

# American Business in China 美国企业在中国

2013 WHITE PAPER 白皮书



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## Chairman's Message

The year 2013 marks an important turning point in China's development model, one which will profoundly impact all businesses throughout China, regardless of their countries of origin. In the coming decade, urbanization will maintain a brisk pace, albeit across broader China, while efficiencies and policies that support productivity growth will be sought in every sector. This year the American Chamber of Commerce in the People's Republic of China (AmCham China) is pleased to present the 15<sup>th</sup> annual *American Business in China White Paper*, which includes many such policy recommendations. Contributions were also made by the American Chamber of Commerce in Shanghai (AmCham Shanghai) and the American Chamber of Commerce in Southwest China (AmCham Southwest).

Recently there have been a number of key developments in economic and business policy in China, from investment approval to financial regulation to a host of new and revised laws on intellectual property rights. The balance between quality of life and breakneck growth is increasingly leaning towards the former, with Chinese citizens more frequently lamenting a deteriorated environment and suspicious of food and product safety. Our members' voices also reflect these changes, with new or returning chapters on Investment Policy, Financial Services, Clean Technology and Environmental Protection, Automotive, and Oil, Energy and Power.

The National People's Congress (NPC) recent approval of *The State Council Organization Reform and Function Transformation Plan* is a promising development. The plan aims to devolve project approval authority for many investments, including many foreign investment projects, to local-level governments. If fully implemented, it could be the most significant liberalization in China's foreign investment regime in the past three decades. An open, fair, and competitive investment environment is a cornerstone of a modern market economy, and critical to capturing the productivity gains that will help push China past middle income levels. AmCham China looks forward to the implementation of the NPC's plan and additional investment liberalization in the future.

Moves by the People's Bank of China to liberalize both RMB exchange rates and interest rates in 2012 are also welcome. While both rates are still regulated, these are important steps in moving towards market-set rates. Exchange rate liberalization helps dull concerns about currency manipulation, allowing both governments to focus on more substantive issues of mutual economic interest. Interest rate liberalization incentivizes commercial banks to compete with innovative products, leads to sounder lending practices, and stimulates household consumption.

# 主席致辞

2013 年标志着中国发展模式的一个重要转折点，这将对中国所有的企业产生深远的影响，无论是内资还是外资。未来十年，中国的城镇化仍将保持生机勃勃的势头，并将在更广阔的地域展开，同时，需要提高每个行业的效率并出台各种政策支持生产力的增长。今年，中华人民共和国美国商会（中国美国商会）十分高兴第 15 次推出年度《美国企业在中国白皮书》，其中包含了许多政策方面的建议。上海美国商会和西南美国商会亦为本书提供了相关章节。

最近，中国的经济和商务政策出现了若干关键性进展，涉及了从投资许可、金融监管，到制定和修改若干知识产权法律的广泛领域。随着中国公众对恶化的环境、食品和产品安全等问题更加频繁地表示怨忿，在生活质量和风险速度的增长之间，天平正在逐渐向前者倾斜。在今年针对“投资政策”、“金融服务”、“清洁能源”和“环境保护”、“汽车”以及“石油、能源和电力”等新增或重述的章节中，我们会员企业的声音亦反映了这些变化。

全国人民代表大会最近通过的《国务院机构改革和职能转变方案》令人充满希望。该方案旨在将很多投资的项目审批权下放给地方政府，也包括许多外商投资项目。若能充分实施，可能会成为过去三十年来中国外商投资体制中最重大的一次松绑。一个公开、公平和竞争的投资环境是现代市场经济的基石，而且对于提高生产力至关重要，而提高生产力将有助于中国跨越中等收入的发展水平。中国美国商会期待上述机构改革方案的实施，以及未来对投资进一步的松绑。

对于中国人民银行在 2012 年采取的放松人民币汇率和利率管制的举措，我们亦表示欢迎。尽管人民币汇率和利率仍处于管制中，上述举措却是迈向市场化的重要步骤。汇率自由化有助于弱化对货币操纵的担忧，使两国政府能够集中解决双边经济关系中更实质性的问题。利率市场化激励商业银行竞相推出创新产品，推行更稳健的贷款业务，并刺激家庭消费。

食品安全日益引起公众的关注，将成为今后政府加强监管和执法的重点。同样，随着北京最近宣布斥巨资治理这些问题，空气、土壤和水污染也越来越多地在中国社交媒体中曝光。中国美国商会欢迎中国各地对生活质量指标的日益关注，希望政府和社会各界竭尽全力处理这些问题，包括增加与外国技术和服务公司的合作，他们中的许多在执行严格的环境标准方面拥有经验。

除了上述进展之外，中国仍然面临诸多挑战。尽管近期放宽投资审批的举措值得称道，但

Food safety has received increased public scrutiny and will be subject to growing regulatory oversight and enforcement going forward. Similarly, air, soil and water pollution have been growing topics in Chinese social media, with expansive new funding to combat these issues recently announced in Beijing. AmCham China welcomes the growing attention towards quality of life indicators throughout China, and hopes that full efforts are utilized in combating these problems, including increased cooperation and partnerships with foreign technology and service providers, many of whom have experience meeting strict environmental standards.

In addition to these areas of improvement, many challenges remain. While recent moves to liberalize the investment process are welcomed, many member companies faced partial or full barriers to investment in their sector over the prior year, significantly reducing options for Chinese consumers and businesses. Complicated or opaque licensing and branching processes stymie many members' expansion plans across China, creating significant disparities in the consumption options across different cities and regions. Similarly, inconsistent implementation of regulations at the local level increase compliance costs for both domestic and foreign firms.

AmCham China has represented the American business community in China for over 20 years. Our members remain strongly committed to China—not just the China of the past two decades, but the China of the coming decade and beyond. It is our sincere hope that we can continue to play an active and constructive role in the US-China commercial relationship, help to increase trust and achieve mutual benefit, and that the policies in this White Paper are considered by both the Chinese and US governments in their continued efforts to foster economic cooperation and development in both countries.

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

去年不少会员企业在其所在的领域仍然遭遇了部分或全面的投资壁垒，大大减少了中国消费者和企业的选择。繁琐或不透明的许可和分门别类的审批程序阻碍了许多会员企业在中国的业务扩展计划，造成了不同城市和地区之间在消费选择上的巨大差距。同样，法律法规各地执行不一，加大了内外资企业的合规成本。

中国美国商会20多年来一直是在华美国企业的代表。我们的会员企业一直坚定地看好中国，不仅是过去二十年的中国，还包括下一个十年的中国，乃至未来的中国。我们衷心希望能够在中美两国的商业关系中发挥积极和建设性的作用，帮助增进互信和实现双赢。我们也希望中美两国政府在继续努力促进两国经济合作和发展的过程中，能够考虑本《白皮书》中提出的政策建议。

葛国瑞

中国美国商会主席



**Part One:**  
**Business Climate Overview**  
**商务环境综述**



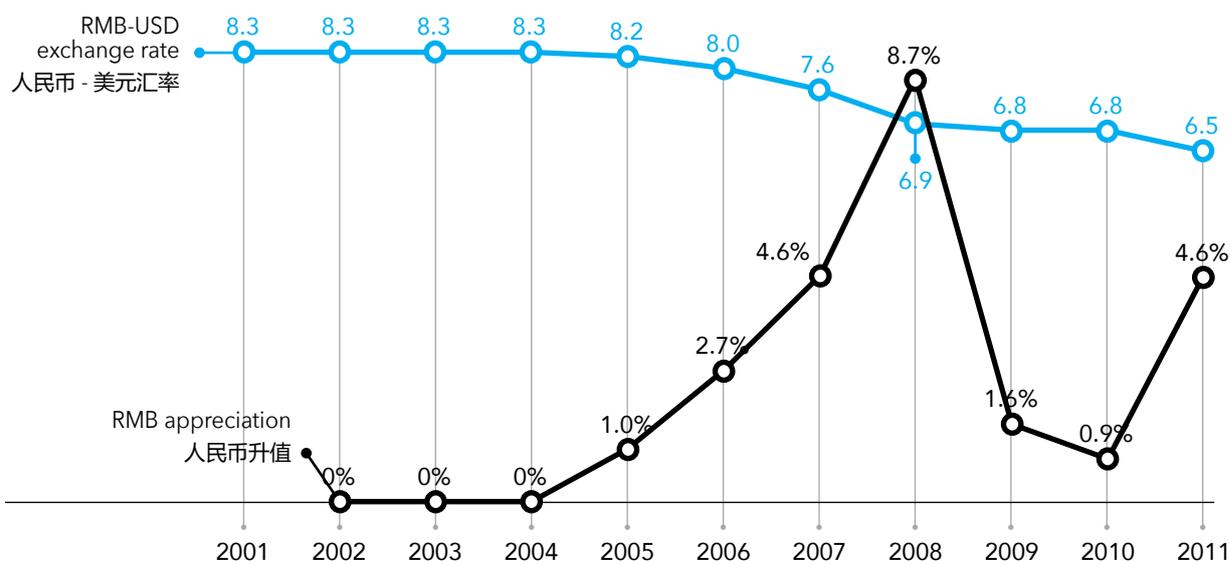
# China's New Economy: The Path Forward

China's economic maturity is increasingly evident, alongside the challenges that maturity brings. Services play a larger role in China's expanding urban areas, world-class technologies are available and frequently used by a wide range of state and private sector enterprises, and household consumption is expected to grow rapidly in the coming years. Factor utilization and net export growth will no longer be the primary drivers of growth. Total factor productivity must grow if China is to develop beyond middle-income status. Even under optimistic estimates, China will not reach high-income status for over two decades; more conservative estimates expect Chinese GDP per capita to reach half that of high-income countries by 2050—primarily due to a declining workforce coupled with stagnant productivity growth. Foreign-invested enterprises (FIEs) can make useful contributions to necessary productivity gains, given their managerial and technological expertise. Unfortunately, restrictions on foreign participation threaten to squander this opportunity. Implicit or explicit support to state-owned enterprises (SOEs) also

hinders both domestically and foreign-owned private sector enterprises. Given the importance of productivity growth, and the risk of experiencing a lost decade if neglected, China and the US must both strive to ensure deeper and fairer market access for domestically and foreign-owned firms.

Three decades after the start of its reform and opening up, China continues to be a desirable location for foreign business. Since the global economic slowdown China has continued to grow not only as an important production base for foreign companies, but increasingly as a market. The evolution of China's impact on foreign companies' business strategy parallels China's own growth and economic maturation. While the service industry has grown, manufacturing remains an important part of the economy, and China enjoys a reputation for efficient production, to the benefit of both business and consumers. Looking forward, the government has set ambitious targets for China to be known not only as an efficient manufacturing base, but also as an innovator in both technology and services.

**Q RMB Appreciation 2001-2011**  
2001 年至 2011 年人民币升值情况



Source: National Bureau of Statistics | 资料来源：国家统计局

## 中国新经济：前进之路

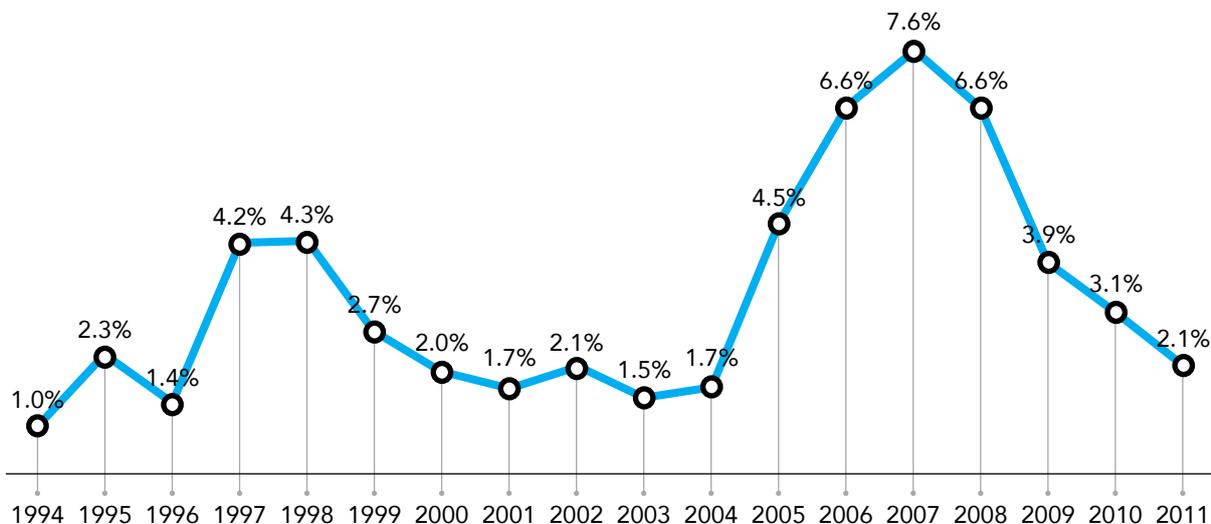
中国的经济以明显的步伐走向成熟，同时也面临着成长过程中的各种挑战。服务业在中国不断扩大的城市区域中发挥着更大的作用，许多国有和民营企业能够获得并常常使用世界一流技术，未来几年家庭消费有望实现快速增长。要素利用和净出口增长将不再是经济增长的主要推动力。如果中国要实现中等收入国家的发展水平，全要素生产率必须提高。即使按乐观的估计，中国要达到高收入国家的水平至少还要 20 年以上；而保守的估计认为，中国的人均 GDP 在 2050 年能达到高收入国家水平的一半——这主要是由于劳动人口下降伴随生产率增长滞缓所致。外资企业由于在管理水平和先进技术方面的优势，能够为中国所需的生产率增长作出有益的贡献。遗憾的是，对外资参与的限制将很有可能阻碍上述优势的充分发挥。对国有企业或隐或明的政策支持，也妨碍了内资民营企业和外资企业的发展。鉴于生产率提高的重要性以及一旦被忽视则很可能使中国经济停滞十年的风

险，中美两国均须作出努力，确保为内外资企业提供更为广阔和公平的市场。

经过三十年的改革开放，中国仍然是外国企业的理想经营地。自从全球经济陷入萧条以来，中国不仅仍旧是外国公司的重要生产基地，还成为了重要的市场。随着中国自身的增长和经济的成熟，中国对外国公司经营战略的影响与日俱增。在服务业增长的同时，制造业仍然是中国经济的重要组成部分，中国凭借高效的生产享誉国际，企业和消费者均从中获益。展望未来，中国政府已经制定出雄心勃勃的目标，不仅要成为高效的制造业基地，而且还志在成为技术和服务创新的国家。

伴随着中国的经济格局及其面向未来的规划，中美经济关系的性质也随之发生了改变。美国对人民币货币估值的担忧已经消散，这主要是由于 2005 年以来人民币对美元大幅升值，同一时期中国的经常性账户盈余水平也变得更加可持续，如左图所示。

**Q** China's Current Account Balance/GDP  
中国的经常性账户平衡 /GDP



Source: National Bureau of Statistics | 资料来源：国家统计局

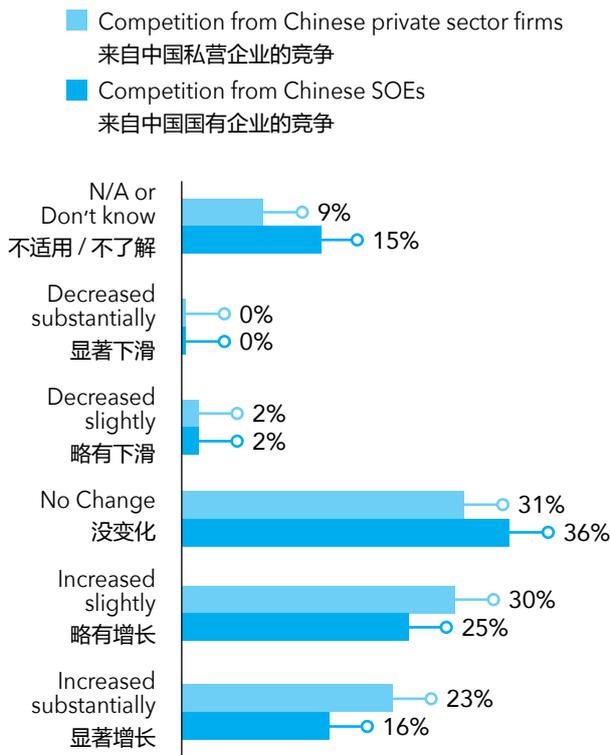
Along with China's economic landscape and its forward-looking plans, the nature of the US-China economic relationship has also changed. Concern over currency valuation has dissipated, largely due to a significant appreciation of the RMB against the dollar since 2005 as shown in the chart on page 2, and the concurrent shift of China's current account surplus towards more sustainable levels.

The next chart on page 3 demonstrates the rapidity of China's external rebalancing. Most recently, concerns have focused on data security. Further, a range of ongoing issues such as regulatory restrictions, intellectual property rights, standards, transparency and enforcement continue to frustrate foreign companies' market access in some sectors in China, and negatively impact the local private sector as well. Net exports will no longer play the outsized role in growth as they have over the past two decades. Thus, the most fundamental concern is what will drive China's growth over the next five years.

### Business Climate at Present

In 2012 the American business community in China remained optimistic, driven by strong performance and

#### Q How would you rate competition for your products and services in China? 企业产品或服务在中国的竞争力情况



expectations of significant growth in domestic demand for the next three years. This is reflected not only in firms' expectations, but also in their substantive planning. China was one of the top three investment priorities for a majority of reporting American firms in 2012, most of which used China-generated profits to fuel their investment.

Despite this optimism, there are also areas of concern. Policies favoring SOEs continue to disadvantage a significant number of FIEs, as well as domestically-invested private firms. Human resource constraints, both for technical and managerial level staff, are of growing concern and may limit planned expansion. While China remains an important profit center for American firms, margins show modest declines, as the economy slows and as Chinese firms become increasingly competitive.

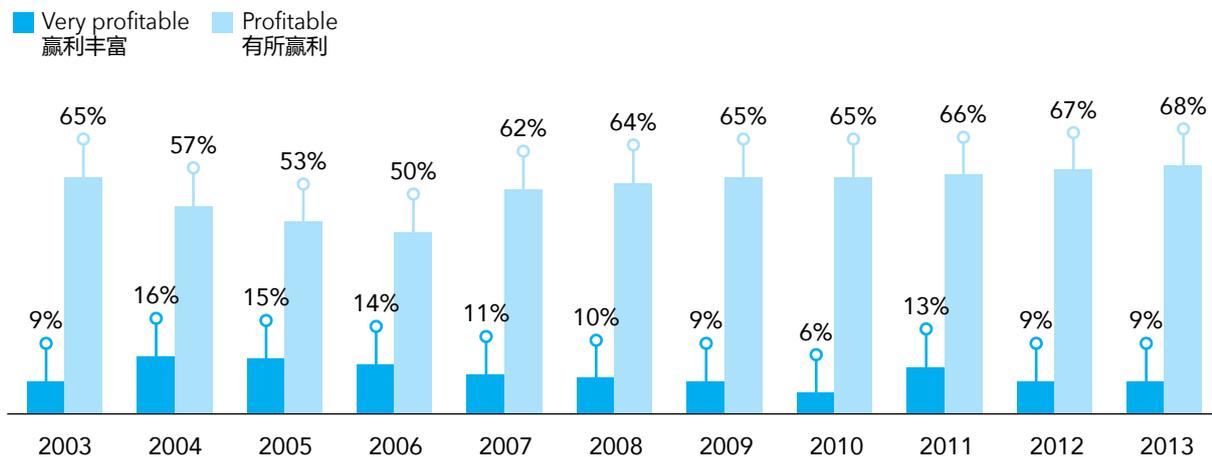
The top business challenges among firms include labor costs, inconsistent regulatory interpretation among different agencies and jurisdictions, shortages of skilled labor (both staff and managerial), and corruption. Together these encapsulate many of the concerns raised in later chapters of this *White Paper*, including corruption and opaque application of rules outside China's first-tier cities.

Human resource issues constitute three of the top five concerns (labor cost, inconsistent regulatory interpretation and/or unclear laws, shortages of qualified employees, shortages of qualified management, and corruption), and have been prominent in the list of challenges since 2010. Rising labor costs are eroding China's historic competitive advantage. Replacing this advantage will be critical to China's next stage of economic development. Labor costs were a principal factor in over 10 percent of survey respondents moving some of their production capacity outside China in the prior year. Labor cost and other regulatory reforms such as increased market access should be pursued to ensure that China maintains an attractive business environment for foreign firms.

Corruption negatively impacts the level of trust foreign investors have in an economy, while inconsistent regulations make business operations more difficult for both FIEs and domestically-invested enterprises. For those companies operating in restricted sectors business conditions have become more difficult, with one-third reporting deteriorating conditions compared to less than a fifth reporting improved conditions for FIEs. At the same time, members feel that US export controls have become less burdensome, highlighting an unequal shift in perceptions of the countries' bilateral treatment of sensitive sectors and technologies. This is further highlighted by demands for transfers of technology in China even when not stated in regulations, with a higher share of American firms reporting increasing pressure and a declining share reporting a neutral experience.

While there are many challenges, our members remain optimistic about the future of the Chinese economy and their place

**Q How would you characterize your company's financial performance over the past year?**  
企业 2012 年在华财务状况



第 3 页中的图表显示了中国迅速恢复了外部均衡。数据安全成为最近的关注重点。另外，现存的一系列问题，如监管限制、知识产权、标准、透明度和执法等依旧使外资公司无法进入中国某些行业领域，同时也对内资民营企业产生了不利影响。净出口将不再像过去二十年一样在经济增长中扮演超大角色。因此，最基本的担忧在于：未来五年中国增长的推动力是什么？

皮书》后面章节所论述的大部分担忧，包括腐败及执法不透明，尤其是在中国一线城市以外的地区。

人力资源问题占前五大担忧（劳动力成本高、法规解释不一致和 / 或法律含混不清、合格员工短缺、管理层人才短缺以及腐败）中的三个，并且自 2010 年以来日益凸显。劳动力成本上升使中国逐渐丧失了过去的竞争优势。找到替代优势，对中国下一阶段的经济的发展至关重要。有超过

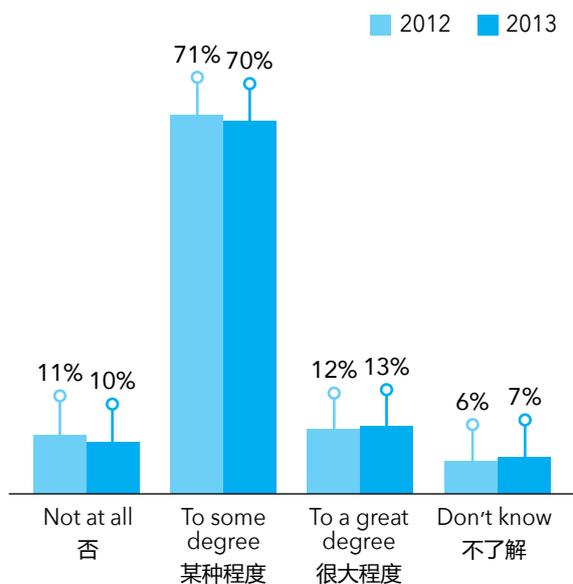
**当前商务环境**

2012 年，由于业绩表现强劲，以及未来三年中国国内需求将会大幅增长的预计，美国在华企业保持乐观。这不仅反映在企业的预期上，还表现在其实际规划上。参与 2012 年商务环境调查的绝大多数美国企业将中国列为三大优先投资目的地之一，其中大部分企业将在华实现的利润用于再投资。

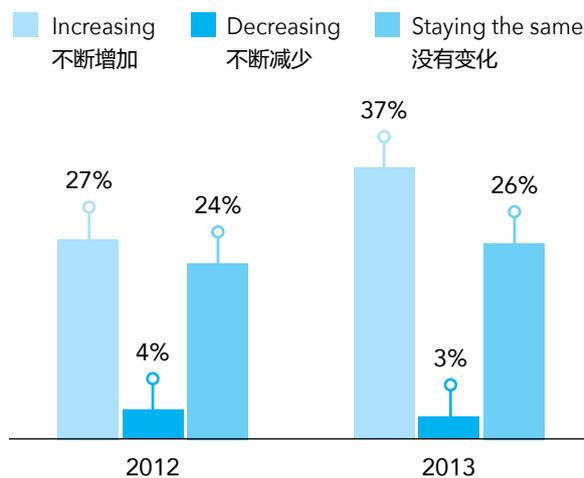
尽管形势乐观，却仍然还有担忧之处。偏向国有企业的政策对许多外资企业以及内资民营企业仍旧不利。人力资源匮乏，不论是技术工人还是管理人才的短缺都使企业越来越担忧，并且很可能因此限制企业按原计划扩展业务。尽管中国仍然是美国企业重要的盈利中心，但随着经济放缓，加之中国公司变得越来越富有竞争力，美国企业的利润略显下滑趋势。

企业经营的最大挑战包括劳动力成本、不同政府部门和司法机关对法规的解释不统一、熟练劳动力（包括普通员工和管理层）短缺、以及腐败。这些挑战涵盖了本《白

**Q China losing competitive advantage 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？

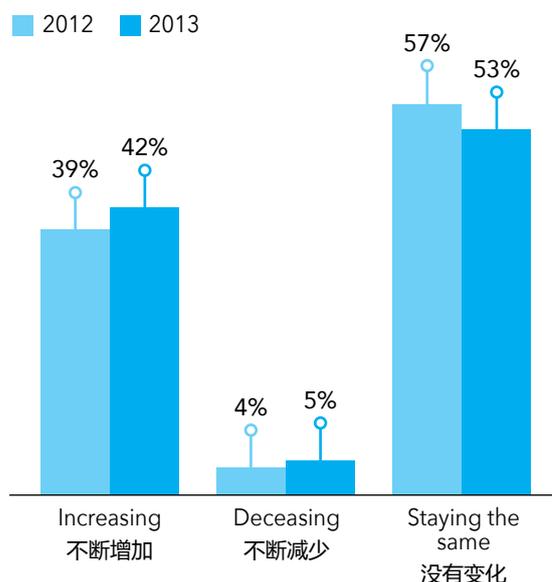


**Q** Do you feel de facto technology transfer as a requirement for market access in China is:\*  
您实际中感到中国国内以市场准入为条件要求企业技术转让的情况 \*



\* "N/A or don't know" category omitted  
该图未包含选项“不清楚或不知道”的数据

**Q** 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：



in its market. This optimism is based in part on market fundamentals, with China already a significant source of revenue for many companies. In addition, there is a sense that another ambitious round of economic reform is forthcoming which, although unlikely to match the scale of reforms undertaken in the late 1980s and early 1990s, would benefit both private domestically-invested enterprises and FIEs.

Trust is an important factor in business relationships, and foreign companies are increasingly concerned and mistrustful about information security in China. For the second year in a row, as shown in the chart above, more than one-third of respondents expressed concern regarding the increasing risk of a data breach negatively impacting their China operations. In the last two years, two-thirds of AmCham China members have begun shifting towards cloud computing globally as big data analytics become increasingly important to stay competitive. Unfortunately, the number of firms willing to base their cloud operations in China is declining, now at less than 50 percent, due to concerns about data security and reliability. China's leadership highlighted cloud computing as a key subsector of new-generation information technology in the Strategic Emerging Industries of the 12<sup>th</sup> Five Year Plan, but the security concerns of consumers and businesses may undermine those goals.

There are signs of improvement in other critical issues supporting China's innovation goals. While intellectual property rights enforcement continues to be perceived as ineffective by a majority of respondents, nearly half note that enforcement has improved over the past five years.

### Securing the Foundations of a High-Income Economy

Over the last several decades, China's economic reforms resulted in unprecedented growth in the overall economy, participation by foreign firms from a wide range of sectors and originating countries, and a steady shift towards higher value manufacturing and services. Individual incomes have risen significantly, as have the choices for applying such income. By 2010 China had met or was on track to meet all of its Millennium Development Goals a full five years early, including achieving poverty and education goals well ahead of schedule. But alongside national economic progress, rapid economic growth has been accompanied by growing concern over pollution, food safety and energy supply.

As China's new generation of leaders takes office a number of pressing issues await them, including continued urbanization, high levels of income inequality, environmental degradation and the *hukou* household registration system. Not surprisingly, each of these issues is closely interrelated; they must be addressed with coherent and consistent policies, lest the solution for one exacerbate another. The paramount question among leading economists and analysts, from government to think tanks to academia to business circles, is how China can avoid the so-called "middle-income trap."

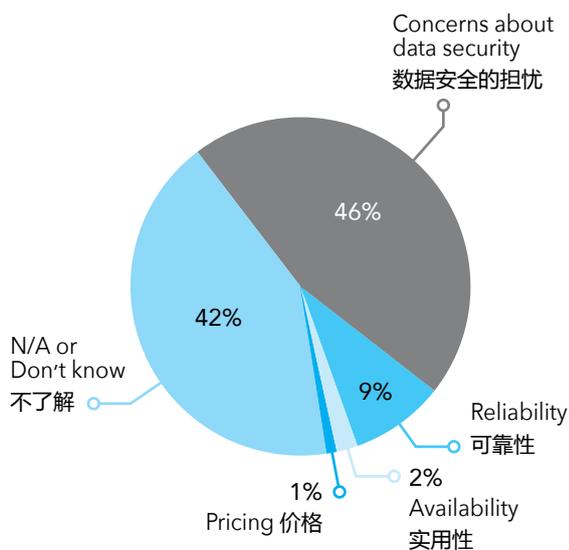
The middle-income trap describes countries which have rapidly entered middle income status, yet fail to maintain momentum and push through to higher income levels. A

10% 的受访者表示，2011 年将部分产能移出中国的主要原因在于劳动力成本。中国应当控制劳动力成本，并进行监管改革，例如增加市场准入，这样才能为外资企业维持一个具有吸引力的经营环境。

腐败负面影响着外国投资者对一个经济体的信任水平，而不一致的法规加大了外资企业和内资企业的经营困难。对于在受限制行业中经营的公司而言，经营环境变得更为不利，三分之一的受访者表示经营条件恶化，相比之下，只有不到五分之一的外资企业表示经营条件改善。与此同时，会员企业感觉到美国出口管制已有所放开，这凸显了两国对敏感领域和技术问题领域双边待遇的理解已经有了不平衡的转变。尽管中国法规并未明确表示，但实际上却有强制技术转让的要求，这种不平衡就显得更为明显。对此，有更多的美国企业表示压力增加，而表示压力没有变化的则有所减少。

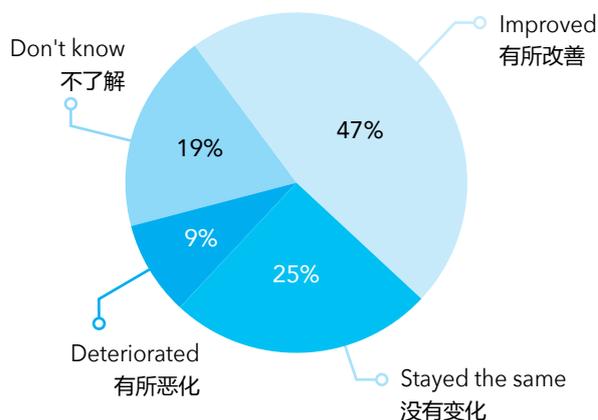
尽管存在许多挑战，我们的会员企业对中国经济的未来及其在华市场的地位仍然表示乐观。这种乐观态度部分是基于中国的市场基础，同时基于中国已经是许多公司一大重要收入来源的事实。另外，有迹象表明新一轮大刀阔斧的经济改革即将来临。尽管规模可能比不上上世纪八十年代后期九十年代初期进行的改革，但新一轮的改革将会使内资民营企业 and 外资企业受益。

**Q If you would not consider using China-based cloud computing, is the reason due to: \***  
不考虑使用中国云计算服务的原因：\*



\* "N/A or don't know" category omitted  
该图未包含选项“不清楚或不知道”的数据

**Q In the last five years, China's enforcement of IPR has:**  
过去五年中国知识产权的执法情况



信任是商务关系中的一项重要因素，但外资公司却对中国的信息安全表示越来越担忧和不信任。如上图所示，连续两年超过三分之一的受访者担心，日益增加的数据侵害风险将对其在华运营产生负面影响。在过去两年中，中国美国商会三分之二的会员企业开始将云计算转向全球，因为对于保持竞争力而言，大数据分析变得日益重要。遗憾的是，愿意将云计算业务基地设置在中国的企业数量不断减少，目前不到一半，原因是企业担心数据的安全性和可靠性。在“十二五”战略性新兴产业规划中，中国的领导层将云计算列为新一代信息技术的一个重要组成部分，然而消费者和企业安全上的顾虑将不利于上述目标的实现。

有迹象表明，有助于中国实现其创新目标的其他关键问题有所改善。尽管大部分受访者仍然认为知识产权执法没有成效，但接近一半的企业表示，过去五年间知识产权执法取得了改善。

**确保高收入经济体的基础**

在过去数十年间，中国的经济改革促使整体经济实现了空前的增长，来自许多国家和行业的外国企业都参与了这一过程，同时改革也推动了中国稳步向附加值更高的制造业和服务业转型。个人收入显著提高，人们也有了支配这些收入的更多选择。到 2010 年，中国整整提前五年实现了或即将实现其所有的千年发展目标，包括提前实现了扶贫和教育目标。但随着国民经济发展，经济快速增长也带来了人们对污染、食品安全和能源供应问题日益增加的担忧。

growing number of lower middle-income countries grew rapidly in recent decades through competitive export industries built around comparative labor cost advantages. As labor costs increase, however, these countries slowly become less competitive as their reliance on cheap and abundant labor over productivity stunts their economic growth. One recent study found that 85 percent of the slow-downs resulted from a decline in total factor productivity, on average shifting from growth of 3.04 percent to less than one-tenth of a percent.

It is important to recognize that the middle-income trap is a symptom of economic policies rather than an inevitability. Unfortunately, by 2010, over two-thirds of middle-income countries fell within the trap. A 2012 OECD study found that avoiding the trap requires a coherent and complementary set of policies in the areas of education, infrastructure, innovation and finance, to support a shift towards higher value-added and knowledge-intensive industries and services. The Asian Development Bank has additionally noted that growing domestic demand is another important factor observed in Newly Industrialized Asian countries, where incomes have converged with upper-income countries.

An adequate infrastructure stock is necessary for reaching high-income status. Thus, it should not be surprising that over the past decade China has increasingly relied on an investment-led growth model, with investment in recent years reaching nearly 50 percent of GDP. High investment is not inherently bad; historically, investment has been a critical part of many low-income economies' development. The US and other high-income countries relied heavily on investment-driven growth during their own nascent development stages. Economists have observed that while every country that reached high-income status invested heavily in infrastructure, not every country that invested heavily reached high-income status. Importantly, China's continued and growing focus on investment, especially under the direction of governmental bodies and SOEs, raises significant concerns.

First, while adequate infrastructure is an important factor in sustaining growth, it is possible to have too much infrastructure as well as the wrong type of infrastructure. Each investment project beyond what is needed does not necessarily constitute capital that will one day be used as China "grows into it." Rather, it represents a misallocation of precious resources in a country that is relatively poor today.

Second, the fact that investment is heavily driven by SOEs, with access to cheap finance via a state-dominated financial sector, is an additional distortion. Empirical studies have found that while private sector investment generally yields higher returns, state-owned banks continue to favor SOEs. This not only adds to inefficient and unnecessary investment, it also hinders development of China's domestically-owned private sector. The private sector is a key innovation driver in all other countries in the world. In China, some of

the most competitive and innovative service firms are also private. State-owned innovations include the likes of Jike, a search engine which despite nearly RMB 2 billion of investment holds less than a one percent market share after years of development.

Finally, policies to support the investment-led growth model, including interest rate regulation and particularly financial repression, by which interest rates are regulated in order to direct household savings towards SOEs in a way that guarantees profit for the banking industry, result in artificially low household consumption—under 40 percent in 2012 and the lowest observed in modern history, excepting wartime. This disadvantages not only households, who cannot enjoy a lifestyle commensurate with their substantial per capita GDP gains, but also domestically-owned firms which aim to serve the domestic market. These firms play a critical role in high-income economies, both as employers and drivers of innovation.

The interrelated nature of these problems requires a coordinated and consistent policy response. Chinese leaders need to simultaneously address inefficiencies in China's financial markets and SOEs, while supporting growth in consumer demand with an ambition and scope as large as that pursued in the reform period that ushered in significant improvement for so many Chinese during the 1990s.

China's leadership in the late 1980s and early 1990s recognized the need for further reform, and pursued expansive reform programs that impacted the whole country. In 1985, foreign ownership accounted for less than one percent of total assets and domestic private ownership for just two percent. By 1990, these figures had risen to one percent and four percent, respectively. By 1997, output from individual and other non-state-owned enterprises accounted for 57.2 percent of total output, compared to just 28.4 percent in 1990. Once again, pursuing policies at a depth and scope sufficient to address endemic problems will be neither politically nor technically easy to implement. Given the broad economic and individual costs they present, we hope that China's leaders are bold in adopting an appropriate growth model for the coming decade.

AmCham China recommends liberalizing financial markets, which would simultaneously halt financial repression and support growth of domestic demand, while reigning in the excessive and inefficient investment of SOEs and other quasi-governmental entities. Private firms would increasingly compete on an equal footing with the remaining SOEs, and China's already competitive marketplace would become even more so. This would support sustainable, productivity-driven economic growth, to the benefit of consumers. Economists estimate that, were investment decisions handled primarily by the private sector, investment as a share of GDP could decline by as much as eight percent with no negative impact on economic growth. Moreover, if investment and labor could adjust under free market prin-

随着中国新一代领导人开始执政，许多紧迫的问题有待他们解决，包括：继续城镇化、收入分配严重不平等、环境恶化和户口登记制度。毫不奇怪，上述每一个问题都是互相关联的，必须通过协调一致的政策予以解决，以免顾此失彼。对于从政府、智库、学术到业界的主要经济学家和分析人士来说，首要的问题是中國如何才能避免所谓的“中等收入陷阱”。

中等收入陷阱指的是一些国家快速实现了中等收入水平，却未能保持足够动力、推进到更高收入水平。近几十年来，有越来越多的中低收入国家依托劳动力比较成本优势，通过具有竞争力的出口行业实现了迅速增长。然而，随着劳动力成本的增加，这些国家逐渐丧失了竞争力，因为他们更多地依赖于廉价而充足的劳动力，而忽略了提高生产率，从而阻碍了经济的健康发展。最近的一项研究发现，85%的经济衰退源于全要素生产率的下降，平均增长率从3.04%跌为不到0.1%。

中等收入陷阱其实是经济政策的表征而非必然，认识到这一点很重要。遗憾的是，截至2010年，有三分之二的中等收入国家掉了该陷阱。经济合作与发展组织2012年的一项研究发现，为了避免落入陷阱，需要在教育、基础设施、创新和金融等领域出台一套协调一致又相互补充的政策，以支持经济向附加值更高的知识密集型产业和服务转型。另外，亚洲开发银行指出，不断增长的国内需求是在亚洲新兴工业化国家中观察到的另一项重要因素，这些国家的收入已逐渐与高收入国家趋近。

为了达到高收入水平，适当的基础设施存量必不可少。因此，在过去十年，中国越发依赖于投资拉动的增长模式，近年来投资占GDP的比重接近50%，这不足为奇。高投资并非就一定不好；历史经验表明，投资是许多低收入经济体发展的重要组成部分。美国和其他高收入国家在各自发展的初期阶段都高度依赖投资驱动的增长。经济学家们注意到，尽管每个实现高收入水平的国家都曾高度投资于基础设施，但并非每一个高度投资于基础设施的国家都发展到了高收入水平。重要的是，中国持续且有增无减地注重投资，尤其是在政府机构和国有企业的引导下进行投资，令人非常担忧。

首先，尽管适当的基础设施是可持续增长的一项重要因素，但也可能出现基础设施过度建设以及基础设施类型错误的问题。每一项超出需求的投资项目未必能成为中国将来发展起来后的可用资本。相反，这意味着一个目前仍

然相对贫穷的国家其宝贵资源没有得到适当配置。

其次，投资大量地由国有企业推动，而这些国有企业又能在国有主导的金融行业获得低成本的融资，这无异于错上加错。实证研究发现，尽管民营领域投资能够产生更高的回报，国有银行仍然更青睐国有企业。这不仅会使效率低下和不必要的投资有增无减，还阻碍了中国内资民营企业的发展。在世界其他国家，民营企业无一不是主要的创新推动者。在中国，一些最具有竞争力和创新性的服务企业也是民营的。而国有企业的创新，包括搜索引擎“即刻”类型的，尽管经过了多年开发，投入了将近人民币20亿元，市场份额却还不到1%。

最后，支持投资驱动型增长模式的政策，包括利率管制尤其是金融压抑，通过管制利率以便将居民存款引导投向国有企业，并确保银行业的利润，导致了人为造成的居民消费过低——2012年不足40%，是现代史中除了战时以外监测到的最低值。这不仅不利于居民家庭，因为人们无法享受到与其较高的人均GDP相称的生活水平，同时也不利于以服务国内市场为目标的内资企业。上述企业在高收入经济体中作为雇主和创新的驱动者，扮演着关键的角色。

上述问题的相互关联特性，要求有一套协调且统一的应对政策。中国领导人需要同步解决中国金融市场和国有企业效率低下的问题，同时，需要以上世纪九十年代改革时期带领许多中国人实现重大进步的气魄和力度支持消费需求的增长。

中国的领导层在上世纪八十年代后期九十年代初期认识到了进一步改革的必要性，并实施了影响到整个国家的广泛的改革方案。1985年，外商仅拥有不到1%的中国总资产，内资民营企业仅拥有2%。到1990年，该数字分别增长为1%和4%。到1997年，个人和其他非国有企业的产出占总产出的57.2%，而1990年只有28.4%。再者，推行深度和广度上足以解决普遍性问题的政策，无论从政治上还是技术上实施起来都非易事。鉴于实施新政意味着广泛的经济形式和个体的成本，我们希望中国领导人能够大胆地采用对未来十年适用的增长模式。

中国美国商会建议，放宽对金融市场的管制，这将同步遏制金融压抑并支持国内需求的增长，同时管控国有企业和其他半官方实体泛滥且效率低下的投资。民营企业将逐渐与其它国有企业展开公平的竞争，而中国已颇具竞争力的市场将变得更有竞争力。这将有助于实现可持续的、由生产率推动的经济增长，使消费者从中受益。经济学家

ciples, productivity in China's manufacturing sector could rise by as much as 50 percent.

SOEs were founded and supported to ensure domestic players existed and grew in sectors which the government considered strategic. A strong state sector is a common feature of the investment-led growth model, including some high-income economies. But transitioning to a truly competitive, efficient and high-productivity economy requires unleashing the full creativity of individual entrepreneurs. Silicon Valley's success did not follow government edict; rather, it arose from countless earnest and inspired attempts by individuals with ideas and ambition. There have been more failures than successes, suggesting that risk appetite and tolerance for failure are key drivers of sustained innovation. Similarly, America's commercial aviation sector first took off after its own state-run monopoly relinquished control—when Congress ordered the Postal Service to privatize aviation mail services in 1926. Air passenger traffic in the US grew rapidly following the 1978 Airline Deregulation Act, with annual passengers more than tripling between 1974 and 2010, as inflation-adjusted prices declined by over 50 percent. China has proven it has an outsized share of entrepreneurial spirit and the ability to rapidly embrace technology in new ways. Unleashing this entrepreneurship and talent in sectors long off-limits to private enterprise or unfairly dominated by SOEs will accelerate productivity growth.

An innovation ecosystem that grants sufficient and equal protection to both domestically-owned firms and FIEs would ensure that Chinese inventors and investors have access not only to the world's fastest-growing large market, but also to the best technologies and talents, regardless of country of origin. Much of the innovation in places like Silicon Valley occurs with considerable cross-border collaboration, both financial and scientific. AmCham China believes that China can most quickly and completely meet its objectives if it is well-integrated into global innovation networks.

## Near-term Solutions

AmCham China member companies are well-positioned to provide market-based solutions to many of the problems China faces in the near term. This White Paper contains numerous policy recommendations that would improve performance in sectors critical to China's development. These include, but are not limited to, clean technology and environmental services, energy, the food, beverage and agriculture industries, real estate, healthcare, government procurement, and related to all of them, innovation policy.

The US has combated air, soil and water pollution problems aggressively over the past several decades, through the adoption of cleaner technologies, as well as monitoring and treatment of emission sources. To maximize the contribution of the technologies and know-how of foreign firms, foreign

firms should be allowed greater opportunity to comment and advise on new regulations and standards, as well as to participate in pilot programs, government procurement, and subsidy programs. For example, comprehensive and cohesive oil and gas legislation making foreign participation financially viable, including in shale oil and gas, can help further reduce China's reliance on coal as a primary energy source.

Food supply and safety are also significant and growing concerns as China grows wealthier and continues to urbanize. The growing distance between consumers and food sources introduce new challenges for food safety, while China's population and its changing preferences place new pressures on an already-stressed agricultural industry. Moving seed production and other restricted agricultural sectors to the "encouraged" investment category would assist agricultural modernization, helping China to reach international productivity levels. Strengthening China's food safety regime, including through a more unified set of science-based regulations, would help reduce risks to final consumers. The decision to elevate the unified food and drug safety regulator to general administration level is a welcome step in this direction.

In addition to continued urbanization, China's population is expected to age significantly in the coming decade. China needs to prepare for this demographic shift. A higher share of the population will be of retirement age, yet traditional care-giving by family may not be sufficient. In high-income countries, a significant service industry exists to ensure quality care for the elderly, yet the lack of a clear regulatory framework in China discourages private investment, including by experienced foreign operators. The aging of the population will also place higher demands on China's healthcare system, but many of the initiatives outlined in State Council Document 58 to encourage foreign participation in the sector remain unimplemented, creating uncertainty and delaying foreign investment.

Corruption continues to be perceived as a major problem by the business community. AmCham China welcomes the new leadership's emphasis on combating corruption and improving government efficiency. The foreign business community notes that corruption and inefficiency increase business environment uncertainty and curtail investment. A key area to consider for further reform is government procurement, where significant cost savings and improved services for Chinese citizens can be achieved through increased competition and transparency. We support China's accession to the WTO Agreement on Government Procurement because it would reduce local protectionism and corruption, benefiting everyone.

Economic maturity brings a new set of development challenges to China, in government, business and its citizens. The rising costs of labor, land and raw materials place new emphasis on managing expenses and productivity improve-

预计，如果投资决策主要由民营部门处理，那么投资占 GDP 的比重就可能下降高达 8%，且对经济增长不会造成负面影响。另外，如果投资和劳动力能够依照自由市场原则调整，中国制造部门生产率的上升将可高达 50%。

当初建立并支持国有企业是为了确保国内企业在政府认定的战略性行业中能够存在和发展。强大的国有部门是投资驱动增长模式的一个共同特征，包括一些高收入经济体也是如此。但要转型为真正具有竞争力的、高效率且高生产率的经济体，就需要彻底解放个体企业家的创造力。硅谷的成功并非遵照政府的指示；相反，它源于许多具有创意和雄心的个体无数次认真而又充满灵感的尝试。失败往往多于成功，这说明敢于冒险、耐得住失败是持续创新的关键驱动因素。同样，美国的商用航空业在国营垄断放弃管制之后才得以腾飞——1926 年，国会下令邮政局将航空邮递服务私有化。在 1978 年颁布实施《航空业管制解除法案》之后，美国的航空客运业得到快速发展，到 2010 年，年客运量增至 1974 年的三倍多，而扣除物价上涨因素之后的价格则下降超过 50%。中国已证明其拥有超级多的创业精神和能力，可以迅速地以各种新方式应用技术。将长期以来被列为民营企业禁区、或被国有企业不公平地主导的行业开放给这些创业者和人才将加速生产率的提高。

一个给予内外资企业充分而公平保护的创新生态系统将确保中国的发明者和投资者不仅能够进入这个世界增长速度最快的大市场，而且还能使他们不受原产地的限制，获得最好的技术和人才。硅谷等地的许多创新来自于相当多的跨境金融和科技合作。中国美国商会相信，中国只要更好地融入全球创新网络，就能够很快完全实现其目标。

## 近期解决方案

对于中国近期所面临的许多问题，中国美国商会会员企业可以提供基于市场的解决方案。本《白皮书》包含了许多政策建议，有助于改善对中国发展至关重要的行业的绩效。这些建议包括但不限于清洁能源和环境服务、能源、食品饮料与农业、房地产、医疗卫生、政府采购，以及上述所有领域息息相关的创新政策。

在过去几十年间，美国通过采用更清洁的技术，对排放源进行监控和处理，积极治理空气、土壤和水污染问题。为使外资企业能够在技术和诀窍上做出最大的贡献，应当给予外资企业更多的机会就新法规和新标准发表意见和建议，并参与试点项目、政府采购和补贴项目。例如，

全面而协调的油气立法，包括在页岩油和页岩气领域，使得外资企业的参与具有财务上的可行性，都能够帮助中国进一步降低将煤炭作为主要能源的依赖程度。

随着中国越来越富裕，城镇化进程持续推进，食品供应和安全也日益受到关注。消费者与食品来源地之间距离越来越远，给食品安全带来了新的挑战，而中国人口及其不断变化的偏好，给本已不堪重负的农业增加了新的压力。将种子生产和其他受限的农业门类调整至“鼓励”投资类，将有利于农业现代化，有助于中国达到国际生产率水平。加强中国的食品安全体制，包括建立一套更统一、更科学的法规，将有助于减少最终消费者的风险。中央决定将食品和药品安全的统一监管机构提高至总局级别是朝上述方向迈出的值得赞许的一步。

除了持续城镇化之外，中国人口预计在未来十年将大幅度趋向于老龄化。中国需要为这一人口统计学上的变化做好准备。更高比例的人口将进入退休年龄，然而家庭可能无法提供充分的护理服务。高收入国家都有一个主要的服务行业为老年人提供高质量的护理服务，而中国由于缺乏明确的监管框架，使民间包括有经验的外国经营者都不敢投资。人口老龄化还将对中国的医疗体系产生更高的需求，但在鼓励外资进入这一行业的国务院 58 号文件中，许多措施仍然未付诸实施，造成了不确定性并使外国投资者踌躇不前。

腐败继续被业界视为一个重大问题。对新领导层强调反腐和提高政府效率的决心，中国美国商会表示欢迎。外国商界指出，腐败和低效率增加了经营环境的不确定性并阻碍了投资。需要进一步改革的一个关键领域是政府采购，通过增加竞争和提升透明度，可以大大节约采购成本，并改善对中国公民的服务。我们支持中国加入 WTO 的《政府采购协定》，因为这将降低地方保护主义和腐败，有百利而无一害。

经济走向成熟给中国带来了一系列新的发展挑战，涉及政府、企业和公民三大方面。劳动力、土地和原材料成本的提高将使发展重心从单纯的收入增长转为费用管理和生产率的提高。中国目前已经成为具有较先进技术的中等收入国家，亦是世界第二大经济体。持续的双位数 GDP 增长将不再可能，也不再可取，但其中长期的发展潜力仍然在战略上对大部分跨国企业而言至关重要。公众日益关注社会和环境问题，这就需要采取能提高经济增长可持续性的新战略。美国商界愿意为解决这些问题并帮助实现中国发展之梦而做出贡献。

ments, and not just revenue growth. China is now a middle-income country with relatively advanced technology, and the second largest GDP in the world. Sustained double-digit GDP growth rates are no longer possible or desirable, but medium- and long-term potential remains strategically central to most multinational firms. Social and environmental concerns are increasingly important to the public, demanding new strategies to improve the sustainability of economic growth. The US business community is ready to contribute to addressing these problems and ensuring China's development dreams are realized.



## 2013 White Paper Priority Recommendations Scorecard

The table below is an index of all priority recommendations in the 2012 and 2013 AmCham China *White Papers*. The progress on each issue from 2012 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	2012 Recommendation	Progress Rating	2013 Recommendation
<b>Agriculture</b>			
<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.	3	Work with Chinese officials through bilateral dialogues including the JCCT, S&ED and US-China Investment Forum to address investment restrictions faced by US agriculture producers.
<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	0	Reduce barriers to foreign participation and investment in agriculture, in particular moving more agricultural products to encouraged status in the "Guiding Catalogue on Foreign Investment in Industry", and opening up the distribution and retail of seeds in China in line with China's WTO commitments.
<b>Automotive</b>			
<i>Chinese Government</i>	N/A	N/A	Issue detailed management rules for Phase 3 Standard of passenger car fuel consumption limits as soon as possible in order to facilitate compliance.
<b>Business Process Outsourcing</b>			
<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.	1	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.
<b>Business Sustainability</b>			
<i>US Government</i>	Facilitate the dissemination of international knowledge, tools, and best practices for business sustainability.	1	N/A
<i>Chinese Government</i>	Consult broadly with business when designing policies, guidelines, and laws relevant to business to encourage compliance, provide sufficient guidance, and level the playing field.	3	N/A
<b>Chengdu</b>			
<i>Chengdu Government</i>	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.	5	Improve traffic support systems around manufacturing enterprises and economic zones. Divide future urban infrastructure projects into phases, and staggering these phases to avoid unnecessary interruptions for residents and workers.
<b>Chongqing</b>			
<i>Chongqing Government</i>	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.	2	Continue to develop a stronger and more transparent legal system, to address corruption and better empower legal professionals.
<b>Civil Aviation</b>			
<i>Chinese Government</i>	Continue increasing the amount of civil-use airspace and expanding the flexibility of air traffic operational procedures.	3	Continue opening up and reforming China's national airspace system to enable both growth and efficiency for all users.
<b>Clean Technology</b>			
<i>Chinese Government</i>	N/A	N/A	Increase engagement with and participation of FIEs in the development of laws, regulations, standards, pilot programs, and financial incentive programs relating to clean technology, including by providing sufficient notice and comment periods prior to promulgation.
<i>Both Governments</i>	N/A	N/A	Continue to support bilateral US-China market development, trade promotion, and research initiatives by providing funding, speakers, and support from the relevant government agencies.

## 2013年《白皮书》重点关注问题一览表

下表列出中国美国商会 2012 及 2013 年白皮书中主要关注的建议。过去一年已对 2012 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	2012年白皮书主要建议汇总	2012年进展评分	2013年白皮书主要建议汇总
<b>农业</b>			
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、梨和鲑鱼）的美国市场准入要求。	3	通过美中商贸联委会、美中战略经济对话和中美投资论坛等平台，加强双边对话，解决美国农业企业所面临的投资限制。
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。	0	减少外资参与和投资农业的障碍，特别是将更多的农产品列入《外商投资产业指导目录》中的鼓励类；按照中国的人世承诺，开放中国的种子批发和零售市场。
<b>汽车</b>			
中国政府	N/A	N/A	尽快出台第三阶段标准中乘用车燃料消耗限制管理细则，便于相关主体遵守。
<b>业务流程外包</b>			
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。	1	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。
<b>企业可持续性</b>			
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。	1	N/A
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。	3	N/A
<b>成都</b>			
成都市政府	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。	5	改善制造业企业和经济开发区的交通支持系统。分阶段实施城市基础设施改建项目，错峰作业，避免对居民和职工造成不必要的干扰。
<b>重庆</b>			
重庆市政府	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。	2	加强法律体系建设，提升法律体系透明度，打击腐败并增强法律专业人士的权利。
<b>民用航空</b>			
中国政府	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。	3	继续开放和改革全国空域系统，使所有使用者都能实现增长，提高效率。
<b>清洁技术</b>			
中国政府	N/A	N/A	在制定清洁能源相关的法律、法规、标准、试点项目和财政激励方案时提高外资企业的参与度，包括在出台相关法律法规方面提供充足的时间进行公示和征求意见。
两国政府	N/A	N/A	继续支持美中双边市场开发、贸易促进和研究行动，提供资金、演讲者，同时相关政府部门提供支持。

Chapter	2012 Recommendation	Progress Rating	2013 Recommendation
<b>Competition Law</b>			
<i>Chinese Government</i>	Allow foreign lawyers to attend and participate in hearings alongside local counsel.	1	Issue a notice clarifying that international lawyers (including Chinese lawyers working in foreign law firms) are allowed to attend hearings alongside local counsel.
<b>Construction, Engineering, and Design</b>			
<i>Chinese Government</i>	Formally issue regulations clarifying qualifications required to undertake EPC contracting.	1	Formally issue regulations clarifying qualifications required to undertake EPC contracting.
<b>Cosmetics</b>			
<i>Chinese Government</i>	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."	1	Do not manage all new ingredients through application of a list; adjust policies to reflect market realities and make the registration of new ingredients practical.
<b>Customs</b>			
<i>Chinese Government</i>	Improve the management system over processing operations.	3	Continue to refine the management of the Customs clearance process.
<b>Dalian</b>			
<i>Dalian Government</i>	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.	5	Timely completion and additional investment as needed in the transportation infrastructure, including the Fast Track Transit, subway, and bus lanes to reduce congestion.
<b>Direct Sales</b>			
<i>Chinese Government</i>	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.	0	Revise service center requirements from one per urban district to one per city.
<b>Electronic Payment Services</b>			
<i>Chinese Government</i>	Open market access to other domestic and international EPS providers in addition to China Union Pay. [PBOC and MOFCOM]	3	Open market access to other domestic and international EPS providers with clear licensing requirement.
<b>Express Delivery Services</b>			
<i>Chinese Government</i>	Ensure timely processing of EDS domestic license approvals, and apprise applicants of their application status in a timely manner.	4	SPB should revise its departmental rules to strictly conform with higher-level laws, procedures and regulations, particularly administrative license regulations.
<b>Financial Services</b>			
<i>Chinese Government —Commercial Banking</i>	N/A	N/A	Raise and eventually eliminate the ceiling of ownership of foreign investors in local Chinese banks.
<i>Chinese Government —Interbank Markets</i>	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]	3	Further lift interbank limitations over foreign firms from the People's Bank of China (PBOC) and the National Association of Financial Market Institutional Investors (NAFMII).
<i>Chinese Government —Private Equity</i>	N/A	N/A	Keep the international "see-through" income taxes practice to avoid double taxation.
<i>Chinese Government —Securities</i>	N/A	N/A	Grant SJVs business licenses related to innovative products more flexibly; shorten the grace period for securities JVs to get new licenses.
<b>Food and Beverage (formerly Food Safety)</b>			
<i>US Government</i>	Provide expanded resources for the US FDA to collaborate with Chinese counterparts on food safety issues.	4	N/A
<i>Chinese Government</i>	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.	4	Improve coordination on supervision, and reduce overlap between regulators by strengthening inter-ministry communication or establish a unified food safety authority.

章节	2012年白皮书主要建议汇总	2012年进展评分	2013年白皮书主要建议汇总
<b>竞争法规</b>			
中国政府	允许外国律师与本地法律顾问一同出席和参与听证会。	1	发布通知明确允许国际律师（包括在外资所工作的中国律师）与本地法律顾问一同出席和参与听证会。
<b>建筑、工程和设计</b>			
中国政府	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。	1	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。
<b>化妆品</b>			
中国政府	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。	1	不宜采用列表的方式管理新原料；按照行业实际情况调整政策，让新原料注册具有实际的可操作性。
<b>海关</b>			
中国政府	进一步完善加工贸易管理制度。	3	继续优化海关通关程序管理。
<b>大连</b>			
大连市政府	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。	5	及时追加投资，如期完成交通基础设施工程，包括快轨、地铁和公交车道，以缓解拥堵状况。
<b>直销</b>			
中国政府	将关于设立服务网点的规定从每个市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。	0	将关于设立服务网点的规定从每个市区设立一个修改为每个城市设立一个。
<b>电子支付</b>			
中国政府	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]	3	以明确的许可证要求，向其它国内外的 EPS 供应商开放市场。
<b>快递服务</b>			
中国政府	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。	4	国家邮政局应当严格根据上位法、程序和法规对其制定发布的部门规章进行修改，特别是对有关行政许可相关规定进行修改。
<b>金融服务</b>			
中国政府 ——商业银行	N/A	N/A	提高并最终取消对外国投资者在本地中资银行的持股比例上限。
中国政府 ——银行间市场	支持对所有的银行和证券公司实行国民待遇，包括允许外资银行在国内市场完全公平竞争（尤其是在承销和衍生品交易方面），以及在所有的金融服务行业消除对国外所有权的限制。[人民银行，交易商协会，中国银监会，中国证监会，国务院]	3	进一步取消中国人民银行和中国银行间市场交易商协会对外资企业进入银行间交易市场的限制。
中国政府 ——私募股权	N/A	N/A	保留国际通行的所得税一次征税的惯例，避免双重征税。
中国政府 ——证券	N/A	N/A	提高中外合资证券公司创新产品业务许可审批的灵活性，缩短合资证券公司取得新业务许可的宽限期。
<b>食品饮料</b>			
美国政府	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。	4	N/A
中国政府	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。	4	通过加强部委间沟通或者建立一个统一的食品安全权威机构来改进协调和监管，减少监管部门职能的重合。

Chapter	2012 Recommendation	Progress Rating	2013 Recommendation
<b>Government Procurement</b>			
<i>Chinese Government</i>	Submit a revised GPA accession offer in line with those of current parties.	3	Submit a revised GPA accession offer in line with those of current parties.
<b>Healthcare</b>			
<i>Chinese Government —Healthcare Services</i>	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.	0	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>	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.	1	Utilize fair and market-oriented competition in order to encourage industry to provide higher-levels of medical and health services.
<i>Chinese Government —Pharmaceuticals</i>	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.	1	Further development of the hospital bidding system based on the “quality first reasonable price” principle.
<b>High-Tech Trade Promotion and Export Controls</b>			
<i>US Government</i>	Formally recognize the ECWG as the public-private partnership mechanism for dialogue in the US-China trade control exchange.	4	Take into account the availability of items in China from both domestic and foreign sources as the US evaluates control lists during the export control reform and through individual licensing decisions.
<i>Chinese Government</i>	Formally recognize the ECWG as the public-private partnership mechanism for dialogue in the US-China trade control exchange.	4	Strengthen the legal framework, implementation, and enforcement of its export control system by: <ul style="list-style-type: none"> <li>• Clearly separating civilian and military programs to ensure dual-use items are not passed from civil to military programs; and</li> <li>• Increasing transparency and clarity of Chinese export controls by streamlining all export control lists into a single harmonized dual-use export control list.</li> </ul>
<i>Both Governments</i>	N/A	N/A	Both the US and Chinese Governments should 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. For example, the Chinese government might want to support or encourage Chinese companies to join the ECWG Chinese Subscription Program in order to learn the US Export Control regime and Compliance Program.
<b>Human Resources</b>			
<i>US Government</i>	Negotiate a tax totalization treaty with China.	0	Negotiate a tax totalization treaty with China.
<i>Chinese Government</i>	Allow foreign employees to opt out of healthcare 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.	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.
<b>Information and Communications Technology and Cyber Security</b>			
<i>US Government</i>	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.	2	Relevant agencies of the US government, including the Department of State, Department of Commerce, and FCC, should coordinate to engage with China on information security policy as it relates to trade and innovation.
<i>Chinese Government</i>	De-link product security credentials from the origin of its IP, including for foreign encryption technology and products at MLPS level three and above.	1	De-link product security credentials from the origin of its IP, including for foreign encryption technology and products at MLPS level three and above.
<b>Innovation Policy</b>			
<i>Chinese Government</i>	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.	2	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.

章节	2012年白皮书主要建议汇总	2012年进展评分	2013年白皮书主要建议汇总
<b>政府采购</b>			
中国政府	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。	3	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。
<b>卫生保健</b>			
中国政府 ——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”。	0	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	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。	1	营造公平，以市场为导向的竞争环境，鼓励行业提供高水平的医药卫生服务。
中国政府 ——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。	1	在“质量第一，价格合理”的原则指导下继续改进医院招标采购制度。
<b>高科技贸易促进和出口管制</b>			
美国政府	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。	4	在出口管制改革期间对管制清单进行评估并作出单独许可决策时，应考虑到中国是否可以从国内和国外获得相关产品。
中国政府	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。	4	应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。
两国政府	N/A	N/A	美中两国政府应通过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，支持美中商业高科技贸易促进活动和教育活动。例如，中国政府可能希望支持或鼓励中国公司加入出口管制工作组中国征订计划，从而学习更多美国出口管制制度和合规计划。
<b>人力资源</b>			
美国政府	与中国政府就税务加总协议展开协商。	0	与中国政府就税务加总协议展开协商。
中国政府	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。	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。
<b>信息通讯技术和网络安全</b>			
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。	2	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	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。	1	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。
<b>创新政策</b>			
中国政府	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。	2	确保中国近期的战略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。

Chapter	2012 Recommendation	Progress Rating	2013 Recommendation
<b>Insurance</b>			
<i>Chinese Government</i>	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.	4	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.
<b>Intellectual Property Rights</b>			
<i>US Government</i>	N/A	N/A	Support US industry's desire to interact with Chinese legislatures and ministries throughout the IP legislative and regulatory processes.
<i>Chinese Government</i>	Fully implement bilateral commitments on software legalization in state-owned enterprises and all levels of government.	2	Increase transparency and openness of IP legislative and regulatory activity by allowing AmCham members adequate opportunity and sufficient time to provide comments.
<b>Investment Policy</b>			
<i>US Government</i>	N/A	N/A	Resist efforts to politicize Chinese inbound investment into the US and the national security review process of the Committee on Foreign Investment in the US (CFIUS).
<i>Chinese Government</i>	N/A	N/A	Streamline inbound foreign investment approval processes by allowing investments in "encouraged" sectors to be filed for the record without project and foreign investment approvals from NDRC and MOFCOM.
<i>Both Governments</i>	N/A	N/A	Prioritize negotiation of a robust US-China bilateral investment treaty that: <ul style="list-style-type: none"> <li>• Covers the pre-establishment phase of investment;</li> <li>• Reduces the number of sectors that are prohibited, restricted, or have JV requirements;</li> <li>• Allows only minimal exceptions to national treatment; and</li> <li>• Establishes and maintains equal competition among private and state-owned as well as foreign-invested and domestically invested companies.</li> </ul>
<b>Legal Services</b>			
<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 international law firms to hire and admit to their partnerships qualified PRC lawyers and not require PRC qualified lawyers to give up their PRC lawyer's license when they join an international law firm.
<b>Machinery Manufacturing</b>			
<i>Chinese Government</i>	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.	0	Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both foreign- and domestically-invested companies.
<b>Media and Entertainment</b>			
<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.	0	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.
<b>Oil, Energy and Power</b>			
<i>US Government</i>	N/A	N/A	Relevant US government agencies, including the Department of State, Department of Energy and Department of Commerce, should engage their Chinese counterparts to introduce the US regulatory framework governing the oil and gas sector, especially in relation to shale oil and shale gas.
<i>Chinese Government</i>	N/A	N/A	Initiate comprehensive oil and gas legislation. This should include the designation of a specific regulator for the oil and gas sector.
<b>Real Estate</b>			
<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.	1	Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171, and streamline the approval process.

章节	2012年白皮书主要建议汇总	2012年进展评分	2013年白皮书主要建议汇总
<b>保险</b>			
中国政府	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。	4	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
<b>知识产权</b>			
美国政府	N/A	N/A	在知识产权立法和执法过程中，支持美国产业界实现与中国立法机构和相关部委保持互动的愿望。
中国政府	全面履行在各级政府及国有企业中实现软件合法化的双边承诺。	2	提升知识产权立法和执法活动的透明度和公开性，允许美国商会会员企业对此充分表达意见和建议。
<b>投资政策</b>			
美国政府	N/A	N/A	抵制将中国在美国境内投资政治化，以及美国外国投资委员会（CFIUS）国家安全审查程序政治化的倾向。
中国政府	N/A	N/A	简化境内外商投资审批程序，允许外商投资“鼓励类”产业实行“备案制”，无需再获得国家发改委和商务部的项目审批和外商投资审批。
两国政府	N/A	N/A	优先谈判签订中美双边贸易协定，且在协定中包括以下内容： <ul style="list-style-type: none"> <li>• 对投资前阶段作出规定；</li> <li>• 减少“禁止类”、“限制类”或要求设立合营企业的产业数量；</li> <li>• 严格控制国民待遇例外规定；</li> <li>• 营造并维护保障私营企业和国有企业、外资企业和内资企业公平竞争的环境。</li> </ul>
<b>法律服务</b>			
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	修改现行法律法规，允许外国律师事务所雇用中国执业律师并使其成为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃其执业证，以便他们为客户提供全面的法律服务。
<b>工程机械制造业</b>			
中国政府	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。	0	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。
<b>传媒娱乐</b>			
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。	0	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。
<b>石油、能源和电力</b>			
美国政府	N/A	N/A	美国相关政府部门，包括国务院、能源部、商务部应积极与中国对口部门联络，介绍美国在油气行业的监管框架，特别是页岩油和页岩气相关监管框架。
中国政府	N/A	N/A	启动石油天然气综合立法。明确指定一个针对石油和天然气行业的监管机构。
<b>房地产</b>			
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。	1	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。

Chapter	2012 Recommendation	Progress Rating	2013 Recommendation
<b>Retail and E-Commerce</b>			
<i>Chinese Government</i>	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.	2	Apply the same regulations and standards for both foreign and domestic retailers.
<b>Shanghai</b>			
<i>Shanghai Government</i>	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.	4	Develop well-defined, highly intermediated financial markets by allowing depth in both the number and the competitiveness of market participants.
<b>Standards, Certification, and Conformity Assessment</b>			
<i>Chinese Government</i>	Broaden recognition of international SDOs beyond ISO, IEC, and ITU, to any organization which follows the WTO/TBT principles on international standards development.	3	Allow non-Chinese testing organizations to carry out testing in China.
<b>Tax Policy</b>			
<i>US Government</i>	N/A	N/A	Support US residents when their taxation liabilities in China are not in accordance with the US-China tax treaty.
<i>Chinese Government</i>	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.	3	Provide unified standards and transparent procedures concerning the application of anti-avoidance rules.
<b>Tianjin</b>			
<i>Tianjin Government</i>	Improve training programs catering to key sectors, specifically finance, services, IT, and manufacturing, to support growth of Tianjin's tertiary industry.	1	Utilize a PR agency to assist Tianjin in creating a master plan to better brand and market the city.
<b>Visa Policy</b>			
<i>US Government</i>	Increase the capacity of the US Mission in China to meet rapidly increasing demand for nonimmigrant visas by qualified applicants: -Over the short-term, by meeting President Obama's goal of interviewing 80 percent of applicants within three weeks of booking an appointment.	5	Abolish discriminatory per-country caps on employment-based green cards.
<i>Chinese Government</i>	Make visa application requirements and procedures uniform nationwide and publish them so they are transparent.	3	Unify work permit and visa application rules across various regions and publish all rules in writing, thus creating a transparent approach that does not hamper business activities.
<i>Both Governments</i>	Extend visitors' visa validity to 10 years.	1	Extend tourist and business travelers' visa validity to 10 years.
<b>Work Safety</b>			
<i>US Government</i>	N/A	N/A	Collaborate with the Chinese government and industry experts in sharing best-case practices.
<i>Chinese Government</i>	Improve worker safety by requiring personnel who work at heights over two meters to use safety equipment with fall protection, such as aerial work platforms with guard rails, belts, and other safety protection; and mandate that aerial work platforms have overload brakes, inclination brakes, descend assistance systems, and operation signal lights.	2	Increase lease and financing options for the investment in and use of access and safety equipment.
<b>Wuhan</b>			
<i>US Government</i>	Offer American citizen services, such as notary, tax, and other services, at the US Consulate in Wuhan.	4	Increase the services available to both US citizens and Chinese at the US Consulate in Wuhan.
<i>Wuhan Government</i>	Encourage international-standard healthcare facilities to operate in Wuhan through the provision of incentives to qualified operators.	2	Publish clear requirements for State-Owned Enterprises regarding business payments and increase measures to enforce the standards.

章节	2012年白皮书主要建议汇总	2012年进展评分	2013年白皮书主要建议汇总
<b>零售业和电子商务</b>			
中国政府	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贸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。	2	对内外资零售企业采用相同的监管要求和标准。
<b>上海</b>			
上海市政府	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。	4	建立定义清晰、中介服务高度发达的金融市场，需要提升市场参与者的数量和竞争力。
<b>标准、认证和许可</b>			
中国政府	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。	3	允许非中资检测机构在华开展检测业务。
<b>税收政策</b>			
美国政府	N/A	N/A	为根据美中税收协定不应当在中国纳税的美国居民提供支持。
中国政府	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。	3	针对反避税规则适用，制定统一标准和透明程序。
<b>天津</b>			
天津市政府	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。	1	聘用一家公关公司帮助天津制定城市品牌构建和市场推广计划。
<b>签证政策</b>			
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%的申请者目标。	5	取消按国别分配工作绿卡的歧视性制度。
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。	3	制定成文的全国统一的就业证和签证申请制度，提高该制度的透明度，以减弱对商业活动的影响。
两国政府	将旅行签证的有效期延长至10年。	1	将旅行和商务签证的有效期延长至10年。
<b>安全生产</b>			
美国政府	N/A	N/A	与中国政府和行业专家进行合作，分享相关最佳实践。
中国政府	提高工作人员的安全，要求在超过两米高空作业的人员使用配有坠落防护的安全设备，如高空作业平台、护栏、安全带，和其他安全保护，并保证高空作业平台配有超载刹车，倾斜刹车，降辅助系统，以及操作的信号灯。	2	推进金融租赁业的发展，以此促进施工平台和安全设备的投资和使用。
<b>武汉</b>			
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。	4	扩大美国驻武汉总领馆向美国公民和中国公民提供的服务范围。
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。	2	就国有企业商业付款制定清晰的标准，并加大上述标准的执行力度。



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



# Competition Law

## Introduction

It has been more than four years since China's first comprehensive competition law, the Anti-Monopoly Law of China (AML), took effect in August 2008. Although the AML incorporates key principles and practices drawn from the competition laws of other jurisdictions, there are many critical open issues remaining to be addressed through implementation of the AML.

China's AML regulates three major types of monopolistic activities: (1) monopolistic agreements (horizontal agreements executed with competitors or vertical agreements signed with upstream suppliers or downstream distributors); (2) abuse of market dominance; and (3) mergers, acquisitions, and other concentrations that may restrict competition. The AML also addresses "administrative monopoly"—abuse of official authority eliminating or restricting competition.

Through recent rulemaking initiatives and enforcement activities, Chinese authorities have made substantial progress in clarifying China's new competition rules, publishing cases investigated or approved by the authorities from which the public can learn the enforcement practice, and underscoring the value of continued bilateral dialogue. Nevertheless, concerns persist regarding: (1) focus on the anticipated effects on "national economic development" which extends beyond conventional competition analysis; (2) inadequate staffing and non-transparent decision making resulting in lengthy review even for "no issue" mergers; and (3) blocking of international counsel from attending meetings and hearings.

## Ongoing Regulatory Issues

### *Enforcement Coordination*

Under the AML and its implementing regulations, the National Development and Reform Commission (NDRC) primarily oversees monopoly pricing concerns and the State Administration for Industry and Commerce (SAIC) is mainly responsible for regulating abuse of market dominance and other non-price related monopoly activities, while the Ministry of Commerce (MOFCOM) is mainly in charge of merger control. However, although we under-

stand that there is an unpublished interdepartmental memorandum of understanding between the NDRC and the SAIC, no published regulations provide guidance on how cases involving both price related and non-price related monopolistic conduct will be handled by the NDRC or the SAIC. According to a conversation held by AmCham China with two senior officials respectively from the NDRC and the SAIC on August 27, 2012, in the event a complaint involves both price and non-price violations of the AML, the agency that opens a file first will be in charge of the investigation and decide the penalties. Such officials further indicated that the NDRC and the SAIC are continuing to strengthen the coordination and exchange of information between the two agencies.

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

### *Transparent Rulemaking and Enforcement*

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

Previously, the only enforcement decisions required to be published were those by MOFCOM blocking transactions or imposing conditions. Beginning in November 2012, MOFCOM took the lead and voluntarily published on its website information on all reported concentration transactions (458 in total) that were approved by MOFCOM without any conditions during the period from August 2008 to September 30, 2012. Although the information on cleared transactions is limited to the names of the transactions and the participating business operators, it provides the public with an enhanced understanding of the regulatory environment. MOFCOM committed to publish such information on a quarterly basis. In contrast, publications of all other enforcement decisions of other enforcement authorities (i.e., NDRC and SAIC) are based on such authorities' own discretion.

# 竞争法规

## 引言

**中**国首部综合竞争立法——《中华人民共和国反垄断法》（《反垄断法》）于2008年8月生效实施，至今已有四年多。虽然反垄断法吸收了其他国家竞争法规的基本原则和重要实践，但在该法实际执行过程中依然存在很多尚待解决的重要问题。

中国《反垄断法》主要规范以下三大垄断行为：(1) 垄断协议（竞争者之间达成的横向协议或者上游供应商与下游经销商签订的纵向协议）；(2) 滥用市场支配地位；(3) 可能限制竞争的企业收购、兼并及其他集中行为。《反垄断法》还规制了滥用官方行政职权排除或限制竞争的“行政垄断”行为。

通过近期的新规制定与执法活动，中国主管部门在竞争法规方面已经取得了实质性的进步，一方面明晰了中国新的竞争制度，一方面发布案例以告知公众执法情况，同时强调持续双边对话的价值。尽管如此，在以下几个方面仍存有忧虑，即(1) 特别关注对“国民经济发展”的潜在影响，而这一点往往超出了传统竞争分析的范围；(2) 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；(3) 限制国际法律顾问参加会议和听证。

## 现存监管问题

### 执法的协调

根据《反垄断法》及其配套法规之规定，国家发展和改革委员会（发改委）主要负责监管垄断定价问题，国家工商行政管理总局（工商总局）主要负责监管滥用市场支配地位以及其他不涉及价格的垄断行为；而商务部主要负责并购监管。然而，虽然我们理解发改委和工商总局之间有跨部门监管谅解备忘录，只是没有公开，但如果出现同时涉及

价格和非价格相关垄断行为时，现有公开的法律法规中却找不到应该由谁来主管的规定。2012年8月27日，中国美国商会邀请了分别来自发改委和工商总局的两名高级官员进行座谈，席间了解到如果一项投诉既涉及价格垄断违法行为，又涉及非价格垄断违法行为，则由先受理投诉的部门负责开展调查并决定惩罚。上述官员还表示发改委和工商总局正在继续加强两个部门之间的监管协调和信息共享。

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

透明且可预期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。公布执法决定能够为各公司提供指导，也能教育各公司遵守法律。

此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。2012年11月初，商务部带头主动在其官网上公布了2008年8月至2012年9月30日期间，商务部无条件批准的经营者集中交易案件信息（共计458起）。尽管所公告上述获批交易案件信息仅限案件名称和参与集中的经营者，但此举却提升了公众对于监管环境的了解和信心。商务部还承诺今后将按季度披露上述信息。而与此相比照，其他执法部门（即发改委和工商总局）是否公布执法决定还完全由本部门自行把握。

中国美国商会建议商务部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。我们继续建议发改委和工商总局及时、定期地发布执法决定。虽然公开决定时必须保护商业秘密，但公开应包括对相关证据有意义的总结、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。

AmCham China commends MOFCOM for continuing to improve their practice of issuing written enforcement decisions in a timely and fully reasoned manner. We further recommend that enforcement decisions of the NDRC and the SAIC be published as they occur and on a periodic basis. 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 also have made significant efforts to solicit input from the public in connection with draft implementing measures. More formal and widely publicized opportunities to comment are 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.

Though SAIC's draft AML Intellectual Property Guidelines make some welcome progress in describing how competitive effects should be assessed, no 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) lawful in other jurisdictions may face prohibition or inconsistent treatment in China.

Likewise, 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, 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 of 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). The NDRC itself acknowledged the difficulty created by such lack of clarity in discussion of the liquid crystal display cartel investigation in January 2013, the first cartel investigation to be concluded by the NDRC.

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*

Both NDRC and the SAIC encourage voluntary reporting of monopoly agreements (e.g., cartels). If companies voluntarily report the relevant information of the monopoly agreement and provide important evidence, the enforcement agency *may* reduce or eliminate the penalty on such companies based on the timing of the voluntary report, importance of the evidence provided, relevant information regarding the creation and implementation of monopoly agreements, and cooperation in the investigation. To be specific, the first company that voluntarily reports any monopoly agreement, provides important evidence and fully cooperates with the investigation *may* be exempted from penalties. Other companies that voluntarily report and provide important evidence *may* receive reduced penalties.

政府主管部门在征求公众对实施细则草案的意见上也已做出了很大的努力。希望在对草案进行公开征求意见时，给予公众更多正式的、广泛告知的建言的机会。

## 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，只要协议的安排具有以下情况即可：(1)《反垄断法》第 15 条规定的服务于有益目的的，(2) 有利于消费者的，(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。

尽管工商总局起草的《反垄断法》知识产权指导原则就如何评估竞争效果取得了有益的进展，但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。

同样，《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不一致。

在缺少进一步指导的情况下，内资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威慑过度的风险。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 / 或受到影响的相关市场内的销售额）。2013 年 1 月，发改委宣布对中国第一起卡特尔案件——液晶面板企业卡特尔的处罚决定，但发改委自身亦承认，由于透明度不够，讨论对此案的调查难度很大。

中国美国商会呼吁中国对此应予以明确，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轻微案件中处罚严重失衡。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

发改委和工商总局都鼓励经营者主动举报垄断协议（如卡特尔协议）。如果经营者主动举报垄断协议相关信息，并提供重要证据，执法机构可以根据上述经营者主动举报该协议的时机、所提供证据的重要性、制订和实施垄断协议的相关信息以及配合调查的程度，减轻或免除对经营者的处罚。具体而言，首家主动举报垄断协议行为、提供重要证据并完全配合调查的企业，可以被免于处罚。其他经营者主动举报并提供重要证据的可以被减轻处罚。

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。例如，政策明确规定，如果申请者符合宽恕条件时，将会得到什么，而不是也许会得到什么。没有这样的保证，公司就不愿冒风险前进，而法案也不能够帮助反垄断机关发现不合法的垄断协议。有关部门应该明确具体程序从而提供上述相应保证。

Similar programs have succeeded in uncovering cartels in other jurisdictions, but such programs rely on concrete assurances of leniency—i.e., they spell out what applicants will receive if they meet the qualifications of the program, rather than only what they *may* receive. Absent such assurances, companies will be very unlikely to risk coming forward, and the program will likely not succeed in helping the AML authorities uncover unlawful monopoly agreements. 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. AmCham China encourages MOFCOM to consider the following issues as it drafts 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 competition 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 Anti-Monopoly Commission, 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. AmCham China commends MOFCOM for changing its practice to allow the clearance of concentrations lacking any competition concerns before the end of the 30-day Phase I review period.
- 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 or dragon's head enterprises should not be allowed to influence 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.

- The enforcement agencies should adopt a shared policy specifying whether conditions for clearance imposed—and thus approved—by MOFCOM may ever be subject to later review by NDRC or SAIC.

### *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. AmCham China urges MOFCOM to clarify that international counsel are permitted to attend such proceedings.

### *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 (SOEs) 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

## 并购审查

商务部仍旧在继续完善其并购分析的实质方法，并加强相应的审查程序。中国美国商会鼓励商务部在起草新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第二阶段的审查。这种拖延似乎折射出存在于与其他部委和行业协会之间的非透明性协商，以及商务部、反垄断委员会甚至是国务院内部上级批准流程中的程序要求。这些拖延可能还反映出商务部在资源方面的匮乏。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。中国美国商会建议商务部改变现行做法，一旦在为期 30 天的初步检查阶段结束时未发现有妨害竞争疑虑的，便排除存在经营者垄断。
- 商务部应当出台清晰的指引来界定“控制”这一相关概念。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所做的集中定义，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却在中国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）。提高国家的竞争力或培育全国领军或龙头企业，这样的考虑不应该成为影响并购审查的因素。
- 关于向中国出口加工区销售用于再加工和再出口的产品是否被视为“向中国销售”这一问题，商务部应该出台明确的并购审查指导。这些销售在办理通关或外汇交易时不被视为进口，因此有必要加以澄清。
- 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要经过发改委或工商总局的审查。

## 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，此保密范围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国外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，外资律师事务所聘用的国际律师通常不被允许参加与商务部召开的会议，即便这些律师有中国律师事务所的本地律师陪同、而且并不寻求在中国执业。这与国际实践的做法不一致，国际上的做法是，允许相关方的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、根据国际竞争政策的普遍原则所做的分析给予评价。中国美国商会促请商务部作出明确表示，允许国际律师参与这些程序。

## 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福利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外来竞争。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，但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的决心，以及对两家国有酿酒厂维持转售价格的控制行为进行的调查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”。

China is encouraged by NDRC's recent willingness to address price collusion between China Telecom and China Unicom, and to investigate two state-owned distilleries for administering resale price maintenance.

- Anti-competitive agreements advancing industrial 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 (IP)." There are concerns that enforcement of IP rights 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 issued measures in 2011 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.

## Recent Developments

### Recent Regulations and Measures

The enforcement agencies were active in rule-making during 2012:

- February 1 (effective date): "Interim Measures for the Investigation and Handling of the Failure to Declare Concentration of Business Operators in Accordance with the Law" (MOFCOM), setting down the procedures for MOFCOM to investigate and penalize companies that fail to notify a transaction in violation of the AML;
- May 3: "Provisions on Certain Issues Concerning the Application of Law in Civil Disputes Cases Arising out

of Monopolistic Acts" (Supreme People's Court), clarifying certain matters related to anti-monopoly litigation, such as the filing, acceptance, jurisdiction, evidence rules, civil liabilities and time limit of case filing;

- June 6: "Declaration Form on Anti-Monopoly Review of Concentration of Business Operators" (MOFCOM), standardizing and streamlining the anti-monopoly filing procedures;
- August 14: "The Fifth Draft of Anti-Monopoly Law Enforcement Guide in Intellectual Property Field" (SAIC).

### MOFCOM Simplification of Procedures

MOFCOM is aware of the concerns over approval delays in China. AmCham China understands that such delays are caused in part by a shortage of officials to review the increasing number of reported transactions and that MOFCOM officials are working hard to accelerate the review process. AmCham China understands that MOFCOM is drafting regulations regarding the fast track mechanism to simplify the procedures for review of business concentration cases and the draft will be released sometime in 2013. AmCham China welcomes the fast track regulations which should improve the efficiency of merger review.

### Recent Enforcement Activities

MOFCOM's merger review remains the most visibly active component of Chinese anti-monopoly enforcement.

Certain 2012 decisions are of particular interest:

- MOFCOM conditionally approved the establishment of a joint venture by Henkel Hong Kong Holdings Co., Ltd. and Tiande Chemical Industry Co. Ltd. by imposing behavioral remedies to maintain pre-merger market structure and to guarantee levels of supply that existed prior to the transaction. This is the second conditional approval published by MOFCOM in relation to establishment of a joint venture, which reaffirms that in the PRC the formation of a joint venture is subject to MOFCOM's anti-monopoly review.
- On August 13, 2012, MOFCOM announced its decision on conditional approval of the acquisition by Walmart of a 33.6 percent equity interest in NewHeight Holdings, which holds the online shopping platform—Yihaodian—through its subsidiaries. Walmart will acquire control over the online direct sales business of Yihaodian. MOFCOM expressly stated that Walmart must not conduct, via any Variable Interest Entity (VIE) structure, the value-added telecoms services currently operated by Yihaodian. The wording of MOFCOM's conditional approval itself does not necessarily say that the use of such VIE structure is illegal, but at least MOFCOM has prohibited Walmart from undertaking value-added telecoms service through a VIE structure. It is not that the VIE structure has been forbidden, but foreign invest-

- 《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经营集中予以放行。
- 《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”。
- 商务部于 2011 年发布了出于“国家安全”理由对涉及外资对国内中国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。

## 最新进展

### 近期出台的规定及办法

2012 年中国各执法机构积极开展相关法律法规的制定工作：

- 2 月 1 日（生效日）：《未依法申报经营者集中调查处理暂行办法》（商务部）规定了商务部对未按照《反垄断法》进行交易申报的经营者进行审查和处罚的程序；
- 5 月 3 日：《最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》，明确了反垄断诉讼相关事项，如起诉、立案、管辖、证据规则、民事责任和诉讼时效等问题；
- 6 月 6 日：《经营者集中反垄断审查申报表》（商务部），确立并完善了反垄断审查申报程序；
- 8 月 14 日：《关于知识产权领域反垄断执法的指南》（草案第五稿）（工商总局）。

### 商务部简化执法程序

商务部已经认识到中国存在行政审批迟滞的问题。中国美国商会理解上述迟滞一部分是由于商务部需要审查的案件数量逐渐增多、审案人员短缺所导致，而商务部的官员们一直在非常努力地加快审查速度。中国美国商会了解到商务部正在起草关于加速审批机制的相关法规，以简化经营者集中的案例审核程序并将于 2013 年发布。中国美国商会欢迎这种加速审核的法规，这将改善执法审核的有效性。

### 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。

2012 年一些决定值得关注：

- 商务部有条件地批准汉高香港控股有限公司与天德化工控股有限公司组建合资企业，所附加的限制性条件要求双方做出相应的补救措施，保持并购前的市场结构，以及保持交易之前的供货水平。这是商务部就组建合资企业所作的第二起附加限制性条件的批准，从而进一步强调了在中国组建合资企业需要通过商务部的反垄断审查。
- 2012 年 8 月 13 日，商务部发布了附加限制性条件批准沃尔玛收购纽海控股 33.6% 股权的公告。纽海控股通过其子公司持有网上购物平台——一号店。沃尔玛将取得一号店网上直销业务的控制权。商务部明确表示禁止沃尔玛通过任何可变利益实体（VIE）结构，从事一号店目前所经营的增值通讯服务。商务部发布的附带条件的批准公告原文中并未提及使用上述 VIE 结构属于非法，但至少商务部禁止沃尔玛通过 VIE 结构从事增值通讯服务。这一公告并不能表示 VIE 结构已被禁止，但外资依然被禁止从事增值通讯服务。总而言之，该公告对于 VIE 结构的影响还需作进一步的评估。

2012 年 8 月，河南省工商局宣布该局处理了一件涉及 11 家二手车经销商的卡特尔案件。这 11 家二手车经销商达成协议，比如，进行市场分割、统一服务费以及实行集中化经营等。根据这些协议，任何一家经销商未经授权都不得降低收费，否则将被处以 15000 元人民币的罚款。经过近一年的调查，该经销商组织的非法所得（1,468,202.08 元人民币，约合 236,000 美元）被没收，并被河南省工商局处以 264,920.37 元人民币的罚款（约合

ment in value-added telecoms services remains off limits to foreign investment. All in all, the implications for the VIE structure still need to be further assessed.

In August 2012, the local counterpart of the SAIC in Henan Province announced that it has settled a cartel case against eleven used car dealers. The eleven used car dealers entered into agreements, for example, to allocate markets, unify service fees, and centralize operations. According to the agreements, a dealer cannot reduce fees without authorization and will get a penalty of RMB 15,000 each time it is found making such an unauthorized reduction. After almost one year of investigation, the dealers' illegal income (RMB 1,468,202.08, approximately US \$236,000) was confiscated and a fine (RMB 264,920.37, approximately US \$42,600) was imposed by the local counterpart of SAIC in Henan Province.

In March 2012, the NDRC communicated with the State Administration of Radio, Film, and Television (SARFT) on SARFT's proposed draft of "Guidance on Further Regulation of Movie Ticket Business." It is reported that SARFT is suspected of abusing its administrative power for fixing the price of movie tickets. The NDRC's timely intervention on this matter was applauded by both the general public and anti-monopoly law experts.

On January 4, 2013, the NDRC released its decision to punish six offshore companies (including two Korean companies and four Taiwanese companies) for their price-fixing of LCD display screens. Such conduct resulted in significant penalties being levied against LCD display manufacturers by competition law enforcers in the US, Europe, and Korea as well. This was the first cartel enforcement action that NDRC has brought against non-Chinese companies. The companies were ordered to pay a total of about US \$56 million in fines and other penalties (approximately US \$23 million in fines, US \$27 million in overcharges that the companies were ordered to return to customers, and US \$6 million in "illegal gains," which NDRC confiscated). This was the largest fine levied by an AML enforcement agency for anticompetitive conduct up to that time—although, as a technical matter, it was not an AML fine. NDRC has explained that since the price-fixing activities took place from 2001 to 2006, prior to the enactment of the AML, the penalties were based on the Price Law of the PRC, rather than the AML. If the companies had been fined under the NDRC's AML authority, the penalties could have been far greater.

### *Bilateral Cooperation with Other Jurisdictions*

China's AML enforcement authorities have been actively cooperating with the authorities in other jurisdictions. On September 20, 2012, the NDRC and the SAIC signed the Anti-Trust Memorandum of Understanding (MOU) with the European Commission. Other notable recent examples include the MOU signed with the UK Office of Fair Trading on April 17, 2012 and the MOU concluded with the US Department of Justice and US Federal Trade Commission

on July 27, 2011. The MOU complements the EU-China Competition Policy Dialogue, signed in 2004 with MOFCOM.

## 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

- **Issue a notice clarifying that international lawyers (including Chinese lawyers working in foreign law firms) are allowed to attend 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 domestically-invested companies, as well as foreign and foreign-invested companies.
- Protect the IP rights of both domestic and foreign rights holders and ensure that the AML is not used as a means to circumvent IP protection, including through compulsory licensing.
- Continue to clarify and streamline AML procedures, especially for merger review.
- Increase the frequency and detail of published data on enforcement activities.

42,600 美元)。

2012 年 3 月, 发改委介入了解国家广播电影电视管理总局 (广电总局) 拟起草《关于进一步规范电影市场票务管理的指导意见》一事。据报道, 广电总局被叫停滥用其行政职权限定电影票票价的行为。发改委对此事的及时干预受到了公众和反垄断法专家的一致好评。

2013 年 1 月 4 日, 发改委宣布对六家海外公司 (包括两家韩国公司和四家台湾企业) 在中国大陆垄断液晶面板价格进行处罚。这一行动导致液晶显示器制造商也受到美国、欧洲, 以及韩国竞争法执法部门的重罚。这是发改委第一起针对境外企业使用卡特协议执法行动。这六家企业被处以总计 5600 万美元的罚金和其他罚款 (其中罚金约 2300 万美元, 退还中国客户多收价款 2700 万美元, 另有 600 万美元“非法所得”被发改委没收)。这是反垄断在竞争法案执行过程中最大的一起罚款—虽然从技术层面上看, 当时的罚款并不属于《反垄断法》执法范畴。根据发改委的解释, 由于上述企业的垄断定价行为发生在 2001–2006 年, 当时《反垄断法》尚未颁布实施, 因此发改委基于《中华人民共和国价格法》而非《反垄断法》做出了处罚决定。如果基于《反垄断法》, 处罚金额会更高。

### 与其他国家开展双边合作

中国反垄断法执法部门一直以来与其他国家的相关部门保持积极合作关系。2012 年 9 月 20 日, 发改委、工商总局与欧盟签订了《反托拉斯谅解备忘录》。其他明显实例还包括 2012 年 4 月 17 日与英国公平贸易局签订谅解备忘录; 2011 年 7 月 27 日与美国司法部及美国联邦贸易委员会签订谅解备忘录。该谅解备忘录是对 2004 年商务部与欧盟签订的欧中竞争政策对话的补充。

### 结论

中国美国商会承认有关竞争的政策是一个复杂的法律领域, 并为中国政府在建设《反垄断法》体系方面作出的努力表示赞赏。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

- 发布通知明确允许国际律师 (包括在外资律所工作的中国律师) 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、在国内投资的公司以及外商和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。
- 继续阐明并简化《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 reported that in 2011 government procurement was US \$179 billion. China's government procurement has been growing at 25 percent per year over the past seven years. China's government procurement market continued to grow in 2012, although the exact size of the market remains a subject of debate. China's expanding economy, together with China's set policy to increase the procurement volume and enlarge the scope of government procurement, spurred this expansion. Procurement was still 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 also should 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 12<sup>th</sup> Five-Year Plan (2011-2015). In particular, the 12<sup>th</sup> 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.

## Ongoing Regulatory 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, marketability, 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."

However, China has yet to make a credible offer for GPA accession. China submitted its initial offer in December 2007, six years after agreeing to take steps toward acceding to the GPA "as soon as possible," as part of its WTO Accession Protocol. Most GPA Parties expressed disappointment with the initial offer, and urged China to submit an improved offer quickly. China submitted a revised offer in July 2010 and a second revised offer in November 2011. China's third revised offer, submitted in November 2012, remains largely deficient in its limited coverage of central and sub-central entities, with sweeping exceptions that are left open for further specification through "revised offers in the future."

Failure to improve the offer in several areas—and expressly stating that it will need to submit "revised offers in the future"—makes it clear that China will not be acceding to the GPA in the near future. Although China made "negotiation for WTO GPA membership a priority of 2012 in the area of Government Procurement," it is widely believed that China is not motivated to accelerate the process. Rather, China is focusing more on mitigating the impact of foreign competition on domestic industries.

# 政府采购

## 引言

**根** 据中美商贸联委会的数据，2011 年中国政府采购的总额为 1790 亿美元。过去七年来，中国的政府采购额以每年 25% 的速度增长。2012 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。中国经济持续增长，再加上政府制定了增加采购量的政策以及不断扩大政府采购的范围，推动了中国政府采购市场的不断扩大。政府采购仍然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，政府采购市场的范围还应包括国有企业在私企竞争受限的行业中进行的采购。

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，预计中国政府采购的规模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加入《政府采购协定》出价清单。

## 现存监管问题

### 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：

- （一）. 确保中央和各级政府都会以“透明的方式实施政府采购”；
- （二）. 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；
- （三）. “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、可销售性和可用性，并确保其他世界贸易组织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
- （四）. 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策，包括购买或销售任何货物的数量、金额或原产国，但与《政府采购协定》相一致的方式除外”。

然而，中国尚未提交一份真正意义上的出价清单来加入《政府采购协定》。2007 年 12 月，中国在同意“尽快”加入《政府采购协定》六年后提交了初步出价清单，该清单也是中国加入世界贸易组织议定书中的一部分。绝大部分《政府采购协定》的缔约方对该清单均表示不满，敦促中国尽快修订清单并重新提交。2010 年 7 月，中国提交了修改后的清单，2011 年 11 月中国对清单进行了第二次修改并再次提交。2012 年 11 月，中国提交了第三次修改后的清单，该版清单依然存在诸多问题，例如，该清单限制了中央政府和地方各级政府实体的范围，并通过“留待在今后修改的清单中作进一步详细规定”的措辞预先设定了普遍适用的例外情形。

中国对清单中的诸多领域未作改进——并且明确表示今后将提交“修改后清单”——这充分表明中国短期内不会加入《政府采购协定》。尽管中国表示“与各方磋商加入世界贸易组织政府采购协定是 2012 年中国在政府采购领域的重点工作”，但各方普遍认为中国加快这一进程的动

AmCham China strongly urges China to take serious steps towards GPA accession by submitting a fourth revised GPA accession offer by July 2013, as requested by the GPA Parties. The fourth revised offer should be more in line with those of current parties, and particularly address the following issues.

### Coverage of Central and Sub-Central Government Entities

China's third revised offer expands sub-central coverage to the three provinces of Fujian, Shandong, and Guangdong, which together account for about a quarter of the country's economy. While the inclusion of these three "top spenders" of China's sub-central governments constitutes a step forward, the new addition only results in the coverage of a mere eight out of 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 of only 37 of 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.

China's revised offer makes no additions to the entities listed under the sub-central provinces covered in its previous offer. Without expanding the scope of entities covered under each sub-central jurisdiction, merely adding provinces to the scope of China's offer bears minimal effect, as many of the sub-central entities appear to be regional administrative offices of central government entities that China had already 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 revised offer is redundant. Meanwhile, China's offer continues to limit coverage of central entities to "central government entities proper and their administrative agencies located in Beijing," which remains problematic.

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.

### 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, China has yet to update the list.

China's third revised offer does not expand coverage from the 14 entities listed under Annex 3 in its previous offer. Most, if not all, of these appear to be central government enti-

ties that should already be covered elsewhere. 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). China's position on the matter has been that the GPA does not apply to its SOEs, as Chinese SOEs are independent market entities and the Chinese government does not interfere in their daily business activities.

As before, we find China's position in this regard particularly interesting, and again encourage China to clarify its position by either: (1) issuing 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) including in its next revised offer its numerous SOEs that procure for governmental purposes.

### Level of Thresholds

In its third revised offer, China made marginal changes to the thresholds above which the GPA's non-discrimination disciplines apply. For instance, the threshold for construction services for central government entities was lowered from 80 million to 50 million special drawing rights (SDRs) for the first and second years after implementation, from 50 million to 35 million SDRs for the 3<sup>rd</sup> year, and from 30 million to 25 million SDRs for the 4<sup>th</sup> year. For sub-central government entities, the construction services thresholds were adjusted from 150 million to 100 million SDRs for the 1<sup>st</sup> year after implementation, from 100 million to 80 million SDRs for the 2<sup>nd</sup> year, from 80 million to 50 million SDRs for the 3<sup>rd</sup> year, and from 50 million to 40 million SDRs for the 4<sup>th</sup> year. The final thresholds for both central and sub-central governments, as well as all thresholds for "other entities" under Annex 3, remain unchanged.

The incremental reduction in thresholds is inadequate, however, especially as the final threshold of 15 million SDRs for central entities still represents three times the amount of the current highest central entity construction services threshold of other GPA parties.

Additionally, China continues to propose a five-year transitional period across all annexes prior to implementing the five-year transitional monetary threshold phase down. Such a transitional period, totaling 10 years, is excessive and completely unwarranted, particularly given that more than 10 years have already passed since China first promised to accede to the GPA "as soon as possible."

### Other Concerns That Have Yet to Be Addressed

China's revised offer makes no changes in its coverage of services. AmCham China continues to urge China to provide services coverage in line with that of the US, which is a

力不足。中国更关心的是如何消除外资参与竞争对本国行业的负面影响。

中国美国商会强烈促请中国按照《政府采购协定》各缔约方的要求，在 2013 年 7 月前提交第四次修改后的加入《政府采购协定》出价清单，切实推进加入进程。第四稿清单应更加接近于现有缔约国的出价清单标准，特别是要解决以下问题。

### **中央政府和各级地方政府实体的覆盖范围**

在中国提交的第三版修改清单中，地方政府的范围扩大到福建、山东和广东三个省，这三个省的经济总量约占全国经济总量的四分之一。将上述三个经济大省纳入中国地方政府采购主体的范围是一个进步，但加入新的省级地方政府采购主体后，地方政府采购主体在中国总计 30 多个省、区、直辖市（不包括香港，其已是《政府采购协定》的缔约方）中也仅占 8 个。过去，中国不仅对美国仅覆盖 50 个州中的 37 个州的做法表示关切，而且也对其他《政府采购协定》缔约方地方政府实体覆盖不足的现象表示了担忧。然而，尽管其他缔约方地方政府实体的覆盖有限，但中国出价清单的覆盖范围相比而言则更加有限。

中国最新修改提交的清单中并没有增加地方省级以下实体的范围。中国提交的清单中只要不扩大地方政府下属实体的范围，那么仅仅增加地方省份的数量基本上收效甚微，因为很多地方实体似乎是中央政府实体的区域性派出机构，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，这些派出机构是中央实体的下设机构，并接受中央实体的预算管理，因此将它们纳入修改后的清单是多余的。与此同时，中国最新提交的清单中依旧将中央实体的覆盖范围限定在“中央政府实体及其在京的行政机构”。这一提法依然存在诸多问题。

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。这似乎也是中国中央政府实体以及“其他”实体名单的一个问题。

### **“其他实体”（包括国有企业）的覆盖范围**

此前，中国曾表示将按《政府采购协定》附录 3 的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”。但中国尚未更新该名单。

中国提交的第三版修改清单中并没有扩大第二版清单

附录 3 中所包括实体的范围，依然是之前的 14 个实体。这 14 个实体中的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。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，或不用于以商业销售或转售为目的的生产或服务）。一直以来，中国所持立场是《政府采购协定》不适用于中国的国有企业，因为中国的国有企业是独立的市场主体，中国政府不干预其日常经营活动。

同以前一样，我们发现中国在这一问题上的立场颇为耐人寻味，并再一次鼓励中国通过以下方式明确立场：

(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的相关规定和指导文件与中国关于国有企业商业独立的承诺相一致，与对世贸组织的其他承诺相一致；(2) 或将为数众多、带有政府采购性质的国有企业纳入中国的下一份出价清单。

### **门槛水平**

在第三版修改清单中，中国将部分门槛调整至比《政府采购协定》非歧视原则下的门槛持平或略低的水平。比如，将中央政府实体采购工程服务的门槛从 8000 万特别提款权降低至 5000 万特别提款权。适用于协定执行后的第一年和第二年，第三年的门槛则从 5000 万降至 3500 万特别提款权，第四年则从 3000 万降至 2500 万特别提款权。地方政府实体，采购工程服务的门槛调整如下：协议执行后的第一年从 1.5 亿降至 1 亿特别提款权，第二年从 1 亿降至 8000 万特别提款权，第三年从 8000 万降至 5000 万特别提款权，第四年则从 5000 万降至 4000 万特别提款权。中央政府和地方政府的最终采购门槛，以及附录 3 列出的“其他实体”的采购门槛却未作修改。

然而，逐步降低政府采购门槛的做法仍然不尽人意，特别是中央实体的最终采购门槛依然是 1500 万特别提款权，这个数字是《政府采购协定》其他缔约方的中央实体工程服务采购门槛价的 3 倍。

另外，中国还提出在执行为期五年的“门槛价逐年递减期”之前，另设五年的过渡期。这一长达十年的过渡期是过分的和极为不合理的，特别是考虑到自中国承诺“尽快”加入《政府采购协定》之后，已经过去了十多年。

### **尚未解决的其他问题**

中国修改后的出价清单没有对其涵盖的服务业范围作

“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 third revised offer does not include “public works” services covered by China’s Tendering and Bidding Law, omissions which remain extremely disappointing.

China has failed to rectify any of the concerns previously highlighted regarding its general exceptions. 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 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.

China’s revised offer removes eight specific exemptions in the first paragraph of the general exceptions to little effect, as the same eight exemptions are embodied in the text of the revised GPA negotiated by signatories last year.

Broad gaps in coverage are carved out throughout China’s revised offer, even outside of the general exemptions. As noted earlier, central government entities covered under the GPA are restricted to entities located within Beijing. In the notes to Annex 2, the exemption for any program “in pursuit of important regional economic and social policies,” which has been criticized as being overly-broad, has been removed. However, it has been replaced with a provision stating that exceptions will be specified “in the revised offers in the future,” adding further ambiguity to the scope of coverage. The same placeholder is found in the notes to Annex 1. China has also reserved the right to make further exceptions through “revised offers in the future” to the newly-added Annex 4, which is intended to create additional coverage for “goods,” as negotiated into the new GPA text by the current parties.

Finally, 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.

## *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 2012. 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 further the practice related to 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 the Ministry of Finance (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 MNCs operating in China when calculating the percentage of their products made in China.

Although MOF once again planned to roll out the “Administrative Measures on Government Procurement of Domestic Products” in 2012, 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.

任何修改。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”，已将排除的领域范围降到最低。因此，美国的清单覆盖了许多高价值产业，例如计算机相关的服务和金融服务。另外一种选择是，中国应积极地、更为广泛地增列服务行业，可以用两位数的海关代码取代现行的四位或五位数代码。

关于建筑服务，中国第三版修改清单中没有将《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。

中国没有更改其在一般特例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》而言不应被视为发展中国家。

中国提交的修改后的清单删除了一般性特例第一段中的8项具体的例外情形，但此举于事无补，因为《政府采购协定》各签字方去年已经协商修改了该协定，将该8项例外情形列入了修改后的《政府采购协定》。

即便是在一般性特例之外，中国提交的修改清单在适用范围上依然与协定要求有较大差距。如前所述，适用《政府采购协定》的中央政府实体的范围仅限于在京实体。附录2中曾经规定任何“旨在实现地区经济或社会政策”的项目均不适用《政府采购协定》，这一条规定之前被批评为过于宽泛，目前已予删除。然而取而代之的是另外一条规定，即除外情形将在“今后提交的修改清单”中予以详细规定，这使得适用范围的模糊性进一步加深。附录1中也有同样的条款。《政府采购协定》现有缔约方新近磋商增加的协定附录4旨在扩大“货物”的范围，但中国通过“今后修改清单”的方式，事实上保留了对附录4中的内容作进一步除外规定的权利。

最后，中国还坚持，在相关缔约方已向“中国的货物和服务供应商提供了本国市场的准入”，中国才会授予这些缔约方的货物和服务供应商《政府采购协定》的相关优惠。

这一表述反映了中国对世界贸易组织的争端解决规则的单方面判断，且与《政府采购协定》第二十二条规定不符。

## 国内政府采购体制

### 《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2012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。然而在实践当中，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”所占比例来定义“本国产品”，而财政部的草案更将这一比例量化为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折旧值以及支付给外国知识产权人的专利使用费的摊销额）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的产品的成本比例时会得到截然不同的结果。

尽管财政部于2012年再次计划推出《政府采购本国产品管理办法》，但上述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，中国美国商会需要就此重要事项与中国政府开展进一步对话，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。

与此同时，国务院起草的法规草案之第十条规定，给予本国货物、工程或服务20%的价格优惠。我们理解一些国家会给本国产品以优惠待遇，但是优惠幅度不应该大到

Meanwhile, article 10 of the State Council draft regulation grants a 20 percent price preference to domestic goods, projects or services. We understand some countries give domestic products preferential treatment, but the margin should not be so large that greatly distort the market mechanisms and hinders normal price competition and R&D development. AmCham China recommends removing or decreasing the 20 percent preferential treatment in the final regulation.

In addition, MOF released the draft of “Administrative Measures on Government Procurement that are not Subject to Public Tendering” on October 18, 2012 for public comments. Industry feedback on this new draft regulation is still to be observed.

### *Delinking Indigenous Innovation from Government Procurement*

In April 2010, the Ministry of Science and Technology (MOST), National Development and Reform Commission (NDRC), and MOF issued the “Draft Notice on Launching the Accreditation of National Indigenous Innovation Products (IIP)” and requested comments from interested parties. 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. In June 2011, MOF revoked 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. AmCham China applauds those important steps toward leveling the playing field in the government procurement market.

Since MOF officially announced that China would void three key NIIP regulations on June 23, 2011 in order to keep its commitment to delink NIIP with government procurement, at least 16 local provinces and cities have stopped implementing local IIP policy. Inconsistent practices still exist, however, among different localities with IIP certification regimes in place, discussed further under *Recent Developments*.

AmCham China looks forward to the complete delinking of IIP accreditation from government procurement at the local level, and also urges the Chinese government to take further steps in revising other relevant laws and regulations that still require prioritization of IIP in government procurement to maintain consistency.

## *Standards and Government Procurement*

AmCham China members have observed 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. CCCi certification applicable to 13 categories of “information security products;”
2. The proposed “information security standard for office equipment;”
3. CECP certification and related “Catalogue of Government Procurement List of Energy Efficiency Products” and proposed “National Recommended Voluntary Certification for China RoHS Compliance;”
4. Chinese Trusted Computing Module and MLPS which requires procurement of ICT equipment with domestic IPs for networks classified at level 3 or higher.

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 information on standards, see the Standards, Certification, and Conformity Assessment chapter.) In addition, AmCham China also hopes that the choice of technologies in government procurement be performance based and technology neutral in terms of IP origins.

## **Recent Developments**

### *Delinking Indigenous Innovation from Government Procurement*

Since the Ministry of Finance officially announced that China would void three key IIP regulations in order to keep its commitment to delink IIP with government procurement, at least 16 local provinces and cities have stopped implementing local IIP policy. Unfortunately, examples of local violations persist: on November 30, 2011, Guangdong issued a local Regulation on Promoting Indigenous Innovation, effective on March 1, 2012. This Regulation provides R&D support to indigenous innovation, encourages indigenous innovation to be transformed into technical standards, and also restricts the import of key technology or equipment where China already has research and development capability.

Additionally, the Ministry of Industry and Information Technology (MIIT) issued the 2012 Catalogue for Indigenous Innovation of Major Technical Equipment on January 12, 2012, aimed to replace the 2009 version. Based

严重扭曲市场机制，并妨碍正常的价格竞争和研发的开展。中国美国商会建议在最终稿中能够取消或者降低该 20% 优惠的待遇。

另外，2012 年 10 月 18 日，财政部还发布了《政府采购非招标采购方式管理办法》公开征求意见。业内对这一新法规草案的反应还有待了解。

### 政府采购与自主创新脱钩

2010 年 4 月，科学技术部、国家发展和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。该通知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。2011 年 6 月，财政部废除了三项将自主创新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。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。

由于财政部于 2011 年 6 月 23 日正式宣布中国将废除三部主要的国家自主创新产品法规，兑现其将国家创新产品与政府采购脱钩的承诺，目前至少已有 16 个省市停止执行当地的自主创新产品政策。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。这部分将在下面“最新进展”中讨论。

中国美国商会期待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，从而保持政策的一致性。

### 标准与政府采购

中国美国商会会员注意到，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：

- (一). 适用于 13 种“信息安全产品”的 CCCI 认证；
- (二). “信息安全技术办公设备基本安全要求”征求意见稿；
- (三). CECP 认证和相关的“节能产品政府采购目录”和以及“中国 RoHS 国推自愿性认证”实施意见；

- (四). 中国可信计算模块，以及“信息安全等级保护制度”要求级别三级及以上网络必须购买带有国内 IP 的 ICT 设备。

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（详情请参阅《标准、认证和合格评定》一章）。另外，中国美国商会还希望政府采购单位在购买技术时能够将技术性能作为选择依据，并且避免根据知识产权来源地的不同而歧视对待有关技术。

## 最新进展

### 政府采购与自主创新脱钩

由于财政部于 2011 年 6 月 23 日正式宣布中国将废除三部主要的国家自主创新产品法规，兑现其将国家创新产品与政府采购脱钩的承诺，目前至少已有 16 个省市停止执行当地的自主创新产品政策。然而地方政府违规的现象依然存在：如 2011 年 11 月 30 日，广东省发布了《广东省自主创新促进条例》，该条例于 2012 年 3 月 1 日起生效实施。该条例中对自主创新提供研发支持，鼓励将自主创新转化为技术标准，同时限制中国已经具备研发能力的核心技术或设备的进口。

另外，工业和信息化部于 2012 年 1 月 12 日发布了《2012 年重大技术设备装备自主创新指导目录》，旨在取代 2009 年的版本。根据 2009 年版目录之规定，目录中的产品可以优先进入政府相关科技研发计划，可享受优先列入国家自主创新产品目录，同时还享受政府采购时优先采购的待遇。不过 2012 年版的《指导目录》并没有对上述优待措施予以明确规定。该目录对中国创新和政府采购政策整体上的影响还不得而知。上述目录涉及 18 个领域的 240 项产品，其中包括发电设备、石油和石化设备装置、导航装置以及民用飞机。

中国美国商会鼓励继续执行财政部关于废止国家自主创新产品的相关法律法规的决定，并且希望加强监督，防止地方可能出现有悖于上述决定的情况。

### 修改后的《政府采购协定》出价清单

中国于 2012 年 11 月第三次提交的修改清单有所改进，

on the 2009 version, the products listed in this catalogue may be preferentially listed in government related science and technology R&D plans, enjoy priority listing in the IIP list, and be supported by government procurement policy. However, the 2012 version doesn't provide clear guidelines regarding these benefits and the new MIIT Catalogue's role in China's overall innovation and government procurement policy remains unclear. The catalogue covers 18 areas with 240 products, including electricity generating equipment, petroleum and petrochemical equipment, traffic tracking equipment, and civil aircraft.

AmCham China encourages continued enforcement of the MOF decision to void IIP regulations, and hopes for increased scrutiny to further avoid potential local-level violations.

### ***Revised Government Procurement Agreement Offer***

China's third and most recent revised offer, submitted in November 2012, contains some improvements in the form of lowered thresholds and coverage of three additional provinces. However, this offer remains seriously lacking and will require significant improvements to meet the standards set by existing GPA parties, as described in the *Ongoing Regulatory Issues* section.

### ***Strategic and Economic Dialogue (S&ED) and Joint Commission on Commerce and Trade (JCCT) Government Procurement Developments***

At the fourth round of the S&ED in May 2012, the United States committed to urging other GPA parties to provide requests for improvements in the Chinese revised offer that was submitted at the end of 2011. Meanwhile, China committed to submitting a new comprehensive revised offer to the WTO Committee on Government Procurement before its final meeting in 2012, which responds to the request of the GPA parties.

In revising the Implementation Regulations for the Government Procurement Law and the Administrative Measures for the Government Procurement of Domestic Products, China is to accommodate to the maximum extent possible the opinions and suggestions of relevant parties, including the United States, and enhance the operability and transparency of those regulations.

At the 23<sup>rd</sup> JCCT, China acknowledged that China's definition of government procurement in its Government Procurement Law is narrower than the definition in the WTO GPA. Accordingly, China recognized that some Chinese government procurement projects are for public service and that some enterprises, including some state-owned enterprises, procure in the public interest. China specifically agreed to further consultations on the legal status of procurement in the public interest by state-owned enterprises and other

entities that operate as for-profit companies. Understanding that many enterprises are for profit with diversification of ownership, including being publicly listed, China and the United States will conduct consultations, under the GPA framework and through bilateral dialogues, focused on projects for public service and on the entities that procure in the public interest.

## **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.

## **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 already repealed.
- Immediately issue rules that make clear to government entities that products produced in China by foreign-invested enterprises are domestic products for purposes of government procurement.

其中包括降低门槛、新增三个省份等。但这份清单依然存在严重缺陷，需要继续作重大修改才能满足《政府采购协定》现有缔约方设定的相关标准，“现存监管问题”部分已对此进行了描述。

### 战略与经济对话以及商贸联委会有关政府采购的进展

在2012年5月召开的第四次中美战略经济对话中，美国承诺敦促《政府采购协定》其他缔约方就中国于2011年底提交的最新修改的出价清单提出改进要求。同时，中国承诺在2012年世界贸易组织政府采购委员会最后一次会议前重新提交全面修改后的出价清单，并在清单中回应协定其他缔约方所提出的要求。

在修改《政府采购法实施条例》和《政府采购本国产品管理办法》时，中国计划最大程度地听取并吸收包括美国在内的相关各方的意见和建议，并且提升上述法规的可操作性及透明度。

在第23届商贸联委会上，中国承认《政府采购法》中对政府采购的定义比世界贸易组织《政府采购协定》中的定义狭窄。同时，中国也认为中国的部分政府采购项目的采购对象是公共服务；部分企业，包括国有企业的采购也是为了公共利益。很多企业为了追求利益而改制，通过上市等方式来实现所有权的多样化。有鉴于此，中国和美国将继续在《政府采购协定》的框架下，通过双边对话进行磋商，重点解决公共服务采购项目以及为了公共利益进行采购的实体等问题。

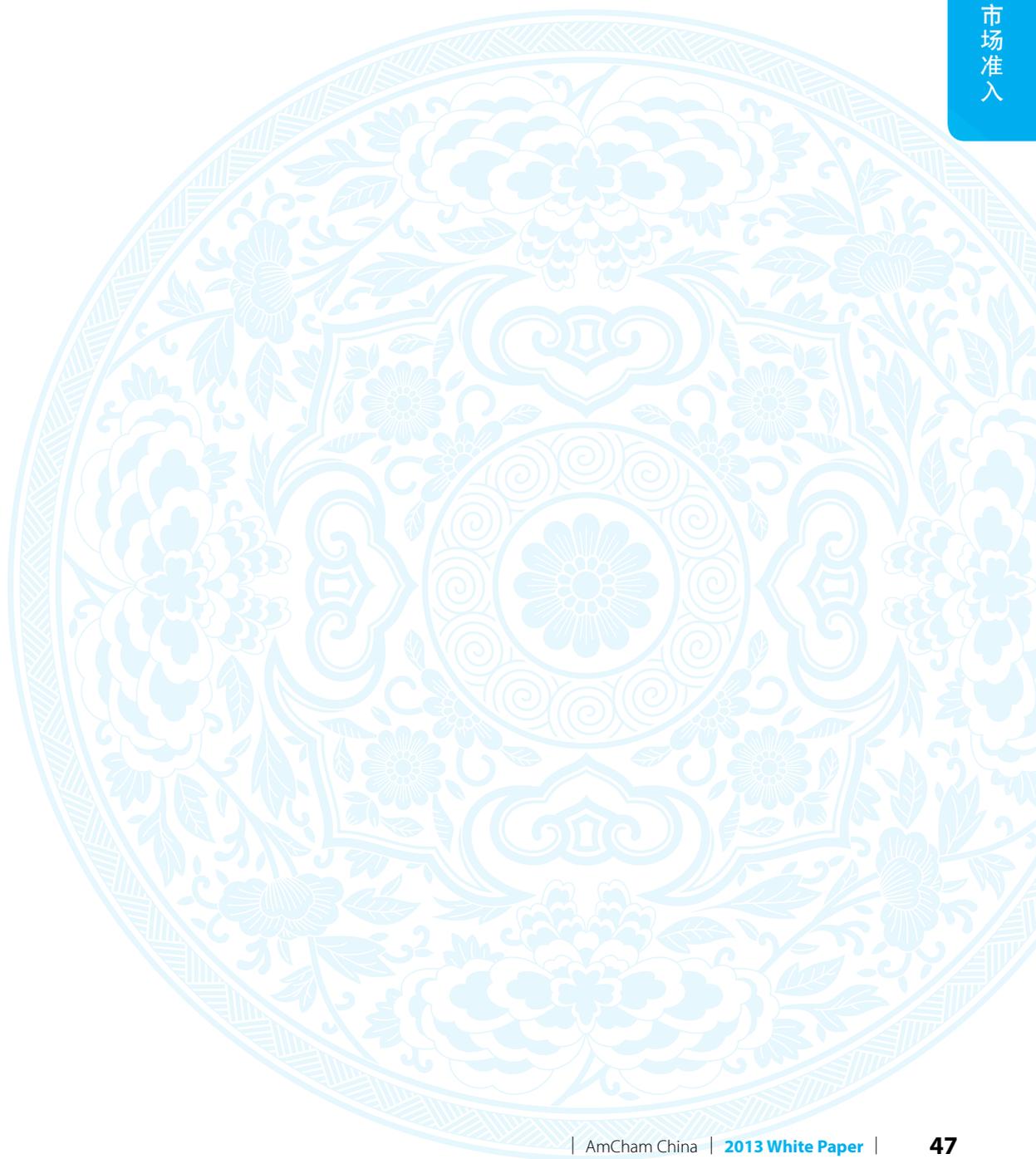
### 结论

美国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：二选一。或(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关于国有企业商业独立性的承诺相一致，与对世贸组织的其他承诺相一致；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。
  - ◆ 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。
- 取消中央和地方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专有信息。

- In situations where standards and conformity assessment qualifications must be required for government procurement, follow a principle of “self-declaration for compliance,” which does not mandate the disclosure of source code or other proprietary information.



# Innovation Policy

## Introduction

Since 2006, the Chinese government has aggressively pursued the goal of “indigenous innovation” by employing a wide range of policies supported by financial and fiscal outlays. Over the last decade annual spending on research and development (R&D) jumped from under 0.5 percent to over 1.5 percent of gross domestic product. At the same time, there has been a shift in focus from government agencies and institutes toward more commercially-oriented companies. AmCham China members support the growth of Chinese indigenous innovation, but are concerned about the limiting, and often harmful, nature of the innovation strategy and its effect on both domestic and multinational corporations operating in China.

Globalization has changed how innovation and R&D are carried out throughout the world. A company’s ability to access and contribute to the global technological knowledge base can improve its innovation efforts. China’s policies encouraging only indigenous innovation at the expense of international innovators will gradually limit China’s access to the global innovation economy. Intellectual property violations, non-compatible standards regimes, and forced technology transfer may help China in the short-term, but reduce its ability to benefit from global innovations and innovators. Multinational companies with broad technological innovation expertise may be forced to invest elsewhere. Notably, in recent years, over a third of AmCham China members faced discriminatory industrial policies or tech transfer policies due to their investment status, with AmCham China’s most recent Business Climate Survey indicating a rise in technology transfer as a de facto requirement for market access.

AmCham China member companies have spent billions of dollars investing in world-class 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 participa-

tion in China’s economy. The Strategic Emerging Industries (SEI) initiative and other policies favor domestic Chinese entities through targeted credit allocation, tax incentives, government procurement (GP) policies, standards setting and requirements, security regulations, subsidies, and competition law policy. China’s intellectual property rights (IPR) system has also made significant progress, but lax enforcement of foreign IPR undermines this progress. These domestic advantages and current IPR enforcement 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. 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. To encourage innovation, China should adopt policies which increase competition in the marketplace by both local and global firms.

## Ongoing Regulatory Issues

### *Innovation Ecosystem*

The continued development of a true innovation ecosystem in China is important for both Chinese and foreign companies. In order to build the essential and interdependent components of such a system, the government must foster a loose framework that will allow creative and innovative ideas to turn into commercial success. Some of the necessary elements include strong IP protection, mature legal and regulatory systems, defensible property rights, and limited government subsidies. An example of an innovation ecosystem success story is the rapid development of hydraulic fracturing technology in the United States. Three primary elements in the United States’ innovation ecosystem provided the building blocks for the new drilling technology to become commercially viable in a short period of time:

1. IPR protection of the original inventor’s rights;
2. A predictable legal and regulatory system providing:
  - a. Strong property rights protection, allowing small landowners to lease their land for profit;
  - b. A mature set of environmental regulations that

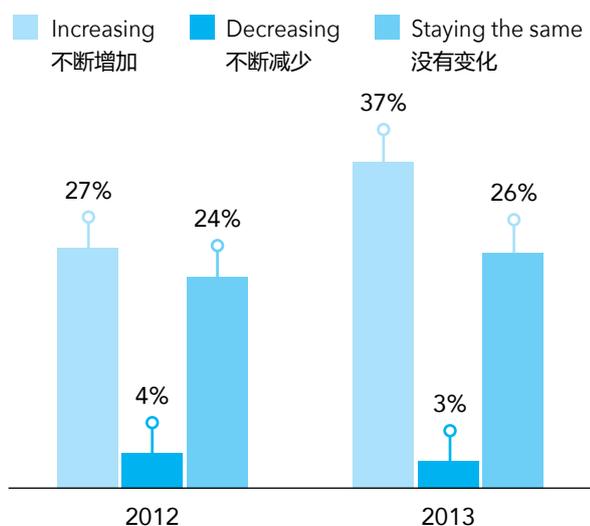
# 创新政策

## 引言

**自** 2006年起，中国政府一直在努力实现“自主创新”的目标，出台了一系列的政策为推进该目标提供金融和财政支持。过去十年来，中国在研发领域的年投资额占国内生产总值的比例已从不足0.5%跃升至超过1.5%。与此同时，创新主体也已经从政府部门和研究机构转向商业企业。中国美国商会的会员企业支持中国自主创新的发展，但同时也担心创新战略的限制性和危害性，以及可能会对中国企业以及在华经营的跨国企业所产生的影响。

全球化改变了整个世界开展创新和研发的方式。当一家公司有能力获取全球技术知识并对其有所贡献，它就能

**Q** Do you feel de facto technology transfer as a requirement for market access in China is:  
您实际中感到中国国内以市场准入为条件要求企业技术转让的情况\*



\* "N/A or don't know" category omitted  
该图未包含选项“不清楚或不知道”的数据

提升自身的创新水平。中国的相关政策以牺牲国际创新主体为代价而仅仅鼓励本土的自主创新，这将逐渐限制中国进入全球创新经济的通道。侵犯知识产权、不接轨的标准体系和强制技术转让等做法可能使得中国在短期内受益，但降低了中国的能力，使其不能从全球的创新和创新主体获益。技术创新经验和知识丰富的众多跨国公司可能会被迫转移投资。值得一提的是，近年来超过1/3的中国美国商会会员企业都因为投资身份问题遭受过歧视性产业政策或技术转让政策，而中国美国商会最新的《商业调查》中也显示，实践中将技术转让作为市场准入前提的做法在上升。

中国美国商会的会员公司已经投入数十亿美元的资金在中国建设了世界一流的研发中心。中国的工程师和科学家融入了这些全球最佳的机构，成为上述研发投资的受益者。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出了越来越多政策方面的限制。战略新兴产业（SEI）发展规划和其他政策通过有针对性的信贷分配、税收优惠、政府采购（GP）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。中国的知识产权保护（IPR）体系也取得了巨大的进步，但是对于外国知识产权保护的执法不力，使进步的进程受到阻碍。以上国内的优势和知识产权的执法现状，令人担心这些政策可能会使中国企业有机会获取专有知识产权（IP）并相应开发出具有竞争力的本土产品，从而将外资企业进一步置于不利地位。这对于中国企业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。要鼓励创新，中国应该制定政策，促进本土和跨国公司共同参与竞争。

clearly outlined driller's responsibilities; and

3. Limited government-provided subsidies, allowing the most efficient technology to compete in the marketplace without prejudice.

One of the most important of these elements is IPR (e.g. patents and data protection). This is the lifeblood of any enterprise that derives value from ideas. In a pharmaceutical company, for example, it takes more than a decade and well over a billion dollars to bring a new medicine from the lab to the pharmacy. Companies that pursue this work need assurance of a fair opportunity to recoup their investment. China has made substantial progress on this front by strengthening its patent system, committing to institutionalize IP protections that support the growth of its biotech sector, and more broadly, by the development of an innovation economy.

A mature legal system and related "institutional infrastructure" is crucial to enforcing a company's rights and to maintaining stability in the system. For IPR protection, in particular, this protection should not be limited to government administrative measures through various campaigns at different times. A regularly-enforced and supportive legal system and infrastructure, independent from local government administration and political authority, plus heavier penalties for offenders are proven, worldwide, to be more effective than the system China currently employs. AmCham China members are concerned that the government's current measures are temporary and ineffective at the local level, given the lack of support from the legal system. Efforts must be increased in all sectors to make sure that IPR is protected.

A regulatory system that is transparent, predictable, and aligned with global frameworks is also an important component of a well-functioning innovation ecosystem. In the case of the pharmaceutical industry, this is particularly important for clinical trials, where emerging biopharmaceutical treatments are tested in large populations of patients. Aligning these practices and their timing with international partners will enable more effective sharing of research and results. A transparent and predictable system benefits all participants in the market and allows companies to make decisions with confidence about the future.

Innovation is best achieved by market forces, not government intervention. In the long run, market-driven innovation is more successful than R&D chosen by the government. Open and fair government incentives for advanced technology development, such as the "Spark" and "Torch" projects, are a good method. Generally, however, direct government involvement in R&D reduces competition and thus may not be an effective path to innovation.

There is every reason to believe that with a properly functioning innovation ecosystem China will lead sectors that require innovation. This ecosystem would also facilitate international collaboration, benefitting Chinese companies

and the economic well-being of the country and its citizens. The following issues highlight the need for China to develop an efficient and inclusive innovation ecosystem.

### *Strategic Emerging Industries*

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 to move China up the global value chain: new-generation information technology (IT), high-end equipment manufacturing, advanced materials, new energy vehicles and energy saving, environmental protection, alternative energy, and biotechnology. The initiative extends the indigenous innovation drive and complements the 2006 Multi-Level Protection Scheme (MLPS). 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 the 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. (See the Government Procurement chapter for more information on delinking indigenous innovation from government 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.

### *Intellectual Property Protection*

#### *Counterfeit Seed and IP Protection*

Intellectual property protection is a key prerequisite for sustainable innovation. Companies will only innovate when their innovations are safe from theft or counterfeiting. Counterfeiting is a common concern for both Chinese and American companies.

## 现存监管问题

### 创新生态系统

中国真正意义上的创新生态系统得以持续发展，对中方和外资企业都很重要。为了构建此系统需要的诸多相互依存的基本要素，政府必须培育一个宽松的框架，使创意和创新思维能够转化为商业上的成功。其中一些必需的要素包括强有力的知识产权保护、成熟的法律和监管框架、受保护的财产权利以及一定数量的政府补贴。创新生态系统的一个成功案例便是近年来快速发展的美国水力压裂技术。美国创新生态系统的三大基本要素为这种新型钻探技术能够在短时间内转化为商业实践并获得成功提供了坚实的基础：

- (一) 对原创发明人的知识产权保护；
- (二) 一个可预测的法律和监管体系：
  1. 对财产权利实施强有力的保护，允许小地主出租土地获利；
  2. 成熟的环保监管体系，明确规定采矿企业的责任；
- (三) 一定数量的政府补贴，确保高效节能技术能够在市场上获得公平竞争的机会。

上述要素中，知识产权保护（专利和数据保护）最为重要。这是确保企业能够源源不断地将创意转化为价值的基本保证。以医药公司为例，一种新药从实验室研发到投产销售通常需要十年，耗资则超过十亿美元。从事这种业务的公司需要确保能够获得回收投资的公平机会。中国在这一领域已经取得了相当的进步，专利体系得到长足发展，同时还承诺实现知识产权保护制度化，保障生物技术领域的发展，从而在更大程度上推进创新经济的发展。

一个成熟的法律体系及其相关“制度基础设施”，对于实现公司的权利以及保持体系的稳定性都至关重要。对于知识产权保护来说，知识产权保护不应该仅限于不定期的专项行动等行政执法形式来实现。一个立法科学、执行有力，且独立于地方政府和政治权力的法律体系和基础设施，加上对违法行为的严格处罚力度，通过全球实践的证明，比中国现有体系更有法律效力。中国美国商会的会员企业担心，如缺乏法律体系的有效支撑，政府现有的行政措施在地方层面并不持久且缺乏有效性。各相关部门和行业都应该加大工作力度以保护知识产权。

一套运行良好的创新生态体系同时还需要一个透明、稳定且和国际接轨的监管体系。以医药行业为例，新兴的生物医药治疗在大量病人中进行试验，监管体系对于临床实验来说尤其重要。在最合适的时机将这些实践与国际合作方向同步，会更加有效地分享研究和成果。透明且稳定的监管体系将造福所有市场主体，并使得企业增强对前景的信心，从而更好地进行决策。

不断地将创新转化为商业实践并取得成功，而非由政府来决定输赢，是激励和实现创新的最佳途径。长期来看，市场机制下的创新比政府直接资助研发创新更易成功。公开公正的政府激励创新基金能够推动高科技进步，例如，“星火计划”和“火炬计划”等项目即为证明。然而，一般来说，政府直接参与研发阻碍了有效的竞争，因而并非实现创新的最有效途径。

我们有理由相信，一旦中国建立起一套行之有效的创新生态系统，中国将在以创新驱动的领域里获得领先。同时它还将有助于促进国际合作，造福中国企业、中国经济的发展以及人民的生活。下文探讨的许多主题都与中国建立一套真正的创新生态系统息息相关。

### 战略新兴产业

2010年10月，中国国务院颁布了《关于加快培育和发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广泛的政策指导意见，促进战略新兴产业的发展。其中包括战略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

AmCham China is pleased to note that the Chinese government has made efforts to improve IP protection. However, the IP environment continues to discourage innovation in China. For example, according to a Ministry of Agriculture investigation, even for nationally leading varieties over half of the seeds on the market can be counterfeit. Consulting firms have estimated that over 80 percent of the volume for certain leading varieties on the market are counterfeit. The huge volume of counterfeit seed in China not only hurts legitimate domestic and foreign-invested seed companies, but also harms China's food security and farmers. Counterfeit seeds are lower quality than genuine seeds, resulting in lower yields and higher risk for Chinese farmers, as well as lower national grain production for China.

One important area for improvement is the application time necessary to receive basic IP protections. For example, breeders of new plant varieties can apply for a special form of intellectual property called Plant Variety Protection under the New Plant Variety Protection Regulations effective since October 1997. However, foreign-invested companies have great difficulty obtaining this type of intellectual property. Stronger IP protection would remove counterfeiters from markets and benefit legitimate American and Chinese companies.

### Services Invention Remuneration

In November 2012, the State Intellectual Property Office (SIPO) released a draft of the proposed Service Invention Remuneration (SIR) regulations for public comment. The SIR set guidelines for compensation of employees for patents based on the realized commercial value of the patent. After the public comment period, SIPO will submit a finalized version of the draft regulations to the Central Committee Talent Work Coordination Group (CCTWC), a high-level, internal Chinese government policy committee that has ultimate authority on human-resource related issues within the Chinese government. AmCham China members are concerned that the SIR will unnecessarily burden corporations filing patents in China, and ultimately deter US companies from investing in R&D in China.

### Regulatory Controls

#### Research and Development Recoupment

Foreign innovative drug companies in China have committed to a high level of social responsibility, in addition to offering cutting-edge, high-quality pharmaceuticals to the Chinese population. Innovative drug companies conduct healthcare programs, train professionals, and promote healthcare development and reform. Fair pricing and timely reimbursements of medicines are important components of the innovation ecosystem, allowing more people to take advantage of new treatments, as well as new options for preventive care. Efficient reimbursement policies complement China's health and development goals by ensuring that Chinese citizens

will benefit from a continuous flow of innovative products.

As part of the Chinese government's ongoing national healthcare reform, it has put into place two key programs designed to increase public access to affordable drugs. The National Reimbursement Drug List (NRDL), which establishes the reimbursement rate for drugs for basic medical insurance, and the National Essential Drug List (NEDL), which lists all essential medicines to be used at public health facilities, retail drugstores and medical institutions in China. EDL drugs are available at Chinese healthcare institutions at low, government-mandated prices.

In 2009, China's Ministry of Human Resources and Social Security released the current NRDL, the first update since 2004. Lengthy delays between NRDL renewals prevent wide-spread patient access to new products and medical techniques. AmCham China members suggest that the NRDL be revised at more frequent intervals.

AmCham China is concerned that the NEDL bidding process prevents effective and innovative drugs from reaching large segments of the population. In many provinces, only one product is chosen for NEDL bidding, typically the lowest-priced generic available. Innovative products are unlikely to win a bid because of their higher prices and program evaluation criteria. These barriers limit drug availability in grassroots hospitals, which conflicts with hospital reform policies encouraging chronically ill and mildly ill patients to go grassroots hospitals instead of the better-supplied tier 2 and 3 hospitals. (For additional detail on the NEDL and NRDL please see the Healthcare chapter.)

### Market Access

#### Biotechnology Companies

The Chinese government has identified biotechnology as one of seven SEIs to receive substantial government support to encourage innovation and growth. To support biotechnology innovation, the State Council approved a special research program under the framework of "National Science & Technology Major Projects" in 2008. This program focuses on the development of new biotech varieties, with an investment that could total as much as US \$3.5 billion over the next 12 years. Investment in the special research program exceeded US \$4.0 billion by the end of 2010.

AmCham China recognizes that biotechnology has immense potential for China's economic development. Foreign-invested companies have valuable capital, technology and expertise and are interested in helping China realize its potential in biotechnology. However, in the 2011 FDI Catalogue, the NDRC and MOFCOM listed biotechnology as a "prohibited" sector, banning foreign-invested enterprises from participating in the development of China's biotechnology industry. This prohibition also excludes foreign-invested enterprises from receiving Chinese govern-

中国政府资助的研发项目以及标准化项目的机会。我们也注意到该《决定》初稿中去除了将技术开发与公共采购挂钩的条款。(详情请参阅《政府采购》一章。)

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能够像这些建议所设想的那样,随着实施推进,全面参与到战略新兴产业中来。

## 知识产权保护

### 假种子和知识产权保护

知识产权保护是实现创新可持续发展的一项重要前提。企业只有在确保其创新成果不会被窃取或仿冒时才会投入创新研究。仿冒已经成为中资和外资企业共同担心的一大问题。

中国美国商会欣喜地看到,中国政府已经在加强知识产权保护方面做出了相当的努力。但中国当前的知识产权环境却一直抑制创新。例如,根据农业部的一项调查显示,即使是全国主要的种子品种,市场中流通的一半以上都是假种子。而咨询公司预测市场上流通的某些种子品种的假货率超过 80%。假冒种子在中国市场上的泛滥不仅损害了中资和外资种子企业的合法利益,同时还威胁到了中国的粮食安全,侵害农民的利益。假种子的质量要远远差于真种子,不仅产量低,还使中国农民面临高风险,导致中国全国粮食减产。

一个需要改进的重要方面就是缩短基本的知识产权保护申请所需的时间。比如,育种者可以根据 1997 年 10 月生效实施的《植物新品种保护条例》,为培育的植物新品种申请一种特殊类型的知识产权,即植物新品种权。然而外资公司在申请上述知识产权保护时却困难重重。加强知识产权保护能够将假冒产品驱逐出市场,从而保护美国和中国企业的合法利益。

### 《职务发明条例》

2012 年 11 月,国家知识产权局公布了《职务发明条例》草案并公开征求意见。该条例草案确立了根据专利实现的商业价值为员工分发报酬和奖励的原则。公开征求意见期结束后,国家知识产权局将向中央人才工作协调小组,即中国政府内有关人力资源相关事务的最高决策机构,提交草案最终稿。中国美国商会的会员企业担心《职务发明条例》会给在华申请专利的企业造成不必要的负担,从而最终打击美国企业在华投资研发的积极性。

## 监管控制

### 研发投资回收

外资创新型医药企业在中国不仅为中国民众提供尖端优质的药品,同时还承诺履行高标准社会责任。创新型医药企业开展医疗保健项目、培训专业医护人员,同时推动医疗发展和改革。药品公平定价和及时报销是这一创新生态体系中的重要部分。公平定价和及时报销有助于更多的人从新型治疗方法中受益,同时也使他们拥有选择预防保健的机会。高效的报销制度有助于中国卫生事业的发展 and 改革,因为中国公民可以享受到源源不断的创新性产品。

作为中国政府正在实施的全国医疗改革的一部分,中国政府已经启动了两个重点改革项目,以便降低药物价格,使老百姓都能负担起医药费。《国家医保药品目录》(《药品目录》)确定了基本医疗保险药物报销比例,而《国家基本药物目录》(《基本药物目录》)中则列明了中国的公立卫生机构、零售药店和医疗机构所使用的基本药物。这些药物将由政府控制价格,在中国的医疗机构以低价出售。

2009 年,中国的人力资源和社会保障部发布了最新版药品目录。2009 年版药品目录是自 2004 年药品目录发布以来的首次修改更新。长达五年的药品目录更新周期造成病人普遍无法获得最新且有效的药品和医疗技术。中国美国商会会员企业建议定期修改药品目录,并缩短其更新周期。

中国美国商会的会员企业担心,现行基本药物目录招投标程序造成大批病人无法享受有效且创新型的药物。在很多省份的基本药物招标过程中,通常仅允许一种药物中标进入基本药物目录,而且中标药物往往是同类中价格最低的一个。而创新药物往往因为自身价格较高且项目评估标准等问题无法中标。上述阻碍造成基层医院供应的药物非常有限,这与医院改革计划中所提倡的鼓励慢性病和小病的病人在基层医院就医,大病重病病人去二甲三甲医院就医的政策导向背道而驰。基层医院只能开出一类药物,创新药品却无法进入基层医院的处方。(更多有关《国家医保药品目录》和《国家基本药物目录》的内容,请参阅《医疗卫生》一章。)

## 市场准入

### 生物技术公司

中国政府已经将生物技术列为七大“战略新兴产业”之一,这意味着政府将大力支持和鼓励生物技术产业的创

ment investments in biotechnology innovation.

AmCham China believes a more inclusive approach, that includes foreign-invested enterprises, will bring biotechnology investment, technology and expertise to China. Further, this will help achieve the Chinese government’s goal increasing the role of the seven SEIs to China’s GDP.

### Equal Opportunity Access for Special Regulatory Status

To promote innovation in selected industries, the Chinese government will offer special status to certain companies that qualify for favorable treatment and expedited regulatory approvals. An example is the planned subsidies and expedited provincial field crop registration granted to “integrated seed companies” as laid out in the State Council’s “Opinions on Accelerating the Modernization of the Crop Seed Industry” released on April 10, 2011.

AmCham China recognizes the value of instituting subsidies and “green pass” systems to encourage innovation and reduce pre-commercialization delays for new innovations. Foreign-invested companies also have innovations that would benefit from such treatment. A system of favorable treatment only available to domestic companies would deny Chinese businesses, consumers, farmers, and others timely access to beneficial innovations developed by foreign enterprises.

### Informal Limits on Foreign Invested JV Scope

According to the “Rules on the Administration of Incorporation & Filing of Foreign-invested Crop Seed Firms,” released September 8, 1997, foreign-invested enterprises setting up joint ventures (JVs) in China must gain approval for the scope of the JVs operations.

AmCham China recognizes the need for clear and transparent regulation of JV formation in China. However, the lack of clear and transparent standards for government approvals of JV scope can lead to informal rules, which limit foreign-invested JVs’ contributions to China’s economic development. For example, the Ministry of Agriculture has not approved a single application for a foreign-invested JV with a scope including two or more main field crops, despite the lack of any rule or standard limiting foreign-invested JVs to one main field crop. Informal limits on the scope of foreign invested JVs limit not only foreign-invested enterprises, but Chinese consumers, distributors, and business partners from access to diversified product offerings.

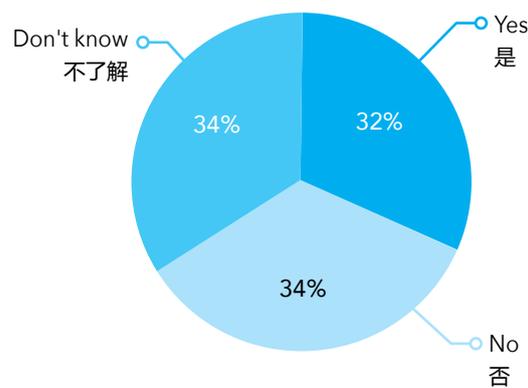
### Subsidies for Domestic Enterprises

Since the 1980s, the Ministry of Science and Technology (MOST), the Ministry of Industry and Information Technology (MIIT), the NDRC, and their 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 MLPS.

In October 2010, the Chinese State Council announced it would begin to allow select foreign-invested companies to participate in these funding programs. To date, however, the funds have been almost exclusively channeled to Chinese enterprises. Further, Chinese enterprises with State High-Tech Development Plan funding gain a direct advantage in the marketplace. Chinese consumers view state funding as government endorsement of the product. 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, offer more technology options to Chinese consumers and manufacturers, and further advance China’s innovation economy.

**Q Do you think Chinese private-sector firms in your industry are losing out on business as a result of industrial policies that favor state-owned enterprises?**  
 您是否认为由于产业政策倾向促进支持国有企业致使中国私营企业业务亏损？



### Standards as a Tool for Innovation Policy

China has adopted unique standards and requirements across a wide range of industry sectors and products for reasons of environmental protection, energy conservation, and securing critical Chinese infrastructure. In many cases these standards prevent foreign-invested companies from competing with their Chinese counterparts. Such standards risk closing off foreign-invested companies from 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 MLPS, may extend these market

新和发展。为了支持生物技术领域的创新，2008年国务院批准了“国家科学技术重大项目”下的一项特别研究项目，该项目将在2008年后的12年内获得总计35亿美元的投资，用于开发各类生物技术。据报道，截至2010年底，对特别研究项目的投资总计已经超过了40亿美元。

中国美国商会认为生物技术对中国经济的增长意义重大。美资企业具有丰厚的资本、相关技术和专业技能，并有志于帮助中国实现生物科技的发展潜力。然而在2011年版的《外商投资产业指导目录》中，发改委和商务部却将生物技术列为禁止外商投资的产业，从而剥夺了外资企业参与中国生物技术发展的机会。上述禁止同时还排除了外资企业获得中国政府投资、促进生物技术创新的可能。

中国美国商会相信，允许外资企业参与中国生物技术产业的发展有利于将更多的投资、技术和技能引入中国，帮助中国政府实现七大战略新兴产业到2015年对GDP的贡献率达到8%、到2020年达到15%的目标。

### **特殊待遇企业的平等准入机会**

为了促进上述产业的创新，中国政府授予了部分企业享受优惠待遇且行政审批周期缩短的特殊地位。例如，国务院在2011年4月10日发布的《关于加快推进现代农作物种业发展的意见》中，就明确给予“育繁推一体化”种子企业以补贴并要求简化省级田间农作物种子登记程序。

中国美国商会认可上述补贴和“绿灯”制度的价值，这些政策不仅鼓励了创新，也减少了行政程序对创新的阻碍。外资企业的创新也可以从上述待遇中受益。一套优惠制度如果只惠及内资企业，势必会影响中国的企业、消费者、农民和其他主体及时使用外资企业开发的创新技术并从中受益。

### **对中外合营企业经营范围的非正规限制**

根据1997年9月8日发布的《关于设立外商投资农作物种子企业审批和登记管理的规定》，外资企业在华设立合营企业，必须获得合营企业经营范围批准。

中国美国商会认为，在华设立合营企业的相关法律法规需要明确性和透明度。但鉴于上述合营企业经营范围行政审批的标准缺乏明确度和透明度，因此会造成潜规则问题，从而限制了中美合营企业对中国经济发展的贡献。例如，尽管目前并无明文规定限制中外合营企业只准经营一种主要田间农作物，但农业部至今尚未批准一项中外合营企业

从事两种或多种主要田间农作物经营的申请。这种对中外合营企业经营范围的非正规限制，不仅限制了外资企业，同时还剥夺了中国国内的消费者、经销商和业务伙伴开展多元经营范围的机会。

### **对内资企业的补贴**

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资。工信部近期与国家开发银行签订了一份战略谅解备忘录，以加大在省级和地方对科技发展中长期发展规划中强调的重点领域中基础和应用研究的资助。

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。再者，从国家高科技研究发展计划中获得资助的中国企业，可以获得市场的优势地位。国家资金资助往往被中国消费者们认为是相关产品获得了国家的认可和保证。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。这将有助于增加在华研发投入，为中国消费者和生产者提供更多的技术选择，并且进一步推动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，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”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政府和民营部门的活动，而这些领域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。（详情请参阅《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》相关章节。）

access barriers to government and private sector activities that in other countries are open to foreign participation.

AmCham China encourages China to harmonize its standards regime with internationally-recognized, market-driven standards. China's participation in the international standards development process would help 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.)

## Recent Developments

Bureaucratic reform also may improve the environment for an innovation-based economy. The central government distributes regulatory authority for innovation-related policies among a number of agencies, and local governments also have considerable authority to develop distinctive strategies. AmCham China is concerned that such regulatory pluralism often leads to policy fragmentation, with conflicting requirements or priorities emanating from different agencies and insufficient coordination.

For example, MOST and NDRC have taken different positions on whether to support pure electric vehicles or focus attention on hybrids and more efficient internal combustion engines. MIIT and the State Administration of Radio, Film and Television (SARFT) frequently differ on policies related to telecommunications technologies. AmCham China recommends the Chinese government clarify the roles of overlapping regulators, thus removing some of the policy fragmentation that adversely affects both Chinese and foreign companies in the market.

## 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 innovation policies, regulatory standards, and initiatives. These policies may stifle the development of a genuine innovation ecosystem and potentially 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 and also inhibiting achievement of its own stated goals.

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.

## Recommendations

- **Ensure that China's new SEIs 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 JV partnerships for foreign-invested firms and to whom those foreign-invested firms transfer or license technology. Create clear and transparent standards for government approvals of joint venture scope of work.
- Harmonize the standards regime with that of internationally recognized, market-driven standards instead of creating duplicative domestic standards. Where international standards are not available or not applicable, foreign-invested companies should have equal access participating in the creation of Chinese domestic standards.
- 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.
- Allow foreign-invested companies equal access to R&D incentive programs.
- Ensure government restructuring increases policy coordination and transparency.
- 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.

## 最新进展

行政体制改革也将改善创新经济发展的环境。中央政府目前对创新相关政策实行多头监管，各级地方政府也有相当大的权力制定监管政策，使用监管工具。中国美国商会担心这种多头监管模式会导致政策碎片化，导致各部门间的政策内容和监管重点之间存在冲突，使得各政策之间缺乏有效协调。

例如，科技部和发改委对于是支持纯电动车还是支持混合动力车和节能发动机车这一问题上就存在分歧。工信部和国家广播电影电视总局（广电总局）则在通讯技术相关政策方面也往往持有不同意见。中国美国商会建议中国政府明确各监管者的监管职权范围，取消多头监管和重复监管，消除政策碎片化倾向，消除其对市场中中资和外资企业的负面影响。

## 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，对于创新政策、监管标准与相关计划所显现出的保护主义色彩，在华运营的外资企业仍然感到担心。这些政策会抑制真正的创新，还有可能加剧贸易争端。当中国谋求从全球商业网络、研发和科学合作中受益以增强自身创新能力，则它不能同时对外资企业在华参与市场竞争设置壁垒，而不会加大贸易摩擦，妨碍中国实现自身所宣称的目标。

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。明确制定并公布合营企业经营范围的行政审批标准。
- 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。当国际标准不存在或者不适用时，外资企业应当平等地享有参与制定中国国内标准的权利。
- 加强对本国和外国知识产权的保护，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。
- 允许外资企业在进入研发扶持项目方面享有平等权利。
- 确保政府机构改革能够促进政策协调，增强政策透明度。
- 加强并拓展美中创新对话的参与深度和广度，以促进鼓励外资与内资企业进行创新的政策。

# Intellectual Property Rights

## Introduction

The year 2012 was marked by numerous legislative, regulatory, and policy initiatives covering almost all types of intellectual property rights (IPRs). AmCham China is convinced that many of the ongoing reforms of the IPR regime will benefit all IPR owners, be conducive to innovation and economic growth, and ultimately advance the public interest. AmCham China is particularly encouraged by the increase in transparency and openness of Chinese authorities leading these reforms in the past year.

AmCham China welcomes the renewed commitments in the areas of software legalization that were made at the 23<sup>rd</sup> Session of the US-China Joint Commission on Commerce and Trade (JCCT) in December 2012. The renewed commitments target enterprises under the China Banking Regulatory Commission as well as the larger state-owned enterprises (SOEs) supervised by the State-Owned Assets Supervision and Administration Commission. We hope this substantially expands efforts being made to ensure the use of legal software by SOEs and at all levels of government.

AmCham China welcomes the ongoing enforcement campaigns conducted by the police nationwide. Sustained enforcement campaigns will result in real deterrence against illicit activities by counterfeiters and pirates.

AmCham China firmly believes an IPR regime that consistently and effectively protects IP rights, regardless of the origin and nature of the underlying IP, will stimulate domestic innovation more than any other policy measure. Economies that offer balanced and effective IP protection attract investment capital because the firms are assured of protection of their valuable IP assets. In turn, such investment results in voluntary technology transfer and increased domestic innovation.

## Ongoing Regulatory Issues

### *Innovation Policy and IP*

China made new commitments at the 23<sup>rd</sup> JCCT that technology transfer and technology cooperation will be auto-

nous decisions of enterprises themselves, and not preconditions for market access. China has also pledged to correct departmental or local practices that are inconsistent with this commitment in a timely manner.

AmCham China members also applaud China for its commitment to revise the indigenous intellectual property requirement for information security products used in critical infrastructure, as set forth in the 2007 Multi-level Protection Scheme (MLPS) Administrative Measures. AmCham China members, however, remain concerned that many aspects of China's national industrial development agenda still include discriminatory elements regarding foreign-owned IP. To ensure equal treatment of foreign enterprises, AmCham China hopes that China will continue to promulgate the November 2011 circular that delinks IPR-related innovation policies from government procurement and avoids conditioning market access on the localization of IPR in China.

### *Patents*

#### *Proposed Expansive Dual Enforcement Power by the State Intellectual Property Office (SIPO)*

Some of SIPO's proposed revisions to the fourth amendment of the patent law caught many of our members by surprise. It was well understood that SIPO intended to improve patent enforcement and increase assurance to patent owners. Proposed revisions include granting SIPO and its hundreds of local offices expansive quasi-judicial and remedial powers to conduct raids, engage in *sua sponte* enforcement actions against ill-defined "market-disruptive" patent infringement activities, and award fines as well as compensatory and punitive damages. We fear that these measures will create great uncertainties and harm innovation.

Though heightened enforcement may benefit patent owners in some situations, extending broad judicial-like powers to local administrative offices with comparatively little technological or legal experience in IPR cases may undermine rather than protect innovation. We firmly feel that courts are the proper forum to adjudicate infringement and damages, and vesting that same authority in administrative agencies will create unnecessary uncertainty. In fact, because of the complexities of patent litigation, such cases currently can only be handled by certain courts in China (most of them

# 知识产权

## 引言

2012年中国在知识产权领域内有众多的立法、法规和政策举措，覆盖了几乎各类知识产权。中国美国商会相信正在进行的知识产权体系的改革将会有利于全体知识产权拥有者、有利于创新和经济增长、并最终促进公共福利。领导上述各项改革举措的政府主管部门在过去一年中提升了透明度和开放度，尤其让中国美国商会深感鼓舞。

2012年12月举行的第23届中美商贸联委会上重申了有关软件正版化的承诺，中国美国商会对此表示欢迎。这一承诺针对的是银监会监管下的国有银行机构和国资委监管下的大型国企。我们希望中国政府能够有力扩大推进这项工作，确保所有国企和各级政府实现软件正版化。

中国美国商会对公安部门在全国范围内持续开展的知识产权执法行动表示欢迎。持续的执法行动将有力地遏制造假和盗版等非法行为。

中国美国商会坚信，无论知识产权的来源和性质如何，如果一国的知识产权体系都能够持续有效地给予保护，这比任何其它政策措施都更能促进本国的创新。能够均衡有效地保护知识产权的经济体必能吸引投资人的青睐，因为创新主体确信其宝贵的知识产权资产会得到保护。反过来，投资又会带来自愿性技术转让，提升国内创新水平。

## 现存监管问题

### 创新政策与知识产权

中国政府在第23届中美商贸联委会上作出新的承诺，允许企业自主决定技术转让和技术合作事宜，且不将其作为市场准入的前提条件。中国还承诺及时纠正某些部门或地方政府实践中与上述承诺不一致的做法。

中国承诺修改2007年出台的《信息安全等级保护管理办法》(MLPS)中对用于重大基础设施的信息安全产品

做出的自主知识产权要求，中国美国商会会员对此亦表示欢迎。但是，中国国家产业发展规划中包含诸多对外国知识产权的歧视性规定，中国美国商会会员对此依然担忧。为确保外资企业能够享有同等的国民待遇，中国美国商会希望中国继续公布2011年11月通知，将知识产权相关创新政策与政府采购脱钩，取消将知识产权在华本地化作为市场准入条件的规定。

## 专利

### 计划授予国家知识产权局广泛的行政执法权力

国家知识产权局公布的《专利法》第四次修订草案中的部分内容使我们许多会员企业感到惊讶。我们非常理解国家知识产权局旨在通过第四次修订《专利法》以加强专利执法，保障专利所有人的权益。但修订草案授予了国家知识产权局以及数百个地方各级知识产权局以广泛的准司法和救济权力，允许他们针对概念模糊不清的“扰乱市场秩序”的专利违法行为开展突击搜查和其他主动执法活动，对违法者处以罚款、补偿性赔偿金和惩罚性赔偿金的权力。我们担心上述规定将会导致更大的不确定性，同时有碍创新。

尽管在某些情形下加强执法有利于专利所有人，但将广泛的准司法权力授予处理知识产权案件方面相对缺乏技术或执法经验的地方知识产权行政管理部门，不仅无法保护创新，反而可能损害创新。我们坚信，只有法院才适合判决和处理知识产权违法案件，授予行政机构以同样的权力只能导致不必要的不确定性。事实上，鉴于专利诉讼的复杂性，在中国通常只有最高人民法院选定的部分特定法院（大部分是中级人民法院）负责审理专利诉讼案件。

草案所拟议的执法双轨制将会导致诉讼增加、成本提高、与司法活动的冲突增加、以及择地诉讼行为增多等问题。这将反过来导致恶意专利持有人越发滥用手中的权利来骚扰竞争对手，加重竞争对手的负担。该修订草案第60条和

being at the intermediate level) that have been selected by the Supreme People's Court.

This proposed dual system of enforcement will increase litigation, expenses, conflicts with judicial actions, and forum shopping. This will, in turn, increase the ability of abusive patent holders to harass and burden competitors. Moreover, as drafted, Articles 60 and 65 of the proposed amendment allow excessive damages and fines even in routine, good faith patent disputes, encouraging even more administrative cases and undermining the fundamental objectives of patent systems. This concern over excessive litigation, damages and fines is augmented by

- The increase in the number of low-quality utility model patents filed in China,
- Concerns that under proposed Article 60, an administrative office, which may lack patent dispute experience, may initiate its own actions, confiscate the alleged illegal earnings, and then impose an additional fine of quadruple the earnings,
- The ability of patent holders to receive triple profits, losses or royalties, for willful infringement under proposed Article 65.

Excessive litigation, damages and fines are particularly problematic for small businesses in China, impairing their incentive to innovate and compete.

To our knowledge there are few, if any, patent systems across the world that have this kind of dual system of enforcement. For example, the German patent office does not make infringement determinations, decide damages, issue injunctions, impose government fines, or self-initiate proceedings without a complaint from the courts. Given the relative newness of China's patent system, AmCham China recommends that SIPO hold off on this expansion of administrative power until the agency has carefully weighed the benefits and downsides, and local administrative authorities have gained more patent experience under the current system. Such a course of action is especially prudent due to the proliferation of low-quality patents in China, which can create additional burdensome and costly patent enforcement proceedings.

### Proliferation of Low-Quality Patents

AmCham China is concerned about the large number of low-quality patents in China, particularly utility model patents (UMPs). Low-quality patents undermine invention patents and discourage genuine innovation.

In 2012, SIPO released a report, entitled "The Development of China UMPs," as a response to growing concerns from the international community on low-quality UMPs in China. According to the report, UMP filings in China accounted for 83 percent of all UMP filings worldwide as of the end of 2010. By the end of 2011, China had registered 1.12 million UMPs.

AmCham China remains concerned that SIPO has not taken effective "quality control" measures to assure patentability of the UMPs granted. Only 7 percent of the report's content addresses the SIPO's quality control system. The report lacks sufficient detail on the examination department's quality control procedures, as well as data on quality-based rejections of UMP filings.

AmCham China believes it is critical for SIPO to release specific data on UMPs, such as the rate of rejection of low-quality patents. We also recommend that SIPO clarify that the objective embodied in the 12<sup>th</sup> Five-Year Plan (per capita filing of patents: 3.3 per 10,000) is meant for invention patents only.

AmCham China believes thorough patent searches with a critical review of the novelty and inventiveness of a UMP filing will help reduce low quality patents. (More detailed recommendations on the type of safeguards SIPO could implement to ensure China's UMP system achieves its objectives can be found in the extensive study produced by Thomas Moga and entitled, "China's Utility Model Patent System: Innovation Driver or Deterrent" (November 2012)). AmCham China appreciates SIPO's cooperative relationship with the European Patent Office (EPO) and the US Patent and Trademark Office (PTO), and we hope that cooperation with these long-established patent offices will provide useful insights in improving the quality of patent examination.

Further, AmCham China continues to hear anecdotal evidence that certain local Chinese companies file low-quality patents simply to take advantage of government subsidies. AmCham China therefore recommends eliminating government subsidies for patent filings, or at least stronger measures to prevent the misuse of such subsidies. At minimum, government subsidies should be limited to invention patents, and not be given for UMPs, which offer only minor advances. By raising the bar of achievement for such subsidies, companies are encouraged to aim for genuine innovation.

### Protection of Computerized Graphic User Interfaces and Icons

The patentability of graphic user interface (GUI) and computerized icons is notably missing from the patent law amendments. SIPO has not removed the barriers in the current "Guidelines for Patent Examination" that prevent patenting of GUIs and icons used in computer programs, phones, and other handheld devices. These barriers are widely seen as lacking statutory basis in the Patent Law.

Not affording patent protection for GUIs and icons has disadvantaged China's innovation technology and creative industries. AmCham China urges SIPO to remove the barriers to patent protection for GUIs and icons in the next amendment of its patent examination guidelines. At minimum, we suggest SIPO commit to including the patentability of GUIs

第 65 条中规定常规性的、无恶意的专利纠纷中也可判处惩罚性赔偿金和罚款，这必将导致行政处罚案例激增，损害了专利制度的根本目的。鉴于下述情况，我们对于出现过分滥用诉讼、赔偿金和罚款数额的担忧更为强烈：

- 在中国，申请低质量实用新型专利的数量增加；
- 根据修订草案第 60 条，可能缺乏专利争议处理经验的知识产权行政管理部门会主动开展执法活动，没收所谓非法所得，并处非法所得四倍的罚款；
- 根据草案第 65 条，专利持有人可能凭借故意的违法行为获得数额为利润、损失或专利使用费三倍的赔偿。

滥用诉讼，赔偿金和罚款数额过高尤其给在华经营的小企业造成了严重问题，打击了他们创新和竞争的积极性。

据我们所知，全世界极少（如果有的话）有国家采用上述双轨制专利执法制度。比如，德国专利局无权作出侵权决定，不能决定赔偿金数额，不能发出禁令，不能决定政府罚金，不能在法院令的情况下主动采取执法行为。鉴于中国专利制度起步较晚，中国美国商会建议国家知识产权局可以暂缓行政扩权，待充分考量评估行政扩权利弊，同时地方知识产权行政主管部门在现有制度下获得更多的专利执法经验后，再做决定。鉴于低质量专利在中国泛滥的现状，采取这一措施时应格外谨慎，因为此举将进一步加重专利执法程序的繁琐程度和成本。

### **低质量专利的问题**

中国美国商会对中国目前充斥着大量低质量专利，特别是实用新型专利的状况表示担心。低质量专利影响了发明专利并抑制了真正的创新。

2012 年，为了回应国际社会对中国低质量实用新型专利的担忧，国家知识产权局发布了一部名为《中国实用新型专利制度发展状况》的报告。该报告显示，到 2010 年，中国实用新型专利申请量已占全世界申请总量的 83%。截至 2011 年年底，中国已注册了实用新型专利 112 万件。中国美国商会担心国家知识产权局并未采取有效的“质量控制”措施，确保所授予的实用新型专利具有可专利性。该报告仅有 7% 的篇幅介绍国家知识产权局的质量控制体系。这篇报告未能对专利审查部门所采用的质量控制程序以及由于质量不过关而未能获得实用新型专利的申请的相关数据进行详尽的介绍。

中国美国商会认为国家知识产权局亟须发布实用新型

专利相关数据，如低质量专利申请驳回率等。我们还建议国家知识产权局明确“十二五”规划中所确立的目标（人均专利申请率：每万人 3.3 件）仅限于发明专利。

中国美国商会认为，针对实用新型专利申请的新颖性和创造性进行实质性审查的专利检索制度有助于减少低质量专利数量。（有关国家知识产权局为实现中国实用新型专利制度既定目标所应当采取保护措施详情，参见 Thomas Moga 所著的名为《中国实用新型专利制度：促进创新还是阻碍创新》（2012 年 11 月）中的相关研究结果。）中国美国商会赞赏国家知识产权局与欧洲专利局（EPO）和美国专利商标局（PTO）建立的合作关系，我们希望对这些起步较早的专利审查机构的合作，能够对中国提高专利质量审查水平提供有益的启示。

另外，中国美国商会不断听到，某些中国本土企业申请低质量专利仅仅是为了争取政府补贴。为此，中国美国商会建议取消专利申请的政府补贴，或至少加强监管，防止上述滥用补贴制度的行为。如果一定要保留上述政府补贴，那么补贴的对象也应当仅限于发明专利，实用新型专利的创新性往往非常有限，因此不应获得补贴。通过提高获取补贴的资格标准，能够激励企业从事真正的创新。

### **计算机图形用户界面与图标的保护**

《专利法》修订草案中没有涉及图形用户界面（GUI）和计算机图标的可专利性问题。国家知识产权局尚未取消现行《专利审查指南》中禁止授予计算机程序、电话和其他便携式设备中的图形用户界面和图标获得专利的规定。这些禁止性规定被广泛认为缺乏《专利法》的法律依据。

否定对图形用户界面和图标的专利保护，已经对中国的创新技术和创意产业造成了负面影响。中国美国商会促请国家知识产权局在下次修改专利审查指南时能够取消对图形用户界面和图标不授予专利之规定。我们建议国家知识产权局至少应当优先考虑在相关改革中赋予图形用户界面和图标的可专利性。

### **专利强制许可**

中国美国商会会员企业对现行《专利法》及其实施细则中有关强制许可的条款依旧担心。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。该法中依然允许为保护“公共利益”而实施强制许可，但“公共利益”外

and icons at the top of the patent reforms agenda.

### Compulsory Licensing

AmCham China members remain concerned about compulsory licensing provisions in the current Patent Law and their implementing regulations. For example, current law permits compulsory licensing where a patentee has failed to sufficiently exploit the patent or meet market demand, but provides no guidance as to how “sufficient exploitation” is determined or who determines it. The law also appears to permit compulsory licensing in the name of “public interest,” which can be very broad, and potentially inconsistent with Article 31 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Even though no compulsory licenses have been issued under the Patent Law yet, AmCham China members hope that future patent reforms will eliminate current ambiguities arising from the compulsory licensing rules. AmCham China urges SIPO to clearly stipulate in the next round of Patent Law amendments the standards for “sufficient exploitation” of a patent and the criteria for defining (and limiting) the “public interest” in accordance with TRIPS Article 31.

### IP Misuse

In October 2012, SAIC released an unofficial draft of its IPR enforcement guidelines under the Anti-Monopoly Law (AML) for comments. Article 17 of the draft guidelines expressly extends the “essential facilities” doctrine to IP rights.

Treating refusal to license IP by a dominant company as abuse of IPR under the AML is unwarranted, and undermines the rights of exclusion provided in China’s patent law and TRIPS Article 28. If finalized as is, Article 17 of the draft SAIC guidelines will unlawfully undermine IPR and curtail innovation. AmCham China members strongly suggest that Article 17 be deleted.

The draft guidelines contain other unnecessarily broad prohibitions and difficult-to-prove requirements in Articles 11, 16, 18, and 19 regarding the treatment of production efficiencies, acquisition of IPR, exclusive and cross-licenses, licensing IP on discriminatory terms or at unfairly high prices, tying sales, resale price maintenance agreements, and trading conditions. As drafted, these guidelines place the burden on the IPR holder to justify common IP licensing transactions, undermining IPR and stemming competition. These licensing practices should, instead, be based on a rule of reason analysis in accordance with international best practices.

Lastly, Article 22 of the SAIC guidelines addresses the potential abuse of patents in standard setting. The draft language, however, is too broad. The guidelines should be limited to patents essential to the standard, for which the

patent-holder has committed to license on reasonable and non-discriminatory terms (RAND). Competition law should not compel companies to participate in standardization, and those outside the standard-setting process should not need to disclose their IP nor have their IPR encumbered by the actions of others. Further, royalties for RAND-encumbered, standard-essential patents should not exceed the value of the patent to the product, as measured at a point prior to adoption of the standard.

We suggest that SAIC consider the views of our member companies and international IP practitioners before it proceeds further with the draft guidelines.

### Inventor Remuneration

SIPO’s 2012 Regulations on Service Inventions (Draft Regulations) inappropriately intrude on internal company operations and the relationship between employee and employers, stipulating companies’ operations to commercialize their inventions, as well as ownership of inventions and employment relationship. The provisions in the Draft Regulations also significantly impact the way companies own and dispose of IP assets, exceeding the scope of the Patent Law and Implementing Rules now in force. Thus, a threshold and fundamental concern is whether the draft Regulations are consistent with the Law on Legislation.

Further, the Draft Regulations discourage innovation in China by making it excessively costly, burdensome, and unpredictable. For example, technology patents may have existing cross-licenses with dozens of other companies, and technology products may use hundreds or thousands of patents further cross-licensed from other companies. Thus, responsible companies use fair and reasonable patent remuneration schemes that recognize inventors’ contributions to the business as a whole. In order for these schemes to flourish and adapt to different business models, responsible companies must be able to provide their own schemes rather than a mandated solution with no relation to business reality. AmCham China members strongly urge the SIPO to remove trade secrets and software copyright from the draft regulations, and limit the regulations to patents from employee inventions. Extending employee rights beyond patents would create significant disparities with established international regimes, place companies operating across multiple jurisdictions, including China, under conflicting rules, and impossibly burden companies where many employees make individual, but minor, contributions to a copyrighted work.

Moreover, we believe the draft regulation takes the wrong approach to remuneration. Business enterprises bear the risks of research and development (R&D) investments and attempts to commercialize resulting inventions. The right form of rewards and remunerations for employee inventors must be considered in the business context in which such innovations are made. No two industries are alike in terms of the origin, nature, scope and number of inventions produced.

延十分广泛，且有可能违反世界贸易组织《与贸易有关的知识产权协议》（TRIPS）第 31 条中的相关内容。

尽管迄今为止尚未出现依据《专利法》实施强制许可的案例，但中国美国商会的会员企业希望在未来的专利改革中取消上述强制许可规定中定义模糊的内容。中国美国商会促请国家知识产权局在下一轮《专利法》修订中明确规定专利“充分利用”的标准以及根据 TRIPS 协议第 31 条明确定义（和限制）“公共利益”的标准。

### 知识产权滥用

2012 年 10 月，国家工商总局以定向征求意见的方式发布了《关于知识产权领域反垄断执法的指南》（草案）。该草案第 17 条明确地扩展了知识产权领域“必要设施”原则。

将占市场支配地位的企业拒绝知识产权许可视作《反垄断法》所规定的滥用知识产权行为是没有根据的，且损害了中国《专利法》和 TRIPS 协议第 28 条中所规定的专利权的排他属性。如果该条最后得以出台，那么必将导致违法侵害知识产权并且阻碍创新。中国美国商会强烈建议删除第 17 条。

上述指南草案中还在第 11、16、18 和 19 条中对处理生产效率、知识产权获取、排他许可和交叉许可、歧视性知识产权许可或不合理高价知识产权许可、搭售、限定转售价格协议和交易条件等问题做出了许多其他不必要的禁止性规定和难以证明的要求。该草案要求知识产权持有人证明普通知识产权许可交易合法，如此会损害知识产权并压制竞争。相反，这些许可做法应当根据国际最佳实践，基于合理性分析加以确定。

最后，工商总局发布的上述指南草案第 22 条旨在解决标准制定过程中潜在的专利滥用问题。但从字面看，该条款的规定过于宽泛。该条款应当将专利的使用界定在标准实施所需的专利范围，既专利持有人本着合理且非歧视（RAND）的原则作出授权的专利范围。竞争法不应该强制企业参与标准化，且不应该要求标准制定过程之外的企业披露自有知识产权或由于他人的行为导致自有知识产权受减损。另外，上述按照合理且非歧视条款予以许可的实施标准所必须的专利使用费，不应当超出标准采用前某个时候确定的该专利对于产品的价值。

我们建议工商总局在正式出台上述草案之前，能够考虑我们的会员企业和国际知识产权专业人士的意见。

### 职务发明

国家知识产权局 2012 年发布的《职务发明条例》草案中，对于企业如何对发明成果进行商业转化和涉及创新的所有权和劳动关系进行了详尽的规定，不适当地干涉了企业的内部运营以及用人单位与其员工之间的关系。该条例草案还将严重影响企业保有和处置知识产权资产的方式，甚至超出了《专利法》及其实施细则中所规定的内容。因此，我们最初也是最根本的担心便是该条例草案是否涉嫌违反《立法法》中就法规必须遵守上位法律的规定。

另外，上述条例草案严重增加了创新的经济和管理成本，并造成创新前景不可预测，从而抑制中国的创新。例如，技术专利之上可能存在与数家其他企业的交叉许可，技术产品可能使用了成百上千件与其他公司继续交叉许可的专利。因此，负责任的企业一般采用公平合理的专利报酬支付计划，认可发明人总体对企业所作的贡献。为了使上述计划能够真正发挥作用且适应不同企业的经营模式，应当允许相关企业提供自己的专利报酬奖励计划，而不是不顾企业经营实际，用法律强制规定一种方法。中国美国商会的会员企业强烈促请国家知识产权局删除该条例草案中有关商业秘密和软件著作权的规定，并将该条例的适用范围仅限于员工发明专利。将员工权利扩展至专利之外，会与现行国际规则严重不符，使得在多个法域（包括中国）开展经营的企业面临相互矛盾的规则；而且根据该条例草案，即使许多员工对某个版权作品的贡献很小，企业也要予以支付报酬或奖励，这无疑加重了企业的负担。

再者，我们认为条例草案中针对报酬采用的方法是错误的。企业承担着巨额研发投入风险和发明结果的商业转化风险。在设立正确的职务发明奖励和报酬方式时，应当充分考虑创新企业的行业背景，而不同行业在起源、特征、范围和发明数量上都不尽相同。另外，由于企业创新（及其带来的商业上的成功）主要依靠其员工，企业给予职务发明人以公平合理的奖励和报酬，本来就符合企业自身的最佳利益。

从字面上看，条例草案允许用人单位及其员工之间自由灵活地确定职务发明相关条款，但条例草案中的其他条款（如第 19 条和第 40 条）却严重削弱了劳动关系双方的合同自由。总而言之，限制企业和员工就职务发明事项自由订立协议，构成了中国研发和创新过程中的障碍。上述条款只会破坏工作关系，抑制工作场所内专有技术和资源的扩散，从而阻碍创新。条例草案不仅给企业增加了

Further, because innovation (and therefore success) in any business lies in its employees, it is already in a business's best interests to fairly reward employee-inventors.

On its face, the Draft Regulations permit freedom and flexibility for employers and employees regarding employment inventions, but such freedom is severely diminished by certain provisions (e.g., Article 19 and Article 40). Restricting the freedom to contract on employment innovation matters erects barriers to R&D and innovation progress in China. The net effect of certain provisions will be to pit employees against employers in ways that damage working relationships and discourage dissemination of know-how and resources in the workplace, slowing innovation. The Draft Regulations unduly burden businesses, without recognizably improving innovation.

## Copyright

### Enterprise End-User Software Piracy

AmCham China remains concerned about widespread enterprise end-user software piracy across China. Although the government has mounted substantial enforcement efforts to combat piracy, the situation remains problematic. For example, the authorities routinely refuse to prosecute pre-installed pirate software activities by arguing that the distributors do not earn "profits" from pre-installed software. Another example is the lack of consistency in damage awards by courts in end-user piracy cases. Some judges still ignore the many good examples set by other courts, and continue to award only relatively low damages, even in cases where companies blatantly use known pirated software in their commercial operations. AmCham China believes amendments to the Copyright Law and Criminal Code that provide for the criminal liability for enterprise end-user piracy are necessary for effective deterrence against software piracy.

## Trademarks

### Trademark Piracy and Bad Faith Filings

Trademark piracy was a persistent and serious problem in 2012. A number of recent high-profile cases involving abusive trademark filings and registrations have invigorated concern over this ongoing problem, and anecdotal evidence indicates bad faith trademark applicants are actively selling squatted marks for high prices.

AmCham China appreciates efforts by the pending trademark law amendment to address this problem requiring that applications for registration and use of a trademark "comply with the principle of good faith." "Good faith," however, is not defined, and the draft amendment does appear to allow the good faith requirement as basis for opposing a trademark application. It is thus unclear what practical effect this proposed change will have on trademark piracy, and on

its face, is inadequate for addressing the problem. We urge China to fully take advantage of the trademark law amendment to provide clear recourse for challenging trademark pirates and bad faith filings at the trademark registry.

The Supreme People's Court (SPC) should guide the lower courts in adjudicating cases involving trademark piracy. Our members' observe that the SPC appears to have been following a policy that respects "inclusive development," but bad faith trademark applicants easily take advantage of that policy. Trademark pirates should be held to a very high burden of proof that their "use" of the squatted marks has not and will not likely lead to confusion. A policy of respecting "inclusive development" should not be turned into a safe haven for bad faith applicants.

### Enterprise Names and Other Conflicts of Rights

Local businesses commonly 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 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 these "conflict of rights" cases, to conserve 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 current requirement that the petitioner's trademark be "well known" in China before an AIC can take measures to cancel an offending enterprise name. 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, streets, land, 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.

## Trade Secrets

Trade secret misappropriation is on the rise. In addition, government authorities increasingly require the unnecessary disclosure of confidential information as a condition of product approvals. Compromising trade secrets destroys business value, and can damage business trust and relationships that may have taken a long time to build. AmCham China encourages authorities to increase public awareness

不必要的负担，同时也无助于推动创新。

## 著作权

### 企业最终用户的软件盗版

中国美国商会依然关注中国广泛存在的最终用户软件盗版问题。尽管中国政府已经投入了大量人力物力打击盗版行为，但目前问题依然大量存在。例如，中国一般拒绝起诉预装盗版软件行为，理由是经销商并没有从预装盗版软件行为中“获利”。另外一例是各个法院审判最终使用者软件盗版案件时，在判处损害赔偿金的标准和数额上缺乏一致性。很多法官对其他法院确立的诸多典型判例不予参考，依然判处相对较低的赔偿金，甚至是在最终用户商业运营中公然使用盗版软件的案例中，也依然判处较低的赔偿金。中国美国商会认为应当在《著作权法》和《刑法》修订中，规定企业最终用户软件盗版的相关责任人的刑事责任，只有这样才能有效地打击震慑软件盗版行为。

## 商标

### 傍名牌与恶意抢注

2012年，傍名牌始终是个严重问题。2012年还出现了很多备受关注的商标恶意抢注案件，使得商标侵权问题更为突出。有证据表明恶意商标申请人依然在活跃地高价贩卖抢注商标。

为了解决这一问题，中国《商标法》修订草案中要求商标注册申请和使用必须“遵守诚实信用原则”。中国美国商会对上述修改表示赞赏。但修订草案在并未对“诚实信用”作明确定义的情况下却似乎还允许将违反诚实信用要求作为异议商标申请的理由。因此，上述修改对打击商标仿冒的实际效果还不明确，而且表面上看，并不足以解决上述问题。我们促请中国充分利用修改《商标法》的机遇，明确规定对傍名牌和恶意抢注申请注册商标行为的追索权。

最高人民法院应当对下级人民法院审理商标仿冒案件予以指导。我们的会员企业注意到最高法院适用了“包容性发展”的政策，但恶意商标申请人却可以轻易地利用该政策。应当加重抢注商标者的举证责任，要求他们证明“使用”的抢注商标现在没有、将来也不会导致混淆。尊重“包容性发展”的政策不应当成为恶意商标申请人的避风港。

### 企业名称及其他权利冲突

地方企业注册的企业名称中通常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。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这些“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当前在地方工商局采取执法措施前要求申请人的商标必须为在华“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、街道、土地、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，并推动中国的市场经济公平和健康发展。

## 商业秘密

商业秘密的滥用日益严重。另外，政府主管部门在产品审批时经常要求披露一些非必要的秘密信息。在商业秘密问题上的妥协将损害商业价值，并且会破坏可能需要很长时间才能建立起来的商业信任和商业关系。中国美国商会鼓励相关部门提高公众对商业秘密滥用负面影响的认识，比如加大公众宣传和政府雇员培训力度。

处理商业秘密案件时应当格外谨慎小心方能避免导致严重的负面影响。在商业秘密诉讼中，举证责任，取得开示证据的能力以及证据保密都是案件审理需要注意的重要内容。在不涉及任何具体案件判决的前提下，中国美国商会认为法院或其他行政主体应当进行充分和恰当的证据显示与复审，同时保证做到严格保密。再有，鉴于侵权者通常掌握着关键证据，中国美国商会促请最高法院改进和明确商业秘密案件申请、获取和执行证据保全令之程序。另外，必须加重惩罚，加大救济力度，方能体现法律的震慑力。

某些监管程序，如新产品审批程序，也会损害商业秘密。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，却没有充分的程序保护商业秘密不泄露就属于上述情况。我们促请减少监管程序中对专有信息的披露要求，这将减轻政府部门在确保所提供的专有信息的保密性方面的负担。

## 付费媒体盗版

内容盗版是数字付费电视行业发展的主要障碍。网络

of the negative consequences of trade secret misappropriation, perhaps through public marketing campaigns or government employee training.

Trade secret cases require sensitivity and caution, to avoid significant adverse impact. In trade secret litigation, the burden of proof, the ability to obtain discovery, and confidentiality of the evidence are critical aspects of the case. Without judging the merits of any specific cases, AmCham China believes that the courts and/or authorities must conduct full and proper discovery and review of the evidence while ensuring that confidentiality is strictly protected. Also, as critical evidence is most often in the hands of infringers, AmCham China urges the SPC to streamline and clarify the procedures for filing, obtaining, and executing evidence preservation orders for trade secret cases. Further, penalties and remedies must be significant enough to serve as a deterrent.

Regulatory proceedings, such as new product approval, can also compromise trade secrets. This is the case when the relevant agency demands extensive proprietary information as a condition of approval, but has inadequate procedures to keep secret such information. We urge greater restraints in requiring disclosure of proprietary information in regulatory proceedings, which will in turn reduce the burden on the agencies to ensure confidentiality of the proprietary information so provided.

### *Pay Media Piracy*

Content piracy is a major obstruction to the development of the digital pay TV industry. The 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.

AmCham China members are encouraged that the proposed copyright law amendment has set out an entire new chapter to address technology protection measures (“TPM”). The proposed rules prohibit all circumvention and destruction of TPMs. AmCham China urges the Chinese government to effectively enforce the law to prevent the proliferation of circumvention devices and services, and provide practical enforcement measures for closing pirate servers and circumvention device manufacturing and distributing syndicates.

## Public Consultation

AmCham China appreciates the gains in legislative transparency in recent years, however, certain areas have much room for improvement. As the final drafts of new rule or rule amendment proposals were often not publicly available until the final steps of the rule-making process, AmCham China members who commented on earlier drafts often did not know how their remarks were interpreted, or why their remarks were accepted or rejected.

We urge NPC, SCLAO, and other relevant agencies to continue to expand the existing consultation practices and involve AmCham China members and other stakeholders in ongoing dialogue throughout the process. Expertise and views from the industry and IP practitioners will contribute a great deal to the IP reforms in China. Our members are eager and ready participate in this process, and have strong incentives to effectively bring their insights to the legislature and relevant ministries if the channels are open to them.

## Recent Developments

### *Copyright*

#### *Revision of the Copyright Law*

AmCham China applauds the leadership of NCAC in hosting several rounds of consultations on the Copyright Law amendment. AmCham China member companies have had multiple opportunities to submit their comments and feedback through position papers and round table discussions.

AmCham China is pleased that NCAC accepted various proposals from its members, including the request for higher statutory damages. We look forward to working closely with SCLAO and NPC as the Copyright Law is further amended, and hope these government agencies will continue their open dialogue with AmCham China members.

#### *Judicial Interpretation on Intermediary Liability*

Building on an existing JCCT commitment to clarify online infringement liability, AmCham China applauds the SPC for its willingness to develop a set of rules consistent with international norms. The law in this area is complex and will continue to evolve. We hope the SPC will continue to offer clear guidelines on the balancing tests to be used in adjudicating such issues.

#### *Government and SOE Software Legalization*

At the 23<sup>rd</sup> JCCT meeting, China confirmed that the new focus of the software legalization programs will target those enterprises in the financial sector under the authority of the China Banking Regulatory Commission and the central

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（卫星或有线），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。

《著作权法》修订草案中新增一章专门规定技术保护措施，中国美国商会的会员企业为此深受鼓舞。修订草案禁止以任何形式规避和破坏技术保护措施。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泛滥，并规定出具有可操作性的执法措施，以取缔盗版服务器和破解设备的生产和传播辛迪加。

## 公开征求意见

中国美国商会对近年来中国在增强法律透明度方面所取得的成就表示赞赏，但同时认为依然存在较大的提升空间。新出台或修订法律法规的最终草案版本往往需要在立法的最后环节才向公众公开。中国美国商会的会员企业无从得知立法者如何解读他们针对前几稿草案的意见和建议，以及他们的意见和建议被采纳或否定的理由。

我们促请全国人大、国务院法制办及相关部门继续扩大现行征求意见办法的范围，并与中国美国商会的会员企业及其他利益相关方在征求意见的过程中保持对话。业界以及知识产权从业人员的专业知识和观点将大幅推动中国知识产权改革。我们的会员企业非常希望并愿意参与立法征求意见程序，将自己的观点和意见传递给立法机关和相关部委，如果沟通渠道对他们敞开的。

## 最新进展

### 著作权

#### 《著作权法》的修订

美国商会对国家版权局组织领导数轮《著作权法》修订草案征求意见表示赞赏。中国美国商会的会员企业有机会多次以提交意见书和圆桌讨论的形式表达其意见和反馈。

中国美国商会很高兴看到国家版权局采纳了会员企业的多个提议，包括提高法定赔偿金标准等。我们希望能够与国务院法制办和全国人大紧密合作，继续推进完善《著作权法》修订，同时希望这些政府部门能够继续保持与中国美国商会会员企业的公开对话。

#### 网络间接侵权责任的司法解释

最高人民法院基于中国在中美商贸联委会上承诺明确网络侵权责任，有意愿和决心制定一套遵循国际规则的制度，中国美国商会对此表示赞赏。这一领域的法律体系十分复杂且处于不断发展过程中。我们希望最高人民法院能够继续制定明确指南，对司法审理上述问题适用衡量原则作出指引。

#### 政府与国有企业的软件合法化

在第 23 届中美商贸联委会上，中国确认将软件正版化工作的重点转向银监会监管下的国有银行机构和国资委监管下的大型国企软件正版化。中国美国商会对中国扩大软件正版化范围表示欢迎，并期待在这项工作推进过程中商会会员企业能够看到实质性成果。中国美国商会的会员企业认为应当扩大这项政策所适用软件的定义和范围，应当从操作系统、工作软件和防病毒软件，明确扩大至包括网络安全软件、多媒体软件和计算机辅助设计软件等等。

中国美国商会的会员企业认为中国可以进一步采取多项措施，加速软件正版化进程。国家版权局发布了一份完全实现软件正版化的国有企业名单。我们建议出台进一步的措施，鼓励企业采用 ISO 认证的软件资产管理（SAM）最佳实践，并引入软件使用第三方审计制度。

### 专利

#### 专利审查

中国美国商会注意到最高人民法院在多个案例中推翻了下级法院和专利复审委员会的判决，给予这些案件中的专利所有人通过司法审查保护专利权的公平机会。我们建议国家知识产权局和专利复审委员会能够修改专利审查指南，保持与最高人民法院判决的一致性。

#### 国家标准和专利

国家标准化管理委员会经过多年来与行业和专家的商议和讨论，终于在 2012 年 12 月发布了《国家标准涉及专利的管理规定（暂行）》并公开征求意见。中国美国商会

SOEs supervised by the State-Owned Assets Supervision and Administration Commission. AmCham China applauds the broadening of the software legalization regime, and looks forward to meaningful outcomes for its members during implementation of this program. AmCham China members believe the definition and types of software covered by this policy should be expanded from operating systems, productivity and anti-virus software to explicitly include Internet security software, multimedia software, and computer-aided design software, among others.

AmCham China members believe China can adopt a variety of further measures to accelerate the software legalization process. NCAC already publishes a list of SOEs that have converted to fully-legalized software. We suggest instituting further measures to encourage enterprises to adopt ISO-certified Software Asset Management (SAM) best practices and to conduct third-party audits of software use.

## **Patent**

### Patent Prosecution

AmCham China notes that in 2012 the SPC reversed the decisions of the lower courts and the Patent Review Board (PRB) in various cases, giving patent owners in those cases the fair chance to prosecute their patent claims. We suggest that SIPO and PRB revise their patent examination guidelines to comply with SPC judgments.

### National Standards and Patents

Following years of deliberation and consultation with industries and professionals, the Standardization Administration Commission released for comment draft regulations on national standards and patents in December 2012. AmCham China is pleased that in addressing the relationship between standards and patents, the latest version of the draft regulations has adopted an approach which is open and fair and will benefit the growth of technology industries and innovations.

## **Civil Procedure Law**

AmCham China was pleased that the newly amended Civil Procedure Law improves rules in enforcement of court judgments, and offers wider availability of preliminary injunctive relief in all types of IP cases, including those for unfair competition and trade secret cases. We hope that the maturing civil procedures will eventually result in more effective evidence collection measures, including adoption of civil discovery proceedings, lower thresholds for accepting and conducting evidence preservation, and reduced burdens of proof on right holders.

## **Trademark**

### Criminal Prosecution/Criminal Code Reform

AmCham China applauds the sustained enforcement campaigns led by the Ministry of Public Security (MPS) throughout 2012, netting large-scale seizures of counterfeits and the arrests of suspects. During the period November 2010 to August 2012, police enforcement actions had led to the arrest of over 121,000 suspects in 72,000 cases.

The Ministry of Public Security (MPS) recently announced that new rounds of actions in 2013 will target the counterfeiting and passing off of well-known brands in high-tech, food, drug, auto parts, and machinery. Heightened enforcement actions will benefit both domestic and international trademark owners. AmCham China is also encouraged that China has begun criminal code reform with respect to IP enforcement. AmCham China members recommend the reform be conducted with a view to bring the criminal code completely in line with TRIPs.

### Trademark Law Amendment

AmCham China is encouraged that the pending draft amendment to the Trademark Law includes punitive damages against willful infringement. We also are pleased that the pending draft will allow courts to award damages based solely on right holders' evidence and claims if the infringer refuses or cannot provide financial data on sales. We hope the NPC will quickly approve these reform proposals, which we believe will greatly lower the burden on brand owners and be an effective deterrence against infringers.

## **Conclusion**

AmCham China believes that 2013 is a critical year for China IP reforms. The pending amendments to the trademark law, copyright law, and patent law as well as other draft regulations offer opportunities to address many of the deficiencies under the current IPR system in IP prosecution and protection. Expert views from the industry and professional IP practitioners can significantly contribute to remedying those deficiencies. AmCham China and its members are eager and ready to contribute to this process.

## **Recommendations**

### ***For the Chinese Government:***

- Increase transparency and openness of IP legislative and regulatory activity by allowing AmCham China members adequate opportunity and sufficient time to provide comments.
- Fully implement bilateral commitments on software legalization in state-owned enterprises and

很高兴地看到该管理规定草案最新一稿采用了公开、公正的方式处理标准和专利之间的关系，这必将推动技术产业的发展和创新。

## 民事诉讼法

中国美国商会很高兴看到新修订的《民事诉讼法》中加强了法院判决执行，并扩大了各类知识产权案件中申请初步禁令救济的范围，包括不正当竞争和商业秘密案件。我们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。

## 商标

### 刑事诉讼与刑法改革

中国美国商会对 2012 年公安部领导的持续专项打击行动表示欢迎，在执法过程中缴获了大批假冒商标，拘捕了众多犯罪嫌疑人。2010 年 11 月至 2012 年 8 月，警方的执法行动在 72000 宗案件中，拘捕了 121000 多名犯罪嫌疑人。

最近公安部宣布 2013 年将继续启动数轮执法行动，重点打击高科技、食品、药品、汽车零部件和机械领域驰名商标假冒行为。加强执法将有助于保护国内和国际商标所有人的权益。中国已启动对刑法中有关知识产权执法的部分进行改革，中国美国商会为此受到鼓舞。中国美国商会的会员企业建议修改刑法时应使相关规定与 TRIPs 协议的规定完全一致。

### 《商标法》修订

中国美国商会因《商标法》修订草案中增加了故意侵权行为的惩罚性赔偿金而深受鼓舞。同时我们还很高兴地看到，草案中还规定如果侵权人拒绝或无法提供销售财务数据时，允许法院仅依据权利持有人的证据和请求，判处支付侵权赔偿金。我们希望全国人大能够尽快批准通过上述修订草案，我们相信上述修改必将极大地降低品牌所有人的负担，并有效地遏止侵权者。

## 结论

中国美国商会认为 2013 年是中国知识产权制度改革的关键性一年。《商标法》、《著作权法》、《专利法》以及其他相关法律法规的修订出台，为解决现行知识产权制度中知识产权审查和保护之种种不足提供了机遇。业内专

家和专业知识产权从业人士的观点将极大地帮助改进上述不足。中国美国商会及其会员企业希望并愿意为这一过程贡献自己的力量。

## 建议

### 对中国政府的建议：

- 提升知识产权立法和执法活动的透明度和公开性，允许美国商会会员企业对此充分表达意见和建议。
- 彻底履行有关国有企业和各级政府软件正版化的双边承诺，包括扩大政策适用软件的定义和种类，明确增加网络安全软件、多媒体软件和计算机辅助设计软件等。
- 对《专利法》修订草案和《职务发明条例》草案的合法性和合理性进行彻底审查。
- 在修订《专利法》时解决执法双轨制、低质量专利（包括实用新型专利）、图形用户界面的可专利性和强制许可等备受关注的问题。
- 避免在工商总局制定的《反垄断法》实施中相关知识产权问题处理指南中适用“必要设施”原则，并且确保在其他知识产权许可实践中能够适用原因分析规则，由政府负责进行相关知识产权许可实践对促进或抑制竞争的影响力衡量和分析。
- 在修改《著作权法》和《刑法》时规定企业最终用户软件盗版行为人的刑事责任，从而有效地打击软件盗版。
- 解决最高人民法院在审理商标侵权案件时适用的“包容性发展”政策可能导致负面影响的问题。
- 彻底履行政府采购政策与国内知识产权要求脱钩的承诺，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。

### 对美国政府的建议：

- 在知识产权立法和执法过程中，支持美国产业界实现与中国立法机构和相关部委保持互动的愿望。
- 与国家知识产权局和其他相关部委加强联系，确保产业界的相关顾虑和反馈都能得到满意解决。
- 充分评估商标侵权和恶意商标申请的严重性，与

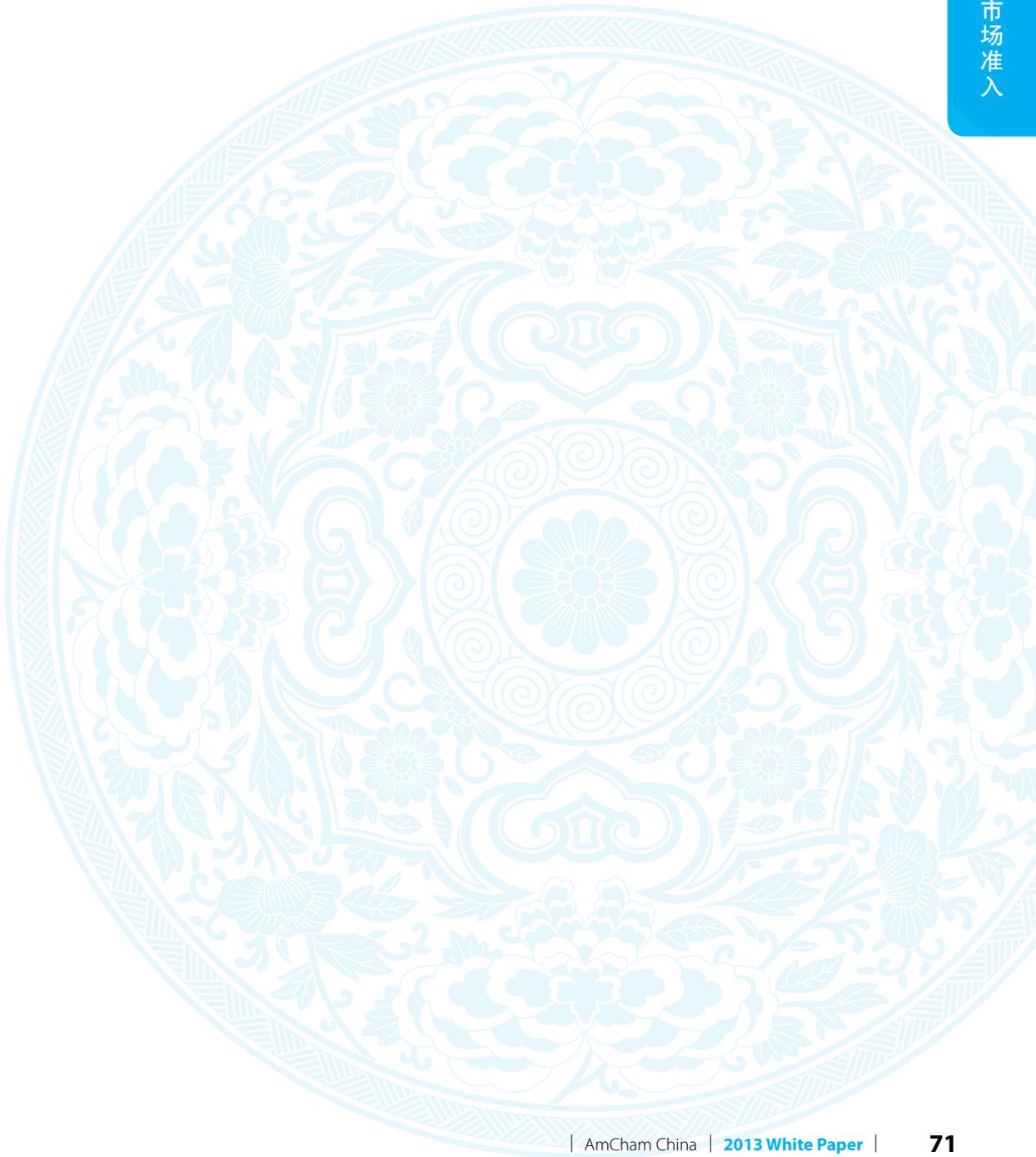
all levels of government, including expanding the definition and types of software covered by this policy to explicitly include Internet security software, multimedia software, and computer-aided design software, among others.

- Conduct a full review of the legality and merits of the proposed amendments to the Patent Law and Regulations on Employment Invention.
- Resolve the significant concerns with the dual enforcement system, low-quality patents (including UMPs), patentability of GUI and compulsory licensing in the amendment of the Patent Law.
- Refrain from applying the essential facilities doctrine to IP under SAIC's IP guidelines for enforcement of the AML, and ensure that other IP licensing practices are governed by a rule of reason analysis where the government has the burden of weighing procompetitive benefits against anti-competitive impacts from the practice.
- Amend the Copyright Law and Criminal Code with a view to effectively providing for the criminal liability for enterprise end-user piracy as a means to support effective deterrence against software piracy.
- Address the possible negative impact of the "inclusive developments" policy of the Supreme People's Court in handling trademark squatting cases.
- Fully implement the commitment to delink government procurement policies from domestic IP requirements, and provide for the protection of IP in domestic standards development organizations and testing and conformity regimes, in line with global best practices.

#### *For the US Government:*

- **Support US industry's desire to interact with Chinese legislatures and ministries throughout the IP legislative and regulatory processes.**
- Interact with SIPO and other ministries to ensure the concerns of and feedback from the industries are addressed satisfactorily.
- Fully assess the seriousness of trademark squatting and bad faith trademark filings; convene with SPC to discuss its "inclusive development" policies and the impact in the context of eliminating the trademark squatting problems.

最高人民法院讨论“包容性发展”政策及其对制止商标仿冒侵权行为的影响。



# Investment Policy

## Introduction

Since beginning its economic reform and opening in 1978, China has benefited enormously from foreign direct investment (FDI)—the jobs it creates, the tax revenues it generates, the managerial and technical expertise it nurtures in the local work force, the technological advances it facilitates, and the multiplier effect these benefits have on the entire Chinese economy. These contributions provide clear win-win benefits for all market participants.

Nevertheless, since China essentially fulfilled its World Trade Organization (WTO) market access commitments in 2006, it has gradually returned to a practice of favoring state-owned enterprises (SOEs) and “national champions.” This policy direction disadvantages private domestic companies and helps create an increasingly challenging investment environment for foreign investors. In particular, foreign investors are increasingly concerned about discriminatory industrial policies, opaque investment approval procedures used to achieve industrial policy goals, and a lack of effective administrative recourse if an investment approval is conditioned or denied.

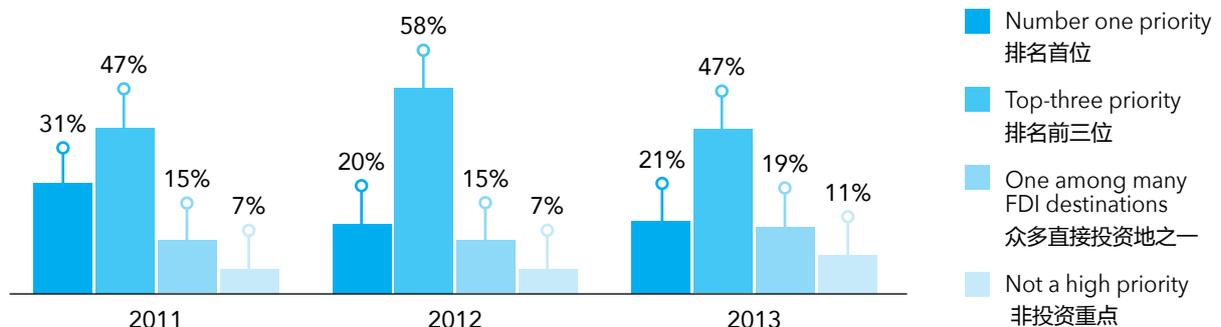
However, the stage has been set for improvements. In 2012, China’s top leaders committed to increased economic opening at both the Fourth Meeting of the US-China Strategic and Economic Dialogue and the 18th National Congress of

the Communist Party of China. In March 2013, the National People’s Congress also announced a plan to devolve investment approval authority to local-level governments. AmCham China commends these positive commitments. Additionally, China and the US have resumed negotiations of a bilateral investment treaty (BIT), presenting an excellent opportunity for China and the US to discuss their interests and concerns relating to bilateral investment and trade.

Reform of China’s approval processes for inbound foreign direct investment continues to be a priority issue for AmCham China members. We encourage China to:

- recognize the various benefits that foreign investment provides by reducing conditions and restrictions on foreign investment and by converging the regulatory platforms for domestic and foreign investments,
- streamline the approval processes, including as a first step by requiring filing for the record rather than project and foreign investment approvals for investments in industries where inbound FDI is encouraged,
- increase transparency and specificity in, and consistency of enforcement of laws and regulations relating to foreign investment approval processes, and
- strengthen the viability of administrative and judicial review by establishing clear criteria requiring approval of projects and investments unless they would violate specific laws or regulations.

### 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



# 投资政策

## 引言

**自** 1978 年实行经济改革开放以来，中国的发展极大地受益于外商直接投资（FDI）——外商直接投资帮助中国增加了就业、税收，提高了本地劳动力的技术和管理水平，推动了技术创新，从而带动了中国经济的高速增长。上述贡献对所有市场主体都带来了双赢收益。

然而，自从 2006 年基本履行了加入世界贸易组织（WTO）市场准入承诺以来，中国已经逐渐转向扶持国有企业和打造“国企巨头”。这一政策导向使得内资私企处于不利地位，同时也造成外商投资面临越来越多的挑战。外国投资者尤其担心的是带有歧视性的产业政策，用以实现产业政策目标的投资审批程序不透明，以及投资申请被拒绝时或有附加条件时缺乏有效的行政追索。

然而，中国已经做好改进的准备。2012 年，中国最高领导层在中美第四次战略经济对话和“十八大”报告中，均承诺继续深入推进经济开放。中国美国商会对上述积极承诺表示赞赏。另外，中美双方还重启了两国双边投资协定（BIT）谈判，这为讨论双边贸易投资领域的利益和关切问题提供了一次绝佳的机会。

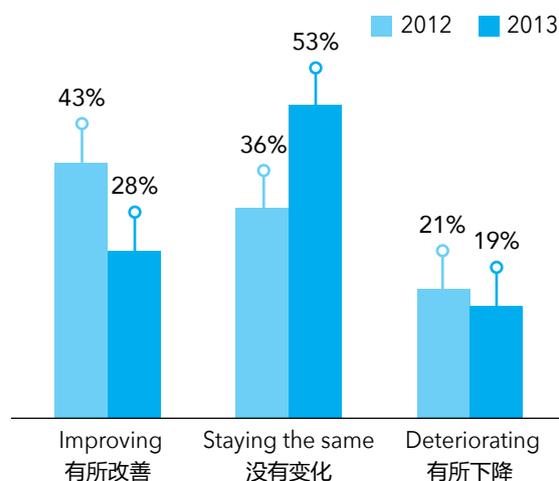
中国境内外商直接投资审批程序改革依然是中国美国商会会员企业关注的一大重点。我们鼓励中国：

- 通过放宽外商投资条件和限制，合并国内外投资监管平台，认可外商投资带来的各种收益；
- 简化审批程序，包括将外商投资“鼓励类”产业的投资审批制改为备案制，作为简化审批程序的第一步；
- 提高外商投资审批相关法律和法规的透明度，专项性和执法一致性；
- 为项目和投资审批制定明确标准，提高行政复议和司法审查的可行性，只要上述标准不违反相关法律或法规即予以批准。

在以下部分我们将进一步阐述分别达到上述四个重要目标的具体建议。

正如国务院发展研究中心和世界银行联合发布的题为《2030 年的中国：建设现代、和谐、有创造力的高收入社会》（2030 中国报告）中提到的：“经过三十多年的快速发展，中国正面临发展方式上的一个转折点”，已经进入到“实施一项新型发展战略”的阶段。近期各类经济指标变化趋势也印证了这一转折点的到来：国民生产总值（GDP）增长速度趋缓，国有企业竞争力落后以及境内外商新投资项目减少等——虽然在全球经济衰退的大背景下，外商投资项目减少在所难免——商务部相关数据显示，2012 年中国境内外商新投资总值比去年减少了 3.7%。本章中提出的有关改革外商直接投资审批程序的建议，将有助于中国继续保持对外国直接投资的吸引力，提高其创新能力，加快提升其在经济价值产业链上的位置，实现 GDP 持续健康增长。

**Q** Quality of China's investment environment  
中国投资环境的质量



In the following sections, we describe in further detail specific recommendations for achieving each of these four overarching goals.

As discussed in the joint publication entitled *China 2030: Building a Modern, Harmonious, and Creative High-Income Society* (China 2030 Report), issued by the Development Research Center of China's State Council and the World Bank, “[a]fter more than 30 years of rapid growth, China has reached ... [a] turning point in its development path” and the time has come “to implement a new development strategy.” This turning point may already be reflected in recent economic indicators that show moderating growth of the gross domestic product (GDP), lagging competitiveness of SOEs, and declining new inbound FDI projects, which—though holding up reasonably well in the global context—fell by 3.7 percent in aggregate value year-on-year in 2012 according data from the Ministry of Commerce (MOFCOM). Reforming China's FDI approval processes along the lines recommended in this chapter will help to ensure that China continues to attract FDI, enhance its capacity for innovation, accelerate its move up the economic value chain, and sustain healthy GDP growth.

## Ongoing Regulatory Issues

### *Streamlining the Foreign Investment Approval Process*

Various national and regional catalogues relating to foreign investment provide a foundation for China's inbound FDI regulatory framework, including most importantly the “Guiding Catalogue on Foreign Investment in Industry” (Foreign Investment Catalogue or Catalogue) maintained by MOFCOM and the National Development and Reform Commission (NDRC). The Foreign Investment Catalogue divides industries into “encouraged,” “restricted,” and “prohibited” categories, with industries not specifically listed in the Catalogue considered “permitted” by default. Foreign investment in “restricted” industries is subject to stricter government review and more burdensome application requirements, while foreign investment in “encouraged” industries is generally subject to fewer ownership restrictions, less stringent government review, and may be eligible for investment preferences. The Catalogue may also require that investment take certain forms (such as a Sino-foreign equity joint venture) and/or that the foreign shareholder's proportion of investment in the enterprise be limited (for example, to 49 percent of total equity).

Foreign investors may, in principle, invest in any non-prohibited industry after obtaining Chinese government approval. However, China's inbound FDI approval processes present many opportunities for investment approval authorities to favor domestic competitors over foreign investors. The 2012 US Chamber of Commerce report entitled *China's Approval Process for Inbound Foreign Direct Investment: Impact on Market*

*Access, National Treatment, and Transparency* (US Chamber Investment Report) lays out how this occurs and the negative impact it has on foreign investment. According to the report, the four types of approval most likely to create market access, national treatment, and related challenges for potential foreign investors are the Anti-Monopoly Law Review (by MOFCOM), Project Approval (by NDRC, the local Development and Reform Commission (DRC), or the State Council), Foreign Investment Approval (by MOFCOM or the local commerce department), and Regulatory Approval (by the relevant industry regulator).

AmCham China encourages the US and Chinese governments to build on existing dialogues and research initiatives to examine both Chinese and US foreign investment approval processes, identify obstacles to investment in both countries, and evaluate reforms that could streamline these approval processes and increase mutually beneficial bilateral investment. For example, AmCham China believes that China could enhance its investment environment by reducing the number of approvals required. As a first step, we encourage China to allow investments in “encouraged” sectors to be filed for the record, without the need to obtain project and foreign investment approvals from DRC and MOFCOM. In the medium term, China could implement more fully the principle of national treatment by applying the same approval processes to inbound foreign investment that it applies to domestic investors (except that foreign investment in limited instances may still be subject to national security review, as is the case for inbound investment into the US). This means that the need for both project approval and foreign investment approval would be eliminated, and the range of projects subject to project approval would be significantly reduced to include only those covered by the Domestic Investment Catalogue. The need for a separate (and much larger) catalogue covering foreign investment would be eliminated.

Eventually, we encourage China to eliminate all investment catalogues and project approvals, both domestic and foreign, and replace them with a system of administrative filing of investments for the record (though other types of approval, such as anti-monopoly, national security, and environmental approvals would remain). This would enable China to more fully fulfill the principle of reciprocity, given that the US does not require foreign investment or project approvals for Chinese or any other foreign investment, does not restrict investment through an investment catalogue, and does not distinguish between foreign or domestic companies for the purposes of investments that do not implicate national security concerns.

Streamlining the investment approval processes in this step-by-step way would not only reduce unnecessary administrative burdens on the government, but would also enable China to benefit from greater foreign investment and the accompanying technological, research and development (R&D), marketing and management expertise, and employ-

## 现存监管问题

### 简化外商投资审批程序

在中国，中央和地方制定的各类外商投资目录构成了中国境内外国直接投资监管框架，其中最为重要的当属商务部和国家发展和改革委员会（发改委）制定的《外商投资产业指导目录》（《外商投资目录》或《目录》）。外商投资目录将投资产业分为“鼓励类”、“限制类”和“禁止类”，未列入目录的产业则默认视作“允许类”。外商投资“限制类”产业需要面对更为严格的政府审查和更为繁重的申请要求；而外商投资“鼓励类”产业则面临所有权比例较少限制，较宽松的政府审查，甚至还可以申请投资优惠。该目录还可能对投资形式（如中外合资企业）和 / 或外资在企业中的持股比例（如不超过企业总股份的49%）作出规定。

原则上外国投资者取得中国政府审批文件后就可以任意投资非禁止类产业。然而，中国现行外商直接投资审批程序却给投资审批机构留出很多歧视外国投资者、偏袒其国内竞争者的机会。2012年美国商会发布了题为《中国的境内外商直接投资审批程序：对市场准入、国民待遇和透明度的影响》（美国商会投资报告），该报告中列出了四类最有可能对外国投资者构成市场准入、国民待遇和其他相关障碍的审批类型，即反垄断法审查（商务部）、项目审批（国家发改委和各地发改委，或国务院）、外商投资审批（商务部或地方商务厅）和监管审批（各行业监管部门）。

中国美国商会鼓励中美两国政府巩固现有对话和研究体系，对两国的外商投资审批程序分别进行回顾检查，确定外商在本国投资所面临的障碍，评估审批程序优化改革措施，增进两国间互惠双边投资。例如，中国美国商会认为中国应当减少所要求的审批数量，改善投资环境。作为第一步，我们鼓励中国先允许外商投资“鼓励类”产业实施备案制，不再要求事先获得发改委和商务部的项目审批和外商投资审批。从中期来看，中国应当更加全面地推行国民待遇，对境内外国投资者与本国投资者执行同一审批程序，并减少对外商投资实行国家安全审查的情况。除非此类外商投资属于需经国家安全审查的限制类型，从而与美国对境内投资者的审查制度保持一致，并且仅对国内投资目录中的项目实施项目审批制。这也将意味着不再需要对外商投资产业单独（范围正在逐步扩大）制定目录。

最终，我们鼓励中国全面取消对外资和内资投资目录

和项目审批制度，代之以投资行政备案制（但其他类型的审批，如反垄断审查、国家安全审查以及环保审批等应予保留）。鉴于美国不对中国或其他外国投资者作外商投资审批或项目审批要求，也没有通过投资目录进行投资限制，更没有基于国家安全因素对内外资企业境内投资实施差别对待，这将做能使中国更好地履行互惠原则。

按照上述步骤简化投资审批程序不仅能够减轻政府无谓的行政负担，还能使中国吸引更多外商投资，通过外商的投资带来的先进技术、研发、营销和管理经验、增加的就业机会而获益。

### 抑制外商投资的产业政策

正如美国商会投资报告中所述，中国政府官员被明确要求扶植“国企巨头”，特别是战略性新兴产业（SEI）中的国企巨头。中国官员实现上述目标可利用的一个主要途径便是通过境内外商投资审批程序，选择性地允许外国投资者进入中国广阔的国内市场，但前提是要求这些外国投资者承诺与政府倾向的中方合作伙伴组建合资企业、转让技术、在中国建立研发中心，和 / 或为合资企业提供进入国际市场的渠道。

中国美国商会担心上述做法违反了“中国有关废除“扭曲贸易的投资条件”，确保授予投资许可“不以业绩要求作为前提条件”，也不以“研发或技术转让作为次等条件”等入世承诺。上述做法还打击了外商直接投资的积极性，阻碍了中国的市场增长、研究和技术进步。

上述政策可能是基于以下错误观念，即如果企业的所有权为中国股东而非外资所掌握，则中国从该企业获得的利润更大，即使该外资企业是在中国设立的。但是，企业投资和发展对一个国家的贡献并不仅限于对本国所有者或股东的利润分配。外国企业在华投资扩大了中国国内的税基，增加了就业机会，培育了本土供应商，培养了本土人才，分享了宝贵的管理、技术和研发经验，扩大了消费者选择面等等，不一而足。随着本土劳动力质量的提升，以及中国市场的深化和扩张，所有的市场主体都可以从中获益。外商在华投资和中资在美投资均是如此。

中国美国商会鼓励中国认可外商投资为中国经济发展带来的诸多益处，减少对外商投资的条件和限制。特别是缩小《外商投资目录》中“禁止类”和“限制类”产业的范围，减少对设立合营企业的要求，全面履行入世承诺，不再将本地研发、技术转让或其他业绩要求（不管是口头

ment opportunities that foreign investors provide.

### **Industrial Policies That Inhibit Foreign Investment**

As described in the US Chamber Investment Report, Chinese government officials are expressly required to foster the development of “national champions,” especially in the “strategic emerging industries” (SEIs). One of the key tools available to Chinese officials for doing so is the inbound foreign investment approval process, which can be used selectively to grant foreign investors access to China’s large domestic market in exchange for commitments to establish joint ventures (JVs) with favored Chinese partners, transfer technology, establish R&D capabilities in China, and/or provide the JV with access to international market channels.

AmCham China is concerned that such practices are at odds with China’s WTO commitment to eliminate “trade distorting conditions on investment” and ensure that permission for investment “would not be conditional upon performance requirements...or subject to secondary conditions covering, for example, the conduct of research . . . or the transfer of technology.” Such practices also discourage foreign investment and thus hinder market growth, the conduct of research, and development of technology in China.

These policies may be based on the mistaken view that if a company is owned by Chinese shareholders, then China will benefit more than if the company is foreign-owned, even if the foreign-owned company is established in China. However, a country benefits from investment and growth of companies in many more ways than through the simple distribution of dividends to domestic owners or shareholders. Investment by foreign companies in China expands the local tax base, creates jobs, fosters development of domestic suppliers, contributes to development of the local work force, disseminates valuable managerial, technical, and R&D expertise, and expands consumer choice, among many other benefits. As the quality of the work force rises and the market deepens and expands, all market participants benefit. This is true for both foreign investment into China and Chinese investment into the US.

AmCham China encourages China to recognize the various benefits that foreign investment provides to the Chinese economy by reducing conditions and restrictions on foreign investment. In particular, this could include reducing the number of sectors in the Foreign Investment Catalogue that are prohibited, restricted, or that require JVs, and more fully implementing WTO commitments to not condition foreign investment approval upon R&D, technology transfer, or other performance requirements (whether imposed orally or in writing). Likewise, we remind the US government and Congress of the many benefits of Chinese investment into the US and encourage US leaders to avoid politicizing such investment.

### ***Opaque Inbound FDI Approval Processes***

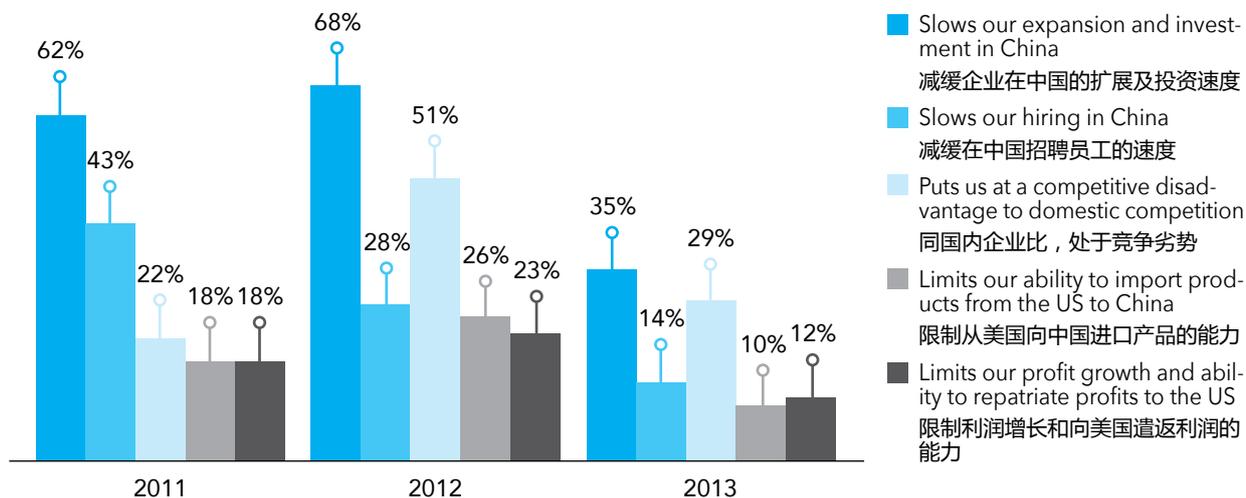
As also discussed in the US Chamber Investment Report, the relatively opaque nature of inbound FDI approval processes enables China’s investment approval authorities to favor domestic competitors over foreign investors, should they so desire, without leaving a paper trail of discriminatory written regulations that could clearly offend WTO obligations. The lack of transparency is exhibited in three ways.

First, vaguely worded or unpublished rules or requirements are often applied in ways that impede foreign participation in a given sector without expressly stating this goal in writing. For example, according to regulations, MOFCOM judges whether there is “obvious unfairness in the concluded agreement” before approving an equity JV application, with “obvious unfairness” left undefined. This provision, and many others similarly vague, provides broad scope for regulators to restrict investments that may compete with domestic companies. An industry-specific example includes the unwritten yet *de facto* prohibition on foreign-invested insurers submitting multiple new branch applications simultaneously (see the Insurance chapter for more details).

Secondly, government officials can effectively block foreign investment simply by failing to promulgate the investment and licensing approval requirements and procedures applicable to foreign investors in those sectors. Foreign-invested electronic payment services (credit card) companies have faced this obstacle for many years, but are hopeful that a licensing approval regime will soon be established as a result of a recent WTO ruling (see the Electronic Payment Services chapter).

Third, the relative opacity of the approval process and the broad discretion granted to the authorities foster an environment where government authorities can impose deal-specific conditions (such as the performance requirements described in this chapter’s *Industrial Policies* section) beyond any written legal requirements, often with the intent to support industrial policies and the interests of local competitors. The common requirement that foreign investors have a local partner creates circumstances where investment approval authorities are able to work in a nontransparent way with that partner to ensure that valuable intellectual property, market channels, and other assets of the foreign investor are made available to the JV—often on commercial terms that are extremely favorable to the local partner. This problem is exacerbated by the fact that the local partner must serve as the investment approval applicant on behalf of the prospective JV. As a result, in many cases, Chinese JV partners are able to control the communication channels between the foreign investor and the government approval authorities. This makes the process even more opaque for the foreign investor and gives any local partner a disproportionate advantage in negotiations, discouraging further foreign investment.

## Q How do licensing requirements impact your business? 许可要求对企业经营的影响



还是书面要求)作为授予外商投资审批的条件。同样地,我们提醒美国政府和国会注意到中国投资给美国带来的许多益处,并鼓励美国领导层切勿将投资问题政治化。

### 模糊的境内外商直接投资审批程序

美国商会投资报告中也提到,中国境内的外商直接投资审批程序相对模糊,导致中国投资审批部门可以在不公布任何可能作为违反WTO协定证据的审批标准文件的情况下,歧视外国投资者,偏袒国内竞争者。缺乏透明度主要表现在以下三个方面:

第一,在没有以成文形式明确表明上述目的的情况下,措辞模糊或者不公开的规则和要求会阻碍外资在某个行业中的参与。比如,根据相关规定,商务部在批准中外合资企业设立申请前要判断“所订立的协议中是否存在显失公平”,而“显失公平”却没有明确定义。上述含义模糊的条款并非个别现象,它们为监管者限制外商投资、保护国内竞争者提供了广阔的空间。以保险业这一具体行业为例,外资保险公司在华面临一项不成文的事实规定,即不允许外资保险公司同时申请开设多个分支机构。(详情请参阅《保险》一章)

第二,政府官员仅仅通过不予制定外商投资某些行业的投资和审批标准及程序,就能有效地将外资阻挡在上述行业之外。外资电子支付服务(信用卡)公司就长期面临这一障碍,但由于近期世界贸易组织的一项裁决,中国有望很快制定一套许可审批制度(详情请参阅《电子支付服务》一章)。

第三,审批程序相对不透明以及审批主管部门广泛的自由裁量权营造了一种环境,即政府审批部门能够在任何成文法定条件之外再根据交易附加特定条件之后进行审批(例如,产业政策领域设定业绩要求),而此举经常是为了配合行业政策和本地竞争对手的利益。外国投资者必须有本地合作方的普遍要求,使投资审批部门能与本地合作方私下配合,在偏袒当地合作方的情况下,确保该合资企业获得外方的知识产权,市场渠道,以及其他有利条件。而相关法律要求本地合作方作为代表拟设立的合营企业办理投资审批申请的规定加剧了这一问题。因此,在很多情况下,合营企业的中方合作伙伴控制着外国投资者和政府审批部门之间的联系渠道。这导致外国投资者更加无法了解审批进展,造成中方合作伙伴在谈判上享有不合理的优势,从而打击了外资进一步扩大在华投资的积极性。

为了解决上述问题,中国美国商会鼓励中国对现行投资审批程序进行修改,使投资审批部门不再对外商投资提出“扭曲贸易”的要求,只要项目和投资申请不违反相关法律和法规,即予以审批通过。我们还建议中国允许外国投资者与中方合作伙伴共同提交合营企业投资申请并直接与审批机构沟通联络。以上措施将有助于提高审批透明度,鼓励外商扩大在华投资。

### 征求利益相关方、专家和政府部门的意见

审批程序上的模棱两还可能致在征求国内利益相关方意见时令外国投资者处于不利地位。按照包括《反垄断

To address these concerns, AmCham China encourages China to modify its investment approval processes to ensure that trade-distorting conditions on foreign investment are not imposed by investment approval authorities and that projects and investments are approved unless they violate specific laws and regulations. We also recommend that China allow foreign investors to participate with their partners in submitting JV investment approval applications and communicating directly with approval authorities. Increasing transparency in these ways will increase efficiency and encourage greater foreign investment in China.

### ***Consultation with Stakeholders, Experts, and Government Agencies***

Another circumstance where lack of clarity in the approval processes may disadvantage foreign investors is when consultation with domestic stakeholders is required. Under various regulations, including the Anti-Monopoly Law, government agencies are required or have the discretion to consult key domestic stakeholders—including local competitors—and take into account their reactions to proposed transactions. No legal criteria have been outlined regarding what type of feedback should (or should not) be considered or how that feedback should (or should not) be taken into account when evaluating the approval at hand. The time lines for such consultations are also often not specified. The absence of a public comment docket and lack of clarity surrounding these consultations increases uncertainty and opacity while also providing opportunities for Chinese companies to gain advantage by improperly influencing the approval authorities.

For certain types of approvals related to foreign investment, the government approval authority is also permitted by law to seek opinions from “qualified consultation institutions,” without exact time limits specified. The law also fails to specify time limits for consideration of foreign investment applications that require State Council approval.

AmCham China encourages China to further specify the type of stakeholder feedback that can be taken into consideration when evaluating investment applications, and to publish time lines for stakeholder, expert, and outside government agency consultations and other approval process steps that currently lack deadlines.

### ***Appeal Processes***

Although Chinese law allows for review of unfavorable foreign investment approval decisions, in practice, it is extremely difficult for applicants to obtain effective recourse when they feel their investment applications have been unreasonably denied or made subject to trade-distorting conditions. In contrast, regulators in the US are commonly sued, and plaintiffs often prevail. The US Chamber Investment Report lists considerations that discourage aspiring investors from attempting administrative appeals

in China, including the following:

- Very broadly defined grounds for denying investment applications and lack of an explicit affirmative duty for approval authorities to approve applications submitted to them if the applications meet clearly specified criteria;
- Difficulty in producing solid evidence of inappropriate conduct, as approval authorities generally rely on oral communications to convey specific conditions of approval, and such communications are often relayed indirectly through a Chinese JV partner; and
- The reality that potential investors are extremely reluctant to challenge the decisions of approval authorities, who have considerable power to affect companies’ business prospects in China.

These factors and the resulting reluctance of foreign investors to seek administrative or judicial review of investment approval decisions foster an environment where approval authorities are able to use approval processes to discriminate against or extract concessions from foreign firms.

AmCham China recommends that China establish clear criteria requiring approval of projects and investments unless they would violate specific laws or regulations if approved. Such criteria would supplement and make more meaningful China’s existing WTO obligation to provide, if an application is denied, a written statement within a prescribed deadline detailing the reasons for the denial. This would not only improve the effectiveness of the administrative and judicial review procedures in China but would also help curb unlawful and inappropriate conduct and ensure accountability of government officials.

## **Recent Developments**

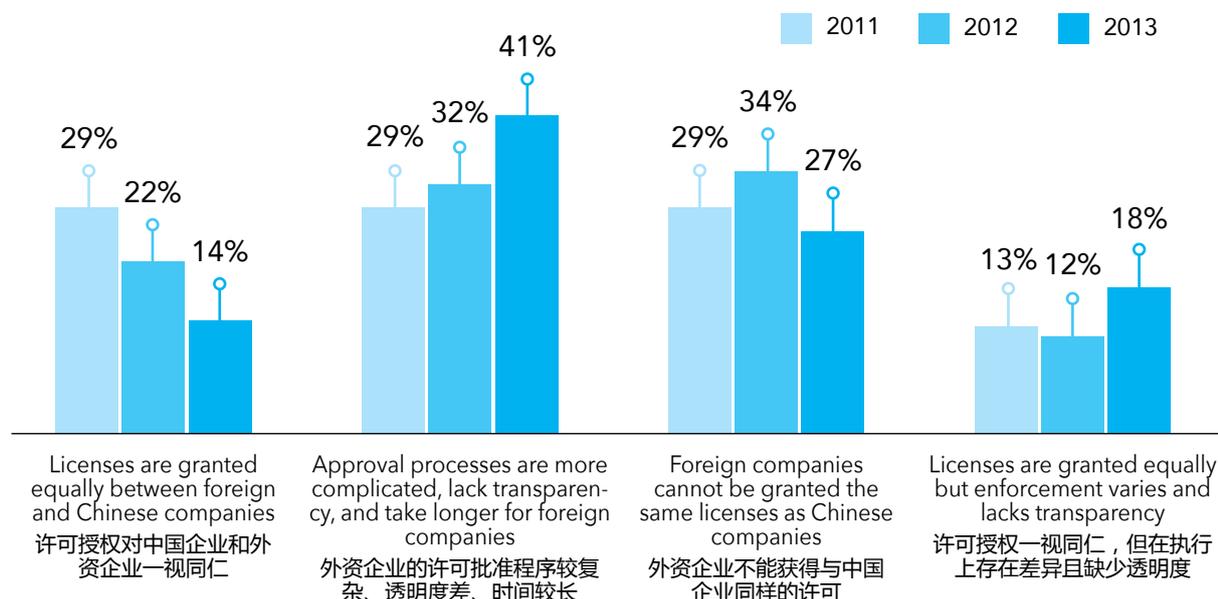
### ***Regulatory Developments***

#### ***Foreign Investment Catalogue Revisions***

On December 24, 2011, MOFCOM and NDRC released the revised Foreign Investment Catalogue. The revisions promote investment in SEIs and liberalize investment restrictions in a small number of sectors, including next-generation Internet system equipment and components for new energy vehicles and charging stations (although manufacture of entire automobiles was dropped from the encouraged category). Meanwhile, the revisions impose troubling new limitations in other sectors, most notably production of chemical raw materials, domestic express letter delivery services, and agriculture. In some cases, these restrictions appear to be at odds with China’s own objectives as outlined in the 12<sup>th</sup> FYP.

For example, the 12<sup>th</sup> FYP emphasizes the need to modernize agriculture and boost food production. As leaders in agriculture, American companies can make great contributions

## Q How are license approvals handled in your industry? 企业所在产业相关许可申请情况



法》在内的各种法规，政府部门必须或者自行决定征求国内重点利益相关方的意见，包括本土竞争者的意见，并考虑其对拟订交易的反应。对于评估正在进行的审批应该（或不应该）考虑哪类反馈或应该（或不应该）如何考虑该反馈意见，尚未制定任何法定标准。上述意见征求的时间安排也常常没有具体规定。围绕这些意见征求，不仅没有公开的程序，同时还缺乏一定的明确性，增加了审批程序中的不确定性和模糊性，也使中资企业有机会通过不恰当地影响审批机关来取得优势。

中国法律还允许政府审批部门就部分外商投资审批事项征求“有资质的咨询机构”的意见，但没有规定具体时限。上述法律也没有规定须经国务院审批的外商投资申请的审批时限。

中国美国商会鼓励中国进一步具体规定相关审批部门在评估投资申请时予以考虑的利益相关方反馈意见的类型，并且公布向征求意见的利益相关方、专家、其他政府部门以及审批程序的时限。

### 上诉程序

尽管中国法律允许对否决外商投资审批申请的决定进行上诉，但在实践中，即便申请者认为相关部门否决自己的投资申请或者附加扭曲贸易的条件不合理，却很难获得

有效的上诉支持。而美国的监管机构却经常因此被诉，且原告经常胜诉。美国商会投资报告中列出了在华投资者不愿意寻求行政申诉的几大原因：

- 相关主管部门否决投资申请的理由非常宽泛，对于审批机关收到符合条件的申请时是怎样进行批准的没有清楚的职责解释；
- 由于审批机关通常口头通知审批条件，而且经常通过合营企业的中方合作伙伴间接告知，因此难以收集投资审批存在不当行为的有力证据；
- 潜在投资者一般极其不愿意质疑审批机关的审批决定，因为审批机关对投资者在华运营前景具有重大影响。

基于以上因素，外国投资者一般不愿意寻求行政复议或司法审查救助，从而进一步滋养了审批机关借助审批程序对外资企业实施歧视的环境。

中国美国商会建议中国制定明确的项目审批和投资审批标准，只要投资和项目不违反相关法律或法规即予以批准。同时审批机关在否决申请时，应在规定的时间内以书面形式告知申请人否决申请的理由，从而使中国更好地履行对世界贸易组织的承诺。上述规定不仅能够提升中国行政复议和司法审查程序的有效性，还有助于遏制非法和不当行为，保障政府官员的公信力。

to advancing agricultural R&D and technology in China, and providing safe, secure, and sustainable food products at reasonable prices to China's population. Nevertheless, China's agricultural industry lags far behind other industries in terms of attracting foreign investment. The revised Foreign Investment Catalogue introduces new restrictions in areas such as seed production, grain purchasing and storage, oilseeds processing, and corn processing. The growing level of restrictions on foreign investment in China's agricultural sector will limit farmers' access to the most advanced technologies, and reduce consumers' access to safe and affordable agricultural products. These restrictions also cast a shadow on bilateral agricultural trade, which has been a highlight of the US-China trade relationship, with US agricultural exports constituting 25 percent of all US exports to China.

When making the next revision of the Foreign Investment Catalogue, AmCham China urges China not to reduce incentives for or increase restrictions on foreign investment in any sector. In particular, we encourage China to reduce restrictions on foreign investment in agriculture and other restricted and prohibited sectors, as well as reduce the number of sectors that require foreign-invested enterprises to invest with a JV partner. China has been very successful in attracting foreign investment in the past few decades, fueling rapid economic growth. Maintaining and increasing flows of foreign investment in sectors throughout the economy will help ensure continued growth and advances in technology as China moves up the economic value chain.

### NDRC-Proposed Amendments to the Foreign Investment Approval Process

On August 16, 2012, the NDRC issued for public comment a draft amendment of the *Administrative Measures for the Verification and Approval of Foreign Investment Projects* (Draft Amendment). The Draft Amendment, if officially promulgated, would make several changes to China's foreign investment approval process. In particular, AmCham China members are pleased that it would remove the requirement for State Council approval of projects over certain value thresholds, instead granting final approval authority to the NDRC. This change would reduce the number of steps and the length of time it takes to receive project approval, while also reducing the administrative burden on the government and costs for investors.

The Draft Amendment would also add a period for the NDRC to solicit public comment from key domestic stakeholders—including local competitors. Unfortunately, legal criteria for the type and use of feedback and time lines for such consultation are not specified.

We encourage China to follow through on the suggested elimination of State Council project approval requirements, and to clarify more explicitly the type of stakeholder feedback that can be taken into consideration during NDRC

approval comment periods, the time line for comment, and how such feedback is to be assessed.

### State Council Reform of Certain Licensing and Approval Requirements

In September 2012, the State Council announced elimination of 171 licensing and approval requirements and devolution of another 143 approval requirements from central-level to provincial-level government. This move signals positive progress toward reducing the administrative licensing burden for businesses, both domestic and foreign-invested. The impact of these changes varies by industry, with financial services, transportation, and healthcare receiving the most benefit.

### Plan Announced to Devolve Foreign Investment Project Approval Authority to Local Level

On March 10, 2013, China's National People's Congress approved a restructuring plan for state agencies that included a call to devolve project approval authority for many investments, including many foreign investment projects, to local-level governments. The plan also calls for updating China's investment catalogues (presumably those for both domestic and foreign investment) and targeting the "reduc[tion] of, as much as possible, the scope of investment approval, verification, and record filing requirements." AmCham China strongly supports this potential decentralization and simplification of the foreign investment approval process. The plan is as yet without specifics and its ultimate impact will inevitably depend on how well its goals are implemented in practice. If central-level project approvals are in fact eliminated, this could significantly streamline the investment approval process, reduce project application costs, and move China's investment approval regime for foreign investors one step closer to the type of review afforded comparative domestic investments.

### Bilateral Dialogue and Policy Developments

#### Restarting of US-China Bilateral Investment Treaty Negotiations

After completion of the US model bilateral investment treaty review in April 2012, the US and China re-launched BIT negotiations in late October 2012. AmCham China strongly supports steady progress on a US-China BIT. A BIT has the potential to provide increased investment flows and better market access and investment protections to investors of both countries. This is especially relevant as China seeks to significantly expand its outbound investment.

AmCham China encourages the US and China to finalize a strong agreement that covers the pre-establishment phase of investment (i.e., market access) and therefore contributes to significant new flows of investment. Reducing the number of sectors that are prohibited, restricted, or have JV require-

## 最新进展

### 监管进展

#### 外商投资目录修订

2011年12月24日，商务部和国家发改委联合发布了外商投资目录修订版。修改后的目录鼓励外商投资战略新兴产业，取消了外资在一小部分产业的投资限制，其中包括下一代网络系统设备和新能源汽车和充电站零部件（但是汽车整车生产并没有列入“鼓励类”目录）。与此同时，新目录中还增加了对外商投资部分产业的限制，其中最值得一提的便是对外商投资化学原料、国内快递和农业等产业的限制。这些限制似乎在某种程度上与中国“十二五”规划提出的目标相悖。

比如，“十二五”规划中强调实现农业现代化和扩大粮食生产的重要性。美国企业在农业领域一直处于领先地位，能够在推动中国农业研发和技术发展以及为中国消费者供应价廉物美、安全放心的食品等方面作出重要贡献。然而中国的农业一直以来缺乏对外资的吸引力。新修订的外资目录新增了对外商投资种子生产、粮食收购和储存、油籽加工和谷物加工等领域的限制。中国严格对外商投资农业的限制将削弱农民应用最先进技术的机会以及消费者享用廉价安全农产品的机会。上述限制还将负面影响双边农业贸易，因为农业贸易是中美贸易关系之重要组成部分，农产品出口占美国对华出口总量的25%。

中国美国商会促请中国政府在下一轮修订外商产业指导目录时，不再缩小鼓励投资类的范围，也不再对外商投资任何产业增加新的限制。我们尤其鼓励中国政府减少对外商投资农业和其他限制或禁止投资类产业的限制，并减少要求外资企业必须与本地合作方成立合营企业方可进行投资的产业的数量。过去三十多年里，中国已经成功地吸引了众多外商投资，推动了经济的快速发展。确保并扩大中国经济全行业对外商投资的吸引力，将有助于中国提升在经济产业价值链中的地位，推动经济持续发展和技术进步。

#### 国家发改委计划修改外商投资审批程序

2012年8月16日，国家发改委发布了《外商投资项目核准管理办法》修订草案（修订草案）并公开征求意见。该修订草案获得通过后，将对中国外商投资审批程序带来诸多变化。中国美国商会会员企业特别欣喜地发现，草案中取消了对一定投资额之上的项目须经国务院批准的规定，

并将最终审批权授予国家发改委。此举将减少审批步骤，缩短审批时间，同时还将减轻政府部门的审批压力，降低投资者成本。

修订草案中还增加了对国家发改委向国内重点利益相关方（包括本土竞争者）征求意见的规定。但遗憾的是草案中没有对反馈意见的类型、使用和征求意见时限做出规定。

我们鼓励中国按照修订草案中的规定，取消有关项目须经国务院审批的规定，进一步明确国家发改委审批征求意见阶段纳入考量的利益相关方反馈意见的类型、征求意见的时限和反馈意见评价办法等规定。

#### 国务院改革部分许可和审批要求

2012年9月，国务院宣布废除171项许可和审批项目，另将143项原属中央政府的审批权授权省级人民政府实施。这标志着中国在减轻内外资企业在华运营行政许可负担方面取得重要进展。上述改革对各个行业的影响程度各不相同，其中金融服务业、交通运输业和医疗保健业受益最大。

#### 方案宣布将外商投资项目审批权下放地方

2013年3月10日，全国人民代表大会通过了一项国家机构改革方案，该方案提出下放众多投资项目，特别是外商投资项目的审批权，至各个地方政府。该方案同时建议更新中国投资目录（包括国内投资和外商投资），目标是“最大限度地缩小审批、核准、备案的范围”。此举将很可能下放外商投资项目的审批权，并简化审批过程，中国美国商会对此表示强烈支持。当然，目前此方案还没有具体细则出台，它的最终影响也不可避免地取决于实际的执行情况。如果中央级别的项目审批程序得到废除，便能够明显地优化投资审批程序，降低项目申报成本，并进一步简化中国对外商投资的审批体系，使其更接近国内投资项目接受的审核程序。

### 双边对话和政策制定

#### 重启中美双边投资协定谈判

2012年4月完成美国双边投资协定范本审查之后，中美两国于2012年10月底重启了双边贸易协定谈判。中国美国商会强烈支持中美两国稳步推进中美双边投资协定谈判。中美双边贸易协定必将推动两国扩大相互投资、开放市场准入、加强对两国投资者的保护。这对中国现阶段积

ments in the Foreign Investment Catalogue would be a positive step. We hope the final agreement makes minimal exceptions to national treatment and allows private and state-owned as well as foreign and domestic companies to compete on a level playing field. Overall, we encourage negotiators to address the concerns laid out in this White Paper chapter regarding China's inbound FDI approval regime when carrying out these negotiations.

### Development Research Center-World Bank China 2030 Report

In April 2012, the Development Research Center of the State Council and the World Bank jointly released the China 2030 Report. This report recommended that the Chinese government "implement structural reform to strengthen the foundations for a market-based economy" and included a number of suggested reforms that would significantly improve the investment environment in China, including for foreign investment. AmCham China supports many of the recommendations included in this report.

### 18<sup>th</sup> Party Congress, Strategic and Economic Dialogue, and Investment Policy

China committed at the Fourth Meeting of the US-China Strategic and Economic Dialogue in early May 2012 "to implement a more proactive opening-up strategy and expand the areas open to foreign investment and the degree of openness." China also committed to develop "a market environment of fair competition for enterprises of *all kinds of ownership* and to provide non-discriminatory treatment."

Subsequently, in his report to the 18<sup>th</sup> Party Congress on November 8, 2012, General Secretary Hu Jintao said that the government will "ensure each sector of the economy, *regardless of ownership*, has equal access to production resources, fair participation in market competition, and equal protection under the law."

These concepts and commitments are the foundation of the recommendations outlined in the China 2030 Report and touch upon the fundamentals necessary for a strong and competitive economy. We hope that their inclusion in the keynote speech of the 18<sup>th</sup> Party Congress will accelerate positive changes in the investment environment. A sound and healthy investment environment in which all investors are treated equally and compete fairly will energize investors and help China to attain the GDP and income growth goals set at the 18<sup>th</sup> Party Congress.

### Fifth US-China Investment Forum

The Fifth US-China Investment Forum was held in April 2012 in Washington, DC, under the Strategic and Economic Dialogue framework. This forum was first launched in June 2008 as an annual exchange between high-level US and Chinese government officials on investment policy. At the

2012 Forum, the two governments committed to continuing to discuss concerns with their respective foreign investment reviews, and to carrying out an exchange on investment policies and infrastructure financing in both countries. AmCham China supports such dialogue and encourages both governments to open future Investment Forums to more private sector participation.

### 23<sup>rd</sup> US-China Joint Commission on Commerce and Trade

In December 2012, senior officials from the US and China convened the 23rd Joint Commission on Commerce and Trade (JCCT), a high-level dialogue on bilateral trade issues. China again confirmed, as it has at past JCCTs, that technology transfer will not be a precondition for market access. At the 2012 JCCT, for the first time, China also promised to correct any departmental or local requirements inconsistent with this commitment. AmCham China welcomes this development and looks forward to its full implementation.

### US Embassy and AmCham China Encourage Chinese Investment in the US

During 2012, AmCham China partnered with the US Embassy and the US Department of Commerce in support of increased Chinese investment in the US. Encouraging Chinese investment in the US has been a priority for Ambassador Gary Locke since he took office in mid-2011. He hosted the first Ambassador's Investment Forum in December 2012, and participated in a number of other trade and investment missions and seminars that the Embassy and Consulates have organized. The US Consulate in Shenyang organized two successful seminars in Shenyang, and the US Department of Commerce Foreign Commercial Service in China held a number of roadshows to promote Chinese investment in the US.

AmCham China has worked closely with the US Embassy to encourage such Chinese investment in a number of ways, including through a pilot Invest USA Program comprised of six workshops. The program, launched in 2012, was designed to help interested Chinese investors better understand how to find and approach investment opportunities in the United States. Invest USA workshops and other AmCham China support were frequently synchronized with Embassy-led trade missions, visits by US governors and mayors, and events hosted by Chinese central, provincial, and municipal authorities. AmCham China and the US Chamber of Commerce also worked with the Embassy on the organization of the Ambassador's Investment Forum.

We suggest the US government to continue to support such collaborative activities in order to encourage increased Chinese investment in the US.

极扩张海外投资极为有利。

中国美国商会鼓励中美两国最终签订双边投资协定，将投资前阶段（如市场准入）相关内容纳入上述协定，从而更好地促进双边投资流动。减少外商投资目录中“禁止类”和“限制类”产业以及成立合营企业等要求，将是推动两国签订 BIT 的一项积极举措。我们希望双方最终签订的双边投资协定中，能够尽量缩小国民待遇例外规定的范围，为私营企业和国有企业、外资企业和内资企业营造公平的竞争环境。总之，我们鼓励协议谈判双方能够解决《白皮书》本章中提及的有关中国境内外商直接投资审批制度的问题。

### **国务院发展研究中心和世界银行联合发布《2030 年的中国》报告**

2012 年 4 月，国务院发展研究中心与世界银行联合发布了《2030 年的中国》报告。该报告建议中国“实施结构性改革，夯实市场经济发展各项基础”，并且提出了有助于显著改善中国投资环境的各项改革建议，其中包括改善外商在华投资环境的各项措施。中国美国商会对上述报告中提出的多项建议表示支持。

### **“十八大”，战略和经济对话，投资政策**

中国政府在 2012 年 5 月初举行的第四次中美战略和经济对话上承诺将“实施更加积极的开放战略，扩大外商投资的广度和深度”。中国还承诺营造“保障各种所有制企业公平竞争的市场环境，对各种所有制企业实施无歧视待遇”。

2012 年 11 月 8 日，胡锦涛总书记在“十八大”报告中提出“保证各种所有制经济依法平等使用生产要素、公平参与市场竞争、同等受到法律保护。”

上述观念和承诺构成了《2030 年的中国》报告内提出的各项建议的基础，并涉及到了一个强大且竞争性市场经济的基本构成要素。我们希望上述观念和承诺写入“十八大”报告能够推动中国投资环境的积极变化。一个平等保障所有投资者公平竞争、完善且健康的投资环境有助于提高投资者的积极性，帮助中国实现“十八大”报告中提出的 GDP 增长和收入增长的相关目标。

### **第五届中美投资论坛**

根据中美两国战略和经济对话框架，2012 年 4 月，两国在美国华盛顿特区举行了第五届中美投资论坛。两国在 2008 年 6 月举行了首届中美投资论坛，该论坛是中美两国政府高层每年交换投资政策意见的平台。在 2012 年的论坛

上，两国政府承诺继续就各自在外商投资审查方面的关切展开讨论，同时就两国投资政策和基础设施融资进行交流。中国美国商会支持中美两国开展上述对话，并鼓励未来两国政府的投资论坛能够扩大对私人领域的开放程度。

### **第 23 届中美商贸联委会**

2012 年 12 月，中美两国政府高层举行了第 23 届中美商贸联委会（JCCT），这是两国双边贸易高层的一个对话机制。中国再次重申在前几届 JCCT 上的立场，技术转让不会作为市场准入的前提条件。2012 年的 JCCT 上中国还首次承诺纠正与此承诺不一致的部门和地方性要求。中国美国商会对最新进展表示欢迎并期待中国尽快全面履行这一承诺。

### **美国驻华使馆和中国美国商会鼓励中国对美投资**

2012 年，中国美国商会与美国驻华使馆、美国商务部进行了合作，支持推动中国在美国投资。鼓励中国扩大在美国的投资，已经成为美国驻华大使骆家辉先生 2011 年年中上任以来的工作重点。骆大使主持了 2012 年 12 月的首届大使级投资论坛，并出席了美国驻华使馆和驻各地领馆组织的一系列贸易和投资代表团及研讨会。美国驻沈阳领馆在沈阳成功举办了首场研讨会，美国商务部外国商业服务局也举办了多场促进中国在美国投资的路演活动。

中国美国商会一直保持着与美国驻华使馆的密切合作关系，通过各种方式鼓励中国在美国投资，包括建立“投资美国”试点项目。该项目于 2012 年推出，下设六个工作组，旨在帮助有意在美国投资的中国投资者增进对在美国投资方式、途径和机会的了解。中国美国商会通过投资美国工作组和其他支持工作，密切配合美国驻华使馆组织贸易代表团，接待美国各州长和市长到华宣传，协助中国中央和省市级政府举办相关活动。中国美国商会和美国商会同时还协助美国驻华使馆组织大使级投资论坛。

我们促请美国政府继续支持上述合作活动，进一步促进中国在美国投资。

## **结论**

尽管事实证明外商投资极大地推动了中国经济发展，但美国商会会员企业在华投资依然面临着诸多障碍，而中国国内投资者面临的投资限制则较少，审批程序也更简易。

## Conclusion

Despite the proven benefits of foreign investment to China's economic development, AmCham China members continue to face numerous obstacles to investing in China, and note that domestic investors face fewer investment restrictions and less onerous approval procedures. In contrast, inbound foreign investment into the US is subject to fewer types of approvals than apply to foreign investment in China, and with few exceptions (such as for investments that directly impact national security strictly defined), US approval processes affect foreign and domestic investors equally.

The ongoing BIT negotiations present an excellent opportunity for the US and China to discuss mutually beneficial reforms of their respective inbound FDI approval processes and ways to further apply the principles of national treatment and reciprocity. AmCham China encourages both countries to prioritize these negotiations, and to focus on commitments that will ensure that foreign investors are treated no less beneficially than domestic investors, that FDI approval processes are transparent, and that all investors, including foreign investors, have appropriate recourse if their investment is denied for improper reasons. Such reforms would strengthen AmCham China member companies' ability to contribute to the future development and growth of the Chinese economy.

## Recommendations

### *For the Chinese Government:*

- **Streamline inbound foreign investment approval processes by allowing investments in "encouraged" sectors to be filed for the record without project and foreign investment approvals from NDRC and MOFCOM.**
- When making the next revision of the Foreign Investment Catalogue, do not increase restrictions on foreign investment in any sector, and instead reduce the number of sectors that are restricted, prohibited, or require JVs, especially including those sectors recently tightened, such as agriculture.
- Modify investment approval procedures at both the national and local level to require that projects and investments be approved unless they violate specific laws and regulations.
- Further specify the type of stakeholder feedback that can be taken into consideration when evaluating investment approvals, and publish time lines for stakeholder, expert, and outside government agency consultations and other approval process steps that currently lack deadlines.
- Allow foreign investors to participate with their proposed JV partners in submitting JV investment

approval applications and communicating directly with approval authorities.

- Take further steps to implement more fully WTO and bilateral commitments to not condition investment approval upon R&D, technology transfer, or other (written or oral) requirements.

### *For the US Government:*

- **Resist efforts to politicize Chinese inbound investment into the US and the national security review process of the Committee on Foreign Investment in the US (CFIUS).**
- Continue to support initiatives to encourage increased Chinese investment into the US.

### *For Both Governments:*

- **Prioritize negotiation of a robust US-China bilateral investment treaty that:**
  - ◆ Covers the pre-establishment phase of investment;
  - ◆ Reduces the number of sectors that are prohibited, restricted, or have JV requirements;
  - ◆ Allows only minimal exceptions to national treatment; and
  - ◆ Establishes and maintains equal competition among private and state-owned as well as foreign-invested and domestically invested companies.
- Build on existing dialogues and research initiatives to examine Chinese and US foreign investment approval procedures, identify obstacles to investment in both countries, and identify reforms that could streamline approval processes and increase mutually beneficial bilateral investment.

相比之下，美国对境内外商投资的审批类别较少，例外情形也较少（如严格限定直接影响国家安全的投资类型），且对本国和外国投资者适用同样的审批程序。

中美两国正在进行的双边投资协定谈判，为两国讨论对本国境内外商直接投资审批程序进行互惠改革、探索推进实施国民待遇原则和互惠原则，提供了一次绝佳的机会。中国美国商会鼓励两国政府优先推进上述协定谈判，并重点承诺保证外国投资者的待遇不低于本国投资者，确保外商直接投资审批程序的透明度，以及确保包括外国投资者在内的所有投资者都能在投资申请被不合理地驳回时进行适当的申诉救助等承诺。上述变革将增强中国美国商会会员企业为中国经济未来发展和增长继续作贡献的能力。

## 建议

### 对中国政府的建议：

- 简化境内外商投资审批程序，允许外商投资“鼓励类”产业实行“备案制”，无需再获得国家发改委和商务部的项目审批和外商投资审批。
- 在下次修订外商投资目录时，不增加外资在任一行业的投资限制，减少“限制类”、“禁止类”和必须建立合营企业方可投资的产业的数量，特别是减少对本次修订中限制更为严格的农业等部门的限制。
- 修订中央和地方的投资审批程序，规定只要项目或投资申请不违反相关法律、法规，就应当予以批准。
- 进一步明确审批征求意见阶段纳入考量的利益相关方反馈意见的类型，公布征求利益相关方、专家和其他政府部门意见的时限，以及其他目前尚未明确规定时限的审批项目的审批时限。
- 允许外国投资者与合营企业中方合作伙伴共同提交合营企业投资审批申请，允许外国投资者直接与审批机关进行沟通联络。
- 进一步采取相关措施，全面履行世界贸易组织和双边协定中的相关承诺，废除将研发、技术转让或其他（口头或书面）要求作为投资审批之前提的做法。

### 对美国政府的建议：

- 抵制将中国在美国境内投资政治化，以及美国外

国投资委员会（CFIUS）国家安全审查程序政治化的倾向。

- 继续采取相关措施，鼓励中国扩大在美投资。

### 对两国政府的建议：

- 优先进行签订中美双边贸易协定的谈判，且在协定中包括以下内容：
  - ◆ 对投资前阶段作出规定；
  - ◆ 减少“禁止类”、“限制类”或要求设立合营企业的产业数量；
  - ◆ 严格控制例外于国民待遇的情况；
  - ◆ 营造并维护保障私营企业和国有企业、外资企业和内资企业公平竞争的环境。
- 巩固现有对话和研究体系，对两国的外商投资审批程序分别进行回顾性检查，明确双方投资所面临的障碍，确立优化审批程序的改革措施，增进两国间互惠双边投资。

# Standards, Certification, and Conformity Assessment

## Introduction

China continues to place emphasis on standards development from a technical as well as regulatory standpoint under the 12<sup>th</sup> Five-Year Plan, allocating state funds and devising work plans 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 the revision and implementation of existing ones. China's Standards Second Batch Work Plan for 2012, announced by the Standardization Administration of China (SAC) in December 2012, stated that SAC has approved work to begin on the development or revision of 758 standards.

AmCham China welcomes positive developments with regard to China's standardization system, including increased participation by foreign-invested enterprises (FIEs) 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. the inability of US testing organizations to obtain accreditation and carry out testing in China for all areas;
2. China's refusal to accept US-initiated standards and advanced technical standards as international standards;
3. the inability of FIEs to fully participate in all phases of China's commercial standards development; and
4. 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 help regulate the market and promote the development of advanced technology. To that end, AmCham China proposes increasing cooperation between US industry and their 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 organizations would not only benefit China's innovation, but would also help China attract greater foreign investment and research and devel-

opment, and advance the acceptance of Chinese-developed standards internationally.

## Ongoing Regulatory Issues

### *Follow-through on Commitment Towards Qualified non-Chinese Testing Organizations*

At the 23<sup>rd</sup> US-China Joint Commission on Commerce and Trade (JCCT) in December 2012, China agreed to provide equal treatment to eligible foreign-invested testing and certification entities registered in China for carrying out testing for China Compulsory Certificates (CCC). For years China has restricted this type of work solely to Chinese testing organizations. For example, US third party testing bodies could act as an "agent" to facilitate applications for customers seeking CCC testing for the China market. This meant they could make sure that all documentation was in compliance with the related certification requirements and coordinate with local accredited testing labs and certification bodies on behalf of their manufacturing customers. However, they were prevented from performing related tests or issuing the related mark or approval. China's agreement to reverse this policy is a promising first step, and AmCham China hopes China will follow through quickly with implementing this commitment to provide national treatment to all conformity assessment bodies on CCC testing and will also expand equal treatment to other testing areas.

### *Recognition and Adoption of International Standards*

Partial harmonization of international and Chinese standards remains a serious concern for many foreign companies in China. In particular, SAC still refuses to officially recognize the standards of US-based standards development organizations (SDOs) as international standards, although these SDO standards meet all WTO requirements and are globally accepted as de facto international standards. In contrast, SAC does officially 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 partial 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 unique Chinese versions by fragmentary adoption and extraction of the various existing international standards. 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 hinders the export of Chinese technology and products to the global market.

From a practical point of view, no individual or group of SDOs can singularly lead standards development for the innumerable technologies and applications in the global market. Each SDO has its unique advantages and plays a specific role in the global economy. Furthermore, as is well known in the global market, it is the content of a standard that matters, not the label of the standard developer. Therefore, the decision to adopt a standard should remain focused on the principles and due process of standard development, particularly the technical quality and market relevance of the standard, as accepted by users in the marketplace. Regulators should be open to all existing SDOs, including those that are US-based and are globally recognized. Recognition of global SDOs would promote the competitiveness of Chinese technologies and products in the global marketplace.

AmCham China strongly urges China to officially 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 of transparency, openness, impartiality and consensus, relevance and effectiveness, coherence, and incorporation of developing country interests as detailed in WTO G/TBT/1/Rev.8. AmCham China is confident that US SDOs meet these qualifications.

### ***Participation of Foreign-Invested Enterprises in Standards Setting***

SAC regulations state that FIEs 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, to date, this mandate remains inconsistently applied. The decision whether or not to allow participation by FIEs 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 FIEs to participate in the drafting of standards and technical regulations at all. Others permit FIEs as voting members, and some offer FIEs the right to participate on a limited observer status without voting rights. These restrictions are not only unfair, but are also inconsistent with the SAC principle of permitting FIEs to participate in the formulation and drafting of standards.

SAC should provide guidance to all standards committees and working groups to ensure they permit FIEs to join and participate as full voting members in all TCs and SCs, with the same opportunities to participate in the committees’ work plans and standards drafting process. 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.

### ***Mandatory “Voluntary” Standards Regimes***

Different ministries or authorities sometimes have different enforcement procedures on standards or regulations, including voluntary standards. In some circumstances, voluntary standards are adopted as the technical criteria in regulations and certifications, thereby essentially turning them into mandatory standards. However, unlike mandatory standards, there is no notification procedure that informs businesses of these voluntary standards being incorporated into regulations or certifications prior to their enforcement. A transparent notification process for when mandatory requirements are adopted from voluntary standards before they are enforced would allow companies to better adapt to changes in Chinese regulations. To achieve this, AmCham China suggests that China require such standards to be reviewed and notified for comment by SAC per their normal procedures. This would avoid confusion on the roles and responsibilities of the various government authorities involved, provide industry with opportunities to provide important and positive feedback, and help clarify what requirements are being mandated and how they will be enforced.

### ***Transition Periods Following Standards Adoption***

The China-US JCCT Pharmaceuticals and Medical Devices Subgroup Information Exchange Program Workshop on International Standards for Medical Equipment took place September 18-19, 2012 in Beijing. There was a great deal of discussion about differences between how the US, Europe and China manage the launch of new standards and the transition to new editions of standards. Specifically, the third edition of IEC60601-1 was brought online in the US and Europe with a three-year transition period. Meanwhile in China, since IEC60601-1 is part of the country’s mandatory (legal) regulations, any changes to the standard would apply overnight under Chinese legal requirements. AmCham China therefore recommends that China allow longer transition periods when adopting standards.

### ***Environmental Standards***

Chinese government agencies at times develop multiple environmental standards on a single issue simultaneously. This leads to inconsistent and ineffective standards. As a result, companies are burdened with high costs in a system

际标准，来制定中国自己的标准。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，同时还阻碍中国的技术和产品对外出口。

从实践角度讲，由于全球市场上的技术及其应用数不胜数，新技术开发和应用总是不断推陈出新，没有任何单独的一个或几个标准制定机构能够独自承担全球市场上所有标准的制定任务。每个标准制定机构都有自己独特的优势，并在全球经济中发挥自己特有的作用。此外，正如全球市场所公认的，一项标准真正起作用的是标准的内容而不是标准制定机构的名称或商标。因此，在采用某项标准时应该着重关注标准制定的原则和科学程序，特别是标准的技术品质和市场相关度，即市场上用户的接受程度。监管者应该以开放的姿态面对所有的标准制定机构，包括设在美国且已获得全球认可的标准制定机构。认可全球知名的标准制定机构为国际标准制定机构有助于提升中国技术和产品在全球市场中的竞争力。

中国美国商会强烈促请中国正式放宽认可国际标准制定机构的范围，从国际标准化组织（ISO）、国际电工技术委员会（IEC）和国际电信联盟（ITU）扩大至其他遵循世界贸易组织贸易技术壁垒协定（WTO/TBT/1/Rev.8）中规定的六大原则的所有标准制定组织，这六大原则包括透明、公开、公正与协商共识、相关性与有效性、协调性、和兼顾发展中国家利益。中国美国商会相信设在美国的标准制定机构均符合上述要求。

## 外资企业参与标准制定

国标委的相关规定声明，在华登记注册的外资企业有资格加入中国标准化技术委员会或工作组，并参与中国标准的起草和投票。然而，目前这项规定的实际执行情况千差万别。在实践中，是否允许外资企业加入的决定权下放给了各技术委员会和技术分委会，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。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化技术委员会和工作组进行指

导，确保他们允许外资企业以完全投票权的身份参加并参与所有技术委员会和技术分委会，同等地享有全面参与委员会工作计划制定和标准起草的过程。中国在起草标准时还应该征求跨国企业成员的意见和建议，这样才更有可能使中国的标准被国际市场所认可。

## 强制“自愿”标准制度

不同的部委或部门对标准和法规的实施程序有时并不一致，这其中也包括了自愿标准。在某些情形下，自愿性标准会被采用为监管和认证中的技术条件，因此实质上都变成了强制标准。然而与强制标准不同的是，在上述自愿标准实施之前，没有任何通知程序将这些自愿标准已被纳入法规或者认证要求的事实通知相关企业。当自愿性标准被纳入法规或认证要求之后，如果能够有一个透明的通知程序在上述标准实施前将此信息通知相关企业，这将有助于企业更好地适应中国监管制度的变化。为了实现这一目标，中国美国商会建议中国应该要求此等标准按照国标委正常程序审查并下发征求意见。此举将避免各相关政府机构的职责和义务发生混淆，使企业有机会提交重要、积极的反馈，并有助于澄清强制性标准的要求及其实施方式。

## 标准实施过渡期

2012年9月18-19日，中美商贸联委会医药和医疗设施分会医疗设备国际标准信息共享项目工作组会议在北京召开。会议就美国、欧洲和中国在新标准的推行和实施过渡期管理上的差异进行了广泛而深入的讨论。特别是IEC60601-1第三版医用电器安全标准已经在美国和欧洲上线实施，带有3年的过渡期。与此同时，在中国，鉴于IEC60601-1属于强制（法定）标准，对该标准的任何修订按照中国法律的要求都要立即实施。中国美国商会因此建议中国在采纳实施标准时规定更长的过渡期。

## 环境标准

中国多家政府主管部委经常分别就同一问题制定不同的环境标准，从而导致这些标准在实施过程中的不一致，并削弱标准的实施效果。因此，由于缺乏明确的指引，相关企业承担了高额的成本。环境标准缺乏衔接和协调的一个典型例证便是重型车辆尾气排放限量标准和油耗标准。在美国，油耗可以在检测发动机排量时通过检测二氧化碳浓度予以测量。因此，中国美国商会建议中国政府考虑通过检测二氧化碳水平来检测油耗。此举可以降低因标准不一致给相关企业造成的疑惑，同时有助于检测机构依据统

without clear guidance. One example of this lack of coordination on standards concerns emission limit standards and fuel efficiency standards for heavy-duty commercial vehicles. In the US, fuel efficiency is measured through CO<sub>2</sub> testing, which can take place when engines undergo emissions testing. AmCham China, therefore, suggests the Chinese government consider using CO<sub>2</sub> levels to measure fuel efficiency. This would reduce the confusion for companies created by inconsistent standards, while enhancing the efficacy of the standard by allowing testing agencies to focus their enforcement efforts on a unified standard.

AmCham China supports China's efforts to stipulate that all on-road and off-road emission regulation measures reduce pollution emission limits. AmCham China also urges the related Chinese government agencies to work together to effectively enforce this measure, and in particular to enhance supervision of vehicle and components manufacturers' COP and in use compliance to ensure emission limits are met. China should also institute substantial fines as punishment for enterprises that violate these measures.

### *Comment Period and English Translations*

All standards initiatives pursued by China should allow for a comment period of 60 days, per Annex 3 (Code of Good Practice) of the WTO/TBT Agreement. This amount of time is necessary for firms to adequately respond to the complex issues within each standards initiative. The Chinese government should also strive to provide English translations early in the process along with a detailed description and rationale for each standards initiative. This would allow AmCham China members to prepare a more thorough and appropriate response during the comment period, which in turn would allow the Chinese government to include international best practices in its standards for the benefit of all businesses, as well as China's economy.

## Recent Developments

### *2012 National Standards-Setting and Revision Work Plan*

SAC released its "Notice Regarding National Standards-Setting Plan (Second Batch)" (Work Plan) on December 25, 2012. 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 National Standardization Management Committee plans for a total of 758 standards to be addressed, with this work beginning in 2013. Of these, 584 will be new standards and 174 will be revisions of existing standards. In addition, 750 will be recommended or voluntary standards, with eight technical guidance documents. The Work Plan also identifies the corresponding departments, technical managing organiza-

tions, and drafting organizations for each standard. Finally, it 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.

### *Information Technology Office Equipment Security Standard*

The Chinese government has completed drafting a national-level printer security technical standard, entitled the "Basic Security Requirement for Information Technology Office Equipment Security Standard" (Information Security Standard). Its scope encompasses printers, copiers, electrophotographic 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 the Ministry of Industry and Information Technology (MIIT), was 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 were allowed to join the working group developing this standard, but only as observers. The draft is currently under review at SAC and is expected to be published soon.

As a next step, TC260 and CESI will be drafting testing standards to implement the framework laid out in the "Basic Security Requirement for Information Technology Office Equipment Security Standard." AmCham China hopes China will allow foreign participation in this information security-related testing standard as full voting members at all stages of the drafting process, not just as observers. AmCham China also hopes that China will adopt existing international testing standards, instead of taking the international standard and modifying it for the China market. This again would enhance China's ability to influence international standards development and promote the acceptance of Chinese standards globally.

### *Cloud Standards*

On July 12, 2012, TC260 published the draft of the Information Security Technology: Government Department Cloud Computing Service Provider Basic Security Requirements, with a comment period that ended on September 1, 2012. This draft standard covers guidelines for, among other issues, cloud service provider size and operational experi-

一标准进行检测，提高标准的执行度。

中国美国商会支持中国政府制定各项措施来减少道路及非道路机械的污染物排放。中国美国商会还促请中国相关政府部门能够提高联合执法，针对整车及关键零部件厂商加强与排放相关的生产一致性和使用的合规控制及监管力度，并提升对违规企业的处罚。

### 评议期和英文翻译

根据 WTO/TBT 协议附件三（优良实践守则），中国起草的标准计划都应该允许 60 天的评议期。这段评议期对企业来说非常必要，有助于它们恰当地回复每个标准体系中包含的复杂问题。中国政府也应当尽早提供英文版本，详细描述各个标准计划的内容和原理。此举将使得中国美国商会的会员企业能够在评议期内更为充分且适当地作出应对，从而也能使中国政府将国际最佳实践吸收到本国标准体系中来，从而造福所有企业以及中国整体经济。

## 最新进展

### 2012 年国家标准化委员会制定与修订计划

2012 年 12 月 25 日，国标委发布了《关于国家标准制修订计划（第二批）的通知》（工作计划），中国美国商会对国标委为中国标准化的程序，将该信息发给国内外利益相关方参考的做法表示赞赏。

根据上述工作计划，国家标准化管理委员会计划自 2013 年年初起，对总计 758 项国家标准进行制、修订。其中 584 项是制订新标准，而 174 项是对现有标准进行修订。另外，其中的 750 项是推荐性或自愿标准，8 项是技术指导文件。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，最后，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，以及要求对标准草案收集意见等工作中所发挥的领导作用。

### 信息技术办公设备安全标准

中国政府已拟定了国家级别的打印机安全技术标准，名为《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、电子照相与喷墨系统、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（CESI）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。目前该草案正在由国标委进行审议，预计不久就将出台。

下一步，信息安全标委会和 CESI 将负责起草检测标准，执行《信息技术办公设备安全标准基本安全要求》中设定的框架。中国美国商会希望中国能够允许外资企业以完全投票权成员的身份，而不仅仅是观察员的身份，参与上述信息安全相关检测标准起草的所有阶段。中国美国商会还希望中国能够采用现行的国际检测标准，而不是对国际标准进行修改以适应中国市场。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。

### 云标准

2012 年 7 月 12 日，信息安全标委会发布了《信息安全技术：政府部门云计算服务提供商基本安全要求》（草案）并公开征求意见，征求意见的截止日期是 2012 年 9 月 1 日。上述标准草案的内容之一便是对云计算服务提供商的规模和运营经验，以及云计算服务提供商和政府客户之间的业务交易做出指引性规定（详情请参阅《信息和通信技术一章》）。

### 电器产品消防安全通用要求

2011 年 11 月 9 日，国家消防电子产品质量监督检验中心（消电产品质检中心）发布了《电器产品消防安全通用要求》（消防要求）草案并公开征求意见。之后不久该质检中心又发布了草案修订版，并做出重大改进。中国的消防要求目前只能勉强符合 IEC60695（火灾危险测试）的要求。

上述消防要求中对中国建筑物内安装的电器产品作出了具体的要求。部分要求可与国际标准持平，但其他则与国际电工技术委员会（IEC）的要求有偏差。还有一些标准是建筑物室内安装电器产品标准中从未出现过的要求，如果将来加以实施，可能会对一系列电器产品的进口和销售构成监管壁垒。中国美国商会希望最终出台的消防要求能够体现电子产品消防领域的最佳国际实践，且不会对电子产品的进口和销售造成额外且不必要的监管壁垒。

ence and business dealings between cloud service providers and government customers. (See the Information and Communications Technology chapter for further information on this development.)

### *Fireproof Requirements for Electronics Products*

On November 9, 2011, the China National Centre for Quality Supervision and Testing for Fire Products (CNCQSTFP) released a draft for public comment of the “Fireproof Requirements for Electric Products” (Fireproof Requirements). Shortly thereafter in December 2011, CNCQSTFP released a draft for review of the standard and adopted important changes. China’s Fireproof Requirements loosely correspond to IEC 60695 (fire hazard testing).

The Fireproof Requirements contain a number of specific requirements for electronics installed in buildings in China. Some are comparable to global requirements, while others constitute deviations from IEC requirements. Still others are completely unprecedented requirements for electronic equipment installed in buildings, and would impose regulatory barriers for import or sale of a wide range of electronics, based on the standard’s future enforcement. AmCham China hopes that the Fireproof Requirements when finalized reflect global best practices in the area of fireproofing for electronics, and do not impose any additional and unnecessary regulatory burdens on the import and sales of electronics.

### *Emission and Fuel Economy Standards*

China announced that January 1, 2012 was the effective date of implementation for the NS IV fuel emission standard, but a few days prior to January 1, another announcement postponed implementation until July 2013. One of the reasons publicly given for the postponement was that qualified diesel fuel was not available to support NS IV. The Chinese government announced that NS III vehicle diesel fuel and common diesel fuel (350 ppm) would be ready July 1, 2013. The Ministry of Environmental Protection (MEP) has spent significant effort in promoting diesel fuel quality improvement so that NS IV can be effectively implemented on July 1, 2013. AmCham China urges Chinese government agencies involved in fuel quality issue, including MEP, MIIT, the General Administration of Quality Supervision, Inspection and Quarantine and National Development and Reform Commission (NDRC) to work closely together to ensure that infrastructure is ready for a timely implementation of NS IV. AmCham China hopes that NDRC can confirm the date for the nationwide availability of NS IV diesel fuel (50 ppm) to ensure effective NS IV emission implementation.

The revision of Vehicle Diesel Standards (19147) does not lay out a specific timeline for the respective emission reduction limits of different levels of fuel (NS III fuel, NS IV fuel and NS V fuel). The coexistence of different emission reduction limits for different quality levels of fuels presents a roadblock towards effective implementation of emissions reduc-

tions. AmCham China recommends that China specify in the Standard the specific times when different levels of fuel will be ready. When a higher level of fuel is supplied, the lower level fuel supply should automatically be halted. And also, when NS III diesel fuel is available on July 1, 2013, the lower level quality diesel fuel shall be banned and the violation shall be severely punished.

### *Food Standards*

On January 30, 2012, the Ministry of Health issued the draft of the 12th Five-Year Plan on National Food Safety Standards. Examples of progress China has made on this issue include: improvement in the food safety national standards system through clarified requirements and published administrative measures, a more streamlined approach for reviewing and integrating food standards, and increased publicizing and smoother implementation of new national food standards.

Nonetheless, challenges still remain that have yet to be addressed by the Chinese government. These include: a lack of coordination among Chinese ministries resulting in the coexistence of overlapping standards which leave some issues unaddressed; insufficient food safety supervision due to the lack of standards on, for instance, detection methods and food packaging materials; and the lack of an unsatisfactory scientific basis in standards, leaving them unable to keep pace with food safety supervision requirements and industry development as well as popular concern over food safety.

## 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 in the drafting of effective and efficient standards and testing processes for the benefit of China and its consumers. China’s adoption of existing international standards, combined with partnering with foreign enterprises in the development of new standards, can create a system of standards in China that will drive domestic innovation and increase foreign investment and research and development in China. China should also ensure equal treatment for FIEs in all phases of the standards development process.

### Recommendations

- **Allow non-Chinese testing organizations to carry out testing in China.**
- **Broaden recognition of international SDOs beyond ISO, IEC, and ITU to any organization which**

## 燃油排放 / 质量标准

中国曾宣布自 2012 年 1 月 1 日起正式实施国家第四阶段机动车污染物排放标准，但在 2012 年 1 月 1 日前几天，又宣布将该标准的实施日期推迟至 2013 年 7 月。该通知中公布的延迟实施的理由之一便是目前的柴油品质无法满足国 4 排放标准的实施要求。中国政府还宣布将在 2013 年 7 月 1 日前推出符合国 3 标准的机动车柴油燃料和普通柴油燃料（350ppm）。但这两项都没有按期推出。环境保护部为提高柴油燃料质量，在 2013 年 7 月 1 日如期实施国 4 标准作出了巨大的努力。中国美国商会促请中国政府负责燃料质量问题的相关部门，包括环境保护部、工业和信息化部、国家质量监督检验检疫总局以及国家发改委，通力合作努力解决上述问题，确保国 4 排放标准能够如期顺利实施。中国美国商会希望国家发改委能够确定符合国 4 排放标准的柴油燃料（50 ppm）在全国范围内推广使用的时间，从而确保国 4 排放标准的如期实施。

修订后的机动车柴油标准（19147）未指明不同排放阶段所对应的燃油（国 3 燃油、国 4 燃油和国 5 燃油）标准实施日期，势必将导致不同等级燃油共存的局面，从而造成排放法规无法顺利推进。中国美国商会建议中国在相关标准中明确各个阶段燃油减排的实施日期。一旦推出了高品质的燃油，就应当自动停止上一阶段燃油供应。此外，在 2013 年 7 月 1 日国 3 标准的机动车柴油燃料推出时，应禁止上一阶段燃油供应，并应对违反行为予以严厉处罚。

## 食品标准

2012 年 1 月 30 日，卫生部发布了《国家食品安全标准十二五规划》草案。中国在食品安全领域所取得的成就包括：通过明确要求并出台管理办法，提升食品安全国家标准，改进完善食品标准审查和整合办法，加快新的国家食品标准的制定和顺利实施。

尽管如此，中国政府依然面临诸多尚待应对的挑战。包括：中国相关部委之间缺乏协调，各项标准政出多门，相互重叠，反而造成部分问题无法解决；由于缺乏相关标准，如留存方法和食品包装材料的标准，造成食品安全监管不力；标准制订缺乏令人满意的科学基础，造成相关标准无法跟上食品安全监管要求以及行业发展的需要，也无法解决食品安全领域的热点问题。

## 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，技术知识与市场了解对于制定既有效益又有效率的标准和检测流程的重要性，这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，可有助于创建一套中国标准化体系，推动中国国内的创新，增加外国在华投资与研发。中国应当确保外资企业在标准制定程序的各个阶段中都能享有平等的待遇。

## 建议

- 中国应当允许非中资检测机构在华开展检测业务。
- 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。
- 允许外资企业充分参与中国商业标准制定的所有阶段。
- 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内资企业平等的基础上参与标准制定活动的各个阶段。

follows the WTO/TBT principles on international standards development.

- Allow FIEs to participate fully in all phases of China's commercial standards development.
- SAC should more closely monitor the activities of TC- and SC-level standards working groups to ensure that FIEs are allowed to participate in all phases of standards development activities on an equal basis with domestically-invested enterprises.

**Part Three:**  
**Cross-Sector Issues**  
**跨行业问题**



# Customs

## Introduction

In 2012, China Customs pursued a series of effective efforts to raise awareness of Customs' affairs, institute paperless declarations, categorized Customs clearance, advance evaluation and pre-classification, which were all highly regarded by business circles. However, industry continues to feel the negative impact of the increased proportion of inspections for imported and exported goods at all ports and even prescribing the proportion of seizures. AmCham China is eager to see China Customs adopt a more rational system designed to adequately implement measures for improved Customs clearance, perform its management functions more effectively, and lower the proportion of inspections.

## Ongoing Regulatory Issues

### *Customs Management in Processing Operations*

China Customs' import and export processing operations supported China's rise as a global manufacturing center by improving management of the Customs system and significantly transforming and upgrading its operations. However, many enterprises' expectations remain unfulfilled, including:

- the need for a credit verification system based on the Enterprise Resource Planning (ERP) system;
- allowing freedom for independent selection of part numbers, item numbers and worksheets under different verification and cancellation modes, with control over domestic sales as the key target;
- optimizing existing policies and management systems for export processing zones;
- formulating practical rules for the disposal of scraps, valuation of bonded parts for domestic sale and attrition rates of electronic products;
- providing as early as possible a solution concerning the circulation of bonded goods between special supervision zones;
- modifying the rules stipulating that imported equipment categorized as non-purchased be kept only for factory use even after the Customs supervision period is over;
- cancelling the restriction that only non-licensed and

non-dutiable goods can be replaced by similar domestic goods within the processing operation; and

- setting up new rules for overseas processing.

In addition, including the import repairing business as part of the service industry is strongly desired by the trade community. AmCham China hopes that the new rules can be formed in this area by China Customs, together with other related government agencies as soon as possible.

### *Voluntary Disclosure*

Voluntary disclosure is an accepted international practice allowing Customs authorities and companies a transparent and straightforward process for addressing situations where a company has found itself in noncompliance. Currently, local Customs authorities across China have no clear-cut provisions for addressing voluntary disclosures, so enterprises do not know how the voluntary disclosure will be received or if filing a voluntary disclosure will help mitigate their exposure to fines and penalties. This lack of understanding deters enterprises from submitting voluntarily disclosures and decreases opportunities for Chinese Customs and enterprises to work cooperatively to improve compliance in the management and operation of their import and export processes. If China Customs published a set of transparent and systematic rules for voluntary disclosures that mitigate the level of punishment, this would incentivize enterprises to disclose and result in improved import and export compliance in China.

AmCham China continues to call on China Customs to develop a set of rules governing voluntary disclosures. These rules should cover the scope, conditions and the general procedures related to tariffs and how voluntarily disclosing will mitigate punishment for the disclosing enterprise. Such clearly defined rules will help raise the proportion of enterprises submitting voluntary disclosures, which will in turn enhance efficiency and improve the overall level of compliance with the clearance procedures. This will also reduce Customs' workload and potentially increase the amount of taxes collected by Customs.

# 海关

## 引言

2012年,中国海关在关务公开,建立无纸化申报、分类通关、预审价以及预归类等方面开展了一系列卓有成效的努力,获得了商界的高度评价。虽然如此,由于各个港口提高了进出口货物的检查比例,有的甚至规定没收指标,业界仍旧能感受到负面影响的存在。中国美国商会急切希望中国海关部门能够采用一种更为合理的执法体系,提高海关清关速度,高效履行管理职能,同时降低检查比例。

## 现存监管问题

### 海关贸易加工监管

中国实施的海关进出口贸易加工监管提升了海关系统管理质量,极大促进了海关监管系统的转型和升级,为中国成为全球制造业中心提供了巨大支持。然而,许多企业期盼的问题依然未得到落实,包括:

- 需要建立以企业资源规划(ERP)系统为基础的信用验证系统;
- 允许企业在不同的验证和取消模式下独立自由地选择部件序号、货件号和工作单,将监管国内销售作为重点目标;
- 优化出口加工区现行政策和管理体系;
- 制定务实的废物处理、保税区内销零部件估价和电子产品损耗率制度;
- 尽快出台特殊监管区域之间保税物流通关解决方案;
- 对现行的针对非购买型进口设备的规定进行修改,改变要求其即使已过海关检查期间也仅限于工厂使用的做法;
- 取消贸易加工只允许非许可和非应税货物被类似的国

产货物所取代的限制;以及

- 制定海外加工领域的新规则。

另外,商贸界强烈期望希望能够将进口修理业务纳入服务行业。中国美国商会希望中国海关部门能够尽快会同其他相关政府部门制定这一方面的新规则。

### 自愿披露

自愿披露是全球通行的规则,它允许海关部门和企业通过一个透明且直接的程序来解决企业的海关违规行为。目前中国各地方海关部门尚未出台处理自愿披露的明确规定,因此企业不知道如何开展自愿披露,也不知道自愿披露会不会降低他们被罚款或处罚的风险。企业对自愿披露缺乏了解而导致其不敢提交自愿披露,也减少了中国海关部门和企业相互合作、提高进出口流程管理和运作中的合规度的机会。如果中国海关部门能够就自愿披露出台透明且系统的规则,并且降低处罚力度,将有助于鼓励企业进行自愿披露,从而提高中国进出口贸易领域的合规度。

中国美国商会继续呼吁中国海关尽早展开针对自愿披露的制度建设。该准则应包括自愿披露之后与关税相关的范围、条件和一般程序,以及减轻对自愿披露企业的处罚力度的具体举措。上述明确界定的准则将有助于提高企业自愿披露比例,从而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

进口很小批量的用于测试的样品手机和作为商品,以一般贸易方式进口进入市场,入网使用的大批量手机之间存在本质性区别。然而,现行贸易管制和中国海关部门其他相关管理制度中,并没有对两者进行区分。这给研发企业带来了挑战,并打击了企业在华研发运营。中国美国商会促请海关部门对现行研发用品进口程序进行审查,并协

### ***Import of Samples for Use in Research and Development (R&D)***

There is an essential difference between the import of a very small quantity of sample cellphones for testing purposes and the import of a large quantity of cellphones as commodities into the market via general trade for network access and use. However, the existing trade control and other relevant management systems of China Customs do not distinguish between the two. This causes difficulties for R&D enterprises and discourages the placement of R&D operations in China. AmCham China urges Customs to review the current process for importing items for R&D and coordinate with other government agencies to adopt reasonable import and export processes and taxation policies for the import of R&D samples, temporary imports and exports of items for R&D purposes, temporary imports of old test equipment, and how to address the import of samples that will be destroyed during the testing process.

### ***Administrative Punishment***

Punishment of enterprises that have violated Customs regulations is under the jurisdiction of China Customs; it is imperative that China Customs carry out such punishment in a fair and reasonable manner. For instance, in determining levels of punishment, China Customs should implement the principle that the punishment should be in proportion to the nature, means and consequences of the violation. However, in Article 18 of the Detailed Rules for Implementation of Customs Administrative Punishment, unintentional, minor, and procedural violations where the consequences are minimal are treated the same as serious and substantive violations that have caused serious consequences. In both instances, enterprises are subject to a fine equivalent to 30 percent of the total value of the goods covered by the violation. Because of this, many enterprises have paid excessive penalties for minor misconduct or mistakes and have suffered serious damage to their reputation. This not only violates the basic principle of fairness, but also deviates from the aim of the law.

AmCham China recommends that China Customs revise Article 18 of the Detailed Rules as soon as possible to delineate the punishment between minor and serious violations. In addition, AmCham China hopes that China Customs can summarize, classify and analyze the administrative punishment imposed by local Customs each year and provide a compilation of this data in a report that would be posted on its website, which would then serve as a direct warning and guidance for enterprises.

### ***Fight against Illegal Trade***

In recent years China Customs has increased its efforts to block illegal exports, such as combatting the export of counterfeit products. However, AmCham China would like to also see increased efforts with regard to combatting illegal

imports, as the smuggling of illegal products has a significant impact on the market share of legitimate products. AmCham China encourages China Customs to increase both its own enforcement efforts and its coordination with other enforcement agencies to reduce the import and sale of smuggled products in the domestic market to better protect both brands and consumers, as well as ensure the Chinese Government collects the associated tax revenues.

## **Recent Developments**

### ***Transparency and Engagement***

In 2012 China Customs worked actively to be more accessible and improve transparency. For example, the 12360 Customs hotline now provides a convenient channel for enterprises to directly make inquiries concerning Customs affairs. In addition, programs such as the online interviews with the General Administration of Customs (“GAC”), the forum on Customs affairs launched by the China Customs Brokers Association, and a series of lectures, symposiums, exchanges and forums China Customs conducted were well attended and well received. Enhanced transparency greatly reduces misunderstandings between Customs and enterprises and leads to improve operational efficiency and enforcement. AmCham China requests that China Customs continue and even increase its outreach efforts to the importing and exporting community and actively engage with industry on any future developments with regard to China Customs’ rules and systemic procedures.

### ***Measures to Improve Trade Facilitation***

On September 27, 2012, China Customs released Notice No. 45 of the GAC. This Notice set out measures for decreasing the administrative burden on enterprises, speeding up customs clearance, enhancing customs management and services, extending operation hours, and strengthening the coordination between government entry-exit authorities. All of these measures broadly benefited industry and were greatly appreciated. To reinforce positive benefits, AmCham China urges China Customs to expand the scope of commodities and ports for which paperless clearance is allowed. AmCham China also recommends that China Customs identify high risk importers and imports based on past violations and target such for greater scrutiny. Law abiding enterprises will thus benefit through decreased inspections and other delays with regard to their routine low risk imports.

In addition, AmCham China believes improved cooperation and coordination between Customs and other port administrative agencies, such as AQSIQ, would further expedite the customs clearance process and also decrease the cost of cargo clearance significantly. AmCham China therefore requests that China Customs take the lead in engaging other administrative agencies to determine methods for improving the efficiency and decreasing the cost of the Customs clearance

调其他相关政府部门就研发样品进口、研发用品临时进出口、老旧测试设备临时进口等事宜，制定出台合理的进出口程序和税收政策，并对如何解决测试过程中即被销毁的样品进口问题做出规定。

## 行政处罚

中国的海关部门负责对违反海关法律法规的企业进行处罚，因此中国海关部门能否公平合理地施行处罚关系重大。例如，在处罚力度上，海关部门应当遵循处罚水平应与违法行为的性质、方法和后果成比例相一致的原则。然而，根据《海关行政处罚实施条例》第18条，后果较轻的非故意、轻微和程序型违法行为受到的处罚与导致严重后果的重大、实质性违法行为却完全相同。在这两种情况下，都要被处以货物价值30%的罚款。很多企业因为该条款而为轻微过失或错误遭受了不相称的严厉处罚，企业声誉也因此严重受损。这不但违背公平的基本原则，也不符合法律的宗旨。

中国美国商会建议中国海关部门尽快修改《实施细则》第18条的规定，对轻微和重大违法行为的处罚要加以区别对待。另外，中国美国商会希望中国海关能够对地方海关每年实施的行政处罚进行汇总、分类和分析，并将上述数据汇编成报告，在中国海关网站上公布，这必将对企业起到直接的警示和指导作用。

## 打击非法贸易

近年来，中国海关一直在加大力度打击非法贸易，如大力打击出口假冒商品。然而，中国美国商会希望中国海关也能加大打击非法进口的力度，因为非法产品走私将对合法产品的市场份额造成严重的负面影响。中国美国商会鼓励中国海关在加强自身执法力量的同时，与其他执法机关也保持通力合作，减少走私商品进口以及在国内市场的销售，如此不仅可以更好地保护品牌和消费者，还可以确保中国政府能够取得相关的税收收入。

## 最新进展

### 透明度和参与度

2012年，中国海关更加积极地推进关务公开和透明度。比如，12360海关热线的开通如今为企业直接咨询海关业务提供了一条便捷的渠道。另外，海关总署在线访谈，中国报关协会举办的海关事务论坛，中国海关部门举办的一系列讲座、座谈、交流和论坛活动等得到了广泛参与和好

评。提高透明度极大地减少了海关部门与企业之间的误解，有助于提高效率和执行度。中国美国商会请求中国海关继续保持并加强与进出口贸易界的交流，让业界一起积极参与到未来中国海关规则和程序的制定过程中。

## 促进外贸便利的措施

2012年9月27日，中国海关发布了海关总署第45号公告《海关总署关于促进外贸稳定增长的若干措施》。该公告中规定了减少企业行政负担、加快通关速度、加强海关管理和服 务、延长工作时间和加强政府各进出口监管部门之间的协调等相关措施。上述措施惠及全行业，受到了广泛好评。为了加强上述积极影响，中国美国商会促请中国海关扩大适用无纸化通关的商品和口岸的范围。中国美国商会还建议中国海关根据历史违法记录，确定高风险进口商及其进口货物名单，加强对这些进口商和货物的监管。如此一来，守法企业在从事日常低风险进口贸易时才能从降低检查频率和缩短延迟中获益。

另外，中国美国商会相信加强海关与其他口岸管理部门，如质量监督检验检疫局之间的合作和协调将有助于进一步优化通关程序，并大幅削减货物通关成本。中国美国商会因此请求中国海关牵头，组织其他监管部门商定如何在需要取得其他部门的认证或许可时提高通关效率、降低通关成本的办 法。

2012年，企业遭遇的一大负面问题便是中国海关部门大幅提高了检查比例。这导致了許多低风险的合规进口商品通关时间延长，导致相关仓储、起吊和装卸等费用增加。尽管中国美国商会充分理解中国海关担负着货物检查的职责，但是我们还是建议应当将检查的重点放在历史违法记录显示违法风险高的进口商和进口货物上。

## 预审价及归类制度

### 新制度

绝大多数发达国家采用预审价和预分类制度，允许企业在装运前确认审价和分类，从而避免出现通关程序中的延误现象。2012年，海关总署发布了中国实施上述制度的框架，中国美国商会的不少会员企业都已经陆续表示部分地区的海关已经开始执行这一制度。中国美国商会对中国海关在引入这一制度方面所作的努力表示赞赏，并促请尽快在全国范围内全面推广这一制度。

另外，中国海关还应当将第三方预分类公司做出的分

process when certifications or licenses are needed from these agencies to complete the clearance process.

As a negative trend, enterprises experienced a marked rise in the proportion of inspections being conducted by China Customs in 2012. This has resulted in prolonged clearance times for many low risk, compliant imports and the incurrance of increased storage, hoisting, handling and crafting fees. While AmCham China fully understands that China Customs has a duty to inspect shipments, we propose that the majority of inspections be focused on imports and importers that have proven to be high risk in the past.

## ***Advance Valuation and Classification Systems***

### *New Systems*

Most developed countries utilize an advance valuation and pre-classification system which allows industry to confirm valuation and classification prior to shipment and thus avoid delays in the customs clearance process. In 2012, GAC issued the framework for such a system in China, and a number of AmCham China members have relayed that this system is already being implemented in some Customs offices. AmCham China greatly appreciates the efforts China Customs has made in introducing this system, and presses for full scale implementation of the system as soon as possible.

Additionally, China Customs should expand the jurisdiction of the rulings provided by the third party pre-classification companies applicable to the whole country, not just a specific region. Further, in cases where an incorrect classification is provided by a Chinese Customs certified third party, the enterprise should be exempt from any Customs punishment since the third party was authorized and certified by China Customs.

### *Valuation*

When determining tariff collection values China Customs sets price indices for different import commodities. However, the prices of commodities under the same HS code may differ from each other due to different specifications, different types, different qualities and different trade terms, with price differences sometimes exceeding a factor of ten. In addition, some local Customs offices decline to adopt the price index directly as the Customs valuation, which is clearly in contradiction to WTO valuation rules. AmCham China requests that China Customs base its valuation on the true value of the goods and the corresponding duty rate as described in WTO valuation rules.

## ***Consistency of Law Enforcement***

Consistency in the enforcement of Customs laws is an issue that has troubled enterprises for years. In 2012, China Customs conducted an in-depth survey on this issue and

developed a resolution that incorporated many of the suggestions from industry. AmCham China applauds this work and looks forward the positive impact in the coming days.

Meanwhile, AmCham China also urges China Customs to provide guidelines to industry for addressing inconsistencies between different local Customs practices.

## ***24/7 Customs Service Model***

While AmCham China applauds China Customs for opening two 24/7 service centers, we feel there is a more effective solution to address Customs clearance issues around the clock. This solution would be to allow independent clearance for enterprises that have a demonstrated history of compliance and have been reviewed and certified by China Customs. For example, if an enterprise is of a certain scale, has established a strict internal control system, been audited and certified by China Customs, and has no history of major violations, they would be allowed to independently clear their shipments, or at a minimum their low risk shipments. In this way, China Customs still carries out its administrative functions, while enterprises take on the burden of implementing compliance with the benefit of receiving the ability to independently clear shipments.

## **Conclusion**

A convenient and efficient Customs clearance system will continuously enhance the competitiveness of the Chinese economy. GAC has made great progress in a wide range of areas, such as the modernization of the network system, a higher degree of openness and transparency, improved clearance operations, and the introduction of pre-classification and advance valuation. Despite these advances, there is still a great deal of work ahead, and AmCham China looks forward to working with GAC in continuing to improve the import and export processes in China in a way that benefits both China Customs and import and exporting community.

## **Recommendations**

- **Continue to refine the management of the Customs clearance process.**
- Develop and publish a voluntary disclosure process for self-reporting violations of Customs laws and regulations.
- Revise the Detailed Rules for Implementation of Customs Administrative Punishment, so minor and serious violations are not subject to the exact same penalties.
- Find a solution to the circulation of bonded goods between special supervision zones.

类结果的适用范围扩大至全国，而非局限于某一特定地区。另外如果经中国海关认证的第三方提供的分类有误，相关企业应当免受海关处罚，因为上述第三方系经中国海关授权和认证。

## 审价

在确定关税应税价格时，中国海关对不同的进口商品设定了不同的价格参数，但由于同一 HS 项下可能包含很多不同规格、不同型号、不同品质、不同贸易条件的商品，相互间出现价格差异，有时甚至高达几十倍的差异。另外，部分地方海关拒绝采用将价格参数直接作为海关审价的依据，这显然违反了 WTO 估价规则。中国美国商会促请中国海关依据货物的真实合理的价值及 WTO 估价规则中确定的相应税率进行审价。

## 执法统一性

海关执法缺乏统一性一直困扰企业。中国海关在 2012 年间将此作为重大问题，进行深入全面的调查研究，在广泛听取企业意见的基础上拟定了解决方案。中国美国商会对中国海关的上述工作表示欢迎，并期待这些措施未来能够产生积极影响。

与此同时，中国美国商会还促请中国海关制定行业指南，解决各地海关执法不一致的问题。

## 全天候海关服务模式

尽管中国美国商会对中国海关开设两家全天候服务中心的做法表示赞赏，但我们觉得还有一种更加有效的全天候解决通关问题的方法。这种方法允许合规历史良好，且经中国海关审查和认证的企业进行单独通关。例如，如果一家企业具有一定的规模，已经建立了严格的内控体系，通过了中国海关审计并取得认证，没有重大违法记录，应当允许他们的货物单独通关，至少允许他们的低风险货物单独通关。通过这种方法，中国海关既履行了自己的行政职能，又通过单独通关程序减轻了企业的合规负担。

## 结论

便捷、高效的海关通关制度将不断提高中国经济的竞争力。海关总署在诸多领域均取得了巨大的进步，比如在网络系统现代化、政务公开透明度提升、通关作业制度改革以及引入预归类、预审价等方面。尽管取得了上述成就，

但还有很多重大事项尚待解决，中国美国商会期待与海关总署开展合作，继续改善中国进出口程序，使中国海关部门和进出口行业获益。

## 建议

- 继续优化海关通关程序管理。
- 制定并公布企业自主申报海关违法违规行为的自愿披露程序。
- 修订《海关行政处罚实施条例》，对轻微和重大违法行为的处罚加以区别对待。
- 解决特殊监管区之间的保税货物流转。
- 建立相关制度，解决全国各地海关系统在分类制度和海关执法方面的不一致问题。
- 降低海关检查比例，重点检查高风险进口货物。
- 实施与 WTO 估价规则相一致的审价制度，扩大预审价和预分类制度的适用范围。

- Establish a mechanism for addressing nationwide inconsistencies with regard to classification and the enforcement of China Customs laws and regulations.
- Lower the proportion of the inspection of goods and focus such inspections on high risk imports.
- Implement a valuation system in line with WTO valuation rules and expand the implementation of the system of advance valuation and pre-classification.



# High-Tech Trade Promotion and Export Controls

## Introduction

China is the most important import partner for the US and the third most important export destination behind neighbors Canada and Mexico. Bilateral trade in goods between the US and China grew from US \$147 billion in 2002 to over US \$500 billion in 2011, with a CAGR of 15 percent. The total value of licensed dual-use exports from US to China grew from just over US \$2 billion in 2002 to almost US \$9 billion in 2011, with a CAGR of 18 percent. As the US and China look to capitalize on the potential future growth in bilateral high-tech trade, both countries should seek to improve cooperation and understanding on export controls.

Export controls affect high-tech trade between the US and China in a number of ways: (1) misperceptions among industry representatives about the restrictions imposed by US export controls have deterred Chinese companies from seeking US-origin items; (2) US export control policies do not fully account for foreign and indigenous availability, leading to (a) heightened US security concerns when such products are sold by non-US competitors without being subject to the careful control regime associated with US export controls and (b) lost sales by US firms to those foreign competitors; (3) ineffective trade control implementation and enforcement in China can lead to diversion of dual-use items to end-users or end-users of concern; and (4) the lack of an established compliance culture amongst Chinese businesses hinders the ability of Chinese firms to persuade US licensing officers to authorize particular licenses and as a result hinders the firms' ability to acquire certain US export-controlled items.

To address these issues, AmCham China and AmCham Shanghai (hereafter referred to together as "AmCham") formed the Export Compliance Working Group (ECWG) in 2006 with the mission of facilitating civilian bilateral high-tech trade by serving as the liaison between government and industry. The ECWG believes that targeted efforts on US export control reform that account for foreign availability and an expansion of programs such as the Validated End-User (VEU) Program, together with China strengthening the legal framework and enforcement of its own export control policies and promoting a stronger compliance culture within Chinese companies, will contribute to sustainable bilateral high-tech trade growth.

AmCham's ECWG is a group of companies dedicated to facilitating high-tech trade between the US and China, by improving the export control environment for US companies; by promoting a security and compliance culture within the trade community in China; and by assisting US companies on keeping up with the changes in China's export regulations.

## Ongoing Regulatory Issues

### US Export Controls

#### Foreign Availability

US export control laws restrict American companies from exporting certain items to China that are already available either indigenously or from other foreign suppliers. These restrictions have two negative effects. First, items sold by non-US firms do not go through the same export controls as those associated with the US export control system. Items may pose greater security threats when the US is unable to monitor to whom they are delivered and for what purpose. Therefore, an export control system that does not account for those items which are already available from other suppliers (foreign or domestic) present security concerns for the US. Second is the related economic disadvantage that US companies experience. Each item that China acquires from a non-US business represents a lost US export opportunity, and in turn harms US job creation and economic growth. Through export control reform, the US can improve its security and improve American competitiveness, by more carefully and comprehensively accounting for foreign availability in setting policy and making individual licensing decisions. AmCham urges the US government to appropriately and consistently account for foreign and indigenous availability in China as it re-evaluates control levels and makes individual licensing decisions.

#### Validated End-User Program

To facilitate legitimate exports to civilian end-users, the VEU authorization allows the export, re-export and transfer of eligible items to specified end-users in China without needing to apply for an individual license for each transac-

# 高科技贸易促进和出口管制

## 引言

**中**国是美国最重要的进口贸易伙伴，也是仅次于美国邻国加拿大和墨西哥的美国第三大出口对象国。美中两国双边货物贸易额已从 2002 年的 1470 亿美元跃升至 2011 年的 5000 多亿美元，年均复合增长率为 15%。获出口管制许可从美国出口到中国的军民两用产品的贸易总额从 2002 年的 20 亿美元出头增长为 2011 年的近 90 亿美元，年均复合增长率达 18%。鉴于美中两国都期望从未来的高科技双边贸易中受益，两国应努力在出口管制领域加强合作，增进理解。

出口管制在下列多个方面影响美中两国的高科技贸易：

- (1) 业内人士对美国实施的出口管制政策中的种种限制存有误解，打击了中国公司进口原产于美国的产品积极性；
- (2) 美国出口管制政策未能充分说明当美国以外国家和中国本地已有类似产品时如何处理，导致 (a) 当此类产品由美国之外的其他国家竞争者销售，而该国又没有与美国出口管制机构相关联的谨慎的出口管制体制时，美国的安全风险便会增大；(b) 造成美国公司的销售份额流向其他外国竞争者；
- (3) 中国贸易管制政策实施和执行不力导致可军民两用的物品转流向最终用户或令人堪忧的应用；
- (4) 中国企业尚未建立规范的合规文化，从而降低了中国企业说服美国政府相关部门颁发许可的能力，同时也削弱了这些企业获取美国出口管制产品的能力。

为了解决这一问题，2006 年中国美国商会和上海美国商会（以下统称“美国商会”）成立了出口合规工作组，该工作组的主要作用是增进政府和行业之间的联络，推动民用高科技双边贸易发展。出口合规工作组相信，通过有针对性地推动美国出口管制改革（将他国产品供给考虑在内），推广诸如合法最终用户验证计划（VEU）在内的相关计划，再加上中国推进完善出口管制制度法律框架，加强执法力度，鼓励中国企业营造更加浓厚的合规文化，必将有助于促进两国双边高科技贸易的持续增长。

美国商会合规工作组由一批致力于推动美中高科技贸易发展的企业组成，主要途径是通过改善美国企业的出口管制环境，推动中国贸易行业内的安全及合规文化，以及帮助美国公司及时更新和适应中国出口管制法律的变化。

## 现存监管问题

### 美国出口管制

#### 外国产品因素

美国出口管制法律限制美国公司向中国出口那些中国已能自主生产或可从其他国外供应商处获得的产品。上述限制有两种负面影响。第一，经过非美国公司出售的产品并不需要经过那些与美国出口管制系统相同的出口管制体制的限制。因此，由于美国无法对这些产品的购买方以及购买目的进行监控，可能造成更大的安全威胁。因此，现行的不考量可以从其他供应商（美国以外或中国国内）处获得类似产品的出口管制体系给美国带来了安全问题。第二，美国公司将因此处于相应的不利地位。中国从非美国企业取得上述产品即意味着美国出口机会的丧失，并将影响美国国内就业机会和经济增长。通过改革出口管制制度，在制定相关政策以及审批出口许可时，应更仔细且全面地考量该产品是否能从外国获得，从而在提高美国安全的同时增强美国的竞争力。美国商会呼吁美国政府在重新评估管制程度并作出单独许可决定时，始终酌情考虑中国是否能从中国本土和从美国以外的国家获得该产品。

#### 最终用户验证项目

为了推进针对民用最终用户的合法出口贸易，美国推出了“最终用户验证项目”（VEU）。该计划授权美国企业向中国特定的终端用户出口、再出口和转让符合条件的产品时，无需就每次交易单独申请许可证。此举将有助于中国民用终端用户为贸易合规进行投资，以便获得高额的

tion. This incentivizes civilian Chinese end-users to invest in trade compliance in order to reap significant business benefits. We urge the US government to continue strengthening and expanding the VEU program.

### Education and Training

Export control myths have created misunderstandings that result in lost opportunities for US-China high-tech trade. Bringing together qualified commercial importers and exporters working on trade deals and educating them on export controls and the compliance process can be an effective path to debunking these myths and growing US-China high-tech trade. The ECWG has taken action to facilitate educational seminars for US exporters, Chinese importers and government officials to maximize commercial trade opportunities by minimizing compliance risks (see Recent Developments). AmCham China asks both the US and Chinese governments and industry representatives to keep supporting and funding programs that include the educational activities necessary to dispel export control myths and open new trade opportunities.

### Chinese Export Controls

#### Diversion of Dual-Use Items

The insufficient clarity on and ineffective enforcement of China's own export control laws and regulations increases the risk of controlled items being diverted to end-users or end-uses of concern (e.g., military end-use in China, or embargoed entities in other countries). AmCham recommends that China strengthen the legal framework, implementation, and enforcement of its export control system in order to minimize the risk of this kind of harmful diversion. By offering more transparency and clarity to industry on China's export control system, the Chinese government will help companies to comply more completely and effectively with Chinese export controls. In particular, AmCham urges China to take a step towards a clearer export control system by establishing a single harmonized Chinese control list. In addition, AmCham also urges the Chinese government to clearly separate civilian and military programs in state owned entities, to ensure dual-use items are not diverted from civil to military programs, thereby constraining high-tech commercial trade.

#### Alignment with International Best Practices

China's export control system still does not fully align with global best practices, as demonstrated by China's absence at influential multilateral regimes. Full membership would put China on par with its biggest trade partners. AmCham recommends China actively pursue membership in these multilateral export control regimes, while also taking an active leadership role in the multilateral regimes in which it is already a member. Adopting internationally-accepted export control regulations, and improving implementation

and enforcement of these laws and regulations, would both strengthen China's security and build mutual confidence between China and US trade control regulators, facilitating greater success by Chinese industry in procuring controlled high-tech items from US suppliers under license.

### Compliance in China

The ECWG has found that cooperation between US and Chinese companies, industries and governments on US export licensing requirements has led to improved compliance practices and policies in China. Continued cooperation is vital to further developing compliance in China and increasing high-tech trade between the two nations.

In 2012, ECWG surveyed member companies and some Chinese companies about their particular compliance practices. Survey results made clear that although companies in China have developed their compliance departments and practices over the past decade, the implementation of and commitment to compliance programs still occurs more on an ad hoc basis, rather than based on any overall systemic change in corporate policy on export controls or systematic communication or advocacy from the Chinese government. US and Chinese industry and government representatives should accelerate their collaboration to create transparency and a domestic compliance culture.

From the survey, the ECWG recommends the focus of compliance programs shift from being US-centric to being globally focused, including fully addressing compliance with Chinese export control laws and regulations. For all companies in China (both multinational and Chinese) internal guidelines and external laws and regulations should be made available in Chinese, which now is often not the case.

### Technology Transfer Requirements

Chinese practices and policies that de facto necessitate the transfer of export controlled technology as part of doing business in China can limit the ability of US companies to cooperate with their Chinese partners in research and product development. Obtaining export licenses from the US Government can be a burdensome and lengthy process. When such transfers are required, implicitly or explicitly, if they happen to require a license they will impose these difficult and time consuming elements (which wouldn't otherwise be required) onto commercial activity. Ultimately, these will limit full market access and efficiencies. Reducing such technology transfer requirements will reduce these barriers and inefficiencies. Moreover, the removal of such requirements will also support individual license reviews. Currently, US government review of license applications can be colored by concern that transfers are the result of Chinese government influence, and do not reflect company-to-company commercial decisions. By facilitating commercial efficiencies and supporting regulatory approvals, clear rejection of controlled technology transfer requirements will

商业利润。我们敦促美国政府继续加强 VEU 项目建设并拓展其范围。

### **教育和培训**

美国的出口管制制度已经引起了不少误解，导致两国高科技贸易机会的流失。召集有贸易往来的合格进口商和出口商，对他们进行贸易管制和合规流程方面的培训必将有效地消除上述误解，促进美中双方高科技贸易的增长。出口合规工作组已经采取相关措施，推动开展针对美国出口商、中国进口商以及相关政府官员的教育培训，以期实现商业贸易机会的最大化，以及合规风险的最小化（详情请参阅“最新进展”部分）。美国商会敦请美中两国政府和业内人士继续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。

### **中国出口管制**

#### **两用产品外流**

中国本国的出口管制法律法规缺乏明确性，实际执行时也颇为不力，这就使管制产品转道流向最终用户或令人堪忧的应用（如中国的军事最终用途以及其他国家受禁运的实体）的风险加大。美国商会建议中国完善出口管制法律框架，并加强法律实施和执行的力度，最大限度地降低军民两用产品流向危险用途的风险。中国政府提升中国出口管制框架的透明度和明确性，必将有助于企业更全面、更有效地遵守中国出口管制法律。美国商会特别促请中国制定一份本国单一综合性管制清单，从而进一步增强出口管制的清晰度。另外，美国商会还促请中国政府明确区分国有企业民用项目和军用项目，确保两用产品不会从民用流向军用项目，不会因此对高科技商业贸易造成限制。

#### **与国际最佳实践接轨**

中国的出口管制制度至今依然不能完全与国际最佳实践接轨，表现在中国至今游离于数个重要的多边体系之外。全面加入相关多边体系有助于确保中国与其最大的贸易伙伴的地位平等。美国商会建议中国积极寻求加入相关的多边出口管制体系，同时在已经加入的贸易多边体系中积极发挥领导作用。采用国际通行的出口管制规范，加强这些法律法规的实施和执行，都将提升中国的安全水平，增进中美两国贸易监管部门的互信，帮助中国相关行业从美国许可出口商处购买受管控的高科技产品。

### **中国的合规状况**

出口管制合规工作组发现，美中两国企业、行业和政府在美国出口许可要求方面的合作已经提高了中国的合规实践和政策水准。继续推进合作对于中国进一步提高合规水平、扩大两国之间的高科技贸易意义重大。

2012 年出口管制工作组就美国商会会员企业以及部分中国企业的合规状况进行了调查。调查结果表明，尽管中国企业在过去的十年中都组建了自己的合规部门并开展活动，但是他们执行这些合规制度的决心和力度更像是临时的行为，并没有对企业的出口管制进行全面系统的变革，也没有与中国相关政府部门就出口管制政策进行系统的沟通并提出主张。美中两国的行业和政府代表应当加深合作，提高制度的透明性，营造国内的合规文化。

出口管制工作组在报告中建议，合规计划的重心应从美国中心论转向更为广阔的全球背景，包括充分解决中国出口管制法律法规的合规问题。所有在华企业（包括跨国公司和合资公司）的内部指引和外部法律法规都应该有中文版本，这一点目前还未能实现。

### **技术转让要求**

强制外企转让出口管制技术的政策，是中国政府允许外企在华经营的必备条件，它限制了美国企业与其中国合作伙伴在研发和产品开发方面开展合作的能力。同时，对于美国企业来说，获得美国政府出口许可审批可能会是一个长期冗繁的过程。所以，被中国强制技术转让（不管是明示还是暗示）的美国企业一旦同时需要获得美国政府出口许可，无疑将把上述耗时耗力之因素的负面影响带到商业活动中去，限制市场的全面进入，并影响效率。消除上述强制要求将会减少阻碍，提高效率，同时加快企业的许可审批。目前，美国政府在审批此类许可时很有可能受到中国政府上述政策的影响，把公司与公司间直接的商业决定看成是中国政府政策影响的结果。废除出口管制技术的强制性转让要求，提高商业效率，支持政策审批，必将最终激励中美两国更深入的技术合作，从而对两国的长期贸易产生积极的影响。

### **其他监管问题**

#### **产品分类**

在中国，某个产品或技术属于本国还是外国，有时是根据公司的所有权和来源地的国别进行分类；而美国则是

ultimately spur greater technology cooperation between the US and China and result in long-term trade benefits both.

## Other Regulatory Issues

### Product Classification

In China, a product or technology's classification of whether something is deemed to be domestic or foreign sometimes depends on the company's ownership and origin, whereas in the US this determination typically depends on where the product or technology is developed or manufactured. The products that a local entity develops or manufactures within China may still be considered foreign products, if the entity has non-Chinese owners. This application of the product's classification has not been uniform or consistent and has impacted US firms' ability to fairly compete in some bidding processes, as these may sometimes be restricted to manufacturers of domestic products only. AmCham China recommends the Chinese government not use company ownership as a criterion for determining whether a product qualifies as domestic. Providing a level playing field would encourage firms to invest more in local research and development (R&D) and innovation.

## Recent Developments

The ECWG's efforts over the course of 2012 have helped facilitate bilateral discussions on export control issues in a number of different ways. From May 31 to June 1, in Shanghai, the two governments (US Department of Commerce Bureau of Industry and Security (BIS) and Chinese Ministry of Commerce (MOFCOM)) held a US-China High Technology Trade Seminar with the ECWG as Co-Organizer. The conference brought together over 200 government and industry leaders for discussions intended to exchange best practices, clear up misperceptions about export controls, and promote bilateral high-tech trade. In addition to emphasizing the mutual gains both sides have experienced over the past decade in high-tech trade, the seminar also focused on pragmatic and effective measures in a framework built around mutual understanding as being the key to future gains for all.

Understanding that Chinese companies have a growing interest in export controls, the ECWG developed a Subscriber Program in 2012. The ECWG will offer Chinese companies the opportunity, as Subscribers, to participate in a variety of bilateral company exchanges, training programs, and high-level interactions with both US and Chinese government officials. Greater cooperation between Chinese companies and ECWG member companies will be mutually beneficial to both groups with the ultimate aim being an increase in commercial high-tech trade.

The third development in 2012 was the creation of the ECWG's first subgroup—the ECWG Chinese Export

Controls Liaisons. The goals of the Liaisons is to establish a collaborative relationship with Chinese government agencies to gain a better understanding of China's export control policies and processes (such as use of the control lists, licensing process, enforcement system); build up constructive engagement with corresponding Chinese government ministries to encourage their participation in international best practices for the refinement of China's export control policies; and work towards an export control process and system that can be more effective, efficient and user-friendly.

## Conclusion

AmCham strongly believes that further cooperation between the US and Chinese high-tech industries and government officials will substantially enhance high-tech trade. Through targeted US export control reforms, expanding the VEU program and increasing stakeholder education and outreach events, combined with China aligning its export control system with international best practices and Chinese companies adopting a compliance culture, the US and China can achieve their mutual goals growing high-tech trade while minimizing the risk of diversion of dual-use items.

## Recommendations

- **Both the US and Chinese Governments should 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. For example, the Chinese government might want to support or encourage Chinese companies to join the ECWG Chinese Subscription Program in order to learn the US Export Control regime and Compliance Program.**
- The US Government should take into account the availability of items in China from both domestic and foreign sources as the US evaluates control lists during the export control reform and through individual licensing decisions.
- The US Government should continue to rely on ECWG as a resource for accessing current information on China's market.
- The US Government should continue strengthening and expanding the VEU program to incentivize civilian Chinese end-users to invest in trade compliance for significant business benefits.
- The Chinese Government should strengthen the legal framework, implementation, and enforcement of its export control system by:
  - ♦ Clearly separating civilian and military programs to ensure dual-use items are not passed from civil to military programs; and
  - ♦ Increasing transparency and clarity of Chinese

根据产品或技术的开发地或制造地作为标准进行分类。如果某个企业的拥有者不是中国人，即使该企业在中国境内，其作为本土企业开发或生产的产品依然会被视作外国产品。这样产品分类的应用缺乏统一性或一致性，从而阻碍了美国公司公平参与项目招标竞争的能力，因为这些招标项目有些仅限于本国产品的生产商。美国商会建议中国政府取消将公司所有权作为判定其开发或生产的产品是否属于本国产品这一标准。营造公平的竞争环境有利于企业加大在中国本土研发和创新上的投资。

## 最新进展

出口管制工作组在 2012 年的辛勤努力已经从多方面促进了美中双方就出口管制问题进行双边协商。2012 年 5 月 31 日至 6 月 1 日，两国政府（美国商务部产业安全局和中国商务部）在上海举行了美中高科技贸易研讨会，出口管制工作组参与了本次研讨会的组织。本次会议汇聚了 200 多名政府和行业领袖，共同讨论以达到交流最佳实践，消除对出口管制的误解，促进高科技双边贸易发展的目的。除总结过去十年两国在高科技贸易中各自取得的收获之外，本次研讨会还重点研讨了如何进一步增进相互了解，制定切实有效的措施，确保双方继续保持共赢的贸易关系。

鉴于中国企业对出口管制的兴趣越来越浓厚，出口管制工作组于 2012 年开发了一个“征订计划”。出口管制工作组将提供更多的机会，让作为征订用户的企业参加中美企业交流、培训项目以及与美中政府官员进行高级别互动等活动。中国企业与出口管制工作组的会员企业加深合作必将增进互利共赢，最终实现高科技商贸产品贸易的增长。

2012 年的第三个进展是建立了出口管制工作组的第一个分组——出口管制工作组中国出口管制联络小组。该联络小组旨在与中国政府相关部门建立合作关系，加深对出口管制政策和程序的了解（如管制清单的使用、许可程序，执行办法等），与中国相关部委建立建设性的合作关系，鼓励他们参与国际最佳实践，完善中国的出口管制政策；努力推动建立一个更加有效、简便、用户友善的出口管制程序和制度。

## 结论

美国商会坚信，美中两国高科技产业和政府官员之间进一步加深合作，必将大大推动两国高科技贸易的发展。在美国方面，对其出口管制规范进行有针对性的改革，扩大最终用户验证项目的适用范围以及加强对利益相关方的教育和推广；在中国方面，加快与国际最佳实践接轨，推进本国出口管制制度的国际化，促进中国公司营造合规文化，这样美中双方必将实现扩大高科技贸易，降低军民两用产品的转移风险之共同目标。

## 建议

- 美中两国政府应在美中两国通过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，促进美中商业高科技贸易促进活动和教育活动。例如，中国政府可能希望支持或鼓励中国公司加入出口管制工作组“中国征订计划”，从而学习更多美国出口管制体制和合规计划。
- 美国政府在出口管制改革期间对管制清单进行评估并作出单独许可决策时，应考虑到中国是否可以从国内和国外获得相关产品。
- 美国政府应当继续依靠出口管制工作组获取中国市场的最新信息。
- 美国政府应继续加强和拓展 VEU 项目，鼓励中国民用最终用户对贸易合规进行投资以获取高额商业利润。
- 中国政府应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转向军用；
  - ◆ 将所有出口管制清单简化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。
- 中国应当争取加入其尚未加入的出口管制多边协议，并且在已经加入的多边框架中积极发挥领导作用。
- 中国政府应当废除技术转让作为进入中国市场之前提条件的规定，该规定阻碍了两国高科技产品和战略产品贸易的发展。

export controls by streamlining all export control lists into a single harmonized dual-use export control list.

- China should pursue membership in those multi-lateral export control regimes of which it is not yet a member. Further, it should take a leadership role in those regimes it has already joined.
- The Chinese Government should remove technology transfer requirements as prerequisites for participation in the Chinese market as they have a detrimental impact on high-tech and strategic trade.



# Human Resources

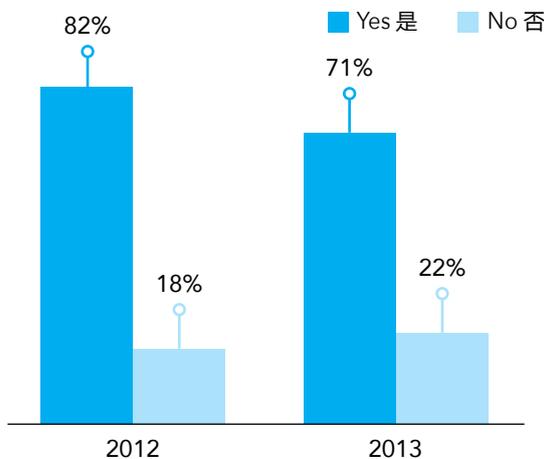
## Introduction

**H**uman resource issues represent a top business challenge facing AmCham China members. In fact, the number of AmCham China members identifying labor costs and labor shortages as the greatest risks facing their operations nearly doubled from 2011 to 2012.

China is no longer a low cost market for production or service operations. Labor costs, driven by national government policy and laws of supply and demand, will continue to increase at 10 to 20 percent per year for the foreseeable future. Likewise, there are no pending changes in the education system or migration patterns that will materially impact continued expectations for labor shortages, especially for skilled managerial and production positions.

A large majority of AmCham China member companies feel the impact of rising labor costs. Sustained strong year-over-year increases in wage rates for front-line labor and managerial employees is more recently exacerbated by even more rapid wage increases and mandatory social benefits costs for expatriates and locally-hired foreigners.

**Q Are rising labor costs affecting your business operations?**  
不断增加的人力成本是否影响企业运营？



Looking forward, multinational employers, in order to operate profitably in China, face little choice but to adapt their local operations. For companies that produce in China for the domestic market, many have reacted by moving inland to take advantage of somewhat lower costs, boosting productivity in higher cost coastal areas, or passing on labor cost increases to their consumers. Some export oriented producers have simply concluded that other countries in the region offer a more attractive production base, shifting some operations out of China. The 2012 member survey of six AmCham Southeast Asian chapters found that approximately 20 percent of respondents had active plans to relocate manufacturing operations from China to Southeast Asia.

AmCham China encourages the Chinese government to consider changes to the *hukou* system that enable migrant workers to more easily settle in regions with a concentration of production facilities, bringing some stability to the current high turnover, supply constrained environment. AmCham China also encourages continued liberalization of visa rules to ease the administrative burden of employing foreigners in China for extended periods (such as recent changes to provide for multi-year visas for executives of companies that relocate their Asian headquarters to China). Legislation requiring foreign workers to contribute to social insurance programs will continue to place an unnecessary administrative and cost burden on employees and their employers, though this largely appears to be settled law and nationwide enforcement is expected in the future.

## Ongoing Regulatory Issues

### Human Resources

#### Increasing Labor Costs

Amidst an economic slowdown globally and in China, labor costs increased 9.3 percent in 2012, lower than 2010 and 2011 increases which were in excess of 10 percent. Still, labor costs are rising at a rate approximately three times faster than CPI inflation and rising at a rate above GDP growth. Experts forecast that 2013 wage increases will remain in the 9 to 10 percent rate, similar to 2012.

# 人力资源

## 引言

人力资源问题位列中国美国商会会员所面临的商业挑战之首。事实上，2011至2012年间，将劳动力成本和劳动力短缺视作企业运营面临的最严峻挑战的中国美国商会会员数量增长了近一倍。

中国已不再是企业生产和服务运营的低成本市场了。在中央政府出台的政策和供需法则的作用下，在可预见的未来，劳动力成本将以每年10%–20%的比率继续增长。同样，教育体制和人口流动政策并没有待议的改革方案，因此也不可能实质性扭转当前人力资源继续短缺的预期，特别是在技术型管理人才和一线生产工人方面。

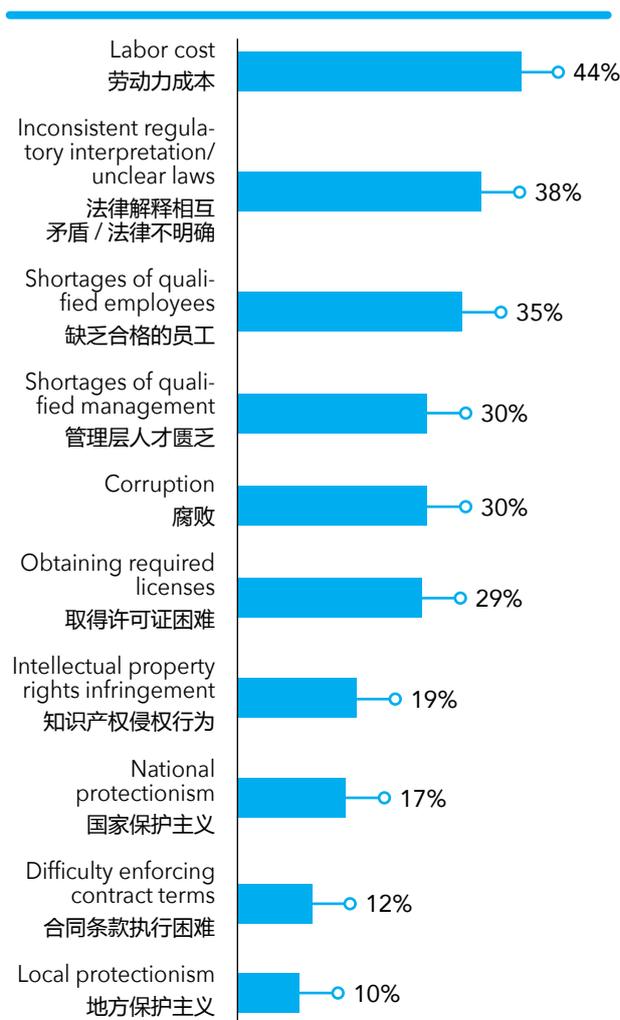
中国美国商会的大多数会员企业都已经感受到了劳动力成本上升所带来的影响。一直以来，一线工人和管理人员每年的薪资保持了强劲稳定的增长，近期外国人和在华工作的外籍人士薪资更加迅速的增长以及企业为其缴纳的强制性社会保险，使得劳动力成本进一步上升。

展望未来，跨国企业欲在华盈利，除了适应当地现状之外，几乎没有其他选择。针对这样的现状，很多中国国内生产并销售产品的企业已经搬迁至成本相对较低的中国内陆地区，没有搬迁的则通过在成本较高的沿海地区提高生产力或是将增加的劳动力成本转移给消费者的方式来应对。而部分出口型生产企业则直接选择将部分运营搬出中国，因为本地区的其他国家能够提供更具吸引力的生产基地。根据2012年中国美国商会东南亚六个分部的会员企业调查显示，约20%的受访企业已有计划将生产线由中国迁移至东南亚地区。

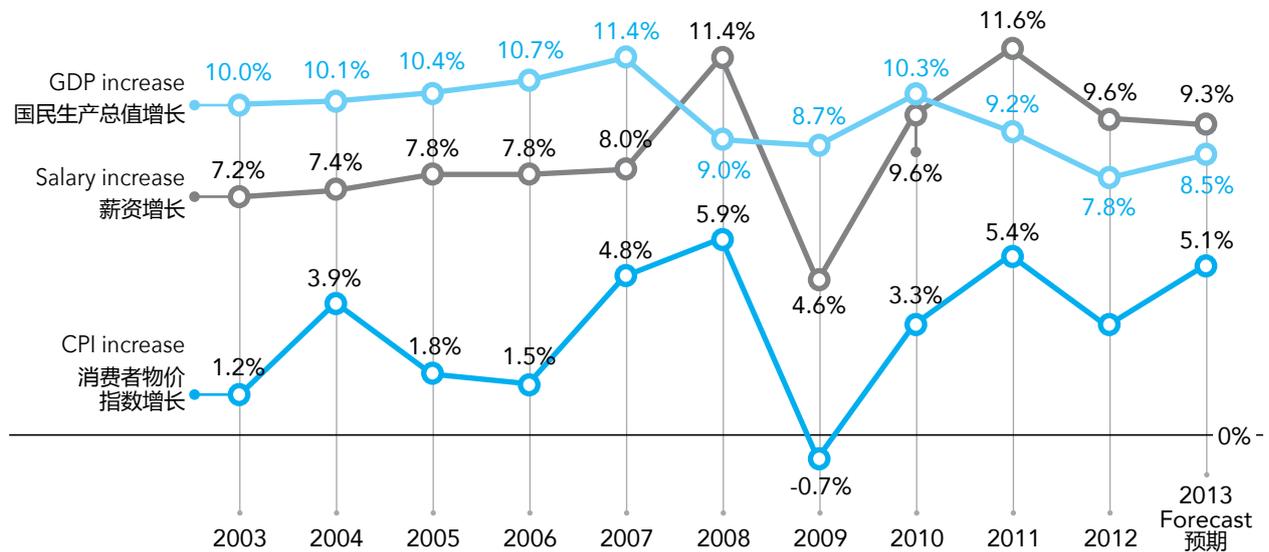
中国美国商会鼓励中国政府考虑改革户口制度，方便外来务工人员在生产企业密集的地区定居，从而在一定程度上稳定当前高离职率的形势，缓解当前劳动力供给不足的状况。中国美国商会还鼓励中国政府继续放开签证制度，减少在华外籍员工延续聘用的行政负担（例如近期新出台

的政策——为将亚洲总部搬移至中国的公司高管提供多年签证）。要求外籍员工参加中国社会保险制度的法律给企业及其员工增添了不必要的行政和经济负担。虽然如此，该法已基本被敲定，预计不久将在全国范围内实施。

**Q Please rank your top business challenges in China:**  
企业在华运营的主要挑战



**Q Rate of Salary Increases Since 2003**  
自 2003 年薪资增长率



Sources: 2012 GDP increase: National Bureau of Statistic of China (Jan-Jun), 2012 CPI increase: National Bureau of Statistic of China (Jan-Jun), 2013 Forecast GDP and CPI rate: The Economist Intelligence Unit, Sep. 2012, 2012 Salary Increase: 2012 Towers Watson General Industry Compensation Survey.

来源：2012 年 GDP 增长：国家统计局（1-6 月），2012 年 CPI 增长：国家统计局（1-6 月），2013 年 GDP 和 CPI 增长率预测：经济学人信息研究部，2012 年 9 月，2012 年薪资增长：韬睿惠悦 2012 年全行业整体薪酬调查。

Chinese national government policy remains focused on doubling minimum wages every five to six years and all indications are that wages will continue to rise at current or faster levels in the foreseeable future. It is notable that although Chinese economic activity contracted for much of 2012, wage increases remained close to 10 percent nationally. Wage increases, on a percentage basis, remain highest among manufacturing production employees who earn near to the minimum wage; for these operators, wages in 2012 were 75-85 percent higher than in 2007.

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. The Ministry of Human Resources and Social Security has enacted a program to train six million high school graduates with vocation skills, as well as allocated RMB 6 billion to provide vocational training for migrant workers. AmCham China supports the Chinese government’s efforts to improve secondary, post-secondary, and vocational education and training.

**Labor Regulations**

China continues to enact numerous new labor regulations and increase enforcement of existing laws. A recent assessment by the US National Bureau of Economic Research found that in the past five years, China labor laws have moved “from a

fairly deregulated market to one that could be considered as restrictive as some of the most protective European economies and much more restrictive than the United States.”

Notable developments include:

Amendment to the Labor Contract Law

In July 2012, the Legislative Office of the NPC circulated a draft for the revisions of the PRC Labor Contract Law. These proposed revisions have been brought about in response to public pressure and to crack down on abuse of the use of labor dispatch staff in the PRC.

The Legislative Office is seeking to add provisions that restrict the permitted scope for use of labor dispatch staff. Labor dispatch should only be used for “temporary, auxiliary or substitute” positions. In this draft, “auxiliary” positions are defined as any roles which do not relate to the core-business of the company, or roles which are more “supportive” in nature. For “temporary” positions, employers will not be able to use labor dispatch staff for more than six months. “Substitute positions” refer to positions left unfilled because its occupant has temporarily been absent on leave or training, etc. In addition, the draft law seeks to clarify the requirement that there is equal pay for equal work when directly hired employees are compared to labor dispatch employees. More penalties are proposed in the draft against any violators, including forfeiture of illegal gains and fines.

## 现存监管问题

### 人力资源

#### 劳动力成本上升

2012年，在中国和全球经济放缓的背景下，中国劳动力成本上升了9.3%，低于2010年和2011年超过10%的增幅。但是劳动力成本的增速几乎是CPI增长率的三倍，甚至超过了GDP的增速。专家预测2013年薪酬增长率将继续保持在9%–10%之间，与2012年持平。

中国中央政府的政策重心依然是每5–6年使最低工资翻一番。各种情况表明，在可预见的未来，工资水平的增长速度将继续保持或高于当前增速。值得一提的是，虽然2012年大部分时间中国经济的活动呈现出萎缩状态，但全国的工资涨幅依然保持在10%的水平。按照百分比计算，工资增长幅度最大的群体是工资水平接近最低工资的生产制造业工人，2012年他们的工资比2007年高出75%–85%。

#### 培养合格人才

在华的跨国公司和中國本土企业依然面临合格员工，特别是技术人才，严重匮乏的现状。人力资源和社会保障部已经出台了一项培养600万具有职业技能的高中毕业生的计划，同时还拨出60亿元人民币资金用于为外来务工人员提供职业培训。中国美国商会支持中国政府在提升中等教育、高中后教育、以及职业教育和培训的水平方面所做出的努力。

#### 劳动法规

中国继续颁布了一系列新的劳动法律法规，同时还加强了现有法律的实施。近期一份由美国国家经济研究局发布的评估报告显示，过去的五年里，中国的劳动法已经从“放松市场管制型”转为严格管控型，其管控之严厉已经达到了某些保护程度最高的欧洲经济体的水平，比美国的管控要严得多。”

重大进展包括：

#### 劳动合同法修正案

2012年7月，全国人大法工委发布了《中华人民共和国劳动合同法修正案（草案）》。该草案旨在回应来自公众的呼声，取缔中国境内滥用被派遣劳动者的行为。

全国人大法工委正在寻求补充相关条款，限制使用被派遣劳动者的许可范围。劳动派遣只能适用于“临时性、辅助性或替代性”的工作岗位。在这一稿草案中，“辅助性”岗位是指不从事企业主营业务的岗位，或者是属于提供“支持”性质的岗位。在“临时性”上，用人单位使用劳动派遣员工的时间不得超过六个月。“替代性岗位”是指用人单位的员工因为脱产学习、休假等原因暂时离岗造成的职位空缺。另外，该草案中还明确了同一企业内的派遣员工应该与企业正式员工同工同酬的要求。草案中还加大了对劳动违法行为的惩罚力度，增加了包括没收非法所得和罚款等惩罚措施。

最新报告显示，该修正案近期不会出台。尽管目前该草案已经处于审议阶段，中国美国商会仍旧对该法缺乏清晰度表示担忧，并且支持中国政府在消除该法模糊规定上的任何努力。我们建议相关部门在广泛征求劳动力市场参与者的意见后，研究如何使该法律更加清晰。

#### 劳动争议司法解释

中华人民共和国最高人民法院就审理劳动争议案件适用法律若干问题发布了一份司法解释征求意见稿。在这份征求意见稿中，最高院就竞业禁止条款的可执行力以及用人单位内部规章的效力等问题作出了司法解释。

该司法解释主要涉及以下内容：

##### 1. 内部规章制度须通过“民主程序”

用人单位的内部规章制度，未经劳动合同法第四条规定的民主程序，不能作为人民法院审理劳动争议案件的依据。简单地说，民主程序包括：

- 在制定新的规章制度时应当经职工代表大会或全体职工讨论；
- 在制定新的规章制度时应当与工会或职工代表平等协商确定；
- 规章制度生效后应向全体职工公示。

未经上述民主程序制定的内部规章制度在执行的过程中如有员工违反的，不得以员工违反该规章制度作为解除其劳动合同的依据。

According to recent reports, enactment of the draft regulations is not imminent. While this proposed law remains in a deliberation phase, AmCham China continues to express concerns 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.

### Judicial Interpretation on Labor Disputes

The PRC Supreme People’s Court has issued a draft interpretation on certain issues concerning the application of law in labor disputes trials. In particular, the Court has provided its interpretation on issues relating to the enforceability of non-compete clauses, and the effectiveness of an employer’s internal rules and regulations.

In particular, the ruling addresses the following:

#### **i. Internal Rules and Regulations to go through a “Democratic Process”**

An employer’s internal rules and regulations will not be recognized as the basis for bringing any labor dispute to the courts if such rules and regulations were not made in accordance with the statutory democratic process defined in Article 4 of the PRC Labor Contract Law. Briefly, the democratic process includes:

- discussion with the Employee Representative Congress or all employees on the new proposed rules and regulations;
- negotiation with the trade union or employee representatives on the new proposed rules and regulations; and
- announcement of the effective rules and regulations to all employees.

Where the prescribed democratic process is not followed in order to implement rules and regulations, the violation of such rules and regulations will not be recognized for the purpose of establishing grounds for termination.

#### **ii. Consultation with Labor Union for Termination**

The draft interpretation specifies that where a company is unionized, the employer must consult with the relevant union prior to the termination of any employee. Any termination without consultation will constitute unlawful termination.

#### **iii. Non-Compete Restrictions**

The draft interpretation now makes it mandatory for employers to stipulate the amount of compensation payable in respect of a non-compete clause in the employment contract. Payments for non-compete provisions must be made on time or within a month of the date that they fall due.

Under the draft interpretation, a non-compete clause will not be enforceable where an employee is unlawfully terminated.

### Special Working Hours Management Regulations

The special working hours regulations—currently in draft—are intended to allow employers to employ employees in the PRC for less than the standard eight-hour work day.

This draft regulation provides that the positions eligible for the Flexible Working Hours System include positions “with decision-making and leadership responsibilities with respect to business management” as well as “positions involving technology, research and development, and creative work”, where employees can arrange their own schedule and attendance is not required.

Employers are required to seek approval from the relevant labor authority, prior to implementing a comprehensive calculation working hours or flexible working hours system.

### Provisions on Salary Payment

Through the new provisions on salary payment—also currently in draft—the government intends to emphasize collective bargaining on salaries, encourage an employer to consult with employees on remuneration policies and encourage mutual agreement on salaries (as opposed to unilateral determination of salaries by employers). This may result in an increase in human resource and payroll costs.

### Foreign Employee Participation in China’s Social Insurance Schemes

The 2011 Chinese government decision to require foreign employees to participate in China’s social insurance programs has been well covered in the press and in the 2012 AmCham China White Paper. While the new regulations are enacted on a national level, enforcement at the present time is reportedly limited to Beijing and a few other municipalities. However, local legal experts conclude that the regulations are final and it is only a matter of time until these requirements are nationally enforced.

As local governments consider specific implementation policies, AmCham China urges continued consideration of:

- 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; however, 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

## 2. 解除劳动合同应征求工会组织意见

该司法解释征求意见稿中规定，建立工会的用人单位在解除员工劳动合同前必须首先征求相关工会组织的意见。未经征求工会意见即解除员工劳动合同的视作违法解除。

## 3. 竞业禁止限制

该司法解释征求意见稿中要求用人单位在劳动合同的竞业禁止条款中必须明确经济赔偿的数额。用人单位应按照合同约定及时支付经济补偿，或在合同约定的支付日逾期一个月内支付。

根据该司法解释征求意见稿，违法解除劳动合同的，竞业禁止条款将不得履行。

## 特殊工时管理规定

《特殊工时管理规定》——目前仅为草案——旨在允许中华人民共和国境内的用人单位以少于八小时标准工作制的工时安排雇佣员工。

该征求意见稿中规定适用弹性工时制度的岗位包括“对企业经营管理负有决策、指挥等领导职责的高级管理岗位”以及“技术、研发、创作岗位”的劳动者可以自主安排工作时间且无考勤要求。

用人单位在实施综合计算工时或者是弹性工时制之前必须经过相应的人力资源社会保障主管部门的审批。

## 工资支付条例

通过新的《工资支付条例》——目前亦正在起草中——中国政府旨在强调进行工资的集体协商，鼓励用人单位就薪酬政策与劳动者展开协商，并鼓励双方协商确定工资薪酬（有别于由用人单位单方面决定劳动者工资的做法）。这一举措可能会导致人力资源和工资支付成本的增加。

## 外籍雇员参加中国社保制度

2011年，中国政府决定要求在华就业的外国人参加中国的社会保险，引起了媒体的广泛关注和报道，《2012年中国美国商会白皮书》也对此进行了评述。虽然该暂行办法属于全国性法规，但据报道目前仅在北京和另外几个城市予以实施。不过中国法律专家认为该法规业已通过，在全国范围内推广实施只是时间问题。

对于各地的实施细则，中国美国商会促请各地政府继续考虑如下问题：

- 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；但可以申请返还的仅为个人账户的储存额。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。
- 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。为解决这一矛盾，应允许外籍雇员免于参加失业保险。如必须参加，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。

## 最新进展

### 劳动争议增多

劳动争议数量激增。去年，中国政府各级劳动争议调解仲裁部门收到的劳动争议案件近140万起，比上一年增加了7.1%。值得关注的是，上述案件中90%发生在中国南部的珠三角地区，70%属于薪酬和劳动合同争议。专家们认为2008年《劳动合同法》的颁布实施，以及媒体对相关劳动争议案件（尤其是中国南方的某些著名案例）的广泛报道，增强了劳动者的维权意识，使他们在自己的权利受到侵害时，更愿意寻求法律救济。

2012年，媒体报道了某些为著名外国技术供应商提供

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.

- **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. 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.

## Recent Developments

### *Increase in Labor Disputes*

The number of labor disputes continues to increase rapidly. In the past year, the various mediation and arbitration departments of the Chinese government received nearly 1.4 million labor dispute cases, a 7.1 percent increase over the prior year. It's worth noting that 90 percent of these cases occurred in the Pearl River Delta in South China and 70 percent of all nationwide cases were related to compensation and contractual issues. Experts surmise that workers are increasingly aware of their rights under the 2008 Labor Contract Law and widespread press coverage, especially of some notable South China cases, have likely increased the willingness of employees to seek legal remediation when they believe their rights have been violated.

In 2012, some leading supply chain companies, often acting as contract manufacturers for major foreign technology

vendors, received significant negative press coverage for reported violations of work hours and age-based regulations. Multinational companies must remain mindful that the current enforcement environment is stricter than before and employee awareness of labor regulations higher than ever. AmCham China continues to support strong compliance of foreign companies with Chinese labor regulations.

### *Changes in Labor Supply*

There is increasing evidence that the supply of labor, especially from migrant workers, is becoming scarcer. Chinese government statistics note that the number of migrant workers in the Yangtze River Delta region was 58.3 million, a 0.1 percent increase over the prior year. Conversely, the number of migrant workers electing to remain in their home provinces is 83.9 million, a 10.1 percent year over year increase. As wages rise inland, migrant workers are finding that the benefits of remaining closer to home outweigh the previous financial incentives of relocating to coastal areas.

The labor shortage is especially severe for employers looking for skilled workers. For example, the Guangdong Labor Security Administration reports a 32 percent shortage of technical workers in that province, with 54 open technical positions for every one applicant. Employers in other regions report similar challenges in recruiting skilled workers.

Long term, the problem will only worsen as China faces a rapidly aging workforce. In fact, the United Nations forecasts that China's working population will peak within the next five years. By 2030, the percentage of working age Chinese will mirror levels last seen in 1990.

Employers in coastal areas, already facing high turnover, rapid wage appreciation, and a near-constant worker shortage, will likely face further difficulties in recruiting and retaining a skilled workforce.

## Conclusion

AmCham China hopes to establish a dialogue with the relevant agencies of the Chinese government, particularly the Ministry of Human Resources & Social Security (MOHRSS), to discuss the various challenges described above, to draw attention to the damage these challenges cause to China's competitive position, and to work constructively to address them.

### Recommendations

#### *For the Chinese Government:*

- **Establish or clarify mechanisms for foreign employees to receive benefits under China's social**

外包制造服务的供应链龙头企业违反有关工作时间和工作年龄的法律规定，这些报道给上述公司造成了及其严重的负面影响。跨国企业必须谨记，目前的执法环境相较之前已经大为严格，劳动者对相关劳动法律法规的熟知程度也大为提升。中国美国商会继续支持在华外国公司严格遵守中国的劳动法律法规。

## 劳动力供给变化

越来越多的证据显示，劳动力将变得稀缺，尤其是外来务工人员。中国政府的统计数据显示长三角地区的外来务工人员为 5830 万，比上一年仅增长了 0.1%。相反，选择留在家乡就业的农民工数量则为 8390 万，比上一年增长了 10.1%。随着内陆地区工资水平的不断提高，农民工将越来越倾向于留在当地就业，沿海地区工资收入高的吸引力比不上离家近带来的益处。

用人单位面临的技术工人短缺问题则格外严峻。以广东省劳动主管部门发布的报告显示，该省技术工人短缺已达 32%，公开招聘的技术岗位的求人比率高达 54:1。其他地区的用人单位在招聘技术工人时也面临着类似的挑战。

长期来看，随着中国劳动力人口老龄化问题的加剧，劳动力供给短缺的问题也会进一步恶化。事实上，联合国预测，中国的劳动人口将在未来五年内达到峰值。到 2030 年，中国劳动适龄人口的比例将重返 1990 年的水平。

沿海地区的用人单位已经面临高离职率、加薪幅度快速增长以及持续不绝的劳动力短缺问题，他们很可能还将进一步面临招募和留住技术工人难度加大的问题。

## 结论

中国美国商会希望与中国政府相关部门，特别是人力资源社会保障部进行对话，讨论上文所提及的种种挑战，关注这些可能损害中国竞争力的问题，并且开展建设性合作以应对上述挑战。

## 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。
- 对《劳动合同法》进行解释，明确“临时”、“辅助”和“替代”岗位的定义。
- 继续评估户籍制度改革，确保外来劳动力能够顺利并长期定居在劳动力最缺乏地区，减少外来工在这些地区定居所面临的障碍，从而降低高居不下的离职率，增强劳动力稳定性。
- 考虑改变当前为在华外籍员工仅提供最长一年期签证的做法；目前多年签证仅限于向少数外籍高管提供。

### 对美国政府的建议：

- 与中国政府就税务加总协议展开谈判。

**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.
- Issue an interpretation of the Labor Contract Law providing definitions of "temporary," "auxiliary," and "substitute" positions.
- Continue to assess *hukou* reforms that enable sufficient and long-term relocation of migrant labor to areas facing the most severe labor shortages, with fewer obstacles to migrants settling in these areas and thus reducing continued rapid turnover and labor instability faced by many employers.
- Consider changes to current practice of providing maximum one-year visas to the majority of foreign workers employed in China; multi-year visa options are currently limited to a small subset of senior executives.

***For the US Government:***

- **Negotiate a tax totalization treaty with China.**



# Tax Policy

## Introduction

China continues to make steady progress in modernizing its tax laws and administrative system, making it more effective and efficient as well as more closely aligned with widely recognized international standards and practices. In 2012, tax revenues (excluding customs duties) reached a new record of RMB 11.07 trillion (US \$1.78 trillion), an increase of 11.2 percent from 2011. (See State Administration of Taxation website, available at <http://www.chinatax.gov.cn>.)

Moreover, progress is evident in a variety of areas related to tax policies. After a several month trial run in Shanghai, the pilot Business Tax (BT)-to-Value-added Tax (VAT) Transformation Program was expanded to eight more regions in the second half of 2012. In terms of tax treaty interpretation, the State Administration of Taxation (SAT), China's tax policy enforcement agency, further clarified Beneficial Ownership (BO) on the basis of Circular 601, and shifted its rights to set taxes on capital gains realized during share transfers. Positive policies in other areas of taxation were also introduced, including providing more lenient treatment on certain corporate income tax deduction issues, launching of tax incentives in specific areas, and granting favorable input on VAT treatment in asset restructuring transactions.

AmCham China hopes China will continue improving tax laws and systems, thereby providing a reasonable, predictable, and fair tax environment for both foreign- and domestic-invested companies. We hope that the Chinese tax authorities work in collaboration with taxpayers, tax advisors, and other stakeholders. We also urge authorities to avoid actions that would negatively impact taxpayers or others, such as unfavorable retroactive implementation of regulations or unreasonable reporting requirements.

## Ongoing Regulatory Issues

### *Further Roll-out of the BT-to-VAT Transformation Pilot Program*

The BT to VAT Transformation Pilot Program ("pilot program") for the transportation industry and certain

modern service industries in Shanghai took effect beginning January 1, 2012. The State Council has since approved expansion of the program, which seeks to eliminate double taxation, to eight other provinces and municipalities: Beijing, Tianjin, Jiangsu, Zhejiang, Anhui, Fujian, Hubei, and Guangdong (collectively called "Pilot Areas"). The program is envisaged to be expanded step-by-step to cover all service industries to include every administrative region in China by 2015.

AmCham China members are pleased to see the Chinese government actively pursuing nationwide expansion of the pilot program in line with the design used in Shanghai. Moreover, AmCham China recommends further guidelines be announced as soon as possible. Some clarification is necessary with regard to some pilot services not yet clearly defined in the existing measures and rules, as well as to how the "exempt, credit, and refund" treatment for exports by qualified pilot enterprises will be put into effect.

While the pilot program is an encouraging step toward adoption of a full consumption-type VAT system nationwide, AmCham China is concerned that the pilot program may temporarily cause a disparity in tax burdens between enterprises that are within and those that are outside pilot areas. Therefore, AmCham China encourages the Chinese government to smoothly expand the pilot program nationwide as soon as possible.

### *Application of Anti-Avoidance Rules*

AmCham China noted that Chinese tax authorities have been gearing up their efforts to crack down on tax avoidance behaviors, for instance by invoking anti-avoidance rules for taxation of capital gains arising from indirect equity transfers (Circular 698) and by embedding an anti-avoidance element into the BO test (Circular 601 and Public Notice 30).

Circular 698 is a clear example of SAT's growing ambition in implementing its anti-avoidance rules. Public media report from time to time on large taxes imposed on indirect equity transfers by overseas enterprises. However, AmCham China members remain concerned about the extremely broad scope of the circular as well as onerous reporting requirements. Although policy-makers are reportedly considering supplementary circulars creating more lenient treatment and more

# 税收政策

## 引言

**中**国在税收法律和征管制度现代化道路上取得了稳健的进步，法律和征管效力及效率大为增强，与公认的国际标准和实践更加接轨。2012年，全国税收收入（不包括关税）再创新高，达到11.074万亿元人民币（1.78万亿美元），比2011年增加了11.2%。（参见国家税务总局网站，<http://www.chinatax.gov.cn>）

另外，税收政策各相关领域也取得重大进展。继上海率先实施营业税改征增值税试点几个月之后，2012年下半年“营改增”试点扩大至其它8个试点省份/直辖市。在税收协定解释方面，中国税收政策执行机构——国家税务总局（国税总局），在601号文的基础上进一步明确了“受益所有人”的定义，并进一步加强对股权转让中实现的财产收益征税。税收政策领域取得的其他进展还包括，放宽部分企业所得税费用抵扣的处理、对部分特定地区实施税收优惠、对资产重组交易留抵增值税允许受让方继续抵扣。

中国美国商会希望中国能够继续完善税收法律和制度，为内外资企业提供合理、公平且可预测的税收环境。我们希望中国的税务机关能够与纳税人、税务顾问以及其他利益相关方保持合作。我们还促请监管部门避免采取给纳税人带来不利影响的行为，比如在法律实施过程中，避免对纳税人不利的法规回溯执行或提出不合理的报告要求。

## 现存监管问题

### 进一步推广“营改增”试点

2012年1月1日，上海率先在交通运输业和部分现代服务业实施营业税改征增值税试点（“营改增”试点）。之后国务院又批准扩大试点范围，在北京、天津、江苏、浙江、安徽、福建、湖北和广东八个省/市（统称“试点

地区”）推进“营改增”试点工作。此次试点的设想是在2015年有步骤地实现“营改增”在全国范围内覆盖整个服务业。

中国美国商会的会员企业很高兴看到中国政府按照上海试点模式在全国范围内积极推进“营改增”改革。另外，中国美国商会建议尽快出台详细的操作指导意见。现行措施和规定中对部分试点服务业的定义尚不清晰，符合要求的试点企业如何享受出口“免抵退”政策也尚不清楚，因此亟须制定详细指南予以明确。

尽管“营改增”试点是在全国范围内实现向消费型增值税体系转变迈出的令人鼓舞的一步，但中国美国商会也担心试点项目会暂时性地造成试点地区企业而非试点地区企业税负不公平。因此，中国美国商会鼓励中国政府尽快平稳地将上述“营改增”试点推广至全国。

### 适用反避税规则

中国美国商会注意到中国的税务机关已经在加强打击避税行为的力度。比如发布针对间接股权转让所得的反避税规定（698号文），以及将反避税的概念植入到受益所有人的认定过程中（601号文和30号公告）。

698号文充分表明了国税总局加强了执行反避税规则的决心。公共媒体中也不时出现海外企业间接股权转让所得被征税的报告。然而，中国美国商会成员企业仍对该文件极为宽泛的适用范围以及繁重的报告要求表示担忧。尽管有报道称决策层正考虑出台补充文件，从宽处理有关问题并提升相关标准的透明度，但我们依然担心各地解释和执行标准不统一的问题。

中国美国商会认可国税总局在加强避税案件管理上所做的努力。与此同时，中国美国商会会员企业促请国税总局为实施反避税规则制定统一的标准和透明程序。我们也强烈建议尽快引入事先裁定制度，使纳税人在进行重组和各类商业行为时具有更多确定性。

transparent criteria, we still worry about the lack of unified standards in the interpretation and implementation within the vast territory of China.

AmCham China acknowledges SAT's strength in reinforcing its administration over tax avoidance cases. Meanwhile, AmCham China members urge SAT to create unified standards and transparent procedures for enforcement of anti-avoidance rules. We also highly recommend that advance ruling mechanisms be introduced as soon as possible in order to give taxpayers more certainty during reorganizations and various business activities.

### ***Amendment of Tax Collection and Administration Law***

The Tax Collection and Administration Law (TCAL) is a fundamental procedural law concerning execution of all tax laws and regulations in China. The ongoing process of amending the TCAL is seen as a crucial step in the modernization of China's tax law system.

The draft of the amended TCAL has been released for public discussion and input. One key theme of the amendment is a focus on balancing of rights and obligations between taxpayers and tax authorities. For example, under the draft taxpayers and withholding agents are entitled to rights that were not clearly addressed before, with the additions of statements like, "In the administration of tax collection, taxpayers have the right to be treated in accordance with proper procedures and with respect, and to receive appropriate services," and "Taxpayers are entitled to the right to participate in the process of formulating or amending tax laws and regulations."

In practice, SAT requires local-level tax officials to maintain a "service-oriented" mindset in their daily work. Under the Outlines of the Taxation Work Plan during the 12<sup>th</sup> Five-Year Plan, SAT encouraged tax bureaus at all levels to continue to work to improve service quality standards, for instance by:

- Setting up and improving the tax service system;
- Creating a tax service platform, for instance telephone hotlines, and websites;
- Enhancing public awareness and availability of consulting channels on tax policies;
- Optimizing services for taxpayers when handling tax issues; and
- Improving credit assessment criteria for taxpayers.

AmCham China members are glad to see that TCAL is being upgraded in accordance with best practices for services. We recommend that tax authorities at all levels increase interactions with taxpayers, listen to their concerns and suggestions, and foster trust and cooperation with taxpayers.

### ***Permanent Establishment (PE) Risk under Secondment Arrangements***

As discussed last year, AmCham China members are concerned about the lack of clarity regarding how Circular 75 determines the real employer in secondment arrangements. Circular 75 sets forth certain conditions to help assess whether the secondees assigned to the Chinese subsidiary are actually working for the overseas parent company and consequently constitute service PE in China. Also, the "substance-over-form" principle has been vaguely used as a guideline for local tax authorities in determining real employer status.

Beginning the second half of 2009, local-level tax bureaus have tightened up tax administration on secondment arrangements. Consequently, overseas parent companies have been challenged frequently regarding secondment arrangements, and many of them were deemed to have a service PE in China. Meanwhile, tax bureaus at local levels have diverging views on application of the "substance-over-form" principle. Similar secondment arrangements in different subsidiaries might encounter different assessments at various tax bureaus.

In addition, parent companies of foreign firms have to go through tedious administrative procedures in defending real employer status and their service PE status in China. There is no standard requirement in place in terms of documentation, and hence, overseas parent companies are placed in a difficult position when compiling and providing supporting evidence.

AmCham China recommends that SAT provide clearer rules concerning the "substance-over-form" principle and reduce administrative procedures. We also believe that it is of utmost importance to create a consistent basis and standards for the same secondment arrangements in different subsidiaries in China.

## **Recent Developments**

### ***Further Clarification on Beneficial Ownership***

In 2012 SAT released a long-awaited supplementary notice, Public Notice 30, to provide further clarification on the interpretation of BO in tax treaties. Public Notice 30 provides a set of high-level guidelines under which relevant issues under Circular 601 should be comprehensively considered. To help taxpayers and tax officials, Public Notice 30 lists certain documents and evidence which should be examined in the process of applying the BO test. It also introduces a safe-harbor rule by which BO status may be granted to qualified listed companies meeting certain conditions.

AmCham China members applauded the initiative to make BO clearer, though the requirements that a wide range of docu-

## 《中华人民共和国税收征收管理法》修订

《中华人民共和国税收征收管理法》（以下简称《税收征收管理法》）是规范中国税收法律法规执行的基本程序法。正在进行的《税收征收管理法》修订被视作是中国税收法律体系现代化进程中的重大进步。

《税收征收管理法》修订草案已发布并公开征求意见。本次修订的一个重要主题是着重平衡纳税人和税务机关的权利义务。例如，在修订草案中，纳税人和扣缴义务人被赋予了之前未作明确规定的权利，增加了“纳税人在税收征收管理过程中，有权获得税务机关的尊重和服务，享有接受正当程序的权利”和“纳税人依法享有参与税收法律、法规制订、修改的权利”的规定。

在实践中，国税总局要求各级税务机关在日常工作中秉承“服务”意识。例如，在《“十二五”时期税收发展规划纲要》中，国税总局鼓励各级税务机关通过以下措施，继续提高服务质量标准：

- 建立健全纳税服务体系；
- 打造纳税服务平台，如电话服务、网络服务；
- 提高公众对税收政策的知情度，丰富税收政策咨询渠道；
- 优化办税过程中为纳税人的服务；
- 完善纳税信用评价机制。

中国美国商会会员企业很高兴看到《税收征收管理法》正在按照最佳服务实践进行修订。我们建议各级税务机关加强与纳税人的互动交流，听取他们的意见和建议，增进与纳税人之间的信任与合作。

### 人员派遣情形下的常设机构风险

正如去年的白皮书中所提到的那样，中国美国商会会员企业担心 75 号文对人员派遣情形下实际雇主的认定缺乏明确性。75 号文列举了几条标准，以帮助判定派驻到中国子公司的员工是否实际上为海外母公司工作，从而构成服务型常设机构。另外，“实质重于形式”的原则被基层税务机关模糊地应用于对实际雇主的认定中。

自 2009 年下半年开始，各地税务局加强了对人员派遣安排的管理。海外母公司经常就人员派遣的税务问题遭到质疑，很多都被认定为在华构成服务型常设机构。与此同时，地方各级税务局在如何适用“实质重于形式”原则上观点

也不统一。不同地区税务局对各地子公司相似的人员派遣安排的认定结果可能不尽相同。

另外，跨国公司的母公司在确认实际雇主身份和其在华服务型常设机构状态时通常要历经繁琐的行政程序。在提交文件方面缺乏统一的标准也导致海外母公司在准备和提交支持证据时往往无所适从。

中国美国商会建议国税总局针对“实质重于形式”原则的适用，制定更为明确的规定并减少行政程序。我们还认为对不同地区子公司相同的人员派遣安排制定统一的常设机构认定基准极其重要。

## 最新进展

### 进一步明确受益所有人的概念

2012 年，国税总局发布了众人期盼已久的补充通知，即 30 号公告，进一步明确了税收协定中受益所有人的解释标准。30 号公告概括性地提出 601 号文中涉及的各种受益所有人判断因素需要综合考虑。为了帮助纳税人和税务官员的实际操作，30 号公告列明了在认定受益所有人过程中应该审查的一些文件和证据。该公告还引入了一项“安全港规则”，对符合条件的合格上市公司可以直接认定其“受益所有人”身份。

尽管受益所有人认定程序要求提交大量文件和证据，可能会加重税收协定优惠申请人的合规负担，但中国美国商会对明确受益所有人认定规则表示欢迎。我们还注意到，安全港规则的适用条件十分严格，目前实践中的大多数上市公司采用的集团结构不能符合其要求。中国美国商会建议国税总局放宽安全港规则的适用条件，并且公布典型案例供纳税人和税务官员参考，帮助他们更好地掌握相关标准及其应用。

### 明确财产收益的有关税收协定待遇

在海内外，跨国公司普遍进行资产重组。2012 年 12 月，国税总局发布 59 号公告，进一步明确了财产收益条款中涉及股份转让的相关解释。该公告给出“不动产”的定义，并对中国——新加坡税收协定第 13 条第 4 款中“50% 不动产”价值标准判定的相关问题予以解释。

另外，59 号公告还对 75 号文的原始解释进行了部分修改，包括在判定某些情形是否达到“直接或间接参与”非不动产公司资本的 25% 的标准时，引入了“最小 10% 持

ments and evidence must be examined may result in more compliance burdens to the treaty benefit applicants. We also notice that the conditions prescribed in the safe-harbor rule are so strict that the prevailing group structures for most listed companies would likely not qualify in practice. AmCham China recommends that SAT relax application of the safe-harbor rule and publish some cases by which taxpayers and officials may better understand both the concept and application standards.

### ***Clarification on Treaty Treatments for Capital Gains***

Across the board, multinational companies are engaged in asset restructuring. In December 2012, SAT issued Public Notice 59 further clarifying its interpretation of the capital gains article in relation to the alienation of shares. It outlines a definition of “immovable property” as well as issues relevant to assessment of the 50 percent “immovable property” value threshold within the context of Article 13.4 under the China-Singapore tax treaty.

Also, Public Notice 59 included revisions to the original interpretation from Circular 75 with respect to assessing the 25 percent threshold for “a participation, directly or indirectly,” in the capital of a non-immovable property holding company through the use of a minimum 10 percent threshold owners before a party is considered a “participant,” and by an extension of the concept of “indirectly” to include a greater number of related parties.

AmCham China members are glad to see SAT provide further clarification in applying the capital gain article. We, however, are disappointed to find that the interpretation of “indirectly” is even broader than that under Circular 75 in some aspects. Consequently, AmCham China members hope to see relaxation of the above interpretation to avoid discouraging investment.

### ***Income Tax Incentives for Specific Regions***

In April 2012, SAT issued Public Notice [2012] No. 12 (Public Notice 12) to provide some important clarifications for the implementation of the corporate income tax (CIT) preferences for enterprises in China’s western regions and set forth the relevant application and approval procedures. Public Notice 12 stipulates that enterprises in the western region eligible for the reduced CIT rate of 15 percent and tax holidays under the CIT law may enjoy both incentives concurrently. It also clarifies that CIT preferential treatment is for enterprises with head offices and branches in both the western region and non-western regions.

AmCham China applauds China’s determination to boost economic activity in the western region. Tax incentives will help attract investment, including foreign investments, into these specific regions.

AmCham China members also note China’s plans to introduce tax incentives in other regions, for example in Qianhai, Hengqin, and Nansha. We recommend Chinese authorities take action as early as possible to put these blueprints into practice in order to provide more certainty in terms of investment policies for potential investors.

### ***CIT Compliance Requirements for Enterprises with Headquarters and Branches in More than One Province***

On 12 June 2012, the MOF, the SAT and the People’s Bank of China jointly issued a circular Caiyu [2012] No. 40 (“Circular 40”) introducing several changes that will affect calculation of the CIT amount to be allocated among the branches (during both provisional and annual filings) and the CIT settlement mechanism (during annual filings). Additionally, echoing Circular 40, SAT issued Public Notice 57 creating new tax settlement and refund mechanisms for use in annual CIT filings. Under the new mechanism, the final tax payment or refund for the annual CIT filing shall be allocated to the headquarters and branches and be settled within their respective local tax bureaus, as opposed to the current mechanism under which the annual reconciliation filing and payment or refund is only required to be carried out by the headquarters with the local-level tax bureau.

AmCham China members understand such change is for the purpose of balancing fiscal revenues among the regions involved. However, we are concerned about the administrative burden for enterprises with a large number of branches across the country.

### ***Further Clarification on the Treatments for the Implementation of Pilot Program***

In June 2012, the MOF and the SAT jointly issued Circular Caishui [2012] No.53 (Circular 53) providing additional policies relating to the pilot program in the pilot regions for international transportation services, certain services of qualified animation enterprises, shipping agency services, and operating lease services. In addition, the authorities also issued Circular Caishui [2012] No.86 to provide supplementary regulations covering determination of the nature of services including environment assessment services and convention or exhibition arrangement services. Circular Caishui [2012] No.86 also confirms VAT exemptions for film royalty transfers under certain conditions.

AmCham China members applaud such clarifications as they reduce the potential for disputes between taxpayers and tax bureaus and encourage the law makers in China to keep up the work and provide more certainty to taxpayers.

股才视为参与”这一条件，以及扩大了“间接”的概念，将大量关联方纳入其中。

中国美国商会会员企业很高兴看到国税总局对财产收益条款的进一步明确。但是我们同时也对公告在某些方面扩大了75号文中对“间接”的解释表示失望。因此，中国美国商会会员企业希望能够放宽上述解释，避免出现抑制投资的后果。

### 部分地区所得税优惠措施

2012年4月，国税总局发布了2012年12号公告（12号公告），对中国西部地区企业所得税优惠措施实施作出了重要解释，同时规定了相关申请和批准程序。12号公告规定西部地区有资格享受《企业所得税法》中规定的15%的优惠税率和减免税期的企业可以同时享受公告中规定的优惠措施。同时对总部和分支机构在西部地区和非西部地区的企业如何享受企业所得税优惠待遇作出了明确规定。

中国美国商会对中国政府振兴西部地区经济发展的决心表示赞赏。税收优惠有助于吸引资本，包括吸引外资，到特定地区投资。

中国美国商会会员企业同时还注意到中国计划在深圳前海、珠海横琴、广州南沙等区域推出税收优惠措施。我们建议中国税务机关尽早将上述计划付诸实施，从而为潜在投资者制定投资策略提供更大的确定性。

### 跨省市总分机构企业所得税合规要求

2012年6月12日，财政部、国税总局和人民银行联合发布了《跨省市总分机构企业所得税分配及预算管理办法》（财预[2012]40号）（40号文），改变了以前对跨省市总分机构企业所得税的分配（季度申报和年度申报期间）和企业所得税汇算清缴中（年度申报期间）的一些做法。另外，为了配合40号文的实施，国家税务总局还发布了57号公告，对企业所得税年度申报期间所得税汇算清缴和退税机制作出了新规定。根据这一最新机制，企业所得税年度申报最终应缴纳或退还的税款应分配至总、分机构，并由总、分机构与各自所属税务机关进行清缴，从而改变了现行机制下总、分机构年度合并申报、并由企业总部与其所属税务机关进行缴税或退税结算的做法。

中国美国商会会员企业理解上述变化是为了平衡企业总分机构所在地的财政收入。然而我们担心此举会增加在中国各地拥有众多分支机构的企业的管理压力。

### 进一步明确“营改增”试点实施优惠待遇

2012年，财政部和国税总局联合发布了财税[2012]53号文（53号文），对试点地区国际运输服务、符合条件的动漫企业部分服务、船舶代理服务和经营租赁服务征税问题作出了补充规定。另外，财政部和国税总局还发布了财税[2012]86号文（86号文），《关于交通运输业和部分现代服务业营业税改征增值税试点应税服务范围等若干税收政策的补充通知》，对包括环境评估服务、组织安排会议或展览的服务等相关服务的性质认定作了补充规定。86号文还确认满足相关条件的电影版权转让免征增值税。

中国美国商会会员企业对上述规定表示欢迎，因为这些规定减少了纳税人与税务机关之间可能产生的争议，同时鼓励中国的立法机构能够继续加强这方面的工作，为纳税人提供更多的确定性。

### 资产重组增值税留抵税额处理

2012年12月13日，国税总局发布了55号公告规定在某些条件下，转让方资产重组增值税留抵进项税额可结转至受让方继续抵扣。国税总局确认在资产重组过程中将全部资产、负债和劳动力一并转让给受让方的，尚未抵扣的进项税额作为一种债权应结转至受让企业继续享有。

### 税收个案批复工作规程

2012年2月10日，国税总局发布了《税收个案批复工作规程（试行）》（《规程》）。该《规程》明确规定了中国税务机关关于税收个案批复详细工作规程和内部程序。这是中国税收征管实践中的一大突破，增强了税务机关适用法律法规处理税收个案程序上的确定性。

该《规程》中的严格要求可能造成纳税人准备文件时难度增加，申请程序耗时更长。尽管如此，中国美国商会会员企业依然欢迎该《规程》的出台，因为《规程》为纳税人提供了一个获取上级税务机关对争议案件处理意见的公平机会。

### 结论

中国美国商会欢迎在全国范围内推广“营改增”试点。我们也感谢相关部门发布一系列旨在消除不确定性的税务规章，感谢其为增强税收监管透明度和改善纳税人服务所付出的努力。中国美国商会会员企业建议中国税务机关继续通过公开听取纳税人和税务专家意见等方式，消除税务

### ***Treatment of Input VAT Balance in an Asset Restructuring Transaction***

On December 13, 2012, the SAT issued Public Notice 55, stipulating that the input VAT balance for the transferor in the event of an asset restructuring transaction may be transferred and credited to the transferee if certain conditions are satisfied. The SAT recognizes that, if the assets, liabilities, and labor force of the transferor are entirely taken over by the transferee in an asset restructuring transaction, the input VAT balance, being seen as a creditor's right, should also be transferred to and enjoyed by the transferee.

### ***Working Guidelines on Replies to Specific Tax Matters***

On February 10, 2012, the SAT published a notice launching the *Working Guidelines on Replies to Specific Tax Matters (Trial)* ("Guidelines"). The Guidelines introduce a set of detailed working guidelines and internal procedures prescribing how the Chinese tax authorities should provide replies on specific tax matters. It is a breakthrough in terms of tax administration practices to offer more certainty in how the tax authorities should apply tax laws and regulations from a procedural perspective on specific tax matters.

The strict requirements in the Guidelines will likely create difficulties in documentation preparation and time-consuming application processes. Despite this, AmCham China members welcome the Guidelines as they give taxpayers a fair chance to receive replies from top tax officials on disputed cases.

## **Conclusion**

AmCham China welcomes the rolling out of the pilot program nationwide. We also appreciate the release of a number of tax circulars providing further clarification on uncertainties and their efforts to provide transparent tax administration and services to taxpayers. AmCham China members suggest that China's tax authorities continue to address uncertainties in tax issues through public hearings from taxpayers and tax professionals, in order to help in fostering a sound investment environment.

## **Recommendations**

### ***For the Chinese Government:***

- **Provide unified standards and transparent procedures concerning the application of anti-avoidance rules.**
- Introduce appropriate mechanisms to give taxpayers more certainty in reorganizations and various business activities.

- Expand the VAT Transformation Pilot Program nationwide in a smooth way as soon as possible, including further clarifying unclear tax policies (e.g., how to implement the "exempt, credit, and refund" treatment for export), providing sufficient funding to support tax reduction treatment, and improving the capability of local level tax officials.
- Offer more clarification and guidance on interpretation of Beneficial Ownership in accordance with international standards and practices.
- Focus on substance over form in practice to determine the real employer of secondees.
- Formulate specific tax incentive rules for the regions that have been granted status as priority development areas, in order to promote more investment.

### ***For the US Government:***

- **Support US residents when their taxation liabilities in China are not in accordance with the US-China tax treaty.**

问题上的不确定性，从而帮助营造一个健全的投资环境。

## 建议

### 对中国政府的建议：

- 制定统一标准和透明程序，实施反避税规则。
- 引入恰当机制，使纳税人在进行重组和各类商业行为时具有更大的确定性。
- 尽快平稳地推进“营改增”改革在全国范围的施行，包括进一步明确尚不清晰的税收政策（例如如何执行出口“免抵退”政策），为减税提供充足的资金支持，提高地方税务官员的执法能力。
- 根据国际标准和实践，对受益所有人的概念作出进一步解释和提供操作指南。
- 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。
- 针对优先发展地区制定专门的税收优惠规定，帮助这些地区吸引更多投资。

### 对美国政府的建议：

- 为在美中税收协定中被屈定不应在中国纳税的美国居民提供支持。

# Visa Policy

## Introduction

New visa policy developments in 2012 in the US and China present significant opportunities and challenges for non-citizens in both countries.

In January 2012, US President Barack Obama issued Executive Order (EO) 13597, setting goals for reducing visa processing times and increasing visa processing capacity in China. During the decade ending in 2010, the US market share of spending by international travelers fell from 17 percent to 11 percent, a more than 30 percent decrease in the US share of the global market. Among the reasons for the slide were a burdensome US visa system and lack of visa processing capacity. The United States was unable to take advantage of booming US visa demand by Chinese. But measures put in place by the State Department to implement EO 13597 have made impressive strides, including hiring 50 new consular officials in China, decreasing visa processing times, and plans to begin processing visas at the US Consulate in Wuhan in 2014. AmCham China advocates continued progress to keep up with forecasts of Chinese travel to the United States, which is expected to grow 259 percent between 2012 and 2017 according to the Commerce Department.

AmCham China advocates visa policies that support member companies in competing internationally for talent to contribute to the US economy. To that end, AmCham China supports abolishing discriminatory per-country immigrant visa caps, raising the H-1B visa cap, and removing barriers for permanent residents taking assignments abroad for US companies, as discussed below. These ongoing regulatory issues are best addressed in the context of comprehensive immigration reform (CIR) legislation currently under consideration in Congress.

China faces a different set of challenges. The country's rapid growth, shifting demographics, and aging population have opened new opportunities for economic immigration 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 visitors and temporary residents.

On June 30, 2012, the National People's Congress (NPC)

enacted a new law on exit and entry control. Effective from July 1, 2013, the new Exit and Entry law will more closely regulate foreigners entering, living and working in China. However, detailed regulations on this issue are not publicly available. This creates conflict and uncertainty in enforcement of the law and local related regulations.

Below, we explain our recommendations for making China's work permit and visa policy more uniform and transparent.

## Ongoing Regulatory Issues

### *For the US Government*

#### *Discriminatory Per-Country Caps on Employment-Based Green Cards*

Under current law, the cap on the number of employment-based green cards that can be issued is 140,000 per year. Per-country caps limit the number to be issued to nationals of any one country to seven percent. Thus, despite China's huge population, it is subject to the same cap on the number of employment-based green cards as Iceland or Belgium. The per-country caps result in a long waiting list for Chinese applicants.

For example, as of February 2013, a US company obtaining a second-preference immigrant visa for a PhD was not subject to any wait for a Russian candidate, but would have already waited five years for a Chinese candidate. Second preference visas are generally reserved for professionals holding advanced degrees filling positions for which the US Department of Labor has determined there is no available qualified US worker.

The per-country caps serve no legitimate purpose and should be abolished by Congress. AmCham China supports the related provision of the bipartisan Immigration Innovation Act under consideration by the Senate.

#### *H-1B Visa Cap*

AmCham China advocates raising the annual numerical limit on H-1B temporary worker visas which are available to professionals whose services are sought by a US employer in

# 签证政策

## 引言

2012年美中两国新签证政策的出台为两国非本国居民往来带来了巨大的机遇和挑战。

2012年1月，美国总统奥巴马签署了第13597号行政令（EO），确定了缩短对华签证处理时间、增加在华签证处理能力的目标。2000至2010年这十年间，美国在国际游客全球旅游消费所占的全球市场份额从17%的下降到11%，降幅超过了30%。导致上述比例下滑的原因之一便是美国签证制度繁琐，签证处理能力不足。美国之前没有有效利用中国公民日益增长的对美国签证的需求。美国国务院为实施第13597号行政令采取了诸多措施，包括新雇佣50名驻华领事官员，缩短签证处理时间，以及计划于2014年在美国驻武汉领事馆开设签证服务，这些措施已经取得显著成效。根据美国商务部数据，2012至2017年期间中国公民赴美签证需求预期将增长约2.6倍（259%）中国美国商会鼓励美国政府继续推进各项措施，满足中国公民赴美签证需求。

中国美国商会呼吁，制定有助于会员企业在国际市场竞争中吸引更多优秀人才的签证政策，从而为美国经济发展做出贡献。为此，中国美国商会支持取消针对特定国家的歧视性移民签证上限政策，提高H-1B签证上限，以及消除美国公司外派永久居民员工签证障碍，具体将在下文予以详述。美国国会目前正在考虑出台综合移民改革（CIR）立法，从而更好地解决上述现存各类监管问题。

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，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的形势，以此接待不断增长的游客与临时居民。

2012年6月30日，全国人大颁布了新的《出境入境管理法》，该法将于2013年7月1日生效，这部法律加强了

外籍人士入境以及在华工作、生活的监管力度。但目前尚未公布实施细则，因而在上述新法律和相关法律实施时可能会导致不一致性和不确定性。

下文我们将针对如何使中国的就业证和签证政策更加统一及透明提出我们的建议，并做具体解释。

## 现存监管问题

### 对于美国政府

#### 美国工作绿卡的歧视性上限

根据现行法律，美国每年可以签发不超过14万张工作绿卡。每个国家获得工作绿卡的国民总人数不得超过上述14万的7%。据此，尽管中国人口庞大，中国公民申请获得工作绿卡的上限却和冰岛或比利时公民相同。这种按国别分配工作绿卡上限的方式导致工作绿卡发放表上积压了众多中国的申请人。

例如，2013年2月，一家美国公司获得了一张第二类优先移民签证，同样是提供给博士，如果是俄国候选人则无需等待，如果是中国候选人，则需要该候选人等待五年。第二类优先移民签证通常是赴美从事美国劳工部确定的美国境内劳动力市场上没有合格美籍员工的专业性职业、且拥有较高学位的专业人士所设立。

这种按国别设定签证上限的做法缺乏合理性，美国国会应予以废除。中国美国商会支持参议院两党正在审议的《移民和创新法》中的相关条款。

#### H-1B 签证上限

中国美国商会呼吁，提高每年向美国雇主所需雇用从事特殊职业的专业人士发放H-1B临时工作签证的数量上限。

中国美国商会支持《移民创新法》中有关将每年发放H-1B签证数量上限从6.5万张上调至11.5万张，允许根

a specialty occupation.

AmCham China supports the provisions of the Immigration Innovation Act which would increase the annual H-1B cap from 65,000 to 115,000 and allow adjustments up or down based on the demands of the economy, as well as uncapping the existing US advanced degree exemption (currently limited to 20,000 per year).

To ensure that H-1B workers do not undercut US wages, employers must pay the prevailing wage. To further address concerns about the visa's impact on local labor markets, the proposed Act would raise the per petition fee paid by the employer to \$2500 (or \$1250 for small businesses), with revenues earmarked for science, technology, engineering and mathematics (STEM) education and training of US workers.

Lifting the cap would give US companies access to the best candidates, spurring competitiveness and productivity. Studies consistently show that increased levels of H-1B admissions lead to increased levels of innovation without reducing the level of domestic invention. In contrast, an H-1B cap that is too low drives skilled workers to competitor nations and drives US employers to consider taking projects to workers abroad.

### Barriers for Permanent Residents Taking Assignments Abroad

An important issue that has received little attention is how US policies place roadblocks before permanent residents (green card holders) who wish to take assignments abroad for US companies.

First, US Citizen Immigration Services (USCIS) regulations impose high costs in connection with the re-entry permit applications these individuals must file. For example, a permanent resident who takes an assignment abroad is at risk of losing his or her green card on the basis that US residence has been "abandoned." However, the individual may apply for a re-entry permit, which allows staying abroad for up to two years, but must be in the United States at the time of application. Moreover, USCIS in 2008 put into effect an additional regulatory requirement that applicants must attend a "biometrics appointment" to be fingerprinted. The fingerprints are taken four to six weeks after filing the application and can only be taken at domestic USCIS offices. For many permanent residents, the effect is to add thousands of dollars to the cost of the application, as the applicant needs to return to the United States for the appointment.

AmCham China suggests amending the regulations to allow appointments to be scheduled at USCIS international offices and US consular posts abroad, which already take permanent residents' fingerprints in connection with USCIS naturalization applications.

Second, the law arbitrarily makes many permanent residents

who take an assignment abroad ineligible for naturalization. Becoming a US citizen requires that most permanent residents "reside continuously" in the United States for five years and be "physically present" in the United States for half the time. These requirements in essence require a probationary period during which an individual can demonstrate fitness for citizenship. An absence from the United States of six months generally breaks continuous residence, making a person ineligible for citizenship. However, Congress makes an exception for persons employed abroad by a US company engaged in the development of foreign trade and commerce. To qualify for this exception, the individual must file a Form N-470, Application to Preserve Residence for Naturalization Purposes. The N-470 requires that the applicant have been physically present in the United States for an uninterrupted period of at least one year after becoming a permanent resident. Physical presence in the United States for one continuous year hardly proves fitness for citizenship and has no place in a modern, interconnected world, and AmCham China supports deleting this requirement.

### Chinese Version of the Visa Application Form

The current online Form DS-160, Nonimmigrant Visa Application, is not user-friendly for Chinese applicants. Only English text is visible on the webpage, although a Chinese translation will pop up when the cursor is hovered above the English. The form is an applicant's earliest encounter with the US government, and the first impression it creates is that US visa applications are difficult. The unwieldy form is one reason many Chinese applicants hire third parties to prepare their visa applications. As no Chinese version can be saved or printed, many applicants never review their form prepared by the third party, impeding collection of accurate data.

AmCham China urges the State Department to design a Chinese version of the Form DS-160 which is user-friendly, printable, and savable.

### Decrease Security Check Times

The State Department's Visas Mantis security check is designed to screen out visa applicants intent on illegally exporting sensitive US technologies. Since 2009 these checks have averaged three to four weeks.

The overall percentage of applicants subject to Visas Mantis checks is low, but 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 such companies may be subject to security checks. This results in the delay or cancellation of customer and project meetings and training sessions. Delays can be serious enough to jeopardize US companies' competitiveness with European rivals.

AmCham China appreciates the national security need

据经济发展需求实际状况予以上下浮动，以及对持有美国高等教育文凭人士的豁免不设上限（目前是每年不超过2万张）等相关规定。

为了确保 H-1B 签证劳工不会降低美国工资水平，雇主必须支付普遍工资。为进一步减弱签证对美国本土用工市场的影响，上述法律草案将雇主支付的每次申请费提高至 2500 美元（小企业则为 1250 美元），并将这笔费用专门用于对美籍劳工的科学、技术、工程和数学（STEM）教育培训。

取消上限将使美国企业能够招募到最优秀的员工，从而刺激竞争，提高生产力。多年来的研究表明，提高 H-1B 签证发放率有助于提升创新水平，同时又不会降低国内发明水平。相比之下，如果 H-1B 上限水平过低，则会导致技术工人流向其他竞争国，并迫使美国雇主考虑将项目搬迁至海外。

### **永久居民外派工作障碍**

美国对永久居民（绿卡持有者）希望外派为美国企业工作设限的政策，是当前一个尚未引起足够关注的重要问题。

首先，美国公民与移民事务局（USCIS）要求这类永久居民必须提交回美证申请，且回美证申请成本高昂。例如，一名永久居民被外派工作需要承担丧失绿卡的风险，理由是其在美国的住所已被“抛弃”。但是这名永久居民可以申请回美证，该证书允许其待在美国境外，时间不得超过两年，但申请时申请人必须在美国境内。另外，2008 年 USCIS 还出台了另外一项监管规定，申请者必须参加生物识别指纹录入。指纹通常在提交申请后 4-6 周内采集，且只能在 USCIS 美国本土机构内进行。对于很多永久居民来说，这意味着需要为此项申请多支付数千美元，因为该申请人需要返回美国录入指纹。

中国美国商会建议修改上述规定，允许在 USCIS 的海外机构和美国驻外使领馆进行生物识别，因为他们在递交 USCIS 移民申请时候就已经采集了这些永久居民的指纹信息。

其次，上述法律武断地造成许多外派工作的永久居民丧失入籍资格。若想成为美国公民，需要绝大部分永久居民在美国境内“连续居住”五年，且至少有一半时间“实际住在”美国。这些要求本质上是规定了永久居民成为公民之前的一段试用期。离开美国六个月基本上就破坏了连续居住的要求，该永久居民也就无法申请公民资格。不过，

美国国会针对从事国际贸易和商务的美国企业雇佣的外派员工工作了例外规定。为了申请适用该例外规定，外派员工必须填写提交 N-470 表格，即《保留归化入籍居住权的申请》。上述 N-470 表格要求申请人在成为永久居民之前至少在美国无中断地实际居住一年。不中断地在美国居住一年很难证明申请人是否合适入籍，而且在当今世界全球一体化的背景下，这一要求十分落后过时。中国美国商会支持废除这一要求。

### **中文版的签证申请表**

目前使用的非移民签证申请 DS-160 在线申请表不便于中国申请者填写提交。申请网站上只显示英文版申请表，申请人需要将鼠标悬停在英文上才能弹出中文翻译。该表是申请人与美国政府接触的第一步，却给申请人留下了美国签证申请难度大的第一印象。申请表格复杂也是许多中国申请人雇佣第三方中介代为申请的原因之一。由于无法保存或打印中文版申请表，很多申请人无法检查第三方中介代为填写的申请表，也就无法核实数据的准确性。

中国美国商会促请美国国务院设计一份中文版 DS-160 表，便于中国申请人填写、申请和保存。

### **缩短安全检查时间**

美国国务院推出的“曼特斯签证”安全检查旨在排除意图非法出口敏感美国技术的申请者。自 2009 年起，这类检查所需时间一般为 3-4 周。

需要接受“曼特斯签证”检查的签证申请人的总体比例低，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，其中这类公司半数或半数以上的雇员、客户及合作伙伴可能需要接受安全检查。这导致申请者被迫推迟或者取消项目会议和培训课程。延迟的严重性足以危害美国企业在与欧洲对手竞争时的竞争力。

中国美国商会理解，实施上述检查是出于保护美国国家安全的需要，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上述检查的申请人范围。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”的及时更新，使不涉及敏感技术的旅行不会被拖延。再次，为了减少此后的延迟，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检查。

for these checks but encourages the government to reduce unnecessary delays. First, the pool of persons subject to these checks should be narrowed. For example, persons with multiple past clearances should not be routinely re-checked. 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 the check before the visa appointment in order to reduce delays afterwards.

### *For the Chinese Government*

#### *Uniform and Transparent Work Permit and Visa Rules*

AmCham China urges the Chinese government to make work permit and China 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 regulations.

#### *Processing Time*

The current Chinese immigration procedure for foreign workers is prolonged and complicated. Foreign employees are required to apply for Chinese working documents with a minimum of five different Chinese government agencies, adding significant time and complication to the process. AmCham China appreciates the Chinese government's efforts to increase efficiency and shorten the processing time for work permit and visa applications, and requests that further efficiencies be sought to reduce the amount of processing time required to obtain visas and permits for foreign workers.

#### *Original Document Requirement*

In some regions, including Beijing, individuals are required to submit an original diploma, birth certificate, or marriage certificate for work permit and 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 copies of original documents (apostilled or legalized by a local Chinese consulate) be accepted for work permit and visa applications across all regions in China.

#### *Issuance of Domestic Travel Slip*

During the visa application process, a visa applicant's original passport is retained by the Public Security Bureau for at least one week, with expedited service for business reasons generally not available. Additionally, the police may conduct an identity check of visa applicants who are working in foreign representative offices or consulting companies, taking up to two weeks to complete. During these processing times visa applicants cannot undertake domestic travel until the passport is returned by government agencies.

AmCham China recommends that the Public Security Bureau issue a uniform travel slip that will be accepted in all Chinese cities for domestic travel.

### *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.

AmCham China urges the two governments to enter into a reciprocal agreement making visas for tourists and business travel valid for 10 years.

## **Recent Developments**

### *US Progress Implementing EO 13597*

Over the past year, the State Department, including the US Mission in China (i.e., the US Embassy in Beijing and the US Consulates in Shanghai, Guangzhou, Chengdu, and Shenyang) has made significant progress in implementing EO 13597:

- Waits for visa appointments had at times exceeded 100 days in 2010 and 70 days in 2011. The President set a goal of interviewing 80 percent of applicants within 3 weeks of receipt of application. The Department exceeded the goal: During 2012, 88 percent of applicants worldwide

## 对于中国政府

### 统一就业证和签证规则并提升规则透明度

中国美国商会敦促中国政府在全国范围内实现就业证与中国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不一致性与不确定性，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。

### 处理时间

目前中国的外国人就业管理程序复杂且耗时长。外籍雇员至少需要向五个中国政府部门提交申请才可取得就业相关文件。中国美国商会感谢中国政府在提高就业证和签证申请效率、缩短取得就业证和签证的时间方面所做的努力，但同时也恳请中国政府进一步提高效率，继续缩短签证和就业证申请的处理时间。

### 文件原件的要求

包括北京在内的一些地区，就业证和签证的申请人需要提交文凭、出生证明或结婚证明原件，这已成为持续多年的一个问题。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各地在受理就业证和签证申请时，能接收原件的复印件（经当地中国领事馆加注或公证）。

### 国内旅行通行证的签发

在签证申请期间，签证申请人的护照原件需交给公安局留存至少一周，并且中国也不提供商务签证加急服务。另外，在外国公司代表处或咨询公司工作的外籍签证申请人还需接受公安局的身份验证，此验证一般需要两周方能完成。在签证处理期间，签证申请人在取得政府部门返还的护照之前，无法在中国境内旅行。

中国美国商会建议公安系统频发全国通行的旅行通行证，便于外籍人士在中国境内旅行。

## 对于两国政府：

### 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，对中国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领事官的步伐。

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系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。

中国美国商会促请两国政府签订互惠协议，将旅游签证和商务旅行签证的有效期延长至 10 年。

## 最新进展

### 美国推进第 13597 号行政令的实施

2012 年，美国国务院，包括美国驻华领事机构（如美国驻华大使馆、美国驻上海、广州、成都和沈阳领事馆）在实施第 13597 号行政令方面取得重大进展：

- 签证预约等待时间从 2010 年的超过 100 天降至 70 天。奥巴马总统设定了在收到申请后三周内面试 80% 的申请人的目标。2012 年美国国务院超额完成该目标：全球范围内 88% 的申请者是在提交申请后三周内接受面试。根据美国国务院 2012 年 8 月发布的报告显示，在中国自 2011 年 10 月起签证等待时间就一直少于三周，在部分领区甚至降至一周内。
- 奥巴马总统设定了将在华处理非移民签证的能力增加 40% 的目标。美国国务院正在通过扩建现有设施，并且新聘用 50 名签证官在华从事签证处理工作，朝着这一目标迈进，预计在 2012 年 12 月完成上述目标。
- 2011 年财年，驻华领事机构共受理了一百多万份签证申请，比 2010 年增加了 35%。2012 财年，驻华领事机构共受理了 134 万份赴美签证申请，比 2011 年增长 34%。

were interviewed within three weeks of submitting their applications. In China, wait times have remained below three weeks since October 2011 and were under a week at some consular sections, according to an August 2012 State Department report.

- The President set a goal of increasing nonimmigrant visa capacity in China by 40 percent. The Department was on track to meet this goal by December 2012 by expanding existing facilities and adding 50 visa adjudicators to its staff in China.
- The US Mission adjudicated more than one million visa cases during fiscal year 2011, a 35 percent increase over 2010. Similarly, in fiscal year 2012, the Mission adjudicated 1.34 million cases, a 34 percent increase over 2011.
- Despite the 34 percent caseload increase from fiscal year 2011 to 2012 (an absolute increase of about 340,000 cases), the weighted-average visa appointment wait time during fiscal year 2012 stood at five calendar days.

The progress of the US Mission in China at both embassy and consulates was also due in part to streamlining the visa process, including waiving interviews for applicants renewing visas that have expired within four years. This measure is particularly significant because visitor visas for Chinese need to be renewed more often than for other nationalities: validity is negotiated on a reciprocal basis, and though the US and Chinese governments have been working toward increasing visa validity beyond one year, an agreement has yet to be reached.

An important effort to further streamline the visa process is the scheduled implementation on March 16, 2013 by the US Mission in China of the State Department's Global Support Strategy (GSS). This involves outsourcing support services related to the visa application process, including appointment scheduling and fee collection services, information services, document delivery services (e.g., returning passports with visas), and greeter services at the US Embassy and Consulates. The transition to GSS will also mean the elimination of additional fees for calling to book interview appointments and for document delivery services. Going forward, the only fee a visa applicant will need to pay is the application fee itself. AmCham China sees this as a positive development which has the potential to resolve difficulties in appointment scheduling addressed in prior White Papers.

AmCham China encourages the US Mission in China to carry this progress even further by building capacity to keep up with forecasted demand growth.

### Visa Processing Duration and Data Availability

EO 13597's goal of interviewing most visa applicants within three weeks of when they book their appointment was a reasonable short-term target and meeting this target was a significant achievement for the State Department.

AmCham China supports provisions of the Jobs Originated

through Launching Travel (JOLT) Act pending before Congress that would mandate the State Department to conduct visa interviews and review applications not later than 15 days after the date on which an applicant requests an appointment. Beginning one year after its enactment, this legislation would require the State Department to move to a 10-day processing standard for all nonimmigrant visas, while allowing additional processing time for applications subject to security-related checks and clearance. A visa processing standard would provide international travelers more predictability regarding the US visa application process. This would also put the United States on a more even footing with European countries with which the US competes for business and tourism visitors, where visa processing averages five calendar days according to the US Travel and Tourism Advisory Board.

In addition, the State Department should increase transparency by making historical data on visa processing times available to the public.

### Consular Officers

Last year, the US Mission in China added 50 consular officers, growing to a total of approximately 155. Many of the additional staff were limited, non-career appointment officers hired on one-year contracts, renewable annually for up to five years.

AmCham China recommends further staff increases as necessary to keep up with demand, which will rise, as the Commerce Department has forecasted Chinese travel to the United States to grow 259 percent between 2012 and 2017.

Consular fees were raised last year, including raising the fee for visitor visa applications from \$140 to \$160 for most visa types. The fees were set using a cost of service model designed to recover all costs related to visa applications (staff, facilities, GSS, etc.) so that the service is self-sustaining.

The gross revenue per officer from visa application fees is approximately US \$1.3 million (8,100 nonimmigrant adjudications per year, \$160 fee each). This conservative figure does not take into account efficiencies allowing for more adjudications per officer, such as interview waivers and GSS. The net cost to US taxpayers of additional officers would be zero, according to the US Travel and Tourism Advisory Board, because the revenues of each additional officer exceed the costs to the government.

### Additional Visa-Issuing Posts

With only five visa-issuing consular posts in China, some 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.

- 尽管 2012 年的签证申请处理量比 2011 年增加了 34%（共增加了 34 万件申请），但该年度平均签证预约等待时间却只有 5 个日历日。

包括美国驻华使馆和各地领事馆在内的美国领事机构之所以能够取得上述成绩，原因之一便是改进了签证申请程序，包括取消对签证有效期满四年以内的续签申请人的面谈。鉴于中国公民的访问签证续签频率远高于它国公民，上述措施意义重大：签证有效期建立在两国磋商达成互惠条件的基础上，尽管美中两国政府一直在努力将签证有效期增至一年以上，但截至目前尚未达成协议。

优化签证申请程序的另一项重大举措将由美国驻华领事机构于 2013 年 3 月 16 日起实施的美国国务院全球支持战略（GSS）。其中包括外包签证申请程序中的支持服务，包括预约排期和收取签证费服务、信息服务、文件递送服务（如返还护照和签证）以及美国驻华使馆和各领事馆的迎宾服务。全球支持战略的实施也意味着取消对电话预约面谈、文件递送服务的单独收费制度。未来签证申请人仅需要支付签证申请费。中国美国商会认为这是一项积极进展，将有助于解决之前《白皮书》中提及的预约排期难的问题。

中国美国商会鼓励美国驻华领事机构积极进行能力提升来适应未来签证申请量增长的需要，以继续上述进步。

### **签证处理时间和数据可得性**

第 13597 号行政令设定了在申请人预约申请后的三周内完成对绝大多数申请人面谈的目标。这是一个合理的短期目标。实现这一目标也是美国国务院的一项重大成就。

中国美国商会支持正待美国国会审议通过的《推动旅游业促进就业法案》（JOLT 法案）中的相关条款，即要求美国国务院在申请人进行签证预约后的 15 天内完成签证面谈和申请审查；并在该法案颁布实施一年后，10 天内完成非移民签证处理，同时允许延长涉及安全检查的签证申请处理时间。上述签证处理标准将有助于全球旅行人士更加了解美国签证申请程序，更精确地估算获得签证的时间。根据美国旅行和旅游业咨询委员会的数据，欧洲国家平均签证处理时间为 5 个日历日，该法案中的相关措施有助于美国在与欧洲国家争取商务和旅游访客的过程中更具竞争力。

另外，美国国务院应当向公众公布签证处理时间的历史数据，从而提高签证制度的透明度。

### **领事官员**

去年，美国驻华领事机构新招募了 50 名领事官员，使驻华领事官员总数增加至 155 名左右。许多新聘官员是一年期合约的有限、非职业任命官员，他们的合约需每年续约，最多不超过五年。

据美国商务部预计，2012 年至 2017 年，中国公民访美数量将增长 2.6 倍（259%）。中国美国商会建议继续增加人员以满足中国公民赴美签证数量激增的需要。

去年领事服务费有所上升，包括访问签证在内，大部分签证申请费用从 140 美元上调至 160 美元。这些费用是按照收回处理签证申请全部成本的模式来确定的（人员、设施、GSS 等），以此保障签证服务的自给自足。

每位领事官员处理签证产生的签证费总收入约为 130 万美元（每年处理 8100 张非移民签证申请，每次申请费为 160 美元）。这一保守数字中尚未包括使得领事官工作效率提高的情形，比如取消面谈以及适用 GSS 带来的效率提升。然而根据美国旅游与观光咨询委员会的数据，增加领事官员数量并不会增加美国纳税人的净成本，因为每位新增领事官员带来的收益超出政府为此支出的成本。

### **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远达 2100 英里的距离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。中国美国商会对美国国务院宣布 2014 年在美国驻武汉领事馆增设签证服务的决定表示欢迎。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。

### **中国关于出入境的新法律**

2012 年 6 月 30 日，全国人大颁布了一部新的出境入境管理法律。该法将于 2013 年 7 月 1 日生效，这部法律加强了外籍人士入境以及在华工作、生活的监管力度。上述新法主要包括以下内容：

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. AmCham China welcomes the State Department's announcement that visa processing will begin in Wuhan, where there is already a US consulate, by 2014. Opening consular posts in other locations will require authorization by Congress and the Chinese government.

### *China's New Laws on Exit and Entry*

The National People's Congress (NPC) enacted a new law on exit and entry control on June 30, 2012. Effective from July 1, 2013, the new Exit and Entry law will more closely regulate foreigners entering, living and working in China. The new law includes the following provisions:

- "Three Illegals" (Illegal employment, stay and exit and entry)
- Penalty for violations of the three illegals
- Talent visa
- Chinese government may allow permanent residence to be granted to foreigners who make "outstanding contributions" to China, or "otherwise meet the requirements" for permanent residence as set by agency regulations.
- Foreigners entering China and applying for work visa may be fingerprinted; If a foreigner is deported from China for immigration/visa violations or violation of other Chinese law, he/she will not be allowed to re-enter China for up to 10 years from the date of deportation.

AmCham China sees this effort as an opportunity to meaningfully address a number of important visa policy issues. As detailed regulations are under discussion in the Chinese government, AmCham China is hopeful that the Chinese government will engage the foreign community in China on the draft regulations.

### **Conclusion**

The United States has made great progress in streamlining its visa application process for Chinese citizens; AmCham China hopes such progress continues. AmCham China also urges Congress to legislate, as part of comprehensive immigration reform, visa policies that help American companies compete internationally for talent to contribute to the US economy. The Chinese government is now more concerned with illegal employment and unlawful residence of non-PRC nationals, with China's new legislation intended to encourage compliance with Chinese immigration rules. 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:*

- **Unify work permit and visa application rules across various regions and publish all rules in writing, thus creating a transparent approach that does not hamper business activities.**
- Allow work permit or visa applicants to submit notarized/legalized copies of diplomas, birth and marriage certificates rather than the originals.
- Issue uniform domestic travel slips acceptable in all Chinese cities while visa applicants' passports are being held for visa processing.

### *For the US Government:*

- **Abolish discriminatory per-country caps on employment-based green cards.**
- Increase the annual H-1B cap from 65,000 to 115,000 and allow up or down adjustments based on the demands of the economy, as well as uncapping the existing US advanced degree exemption.
- Remove barriers for permanent residents taking assignments abroad for US companies by allowing biometrics appointments for re-entry permit applicants to be scheduled at USCIS international offices and US consular posts and eliminating the requirement of one-year uninterrupted US physical presence before filing a Form N-470, Application to Preserve Residence for Naturalization Purposes.
- Establish a 10-day processing standard for all nonimmigrant visas and make historical data on visa processing times available to the public.
- Increase the number of consular officers and open additional visa-issuing posts to keep up with growing Chinese demand for visitor visas which will rise, as the Commerce Department has forecasted for Chinese travel to the United States to grow 259 percent between 2012 and 2017.
- Create a Chinese version of Form DS-160, Nonimmigrant Visa Application, which is user-friendly, printable, and savable.
- Decrease administrative processing security check times.

### *For Both Governments:*

- **Extend tourist and business travelers' visa validity to 10 years.**

- “三非法”（非法就业、非法居留和非法出入境）
- 对违反“三非法”的处罚措施
- 人才签证
- 中国政府可以允许对中国经济社会发展做出突出贡献或者符合其他在中国境内永久居留条件的外国人，经本人申请和公安部批准，取得永久居留资格。
- 外国进入中国境内和申请工作签证可能被要求采集指纹；外国人因违反中国的出入境 / 签证规定或者违反中国其他法律被驱逐出境的，自被驱逐出境之日起十年内不准入境中国。

中国美国商会将该举措视为有效解决诸多签证政策问题的一次机会。鉴于中国相关政府部门正在讨论制定配套法规，中国美国商会希望中国政府能够在起草相关法规和细则时允许在华外国社群参与。

## 结论

美国在优化中国公民签证申请程序方面已经取得了长足的进步；中国美国商会希望美国政府能够继续保持这一态势。我们同时促请美国国会在推进全面移民改革时，能够针对签证政策制定法律，帮助提升美国企业在国际人才竞争中吸引更多人才为美国经济发展服务。中国政府当前的工作重点转向了非中国大陆公民在华非法就业和非法居留问题，并通过制定新的法律来鼓励遵守出入境管理规范。随着中国的不断发展并继续在国际上扮演着更为重要的角色，中美关系变得更加重要。制定和保持明确、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

### 对中国政府的建议：

- 制定成文的全国统一的就业证和签证申请制度，提高该制度的透明度，以减弱对商业活动的影响。
- 允许就业证或签证申请人提交经公证 / 认证的学历文件、出生证和结婚证副本。
- 在签证申请人申请签证、护照交由公安局留存其间，向其发放全国统一、通行的旅行通行证。

### 对美国政府的建议：

- 取消按国别分配工作绿卡的歧视性制度。
- 将每年发放 H-1B 签证的上限从 6.5 万张提升至 11.5 万张，并允许根据经济发展需要适时上下调整，同时对持有美国高等教育文凭人士的豁免不设上限。
- 消除美国企业派驻永久居民员工境外工作的障碍，允许上述员工申请回美证时在 USCIS 的境外机构和美国驻外领事机构录入生物识别信息，取消提交 N-470 表（即《保留归化入籍居住权的申请表》）前，申请人必须在美国境内不间断地实际居住至少一年的要求。
- 建立非移民签证申请处理 10 天内完成的标准，并向公众公开签证处理时间的历史数据。
- 增加领事官员的数量，招募更多的签证官以满足日益增长的中国公民赴美访问签证需求。根据美国商务部预测，2012 年至 2017 年，中国公民访美数量将增长 2.6 倍（259%）。
- 设计便于申请人填写、打印和保存的中文版 DS-160 表格，即非移民签证申请表。
- 缩短行政安全检查程序的时间。

### 对两国政府的建议：

- 将旅行和商务签证的有效期延长至 10 年。

# Work Safety

## Introduction

Despite a slowdown in the pace of economic growth, China continues to experience significant expansion in construction and infrastructure projects, contributing to economic growth over 2012. Construction output is expected to increase by a further 7.3 percent in 2013, and is forecasted to grow at an average of over 7 percent per year over the next decade.

Chinese authorities aim to ensure continued development in both urban and rural regions through the coordinated execution of large-scale construction and housing projects across China. Yet, construction activity remains plagued by concerns over work safety conditions at construction sites. The total number of accidents in the construction industry within China is second only to the mining sector. There are more than 1,000 reported accidental deaths every year at worksites within China, with at least 60 percent of these accidents resulting from falls from heights or collapsed structures. With a fatality rate of 9.87 per 100,000 workers, China's occupational fatality rate is far higher than countries with industry-recognized standards such as Singapore and Australia.

The widespread use of scaffolding and unsafe scaffolding practices led the Ministry of Housing and Urban-Rural Development (MOHURD) to commit to eliminating 50 percent of scaffolding usage in construction sites by 2015. To this end, the Chinese government has also sought to investigate technological solutions and to implement stricter safety laws. However, work safety laws remain underdeveloped and do not provide a clear methodology for safety compliance. In addition to the enhancement of regulations along internationally-accepted standards, AmCham China encourages greater investment in access equipment such as aerial work platforms, enforced use of safety equipment, and a solid risk management standard as key factors for work at heights (WAH) safety. This could help to bring China's occupational fatality rates to a level on par with "moderately developed countries" and serves the 12<sup>th</sup> Five-Year Plan's objective of ensuring a "safer and better life" for Chinese citizens.

## Ongoing Regulatory Issues

### *Lease Financing Options for Access Equipment*

Quality access and safety equipment is used around the world in lieu of scaffolding as a way to ensure safety when working at heights. However, the Chinese market has not yet been able to take advantage of available technologies. The lack of leasing and rental options for access equipment constricts the use of such products in China and presents a barrier for US manufacturers who wish to participate in the market. This issue is evident in aging construction equipment fleets and in overly long useful life periods applied in calculating equipment depreciation. The Chinese government is encouraged to develop the lease financing industry, thereby giving the construction industry greater access to both locally and foreign manufactured equipment.

### *Limited Scope and Detail of China's Production Safety Law*

#### Inspections and Oversight

Access to financial resources for the purchase and use of access and safety equipment is not in itself sufficient to improve the construction industry's safety record. The 2002 Production Safety Law does not mandate quantifiable or enforceable standards and provides no transparent guidelines for employers, contractors, or workers who wish to engage in safe work behavior. Article 38 calls for "regular inspections over production safety" but does not stipulate requirements as to frequency of inspections. International regulations specifically call for inspection timetables depending on the equipment used to conduct work at height. For example, Singapore's Workplace Safety and Health (Scaffolds) Regulations 2011 call for scaffolding inspections every 7 days, or less if the scaffolding structure was exposed to adverse weather conditions.

#### Risk Management Framework

An additional concern is Article 31, which calls for elimination of techniques and equipment that may seriously endanger safety during production. While well-intentioned, the Article provides no clear methodology to help prioritize these hazards, nor does it identify alternative methods for work at height. Furthermore, without clear mandates for enforcement, workers do not get training as to the benefits

# 安全生产

## 引言

**尽**管中国经济发展速度放缓，但建筑和基础设施项目却依旧保持了强劲的增长，为 2012 年中国经济的增长做出了重要贡献。2013 年建筑业的产值将有望继续增长 7.3%，且今后十年内预计将以超过 7% 的年平均增长率持续增长。

中国政府旨在通过协调发展全国范围内的大型建筑和住房项目来确保城市和农村的持续发展。但是，对建筑工地安全生产条件的担忧仍旧是建筑行业的一大困扰。全国建筑业事故的总量仅次于采矿业。中国工作场所意外死亡的报告人数超过 1000 人 / 年，而上述事故中 60% 的死亡是由于高空坠落或建筑物结构坍塌所致。中国每十万工人中有 9.87 个死于工伤事故，远远高于新加坡、澳大利亚等已经建立了行业公认标准的国家。

脚手架，尤其是缺乏安全保障的脚手架在建筑工地的广泛应用，促使住房和城乡建设部（住建部）决意到 2015 年将脚手架的使用量减少一半。为了实现这一目标，中国政府已开始研究技术解决方案，并执行更加严厉的安全法规。但中国目前的安全生产法律体系依然不健全，不能提供一套明确的安全合规方法。除了加强符合国际通行标准的安全法律法规体系外，中国美国商会还鼓励大力投资诸如高空作业平台等施工平台，强制使用安全设备和建立对高空安全作业至关重要的完备的风险管理标准。这些举措可以有助于将中国的工伤死亡率降低至“中等发达国家”的平均水平，并有助于实现“十二五”规划中提出的保障全国人民都能过上“更安全更美好”生活的目标。

## 现存监管问题

### 金融租赁施工平台

以高质量的施工平台和安全设备替代脚手架的使用，从而确保高空作业的安全性是一种国际通行的做法。然而中国市场尚未能够利用现有技术。施工平台租赁体系的缺

失限制了这些产品在中国的使用，也阻碍了有意进入中国市场的美国生产商的参与。以上问题集中表现在建筑设备大批老化以及设备折旧计算中过长的设备使用年限。我们鼓励中国政府加快发展金融租赁业，为建筑业能够更广泛地使用本土和进口设备创造条件。

### 中国《安全生产法》的有限范围及细节

#### 检查和监督

利用金融资源购买和使用施工平台及安全设备本身并不足以完善建筑行业的安全记录。2002 年颁布的《安全生产法》没有规定可量化或可强制执行的标准，也未能为希望实现安全生产的雇主、承包商或劳动者提供明确的指引。该法第 38 条只规定“定期进行安全生产检查”，但对检查频率的具体问题未作要求。国际监管法律中则明确要求根据高空作业使用的设备制定详细的检查时间表。例如，新加坡《职业安全与健康（脚手架）条例 2011》中规定必须每七天对脚手架进行一次安全检查，若脚手架暴露在恶劣天气环境中，则检查周期更短。

#### 风险管理框架

另外，该法第 31 条要求淘汰可能严重危害生产安全的技术和设备。虽然立意很好，但却未能就如何判定危险系数提供明确的方法，也未明确替代高空作业的其他方法。此外，由于缺乏明确的强制执行措施，工人们也无法获得有关内容的培训，如高空作业安全机制的益处以及如何正确操作施工平台和安全设备等。

我们鼓励中国政府出台全国通用的操作准则，专门针对两米及以上高空作业的情况预防坠落。澳大利亚的《防坠通则》就很值得借鉴。该法确保了风险评估的有效性，减少了高空不安全生产行为。该法在分级管控的框架下，将职业安全按照危险系数高低进行分类，从最不危险到最危险。中国相关部门可加以借鉴，制定明确的危险级别分类并从中收益。为落实全国通用操作准则，各级政府和相关行业还应该投资设立相关培训项目，按照国家法律予以

of safety mechanisms for work at heights or as to the proper use of access and safety equipment.

The Chinese government is encouraged to issue national codes of practice specifically on the prevention of falls from heights at two meters and above. A positive example is Australia's General Falls Code, which aids in effective risk assessment and reduction of unsafe work at heights. The code lays out levels of work safety, from least to most hazardous, under a Hierarchy of Controls framework. Chinese stakeholders can benefit from similar transparent classification of hazard levels. National codes of practice are coupled with government and industry-sponsored training initiatives which are implemented in accordance with national laws. These two strategies provide a clear and standard structure for reducing potential hazard from work at heights, including use of aerial work platforms or reducing ladder usage. Such a clear framework would give the Chinese government an explicit means for enforcing industry regulations and practices, and would also help introduce work safety analysis to key stakeholders.

### ***Risk Management and Safety Licensing***

Countries around the Asia-Pacific region are enacting regulations requiring robust Permit-To-Work systems and Safe Work Method Statements to control risk of falls of two meters or greater. These transparent processes provide clear methodologies and involve key stakeholders in the risk review and management process. The designation of a work-at-heights safety assessor for each project, a thorough inspection of planned work, and a continuous review process at the job site linked to issuance and maintenance of licenses are key success elements of these systems. AmCham China recommends Chinese authorities introduce similar risk management processes and provide training on the use of safe equipment that can be used instead of unsafe scaffolding.

### **Recent Developments**

#### ***Proposed Amendment to the 2002 Production Safety Law***

In June 2012, the Legislative Affairs Office of the State Council announced it was seeking public reviews on a draft amendment to the 2002 Production Safety Law. The main focus of the amendment was an expansion of the regulatory scope of the Law to cover additional industries including metallurgy, rail transportation, and movement of dangerous goods. However, the proposed amendment does not address concerns over work at heights in the construction industry and provides no concrete guidelines for reducing unsafe scaffolding practices.

AmCham China suggests Chinese authorities to improve the Production Safety Law by incorporating international accepted standards on work at heights and scaffolding

quality. Requiring and enforcing the use of technologies and safety equipment with fall protection such as guard rails and work positioning systems are internationally acknowledged practices for ensuring safe working environments. We also recommend introducing transparent scaffolding quality requirements for the installation, maintenance, and deconstruction stages, as present in regulations in the US, Europe, Singapore, and Australia. These countries regulate the use of scaffolding based on height, material, and working levels; for instance, the US restricts use of tube and coupler scaffolding of over 38.1 meters in length or wood pole scaffolding over 12.8 meters in length.

### **Conclusion**

The growth of China's construction industry has created challenges in terms of worker safety, particularly with regards to falls from heights, and Chinese authorities are commended for conducting studies on this risk. Initial observations show that the quality of life of construction workers can be greatly enhanced through use of alternatives to scaffolding and unsafe scaffolding practices. The Chinese government should thus guide industry in the purchase and use of technologies, access equipment, and safety products and can also set standards as to training and risk management methods for the industry. Introducing these internationally accepted standards can help China reduce its occupational fatality rate to more acceptable levels. AmCham China encourages a dialogue between MOHURD, the State Administration of Work Safety, and industry experts to help improve current laws. We welcome the continued participation of both local and foreign companies who can contribute technology, equipment, and practices toward the development of greater work safety consciousness.

### **Recommendations**

#### ***For the Chinese Government***

- **Increase lease and financing options for the investment in and use of access and safety equipment.**
- **Revise current safety laws to prescribe and enforce strict parameters for various work-at-height methods.**
- **Introduce a transparent risk management process and training initiatives for key stakeholders in China.**

#### ***For the US Government***

- **Collaborate with the Chinese government and industry experts in sharing best-case practices.**
- **Support the use of technology, access, and safety equipment within China and provide training on the use of quality products.**

实施。上述两项战略构成了一个清晰、标准的框架，可以有效地降低高空作业的潜在风险，包括减少使用高空作业平台的危险性及梯子的使用量。上述清晰的监管框架将成为中国政府执行相关行业法律和实践的有力工具，也会有助于向主要的利益相关方介绍作业安全分析。

## 风险管理和安全许可

当前，亚太地区各国都纷纷颁布相关法律法规，建立健全的施工许可证制度和安全施工方案制度，以降低施工中两米及以上高空坠落的风险。这些制度透明、清晰，明确提出了各种降低风险的方法，且主要利益相关方均能参与风险检查和管理过程。每个工程都必须指定高空安全评估员，对施工计划进行彻底检查，以及对施工现场进行持续的安全检查并将检查结果与施工许可证的发放和吊销挂钩，这些措施都是确保上述制度有效实施的重要因素。中国美国商会建议中国政府引入类似的风险管理流程，并提供如何使用安全设备（取代不安全的脚手架）的培训。

## 最新进展

### 2002年《安全生产法》的修订

2012年6月，国务院法制办公室发布了《安全生产法》修正案草案并公开征求意见。该修正案的主要目的在于扩大该法的监管范围，将冶金、铁路交通以及危险物品运输等行业纳入该法的调整范围。然而该修正案并未涉及建筑行业高空作业安全问题，也未能就减少不安全脚手架使用制定具体的指引。

中国美国商会欢迎中国政府引入与高空作业和脚手架质量相关的国际通行标准，从而进一步完善《安全生产法》。要求并强制使用防护栏和作业定位系统等提供防坠保护的安全设备和技术，是国际公认的保障施工环境安全的做法。我们还建议借鉴美国、欧洲、新加坡和澳大利亚的相关做法，明确脚手架的安装、维护和拆卸环节的质量要求。上述国家根据作业高度、材质和施工水平来对脚手架的使用进行监管，比如，美国限制扣件式钢管脚手架使用高度不得超过38.1米，木柱脚手架使用高度不得超过18.28米。

## 结论

中国建筑业的发展带来了施工安全方面的种种挑战，特别是在高空坠落方面，中国政府对上述风险开展研究的

行动值得赞扬。经初步观察发现，通过替换脚手架和改变不安全的脚手架作业方法，建筑工人的生命安全可以大大提高。因此，中国政府应当引导购买和使用各种技术、施工平台和安全产品，同时设立行业培训标准和风险管理方法标准。引入国际通行的标准会有助于中国将工伤死亡率降低至更可接受的水平。中国美国商会鼓励住建部、国家安全生产监督管理总局与行业专家开展对话，更好地完善现有法律。我们欢迎相关中资和外资企业能够继续参与合作，共同为提高全行业的安全生产意识从技术、设备和实践方面做出贡献。

## 建议

### 对中国政府的建议

- 推进金融租赁业的发展，以此促进施工平台和安全设备的投资和使用。
- 修改现行安全法律法规，规定并执行严格的高空作业标准。
- 为中国的主要利益相关方引入透明的风险管理过程和培训举措。

### 对美国政府的建议

- 与中国政府和行业专家进行合作，分享相关最佳实践。
- 支持中国在全国范围内推广使用相关技术、施工平台和安全设备，并提供相关设备操作培训。



**Part Four:**  
**Industry-Specific Issues**  
**具体行业问题**



# AmCham China Cooperation Programs

## Introduction

**A**mCham 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 where companies can 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



国美国商会的四个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，促进双边合作的目标。这些项目由美国企业联合运作，并在美中两国政府总体协议或合作计划下运行，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，而且还扩大了美国对华出口，增加了美国的就业机会。

美国贸易发展署是我们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的合作项目，该项目得到了美国商务部的支持。每个项目都与中国政府的主要部委和官员保持着密切的互动。

## 创造商机

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中美两国政府直接进行互动。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。尤其是对中小企业而言，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。

## 促进行业发展

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。这些合作项目也是企业能够与决策者共同解决标准、贸易促进和法规等领域问题的框架。

## 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 45 to 50 corporate members from various sectors across the aviation industry. ACP is currently 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 and Friends

- 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 and Regional Aviation Airport
- Airline Economic Regulatory Group

### Results and Important Events

- Over 220 promising Chinese executives graduated from Executive Management Development Training in the US, and about 100 graduated from Air Traffic Management Executive Training.
- US Ambassador Gary Locke's Reception (March 2012)
- US-China Aviation Summit (September 2011 and upcoming September 2013)
- China Civil Aviation Development Forum (Annually every May)
- Energy Conservation and Emission Reduction training (May 2011 and upcoming 4Q 2013)

### 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 45-50 余家企业会员，它们来自于航空业的各个领域。目前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

#### 中方合作伙伴和朋友

- 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

### 工作委员会

美中航空合作项目的会员代表着航空业的所有领域，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。工作委员会包括：

- 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

- 通用和区域航空机场
- 航空公司经济监管组

### 成果和重要活动

- 高级行政人员管理培训培养了 220 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约 100 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 月和 2013 年 9 月即将举行）
- 中国民航发展论坛（每年 5 月举办一次）
- 节能减排培训（2011 年 5 月和 2013 年第 4 季度即将举行）

### 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机会，参与投标中国新项目平台。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 a private sector initiated and financed non-profit organization under the legal auspices of AmCham China. ECP serves as the commercial implementing arm of US-China clean energy collaboration.

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 establish new industries and markets, influence regulatory policy, serve as the industry voice in bilateral government dialogue, and facilitate commercial deals.

### Bilateral Cooperation

#### Official US Government Advisors

- Department of Commerce
- Department of Energy
- Trade and Development Agency (TDA)

#### Official Chinese Government Advisors

- 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, in order 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
- Energy Efficient Building and Design
- Energy Financing and Investment
- Industrial Energy Efficiency
- Nuclear Power
- Renewable Energy
- Smart Grid

## 美中能源合作项目



### 引言

中美能源合作项目（ECP）是一个中国美国商会主办、由企业发起并出资的非盈利机构。ECP 是中美两国清洁能源合作的商业执行机构。

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。中国前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，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了一个独特的平台，以实现商业开发成果的转化，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，以建立新行业和市场，对监管政策施加影响，在政府双边对话中充当行业的代言人，并促进行业交易。

### 双边合作

#### 美国政府官方顾问

- 商务部
- 能源部
- 贸易发展署

#### 中国政府官方顾问

- 国家能源局
- 商务部

### 工作组

ECP 的每个工作组都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，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
- 核能工作组
- 可再生能源工作组
- 智能电网工作组

## Results

Each year, ECP working groups (WG) identify business development objectives and concrete initiatives to implement. Some of the many achievements from 2012 include the following:

- With support from NEA and USTDA, the ECP Smart Grid WG launched the Integrated Smart Grid Communication Model Study with the China Electric Power Research Institute and the State Grid Corporation of China.
- In a partnership with Huaneng Shandong Power Company, the Clean Coal WG is conducting a feasibility study and pilot project demonstrating how nitrous oxides and other harmful emissions from coal-fired power plants can be reduced by use of advanced technologies through an Engineering, Procurement and Construction business model.
- The Energy Efficient Building Design WG launched the Eco-City Projects – a program to promote live commercial eco-city demonstration projects that can serve as operable, sustainable, duplicable business models for Chinese eco-city development.
- Together with the China Electricity Council and China Electric Power Research Institute, the Renewable Energy WG is implementing a comparative study of photovoltaic grid integration standards in China, the United States and the European Union.
- The Renewable Energy WG completed a study of successful cases of wind farm operation and management in the United States, introducing Chinese industry

stakeholders to the key standards related to preliminary work of wind farm development, construction, operation and management.

- ECP members supported the MOU signed by the US Foreign Commercial Service and the Shandong Provincial Department of Commerce to promote clean energy development, which included commercial agreements with Huaneng Huangtai Power Generation Company and Shandong Zhenlong.

## Quotes from Members



*For LP Amina, ECP has been a true partner in the growth of our business in China. ECP has enabled LP Amina to develop trusting relationships with key government stakeholders, which led to concrete business opportunities in our core business as well as accelerating strategic R&D projects.”*

— Will Latta, Managing Director, LP Amina, 2012 ECP Management Board Executive Committee, Co-chair and Clean Coal WG Co-chair



*ECP serves as an invaluable channel for companies, such as UL, to both the Chinese and US government agencies to timely share market and regulatory information— which allows UL to make the right business decisions.”*

— Benjamin Shi, Director, China Government Affairs, UL, Renewable Energy WG and Smart Grid WG member

## 成果

每年，ECP 工作组制定商业发展计划和切实的实施办法，以下是 2012 年该项目所取得的众多成果的缩影：

- 在美国全国教育协会和美国贸易发展署的支持下，ECP 智能电网工作组与中国电力科学研究院和中国国家电网公司合作开展了智能电网综合通信模型研究。
- 清洁煤炭工作组与华能山东电力公司合作，正在进行一项可行性研究和试点项目，论证如何在工程采购与施工的商业模型中运用先进技术来减少火力发电厂排放的一氧化二氮和其它有害物质。
- 节能建筑与设计工作组推出了生态城计划。该计划是一项促进商业生态城发展的现场示范项目，能作为中国生态城开发的可操作、可持续、可复制的商业模式。
- 可再生能源工作组正在与中国电力企业联合会和中国电力科学研究院一道开展有关中国、美国和欧盟光伏并网发电集成标准的比较研究。
- 可再生能源工作组完成了有关美国风电场运营与管理成功案例的研究，向中国电力行业的利益相关方介绍

与风电场的开发、建设、运营和管理相关的主要标准。

- ECP 成员支持美国海外商务署与山东省商务厅签署有关推进清洁能源开发的谅解备忘录，其中包括与华能黄泰发电公司和山东振龙签署的协议。

## 会员语录

对于 LP Amina (阿米那电力环保技术开发(北京)有限公司) 来说，ECP 一直是我们在华业务发展过程中真正的合作伙伴。ECP 使 LP Amina 能够与主要的政府部门建立起相互信任的关系，为我们加速发展核心业务和战略性研发项目创造了切实商机。”

—— Will Latta, LP Amina 董事总经理，2012 年 ECP 管理委员会执行委员会联合主席  
兼清洁煤炭工作组联合主席

ECP 对于 UL 这样的公司来说，是与中美政府部门及时交流市场和监管信息的宝贵渠道，这些信息能够使 UL 作出正确的商业决策。”

—— Benjamin Shi, UL 中国政府事务总监，可再生能源工作组和智能电网工作组成员

## 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 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.

### 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

- MOH Health IT Seminar
- US Ambassador’s Healthcare Mission in Henan
- Hainan Province International Health Cooperation Workshop
- Clinical Data Interchange Standards Consortium (CDISC) Workshop in Beijing and Guangdong

### 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

### Quotes from Members



*As a responsible company, we continue to support the development of healthcare capacity in China that benefits patients. The HCP public-private cooperation platform allows us to work closely with government officials to address key healthcare-related issues through a constructive, project-based approach.”*

— Chindex



*Over the past year, the HCP provincial missions have allowed us to reach out to hospitals on a more local level, while engagement through HCP workshops has allowed us to expand policy dialogue on healthcare reforms in China.”*

— Philips

### 2012 Programs

- MOH Senior Health Executive Training Program

## 医疗卫生合作项目



### 引言

2011年1月,美国总统巴拉克·奥巴马与中国前国家主席胡锦涛就建立中美医疗公私合作关系(PPPH)形成了初步框架。2011年3月,双方公布了中美医疗卫生合作项目(HCP)。医疗卫生合作项目基于双方各个层次的密切合作,旨在推动美中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。

医疗卫生合作项目利用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、人员培训等能力建设方面,同时协助提升中国整体的医疗卫生环境,并在中国医改框架下寻求和把握市场机遇。

### 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

- 美国大使保健代表团访问河南省
- 海南省国际卫生合作研讨会
- 在北京和广东举行的临床数据交换标准协会(CDISC)研讨会

### 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、以具体项目为基础的工作方式为公私合作提供了一个绝佳的平台,使我们能够就医疗的相关问题与政府官员紧密合作。”

—— 美中互利医疗有限公司

在过去的一年中,医疗合作项目的省际考察活动使我们和当地的医院取得了更直接的联系,而医疗合作项目的讨论活动则帮助我们就中国的医疗改革开展了更广泛的政策对话。”

—— 飞利浦医疗有限公司

### 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年项目

- 卫生部卫生高级管理人员培训项目
- 卫生部卫生信息技术交流大会

## EXPORT COMPLIANCE WORKING GROUP



# ECWG

The Export Compliance Working Group

### 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
- Assisting US companies on keeping up with the changes in China import and export regulations

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. In 2012, it served as co-organizer, with China's Ministry of Commerce (MOFCOM) and the US Department of Commerce (DOC), for the Shanghai Export Controls Seminar. Over 200 leaders and professionals attended. Delegations were led by the MOFCOM Vice Minister and the US DOC Deputy Undersecretary. Currently both governments and ECWG are planning a third event for 2013. As before, the event will provide a forum for bilateral dialogue on export controls, government to industry dialogue, and training for US and Chinese business partners on export controls and compliance practices. All these elements work together to highlight the need for officials and companies from both nations to continue to engage and progress on trade control initiatives, to increase bilateral high-tech trade.

### 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 control policy and compliance, high tech trade promotion, and expanding bilateral dialogue co-hosted by US DOC and Chinese MOFCOM
- ECWG market study reports
- Ongoing meetings with US and Chinese government officials
- Industry-specific trade compliance training and development courses

## 出口合规工作组



# ECWGW

The Export Compliance Working Group

### 引言

出口合规工作组成立于 2006 年，由不同的企业组成，其宗旨是：

- 改善出口管制环境，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。

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面。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。2012 年，出口合规工作组作为中国商务部和美国商务部的协办方共同组织了上海出口管制研讨会。200 多名领导和专业人士参加了该研讨会。中国商务部副部长和美国商务部副部长率团参加了该活动。目前两国政府和出口合规工作组正准备于 2013 年举办第三次活动。与之前的活动一样，该活动将为出口管制双边对话、政府与行业对话提供平台以及为美、中贸易合作伙伴提供出口管制和合规实践培训。所有这些因素共同凸显了两国官员和企业为加强双边高科技贸易而继续为贸易管制献计献策，并不断取得进展的需求。

### 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
- 就贸易管制政策与合规、高科技贸易促进开展年度研讨会；扩大由美国商务部和中国商务部联合主办的双边对话
- 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

## Results

- Bilaterally recognized and celebrated annual seminars
- 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 comments led to changes in the US Government Validated End-User Program, positively impacting U.S. industry by making the program more user-friendly.

## 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



*The information the ECWG is providing on the development of compliance programs in China and encouraging Chinese companies to implement compliance programs is very important"*

— Vann Van Diepen, Principal Deputy Assistant Secretary – International Security and Nonproliferation – State Department



*Thanks to ECWG for bringing key issues to the table for discussion. ECWG serves as an instrumental organization in trade collaboration. We look forward to continuing our engagement and cooperation with ECWG."*

— Director General Li Minglin of MOFCOM's Department of Mechanic, Electronic and High-Tech Industry

## 成果

- 双方均认可和重视的年度研讨会
- 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或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。
- 出口合规工作组的意见和建议促成了美国政府对最终用户验证计划的修改，使该计划的用户体验更加良好，从而对美国行业产生了积极的影响。

## 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，美国商务部前副部长，  
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，  
美国商务部前部长助理，负责出口管理事务



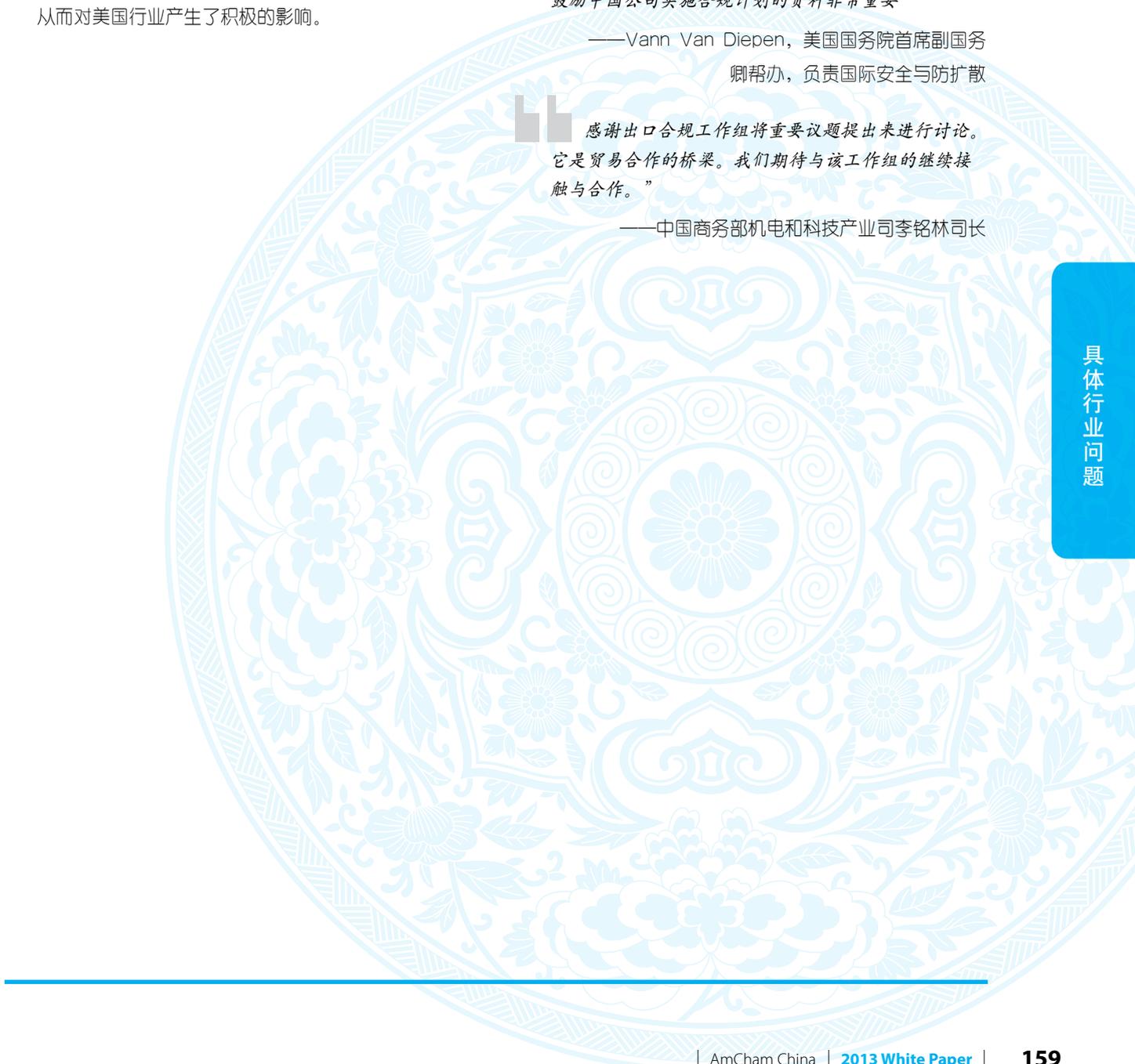
*出口合规工作组提供的有关中国合规计划发展和鼓励中国公司实施合规计划的资料非常重要”*

——Vann Van Diepen，美国国务院首席副国务卿帮办，负责国际安全与防扩散



*感谢出口合规工作组将重要议题提出来进行讨论。它是贸易合作的桥梁。我们期待与该工作组的继续接触与合作。”*

——中国商务部机电和科技产业司李铭林司长



具体行业问题

# Agriculture

## Introduction

**A**s the world's most populous nation and one of the largest consumers of agricultural products, China prioritizes the modernization of its agriculture sector as a top national strategic objective to ensure the nation's food security. Improving domestic productivity with new technology and securing stable sources from international markets are a vital part of the solution. AmCham China welcomes China's goal set out in the 12<sup>th</sup> Five-Year Plan to modernize the country's agriculture industry. US agricultural companies are well positioned to cooperate with China to realize that goal.

Over the past year, China continued to see strong growth in agricultural trade, with a rise in both imports and exports. The US-China trade relationship continued to deepen, with China becoming an increasingly important market for US agricultural exports. Between 2009 and 2012, exports of US agricultural products to China increased by more than 110 percent, from US \$11.1 billion to US \$23.4 billion annually. Moreover, agriculture comprises about 25 percent of total US exports to China, which positions bilateral US-China agricultural trade as a pillar in the US-China economic partnership.

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, market restrictions not based on sound science, 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.

## Ongoing Regulatory Issues

### *Restrictions on Foreign Investment in 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 development of China's agricultural industry.

Additional restrictions were introduced in areas such as seed production, grain origination and storage, oilseeds processing and corn processing. Grain logistics was added to the restricted list. Restrictions on corn processing were expanded in practice to value-added downstream products. Restrictions on seed production were expanded beyond field crops, and restriction on oilseeds processing were also expanded beyond soybean to all oilseeds crops. At a time when China's agriculture industry lags far behind other industries in terms of attracting foreign investment, the growing restrictions on foreign investment in China's agricultural sector block farmers' access to advanced technologies, and consumers' access to safe and affordable agricultural products. It is also at odds with the objectives in China's 12<sup>th</sup> Five-Year plan, which emphasizes the need to shift more resources to agriculture and food production in order to improve people's lives and meet China's food security and safety needs. AmCham China is 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.

Importantly, the revised FDI catalogue has taken out the restriction on seeds distribution and retailing from the restricted category. In September 1997, four ministries including the Ministry of Agriculture and State Planning Commission jointly issued the Administration of Approval and Registration of Foreign-Invested Crop Seed Enterprises (1997 Administrative Statement). The 1997 Administrative Statement still prohibits multinational corporations from establishing foreign-invested companies engaged in seeds distribution and retailing, or WFOEs in the overall crop seeds business. China has committed to liberalizing the distribution and retailing sector for all industries. AmCham China requests that Chinese government modify the 1997 Administrative Statement to align it with the revised FDI catalogue and allow greater foreign investment in the agricultural industry in China. This will foster stronger China-US trade relations, and will help introduce quality

# 农业

## 引言

**作** 为全球第一人口大国，以及全球最大的农产品消费国之一，中国已经将实现农业现代化定为国家首要战略目标之一，以保证国家的粮食安全。通过新技术应用提高国内农产品产量与确保稳定的国际农产品进口相结合是实现上述目标的重要途径。中国美国商会欢迎中国在其“十二五”规划中制定的中国农业产业现代化目标。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。

2012年，中国的农业贸易继续保持强劲增长，农业进口和出口双双攀升。美中两国贸易关系继续深化，中国已经成为美国农产品日渐重要的进口国。2009年至2012年，美国向中国出口的农产品数量已从每年111亿美元增长至每年234亿美元，增长超过110%。不仅如此，农产品出口占美国向中国出口总量的25%，农产品贸易已经成为美中经济合作中的支柱项目。

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、缺乏科学依据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、增强粮食安全和可持续性、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，并对中国继续提高规则实施的透明度和公平度持乐观态度。

## 现存监管问题

### 对外资投资农业的限制

中国国家发展和改革委员会与商务部于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加了对外资企业参与和协助中国农业产业发展的限制。

在种子生产、谷物培育和储存、油籽加工和玉米加工等行业增加了新的限制。粮食收购也被加入到限制清单中。在实践中，玉米加工限制已经扩张至下游深加工产品。对种子生产的限制超出了大田作物，对油籽加工的限制从大豆扩大到所有的油籽作物。目前，中国的农业产业相比较其他行业来说，在吸引外资方面最弱，而中国对外资进入农业的限制却越来越严格。这将阻碍农民获得全球最先进的农业技术，妨碍消费者享用物美价廉的安全农产品。另外，这些限制也与中国在“十二五”规划中的相关目标相违背，“十二五”规划中强调将加大对农业和食品生产上的投入，提高人民的生活水平，实现中国的粮食安全和食品安全的目标。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。

重要的是，新修订的《外商投资产业指导目录》中已不再将种子批发和零售列入限制类。1997年9月包括农业部和国家计委在内的四部委联合发布的《关于设立外商投资农作物种子企业审批和登记管理的规定》却依然不允许跨国企业设立从事种子批发和零售业务的外资企业，同时禁止成立从事任何农作物种子相关业务的外商独资企业。中国已经承诺开放所有产业的批发和零售环节。中国美国商会建议中国政府修改上述1997年颁布的行政法规，使其与外商投资目录的相关规定相一致，允许更多的外资投资中国的农业。这必将有助于进一步增进中美贸易关系，并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。

修订后的产业目录亦继续禁止外商投资“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。目前全球主要农业大国都已广泛使用农业生物科技，为农民乃至整个社会的农业发展、环境保护、经济发展和进步做出了巨大的贡献。中国美国商会认为中

technology into the Chinese market. Opening up foreign investment is also consistent with the 12<sup>th</sup> Five-Year Plan's emphasis on shifting more resources to agriculture and food production.

The revised catalogue continues to prohibit foreign investment in "development and production of transgenic plant seeds," and for the first time also prohibits foreign companies from engaging in biotech research and development (R&D). Ag-biotechnology has been widely adopted in major agricultural countries across the world to deliver substantial agronomic, environmental, economic and social benefits to farmers and society. AmCham China believes that China's prohibition on foreign investment in agricultural biotechnology not only arbitrarily restricts business opportunities but also limits competition and efficiency. This ultimately reduces innovation, slows industry development, and raises prices for food products.

## *Seed Industry*

### *Promotion of a Modern Crop Seed Industry*

To ensure an abundant food supply, and the safe use of commodity grains derived from biotechnology, the Chinese government issued the Seed Law and Agriculture Genetically Modified Organism (GMO) regulations in December 2000 and May 2001 respectively. Implementation of the seed law and other regulations supported bumper harvests and the smooth development of international commodity trade over the past decade. However, AmCham China members have concerns about China's seed and GMO registration, import approval, and licensing processes, which we believe require substantial reform since they were established a decade ago.

In April 2011, the State Council issued "Opinions on Further Promotion of the Modern Crop Seed Industry's Development," 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 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.

To effectively accelerate the modernization process of the crop seed industry requires significant changes to certain regulations such as seed import and export rules, to improve the existing lengthy and onerous approval process. In addition, seed registration for local cultivation should be faster, more transparent, and fairer for all industry participants.

### *Seed registration*

The registration process for seeds is opaque and time-consuming, in comparison to similar processes in other countries' agricultural markets. Significant delays and

uncertainty discourage investment in seed R&D, impeding the 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.

### *Seed import & export*

Under the Technologies Import and Export Regulations (TIER) and Regulation Method on Protection of Crop Genetic Resources of China, germplasm exports can be restricted if endogenous germplasm is used. Even if this is not the case, exporting seeds for research purposes is cumbersome, in particular for MNCs, requiring multiple approvals on a sample-by-sample basis. This includes approvals from multiple authorities within the Ministry of Agriculture; registration with MOFCOM (for TIER compliance); and phytosanitary certification. Moreover, Ministry of Agriculture has recently strengthened regulation over germplasm export controls, which require lab test reporting in some cases.

## *International Agricultural Commodity Trade*

### *Trade Remedy Proceedings against US Agricultural Exports*

AmCham China notes with concern that China continues 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.

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. Additionally, 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 prices low.

US agricultural companies acknowledge that our Chinese counterparts have likewise voiced concerns about market access for certain agricultural products in the United States. To promote 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 and catfish).

国禁止外商投资农业生物技术不仅武断地限制了商业机会，而且还限制了竞争，降低了效率，最终会阻碍创新，降低行业发展速度，推高农产品价格。

## 种子行业

### 推进现代农作物种业

为了确保粮食供给充足，以及利用生物科技的生产的商品粮的食品安全，中国政府于2000年12月及2001年5月分别制定了《种子法》和农业转基因相关条例。《种子法》和其他条例的实施确保了过去十年中国粮食大丰收以及国际粮食贸易的平稳发展。然而中国美国商会的会员企业认为，由于这些法规制订于10年前，目前有必要对中国种子和转基因产品登记、审定、进口审批等进行重大改革。

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，保障国家粮食供给安全。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》。外资种业公司期盼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。

为了有效加快农作物种子行业现代化的进程，中国政府需要对相关监管法律和法规，如种子进出口法律，做出重大修改，改变现存的审批耗时长，环节多的问题。另外，本地培育的种子登记应当全面加快速度，提高透明度，并做到对所有行业主体一视同仁。

### 种子审定

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，妨碍了中国种子行业乃至农业产业的整体发展。中国美国商会鼓励中国对现行的种子基因审定体系进行改革，增强种子审定的快速化、公平化和透明化。

### 种子进出口

根据中国的《技术进出口管理条例》和《农作物种质资源保护管理办法》，内生种质的出口受到严格限制。即使不属于内生种质，为研究目的而进行的种子出口监管依然十分繁琐，对跨国企业来说更是如此，要求审批时必须提交审查每一份样品，而且需要经过农业部的多个司局予以批准，且需要到商务部进行登记（审查是否符合《技术

进出口管理条例》的相关规定），最后还要取得植物检疫证书。另外，农业部近期加强了对内生种质出口的控制，规定在某些情况下需要提交实验室检验报告。

## 国际农产品贸易

### 针对美国农产品出口采取的贸易救济措施

中国美国商会颇为忧虑地指出，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，并且已经发现中国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。

中国美国商会认为对美国家禽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负面影响。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。保证充足的供给不仅可以满足增长的需求还可以降低价格以确保生产者和消费者的利益。

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、苹果和鲑鱼）进入美国市场的要求。

### 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。遗憾的是，迄今为止没有取得任何进展。中国美国商会促请中国政府基于现有数据进行公正的评估，尽快解决该问题。

如上所述，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，但相关进口要求在商业实践中无法操作。

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

### Beef Market Access

China banned 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. Unfortunately, no progress has been made since then; AmCham China urges a speedy resolution of the issue based on a fair assessment of available data.

AmCham China members remain concerned that China continues to maintain a ban on US beef, as mentioned above. 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.

### Barriers to grains derived from Biotechnology

In a number of areas, China’s regulatory process regarding agricultural products remains unnecessarily complex. This is particularly true with respect to GMO products, which face a needlessly complex registration process that disadvantages these high-tech products without materially improving the safety of China’s food supply. Zero tolerance on low level presence (LLP) of GMO events has served as a technical trade barrier and a deterrent to normal grain trade. While most GMO corn gene insertion methods (“events”) commercialized in the US have not been approved in China yet, LLP issues will be an immediate threat to US-China corn trade when China increases its corn imports. China should establish a science-based threshold on LLP of GMO events in order to facilitate trade and also meet food safety requirements.

Even for approved GMO “events”, traders need to get a GMO certificate for every shipment of a commodity. This unnecessary and burdensome regulatory procedure does nothing to improve food safety, while adding costs eventually passed on to Chinese consumers. Once a GMO certificate is received, companies face additional regulatory barriers with regard to wholesale retailing and logistics of GMO products. The imported GMO 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.

AmCham China members are concerned about biotech products which were submitted by technology providers for import approval in 2011 but denied by the Chinese Ministry of Agriculture. As a result of the rejections from 2011 submission windows and other delays in the review process, safety certificates are unlikely to be granted for new products before 2012 or later. This also imposes uncertainties for product renewals in commodity grains containing biotech traits which have been approved in China since 2004. Not issuing safety certificates for biotech products will have an immediate negative impact on agricultural commodity trade between exporting countries and China. In short, the failure to grant safety certificates in a timely fashion for biotech products threatens to not only hurting grain commodity exporting countries, but also weaken China’s ability to secure stable sources for grain supply to ease domestic inflation pressure and maintain social stability. AmCham China members urge the Chinese government to issue safety certificates based on a functional regulatory framework and sound scientific evaluation system. Decision making should not be based on political motivations or trade protectionism.

### 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 United States. It has been determined as safe by 27 regulatory authorities as well as the Joint FAO/WHO 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 ractopamine. Thus, 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.

易。但目前中国继续对从疯牛病爆发国家进口牛肉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。

### **对生物技术生产粮食的限制**

中国在农业产品监管的诸多领域的监管程序十分复杂且无必要。这一点在转基因产品监管程序方面表现得尤为明显。转基因产品登记程序十分繁复，造成了这些高科技产品无法实质性地提高中国粮食供应链的安全系数。对转基因产品低水平混杂的零容忍已经成为一项技术贸易壁垒，对正常的粮食贸易造成了损害。鉴于大多数在美国已经商品化的转基因玉米至今尚未在中国获得批准，低水平混杂问题就成为中国增加玉米进口的背景下直接影响美中玉米贸易的一大威胁。中国应设立转基因产品低水平混杂的科学门槛，推动中美粮食贸易的同时满足食品安全的要求。

即使对于已经取得转基因产品审批的产品而言，贸易商对于每次装运的商品都要申请取得转基因审批证书。这一监管措施不仅没有必要，还给被监管方造成了沉重的负担，不仅对于提升食品安全系数无益，还无端地增加了最终消费者的成本。在获得转基因生物产品证书后，生产企业在转基因生物产品的批发零售和物流方面又面临着其他监管壁垒。进口商进口的转基因产品只能自用，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。

中国美国商会的会员企业尤其关心的是，部分技术供应商于 2011 年就提交了生物技术产品进口审批申请，却未能获得农业部批准。由于有了上述 2011 年申请失败的先例，以及审批过程中的其他延误情形，2012 年之前及以后的新产品申请都不太可能再获得安全证书。这对产品续订，尤其是 2004 年后获批的生物科技特性粮食产品的续订造成了不确定性。生物技术产品无法获得安全证书，对出口国和中国之间的农产品贸易造成了直接的负面影响。总之，不仅影响了粮食产品出口国，还影响了中国的粮食安全和社会稳定，中国需要稳定的粮食进口来平抑国内市场的通胀压力。中国美国商会的会员企业促请中国政府基于有效的监管框架和科学完善的评估系统来发放安全证书。监管机构的决定不应该基于政治动机或者贸易保护主义。

### **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  $\beta$  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 个国家的监管机构和世界粮农组织 / 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  $\beta$  肌肉生长剂。在中国，瘦肉精往往是指盐酸克伦特罗，这是另外一种  $\beta$  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伦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  $\beta$  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，中国确认禁止美国猪肉生产企业向中国出口产品。

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  $\beta$  肌肉生长剂（“瘦肉精”）进行区分；(2) 对肉制品中使用莱克多巴胺和其他安全的  $\beta$  肌肉生长剂进行全面的风险评估并建立安全残留标准。

### **关税配额分配制度**

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，关税配额水平自 2001 年中国加入世界贸易组织之后就未作过调整，该水平无法满足中国对玉米、糖类、棉花和其他农产品日益增长的需求。第二，私人申请者所能获得的关税配额数额过小，甚至无法满足一次进出口贸易的需求。贸易商必须集中多个私人申请者的配额才能满足一次巴拿马型散货船的装运。第三，关税配额管理缺乏透明度，抑制了配额使用的效率并增加了农业贸易成本。贸易商很难获知关税配额的分配状况，哪些申请人获得配额，具体数量如何等信息。第四，配额分配缺乏预测性，经常与市场的实际需求不符，配额往往在进口商没有进口需求时发放，而等到他们需要进口时又迟迟不发放。

中国美国商会请求中国政府根据市场实际需求定期评估关税配额水平，并建立更加透明的关税配额分配制度。同时我们还建议减少需要配额的农产品类别，从而更加有

### Tariff Rate Quotas (TRQs)

There are currently a number of issues holding back Chinese TRQs from fulfilling their potential to support China-US trade relations and the Chinese domestic agricultural market. First, TRQ quota levels have not been adjusted since China's WTO accession in 2001, and do not meet increasing demand in China for corn, sugar, cotton and other agricultural commodities. Second, TRQ volume allocated to each private applicant is often too small to be commercially viable for making one shipment. Traders have to combine TRQs of a dozen private recipients to make a panamax shipment. Third, lack of transparency in the administration of TRQs inhibits efficient utilization of quotas and increases the cost of agricultural trade. Traders find it difficult to know who received the TRQ and how much they got. Fourth, quota distributions are unpredictable, often at odds with the needs of the market. Quotas are released at times when importers do not need to import, while quotas are not released at other times when importers need to import.

AmCham requests the Chinese government regularly review TRQ levels according to actual market demand, and establish a more transparent TRQ allocation system. 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. These changes would also better protect Chinese consumers, foster greater China-US bilateral trade relationship, and secure the Chinese food supply.

### Recent Developments

#### *23<sup>rd</sup> JCCT*

In December 2012 at the 23<sup>rd</sup> US-China Joint Commission on Commerce and Trade (JCCT) the new access for pears in the Chinese marketplace was affirmed by the US Department of Agriculture (USDA). The new access is a result of a new commitment to allow reciprocal trade between the US and China starting in 2013. AmCham China welcomes the new market access, and urges both sides to continue to explore additional products or groups of products where progress can be made in this regard. USDA and China's Ministry of Agriculture also committed to a biotechnology pilot program to provide greater cooperation in the approval process for new products. As discussed above, biotechnology is but one important area where an opaque approval process has limited the scope of China's modernization efforts. AmCham China members are encouraged by the possibilities the pilot program brings, and look forward to its implementation.

### Conclusion

The continued growth of Chinese agriculture throughout 2012 highlights the importance and strength of the sector.

Although US-China agricultural ties remain robust, AmCham China believes the Chinese government could make changes regarding foreign investment and imports that would benefit both countries. Creating more scientific, transparent, and consistent methodologies will improve efficiency, lower prices, and create a more competitive modern, safe, sustainable, and secure agricultural industry in China.

AmCham China 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.

### Recommendations

#### *For the Chinese Government:*

- **Reduce barriers to foreign participation and investment in agriculture, in particular moving more agricultural products to encouraged status in the "Guiding Catalogue on Foreign Investment in Industry", and opening up the distribution and retail of seeds in China in line with China's WTO commitments.**
- Implement a more transparent and science-based regulatory system across all agricultural sectors, both for imported commodities and domestically cultivated crops. Remove unscientific restrictions on importation of US beef, poultry, pork, and GMO products.
- 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.

#### *For the US Government:*

- **Work with Chinese officials through bilateral dialogues including the JCCT, S&ED and US-China Investment Forum to address investment restrictions faced by US agriculture producers.**
- Employ a science-based approach to Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples and catfish.
- Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support 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.

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有效地发挥作用，实现中国入世的相关承诺，从而更好地保护中国的消费者，促进中美双边贸易的深入发展，保障中国的粮食供给。

## 最新进展

### 第 23 届美中商贸联委会

2012 年 12 月，中美两国召开了第 23 届美中商贸联委会，会上美国农业部确认美国梨可出口中国市场。这是美中两国最新承诺 2013 年起允许美中双边互惠贸易的结果。中国美国商会对该项新的市场准入表示赞赏，并促请双方继续扩大此类互惠贸易的品种和范围。美国农业部和中国农业部同时还承诺开展一项生物技术试点项目，为批准更多新产品市场准入而深化合作。正如上述讨论所示，生物技术领域非常重要，但由于目前审批程序不透明，因此限制了中国农业现代化的进程。中国美国商会会员企业对上述试点项目的成果寄予了很高期望并深受鼓舞，期待其早日实施。

## 结论

2012 年中国农业保持持续增长，充分显现了农业产业的重要实力和实力。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还能够围绕外国投资和进出口作出一些改革，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。

## 建议

### 对中国政府的建议：

- 减少外资参与和投资农业的障碍，特别是将更多的农产品列入《外商投资产业指导目录》中的鼓励类；按照中国的入世承诺，开放中国的种子批发和零售市场。
- 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。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。
- 实现种子审定程序的快速化、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。

### 对美国政府的建议：

- 通过美中商贸联委会、美中战略经济对话和中美投资论坛等平台，加强双边对话，解决美国农业企业所面临的投资限制。
- 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、苹果和鲑鱼）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，使中国支持实施透明、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。

# Automotive

## Introduction

The Chinese automotive market is increasingly integrated into the global market, and acting as a driver for global firms strategic planning. For example, luxury car sales may have risen in China in part because of the intensified attention by foreign manufacturers, given weakening sales in the EU market due to the European debt crisis. The overall market, however, experienced slower than expected growth in 2012, with a predicted November recovery failing to materialize.

Compared to the 7.8 percent growth rate of GDP in 2012, automobile production increased by only 6.3 percent, while automobile sales grew at 7.3 percent, down from 7.87 percent in 2011. Sales volumes in 2012 reached 20.6 million units, an increase of 6.3 percent, including 11.19 million passenger vehicles, an increase of 8.3 percent. National policies may be implemented to stimulate automotive sales. Local policies, such as the license plate lotteries of Beijing and Guangzhou, are expected to be unfavorable, however. The overall automotive market is likely to remain stable or grow marginally compared to 2012.

Coordination between the various regulatory authorities improved in 2012, but remains inadequate. AmCham China recommends additional inter-agency coordination as well as the creation of a formal automotive policy development mechanism that allows for public comment. This would result not only in increased efficiency and transparency, but also contribute to the development and global competitiveness of the Chinese automotive industry.

AmCham China welcomes the removal of indigenous innovation policies that had blocked imported vehicles from government procurement, and hopes that this policy will be extended to remove the industrial property rights requirements that continue to act as barriers. AmCham China further hopes that the barriers to imported vehicles are removed to encourage China's new energy vehicle (NEV) policies.

AmCham China hopes for China's improved compliance with international guidelines for scrapping and recycling vehicles, and the harmonization of vehicle standards. Clear rules and agency-industry communication regarding fuel consumption, recall rules, and the repair, replacement and

return of vehicles will help China protect its consumer interests. These measures would be beneficial to the automotive industry's development, and ultimately, to the Chinese consumer.

## Ongoing Regulatory Issues

### *Regulatory Transparency and Coordination*

China has made great strides in transparency in recent years, in some instances releasing draft policies for public comment. AmCham China welcomes these improvements and encourages greater transparency, particularly with regard to automotive policy. Nonetheless, as one of the most highly regulated industries in China, the automotive industry provides ample opportunity for improving regulatory transparency. At present, the regulation of China's automotive industry is complex and involves many central and local authorities with duplicative and/or inconsistent requirements. While an individual authority may consider the opinions of other departments, coordination and communication amongst the various authorities remains inadequate.

Cooperation amongst Chinese regulatory authorities in defining and clarifying key concepts, requirements, and roles and responsibilities would improve efficiency and transparency. In addition, it would promote the rapid and healthy development of the Chinese automotive industry and enhance its competitiveness in the global market. To further promote a spirit of policy-making transparency in China, AmCham China encourages the Chinese government to establish a formal automotive policy development mechanism. This would provide a way to publicly share proposals, seek legitimate comments, and provide adequate lead time prior to implementation. A similarly transparent process for project approvals would greatly benefit the industry.

### *Government Procurement*

AmCham China welcomes China's steps towards leveling the playing field for foreign-invested enterprises (FIEs) and domestically-invested enterprises in the China market by removing indigenous innovation policies from government procurement. Unfortunately, inconsistent practices remain in certain areas.

# 汽车工业

## 引言

**中** 国汽车市场正在加快融入全球市场，成为全球企业战略规划中的一个重要增长点。豪华轿车在华销量上升便是一个例子，究其原因是由于欧债危机导致欧盟市场疲软，国外汽车制造商对中国市场给予了更多的关注。然而总体而言，2012年中国汽车市场的增长速度低于预期，市场普遍看好的11月份反弹也未能兑现。

2012年，中国GDP全年增长率为7.8%，而汽车产量增速为6.3%，汽车销量增速为7.3%，相比2012年上半年7.87%的增长水平稍有下滑。2012年汽车销量达2060万辆，同比增长6.3%；其中包括销售乘用车1119万辆，同比增长8.3%。尽管中央出台了刺激汽车销售的政策，但各地出台的一些地方性政策却并不利于汽车行业的发展，如北京和广州的车牌摇号政策。未来中国的汽车市场整体上将保持稳定发展态势，或比2012年略有增长。

2012年，汽车市场相关各大监管部门加强了协调工作但尚不充分。中国美国商会建议增设正式的汽车政策制定机制和部门间政策协调机制，并允许公开征求意见。这不仅有助于提高透明度和效率，还有助于中国汽车行业的发展，增强中国汽车行业的全球竞争力。

中国美国商会对于取消将进口汽车排除在政府采购市场之外的自主创新政策表示欢迎，并希望中国政府能够继续取消构成同样壁垒的知识产权要求。中国美国商会希望中国能够取消限制进口汽车的相关条款以鼓励新能源汽车政策。

中国美国商会希望中国在车辆报废和回收制度上能够进一步向国际规范看齐，同时统一车辆标准。希望在汽车燃油消耗，召回制度，修理、更换和退货等方面制定明确的规则并加强政府与行业间的沟通，这将有利于汽车行业的发展并最终造福中国消费者。

## 现存监管问题

### 监管透明度和协调问题

近年来中国为提高监管透明度方面取得了长足的进步，如公布政策草案公开征求意见。中国美国商会欢迎上述进展，并鼓励进一步提高透明度，特别是提高汽车政策的透明度。中国的汽车行业目前是管制程度最高的行业之一，因此在提升监管透明度方面有很大空间。目前中国对汽车行业的监管体系十分复杂且涉及多个中央和地方监管部门。各级监管部门存在重复监管和不一致的规定。尽管每个监管部门可能会考虑其他监管部门的意见，但是各个监管部门之间的沟通协调依然不足。

中国各汽车监管部门应该在界定和明确基本概念和要求、明确各自的监管职能和责任方面加强合作，从而提升监管效率和透明度。另外，此举将促进中国汽车行业的快速健康发展，提升中国汽车行业的全球竞争力。为了进一步提升中国政策制定的透明度，中国美国商会鼓励中国建立一套正式的汽车政策制定机制，通过这一机制公开立法计划，征求公众意见并在正式实施前做好充分准备。项目审批程序透明化将极大地惠及整个行业。

### 政府采购

中国美国商会对于中国政府取消政府采购中的自主创新要求，为内外资企业在华经营营造公平竞争环境的各项做法表示欢迎。可惜的是，在部分领域依然存在着未能严格落实上述做法的情况。

例如，新修订的政府公车采购要求（《党政机关公务用车选用车型目录管理细则》）就给希望进入副部级以下公务用车市场的汽车生产企业设置了新门槛。根据新规定，汽车制造商必须拥有申报车型的诸多“工业产权”，包括“申报车型产品改进及认可权、产品技术转让权及国内外市场销售权”。与之前的采购指南相比，这一版目录中增加了

For example, the newly revised requirements for government vehicle fleet procurement have set new thresholds for auto manufacturers wishing to sell vehicles to government officials below the vice minister level. Under the new guidelines, a vehicle manufacturer must hold a broad array of “industrial property rights” including “improvement and recognition rights, technology transfer rights and the right of sale in the domestic and overseas markets of the models” in the catalog. This is a new and more rigorous standard for IP ownership compared to previous procurement guidelines, introducing requirements that have no relationship to the manufacturer’s ability to make and service the vehicle.

In addition, the guidelines require that R&D spending shall be not less than 3 percent of the business operating revenue in the past two years within China. In February 2012 the Ministry of Industry and Information Technology (MIIT) released a draft catalog of vehicles available for government procurement under these guidelines, listing 412 vehicles, none of which were produced by joint ventures (JVs) with international original equipment manufacturers (OEMs).

AmCham China advises that the guidelines be revised to limit the qualifying criteria to attributes of the vehicle, not the vehicle manufacturer.

### *New Energy Vehicle (NEV) Policies*

China’s government strongly supports the development of NEVs, yet a number of separate interlocking policies benefit locally produced NEVs and limit full participation by FIEs. For example, NEV vehicle purchase incentives only apply to vehicles in the “MIIT Product Catalog.” Because vehicles imported to China appear in a separate catalogue, as a practical matter only locally produced NEVs qualify for these benefits. While both domestically produced and imported vehicles have the China Compulsory Certification (CCC) and are listed in the MEP emission catalog, the MIIT product catalog does not include imported vehicles.

Approval for domestic vehicle production requires the manufacturers to possess an understanding or “mastery” of one of the three key NEV systems: battery, engine, or transmission. Regrettably, foreign equity ownership of key automotive component manufacturing in China is limited to 50 percent. Furthermore, the NRDC-issued Catalogue for the Guidance of Foreign Investment Industries in 2011 requires that NEV energy battery manufacturers (batteries with an energy density greater than or equal to 110 Wh/kg and battery life greater than or equal to 2000 charge cycles) have no more than 50 percent foreign investment. No such requirements exist for other key NEV parts.

These policies run counter to China’s objective of encouraging NEV sales and use in China, and in certain instances also run counter to WTO rules.

AmCham China encourages the Chinese government to

adopt policies that support the sales and use of NEVs in China regardless of their manufacturer, and promote an equitable and non-discriminatory policy environment for FIEs and their JVs.

### *Fuel Consumption Regulation*

AmCham China supports the Chinese government’s policies on energy saving and emissions reduction. China’s initiatives to actively promote more stringent fuel consumption standards and regulations, such as the MIIT Phase 3 Standard for passenger car fuel consumption limits, are worthwhile. Automotive manufacturers are concerned, however, and hope that detailed management rules can be issued as soon as possible in order to facilitate OEM compliance. In terms of the Phase 4 (2016-2020) Standards development, AmCham China believes that the state-of-art auto industry energy-saving technologies and Phase 3 Standards implementation results should be fully considered. At the same time, OEMs need more flexibility in practice. Appropriate, realistic and scientific goals will further encourage the development of China’s automotive industry and also support China’s fuel consumption targets.

### *Automotive End of Life Policies*

China established its current End of Life Vehicles (ELV) policy with the NDRC’s Auto Recovery Technology Policy, issued on February 6, 2006, providing guidance for scrapping and recycling vehicles. Unfortunately, follow-up policies, standards and implementation details have yet to be issued seven years later.

AmCham China hopes these follow-up measures will be harmonized with relevant international regulations and standards to ensure compliance while avoiding unnecessary burdens on OEMs.

### *Standards Harmonization*

The automotive industry is a global industry with respect to the harmonization of standards and regulations, especially the global technical regulation (GTR) rulemaking process under the WP.29 framework, with China’s MIIT actively involved in the drafting of global regulations. AmCham China encourages China to take a more open approach to harmonizing global technical regulations, while avoiding redundant technical requirements, to reduce costs to consumers and accelerate the introduction of new products to the market. For additional information please see the Standards, Certification and Licensing chapter.

### *The Economic Cooperation Framework Agreement (ECFA)*

The Economic Cooperation Framework Agreement (ECFA) “early harvest” list of tariff concessions covers 539 Taiwanese products and 267 Chinese mainland goods. Under the agree-

对知识产权所有权的严格要求，而这些要求与汽车生产企业制造汽车并提供相关服务的能力并无关联。

另外，上述细则中要求申报《目录》的汽车生产企业近两年企业研究开发费用支出占主营业务收入的比例均不低于3%。2012年2月，工业和信息化部（工信部）发布了党政机关公务用车选车型目录草案，其中有412种车型上榜，但其中没有一种车型出自与国际原始设备制造商（OEM）组建的中外合资企业。

中国美国商会要求对上述细则进行修改，将资格条件限定在汽车性能本身，而非汽车生产企业。

### 新能源汽车政策

中国政府大力支持新能源汽车行业的发展，但很多支持政策都仅惠及国产新能源汽车，且限制相关外资企业的充分参与。比如，购买新能源汽车享受优惠条件仅适用于工信部发布的选车目录中列出的车型。由于进口汽车必须单独列为一类，在实践中往往只有中国国产的新能源汽车才可以申请相关优惠。虽然国产汽车和进口轿车同时拥有中国3C强制认证，也都列入了环境保护部排放目录，但工信部的选车目录却将进口汽车排除在外。

汽车生产企业要想获得国内汽车生产资格就必须至少掌握新能源汽车车载能源系统、驱动系统及控制系统三者之一的核心技术。遗憾的是，外资在中国汽车关键零部件生产企业的持股不得超过50%。另外，发改委在2011年发布的《外商投资产业指导目录》中要求新能源汽车的能量型动力电池（能量密度 $\geq 110\text{Wh/kg}$ ，循环寿命 $\geq 2000$ 次）生产企业的外资比例不得超过50%。而对新能源汽车其他关键零部件未作这类要求。

上述政策与中国确立的鼓励新能源汽车销售和使用的目标背道而驰，而且在某些情况下还违背了世界贸易组织规则。

中国美国商会鼓励中国制定实施对新能源汽车销售和使用的鼓励政策不以新能源生产企业类型作为适用条件，为外资汽车企业及其合营企业营造一个公平、非歧视性的政策环境。

### 燃料消耗法规

中国美国商会支持中国政府所制定的节能减排政策。中国政府制定并积极推广更为严格的燃料消耗标准和法规，比如工信部的《第三阶段乘用车燃料消耗量评价方法及指

标》中确立的乘用车燃料消耗限制等，这些都非常必要。但是汽车生产企业关注并希望能够尽快出台相关管理细则，便于OEM厂商的合规经营。在第四阶段（2016–2020）标准开发方面，中国美国商会认为应当充分吸收最先进的汽车节能技术以及第三阶段标准的实施结果。与此同时，对OEM厂商的监管应当更为灵活。恰当、务实且科学的目标将进一步促进中国汽车行业的发展，同时有助于中国实现燃料消耗目标。

### 汽车报废政策

2006年2月6日，发改委制定发布了《汽车产品回收利用技术政策》，确立了现行汽车报废政策，为汽车报废和回收提供指导。遗憾的是，之后的七年里中国却一直没有为此制定后续政策、标准和实施细则。

中国美国商会希望中国在制定后续措施时，能够与相关国际规则 and 标准保持一致，同时避免给OEM厂商增加不必要的负担。

### 标准协调

汽车行业在标准和法规协调方面是一个全球化的行业，特别是在WP.29框架下的全球技术法规（GTR）立法程序更加促进了全球化进程，中国工信部也积极参与全球法规制定过程。中国美国商会希望中国能够更加开放地借鉴采用全球技术法规，同时也避免不必要的技术要求，在降低消费者成本的同时，缩短新产品市场投放周期。详情请参阅《标准、认证和许可》一章。

### 海峡两岸经济合作框架协议（ECFA）

海峡两岸经济合作框架协议分别将539项台湾产品和267项大陆产品纳入到关税减让“早期收获”产品清单。根据该协议，大陆将向台湾开放包括银行、证券、保险、医院和会计行业在内的11个服务行业，同时台湾也将对大陆开放包括银行和娱乐业在内的7个行业。

然而，汽车行业的开放却仅限于部分零部件。中国美国商会鼓励在ECFA框架下的关税减让能够增加零部件种类，或者将装配产品也纳入其中。上述举措将提升地区成本竞争力以及高质量供应商基础能力，从而促进两岸汽车行业的发展和长期合作。

ment, mainland markets will also open in 11 service sectors including banking, securities, insurance, hospitals and accounting, while Taiwan will offer wider access in seven areas, including banking and entertainment.

However, the automotive sector is limited to certain components. AmCham China encourages additional components or even assembled goods be covered by the ECFA framework on tariff reduction. Such moves would spur growth in regional cost competitiveness and high-quality supplier base capabilities, which will help both industries' development and long-term cross-strait cooperation.

## Recent Developments

### *Repair, Replacement & Return Regulation*

China's "3R" Provision was released on January 15, 2013 and will be effective from October 1, 2013. It describes the responsibilities and obligations of consumers, manufacturers, importers, distributors, repair firms, Chinese quality and technical supervision departments and other relevant parties. As OEMs have differing opinions on the content of the 3R Provision, and conflicts are likely in future implementation, AmCham China suggests that lines of communication between the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and OEMs be kept open, and hopes that the relevant authorities will further consider industry opinions in implementing the 3R provision.

### *Recall*

AmCham China members are committed to providing high-quality automotive products to Chinese consumers, and supporting the efforts of the Chinese government to protect consumer interests and promote automotive product quality.

Drafted by AQSIQ, approved by the State Council, and effective since January 1, 2013, the Defective Auto Product Recall Management Rules will protect consumer interests. AmCham China welcomes initiatives to protect these interests, including the Recall Rules. However, the implementation details of the Recall Rules require further clarification. AmCham China also suggests that the recall process be standardized, including the establishment of a communication mechanism between authorities and OEMs to effectively promote recalls.

## Conclusions

Increased inter-agency coordination and a formal automotive policy development mechanism that allows for public comment will improve efficiency and transparency. AmCham China welcomes the removal of indigenous innovation policies that block imported vehicles from government procure-

ment, and hopes that similar policies on industrial property rights and new energy vehicles will also be removed. China can hasten the development of the automotive industry by following international guidelines for scrapping and recycling vehicles, the harmonization of vehicle standards, and remanufacturing. Clear rules and enhanced agency-industry communication regarding fuel consumption, recalls, and the repair, replacement and return of vehicles will help China protect its consumer interests. AmCham China believes that these measures would be mutually beneficial to China and its trade partners in improving the development and global competitiveness of the Chinese automotive industry.

## Recommendations

- Issue detailed management rules for Phase 3 Standard of passenger car fuel consumption limits as soon as possible in order to facilitate compliance.
- Establish a formal automotive policy development mechanism to publically share proposals, seek legitimate comments, and provide adequate lead time prior to implementation.
- Ensure that NEV policies do not discriminate based on manufacturer or location.
- Establish a formal, transparent process for project approvals.
- Further standardize recall process, and establish a communication mechanism between authorities and OEMs to promote recalls.
- Revise government procurement guidelines to limit the qualifying criteria to attributes of the vehicle, not the vehicle manufacturer.

## 最新进展

### 修理、更换和退货法规

2013年1月15日，中国颁布了《家用汽车产品修理、更换、退货责任规定》（“三包规定”），这一新规定将于2013年10月1日起实施。新规定中规定了消费者、生产者、进口商、经销商、修理商、中国质量和技术检验监督部门以及相关主体的义务和责任。鉴于OEM厂商对上述三包规定的内容持有异议，未来实施中也很可能出现冲突，因此中国美国商会建议国家质量监督检验检疫总局和OEM厂商之间应当保持沟通，并希望相关部门在实施上述新规定的过程中，能够进一步考虑行业意见。

### 召回

中国美国商会的会员企业一直致力于为中国消费者提供高质量的汽车产品，支持中国政府保护消费者权益和提高汽车质量水平。

由质检总局起草、经国务院批准的《缺陷汽车产品召回管理条例》已于2013年1月1日起生效实施。该条例旨在保护消费者权益。中国美国商会欢迎中国制定上述召回条例、保护消费者权益的做法。但中国还需要进一步细化上述召回条例的实施细则。中国美国商会也建议实现召回程序的标准化，包括建立相关政府部门和OEM厂商的沟通机制，从而更有效地实施召回制度。

## 结论

加强相关政府部门之间的协调，建立正式的汽车政策开发机制并公开征求意见，将有助于提升效率和透明度。中国美国商会欢迎中国政府取消政府采购政策中自主创新要求、阻碍进口汽车进入政府采购市场的条款，并且希望在工业产权领域也能制定类似政策，同时取消新能源汽车的相关限制。中国可以通过引入汽车报废回收、汽车标准协调和汽车翻新的国际规则，加速中国汽车行业的发展。制定明确的燃料消耗、召回以及汽车修理、更换和退货规则，并加强政府和行业在上述领域的沟通协调，将有助于中国保护消费者权益。中国美国商会认为上述措施将促进中国汽车行业的发展，提升中国汽车行业的全球竞争力，实现中国和贸易伙伴利益的双赢。

## 建议

- 尽快出台第三阶段标准中乘用车燃料消耗限制管理细则，便于相关主体遵守。
- 建立一个正式的汽车政策制定机制，便于公开计划、征求意见以及在正式实施前进行充分宣传。
- 确保新能源汽车政策不会造成厂商歧视和地域歧视。
- 建立一个正式、透明的项目审批程序。
- 继续推进召回程序标准化，包括建立一个政府和OEM厂商之间的沟通机制。
- 修改政府采购规则，将资格标准限定在汽车性能本身，而非车辆生产企业。

# 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 11<sup>th</sup> Five-Year Plan as a priority industry for development, the sector continues to receive support and sustained focus under the 12<sup>th</sup> 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 for economic growth. By strengthening China's capabilities in terms of 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, current policies that 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 business cases 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.

Addressing these issues will help the market to build an increasingly credible reputation for high-quality outsourcing services. This will support the achievement of the targets recently released in the Outline of Development Plan for China's International Service Outsourcing Industry (2011-2015), jointly issued by China's National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM). These targets include over 40 percent revenue growth per annum from offshore outsourcing projects alone, reaching in excess of US \$85 billion by 2015, representing 28 percent of China's service trade exports.

## Ongoing Regulatory 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 expands market options. However, the rapid rise in options has also created challenges related to market fragmentation and lack of uniformity.

The Model Cities operate in de facto competition with one another and have 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 costs 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 bureaucratic and

# 业务流程外包

## 引言

**过** 去十年里，服务外包产业的发展受益于中国政府对此产业不断增加的支持力度。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发展的政策导向。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日渐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。中国美国商会了解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，随着近年来市场的发展，服务外包供应商所共同面临的一系列关键性挑战越来越严重地阻碍着该产业的发展。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，目前相关政策却缺乏灵活性，限制外资企业的发展，抑制了其对外包产业的投资动力。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，从而加快改善包括知识储备、管理经验和服务质量等业务流程外包服务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，从而加大投资造成了严峻的挑战。而该市场高度分割化、买方需求有限、人才匮乏以及成本过高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。

解决这些问题将有助于市场赢得并持续增加其高质量外包服务的信誉，将有助于推进国家发展和改革委员会和商务部近期联合发布的《中国国际服务外包产业发展规划纲要（2011-2015）》中目标的实现。这些目标包括承接离岸外包业务执行额年均增幅保持 40% 左右，2015 年达到 850 亿美元，使其占中国服务贸易出口额比重达到 28%。

## 现存监管问题

### 政策、地域以及市场分割

中国政府创建“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了与市场分割和缺乏统一性相关的挑战。

为吸引业务，各示范城市之间实际上在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，确定开展经营的合适地点。另外，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时的审批和行政负担。

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言，并凭借此类组织的营销力量，促进中国服务外包产业市场的拓展。

administrative burden to businesses seeking to expand.

China could look to India as a model for success, where the early formation of an industry-wide trade body and chamber of commerce allowed for the industry to have a unified voice. Known as the National Association of Software and Services Companies (NASSCOM), the organization serves both domestic and multinational enterprises and 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 in markets elsewhere.

Added to this overall geographical and promotional fragmentation is the additional challenge for outsourcing buyers in identifying suitable providers from among the thousands of newly established outsourcing companies. As an emerging market, dynamic growth in the number of new businesses is inevitable and welcome, but ultimately industry consolidation would support the emergence of industry leaders offering high-quality services and at the same time build a solid reputation for China in terms of industry capability.

### *Incentive Timeframe Limitations*

Tax and other financial incentives offered by the Chinese government to cultivate the growth of the outsourcing industry are notably shorter in timeframe than those in other countries seeking to attract outsourcing business. Indeed certain preferential tax policies established in 2009 for service outsourcing companies are due to expire in 2013. Again using India as an example, the various tax incentives and other favorable policies issued by India have typically been 10 to 15 years in length, giving companies entering the market a stable and clear landscape for financial and strategic planning.

AmCham China understands 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 and 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 between 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 NDRC and MOFCOM, defines outsourcing as an "encouraged" sector. Its definition covers businesses engaged in "information technology and business flow outsourcing services such 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 government agencies to be engaged 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 meeting the criteria.

This complexity and effort 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 greatly in recent years, the reality is 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, participants in the Chinese market need to remain vigilant in continuing to address key concerns, including:

除了上述在地域和推广促进方面出现分割外，服务外包采购商面临的另一大问题是如何在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面貌是不可避免的。但是，最终唯有实现行业整合才能让提供高质量服务的领头企业脱颖而出，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限明显短于其他国家出台类似激励措施的有效期限。事实上，2009年出台的某些面向服务外包企业的优惠税收政策在2013年底即将到期。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限一般都在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的政策环境，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限较短（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，也会成为跨国企业供应商比较中国和其他备选国投资机会过程中的不利因素。中国美国商会建议中国依照其他国家的做法，将税收和财务激励政策的有效期限至少延长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，公司还必须面临各部委政策和业务分类时有矛盾的情况。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，又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，导致他们迟迟无法享受达到要求的公司可享有的

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复杂、难办。尽管目前的环境能够使企业根据各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、减少行政程序则更有利发展。

中国美国商会建议建立一家中央级认定机构或设立统一程序，加强各地方政府间在许可、认证和优惠待遇申请的处理方面的协作，促进政策有效实施。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

近几年，中国作为离岸服务外包目的地已经逐步得到更多的认可，但有些方面仍存在着负面的评价，比如服务意识淡薄以及能力强的合格供应商数量有限，这些都是需要改进的方面。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关键问题：

- 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；
- 高级人力资源和管理技能缺乏，且获得上述技能人才的成本越来越高；
- 知识产权执法认识度不够；
- 需要一个更先进的数据安全体系，提高对外资供应商数据托管管理法规的灵活度；
- 对于复杂的外汇管理体系的负面看法；以及
- 劳动法规体系缺乏灵活性，不能满足外包行业的需求。

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，中国作为可靠的服务外包目的地吸引投资的能力将受到影响。

- The need for the ongoing government 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 that will tackle these disadvantages. 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 recently released policies support and subsidize the attraction and talent training needs of the industry, both outsourcing and shared services organizations continue to face challenges in these and other related areas. A talent bottleneck crisis is currently challenging many businesses, both foreign- and domestic-invested, threatening the rapid and healthy growth of the industry. A shortage of appropriately skilled management 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 institute partnerships and internships, international training initiatives, management trainee training programs, and candidate relocation campaigns and incentives.

### ***Barriers to the Domestic Market for Multinational Corporations (MNCs)***

To succeed, outsourcing companies rely on scale and volume across multiple clients and projects, creating an efficient cost structure and justifying ongoing investment. China's outsourcing capability is still perceived to be relatively immature and 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 domestic

market acceptance of the outsourcing model. Currently the domestic market offers huge potential, but this market remains relatively untapped and reluctant to trust or engage with service providers. The gradual recognition of the business benefits of outsourcing is expected to take many years. To ensure progress, active government encouragement of the sector will remain essential.

However, multinational service providers are extremely discouraged by government procurement (GP) policies that 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 capabilities, 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 experiences fostered in the market by MNCs inevitably 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 advancement in building the resource, management, and operational expertise to deliver proven outsourcing capabilities. This would in turn improve 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

## 吸引、培养及管理人才的挑战

尽管中国最近出台了一系列政策，以扶植和补贴服务外包产业吸引及培训人才的需要，但无论是服务外包企业还是共享服务企业，在上述及相关领域仍面临着挑战。目前，许多外资与中资企业遭遇的人才瓶颈直接危及到整个行业快速健康的发展。缺乏具备适当技能的管理人员及大学毕业生、缺少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，例如：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

为了获得成功，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，其外包服务的采购基本依靠少数跨国公司引导，且项目规模相对较小。

建立健康可持续发展的服务外包市场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。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，企业普遍不愿信任服务供应商，或者不愿意与服务供应商合作。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，政府给予该产业积极鼓励将是至关重要的。

然而，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，这令人十分失望。中国现行的政府采购政策偏向国内企业，并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的目的地。政府和国有企业代表潜在的大规模外包服务的重要市场，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入，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，同时按照严格的商业条款

兑现中国加入世界贸易组织《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，吸引了很多大规模的外国投资。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，必将同样有助于迅速构建资源、管理和运营技能，打造提供优质外包服务所必备的各项能力。这将帮助中国进一步提高其国家声誉，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，并且在全球的其它市场中均已经失败。

2010 年 4 月，国务院宣布对部分外资呼叫中心取消合资规定的限制，但条件是外商呼叫中心须在 21 个示范城市运营，并且其服务全部面向中国境外客户。中国美国商会赞赏此举提高了涉及呼叫中心服务供应商相关政策的灵活度，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，中国具备外语能力的人力资源相对有限，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大可行。但在中国设立面向周边邻国提供离岸支持服务的呼叫中心却非常合适，如大连市作为为韩国和日本客户提供离岸服务的基地取得了成功，但服务供应商依然担心业务扩展空间的问题。

Business License issued by the 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 again, 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 providing human resource outsourcing (HRO) services in China are subject to a range of restrictions. This sector has the oversight of a multitude of 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 directly conflicting in scope and direction for foreign-invested companies. Without a single coordination point within government or a sanctioned trade body, obtaining approvals and disseminating new regulations and policies that may override those of other ministries is proving a barrier to success and growth.

HRO companies are seeing an evolving market need for value-added integrated human resources (HR) services for both recruiting and retaining talent, cutting costs, managing the broad and complex range of HR services, adhering to labor regulations, as well as 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 in 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.

## **Recent Developments**

### ***1,000-100-10 Project***

In 2006, 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 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 these efforts by the government, China now boasts over 18,000 registered outsourcing service providers, revenue growth from US \$13.8 billion in 2009 to over US \$40 billion in 2012, and the approval of 21 cities as "Model Cities for Service Outsourcing."

## **Conclusion**

The Chinese government has made ongoing efforts to develop the outsourcing industry in China. The significant investment in creating customized policies, subsidies, incen-

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。缺乏单一的政府协调部门或是经授权的行业协会统一负责行政审批，传达对其他相关各部委均有效力的新的法规和政策造成了跨国企业在华成功与发展的障碍。

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，从而为提升中国高附加值、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，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。

## 最新进展

### “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，并在金融、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。在政府上述努力的推动下，中国目前注册登记的服務外包供应商已超过1.8万家，合同执行金额从2009年的138亿美元增长到2012年的400亿美元，同时已有21个城市被批准成为“服务外包示范城市”。

## 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的地的地位在不断提高。

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，能够大力支持中国实现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增强外界对中国服务外包的能力和质量的信心。

tives, 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.

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 that allow flexible operating models. MNCs are confident that they can greatly support China's strategic objectives of knowledge and best practice sharing through the inevitable cross-fertilization of resources and knowledge between multinational and domestic enterprises.

Multinational providers' investments will only increase within 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 strengthened confidence in China's outsourcing service capabilities and quality.

## Recommendations

- **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.**
- 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, in order 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 that foreign-owned call center operators enter into a JV with no more than 50 percent of the JV's registered capital if providing services to domestic customers.

## 建议

- 设立一个由政府认可的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提供商代言。
- 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

**A**mCham China commends the Chinese government for its efforts to develop a healthy and sustainable civil aviation sector. Strong economic growth, increased trade, rising personal incomes, and progress in market liberalization have driven growth in the sector.

In July 2012, the “State Council Opinions on Promoting Civil Aviation Development” was released. This important document sets several key development targets for the industry including a transport growth rate of 12.2 percent for 2011-2020, an improved accident rate, general aviation growth of 19 percent, and increased access to air services for more of the population.

China is well on its way to achieving its goal of transforming from a “large aviation nation” to a “powerful aviation nation.” China’s top three airlines are now among the world’s top 15 carriers, while none were listed in 2000. Beijing Capital International Airport is set to become the world’s busiest airport in 2013. By 2015 China is expected to add 82 new airports and expand 101 existing ones. Boeing’s Current Market Outlook forecasts that China’s airlines will add over 5,200 new airplanes valued at US \$670 billion between 2012 and 2031. This expansion provides significant opportunities for airplane sales and airport design and construction, as well as in the rapidly emerging general aviation (GA) sector where experienced US GA companies have much to offer. 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.

Meaningful cooperation between the US and Chinese governments on aviation is necessary to realize these business opportunities. The US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) continue to enjoy a close, mutually beneficial partnership that has benefited both sides for many years. AmCham China’s 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.

## Ongoing Regulatory 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.

The surge in air traffic has significantly increased demands on the country’s large and complex airspace system. 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 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.

# 民用航空

## 引言

**中** 国美国商会对中国政府发展健康和可持续的民用航空业所做的努力表示赞赏。经济的强劲增长、贸易和居民收入水平的提高以及市场化进程的加快都推动了民航业的快速增长。

2012年7月,《国务院关于促进民用航空业发展的若干意见》发布。这份重要的文件确立了民用航空业几大重点发展目标,其中包括计划2011到2020年运输量增长12.2%,降低事故率,通用航空业增长19%以及让更多人享受航空服务。

中国目前正在努力实现从一个“航空大国”向“航空强国”转变。中国最大的三家航空公司目前已跻身全球前15大航空公司之列,而在2000年时却还没有一家上榜。2013年,北京首都国际机场有望成为全球最繁忙的机场。预计到2015年,中国将新建机场82座,并扩建101座现有机场。波音公司的《当前市场瞭望》预计,2012-2031年间中国各航空公司将购入5200多架新飞机,总价值超过6700亿美元。这种扩张态势不仅为飞机销售和机场设计建设行业,同时也为正在快速发展的通用航空业及具备丰富经验的美国通用航空领域的公司提供了巨大的商机。另外,中国也继续融入并成为各种航空产品和服务全球供应链中快速成长的一部分,并且在进军商用大飞机制造市场方面取得了长足的进步。

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(中国民航局)多年来一直保持着密切、互利的合作关系。所属中国美国商会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的健康可持续发展的制约

因素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。

## 现存监管问题

### 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影响的最根本需要。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。

空中交通的快速发展已经大大地增加了对中国庞大而复杂的空域系统的需求。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。这些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%多的空域由军方控制)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计划,既要增加空域使用率和机场运力,又要预估和满足未来需求。

### 增加民用空域,扩大容量

增加民用空域的数量以及增强运营程序的灵活性是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内容。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《关于深化我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方面迈出的出色的第一步。中国美国商会希望低空空域改革也能够带动中、高空空域的改革。

The State Council and Central Military Commission's "Guidelines for Management Reform of Low-Altitude Airspace" are a good first step toward better utilization of airspace resources. AmCham China hopes that this low-altitude reform will lead to reform of mid- and upper-altitude airspace as well.

One best practice of other International Civil Aviation Organization (ICAO) member states is to co-locate military and civilian controllers and share flight information data between them. This is reportedly under active consideration by the leadership of the SATCC, and AmCham China encourages acceleration of this initiative.

### 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 a 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. AmCham China also strongly encourages the opening of new entry and exit air routes at China's borders (similar to the Olympic Bypass B208 opened in 2008).

### *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 equally benefit Chinese airlines.

#### Flight Slots Utilization

China's major hub airports, including Beijing, Shanghai and Guangzhou are slot-constrained. Optimizing slot utilization will be necessary to meet the growth and efficiency targets set by the State Council. During 2012, the CAAC made improvements in several areas: increasing airport capacity, opening new and flexible flight paths, and introducing online slot monitoring. US airlines commend CAAC's efforts to strengthen the slot allocation process and recommend the following steps for further improvements:

- Evaluate airport capacity for potential expansion based on anticipated future demand.
- Continue to improve and optimize slot allocation procedures and slot utilization in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines.
- Consider extending airport operational hours at key slot-constrained airports to add capacity without the need for additional facilities. Limitations on daily operations, which do not take into account actual use patterns,

should be eased or eliminated to encourage more use of off-peak hours

### 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. The lack of practical Customs procedures to allow goods in-bond to flow through China's gateway airports in realistic aviation time-frames will hamper the growth of international air cargo to China's central and western regions.

### Jet Fuel

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 reduce prices to global market levels and benefit all airlines, Chinese and foreign alike.

### *General and Regional Aviation*

General Aviation (GA) includes all aviation except military and scheduled commercial carriers. It includes private aircraft operated by individuals and corporate flight departments, charter/air taxi on-demand commercial operations, air tourism, civil helicopter aerial work, and disaster relief/aeromedical transportation.

In the 12<sup>th</sup> Five-Year Plan (2011-2015) for China Aviation Development, the Chinese government formalized its commitment to develop a substantial GA sector capable of making major contributions to economic and social development in China. This plan recognizes that GA growth depends heavily on Chinese government action to improve the physical and policy infrastructure for safe, high capacity

国际民用航空组织（ICAO）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。据报道，国家空管委领导层正在积极考虑这一事宜，中国美国商会鼓励相关部门加速推进这一工作。

### **提高空域使用效率和运营灵活度**

其他改进也将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）系统来调节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度。中国美国商会也强烈鼓励在中国开辟新的空域进出航路（类似 2008 年开辟的奥运 B208 支线）。

### **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，其中很多也将使中国各航空公司受益。

### **航班起降时刻的使用**

中国主要的枢纽机场，包括北京、上海和广州的机场都面临起降时段有限的问题。优化起降时刻分配调度是实现国务院提出的增长和效率目标的必由之路。2012 年，中国民航局在如下领域取得了进步：提高机场运力，开设全新且具备灵活性的起降跑道，并引入起降时间分配在线监督系统。美国航空公司赞赏民航局为优化起降时间分配流程所做出的努力，同时还建议采取以下步骤以进一步优化分配流程：

- 基于对未来需求的预期，对机场扩容的潜能进行评估。
- 根据国际航空运输协会（IATA）制定的《全球起降时刻指南》，继续改善和优化起降时段分配程序和起降时刻的使用。
- 考虑在起降时刻非常紧张的机场适当延长机场运营时间，在不增加设施的基础上提高运力。应当放松或取消那些没有考虑实际使用状况的日常运营限制，鼓励使用非高峰时段。

### **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更加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，国际物流产业将发挥日益重要的作用。但繁琐的海关通关程序和较低的处理效率一直阻碍着中国现代物流产业的发展。例如，在中国的机场，货运航班的起降时间在分配上没有或很少得到优先安排，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服务的出口行业中中国和国际客户的业务发展，同时也削弱了中国在国际运输产业链上的竞争力。由于没有实用的海关程序使保税货物能在现实的航空时间框架内通过中国的门户机场，中国中西部地区的国际航空货运业的发展将受到阻碍。

### **航空燃油**

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价格降至国际市场水平，从而使全体中外航空公司受益。

### **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。包括个人和企业航空部门运营的私人飞机、包机/空中计程商用航空业务、空中游览飞机、民用直升机、救灾飞机和航空医疗运输机。

在《中国民用航空发展“十二五”规划（2011-2015）》中，中国政府提出了大力开发通用航空业，为中国经济和社会发展做出重大贡献的目标。上述规划中指明通用航空业的发展非常依赖中国经济和政策支持，以实现通用航空业安全、高效、规模经营的目标。包括提高空域和机场使用效率，改善通用航空机场设施，建立提供航班规划支持的航班服务站，加强通用航空维护服务和航空燃料运输设施建设，改善空中交通管制程序。中国美国商会将一如既往地对上述措施予以支持。

2012 年，美中航空合作项目提出了一系列建议，支持上述规划：

- 改革低空空域设计，包括为通用航空发展分配更多空域，提高通用航空业飞行高度上限，保障小飞机安全、高效、舒适的运营。

and efficient GA operations. It includes improvements in airspace and airport access, better GA airports, flight service stations for flight planning support, more maintenance services and jet fuel delivery facilities for GA, and improved air traffic control procedures. AmCham China continues to support these actions.

In 2012, the ACP developed a series of recommendations to support these initiatives:

- Reform Low-Altitude Airspace design, including more airspace for GA and a higher maximum altitude for GA, to enable safe, efficient and comfortable operations of small aircraft.
- Improve the Flight Service Station (FSS) system to provide weather and other flight planning information and filing services over the internet.
- Develop GA airports, improve GA access to commercial airports, and support Fixed Base Operators (FBOs) with standards for fueling and maintenance facilities, and all other functions of FBOs.
- Differentiate safety regulations between GA and air carriers and between various types of GA to accurately match the mitigation of safety risk to the cost of regulation.
- Differentiate economic regulation between GA and commercial air carriers and between various types of GA, recognizing the inverse relationship between cost to GA operators and the volume of GA operations.
- As business aviation grows, facilitate the use of foreign pilots by business aviation operators and take steps to train more pilots and mechanics for business aviation.

### **Airports**

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 efficient 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.

China is now planning for more second airports, as both Beijing and Chengdu will be joining Shanghai as dual-airport cities. Expansion of existing airports continues as well, with many airports planning for additional runways and terminal expansions. CAAC should consider that in some cases, expanding existing airports may be more sustainable than the alternative of duplicating facilities within the same region.

Where second airports are the appropriate development choice, care must be taken to plan comprehensively for the addition of GA operations in a way that does not negatively

impact the increasing demand for commercial operations, so that both can expand without conflict.

Continued collaboration between CAAC and ACP could also help improve the operation of China's international gateway airports to become more efficient international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as true hub airports is a high priority for US air carriers. China should develop policies that facilitate timely transfers of cargo and passengers as well as streamlined baggage clearance. This could help both China and the US compete with other regional airlines and airports to capture an even larger share of Pacific Rim passengers and flights.

### ***Easing JV 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 C919 now being developed by the Commercial Aircraft Corporation of China (COMAC). 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 (implicitly or explicitly) to transfer such IP to their JV partners. 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 the rapid growth of the industry. Key CAAC departments in charge of safety, capacity, and efficiency are significantly understaffed

- 改进飞行服务站 (FSS) 系统, 提供天气和其他飞行计划信息, 实现网上提交服务申请。
- 开发建设通用航空机场, 提高通用航空对商用机场的使用率, 支持固定基地运营商 (FBO) 建设, 制定 FBO 燃油和维护设施以及其他服务标准。
- 区分通用航空和航空公司的安全监管, 并区分各类通用航空的安全监管, 从而有针对性地降低安全风险。
- 在承认通用航空运营成本与通用航空运营量之间存在负相关关系的前提下, 区分通用航空和航空公司的经济监管, 并区分各类通用航空的经济监管。
- 随着商务航空业的发展, 为商务航空运营商雇佣外籍飞行员提供便利条件, 并逐步培训更多商务航空飞行员和机械工程师。

## 机场

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, 扩建有机场的同时, 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。

中国目前正在规划建设更多的第二机场, 北京和成都将成为继上海后拥有两座机场的城市。除了新建机场外, 还包括扩建有机场, 如很多机场计划修建新跑道, 扩建航站楼。中国民用航空局应该考虑, 在某些情形下, 扩建有机场可能比在同一地区再建一个机场更利于可持续发展。

如果兴建第二机场对发展更为有利, 在规划时也应该综合考虑通用航空和商业航空的需求, 确保二者能够并行不停地顺畅经营。

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, 使之成为更有效率的国际国内航运枢纽。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。中国应当制定相关政策, 确保货运和旅客的及时中转, 同时简化行李通关程序。此举将有助于中美两国的航运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。

## 放宽民用飞机项目合资要求和税收政策

外资企业需要与指定的中国合作伙伴组建合资公司, 方能取得参与国内飞机项目的资格, 比如目前正在由中国商用飞机有限责任公司开发的 C919 项目。上述合资要求可能会不符合中国人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, 则会被 (暗示或明示) 要求转让那些属于企业核心竞争力以及利润之源的知识产权。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, 如免除非经常性支付预扣税, 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结构, 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, 这对中国所保持的优异安全记录造成潜在风险, 也对对中国民用航空业的可持续发展形成了限制。尽管该行业迅猛发展, 编制限制从 1998 年至今却一直未有改变。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。与此相比, 美国联邦航空局总部工作人员则有约 4000 名, 事实上, 中国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不属于美国联邦航空局。

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, 中国民航局未能增加充足的人力来按时完成对维护、修理和维修单位 (MRO)、型号认证 (VTC)、补充型号认证 (VSTC) 以及授权制造的检查工作。

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, 审查并相应地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。

compared to staffing levels at other aviation regulators around the world. By comparison, FAA headquarters have approximately 4,000 employees, despite the fact that CAAC also performs airline economic regulatory functions that are not part of the FAA's responsibilities.

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 added sufficient manpower to conduct inspections of Maintenance, Repair, and Overhaul (MRO) facilities, Validated Type Certificate (VTC) and Validated Supplemental Type Certificate (VSTC) approvals, or production authority in a timely manner.

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 accordingly. AmCham China and ACP stand ready to assist in this effort.

### ***Increase Safety, Capacity, and Efficiency through Scientific Development Principles***

Capacity and efficiency of air traffic control (ATC), airline, and airport operations are significantly higher in the US than in China. Safety is equally good in both countries but advancements in safety originating in the west can further strengthen China's safety culture.

There is clearly a strong need in China to improve system capacity and efficiency. In the US, safety, capacity, and efficiency are all measured, motivated, and rewarded throughout the system whereas, the focus in China is mainly on safety with little motivation or reward for considering capacity and efficiency. AmCham China encourages the CAAC to explore reforms that balance all three attributes.

Advancements in safety have centered around development of "open" safety cultures in contrast with a punishment-based approach. In the US and other western countries, safety is actually enhanced by avoiding punishment for inadvertent mistakes that don't cause accidents. Programs exist at airlines, airports and ATC facilities to encourage people who make mistakes to voluntarily report these instances. In many cases, such reports can be submitted anonymously. This results in a valuable database that can then be used to implement corrective actions to fix problems before an accident happens. The promise of immunity from punishment leads to a high volume of such reports in the west, while the threat of punishment discourages such voluntary reporting in China.

AmCham China recommends that the US aviation community work together with their Chinese counterparts to study this issue in a scientific way to identify appropriate reforms that can work effectively in China to increase safety as well as capacity and efficiency.

## **Recent Developments**

### ***State Council Guidance for Civil Aviation***

In a major development, the "State Council Opinions on Promoting Civil Aviation Development" was released in July 2012. This was the first time that the State Council has issued guidance for civil aviation and the document represents a comprehensive blueprint for the future that all relevant stakeholders can look to for establishing priorities. AmCham China is pleased to note that the document reflects many of the same priorities that have been highlighted in past White Papers signifying close alignment between the US aviation industry and the Chinese government. AmCham China member companies strongly support the tasks and policies outlined by the State Council and look forward to exploring ways to strengthen cooperation with this document as the framework.

### ***Global Distribution System (GDS) Reform***

AmCham China commends China's decision to relax its regulation to allow foreign global distribution systems (GDSs) to assist Chinese travel agents to issue tickets for international flights. This issue was highlighted in previous AmCham China White Papers. Prior to 2012, only one non-Chinese GDS (TravelSky) was allowed to operate in the Chinese market. Allowing more foreign GDS providers to operate in China will increase choices for consumers and improve service for both passengers and airlines.

### ***General Aviation Policies***

In late 2012, the Chinese government published two regulations favorable to GA growth. CAAC and the Ministry of Finance jointly published "The Tentative Method on General Aviation Operation Subsidy Management" and the CAAC released "The Tentative Method on General Aviation Aircraft Importation". AmCham China views these new regulations as positive progress which will spur GA growth and reduce the time needed to obtain aircraft import permits. AmCham China encourages prompt implementation of these policies by CAAC's regional authorities.

The high import duty (6 percent) and VAT (17 percent) imposed on GA aircraft sales have been a significant constraint on GA and business development in China. A draft proposal to further levy a consumption tax for business jets would further discourage business aviation development, contrary to the State Council's guidance. AmCham China recommends reduction of the import duty and VAT taxes to a level consistent with that imposed on transport aircraft, which is closer to 5 percent, and dropping the proposed consumption tax.

## 按照科学发展原则提升安全、运力和效能

美国在空中交通管制、航空公司和机场运营的运力和效率方面显著高于中国。尽管两国安全水平相当，但西方在安全运营方面的率先发展能够进一步推进中国安全文化的进步。

中国明显亟需加强系统的运力和效率。美国已经建立一套完整的体系，通过评估、激励和奖励等方法来提升安全、运力和效率。而中国主要关注安全问题，基本没有通过激励或奖励等手段来提升运力和效率的做法。中国美国商会鼓励中国民航局深化改革，全面提升安全、运力和效率。

民航安全运营方面的领先发展主要围绕营造“公开”的安全文化，而不是惩罚型监管方式。在美国和其他西方国家，安全实际上是通过避免处罚那些没有造成严重后果的疏忽过失而得以提升的。他们通过在航空公司、机场以及空中交通管制设施内部建立相关制度，鼓励犯错者主动报告失误行为。很多情况下犯错者可以匿名提交失误报告。这样便形成了一个极有价值的数据库，有助于及时纠正错误行为，避免事故的发生。西方国家这种免于处罚的承诺有助于形成大样本报告数据库，而中国的惩罚制度却不利于建立这种自愿报告制度。

中国美国商会建议美国航空业与中国同行通力合作，科学地研究上述问题，确立适当的改革方案，切实提高中国航空业的安全及运力和效率。

## 最新进展

### 国务院颁布促进民航业发展的若干意见

2012年7月，《国务院关于促进民用航空业发展的若干意见》发布。这是一项重大进展，是国务院首次颁布有关民航业发展的指导性文件。该文件规划了民航业的全面发展蓝图，各利益相关方均能参鉴这份文件确立业务重点。中国美国商会很高兴地注意到这份文件中规划的发展重点与往年《白皮书》中强调的重点完全吻合。这反映了美国航空业和中国政府之间的密切联系。中国美国商会的会员企业十分支持国务院制定的政策和任务，并且期待着以此文件为指导框架，进一步探索加强合作的渠道和方法。

### 全球分销系统（GDS）改革

中国美国商会赞赏中国决定放松管制，允许外国全球分销系统帮助中国旅行社进行国际航班机票出票的做法。

这一问题在往年的中国美国商会白皮书中也曾作为重点问题列出。2012年前，只有一家非中资全球分销系统（信天游）可以在中国市场上开展业务经营。允许更多的外资全球分销系统在华经营将为消费者提供更多选择，同时改善为乘客和航空公司提供的服务。

## 通用航空政策

2012年下半年，中国政府制定颁布了两部推动通用航空发展的法律。中国民航局和财政部联合制定发布了《通用航空发展专项资金管理暂行办法》，中国民航局还修订发布了《引进进口通用航空飞行器管理暂行办法》。中国美国商会认为这两部法规必将对通用航空业的发展起到积极的推动作用，并将缩短取得航空器进口许可证的时间。中国美国商会鼓励地方各级民航管理部门尽快落实上述政策。

对通用航空飞行器销售征收高额的进口关税（6%）和增值税（17%），已经成为中国通用航空和业务发展的一个重大障碍。而在此基础上对商务机再征收消费税的计划，将进一步抑制商务航空的发展，同时也有悖于国务院发布的指导意见。中国美国商会建议削减进口关税和增值税税率，使其与运输飞行器所适用的税率（约5%）相当，并放弃征收消费税的计划。

## 结论

中国航空业的快速增长既标志着经济的繁荣发展，也说明为确保航空业的安全和竞争力，需要填补效率和现代化缺口。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，削弱了中国未来增长的竞争力和可持续性。

## 建议

- 继续开放和改革全国空域系统，使所有使用者都能实现增长，提高效率。
- 优化中国主要枢纽机场的起降时刻分配和运营程序，在新建机场项目中充分考虑节能和环保因素。
- 简化航空货运业海关监管办法。

## Conclusion

The rapid growth of China's aviation industry is both an indication of expanding economic prosperity as well as an indication of the need to rectify various efficiency and modernization gaps 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 burden China's ability to ensure sustainable, competitive future growth.

## Recommendations

- **Continue opening up and reforming China's national airspace system to enable both growth and efficiency for all users.**
- Optimize slot utilization and operational procedures at China's major hub airports; consider energy efficiency and "green" practices in new airport projects.
- Streamline Customs regulations for the air cargo industry.
- Continue to strengthen the physical and policy infrastructure to enable GA growth, including more favorable tax policies for import of GA aircraft.
- Adopt more flexible requirements and tax treatment for foreign company participation in China's civil aircraft programs.
- Benchmark staffing levels of other countries' aviation regulators, and then review and increase regulatory and inspection staffing levels at CAAC accordingly.
- Partner with the US aviation community to study the principles of voluntary disclosure practices within the air space management system to identify hidden risks and further improve safety.

- 继续加强对通用航空业的经济和政策支持，包括对进口通用航空飞行器适用优惠税收政策。
- 对参与中国民用航空器项目的外资企业，采用更灵活的管理要求和税收制度。
- 参考其他国家航空监管机构的人员配备水平，审查并相应地增加中国民航局监管人员和检查人员的数量。
- 与美国航空业合作，在航空管理系统中，借鉴自愿披露方法，发现潜在安全隐患并进一步提升航空安全。

# Clean Technology

## Introduction

In 2012, China remained the most significant and rapidly growing market in the world for clean technology, and now leads the world in renewable energy investment. AmCham China commends the Chinese government for its continued efforts to develop clean technology and for its ongoing commitment to fostering environmentally sustainable growth. In particular, we are pleased to see the strong emphasis on clean technology in China's national and industry-specific five-year plans. Through ambitious national renewable energy and efficiency targets, continued investment in clean technology solutions, and supportive regulatory policies, China has signaled its intention to take a leading role in the global development of clean technology.

However, it should be noted that international trade tensions are rising following the US' recent imposition of trade sanctions on Chinese solar panel exports, an ongoing and similarly targeted EU investigation, and China's own investigations into the export of solar-grade polysilicon from the US, EU, and the Republic of Korea. And while China's initial steps to develop its clean technology industry are laudable, there are also a number of significant hurdles domestically to realization of the government's ambitious goals.

AmCham China member companies report that issues with respect to legal transparency and government engagement, procurement, and standard setting and enforcement continue to prevent foreign-invested enterprises (FIEs) from fully contributing their advanced technology and expertise. In addition, the dominance of state-owned enterprises (SOEs) in some sectors prevents the full participation of private domestically invested companies and FIEs in China's clean tech industry. Market-distorting government subsidies and resultant overproduction, as well as intellectual property infringement, are also of great concern.

China's efforts to cultivate a strong clean technology industry, meet its sustainable development goals, and address its environmental problems would be better advanced by further integrating its own substantial indigenous capabilities with international technology and expertise. This could be achieved by:

- fully engaging FIEs in the clean technology industry,

particularly during the development of laws, standards, and pilot programs relevant to the industry;

- ensuring high-quality, internationally harmonized clean technology standards are in place and effectively implemented; and
- strengthening government and SOE procurement practices to incorporate life cycle assessments of products/projects and minimize modifications to selected bids in order to facilitate procurement of the most innovative and effective clean technology.

AmCham China member companies look forward to working with the Chinese government and domestically invested companies as China continues its admirable efforts to develop its clean technology industry.

## Ongoing Regulatory Issues

### *Legal Transparency and FIE Engagement*

China has made significant progress in establishing a legal framework, standards, financial incentives, and pilot programs to promote clean technology and protect the environment. However, AmCham China member companies continue to report that China's clean tech industry regulations are often drafted ambiguously, leaving much to administrative interpretation. The resulting uncertainty and potential regional variations in implementation discourage FIEs from fully contributing their technological and operational expertise to China's development efforts. More precise legislative and regulatory drafting would provide less scope for such conflicting interpretations.

AmCham China applauds the Chinese government's increased willingness to engage FIEs in the development of policy and regulations, including through briefings and exchanges. This engagement, however, is still relatively ad hoc, and more systematic mechanisms would ensure that foreign participants could share their expertise with regulators. For instance, clean tech standard-setting working groups frequently limit or prohibit FIE participation, despite the FIEs' significant international experience in similar standard setting. This deprives China's standard-setting process of valuable expertise that could contribute to higher-quality standards and more effective clean technologies. Increased

# 清洁技术

## 引言

2012年，中国仍旧是全世界清洁技术最重要和增长最快的市场，并成为全球可再生能源投资的主导。中国美国商会赞赏中国政府在大力开发清洁技术，持续承诺培育环境可持续发展方面做出的努力。我们非常高兴地看到，大力开发清洁技术成为中国国家和行业五年规划的重点。通过确定国家发展可再生能源和节能的宏伟目标，持续投资清洁技术方案，制定支持性监管政策，中国已经表明了引领全球清洁技术开发的决心。

但是，值得注意的是，近来美国对中国出口的太阳能电池板实施贸易制裁，欧盟也正开展类似调查，而中国也正在对原产于美国、欧盟、韩国的进口太阳能级多晶硅展开调查，这些都表明国际贸易摩擦正在不断加剧。尽管中国在开发清洁技术产业领域开了个好头，值得称道，但中国国内还存在着不少巨大障碍，影响政府宏伟目标的实现。

中国美国商会的会员企业反映，法律透明度、政府参与、采购及标准设定与执行等问题依然是阻碍外资企业充分发挥和贡献其先进技术和专业知识的主要因素。另外，国有企业对部分产业的主导也造成私营企业和外资企业无法充分参与中国清洁技术产业。扭曲市场的政府补贴和由此导致的产能过剩，以及知识产权侵权等也是会员企业担心的主要问题。

中国致力于培育一个强大的清洁技术产业，实现其可持续发展的目标，并解决其环境问题，通过进一步将自主创新与国际技术和经验相结合，必将提升中国开发清洁技术产业的能力。具体可以通过以下途径：

- 确保外资企业充分参与清洁技术产业，特别是在制定和开发行业相关法律、标准和试点项目中允许外资企业充分参与；
- 确保制定并有效实施与国际接轨的高质量清洁技术标准；

- 加强政府和国企采购管理，采购过程增加产品或项目生命周期评估，减少对标底的修改，从而确保能够采购到最具有创新性和效率的清洁技术。

中国美国商会会员企业期待与中国政府和内资企业合作，共同推进中国开发清洁能源产业。

## 现存监管问题

### 法律透明度和外企参与度

中国在促进清洁技术发展和保护环境领域已经制定了一套法律框架、相关标准、财政激励政策和试点项目，并取得了显著成绩。然而中国美国商会的会员企业继续表示，中国的清洁技术产业法规文字模糊，给行政执法留下了很大的自主解释空间。由此造成的不确定性以及各地在执行上的差异，打击了外企将自己的技术和运营经验贡献给中国清洁技术产业发展的积极性。在法律和法规起草时就明确细化相关规则，将减少出现各种解释之间相互矛盾的情形。

中国美国商会对中国政府越来越愿意让外企参与法律和政策的制定过程（包括通过简报和交流等方式）表示欢迎。但这种参与过程依然属于临时性质，建立更加系统的参与机制将确保外国参与者能够与监管部门分享其技术专长。例如，尽管外企在相关标准设定领域拥有丰富的国际经验，但清洁技术标准制定工作组经常限制或禁止外企参与。这种做法造成了中国在标准制定过程中无法获得宝贵的技术专长，影响政府出台高质量标准和开发更有效的清洁技术。提高外企参与度特别有利于解决一些最具挑战性的问题。例如，可再生能源高效入网的难题迟迟得不到解决的部分原因就是缺乏高质量、实际的和可执行的标准。

中国美国商会鼓励中国政府在法律法规起草过程中扩大外企实质参与度，充分听取吸收外企的观点，包括在法律出台之前预留充分的时间进行公示和征求意见。除增强

engagement of FIEs would be particularly beneficial on the most challenging problems. For example, difficulty achieving efficient integration of renewable energy sources into the grid has persisted in part due to the lack of high-quality, realistic, and enforceable standards.

AmCham China encourages the Chinese government to expand substantive engagement and incorporate the views of FIEs during the legislative and regulatory drafting process, including through sufficient notice and comment periods prior to legislative promulgation. In addition to increasing legal transparency, such engagement provides the government with a valuable mechanism for obtaining feedback from industry experts on the legislation's potential impact. Incorporating that feedback increases the likelihood that the legislation will meet its intended objectives and is effectively implemented. Likewise, more open communication with FIEs on financial incentive and pilot programs, including regarding the intended beneficiaries and timelines of such programs, would enhance company participation and increase the likelihood that the programs will achieve their objectives.

### *Life Cycle Assessment and Procurement*

Several features of current government and SOE procurement processes disadvantage private domestically invested companies and FIEs and inhibit procurement of the most innovative and environmentally friendly clean tech products and services.

China's strategic development plans and environmental laws often set energy consumption and environmental impact as important project and product bidding criteria. However, these criteria are assessed based on merely the period in which the product/project operates, not on its full life cycle. In order to create a long-term sustainable development model, it is important to look beyond the "use" or operational stage and ensure that a product/project does not incur large environmental costs at other stages, such as during manufacturing or upon disposal.

For instance, solar cells generate electricity and heat with zero emissions, so China's standard consumption and environmental impact analysis views most solar panels as having comparable environmental impact. However, in a life cycle assessment, not all solar panels are equal, as a given product's ecological footprint also depends on its manufacture, materials, and disposal. A full life cycle assessment is a more effective mechanism for evaluating the most energy efficient and environmentally friendly products/projects, and will help achieve China's energy consumption and environmental objectives.

Second, aspects of the bidding process for government and SOE procurement of clean technology concern AmCham China, particularly the substantial modification of bids after acceptance, and the low rates of return on investment

allowed by government agencies. These features respectively limit transparency of the procurement process and reduce incentives for qualified firms to bid. Furthermore, FIEs and private domestically invested companies are put at a disadvantage in the bidding process due to the strong ties SOEs enjoy with government and financing entities, and a willingness of SOEs to accept low (or no) investment returns due to their favorable access to government fiscal support and credit facilities. The China 2030 report prepared by the World Bank and State Council Development Research Center found that the lack of a level playing field in China's emerging industries is due in large part to the monopolistic or commanding role enjoyed by SOEs. Such practices stifle the introduction of innovative products from foreign and private domestically invested companies, and impede achievement of China's 12<sup>th</sup> Five-Year Plan development goals.

AmCham China recommends that China encourage standards and a bidding process that consider the environmental impact of the product/project's complete life cycle. We also urge the relevant ministries at all levels to adopt and adhere to standard templates for bidding documents and draft concession agreements. Accordingly, any material modification to the selected bid should be made prior to submission, rather than after selection. Implementing these measures will result in a more open, competitive bidding process and higher quality, more sustainable clean energy projects.

### *Standard Setting and Enforcement*

China has set many laudable and ambitious goals in the 12<sup>th</sup> Five-Year Plan for the adoption of clean technologies throughout the economy. However, a lack of high-quality, practical, internationally harmonized standards for these technologies means that many of them cannot be used in a timely way. Even when clear standards are in place, lax enforcement frequently leads to inadequate compliance. In other cases, the implementation of subpar standards results in poor performance or even equipment failure.

For example, despite the rapid pace of growth in China's wind and solar power sectors, many necessary standards have yet to be promulgated. For the standards that have been issued, often their drafting proceeded too quickly and with little input from FIEs. This has resulted in the issuance of low quality standards, impractical standards with unrealistically high requirements, or standards not harmonized with international norms, all of which may disadvantage the introduction or use of advanced technology. A lack of internationally harmonized standards is weakening not only MNCs investment into the Chinese market, but also heightening the burden on Chinese firms looking to "go out" and expand to international markets. This rise in compliance costs attributable to incompatible standards slows the healthy and sustainable development of wind power both at home and abroad. Such problems continue to depress wind energy generation and reduce the efficiency and integration

法律透明度之外，外企参与为政府获得行业专家对立法潜在影响的反馈提供了宝贵的途径。立法中吸纳行业的反馈意见更能使法律实现其预期目标并得到有效实施。同样，在财政激励政策和试点项目上与外企进行更为开诚布公的沟通，包括在目标受益人和项目进度时间表方面进行沟通，将提高企业参与度，提高项目实现预期目标的可能性。

## 生命周期评估和采购

现行政府和国有企业采购程序的诸多特点都使国内私营企业和外企处于不利地位，也使得政府和国企无法采购到最具创新性和环保效果的清洁技术产品和服务。

中国的战略发展规划和环境法律中都将能耗和环境影响作为项目和产品招标中的重要选择标准。然而，现实中这些标准的评估仅仅基于产品或项目运转之时，并不是基于其完整的生命周期。为了建立长期可持续发展模式，预测到使用或运营阶段以后的发展状况便显得非常重要，应要确保产品/项目不会在其他阶段发生高昂的环境成本，比如在生产或报废阶段。

例如，太阳能电池可以零排放发电和发热，所以中国的标准消耗和环境影响分析认为绝大多数太阳能板的环境影响都大同小异。但生命周期评估方法下的太阳能电池板的环境影响却并不相同，因为某个产品的生态足迹还取决于其生产过程、原料和报废过程。一套完整的使用寿命评估机制能够更加有效地评估选拔出最节能环保的产品或项目，还将有助于中国实现其能耗和环保目标。

第二，中国政府和国企采购清洁技术的相关环节也使中国美国商会担忧，特别是在中标后对标底进行实质性修改，以及政府部门允许的低投资回报率方面。这些特征分别降低了采购程序的透明度，抑制了合格企业的投标动力。另外，由于国企和政府及银行联系紧密，外企和内资私企在投标竞标过程中往往处于劣势，国企通常由于更易获得国家财政支持和银行信贷支持而愿意接受低（甚至零）投资回报率的项目。世界银行和国务院发展研究中心联合发布的《2030年的中国》报告中指出，国有企业占据垄断或者支配性地位是中国新兴产业缺乏公平竞争的主要原因。以上做法扼制了外企和内资私企生产创新性产品的动力，也阻碍了中国“十二五”规划的发展目标的实现。

中国美国商会建议中国应当鼓励把产品或项目完整生命周期的环境影响评价纳入标准和招标程序的做法。我们还提请各级相关部门采纳并坚持招标文件和减让协议初稿

标准模板。另外，对选定标底做实质性修改应在投标之前完成，而不应该在决标之后进行。实施上述措施有助于建立更为公开、竞争的招投标程序，采购到优质且更可持续的清洁能源项目。

## 标准制定与实施

中国在“十二五”规划中对经济发展中全面采用清洁技术设定了许多值得称道的宏伟目标。然而，这些技术领域缺乏高质量、可操作且与国际接轨的标准，这意味着很多技术得不到及时应用。即使制定了清晰的标准，不严格执行常常导致标准得不到充分遵守。另外，采用低水平的标准导致了技术性能低下甚至设备故障。

例如，尽管中国在风能和太阳能发电领域发展迅猛，但却尚未出台相关必要标准。就已经制定的标准来看，很多标准匆忙起草出台，基本没有听取外资企业的意见和建议，导致所制定出的标准要么质量低下，要么要求过高不切实际无法实施，或与国际标准不接轨。所有这些都抑制了先进技术的引进和应用。缺乏与国际接轨的标准不仅打击了跨国企业对华投资，同时还导致计划“走出去”拓展国际市场的中国企业负担加重。由于标准不接轨造成的合规成本增加，阻碍了风力发电行业国内和国际市场的健康可持续发展。这些问题继续抑制着风力发电行业的能源输出效率，也阻碍了风电电网的进程及效率提升。

即使制定了清晰的标准，不严格执行常常导致标准得不到充分实施，无法实现设定标准之时的预期目标。正如《2030年的中国》所指出的，尽管建筑业占全国能源需求的30%，然而中国却尚未严格执行绿色建筑设计标准。同样地，由于执法不严格，企业也不严格执行机动车排放和燃料标准，在一定程度上抵消了中国在改善空气质量方面所做的努力，也削弱了严格遵守法规的企业的竞争力。

中国美国商会鼓励中国采取措施确保风能、太阳能、电动汽车、绿色建筑、产业节能和其他领域出台与国际接轨的标准，并确保这些标准质量高，切合实际且能得到有效实施。如此方能实现中国清洁技术产业的健康可持续发展，并有助于实现中国“十二五”规划中提出的可再生能源、节能减排和绿色建筑的相关目标。

## 最新进展

受2012年秋天中国十年一度的领导层换届影响，与2011年相比，清洁技术监管和投资环境领域没有太多进展。

of wind power to the grid.

Even when clear standards are in place, lax enforcement sometimes results in inadequate compliance, and the intended objectives of the standards are not met. As noted in the China 2030 report, China has yet to strictly enforce green building design standards even though buildings account for about 30 percent of the country's energy demand. Likewise, lax enforcement and manufacturer's subsequent lack of compliance with vehicle emissions and fuel standards undermine efforts to improve air quality and undercut the competitiveness of companies that do comply.

AmCham China encourages China to take steps to ensure that internationally harmonized standards are in place for wind and solar power, electric vehicles, green building, industrial energy efficiency, and other sectors, and that they are of high quality, practical, and effectively enforced. This will enable China's clean technology sectors to maintain healthy, sustainable growth, and facilitate achievement of China's 12<sup>th</sup> Five-Year Plan renewable energy, energy efficiency, emissions, and green building goals.

## Recent Developments

Owing to China's once-in-a-decade leadership transition that began in the fall, the clean technology regulatory and investment environment saw fewer developments in 2012 compared to years past. Nevertheless, the Chinese government promulgated a number of key policy papers and regulations in 2012 to further encourage development of the strategic emerging industries (SEIs) and other clean technology-related sectors as well as to address air pollution. These developments include the promulgation of industry-specific five-year plans (FYPs), a new Foreign Investment Catalogue, and the release of new regulations providing government financial support and encouraging private investment in the renewable energy sector.

### *Industry-Specific Five-Year Plans Published*

China's national 12<sup>th</sup> FYP, released in March 2011, emphasizes the development of the clean technology industry, particularly the development of nuclear, solar, hydro, and wind power technologies as well as smart grids. China's SEIs, several of which relate to clean technology, were also targeted, with the 12<sup>th</sup> FYP setting the goal of increasing their contribution to GDP from 5 percent in 2010, to 8 percent by 2015, and 15 percent by 2020.

The national 12<sup>th</sup> FYP was supplemented in 2012 by the release of industry-specific FYPs specifying targets and goals in greater detail. These include:

- "12<sup>th</sup> FYP on Industrialization of Key Projects for Key Technologies of the Smart Grid" (March 2012), setting forth nine key tasks related to smart grid development,

including development of grid technology for electric cars, large-scale energy storage systems, intelligent grid operation and control, and intelligent distribution technologies

- "12<sup>th</sup> FYP for the Solar Photovoltaic (PV) Industry" (February 2012), targeting annual production capacity of five gigawatts for "leading" solar cell enterprises and one gigawatt for "major" solar cell enterprises, and targeting PV module costs of RMB 7000/kilowatt (kw), PV system costs of 1.3 RMB/kw, and power generation costs of RMB 0.8/kw by 2015.
- "12<sup>th</sup> FYP on Energy Conservation and Emission Reduction" (August 2012), aiming to reduce energy consumption per RMB 10,000 of GDP to .869 tons of standard coal (a 16 percent decrease from 2010), to save 670 million standard tons of coal in the 12th FYP period, and to limit chemical oxygen demand and sulfur dioxide emissions to under 23.476 million tons and 20.864 million tons, respectively. In an interview at 2012 Summer Davos, a vice-minister of the National Reform Development Commission (NDRC) stated that China would invest up to RMB 3.6 trillion in key energy conservation projects.
- "12<sup>th</sup> FYP on Renewable Energy" (August 2012), targeting provision of 9.5 percent of national energy needs in the form of renewable energies by 2015, total installed hydropower generation capacity of 290 million kw, wind power capacity of 100 million kw, and solar power capacity of 21 million kw.
- "12<sup>th</sup> FYP of Building Energy Efficiency" (May 2012), positioning green building as a major component of energy efficiency and resource conservation efforts, targeting energy efficiency gains equivalent to saving 116 million tons of standard coal by the end of the 12<sup>th</sup> FYP period, and ensuring that 50 percent of buildings in key metropolitan areas meet green building standards by 2015.

### *Foreign Investment Catalogue Amended*

The "Guiding Catalogue on Foreign Investment in Industry" (Catalogue) regulates the flow of foreign capital investment into the PRC by subdividing industries into encouraged, restricted, and prohibited industries. Industries not listed in the Catalogue are considered permitted by default. The 2011 revisions to the Catalogue took effect in January 2012 and contained several notable changes in the field of clean technology. Among the changes, the Catalogue removed a joint venture requirement for foreign investment in new energy equipment manufacturing. It also changed the designations of some sectors to "encouraged," namely electric car charging stations, the construction and operation of renewable water plants, and the manufacture of batteries and other key components for new energy vehicles. Despite adding components for new energy vehicles to the encouraged category, however, the revisions also imposed a new requirement limiting foreign investment in "high-energy propulsion batteries" to 50 percent or less, while manufacture of "complete automobiles" was dropped from the encouraged category.

尽管如此，中国政府在 2012 年还是颁布了一系列重要的政策文件和法规，进一步鼓励战略性新兴产业和其他清洁技术相关产业的发展，解决空气污染问题。这些进展包括制定颁布了行业五年计划，修订出台最新的《外商投资产业指导目录》，制定新法规和规章为可再生能源行业发展提供财政支持并鼓励私人投资。

## 发布产业专项五年规划

2011 年 3 月，中国发布了国家发展“十二五”规划，强调发展清洁技术行业，特别是发展核能、太阳能、水电、风能技术和智能电网建设。中国的战略性新兴产业不少都涉及清洁技术，“十二五”规划中也提出了要将战略性新兴产业对 GDP 增长的贡献率由 2010 年的 5% 提升至 2015 年 8% 并于 2020 年达到 15% 的目标。

2012 年，中国还制定了相关产业五年规划作为国家“十二五”规划的补充，其中详细规定了相关目标。包括：

- 《智能电网重大科技产业化工程“十二五”专项规划》（2012 年 3 月），确立了智能电网发展九大重点任务，包括支撑电动汽车发展的电网技术、大规模储能系统、大电网智能运行与控制、智能配电技术等。
- 《太阳能光伏产业“十二五”发展规划》（2012 年 2 月）。确立了到 2015 年太阳能电池领先企业达到 5GW 级，骨干企业达到 1 GW 级水平；光伏组件成本下降到 7000 元 / 千瓦，光伏系统成本下降到 1.3 万元 / 千瓦，发电成本下降到 0.8 元 / 千瓦时的目标。
- 《节能减排“十二五”规划》（2012 年 8 月），确立了到 2015 年，全国万元国内生产总值能耗下降到 0.869 吨标准煤（比 2010 年的 1.034 吨标准煤下降 16%）的目标。“十二五”期间，实现节约能源 6.7 亿吨标准煤。到 2015 年，全国化学需氧量和二氧化硫排放总量分别控制在 2347.6 万吨、2086.4 万吨的目标。在 2012 年夏季达沃斯论坛的一次采访中，国家发改委的一位副主任也表示中国在重点节能项目上的投资总额将达 3.6 万亿人民币。
- 《可再生能源发展“十二五”规划》（2012 年 8 月），确立了到 2015 年全部可再生能源利用量在全国能源消费中的比重达到 9.5%，全国水电装机容量达到 2.9 亿千瓦，累计并网风电装机达到 1 亿千瓦，太阳能发电装机达到 2100 万千瓦的目标。

- 《“十二五”建筑节能专项规划》（2012 年 5 月），将绿色建筑作为节约能源保护资源工作的重要组成部分，确立了到“十二五”期末，建筑节能形成 1.16 亿吨标准煤节能能力，到 2015 年，重点城市城镇新建房地产项目 50% 达到绿色建筑标准之目标。

## 外商投资目录修订

《外商投资产业指导目录》通过将投资产业分为“鼓励类”、“限制类”和“禁止类”来引导外资在中国的投资流向。没有列入目录的则自动视作允许投资产业。2011 年新修订的目录于 2012 年 1 月生效，在清洁技术领域有几项重大变化。其中包括目录取消了对外商投资新能源设备制造业必须设立合营企业的要求。目录中还将部分产业确立为“鼓励类”，包括电动汽车充电站、可再生水电站建设和运营以及新能源汽车电池和其他重要零部件制造等。尽管目录将新能源汽车零部件制造列入鼓励投资类，但同时也对外商投资能量型动力电池的投资上限作出了新要求，即不得超过 50%，同时“汽车整车”制造也不再列入鼓励投资类。

中国美国商会会员企业对目录中增加鼓励外商投资的清洁技术产业种类表示欢迎。但是，为了进一步促进相关产业的发展，并使目录更好地与“十二五”规划目标保持一致，我们促请中国政府取消其对外资所有权的限制和合营企业要求，比如对投资新能源汽车能量型动力电池的所有权限制和合营企业要求。

## 清洁能源产业财政支持法规

除了国家“十二五”规划和行业“十二五”专项规划外，中国还制定了相关法规，对清洁能源产业和技术给予财政支持，但这些支持法规尚待进一步制定实施细则。

2012 年 7 月 20 日，财政部和国家发展和改革委员会（发改委）联合发布了《循环经济发展专项资金管理暂行办法》，其中规定了多个可再生能源专项基金，包括一项支持“清洁生产技术示范推广”及其成熟时应用的基金。相关部委已经宣布制定该专项基金管理实施方案，但至今尚未出台。

2012 年 9 月 20 日，财政部、工业和信息化部 and 科学技术部联合发布了《新能源汽车产业技术创新财政奖励资金管理暂行办法》，明确奖励资金支持对象包括新能源汽车整车项目和动力电池项目两大类，由中央政府对具有资质的企业提供财政支持。但该暂行办法中没有对获得财政支持企业所须具备的具体条件和支持金额做出规定。

AmCham China members welcome the increased encouragement of some clean technology sectors for foreign investment. However, in order to further promote development of the sectors and better align the Catalogue with 12<sup>th</sup> FYP goals, we urge the Chinese government to remove its remaining ownership restrictions and joint venture requirements, such as those for high-energy propulsion batteries for new energy vehicles.

### ***Regulations Promoting Financial Support for Clean Energy Industries***

In addition to the policy goals of the national and industry-specific 12<sup>th</sup> FYPs, China promulgated regulations providing financial encouragement for clean-energy industries and technologies, although they will require subsequent implementation guidance that has yet to be issued.

On July 20, 2012, the Ministry of Finance (MOF) and NDRC issued the “Interim Measures for the Management of Special Funds for the Development of the Circular Economy,” which create a number of special funds for renewable energy, including a special fund to support the “demonstration and promotion of clean production technologies” and their application once mature. An implementation plan for administering this special fund was announced but has yet to be promulgated.

On September 20, 2012, MOF, the Ministry of Industry and Information Technology, and the Ministry of Science and Technology jointly issued the “Interim Measures for Managing the Government Financial Reward Fund for New Energy Automobile Industry Technical Innovation Projects” to support key technological innovation in complete sets of equipment and power batteries for new energy automobiles, and to provide eligible companies with financial support from the central government. The measures do not detail the specific requirements necessary for companies to obtain financial support, or the amount of support available.

On December 31, 2012, MOF and NDRC issued the “Interim Measures on the Administration of the Special Fund for Strategic Emerging Industries,” setting out the implementation steps for the special fund to encourage the development of SEIs. The measures instruct the NDRC and other relevant ministries to work with MOF to issue “application guidelines” for the fund and to determine pilot demonstration areas and participating entities. It remains unclear, however, how welcoming these still-undrafted application guidelines will be to foreign investment.

### ***Air Pollution***

Air pollution remains a major national health and welfare concern. Although the sources of such pollution are numerous, one growing problem is the rise in the number of private vehicles. In 2011, the Ministry of Environmental Protection (MEP) reported that Chinese motor vehicles

emitted approximately 46 million tons of pollutants and vehicle exhaust, making motor vehicles the main source of air pollution in large- and mid-sized cities in China.

To reduce this growing problem, the Chinese government has issued a number of new standards and policies to limit vehicle emissions and other air pollution sources. These include the February 2012 issuance by the State Council of an amendment to the Ambient Air Quality Standards, which included the creation of new indices to measure ozone and PM2.5 particles; and the December 2012 issuance by MEP of the “12<sup>th</sup> FYP on Air Pollution Control in Key Regions,” which targets a five percent reduction of PM2.5 particles and a 10 percent reduction of PM10 particles by 2015 in 13 major areas covering 117 cities. These are positive steps, yet much more remains to be done to bring air pollution in China under control, especially in enforcement and compliance.

### ***US-China Energy Cooperation Program***

The US-China Energy Cooperation Program (ECP) is a private-sector initiated and financed non-profit organization under the legal auspices of AmCham China. The ECP serves as the commercial implementing arm of US-China clean energy collaboration. Through formal partnerships with both the Chinese and US governments, the ECP focuses on establishing new industries and markets, influencing regulatory policy, serving as the industry voice in bilateral government dialogue, and facilitating commercial deals. In 2012, the ECP achieved several outcomes with bilateral government support, including the following:

- Completed a study of US wind farm operational best practices to introduce to Chinese industry stakeholders key standards related to wind farm development, construction, operation, management, and grid connection;
- Carried out a comparative study on PV grid integration standards in China, the US, and the European Union, in partnership with the China Electricity Council and China Electric Power Research Institute (CEPRI);
- Implemented a smart grid automatic demand response pilot project in Tianjin in partnership with Tianjin Economic-Technological Development Area, CEPRI, and the State Grid Corporation of China (State Grid);
- Launched the Eco-City Initiative, a program to promote live commercial eco-city demonstration projects that can serve as operable, sustainable, duplicable business models for Chinese eco-city development; and
- Launched the Integrated Smart Grid Communication Model Study with CEPRI and State Grid.

(For more information on ECP, see the AmCham China Cooperation Programs chapter)

2012年12月31日，财政部和发改委发布了《战略性新兴产业发展专项资金管理暂行办法》，确立了鼓励战略性新兴产业发展专项基金的实施办法。该暂行办法中要求国家发改委等有关部门会同财政部制发“申报指南”，或确定试点示范的区域或承担单位。然而，该“申报指南”至今尚未起草，其对外商投资的影响也不得而知。

## 空气污染

空气污染一直是关系民众健康和福祉的重大问题。尽管污染源不计其数，但私家车保有量迅速增长成为造成空气污染的一大来源。2011年，环境保护部（环保部）报告称中国机动车排放的污染物和尾气约为4600万吨，机动车成为中国大中型城市空气污染的主要来源。

为了缓解日益严重的空气污染问题，中国政府已经出台了一系列最新标准和政策来限制机动车排放和其他空气污染源。其中包括2012年2月国务院修订颁布了新的《环境空气质量标准》，其中新增设臭氧和PM2.5这两项测量指标。2012年12月，环保部发布了《重点区域大气污染防治“十二五”规划》，其中确立了到2015年，将13个重点区域的117个城市PM2.5和PM10浓度分别下降5%和10%。尽管取得以上积极进展，但中国控制空气污染的工作依然任重道远，特别是在执法和合规方面。

## 中美能源合作项目

中美能源合作项目（ECP）是一个中国美国商会框架下、由企业发起并出资的非盈利机构。ECP是中美两国清洁能源领域合作的商业执行机构。通过与中国和美国政府之间建立正式的合作关系，ECP重点关注建立新行业和市场，对监管政策进行影响，在政府双边对话中充当行业的代言人，并促进行业交易。2012年，在两国政府的支持下，ECP取得了下列成绩：

- 完成了对美国风力发电运营最佳实践的研究，为中国行业利益相关方引入风力电厂开发、建设、运营、管理和电网连接等领域的关键标准；
- 与中国电力企业联合会和中国电力科学研究院（电科院）联合开展了中国、美国、欧盟光伏电网并网技术标准比较研究；
- 与天津经济技术开发区、电科院和国家电网公司（国家电网）联合在天津实施了智能电网自动需求响应试点项目；

- 推出了生态城计划。该计划是一项促进商业生态城的现场示范项目，能作为中国生态城开发的可操作、可持续、可复制的商业模式；
- 与电科院和国家电网合作开展了智能电网综合通信模型研究。

（详情请参阅《中国美国商会合作项目》一章）

## 结论

中国美国商会会员企业期待与中国在清洁技术产业发展领域继续深化合作。为了推动这一领域的发展，我们鼓励中国和美国政府继续支持双边市场发展、贸易促进和合作研究行动。我们还促请中国确保加强清洁技术标准制定及其有效实施，在政府和国企采购过程中采用产品或项目生命周期评估方法及其他改革措施来改善采购实践，同时确保外资企业的充分参与。采取以上措施将有助于中国加快建成一个具有创新性、充满活力的清洁技术产业，同时有助于中国更加有效地解决环境和资源问题。

## 建议

### 对中国政府的建议：

- 在制定清洁能源相关的法律、法规、标准、试点项目和财政激励方案时提高外资企业的参与度，包括在出台相关法律法规方面提供充足的时间进行公示和征求意见。
- 确保外资企业被允许实质性地参与所有清洁能源标准制定工作组。
- 确保为清洁技术产业各个领域制定高质量、切合实际且与国际接轨的标准，并确保上述标准的有效执行和实施。
- 修改政府和国企采购办法，在评估清洁技术产品或项目时采用完整生命周期评价法，招标文件和减让协议草案采用标准模板，并尽可能地减少对中标的实质性修改。

### 对两国政府的建议：

- 通过提供资金、邀请活动主讲人、敦促相关政府部门给予支持，继续推进美中双边市场开发、贸易促进和研究行动。

## Conclusion

AmCham China member companies look forward to continuing their deepening collaboration with China in the development of its clean technology industry. To further this development, we encourage both the Chinese and US governments to continue to support bilateral market development, trade promotion, and collaborative research initiatives. We also urge China to ensure strong clean technology standards are in place and effectively implemented, to strengthen government and SOE procurement practices by incorporating life cycle assessments of products/projects and other reforms, and to fully engage FIEs. Taking these steps will help China advance development of an innovative, dynamic clean technology industry while also equipping China to more effectively address its environmental and resource challenges.

### Recommendations

#### *For the Chinese Government:*

- **Increase engagement with and participation of FIEs in the development of laws, regulations, standards, pilot programs, and financial incentive programs relating to clean technology, including by providing sufficient notice and comment periods prior to promulgation.**
- Ensure FIEs are permitted to substantively participate in all clean technology standard-setting working groups.
- Ensure that high-quality, practical, internationally harmonized standards are in place for all sectors of the clean technology industry, and that they are effectively implemented and enforced.
- Amend government and SOE procurement practices to adopt full life cycle assessments in the evaluation of clean technology products/projects, to adopt standard templates for bidding documents and draft concession agreements, and to minimize material modification to selected bids.

#### *For Both Governments:*

- **Continue to support bilateral US-China market development, trade promotion, and research initiatives by providing funding, speakers, and support from the relevant government agencies.**
- Encourage US-China government agencies to share best practices related to standards enforcement, including applicable penalties for violations, in order to further ensure a fair, competitive playing field for all parties.

- 鼓励美中政府部门分享标准实施最佳实践，包括对违法行为的惩罚措施，从而进一步确保各方都能享有公平竞争的环境。



# Construction, Engineering, and Design

## Introduction

Over the course of the past year a growing number of foreign construction and engineering companies in China expanded their business into various sectors, especially those requiring high and advanced technologies, such as petrochemical, pharmaceutical, and environmental protection. These companies have made progress by obtaining or upgrading their relevant qualifications issued by the construction authorities and participating in more large scale construction projects across the country.

On the other hand, the regulatory environment for foreign construction and engineering companies generally remains the same, with multiple levels of restrictions in place, which have limited transfer of technology and experience from foreign companies to China.

## Ongoing Regulatory Issues

### *Engineering and Design Sector*

#### *Open Grade A Classification to More FIDEs*

The legal regime applicable to foreign-invested design enterprises (FIDE) remained unchanged in 2012. In order for an FIDE to apply for a Design Qualification (DQ), its initial application must be for Grade B or below, regardless of its size, experience, and track record internationally. The only way a FIDE is able to apply directly for a Grade A DQ would be if the FIDE already holds a Grade One (or above) construction qualification in the same industry.

These restrictions unfairly discriminate against qualified and experienced foreign-invested companies that otherwise already satisfy all the relevant requirements for a Grade A DQ. Such companies are generally neither interested nor competitive in Grade B engineering projects, and therefore have little reason to apply for a Grade B DQ. AmCham China recommends that the Chinese government allow FIDEs, which otherwise meet the requirements, to directly apply for a Grade A DQ without first applying for and obtaining a Grade B DQ.

#### *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 Ministry of Housing and Urban-Rural Development (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 qualifications and licenses 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 of the company will change. This makes planning for post M&A operations uncertain.

AmCham China encourages the Chinese government to allow DQs to be transferred through M&A without the need for reassessment or reapproval.

#### *Permanently Relax Hiring and Residency Requirements for FIDEs*

When China relaxed certain residency requirements for foreign staff and allowed a greater percentage of qualified Chinese nationals to work for foreign-invested firms in 2007, 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 because of the uncertainty as to whether these temporary measures will continue.

This uncertainty 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.

# 建筑、工程和设计

## 引言

**过** 去一年里，越来越多的在华外资建筑和工程公司将其业务扩展到各个行业，特别是那些需要高新技术的领域，如石油化工、制药和环境保护等。通过取得或提升由建筑主管部门颁发的相关资质，并在中国各地参与更大规模的建筑项目，这些公司已经获得了很大发展。

另一方面，外资建筑和工程公司所面临的法规环境总体上仍然如故，依旧存在多重局限，限制了外资企业向中国转让技术和经验。

## 持续监管问题

### 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 2012 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、经历与国际业绩记录如何，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，外资设计公司才能直接申请甲级公司设计资质。

这些限制性规定对符合条件并具有行业经验的外资企业是一种歧视，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。这些外资企业一般对于乙级工程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政府允许符合要求的外资设计公司直接申请甲级设计资质，而无需首先申请获得乙级资质。

#### 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，住房和城乡建设部（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被调低一级时，企业执行项目的法律责任会发生变化，其已获批准的经营计划也会随之变化。这将使并购后的经营计划面临不确定性。

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转让无需再经过重新审核或批准。

#### 永久性地放宽外资设计企业的雇用及居住限制

2007 年，中国放宽了对外商投资设计公司外籍员工的居住限制，同时允许其加大雇用中国员工的比例。外商投资设计公司因此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，导致很多外商投资设计公司无法从这一法规中获益，因为他们不确定这些临时措施会不会继续下去。

这种不确定性使经营计划变得更为复杂，并阻碍了人员雇用。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规定。

### 建筑行业

#### 调整关于外资建筑企业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。

## Construction Sector

### Improve Laws Regarding Capital Requirements and Staffing for FICEs

Foreign-invested construction enterprises (FICE) 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 FICE.

Contrary to international practice, 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 a 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 towards 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 a FICE, and staffing requirements should be changed to recognize appropriately qualified foreign professionals.

### Reduce Registered Capital Requirements for FICE

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 FICEs cannot contribute advanced technology and management expertise that would otherwise benefit important projects and the industry as a whole. AmCham China believes that the standards should be changed to allow internationally accepted standard financial instruments to be used 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. However, by law 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 and allow the higher qualification to prevail.

## Project Management Sector

### Clarify Project Management Qualifications

Conflicting regulatory regimes restrict foreign-invested companies from providing project management services. 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 the differing regimes of both NDRC and MOHURD before they can offer project management services. This 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).

In addition, foreign-invested companies attempting to satisfy MOHURD's regulations are further confused by the 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, the 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.

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。

与国际惯例不同的是，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，这一点无疑是企业增添了特别困难。根据该条例，涉及到某些领域关键职位（例如工程师、建筑师等）最低人数要求的计算问题时，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合格资质的外籍专家。

### **降低外资建筑企业注册资本金的要求**

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的工程项目，其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，优秀的外资建筑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将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。然而，根据中国法律的规定，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，允许以更高资质公司的承揽范围为准。

## **项目管理行业**

### **明确项目管理资质**

相互冲突的监管制度限制了外资公司提供项目管理服务。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，即勘察、设计、建筑、监理、招投标代理及造价咨询。

外资企业获准提供项目管理服务之前，是否需要同时符合发改委和住建部不同体制下的要求，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）。

在试图达到住建部标准的同时，令外资企业更加困惑的是，他们发现通过选用适用的法规（155号令），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。外资企业只要拥有监理、招投标代理或造价咨询三项中的任一资质便可符合155号令的要求，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资企业的工程服务资质。

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。

## **设计、采购、施工行业**

### **明确有关设计采购施工承包的法规**

在建筑项目中纳入设计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。《关于培育发展工程总承包和工程项目管理企业的指导意见》（30号令）以及《关于工程总承包市场准入问题说明的函》（161号令）似乎均允许设计采购施工承包，只要承包商具有适当的监理、工程设计或总承包资质，并将建筑活动适当地分包给具有资质的分包商。然而，如果承包商只具有设计资质，仍然有许多地方官员不接受其提出的设计采购施工承包申请。这完全阻碍了只具有设计资质的主体参与设计采购施工承包，而这又是30号令和131号令明确允许的。

## Engineering Procurement Construction Sector

### Clarify Regulations for EPC Contracting

Construction projects with an engineering, procurement, and construction (EPC) contracting component are expanding around China, but the qualification system does not currently address these projects effectively. Both the “Guidance Opinions Concerning Nurturing and Development of Project General Contractor and Engineering Project Management Enterprises” (Circular 30) and “Explanation Letter Concerning Market Entry for Project General Contracting” (Circular 161) appear to allow EPC contracting, provided the contractor holds an appropriate supervision, engineering design, or general construction qualification and contracts the construction activities to appropriately qualified subcontractors. However, there are still many local officials who do not accept the filing of such EPC contracts if the contractor only holds a DQ. This effectively prevents entities with only a DQ from undertaking EPC contracting, which is what is expressly permitted by Circular 30 and Circular 131.

AmCham China hopes that the qualifications will be clarified and implementation will be consistent in order to increase transparency and regulatory uniformity within the industry.

### Recent Developments

#### Promulgation of Tendering Implementation Rules

The State Council promulgated the “Implementation Rules to Tendering and Bidding Law of the People’s Republic of China” (Tender Implementation Rules) on December 20, 2011, which came into effect on February 1, 2012. Given that the “Tendering and Bidding Law of the People’s Republic of China” (Tender Law) was issued in 1999, the delay in promulgating the implementation rules was unfortunate.

For the first time, the Tender Implementation Rules define the terms “Construction Project” and “Projects” with more detail, so it is more obvious how the Tender Law is to be implemented in relation to construction projects. The Tender Implementation Rules also set out the scope of mandatory bidding, with further specifications based on the previous descriptions outlined in the Tender Law. Also for the first time, the Tender Implementation Rules recognize the general contracting method of tendering, which is important given that general contracting methods, such as EPC, design and build (DB) and other forms of construction procurement, have been adopted for construction projects in China for many years.

AmCham China welcomes the promulgation of this new legislation, which provides clearer and more instructive guidance for foreign companies to participate in tendering activities in China.

### Issuance of New Model Text for Construction Supervision Contract

MOHURD and State Administration of Industry & Commerce jointly promulgated a “Model Text for Construction Supervision Contract” on March 21, 2012. Compared with the previous version of the model text issued in 2000, this new version has changed the composition of the overall contract, further defining the scope of supervision, setting out 22 items of basic supervision works, specifying the calculation method and payment method for compensation, making the compensation adjustable, increasing the liability for general supervisor, and including new conditions for termination of the supervision contract.

This new model text, which contains more detailed provisions and contractual arrangements, would better accommodate the needs of both sides of a contract, a development which AmCham China applauds.

### Conclusion

While the majority of legal regimes applicable to foreign-invested enterprises in the construction, engineering, and design industry remained unchanged in 2012, 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 the new regulations and a healthier market environment, foreign investment will be able to provide greater benefits to the Chinese market. AmCham China hopes to draw MOHURD’s attention to these long standing challenges, and to work constructively to benefit the Chinese construction industry as a whole.

### Recommendations

- **Formally issue regulations clarifying qualifications required to undertake EPC contracting.**
- 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.
- Reduce registered capital requirements to align 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.
- In line with international norms, relax the requirement that consortia must default to the qualification level of the lowest qualified consortium member.
- Issue specific project management qualification

中国美国商会希望这些资质要求得到明确和统一实施，以便强加本行业的透明度和监管的一致性。

## 最新进展

### 招投标实施条例发布

国务院于 2011 年 12 月 20 日颁布了《中华人民共和国招标投标法实施条例》（招投标实施条例），自 2012 年 2 月 1 日起施行。鉴于《中华人民共和国招标投标法》（招投标法）早在 1999 年就发布了，实施条例这么久才予以公布实在遗憾。

招投标实施条例首次对“工程建设项目”和“项目”进行了更详细的界定，因此如何在工程建设项目中实施招投标法更为明确。招投标实施条例还规定了必须依法进行招投标的工程建设项目的范围，依照此前招投标法中概述的说明，进一步明确了各项规范。同时，招投标实施条例还首次认可了总承包方法的招投标。考虑到诸如设计采购施工承包、设计施工和其他建设工程采购方式等总承包方法在中国的建设工程项目中已实施多年，这一认可很重要。

中国美国商会欢迎这一新法令的颁布，这为外资公司参与中国的招投标活动提供了更清晰且更有价值的指导。

### 建设工程监理合同（示范文本）发布

2012 年 3 月 21 日，住建部与国家工商行政管理总局联合发布了“建设工程监理合同（示范文本）”。与发布于 2000 年的前一版示范文本相比，新版本对整体合同的结构进行了调整，进一步界定了监理的范围，设定了 22 项基础监理工作，明确了酬金的计算方法和支付方式，使得酬金能够调整，加强了监理人的违约责任，并加入了终止监理合同的新条件。

该新示范文本包含了更具体的条款和合同安排，将更好地满足合同双方的需要，中国美国商会对此进展表示赞赏。

## 结论

尽管在 2012 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，但是行业纲要与规划的出台是中国政府愿意并准备改善整个行业的政策环境的积极表现。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。中国美国商会希望能够提请住建部关注这些长期挑战，并通过建设性的工作，使中国建筑行业整体受益。

## 建议

- 颁布正式的法规，明确承揽设计采购施工一体化项目的资质要求。
- 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。
- 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。
- 与国际标准接轨，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。
- 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。

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.



具体行业问题

# Cosmetics

## Introduction

Over the past decade, the Chinese cosmetics industry has undergone an unprecedented period of change and growth (18.8 percent growth in 2011 and 16.6 percent growth in 2010) to become the world's second largest cosmetics market after the United States. Accelerating urbanization and increasing disposable income has boosted the consumption of cosmetics, which are now considered essential goods in many people's lives.

In 2011, total sales of larger-scale cosmetics enterprises was RMB 110.3 billion. The 2015 industry target, set out by the Development Plan of the Cosmetics Industry in the 12<sup>th</sup> Five-Year Plan period, is RMB 230 billion. The average annual growth target through 2020 is 12 percent. Meanwhile, in 2008, the industry provided employment for more than 2.5 million Chinese employees, generated income of RMB 5.3 billion and contributed RMB 164 billion to the national GDP. By 2020, its contribution to the GDP is expected to increase to over RMB 500 billion. Despite these impressive figures, the current per capita consumption of cosmetics in China is only around RMB 100, less than a tenth of that of developed countries. Further development of the cosmetics industry is in urgent need of government encouragement and support.

At present, the supervisory system of government departments focuses on pre-market review and approval, differing from the internationally accepted practice of self-discipline within industry. This hinders not only the development of internationally-compatible Chinese market practices, but also the healthy and rapid growth of the domestic cosmetics market. The goal of government departments in formulating laws and regulations should be to encourage cosmetics companies bearing the responsibility of providing consumers with safe and quality products, while considering the cosmetics industry's uniqueness and incorporating international experience and practices.

## Ongoing Regulatory Issues

### *Revision of the Cosmetics Hygiene Management Regulation*

The Cosmetics Hygiene Management Regulation (CHMR) provides the policy basis for China's cosmetics supervision system and technical law system. The CHMR hasn't been revised since it was implemented 20 years ago and it does not support the demands created by the rapid development of the cosmetics industry and related scientific monitoring. For example, CHMR heavily relies on government control while neglecting the role of enterprises and emphasizes pre-market examination and approval while paying insufficient attention to post-market supervision. Therefore, AmCham China suggests that the CHMR be revised to foster a scientific, rational and effective supervisory system and achieve the following three targets: ensure the safety of products, promote technological innovations, and add momentum to the continued healthy and rapid development of China's cosmetics industry. Additional recommendations include:

1. Cosmetics-producing enterprises should bear the responsibility for product quality, safety and compliance, while the supervisory departments ensure compliance of products through post-market supervision.
2. Reasonable, scientific requirements for product filing and registration should be established to reduce the pre-market product categories subject to examination and approval.
3. A simplified system for post-market product filing that needs no examination and approval for standard cosmetics.
4. The definition of "new ingredients" should be revised and limited so that it applies only to categories of ingredients that have special functions and relatively higher safety risks (e.g. preservatives, colorants, sunscreens and hair dyes).
5. Improve the system for the post-market supervision of products. Recognize the latest internationally-applied risk assessment methods and standards, such as the Animal Alternative Test.

# 化妆品

## 引言

**在** 过去的十年里，中国的化妆品行业经历了快速的变化和成长，成为全球仅次于美国的化妆品消费第二大国家。城镇化进程的加速和居民可支配收入的提高，促进了化妆品的消费，目前化妆品已被许多人视为必需消费品。

2011年，规模以上化妆品企业的销售总额已经达到1103亿元。《化妆品行业“十二五”发展规划》提出了到2015年行业的目标是，销售额达到2300亿元。从目前到2020年的年增长率目标维持在12%。与此同时，行业在2008年为250多万中国员工提供了就业，实现劳动收入53亿元人民币；为中国GDP贡献1640亿元人民币。到2020年，为中国GDP的贡献额预计将增长至5000多亿元人民币。尽管数据如此抢眼，但中国当前人均化妆品消费仅有百余元人民币，不足发达国家的十分之一。化妆品行业的进一步发展急待得到政府的鼓励和扶持。

与国际上普遍接受的以行业自律为主的做法不同，目前政府部门的监管体系还着重于市前审批。这非但阻碍了中国市场操作与国际接轨的进展，更不利于国内化妆品市场的健康、快速发展。政府部门制定法律、法规的目标应该能鼓励化妆品企业承担责任，为消费者提供安全、优质的产品，并考虑到化妆品行业的独特性和借鉴国际的经验与实践。

## 现存监管问题

### 《化妆品卫生监督条例》的修订

《化妆品卫生监督条例》（下简为《条例》）为中国化妆品监管体系和技术法规体系提供了政策依据。但该《条例》实施至今20余年未做修订，已经不能满足化妆品行业迅速发展和科学监管的需要。例如，《条例》过多地强调

政府管制，忽视企业自身的作用；强调市前审批，市后监管不足等。因此，中国美国商会建议对《条例》进行修订，以形成科学、合理、有效的监管体系，实现以下三个目标：确保产品安全，促进技术创新，推进中国化妆品行业继续健康、快速发展。其他建议包括：

- （一）. 由化妆品生产企业承担产品质量安全、合规的责任。监管部门主要通过事后监管，确保产品的合规性。
- （二）. 设置合理科学的产品备案、注册要求，减少上市前评审、审批的产品种类。
- （三）. 针对普通化妆品，实行简化的、无需评审、审批的市后产品备案制度。
- （四）. 修订新原料定义，将新原料界定在安全风险相对较高的特殊功能原料（如防腐剂、着色剂、防晒剂和染发剂）。
- （五）. 健全产品上市后的监管体系。认可国际通用的最新的风险评估方法和标准，例如动物替代试验。

## 最新进展

### 化妆品新原料的管理

#### 已使用化妆品原料清单

国家食品药品监督管理局（以下简称食药局）目前正在制定《已批准使用的化妆品原料名称目录（第一批）》，拟用于新原料的管理。我们认为这会严重阻碍行业的科技创新，也不利于构建目前政府倡导的创新型社会。中国美国商会：

- （一）. 反对以肯定列表的方式管理化妆品原料。
- （二）. 建议将已发布的清单更名为《已获批特殊用途化妆品中已使用原料名称目录》，以统计特殊用途化妆品中原料的使用情况。该目录将有助于了解化妆品

## Recent Developments

### *Management of the New Ingredients for Cosmetics*

#### List of Ingredients in Use for Cosmetics

The State Food and Drug Administration (SFDA) is now formulating the Catalogue of Names of the first batch of Approved Ingredients in Use for Cosmetics, intended for the management of new ingredients. We believe this will seriously discourage technological innovation in the industry, undermining the government's goal of an innovative society. AmCham China:

1. Opposes any system of management of the ingredients for cosmetics that is based on the application of a list.
2. Suggests that the list already released be renamed Catalogue of Names of the Ingredients Used in Approved Special-Purpose Cosmetics, collecting information on the use of ingredients in the cosmetics for special purposes. This catalogue will aid understanding of the use of ingredients for cosmetics in China and help fill a gap in risk management. To obtain complete information, the statistics should cover the ingredients used in all domestic and imported non-special-purpose cosmetics since 1989.
3. Suggests the Standard for Cosmetics Hygiene management model be referenced in order to reduce the list of new ingredients to several with special functions (e.g. preservatives, colorants, sunscreens and hair dyes) and create a scientific and modern framework for the management of ingredients.

#### Registration of New Ingredients

From 2008 to November 2012, only three applications for use of new ingredients were approved out of the 155 total applications received from enterprises. This data reveals a breakdown in the effective functioning of the screening process. The main cause of delay is the excessive requirements for technical documentation and data, which the entire industry is unable to satisfy. Moreover, officials stating new requirements in the course of the review make it unreasonably difficult for enterprises to satisfy the requirements. Obstacles in new ingredient application have the effect of precluding any innovation in the sector.

#### Supervision of Cosmetics Registration

Using risk assessment methodology, it can be seen that cosmetics pose far lower risks than food, both in terms of exposure type and quantity. The existing pre-market supervision for cosmetics, however, far exceeds that for food products. For cosmetics (special-purpose and non-special-purpose), pre-market registration and filing is necessary. For China-produced cosmetics, production hygiene licenses are also necessary. Therefore, in addition to the self-monitoring

standards in place around the world, enterprises operating in China must add a variety of additional standards that greatly delay new product launches and impose significant cost burdens. These discourage industry development and innovation in China. AmCham China accordingly encourages the competent government ministries to eliminate or simplify the system of pre-market examination, approval and filing and come closer to international best practices by:

1. Streamlining the examination and approval process for special-purpose cosmetics;
2. Eliminating the review of production capacity of domestic special-purpose cosmetics at the provincial level FDA; and
3. Eliminating the review and approval system for imported non-special-purpose cosmetics and replacing it with the same post-market filing that is applied to domestic non-special-purpose cosmetics.

### *Consistency of Law Enforcement in Market Supervision*

In 2012, SFDA began to gradually strengthen the post-market supervision of the cosmetics industry, an important measure for protecting consumers' rights and interests. However, many local drug administrations have only just taken over the supervision of cosmetics and lack the understanding of the industry and relevant laws and regulations, resulting in varying interpretations of relevant policies and uneven enforcement. For example, local administrations need further expertise and development to properly evaluate third party reports raised to their attention that make safety claims. AmCham China recommends SFDA strengthen the training of local administrations to this end.

### *Registration of Children's Products*

On April 1, 2010, SFDA's "Cosmetics Administrative Application & Acceptation Rules" was implemented, raising numerous problems in the registration of children's (including infants') cosmetics products. Some products have been the subject of review at numerous meetings, large and small, but still await a positive or negative conclusion. In the past two years only a limited number of children's products have been approved by SFDA (out of hundreds of registration applications, not to mention the number of applications put on hold by cosmetic manufacturers due to the uncertainties in the approval process).

Recent SFDA efforts aim to address these concerns, such as the release of the "Guideline for Registration and Evaluation of Children's Cosmetic Products" on October 19, 2012, effective from February 1, 2013. Unfortunately, based on industry experience, SFDA's published guidelines are still not consistently followed during the review and approval process, with some review experts arguing that certain requirements stipulated in the guidelines are still general, and therefore hesitating to conduct technical evaluation and approval.

原料在国内的使用情况，填补风险管理中的空白。为使信息更加全面，应统计 1989 年以来所有国产和进口非特殊用途化妆品中使用的原料。

- (三). 建议参考《化妆品卫生规范》的管理模式，将新原料管理的对象缩减为几类特殊功效原料（防腐剂、着色剂、防晒剂和染发剂），形成科学现代的原料管理框架。

### **新原料注册问题**

从 2008 年到 2012 年 11 月，企业申报的化妆品新原料共有 155 个，但是获批的只有 3 个。这一数据说明，该审查程序不能发挥有效的功能。造成审批延迟的主要原因是对各种技术文件、数据的要求过于严苛，超出了行业的能力所及。另外评审专员在评审过程中不断提出新的要求，也令企业无所适从，难以满足要求。新原料申报困难也阻碍了行业创新。

### **化妆品的注册监管问题**

从风险性评估的角度而言，无论从暴露类型还是暴露量，化妆品对人体的危害风险都远远低于食品。但目前对化妆品上市前监管的强度却远远大于食品。化妆品（特殊用途与非特殊用途）需要上市前的注册和备案。在国内生产的化妆品还要申请卫生许可证。因此，除了全世界通行的自我监控标准之外，在华运营的企业还必须符合各种额外标准，大大延缓了新产品的上市，并给企业带来了较重的经济负担。这不利于中国化妆品行业的发展和创新。因此，中国美国商会鼓励政府主管部门通过以下的措施，消除或简化上市前审批、备案制度，与国际最佳实践接轨：

- (一). 简化特殊用途化妆品审批流程；
- (二). 取消国产特殊用途化妆品省级食药部门的生产能力审核环节；
- (三). 取消进口非特殊用途化妆品的审评备案制，改为与国产非特殊用途化妆品一样的上市后备案。

### **市场监管中的执法统一**

2012 年，国家食药局开始逐步加强对化妆品行业的上市后监管，这是保护消费者权益的重要措施。但是由于许多地方药监部门刚刚接手化妆品的监管，对行业和相关法规文件缺乏了解，导致政策解读不一致，执法水平参差不齐。例如，地方执法部门必须进一步加强自身建设，提高专业

水平，增强对第三方报告中提出的安全问题和诉求进行合理评估的能力。中国美国商会建议国家食药局加强对地方相关行政主管部门的培训。

### **儿童产品注册问题**

自 2010 年 4 月 1 日，国家食药局发布的《化妆品行政许可申报受理规定》正式实施起，儿童（包括婴幼儿）化妆品的注册遇到了一系列的问题。有些产品历经多次大会、小会的评审，仍然没有得到批复。在过去的两年中，仅有极少数的儿童产品获得了国家食药局的批准（而提交的申报申请却有几百个，此外由于审批的不明确，还有很多申请仍在化妆品生产商手中尚未提交）。

为了解决上述问题，食药局也曾进行了一系列的努力，包括于 2012 年 10 月 19 日发布了《儿童化妆品申报与审评指南》并于 2013 年 2 月 1 日起生效实施。遗憾的是，根据行业经历，食药局发布的上述指南在审评过程中并没有得到很好地贯彻执行，部分审评专家仍然认为该《指南》中列出的部分要求不够具体，因而不便进行评审和审批。

在中国，儿童和婴幼儿化妆品的注册许可问题由来已久。化妆品生产商一直在努力提交所需要的所有资料来证明其生产的产品的安全性和质量，然而，部分评审专家却一直要求提交补充文件资料，完全忽视这些产品可能早就已经满足市场的安全要求这一事实。中国美国商会强烈建议食药局尽快统一内部专家评审标准，简化儿童产品上市审批工作的程序。

### **防晒指数 (SPF) 标识问题**

自 2003 年起，中国化妆品法规规定防晒化妆品 SPF 值最大标识值为 SPF30+。此后美国、欧盟、日韩、东盟等国家和地区现行防晒化妆品 SPF 值最大标识值已更新为 SPF 50+。

中国的现行化妆品法规都规定了防晒化妆品 SPF 最大标识值，说明对于“SPF 防晒指数不可以无限制上标”是有共识的。但是自 2003 年以来，新的研究表明中国所处的地理位置属于高至特高强度紫外线照射范围。同时，防晒化妆品在原料、配方、剂型上都有了很大发展。SPF30+ 未能反映防晒化妆品技术水平。同样重要的是，SPF30+ 无法满足消费者的防护需求，特别是日光敏感人群、长时间从事户外活动人群、会暴露于极强紫外线照射的高山运动员等特定人群。这一缺陷直接削弱了国产防晒化妆品在国际化妆品市场的竞争力，阻碍了民族企业的长远发展。

The registration of children and baby cosmetics products in China has been highly problematic for some time. Cosmetic manufacturers have made great efforts to submit the required documentation to verify the safety and quality of these products, but some review experts continue with follow up requests indefinitely, ignoring the fact that these products may have already been safely on international markets for an extended period of time. AmCham China strongly suggests SFDA unify review standards of internal experts as soon as possible to streamline the market launch approval process for children's products.

### *Indication of Sun Protection Factor (SPF)*

Since 2003 Chinese laws and regulations concerning cosmetics have imposed a cap of SPF of cosmetics of SPF 30+. Since then, this figure has been updated to SPF 50+ in the United States, EU, Japan, Republic of Korea, ASEAN and other countries and regions.

The fact that in China a SPF cap value is provided in existing cosmetics-related laws and regulations shows that they have reached a consensus that "SPF should not be without an upper limit". However, since 2003, new research has shown that China is within a region of high and very high intensity UV radiation. Meanwhile, great advances have been made in sunscreen cosmetics ingredients, formula and application methods. SPF 30+ does not reflect the technical level of sunscreen cosmetics. Equally important, it no longer meets consumers' needs, especially the needs of particular groups, such as photosensitive people, those pursuing prolonged outdoor activities, and alpine athletes exposed to extremely strong UV radiation. This shortcoming directly impairs the competitiveness of domestic sunscreen cosmetics on the international market and impedes the long-term development of national enterprises.

To provide all consumers with adequate sunscreen protection, AmCham China suggests that the indicated SPF cap value be raised to SPF 50+.

### Recommendations

- **Do not manage all new ingredients through application of a list; adjust policies to reflect market realities and make the registration of new ingredients practical.**
- Further streamline the examination and approval process for special-purpose cosmetics by eliminating the examination of the production capacity of domestic special-purpose cosmetics at provincial-level FDA.
- Replace the system for review and filing of imported non- special-purpose cosmetics with post-market filing applied to domestic non- special-purpose cosmetics.

为了向所有消费者提供更充分的防晒保护，中国美国商会建议将 SPF 标识值上限提高为 SPF50+。

## 建议

- 不宜采用肯定列表的方式管理所有新原料；按照行业实际情况调整政策，让新原料注册具有实际的可操作性。
- 进一步简化特殊用途化妆品审批程序，取消国产特殊用途化妆品省级食药部门的生产能力审核环节。
- 将进口非特殊用途化妆品的审查备案，改为与国产非特殊用途化妆品一样的上市后备案。

# Direct Sales

## Introduction

**D**irect selling was recognized as a legitimate industry in China in 2005 with the promulgation of the Direct Sales Regulation. AmCham China applauds China's compliance with its World Trade Organization (WTO) obligation to open the direct sales market. By the end of 2012, the Ministry of Commerce (MOFCOM) had granted 32 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 2012 exceeded RMB 91.7 billion.

AmCham China believes that recent years have demonstrated that direct sales operations benefit China not only through the introduction of new products and by offering an alternative shopping channel for consumers, but also by creating employment and income opportunities for hard-working Chinese citizens. These benefits complement and can help accelerate achievement of China's objectives under the 12<sup>th</sup> Five-Year Plan.

## Ongoing Regulatory Issues

### *Industry Reputation and the Need to Unfetter Direct Selling*

Over the last two decades, the proliferation of frauds called *chuanxiao*, which deliberately misled consumers with claims that they are direct sales operations have led to major involvement by the Ministry of Public Security (MPS). Today the State Administration for Industry and Commerce (SAIC) is responsible for supervising Direct Sales, and MPS is responsible for eliminating *chuanxiao*. However, because it is not always easy to differentiate legitimate direct sales operations from *chuanxiao*, both the SAIC and the MPS are often involved together.

Unfortunately, *chuanxiao* operations persist in spite of continued government efforts to eradicate such fraudulent practices. Although legitimate direct sales operators have sought to set themselves apart from *chuanxiao*, the government tends to see the latter as inspired by the former. Consequently, the government enforces stringent regula-

tions which limit industry expansion, and continues to be suspicious of direct sales. This results in decisions by many companies to operate some form of direct selling, including via the Internet, without licenses and in violation to the Direct Sales Regulations. This causes confusion and is unfair for licensed companies, who 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 often disguised as legitimate business, 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 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 62 million) initial investment, a three-year prior direct sales history for FIEs, limited

# 直销

## 引言

2005年，中国政府《直销管理条例》（以下简称《条例》）的颁布标志着直销在中国获得合法行业地位。中国美国商会非常赞赏中国能够开放国内直销市场，切实履行其加入世贸组织的承诺。截至2012年底，已经有32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，2012年中国获批直销许可企业的总规模超过人民币917亿元。

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。

## 现存监管问题

### 行业声誉和放宽直销法规的必要性

过去二十年中，欺诈性传销十分猖獗，经常谎称自己是直销经营，故意误导消费者，引发公安部门投入大量警力参与治理。目前，国家工商行政管理总局负责监管直销，公安部负责打击传销。但是，有时合法的直销经营和欺诈性传销不易分辨，所以通常国家工商行政管理总局和公安部会联合参与执法。

遗憾的是，尽管政府严厉打击，欺诈性传销仍然猖獗。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，始终对直销行业持严格限制和怀疑的态度。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，导致持有许可的企业遭受不公平待遇且处于劣势。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，而是通过明辨欺诈性销售方法，对那些伪装成合法企业的诈骗进行严惩。

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、无退货政策、缺少有效的人员退出机制、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。这些区别除了在《条例》中得以充分反映，亦应该成为未来修订《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6200万元）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市区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。

### 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市区设立一个“服务网点”。如果一家企业要在全国通过直销人员在固定零

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 above, unlicensed companies do not comply with the Direct Sales Regulations. 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 all direct sales companies must have a branch office in every province in which they operate and a “service center” in every urban district in which they sell products. A company selling through sales personnel that by definition work outside of fixed retail locations could potentially be required to put up a service center in every one of China’s 2,861 urban districts. This is economically daunting, and impractical, prior to realizing sales. The regulation simultaneously forces companies to adopt two different business models: one to meet the requirements of direct sales and the other for non-direct sales.

Secondly, the current direct sales license approval process 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 each urban district. In addition, established service centers are required by local administrations for industry and commerce (AIC) 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 seven 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, while others 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 direct sales companies can sell should be minimized and brought in line with international practice.
- Geographic approval—Current unwritten practice indicates that companies entering the direct sales market in China can only receive initial geographic approval for one province. Only after an unspecified waiting period, companies may 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 operations and to ensure more consumers may benefit from direct sales.

### *Change in Supervision Authority Over Direct Selling*

In October 2011, the Chinese government announced Directive 2011(48), under which the State Council cancelled the “vertical management” system for local AIC and Quality Supervision bureaus below the provincial level. 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.

While not fully effective yet, 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 developments at the local level. Due to ambiguity in relevant regulations and relatively less

售点以外地区开展业务，这家企业将面临着需要在 2861 个市区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先递交服务网点方案，而该方案必须分别经过区级、市级和省级监管机构以及国家商务部的批准。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，方可在市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，这套程序所要求的时间长、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，将每个市区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 7 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。有些现行法规过于严格，有些甚至完全脱离市场实际。需进一步完善的条例包括：

- 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。政府应根据市场需求进行地域审批，以避免未经许可经营，同时也不会阻碍更多的消费者受益于直销。

### 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、质监省级以下垂直管理。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 / 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。中国有数千个区级 / 乡镇级行政单位，直销企业将面临极大的管理挑战。

### 结论

中美商会赞赏中国政府承认直销行业合法地位，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。

### 建议

- 将关于设立服务网点的规定从每个市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、加快审批速度并适时通知企业审批进程，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。

familiarity on behalf 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 the Chinese government'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.

### 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 Regulations, the Regulations 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 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.



具体行业问题

# Electronic Payment Services

## Introduction

In 2012, China's electronic payment service (EPS) industry continued to experience exponential growth, driven by strong domestic consumption and innovation in online and mobile payment services. The level of interbank transactions reached RMB 15.9 trillion (US \$2.5 trillion) in 2011, up over 40 percent year-on-year. China's Internet population reached 538 million, including 194 million who have shopped online, and online retail sales are expected to hit US \$360 billion by 2015—up from about US \$121 billion in 2011. Mobile payments are expected to jump from RMB 20 billion (US \$3.15 billion) in 2010 to RMB 385 billion (US \$61.4 billion) by 2014.

On July 16, the WTO issued the Panel decision on the EPS dispute between the United States and China. The Panel's ruling confirms that under its market access commitments, China must allow foreign EPS suppliers to establish entities in China that will be permitted to provide RMB-denominated EPS. While the implementation details are yet to be negotiated between the United States and China, foreign EPS providers are hopeful that the bilateral negotiation will open up opportunities for them to bring world class payment technology and services to Chinese consumers.

In collaboration with related agencies, the People's Bank of China (PBOC) closely monitors the potential risks associated with a fast-growing EPS industry and issues regulations to guide the industry toward healthy growth. This includes promulgation of regulations on pre-paid cards issued by third-party payment providers (3PPP), and distribution for comment of draft regulations on acquiring businesses. Between 2011 and 2012, the PBOC granted licenses in five batches to 197 3PPPs, bringing previously unregulated 3PPPs under supervision.

Positive developments in 2012 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.

## Ongoing Regulatory Issues

### *Building a Competitive Market*

The absence of a regulatory framework allowing foreign-invested EPS providers to engage in RMB-denominated transactions in China continues to prevent them from fully participating in, and contributing to, the industry's development. China remains the only G-20 or BRIC (Brazil, Russia, India, China) country that has only one EPS scheme available for domestic transactions, as China Union Pay (CUP) is the only EPS company permitted to provide EPS for RMB-denominated transactions. CUP has made remarkable progress since its inception in 2001, issuing more than 3 billion cards to card holders and expanding its merchant acceptance network in 135 countries and regions. On November 29, CUP International was launched to support CUP's international expansion. Given CUP's solid grounding, it is time, now, for cardholders and merchants in China to benefit from increased cooperation and competition in the market.

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. Such cooperation also nurtures domestic innovation, benefits trade, and integrates China with global practices. International EPS providers look forward to gaining direct access to China's domestic EPS market.

## Recent Developments

### *Market Access*

On July 16, 2012, the WTO issued the Panel decision on the EPS case between the United States and China. The Panel ruled that China must allow foreign EPS suppliers to establish entities in China that will be permitted to provide RMB-denominated EPS. Following issuance of the Panel report, the US and China agreed upon a deadline for China's compliance with the ruling of July 2013. Prior to that time, China is expected to publish for public comment draft regu-

# 电子支付服务

## 引言

2012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）行业继续迅猛增长。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%。中国网民人数已经达到5.38亿人，其中网络购物的人数为1.94亿，预计到2015年，网络零售额将达到3600亿美元——而这一数字在2011年仅为1210亿美元。预计到2014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3850亿人民币（614亿美元）。

今年7月16日，世界贸易组织就美中电子支付服务争议发布专家组决定。专家组判定，根据WTO市场准入原则，中国必须允许外国电子支付服务供应商在华建立实体，提供以人民币结算的电子支付服务。尽管具体的实施细节尚待美中双方加以磋商，外国的电子支付服务供应商希望双边磋商能够为他们打开机会之门，让他们将世界一流的支付技术和服​​务带给中国消费者。

通过与其他相关部门合作，中国人民银行密切监控电子支付服务产业快速增长可能带来的潜在风险，并且发布相应法规引导该行业的健康发展，包括制定有关第三方支付机构发行预付卡的监管法规，并公布收单业务监管法规草案向社会公开征求意见。2011至2012年间，中国人民银行分五批共向197家第三方支付机构发放了牌照，将之前不属于监管范围的上述机构纳入了央行的统一监管。

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。

## 现存监管问题

### 建立竞争性市场

由于缺乏准许外资电子支付服务供应商在华从事人民币结算交易的监管框架，外资电子支付服务供应商依然无法充分参与到市场中，也无法为该行业的发展做出贡献。中国是20国集团或“金砖四国”（巴西、俄罗斯、印度和中国）中唯一一个国内交易只适用单一电子支付服务系统的国家，中国银联（银联）是目前唯一一家可以提供人民币结算交易电子支付服务的电子支付服务公司。自2001年成立以来，银联已经取得显著成就，共发行了30多亿张银行卡，并将其受理网络扩展到了135个国家和地区。11月29日，银联成立了银联国际来支持其国际业务的发展。鉴于银联已经夯实了业务基础，现在应通过加强合作和激励竞争来使中国的持卡人和商户都能充分享受到合作和竞争带来的益处。

银联通过与万事达和VISA等国际电子支付服务供应商发行双币种双标识卡，可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服务供应商进行合作的重要性，特别是在实现客户利益最大化方面。同时这种合作促进了国内创新，推动贸易发展，并使中国融入到全球实践中。国际电子支付服务供应商期待着能够直接进入中国国内的电子支付服务市场。

## 最新进展

### 市场准入

2012年7月16日，世界贸易组织就美中电子支付服务争议作出专家组决定。专家组判定中国必须允许外国电子支付服务供应商在中国建立实体，并允许其从事人民币结

lations that would govern the establishment and operation of foreign-funded payment card companies in China.

AmCham welcomes the timely promulgation of these new regulations and hopes that they will include reasonable requirements that facilitate healthy participation and contributions to the EPS industry in China by foreign EPS suppliers.

### *Chip Standards*

In 2012, PBOC accelerated the migration of magnetic stripe cards to PBOC 3.0, a chip standard issued by PBOC. The move aims at migrating all new RMB denominated bank cards to PBOC 3.0 in economically developed geographical areas by 2015.

Though intended to provide better fraud-proof service for cardholders, this migration project has triggered concerns about the compatibility of PBOC 3.0 with the internationally accepted EMV (Europay, MasterCard, and Visa) chip card standard. It is unclear whether the two standards will be able to 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 important both for PBOC 3.0 cardholders traveling abroad and EMV card holders visiting China. For the same purpose, it is equally important to make the PBOC 2.0 standard accessible to foreign EPS providers without technical or economic restrictions.

AmCham China encourages the PBOC to work with both domestic and international EPS providers to ensure the interoperability of PBOC 3.0 and EMV and equal accessibility to PBOC 3.0 by foreign EPS providers, so that inbound and outbound travelers experience smooth and secure card usage.

### *Bank Card Swiping Fees*

In response to merchants' long-standing complaints about allegedly overpriced bank card swiping fees, NDRC proposed a regulation in October 2011 to lower fees by half and cap them. NDRC has since entered into several rounds of discussion with all stakeholders, including cardholders, merchants, issuers, and acquirers, on the impact of the proposed cuts. As a result of the consultations, NDRC is said to be considering a smaller reduction in the fee and an optimized fee structure to balance the interests of the stakeholders. AmCham China commends NDRC's effort to balance the interests of the various market participants.

At the same time, AmCham encourages NDRC to coordinate the streamlining of the business tax, which is levied on merchants, acquirers, and issuers in the issuing and acquiring process. We also encourage CBRC and PBOC to continue tightening 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.

## Conclusions

With 3.5 billion bank cards in circulation, 538 million Internet users, and 1.85 billion mobile phone users, China is set to become the world's largest EPS market. China is on track to bring world class payment innovation to benefit consumers and the Chinese economy as a whole. AmCham China encourages the Chinese government to continue building an enabling regulatory environment that fosters increased competition and openness and helps China keep pace with the rapid progress that is taking place in other markets.

## Recommendations

- **Open market access to other domestic and international EPS providers with clear licensing requirement. [PBOC and MOFCOM]**
- Make PBOC 3.0 accessible to international EPS providers and ensure full interoperability between PBOC 3.0 and EMV chip standards. [PBOC]
- Avoid drastic reductions in bank card swiping fees to ensure a balance of interests between merchants and issuers. [NDRC, PBOC, CBRC, and MOFCOM]

算的电子支付服务。专家组报告发布后，美中双方商定中国应在 2013 年 7 月之前履行专家组决定。在此之前，外界期待中国发布监管外资电子支付服务供应商在华建立实体及运营的法律法规草案，并就此公开征求意见。

中国美国商会欢迎上述新法规的及时出台，并希望这些法规能包含有助于外国电子支付服务供应商在华参与健康的市场竞争、促进中国电子支付服务市场发展的合理标准。

## 芯片标准

2012 年，中国人民银行加快了由磁条卡向以央行发布的芯片卡标准 PBOC3.0 为标准的芯片卡过渡的步伐。此举旨在确保到 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 PBOC3.0 标准。

尽管这一举措的初衷在于为持卡人提供更好的防欺诈服务，但 PBOC3.0 引发了此标准与国际通行的 EMV（由欧洲支付、万事达卡和 VISA 联合制定的标准）芯片卡标准兼容问题的担忧。这两种标准在大规模使用的情况下能否顺畅对接至今尚不清楚。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 PBOC3.0 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都很重要。因此，确保国外电子支付服务供应商没有技术或经济上的限制使用 PBOC2.0，这一点也不容忽视。

中国美国商会鼓励央行加大与国内外 EPS 供应商合作，确保 PBOC3.0 和 EMV 标准的全面兼容，确保外国 EPS 供应商同样可以使用 PBOC3.0，从而保证出入境游客能够方便、安全地使用银行卡。

## 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。发改委已经召集各利益相关方，包括持卡人、商户、发卡行和收单方就出台降低银行卡收费政策进行了数轮磋商。据悉，磋商的结果是，发改委正在考虑小幅降低银行卡刷卡费用，同时优化收费结构，以此平衡各方的利益。中国美国商会赞赏发改委在平衡各市场参与方利益方面所作的努力。

与此同时，中国美国商会鼓励发改委协调简化营业税，消除目前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。我们还鼓励银监会和央行继续加强监管，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。

## 结论

目前中国流通的银行卡已达 35 亿张，同时拥有 5.38 亿网民和 18.5 亿手机用户，中国必将成为全球最大的电子支付市场。中国正努力引进世界一流的支付创新技术，造福所有消费者和中国的整体经济。中国美国商会鼓励中国继续建立一个有效的监管环境，促进竞争和开发，实现与其他市场同步快速发展。

## 建议

- 发布明确的许可证要求，向其他国内和国际电子支付服务供应商开放市场。[ 央行、商务部 ]
- 确保国际电子支付服务供应商能够顺利使用 PBOC 3.0，促进 PBOC 3.0 和 EMV 芯片标准的全面兼容。[ 央行 ]
- 避免银行卡刷卡费大幅下调，以确保商户和发卡行之间的利益平衡。[ 发改委、央行、银监会和商务部 ]

# Express Delivery Services

## Introduction

**L**ogistics costs accounted for 17.8 percent of China's GDP in 2011, 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.

## Ongoing Regulatory 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.

### Administrative Measures on Express Market

In addition to managing the national standards for express services, and establishing and overseeing prefecture-level

postal authorities, the State Post Bureau (SPB) has passed the Administrative Measures on the Express Market. These measures exerted a significant impact on foreign companies' operation in China and also violated China's WTO accession commitments, with a rising level of regulations, standards and administrative measures this year that impede the sound growth of foreign businesses in the Chinese market.

SPB's current revisions establish new requirements on business scope and geographic scope. For the past decade foreign companies that engaged in international express delivery services were issued a "Business Permit of International Express Delivery Operation in China" by the Ministry of Commerce. This permit specifies a nationwide business scope, with no further restrictions on business and geographical range. Foreign operators were also issued the "Business Permit for International Express Delivery Services", allowing operations relevant to international businesses in specified provinces. Combined, these permits led to major operators establishing branches in all provinces throughout China.

Given the network-based and intensive operation of express services, operators take into account multiple factors, such as requirements of customers, levels of market maturation, and operational costs, before establishing branches or service stores in a new location. The general practice is to establish branches in central cities in a province which is fairly developed, and then build and expand an operating network in regions and cities where demand is growing. Previously operators were permitted at the provincial level without limitations based on regional branches.

The enforcement of new measures could possibly narrow down the geographic scope of administration to the level of prefecture-level cities in its discretion, implying that business operators have to apply for a permit in each prefecture. With 300-odd prefecture-level regions in China, the new measures partition an integrated nationwide network and market into some 300 segments. These measures artificially segment an integrated market, introducing new barriers to trade, hindering free distribution of goods and services, and reducing the potential for commercial development.

According to article 16 of the 'Law on Administrative Permit of the PRC', regulations may make specific provisions for the

# 快递服务

## 引言

2011年，中国的物流成本占到国内生产总值的17.8%，是发达国家平均物流成本的两倍。中国物流成本居高不下的原因众多，包括乱收费、乱罚款，石油价格上涨，城区配送困难，重复征税等。物流行业不断上升的成本已经成为影响整个经济发展的重大问题。

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繁荣、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。

## 现存监管问题

### 外商投资限制

2011年12月修订的《外商投资产业指导目录》（《外商投资目录》）第五条明示，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，外商投资企业为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快递业务将减缓相关产业的发展速度。中国美国商会促请中国将交通运输、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”。

### 快递市场管理办法

国家邮政局管理全国快递服务标准，建立和监督地级市邮政主管部门。此外，该局还制定通过了《快递市场管理办法》。这一办法对外资在华运营构成了严重影响，也违反了中国的人世承诺。同时，2012年相继出台的各项法规，标准和行政措施，阻碍了外资企业在中国市场的正常发展。

国家邮政局在新修订的管理办法中对业务范围和地域范围作出了新的要求。过去十年中，从事国际快递服务的外资企业都有商务部颁发的“在华国际快递业务经营许可证”。该许可证在全国范围均有效，且并未对外资企业的业务范围和地域范围做进一步限制。同时外资快递企业还可申请获得“国际快递服务经营许可证”，允许外资企业在全国特定省份从事相关国际业务。上述许可证制度使得大型外资快递企业能够在中国境内的所有省份建立业务分支机构。

由于快递服务需要依赖服务网络和集约式经营模式，快递企业在新建业务分支机构和服务点时需要考虑包括客户需求、市场饱和度和经营成本等很多因素。业内通常的做法是在一个较为发达省份的中心城市建立分支机构，在此基础上根据需求增长情况向附近地区和城市辐射，建立并拓展运营网络。之前的快递企业所取得的经营许可都是省级许可，对建立区域分支机构并未作限制。

上述新的管理办法实施后，邮政部门对快递企业的监管可能会具体到地级市一级，这也意味着业务运营商需要在每个地市申请许可。中国现有300多个地级市，新管理办法可能会将全国性整体运营网络和市场分割成为300多个部分。上述办法人为割裂了整体市场，构成了新的贸易壁垒，阻碍了商品和服务的自由流动，也抑制了业务开发的潜力。

根据《中华人民共和国行政许可法》第16条之规定，规章可以在上位法设定的行政许可事项范围内，对实施该行政许可作出具体规定。法规、规章对实施上位法设定的行政许可作出的具体规定，不得增设行政许可；对行政许可条件作出的具体规定，不得增设违反上位法的其他条件。据此，上述新修订的管理办法中有关业务范围和地域范围的规定超出了《邮政法》所允许的行政许可范围，应被视为行政许可及其他条件的增设，因此违反了上位法。中国美国商会鼓励国家邮政局取消对于省级以下业务的许可审

implementation of an administrative permit within the scope of matters of the administrative permit prescribed by upper law. Meanwhile regulations shall not add other administrative permits in their specific provisions for the implementation of an administrative permit prescribed by upper law, and shall not add other conditions which violate upper law in their specific provisions for conditions of the administrative permit. Therefore the new provisions concerning the business and geographic scope exceed the scope of administrative permits prescribed by the “Postal Law” and shall be recognized as an addition of other administrative permits and addition of other conditions, thus violating the upper law. AmCham China encourages SPB to maintain operators’ right to establish branches in prefecture-level cities based on prevailing market conditions at the provincial and national level.

### Restrictions on EDS Domestic Business Permit

After two years of application, in 2012 SPB finally agreed to issue Chinese business licenses to new foreign companies. However, these licenses are bundled with a series of conditions, including only opening in five to eight cities initially. Additionally, domestic operators who cooperated with international operators are required to obtain the international business license and are limited to doing agency business in the approved cities, severely curtailing areas of cooperation.

The express industry relies on complete network coverage to do business. With access to only a limited number of cities, it is impossible for permitted enterprises to be competitive. The domestic market is fully open to domestic enterprises; such measures targeting foreign enterprises are discriminatory, limit market development and fulfillment of consumer needs, and violate China’s WTO accession commitments.

## 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

- **Revise SPB’s departmental rules to strictly conform with higher-level laws, procedures and regulations, particularly administrative license regulations.**
- Adhere to China’s WTO accession commitments, completely open the domestic business market, provide the foreign enterprises with equal treatment as afforded to domestic enterprises, and eliminate unreasonable requests on foreign enterprises.
- During the process of formulating administrative measures, respect the opinions and suggestions of the foreign enterprises to make the administrative measures more balanced and sensible.

批，保留快递企业根据全省及全国市场趋势决定是否在地级市建立分支机构的权利。

### **国内快递业务经营许可证限制**

经过近两年的申请等待，2012年，国家邮政局终于同意向新的外资企业颁发国内快递业务经营许可证。然而上述牌照的发放还附加了一系列的条件，包括首批仅开放5-8个城市。另外，内资快递企业与外资快递企业合作需要申请取得国际业务经营许可证且仅限在获得批准的城市从事代理业务，从而严重限制了双方合作的领域。

快递行业的发展离不开完整的业务经营网络。如果仅允许企业进入有限的几个城市的市场，那么被许可企业也无法具有竞争力。目前国内快递市场向内资企业完全开放，而涉及外资快递企业的管理规定却具有歧视性，不仅限制了市场的发展，损害了消费者的利益，同时还违反了中国的人世承诺。

## **结论**

中国美国商会建议中国政府对快递服务行业的监管能更加符合国际最佳实践。尤其是，我们鼓励中国政府放宽管制，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的公共服务职能。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**

- 国家邮政局应当对部门规章进行修改，严格保持与上位法、相关程序和法规的一致性，特别是与行政许可规定的一致。
- 国家邮政局应当遵守中国的人世承诺，完全开放国内快递市场，授予外资企业与内资企业同等的国民待遇，取消对外资企业的不合理要求。
- 在制定管理办法的过程中，应当尊重外资企业的意见和建议，以加强管理办法的平衡性和合理性。

# Financial Services

## Introduction

**F**inancial services, including but not limited to commercial banking, private equity, securities and the interbank market, serve an instrumental role in any modern market economy. AmCham China has long supported the shared commitment of the US and Chinese governments to work together on a broad range of financial services issues. Following the global financial crisis, both governments worked together effectively to address issues of mutual interest. AmCham China maintains its pledge to support these efforts wherever possible.

In 2012, foreign commercial banks maintained growth momentum from a low base in China, benefiting from the relatively stable economic and financial environment as well as further opening-up of the market. Currently, at least 338 foreign banks have an established presence in China. For the first time since foreign banks have been able to incorporate locally, four international banks were among the top 50 biggest banks in China. While many have established branches and subsidiaries with multiple business lines, the majority operate as representative offices with limited business capacity. Regulators made efforts to enable foreign commercial banks to negotiate branch opening locations, and applications are being processed faster. The application process has also improved through increased transparency and further standardization of documentation requirements.

Over the past year private equity's (PE) stature and influence in China also grew, continuing the decade-long trend of serving as a driving force for economic growth, job creation, innovation and entrepreneurial success. China is now one of the leading destinations for PE capital amid continued global economic turbulence, capturing more than 5 percent of the value of global PE investment, a significant increase from 1.5 percent in 2007. With regards to securities, in 2012 the China Securities Regulatory Commission (CSRC) accelerated the Qualified Foreign Institutional Investor (QFII) approval process while the State Administration of Foreign Exchange (SAFE) provided bigger quota for QFIIs; by February of 2013, 215 foreign institutions have been granted QFII licenses and the total QFII quota is more than US \$40.8 billion.

Despite the progress in the past year in various financial services, numerous and significant barriers remain to foreign

operators. Foreign banks are still constrained in the services and coverage they can provide in China, accounting for only 1.93 percent of the market; by contrast, foreign banks in the US account for more than 20 percent of total assets. While key services of PE firms have been gradually recognized by Chinese regulators and enterprises, regulatory challenges and uncertainties, particularly on the nature of RMB funds managed by foreign general partners (GPs), continue to negatively impact the development of the industry in China. While some of these barriers may be well-intentioned, in practice they reduce the competitiveness of Chinese financial markets as well as services available to both consumers and businesses, and ultimately have negative impact on the efficiency of the sector and the crucial services it provides to the economy as a whole. AmCham China hopes that the Chinese government recognizes the value and efficiency that foreign operators provide in the sector, and accordingly embark on further reform to improve market access and regulatory clarity.

## Ongoing Regulatory Issues

### *Regulatory Clarity*

While foreign financial services firms have gradually become important contributors to the industry in China, they still face a complicated and opaque regulatory approval process and are subject to regulations from numerous regulators, including the People's Bank of China (PBOC), China Banking Regulatory Commission (CBRC), China Insurance Regulatory Commission (CIRC), CSRC, National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM), SAFE, Ministry of Finance (MOF) and local financial offices or the Bureau of Financial Work. A consistent concern across all financial subsectors is the ambiguous and overlapping regulatory structure. A simplified regulatory structure would avoid inconsistency across multiple authorities, while clarifying their roles would ensure a coordinated regulatory approach to market activities.

# 金融服务

## 引言



融服务，包括但不限于商业银行、私募股权基金、证券和银行间市场，是现代市场经济的重要组成部分。长期以来，中国美国商会一直支持美中政府为解决广泛的金融服务问题付出的共同努力。全球金融危机后，两国政府开展有效合作，解决了关乎两国共同利益的诸多问题。中国美国商会将在必要时一如既往地提供协助。

2012年，得益于中国相对稳定的经济金融环境和逐渐开放的市场，外资商业银行在华经营从薄弱的基础上起步，保持了良好的发展势头。目前，至少已有338家外资银行进入中国市场。从外资银行获得允许并在华设立分行以来，中国银行前五十强于2012年首次出现了四家国际性银行。虽然不少外资银行已经在华设立了分支行，拓展了业务范围，但大部分外资银行仍以代表处的形式在华开展业务，经营范围非常有限。监管部门做了大量工作，使外资商业银行能够协商分行开设地址，并且加快了分行申请审批速度。另外，申请程序更加透明以及对申请文件进一步标准化也优化了申请程序。

去年，私募股权基金（PE）在中国的声望和影响力进一步增强，继续保持十年来不断推动中国经济增长、扩大就业、促进创新和创业成功的地位。在全球经济持续动荡的背景下，中国目前已经成为私募股权投资投资大国之一。2012年，中国私募股权投资额占全球私募股权投资额的比例超过了5%，与2007年的1.5%相比有了大幅跃升。在证券领域，从2012年中国证券监督管理委员会加快了合格境外机构投资者（QFII）的资格审批，国家外汇管理局（外管局）加大了QFII的配额审批之时至2013年2月，已有215家外资机构获得了QFII牌照，QFII配额总额已超过408亿美元。

尽管去年中国在各项金融服务业均取得了进展，但外资银行在华经营依然面临着诸多重大障碍。外资银行在华

经营依然受到业务和地域上的限制，在中国的市场份额仅占1.93%，而外资银行在美国市场的总资产占比却超过20%。虽然私募股权公司的主要业务已经逐步取得中国监管部门和企业的认可，但依然面临着诸多挑战和不确定性，特别是实际处于外资普通合伙人管理下的人民币基金。这些挑战和不确定性依旧对中国私募行业的发展产生着负面影响。尽管上述一些障碍的设立初衷不错，但在实践中却削弱了中国金融市场的竞争力，也缩小了消费者和企业所能享受到的金融服务范围，最终也会削弱本行业的效率，妨碍其为整体经济发展所能提供重要服务的能力。中国美国商会希望中国政府能够意识到外资金融机构对中国金融业提升价值和效率的重要作用，并据此深化改革，扩大市场准入和增加监管透明度。

## 现存监管问题

### 监管透明度

尽管外资金融服务企业已经逐渐成为中国金融业的重要组成部分，但他们却依然面临着复杂且不透明的监管审批程序，且受到包括中国人民银行（央行）、中国银行业监督管理委员会（银监会）、中国保险业监督管理委员会（保监会）、中国证券业监督管理委员会（证监会）、国家发展和改革委员会（发改委）、商务部、外管局、财政部和地方金融办或金融工作局在内多个部门和层级的监管机构的监管。一直以来都困扰金融业的一大难题便是含糊不清和相互重叠的监管结构。简化监管结构将消除多头监管造成的前后矛盾，同时，明确各监管部门的职责将确保对市场活动的监管方式协调一致。

## **Commercial Banking**

### Ownership Ceiling for Foreign Investors in Local Chinese Banks

A single foreign investor is subject to a 20 percent ownership limit, while the combined share of foreign investors in a joint venture is capped at 25 percent. This rule restricts the development of foreign banks as well as their ability to influence the management of institutions they invest in, which is the purpose of introducing foreign strategic investors. In a welcome move, the Chinese government has raised the foreign equity cap in securities joint ventures from 33 percent to 49 percent under the US-China Strategic and Economic Dialogue. AmCham China suggests a similar policy relaxation be adopted in the commercial banking sector and that all such limits be phased out.

### Branch Expansion Limitations and Data Requirements

Foreign banks are only allowed to submit one new branch application at a time, the time to obtain approval is often unpredictable, and documentation requirements can vary significantly by locality. Banking regulators in second and third tier cities, increasingly the preferred locations for foreign banks' expansion, often have less exposure to foreign banks and are therefore not familiar with the regulations governing their expansion. AmCham China suggests allowing submissions of multiple expansion applications simultaneously, clearer guidance by central regulators on necessary data, and information requirements to be applied consistently in all regions.

### Redundant Reporting Requirements

The commercial banking industry is regulated by several government agencies, including, but not limited to, the PBOC, CBRC, SAFE, and local Financial Offices or Bureaus of Financial Work. Each regulator and its local branches require banks to generate and submit reports on all aspects of daily operation to pre-empt risk and ensure market stability. However, different regulators often request that banks prepare separate reports with similar but not identical content and format on short notice. A commercial bank with a national network may need to provide thousands of different reports for different regulators at different levels and locations at the end of each quarter, which poses a significant burden on manpower, IT systems and quality control. AmCham China suggests that the numerous regulators overseeing this sector strengthen their coordination and data sharing to effectively reduce reporting requirements and the costs they represent to all banks.

### Capital and Liquidity Constraints

The Central Bank Law of 1994 describes the availability of a liquidity window at the PBOC which banks may theoreti-

cally use in the event of exceptional liquidity needs, but the window has never actually been utilized. Each year SAFE and NDRC approve offshore short-term and long-term foreign debt quotas for locally incorporated foreign banks in China. Access to sufficient liquidity, whether through adequate foreign debt quotas or the Central Bank borrowing window, is of paramount importance for prudential asset and liability management in the event of a downturn. This is particularly the case when foreign banks are unable to avail themselves of the funding possibilities offered by their offshore parents.

AmCham China recommends increasing and ultimately removing foreign debt quotas. Foreign financial institutions would willingly cooperate with the relevant regulatory bodies to develop a clear and transparent contingency plan to provide sufficient liquidity to foreign banks in the event of extraordinary market circumstances. In addition to an increasingly challenging macroeconomic and financial environment, foreign banks must maintain a higher level of capital than ever before to meet the Basel III standards. While a stronger capital base is helpful, it is not a substitute for liquidity.

## **Securities**

### Innovation Business Licenses

AmCham China welcomes CSRC's move to allow securities joint ventures (JV) to participate in the A-share stock market, along with shortening the operation period requirement to apply for new licenses from 5 years to 2 years. As all JVs are independent and managed under strict corporate governance, new licenses incentivize JVs' foreign shareholders to introduce additional products and experience into China's capital markets. Unfortunately, unnecessary requirements such as regulated capital requirements and detailed ratings thresholds hinder securities firms' participation in specific businesses, such as private placement bonds, assets-backed securitization and mezzanine financing. Notably, some underwriting and advisory businesses that securities firms regularly participate in do not deploy capital, thus limiting the risk and need for related capital requirements.

Given the need for higher competition and innovation in the above subsectors, AmCham China urges regulators to more flexibly grant securities JVs business licenses related to innovative products. AmCham China also suggests that China open the market for mergers and acquisitions in advisory and bidding services for all China-based securities firms equally. Moreover, the grace period for new licenses should be shortened for business lines with limited risk and deployed capital.

### Non-transparent Regulatory Structure and Credit Rating System

Over the past decade, China's bond market has experienced significant development and has grown to be the second

## 商业银行

### 外国投资者对本地中资银行的持股限制

目前在中国，单一外国投资者对本地中资银行的持股比例不得超过 20%，两个或两个以上的外国投资者的联合持股最高上限为 25%。这一规定限制了外资银行的发展，也削弱了其对所投资机构的管理施加影响的能力，而中国引入外国战略投资者的目的就是为了解引进先进的管理经验。可喜的是，中国政府已经根据美中战略经济对话（S&ED）成果，将外资在中外合资证券公司中的持股比例上限从 33% 提升至 49%。中国美国商会建议中国政府在商业银行领域采取类似的放松管制政策，并逐步取消上述限制。

### 开设分行的限制和数据要求

外资银行只允许一次申请开设一个新分行，且最终获得批准的时间也无法预计，而各地对申请文件的要求差别甚大。中国的二三线城市目前是外资银行业务扩展的首选地点，但这些城市的银行监管部门通常较少接触外资银行，因此不甚熟悉外资银行设立分支机构的相关规定。中国美国商会建议允许外资银行同时申请开设多个分支机构，由中央一级监管部门制定在各地区统一适用的申请必要的数据和信息要求。

### 繁冗的报告要求

商业银行业需要接受包括但不限于央行、银监会、外管局和地方金融办或金融工作局在内的监管机构的多头监管。上述每个监管部门及其地方各级监管分支机构，均要求银行就日常经营中的各个方面提交报告，以防范风险，确保市场稳定性。但是各个监管机构经常临时要求银行分别向其提交报告，报告主题相似，但在内容和格式要求上却不尽相同。一家网点遍布全国的银行每个季末可能需要分别向不同地区、不同层级的不同监管者共计提交多达数千份的报告，给银行的人工、信息系统和质量控制都增加了一定的负担。中国美国商会建议金融业的各监管部门能够加强协调和数据共享，从而有效地减少报告要求，降低银行的运营成本。

### 资本和流动性限制

1994 年《中国人民银行法》规定商业银行理论上可以在面临特殊流动性需求时申请央行开启流动性窗口，但这一窗口在实践中从未开启使用过。每年外管局和发改委都会审批在本地注册运营的外资银行离岸的短期和长期外

债配额。不管是通过给予充足的外债配额，还是开启央行借贷窗口来确保商业银行流动性充足，对经营滑坡时期商业银行审慎资产负债管理都具有非同寻常的重要意义。这一点对于无法从海外母公司获取充足流动性的外资银行来说尤其重要。

中国美国商会建议增加并最终取消外债配额限制。外资金融机构希望与相关监管部门通力合作，制定一套明确且公开的特殊市场条件下外资银行确保充足流动性的应急预案。除了宏观经济和金融环境的日益严峻的挑战外，为了达到巴塞尔协议 III 提出的相关标准，外资银行还必须保持比以往都高的资本充足率水平。尽管夯实资本金基础不无裨益，但毕竟它无法代替流动性需求。

## 证券

### 创新业务许可

中国美国商会欢迎证监会允许中外合资证券公司参与 A 股市场交易，并将证券公司申请新业务许可的经营年限要求从 5 年缩短至 2 年。由于所有的外资证券公司均属独立经营且按照严格的公司治理结构进行管理，新业务许可有利于激励合资证券公司的外方股东为中国资本市场引入更多新产品和经验。但是，包括法定资本要求、过细的评级门槛在内的一系列不必要的限制，都阻碍了证券公司从事私募债券、资产证券化和夹层融资等业务。值得一提的是，证券公司部分常规承销和咨询业务并不动用资本，因此控制了风险，降低了对资本的需求。

鉴于上述行业对竞争和创新的要求较高，中国美国商会促请中国监管部门在向中外合资证券公司发放创新产品许可时能够更加灵活。中国美国商会还建议向所有在中国注册运营的证券公司平等开放并购咨询和投标服务市场。另外，对风险有限且资本到位的新业务，应当缩短许可申请的宽限期。

### 监管框架和信用评级体系不透明

过去十年来，中国的债券市场得到了长足的发展，目前已经成为亚洲第二大债券市场。中国的债券资本市场受到包括央行、银监会、证监会、半官方机构中国银行间市场交易商协会（NAFMII）、发改委和财政部在内的多头监管。在很多情况下，公司发债需要获得不止一家监管部门的审批，因此造成了审批周期长、重复审批和审批程序不透明等问题。

largest in Asia. China's debt capital market is governed by a large number of regulatory bodies, including PBOC, CBRC, CSRC, the quasi-governmental National Association of Financial Market Institutional Investors (NAFMII), NDRC and MOF. In many cases, companies require approval by more than one regulator to issue bonds, resulting in time-consuming, repetitive and unclear procedure.

To reform the debt capital market, AmCham China recommends China establish a transparent regulatory structure with clarified roles between regulatory bodies in the bond market, and promote self-regulatory bodies to encourage market participation as well as an accurate and transparent credit rating system. Both moves would be beneficial for the further development of China's exchange bond market. AmCham China urges regulators to clarify criteria and requirements for issuers and investors to enter the bond market, and to further lift the capital requirements for financial bonds issuance. China should also establish a unified, linked and multi-currency clearing platform to centralize global bond trading transactions outside of the exchange market and attract foreign participation.

## *Private Equity*

### *Uncoordinated Regulations*

The amended Securities Investment Fund Law effective from June 2013 is intended to establish legal grounds for private equity and appoint an industry regulator to supervise the industry. Given that privately placed funds are not typically covered by the regulatory framework of mutual funds, the existing ambiguous regulatory status is expected to continue.

AmCham China looks forward to separate legislation that specifically addresses the private equity market to reduce this ambiguity. This legislation should recognize the unique characteristics of private equity, which make it a valuable component of the financial services industry and value-add service provider to Chinese investee companies and thus should be preserved. These include:

- Funds are privately raised on the basis of historical performance and individual judgment.
- Funds mainly invest in the shares of the unlisted firms, and exit via IPO or trade sales.
- General partners generate revenue on the basis of a management fee of the committed capital and a bonus subject to their achievement of a hit rate.
- The sole purpose of the investment is to maximize the values for the investee companies and provides high returns to the limited partners.
- Globally the industry is self-disciplined and self-managed.

### *Nature of Foreign GP Managed RMB Funds*

Currently there is no clear regulatory definition of the nature of an RMB fund initiated and managed by foreign general partners (GP), including whether it is treated as a domestic or foreign fund. Some regulators view these as purely foreign based on the existing principle of "sources of capital." Others view it as domestic due to the fact that the funds are raised and invested onshore; it is also often regarded as a new category that is subject to both "sources of capital" and "actual control."

AmCham China recommends authorities establish legislation specifically designed for private equity that takes into account the unique features of the PE GPs and funds, and can drive the establishment of a loosened yet coordinated regulatory mechanism that emphasizes the role of the market and industry associations. AmCham China suggests a "domestic in nature" treatment for several reasons. The limited partners (LPs) of those funds, whether institutional or individual, are all domestic. The investments will be made to support the growth and transformation of Chinese enterprises, and exits will occur via either domestic stock exchange markets or trade sales to strategic buyers. The sole mission of the GPs is to help target companies maximize their value and generate returns for the LPs. To control a company or even an industry is not among the interests of those funds and GPs.

## *Interbank Market*

### *Rating Issues Related to Market Entry via Joint Venture*

There are no securities joint ventures (SJV) licensed to underwrite commercial paper or mid-term notes in the inter-bank market. Although the CSRC-rated "AA" threshold appears to be applied on an equal basis, the rating of an SJV is in fact decided entirely by that of its Chinese partner, not the global credentials and performance of the foreign partner. Thus, in practice, SJVs are excluded from the market.

AmCham China urges PBOC and NAFMII to recognize foreign firms' global experience, thereby introducing more competition and allowing the issuer more freedom to select the underwriter based on its own assessment of both service and price. The pool of underwriters should include all locally incorporated banks and securities firms who have passed the minimum requirements and are fairly registered. Foreign firms have been providing such services globally for decades. The national treatment for foreign financial institutions will provide Chinese firms better products, more options and lower costs.

为了改革债券市场，中国美国商会建议中国应该建立一个透明的监管框架，明确各监管主体对债券市场的监管职能，推动建立行业自主监管主体，鼓励市场参与，建立准确透明的信用评级体系。这些举措都将有利于中国交易所债券市场的进一步发展。中国美国商会促请各监管部门明确债券发行人和投资人进入债券市场的标准和要求，进一步取消金融债券发行的资本要求。中国还应该建立一个统一、互联且多币种结算的交易平台，实现交易所市场以外的全球债券交易的集中化，并吸引外国投资者参与交易。

## 私募股权

### 监管法律缺乏协调

修订后的《中华人民共和国证券投资基金法》将于2013年6月生效实施，试图确立私募股权基金的法律地位和指定其行业监管机构。鉴于私募股权基金通常不纳入共同基金监管框架，因此目前对私募股权基金模糊的监管状况预计仍将继续。

中国美国商会期盼针对私募股权市场单独立法，减少其监管模糊性。此法应当认可并且支持保护私募股权的独特特征。正是因为以下独特特征，私募股权成为了金融服务行业中非常宝贵的组成部分和中国被投资企业的增值服务提供商。这些特征包括：

- 根据历史业绩和个体判断进行非公开募集的私募基金。
- 基金主要投资非上市公司股份，通过IPO或者交易出售等方式退出。
- 普通合伙人的收入来自于认缴资本的管理费，以及完成最低投资回报率后获得的奖金。
- 投资的唯一目的在于使得被投资公司的价值最大化，为有限合伙人（投资人）提供高回报。
- 自律和自我管理是该行业通行的规则。

### 由外国普通合伙人管理的人民币基金的属性

目前尚无法律对外资普通合伙人（GP）发起和管理的人民币基金的性质作出明确的监管定义，包括上述人民币基金属于内资基金还是外资基金都无规定。一部分监管部门基于现行的“资本来源”原则，认定上述基金属于外资。另一部分则认为鉴于该基金在中国境内募集、投资，因此应视为内资；另外上述基金还经常被认定为同时适用“资本来源”和“实际控制”原则的一种新型基金。

中国美国商会建议中国制定私募股权专门法律或法规，在立法时充分考虑私募股权普通合伙人和私募股权基金的特点，建立一套以市场和行业协会为监管主体，宽松而协调的监管机制。中国美国商会建议确立上述私募股权基金的“内资基金”地位。原因如下：上述基金的有限合伙人（LP），无论是机构还是个人，都是内资。上述基金将投资支持中国企业的增长和转型。退出也是通过境内证券市场或交易出售的方式转让给战略买家。普通合伙人的唯一任务就是帮助目标公司实现价值最大化，并为有限合伙人赚取回报。控制一家公司甚至一个行业并不是上述基金和普通合伙人的目标。

## 银行间市场

### 合资企业市场准入评级问题

目前中国银行间市场中尚无中外合资证券公司（SJV）获得承销商业票据或中期票据的业务许可。尽管理论上证监会确定的“AA”级门槛应该对所有主体同等适用，但合资证券公司的评级事实上完全取决于中国合资方的评级，并不考量外方的全球信誉和业绩。因此，合资证券公司事实上被排除在该市场之外。

中国美国商会促请中国人民银行和中国银行间市场交易商协会承认外资企业的全球经验，引入更多竞争，授予票据发行方更多自主权，允许他们基于服务和价格自主评估选择承销商。上述承销商应该包括所有在中国本地注册的银行和符合最低要求且合法登记的证券公司。外资金融企业在这方面已具备数十年的全球经营经验。给予外资金融机构国民待遇，将有助于它们为中国券商提供更好的产品，使它们有更多的选择同时降低成本。

## 最新进展

### 金融业发展和改革

2012年2月下旬，世界银行和国务院发展研究中心联合发布了一份名为《展望2030年的中国》的报告，报告中提出了中国未来六大战略发展方向。尤其值得一提的是有关财政改革的详细建议。该报告展示了中央政府继续推进经济全面改革的决心，并描绘了金融领域各类改革的宏伟蓝图。2012年9月，国务院批准了由央行、银监会、证监会、保监会和外管局共同起草制定的《金融业发展和改革“十二五”规划》。规划提出的最重要的内容便是实现利

## Recent Developments

### *Financial Sector Development and Reform*

In late February 2012, the World Bank and Development Research Center (DRC) of the State Council jointly released a report entitled “China 2030” which lays out six strategic directions for China’s future. Particularly noteworthy are the detailed suggestions covering fiscal reform. The report demonstrates the central government’s determination in driving the country’s overall economic reform, and lays a blueprint for all reforms in the financial sectors. In September 2012, the State Council approved the Twelfth Five-Year Plan for Financial Sector Development and Reform jointly formulated by the PBOC, CBRC, CSRC, CIRC and SAFE. The most important element mentioned is the liberalization of interest rates. At present, the People’s Bank of China (PBOC) has a ceiling on the interest rates banks can pay depositors and a floor on the rates they can charge borrowers. AmCham China welcomes any positive steps on liberalizing interest rates.

The Chinese government’s 12<sup>th</sup> Five-Year Plan also reviews the main achievements in the financial sector’s development and reform during the Eleventh Five-Year Period, analyzes the opportunities and challenges facing the financial industry, and expounds on the guiding principles, main objectives and policy measures for future development and reform in the industry. AmCham supports the top priorities highlighted in the Plan which deal with financial sector development, such as deepening financial sector reforms, further opening-up the financial sector, safeguarding financial stability, and strengthening financial infrastructure.

### *Commercial Banking*

In 2012 AmCham China members experienced faster and more predictable approvals by banking regulatory authorities of their network expansion plans, especially branches and sub-branches in the middle and western regions of China and those focusing on servicing small and media enterprises (SMEs). This is just one of many policy improvements over the past year.

On March 29, 2012, the NDRC approved an expanded long-term foreign debt quota totaling US \$24 billion and significantly increased the quota of six participating foreign banks in a pilot scheme. AmCham China welcomes the improved lending capability of foreign banks, supported by a policy allowing borrowing from parent institutions and overseas markets.

The PBOC announced on April 14, 2012 an expansion of the floating range of the RMB trading price against the USD in the interbank market from 0.5% to 1%. This is another significant step toward a market-based exchange rate mechanism. Increased volumes and stable RMB rates to date demonstrate the success of the reform.

On June 8, 2012, the PBOC cut the benchmark deposit rate by 25 basis points (bps). At the same time, the deposit interest ceiling was raised to 1.1 times the benchmark rate while the loan interest rate floor was reduced to 20% of the benchmark rate. While the uneven adjustment of saving and lending rates will reduce the net interest margin, it incentivizes commercial banks to differentiate pricing and services and to invest more in product innovation.

Released November 21, 2012, Circular 59 is a welcome relaxation of foreign exchange controls in China. Expedited transactions will both lower costs and reduce the risk of cancellation during a lengthy process. The lack of a drawn out foreign exchange process makes a larger pool of deals more accessible to foreign investors, and divestment risks have also been lowered now that repatriation of proceeds from realized investments to foreign shareholders need not go through SAFE. As ease of investment for foreign entities improves, investment volume and liquidity should also improve. In late December 2012 and early January 2013, SAFE approved two foreign commercial banks to establish a cross-border sweeping structure for two large multinational manufacturing companies, allowing them to centralize and more efficiently conduct foreign currency management. This move marks another major step towards greater freedom of the foreign exchange management regime in China and contributes positively to China as a more favorable destination for foreign investment.

2012 also saw rapid growth in the international use of the RMB as a trade and investment instrument. The Chinese government has officially announced its intention to make Shanghai the center of the RMB’s international innovation, transaction, pricing and clearing, as well as to support Hong Kong and London as offshore hubs. In close cooperation with Chinese and overseas regulators, as well as their Chinese counterparts, international banks actively participated and drove the development of cross-border flows of RMB and the offshore market. Progress was made in offshore deposits, RMB denominated cross-border lending and investment, Dim Sum Bonds, trade settlement, and foreign exchange trading. Some measures indicate that between December 2010 and September 2012 the internationalization of the RMB saw a 7-fold increase.

### *Securities*

#### *Decentralized Approval Procedures*

In 2012, CSRC modified and announced many important A-share listing regulations to ensure the A-share financing process is more transparent and market-oriented. It appears the efficiency of the approval process will increase as a result of a decentralized approval procedure moving from the central level to the provincial level. This change will support increased dynamism in the domestic capital market if effectively implemented. AmCham China welcomes CSRC’s continuing regulatory support of a transparent and market-

率自由化。目前，央行依然对商业银行存款利率实行上限管理，对借款人的贷款利率试行下限管理。中国美国商会欢迎中国政府在实现利率自由化过程中所迈出的积极步伐。

中国政府的“十二五”规划还回顾了“十一五”期间金融业发展和改革所取得的主要成就，分析了金融业发展面临的机遇和挑战，详细解释了金融业未来发展和改革的指导原则、主要目标和政策措施。中国美国商会支持规划中将金融业发展列为重中之重的做法，如深化金融业改革、进一步实现金融业开放、维护金融稳定和加强金融基础设施建设。

## 商业银行

2012年，中国美国商会会员公司的网点扩张计划获得了各级银行业监管部门可预期且更快的审批，尤其是在中国中西部地区设立分支机构的申请，以及专注于为中小企业提供金融服务的申请。这只是去年政策方面的诸多进展之一。

2012年3月29日，发改委核定了总额为240亿美元外资银行中长期外债规模，并且大幅增加了参加试点的六家外资银行的各自的配额。中国美国商会欢迎上述提升外资银行举债能力，以及允许外资银行向母公司和海外市场举债的政策。

2012年4月14日，央行宣布将银行间即期外汇市场人民币兑美元交易价浮动幅度由千分之五扩大至百分之一。这是实现汇率市场化道路上的又一项重大进步。市场扩容和人民币汇率的稳定都证明了这一改革的成功。

2012年6月8日，央行决定下调基准存款利率25个基点。与此同时将存款利率的上限调整为基准利率的1.1倍，贷款利率的下限调整为基准利率的0.8倍。尽管这种存贷款利率非对称调整将降低净利息收益率，但却刺激商业银行进行差别定价和服务，同时加大产品创新投入。

2012年11月21日发布的59号文标志着中国放松对外汇的管制，受到了各界的欢迎。加快交易将不仅有助于降低成本，还能够降低漫长交易过程中的交易取消风险。简化和放松外汇管理有助于吸引外国投资者，而外国投资者在华实现的利润的汇出无需再经外汇局审批，也降低了投资者的利润减损风险。鉴于放松了外资实体投资外汇管理，投资额度和流动性方面也应该放松管制。2012年12月下旬和2013年1月初，外管局分别批准了两家外资商业银行为两家大型制造业跨国企业建立一个跨境资金归集试点，

允许他们集中且更有效率地运作外汇管理。此举堪称中国外汇管理自由度增大的又一明证，必将进一步提升中国作为投资输入国的吸引力。

2012年，人民币作为国际贸易和投资结算工具的地位迅速得到加强。中国政府正式宣布将把上海建成人民币国际创新、交易、定价和结算中心，同时支持香港和伦敦成为人民币离岸中心。通过与中国及海外监管部门、中资银行密切合作，国际银行积极参与和推动人民币的跨境流动和人民币离岸市场建设。在离岸存款、人民币计价跨境借贷和投资、点心债券(Dim Sum Bonds)、贸易结算和外汇交易等方面都取得了一定的成就。据有关统计，2010年12月至2012年9月期间，人民币国际化程度上升了7倍。

## 证券

### 审批程序下放

2012年，证监会修改并公布了A股上市监管法律，确保A股融资程序更为透明、更加市场化。事实证明审批权限从证监会下放至各省证监局有助于提升审批效率。如能有效执行，此举将增强国内资本市场的活力。中国美国商会欢迎证监会继续优化监管，提升中国证券市场的透明度和市场化，并鼓励证监会进一步提高审批效率。

### 场外交易(OTC)金融衍生品

中国美国商会支持证监会建立证券公司间场外交易金融衍生品的计划。中国美国商会建议一开始就授予中外合资证券公司完整的市场准入资格，并建议基于保持流动性的考虑，加强上述市场与银行间市场、中国金融期货交易市场(CFFEX)以及交易所市场之间的关联。

### 央行近期关于资本账户自由化的报告

中国美国商会的会员企业仔细阅读了央行调查统计司于2012年2月、4月和2013年1月发布的报告，报告中叙述了人民币国际化、资本账户自由化和利率汇率市场化的实施路线图。中国美国商会对中国政府为实现上述目标所采取的措施表示欢迎。中国美国商会鼓励中国相关部门继续推进上述进程，特别是实现资本跨境自由流动以及建立货币价值存贷款利率的市场决定机制。

oriented securities sector, and encourages harnessing further efficiencies in the approval process.

### Over-the-Counter (OTC) Financial Derivatives

AmCham China supports the CSRC's initiative in setting up OTC financial derivatives among securities firms. AmCham China suggests that SJVs be granted full access to this market from the outset, and also propose increasing the connectivity between the above market and the inter-bank, China Financial Futures Exchange (CFFEX) and exchange markets for the sake of maintaining liquidity.

### Recent PBOC report on liberalizing the capital account

AmCham China took note of reports released by the Survey and Statistics Department of the PBOC in February and April 2012 and January 2013, which described the implementation roadmap for China of RMB internationalization, capital account liberalization and more market oriented interest and exchange rates. AmCham China welcomes the measures taken by China to facilitate the realization of these goals. AmCham China encourages Chinese authorities to continue in this direction, particularly with regards to liberalized cross-border capital flows and market-mechanisms determining currency value and deposit and lending rates.

### *Private Equity*

#### Income Taxation on Partnerships and Partners

The State Administration of Taxation (SAT) is in the process of drafting regulations on income taxation for partnerships and partners to override varying local tax incentives and unify tax rates. Several key features are listed as follows:

1. SAT plans to adjust the tax base by determining taxable income at the partnership level and assigning income to partners.
2. The partnership will be treated as the tax payer, with taxes assessed at the partnership's registered address, regardless of where the partners receive distributions.
3. SAT will limit tax incentives, with no IIT incentives available to individual partners while institutional partners are eligible for tax incentives which have yet to be finalized.
4. Tax rates have not yet been decided, with 35% or 20% possibly applicable for individual partners. SAT believes that the tax rates for individual partners should be benchmarked to the tax rates (5-35%) for individual business owners while partners organized as legal persons or other organizations will be subject to the corporate income tax rate (25%).
5. SAT and other regulators have not yet decided how to treat non-resident partners, specifically whether or not they will be treated as resident partners with a permanent establishment. It is possible that foreign legal part-

ners and partnership-type participants in partners of the partnership will be treated as non-resident enterprises with a permanent establishment and subject to a withholding tax of 25%.

6. Tax treaty agreements will be taken into account. Taxes paid overseas for overseas income can be offset in accordance with relevant regulations.

AmCham China recommends SAT maintain the 20% tax rate for both individual and institutional partners, as adopted by the majority of local governments. Since foreign LPs, as passive investors, delegate all investment decisions and responsibilities to GPs, AmCham China hopes that taxation of foreign LPs as if they have permanent establishment in China will be avoided. This will encourage the development of PE funds that have long-term investment horizons and attract foreign LPs into the Chinese market.

AmCham China also recommends adhering to the international practice whereby income tax is collected from the partner rather than at the partnership level to avoid double taxation of individual partners.

### *Interbank Market*

AmCham China appreciates efforts made by Chinese financial regulators to coordinate the exchange and interbank markets. In particular, the recent opening of the interbank market to securities firms in underwriting debt financing instruments for non-financial enterprises through NAFMII Decree [2012] No. 18. This decree is a welcome one and makes significant progress towards allowing more options for issuers.

In the past year, the PBOC's medium-term note market developed rapidly, with indications that the CSRC is interested in developing a corporate bond market. With the gradual deregulation and reform of interest rates, the bond market has begun to develop as well. A key requirement to develop the market is a reliable yield curve based on significant secondary market trading, and further developments in this regard are encouraged by AmCham China.

### **Conclusion**

AmCham China hopes that all the relevant financial regulators will facilitate the liberalization of interest rates as a fundamental reform, relax capital controls, shift to market-determined foreign exchange rates and develop a vibrant corporate bond market. AmCham China welcomes improvements in regulatory procedures for the exchange and interbank markets and the decentralized approval process for securities, and looks forward to further improvements in regulatory coordination and data sharing in other aspects of financial services. Numerous experts in China and abroad have identified the need for improved capital allocation to ensure smooth and sustainable economic growth in the

## 私募股权

### 合伙制企业及合伙人所得税征收管理办法

国家税务总局（国税总局）正在起草合伙制企业及合伙人所得税征收管理办法，用以取代各地自行制定的税收激励政策并统一税率。该草案具有如下几个特点：

- （一）. 国税总局计划通过确定整个合伙企业的应税收入和将收入分配给各合伙人来调整税基。
- （二）. 合伙企业将被视作纳税主体，在合伙注册地征税，不管合伙人在哪里取得收入分配。
- （三）. 国税总局将限制税收激励措施，自然人合伙人将不再享受个税优惠政策，而企业合伙人将继续享受一定的税收优惠。
- （四）. 具体税率尚未确定，自然人合伙人可能适用 35% 或者 20% 的税率。国税总局认为自然人合伙人的税率应该比照个体经营者所适用的 5%–35% 的累进区间税率，而注册成为法人或者其他机构的合伙人则应该适用企业所得税税率（25%）。
- （五）. 国税总局和其他监管机构尚未确定如何对待非居民合伙人，特别是他们是否应当被视作拥有常设机构的居民合伙人。合伙企业中的外资法人合伙人和合伙型合伙人可能将被视作具有常设机构的非居民企业，适用 25% 的预扣税。
- （六）. 税收条约协议将纳入考虑范围。海外收入已纳税款将根据相关法律予以抵扣。

中国美国商会建议国税总局保留绝大多数地方政府目前正在执行的对自然人和企业合伙人均征收 20% 的所得税的做法。由于外国有限合伙人作为被动投资者将所有投资决策权及相关责任授权给普通合伙人，中国美国商会希望避免将外国有限合伙人视为在中国拥有常设机构进行征税。这将鼓励私募股权基金的长远发展，并将吸引国外有限合伙人进入中国市场。

中国美国商会还建议遵守国际惯例，将合伙人而非合伙企业作为纳税主体以避免对自然合伙人的双重征税。

### 银行间市场

中国美国商会感谢中国金融监管部门在协调交易所市场和银行间市场方面所做出的努力。特别是近期中国银行间市场交易商协会发布了 2012 年第 18 号公告，允许证券

公司参与非金融企业债务融资工具主承销业务。这份公告广受欢迎，标志着中国在允许发债人获得更多选择方面取得了重大进展。

去年，央行中期票据市场迅猛发展，有消息显示证监会愿意建立一个企业债券市场。随着利率改革和放松管制的进一步推进，债券市场也已起步发展。发展债券市场的一个重要方面就是基于二级市场交易建立可靠的受益曲线，中国美国商会鼓励在这一方面的进一步发展。

## 结论

中国美国商会希望各相关金融监管机构能够携手推进利率自由化这一基础性改革，放松资本管制，转向建立由市场决定的汇率机制，以及建立一个充满活力的企业债券市场。中国美国商会欢迎相关部门在交易所市场和银行间市场监管、证券审批权限下放等方面做出的努力，并期待金融服务监管协调和数据共享得到进一步加强。海内外很多专家都认为，未来几年中国需要优化资本配置以确保经济平稳持续增长。中国美国商会对此表示赞同，并鼓励通过金融业改革来推进中国资本配置的优化。

## 建议

### 商业银行

- 提高并最终取消对外国投资者在本地中资银行的持股比例上限。
- 允许外资银行同时申请开设多个网点。
- 加强各个监管主体之间的协调以减少报告要求。

### 证券

- 提高中外合资证券公司创新产品业务许可审批的灵活性，缩短合资证券公司取得新业务许可的宽限期。
- 向中国境内的证券公司同等开放并购咨询和投标业务。
- 授予合资证券公司进入场外交易市场的完整权利。

### 私募股权

- 保留国际通行的所得税“穿透”征税的惯例，避免双重征税。

coming years. AmCham China joins these voices in encouraging thorough financial sector reform to ensure China's capital allocation improves going forward.

## Recommendations

### *Commercial banking*

- **Raise and eventually eliminate the ceiling of ownership of foreign investors in local Chinese banks.**
- Allow foreign banks to submit multiple network expansion applications simultaneously.
- Strengthen coordination of different regulators to reduce reporting requirements.

### *Securities*

- **Grant SJVs business licenses related to innovative products more flexibly; shorten the grace period for securities JVs to get new licenses.**
- Open M&A advisory or bidding business for all the China-based securities firms equally.
- Grant full access for SJVs to OTCs.

### *Private equity*

- **Keep the international "see-through" income taxes practice to avoid double taxation.**
- Keep the 20% tax rate for both individual and institutional partners, as already adopted by the majority of local governments.
- DO NOT tax foreign LPs as if they have permanent establishment in China.

### *Interbank market*

- **Further lift interbank limitations over foreign firms from the People's Bank of China (PBOC) and the National Association of Financial Market Institutional Investors (NAFMII).**
- Allow issuers to select the best service provider for commercial paper and mid-term notes issuance business.

- 保留绝大多数地方政府目前所采用的对自然人合伙人和机构合伙人均适用 20% 所得税税率的做法。
- 避免将外国有限合伙人视为在中国拥有常设机构进行征税。

### **银行间市场**

- 进一步取消中国人民银行和中国银行间市场交易商协会对外资企业进入银行间交易市场的限制。
- 允许发行人在发行商业票据和中期票据时自行选择最佳服务供应商。

# Food and Beverage

## Introduction

In 2012, China made much progress in terms of ensuring food safety, with unprecedented efforts invested in developing the regulatory regime and implementing new food safety standards. At the same time, broad inconsistencies in both policies and their implementation remain, placing unnecessary burdens on industry, while counterfeiting harms brands and places consumers at risks. While great progress has been made in terms of food safety supervision, there is still room for improvement.

## Ongoing Regulatory Issues

### *Policy and Standards Inconsistencies*

Despite recent improvements, there remains a lack of consistency or coordination among food and beverage policies and regulations, with some regulations posing hurdles for food companies because they fail to consider the needs of normal business operations. Some examples include:

- A significant number of manufacturers of food related products are fully capable of producing quality products, but are unable to obtain QS certificates because their products don't fall into the existing categories per current regulations. Notably, this includes catering companies' central kitchen operations, which deliver semi-finished products to chain stores in other cities. This situation results in difficulties for food companies in sourcing suppliers, given the importance of the QS certification in China.
- Standard business practices, such as repacking certain food additives, are still not allowed although they are necessary from a business perspective and are a common and accepted practice in the global industry.
- When new standards are issued, unless the government provides early notice manufacturers and retailers have difficulty in rapid implementation. Additionally, a lack of clear and specific measures on the products already produced under the original standards are a source of further uncertainty.
- While the government defines retail as a circulation sector, retailers are expected to control far more of the supply chain than in most other countries. Occasionally

a retailer is fined for food products which do not pose a safety risk and also be fined for the products of brands they carry.

### *Disparity in Policy Interpretation and Enforcement*

There is inconsistent interpretation and enforcement of policies and regulations at the local level. Local officials' understanding of requirements or regulations parameters often differ from the central authorities', and they are often reluctant to seek out higher authorities for an authoritative and unified interpretation. Companies find it difficult, if not impossible, to get authoritative explanations because government agencies seldom produce them at the request of companies and it is difficult to find explanations of policies and regulations in the related governments' documents or government websites. AmCham China hopes that Chinese government can foster a favorable business environment in which it is easier for companies to expand successful practices across China. Providing more specific guidance on rules and regulations will help to encourage healthy economic development. AmCham China also welcomes increased consistency and alignment between the State Administration for Industry and Commerce (SAIC) and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), which would lower operational costs and improve the overall efficiency in the industry.

### *Intellectual Property Rights (IPR) Enforcement*

Lack of IPR protection and rampant counterfeiting of famous food brands remains a significant barrier 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 companies will be unfairly tarnished. AmCham China strongly urges China to take measures to prevent counterfeiting and punish counterfeiters.

# 食品饮料

## 引言

2012年，中国在保障食品安全领域取得了很大进步，在建立监管制度、执行新的食品安全标准上付出了前所未有的努力。但是与此同时，政策和政策实施之间依然存在很多不一致，给行业造成了不必要的负担；行业造假现象不仅损害了品牌本身的利益，还危害了消费者的权益。虽然中国在食品安全监管领域取得了显著的成绩，但依然还有改进的空间。

## 现存监管问题

### 政策标准不一致

尽管近期中国在这一领域取得了一些进步，但食品饮料政策法规之间缺乏协调性和一致性，一些监管法规未考虑食品企业正常业务运营的需要，人为地给食品企业设置了障碍。举例如下：

- 众多食品相关产品制造商完全有能力生产出优质产品，但仅因为他们的产品没有进入当前监管法规的现行分类，因此无法取得食品安全许可证。最典型的便是餐饮企业的中央厨房业务，该业务为其他城市的连锁商店供应半成品。由于食品安全许可证在中国非常重要，因此这种状况往往造成食品公司很难找到合格的外包供应商。
- 从商业角度上看，一些标准商业操作，如对特定食品添加剂进行重新包装，不仅必要，而且是全球食品行业内通行的标准做法，但中国却禁止这种做法。
- 新标准发布时，如果政府不能提前告知，生产商和零售商很难迅速执行新标准。另外，对按照原标准生产的产品缺乏明确具体的监管办法，从而进一步加大了不确定性。
- 尽管政府将零售业划为流通领域，但其要求零售企业

负责控制的供应链环节远多于其他国家通行的要求。因此，零售商销售不会引起安全风险的食物制品或自有品牌产品而被罚款的情况时有发生。

### 政策解释和执行缺乏一致性

各地政府在解释和执行相关政策时缺乏一致性。地方政府官员对某些要求或指标的理解往往与中央政府的本意有出入，并且地方官员通常也不愿意向上级官员咨询统一、权威的解读。企业本身很难、甚至无法获得权威解读，因为相关政府部门很少回应企业请求解释的要求，而且也很难在政府相关文件或网站上找到相关的政策解释。中国美国商会希望中国政府能够营造有利的商业环境，方便企业在中国推广成功商业实践；同时，对政策法规更加具体的指导也有助于经济的健康发展。中国美国商会同时还希望国家工商总局和国家质检总局加强政策一致性和协调性，以降低操作成本，提高全行业的效率。

### 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果的重大障碍。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防范造假并惩罚造假者。

## 最新进展

### 媒体问责

不管是在中国还是全球其他国家，媒体在帮助消费者了解食品安全信息方面都发挥着重要的作用。不幸的是，媒体有时也会滥用权利，发表耸人听闻却毫无科学或医学依据的批评报道。美国和中国食品企业就都曾因为不负责任或误导性的媒体报道而额外遭受了毫无必要且劳师动

## Recent Developments

### *Media Accountability*

The media plays an important role in informing consumers about food safety globally and in China. Unfortunately, in some cases this role has been abused through use of sensational accusations with little scientific or medical basis. American and Chinese food-related companies experience additional, unnecessary and burdensome government scrutiny following irresponsible or misleading media reports. In many cases, topics related to nutrition are inappropriately labeled and misunderstood as related to food safety, while disputed and biased findings are presented as scientific facts. This has caused biased public concern, which in turn unnecessarily impacted consumption of safe food products.

The government and key opinion leaders have spoken to the public to provide scientific explanation on certain types of food products. For example, in June 2012, the National Food Safety Publicity Week and the Fourth China Food Safety Forum were held by the National Food Safety Commission Office, MOF, SAIC, among others, to foster better-informed attention to food safety issues in China. Still, AmCham China feels prior efforts are not sufficient to provide Chinese consumers an accurate understanding of food safety. The distinction between food safety and nutrition is needed in both legislation and implementation to encourage consumers to protect their rights in a lawful way to prevent unfounded accusations reducing efficiency in the market. It is suggested that the relevant authorities, particularly the Ministry of Health (MOH), work together to amend the Food Safety Law to clarify the distinction between nutritional and food safety issues, and issue guiding principles to local authorities for understanding and compliance.

### *National Food Safety Supervision System*

In June 2012, the State Council issued the Decision about Strengthening Food Safety and the 12<sup>th</sup> Five-Year Plan for Building the National Food Safety Supervision System. In these documents, the State Council stressed the government's resolve to establish and complete the systems for regulation and standards, monitoring and evaluation, inspection and testing, process control, crisis management, import and export food safety monitoring, comprehensive coordination, technical support, credibility and trust, and education and training. AmCham China looks forward to increased policy clarity on these issues through issuance of official explanations and interpretations on the National Food Safety Supervision System, as well as more detailed regulations and measures.

### *Food Safety Enforcement*

The National Food Safety Risk Assessment Center, established at the end of 2011, played an increasingly important role through 2012 implementing the Food Safety Law. The

State Council and related government agencies at all levels carried out campaigns to crack down on illegal activities, such as adding non-food materials or additives to foods. AmCham China is encouraged by the continuing efforts related to food safety enforcement and supervision.

### *Regulatory Structure*

China's food safety supervision authorities consist of a number of government agencies, including the MOH, AQSIQ, Ministry of Agriculture, SAIC, Ministry of Commerce, SFDA, among others. Each of the ministries covers a link in the food safety supervision chain. An overarching institution, the State Council Food Safety Commission and its office, plays the coordinating and guiding role related to key issues and big risks. Given the complexity of food safety, there are some overlapping links between or among the ministries which lead to confusion and unnecessary operational costs. China is working to sort and align all its food safety standards, some of which are out of date. In October 2012, MOH set a target of sorting out all the food safety standards by the end of 2013. According to the State Council, by June 2012, 185 new food safety standards have been promulgated since the Food Safety Law was issued in 2009.

Sub-provincial supervision by local AICs and AQSIQs were announced to be transferred to local governments in October of 2011, but later suspended. This reversal is a positive step towards national consistency in policy interpretation and enforcement, and consequently helping reduce the costs for companies with operations across China. It is also helpful that the higher government authorities remain involved in crucial disputes on interpretation and enforcement of regulation and standards. AmCham China welcomes this and further steps towards regulatory clarity brought by SAIC's and AQSIQ's vertical supervision of local authorities.

## Conclusion

2012 saw much improvement in China's regulatory framework related to safety and quality in China's food and beverage industry. Both central and local governments continued to strive to increase the level of food safety. 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, improve coordination on supervision, clarify standards, and ensure IPR protection would create a better environment for ensuring food safety.

众的政府检查。在很多这些报道中，一些关于食品营养的话题都被不恰当地归为食品安全问题，并且将有争议的论述当做科学事实进行介绍。如此导致了公众偏见，从而对安全食品的消费产生了不必要的影响。

政府和主要意见领袖已出面向公众解释某些类型食品的科学性。例如，2012年6月，全国食品安全委员会办公室、财政部和国家工商总局会同其他部门联合组织了全国食品安全宣传周和第四届中国食品安全论坛，以提升中国民众食品安全方面的知识和意识。不过中国美国商会依然认为上述努力并不足以让中国消费者准确地理解食品安全。食品安全和营养这两个概念的区别应贯穿在立法和执法过程始终，以此鼓励消费者采用合法手段保护自己的权益，防止无端指责降低市场效率。我们建议相关权威部门（尤其是卫生部）联合修订《食品安全法》，以明确食品营养与食品安全的区别，并向地方政府发布指导原则以便于其理解和执行。

## 全国食品安全监管体系

2012年6月，国务院发布了《关于加强食品安全工作的决定》和《国家食品安全监管体系“十二五”规划》。在文件中，国务院强调中国政府决心积极建立和完善食品安全监管体制，推动健全食品安全法规标准体系，加强检验检测和风险监测评估能力建设，加强进出口食品安全监管，提高综合协调水平，强化技术支持，加强食品行业诚信体系建设，加强宣传教育和培训。中国美国商会希望中国政府发布对《国家食品安全监管体系》的官方解释和解读以及更加具体的法律规范，进一步明确以上政策。

## 食品安全执法

2011年底，中国建立了国家食品安全风险评估中心，该中心在2012年《食品安全法》实施过程中发挥了越来越重要的作用。国务院和各级相关政府机构采取专项行动打击食品安全违法行为，如在食品中添加非食物原料或添加剂的行为。中国美国商会为持续开展的食品安全相关执法和监督行动感到鼓舞。

## 监管框架

在中国，食品安全由多个政府机构负责监管，包括卫生部、国家质检总局、农业部、国家工商总局、商务部、国家食品药品监督管理局等等。上述部委分别负责食品安全监管链中的一环，国务院食品安全委员会及其办公室负责重

大安全问题和风险的协调和指导工作。鉴于食品安全问题的复杂性，以上各部委在食品安全监管范围和职能上存在一定的重合，由此导致了实际监管上的混乱，增加了不必要的监管成本。中国正在努力对现有食品安全标准进行清理整合，有些标准目前确已过时。2012年10月，卫生部确定了2013年底完成全部食品安全标准清理整合工作。国务院数据显示，从2009年《食品安全法》出台至2012年6月，中国已经发布了185项新的食品安全标准。

2011年10月，中国宣布将工商总局和质检总局的省级以下监管职能交给地方政府负责，但之后这一政策被叫停。这次叫停有助于确保全国统一政策解释和执行，并帮助企业降低在中国各地运营的成本。同时，上级政府始终参与解决法律和标准在解释与执行中产生的重大争议，这一做法也十分有益。中国美国商会对此表示支持，并希望工商总局和质检总局能够加强对地方相关部门的垂直管理，增强监管的明确性。

## 结论

2012年，中国监管食品和饮料行业安全和质量的法规框架获得了长足的进步。中央和地方各级政府仍旧在不断努力提高食品安全水平。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，这给正常的企业运营带来了困惑和影响。因此，改善供应链管理、加强监管之间的协调、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。

## 建议

- 通过加强各部委间沟通或者建立一个统一的食品安全权威机构来改进监管之间的协调，减少监管部门职能的重合。
- 出台一致、清晰且连贯的法律、标准和政策，以适应现有未分类但可接受的操作。
- 考虑对生产商和零售商的影响，对国家食品安全标准给出明确、具体的解释。
- 加大对地方和一线政府执法人员的培训和指导，确保政策解释和执行的一致性。必要时可以由食品行业提供专业知识培训。
- 加强监管机构 and 行业在法律和政策执行方面的沟通。

## Recommendations

- **Improve coordination on supervision, and reduce overlap between regulators by strengthening inter-ministry communication or establish a unified food safety authority.**
- Promulgate consistent, clear and coherent regulations, standards and policies, allowing currently unclassified but acceptable practices.
- Provide clear and specific explanations of national food safety standards, taking into consideration of the impact on both manufacturers' and retailers.
- Provide more trainings and guidance to local and front-line level government authorities for to ensure consistent interpretations and enforcement. Industry may provide expertise as needed.
- Strengthen regulator and industry communications related to the implementation of policies and regulations.
- Make additional effort in education of the general public on food safety versus nutrition issues, and foster related media accountability.
- Fully enforce and protect IPR for all companies conducting business operations in China.

- 继续努力提高公众对食品安全和食品营养问题区别上的认识，建立媒体问责制度。
- 全面实施相关政策和执法，保护所有在华开展业务企业的知识产权。



# Healthcare

## Introduction

Pharmaceutical, healthcare services, and medical device industries in China continue to face old challenges and new opportunities. While encouraged by the emphasis on healthcare, standard of living, and innovation in the 12<sup>th</sup> Five-Year Plan, these industries are concerned with a number of policy and regulatory measures that 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 a fundamental goal of the current healthcare reform plan in China—a goal which the industry fully supports. However, AmCham China is concerned that particular developments 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 viably conduct business in China.

We also see considerable scope for additional reform to increase both domestic and foreign private sector participation in China's healthcare services and medical equipment and device industries. To facilitate such private investment, we encourage clarifying the policy incentives for private healthcare, simplifying registration requirements for medical devices, reforming hospital sector reimbursement, and harmonizing China's classification standards with international norms.

## Ongoing Regulatory Issues

### *Healthcare Services Issues*

#### *Private Investment in Healthcare Services*

Since 2006, the central government has recognized that private hospitals can help increase the capacity, as well as diversity, of healthcare services. In the "Opinions on

Deepening Healthcare System Reform" of 2009 the State Council set out a policy encouraging private investment in healthcare 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 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:

- 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 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 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" (Foreign Investment Catalogue), it is not yet on the "encouraged" list. We urge the government to rectify this, and to remove multiple obstacles for the 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 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

# 医疗保健

## 引言

**中**国的医药、医疗服务和医疗器械行业 2013 年仍然面临旧的挑战和新的机遇。尽管“十二五”规划中强调了医疗、生活水平与创新的重要性，使上述行业受到鼓舞，但同时，他们也对许多政策与监管措施表示担忧，而这些政策与措施使得他们为全中国患者提供世界一流的、具创新性的医药产品及服务的能力受到挑战。

提高公众获得和负担高品质医疗服务的能力，这是中国目前医疗改革计划的一个根本目标，也得到了全行业的大力支持。然而，中国美国商会担心某些以医疗改革名义出现的具体变化可能会有悖于在医疗服务、药品与医疗器械领域建立一个具有安全性、创新性、和竞争性市场机制的目标。医药与医药设备行业所面临的主要挑战包括现有的药品与医疗器械的招标程序以及在议的固定价格加成，这些方面危及了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企业在中国医疗服务和医药设备器械行业的参与度。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接轨。

## 现存监管问题

### 医疗服务问题

#### 医疗服务领域的民间投资

自 2006 年以来，中央政府已经认可私立医院有助于提高医疗服务行业的服务能力与服务多样性。在 2009 年公布的《关于深化医药卫生体制改革的意见》一文中，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。

从政策层面上认可民间投资对医疗与医院体系的重要作用，中国美国商会对此表示赞许。我们的会员企业对于 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》提出的一系列更为具体的计划表示十分支持。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。
- 确保盈利性医院在独立定价、采购医疗设备及吸收更多优秀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。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，尽管由国家发展和改革委员会与商务部联合发布的《外商投资行业指导目录》（《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，但仍未将其列入“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。

#### 私立医院的医保报销制度

政府继续扩大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公共体系制定的强制性价格标准的医院。这便将那些依照国际标准建立，因提供高质量医护服务而实施高于公立机构收费标准的私立医院排除在报销制度外。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，将私立

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 include private hospitals in the reimbursement regime is even more pressing. The interim measures require foreign employees and employers in China to pay social insurance premiums, including health insurance premiums. However, many foreign national employees do not know Chinese well enough to navigate the Chinese public medical system effectively, and must retain their existing private health insurance coverage for private healthcare facilities.

AmCham China recommends allowing patients 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 patient could then pay the excess cost of care out-of-pocket or through supplemental private insurance. This would improve patient access and choice in healthcare providers.

### Diagnosis-Related Groups

Diagnosis-related group (DRG) charge schemes were introduced to manage healthcare costs by reimbursing hospitals according to case diagnosis rather than treatment. These, and other alternative payment systems, are 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 improve efficiency without compromising quality. Without proper oversight, DRGs may create incentives for healthcare providers to deliver reduced medical services to patients in order lower hospital operating costs and maximize reimbursement rates.

To ensure that Chinese patients continue to have access to world-class treatment and medical services, we encourage the government to carefully monitor and enforce DRG schemes. Authorities implementing and regulating the DRG charge scheme must do so transparently, particularly in the pilot stage of the scheme. We also urge the government to fully consider industry recommendations that support innovative medical products and high-quality care, including those regarding DRG payment add-ons.

### 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. AmCham China suggests the Ministry of Finance consider lowering the corporate tax rate for private hospitals.

### Physicians’ Licenses for Multiple Practice Sites

In 2012 the Ministry of Health (MOH) issued a policy allowing physicians to have their license valid for multiple practice sites. Beijing city and several other jurisdictions also issued regulations permitting two places of practice for physicians. In practice, however, this has been very difficult to implement because applicants must get approval from both primary and secondary employers. Public hospital presidents have been reluctant to grant approval, fearing a loss of the full efforts of their medical staff. However, in actuality, many doctors now travel to second practice sites in other cities, without the benefit of formal licensing. This puts the medical staff at risk and reduces the number of senior medical personnel in major east coast cities on weekends.

This policy could be more efficient if physicians could apply directly to the health bureau for second site licenses, so long as they agree to meet their 40 obligatory hours at their primary work place. The second employer also must agree to cover the physician’s malpractice costs. The resulting mobility of senior medical human resources would help reduce over-concentration of patients in level three hospitals, by distributing the physicians to other hospitals in the same city.

### Medical Device Issues

#### “Draft Supervision and Administration Measures for Medical Devices”

AmCham China applauds government efforts to consider industry opinions in developing the third version of the “Draft Supervision and Administration Measures for Medical Devices” (Draft), including seeking industry feedback through public comments periods and the industry roundtable held by SFDA and the State Council Legislative Affairs Office (SCLAO).

However, the Draft includes measures that cause concern for industry, including the emphasis on research and development (R&D) in product life cycle management, the use of mandatory China country standards and industry standards, clinical trial requirements for most Class II and Class III medical devices, registration requirements and timelines, and the testing requirement for medical devices. Of particular concern are the vague definitions for Chinese-language medical device labeling, packaging marking, and instructions for use (IFUs), as outlined in Article 30 and Article 36. Specifically, AmCham China suggests that the Draft present clearer requirements for “Date of Manufacture,” “Product Shelf Life,” “Expiry Date,” “Certificate Holding Entity,” “Minimum Marketing Unit (MKU),” “large sized medical devices”, and clarify the difference between “product specification” and “product (model) code.” Finally AmCham China suggests that no information on the country of origin be reflected on product labels and that the “manufacturers’ address” refers to the address of the manufacturer’s legal entity.

医院包含在内的必要性已变得越来越紧迫。《暂行办法》要求在中国境内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。然而，很多外籍员工不具备足够的中文语言能力去有效地使用中国公立医疗体系提供的医疗服务，不得不继续使用原有覆盖私立医疗保健机构的私人医疗保险。

中国美国商会建议允许患者可以在自己选择的医院或诊所使用其社会医疗保险，并对按照公共定价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的私人医疗保险支付。这将提高患者在选择医疗服务提供机构方面的便利度与自由度。

### **疾病诊断相关分组**

引进疾病诊断相关分组的付费制度（以下简称 DRG）是为了管理医疗费用，它根据实例诊断而非治疗情况为医院提供报销依据。该制度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，而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，中国在使用疾病诊断相关分组时，在如何提高效率的同时又不降低质量等方面却面临挑战。没有恰当的监管，DRG 可能会驱使医疗服务机构通过降低提供给患者的医疗服务的质量，减少医院的运营成本并尽量提高报销价格。

为了确保中国的患者能够继续享用到世界一流的治疗与医疗器械，我们鼓励政府对 DRG 付费制度采取仔细的监管与执行。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，必须确保监管与执法的透明度。我们也促请政府充分考虑来自业界关于支持创新型医疗产品和高质量医疗保健服务的建议，包括 DRG 补充付费的相关提议。

### **私立医院纳税税率**

私立医疗机构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。中国美国商会建议财政部考虑降低私立医院的企业所得税税率。

### **医师多点执业**

2012 年，卫生部发布了允许医师多点执业的政策。北京市和其他多个省市都已经发布规定，允许医师有两个执业地点。但实践中这一规定很难执行，因为医师申请两个

执业地点必须同时获得第一雇主和第二雇主的批准。公立医院院长一直都不情愿予以批准，因为担心本院医疗骨干流失。然而实践中，在没有正式许可的情况下，很多医生如今到其他城市进行第二点执业。这样的做法给医疗人员带来了风险，并且减少了周末东部沿海主要城市资深医疗工作者的数量。

只要医师承诺在第一执业地行医时间达到 40 小时，就可以允许医师直接向卫生局申请第二点执业执照，这样的政策实施起来会更具效率。第二雇主也必须同意承担医师的医疗事故成本。这样便可以促进资深医务人员的流动，允许医师到同一城市的其他医院行医，有助于减少患者过度集中到三级医院就医的状况。

### **医疗器械问题**

#### **《医疗器械监督管理办法草案》**

中国美国商会对中国政府在起草《医疗器械监督管理条例（修订草案）》第三次修改稿时参考行业意见的做法表示赞赏，这些做法包括在公开征求意见期内征求行业反馈意见，以及国家食品药品监督管理局（国家食药局）和国务院法制办公室（法制办）联合召开行业圆桌会议，听取业界意见。

然而业界对草案中的相关条款依然表示担忧，包括强调产品研发生命周期管理、使用中国强制性国家标准和行业标准、对大部分第二类 and 第三类医疗器械的临床试验要求、注册要求和时限以及医疗器械的测试要求等。其中最令人关注的是草案第 30 条和 36 条中对医疗器械中文标签、包装标识和使用说明的定义含混模糊。中国美国商会还特别建议草案中应当对“生产日期”，“产品使用期限”，“失效日期”，“持证主体”，“最小购（销）货单位”，“大型医疗器械”等作出更明确的要求，同时区分“产品规格”和“产品（示范）标准”。最后，中国美国商会建议不应要求产品标签上显示原产地信息，因为“制造商地址”就已说明制造商法人实体所在地。

进一步讨论和明确上述定义将有助于监管部门和行业更好地适用新医疗器械管理法规。

#### **医疗器械价格加成**

2011 年，国家发改委发布了《植（介）入医疗器械流通环节加价率管理及购销价格监控办法（暂行）》，规定了以下六种医疗器械最高加价率，包括（1）植入式起搏器；

Further discussion and clarification of these definitions will allow regulators and industry to better apply new regulations surrounding medical device administration.

### Medical Device Price Mark-Ups

In 2011, the NDRC released the “Provisional Measures for Administration of Implantable (Intervention) Medical Device Price,” which set out maximum mark-up provisions on six types of medical devices, including (1) implantable pacemakers; (2) endovascular stents; (3) endovascular catheters; (4) artificial valves, artificial cochlea; artificial blood vessels, artificial intraocular lenses; (5) artificial joints (hip & knee); (6) orthopedic internal fixing devices (bone plates and screws).

The NDRC restrictions cap the mark-up on medical devices to a maximum of 50 percent on a decreasing 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 to further lower the legal price of medical devices. In 2012, these regulations remained under discussion by NDRC and provincial-level NDRC offices.

AmCham China member companies are concerned that imposing a cut-off margin and price for medical devices disregards the reality of the costs for higher-quality products and value-added services, such as device maintenance and training. The pricing mechanism for the “port price” of imported devices is especially problematic for foreign-invested companies in China, as port prices do not include expenses related to China operations, including local taxes. However, the “ex-factory price” for domestic factories does include operational expenses, giving an unfair advantage to domestically-invested companies.

AmCham China urges the government to consider fair and market-oriented competition in order to encourage higher quality medical and health services. We are concerned that the proposed price mark-ups, if implemented in their current form, discourage companies from bringing innovative products to the Chinese market, and prevent the sustainable development of China’s medical device industry in the long run.

### Duplicative Product Registration and Testing

Increased requirements surrounding re-registration of medical devices remain burdensome and duplicative for regulators and industry. To re-register products, manufacturers must secure type-testing, even for products with no changes or minor changes that do not affect product safety, functionality, indication, or materials. In addition, SFDA frequently prohibits manufacturers from jointly registering products with similar materials and functionality, but

different names or intended uses. This overburdens both SFDA and business, diverting limited resources from new product registrations. The re-registration process can also disrupt patient access to technologies that have already been proven safe and effective.

AmCham China encourages SFDA to simplify the re-registration process and decrease requirements for duplicative product testing for new products with similar materials or functions. This would allow patients and hospitals faster access to more innovative products and technologies.

### Country of Origin Approval Requirements

China requires international manufacturers of medical devices to obtain prior approval for use from the country of manufacture. AmCham China members appreciate the need for quality control of medical devices entering China. However, this country-of-origin requirement is problematic for many foreign-invested companies, as approval requirements vary widely across countries or regions. These rules prevent foreign-investment from introducing advanced technology products into China in a timely manner and prevent Chinese physicians and citizens from benefiting from technology available elsewhere in the world.

As the medical device business globalizes, many medical devices may lack registration in their place of production or where their manufacturer is based. Examples include devices purchased from an Original Equipment Manufacturer (OEM) and products made solely for export or for a specific destination. Many foreign-invested medical device companies applying to register their products in China have already registered their products in one of the International Medical Device Regulators Forum (IMDRF) members, such as Australia, Canada, the EU, Japan, or the US. IMDRF’s predecessor, the Global Harmonization Task Force (GHTF), audited all manufacturing facilities, regardless of location, based on GHTF guidelines.

AmCham China requests the amendment of the current Country of Origin Approval requirement, SFDA announcement No. 82, to accept registration applications of medical devices approved by IMDRF member countries, regardless of the location of production. This is a more effective way to ensure the safety of imported medical device products, while still permitting devices to come to market in a reasonable time.

### Procurement and Tendering

AmCham China appreciates that since this program began in 2010, local governments have openly communicated with the medical device industry. MOH and five ministries jointly issued “Working Guidance of Public Procurement on High Medical Value Consumables (interim)” on December 17, 2012. While a good start, this does not fully take into account the complexities of the high value consumables industry.

(2) 血管内支架；(3) 血管内导管；(4) 人工瓣膜，人工耳蜗，人造血管，人工晶体；(5) 人造关节（髌关节和膝关节）；(6) 骨科内固定装置（骨板和骨钉）。

国家发改委对于医疗器械的限制性规定要求国产医疗器械加成不得超过“出厂价”的50%，进口医疗器械加成不得超过“口岸价”（以成本，保险和运费（CIF）为基础计算）的50%。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。2012年，该办法依然处于国家发改委和各省级发改委内部讨论的阶段。

中国美国商会会员企业担心上述对医疗器械价格和利润实行一刀切，忽视了与高质量产品和增值服务（如器械维护和培训）相关的成本消耗。进口器械以“口岸价”为基础的定价机制，尤其对在华运营的外资企业造成问题，因为口岸价中并没有涵盖在中国的运营成本，包括在中国缴纳的相关税款。然而国内企业生产的器械却使用“出厂价”作为定价基础，这无疑增加了内资企业不公平的竞争优势。

中国美国商会促请中国政府从鼓励高质量的医疗和保健服务出发，考虑营造公平且市场导向的竞争环境。我们担心如果按照上述办法实施价格加成，会导致企业不愿意将创新型医疗产品引入中国市场，也妨碍了中国医疗器械行业的长期可持续发展。

### **重复的产品注册与检测**

医疗器械再注册的相关要求不断增加，给监管部门和行业造成了重复且繁重的工作负担。为了重新注册产品，生产者必须通过类型测试，即使产品本身没有改动或者是有不影响产品的安全性、功能、标示或材料的细微改动。另外，国家食药局经常禁止生产者联合注册原料和功能相近、只是名称或用途不同的多个产品。这同时加重了国家食药局和生产者的负担，造成没有足够的资源留给新产品注册。这种重新登记程序还可能造成患者享受不到已被证明安全有效的医疗技术。

中国美国商会鼓励国家食药局简化重新登记程序，减少对与原注册产品材料和功能相近的新产品的重复测试要求。这将使患者和医院都能够尽快享用创新型产品和技术。

### **原产国审批要求**

中国要求国际医疗器械生产商必须事先取得原产国批件。中国美国商会会员企业对进入中国的医疗器械需接受

质量管控的要求表示理解。然而，上述原产国要求却给许多外资企业造成困扰，因为各国或各地区的审批要求差异很大。这些规则妨碍了外资企业第一时间将高科技产品引入中国，也阻碍了中国的医生与患者享用到已经推广至世界其他地方的技术。

随着医疗器械业务不断全球化，许多医疗设备可能没有在原产国或生产商登记国注册，比如从一家贴牌代工企业购入的设备，或者是仅供出口或仅在特定区域销售而生产的产品。许多外资医疗器械公司在中国申请注册的产品实际上已经在国际医疗器械监管者论坛（IMDRF）的某个会员国完成注册，如澳大利亚、加拿大、欧盟、日本或者美国。而IMDRF的前身，即全球协调工作组（GHTF），会依据GHTF发布的统一准则对其会员国的生产工厂进行审核，无论其生产厂设在何处。

中国美国商会请求修改现行的原产国审批要求，即国家食药局第82号公告，接受获得IMDRF会员国批准的医疗器械注册申请，而不受生产地的影响。只有这样才能在更有效地保障进口医疗器械产品安全性的同时，确保医疗器械能够在合理的时间内进入中国市场。

### **采购与招标**

中国美国商会感谢自2010年该项目实施以来，地方政府与医疗器械行业一直保持着开诚布公的交流。2012年12月17日，卫生部会同其他5部委联合发布了《高值医用耗材集中采购工作规范（试行）》。这是一个良好开端，但未能考虑到高值医用耗材行业的复杂性。我们希望能够对相关规定的完善，以质量和合理价格作为优先考虑，建立一套公正、透明的标准化招投标程序。主要建议包括：

- 综合考虑产品的各个方面——确保招投标程序中优先考虑医疗器械的功效和安全性。然而，特别是在各地方政府中，倾向于以价格来决定结果的招标方式已成为惯例。一套更多考虑产品质量、服务和创新性的综合采购程序将使那些生产高质量产品、造福患者的企业受益。该程序还将真实地反映高质量医疗器械真正的使用价值和服务价值，更能激励企业关注成本之外的因素，专注创新。
- 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、品牌、企业或经销商的数量加以人为的限制。另外，应当允许企业同一品牌之下提交多种产品，且在招投标过程中不应在一种产品不符合中

We hope for improvements in the systems to create a standardized, impartial, and transparent bidding process prioritizing quality and reasonable prices. Key recommendations include:

- Consider all aspects of a product—ensuring the efficacy and safety of medical devices should be a priority in tendering procedures. However, cost-based tendering has become the norm, especially within local governments. A more integrated approach, considering product quality, service, and innovation, will reward companies whose products are manufactured with high standards, benefiting patients. This will also more accurately reflect the real costs of use and service of a high quality medical device, as well as incentivize innovation by allowing companies to look at factors beyond cost.
- Eliminate artificial tendering constraints—tendering processes should not artificially limit the number of products, brands, companies, or distributors participating in the tender. Further, companies should be able to submit multiple products under the same brand name, and the disqualification of one product should not eliminate all products from that brand.
- Clarify definitions and standardize product classification—ambiguity in definitions for high value medical consumables and evaluation systems, particularly across provincial governments, often leads to differences in bidding results for products. National standards for classification catalogues and product definitions would create a more efficient bidding process.
- Clarify implementation of port price requirements—as mentioned above, they are problematic for foreign firms and hinder their ability to provide higher quality products and health services. Port price requirements also stipulate foreign enterprises should disclose certain trade secrets. If port price requirements are kept, they should be accompanied by a mechanism to ensure the confidentiality and security of the data provided.

In addition to these central recommendations, we believe medical device tendering could be improved if conducted transparently, guided by clear rules and criteria from the MOH, with a centralized approach. Tendering should also be in line with national trade policies and international trade agreements, including those of the World Trade Organization. Thus, biases favoring domestically invested companies over foreign-invested companies should be eliminated from the tendering process. Finally, medical device tendering would be more efficient if conducted at a single level (either national or provincial), to simplify procedures and reduce redundant work for participating companies.

### Software Registration and Submission Requirements

In April 2012, SFDA published the “Basic Requirements for Medical Device Software Registration Submission.” According to the regulations, medical device software version numbers need to be specified in the Product

Registration Standard (PRS) and other documents submitted to SFDA, with any change in the version number requiring re-registration. However, as software version numbers frequently change due to standard upgrades, this process significantly burdens medical device software companies and delays important updates to medical device software. AmCham China recommends that SFDA simplify the registration process by allowing the use of sub-version numbers for software with minimal changes.

In addition, SFDA’s software registration process requires companies to submit a significant amount of technical documentation, much of which is not related to the safety and effectiveness of medical device software. As processing these documents is burdensome for both industry and SFDA, we suggest that SFDA simplify this process by removing the requirement to submit certain types technical documentation, including User Requirements Specifications, System Design Architecture Specification, Risk Management File, and the Verification and Validation Report. AmCham China recommends that SFDA instead periodically audit systems, a more efficient and effective way of ensuring the safety and efficacy of medical device software. SFDA also requires registration for technical documentation related to the software’s core algorithms, which are a company’s core IP. We are concerned that without effective internal protection at SFDA, these technical specifications may be divulged without the company’s consent. AmCham China member companies would like guarantees from SFDA that applicant IP is protected internally, and if breached, IP protection-related regulations would be strongly enforced.

Finally, SFDA mandates the Software product Quality Requirements and Evaluation (SQuaRE) standard, which is designed for commercial, off-the-shelf software, and not applicable to most medical software. Although neither the US nor the EU have adopted this standard, SFDA requires that medical software devices comply with the SQuaRE standard, with SFDA reviewers having their own interpretations and requirements for some of the clauses. In addition, SFDA creates unnecessary overlap by requiring that medical software devices meet the embedded programmable software standard focused on risk management, which is already essentially covered by other standards. AmCham China suggests that SFDA reconsider the adoption of these standards for medical software devices, and follow international best practices to relieve companies of unnecessary burdens and encourage the development of the medical device software industry in China.

### *Pharmaceutical Industry Issues*

#### *Pharmaceutical Tendering*

Several of the tendering recommendations outlined for medical device tendering also apply to pharmaceutical tendering. In addition to these recommendations, the “double-envelope and lowest bidder” principle in the

标要求时，取消其品牌下所有产品的中标资格。

- 明确产品分类的定义并实现产品分类标准化——高值医用耗材的定义以及评估体系模糊不清，特别是各省级政府部门对上述定义和评估体系规定有差异，经常导致同类产品竞标结果不一。建立全国统一的分类标准和产品定义将有助提升招投标程序的效率。
- 澄清“口岸价格”实施细则——如前所述，这一规定给外资企业带来了诸多问题，并影响了他们提供高质量产品和医疗服务的能力。口岸价格要求的同时还规定外资企业必须披露某些相关商业机密。如果继续保留口岸价格规定，就应同时实施一项保护所提供数据的保密性和安全性的机制。

除了这些核心建议外，我们相信如果卫生部制定清晰规定与标准并使之得到遵守，同时采用透明的程序与集中式方法，医疗器械招标程序便可得到完善。招标也应与全国贸易政策及世界贸易组织相关协议等在内的国际贸易协议保持一致。招投标过程中偏向内资企业而歧视外资企业的做法应被废除。最后，如果实施单一制医疗器械招标（国家级或省级），简化招标程序，减少竞标企业不必要的工作，将有助于进一步提高招标效率。

### **软件注册和申报要求**

2012年4月，国家食药局发布了《关于医疗器械软件注册申报基本要求的说明》。根据这一法规，企业向国家食药局申报软件注册时，应在所提交的产品注册标准和其他文件中注明医疗器械软件版本号，软件版本号变更时应重新申请注册。但是，由于标准更新速度快，软件版本号也经常变化，上述要求严重增加了医疗器械软件企业的负担，也延误了医疗器械软件的重大更新。中国美国商会建议国家食药局简化注册程序，允许使用只有细微变动的软件次版本号。

另外，国家食药局的软件注册程序要求企业提交大量技术文档，而这些技术文档大部分都与医疗器械软件的安全性和有效性无关。鉴于这些文档对申报方企业和审查方国家食药局来说都十分繁重，我们建议国家食药局简化上述程序，取消提交包括使用者要求规格、系统设计构造规格、风险管理文件和验证与确认报告在内的技术文档的要求。中国美国商会建议国家食药局转而采用定期审计制度，这样可以更迅速更有效地确保医疗器械软件的安全性和有效性。国家食药局还要求注册有关软件核心算法的技术文档，

而核心算法正是一个企业的核心知识产权。我们担心鉴于国家食药局内部尚未建立有效的保护措施，这些技术规格可能在未经企业同意的情况下即遭外泄。中国美国商会会员企业希望国家食药局在内部建立有效保护申请人知识产权制度并保证，一旦遭泄露，即强力执行相关知识产权保护法律。

最后，国家食药局要求实施适用于商用现用软件，不适用于大多数医疗软件的“软件产品质量要求与评价（SQuaRE）”。尽管美国和欧盟都没有采用这一标准，国家食药局却要求医疗软件器械必须符合 SQuaRE 标准，而且国家食药局审查人员对该标准的部分条款还增加了自己的解释和要求。另外，国家食药局还要求医疗软件器械必须符合重在风险管理的嵌入式可编程软件标准，但这一标准基本上已经被其他标准所涵盖，因此造成不必要的重复要求。中国美国商会建议国家食药局重新考虑是否要求医疗软件器械采用这些标准，并沿用国际最佳实践来减轻企业不必要的负担，鼓励中国医疗器械软件开发行业的发展。

## **医药行业问题**

### **药物招标**

针对医疗器械招标提出的一些招标建议同样适用于药物招标。除了上述建议之外，基本药物招标采购实践遵循的“双信封制和唯低价”原则也望能予以改进，因为现行制度造成很多高品质药品生产商在招标过程中处于不利地位。

实践中数个省份采用的“第二轮价格谈判”的做法违反了2010年发布的《进一步规范医疗机构药品集中采购工作的意见》（第64号令）中提到的医院采购“不得进行二次议价”之规定。部分省份的上述做法还鼓励了医院利用第二轮价格谈判程序牟取利益，这与政府提倡的医药分开的原则背道而驰。另外，还影响了生产高质量药品的创新型企业的竞争力，限制了患者获得创新型医疗方案。

中国美国商会建议在“质量第一、价格合理”的原则上继续完善医院药品招标采购制度。改进医院融资体系及增加政府对医院的投入都为消除医药利润、减轻医院压力铺平了道路。我们同时还促请监管部门为在两个招标周期之间新上市的药品建立一个绿色通道，方便患者及时使用。

在制定和改进采购和招标政策方面，中国美国商会建议中国中央政府积极征求医药行业和智库的意见，从而提

essential drugs bidding practices could also be improved, as the current system disadvantages many high-quality drug manufacturers in the bidding process.

The “second-round price negotiation” practice used in several provinces violates the rule of “no second-round price negotiation” in the hospital procurement process, from the “Medical Institution Drug Centralized Bidding and Purchasing Work” (Order 64) issued in 2010. This also encourages hospitals to leverage the second-round process to make a profit, which conflicts with government efforts to separate prescribing and dispensing. In addition, it affects the competitiveness of innovative and high-quality drug manufacturers, which limits patients’ access to innovative medical solutions.

AmCham China recommends that further development of the hospital bidding system be based on the “quality first reasonable price” principle. The development of hospital financing systems by increasing funding from the government paves the way to eliminate pharmaceutical margins, as well as to alleviate hospital pressures. We also urge regulators to create a green channel for newly launched drugs between bidding cycles for improved patient access.

In formulating and adjusting procurement and tendering policy, AmCham China suggests that the central government authorities actively seek opinions from the pharmaceutical industry and think tanks to increase transparency and improve industry engagement.

### National Essential Drug List (NEDL)

AmCham China applauds the success of the NEDL. Since the NEDL was introduced over three years ago, China has made great progress in developing a strong national primary healthcare service system. The practice of relying on drug revenues to subsidize medical services has been increasingly phased out in primary medical and healthcare institutions (MHIs). As a result, the cost of medicine for the general public has decreased dramatically.

However, the implementation of the Essential Drug System (EDS) has given rise to problems that require attention from regulators. First, in many underdeveloped regions patients are seeking care at second and third class hospitals because primary MHIs lack frequently prescribed drugs and branded drugs because they are not included within the EDS. Second, many pharmaceutical companies that produce high-quality drugs are reluctant to register their products on the NEDL due to a lack of confidence in the EDS.

AmCham China would like to provide the following recommendations for the consideration of government authorities:

- Limit the number of drugs in the EDS. The list should be based on a catalogue of common diseases with high incidence rates and mature treatment solutions. The

EDS should be updated according to the evolution of the disease spectrum. The NEDL is designed to meet the basic healthcare needs of Chinese citizens, which should be clearly separated from the broader needs helped by the National Reimbursement Drug List (NRDL). A massive NEDL would also increase the burden on the three-tiered medical insurance system.

- Allow MHIs to prescribe “nonessential” drugs. To ensure the accessibility of both “essential” and “non-essential” drugs, regulators should allow MHIs to prescribe a certain number of “non-essential” drugs. Additionally, regulations should not force second- and third-tier hospitals to set a mandatory percentage of prescriptions for essential drugs.
- Maintain a separate pricing policy for independently-priced drugs. SFDA and three other ministries have been pushing for the enforcement of new good manufacturing practices (GMP) and will launch a new evaluation plan to ensure quality consistency of generic drugs. Nevertheless, differences in quality between pharmaceutical companies will continue to be problematic for the foreseeable future. AmCham China therefore recommends that China maintain a separate pricing policy for independently-priced drugs in the NEDL. These drugs should still be used in hospitals as non-essential drugs.
- Improve the “double-envelope” bidding practice. AmCham China suggests that related authorities conduct a categorized or a comprehensive evaluation based on both quality and price. This practice is already widely used by second and third tier hospitals for centralized procurement of non-essential drugs.
- Simultaneously release renewal policies with new NEDLs. To ensure the success and sustainability of EDS, the NEDL renewal process should be in line with the formulation of related pricing and reimbursement policies. These related policies should be released simultaneously with the renewed NEDL.

### Regulatory Data Protection (RDP)

One of the best ways to encourage and reward innovation within the pharmaceutical sector is to strengthen regulatory data protection and to establish an effective legal system. However, the current Drug Registration Regulation (DRR) is ambiguous on key concepts such as the “new chemical entity” (NCE) and “unfair commercial use,” as well as on the data protection implementation measures. This leads to ambiguity in law enforcement, discouraging both domestic and foreign innovation in the industry.

AmCham China supports government efforts to improve the regulatory data protection practice in China. We propose the following recommendations:

- Modify the DRR by developing a clear definition of “New Drug” and “NCE.”
- Connect the revised data protection provisions to drug registration regulations, in line with internationally

高政策透明度和行业参与度。

### **国家基本药物目录 (NEDL)**

中国美国商会对国家基本药物目录 (NEDL) 取得的成就表示赞赏。自三年多之前推出 NEDL 以来, 中国在建立一个强有力的国家基层医疗卫生服务体系方面取得了巨大成就。基层医疗卫生机构逐步消除了以药养医的做法, 公众在药品方面的花费也因此大幅下降。

然而, 基本药物制度 (EDS) 的实施引起了诸多问题, 需要监管部门关注。首先, 因为常用处方药品和名牌药品都没有纳入基本药物目录, 基层医疗卫生机构缺乏这些药品, 使得许多不发达地区的患者纷纷到二级和三级医院就医。其次, 很多生产优质药品的医药企业不愿意将自己的产品登记进入基本药物目录 (NEDL), 因为他们对基本药物制度缺乏信心。

中国美国商会愿意提供下列建议供政府相关部门参考:

- 限制 EDS 中药品的数量。该目录的制定应当基于高发常见病目录和成熟的治疗方案。EDS 应当根据疾病谱变化及时更新。NEDL 旨在满足中国民众基本医疗卫生需求, 与国家医保报销药品目录 (NRDL) 所满足的更广泛的需求之间有明显的区别。NEDL 范围过广可能会增加现行三层架构医疗保险体系的负担。
- 允许医疗卫生机构开“非基本”药品。为了确保医患能够同等地获得“基本”和“非基本”药品, 监管部门应当允许医疗卫生机构开一定数量的“非基本”药品。另外, 相关法律法规中不应当强制要求二、三级医院开基本药品的最低比例。
- 保留独立定价药物的单独定价政策。国家食药局和其他三家部委一直在推动实施新的药品生产质量管理规范, 并将实施一项新的评估计划来保证仿制药品质量的稳定性。但是, 不同的医药公司生产的药品质量必然存在差异, 这也是可预见的未来医药行业面临的一大问题。因此中国美国商会建议中国保留 NEDL 独立定价药品单独定价的政策。这些药品应当仍由医院按非基本药物使用。
- 改进“双信封制”招标法。中国美国商会建议相关部门实行基于质量和价格的分类或综合评估法。上述做法已经广泛用于二、三级医院集中采购非基本药品。
- 发布新的 NEDL 时同时更新发布相关政策。为了确保

EDS 的成功实施和可持续性, NEDL 的更新过程应当与相关定价和报销政策同步。相关政策应当与更新后的 NEDL 同时发布。

### **行政审批数据的保护**

加强行政审批数据的保护和建立一套有效的配套法律制度是鼓励和回报医药行业创新的最佳途径之一。然而, 现行的《药品注册管理办法》中包括“新型化学成分”、“不公平的商业使用”在内的相关概念定义模糊, 数据保护实施办法也不清晰。这就导致了执法上的模糊性, 抑制了医药行业内资和外资企业的创新。

中国美国商会支持政府在加强行政审批数据保护方面的工作。同时, 提出以下建议:

- 修改《药品注册管理办法》, 明确“新药”和“新型化学成分”的定义。
- 在修改药品注册管理办法的同时修改数据保护规则, 使数据保护规则与国际通行的行政审批数据保护标准和程序保持一致。
- 如果某药品已申请取得专利 (专利链接), 则不批准仿制药申请人同样药品上市。
- 建立实施有效的通知机制, 保证专利持有人能够及时提出侵权诉讼。
- 建立有效的机制, 确保在专利持有人提起侵权诉讼后能够暂停后续申请人的药品审查程序。

### **药物定价改革**

2012 年, 国家发改委采取多项措施降低总体医疗成本, 推进药物定价改革。例如, 2012 年 3 月, 发改委降低了国家医保报销药品目录 (NDRL) 中 53 种药品零售的最高零售限价。2012 年 9 月, 发改委降低了 95 种抗肿瘤、免疫、和血液系统类等药品和 200 个代表剂型的最高零售限价, 平均降低幅度为 17%, 本次降价也是自 1998 年以来第 30 次降低药品价格。2012 年 5 月, 中国价格协会 (CPA) 发布了一项通知, 要求提供美国、加拿大、英国、法国、德国、日本、韩国、台湾、香港和原产国的跨国医药公司产品的零售和报销定价数据。

中国美国商会会员企业支持中国政府在保持一个嘉奖创新的定价体系方面所做出的努力。然而, 我们担心这种政府强制降低药物价格的措施可能对生产高品质药品的创

accepted RDP standards and procedures.

- Ensure that marketing approval will not be granted to a generic drug applicant if a patent exists on the drug (Patent Linkage).
- Put in place an effective notice mechanism to enable patent holders to file and take infringement actions in a timely manner.
- Establish an efficient mechanism to stay a subsequent applicants' drug review process when a patent holder initiates an infringement action.

### *Pharmaceutical Pricing Reform*

In 2012, the National Development and Reform Commission (NDRC) undertook several initiatives to reduce overall medical costs as well as to advance drug pricing reform. For example, in March 2012, NDRC cut the retail price ceiling of 53 drugs in the National Drug Reimbursement List. In September 2012, NDRC reduced retail prices for 95 types of oncology, immune system, and blood-related drugs and 200 formulations by an average of 17 percent, representing the 30th round of price cuts instituted since 1998. In May 2012, the China Pricing Association (CPA) issued a notice to request retail and reimbursement pricing data for products of multinational pharmaceutical companies in the US, Canada, UK, France, Germany, Japan, South Korea, Taiwan, Hong Kong, and the country of origin.

AmCham China members support the government's efforts to maintain a pricing policy that rewards innovation. However, we are concerned about the possible impact of these government-mandated drug price cut measures on innovative and high-quality drug manufacturers.

AmCham China suggests regulators optimize the pricing system by using pricing as a tool to reward quality, ensure safety, and encourage innovation. In addition, pricing incentives should be well developed and implemented to reward high-quality generic manufactures and to encourage them make the transition to an R&D based business model.

## Recent Developments

### *Healthcare Reform*

AmCham China applauds China's successful healthcare reform efforts to date. These include: the provision of basic medical coverage for 95 percent of Chinese citizens, the establishment of a national essential medicine system, the advancement of a basic health service system, the development of medical staff capabilities, the significant improvement in equalizing basic public health services, and the launch of various pilot reforms for public hospitals.

In March 2012, the State Council identified priorities for China's next phase of reform, primarily focused on deepening previous reform efforts, including: decreasing out-

of-pocket health expenditures, introducing social insurance programs for major diseases, consolidating and improving the system for essential drugs, improving the community-level medical and healthcare system to prevent major communicable, chronic, and occupational diseases, tightening control over drug safety, promoting the development of traditional Chinese medicine (TCM), encouraging private investment in hospitals, improving medical staff human resources issues, and prioritizing public hospital reforms across the country, including implementing pilot programs in county-level and third-tier hospitals across the country.

However, while national healthcare reform policy objectives continue to expand, many initiatives are first implemented through pilot programs at the local level. AmCham China encourages the government to implement reform measures in a consistent and timely manner to ensure nationwide adoption of these important initiatives.

### *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. HCP leverages US healthcare industry strengths in the areas of public health, policy research, training, R&D, and technology to support the Chinese government's goal of enhancing patients' access to healthcare services in China.

In 2012 HCP signed its first Memorandum of Understanding (MOU) with the Health and Human Resources Development Center (HHRDC) at MOH and conducted a number of public-private capacity building projects, including:

- MOH Senior Health Executive Training Program
- MOH Health IT Seminar
- US Ambassador's Healthcare Mission in Henan
- Hainan Province International Health Cooperation Workshop
- Clinical Data Interchange Standards Consortium (CDISC) Workshop in Beijing and Guangdong

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.

新型生产商造成负面影响。

中国美国商会建议监管部门优化定价体系，利用价格制度营造优质、安全和创新的大环境。另外，应当制定和实施合理的价格激励制度以使高品质仿制药生产商受益，鼓励他们向研发型商业模式转型。

## 最新进展

### 医疗卫生改革

中国美国商会赞赏中国迄今为止为成功推进医疗改革所作出的努力。改革所取得的成就包括：已覆盖 95% 中国公民的基本医疗卫生服务，建立国家基本药物制度，建立基本卫生服务体系，提高医疗人员能力，基本公共卫生服务均等化取得重大进展，以及在公立医院推行多种改革试点。

2012 年 3 月，国务院确定了中国下一步的改革重点，主要集中在深化现有改革措施方面，包括减少自费医药费用，引入基本医保基金购买商业大病保险或建立补充保险等方式，巩固和改善基本药物制度，加强社区医疗卫生体系建设，加强传染病、慢性病、职业病等疾病防治，加强药品安全监管，促进中医发展，鼓励私营医院，提升医务人员业务水平，优先推进全国范围内公立医院改革，包括在全国县级和三级医院实施改革试点。

然而，尽管全国医药卫生体制改革政策的目标不断扩大，但很多试点项目都是在地方层级率先开始的。中国美国商会鼓励政府在全国范围内按照统一的标准，及时推进各项改革措施。

### 医疗卫生合作项目

于 2011 年 3 月成立的美中医疗卫生合作项目（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）框架作为基础，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峰会之时公布。

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。该合作项目借助美国医疗行业在公共卫生、政策研究、培训、研发及技术领域的优势，为提升中国政府实现让中国患者获得更便捷的医疗服务的目标提供了支持。

2012 年，医疗卫生合作项目与卫生部下属卫生部人才交流中心签订了首个谅解备忘录，并开展了一系列公共和私营部门能力建设项目，包括：

- 卫生部卫生高级管理人员培训项目
- 卫生部卫生信息技术交流会
- 美国大使带领卫生使团赴河南考察
- 海南省国际卫生合作研讨会
- 在北京和广东举行的临床数据交换标准协会（CDISC）研讨会

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。

## 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。中国美国商会欣喜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的方向发展。特别是，我们促请医疗服务部门能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。在医疗器械与药物领域，采取合理的定价改革、有效的招标体系以及不仅限于审批与注册程序方面的合理监管制度等措施，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

### 医疗改革

- 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》“鼓励类”中。
- 允许患者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，患者可选择自付或使用其补充私人医疗保险支付。
- 降低私立医院的企业所得税税率。

## Conclusion

With China's demographic changes 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, measures like 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.

### *Pharmaceutical Industry Issues*

- **Further development of the hospital bidding system based on the "quality first reasonable price" principle.**
- Modify the DRR by developing clear definitions for "New Drug" and "NCE".
- Optimize the pricing system by using pricing as a tool to reward quality, ensure safety, and encourage innovation.

## Recommendations

### *Healthcare Reform*

- **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.

### *Medical Device Issues*

- **Utilize fair and market-oriented competition in order to encourage industry to provide higher-levels of medical and health services.**
- Simplify SFDA's re-registration process and decrease requirements for duplicative product testing for new products with similar materials or functions
- Present clearer requirements for "Date of Manufacture," "Product Shelf Life," "Expiry Date," "Certificate Holding Entity," "Minimum Marketing Unit" (MKU), as well as make clear the difference between "product specification" and "product (model) code" in relevant regulations and laws.

### **医疗设备问题**

- 营造公平，以市场为导向的竞争环境，鼓励行业提供高水平的医药卫生服务。
- 简化国家食药局的重新登记程序，减少对原料和功能相近的新产品的重复产品测试要求。
- 明确对“生产日期”、“有效期”、“失效日期”、“持证主体”、“最小购（销）货单位”的定义，同时在相关法律和法规中明确区分“产品规格”和“产品（示范）标准”。

### **医药行业问题**

- 在“质量第一，价格合理”的原则指导下继续改进医院招标采购制度。
- 国家食药局修改《药品注册管理办法》，在其中明确定义“新药”和“新型化学成分”。
- 优化定价制度，将价格作为奖励优质、确保安全和鼓励创新的工具。

# Information and Communications Technology and Cyber Security

## Introduction

The information and communications technology (ICT) sector presents tremendous opportunity both for foreign businesses in China, as well as cooperation between the U.S. and China to drive global growth and innovation. Cooperation between leading foreign and Chinese firms is increasing; at the same time, the Chinese market has become a stage to showcase the world's leading technologies.

Despite the potential growth and room for cooperation between foreign and Chinese firms in this area, AmCham China remains concerned that Chinese government policies create barriers for foreign technology product and service providers through standards, prescriptive and divergent technical policy, investment restrictions and information security regulations. A competitive and globally aligned ICT industry, especially in the realm of security, is critical to help drive innovation and place technology in the hands of all members of society.

Global challenges remain in the development of the ICT sector, among them internet governance, cyber security, and standards. AmCham China hopes that the Chinese government can continue to increase its engagement with governments from around the world as well as foreign and domestic industry in order to set policies that promote interoperability and global trade. China's role in this area continues to become more and more critical.

## Ongoing Regulatory Issues

### *Market Access to Cable, Telecom, and Internet Services*

Despite World Trade Organization (WTO) commitments made in 2001, China continues to restrict access to the telecom market for foreign-invested firms. 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. Moreover, most services are effectively barred to foreign investment even in the form of joint ventures. These requirements not only severely limit foreign telecom services providers from

entering the market, but also prevent the world's most innovative internet services firms from contributing substantially to the growth of China's online sector. AmCham China strongly urges MIIT to revise the *Telecom Law* to remove investment and operating restrictions on now widespread 'value-added' (multi-party audio/visual conferencing systems, VoIP, Internet content) and 'basic' telecommunications 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 this catalogue and grant foreign firms equal access to both the telecom and cable television service markets in China.

### *Cloud Computing, Internet Policy and Big Data*

Cloud computing and Big Data are two of the hottest topics in the global information technology space today, particularly for companies engaged in IT, telecom and Internet products and services, for both the commercial and public sectors.

Global technology companies are keen to pursue opportunities in the cloud computing market in China, and are closely following the development of the domestic cloud computing industry. But despite China's designation of cloud computing as one of the seven "strategic and emerging industries" in the 12<sup>th</sup> Five-Year Plan, some of the world's largest cloud computing service providers remain barred from the market. Others face a number of challenges in specific areas, including:

- Equity caps and restrictions on value-added telecommunication services prevent companies from operating cloud services without a joint venture;
- Hardware and software import and procurement restrictions, including information security restrictions;
- Chinese technical standards that often diverge from global standards. The development and implementation of domestic cloud computing technology standards

# 信息通信技术和网络安全

## 引言

**信** 息通信技术（ICT）产业为在华的外资企业以及美中两国相互合作推动全球增长和创新提供了巨大的机遇。中美两国领先企业之间的合作不断加强，同时，中国市场已成为展示全球领先科技的舞台。

尽管外资和中资企业在这一领域合作的发展空间潜力巨大，中国美国商会依然担心中国政府出台的有关标准、规定不同的技术政策、投资限制、和信息安全监管法规会成为外国技术产品和服务供应商进入中国的壁垒。一个富有竞争又全球协同的信息通信技术产业，尤其是在安全领域，对于推动创新和全球共享技术至关重要。

信息通信产业发展目前仍面临各种全球性挑战，其中包括互联网治理、网络安全和标准等。中国美国商会希望中国政府能够继续加强与全球其他各国政府以及国内外信息通信产业的合作，以便制定出促进交互性和全球贸易发展的各项政策。中国在信息通信产业中的作用依然越来越关键。

## 现存监管问题

### 有线电视、电信与互联网服务的市场准入

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%，同时这些投资的最低出资要求较高。另外，事实上外资即使以组建合营企业的方式也无法进入大部分服务市场。这些要求不仅严重限制了外资电信服务供应商进入市场，同时也将全球最富创新力的互联网服务企业拒之门外，使其无法实质上推动中国网络产业的发展。中国美国商会强烈促请工信部修改《电信法》，取消对目前普遍存在的“增值”电信服务（多方视听会议系统、VoIP、网络内容）和“基础”

电信服务领域的投资和运营的限制。

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设立合资企业提供增值服务，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播放节目。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。

### 云计算、互联网政策和大数据

云计算和大数据是当前全球信息技术界的两大最热门话题，特别是为商用和公共部门提供信息技术、电信和网络产品和服务的企业，更是热门中的热门。

全球技术企业如今纷纷在中国云计算市场寻找商业机会，密切关注中国国内云计算行业的发展状况。尽管中国在“十二五”规划中已经将云计算列入七大“战略新兴产业”之一，但部分全球最大的云计算服务供应商却被挡在中国市场之外。其它供应商则面临着如下领域的许多挑战：

- 对增值电信服务供应商的持股上限和各种限制使外资企业无法以合营企业以外的方式经营云计算服务；
- 包括信息安全限制在内的硬件和软件进口和采购限制；
- 中国的技术标准往往与全球标准不一致。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《技术性贸易壁垒协议》，附件三，第五条）。如果标准制定过程明确排斥外国参与的话，此问题将会加剧；
- 互联网内容限制；
- 宽带互联网限制，特别是带宽不足以及很难接入国际互联网；
- 隐私和跨境数据流限制。

that do not conform with international norms can create interoperability issues and thus raise unnecessary obstacles to trade (see TBT Agreement, Annex 3, Par. E). This problem is exacerbated by the use of standards development processes that explicitly exclude foreign participation.

- Internet content restrictions;
- Broadband Internet limitations, specifically a lack of bandwidth and connectivity to networks outside China;
- Privacy and cross-border data flow restrictions.

As one of China's Strategic & Emerging Industries (SEI), the government has allocated billions of RMB to initiate model cloud computing projects; local governments may also support domestic companies with their policy mechanisms. In September 2010, the joint MIIT and NDRC National Cloud Computing Pilot Cities project identified five cities to carry out nationally supported cloud computing development plans. In October 2011, RMB 660 million national supporting funds were granted to the first batch of Chinese applicants. Many cities included in the pilot program (such as Beijing and Shanghai), as well as other Chinese cities, have issued their cloud computing pilot project implementation plans.

At the 23<sup>rd</sup> JCCT, the Chinese government clarified that it will provide foreign enterprises fair and equitable participation in the development of SEIs, including the 20 major projects announced on May 30, 2012 by Premier Wen. China also committed that policies supporting SEI development will comply with the World Trade Organization's national treatment rules and that such policies will be equally applicable to qualified domestic and foreign enterprises. In addition, relevant Chinese government ministries will engage in dialogue and exchange with relevant U.S. departments on the development of SEIs.

Although the Chinese government has issued no formal statements about cloud services, AmCham China has surmised that foreign companies must establish a joint venture with a domestic company to obtain a value-added telecommunications service license (VATS) and to provide certain cloud services to Chinese customers. This regulatory environment is out of line with global norms for cloud services, an area which has witnessed explosive growth. AmCham China hopes the Chinese government will increase collaboration with cloud computing industry stakeholders in a constructive, open fashion, and adopt global standards and policies that reflect the international nature of this emerging industry, to avoid isolating China from the global cloud and big data ecosystem.

### ***Multi-Level Protection Scheme Market Access Restrictions***

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 infra-

structure 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 2012. Foreign industry has identified over 100 requests for proposals stipulating MLPS compliance for certain IT products, many of which are at level three or above. In July 2012, the United States Trade Representative's office met with MPS to discuss the rollout of MLPS as a follow-up to its meeting in June 2011. According to MLPS regulations, systems classified at level three or above must procure IT security products containing only domestic IP. By 2012, MPS aims to achieve "full compliance" in systems classified at level three or above.

At the 23<sup>rd</sup> JCCT in December 2012, China acknowledged that "Article 21 of China's 2007 MLPS Administrative Measures specifies an indigenous intellectual property requirement for the selection of information security products for level three and above with the objective of protecting national information security." China committed to conduct a process to revise this measure and seek the views of all parties, including through dialogue with the United States.

AmCham China urges China to de-link MLPS level three compliance from the Chinese IP origin requirement for IT security products. We also urge China to remove requirements within MLPS that state-owned enterprises (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 Non Publicly Reviewed Algorithms***

Despite transformational technological development over the last decade, China has not revised its 1999 Commercial Encryption Regulations. The rules state:

- Entities importing, developing, and selling encryption technology in China must obtain licenses from the State Encryption Management Bureau (SEMB), including a special license to apply to use foreign encryption technology.
- Encryption products sold in China must be subject to testing that requires disclosure of source code in order to receive a sales license.
- Foreign technology providers must use Chinese indig-

作为中国战略新兴产业 (SEI) 之一, 中央政府已斥资数十亿人民币启动示范云计算项目; 地方政府可能也会制定相关政策支持该领域内资企业的发展。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城市作为此项国家支持的云计算发展计划的试点城市。2011 年 10 月, 第一批中国申请者获得了共计 6.6 亿人民币的云计算国家资助基金。入选该试点计划中的许多城市 (如北京和上海), 以及中国其他城市, 均已颁布了其云计算试点工作的实施方案。

在第 23 届中美商贸联委会上, 中国政府表示将为外资企业提供公平、公正参与战略新兴产业发展的待遇, 包括公平公正地参与温家宝总理于 2012 年 5 月 30 日公布的 20 个重大项目的机会。中国同时还承诺所制定的战略新兴产业开发政策遵守世界贸易组织国民待遇原则, 承诺上述政策公平地适用于符合条件的中资和外资企业。另外, 中国相关部委将与相关的美国政府部门就战略和新兴产业开发开展对话和交流。

尽管中国政府尚未就云服务发布任何正式声明, 但中国美国商会推断外资必须与中资企业建立合营公司才能获得增值电信业务经营许可证 (VATS), 并向中国客户提供某些云服务。这种监管环境与全球对呈爆炸式增长的云服务行业的监管规则相脱节。中国美国商会希望中国政府以一种建设性的、开放式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和政策, 以使中国不要游离于全球云计算和大数据生态系统之外。

### 信息安全等级保护的市场准入限制

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, 一表示最不重要, 五表示最重要。

2012 年, 信息安全等级保护制度继续在中国市场实施。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规定的规定, 其中许多采购单位的安全级别均被定为三级或以上的级别。2012 年 7 月, 继 2011 年 6 月的会晤之后, 美国贸易代表办公室与中国公安部会晤并商讨了《信息安全等级保护管理办法》实施工作的开展。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。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”。

在 2012 年 12 月的第 23 届中美商贸联委会上, 中国承认“《信息安全等级保护管理办法》第 21 条中规定为了保护国家信息安全, 所选择使用的三级及以上的信息安全产品必须符合自主知识产权的要求。”中国承诺采取措施修改上述管理办法并征求各方意见, 包括与美国开展对话。

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) 采购国内专有技术。我们也建议取消信息安全制度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。

### 商用密码管理条例和使用非公开算法

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》。该条例中规定:

- 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 (SEMP) 办法的许可证, 使用外国加密技术需要申请特别许可。
- 在中国销售的加密产品必须经过要求披露源代码的检测, 方可获得销售许可证。
- 外国技术提供商必须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, 上述 1999 年的密码管理条例只适用于对属于“核心功能”产品的加密。另外, 工信部已签署支持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, 中国美国商会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方法的合理性。

enously 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.” Further, MIIT 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, AmCham China remains concerned about the path China’s encryption authorities are pursuing with regard to licensing and restrictions of global technology.

### CNCA Information Security Testing and Certification Regulations

In August 2007, the Chinese National Certification and Accreditation Administration (CNCA) initiated a regulatory push to test and certify 13 types of information security products, including firewalls and anti-spam products. This testing and certification process places burdensome requirements on foreign businesses trying to access the government procurement market, including divulging source codes, product designs, and other forms of sensitive IP. Moreover, this testing scheme is inconsistent with globally accepted norms and practices, including the Innovation Principles that China and the other 20 member economies of the Asia-Pacific Economic Cooperation forum adopted.

AmCham China strongly encourages China to adopt the Common Criteria approach to information security product certification.

### *Market Access for Wireless Devices*

U.S. industry estimates that total spending on smartphones in China will rise to \$57 billion in 2012. China is also the fastest growing market for mobile applications in the world—the number of app sessions increased by 1,126 percent in the first quarter of 2012 when compared to the same quarter in 2011.

Two MIIT departments and AQSIQ jointly administer a mandatory set of testing and conformity assessment requirements for any device with a radio receiver that accesses China’s mobile networks. Specifically, these requirements include the Network Access License (NAL), administered by MIIT’s Telecommunication Administration Bureau (TAB); Radio Type Approval (RTA), administered by MIIT’s Radio Regulation Bureau; and CCC mark, administered by AQSIQ’s China National Certification & Accreditation Administration (CNCA). These requirements slow time-to-market and increase import costs, without delivering significant technical benefit to wireless customers.

At the 23<sup>rd</sup> JCCT, China confirmed that it will take the views

of all stakeholders into full consideration in regard to the regulation of information technology and telecommunications hardware, operating systems, applications, app stores, and other related services. The United States and China will continue to discuss this issue at the working level, as China revises and improves the current draft.

We urge China to reform the overall type approval process to test for a narrowly defined list of specifications for radio frequency interference and network interoperability. We also hope that applying companies can be offered ‘one-stop’ shop service. It will shorten time-to-market if all testing can be done in one lab.

We also encourage China to ensure that all testing requirements are centrally published in an accessible and transparent manner for industry and that any new testing requirements be subject to public comment followed by a meaningful discussion with stakeholders, notified to the relevant international bodies (e.g. WTO Technical Barriers to Trade Committee), and implemented with sufficient advance public notice for industry to comply.

## Recent Developments

### *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. The Chinese firm Nufont developed them with financial assistance from the Ministry of Science and Technology (MOST) and strong administrative support from MIIT. On February 13, 2012, MIIT formally approved the two standards. 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.

### *Cloud Computing*

AmCham China members are aware of important developments in cloud computing policy and collaboration in China, including:

- September 20<sup>th</sup>, 2012, China’s National Information Technology Standards Technical Committee (NITS) held

## 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，包括防火墙和反垃圾信息产品。这种检测和认证过程给试图进入政府采购市场的外资企业增添了沉重的负担，包括公布源代码、产品设计和其他形式的敏感知识产权信息。另外，这种检测规定与国际公认的规则及惯例不符，其中包括中国及亚太经合组织的其他20个成员国共同采纳的创新原则。

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。

### 无线设备的市场准入

据美国业内人士估计，2012年中国在智能手机市场总消费额将升至570亿美元。中国同时还是全球增长最快的移动应用市场——与2011年一季度相比，2012年一季度的移动应用产品增长达1126%。

工信部的两个司局和质检总局负责共同管理带有可接入中国移动网络的无线电接收器的设备的检测和合规评估要求。特别是这些要求中包括工信部电信管理局（TAB）负责管理的进网许可（NAL）；工信部无线电管理局管理的无线电型号核准（RTA）和国家质检总局中国认监委（CNCA）管理的3C认证。这些要求延缓了设备上市周期，增加了进口成本，妨害了无线用户享受先进技术。

在第23届美中商贸联委会上，中国确认在制定信息技术和电信硬件、操作系统、应用程序、应用商店以及其他服务的监管法律时将充分考虑各利益相关方的观点。随着中国修改完善上述草案，美国和中国将在操作层面上就这些问题继续展开讨论。

我们提请中国全面改革类型审批程序，将检测范围限定在无线电频率干扰和网络交互性相关规格上。我们还希望能够为申请企业提供“一站式”服务。如果能在一个实验室完成所有检测，那么必将大为缩短产品上市的周期。

我们还鼓励由中央政府制定统一的检测要求，并向行业公开。制定新检测要求需要事先公开征求意见，与利益相关方开展实质性磋商，并通知相关国际组织（世界贸易组织贸易技术壁垒委员会），在实施前还应该充分公示便于行业遵守。

## 最新进展

### 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）和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。由中国新岸线公司自主研发。该技术的研发在资金上和行政上分别得到了中国科学技术部（科技部）与工信部的大力支持。2012年2月13日，工信部正式批准了该两项标准。中国美国商会成员担心中国将不惜以牺牲802.11Wi-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泛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。我们提醒中国注意以下两点：（1）遵守中国加入世界贸易组织后所作出的技术性贸易壁垒（TBT）承诺，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）遵守由中央政府支持的中国各标准化机构作出的承诺，尽可能避免与国际标准化机构工作的重复或交叉。

### 云计算

中国美国商会会员企业注意到，中国在云计算政策和合作方面取得了重大进展，包括：

- 2012年9月20日，中国国家信息技术标准化技术委员会召开了云计算标准工作组第一次会议。
- 2012年9月19日，发改委，中国的最高宏观经济规划主管部门，在北京召开了“云计算指导性文件起草专家委员会”第一次会议。
- 2012年7月，全国信息安全标准技术委员会（TC260）针对《信息安全技术：政府部门云计算服务提供商基本安全要求》草案提出意见。这份文件是首个政府采购云计算安全标准文件。可惜的是，TC260和中国其他标准组织并不允许外国企业加入，甚至不允许外国企业以观察员的身份加入。中国美国商会促请中国政府今后允许外资企业加入上述机构。

### 网速变慢和稳定性降低

中国美国商会在华运营的会员企业，无论大小，都注意到连接中国境外网站速度变慢的现象。尽管我们清楚中国限制网络连接是出于安全考虑，但国际网络连接速度过慢最终会影响外商在华投资的积极性。这些问题在从事软

the first meeting of its Cloud Computing Standards Working Group;

- On September 19<sup>th</sup>, the NDRC, China's top macro-economic planning authority, held the first "Cloud Computing Guiding Documents Drafting Experts Committee" meeting in Beijing;
- In July 2012, the National Information Security Standards Technical Committee (TC260) published for comment the draft 'Information Security Technology: Government Department Cloud Computing Service Provider Basic Security Requirements.' This document was the first cloud computing security standard for government procurement. Unfortunately, TC260 and many other Chinese standards organizations do not permit foreign companies to participate, even as observers. AmCham China urges the Chinese government to permit foreign companies' participation in these organizations going forward.

### ***Deteriorating Internet Speed and Reliability***

AmCham China member companies operating in China, both large and small, have noted deterioration in access speeds to web sites outside of China. While recognizing that the Chinese government has security concerns with unfettered Internet access, slow international access speeds will eventually discourage investment in China. The problem is especially acute for companies engaging in collaborative software development. These concerns are leading some companies, particularly in industries reliant on Internet collaboration (increasingly every global company), to locate Asian operations elsewhere. Until recently the problem was obviated by the use of Virtual Private Networks. But these are now less available, limiting options for companies to gain reliable high speed access to the global Internet. AmCham China members have also raised a concern that Chinese companies, particularly SOE's, may be permitted to by-pass the firewall, have freedom to use VPNs, or have special VPNs from large telecommunications firms that aren't available to foreign or privately-owned companies in China.

Given the importance of high speed international access, AmCham China suggests that Chinese authorities establish a regime to vet and certify companies for high speed international access, circumventing the firewalls that are slowing data communications traffic. For examples, general managers would give undertakings that their companies would use the networks for business-related correspondence only.

A secondary issue is the slow speed of private Internet access in some Beijing neighborhoods. xDSL suppliers seem to be overloading DSLAMS in many housing areas, not just those primarily housing foreigners. This affects Chinese users also, particularly students and small businesses. AmCham China recommends increasing competition in providing last mile Internet access to alleviate this problem.

### ***Personal Information Protection***

At the end of 2011, MIIT promulgated the *Several Provisions on Regulating Market Orders of Internet Information Services*, which took effect in March 2012. It imposes significant new data protection obligations on Internet information service providers ("IISPs"). IISPs are now required to obtain the user's consent before collecting user personal information or providing it to third parties. They also must expressly inform the user of the method, content, and purpose for collecting and processing the information.

In June 2012, MIIT released two draft regulations that would significantly affect how mobile smart device manufacturers and IISPs handle users' personal information in China. In July 2012, the State Council issued the *Several Opinions of the State Council on Vigorously Advancing Informatization Development and Thoroughly Ensuring Information Security*. This is generally seen as an implementing rule for the "12<sup>th</sup> Five-Year National Development Plan for Strategic Emerging Industries." It provides only strategic opinions, and does not contain any specific provisions or penalty on data privacy.

Although a national data protection law is still under consideration, some provinces in China moved forward in 2012 with their own rules. Both Jiangsu and Hebei issued *Informatization Regulations*, which broadly impose consent and notice obligations on entities or individuals who collect personal information.

Also, in late 2012 it was reported that the draft guidelines entitled *Information Security Technology—Guideline for Personal Information Protection within Information System for Public and Commercial Services*, initially issued in 2011 for public comment, had gone through its approval process and would be published soon. Finally, at the end of 2012, the NPC Standing Committee passed the *Resolutions of the Standing Committee of the NPC Concerning Strengthening the Protection of Information on the Internet*. This announces the State's protection of electronic information that can identify individuals and involves private matters, and prohibits the misappropriation, sale or unlawful disposition of electronic personal information. It also imposes requirements on the collection and use of electronic personal information over the internet, such as requirements relating to the purpose of the collection and use of the data, obtaining the consent of data subjects, adopting security safeguards, and maintaining confidentiality.

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 information-driven industries in China.

To create a highly protective but flexible privacy regime,

件合作开发的企业尤为严重。上述忧虑致使部分企业，特别是依赖互联网进行合作（基本上每个跨国公司均是如此）的企业，开始将企业运营撤离中国。直至最近，通过使用虚拟专用网络（VPN）缓解了上述问题。但虚拟专用网络目前尚有限，因此限制了企业获得高速接入国际互联网的选择机会。中国美国商会的会员企业同时还担心中资企业，特别是国有企业，可能会被允许翻越防火墙，可以自由使用虚拟专用网络，或者从大型电信企业处获得专用 VPN 账户，而在华运营的外企或私企却无法获得同等待遇。

鉴于高速国际互联网接入的重要性，中国美国商会建议中国相关主管部门建立企业接入高速国际互联网审批机制，从而绕过降低数据通信速度的防火墙。例如，可以由总经理承诺其公司仅出于业务联络之目的使用国际互联网。

次要问题是北京部分社区私人接入互联网速度变慢。许多社区（而不仅仅是外国人聚居区）的 xDSL 提供商 DSLAMS 负荷过重。这也影响了中国的使用者，尤其是学生和小企业用户。中国美国商会建议加强最后阶段互联网接入服务供应商之间的竞争，从而缓解这一问题。

## 个人信息保护

2011 年底，工信部颁布了《规范互联网信息服务市场秩序管理若干规定》，并于 2012 年 3 月生效。该规定中加大了对互联网信息服务供应商（“IISPs”）保护新数据的义务。现在 IISPs 必须在收集使用者个人信息或将该信息提供给第三方之前先得到该使用者同意。他们还必须明确告知使用者收集和处理个人信息的方法、内容和目的。

2012 年 6 月，工信部发布了两部法规草案，可能会对移动智能设备制造商和 IISPs 处理中国使用者个人信息的方式带来重大影响。2012 年 7 月，国务院颁布了《关于大力推进信息化发展和切实保障信息安全的若干意见》。这部文件可以看做是《“十二五”国家战略性新兴产业发展规划》的实施细则。但该文件中只规定了战略意见，并没有关于数据盗版的具体规定或惩罚措施。

尽管国家层面的数据保护法律尚在考虑之中，但中国部分省份已经率先在 2012 年制定了本省的数据保护地方法规。江苏省和河北省颁布了本省的《信息化条例》，宽泛地规定了采集个人信息的单位或个人需要承担的认可和告知义务。

另外据报道，2012 年后期，最初于 2011 年公开征求意见的《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》草案已经获得批准，不久就将公布实施。最后，2012 年底全国人大常委会通过了《全国人大常委会关于加强网络信息保护的决议》。该决议中规定国家保护个人身份电子信息和私人信息，禁止盗用、贩卖或非法使用个人电子信息。决议中还对通过互联网采集和使用电子个人信息作出了要求，比如对采集使用信息的目的、获取数据客体内容、采用安全防护和保密等问题作出了规定。

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，中国美国商会建议中国采用以“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负责落实防止个人信息滥用，而不只是为了实证符合官方规定。

## 宽带开发

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。

2012 年，工信部无线电管理局发布了《5000 兆赫兹频段无线接入系统频率使用规划》草案。这一举措将积极鼓励信息通信行业的发展，只要明确在利用这些波段的设备的 RTA 相关要求，将很快为中国的无线网络客户带来巨大的好处。

另外，2012 年，发改委宣布建立跨部委工作组，起草国家宽带发展计划并于 2012 年 6 月底提交国务院审议。中国美国商会尚未看到该草案内容，也没有外资企业受邀参与该战略的起草。

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。

中国 4G 网络的推广速度落后于其他发达国家和发展中国家。尽管目前已经开展省市级推广试点，但还是存在诸

AmCham China suggests an “accountability”-based approach, an approach 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 of the prevention of abuses of personal information, rather than for mere positivistic compliance with formal rules.

### **Broadband Development**

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.

In 2012, the MIIT Radio Regulation Bureau released a draft decision regarding the unlicensed allocation of 3 critical bands of radio spectrum for wireless broadband use. This is a very positive development for the ICT industry, and should quickly lead to tremendous benefits for China’s wireless customers, given the clarification of RTA-related requirements for devices operating in those bands.

Additionally, in 2012 the NDRC announced the establishment of an inter-agency working group to draft and submit a National Broadband Development Plan to the State Council by June 2012. AmCham has not yet seen a draft of this plan, nor have foreign companies been invited to participate in its drafting.

AmCham China applauds China’s efforts to develop a national broadband network, as well as realize fixed broadband network convergence between cable, Internet, and telecommunications networks, through Three-Network Convergence (TNC).

China’s rollout of 4G lags behind that of other developed and developing markets. Although both city- and provincial-wide trials are underway, a variety of factors has led to a delay of full commercialization of China’s LTE network until 2014, or later. AmCham China urges the Chinese government to continue working with industry stakeholders to speed 4G network commercialization, and to promote all global 4G LTE standards, including FDD-LTE.

### **ZUC algorithm**

ZUC is a 4G Long-Term Evolution (LTE) encryption algorithm developed by a Chinese government-owned research organization. The 3rd Generation Partnership Project (3GPP) standards development consortium approved ZUC as a voluntary international standard on September 23, 2011, making it the third encryption algorithm approved by the 3GPP process for LTE. Chinese authorities have indicated that all 4G LTE products sold in China will be required to

implement ZUC in addition to AES and Snow 3G. Moreover, because China’s 1999 *Commercial Encryption Regulations* prohibit the use of foreign encryption technology, ZUC is the only 4G LTE algorithm that may be enabled in China.

On February 9<sup>th</sup>, 2012 the State Cryptography Administration (SEMA) completed a draft-for-comment of the *Technical Requirements for ZUC Algorithm Cryptographic Modules*, a proposed testing and conformity assessment specification for mobile devices, base stations and network management equipment implementing ZUC.

AmCham China is concerned about implementation of ZUC in China for the following reasons:

- The proposed compulsory OSCCA testing of 4G LTE products constitutes an extension of OSCCA’s testing jurisdiction into telecommunications products
- The proposed compulsory OSCCA testing calls for disclosure of source code and other sensitive intellectual property (IP)
- The 1999 *Commercial Encryption Regulations* render ZUC a de facto national mandatory standard in China

OSCCA has not indicated when it intends to revise the Technical Requirements. At the 23<sup>rd</sup> JCCT, China agreed that it will not mandate any particular encryption standard for commercial 4G Long Term Evolution telecommunications equipment.

### **Emerging Smartphone Security Regulations**

In response to a perceived increased risk to consumers from the proliferation of security threats on mobile smart terminals (phones and PDAs), the Chinese government has rapidly moved to widen its regulatory purview over these emerging technologies. In response to industry feedback received about a draft policy issued in April 2012, on June 1, 2012 MIIT released a draft of the *Notice Regarding Strengthening of Network Access Management for Mobile Smart Terminals* for comment. On November 23<sup>rd</sup>, China notified the WTO TBT of the proposed finalized measure and two underlying technical standards. If finalized, the standards would widen MIIT’s regulatory purview over management of the entire mobile smart terminal device industry in the name of information security and data privacy through the Network Access License (NAL). AmCham China members are keen to monitor further developments in this area.

### **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. China is not alone in facing the challenges of keeping up with the

多因素导致中国 LTE 网络最早到 2014 年才能实现全面商用化。中国美国商会促请中国政府继续与行业各利益相关方进行合作，加快推进 4G 网络商用化，推广包括 FDD-LTE 标准在内的各大全球 4G LTE 标准。

## 祖冲之算法

祖冲之算法是由中国政府下属研究机构开发的一种 4G 长期演进 (LTE) 加密算法。2011 年 9 月 23 日，第三代合作伙伴计划 (3GPP) 标准开发组织将祖冲之算法批准为一项自愿性国际标准，这也是 3GPP 程序批准的第三个长期演进加密算法。中国政府已经表示，要求中国境内销售的所有 4G LTE 产品都执行祖冲之、AES 和雪 3G 算法。另外，由于中国 1999 年制定实施的《商用密码管理办法》禁止使用外国加密技术，祖冲之算法就成为唯一可以在中国使用的 4G LTE 算法。

2012 年 2 月 9 日，国家密码管理局 (SEMB) 起草了《祖冲之算法密码电文模块技术要求》并征求意见，该技术要求对执行祖冲之算法的移动设备、基站和网络管理设施的检测和评估规格均作出了规定。

中国美国商会对祖冲之算法在中国的实施表示担忧，原因如下：

- 4G LTE 产品强制接受的 OSCCA 检测也拓展适用于通信产品
- 强制性 OSCCA 检测要求公布源代码和其他敏感性知识产权信息
- 1999 年的《商用密码管理办法》实际上将祖冲之算法作为一种全国性强制标准

OSCCA 目前尚未表示准备何时修改上述《技术要求》。在第 23 届美中商贸联委会上，中国同意不会强制要求使用某种商用 4G LTE 通信设备的加密标准。

## 新兴智能手机安全法规

为了应对移动智能终端 (手机和 PDA) 安全威胁日益增加的风险，中国政府迅速采取措施，对相关新兴技术进行监管。作为对 2012 年 4 月发布的一项政策草案收到的行业意见的回复，工信部于 2012 年 6 月 1 日发布了《关于加强移动智能终端进网管理的意见》草案并征求意见。2012 年 11 月 23 日，中国通知世界贸易组织贸易技术壁垒委员会，即将正式颁布管理办法及两条相关技术标准。上述法规颁

布实施后，工信部对整个移动智能终端设备行业的监管职权进一步扩大，可以信息安全和数据隐私为由，通过进网许可证审批进行管理。中国美国商会的会员企业密切关注这一领域的最新进展。

## 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。在面对各种挑战，如：如何保持与最尖端的技术同步，培育不断成长的本土产业、如何保护数据信息与网络安全等方面，中国并不是独立作战。尽管中国在营造充满活力的高科技生态环境方面取得了长足的进步，但外资企业所面临的监管壁垒、有别于国际管理的网络安全政策等都可能阻碍中国的发展。中国美国商会会员企业随时准备与中国政府部门进行合作，以保障中国信息通信技术产业今后的稳定发展和成功。

## 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。
- 取消增值电信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和 / 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，包括外国公司，在标准制定机构中拥有完全的表决权，并采用国际标准，以促进新兴产业的联合创新。

most cutting-edge technology, growing domestic industry, and protecting networks and the data stored on them. Although China has made significant progress in promoting a vibrant high tech ecosystem, regulatory barriers for foreign companies, as well as Internet and cyber-security policies that diverge from global practices, may hinder China's progress. AmCham China members stand ready to collaborate with Chinese authorities to ensure the future stable growth and success of the ICT sector in China.

## 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 to eliminate mandatory licensing for entities importing, developing, and selling encryption technology.
- Eliminate equity caps on foreign investment in value-added telecom 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 and/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, including foreign companies, full voting rights in standards-setting bodies, and adopt international standards to facilitate joint innovation in the emerging sector.

### *For the US Government:*

- **Relevant agencies of the US government, including the Department of State, Department of Commerce, and 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 the export of non-sensitive technologies.

### 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 grew modestly in 2012. Total insurance premiums rose to RMB 1.55 trillion (US \$246.03 billion), an increase of eight percent from RMB 1.43 trillion (US \$226.98 billion) in 2011. Primary property and casualty (P&C) premiums increased 15.4 percent to RMB 533.1 billion (US \$84.62 billion), due in large part to an increase in motor vehicle registrations, while life insurance premiums rose 2.4 percent, to RMB 890.8 billion (US \$141.40 billion), held back in part by policy changes affecting bancassurance distribution. Health insurance premiums rose to RMB 862.8 million (US \$136.95 million), an increase of 24.7 percent from 2012, due to an expansion of the health insurance system. The gains are attributable in part to improvements in the control of solvency capacity, funds utilization and other risks, market order and service quality. The China Insurance Regulatory Commission (CIRC) cautions, however, that 2013 may be a very difficult year for the industry despite last year's gains. Moreover, restrictions on ownership, market entry, expansion, and product offerings by foreign-invested insurance companies and ancillary businesses continue to impede innovation and deprive consumers of choice.

## Ongoing Regulatory 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 market access and 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 branch approvals, issuance of licenses, and new product approvals, as well as artificial ownership caps and other barriers.

### *Sales and Service Channels*

#### Branching

AmCham China welcomes CIRC's February 2012 notice to

level the playing field between foreign-invested and domestically invested insurers with respect to sub-provincial branch and sub-branch approvals, but we continue to be disappointed that foreign-invested insurers remain subject to lengthier review periods for branch applications, and by CIRC's *de facto* refusal to review multiple branch applications at the same time. Equal treatment with respect to branching would benefit consumers by developing the market more rapidly and providing them with wider choice. AmCham China urges CIRC to allow foreign-invested insurers to submit multiple applications for branch approvals for concurrent review and to commit to approve concurrent branch applications by qualified foreign-invested insurers on the same basis as that applicable to domestically-invested insurers. AmCham China is hopeful that the "Measures on the Administration of Market Access by Branches and Sub-branches of Insurance Companies" promulgated in March 2013 will level the playing field with respect to provincial-level branch applications.

#### Bancassurance

Since a regulatory change in 2011, sales through the bancassurance channel have declined significantly and are a significant cause of the overall slowdown in premium growth. Since insurance sales personnel were banned from selling insurance products in bank branches, bank sales staff became the main force for selling insurance products through bancassurance. Bank sales staff have limited experience in selling insurance products, however, particularly in medium- and small-sized bank branches which are under great pressure to promote savings and loan products while insurance products are not prioritized. These factors have led to the decline in bancassurance sales. The "Guidelines on the Supervision and Administration of Insurance Business Conducted by Commercial Banks as Agents," jointly promulgated by CIRC and CBRC in March 2011, allowed insurers and banks to decide the number of insurance partners in accordance with their own conditions, not requiring the three insurers per bank ratio which discriminated against medium- and small-sized insurance companies. But the limit has yet to be expressly removed. We urge CBRC and CIRC to expressly remove the three-to-one ratio in the interest of enhancing consumer choice.

# 保险业

## 引言

2012年，中国保险行业有小幅增长。总保费收入增至1.55万亿元人民币（2,460.3亿美元），较2011年的1.43万亿元人民币（2,269.8亿美元）增长8%。主要财产险和意外险（“P&C”）保费收入增长15.4%，达到5,331亿元人民币（846.2亿美元），其原因大部分是由于机动车登记数量的增加；人寿保险保费收入增长2.4%，达到8,908亿元人民币（1,414亿美元），增长受阻的部分原因在于政策变化对银行保险分销产生了影响；健康保险保费收入与2011年相比增至8.628亿元人民币（1.3695亿美元），增幅达24.7%，其原因在于健康保险体系的扩大。这些增长的部分原因在于对偿付能力控制、资金运用、其他风险、市场秩序和服务质量所做出的改善。但是，中国保险监督管理委员会（保监会）告诫称，尽管去年实现了增长，2013年对于该行业来说可能是非常艰难的一年。此外，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。

## 现存监管问题

美国保险公司希望中国消费者也能享受到它们的产品，它们当中很多企业和服务全球消费者方面已经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批进入中国市场并获得在华经营许可，之后需获得平等的国民待遇及与中资保险公司在同一舞台进行公平竞争的机会。但不幸的是，外资保险公司仍面临着许可发放、分支机构设立审批延迟、新品推出和硬性所有权限制等各种障碍。

## 销售与服务渠道

### 设立分支机构

2012年2月，保监会下发通知，在省级分公司和分公司以下设立分支机构（不含分公司）的审批方面给予外资保险公司与中资保险公司同等待遇，中国美国商会对此表示欢迎。然而，我们失望地看到，外资保险公司在申请设立分支机构时仍然要接受旷日持久的审查，与此同时，保监会实际上拒绝审批外资保险公司提交的多个分支机构的设立申请。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。中国美国商会促请保监会允许外资保险公司提交设立多个分支机构的申请，以便同时进行审批，并承诺按照适用于内资保险公司的相同依据来审批由具备合格资质的外资保险公司提交的设立多个分支机构的申请。中国美国商会希望2013年3月颁发的《保险公司分支机构市场准入管理办法》能在省级分公司申请方面给予外资和中资保险公司同等的待遇。

### 银行保险业

自监管规定于2011年发生改变以来，通过银行保险渠道实现的销售量呈显著下降态势，成为保费收入增长总体放缓的一个主要原因。由于保险销售人员被禁止在银行里推销保险产品，因此银行销售人员就成为银行推销保险产品的主力。但是银行销售人员在推销保险产品方面经验有限，尤其是在中小分行，在吸储和推广贷款产品方面面临很大压力，而对保险产品并不重视。这些因素造成了银行保险销售的下降。保监会和银监会于2011年3月联合发布的《商业银行代理保险业务监管指引》允许保险公司和银行按照自身情况决定其保险业务合作对象的数量，并未要求遵循每家银行只可与三家保险公司建立合作关系这一构成对中小保险公司的歧视的限制。但是该比例限制并未被明确取消。我们促请银监会和保监会明令取消这一比例限

### Investment of insurance funds

AmCham China applauds the series of new investment regulations released in 2012 which further loosened the restrictions on investment vehicles, opened new investment channels and markets with respect to capital markets and real estate, and provided necessary risk-hedging tools for insurance capital. The new rules truly removed outdated barriers among industries for purposes of investment and asset management, and is a reform insurers had long awaited.

### Licenses

#### Pension Insurance and Health Insurance

Although a number of US and other foreign-invested life and P&C insurers have received licenses to operate in China, specialist pension and health insurers continue to be denied market entry. MOHRSS has not issued any enterprise annuities licenses since 2007, continuing to exclude 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 years for a license to be issued, constituting *de facto* barriers to market entry.

### Ownership

#### Life Insurance

AmCham China continues to be disappointed by the lack of progress on relaxation of the 50 percent cap on foreign ownership in life insurance. It has been in place since China was admitted to the WTO in 2001 and no longer has any justification as domestically-invested insurers have grown large and enjoy an aggregate market share in excess of 95 percent. The equity cap is the main disincentive for foreign life insurers to invest to better serve the China market. It also results in governance shortcomings in foreign-invested life insurers, as all too often the domestic investors in such companies are unable or unwilling to make the additional investments needed to grow the business. AmCham China continues to recommend lifting the 50 percent equity cap.

#### Insurance Asset Management Companies (IAMCs)

AmCham China applauds the increased issuance of IAMC licenses in the last two years. But CIRC continues to regulate this industry on the basis of the Interim Provisions on the Regulation of IAMCs which require that IAMCs have at least two founding shareholders, even though the Company Law as amended in 2005 effectively requires 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 forced to become minority shareholders in their own IAMCs, even assuming that another founding shareholder can be enlisted on acceptable terms.

### Products

#### Property Insurance

AmCham applauds the opening of the mandatory third party liability ("MTPL") automobile insurance market in 2012 to foreign-invested P&C insurance companies.

#### Reinsurance

CIRC released the "Notice on Certain Issues Concerning Reinsurance Transactions Conducted by Foreign-Invested Insurance Companies with Their Affiliates" (draft for solicitation of comments) in late December 2012. AmCham believes that the proposed restrictions, including pre-approval by CIRC, on related party reinsurance transactions unfairly discriminate against foreign-invested insurers, as domestically-invested insurers do not face a compensable restriction under the Regulations on the Administration of Reinsurance Business (2010). AmCham is moreover not aware of any basis for the restrictions proposed in the Draft Notice under the international best supervision practices promoted by the International Association of Insurance Supervisors (IAIS). To the extent that any restriction is necessary, there is no need for the multiple redundant and unnecessary qualifications on related parties proposed in the Draft Notice. A single credit rating threshold should suffice.

#### 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 prudential justification. Foreign-invested insurance brokerages: (1) in the commercial P&C market are only allowed to broker large-scale commercial risks, i.e. annual premiums exceeding RMB 400,000 (US \$63,000) and investment exceeding CNY 150 million (US \$ 23.6 million), which constitute 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. The Chinese government has stated that SME and private consumption growth is essential for China to develop a more sustainable economy. However, because foreign intermediaries are barred from servicing SME and private consumers, they cannot bring their global experience to support the growth of these sectors. The license restriction also prevents foreign intermediaries from contributing full value to product innovation and the development

制，为消费者提供更多选择。

### **保险资金的投资**

2011年，中国推出了一系列新的投资规定，进一步放宽了对投资工具的限制，开辟了新的投资渠道和市场（包括资本市场和房地产），为保险资金提供了必要的风险对冲工具，中国美国商会对此表示赞赏。这些新规定真正取消了各个行业在投资和资产管理方面已经过时的壁垒，是保险公司期待已久的一项改革。

### **许可**

#### **养老保险和健康保险**

虽然一些美国和他国外资人寿保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。中国人力资源和社会保障部自2007年之后便再没有发放过企业年金许可，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，这构成了事实上的市场准入壁垒。

### **所有权**

#### **人寿保险**

在放宽人寿保险公司50%的外资持股比例限制方面至今依然没有进展，中国美国商会对此感到失望。这一自2001年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，占据了95%以上的市场份额。对于打算在中国进行投资来更好地服务中国市场的外国人寿保险公司来说，该持股上限是一个主要的抑制因素。此外，该上限还造成外资人寿保险公司的治理出现缺陷，因为此类公司中的国内投资人往往不能或者不愿投入为业务增长所需的额外资金。中国美国商会继续呼吁取消该50%的持股比例限制。

#### **保险资产管理公司**

过去两年中，保险资产管理公司许可的发放数量有所增加，中国美国商会对此表示肯定。但是保监会依然根据《保险资产管理公司管理暂行规定》来对该行业实施监管。该规定要求此类公司至少要有两名发起人股东，即便2005年

修订后的《公司法》只要求一名发起人股东。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，即便假定他们能够以可接受的条款找到另一个发起人股东，他们在自己所成立的保险资产管理公司中却被迫成为小股东。

### **产品**

#### **财产保险**

机动车第三者责任强制保险市场于2012年向外资财产和意外险公司开放，美商会对此表示赞赏。

#### **再保险**

保监会于2012年12月发布了《外资保险公司与其关联企业从事再保险交易若干问题的通知》（征求意见稿）。美商会认为对关联方再保险交易提出的限制（包括保监会预审）是对外资保险公司的不公平歧视，因为《再保险业务管理规定》（2010年）对内资保险公司并无该限制。此外，美商会不清楚根据国际保险监督官协会所推进的最佳监督方法，该通知中提出的限制依据何在。如果需要有任何限制，就没有必要在通知中就关联方规定多种多余和不必要的资格条件。只需一个信用评级门槛就足矣。

#### **保险经纪**

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63,000美元，投资额超过1.5亿元人民币或2,360万美元），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。中国政府曾提出，中小企业和私人消费增长对于中国发展更具有可持续性的经济来说至关重要。但是，外国中介机构被禁止向中小企业和私人消费者提供服务，因此无法利用其全球性经验来支持这些行业的发展。牌照限制还使得外国中介机构无法对中国的产品创新和专业保险分销的发展贡献出全部价值。

of professional insurance distribution in China.

## ***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 responsibilities borne by 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 long 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.

Tax incentives are an important stimulus to the purchase of commercial health insurance, especially indemnity products. US specialist health insurers have long experience in this field and are eager to be licensed so that they can assist its 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, will further the efficient development of health insurance.

### *Advisory*

A number of local governments in China have established international business leaders advisory councils to provide high-level advice from international business leaders. AmCham China recommends that CIRC do so as well to avail itself of the knowledge and experience of international

industry leaders to promote development of the insurance industry in China on a sound and prudential basis.

### *Remuneration*

CIRC promulgated the "Rules and Guidelines for the Management of Remuneration of Insurance Companies" in July 2012 to tighten regulation of insurance company governance, as well as to improve incentive and restraint mechanisms. However, the rigid remuneration standards present obstacles in the competition for talent. The one-size-fits-all model also unfairly handicaps foreign-invested insurers because the remuneration structure of foreign insurers typically differs from that of domestic insurers. AmCham China recommends that CIRC limit the application of the Guidelines with respect to foreign-invested insurers to "for reference" only, which we understand has been the practice of the CBRC with respect to foreign-invested banks.

### *Regulatory and Compliance Costs*

Our members, who have extensive international experience, find that the costs of operating in China are very high compared to most other markets. Administrative and compliance burdens are particularly onerous, including I/T requirements and rules regarding claims, finance and compliance personnel for new branches. Regulatory maintenance and compliance costs are generally significantly higher in China than in most other markets. AmCham China urges CIRC to simplify and otherwise take measures to reduce costs wherever possible.

## **Recent Developments**

There were several significant regulatory accomplishments in 2012. Among the most notable were the following: promulgation of the Notice Concerning the Adjustment of Relevant Matters Relating to Some Foreign-Invested Insurance Company Approval Items (with particular relevance to sub-provincial branches and sub-branches); opening the MTPL market to foreign-invested P&C insurers; the decision by tax authorities that foreign insurance company representative offices retain their tax-exempt status; liberalization of regulations on the investment of insurance funds; and tighter regulation of sales practices.

We remain disappointed, however, in the continuance of barriers to market entry and expansion faced by US and other foreign-invested insurers. Domestic insurers and insurance brokerages, particularly larger companies, continue to enjoy more regulatory favor with respect to branching 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 generally lost market share in China, despite a modest uptick last year.

## 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，促进该行业的发展。

### 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。

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。美国专业健康保险公司已从事这一业务多年，它们希望得到在华经营许可，为该行业的发展贡献一己之力。

## 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。

### 顾问委员会

中国多个地方政府成立了国际商界领袖顾问委员会，来提供高层次的咨询建议。中国美国商会建议保监会也这样做，来利用国际业界领袖的知识和经验，以完善和审慎的方式推进中国保险行业的发展。

## 薪酬标准

保监会于2012年7月发布了《保险公司薪酬管理规范指引》，以加强对保险公司治理的监管，并改善激励和约束机制。但是，僵化的薪酬标准阻碍了对人才的竞争。这种一刀切模式还对外资保险公司构成了不公平的妨碍，因为外国保险公司的薪酬结构通常都不同于国内保险公司。中国美国商会建议，针对该指引对外资保险公司的适用性方面，保监会应规定该指引仅“供参考”。据我们了解，这也是银监会对外资银行所采取的做法。

## 监管与合规成本

中国美国商会的会员具有广泛的国际经验，他们发现在中国的经营成本与其它大多数市场相比非常之高。行政与合规负担尤为沉重，包括针对新分支机构提出的理赔、财务与合规人员的I/T要求和相关规定。与其它大多数市场相比，中国的监管维持与合规成本一般要高出不少。中国美国商会促请保监会通过简化程序和采用其他措施来尽可能地减少成本费用。

## 最新进展

2012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：发布了《关于调整外资保险公司部分行政许可项目有关事项的通知》（尤其与省级分公司和分公司以下分支机构不含分公司相关）；向外资财产和意外险公司开放交强险市场；税务机关有关外国保险公司代表处保留免税资格的决定；放开对保险资金投资的监管；对销售行为实施更加严格的监管。

然而，美国和其他外资保险公司在市场准入和业务拓展方面仍受到制约，我们对此感到失望。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，尽管去年中国的保险市场有小幅增长，但外资保险公司的中国市场份额普遍出现了下滑。截至2012年底，外资保险公司的市场份额仅为3.5%，比2004年的6%大幅降低，比2011年的3.06%仅略有回升。个人保险业务的下降尤为明显，从2005年的8.9%跌至2012年的4.8%。即便是最大的外资人寿保险公司所占市场份额也不到1%。此前一直无缘交强险市场的外资财产和意外险公司，其2012年的市场份额仅为1.2%。外资

As of year-end 2012, the market share of foreign-invested insurers stood at a mere 3.5 percent, down from six percent in 2004 and up only slightly from 3.06 percent in 2011. The decline in personal insurance has been particularly sharp, falling from 8.9 percent in 2005 to 4.8 percent in 2012. Even the largest foreign-invested life insurer's market share is less than one percent. The market share of foreign-invested P&C companies, who were previously excluded from the MTPL insurance market, continues to barely register at 1.2 percent in 2012. 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.

## 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.

## 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.**
- Expressly 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.
- Remove restrictions on the scope of business of foreign-invested insurance intermediaries to allow service to SME and private consumers, so that they can fully contribute their capabilities to clients in all segments of the insurance market.

### 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

- 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.
- Create an international advisory council in CIRC to provide high-level advice from international industry leaders.
- 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.

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。

## 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。

门与人身保险监管部和财产保险监管部属于平级部门。

- 成立保监会下属的国际顾问委员会，由国际业界领袖提供高层次的咨询建议。
- 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。

## 建议

### 销售和服务渠道

- 在审批分公司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，明确取消所有对合作保险公司数量的限制。

### 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。
- 取消对外资保险中介机构业务范围的限制，允许它们向中小企业和私人消费者提供服务，在保险市场的所有细分领域贡献能力。

### 所有权

- 放宽人寿保险公司外资方持股比例不得超过50%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

- 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，藉此享有和中资保险经纪公司同样的待遇。

### 税收优惠政策

- 制定税收优惠政策来鼓励投资企业年金，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

## Legal Services

### Introduction

Since the early 1980s, international law firms and lawyers operating in China, working with their Chinese counterparts in government, academia, and PRC 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; (2) the inability to employ qualified PRC lawyers so that they can provide comprehensive legal services to their clients; (3) prohibitions against participation in important meetings at government departments involving their clients; (4) discriminatory taxation; and (5) other operational restrictions.

China's continued restrictions in this sector significantly limit the options available to Chinese and foreign companies seeking sophisticated legal advice and counsel, and deprive PRC-qualified lawyers of the opportunity to work for, receive world-class training in, and become principals of international law firms. Moreover, the current restrictions are inconsistent with international best practices 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 also conflict with the general principle of reciprocity, given that most of China's major trading partners allow PRC law firms to establish full service offices in their jurisdictions.

AmCham China urges the Chinese government to ease market access restrictions on international law firms, in order to facilitate the further development of world class legal services in China and increase employment and business opportunities for Chinese lawyers. This will also help promote the development of China as an international financial center and enable Chinese companies expanding outside of China to more efficiently obtain globally integrated legal advice.

### Ongoing Regulatory Issues

#### *Limited Scope of Practice for Chinese Lawyers in International Firms*

International law firms with representative offices in China are unable to hire or admit to their partnerships qualified PRC lawyers with active PRC law licenses. Under current regulations, any PRC national who possesses a national license to practice law in China and wishes to join an international law firm with a representative office in China must first surrender his or her license to the Ministry of Justice and may not practice PRC law. Removing this prohibition would significantly expand training and future employment opportunities for Chinese law students and lawyers, and enhance foreign law firms' capacity to represent clients doing business in China and Chinese companies looking to expand their global commercial and investment activities.

International law firms provide the integrated, seamless service across different jurisdictions and areas of law 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 an integrated worldwide team of legal specialists. Removing the prohibition on international law firms' hiring of PRC lawyers would also expand the pool of trained and experienced PRC lawyers for PRC law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds.

AmCham China urges the Chinese government to revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers, so that they may provide comprehensive legal services to their clients.

#### *Restricted Appearance Before Government Agencies*

Appearance and participation by foreign lawyers in many types of meetings involving their clients and Chinese government departments is often prohibited, restricted, or permitted only conditionally on a non-transparent and case-by-case basis. The lack of clear, consistent regulations permitting foreign lawyers to participate in such proceedings

# 法律服务

## 引言

**自** 上世纪 80 年代初期开始，在华运营的外国律师事务所和外国律师就与中国政府部门、学术界和国内律师事务所的同行们通力合作，对中国的法制及其实践发展做出了相当大的贡献。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) 成立办事处所需的注册手续过于繁杂，过程漫长而且批准结果难以预料；(2) 无法雇用中国执业律师，因此无法为客户提供全方位法律服务；(3) 不允许出席客户与政府部门之间的会议；(4) 差别性的税收政策；(5) 其他运营限制。

中国一直对外国律师事务所的市场准入进行限制，这不仅阻碍了中国和外国公司获得高度专业化的法律意见和咨询服务的机会，更剥夺了中国执业律师在国际律师事务所工作、接受全球顶级培训并获得升迁的机会。除此之外，现有的限制也不符合国际最佳实践，导致许多外国投资者不愿意使用中国法律作为合同的适用法律，也不愿意选择中国法庭或仲裁庭处理解决争端纠纷。

以上限制还违反了互惠原则，因为中国主要贸易伙伴中的绝大多数都允许中国律师事务所在其本国建立具备提供全面服务资质的分所。

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，以便增加中国律师的就业和执业机会，并进一步推动全球顶级法律服务在中国的进一步发展。这还将有助于推进中国成为全球金融中心，并使走出国门的中国企业更有效地获得全球范围的一体化法律咨询。

## 现存监管问题

### 中国律师在外国律师事务所的执业范围受限

国际律师事务所在中国设立的代表处不能雇用持有有效中国律师执业证的中国律师。依据现行法律法规，任何

持有中国律师执业证并在中国执业的中国公民，如希望加入外国律师事务所的中国代表处，必须首先向中国司法部门上缴其律师执业证并放弃在中国执业。取消该项限制将会在相当程度上扩大中国法律专业学生和律师接受培训和未来就业的机会，并提高外国律师事务所在华的业务能力，更好地为在华国外客户和寻求扩大国际商业与投资的中国客户提供法律服务。

国际律师事务所提供的是一体化的、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。如果中国公司有机会获得此类法律服务，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，从而使中国公司实现更高效、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执业律师的限制，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，使得中国国内企业和律师事务所能够聘请他们担任法律顾问或其他需要专业法律背景的职业。

中国美国商会建议中国修改相关的现行法律法规，允许外国律师事务所雇用中国执业律师，便于他们为客户提供全面的法律服务。

### 律师参与政府会议受限

中国目前通常禁止、限制或者在不透明的基础上有条件地个案允许外国律师出席和参与客户与中国政府部门之间多种类型的会议。缺乏允许外国律师参与上述会议的明确和一致的相关规定，导致外国和中国客户在上述会议中无法就非中国法律问题充分阐明自己的观点和立场，也影响了客户在与中国政府官员会谈前如何组建参会法律团队的决策。这不仅限制了客户在国际背景下理解政府程序和规则的能力，同时也影响了客户向中国政府官员提供与其在中国及境外活动和义务相关信息的质量。

据我们所知，全球其他主要经济体中都没有上述限制和规定，或仅在不统一、不透明的基础上允许会见政府官员。

deprives both foreign and Chinese clients of adequate representation in these meetings relating to areas of non-Chinese law and prevents clients from determining the composition of their own legal teams in meetings with Chinese government officials. This both limits clients' ability to understand government proceedings in their international context and limits the quality of information clients are able to provide to Chinese government officials relating to the clients' activities and obligations in China and abroad.

To the best of our knowledge, no other leading economy imposes such limitations or restrictions or permits only inconsistent, non-transparent access to government officials. Such restrictions and inconsistent application frustrate the right of international law firms to advise foreign and Chinese clients on the impact of the Chinese legal environment—a right that is clearly established in China's Protocol of Accession to the World Trade Organization (WTO) as well as in State Council regulations.

The absence of a transparent, consistently-enforced right of access for foreign lawyers before government officials creates an uneven playing field and fosters the impression that the Chinese government may engage in arbitrary and discriminatory treatment with respect to foreign companies when their legal counsel is barred or restricted from participation. 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***

International law firms face burdensome regulatory approval procedures not applicable to PRC law firms. When applying to establish a representative office, an international 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 that are potentially inconsistent with China's WTO commitment to eliminate geographic and quantitative limitations on the number of representative offices that international law firms can establish in China.

These opaque, undefined conditions unnecessarily and unreasonably lengthen the approval process to up to nine months according to relevant regulations. Moreover, the length of the approval process is unpredictable and often subject to protracted delays. The application process for establishing an office can and should be substantially streamlined.

Furthermore, an international law firm must wait three years after establishing a representative office before opening an additional office, thus limiting their growth. International law firms have reported substantial difficulties and delays in

the processing of these applications as well. This impairs the ability of international law firms to serve clients and provide much-needed global services to Chinese companies, particularly in interior provinces which are key targets of the 12<sup>th</sup> 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 international law firms are subject to higher and more burdensome PRC income taxes than PRC law firms carrying out the same activities. Profits of international law firms in China are subject to two levels of income taxation, while profits of PRC law firms are only subject to a single level of income taxation. This is because international law firms are denied the ability to be treated as partnership enterprises for PRC tax purposes. As a result, international law firms are taxed first at an enterprise income tax rate of 25 percent at the entity level. The after-tax profits are then subject to tax a second time, to the extent they are repatriated, at an enterprise income tax rate of 10 percent. In the event the after-tax profits are paid to partners directly in China, the rate is as high as 45 percent in the form of individual income tax on those partners.

In addition, international firms are denied the preferential tax calculation method granted to PRC law firms that drives down the domestic firms' effective income tax rate significantly. PRC law firms can enjoy a cap on their profits that are subject to PRC income tax regardless of their actual profits. The cap varies by location and local practice. In Beijing, the cap is equal to 25 percent of revenue. This can result in an effective income tax rate of 17.5 percent (i.e., 25 percent of revenue assuming a profit margin of 50 percent multiplied by the highest applicable income tax rate of 35 percent) on revenue of PRC firms as the single incidence of income tax payable. Shanghai has been known to use a lower cap of 20 percent (resulting in a 14 percent effective income tax rate), and certain firms in Guangzhou enjoy an even lower rate using a simplified effective income tax rate of 5 percent (i.e., no cap or deemed profit rate calculation is used—the effective rate is directly applied).

To address this inequity and comport with the principles of non-discrimination in the US-China bilateral tax treaty, AmCham China recommends that China provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

### ***Other Market Access Problems***

In addition to the problems described above, international law firms face a number of other restrictions and regulatory burdens that impair their ability to operate in China. These

上述限制以及实际执行的不一致状况，妨害了外国律师事务所的权力，向中国和外国客户就中国法制环境的情况提供咨询——而这一权利已经清楚地写入中国人世承诺以及国务院法规中。

外国律师参加客户与中国政府官员会议的权利缺乏透明度且执行不统一，会造成有失公平的局面，同时，因为双方会面时禁止或限制外资企业律师参与，容易给外界造成中国政府对外资企业实行主观武断的、有歧视的待遇之印象。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。

### 代表处注册程序繁琐

外国律师事务所面临比国内同行更为繁琐的监管审批程序。外国律师事务所所在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”。相关政府部门在评估上述必要性时，通常会考虑拟设立地的“社会经济发展情况”、对法律服务的“发展需求”以及其他类似的模糊因素，这在一定程度上可能违反了中国在世界贸易组织下有关消除外国律师事务所在中国设立代表处的地域和数量限制方面的承诺。

根据相关法律法规，这些缺乏透明度、定义不明确的审核条件会大大延长审批流程，该过程可以长达9个月之久。此外，审批时间也难以预料，且通常久拖不决。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之后必须等待至少三年才能再增设新的代表处，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，尤其是“十二五规划”中作为经济发展重点的内陆省份的中国企业，提供他们十分需要的国际法律服务。

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时间。

### 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所得税更高、更繁重。外国律师事务所在中国的利润需要缴纳双重所得税，而中国律师事务所的利润只需要缴纳一次所得税。这是因为中国现

行法律不承认外国律师事务所在中国税法上的合伙企业地位。因此，外国律师事务所首先要在企业层面缴纳25%的企业所得税，税后的利润还要再次纳税，即对汇回母国的利润按照10%的税率征收企业所得税。而一旦将税后利润直接在中国支付给合伙人，合伙人还需要缴纳最高可达45%的个人所得税。

另外，外国律师事务所还不享受中国律师事务所所享受的优惠税收计算方法，而这一计算方法大幅降低了中国律师事务所的实际所得税税率。不论实际利润如何，中国律师事务所可以在计算所得税应纳税额时享受利润封顶待遇。各地对封顶的规定并不相同，执行情况也不一样。在北京，上述利润封顶等于收入的25%。这可以将北京市的中国律师事务所的实际所得税税率降低为17.5%（即收入的25%，假定利润率为50%，再乘以所得税最高税率35%），而中国律师事务所的收入只作为一次应纳所得税额。上海的利润封顶较低，为收入的20%（实际所得税税率为14%），而广州的部分律师事务所甚至可以享受更低的税率，直接将实际所得税税率简化为5%（即在计算时不涉及利润上限，直接适用实际税率）。

为解决这种不平等并与《中美税收协定》中的各项非歧视性原则保持一致，中国美国商会建议，中国为美国律师事务所在中国所得税征收方面给予与中国律师事务所同等的待遇。

### 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（特别是首席代表）工作签证期为一年；及(4) 取得工作许可的时间一般相对较长（有时甚至需要一年半）。

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、改进代表的注册和调动程序、延长代表的签证有效期、及减少工作的审批所需时间。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。

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; (3) the limitation of one-year work visas for foreign lawyers (especially chief representatives) and (4) protracted procedures (sometimes up to 1.5 years) for obtaining work permits.

AmCham China encourages China to allow international law firms to hire foreign non-legal professionals, improve the procedures for registering chief representatives and transferring representatives, increase the length of time visas are valid for representatives, and decrease work permit approval times. Doing so will improve foreign law firms' ability to effectively serve their clients, both foreign and domestic, in China.

## Recent Developments

### *Growth of PRC Law Firms in Foreign Jurisdictions*

PRC law firms continue to open law offices outside of China and practice law in foreign jurisdictions. This trend is consistent with the increasingly global business operations of Chinese companies. In fact, some PRC law firms are reportedly urging the State-owned Assets Supervision and Administration Commission (SASAC) to establish rules requiring Chinese state-owned enterprises to use PRC law firms for China outbound transactions. Such requirement would seriously limit the range and quality of legal services available to such Chinese clients, undermine the rationale for many foreign law firms to establish offices in China, and potentially violate China's national treatment obligations under the WTO.

PRC law firms' growth abroad is largely not subject to protective trade barriers that restrict their ability to practice law. In the US, Japan, and the EU, PRC law firms are able to establish offices, hire local lawyers, and engage in comprehensive corporate law and litigation services. In the US, nearly 10 PRC law firms have established offices and practice US law, some now for over a decade. 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 international law firms remain subject to barriers in China as described in this chapter and find it difficult even to open offices offering a restricted scope of legal services. International law firms are increasingly losing access to talented lawyers, both Chinese and foreign, due to these practice restrictions.

## Conclusion

Despite the remarkable opening and growth of the Chinese economy following China's WTO accession, and the important contribution that international law firms have made to this growth and the development of China's legal system, the legal services market in China remains largely closed to international law firm participants. In some respects, the ability of international 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 international law firms would be consistent with regional and global economic trends and would facilitate the outward-bound growth and internationalization of PRC law firms. The failure to make progress on this front is harmful to both Chinese and foreign companies and inconsistent with global economic developments. It also significantly limits the training and employment opportunities available to qualified PRC lawyers, contributes to the unwillingness of foreign companies to use Chinese law as the governing law of contracts, and retards the development of world class legal services in China.

## Recommendations

- **Revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers and not require PRC qualified lawyers to give up their PRC lawyer's license when they join an international law firm.**
- 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 international 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.
- Provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

## 最新进展

### 中国律师事务所在境外的发展

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。这一趋势符合中国公司日益增长的国际业务需求。事实上，据报道，部分中国律师事务所正在促请国有资产管理委员会（国资委）制定相关法规，要求中国国有企业境外交易必须聘用中国律师事务所。此种要求将严重限制上述中国客户获得法律服务的范围和质量，同时也将冲击许多外国律师事务所在华设立代表处的初衷，并可能违反中国在世界贸易组织下的国民待遇承诺。

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。在美国，近 10 家中国律师事务所已经设立了办公室并提供美国法律相关服务，其中部分律所在美执业已经超过了 10 年。在亚太地区和世界范围，如香港、日本、新加坡以及不久前的韩国，开放法律服务市场，允许国际律师事务所提供法律服务已成为一个显著趋势。

外国律师事务所在华经营不仅要面临本章所列出的种种壁垒，甚至连新成立一家代表处提供有限的法律服务都困难重重。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。

## 结论

尽管自中国加入世界贸易组织以来，中国经济的开放程度和增长速度令人瞩目，尽管外国律师事务所对中国法制体系建设和发展也做出了重要的贡献，但中国的法律服务市场对外国律师事务所的开放程度却一直很低。在某些方面，自中国加入世界贸易组织之后，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。

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方面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。此举还同样严重限制了中国执业律师获得培训和就业的机会，造成外国企业不愿

使用中国法律作为合同的适用法律，同样也抑制了世界一流法律服务在中国发展的机会。

## 建议

- 修改现行法律法规，允许外国律师事务所雇用中国执业律师并使其成为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃其执业证，以便他们为客户提供全面的法律服务。
- 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时间。
- 允许外国律师事务所聘请外籍非律师专业人士，改进代表的注册及调动程序，延长代表的签证有效期。
- 为美国律师事务所在中国所得税征收方面给予与中国律师事务所同等的待遇。

# Machinery Manufacturing

## Introduction

Currently, the Chinese manufacturing industry primarily operates at the lower to middle end of the international industry value chain and the Chinese government has realized that there is an urgent need to transform from simply “made in China” to “created in China.” AmCham China member companies stand ready to work with their Chinese counterparts to facilitate this process, particularly in the machinery manufacturing industry. Despite significant improvements, the Chinese government has made in recent years in policy development, AmCham China member companies continue to face policy challenges, including foreign direct investment (FDI) restrictions, industry overcapacity, and a lack of regulatory consistency. AmCham China encourages the Chinese government to consider the following issues in supporting higher value chain machinery manufacturing.

## Ongoing Regulatory Issues

### *Restrictions on Foreign Investment*

The 2011 “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 investment in certain machinery sectors by raising required technology thresholds and changing the requirements with regard to the size of equipment. Foreign parties are still prevented from setting up wholly foreign-owned enterprises or holding majority ownership in several key manufacturing sectors. Moreover, the 2011 “Guiding Catalogue for Industrial Upgrading and Restructuring” offers preferential treatment to domestic companies in the way of lower required technology thresholds and equipment size requirements

Foreign-invested firms have ample expertise to contribute to the development of China’s machinery manufacturing sectors. AmCham China recommends that the Chinese government implement equivalent investment requirement standards for both foreign- and domestically-invested firms. For additional information see Investment Policy chapter.

### *Industry Consolidation*

In the 12<sup>th</sup> Five-Year Plan (12<sup>th</sup> FYP), the Chinese government placed great emphasis on industrial consolidation, to promote industry upgrading and revitalization. With leading technologies, experience, and know-how, AmCham China member companies are poised and ready to play a key partnership role in consolidating and upgrading China’s machinery manufacturing capacity. However, complicated and obscure Chinese mergers and acquisitions (M&A) review procedures and intra-government consultation mechanisms are impeding further participation. AmCham China encourages the Chinese government to welcome participation by foreign-invested firms by instituting more transparent M&A review procedures and intra-government consultation mechanisms, and treating foreign-invested enterprises in the same manner as their domestic counterparts with regard to review standards.

### *Government Procurement*

Government procurement plays an important role in some subsectors of machinery manufacturing. As discussed in the Government Procurement chapter, China’s definition of government procurement in its “Government Procurement Law” is narrower than the definition in the “WTO Government Procurement Agreement” (GPA). Under international norms, both consumer and investment expenditure by government, regardless of the procuring entity (including government agencies, public institutions, or state-owned enterprises) should be included in government procurement. AmCham China encourages the Chinese government to increase transparency regarding government procurement procedures, to treat both domestic and international suppliers equally, and harmonize its GPA offer and domestic “Bidding Law.”

### *Subsidies and Incentives*

The Chinese government actively promotes development of the machinery manufacturing industry through subsidies and incentives supporting sectors such as large machines, engines, transmissions, and hydraulic components. However, there are several practices which have a negative impact on the healthy development of the industry by distorting market competition. For example, as a result of local government practices domestic-invested compa-

# 机械制造业

## 引言

**当**前中国机械制造业主要处于国际产业价值链的中低端。中国政府已经认识到从简单的“中国制造”转变为“中国创造”的迫切性。中国美国商会的会员企业，随时准备与中国的同行合作，特别是机械制造业的同行，加速“中国制造”向“中国创造”转变的进程。尽管中国政府最近几年来政策制定方面已经取得了显著的成绩，但中国美国商会的会员企业却一直面临着政策挑战，包括外商直接投资限制、行业产能过剩以及监管缺乏一致性问题。中国美国商会促请中国政府在支持高价值链机械制造业时考虑以下问题。

## 现存监管问题

### 外商投资限制

2011年由中国商务部（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，提高了所需的技术门槛以及与更改设备规模有关的要求。部分关键机械制造领域依然不允许外资以组建独资企业或外资控股合资企业的形式经营。另外，2011年发布的《产业结构调整指导目录》降低了对内资企业的技术门槛和设备规模要求，从而给予内资企业以优惠待遇。

外资企业掌握丰富的知识和经验，可以为中国机械制造业的发展贡献力量。中国美国商会建议中国政府对外资和中资企业一视同仁，执行相同的投资要求标准。（详情请参阅《投资政策》一章。）

### 行业整合

在“第十二个五年规划”（十二五规划）中，为了促进全行业的升级换代和振兴，中国政府重点强调了行业整

合。中国美国商会会员企业凭借领先的技术、经验及技术专长，能够发挥合作伙伴的关键作用，参与中国机械制造业的整合与升级。但是由于中国现行并购审查程序以及政府部门之间的内部征求意见机制既复杂也不透明，降低了外资企业进一步参与的可能性。中国美国商会鼓励中国政府通过提升并购审查程序和政府部门之间意见征求机制的透明度，以及对外资企业和中资企业执行同等的审查标准，来提高外资企业在此行业的参与度。

### 政府采购

政府采购在机械制造业的部分子行业中发挥着重要的作用。正如在政府采购一章中所述，中国的《政府采购法》中对政府采购的定义比世界贸易组织《政府采购协议》中的定义狭窄。根据国际规则，不管采购实体如何（包括政府机关、事业单位或国有企业），政府的消费型支出和投资型支出都应当纳入政府采购体系。中国美国商会鼓励中国政府提升政府采购程序的透明度，平等地对待国内和国际供应商并使政府采购协议出价和《招投标法》保持一致协调。

### 补贴和激励政策

中国政府通过给予诸如大型机械、发动机、变速器和液压零部件等产业补贴和激励政策等形式来积极促进机械制造业的发展。但在实际操作中却存在不少扭曲市场竞争，阻碍行业健康发展的做法，比如部分地方政府对同一行业中的内外资企业给予不同的补贴和激励政策待遇。这种做法造成了人们对于内外资企业双重补贴和激励标准的担忧。中国美国商会鼓励中国政府统一机械制造行业内外资企业的补贴和激励标准。

### 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

nies and foreign-invested companies in the same sector are subject to different subsidies and incentives in some regions. Such practices raise concerns of dual subsidies and incentive standards to domestic-invested companies and their foreign counterparts. AmCham China encourages the Chinese government to provide equal access to subsidy and incentive regimes to both foreign and domestic actors operating in China.

### *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.

### *Clean Energy Machinery*

In recent years the Chinese government has prioritized developing clean energy and energy efficiency to foster sustainable development, and expended considerable efforts towards these commendable goals. However, barriers still exist which impede China's progress in these areas. AmCham China supports these goals, and recommends the Chinese central government expedite setting national standards for the Distributed Energy and on-grid power tariff formation mechanism and policies for its grid connection, allow power producers to connect to the national grid, and encourage local governments to put forward more preferential policies and subsidies for natural gas distributed energy combined heat and power (DECHP).

### *Non-Road Diesel Engine Emissions Regulation*

AmCham China understands the rapid advances China is trying to make in their regulatory policies and supports China's efforts to ensure manufacturer compliance with implemented standards. We applaud efforts by the Chinese government to improve engine emission compliance and stand ready to work with the Chinese government. AmCham China recommends that China moves at a pace that allows its industry to meet all the new standards, that appropriate lead time (two to three years) should be given to implement new regulations on a nation-wide basis, and is concerned about the effectiveness of regional regulation (e.g. Beijing only).

### *Rail*

Passenger and freight are two pillars of the modern rail system. While rail equipment and passenger rail equipment are specified in the encouraged category of the Foreign Investment Catalogue, freight rail equipment is not specified. We recommend that freight rail equipment be noted

specifically and, therefore, clarified in the next Foreign Investment Catalogue as in the encouraged sector.

Maintenance of freight diesel locomotives is a highly professionalized task. For the sake of improved efficiency and safety, AmCham China recommends that the Chinese government encourage railway companies to employ freight locomotive manufacturers to perform maintenance tasks, while railway companies focus on railway operations and management.

### *Remanufacturing*

The January 2009 "Circular Economy Law" was an important milestone for the development of the remanufacturing industry in China. Chinese Vice President Xi Jinping called for both countries to improve cooperation in remanufacturing during his visit to the US in February 2012. However, the lack of an effective management system hinders the development of the industry. AmCham China recommends that the Chinese government establish a practical operation system and an operational tax and incentive system to encourage the free flow of cores and remanufactured products across borders, and confirm that remanufactured products follow the same technical standards as original new products, following global best practices.

### **Recent Developments**

The 18<sup>th</sup> CPC National Congress called for green development, the development of a circular economy, and low-carbon development to build a better China. AmCham China members have observed solid progress in business cooperation as well as active discussions and flourishing cooperation between the US and China in terms of sustainable development in areas such as remanufacturing, DECHP, development and usage of natural gas, unconventional gas including CBM and shale gas, industrial runoff gas including CMM, coke oven and refinery gas, and energy efficiency sectors at the US-China bilateral events and platforms including US-China Energy Efficiency Forum, US-China Oil and Gas Forum, US-China Reman Dialogue, US-China Mayoral Exchange Program and Energy Cooperation Program (ECP).

The Chinese government has taken substantial efforts to promote innovation. Seven strategic emerging industries to support an innovative and sustainable China have been given priority, and business' role as major innovator, implementer of brand strategy, and support of small- and medium-sized enterprise research and development (R&D) has been recognized. Broad topics, including innovation policy, best practice, cooperation between industry and R&D institutes, innovation performance assessment and environment, among others, were discussed at the 3rd US-China Innovation Dialogue in Beijing in May 2012, where senior government officials, business leaders, and R&D professionals from both countries attended the Dialogue.

广机械化并采用国际最佳实践将有助于行业安全与效率的提高。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。内外资企业紧密的合作有助于进一步提高采矿业的安全性和效率。

## 清洁能源

近几年，为了实现可持续发展的目标，中国政府已将优先发展清洁能源和提高能效列入了重点工作日程并为实现这一积极目标做出了巨大努力。但阻碍中国此领域发展的障碍依然存在。中国美国商会十分支持上述目标并建议中央政府尽快制定分布式能源国家标准和全国统一的上网电价形成机制及电网接入政策，并鼓励地方政府出台更多的天然气DECHP（分布式热电联产系统）优惠政策和补贴。

## 非道路移动机械用柴油机排气污染物法规

中国美国商会认识到，中国政府希望在政策执法方面能够快速进步，同时也支持中国政府确保制造商履行行业准则所作出的努力。我们赞赏中国政府为改进发动机排放合规方面的积极举措，并已准备好与中国政府在此方面携手合作。中国美国商会建议中国采取适当的改革步伐，给予该产业适应新政策新标准的时间，而两至三年应该是开展全国性执法前比较合适的准备时间。中国美国商会对各地的执法效果也非常关心（比如北京）。

## 铁路

客运与货运运输是现代铁路系统的两大支柱。外商投资产业目录中明确规定了铁路设备和客运铁路设备属于鼓励外商投资产业，但却未对货运铁路设备做出具体规定。我们建议应明确货运铁路设备的地位，在下一版的外商投资产业目录中将其列入鼓励外商投资类。

货运柴油机车的维护是一项高度专业化的工种。为了提高能效和安全，中国美国商会建议中国政府鼓励铁路公司雇用专业的货运机车制造商进行维护工作，铁路公司则专攻铁路运营和管理。

## 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。2012年2月，时任中国国家副主席的习近平先生在访美期间呼吁中美两国加强再制造产业的合作。然而，缺乏有效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，并按照国际最佳实践的做法，确保再制造产品的技术标准与新产品的一致。

## 最新进展

“十八大”提出了绿色发展，循环经济和低碳经济的模式以实现中国发展的平衡。中国美国商会的会员企业已经观察到美中两国在再制造产业、分布式热电联产系统、天然气、煤层气和页岩气等非常规燃气开发和使用，瓦斯、焦炉煤气和炼化尾气等工业副产气以及节能领域所进行的积极及频繁的磋商和业务合作，其中包括美中节能论坛、美中油气论坛、美中再制造业对话、美中市长交流项目和ECP（能源合作项目）等双边活动和平台。

中国政府在鼓励创新领域作出了扎实的努力。为了支持中国的创新和可持续发展，中国确定了优先发展的七大战略新兴产业。同时中国还确立了企业在创新、执行品牌战略和支持中小企业研发领域的主体地位。2012年5月，北京举办了第三次美中创新对话，两国的高层政府官员、商业领袖和研发专家参加了本次对话，就创新政策、最佳实践、产业界和研究机构的合作、创新绩效评估和环境等问题展开了广泛的交流和讨论。

## 结论

外资制造商在投资机械制造行业所面临的限制逐渐增多。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与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

- 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。
- 优化并购审批程序，提高审批透明度，允许外资企业更大范围地参与行业整合。
- 根据WTO制定的GPA的原则，允许外资企业与内资企业同等待遇参与政府采购。
- 在实施发动机排放监管政策之前，执行清晰的监

## Conclusion

Foreign-invested manufacturers are facing increasing investment restrictions in the machinery manufacturing 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 by 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.

## Recommendations

- **Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both foreign- and domestically-invested companies.**
- Streamline M&A approval procedures and increase transparency to allow foreign-invested enterprises to make a greater contribution to industry consolidation efforts.
- Provide national treatment for foreign firms in China's government procurement, in compliance with WTO GPA principles.
- Implement a clear regulatory framework prior to enforcing engine emission regulations to ensure readiness and compliance among the entire industry.
- Designate a leading ministry to coordinate with functional ministries to form workable systems and mechanisms for the development of remanufacturing in China.

管框架以确保整个行业都已经具备遵守监管规则的能力。

- 指定一个主管部委, 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。

# Media and Entertainment

## Introduction

The media and entertainment industry plays an increasingly critical role in China, providing information to Chinese citizens and meeting their demand for world-class entertainment and cultural activities. As China's international footprint continues to expand, this industry will play a prominent role in the development of China's image, reputation, cultural influence, and economic interests globally.

Demand in China for international news media and entertainment content increased significantly in 2012, yet international participation in the sector continued to be restricted. Despite some copyright enforcement efforts, policies such as censorship and market access restrictions continue to create conditions where piracy and intellectual property rights (IPR) violations proliferate. In recent years the spectacular growth of the Chinese Internet contributed to a whole new set of piracy problems. In addition, working conditions for journalists have deteriorated since the 2008 Olympics, making it more difficult for journalists to tell China's story to the world. Finally, in the financial field censorship and other regulations create transparency issues and foster nondisclosure, malpractice, and corruption.

These problems have ramifications not only within China, but also as China reaches out to the rest of the world. While cultural and artistic development is a significant element of the 12<sup>th</sup> Five-Year Plan, censorship and other restrictions threaten to undermine this effort. China's rich 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, but only if the need to protect IPR is emphasized.

AmCham China encourages the increasingly globalized orientation of China's media and entertainment industry as exemplified by the announcement in February 2012 of an agreement to increase the number of US films appearing on Chinese movie screens. However, additional improvements in the operating environment need to occur.

## Ongoing Regulatory Issues

### Cross-Sector Issues

#### Piracy

AmCham China applauds the progress in legislation and enforcement of IPR. However, for the media and entertainment industry, IPR violations remain rampant, as evidenced by the huge market in pirated products and content, both online and offline. As discussed in the Censorship section below, such violations are often encouraged by government regulations and censorship.

The rapid growth of online distribution has multiplied the possible ways, ease, and speed with which IPR violations occur. While IPR appears to be respected where Chinese companies have bought rights for the use of intellectual property (IP) online, nonetheless, enforcement of IPR still lags behind growing piracy via user-generated content and person-to-person platforms.

Occasional enforcement campaigns demonstrate that authorities have the ability to disrupt illegal channels, but organized piracy continues unabated. Despite current Internet controls, it is still possible to illegally download music, images, and even whole television programs and films via Chinese search engines.

Of particular concern is rampant piracy for derivative products and merchandise in China, such as branded clothing, toys, and games. As a result, there is significant revenue loss to legitimate owners of IP. Enhanced enforcement of IPR, similar to the effort to protect the IPR of the Beijing Olympics derivative products and merchandise, would help protect the derivative products and merchandising market of both Chinese and foreign companies.

Monetization—or recovery of damages through fines—of infringed copyrighted works also continues to be problematic. Damages awarded to rights holders through the Chinese judicial system remain inconsistent with the actual damages suffered. Judgments remain small and legal costs remain high. Lawsuits often take years to conclude, and even a successful court judgment can be difficult to enforce. The proposed amendments to the Copyright Law could

# 传媒和娱乐

## 引言

**传** 媒和娱乐行业在中国的作用日渐重要，向中国百姓传播信息，满足大众对具有世界水准的娱乐和文化活动的需求。随着中国国际影响力继续扩大，该行业将发挥突出作用，推动中国在全球范围内的形象、声誉、文化影响和经济利益等方面的发展。

2012年，中国对世界新闻媒体和娱乐内容的需求大幅增加，但该领域的国际参与度依旧受限。尽管在版权执法方面做出了一些努力，有些规定比如审查制度和市场准入限制仍旧助长了侵犯知识产权行为的滋生。近来中国互联网的迅猛发展又带来了一系列全新的侵权问题。另外，自2008年奥运会以来，记者的工作环境不断恶化，记者向世界报道中国的困难增加。最后，在金融领域，审查制度和其他相关法规造成市场透明度的问题，导致信息不公开、玩忽职守和腐败现象。

这些问题所造成的后果并不局限于中国境内，随着中国影响力的扩大，还波及到了世界其他地区。尽管文化和艺术发展是“十二五”规划中列出的重点内容，但审查制度及其他限制性规定却可能影响上述努力。只有通过推动各种举措来宣传、管理、增强原创作品的商业价值，才能使中国在娱乐和艺术方面丰厚的遗产精华得以最好的保存并获得国际重视，但其前提是要强调知识产权保护的必要性。

中国美国商会鼓励中国传媒和娱乐业日趋国际化，2012年2月宣布的一项以增加中国电影屏幕上美国电影的数量的协议就是例证之一。但该行业的运营环境需要作进一步的改善。

## 现存监管问题

### 跨行业问题

#### 盗版

中国美国商会对中国在知识产权立法和执法领域所取得的成就表示赞赏。然而传媒和娱乐业内的知识产权违法现象依然很猖獗，在线、离线盗版商品和内容的巨大市场便是例证。正如下文审查制度一节所述，政府的监管和审查制度往往鼓励了上述违法现象的发生。

网络发行的快速发展也增加了知识产权违法行为发生的途径、便利性和速度。虽然在中国公司购买了网络知识产权使用权的领域，知识产权看来得到了尊重，但知识产权的执法行动依然落后于盗版活动的蔓延，这些盗版活动多来自于用户自创内容以及个人对个人交流平台。

偶尔实施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依然势头不减。虽然当前有互联网控制措施，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和电影。

特别令人关注的是中国层出不穷的衍生产品和商品盗版，比如仿冒品牌服装、玩具和游戏，知识产权合法权利人因此遭受了巨大的收益损失。仿照北京奥运衍生产品和特许商品的知识产权保护执法力度，提高知识产权保护执法力度，将有助于保护中国和外国公司的衍生产品和商品市场。

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）仍然有很大问题。中国司法系统为权利人提供的司法赔偿金额依然不能弥补权利人实际遭受的损失。判决赔偿金额少但诉讼费用却居高不下。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。《版权法》修正案提高了司法赔偿金额并规定了惩罚性赔偿金，可能会有助于缓解此问题（详情请参阅《知识产权》一章）。

help alleviate this problem by increasing damages that can be awarded and providing for punitive damages (See the Intellectual Property Rights chapter for more details).

AmCham China encourages China to build on the progress made during the IPR enforcement campaign of 2010-2011 by continuing to strengthen IPR enforcement, increasing damage awards, and fighting Internet piracy by requiring online platforms to protect IPR and assist in enforcement efforts.

### Censorship

China argues that censorship and other restrictions on media and entertainment are necessary because of their cultural impact. However, it appears that censorship is often a guise to restrict market access for foreign television programming, music, and films, while having the undesirable side effect of fostering piracy.

China's censorship process regularly results in lengthy delays on film, television, and music entry, creating an environment in which a market for pirated products can thrive. For example, legitimate DVD/Blu-Ray film discs require censorship approval by General Administration of Press and Publication (GAPP), which takes at least one month. Meanwhile, pirated DVDs appear within a few days, stealing the market from legitimate businesses. Likewise, though foreign programming is severely restricted on Chinese cable television, Chinese can watch every episode of many American television programs in pirated versions. In effect, Chinese consumers still watch or listen to the "forbidden" products despite government censorship. As a result, the action of the government only encourages piracy while unsuccessfully protecting the Chinese market from competition, undermining the sector's profitability, and inhibiting the sector's ability to create new entertainment and cultural works. Streamlining the censorship process will reduce artificial bottlenecks that encourage piracy, while fostering greater creativity, innovation, and competitiveness of the domestic industry and enhancing profitability of the industry overall.

Finally, censorship of the worldwide Internet through site blockages and technical bottlenecks clearly disadvantages both international and Chinese media and entertainment companies. Foreign companies are forced to base servers and information systems offshore, and many foreign and large Chinese companies also require virtual private networks (VPNs) in order to access the information they need. 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.

### Lack of Regulatory Clarity and Enforcement

Many Chinese government agencies claim a role in regulating media, entertainment, and culture, and a wide variety of laws and regulations set regulatory and market access restrictions on the industry. For example, the State Administration of Radio, Film, and Television (SARFT) and the Ministry of Culture (MOC) have separately promulgated regulations related to international film distribution and foreign television content. MOC and the Public Security Bureau (PSB) are the main regulatory authorities for live entertainment. Both the State Council Information Office (SCIO) and the GAPP have separately promulgated regulations related to the news and financial information sectors. Finally, the Ministry of Industry and Information Technology (MIIT) oversees Internet websites and electronic communications, which affect many operating in the media, entertainment, and culture industries.

Lack of clarity about these various roles and in the regulations themselves inhibit the development of the entertainment and media industry in China. Laws, often vague and inconsistently enforced, lead to unbalanced treatment among industry players. Moreover, as MOC, GAPP, and other regulators issue conflicting proclamations in a battle for oversight, the lucrative trade in online piracy continues.

International companies are often confronted with vague and inconsistent regulations, making planning and implementation of business initiatives difficult. In addition, outdated regulations have failed 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 inconsistent investment approvals also cause China to lag far behind international standards, particularly in retail distribution of books and periodicals.

AmCham China recommends regulatory agencies, including MIIT, SARFT, MOC, GAPP, 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.

### Sector-Specific Issues

#### Film Distribution

Despite an apparent agreement in February 2012 at the government-to-government level where China committed to allowing importation of additional 3-D and large-format films on a revenue-sharing basis, China continues to restrict distribution of international films on a commercial scale in China. For example, currently regulators limit the number of films imported on a revenue-sharing basis to 20 films a year, with an additional 30 films permitted on a low, flat-

中国美国商会鼓励中国以 2010–2011 年知识产权执法大检查中所取得的成绩为基础，继续加强知识产权执法，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切实打击互联网盗版。

### **审查制度**

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成为限制外国电视节目、音乐和电影进入中国市场的借口，并且产生了滋生盗版的副作用。

中国的审查经常导致影、视、音乐作品的进口过程冗长，从而使得盗版产品能够乘虚而入，大行其道。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，从而占据了正版的市场。同样的，尽管中国严格禁止国内的有线电视播放美国的电视节目，但事实上中国观众还是能够一集不落地观看到很多盗版美国电视节目。事实上，即便是有政府审查的存在，中国的消费者仍旧可以观看或者收听所谓的“违禁作品”。其结果，是政府的举措仅仅起到了鼓励盗版的作用，不仅没能阻碍竞争保护中国的市场，而且损害了行业的盈利能力，也削弱了业内创作新的娱乐和文化作品的的能力。优化审查程序将有助于消除鼓励盗版的人为瓶颈，同时激励创意和创新水平及提升国内产业的竞争力，提高整个行业的盈利水平。

最后，通过屏蔽网站和技术瓶颈来对国际互联网进行审查，显然使国际和国内传媒娱乐公司处于竞争劣势。外国公司被迫在境外设立服务器和信息系统，而且很多外国和中国的大公司还需要搭建虚拟专用网络（VPN），以便获得其需要的信息。企业的成本因此增加，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，因为他们无法及时获得至关重要的信息和内容。

### **监管制度缺乏清晰度和执行力**

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，众多法律和法规都对该行业进行了监管和市场准入限制。比如，国家广播电影电视管理总局（广电总局）和文化部分别出台各自的规章，对国际电影发行和外国电视内容进行监管。文化部和公安局是现场演出娱乐产品的主要监管部门。国家信息化办公室（信息办）和新闻出版总署也都有各自的规章，对新闻和金融信息产业进行监管。

最后，国家工业和信息化部（工信部）负责对互联网和电子通讯方面进行监管，监管范围涉及传媒、娱乐和文化产业。

各部门之间在监管职责上缺乏明确分工，各部门多头发布监管规章阻碍了中国娱乐和传媒产业的发展。相关法律往往含糊不清，执法上也缺乏一致性，导致平行的行业参与者受到不同的对待。然而，当文化部、新闻出版总署以及其他监管部门在监管的执法中发布相互矛盾的公告时，暴利的网上盗版交易却在继续。

跨国企业经常遇到各监管规章之间存在模糊或不一致的问题，从而增加了企业制定和执行业务计划的难度。另外，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。法规的不明确和投资审批的不一致，还造成中国尤其在书刊杂志的零售发行方面远远落后于国际标准。

中国美国商会建议包括工信部、广电总局、文化部、新闻出版总署、国家新闻办公室在内的各监管部门能够明确地划分监管职权。此外，我们还建议实施透明的规章起草程序，以便提早征求公众意见，同时加快对外商投资和参与中国传媒和娱乐市场的审批程序。

## **具体行业问题**

### **电影发行**

尽管根据 2012 年 2 月签订的一项政府间协议，中国承诺允许在收入分享模式下，增加 3D 电影和巨幕电影的进口量，但中国实际上依然对国际影片的商业发行作出了种种限制。例如，当前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，中国还保持了广电总局实施的进口和发行双头垄断，以此可以任意规定所进口电影的种类和发行时间。

中国美国商会赞赏中国签订协议允许增加 3D 影片和巨幕影片进口数量的做法，并促请中国政府尽快按照承诺内容全面履约。同时，我们注意到，即便协议得到全面履行，但它仍然留下了若干监管壁垒。

如上所述，审查制度和监管壁垒对合法发行的电影造成的影响依然存在，并给盗版猖獗留下空间。2010 年，单是中国电影业因盗版受到的损失估计就已超过了 140 亿元人民币（22 亿美元）。如果将外国电影包括在内，该数字还将大幅上升。截至 2012 年 8 月，电影屏幕的数量从

fee basis. China also maintains an import and distribution duopoly, managed by SARFT, which dictates what films may be imported and when they may be released.

AmCham China applauds the announcement of the agreement to allow importation of additional 3-D and large format films, and urges the Chinese government to fully implement all commitments as quickly as possible. At the same time, we note that even if the deal is fully implemented, it leaves a number of regulatory barriers in place.

As mentioned above, censorship and regulatory barriers to legitimate means of film distribution remain in place, allowing piracy to flourish. The Chinese film industry alone is estimated to have lost over RMB 14 billion (US \$2.2 billion) during 2010 as a result of piracy. This figure rises dramatically when foreign films are included. With the number of film screens rising from 9,286 in 2011 to almost 11,000 by August 2012, and fast growth expected for the next five to ten years, an effective distribution system and antipiracy control will be central to the commercial viability of the new venues.

Distribution of more foreign films, without market manipulation or arbitrary blackout periods, combined with a robust campaign to curb piracy, would benefit the domestic industry by building market demand for quality entertainment products. It would also make the Chinese audience a bigger factor in the overall international market, making it more likely that foreign filmmakers will cater to this audience.

### Television

Non-market mechanisms severely restrict foreign television content in China. The government effectively prohibits Chinese cable operators from carrying foreign channels, limiting such channels 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 making it difficult for Chinese to watch international content. At the same time, foreign channels are required to “assist” CCTV with access to the foreign channels’ home markets.

Since regulation and censorship do not actually prevent Chinese from obtaining international television content, the effect of the non-market mechanisms is simply to foster piracy.

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. For example, staging of live events requires securing a license, or *piwen* (批文), in advance. However, the process requires submission of information such as event crew and support staff rosters not typically available until a show is nearly ready to open. Furthermore, no reason is given when a license application is rejected. Providing an official explanation for rejected *piwen* applications would be very helpful to managers, artists, and agents for future planning.

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.

After the *piwen* is approved, visa-granting officials must receive a notification letter based on the exact same event crew and performer names submitted for the *piwen* request. However, most international performing units do not know which contracted personnel will visit China more than one month prior to the show opening, let alone six to nine months before when the *piwen* is requested. As a result, performing units are forced to seek exceptions and crisis-manage in order to obtain necessary visas. In addition, the requirement that touring personnel obtain a work (Z) visa that they must then convert into a year-long residence permit, despite the fact that most tours remain in China less than three months, imposes unnecessary delays and administrative burden.

This difficult environment for staffing live events is damaging and contradictory to the spirit of open exchange in culture and arts that was championed in the 12<sup>th</sup> Five-Year Plan. We encourage China to allow performers from abroad to enter China on business visit (F) visas instead of Z visas.

Other barriers to successfully holding live events exist as well. The PSB provides security for live events. However, for any given event, it is not clear what the scope of the PSB’s role or the fees it charges will be since they are not published. 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, while tickets often find their way to scalpers who sell them 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 other issues from security to visas deter world-class performers from coming to China. AmCham China urges China to streamline and clarify relevant procedures

2011年的9,286块增加到接近1.1万块,未来五年到十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。

发行更多外国电影,取消市场操纵或任意设置的封锁期,采取积极行动打击盗版,将会增加对优质娱乐产品的市场需求,造福中国国内电影产业。中国观众也将因此成为总体国际电影市场上的一个更大因素,从而鼓励外国电影制作商更有可能迎合中国观众的需求。

## 电视

非市场化机制严重限制了外国电视节目进入中国。政府有效地禁止了国内有线电视运营商播放外国频道,除去外国人相对密集的地方,比如酒店和外国人居住区。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,中国观众很难看到国际节目。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本土市场。

鉴于管制和审查实际上并未有效地阻止中国人收看国际电视节目,这种非市场机制只能催生盗版。

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

现场演出娱乐的市场准入仍旧受到限制,比如缺乏透明度,过度监管,官僚体制,及扼杀市场成长的其他限制措施。例如,现场演出需要预先获得许可证,或“批文”。但是,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临近演开始之前才能确定。此外,许可申请未获得批准时也未说明原因。对被拒绝的申请提供官方解释将非常有益于管理人、艺术家和代理人进行今后的策划。

此外,在获得批文之前,票务无法进行宣传和推广。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。

在获得批文后,申请签证阶段,签证官必须获得一份告知函,其中演职人员必须与批文申请中的人员名单一致。但大部分国际演出单位在正式开演一个多月之前都无法最终敲定来华演出的人员,要在6-9个月之前提出批文申请之时确定名单,则更是难上加难。为此,演出单位被迫另

觅蹊径或进行危机管理来取得签证。另外,获得工作签证(Z类)的外国人必须将签证换成一年期的居住证,这条规定没有考虑到大部分的游客在中国都待不满三个月的事实,从而造成了不必要的延误和行政负担。

外国演职人员来华参加现场演出活动所面临的种种困难,对市场造成了巨大打击,且有悖于“十二五”规划中主张的开放文化艺术交流的精神。我们建议中国为来华演出的演员颁发商务旅行签证(F类)而非Z类签证。

此外,成功举办现场演出还有其他一些障碍。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,因为这些都公布。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,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活力。

批文申请缺乏透明度和明确的指导原则,以及从安保到签证的一系列问题,都会严重阻碍世界级演员来中国表演。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,正如在其他国家发生过的那样。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,包括有权利和有能力与艺术家签约、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营销和发行。

## 记者工作环境

外国新闻媒体在华的工作环境依然不容乐观。报道工作持续受到限制,记者人身安全受到威胁,签证发放拖延等问题都使得北京奥运会前公开报道的环境一去不复返。

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.

### Working Conditions for Journalists

Working conditions for foreign news media remain difficult in China. Continued use of restrictive rules on reporting, physical violence against reporters, and delays in issuing visas have set back any progress made in openness of reporting prior to the Olympics. For the first time in 14 years, authorities expelled an American reporter in 2012.

For the second year in a row, the Ministry of Foreign Affairs (MOFA) has slowed visa approvals for temporary assignments and new resident correspondents. A new requirement that applicants be interviewed at overseas Chinese diplomatic missions further slowed approvals of work visas. A survey done by the Foreign Correspondents Club of China in late 2012 found that eight journalists had to wait more than six months for resident visas - an improvement over 13 such cases in 2011, but still 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. One of them was eventually expelled without a formal explanation for the expulsion. Interestingly, these restrictive practices come at a time when China's state media is expanding vigorously overseas, taking advantage of more open working conditions for reporters internationally.

The adversarial, and at times hostile, conditions for journalists create a situation in which the mistreatment 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 good news about economic, cultural, and other developments coming out of China.

### News and Financial Information

In addition to restrictive working conditions for journalists, China continues to restrict or hamper information gathering and distribution in the Chinese market. For example:

- Limitations on financial information providers and news media inside China create distrust and suspicion outside the country. Rules restricting what information providers may publish are broad, giving regulators wide leeway to punish providers. 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. Such 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 state media. Accurate and timely data release, 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.
- China has a growing pool of highly talented, multi-lingual 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.

AmCham China recommends that China reduce limitations on financial information and news providers, allow foreign news organizations to hire Chinese reporters, and follow a regular schedule for the official release of economic data.

## Recent Developments

### *Film Co-Production*

China has recognized the benefit of US funding and film-making expertise by granting certain US-China co-productions the status of "joint production." This allows such films to be released in China as domestic films not subject to foreign import quotas and revenue-sharing restrictions.

It is clear the requirements to qualify as a joint production are much more stringent in practice than in the written regulations. For example, while the regulations do not specify the minimum amount of Chinese investment, US film studios understand that, in practice, SARFT will generally only

2012年，中国14年来第一次驱逐了一名美国记者。

外交部连续两年放慢了对临时特派记者和新任常驻记者的签证审批。近期中国又出台新规定，要求签证申请人到当地的中国使领馆进行面试，进一步延长了签证发放时间。驻华外国记者协会于2012年底进行的一项调查发现，2012年有8名外国记者等待常驻签证的时间超过了6个月，虽然比2011年的13人次有所改善，但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签证。其中的一名记者就在未获得正式驱逐原因的情况下被驱逐出境。有趣的是，这些限制性做法发生之际，中国的国家传媒却在利用国际上记者的整体工作环境更为宽松的优势大力扩大海外影响力。

外国记者在华所处的不友善甚至有时是充满敌意的工作环境本身也成为了他们报道的一部分，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。

### 新闻和金融信息

除了记者面临的重重限制之外，中国还一直限制或阻碍中国市场信息的收集和发布。例如：

- 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。限制信息供应商发布内容的规定过于宽泛，造成监管者拥有诸多借口来惩罚供应商。此外，“国家机密”的定义依然模糊不清，甚至包括在其他国家中都是例行发布的数据。这样，就不清楚金融信息提供方是否要因传播尚未被正式发布的经济和商业数据而承担责任。这种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。
- 中国已经成为全球第二大经济体，但是在大多数官方经济数据的发布时却没有固定的模式可循，而且常常被手眼通天的中国国家传媒机构泄露。事先定好发布日期和时间，兼具时效性和准确性的数据发布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。
- 中国高素质、多语种的记者人才越来越多，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、提高报道中国的质量，因而也能增进海外对中国的了解。

中国美国商会建议中国减少对金融信息和新闻供应商的限制，允许外国新闻机构聘用中国记者，并按照定期时间表公布官方经济数据。

## 最新进展

### 电影共同制作

认识到美国在资金和电影制作方面的优势，中国已经允许通过“联合制作”的形式开展中美电影合作。这些电影可以作为国产片在中国发行放映，无需受到外国进口电影配额和收益分享比例的限制。

显而易见，在实际执行中，获得联合制作资格所需的条件要比相关法规条文中的说明严格得多。比如说，法规中并未具体说明中方投资的最低金额，但美国电影公司了解到，实际操作中广电总局一般只会批准中方投资不低于总投资1/3的申请。另外，法规也未对电影拍摄地点作要求，但美国电影公司也明白，广电总局希望影片至少有一部分在中国拍摄。

此类监管规则不明使美国电影公司面临巨大挑战，美国电影公司因此必须在申请联合制作资格、并将电影剧本提交中国电影合作制片公司和广电总局审查之前，就与中方合作者建立合作关系。美国电影公司投入了巨大的资源与中方制作者签订协议，并准备剧本提交审查，却面临着未能通过联合制作审批或剧本审查的风险。以上风险可能会阻碍美国电影公司寻求与中国合作方联合制作电影的步伐。

中国美国商会建议电影监管机构明确联合制作电影的资格要求，减少不确定性，加强美中两国在电影业的合作。

## 结论

猖獗的知识产权侵权行为加上严格的审查制度继续限制着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。

approve joint productions in which at least one-third of the investment is from the Chinese partner. In addition, the regulations do not include any requirement as to the film's shooting locations, but US film studios understand that SARFT expects at least a portion of the film be shot in China.

This lack of clear regulatory guidance is very challenging for US film studios, which must enter into a partnership with a Chinese producer before applying for joint production status and before submitting the film script to the China Film Co-Production Corporation and SARFT for censorship review. A US film studio risks expending considerable resources entering into an agreement with a Chinese partner and preparing a script for censorship submission, without knowing if the production qualifies as a joint production or will pass censorship review. These risks may deter US film studios from seeking to participate in co-productions in China.

AmCham China recommends that the regulatory authorities clarify the written regulations on what qualifies as a co-production in order to reduce uncertainty and foster increased US-China cooperation in film.

## Conclusion

The combination of rampant IPR infringement and censorship continues to restrict 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, as well as enable the Chinese media and entertainment industry to achieve the influence that it deserves to have around the world.

## 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 in all media and entertainment sectors, and increase judicial damage awards in order to enhance their deterrent capabilities.
- Attack online IPR piracy by improving IPR enforcement 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.
- Clarify written regulations on what qualifies as a film co-production in order to reduce uncertainty and foster increased US-China cooperation in film.
- Reconcile *piwen* and visa application procedures for live entertainment personnel to support China's goals of cultural exchange and development, for example by allowing personnel from abroad to enter China on business visit (F) visas instead of work (Z) visas.
- 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.
- 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.

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，并有助于中国传媒娱乐业在全世界获得其理应具有的影响力。

## 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。
- 在传媒和娱乐领域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。
- 加大知识产权执法力度、要求在线平台保护知识产权、向政府和权利人提供侵权人的信息、并协助开展执法行动，来打击网上知识产权侵权。
- 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。
- 电影监管机构明确联合制作电影的资格要求，减少不确定性，加强美中两国在电影业的合作。
- 简化现场表演活动演职人员批文和签证申请程序，促进中外文化交流和发展，例如允许来华表演人士取得商务旅行签证（F 签证）而非工作签证（Z 签证）进入中国。
- 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，向外国节目制作商公布与国内电视开展合作的详细规定。
- 允许美国录音行业与艺术家签约，通过实体形式、互联网形式和移动平台的形式录制，制作，推广和发行这些音乐作品。
- 阻止对记者和信息源的骚扰，起诉对记者暴力袭击的人。
- 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。

# Oil, Energy and Power

## Introduction

**N**o industrial sector is more important to China's growth prospects than the energy sector. Over the past year, the global focus on this sector has intensified dramatically, both for traditional and alternative energy. This is in large part the result of a continued and commendable extension of energy development activities in the principal emerging economies, especially China. It is in the world's best interest that China participate in global exploration for and production of energy. We also believe that it is in China's best interest to allow US energy companies greater opportunity to contribute to the development of China's energy sector.

The 12<sup>th</sup> Five-Year Plan (12<sup>th</sup> FYP) set goals for increased development of China's unconventional oil and gas resources; the Chinese government has expressed ongoing support for these goals over the past two years. Particularly notable are the execution of the first shale gas bid round in 2011, a second, larger bid round in 2012, and projects that capitalize on China's abundant coal resources. The latter, including coal-to-chemicals, coal-to-liquids, and coal-to-gas projects, could reduce China's reliance on imported oil and natural gas. Further efforts to develop and expand exploration for and production of natural gas and shale gas have been made.

In 2012, governmental authorities at all levels in China have made efforts to reduce bureaucracy and increase transparency in the energy sector. In response, some American firms have invested in successful projects in China, especially in the unconventional resource and deepwater resource development fields. American firms in the oil, refining, and nuclear power industries have observed some relaxation of regulations that had previously prohibited them from establishing wholly foreign-owned enterprises in China. Similarly, restrictions on the import of equipment, personnel, and technology have also eased slightly. AmCham China applauds these changes, which enable American firms to further contribute to China's energy security.

## Ongoing Regulatory Issues

### *Shale Gas Production Targets*

In China, shale gas exploration is still in its infancy, although according to recent Chinese government reports China has vast estimated shale gas reserves, with estimates of potential reserves of 3,500 trillion cubic feet (tcf). The Chinese government has set ambitious goals for shale gas production, including annual production targets of 3 tcf by 2020. Achieving this target offers benefits such as increased energy independence and reduced carbon emissions.

In recent years international oil companies (IOCs), particularly those operating in the US, have played a leading role in the development and refinement of horizontal drilling and hydraulic fracturing technologies, as well as the development of advanced safety and environmental practices in the unconventional energy sector. IOCs and their service providers in the US can bring these technologies and practices to China; China would benefit from such cooperation as it seeks to exploit its shale gas reserves. This would add significant long-term value to unconventional energy resource development in China. AmCham China encourages the Chinese government to expand the utilization of international expertise and technology by facilitating the participation of IOCs in China's continuing energy development.

### *Market Access Concerns*

#### *"Going-Out" Strategy*

The Chinese government launched its "going-out" strategy in the 1990s. Since then, the policy has taken root. Over the past ten years, China's national oil companies (NOCs) have spent over US \$90 billion on overseas acquisitions. Chinese NOCs spent nearly US \$30 billion (approximately RMB 188 billion) on mergers and acquisitions in 2010 alone. They are expected to reach this amount again in 2012.

Much of this investment has gone into project execution. Its objective is to expand and diversify China's oil and gas resources. It also serves to expose Chinese companies to technologies and ideas which are critical to developing China's own unconventional oil and gas resources.

# 石油、能源和电力

## 引言

**能**源行业在中国经济增长中的重要地位是无可比拟的。过去一年中，无论是传统能源还是可替代能源，全球对能源行业的关注显著增强。这在很大程度上得益于主要的新兴经济体，尤其是中国，在能源开发方面持续的、良好的拓展和发展。中国参与全球能源的开采和生产是符合世界最佳利益的。我们也相信，允许美国能源企业有更多机会为中国能源业的发展做出贡献也符合中国的最佳利益。

第十二个“五年规划”（“十二五规划”）中确定了加强非常规油气资源开发的诸多目标；近两年来，中国政府一直明确表示支持实现上述目标。特别值得关注的是2011年中国实施了首轮页岩气招标，2012年又开展了规模更大的第二轮招标，并开展多个项目来充分利用中国丰富的煤炭资源。上述项目包括煤化工、煤制油和煤制天然气项目，以此来降低中国对进口原油和天然气的依存度。中国还进一步采取措施，加强天然气和页岩气的勘探开发及生产。

2012年，中国各级政府部门在减少能源行业的行政审批环节，提高信息透明度方面做出了努力。基于此，部分美国企业成功地投资了很多中国的相关项目，特别是在非常规资源和深水资源开发领域。原油、炼油和核能行业的美国企业已经观察到政府放松对这些行业管制的一些迹象，例如不再禁止外资在这些行业成立外商独资企业。同样，对相关设备、人员和技术进口上的管制也稍有放松。中国美国商会赞赏上述变化，这将使得美国企业能够为中国的能源安全做出更大的贡献。

## 现存监管问题

### 页岩气生产目标

页岩气的勘探开发在中国仍处于起步阶段，不过，据中国官方报告显示，中国拥有丰富的页岩气储备，预计潜在储备约3500万亿立方英尺。中国政府已经设定了宏伟的页岩气生产目标，包括到2020年，实现页岩气年产量3万亿立方英尺。这一目标的实现将有助于加强中国的能源独立性和减少碳排放。

近年来，在非常规能源领域中，国际石油公司，特别是在美运营的石油公司，在开发和优化水平钻井和压裂技术以及开发先进安全和环境实践方面一直处于领先地位。美国的国际石油公司及其服务供应商能够将上述技术和操作引入中国；中国的页岩气储备勘探开发事业将会受益于此等合作。这将为中国非常规能源资源开发增加重要的长期价值。中国美国商会鼓励中国政府为国际石油公司参与中国能源开发事业提供便利，扩大利用国际专业知识和技术的范围。

### 市场准入问题

#### “走出去”战略

中国政府在上世纪90年代推出了“走出去”战略。从那时起该项政策已经扎下了根。过去十年来，中国的国家石油公司斥资900多亿美元进行海外并购。仅2010年一年，中国的国家石油公司在并购领域的投资就高达近300亿美元（约合人民币1880亿元）。预计2012年的并购投资额将再次达到这一规模。

上述投资大部分都用于项目执行。其目的是扩展中国油气资源，实现油气资源的多样化。它同样也有助于中国公司了解相关的技术和理念，这些都是对于中国开发自己的非常规油气资源至关重要的。

This strategy, however, has also led to concerns and delays in the implementation of some projects. Under current central government guidance, NOCs cannot offer acreage positions or production sharing contracts (PSCs) unless these are linked to an overseas investment opportunity for the NOC. This requirement, however, can delay the implementation of projects, and can even render some IOCs unable to assist in the development of China's oil and gas resources. AmCham China suggests the central government delink the award of acreage positions and PSCs from overseas investments for specific NOCs so that worthwhile partnerships can be formed where mutually beneficial.

### Limited Access to Pipelines

The most effective way to transport significant volumes of onshore gas is through a pipeline system. However, access to pipelines and ancillary infrastructure in China can be difficult, with China's existing gas pipelines predominantly owned and operated by NOCs. At the same time, construction of new pipelines is highly expensive.

Non-discriminatory access to pipelines under transparent tariffs is therefore a key issue for any IOC considering shale gas production in China. No legislation on third party pipeline access exists in China. Currently, the only way to address this issue is through a PSC. AmCham China encourages legislation to clarify third party access rights to pipeline infrastructure.

### Land Acquisition

Only limited surface land use rights are available to foreign-invested oil and gas exploration activities. Almost all prospective acreage in China is held by one of the three NOCs, namely Sinopec, China National Petroleum Company (CNPC), or China National Offshore Oil Company (CNOOC). Only Chinese-owned entities are eligible to obtain acreage licenses. As a result, there is currently no way for IOCs to be able to hold acreage on their own. Because both IOCs and NOCs find it difficult to obtain blocks approved for foreign cooperation, IOCs have only limited opportunities to assist in the development of China's oil and gas resources. IOCs need greater access to prospective acreage to enable their more active participation and to accelerate the development of unconventional energy in China.

### **Shale Gas Production Sharing Contracts**

Any shale gas PSC must reflect a solid and clear regulatory framework that conforms to PRC law. The PSC must also encourage investment in shale gas development, and provide a stable economic incentive to sustain meaningful and consistent investment. At the same time, shale gas projects have specific technical and commercial characteristics that generally differ from conventional oil and gas projects. The PSC must take these specific characteristics into account. AmCham China suggests the development of a "Model

Shale Gas PSC" that addresses the unique aspects of shale gas exploration, development, and production, without upsetting existing Chinese PSC structures while addressing investor concerns. Model PSCs are an effective step to advance cooperation in shale gas development; some key issues for such a model PSC are listed below:

### Timeframe for Exploration, Appraisal, Development, and Production Periods

Unlike conventional oil and gas development, shale resource development involves a high degree of overlap between different stages of field development. This requires the operator to continue exploration and appraisal in some areas, while performing development in others. This is necessary to identify the most commercially productive areas, as well as to optimize drilling and completion programs. These requirements typically result in the investment of decades of time and many billions of dollars to fully develop a large shale prospect. The "Model Shale Gas PSC" would apply appropriate modifications to the current model PSC to take into account the overlap in development phases and the length of time required to fully develop an area.

### Relinquishment

Current model PSCs provide only for short, distinct exploration periods, and no appraisal period. When these are concluded, the current model PSC requires the project developer to relinquish any unexplored surface acreage.

In unconventional resource development, however, exploration must continue for a longer time. In cases where commercial production is possible, appraisal and pilot production programs may also be necessary to test the commercial viability of various sectors within the field. This differs greatly from conventional oil and gas development, in which a handful of wells and seismic data can reliably identify productive areas. As a result, requiring the developer to relinquish surface acreage according to a rigid schedule is not appropriate for shale gas exploration and development.

### Overall Development Plan (ODP)

The ODP is the development plan prepared and approved for a specific oil or gas field. According to current model PSCs, the ODP should include such data as recoverable reserves, development well pattern, production profiles, economic analysis, and others. However, in the context of a shale gas development project, an ODP must instead function as a dynamic guide to development, and remain pragmatically flexible for modification as the development progresses.

For a shale gas PSC, an IOC will compile an ODP using all available data collected during the exploration and appraisal phases, as well as any pilot development program. Nevertheless, significant new information often arises *after*

然而这一战略在部分项目执行时也引发了一些担忧和延误。根据中央政府目前的指示，除非涉及国家石油公司海外投资机会，国家石油公司不得提供矿区租让或产量分成合同。这一要求会造成项目执行延迟，甚至会导致某些国际石油公司无法协助中国开发自己的油气资源。中国美国商会建议中央政府将矿区租让及产量分成合同的授予与特定国家石油公司的海外投资机会脱钩，以便合作双方能够建立互利且双赢的合作关系。

### **限制管道接入**

管道运输是大批量运送陆上天然气最有效的方式。然而，由于中国现有的天然气传输管道绝大多数由国家石油公司所有及经营，因此国际石油公司很难接入中国的天然气管道及附属设施。与此同时，自行新建管道成本极高。

因此，国际石油公司在考虑投资中国页岩气生产时最关心的就是能否无歧视地按照透明的价格接入管道。中国目前尚没有规范管道系统第三方接入的相关法律。当前只能通过产量分成合同来解决这一问题。中国美国商会建议制定相关法律，明确管道基础设施第三方接入权。

### **土地使用**

目前，外商投资油气勘探开发活动时只能取得有限的地上土地使用权。在中国，几乎所有有望勘探开发矿区都由三大国家石油公司，即中石化、中石油或中海油持有。只有中国企业才具有获得矿区许可的资格。因此，目前国际石油公司无法自行拥有矿区。由于国际石油公司和国家石油公司都很难获得中外合作勘探矿区的审批，所以，国际石油公司在协助中国开发油气资源方面机会十分有限。国际石油公司需要获得更多的矿区勘探权，确保他们能够更加积极地参与并加快中国非常规能源的开发。

### **页岩气产量分成合同**

页岩气产量分成合同必须遵循一套符合中国法律要求、具体且清晰的监管框架。产量分成合同必须能够鼓励页岩气开发的投资，且需提供稳定的经济激励以确保该项投资确有意义并能够持续稳定。与此同时，页岩气项目的技术要求和商业特性通常有别于传统油气项目。因此页岩气产量分成合同必须考虑这些要求和特性。中国美国商会建议编制一份“页岩气产量分成示范合同”，解决页岩气勘探、开发和生产过程中所涉及的特殊要求，既不违反中国现行产量分成合同框架，又能消除投资者的担心。产量分成示

范合同是推进页岩气开发合作进程的有效步骤，以下内容是该合同应该解决的几大关键问题：

### **勘探、评估、开发和生产阶段时间表**

与常规油气开发不同，页岩气资源开发中的现场开发各个阶段具有高度的时间重合性。这就要求运营商能够一边在一些地区进行开发，同时又能继续在其它地区进行勘探和评估。这对于确定最具商业价值的富矿区以及优化勘探和完工计划是非常必要的。这些要求一般需要数十年的持续投资，并且，完整开发一个大型页岩气项目需耗资数十亿美元。“页岩气产量分成示范合同”应在现有产量分成示范合同的基础上进行必要的修改，充分反映页岩气开发各个阶段的重合性，以及完整开发一个地区所需要的时间。

### **权利放弃**

目前使用的产量分成示范合同仅适用于明确的和短时间的勘探阶段并没有规定评估阶段。现有产量分成示范合同要求项目开发商在各阶段完成后必须放弃任何未勘探的地表矿区。

然而在非常规资源开发过程中，勘探阶段必须持续较长时间。在确定具备商业生产价值后，还必须在该地区进行评估和试点生产，从而全方位地检验商业可行性。与常规油气开发完全不同的是，页岩气开发过程中并没有充足、可靠的矿井和地震数据可供参考，产区确定难度较大。因此，要求开发商严格遵循时间表，放弃地表探区的做法不适合页岩气勘探开发。

### **整体开发方案 (ODP)**

整体开发方案是针对特定的石油或天然气领域所制订并批准的开发方案。根据目前的产量分成示范合同，整体开发方案中必须包括可采储量、开发井网、开采剖面、经济分析等其他内容。然而，在页岩气开发项目中的整体开发方案发挥的却是动态指引的功能，且必须具备一定的灵活性，随着开发项目的推进，需要根据实际情况适时进行修改。

就页岩气产量分成合同而言，国际石油公司将使用勘探、评估阶段以及试开发项目中获得的全部数据来编制整体开发方案。然而许多重要新信息通常都是在整体开发方案获得批准后进入页岩钻探的开发阶段才出现的。为了实现页岩产量最大化，该整体开发方案必须保持相应的灵活

approval of the ODP during the development period after shale formation drilling has already started. In order to maximize shale formation productivity, the ODP must be sufficiently flexible to allow prompt and deft adjustment of the way in which particular shale formations will be developed in response to newly acquired information. This flexibility is essential to success in shale gas development. The ODP should therefore be regarded as a forecast, or non-binding guidance document, for the direction of shale gas development. It cannot function as a mandatory, fixed governing document.

### *Limited Access to Data*

The limited availability of data is another major issue for US energy companies. In the US, large amounts of reliable data are readily available for purchase and analysis. This allows rapid evaluation of potential resource reserves and related investment proposals. In China, however, oil and gas data are considered to be state secrets, and are treated accordingly. The shortage of data available to energy companies significantly reduces “industry learning.” In turn, this adversely affects the development of unconventional resources. Opening up additional data for industry review will be critical. AmCham China suggests that industry data be made accessible in line with international practice.

### *Local Communities—Environment and Safety Concerns*

The increasing importance of shale gas as a potential energy resource has triggered some environmental and safety concerns. Particular environmental concerns have arisen in relation to the risk of pollution of residential water resources, land use in heavily populated areas, and a lack of water in others. Similarly, the security and safety of populations residing near drilling and production sites is among the highest level concerns for any well-run shale gas project.

To address environmental and safety concerns in shale gas production, AmCham China suggests that the relevant government agencies introduce clear guidelines regarding operational and community safety, incorporating the best available environmental and technical global practices.

### *Lack of Regulatory Framework*

China’s energy sector has a complex and opaque regulatory framework. The Chinese government regulates all exploration, development and production of oil and gas in China. The National Development and Resource Commission and the National Energy Administration are the principal energy sector regulators. However, given the industry’s importance, a number of additional governmental agencies play critical roles of their own. These include the Ministry of Land and Resources (MOLAR), the Ministry of Environmental Protection, the State Oceanic Administration, the Ministry of Commerce, and the State Administration of Foreign Exchange.

Due in part to the large number of agencies involved in energy sector oversight, the regulatory framework, related reporting, and permitting processes for the oil and gas sector in China are complex, overlapping, and sometimes opaque.

Clear, concise regulations outlining the requirements applicable to resource development would address questions surrounding potential environmental, health, and safety costs. They would also bring all parties involved to a common understanding and expectation of their respective roles and responsibilities. AmCham China suggests that China promptly promulgate clear regulations on unconventional resource development.

### *Duty Exemptions*

Although foreign-invested enterprises in the oil and gas industry may receive exemptions from import duties, the process is cumbersome and time consuming. Furthermore, in recent years, the amount of the duty exemption has been gradually reduced. It has also become subject to a centralized quota. Facilitating the importation of key technologies and equipment will assist China to develop its energy resources more rapidly.

## Recent Developments

### *2<sup>nd</sup> Shale Gas Bid Round*

China recently completed the 2<sup>nd</sup> Shale Gas Bid round. While the opening of development opportunities to companies beyond the three largest NOCs is commendable, the quality of the blocks offered was not attractive. CNPC or Sinopec still hold most of the very promising blocks. Also, most blocks were awarded to Chinese companies in other industry sectors, which will affect the ultimate evaluation and development of these blocks. AmCham China welcomes the invitation of additional companies into bid rounds, and encourages bidding and awards to be made in a transparent matter to ensure that expertise is well-matched to promising blocks.

### *Shale Gas as a Separate Resource*

The Chinese government has determined to treat shale gas as a separate resource. This has added an additional layer of complexity and ambiguity. Current holders of licenses issued by MOLAR and IOCs alike await the practical results of this policy change. A clear understanding of who actually holds the rights for shale gas exploration will be necessary before negotiations for exploration rights can truly begin.

### *Price Incentives for Shale Gas*

The Chinese government has indicated its desire to promote the development of shale gas by way of pilot pricing (city gate pricing in two areas) and an incentive (through 2015) of

性，允许根据最新获取的信息随时灵活调整页岩开发方法。上述灵活性是确保页岩气开发取得成功的基础。因此，整体开发方案应该视作一份针对页岩气开发方向的预测性、非约束性的指引文件，而不是一份僵化、强制性的管制文件。

### 限制信息获取

可获得的数据资料有限是美国能源公司所面临的另一大难题。在美国，市面上有大量可靠信息可供随时购买和分析使用。这使得相关人员可以快速评估潜在资源储量以及相关的投资计划书。然而，在中国，油气数据却被视为国家秘密，并作相应的保密处理。能源公司缺乏相关数据，严重阻碍了“行业学习”。同时也阻碍了非常规资源的开发。开放相关数据用于行业分析至关重要。中国美国商会建议按照国际通行做法开放行业数据。

### 当地社区——环境和安全问题

虽然页岩气作为潜在能源资源的地位越来越重要，但它也引发了部分环境和安全的担心。目前引起的具体环境担心包括污染居民生活用水、人口密集地区的土地使用以及其他地区缺水等问题。同样地，页岩气钻探和生产地临近地区的人口安全问题也是任何运行良好的页岩气项目最需要关注的问题之一。

为了解决页岩气生产所面临的环境和安全隐患，中国美国商会建议相关政府部门借鉴国际上环境和技术相关方面的最佳方案，发布明确的指引文件，指导运营和社区安全。

### 缺乏监管框架

中国能源行业的监管框架复杂且缺乏透明度。中国政府对中国境内的石油、天然气的勘探、开发和生产实行全程监管。国家发展与改革委员会（发改委）和国家能源局是该领域的主要监管机构。不过鉴于该行业的重要地位，其他政府部门也发挥着重要的监管功能。这些部门包括国土资源部、环境保护部（环保部）、国家海洋局、商务部和国家外汇管理局（外管局）。

能源行业的多头监管在一定程度上造成了中国油气行业监管框架中有关报告和批准程序的复杂、相互重叠以及有时模糊不清的状况。

制定清晰、具体的监管法律法规，明确资源开发相关要求，能够解决潜在的环境、卫生和安全成本等方面的问题。这样做有助于相关各方都能够清楚各自的权利和义务。中国美国商会建议中国政府尽快出台清晰的非常规资源开

发监管方面的法规。

### 税务免除

尽管外资企业投资石油天然气行业可以享受免征进口关税的优惠，但申请免税的程序繁琐耗时。另外，近年来免税金额已经在不断降低，但还要受中央政府所制定的总免税配额的限制。便利重点技术和设备的引进有助于中国加快能源资源开发的步伐。

## 最新进展

### 第二轮页岩气招标

中国近期已经完成了第二轮页岩气招标工作。虽然此次招标向除了三大国家石油公司之外的其他企业开放了开发机会是值得称赞的，但招标中所提供的竞标区域的质量却不具有吸引力。中石油和中石化依然把持着绝大部分富矿区域。另外，最终大部分竞标矿区都由其他行业的中资企业中标，这势必会影响这些矿区的最终估值和开发。中国美国商会欢迎本轮招标中邀请其他公司参与竞标的做法，同时鼓励加大竞标及中标过程的透明度，确保能够根据专业知识来判定矿区的潜在价值。

### 页岩气列为独立资源

中国政府已经决定将页岩气列为一项独立矿产资源。这使得页岩气的监管更加复杂和模糊。国土资源部授予采矿许可证的企业和国际石油公司都在静观此项政策改革所带来的实际后果。在启动页岩气勘探权的谈判之前，必须首先明确知悉页岩气勘探权的实际所有人。

### 页岩气价格激励措施

中国政府已经表示将出台激励促进页岩气开发的措施，包括试点定价（在两个地区实行门站定价）以及2012至2015年实行每销售一立方米页岩气予以0.4元人民币补贴的政策。但目前尚未出台明确政策来规范公开市场定价以及其他潜在激励措施。

### 美中能源协议

2010年10月，美国和中国签署了《能源安全合作联合声明》，这是中美双方签订的又一项相关能源的具体协议。该协议规定了双方在非常规能源资源开发利用方面的合作。2011—2012年间，美国和中国还签署了《美中页岩气资源

0.40 RMB per cubic meter of shale gas sold. However, a clear policy on open market pricing or further potential incentives has yet to be promulgated.

### *US-China Energy Agreements*

The US-China Joint Statement on Energy Security Cooperation, signed in October 2010, is one of the more concrete of the many energy-related agreements between China and the US. This agreement provides for cooperation on the development and utilization of unconventional energy resources. During 2011 and 2012, the US and China also signed the US-China Shale Gas Resource Task Force Work Plan and several subsequent agreements including, most recently, a US-China Memorandum of Understanding establishing a shale gas technical program. AmCham China welcomes the development of a constructive, short-term framework for cross-Pacific cooperation in the energy sector.

### Conclusion

Energy remains among the key strategic industries in China. With the 12<sup>th</sup> FYP adopting increased shale gas production targets, shale gas exploration and development will become a key area for cooperation between US and Chinese energy companies. Despite positive developments, American companies still encounter challenges in the oil, energy, and power industries in China. Addressing these challenges will help increase American investment and assistance in China's energy sector. Through their participation, US energy companies hold significant promise for accelerating and increasing the effectiveness of the development of energy resources in China.

However, existing investment restrictions discourage foreign companies from participating fully in China's energy industry. These include regulatory requirements, as well as restrictions related to acreage access, data availability, gas pricing policy and incentives, and access to infrastructure, pipelines and end-users. China will improve its chances of harnessing potent foreign industry expertise, technology and resources when it relaxes these restrictions.

- Relax restrictions on the availability of data. Open up data on targeted basins for industry analysis.
- Develop regulations for the administration of shale gas mineral rights. These should clearly provide for market access, permitted investors, and exit procedures.

### *For the US Government*

- **Relevant US government agencies, including the Department of State, Department of Energy and Department of Commerce, should engage their Chinese counterparts to introduce the US regulatory framework governing the oil and gas sector, especially in relation to shale oil and shale gas.**
- Undertake dialogue with Chinese counterparts to secure the implementation of bilateral agreements on shale gas development.

### Recommendations

#### *For the Chinese Government*

- **Initiate comprehensive oil and gas legislation. This should include the designation of a specific regulator for the oil and gas sector.**
- Promote the development of a "Model Shale Gas PSC."
- Accelerate long-term shale gas pricing and market reform. When completed, clearly communicate the results of these reforms.

工作组工作计划》及多个后续协议，包括近期双方为合作开展页岩气技术项目而签订的一份美中谅解备忘录。中国美国商会对双方在能源行业跨太平洋合作所取得的这一建设性短期框架成果表示欢迎。

## 结论

能源业依然是中国的重要战略性行业之一。“十二五”规划中提出了加快页岩气生产的目标，因此页岩气勘探、开发将成为美国和中国能源企业开展合作的重点领域。虽然中国在石油、能源和电力行业取得了积极进展，但美国公司在这些行业依然面临诸多挑战。解决这些问题将有助于鼓励美国增加在华能源领域的投资和援助力度。美国能源企业参与中国能源行业发展必将提高中国能源资源开发的速度和效率。

然而，现行的种种投资限制打击了外资全面参与中国能源业发展的积极性。这些限制包括监管要求、矿权持有限制、信息不足、天然气定价政策和激励措施，以及对基础设施使用、管道接入和接近终端用户的限制等。中国应放松上述管制，提高外资参与的积极性，从而充分利用外资的行业知识、技术和资源。

## 建议

### 对中国政府的建议

- 启动石油天然气综合立法。明确指定一个针对石油和天然气行业的监管机构。
- 促进“页岩气产量分成示范合同”的编制。
- 加速长期页岩气定价和市场改革。改革完成后将改革成果明确传达。
- 放松在行业数据管控上的限制。开放相关目标盆地的数据供行业研究。
- 制定与页岩气矿权管理相关的法律法规。明确规定市场准入、投资者审批以及退出程序等内容。

### 对美国政府的建议

- 美国相关政府部门，包括国务院、能源部、商务部应积极与中国对口部门联络，介绍美国在油气行业的监管框架，特别是页岩油和页岩气相关监管框架。
- 与中国政府开展对话，确保双方在页岩气开发领域的双边协议得以有效执行。

# Real Estate

## Introduction

**H**ousing purchase restrictions on residential property remained in place throughout 2012. Such measures were implemented in an attempt to curb the rapidly rising prices witnessed throughout China in recent years. Sluggish sales in early 2012 motivated developers to lower prices, and sales volumes picked up after the second quarter of 2012. Falling prices in a number of cities were offset by rising prices in others, resulting in marginal growth for the year. It was recently reported that tightened measures on residential real estate transactions are to remain in place in 2013. Should prices grow at a rate considered too robust, we can expect the implementation of further restrictions in the coming year.

In the commercial real estate sector, uncertainty in the domestic and global economies led some office tenants to exercise caution—while an exit from the China market is highly unlikely for most international firms, a number of tenants considered relocating to less expensive office premises or looked for ways to more efficiently utilize their existing space. Other domestic and international firms remained upbeat and continued expanding. In the retail market, domestic and international brands continued expanding and 2013 saw the entrance of a number of high-profile international brands to the Chinese market.

Under these conditions, AmCham China member companies are still faced with several challenges in China's real estate market. Most notably, significant barriers to market entry and participation continue to 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 purchasing real estate strictly for their own use. Quality issues in construction and management practices continue to create unnecessary costs (and risks) for industry participants. Other long-term issues include lack of transparency and poor regulatory and legal enforcement.

Given the large and critical role that real estate plays in China's economy, it is important that the government remove barriers to 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 within the sector.

## Ongoing Regulatory 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, while increasing overall transparency in the sector.

### *Consistency of Quality and Regulatory Enforcement*

The rapid development of real estate in China has at times led to problems. Regulatory enforcement is inconsistent, construction materials are sometimes suspect, and professional real estate management is 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. Progress in these areas would result in a more stable real estate market and higher quality assets.

While there have been some improvements in quality, these have been very 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 best

# 房地产

## 引言

2012年，中国继续实施商品房限购政策。此举旨在抑制近年来中国商品房房价过快上涨的态势。2012年初，商品房销量下滑促使开发商降低售价，而2012年二季度之后销售量又反弹上升。部分城市房价下跌的同时，另外一些城市房价却继续上扬，造成2012年全国平均房价呈略微上涨态势。近期有报道称，2013年将连续对住宅房地产交易实行严厉管控。如果房价上涨幅度过快，我们可以预见2013年将会继续加强调控力度。

在商业房地产领域，由于国内和全球经济均存在诸多不稳定因素，部分写字楼租户在商业房地产租用决策上更为谨慎。虽然绝大多数跨国公司退出中国市场的可能性极小，但不少公司已经考虑将办公地点搬迁至租金更为便宜的场所，或竭力提高现有办公场地的使用率。不过有不少内资企业和跨国公司依然处于上升扩张态势。在零售市场，本土和国际品牌均保持继续扩张态势，2013年还将有一批国际知名品牌进入中国市场。

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重大壁垒仍然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号文），严格限制外国实体的分支和代表处购买自用性住房。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，做到这几点十分重要，因为这些措施将提升行业透明度，促进行业内部的良性竞争。

## 现存监管问题

### 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号文）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。外国投资商人股外资投资房地产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政府对171号文意见做出修订，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，同时增加产业整体的透明度。

### 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，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。这些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。

尽管资产质量有所提高，但进展步伐十分缓慢。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。

### 合同与产权的执行及透明度

中国在改善合同和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多次重申这样的情况不利于投资。

地方对于产权权益注册的管理，包括土地使用权、租赁、

practices, increasing the overall quality of the industry and its participants.

### ***Transparency and Enforcement of Contract and Property Rights***

Little progress has been made to address the lack of transparency and consistency in the administration and enforcement of both contractual and 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 security 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 public, readily 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.

The recent increase in incidents involving landlords changing contractual terms mid-lease or arbitrarily not adhering to previously agreed-upon terms is also cause for concern. This trend may be largely attributable to the recent landlord-favorable shifts in the market. AmCham China respects the challenges that likely exist in regulating a rapidly transforming market. Yet, the enforcement of contractual obligations is an absolute necessity and remains a key cornerstone in any market economy looking to attract and retain leading global corporations.

### ***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. The minimum down payment on a second home has 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. 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.

### ***Sustainability and Green Building***

In recent years 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 2011, MOHURD issued the “Notice on Further Promoting Energy Saving Work for Public Buildings,” in which it pledged to reduce energy consumption per unit area by 10 percent for public buildings and by 15 percent for large public buildings during the 12<sup>th</sup> Five-Year Plan period (2011-2015).

AmCham China members welcome the government’s continued efforts to integrate greater energy efficiency into the building sector. Given the level of new building construction in China, these initiatives are essential if China is to successfully manage its energy demands and reduce the overall energy footprint of the building sector. In 2008, buildings accounted for about 23 percent of China’s primary energy use, and were expected to rise. Reducing the energy used by the building sector would significantly impact overall efficiency, and thus contribute to China’s efforts to reduce pollution. Given their wealth of expertise in this sector, AmCham China members remain prepared to continue assisting China with these efforts and look forward to continued government support and encouragement in ensuring fair market access and protection of intellectual property rights.

## **Recent Developments**

### ***Affordable Housing***

Premier Wen Jiabao stated that China still plans to build 36 million affordable housing units by 2015, despite cutting its original target number of construction starts by 20 percent for 2012. In October 2012, Beijing’s Commission for Housing and Urban Development stated that 160,000 state-subsidized

抵押和其他权益，以及与担保优先权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。地方法院在使用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房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。

近期业主在租约履行期间更改合同条款或随意不遵守约定条款的现象不断增多也令人担忧。出现这一趋势的主要原因正是近期租房市场正不断向业主市场转变。中国美国商会承认对这种瞬息万变的市场监管的难度很大。然而，履行合同义务绝对必要，而且一直是任何市场经济体吸引和留住世界一流企业的重要基石。

### 房地产紧缩措施

中央政府 2011 年实施的房地产紧缩措施包括：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（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全额征收营业税。要求当地政府按当地收入水平和负担能力设立房价增长上限。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，应当由市场主导房地产行业的中长期发展。

### 可持续性发展和绿色建筑

近年来，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。

2011 年 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%。

中国美国商会的会员企业欢迎中国政府继续采取相关举措推进建筑行业节能工作。鉴于中国新建建筑数量之多，中国想要成功地控制能源需求，减少建筑业的总体能耗，这些举措十分重要。2008 年，中国建筑耗能约占总基础耗能的 23%。减少在建建筑耗能将极大的提高整体效率，进而为中国减少污染做出贡献。中国美国商会的会员企业在这一领域具有丰富的经验，已准备好继续协助中国开展上述工作，并且希望政府能够在确保公平市场准入、保护知识产权方面继续予以支持和鼓励。

## 最新进展

### 保障性住房

温家宝总理表示，尽管将 2012 年开工的保障房数量原定目标下调 20%，中国仍计划在 2015 年年底之前修建 3600 万套保障房。2012 年 10 月，北京市住房和城乡建设委员会宣布，已经为北京本地低收入家庭兴建了 16 万套享受国家补贴的公租房。北京市政府还称将继续紧密监控这一政策的实施，并鉴于最近保障性住房领域爆出的贪污渎职和以权谋私现象，新建保障房以租代售提供给广大市民。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 50 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：当地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），四人户或以上家庭总收入不超过 13 万元人民币（20472 美元）。

中国美国商会支持中国政府继续建设适用不同收入群体住房的决策。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。

### 老年住房开发

中国的老年人护理行业依然处于刚刚起步阶段。中国民政部的数据显示，截止 2012 年底，全国共计约有十万家

homes had been built, which targeted local, low-income households in the city. The government further stated it will closely monitor implementation of the policy, stipulating that new developments designed for affordable housing shall be rented instead of sold, following public outcry over reported 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 500,000 public rental apartments expected to be built in the city by 2015. The apartments are for local 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 certain number of years. These measures will enable migrant workers and the foreign population to benefit from the affordable and subsidized housing market. Local families of three people or less must have a household yearly income of less than RMB 100,000 (US \$15,748), while families totaling four people or more must have a household yearly income of 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.

### *Senior Housing Development*

The senior care industry in China is still at a very early stage of development. According to the Ministry of Civil Affairs, as of the end of 2012 there were about 100,000 senior housing institutions providing a total of 3.5 million beds, equivalent to just 2% of the current elderly population (i.e. people over 60 years old) compared to 5%-7% for developed nations. While interest among investors and overseas operators in this sector has been increasing, government agencies still constitute the majority of operators in the market. For example, in the two most mature and affluent cities, Beijing and Shanghai, over 80% of these institutions are publicly operated. These institutions are generally at full occupancy due to their low cost and limited number of beds.

The elderly population, which currently comprises 178 million people (approximately one in seven of the population as a whole), is expected to double by the year 2030. In addition to that unprecedented growth, the one child policy (begun in 1979), coupled with improved life expectancy, is making it much more challenging for the younger generation to adequately support their parents and grandparents. The country's fertility rate fell from 17.8 per 1,000 people in 1979 to just 11.9 per 1,000 people in 2010. The trend raises the obvious question as to how a young couple from two single-child families can be expected to provide for as many as

twelve aged family members, in addition to their children.

The first peak in aging rate of China's population will occur in the next five years, and social stability may come under significant pressure if the issue is not handled swiftly and properly. The enormous scale of demographic transformation cannot be solved by the Chinese government alone; attracting private sector involvement is therefore imperative. However, the current lack of a regulatory framework has so far confined private sector participation to the upper tier of the senior housing sector as investors tend to prefer independent living or retirement homes providing lower levels of care and opt to enter the market in the form of partnership with local entities that have local market knowledge and expertise in operating senior housing facilities. Moreover, due to the unclear government support for mid-tier facilities, most new projects in the planning stages are located in tier-1 and mature tier-2 cities with a significant population of affluent elderly.

According to a survey conducted by the China Research Centre on Aging, senior institutions currently face many challenges, such as acceptability and affordability for its end-users, lack of capital and adequately trained staff, and difficulty of importing overseas experience. A majority of the elderly stress the importance of residing in metropolitan areas for convenient access to their children and quality medical facilities. High land prices in these locations, however, create a strong financial incentive to construct residential or commercial projects rather than senior housing. Unless the government can designate land in desirable urban areas for the development of senior housing, China will very likely face a shortage of senior homes in accessible locations.

### *Property Taxes in Shanghai and Chongqing*

Shanghai and Chongqing have initiated a trial period during which they will levy an experimental property tax to slow the increase in housing prices and boost tax revenue. During the trial period, 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 trial period is an attempt to move towards annual, recurring streams of income. If this trial is deemed successful, it will likely be expanded to other first- and second-tier cities.

### **Conclusion**

AmCham China understands the Chinese government's goal of stabilizing, regulating, and guiding its real estate

养老机构,共能提供350万张床位,相当于目前老龄人口(即年龄在60岁以上的人)的2%,而这一数字在发达国家则为5%—7%。尽管这一领域的投资者和海外经营者对中国养老行业的兴趣越来越浓厚,但目前中国的养老市场主要由政府机构负责运营。例如,在中国经济最发达,发展最成熟的两个城市北京和上海,80%的养老机构都属公立。由于收费低而床位有限,这些机构往往处于满员状态。

中国目前的老龄人口为1.78亿(约占总人口的1/7),预计到2030年将翻一番。除了老龄化人口增长速度飞快之外,中国的计划生育政策(1979年开始实施)以及人口寿命的延长,都为中国的年轻一代赡养父母及祖母带来了严峻挑战。中国的人口出生率从1979年的1.78%下降为2012年的1.19%。这一趋势凸显了一个严重的问题:双独生子女组成家庭后,年轻的小夫妻们如何在抚养自己的子女的同时,承担起赡养多达12位老人的重担?

中国的第一个老龄化高峰将在今后五年内出现,如果不能迅速而有效地解决老年人养老问题,将会对社会稳定造成严重压力。中国政府不可能独立解决这种大规模的人口结构的变化,因此有必要吸引私营部门参与。然而,由于目前监管框架缺乏,私营部门的参与到目前为止局限于投资高档老年公寓,因为投资者倾向于开发提供较低水平看护服务的独立居住或退休公寓,并且倾向于通过与具有本地经营养老院经验和知识的本地机构建立合作关系的方式进入市场。另外,鉴于政府对中档养老机构的支持尚不明朗,绝大多数规划中的新项目都将建在富庶老龄人口密集的一线和成熟的二线城市。

中国老龄科学研究中心的一项调查显示,目前养老机构面临诸多挑战,例如最终用户的接受程度和负担水平、缺乏资金和受过培训的合格员工、难以引进外国经验等等。绝大多数老年人希望住在市区,方便就医和与子女团聚。但市中心往往地价极高,出于财务上的考虑,开发商往往更愿意在此建设住宅或商用项目而不是老年公寓。除非政府在城区划定土地专门用于开发养老房地产,否则中国将很可能面临上述地段养老机构缺乏的局面。

### 上海和重庆的房产税试点

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工作。在试点期间,征收对象为本市居民新购的第二套住房或非本市居民新购住房。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,该政策可能会推广到其他一线和二线城市。

## 结论

中国美国商会理解中国政府希望通过采取包括紧缩、房产税、保障房和绿色住房在内的政策措施以达到稳定、规范和引导房地产市场的目标。就长期来看,政府应致力于建立和实施公平、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、可持续发展。如果地产行业得以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和国家级产权权益注册体系。
- 加大努力提高建筑行业能源效率、满足能源需求和降低整体能源消耗。

sector, through policies such as 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 the enforcement of regulations and policies governing the real estate sector.
- Create readily publicly accessible registries for provincial and national property rights and interests.
- Increase efforts to integrate greater energy efficiency, address energy demand and reduce the overall energy footprint of the building sector.



具体行业问题

## Retail and E-commerce

### Introduction

The growing purchasing power of Chinese consumers and the corresponding expansion of the retail sector now play critical roles in China's economic development. As the Chinese government strives to increase the role of the service industry and increasingly depends on domestic consumption to drive the economy, retail sector openness and competitiveness are ever more urgent in the 12<sup>th</sup> Five-Year Plan period.

In 2012, the Chinese government continued to make progress in this direction by regulating and promoting e-commerce development to both foreign and locally invested retailers. This positive move will improve product variety and lower costs for Chinese consumers, while upgrading China's economic structure.

Though China's retail sector has been growing in recent years and the regulatory environment has seen significant improvements, industry still faces several hurdles that prevent full maturation. Uneven regulatory practices unduly burden foreign-invested retailers, resulting in a marketplace that does not fulfill its potential for full and fair competition. Different treatment for foreign and domestic retailers creates particular concerns in the commercial zoning application process for new stores, retail ownership and product restrictions, retailers and suppliers relations, problems created by "professional faultfinders," and various types of store inspections. Addressing such issues will effectively promote the healthy development of the Chinese retail market, maximize choice for Chinese consumers, lower costs of goods due to increased competition, and increase employment opportunities and overall consumer consumption.

Foreign retailers play an important role in the retail industry in China, particularly in international practices and knowledge sharing, standards, job creation, corporate social responsibility, sustainability and compliance. These contributions help China's retail industry achieve development in a sustainable manner. AmCham China hopes that the Chinese government will encourage these contributions by applying the same regulations and standards for both foreign and domestic retailers.

Differential treatment for foreign-invested retailers domi-

nates the concerns of AmCham China members in the retail sector. Uneven treatment in a variety of areas presents additional hurdles for foreign-invested retailers, resulting in a less efficient market. AmCham China urges the Chinese government to end the most burdensome of these practices, as outlined below.

### Ongoing Regulatory Issues

#### *Prepaid Cards (Single-purpose)*

Following the China State Council General Office issue of its Opinions to Regulate Prepaid Cards in May 2011, the Ministry of Commerce (MOFCOM) issued Administrative Measures on Single-purpose Commercial Prepaid Card in September of 2012 based on many rounds of opinions solicited from trade associations and companies, including AmCham China members, to develop the regulation.

We appreciate MOFCOM's efforts in improving the transparency of policymaking in this area, and applaud their protection of consumer rights, prevention of corruption, and consideration of retailers' rights and interests. These are beneficial to expanding domestic consumption.

Different standards of implementation from one city to the next, however, impede growth. What is perfectly fine in one city is unacceptable in another, with such variations in enforcement leading to unnecessary uncertainty in carrying out business. AmCham China looks forward to increasing guidance to local authorities on implementation to ensure that domestic and foreign firms face a consistent regulatory environment in all localities.

#### *E-commerce*

There is tremendous government support for e-commerce development in China. Following the 12<sup>th</sup> Five Year Plan's emphasis on developing e-commerce, and Premier Wen Jiabao's 2012 government work reports, MOFCOM, NDRC, MIIT, and many municipal and provincial governments issued related policies to promote e-commerce and e-commerce logistics development. AmCham China applauds these initiatives toward increased efficiency and competitiveness of the China e-commerce market. These will

# 零售与电子商务

## 引言

**中** 国消费者购买力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。随着中国政府努力提高服务业在国民经济中的比重，通过扩大内需来促进经济发展，加强零售业的开放和竞争在“十二五”时期变得更为紧迫。

2012年，中国政府通过规范和促进外资及本地零售企业电子商务发展等方法在促进零售业的发展方面取得了持续性进展。这些积极的举措在促进中国经济结构升级的同时，还将丰富中国消费者可选商品种类、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，但行业仍面临一些问题，影响其进一步发展成熟。不一致的监管加重了外资零售企业的负担，造成市场竞争不充分、不公平，外资企业无法充分发挥其潜力。内外资零售企业差别待遇尤其反映在新店商业网点规划申请、零售所有权及商品种类限制、零售商和供应商关系、“专业找错人”造成的问题以及各种店铺检查等方面。上述问题的解决，将有效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，提高竞争程度，降低商品成本，增加就业机会和扩大消费。

外资零售商在中国零售业居于承担重要角色，特别体现在国际惯例、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。中国美国商会希望中国对内外资零售企业实施同等的法规和标准，从而鼓励外资零售商做出更多这样的贡献。

外资零售企业遭受不同待遇令中国美国商会零售业会员尤为担忧。内外资企业在诸多领域待遇有别，对外资零售商构成了市场壁垒，降低了市场效率。中国美国商会提请中国政府取消下文列出的使外资企业面临最繁重负担的诸多做法。

## 现存监管问题

### 预付卡（单用途）

根据国务院办公厅2011年5月发布的《关于规范商业预付卡管理的意见》，经几轮征求相关行业协会和企业（包括中国美国商会的会员企业）的意见后，商务部于2012年9月发布了《单用途商业预付卡管理办法》。

我们赞赏商务部在增强该领域政策制定透明度方面所作出的努力，并对其在保护消费者权益、防制腐败、考虑零售商的权益等方面的努力表示欢迎。这些举措必将有助于扩大国内消费。

但是各个城市在执行标准上的不统一却阻碍了需求的增长。某些标准在一个城市落实良好，在另一个城市却无法推行，这种执行上的差异导致商业运营面临着不必要的不确定性。中国美国商会期待加强对地方主管部门在执行方面的指导，确保各地的内外资企业都享有同等的监管环境。

### 电子商务

中国对电子商务的发展给予了极大支持。继“十二五”规划中强调加强发展电子商务的相关内容，以及2012年温家宝总理所作的政府工作报告之后，商务部、发改委、工信部以及很多省级地方政府也纷纷制定发布了促进电子商务和电子商务物流发展的相关政策。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。

中国美国商会欢迎为电子商务全行业营造有利的商业环境。但是对外资零售商的限制依然存在，影响了外资零售商提供相关电子商务服务的能力。我们认为下一步应当取消这些限制，以便为消费者营造一个开放且充满活力的电子商务市场。例如：

not only benefit Chinese consumers, but also contribute to China's goals of increasing the role of service industries and domestic consumption in the Chinese economy.

AmCham China applauds the favorable business environment for the entire e-commerce sector. However, restrictions remain on foreign-invested retailers' ability to provide certain e-commerce services. We believe these restrictions should be lifted as a next step in providing an open and dynamic e-commerce market for consumers. For example:

1. E-commerce/online sales are still in the "Restricted" category of the newly revised NDRC/MOFCOM Foreign Investment Catalogue. AmCham China suggests e-commerce and online sales be removed from this category, or better, put in the "Encouraged" category;
2. Per the State Council's revised Provisions on the Administration of Foreign-Invested Telecom Enterprises, foreign investors' capital contribution in a telecom enterprise operating value-added telecom services is capped at 50 percent. AmCham China suggests that China further open the telecommunication sector to allow foreign e-commerce companies to set up and operate open online marketplaces. This would expand choice for customers, increase price competitiveness, and help develop small- and medium-sized businesses.

### *Commercial Zoning and Opening of New Stores*

Foreign-invested retailers opening new stores face more difficulties than their domestic counterparts. Approval authorities must seek the local government's opinion on a foreign-invested firm's zoning plan before a new store application can be approved. Some locales even require a public hearing, further lengthening the approval process. In areas where local governments have not yet established zoning plans, it is impossible for local regulators to render the required opinion on a foreign-invested firm's zoning plan. This effectively obstructs any growth plans a foreign firm may have for that city, thus inhibiting the growth of the overall retail sector there. Local retailers are not subject to these requirements, but the negative impact these practices have on foreign retailers results in a less competitive and less efficient retail market.

AmCham China urges the Chinese government to provide equal treatment to all retailers by eliminating the requirements for local government opinions and public hearings on foreign-invested retailers' zoning plans. Reducing such unnecessary administrative procedures will streamline the Chinese government's administrative burden and improve the development of the overall retail market.

### *Restrictions on Retail Ownership*

Limits on foreign ownership in the retail sector reduce fair competition to the detriment of Chinese consumers. According to NDRC's Catalogue Guiding Foreign

Investment in Industry 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, agricultural film, chemical fertilizer or other specific commodities of varying brands from different suppliers cannot be more than 49-percent foreign-owned, hindering the utilization of international management practices.

Inconsistent treatment also persists with regard to the sale of audiovisual products. Audiovisual products can only be sold by Sino-foreign cooperative joint ventures that are not more than 49-percent foreign owned. This restriction unnecessarily limits consumer choice at foreign-invested retailers and decreases retail competition to the detriment of the consumer.

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, benefit consumers and retail sector development through knowledge transfer, lower prices and increased retail choices.

### *Restrictions on Tobacco*

The NDRC Administrative Measures for Tobacco Monopoly License Measures prohibits foreign-invested retailers from selling into China's wholesale and retail tobacco markets. While AmCham China supports the regulation of the tobacco industry to reduce tobacco-related illnesses, we recommend promoting this objective through internationally accepted measures such as age requirements for purchase, rather than prohibiting sales by foreign-invested retailers. Such restrictions put foreign-invested retailers at a clear disadvantage to their domestic competitors while having no impact on the stated intention of reducing overall tobacco sales.

### *Corporate structure and demands for WFOE by local governments*

A key characteristic of modern retail is the use of a limited number of Wholly Foreign-Owned Enterprises (WFOEs) with many more branch stores and distribution centers managed under WFOEs as chain stores to reduce internal transaction costs between stores and distribution centers. In recent years, however, an increasing number of municipal and even district governments have begun demanding that retailers register each of these stores as WFOEs in order to collect taxes locally, increase local GDP, foreign investment, and other economic performance indicators. This inhibits the development of modern retailing and is ultimately unfavorable to consumers.

Retail is a capital intensive business, and the initial investment in a store causes financial losses in the first few years of operation. Thus, the city collects no income and more impor-

- (一). 电子商务/网上销售在发改委和商务部新修订的《外商投资产业指导目录》中仍然是受限制的类别。中国美国商会建议将电子商务与网上销售从限制类别中删除,最好将其列入“鼓励”类别;
- (二). 根据国务院修订后的《外商投资电信企业管理规定》,经营增值电信业务的外方投资者出资额不得超过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设立和开放网上市场。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。

### 商业网点规划和开设新店

在开设新店方面,外资零售商与内资零售商相比面临更多的困难。审批机关在批准新店设立申请前必须征求地方政府对该外资企业商业网点规划的意见。部分地区甚至要求公开听证,也进一步延长了审批流程。如果地方政府尚未制定分区规划,当地监管部门就无法向外资零售企业出具商业网点规划意见书。这实际上阻碍了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,这些做法对外资零售商造成了负面影响,削弱了零售市场的竞争和效率。

中国美国商会促请中国政府取消对外资零售企业商业网点规划需要征求地方政府意见和公开听证的要求。减少上述不必要的行政程序不仅将简化中国政府的行政流程负担,同时还将促进零售市场的整体发展。

### 零售所有权的限制

限制外资在零售业的持股比例,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颁布的《外商投资产业指导目录》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、农膜、化肥或其他来自不同供应商不同品牌的特定商品的零售连锁企业,其外资比例不得超过49%,这阻碍了国际管理实践在中国的运用。

音像制品销售领域也存在不一致性。音像制品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商品选择空间,降低了零售业的竞争度,损害了消费者利益。

中国美国商会建议取消所有限制,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、降低价格及增加零售产品选择惠及消费者,促进零售业发展。

### 烟草制品的限制

发改委制定发布的《烟草专卖许可证管理办法》禁止外资零售企业在中国从事烟草批发和零售业务。中国美国商会支持中国政府出于对烟草有害健康的考虑而加强对烟草行业的监管力度,但我们也建议采用国际公认的办法,如设定购烟最低年龄,而不是限制外资零售商从事烟草销售的方法来实现上述目标。这样的限制将外资零售企业置于较内资企业明显不利的地位,而对于所宣称的减少烟草总销量的意图并无帮助。

### 公司结构和地方政府对外商独资企业的要求

现代零售业的一个重要特征便是采用有限责任外商独资企业并在其下管理许多分支机构和配送中心的形式进行连锁式店铺经营,从而降低连锁店和配送中心之间的内部交易成本。然而,近年来越来越多的市政府甚至区政府却要求这些店铺全部注册为外商独资企业,从而增加地方政府税收收入并提升当地GDP、外商投资和其他经济发展指标。此举限制了现代零售业的发展并最终影响消费者的利益。

零售业是一种资本密集型的产业,高额的前期投资使得经营者在企业运营最初几年都处于亏损状态。因此,所在城市无法从中收税,更重要的是,店铺的损失无法用于母公司的税收抵扣。这种越来越常见的做法不仅在税收上无效率,同时又很麻烦。

中国美国商会建议中央政府相关部委,如商务部、国家统计局等部委能够发布相关政策,对省级和地方政府监管上述事项予以引导。上述指引应该规范外商独资企业的适用情形,促进零售业的发展。另外,允许通过税收筹划弥补上述损失不仅极大地有利于每个零售商,而且还有助于零售行业的整体发展。

### 价格监管

许多零售企业都因为发改委发布的相关价格法规中规定的“价格欺诈”而受到重罚。零售商也是人,在定价时也会犯错,但这是他们在诚信定价基础上的无心之过。

目前各地政府在价格执法的标准上差异很大,且对待国内零售企业和跨国零售企业的执法标准也不一致。价格执法往往没有考虑到零售业务的复杂性,比如各个连锁店

tantly, the store's losses cannot be used to offset tax expenses for the larger entity. This increasingly popular technique is tax inefficient and onerous.

AmCham China suggests that central government agencies, such as MOFCOM and National Bureau of Statistics, issue guiding principles and policies to provincial and municipal governments on this issue. These guidelines would promote retail development by standardizing expectations on when to use the WFOE vehicle. In addition, finding ways to accommodate these losses in tax planning would be remarkably helpful to not only individual retailers, but the industry as a whole.

### *Pricing Regulations*

Many retailers have been heavily fined for "price fraud," as defined in the current NDRC pricing regulations. Retailers are human and may make mistakes in pricing, but these are made in good faith and with no fraudulent intent.

The current level of enforcement by local governments varies not only from one city to the next, but between local and multinational retailers. This enforcement often does not take into the account the complexity of the retail business, such as the independence of the individual stores, or pricing changes from promotions by the manufacturer. Most importantly, current enforcement regimes fail to consider the benefit to the consumer in the form of low prices from competitors. It is common international practice for retailers to compare and adjust their prices to encourage competition and benefit their customers. These practices, however, may be in conflict with current NDRC regulations.

AmCham suggests NDRC consider the intention of retailers and revise the current regulations to encourage competition and look after the best interests of consumers.

### *Professional faultfinders*

In recent years, especially in 2012, retailers suffered heavy losses from "professional faultfinders." AmCham China absolutely supports monitoring retail regulations, however professional faultfinders are more concerned with their own profit than enforcing regulations and increasing consumer welfare. These individuals, often organized, abuse their knowledge of retail regulations to essentially extort money from businesses. They operate by examining retail outlets for minor flaws, and demand compensation in exchange for their silence. In the course of their actions, they will often physically abuse store management or disrupt the shopping of ordinary customers. They target foreign retailers in particular because of their special concerns with reputation, compliance, and ethics. Several local governments offer incentives to these fault finders, further damaging consumer interests.

AmCham China urges that the Chinese government create

an unfavorable climate for professional faultfinders from legal and policy perspectives. Reducing the harm they can do will benefit not only consumers, but retail development as a whole.

## Recent Developments

### *Sector Growth*

The retail sector continues on a steady growth track. In 2012, total consumption of retail commodities reached RMB 20.7 trillion, up 14.3 percent from the previous year, although 2.8 percentage points lower than last year. Increasing costs for rent, human resources, water, and electricity were the primary drivers in reducing profits in the sector.

The 18<sup>th</sup> CPC Congress set goals of building a more economically well-off society, promoting continued and healthy economic development, and upgrading economic structure in the years to come. AmCham China believes this favorable to service industries, including the retail sector.

### *Retailer-Supplier Relations and Channel Fee*

One of the milestones regarding retailers' and suppliers' relations in China in 2012 was the reform of channel fees, which had come to the attention of the Chinese government due to inflation and complaints from suppliers of "unfair" trading terms. MOFCOM carried out the inspection and correction of channel fees, issuing the Notice on Work Plan in Inspecting and Rectifying Illegal Channel Fees Charged by Retailers to Suppliers with four other agencies. AmCham China recognizes and appreciates these initiatives in standardizing the market order in this area.

## Conclusion

In 2012, the Chinese government made some noteworthy progress in regulating the retail and e-commerce market, which is favorable for retail sector in China. Significant room for progress still exists, however, with regard to equal treatment for foreign-invested retailers. Discriminatory treatment persists in areas including e-commerce, commercial zoning application process for new stores, retail ownership and product restrictions, demand for WFOE status by local governments, pricing regulations, and dealing with professional faultfinders. AmCham China looks forward to working with the Chinese government to mitigate these difficulties while continuing to contribute to the ongoing development of China's vibrant retail market.

## Recommendations

- Apply the same regulations and standards for both foreign and domestic retailers.

经营上的独立性，或者是生产者促销引起的价格变动等等。最重要的是，现行的执法体制没有考虑到零售企业之间的竞争带来价格下降能使消费者受益这一事实。零售企业在比较之后调整价格以带动竞争并让利消费者这是一项国际通行的惯例。但是这些惯例有可能与发改委当前发布的法规相冲突。

中国美国商会建议发改委考虑零售企业的主观意图，修改当前的法规，鼓励竞争，确保消费者利益的最大化。

## 专业找错人

近年来，尤其是 2012 年，零售企业因为“专业找错人”而遭受了重大损失。中国美国商会绝对支持零售业监管法规，但是专业找错人更关心自己的利益，而不是实施监管法规和提高消费者的福利。这些找错人，通常是有组织的，滥用他们所掌握的零售监管法规知识，本质上就是向企业讹钱。他们经常揪住零售商店的细微失误向店家索要补偿，否则就要予以曝光。在他们从事这些行为的过程中，常常实质性地扰乱店铺管理或妨害普通消费者的购物。他们尤其瞄准外资零售企业，因为外资零售企业特别注重声誉、合规和商业道德。有些地方政府还鼓励这种找错行为，这进一步损害了消费者的利益。

中国美国商会促请中国政府从法律和政策层面打击专业找错人及其行为。减少专业找错人造成的损害不仅有益于消费者，还能促进零售行业的整体发展。

## 最新进展

### 行业增长

零售业继续保持稳定增长。2012 年，社会消费品零售总额为 20.7 万亿元人民币，比上年增长 14.3%，但增长率比上年下降了 2.8 个百分点。房租、人力资源、水、电等成本的增加是零售业利润减少的主要原因。

中共“十八大”确立了未来建立一个更加小康的社会、促进经济持续健康发展以及经济结构升级的目标。中国美国商会相信这将有利于服务行业，包括零售业的发展。

### 零售商——供应商关系和渠道费

2012 年中国零售商——供应商关系上的重大进展之一就是渠道费的改革，这也是中国政府基于通货膨胀现状以及供应商对“不平等贸易条款”的不满而作出的重要决策。

商务部展开了渠道费的检查和纠正，并为此会同其他四家部委制定发布了《清理整顿大型零售企业向供应商违规收费工作方案》。中国美国商会认可并赞赏中国政府在这一领域统一标准、规范市场秩序方面所做出的努力。

## 结论

2012 年，中国政府在规范零售业和电子商务市场方面取得的进步可圈可点，这些进展都将促进中国零售业的发展。但在提升内外资零售企业平等待遇方面却依然存在巨大的改进空间。电子商务、新商业网点规划申报流程、零售所有权和产品限制、地方政府对设立外商独资企业的要求、价格规范以及应对专业找错人等领域依然存在着歧视性待遇。中国美国商会期待与中国政府通力合作，在消除上述障碍的同时，继续推进中国目前蓬勃兴起的零售市场的进一步发展。

## 建议

- 对内外资零售企业采用相同的监管要求和标准。
- 修改《外商投资产业指导目录》，将电子商务从限制类中删除。允许外资电子商务公司设立并经营开放的在线网络市场。
- 取消新店设立审批需要就外资零售企业商业网点规划征求地方政府意见并进行公众听证的要求。取消对外资零售商的一切地域限制。
- 取消对外资零售企业的所有权上限。
- 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。
- 面向省、市级地方政府发布指导政策，统一对外资零售企业设立外商独资企业的要求。改善税制结构，抵消外商独资企业地位带来的商业损失。
- 修改相关法规，要求执法部门在判定是否存在“价格欺诈”的时候考量零售商是否存在欺诈的主观故意。修改现行价格法规，鼓励竞争且保护消费者利益。
- 营造抑制专业找错人及其行为的环境，包括取消地方上的奖励政策。

- Revise the Foreign Investment Catalogue and remove e-commerce from the “Restricted” Category. Allow foreign e-commerce companies to set up and operate open online marketplaces.
- Eliminate the requirements for local governments’ opinions and public hearings on foreign-invested retailers’ zoning plans before approving new store applications. Lift all geographical restrictions on foreign-invested retailers.
- Remove ownership 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.
- Issue guiding policies to provincial and municipal governments to standardize requirements of WFOE status for foreign retailers. Improve the tax structure to account for business losses that would otherwise be captured by the WFOEs.
- Incorporate changes to the regulation to have authorities consider the whether retailers had fraudulent intent in “price fraud.” Revise the current pricing regulations to encourage competition and protect consumer interests.
- Create an unfavorable climate for professional faultfinders, including eliminating local reward programs.

**Part Five:**  
**Regional Issues**  
**区域性问题**



## Provincial and Local Investment Environment

**A**mCham China member companies continue to invest and expand their business operations beyond their traditional east-coast bases into second- and third-tier cities all across China, making the investment environment at the local level increasingly important. This trend has accelerated alongside the central government's own regional development priorities, creating new opportunities while also giving rise to a number of new challenges.

AmCham China members are proud of the role they have played in these localities, and remain committed to working constructively with local governments and other stakeholders to identify and solve problems, and contribute to future development. The chapters that follow draw upon the front-line experience of our members working and living in these communities. Contributions were made by member companies from AmCham China's Northeast China, Tianjin, and Central China chapters, as well as from our fellow chambers, the American Chamber of Commerce in Southwest China and the American Chamber of Commerce in Shanghai.

The chapters reflect many common themes, but also differences, from one area to another. Common concerns highlighted include talent shortages, issues regarding implementation of recent changes to the Social Insurance Law and the Labor Contract Law, and the need to improve 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 many cities have made in recent years. However, traffic congestion and the corresponding pollution continue to be problematic. Further enhancing transportation networks and public transit will increase business efficiency as well as improve livability in China's cities, which in turn will 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 in cities, while improving the overall business environment

### ***Talent Shortages***

Shortages of qualified technical, innovative, and managerial talent are another common thread, particularly in China's quickly developing second- and third-tier cities. In our 2013 AmCham China *Business Climate Survey Report*, members ranked management-level human resource constraints as the top business challenge and non-management human resource constraints as the third-ranking challenge. At the local level, member companies in four out of the six cities featured in this *White Paper* highlight human resource shortages as a threat to sustainable growth. These shortages also raise costs as businesses struggle to compete for and retain the best talent from a limited pool.

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.

### ***Social Insurance and Amended Labor Contract Law***

AmCham China appreciates the intent of 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, as well as the Amended Labor Contract Law to reduce illegitimate use of labor dispatch staff. Nonetheless, members across several localities are concerned that the first will increase costs of hiring foreign employees, while the later may negatively affect both domestic and foreign firms operations considerably. Combined with the above-mentioned local talent shortages, these impacts may lead many firms to invest elsewhere. We encourage local governments to heed concerns and adopt reasonable, fair and consistent implementing measures.

## 省市及地方投资环境

**中** 国美国商会会员公司继续从传统的东部沿海城市向全国各地二、三线城市投资及扩大业务经营，使得各地的投资环境变得日益重要。这一趋势与中央政府自身的区域发展重点不谋而合，创造了新的机遇，同时也引发出许多新挑战。

中国美国商会会员为其在各地发挥的重要作用感到骄傲，并与各地方政府及其他利益相关者始终保持建设性的合作，一起找出问题并解决问题，为该地区未来的发展助力。本部分涉及的章节反映了工作、生活在这些地区的我们的会员企业的亲身经历。中国美国商会东北、天津和华中办公室，及姐妹商会——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。

本部分章节既反映了各地区关注的许多共同主题，也反映区域关注的不同。共同的关注重点包括人才短缺、有关新修订《社会保障法》和《劳动合同法》的实施问题，以及需要提升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，同时提升整体商业环境。

### 人才短缺

缺乏合格的技术型、创新性和管理型人才是另外一个共同关注的主题，尤其是在中国快速发展的二、三线城市。在中国美国商会 2013 年《商务环境调查报告》中，会员企业认为管理层人力资源匮乏为首要运营挑战，非管理层人才匮乏位列第三。在地方层面，本《白皮书》中提及的六座城市中有四座城市的会员企业认为人力资源匮乏是对企业可持续发展的威胁。由于企业需要从有限的人才库中竞争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。

### 《社会保障法》和修订后的《劳动合同法》

中国美国商会赞赏修订《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，也赞赏修订《劳动合同法》的举措，其意在减少非法使用劳务派遣人员。然而，几个城市的会员企业都很担心，前者将增加雇佣外籍员工的成本，而后者可能对国内外企业的运营产生较大的负面影响。加之上文提及的当地人才短缺，这些影响可能导致许多公司到别处投资。我们鼓励当地政府部门对这些担忧加以关注，并采取合理、公平和一致的执行办法。

### 结论

中国美国商会会员企业渴望在中国广袤的不同地理区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。

## 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.



区域性问题

# Chengdu

*This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).*

## Introduction

Chengdu, the capital of the Sichuan province, is one of the most important economic and financial hubs in western China. As a part of the “Go West” Western Development Program, the “City in the Basin” has received a large amount of government support and remains one of the top cities for foreign investment.

Thanks to the advantages of diversified industry, improving urban infrastructure, efficient government management, as well as relatively low labor and production costs, Chengdu attracted a substantial number of multinational corporations (MNCs) and domestic firms, real estate investors and developers to the city in recent years. According to the *China50 report* published by Jones Lang LaSalle early this year, Chengdu is listed in the new “Tier 1.5 Transitional Cities” category, and ranks first amongst the 50 cities. It also ranks as China50’s largest office market, second largest retail market, and has strong growth potential for the logistic property sector. Chengdu has already captured the attention of many international corporations, with over 200 Fortune 500 companies with established bases in Chengdu. Representing western China’s emerging market, Chengdu hosted the 12<sup>th</sup> annual Western China International Fair and will also host the Fortune Global Forum in 2013.

Chengdu’s GDP grew by 13 percent, to US \$18.26 billion (RMB 177.51 billion), in the third quarter of 2012. Chengdu’s growth rate, while down two percent from 2011, was still significantly higher than the national average of 7.7 percent. Although Chengdu has shown promising performance amidst a struggling global economy, certain factors threaten further growth. Government restrictions on foreign industries, a lack of skilled labor, poor regulation of industry standards, and poor construction planning are some of the issues detailed below.

## Ongoing Regulatory Issues

### *Infrastructure Development Side Effects*

Chengdu’s massive renewal of traffic infrastructure in 2012 will undoubtedly benefit the future, but it fails to adequately consider transportation facilities for highly centralized

industrial parks in suburban areas. Factors such as too few bus lines and unreasonable transit time may negatively impact companies, in both business travel and employee commute time. In addition, traffic jams and traffic limitations during construction have caused great inconvenience. AmCham China hopes the Chengdu Municipal government will consider manufacturing enterprises and economic zones in future transportation plans, as well as stagger the schedule for future urban infrastructure projects, to avoid unnecessary interruptions for residents and workers.

### *Lack of Support for the Foreign Banking Sector*

Introducing foreign banks to China can create international competition and encourage creativity, innovation, and further development in the domestic banking sector. However, this goal cannot be realized without proper support for foreign banks to create this type of competition.

Currently, foreign banks in China generally have fewer assets and hold limited market share, due to later market entry, less physical coverage, and exposure to sovereign risk. Foreign banks face capitalization barriers due to regulations that place restrictions on the amount of credit parent companies are allowed to extend to their subsidiary branches, based on local performance. They lag behind Chinese banks that have long-term advantages of RMB business and state credit support. As a result, foreign banks in China have limited influence in the banking market.

Recently, foreign banks have actively planned to expand their business, seeking more coverage in China. However, the long processing time for new branches and sub-branches in western China compared to other regions in China significantly increases costs for foreign banks.

These factors seriously restrict the operations and growth of foreign banks, compared to their Chinese counterparts. As a result, foreign banks in China have little influence in the market, and are unable to contribute fully to innovation and competition within China. AmCham China recommends liberalization of the domestic banking sector, specifically loosening the restrictions on branch and sub-branch growth for foreign banks. This will introduce better competition to China’s banking sector, improving not only the domestic market, but the competitiveness of Chinese banks abroad.

# 成都

本章由中国西南美国商会（西南美国商会）撰写

## 引言

**成**都是四川省省会，也是中国西部地区最重要的经济和金融中心之一。作为中国“西部大开发”战略的组成部分之一，成都这座“盆地之城”获得了政府的大力支持，也一直是外商投资的首选城市之一。

得益于多元化的产业、优良的城市基础设施、高效的政府管理以及相对低廉的劳动力价格和生产成本，成都近年来吸引了大批的跨国企业和内资企业、房地产投资商和开发商来蓉投资。今年年初仲量联行发布的最新《中国新兴城市 50 强》报告中，成都位列新增的“1.5 线过渡型城市”一类，并且在中国新兴城市 50 强中名列首位。报告称成都现已拥有中国新兴城市 50 强中最大的办公物业市场、第二大零售物业市场，并且在物流物业产业具有强劲的发展潜力。成都已经成为众多跨国公司关注的对象，世界 500 强企业中有 200 多家均已进驻成都。作为中国西部新兴市场的代表，成都还主办了第十二届中国西部国际博览会，并将于 2013 年举办财富全球论坛。

2012 年第三季度，成都的 GDP 增长速度为 13%，达 182.6 亿美元（人民币 1775.1 亿元）。虽然 GDP 增长率比 2011 年下降 2%，但依然远高于 7.7% 的全国平均水平。尽管成都的经济发展前景在全球经济不景气的大背景下依然保持良好势头，但是依然存在着不少影响经济发展的因素：如政府限制外商投资行业、技术工人短缺、行业标准监管不力以及建设规划落后等等，将在下文详细论述。

## 现存监管问题

### 基础设施建设的副作用

2012 年，成都进行了大规模交通基础设施翻新改造工程，这无疑将造福未来城市发展，但却未能充分考虑到市

郊高度集中的工业园区对于交通设施的需求。公交线路太少以及运营时间不合理等因素都可能对企业商务出行和员工通勤造成负面影响。另外，工程施工导致的交通拥堵和交通管制也引起诸多不便。中国美国商会希望成都市政府在未来交通规划中能够充分考虑制造业企业和经济开发区的需求，错开时间安排未来城市基础设施工程的施工，避免给居民和员工造成不必要的干扰。

### 缺乏对外资银行业的支持

将外资银行引入中国市场能够营造国际竞争，鼓励创新，推动内资银行业发展。然而，没有对外资银行的适当支持，就无法形成竞争，也就无法实现上述目标。

目前在华外资银行由于进入中国市场较晚，服务覆盖的区域小，承受的政策风险高，普遍资产较少而且市场份额有限。同时，外资银行面临资本化障碍，因为外资银行通常根据分支机构的经营状况为其提供信贷额度授权，而此额度却受到中国法律法规的制约。外资银行在人民币业务和国家信贷支持方面远落后于中资银行。因此外资银行在中国银行业市场的影响力有限。

外资银行最近已积极规划扩大在华业务范围，提高网点覆盖率。但是由于外资银行在西部地区设立新的分支机构的程序要比在其他地区耗时长，因此大幅增加了外资银行的成本。

与中资银行相比，上述因素严重限制了外资银行的运营和增长。因此，外资银行在中国市场的影响力很小，也无法充分发挥激发中国市场创新和竞争的作用。中国美国商会建议放松对国内银行业的管制，特别是放宽对外资银行设立分支机构的限制。此举将增强中国银行业的竞争度，不仅促进国内市场的发展，还能增强中资银行在海外市场的竞争力。有关商业银行和相关政策的信息，详情请参阅《金融服务》一章。

For more information on Commercial Banking and related policies, see the Financial Services chapter.

## Recent Developments

### *Property Development*

As of the third quarter of 2012, there are a total of 20 Grade A office buildings in Chengdu, with an overall stock of approximately 1.23 million square meters. Most of these are clustered in the city center. Currently, there is only one Grade A office building in the New South Area, but with a number of projects in progress, there will be plenty of space in the future. On top of rising supply, there is continued demand for new office space, as many domestic firms and foreign enterprises come to Chengdu for its rapid economic development.

As the trade center of Southwest China, the retail property market in Chengdu is developing rapidly. By the third quarter of 2012, the city established 55 retail properties, including shopping centers and department stores, with a total stock of approximately 2.9 million square meters. The booming retail and consumer market has accelerated the expansion of retailers in Chengdu.

The improving living environment and increasing job opportunities have attracted a huge number of people into the city. The population growth increased demand for residential properties, including that of higher-income families demanding high-end residential environments. To meet this demand, many experienced domestic and overseas developers entered the city. Among China's southwestern cities, Chengdu has attracted the greatest number of developers. They have brought new modern housing concepts, further diversifying residential properties and improving quality.

### *Luxury Hotel Outlook*

As of the third quarter of 2012, there were approximately 15,649 rooms in four and five star hotels in Chengdu. By 2015, there will be approximately 18,511 five-star hotel rooms, plus another 2,933 four-star hotel rooms.

Despite this, the overall outlook for the industry is negative, due to the poor state of the global economy. The expected influx of new inventory will likely flood the market at this inopportune time. Another major issue for the new properties is the recruitment of talented personnel to staff the existing properties and new openings. At least 20,000 new staff will need to be recruited and retained to ensure the correct level of service.

AmCham China hopes that this talent shortage can be addressed through further training in the hospitality industry, as well as by loosening labor restrictions to allow qualified staff to work in Chengdu.

### *Pharmaceutical Industry Investment*

China's pharmaceutical market has successfully attracted increasing amounts of foreign investment to Chengdu. However, to achieve sustainable growth and investment, the industry must focus on long-term and strategic planning. If domestic Chinese pharmaceutical enterprises blindly pursue short-term profits instead of providing quality medicine with patient health in mind, the industry will fail in the long term. AmCham China recommends that for sustained growth, the Chengdu government facilitate cooperation between pharmaceutical industry experts, pharmaceutical companies, and national regulatory agencies, to enact rules on punitive damages based on model international provisions. This will not only ensure that foreign investments are sound, but that Chinese consumers may have access to safe and reliable medicines.

### *Developing Talent*

In order to accelerate the development of western talent, Chengdu has launched two new initiatives: "Chengdu Talent Plan: Implementation of Top-Notch Entrepreneurial Team Project" and "Chengdu Talent Plan: Implementation of Youth Projects and Overseas Short-term Project." These two new initiatives will, in combination with the current implementation of "The Introduction of High-Level Entrepreneurial Talent in Chengdu," help develop local talent.

Regional data shows that employers in the southwest region still report hopeful hiring plans for the fourth quarter of 2012 with a Net Employment Outlook increase of 14 percent. The data shows close competition in this region among Chongqing, Chengdu, Xi'an, Changsha and Wuhan. AmCham China appreciates Chengdu's progress in developing talent, and hopes that Chengdu will extend such initiatives to include foreign talent. We recommend that Chengdu attract and retain international talent by relaxing labor dispatch restrictions.

### *New Airport Terminal and Metro Line*

The new terminal at Chengdu's Shuangliu airport opened in 2012, increasing the passenger and airfreight capacity of the airport substantially. Chengdu's subway system continued to grow in 2012, with the opening of the East-West line. Construction of additional lines is underway. Construction of an elevated ring road above the second ring road began in the second half of 2012, causing massive congestion for inner city traffic. The construction of this elevated ring road has proceeded very quickly, however it has also brought tremendous inconvenience to those living in the city and had a negative ripple effect on transportation. While AmCham China applauds Chengdu's improvements in public transportation infrastructure, we hope for better management of road traffic around construction projects, perhaps through staggered scheduling.

## 最新进展

### 房地产开发

截止 2012 年第三季度，成都共计拥有 20 座 A 级写字楼，总面积 123 万平方米。这些写字楼大多集中坐落在成都市中心。目前新南区只有一座 A 级写字楼，但却有多个在建项目，完工后将使空间面积大大增加。成都经济的飞速增长吸引了大批内外资企业来蓉投资，所以在新办公空间供给不断增加的同时，需求也持续上扬。

作为中国西南地区的贸易中心，成都的零售地产市场正在经历快速发展。截止 2012 年第三季度，成都已建成 55 座零售物业，包括购物中心和百货商场，总面积约为 290 万平方米。零售业和消费市场的快速增长推动了成都零售地产的发展。

成都生活环境的改善和就业机会的增长吸引了大批人士来蓉发展。人口增长催生了住宅房地产需求，包括高收入家庭对高端住宅环境的需求。为了满足这些需求，很多国内外成熟地产开发商纷纷进入成都市场。在中国西南城市中，成都房地产市场中的开发商数量最多。他们不仅带来了全新的现代居住理念，还丰富了成都住宅房地产市场，提升了住宅品质。

### 豪华酒店的前景

截止 2012 年第三季度，成都四星级和五星级酒店共计拥有约 15649 间客房。到 2015 年，成都市五星级酒店客房量将上升至 18511 间左右，四星级酒店客房量约 2933 间左右。

尽管如此，鉴于全球经济不景气，以及新建豪华酒店可能大量入市，该行业的总体发展前景不容乐观。新建酒店面临的另一个主要问题是，现有以及新增职位空缺都很难招募到优秀人才。为了保障豪华酒店的服务水平，至少需要新聘用并留住 2 万名员工。

中国美国商会希望能够通过加强酒店服务业人员的培训，放松合格员工来成都就业的限制，缓解上述人才短缺的状况。

### 医药行业投资

中国的医药市场已经成功地吸引了越来越多的外商到成都投资。然而，为了实现可持续增长和投资，医药行业必须重视长期战略规划。长期来看，如果中国内资医药企

业盲目追求短期利益而不是以为病人健康提供优质药品为首要目标，该行业必将不能持久发展。中国美国商会建议，为了医药行业的持续发展，成都市政府应当加强医药行业专家、医药企业、国家监管机构之间的合作，并借鉴国际标准，规定惩罚性赔偿金。如此不仅可以保障外国投资，还可以让中国消费者使用上安全、放心药品。

### 人才开发

为了加快西部的人才开发，成都市出台了两项新办法：《“成都人才计划”：顶尖创新创业团队项目实施办法》和《“成都人才计划”：青年项目和海外短期项目实施办法》。这两项新办法，与《成都市引进高层次人才创新创业人才实施办法》一起，将促进成都本地人才开发。

区域数据显示，西南地区的用人单位 2012 年第四季度仍在发布人员招聘计划，而该地区净就业前景指数增长了 14%。数据还显示重庆、成都、西安、长沙和武汉等地正在激烈地争夺人才。中国美国商会赞赏成都市在人才开发领域所取得的成就，同时希望成都能够将上述办法的适用范围扩展至外籍人才。我们建议成都市通过放松劳务派遣限制来吸引和留住国际人才。

### 新建机场航站楼和地铁线路

2012 年，成都双流机场新航站楼投入运营使用，大幅提高了双流机场客、货运载能力。2012 年成都地铁建设继续扩展，东西线开通使用。其他新线路也正在建设过程中。2012 年下半年成都开始在现有二环路之上再建高架桥，导致市区交通大面积拥堵。虽然二环路高架桥建设速度很快，但的确给市民生活带来诸多不便且对城市交通造成负面涟漪效应。虽然中国美国商会对成都市政府改善交通基础设施的举措表示赞赏，但我们希望通过错开施工时段，更好地管理项目工地交通状况。

### 吸引大型企业

按照“通过引入龙头企业，带动上下游关联企业集群落户成都”的战略，2012 年成都已经吸引包括戴尔、联想以及龙头代工企业富士康、仁宝和纬创在内的诸多企业落户成都，未来还将吸引更多的上下游关联企业进驻。世界 500 强企业中已经有 200 多家企业进驻成都，数量居中国西南部地区之首，其中包括 173 家外国企业和 56 家中资企业。2012 年 1 月至 9 月，超过 20 家全球 500 强企业落户成都。

尽管在 2012 年 1 月至 8 月，外商在华直接投资减少

## Attracting Large Enterprises

In accordance with the “Complete the Industrial Cluster by Attracting Leading Companies Followed by Supporting Companies” initiative, Chengdu has attracted renowned international enterprises like Dell and Lenovo, as well as leading OEM companies such as Foxconn, Compal and Wistron, in 2012, which have all further attracted core support companies. Over 200 Fortune 500 companies have established bases in Chengdu, the most in southwest China, including 173 overseas enterprises and 56 domestic enterprises. Over 20 Fortune 500 companies have settled in Chengdu from January to September 2012.

Although foreign direct investment in China fell by 3.4 percent from January to August of 2012, Chengdu managed to achieve an impressive increase of US \$5.568 billion in realized foreign investment, a rise of 20.62 percent compared to 2011. 153 new foreign investment projects were approved, and 267 major projects consisting of RMB 172 billion were introduced. The newly introduced funds from the first half of 2012 are in the hundred billions (RMB), with most investments coming from the modern manufacturing industry and modern service industry.

The electronics manufacturing industry has rapidly grown into a RMB 100 billion industrial cluster, providing a strong role model for the development of IT industries in Meishan, Suining, Neijiang and surrounding cities. However, foreign-funded enterprises in Chengdu still face specific problems, including talent shortages and lack of government support.

## Conclusion

In recent years, Chengdu has consistently performed the best among cities in southwest China, serving as a model for the Go West development initiative. Chengdu is listed in Asia-Pacific’s Top Ten Best Foreign Investment Strategic Cities. However, in an uncertain global economy, it is necessary to monitor and seek solutions for barriers that may hinder continued and sustainable development.

## Recommendations

- **Improve traffic support systems around manufacturing enterprises and economic zones. Divide future urban infrastructure projects into phases, and stagger these phases to avoid unnecessary interruptions for residents and workers.**
- Loosen restrictions on branch and sub-branch growth for foreign banks, to liberalize the domestic banking sector and improve competition.
- Facilitate cooperation of pharmaceutical industry experts, pharmaceutical companies, and national regulatory agencies, to enact rules on punitive damages based on model international provisions.
- Attract and retain both domestic and international talent by relaxing labor dispatch and other restrictions.

3.4%，但成都市实现外商投资增加额却达到了 55.68 亿美元这一惊人的数字，比 2011 年增长了 20.62%。153 家新外商投资项目获得批准，同时引入 267 项重大项目，总价值 1720 亿元人民币。2012 年上半年新引进资金以人民币千亿计，且大部分投资来自现代制造业和现代服务业。

电子制造业已经快速发展成为产值达一万亿人民币的产业集群，为眉山、遂宁、内江以及成都周边城市的 IT 产业发展起到了强大的示范作用。然而在蓉外资企业依然面临着包括人才短缺和政府支持不足等具体问题。

## 结论

近年来，成都市经济发展一直居于中国西南城市之首，成为“西部大开发”战略实施一大典范。成都还入选“亚太十大最佳外商投资战略城市”。然而，由于全球经济依然面临诸多不确定性，因此有必要监测和寻求解决方案，扫清可能阻碍成都继续保持可持续发展的障碍。

## 建议

- 改善制造业企业和经济开发区的交通支持系统。分阶段实施城市基础设施改建项目，错峰作业，避免对居民和职工造成不必要的干扰。
- 放松对外资银行新设立分支机构的限制，实现国内银行业的自由化并促进竞争。
- 加强医药行业专家、医药企业、国家监管部门的合作，吸收国际通行的惩罚性赔偿金规定。
- 放松对劳务派遣和其他相关事项的限制，吸引和留住国内外人才来蓉就业。

# Chongqing

*This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).*

## Introduction

**T**he only municipality in western China under the direct control of the central government, Chongqing remains at the forefront of the “Go West” national development campaign. As enshrined in the 12<sup>th</sup> Five-Year Plan (2011-2015), the Chengdu-Chongqing Economic Zone is well on its way to becoming one of China’s leading regional power houses, having received significant government support in recent years.

In spite of sluggish external demand and slowing growth rates nationally, Chongqing’s economic performance remained relatively strong in 2012. Its GDP growth rate of 13.9 percent, exceeding the national average of 7.7 percent, makes it the fastest growing major city in China. FDI increased 20.1 percent to US \$3.506 billion (RMB 21.8 billion). Recent surveys report that the employment outlook for Chongqing has remained positive, increasing by 23 percent in 2012, while regional data show that employers in the southwest region had strong hiring plans for the fourth quarter of 2012 with a Net Employment Outlook increase of 14 percent. Imports and exports reached US \$25.044 billion (RMB 157.777 billion), a 170 percent increase on the previous year. Chongqing achieved an urbanization rate of 55 percent by September 2012, and is expected to reach 60 percent by 2015, a trend that will bolster its economic prospects.

Chongqing is western China’s leading industrial region. Motorcycle and motor vehicle production, its two primary industries, rank first and second in China. The hospitality industry in Chongqing is also one of the country’s fastest growing, at 34 percent in 2011, ranking second in the country. Fast growing education, legal, technology and manufacturing sectors will continue to drive Chongqing’s economy in the coming years.

Chongqing’s impressive growth is not, however, free of challenges. Concerns include uncertainty about potential effects from the slower rate of China’s overall growth and related reforms of its economic model, as well as external demand, a shortage of high-quality professional and technically skilled workers, social insurance and tax policies, and pollution.

## Ongoing Regulatory Issues

### *Labor Dispatch Regulation*

Proposed central government amendments to the labor dispatch regulations are viewed as more restrictive, with a significant impact on the temporary staffing market, and are expected to affect both domestic and foreign firms’ operations considerably. The term of dispatch would be reduced to less than six months, with restrictions placed on the types of temporary positions eligible for dispatch workers, as well as new conditions imposed on the use of dispatched labor to replace permanent staff on leave. The draft amendment also adds three new categories for labor dispatching and bans temporary positions over six months. For detailed recommendations on the regulation, please see Human Resources chapter.

### *Skilled Labor Shortages*

There is still a severe structural shortage of talent among a large pool of college graduates seeking employment. Surveys from 2012 reveal that due to lack of technical competencies (hard skills), about 23 percent of mainland China employers are still suffering a talent shortage—only a one percent decrease from the previous year. The top three occupations in greatest demand are technicians, sales representatives, and laborers. Technicians have ranked at the top since 2010.

With the increase of domestic raw material prices and labor costs, manufacturing companies are moving all or part of their production capabilities to China’s inland or abroad. China no longer holds an advantage in low-end labor. As China’s manufacturing industry develops in the direction of high-end technology, technical talent is in greater demand.

The hotel industry in China is also facing a shortfall of qualified employees. It is difficult to find fresh graduates from hospitality management universities in China who can meet the needs of international luxury hotels, with most graduates lacking adequate English skills. This issue is especially difficult in second- and third-tier cities. Additionally, most hotel management education programs lack sufficient training in certain aspects of operations. The resulting high turnover of employees presents yet another challenge. These conditions are a particular challenge to the luxury hotel segment where

# 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

庆是中国西部地区唯一的直辖市，仍旧是中国“西部大开发”战略的前沿阵地。随着“十二五”规划（2011—2015）正式确定建立成渝经济区，近年来在政府的大力支持下，成渝经济区正在成为中国主要的区域经济引擎之一。

2012年，在外部需求疲软，全国经济增长整体下滑的大背景下，重庆的经济增长却依然保持了相对强劲的势头，GDP增速达13.9%，远远超出全国7.7%的增速水平，成为中国经济增长速度最快的城市。外商直接投资稳步增长，总额达到35.06亿美元（人民币218亿元），同比增长20.1%。最新调查报告显示，重庆市就业前景保持良好势头，2012年全年就业增长23%，且地区数据显示，2012年第四季度西南地区用人单位招聘需求旺盛，净就业前景指数增长14%。进出口贸易总额达250.44亿美元（人民币1577.77亿元），比上一年增长170%。截止2012年9月，重庆城镇化水平达55%，预计2015年将升至60%，城镇化趋势将进一步促进该市经济增长。

重庆是中国西部工业重镇，摩托车和汽车制造是重庆的两大支柱产业，分别位列全国第一和第二。在酒店服务业方面，重庆也是全国发展最快的城市之一，2011年的增速为34%，位列全国第二。未来几年，教育、法律、技术和制造业的快速发展将继续推动重庆经济增长。

虽然增长速度令人惊叹，但同时也面临诸多挑战，包括以下各方面潜在影响带来的不确定性：中国整体经济增长放缓、重庆经济模式改革以及外部需求疲软、高技术专业人才和技术熟练工人短缺、社会保险和税收政策以及污染问题。

## 现存监管问题

### 劳务派遣监管

外界认为中国最近发布的《劳动合同法》修改草案中对劳务派遣管理更加严格，将对临时用工市场造成巨大影响，预计也会对中资和外资企业的运营产生较大影响。劳务派遣被限定在六个月以内的临时用工，对可以使用派遣工的临时岗位的种类施加各类限制，同时对因正式员工休假造成的临时性空缺使用派遣工做出了新规定。上述修订草案还新增加三类劳务派遣并规定用人单位使用劳动派遣员工的时间不得超过六个月。详情请参阅《人力资源》一章。

### 熟练技术人才短缺

尽管有大批高校毕业生面临就业，但依然存在着严重的结构性人才短缺。2012年的调查显示，由于技术能力（硬技能）匮乏，目前内地约23%的用人单位依然面临人才短缺问题——仅比去年降低1%。目前排名前三的紧缺职业包括技师、销售代表和体力工人。自2010年以来，技师一直名列紧缺职业之首。

由于国内原材料价格和用工成本上升，很多制造业企业正在将工厂整体或部分转移至中国内陆地区或其他国家。中国不再拥有低端劳动力成本优势。随着中国制造业正在向高端技术制造业转型，技术人才的需求量也日益增加。

中国酒店业也面临着招不到合格员工的问题。该行业很难从中国开设酒店管理专业的高校中招录到英语水平高、能够满足国际高档酒店用人需求的应届毕业生。这一问题在二三线城市更为突出。另外，大部分酒店管理教育计划都缺少足够的实际操作训练。员工离职率高是酒店业面临的另一大挑战。上述问题对于以高标准服务制胜的高档酒店业尤为突出。

中国美国商会促请地方政府以及中央政府采取相关政策和措施，使教育更能适应人力市场需求，培养充足的熟

the overall standard of service is a key component of success.

AmCham China urges both regional and central governments to adopt policies and incentives which better match educational programs with market expectations to ensure sufficient skilled labor is available going forward.

### *International Education*

Finding the right balance in the ongoing development of Chongqing's international schools is also key to the sustainability of this key service area. While Chongqing needs more international schools, careful planning must take place. If the pace of development is too fast, overall standards may fall as existing schools suffer. New international schools must be carefully vetted to ensure they have the strength and support to survive in Chongqing's challenging and still expanding market.

International schooling for expatriate families in Chongqing needs to be seen as an important element of the municipality's long-term economic plans, which require creating an attractive business and living environment for professionals (both domestic and foreign) who are globally mobile. Care should also be taken in the approval of new, for-profit schools entering the market, ensuring that the city's overall quality of education is not compromised for short-term profit.

The application of China's Social Insurance Tax to expatriate employees of international schools should also be reviewed. As many of these schools already have their own private benefit plans in place, the requirement can have a negative effect on the overall operations of the schools, at the expense of their educational mission. Additional details on the Social Insurance Tax can be found in our Human Resources chapter.

### *Legal Profession*

Lawyers play a key role in the development of China's civil society, as well as the underlying economy which supports it. AmCham China applauds Chongqing's ongoing efforts to build a stronger rule-based legal system. Unfortunately, foreign attorneys' rights to investigate and collect evidence remain relatively narrow, an obstacle to practicing in accordance with facts-based principles. Moreover, established rights of lawyers have been denied in practice in some cases, with lawyers' access to their clients limited in criminal cases and the right of cross-examination problematic in civil cases. AmCham China encourages further efforts to strengthen the implementation of a rule-based legal system in Chongqing, including ensuring lawyers' rights and the fulfillment of their professional obligations.

## Recent Developments

### *Legal Environment Improvements*

During the past year, under the government's leadership, Chongqing's legal services sector has developed considerably. The investment environment, legal environment, and service attitude and efficiency of government sectors have all improved. Nevertheless, there is still room for improvement when it comes to specific issues such as double approval. The resolution of these and other issues remains important.

In 2012, the most significant industry change was the modification of the "PRC's Lawyer's Regulations" by the National People's Congress Standing Committee, effective January 1, 2013. The major revisions entail certain privileges such as, "the right of investigation and evidence collection," "criminal defense rights," "right of expression immunity," and so on. AmCham China looks forward to their implementation, and to an enhanced environment in which legal professionals operate. For further information see Legal Services chapter.

### *Development of International Education*

International education in Chongqing should continue to expand, following encouraging growth in 2012. Of the two international schools in Chongqing, only one has approval from the Central Government. The largest international school in Chongqing has already passed the 220 student mark and is now offering the IGCSE, an internationally recognized education program for 14-16 year olds, as well as the International A Levels, another internationally recognized program for 16-18 year olds. As these developments make Chongqing a more attractive destination for international families with older students, they also contribute to Chongqing's international competitiveness. Ever more graduates of these schools are attending top universities in the USA and Australia before bringing their talents back to China.

The largest International School in Chongqing, YCIS, is likely to reach its maximum student capacity of 350 students within 12-18 months. Currently, available classroom space is limited, with some classes already full. Expansion of successful international schools and the development of new international schools will serve as important drivers of Chongqing's position in the international community.

### *Automobile Manufacturing Industry Developments*

With the goal of establishing China's largest automobile manufacturing base, the Chongqing automobile industry will continue to implement the "1+6+1000" automobile industrial system. Changan Automobile Group, which includes Changan Auto, Changan Ford, Changan Suzuki and Changan Kuayue, is playing the leading role in this

练技术人才。

## 国际教育

保持重庆国际学校持续平衡发展是确保这一重要服务领域可持续发展的关键。虽然重庆需要建设更多的国际学校，但必须进行审慎规划。如果开发速度过快，那么现有学校的整体水准就会下降。审批新建国际学校时务必确保该校具备在重庆这一充满挑战却仍在扩展的市场上生存发展的能力和实力。

为在渝外籍家庭子女提供国际教育，应被视作重庆市长期经济规划的重要部分。这就要求为全球流动的（国内外）专业人士来渝工作创造一个具有吸引力的商业和生活环境。批准新建赢利性国际学校应当格外谨慎，以确保重庆市整体教育水平不会因追逐短期利益而受到削弱。

针对国际学校外籍职员适用中国社会保障税的做法也应该进行商榷。鉴于很多学校都已经建立了自己的员工福利计划，该要求会对国际学校的整体运营造成负面影响，最终影响学校的教学宗旨。有关社会保障税的相关问题，详情请参阅《人力资源》一章。

## 法律业

律师在中国公民社会发展和经济发展中发挥着关键作用。中国美国商会对重庆市正在进行的加强法制体系建设工作表示赞赏。遗憾的是，外国律师的调查取证权依然相对狭窄，成为他们依据事实进行法律执业的一大障碍。另外，在某些案件中，律师行使法定权利也受限，比如刑事案件中限制律师会见当事人，民事案件中限制律师的交叉询问权。中国美国商会希望重庆市政府采取进一步的措施，加强法治社会建设，包括保障律师能够充分行使权利，履行义务。

## 最新进展

### 法制环境改善

过去一年中，在政府领导下，重庆市的法律服务业获得了长足的发展。投资环境、法制环境，政府部门的服务态度和效率都得到了全面提高。然而在具体问题上，如双重审批问题，依然存在改进空间。如何解决上述问题和其他问题依然十分重要。

2012年，全国人大常委会修改《中华人民共和国律师

法》堪称本年度法律界最重要的变革。修改后的《律师法》于2013年1月1日生效实施。修改后的法律明确规定了“调查取证权”、“刑事辩护权”、“辩护豁免权”等权利。中国美国商会期待这些权利能够落到实处，改善法律工作者的执业环境。详情请参阅《法律服务》一章。

## 国际教育的发展

重庆市国际教育业应当延续2012年的良好发展势头持续增长。目前渝上两家国际学校中，只有其中一家获得了中央政府的批准。这家重庆市最大的国际学校学生人数已经达到220名，目前已开设全球通行的IGCSE14-16周岁学生的教育课程，以及针对16-18岁学生的国际A级教育课程。上述成就增加了重庆对家中有高年级学生的外籍家庭的吸引力，同时也提升了重庆的国际竞争力。越来越多国际学校毕业生升入美国和澳大利亚的顶级高校，并在学成后回到中国工作。

预计在12-18个月内，重庆市最大的国际学校——重庆耀中国际学校的学生人数将饱和，达到350人。目前教室空间有限，某些班级已经满员。扩大现有国际学校的规模并新建其他国际学校将成为重庆市国际化进程的重要推动因素。

## 汽车制造业取得的成就

在建立中国最大的汽车制造基地这一目标的指引下，重庆市汽车行业将继续建设“1+6+1000”汽车产业体系。即以长安集团在渝企业长安股份、长安福特、长安铃木及长安跨越为龙头，吸引国内六大知名企业来渝发展，做强1000家配套企业，着力发展轿车、SUV、微型车、商用车、新能源轿车和特种车的研发。

重庆目前正在建设两江新区核心产业基地和渝西及九龙坡、沙坪坝商用车产业基地。预计到2015年，两江新区核心产业基地产值将达到人民币2700亿元。渝西及九龙坡、沙坪坝商用车产业基地产值将达到人民币1500亿元。未来三年内，重庆市政府将大力支持“十百千亿”重点企业发展。

## 结论

重庆市惊人、快速的经济增长充分反应了中国为开发西部地区所作出的巨大努力。重庆这一中国西部直辖市是汽车制造和信息技术产业等中国最强产业部门的大本营。

initiative. The initiative will also promote investment in the other six car-manufacturing enterprises developing in Chongqing and strengthen the scale of 1000 automotive system enterprises to form an integrated and reasonable industrial system. It also focuses on the research and development of sedans, SUVs, subcompact cars, commercial vehicles, new energy vehicles, and special vehicles.

Chongqing is currently constructing the Liangjiang New Area and commercial vehicle manufacturing base of West Chongqing Jiulongpo and Shapingba. By 2015, the Liangjiang New Area's output is expected to reach RMB 270 billion. The vehicle manufacturing base of West Chongqing is expected to produce an output of RMB 150 billion. During the next three years, Chongqing's government will heavily support the development of the "Billions Key Enterprises."

## Conclusion

Chongqing's outstanding and fast paced economic performance reflects China's considerable efforts towards developing western China. The western municipality is home to some of China's strongest industries in sectors such as motor vehicle production and IT. As these industries grow with government support and foreign investment, the potential for further progress remains strong.

While Chongqing has so far avoided a growth slowdown as expected elsewhere in China and abroad, it still faces many challenges. Serious talent shortfalls in several key growth sectors, the continuing need for a stronger and more transparent legal system, and other human resource constraints need attention. Chongqing's ability to adjust to the new national development model relying more on private household wealth and domestic demand, and less on the investment and infrastructure development, will likewise be a critical factor in its future success.

## Recommendations

- **Continue to develop a stronger and more transparent legal system, address corruption, and better empower legal professionals.**
- Increase support for international education, to attract foreign professionals and their families and thereby strengthen Chongqing's competitiveness in the international marketplace.
- Attract and retain international talent by relaxing labor dispatch restrictions.
- Achieve a better balance between talent needs and the pool of trained talent, in a number of key industrial and service sectors.

这些产业在政府扶持和外商投资推动下，依然保有巨大的发展潜力。

尽管目前重庆已经避免了海外及国内其他地区所预测的经济衰退的情况，但依然面临着诸多挑战。几大重点发展产业面临严重人才短缺、急需加强法律体系建设、提升法律体系的透明度以及其他人力资源缺乏等问题都值得关注。重庆适应国家经济发展转型的能力，既越来越多地依赖于个体家庭财富的多少和内需的大小，越来越少依赖投资和基础设施建设将成为决定重庆市未来可持续发展的关键。

## 建议

- 加强法律体系建设，提升法律体系透明度，打击腐败并赋予法律专业人士更多的权利。
- 加大对国际教育的支持力度，吸引境外人才及其家人来渝发展，从而提升重庆市在国际市场上的竞争力。
- 通过放松对劳务派遣的限制，吸引并留住国际人才。
- 努力实现核心产业和服务业人才供需的合理平衡。

# Dalian

## Introduction

**D**alian is one of the 14 open coastal cities in China and Northeast China's primary foreign portal. It is an important international shipping and logistics center and regional financial center for Northeast Asia. Dalian's municipal government has tried to make the city more attractive to foreign investment by developing infrastructure across the city. The government is focused on improving the city's tense transportation situation by constructing a new subway system and light-rail train line, as well as a new train station and sea bridge. A new high-speed train line linking Dalian and Harbin opened at the end of 2012, brought the whole Northeast region much closer together. The government is also working to improve the healthcare and education situation for foreigners in the city.

However, delays in completing the subway system and high-speed train lines have raised concerns in the public's eyes. Healthcare services for foreigners, though improving slowly, remain limited, and there is still no international hospital. While some progress has been made in opening a channel for discussion between foreign-invested enterprises and municipal authorities, AmCham China would welcome more opportunities to engage in a candid, constructive, and institutionalized dialogue to continue improving the business environment in Dalian.

## Ongoing Regulatory Issues

### *Transparency and Dialogue*

Greater access to and more timely notice of information on government policies, laws, and regulations would also be helpful. Foreign companies, especially small- and medium-sized enterprises, are often in the dark about changing local requirements. This leads to confusion among companies, even within the same development zone, as to what the rules are. The lack of quality policy translations is seen as another barrier for foreign enterprises seeking to comply with the law. In 2012, Northeast China Chapter held meetings with local officials in conjunction with the US Consulate General. AmCham China welcomes further engagements planned for 2013, on a twice yearly basis, that will provide a mechanism

to anticipate and address these and other challenges in a more timely and productive way.

### *Transportation*

The last few years were marked by ambitious plans from the local government to improve the transportation system in Dalian. The Dalian New Airport, currently under construction in Jinzhou Bay, will accommodate the world's largest airliner, the A380, when completed by 2015. The New Dalian Railway Station, also under construction adjacent to the Shenyang-Dalian Highway, about 15 kilometers away from city center and major development zones, will also be 10 kilometers away from the Zhoushuizi International Airport. Construction has also started on the new Xinghai Bay Bridge, an eight-lane span connecting downtown and Golden Sand Beach to the Dalian High Tech Park. These projects' completion should significantly reduce congestion throughout the city.

Delays in many of these major transportation projects have, however, proven frustrating for businesses affected by overall traffic congestion and the limits of the older systems. The high-speed railway between Dalian and Harbin, originally set to open at the beginning of 2012, was pushed back to the year's end. It opened very late in 2012, and should ease the heavy freight traffic on the Harbin-Dalian railway. Similarly, the long awaited opening of the Dalian Metro (subway) system, originally scheduled for 2012, has now been delayed until 2015. Another transportation project, the "Number 8" Fast Track, with a total length of approximately 43 kilometers, was expected to be completed by the end of 2012 but has now been pushed back as well. While we understand some of the unanticipated complexity of projects on this scale, and the huge benefits expected when they are completed, these unexpected delays have had a negative effect on the business community. Additionally, the city also has a severe parking shortage, resulting in cars parked on the sidewalks and along the streets, which impedes traffic and jeopardizes pedestrian safety by forcing people to walk on roads.

# 大连

## 引言

**大**连是中国十四个沿海开放城市之一，也是中国东北主要的外贸港口，是重要的国际航运和物流中心，东北亚区域金融中心。大连市政府正着力加大城市基础设施建设力度，吸引更多外商投资。政府计划新建一条地铁和轻轨系统，再建一座火车站及一座跨海大桥，缓解该市的交通拥挤状况。2012年底，大连至哈尔滨的一条新高铁线路开通运营，使整个东北地区更为紧密地联系在一起。市政府还不断努力提高面向外籍人士的医疗和教育服务水平。

然而，地铁和多条高铁线路的延工引起了公众的广泛关注。向外籍人士提供的医疗服务水平虽然在缓慢提高，但提高幅度有限，并且仍然没有国际医院。当地在开放市政府部门与外资企业沟通平台方面已取得一定进展，中国美国商会欢迎有更多的机会开展坦诚、有建设性和制度性的对话，以继续提升大连的商务环境。

## 现存监管问题

### 透明度及对话交流

扩大公开范围，更加及时发布政府的相关政策、法律和法规有助于提高信息透明度。外资企业，特别是中小型外资企业，通常无法知悉当地政府相关规定的变动情况。这就导致了身处同一开发区的各家企业对相关监管规定的了解混乱。相关政策缺乏准确的英文版本则是外资企业遵守法律的又一障碍。2012年，中国美国商会东北办公室及美国总领馆与当地官员进行了会谈。中国美国商会希望在2013年与大连市政府进行一年两次更加深入的对话，从而建立更加及时有效地讨论解决上述及其他相关问题的机制。

## 交通

过去几年来，大连市政府一直计划大力改善市政交通系统。目前于金州湾在建的大连市新机场将于2015年底前竣工，该机场可以起降全球最大的A380客机。目前正处于施工中的新大连火车站毗邻沈阳—大连高速公路，距离市中心和主要经济开发区仅有15公里，距离周水子国际机场也只有10公里。目前在建工程还有八车道的新星海湾大桥，建成后将连接大连市中心、金州湾和大连市高科技园区。这些项目完工后将极大地改善市内交通拥挤状况。

但是，许多上述大型交通工程项目一再延工，加上现有交通系统弊端频发，拥堵状况不见好转，挫伤了外商的投资热情。哈大高速铁路原计划于2012年初开通运营，但却推后至年底。该铁路于2012年末才开通，应该能使哈尔滨至大连铁路货运运力紧张的状况有所缓解。无独有偶，万众期待已久的大连地铁系统原定于2012年开通，但如今却被延期至2015年。另一个交通项目，总长约43公里的轻轨八号线工程原定于2012年底完工，如今也延期。尽管我们理解上述大规模的项目难免会遇到一些不可预期的复杂问题，而这些工程完工后将会带来巨大的收益，但这些意料之外的延工却对商业投资和运营造成了负面的影响。另外，大连市还存在停车位严重不足的问题，很多汽车都只能停在人行道和路边，造成行人必须在路上通行，影响了正常交通，也威胁行人安全。

## 最新进展

### 经济指标和发展

2012年是中国实施“十二五”规划的重要一年。大连市政府发布了一系列经济和社会发展目标。很多目标都需要在2012年底实现。2012年全年大连市GDP达到人民币7000亿元（1125.6亿美元），比上年增长11%；政府财政收入总计751亿人民币（120.8亿美元），同比增长15.2%。

## Recent Developments

### *Economic Indicators and Development*

2012 was a key year for carrying out China's 12<sup>th</sup> Five-Year Plan. The Dalian municipal government set a series of goals and targets for economic and social development. Most of them were expected to be achieved by the year's end. During the year of 2012, Dalian's GDP reached RMB 700 billion (US \$112.56 billion), an increase of 11 percent over the previous year; government fiscal revenue totaled RMB 75.1 billion (US \$12.08 billion), up 15.2 percent.

### *Healthcare*

After significant engagement with AmCham China and member companies, a high-quality clinic, International SOS, should be opened to serve the Dalian and Northeast China expat community early in 2013. The clinic is staffed by western-trained physicians and an English-speaking staff. While the city has 20 hospitals, only a few offer special sections for foreigners with prioritized medical care at an increased fee. Even in these, however, doctors' English skills are often limited. Historically, large foreign enterprises have contracted private international companies to provide on-site health clinics for their own employees. Continued progress in this area will be a significant and needed improvement in the social infrastructure for foreigners in Dalian, and should eliminate one of the biggest obstacles that foreign companies have faced operating in the city.

With an increasing number of younger expat families, there has been a growing interest in prenatal care, and even delivery at local specialized hospitals either in Dalian or surrounding parts of Liaoning. Many specialized hospitals provide basic English language support by Chinese-trained providers. All emergency services are still provided through local hospitals, although there may be private clinic participation.

### *Social Insurance*

Social Insurance remains an area of concern to members operating in Dalian. In late 2011, the city notified the local business community of their intent to remove the cap on the existing social insurance ceiling and add expats to the pool. This would have added significant additional payroll costs to businesses operating in Dalian. With the assistance of US Ambassador Gary Locke, the US Consul General in Shenyang, and the combined efforts of local members and AmCham China, the implementation was postponed pending further review. To date, the social insurance requirement has not been pushed forward, and businesses have not been required to pay this portion of the social insurance. A recently published document by the Dalian Social Insurance Fund Management Center has implied that the caps will be restored to their previous levels. Unfortunately, the document is silent regarding the inclusion of foreigners. It is

crucial that any company considering establishing itself in Dalian fully explore the subject of Social Insurance with the local government to get the latest update.

### *Education*

While Dalian has a large number of local schools throughout the city, with 23 general institutions of higher education, 80 middle and high schools, and 1,432 kindergartens, most remain closed to international students, and there is no indication that this will change in the near future. The number of international schools remains limited with only the Dalian American International School (DAIS) and Dalian Maple Leaf. While DAIS only has one campus located in the Golden Pebble Beach area, Maple Leaf has several campuses in various locations across the city. Both schools also provide education for local Chinese who are planning to go abroad for higher education, and also provide boarding options for the Chinese students. DAIS had plans to open another campus in Dalian; however, the project is on hold with no further updates.

### *Hospitality and Tourism*

Over the next five years Dalian is expected to build 20 additional five-star hotels in an already saturated hotel environment, where for more than half the year supply exceeds demand. The city's tourism bureau believes that in order for tourism to truly flourish, the basic infrastructure of quality hotels, efficiently networked transportation hubs, iconic convention/exhibition centers, and sports competitions need to be better developed. With more than 12 million visitors transiting in and out of the airport and cruise hubs, Dalian is promoting itself as a 'Romantic City' to the national, regional and international tourist markets. Aside from the picturesque topography of the city, regular promotions like Fashion Week, a Beer Festival, Seafood Exhibition and Summer Davos Forum attract both business and leisure guests to the city. With the winter months being the slowest visitor season in Dalian, cold weather activities such as ski competitions and hot spring vacation destinations are also being developed by the city's tourism board.

Although the city tries to set its eyes on attracting the Southeast Asian and European long haul markets, its primary consumers reside locally and across the Yellow Sea in Korea and Japan. With the cultural ties to other North East Asian countries being much tighter despite the tension between them, visitors from these neighboring nations are drawn to Dalian not just because of historical ties but especially because of business. As for the local market, Dalian's launch of the high-speed train will bring visitors to Dalian and then to the other Northeast cities as it weaves through Shenyang all the way to Harbin and Changchun.

## 医疗保健

经过中国美国商会和会员公司的不懈努力，一家高水平的医疗机构——国际 SOS 救援中心将于 2013 年初在大连开业，主要服务于大连及中国东北地区的外籍人士。该诊所配备受过西方医学训练的医生以及会说英文的医护人员。虽然大连市内有 20 家医院，但仅有极少数医院为外籍人士开设收费型优先医疗服务。即使是开设这些服务的医院，医生的英文水平通常也很有限。大型外资企业之前通常都会购买私人国际公司的服务，为自己的员工提供现场诊疗服务。继续推进这一领域的发展，将极大改善外籍人士在大连生活的社会基础，也将扫除外资企业在大连经营的最大障碍之一。

随着在大连居住的年轻外籍家庭数量的增多，他们对大连及辽宁省周边地区的产前及生育等专业护理服务的需求量也不断上升。许多专门医院提供中国籍的护理师和基本的英文服务。急诊服务依然由当地医院提供，虽然私人诊所也可能提供。

## 社会保障

社会保障问题依然是在大连的会员所担心的主要问题之一。2011 年年末，大连市政府通知当地的企业，他们有意取消现行社会保险缴费上限的规定，并将在大连就业的外籍人士纳入社保统筹。这一政策无疑将极大地加重企业在大连经营的人工成本。在美国驻华大使骆家辉先生及美国驻沈阳总领馆的帮助下，在当地会员以及中国美国商会的共同努力下，该项政策暂缓实施并有待进一步审议。迄今为止，这项社保规定并没有实际执行，企业也没有被要求缴纳这部分社会保险费。大连社会保险基金管理中心发布的最新报告显示，社保缴费上限依然保持了原有水平。但遗憾的是，这份报告中没有提及外国人参保问题。对有意在大连建立企业的会员来说，重要的事项是它必须充分了解当地政府在社会保险方面的最新政策。

## 教育

虽然大连市拥有众多的教育机构，包括 23 所普通高等院校、80 所中学和 1432 所幼儿园，但这些学校大多不向国际学生开放，而且这一现状短期内不可能得到改变。目前大连市仅有两所国际学校，大连美国国际学校 (DAIS) 和大连枫叶国际学校。大连美国国际学校仅有一个分校，位于金石滩地区，而大连枫叶学校在全市拥有多个校区。这两所学校都接收计划出国留学的中国本地学生并向他们

提供食宿服务。大连美国国际学校之前计划在大连市开设另一个分校，但这一项目目前处于搁置状态。

## 酒店及旅游业

未来五年内，大连将新建 20 家五星级酒店，预计该市酒店业本已饱和的状况将进一步加剧，大连酒店业一年有六个多月处于供大于求的状态。大连市旅游局认为为了切实繁荣本市的旅游业，需要进一步完善包括星级酒店、网络交通、会展以及体育竞技等基础设施建设。目前大连的机场和港口游客吞吐量达 1200 万人次，大连市正在竭力打造“浪漫之都”的形象以吸引各国、各地区的中外游客。除了大力宣传该市优美的自然风光外，大连还定期举办时装周、啤酒节、海鲜节和夏季达沃斯论坛等活动来吸引投资者和游客。冬季通常是大连的旅游淡季，但该市旅游局正在规划利用严寒等自然条件来开办滑冰比赛和温泉度假村等项目。

尽管大连市一直着眼于吸引东南亚和欧洲的长线投资，但其主要的消费群体依然是国内消费者以及黄海周边的韩国和日本游客。尽管东北亚各国摩擦不断，但他们之间的文化纽带却无法割舍并不断加深，邻国游客为大连所吸引不仅仅是基于历史渊源，更多地是基于商业考虑。从国内市场看，大连开通高铁将运送更多的游客来到大连，并由大连去往沈阳、哈尔滨和长春等东北其他城市。

## 结论

大连继续保持着高速增长，但也需要更好地平衡高速增长和优化环境之间的关系，以吸引更多的国内外顶尖公司和创新型公司。中国美国商会鼓励并赞赏大连市政府在完善医疗、教育和酒店业方面所作出的努力，这必将更好地吸引外国家庭来大连定居。

解决目前存在的交通拥堵和交通体系落后的问题，缓解停车位严重不足的状况，增强当地政策和规章的透明度，依然是摆在大连市政府面前的头等大事。

## Conclusion

Dalian continues to grow at an impressive pace, but it needs to achieve a better balance between that rapid growth and its evolution to a more sophisticated environment that attracts the best and most innovative companies, whether foreign or domestic. AmCham China encourages and applauds the efforts of the municipal government to improve healthcare, education, and hospitality that will make the city so much more attractive to foreign families.

Therefore, tackling the ongoing challenges of a congested and underdeveloped transportation system, a severe lack of parking spaces, and addressing the need for more transparency in local policies and regulations remain important challenges in the year ahead.

## Recommendations

- **Timely completion and additional investment as needed in the transportation infrastructure, including the Fast Track Transit, subway, and bus lanes, to reduce congestion.**
- Expand ongoing dialogue between the local government, AmCham China, and the Northeast China chapter to increase the flow of information and the mutual benefits which result.
- Publish the latest updates to regulations and policies on a user-friendly website in English, as early as possible, with adequate opportunities for open consultation with the foreign business community before new laws and regulations are enacted.

## 建议

- 及时追加投资，如期完成交通基础设施工程，包括快轨、地铁和公交车道，以缓解拥堵状况。
- 扩大当地政府与中国美国商会及其东北办公室交流对话的范围，促进信息沟通，实现互利共赢。
- 及时地在政府网站上公布最新法规和政策的英文版，在最新法律法规出台前给予适当时间，公开征询外资企业意见建议。

# Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai).

## Introduction

**A**midst ongoing global economic uncertainty, Shanghai continued to build on its ambitious development goals, as laid out in the National Development and Reform Commission's (NDRC) *2011/2012 Development Report of Shanghai*, to become an international financial center (IFC) and trade, shipping and economic center by 2020. As the commercial, industrial and financial capital of China, Shanghai is well positioned to realize its development plans, though much work remains to be done. Further reforms are needed to build the foundation of a modern IFC with advanced financial services products and a supportive regulatory regime. Shanghai Customs should continue to clarify new regulations and reconsider existing protocols to improve the facilitation of merchandise movement for foreign companies. Ongoing human resource (HR) constraints need to be addressed with a commitment to further develop the city's talent pool.

AmCham Shanghai and AmCham China are committed to assisting Shanghai in achieving its 2020 development goals and look forward to enhancing our long-standing partnership with the Shanghai Municipal Government in support of those efforts.

## Ongoing Regulatory Issues

### *Developing Shanghai into an IFC*

In 2009, the State Council declared Shanghai would establish itself as one of the world's preeminent international financial centers (IFC) by 2020. The ambitious and far reaching plan calls for Shanghai to feature a mature financial system that boasts well-established financial institutions, advanced markets and a wide range of globally competitive financial products and services, as well as advanced tax, credit, regulatory and legal systems to support the IFC objective. Shanghai, as well as China as a whole, likely would gain enormous benefits in becoming an IFC, ranging from advancing economic development and garnering national prestige to attracting top-level professional talents and stimulating city infrastructure and other quality of life improvements.

In June 2012, AmCham Shanghai and Brookings Institution

launched *Achieving 2020: An assessment of Shanghai's plan to become an international financial center by 2020*, to offer recommendations for Shanghai to consider in its plan. These include:

- The need for well-defined, highly intermediated financial markets, and the ability to create and deliver financial products within those markets.
- Shanghai needs depth in both the number and the competitiveness of market participants—mutually in financial institutions and institutional investors.
- Shanghai needs to cultivate a deep reservoir of knowledgeable, innovative, and proficient finance professionals.
- There must be appropriate financial infrastructure and regulatory parameters that facilitate the development of the aforementioned three issues.

(For more information refer to the Financial Services chapter.)

## Customs & Logistics

Though Shanghai Customs has made significant progress in increasing efficiency and reducing bottlenecks, including increased integration of Shanghai Customs and the Shanghai Entry-Exit Inspection and Quarantine Bureau (CIQ), challenges remain. For example, Joint Announcement No. 203, implemented by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and General Administration of Customs (GAC) in 2012, added a number of product categories to the compulsory inspection category that were previously not subject to inspection, adversely affecting companies' supply chain operations. Additionally, Regulation 33 went into effect in 2010, requiring 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, resulting in longer clearance times for relevant goods.

Going forward, AmCham Shanghai and AmCham China recommend that Shanghai Customs:

- Inform management of foreign companies concerning regulations, and how to address and resolve compliance

# 上海

本章节由上海美国商会撰写。

## 引言

# 尽

管当今全球经济形势仍不稳定，但上海依然按照发改委发布的《2011/2012年上海发展报告》中的宏伟蓝图继续努力，争取在2020年前将上海建设成为国际金融、贸易、航运和经济中心。尽管还有很多方面需要改善，但作为中国工、商业和金融业中心的上海，对实现上述发展蓝图却是志在必得。未来改革的方向是建立现代国际金融中心的基础，包括开发先进金融服务产品和配套监管框架。上海海关应当继续明确新的监管措施，并重新审议现行监管框架，促进外资公司的商品流动。此外，为进一步增强上海的人才建设，还需要修改现行人力资源政策领域的诸多限制。

上海美国商会和中国美国商会一直致力于协助上海实现2020年发展目标，并期待与上海市政府继续深化长期合作关系，为上海实现上述改革目标做出更大的贡献。

## 现存监管问题

### 将上海建设成国际金融中心

2009年，国务院宣布将于2020年将上海建设成为世界著名国际金融中心（IFC）。根据这一意义深远的宏伟蓝图，届时上海将建成成熟的金融体系，拥有完备的金融机构、先进的金融市场、众多具有国际竞争力的金融产品和服务，并同时建成包含先进的税收、信贷、监管和法律在内的配套体系。上海市乃至全中国都将受益于上海发展成为国际金融中心，包括促进经济增长，提升国家声誉，吸引顶级专业人才，推动城市基础设施升级及提高人民生活水平。

2012年6月，上海美国商会和布鲁金斯协会联合发布了《展望2020：对上海2020年建成国际金融中心计划的评估与建议》，对上海建成国际金融中心提出了建议。包括：

- 需要建立定义清晰、中介服务高度发达的金融市场，

并能够在这些市场中创造和提供各种金融产品。

- 上海需要提升市场参与者——金融机构和机构投资者数量和竞争力。
- 上海需要深层次地培养储备知识丰富、富有创新精神和精通业务的金融专业人才。
- 必须建立能够促进前述三项发展的适当的金融基础设施和监管标准。

（详情请参阅《金融服务》一章。）

## 海关与物流

尽管上海海关已经采取了将上海海关和上海进出口检验检疫局的职能进一步整合在内的诸多措施来提高效率和减少瓶颈，并取得了显著成效，但在实践中依然存在着诸多挑战。例如，国家质量监督检验检疫总局（质检总局）和国家海关总署（海关总署）于2012年联实施的203号文中就将一些原来并不需要经过检验检疫的产品纳入强制检验检疫的范围，从而对企业供应链运营造成负面影响。另外，于2010年7月开始实施的33号规定要求进出口货样和/或广告品，应均由进出口收发货人向海关申请注册登记号，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加长。

上海美国商会和中国美国商会建议上海海关：

- 向外资企业管理层通报有关如何解决和处理合规问题的法律法规，帮助企业了解核心规则；
- 就如何最大程度地从东盟-中国自由贸易区中受益发布进一步指南；
- 明确解释上海数个保税区之间的区别，整合优化保税区类别，以便提高企业经营效率；
- 针对口岸海关、检验检疫、关税税则分类、验证、清关和估价技术上复杂、实践操作变化较大的问题向企

issues to help enterprises build more awareness on key rules;

- Issue further instructions on how to maximize the various benefits of the ASEAN-China Free Trade Area;
- Improve explanations concerning the differences among Shanghai's several bonded zones, and integrate and simplify the types of bonded zones so that enterprise operations can be more efficient; and
- Instruct enterprises on the technical complexities and varied practices within port customs, as well as inspection and quarantine, tariff classifications, certification, clearance, and valuation.

(For more information refer to the Customs chapter and Express Delivery Services chapter.)

### ***HR Constraints***

Attracting, developing and retaining skilled workers and professionals continues to be a challenge for businesses in Shanghai, and more needs to be done to support Shanghai's talent pool. AmCham Shanghai and AmCham China encourage Shanghai to evaluate its educational infrastructure and its efficacy in producing highly skilled labor. Initiatives such as partnerships between business and education, study abroad programs for Chinese students and incentives for overseas students and recent graduates to move to Shanghai would go a long way toward filling the existing talent vacuum.

HR continues to be a leading challenge for American businesses in Shanghai. According to AmCham Shanghai's 2011-2012 China Business Report, 90 percent of companies say HR constraints hinder their business operations to some extent. Stricter enforcement and narrow interpretation of regulations for obtaining Chinese work visas and permits also contribute to this challenge. AmCham Shanghai and AmCham China applaud Shanghai's further efforts to address the talent vacuum. A long-term HR initiative that encourages industry-academia partnerships, more study abroad programs, investment from foreign academic institutions, and easing of visa requirements for overseas students is necessary to support Shanghai's economy as it transforms into a global economic hub.

(For more information refer to the Human Resources chapter.)

## **Recent Developments**

### ***Shanghai's Business Climate***

In 2012, Shanghai's GDP expanded 7.5 percent to RMB 2.01 trillion (US \$319 billion), down from an 8.2 percent growth rate in 2011. The easing of the city's output in 2012 was in line with the national economy, which moderated to 7.8 percent GDP growth, down from a 9.2 percent growth rate

achieved the previous year. Shanghai's foreign trade volume amounted to US \$437 billion in 2012, with a trade deficit of US \$23 billion. Exports amounted to US \$207 billion, down 1.4 percent from 2011, while imports reached US \$230 billion, a 1 percent increase year-on-year. Retail sales rose 9 percent over 2011. Contracted foreign direct investment (FDI) into Shanghai increased 3.7 percent in 2012 to RMB 525 billion. This is a striking affirmation of the international business community's recognition of Shanghai as a leading Asia-Pacific business hub.

### ***Financial Services Reforms***

Shanghai continues to build the infrastructure to achieve its goal of becoming an IFC by 2020. In April, the quota for foreign investment as stipulated under the Qualified Foreign Institutional Investor (QFII) program was raised from US \$30 billion to US \$80 billion, opening the door for more foreign investment. The new QFII provisions also allow for wider areas of investment, an increased foreign shareholder cap and lower qualification thresholds. Another major financial reform in 2012 was the approval for Citigroup to issue its own credit cards in China, the first non-Asian and second non-Chinese bank to do so. Previously, foreign firms were required to partner with a Chinese bank to issue credit cards.

Meanwhile, China continues to move forward cautiously with internationalizing the RMB to encourage wider use of the currency in global trade and investment. In November 2011, regulators approved four more companies to issue dim sum RMB-denominated bonds in Hong Kong. In December, China Construction Bank issued RMB 1 billion worth of dim sum bonds in London, becoming the first Chinese creditor to raise capital in the London yuan bond market after HSBC became the first bank to list dim sum bonds there in April.

### ***Small and Medium Enterprises***

The number of US small- and medium-sized enterprises (SME) targeting Shanghai, and China as a whole, as a destination for investment, export sales, and business expansion continues to climb. Nearly one-third of AmCham Shanghai members are small businesses and entrepreneurs, which are defined as businesses with fewer than 500 employees. US SMEs are increasingly expanding into China to take advantage of growing business opportunities, bringing with them the latest technology, management expertise and industry leadership. According to US Commerce Department data, China is the third largest export market for US SMEs, registering US \$30.4 billion in export sales in 2010—more than a third of all US goods exports to China that same year.

Many SMEs are reluctant to expand their business overseas because of a variety of challenges. In China, these range from day-to-day challenges like an unclear regulatory environment, cultural challenges and human resource constraints, to systemic hindrances such as market access limitations and a legal system tilted in favor of local Chinese compa-

业发布指南。

(详情请分别参阅《海关》，《快递》章节。)

## 人力资源限制

如何吸引、培养以及留住技术工人和专业人士依然是沪上企业所面临的一大挑战，因此，上海人才建设工作依然需要很大的努力。上海美国商会和中国美国商会鼓励上海对现有教育基础设施及其培养高技能劳动力的效率进行评估。填补当前上海人才真空问题需要建立并长期坚持产学研合作计划、中国学生海外留学计划、吸引海外学生及毕业生来沪就业计划。

人力资源问题依然是在沪美资企业遇到的主要挑战。根据上海美国商会《2011-2012年中国商业调查》，90%的企业认为人力资源方面的问题在某种程度上阻碍其商业运营。外国人取得在华工作签证和许可证的执法变得更加严格，相关法律法规的解释又不清晰，使这一挑战进一步复杂化。然而，上海美国商会和中国美国商会对上海为进一步解决人才真空问题所作的不懈努力仍旧表示赞赏。在上海建设成为全球经济中心的进程中，制定人力资源长效机制，鼓励产学研合作，鼓励中国学生海外留学、吸引外国高等院校的投资以及放松对外国留学生的签证管制对于促进上海经济的增长都是实属必要的。

(详情请参阅《人力资源》一章。)

## 最新进展

### 上海商务环境

2012年，上海GDP增长7.5%，达2.01万亿人民币（3190亿美元），增速较2011年的8.2%有所降低。该市2012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7.8%，低于2011年的9.2%。2012年，上海对外贸易总额达到4370亿美元，贸易逆差达230亿美元。出口额为2070亿美元，较2011年下降1.4%；而进口额为2300亿美元，较2011年增长1%。零售业较2011年增长9%。2012年，上海合同外商直接投资增加3.7个百分点，达5250亿元人民币。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

为了实现2020年建成国际金融中心的目标，上海一直

在加强金融基础设施建设。今年4月，合格境外机构投资者(QFII)的投资配额从300亿美元增至800亿美元，使更多的外资可以进入中国。同时上海还放宽了QFII的投资领域，提高了外资持股的上限，降低了合格投资者的门槛。2012年的另一项重大金融改革是批准花旗银行在华独立发行信用卡，这是获得批准开展独立发行信用卡业务的首家非亚洲银行和第一家非中资银行。在此之前外资银行必须与中资银行合作发行信用卡。

同时，中国继续谨慎地推进人民币国际化，鼓励在全球贸易和投资中更广泛的使用人民币。2012年11月，中国的监管机构又批准了四家公司在香港发行人民币计价的“点心”债券。12月，中国建设银行在伦敦发行了价值10亿元人民币的“点心”债券，成为继4月首家在伦敦发行“点心”债券的汇丰银行之后，在伦敦发行人民币计价债券融资的首家中资银行。

## 中小企业

越来越多的美国中小企业希望在上海乃至全中国寻求投资项目、出口贸易和业务拓展机会。上海美国商会近1/3的会员都属于中小型企业或个人企业家，即雇员人数在500人以下的企业。美国的中小企业带着他们的最新技术、管理经验和行业领导地位来到中国，希望充分利用上海日益增长的商机。根据美国商务部的数据，中国是美国中小企业的第三大出口市场，2010年的贸易出口额达304亿美元——占同年美国向中国的货物出口总额的比例超过了1/3。

鉴于存在很多障碍，很多中小企业都不愿意向海外拓展业务。在中国，这些挑战既包括日常问题，如监管环境不透明、文化差异大以及人力资源限制；也包括系统性的制度障碍，如市场准入限制以及偏袒本地中资企业的法律体系等。上海美国商会和中国美国商会希望中国能够继续积极支持美国中小企业在华的公平竞争。上海美国商会已在沪建立了中小企业中心，以公-私合作的形式，通过提供实体和虚拟资源，帮助中小企业解决在华经营所面临的种种挑战，同时帮助他们创造与中国中小企业以及国有企业开展商业和投资合作的机会。

## 长三角经济一体化

上海始终且将继续成为长江三角洲地区（长三角）经济一体化发展的龙头。长三角地区包括上海市、江苏省和浙江省，土地占中国全境的2%，人口占全国的11%，

nies. AmCham Shanghai and AmCham China look forward to continuing to actively support competitive US SMEs in China. AmCham Shanghai's SME Center, a physical and virtual resource, is one such public-private partnership that SMEs are encouraged to use to help address the challenges of doing business in China, as well as create business and investment partnerships with Chinese SMEs and state-owned enterprises (SOEs) that the SME Center is planning to help facilitate.

### ***Yangtze River Delta (YRD) Integration***

Shanghai is and will continue to function as the anchor of an integrated Yangtze River Delta region. The YRD, which includes Shanghai and the Jiangsu and Zhejiang provinces, has generated close to one-fifth of China's GDP despite accounting for only two percent of the country's land area and 11 percent of the national population. The American business community is proud of its strong presence in the YRD and the important role US companies have played in its economic development. The YRD now boasts 4,000 US enterprises and investment projects that are taking advantage of new manufacturing facilities and research and development centers.

AmCham Shanghai continues to emphasize the need for further integration of the YRD to enhance economic development of the region and operates a YRD Center in Suzhou to support the increasing number of US companies that are expanding aggressively into the YRD. A more integrated YRD with a consistent set of regulations and laws will lead to synergies in areas such as customs, education and training, labor, intellectual property rights protections and enforcement, taxation and transportation and logistics. The strength of the YRD comes from its functioning as a single economic powerhouse for the country, capitalizing on the sum of its strengths, instead of a disparate group of rival cities and provinces.

### ***Customs & Logistics***

In 2012, AmCham Shanghai continued its collaborative efforts to improve communication between American-invested companies and Shanghai Customs. AmCham Shanghai's Customs Taskforce met with Customs and CIQ officials throughout the year to discuss a number of important developments. One of those developments, the November rollout of paperless customs, will provide advanced clearance for AA-rated companies and online payment of duties—currently, 85 percent of duties are paid online. Clearance processing is now available 24 hours a day throughout the year. Other developments include CIQ, the Maritime Bureau, Shanghai Airport Group and Maritime International Port Group all signing MOUs to integrate parallel trade practices. Plans are underway to establish bilateral communications through various channels such as trade associations and enterprises to collect feedback, and to provide a contact point for large companies with regional

headquarters in Shanghai and a coordination center for companies to address emergencies encountered during the clearance process.

In September, the State Postal Bureau granted FedEx and United Parcel Service approval to provide express courier service in a handful of Chinese cities. While the approval fell short of what both companies had sought, the development is welcome for helping to open the express courier market to foreign firms, which previously had been off-limits. At the end of October, FedEx Express announced it would establish a new International Express and Cargo Hub in Shanghai, citing expectations that Pudong International Airport will become the world's top air cargo hub by 2015. The company also plans to increase its freight handling capacity to five million tons annually by 2020.

AmCham Shanghai and AmCham China applaud Shanghai Customs on these positive developments.

### ***HR***

In November, Shanghai officials stated the city's intention to roll out incentives to attract and retain non-local professionals. Among the incentives are efforts to provide affordable housing for non-local professionals, support local enterprises with government-subsidized company housing, offer a path—dubbed the “green channel”—for professionals to become permanent residents and contribute to compensation packages at local firms that look to offer higher salaries, better stock options and larger bonuses to non-local professionals.

NYU Shanghai became the first American university to receive independent certification from the Ministry of Education. Foreign educational institutions help to provide Chinese students with workplace skills, English language skills and international exposure that allow access to more opportunities and provide employers with a richer talent pool of local workers. AmCham Shanghai applauds the partnership—which includes New York University, East China Normal University, Shanghai Municipal Education Commission and the Pudong New Area Government – for working to enhance the educational options available to Chinese students and growing the presence of American higher educational institutions in China.

### ***Local Intellectual Property Rights (IPR) Protection***

In July 2012, the Shanghai Municipal Government Information Office unveiled the city's strategy to build Shanghai into an intellectual property (IP) center by 2020—a plan that presents a long-term approach for improving the IPR environment in Shanghai. Shanghai received commendation for its goal from the World Intellectual Property Organization (WIPO) and China's State Intellectual Property Office (SIPO). The city's other 2020 goals—establishing

GDP 总产值却占了近 1/5。美国工商界对美资企业在该地区的强劲表现，以及在该地区经济发展中所发挥的重要作用深感自豪。目前长三角地区有 4000 家美资企业和投资项目充分运用了该地区的新兴制造设施和研发中心开展经营。

上海美国商会将持续强调深化长三角地区经济一体化进程的必要性，从而加快该地区的经济发展。上海美国商会在苏州设立了一家长三角地区中心，为更多在该地区迅速扩张的美资企业提供支持。深化长三角地区的一体化，建立统一的法律法规有助于本地区海关、教育、培训、劳动力、知识产权保护和执法、税收、交通和物流等领域的协调共进。长三角一体化的优势在于能够克服各个城市和省份因单兵作战而相互竞争产生的内耗，集中力量成为推动中国经济增长的一支大军。

## 海关与物流

2012 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。上海美国商会的海关工作组在 2012 年与上海海关以及上海进出口检验检疫局的官员们进行了多次会谈，取得多项重要进展。其中的一项便是海关关于 11 月推行的无纸化通关，将为 AA 级公司提供先进的清关服务和在线交税服务——目前 85% 的关税都是在网上交付。如今上海已经实现全年全天候的通关服务。其它进展包括上海进出口检验检疫局、海洋局、上海机场集团和上海国际港务集团均签订了谅解备忘录以整合平行的贸易惯例。另外还计划通过贸易协会和企业等渠道收集反馈意见，加强双边交流；为在沪建立地区总部的大型企业建立联络服务点，同时建立一个协调中心，帮助企业解决通关过程中遇到的紧急问题。

2012 年 9 月，国家邮政局批准联邦快递公司和 UPS 在中国的多个城市提供快递服务。尽管批准的范围小于两家企业的预期，但这一进步依然有助于外资进入原本不对外开放的快递市场，因此值得提倡。10 月底，联邦快递宣布，鉴于 2015 年上海浦东机场将预期成为全球顶级航空货运枢纽，公司将在上海建立一个新的国际快件和货运中心，并计划到 2020 年将该中心的年货运处理能力提升至 500 万吨。

上海美国商会和中国美国商会对上海海关这些积极进展表示赞许。

## 人力资源

2012 年 11 月，上海市相关官员表示上海正准备推行一系列的激励措施，吸引并留住非上海本地人才。其中包括为非上海本地人才提供经济适用住房，支持当地企业建造

政府补贴住房，为专业人才取得上海市户口开辟“绿色通道”，并且为非上海本地人才提供高工资、高期权和高奖金的当地企业提供补偿计划。

上海纽约大学是首家获得教育部独立办学资格的美国大学。外国教育机构帮助培育中国学生的工作技能、英语能力和国际视野，从而增加他们的就业机会，同时也为雇主提供丰富的本地人才资源。上海美国商会对纽约大学、华东师范大学、上海市教委和浦东新区政府携手开展本次合作，为中国学生提供更多的教育机会以及提升美国高等教育机构在中国的知名度和参与度等方面所作出的努力表示赞赏。

## 当地知识产权保护

2012 年 7 月，上海市人民政府信息办公室发布了上海市将在 2020 年前建成知识产权中心的战略——该战略是提升上海市知识产权保护环境的长期战略。上海市的上述目标受到了世界知识产权组织（WIPO）和中国国家知识产权局的一致好评。为实现上海市确立的 2020 年将上海建立成为世界金融、贸易和物流中心的目标也需要加强知识产权保护立法和执法力度、需要知识产权专业人士提供支持，并进行政策审查，确保配备充足的财政资金保障战略实施。

上海美国商会希望该市的知识产权保护计划能够切实地保护知识产权，并帮助营造创新文化。尽管上海所确立的增加专利和商标申请数量的目标方向是正确的，但我们希望上海能够营造一个不仅保护和执行知识产权，还鼓励知识产权发展的环境。建立一个更有力度和效力的知识产权保护体系，也是上海 2020 年宏伟目标中的重要一环。

（详情请参阅《知识产权》一章。）

## 结论

上海一直在为实现 2020 年发展目标不懈努力。与此同时阻碍“四个中心”顺利实现的障碍依然未决，但这些障碍也并非不可克服。上海市政府已经充分认识到这一问题，积极与包括上海美国商会在内的各大商业协会进行沟通，制定并实施切实有效的政策来应对上述挑战。除此之外上海还要在开放资本市场、加强知识产权保护和执法、消除人力资源限制和海关限制等问题开展进一步的工作。长三角地区经济一体化将带来无限商机，并成为决定上海 2020 年发展目标能否实现的关键因素。

Shanghai as a center for international finance, trade, and logistics—will be supported by stronger IPR protection and enforcement, support for IPR professionals and policy review to ensure the strategy receives adequate budgetary support.

AmCham Shanghai hopes that the city’s IPR initiative will protect IPR and help foster a culture of innovation. While Shanghai’s goal of increasing the number of patents and trademarks applied for in the city is in the right direction, we hope to see an environment that not only protects and enforces IPR, but also encourages IP development. The desire for a stronger and more effective IPR regime has been attached to Shanghai’s increasingly ambitious 2020 goals.

(For more information refer to the Intellectual Property Rights chapter.)

## Conclusion

Shanghai continues to work towards achieving its 2020 development goals. There are many unresolved barriers that can slow the momentum of the “Four Centers” initiatives, but they are not insurmountable. The Shanghai Municipal Government is mindful of this and has actively engaged business associations such as AmCham Shanghai, and has taken practical policy approaches to address these challenges. However, more work remains to be done to open Shanghai’s capital markets, strengthen IPR protection and enforcement and address human resource limitations and customs challenges, among other issues. The continued integration of resources surrounding the YRD region offers tremendous opportunities and will be a key factor in determining the success of the 2020 initiatives.

Through these efforts, Shanghai will not only continue to have a thriving economy, but will also invite greater foreign investment in the city and facilitate its drive toward becoming an international financial center and shipping hub. AmCham Shanghai and AmCham China look forward to continued collaboration with the city to help achieve its ambitious and mutually beneficial development goals.

- Inform management of foreign companies concerning regulations and how to address and resolve compliance issues to help enterprises build more awareness on key rules.
- Further integrate the YRD to enhance economic development of the region.

## Recommendations

- **Develop well-defined, highly intermediated financial markets by allowing depth in both the number and the competitiveness of market participants.**
- Bolster with Shanghai’s IPR initiative to better protect IPR and further foster a culture of innovation.
- Establish a long-term HR initiative to encourage industry-academia partnerships and the easing of visa requirements.

通过上述努力，上海不仅将获得经济持续繁荣，还将吸引更多的外商来沪投资，并有助于实现将上海建设成为国际金融中心和航运枢纽的宏伟目标。上海美国商会和中国美国商会希望与上海市政府继续保持密切合作，帮助上海市实现宏大的双赢发展目标。

## 建议

- 建立定义清晰、中介服务高度发达的金融市场，需要提升市场参与者的数量和竞争力。
- 支持上海建立健全的知识产权保护计划，更好地保护知识产权并进一步培育创新文化。
- 建立人力资源长效机制，鼓励产学合作，放松签证要求。
- 向外资企业管理层通报有关如何解决和处理合规问题的法律法规，帮助企业了解核心规则。
- 加快长三角地区一体化进程，促进该地区的经济发展。

# Tianjin

## Introduction

**T**ianjin, with a population of over 13 million, continues to be one of China's economic powerhouses, recording 13.8 percent annual GDP growth last year. Alongside its huge and growing industrial and service base, it also benefits from some of China's most ambitious investments in infrastructure and property development in its urban core and the outlying Binhai New Area. With the elevation of Zhang Gao Li, Tianjin's former party secretary, to the Standing Committee of China's Politburo last November, the city should continue to benefit from favorable central government support even if market conditions soften, as some are now predicting.

The city has a number of distinct geographic jurisdictions around which development has centered. These include:

### *Central Tianjin*

Central Tianjin is made up of six core districts and, in addition to having more than six million residents, is home to most of the city's hotels, retail centers, and office buildings. The city has historic architecture dating back more than one and a half centuries, recalling its European colonial heritage. Key transportation links include three major train stations as well as a basic subway network.

### *Tianjin Binhai New Area*

Home to most of Tianjin's industrial base and covering 2,270 square kilometers, Binhai New Area includes the Tianjin Airport, Tianjin Economic Development Area (TEDA), Sino-Singapore Tianjin Eco-city (SSTEC), Tianjin Port, Xiangluowan, and Yujiapu.

The Binhai New Area was a major contributor to Tianjin's impressive GDP growth last year, with a GDP over RMB 720 billion. Key sectors of growth included automobile manufacturing, aviation, food, petroleum, and digital technology.

### *Tianjin Economic Development Area (TEDA)*

Established more than 20 years ago, TEDA continues to be one of China's leading manufacturing centers, with over 187 Fortune 500 companies, and an investment environ-

ment ranked first by China's Ministry of Commerce for 15 consecutive years. As of Q3 2012, TEDA had accepted 125 new foreign company registrations and received additional investment from 163 foreign companies, adding an estimated foreign investment value in excess of US \$7.4 billion to its already impressive total.

Within TEDA, there is the Modern Service District (MSD), a complex of office, retail, and hotel developments which are adding a services sector base to the already strong industrial hub. In 2012, the first phase of retail opened, with two department stores increasing the service amenities to the existing cluster of office towers.

### *Sino-Singapore Tianjin Eco-city*

Now entering its fourth year, the Eco-city is rapidly developing its 8 square kilometer start-up area with more than 700 companies, including a number of global firms. A middle school affiliated with the Tianjin Foreign Language University has also welcomed students to its new campus, and thousands of residential units have been completed.

### *Yujiapu Financial Area*

The Yujiapu Financial Area, one of the largest and most ambitious development projects in today's China, will, when completed, add an estimated gross floor area of 1.2 million square meters to the greater Tianjin area. Eventually rivaling New York City in its scale, it reflects the ambition to make Tianjin the financial hub of northern China. Key international developers are participating in its development and more than 400 companies have already registered in the area.

## Ongoing Regulatory Issues

Alongside its strong economic growth and investment, Tianjin still faces a number of challenges and opportunities. The Tianjin government has been very active in engaging with the foreign business community over the past several years to discuss areas for improvement. Below, we highlight areas we believe should be considered for further review.

# 天津

## 引言

人口超过 1300 万的天津，去年 GDP 年增长率达 13.8%，并仍将作为中国经济增长的动力之一。天津市除了拥有庞大且不断增长的工业和服务业基础外，还受益于中国在天津城区及附近的滨海新区内基础设施和房地产开发上的巨大投资。去年 11 月，天津市原市委书记张高丽晋升为中央政治局常委，人们预测，尽管市场状况疲软，天津应当能够继续受益于中央政府的优惠政策支持。

天津市下辖数个经济快速发展区域。包括：

### 天津市中心区

天津市中心区由六个区组成，总人口超过 600 万人，该市的宾馆、购物中心和写字楼多集中在本区域。市内的历史建筑有 150 多年的历史，大多是欧洲殖民地时期建造。主要交通网络包括市内的三座大型火车站和一条基础地铁网络。

### 天津滨海新区

天津滨海新区是天津市主要工业园区所在地，占地 2270 平方公里。滨海新区包括天津机场、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）、天津港、响螺湾和于家堡。

滨海新区是推动去年天津 GDP 飞速增长的主要动力，GDP 产值超过 7200 亿人民币。该新区内的主要增长点包括汽车制造业、航空业、食品业、石油产品及电子科技。

### 天津经济技术开发区（泰达）

天津泰达经济技术开发区始建于 20 多年前，目前仍然保持着中国制造业中心龙头地位，187 家世界五百强企业在该经济开发区分区落户，且中国商务部连续 15 年将其投资环境排名全国第一。2012 年第三季度，泰达经济开发区新登

记外资企业为 125 家，163 家外资企业追加其在开发区的投资，在其本已庞大的外资总额上又新增逾 74 亿美元。

泰达经济开发区还兴建了现代服务产业区，该产业区集写字楼、购物中心和酒店于一体，为泰达这个业已强大的工业中心再添服务产业。2012 年，第一批零售业开张，包括两大百货商店，为写字楼密集地区新添服务配套。

### 中国—新加坡天津生态城

中新天津生态城建立已有四年，四年来生态城飞速发展，从成立之初的 8 平方公里迅速发展成为坐拥 700 多家企业的新兴之城，其中就包括不少国际企业。天津外国语大学附属中学在该城成立了新校区并开始招生教学，几千套住宅也已竣工。

### 于家堡金融区

于家堡金融区是当今中国规模最大、力度最强的开发项目之一。该区建成后预计将使大天津地区的总建筑面积增加 120 万平方米。最终将在规模上超过纽约市，这也充分反映了中国政府将天津打造成为北方金融中心的雄心壮志。全球主要开发商都参与了于家堡金融区的开发，目前已经有 400 多家公司在此登记注册。

## 现存监管问题

在经济和投资强劲增长之外，天津依然面临着一系列的挑战和机遇。过去几年来，天津市政府一直保持与外资企业的积极互动，力求完善监管。但我们认为以下领域依然值得天津市政府重视。

### 打造城市品牌战略

天津市在发展工业基地、新建基础设施、推动新兴产业和服务业发展方面已经取得了令人瞩目的成绩。但天津市在中国大城市中仍属于默默无闻的行列，而且在整合发

### ***Create a City Branding Strategy***

Tianjin has made great progress in growing its industrial base, establishing new infrastructure, and promoting new industrial and service sectors. The city, however, remains one of the least known large cities in China and appears to have little strategy to tie its various development efforts together. A professional public relations agency could assist Tianjin in better articulating its advantages and ensuring projects already underway are coordinated and publicized.

### ***Promote Tourism, Meetings, and Conferences***

There is tremendous potential to grow Tianjin as a tourist destination as well as a corporate destination, as it has a lot more to offer. Over the next five years there will be a large increase of hotel inventory in the city and the Tourism bureau could do more to market the city as a destination, with the amazing history of this port city it should not be hard to achieve. Examples would be a city slogan, for example “The City of Bridges” or “Bridging Tianjin to the World”. More publicity about the city’s events needs to be leveraged. For example, the new concert hall could do more to advertise its events and local events could be publicized in Beijing. Tianjin needs to become a destination for more MICE (meeting incentive conference exhibition) groups. The city has the potential to not only host corporate events like the Davos World Economic Forum, but also leisure events like a Tianjin Marathon or future Jazz Festivals.

### ***Leverage the Hai River as a Focal Point and Transportation Link***

Tianjin has a beautiful river running through the heart of the city. More needs to be done to create access to it and to create activities and events alongside it. The introduction of a water taxi would be very helpful, linking the train station to key sites along the river. This would not only be convenient for commuters, but also a great new way to showcase the river to tourists, enhancing the river cruises already running.

### ***Clarify Tianjin Government’s Position on Social Insurance Regulations***

China has adopted new rules regarding its social insurance regime, but left the implementation to the provinces and municipalities. Areas that create policies supportive of foreign companies are likely to see additional investment; those that do not run the risk of losing them to other more favorable places. We encourage Tianjin to consult with foreign firms to better understand how their businesses would be impacted should certain punitive measures be implemented.

### ***Improve Traffic***

AmCham encourages the Tianjin municipal government to increase the number of trained traffic police at intersec-

tions and enforce traffic rules by issuing violation tickets and fines when violations occur. This can change driving behavior and improve traffic flow and safety. A shortage of parking adds to the congestion in some areas of the city where cars are stacked along streets and intersections. This could be addressed with new urban renewal projects and new building permits.

### ***Increase the Size of the Mass Transit Network***

Tianjin now has a basic subway network, but the city must continue to aggressively expand it and connect additional parts of the urban core. Additionally, work must be done to maintain the basic infrastructure within the subway and train stations. The elevators connecting the concourse and train station parking lot have been broken for well over a year forcing visitors to carry luggage up and down poorly lit staircases. Within a few months of the new subway stations being opened, multiple escalators were already out of order. The city needs to build and maintain its core infrastructure.

## **Recent Developments**

### ***Subway Network Completed***

In the autumn, subway lines 2 and 3 were opened and light rail line 9 was extended to connect with the main train station. These developments created for the first time, a fully integrated subway network in Tianjin—a major step forward in Tianjin’s transportation and infrastructure plans.

### ***Tianjin Plays Host to International Events***

In 2012, Tianjin again played host to the Summer Davos World Economic Forum, a meeting of influential political and industry leaders. The city also attracted the Volvo Golf tournament in April 2012. In 2013, Tianjin will host the East Asian Games. We applaud the city for continuing efforts to host global events that raise the city’s profile.

### ***Tianjin Continued to Attract New Industry***

A number of well-known global companies have chosen Tianjin as a site for future development. The addition of these industries will continue to support and grow Tianjin’s economic base and allow for the further development of supporting industries.

### ***Tianjin Added Additional International Air Routes***

An additional air route was added linking Tianjin’s international airport to Singapore in 2012. This and other new routes and flights will support Tianjin’s internationalization and better support its industrial base.

展战略上十分缺乏。一家专业的公关公司可以帮助天津更充分地展示城市的优势,确保在建项目协调发展,宣传得当。

### 推进旅游业、会展业的发展

天津拥有众多旅游资源,完全可以在成为投资乐土之外,再跻身为旅游城市。未来五年天津市将有大量酒店落成,天津市旅游局应当大力推广这一港口城市的悠久历史,吸引游客来津旅游。比如可以创作类似“桥梁之城”或“天津之桥,连接世界”这样的城市宣传语。天津还应该加大大地活动的宣传力度,比如新建的音乐厅可以多推广其活动,还可以在北京宣传天津的活动。天津要力求发展成为会展旅游集团(MICE)的选择地。天津不但完全有能力承接达沃斯世界经济论坛这样的商业盛事,而且还可以举办天津马拉松或爵士音乐节这样的娱乐休闲活动。

### 将海河打造成为城市焦点及交通枢纽

美丽的海河贯穿天津市中心。天津市应充分发挥海河的功能,在其沿岸举办各类活动。可以在河上设立水上出租船,连接火车站和海河两岸重要景点。这样做不仅方便了乘客,同时还是一个向游客展现海河魅力、增强现有航行游览能力的全新方法。

### 明确天津市政府在执行社会保险法律中的作用

中国已经颁布了一项新的社会保险制度,但具体实施则由地方省市自行决定。出台支持外资企业政策的地区可能将吸引到新的投资,反之这些外资就会流向更有利于其运营的地区。我们鼓励天津市政府能够征求外资企业的意见,更好地了解执行相关处罚措施可能对其业务经营造成的影响。

### 改善交通

美国商会鼓励天津市政府在主要路段增加训练有素的交通警力,在交通违法情况发生时加强处罚力度以确保交通法规有效执行。如此可以改变驾驶行为,保持道路通畅和安全。缺乏停车位加剧了该市部分地区拥堵的状况,汽车只能停在路边和交叉口。着手城市改造以及批准建造新的建筑可以解决上述问题。

### 扩大公共交通网络规模

天津目前已经建成了一条基础地铁网络,但仍需加快地铁建设,实现市中心区域的全面连通。另外,还应该加大力度维护地铁和火车站内的基础设施。火车站内停车场

去往大厅的直梯损坏已有一年多,游客们只能拿着行李乘扶梯上下。新地铁站启用不久,站内的好几部电梯就已经出现故障。天津需要加大核心基础设施的建设和维护力度。

## 最新进展

### 地铁网络建成

2012年夏天,天津地铁2号线和3号线开通运营,轻轨9号线也已延长与主火车站连接。上述进展标志着天津地铁网络首次实现全贯通,也是天津交通和基础设施规划方面迈出的重要一步。

### 天津举办国际盛会

2012年,天津再一次举办了夏季达沃斯世界经济论坛,迎接了来自世界各地的政治首脑和商界领袖。2012年,天津还成功举办了沃尔沃高尔夫巡回赛。2013年,天津还将举办东亚运动会。我们为天津市在努力争取举办国际盛会、提高城市知名度方面所作出的不懈努力而喝彩。

### 天津继续吸引新兴产业进驻

许多全球著名企业都已经选择了天津作为未来发展的落脚点。这些新兴产业的进驻将继续支持和推动天津的经济增长,并推动相关配套产业的发展。

### 天津开通国际新航线

2012年,天津国际机场开通了往返新加坡的国际新航线。这一航线以及其他新航线和航班的开通必将加速天津的国际化发展,并巩固其产业基地的地位。

## 结论

天津经济增长继续保持良好势头。2012年取得的成就包括建成一条基础地铁网络、举办多项国际会议、开通国际新航线等。但天津在很多领域依然具有巨大的发展潜力。天津市政府应当明确宏观战略问题,鼓励并支持旅游业和服务经济的深入发展。这些举措将有助于提升天津的宜居水平,最终提升其城市竞争力。

## Conclusion

Tianjin has continued to make positive progress in developing its local economy. Key successes over the past year included completing a basic subway network, hosting international events, and increasing international routes to Tianjin's international airport. However, the city has the potential to make even more progress in many areas. The city government should clarify some overall strategic issues and encourage and support further development of the tourism and service sector economies. These steps will increase Tianjin's overall livability and ultimately its competitiveness.

## Recommendations

- **Utilize a PR agency to assist Tianjin in creating a master plan to better brand and market the city.**
- Prioritize tourism, meetings, and conferences as key areas for development and promote Tianjin as a destination.
- Create a water taxi system along the Hai River to maximize the river as a transport and branding opportunity.
- Clarify Tianjin government's position on the social insurance regulations.
- Increase the number of traffic policemen and strictly enforce traffic rules.
- Continue to expand Tianjin's mass transit system.

## 建议

- 聘用一家公关公司帮助天津制定更佳城市品牌构建和市场推广计划。
- 将旅游业、会展业作为天津今后优先发展的行业。宣传天津会展之都的功能。
- 在海河开通水上出租船，充分发挥海河的交通和宣传作用。
- 明确天津市政府在执行社会保险法律方面的作用。
- 增加交警数量，严格交通执法。
- 继续扩展天津的大型公共交通网络。

# Wuhan

## Introduction

**T**he city of Wuhan, capital of Hubei province, continues to benefit from the significant economic growth and development of China's six central provinces—Anhui, Shanxi, Hunan, Henan, Hubei, and Jiangxi—fueled in large part by the central government's "Rise of Central China Plan." The region continues to pursue development of higher-end products, green economic growth, infrastructure development, a cleaner environment, and consumption.

According to recent research by the National Development and Reform Commission (NDRC), the proportion of high-intensity energy industries in the overall Hubei economy continues to decline. The province is also rated the 12<sup>th</sup> most open Chinese province to the outside world, and the most open province in China's central region. In the first three quarters of 2012, Hubei's GDP rose 11.2 percent, 3.5 percent higher than the national average of 7.7 percent. The Wuhan government continues to make progress in improving air quality, traffic flow, and international education for expatriate children.

Despite this healthy overall growth, manufacturing has experienced a slowdown and is expected to remain flat in 2013. Challenges also increased in 2012 for the service and retail industries, where costs continue to rise.

This year, AmCham China welcomes further government efforts in the areas of business-to-business payments, international-standard medical care, customs clearance procedures, talent training and recruitment of talent, and improved traffic. We also look forward to expanded American Citizens Services at the US Consulate in Wuhan.

## Ongoing Regulatory Issues

### *Business to Business Payments*

One significant challenge for foreign companies based in Wuhan is a long delay in receiving payments, often months after the contractual payment period. This means that companies are often starved of cash that could be used to re-invest in their businesses and the economy as a whole. In

particular, slow payments damage small companies, as they lack leverage to demand payment and possess lower cash reserves. A higher percentage of on-time payments would make central China a more attractive investment environment for foreign companies, as well as improve the business environment for local domestic small and medium enterprises. AmCham China requests that the relevant government agencies publish clear requirements for State-Owned Enterprises (SOEs) regarding payments and take steps to enforce the standards.

### *Medical Care in Wuhan*

Medical care for the English-speaking community in Wuhan is improving, but still lags behind that which is available in other major cities in China. The sole medical facility dedicated to the English-speaking expatriate community and staffed with a US-licensed family physician is open only two half-days a week. The two major hospital systems have excellent facilities, diagnostic capabilities, and medical skills, and actively facilitate interaction with academic institutions and hospitals in the US, France, Germany, Australia, UK, and other Western countries. However, there is still a shortfall in areas of clinical decision-making, standardization of methods, international-standard pharmacy, use of English communication, and compassionate, vigilant nursing care. Fiscal incentives that encourage international-standard medical care providers to offer additional services would facilitate medical developments in Wuhan, and in turn encourage more foreigners to invest, live, and work in Wuhan.

### *Recruitment of Talent*

While the overall level of management talent in central China continues to rise, it remains difficult for companies to find and retain staff with international-standard business and management skills. Central China should also establish stronger links with international educational institutions and businesses, so that more central Chinese students may have the opportunity to study and work overseas. This will help bring international education and business skills back to China and accelerate economic development. Links to Western educational institutions will also raise central China's profile as a place to invest and study.

# 武汉

## 引言

**武**汉市是湖北省的省会。在中央政府“中部崛起”战略主要推动下，安徽、山西、湖南、河南、湖北和江西这六大中部省份经济增长和发展取得了显著成绩，武汉市的发展也因此而持续受益。该地区一直致力于发展高端产品、绿色经济、基础设施开发、环境保护和消费等领域。

国家发展和改革委员会（发改委）近期研究结果显示，高耗能企业占湖北全省经济的比重不断下降。同时，湖北省在中国最开放省份中排名居第12位，在中国中部最开放省份中排名第一。2012年前三季度，湖北省GDP增速达11.2%，比全国平均增速7.7%高出3.5%。武汉市政府在改善空气质量、交通状况和外籍子女国际教育方面在不断进步。

尽管总体经济发展良好，但制造业发展速度却日渐放缓，预计2013年将与2012年持平。由于成本不断上升，2012年服务业和零售业遇到了更多的挑战。

今年，中国美国商会支持武汉市政府在企业间支付、国际标准医疗服务、海关清关程序、人才培训和招聘以及改善交通状况等领域进一步做出努力。我们还期待美国驻武汉领事馆扩大对美国公民的服务。

## 现存监管问题

### 企业间支付

武汉的外资企业面临的一个主要挑战就是付款严重迟延，以致于经常要在合同约定的付款期满几个月之后才能收到货款。这就意味着企业经常因此出现资金短缺的情况而无法对企业以及整体经济进行再投资。回款速度慢对小企业的损害尤其大，因为它们既无力催款，又缺乏资金储备。提高按时付款比例将为中国中部地区营造更加吸引外资公

司的投资环境，同时也能改善当地国内中小企业的商务环境。中国美国商会促请相关政府部门发布有关国有企业付款事宜的明确规定，并采取措施有效实施这些规定。

### 医疗保健

武汉对英语国家人群的医疗服务水平正不断提升，但与中国其他大城市相比依然较为落后。全市唯一一家专门服务于英语国家外籍人士且配备有一位拥有美国执业资格家庭医生的医疗机构每周仅有两个半天开门营业。武汉两家主要的大医院都具有优良的设施、诊断能力和医疗技能，并积极促进与美国、法国、德国、澳大利亚、英国和其他西方国家学术机构及医院的往来。然而，在临床诊断、医疗手段标准化、国际标准药房、英语交流水平以及护理态度和服务意识方面，武汉的医疗保健都存在差距。通过财政刺激鼓励国际水准的医疗保健机构提供武汉缺失的服务，将不仅有助于提升武汉医疗发展水平，还能因此吸引更多的外籍人士来武汉投资、生活和工作。

### 人才招聘

尽管中国中部地区人才管理总体水平一直处于上升趋势，但企业依然很难聘请并留住具有国际水准的商业和管理技术人才。中部地区应当加强与国际教育机构和商业机构的联系，支持更多中部地区学生获得海外留学和工作的机会。这将有助于把国际教育和商业技能带回中国并推动经济发展。加强与西方教育机构的联系也将提升中国中部地区作为投资和学习目的地的吸引力。

中国美国商会还担心，禁止向25岁以下的外国人发放商务签证的规定会对武汉劳动力市场造成负面影响。青年专业人才过去曾经是该地区国有企业、私营企业和外资企业提升公司和教育机构价值的有效方式，也是上世纪90年代和本世纪前十年人力资源开发的主要支柱。年轻外籍员工有助于完善企业内部语言环境的发展，有助于提高员工跨文化交际能力，同时也有助于了解中西方观念和习惯的

AmCham China is also concerned that the prohibition on business visas for foreigners under the age of 25 negatively impacts the labor market in Wuhan. Young professionals were historically an effective way for SOEs, private Chinese companies, and foreign-invested enterprises (FIEs) to add value to the corporations and learning institutions in the region, and were a mainstay of HR development in the 1990s and 2000s. Young foreign employees complemented internal language development, helped the development of cross-cultural skills, and enhanced understanding the differences between Western and Chinese mindsets and practices. Prohibiting these visas limits central and western Chinese business entities access to the same opportunities that were an integral part of the cross-cultural infrastructure development of the eastern developed regions.

While there are valid criteria for denying a visa, age should not be one of them. AmCham China hopes that age-based visa restrictions will be removed entirely, or at least in a way that lets young foreign workers work in central and western China.

### *Customs Clearance*

AmCham China applauds Wuhan Customs' recent improvements in the consistency and transparency of customs policy and the efficiency of the customs clearance process. To further promote foreign investment in Wuhan, AmCham China suggests Wuhan Customs provides more equal treatment and benefits to both local- and foreign-invested manufacturers and research and development (R&D) centers. This should include exempting imported R&D equipment and service parts from value-added tax, and simplifying the customs clearance process for training and educational materials. More transparent and equal application of customs policies would also improve the efficiency of shipments through customs, and encourage more foreign R&D investment in Wuhan.

### *Research & Development Centers*

While the Wuhan municipal government has been very supportive of foreign-invested R&D centers, companies still face many challenges in expanding R&D investment in the city. Problems include limited land availability and electricity shortages. 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.

### *Inter-Bank & Intra-Bank Payments*

Payments from one bank to another or within the same bank often take several days to process. The procedures can also be excessively complex, forcing many payments to be made in cash. The need to carry large sums of cash is both inconvenient and dangerous. Interbank payments become necessary

where credit cards, personal checks and prepaid debit cards are inaccessible for foreigners. Both personal and business matters are often delayed or jeopardized when financial institutions are unable to communicate clearly and/or unable to transfer funds expediently. This also complicates the collection of receipts necessary for proper tax reporting and accounting.

### *Traffic*

AmCham China applauds the Hubei government's significant investment in improving traffic flow, including the construction of expressways, subways, and light-rail trains. One safety concern is that, during the construction phase, sidewalks are often removed, increasing the danger for pedestrians and cyclists. AmCham China recommends requiring designated pedestrian walkways to be provided during construction. Other suggestions for increasing traffic flow include designating special bus lanes to promote public transportation, enforcing the prohibition of parking at bus stops, limiting street washing and cleaning to night and early morning, and prohibiting large trucks from entering the city during rush hours.

### *Ambient Air Quality*

Since designating ambient air quality as one of the ten top priorities to improve the quality of life for residents, the Wuhan government has taken various measures to improve the air quality. These include monitoring the discharge of pollution from infrastructure, building construction vehicles, and cement mixing stations, and eliminating and improving high-polluting buses, coal boilers, and kitchens. Moreover, Wuhan has installed PM2.5 monitoring instruments at ten monitoring stations and publishes the real-time PM2.5 data, as well as PM10, SO<sub>2</sub>, and NO<sub>2</sub> levels. AmCham China recognizes these significant contributions to improving the quality of life in Wuhan.

AmCham China recommends the Wuhan government also ensure that the newer pollution standards are clearly communicated to the relevant entities and strengthen enforcement of those standards. AmCham China further recommends that incentives are introduced to encourage the installation and use of high-efficiency energy systems, such as combined cooling, heating, and power technology (CCHP), the use of electrical vehicles, improved industrial energy efficiency, waste processing, and recycling.

## **Recent Developments**

### *American Citizen Services at the US Consulate Offices in Wuhan*

In spring of 2012, US Ambassador Gary Locke announced that the US Consulate in Wuhan would expand significantly, including adding full consular and visa services by 2014. In

差异。禁止签发此类签证限制了中西部中资企业在某些方面获得与东部发达地区同等的机会，而这些机会正是东部发达地区跨文化基础设施发展不可或缺的一部分。

虽然拒绝发放签证有许多合理标准，但年龄绝不应该成为上述标准之一。中国美国商会希望将这种以年龄作为签证发放标准的做法完全取消，或者至少在某种程度上允许外籍青年劳动者在中国中西部就业。

## 海关清关

中国美国商会对武汉海关近期在提高清关政策一致性和透明度及清关效率等方面所取得的成就表示赞赏。为了进一步推动武汉外商投资，中国美国商会建议武汉海关为本地和外资生产厂家及研发中心提供更多同等的待遇和优惠。这应包括免征进口研发设备和维修件增值税，并简化培训和教育材料的清关手续。更透明更平等地实施海关政策还可以提高通关效率，鼓励更多外资企业对武汉进行研发投入。

## 研发中心

尽管武汉市政府非常支持外资研发中心的发展，但企业在对研发中心增加投入时仍面临诸多挑战，包括土地供应有限以及电力短缺等等。社会保险法和所得税法规的变化也对此产生了影响。中国美国商会希望武汉市政府解决这些问题，以进一步提高武汉对外资研发投入的吸引力。

## 银行间和行内支付

银行间支付或行内支付处理周期常常需要数天且付款程序也格外复杂，迫使很多企业以现金结算。但现金结算需要携带大量现金，既不方便也不安全。鉴于外国人无法申请获得信用卡、个人支票和预付型借记卡，银行行内支付就非常必要。当金融机构不能快捷和/或便利地进行资金转账时，无论因私还是因公业务都会经常因此受到延误或损害。这也使税务报告和审计所需相关票据的收集变得更加困难。

## 交通

中国美国商会赞赏湖北省政府为改善城市交通状况而投入大量资金建设高速公路、地铁和轻轨的做法。但在上述项目建设过程中也产生一大安全隐患：施工期间常常占用人行道，增加了行人和骑车人的安全风险。中国美国商会建议在施工过程中提供行人专用道。中国美国商会还建

议采取以下措施改善城市交通状况：设立公交车专用车道，推动公共交通事业发展；严格实施公交车站禁止停车的规定，规定道路冲洗和清洁只能在晚间和清晨进行，以及高峰时段禁止大型卡车进入市区等等。

## 环境空气质量

自从将环境空气质量列入向市民承诺的改善生活质量的十大实事以来，武汉市政府采取了多项措施来改善空气质量，包括监控市政及建筑工地车辆和水泥搅拌站的粉尘排放，淘汰和改善高污染的公交车辆、燃煤锅炉和厨房设施等。此外，市政府还在 10 个环境监测站安装了 PM2.5 监测仪器，并公布 PM2.5、PM10 以及二氧化硫和二氧化氮的实时监测数据。中国美国商会认为这些措施都有助于改善武汉市民的生活质量。

中国美国商会建议武汉市政府确保所有相关主体都能充分了解上述污染新标准，并加强这些标准的实施。中国美国商会进一步建议市政府推出相关激励措施，鼓励安装使用高效能源系统，如热电冷联供（CCHP），电动汽车，优化的工业节能、废物处理和回收利用技术。

## 最新进展

### 美国驻武汉总领馆提供美国公民服务

2012 年春天，美国驻华大使骆家辉先生宣布大规模扩大美国驻武汉总领馆的业务，到 2014 年时将提供全部的领事签证服务。2012 年夏天，驻武汉总领馆还新招聘了一名二等官员和一名公共事务官员。上述举措将有助于吸引更多的美国企业移至中国中部地区。我们期待着进一步的发展，并欢迎武汉市政府与美国政府、商界和公民更密切的合作。

### 新建国际学校

一个城市中国际学校的设立是外资企业考虑是否在当地投资的另一个主要因素。武汉市经济技术开发区斥巨资兴建国际学校设施，为在汉工作的外籍人士子女创造了高水平的教育环境，中国美国商会对此表示赞赏。

## 结论

中国美国商会期待并鼓励美国政府、湖北省政府和武汉市政府在改善湖北省的商业和生活环境方面不断取得进

the summer of 2012, a second officer, a Public Affairs Officer, was added. These improvements should encourage more American businesses to move to Central China. We look forward to continuing developments and welcome even closer cooperation between the Wuhan and US governments, business community, and citizens.

### *New International School Building*

The presence of international schools in a city is another key factor foreign companies consider when deciding whether to invest in a location. AmCham China applauds the significant investment the Wuhan Economic and Technical Development Zone is making to build new international school facilities, providing a higher-quality educational environment for the children of expatriate personnel working in Wuhan.

## Conclusion

AmCham China welcomes and encourages the continuing progress the US, Hubei, and Wuhan governments are making to improve the business and living environment of Hubei province. Expansion of American Citizen Services, better educational facilities for expatriate children, and improved traffic and air quality all contribute to a more desirable environment for business and living.

AmCham China is committed to creating an environment that will make all businesses more competitive and encourage more investment in the central China region. AmCham China recommends taking steps to improve the efficiency of business-to-business payments and transfers, world-class medical care for expatriates and Chinese, greater government encouragement of international leadership development opportunities for Chinese students, and more transparent customs clearance procedures. As the business investment improves, Hubei will become an ever more attractive destination for foreign investment.

25 to support human resource development needs of both domestic and foreign enterprises.

- 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.
- Provide transparent and equal application of customs policies.

### *For The US Government*

- **Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.**

## Recommendations

### *For the Hubei And Wuhan Governments*

- **Publish clear requirements for State-Owned Enterprises regarding business payments and increase measures to enforce the standards.**
- Encourage international-standard healthcare facilities to operate in Wuhan through the provision of incentives to qualified operators.
- Establish strong links with international educational institutions and global businesses so more Central China high school and university students may have the opportunity to study and work overseas.
- Allow working visas extended to foreigners under

展。扩大美国公民服务，为外籍人士子女提供更好的教育设施和交通状况，以及空气质量的改善必将有助于营造更具吸引力的商务和生活环境。

中国美国商会致力于在中国中部地区营造一个让所有企业更具有竞争力，鼓励更多外商来投资的环境。中国美国商会建议采取相关措施提高企业间付款和转账效率，为外籍人士和中国公民提供世界一流的医疗保健服务，鼓励政府为培养中国学生发展成为全球领导力提供更多的机会，提高海关的清关透明度。随着商业投资环境的不断改善，湖北必将成为吸引外商投资的又一大热点省份。

## 建议

### 对湖北省和武汉市政府的建议

- 就国有企业商业付款制定清晰的标准，并加大上述标准的执行力度。
- 通过向合格的医疗机构提供激励措施鼓励其在武汉建立符合国际标准的医疗设施。
- 加强与国际教育机构和跨国企业的联系，为中部地区高中和大学学生创造更多海外留学和工作的机会。
- 将工作签证的签发扩大至年龄在 25 岁以下的外国人，以满足中外企业人力资源发展的需求。
- 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。
- 确保武汉全市人行道的安全。
- 建立透明且平等适用的海关规则。

### 对美国政府的建议

- 扩大美国驻武汉总领馆向美国公民和中国公民提供服务的范围。

## Abbreviations 缩写表

<b>3GPP</b>	3rd Generation Partnership Project
<b>3PPP</b>	Third-party Payment Providers
<b>ACP</b>	Aviation Cooperation Program
<b>AIC</b>	(Local) Administration for Industry and Commerce
<b>AML</b>	Anti-Monopoly Law of China
<b>AQSIQ</b>	General Administration of Quality Supervision, Inspection and Quarantine
<b>ATC</b>	Air Traffic Control
<b>BIS</b>	U.S. Department of Commerce Bureau of Industry and Security
<b>BIT</b>	Bilateral Investment Treaty
<b>BO</b>	Beneficial Ownership
<b>BPO</b>	Business Process Outsourcing
<b>bps</b>	basis points
<b>BRIC</b>	Brazil, Russia, India, China
<b>BT</b>	Business Tax
<b>CAAC</b>	Civil Aviation Administration of China
<b>CBRC</b>	China Banking Regulatory Commission
<b>CCC</b>	China Compulsory Certification
<b>CCHP</b>	Combined Cooling, Heat, and Power
<b>CCTWC</b>	Central Committee Talent Work Coordination Group
<b>CDISC</b>	Clinical Data Interchange Standards Consortium
<b>CEPRI</b>	China Electric Power Research Institute
<b>CESI</b>	China Electronic Standardization Institute (MIIT)
<b>CFFEX</b>	China Financial Futures Exchange
<b>CFIUS</b>	Committee on Foreign Investment in the US
<b>CHMR</b>	Cosmetics Hygiene Management Regulation
<b>CIIC</b>	China International Intellectech Corporation
<b>CIR</b>	Comprehensive Immigration Reform
<b>CIRC</b>	China Insurance Regulatory Commission
<b>CIT</b>	Corporate Income Tax
<b>CNCA</b>	Chinese National Certification and Accreditation Administration (AQSIQ)

<b>CNCQSTFP</b>	China National Centre for Quality Supervision and Testing for Fire Products
<b>COMAC</b>	Commercial Aircraft Corporation of China
<b>CPA</b>	China Pricing Association
<b>CSRC</b>	China Securities Regulatory Commission
<b>CUP</b>	China Union Pay
<b>DAIS</b>	Dalian American International School
<b>DAIS</b>	Dalian American International School
<b>DB</b>	Design and Build
<b>DECHP</b>	Distributed Energy Combined Heat and Power
<b>DOC</b>	US Department of Commerce
<b>DQ</b>	Design Qualification
<b>DRC</b>	State Council Development Research Center
<b>DRC</b>	(Local) Development and Reform Commission
<b>DRG</b>	Diagnosis-Related Group
<b>DRR</b>	Drug Registration Regulation
<b>ECFA</b>	Economic Cooperation Framework Agreement
<b>ECP</b>	Energy Cooperation Program
<b>ECWG</b>	Export Compliance Working Group
<b>EDS</b>	Express Delivery Services
<b>EDS</b>	Essential Drug System
<b>ELV</b>	End of Life Vehicles
<b>EMV</b>	Europay, MasterCard, and Visa
<b>EO</b>	Executive Order
<b>EPC</b>	Engineering, Procurement, and Construction
<b>EPO</b>	European Patent Office
<b>EPS</b>	Electronic Payment Service
<b>ERP</b>	Enterprise Resource Planning
<b>EUHT</b>	Extra Ultra High-Throughput
<b>FAA</b>	Federal Aviation Administration
<b>FBO</b>	Fixed Base Operators
<b>FDA</b>	US Food and Drug Administration
<b>FDI</b>	Foreign Direct Investment

<b>FESCO</b>	Foreign Enterprise HR Service Company
<b>FICE</b>	Foreign-Invested Construction Enterprises
<b>FIDE</b>	Foreign-Invested Design Enterprises
<b>FIE</b>	Foreign-Invested Enterprises
<b>FIESE</b>	Foreign-Invested Engineering Services Enterprise
<b>FSS</b>	Flight Service Station
<b>FYP</b>	Five-Year Plan
<b>GA</b>	General Aviation
<b>GAC</b>	General Administration of Customs
<b>GAPP</b>	General Administration of Press and Publication
<b>GDP</b>	Gross Domestic Product
<b>GDS</b>	Global Distribution System
<b>GHTF</b>	Global Harmonization Task Force (IMDRF)
<b>GMO</b>	Genetically Modified Organism
<b>GP</b>	Government Procurement
<b>GP</b>	General Partners
<b>GPA</b>	WTO Agreement on Government Procurement
<b>GSS</b>	Global Support Strategy
<b>GTR</b>	Global Technical Regulations
<b>GUI</b>	Graphic User Interface
<b>HCP</b>	Healthcare Cooperation Program
<b>HHDC</b>	Health and Human Resources Development Center (MOH)
<b>HR</b>	Human Resource
<b>HRO</b>	Human Resource Outsourcing
<b>IAIS</b>	International Association of Insurance Supervisors
<b>IAMC</b>	Insurance Asset Management Company
<b>IATA</b>	International Air Transport Association
<b>ICAO</b>	International Civil Aviation Organization
<b>IEC</b>	International Electrotechnical Commission
<b>IFC</b>	International Financial Center
<b>IFU</b>	Instructions For Use
<b>IIP</b>	Indigenous Innovation Products
<b>IISP</b>	Internet Information Service Providers
<b>IMDRF</b>	International Medical Device Regulators Forum

<b>IOC</b>	International Oil Companies
<b>IP</b>	Intellectual Property
<b>IPR</b>	Intellectual Property Rights
<b>ISO</b>	International Organization of Standardization
<b>ISOS</b>	International SOS
<b>ITO</b>	Information Technology Outsourcing
<b>ITU</b>	International Telecommunications Union
<b>JCCT</b>	US-China Joint Commission on Commerce and Trade
<b>JECFA</b>	Joint FAO/WHO Expert Committee on Food Additives
<b>JOLT</b>	Jobs Originated through Launching Travel Act
<b>JV</b>	Joint Venture
<b>LLP</b>	Low Level Presence (agriculture)
<b>LP</b>	Limited Partner(ship)
<b>LTE</b>	Long-Term Evolution
<b>M&amp;A</b>	Mergers and Acquisitions
<b>MEP</b>	Ministry of Environmental Protection
<b>MHI</b>	Medical and Healthcare Institutions
<b>MICE</b>	Meeting Incentive Conference Exhibition
<b>MIIT</b>	Ministry of Industry and Information Technology
<b>MKU</b>	Minimum Marketing Unit
<b>MLPS</b>	Multi-Level Protection Scheme
<b>MNC</b>	Multinational Companies
<b>MOC</b>	Ministry of Culture
<b>MOF</b>	Ministry of Finance
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOFCOM</b>	Ministry of Commerce
<b>MOHURD</b>	Ministry of Housing and Urban-Rural Development
<b>MOLAR</b>	Ministry of Land and Resources
<b>MOLLS</b>	Ministry of Labor and Social Security
<b>MOST</b>	Ministry of Science and Technology
<b>MOU</b>	Memorandum of Understanding
<b>MPS</b>	Ministry of Public Security
<b>MRO</b>	Maintenance, Repair, and Overhaul
<b>MSD</b>	Modern Service District (Tianjin)
<b>MTPL</b>	Mandatory Third Party Liability

<b>NAFMII</b>	National Association of Financial Market Institutional Investors
<b>NAL</b>	Network Access License
<b>NASSCOM</b>	National Association of Software and Services Companies
<b>NCE</b>	New Chemical Entity
<b>NDRC</b>	National Development and Reform Commission
<b>NEA</b>	National Energy Administration
<b>NEDL</b>	National Essential Drug List
<b>NEV</b>	New Energy Vehicles
<b>NITS</b>	National Information Technology Standards Technical Committee
<b>NOC</b>	National Oil Companies
<b>NPC</b>	National People's Congress
<b>ODP</b>	Overall Development Plan
<b>OEM</b>	Original Equipment Manufacturer
<b>OIE</b>	World Organization for Animal Health
<b>OTC</b>	Over-the-Counter
<b>P&amp;C</b>	Property and Casualty
<b>PBOC</b>	People's Bank of China
<b>PE</b>	Permanent Establishment
<b>PE</b>	Private Equity
<b>PPPH</b>	US-China Public-Private Partnership on Healthcare
<b>PRB</b>	Patent Review Board
<b>PRS</b>	Product Registration Standard
<b>PSB</b>	Public Security Bureau
<b>PSC</b>	Production Sharing Contracts
<b>PTO</b>	US Patent and Trademark Office
<b>PV</b>	Solar Photovoltaic
<b>QFII</b>	Qualified Foreign Institutional Investor
<b>R&amp;D</b>	Research and Development
<b>RAND</b>	Reasonable and Non-Discriminatory Terms
<b>RDP</b>	Regulatory Data Protection
<b>RTA</b>	<i>Radio Type Approval</i>
<b>RVSM</b>	Reduced Vertical Separation Minimum
<b>S&amp;ED</b>	Strategic and Economic Dialogue
<b>SAC</b>	Standardization Administration of China
<b>SAFE</b>	State Administration of Foreign Exchange
<b>SAIC</b>	State Administration for Industry and Commerce

<b>SAM</b>	Software Asset Management
<b>SARFT</b>	State Administration of Radio, Film, and Television
<b>SASAC</b>	State-owned Assets Supervision and Administration Commission
<b>SAT</b>	Administration of Taxation
<b>SAWS</b>	State Administration of Work Safety
<b>SC</b>	Technical Subcommittees (SAC)
<b>SCIO</b>	State Council Information Office
<b>SCLAO</b>	State Council Legislative Affairs Office
<b>SDO</b>	standards development organizations
<b>SDR</b>	Special Drawing Rights
<b>SEI</b>	Strategic Emerging Industry
<b>SEMB</b>	State Encryption Management Bureau
<b>SFDA</b>	State Food and Drug Administration
<b>SHCIQ</b>	Shanghai Entry-Exit Inspection and Quarantine Bureau
<b>SIPO</b>	State Intellectual Property Office
<b>SIR</b>	Service Invention Remuneration
<b>SJV</b>	Securities Joint Venture
<b>SME</b>	Small- and Medium-sized Enterprises
<b>SOA</b>	State Oceanic Administration
<b>SOE</b>	State-Owned Enterprises
<b>SPB</b>	State Post Bureau
<b>SPC</b>	Supreme People's Court
<b>SPF</b>	Sun Protection Factor
<b>SQuARE</b>	Software product Quality Requirements and Evaluation (SFDA)
<b>SSTEC</b>	Sino-Singapore Tianjin Eco-city
<b>STEM</b>	Science, Technology, Engineering, and Mathematics
<b>TAB</b>	Telecommunication Administration Bureau (MIIT)
<b>TC</b>	Technical Committees (SAC)
<b>TC260</b>	National Information Security Standards Technical Committee
<b>TCAL</b>	Tax Collection and Administration Law
<b>tcf</b>	trillion cubic feet
<b>TCM</b>	Traditional Chinese Medicine
<b>TDA</b>	Trade and Development Agency
<b>TEDA</b>	Tianjin Economic Development Area
<b>TIER</b>	Technologies Import and Export Regulations

<b>TNC</b>	Three Network Convergence
<b>TPM</b>	Technology Protection Measures
<b>TRIPS</b>	Trade-Related Aspects of Intellectual Property Rights
<b>TRQ</b>	Tariff Rate Quota
<b>UHT</b>	Ultra High-Throughput
<b>UMP</b>	Utility Model Patent
<b>USCIS</b>	U.S. Citizen Immigration Services
<b>USDA</b>	US Department of Agriculture
<b>VAT</b>	Value-added Tax
<b>VATS</b>	value-added telecommunications service
<b>VEU</b>	Validated End-User
<b>VIE</b>	Variable Interest Entity
<b>VPN</b>	Virtual Private Network
<b>VSTC</b>	Validated Supplemental Type Certificate
<b>VTC</b>	Validated Type Certificate
<b>WAH</b>	Work At Heights
<b>WFOE</b>	Wholly Foreign-Owned Enterprise
<b>WG</b>	Working Groups
<b>WIPO</b>	World Intellectual Property Organization
<b>WLAN</b>	Wireless Local Area Network
<b>WTO</b>	World Trade Organization
<b>WTO/TBT</b>	WTO Technical Barriers to Trade
<b>YRD</b>	Yangtze River Delta
<b>PLA</b>	People's Liberation Army
<b>PPP</b>	Public-Private Partnership
<b>PPPH</b>	Public-Private Partnership on Healthcare
<b>PRC</b>	People's Republic of China
<b>PRI</b>	Political Risk Insurance
<b>PSB</b>	Public Security Bureau
<b>PTO</b>	US Patent and Trademark Office
<b>QDII</b>	Qualified Domestic Institutional Investor
<b>QFII</b>	Qualified Foreign Institutional Investor
<b>QIP</b>	Quarantine Inspection Permit
<b>QMS</b>	Quality Management System
<b>R&amp;D</b>	Research and Development
<b>RA</b>	Regional Aviation
<b>RDP</b>	Regulatory Data Protection
<b>RE</b>	Renewable Energy
<b>RFG</b>	Remanufactured Finished Goods
<b>RFP</b>	Request for Proposal

<b>RMB</b>	<i>Renminbi</i>
<b>RNP</b>	Required Navigation Performance
<b>RoHS</b>	Restriction of Hazardous Substances
<b>RPK</b>	Revenue-Passenger-Kilometer
<b>RQFII</b>	<i>Renminbi</i> Qualified Foreign Institutional Investor
<b>RVSM</b>	Reduced Vertical Separation Minimum
<b>S&amp;ED</b>	US-China Strategic and Economic Dialogue
<b>SAC</b>	Standardization Administration of China
<b>SAFE</b>	State Administration of Foreign Exchange
<b>SAIC</b>	State Administration of Industry and Commerce
<b>SAM</b>	Software Asset Management
<b>SAO</b>	Security Advisory Opinion
<b>SARFT</b>	State Administration of Radio, Film, and Television
<b>SASAC</b>	State-Owned Assets Supervision and Administration Commission
<b>SAT</b>	State Administration of Taxation
<b>SATCC</b>	State Air Traffic Control Commission
<b>SC</b>	Technical Subcommittee
<b>SCEP</b>	Service Center Establishment Plan
<b>SCH</b>	Shanghai Clearing House
<b>SCIO</b>	State Council Information Office
<b>SCLAO</b>	State Council Legislative Affairs Office
<b>SDA</b>	Swaps and Derivatives Association
<b>SDO</b>	Standards Development Organization
<b>SDOC</b>	Self-Declaration of Compliance
<b>SDR</b>	Special Drawing Rights
<b>SEI</b>	Strategic Emerging Industries
<b>SEMB</b>	State Encryption Management Bureau
<b>SFDA</b>	State Food and Drug Administration
<b>SH-SZ</b>	Shanghai-Shenzhen
<b>SIPO</b>	State Intellectual Property Office
<b>SKU</b>	Stock-Keeping Unit
<b>SLC</b>	Small Lending Companies
<b>SME</b>	Small- and Medium-Sized Enterprises
<b>SOE</b>	State-Owned Enterprises
<b>SPB</b>	State Postal Bureau
<b>SPC</b>	Supreme People's Court
<b>SPS</b>	Sanitary and Phytosanitary

<b>SPV</b>	Special Purpose Vehicle
<b>SRT</b>	Special Reorganization Treatment
<b>SSTEC</b>	Sino-Singapore Tianjin Eco-City
<b>SWIM</b>	System Wide Information Management
<b>TAB</b>	Telecommunications Administration Bureau
<b>TAL</b>	Technology Alert List
<b>TBNA</b>	Tianjin Binhai New Area
<b>TBT</b>	Technical Barriers to Trade
<b>TC</b>	Technical Committee
<b>TCM</b>	Traditional Chinese Medicine
<b>TDA</b>	US Trade and Development Agency
<b>TEDA</b>	Tianjin Economic-Technological Development Area
<b>TFSP</b>	Tianfu Software Park
<b>TMO</b>	China Trademark Office
<b>TNC</b>	Three Network Convergence
<b>TP</b>	Transfer Pricing
<b>TRAB</b>	Trademark Review and Appeal Board
<b>TRIPS</b>	Trade-Related Aspects of Intellectual Property Rights
<b>TRQ</b>	Tariff Rate Quota
<b>UDI</b>	Unique Device Identification
<b>UGC</b>	User Generated Content
<b>UHT</b>	Ultra-High Throughput
<b>UHV</b>	Ultra-High Voltage
<b>ULC</b>	Unit Labor Cost
<b>UMP</b>	Utility Model Patents
<b>USITO</b>	US Information Technology Office
<b>USML</b>	US Munitions List
<b>VAS</b>	Value-Added Services
<b>VAT</b>	Value-Added Tax
<b>VEU</b>	Validated End-User
<b>VoIP</b>	Voice-over-Internet Protocol
<b>VPN</b>	Virtual Private Network
<b>VTC</b>	Validated Type Certificate
<b>WAPI</b>	WLAN Authentication and Privacy Infrastructure
<b>WCO</b>	World Customs Organization
<b>WEEE</b>	Waste Electrical and Electronic Equipment
<b>WFOE</b>	Wholly Foreign-Owned Enterprise

<b>WHO</b>	World Health Organization
<b>WLAN</b>	Wireless Local Area Network
<b>WSC</b>	World Semiconductor Council
<b>WTO</b>	World Trade Organization
<b>YRD</b>	Yangtze River Delta