regulatory coordination mechanisms, e-commerce pilot cities, intellectual property rights protection, standards, logistics, and product safety. AmCham China applauds these initiatives designed to increase efficiency and competitiveness in China's e-commerce market. These should not only benefit Chinese consumers but also contribute toward China's goal of increasing the role of service industries and domestic consumption in the economy.

Single-Purpose Prepaid Cards

On May 23, 2011, the State Council General Office issued "Opinions to Regulate Prepaid Cards," jointly put forward by seven ministries. MOFCOM undertook a special national review of the opinions from August through September 2011, soliciting input from industry in order to develop more detailed subsequent draft regulations yet to

零售与电子商务

引言

中 国消费者购买力的上升和由此带来的零售业快速增长,已成为推动中国经济发展的重要力量。随着“十二五”期间中国政府努力提升服务业和扩大内需,提高零售业的竞争力和开放度将变得更为迫切。2011年,中国政府在规范和促进外资及本地零售企业电子商务发展等方面,取得了很大进展。这项积极的举措在改善中国经济结构的同时,还能丰富中国消费者可选商品种类和降低购物成本。

近年来中国零售业持续发展,监管环境显著改善,但该行仍面临一些问题,影响其进一步发展成熟。不平等监管加重了外资零售企业的负担,导致市场缺乏充分公平的竞争环境。外资零售企业未与国内企业享有平等国民待遇,尤其反映在新店商业网点规划申请、零售所有权及产品限制、零售商——供应商关系以及店铺检查等方面。解决上述问题,将推动中国零售市场的健康发展,极大丰富中国消费者的选择余地,增加就业机会和扩大消费。

外资零售商在中国零售业居于重要地位,特别是在在知识共享、标准、创造就业机会、企业社会责任、可持续性和合规方面。这些贡献有助于中国零售业实现更加可持续的发展。中国美国商会敦促中国政府对内外资零售企业实施同等的法规和标准。

重大进展

零售行业增长

零售业继续保持增长。2011年,社会消费品零售总额为18.1万亿元人民币(2.87万亿美元),比上年增长17.1%。虽然全球经济恢复对零售业产生的后续影响尚待观察,但据政府估算,到2020年零售总额将达到63万亿元人民币(10万亿美元)。

电子商务的指导原则、意见和法规

中国对电子商务的发展给予极大支持。“十二五”期间,中国强调将发展电子商务作为改善信息技术在经济和社会发展中的重要工具。在温家宝总理2011年全国人民代表大会的政府工作报告中,以及其他领导人的发言中,都强调了电子商务能够扩大内需、促进消费的积极作用。

2011年,商务部发布了《“十二五”电子商务发展指导意见》和《关于开展国家电子商务示范基地创建工作的指导意见》。此外,当年年底,国家发展和改革委员会以及其他七个部委同意21个城市成为国家电子商务示范城市。中国政府在建立部委间监管协调机制、电子商务试点城市、知识产权保护、标准、物流和产品安全中决定优先使用电子商务。中国美国商会赞赏这些旨在提高中国电子商务市场效率和竞争力的举措。这不仅使中国的消费者受益,而且有助于中国实现提高服务业及国内消费在经济中占比的目标。

单用途预付卡

2011年5月23日,国务院办公厅发布了由七部委联合提出的《关于规范商业预付卡管理的意见》。商务部从2011年8月到9月开展了全国范围内的专项调查,征求行业意见,以便制定更详细的后续法规草案(该草案尚未公布)。据预计,后续法规可能要求企业将一定比例的预付款存入托管(信托)账户。中国美国商会支持中国政府规范预付卡市场的提议,然而我们对实施强制托管账户的潜在影响产生一些顾虑,见如下“具体问题”中的描述。

具体问题

外资零售企业缺乏平等的国民待遇令中国美国商会零售业会员尤为担忧。在中国的监管实践中似乎存在对外资零售企业的区别对待,导致零售市场竞争力较弱,效率较低。外资零售企业面临最繁重的负担如下:

be released. It is expected that these subsequent regulations may include a requirement that a percentage of prepaid money be deposited in an escrow (trust) account. AmCham China supports Chinese government initiatives to regulate the prepaid card market; however, we have some concerns about the potential for implementation of compulsory escrow accounts, as described below in the Specific Issues section.

Specific Issues

Lack of equal national treatment for foreign-invested retailers dominates concerns of AmCham China members in the retail sector. Chinese regulatory practices appear to single out foreign-invested retailers for discriminatory treatment, resulting in a less competitive and less efficient retail market. The most burdensome of such practices are described below.

Commercial Zoning and Opening of New Stores

Foreign-invested retailers receive unequal treatment compared to their domestic counterparts with regard to the opening of new stores. Local foreign trade and investment approval authorities currently must seek opinions from local internal trade and investment approval authorities concerning a foreign-invested firm's store location plan before a new store application can be approved. Some locales require public hearings which can further lengthen the approval process. In other areas where local governments have yet to establish zoning plans, such as in some second- and third-tier cities, local regulators are unable to render an opinion on a foreign-invested firm's store location plan. This seriously obstructs any expansion plans that a foreign-invested firm may have for that city, thus inhibiting the growth of the overall retail sector there. In stark contrast, local retailers are not subject to these requirements. Thus, these unequal practices unfairly favor domestic retailers. Such practices result in a less competitive and less efficient retail market.

AmCham China urges the Chinese government to provide equal treatment to both foreign-invested and domestic retailers by eliminating the requirement that foreign trade and investment approval authorities seek the opinion of internal trade and investment approval authorities, or that they hold public hearings on foreign-invested firms' store location plans before approving new store applications. Leveling the playing field and reducing such unnecessary administrative procedures should streamline the administrative burden and improve the development of the overall retail market in China.

Restrictions on Retail Ownership

Limits on foreign ownership in the retail sector reduce fair competition to the detriment of Chinese consumers. According to the joint NDRC/MOFCOM "Guiding

Catalogue on Foreign Investment in Industry" (foreign investment catalogue) and MOFCOM's "Measures on the Administration of Foreign Investment in Commercial Sectors and Its Supplementary Provisions," retailers operating more than 30 stores in China and selling pharmaceuticals, grains, vegetable oil, sugar, cotton, agricultural pesticide, chemical fertilizer, or other specific commodities of varying brands from different suppliers cannot be more than 49 percent foreign owned.

AmCham China recommends easing this ownership restriction and maintaining equal national treatment for foreign-invested retailers established in China. Doing so will increase investments by foreign-owned retailers, thus benefiting consumers and the development of the retail sector through knowledge transfer, lower prices, and increased retail choices.

Restrictions on Publications and Audiovisual Products

Inconsistent treatment also persists with regard to the sale of publications and audiovisual products. Publications, including books, newspapers, and periodicals, can only be sold by foreign-invested retailers that have gone through a burdensome approval and registration process. The registration process for Chinese companies to sell publications is much less onerous. Furthermore, audiovisual products, except movies, can only be sold by Sino-foreign cooperative joint ventures that are not more than 49 percent foreign owned. These restrictions unnecessarily limit consumer choice at foreign-invested retailers and decrease retail competition to the detriment of the consumer.

Restrictions on Tobacco

As of January 2009, foreign-invested retailers are prohibited from selling into China's wholesale and retail tobacco markets. While AmCham China supports stricter regulation of the tobacco industry in order to reduce tobacco-related illnesses, we recommend enforcing legal-age purchasing requirements on tobacco products and other internationally accepted measures rather than prohibiting sales by foreign-invested retailers. Such discriminatory restrictions put foreign-invested retailers at a clear disadvantage to their domestic competitors while having no impact on the goal of reducing overall tobacco sales.

E-Commerce

As mentioned in the Significant Developments section above, AmCham China welcomes the recent issuance of guiding principles, opinions, and regulations governing the e-commerce sector. While these are favorable developments, restrictions remain that impede foreign-invested retailers' ability to provide certain e-commerce services, thus holding back the development of an open and dynamic e-commerce market. Several examples are described below.

商业网点规划和开设新店

外资零售企业在开设新店时，相对于内资企业受到不平等待遇。有关外资零售店网点规划外经贸主管部门需征求内贸主管部门意见，才能使新店申请获得批复。部分地区要求公开听证，也进一步延长审批流程。而在其他一些尚未形成商业网点规划的地区，如一些二三线城市，当地监管部门无法向外资零售企业出具商业网点规划意见书。这严重阻碍外资零售企业在当地的发展计划，从而抑制当地整个零售业的发展。而对内资零售企业并无此类要求。这样的不平等待遇使得内资零售企业处于有利地位，导致零售市场的竞争和效率下降。

中国美国商会呼吁中国政府给予内外资零售企业平等待遇，不再要求外经贸主管部门必须向内贸主管部门征求意见，或者不要求在申请开设新店时就其商业网点规划进行公开听证。公平的竞争环境和减少不必要的行政程序可精简政府行政流程，促进零售市场发展。

零售所有权的限制

限制零售业的外资持股比例，不利于公平竞争，损害了中国消费者的利益。根据国家发改委和商务部联合颁布的《外商投资产业指导目录》（外商投资目录）以及商务部的《外商投资商业领域管理办法》，在中国分店超过30家、销售药品、粮食、植物油、食糖、棉花、农药、化肥或其他来自不同供应商的特定商品的零售连锁企业，其外资比例不得超过49%。

中国美国商会建议解除所有限制，给予在华外资零售企业平等的国民待遇。这样做将吸引外资零售企业加大投资，通过知识转移、降低价格，增加零售产品选择也将惠及消费者，促进零售业发展。

出版物和音像制品的限制

出版物和音像制品销售领域也存在不一致性。外资公司需办理繁琐的审批和登记程序才可销售图书、报纸和期刊在内的出版物。而中国公司销售出版物的登记程序却简单得多。此外，音像制品（电影除外）的经营只限于外资占比小于49%的中外合资企业。这种规定不必要地限制了消费者在外资零售企业中的选择空间，降低了零售业的竞争度，损害了消费者利益。

烟草制品的限制

截至2009年1月，外资零售企业仍被禁止在中国从事烟草批发或零售业务。中国美国商会支持中国政府出于对烟草有害健康的考虑、加强对烟草行业的监管力度，但我们建议可以采用禁止向未成年人售烟等国际通行做法，而不是禁止外资零售商从事烟草批发或零售业务。这样的歧视性限制将外资零售企业置于较内资企业明显不利的地位，而对减少烟草总销量并无帮助。

电子商务

正如前面“重大进展”部分所述，中国美国商会对最近发布的管理电子商务领域的指导原则、意见和法规表示欢迎。尽管这些进展令人称赞，但仍然有一些限制阻碍外资零售企业提供电子商务服务的能力，影响电子商务市场向开放和充满活力的方向发展。实例如下：

1. 电子商务 / 网上销售仍然是新修订的外商投资目录中的受限制类别。中国美国商会建议将电子商务 / 网上销售从限制类移至鼓励类。
2. 经国务院修订的《外商投资电信企业管理规定》仍然对外国投资者存在股权限制。根据该规定，经营基础电信业务（无线寻呼业务除外）的外方投资者在企业中出资比例不得超过49%。经营增值电信业务（包括无线寻呼业务）的外方投资者出资比例不得超过50%。中国美国商会建议中国进一步开放电信业，允许外资电子商务公司在网上设立和运作。此举将扩大客户的选择面，提高价格竞争力，并且有助于中小企业的发展。
3. 中国美国商会建议中国政府降低行政成本，对于中国电子商务用户喜欢的某些进口产品类别（例如婴儿配方奶粉、包装食品、酒类等），简化其审批程序。外国零售商在国外高效、低成本的采购可以为中国客户提供更多的选择，提高质量标准，并且发展出更好和更具竞争力的本地供应商。
4. 中国美国商会建议中国政府公布详细的政策，鼓励外商投资中国的电子商务基础设施和物流。鉴于物流业的发展严重落后于其他方面，并已成为电子商务发展的障碍，应通过税收优惠和其他激励措施鼓励为配送中心、运营中心和仓库购置土地。
5. 中国美国商会建议中国政府对于销售出版物、音频和视频产品的外资和本土电子商务公司一视同仁。

1. E-commerce/online sales are still in the restricted category of the newly revised foreign investment catalogue. AmCham China recommends e-commerce/online sales be moved from the restricted to the encouraged category.
2. The State Council's revised "Provisions on the Administration of Foreign-Invested Telecom Enterprises" continue to put equity restrictions on foreign investors. According to the provisions, a foreign investor's capital contribution to a telecom enterprise operating basic telecom services (excluding wireless paging service) may not exceed 49 percent. In a foreign-invested telecom enterprise operating value-added telecom services (including wireless paging service), the foreign investor's capital contribution may not exceed 50 percent. AmCham China recommends that China further open the telecommunications sector to allow foreign e-commerce companies to set up and operate online. Doing so would expand choice for customers, increase price competitiveness, and contribute to the development of small- and medium-sized businesses.
3. AmCham China recommends that the Chinese government lower administrative costs and streamline the approval process for importing certain product categories preferred by Chinese e-commerce customers (e.g., baby formula, some packaged foods, spirits, etc.). Foreign retailers' access to efficient, low-cost sourcing abroad can provide added choice for Chinese customers, increase quality standards, and develop better and more competitive local vendors.
4. AmCham China recommends the Chinese government issue detailed policies to encourage foreign investment in China's e-commerce infrastructure and logistics. Given that logistics development seriously lags behind other areas and has become a bottleneck for e-commerce development, land purchase for distribution centers, fulfillment centers, and warehouses should be encouraged through tax preferences and other incentives.
5. AmCham China recommends that China treat foreign-invested e-commerce companies the same as domestic ones in selling publications, audio, and video products.

Single-Purpose Prepaid Cards

As mentioned in the above Significant Developments section, AmCham China supports Chinese government initiatives to regulate the prepaid card market. However, we remain concerned about the possibility that in drafting more specific regulations, MOFCOM might require that a percentage of prepaid money be deposited in an escrow (trust) account. Such a requirement would add unnecessary costs for established and sound foreign retailers in China, and negatively impact efforts to increase domestic consumption.

AmCham China recommends that compulsory escrow accounts not apply to financially sound and credit-worthy companies. In order to establish credit worthiness, we

suggest that MOFCOM allow companies to provide a letter of guarantee from a bank or proof of third-party insurance to cover credit risk. This would ensure that the regulations reduce financial risks and combat fraud while minimizing unnecessary regulatory burdens on financially sound, reputable companies.

Retailer-Supplier Relations and Alleged "Commercial Bribery"

One of the more discussed issues regarding retailer-supplier relations in China in 2011 was channel fees or entry fees. These fees, which retailers charge suppliers to sell products in their stores, are common practice in both the US and Chinese retail sectors. They became a topic of discussion within the Chinese government and media in 2011 due to inflation and complaints about the fees from suppliers. In certain cities in China, the local administrations of industry and commerce (AICs) investigated the charging of channel fees by some retail stores and levied penalties for what they cited as "commercial bribery" under anti-unfair competition laws and regulations.

AmCham China believes such penalties are being applied inappropriately. The Anti-Unfair Competition Enforcement Bureau of the State Administration of Industry and Commerce (SAIC) has stated that channel fees are not regarded as commercial bribery in principle. AmCham China supports this interpretation of the relevant laws and regulations, and suggests SAIC make this interpretation clear to all local AICs so that national law will be implemented consistently nationwide.

Registered Capital

According to Article 7 of MOFCOM's "Measures for the Administration of Foreign Investment in the Commercial Sector," foreign retail investors' minimum registered capital must comply with relevant provisions in the Company Law and other relevant regulations. According to the Company Law, the minimum capital required for company registration is relatively low—between RMB 30,000 (US \$4,400) and RMB 500,000 (US \$73,000). However, according to "Tentative Regulations of SAIC on the Proportion of the Registered Capital to the Total Amount of Investment of Sino-Foreign Equity Joint Ventures," foreign retailers must contribute minimum registered capital much higher than required by the Company Law. Furthermore, under neither law are domestic retailers required to contribute minimum registered capital.

AmCham China recommends that SAIC revise the above regulation to make minimum registered capital requirements consistent with the Company Law, and that China treat foreign and domestic retailers equally in regard to minimum registered capital requirements.

单用途预付卡

正如前面“重大进展”部分所述，中国美国商会支持中国政府规范预付卡市场的举措。然而，商务部在起草更具体的法规时可能要求将一定比例的预付资金存入托管（信托）账户，对此我们仍有顾虑。这项要求会对已在中国成立并运营良好的外国零售企业增加不必要的费用，对增加国内消费也有负面影响。

中国美国商会建议不要将强制托管帐户应用于财力雄厚且信誉良好的公司。为了增强信贷可靠性，我们建议商务部允许公司提供银行保证函或第三方保险证明来控制信贷风险。这将确保这些法规会降低金融风险、打击欺诈，同时对财力雄厚且信誉良好的公司减小不必要的监管负担。

零售商—供应商关系和所谓的“商业贿赂”

2011年，关于中国零售商与供应商关系，讨论较多的是通道费或进场费。零售商向供应商收取费用，以允许其进入卖场出售产品，这在中美零售业都是一种常见行为。受通货膨胀和供应商对此收费投诉的影响，进场费成为2011年中国政府和媒体热议话题。在中国一些城市，地方工商行政管理局对一些零售商店收取进场费的行为进行调查，并且根据反不正当竞争法律法规对这些所谓的“商业贿赂”进行了处罚。

中国美国商会认为这种处罚在某些城市被不恰当地应用。国家工商行政管理总局反垄断与反不正当竞争执法局曾表示，进场费在原则上不被视为商业贿赂，中国美国商会支持这种对相关法规的解释，并建议国家工商总局对所有地方局明确这一解释，从而使国家法律在全国范围内执行一致。

注册资本

根据商务部《外商投资商业领域管理办法》第七条规定，外商投资零售企业的注册资本必须符合《公司法》和其他相关法规的规定。根据《公司法》，注册一家零售企业所需的最低资本相对较少，在3万元人民币（4,400美元）到50万元人民币（73,000美元）之间。然而，根据《国家工商行政管理局关于中外合资经营企业注册资本与投资总额比例的暂行规定》，外国零售企业的最低注册资本远远高于《公司法》的要求。而以上两种法律均不适用于本国零售企业的最低注册资本要求。

中国美国商会建议国家工商总局修改上述法规，使外

资零售企业最低注册资本要求与《公司法》一致，并且建议中国在最低注册资本要求方面平等对待国内外零售企业。

审批和登记要求不一致

不同机构要求的审批和登记时限不一致，这给外资企业带来困扰。比如，根据国家工商总局、商务部、海关总署和国家外汇管理局联合发布的第81号（2006）文件要求，变更注册资本时，公司必须投入新增资本的20%，获得资金报告，并且在当局批准后30天内变更其营业执照。与此同时，为了完成注资和营业执照变更，外商投资企业需要首先变更外汇登记，增加其注册资本，获得境内外币转移批准，并取得国家外汇管理局的注册资本验资证明。

根据《中华人民共和国行政许可法》，“除可以当场作出行政许可的决定外，行政机关应当自受理行政许可申请之日起二十日内作出行政许可决定。”因此，对于上述变更注册资本的四步程序，每一步可能需要多达20个工作日，四步程序总共需要85个工作日，因而在审批后30日内完成变更注册资本几乎难以实现。

我们建议国家工商总局和国家外汇管理局公布其审批和登记时间表，且该时间表应与有关法律相一致。

结论

2011年，中国政府在规范电子商务市场方面取得显著进展，为国内消费者创造更有效的市场。但在提升现有对外资零售企业不平等待遇方面仍有改进空间。我们关注的领域包括：新商业网点规划申报流程；零售所有权和产品的限制；电子商务；进场费；注册资本要求。中国美国商会期待与中国政府共同努力，推动中国充满活力的零售市场持续发展。

建议

- 对内外资零售企业采用相同的监管要求和标准。
 - 取消在外资零售企业申请开设新店时外经贸主管部门必须向内资主管部门就外资零售店网点规划征求意见或进行公开听证的要求。
 - 取消对外资零售企业的所有权限制。
 - 取消对外资零售企业可售商品种类的限制，如音像制品和烟草，或至少确保内外资零售企业适用相同的商品销售限制规定。

Inconsistency of Approval and Registration Requirements

Inconsistent timelines for approvals and registrations required by different agencies create problems for foreign companies. For example, according to two articles in Document No. 81 (2006) issued jointly by SAIC, MOFCOM, General Administration of Customs, and the State Administration on Foreign Exchange (SAFE), when changing registered capital, a company must complete injection of 20 percent of newly increased capital, acquire the capital report, and change its business license within 30 days after approval by authorities. At the same time, in order to complete the capital injection and change the business license, foreign-invested companies need to first change the foreign exchange registration, increase their cap on registered capital, get approval for domestic transfer of foreign currency, and acquire verification of registered capital from SAFE.

According to the “Administrative License Law of China,” “an administrative organ shall make a decision on the administrative license within 20 days from the day when it accepts such an application unless it can make a decision on the spot.” Therefore, the above four-step procedure for a change of registered capital can require up to 20 work days each step, which can amount to 85 work days in total, thus making it almost impossible to complete the process of changing registered capital within 30 days after its approval.

We suggest that SAIC and SAFE publish approval and registration time guidelines that are mutually aligned and consistent with the relevant law.

Conclusion

In 2011, the Chinese government made excellent progress towards regulating the e-commerce market, resulting in a more efficient market for domestic consumers. However, significant room for improvement exists as foreign-invested retailers still receive discriminatory treatment. Areas of concern include: the commercial zoning application process for new stores; retail ownership and product restrictions; e-commerce; channel fees; and registered capital requirements. AmCham China looks forward to working with the Chinese government to mitigate these difficulties to ensure continued enhanced development of China’s vibrant retail market.

Recommendations

- **Apply the same regulations and standards to both foreign- and domestically-invested retailers.**
 - Eliminate the requirement that local foreign trade and investment approval authorities seek the opinion of local internal trade and investment approval authorities, or that the latter hold public hearings on foreign-invested retailers’ store location plans before approving new store applications.
 - Remove ownership restriction caps on foreign-invested retailers.
 - Remove restrictions on the types of commodities, such as audiovisual products and tobacco, that foreign-invested retailers can sell, or, at a minimum, ensure that regulations on these commodities are applied equally to Chinese and foreign-invested retailers.
 - Revise the foreign investment catalogue to move e-commerce from the restricted to encouraged category.
 - Treat foreign and domestic retailers equally regarding minimum registered capital requirements.
 - Allow foreign telecommunications e-commerce companies to set up and operate online, including providing basic and value-added telecommunications services.
- Encourage foreign companies to invest in China’s e-commerce infrastructure and logistics sector.
- Ensure that financially sound companies will not be required to contribute to compulsory escrow accounts for prepaid cards in the final version of MOFCOM’s prepaid card regulations.
- SAIC should make clear to all local AICs their interpretation that channel fees are not regarded as commercial bribery under Chinese law, thus ensuring national law will be implemented consistently nationwide.
- SAIC and SAFE should publish approval and registration time guidelines that are mutually aligned and consistent with the relevant law.

- 修改外商投资目录，将电子商务从限制类移到鼓励类。
- 在最低注册资本要求方面平等对待国内外零售企业。
- 允许外国电信电子商务公司在网上设立和运作，包括提供基础和增值电信业务。
- 鼓励外国公司投资中国的电子商务基础设施和物流业。
- 确保在商务部预付卡法规的最终文件中不要求财力雄厚的公司为预付卡强制托管帐户出资。
- 国家工商总局应使所有地方局明确，进场费在原则上不被视为商业贿赂，从而使国家的法律在全国范围内统一执行。
- 国家工商总局和国家外汇管理局应该公布审批和登记时间表，使之与有关法律相一致。

Part Five:
Regional Issues
区域性问題



Provincial and Local Investment Environment

As AmCham China member companies have continued to invest and expand their business operations beyond their traditional east coast bases into second- and third-tier cities and beyond, the investment environment at the local level has become increasingly important. The implementation of the central government's regional development incentives has created new opportunities, but this rapid pace of change has also given rise to a number of new challenges.

AmCham China members are proud of the role they have played in localities across China, and they remain committed to working constructively with local governments and other stakeholders to identify and help solve problems and contribute to future development. The chapters that follow draw from the front-line experience of foreign-invested companies working and living in these communities. Contributions were made by member companies from AmCham China's Northeast China (Dalian), Tianjin, and Central China (Wuhan) chapters, as well as from our sister chambers, the American Chamber of Commerce in Southwest China and the American Chamber of Commerce in Shanghai.

As the chapters which follow reflect, there are many common concerns, but also differences, from one area to another. Common concerns highlighted this year include talent shortages, issues regarding implementation of recent changes to the Social Insurance Law, and the need to create more business-friendly infrastructure. Differences include a variety of industry issues that vary by the local market and regulatory environment. Many of these industry-based concerns are also more thoroughly addressed in the Industry-Specific Issues section of the *White Paper*.

Business-Friendly Infrastructure

Member companies are pleased by infrastructure improvements that many cities have made in recent years. However, traffic congestion and corresponding pollution continue to be problematic. Further enhancing transportation networks and public transit would increase business efficiency as well as improve the livability of China's cities, which in turn would help attract more investment, tourism, and higher-quality talent.

Development of service-related infrastructure also remains a concern for member companies in China's second- and third-tier cities. The need to develop higher quality health-care and education services to attract and retain foreign and Chinese business executives and their families is a top priority. In addition, making it easier for foreign law firms to open branch offices would help advance the quality of business-related services, thus improving the business environment overall.

Talent Shortages

Shortages of qualified technical, innovative, and managerial talent have surged in recent years, particularly in China's quickly developing second- and third-tier cities. In our 2012 AmCham China *Business Climate Survey*, members ranked management-level human resource constraints as the top business challenge and non-management human resource constraints as the third-ranking challenge (see figure 1 below). At the local level, member companies in five out of the six cities featured in this *White Paper* highlight the threat

Figure (图) 1

Top business challenges.

企业在华运营的主要挑战

Company sample size: ■ 2012=339 ■ 2011=250
企业样本规模



省市及地方投资环境

随 着中国美国商会会员公司从传统的东部沿海城市向二、三线城市投资及扩大业务经营，各地的投资环境变得日益重要。中央政府区域发展鼓励政策的实施创造了新的机遇，但快速发展变化仍然引发出许多新挑战。

中国美国商会会员为其在全国各地发挥的重要作用感到骄傲，他们与各地方政府及其他利益相关者始终保持建设性的合作，找出问题并协助解决，以为其未来的发展助力。本部分涉及的章节反映了工作、生活在这些地区的外资企业的亲身经历。中国美国商会东北（大连）、天津和华中（武汉）办公室，及其姐妹商会——西南美国商会和上海美国商会等对本部分内容都有所贡献。

正如本部分章节所反映的那样，各地区关注的问题有许多共同点，但仍有不同。今年共同的关注重点包括人才短缺、有关新修订《社会保障法》的实施问题，以及兴建更多适宜营商的基础设施等。不同点包括由于各地市场和监管环境不同而导致的各类行业问题。许多行业关注重点在《白皮书》的“具体行业问题”部分做了更详细的阐述。

益于营商的基础设施

会员企业很高兴看到近年来许多城市在基础设施建设方面取得进展。然而，交通拥堵和由此造成的污染问题仍然存在。进一步提升交通网络和公共交通系统将提升运营效率和中国城市的宜居度，继而吸引更多投资、旅游和高质量人才。

发展与服务业相关的基础设施仍然是在中国二、三线城市的会员企业关注的问题。发展更高质量的医疗服务和教育机构，以吸引和留住中外企业高管及其家庭是首要需求。此外，简化外资律所开办分支机构流程将帮助提升城市商业服务质量，进而提升整体商业环境。

人才短缺

缺乏合格的技术型、创新性和管理人才的趋势近年来有所增强，尤其是在中国快速发展的二、三线城市。在中国美国商会 2012 年《商务环境调查》中，会员企业认为管理层人力资源匮乏为首要运营挑战，非管理层人力资源匮乏位列第三（见左页图 1）。在地方层面，本《白皮书》中提及的六座城市中有五座城市的会员企业认为人力资源匮乏威胁到企业的可持续发展。由于企业需要从有限的人才库中竞争，从而得到并留住最优秀的人才，因而人才的匮乏加剧了成本上涨。中国正值经济转型时期，从以制造业为基础、受出口驱动转向以服务业为基础，由知识、创新和综合性管理驱动，若人才短缺问题不予以解决只会日益严重。

中国美国商会建议中央和地方政府通过加强教育机构、内外资企业、家庭和个人以及相关机构和组织之间的合作和交流，来解决这类问题。（关于解决人才短缺问题的相关建议，参考“人力资源”章节。）

《社会保障法》

中国美国商会赞赏近期修订《社会保障法》的意图，相关暂行办法的出台是从与中国员工对等的立足点出发，解决在华外籍雇员的社会福利需求。然而，59% 受调查的会员认为修订后的法律对其运营产生负面影响（见第 296 页图 2）。此《白皮书》中提及的六座城市中有四座城市的会员企业强调他们对该法在当地的实施表示担忧。新社保税的实施增加了雇佣外籍员工的成本，加之上文提及的当地人才短缺，许多公司可能选择到别处投资。我们鼓励当地政府部门对这些担忧加以关注，并采取合理且公平的执行办法。（关于《社会保障法》修订的相关信息，参考“人力资源”章节。）

of human resource shortages to sustainable growth. These shortages also raise costs as businesses struggle to compete for and retain the best talent from a limited pool. If not addressed, this problem will only get worse as China shifts from a manufacturing-based, export-driven economy to a service-based economy driven by knowledge, innovation, and sophisticated management.

AmCham China recommends that the central and local governments address this issue by facilitating cooperation and communication among educational institutions, foreign- and domestically-invested companies, families and individuals, and relevant agencies and organizations. (For more information on our recommendations for addressing talent shortages, also refer to the Human Resources chapter.)

Social Insurance Law

AmCham China appreciates the intent of recent changes to the Social Insurance Law and related interim measures to address social welfare needs of foreign employees in China on an equal footing with Chinese employees. However, 59 percent of our surveyed members expect the changes to have a negative impact on their business operations (see figure 2 below). Member companies highlighted their concern about the law's local implementation in four out of the six cities featured in this *White Paper*. When the increasing costs of hiring foreign employees due to new social insurance taxes is combined with the above-mentioned local talent shortages, many firms may choose to invest elsewhere. We encourage local governments to heed concerns and adopt reasonable and fair implementing measures. (For more information on the Social Insurance Law changes, please also refer to the Human Resources chapter.)

Conclusion

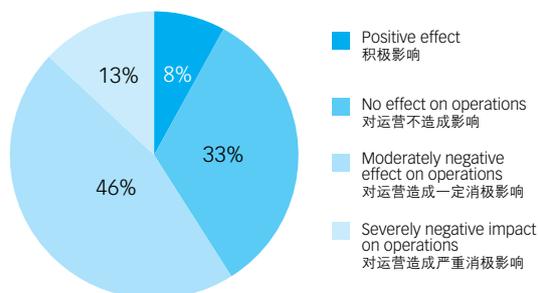
AmCham China member companies remain eager to expand investment and contribute to development across all of China's diverse geographic regions. We look forward to working with local and central governments in their pursuit of more sustainable development while building the competitive advantages of these communities, finding solutions for shortages of talent, and otherwise contributing to the advancement of livable, business-friendly cities. More specific observations and recommendations are set out in the chapters that follow. We again thank our chapters and sister chambers for their contributions.

Figure (图) 2

What effect will the implementation of the proposed social insurance taxes on foreign employees in China have on your business operations?

实施向在华就业的外国雇员征收社会保险将对企业运营造成何种影响？

Company sample size = 321
企业样本规模



结论

中国美国商会会员企业渴望在中国广袤的地理疆域上继续扩大投资并促进当地发展。我们期待与地方及中央政府合作，在追求更加可持续发展的同时，提升这些地区的竞争优势，找到人才短缺的解决方案，或帮助提升城市的宜居和宜商程度。更多详细的意见和建议将在后续章节中展开。我们再次感谢商会各个办公室和姐妹商会的贡献。



Chengdu

This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).

Introduction

As a primary economic hub of western China, Chengdu is witnessing a rapid increase in international attention and economic growth. In 2011, it was recognized as one of the top Asian cities for foreign direct investment, and one of the fastest growing cities in the world, in addition to being among the largest cities in China in terms of population. In the past year, Chengdu hosted US Vice President Joe Biden, a delegation of 10 US senators, and the 22nd bi-annual US-China Joint Commission on Commerce and Trade.

The city's GDP reached US \$108 billion (RMB 685.5 billion) for 2011, an increase of 15.2 percent over 2010. Disposable income per capita for urban residents reached US \$3,765 (RMB 23,910) by year-end, an increase of 14.8 percent over 2010. These numbers reflect the growing strength of the city's consumer economy.

Chengdu also saw a significant increase in foreign trade and investment. Within the first eight months of 2011, its trade volume hit a high of US \$22.9 billion (RMB 145.6 billion), up 44.7 percent year-on-year. Exports accounted for US \$13.3 billion (RMB 84.2 billion), an increase of 50.4 percent over the same period in 2010. The city also saw an unprecedented 68.3 percent growth in realized investment, reaching US \$4.89 billion (RMB 31.05 billion) in September 2011. Foreign investment accounted for approximately 94 percent of that number.

Chengdu's information technology (IT), banking, and hospitality sectors are helping to drive the city's growth. As new infrastructure projects connecting Chongqing and Chengdu are completed in the coming years, opportunities for collaboration as well as healthy competition between the two leaders of western China will continue to increase. Chengdu is also receiving increased national investment under central government policy initiatives for development of western China in the 12th Five-Year Plan.

Nevertheless, Chengdu still faces challenges in sustaining healthy economic growth. In particular, companies face difficulty recruiting and retaining qualified talent, a problem which inhibits foreign investment. In order to further improve Chengdu's investment environment,

AmCham Southwest and AmCham China recommend Chengdu provide tax and other incentives to attract high-quality talent to the city, while also collaborating with companies and universities to ensure students have access to relevant technical training. Enforcing higher construction standards, taking steps to moderate real estate prices, and developing platforms for company-government information sharing would also contribute to sustainable growth.

Significant Developments

Information Technology Sector Growth

The IT industry of Chengdu, especially with respect to IT manufacturing, continued to experience remarkable high-speed development in 2011. The city attracted domestic and overseas industry leaders into its new high-tech zones this past year, with three major IT enterprises in particular establishing large production bases, creating tens of thousands of jobs. The completion of China Telecom's cloud computing center and data recovery projects in the Western China Information Center added new cloud computing services and end-product manufacturing ability to the city's IT landscape.

Real Estate

Purchase limits and increased restrictions on mortgages implemented under the National Development and Reform Commission's Provision No. 548 significantly moderated sales transaction volumes (particularly for speculative investment purposes) and price increases of residential properties in 2011. While overall transactions were down from the previous year, Chengdu's growing population is expected to fuel demand for residential real estate, making its real estate market more stable than in many other Chinese cities.

Demand for retail space remained steady in 2011 as international brands continued to expand their presence in the city. Chengdu's *Xintiandi* (新天地) area is receiving increased interest from potential retailers hoping to replicate the success of other major retailers already established there. With two new international malls due for occupancy in mid-2012, the influx of retailers should continue through the year, though risk of oversupply of retail space exists.

成都

本章由中国西南美国商会（西南美国商会）撰写

引言

作 为中国西部重要的经济中心，成都的国际关注度和经济总量正在与日俱增。2011年，成都跻身亚洲最佳外国直接投资城市之列，成为全球发展速度最快的城市之一，此外在中国城市人口排名中位居前四。去年，成都接待了美国副总统乔·拜登和一个由10名美国参议员组成的代表团，并成功举办了第二十二届中美商贸联委会（每年两次）。

2011年，成都的国民生产总值达到了1080亿美元（6855亿元人民币），较2010年增长15.2%。截止年末，城镇居民人均可支配收入达到了3765美元（23910元人民币），较2010年增长14.8%。这些数据表明了成都消费经济的增长实力。

成都的外贸和外资也有大幅增长。2011年前八个月，该市的贸易额升至229亿美元（1456亿元人民币），较往年增长44.7%。其中，出口额达到了133亿美元（842亿元人民币），较2010年同期增长50.4%。2011年9月，该市已实现投资48.9亿美元（310.5亿元人民币），增长率达到了史无前例的68.3%。其中，外资占94%左右。

成都的信息技术（IT）产业、银行业以及酒店业也推动了城市的发展。连接重庆和成都的新基础设施项目将在近几年之内竣工，这些项目的落成将为这两座中国西部领军城市提供更多的合作和良性竞争机遇。中央政府在“十二五”规划中提出了多项西部开发政策将使成都吸引到更多的内资。

尽管如此，成都仍面临着如何保持经济健康增长的挑战。尤为突出的问题是，企业难以招聘到并留住合格的人才，而这一问题也阻碍了外资的进驻。为了进一步改善成都的投资环境，西南美国商会以及中国美国商会建议成都实施税收和其他鼓励政策来吸引高素质人才。与此同时，成都政府还可以与企业 and 高校进行合作，确保学生有机会接受

相关技能培训。实施更高的建筑标准，抑制房地产价格以及搭建企业——政府信息共享平台也将有利于经济的持续增长。

重大进展

信息技术产业的发展

2011年，成都的IT产业，特别是IT制造业，仍继续保持高速增长。过去一年中，该市新的高新技术园区吸引了一批国内外IT行业领军企业前来进驻。其中，有三家重要的IT企业建立了大型生产基地，创造了上万个就业岗位。中国电信在中国西部信息中心设立的云计算中心和数据恢复项目也为该市的IT产业带来了新的云计算服务和终端产品制造能力。

房地产业

2011年，国家发改委实施548号规定后，限购令和贷款紧缩政策相继出台，极大地抑制了成交量（尤其是投机性质的购房投资）和住宅地产价格的攀升。尽管成都总体成交量较去年有所下降，但该市人口的不断增长将有望继续拉动住宅地产的需求，这也将使该市的房地产市场比中国其他很多城市的市场更为稳定。

2011年，随着国际品牌的继续扩张，零售店面的需求呈稳定增长趋势。成都新天地地段正越来越受到潜在零售商的关注，他们希望复制一些已进驻的主要零售商取得的骄人业绩。随着两家全新的国际商场将于2012年年中投入使用，预计今年进驻该市的零售商将持续增加，但也可能导致零售店面出现供大于求的局面。

今年，由于高品质办公楼需求旺盛，且供应有限，商业地产亦保持着上升的发展态势。随着成都经济和基础设施的不断发展，越来越多的国内外企业都正寻求在这个城市拓展业务。随着一些新大型办公楼项目即将进入市场，这一空白将很快得到填补。去年一年成都市中心商业地产

Commercial real estate has also maintained an upward trend this year due to a limited supply of and high demand for high-quality office space. As Chengdu's economy and infrastructure continue to grow, more domestic and international companies are looking to expand operations in the city. As several new large office space projects enter the market, initial vacancies are expected to be quickly filled. The investment value of commercial real estate in downtown Chengdu has continued to rise throughout the year, with commercial sales leading growth in the real estate market.

Hospitality and Tourism Sector Expansion

With the continued strength of the economy in the Sichuan region, the Chengdu hospitality industry had another very positive year in 2011. While several new international hotels opened during 2011 and several existing facilities were refurbished, strong and growing demand readily absorbed this new inventory.

An increase in hotel inventory anticipated over the next few years is expected to soften the hospitality market; however, the outlook is still relatively positive. From the fourth quarter of 2011 to 2014, the room capacity of major hotels in Chengdu is expected to double, with the anticipated completion of some 40 five-star hotels containing around 12,811 rooms, on top of the addition of 2,118 rooms in four-star hotels. Two international-standard serviced apartments also opened in 2011.

The tourism market has recovered well since the 2008 earthquake, and overall the current global financial crisis has not had significant impact on Chengdu's hospitality industry. In 2010, domestic tourism increased by 22 percent compared to 2009 to 67.4 million arrivals, while international arrivals grew 24 percent to 800,200.

Banking

The banking industry in Chengdu is one of the city's fastest growing and most competitive sectors, leading western China in terms of total bank assets, total savings, total issued loans, and overall profit margins. In 2011, rapid development took place in the sector with the construction of the Western China Financial Center, including the Finance Headquarters Business District, the Financial Industry Gathering Area, and the Financial Banking Services Convergence Zone. These provided a strong backdrop for the Second Western China Financial Forum and the 12th Western China Expo. Chengdu's local government also took a leading role in hosting the Sichuan and Hong Kong Financial Cooperation Forum in Hong Kong, enhancing Chengdu's cooperation and communication with financial institutions outside of the city.

Attracted by the city's rapid economic development and local government support for the banking sector, many

commercial banks in China have opened branches in Chengdu. The number of foreign banks operating in the city is also on the rise. In 2011, after the entrance of several Korean-owned banks, the number of foreign banks reached twelve.

Transportation and Logistics

The opening and continuing expansion of the Chengdu subway system is a major step forward for the city's transportation infrastructure. This and other improvements to the municipal traffic and public transportation infrastructure have helped reduce congestion and create a positive ripple effect on the overall efficiency of the city.

China's plan to partner with member states of the Association of Southeast Asian Nations (ASEAN) in the construction of railway lines between China, Myanmar, and Thailand (and possibly Cambodia and Laos) was met with enthusiasm in the city's shipping and logistics community. In 2010, trade between China and ASEAN increased by 40.6 percent, reaching US \$263 billion (RMB 1.67 trillion). AmCham Southwest and AmCham China hope that the planned rail projects will proceed quickly so as to continue fostering increased trade between China and ASEAN member states.

Specific Issues

Human Resource Constraints

Difficulty recruiting and retaining qualified talent remains a top concern for foreign-invested companies in Chengdu, particularly in the hospitality, IT, and banking sectors.

Given anticipated growth in the hospitality industry, at least 15,000 new staff members will need to be recruited and trained to ensure an acceptable level of service in new and existing hotels. Likewise, demand for local talent in Chengdu's IT and banking industries continues to grow. More cooperation between local universities and corporations is needed in order to supply companies in these sectors with a sufficient talent pool possessing applicable skills, including English-language, technical, and financial skills, as well as firm understanding of the local industry. Providing incentives for the establishment of relevant education centers, such as tourism training schools, would also help.

Technical vocational education curricula at high schools and two-year post-secondary colleges are not well aligned with employer and industry needs. A government incentive for companies that provide students internship opportunities with the possibility for subsequent full-time job placement would enhance student preparedness while also addressing sustainable employment needs of the region.

Finally, improved business and urban living environments,

的投资价值继续走高，商业地产销售也因此成为了房地产市场增长的生力军。

酒店业和旅游业的扩张

随着四川地区经济实力的不断增强，成都酒店业在2011年延续了蓬勃发展之势。2011年，尽管有多家国际酒店新近开业及数家现有酒店修葺一新，不断增长的强劲需求很快便消化了这些新增存量。

据预计，未来几年之内新增的酒店存量会使酒店市场发展放缓；尽管如此，酒店业的前景仍比较乐观。2011年第四季度至2014年，成都主要酒店的客房总数有望翻番。届时，成都五星级酒店有望达到40家，这些酒店的客房总数将达到12811间，而与此同时，四星级酒店的客房将增加2118间。两座拥有国际服务标准的公寓楼也于2011年开始运营。

2008年地震以来，旅游市场恢复良好。从总体上来说，全球金融危机并没有对成都的酒店业造成重大影响。2010年，国内游客总数较2009年增长了22%，达到6740万人次，而国际游客总数增长了24%，达到80.02万人次。

银行业

银行业是成都发展最快，最具竞争力的行业之一。就资产总量、存款总额、贷款总额和总利润率这些指标而言，成都银行业在中国西部处于领跑位置。2011年，该行业发展迅速，成都开始打造中国西部金融中心，包括金融总部商务区、金融机构聚集区和金融银行服务聚集区。这些都为成都举办“第二届中国西部金融论坛”和“第十二届中国西部国际博览会”奠定了良好的基础。成都市政府还在香港主办了“川港金融合作论坛”，进一步推动了成都与外界金融机构的交流与合作。

鉴于该市迅猛的经济发展势头和当地政府对银行业的支持，很多中国的商业银行在成都开设了分支机构。该市外资银行的进驻数量也在不断增加。2011年，继几家韩资银行进驻以来，成都外资银行数目达到了12家。

交通和物流业

地铁系统的开通与扩建是成都交通基础设施建设向前迈出的重要一步。该系统以及针对城市交通和公交设施的其他改进工作缓解了城市的拥堵状况，带来了积极的连锁效应，从而提升了城市的整体效率。

中国正酝酿与东南亚国家联盟（东盟）成员国合作修建连接中国、缅甸和泰国（也可能包括柬埔寨和老挝）的铁路，成都航运和物流界对此反响热烈。2010年，中国与东盟之间的贸易增长了40.6%，总额达到2630亿美元（1.67万亿元人民币）。西南美国商会和中国美国商会希望能尽快开展这一铁路项目，以便进一步促进中国与东盟成员国之间的贸易。

具体问题

人力资源匮乏

对于成都的外资企业来说，特别是酒店、IT和银行业，难以招聘到和留住合格的人才仍是他们目前所面临的最大问题。

按照酒店业的预期增速来看，为保证新增和现有酒店正常的服务水平，成都至少需要招聘并培训15,000名新员工。同样，成都IT产业和银行业对当地人才的需求也将继续扩大。当地高校和企业应加强合作，为从事这些行业的企业提供充足的有相应技能的人才储备，这些技能涉及英语、技术、金融以及对当地产业的充分了解。为相关教育机构的建设提供优惠政策，例如旅游培训学校，也将大有裨益。

高中的职业培训课程和两年制专科并未完全与用人单位和行业需求挂钩。对于为学生提供实习机会并在实习后可能正式聘用学生的企业，政府可以向其提供优惠政策，藉此提高学生的应对能力，并促进当地就业需求的可持续性发展。

最后，改善商业和城市居住环境以及提供税收和其他优惠政策也同样有利于吸引和留住高级技术型和管理型人才，尤其是IT产业方面的人才。采取上述建议措施将有利于继续推动成都酒店、IT、银行和其他行业的健康发展。

信息技术产业协会

成都的IT产业缺乏企业间及企业与政府间有效的沟通机制。建立一个旨在促进沟通与合作的IT产业协会将有利于提升成都信息技术产业的开放度和透明度。通过该产业协会，当地政府和行业可以开展关于新政和政策变化的讨论，提高参与各方的效率。除此之外，通过开展一些合作性质的项目，例如搭建一个安全的在线信息共享平台，企业之间以及企业与当地政府之间可以更好地交流行业需求和存在的问题。西南美国商会和中国美国商会鼓励成都市

as well as tax and other incentives, are likewise needed to attract and retain more senior-level, technical, and managerial talent, particularly in the IT sector. Taking the above recommended steps would help ensure continued healthy growth of the hospitality, IT, banking, and other sectors in Chengdu.

Information Technology Industry Association

Chengdu's IT sector lacks effective means for companies to communicate with each other and the local government. Establishing an IT industry association to promote communication and collaboration would help to accelerate opening and transparency in Chengdu's IT sector. Through this industry association, the local government and industry could discuss new or changing government policy initiatives, increasing efficiency of all parties involved. Additionally, through collaborative initiatives, such as the development of a secure, online information-sharing platform, companies could better communicate industry needs and concerns to each other and to the local government. AmCham Southwest and AmCham China encourage the Chengdu municipal government to work with industry to create such an IT sector industry association.

Real Estate

Despite the moderation of real estate prices nationwide under new central government policy initiatives, prices of residential real estate in Chengdu have continued to rise. However, the poor construction quality of many new properties brings into question the sustainability of their rising value. Increased local government efforts to enforce higher standards for new construction and moderate prices will help ensure greater sustainability and long-term development of Chengdu's residential real estate market.

Education

The expatriate population in Chengdu has continued to grow over the past year, and with it the demand for quality international schools for expatriate children. Overall capacity of existing schools should be adequate for the next few years, however. Retaining quality foreign teachers has long been a challenge for Chengdu, though the improving living environment in the city is helping to alleviate this problem.

Demand for openings at international schools has so far concentrated on younger students. We recommend that the local government incentivize international schools to introduce a full range of international courses, such as the IB Diploma, in order to attract to the city and retain expatriate families and professionals with older children. Creating more public play spaces and helping to organize cross-cultural activities for local and foreign preschool-aged children would also help attract expatriate families to Chengdu.

Conclusion

The impressive growth of Chengdu's economy in 2011 has elevated the city's status domestically and internationally. As a result, the number of foreign and domestic companies investing and setting up operations in Chengdu's IT, retail, hospitality, financial services, and other sectors has increased dramatically. While such growth is promising, it brings challenges for companies trying to attract and retain workers with the necessary skills and experience to staff these new and expanding businesses. Unrestrained growth also increases the risk of overcapacity and softening of the market, particularly in the hospitality and retail sectors.

In order for Chengdu to achieve continued long-term growth, we recommend that the local government implement more programs and incentives to develop and attract talent. Such efforts will help to address human resource constraints and encourage future investment. Enforcing higher construction standards, taking steps to moderate real estate prices, and developing platforms for company-government information sharing would also contribute to sustainable growth.

Recommendations

- Offer incentives, subsidies, and preferential tax policies for highly skilled technical and managerial talent in order to attract and retain such talent in Chengdu, particularly in the banking and IT industries.
- Work with industry to create an IT sector industry association and information-sharing platform to promote cooperation between IT enterprises and the government and increase the cohesion and competitiveness of the IT industry.
- Provide incentives for the establishment of education centers, such as tourism training schools, to strengthen talent development in key industries, such as hospitality and tourism.
- Encourage cooperation between local universities and corporations in order to ensure students gain skills, including English-language, technical, and financial skills, that are applicable to employment in key sectors, such as financial services and IT.
- Enforce higher standards for new construction and moderate real estate prices to help ensure greater sustainability and long-term development of Chengdu's real estate market.
- Incentivize international schools to introduce a full range of international courses, such as the IB Diploma, in order to attract to the city and retain expatriate families and professionals with older children.

政府与相关行业开展合作，建立上述 IT 产业协会。

房地产

尽管全国地产价格在中央政府新政调控下有所回归，成都的住宅地产价格仍在继续上扬。但是，很多新建楼盘的质量问题让人们对房价坚挺的上涨态势产生了质疑。当地政府应加大力度，针对新楼盘实施更高的建筑标准并稳定房价，这将有助于确保成都住宅地产市场的可持续长远发展。

教育

过去一年中，成都外籍人口数量仍在不断增长，因此针对外籍人士子女的高品质国际学校的需求也在相应地增长。但现有学校的容量尚可满足未来几年的需求。对成都来说，留住高素质的外籍教师一直是个难题，尽管城市生活环境的改善在一定程度上缓解了这个问题。

从需求上来看，国际学校的主要服务对象是年纪较小的学生。我们建议当地政府鼓励国际学校引进全套国际课程，例如国际大学预科文凭，藉此吸引并留住那些拥有年纪较大子女的外籍家庭和专家人士。建立更多的公共休闲娱乐场所以及帮助当地及外籍学龄前儿童组织跨文化交流活动也将有利于吸引外籍家庭进驻成都。

结论

2011 年成都骄人的经济增长业绩提升了该市的国内外知名度。因此，在成都投资、运营的 IT、零售、酒店、金融服务和其他行业的国内外企业数量呈现大幅增长。尽管增长前景十分看好，但增长也带来了挑战。在新建和扩张过程中，企业难以吸引和留住那些拥有相应技能和经验的员工来满足其用人需求。粗犷的增长方式将会增加产能过剩的风险，并导致市场疲软，尤其在酒店和零售领域。

为了确保成都的长远发展，我们建议当地政府实施更多的措施和优惠政策来培养和吸引人才。这些措施将有利于解决人力资源匮乏问题，并在未来吸引更多投资。实施更高的建筑标准，稳定地产价格，以及搭建企业——政府信息共享平台也都将促进经济的可持续发展。

建议

- 为高素质的技术型和管理型人才提供激励措施、补贴和税收优惠政策，藉此吸引人才、留住人才，尤其是在银行和 IT 产业。
- 与行业合作，创建 IT 产业协会和信息共享平台，藉此促进 IT 企业与政府的合作，提升 IT 产业的凝聚力和竞争力。
- 为教育机构的建设提供鼓励措施，例如旅游培训学校，藉此加强对诸如酒店和旅游业等关键产业人才的培养。
- 鼓励当地高校与企业开展合作，藉此确保学生获得英语、技术和金融等方面的技能，帮助学生适应关键领域的工作，例如金融服务和 IT 领域。
- 针对新楼盘实施更高的建筑标准，稳定地产价格，确保成都住宅地产市场可持续长远发展。
- 鼓励国际学校引进全套国际课程，例如国际大学预科文凭，藉此吸引并留住那些拥有年纪稍大子女的外籍家庭和专家人士。

Chongqing

This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).

Introduction

Chongqing has long been one of southwest China's major commercial and industrial hubs. As the only municipality in western China under direct control of the central government, Chongqing is at the forefront of the "Go West" national development campaign, and is crucial in attaining goals for western development laid out in the 12th Five-Year Plan.

The city is receiving increasing attention from foreign and domestic enterprises as continued growth and opening takes place in Chongqing's traditionally strong manufacturing and legal sectors, and new growth expands the education, tourism, retail, and high-tech sectors. In 2011, foreign direct investment (FDI) in Chongqing reached US \$10.6 billion (RMB 66.9 billion), with 200 Fortune 500 multinationals having an established presence in the city. Chongqing's GDP reached US \$158.9 billion (RMB 1 trillion), up 16.4 percent from 2010. This was accompanied by a 15.5 percent year-on-year increase in urban per-capita disposable income, which reached US \$3,205 (RMB 20,250) by the end of 2011. Such growth highlights the increasing strength of Chongqing's consumer economy and helped fuel an 18.7 percent increase in retail sales from 2010.

Growth has been accompanied by municipal government efforts to further incentivize investment and increase energy efficiency in the city. With strong investment rates and economic fundamentals, Chongqing's growth is expected to continue. Nevertheless, energy shortages and inefficient energy allocation; insufficient enforcement of social insurance laws; lack of an international airport, pollution, and other constraints on tourism; human resource constraints; and other issues as detailed below, prevent even more vigorous growth.

Significant Developments

Cross-Sector Developments

Improved Energy Supply

In 2011, the Chongqing government actively responded to the energy shortages and soaring coal prices that have plagued industry in the past by designating manpower

and financial resources to tackle these problems. This effort to foster more efficient use of electricity for civil and industrial purposes helped avoid power shutdowns in the summer of 2011, a welcome improvement over past years, for the manufacturing sector in particular. Energy supply constraints remain a problem, however, as explained further below in the Specific Issues section.

Expanding Infrastructure

Chongqing has undertaken a number of important new infrastructure projects. The new Sino-European rail link, which can carry goods from Chongqing to Antwerp in only 13 days, improves the competitiveness of Chongqing-made laptops and other goods, and is a major step towards making Chongqing an inland high-tech and software outsourcing hub. A high-speed railway line connecting Chengdu with Chongqing, expected to be finished by 2014, will spur collaborative development between the two major cities. Similarly, a new rail line connecting Chongqing with Lanzhou (the capital of Gansu province), to be completed by 2014, will boost domestic trade in China's western region. Traffic congestion in Chongqing remains a major problem, but the city's metro system is growing rapidly with three lines currently in place and six lines expected by 2016.

Development of International Education

After many years of slow development, international education in Chongqing has seen encouraging growth in the last 12 months. The largest international school in the city now has over 160 students and offers the Cambridge International General Certificate of Secondary Education (IGCSE) and Advanced Level General Certificate of Education (A Level) curricula, both internationally recognized programs for 14/15- and 16/17-year-olds respectively. These developments have made Chongqing a more attractive destination for families of foreign business executives with older children, thus improving the investment environment in the city.

重庆

本章节由中国西南美国商会（西南美国商会）撰写。

引言

重庆一直是中国西南地区主要的商业和工业中心。作为西部地区唯一一个直辖市，重庆成为国家“西部大开发”战略的前沿，也是实现“十二五”规划发展西部目标的重要城市。

重庆的传统强项制造业和法律行业保持持续的增长和开放，教育、旅游、零售和高科技行业也获得新的增长，因此重庆受到了国内外企业越来越多的关注。2011年，重庆外商直接投资达到106亿美元（669亿元人民币），200家世界500强企业已经进驻。重庆GDP达1589亿美元（1万亿人民币），较2010年增长16.4%。截至2011年底，城市人均可支配收入达3205美元（20250元人民币），较去年同期增长15.5%。这体现了重庆消费经济强劲的增长实力，并助推零售业较2010年有18.7%的年增长率。

市政府通过进一步鼓励投资、提升能效，以促增长。凭借较高的投资增长率和良好经济基础，重庆市的增长有望持续。然而，仍有以下因素影响城市发展活力，包括：能源短缺及低效分配；社会保障法律执法不力；缺少国际机场，污染以及其他问题制约了旅游业发展；人力资源有限，以及如下详述的其他问题等。

重大进展

跨行业进展

提高了能源供给

2011年，重庆市政府通过加大人力、财力，解决了过去几年内由于能源短缺、煤炭价格上涨所导致的阻碍工业发展的问题。这是几年来尤其在生产等领域广受欢迎的举措，它促使民用及工业用电更加有效，避免2011年夏季电力中断。但能源供应不足问题尚存，以下“具体问题”部分将进一步阐述。

基础设施扩建

一系列重要的新基础设施建设项目已经投入建设。新建的中欧铁路线，仅用13天就能将货物从重庆运至安特卫普，提升了重庆制造笔记本电脑和其他产品的竞争力，也是重庆迈向内陆高科技和软件外包集散中心的重要一步。预计于2014年完工的成渝高铁将加速两市的协同发展。同样，一条连接重庆和兰州的新铁路线也将于2014年完成，届时将加速中国西部地区国内贸易的发展。重庆交通拥堵依然是一个主要问题，但地铁系统发展迅速，目前已开通运行了三条线路，到2016年将再增加六条。

国际教育的发展

在经历多年缓慢发展后，重庆的国际教育在去年一年有令人可喜的增长。全市最大的国际学校已招收160余名学生，并提供剑桥普通中等教育证书课程（IGCSE）及普通中等教育证书考试高级水平课程（A Level），二者分别向14/15及16/17岁学生提供国际认证课程。这些进展使得重庆对那些有年龄较大的孩子的外企高管家庭更具吸引力，继而提升城市投资环境。

具体行业进展

发动机制造业

重庆出口导向型通用发动机制造业仍是该市经济增长的主要支柱。2011年，部分私营制造商机器销量超过百万台。欧洲和美国是这些发动机产品最大的出口市场，2011年预计出口额超过10亿美元（63.5亿元人民币）。用于发电机、水泵、割草机及其他机械的通用发动机的出口额在重庆出口行业排名第三位，仅次于笔记本电脑和摩托车的出口。随着几百家被广泛认可的企业在当地成功的运营，重庆将在未来吸引行业巨头增加投资，扩大生产规模。

Industry-Specific Developments

Engine Manufacturing

Chongqing's export-oriented general purpose engine manufacturing industry remains a heavily subsidized pillar of the city's economic growth. In 2011, several private producers had sales surpassing one million units. Europe and the US are the largest export markets for the sales of these motor products, the export value of which was expected to exceed US \$1 billion (RMB 6.35 billion) in 2011. The export value of general purpose engines for generators, water pumps, lawn mowers, and other machinery ranks third in Chongqing's export sector, behind only laptops and motorcycles. With hundreds of well-established enterprises already operating successfully in the city, Chongqing is expected to attract increased investment and additional expansion from the industry's top players in the coming year.

Legal Services

In 2011, nearly 100 new law firms entered the Chongqing market, meeting in advance the government's goal of having 500 firms operating in the city by 2012. The city's legal sector now employs over 4,000 lawyers. While several well-known international law firms have established branches in Chongqing, their scale is still relatively small. With continued development of Chongqing's economy, profits in the legal service industry should remain healthy.

Hospitality and Tourism

Chongqing's hospitality and tourism industry saw significant growth in 2011 as the government made progress dealing with challenges. Revenue from tourism now accounts for over 12.5 percent of Chongqing's GDP. In 2011, over 2.12 million domestic and foreign tourists visited the city during Golden Week, an increase of 320,000 from the same period in 2010. Foreign visitors were responsible for over US \$518 million (RMB 3.29 billion) in revenue in 2011, a 34.1 percent increase over the previous year.

Continued efforts to develop Chongqing's hot springs infrastructure have also yielded positive results, with the city's 10 key hot springs resorts enjoying a 37.5 percent increase in visitors over 2010. As existing hot spring properties have undergone renovation and several well-known spa groups are expected to sign contracts for the development of new luxury facilities in 2012, Chongqing's hospitality and tourism sector will likely continue to see growth.

Software Outsourcing Services

Total revenues from Chongqing's software and information services industry reached US \$5.98 billion (RMB 38 billion) in 2011, of which the city's software outsourcing services industry accounted for US \$3.62 billion (RMB 23 billion). There are currently more than 370 certified software

companies and 156 companies with National Computer Information System Integration Qualification certification operating in Chongqing's software outsourcing industry. The sector has attracted investment from dozens of international enterprises in recent years, and further growth in the industry is expected in 2012 as companies seek to utilize improved rail connections with the European market. New outsourcing demonstration zones have also incentivized further investment in this critical industry.

Specific Issues

Energy Supply Constraints

Though progress has been made as described in the Significant Developments section above, energy supply shortages continue to present problems for the further development of Chongqing's industry.

As energy supply in Chongqing struggles to keep pace with economic development, many manufacturers have experienced difficulties, especially during the winter months. To minimize these disruptions, the local government should take additional steps to guarantee a consistent energy supply. Increased transparency during periods of energy shortage with the release of updated energy situation reports would help local and international enterprises to effectively adjust their operations. Additionally, the local government should take steps to more effectively distribute energy according to energy-output ratios and make use of market regulation mechanisms to increase energy prices for top energy consumers who are operating inefficiently.

Enforcement of Social Insurance Laws

Additional problems exist with regard to inconsistent and often weak enforcement of social insurance laws. In spite of tighter government regulation, many companies still underreport the total wages paid to employees so as to reduce the amount of social security taxes they are required to pay on behalf of workers. This underreporting hurts Chinese workers and disadvantages law-abiding companies, particularly manufacturers.

We encourage the Chongqing government to vigilantly monitor companies in their reporting of payroll statistics, consistently enforce penalties on companies who do not abide by existing laws, and increase the transparency of such procedures.

Human Resources Shortage

An undersupply of qualified talent raises significant challenges for employers all across China. Though Chongqing has fared better than most cities, ManpowerGroup's 2011 *Talent Shortage Survey* reveals that due to a mismatch in candidates' skills and employers' needs, about 24 percent of employers in mainland China are facing talent short-

法律服务

2011年，近100家律师事务所新近落户于重庆，提前实现该市于2012年底引进500家律所的目标。目前该行业拥有律师已超过4000名。尽管已有一些国际知名律所已在重庆建立分支机构，但其规模仍相对较小。随着重庆经济不断发展，法律服务业利润应会保持良性发展。

酒店及旅游业

重庆市政府积极应对挑战取得进展，使酒店及旅游行业在2011年经历了强劲增长。旅游业收入在重庆GDP占比超过12.5%。2011年黄金周，超过212万国内外旅客到访重庆，较2010年同期增长32万人次。2011年全市旅游收入中，国外游客占5.18亿美元（32.9亿元人民币），较去年增长34.1%。

重庆温泉设施的持续发展也显现出积极成果，十大主要温泉景点吸引游客数量较2010年增长37.5%。随着现有温泉设施修葺一新，一些知名水疗集团有望在2012年签署合同新建豪华设施，重庆酒店及旅游业将迎来持续发展。

软件外包服务

2011年，重庆软件及信息服务业总收入达到59.8亿美元（380亿元人民币），其中该市软件外包服务业贡献产值36.2亿美元（230亿元人民币）。目前超过370家在册的软件公司和156家拥有国家计算机信息系统集成资质证书的企业在重庆运营软件外包行业。近年来该行业吸引了大批国际企业前来投资，并且随着企业寻求使用即将升级的铁路干线联结欧洲市场，该行业有望在2012年获得进一步增长。新的外包试验区也鼓励对该重要领域的进一步投资。

具体问题

能源供应限制

尽管在前文“重大进展”部分详述已取得的进展，但能源供应短缺仍然制约重庆工业进一步发展。

由于能源供应难以与经济发展速度相匹配，许多制造企业经历了一段困难时期，尤其是在冬季。为了使影响降到最低，当地政府应采取进一步措施以确保能源的持续供应。在能源短缺时期发布最新能源状况报告等提升透明度的做法将帮助当地和外资企业有效地调整生产进度。此外，当地政府应当采取措施，根据能源产出比例更有效的分配

资源，以及利用市场监管机制对那些效能差和高耗能的企业提高能源价格。

《社会保障法》的实施

此外，社会保障法实施不一致且不到位。尽管政府监管更为严格，但许多企业仍然低报支付员工的工资总额，以减少应替员工必须缴纳的社保税金额。这种低报行为损害了中国员工的利益，且使守法企业尤其是制造业企业陷入不利地位。

我们鼓励重庆市政府审慎监管企业工资数据上报，持续对违法企业实施惩罚，并增强相关程序的透明度。

人力资源短缺

在中国，合格人才短缺为用人单位带来严重挑战。尽管在这一方面重庆好于大多国内其它城市，但万宝盛华集团2011年《人才短缺调查》表明，由于应聘者在技能方面与雇主需求不相符，约24%的中国内陆用人单位面临人才短缺问题。重庆市拥有众多大学和科研机构以及几百所初级职业技能学校，能够为企业不断壮大的人才库，但人才短缺问题仍然存在。预计2012年第一季度用工人数将增长30%，年度平均增长19%，因此外资企业及当地政府需加强合作，以确保维持目前的用人需求。

该问题在重庆快速增长的软件外包服务行业尤为突出。尽管该市人才库由于毕业生生源增长而扩大，但在约67000名外包从业人员中，仅有15%为技术专家。缺乏有经验的高级项目管理人员、市场开发人员、高级软件架构师以及系统工程师使该行业未来发展面临严峻挑战。重庆许多外包服务园区坐落在距市区很远、交通不便的地区，且住房不足令吸引合格员工难上加难。

为了使重庆外包服务业和其他产业持续增长，重庆市政府应重点扩大培训项目，培养并吸引具备信息技术知识、英语语言技能、和国际商务背景的复合型人才来渝发展。提升信息技术和软件外包服务产业园的整体环境和生活质量也将对此有所帮助。最后，政府、大专院校和企业的合作对保证学生在毕业时获得相应技能也十分必要。

国际教育

为外籍子女提供充足的教育是吸引更多外资企业、投资和高管进驻重庆的重要先决条件。外资雇主和当地政府需通力合作以确保未来国际学校得以充分发展，继而促进重庆达成整体发展目标。

ages. With dozens of universities, research institutes, and hundreds of secondary vocational schools in the city, Chongqing offers a growing talent pool for companies, yet talent shortages remain. With new employment in Chongqing projected to increase 30 percent in the first quarter of 2012, and 19 percent on average for the year, foreign companies and the local government will need to work together to ensure that recent hiring trends can be maintained.

This problem is particularly acute in Chongqing's rapidly growing software outsourcing services industry. Though the city's talent pool is growing due to increased educational offerings, only 15 percent of the almost 67,000 employees working in the outsourcing industry are technical professionals. A shortage of experienced senior project managers, market development professionals, high-end software architects, and system designers also raises challenges for the future growth of the industry. The fact that many outsourcing service parks in Chongqing are inconveniently located far from the city center and offer very little in the way of accommodation makes it even harder to attract quality employees.

For the growth of outsourcing services and other industries in Chongqing to continue, the Chongqing government should focus on expanding training programs and developing and attracting to the city professionals with knowledge of information technology, English language skills, and international business backgrounds. Improving the overall environment and quality of life in the city's information technology (IT) and software outsourcing service parks would also help. Finally, cooperation among the municipal government, universities, schools, and companies will be crucial to ensuring that students graduate with relevant skills.

International Education

Adequate international education for expatriate children is an important precondition for attracting more foreign companies, investment, and executives to Chongqing. Foreign employers and the local government need to work together to ensure that the future development of international schools will be adequate to support Chongqing's overall growth targets.

In the past year, positive improvements have taken place with the employment of more foreign experts in Chongqing's educational sector as a result of a new regulation that teachers must now have four-year degrees to teach at international schools. However, with any such change in regulation, the local government should give schools timely notice and explanation regarding enforcement of the changes so that schools and government can work together to achieve full implementation.

While there is only one international school in Chongqing

of noteworthy size, the international schools in Chongqing and Chengdu have discussed opportunities for cooperation and shared events in the future. Such cooperative efforts, along with increased government interest in international schooling under the "Five Chongqings" proposal, bodes well for the future of Chongqing's international education offerings. Increased cooperation between the government, the foreign business community, and international schools to establish education groups, forums, and skills workshops for the continued professional development of teachers would also be welcome.

Hospitality and Tourism

Despite improvements, Chongqing still lacks the tourist inflow that a city of its size and historical importance is capable of attracting. The city's traffic congestion, relatively poor highway network, and the lack of an international airport make it difficult for tourists to reach Chongqing and to navigate between its spread-out tourist destinations. Additionally, pollution of the Yangtze River and a lack of comfortable and fairly priced river cruise accommodations serving the Three Gorges scenic areas also hold back the tourism sector. We urge the government to open an international air terminal and improve domestic infrastructure so as to attract more interest from both tourists and international investors alike. Efforts to reduce pollution in the city's main rivers will also increase profits from tourism and raise the overall quality of life in and around the city.

In 2011, the occupancy rate at Chongqing's 49 five-star hotels rose to 64 percent, with an increase of US \$19.70 (RMB 125) in average booking rates over the previous year. While this growth is encouraging, these figures are still low relative to other major Chinese cities, including Chongqing's western neighbor, Chengdu. As a result, the standard and salaries of workers in Chongqing's hospitality industry are correspondingly low. In order to continue improving the quality of service in the industry, we recommend that the municipal government take steps to improve and expand Chongqing's hospitality and tourism training schools.

Conclusion

At the forefront of China's western development efforts, Chongqing continues to grow at an impressive pace. Infrastructure projects are increasing the connectivity of the city, and thus the competitiveness of Chongqing-made products, raising Chongqing's status as an inland trade and services hub with many sectors seeing strong growth.

Despite such ongoing positive trends, Chongqing still faces many challenges in attracting and retaining highly skilled workers, attracting domestic and international tourism, effectively enforcing social insurance laws, addressing energy shortages, and others issues as described above. AmCham Southwest and AmCham China recommend

去年，重庆市实施新规定，要求教师需拥有本科学历方可在国际学校授课，从而使教育系统得以招收更多外籍专家，这不失为一项积极举措。然而，当法规上作出任何改变时，当地政府应将如何执行修订政策给予学校及时的通知和解释，使学校与政府能协同合作，全面实施新政策。

尽管重庆市目前仅有一家规模较大的国际学校，但在重庆和成都的国际学校曾讨论未来合作机会并分享活动信息。学校间的协同努力加之政府在“五大重庆”计划倡导下给予国际学校教育更多关注，预示着重庆的国际教育前景广阔。政府、外国企业界与国际学校应加强合作，为教师的职业化发展建立教育小组、论坛和技能研讨会，此举也将受到欢迎。

酒店及旅游业

尽管取得一定进展，但重庆以其城市规模和历史地位而言，旅客流量依然较小。城市交通拥堵，高速公路网相对贫乏，缺少国际机场等，使得旅客难以到达重庆和往返于周边旅游景点。此外，长江的污染和三峡景区缺少价格适中的游船也限制旅游业的发展。我们敦促政府增设一个国际航站楼，提升当地基础设施以吸引更多旅行者和国际投资者。减少城市主要河道的污染也将促进旅游业创收，提升整体城市生活质量。

2011年，重庆49家五星级酒店入住率增长到64%，预定费率比前一年平均增加19.7美元（125元人民币）。这一增长虽令人鼓舞，但仍低于国内其他主要城市，包括重庆的西邻成都市。因此，重庆市酒店业工人的水平和薪资也相应较低。为了继续提升行业服务，我们建议政府采取措施改善并扩充重庆旅游培训学校。

结论

作为中国西部开发战略的门户，重庆持续增速令人印象深刻。基础设施建设促进城市与外界的连接，进而提升重庆制造的产品竞争力；并且，随着许多产业的强劲增长，重庆作为内陆贸易和多行业服务集散中心的地位日趋凸显。

尽管呈现积极发展态势，但重庆在吸引并留住高技术人才、吸引国内外游客、有效实施社会保障法律、解决能源短缺及其他几方面仍然面临很多挑战。西南美国商会及中国美国商会建议重庆市政府加大力度，通过提升公共交通、教育及环境来提升城市生活质量；与商界合作解决特定行业问题。类似改进措施不仅吸引更多高技术人才和投资，而且能够帮助当地政府实现“十二五”规划目标。

建议

- 保持能源持续供应，在能源短缺时期提升透明度，包括公布月度能源状况报告，或改善能源定价和分配机制。
- 当地社会保障部门及税务部门加大监管力度，加强企业工资审计、鼓励增加透明度，对违法行为加大惩治力度。
- 进一步采取措施提升公共交通、基础设施及城市环境。
- 提升重庆信息技术和软件外包产业园区的整体环境和生活质量。
- 促进当地政府、大专院校与企业的合作，以扩大技术和管理培训课程，确保毕业生获得相应技能。
- 加强政府、外国企业界和国际学校的合作，为教师职业化的持续发展建立教育小组、论坛和技能研讨会等。

that the Chongqing municipal government increase efforts to raise the quality of life in the city by improving public transportation, education, and the environment, while also working with the business community to address industry-specific concerns. Such improvements would not only attract more highly skilled labor and investment to the city, but would also help the municipal government achieve goals of the 12th Five-Year Plan.

Recommendations

- **Maintain a consistent energy supply, increase transparency during periods of shortage by releasing monthly energy situation reports, and improve mechanisms for energy pricing and distribution.**
- Increase oversight by local social security administration and tax authorities to strengthen corporate payroll audits, encourage transparency, and increase penalties for infractions.
- Take further steps to improve the public transportation, infrastructure, and urban environment of Chongqing.
- Improve the overall environment and quality of life in Chongqing's IT and software outsourcing service parks.
- Facilitate cooperation among the municipal government, universities, schools, and companies to expand technical and management training programs and ensure that students graduate with relevant skills.
- Increase cooperation among the government, the foreign business community, and international schools to establish education groups, forums, and skills workshops for the continued professional development of teachers.



区域性问题

Dalian

Introduction

Dalian has developed rapidly in recent years. The city serves as a regional financial base, an important international shipping center, and logistics hub for northeast Asia, and is a major city and seaport for Liaoning province. The local government has focused on transforming the city into a major destination for foreign investment and international tourism. As a result, the city's infrastructure has developed rapidly, with numerous high-tech parks and economic zones, as well as green technology projects, all of which offer an improved business environment for international companies. Additional internationally known five-star hotels are also currently under construction and are scheduled to open in one or two years. In addition, Dalian hosted

the Fifth Summer Davos Forum in September 2011, the third time since 2007 that the city has hosted this event. The forum has provided a platform to exchange ideas, share experiences, and explore business opportunities.

Despite these numerous positive developments, problem areas remain. There has been considerable confusion among foreign companies about how they will be affected by the Social Insurance Law. One proposed change specific to Dalian would impose a high corporate financial burden and undermine the city's competitiveness relative to other investment venues. Though the proposal has not yet been implemented.

Dalian has significant natural advantages with its beaches and coastal areas; however, traffic congestion and lack of

AmCham China, Northeast China Chapter

In 2012, AmCham China Dalian chapter renamed itself AmCham China Northeast China chapter. While chapter activities still primarily take place in Dalian, the new name reflects the organization's growing scope and ambitions. Ultimately, the chapter hopes to cover the same area as the US Consulate in Shenyang, which is one of our critical partners in success. The Northeast China chapter provides a platform for the expanding US business community to speak with one voice to the government, and network together to share insights and best practices.

Northeast China Chapter Highlights

- **Business Services**

Last year the chapter launched a Business Visa Program for its member companies. The program allows members and accompanying spouses and children to quickly and conveniently apply for a US business visa. The program covers the entire area of northeast China and allows the chapter to attract and serve new members from the region.

- **US Government**

The chapter has a close relationship with the US Consulate General from Shenyang and organizes regular

briefings and other activities with government officials from the consulate. The chapter also hosted an exclusive breakfast with US Ambassador Gary Locke during his visit to Dalian last year.

- **Network and Value-Added Events**

The chapter has a deep, broad network of local companies, contacts, and other non-governmental organizations. It hosts a variety of business, networking, and other social events that provide timely updates on current business topics and also serve as a platform for members to build and expand

their clientele. Two big events, the American Day Celebration and a golf outing, are annual highlights.

- **Industry Development**

Forums focused on small- and medium-sized businesses and customs have been established in the chapter. They are dedicated to regularly organizing information sharing presentations, advancing more specialized agendas, as well as facilitating the development of these and other business sectors in Dalian.

Headquartered in Beijing, AmCham China has organized member-led chapters in Central China (Wuhan), Northeast China (Dalian) and Tianjin.

大连

引言

近年来，大连发展迅速。大连市是区域金融中心、国际重要航运中心、东北亚物流中心以及辽宁省的主要城市和港口。当地政府致力于将大连建设成为外商投资和国际旅游的重要目的地，因此，基础设施建设得到了快速发展，建立了大量高科技产业园、经济开发区和环保科技工程，这些都给跨国公司营造更加良好的商业环境。更多的国际知名五星级酒店正在建设中，预计未来一两年内将投入使用。此外，大连在 2011 年 9 月举办了第五届夏季达沃斯论坛，这是大连继 2007 年首次举办以来第三次承办该论坛。该论坛为思想交流、经验分享和拓展商机提供平台。

尽管取得了这些积极进展，但仍然存在一些问题。外资企业在社会保障法对他们的影响方面有诸多疑问。一项

针对大连的专门提议将大大加重企业的财务负担，并影响该城市相对于其他投资地的竞争力。目前该提议尚未施行。

大连具有海滩及沿海区域等显著的自然优势，但交通拥堵和缺乏对海滩、海岸线、历史名胜和中心城区卫生环境的维护削弱了大连作为商业和旅游中心的吸引力。当地在开放市政府与外资企业沟通平台方面已取得一定进展，中国美国商会希望有机会进一步开展坦诚、有建设性和制度性的对话，以继续提升大连的商务环境。

重大进展

经济指标和发展

2011 年初，即中国“十二五”规划的开局之年，大连市政府设定了一系列经济和社会发展目标，其中大部分目标已在年内达成。2011 年大连市 GDP 达 6100 亿元人民币

中国美国商会东北办公室

2012 年，中国美国商会大连办公室更名为中国美国商会东北办公室。虽然主要活动地点仍在大连，但新名称体现了东北办公室不断提升的规模和目标。美国驻沈阳总领事馆是中国美国商会在东北地区重要的合作伙伴之一，东北办公室希望最终能覆盖美国驻沈阳总领事馆的辖区。中国美国商会东北办公室为日益壮大的美国商界搭建了一个相互交流、分享真知灼见和最佳实践的平台，美国商界可基于这个平台统一协调与政府对话。

主要活动

• 商务服务

去年，东北办公室为会员企业启动了商务签证计划，使会员及其配偶和子女的美国商务签证申请更加迅速和便捷。该计划覆盖整个中国东北区域，有利于东北办公室吸纳该区域的新会员并为其服务。

• 美国政府

东北办公室与美国驻沈阳总领事馆

保持着密切的合作关系，并定期与美领馆政府官员一起组织通报会及其他活动。去年美国驻华大使骆家辉访问大连期间，东北办公室举办了独家早餐会。

• 交流与增值活动

东北办公室与当地公司和其他非政府组织建立了强大的网络和人脉关系。东北办公室所举办的一系列商务、交流和其他社交活动都紧扣当

前的商务话题，同时为会员企业建立和扩展客户群搭建平台。美国独立日庆祝活动和高尔夫比赛这两大活动是每年的重中之重。

• 行业发展

东北办公室针对中小企业和海关事宜设立了论坛。这些论坛一直致力于定期组织信息共享展示，筹备更加具体化的议程，以及促进大连相关行业及其它商务的发展。

中国美国商会总部设在北京，在华中（武汉）、华北（大连）和天津设立以会员为导向的区域办公室。

attention to maintaining the cleanliness of Dalian's beaches, coastline, and historic and downtown areas dilute Dalian's attractiveness as a business and tourist center. While some progress has been made in opening a channel for discussion between foreign-invested enterprises and municipal authorities, AmCham China would appreciate further opportunities to engage in a candid, constructive, and institutionalized dialogue in order to continue improving the business environment in Dalian.

Significant Developments

Economic Indicators and Development

At the beginning of 2011, the first year of China's 12th Five-Year Plan, the Dalian municipal government set a series of goals and targets for economic and social development, most of which were achieved by year's end. Dalian's GDP in 2011 reached RMB 610 billion (US \$96.1 billion), an increase of 14 percent over the previous year; government fiscal revenue totalled RMB 65.1 billion (US \$10.3 billion), up 30 percent; and actual foreign investment totalled US \$11 billion (RMB 69.9 billion), up 10 percent.

Hospitality and Tourism

Over the last three years, Dalian expanded the number of brand name and high-end hotels. Such development will enhance Dalian's appeal in the high-end and international tourism market, though it is not clear if the market will support such an expansion, especially considering Dalian's seasonal demand cycle. Further development of the hospitality sector within the mid-range and boutique hotel category, however, would be a welcome enhancement to diversity in the market, attracting a wider spectrum of visitors.

Dalian also offers extensive opportunities for outdoor recreation. This year saw expansion of the yachting industry, with the successful conclusion of the fourth annual Dalian Boat Show. We believe this show provides significant upside for Dalian, and its presence and exposure should be expanded. Moreover, additional emphasis should be placed on preserving Dalian's waterways. They are a unique resource that provides opportunity for residents and visitors to enjoy the water/seaside lifestyle in a clean and safe environment.

Manufacturing and Automobile Industry

With China's expanding automobile market, Dalian is home to a growing number of companies that operate in automobile manufacturing and related industries. In 2011, the increasing cost of raw materials impacted most manufacturing companies in Dalian. Although foreign-invested manufacturers have continued to move forward emphasizing product innovation, they are likely to face pressures from growing inventory and higher costs in the near future.

Healthcare

Dalian currently has 20 hospitals, some of which offer medical care targeted towards expatriates for a higher fee. There are three models: newer privately owned healthcare clinics with state of the art facilities open to both expatriates and locals; newer private, formerly corporate clinics that have been converted to public use; and Dalian hospital partnerships serving both expatriates and local citizens. All models advertise Western-trained and English-speaking doctors; however, the quality, services, and English language capabilities vary significantly among facilities.

Dalian will soon see significant improvement in international-quality medical facilities and healthcare services, with three AmCham China Northeast China chapter member healthcare providers slated to begin servicing areas from downtown to the Dalian Development Area in 2012. Availability of these new healthcare facilities should contribute to Dalian's attractiveness as a business hub. AmCham China commends the Dalian local government for its active interest in working with service providers to facilitate the establishment of excellent healthcare facilities and services.

Infrastructure

Many infrastructure projects in Dalian are now underway. Metro lines 1 and 2 are to be completed by the end of 2012, with a total length of 67.4 kilometres (40 miles) and 50 stations. The metro will greatly improve Dalian's public transportation options. Phase three of the Dalian International Airport expansion project was completed in August 2011 and put into use before the Summer Davos Forum in September. The airport terminal doubled in size. These enhanced transport initiatives make Dalian a more attractive and connected business center.

Specific Issues

Transparency and Dialogue

International companies based in Dalian—large, medium, and small—all face challenges in learning about and keeping up to date on local government policies, laws, and regulations. The Dalian municipal government's official English language website is an important channel for foreign-invested companies seeking to understand regulations and policies in order to comply with the law. It is important, however, to ensure that regular updates are made to the English website to reflect the most recent policy and regulatory developments, and that translations are clear and consistent. AmCham China's Northeast China chapter appreciates the ongoing dialogue meetings with the Dalian municipal government that began in late 2010, and we look forward to deepening this exchange in 2012.

(961 亿美元)，较前一年增长 14 个百分点；政府财政收入达 651 亿元人民币（103 亿美元），上涨 30%；实际利用外资 110 亿美元（699 亿元人民币），增长了 10%。

酒店及旅游业

过去三年间，大连的知名及高端酒店数量有所增加。这一增长将迎合高端和国际旅游市场。尽管目前尚不确定市场能否支持这一扩张，尤其是考虑到大连旅游的季节性因素时，但包含中端和精品酒店在内的酒店业的进一步发展可以增加市场多样性，并吸引各类游客。

大连的户外娱乐项目种类繁多。去年帆船产业得以发展，成功举办了第四届大连国际游艇展。我们相信这一展览能够为大连带来显著优势，提升城市形象，扩大对外影响力。此外，还应强调保护大连水域。独具特色的水域资源将在一个洁净、安全的环境下，为居民和访客提供享受水域或海滨生活的机会。

制造业和汽车工业

随着中国汽车市场的扩大，大连成为越来越多汽车制造和相关行业企业的生产基地。2011 年的原材料成本上涨影响了大连大多数制造企业。尽管外资制造商通过强调产品创新而继续发展，但他们很可能由于库存和成本的增加在不远的将来面临更多压力。

医疗保健

大连市目前拥有 20 家医院，其中一些为外籍人士提供价格较高的医疗服务。目前有三种运营模式：对外籍人士及当地居民开放并配有先进医疗设备的新一代私人诊所；将原企业诊所改建成为对公众开放的新一代私人诊所；以及对外籍人士及当地居民开放的大连市医院的合作项目。所有这些诊所都配有在西方受过专业训练和会讲英语的医生，但各诊所的质量、服务和英语水平相差很大。

2012 年，在中国美国商会东北办公室的会员中，将有三家医疗服务供应商为大连市中心及开发区提供医疗服务，因此大连具有国际标准的医疗设备和卫生保健服务将很快得到极大的提升。具有先进医疗设备将为大连作为商业中心带来吸引力。中国美国商会赞赏大连市政府积极与服务商合作为建立一流的医疗设施及服务而付出的努力。

基础设施

大连许多基础设施建设项目正在进行。地铁 1、2 号线

预计将在 2012 年底完工，总长度 67.4 公里（40 英里），设有 50 个站点。地铁线路将为大连的公共交通出行提供更多选择。大连国际机场三期扩建工程已于 2011 年 8 月完工，在 9 月夏季达沃斯开始前投入使用。机场航站楼面积增加一倍，机场运力得以提升。交通线路改进使大连更具吸引力，成为与外界连接更加便利的商业中心。

具体问题

透明度及对话交流

在大连的国际企业，无论大、中、小规模，都在掌握和跟进当地政府政策、法律法规时面临挑战。大连市政府的英文官方网站是外资企业试图了解政策法规以实现守法经营的重要渠道。在英文网站上对最新政策和法规进展进行定期更新是十分重要的，且英文翻译应该清晰准确。中国美国商会东北办公室对开始于 2010 年底的与大连市政府的持续交流表示感谢，我们期待在 2012 年深化这一交流。

社会保障

2011 年 9 月，中央政府施行《在中国境内就业的外国人参加社会保险暂行办法》（下称“暂行办法”），《社会保障法》要求将目前所有在华就业的外国人纳入中国的社保体系。《社会保障法》于 2011 年 7 月 1 日生效，暂行办法已于 2011 年 10 月 15 日生效。

在新办法宣布实施不久，大连市考虑实行试点计划，对用人单位向社保计划缴纳金额不设上限。截至目前并未采取具体行动。中国美国商会对于大连市政府愿意听取外资企业的有关建议表示赞赏。如果实施无上限政策，其带来的金融影响将降低大连在全国范围内与其他投资目的地相比的竞争力，对于已在大连落户的企业和那些考虑将来选择大连的企业来说尤为如此。这也影响到那些大连政府努力吸引来的行业和外资企业，以及高科技和软件领域那些高新聘请的当地员工的中国企业。

中国美国商会东北办公室采取积极措施进行政策解读，通过递交信函、同其他商会一起与大连市副市长举行会议等多种渠道与当地官员沟通相关议题。中国美国商会鼓励当地政府有关部门继续实施与其他行政区域相一致的《社会保障法》的新变化，包括保留用人单位缴纳上限的规定。（了解将外国雇员纳入中国社保制度的详细信息，参考“人力资源”章节。）

Social Insurance

In September 2011, the central government promulgated the “Interim Measures for the Participation in Social Insurance of Foreigners Employed in China” (measures), a new set of regulations that requires all foreign nationals currently employed in China to take part in the country’s social insurance system based on the Social Insurance Law. The Social Insurance Law became effective on July 1, 2011, and the measures went into effect on October 15, 2011.

Shortly after the announcement of the new measures, it appeared that Dalian was considering a pilot program that would remove the cap on employer contribution payments. To date, however, no action has been taken towards this end. AmCham China appreciates the Dalian government’s willingness to listen to the concerns of foreign-invested companies on this issue. If this no-cap policy were to be put in place, its financial impact would reduce Dalian’s competitiveness relative to other investment locations in China, both for companies already located in the city and those companies considering locating in Dalian in the future. This impact would be felt by both the industries and foreign-invested companies that Dalian has been keen to attract, as well as Chinese companies with highly paid local workforces, notably in the high-tech and software industries.

AmCham China Northeast China chapter has been active in explaining these implications and engaging with local government officials on these issues through a variety of channels, including letters and a multi-chamber meeting with the vice mayor of Dalian. AmCham China urges that the authorities continue to implement changes under China’s Social Insurance Law in a manner consistent with other administrative regions and cities throughout China, including by retaining a cap on employer contributions. (For more information on foreign employee participation in China’s social insurance scheme, please refer to the Human Resources chapter.)

Cosmetic Pollution and Litter Management

Dalian’s beaches are one of the city’s most appealing attractions, and if managed properly, would generate increased tourism revenue and enhance the city’s attractiveness as both a business hub and tourist destination. However, currently, these beaches are not well maintained, lacking in both trash receptacles and daily clean-up, leading to an accumulation of litter and unsanitary grounds (especially during peak tourist season).

AmCham China recommends that the Dalian authorities make environmental concerns a priority by establishing appropriate regulations and systems to address cosmetic pollution, trash removal, and littering. For example, posting anti-litter warning signs, instituting fines for littering, installing trash receptacles, ensuring daily clean up on

beaches, and carrying out public education campaigns, all would be positive steps toward enhancing the quality of life in Dalian.

Transportation and Parking

AmCham China appreciates the Dalian municipal government’s efforts to reduce congestion through new traffic control policies, including car lane separation fences on the roads and the addition of traffic control police. However, the traffic situation remains problematic.

Dalian’s downtown area has a severe parking shortage, resulting in cars parked on the sidewalks, along the streets, and in public areas. Such ad hoc parking impedes traffic, blocks walking areas and roadways, and jeopardizes pedestrian safety by forcing people to walk on roads.

AmCham China suggests enhanced public outreach and dialogue on local transport issues, including the progress on building an underground parking system. We support the building of above/underground parking areas to eliminate current unsafe parking practices.

Conclusion

AmCham China applauds the Dalian municipal government’s efforts to make Dalian an attractive place to live, conduct business, and visit. Important improvements have been made in infrastructure, healthcare, and hospitality. We also appreciate the municipal government’s commitment to promoting economic growth and creating favorable business conditions in local free trade zones and software parks.

However, issues such as limited and uneven information flows on new rules and regulations; potentially costly social insurance policies; pollution and litter; and congested traffic remain challenging. We encourage the municipal government to address these issues in a timely manner in order to ensure future development of the city. AmCham China looks forward to working with the municipal government and contributing to future progress.

Recommendations

- **Implement changes under China’s Social Insurance Law in a manner consistent with other administrative regions and cities throughout China, including retaining a cap on employer contributions.**
- Expand ongoing dialogue between the local government and AmCham China Northeast China chapter to ensure mutual success and increase the flow of information.
- Post the latest updates to regulations and policies on the Dalian municipal government website in English.

城市环境污染和垃圾管理

大连海滩是其最具吸引力的名片之一，如果管理得当将促进旅游业的收入增长、增强该市作为商业中心和旅游目的地的吸引力。然而，目前这些海滩并未得到良好的维护，缺少垃圾箱和日常清理，导致垃圾成堆、地面不干净（尤其是旅游高峰季节）。

中国美国商会建议大连市政府将环境保护纳入考虑重点，建立适当的法规和制度以处理城市环境污染、清除垃圾和废弃物。例如，设置禁止乱扔垃圾的警示牌，对随意扔垃圾者实施罚款，设置更多垃圾箱、确保每天对海滩进行清洁，以及对公众实行教育等，这些积极举措将会提升大连的生活质量。

交通和车辆停放

大连市政府通过实施新交管措施以减少交通拥堵，包括设置交通隔离带及增加交警警力等，中国美国商会对这些努力表示赞赏。然而交通状况依然不容乐观。

大连市中心区域严重缺乏停车场，使得汽车只能停放在路边的人行道上和公共区域内。停车秩序混乱影响交通，占用了人行道和行车道，迫使行人在行车道上行走，进而安全受到威胁。

中国美国商会建议就当地交通问题加强公众影响力和对话，包括加速建立地下停车系统等。我们建议建立地上/地下停车场减少当前不安全的停车状况。

结论

中国美国商会赞赏大连市政府为大连建设成为宜居、宜商和宜游的城市所作出的努力，其在基础设施、医疗保健和酒店服务业方面举得了显著进展。我们对当地政府为促进经济增长，在自由贸易区和软件园创造有利的营商环境表示赞赏。

然而一些问题仍然面临挑战，例如，对于新法律法规缺乏通畅和平等的信息沟通；社保政策有增加运营成本的潜在可能；污染、垃圾及交通拥堵等。我们鼓励当地政府及时解决这些问题以促进该市在未来取得发展。中国美国商会期待与大连市政府合作，为取得新进展贡献力量。

建议

- 在中国《社会保障法》框架下，继续实施与国内其他行政区域和城市相一致的政策变化，包括保留用人单位缴纳上限的规定。
- 加强中国美国商会东北办公室与当地政府的持续的对话交流，确保双方都能取得成功，并加强信息流动。
- 在大连市政府英文官方网站上，公布最新政策法规。
- 美化大连市海滩和道路环境，建立适当的法规制度治理城市环境污染，清理垃圾和废弃物。
- 加强市中心人行道路和旅游景区的交通管制，建立地下停车设施，对司机和行人实施安全教育。

- Improve the beauty of Dalian's beaches and streets by establishing appropriate regulations and systems to address cosmetic pollution, trash removal, and littering.
- Tighten traffic control around downtown pedestrian zones and tourist areas, create underground parking facilities, and educate drivers and pedestrians on safety measures.



Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai).

Introduction

Shanghai has traditionally played a central role in China's economy as the country's commercial, industrial, and financial capital. It also acts as the hub of the surrounding Yangtze River Delta (YRD) region, which ranks as the 10th largest economy in the world. The city's development is a key driver in China's shift from a manufacturing-based, export-led economy to one driven by domestic consumption and the development of services and innovation. Shanghai's current Five-Year Plan (2011-2015) aims to further that development by accelerating the internationalization of the city; promoting emerging industries such as services, the high-end medical industry, education, new energy, and pharmaceuticals; encouraging investment flows; and continuing to improve the business climate for foreign-invested companies in Shanghai.

AmCham Shanghai and AmCham China are fully committed to Shanghai's efforts to become an international shipping hub and financial, trade, and economic center by 2020. Yet, significant challenges remain, including the need to remove many financial regulatory roadblocks, improve the clarity of Shanghai Customs regulations, and address ongoing human resource (HR) constraints. We present our recommendations below to ensure Shanghai's 2020 goals are met.

We look forward to enhancing and deepening our valued partnership with Shanghai as we work together to achieve the city's ambitious development goals that will shape the business climate in Shanghai for years to come.

Significant Developments

Shanghai's Business Climate

In 2011, Shanghai's GDP expanded 8.2 percent to RMB 1.92 trillion (US \$302.4 billion), down from a 9.9 percent growth rate in 2010. The easing of the city's output in 2011 was in line with the national economy, which moderated to 9.2 percent GDP growth, down from a 10.3 percent growth rate achieved the previous year.

Shanghai's foreign trade volume reached more than US \$437

billion (RMB 2.77 trillion) in 2011, with a record trade deficit of US \$17.9 billion (RMB 113.7 billion). Exports amounted to US \$209.7 billion (RMB 1.3 trillion), up 16 percent over 2010, while imports reached US \$227.6 billion (RMB 1.45 trillion), a 21 percent increase. Retail sales rose 12.3 percent over 2010.

Contracted foreign direct investment (FDI) into Shanghai reached record levels, increasing 31 percent in 2011 to US \$20.1 billion (RMB 127.6 billion). US FDI into Shanghai amounted to US \$5.5 billion (RMB 34.9 billion), up 3.2 percent year-on-year. At the beginning of 2012, 353 multinational companies had designated Shanghai as their regional headquarters, and 334 foreign-invested research and development (R&D) centers had been established. This is a striking affirmation of the international business community's recognition of Shanghai as a leading Asia-Pacific business hub.

Financial Services Reforms

As Shanghai continues to build the infrastructure to become an international financial center (IFC) by 2020, the city is focused on developing three major financial markets in bonds, derivatives, and equities.

Since 2005, China's bond market has experienced significant development with the introduction of market-oriented products (e.g., midterm notes and corporate bonds). In September 2010, the China Banking Regulatory Commission, the China Securities Regulatory Commission, and the People's Bank of China issued a notice to further develop Shanghai's bond exchange market by encouraging commercial banks to reenter the bond exchange market following a 15-year ban by the State Council.

In China's derivatives market, several products were launched in 2010, including Shanghai-Shenzhen (SH-SZ) Equity Index Futures and RMB Interest Rate Options, which began trading in January 2011. Going forward, the Shanghai Futures Exchange reportedly is planning to accept foreign traders' participation in direct commodity trading to expand the exchange market over the next five years.

Finally, Shanghai's equities market is ripe for development with efforts made to introduce more foreign institutional

上海

本章节由上海美国商会撰写。

引言

作 为全国商业、工业和金融中心，上海始终在中国经济中发挥核心作用，同时也是全球第十大经济体——长江三角洲（长三角）地区的核心城市。在中国从以制造业为基础、出口导向型经济向以国内消费驱动、发展服务业和创新型经济为主的转型中，上海的发展成为主要驱动力。上海当前实施的“十二五”规划（2011–2015）旨在通过以下措施进一步促发展：加速城市国际化；促进服务业、高端医疗产业、教育、新能源和制药业等新兴产业的发展；鼓励投资流动以及继续提升上海外资企业营商环境等。

上海计划到 2020 年努力建成国际航运、金融、贸易和经济中心，对此上海美国商会和中国美国商会表示全力支持。然而重大挑战依然存在，包括需清除许多金融监管障碍，提升上海海关法规清晰度，以及解决持续人力资源匮乏问题。我们将在下文提出具体建议，以确保上海 2020 年目标得以实现。

上海美国商会和中国美国商会期待与上海市政府继续加强并深化重要合作伙伴关系，协同合作以促进该市实现宏伟目标，这将塑造上海未来几年的营商环境。

重大进展

上海营商环境

2011 年，上海 GDP 增长 8.2%，达 1.92 万亿人民币（3024 亿美元），增速较 2010 年的 9.9% 有所降低。该市 2011 年总产出的放缓与国家经济发展状况相吻合，当年全国 GDP 增速放缓至 9.2%，低于 2010 年的 10.3%。

2011 年上海对外贸易总额超过 4370 亿美元（2.77 万亿人民币），贸易逆差创记录地高达 179 亿美元（1137 亿人民币）。出口额为 2097 亿美元（1.3 万亿人民币），比 2010 年高出 16 个百分点；进口额达到 2276 亿美元（1.45

亿人民币），增长 21%。零售业较 2010 年涨幅 12.3%。

2011 年上海合同外商直接投资创历史新高，增加 31 个百分点，达 201 亿美元（1276 亿元人民币）。美国对上海的外商直接投资达到 55 亿美元（349 亿元人民币），同比增长 3.2%。截至 2012 年初，已有 353 家跨国公司指定上海为区域总部，334 家外资研发中心投入运营。这是国际企业界对上海作为亚太地区领先商业中心的极大认可。

金融服务改革

随着上海继续基础设施建设以向 2020 年国际金融中心目标迈进。该市将重点发展三大金融市场：债券市场，衍生品市场和股票市场。

自 2005 年，中国债券市场通过引入以市场为导向的产品（例如中期债券和公司债券）从而经历重大发展。2010 年 9 月，中国银行业监督管理委员会、中国证券监督管理委员会及中国人民银行发布通知，鼓励商业银行重返债券交易市场（这项规定已被国务院禁止 15 年），推动上海债券交易市场得以进一步发展。

中国衍生品市场于 2010 年发行部分产品，包括于 2011 年 1 月开始交易的上海 - 深圳（沪深）股指期货和人民币利率期权交易。据报道，上海期货交易所计划允许外资交易商参与直接商品交易，以在未来五年内扩大交易市场。

最后，上海股票市场凭借近期引进更多外资机构参与得以成熟发展。例如，为鼓励外商投资者在沪建立地区总部或分支机构，上海继续向其提供税收和房屋租赁的优惠政策，这一举措与上海成为国际金融中心的目標相吻合。

同时，中国继续推进人民币国际化，鼓励人民币在全球贸易和投资中更广泛使用。取得的积极进展包括：稳步发展人民币离岸业务，截至 2011 年底，在香港实现的离岸存款达 6000 亿元人民币（945 亿美元）；在香港发行超过 80 种“点心式”人民币债券，预计环比增长 6 倍，达 2400

participants. For example, Shanghai continues to offer tax and rental property incentives to foreign investors to locate their regional headquarters or branch in Shanghai to advance the city's goal to build an IFC.

Meanwhile, China continues to move forward with internationalizing the *yuan* to encourage wider use of the currency in global trade and investment. Positive developments include: steady growth of offshore *yuan* deposits, which reached RMB 600 billion (US \$94.5 billion) in Hong Kong by the end of 2011; more than 80 "dim sum" RMB-denominated bonds issued in Hong Kong, reaching a projected six-fold year-on-year increase to RMB 240 billion (US \$37.8 billion); and the December 2011 launch of a RMB Qualified Foreign Institutional Investor (RQFII) scheme, which allows approved foreign institutions to make limited investments in China's capital markets. Yet, the lack of offshore investment options and numerous restrictions to channel *yuan* into China's heavily regulated capital markets limit the potential growth of the *yuan* outside China, with negative implications for the development of the financial services industry in Shanghai.

Customs

In 2011, AmCham Shanghai continued its collaborative efforts to improve communication between American-invested companies and Shanghai Customs. In September 2011, AmCham Shanghai Customs Liaison Taskforce members met with customs officials to discuss recently implemented changes to the customs process.

To alleviate declaration bottlenecks, Shanghai Customs has instituted pre-valuation and pre-classification procedures to declare goods before arrival. A key to this is classifying and valuing all component pieces and materials from which goods are made, and correctly matching component pieces to their designated category within the China/Shanghai Customs category and valuation index. Shanghai Customs also recently shifted to an electronic recordkeeping system to more efficiently track materials transferred and housed in customs. We applaud Shanghai Customs on these positive developments, and offer further recommendations for improvement in the Specific Issues section below.

Social Insurance Law Implementation

On October 15, 2011, China's social insurance scheme for foreigners working in China went into effect. The new measures issued by the Ministry of Human Resources and Social Security require financial contributions from foreign nationals and their employers to cover pension, medical, unemployment, occupational injury, and maternity insurance. However, concerns have been raised regarding compliance and whether foreign nationals will be able to equally benefit from the scheme.

At this time it is unclear how the law will be imple-

mented in Shanghai, as the municipal government is currently drafting local implementation regulations. In late November 2011, AmCham Shanghai's Government Relations Department was told by relevant authorities in Shanghai that the city's social insurance regulations will be based on the 2009 Circular 38, and that it will not be changed significantly. Circular 38 states that foreigners must participate in retirement, medical, and occupational injury insurance, but not unemployment or maternity insurance. Additionally, Shanghai officials stated that employers "should" implement policies to enroll in the system but that enforcement is not yet at the "must" implement stage. (For more information on China's social insurance scheme for foreign employees, refer to the Human Resources chapter.)

Shanghai Free Trade Zone

In 2011, Shanghai announced plans to turn three of its bonded areas in Waigaoqiao, Yangshan Port, and Shanghai Pudong International Airport into China's first free trade zone, pending the central government's approval. The three areas will come under a unified management and be administered directly by the Shanghai municipal government. When complete, the zone will allow for free exchange of currency and offer tax exemptions among other services, thereby increasing functionality and processing efficiency, and decreasing operating costs. AmCham Shanghai and AmCham China support plans to create such a free trade zone, as it will facilitate the free flow of goods and enhance Shanghai's efforts to become a global shipping hub.

Shanghai Human Resources Five-Year Plan

In December 2011, the Shanghai Municipal Human Resources and Social Security Bureau released the city's five-year plan for talent development. The plan calls for attracting top worldwide talent to work in Shanghai and for developing the city's talent pool to compete globally. By 2015, Shanghai plans to have 320,000 financial services professionals, up from 230,000 today, and 130,000 workers employed in international shipping.

To attract highly qualified foreign professionals, Shanghai plans to improve the city's living environment, including by developing advanced medical, cultural, and educational services, as well as by subsidizing the education of foreign professionals' children and providing other incentives. With the addition of Shanghai-based campuses of several leading US universities, Shanghai is working to build a talent base that can drive the successful development of the city as an IFC and shipping hub.

Local Intellectual Property Rights Protection

Shanghai is taking steps to combat intellectual property rights (IPR) infringement, progress on which is important for the city to achieve further development of its economy. In November 2011, Shanghai released its first Five-Year Plan

亿元人民币（378 亿美元）；2011 年 12 月发行人民币合格境外机构投资者（RQFII）制度，允许获批境外投资机构有限度地投资中国资本市场。然而，离岸投资渠道的缺乏和对境外人民币进入中国资本市场的大量限制制约境外人民币的潜在发展，不利于上海金融服务业的发展。

海关

2011 年，上海美国商会继续协作推进美资企业与上海海关的沟通。2011 年 9 月，上海美国商会海关联络工作组成员与海关官员会面，探讨近期海关程序执法方面的改变。

为减少报关障碍，上海海关实施预估价和预归类程序，以在货品抵达前报关。这一做法的关键是对物品所有零部件和原材料进行归类和估价，并根据中国 / 上海海关归类和估价指引对零部件正确归类。上海海关近期采用一套电子记录存储系统，以更有效追踪原料在海关的转运及存储情况。我们对上海海关这些积极进展表示赞许，在下文“具体问题”中提出更多改进建议。

社会保障法的实施

2011 年 10 月 15 日，中国正式将在华工作的外籍雇员纳入中国社保制度。新办法由人力资源和社会保障部颁布，要求外籍雇员及其所在公司需要缴纳养老、医疗、失业、工伤及生育险。但是，关于该法的合规问题和外国公民是否能够平等受益于该法引起了广泛关注。

目前由于上海市政府正在草拟适用于本地的实施细则，尚不明确上海将如何实施该项法律。2011 年 11 月底，上海美国商会政府事务部从上海有关部门获知，当地社会保障法规将以 2009 年的 38 号通知为基准，且与其并无显著差异。38 号文规定，外籍雇员必须缴纳养老、医疗和工伤险，但无失业险和生育险。此外，上海有关部门认为用人单位“应该”实施与制度相吻合的政策，但尚未达到“必须”执行的阶段。（更多关于中国适用于外籍雇员的社保制度，参阅“人力资源”章节。）

上海自由贸易区

2011 年，上海宣布计划将其位于外高桥、洋山港和上海浦东国际机场的三个保税区合并成为中国第一个自由贸易区，该计划正等待中央政府批复。三个地区将统一管理，受上海市政府直接监管。一旦建成，该区域将允许货币自由兑换、提供免税及其他服务，以此增强其功能性和操作效率，降低运营成本。自由贸易区的建成将促进商品自由

流动，加速实现上海成为全球货运中心的目标。上海美国商会和中国美国商会对此全力支持。

上海人力资源五年计划

2011 年 12 月，上海市人力资源和社会保障局公布该市人才发展的五年计划。计划号召吸引全球顶尖人才到上海工作，发展城市人才库以应对全球竞争。上海目前拥有 23 万金融服务专业人士，计划到 2015 年增长至 32 万；并计划到 2015 年拥有 13 万国际运输行业工人。

为吸引高级资深外籍专业人士，上海市计划提升城市居住环境，包括发展先进医疗、文化、教育服务，对外籍专家子女实施教育补贴和其他激励措施等。除几所美国知名大学已在上海建立校园外，上海正努力建立人才库，以推动城市作为国际金融中心和航运中心成功发展。

当地知识产权保护

上海正采取措施打击知识产权侵权行为，所取得的进展对上海进一步发展自身经济至关重要。2011 年 11 月，上海市公布其首个知识产权保护“五年计划”，强调保护中国的战略新兴产业创新。此外，为确保零售商销售正品，已有 210 家公司在 4000 多家奥特莱斯商场注册。截至 2011 年 4 月，上海在区级法院建立了七个知识产权部门以处理知识产权侵权案件。

上海美国商会和中国美国商会高兴地看到，始于 2010 年 10 月的打击知识产权侵权专项行动已经成为长期行动，高层领导被派往上海知识产权局任局长以继续支持这些努力。2011 年 1 至 6 月，该行动致使上海法庭知识产权相关案件数量同比增长 38%。

尽管取得以上进展，但在上海美国商会《2011-2012 年中国商业报告》中显示，美国在华企业仍然将知识产权作为一项重要挑战，并且认为在该领域总体并未看到显著进展。因此，继续加强知识产权的执法和保护仍然必要。（有关知识产权更多内容，参见“知识产权”一章。）

具体问题

将上海建成国际金融中心的改革

为将上海建设成为国际金融中心，在中央层面去除各类金融监管障碍尤为必要。上海美国商会和中国美国商会鼓励上海政府官员与中央政府有关部门协同努力实施改革，并希望在这项努力中贡献一己之力。

for IPR Protection, stressing protection of innovation made in strategic emerging industries. In addition, an initiative to ensure the sale of authentic products at retailers has thus far registered 210 companies at more than 4,000 outlets in Shanghai. As of April 2011, Shanghai had also established seven IPR divisions at district-level courts to handle IPR violations.

AmCham Shanghai and AmCham China are pleased that China's campaign against IPR infringements that began in October 2010 has been made permanent, and that a high level official has been appointed to continue these efforts locally as head of the Shanghai Intellectual Property Administration. From January through June 2011, the campaign resulted in a 38 percent year-on-year increase in IPR-related cases in Shanghai courts.

Despite these developments, according to AmCham Shanghai's 2011-2012 *China Business Report*, American companies in China still ranked IPR as a critical challenge and reported that overall they are not seeing a marked improvement in this area. As such, continued strengthening of IPR enforcement and protection is still needed. (For more information on IPR issues, refer to the Intellectual Property Rights chapter.)

Specific Issues

Reforms to Develop Shanghai as an International Financial Center

To successfully develop Shanghai into an IFC, removal of various financial regulatory roadblocks will need to be addressed at the national level. AmCham Shanghai and AmCham China encourage Shanghai officials to work with their counterparts in the central government to implement these reforms, and we offer our assistance in this effort.

First, China should loosen capital market controls to enable RMB convertibility. Capital market reform is a prerequisite for Shanghai to become a central hub for regional and global capital flows. In addition, a free floating currency would lead to positive spillover effects for Shanghai's other industries and for the country's overall development.

Second, China should develop transparent, unambiguous regulations governing foreign-invested financial service providers and establish clear role divisions between regulatory bodies. In China's bond markets, for example, a complicated regulatory system makes the approval process for issuing corporate bonds difficult and time consuming. A unified regulatory body and transparent approval system are needed to ensure wider foreign participation.

Third, China should develop a wider variety of market offerings such as those found in mature financial centers. In the derivatives market, China should attract additional foreign investors to make the derivatives markets more

competitive; expand the number of foreign institutional participants beyond the limited number permitted to underwrite and distribute derivative contracts directly to end-clients; and lift capital requirements that foreign-invested banks currently must meet to participate in trading activities.

Finally, China should ease access requirements for foreign investors and institutions to increase market competition in China's equity market. The requirement that foreign firms form a joint venture with a local institution in order to participate in certain financial activities in the equity market poses challenges as foreign companies are unable to take a more managerial role.

(For more information on China's bond market and financial reforms, refer to the Bond Markets chapter.)

Customs

Though Shanghai Customs has made significant recent progress in increasing efficiency and reducing bottlenecks, challenges remain.

Shanghai Customs postponed full implementation of Regulation 33 until July 7, 2012. The regulation requires co-signees of imports and shippers of exported samples and/or advertising materials to obtain a customs registration number or hire an import/export trading company to do it for them. Express delivery companies have had difficulty adapting to the regulation and longer clearance times for relevant goods have resulted.

Several other areas of concern exist as well. Going forward, we recommend Shanghai Customs:

- Clarify for enterprises how to resolve difficult compliance issues related to customs valuation, goods inspection, and tariff classification in order to increase compliance and efficiency;
- Develop methods to clearly explain regulatory changes and notify enterprises in a timely manner in order to facilitate a faster and more efficient clearance process;
- Provide further instructions on how to maximize various benefits of free trade agreements; and
- Clarify key differences among the several bonded zones around Shanghai so that enterprises can more efficiently use resources, improve supply chain efficiency, and reduce logistics costs.

(For more information on customs, refer to the Customs chapter.)

Human Resource Constraints

According to AmCham Shanghai's 2011-2012 *Business Climate Survey*, 90 percent of responding companies said HR constraints hinder their business operations to some

首先，中国应放松对资本市场控制，允许人民币自由兑换。资本市场改革是上海成为区域和国际资本流动中心的先决条件。此外，自由浮动汇率将对上海其他产业和全国整体发展产生积极的溢出效应。

其次，中国应该建立透明、清晰的法规以监管外资金融服务机构，明确划分监管机构工作职能。例如在中国的债券市场，复杂的监管机制使发行公司债券的审批困难且耗时较长。有必要建立统一监管机构和透明审批系统，确保外资更广泛参与。

第三，中国应该向成熟的金融中心那样，提供更多的市场供应选择。在衍生品市场，中国应吸引更多国外投资者使该市场更具竞争性；在规定的数量外，扩大外资机构参与数量，允许为终端客户直接承销和发放衍生品合同；取消外资银行在参与贸易活动中必须达到的资本要求。

最后，中国应放宽对国外投资者和机构进入中国股票市场的限制要求，以增加其市场竞争力。规定要求外资企业需与当地机构成立合资公司，方能参与股票市场特定的金融活动。由于外资企业不能实行更多的管理职能，这对于它们来说不失为一种挑战。

(更多关于中国债券市场和金融改革的内容，详见“债券市场”一章。)

海关

尽管上海海关在提升效率、减少障碍等方面取得显著新进展，但挑战犹存。

上海海关将 33 号规定推迟至 2012 年 7 月 7 日起全面执行。该法规要求进出口货样和 / 或广告品，均应由进出口收发货人向海关申请注册登记，或委托进出口贸易公司为其代理。快递公司难以适应该规定，导致相关物资所需清关时间过长。

一些其他方面的担忧仍然存在。今后，我们建议上海海关：

- 向企业宣讲如何解决海关估价、货物检查和关税归类等相关的困难的合规性问题，以提高合规性和效率；
- 建立相关机制，对监管变化作出清楚解释并及时通知企业，以实现更快速更高效的清关手续；
- 对于如何能最大限度地受益于自由贸易协定，给出进一步指导意见；及

- 阐明上海各保税区之间主要不同点，使企业更有效利用资源，提高供应链效率，降低物流成本。

(有关海关方面更多内容，参考“海关”章节。)

人力资源限制

根据上海美国商会《2011-2012 年中国商业调查》，90% 反馈企业认为人力资源限制某种程度上阻碍其商业运营。企业认为吸引、培养和留住技术工人和专家是其人力资源面临的主要挑战。

我们鼓励上海评估本市教育体系，评估培养具备上海本地及长三角地区企业所需相关技能的毕业生的能力。建立更多校企合作项目，鼓励更多中国学生出国留学，激励重点大学建设卫星校园，注重吸引海外留学生等，都将是壮大上海人才库的有效方式。

为吸引有经验的人才来沪发展，上海应该鼓励中央政府对个人所得税政策进行全面分析，使其与其他亚洲商业中心更趋于一致。全球对顶尖人才的竞争十分激烈，而较高的地方税率使上海及其他长三角城市与新加坡和香港等其他亚洲商业中心相比不具竞争优势。(有关更多人力资源相关信息，参阅“人力资源”章节。)

结论

上海将于 2020 年建成国际金融、航运及贸易中心的计划正在顺利实施。上海已进行的重要金融服务改革、上海海关在加速通关方面取得的进展，以及拟在浦东建立中国首个自由贸易区，已经为上海的发展开了个好头。然而，距离 2020 年所剩时间紧迫，仍有大量工作需要完成。

为了扫清金融领域的各种障碍，解决人力资源匮乏问题，上海需继续推进全面开放资本市场，允许汇率自由浮动。只有通过这些改革，上海方能提升其作为中国商业、工业和金融中心的地位，促进该市在这些领域成为全球中心。上海美国商会和中国美国商会随时准备支持并帮助该市实现这些宏伟、互利的发展目标。

建议

- 支持上海 2020 年计划，中央政府有关部门合作评估个人所得税政策，并解决其他民生问题，以保证上海人才的竞争力与其他亚洲商业中心相比具有优势，同时建立校企合作机制培养本土人才。

extent. Companies identified attracting, developing, and retaining skilled workers and professionals as their leading HR challenge.

We encourage Shanghai to evaluate the city's education system and its ability to produce graduates with relevant skills required by companies in Shanghai and the surrounding YRD. Developing more industry-academia partnerships, encouraging more Chinese students to study abroad, incentivizing creation of satellite campuses of leading universities, and focusing on attracting overseas students would be effective ways to develop Shanghai's talent pool.

To attract experienced talent to the city, Shanghai should encourage the central government to initiate a thorough review of personal income tax policies to bring them more in line with other Asian business hubs. Global competition for top professionals is fierce and high local taxation rates make Shanghai and other YRD cities less attractive places to work relative to other Asian business hubs like Singapore and Hong Kong. (For more information on HR, refer to the Human Resources chapter.)

Conclusion

Shanghai's plan to become an international financial center, shipping hub, and economic and trade center by 2020 is well under way. Important financial services reforms, improvements at Shanghai Customs to speed up declaration, and the anticipated launch of China's first free trade zone in Pudong all indicate that Shanghai is taking appropriate preliminary steps. Yet, a great deal remains to be done with not much time remaining before the 2020 deadline.

In addition to resolving various financial roadblocks and human resource limitations, Shanghai must continue pushing for fully open capital markets and a free floating currency. Through such reforms, Shanghai will advance its role as China's commercial, industrial, and financial capital and facilitate progress toward the city becoming a global leader in these areas. AmCham Shanghai and AmCham China stand ready to offer support and assistance to help achieve the city's ambitious and mutually beneficial development goals.

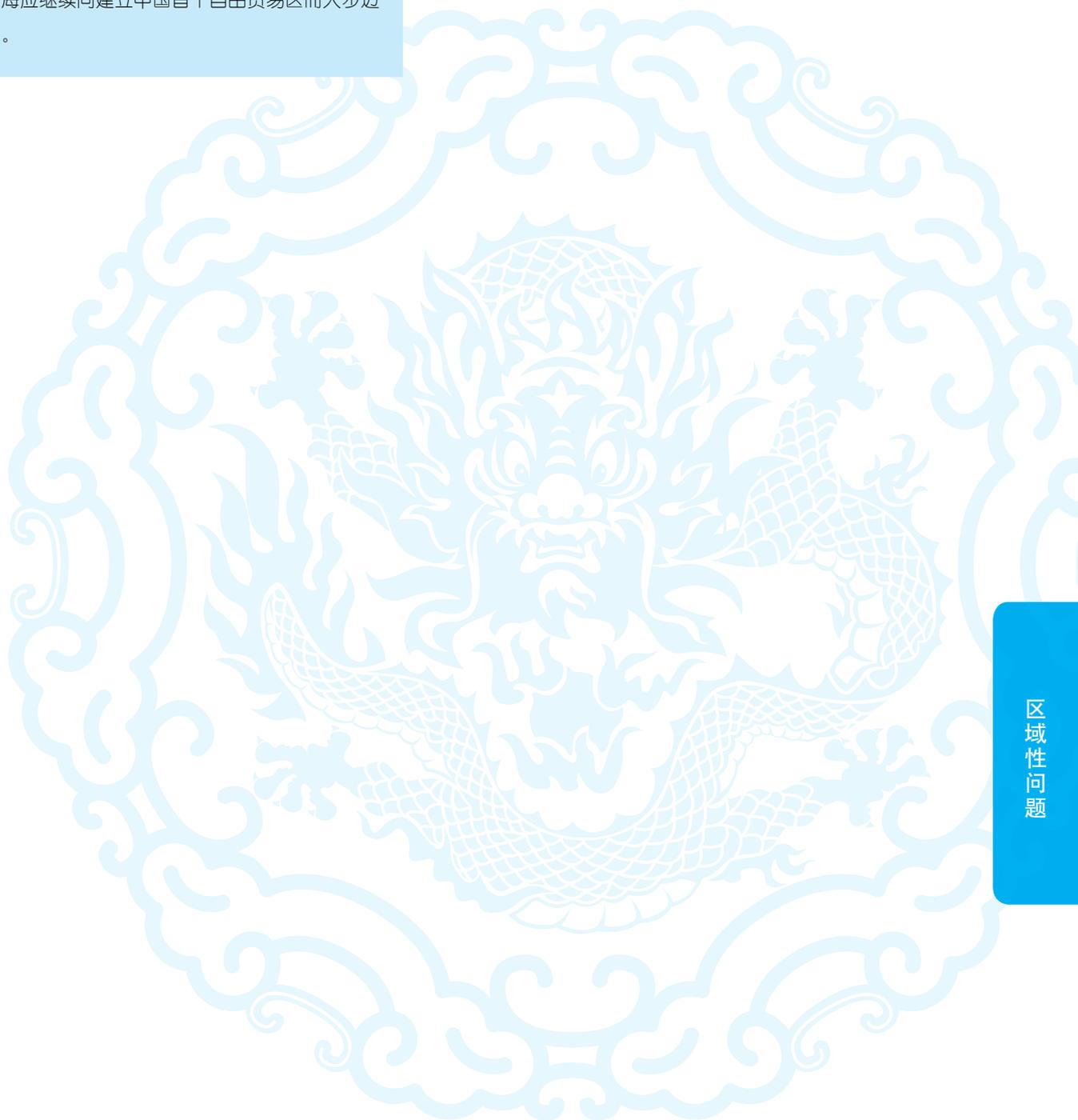
access requirements for foreign investors and institutions and to improve transparency in the development of rules, laws, and regulations governing the financial services sector.

- Continue to strengthen IPR protections and enforcement in order to encourage, protect, and support foreign- and domestically invested R&D and commercialized innovation.
- Provide training and continue ongoing exchanges between Shanghai Customs and the American business community in order to improve understanding of customs policies, and allow for comment on future regulatory changes.
- Move aggressively towards the establishment of China's first free trade zone in Shanghai.

Recommendations

- **Support Shanghai's 2020 goals, engage central government authorities to review personal income tax policies, and address other lifestyle concerns in order to ensure Shanghai's talent competitiveness with other Asian business hubs while at the same time building industry-academia partnerships to develop native talent.**
- Engage central government authorities to ease

- 与中央政府有关部门合作，放宽对外商投资者和机构准入限制，在建立监管金融服务业的规则、法律和法规时提升透明度。
- 继续加强知识产权保护力度和执行力，以鼓励、保护和支持国内外研发和商业化创新。
- 提供培训并继续加强上海海关与美资企业的交流以增进对海关政策的理解，允许对未来监管变化给予评论和建议。
- 上海应继续向建立中国首个自由贸易区而大步迈进。



Tianjin

Introduction

Tianjin municipality, a port city located in northern China with a population of 13 million, has impressed investors and observers with its growth. In 2011, it attracted US \$13 billion (RMB 82.6 billion) in foreign direct investment, a 20 percent annual increase; it saw retail sales grow by 20 percent; and led China with a GDP growth rate of 16 percent.

With approximately 150 *Fortune* Global 500 companies and a traditional industrial focus on automobiles, consumer goods, micro-electronics, petroleum, and pharmaceuticals, Tianjin displays strong fundamentals and potential. Recently these industry clusters have gained more depth while additional clusters have been established in aerospace and new energy. Recent investments in hotels, convention-related facilities, and logistics centers also illustrate how the city is broadening its economic base.

AmCham China applauds Tianjin's strategic development of specialized economic areas. However, to further Tianjin's development, and maintain a competitive advantage, the municipality should consider addressing several issues, including: developing a human resources strategy to cultivate, attract, and retain a skilled workforce; allowing foreign law firms to establish branch offices to pave the way for further growth in service sectors; minimizing the impact of the Social Insurance Law implementation on businesses with foreign employees; and addressing traffic-related issues.

Significant Developments

Tianjin Binhai New Area

One of Tianjin's key geographic regions and economic engines is the Tianjin Binhai New Area (TBNA). TBNA includes the Tianjin Economic-Technological Development Area (TEDA), the Sino-Singapore Tianjin Eco-City (SSTEC),

AmCham China, Tianjin Chapter

The Tianjin chapter continues developing and expanding along with Tianjin's economy and the local business community. Established as a chamber in 1980, it merged with AmCham China in 2008, allowing members to benefit from AmCham China's national presence while continuing to grow as a locally run, member-led organization. The chamber provides an active, effective channel for member companies to directly engage with the Tianjin government to discuss the development of the city's dynamic business landscape.

Tianjin Chapter Highlights

- **Tianjin Government Dialogues**
The chamber holds regular dialogues between members and Tianjin government officials.
- **Government Appreciation Dinner**
The chamber organizes an annual appreciation dinner with Tianjin government officials to celebrate the spirit of mutually beneficial cooperation between member companies, the chamber, and local government officials.
- **Tianjin Business Development**
AmCham China's Tianjin chapter serves as a platform to introduce member companies from around China to business opportunities in Tianjin. Frequent professional and social events facilitate networking.
- **US Government**
The chamber organizes regular briefings for the membership by the US Embassy, often followed by networking opportunities.
- **Corporate Social Responsibility**
Giving back to the Tianjin community is a long-standing tradition among chamber members. The chapter's annual charity golf tournament is entering its 11th year of supporting local causes.

Headquartered in Beijing, AmCham China has organized member-led chapters in Central China (Wuhan), Northeast China (Dalian) and Tianjin.

天津

引言

天津，中国北方的一座港口城市，拥有 1300 万人口，其发展速度令投资者和关注者瞩目。2011 年，吸引外商直接投资 130 亿美元（826 亿人民币），年增长 20%；零售业增长 20%；其 16% 的 GDP 涨幅位居中国前列。

世界 500 强企业中约有 150 家已落户天津，传统优势产业集中在汽车制造、日用消费品、微电子、石油化工及制药业，凭借于此，天津显示了较强的产业基础和潜力。近期随着航空和新能源产业集群的建立，原有产业集群得以深化。对酒店、会展设施及物流中心的投资建设，展示出该市正在如何拓宽其经济基础。

中国美国商会赞赏天津对其专业经济领域的战略发展。然而，为促进进一步发展并保持其竞争优势，天津市应该考虑解决以下问题：制定培养、吸引和保留技术型劳动力的人力资源战略；允许外资律所建立分支机构，为发展服

务业铺路；降低实施社会保障法对雇用外籍雇员企业的影响；解决交通问题等。

重大进展

天津滨海新区

天津滨海新区（滨海新区）是天津主要行政区和经济引擎之一，包括天津经济技术开发区（泰达）、中国——新加坡天津生态城（中新生态城）、于家堡金融区、天津港、以及天津空港物流加工区周边大部分地区。

2011 年天津市 GDP 总量为 1.1 万亿（1762 亿美元），其中滨海新区贡献 6200 亿元人民币（976 亿美元），同比增长 23.8%，显示出新区不俗的增长实力。航天航空、石油化工及可替代能源行业成为主要贡献领域。2010 年上半年，滨海新区 GDP 首次超过上海浦东开发区。

大量的填海造陆工程继续进行，包括南港工业区、天津东疆港和滨海休闲旅游区，填海造陆面积已达几百平方公里。

中国美国商会天津办公室

中国美国商会天津办公室继续随着天津的经济和商界一起发展壮大。天津办公室最初成立于 1980 年，在 2008 年与中国美国商会合并。此举不仅使会员企业受益于商会的全国性构架，同时该办公室也能作为一个在本地运行、由会员领导的机构不断发展壮大。商会为会员企业提供了一个与天津政府直接对话的渠道，就如何促进天津商业环境发展分享意见。

主要活动

- **与天津市政府对话**
商会定期组织会员与天津市政府官员对话。
- **政府答谢晚宴**
天津办公室组织了第二届政府答谢晚宴，以共庆会员企业、商会与地方政府间的双赢合作。
- **天津商业发展**
天津办公室向遍布中国的会员企业介绍天津的商机，通过各种活动来促进沟通交流。
- **美国政府**
商会定期组织美国使馆政府官员向会员传达简报活动，并组织沟通交流。
- **企业社会责任**
回报天津社区是商会一直以来的传统。天津办公室每年举行慈善高尔夫球赛，支持地方发展，至今已有十一年。

中国美国商会总部设在北京，在华中（武汉）、华北（大连）和天津设立以会员为导向的区域办公室。

the Yujiapu Financial Area, the Tianjin port, and much of the area around Tianjin's airport.

TBNA showed particular strength as its GDP rose by 23.8 percent year-on-year in 2011, contributing RMB 620 billion (US \$97.6 billion) out of Tianjin's RMB 1.1 trillion (US \$176.2 billion) total GDP. Major contributions came from the aerospace, aviation, petrochemical, and alternative energy industries. In the first half of 2010, TBNA's GDP exceeded the GDP of Pudong in Shanghai for the first time.

Large-scale land reclamation has also continued in TBNA, including the construction of the Nangang Industrial Zone, the Tianjin Dongjiang port, and the Binhai Leisure and Tourism Area, which together total several hundred square kilometers of reclaimed area.

Yujiapu Financial Area

The Yujiapu Financial Area is a new, planned peninsula near the sea coast consisting of an initial phase of more than one million square meters of commercial real estate. It is slated to become TBNA's financial center, will have a key traffic hub serving as a terminal for the Beijing-Tianjin high-speed railway, and will eventually be an interchange for four subway lines.

The area has attracted investment from well-known US companies. It has also retained a leading New York performing arts center as a consultant for development of a world-class performing arts center in Yujiapu. The center is slated to open in 2015 to foster artistic exchanges between Chinese and American counterparts.

Sino-Singapore Tianjin Eco-City

With the aim to "build an economically thriving, environmentally friendly, socially harmonious, and resource-efficient city," the 30 square kilometer SSTECC is taking shape and developing rapidly. With local and foreign developers constructing several residential projects, the first of these projects began handover to buyers in late 2011. An international school has agreed to open a campus in SSTECC. Commercial and industrial developments are also underway. In 2011, SSTECC attracted close to RMB 673 million (US \$106 million) in investments, out of which 50 percent were from Singaporean companies.

Tianjin Economic-Technological Development Area

TEDA was established to attract investment, technological, and human resources in key industries, with strategic government initiatives and incentives in place to encourage foreign investment. By the end of 2011, TEDA had attracted a total of 4,999 approved foreign-invested enterprises which invested roughly RMB 336.6 billion (US \$53 billion) in industries such as automobiles, telecommunications, and electronics.

Several years ago TEDA began the development of the Modern Services District (MSD), a commercial hub that complements TEDA's existing industrial base. The first phase of MSD opened in 2011 with three office towers built to international specifications.

Riverside Development, Tourism, and Major Events

Tianjin's image and livability continue improving, together with the city's increasing visibility and international prestige. Recent property developments led by government-related companies have improved the riverfront area in the heart of central Tianjin. These developments, as well as a new river cruise business, have helped improve the city's image and livability among visitors and locals alike.

Tianjin continues to host events and summits, with recent examples including the Asia-Pacific Economic Cooperation Low Carbon Model Town Forum held in late June 2011 and the China Tourism Industries Exposition in September 2011. The city will also serve as host to large upcoming events including the 2012 Summer Davos, 2012 Volvo China Open golf tournament, and the 2013 East Asian Games.

AmCham China applauds Tianjin's positive progress and is confident that it will result in increased tourism and investment.

Visa Policies and Practices

Since publication of the 2011 *White Paper*, AmCham China members have met with local government departments that issue work visas for foreigners, with encouraging results. Local government leaders are committed to attracting qualified experts from abroad to spur growth and development in Tianjin. In an effort to do so, they have agreed to adopt a more open policy for granting visas within the national framework. AmCham China appreciates these efforts and looks forward to continued productive and mutually beneficial dialogue going forward.

Quality of Life Developments

The availability of international-standard healthcare and education facilities are always important considerations for expatriates and returning Chinese looking to relocate to China. Tianjin saw beneficial development in both areas during 2011.

In the past year, Tianjin's healthcare sector grew, with the opening of an American-invested hospital in the Meijiang area and a foreign-invested clinic in TEDA. Both facilities offer an exceptional standard of service, essential for Tianjin's expatriates and local citizens. Tianjin should encourage further investment in high-quality healthcare facilities and continue favorable policies that allow foreign medical staff to practice in the city.

于家堡金融区

于家堡金融区是一个位于沿海地区新规划的半岛区域，一期工程包括超过 100 万平方米的商业地产项目。该区域将成为滨海新区的金融中心，区内还将规划建设作为京津高铁终点站的主要交通枢纽，并最终还将建成四条地铁线路的换乘站。

该区域吸引了知名美资企业的投资，并聘请一间纽约顶尖的演艺中心作为顾问在于家堡建立世界级演艺中心。中心预计于 2015 年开业，届时将推进中美两国的艺术交流。

中国——新加坡天津生态城

为建成“经济蓬勃、环境友好、社会和谐、资源节约的城市”，占地 30 平方公里的中新生态城已初具规模并发展迅速。2011 年底，由当地和外资开发商承建的首批住宅项目已开始销售。一所国际学校即将在中新生态城开设分校。商业和工业发展正在进行。2011 年新生态城吸引投资约 6.73 亿人民币（1.06 亿美元），其中一半来自新加坡企业。

天津经济技术开发区

天津经济技术开发区的成立旨在为重点产业引进资金、技术和人才，同时辅以政府战略性鼓励政策吸引外资。截至 2011 年底，泰达开发区在册外资企业共 4999 家，累计外商总投资额约为 3366 亿元人民币（530 亿美元），这些投资主要分布在汽车，电信和电子等领域。

数年前泰达开发区开始规划现代服务产业区 (MSD)，该产业区作为商业中心有力补充了泰达现有产业基础。MSD 首批按照国际标准建造的三栋写字楼已于 2011 年开业。

海河沿岸景观提升、旅游和主要活动

天津城市形象和宜居程度持续提升，日益受外界瞩目，国际声誉大增。由政府主导的地产项目改善了位于市中心海河沿岸区域的环境。包括游船业在内的新项目进展使来访者和当地居民感受到城市形象和宜居性的提升。

天津继续举办重大活动和高峰论坛，如 2011 年 6 月底举办的 APEC 低碳示范城镇论坛，2011 年 9 月中国旅游产业博览会。此外还将继续承办 2012 夏季达沃斯论坛，2012 沃尔沃中国高尔夫公开赛及 2013 东亚运动会等大型活动。

中国美国商会对天津取得的积极成就表示赞赏，并对随之而来的旅游业发展和投资增长持有信心。

签证政策和实践

自 2011 年白皮书发布以来，中国美国商会会员企业就向外籍人士发放工作签证事宜与当地有关部门会谈，取得了可喜进展。当地政府官员致力于从国聘请有资质的专家以促进天津的发展，为实现此目标，有关部门同意在国家政策允许范围内采取更加开放的签证政策。中国美国商会对这些努力表示赞许，并期待继续进行富有成效和互惠的对话交流。

生活质量提升

拥有具备国际标准的医疗和教育设施，是外籍人士和归国华人在华选择目的地的重要考量因素。2011 年天津在以上两方面都取得良性发展。

去年，天津医疗行业发展良好，包括在梅江开设一家美资医院，泰达开设一家外资诊所，两家机构为天津外籍人士和本地居民提供优质服务。天津应该鼓励对高质量医疗机构的进一步投资，允许外籍医疗人士在津执业提供优惠政策。

2011 年，天津在红桥区 and 泰达建立了新的学校。现有学校也在继续扩张，例如一座位于西青区的校园进行扩建，同时原来坐落于南开区的一座校舍正迁至梅江地区。

医疗和教育领域的发展广受欢迎，因为可以提升家庭生活品质，有利于吸引外籍企业高管及其家庭在此安家落户，进而增加外商投资。

具体问题

人力短缺

天津许多行业都面临技术人才短缺。中国美国商会鼓励天津市政府投资设立更多培训机构，为金融和信息技术 (IT) 等服务行业输送应届毕业生。除此之外，为现有的技术工人和半熟练工人提供继续教育，特别在日益发展的制造业，帮助他们获得并提升行业必备的相关知识和技能尤为重要。（有关人力资源限制和建议，详见“人力资源”章节。）

对外资律师事务所的限制

中国现行法规限制外资律所在华开设新分支机构，这对天津发展尤为不利。由于这些限制，律师事务所更倾向于由其北京办公室向天津提供服务，而不是在天津设立办

In 2011, new schools were also established in Tianjin, in both the Hongqiao district and TEDA. Existing schools continued to grow, with a school in Xiqing district expanding its facility and a school formerly located in Nankai district moving to a newly renovated facility in the Meijiang area.

This growth in both the healthcare and education sectors is welcome, as it will improve the quality of life for families in the city, help attract expatriate business executives and their families, and thus facilitate increased foreign investment.

Specific Issues

Labor Shortages

A wide range of industries in Tianjin face a shortage of skilled employees. AmCham China encourages the Tianjin government to invest in more training facilities to better prepare new graduates for the service sector, particularly for finance and information technology (IT) related industries. Additional continuing-education programs are needed for existing skilled or semi-skilled workers, especially in the growing manufacturing sector, to help them maintain and advance relevant knowledge and skills as industries evolve. (For more detailed information on human resource constraints and recommendations, see the Human Resources chapter.)

Restrictions on Foreign Law Firms

Existing Chinese regulations that restrict foreign law firms' ability to open new branch offices in China is especially harmful to Tianjin. Faced with such restrictions, law firms will likely opt to serve Tianjin from their Beijing offices rather than opening a Tianjin office and developing a deep local talent pool. This will slow development in the finance, insurance, and other service sectors in the city that require legal services.

AmCham China encourages the Tianjin municipal government to urge central Chinese authorities to ease restrictions on foreign law firms' ability to open new branch offices.

Social Insurance Law Implementation

China's new Social Insurance Law, promulgated in July 2011, has raised broad concerns across the business community in China. However, Tianjin authorities must recognize this is not only a national issue. Since the new law is implemented locally, any implementation that makes Tianjin more costly for employers will hurt Tianjin's competitiveness and could result in reduced foreign investment. It will also especially slow the development of businesses in the education and service sectors, as they heavily rely on foreign staff. (For more detailed information on AmCham China's recommendations regarding the Social Insurance Law, see the Human Resources chapter.)

Transportation Connectivity and Convenience Issues

A variety of concerns exist regarding transportation systems and connectivity in Tianjin, as described below. Addressing these issues will not only make the city more attractive and convenient for tourists, residents, and business executives, but it will also increase business efficiency and help attract increased investment.

Train Station Maintenance and Accessibility

The Tianjin train station is a major transport hub linking the city to Beijing, but it continues to be poorly run and maintained, thereby hurting the city's image. Seating is inadequate in the waiting halls, bathrooms are poorly maintained, and escalators and elevators are often out of service forcing visitors to carry large luggage by hand up the stairs. Additionally, the new rule requiring foreigners to bring passports when purchasing tickets means they can no longer use the automated machines, causing burdensome delays.

Development of Mass Transit System

Construction of the Tianjin subway system has been continually delayed, making the city's mass transit system one of the least developed of any large city in China. This delay will only aggravate traffic congestion and have an adverse impact on business efficiency, accessibility, and pollution. We encourage the municipal government to prioritize and accelerate development of the subway system.

Traffic Problems

Tianjin faces a variety of traffic-related problems that decrease quality of life and reduce business efficiency in the city. Increasing car ownership causes additional air and noise pollution. Traffic rules are routinely ignored and major intersections are poorly policed, causing increasing traffic jams and delays. Traffic cameras appear to have little influence over driving behavior, especially at night, and traffic fines are not adequate to enforce traffic rules.

AmCham China encourages the Tianjin municipal government to increase the number of trained traffic police at intersections and increase traffic fines to insure that traffic rules are enforced.

Taxi Service Issues

Poor taxi service continues to be one of the top complaints of residents and visitors to the city. Attempts by taxi drivers at the airport, train station, and outside major hotels to overcharge visitors are common, as are long waits for taxis around the city. Taxi drivers exhibit poor hygiene, violate no-smoking rules, refuse to accept the "City Card," and are often unfamiliar with the roads. Getting taxis between

公室来培育和发展当地的人才库。这使得需要这类法律服务的当地金融、保险及其他服务行业的发展速度受到局限。

中国美国商会呼吁天津市政府促请中央政府取消对外资律所新建分支机构的限制。

社会保障法的实施

于2011年7月实施的新《社会保障法》，引发在华企业界的广泛关注。但天津市政府应该意识到这不仅仅是国家层面的问题。由于新法在地方层面执行，任何增加企业运营成本的法律实施都将有损天津的竞争力，并将最终导致外商投资减少。由于教育和服务业大量依赖于外籍员工，其业务发展尤其受到限制。（中国美国商会有关建议，参见“人力资源”章节的“社会保障法”部分。）

交通连通性和便利性问题

如下文所述，天津交通系统及其连通性一直以来被普遍关注。解决这些问题将不仅使城市对旅游者、居民和企业管理人员更具吸引力、增加便利性，而且还将提升企业效率，吸引更多投资。

火车站的维护和便利性

天津火车站是连接天津和北京的重要交通枢纽，但由于运营和维护不力，已影响城市形象。例如，候车大厅座椅不足，卫生间环境差，扶梯、电梯运行不畅，导致旅客需手持大件行李上楼梯。此外，新购票规定要求外籍人士需持护照购买火车票，这意味着外籍人士将无法继续使用自动售票机，大大增加了旅程延误的可能性。

公共运输系统的发展

天津地铁系统建设继续延期，导致该市公共运输系统成为中国大城市中发展最为缓慢的。延迟修建只能加速交通拥堵，对商业运营、通达性和环境污染均造成不利影响。我们鼓励当地政府将发展地铁系统放在首位，并提高建设速度。

交通问题

天津面临的各类交通问题使得居民生活质量和运营效率降低。汽车保有量增长加重空气和噪音污染。行人通常无视交通法规，主要路口缺乏交警警力，导致交通堵塞和延误现象越来越严重。交通监控摄像头对车辆行驶的监控，尤其是夜间的监控作用有限，交通罚款对交通规则的执行

收效甚微。

中国美国商会鼓励天津市政府在主要路段增加训练有素的交警警力，提高交通罚款金额，确保交通法规有效执行。

出租车服务问题

出租汽车服务水平差继续为城市居民和外地来访者所诟病。出租车运力不足导致全市范围内出租车等待时间较长，同时，出租车司机在机场、火车站和主要酒店区域向乘客收取高昂费用现象普遍存在。此外，出租车卫生情况差，司机无视车内禁烟的规定，拒绝接受“城市一卡通”，以及对路况不熟等情况时有发生。在天津中心城区和滨海新区之间打车尤其困难，因为大多数司机对这两个区域均不熟悉。滨海新区司机通常让乘客在外环线附近下车，再换一辆出租车前往目的地。这些问题令企业管理人员和游客尤为不悦，也有损城市形象。

对天津机场增加国际航班的需求

缺少国际航班继续延缓城市发展。尽管飞往台湾和香港地区的航班班次增加，但仍然没有直飞欧洲的航班。夜间机场出租车数量不足也是问题之一。

中国美国商会鼓励政府增加进出港国际航班数量，以促进国际贸易、投资和旅游业的发展。

结论

天津正经历显著的积极变化，包括拓宽产业基础，吸引新增投资，增加酒店业设施和基础设施建设等。幸运的是，本章所述的许多问题仅需要较小的投入就能加以解决。中国美国商会期待与天津市政府合作加强城市建设。

建议

- 为主要行业，尤其是金融、服务、IT和制造业完善培训项目，以支持天津第三产业的发展。
- 鼓励中央政府取消对外资律所开设分支机构的限制。
- 考虑实施新《社会保障法》可能对天津吸引外资产生的消极影响。
- 继续提高公共基础设施建设，如火车站、公共运输系统及机场。
- 通过加强适用于私家车、行人和公共交通工具的交通法规执法力度以缓解拥堵。

central Tianjin and TBNA is a particular challenge, since most drivers are unfamiliar with both areas. Drivers from TBNA have been known to drop passengers near the Outer Ring Road leaving them to find another taxi to complete the journey. These problems frustrate business executives and tourists alike, damaging the image of the city.

Need for International Flights from Tianjin

A lack of international flights to and from the Tianjin International Airport continues to slow development of the city. Although flights to Taiwan and Hong Kong have increased, the city still has no direct flights to Europe. The lack of taxis at the airport in the evening also remains a problem.

AmCham China encourages the government to negotiate the opening of international flights into and out of the city in order to facilitate international trade, investment, and tourism.

Conclusion

Tianjin is undergoing phenomenal and positive changes, including the broadening of the industrial base, the attraction of new and additional investment, and an increase in hospitality-related facilities and infrastructure. Fortunately, many of the concerns highlighted in this chapter can be addressed with relatively small investments. AmCham China looks forward to working with the Tianjin government to build an even stronger city.

Recommendations

- **Improve training programs catering to key sectors, specifically finance, services, IT, and manufacturing, to support growth of Tianjin's tertiary industry.**
- Encourage the central government to reduce restrictions on foreign law firms' ability to open branch offices.
- Take into account the negative impact implementation of the new Social Insurance Law may have on attracting foreign investment to the city.
- Continue improving public infrastructure such as the train station, mass transit system, and airport.
- Reduce traffic congestion through stronger enforcement of traffic regulations affecting private cars, pedestrians, and public transport providers.
- Require taxi drivers, as key transport service providers, to accept the "City Card" and improve service between the Tianjin city center and TBNA.

- 敦促作为交通服务主要提供者的出租车司机接受使用“城市一卡通”，并提升天津城区和滨海新区运营的服务质量。



Wuhan

Introduction

The six provinces that make up China’s central region—Anhui, Shanxi, Hunan, Henan, Hubei, and Jiangxi—continue to experience rapid growth and economic development, owing much to the national government’s Rise of Central China Plan. Government priorities for the region include infrastructure development, green economic growth, more efficient use of water and energy, and higher-end value-added products.

As the largest city and transportation center in central

China, Wuhan plays a key role in driving economic growth and development in the region. With over 390 US-invested enterprises in the city, American companies have helped contribute significantly to Wuhan’s impressive growth. In 2011, the Wuhan municipal government made further progress by targeting key sectors for development and improving transportation and international education infrastructure in the city.

AmCham China welcomes further government efforts to: provide equal treatment in customs clearance for local and foreign-invested research and development (R&D) centers; to enhance the R&D investment environment by addressing

AmCham China, Central China Chapter

Wuhan is an expanding business hub in Central China of growing importance to the national economy. AmCham China established the Central China chapter in Wuhan in 2008, creating a platform from which American companies can speak with one voice to the government and network together to share insights and best practices.

Central China Chapter Highlights

- Wuhan Government Dialogues**
 During 2011, AmCham China continued to hold productive dialogues between chamber members and Wuhan government officials, including meetings in each of the city’s primary commercial districts to discuss the 12th Five-Year Plan and its implications for business development.
- Central China Business Development**
 AmCham China’s Central China chapter supports regional development by regularly organizing delegations from the American business community to attend trade fairs in surrounding provinces. In addition, AmCham China’s popular provincial trip program often organizes trips to areas in and around the Central China region, during which business leaders can meet with provincial governors and other officials.
- US Government**
 The chamber organizes quarterly briefings for the membership by the Consul General and other US government officials from the consulate in Wuhan, followed by cocktail receptions for networking. Also, the first Hubei, Wuhan, USA Week gave opportunities for chamber members to meet with US Ambassador Gary Locke and leading US Embassy officials.
- Industry Development**
 A Training Forum has been established, and members regularly organize information sharing presentations and panel discussions that facilitate the development of key industries in Central China.
- Corporate Social Responsibility**
 AmCham China is committed to contributing to the sustainable development of the communities where members work and live. In 2010, the Central China Chapter held two charity events coordinating with the Hubei Red Cross to benefit a local school. More than 100 local and international businesses participated, and the events were the first of their kind ever organized by a foreign business group in Wuhan.

Headquartered in Beijing, AmCham China has organized member-led chapters in Central China (Wuhan), Northeast China (Dalian) and Tianjin.

武汉

引言

安 徽、山西、湖南、河南、湖北、江西六省组成了中国中部地区。得益于中央政府的中部崛起计划，六省持续保持快速的增长和经济发展。政府对该地区的工作侧重点包括基础设施建设、绿色经济增长、更有效地利用水和能源以及生产高附加值产品。

作为中国中部地区最大的城市和交通枢纽，武汉在推动该地区的经济增长和发展起着关键作用。武汉的美资企业超过 390 家，它们对武汉令人瞩目的发展做出了重要贡献。2011 年，武汉市政府通过发展重点行业、改善城市交通和国际教育基础设施，取得了进一步发展。

中国美国商会建议，政府应进一步努力为本地和外资研发中心在清关方面提供平等的待遇；通过提供土地资源、解决电力短缺和人力资源限制以提高研发投资环境；促进

建立世界级的医疗及教育系统以吸引外籍高管及其家庭；应对交通和污染问题。

这些举措不仅与政府工作的侧重点一致，还将有助于改善武汉的投资环境，促进该市强劲和可持续的经济增长。

重大进展

经济增长、贸易和投资

2011 年上半年，武汉的国内生产总值增长 12.4%，达 3220 亿元人民币（507 亿美元）。人均可支配收入增长 13.5%，达 12651 元人民币（1992 美元）。武汉 2010 年外商直接投资达 33 亿美元（210 亿元人民币），比 2009 年增长了 12.2%。2011 年前三季度中，武汉同美国的贸易总额上升至 18 亿美元（114 亿元人民币），其中，进口占 4.5 亿美元（28.6 亿元人民币），比 2010 年同期增长了

中国美国商会华中办公室

武汉是华中地区不断扩大的商业中心，其在全国经济中的地位日益加重。中国美国商会于 2008 年在武汉设立了华中办公室，旨在创造平台和渠道，以使美国企业能向政府表达心声以及联络交流，分享最佳实践经验。

主要活动

- 与武汉政府的交流**
 2011 年期间，商会会员与武汉政府官员继续保持开展成果丰硕的对话，其中包括在该市各个主要商业区举办会议讨论“十二五”规划以及对商业发展的影响。
- 华中地区的商业发展**
 中国美国商会华中办公室大力支持该区域的发展，定期组织美国商界代表团参加周边各省的贸易展览会。另外，商会颇受欢迎的省市投资考察活动也经常造访华中及周边地区，组织会员及当地企业领导与各省市领导会面。
- 美国政府**
 商会会员每季度同美国驻武汉领事馆的总领事以及美国政府官员做定期交流，并组织鸡尾酒会。此外，首届“湖北武汉 - 美国周”活动向会员提供了良好的与美国驻中国大使骆家辉及主要使馆官员见面的契机。
- 产业发展**
 武汉办公室成立了培训论坛，会员们定期会组织演讲和小组讨论以共享信息，促进华中地区相关产业的发展。
- 企业社会责任**
 商会会员致力于为其工作生活社区的可持续发展做出贡献。华中办公室在 2010 年协同湖北红十字会组织了两次慈善活动，为一所当地学校募款。一百余家本地以及国际企业参与盛会，这是外国商业团体首次在武汉组织此类活动。

中国美国商会总部设在北京，在华中（武汉）、华北（大连）和天津设立以会员为导向的区域办公室。

challenges such as land availability, electricity shortages, and human resource constraints; to incentivize establishment of world-class medical and school systems for the families of expatriate business executives; and to address transportation and pollution issues.

Initiatives in these areas would align with government priorities for the region, while helping to improve the investment environment of Wuhan and contributing to strong, sustainable economic growth in the city.

Significant Developments

Economic Growth, Trade, and Investment

In the first six months of 2011, Wuhan's GDP grew 12.4 percent over the previous year to RMB 322 billion (US \$50.7 billion). Disposable income per capita also increased 13.5 percent to RMB 12,651 (US \$1,992). In 2010, foreign direct investment in Wuhan rose to US \$3.3 billion (RMB 21 billion), an increase of 12.2 percent over 2009. In the first nine months of 2011, the city's trade with the US grew to a total of US \$1.8 billion (RMB 11.4 billion), of which imports accounted for US \$450 million (RMB 2.86 billion), 16.1 percent higher than the same period in 2010. Wages have continued to rise, however finding and retaining talent remains a challenge.

Targeted Strategic Emerging Industries

Under the 12th Five-Year Plan (2011-2015), the Wuhan municipal government has prioritized the development of 15 strategic emerging industries: energy and environmental conservation, new-generation information technology, new energy, new material technology, clean energy automobiles, the animation industry, integrated circuits, financial services, high-end equipment manufacturing, software outsourcing, bioengineering, numerical control lathes, modern logistics, the laser industry, and the flat panel display industry. The government intends to use favorable tax policies, land subsidies, and financial support to promote growth in these industries.

USA Week

The US Consulate General in coordination with the Hubei provincial and the Wuhan municipal governments held the first ever USA Week in Wuhan September 22-28, 2011. AmCham China organized the Invest USA Forum as well as meeting between member companies and US Ambassador Gary Locke during this week. Ambassador Locke spoke at the opening ceremony and participated in several of the forums and events. Many forums were held for those interested in investing in Wuhan and Hubei, as well as for those interested in investing in the US. The event was a success for Hubei province, Wuhan city, and the US.

International School License Granted

In February 2011, an international school was granted an independent license from the national Ministry of Education. This will help create a positive environment for foreign investment in central China by enhancing the international school's ability to provide quality education for the children of expatriate business executives. Opening and licensing additional international schools would further expand access to education and help attract more expatriate families and foreign investment to the city.

Transportation Infrastructure Improvements

The number of vehicles in Wuhan has rapidly increased. By the end of 2011, there were one million vehicles in the city, and that number is expected to increase 20 percent annually over the next several years. This creates tremendous pressure on both traffic and parking infrastructure. The Wuhan municipal government has planned construction of more than 320 public parking lots, for a total of 85,000 new parking spaces over the next five years. Four pilot sites testing new investment, management, and pricing mechanisms are already in operation.

Over 2011, Wuhan also invested RMB 27 billion (US \$4.25 billion) in roads and bridges and another RMB 12 billion (US \$1.92 billion) in urban rail transit. The city now has in place an "urban quick traffic system" which includes city ring roads, an express road network, and an eco-bicycle system. These improvements to city infrastructure have helped alleviate congestion during rush hour. By completion of the system in 2015, travel between any two locations within the second-ring road is projected to take less than 30 minutes. Wuhan also installed an electronic toll system to manage toll collection gates at river crossings, further alleviating traffic during rush hour.

Specific Issues

Cross-Sector Issues

Need for US Citizen Services at the US Consulate in Wuhan

The US Consulate in Wuhan opened three years ago, however it does not yet offer American citizen services, such as notary, tax, and other services. Currently, in order to access these services, citizens must travel to either Beijing or Shanghai, which is expensive and inconvenient. As the number of Americans and American businesses in Wuhan and central China continues to grow, the need for these services multiplies.

Human Resource Challenges

Competition for talent in Wuhan's employment market remains high, as there are more positions available than

16.1%。虽然工资水平持续上升，但是吸引并保留人才仍然是一个挑战。

重点战略性新兴产业

根据第十二个五年计划（2011—2015），武汉市政府优先考虑 15 个战略性新兴产业的发展：节能环保、新一代信息技术、新能源、新材料技术、清洁能源汽车、动漫产业、集成电路、金融服务、高端装备制造、软件外包、生物工程、数控车床、现代化的物流、激光产业和平板显示器产业。政府将利用优惠的税收政策、土地补贴和财政支持来促进这些行业的发展。

美国周

美国总领事馆协同湖北省政府和武汉市政府于 2011 年 9 月 22 日至 28 日在武汉举行了首届“湖北武汉——美国周”活动。中国美国商会承办了其中的投资美国论坛和会员企业与大使见面会。美国驻华大使骆家辉在开幕式上发言，并出席了部分论坛讨论和活动。这些论坛旨在服务于对湖北、武汉以及美国有兴趣的投资者。此次活动无论对于湖北省、武汉市还是美国来说都是一种成功。

授予国际办学许可证

2011 年 2 月，国家教育部授予武汉一所国际学校独立的国际办学许可证。此举将增强国际学校为外籍企业高管的子女提供优质的教育能力，从而为外商在中国中部投资创造积极的环境。向更多的国际学校开放并授予许可证将进一步扩大学生受教育的机会，并有助于吸引更多的外籍家庭和外资企业前来武汉。

交通基础设施的改善

武汉的车辆数目在迅速增加。到 2011 年底，武汉已有一百万辆车；预计未来几年车辆年增长率为 20%，从而道路交通和停车设施将面临严峻压力。武汉市政府已计划在未来五年内建设 320 多个公共停车场、85000 个停车位。首批四个试点停车场已经从招商、管理和定价系统方面投入建设。

2011 年，武汉市还在道路和桥梁上投资了 270 亿元人民币（42.5 亿美元），另外在城市轨道交通上投资了 120 亿元人民币（19.2 亿美元）。目前，武汉的“城市快速交通系统”已经到位，这包括环城公路、快速路网、以及环保自行车系统。这些城市基础设施的改善有助于缓解上下

班高峰期的拥堵。2015 年该系统建成后，二环线内任何两个地点之间交通耗时预计将少于 30 分钟。武汉市还在桥口的收费站安装了电子收费系统，进一步缓解了上下班高峰期的交通拥堵。

具体问题

跨行业问题

驻武汉的美国领事馆提供美国公民服务的需求

武汉美国领事馆三年前正式开放，然而它仍未提供美国公民服务，如公证、税务等。目前，为了获得这些服务，美国公民必须前往北京或上海，花费昂贵并造成诸多不便。随着武汉和中国中部地区的美国公民和企业数量持续增加，对这些服务的需求量也将大增。

人力资源挑战

武汉就业市场的人才竞争仍然很激烈，因为空缺职位多于合格的应聘者，其中对经验丰富的专业人员和刚毕业大学生的需求均有短缺。当地政府、大学和企业之间应加大合作，鼓励建立职业教育中心，公司为学生提供实习机会、随后依据实习期间表现留用学生；以给企业提供充足的、和具备必要技能的人才库。此举有助于帮助学生提高进入职场的准备，同时也解决了该地区持续的就业需求。最后，武汉需提升企业经营环境和城市生活环境，并采用税收激励等措施，以吸引和留住高层、技术型和管理型人才前来武汉。（更多信息详见“人力资源”章节。）

研发机构在武汉

武汉海关近来提高了政策的一致性和透明度及清关效率。为了进一步推动武汉市外商投资，中国美国商会建议武汉海关为本地和外资生产厂家和研发中心提供同等的待遇和优惠。这应包括免征进口研发设备和维修件增值税，并为培训和教育材料提供一个简明的清关手续。透明和平等地实施海关政策可以提高工作效率和通关量，同时也鼓励更多外资增加对武汉的研发投资。（更多信息详见“海关”章节。）

武汉市政府非常支持外资研发中心的发展。然而，企业在对设立于该市的研发中心增加投入时仍面临诸多挑战。问题包括可利用土地有限、电力短缺和缺乏服务外籍企业高管家庭的世界级的医疗和教育系统。社会保险和所得税法规的变化也对此产生了影响。中国美国商会鼓励武汉市

qualified people to fill them. Shortages of both experienced professionals as well as recent university graduates exist. More cooperation between local government, universities, and corporations is needed in order to supply companies with a sufficient talent pool possessing necessary skills. Providing incentives for the establishment of vocational education centers, or for companies to provide student internship opportunities with the possibility for subsequent full-time job placement, would enhance student preparedness while also addressing sustainable employment needs of the region. Finally, improved business and urban living environments as well as tax and other incentives are likewise needed to attract and retain more senior-level, technical, and managerial talent to Wuhan. (Please refer to the Human Resources chapter for more information.)

Research and Development in Wuhan

Wuhan Customs has made recent improvements in policy consistency and transparency as well as in efficiency of the customs clearance process. To further promote foreign investment in Wuhan, however, AmCham China suggests Wuhan Customs provide equal treatment and benefits to both local and foreign-invested manufacturers and R&D centers. This should include exempting imported R&D equipment and service parts from value-added tax, and providing a simplified customs clearance process for training and educational materials. Transparent and equal application of customs policies would improve efficiency and the flow of shipments through customs while also encouraging more foreign R&D investment in Wuhan. (Please refer to the Customs chapter for more information.)

The Wuhan municipal government has been very supportive of foreign-invested R&D centers. However, companies still face many challenges in expanding R&D investment in the city. Problems include limited land availability, electricity shortages, and lack of world-class medical and school systems for the families of expatriate business executives. Changes in social insurance and income tax regulations also have had an impact. AmCham China encourages Wuhan to address these various issues in order to make the city even more attractive for foreign investment in R&D.

We also recommend Wuhan explore possible development of office properties catering to the needs of R&D facilities, similar to the Gold Bridge (金桥) office park in Shanghai where each company office is in an independent building with parking and other business services available. This would enable R&D companies in Wuhan to more easily maintain confidentiality of sensitive technologies and R&D methods.

Promoting Wuhan's Image

Inside China, Wuhan is known for its strength and influence as a hub of central China, yet many outside of China have

never heard of Wuhan. As the city grows increasingly internationalized, brand building and promotion will grow in strategic importance for Wuhan's long-term development. Effective city branding would attract more talent, enterprises, and investors. AmCham China recommends the city position itself as a culturally rich international city, emphasizing its unique advantages and leveraging international media channels and other influential global platforms, such as international conferences and organizations, to build city brand recognition worldwide.

Quality of Life Issues

Need for International-Standard Medical Care

International-standard medical care in Wuhan is improving rapidly but still lags behind other major cities in China. For example, there are no medical facilities specifically designed for the English-speaking expatriate community, though plans are currently underway. Wuhan's two major hospital systems have excellent facilities, diagnostic capabilities, and medical expertise, they are actively engaging with academic institutions and hospitals in the US, France, Germany, Australia, UK, and other western countries. However, the existing hospital systems could still improve clinical decision-making, standardization of methods, English fluency of personnel, and quality of nursing care.

Adopting financial and tax incentives to encourage international-standard medical care providers to invest in Wuhan would increase access to quality medical care, facilitate development of the medical services sector in the city, and attract more foreign business executives and investors to live, work, and invest in Wuhan.

Traffic and Transportation Infrastructure

Though Wuhan's transportation and parking infrastructure have recently dramatically improved, a rapid increase in vehicle usage continues to put pressure on the system. Wuhan should develop a strategic long-term vision for sustainable development and urban planning to alleviate traffic pressure. Further improvements to public transit and supporting infrastructures are recommended, while also maintaining emphasis on the construction and administration of parking lots to accommodate the growing number of cars. Incentives for residents to make use of more eco-friendly travel, for instance by using public transit or purchasing hybrid and electric vehicles, would help reduce congestion and pollution in the city. We also encourage Wuhan to ensure that pedestrians have access to safe sidewalks.

Pollution

The Wuhan municipal government took significant steps in pollution management over 2011. Nevertheless, substantial air quality issues remain. In addition to pollution

政府解决这些问题，以进一步提高武汉对外资研发投入的吸引力。

我们还建议武汉探索开发迎合研发需求的写字楼盘。例如在上海的金桥开发区，每个公司有独立的、附带停车场的办公楼，其周边有其它商业服务。这将为武汉的研发公司对敏感技术和研发方法进行保密提供便利。

提升武汉城市形象

武汉作为华中地区枢纽的实力和影响力闻名国内，但其国际知名度却有待提高。随着武汉市日趋国际化，城市品牌的建设和推广对于武汉的长远发展具有重要战略意义。有效的城市品牌将吸引更多的人才、企业和投资者。中国美国商会建议，武汉定位为具有丰富文化的国际城市，强调其独特的优势、利用国际媒体和其它有影响力的国际平台（如国际会议和组织），打造世界知名的城市品牌。

生活质量问题

对国际标准的医疗护理的需求

武汉的医疗护理水平正迅速向国际标准靠拢，但仍落后于国内其它主要城市。比如，尽管相关计划目前正在进行，但武汉目前还没有专为英语国家外籍人士设计的医疗设施。武汉的两大医院系统具有优良的设施、诊断能力和医疗专业知识，并积极与美国、法国、德国、澳大利亚、英国和其他西方国家的学术机构和医院接洽。然而，现有的医院系统仍有改进空间，如可以改进临床决策、提升方法的标准化、提高工作人员的英语能力和护理质量等等。

采用财政和税收优惠来鼓励国际标准的医疗机构在武汉投资，可以增加优质的医疗服务，促进该市医疗服务部门的发展，并吸引更多的外企高管和投资者在武汉生活、工作和投资。

交通和运输基础设施

虽然武汉的交通和停车基础设施近年来得到了显著的改善，但是，快速增长的车辆使用对现有的系统压力持续增加。武汉应为可持续发展和城市规划制定长期战略，以缓解交通压力。建议进一步改善公共交通和配套基础设施，同时注重停车场的建设和管理来容纳越来越多的车辆。鼓励居民利用更环保的交通，比如使用公共交通或购买混合动力汽车和电动汽车，将有助于缓解城市交通拥堵和污染。我们也鼓励武汉确保行人可以使用安全的人行道。

污染

2011年，武汉市政府在污染管理上采取了重大措施。然而，大量的空气质量问题仍然存在。除城市基础设施项目和车辆的污染管理外，政府应鼓励使用清洁能源，如天然气、生物质能和太阳能，同时减少对污染严重的火电厂的依赖。利用激励措施来鼓励节能，使用钢铁等行业生产中的废气，按行业需求采用混合冷却、加热和供电（冷热电联产系统）技术来提高效率都将有助于减少工业污染。

结论

武汉在改善城市基础设施建设和扩大促进投资方面继续取得巨大的进步。然而，快速增长对环境产生了不利的影响，造成了交通拥堵，对城市产生了其它负面影响，这些问题都必须解决。我们鼓励武汉在继续推动企业可持续发展的同时设法解决这些问题。通过鼓励国际标准的医疗保健建设、改进海关程序和研发投资环境、解决人力资源的挑战和上述的其它建议，武汉市将能够吸引更多的外国投资，并保持可持续的经济增长。中国美国商会华中办公室期待与武汉市政府合作实现这些目标。

建议

对武汉市政府：

- 为合格的医疗机构提供鼓励措施来推动建立符合国际标准的医疗设施。
- 继续改进和鼓励公共交通的使用，以缓解城市交通拥堵、停车难和污染等问题。
- 确保武汉全市有安全的人行道。
- 向更多有资格的学校授予国际办学许可，以便城市的外籍家庭可以获得优质教育。
- 制定一致、透明的清关手续，以鼓励更多公司对武汉的研发投资。
- 探索开发迎合研发机构需求的写字楼（类似于上海的金桥开发区）。
- 打造有效的城市品牌以吸引更多的人才、企业和投资者来武汉。

对美国政府：

- 驻武汉的美国领事馆提供美国公民服务，如公证、税务和其它服务。

management of city infrastructure projects and vehicles, the government should encourage the use of clean energy such as natural gas, biomass, and solar power, while reducing dependence on polluting thermal power plants. Incentives to encourage saving energy; usage of waste gas in the iron, steel, and other industries; and adoption of combined cooling, heating, and power (CCHP) technology by industry to increase efficiency would also help reduce industrial pollution.

Conclusion

Wuhan continues to make tremendous progress in improving city infrastructure and expanding investment promotion. However, rapid growth has adversely impacted the environment, created traffic congestion, and had other negative impacts on the city that must be addressed. We encourage Wuhan to continue to promote sustainable business development while addressing such issues. By incentivizing international-standard healthcare, improving customs procedures and the investment environment for R&D, addressing human resource challenges, and other recommendations described above, Wuhan will be able to attract greater foreign investment and maintain sustainable economic growth. The AmCham China Central China chapter looks forward to working with the Wuhan municipal government to achieve these goals.

Recommendations

For the Wuhan Government:

- **Encourage international-standard healthcare facilities to operate in Wuhan through the provision of incentives to qualified operators.**
- Continue to improve and encourage the use of mass transportation systems to reduce traffic congestion, parking problems, and pollution.
- Ensure pedestrians have safe places to walk throughout the city.
- Grant additional international school licenses to qualified schools so that expatriate families throughout the city will have access to quality education.
- Develop consistent, transparent customs clearance procedures that will encourage more companies to invest in R&D in Wuhan.
- Explore possible development of office properties catering to the needs of R&D facilities, similar to the Gold Bridge office park in Shanghai.
- Develop effective city branding to attract more talent, enterprises, and investors to Wuhan.

For the US Government:

- Offer American citizen services, such as notary, tax, and other services, at the US Consulate in Wuhan.



Abbreviations 缩写表

3PPP	Third-Party Payment Provider
3T3 NRU	3T3 Neutral Red Uptake
A Level	Advanced Level General Certificate of Education
ACFTU	All-China Federation of Trade Unions
ACP	US-China Aviation Cooperation Program
ADS	Approved Destination Status
AECOM	Architecture, Engineering, Consulting, Operations, and Management Technology Corporation
AEO	Authorized Economic Operator
AHWP	Asian Harmonization Working Party
AIC	Administration of Industry and Commerce
AMC	Anti-Monopoly Commission
AMC	Asset Management Company
AML	Anti-Monopoly Law of China
APCAC	Asia-Pacific Council of American Chambers of Commerce
API	Active Pharmaceutical Ingredients
API	Air Pollution Index
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine
ARF	Automatic Registration Form
ASEAN	Association of Southeast Asian Nations
ATC	Air Traffic Control
ATFM	Air Traffic Flow Management
ATMB	Air Traffic Management Bureau
ATMET	Air Traffic Management Executive Training
AVIC	Aviation Industry Corporation of China
BIT	Bilateral Investment Treaty
BPO	Business Process Outsourcing
BRIC	Brazil, Russia, India, China
BSE	Bovine Spongiform Encephalopathy
BT	Business Tax
CAAC	Civil Aviation Administration of China

CAEFI	China Association of Enterprises with Foreign Investment
CAFFCI	China Association of Fragrance, Flavor, and Cosmetic Industry
CBD	Central Business District
CBRC	China Banking Regulatory Commission
CCC	China Compulsory Certification
CCCi	China Compulsory Certification for Information Security Products
CCDC	China Central Depository & Clearing Co, Ltd.
CCHP	Combined Cooling, Heating, and Power
CCL	Commerce Control List
CCP	Central Counterparty
CCPIT	China Council for the Promotion of International Trade
CCS	Carbon Capture and Storage
CDE	Center for Drug Evaluation
CE	Circular Economy
CE	Collective Enterprise
CECP	China Energy Conservation Program
CEPRI	China Electric Power Research Institute
CERA	Cambridge Energy Research Associates
CERC	US-China Clean Energy Research Center
CESI	China Electronic Standardization Institute
CFETS	China Foreign Exchange Trade System
CIF	Cost, Insurance, and Freight
CIIC	China International Intellectech Corporation
CIQ	China Inspection and Quarantine
CIRC	China Insurance Regulatory Commission
CMC	Central Military Commission
CMRA	Chinese Master Repo Agreement
CNAF	China National Aviation Fuel Group Corporation
CNAO	China National Audit Office

CNCA	Certification and Accreditation Administration of China
CNTA	China National Tourism Administration
CODEX	Codex Alimentarius
COMAC	Commerical Aircraft Corporation of China
COTS	Commercially Available Off-the-Shelf
CP	Commercial Paper
CPI	Consumer Price Index
CPSC	Consumer Product Safety Commission
CSR	Corporate Social Responsibility
CSRC	China Securities Regulatory Commission
CT	Computed Tomography
CTA	Clinical Trial Application
C-TPAT	Customs-Trade Program Against Terrorism
CUP	China Union Pay
DCB	Designated Certification Body
DDA	Dalian Development Area
DDGS	Distiller's Dried Grains with Solubles
DE&CHP	Decentralized Energy and Combined Cooling, Heat, and Power
DLSP	Dalian Software Park
DOC	US Department of Commerce
DQ	Design Qualifications
DRG	Diagnosis-Related Group
DRR	Drug Registration Regulation
DWT	Deadweight Ton
EA	Enterprise Annuities
ECP	US-China Energy Cooperation Program
ECWG	Export Compliance Working Group
EDI	Customs Electronic Data Interchange
EDS	Express Delivery Services
EIT	Enterprise Income Tax
EMDT	Executive Management Development Training
EMS	Electronic Manufacturing Services
EMV	Europay, MasterCard, and Visa
EPC	Engineering, Procurement, and Construction

EPO	European Patent Office
EPS	Electronic Payment Services
ERC	Employee Representative Councils
EUHT	Extra Ultra-High Throughput
EUS	End-User Statement
FAA	US Federal Aviation Administration
FAO	Food and Agriculture Organization of the United Nations
FASCO	Foreign Aviation Service Corporation
FBO	Fixed Base Operator
FCC	Federal Communications Commission
FDA	US Food and Drug Administration
FDI	Foreign Direct Investment
FESCO	Foreign Enterprise Human Resource Service Company
FFIP	Foreign Financial Information Providers
FIA	Foreign Investment Administration Department of MOFCOM
FICE	Foreign-Invested Construction Enterprise
FIDE	Foreign-Invested Design Enterprise
FIE	Foreign-Invested Enterprise
FIESE	Foreign-Invested Engineering Service Enterprise
FIR	Flight Information Region
FSAP	Financial Stability Assessment Program
FSL	Food Safety Law
FSS	Flight Service Stations
FY	Fiscal Year
FYP	Five-Year Plan
GA	General Aviation
GAC	General Administration of Customs of China
GAPP	General Administration of Press and Publications
GARA	General Aviation and Regional Aviation
GDP	Gross Domestic Product
GDS	Global Distribution Systems
GHTF	Global Harmonization Task Force
GM	Genetically Modified
GMO	Genetically Modified Organism

GMP	Good Manufacturing Process
GONGO	Government-Organized Non-Governmental Organization
GP	Government Procurement
GPA	WTO Agreement on Government Procurement
GRI	Global Reporting Initiative
GRI G3.1	Global Reporting Initiative Sustainability Reporting Guidelines G3.1
GUI	Graphic User Interface
GW	Gigawatts
HCP	US-China Healthcare Cooperation Program
HNTE	High and New Technology Enterprises
HR	Human Resources
HRO	Human Resources Outsourcing
HVAC	Heating, Ventilation, and Air Conditioning
IAMC	Insurance Asset Management Company
IC	Integrated Circuits
ICAO	International Civil Aviation Organization
ICT	Information and Communications Technology
IDC	International Data Corporation
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IFC	International Financial Center
IGCC	Integrated Gasification Combined-Cycle Technology
IGCSE	International General Certificate of Secondary Education
IIP	Indigenous Innovation Products
IIT	Individual Income Tax
IMF	International Monetary Fund
IP	Intellectual Property
IPR	Intellectual Property Rights
IRG	Immediate Release Guidelines
IRS	Interest Rate Swap

ISO	International Organization for Standardization
IT	Information Technology
ITO	Information Technology Outsourcing
ITU	International Telecommunications Union
IVD	<i>In-Vitro</i> Diagnostic Device
JCCT	US-China Joint Commission on Commerce and Trade
JECFA	Joint FAO/WHO Expert Committee on Food Additives
JV	Joint Venture
KPO	Knowledge Process Outsourcing
M&A	Mergers and Acquisitions
MEP	Ministry of Environmental Protection
MIIT	Ministry of Industry and Information Technology
MLP	Medium- and Long-Range Plan
MLPS	Multi-Level Protection Scheme
MNC	Multinational Corporation/ Company
MOA	Ministry of Agriculture
MOC	Ministry of Construction (Renamed Ministry of Housing and Urban-Rural Development)
MOC	Ministry of Culture
MOCA	Ministry of Civil Affairs
MOE	Ministry of Education
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOFCOM	Ministry of Commerce
MOH	Ministry of Health
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOR	Ministry of Rail
MOST	Ministry of Science and Technology
MOU	Memorandum of Understanding
MPS	Ministry of Public Security
MQIP	Meat Quarantine Import Permit
MR	Magnetic Resonance

MRL	Maximum Residue Levels
MRO	Maintenance, Repair, and Overhaul
MSD	Modern Services District
MTN	Medium-Term Note
MTPL	Mandatory Third Party Liability
MW	Megawatts
NAFMII	National Association of Financial Markets Institutional Investors
NASSCOM	National Association of Software and Services Companies of India
NBFI	Non-Bank Financial Institution
NCAC	National Copyright Administration of China
NDRC	National Development and Reform Commission
NEA	China National Energy Administration
NEC	National Energy Commission
NGO	Non-Governmental Organization
NIIP	National Indigenous Innovation Product
NOC	National Oil Company
NOX	Nitrogen Oxide
NPC	National People's Congress
NPL	Non-Performing Loans
NPO	Nonprofit Organization
NPVC	National Promote Voluntary Certification
NR III	Non-Road III Regulation
NRVC	National Recommended Electronic Information Products Pollution Control Voluntary Certificate
OECD	Organisation for Economic Co-operation and Development
OIE	World Organization for Animal Health
OIG	Office of the Inspector General
OSTP	Office of Science and Technology Policy
OTC	Over-the-Counter
P&C	Property and Casualty
P2P	Peer-to-Peer
PBN	Performance-Based Navigation
PBOC	People's Bank of China
PCT	Patent Cooperation Treaty

PE	Permanent Establishment
PE	Private Equity
PET-CT	Positron Emission Tomography - Computed Tomography
PLA	People's Liberation Army
PPP	Public-Private Partnership
PPPH	Public-Private Partnership on Healthcare
PRC	People's Republic of China
PRI	Political Risk Insurance
PSB	Public Security Bureau
PTO	US Patent and Trademark Office
QDII	Qualified Domestic Institutional Investor
QFII	Qualified Foreign Institutional Investor
QIP	Quarantine Inspection Permit
QMS	Quality Management System
R&D	Research and Development
RA	Regional Aviation
RDP	Regulatory Data Protection
RE	Renewable Energy
RFG	Remanufactured Finished Goods
RFP	Request for Proposal
RMB	<i>Renminbi</i>
RNP	Required Navigation Performance
RoHS	Restriction of Hazardous Substances
RPK	Revenue-Passenger-Kilometer
RQFII	<i>Renminbi</i> Qualified Foreign Institutional Investor
RVSM	Reduced Vertical Separation Minimum
S&ED	US-China Strategic and Economic Dialogue
SAC	Standardization Administration of China
SAFE	State Administration of Foreign Exchange
SAIC	State Administration of Industry and Commerce
SAM	Software Asset Management
SAO	Security Advisory Opinion
SARFT	State Administration of Radio, Film, and Television
SASAC	State-Owned Assets Supervision and Administration Commission

SAT	State Administration of Taxation
SATCC	State Air Traffic Control Commission
SC	Technical Subcommittee
SCEP	Service Center Establishment Plan
SCH	Shanghai Clearing House
SCIO	State Council Information Office
SCLAO	State Council Legislative Affairs Office
SDA	Swaps and Derivatives Association
SDO	Standards Development Organization
SDOC	Self-Declaration of Compliance
SDR	Special Drawing Rights
SEI	Strategic Emerging Industries
SEMB	State Encryption Management Bureau
SFDA	State Food and Drug Administration
SH-SZ	Shanghai-Shenzhen
SIPO	State Intellectual Property Office
SKU	Stock-Keeping Unit
SLC	Small Lending Companies
SME	Small- and Medium-Sized Enterprises
SOE	State-Owned Enterprises
SPB	State Postal Bureau
SPC	Supreme People's Court
SPS	Sanitary and Phytosanitary
SPV	Special Purpose Vehicle
SRT	Special Reorganization Treatment
SSTEC	Sino-Singapore Tianjin Eco-City
SWIM	System Wide Information Management
TAB	Telecommunications Administration Bureau
TAL	Technology Alert List
TBNA	Tianjin Binhai New Area
TBT	Technical Barriers to Trade
TC	Technical Committee
TCM	Traditional Chinese Medicine
TDA	US Trade and Development Agency
TEDA	Tianjin Economic-Technological Development Area
TFSP	Tianfu Software Park

TMO	China Trademark Office
TNC	Three Network Convergence
TP	Transfer Pricing
TRAB	Trademark Review and Appeal Board
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota
UDI	Unique Device Identification
UGC	User Generated Content
UHT	Ultra-High Throughput
UHV	Ultra-High Voltage
ULC	Unit Labor Cost
UMP	Utility Model Patents
USITO	US Information Technology Office
USML	US Munitions List
VAS	Value-Added Services
VAT	Value-Added Tax
VEU	Validated End-User
VoIP	Voice-over-Internet Protocol
VPN	Virtual Private Network
VTC	Validated Type Certificate
WAPI	WLAN Authentication and Privacy Infrastructure
WCO	World Customs Organization
WEEE	Waste Electrical and Electronic Equipment
WFOE	Wholly Foreign-Owned Enterprise
WHO	World Health Organization
WLAN	Wireless Local Area Network
WSC	World Semiconductor Council
WTO	World Trade Organization
YRD	Yangtze River Delta



www.amchamchina.org/whitepaper2012

READ DIGITALLY*

Visit the following digital bookstores and read AmCham China's 2012 *American Business in China White Paper*:



For more information, and to download to the iPad with one click, please visit www.amchamchina.org/wpebook.

* Coming in May 2012

AmCham China
中 国 美 国 商 会

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

The Office Park, Tower AB, 6th Floor,
No. 10 Jintongxi Road, Chaoyang District,
Beijing, 100020, The People's Republic of China
Tel: (8610) 8519-0800
Fax: (8610) 8519-0899

Website: www.amchamchina.org

中国北京市朝阳区金桐西路10号,
远洋光华国际AB座6层
邮政编码: 100020
电话: (8610) 8519-0800
传真: (8610) 8519-0899
网址: www.amchamchina.org

Headquartered in Beijing with Chapters
in Tianjin, Central China (Wuhan),
Northeast China (Dalian)

中国美国商会总部设于北京, 在天津、
华中(武汉)及华北(大连)设有区
域办公室