AmCham China
中 国 美 国 商 会

2015 AmCham China White Paper | 中国美国商会 2015 年度白皮书

AMERICAN BUSINESS IN CHINA

美国企业在中国

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

2015 American Business in China White Paper

2015 年度美国企业在中国白皮书

Unless otherwise indicated, all charts are from the 2015 AmCham China *Business Climate Survey*.
若无特别说明，文中所有图表皆来自于中国美国商会2015年度商务环境调查。

All monetary conversions are based on the average 2014 exchange rate of US $1.00=RMB 6.16
所有的人民币换算为美元都是依据2014年6.16:1的平均汇率计算的。

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

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

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

© 2015 by the American Chamber of Commerce in the People's Republic of China (AmCham China), all rights reserved. This report may not be reproduced either in part or in full without the prior written consent of AmCham China.

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

Table of Contents 目 录

Chairman's Message II
主席致辞

Part One:
Business Climate Overview
商务环境综述

Investment Challenges in the Age of the New Normal 2
新常态下的投资挑战

2015 *White Paper* Recommendation Scorecard 14
2015年《白皮书》主要建议一览表

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

Civil Society 28
公民社会

Competition Law 36
竞争法规

Compliance 50
合 规

Customs 56
海 关

Government Procurement 64
政府采购

High-Tech Trade Promotion and Export Controls 74
高科技贸易促进和出口管制

Human Resources 80
人力资源

Intellectual Property Rights 86
知识产权

Investment Policy 98
投资政策

Standards, Certification, and Conformity Assessment 116
标准、认证和合格评定

Tax Policy 122
税收政策

Visa Policy 132
签证政策

Work Safety 140
安全生产

Part Three:
Industry-Specific Issues
具体行业问题

Agriculture 148
农 业

Automotive Policy 160
汽车政策

Banking and Capital Markets 168
银行业和资本市场

Civil Aviation 184
民用航空

Clean Technology 194
清洁技术

Construction, Engineering, and Design 202
建筑、工程和设计

Cosmetics 210
化妆品

Direct Sales 216
直 销

Electronic Payment Services 224
电子支付服务

Express Delivery Services 228
快递服务

Food and Beverage 232
食品及饮料

Healthcare Services, Medical Devices, and Pharmaceuticals 240
医疗服务、医疗器械、和药品

Information and Communications Technology 256
信息通信技术

Insurance 264
保 险

Legal Services 274
法律服务

Machinery Manufacturing 282
机械制造业

Media and Entertainment 288
媒体与娱乐

Oil and Gas, Energy, and Power 296
石油天然气、能源和电力

Real Estate 306
房地产

Retail and E-Commerce 314
零售与电子商务

Part Four:
Regional Issues
区域性问题

Provincial and Local Investment Environment 324
省市及地方投资环境

Chengdu 328
成 都

Chongqing 334
重 庆

Northeast China 338
中国东北

Shanghai 344
上 海

Tianjin 350
天 津

Wuhan 356
武 汉

Acronyms 362
缩写表

Chairman's Message

For AmCham China members, 2014 was one of the most challenging years in recent history in terms of revenue and profit growth. Over 30 percent of member companies have no investment expansion planned in 2015, the highest rate since the recession of 2009, and more companies than ever have moved or are planning to move capacity outside of China. Almost half of member companies feel that foreign businesses are less welcome in China than before, and almost 60 percent believe foreign firms are being singled out in recent campaigns against monopolies, corruption, and product safety.

That said, there are other issues to consider, such as the difficult transition from one economic model to another. Indeed, China's average growth rate since the 1980s of around 10 percent was driven by exports and high levels of investment. Today, the government is increasingly working to manage economic growth and expectations while emphasizing a "new normal" focused on sustainable development as the country rebalances to a model involving a greater role for services and consumption.

As reflected in our *White Paper*, challenges remain, particularly around the key issues of market access and barriers to investment, opaque rules and regulatory practices, and the overall development of and respect for the rule of law.

Rulemaking that is opaque, unclear, or inconsistent is a key concern for many of our member companies and impacts their ability and willingness to invest in China. We believe that China's legal and regulatory framework can be improved through development of a more robust rule of law.

AmCham China supports the streamlining of laws and regulations that impact foreign-invested enterprises (FIEs) and the way they operate in China. We also support a revision of the law that will ease the approval procedures for the establishment and operation of FIEs in China, as well as to provide for greater market access and the reduction of trade barriers that impact American companies.

We encourage the Chinese government to ensure that FIEs are allowed to participate in all phases of standards development activities, as such activities have increasingly been used to discriminate against and limit market access for FIEs.

We believe these are critical issues not just for our members, but also for the success of China's reform agenda, and understand that they will not be remedied overnight. We remain optimistic that the authorities recognize the problems and anticipate continued progress on the reforms in 2015.

With the pressure on, it would be easy to view some of the developments in 2014 as seeking to squeeze FIEs out of China, and that the golden age for foreign investment is over. But clearly there never was a golden age. Foreign multinationals have contributed to, benefitted from, and struggled through China's economic reform and opening from the start. As long as China continues to recognize the benefits of global engagement and continues down the path of economic reform and establishment of consistent rule of law, opportunities will remain and American business will survive and grow.

主席致辞

对于中国美国商会会员来说，2014 年是近年来其在华收入和利润增长形势最为严峻的一年。超过 30% 的会员企业 2015 年没有扩大投资的计划，达到 2009 年经济衰退以来的最高值，有更多的企业已经或者正在计划将产能转移到中国以外的地方。近半数的会员企业感到外国企业在华受欢迎程度有所降低，将近 60% 的会员企业认为近期反垄断、反腐败、和提高产品安全的行动是针对外资企业的。

此外，还有其他需要考虑的问题。例如，经济模式转型存在的困难。事实上，中国从上世纪八十年代以来一直保持的 10% 左右的平均增速，是在出口和高投资水平的驱动下实现的。如今，政府正努力调整经济增长预期，同时重新平衡经济模式，促使服务业和消费发挥更大作用，强调以可持续发展为重点的“新常态”。

正如《白皮书》所反映的，挑战继续存在，特别是在市场准入、投资壁垒、规则和监管实践缺乏透明度、法治的总体发展以及对法治的尊重等关键问题方面。

立法程序缺乏透明度、清晰度或一致性是许多会员企业关注的主要问题，影响到他们在华投资的能力和意愿。我们相信，中国能够通过进一步健全法治改进法律和监管框架。

中国美国商会支持中国政府简化影响外资企业及其在华运营方式的法律和法规。我们也支持中国政府修改法律，简化外资企业在华设立和运营的审批程序，扩大市场准入，减少影响美国企业的贸易壁垒。

我们鼓励中国政府允许外资企业参加各个阶段的标准制定活动，因为这些活动越来越多地被用来歧视外资企业和限制外资企业的市场准入。

我们认为，这些关键问题不仅关乎我们的会员企业，也关系到中国改革进程的成败。我们明白，这些问题不可能一夜之间得到解决。我们持乐观态度，相信中国政府认识到存在的问题，并会在 2015 年继续推进改革。

在压力之下，很容易将 2014 年的一些事件解读为外资企业将被挤出中国，以及外国投资的黄金时代已经结束。但是很显然，黄金时代从未存在过。外国跨国企业从中国经济改革开放的一开始就在贡献、获益、并在艰难中前行。只要中国继续认可国际参与带来的好处、继续推行经济改革并建立协调一致的法治体系，机会就会继续存在，美国企业就会继续在中国生存和壮大。

There is hope that the two largest economies in the world can work together to their mutual benefit. If the US and China can quickly complete a high-standard bilateral investment treaty (BIT) – which has been under negotiation since 2008 – this would reduce trade barriers and open markets further for American goods and services. Indeed, the US-China BIT would likely be the largest market liberalization exercise since China's accession to the World Trade Organization in 2001.

The US side is currently waiting for China to release a nation-wide negative list. A high quality, concise negative list will reduce the complexities of doing business in China while providing high-potential sectors of China's economy with much-needed foreign capital and experience. We are hopeful that China will seriously and significantly open up further to foreign investment, especially in the financial services, agriculture, automotive, and healthcare sectors. An overreaching negative list will be a non-starter.

Overall, the 2015 *White Paper* reflects that AmCham China member companies are committed to the market but continue to weather and adapt to a challenging business environment that is constantly evolving as China continues on a path of economic reform and sustainable development. Our companies understand and appreciate the complexities and difficulties that the Chinese leadership is confronted with as it balances its economy and drives reform, including the reforms incumbent in the upcoming 13th Five-Year Plan. But much work lies ahead for all of us in 2015 and beyond as the Chinese economy continues to mature and the government implements and enforces a host of new laws that have been in the pipeline for years.

Indeed, we are witnessing a learning curve in developing best practices – as seen in the enforcement of the Anti-Monopoly Law. AmCham China will continue to monitor the regulatory environment and advocate on behalf of our members' interests as we seek fair, uniform, and transparent law enforcement.

The 2015 *White Paper* further reflects that our member companies desire to play a positive and constructive role in the development of the country in a manner that is mutually beneficial to our companies and the communities in which they operate. We look forward to an open and candid dialogue with the Chinese leadership with respect to the issues raised in our *White Paper*.

James Zimmerman
Chairman
The American Chamber of Commerce
in the People's Republic of China
April 2015

世界上两个最大的经济体有机会通过相互合作，实现互利共赢。如果美国和中国能够结束 2008 年以来一直进行的谈判，迅速签订一份高质量的双边投资协定，这将有助于减少贸易壁垒、进一步向美国的商品和服务开放市场。事实上，中美双边投资协定有可能是自中国 2001 年加入世界贸易组织以来最大的市场开放举措。

美国方面目前正在等待中国公布一份全国负面清单。一份高质量、简明的负面清单将有助于降低在华经营的复杂性，同时为中国经济中具有高潜力的行业提供急需的外国资金和经验。我们希望中国能够向外国投资进一步切实大幅开放市场，特别是金融服务、农业、汽车工业、医疗领域。过于宽泛的负面清单将不是个好的开端。

总体而言，2015 年《白皮书》表明，中国美国商会的会员企业致力于开拓中国市场，不过在中国的经济改革和可持续发展过程中，这些企业将不断面临挑战，需要努力适应不断变化且具有挑战性的商务环境。我们的会员企业清楚并且理解中国领导层在平衡经济和推动改革的过程中面临的复杂情况和各种困难，包括正在制定的第十三个五年计划需要部署的改革任务。但是，随着中国经济继续走向成熟，一系列已经酝酿多年的新法规生效实施，在 2015 年以及将来，还有许多工作要做。

实际上，我们正在经历一种制定最佳实践的学习曲线——如《反垄断法》的施行。中国美国商会将继续关注监管环境，代表会员企业的利益寻求执法公平、统一和透明。

2015 年《白皮书》进一步反映了我们的会员企业希望在中国的发展过程中起到积极和建设性的作用，实现企业和他们运营所在社区的互利共赢。我们期待与中国领导层就《白皮书》提出的问题展开开放和坦诚的对话。

吉莫曼

中国美国商会主席

2015 年 4 月

Part One:
Business Climate Overview
商务环境综述

Investment Challenges in the Age of the New Normal

For American businesses operating in China, 2014 was a year in which the economic, political, and social reforms set forth by the Chinese leadership in 2013 slowly began to take shape. While the slowness of the pace of reforms continues to be of concern, our members understand the complexity of the tasks set to be reached by the 2020 timeline, and remain cautiously optimistic about the direction of the proposed reforms. As the 12th Five-Year Plan (FYP) enters its final year, we continue to support its general message of establishing fair, consistent, and transparent market access standards and enhanced competition to sustain economic development. We hope that those involved in the planning of the 13th FYP will consider the messages outlined within this 17th annual *American Business in China White Paper* when formulating priorities for 2016-2020. As the chapters of this *White Paper* indicate, continued implementation of Third Plenum reforms, further government streamlining, and a focus on the service sector have led to positive developments in many industries. Members were also encouraged by the outcomes of the Fourth Plenum and look forward to contributing to upcoming policy developments.

Incremental Progress of the Reform Agenda

Establishing Authority at Home and Abroad

Xi Jinping spent his first two years as Communist Party General Secretary establishing himself as a powerful and ambitious leader focused on improving governance and reforming the economy. He continues to reinforce his position, exhibited in part by the continuation of the far-reaching anti-corruption campaign. Our members also took note of the success of the anti-corruption drive – our 2015 *Business Climate Survey* saw corruption drop to the 13th most significant business challenge, down from sixth in 2014 and fourth in 2013.

Beyond China's borders, Xi Jinping exhibited "big diplomacy with Chinese characteristics" by visiting 18 countries in 2014 and participating in a series of high-profile summits, including the hosting of the Asia-Pacific Economic Cooperation (APEC) Forum, at which the US and China signed bilateral agreements on climate and visa policies, and the Conference on Interaction and Confidence-Building Measures in Asia, which highlighted pursuit of a "new Asian security concept" that would put China at the center of Asian-led regional security efforts.

China also unveiled a number of high-profile initiatives in 2014, including establishment of the "One Belt, One Road" New Silk Road which seeks to integrate Eurasian economies, the Asian Infrastructure Investment Bank, and the New Development Bank, while making a US $41 billion (RMB 252 billion) contribution to the BRICS Emergency Fund. In addition to the continued efforts to negotiate a US-China Bilateral Investment Treaty (BIT) – discussed in detail in the Investment Policy chapter, China also made progress on free trade talks with South Korea and signed a Free Trade Agreement with Australia.

From the Third Plenum to the "New Normal"

Regarding the domestic economy, we continue to look for implementation of reforms laid out in the 60-point Decision document that was released following the Third Plenum of the 18th Party Congress in October 2013. The Decision outlined government plans for improving the administrative system, clarifying the roles of the market and the state, and allowing a greater role to citizen-led non-governmental social service organizations. The Decision emphasized economic development as its main objective, stating that the government must retreat from its role in allocating resources. In March 2014, the "Two Meetings," or *liang hui*, indicated that the market will be used as a tool to help the state enterprise and fiscal systems operate as more effective instruments for achieving state aims. While this falls far short of a truly market-driven economy, it presents a basis for substantial progress.

While state-owned enterprises' (SOEs) share of total assets, output, and employment in the economy has slowly begun to decrease, their influence remains very large and concentrated in sectors crucial to the productivity gains China is seeking. Indeed, government support for SOEs continues to be overwhelmingly citied by AmCham China member companies among the industrial policies most negatively impacting their business operations. While the outcomes of both the Third Plenum and 2014 *liang hui* indicate that SOEs will continue to be supported and are expected to play an important role in China's economic development, they will

新常态下的投资挑战

对于在华运营的美资企业来说，2014 年是中国领导层在 2013 年确定的各项经济、政治、和社会改革慢慢开始成形的一年。虽然改革步伐缓慢一直是人们关注的问题，但我们的会员企业理解 2020 年实现预订目标的复杂性，并对改革确定的方向保持审慎乐观的态度。随着第十二个五年计划进入最后一年，我们继续支持它所倡导的建立公平、统一、透明的市场准入标准，以及增强竞争以推动经济发展的总体思想。我们希望，第十三个五年计划的制定者在确定 2016—2020 年的重点任务时，能够参考第 17 版年度《美国企业在中国白皮书》提出的建议。正如这份《白皮书》所指出的，由于中国继续推行三中全会确定的改革事项、精简政府机构、重点发展服务行业，许多行业都呈现了积极的进展。面对四中全会的成果，会员企业备受鼓舞，期待着能够对未来的政策制定有所贡献。

改革议程的阶段性进展

在国内外确立权威

自担任中共中央总书记以来，作为一位有抱负的强有力的领导人，习近平在最初两年将重点放在改进吏治和改革经济上。他不断巩固自己的地位，从反腐运动的继续全面推行上可以得到印证。我们的会员企业也关注反腐行动的成功，在我们的《2015 年度商务环境调查》中，作为商务挑战之一的腐败问题从 2014 年的第六位和 2013 年的第四位降至第十三位。

2014 年，习近平在国外展现了“中国特色的大外交”。他共出访了 18 个国家，参加了一系列高端峰会，其中包括举办亚太经合组织（APEC）论坛，期间中美两国签订了关于气候和签证政策的双边协定，以及亚洲相互协作与信任措施会议（亚信会议）。后者强调追求“新的亚洲安全观”，这将使中国成为亚洲领导的区域安全建设的核心力量。

2014 年，中国还提出了一系列备受瞩目的倡议，包括建立整合欧亚经济的“一带一路”的新丝绸之路、亚洲基础设施投资银行和新开发银行，同时出资 410 亿美元（折合人民币 2520 亿元）设立金砖国家应急基金。除了继续与美国就双边投资协定展开谈判——详情请见“投资政策”一章，中韩自由贸易谈判也取得了进展，中国还与澳大利亚签订了自由贸易协定。

从三中全会到“新常态”

国内经济方面，我们继续期待 2013 年 10 月中共中央十八届三中全会发布的“60 条决定”（《决定》）文件提出的改革方案能够得到实施。《决定》提出政府计划改进行政体制、明确市场和国家的作用、允许公民领导的非政府社会服务组织发挥更大的作用。《决定》强调以经济发展作为主要目标，指出必须减少政府在资源配置中起的作用。2014 年 3 月召开的“两会”指出，市场可作为一种工具来帮助国营企业和财政制度更高效地实现国家目标。虽然与真正的市场驱动的经济相差甚远，但这也为取得实质性进展奠定了基础。

虽然按总资产、产出和就业人数衡量，国有企业在整个经济的占比已经开始缓慢下跌，但是，在关乎中国所追求的提高生产力的行业，国企仍然占有很高的比重。的确，中国美国商会的绝大多数会员企业都将政府对国企的支持列为对其业务运营不利的产业政策因素之一。虽然三中全会和 2014 年两会的决定表明，国企将会继续获得支持并在中国的经济发展中发挥重要的作用，但是，政府也要求他们改进运营效率、提高资本收益、接受更激烈的竞争和更严格的监管。此外，中国将允许民营资本进入之前的限制行业，并且鼓励民营资本直接投资国企和国家主导的投资项目。尽管这些领域在 2014 年取得的实质进展有限，但这些都是积极的举措。

2014 年 6 月，根据三中全会做出的决定，中国高层领

also be charged to operate more effectively, improve their return on capital, and be subject to more intense competition and tighter regulation. Additionally, private capital will be permitted to enter previously restricted sectors and private direct investment in SOEs and in state-led investment projects will be encouraged. These are positive initiatives, although tangible progress in these areas in 2014 was limited.

In June 2014, China's top leaders formally endorsed broad reforms to the national tax system and center-local fiscal dynamics – as outlined during the Third Plenum – including a 2016 deadline to complete initial tasks that would keep the overall reforms on track for 2020 completion. Such reforms enhance the potential for more substantial market reforms in the medium-term and the clear statement of reform tasks and clear deadlines signify significant high-level commitment and support the view that China's reforms are moving ahead despite institutional resistance.

To emphasize the realities of the shifting economic landscape, China's leaders embraced the "new normal" concept of economic growth in 2014, with a GDP target of around seven percent confirmed for 2015. During the APEC meeting in November, President Xi defined the new normal as: shifting from breakneck economic expansion to moderate to high-speed growth, continuous improvement in the country's economic structure, and moving away from factor- and investment-driven growth to innovation-driven growth. A report issued following the Central Economic Work Conference in December 2014 further characterized the new normal as:

❶ Diversified and customized goods and services becoming mainstream consumption;

❷ Interconnected infrastructure and investment opportunities in new technologies, new products, new industries, and new business models;

❸ Industrial consolidation and upgrades in oversupplied areas;

❹ Improving human capital and advanced technologies that drive growth;

❺ A shift of focus in competition from quantity and price to quality and diversification; and

❻ The establishment of a unified, transparent, and well-regulated market.

Following the March 2015 *liang hui*, Premier Li Keqiang emphasized that it would be "by no means easy" for China to achieve the seven percent growth target and predicted that forthcoming reforms would be painful, "like taking a knife to one's own flesh."

Push for Transparency

The Fourth Plenum in October 2014 was dedicated to enhancing rule of law and legal reform. For the first time in Chinese Communist Party (CPC) history, a Central Committee plenum focused on the country's legal development. Though interpretations differ on the true intent of the CPC to strengthen "rule of law" into a definitive guiding principle of governance, as opposed to the more instrumental sense of "rule by law" under Party direction, some of the steps noted in the Plenum's outcome document at least begin movement in that direction.

However, despite progress in curbing corruption as discussed above, President Xi has reportedly resisted calls for greater transparency into the assets of Party members, and has instead arrested activists who have pushed for officials to reveal their assets while censoring Western media outlets that have investigated Chinese leaders. Thus, despite an apparent understanding of the need for rule of law to constrain official abuse, it appears that there will be far to go to institute a system of rule *of* law even after development of a system of rule *by* law.

Other events of note from 2014 include:

- Adoption by the Ministry of Commerce (MOFCOM) of expedited procedures for review of simple merger cases.
- Reform of the Company Law in an effort to reduce regulatory burden and provide greater autonomy in investment decision making.
- Overhaul by MOFCOM and the National Development and Reform Commission (NDRC) of the approval and filing of outbound investment.
- Clarification of the recognition of onshore arbitration administered by offshore institutions.
- Relaxation of State Administration of Foreign Exchange (SAFE) regulatory restrictions on cross-border security and guarantees, and the easing of controls over conversion of foreign exchange equity capital.
- New SAFE rules providing greater flexibility for Chinese-controlled overseas companies using funds raised outside of China to acquire assets and businesses in China by enhancing their capital management options and clarifying compliance obligations.
- Limited narrowing of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) negative list by MOFCOM and the NDRC.
- Simplification by the China Securities Regulatory Commission of the requirements for government approval and other processes in connection with public takeovers.
- Further relaxation by the State Council of the capital and track record requirements applied to foreign banks seeking to expand throughout China.
- Announcement from the State Council of the plans to establish additional free trade zones (FTZs) in Tianjin, Guangdong, and Fujian.

导正式批准对国家税收制度以及中央和地方之间的财政关系实施广泛的改革，要求 2016 年完成初步任务，2020 年完成总体改革任务。从中期来看，这些改革有助于开展更具实质性内容的市场改革，同时，明确说明改革任务和时限展示了高层的决心，也证明中国的改革不会因为存在制度阻力而停滞不前。

2014 年，为了强调经济形势正在发生变化，中国领导人提出了经济增长“新常态”这一概念，确定 2015 年国内生产总值增长目标为 7% 左右。在 11 月份召开的亚太经合组织会议期间，习主席将新常态定义为：从高速增长转为中高速增长，经济结构不断优化升级，从要素驱动、投资驱动转向创新驱动。2014 年 12 月中央经济工作会议召开之后发布的一份报告进一步指出新常态具有以下特征：

❶ 个性化、多样化消费渐成主流；

❷ 基础设施互连互通和新技术、新产品、新产业和新业务模式的投资机会大量涌现；

❸ 产能过剩领域出现产业整合和升级；

❹ 经济增长更多依靠人力资本质量和技术进步；

❺ 市场竞争逐步从数量和价格竞争转向质量型、差异化为主的竞争；

❻ 建立一个统一、透明和管理有序的市场。

2015 年 3 月的两会之后，李克强总理强调，实现 7% 的增长目标对中国来说“并不容易”，并且预计将要实施的改革会带来阵痛，“如同拿刀割自己的肉”。

提高透明度

2014 年 10 月召开的四中全会专门探讨了如何加强依法治国和推动司法改革。这是中国共产党有史以来第一次以国家法治发展为主题的中央全会。由于不同于中共领导下的更具有工具性意义的“法制”的说法，各方对中共加强以“法治”作为其治理的基本指导原则的解读各不相同，但是全会的决定文件中的一些措施至少朝着法治的方向迈进了一大步。

虽然遏制腐败取得了上述进展，但是，有报道说习近平主席拒绝了更大提高党员财产透明度的要求，逮捕了争取官员公开财产的活动人士，并且对调查中国领导人的西方媒体渠道实施审查。因此，虽然法治对遏制官员滥用职权十分必要，并且确立了法制体系，但是距离真正的法治还有很长的路要走。

2014 年其他值得关注的事件还包括：

- 商务部实施简易并购案件快速审查程序。
- 修订《公司法》，降低监管负担，提高投资决策的自主性。
- 商务部和国家发展与改革委员会全面修改对外投资审批和备案的规定。
- 明确承认境外机构实施的境内仲裁。
- 国家外汇管理局放松跨境安全和担保的限制规定，放松对外汇资本金兑换的控制。
- 国家外汇管理局发布新的法规，提供更多的资本管理选择，明确合规义务，从而放松对中国控股的海外企业使用海外筹集的资金在中国收购资产和企业的限制。
- 商务部和国家发展与改革委员会有限地缩减中国（上海）自由贸易试验区（上海自贸区）负面清单。
- 中国证监会简化与公开收购交易有关的政府审批和其他程序。
- 国务院进一步放宽外国银行在华扩展业务的资本和业绩记录要求。
- 国务院宣布计划在天津、广东、福建设立自由贸易区（自贸区）。
- 国家发展与改革委员会 2015 年 3 月对外发布修改后的《外商投资产业指导目录》，2015 年 4 月 10 日生效实施。
- 商务部公布新的《外国投资法》，将现有的外资三法合而为一（即《中外合资经营企业法》、《外资企业法》和《中外合作经营企业法》）。

中国美国商会的优先关注事项

虽然会员企业关注的问题范围很广，但是，中国美国商会主要关注中国在四个主要领域的不断改进：❶ 法治（包括透明度和执法）；❷ 市场准入；❸ 知识产权；及 ❹ 标准。本年度《白皮书》提供的补充说明根据这一基本框架详细列出了各个行业的具体问题和建议。

法治、透明度和执法

中国美国商会认为，中国在三中全会和四中全会上做出的进一步开放和改革经济以及全面实施依法治国的承诺

- Release by the NDRC of a revised draft "Guiding Catalogue on Foreign Investment in Industry" which was finalized in March 2015 and entered effect April 10, 2015.
- Release by MOFCOM of a new draft Foreign Investment Law, unifying the three existing laws that apply to foreign-invested enterprises (FIEs) (Wholly Foreign Owned Enterprise Law, Sino-Foreign Equity Joint Venture Enterprise Law, Sino-Foreign Cooperative Joint Venture Enterprise Law).

AmCham China Priorities

Though the concerns of our members span a broad range of issues, AmCham China's main objective is further improvement in four overarching areas: ❶rule of law (including transparency and enforcement); ❷market access; ❸intellectual property rights (IPR); and ❹ standards. The supplementary summary issued with this year's *White Paper* details each industry's specific concerns and recommendations within this general framework.

Rule of Law, Transparency, and Enforcement

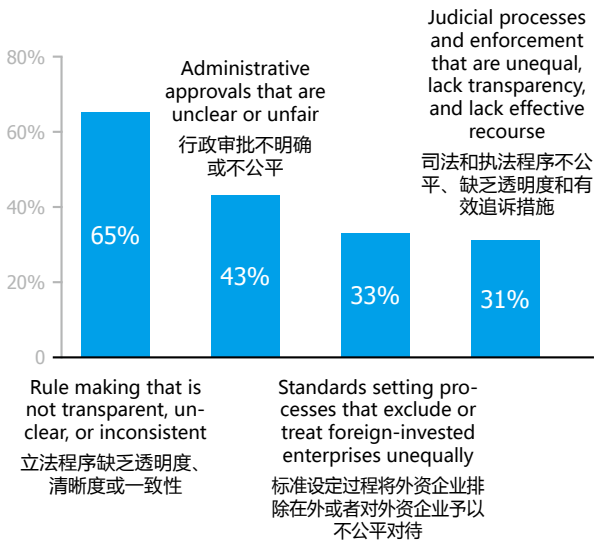
AmCham China believes that the commitments from China's Third and Fourth Plenums to further open and reform the economy and to implement the rule of law throughout the country represent positive steps forward. Non-transparent, unclear, and inconsistent rule-making were identified by 65 percent of our members as limiting their ability and willingness to invest in China, and have remained as top challenges to business for the last four years in a row. Effective rule of law is essential to ensuring that China's market remains open to foreign business, and that foreign investments will be treated fairly.

We believe that China's regulatory and legal system should be transparent, predictable, stable, accountable, and have legal due process for all involved. While we recognize that rule of law in China at this time will likely be more in the nature of rule by law than rule of law, we nevertheless believe that substantial progress can be made in these areas such that outcomes are less likely to be affected by nationality of the shareholder.

We encourage the Chinese government to facilitate more robust sharing of international rulemaking best practices by fully and consistently implementing a minimum 30-day notice and comment period on draft laws and regulations across all agencies. We encourage the publication of internal guidelines that govern the administration of both domestic and foreign companies in China and of judicial decisions to facilitate compliance. We also urge the application of due process in investigations of, and non-discriminatory enforcement against, foreign companies and FIEs.

Which of the below practices limit your company's ability and willingness to invest in China?

以下哪些做法抑制了贵企业在华投资的能力和意愿？



Market Access

We are encouraged by the continued focus on US-China BIT negotiations, and the reduction of barriers to foreign investment in certain industries in the 2015 revised edition of the "Guiding Catalogue on Foreign Investment in Industry," as well as promised further reductions in the Shanghai FTZ negative list.

We encourage the Chinese government to prioritize negotiation of a robust US-China BIT, with a short negative list and narrowly crafted exceptions. To ensure successful negotiations and implementation, we encourage the continued reduction of sectoral restrictions in the foreign investment catalogue and in the FTZs, and the streamlining of foreign direct investment by allowing investments to be filed for the record instead of being subject to approval (except for restricted and prohibited industries).

Across industries, market access restrictions are the primary measures reported by companies inhibiting their ability and willingness to invest in China. Our members agree that a BIT will reduce the general complexity of the Chinese regulatory environment and create market access benefits, including the ability to enter new markets, the freedom to make acquisitions in China, and a reduced need for joint ventures.

是积极的前进步骤。百分之六十五的会员企业认为“立法程序缺乏透明度、清晰度或一致性”，从而抑制其在华投资的能力和意愿。这一因素已经连续四年成为主要的商务挑战。为了确保中国市场保持对外国企业的开放以及外国投资能够得到公平对待，有效的法治是不可或缺的。

我们认为，中国的监管和法律制度应当是透明、可预测、稳定和负责任的，并确保有关各方的程序正义。虽然我们认识到中国此时的法治在性质上更有可能是依法而治而非真正的法治，我们仍然相信这些方面能够取得重大进展，并能降低股东国别对司法结果的影响。

我们鼓励中国政府大力借鉴国际立法最佳实践做法，要求各个部门起草法规时全面和统一执行至少 30 天的公告和征求意见期。我们鼓励公布适用国内企业和在华外资企业以及司法裁决的内部管理规定，为合规提供便利。我们也促请对外国企业和外资企业的调查和执法行动遵循程序正义和非歧视的原则。

市场准入

令我们感到鼓舞的是，中国继续推进中美双边投资协定的谈判，在 2015 修订的《外商投资产业指导目录》中减少外商投资某些产业的壁垒，并且承诺继续缩减上海自贸区的负面清单。

我们鼓励中国政府优先考虑中美双边投资协定的谈判，提供一份简短的负面清单和例外情形。为了确保谈判和执行取得成功，我们鼓励中国继续减少外商投资目录和自贸区的行业限制，简化外国直接投资程序，用备案制取代审批制（限制和禁止行业除外）。

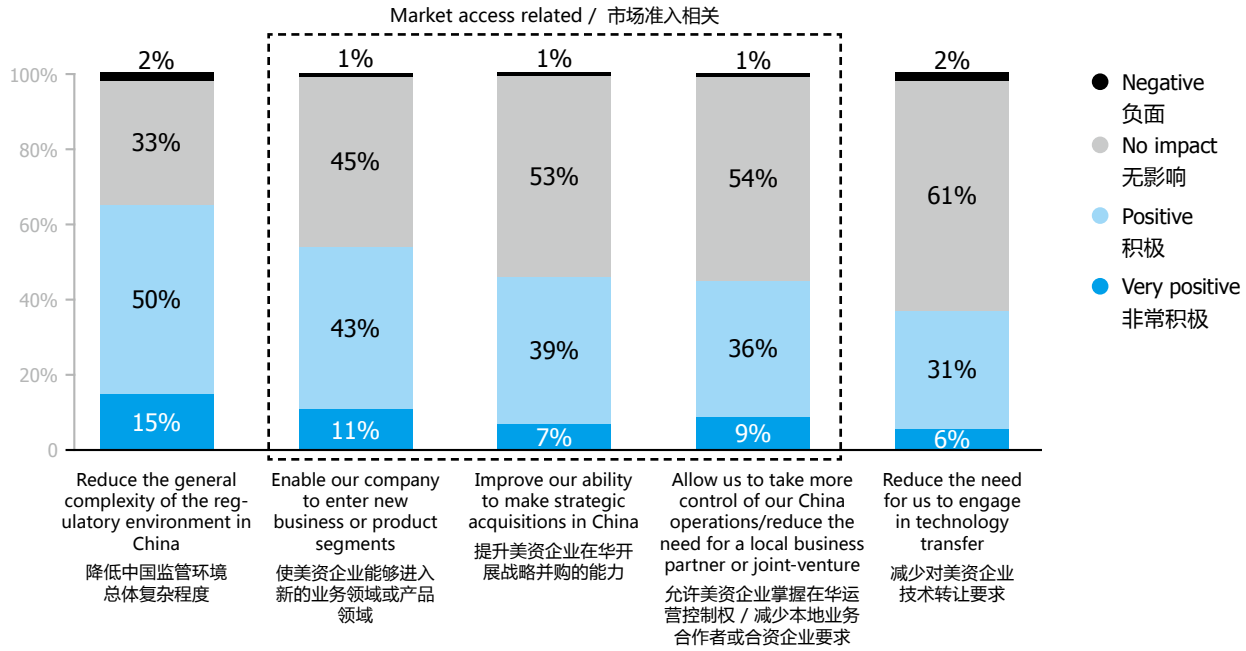
所有行业的企业都表示，市场准入限制是抑制其在华投资能力和意愿的主要因素。我们的会员企业一致认为，双边投资协定有助于降低中国监管环境普遍存在的复杂性，使得企业能够从市场准入获益，包括进入新的市场，在中国开展收购，减少成立合资企业的需要。

知识产权

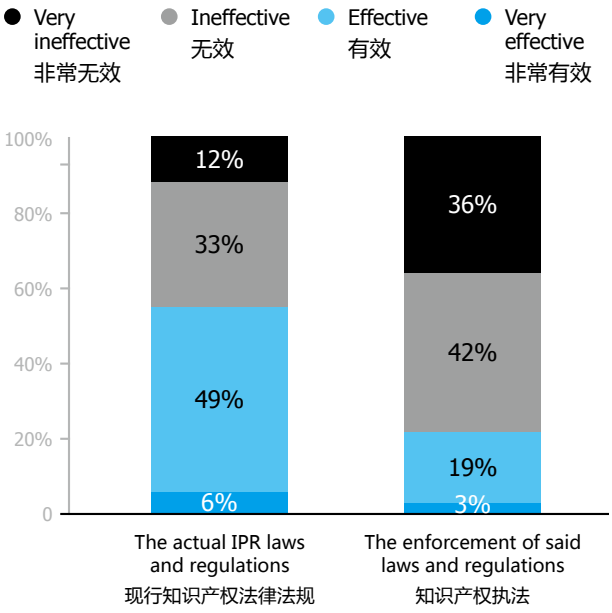
令人感到鼓舞的是，中国设立了专门的知识产权法院，并且继续关注 2014 年中美商贸联委会等领域的高层次知识产权问题。三中全会的决定有一章节专门谈到深化科学技术改革，重点提到加强知识产权保护和打击假冒产品。

What would be the primary expected impact from a US-China Bilateral Investment Treaty (BIT) on your company's operations?

您最期望美中投资协定（BIT）对贵企业在华运营带来何种影响？



How would you rate China's IPR laws and regulations, and the enforcement thereof?
您如何评价中国知识产权法律法规及其执法状况?



Intellectual Property Rights

We are encouraged by the development of specialized intellectual property (IP) courts, and continued focus on advanced IP issues in arenas such as the 2014 Joint Commission on Commerce and Trade. The Third Plenum Decision includes a section on Deepening Science and Technology Reform, which focuses on increasing IPR protection and combating counterfeit products.

We encourage the Chinese government to unify enforcement of IP laws and regulations across the country through detailed published decisions that include transparency and legal due process, in accordance with existing laws and regulations. We particularly look forward to expanded enforcement that requires state-owned and state-invested enterprises to use non-pirated software, and further clarification that contracts between companies and their employees will be firmly upheld. We further look forward to an early and robust legislative expansion of protection for trade secrets.

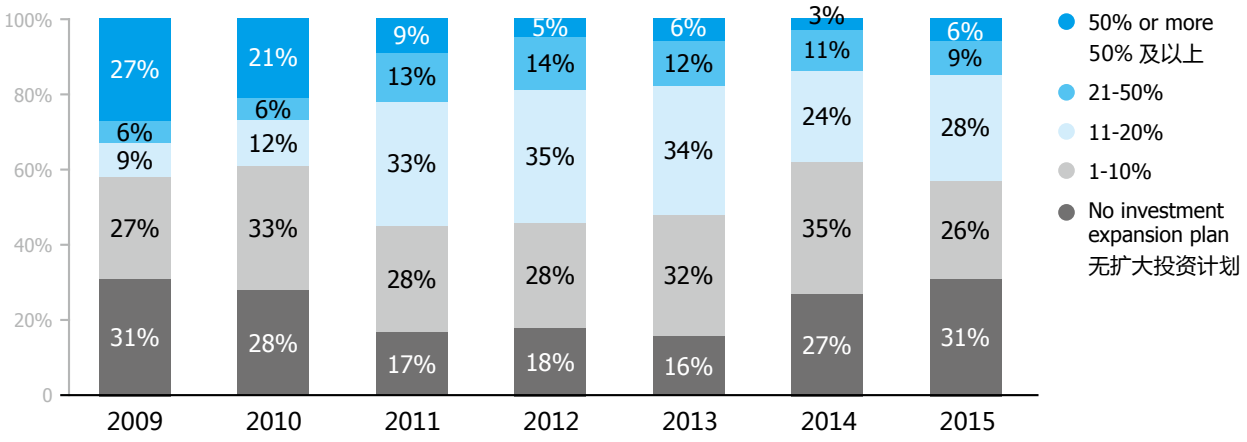
While more than 85 percent of members believe that the country's enforcement of IPR has improved over the last five years, ineffective enforcement remains a concern for nearly 80 percent; and two-thirds believe the risk of IP and data leaks are greater in China than in other countries.

Standards

AmCham China welcomes the allowance of foreign testing organizations to carry out testing in China and increased transparency in the standards notification and development process. We encourage the Chinese government to ensure that FIEs are allowed to participate in all phases of standards development activities, including technical committees and subcommittees, on an equal basis with domestically invested enterprises.

Thirty-three percent of our member companies note that their ability and willingness to invest in China is limited by standards-setting processes that exclude or treat FIEs

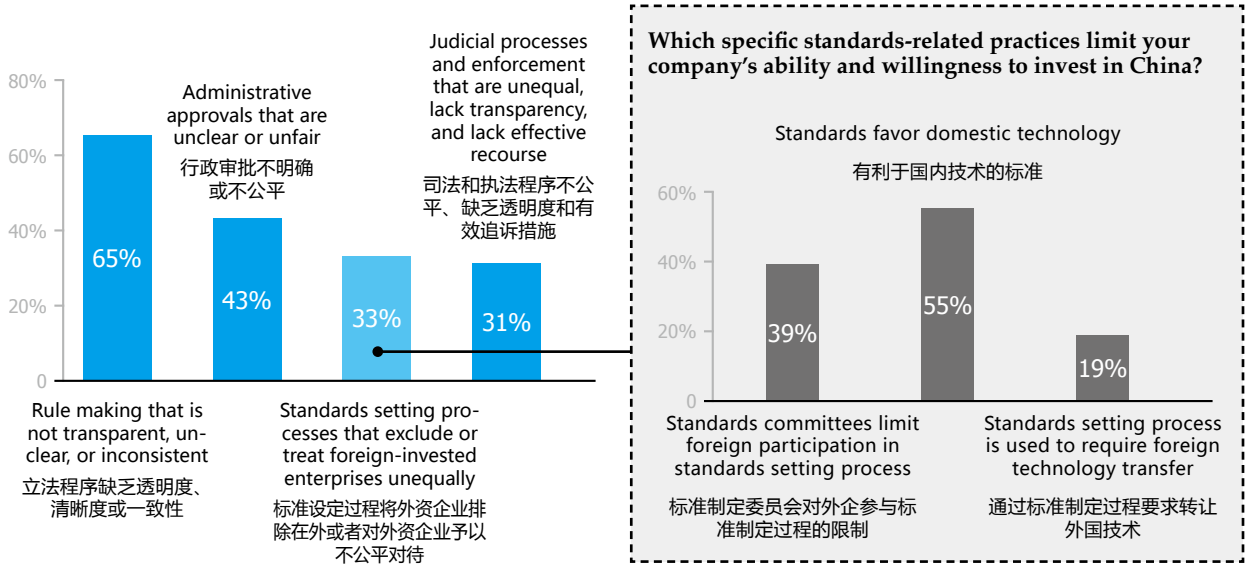
How much do you estimate your company will increase investment in China operations for the next year?
来年贵企业预计扩大在华运营投资的规模为多少?



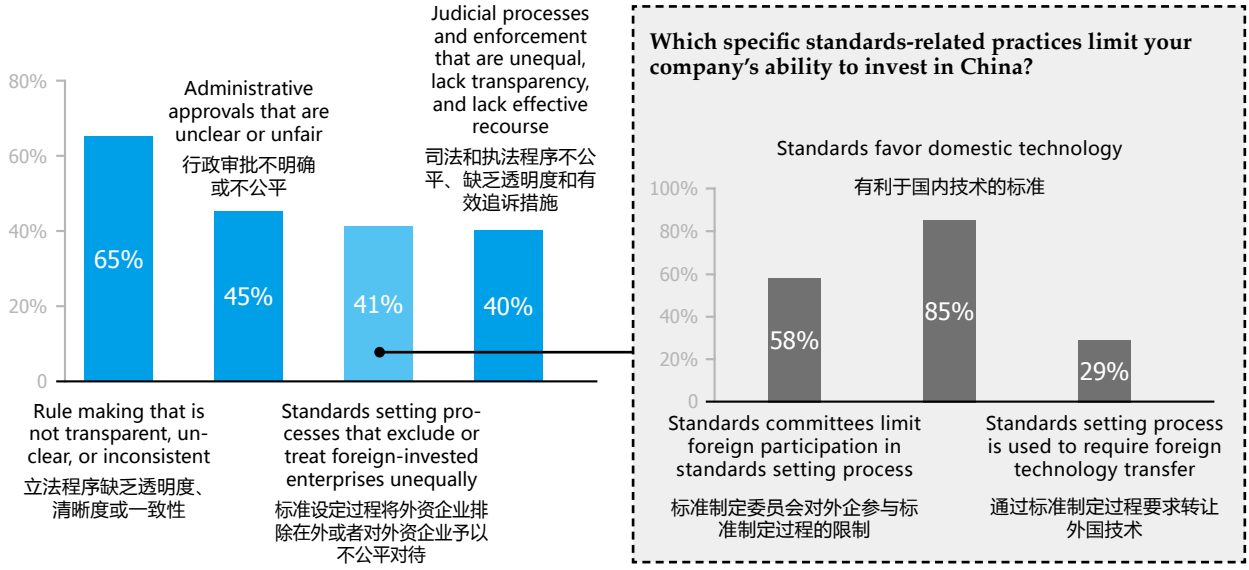
我们鼓励中国政府在全国统一知识产权法规的执法，按照现有法规以及透明和程序正义的原则发布详细的执法决定。我们特别希望中国扩展正版软件执法范围，要求国有和国资企业使用正版软件，以及进一步明确企业和员工之间的合同将得到坚定的支持。我们还期望能早日立法将保护范围涵盖商业秘密。

虽然超过百分之八十五的会员企业认为中国的知识产权执法在过去五年中已经取得进步，但是，将近百分之八十的会员企业仍然认为执法缺乏效率，三分之二的会员企业认为中国的知识产权和数据泄漏风险要高于其他国家。

Which of the below practices limit your company's ability and willingness to invest in China?
以下哪些做法抑制了贵企业在华投资的能力和意愿？



For members with R&D centers in China
针对在中国设有研发中心的会员



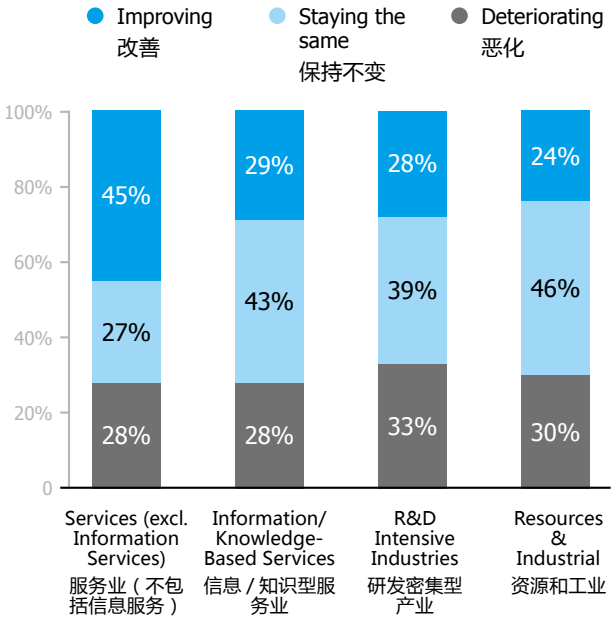
unequally. Of these, 55 percent specifically identified standards that favor domestic technology and 39 percent cited limited foreign participation in standards developing technical committees as further limiting their investments. These challenges are felt particularly by those members with research and development (R&D) centers in China. For this particular subset of our members, the above data points increased to 41, 85, and 58 percent, respectively.

Business Climate Overview

Though the challenges of doing business in China continued to increase in 2014, AmCham China member companies nevertheless further localized their operations in the expectation that the difficult transition to a new economic model will ultimately be successful and that reforms will be implemented to ensure that foreign companies are treated fairly. Our members appreciate the complexities and difficulties that the Chinese leadership is confronted with as it balances the economy and implements reforms. Nevertheless, much work lies ahead for the near term as the Chinese economy continues to mature.

According to the 2015 AmCham China *Business Climate Survey*, company revenues continued to grow in 2014, but not at the breakneck pace of years past. Still, more than 70 percent of respondents identified their organization as "profitable" or "very profitable," with 42 percent of companies reporting increasing margins, a lower percentage than in prior years, and 44 percent reporting margins comparable to their global average. Three of five respondents reported increased revenues from 2013, while about 20 percent reported revenues comparable to the previous year.

The quality of China's investment environment is:
中国投资环境质量如何？



With growth leveling off, over 30 percent of companies have no investment expansion planned in 2015, the highest rate since the recession of 2009. AmCham China member companies nevertheless remain optimistic because of sustained economic growth and an increase in domestic consumption. The country's growing middle class and urbanization are also positive beacons for businesses. Furthermore, in-depth analysis reveals differences by sector, with service companies more optimistic than resource and industrial companies on growth opportunities.

As a result, some companies continue to strengthen their connection with the Chinese economy: One-third of companies now derive over half of their revenues in China from locally designed, developed, or tailored products and services. Moreover, many other companies use China as a base for global growth. Approximately half of companies in R&D intensive industries or resources and industrial (R&I) industries have established R&D centers in China, and almost 40 percent of these companies are using the centers not just for China, but also for a broader set of emerging markets.

Business in China is at a turning point, and companies are considering whether to continue pursuing growth and investment in China, or whether to prioritize other growth opportunities. Those committed to staying the course in China are evaluating their strategies to ensure they are well adapted to the changing market opportunities and challenges in China.

The top two challenges for business were unchanged from the previous year: high labor costs and unclear regulations. Nearly one-quarter of AmCham China member companies in the R&I category have moved or are planning to move capacity or investments outside of China because of high labor costs. Additionally, this year marked the first time that a majority of members reported difficulty in recruiting executive talent to work in China because of air quality issues. From a regulatory perspective, one-third of respondents reported licensing and government approval processes are becoming more difficult.

In a year that saw an intensification of antitrust enforcement – that was widely perceived to be unfairly targeting foreign companies – by the NDRC and State Administration for Industry and Commerce, about half of survey respondents say they feel less welcome in China. FIEs – technology and consulting companies and legal service providers, in particular – are being squeezed from the market. Additionally, forced technology transfers and the curtailing of the market

标 准

中国美国商会欢迎中国对外国测试组织开放，允许它们在中国开展测试业务，也欢迎中国提高标准通知和制定过程的透明度。我们鼓励中国政府允许外资企业按照与中国企业平等的条件参与各个阶段的标准制定活动，包括技术委员会和分支委员会。

百分之三十三的会员企业表示，“标准设定过程将外资企业排除在外或对外资企业予以不公平对待”抑制了其在中国投资的能力和意愿。其中，有百分之五十五认为此标准有利于国内技术，百分之三十九认为限制外资企业参与标准制定技术委员会进一步抑制了他们的投资。在中国设有研发中心的会员企业对这些挑战感受尤其深刻，对于这一类会员企业，上面的数据分别上升至 41%、85% 和 58%。

商务环境综述

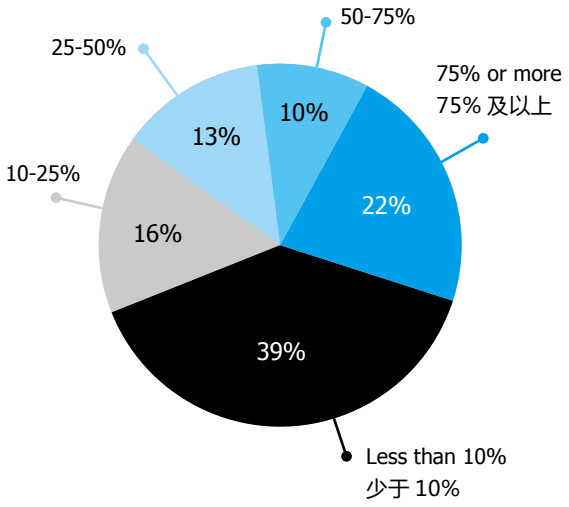
2014 年，虽然在华运营面临的挑战继续增加，中国美国商会的会员企业仍继续将其在华业务本土化，期望经济模式的艰难转型最终能够成功，改革能够得到施行，以确保外资企业获得公平待遇。我们的会员企业明白并且理解中国领导层在平衡经济和推动改革的过程中面临的复杂情况和各种困难。但是，随着中国经济继续走向成熟，近期内还有许多工作要做。

根据中国美国商会《2015 年度商务环境调查》，2014 年，企业收入继续保持增长，只是从前的高速增长不复存在。然而，仍然有超过百分之七十的受访者表示企业“盈利”或“利润很可观”，其中百分之四十二的企业表示利润率提高，这一比例与前几年相比有所下降，有百分之四十四的企业表示利润率与国际平均水平持平。有五分之三的受访者表示与 2013 年相比收入实现增长，大约有百分之二十的企业表示收入水平与上一年度持平。

随着增长趋于平稳，超过百分之三十的企业在 2015 年没有扩大投资的计划，达到自 2009 年经济衰退以来的最高值。不过，由于经济增长的可持续性和国内消费的增长，中国美国商会的会员企业仍然保持乐观。中国日益壮大的中产阶级和城镇化进程对于企业来说也是积极的信号。而且，深入分析表明行业之间存在差异，服务业企业要比资源和工业企业对增长机遇更为乐观。

What percentage of your China revenues comes from products or services that were locally designed, developed or at least tailored to local requirements?

贵企业多大比例的在华收入源自本土设计、开发或至少针对本地需求的产品或服务？



因此，一些企业继续强化与中国经济的联系：目前，三分之一的企业有超过半数的在华收入来自本地设计、开发或定制的产品和服务。而且，许多其他企业将中国作为全球增长的基地。在研发密集型行业或资源和工业行业中，大约有一半的企业已经在中国设立了研发中心，其中有近百分之四十的企业在华设立的研发中心不仅服务中国市场，还针对更为广阔的新兴市场。

在华企业正处于一个转折点，企业正在考虑是继续在中国追求增长和投资还是优先考虑其他增长机会。那些继续坚持在华运营的企业正在评估自己的战略，以确保很好地适应中国不断变化的市场机会和挑战。

与去年相比，企业面临的两大挑战没有变化：劳动力成本高和法规不明确。由于劳动力成本高，中国美国商会资源和工业类会员企业有将近四分之一已经或正在计划将产能或投资转移到中国以外的地方。而且，有史以来的第一次大多数会员企业表示因为空气质量问题很难招到高级管理人才来华工作。至于监管，有三分之一的受访者表示获得许可和政府审批程序变得更难了。

国家发展与改革委员会和国家工商行政管理总局过去一年里加大反垄断执法力度，此举被会员企业普遍视为是

through barriers in government procurement add to the perception that China is becoming an increasingly less-welcoming environment for investment.

We are also concerned that China's overly broad, opaque, and discriminatory approach to cybersecurity policy – restricting foreign websites and information-technology products and services – will ultimately isolate Chinese firms from the global marketplace and weaken cybersecurity, thereby harming China's economic growth and development and restricting customer choice. When conducting business, more than 80 percent of member companies reported being limited by the censorship of Internet content and websites. Many members noted delayed Internet speed and the inability to access relevant information for their industry as significant complications of the censorship systems.

Despite these challenges, China remains a top three priority globally for more than 60 percent of members. However, companies are investing in the country at a slower rate, hindered by market access barriers or government policies that executives feel disadvantage foreign companies. Increasingly, respondents describe China as "one among many destinations" for their global investments. The number of companies who described China's investment environment quality as deteriorating increased substantially to 29 percent.

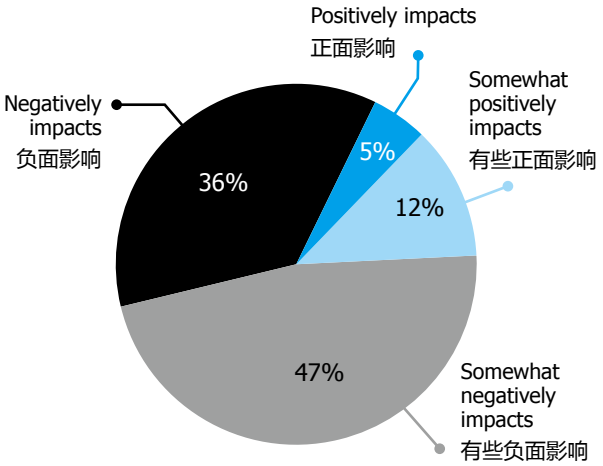
Reforms such as the US-China BIT present a potential boon to business in China as companies look to overcome regulatory issues. More than two-thirds of respondents believe that the BIT would reduce the general complexity of the regulatory environment in China. It could also allow companies to enter new business or product segments, or improve the ability to make acquisitions.

The BIT represents a major opportunity to improve the regulatory environment, which could, in turn, enhance the ability of US companies to invest, innovate, and compete in China for the benefit of the domestic economy. Our member companies' desire to play a positive and constructive role in the development of the country in a manner that is mutually beneficial to our companies and the communities in which they operate.

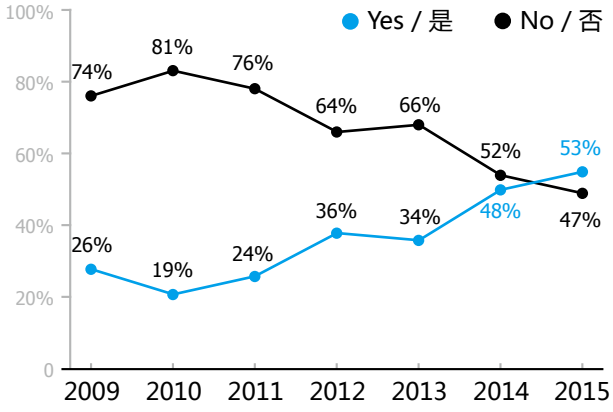
While the remaining challenges cannot be remedied overnight, we nevertheless remain optimistic that the authorities recognize the challenges, and we anticipate continued progress on reforms in 2015. If China continues to recognize the benefits of global engagement and continues down the path of economic reform and establishment of consistent rule of law, growth opportunities will continue to be created for both Chinese and American businesses.

To what degree does Internet censorship of content and websites impact your ability to conduct business normally in China?

互联网内容和网站审查在多大程度上影响了贵企业在华正常运营？



Have you or your organization experienced any difficulty in recruiting senior executive talent to work in China because of air quality issues?
您或您所在机构是否存在因空气质量问题而很难招聘到高级管理人才来华工作的情况？



专门针对外资企业，大约一半受访者感觉他们在中国不如以前受欢迎。外商投资企业——特别是技术、咨询、和法律服务企业，正在被挤出市场。此外，强迫技术转让，通过政府采购壁垒实施市场限制，让人感觉中国的投资环境越发不友好。

我们还很关注中国大范围施行的歧视性和缺乏透明度的网络安全政策，限制外国网站和信息技术产品和服务，最终将使得中国企业与国际市场隔离，损害网络安全，从而损害中国经济增长和发展，限制消费者的选择。超过百分之八十的会员企业表示业务运营受到互联网内容和网站审查制度的限制。许多会员企业提到，审查制度导致网速变慢，无法获取行业相关信息等严重并发问题。

虽然面临这些挑战，但超过百分之六十的会员企业仍然将中国作为全球三大首选投资地之一。不过，由于市场准入壁垒或在外企高管看来对外资企业不利的政府政策，美国企业在华投资的速度正在放慢。越来越多的受访者将中国视为全球投资的“众多目的地之一”。认为中国投资环境质量正在恶化的会员企业的数量大幅增加，达到百分之二十九。

中美双边投资协定等改革举措对于在华企业来说是一个潜在的利好消息，企业面临的监管问题有望得到解决。超过三分之二的受访者认为双边投资协定将降低中国监管环境普遍存在的复杂性，同时允许企业进入新的业务或产品领域或者提高企业开展收购的能力。

双边投资协定是改善监管环境的一个重大机遇，这反过来也有助于提高美国企业在中国投资、创新和竞争的能力，有利于中国经济发展。

我们的会员企业希望在中国的发展过程中起到积极和建设性的作用，实现企业和所在社区的互利共赢。

虽然现存挑战不可能一夜之间得到纠正，我们仍然乐观地相信当局会认识到这些挑战，并且期待改革在 2015 年能够继续前行。只要中国继续认可国际参与的好处，继续推行经济改革和建立协调一致的法治，就能不断创造新的机会，中国和美国企业就会继续发展壮大。

2015 *White Paper* Recommendation Scorecard

The Recommendation Scorecard is an important tool that helps AmCham China track the progress made each year in its top areas of concern. The following table is an index of the priority recommendations from each of the 2014 and 2015 AmCham China *White Paper* chapters.

The progress rating indicates our members' perception of the level of progress – either high, moderate, or low – achieved by relevant government officials in resolving the priority challenge designated in each chapter of the 2014 *White Paper*. The final column indicates each chapter's priority recommendation for 2015.

Chapter	2014 Recommendation	Progress Rating	2015 Recommendation
Agriculture			
Chinese Government	Reduce barriers to foreign participation and investment in agriculture, in particular by moving more agricultural products to the Encouraged section of the Foreign Investment Catalogue, and removing most agricultural segments from the negative list of the Shanghai FTZ.	Low Progress	Reduce barriers to foreign participation and investment in agriculture, in particular by moving more agricultural products to the Encouraged section of the Foreign Investment Catalogue, and removing most agricultural segments from the negative lists of the Shanghai FTZ and BIT.
US Government	Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China BIT negotiations, to address investment restrictions faced by US agriculture producers.	Low Progress	Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China BIT negotiations, to address investment restrictions faced by US agriculture producers.
Automotive Industry			
Chinese Government	Issue detailed management rules for the Phase III Standard of passenger car fuel consumption limits as soon as possible in order to facilitate compliance.	Moderate Progress	Consider the level of industry development and the overall market environment when adopting international rules or developing unique standards, and allow enough lead time for businesses to make adjustments and ensure compliance.
Banking and Capital Markets			
Chinese Government			
• *Bonds*	N/A	N/A	Level the playing field for investors, strengthen market infrastructure, and promote greater transparency to develop a healthy and well-functioning bond market.
• *Commercial Banking*	Raise the 20 percent investment ceiling imposed on foreign banks when investing in local Chinese banks, to incentivize foreign banks to transfer more of their expertise and best practices to their Chinese partners.	Moderate Progress	Better coordinate reporting requirements under the guidance of the respective regulators' head offices; increase efficiency in data collecting and reduce or simplify the numerous reporting requirements.
• *Credit Ratings*	Follow prevailing international practices, such as the IOSCO Code, and remove mandatory ratings requirements from relevant financial sector rules.	Low Progress	Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.
• *Private Equity and Venture Capital*	Use "domestic in nature" treatment for foreign GP controlled RMB funds.	Moderate Progress	Optimize tax policies for limited-partnership VC/PE funds, accelerate the growth of qualified institutional investors, and improve QDLP pilot policies.
• *RMB Internationalization*	Release further information on the establishment of the China International Payment System.	Moderate Progress	Provide a clear and holistic roadmap and timetable for RMB internationalization that will promote understanding by both the Chinese and global financial communities and allow proactive alignment with the policy agenda.
• *Securities*	More flexibly grant SJVs business licenses related to innovative products and shorten the grace period for securities JVs to get new licenses.	Moderate Progress	Fully liberalize foreign investment in the securities sector as soon as possible, and do not include securities on the US-China BIT negative list.

2015 年《白皮书》主要建议一览表

此主要建议一览表帮助中国美国商会追踪重点关注领域的年度发展进程。下表列出了中国美国商会 2014 及 2015 年白皮书各章节提出的主要建议。

相关政府官员积极应对 2014 年《白皮书》各章节所提及的挑战，并取得一定进展，进展评分正是表明了会员公司对政府相关改革进展的评价——进展明显、有所进展或进展较慢。最后一栏列出 2015 年《白皮书》各章节的主要建议。

章 节	2014年白皮书主要建议汇总	进展评价	2015年白皮书主要建议汇总
农 业			
中国政府	减少对外资参与和投资农业的限制，特别是将更多的农产品移至外商投资目录之“鼓励”类，同时删除上海自贸区“负面清单”中的绝大多数农业产业。	进展较慢	减少对外资参与和投资农业的限制，特别是将更多的农产品移至外商投资目录之“鼓励”类，同时将大多数农业产业从上海自贸区和双边投资协定的负面清单中去除。
美国政府	通过美中商贸联委会、美中战略经济对话和美中双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。	进展较慢	通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。
汽 车			
中国政府	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。	有所进展	采纳国际规则或制定特有标准时，考虑行业发展水平和市场总体环境，并给出足够的提前期，使企业有充分的时间做出调整，确保合规。
银行和资本市场			
中国政府			
• *债券市场*	N/A	N/A	为投资者提供公平的环境，加强市场基础设施建设，提高透明度，从而建立一个运行良好的健康的债券市场。
• *商业银行*	对外资银行投资本地中资银行时不超过 20% 的投资上限予以提高，以激励外资银行把更多的专业知识和最佳实践转让给中国的合作伙伴。	有所进展	在各监管总部的指导下，统一监管要求，提高信息收集效率，减少或简化各类申报要求。
• *信用评级*	遵循通行的国际实践比如国际证券委员会组织 (IOSCO) 准则，并且取消相关金融行业规则的强制性评级要求。	进展较慢	取消或放宽对外资 CRA 中外资比例的限制。
• *私募股权*	对外资普通合伙人控制的人民币基金使用“内资性质”的待遇。	有所进展	通过落实本章提出的相关建议，优化对有限合伙制 VC/PE 的税收政策，促进合格机构投资者的发展，改善 QDLP 试点政策。
• *人民币国际化*	发布有关建立中国国际支付系统的更多信息。	有所进展	中国相关监管部门出台一份清晰和全局性的人民币国际化路线图和时间表，从而有助于中国和全球金融行业理解并积极配合该项政策议程。
• *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度，并缩短合资证券公司取得新业务许可的宽限期。	有所进展	尽快完全实现外商投资证券业的完全自由化，且不将证券列入美中双边投资协定负面清单中。

Chapter	2014 Recommendation	Progress Rating	2015 Recommendation
Chengdu			
Sichuan and Chengdu Governments	N/A	N/A	Establish more waste disposal vendors in Sichuan province and allow the transportation of industrial waste across provincial borders to nearby disposal facilities.
Chongqing			
Chongqing Government	N/A	N/A	Re-evaluate the social insurance tax on FIEs to accommodate companies already providing insurance to their employees.
Civil Aviation			
Chinese Government	Continue opening up and reforming China's national airspace system to enable both growth and efficiency for all users.	Moderate Progress	Continue opening up and reforming the management of China's national airspace system to promote growth and efficiency for all users, including the adoption of an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to efficiently utilize the system and alleviate delays.
Civil Society			
Chinese Government	Broaden the range of civil society organizations that can register directly with the local bureau of civil affairs, expand the regulations to be applicable nationwide, and ensure an open and transparent registration process.	Low Progress	Broaden and clarify the scope of what constitutes a public interest charity that can be registered directly with the local bureau of civil affairs, and provide clear and specific registration guidance that is implemented consistently nationwide.
US Government	Better integrate civil society into existing government dialogues (e.g., US China Consultation on People-to-People Exchange and the US-China Human Rights Dialogue), and support external dialogues such as China-US Strategic Philanthropy.	Moderate Progress	Establish a US-China collaboration mechanism on social innovation to bring civil society organizations together and exchange ideas on how the government can work with civil society organizations to outsource certain services, seed new ideas, and scale proven, demonstrated success stories. Such collaboration should seek to promote and expand ideas for addressing social problems based on learned experiences from both countries.
Clean Technology			
Chinese Government	Continue to set targets and provide preferential policies and incentives for green and energy-efficient building construction and retrofit. A potential first step would be to develop national training and certification programs for building designers and operators.	Moderate Progress	Continue to set targets and provide preferential policies and incentives for green and energy-efficient building construction and retrofit.
US Government	Continue to collaborate with the Chinese government to conduct joint research on policy and technologies that will drive very low-energy buildings in China, such as the US-China Energy Research Center (CERC) Building Energy Efficiency project.	High Progress	Consider diversifying funding beyond the CERC in order to create opportunities for SMEs and early stage companies looking for project and partnership development opportunities within the Chinese market. Supporting multiple investments and consulting platforms fosters both diversity and specialization.
Competition Law			
Chinese Government	Issue a notice clarifying that foreign-qualified lawyers (including PRC-qualified lawyers working in foreign law firms) are allowed to attend hearings alongside local counsel.	Low Progress	Issue formal guidelines confirming that foreign-qualified lawyers (PRC-qualified lawyers working in foreign law firms) and foreign counsel will be allowed to attend meetings and investigations of MOFCOM, NDRC, and SAIC, alongside local counsel to implement China's JCCT commitment.
Compliance			
Chinese Government	N/A	N/A	Build on the goals laid out in the Fourth Plenum to further develop rule of law, with the goal of a consistent and predictable legal and regulatory environment for all enterprises, foreign or domestic.
US Government	N/A	N/A	Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China BIT negotiations, to address the full range of compliance issues and their enforcement.

章 节	2014年白皮书主要建议汇总	进展评价	2015年白皮书主要建议汇总
成 都			
四川省和成都市政府	N/A	N/A	在四川省内建立更多废物处理厂，允许工业废物运出省，由附近的废物处理厂处理。
重 庆			
重庆市政府	N/A	N/A	充分考虑外资企业已经为其员工购买商业保险的现状，对外资企业适用社会保险税政策进行重新评估。
民用航空			
中国政府	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。	有所进展	继续开放和改革全国空域系统的管理，让所有使用者都能实现增长，提高效率，其中包括采用实施空中交通流量管理（ATFM）系统，纳入全系统信息管理（SWIM）以及包括空管部门、航空公司、机场当局的协同决策机制 (CDM)，以提高中国空域系统的效率，减少航班延误。
公民社会			
中国政府	扩大可直接在地方民政局登记的公民社会组织范围，将有关法规的适用范围扩展至全国，确保开放、透明的登记程序。	进展较慢	扩大并明确可向当地民政机构直接申请登记的公益慈善机构的范围，并制定全国统一的、明确且具体的登记指南。
美国政府	将公民社会议题更好地加入现有政府对话（例如：中美人文交流高层磋商机制和中美人权对话）并支持 中美战略慈善工作坊等外部对话。	有所进展	建立美中社会创新合作机制，聚合公民社会组织，与政府交流如何与公民社会组织合作进行外包服务，培育新方法和评价现有公认的成功经验。上述合作应当努力推广以便基于两国现有经验解决社会问题。
清洁技术			
中国政府	继续为新建和改造绿色和节能建筑设定目标并提供相应的优惠政策和激励措施。作为第一步，可以先开发全国性建筑设计和运营的培训和认证项目。	有所进展	继续为新建和改造绿色和节能建筑设定目标并提供优惠政策和激励措施。
美国政府	继续与中国政府开展合作，共同致力于诸如美中能源研究中心（CERC）建筑物节能项目等降低中国建筑物能耗的政策和技术研究。	进展明显	考虑在中美清洁能源联合研究中心（CERC）之外建立新的、多样化的资助机制，为中小企业和初创公司在中国市场寻找项目和合作伙伴创造更多机会。支持多元投资和咨询平台，既保障多样化又突出专业性。
竞争法规			
中国政府	发布通知明确允许外国执业律师（包括在外国律师事务所工作的中国执业律师）与本地法律顾问一同出席和参与听证会。	进展较慢	兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。
合 规			
中国政府	N/A	N/A	根据四中全会提出的目标，进一步推动法治进程，为外资和内资企业创造一个统一的、可预测的法律和监管环境。
美国政府	N/A	N/A	与中方开展双边对话，包括中美商贸联委会会议、战略与经济对话以及美中双边投资协定谈判，共同解决各种合规问题及合规政策的执行问题。

Chapter	2014 Recommendation	Progress Rating	2015 Recommendation
Construction, Engineering, and Design			
Chinese Government	Formally issue regulations clarifying qualifications required to undertake EPC contracting.	Moderate Progress	Apply more flexibility when reviewing design and construction contracts filed with local authorities to allow use of non-standard forms of contract.
Cosmetics			
Chinese Government	Shorten the registration lead time and treat domestically produced and imported normal cosmetic products equally.	Low Progress	Focus on the trend toward global industry harmonization and the limitations of the "Cosmetic Supervision and Administration Rules" during its revision; Reduce technical barriers to trade to prevent trade disruptions and barriers against international cooperation.
Customs			
Chinese Government	Before implementing a voluntary disclosure clause, take temporary measures as soon as possible to solve self-reported issues.	High Progress	Strengthen and promote the "Implementation Plan of China Customs for Comprehensively Deepening Reform" and press forward such reforms as the "single window," regional clearance integration, and paperless customs clearance.
Direct Sales			
Chinese Government	Review and revise the Direct Sales Regulation, the Anti- *Chuanxiao* Regulations, and their associated administrative directives, bringing them in line with China's WTO commitments, standard international practices, and the business reality in the China market.	Moderate Progress	Revise service center requirements from one per urban district to one per city and simplify the service center approval process.
Electronic Payment Services			
Chinese Government	Allow market access for other domestic and international EPS providers using clear and reasonable licensing requirements.	High Progress	Formulate market access regulations with reasonable requirements to allow international bank card clearing networks to provide RMB denominated services.
Express Delivery Services			
Chinese Government	During the process of formulating administrative measures, respect suggestions made by foreign enterprises to make administrative measures more balanced and sensible.	Moderate Progress	Grant FIEs more opportunities to participate in the regulatory process based on the principal of transparency and provide timely feedback to industry recommendations by holding symposiums or through other channels.
Food and Beverage			
Chinese Government	When promulgating laws, regulations, and standards, the government should provide more clarity to and work with industry to develop guiding documents that are released in conjunction with official policies and assign legal authority to official responses to regulation-related questions that are posted on the central government's website.	Moderate Progress	Specify in the revision of the Food Safety Law that the producer of food products and not the retailer should assume primary responsibility in food safety incidents; Ensure regulators examine the entire supply chain.
US Government	N/A	N/A	Strengthen communication and cooperation with the relevant government agencies, establish a communication mechanism between government and industry, and maintain scientific and stable import and export policies to improve port inspection efficiency.
Government Procurement			
Chinese Government	Submit a revised GPA accession offer in line with those of current parties.	Low Progress	Address the significant remaining gaps in the revised GPA offer and accelerate negotiations toward accession to the GPA.
Healthcare Services, Medical Devices, and Pharmaceuticals			
Chinese Government			
• *Healthcare Services*	Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities, at least for facilities in the same city.	Low Progress	Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities, at least for facilities in the same city.
• *Medical Devices*	Further clarify the procedures of the simplified Re-registration Notice.	High Progress	Adopt a risk-based approach for medical device clinical trials.
• *Pharmaceuticals*	Further develop the hospital bidding system based on the international best practice of the "two-envelope system" which balances quality with reasonable price.	Moderate Progress	Put in place a quality grading system for the tendering process to enhance patient access to innovative and quality drugs.

章 节	2014年白皮书主要建议汇总	进展评价	2015年白皮书主要建议汇总
建筑、工程和设计			
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。	有所进展	地方当局审查已备案的设计和建筑合同时应当更加灵活。
化妆品			
中国政府	缩短注册时间，平等对待国内和进口非特殊用途化妆品。	进展较慢	关注《条例》修订的局限性和行业全球一体化发展的诉求，避免技术壁垒造成的贸易冲突和国际合作障碍。
海 关			
中国政府	在自愿披露制度制定实施前，能够尽早采取过渡性解决办法，解决企业自查自报的出路问题。	进展明显	加快推进海关全面深化改革实施方案的具体落实，推进包括单一窗口、区域通关一体化改革、通关作业无纸化改革等各项改革。
直 销			
中国政府	审核并修订《直销管理条例》、《禁止传销条例》以及配套法规，使之符合中国的入世承诺、国际惯例和中国市场的行业现状。	有所进展	将服务网点设立的要求从每个区 / 县修订为每个市，简化服务网点审批流程。
电子支付			
中国政府	通过明确合理的许可要求，向其它国内和国际电子支付服务提供商提供市场准入。	进展明显	制定市场准入法规，设定合理要求，允许国际银行卡清算网络提供人民币业务。
快递服务			
中国政府	在制定快递市场管理条例的过程中，应当尊重外资企业的建议，以加强条例的平衡性和合理性。	有所进展	根据透明原则为外资企业提供更多参与法规制定过程的机会，通过举办研讨会或者其他渠道及时回应业界提出的建议。
食品饮料			
中国政府	出台法律法规及标准时，政府应使内容更加明确，并与产业合作撰写指导文件，与政策同步推出，并对中央政府网站上针对规定提出的相关提问的答复赋予法律效力。	有所进展	新食品安全法中规定食品生产经营者是食品安全第一责任人。确保监管部门对供应链全程实行监督检查。
美国政府	N/A	N/A	加强与中国进出口食品监管部门在互信基础上加强沟通合作，保持进出口政策科学、稳定，落实对守法合规企业的便利政策。
政府采购			
中国政府	根据本章所述的条款，提交一份重新修改的中国加入《政府采购协定》的出价清单，该清单要与其他现有缔约方保持一致并能使中国最后完成加入《政府采购协定》。	进展较慢	根据本章提出的建议解决修改后的《政府采购协定》出价清单仍然存在的显著差距。
医疗服务、医疗器械和医药			
• *医疗服务*	降低私立医院的纳税税率，允许连锁医院合并成熟医院和新开医院的税收报表，至少允许位于同一座城市的医院如此操作。	进展较慢	降低私立医疗机构的纳税税率，允许连锁医疗机构合并现有成熟医疗点和新设医疗点的税收报表，至少允许位于同一城市的医疗点这样处理。
• *医疗器械*	进一步明确简化重新注册的程序。	进展明显	对医疗器械临床试验采取基于风险的做法。
• *药物行业*	进一步完善“双信封”评价模式，确保贯彻质量优先、价格合理的原则，结合国际最佳实践，建立透明、规范的药品招标采购制度。	有所进展	设立招标过程的质量分级制度，提高患者获取创新性高质量药物的能力。

Chapter	2014 Recommendation	Progress Rating	2015 Recommendation
High-Tech Trade Promotion and Export Controls			
Chinese Government	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.	Moderate Progress	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.
US Government	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.	Low Progress	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.
Human Resources			
Chinese Government	Establish or clarify mechanisms for foreign employees to receive benefits under China's social insurance programs, or allow foreign employees to opt out of participation.	Low Progress	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.
US Government	Negotiate a tax totalization treaty with China.	Low Progress	Negotiate a tax totalization treaty with China.
Information and Communications Technology			
Chinese Government	Ease FDI restrictions for telecom and Internet service sectors and permit FIEs a greater role in supporting China's socioeconomic development, market liberalization, and national informatization strategies in accordance with JCCT commitments.	Low Progress	Eliminate technology localization mandates and ensure that programs and measures designed to foster innovation and technology development in China are fair, non-discriminatory, transparent, open to foreign participation, and do not distort global markets.
US Government	Create opportunities for dialogue with Chinese counterparts and share lessons learned from best industry practices, light-regulatory approach, and competitive market strategies to promote sustained industry innovation and growth.	Moderate Progress	N/A
Insurance			
Chinese Government	Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.	Moderate Progress	Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.
Intellectual Property Rights			
Chinese Government	Make the filing of a trademark in bad faith a clear basis of invalidating trademarks filed by third parties.	Low Progress	Make the filing of a trademark in bad faith a clear basis of invalidating trademarks filed by third parties.
US Government	Share best practices from US Federal and State trade secret laws and its national trade secret strategy.	Moderate Progress	Share best practices from US Federal and State trade secret laws and its national trade secret strategy.
Investment Policy			
Chinese Government	Continue to engage and take into consideration input from the foreign business community regarding ongoing foreign investment management system reform initiatives nationwide and in the Shanghai FTZ.	Moderate Progress	Continue to seek and actively consider input from the foreign business community regarding foreign investment management system reform initiatives nationwide and in the various FTZs under development, and regarding proposed revisions to the draft Foreign Investment Law.
US Government	Seek to improve understanding of the CFIUS process by: • Publishing updated guidance on the transactions that have been reviewed by CFIUS and have presented national security considerations – regardless of the home country of investor. • Publishing in the CFIUS annual report statistics on the average time to complete a review or investigation, broken down by country of the investor and sector.	Low Progress	N/A
Legal Services			
Chinese Government	Revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers and not require them to give up their PRC lawyer's license when they join a foreign law firm.	Low Progress	Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers and not require them to give up their PRC lawyer's license when they join a foreign law firm.

章 节	2014年白皮书主要建议汇总	进展评价	2015年白皮书主要建议汇总
高科技贸易促进和进口管制			
中国政府	向中国企业加大推广力度，以促进合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。	有所进展	加大和中国企业的合作从而促进企业合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。
美国政府	通过提供资金、发言人、并由相关政策制定部门和机构的官员给予支持，推进美中高科技贸易。	进展较慢	通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡仪。
人力资源			
中国政府	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。	进展较慢	在中国社保体系中建立或明确外籍雇员享受福利制度，或者允许外籍雇员不参加社保。
美国政府	与中国政府就税务加总协议展开协商。	进展较慢	与中国政府就税务加总协议展开协商。
信息通讯技术			
中国政府	根据在商贸联委会上的承诺，放宽外资直接进入电信与互联网服务行业的限制，允许外资企业在支持中国的社会经济发展、放宽市场限制和国家信息化战略方面发挥更大的作用。	进展较慢	取消技术本地化要求，允许外国企业在公平、非歧视、透明和开放的基础上参与旨在促进中国创新和技术发展的项目和措施。
美国政府	创造与中国对应部门开展对话的机会并且分享从最佳行业惯例、宽松的监管方式和竞争性市场战略中获得的经验教训，以便促进持续的行业创新和增长。	有所进展	N/A
保 险			
中国政府	在审批分支机构设立申请时，对外资保险公司和中资保险公司的申请在审理和审批时间上一视同仁。	有所进展	外资保险公司申请设立分支机构时，在审批手续和审批进度上应享受和内资保险公司同等的待遇。
知识产权			
中国政府	使恶意抢注商标成为第三方申请的商标无效作废的明确依据。	进展较慢	将恶意抢注商标作为判定第三方申请商标无效的明确依据。
美国政府	分享美国联邦和州的商业秘密法律以及美国国家商业秘密战略方面的最佳实践。	有所进展	分享美国联邦和州的有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。
投资政策			
中国政府	继续寻求并考虑采纳外资商界有关全国及上海自贸区现行外商投资管理体系改革的意见。	有所进展	继续就全国和各筹建自贸区的外国投资管理制度改革计划、就《外国投资法》草案的修订工作，征求并积极考虑外资企业的意见。
美国政府	通过以下举措增进对 CFIUS 国家安全审查程序的了解： • 发布更新版的 CFIUS 交易审批指南，强调不管投资者来自哪个国家，审批应依据国家安全考虑。 • 在 CFIUS 年报中公布有关 CFIUS 审批或调查案件平均所需时间，并且按照投资者来源国和行业进行细分。	进展较慢	N/A
法律服务			
中国政府	修改现行监管制度，允许外国律师事务所雇佣中国执业律师在本所执业，不要求中国职业律师在外资律所工作期间放弃中国律师执业资格。	进展较慢	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任用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。

Chapter	2014 Recommendation	Progress Rating	2015 Recommendation
Machinery Manufacturing			
Chinese Government	Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.	Low Progress	Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested companies.
Media and Entertainment			
Chinese Government	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.	Low Progress	Reduce non-tariff barriers to entry for all types of foreign media and entertainment (M&E) and minimize market access barriers for foreign M&E providers, including M&E censorship and control. In particular, reclassify foreign investment in M&E from "restricted" to "permitted" and increase all quotas for foreign films.
Northeast China			
Liaoning Government	Foster dialogue and consider feedback from foreign investors by holding regular meetings with FIEs, improving communications and transparency between enterprises and the local government.	Low Progress	Further engage with foreign businesses to discuss the regulatory and operational challenges faced in the region and practical solutions moving forward.
Oil and Gas, Energy, and Power			
Chinese Government	Initiate comprehensive oil and gas legislation, including the designation of a specific regulator for the oil and gas sector and the clarification of third party access rights to pipeline infrastructure.	Moderate Progress	Make concrete plans (including a time table and specific steps/milestones) to open upstream acreage/resources to all types of investors – including foreign companies and Chinese private investors. In the near term, provide specific and practical guidelines for foreign investors to participate in the exploration and production of unconventional resources.
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.	Moderate Progress	Relevant US government agencies, including the Department of State, Department of Energy, and Department of Commerce, should engage their Chinese counterparts to lobby for open acreage and resource access in China for IOCs.
Real Estate			
Chinese Government	Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171, and streamline the approval process.	Low Progress	Regulatory authorities should work with the real estate industry to deliver robust and timely market data, analysis, and information, in keeping with national initiatives already underway.
Retail and E-Commerce			
Chinese Government	Apply the same regulations and standards for both foreign and domestic retailers.	Moderate Progress	Regulate the retail industry, in all its business formats, under the same regulatory system, using consistent enforcement standards nationwide.
Shanghai			
Shanghai Government	Improve transparency and rule of law concerning changes in regulations, policy-making processes, and compliance.	Moderate Progress	Reduce the number of restrictions on the negative list for the Shanghai FTZ and further engage the American business community on ways it can help drive the reform process.
Standards, Certification, and Conformity Assessment			
Chinese Government	Allow non-Chinese testing organizations to carry out testing in China by opening up the application process for becoming a Chinese certified testing authority.	High Progress	Broaden recognition of international SDOs beyond the ISO, IEC, and ITU to any organization which follows the WTO/TBT principles on international standards development.
Tax Policy			
Chinese Government	Roll out a pilot advance ruling regime that adopts features of systems in foreign jurisdictions, covering taxpayers with certain eligibility criteria.	Low Progress	The SAT should increase the number of employees in its Anti-avoidance Division.

章 节	2014年白皮书主要建议汇总	进展评价	2015年白皮书主要建议汇总
机械制造业			
中国政府	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待遇。	进展较慢	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待遇。
传媒娱乐			
中国政府	减少对所有外国传媒企业进入中国的非关税壁垒，并将外国媒体供应商的市场准入壁垒，包括媒体审查和管控，降至最少。	进展较慢	减少各类外国媒体进入中国市场的非关税壁垒，减少外国媒体提供商的市场准入壁垒，包括媒体审查与控制。特别是要将媒体与娱乐业的外国投资由“限制”改为“允许”，增加外国电影的整体配额。
中国东北			
辽宁省政府	通过与外资企业定期举行会议，开展对话并考虑外国投资者的反馈意见；加强企业与当地政府之间的沟通和透明度。	进展较慢	继续邀请外资企业讨论在该地区经商所面临的法律和运营挑战，共商具有操作性的解决措施。
石油天然气、能源和电力			
中国政府	全面启动油气资源开发立法，包括指派专门的监管机构来负责监管石油天然气行业，并明确第三方对管道基础设施的使用权。	有所进展	制定关于向包括外资企业和中资企业在内的各类投资者开放上游区块 / 资源的具体计划（包括时间表和具体步骤及重大节点）。近期内针对外国投资者参与非常规资源勘探的开发制定具体可行的办法。
美国政府	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。	有所进展	包括国务院、能源部和商务部在内的美国相关政府部门应该积极与中国对口部门联络，游说对国际石油公司开放更多油气区块和资源。
房地产			
中国政府	取消 171 号文件针对外资企业的市场准入限制，简化审批手续。	进展较慢	采取有效措施提高透明度，以及加强管理房地产行业的规定和政策的执行。
零售业和电子商务			
中国政府	对内外资零售企业采用相同的监管要求和标准。	有所进展	将各种形式的零售业务模式纳入统一的监管体系，实行全国统一的执行标准。
上 海			
上海市政府	提高法规变更、决策过程以及合规操作的透明度及法治程度。	有所进展	减少中国（上海）自由贸易试验区负面清单中的限制，提高美资企业帮助推进改革进程的参与度。
标准、认证和许可			
中国政府	中国政府应通过开放非中资检测机构成为中国认证的检测机构的申请程序，信守允许非中资检测机构在华开展检测业务的承诺。	进展明显	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协定 (WTO/TBT) 关于国际标准制定原则的标准制定组织。
税收政策			
中国政府	在反避税法规应用问题上，推出了统一标准，程序透明。	进展较慢	试点推行事先裁定制度，借鉴国外司法体系中的要点，应用于符合一定资格标准的纳税人。

Chapter	2014 Recommendation	Progress Rating	2015 Recommendation
Tianjin			
Tianjin Government	Be bold in shaping Tianjin's new Free Trade Zone, and design it in an open way with opportunities for timely consultation with the business community.	Moderate Progress	Provide a clear roadmap for Tianjin's role in the regional integration strategy with Beijing and Hebei province, including a strategic plan to endorse certain sectors in which Tianjin has or can gain competitive advantage, such as service industries, in the broader region.
Visa Policy			
Chinese Government	Shorten the holding period of passports by the PSB when processing residence permits from 15 to five days.	Low Progress	Shorten the holding period of passports by the PSB when processing residence permits from 15 to five working days.
US Government	N/A	N/A	Add at least four visa-issuing posts in China.
Both Governments	Extend tourist and business travelers' visa validity to 10 years.	High Progress	N/A
Work Safety			
Chinese Government	Revise and update current safety laws and regulations, such as JGL80-1991 to prescribe and enforce strict parameters for various work at heights methods.	Moderate Progress	Place high attention on work safety issues emerging as a product of accelerated urbanization, prioritizing aerial work safety in all industrial sectors, particularly the construction industry.
US Government	Collaborate with the Chinese government and industry experts in sharing the latest laws and regulations for work at heights.	Low Progress	Collaborate with the Chinese government and industry experts in sharing the latest laws and regulations for work at heights.
Wuhan			
Hubei and Wuhan Governments	Provide transparent and equal application of Customs policies.	Moderate Progress	Provide transparent and equal enforcement of government rules and regulations.
US Government	Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.	Low Progress	Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.

章 节	2014年白皮书主要建议汇总	进展评价	2015年白皮书主要建议汇总
天 津			
天津市政府	在建立天津新的自由贸易区方面更加大胆，以开放的方式设计，并及时与商业界协商沟通。	有所进展	制定一份清晰的路线图，确定天津在京津冀区域一体化战略中的作用，包括支持服务业等天津具有或者能够获得竞争优势的产业在该地区发展的战略计划。
签证政策			
中国政府	把公安机关处理居留许可时留存申请人护照的期限从 15 天缩短为 5 天。	进展较慢	把公安机关处理居留许可时留存申请人护照的期限从 15 缩短为 5 个工作日。
美国政府	N/A	N/A	中国至少再增加四处签证申发地。
双方政府	将旅行和商务签证的有效期延长至 10 年。	进展明显	N/A
安全生产			
中国政府	修改和更新如 JGJ80-1991 规范等现行的安全法律法规，规定并执行严格的高空作业标准。	有所进展	高度关注城镇化过程中的安全生产问题，重点是加强建筑行业和工业行业领域的高空作业安全监管。
美国政府	与中国政府和行业专家进行合作，分享最新的高空作业法律和法规。	进展较慢	与中国政府和行业专家进行合作，分享最新的高空作业法律和法规。
武 汉			
湖北省与武汉市政府	提供透明且平等适用的海关规则。	有所进展	实现透明而平等的政府法规执法。
美国政府	扩大美国驻武汉总领馆向美国和中国公民提供服务的范围。	进展较慢	扩大美国驻武汉总领事馆对美国和中国公民的服务范围。

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

Civil Society

Introduction

Civil society, comprised of social, non-profit, or non-governmental organizations (NGOs), plays a crucial role in how many countries function by providing an independent source of accountability and unique expertise to implement development initiatives and provide services. The US, with a long tradition of philanthropy, has an active civil society that works with government, businesses, and independently to address local and national issues. In contrast, the civil society sector in China is today both fledgling and expanding. Given China's many economic, social, and environmental challenges, and the fast growth in the number of its indigenous civil society organizations, the opportunity exists to unleash the potential of this sector to make much greater contributions, especially in the areas of sustainable development.

A strong civil society matters for China's development from a business perspective. AmCham China recognizes the value civil society plays in improving the business environment and as a partner for companies in helping promote sustainable business practices in China. We encourage businesses to explore partnerships with civil society organizations.

A thriving NGO sector can contribute to solving China's sustainability challenges, bringing tremendous benefits to businesses. These benefits include: helping to provide an educated and healthy workforce, improving and protecting the environment, expanding access to services such as health and finance, advocating for food safety, developing productive labor relations, fostering active participation in society through volunteerism, providing social services to marginalized populations, and supporting the government in monitoring corporate compliance.

NGOs can play an important role in building trust in business and government as well as providing safer, formal channels for citizens to express themselves, rather than disorganized, spontaneous, and informal protests that cause social unrest. Furthermore, American businesses expect capable NGOs – both local and international – operating in China to provide these benefits, and be constructive partners in sustainability initiatives. On the one hand, businesses need transparency and trust in civil society as a whole in order to work with trusted partners and to have their partnerships be viewed as externally credible. And on the other hand, civil society can bring added trust and credibility to businesses due to their independence.

Despite some promising changes in 2014, restrictions on civil society in China remain tight, limiting its potential. Among various concerns, scrutiny is particularly high on groups with links to or funding from overseas organizations, especially governments. Meanwhile, despite the proud tradition of philanthropy in the US, the US government supports very few initiatives to share experiences with China on how the US government works with NGOs, or how NGOs in the US collaborate with businesses. Doing so would help promote China's sustainable development, assist American businesses in China, and promote ties between the two countries.

AmCham China recommends that the Chinese government ensure fair treatment of NGOs nationwide and work with stakeholders to advance trust amongst local government officials and, further, to formulate detailed regulations and guidelines for the implementation of reforms aiming to foster the growth of civil society in support of government goals. We are encouraged by the recent trends detailed below, but recognize that much more needs to be done across the country beyond a few programs in pilot cities. We encourage the US government to work closely with the Chinese government to direct more resources to assist the growth of China's civil society and share innovative programs and models.

Ongoing Regulatory Issues

There are a number of long-term challenges facing civil society in China, including the following regulatory issues:

- Registration process and taxes: NGOs are required to register in each province in which they want to open a branch. However, many types of NGOs are unable to register; must obtain government entity supervision; or struggle to register due to the lack of a transparent process, consistent criteria, and capacity in local civil affairs bureaus. Positive reforms to registration regulations that have taken place over the past two years are restricted to NGOs working in certain favored fields

公民社会

引 言

由社会非盈利或非政府组织（NGO）构成的公民社会通过提供独立的问责和独特的专业知识，执行开发计划并提供服务，在许多国家职能中扮演着重要角色。美国具有悠久的慈善传统，其公民社会与政府、企业合作活跃，并独立地处理地方和全国性问题。相比之下，中国的公民社会如今尚处于起步和扩展阶段。鉴于中国在经济、社会和环境等诸多方面面临的挑战以及国内公民社会组织数量的急速增加，这一领域将有机会释放巨大潜力，有更大的作为，特别是在可持续发展方面。

从商业角度看，公民社会的壮大对中国的发展意义重大。中国美国商会认可公民社会在改善商业环境的重大价值及其作为合作伙伴协助企业在华提升可持续商业实践发挥的重要作用。我们鼓励企业探索与公民社会组织建立合作关系。

非政府组织的蓬勃发展将有助于解决中国在可持续性发展方面的挑战，并为企业带来巨大的益处，包括帮助提供受过良好教育的健康劳动力；改善和保护环境；扩大医疗和金融等服务的普及范围；倡导食品安全；建立卓有成效的劳资关系；通过志愿服务培育参与社会活动的积极性；向边缘人群提供社会服务；以及协助政府监督企业合规。

非政府组织能够在建立商业和政府公信，提供更加安全、正式的公民诉求表达通道方面发挥重要作用，而无组织、自发的非正式抗议容易导致社会动荡。另外，中国美国商会期待有能力的非政府组织——不管是国内还是国际非政府组织——在华运营期间能够发挥上述有益作用，并成为可持续发展计划实施中的建设性合作伙伴。一方面，公民社会中的商业需要具有透明度和可信度，以作为一个整体能够与可信任的伙伴合作。基于此他们的合作对外界来说才是可以信赖的。从另外一方面，由于商业的独立性，公民社会可以为他们增加更多信任度和可靠性。

虽然 2014 年出现了一些可喜的变化，但是中国对公民社会依然实行严格管控，限制了公民社会的潜能。出于各种原因，与境外组织（特别是与外国政府）相关或得到其资助的社团所受的审查尤为严格。与此同时，尽管美国有着引以为豪的慈善传统，但美国政府却只能通过支持极少数的行动计划与中国分享美国政府与非政府组织合作，或非政府组织与企业界合作的相关实践经验。而分享上述经验有助于推动中国的可持续发展，帮助在华美资企业，并促进两国之间关系发展。

中国美国商会建议中国政府在全国范围内对所有非政府组织予以一视同仁的公平对待，并与利益相关方合作，提高地方政府的公信力，同时出台相关改革的实施细则和指南，以期更好地推动公民社会发展，支持政府实现相关目标。近期趋势让我们倍感鼓舞（详见下文），但我们认为除了在试点城市进行的少数项目以外，全国各地仍需开展更多工作。我们鼓励美国政府与中国政府密切合作，引导更多资源来协助中国公民社会的发展，并分享创新方案和模式。

现存监管问题

中国公民社会发展面临许多长期挑战，其中包括如下监管问题：

- 监管程序和税收：非政府组织在各省建立分支机构须经登记注册。然而现实中很多类型的非政府组织无法进行登记，必须接受相关政府部门监管，或者因为地方民政局程序不透明、标准不统一或人手不足而迟迟难以取得登记。近两年来公民社会登记管理改革取得的积极进展也仅限于某些优先领域（如服务提供）和部分地区（如广东）的非政府组织，且各地的具体规定和操作存在差异。而上述改革大多不惠及国际性非政府组织，目前已登记的约 500,000 个非政府组织中，除了 150 家，全都需要为他们接受的捐赠缴税。上述

(e.g., service provisions) and regions (e.g., Guangdong) and vary across the country. Most are not relevant to international NGOs. Even for registered NGOs – which number around 500,000 – all but 150 are still required to pay taxes on donations which they receive. Such restrictions make it more difficult for business to find suitable NGOs that can operate nationwide, and increases the financial burden on NGO partners.

- Restrictions on public fundraising: Only around 50-100 domestic NGOs (including public foundations) and their partners that are directly supervised by government agencies are allowed to publicly fundraise (no international NGOs are allowed to do so). This holds back NGOs from being able to grow and be more competent partners for businesses. It is noteworthy that NGOs which abide by restrictive conditions in certain pilot cities that are experimenting with easing fundraising restrictions may fundraise from the public. This is a positive step which we hope will lead to an expansion of fundraising by domestic NGOs and eventually be expanded to international NGOs.
- Limitations on tax deductions for individuals and corporations: Those making charitable donations to most types of NGOs other than those organizations directly supervised by the government generally cannot enjoy tax deductibility benefits, thus narrowing donation options and discouraging philanthropy. This restricts the pool of NGOs that businesses can fund.

AmCham China commends the Chinese government for certain regional reforms that have taken place over the last three years to address these issues, particularly those to allow direct NGO registration for certain kinds of organizations and pilots for public fundraising. This represents a welcome shift in the attitude of certain sections of the government towards civil society.

However, the major long-term issue is a lack of awareness, trust, and support for civil society, both within the government and amongst the public. Despite official announcements, most government departments do not understand the role of civil society and see independent social organizations, particularly active ones, as possible threats to social stability and government agencies. Conversely, they fail to see how a healthy civil society can enhance social stability and help the government implement its reform agenda. Furthermore, despite efforts to improve transparency, the public still has trust-related questions with government-organized NGOs (e.g., China Red Cross) compared to more independent NGOs (e.g., One Foundation). All of these issues make it more difficult for businesses to find trustworthy, capable, and credible NGO partners.

Recent Developments

Civil society experienced both positive and negative developments in 2014.

Experience Sharing and Government-to-Government Exchanges

Increasing numbers of US universities and private groups are sharing expertise with their peers in China. From a government perspective, despite the reduction of US government funding for many programs that hold the potential for building civil society capacity in China and influencing policy, there have been some increased exchanges of experts (such as on rights for disabled people) as well as dialogues and other events, many of which are well attended by US and Chinese businesses.

Expanded Scope of Civil Society-Business Partnerships

A number of US (as well as Chinese and other international) companies are working closely with both international and local civil society organizations to support China's reform and social development goals. These include efforts to train women factory workers in China, expand financial education, increase access to sports, meet the needs of the elderly, and address pollution and food safety concerns. Overall, companies are broadening their efforts to work with civil society to address China's key development issues.

Revised Environmental Law Grants Standing to More NGOs to File Public Interest Lawsuits

An initial draft of the new Environmental Protection Law was published in 2013, allowing only the All-China Environmental Federation (a group closely affiliated to the Chinese government) to file public interest lawsuits. In 2014, this law was amended to grant standing to a broader range of environmental NGOs, a move that AmCham China commends and will help ensure implementation of environmental laws in China. This in turn will improve the business environment and protect important natural resources on which business and society rely.

Increasing Engagement of the Public in Philanthropy

Companies, governments, foundations, and NGOs are all using social media to more proactively and innovatively engage the public in philanthropy and development efforts. This includes innovative approaches to legally sanctioned fundraising efforts (e.g., micro-fundraising of tiny and sometimes regular donations), campaigns, and the use of video and other unique tools to help the public volunteer or contribute to specific initiatives. These efforts help businesses promote their brands and engage consumers and employees in development programs.

限制造成企业很难找到合适的、全国性的非政府组织进行合作，也增加了非政府组织合作方的经济负担。

- 对公开募资的限制：目前只有 50–100 家国内非政府组织（包括公立基金会）及其由政府部门直接监督的合作伙伴被允许向公众募集资金（而国际非政府组织都不得进行公开募资）。此举抑制了非政府组织的成长，使他们难以成为企业得力的合作伙伴。值得一提的是，在某些进行放宽筹资限制的试点城市，遵守限制条件的非政府组织有可能公开募集资金。我们希望上述积极的改革举措能够推广到所有的国内非政府组织，并最终延伸至国际非政府组织。
- 对个人和公司税收减免的限制：除受政府部门直接监管的社会组织外，其他绝大多数类型的非政府组织接受慈善捐赠通常都不能享受税收减免优惠，此举大大限制了捐赠对象选择范围，抑制了慈善之举，同时也限制了企业对非政府组织资助的选择范围。

中国美国商会对中国政府过去三年来为解决上述问题所开展的若干区域性改革表示赞赏，特别是允许部分类型的组织直接进行非政府组织登记以及开展公开筹资试点。这些改革措施代表着中国相关政府部门对公民社会的态度发生了令人欣喜的转变。

然而，政府和公众对公民社会缺乏了解、信任和支持依然是一个长期的主要问题。尽管已有官方文件为非政府组织正名，但大多数政府部门并不了解公民社会的作用，将独立的社会组织特别是活跃社会团体视作破坏社会稳定和危及政府部门的潜在威胁。而他们并没有看到一个健康的公民社会其实能够增强社会稳定性并帮助政府实施改革议程。另外，尽管政府在提高透明度方面做了很多工作，但与更具独立性的非政府组织（如壹基金）相比，公众依然对政府设立的非政府组织（如中国红十字会）的公信力存疑。所有这些问题造成了企业很难找到可靠可信且有能力的非政府组织合作伙伴。

最新进展

2014 年公民社会的发展可谓喜忧参半。

经验分享和政府间交流

越来越多的美国大学和私人团体与中国同行分享经验和知识。从政府角度来看，尽管美国政府缩减了诸多相关项目经费，削弱了在华建立公民社会的能力和政策影响力，但专家互访交流（如在残疾人权利领域）、对话和其他活动却不断增加，上述活动也得到了美国和中国商界的广泛参与。

公民社会和企业开展合作的领域越来越广泛

许多美国（以及中国和其他国际）企业正与国际和国内的公民社会组织进行密切合作，支持中国实现改革和社会发展目标。其中包括培训中国工厂女工、推广财务教育、增加参与体育锻炼的机会、满足老龄人需求、解决污染和食品安全等问题。总而言之，企业正在不断扩大与公民社会的合作领域，帮助解决中国在发展中面临的重大问题。

修改后的《环保法》赋予更多非政府组织提起公益诉讼的主体资格

2013 年发布的新《环境保护法》草案中只允许中华环保联合会（一个隶属于中国政府的机构）提起公益诉讼。2014 年新修订的《环保法》赋予了更多环境类非政府组织公益诉讼主体资格。中国美国商会对此举表示赞赏并将鼎力协助中国相关环保法律的实施。这将有助于改善商业环境，保护商业和社会赖以生存的重要自然资源。

鼓励公众积极参与慈善事业

企业、政府、基金会和非政府组织都在积极使用社交媒体，采用创新方式鼓励公众参与慈善事业和发展项目。包括通过创新方式募集资金（如小额和定期捐款），开展活动，使用视频和其他独特工具为特定活动公开招募志愿者或筹款等。上述活动有助于企业提高品牌知名度，吸引消费者和员工参与发展项目。

文化类非政府组织发展环境的潜在改善

2013 年 12 月 30 日，文化部部长蔡武宣布建立中国国家艺术基金（CNAF），该基金主要由中央政府出资，同时接受公众捐赠。中国国家艺术基金并非一家非政府组织，但却是中国首家直接向个人和非登记团体提供资金赞助的政府机构。该机构目前还面临诸多争论和怀疑，如其选拔程序是否客观公证以及非政府组织从中受益如何等等。外国机构目前尚不能在华注册与演出相关的非政府组织，但可以注册文化交流实体。筹资及赞助方面的最佳实践越来越成为中国艺术市场会议讨论的热点问题，企业也越来越多地寻求与这些非政府组织就此开展合作的机会。

Potential Improvement in Environment for Cultural NGOs

On December 30, 2013, Minister of Culture Cai Wu announced the establishment of the China National Arts Foundation (CNAF), which is primarily funded by the central government but also accepts public donations. The CNAF is not an NGO; however, it is the first government entity in China to offer funding directly to individuals and unregistered collectives. Skepticism remains, however, about how objective the selection process will be and how much NGOs will benefit from the funding. Foreign entities are still restricted from registering performance-related NGOs in China, although cultural exchange entities are allowed. Fundraising and sponsorship best practices are increasingly important topics at arts market conferences in China and relevant for businesses which seek to partner with such NGOs.

Wide Variations and Capacity in Implementing Civil Society Registration

Despite a clear and encouraging message from the central government, the actions of local civil affairs bureaus suggest they lack specific guidance on how to interpret and implement registration changes. Different cities and provinces have established different procedures with different forms and definitions, which hinder the implementation of the central government's message. Local government officials need more support and training so they can implement the central government's message accordingly. Businesses, in turn, need predictability as well as a supportive environment for their NGO partners nationwide.

Registration

Despite progress in several cities allowing direct registration for certain charities, a lack of guidance from central authorities on the definition of which charities qualify and how they should apply is holding back registrations – in many cases there is simply confusion amongst local officials regarding minimum capital requirements as well as the need for bank accounts or official office registrations. Despite regular announcements that new nationwide regulations are forthcoming, there is still no sign that they are actually going to be approved. Furthermore, in October 2014, the city of Guangzhou – previously the site of the most progressive registration reforms – published plans for new regulations that would make it easier to shut down "illegal" NGOs. If put in place, these new measures would represent a significant step backwards, dissuading un-registered organizations from seeking legal status approval and reducing the pool of potential NGO partners for businesses.

Crackdown on NGOs Working on Certain Issues

The actions of many civil affairs and other government departments across the country appear to run contrary to the overarching message from the central government calling for social organizations to play a bigger role in society, particularly as emphasized in the 2013 Third Plenum. This includes:

- Investigations into civil society organizations, including those that are registered, for reasons of national security or maintaining social stability;
- Closing down many civil society organizations, including locally registered organizations, working on poverty reduction among ethnic minorities in western China;
- Crackdowns on both political and non-political civil society organizations around the time of certain politically sensitive activities;
- Investigations and harassment of local civil society organizations working on issues such as ensuring the enforcement of anti-discrimination or labor laws; and
- The summer 2014 investigation of international NGOs operating in China and Chinese NGOs with links to international funders. This has a direct impact on businesses, particularly American businesses, that may provide funding for NGOs in China from foundations or other entities based overseas.

Spontaneous and Disorganized Protests Driven by Social Media

Following several years of protests in response to new large-scale projects that are seen as damaging to the local environment and communities, it is now a regular occurrence for Chinese citizens to organize and communicate amongst themselves using social media and protest against new projects. Some of these protests have prevented projects, ranging from chemical plants to waste incinerator plants, from proceeding, affecting the overall business environment. NGOs can play a role in fostering dialogue to mediate disputes, help moderate dialogue, and encourage social movements that are based on facts rather than rumors, in an effort to create a more stable business environment.

Recommendations

For the Chinese Government:

- **Broaden and clarify the scope of what constitutes a public interest charity that can be registered directly with the local bureau of civil affairs, and provide clear and specific registration guidance that is implemented consistently nationwide. [MoCA]**
- Create tax benefits for civil society organizations and those who donate to such organizations. [MoCA, MOF]

各地实施公民社会组织登记的规定和能力差异较大

尽管中央政府已经明确表示鼓励，但在实践中，地方各级民政局的做法却表明他们缺少针对如何解释和执行登记改革的具体指导。各省市制定了不同的登记程序，相关表格和定义都不相同，影响了中央政府政策的落实。需要对地方政府相关人员进行更多的指导和培训，从而使他们能够准确统一地落实中央政府的规定。而企业需要可预见性，同时对于其遍布全国的非政府组织合作伙伴而言，它们需要有利的支持环境来发展。

登 记

尽管多个城市都已经放开部分慈善机构的直接登记，但由于中央政府相关部门尚未对诸如哪些慈善机构具备登记资格以及如何申请登记程序等问题作出详细规定，因此实际操作中上述登记进展缓慢，许多地方政府官员对最低资本要求、银行账户要求或注册办公地等要求理解混乱。尽管定期公告中多次表示即将颁布全国性的实施细则，但目前尚无迹象表明该细则将很快出台。另外，2014 年 10 月，此前登记改革力度最大的城市杭州，表示将出台新规定，而在该新规定之下，取缔“非法”非政府组织将更为容易。一旦上述新规定发布实施，即意味着该领域内的一项重大倒退，这将导致未登记组织不愿申请取得合法地位，进而缩小了企业选择非政府组织合作伙伴的候选范围。

打击取缔从事某些活动的非政府组织

全国各级民政部门和其他政府部门的行为似乎与中央政府在 2013 年三中全会上强调的使社会组织发挥更大作用的宏观政策导向背道而驰。这些行为包括：

- 以国家安全或保持社会稳定为由调查公民社会团体，包括已登记的社团；
- 关闭诸多公民社会团体，包括在西部少数民族地区从事扶贫工作的地方登记团体；
- 在某些政治敏感时期前后取缔和打击政治和非政治性的公民社会团体；
- 调查和骚扰从事诸如反歧视法或劳动法实施的地方性公民团体组织；
- 2014 年夏天对在华运营的国际非政府组织及有国际赞助背景的中国非政府组织进行调查。此举对企业，特别是对通过基金会或其他海外机构为在华非政府组织提供资助的美国企业，造成了直接的影响。

社会媒体驱动的自发无组织的抗议活动

过去几年来，针对有害于地方环境和社区的新建大型项目的抗议活动时有发生。如今中国公民已经习惯于通过社交媒体自发地交流和组织抗议新建项目。部分抗议活动也成功地阻止了相关项目的实施——从化工厂到垃圾焚烧厂，同时也影响了整体商业环境。非政府组织可以在沟通对话、化解纠纷和鼓励基于事实而非流言的社会运动方面发挥作用，从而营造一个更加稳定的商业环境。

建 议

对中国政府的建议：

- **扩大并明确可向当地民政机构直接申请登记的公益慈善机构的范围，并制定全国统一的、明确且具体的登记指南。[民政部]**
- 为公民社会团体及其捐赠人提供税收优惠。[民政部、财政部]
- 要求所有已登记的公民社会组织提交和公开年度财务和绩效报告，提高这一领域的透明度和信任度。[民政部]
- 对已登记的非政府组织建立有效机制，以便于报告它们在与地方政府的相关机构接触中遇到的问题。[民政部]

对美国政府的建议：

- **建立美中社会创新合作机制，聚合公民社会组织，与政府交流如何与公民社会组织合作进行外包服务，培育新方法和评价现有公认的成功经验。上述合作应当努力推广以便基于两国现有经验解决社会问题。[国务院、国家和社区服务公司、教育部、卫生部、千年挑战公司和美国国际开发署]**
- 分享有关公民社会组织透明度和评分方法的最佳实践，培养开放、竞争和透明的公民社会市场。[国税局、国务院]

- Require all registered civil organizations to submit annual financial and performance reports and make this information publicly available to increase transparency and trust in the sector. [MoCA]
- Establish a mechanism for registered NGOs to report problems they experience with local government agencies. [MoCA]

For the US Government:

- **Establish a US-China collaboration mechanism on social innovation to bring civil society organizations together and exchange ideas on how the government can work with civil society organizations to outsource certain services, seed new ideas, and scale proven, demonstrated success stories. Such collaboration should seek to promote and expand ideas for addressing social problems based on learned experiences from both countries. [DOS, Corporation for National and Community Service, ED, HHS, Millennium Challenge Corporation, USAID]**
- Share best practices on civil society organizations' transparency and ratings approaches to foster an open, competitive, and transparent civil society marketplace. [IRS, DOS]
- Expand financial support for civil society organizations in China directly or indirectly, through US NGOs. [DOS]
- Establish a mechanism to support US civil society organizations wishing to enter China, or to support those already operating in China, and find ways to encourage those organizations to work through multi-stakeholder platforms that involve civil society organizations, rather than working solely with government-affiliated organizations or public institutions such as universities. [DOS]

- 通过美国非政府组织直接或间接加强对中国公民社会组织的财政支持。[国务院]
- 建立机制，支持有意进驻中国或已在中国运行的美国公民社会组织，想方设法鼓励这些机构与包括公民社会组织在内的多利益相关方平台合作，而非仅仅与政府下属机构或包括大学在内的公共机构开展合作。[国务院]

Competition Law

Introduction

In 2014, continuous efforts were made by the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC) to enforce China's Anti-Monopoly Law (AML) and improve the regulatory framework for the protection of competition in China.

These authorities have quickly become active competition regulators with impressive enforcement track records. Nevertheless, concerns persist regarding: ❶ the potential for selective use of the AML as a tool of protectionism and promotion of national Chinese industrial interests; ❷ the lack of transparency inherent in reviews and investigations; ❸ inadequate coordination and staffing, often leading to lengthy review periods; ❹ a disregard for the importance of intellectual property (IP) protections in relation to competition law; and ❺ a history of selective admittance of foreign counsel to meetings and hearings with the enforcement authorities.

Recent Developments

MOFCOM's New Simplified Merger Review Procedure

In February 2014, MOFCOM promulgated the "Interim Regulations on Applicable Standards for Simple Cases regarding Concentrations of Business Operators" (Simple Case Standards) in response to the continuing concern over delays in obtaining pre-merger clearance from MOFCOM. In April 2014, MOFCOM followed up with the publication of "Guidelines for Notification of Concentration of Undertakings Under Simplified Merger Review Procedure" (Simple Case Guidelines), specifying the procedure for determining eligibility for the simplified procedure.

The Simple Case Standards and Guidelines clarify the standards MOFCOM will use to distinguish cases to be reviewed under the simplified procedure and reflect MOFCOM's commitment to develop a more efficient pre-merger review process. On June 9, 2014, MOFCOM cleared its first case under the simplified procedure, and, as of late 2014, 64 applications for treatment under the simplified procedure have been posted on the agency's website, indicating significant use and acceptance by both MOFCOM and the business community.

In addition, the simplified procedure appears to be having a significant beneficial effect for those cases accepted for such review. On the basis of statistics available through September 30, 2014, 23 simplified cases have been cleared unconditionally with only two of those going into Phase II review (see table for the review times to date).

These review times show significant improvement over past treatment of non-controversial cases, which routinely extended to one or two months into the Phase II review period, and MOFCOM is to be congratulated for implementing such an effective system so quickly from the publication of the Simple Case Standards and Guidelines in early 2014. AmCham China recommends that MOFCOM continue to improve this procedure by: ❶ publishing firm guidance and maximum review periods for pre-acceptance review and substantive review of simplified cases; and ❷ publishing guidance on the consequences, timelines, and procedures if an application for simplified review is rejected.

MOFCOM's Strengthening of Enforcement Measures

Since the AML's enactment, MOFCOM has completed review of 875 cases, clearing 849 (97 percent) unconditionally. This pace was similar in 2014, with 158 unconditional clearances, four conditional clearances, and a single prohibition in the first three quarters of the year. AmCham China commends MOFCOM's efforts as its analyses have become more thorough and detailed, incorporating more advanced economic tools including price increase forecasts and concentration ratios.

On December 4, 2014, MOFCOM promulgated the "Provisions on Imposing Restrictive Conditions on the Concentration of Undertakings (for Trial Implementation)," effective on January 5, 2015 (the New Remedy Rules). The New Remedy Rules detail the regulations concerning the imposition of remedies in merger cases, including determination, implementation, oversight, modification, and removal of conditions. The New Remedy Rules confirm the

竞争法规

引 言

2014 年，中国商务部、国家发展和改革委员会和国家工商行政管理总局继续执行《反垄断法》，完善旨在保护中国境内竞争的监管框架。

上述主管部门已经迅速成为竞争的积极监管者，并且取得了令人瞩目的执法成绩。但是，仍然存在以下问题：❶《反垄断法》有可能被选择性地用作保护主义和歧视跨国企业的工具；❷ 审查和调查程序缺少透明度；❸ 执法机构的协调和人员配备不足，经常导致审查和调查期限过长；❹ 忽视了知识产权保护对竞争法规的重要性；❺ 曾经选择性地允许外国律师参加执法部门的会议和听证会。

最新进展

商务部简化并购审查程序

鉴于人们一直担心从商务部获得并购预许可可能发生拖延，2014 年 2 月，商务部颁布《关于经营者集中简易案件适用标准的暂行规定》（《简易案件标准》）。2014 年 4 月，商务部又颁布了《关于经营者集中简易案件申报的指导意见（试行）》，明确了适用简易程序需要满足的条件和标准。

《简易案件标准》和《简易案件指导意见》明确了商务部用于判定适用简易程序案件的标准，表明商务部决心提高并购前审查程序的效率。2014 年 6 月 9 日，商务部首次适用简易程序审查并购交易申请，截止 2014 年年末，商务部网站已经公布 64 份简易程序适用申请，这表明商务部和企业界开始大量使用和接受简易程序。

此外，简易程序对适用简易审查程序的案件来说似乎具有显著的有利影响。据统计，截止到 2014 年 9 月 10 日，23 件简易案件获得无条件批准，只有两个案子进入第二阶段审查。（最新的审查数据请见表格）

这些数据表明，与过去经常延续一到两个月才进入第二阶段的情况相比，这种处理非争议案件的方式可谓是巨大的进步，商务部在 2014 年年初发布《简易案件标准》和《简易案件指导意见》，之后就能如此迅速地实施有效的制度，这点很值得祝贺。中国美国商会建议商务部继续通过以下方式完善这一程序：❶ 公布“预受理”审查的企业指南和审查次数上限以及简易案件的实质性审查结果；❷ 针对简易审查申请被拒绝后所致后果、期限和程序公布指导意见。

商务部加强执法措施

自《反垄断法》颁布实施以来，商务部已经完成 875 件审查，其中 849 件（占 97%）获得无条件批准。2014 年的情况与之类似，在前三个季度，有 158 件获得无条件批准，4 件获得有条件批准，只有 1 件被禁止。中国美国商会建议商务部进行更加全面和详细的分析，更多地运用价格上涨预测和集中比率等高级经济工具。

2014 年 12 月 4 日，商务部颁布《关于经营者集中附加限制性条件的规定（试行）》（2015 年 1 月 5 日生效，《条件新规》）。《条件新规》详细介绍了并购案件的限制性条件，包括限制性条件的确定、实施、监督、变更和解除。《条件新规》确定将继续使用结构性条件（例如剥离有形资产或无形资产权益）和行为性条件（例如，开放网络或基础设施、许可关键技术）。《条件新规》没有说明商务部是否继续沿用过去特有的“单独持有”或“临时剥离”条件（例如，西部电子收购日立，丸红收购高鸿控股），虽然有提

Period 期限 (Days 天)	Number of Cases 案件数量	Percentage 占比
≤ 25	14	60.9
26-35	8	34.8
> 35	1	4.3

continued use of structural remedies (such as divestitures of tangible assets or intangible property rights) as well as the use of behavioral remedies such as providing access to infrastructure and networks or licensing key technologies. The New Remedy Rules do not clarify MOFCOM's continuing position on its unique "hold separate" or "temporary divestiture" remedies used in the past (e.g., Western Digital/Hitachi, Marubeni/Gavilon), but does provide for comprehensive conditions "combining both structural and behavioral conditions" without further elaboration. MOFCOM should clarify its current use of this unique remedy and, given its singular application by MOFCOM, provide explicit guidelines as to how and when such a condition might be an appropriate solution to competitive issues of a given transaction.

The New Remedy Rules also provide when and how a company may apply for removal of remedies imposed on its transaction. On January 9, 2015, MOFCOM announced its decision dated January 6, 2015 to remove the second condition (i.e., Google should treat all OEMs in a non-discriminatory way with respect to its Android platform) imposed in its clearance decision of Google's acquisition of Motorola Mobility. Although the Google/Motorola transaction has its distinctive facts, it demonstrates that MOFCOM appears committed to follow the procedures outlined in the New Remedy Rules.

MOFCOM has also taken an important step by beginning to publicize penalty decisions on undertakings which fail to file for review when required. On December 8, 2014, the Department of Treaty and Law imposed a fine of approximately US $48,272 (RMB 300,000) on Unigroup for failure to notify its acquisition of RDA Microelectronics. This decision is particularly to be commended given not only that Unigroup is a state-owned enterprise (SOE) under Tsinghua Holdings, but also because the transaction took place in the semiconductor industry which is a major focus of China's industrial policy. MOFCOM's public censure of an SOE for failure to notify helps to dispel the impression that domestic companies, particularly SOEs, sometimes consider themselves to be exempted from the requirement to notify.

However, MOFCOM continues to provide inadequate evidence to support its findings of coordinated or unilateral effects in its conditional decisions and prohibitions.

- On June 17, 2014, MOFCOM prohibited a proposed shipping alliance among A.P. Moller-Maersk Line, Mediterranean Shipping Company, and CMA CGM (P3). The prohibition relied on findings that the alliance was not a "loose association" but rather a "tight cooperation," and that the concentration would "significantly enhance" the parties' market power and increase the degree of concentration in the market. However, MOFCOM also relied on allegations that the proposed transaction would increase market entry barriers (without providing any detailed analysis), and that the apparent efficiencies of the integration would enhance the parties' market power and thereby "squeeze development" by competitors, implying industrial policies might again play a role. When taking the ultimate step by delivering a prohibition, MOFCOM should provide detailed analysis for all grounds on which it relies, particularly where what appear to be pro-competitive, transaction-specific efficiencies are cited as grounds supporting the anticompetitive nature of the transaction.
- In its decision analyzing the proposed Corun PEVE automotive battery joint venture (JV) dated July 2, 2014, MOFCOM analyzed the nickel-metal hydride (Ni-NH) battery market in isolation, justifying the conditions imposed by reference to the fact that the shares of the four largest suppliers indicated serious concentration in the industry, and that the JV in question would lead to links among three of those suppliers, potentially reducing their incentive to compete vigorously. However, other competition authorities to consider the issue have found that lithium-ion hybrid electric vehicle batteries formed a substitutable and superior alternative to Ni-NH batteries, suggesting that MOFCOM may be applying an overly narrow market definition not justified from an economic perspective.
- MOFCOM also imposed remedies in its decisions in the Microsoft/Nokia (April 8, 2014), Merck/AZ (April 30, 2014), and Thermo Fisher/Life Technologies (January 14, 2014) cases. IP and licensing concerns played a prominent role in these decisions, raising concern as to whether MOFCOM's decisions were driven at least partially by industrial policies to protect Chinese companies instead of market competition. These decisions are discussed in detail in the IP section below.

NDRC's Enforcement Activities

The NDRC continued to investigate both domestic and foreign companies for pricing and anti-monopoly concerns, notwithstanding heavy media focus on the impact on foreign companies. The summary below highlights the NDRC investigations relevant to foreign companies.

Price-Fixing

- In August 2014, the NDRC found that twelve Japanese auto parts suppliers had allegedly colluded to set the price of auto parts and bearings. Under the leniency provision, one company was exempted and another company's fine was reduced.

Resale Price Maintenance

- In May 2014, the NDRC found that six contact lenses and eyeglasses manufacturing companies had allegedly violated the AML through resale price maintenance (RPM) programs where retailers were required to promote products at the same time and at certain prices.

到“结构性条件和行为性条件相结合的”综合性条件，却没有更详细的说明。商务部应当明确这一特有条件的运用，并应当明确说明某一交易如何以及何时可以适用这一独有的举措。

《条件新规》还规定了企业何时可以以及如何申请解除限制性条件。2015 年 1 月 9 日，商务部宣布在 1 月 6 日所做出的裁决，即解除批准谷歌收购摩托罗拉移动所设置的第二项条件（即：谷歌的安卓平台应当按照非歧视的原则对待所有的原始设备制造商）。虽然谷歌收购摩托罗拉移动公司的交易有其独特性，但这仍然表明商务部信守《条件新规》所规定的程序。

商务部还采取了一项重要举措，即开始公布对未能按照要求提交审查的企业的处罚决定。2014 年 12 月 8 日，紫光集团因为未能申报收购锐迪科微电子一事，被商务部条法司处以约 48,272 美元（人民币 300,000 元）罚款。这一决定特别值得称赞，这是因为紫光集团是清华控股旗下的一家国有企业，而且这一交易发生在中国产业政策重点关注的半导体行业。商务部公开谴责一家国有企业未能履行申报义务，此项行动有助于让国内企业，特别是国有企业，打消认为自己不用遵守申报要求的想法。

不过，如往常一样，商务部在有条件批准和禁止决定书中给出的支持协同或单边效应的证据并不充分。

- 2014 年 6 月 17 日，商务部禁止马士基集团、地中海航运和达飞海运集团关于成立 P3 航运联盟的申请。禁止的原因是联盟属于“紧密合作”，而非“松散联系”，集中将“显著提升”相关方的市场力量，提高市场的集中程度。商务部还表示，拟议的交易将会增加市场准入壁垒（没有做出任何详细的分析），显著的整合效率将会提升相关方的市场力量，从而“挤压”竞争者的发展空间，暗示着产业政策再次发挥作用。在最终做出禁止决定时，商务部应当详细说明其所依据的各种理由，特别是在看似有利于竞争的情况下，可以通过交易的特定效率来证实交易具有妨害竞争的性质。
- 2014 年 7 月 2 日，商务部在科力美汽车电池合资项目决定书中，单纯地分析了镍合金（镍氢）电池市场，指出之所以有条件放行，是因为四家最大的供应商所占市场份额表明这一行业存在高度的集中，合资项目将使得其中三家供应商产生关联，从而降低其积极开展竞争的意愿。但是，美国联邦贸易委员会早在 2009 年就已经认定混合电动车的锂离子电池是镍氢电池更好的替代品，表明商务部对镍氢电池的选择性关注从经济角度来说是站不住脚的。
- 商务部在批准微软收购诺基亚（2014 年 4 月 8 日）、默克收购安智电子（2014 年 4 月 30 日）和赛默飞世尔收购生命科技（2014 年 1 月 14 日）交易时也提出了限制性条件。在这些决定中，知识产权和许可成为商务部的主要考虑因素，这使得人们越发担心商务部的决定至少有一部分原因不是市场竞争，而是出于保护中国企业的产业政策的需要。我们将在下面的知识产权部分详细介绍这些决定。

发改委的执法活动

发改委继续针对境内企业和外资企业开展价格和反垄断调查，而媒体重点关注的则是对外资企业的影响。下面专门介绍了发改委针对外资企业进行的调查。

价格垄断

2014 年 8 月，发改委认定十二家日本汽车零部件供应商合谋设定汽车零件和轴承价格。根据宽恕条款，一家公司免于处罚，还有一家公司被减轻处罚。

转售价格维持

- 2014 年 5 月，发改委认定六家隐形眼镜和镜片生产企业因为通过转售价格维持计划要求零售商在相同的时间按照某一价格开展产品促销，涉嫌违反《反垄断法》。
- 2014 年 9 月，外资汽车制造厂因为违反《反垄断法》在零部件售后市场实行转售价格维持计划而被发改委处罚。

滥用支配地位：暂停的调查

- 2011 年，发改委暂停对中国电信和中国联通的调查。为了换取暂停调查，这两家公司同意提高网速，降低互联网接入收费并且每年向发改委提交报告。中国联通和中国电信分别于 2013 年 12 月 23 日和 2014 年 1 月 7 日提交最新的报告。2014 年 2 月，发改委表示连通质量已经改善，价格已经降低，但是没有明确是否继续暂停调查。
- 2014 年 5 月，发改委暂停针对 InterDigital 的调查，以换取 InterDigital 就许可操作、专利使用费以及对被许可人提起诉讼等方面做出承诺。

- In September 2014, the NDRC fined foreign automobile manufacturers for allegedly violating the AML through RPM programs related to the after-sales market of spare parts.

Abuse of Dominance: Suspended Investigations

- In 2011 the NDRC suspended the investigation of China Telecom and China Unicom. To qualify for the suspension, the companies promised to increase Internet speed, decrease the fees charged for Internet access, and submit reports to the NDRC every year. China Unicom submitted its most recent report on December 23, 2013, and China Telecom submitted its report on January 7, 2014. The NDRC noted in February 2014 that quality of connectivity has improved and prices are lower; however, the decision whether to continue the suspension is still pending.
- The NDRC suspended the investigation of InterDigital Corporation in May 2014 in exchange for commitments by InterDigital related to licensing practices, royalties, and use of litigation related to licensees.

Abuse of Dominance: Excessive Pricing

- The first excessive pricing investigation was concluded in September 2013. Two river sand producers were found to have 75 percent of the market (comprised of one of ten subdivisions in the region). These river sand producers increased the price of their products by 54 percent, even though production costs had increased by only 20 percent. These producers' prices were also higher than the prices charged by other companies in the region. Therefore, the NDRC found that they had violated the AML provision prohibiting excessive prices. Although this involved domestic firms in a small subdivision in Guangdong, the narrow definition of the market and basis for determining excessive prices may indicate how the NDRC will approach future excessive price investigations.
- The suspended investigation of InterDigital in May 2014 included an excessive pricing allegation in the form of royalty rates for patents. Since the investigation has been suspended, it is not clear how the NDRC determined that InterDigital had a dominant market position and how it determined that the royalty rate was excessive, although presumably the NDRC based its findings on the court decision involving the same parties (the court's analysis has been criticized by the bar and economists). The NDRC has made public announcements about ongoing investigations of some foreign automobile manufacturers for alleged excessive pricing, but it has not provided a market definition or the basis for excessive pricing.
- In February 2015 the NDRC fined Qualcomm for allegedly violating the AML through excessive pricing, tying essential patents to non-essential patents and unreasonable sales conditions. In addition to paying a fine, Qualcomm agreed to a rectification plan that included terms related to licensing practices, royalties, and conditions of licensing agreement.

Investigations in General

Concern has been raised by foreign companies about: ❶ the breadth of scope of the material that is requested and the lack of a process to appeal such requests and ❷ NDRC's refusal to allow foreign counsel to participate in discussions related to the investigations.

AmCham China recommends that the NDRC provide more detail in its announcements regarding investigations. Increased transparency gives companies more guidance regarding what is and is not acceptable and thus enables them to better comply with the AML. In addition, the investigation process would benefit from greater specificity in the information being requested (not only would this decrease the amount of information handed over, but would also narrow the scope for the benefit of the investigative staff who must review the documents). Having foreign counsel present would facilitate discussions, especially given: ❶ the likelihood that the behavior under investigation is similar to or affects the undertakings' conduct in other jurisdictions; and ❷ the often long-standing familiarity and understanding of foreign counsel with their clients' business culture and operations.

SAIC's Enforcement Activities

The SAIC published eight decisions in 2014, only one of which was conducted by the central SAIC. The other seven were conducted by local administrations of industry and commerce in Guangdong, Inner Mongolia, Jiangsu, Chongqing, and Zhejiang, respectively. Unlike 2013, in which all 12 of the published cases concerned horizontal monopoly agreements, only three of the eight in 2014 related to horizontal monopoly agreements. The other five were abuse of dominance cases. In striking contrast to the NDRC's enforcement activities, each of the eight cases focused on domestic companies and local industries such as water supply, fireworks, quarries, tobacco, natural gas, and concrete.

Although no multinationals were involved in the eight published final decisions, the SAIC opened or continued two high-profile investigations involving foreign firms.

- In 2013, the SAIC initiated an investigation into the activities of Tetra Pak, which has yet to conclude. On September 11, 2014, it was reported that the investigation had entered into the judgment phase. SAIC Director General Ren Airong disclosed that the agency conducted industry research and surveys in four areas, namely liquid food, packing equipment, packing materials, and raw materials, and confirmed that the agency would publish its findings in a timely manner. It is

滥用支配地位：超高定价

- 2013 年 9 月，第一件超高定价案例完成调查。发改委认定两家河沙生产商的市场份额达到 75%（占该地区的十分之一），在生产成本只增加 20% 的情况下，却将产品价格上涨 54%。这两家企业的价格也高于该地区其他企业收取的价格。因此，发改委认定其违反《反垄断法》关于禁止超高定价的规定。虽然涉案的是位于广东某地的境内企业，但是，发改委在本案中对于市场的狭义假定以及用于认定超高价格的理由，也许能够揭示发改委将来开展超高定价调查的方式。
- 对 InterDigital 进行的调查已于 2014 年 5 月暂停，调查包括指责 InterDigital 通过专利使用费的形式实施超高定价。由于调查已经暂停，所以，不清楚发改委是如何认定 InterDigital 的市场支配地位和使用费过高的，不过很有可能发改委依据的是法院对此做出的判决（法院的分析受到律师和经济学家的批评）。发改委已经宣布正在对一些外资汽车制造厂涉嫌超高定价进行调查，但是没有提供超高定价的市场定义或基础。针对芯片生产商高通公司存在的类似许可问题的调查仍在高调进行当中。
- 2015 年 2 月，发改委以超高定价、将必要专利和非必要专利捆绑销售并且设定不合理的销售条件为由，认定高通公司违反《反垄断法》。除了交纳罚款，高通公司还同意对许可操作、专利使用费和许可协议的条款进行整改。

调查活动

外资企业提出的问题包括：❶ 要求提交的资料的范围，缺少对资料要求提出申诉的程序；❷ 发改委拒绝允许外国律师参加与调查有关的会谈。

中国美国商会建议发改委在公告中更加详细地说明调查活动。更高的透明度能够更好地帮助企业了解什么是允许的和什么是不允许的，从而更好地遵守《反垄断法》。此外，若是信息要求能更加详细和具体，将会对调查过程更有帮助（不仅有助于减少提交的资料数量，而且有助于缩减调查人员必须审查的文件的范围）。鉴于 ❶ 被调查的行为有可能影响企业在其他国家或地区的活动或者与之类似；并且 ❷ 国外律师通常非常熟悉和了解客户的企业文化和经营，所以，允许国外律师参加将有助于推进调查进程。

工商总局的执法活动

2014 年，工商总局公布了八个案件的裁决，其中只有一个案子是总局裁决的，其他七个案件的裁决分别由广东、内蒙古、江苏、重庆和浙江的地方工商部门做出。2013 年，公布的 12 个案件全都与横向垄断协议有关，相比之下，2014 年，在八个案件中只有三个案件与横向垄断协议有关，其他五个案件与滥用支配地位有关。与发改委的执法活动形成鲜明对比的是，这八个案件都与境内企业有关，主要集中在供水、烟花、采石、烟草、天然气、水泥等当地产业。

虽然公布的八项最终裁决没有涉及到跨国公司，但是，工商总局有两项已经启动或正在进行的调查活动涉及到了外资公司。

- 2013 年，工商总局对利乐启动调查，调查目前尚未结束。2014 年 9 月 11 日，有报道称调查已经进入裁决阶段。工商总局反垄断与反不正当竞争执法局的任爱荣局长透露，工商总局从液态食品、包装设备、包装材料和原材料四个方面进行了行业分析和调查，将及时公布调查结果。据称，工商总局已经向利乐发出临时性处罚通知，调查即将完成。
- 2014 年 7 月 29 日，工商总局在其网站上披露，工商总局对微软公司在北京、上海、广州和成都的四个经营场所进行突击检查。并且说明，2013 年 6 月，工商总局根据举报进行了调查。在突击检查过程中，执法人员询问了市场和财务部门的高级管理人员，但是显然不满意有一些关键人员不在现场。2014 年 8 月 4 日，工商总局在其网站上发布公告，声称已经会见微软公司的全球副总裁，要求微软公司遵守中国法律，不得以任何方式阻碍案件调查。两天之后，工商总局对作为微软财务外包商的埃森哲信息技术（大连）有限公司进行突击检查。微软公司首席执行官前往北京拜会工商总局局长张茅，微软表示将遵守中国法律。

中国美国商会赞赏工商总局通过建立一个案件平台，及时公布微软案的最新调查结果，提高了执法活动的透明度。中国美国商会建议工商总局进一步明确与程序正义有关的问题，包括突击检查过程中复印和保留文件的权限范围以及保障相关人员在接受询问过程中享有寻求律师帮助的权利。

reported that the agency has already issued a tentative penalty notice to Tetra Pak and will conclude the case soon.

- On July 29, 2014, the SAIC disclosed on its website that it had raided four Microsoft offices in Beijing, Shanghai, Guangzhou, and Chengdu. It further disclosed that the investigation was initiated by complaints and had begun in June 2013. During the dawn raids, the officials queried senior executives in the marketing and finance departments, but were apparently dissatisfied with the fact that certain key personnel were not on site. On August 4, 2014, the SAIC published a notice on its website that the agency had met with Microsoft's global vice president, and urged Microsoft to comply with the laws of China and to not obstruct the investigation in any way. Two days later, the SAIC conducted a dawn raid on Accenture as a result of its financial outsourcing work performed for Microsoft. Microsoft's CEO came to Beijing to meet with SAIC Minister Zhang Mao to discuss the case, and Microsoft stated that it would comply with the laws of China.

AmCham China commends the SAIC for improving the transparency of its enforcement activities by establishing a case platform and for publishing updates on its investigation of Microsoft promptly. AmCham China recommends that the SAIC provide additional guidance on questions of due process, including the scope of its ability to copy and retain documents in a dawn raid and a guarantee of the right to counsel during interviews.

Judicial Enforcement Activities

In May 2012, the Supreme People's Court (SPC) published the "Provisions on Certain Issues Concerning the Application of Law in Civil Dispute Cases Arising out of Monopolistic Acts" (the Provisions). The Provisions clarify certain matters related to anti-monopoly litigation, including the filing, acceptance, jurisdiction, evidence rules, and civil liability applicable to those cases. Since their publication, we have seen a rise in anti-monopoly cases resolved through civil litigation.

The Qihoo 360 and Tencent case is perhaps the most high-profile. Qihoo 360 accused Tencent of abusing its dominance in online instant communications services. In March 2013, the Guangdong High People's Court held that Tencent did not violate the AML, providing a detailed analysis of the definition of relevant market and alleged abusive conduct.

Qihoo 360 appealed the case to the SPC, which handed down its decision in October 2014. The SPC found that Tencent did not hold a dominant position, notwithstanding an alleged 80 percent market share, given the dynamic nature of the market for instant messaging and considering factors such as Tencent's ability to control price, its financial and technological strength, and the ease of other business operators to enter the market. The SPC also provided guidance on bundling, tying, and refusals to deal.

AmCham China commends both the SPC and the Guangdong High People's Court for their detailed, thorough, and economically supported analyses of the facts at hand. AmCham China recommends that the guidance and experience of these Courts be adapted by the anti-monopoly enforcement authorities in their own guidelines and practices to ensure transparency and consistency in their approaches.

Ongoing Regulatory Issues

Exclusion of Foreign Counsel

In the absence of implementing regulations, over the past several years, foreign counsel have often been barred or discouraged from participating in MOFCOM meetings in merger control proceedings, and have routinely been prevented from attending meetings with or investigations by the NDRC and SAIC. This is true even when the lawyers in question are accompanied by local counsel from Chinese law firms and are not engaging in the practice of 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 foreign 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.

At the 25th US-China Joint Commission on Commerce and Trade (JCCT), China undertook to ensure that, upon request from the party involved, and after obtaining approval from the relevant authority (which shall be granted as normal practice), the following persons may attend the meetings with any of the three agencies:

❶ Representatives of foreign law firm representative offices established in China, who are permitted to attend and advise on international law and practice and provide information on the impact of the Chinese legal environment, but not permitted to conduct activities that encompass Chinese legal affairs; and

❷ Foreign legal counsel practicing in other legal jurisdictions, who are permitted to attend and provide information on the subject transaction or conduct and information on the laws or international practices of the legal jurisdiction where they practice.

We applaud this advance and look forward to its implementation and observance in the near future. These steps will help better establish MOFCOM's recent practice of allowing

司法执法行动

2012 年 5 月，最高人民法院发布《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》（以下简称《垄断司法解释》）。《垄断司法解释》明确了起诉、案件受理、管辖、诉讼证据、民事责任等与反垄断诉讼有关的问题。我们注意到，《垄断司法解释》发布之后，通过民事诉讼提起的反垄断案件有所增加。

其中最受关注的可能就是奇虎 360 诉腾讯案。奇虎 360 指控腾讯滥用其在在线即时通讯服务的支配地位。2013 年 3 月，广东省高级人民法院裁定腾讯没有违反《反垄断法》，并详细分析了相关市场和滥用行为的定义。

奇虎向最高人民法院提出上诉，2014 年 10 月，最高人民法院做出裁决。最高人民法院认定，虽然据称市场份额高达 80%，但是，考虑到即时通讯市场的动态性质以及腾讯的价格控制能力、财务和技术实力以及其他经营者很容易进入这一市场等因素，腾讯并不具有市场支配地位。最高人民法院还对捆绑搭售和拒绝交易给出了指导意见。

中国美国商会赞赏最高人民法院和广东省高级人民法院对现有的实际情况进行详细、全面和客观的分析。中国美国商会建议反垄断执法部门在制定指导意见和具体实践时参考这些法院的意见和经验，确保执法方式的透明度和一致性。

现存监管问题

排斥国外律师

由于没有颁布实施条例，在过去的几年中，外资律师事务所聘用的国外律师，即便有中国律师事务所的本地律师陪同并且不寻求在中国执业，通常也无法参加商务部召开的并购规制会议以及发改委和工商总局的会议或调查活动。这不符合国际惯例，国际上的通行做法是，允许相关方聘请的国际律师和本地律师一同约见竞争事务主管当局，从而确保更加高效地传达不同司法管辖区域的证据和分析。同样，允许外资律师事务所的律师参与《反垄断法》程序能够帮助中国主管部门评价直接呈交的、根据国际竞争政策的普遍原则所做的分析。

中国在第 25 届美中商贸联委会上承诺，经相关方提出申请并且取得相关当局的批准（正常情况下会予以批准），以下人员可以参加三部委的会见：

❶ 外资律师事务所代表处的代表可以参加会议并就国际法及实践及其对中国法律环境的影响提出建议，但是不得进行涉及中国法律事务的活动；以及

❷ 在其他司法管辖区域执业的外国律师可以参加会议并介绍目标交易或行为以及执业所在地的法规以及国际实践。

我们对这一进展表示欢迎，并且期待其在不远的将来能够得到实施和遵守。有了这些举措，商务部最近允许外国律师参加重要的并购规制会议的做法将变成一种常态，对发改委和工商总局的调查活动也能提供重要的有益帮助。这是因为在全球化程度日益提高的背景下，垄断行为以及与外资有关的并购审查通常都是跨越国境的，所以外国律师列席会议，既有助于发改委和工商管理总局更好地了解相关方的海外活动（从而更有效率地询问），也能够帮助发改委和工商管理总局更好地了解国内案件与其他管辖区域的法律和现实情况之间的潜在关联。此外，外国律师出席会议还能够进一步保障在华经营的跨国企业享有的程序正义权利。

提高透明度

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导意见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企业提供指导，教育企业遵守法律。

商务部正在努力提高透明度，发改委和工商总局只是选择性地公布执法决定（虽然正如上面提到的，工商总局近来已经有所改进）。中国美国商会建议发改委和工商总局及时、完整地公布执法决定。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。不能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。

并购审查

2014 年，商务部继续完善并购审查方法。中国美国商会鼓励商务部在起草新的实施条例的过程中考虑以下问题：

- 商务部的审查时间仍然比其他司法管辖区要长，即便不存在任何明显的竞争问题，也时常延续到第二阶段。这种拖延也许能够反映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审批流程的程序要求，亦或商务部在资

foreign counsel attendance at important meetings in the context of merger control. These steps will also provide an important and beneficial aid to the NDRC and SAIC in their investigations, as increasing globalization means that cartel conduct as well as foreign-related merger reviews ordinarily extend across borders. As a result, the presence of foreign counsel will allow the NDRC and SAIC to obtain a better understanding of the parties' activities overseas (thus helping the agencies target and tailor their inquiries more efficiently) and will also help the NDRC and SAIC better understand the potential interaction of a domestic case with the laws and facts in other jurisdictions. In addition, the presence of foreign counsel will further safeguard the due process rights of multinational companies operating in China.

Increasing Transparency

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.

While MOFCOM has strived to increase transparency, the NDRC and SAIC only selectively publish their enforcement decisions (although the SAIC's recent improvements have been noted above). AmCham China recommends that full enforcement decisions of the NDRC and SAIC be published as they occur. 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.

Merger Review

In 2014, MOFCOM continued to refine its approach to merger review. AmCham China encourages MOFCOM to consider the following issues as it drafts new implementing regulations:

- MOFCOM reviews continue to last longer than reviews in other jurisdictions, typically extending into Phase II even in the absence of any clear competition concerns. These delays may reflect procedural requirements for non-transparent consultations with other ministries and trade associations. These delays may also reflect constraints on MOFCOM's resources. While these are understandable, unnecessary delay may jeopardize the conclusion of a transaction. While the simple procedure has facilitated MOFCOM's review of straightforward transactions, MOFCOM should still improve its review times for other cases, for example by increasing staffing, publishing firm guidance and maximum review times for "pre-acceptance" review by the consultation division, and increasing transparency when delays are created by the review of other important stakeholders.
- MOFCOM does not assign a single case handler to supervise review from pre-acceptance through the ultimate determination. Moreover, MOFCOM typically declines to identify a transaction's specific assigned case handler until questions have been raised by that case handler on the review side. MOFCOM should increase the efficiency and speed of review by assigning a single case handler, and it should identify the assigned case handlers earlier to facilitate open communication and transparency.
- MOFCOM personnel continue to frame investigations in terms of China's national competitiveness instead of a particular market's competitiveness. This emphasis on national competitiveness can give rise to concerns that MOFCOM focuses its enforcement activities against foreign transactions while failing to act against Chinese acquisitions and domestic industry consolidation.
- 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 the NDRC, SAIC, or other relevant agencies such as the Ministry of Industry and Information Technology (MIIT). While the NDRC and SAIC have a statutory consultative role to play in MOFCOM merger reviews, that role has increasingly expanded to the point that the NDRC and SAIC are effectively second and third tiers of investigation, requiring responses from the parties to investigative requests. MOFCOM should affirmatively assert its role as the agency of jurisdiction to minimize such requests and thereby reduce the burden on the parties to address multiple levels of review.

Industrial Policy, Protectionism, and Intellectual Property Rights

Most provisions of the AML seek to promote consumer welfare and economic efficiency. At the 25th US–China JCCT, China undertook to foster a better environment to facilitate increased sales of legitimate IP intensive goods and services. Nevertheless, concerns remain that the AML may sometimes be used to shield domestic markets from foreign competition and thus promote indigenous innovation and the development of national champions. AmCham China recommends that MOFCOM and the other enforcement agencies publish specific guidelines addressing the potential issues below:

- Article 7 requires the state to "protect the lawful business activities" of SOEs in industries "that implicate national economic vitality and national security." Thus, without additional guidance, Article 7 may appear to call for the AML to be interpreted in favor of SOEs in specific cases. However, AmCham China is encouraged by MOFCOM's censure of Unigroup for failure to notify

源方面的匮乏。虽然可以理解，但是不必要的拖延本身有可能危及交易的完成。商务部虽然对简易交易适用简易审查程序，但是仍然应当优化其他交易的审查次数要求，例如，增加人员配备，发布磋商部门“预受理”审查的企业指南和审查次数上限，提高其他重要利害关系人的审查所造成的拖延的透明度。

- 商务部通常拒绝确认所指定的具体案件经办人的身份，直至该经办人针对并购审查提出相关问题。为了方便沟通和提高透明度，商务部应当提早确认指定的案件经办人的身份。而且，若是像欧盟等地区的做法一样，能够在初始申报后即指定案件经办人，由案件经办人协助磋商部门进行完整性审查，由于不需要向两组审查人员重复介绍相同的情况，审查进程会大大加快。为了避免拖延，案件经办人可以对初始申报资料要求以及随后的补充资料要求提供指导。
- 商务部的调查人员继续根据国家的竞争力而非某一市场的竞争力开展调查。对国家竞争力的强调使得人们担心，商务部的执法活动主要针对外资交易，不会对中国企业的收购和国内行业整合采取行动。
- 执法机构应当达成一项共识，明确商务部设置和批准的条件随后是否需要接受发改委、工商总局或工业和信息化部等相关机构的审查。发改委和工商总局依法有权参加商务部的并购审查，但这一权限日益膨胀，使得发改委和工商总局实际上成为第二和第三级调查部门，要求相关方对调查要求做出回应。商务部应当积极维护自身的管辖权限，尽量减少这种调查要求，从而减轻相关方应对多级审查的负担。

产业政策、保护主义和知识产权

《反垄断法》的大多数规定都是为了促进消费者福利和提高经济运行效率。中国在第 25 届美中商贸联委会上承诺改善环境，提高合法的知识产权密集型商品和服务的销售。尽管如此，仍然存在着这样的忧虑，即《反垄断法》有时可能被用来保护国内市场免受外来竞争，从而推动自主创新和领军企业的发展。中国美国商会建议商务部及其他执法机构发布具体的指导意见，对以下潜在问题做出说明：

- 《反垄断法》第 7 条要求，对于“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”。因此，在没有更详尽的解释的情况下，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。不过，商务部对紫光集团未能申报收购锐迪科微电子一事予以谴责，中国美国商会深受鼓舞。
- 《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。在没有更详尽的解释的情况下，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”。在没有更详尽的解释的情况下，这一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。
- 2011 年，商务部发布《实施外国投资者并购境内企业安全审查制度的规定》。2015 年 1 月，商务部发布最新的《外国投资法》（草案征求意见稿），用了整整一章的篇幅来规范国家安全审查。这些规则允许考虑交易对中国“经济稳定”和“社会秩序”的影响，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。

《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”。这使得知识产权和竞争法规出现交叉，这一问题在 2014 年变得尤为突出。在过去的一年中，中国法院对两个具有标志性的案件做出裁决，即华为诉 InterDigital 专利垄断案和奇虎诉腾讯垄断案。发改委对高通公司和 InterDigital 这两大专利技术巨头展开调查。工商总局完成滥用知识产权支配地位规则的制定并且对微软展开正式调查，商务部则对微软收购诺基亚和默克公司收购安智电子提出了实质性的、专门针对知识产权的限制性条件。

最重要的是，随着工商总局《禁止滥用知识产权排除、限制竞争行为的规定》（《禁止滥用知识产权的规定》）的定稿，加上商务部近期对微软收购诺基亚和默克公司收购安智电子做出的决定，中国美国商会担心，中国的反垄断执法部门为了短期利益，继续低估知识产权对提高中国供应商竞争力的重要性（及其对持续创新的贡献）。

its acquisition of RDA Microelectronics.

- AML rules against abuse of dominance prohibit certain conduct undertaken "without justification." Without additional guidance, industrial policy concerns may tip the balance between abusive and "justified" practices, such that exclusionary practices by dominant domestic firms may be tolerated, where similar practices by foreign-invested 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." Without additional guidance, the public interest exception could be used to excuse patently anti-competitive concentrations that nevertheless advance industrial policies.
- In 2011, MOFCOM issued "Regulations of the Implementation of Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors." The latest draft of the Foreign Investment Law released for comment by MOFCOM in January 2015 also includes an entire chapter on national security review. 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 may be prohibited under this broad view of national security.

In addition, Article 55 of the AML notes that the AML is applicable to undertakings that "eliminate or restrict competition by abusing their intellectual property rights" (IPR). This has led to questions regarding the intersection of IPR and competition law in China, which came to an important head in 2014. Over the course of the year, Chinese courts concluded two landmark cases – Huawei v. InterDigital and Qihoo v. Tencent. The NDRC probed Qualcomm and InterDigital, two technology giants each with substantial patent portfolios. The SAIC, while finalizing its draft rules on abuses of dominance with regard to IP, also initiated a formal investigation of Microsoft, and MOFCOM imposed substantial and unique IP-related remedies on both Microsoft's acquisition of Nokia and Merck's acquisition of AZ Electronics.

Most importantly, as the SAIC finalizes its "Rules on Prohibiting Abuse of Intellectual Property Rights to Eliminate or Restrict Competition" (Rules on IP Abuse), AmCham China is concerned that, when read in conjunction with MOFCOM's recent decisions in Microsoft/Nokia and Merck/AZ, China's anti-monopoly enforcers will continue to devalue the importance of IPR (and their contribution to continued innovation) at the expense of promoting short-term gains for the competitiveness of Chinese suppliers.

- In Microsoft/Nokia, despite unconditional clearance in the US and EU, MOFCOM imposed numerous conditions on both Microsoft and Nokia (despite its position as seller), including requirements to: ❶ honor fair, reasonable, and non-discriminatory (FRAND) commitments to standard setting organizations (SSOs); ❷ not seek injunctive relief against smartphones made by manufacturers in China; and ❸ not increase royalty rates on specified non-standard-essential patents (SEPs) for a period of eight years. The parties are also subjected to long-term, intrusive monitoring of confidential royalty and licensing information.
- In Merck/AZ, MOFCOM imposed conditions on Merck that, in the event it decided to license its liquid crystal technology in the future, it would have to be done on a non-exclusive, FRAND basis. MOFCOM reached this conclusion despite the absence of any horizontal overlaps or vertical relationships between the parties and notwithstanding the fact that the transaction was cleared unconditionally in all other jurisdictions.
- The eighth draft of the SAIC Rules on IP Abuse has preserved several troubling provisions, notwithstanding extensive commentary to the contrary from multinational and Chinese companies and organizations during their development. In particular, the SAIC continues to seek to: ❶ apply essential facilities doctrines to IPR; ❷ create liability for failure of SEP holders to disclose their patents to SSOs without being an active voting participant in the SSO and without requiring the failure to disclose to result in anticompetitive harm; and ❸ create liability for failing to license SEPs on FRAND terms, even in the absence of a voluntary commitment to do so.
- In late 2014, the Electronic Intellectual Property Center (EIPC) of MIIT released a draft "Template for Intellectual Property Policies in Industry Standardization Organizations," seeking public comments. It is reported that the EIPC is revising the draft after receiving strong opposition from both domestic and foreign companies. Alleged concerns surround controversial issues such as injunctive relief and favorable treatment of licensees. Companies also worry that the template may eventually become a government policy.

AmCham China strongly recommends that China's anti-monopoly enforcers cease using the AML as a means to compel transfer of valuable IP away from its innovators without compelling evidence of imminent anticompetitive harm.

Due Process

Several important due process concerns were highlighted in 2014, especially with regard to investigations by the NDRC. In particular, AmCham China recommends that clear guidelines and measures for redress be made available to ensure that both domestic and multinational undertakings under investigation or review have: ❶ the right and practical access to domestic and international legal counsel; ❷ notification of the express legal and factual bases for any investigation; ❸ direct and meaningful engagement between

- 微软收购诺基亚的交易虽然在美国和欧盟获得无条件的批准，但中国商务部却对微软和作为卖方的诺基亚设置了诸多条件，其中包括：❶ 对标准制定组织的公平、合理和非歧视（FRAND）承诺；❷ 不向中国智能手机生产商寻求禁令救济；以及 ❸ 八年之内不得提高特定的非必要专利的使用费。相关方的专利使用费和许可信息（作为保密信息）还需要接受长期的介入监控。
- 在默克收购安智电子一案中，商务部要求默克公司将来如果决定许可其液晶技术，应当按照非排他、公平、合理和非歧视的原则进行许可。尽管交易双方不存在任何横向重叠或者纵向关系，并且该项交易在其他国家和地区已经获得无条件批准，中国商务部仍然做出这样的决定。
- 虽然在征求意见和起草过程中遇到跨国公司和中国企业的普遍反对，《禁止滥用知识产权的规定》第八稿仍然保留了几项令人担忧的规定。特别是，工商总局试图：❶ 将必需设施理论用于知识产权；❷ 要求必要专利的持有人为其不向标准制定组织披露专利信息承担责任，但没有要求该持有人是标准制定组织具有投票权的活跃成员，也没有要求这种不披露对反竞争造成妨害；❸ 即便没有主动承诺，未能公平、合理和非歧视地实施必要专利的许可，也需要承担责任。
- 2014 年年末，工业和信息化部电子知识产权中心发布《行业标准化组织知识产权政策模板》（征求意见稿）。据说电子知识产权中心收到境内外企业的强烈反对，正在对草案进行修改。争议主要集中在禁令救济和被许可人的优惠待遇等争议事项。企业还担心模板最终变成政府的政策。

中国美国商会强烈建议，在没有令人信服的能够证明有妨害竞争之虞的证据的情况下，中国反垄断执法机构应当停止通过《反垄断法》迫使专利权人转让有价值的知识产权。

程序正义

2014 年，发改委的调查活动存在几项重要的程序正义问题。特别是，中国美国商会建议发改委制定明确的救济指导意见和措施，确保接受调查或审查的国内企业和跨国公司：❶ 有权并且能够实际征求国内和国际法律顾问的意见；❷ 被明确告知调查的法律和事实依据；❸ 相关方与调查人员和决策部门直接进行有意义的接触；❹ 明确问题内容并有权对指控做出反应或辩护；❺ 确保执法机构保持决策制定的内部制衡。

建 议

- **兑现中国在美中商贸联委会上做出的承诺，发布明文规定，明确允许合格的外国律师（包括在外资律所工作的合格的中国律师）和法律顾问与本地法律顾问一同出席和参与三部委的会议和调查。**
- 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，使得相关方都有机会提出有意义的建议。
- 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，例如，明确监管权限的划分以及商务部的决定何时需要接受其他部门的审查。
- 保护国内外知识产权持有人的权益，确保《反垄断法》不会通过强制要求许可认证等方式成为规避知识产权保护的手段。
- 公布和保障被审查或调查企业享有的程序正义权利。

the parties and the investigative staff and decision makers; ❹ clear identification of any issues and the right to respond or defend against each allegation; and ❺ the protection of internal checks and balances on decision making within the enforcement agencies.

Recommendations

- **Issue formal guidelines confirming that foreign-qualified lawyers (PRC-qualified lawyers working in foreign law firms) and foreign counsel will be allowed to attend meetings and investigations of all three agencies, alongside local counsel to implement China's JCCT commitment.**
- Ensure that all regulations and measures are published in draft form and allow formal and widely publicized opportunities for meaningful comment by all interested parties.
- Continue to clarify and streamline AML procedures, especially for merger review. For example, clarifying the division of regulatory authorities and when MOFCOM decisions will be subject to review by other authorities.
- Protect the IPR 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.
- Publish and guarantee due process rights of companies under review or investigation.

Compliance

Introduction

Compliance is an increasingly important and complex concern facing all AmCham China member companies. It is multi-faceted as well, covering many aspects of business, including compliance in such areas as anti-monopoly law, customs, business partners, data privacy, the Foreign Corrupt Practices Act, labor law, national product standards, and taxes. A foreign-invested enterprise (FIE) must not only take into consideration a broad range of laws and regulations enforced by China's central government ministries and local bureaus, but also laws and regulations issued by agencies in its home jurisdiction. The object of any compliance policy is to provide effective guidance to employees in order to ensure that the company abides by relevant laws and regulations applicable to their operations. The increased prominence of rule of law, and the enforcement of existing regulations, has shown that the ability of a company to comply with relevant regulations plays an increasingly important role for companies operating in China.

AmCham China understands the need for our member companies to abide by the established laws of the US, China, and wherever else they operate, and to comply with all laws and regulations relevant to their industries. Here, we focus on the broader operating environment in China: issues of rule of law, transparency, and due process.

Ongoing Challenges

Macro-Level Challenges

As compliance has risen in importance for FIEs in China, the need to train professionals within a company, not only to oversee its legal and regulatory responsibilities but also to understand the complex rules that regulate companies, has increased. This is particularly true when complying with anti-corruption regulations. As business and legal culture changes across international borders, compliance policies need to conform to a company's internal standards and procedures while accommodating the local environment. Therefore, professionals need to understand the regulatory system, financial procedures, and the culture of the company. Companies must also develop appropriate procedures in the event that management discovers that an employee of the company or specific actions of the company are not compliant with applicable regulations. The most successful response procedures are developed with a strong understanding of the regulatory and enforcement environment. If the environment is predictable, transparent, stable, and specifies accountability for both business and government, with legal due process provided to those under investigation, compliance is relatively straightforward.

In China, this is often not the case. Understandably, the regulatory environment has matured dramatically over the last two decades, as China develops its governance framework in relation to its rapidly evolving economy. However, understanding and navigating this legal system continues to be a top concern for AmCham China members. In our annual *Business Climate Survey*, inconsistent regulatory interpretation and unclear laws have ranked among the top three business challenges in each of the last six years. The lack of clarity on how laws are implemented and how regulations are interpreted by administrative authorities increases the difficulties of complying with the regulatory system. This becomes particularly complex when implementing compliance policies across China where local agencies frequently have inconsistent enforcement procedures.

Rule of Law

Current inconsistencies in the application of Chinese law create obstacles for companies attempting to comply with relevant laws and regulations. The World Justice Project's annual "Rule of Law Index" assesses and ranks countries around the world according to their constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. For the first time, the 2014 report ranked countries on their combined average value, with China ranking 76th among the 99 assessed countries. Considering the size of China's market, and its role in the global economy, we urge the government to act on the commitments recently announced at the Fourth Plenum to raise China's standing.

合 规

引 言

合规是中国美国商会所有会员企业面临的一项日益重要且复杂的问题。合规问题涉及到企业的很多方面和领域，包括反垄断法、海关、业务合作、数据隐私、美国《反海外腐败法》、劳动法、产品的国家标准、税务等等。外商投资企业（外资企业）不仅需要考虑中国中央政府各部委以及地方主管部门执行的各种法律法规，还需要考虑母国当局发布的各种法律法规。合规政策的目的是为了向员工提供有效的指导，确保企业在业务经营过程中遵守适用的相关法律法规。日益凸显的法治精神以及现有法规的执行已经表明，企业遵守相关法规的能力对企业在华经营越来越重要。

中国美国商会理解，会员企业需要遵守美中两国及其经营所在地的现行法律以及与行业相关的各项法律法规。在本章中，我们关注的是更宏观的经营环境：法治、透明度以及程序正义问题。

现存挑战

宏观挑战

随着合规变得越来越重要，在华外资企业更加需要在公司内部培训专业人员，由专业人员负责监督企业法律和监管责任，了解公司需要遵守的复杂规章制度体系。反腐败法规的合规要求尤其如此。鉴于不同国家的企业文化和法律文化不同，合规政策不仅需要符合企业内部的标准和程序，还需要考虑当地环境。因此，专业人员需要了解监管制度、财务制度和企业文化。

企业还必须制定适当的政策，以便管理层在发现企业某一员工或某些行动不符合适用法规要求时做出应对。只有熟知监管环境和执行环境，才能制定出最合适的应对措施。如果环境可预测且透明、稳定，企业和政府的责任明确，并且调查程序合法公正，合规就相对简单。

在中国，事实往往并非如此。过去二十年中，随着中国经济的快速发展，中国逐渐确定了自己的治理框架，监管环境已经取得很大的进步。但是，对于中国美国商会会员企业而言，了解和掌握这一法律体系仍然是主要挑战之一。中国美国商会的年度《商务环境调查》显示，在过去六年中，法律解释相互矛盾和法律不明确始终是三大主要运营挑战之一。管理机构对法规的执行和解释不明确，增加了遵守监管制度的难度，尤其是，地方机构的执行措施经常相互矛盾，使得在中国执行合规政策变得尤为复杂。

法 治

目前，中国法规应用存在不一致现象，这给力图遵守相关法规的企业造成了障碍。世界正义工程每年根据政府权力的制约、贪腐程度、政府开放程度、基本权利、秩序和安全、法规执行、民事诉讼和刑事诉等因素对世界各国进行排名，发布“法治指数”。2014 年，首次按照综合平均值排名，在 99 个被评估的国家中，中国排名第 76 位。鉴于中国市场的规模及其在全球经济中的作用，我们强烈要求政府信守四中全会的承诺，提升中国的排名。

2012 年，中国美国商会在“联合推动全球市场法治进程”报告中指出，法治的五个关键因素能够帮助一个国家吸引企业投资和经营（见下面框中文字）。中国美国商会认为，随着中国继续推进经济改革并在全国范围内推行法治，这几个因素对确保中国继续向外资企业开放并且公平对待外商投资非常重要，特别是，它们能够影响在华企业了解和遵守法律法规。

透明度

法律制定和执行的透明能够提高人们对监管和法律框架可预测性和确定性的信心。透明使得投资者、企业和个人能够根据法律法规更加高效地满足市场需求。不确定性和不透明会增加企业运营成本，对企业从事生产或有益活动造成不必要的阻碍。

In 2012, the U.S. Chamber of Commerce's *Coalition for the Rule of Law in Global Markets* pointed to five key factors applicable to rule of law that help to attract business investment and operations to a country (see box). AmCham China believes that as economic reform in China continues, and the rule of law is implemented throughout the country, these points will be essential to ensure that the environment remains open to foreign business and that their investments will be treated fairly. In particular, these factors affect a company's ability to understand, and thus comply with, laws and regulations in China.

Rule of Law:

1. **Transparency:** Laws and regulations applied to business must be readily accessible and easily understood.
2. **Predictability:** Laws and regulations must be applied in a logical and consistent manner regardless of time, place, or parties concerned.
3. **Stability:** The government's rationale for the regulation of business must be cohesive over time, establishing an institutional consistency across administrations, and free from arbitrary or retroactive amendment.
4. **Accountability:** Investors must be confident that the law will be upheld and applied equally to government as well as private actors.
5. **Due Process:** When disputes arise, they must be resolved in a fair, transparent, and predetermined process.

Transparency

Transparency in the development and enforcement of laws strengthens confidence in the predictability and certainty of the regulatory and legal framework. Transparency enables investors, firms, and individuals to meet the needs of the marketplace more efficiently in accordance with laws and regulations. Uncertainty and opacity increase the cost of doing business and needlessly deter companies from pursuing productive, beneficial activities.

In particular, Chinese laws and administrative regulations tend to be broadly drafted and give substantial discretion to administrative authorities in the implementation of laws, with few requirements to provide detailed justification for their decisions. Furthermore, administrative rulings and judicial opinions are often not made public and administrative authorities are often reluctant to give prospective guidance on the requirements of specific measures or the legality of proposed courses of action. Consequently, when agencies fail to publish their decisions transparently, companies cannot effectively monitor enforcement actions to determine how best to comply with relevant laws and regulations.

Although there has been substantial improvement in this area, some foreign firms still encounter policies disseminated and enforced on the strength of unpublished internal measures. AmCham China recognizes and applauds steps that have been taken to promote transparency in recent years, and hopes to see the timely publication of all relevant judicial opinions and administrative rulings in the coming years.

Legal Due Process

Legal due process allows a company to understand and evaluate charges that have been brought against them, as well as similar charges brought against other companies in prior cases. This is essential if a company is to correct its policies and ensure that it does not unwittingly follow a course of action that will lead to violations. Furthermore, the right to address and appeal any judgment is vital in order to ensure companies are not targeted unfairly or without cause.

Currently, AmCham China members increasingly perceive that multinational companies are under selective and subjective enforcement by Chinese government agencies using a range of administrative, legal, and extra-legal approaches, through regulations that are not clearly applied and lacking in due process. Many companies cite the complication of carrying the burden of proof when the accusations are unclear, and are sometimes required to make statements to the authorities without having been informed of the grounds for the investigation. Member companies also cite restrictions on the ability to have legal counsel appear with them in court or in administrative procedures or even general meetings. Of special concern, member companies often fear retribution if they seek administrative or judicial review.

Many member companies are concerned that enforcement is unequally applied against FIEs, forcing foreign firms to comply with laws and regulations that are not applicable to domestically invested competitors. Local media coverage targeting alleged questionable operations by companies has led to inconsistent investigations and enforcement against FIEs with little legal evidence to back up the investigation. Such public and disproportionate enforcement can result in disastrous reputational harm. Indeed, there are known cases of specific mandates for government agencies to target enforcement against particular FIEs in designated sectors.

Cases of targeted and inconsistent enforcement and unclear regulations make it difficult for management to anticipate potential problems, increasing the difficulty of complying with the regulatory and legal system. We urge the Chinese government to continue to increase both transparency and legal due process in its regulatory and judicial systems, and provide clarity on the enforcement of any judgments, penalties, and possible remedies.

Top five business challenges in China 企业在华运营的五大主要挑战：

	2010	2011	2012	2013	2014	2015
1	Inconsistent regulatory interpretation/ Unclear laws 法律解释不一致 / 法律不明确	Bureaucracy 官僚主义 31%	Shortage of qualified management 管理层人才匮乏 43%	Labor costs 劳动力成本 44%	Labor costs 劳动力成本 45%	Labor costs 劳动力成本 61%
2	Management-level human resources constraints 管理层人才匮乏	Shortage of qualified management 管理层人才匮乏 30%	Inconsistent regulatory interpretation/ Unclear laws 法律解释不一致 / 法律不明确 37%	Inconsistent regulatory interpretation/ Unclear laws 法律解释不一致 / 法律不明确 38%	Inconsistent regulatory interpretation/ Unclear laws 法律解释不一致 / 法律不明确 39%	Inconsistent regulatory interpretation/ Unclear laws 法律解释不一致 / 法律不明确 47%
3	Obtaining required licenses 获取许可证困难	Inconsistent regulatory interpretation/ Unclear laws 法律解释不一致 / 法律不明确 28%	Shortages of qualified employees 缺乏合格的员工 29%	Shortages of qualified employees 缺乏合格的员工 35%	Shortages of qualified employees 缺乏合格的员工 37%	Shortages of qualified employees 缺乏合格的员工 42%
4	Bureaucracy 官僚主义	Intellectual property rights infringement 知识产权侵权行为 24%	Obtaining required licenses 获取许可证困难 26%	Corruption 腐 败 30%	Shortage of qualified management 管理层人才匮乏 31%	Shortage of qualified management 管理层人才匮乏 32%
5	National protectionism 国家保护主义	Corruption 腐 败 22%	Corruption 腐 败 26%	Shortage of qualified management 管理层人才匮乏 30%	Obtaining required licenses 获取许可证困难 31%	Increasing Chinese protectionism 中国保护主义增强 30%

特别是，中国的法律和行政法规通常措辞宽泛，负责执行法律的行政机关享有很大的自由裁量权，很少需要详细说明所做决定的理由。而且，行政裁决和司法意见经常不会公布，行政机构通常不愿意对具体法规的要求或者行动计划的合法性提供前期指导。因此，如果政府机构不能透明地公布自己做出的决定，企业就无法有效地监督执法行动，从而无法确定如何才能更好地遵守相关法律法规。

尽管中国在这方面已经取得了很大的进步，但外资企业仍然经常碰到通过未公布的内部措施来传达和执行政策的情况。中国美国商会对中国近年来采取的提高透明度的措施表示认可和赞赏。希望今后能够及时公布所有相关司法意见和行政裁决。

法律程序正义

法律程序正义允许企业了解和评估自己所面临的指控以及之前针对其他公司提出的类似指控。唯有如此，企业才能修正自身的政策，确保不会无意间触犯法律。此外，质询权和上诉权也很重要，能够确保企业不会遭受不公平的待遇或者毫无理由的指控。

目前，中国美国商会的会员企业越来越感觉，中国政府正通过不明确的和缺少程序正义的规定，采取行政、法律和法外等手段，有选择性地对跨国企业开展主观的执法

Recent Developments

Fourth Plenum Focuses on Rule of Law

The Communist Party of China (CPC) dedicated its Fourth Plenum in October 2014 specifically to enhancing rule of law and legal reform. For the first time in CPC history, a Central Committee plenum focused on the country's legal development. Though interpretations differ on the true intent of the CPC to strengthen "rule of law" into a definitive guiding principle of governance, it is clear that some of the initial steps noted in the Plenum's outcome document at least begin the movement in that direction. It remains too soon to judge the impact this high-level guidance and conversation may have on actual business operations and environment, but this will be a subject of high interest to AmCham China going forward. We urge the Chinese government to build on these goals to create a more predictable legal and regulatory environment for all enterprises.

2014 Joint Commission on Commerce and Trade

During the 2014 Joint Commission on Commerce and Trade (JCCT), Chinese officials addressed concerns expressed by US industry regarding the insufficient predictability, fairness, and transparency of its competition policy enforcement authorities' investigative processes, as discussed in further detail in the Competition Law chapter. We look forward to the implementation of these commitments to implement a transparent and fair legal due process system in all areas of compliance regulation.

Recommendations

For the Chinese Government:

- **Build on the goals laid out in the Fourth Plenum to further develop rule of law, with the goal of a consistent and predictable legal and regulatory environment for all enterprises, foreign or domestic.**
- Improve transparency in the formulation and enforcement of laws and regulations, which will strengthen confidence in the predictability and certainty of the legal and regulatory environment.
- Act upon the commitments made at the December 2014 JCCT leadership meeting to implement a transparent and fair legal due process system in all areas of compliance regulation.
- Publish clear and consistent guidelines for the acquisition and use of business-relevant information necessary for companies to conduct vital due diligence efforts, while complying with China's relevant laws.

For the US Government:

- **Work with Chinese officials through bilateral dialogues, including the JCCT, Strategic and Economic Dialogue, and US-China Bilateral Investment Treaty negotiations, to address the full range of compliance issues and their enforcement.**
- Continue to work productively with involved Chinese regulatory authorities to exchange best practices and understanding on the actions taken by both sides.
- Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent and predictable regulatory systems.

法 治：

❶ **透明**：企业适用的法律法规必须易于获得和清晰易懂。

❷ **可预测**：法律法规的实施必须符合逻辑，不因时间、地点或当事方的不同而有所不同。

❸ **稳定**：政府监管企业的基本原理必须长期保持一致，确保各届政府制度的一致性，不存在武断或追溯性的修改。

❹ **问责**：投资者确信法律在政府和私营部门执行一致。

❺ **程序正义**：发生争议时，必须按照公平、透明和既定的程序解决。

行动。许多企业表示，在指控不明确时，很难履行举证责任，有时甚至会在没有被告知调查原因的情况下，就被要求向当局提供证明文件。会员企业还提到，企业法律顾问陪同出庭、参加行政程序或一般性会议也受到限制。其中尤其值得一提的是，会员企业常常担心他们会因为寻求行政或司法复核而遭受报复性惩罚。

许多会员企业担心执法不公，迫使外资企业遵守本国企业不需要遵守的法律法规。当地媒体关于企业涉嫌违规经营的报道致使当地政府机构针对外资企业开展前后矛盾的、基本上没有合法证据支持的调查和执法活动。这种公然的有失公平的执法会对企业声誉造成灾难性的损害。据悉，要求政府机构在特定领域针对特定外资企业开展执法活动的具体命令确实存在。

有针对性的执法不一以及法律规定模糊不清等因素使得管理层难以估计潜在的问题，增加了遵守监管制度和法律制度的难度。我们敦促中国政府继续提高监管和司法体系的透明度和程序正义，明确判决、处罚和救济措施的执行。

最新进展

四中全会聚焦法治

在2014年10月召开的四中全会上，中国共产党（中共）特别提出加强法治和司法改革。这是中共历史上第一次将法治发展作为主题的中央全会。全会成果文件提出的初步举措至少表明中国已经在朝着这一方向前进。虽然现在判断这一高层指导意见对企业实际经营和环境的影响好坏还为时尚早，但是，中国美国商会将会予以密切关注。我们敦促中国政府根据这些目标为所有企业创造一个可预测性更高的法律和监管环境。

2014年中美商贸联委会

在2014年度中美商贸联委会会议期间，中方官员对美国企业提出的竞争政策执行机构调查程序的可预测性、公平性和透明度不高等问题做出了回应，详情请见“竞争法”章节。我们期待中方兑现关于在合规管理各个领域确保透明、公平、程序正义的承诺。

建 议

对中国政府的建议：

- **根据四中全会提出的目标，进一步推动法治进程，为外资和内资企业创造一个统一的、可预测的法律和监管环境。**
- 提高法律法规制定和执行的透明度，增强人们对法律和监管环境可预测性和确定性的信心。
- 根据2014年12月召开的中美商贸联委会领导人会议上做出的承诺，在合规监管的各个领域实施透明、公平和符合程序正义的制度。
- 发布统一明确的指导意见，指导企业在遵守中国相关法律的情况下，取得和使用开展尽职调查所需的与企业有关的信息。

对美国政府的建议：

- **与中方开展双边对话，包括中美商贸联委会会议、战略与经济对话以及美中双边投资协定谈判，共同解决各种合规问题及合规政策的执行问题。**
- 继续与中国相关监管机构开展富有成效的合作，相互交流经验，增进对彼此行动的理解。
- 开展双边对话、研讨会以及深度科学的交流，支持执行透明、可预测的监管体系。

Customs

Introduction

AmCham China members followed the activities of the General Administration of Customs (China Customs) in 2014 with great interest and have been pleased by the progress made in business management system reforms and in trade facilitation. The forthcoming "China Customs Plan for Comprehensively Deepening Business Reform" is a pragmatic and well thought-out document that provides clear guidelines and procedures. We look forward to collaborating with China Customs on the implementation measures of the Plan.

In August 2014, substantive exchanges were held between China Customs and AmCham China's Customs and Trade Committee. This dialogue and the detailed written feedback subsequently provided by China Customs on the various opinions and recommendations included in the 2014 *White Paper* Customs chapter were welcomed and very encouraging. Such pragmatic and open dialogue, exchange, and consultation between the government and the business community are significant and conductive to overall US-China trade relations.

Ongoing Regulatory Issues

While AmCham China is fully confident of China Customs' determination to facilitate trade, we request the opportunity to collaborate on international business, trade, logistics, processing, and manufacturing developments to ensure the smooth implementation and optimization of institutional reforms.

Customs Clearance System

Paperless Clearance

While the paperless clearance system has essentially been expanded nationwide, we hope that it can be further improved in the following ways: ❶ expand the scope of enterprises handling their own declaration forms and accompanying documents through implementation of the enterprise credit management system; ❷ simplify accompanying document requirements for declarations; ❸ adopt a digitalized mode of transmission for accompanying documents required during declaration to replace the use of scanned copies; ❹ make relevant adjustments as soon as possible to Article 4 of GAC Announcement No. 70 that one bill of lading should correspond to each declaration form; ❺ open the bill of lading transmission terminal in the Customs system according to fair market principles; and ❻ assess the implementation of the paperless clearance system and the "declaration and clearance at the local Customs location" system.

Cross-Regional Multiple Customs Transfer

Declaration for items that will transfer between multiple regional Customs ports – including transfer between different ports and between different Customs supervision zones of the same port – cannot be completed at the point of entry due to system setting and information entry problems. Instead, items must undergo a series of complex single declarations at each point of transfer, which require repeated data entry, creating unnecessary burdens for enterprises. Additionally, Customs authorities in different localities differ greatly in their operations and implementation of such transfers between multiple Customs sites. An enterprise must often contact the Customs authorities in two places to determine a mutually acceptable mode of transfer between the two locations, consuming much time and energy. Currently, it takes at least three days to conduct cross-regional transfers between two or more Customs locations; clearance times have not shortened significantly in recent years.

To address these challenges, we recommend that, while studying and implementing the central government's "one belt, one road" economic strategic plan and comprehensively pushing ahead the long-term process of Customs clearance integration, China Customs: ❶ optimize the current process and system design of cross-regional multiple Customs transfers as soon as possible to separate information flow from flow of goods and realize the "direct transfer of data"; and ❷ enhance consistency of law enforcement between different Customs zones so as to solve the difficulties of multiple Customs transfers in the short term.

海 关

引 言

中国美国商会高度关注中国海关 2014 年在全面深化业务管理制度改革以及推进贸易便利化方面所开展的各项工作，并对其取得的进展和成就高度赞赏。商会成员经过认真的研究和讨论后认为：《中国海关全面深化业务改革方案》是一个方向明确、内容丰富、措施得当、前景诱人的纲领性引导文件。商会成员将高度关注并愿意积极参与该《方案》的实施。

2014 年 8 月间，海关总署安排和商会及海关贸易委员会高层领导之间进行的具有实质内容的交流，以及海关总署随后对《白皮书》海关章节所涉及的各项意见、建议所做出的详尽的书面反馈，让商会及相关成员此后扩展和包括海关在内的其他政府机构之间的建设性对话的积极性得到显著增强。商会确信，以坦诚、务实的方式在政府和商业界之间开展对话、交流、讨论、协商，对双方都具有积极意义。

现存监管问题

中国美国商会在充分确信中国海关在实现制度创新、不断推进贸易便利化方面的信心和能力的同时，期待有机会为中国海关贡献更多国际商务、贸易、物流、加工制造方面的实践知识和意见建议，以保证制度变革和完善的顺利实施。

海关通关制度

通关无纸化

在通关无纸化制度基本实现全覆盖的同时，我们希望此项制度在以下几个方面有进一步的改善：❶ 通过企业信用管理制度的实施，扩大企业自存报关单以及随附单据范围；❷ 减少、简化报关随附单据要求；❸ 报关随附单据采用数字化传送代替扫描件传送；❹ 对 70 号公告第四条有关一份提单对应一份报关单的规定尽快作出相应调整；❺ 按公平的市场要求、真正开放海关系统中的提单传输端口。❻ 无纸化通关以及属地申报、属地放行制度的实施情况评估。

跨关区的多重转关

跨关区的多重转关，包括在不同口岸间及同一口岸不同海关监管区之间的转关，由于当前系统设置的一些缺陷以及信息录入的障碍，无法无法在第一次申报时完成多重转关的申报，而只能在每个转关地做单次转关的简单叠加，转关程序复杂且数据录入多次重复，为企业带来很大挑战。另一方面，各地海关在多重转关的操作和执行方面存在较大差异，企业常需要联系两地海关彼此沟通，确定下来该企业在这两个地方转关时的固定模式，耗费了大量的精力。目前，在两个以上海关间实行跨关区转关需要耗时至少三天及以上时间，和之前相比，通关时间上并没有明显的缩短。

对此，我们希望海关在研究落实中央“一带一路”经济战略规划以及全面推进通关一体化长远进程的同时：❶ 尽快优化当前跨关区多重转关的流程及系统设计，分离信息流和货物流，实现“数据直转”；❷ 增强各关区在转关业务方面的执法统一性，以解决企业在短期面临的困难。

区域通关一体化

我们确信“区域通关一体化”的目标和方向符合商界的期待和利益，同时希望：❶ 海关区域通关一体化制度和检验检疫等口岸管理机构相关的进出境管理制度之间的协调和配合能够得到进一步改善和加强；❷ 对于申报、归类及价格原产地审定以及查验不在同一关区的，能够为有关企业提供清晰的引导路径；❸ 加强区域通关一体化制度和港务、仓储、物流等商务机构相关营运管理制度之间的协调，此类在属地申报、属地验放制度实施过程中产生负面影响的情况应予尽可能避免。

Regional Clearance Integration

AmCham China believes that the goals and focus of the "regional clearance integration" plan are aligned with industry expectations and interests, and hopes that: ❶ the coordination and cooperation among the entry and exit management systems, such as the Customs regional clearance integration system and inspection and quarantine conducted by port management authorities, can be further improved and strengthened; ❷ China Customs will provide clear guidance to enterprises when the declaration, classification, and the examination, approval, and inspection of place-of-origin prices are not conducted at the same Customs zone; and ❸ coordination between the regional clearance integration system and the port affairs, storage, logistics, and other operation management systems related to businesses will be strengthened, while avoiding circumstances that may adversely affect implementation of "declaration and clearance at the local Customs location."

Self-Inspection and Self-Discipline

In August 2014, the China (Shanghai) Pilot Free Trade Zone Customs department released the "self-inspection and self-discipline" measure, a practice which was then also adopted by local Customs in Beijing and Nanjing. AmCham China applauds this measure, which is consistent with the concept of "voluntary disclosure" that we have advocated for years. However, in practice, this measure is implemented unevenly by different local Customs authorities as a result of unclear operating rules and standards and a lack of clear-cut standards for exemption and the alleviation of penalties. For example, looking at identical cases, some Customs authorities may allow enterprises to address payment of overdue taxes via "self-inspection and self-discipline," while other Customs authorities may directly hand such cases over to inspection or even anti-smuggling police departments, giving the enterprises cause for concern. We recommend that China Customs simplify and integrate measures such as the modification of declaration forms, self-inspection and self-discipline, and enterprise credit management. Furthermore, based on the data provided by the Enterprise Resource Planning System, China Customs should examine and approve enterprises' requests to modify declaration forms after goods are cleared. AmCham China encourages China Customs to develop detailed and transparent rules that will result in enterprises' voluntary self-inspection and self-discipline.

Rate of Inspections and Seizures

The rate of Customs inspections and seizures continues to be a concern for AmCham China members. The current "two rates" system results in long queues for imported goods at many ports, and the number of objects subject to penalty continues to expand. While Category AA and Category A enterprises should, in theory, be inspected less frequently, in reality, the high proportion of declarations in these Customs zones causes inspection rates to remain high, meaning that these enterprises are unable to actually enjoy the preferential measures. We request that China Customs fully consider these factors and ensure that various preferential measures can be enjoyed by enterprises in good standing. While we recognize the need for regulatory measures to ensure trade security and proper management, we hope that Customs regulators at all ports will set reasonable inspection rates according to local conditions and needs.

Customs Valuation

The affirmation standard for royalties is a concern for our members. Paragraph three of Article 11 and Articles 13 and 14 of the "Customs Measures for the Assessment and Determination of Duty-paid Value" provide guidance on circumstances where royalties should be counted as part of the duty-paid value. However, when implemented, there are misunderstandings between the central and local Customs authorities on the relevant provisions. Such enforcement inconsistencies make it difficult for enterprises to evaluate whether royalties should be included in paid Customs duties. We recommend that China Customs issue clearer guidelines regarding royalties, or provide typical cases as a reference for both enterprises and all Customs authorities. This will help reduce disputes between enterprises and Customs regarding the taxable nature of royalties and provide an accurate basis for enterprises' declaration of relevant fees to Customs.

Enterprise Credit Management

The "Interim Measures for Customs Enterprise Credit Management" (Order No. 225), effective December 1, 2014, classify enterprises as authorized economic operators (AEOs), general trustworthy enterprises, or dishonest enterprises. AmCham China recognizes the legislative concept, establishment of conditions, and operability of Order No. 225. This Order indicates that China Customs has made significant progress in harmonizing its advanced management system with international customs procedures. Regarding its implementation, we recommend that: ❶ the preferential facilitation measures for enterprises with advanced AEO certification be further expanded; ❷ specific provisions be made for preferential facilitation measures in the AEO mutual authentication agreement signed by international customs authorities; ❸ detailed operational standards be drawn up for the AEO coaching/entrustment certification; and ❹ that Order No. 225 be tracked and assessed so that further revisions and improvements can be made as appropriate.

One of the standards previously used by China Customs to validate applications for Category AA enterprises required that an enterprise had not run a deficit for the most recent three consecutive years. However, as some enterprises have increased their investments in China, necessary initial investments in infrastructure have reduced profits to the point of running a deficit. Such enterprises are thus

自查自律

2014 年 8 月上海自贸区海关推出的“自查自律”举措并得到北京、南京等地方海关的响应；该举措和本商会数年来一直呼吁的“自愿披露”理念完全一致，企业对此普遍持欢迎态度。实际实施情况表明，不同海关在实施该措施的实际效果有相当差异，主要原因为：实际操作因缺乏细则规范，对免于、减轻处罚缺乏清晰标准，相同事例有些海关能够按照自查自律企业的期望，作简单的补税处理而另一些海关则移交稽查甚至缉私警察局而导致部分企业的顾虑无法彻底消除。希望海关可以将报关单修改、自查自律以及企业信用管理等办法有机结合；基于企业 ERP 系统提供的真实数据，审批货物放行后企业提出的报关单修改要求。商会成员期待海关能够在此前试验性实施的基础上，尽快拟定出台明确的、真正达到鼓励企业自查自律的规定细则。

海关查验率、查获率

海关查验率、查获率依然引起商界普遍关注乃至于焦虑，不少口岸进口货物因“两率”而出现通关排队，从宽扩大处罚对象的情况依然存在。AA 或 A 类企业理论上给予较低的查验率，但实际执行过程中，因为报关量在其关区内所占比重大，造成查验率也居高不下，无法实际享受到降低查验率的优惠措施。希望海关能够充分考虑到这些因素，确保信誉良好企业的各项优惠措施能够落到实处。商会理解中国海关为贸易安全和实现管理职能所采取的各项必要的监管措施，同时期望各口岸海关能够根据各自场地、人手、管理对象、商品种类等不同条件和因素，设定合理、恰当的查验率。对海关硬性设定查获率指标，商会依然持保留意见。

海关估价

特许权使用费的认定标准为成员所关心。海关审价办法第十一条第三款以及第十三条、第十四条对特许权使用费是否应计入完税价格进行了规定。在实际的执行过程中，各地方海关以及海关和企业之间对相关规定的理解不尽相同，带来海关执法尺度的不统一以及企业难以自行判断特许权使用费是否应计入海关完税价格。我们希望海关可以出台关于特许权使用费的执行细则，或提供典型案例供海关和企业共同参考以利于减少企业与海关关于是否应税的争议，并给企业向海关申报相关费用提供准确的依据。

企业信用管理

2014 年 10 月中旬公布的 225 号署令从立法理念、条件设定、可操作性等方面衡量，都值得充分肯定，预示中国海关在和国际海关先进管理制度接轨上迈出了重大的一步。就该制度的实施，商会希望：❶ 对高级认证以及普通 AEO 认证企业的优惠便利措施能够得到进一步扩大和增强；❷ 对国际海关之间签订 AEO 互认协定的优惠便利措施作出具体规定；❸ 对社会化 AEO 辅导 / 委托认证拟定详细的操作规范；❹ 对《暂行办法》的实施情况进行跟踪了解和评估，适时修订完善。

另外，总署新的企业分类管理办法《中华人民共和国海关企业信用管理暂行办法》已经出台，将企业划分为认证企业、一般信用企业和失信企业。其中对于认证企业的《海关认证企业标准》尚未出台。以前海关验证申请 AA 类企业的标准，其中一条是要求企业必须没有连续三年亏损。但是很多企业因为不断扩大投资规模，前期基础建设投资巨大而没能实现盈利，但其在进出口通关过程中各项指标都很好却不能申请到 AA 类企业资质。希望海关在新办法出台之际考虑降低或者取消这方面的要求。

商品归类

目前各地方海关对商品归类存在一定程度的执法不统一。例如，某一商品使用当地海关认可的税号在异地海关报关，该税号可能不被认可；或者，某商品在一地海关做出了预归类，但在其他海关不被接受。我们注意到最近海关在京津冀、长江经济带、广东地区等海关区域通关一体化改革中提到了互认商品预归类及归类等专业认定结果的措施。这些措施对于区域内通关的企业带来很大的便利。但跨区域报关或在区域外海关报关，仍然会遇到同样的问题。考虑到商品归类是企业在报关中最常见的问题之一，其执法的不统一性对企业的影响是普遍的，因此我们建议海关可以考虑如下措施：

❶ 由总署或总署指定的归类中心审核企业的预归类资质，一旦通过审核，其做出的预归类在全国范围内有效；

❷ 对于企业遇到的同一商品在不同海关归类不一致的问题，由企业向主管地海关提出申请，海关将统一后的税号告知企业。

ineligible to apply for Category AA qualification, despite displaying other good indicators in the clearance of imports and exports. We recommend that China Customs consider revising or removing such requirement when the new standards are released.

Classification of Commodities

There are inconsistencies between different local Customs offices regarding their classification of commodities. For example, a commodity's tax number recognized during declaration at one port of Customs may not be recognized by Customs officials at other locations. In other words, the pre-classification of a certain commodity made by Customs in one location may not be accepted by other Customs offices. We note that China Customs has discussed measures for harmonizing recognition of commodity pre-classification, classification, and other professional authentication mechanisms in the regional clearance integration reforms of Customs in Beijing-Tianjin-Hebei, the Yangtze River Economic Belt, and Guangdong. We applaud China Customs for harmonizing classification procedures in these regions. However, such problems persist elsewhere. Considering that commodity classification and inconsistent law enforcement are the most common problems faced by enterprises during declaration, we recommend that:

❶ The pre-classification qualifications of enterprises be audited by China Customs or a designated classification center. Once successfully audited, the granted pre-classification should be effective nationwide; and

❷ Enterprises be allowed to apply to the Customs office in their jurisdiction for a unified tax number, to resolve the problem of inconsistent classifications of the same commodity by different Customs offices across the country.

Bonded Policy

The provisions and operational procedures for domestic materials entering bonded areas – some of which were established in the early 1990s – are not clear-cut. According to China Customs' provisions, the entry of goods into such areas should be deemed as an export. In actuality, domestic suppliers are not actually exporting and are thus not required to undergo export procedures. Instead, ordinary value-added tax invoices are provided for enterprises in the bonded areas and, after the finished products are exported, these enterprises apply to the State Administration of Taxation regulators within the bonded areas for export rebates. This process is inconsistent with the "Regulatory Customs Measures for Bonded Areas" and the local "Regulations on Administration of Bonded Areas." We recommend that China Customs clarify the relevant policies.

Customs' Legal System

According to the guidelines determined at the Fourth Plenum in November 2014, AmCham China anticipates the application of "rule of law" standards to Customs' legal system and recommends that: ❶ the "Measures for Customs Legislation" be implemented, providing substantial opportunity for all who are interested to participate in the development of Customs legislation; ❷ transparency of proposed legislation be enhanced whereby goals, requirements, problems, and solutions are presented clearly for public comment; ❸ China Customs work collaboratively with industry, academics, and other stakeholders to help devise policies that enhance Customs laws and regulations; ❹ greater input is allowed and public outreach to Chinese and foreign companies is conducted to develop greater understanding of Customs' laws; and ❺ laws and regulations governing the Customs management system be developed according to China Customs' legal foundations.

Customs Charges

We commend China Customs for its performance as a trade facilitator. However, Customs charges remain a concern for our members. Specific issues include:

❶ The interfaces of the electronic channels, such as the manifest declaration system and electronic data interchange transmission system, are nominally open to outside competition but remain under China Customs' de facto control as enterprises must pay unreasonable service charges to a designated third-party channel before they can complete the transmission; and

❷ The entrusted declaration agreement is a commercial agreement between importers and exporters and the customs broker enterprises and, in most cases, is a long-term commission contract. However, the current Customs system requires that enterprises submit one declaration entrustment agreement (in the form of a certain fixed third party agreement) for each declaration as an associated mandatory document required for declaration. Such practice is uneconomical and unreasonable.

China Customs reasonably requires the submission of an entrustment agreement to ensure that both entrusted and agency enterprises assume the legal liabilities of Customs procedures. However, such agreement should set restrictions only according to China Customs' requirements and not allow for the designated third party to insert restrictions which, in essence, constitute monopolistic fees. Additionally:

❶ The warehouses for storing goods and articles under Customs supervision and detainment are currently operated by third parties. China Customs should select partners through public bidding wherever possible. Even if pubic bidding is impractical, China Customs

保税政策

对于某些在 1990 年代早期成立的保税区，国内物料入区操作流程规定不清晰。根据海关规定货物入区应该视同出口，但实际操作中，国内供应商并不真的是出口，也不需要办理出口手续，而是给保税区内企业提供普通增值税发票，成品出口后，再由区内企业向保税区国家税务局申请出口退税。这个操作流程与现行“保税区海关监管办法”和地方“保税区管理条例”并不一致。希望海关可以明确相关政策。

海关法制

根据十八大四中全会确定的依法治国方针、路径，中国美国商会对海关法制充满新的期待并建议：❶《海关立法办法》能够得到切实、充分的贯彻实施，给有意愿、有兴趣参与海关法制建设工作的所有人提供实在的参与机会；❷ 将海关的立法意图、期望的目标和要求、需要重点解决的核心问题和途径等等内容和立法年度计划同时公布，大力提高立法透明度；❸ 对涉及面普遍的海关法规制定、修订工作，强烈建议开展科学的立法调研；❹ 积极采纳来自社会各界的立法、修法建议、意见，通过交流、讨论、说理的方式增强海关法规的社会认可、接纳度；❺ 海关管理制度是海关法制建设的延伸，应该参照海关法规建设机制进行其设计、制定和完善。

海关收费

作为贸易便利化的一个方面，中国海关作为一个政府机构，其表现业界及本商会成员高度评价。但与此同时，因海关实现管理职能而延伸出来，需要其他商业机构作为配套手段而进行的收费活动值得引起海关的高度关注：

❶ 舱单申报系统、EDI 数据传输系统等电子通道的接口，名义上是可竞争并对外开放，实际情况是开而不放，企业必须通过某一个特定的第三方管道，交纳不合理的服务费后才能完成传输任务；

❷ 委托报关协议，委托报关是进出口商和代理报关企业之间的商业协定，大部分情况是长期委托合同，但目前的海关系统要求企业按每一份报关单提交一份报关委托协定并只能采用某一固定第三方的协定书作为报关必备随附单据的做法是不经济且不合理的。

为了确保委托和代理企业双方在通关环节的法律责任，海关要求提供代理协定的理由是充分的，但这个协定书应以满足海关要求为限，而不应限定仅接受某一特定第三方制作的协定书而形成的本质上属于垄断性收费的项目：

❶ 仓储。海关监管货物以及海关扣留货物、物品的存放仓库目前均属第三方经营，海关应该在可能的条件下采用公开招标方式确定合作方，即便无法实现公开招标，也应该并有权要求经营者采用并公布其合理的收费费率，切断第三方和海关之间或许存在的利益输送关系；

❷ 税单。作为海关出具给进口商缴纳进口关税凭证和依据的税单，免费提交给进口商理所当然。但有些海关将税单出具和递交责任转移给负责关税转账的第三方银行，而银行借此向进口企业收取不合理的服务费用，增加了企业负担；

❸ 加工贸易信誉核销制度的商讨和建立。加工贸易在过去的三十年间为中国经济发展做出了巨大贡献，与此同时，经营主体成分、商品种类、海关管理制度也发生了本质性变化。业界期盼海关管理方式能够与时俱进，对高信用、大规模、善内控的企业大胆实施信誉核销制度，显著降低因单耗、核销制度造成的管理成本和违规风险；

❹ 尽快启动《海关行政处罚实施条例》修订，修改其中诸多“小错大罚”的不合理内容；

❺ 进一步推进贸易统计数据，海关行政处罚，海关行政复议及行政诉讼等方面的信息公开；

❻ 尽快研究制定有关跨境电子商务进出口货物、物品的海关监管制度；

❼ 推进海关与质检的配合，实行“单一窗口”制度的研究和实施。

should and has the right to demand operators to adopt and publish their reasonable fees so as to cut off any beneficial transport relations that may exist between the third parties and China Customs;

❷ A tax receipt should be issued free-of-charge by China Customs to importers for payment of import duties. However, some Customs authorities delegate the issuance and delivery of tax receipts to third-party banks that are responsible for duty transfers. As a result, the banks collect unreasonable service charges from the import companies, imposing unnecessary costs;

❸ A reputable verification system for processing trade credits should be established. The processing trade has made many contributions to Chinese economic development in the past three decades. Meanwhile, the main components of business operations, the variety of commodities, and the Customs management system have changed. AmCham China urges China Customs to develop an enhanced reputational verification system for large-scale enterprises with high credit and sound internal controls so as to significantly reduce management costs and compliance risks;

❹ Revise the "Detailed Rules for the Implementation of Customs Administrative Punishment" as soon as possible to modify the numerous unreasonable provisions concerning "serious punishments for minor mistakes";

❺ Further promote the disclosure of statistical data on trade, Customs administrative punishment, and Customs administrative reviews and proceedings;

❻ Research and implement a Customs regulatory system for the import and export of goods through cross-border e-commerce; and

❼ Advance greater cooperation between China Customs and the General Administration of Quality Supervision, Inspection, and Quarantine, and research and implement the "single window" system.

Recommendations

- **Strengthen and promote the "Implementation Plan of China Customs for Comprehensively Deepening Reform" and press forward such reforms as the "single window," regional clearance integration, and paperless Customs clearance.**
- Continue the process of decentralization and optimize all clearance procedures.
- Further reduce enterprise costs and burdens when clearing Customs.
- Make the development of new regulations transparent and provide all enterprises with the opportunity to submit their opinions.
- Improve Customs' enterprise credit management system.
- Strengthen the guarantee of Customs' policy and enhance the timeliness of laws, regulations, and decrees.
- Enhance the consistency of China Customs' law enforcement.

建 议

中国美国商会会员企业的期待：

- **加快推进海关全面深化改革实施方案的具体落实，推进包括单一窗口、区域通关一体化改革、通关作业无纸化改革等各项改革。**
- 继续推进简政放权，优化各项通关程序。
- 进一步减轻企业成本和负担。
- 加强政务公开，多方听取企业意见。
- 完善海关企业信用管理制度。
- 强化海关政策保障，增强法规、政令的时效性。
- 增强海关执法统一性。

Government Procurement

Introduction

China's government procurement market has grown almost fourteen-fold over the last 10 years, reaching US $260 billion (RMB 1.64 trillion) in 2013. While the size and growth of the market is significant, government figures do not take into account the substantial purchases undertaken by China's state-owned enterprises (SOEs) in industries in which private competition is often restricted.

American businesses can supply many of China's government procurement needs with competitively priced, high-quality products. However, the market remains largely closed to foreign businesses. More than a decade ago, the Chinese government promised to join the World Trade Organization's (WTO) Agreement on Government Procurement (GPA), which requires parties to open most government procurement to foreign businesses. Despite that commitment, the Chinese government has yet to submit an accession offer that is "on the whole commensurate with the coverage of GPA parties," as agreed at the 24th Joint Commission on Commerce and Trade (JCCT) in December 2013.

In an unexpected move, China announced at the mid-February 2015 meeting of the Committee on Government Procurement that it does not intend to improve the market access concessions it made in its latest fifth revised offer presented in December 2014, though it is willing to negotiate on the exclusions it has proposed. In particular, China stated that it is not willing to add any entities to Annexes I-III of its current offer. Moreover, China indicated that negotiations should continue on its most recent offer because it was unsure whether another revised offer would be put forward. This development is troubling given China's latest GPA offer which, while an improvement from past offers, is still not "commensurate" with the coverage of other GPA parties.

Opening China's government procurement market to foreign competition would allow relevant Chinese entities to acquire high-quality goods and services at competitive prices. Joining the GPA would also provide China with tools to combat local protectionism and corruption. AmCham China encourages the Chinese government to further open its government procurement market on a reciprocal basis with the US and many other countries by improving its fifth revised offer and accelerating the process of accession to the GPA.

Ongoing Regulatory Issues

Accession to the GPA

Slow Timeline for Accession

In its 2001 Protocol on Accession to the WTO, the Chinese government committed to become a party to the GPA "as soon as possible." However, China has yet to make an offer that is "on the whole commensurate with the coverage of GPA parties" for GPA accession. China submitted its initial offer in December 2007, six years after signing its Accession Protocol, and its subsequent offers have been detailed in previous *White Paper* editions.

China submitted its fifth revised offer on December 22, 2014. AmCham China commends the Chinese government for making meaningful improvements in its fifth revised offer, especially in expanding entity coverage and lowering thresholds. However, we urge the Chinese government to more fully address the key remaining issues, discussed below, in order to take meaningful steps towards concluding its GPA accession.

Coverage of Central and Sub-Central Government Entities

At the central level, one area of improvement in the fifth revised offer is the removal of an exclusion in China's previous offers that limited coverage to "central government entities proper and their administrative agencies located in Beijing." However, among the central government entities covered, the offer still does not include the Ministry of National Defense or any of its defense-related entities, including the People's Liberation Army.

At the sub-central level, the offer expands coverage to the five provinces of Shanxi, Heilongjiang, Anhui, Jiangxi, and Hainan. While their inclusion constitutes a step forward, omitted sub-central entities include less-developed provinces where significant government investment and infrastructure projects are currently taking place.

政府采购

引 言

中国的政府采购市场在过去10年间增长了将近十四倍，2013年达到2600亿美元（折合人民币约1.64万亿）。政府采购市场规模巨大并且增长迅速，但目前的数据统计中还未包括国有企业在不允许私企参与竞争的行业中进行的大规模采购。

美国企业能够提供很多满足中国政府采购需求的产品，且产品质高价优。但是，政府采购市场在很大程度上仍然限制外国企业参与。十几年前，中国政府曾承诺加入世界贸易组织的《政府采购协定》，该协定要求向外国企业开放大部分政府采购。尽管有这一承诺，但中国仍然没有按照2013年12月召开的第24届中美商贸联合委员会（商贸联委会）达成的协议，提交一份与其他国家的覆盖范围大体匹配的加入《政府采购协定》的出价清单。

在2015年2月中旬召开的政府采购委员会会议上，中国虽然愿意就其提出的例外情形进行谈判，但却出人意料地宣布不打算修改其在2014年12月第五次修改后的清单中做出的市场准入让步。特别是，中国表示不愿意扩大现有清单附录1–3的实体覆盖范围。而且，中国表示，谈判应当继续以其最新提出的清单为基础，因为其不确定是否还会制定另外一份修改清单。这让事情变得很麻烦，因为，虽然与过去的版本相比有所改进，但中国的最新清单仍然与加入《政府采购协议》的其他国家的覆盖范围不“匹配”。

向外资开放中国的政府采购市场，能够让中国相关实体以具有竞争力的价格获得高质量的商品和服务。加入《政府采购协定》也能成为中国消除地方保护主义和腐败的手段。中国美国商会鼓励中国政府修改第五版修改清单，加快加入《政府采购协定》的进程，在互惠互利的基础上向美国以及其他缔约方进一步开放政府采购市场。

现存监管问题

加入《政府采购协定》

进展缓慢

中国早在2001年《中国加入世界贸易组织议定书》中就承诺“尽快”加入《政府采购协定》。但是至今仍然没能提交一份“与其他国家的覆盖范围大体匹配”的加入《政府采购协定》的出价清单。2007年，即签订《中国加入世界贸易组织议定书》六年后，中国提交了初步出价清单，之后又陆续提交了几版修改清单，之前发表的《白皮书》对此有过详细介绍。

2014年12月22日，中国提交第五版修改清单。中国美国商会赞赏中国政府在第五版修改清单中做出的有意义的改进，特别是扩大了实体覆盖范围并且降低了门槛。不过，我们敦促中国政府充分解决以下主要遗留问题，采取有意义的举措，最终完成加入《政府采购协定》。

中央和各级地方政府实体的覆盖范围

在中央层面，第五版修改清单的一个进步就是取消了之前中国清单中的一个排除情况，即仅限于“中央政府实体及其在京的行政机构”。但是，在清单覆盖的中央政府实体中，仍然不包括国防部或者包括中国人民解放军在内的任何与国防有关的实体。

在地方政府层面，清单覆盖范围扩大到山西、黑龙江、安徽、江西和海南五省。虽然将这五省纳入覆盖范围是一种进步，但漏掉的地方实体中却包含目前正在大规模开展政府投资和基础设施项目的欠发达省份。

而且，有几项限制性因素使得地方实体覆盖范围的扩大失去了一定的意义。首先，与之前几个版本的清单一样，这份修改清单使用正面清单的方式列出覆盖的地方政府实体。由于不清楚清单所遗漏的实体，《政府采购协定》的

Moreover, there are several limiting factors that make the expanded sub-central coverage less meaningful. First, as in previous offers, the revised offer uses a positive list of covered sub-central government entities. Without knowing the entities that have been omitted from the list, other parties to the GPA are unable to assess the adequacy of coverage within each province and municipality. Second, the Chinese offer continues to adopt a sequential approach under which all five of the newly added provinces would only begin to be covered three years after the GPA takes effect in China. Finally, a new exclusion to sub-central coverage states that "procurement of construction services by the above-mentioned sub-central government entities using special funds of the central government" are not covered. It is unclear what this exclusion covers and whether it would exclude all sub-central procurement carried out with central government money.

AmCham China commends the fifth revised offer's expanded entity coverage. However, the restrictions on the scope and timeline for coverage remain troubling and conflict with the Chinese government's obligation under its WTO Accession Protocol.

Coverage of SOEs

The fifth revised offer does add to the list of covered entities under Annex III of the GPA, entitled "Other Entities which Procure in Accordance with the Provisions of this Agreement." Newly added entities include the China Post Group, Agricultural Development Bank of China, and China Central Depository and Clearing Group, along with several hospitals and universities. However, the Chinese government has continued to resist calls to include the many SOEs that appear to procure regularly for governmental purposes (i.e., not with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale).

We again encourage the Chinese government to clarify its position by either: ❶ issuing an unambiguous directive confirming that SOE procurements are non-government procurements and ensuring 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 ❷ including SOEs that procure for governmental purposes in its next revised offer.

Level of Thresholds

In its fifth revised offer, China made serious improvements in lowering the thresholds above which the GPA's non-discrimination disciplines apply, bringing its coverage more in line with that of the GPA parties. However, significant improvements will still be needed.

For central government entities, China lowered thresholds to 130,000 Special Drawing Rights (SDRs) for goods and non-construction services and five million SDRs for construction services, which are the same thresholds used by the vast majority of GPA parties. However, these thresholds would not take effect until the beginning of the third year after China's accession. China would apply higher thresholds during the first two years. China's previous offer had proposed phasing in its thresholds for central government entities to 200,000 SDRs for goods and non-construction services and 15 million SDRs for construction services over a four-year period to take effect in the fifth year.

For sub-central government entities, the latest offer has also lowered the thresholds that will be applied in the third year to 355,000 SDRs for goods and non-construction services and 15 million SDRs for construction services. The threshold for goods and non-construction services is in line with that in the US and Canada. However, on construction services for sub-central entities, most GPA parties use the lower five million SDRs threshold.

For Annex III entities, China has also lowered the thresholds, such that beginning in the third year the thresholds would be set at 400,000 SDRs for goods and non-construction services and 15 million SDRs for construction services. The new proposed thresholds are partly in line with the thresholds applied by the US and the EU, which both apply thresholds of 400,000 SDRs or lower for goods and non-construction services and five million SDRs for construction services.

AmCham China commends the significant improvements China has made in lowering its thresholds to bring them more in line with those applied by current GPA parties. However, China continues to propose transitional periods for phasing in the thresholds, albeit over the course of a shorter time period. This is problematic, particularly as almost 15 years have already passed since China first committed to accede to the GPA "as soon as possible."

Coverage of Service Sectors

AmCham China recognizes the Chinese government's efforts to extend coverage to additional service sectors. China's fifth revised offer includes five new categories: legal services, urban planning services, software implementation services, building-cleaning services, and refuse disposal services. The revised offer also covers new subsectors of construction services, including construction work for warehouses and industrial buildings, educational and health buildings, and "other buildings"; construction work for civil engineering; and special trade construction work for foundations and water well drilling.

We continue to encourage the Chinese government to provide service coverage in line with that of the US, which uses a negative list for its service commitments under the GPA with minimal sector exclusions, resulting in broader and higher-value coverage of services. Alternatively, as recommended in the 2013 *White Paper*, the Chinese govern-

其他缔约方无法评判各个省市覆盖范围的充分性。其次，中国提出的清单继续采用顺序排列的方法，五个新增省份将在《政府采购协定》生效三年后才开始被正式纳入覆盖范围。最后，地方政府覆盖范围中有一个例外情形，即，“上述各级地方政府实体使用中央政府专项资金采购的建筑服务”不包括在内。这一例外情形包含的具体内容以及是否应当排除各级地方政府实体使用中央政府资金开展的所有采购活动仍不清楚。

中国美国商会赞赏中国在第五版修改清单扩大了实体覆盖范围。但是，与范围和时间有关的限制规定仍然令人担忧，并且也不符合中国政府在《中国加入世界贸易组织议定书》中应当承担的义务。

国有企业的覆盖范围

第五版修改清单确实按照《政府采购协定》附录 3 的规定增列了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”。新增实体包括中国邮政集团、中国农业发展银行、中央国债登记结算公司以及几所医院和大学。但是，中国仍然拒绝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（即，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）。

我们再次鼓励中国政府通过以下方式明确自己的立场：❶ 颁布明确的行政条例，声明国有企业采购不属于政府采购，并确保所有管理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以及对世贸组织的其他相关承诺相一致；或 ❷ 将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

在第五版修改清单中，中国大大降低了适用《政府采购协定》非歧视原则的门槛，覆盖范围与其他缔约方更加相符。但是，还需要继续做出重大的改进。

对于中央政府实体，中国将货物和非建筑服务的门槛降低至 13 万特别提款权，将建筑服务的门槛降至 500 万特别提款权，与《政府采购协定》绝大多数缔约方使用的门槛持平。但是，这些门槛条件在中国加入后的第三年才会生效。中国在头两年可以施行更高的门槛。中国在之前的清单中曾经建议逐步将中央政府实体采购货物和非建筑服务的门槛定在 20 万特别提款权，将建筑服务的门槛定在 1500 万特别提款权，并设置为期四年的过渡期，在第五年生效实施。

对于各级地方政府实体，最新清单也将第三年适用的货物和非建筑服务的门槛降低至 35.5 万特别提款权，将建筑服务的门槛降至 1500 万特别提款权。货物和非建筑服务的门槛符合美国和加拿大的标准。但是，对于各级地方政府实体的建筑服务，《政府采购协定》的缔约方大都使用较低的 500 万特别提款权的门槛。

中国还降低了附录 3 所列实体的门槛，因此，从第三年开始，货物和非建筑服务的门槛将变成 40 万特别提款权，将建筑服务的门槛降至 1500 万特别提款权。新提出的门槛水平在一定程度上与美国和欧盟适用的门槛标准保持一致，这两个地区对货物和非建筑服务都实行 40 万特别提款权或更低的门槛，而对建筑服务实行 500 万特别提款权。

中国美国商会赞赏中国参照《政府采购协定》现有签约方的门槛标准对门槛水平做出的重大改进。但是，中国仍然提出分阶段实施的过渡期，尽管期限有所缩短，但这仍然是有问题的，特别是，自中国承诺“尽快”加入《政府采购协定》之后，将近十五年的时间已经过去了。

服务行业的覆盖范围

中国美国商会认可中国政府将覆盖范围延伸到其他服务行业的努力。中国在第五版修改清单中新增了五个类别：法律服务、城市规划服务、软件实施服务、建筑 – 清洁服务以及废物处理服务。修改清单还新增了建筑服务行业覆盖的领域，包括仓库和工业建筑、教育和医疗建筑以及“其他建筑”的建筑施工；土木工程的施工；地基和水井钻探的施工。

我们继续鼓励中国政府参考美国的做法，确定服务行业的覆盖范围，即，使用负面清单兑现其在《政府采购协定》中的服务行业承诺，将排除在外的行业降至最低，提高服务行业价值覆盖范围的广度和高度。或者，根据 2013 年《白皮书》的建议，中国应当积极地增列更广泛的服务行业，用两位数的海关代码取代现行的三位或三位数以上的代码。

存在问题的例外情形

在最新版的清单中，中国政府没有消除之前一般特例中存在的种种问题。

第一，中国仍然提出，在某项采购可能会“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”。中国美国商会在之前发表的《白皮书》

ment should positively list service sectors more broadly, such as by two-digit customs procedure codes instead of three or more digits, as currently listed.

Problematic Exceptions

In its latest offer, the Chinese government has failed to eliminate previous concerns regarding its general exceptions.

First, China continues to propose that it 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 editions of the *White Paper*, this provision is extremely broad and would completely circumvent the core GPA principles of non-discrimination and market access. It would also add unpredictability to China's procurement process as any procurement could be subject to this exception.

Second, China maintains its exception to require domestic content, procurement offsets, or technology transfer under revised GPA Article V. As noted in previous editions of the *White Paper*, China – as the world's second largest economy – should not be treated as a developing country for purposes of allowing it to include transitional measures in the terms of its accession. Under the revised GPA, offsets and other transitional measures may be allowed only if permitted by the parties as a whole.

Third, in the notes applicable to several annexes, the revised offer retains a provision stating that exceptions will be specified "in the revised offers in the future," adding further ambiguity to the scope of coverage.

Fourth, China maintains its ability to extend the benefits of the GPA only to providers of goods and services from 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 wholly unique to China's GPA offer.

Finally, the new offer maintains China's request to delay implementation of its GPA obligations by three years from the date of its accession. For the provinces in Group B of Annex II, this would mean a delay of six years after China accedes to the GPA. There is no provision in the revised GPA for delayed implementation of all GPA obligations.

Domestic Government Procurement Regime

Tendering and Bidding Law

There has long been discussion about reconciling inconsistencies between "China's Government Procurement Law" and its "Tendering and Bidding Law," although there was little apparent progress in 2014. 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, discretion is often left to the purchasing entity to decide which law to apply, adding more uncertainty to China's government procurement regime. Reconciling these two major laws governing China's procurement practices as part of China's GPA accession negotiations is critical, particularly with respect to SOE procurement. An alternative to reconciliation of the two laws may be for China to enact a new law (or amend the Government Procurement Law) to provide that the GPA applies to those SOEs covered by the GPA in the implementation of the Tendering and Bidding Law.

Delinking Indigenous Innovation from Government Procurement

Most local provinces and cities have stopped implementing local Indigenous Innovation Product (IIP) policy in accordance with measures issued by the State Council and Ministry of Finance (MOF) in June 2011 to delink indigenous innovation from government procurement. AmCham China applauds the important steps that have been taken to level the playing field in the government procurement market. However, we still see indigenous intellectual property (IP) requirements appearing in other policies, such as the "Guidelines for Promoting the Application of Secure and Controllable IT in the Banking Sector," which will disadvantage foreign IT companies and ultimately restrict the competitiveness and security of China's information infrastructure. AmCham China is concerned that the protective and discriminatory trend toward foreign companies is reflected in this guideline and could be expanded to other sectors. We thus encourage China's continued commitment to the complete delinking of indigenous IP from government procurement at the national and local level.

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 and controllability, environmental protection, and/or energy conservation. Such standards, testing, and certification requirements include: ❶ the China Certification Center Inc. certification applicable to 13 categories of "information security products"; ❷ the proposed information security standard for office equipment; ❸ the Certified Executive Compensation Professional certification and related "Catalogue of Government Procurement List of Energy Efficiency Products" and the proposed "National Recommended Voluntary Certification for China Restriction of Hazardous Substances Compliance"; and ❹ the Chinese Trusted Computing Module and Multi-level Protection Scheme which requires procurement of ICT equipment with domestic IP for networks classified at level III or higher.

Particularly in the high-tech sector, restrictive policies and standards make it more difficult for foreign companies to participate in government procurement. For example, the

中已经指出过，这一条款过于宽泛，完全可以用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。此外，由于任何采购都适用于该例外情形，该规定增加了中国采购流程的不可预测性。

第二，中国仍然要求，根据修订的《政府采购协定》第五条，将本国含量、采购抵消或技术转让设置为例外情形。在之前发表的《白皮书》中，中国美国商会已经指出，中国作为全球第二大经济体，就《政府采购协定》而言，不应当被视作发展中国家，从而在加入条件中包含过渡性措施。根据修订的《政府采购协定》，抵消和其他过渡性措施必须获得全体缔约方的同意。

第三，在几个附录的注释中，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。

第四，中国还坚持，只向已经向“中国货物和服务供应商提供了本国市场准入”的缔约方的货物和服务供应商提供《政府采购协定》中的相关优惠。这一要求似乎替代了中国对世界贸易组织的争端解决规则的单方面判断，完全是中国《政府采购协定》的清单独有的。

最后，中国在最新清单中继续要求，将履行其在《政府采购协定》项下的义务推迟至加入后三年。对于附录 2 的 B 组省份来说，这意味着实施时间将推迟到中国加入《政府采购协定》六年之后。修订的《政府采购协定》中，没有任何关于延迟履行《政府采购协定》义务的规定。

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，但是，2014 年在这方面仍然没有取得明显进展。到目前为止，《政府采购法》的适用主要依据使用资金的性质，而非采购实体的性质。然而，在实践中，采购实体经常可以自行决定适用哪部法律，这增加了中国政府采购体制的不确定性。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。作为理顺两部法律的替代方案，中国可以制定一部新的法律（或者修改《政府采购法》），规定《政府采购协定》覆盖的国企在实施《招标投标法》时应当遵守《政府采购协定》的规定。

政府采购与自主创新脱钩

大部分省市已经按照国务院和财政部 2011 年颁布的规定，停止实施本地自主创新产品政策，将自主创新与政府采购脱钩。中国美国商会赞赏中国为改进政府采购市场的公平竞争环境而采取的重要举措。但是，我们在其他政策中仍然看到有自主创新要求的出现。例如，《银行业应用安全可控信息技术推进指南》就会让外国 IT 企业处于劣势，最终限制中国信息基础设施的竞争力和安全性。中国美国商会担心，这一指南表现出来的保护主义和歧视外国企业的倾向有可能延伸到其他行业。因此，我们鼓励中国承诺将自主创新产品与中央和地方层面的政府采购完全脱钩。

标准与政府采购

中国美国商会会员企业注意到，中国政府越来越频繁地以信息安全和可控、环保和 / 或节能的名义，将各种技术标准与政府采购挂钩。这些标准、测试及认证要求包括：❶ 适用于 13 种“信息安全产品”的 CCCi 认证；❷ 信息安全技术办公设备基本安全要求征求意见稿；❸CECP 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；❹ 中国可信计算模块，以及“信息安全等级保护制度”要求三级及以上网络必须购买带有国内 IP 的信息通信技术设备。

特别是在高科技行业，限制性政策和标准使得外国企业更加难以参加政府采购。例如，中国推行“安全可控”的标准，要求信息通信技术产品和服务接受侵入安全测试，包含中国自主知识产权（例如，本国的加密算法），符合中国国家标准，限制商务数据的合法跨境流动。这些政策还要求供应方向中国政府提交源代码等敏感知识产权信息。

中国美国商会促请中国政府仅在那些需要采用此类标准的项目和领域实施这些标准，不要针对所有政府采购。当需要采用此类标准和合格评估认证时，我们建议采取“自我声明遵守”原则，不要强制公开源代码或其他专有信息。我们还建议政府采购技术时能够将技术性能作为选择依据，避免根据知识产权来源地的不同歧视对待有关技术。

价格控制与政府采购

中国美国商会会员企业注意到，中国政府继续以紧缩为名将价格控制与政府采购挂钩。例如，财政部发布的 2013 年 7 月 1 日生效实施的《政府机关办公通用软件资产配置标准（试行）》就对外国软件产品和服务的市场准入

Chinese government's promotion of "secure and controllable" standards require ICT products and services to undergo intrusive security testing, incorporate indigenous Chinese IP (e.g., local encryption algorithms), comply with Chinese national standards, and restrict the legitimate flow of cross-border commercial data. Such policies also mandate that vendors file sensitive IP, such as source code, with the Chinese government.

AmCham China urges the Chinese government to apply these standards only to those projects and areas where such standards are essential, not to all government procurement. In situations where these standards and conformity assessment qualifications are required, we recommend implementation of a principle of "self-declaration for compliance," which does not mandate the disclosure of source code or other proprietary information. We also recommend that the choice of technologies in government procurement should be performance based and technology neutral in terms of IP origins.

Price Controls and Government Procurement

AmCham China members have observed that the Chinese government continues to link price controls with government procurement in the name of austerity. For example, the "Trial Directive on Asset Allocation Standards for General Office Software of Government Agencies" issued by the MOF and effective July 1, 2013, significantly restricted market access for foreign software products and services. As elaborated in the 2014 *White Paper*, this directive does not comport with best practices for software procurement, does not adequately take into account the speed with which software products and services are developed, and appears to put in place de facto preferences for procuring domestic software products and services.

AmCham China members have observed that the Chinese government often interferes with or regulates government procurement through implicit internal orders without adequate transparency and explanation to the general public. Some foreign products are banned from government procurement without explicit government directives or justifications.

AmCham China urges the Chinese government to increase the transparency of government procurement and not implement this directive as it not only leads to de facto discrimination against foreign brands, but also hinders the Chinese government's ability to obtain products with the best price-to-performance ratio.

Recent Developments

Government Procurement Law

On December 31, 2014, the State Council finally passed the "Implementing Rules of the Government Procurement Law" (Rules), effective March 1, 2015, which was issued for comment in January 2010 and discussed in detail in previous *White Paper* editions. The new regulation aims to standardize the procurement process, improve efficiency, and promote transparency. Meanwhile, supervision and management of procurement will be improved through public scrutiny (e.g., procurement information, information concerning the bidding results and transactions will be published via the media). More specifically, the finalized Rules deleted wording found in Articles IX and X of the 2010 draft on national IIPs, including the 20 percent preference for domestic goods. AmCham China welcomes this positive development and looks forward to its implementation.

JCCT Government Procurement Developments

At the 25th JCCT in December 2014, China committed to advance work on its draft "Interim Administrative Measures for the Government Procurement of Domestic Goods," which were issued for comment in 2010. According to the Joint JCCT Fact Sheet, China agreed to revise and improve those Measures after giving thorough consideration to various opinions, including those related to achieving cost savings, decreasing administrative burdens, and increasing flexibilities. China will then publish the improved draft Measures for public comment. According to the US JCCT Fact Sheet, these commitments will "help ensure that the goods of US companies invested in China and goods imported from the US can access" China's government procurement market.

AmCham China hopes that the revised draft will provide a clear, consistent, and reasonable definition of "domestic product" that establishes a level playing field which enables foreign companies to participate in China's government procurement in line with international practice. We look forward to reviewing and commenting on the revisions before their final promulgation.

In the 2014 JCCT, China did not commit to submit another revised offer in its negotiations to accede to the GPA, as it had done in the 2013 JCCT.

Recent Government Procurement Policy Announcements

China has, in recent years, continued its policy of dropping some of the world's leading technology from its Central Government Procurement Center's list, while approving thousands of additional locally made products. In particular, the number of approved foreign technology brands has fallen by one-third, while less than half of those with security-related products have remained on the list.

The US government and industry should continue to engage with China on its current revised GPA offer in order to ensure coverage "commensurate" with that provided by other GPA signatories and the application of GPA disciplines to China's government procurement policy decisions.

设置了重大限制。正如 2014 年《白皮书》所述，这项标准不符合软件采购的最佳实践作法，没有充分考虑软件产品和服务开发的速度，实际上似乎在偏爱采购国内软件产品和服务。

中国美国商会会员企业注意到，中国政府经常通过隐性的内部命令干预或管控政府采购，采购过程对一般大众缺乏足够的透明度和解释。政府采购时禁止采购一些外国产品，却没有给出明确的政府规定或理由。

中国美国商会促请中国政府提高政府采购的透明度，不要施行这一规定，因为其不仅对外国品牌构成事实上的歧视，而且还会限制中国政府取得性价比最优的产品。

最新进展

《政府采购法》

2010 年 1 月，国务院公布《政府采购法实施条例（征求意见稿）》，之前发表的《白皮书》做过详细介绍，2014 年 12 月 31 日，国务院最终通过了《政府采购法实施条例》（《条例》），定于 2015 年 3 月 1 日起生效实施。新条例旨在规范采购过程、提高效率并提高透明度。与此同时，通过公众监督改进采购监管（例如，通过媒体公布采购信息、与投标有关的信息和交易）。更具体来说，《条例》的终稿删除了 2010 年草案第九条和第十条中关于本国自主创新产品的规定，包括给予本国货物 20% 的价格优惠。中国美国商会欢迎这一积极的进展并且期待《条例》的实施。

商贸联委会政府采购进展

在 2014 年 12 月召开的第 25 届商贸联委会上，中国承诺加快 2010 年发布的《政府采购本国产品管理办法（征求意见稿）》（《办法》）的起草工作。根据商贸联委会情况说明书，中国同意全面考虑各种意见后对《办法》进行修改和改进，包括与实现成本节约、减轻行政负担以及提高灵活性有关的建议。然后，中国将发布修改后的《暂行办法》草案，公开征求意见。根据商贸联委会情况说明书，这些承诺将“有助于确保美国企业在中国投入的货物以及从美国进口的货物可以进入”中国的政府采购市场。

中国美国商会希望修改后的草案对“国内产品”有一个明确、一致和合理的定义，营造一个公平竞争的环境，使得外国企业能够按照国际实践作法参与中国的政府采购。我们期待在法规最终发布之前能够对草案进行审查并提出意见和建议。

在 2014 年的商贸联委会上，中国没有像 2013 年一样，承诺修改并重新提交一份谈判用的加入《政府采购协定》的出价清单。

最新发布的政府采购政策

近年来，中国继续将一些世界领先技术从中国国家机关政府采购中心（即中央政府采购中心）清单中删除，同时，批准了数以千计的本地制造产品。特别是，获准的外国技术品牌的数量已经减少三分之一，并且与安全有关的产品只有不到一半还留在清单上。

美国政府和企业界应当继续与中国就修改后的《政府采购协定》出价清单展开洽谈，确保覆盖范围与其他缔约方“大体匹配”，确保中国按照《政府采购协定》的要求制定政府采购政策。

建 议

- **根据本章提出的建议，解决修改后的《政府采购协定》出价清单仍然存在的显著差距。（商务部、财政部、国资委）**
- 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。
- 如果政府采购必须要求满足相关标准和合格评估认证，可以遵循“自我声明遵守”原则，不要强制公开源代码或其他专有信息。
- 确保政府采购技术时以技术性能作为选择依据，避免根据知识产权来源地的不同歧视对待有关技术。
- 取消政府机关购买办公通用软件实行的价格上限、优先许可条款、软件生命周期最低要求以及歧视外国品牌的其他要求。（财政部）

Recommendations

- **Address the significant remaining gaps in the revised GPA offer and accelerate negotiations toward accession to the GPA, according to the terms outlined in this chapter. [MOFCOM, MOF, SASAC]**
- Repeal remaining policies that provide preferences for domestic products or IIPs in government procurement, at both the central and local government levels, and ensure full revocation of IIP preferences previously repealed.
- 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.
- Ensure that the choice of technologies in government procurement is performance based and technology neutral in terms of IP origins.
- Repeal directive-imposed price caps, preferred licensing terms, minimum terms for software life, and other requirements on procurement of general office software by governmental agencies that discriminate against foreign brands. [MOF]

High-Tech Trade Promotion and Export Controls

Introduction

China is the most important import partner for the US and the third largest export destination behind our neighbors Canada and Mexico. Bilateral trade in goods between the US and China grew from US $147 billion (RMB 910 billion) in 2002 to US $590 billion (RMB 3.6 trillion) in 2014. The total value of licensed dual-use exports from the US to China continues to grow at an even faster rate. As the US and China look to capitalize on future growth in bilateral high-tech trade, both countries have sought to promote mutual understanding and increase cooperation on export controls.

Despite efforts by both sides, however, problems still pervade discussion on export controls and negatively impact high-tech trade cooperation. Export controls affect high-tech trade between the US and China in the following ways:

- Misperceptions by the Chinese government and among Chinese industry representatives about the restrictions imposed by US export controls have deterred Chinese companies from seeking US-origin products;
- US export control policies do not fully account for foreign and indigenous availability, resulting in:
    - Decreased national security benefits for the US when the same items can be obtained without license domestically or through another country, and
    - Loss of sales by US firms to foreign competitors, negatively affecting the US defense industrial base;
- A lack of transparency in China's export control regime has led to diversion concerns with regard to dual-use items; and
- The lack of an established compliance culture among Chinese businesses hinders the ability of Chinese firms to persuade US licensing officers to authorize particular licenses, hindering the firms' ability to acquire certain US export-controlled items.

To address these issues, AmCham China and AmCham Shanghai (hereafter referred to collectively as "AmCham") formed the Export Compliance Working Group (ECWG) in 2006 to facilitate civilian bilateral high-tech trade by serving as the liaison between government and industry.

Since its inception, the ECWG has focused on compliance promotion and industry-government cooperation, while emphasizing best practices and the importance of transparency and compliance. As US companies develop more research and development and intellectual property in China, the ECWG has also focused its efforts on understanding Chinese export regulations and best practices in China-based compliance.

Ongoing Regulatory Issues

US Export Controls

Foreign Availability and Non-US Suppliers

In some circumstances, US export controls require dual-use export licenses for items that are already available indigenously in China or that may be exported from non-US countries under easily obtainable export licenses. AmCham believes it is unnecessary for either the US or multilateral regimes to control items that are already available in China. Such restrictions do not provide a national security benefit to the US nor do they have a positive impact on preventing the proliferation of weapons of mass destruction or conventional weapons. AmCham thus requests that the US government take the lead in reviewing the list of items controlled by all multilateral regimes (except for the Nuclear Suppliers Group, of which China is a member) and remove those items that are produced in China.

Regarding items which are available in China from non-US firms, AmCham stresses that having items exported under a US export license is of much greater benefit to US national security than if those equivalent items are exported from another country. In other countries' export control regimes, the license review process, conditions imposed on any license, and ongoing controls and monitoring are not the same as those associated with the US export control system. In addition to this direct national security impact, there is a secondary impact related to the economic disadvantage that US companies experience when they lose sales to non-US companies due to dual-use export controls.

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，也是仅次于其邻国加拿大和墨西哥的第三大出口目的地国。美中两国双边货物贸易额已从 2002 年的 1470 亿美元（9100 亿元人民币）跃升至 2014 年的 5900 亿美元（3.6 万亿元人民币）。而获准对华出口的美国两用产品的贸易总额持续以更快的速度增长。鉴于美中两国都期望从未来的高科技双边贸易增长中受益，两国都已努力在出口管制领域促进相互理解，加强合作。

尽管两国已作出巨大努力，但在出口管制问题上依然存在各种问题，并对高科技贸易合作造成了负面影响。出口管制在下述方面影响美中两国的高科技贸易：

- 中国政府及业内人士对美国出口管制的限制措施存在的误解，阻碍了中国企业对美国原产地产品的进口；
- 美国出口管制政策未能充分考虑外国（第三国）及本土是否已有类似产品的情况，这将导致：
  - 如果可以从本土或第三国不经过许可证获得同样产品，美国的国家安全利益将打折扣；以及
  - 美国公司的销售份额流向外国竞争者，从而对美国国防工业基础造成负面影响；
- 中国出口管制制度缺乏透明度，造成两用物项产品被挪用的担心；
- 中国企业尚未建立合规文化，降低了中国企业说服美国许可证审批官员向其颁发特定许可证的可能，从而削弱其获取美国出口管制产品的可能性。

为了解决这些问题，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（ECWG），旨在增进政府和行业之间的联络，推动双边民用高科技贸易的发展。

自其成立之时起，出口合规工作组就一直通过强调最佳实践以及透明度和合规的重要性，来着重于促进合规和行业－政府合作。随着美国企业越来越多地在华开展研发并取得知识产权，出口合规工作组也在专注于理解中国出口监管制度和在华企业合规最佳实践。

现存监管问题

美国出口管制

外国产品的存在和非美国供应商

在某些情况下，美国出口管制政策对于中国已能自主生产或通过简单手续即可从美国之外的国家获得许可证并出口的产品，仍然要求两用产品出口许可证。美国商会认为，美国或多边体系无需管制中国已能自主生产的产品。这种限制既不会提供美国的安全保障，也不会对防止大规模杀伤性武器或常规武器扩散产生积极影响。因此美国商会呼吁美国政府率先审核所有多边体系管制下的产品清单（中国作为成员国之一的核供应国集团的管制清单除外），并从中清除中国自主生产的产品。

对于中国从美国以外国家进口的产品，美国商会强调，相比从另一个国家出口同等产品，出口已取得美国出口许可证的此类产品对美国国家安全更有利。在其他国家出口管制制度中，许可证审核流程、许可证的授予条件以及持续管制和监控均不同于美国出口管制制度的相关规定。除造成直接国家安全影响之外，还会因两用物项出口管制导致销售份额流向美国以外企业时，对美国企业所经受的经济劣势再次造成影响。

中国每次从美国以外的企业进口一个产品，就表明美国丧失了一次出口机会，进而对美国就业、经济增长和美国军事工业基础的稳定造成损害。因此，美国商会敦请美国政府核查许可证处理时间和颁发两用物项出口许可证的

Each item that China acquires from a non-US business represents a lost US export opportunity and, in turn, harms US job creation, economic growth, and the stability of the US military industrial base. AmCham therefore requests that the US government review its processing times and approval criteria for issuing dual-use export licenses and bring these more in line with the practices of other multilateral regime members.

ECWG Reports

A core component of the ECWG's mission is to provide information on available technology in China and an "on the ground" perspective from US companies in China to assist US government decision-makers in export control policy and licensing decisions. To that end, the ECWG has prepared and submitted the following 11 reports over the past eight years to US-policy makers on market and industry developments in China:

- *Composite Materials in the Aerospace Industry in China* (2006, 2007);
- *Cross Sector Report* (2006);
- *Machine Tool Industry in China* (2007);
- *Semiconductor Industry in China* (2008);
- *Navigation and Avionics Capabilities in China* (2008);
- *The Effect of US Export Controls: Case Studies from China on the Impact of Export Controls on Manufacturers' Decisions to Use or Not Use US-Origin Goods in Commercial Products* (2009);
- *Gas Turbine, Marine, and Diesel Engines in China* (2009);
- *Cross Sector Report* (2010);
- *A Study on Foreign Dual-Use Export Licenses to China* (2011); and
- *The Evolution of Export Compliance in China* (2012).

The ECWG is in the process of identifying potential report topics for 2015.

End-Use Checks

The Bureau of Industry and Security (BIS) published several changes to the US Unverified List (UVL) process that went into effect in January 2014 that may directly impact Chinese companies purchasing dual-use items from the US. While AmCham understands the need for the US government to conduct end-use visits, we believe expanding the UVL should be an absolute last resort for addressing the inability of the US government to visit an end-user.

Instead, AmCham asks that both the US and Chinese governments increase their efforts to find a solution to any questions regarding end-use visits. AmCham welcomes the opportunity to facilitate bringing US companies and their Chinese partners together with both governments to find a positive solution to any end-use visit concerns. AmCham also respectfully requests that the Chinese government continue to increase its support for timely end-use visits, which are critical to facilitating high-tech trade.

Validated End-User Program

In 2013, the BIS added several new validated end-users (VEUs) in China, bringing the total number of VEU entities to 12. AmCham fully supports the VEU program as an important tool for facilitating legitimate exports to civilian end-users. The main advantage of VEU authorization is that it 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 transaction. This program puts US companies at a competitive advantage and 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 and make it more accessible to entities in China willing to commit to compliance and civil end-use only.

Education and Training

Export control myths continue to create 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 increasing US-China high-tech trade. In fact, many domestic Chinese companies have expressed an interest in learning about internal control processes to enhance their own compliance. Education and training can also help focus government-to-government discussion on the primary issues, such as US license processing times and criteria in relation to other multilateral regime countries, instead of the incorrect assumption that the US has more license requirements for list-based items than other multilateral regime countries.

To address these misconceptions, the ECWG has previously facilitated educational seminars for US exporters, Chinese importers, and government officials on how to maximize commercial trade opportunities by minimizing compliance risks. Current US and Chinese government budgetary restraints, however, pose a challenge to maintaining a consistent rhythm for these exchanges. AmCham suggests that both the US and Chinese governments look for opportunities to support and fund such programs, as they are necessary to dispel export control myths and open new trade opportunities. In particular, we suggest adding such educational activities to existing bilateral government engagements.

Chinese Export Controls

Diversion of Dual-Use Items

The lack of transparency in China's export control laws and regulations continues to cause concern regarding the diversion of items to harmful end-users or end-uses (e.g., entities

通过标准，使该流程更加符合其他多边体系成员的做法。

出口合规工作组报告

出口合规工作组使命的一个核心部分是提供中国现有技术的信息以及从在华美资企业的“本土”角度协助美国政府决策者制定有关出口管制政策，做出许可证决策。为此，出口合规工作组在过去的八年中已为美国决策者编制并提交了如下 11 部有关中国市场和行业发展的报告：

- 《复合材料在中国的航空航天业的现状》（2006，2007）
- 《跨行业报告》（2006）
- 《中国的机床制造业》（2007）
- 《中国的半导体业》（2008）
- 《中国的导航和航空电子实力》（2008）
- 《美国出口管制的影响：出口管制对中国生产商在生产商用产品时是否使用美国产品之决策的影响案例分析》（2009）
- 《中国的燃气涡轮、海运和柴油发动机》（2009）
- 《2010 年跨行业报告》（2010）
- 《外国对华出口两用产品之出口许可研究》（2011）
- 《中国出口合规的发展演变》（2012）

目前出口合规工作组正在确定 2015 年报告的主题。

最终用途审查

美国产业与安全局（BIS）发布了对 2014 年 1 月起开始生效的“美国未核实名单”（UVL）流程的几次修改，这可能会直接影响中国企业从美国购买两用产品。尽管美国商会理解美国政府需要进行最终用途访问，但我们相信，扩充 UVL 应该是解决美国政府因无法访问最终用户的最终补救措施。

然而，美国商会同时敦请美国政府和中国政府加大力度，来寻找与最终用途访问的相关问题的解决方案。美国商会非常乐意促进美国企业及其中国贸易伙伴与两国政府的合作，以共同寻找解决任何有关最终用途访问问题的积极方案。美国商会也敬请中国政府继续加大力度，支持对最终用途的及时访问，这对促进高科技贸易是至关重要的。

经验证最终用户项目

2013 年，美国产业与安全局在中国新增了几家验证最终用户，使其实体总数达到十二家。美国商会全力支持将验证最终用户项目作为一个重要工具来促进向民用最终用户合法出口。此项目授权的主要优势在于允许向中国特定的最终用户出口、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。该项目让美国企业处于竞争优势，激励中国民用最终用户投资贸易合规，以便获得高额的商业利润。我们敦促美国政府继续加强验证最终用户项目建设并拓展其范围，让致力于合规建设和承诺仅限民用的中国实体有机会成为验证最终用户。

教育和培训

美国出口管制导致美中两国高科技贸易机会流失的误解一直存在。消除这种误解的有效途径就是对所有有资质的进口商和出口商进行出口管制和合规流程方面的培训从而促进中美高科技贸易。事实上，许多中国本土企业都表示有兴趣学习有关内控流程来提高其自身合规水平。教育和培训还会有助于两国政府关注讨论主要问题，如美国许可证处理时间和标准以及其他多边国家体系，而不是错误的认为和其他多边国家体系相比美国有更多的产品许可证要求。

为消除这些误解，出口合规工作组之前已推动开展针对美国出口商、中国进口商以及政府官员的教育培训，以期通过合规风险的最小化实现商业贸易机会的最大化。然而，因为美中两国政府的预算限制无法进行定期的交流。美国商会建议美中两国政府共同寻找支持和资助此类项目的机会，因为必须通过此类项目消除对出口管制的疑虑来创造新的贸易机会。我们特别建议在现有两国政府活动中增加此类培训活动。

中国出口管制

两用物项转移

中国出口管制法律法规缺乏透明度，继续导致人们担忧产品是否转移到有危害的最终用户或最终用途（如：担心武器扩散与恐怖主义的实体和国家）。美国商会建议中国官员主动与美国及其他有关政府沟通，进一步解释其出口管制体系的详细流程，尤其是关于执行方面。

此外，美国商会敦请中国政府向在中国拥有业务的美国企业加大推广和培训力度。清晰透明的中国出口管制体

and countries of proliferation and terrorism concerns). AmCham recommends that Chinese officials reach out to the US government, among others, to further explain the detailed processes of its export control system, especially as it relates to enforcement.

In addition, AmCham requests that the Chinese government conduct more outreach and training to US industry with a presence in China. A clear and transparent Chinese export control system is critical for US-China relations and will help US-based companies comply more completely and effectively with Chinese export controls. In addition, AmCham urges China to clearly separate civilian and military programs in state-owned entities, to ensure that dual-use items are not diverted from civil to military programs thereby constraining high-tech commercial trade.

Joining Multilateral Regimes

China's absence from influential multilateral regimes has a negative impact on high-tech trade between the US and China, as China's control lists are not in line with all of the multilateral lists, especially the Wassenaar List. Full membership would put China on par with its biggest trade partners and have a positive impact on high-tech exports from the US to China. AmCham recommends that the Chinese government actively pursue membership in these multilateral export control regimes, such as the Australia Group and the Missile Technology Control Regime, while also taking an active leadership role in the multilateral regimes in which it is already a member.

Recent Developments

MOFCOM Reorganization

In 2014, the Ministry of Commerce undertook a significant reorganization of its export controls division. The newly formed division, the Bureau of Industry, Security, Import, and Export Control (BISIEC), is comprised of six units, four of which are dedicated to export controls: Policy and Regulation, Security Inspection and Review, Export Control Licensing, and Investigation and Enforcement.

AmCham commends MOFCOM for this development and looks forward to engaging with BISIEC. AmCham hopes to work with BISIEC in an ongoing dialogue to gain a better understanding of China's export control regime and encourages BISIEC to be transparent and engage in outreach to Chinese companies.

Semiconductor Etch Equipment

In September 2014, BIS initiated a foreign availability assessment on semiconductor etch equipment to determine whether such equipment merits removal from the Commerce Control List. Specifically, BIS will both examine and take into account comments on the foreign availability of etch equipment in China. This represents the first Foreign Availability Assessment conducted in more than 20 years. The ECWG commends BIS for its responsiveness to industry requests and for demonstrating that there is a mechanism in place to consider the removal of items from the Commerce Control List.

Recommendations

For the US Government:

- **Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.**
- Take into account the availability of items in China from both domestic and foreign sources as the US government completes phase two of the export control reform effort and moves into phase three.
- Consider establishing a simplified and expedited review process for sections of sanctioned Chinese universities when those sections and the product or data at issue are outside the focus of US export controls.
- Support and encourage China's BISIEC implementation.

For the Chinese Government:

- **Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.**
- Improve transparency on China's export control system and conduct more outreach to and training of US industry with a presence in China on China's export controls.
- Continue to support BIS end-use checks to facilitate trade between the US and China.
- Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.
- Promote further compliance with global export control norms by adopting export control laws and regulations in line with all multilateral export control regimes.

系对中美关系至关重要，这会有助于美国的企业更全面、更有效地遵守中国出口管制法规。此外，美国商会还促请中国政府明确分开国有企业民用项目和军用项目，确保两用物项产品不会从民用项目转为军用项目，从而限制高科技商业贸易。

加入多边体系

中国未加入具有影响力的多边体系对美中两国的高科技贸易造成负面影响，因为中国的管制清单与所有多边清单均不一致，尤其是瓦森纳清单。正式会员资格可让中国向其最大的贸易伙伴看齐，对美国向中国的高科技出口产生积极影响。美国商会建议中国政府能够积极加入这些多边出口管制体系，比如澳大利亚集团和导弹及其技术管控制度，同时也在自己已成为会员的多边体系中发挥积极的领导作用。

最新进展

商务部机构改革

2014 年，商务部对其负责出口管制的部门进行了重大调整。新成立的产业安全与进出口管制局下设六个处，其中四个处涉及出口管制工作：政策法规处、安全审查处、管制许可处和调查执法处。

美国商会对商务部的此举表示赞赏，并期待和产业安全与进出口管制局进行合作。美国商会希望与该局保持经常性的沟通对话，从而更好地理解中国的出口管制制度，并鼓励产业安全与进出口管制局坚持透明度原则，与中国企业加强沟通。

半导体蚀刻设备

2014 年 9 月，美国产业与安全局启动了一项外国半导体蚀刻设备可用性的评估，旨在决定是否满足将该种设备从商业管制清单中删除的条件。特别是美国产业与安全局将对外国在中国的蚀刻设备可用性进行考查并充分考虑各方面对此的意见。这是美国近 20 多年来首次进行的外国产品可用性评估。对于产业与安全局顺应行业需求并示范了现行机制如何从商业管制清单中去除相关产品的做法，出口管制工作组表示赞赏。

建 议

对美国政府的建议：

- **通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，从而推进美中高科技贸易的倡仪。**
- 美国政府在完成出口管制改革第二阶段并进入第三阶段时，应考虑到中国是否可以从国内和国外获得相关产品。
- 对于受制裁的中国大学，如果其学校、产品、或数据已经不是美国出口管控关注的重点，考虑建立精简且快速的审核流程。
- 支持和鼓励中国商务部产业安全与进出口管制局的履职。

对中国政府的建议：

- **加大和中国企业的合作从而促进企业合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。**
- 提高中国出口管制体系的透明度，加大对在中国拥有业务的美国企业在中国出口管制制度方面的推广和培训力度。
- 继续支持美国工业安全局最终用途审查，以促进美中两国的贸易。
- 通过提供资金、发言人，并由相关决策部门和机构的官员给予支持，推进美中高科技贸易的倡议。
- 采用符合所有多边出口管制体系的出口管制法律法规，以进一步促进对全球出口管制规范的合规。

Human Resources

Introduction

Human resource issues continued to be a top business challenge for AmCham China members in 2014. According to the AmCham China 2015 *Business Climate Survey*, labor costs and labor shortages once again posed some of the greatest risks to our members' China operations. Sustained strong year-over-year increases in wage rates for front-line labor and managerial employees have recently been exacerbated by increasingly rapid wage increases and mandatory social benefits costs for foreign staff.

Looking forward, multinational corporations (MNCs) face little choice but to adjust their local operations in order to operate profitably in China. Many China-based companies that produce for the domestic market have reacted by moving operations 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 decided that other countries in the region offer a more attractive production base, shifting some of their operations outside of China. In the past year, 15 percent of our members reported plans to move their operations outside of China due to rising labor costs, up slightly from 11 percent in 2013.

Ongoing Regulatory Issues

Shortage of Qualified Talent

Chinese nationals constitute an important component of our member companies' human resources and positively contribute to the US-China commercial relationship. Indeed, for 66 percent of our members, at least three-quarters of management positions are held by local Chinese citizens.

That said, 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 vocational skills and allocated approximately US $965 million (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. Through the Education USA program, a large number of Chinese students have traveled to the US to attend universities for undergraduate, graduate, and advanced degrees. These educated individuals returning to China will add talent to the labor pool.

To further reduce the burden of labor shortages, AmCham China encourages the Chinese government to consider changes to the *hukou* system that would enable migrant workers to more easily settle in regions where production facilities are located to facilitate employee retention and social stability. At present, fewer *hukou* requests are honored and primarily target students majoring in telecommunications and computer science. Such restrictions create gaps in companies' talent pools, hindering innovation, product development, and long-term growth.

Labor Regulations

AmCham China welcomes greater legislative and legal reforms, which call for transparency, fairness, and equity. Furthermore, we support the standardization of labor regulations across the country. Currently, each province and city has its own labor-related legislation which burdens businesses with the obligation to comply with disparate regulations.

The Chinese government continues to enact new labor regulations and increase enforcement of existing laws. Notable developments were outlined in detail in the 2014 *White Paper* and our key remaining concerns are summarized below.

Amendment to the Labor Contract Law

In July 2012, the Legislative Affairs Committee of the National People's Congress (NPC) circulated a draft revision of the Labor Contract Law.

Reportedly, enactment of the draft revision is not imminent. While this proposal remains in the deliberative phase, AmCham China continues to express concern about a lack of clarity in the Labor Contract Law and supports efforts by the Chinese government to clarify such issues. We recommend that the relevant agencies examine ways in which the Law can be clarified in broad consultation with labor market participants.

人力资源

引 言

2014 年，人力资源仍然是中国美国商会会员企业面临的最为严峻的商业挑战之一。根据中国美国商会《2015 年度商务环境调查报告》显示，劳动力成本和劳动力短缺再次成为会员企业在华运营面临的严峻挑战。近年来一线工人和管理人员薪资增长速度不断加快，再加上中国出台的外籍员工缴纳强制性社会保险的规定，使得一线工人和管理人员的年薪增长率越发呈现出强劲、持续的特点。

为了在中国市场上盈利，跨国公司除了调整本地经营策略之外几乎没有其他选择。对此，很多在中国生产并销售产品的企业选择将企业搬迁至劳动力成本相对低廉的中国内陆地区，或在劳动力成本较高的沿海地区提高生产力，或选择将增加的劳动力成本转嫁给消费者。由于本地区的其他国家能够提供更具吸引力的生产基地，部分出口型生产企业则直接选择将其部分运营业务迁出中国。15% 的会员企业在 2014 年中计划将其运营业务迁出中国，比 2013 年的 11% 略有上升。

现存监管问题

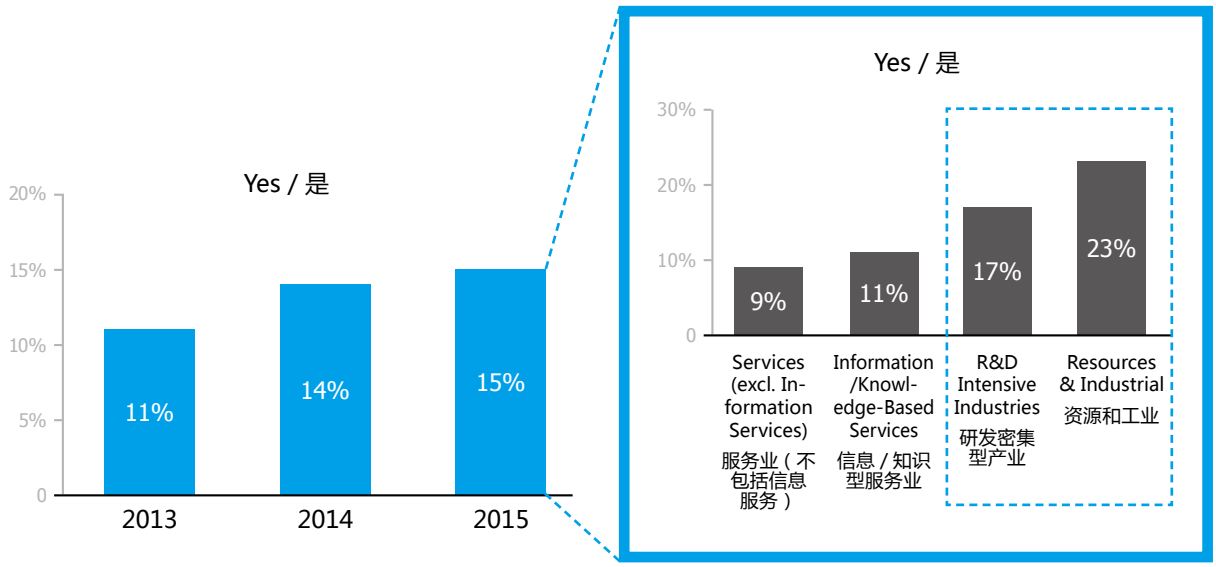
合格人才短缺

中国籍员工是我们会员企业人力资源的重要组成部分，对促进美中商业关系作出了积极贡献。事实上，在 66% 的会员企业中，中国籍本土员工担任企业管理职位的比例已经达到四分之三。

尽管如此，在华的外资和内资企业均依然面临合格雇

Has your company moved (or is planning to move) capacity outside of China, or allocated investment outside of China due to rising labor costs?

鉴于劳动力成本上升，贵企业是否已经（或者计划）将产能迁出中国，或者将对华投资转移出境？



Judicial Interpretation on Labor Disputes

In February 2013, the Supreme People's Court issued a draft interpretation on certain issues concerning the interpretation of laws applicable to labor dispute trials. In particular, the interpretation addressed the following:

Internal Rules and Regulations to go through a "Democratic Process"

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

If a rule is implemented without having undergone the prescribed democratic process, a violation of the rule will not be recognized for the purpose of establishing grounds for termination. AmCham China recommends that the legislative process for labor dispute management be standardized.

Consultation with Labor Unions for Termination

The draft interpretation specifies that if 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. Such case-by-case negotiations and contexts for agreement have wide interpretation and are very time consuming to understand.

Lack of Unionization Distinction for Different Industries

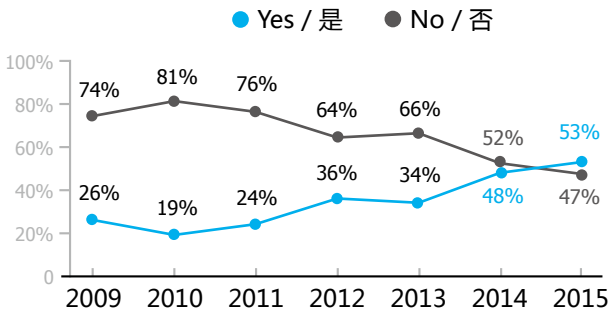
The Labor Law mandates that all companies be open to collective contracts. All legal trade unions must be affiliated with the All-China Federation of Trade Unions. Following the 12th NPC, many regulatory bodies in key industries have been streamlined. However, collective contract oversight has been left out of the streamlining process. Establishing a procedure for oversight of collective contracts would be beneficial.

Potential Legal Consequences of Pollution

In 2013, the World Health Organization (WHO) officially identified air pollution as a carcinogen and stated that worldwide 1.3 million people annually lose their lives due to illnesses stemming from air pollution. Under Article 88(4) of the Labor Law, employers that "provide poor working conditions or a severely polluted environment, resulting in serious damage to the physical and mental health of the employee," are liable for the consequences and subject to administrative penalties. This provision raises the possibility that companies hiring employees in areas known to have high levels of pollution, such as Beijing, would be at risk of litigation if they do not effectively limit the effects of air pollution. The Chinese government has not identified corrective measures that a company must take to avoid liability.

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

您或您所在机构是否存在因空气质量问题而很难招聘到高级管理人才来华工作的情况？



Some companies have established protocols for days when pollution levels exceed a healthy standard and are considered to have a negative impact on daily operations. Additionally, some MNCs are offering additional salary allocation to attract employees considering the pollution risks.

Fifty-three percent of our members reported difficulties in recruitment and retention of talent due to air quality over the past year.

Foreign Employee Participation in China's Social Insurance Schemes

The 2011 "Interim Measures for the Participation in Social Insurance of Foreigners Employed in China" (Interim Measures) requires that foreign employees participate in China's social insurance programs. While new regulations have been enacted on the national level, enforcement currently is limited to Beijing and a few other municipalities.

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 state that if a foreign employee leaves China before the age at which she or 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 an employee's return to her or his home country.
- Opt Out of Healthcare and Maternity Coverage – The Interim Measures allow foreign nationals as well as Chinese employees to receive care only at

员、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等学校毕业生计划，同时还拨出 60 亿人民币（约 9.65 亿美元）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高等院校以及职业教育和培训水平方面所做出的努力。通过 Education USA 项目，大批中国学生赴美国高校攻读本科、硕士和高等学位。毕业回国后，这些学生将增加中国的人才储备。

为了进一步减轻人才短缺的压力，中国美国商会鼓励中国政府考虑改革现行户籍制度，使外出务工人员能随着工厂的搬迁更方便地迁徙定居，从而能留住更多员工、保证社会稳定。目前，落户要求很少获得批准，并且主要给通信和计算机科学专业的毕业生。此等限制造成了企业人才储备的不足，不利于推动创新、产品开发和企业长期发展。

劳动法规

中国美国商会欢迎中国政府进一步的立法和法律改革，以全面体现透明、公平和公正。另外，我们支持全国各地的劳动法规实现标准化。目前各省、市都有其与劳动相关的法规，由于这些法规之间存在差异，从而增加了企业遵守法规义务的难度。

中国政府继续颁布新的劳动法律法规，同时加强了现有法律的实施。2014 年的《白皮书》中详细列明了中国在这方面取得的显著进展，但我们对如下方面问题依然表示担忧：

修订劳动合同法

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）。

据报道，该修正案近期不会出台。尽管该草案还处于考虑阶段，中国美国商会仍对劳动合同法缺乏明确性表示关切，并对中国政府在消除此等问题上的各种努力表示支持。我们建议相关部门在广泛征求劳动力市场相关主体的意见后，研究如何提升该法律的明确性。

劳动争议司法解释

2013 年 2 月，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草案。该司法解释尤其涉及以下内容：

内部规章制度必须通过“民主程序”

用人单位制定、修改或者决定直接涉及劳动者切身利益的规章制度，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。

如果用人单位未经民主程序就执行规章制度，劳动者违反上述规章制度的，用人单位不得以此为由与劳动者解除劳动合同。中国美国商会建议对解决劳动争议的立法程序实施标准化。

解除劳动合同前征求工会组织意见

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。这种逐案协商和确定合同内容的做法留下广泛的自由解释的空间，而且在理解上非常耗时。

工会组织缺乏行业差异性

劳动法规定所有企业都可以签订集体合同。所有的合法工会都隶属于中华全国总工会。12 届全国人大会议后，许多重点产业的监管部门都得到了优化。但是集体合同监管却未能得到优化。建立集体合同监管程序将非常有益。

污染可能造成的法律后果

2013 年，世界卫生组织（WHO）正式认定空气污染为致癌物质，并称全球每年有 130 万人因空气污染引起的疾病而丧生。根据《劳动法》第 88 条第 4 款，用人单位因为“劳动条件恶劣、环境污染严重，给劳动者身心健康造成严重损害的”，需要承担相应责任并接受行政处罚。对于那些雇佣员工在北京等污染程度较高的城市工作的用人单位而言，如果其没有有效地控制空气污染对员工的有害影响，此条款可能会增加其法律诉讼风险。中国政府尚未对用人单位为避免承担法律责任而应采取的补救措施做出规定。

对于污染程度超过健康标准并且被认为对日常运营具有不利影响的工作日，部分用人单位已经制定了应对方案。另外，一些跨国公司为吸引员工还提供额外的污染补贴。

去年，53% 的会员企业表示空气质量使得他们招聘和留任人才方面困难重重。

外籍雇员加入中国社保制度

2011 年发布的《在中国境内就业的外国人参加社会保险暂行办法》（暂行办法）要求外籍雇员参加中国的社会保险。尽管中央层面就此已经制定了相关法律法规，但目前真正实施的也只有北京和其他少数直辖市。

public hospitals or at private hospitals which charge the same prices as public hospitals. As many foreign national employees lack the Chinese language skills needed 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 health-care 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 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 giving their citizens a competitive advantage in China.

Change in Foreign Visa Laws

On July 22, 2013, the Exit and Entry Administration updated the current visa system and made changes to the visa application process in accordance with the Exit and Entry Administration Law. In addition to the issues detailed in the Visa Policy chapter, we remain concerned with the unclear definition of the new R visa. Specifically, an R "talent" visa will be issued to "those who are high-level talents or whose skills are urgently needed in China." It remains unclear, however, how to identify which "high-level talents" and "skills" are in urgent need. While it can be assumed that individuals working in high-technology industries, particularly those related to the strategic emerging industries identified in China's 12th Five-Year Plan (2011-2015), may qualify, the lack of clarity all but ensures that companies must apply for a Z visa. R visa category standards are still being formulated and there is no official timeline for when they will be released.

Recommendations

For the Chinese Government:

- **Establish or clarify mechanisms for foreign employees to receive benefits under China's social insurance programs, or allow foreign employees to opt out of participation.**
  - Allow a full refund of both employee and employer pension contributions upon employees' return to their home country.
  - Allow foreign employees to opt out of health-care and maternity coverage if they can prove they have the relevant medical insurance coverage, or allow them to use their social healthcare insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme.
  - Exempt foreign employees from participation in China's unemployment insurance scheme, allow them to remain in China for up to the maximum period during which Chinese nationals can enjoy unemployment benefits (24 months), or make unemployment benefits payable overseas.
- 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.
- Establish concrete guidelines for companies to mitigate liability stemming from the health issues caused by pollution.

For the US Government:

- **Negotiate a tax totalization treaty with China.**
- Restart the practice of locally hiring US Citizens at the American Embassy in Beijing and Consulates throughout China.

在各地的实施细则上，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在外籍雇员回国时返还雇员和雇主双方缴纳的全部养老金。
- 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。由于许多外籍雇员不具备使其有效利用中国医疗资源所需的汉语水平，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——暂行办法要求在华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，外籍雇员应免于参加失业保险。如果必须参加，我们建议允许失业外籍人士继续在中国逗留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24 个月），或者允许外籍人士在海外领取失业保险金。

中国美国商会还鼓励美国政府就税务加总协议与中国政府展开协商。我们注意到，其他国家已经与中国签署了此类协议，这使其公民在中国更有竞争优势。

外国人签证法律修改

2013 年 7 月 22 日，中国出入境管理局更新了现行签证制度，并根据《中华人民共和国出境入境管理法》修改了签证申请程序。除了《签证》一章中详细列出的各种问题，我们依然对新的“R”类签证的定义不清有所担心。具体而言，“R”类签证，即“人才引进”签证将发给“中国需要的外国高层次人才和急需紧缺专门人才”。然而关于什么是“高层次人才”以及哪些是“急需紧缺”的“技能”仍不明确。尽管我们可以假定在高科技领域（特别是在中国的“十二五”规划（2011–2015）中确定的战略新兴产业相关领域）工作的人才可能属于“高层次人才”，因为缺乏明确性，为保险起见企业一般都会申请 Z 签证。R 签证相关标准依然在制定过程中，官方也没有公布出台的时间表。

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。
- 减少因污染造成劳动者健康问题时企业所需承担的法律责任，并就此出台具体指引。

对美国政府的建议：

- **与中国政府就税务加总协议展开协商。**
- 重启美国驻华大使馆和驻中国各地领馆在中国当地雇佣美国公民的做法。

Intellectual Property Rights

Introduction

AmCham China members continued to face intellectual property (IP) challenges in 2014, particularly in the areas of trade secrets, patents, copyrights, rewards and remuneration for service inventions, and trademarks. Though each area continues to receive increased attention from Chinese authorities, this chapter details the key issues which continue to challenge both foreign and domestic companies operating in China.

Ongoing Regulatory Issues

Trade Secrets

Trade secrets remain one of the most vulnerable forms of IP in China, in part as government authorities in China jeopardize the value of trade secrets by demanding unnecessary disclosure of confidential information for product approvals. Compromising a trade secret reduces its economic value, undermines trust, and threatens even long-standing business relationships. Over time, inadequate trade secret protection hampers cross-border technology transfers, dampens investment in research and development (R&D), and hinders China's bid for an innovation-driven economy. More directly, however, effective trade secrets protection is much cheaper than patent prosecution – a potentially crucial cost differential and advantage, especially for small- and medium-sized enterprises.

Currently, Chinese trade secret protection depends on a patchwork of laws and regulations, including the Anti-Unfair Competition Law (AUCL) and the Criminal Law. Both of these laws no longer reflect contemporary commercial realities, especially innovative methods of trade secret misappropriation. A typical trade secret owner attempting to enjoin disclosure of stolen trade secrets or recover adequate damages faces a disproportionately low success rate in the People's Courts, and an even more unattainable threshold for criminal trade secret violations. Onerous burdens of proof and constrained powers of discovery pose significant obstacles to effective enforcement.

AmCham China urges accelerated review of existing legislation as a first step towards a much needed consolidation of legislation in order to improve trade secret protection. We hope that the pending revision of the AUCL will provide such improved protection. Courts and authorities could directly strengthen such protection by conducting full discovery procedures and comprehensive evidence reviews, but without compromising confidentiality. Clear, streamlined procedures for filing, obtaining, and executing evidence preservation orders and injunctions would facilitate effective trade secret actions. Greater restraint by administrative agencies in requiring disclosure of proprietary information for regulatory proceedings would reduce the burden on the agencies to protect such information.

Patents

The State Intellectual Property Office (SIPO) released a draft fourth amendment to the Patent Law in August 2012. The proposed fourth amendment purports to enhance administrative protection and enforcement of patents, including imposing financial penalties and determining damages for infringement. AmCham China continues to be very concerned about this trend of administrative expansion. Unlike other branches of IP, patent disputes are inherently and necessarily technical, complex, and time-consuming in order to ensure their effective resolution. As such, stronger judicial protection is a better approach, as administrative action would interfere with private disputes and make the process more complicated and protracted, potentially resulting in even more disputes.

In addition, administrative authorities may lack the expertise and resources to handle the substantial increase in workload which may overwhelm the administrative process, cause delays in resolving disputes, or lead to abuse of the administrative process. We note that some Chinese studies use foreign examples, such as the US Federal Trade Commission and International Trade Commission, as references for the administrative protection of patents. However, these examples are not inherently applicable to the Chinese context as these agencies only intervene in very special and limited cases rather than patent disputes generally, are quasi-judicial in the exercise of their jurisdiction, and must follow strict procedures.

Another issue of continued concern is the quality of patents,

知识产权

引 言

中国美国商会的会员企业在 2014 年依旧面临知识产权的挑战，尤其是在商业秘密、专利、著作权、职务发明的奖励和报酬、以及商标等领域。虽然中国各有关部门日益加强对上述领域的关注度，但是在华运营的内外资企业依旧共同面临很多挑战。我们在本章中将对此作详细说明。

现存监管问题

商业秘密

商业秘密仍然是中国最为脆弱的知识产权形式之一，部分原因是中国政府各部门在产品审批时要求披露其保密信息，包括不必要披露的信息，从而损害了商业秘密的价值。在商业秘密问题上的妥协将降低其经济价值，破坏信任，甚至危及长期存在的商业关系。长期以来，商业秘密保护不力会妨碍跨境技术转让，抑制对研究与开发的投资，并且阻碍中国对创新型经济的追求。然而，更直接的是，商业秘密的有效保护作为一种潜在的重要成本差异和优势，比专利起诉要便宜得多，尤其是对中小型企业而言。

目前，中国保护商业秘密所使用的法律法规比较混乱，其中包括《反不正当竞争法》和《刑法》。这两部法律已经不能充分反映当代商业的现实情况，特别是商业秘密滥用的各种创新方法。如果商业秘密所有人想通过人民法院来禁止窃取者披露商业秘密或寻求充足的损害赔偿，通常胜诉的几率很低，而商业秘密案件构成刑事犯罪的门槛则更是高不可攀。繁重的举证责任以及受到限制的取证权力对有效执法形成了重大阻碍。

中国美国商会促请加快对现有法律法规的审查工作，作为整合一部亟需的立法的第一步，改善对商业秘密的保护。中国美国商会希望未来对《反不正当竞争法》进行的修订能改善对上述商业秘密的保护。在不影响保密性的情况下，法院和有关部门可通过执行完整的取证程序和全面的证据审查来直接加强对商业秘密的保护。清晰简洁的证据保全命令和禁令申请、获取和执行程序将会促进有关商业秘密的诉讼行之有效。减少行政部门在监管程序中对专有信息的披露要求将会减轻政府部门保护此等信息的负担。

专 利

2012 年 8 月，国家知识产权局公布了《专利法》第四次修订草案。该草案旨在加强对于专利的行政保护和执法工作，包括施加经济处罚和做出专利侵权损害赔偿裁决。中国美国商会对这一行政权力扩大的趋势甚感担忧。与知识产权的其它方面不同，专利争议本质上必然会涉及复杂的技术性问题，解决起来既费时又费力。因此，更强有力的司法保护才是更好的办法，因为行政行动会干预私人争议，导致解决过程更为复杂和耗时，有时甚至会导致更多争议。

另外，面对激增的工作量，行政主管部门也缺少所需的专业知识和资源，由此可能带来行政程序负担激增，造成争议解决迟延，或是导致行政程序滥用。我们注意到，中国的有些研究报告中使用了外国事例，尤其是将美国联邦贸易委员会和国际贸易委员会作为行政保护专利的参考。然而，这些事例在本质上并不适用于中国的环境，因为此类机构仅干预非常特别而且有限的案件，而不会干预一般性质的专利争议，它们在行使其管辖权时都是准司法性的，并且必须遵守严格的程序。

另外一个让人十分担忧的问题是专利的质量，特别是实用新型专利的质量。我们对国家知识产权局最近取消财政激励的措施和计划表示赞赏，因为这些激励措施使用不恰当而引发了大量的实用新型专利申请和授予，许多申请的动机不是因为实用，而是因为能够获得财政补贴。但是，还有其他方式来提高专利质量。例如，《专利法》的修订

especially utility model patents (UMPs). We applaud SIPO's recent measures and plan to eliminate the fiscal incentives that inappropriately induce a flood of UMP applications and grants, many of which are motivated not by utility, but solely by the ability to take advantage of fiscal subsidies. However, there are additional means to enhance patent quality. For example, amendments to the Patent Law could set a higher bar for the inventiveness of UMPs, limit the remedies (particularly injunctive relief and damages) for UMPs, require examination and assessment upon the UMP patentees' initiation of infringement proceedings, and limit the assignability of UMPs. Stimulation of true innovation and the provision of fair treatment require proper institutions and mechanisms.

Copyrights

For civil enforcement against copyright infringements, unreasonably high evidential thresholds place a heavy burden of proof on software copyright holders (e.g., by requiring preliminary evidence in order to apply for injunction and notarizations of original legal documents obtained outside of China instead of notarized photocopies of the original document).

Statutory damages capped at approximately US $80,000 (RMB 500,000) are normally applied by the Chinese court but are much lower than the actual loss suffered by the copyright holders who may be unable to cover the legal costs. Thus, the deterrent effect of civil enforcement against pirates is likely contravened by the inconsistent damages awarded by the courts. Even in cases where companies are conclusively shown to have blatantly used software known to be pirated in commercial operations, courts sometimes continue to disregard prior court awards of adequate damage amounts in favor of unreasonably low amounts.

Widespread enterprise end-user software piracy across China continues to negatively impact AmCham China members and increased compensation awards by local courts in favor of software companies have failed to deter continuing violations. To date, there have been no criminal convictions for enterprise use of pirated software. As a first step, China should consider criminalizing those enterprises whose operating profits derive mainly from the use of pirated software.

Outside of the courtroom, Chinese authorities routinely refuse to prosecute pre-installed unlicensed software violations by enterprise end-users and distributors. Although there have been a couple of successful criminal convictions against hard disk loading (HDL) piracy in recent years, sustained and proportionate criminal prosecution needs to be pursued, given the frequency and gravity of such copyright theft activity. In direct contradiction to widely accepted international practice, authorities argue that distributors do not earn profits from pre-installed software, and therefore are not criminally liable for using unlicensed software for commercial purposes.

In the long term, Chinese copyright laws must be reformed to provide adequate legal protection for cloud computing and the quickly evolving software business, in order to support the development of China's software industry. We urge amendment of the Copyright Law and Criminal Law to provide effective deterrence against software piracy.

Rewards and Remuneration for Service Inventions

AmCham China members continue to view employee compensation requirements for certain employer-filed patents as too rigid. Upon the granting of a patent, the Patent Law requires employers to pay employees "reasonable remuneration" for patents filed by employers, but predicated on technical achievements by their employees in the course of employment. These technical achievements are referred to in PRC law and practice as "service inventions." The "Implementing Regulations of the Patent Law of the PRC" (Implementing Regulations) permit employers to determine by agreement or internal policy the amounts of remuneration payable to the employee for such service inventions. Absent any such agreement or policy, statutory minimum amounts apply. AmCham China members generally find the remuneration provisions too rigid because they fail to provide mechanisms that account for the specific characteristics of the technology or industry in question.

On April 1, 2014, SIPO released the most recent draft of the "Service Invention Regulations" (SIR) for public comment, without specifying a deadline. We were encouraged by provisions in the Draft Measures that suggest that the Chinese courts should defer to company policy and agreement between the parties, and that the employer and inventor have the freedom to negotiate and/or agree on amounts and the mode of payment for rewards/remuneration. However, the most recent draft of the regulations link inventor compensation to ambiguous and difficult-to-define market valuations of the invention. The scope of the regulations is also not clearly defined, covering not only inventions but also proprietary technical capabilities and other intellectual property.

AmCham China is concerned that the proposed SIR creates uncertainty for any organization with China-based R&D teams, potentially erecting non-market barriers for the establishment of foreign-owned R&D institutions or teams within Chinese borders. These barriers could deter FIEs from investing in China's R&D infrastructure, block domestic industry exposure to cutting-edge foreign technology and applications, and stunt China's innovation and ecosystem development. AmCham China encourages Chinese regulators to continue working closely with industry to define more effective invention remuneration measures that stimulate and promote employee innovation.

案可以对实用新型专利的创造性设置更高的标准要求；限制对实用新型专利的救济（尤其是禁令性救济和赔偿）；要求对实用新型专利的专利权人启动诉讼程序进行审查和评估；并且限制实用新型专利的可转让性。要激励真正的创新和做到公平对待，需要建立适当的制度和机制。

著作权

就侵犯著作权行为的民事强制执行而言，软件著作权持有者往往要面临高得不合理的证据门槛，承担沉重的举证责任（如申请禁止令时需要提供初步证据，中国境外获取的法律文件原件需要进行公证而不能提供经公证后的原始文件的复印件）。

中国法院判决的法定赔偿金的上限一般为 80,000 美元（人民币 50 万元），而上述数额不仅无法补偿著作权所有人所遭受的实际损失，甚至不能弥补著作权所有人为此所花费的诉讼费。因此，民事强制执行的震慑力实际上被法院所判决的较低赔偿金数额所消减。甚至在一些案件中，相关公司已被证明在商业经营中公然使用明显盗版软件，法院有时还是置之前法院判决的合理赔偿金额于不顾，仍然倾向于判处较低且不合理的赔偿金额。

企业最终用户软件盗版问题在中国广泛存在，这个问题一直对中国美国商会的会员企业造成负面影响，地方法院加大给予被侵权软件公司的赔偿力度也未能遏制盗版违法行为的继续发生。迄今为止，还没有针对企业使用盗版软件做出过刑事判决。作为第一步，中国应该考虑对那些营业利润主要源于使用盗版软件的企业追究刑责。

在法庭外，中国政府部门一般拒绝起诉企业最终用户和分销商预装未经许可的软件行为。虽然最近几年对硬盘安装这种盗版行为有过几起刑事定罪的成功案例，但是鉴于这种著作权盗窃行为的频率和严重性，需要持续和适当地对该行为追究刑责。与国际公认惯例直接矛盾的是，相关部门认为分销商并没有从预装软件中获利，因此无需为商业目的使用未经许可的软件而承担刑事责任。

长期来看，中国必须对现行著作权法律进行修改，为云计算和快速发展的软件行业提供充分的法律保护，从而为中国软件业的发展提供更多支持。我们促请中国修订《著作权法》和《刑法》，对软件盗版行为进行有效震慑。

职务发明的奖励和报酬

中国美国商会的会员企业依然认为对于某些雇主申请专利的雇员补偿要求过于严格。在授予一项专利后，《专利法》要求雇主就其申请的专利向员工支付“合理的报酬”，但是这种报酬是基于其员工在雇用过程中的技术成就。这些技术成就在中国的法律和实践中称为“职务发明”。《中华人民共和国专利法实施细则》允许雇主通过协议或内部政策来决定向员工支付发明报酬的额度。如果没有任何此类协议或政策，则适用法定的最低金额。中国美国商会的会员企业普遍认为这些报酬规定过于严格，因为它们未能提供各种机制对有关技术或行业的具体特征进行说明。

2014 年 4 月 1 日，国家知识产权局发布最新版《职务发明条例》公开征求意见，且没有规定意见征求截止时间。我们对草案征求意见稿中提出的中国法院应当尊重公司内部政策以及双方主体之间达成的协议，以及发明人拥有协商和／或同意相关奖励／报酬的金额及支付方式的自由。但该条例最新草案中含混地将发明者的报酬与其发明的市场价值挂钩，而上述发明的市场价值却很难界定。该条例也未明确其适用范围，不仅适用于发明，还适用于专有技术秘密和其他知识产权。

中国美国商会担心上述《职务发明条例》会给在华运营研发团队的组织造成不确定性，因为它很可能成为在中国境内建立外资研发机构或团队的非市场壁垒。这些壁垒会打击外资企业在华投资兴建研发基础设施的积极性，阻碍国内行业接触最前沿的外国技术和应用，并且抑制中国创新及生态系统发展。中国美国商会鼓励中国相关监管部门继续加强与行业的沟通合作，更为有效地规定发明报酬的计算方法，从而进一步鼓励支持员工创新。

在 2014 年 12 月的中美商贸联委会上，美国和中国联合承诺“根据并符合他们各自国内相关法律法规，保护发明人对其发明创造的合法权利”以及“尊重雇主合法制定的政策和规定，并尊重雇主与员工合法签订的有关发明人报酬和奖励的协议”。

商 标

在线售假

中国美国商会对中国政府采取措施鼓励地方警察和相关行政部门更为积极主动地监控和查处在线仿冒售假行为的做法表示赞赏。不过这一问题目前依然还很严重，据一

At the December 2014 Joint Commission on Commerce and Trade, the US and China jointly committed to "protect the legal rights of inventors in respect of their inventions and creations, in accordance with their respective domestic laws and regulations, and in line with their domestic laws" and to "respect the legitimate rules and regulations developed by employers and legitimate contracts between employers and inventors concerning inventor remuneration and rewards."

Trademarks

Online Counterfeiting

AmCham China is encouraged by Chinese government efforts to encourage local police and administrative authorities to become more active in monitoring and investigating instances of online counterfeiting. Nevertheless, this problem remains acute, with some brand owners seeing tens of thousands of fakes being sold on a single e-commerce platform.

We encourage the government to continue its efforts in addressing this important and pressing problem, in particular by:

- Applying more pressure on e-commerce platforms to implement strict, transparent, and user-friendly repeat-offender policies (preferably adopting simple two- or three-strike rules);
- Encouraging e-commerce platforms to improve dialogue with brand owners as to how counterfeiters are circumventing filters, and to modify those filters accordingly; and
- Encouraging e-commerce platforms to adopt best practices that make it easier to identify counterfeiters and more difficult for counterfeiters to operate under multiple false identities.

Oppositions

Under the revised "Trademark Law of the People's Republic of China" (Trademark Law), which entered effect on May 1, 2014, oppositions can be filed by "interested parties," and there is no appeal process if the opposed trademark is allowed registration by the Trademark Office (TMO). In other words, if the TMO decides to approve the registration of an opposed trademark, the mark will become registered. If an opponent is dissatisfied with the TMO's decision, it can file a request with the Trademark Review and Adjudication Board (TRAB) to invalidate the trademark.

We are concerned that current opposition procedures significantly advantage applicants of third-party trademarks filed in bad faith, particularly as brand owners are left without an evidence exchange procedure for oppositions filed with the TMO, and we are not confident that the quality of the TMO's examination of oppositions will improve under the new trademark regime. Trademark pirates that win opposition challenges obtain perfected and exclusive rights to use a subject trademark in the PRC for the period in which it takes the interested third party to successfully invalidate the mark in a separate action before the TRAB.

AmCham China strongly recommends that "interested party" be construed liberally in practice, allowing brand owners who are the victims of bad faith filings to file oppositions against applications that target other third-party trademarks filed by the same pirate. Additionally, procedures for the handling of oppositions before the TMO should be more transparent, including further opportunity to comment as part of the opposition proceedings.

Recent Developments

Trade Secrets

As discussed in the 2014 *White Paper*, AmCham China strongly supports the proposed establishment of a Trade Secret Law and encourages open, in-depth deliberations.

A long-awaited revision of the AUCL, first proposed by the State Administration for Industry and Commerce (SAIC) in 2008, seems to have stalled in the legislative drafting process, based upon recent comments by the State Council Legislative Affairs Office (SCLAO). The AUCL represented China's first major effort to protect trade secrets 20 years ago, but the protection provided by the AUCL is outdated and inadequate. We welcome an updated AUCL, especially if a new Trade Secret Law to consolidate the existing regime is not forthcoming, and encourage the SCLAO to make it a priority in their 2015 legislative plan.

Copyrights

Revision of the Copyright Law

AmCham China is encouraged by the ongoing draft amendment to the Copyright Law. We applaud the leadership of the National Copyright Administration of China (NCAC) in hosting several rounds of discussion for public feedback on these amendments. Members have had multiple opportunities to submit their comments through position papers and round table discussions.

Significantly, increased statutory damages and a re-allocated burden of proof, among other proposed changes with respect to enforcement, have been adopted in the most recently amended draft. These additions should be preserved in the final version of the law. Amendments to the Copyright Law are now being reviewed and we strongly urge the SCLAO and National People's Congress (NPC) to expedite the process. We anticipate a continued dialogue with both agencies and welcome increased transparency through frequent discussions on salient issues.

些品牌商反映，在同一电子商务平台上就曾发现数万个冒牌假货在售。

我们鼓励中国政府继续采取措施解决在线售假这一严重而紧迫的问题，并提出如下具体建议：

- 对电子商务平台施加更大压力，促使他们执行严格、透明且用户友好型的累犯处罚政策（最好是直接实行两次或三次即出局的政策）；
- 鼓励电子商务平台加强与品牌拥有人的对话，研究假冒商品是如何逃过过滤检查的，从而有针对性地修改筛选设置；
- 鼓励电子商务平台采用最佳实践，更加便利地甄别出制假售假者，并增加制假售假者利用多个虚假身份从事售假行为的难度。

异 议

根据 2014 年 5 月生效实施的新修订的《中华人民共和国商标法》（商标法），“利害关系人”可以申请异议，但却未就争议商标在商标局注册登记后的上诉程序做出规定。换言之，如果商标局决定批准对有异议的商标进行注册，则该商标将得到注册。如果异议方对商标局的决定不满意，它可以向商标评审委员会提出申请，要求宣告该商标无效。

我们担心现行异议程序会使恶意抢注商标的第三方申请人获得巨大优势，特别是在品牌所有者不能通过证据交换程序获得异议人向商标局提交材料的情形下。同时我们对商标局根据上述商标新法规进行异议审查的能力缺乏信心。仿冒商标在赢得异议申请后，在利害关系方通过单独程序向商标评审委员会申请并成功获得该委员会判定该仿冒商标无效之前，就可以在这段时间内享有完全且排他的商标权利。

中国美国商会强烈建议，在实践中对“利害关系人”作更为宽泛的解释，允许作为恶意商标抢注行为的受害者的品牌所有人对同一仿冒人提出的旨在针对其他第三方商标的商标注册申请提出异议。另外，商标局应当提高异议申请处理程序的透明度，包括在异议程序中提供更多发表意见的机会。

最新进展

商业秘密

正如在 2014 年《白皮书》中所述，中国美国商会强烈支持制定《商业秘密法》的议案，鼓励就此进行公开、深入的审议。

从国务院法制办公室（国务院法制办）最近发表的评论看，由国家工商行政管理总局（国家工商总局）于 2008 年首次提议的、大家期待已久的《反不正当竞争法》修订工作的立法起草程序目前陷入了停滞状态。《反不正当竞争法》是 20 年前中国为保护商业秘密所做的第一次重要努力，但《反不正当竞争法》所提供的保护已经过时且不够充分。中国美国商会支持更新《反不正当竞争法》，特别是在能统一现有体系的新《商业秘密法》还没有出台的情况下，鼓励国务院法制办公室将此项立法工作纳入其 2015 年的工作重点。

著作权

《著作权法》的修订

中国美国商会对于进行中的《著作权法》修订工作抱有很高期望。为了修订《著作权法》，中国国家版权局（NCAC）召集了多轮讨论，公开征求意见，发挥了领导作用，中国美国商会对此表示赞赏。中国美国商会的会员企业已有多次机会通过意见书和圆桌会议讨论提交他们的反馈意见。

重要的是，在最新的修订草案中，我们会员企业就执法问题提出的修订意见，例如提高法定损害赔偿金额和重置举证责任等，已经得到了采纳。这些增补内容应该在《著作权法》最终版本中得到保留。对《著作权法》的修订内容正在审查当中，我们强烈促请国务院法制办和全国人民代表大会（全国人大）加快这一进程。我们期望与国务院法制办和全国人大开展持续对话，在重要问题上多加探讨以提高立法透明度。

我们促请国务院法制办在《著作权法》中明确规定未经授权软件的商用行为属于侵犯复制权行为。这对于打击企业用户使用未经授权的软件，支持企业发展云计算等都具有十分重要的意义。在订购和云计算领域，临时复制发挥着重要作用。若《著作权法》认识不到为云计算提供法律保护的重要性，必将严重阻碍未来软件行业在云计算领域的发展。技术保护措施（TPM）是消除非授权软件的使

We urge the SCLAO to provide in the Copyright Law that commercial use of unlicensed software is an infringement of reproduction rights. This is critical to setting a foundation for deterring unlicensed software use by enterprises supporting the development of cloud computing. In the context of subscription and cloud computing, temporary reproductions play a very important role. Failure of the Copyright Law to recognize the need for legal protection of cloud computing will seriously hamper the future development of the software industry in the cloud era. Technological protection measures (TPM) are key to eliminating unlicensed software use. Thus, the new Copyright Law should lower the burden of proof for copyright enforcement from the perspective of TPM.

We hope that various amendments in the latest draft, such as increased statutory damages and a re-allocated burden of proof, will be preserved in the final version of the law. We strongly urge the SCLAO and NPC to expedite the process of revision. We also anticipate continued dialogue with both ministries and welcome increased transparency through frequent discussions on salient issues.

Criminal Law Amendment

AmCham China is disappointed by the delays in amendment of the Criminal Law, especially regarding much-needed amendments clarifying criminal liability for enterprise end-user piracy. We urge the Chinese government to officially include the amendment of the Criminal Law regarding IP-related criminal liability on the legislative agenda.

Explicit criminal penalties for the commercial use of pirated software are urgently needed, especially for violations of TPM and pre-installation or HDL piracy, and have proven effective when applied in other jurisdictions. Neither civil litigation nor administrative enforcement rival the efficiency of criminal enforcement to change the mindset and behavior of counterfeit software distributors, TPM violators, and pirated product consumers.

Judicial Enforcement

AmCham China appreciates recent improvements in China's judicial enforcement regime, including increasingly large civil damages awards and several government-led criminal actions against software counterfeiters.

However, a number of obstacles to enforcement remain and threaten to reverse recent progress. The documentation criteria for case acceptance is inconsistent among courts in different cities and regions, confusing copyright holders. The procedures for accepting copyright holders' applications for evidence preservation are similarly inconsistent, confusing the process of applying for evidence preservation. Often times, courts do not have the resources or the will to conduct thorough evidence preservation measures, and ineffective evidence preservation proceedings result in insufficient compensation. Chinese courts are often inadequately empowered to handle more complex cases where the piracy users refuse to cooperate or hide/destroy evidence that hinders proceedings. In addition, civil damages remedies available to copyright holders in China are generally insufficient as a deterrent against infringement.

We hope that the roadmap of the judiciary reforms set out in the Fourth Plenum will expand progress in anti-piracy enforcement, including increasingly large civil damages awards and effective evidence preservation actions against enterprises using unlicensed software.

Additionally, the Fourth Plenum calls for implementing a registration-based case acceptance system which could potentially resolve the enduring obstacles to case acceptance. The resolution of the Fourth Plenum also addressed the importance of judicial independence, such as a recording and punishment system to ban senior government leaders from interfering in judicial proceedings. We anticipate further details on such reforms.

Intellectual Property Courts

New IP courts were established in Beijing, Shanghai, and Guangzhou in 2014.

The guidelines for the transition of cases to these new IP courts were set out in the "Provisions of the Supreme People's Court on Jurisdiction of Intellectual Property Courts in Beijing, Shanghai and Guangzhou" and the "Provisions of the Beijing Higher People's Court on Issues Concerning Adjustment and Transition of Jurisdiction over Intellectual Property Cases." The new IP court in Beijing is intended to take on all cases involving the review of TRAB decisions from the Beijing No. 1 Intermediate People's Court and, as these courts have only very recently begun accepting civil and administrative cases, it is unclear at this point what impact they will have on IP-related litigation in these jurisdictions.

AmCham China is hopeful that the consolidation of IP cases with specialty courts will increase the efficiency and quality of judgments in these jurisdictions, and we will be watching developments with these courts very closely in the coming months. Some concerns remain regarding whether the new courts will have sufficient resources to conduct evidence preservation, property preservation, or preliminary injunctions, particularly in the Guangdong area.

Administrative Enforcement

AmCham China members also report relatively anemic copyright administrative enforcement. Compared with trademark administrative enforcement, extremely limited manpower and resources are available for copyright administrative enforcement. The NCAC is disconnected from local market enforcement agencies, many of whom are controlled

用的关键。因此，新《著作权法》应当从 TPM 的角度降低著作权强制执法的举证责任。

我们希望最新草案中的诸多修改，如提高法定损害赔偿金额和重置举证责任等，都会在之后正式颁布的法律中得以保留。我们强烈促请国务院法制办和全国人大加快修法进程。我们还期望与国务院法制办和全国人大继续保持沟通对话，在重要问题上多加探讨以提高立法透明度。

《刑法》的修订

中国美国商会对《刑法》修订工作迟迟不能取得进展表示失望，尤其是迫切需要修订并澄清对企业最终用户盗版行为追究刑责的相关法律规定。中国美国商会促请中国政府把有关知识产权刑事责任的《刑法》修订正式提到立法日程上。

中国美国商会迫切希望针对商业使用盗版软件，尤其是对违反技术保护措施的行为以及预装盗版软件或硬盘安装盗版软件的行为，实施明确的刑事处罚。这一做法已得到全球其他司法管辖区的广泛采用，经实践证明是打击盗版行为的有效手段。在改变假冒软件分销商、技术保护措施违犯者以及盗版产品用户的习惯和行为方面，无论是民事诉讼还是行政执法都无法与刑事执法的效率相提并论。

司法执法

中国美国商会赞赏最近中国在司法执法体制方面的改进，其中包括不断提高民事赔偿金的判决和政府主导的几次针对软件造假者的打击犯罪行动。

然而，大量的执法障碍依然存在并且有可能损害最近取得的进展。有关立案的文件在不同城市和地区的法院标准不一致，给著作权持有人造成了混乱。著作权持有人申请证据保全的受理程序也同样不一致，导致申请证据保全时的混乱。法院常常没有资源或意愿执行彻底的证据保全措施。无效的证据保全程序导致赔偿不足。盗版用户如果拒绝配合或隐瞒／销毁证据，妨碍调查程序，那么面对这样更为复杂的案情，中国的法院在处理时往往得不到充分的授权。另外，中国的版权持有人可获得的民事损害赔偿救济一般不足以对侵权行为起到震慑作用。

我们希望四中全会确立的司法改革路线图能够进一步推动反盗版执法工作，包括大幅提高民事赔偿数额，针对使用未经授权软件的企业采取有更加有效的证据保全措施等。

另外，四中全会还提出实施立案登记制，该制度有望解决长久以来的立案难的问题。四中全会决议中还强调了司法独立的重要性，例如提出了旨在禁止上级政府领导干涉司法程序的记录和处罚机制。我们期待能够看到有关上述改革的更多的细节和内容。

知识产权法院

2014 年，北京、上海和广州都新建了知识产权法院。

《最高人民法院关于北京、上海和广州知识产权法院案件管辖的规定》和《北京市高级人民法院关于知识产权案件管辖调整过渡有关问题的规定》对上述新成立的知识产权法院案件管辖过渡做出了规定。北京知识产权法院将完全承接原来由北京市第一中级人民法院负责的商标评审委员会决定的审查案件。鉴于这些法院最新才刚刚开始受理民事和行政案件，因此目前还无法判定这些法院将对其辖区内的知识产权诉讼产生何种影响。

中国美国商会希望上述由专业法院专门针对审判知识产权案件的改革措施将有助于提高其管辖范围内判决的效率和质量，今后我们还将密切关注这些法院的发展动态。不过依然存在一些担忧，这些新建法院是否有充足的资源进行证据保全、财产保全或执行初步禁令，特别是在广东地区。

行政执法

中国美国商会的会员企业还反映，著作权行政执法工作显得相对软弱无力。与商标的行政执法相比，著作权行政执法的人力和资源极为有限。国家版权局与地方市场执法机构相分离，这些地方执法机构很多是由地方政府或领导负责，国家版权局没有充足的权力管理它们。对举报的违犯行为是否采取行动，地方执法机关拥有过多的自由裁量权，导致决策的随意性。在大多数情况下，著作权行政执法机构没有及时充分地把它们的决定通知著作权持有人。在机构未能以透明方式公布其决定时，著作权持有人（以及公众）就不能有效地监控行政执法行为，也不能通过正当程序对其进行质疑。另外，由于缺少一套关于如何现场执法的标准程序（行政机关可以遵循《民事诉讼法》和法院的做法），往往会造成违法行为的证据丢失，导致著作权所有人在行政执法之后的后续行动更加困难。

by local government leaders, because it does not have sufficient power to manage them. Local law enforcement bodies have excessive discretion regarding whether to take action upon reported violations, resulting in arbitrary decision making. In most cases, copyright administrative enforcement agencies fail to inform the copyright holders of their decisions in a timely and adequate manner. When agencies fail to transparently publish their decisions, copyright holders (and the public) cannot effectively monitor administrative enforcement actions or challenge them with due process. Furthermore, due to a lack of standard guidelines on how to raid the target (civil procedural laws as well as the court's practice could be followed by the administrative agencies), evidence of infringement is usually missing, making any follow-up actions by the copyright owners (such as filing a civil suit for compensation) after the administrative enforcement increasingly difficult.

Government and State-Owned Enterprise Software Legalization

AmCham China believes that the definition and types of software covered under the "Administrative Measures for Government Authorities' Use of Legalized Software" should be expanded from operating systems, productivity, and anti-virus software to expressly include Internet security software, multimedia software, and computer-aided design software, among others. In addition, we suggest instituting further measures to encourage more enterprises to adopt International Organization for Standardization-certified software asset management best practices and to conduct third-party audits of software use.

Trademarks

Perhaps the biggest development in the trademark space is the long-awaited revision of the Trademark Law. In the 2014 *White Paper*, AmCham China outlined what its membership viewed as the most important changes that were to be introduced under the new law, and those that were likely to result in improvements of the current system.

A number of additional noteworthy trademark-related developments occurred in 2014, including:

- Promulgation by the State Council of the amended Implementing Regulations on April 20, 2014, effective May 1, 2014;
- Adoption by the SAIC of amended "Trademark Review and Adjudication Rules," effective June 1, 2014;
- Issuance by the SAIC of amended "Regulations for the Recognition and Protection of Well-Known Trademarks" (Well-Known Trademark Regulations), effective August 3, 2014; and
- Issuance by the Supreme People's Court (SPC) of draft "Regulations on Certain Issues Related to the Trial of Administrative Cases Involving the Grant and Affirmation of Trademark Rights" (SPC Draft Trademark Regulations) on October 14, 2014.

Additionally, a number of administrative policy documents were issued by the State Council and the SAIC that were intended to affect the enforcement of IP rights, including trademark rights, in the online environment, including:

- Issuance by the SAIC of "Guidelines for the Fulfilment of Social Responsibilities by Online Trading Platform Operators" on May 28, 2014;
- Issuance by the SAIC of the "Notice on Carrying Out the Special Campaign of 2014 'Red Shield Internet Sword'" on June 12, 2014; and
- Adoption of a "Work Plan of the State Council National Leading Group for the Fight Against IP Infringements and the Manufacture and Sale of Fake and Shoddy Goods in the Online Environment" on June 18, 2014.

Despite these numerous and comprehensive legal and policy developments, many of the concerns that we raised when the new Trademark Law was promulgated in late 2013 remain, including:

- Enterprise Name Infringements: It is not uncommon for Chinese companies to register and use enterprise names that incorporate famous foreign trademarks, but local Administrations for Industry and Commerce (AIC) have generally been reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The new Trademark Law provides a cause of action to the registrants of trademarks that are not well known when the use of a trademark as an enterprise name is liable to mislead the public and otherwise constitutes unfair competition. According to the new law, however, such acts are to be handled under the AUCL. We are concerned that the new Trademark Law does not go far enough to address the problem of bad faith enterprise name filings, and that the handling of such cases under the AUCL will further complicate efforts by trademark registrants to enforce their rights in such cases before the AICs.
- Bad Faith Filings: Article 7 of the new Trademark Law provides that applications for the registration of trademarks must comply with the principles of honesty and good faith. The addition of a positive obligation of good faith in the new Trademark Law is welcome, but the provision is not listed as a possible ground for opposition. Thus, it is unclear what practical effect this provision will have in the context of opposition against pirate filings moving forward.

  It has been extremely difficult for foreign companies who have yet to use their trademarks in China, or have yet to use them extensively, to challenge pirates who take advantage of the first-to-file rule to file applications for their trademarks in bad faith. We have been

政府和国有企业软件正版化

中国美国商会会员企业认为，应当扩大《政府机关使用正版软件管理办法》中适用软件的定义和范围，应从操作系统、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在内的其他系统。此外，中国美国商会建议出台进一步的措施，鼓励更多企业采用 ISO 认证的软件资产管理最佳实践，并引入软件使用第三方审计制度。

商 标

商标领域最大进步当属众盼已久的《商标法》修订。在 2014 年的《白皮书》中，中国美国商会列出了我们的会员企业认为最应当在新法中予以修改或增减的内容，会员们认为这些内容将极大促进现行制度的完善。

2014 年与商标相关的其他诸多重要进展包括：

- 2014 年 4 月 20 日，国务院颁布经修订的《中华人民共和国商标法实施条例》，自 2014 年 5 月 1 日起施行；
- 国家工商总局通过经修订的《商标评审规则》，自 2014 年 6 月 1 日起施行；
- 国家工商总局发布经修订的《驰名商标认定和保护规定》，自 2014 年 8 月 3 日起施行；
- 最高人民法院于 2014 年 10 月 14 日发布《关于审理商标授权确权行政案件若干问题的规定（征求意见稿）》。

此外，国务院和国家工商总局还出台了多份政策性文件，旨在加强互联网环境中的知识产权执法工作（包括商标权），其中包括：

- 国家工商总局于 2014 年 5 月 28 日发布《网络交易平台经营者履行社会责任指引》；
- 国家工商总局于 2014 年 6 月 12 日发布《关于开展 2014 红盾网剑专项行动的通知》；以及
- 2014 年 6 月 18 日，国务院全国打击侵犯知识产权和制售假冒伪劣商品工作领导小组公布《全国打击侵犯知识产权和制售假冒伪劣商品重点工作安排》。

尽管中国取得了上述诸多、全面的法律和政策进展，我们在 2013 年底出台新《商标法》时所提出的许多担忧目前依然存在，其中包括：

- 企业名称侵权：中国企业注册并使用含有知名外国商标的企业名称并不少见，但地方工商局（AIC）通常却不愿意处理涉及注册商标和企业名称相冲突的案件。新《商标法》中为非著名商标持有者提供了诉讼权，规定了若使用商标作为企业名称的行为产生误导公众和构成不正当竞争时，商标注册人可提起诉讼。但根据新《商标法》，这种行为必须按照《反不正当竞争法》处理。我们担心新商标法在解决恶意企业名称申请登记问题上的力度不够，且根据《反不正当竞争法》处理此类案件只会让注册商标权利人在申请工商局保护执行其商标权时更为复杂。
- 恶意抢注：新《商标法》第 7 条规定，申请商标注册必须遵守诚实信用的原则。我们欢迎在新《商标法》中增加一项积极的诚信义务，但是这一规定并没有被列为一条反对注册的理由。因此，这一规定在发生异议的情况下对抑制抢注有何实际效果尚不清楚。

  对尚未在华使用商标、或尚未在华广泛使用商标的外资企业来说，遇到商标遭他人利用“在先申请”规则恶意抢注时，提出商标侵权异议极为困难。我们一直对最高法院发布的《关于审理商标授权确权行政案件若干问题的规定》草案中的有关解决连续剽窃行为的规定深表欢迎，它似乎也强化了《商标法》第 32 条（不得以不正当手段抢先注册第三方商标）中的相关规定，从而解决恶意抢注问题。我们希望最高人民法院接下来能够尽快出台相关规定来解决这一问题，这样国家工商总局就会跟进统一和优化商标局和商标评审委员会的审查标准，从而使商标申请人难以利用先来先注册的原则来恶意抢注第三方商标。
- 驰名商标：新《商标法》禁止在商品、商品包装以及在广告或其他业务活动中不恰当地提及“驰名”商标，这是现行中一个受欢迎的改变。引入禁止在广告中使用“驰名”商标的规定应该会给国内企业常见的广泛滥用商标的做法画上句号。

可惜的是，新的《商标法实施条例》和《驰名商标认定和保护规定》均未提及未来将如何改进外国商标持有人所持有的驰名商标认定程序的内容。我们鼓励中国政府将改进商标局、商标评审委员会和国家工商总局的驰名商标认定程序作为其工作重点，从而确保外国商标持有人也能享受公平、透明和公正的认定程序。

encouraged by language in the SPC Draft Trademark Regulations that address serial piracy, and that appear to strengthen Article 32 of the Trademark Law (prohibiting, inter alia, pre-emptively registering a third party's mark by "improper means") to address bad faith filings. We hope that the SPC will take the lead on addressing this issue through the issuance of relevant regulations in the coming months, and that the SAIC will follow through by supporting consistent review standards for the TMO and TRAB that will make it more difficult for trademark applicants to take advantage of the first-to-file principle to obtain rights to third party trademarks in bad faith.

- Well-Known Trademarks: The new Trademark Law prohibits improper references to "well-known" trademarks on goods, packaging for goods, and in advertising or other business activities, which is a welcome change from current practice. The introduction of a prohibition on the use of references to "well-known" trademarks in advertising should put an end to an abusive practice that has been adopted widely and almost exclusively by domestic companies.

Unfortunately, the new Trademark Implementing Regulations and Well-Known Trademark Regulations contain nothing to suggest that the procedure for well-known trademark determinations will be improved for foreign trademark holders going forward. We encourage the Chinese government to make it a priority that well-known mark determinations made by the TMO, TRAB, and SAIC are even handed, transparent, and fair for foreign brand holders.

Recommendations

For the Chinese Government:

- **Make the filing of a trademark in bad faith a clear basis of invalidating trademarks filed by third parties.**
- Finalize the Copyright Law amendments in an expedited manner, reform the Criminal Law to include the criminal liability of enterprise end-user piracy, implement stronger civil remedies against piracy, and expressly criminalize the commercial use of pirated software.
- Undertake comprehensive review of current trade secret protection laws, streamline and clarify procedural rules among courts, and restrain administrative agencies from requesting unnecessary disclosure of proprietary trade secret information.
- Refrain from further expanding administrative power in civil patent disputes and focus on improving patent quality in the new amendment to the Patent Law.
- Ensure that local enforcement agencies have clear responsibilities and centralized reporting lines, and that they proactively and transparently implement rules.
- Expand the definition and types of software covered by bilateral commitments on software legalization to explicitly include Internet security software, multimedia software, and computer-aided design software.
- Introduce a process for determining appropriate amounts of remuneration by using clear guidelines that take into account the respective field of industry and balance an employee's contribution to the invention with the contributions of the employer.

For the US Government:

- **Share best practices from US federal and state trade secret laws and national trade secret strategy.**

建 议

对中国政府：

- **将恶意抢注商标作为判定第三方申请商标无效的明确依据。**
- 加快确定《著作权法》的最终修订，改进《刑法》，把企业最终用户软件盗版行为列为刑事责任，对盗版行为实施更为有力的民事救济，并且把商业使用盗版软件明确定性为违法行为。
- 对目前的商业秘密保护法律进行全面审查，简化并明确法院间的程序规则，并且限制行政机构对专有商业秘密信息不必要的披露要求。
- 防止进一步扩大民事专利争议中的行政权力，新的《专利法》修订案的重点应放在如何提高专利质量之上。
- 确保地方执法机构责任清晰，有统一的报告责任制度，以及积极主动和透明地执行相关规定。
- 扩大软件正版化双边承诺所涉及软件的定义和类型，把互联网安全软件、多媒体软件和计算机辅助设计软件明确包括在内。
- 通过明确的规定提出一种确定适当报酬金额的程序，该规定要考虑各个行业领域并且要平衡员工和雇主对发明所做的贡献。

对美国政府：

- **分享美国联邦和州的有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。**

Investment Policy

Introduction

Foreign investors in China had mixed reactions to government policy trends in 2014. On one hand, the Chinese government signaled its seriousness in pursuing economic reforms under the 2013 Third Plenum rubric, reforms that AmCham China strongly supports in principle. On the other hand, foreign investors felt targeted and vulnerable in the face of policymaking and enforcement actions widely perceived as discriminatory.

Foreign investors have fostered innovation and made major contributions to the rapid development of the Chinese economy. Ministry of Commerce (MOFCOM) and World Bank statistics show that China has been the world's leading recipient of foreign direct investment (FDI) since 2009, with annual inbound investment exceeding US $100 billion (RMB 616 billion) every year since 2004.

Despite these achievements, foreign investors have been hobbled by restrictive laws and regulations that effectively establish a separate and less favorable set of rules for foreign investors. We have long urged the Chinese government, particularly MOFCOM and the National Development and Reform Commission (NDRC), to liberalize and streamline the regime governing foreign investment.

There were some signs in 2014 that the Chinese government has become genuinely committed to carrying out such reforms. A new draft foreign investment law – consistent with the mandate of the Third Plenum economic reforms – was greeted with cautious optimism. Furthermore, the Chinese government has signaled its commitment to supporting US investment in China by advancing US-China Bilateral Investment Treaty (BIT) negotiations, a commitment that must be borne out in full relief with the exchanging of proposed negative lists in early 2015.

Reforms in a Period of Economic Rebalancing

Despite enthusiasm for these developments, economic reform efforts have not kept pace with the decline in investor sentiment caused by macroeconomic trends and perceived discriminatory treatment.

The new reality that double-digit economic growth has run its course has led many foreign businesses to take a more pragmatic, sober assessment of China's overall business environment. Furthermore, over the past year, there has been a growing sense within the foreign business community that they are increasingly less welcome in China, with nearly half of respondents to our 2015 *Business Climate Survey* perceiving an environment less welcoming than before. As reported in AmCham China's 2014 *Policy Spotlight on Investment*, foreign-invested enterprises (FIEs) – technology and consulting companies and legal service providers, in particular – are being squeezed out of the market. Additionally, forced technology transfers and the curtailing of the market through barriers in government procurement add to the perception that China is becoming an increasingly less welcoming environment for investment.

More broadly, foreign investors have become more concerned about discriminatory industrial policies, opaque investment approval procedures used to achieve industrial policy goals, and a lack of effective administrative and legal recourse if an investment approval is conditioned or denied. A majority of survey respondents highlighted their concern that administrative authorities and judicial organs rely on non-public internal guidance – one of a number of topics relevant to the Xi administration's legal reform agenda announced at the 2014 Fourth Plenum. Transparency and open communication with the business community, both domestic and foreign, is essential to a successful foreign investment policy and economic policy as a whole.

Such reforms are needed, not only to help China address domestic economic pressures, but also to ensure that it remains competitive in the global market place. Regional trade and investment agreements are being negotiated elsewhere in the world, and survey data and qualitative experiences indicate that more of our members are already looking to diversify their investments away from China.

The sections below discuss important recent developments and highlight issues AmCham China hopes will be addressed over the coming months.

投资政策

引 言

2014 年，在华外国投资者对政府的政策趋势反应不一。一方面，中国政府表示其在认真推行 2013 年三中全会确立的各项经济改革，中国美国商会原则上大力支持这些改革。另一方面，外国投资者感觉面对普遍认为带有歧视性的政策制定和执法行动，自己很容易成为目标和遭受侵害。

外国投资者推动创新，为中国经济的快速发展做出了重大贡献。根据商务部和世界银行的统计，中国自 2009 年以来一直是世界上主要的外国直接投资接受国，自 2004 年以来每年吸引外资超过 1000 亿美元（人民币 6160 亿元）。

虽然取得了这些成绩，外国投资者却一直受制于法规限制，实际上面临着一套单独的较为不利的法规。长期以来，我们一直敦促中国政府，特别是商务部和国家发改委，放宽和简化外资管理机制。

2014 年的一些迹象表明，中国政府真心要推行这些改革。根据三中全会经济改革要求起草的外国投资法受到审慎乐观的欢迎。再者，中国政府已释放出信号表示将通过推进美中双边投资协定谈判（BIT），支持美国在华投资，这一承诺的落实，将体现在 2015 年初双方交换负面清单的行动中。

经济再平衡时期的改革

尽管投资者对这些发展抱有热情，但是，由于宏观经济趋势和感受到的歧视待遇，虽然经济改革取得进展，投资者情绪却出现下滑。

新的现实情况是，两位数的经济增长已经走到尽头，导致很多外资企业对中国总体商务环境有了更为实际和清醒的评价。而且，在过去的一年，越来越多的外资企业感受到他们在中国变得越来越不受欢迎，在 2015 年度的商务环境调查中，将近一半的受访者认为投资环境友好程度不如从前。根据中国美国商会 2014 年《投资政策聚焦》报告，外商投资企业（外资企业）——特别是技术和咨询以及法律服务企业，正在被挤出市场。而且，强迫转让技术，通过政府采购壁垒实施市场限制，让人越发感觉到中国的投资环境越来越不友好。

更广泛一点说，外国投资者变得更加关注歧视性的产业政策、用以实现产业政策目标的缺乏透明度的审批程序，以及投资审批附加条件或被拒绝时缺少有效的行政和司法申诉救助。大部分受访者强调他们担心行政部门和司法机关依赖非公开的内部指南——这一问题是与习近平政府 2014 年四中全会宣布的司法改革议程有关的众多议题之一。外资和经济政策要想获得全面成功，需要对内外资企业保持透明度和开放沟通。

这些改革是必要的，不仅能够帮助中国缓解国内经济压力，而且能帮助其保持国际竞争力。世界其他地方正在进行区域贸易和投资协定谈判。调查数据和定性研究表明，有更多的会员企业在寻找中国以外的地方，实现投资多元化。

下文将介绍近期取得的重要进展，强调中国美国商会希望在未来几个月能够得到解决的问题。

最新进展

美中双边投资协定谈判

中国美国商会强烈支持优先考虑并且持续推进美中双边投资协定谈判。我们鼓励谈判人员在双边投资协定谈判中商讨本报告列出的问题，并重点承诺确保：

- 外国投资者及其投资、产品、服务和知识产权在准入前和准入后的待遇不低于本国投资者；
- 外商直接投资审批程序是透明的；
- 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求助。

Recent Developments

US-China BIT Negotiations

AmCham China strongly supports prioritization of and steady progress on the US-China BIT negotiations. We encourage negotiators to address the concerns laid out in this report during the BIT negotiations, and to focus on commitments ensuring that:

- Foreign investors and their investments, products, services, and intellectual property are treated no less favorably than those of domestic investors during the pre-establishment and post-establishment phases;
- FDI approval processes are transparent; and
- All investors, including foreign investors, have appropriate recourse if their investment applications are denied for improper reasons.

Such reforms would strengthen our member companies' ability to contribute to the future development and growth of the Chinese economy.

At the fifth Strategic and Economic Dialogue (S&ED) in July 2013, China revived the US-China BIT negotiation process when it committed to enter the next stage of negotiations on the basis of a negative list approach, covering all phases of investment (including both pre-establishment and post-establishment).

At the sixth S&ED, the two sides affirmed their commitment to intensify negotiations, setting a goal to "reach agreement on core issues and major articles of the treaty text by the end of 2014" and to "initiate the 'negative list' negotiation in early 2015 based on each other's 'negative list' offers." It is anticipated that the two sides will exchange proposed negative lists in the spring of 2015.

The negative list proposed by the Chinese government will serve as a bellwether of its commitment to take BIT negotiations to the finish line. An ambitious negative list proposal from China – containing few, narrowly crafted exceptions – will galvanize the foreign business community to help build momentum for the ratification of the treaty in Washington. An extensive list of exceptions (such as that implemented in the China (Shanghai) Pilot Free Trade Zone, or Shanghai FTZ) will give critics of expanding trade and investment links between the two countries the upper hand. Ultimately, we believe that the final BIT must make minimal exceptions to national treatment and allow both FIEs and domestically invested companies to compete on a level playing field in order to obtain needed political support and achieve true economic benefits for both countries.

While negotiations are in progress, the early implementation of promised reforms nationwide will signal the potential for a successful BIT and help build and maintain the support of the foreign business community.

Narrowing and Streamlining Foreign Investment Approval Procedures

Despite the proven benefits of foreign investment to China's economy, and the fact that FIEs are Chinese companies and should therefore not face additional investment burdens except where narrowly defined security concerns apply, domestic investors face significantly fewer investment restrictions and less onerous approval procedures than foreign investors. For example, the 2014 version of the "Catalogue of Investment Projects Subject to Government Approval" (Domestic Catalogue), which lists industries where NDRC approval is required for investments by domestic investors, covers only 10 categories and 40 subcategories of industries. This stands in sharp contrast to the requirement that NDRC approval be obtained for the large majority of inbound foreign investments. The 2015 "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalogue) includes only "encouraged," "restricted," and "prohibited" industries. Of these, investment is "restricted" in 38 sectors and "prohibited" in 36; "permitted" industries, which are not listed in the Catalogue, also require NDRC approval. Similarly, while MOFCOM approval is generally not needed for domestic investors, foreign investors must obtain MOFCOM approval for almost all inbound investments.

Even where domestic investment falls within the Domestic Catalogue and requires NDRC approval, the domestic investment approval procedure is often less onerous than the process for foreign investment in the same industry. For example, although domestic investment in automobile manufacturing requires NDRC project approval, some newly launched foreign-invested passenger car projects require project approval from the State Council. Furthermore, all foreign-invested automobile manufacturing projects are subject to limits on foreign equity. Even where regulations do not provide for disparate treatment of foreign and domestic investors, agencies in practice often treat applications from these parties differently.

Developments since 2013 indicate a seriousness on the part of the Chinese government to address at least some of these issues in order to create a more efficient environment for administering foreign investment and carry out urgently needed economy-wide reforms. The Third Plenum announced the initiation of wide-ranging economic, political, and social reforms, with several provisions directly addressing foreign investment.

Our 2014 *White Paper* specifically identified four key areas of foreign investment reform put forth by the Third Plenum Decision: ❶ pre-establishment national treatment with all exceptions to be published in a negative list, ❷ opening of certain service sectors for foreign investment, ❸ unification of domestic and foreign capital laws and regulations, and

这些改革将提高我们的会员企业的能力，以助力推动中国经济未来的发展和增长。

在2013年7月举行的第五轮中美战略与经济对话期间，中国恢复美中双边投资协定的谈判，承诺以“负面清单”模式为基础开始下一阶段的谈判，谈判内容涵盖投资的各个阶段（包括准入前和准入后的环节）。

在第六轮中美战略与经济对话中，双方承诺进一步加强谈判，同意争取“到2014年末就双边投资协定文本的核心问题和主要条款达成一致意见”，并且“在2015年初基于彼此的负面清单计划启动负面清单谈判”。预计双方将在2015年春季交换负面清单。

中国政府提出的负面清单计划将成为其完成双边投资协定谈判的指导。一份有抱负的负面清单应当只包含少量严格界定的例外情形，这将鼓励外资企业推动美国政府批准这一协定。例外清单过于冗长（如上海自由贸易试验区实施的清单），会让主张扩大两国之间贸易和投资联系的意见占据上风。最后，我们相信，最终的双边投资协定一定会尽量缩减国民待遇的例外项目，允许外资企业和内资企业在公平的竞争环境中展开竞争，从而获得必要的政治支持，使两国经济真正从中受益。

虽然谈判还在进行中，中国政府为推行承诺的改革作出的早期努力将为双边投资协定谈判的成功奠定基础，并持续获得外资企业的支持。

缩减和简化外商投资审批程序

虽然事实已经证明外国投资对中国经济的好处，而且外资企业属于中国企业，除非出于狭义上的安全考虑，不应施加额外的投资限制，但是，与国内投资者相比，外国投资者面对的投资限制显然更多，审批程序更为繁琐。例如，2014年《政府核准的投资项目目录》（《国内目录》）规定国内投资者需要申请国家发改委核准的行业只有10大类和40小类。与此形成鲜明对比的是，绝大多数境内外商直接投资都要求取得国家发改委的批准。2015年《外商投资产业指导目录》（《外商投资目录》）列出了“鼓励”、“限制”和“禁止”三大类。其中，38个产业“限制”外商投资，36个“禁止”外商投资，“允许”外商投资的产业，虽然目录没有列出，也需要获得国家发改委的批准。同样，国内投资者通常不需要取得商务部的批准，而境内外商投资几乎全部必须取得商务部的批准。

即使是《国内目录》规定的需要国家发改委核准的国内投资项目，其审批程序通常也不像同一行业的外商投资审批程序那样繁琐。例如，国内投资者投资汽车制造业需要取得国家发改委的批准，但是一些最新启动的外商投资乘用车项目却需要获得国务院的批准。而且，外商投资汽车制造项目全都设有外资股权限制。即使法规没有要求区别对待，在实践中，政府机构也经常区别对待外国投资者和国内投资者提交的申请。

2013年以来，为了创造更加高效的外商投资管理环境以及全面开展急需的经济改革，中国政府方面表现出至少解决一部分问题的诚意。三中全会宣布全面启动经济、政治和社会改革，其中有几项要求直接提到外商投资。

2014年的《白皮书》特别提到三中全会提出的四个方面的外商投资改革举措：❶ 准入前国民待遇，负面清单列出所有例外情形，❷ 向外商投资开放某些服务行业，❸ 统一内资和外资法律法规，以及 ❹ 金融改革。中国政府在这四个方面都已经取得一些进展，虽然进度不一，有时出现停滞。我们下面将介绍一些重要的最新进展。

《外商投资目录》

2015年3月13日，国家发改委和商务部对外发布新版《外商投资目录》，2014年11月，目录草案曾经公开征求意见。新版目录总体来说代表一种进步，虽然某些领域的限制变得更加严格，服务行业的利好消息也不如预期的广泛。考虑到三中全会要求放开众多行业的市场准入限制，特别是服务行业的限制，这种状况未免令人失望。基于目前对《目录》的理解，中国美国商会给出以下评论：

- 《目录》在取消外商投资制造业的限制方面取得重大进展——尽管看来似乎继续限制汽车制造行业。
- 财务公司、信托公司和货币经纪公司从限制类别删除，意味着它们现在属于“允许”投资领域。
- 外商对银行的投资继续受限制。新版《目录》补充说明，外商投资中国银行的入股比例合计不得超过25%，单个境外金融机构入股比例不得超过20%。这不是一项新要求，相关法律法规早有这一规定。之所以加入《目录》中，似乎表明中国希望《目录》符合已经签订的协定和现有法规。
- 高等教育（之前属于鼓励类）和新增的学前教育（之前没有列出，所以视为“允许”）归入限制外商投资类别。两者现在都需要与中方合作，由中方主导（学

❹ financial reforms. The Chinese government has shown signs of progress, though often uneven and halting, in all four of these areas. We discuss some of the more significant recent developments below.

Foreign Investment Catalogue

On March 13, 2015, the NDRC and MOFCOM jointly released a new edition of the Foreign Investment Catalogue, a draft of which had been circulated for public comment in November 2014. The new Catalogue represents a step forward overall, though restraints were tightened in some areas and positive news for service industries was not as extensive as had been hoped. This was disappointing given the Third Plenum's mandate of liberalizing market access restrictions in a wide range of industries, particularly in the service sector. Some observations based on AmCham China's current understanding of the Catalogue are as follows:

- The Catalogue makes significant progress in lifting restrictions on foreign investment in manufacturing activities – though it appears to further restrict the automobile manufacturing industry.
- Finance companies, trust companies, and currency brokerages have been removed from the restricted category, meaning they are now categorized as "permitted."
- Foreign investment in banks remains restricted. The new Catalogue adds text stating that foreign investment in Chinese banks may not exceed 25 percent, with no individual foreign financial institution allowed to hold more than a 20 percent share. This is not a new requirement as it was already contained in relevant laws and regulations. Its inclusion in the Catalogue represents what appears to be an effort to make the Catalogue more consistent with China's treaty commitments and existing regulations.
- Foreign investment in higher education (previously in the encouraged category) and the newly-added pre-school education (previously considered "permitted" as it was unlisted) have been placed in the restricted category. Both are now subject to the requirement that a cooperative joint venture (JV) be established with a Chinese partner, and that the Chinese partner exercise control (the principal of the school and 50 percent or more of the members of the entity's lead management body must be Chinese nationals). Chinese partner control is also required for high school education investments.
- Though foreign-invested medical institutions were removed from the restricted list in the 2011 Catalogue, the new Catalogue has returned them to the restricted list, limiting them to equity and cooperative JVs. No reference was made to the pilot scheme for allowing hospital wholly foreign-owned enterprises (WFOEs) which is currently being rolled out, so we may see more positive changes in this sector in the future.
- A number of real estate-related investments previously categorized as restricted are now permitted.
- Complete foreign ownership is permitted in the construction and operation of municipal metro and light rail systems.
- Chinese majority ownership is no longer required for performance venues (still listed as encouraged).
- Construction and operation of large-scale theme parks and entertainment venues (including movie theaters), which were removed from the restricted list in the public draft of the new Catalogue published in November, have been restored in the final version and continue to be restricted areas for foreign investment.
- Consulting on Chinese law is now placed in the prohibited category with a carve-out for providing information on the "impact of the Chinese legal environment" (reflecting a Chinese World Trade Organization (WTO) commitment).
- Other new prohibitions have been added, including prohibitions related to internet publishing services, wholesale and retail of tobacco, and the sale of cultural relics. As with equity caps on foreign investment in Chinese banks, these are existing prohibitions found in other laws and regulations that have now been incorporated in the Catalogue.

This 2015 Catalogue entered force on April 10, 2015, replacing the 2011 version. AmCham China recognizes this new Catalogue as a step forward, but much work remains ahead.

Draft Foreign Investment Law

In January 2015, MOFCOM issued a new draft foreign investment law that seeks to implement the Third Plenum's call for unifying domestic and foreign investment laws and regulations. Although the promulgation of the final version of the law may take time, MOFCOM's early outreach is viewed positively by AmCham China and the foreign business community.

The draft foreign investment law addresses three key proposals from the Third Plenum (the first two of which, as mentioned, were discussed in our 2014 *White Paper*):

❶ The Third Plenum called for applying the principle of national treatment more broadly to foreign investment. Under the national treatment principle, foreign investors and investment would, in general, be treated the same as domestic investors and investment, subject only to specific exceptions to be included in a "negative list." With national treatment, review by MOFCOM (or another designated body) and the NDRC would become the exception, rather than the rule, for entry into the Chinese market. The draft foreign investment law sets up a market entry review system applicable to foreign investments captured by the negative list. This is a positive development provided that the negative list is short and contains narrowly crafted exceptions to the general rule of national treatment.

校校长以及主要管理机构的半数以上成员应当具有中国国籍）。外商投资高中教育机构的，也要求由中方主导。

- 2011 版目录曾经将医疗机构从限制类别删除，但是，新版《目录》又将其重新归入限制类别，并且限于合资和合作方式。没有提及目前正在开展的外商独资医院试点项目，因此，我们预计这一领域未来会发生更多积极的变化。
- 很多与不动产有关的之前归入限制类别的投资现在都被允许。
- 城市地铁和轻轨允许外商独资建设和经营。
- 演出场所（仍然属于鼓励类别）不再要求中方持多数股份。
- 大型主题公园和娱乐场所（包括电影院）的建设和经营，在 11 月份公布的公开征求意见稿中曾经从限制类别删除，但是最终又被恢复，仍然属于限制外商投资的类别。
- 中国法律事务咨询现在属于禁止类别，提供有关中国法律环境影响的信息除外（反映了中国在世贸组织框架下的承诺）。
- 新增了其他禁止项目，其中包括网络出版服务、烟草批发和零售、文物拍卖。与外商投资中国银行的入股比例限制一样，其他法律法规已经做出过这些禁止，只是现在被纳入《目录》。

2015 版目录将取代 2011 版，于 2015 年 4 月 10 日生效。中国美国商会认为新版目录取向前迈进了一步，但是还有许多工作要做。

《外国投资法》草案

按照三中全会关于统一内外资法律法规的要求，2015 年 1 月，商务部公布《外国投资法》草案（征求意见稿）。法案的最终发布还需要一定的时间，但是，商务部广泛征求各方意见的做法已经获得中国美国商会和外资企业的积极评价。

外国投资法草案提到了三中全会的三项重要提议（前两个在 2014 年《白皮书》中已经讨论过）：

❶ 三中全会要求扩大外商投资适用国民待遇的范围。按照国民待遇原则，除“负面清单“规定的例外情形外，外国投资者及其投资通常应当与本国投资者及其投资享有相同的待遇。根据国民待遇，商务部（或其他指定部门）和国家发改委的审查应当作为中国市场准入的例外情况而不是一般规则。外国投资法草案规定了适用于外国投资的基于负面清单的市场准入审查制度。如果负面清单简短，只包含少量国民待遇原则例外情形，这应当算是一项积极的进展。

❷ 三中全会建议统一内外资法律法规，形成单一的公司法律法规体系。外国投资法草案建议废止外国投资目前适用的三部核心法规（在不同的时间专门制定的，分别适用于中外合资经营企业、中外合作经营企业和外资企业），用单一的、内容精简的外国投资法来取代它们。它确立了一个框架，大部分外资企业将适用国内公司法规，没有试图专门建立一套经常与国内私营企业适用的《公司法》存在冲突的法规体系。这种统一将会让影响外国投资的中国公司法规变得更透明，更便于按照一致和非歧视的原则开展执法。

按照草案的规定，商务部不再通过审批程序审查外国投资，而是转为准入后的监督。为此还建立了信息报告制度，适用于所有外国投资（无论是否在负面清单之中）。遗憾的是，新的信息报告制度与境内企业目前适用的信息报告要求不符，两者有可能并行实施。这会加重外资企业的负担，不符合国民待遇原则。

❸ 三中全会建议设立国家安全委员会，加强国家安全审查，解决国家面临的来自国内外的威胁。为此，外国投资法草案对国家安全审查制度做了更详细的规定，适用于“任何危害或可能危害国家安全的外国投资”。

中国美国商会理解中国（和任何其他国家一样）需要设立审查制度以确保国家安全，但是，我们担心，相关规定多达 27 条，体现的审查范围太过宽泛模糊。我们认为，任何审查应当仅限于解决具体的国家安全风险，不应当适用于包括经济安全、产业安全或“社会稳定”等更广泛的国家利益。而且，虽然不清楚具体的程序，我们仍然担心政府官员可能将享有的自由裁量权用于维护国家安全之外的目的（例如，保护国内经济利益）。国家安全审查决定也没有行政或司法复议渠道。

除了提及三中全会的这三项重要建议，草案还对外国投资做了新的更宽泛的定义。具体来说，按照定义，外资企业包括在中国设立但是由其他国家的自然人、企业、政府、机构或者国际组织控制的企业。对“控制”的定义在

❷ The Third Plenum proposed to unify the domestic and foreign investment regimes under a single body of corporate law. The draft foreign investment law proposes to do away with the three core laws currently governing foreign investment (they were developed in an ad hoc manner over time and govern equity JVs, cooperative JVs, and WFOEs, respectively) and replace them with a single, streamlined foreign investment law. Rather than attempting to create a separate body of corporate law that sometimes conflicts with the Company Law governing domestic private enterprise, it creates a framework under which domestic corporate law also applies to most foreign investment. This unification will make Chinese corporate law affecting foreign investment more transparent and easier to implement in a more consistent, non-discriminatory manner.

Instead of using the approval process to screen foreign investment, the draft law shifts MOFCOM's role to one of post-establishment monitoring. To this end, it sets up an information reporting system applicable to all foreign investment (whether or not captured by the negative list). Regrettably, this new information reporting system differs from and will presumably be implemented in addition to existing information reporting requirements imposed on domestic companies. This creates an added burden for FIEs, in contravention of the national treatment principle.

❸ The Third Plenum proposed the creation of a National Security Council and the strengthening of national security review in order to address threats to the state, both from within and outside of China. For its part, the draft foreign investment law sets out a more comprehensive national security review system, applicable to "any foreign investment that endangers or may endanger national security."

While AmCham China appreciates the need for China (like any country) to set up safeguards for protecting national security, we are concerned about the broad and vague scope contemplated by the draft law which is embodied in a full 27 articles. We believe that any review process should be limited and narrowly tailored toward addressing concrete national security risks, and not apply to broader national interests such as economic security, industrial security, or "social stability." Furthermore, although the specific procedures are not yet clear, we are concerned that discretion granted to government officials may be used for purposes other than protecting national security (e.g., promoting domestic economic interests). National security review decisions will not be subject to administrative or judicial review.

Beyond addressing these three key Third Plenum proposals, the draft law sets out a new, broader definition of foreign investment. Specifically, it defines FIEs to include enterprises established in China but *controlled* by foreign nationals, offshore enterprises, foreign governments or organizations, and international organizations. The definition provided for "control" is vague in some respects, creating uncertainty. For example, it provides that a foreign investor may have control over an entity if it has "decisive influence" (决定性影响) over the operation, finances, personnel, or technology of the company in question through contractual trust or other means. Though vague, we understand that this language is intended to categorize at least some variable-interest entity (VIE) structures as FIEs. VIE structures are legal structures commonly used (and generally tolerated by the authorities) to channel foreign investment into industries where foreign investment is restricted or prohibited. This is accomplished by giving the FIE effective control over – and causing it to bear the benefits and risks of – a domestic operating company through contractual means rather than through ownership. Due to lack of certainty and uniform standards in determining control, local authorities could have broad discretion in making decisions, and there could be different treatment of similar structures by different government authorities. We ask that the authorities provide further clarity on the definition of foreign investment and ensure that a consolidation of the legal framework for foreign investment does not create new impediments for existing or new foreign investment activity.

"Several Opinions on the Acceleration of the Development of Service Trade"

The State Council on February 14, 2015 issued "Several Opinions on the Acceleration of the Development of Service Trade," marking the first time that the State Council stated its strategic objectives for the service trade. The government, according to the Opinions, plans to reduce market entry and administrative approval requirements for service industries. A string of measures were announced, including "significantly opening up the finance, education, culture, and medical treatment sectors" to both domestic private capital and foreign capital, and easing market entry restrictions faced by foreign investors in childcare and eldercare services, architectural design, accounting and auditing, trade and logistics, and e-commerce. The Opinions further state an intention to nurture enterprises in capital and technology-intensive areas such as transportation, telecommunications, research and development (R&D), and ecological protection.

The Opinions place particular emphasis on the development of service exports, with the government slated to start developing service export bases in existing development and free trade zones in the first half of 2015. The government plans to further expand capabilities in re-exports, international logistics, transit services, R&D, international account settlement, and distribution and storage within customs supervisory areas and bonded zones. We trust that these opportunities will be available in equal manner to FIEs and domestically invested companies, and that domestic market access barriers to FIEs will be lifted.

某些方面模糊不清，造成了不确定性。例如，草案规定，外国投资者通过合同信托等方式对该企业的经营、财务、人事或技术等施加“决定性影响”的情形即可构成“控制”。虽然未明确说明，但是，我们的理解是，这一规定的目的是至少要将一部分可变利益实体（VIE）归为外资企业。可变利益实体是外国投资进入限制或禁止领域通常会使用（并且通常得到当局默认）的法律架构。外资企业通过合同而不是所有权的方式实现对国内经营企业的实际控制并且承担收益和风险。由于控制的确定缺少确定性和统一的标准，地方当局就有很大的自由裁量权，不同政府机构对相同情形可能会有不同的处理。我们希望有关部门进一步明确外国投资的定义，确保外资法律框架的整合不会给现有或新增外国投资活动造成新的阻碍。

《关于加快发展服务贸易的若干意见》

2015 年 2 月 14 日，国务院发布《关于加快发展服务贸易的若干意见》，首次明确服务贸易的战略目标。根据《意见》，政府计划减少服务领域市场准入和行政审批要求，并且宣布了一系列举措，包括向外资和国内民营资本“推进金融、教育、文化、医疗等服务业领域有序开放，逐步实现高水平对内对外开放”，放开育幼养老、建筑设计、会计审计、商贸物流、电子商务等服务业领域外资准入限制。《意见》还表示要培育运输、通信、研发设计、环境服务等资本技术密集型服务领域的发展。

《意见》特别强调要发展服务出口，政府准备从 2015 年上半年开始依托现有开发区和自由贸易试验区规划建设服务出口基地。政府计划进一步扩充海关监管区域和保税场所的转口贸易、国际物流、中转服务、研发、国际结算、分销和仓储功能。我们相信，这些机会将向内外资企业公平开放，外资企业面临的国内市场准入壁垒将会被取消。

金融改革

三中全会决定还要求“完善金融市场体系”，建立存款保险制度，允许金融机构退出市场，加强金融基础设施建设（第 12 条）。此外，还要求由市场决定利率和人民币汇率，有序提高跨境资本和金融交易可兑换程度，审慎管理外债和资本流动，加快实现人民币资本项目可兑换，完善监管协调机制。

中国政府有意对金融体系进行这些根本性的改革，我们为此深受鼓舞。此举关乎中国其他经济和投资改革的成败，将会大大推动在华外国投资的扩大。

不过，我们清楚，三中全会决议中与外国投资有关的要求和表述只是代表重点和方向的转移，并不是一套完全成熟的新政策。要想获得成功，需要全国人大和国务院以及商务部、国家发改委等中央政府主要部门为实现新的目标大力制定或修改法律法规，在国民待遇的基础上向外国投资进一步开放大部分行业。

目前进展情况

一些领域已经开始采取积极的金融改革举措，包括：

- 2013 年 9 月 23 日，中国人民银行（PBOC）发布《关于境外投资者投资境内金融机构人民币结算有关事项的通知》，提高了境外企业在中国直接使用人民币对金融机构进行投资的能力；
- 2014 年 2 月 7 日，国务院发布《关于印发注册资本登记制度改革方案的通知》，降低内外资企业的注册资本要求，简化公司注册程序（这项改革没有涉及金融领域的企业，例如外资银行和外资保险公司）；
- 2014 年 2 月 15 日，国务院发布《关于取消和下放一批行政审批项目的决定》（国发（2014）5 号），决定取消多个领域的审批要求，包括与外资银行和金融机构有关的审批；
- 2014 年 3 月 21 日，中国保险监督管理委员会（中国保监会）印发《保险公司收购合并管理办法》，允许境内外保险公司在合并完成后，控制两个经营同类业务的保险公司；
- 2014 年 4 月 25 日，国家外汇管理局发布《跨国公司外汇资金集中运营管理规定（试行）》，允许外资企业更加灵活地设立外汇现金管理项目和使用外汇资金；
- 2014 年 5 月 9 日，国务院发布《关于进一步促进资本市场健康发展的若干意见》，提出减少证券公司的行政审批要求，培育更开放的私募股权市场，对其他企业产生更广泛的间接影响；
- 2014 年 6 月 27 日，中国人民银行发布《银行办理结售汇业务管理办法》，降低境内外银行办理现汇交易和外汇衍生品交易的市场准入条件；
- 2014 年 8 月 4 日，国家外汇管理局发布《关于在部分地区开展外商投资企业外汇资本金结汇管理方式改革试点有关问题的通知》，允许 15 个省市试点区域的外资企业根据企业的实际经营需要办理结汇；

Financial Reforms

The Third Plenum Resolution also called for building a "sound financial system," setting up a deposit insurance system, allowing financial institutions to exit the market, and building a sound financial infrastructure (Section 12). In addition, it referred to the need to allow the market to determine interest and RMB exchange rates; called for the gradual promotion of cross-border capital flows, financial transaction convertibility, prudential supervision of foreign debt and capital flows, and the acceleration of the process of opening up RMB capital markets; and promoted improvements in regulatory coordination.

AmCham China is encouraged by the Chinese government's intention to make such fundamental reforms to the financial system. Doing so is crucial for the success of China's other economic and investment reforms, and will greatly facilitate increased foreign investment in China.

However, we recognize that the new directives and narrative for foreign investment laid out in the Third Plenum Resolution represent only a shift of emphasis and direction, not a fully developed set of new policies. To ensure success, it is critical that the National People's Congress (NPC) and the State Council, as well as MOFCOM, NDRC, and other leading central government departments, move aggressively to implement the new goals through new and amended laws and regulations that will further open most sectors to foreign investment on a national treatment basis.

Current Progress

Positive steps towards financial reform have already been taken in several areas, including:

- The September 23, 2013 People's Bank of China (PBOC) "Notice on Relevant Matters Regarding RMB Settlement of Foreign Investors Investing in Domestic Financial Institutions," which broadens the ability of foreign companies to directly use RMB to expand their investments in financial institutions in China;
- The February 7, 2014 State Council "Notice on Registered Capital Registration System Reform," which reduces registered capital requirements and eases the incorporation process for domestic and foreign companies (though companies in the financial sectors, such as foreign banks and foreign insurance companies, were untouched by this reform);
- The February 15, 2014 State Council "Decision on Cancelling and Decentralizing Several Administrative Approval Items" (No. 5), which eliminates approvals in a range of areas, including approvals related to foreign-invested banks and financial institutions;
- The March 21, 2014 China Insurance Regulatory Commission (CIRC) "Administrative Measures on Insurance Company Mergers and Acquisitions," which allows foreign and domestic insurance companies to hold controlling stakes in up to two competitors in the same product market after the acquisition is completed;
- The April 25, 2014 State Administration for Foreign Exchange (SAFE) "Administrative Rules on the Centralized Management of Foreign Exchange Funds by Multinational Companies (for trial implementation)," which allows more flexibility for FIEs in setting up foreign currency cash management programs and using foreign exchange;
- The May 9, 2014 State Council "Opinions on Further Promoting Healthy Development of the Capital Market," which reduces administrative approvals for securities companies, and has a broader indirect impact for other companies in promoting a more open private equity market;
- The June 27, 2014 PBOC "Administrative Measures on Banks' Settlement and Sale of Foreign Exchange," which lowers the market access conditions for domestic and foreign banks to handle both spot exchange transactions and exchange derivatives transactions;
- The August 4, 2014 SAFE "Notice on the Pilot Reform in Certain Areas of the Administrative Approach Regarding the Settlement of Foreign Exchange Capital by Foreign-invested Enterprises," which allows FIEs in the pilot zones of 15 provinces and cities to settle their foreign exchange capital freely based on actual business needs;
- The November 24, 2014 State Council "Decision on Cancelling and Adjusting Several Administrative Approval Items" (No. 50), which further eliminates approvals in a range of areas, including approvals for chief representatives of representative offices of foreign securities companies;
- The December 20, 2014 State Council "Decision on Amending the Administrative Regulations of the People's Republic of China on Foreign Banks," which lifts market entry restrictions on ❶ the establishment of foreign banks and their branches, and ❷ foreign banks and their branches to engage in RMB transactions;
- The January 29, 2015 State Council "Notice on Popularizing the Replicable Pilot Reform Experiences of the China (Shanghai) Pilot Free Trade Zone," which introduces to other areas of the country successful pilot programs incubated in the Shanghai FTZ; one example related to financial reform is allowing direct investment-related foreign exchange registration to be handled directly by banks; and
- The March 5, 2014 CIRC "Notice on Issues Concerning Reinsurance Transactions Between Foreign-Funded Insurance Companies and Their Affiliated Companies," which lowers qualification requirements for companies affiliated with foreign-funded insurance companies in instances where the foreign-funded insurance company only receives insurance business from its affiliate and not the other way around.

- 2014 年 11 月 24 日，国务院发布《国务院关于取消和调整一批行政审批项目等事项的决定》（国发〔2014〕50 号），决定进一步取消一些领域的审批要求，包括境外证券公司代表处首席代表的审批要求。
- 2014 年 12 月 20 日，国务院公布《关于修改〈中华人民共和国外资银行管理条例〉的决定》，决定取消：（i）设立外资银行及其分支机构，以及（ii）外资银行及其分支机构开展人民币业务的市场准入限制。
- 2015 年 1 月 29 日，国务院发布《关于推广中国（上海）自由贸易试验区可复制改革试点经验的通知》，向国内其他地区介绍上海自贸区的成功试点项目；与金融改革有关的一个例子就是将直接投资项下外汇登记下放银行办理。
- 2014 年 3 月 5 日，中国保监会发布《关于外资保险公司与其关联企业从事再保险交易有关问题的通知》，规定当外资保险公司仅从某一关联企业分入保险业务、而不向该关联企业分出保险业务时，该关联企业无需符合限制条件。

我们期待中国继续明确上述及其他改革事项的实施计划。

上海自由贸易区

2013 年 9 月 29 日，上海自由贸易区正式设立，成为外国投资、外国资本和货币管制机制改革等全国经济和行政改革计划的限制性试验场地。三中全会决定还提到许多计划在上海自贸区实施的改革项目将在全国范围内推行。《决定》还明确表示支持上海自贸区，指出“建立中国上海自由贸易试验区是在新形势下推进改革开放的重大举措”（第 24 条）。中国美国商会欢迎这一实验项目，也认同其开始为在全国范围内推行改革所发挥的重要作用。

三中全会决定还要求设立其他自贸区：“加快自由贸易区建设。坚持世界贸易体制规则，坚持双边、多边和区域合作。改革市场准入、海关监管、检验检疫等管理体制，加快环境保护、投资保护、政府采购、电子商务等新议题谈判，形成面向全球的高标准自由贸易区网络”（第 25 条）。该决定发表后，天津、青岛、重庆和广东／澳门／香港等 20 多个地方政府都将设立新自贸区项目写入了本地 2014 年政府工作报告中，但这些申请最初都被搁置了。目前，又新增三个自由贸易试验区，即中国（广东）自由贸易试验区、中国（天津）自由贸易试验区和中国（福建）自由贸易试验区，原上海自贸区也已扩大。此外，2014 年 12 月 28 日，全国人大常委会公布了一个决定，自 2015 年 3 月 1 日起，授权国务院暂时调整有关法律规定的行政审批事项，为上述四个自贸区提供更大的灵活性。

中国美国商会及其在天津、武汉和东北的办公室期待与中国政府就自贸区未来的发展展开对话，提高透明度，使得外资企业能更大程度为自贸区的发展做出贡献。

上海自贸区负面清单

上海自贸区为境内外商投资制定了一份负面清单，随后，三中全会决定在全国范围内予以推广。通过负面清单这种方式，外商只有在自贸区内投资负面清单上列出的或者国务院指定需要审批的行业，才需要获得批准。至于没有列出的行业，投资只需向管理部门备案，无需申请商务部或国家发改委的批准。

2013 年 9 月 30 日，首份负面清单公布，涉及近 200 个领域（近 2000 项），其中很多是《外商投资目录》没有列出的。第一份负面清单过于冗长，这让外资企业倍感失望。2014 年 7 月 1 日，修改后的负面清单发布，限制领域的数量从 190 个缩减到 139 个。虽然限制领域的数量确有减少，但大都是简化重复性限制的结果，并不是新增 51 个开放领域。进一步的分析表明，实际新增开放领域为 17 个，虽然前进的方向是正确的，但是，在负面清单对外国投资者的行为产生重大影响前，在双边投资协定实质性谈判开展之前，还有很多工作需要去做。

中国美国商会希望上海自贸区大幅缩短负面清单，更大胆地减少市场准入限制，从而增强投资者的信心，支持经济增长。

上海自贸区金融改革

通过推进人民币资本项目可兑换、利率市场化以及跨境人民币业务办理等举措，上海自贸区还成为“加快金融体系内部创新”的排头兵。这些创新在三中全会的决定也得到了体现。

2013 年 12 月 2 日，中国人民银行发布《关于金融支持中国（上海）自由贸易试验区建设的意见》（《意见》），为上海自贸区的金融改革和总体发展提供支持。例如，《意见》要求：

- 根据“宏观审慎管理原则”推进改革；

We look forward to continued clarification on the planned implementation of these and other reforms.

Shanghai Free Trade Zone

Formally established on September 29, 2013, the Shanghai FTZ was created to serve as a limited testing ground for economic and administrative reforms contemplated for nationwide implementation, including reform of the foreign investment, foreign capital, and currency control regimes. Many of the reforms slated for development in the Shanghai FTZ were further referenced for implementation on the national level by the Third Plenum Resolution. That resolution also gave its explicit support for the Shanghai FTZ, calling for "[e]stablishing the China (Shanghai) Pilot Free Trade Zone as a major national measure to move reform and opening up forward under new circumstances." (Section 24) AmCham China welcomed the pilot program and recognizes the important role it has begun to play in testing reforms for eventual nationwide implementation.

The Third Plenum Resolution calls for the establishment of other FTZs as well: "Construction of free-trade zones will be sped up, with adherence to the rules of the world trade system and insistence on bilateral, multilateral, and regional cooperation. Reforms will be carried out in market access, customs supervision, and inspection and quarantine management. Negotiations in emerging issues such as environmental protection, investment protection, government procurement, and e-commerce will be accelerated to form a global, high-standard network of free trade zones." (Section 25) Following this announcement, over 20 local governments, including those in Tianjin, Qingdao, Chongqing, and Guangdong/Macao/Hong Kong announced plans to develop their own new FTZ projects in their 2014 government work reports, though these applications were initially put on hold. To date, an additional three Pilot Free Trade Zones (i.e., the China (Guangdong) Pilot Free Trade Zone, the China (Tianjin) Pilot Free Trade Zone, and the China (Fujian) Pilot Free Trade Zone) have been established, and the area of the previous Shanghai FTZ has been expanded. In addition, on December 28, 2014, the Standing Committee of the NPC issued a decision, effective March 1, 2015, to authorize the State Council to temporarily adjust relevant national administrative examination and approval items prescribed by pertinent national laws to allow for greater flexibility in the above four FTZs.

AmCham China, including our regional chapters in Tianjin, Wuhan, and Northeast China, looks forward to future dialogue with the government on the development of future FTZs in order to increase transparency and maximize the contribution that FIEs can make to the development of the FTZs.

Shanghai FTZ Negative List

The Shanghai FTZ has adopted a negative list for inbound foreign investment, a move that was later endorsed for nationwide application in the Third Plenum Resolution. Under the negative list approach, foreign investment approvals within the FTZ will only be required for those industries that are on the list or that are otherwise designated as requiring approval by China's State Council. Investments in unlisted industries may simply file for the record (*bei'an* 备案) with administrative authorities and will not need to obtain investment approvals from MOFCOM or the NDRC.

Released on September 30, 2013, the initial negative list contained nearly 200 sectors (and nearly 2,000 subcategories), a number of which were not in the Foreign Investment Catalogue. The extensive length of the initial negative list disappointed many in the foreign business community. An updated, further-revised version of the negative list was released on July 1, 2014, which reduced the number of restricted sectors from 190 to 139. Although the number of restricted items was indeed reduced, this constituted more of a streamlining of repetitive restrictions than an outright opening of 51 more sectors. Further analysis indicates a true opening to 17 new sectors, marking progress in the right direction, but still leaving much work to be done before the negative list is in a state that will make a significant impact on foreign investor behavior and be conducive to meaningful BIT negotiations.

AmCham China hopes to see a more ambitious reduction in market access barriers in the Shanghai FTZ through a significantly shortened negative list in order to boost investor confidence and support economic growth.

Shanghai FTZ Financial Reforms

The Shanghai FTZ also champions the "acceleration of innovation within the financial system" through, among other measures, implementation of RMB capital account convertibility, market interest rates, and cross-border RMB handling. These innovations are also embodied in the Third Plenum Resolution.

On December 2, 2013, the PBOC released the "Opinions of the PBOC about the Financial Support to the Construction of the China (Shanghai) Pilot Free Trade Zone" (Opinions) to provide support for financial reform and the overall development of the Shanghai FTZ. The Opinions provided, for example, that:

- Reform is to proceed under a "macro-prudential management principle";
- Fund remittance and conversion for cross-border direct investments into or originating out of the Shanghai FTZ is to be handled directly by banks in the Shanghai region without prior clearance from SAFE;
- Institutions in the FTZ may finance RMB and foreign currency transactions from overseas;
- To support establishment of regional headquarters and development of innovation in the FTZ, and to encourage multinationals and state-owned financial

- 试验区跨境直接投资可以直接向银行办理所涉及的跨境收付、兑换业务，无需事先获得国家外汇管理局的核准；
- 区内机构可以境外融入本外币资金；
- 为了支持在区内设立地区总部和开展创新，鼓励跨国公司和国有金融机构申请资金池管理牌照，进一步简化外币资金池管理；
- 鼓励区内企业开展集团内双向人民币资金池业务，为其境内外关联企业提供经常项下集中收付业务；
- 中国人民银行还支持银行开展商品衍生品的柜台交易。

《意见》要求对试验区内的居民和非居民实行“分账核算管理”。为了从试验区的开放政策中受益，试验区内的个人和企业可以在区内或上海市内的任何一家银行开立专门的自由贸易账户。这类账户通常作为境外账户。居民自由贸易账户与境外账户、境内区外的非居民账户、非居民自由贸易账户以及其他居民自由贸易账户之间的资金可自由划转。居民自由贸易账户与同一实体的境外账户可以根据跨境交易需要办理资金划转。

《意见》要求根据风险可控、稳步推进的原则，通过“成熟一项、推动一项”的方式，实施、评估和全面贯彻上述要求。现在，自《意见》发布之后，已经过去一年多的时间，中国美国商会注意到，中国人民银行上海总部和国家外汇管理局上海分局颁布了一系列详细的政策和规定，依法推进改革计划并且取得了重要进展。这些政策和规定包括：

- 2014 年 2 月 18 日，中国人民银行上海总部发布《关于上海市支付机构开展跨境人民币支付业务的实施意见》，允许在试验区注册的企业在跨境交易中使用人民币，简化人民币结算的审查程序；
- 2014 年 2 月 21 日，中国人民银行上海总部发布《关于支持中国（上海）自由贸易实验区扩大人民币跨境使用的通知》，推动人民币国际化，取消试验区内信贷机构的审批要求；
- 2014 年 2 月 26 日，中国人民银行上海总部发布《关于在中国（上海）自由贸易试验区放开小额外币存款利率上限的通知》，取消试验区内小额外币存款的利率上限；
- 2014 年 2 月 28 日，国家外汇管理局上海市分局发布《关于印发＜支持中国（上海）自由贸易试验区建设外汇管理实施细则＞的通知》，减少结汇的监管核查要求；
- 2014 年 5 月 22 日，中国人民银行上海总部发布《中国（上海）自由贸易试验区分账核算业务实施细则（试行）》和《中国（上海）自由贸易试验区分账核算业务风险审慎管理细则（试行）》，对试验区内的个人和企业或外籍人士在上海市内的金融机构开立专门的自由贸易账户进行了详细规定，加快了资本账户可兑换改革进程；
- 2014 年 6 月 26 日，中国人民银行上海总部发布《关于在上海市放开小额外币存款利率上限的通知》，将外币存款利率上限改革的试点范围从上海自贸区扩大到整个上海市；
- 2015 年 2 月 12 日，中国人民银行上海总部发布《中国（上海）自由贸易试验区分账核算业务境外融资与跨境资金流动宏观审慎管理实施细则》，进一步帮助试验区内企业通过自由贸易账户获得境外融资。

中国美国商会支持在上海自贸区和中国其他地方放开资本和外汇管制。这些改革措施的发布确实属于积极的信号，但是书面规定和实际执行之间还存在差距。对于中国美国商会的会员企业来说，采取切实措施执行和实施已经发布的书面规定比继续发布改革措施更加重要。

现存监管问题

抑制外国投资的产业政策

中国政府官员有明确要求，要扶持“国家级领军企业”，特别是战略性新兴产业（SEI）的领军企业。为此，中国官员可使用的一个主要工具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，前提是要求这些外国投资者承诺与政府中意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并为合资企业提供进入国际市场的渠道。

这些产业政策可能是基于这样一种观点：即使外资企业是在中国设立的，如果企业的所有权为中国股东而非外资所掌握，中国从该企业获得的利润就更大。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。外国企业在华投资能够扩大中国国内的税基，增加就业机会，培育本土供应商，培养本土人才，分享宝贵的管理、技术和研发经验，扩大消费者选择面等等，

institutions to apply for cash pool management licenses, the foreign currency cross-border cash-pooling program is to be simplified;

- Enterprises in the FTZ are encouraged to engage in round-trip RMB cash pooling as well as centralized cross-border settlements under the current account for their domestic and overseas affiliates; and
- The PBOC shall also support the provision by banks of over-the-counter commodity derivative trading.

Furthermore, the Opinions called for a "segregated account management system" to be adopted in the FTZ for residents and non-residents. Individuals and enterprises located in the FTZ may open special Free Trade Accounts (FTAs) at any bank in the FTZ or in the Shanghai municipality in order to benefit from the liberalized policies of the FTZ. These FTAs generally perform as offshore accounts. Funds can be freely transferred between resident FTAs and offshore accounts, non-resident accounts, non-resident FTAs, or other resident FTAs. Funds can be transferred between resident FTAs and onshore accounts of the same legal entity based on cross-border transaction needs.

The Opinions stated that the above-mentioned measures would be launched, evaluated, and fully implemented according to principles of risk control and incremental liberalization, using a process of "testing and liberalizing step by step." Now that more than a year has passed since the promulgation of the Opinions, AmCham China recognizes significant progress towards legally implementing the contemplated reforms through a series of detailed policies and rules issued by the PBOC's Shanghai Branch and Shanghai SAFE. These policies and rules include the following:

- The February 18, 2014 PBOC Shanghai Branch "Implementing Opinions for Shanghai Payment Agencies Carrying Out Cross-Border RMB Payment Services in Shanghai," which allows companies registered within the FTZ to use RMB in cross-border transactions and eases the review process for RMB settlement;
- The February 21, 2014 PBOC Shanghai Branch "Opinions on Promoting the Cross-Border RMB Business in the Shanghai FTZ," which promotes internationalization of the RMB and eliminates approvals for lenders operating within the FTZ;
- The February 26, 2014 PBOC Shanghai Branch "Announcement Lifting Foreign Currency Deposit Rates Caps in the Shanghai FTZ," which removes some foreign currency deposit interest rate caps within the FTZ;
- The February 28, 2014 Shanghai SAFE "Notice on the Issuance of Foreign Exchange Management Implementation Details to Support the Construction of the China (Shanghai) Pilot Free Trade Zone," which reduces regulatory verifications for foreign exchange settlements;
- The May 22, 2014 PBOC Shanghai Branch "Implementing Rules on Segregated Accounting Business in the Shanghai FTZ (for Trial Implementation)" and "Rules on Prudent Risk Management of Segregated Accounting Business in the Shanghai FTZ (for Trial Implementation)," which provide detailed provisions for individuals and enterprises in the FTZ or foreigners to open special FTAs with financial institutions within Shanghai, expediting the reform of capital account convertibility;
- The June 26, 2014 PBOC Shanghai Branch "Announcement Lifting Foreign Currency Deposit Rate Caps in Shanghai," which expands the geography for the pilot reform of lifting foreign currency deposit interest rate caps from the Shanghai FTZ to the whole city; and
- The February 12, 2015 PBOC Shanghai Branch "Detailed Implementation Rules on Macro-Prudential Management of Overseas Financing and Cross-Border Capital Flows under Segregated Accounting Business in the Shanghai FTZ," which further facilitates securing by enterprises in the Shanghai FTZ of overseas financing through FTAs.

AmCham China supports liberalization of capital and currency controls both in the Shanghai FTZ and more broadly across the country. While these announced reforms are indeed positive, a gap remains between the written reforms and their actual implementation. For AmCham China members, more important than the continued announcement of reforms is the taking of concrete actions to implement and enforce those for which written rules have already been promulgated.

Ongoing Regulatory Issues

Industrial Policies That Inhibit Foreign Investment

Chinese government officials are expressly required to foster the development of "national champions," especially in "strategic emerging industries." One of the key tools available to Chinese officials for doing so is the inbound foreign investment approval process, which can be selectively used to grant foreign investors access to China's large domestic market in exchange for commitments to establish JVs with favored Chinese partners, transfer technology, establish R&D capabilities in China, and provide the JV with access to international market channels.

These industrial policies may be based on the view that China will benefit more if a company is owned by Chinese shareholders 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,

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。

令人鼓舞的是，国务院 2014 年 6 月发布的《关于进一步加强贸易政策合规工作的通知》规定，由商务部负责确保国务院各部门和地方各级政府遵守现有的国际协定。中国美国商会鼓励中国政府承认外商投资为中国经济发展带来的诸多益处，全面履行入世承诺，不再将研发、技术转让或其他业绩要求（不管是口头还是书面要求）作为外国投资审批的条件。

不透明的境内外商直接投资审批程序

境内外商直接投资审批程序相对不透明，导致中国政府的投资审批部门偏向外国投资者的国内竞争者。如果他们愿意，他们可以不留下任何显然违反 WTO 协定或者“国民待遇”原则的纸质证据。依据措辞模糊的明文规定或是不成文的潜规则，审批部门经常无需书面说明理由，就可以阻止外国投资进入某一领域。

政府官员只要不公布外商投资某些行业的投资和审批标准及程序，就能有效阻止外资进入上述行业。由于中国尚未按照世界贸易组织 2012 年 7 月的裁决为这类企业建立许可批准制度，外资电子支付服务企业多年来一直面临着这种障碍。

由于审批程序相对不透明以及审批主管部门享有较大的自由裁量权，致使政府部门能够在法律明文要求之外附加特定交易条件之后进行审批，而此举经常是为了以市场准入作为条件，强迫转让技术，或者配合行业政策和本地竞争对手的利益需要。

除了审批程序缺乏透明度外，中国还限制外资公司在投资中国之前开展尽职背景调查，这让问题变得更加严重。这种调查对于任何经营决策来说都是正常和基本的需要。这样的限制使得外资企业面临很大的风险，抑制了投资。

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，确保投资审批部门不再对外商投资提出“扭曲贸易”的条件，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。提高透明度将有助于提高效率，鼓励外商扩大在华投资。

此外，复杂、模糊的并购审查程序和政府各部门间的协商机制也阻碍了外资企业参与中国经济。例如，住房和城乡建设部 2007 年颁布的一项条例就要求外国投资者收购国内企业时，原企业拥有的资质和许可必须重新接受评估和审批。由于重新评估的标准目前还不清楚，相关各方面临的风险加大，被收购企业的资质和许可是否能够延续存在风险。如果重新评估，许可就有可能被降级，开展项目的合法性就会发生变化，企业不得不修改批准的业务计划。这一风险使得交割后的经营计划存在不确定性。中国美国商会鼓励中国政府欢迎外资企业参与并且设立更加透明的并购审查程序和政府各部门间的协商机制，解决外资企业面临的与不公平并购执法相关的问题。而且，外资企业在审查标准方面应当获得与内资企业相同的待遇，因为 2014 年中美战略与经济对话期间，中国曾承诺“公平、客观、透明和非歧视”地执行竞争法规，而“竞争政策的目的是为了提高消费者福利和经济效率，不是为了提升个别竞争者或行业”。

征求利益相关方、专家和政府部门的意见

按照《反垄断法》等相关法规的规定，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，并考虑其对拟定交易的反应。评估正在进行的审批时，对于应该（或不应该）考虑哪类反馈或该反馈意见应该（或不应该）如何考虑，尚未制定任何法定标准。征求上述意见的时间期限也常常没有具体规定。在征求这些意见的过程中，不仅没有公开的程序，还缺乏一定的明确性，增加了审批程序中的不确定性和不透明，也使内资企业有机会通过不恰当地影响审批机关来获得优势。

中国美国商会鼓励中国进一步明确相关审批部门在评估投资申请时可以考虑的利益相关方反馈意见的类型，并且公布向利益相关方、专家、其他政府部门征求意见以及其他审批程序的时限。

复议和上诉程序

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，在实践中却很难获得有效的上诉支持。美国的监管机构则经常遭到起诉，原告经常胜诉。

由于相关主管部门否决投资申请的理由非常宽泛，缺少程序正义，难以收集到投资审批存在不当行为的有力证据或者担心报复，外国投资者常常不愿意寻求行政复议或司法审查，从而滋生了审批机关借助审批程序歧视外资企业或迫使外资企业妥协的环境。

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.

AmCham China was encouraged by the June 2014 State Council "Notice on Strengthening Efforts in Trade Policy Compliance," which will charge MOFCOM with ensuring that government ministries and local governments comply with existing international agreements. We encourage the Chinese government to recognize the various benefits that foreign investment provides to the Chinese economy by 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).

Opaque Inbound FDI Approval Procedures

The relatively opaque nature of inbound FDI approval procedures 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 breach China's WTO obligations or otherwise violate the principle of "national treatment." 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.

Government officials can also 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 e-payment service companies have faced this obstacle for many years, as China has yet to establish a licensing approval regime for such companies despite the July 2012 WTO ruling requiring China to do so.

Finally, 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 beyond any written legal requirements, often with the intent to force technology transfer as a condition of market access or support industrial policies and the interests of local competitors.

This lack of transparency in the approval process is exacerbated by restrictions that prevent foreign companies from performing due diligence background investigations prior to investing in China – a normal and indeed essential element in any business decision. Such restrictions put these companies at significant risk and discourage investment.

To address these concerns, AmCham China encourages the Chinese government to modify its investment approval procedures 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 the Chinese government allow foreign investors to participate with their partners in submitting JV investment approval applications and communicating directly with approval authorities. Greater transparency will increase efficiency and encourage greater foreign investment in China.

Additionally, complicated and unclear merger and acquisition (M&A) review procedures and intra-government consultation mechanisms impede FIE participation in China's economy. For example, a 2007 regulation from the Ministry of Housing and Urban-Rural Development states that when foreign investors acquire domestic enterprises, the qualifications and licenses held by the original enterprise(s) must be reassessed and reapproved. As 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 are jeopardized. When a license is reevaluated and potentially revised down a level, the legal ability to conduct projects changes and forces the company's approved business plan to change. This risk makes planning for post-closing operations uncertain. AmCham China encourages the Chinese government to address concerns regarding unequal M&A enforcement towards foreign firms by welcoming participation by FIEs and instituting more transparent M&A review procedures and intra-government consultation mechanisms. Furthermore, FIEs should be treated in the same manner as their domestically invested counterparts with regard to review standards, in accordance with the 2014 S&ED commitments of "fair, objective, transparent, and non-discriminatory" enforcement for competition law, considering the "objective of competition policy is to promote consumer welfare and economic efficiency, rather than to promote individual competitors or industries."

Consultation with Stakeholders, Experts, and Government Agencies

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 timelines for such consultations are also often not specified. The absence of a public comments 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.

AmCham China encourages the Chinese government to further specify the type of stakeholder feedback that can be

中国美国商会建议中国政府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。这不仅能够提升中国行政复议和司法审查程序的有效性，还有助于遏制非法行为和不当行为，保障政府官员的责任制。我们鼓励中美之间达成的双边投资协定规定透明的复议和上诉程序，确保外资企业和内资企业平等适用审批程序。

建 议

对中国政府的建议：

- **继续就全国和各筹建自贸区的外国投资管理制度改革计划、就《外国投资法》草案的修订工作，征求并积极考虑外资企业的意见。**
- 进一步完善并尽量减少限制、禁止外国投资或者要求外国投资与本地企业合资行业的数量。
- 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。
- 进一步明确相关审批部门在评估投资申请时可以考虑的利益相关方反馈意见的类型，并且公布向利益相关方、专家、其他政府部门征求意见以及其他审批程序的时限。
- 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。
- 设立更加透明的并购审查程序和政府部门间协商机制，扩大外资申请人和外资企业的参与范围，消除外资企业对并购交易审查存在不公的担心。
- 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）业绩要求作为投资审批条件的做法。

对两国政府的建议：

- **优先进行中美双边贸易协定谈判，并在协定中包括以下内容：**
  - 确保外国直接投资审批程序的透明度，向来自其他国家的投资者及其投资、产品、服务和知识产权提供国民待遇和更宽的市场准入，负面清单另有规定的情况除外；
  - 允许所有投资者（包括外国投资者）在其投资因不正当理由被拒或受损时申请适当的救助；
  - 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。

taken into consideration when evaluating investment applications, and to publish timelines for stakeholder, expert, and outside government agency consultations and other approval process steps that currently lack deadlines.

Review and Appeal Procedures

Although Chinese law allows for review of unfavorable foreign investment approval decisions, in practice it is extremely difficult for applicants to obtain effective recourse. In contrast, regulators in the US are commonly sued and plaintiffs often prevail.

Very broadly defined grounds for denying investment applications, a lack of due process, difficulty producing solid evidence of inappropriate conduct, and fear of retribution often discourage foreign investors from seeking administrative or judicial review of investment approval decisions. This fosters an environment where approval authorities are able to use approval processes to discriminate against or extract concessions from foreign firms.

AmCham China recommends that the Chinese government 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. We encourage any BIT agreement between the US and China to include transparent review and appeal procedures that help ensure equal application of approval procedures to foreign and domestic companies.

Recommendations

For the Chinese Government:

- **Continue to seek and actively consider input from the foreign business community regarding foreign investment management system reform initiatives nationwide and in the various FTZs under development, and regarding proposed revisions to the draft Foreign Investment Law.**
- Further refine and minimize the number of sectors where foreign investment is restricted, prohibited, or requires a JV with a local partner.
- Modify investment approval procedures at both the national and local levels to minimize the number of sectors where foreign investment requires government approval (rather than simple filing for the record) and 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 approval authorities evaluate investment applications, and publish timelines 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.
- Institute more transparent M&A review procedures and intra-government consultation mechanisms and expand the scope for participation by foreign applicants and FIEs in order to address concerns regarding possible unequal M&A review of transactions involving foreign companies.
- Take further steps to implement more fully WTO and bilateral commitments not to condition investment approval upon R&D, technology transfer, or other (written or oral) performance requirements.

For Both Governments:

- **Prioritize negotiation of a robust US-China bilateral investment treaty that:**
  - Ensures FDI approval procedures are transparent and accord national treatment and broad market access to investors from the other country – and to their investments, products, services, and intellectual property – except as otherwise specified in a narrowly drawn negative list;
  - Allows all investors, including foreign investors, to have appropriate recourse if their investment is denied or impaired for improper reasons; and
  - Establishes and maintains equal competition among private and state-owned as well as foreign-invested and domestically invested companies.

Standards, Certification, and Conformity Assessment

Introduction

China's standardization system continues to grow rapidly, both in terms of the development of new standards and the revision and implementation of existing ones. AmCham China welcomes these positive developments, including the accreditation of three foreign testing organizations to carry out testing in China, 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 standardization system still imposes a number of barriers to market entry that remain a concern for AmCham China member companies. In order of significance, these barriers include:

❶ The refusal by some Chinese standards committees to adopt existing international standards, including those created by US-based standards bodies that are largely made up of and driven by international industry, such as the Institute of Electrical and Electronics Engineers, despite encouragement from the Chinese government to do so;

❷ The inability of FIEs to fully participate in all phases of China's commercial standards development; and

❸ China's inconsistency in providing full transparency across all standards development and implementation processes.

In early 2014, the Chinese government announced plans to reform the current standardization system. AmCham China welcomes such reform and looks forward to engaging in the consultation process and contributing related knowledge and global experience.

Ongoing Regulatory Issues

Further Deepening China Compulsory Certificate Reforms

For years, China has restricted and controlled which organizations are allowed to perform testing for the China Compulsory Certificate (CCC). To fulfill its commitment made at the 23rd Joint Commission on Commerce and Trade in December 2012, the Certification and Accreditation Administration of China published "The Supplementary Decision on CCC Designated Certification Bodies and Testing Labs for Public Review" (Notice No. [2014] 25) on July 31, 2014, announcing that several non-Chinese testing organizations had been accredited to perform CCC testing for specific product categories.

AmCham China welcomes this action, as it will facilitate trade between the US and China, providing more alternatives for manufacturers to comply with related certification requirements in the China market. However, AmCham China believes further concrete steps need to be taken to deepen CCC reforms, including allowing non-Chinese testing organizations to perform CCC testing for all product categories and enabling non-Chinese organizations to be CCC certification organizations.

Recognition and Adoption of International Standards and Due Process

Over the past two years, China's government and its industries have embraced some international standards, including those developed by standards development organizations (SDOs) located in the US. In 2014, China continued to increase its efforts to promote international standards, for example, by leading the standards establishment work on the Internet of Things (IoT) in the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) joint technical committee (JTC) (ISO/IEC JTC1). While AmCham China is pleased to see such greater involvement in international standards development, we believe much more progress is needed in this area.

The partial harmonization of international and Chinese standards remains a serious concern for many foreign companies in China. Many Chinese standards committees continue to create unique Chinese standards where internationally accepted technical standards already exist. These Chinese standards, which are often fragmentary adoptions and extractions from existing international standards, are duplicative, create trade barriers restricting market entry of foreign imports, and hinder the export of Chinese technology to the global market, which increases cost and time-to-market for all parties.

标准、认证和合格评定

引 言

中国标准化体系建设在新标准制定与现有标准修订和实施两个方面继续迅速推进。中国美国商会对中国标准化体系建设取得的积极进展表示欢迎，这些进展主要体现在对三家外资检测机构在华开展检测业务资格的认证，外商投资企业（FIEs）对标准制定参与度的提高，以及标准通报和制定过程透明度的增加等。

尽管有上述进步，中国的标准体系在市场准入方面设置的诸多障碍仍令中国美国商会的会员企业担忧。按重要性排列，这些障碍包括：

❶ 尽管中国政府鼓励接受国际标准，但部分中国标准机构拒绝采用包括美国标准机构所制定标准在内的现行国际标准，而上述美国标准机构，如电气电子工程师协会(IEEE)大多是由国际业界组成和推动；

❷ 外资企业不能充分参与中国商业性标准制定的全过程；及

❸ 中国在各项标准制定和实施过程中不能始终保持充分透明。

2014 年初，中国政府宣布对现行标准化制度进行改革的规划。中国美国商会对上述改革表示欢迎，并期待参与征求意见过程，贡献相关知识和全球经验。

现存监管问题

进一步深化中国强制性产品认证改革

多年来，中国对获准进行中国强制性产品认证(CCC)检测业务的机构施行限制和控制。为履行中国政府在 2012 年 12 月举行的第 23 届中美商贸联委会（JCCT）上做出的承诺，中国国家认证认可监督管理委员会（国家认监委）于 2014 年 7 月 31 日出台了《国家认监委关于承担强制性产品认证相关任务认证机构和实验室补充指定决定的公告》（2014 年第 25 号公告），指定数家非中资检测机构也可以开展特定类型产品的 CCC 检测。

中国美国商会对此举表示欢迎，因为它将为制造商满足中国市场相关认证要求提供更多的选择，从而促进美中两国贸易发展。不过中国美国商会认为还需进一步采取切实措施深化 CCC 改革，包括允许非中资检测机构开展所有类型产品的 CCC 检测，并允许成立非中资 CCC 认证机构。

国际标准的认可和采用以及科学程序

过去两年来，中国政府及相关行业接受了一些国际标准，包括在美国的标准制定组织(SDOs)制定的相关标准。2014 年，中国继续加大推广国际标准的力度，如在国际标准化组织(ISO)和国际电工委员会(IEC)联合技术委员会(JTC)(ISO/IEC JTC1)内牵头组织物联网（IoT）标准制定工作。尽管中国美国商会乐见中国更广泛深入地参与国际标准制定，但我们也认为这方面还需取得更多进展。

中国标准仅仅与部分国际标准接轨依然是许多在华外资企业所担心的一件大事。在国际普遍认可的技术标准已经存在的情况下，中国许多标准委员会继续制定特有的中国版标准。这些中国版标准往往零散地借鉴和吸收各种现有国际标准，是一种重复并造成贸易壁垒，限制市场准入或外国进口，同时也阻碍了中国技术向全球市场的出口，增加了市场各方的经济和时间成本。

另一大挑战是中国一直不愿意接受国际性标准化联盟机构作为合格标准制定机构的资格。从实践角度讲，由于全球市场上的技术及其应用数不胜数，没有任何单独的一个政府、个人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。因此，至关重要的是监管者应该以开放的态度面对并接纳所有现已获得全球认可的标准制定机构，包括那些设在美国的标准制定机构。在采用某项标准时，监管者还应根据国际上认可的标准制定原则和正

Equally challenging is China's continued reluctance to accept globally oriented standardization coalitions as valid SDOs. From a practical standpoint, no government, individual, or group of SDOs can singularly lead standards development for the innumerable technologies and their applications in the global market. It is essential, therefore, that regulators be open to all existing globally recognized SDOs, including those that are US based. Regulators should also base the decision to adopt a standard on internationally accepted standards development principles and due process, which include open participation, transparency, impartial voting rights, and consensus. In particular, the technical quality and market relevance of the standard, as accepted by users in the marketplace, should be given weight. By accepting these SDOs and by following these principles for adopting standards, AmCham China believes the Chinese government will not only improve its standardization system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

Therefore, AmCham China strongly urges the Chinese government to officially broaden its recognition of international SDOs beyond the ISO, IEC, and International Telecommunications Union (ITU) to any organization that follows the World Trade Organization 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-based SDOs meet these qualifications and hopes that the Chinese government will equally engage with and accept those SDOs, as it has with the ISO, IEC, and ITU.

Participation of Foreign-Invested Enterprises in Standards Setting

Standards quality is of critical importance to China's information and communications technology (ICT) industry, as it enables companies to optimize investment, drive innovation, ensure interoperability, and safeguard information security. SDOs open to all interested parties ensure the development and adoption of high-quality standards that yield global value and, more importantly, do not conflict with existing, internationally accepted global standards. In particular, SDOs can serve as the vehicle to foster Chinese ICT industry growth by enriching its standards-development process with foreign global ICT companies' experience and technological expertise.

Currently, in China's ICT industry, some technical committees (TCs) and subcommittees (SCs) limit or preclude FIE participation in the standards drafting process. For instance, TC8 of the China Communications Standards Association does not permit FIE participation in TCs or SCs, and China's Information Security Standardization Technical Committee (TC260) only permits FIE participation subject to TC or SC discretionary approval. FIE participation is often granted under "Observer" status with limited or no voting rights, TC electorate eligibility, standards drafting participation, and is often subject to inflated membership fees. Even with "Observer" status, TCs continue to exclude FIE participants and hold discussions and meetings where only a selected group of domestic companies and organizations are allowed to participate.

AmCham China recommends that the Standardization Administration of China (SAC) ensure all SDOs and working groups are open, transparent, and equitable to foreign and domestic companies alike by granting the same opportunities and rights to participate in the standards drafting process regardless of shareholder nationality. By adopting a more open attitude and welcoming foreign expert technical suggestions and opinions from global enterprises, China can minimize conflicts in domestic and global standards compliance, facilitate the internationalization of domestic firms, and enhance competitiveness in the global marketplace.

Consortia Standards

China's government-driven standardization process is undergoing a key reform in consortia-led standardization (e.g., those developed by societies, associations, chambers, industry, technical alliances). The government seeks to decentralize and streamline the administrative process and consortia are encouraged to directly lead the standardization process. The SAC and Ministry of Science and Technology have set up pilot programs to encourage consortia to participate in standards development.

AmCham China members believe consortia standardization is a positive departure from traditional Chinese government standards development practices and more in line with international SDOs. We applaud the Chinese government's effort to integrate industry expertise into the standardization process and request that China adhere to international norms of transparency and openness to ensure equitable participation and fair treatment for domestically invested enterprises and FIEs alike during the consortia standards participation process.

Although industry is excited by consortia standardization developments, it is essential that Chinese regulators and standards committees provide a clear set of rules and requirements to guide the healthy and orderly development of consortia standards and prevent industry abuse of select interests. AmCham China also requests the Chinese government to clarify its role in overseeing consortia standardization processes and state the relationship between consortia and traditional standardization processes (i.e., industry and/or national standards) to improve industry understanding.

当程序做出决定，这些原则和科学程序包括公开参与、透明度、公平的表决权以及协商一致。尤其是应重视标准的技术品质和市场相关度，即市场上用户的接受程度。中国美国商会相信，中国接受这些标准制定机构并遵循这些标准制定原则不仅将有助于改善中国的标准体系，而且有助于提升中国技术和产品在全球市场中的竞争力。

因此，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）之相关原则的所有标准制定机构，包括程序透明、公开参与、公正与协商共识、相关性与有效性、协调性以及兼顾发展中国家利益等原则。中国美国商会认为在美国的标准制定机构均符合上述要求，并希望中国政府能够将这些标准制定机构与 ISO、IEC 和 ITU 一视同仁，平等对待。

外资企业参与标准制定

标准质量对中国的信息和通讯技术产业（ICT）至关重要，因为它能够使公司优化投资、推动创新、保证互用性并且保障信息安全。标准制定机构应向所有利益相关方开放，以确保所制定和采用的高质量标准能产生全球价值，并且更为重要的是不会与国际普遍认可的现有全球标准发生冲突。尤其是，标准制定机构能够利用国外全球性信息和通讯技术公司的经验和技术知识来丰富标准制定程序，从而成为培育中国信息和通讯技术产业增长的潜在工具。

目前在中国的信息和通讯技术产业内，有部分技术委员会和技术分委会限制或阻止外资企业参与标准的起草过程。比如，中国通信标准化协会第 8 技术委员会不允许外资企业参加技术委员会或技术分委会，全国信息安全标准化技术委员会（TC260）虽然允许外资企业参与，但要经技术委员会或技术分委会裁量批准。外资企业往往被允许以“观察员”的身份参与，而其投票权、技术委员会选举资格以及参与标准起草工作都受到限制或根本没有，并且经常要交纳高额的会员费。即便获得“观察员”身份后，技术委员会还是不允许外资企业参加相关会议和讨论，而这些会议和讨论只挑选部分国内企业和机构参加。

中国美国商会建议，中国国家标准化管理委员会（国标委）应确保所有标准制定机构和工作组对外资企业和中资企业同样地公开、透明和平等，在标准起草过程中给予各利益相关者相同的参与机会和权利，而不论利益相关者的国籍如何。通过采取更为开放的态度并且对全球企业提供的外国专家技术建议和意见持欢迎态度，中国就能最大程度地消除国内标准与全球标准不相符的矛盾，促进国内企业的国际化，提高在全球市场中的竞争力。

团体标准（学会、协会、商会、产业技术联盟）

中国的标准化进程正经历从政府主导型向产业主导型过渡的重大变革。政府大力推行简政放权，简化行政审批程序，鼓励社会团体直接牵头推动标准化进程。国家标准委和科技部已启动相关试点，鼓励社会团体参与标准制定工作。

中国美国商会认为社会团体标准化活动是中国政府标准化制度发展的正确方向，更符合国际标准制定机构的做法。我们对中国政府在标准化进程中采纳企业贡献的行业知识等努力表示赞赏，并促请中国遵守透明公开的国际规范，确保所有内资和外资企业在团体标准制定过程中均能平等参与并得到公平对待。

尽管各行业对团体标准化活动深感振奋，但至关重要的是中国的监管者和标准制定委员会要提供一套清晰的规则和要求，引导团体标准的健康有序制定，并防止行业为谋求私利而滥用规定。中国美国商会还促请中国政府明确其在监督团体标准化过程中所起的作用并说明团体标准化和传统标准化过程（即行业和、或国家标准）之间的相互关系，以增进行业的理解。

最新进展

标准化体制改革

2014 年初，中国政府公开表示将对二十余年来一直未变的标准化体制进行改革。尽管上述改革细节尚在讨论之中，但大家普遍认为上述改革将遵循中央政府支持市场化的原则，朝着市场主导型方向迈进。中国美国商会希望参与改革相关咨询过程，分享相关知识和行业经验。市场主导型标准化体制将有益于产业下一阶段的发展。与此同时，中国美国商会相信上述改革将鼓励中国进一步融入国际标准制定过程，采用更多国际通行的标准，并为有意遵守中国标准化体系的所有企业营造更为公平、无差别的竞争环境。中国美国商会相信，这些举措将有助于激励中国创新，吸引更多外国投资和研发投入，以及推动中国自主制定的标准走向国际。

Recent Developments

Standardization System Reformation

The Chinese government publicly announced in early 2014 its intention to reform its standardization system, which has remained unchanged over the past two decades. Although the details are still under discussion, it is believed that the reforms will lead to a more market-driven system in accordance with central government policy in support of marketization. AmCham China hopes to engage in the consultation process to share knowledge and industry experience. A market-driven standardization system would benefit the next phase of industry development. Meanwhile, AmCham China believes the reforms would encourage China's further integration into the international standards-setting process, adoption of internationally accepted standards, and a level playing field for all companies seeking to comply with China's standardization system without discrimination. AmCham China believes all of these would increase Chinese innovation, attract greater foreign investment and research and development, and advance the acceptance of Chinese-developed standards internationally.

National Standards Streamlining and Integration Work Plan

In July 2013, the State Council approved the SAC's plan to streamline and integrate mandatory standards to eliminate duplications. We welcome this plan, which can facilitate FIE compliance with national and industrial requirements.

China's International Standards Promotion Efforts

On September 2, 2014, China's proposed international standard on "Reference Architecture for IoT" was approved by ISO/IEC JTC1 (project number ISO/IEC 30141). The project was initiated by the ISO/IEC Working Group on Sensor Networks and participants in the working group include the US, South Korea, Canada, and Australia. This is one of the most recent examples of international adoption of China's national standards, and is viewed as a breakthrough for China's international IoT standardization efforts.

Development of Security-Related Policies

Since the formation of China's Central Cybersecurity and Informatization Leading Group on February 27, 2014, China's industry regulators have tightened requirements for national networks and information security. China's distrust of foreign technologies and governments has given rise to unilateral approaches and exclusionary reliance on indigenous technology. Nearly all newly developed policy documents are required to promote "secure and controllable" products and software in such a way that favors domestic industry stakeholders and allows them to benefit from security concerns in the marketplace at the expense of foreign competitors. China's standards and technologies are increasingly creating challenges for FIEs in cybersecurity and information security-related areas. In the drafts of some information security standards, there is a requirement for the product's or software's source code to be provided. However, companies normally consider source codes proprietary information and an intellectual property asset which cannot be shared. AmCham China requests that new information security standards do not include a source code requirement.

Information Security Standards on Cloud Computing

The National Information Security Standard Technical Committee (SAC/TC260) announced in September 2014 that two national standards for cloud computing had been officially approved by the SAC and were implemented starting April 1, 2015. The two standards are the:

- "Information Security Technology - Security Capability Requirements of Cloud Computing Services" (GB/T 31168-2014); and
- "Information Security Technology - Security Guide of Cloud Computing Services" (GB/T 31167-2014).

TC260 conducted a six-month pilot program with major domestic ICT companies to test the new standards. No foreign companies were invited to participate. AmCham China requests full participation by foreign companies in such pilot programs. In addition, AmCham China is concerned that the scope of the standards is unclear. The standards are "recommended for government agencies and critical infrastructure operators" which potentially broadens the scope of implementation beyond the originally stated intent. AmCham China proposes that this be clarified prior to implementation.

Recommendations

- **Broaden recognition of international SDOs beyond the ISO, IEC, and ITU to any organization which follows the WTO/TBT principles on international standards development. [SAC]**
- Adopt existing global technical standards whenever available and avoid creating duplicative national standards or standards that diverge from prevailing global standards. [SAC]
- Adhere to international norms of transparency and openness in the consortia standards development process. [SAC]
- 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. [SAC]

国家标准简化和整合工作计划

2013 年 7 月，国务院批准了国家标准委简化和整合强制性标准以消除重复的计划。简化和消除重复性标准是受欢迎的举措，有助于促进外资企业符合国家和行业要求。

中国技术标准的国际化推广

2014 年 9 月 2 日，中国设计的“物联网参考架构”国际标准获得了 ISO/IEC JTC1 的批准（项目号：ISO/IEC 30141）。该项目由 ISO/IEC 传感器网络工作组发起，参加国包括美国、韩国、加拿大和澳大利亚。这是近期国际社会采纳中国国内标准的一项实例，也被视作是中国物联网标准国际化的一项重大突破。

安全相关政策的发展

自 2014 年 2 月 27 日中国成立中央网络安全和信息化领导小组以来，中国的行业监管部门加强了对国内网络和信息安全的管控。中国对外国技术和政府的不信任导致其单边、排他性地依赖自主研发技术。几乎所有新制定的政策文件都要求推广“安全可控”的产品和软件，从而扶助国内行业相关方，允许他们从安全政策中受益却牺牲了外国竞争者的利益。中国在网络安全和信息安全相关领域的标准和技术对该领域的外资企业构成越来越严重的挑战。在起草某些信息安全标准时，中国要求提供产品或软件的源代码。但企业一般都认为源代码是企业的财产性信息和知识产权资产，不可分享。中国美国商会促请中国在起草新的信息安全标准时取消提供源代码的要求。

云计算信息安全标准

2014 年 9 月，全国信息安全标准技术委员会（SAC/TC260）宣布两项云计算国家标准已经正式获得国家标准委会的批准，将于 2015 年 4 月 1 日起正式实施。这两项标准分别是：

- 《信息安全技术云计算服务安全能力要求》（GB/T31168–2014）；
- 《信息安全技术云计算服务安全指南》(GB/T31167–2014)。

全国信息安全标准技术委员会与国内主要 ICT 企业一起，针对上述标准进行了为期六个月的试点。但没有一家外资企业收到参与邀请。中国美国商会请求授予外资企业充分参与上述试点的资格。另外，中国美国商会担心上述标准的适用范围不清。“建议政府部门和重点行业和企事业单位”适用该标准可能会扩大标准预定的实施范围。中国美国商会建议在实施上述标准之前应明确适用范围。

建 议

- **扩大对国际标准制定组织的认可范围，从 ISO、IEC 和 ITU 扩大至其他遵循世界贸易组织贸易技术壁垒协定 (WTO/TBT) 关于国际标准制定原则的标准制定组织。（国标委）**
- 采用现有国际技术标准，避免出台重复性的国家标准，或与国际通行标准不符的国内标准。（国标委）
- 在社会团体标准的制定过程中，遵循透明和公开的国际准则。（国标委）
- 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相关工作，确保外资企业能够与内资企业一样，平等地参与各个阶段的标准制定工作。（国标委）

Tax Policy

Introduction

Major changes occurred in China's cross-border tax regulatory system in 2014. For example, the Organisation for Economic Co-operation and Development and G20 (OECD/G20) initiative for multilateral cooperation in addressing tax base erosion and profit shifting (BEPS) made steady progress. China played an important consultative role in the BEPS initiatives and is expected to implement various domestic rules to achieve the major objectives contemplated by BEPS (i.e., preventing multinational companies from eroding the Chinese income tax base and moving profits beyond the reach of Chinese tax regulators). In addition to heightening enforcement in the international taxation arena, China has pushed ahead with turnover tax reforms which aim to eventually unify value-added taxes (VAT) and business taxes (BT).

Recent Developments and Regulatory Challenges

Transfer Pricing

In September 2014, the OECD released the first seven deliverables under the BEPS project (2014 BEPS Deliverables), setting out its recommendations to enhance the integrity and fairness of the international tax system and ensure that taxing rights are aligned with economic activities and value creation. Through China's membership in the OECD's Committee of Fiscal Affairs, the State Administration of Taxation (SAT) has been intimately involved in the BEPS initiative. The SAT's actions have clearly shaped China's transfer pricing framework, as the 2014 BEPS Deliverables provide support for several key issues at the heart of China's new transfer pricing measures, such as those concerning location-specific advantages and profit splits.

AmCham China's overriding concern and recommendation is for the SAT to make clear that it will seek to ensure that China's tax rules and enforcement practices remain consistent with the emerging global consensus, and that it will seek to avoid hasty adoption of new rules and practices in advance of such consensus being realized in the finalized BEPS deliverables. For example, we urge the SAT to adopt country-by-country (CBC) reporting requirements that are consistent with BEPS standards and do not require additional columns of information in the CBC template.

The demands of the BEPS initiative – both during its development and implementation phases – continue to place significant strain on the SAT's Anti-avoidance Division. In the 2014 *White Paper*, we urged the Chinese government to put more resources into transfer pricing by increasing the number of officials working in the Division, and we would like to reemphasize this recommendation. While the Division has increased the level of transfer pricing enforcement throughout China, it has done so largely by leveraging local tax authority resources rather than increasing staffing at the Division. We believe there is a need for coordination capability and a degree of expertise that can only be achieved through the expansion of the Division itself.

As we noted last year, AmCham China members highly value the availability of advance pricing agreements (APAs) to help manage their global tax affairs and prevent double taxation. Transfer pricing developments in the BEPS initiative seem to augur greater uncertainty in such areas as determining what functions are most important and how risks should be allocated and assessed. We believe APAs will become even more important in this environment. Again, an increase in the number of officials in the Division is the most effective way to increase the availability of APAs.

Large Cross-Border Payments

The SAT's increased focus on transfer pricing matters is reflected in the July 2014 issuance of *Shuizongbanfa* [2014] No. 146 (Directive 146), which instructs local tax authorities to survey large cross-border payments of service fees and royalties made by Chinese entities between 2004 and 2013. While we understand the need for greater scrutiny of these types of payments per se, we urge Chinese tax authorities to weigh the evidence carefully and not simply disallow deductions for them as a matter of course.

Regarding service payments, the SAT has laid out its view of what constitutes an appropriate inquiry in its April 2014 letter to the UN working group on transfer pricing issues.

税收政策

引 言

2014 年，中国跨境税收监管制度发生重大变革。例如，经济合作与发展组织（OECD）和二十国集团（G20）就有关税基侵蚀和利润转移（BEPS）问题开展多边合作的行动计划取得了稳步进展。中国在 BEPS 项目中发挥着重要的咨询作用，并有望落实各项国内法规以达成 BEPS 设计的主要目标（如防止跨国企业侵蚀中国所得税税基和转移利润，逃脱中国税收监管部门的监管）。另外，为了加强国际税收执法，中国还进一步推进营业税改革，以期最终实现增值税（VAT）和营业税的合并统一。

最新进展和监管挑战

转让定价

2014 年 9 月，OECD 发布了 BEPS 行动计划首批的七项成果，就提高国际税收制度的诚信度和公正性、确保税收权利与经济活动及价值创造相适应等方面提出了建议。由于中国是 OECD 财政事务委员会的会员国，国家税务总局一直密切参与 EBPS 项目进程。国家税务总局的这些举措显然对中国的转让定价制度框架产生了影响，因为 2014 年公布的 BEPS 成果为中国最新出台的转让定价措施所涉及的若干重大问题提供了支持，例如：有关区位优势和利润分成的转让定价措施。

中国美国商会最重要的关注和建议是，国家税务总局能够明确表示将努力确保中国的税收制度和执法措施将与日益显现的全球共识保持一致，并将努力避免在 BEPS 最终成果出台、上述全球共识得以形成之前匆忙出台新制度和新做法。例如，我们促请国家税务总局采用与 BEPS 相一致的分国（CBC）报告要求，且在 CBC 模板基础上不再增加新的信息项。

BEPS 行动计划提出的相关要求——不管是开发阶段还是实施阶段——都对国家税务总局的反避税处构成巨大压力。在 2014 年的白皮书中，我们促请中国政府增加该处工作人员数量，加大对转让定价监管的投入，今年我们再次强调此项建议。我们相信只有通过扩充该处人员配备，才能满足转让定价监管对协调能力和专业知识的需求。

正如我们去年所提到的，中国美国商会的会员企业高度重视预约定价协议（APA）之可用性，以协助企业管理其全球纳税事务和避免双重征税。BEPS 行动计划的转让定价发展动态，似乎预示着在某些方面会出现更大的不确定性，诸如：确定哪些功能最为重要以及如何分配和评估风险等。在这种环境下，我们认为 APA 将会越来越重要。另外，增加反避税处人员配备是提高 APA 可用性的最为有效的途径。

大额跨境支付

2014 年 7 月国家税务总局发布了税总办发 [2014] 第 146 号文（146 号文），表明国家税务总局越来越重视转让定价问题。146 号文要求地方税务部门对 2004–2013 年向境外关联方支付服务费和特许权使用费的中国境内的企业开展摸底排查。尽管我们理解对上述支付加强检查的必要性，但我们促请中国税务机关能够谨慎评估权衡相关证据，而不会想当然地直接决定不准许扣除。

在服务费支付方面，国家税务总局在 2014 年 4 月给联合国工作组关于转让定价问题的函件中，就调查过程中所需考量的要素表明了自己的观点。尽管国家税务总局对于某些考量要素予以特别强调，我们认为国家税务总局的立场与 OECD《转让定价指南》中所反映的全球标准是基本一致的。我们建议国家税务总局的相关标准应当只用于决定公平交易服务费的数额，而不是全盘否定服务费。例如，如果一家企业总部的活动同时使总部和中国子公司获利——即使是总部获利更多——则按照该子公司相应的获利份额相应地对其收取服务费应属合理。另外，虽然我们了解认定服务费数额会面临诸多困难，但是我们希望在实

While the SAT places special emphasis on certain elements of the inquiry, we believe that the SAT's position is largely consistent with global standards reflected in the OECD's Transfer Pricing Guidelines. However, we suggest that some of the criteria advocated by the SAT should be considered relevant to the quantification of the amount of the arm's length service fee rather than leading to the disallowance of the service fee in total. For example, if certain headquarters' activities benefit both the headquarters and the Chinese subsidiary – even if the benefit to the headquarters is greater – then it would nonetheless be appropriate to charge the subsidiary a service fee commensurate with its share of the total benefit. In addition, we recognize the challenges involved in authenticating the amount of the service fee, but hope that authentication will not be an insurmountable hurdle in practice.

With respect to royalties, Directive 146 instructed that greater focus should be placed on payments to intermediaries with relatively little substance. This focus is understandable, but it should be recognized that such intermediaries often have acquired the intangibles at an arm's length from the affiliate that actually developed the intangibles, or that the intermediary pays substantial royalties to the developer on an ongoing basis. Outright disallowance of deductions for royalty payments in these situations would be inappropriate. In addition, no artificial limit should be imposed on the absolute value of a royalty fee. In some circumstances, a royalty rate well in excess of 10 percent of sales for particularly valuable intangibles is entirely consistent with the arm's length standard. We raise this caveat not only to the relevant tax authorities but also those in the Ministry of Commerce (MOFCOM) responsible for authorizing the cross-border remittance of technical royalties.

Treaty Qualification in Entrusted Investment Structures

In April 2014, the SAT issued guidance in Bulletin 24 which contains rules on determining beneficial owner status in "entrusted investment" structures and clarifies previous SAT guidance on tax treaties issued since 2009.

Bulletin 24, which went into effect June 1, 2014, provides that a nonresident investor may apply for tax treaty benefits as the beneficial owner of income derived from an entrusted investment. An entrusted investment structure is one in which a nonresident entrusts its own funds to an offshore financial institution that is engaged in the business of securities brokerage, asset management, and custodial services (e.g., for funds, securities) for the purpose of making equity or debt investments in Chinese resident enterprises.

In general, it is our understanding that the rule encompasses certain investment arrangements that investors make with qualified foreign institutional investors (QFIIs) under the current Chinese regulations, whereas investments through other financial institutions engaged in asset management and investment (e.g., private equity funds, collective investment vehicles, trusts) will likely be excluded from the scope of entrusted investment due to differences in the investment decision-making process, risk, and benefits, among other reasons. Moreover, Bulletin 24 imposes strict documentation requirements on nonresident investors to prove the existence of a qualifying entrusted investment structure, which some investors may find difficult to satisfy due to confidentiality concerns.

In addition, under most of China's tax treaties, a reduced withholding tax rate on dividends will generally be granted where the beneficial owner directly holds at least 25 percent of the capital of the company paying the dividends. Therefore, when an offshore professional institution is regarded as a nonresident investor's nominee or agent for purposes of the beneficial ownership requirement under a treaty, the nonresident investor can enjoy the reduced withholding tax rate only where it meets the 25 percent shareholding requirement. This requirement may restrict the application of Bulletin 24 since current rules may not allow QFIIs to own more than a certain percentage of a Chinese company.

With the emergence of various investment structures for offshore funds to invest into China, the SAT hopes to clarify the determination of beneficial ownership for certain common investments, and Bulletin 24 thus provides welcome guidance. However, taxpayers that had hoped for clarification of beneficial ownership for a broader range of investment structures than the qualifying entrusted investment structures defined in Bulletin 24 may find the narrow scope of the bulletin disappointing.

Anti-Treaty Shopping

China has renegotiated several of its tax treaties since November 2013, including:

- New treaties with France, Germany, and Russia were signed but have not yet come into force;
- New treaties with Belgium and the United Kingdom entered into effect in the first half of 2014; and
- New treaties with Ecuador and the Netherlands took effect in January 2015.

Some common features of these treaties include:

- A reduced five percent withholding tax rate on certain dividends (down from 10 percent) and a reduced withholding tax on certain royalties;
- A miscellaneous rule that enables tax authorities to apply their domestic general anti-avoidance rules, notwithstanding the provisions of the treaty;
- Additional anti-treaty shopping clauses in the dividend, interest, royalties, and other income articles that deny treaty benefits where the main purpose, or one of the main purposes, of an arrangement is to take advantage of the relevant treaty article; and

践中，上述认定不会成为不可逾越的障碍。

在特许权使用费方面，146 号文规定应重点关注向不承担功能或只承担简单功能的中间方支付特许权使用费的情况。重点排查上述方面可以理解，但必须认识到，通常上述中间方已经以公平合理的价格向实际开发无形资产的关联方购买该无形资产，或者该中间方一直向无形资产的开发人支付特许权使用费。在这些情况下，如完全不允许抵扣特许权使用费实属不合理。另外也不应当对特许权使用费的绝对价值人为设定上限。有时一些特别有价值的无形资产的特许权使用费率即便超过了使用方销售额的 10%，但却完全符合公平交易的标准。上述提醒不仅针对相关税务部门，还适用于商务部负责特许权使用费跨境汇付授权的相关部门。

委托投资结构适用税收协定资格

2014 年 4 月，国家税务总局发布 24 号公告，对于“委托投资”情况下受益所有人身份的认定做出规定，并明确了国家税务总局自 2009 年起发布的有关税收协定的相关指导文件的适用性。

第 24 号公告自 2014 年 6 月 1 日起施行，规定非居民投资者作为受益所有人通过委托投资的投资收益可以申请享受税收协定待遇。委托投资是指非居民将自有资金直接委托给境外专业机构用于对在华居民企业的股权、债权投资，其中的“境外专业机构”是指经其所在地国家或地区政府许可从事证券经纪、资产管理、和托管服务（如基金、证券托管）等业务的金融机构。

总体而言，我们理解上述规定包含投资者与中国现行法律所认可的合格境外投资者（QFII）之间的部分投资安排，但投资者通过从事资产管理和投资的其他金融机构（如私募股权基金、集合投资工具和信托）则可能被排除在上述委托投资范围之外，原因是投资决策程序、风险和收益及其他因素方面存在差异。另外，24 号公告对非居民投资者提交的委托投资资质证明文件提出了严格要求，出于保密的原因，部分投资者很难满足上述要求。

另外，中国的大部分税收协定都规定，受益所有人必须直接持有付息企业至少 25% 的股份方可享受股息预提所得优惠税率。因此，出于满足某税收协定下的受益所有人要求之目的，当一家境外专业机构被认定为一名非居民投资人的提名人或代理人时，如该非居民投资人满足 25% 的持股要求，就可以享受股息预提税优惠。但该持股比例要求却可能限制第 24 号公告的适用，因为现行法律可能不允许 QFII 持有的中国公司股份超过特定比例。

随着境外基金对华投资所使用的投资结构不断多样化，国家税务总局希望明确部分普通投资受益所有人的认定办法，因此出台 24 号文件予以指引并受到欢迎。然而纳税人一直希望总局文件能够就更广泛的投资结构所涉及的受益所有人问题进行说明，因此对第 24 号公告中所包括的较为狭窄的合格委托投资结构类型可能会感到失望。

反税收协定滥用

自 2013 年 11 月起，中国已经与下述多个国家重新协商签订了税收协定：

- 与法国、德国和俄罗斯签订新税收协定但尚未生效；
- 与比利时和英国签订新税收协定并于 2014 年上半年生效；
- 与厄瓜多尔和荷兰签订新税收协定并于 2015 年 1 月生效。

上述税收协定具有如下共同特点：

- 部分股息预提税税率从 10% 降至 5%，并降低部分特许权使用费预提税税率；
- “其他规则”条款中允许税务机关运用本国一般反避税规则，而不论协定是否另有规定；
- 增加反择协避税条款，规定如果某项安排的主要目的或主要目的之一是利用协定相关条款避税的，则相关股息、利息、特许权使用费及其他收入不得享受相应的协定优惠；
- 其他修订使得新协定更加符合 OECD 协定范本。

中国税务机关认可的 2014 年 BEPS 成果文件包括第六项行动报告《防止税收协定优惠的不当授予》。该报告列举了各 BEPS 参与国所一致认可的应当予以打击的择协避税行为。

为使中国与国际接轨，我们建议国家税务总局采取下述得到国际一致认可的做法：

❶ 在评估企业是否可以享受税收协定中的预提税减免时，将受益所有人认定与一般反避税规则（GAAR）脱钩。受益所有人认定测试应仅考虑收入接收方对收入是否有控制权；

- Other changes to bring the new treaties more in line with the OECD model treaty.

The 2014 BEPS Deliverables agreed to by China include the report on Action 6, "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances." This report outlines the means by which treaty shopping should be countered, as agreed upon by the countries participating in the BEPS process.

We propose that, for China to align itself with this globally agreed-upon approach, the SAT should:

❶ Decouple the general anti-avoidance rule (GAAR) from the beneficial ownership determination when evaluating whether treaty-withholding tax relief is available. The beneficial ownership test should simply be a test of rights of control over income;

❷ Clarify that the GAAR is the instrument used when countering treaty shopping, whether in respect to passive income treaty-withholding tax relief (where it may be used in conjunction with the purpose test in the passive income articles of newer treaties), or in respect to capital gains treaty-withholding tax relief; and

❸ Indicate that the new OECD model tax convention (MTC) guidance on the principal purposes test (PPT) can be referred to when applying the GAAR to treaty shopping arrangements.

The reasoning for the above recommendations is detailed in the following paragraphs.

The report on Action 6 specifies that, at a minimum, the defenses to be established by countries against treaty abuse will include a treaty-based limitation on benefits (LOB) clause together with a treaty-based PPT or, alternatively, a PPT or an LOB as supplemented by domestic anti-abuse rules (e.g., GAAR) to address conduit arrangements. As China has historically not favored the LOB approach, AmCham China recommends that China align its approach with the globally agreed practice of utilizing its GAAR, in addition to the "main purpose" tests it is increasingly including in the passive articles of its treaties, to address treaty shopping. However, at present, many commentators feel that China is combating treaty shopping through an unorthodox use of the beneficial ownership definition, as described in SAT Circular 601 (2009), which effectively includes an "embedded GAAR." Although the beneficial ownership evaluation factors, as detailed in Circular 601, do consider whether the treaty relief claimant controls the disposition of the income and the underlying property – in line with the internationally understood meaning of beneficial ownership – factors such as whether the staffing, premises, and other business activities and assets of the relief claimant are commensurate with its income are also considered.

In the view of most commentators, such substance-based factors are relevant for a GAAR analysis of the artificiality of the arrangements in evaluating whether treaty shopping is at issue. However, combating treaty shopping through the beneficial ownership requirement is at variance with the internationally agreed approach detailed in the report on Action 6, and we recommend that the SAT unbundle the GAAR application from the beneficial ownership definition. At the same time, we suggest that when capital gains tax relief is denied by the SAT regarding the Double Tax Agreement and withholding income tax (DTA, WHT), it be done on the basis of the GAAR, rather than Circular 601. While commentators have long inferred that this is the basis on which DTA relief is denied, it has never been expressly stated by the tax authorities.

Viewed from the perspective of adherence by China to the agreed international approach in the report on BEPS Action 6, use of the GAAR to combat treaty abuse is a stand-in for Chinese adoption of the PPT. As such, the SAT would best fulfil its commitment to adopt the aligned BEPS approach to treaty abuse by confirming that the PPT application guidance should be followed when applying the domestic law GAAR to counter treaty shopping. Some of the BEPS Commentary provides helpful guidance regarding GAAR application, including:

- "Merely reviewing the effects of an arrangement will not usually enable a conclusion to be drawn about its purposes";
- "Where...an arrangement can only be reasonably explained by a benefit that arises under a treaty, it may be concluded that one of the principal purposes of that arrangement was to obtain the benefit"; and
- "Where an arrangement is inextricably linked to a core commercial activity, and its form has not been driven by considerations of obtaining a benefit, it is unlikely that its principal purpose will be considered to be to obtain that benefit."

In particular, given that the SAT has recently, with release of the *Shuizonghan* [2014] No. 317, launched a wide-ranging examination of historic dividend payments with a view to challenging, inter alia, treaty shopping arrangements, now is the time to clarify the manner in which such treaty shopping will be challenged.

VAT Reform

China's VAT reform, originally launched as a pilot program in Shanghai on January 1, 2012, is expected to be completed in 2015. The pilot program removed certain services from the scope of the BT regime and into the scope of the VAT regime. This step was the first phase of an overall plan to replace the dual BT/VAT systems with a single system applied to the supply of both goods and services. Under the current regime, VAT is levied on certain supplies of goods and services, while BT is levied on other services and the

❷ 明确 GAAR 作为打击择协避税的手段，是否适用于被动收入预提税协定减免（此时可能与协定中的被动收入相关条款的目的测试共同使用），亦或是否适用于财产转让所得预提税协定减免；

❸ 明确在使用 GAAR 打击择协避税安排时可运用 OECD 新的税收协定范本（MTC）指南中的主要目的测试（PPT）。

上述建议的依据详述如下。

第六项行动报告中指出，各国建立的最低程度的反税收协定滥用措施包括一项基于协定的利益限制条款(LOB)加上一项基于协定的主要目的测试（PPT），或是在 PPT 和辅以国内打击导管安排的反滥用规则（如 GAAR）的 LOB 中间任择其一。由于中国没有采用 LOB 规则的传统，因此建议中国根据国际惯例积极运用 GAAR，并辅以在税收协定消极条款中使用得越来越频繁的 PPT，来打击择协避税行为。

然而，目前不少评论家都感觉中国现在通过采用界定受益所有人来打击择协避税的方法在国际上实属少见。国家税务总局在国税函【2009】601 号文中规定了如何理解和认定税收协定中的受益所有人，该函实际上包括了“内嵌 GAAR”。尽管 601 号文对受益所有人的详细认定要件中包括了协定优惠申请人能否控制处分收益及相应财产这一符合国际惯例的因素，但也包括了诸如申请人的员工、经营场所、其他经营活动和资产是否与其所得相匹配等因素。

大部分评论家认为上述基于实质的判断因素应在使用 GAAR 分析相关安排的故意性以判定是否存在择协避税行为时考虑。但这种通过限定受益所有人来打击择协避税的做法与第六项行动报告中列举的国际一致认可的反协定滥用措施并不一致。我们建议国家税务总局将受益所有人定义与 GAAR 脱钩，同时，在拒绝给予协定中的财产转让所得相关的预提所得税减免时，应当依据 GAAR 而非 601 号文。尽管评论家们一直推测财产转让所得的协定待遇被拒绝的根据是 GAAR，但这一点始终未得到中国税务机关的明文证实。

从一致性角度比较中国的做法与 BEPS 第六项报告中列举的国际认可的规则，运用 GAAR 打击税收协定滥用行为可以看作是 PPT 规则的替代做法。因此，为了最大程度地恪守采用 BEPS 规则打击税收协定滥用之承诺，国家税务总局应当确保在适用 GAAR 打击择税避税时遵循 PPT 规则的注释。BEPS 的部分注释对如何适用 GAAR 提供了有用的指导，其中包括：

- “仅靠评估一项安排的结果通常并不足以判定该安排之目的”；
- “当一项安排只能从一项税收协定优惠中得到合理解释时，则可能判定该安排的主要目的之一就是获取该优惠”；
- “当一项安排与一项核心商业活动密不可分、且其形式并非出自获取税收优惠之考虑，则不能认定其主要目的是获得该税收优惠”。

特别是国家税务总局近期发布了税总函 [2014] 第 317 号文件，要求对历史股息支付开展广泛检查，剑指择协避税行为，因此明确上述择协避税的应对方法刻不容缓。

增值税改革

中国最近的增值税改革始于 2012 年 1 月 1 日启动的上海营改增试点，该项试点工作预计于 2015 年结束。上述试点对部分原本征收营业税的服务业改为征收增值税。此举旨在取消营业税和增值税双轨制，对货物和服务供应统一征收增值税，是总体改革计划的第一步。在现行制度下，对部分货物和劳务征收增值税，对其他劳务和无形资产和不动产转让征收营业税。营业税和增值税采用不同的征税税率，且增值税制度下的进项抵扣通常并不适用于营业税。此项改革旨在消除现行税制下的双重或多重征税。

此项改革自启动以来，适用区域和适用范围均得以扩展。2012 年下半年该项改革扩展至另外八个城市和省份，并于 2013 年 8 月推广至全国。改革起初只限于有形动产租赁、运输服务和现代服务业（如研发和技术服务、认证和咨询服务），目前已经拓展至电信和其他服务、铁路运输、邮政服务等。

自 2012 年起，财政部和国家税务总局发布大量规范性文件对改革的范围和特定交易的增值税处理等问题做出了规定。下文列出了自 2013 年 12 月起发布的相关文件：

- 第 106 号通知，发布于 2013 年 12 月 12 日，其中包含一些自 2014 年 1 月 1 日起实施的新规定，这些规定取代了第 37 号通知中的许多规定。第 106 号通知明确了铁路运输和邮政服务适用 11% 的增值税税率，接送和送货服务适用 6% 的税率。该通知还修改了金融租赁

transfer of intangible assets and real property. Different rates are imposed under the VAT and BT regimes and, unlike VAT, an input tax credit is not available under the BT system. Such reform aims to eliminate the double or multiple taxation that arises under the current tax system.

Since its inception, the reform has expanded both geographically and in scope. The reform was extended to another eight cities and provinces later in 2012 and then nationwide on August 1, 2013. While initially limited to leases of tangible movable property and the provision of transportation services and modern services (i.e., research and development and technical services, information technology services, cultural and creative services, logistics and ancillary services, and certification and consulting services), the scope of the VAT reform now encompasses telecommunications and other services, railway transportation, and postal services and freight forwarding services.

The Ministry of Finance (MOF) and the SAT have issued an abundance of guidance since 2012 on the scope of the reform and the VAT treatment of specific transactions. The following bullets highlight some of the guidance issued since December 2013:

- Circular 106, issued on December 12, 2013, contained a new set of rules that apply to the VAT reform beginning January 1, 2014 and superseded many of the rules in Circular 37. Circular 106 specified that railway transportation and postal services would be subject to the 11 percent VAT rate and that pick-up and delivery services would be subject to the six percent rate. It also amended the rules relating to finance leasing companies, international freight forwarders, and shipping agencies.
- Circular 43, issued on April 29, 2014, further extended the scope of the VAT reform to apply to telecommunications services beginning June 1, 2014 at a rate of 11 percent for basic telecommunications and six percent for value-added telecommunications. These rates represent a significant increase for the telecom sector as compared to the three percent BT that previously applied. For taxpayers in this industry, the real challenge is to ensure there are sufficient VAT inputs to mitigate the negative impact.
- Bulletin 42, issued on July 4, 2014 and effective September 1, 2014, extended VAT-exempt treatment to international freight forwarding services provided through other forwarders. Initially addressed in Circular 106, the VAT exemption for such services applied only to the last forwarder in the chain (i.e., the forwarder that was in direct business contact with the international transportation service supplier, such as a shipping company), but not to forwarders that did not have direct contact with international suppliers and did not make direct payments to such suppliers. With the issuance of Bulletin 42, all other forwarders in the chain became eligible for VAT-exempt treatment, provided that all of the income received from customers (or other forwarders) and international transport and agency fees paid to other forwarders are settled through a financial institution. As international freight forwarding services are frequently provided through a chain of forwarders, this practical clarification was welcome.
- Bulletin 49, issued on August 27, 2014 and effective beginning October 1, 2014, contains comprehensive guidance on the application of VAT-exempt treatment for cross-border services. Under VAT-exempt treatment, no output VAT is payable, but the input VAT incurred on costs is not recoverable. Although less beneficial than zero-rated VAT treatment, under which the input VAT incurred on cost is recoverable, the VAT exemption is still considered as an incentive to promote the development of cross-border services. Circular 49 extends the scope of the VAT exemption to include exports of services that are part of the VAT reform and clarifies the treatment where taxpayers are eligible for both zero-rated treatment and a VAT exemption. It also permits a taxpayer to claim a VAT exemption if the taxpayer elects to relinquish the zero-rated treatment.

Although it was inevitable that unanticipated tax issues would arise during the rollout of the pilot reform, the issuing of such guidance demonstrates the willingness of the MOF and SAT to take positive steps to address such issues. While we welcome the MOF's and SAT's efforts in this context, there are many areas in which interpretational uncertainty and local variations still persist. In view of the Chinese government's statement that VAT reform will be completed by the end of 2015 and its demonstrated ability to meet announced deadlines, further expansion of the VAT regime's scope – in addition to the services already brought into the pilot reform in 2014 – is widely anticipated. In particular, we are carefully monitoring developments regarding speculation as to whether and when real estate services and financial services will be brought within the scope of the VAT regime.

Recommendations

- **The SAT should increase the number of employees in its Anti-avoidance Division.**
- Any country-by-country reporting requirements that the SAT adopts should be consistent with BEPS standards.
- The amount of additional evidence requested by the Chinese tax authorities to authenticate services and royalties should be reasonable and not create an insurmountable hurdle in practice.
- The SAT and MOFCOM should not set artificial limits on the absolute value of a royalty fee but, instead, assess the arm's length nature of the royalty amount based on specific facts and circumstances.

公司、国际货运代理机构和航运公司的相关规定。

- 第 43 号通知，发布于 2014 年 4 月 29 号，进一步扩大营改增改革的适用范围，从 2014 年 6 月 1 日起对电信服务改收增值税。其中基础电信服务增值税税率为 11%，增值电信服务税率为 6%。改革后电信业的税率明显增加，原来的营业税税率仅为 3%。对于该行业的纳税人而言，真正的挑战在于确保足够的增值税进项以减少负面影响。
- 第 42 号公告，发布于 2014 年 7 月 4 日，同年 9 月 1 日生效实施。该公告将免征增值税的业务范围拓展至通过其他货运代理机构的国际货物运输代理服务。最开始 106 号通知中也对此做出了规定，但免征待遇仅适用于代理链条上的最后一名货运代理服务商（例如，与国际运输服务供应商（如航运公司）形成直接业务联系的货物运输代理商），却并不适用于未与国际供应商建立直接联系、且未获该国际供应商直接支付费用的货运代理商。42 号公告实施后，上述业务链条上的所有其他货运代理商也都有资格获得免征增值税的待遇，前提是纳税人提供上述国际货物运输代理服务，向委托人收取的全部代理服务收入，以及向其他代理人支付的全部代理费用，必须通过金融机构进行结算。鉴于国际货物运输代理服务在实践中往往由数个转运商共同完成，因此该公告规定颇受欢迎。
- 第 49 号公告，发布于 2014 年 8 月 27 日，同年 10 月 1 日生效实施。该公告对跨境应税服务增值税免税做出了全面的规定。免征增值税后，纳税人无需计算销项增值税，但成本中的进项增值税额却无法得到抵扣。虽然不如零税率待遇那般受益（零税率待遇下进项增值税额可以得到抵扣），但增值税免税依然被认为是促进跨境服务贸易的一项重要激励措施。49 号公告中扩展了增值税免税的适用范围，将服务出口列入免征增值税范围，并明确纳税人同时具备零税率待遇和增值税免税待遇时的处理办法。公告中还规定如果纳税人选择放弃适用零税率的，可以申请增值税免税。

尽管在营改增试点推广的过程中难免会遇到意想不到的税务问题，但财政部和国税总部发布的上述众多文件已经充分表明了其努力解决相关问题的意愿。我们对财政部和国家税务总局以上的工作表示欢迎，但在很多领域依然存在着解释上的不确定性和各地在具体落实中存在差异等问题。鉴于中国政府表示将在 2015 年底完成增值税改革，并且业已展现其按时完成既定目标的实力，各方都期待增值税适用范围在 2014 年改革的基础上能够得以进一步扩大。特别是我们正密切关注房地产业和金融服务业是否以及何时能够纳入增值税改革范围之内。

建 议

- **国家税务总局应增加反避税处工作人员数量。**
- 国家税务总局采用的分国报告要求应当与 BEPS 标准保持一致。
- 中国税务部门新增的认定服务和特许权使用费可以税前列支的相关证据应当合理，且在实践中不会构成无法逾越的障碍。
- 国家税务总局和商务部不应就特许权使用费的绝对价值人为设置上限，而应当根据具体的事实和情况对该特许权使用费数额是否符合公平交易的标准进行判定。
- 当境外提供的某项服务给境外关联方带来的收益高于给在华企业带来的收益的，中国税务机关应当允许按照与在华企业收益比例相匹配的服务费数额进行扣除，而非完全不予扣除。
- 国家税务总局应当扩大 24 号公告中有明确有资格申请优惠待遇的投资结构的范围，从而使金融领域有更多的合法投资安排能够被认定为受益所有人。
- 国家税务总局在评估是否适用协定预提税减免时，应将受益所有人的判定与 GAAR 脱钩，而应依靠“主要目的测试”（PPT）规则来打击协定滥用，从而更好地与国际普遍认可的规则保持一致。

- When a service rendered from overseas benefits a foreign affiliate more than the Chinese recipient, the Chinese tax authorities should allow a deduction for the portion of the service fees that are commensurate with the Chinese entity's share of the total benefit, rather than denying the entire deduction.
- The SAT should broaden the scope of investment structures that are explicitly eligible for treatment in Bulletin 24 so that more legitimate investment arrangements in the financial sector can benefit from the relaxed rules on beneficial ownership.
- The SAT should decouple the GAAR from the beneficial ownership determination when evaluating whether treaty-withholding tax relief is available and, instead, rely on a PPT to tackle treaty-shopping arrangements, thereby aligning itself with the globally agreed-upon approach.

Visa Policy

Introduction

New visa policy developments in 2014 offer increased opportunities for the movement of persons and for commerce between the US and China. Despite these important and positive developments, many challenges remain. China's rapid growth, shifting demographics, and aging population have opened new opportunities for economic immigration from developed as well as developing countries, underscoring the need for China to modernize its regulatory framework and enhance administrative capacity. Although the US Mission in China continues to provide short wait times for visa applicants despite a continued increase in demand, challenges remain for Chinese citizens wanting to obtain US work permits.

Recent Developments

US-China Visa Reciprocity Agreement

For years, AmCham China has advocated for an agreement between the US and China to increase business and tourist visa validity. We applaud the announcement made during the 2014 Asia-Pacific Economic Cooperation meeting in Beijing that such visas will be issued for periods of up to 10 years. Specifically:

- The US will normally issue B1/B2 visas for business and tourism to Chinese nationals valid for 10 years – the longest validity possible under US law.
- China will issue L tourist visas, M business visas, Q2 relative visit visas, and S2 private matters visit visas valid for a maximum of 10 years.

Visa validity refers to the period during which the visa may be used to seek admission to a country and differs from the period of authorized stay in the country.

President Obama touted the agreement as good for US trade and business, saying in a press release: "the United States hopes to welcome a growing share of eligible Chinese travelers, inject billions (of dollars) into the US economy, and create enough demand to support hundreds of thousands of additional US jobs." In 2013, 1.8 million Chinese travelers visited the US, contributing US $21.1 billion (RMB 131 billion) to the US economy and supporting more than 109,000 American jobs.

For the US government, increasing visa validity is also key to conserving limited consular resources and will help decrease the pace at which the US Mission in China needs to hire, train, and deploy officers to adjudicate nonimmigrant visa applications.

Ongoing Regulatory Challenges: Chinese Visas

The following sections detail recommendations for making China's work permit and visa policy more uniform, transparent, and friendly to foreign investment. For detailed descriptions of the revised visa categories, please refer to the 2014 *White Paper*.

Processing Times for Work and Residence Permits

Current Chinese immigration procedures are very complicated, requiring foreign employees to apply for working documents at a minimum of five different government agencies which can take up to 10 weeks or more.

Since the Entry-Exit Administration Law (Entry-Exit Law) entered into effect in 2013, local Public Security Bureaus (PSBs) have adopted a more stringent approach to visa applications by extending the processing time for residence permits (initial, renewal, or amendment) to 15 working days, instead of the previous processing time of five working days. Of greater concern, the PSB holds an applicant's passport for 15 working days and expedited service is normally only available in extraordinary cases. During this period, there is no guarantee that the passport holder will be able to use a visa collection receipt and a copy of the passport photo page for domestic travel and it appears that international travel may not be possible at all. Besides curtailing travel, not having a passport during such period raises other problems such as being unable to withdraw money from a Chinese bank teller window or exchange foreign currency. This loss of productivity adds significant cost to doing business in China.

签证政策

引 言

2014 年出台的签证新政策为促进美中两国之间的人员流动和贸易往来提供了更多的机会。尽管签证领域取得了诸多重要、积极的进展，但依然面临许多挑战。中国的快速发展、人口结构的变化以及人口老龄化，均为来自发达国家以及发展中国家的经济移民创造了新的机会，也凸显出中国必须按照现代化的要求对其监管框架进行改革并提高其行政能力。尽管美国驻华使团在签证申请持续攀升的情况下不断缩短签证申请人的等待时间，但中国公民在获得美国工作许可证方面依然面临种种挑战。

最新进展

美中签证互惠协定

中国美国商会多年来一直呼吁中美签订相关协议以延长商务和旅游签证的有效期。2014 年 APEC 北京会议期间，中美两国宣布相关签证有效期最长可达 10 年，我们对此表示欢迎。具体包括：

- 美国将向中国公民发放 10 年期的商务、旅游 B1/B2 签证——这是美国法律所允许的签证最长有效期限。
- 中国将发放最长有效期为 10 年的 L 旅游签证、M 商务签证、Q2 探亲签证和 S2 私人事务签证。

签证有效期是指签证持有人有权凭签证进入签证发放国的期限，但不等于有权在该国合法停留的时间。

奥巴马总统认为该协定有助于促进美国贸易和商务发展。他在新闻发布稿中表示：“美国希望并欢迎更多符合条件的中国游客到访美国，这将为美国经济带来数十亿美元的收入，所创造的需求将足够为美国增加数十万就业。”2013 年，180 万中国游客访问美国，为美国经济贡献了 211 亿美元（1310 亿元人民币），支撑了 109000 个美国就业岗位。

对美国政府而言，延长签证有效期对节约有效的领事资源同样也十分重要。此举将有助于减缓美国驻华使团在华雇佣、培训和部署从事审批非移民类签证申请的官员的速度。

现存监管挑战：中国签证

以下内容是我们为使中国的就业证和签证政策对外商投资更加统一、透明和友好而提出的详细建议。有关修改后签证种类的详细说明，请参看 2014 年《白皮书》。

减少就业证和居留证办理时间

目前中国的入境程序非常复杂，要求外国员工要在至少五个不同的政府机构申请工作文件，耗时长达 10 个星期甚至更长。

自从 2013 年《中华人民共和国出境入境管理法》生效以来，地方公安机关对签证申请采取了更为严格的方式，把居留证（初领、更新或修改）的办理时间延长到 15 个工作日，而不再是原先的五个工作日。更让人关切的是，公安机关会留存申请人的护照 15 个工作日，通常只有在特殊情况下才会提供加急办理服务。在此期间，不能保证护照持有人使用签证留存回执和签证照片页复印件进行国内旅行，而且似乎也根本不可能进行国际旅游。除了影响旅行，外国公民这段期间没有护照还会造成其他麻烦，例如不能从中国的银行出纳窗口取钱或兑换外币。这种效率损失极大地增加了在中国做生意的成本。中国美国商会建议公安机关在办理居留证时把护照的留存期限缩短到《出入境管理法》实施前规定的五个工作日。

文件原件的要求

文件原件要求包括北京在内的一些地区，办理就业证和居留证的申请人除了提交护照以外，还需要提交文凭、出生证明或结婚证明原件。对许多申请人来说，提供这些

AmCham China recommends that the PSB shorten the holding period of passports when processing residence permits to five working days, as was the case before the Entry-Exit Law was implemented.

Original Document Requirement

In some regions, including Beijing, individuals are required to submit an original diploma, birth certificate, or marriage certificate in addition to their passport for work permit and residence permit processing. For many individuals, ready access to such documents can be problematic.

Visa application procedures at the PSB previously required only a copy of the employer's business license, but now require the original. This is not only inconvenient, but, if the original is lost, it is very difficult to replace. The PSB should be able to cross check the legitimacy of a business license with the Ministry of Commerce with just a copy instead of the original.

AmCham China recommends that notarized or legalized copies of original documents (authenticated by a local Chinese embassy or consulate) be accepted for work permit and residence permit applications across all regions in China.

Visa Conversion

Under the Entry-Exit Law, it is no longer possible to convert an L or F visa to a Z visa. The applicant must leave China to obtain a single entry Z visa, then return to China and apply for a multiple entry residence permit.

AmCham China recommends that the conversion of other types of visas to Z visas within China be resumed to reduce the cost of doing business in China.

Differing Definitions of Criminal Charges

Applicants for certain visa types are required to undergo a criminal background check. However, it is not clear whether those with criminal charges such as disorderly conduct or drunk driving in foreign countries – acts that may be considered administrative violations rather than criminal charges under Chinese law – are eligible for a visa. The Ministry of Human Resources and Social Security should clearly define what acts constitute a criminal conviction for purposes of visa or residence permit disqualification. Applicants should not be disqualified from obtaining a work visa due to convictions that are not considered to be a crime in China.

Concerns from International Schools

The availability of high quality international schools in China is critical to the ability of foreign corporations to attract top personnel to work in China. As stated in the 2014 *White Paper*, international schools continue to face challenges to which AmCham China recommends:

- Schools be allowed to employ substitute teachers who possess a Z dependent visa for occasional work. All applicable individual income taxes should be paid and social benefits should be paid each month on a pro rata basis as follows:
  - days worked / 21 days per month * maximum monthly contribution
- Nursery nurses should be granted visas on the same basis as teachers provided their employers agree that they will be in charge only of children aged three and under.
- If a teacher will have two years of experience by the time he or she starts a new position in China, a visa application be accepted for processing early enough to allow issuance of the visa in time for the start of the employer's school year.

Ongoing Regulatory Challenges: US Visas

US Progress Implementing EO 13597

In January 2012, President Obama issued Executive Order (EO) 13597, which set goals for reducing visa processing times and increasing visa processing capacity in China. Measures put in place by the State Department to implement EO 13597 have made impressive strides:

- In 2013, the Mission hired 50 new consular officials in China.
- President Obama set a goal of interviewing 80 percent of applicants within three weeks of receipt of application. The Mission has exceeded that goal, an immense improvement over waits that had at times exceeded 100 days in 2010 and 70 days in 2011.
- The Mission's capacity has increased from adjudicating one million visa applications in fiscal year 2011 to 1.9 million in fiscal year 2014.
- The Mission has made plans to begin processing visas at the US Consulate in Wuhan.
- The visa application process has been streamlined as part of the State Department's Global Support Strategy.

AmCham China appreciates these noteworthy achievements and encourages the US Mission in China to continue to increase its capacity in anticipation of forecasted future growth in demand. We recommend, consistent with the US Travel and Tourism Advisory Board's recommendations, that at least four additional visa-issuing locations be added in China. Potential locations might include cities with more than two million urban inhabitants and no US consulate, such as Chongqing, Dalian, and Shenzhen. We understand that opening consular posts in new locations requires authorization by Congress and the Chinese government.

文件会很麻烦。

公安机关签证申请程序以前只需要雇主的营业执照复印件，但是现在需要原件。这不仅很不方便，而且一旦文件丢失，补办非常困难。公安机关应该可以凭复印件而不是原件与商务部（或者工商局）核实营业执照的合法性。

中国美国商会建议中国各地在受理就业证和居留证申请时，能接受经公证或法律认可的原件复印件（经当地中国大使馆或领事馆认证）。

签证转换

根据《出入境管理法》，“L”或“F”签证不能在境内转换为“Z”签证。为申请单次入境“Z”签证，申请人必须离境申请，然后再返回中国申请多次往返居留许可。

中国美国商会建议恢复在中国境内把其他类别签证转换为“Z”字签证的规定以减少在华运营成本。

犯罪指控的不同定义

申请特定类型签证的申请人需要通过犯罪背景调查。然而扰乱治安行为或醉酒驾驶等在国外属于刑事犯罪，而按照中国法律却属于行政违法行为，那么这种情况是否符合条件获得签证目前尚不明确。为便于确定是否有资格获得签证或居留证，人力资源和社会保障部应该明确定义何种行为构成刑事犯罪。申请人不应该由于在中国不属于刑事犯罪的指控而被取消获得工作签证的资格。

国际学校的担忧

在中国拥有高质量的国际学校对外国企业能否吸引到顶级人才来华工作至关重要。正如 2014 年《白皮书》所列明的那样，国际学校依然面临诸多挑战，对此中国美国商会提出建议如下：

- 允许学校雇用拥有 Z 字眷属签证的代课老师从事临时工作。每月按下列公式计算应缴纳的所有适用的个人所得税以及各种应付的社会福利：
  - 工作天数 / 每月 21 天 * 最大月工作量
- 应该按与老师相同的情况向保育员签发签证，只要他们的雇主同意他们将仅负责三岁或三岁以下儿童的教育工作。
- 如果一名老师在中国开始其新工作时将拥有两年的教学经验，应尽可能早地受理并处理签证申请，以便及时签发签证使老师能赶上学校的新学年开始。

现存监管挑战：美国签证

美国在执行 EO13597 方面的进展

2012 年 1 月，奥巴马总统签署了第 13597 号行政令（EO），确定了缩短在华签证处理时间和增加在华签证处理能力的目标。美国国务院在执行 EO13597 方面推出多项举措并取得重大进展：

- 2013 年，美国驻华使团在中国新增 50 名领事官员。
- 奥巴马总统设定了在收到签证申请三周内对 80% 的申请者进行面谈的目标。美国驻华使团大幅超额完成上述目标：2010 年的签证等候时间超过 100 天，2011 年需要 70 天。
- 使团的受理能力也从 2011 财年的审签 100 万份签证申请提高至 2014 财年的 190 万份。
- 使团已计划在美国驻武汉总领馆开设签证业务。
- 优化签证申请程序已被纳入国务院全球支持战略。

中国美国商会对上述引人注目的成就表示赞赏，并鼓励美国驻华使团按照今后签证业务将继续攀升的预期，进一步扩大其受理能力。我们建议在中国至少再增加四处签证申发地，这也符合美国观光和旅游咨询委员会的建议。备选地包括那些城市居民在 200 万以上、且尚未建立美国总领馆的城市，如重庆、大连和深圳。我们理解在新城市开设新的美国领馆需要经过国会授权和中国政府的批准。

此外，中国美国商会促请美国国务院设计一份中文版 DS-160 在线申请表，即非移民签证申请表，使该表格更易于填写，更方便打印和保存。现有表格在网页上只显示英文文本，尽管鼠标悬浮在英文上时会弹出中文翻译，但对填写者来说依然不够方便。该表格是申请人与美国政府接触的第一步，而且我们相信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。因为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代为填写的申请表，这也意味着相关数据可能不准确，从而导致签证延误和拒签。

按国别分配工作绿卡的歧视性制度

根据美国现行法律，美国每年可以签发不超过 140000 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%。因此，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等人口少的国

Further, AmCham China urges the State Department to design a Chinese version of the online Form DS-160, Nonimmigrant Visa Application, that is more user-friendly, printable, and savable. The current form, in which only English text is visible on the webpage, is not sufficiently user friendly, 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 we believe that many Chinese applicants hire third parties to prepare their visa applications, in part because they perceive it to be unwieldy. As no Chinese version can be saved or printed, many applicants never review the form prepared by the third party, which means the data may not be accurate, causing further delay and frustration.

Discriminatory Per-Country Caps on Employment-Based Green Cards

Under current law, the cap on the number of employment-based green cards 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 countries with smaller populations such as Iceland or Belgium. The per-country caps result in a long waiting list for Chinese applicants.

For example, as of March 2015, a US company obtaining a second-preference immigrant visa for a PhD could immediately hire a Russian candidate, but would have already been waiting nearly 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 little purpose and should be abolished by Congress. AmCham China supports the related provision of the bipartisan Immigration Innovation Act of 2015 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 a specialty occupation. The annual H-1B cap should be increased from 65,000 to 115,000 and allow adjustments in either direction based on the demands of the economy. The existing US advanced degree exemption (currently limited to 20,000 per year) should also be uncapped. Without the flexibility to adjust in years when the economy is strong, employer's applications for H-1B visas are akin to a lottery, and such unpredictability in recruitment is bad for the economy.

To ensure that H-1B workers do not undercut US wages, employers are required to pay the prevailing wage. There have been proposals to raise the per petition fee paid by the employer to US $2,500 (RMB 15,400) or US $7,804 (RMB 48,072) 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 an increase in H-1B admissions leads 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 shifting projects to workers abroad.

Barriers to Permanent Residents Taking Assignments Abroad

An important issue that has received little attention is how US policies inhibit US permanent residents (green card holders) who wish to take assignments abroad for US companies.

First, US Citizen Immigration Services (USCIS) regulations impose high fees for the reentry permit applications these individuals must file. 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." To ameliorate that risk, the individual may apply for a reentry permit, which allows the individual to stay abroad for up to two years. According to federal regulations, the individual must be in the US at the time of application and must attend a biometrics appointment for fingerprinting four-to-six weeks after filing the application. Since the appointment must take place in the US, many start work abroad and then return to the US for the appointment, costing thousands of dollars. AmCham China recommends that regulations be amended to allow applications to be filed from abroad and to allow biometrics appointments to be scheduled at USCIS international offices and US consular posts abroad. Those offices already collect permanent residents' fingerprints in connection with certain 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 US for five years and be "physically present" in the US for half of the time. These requirements, in essence, impose a probationary period during which an individual can demonstrate fitness for citizenship. An absence of six months generally breaks continuous residence, disqualifying the individual.

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 an Application to Preserve Residence for Naturalization Purposes (Form N-470).

家的公民相同。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，2015 年 3 月，一家美国公司获得了一张博士学位第二类优先移民签证，如果是一名俄罗斯候选人，则可立即雇佣，但如果是一名中国候选人，则需要该候选人等待五年。第二类优先移民签证通常是为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限制。每年发放的 H-1B 签证数量上限应该从 65,000 份上调至 115,000 份，允许根据经济发展需求予以上下调整。对持有美国高等教育文凭人士的豁免也应该不设上限（目前是每年不超过 20,000 份）。当经济发展强劲而签证限额却不能相应调整时，雇主申请 H-1B 签证无异于博彩，由此造成的招聘的不可预期性实际上也损害了美国经济的发展。

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。已经有建议将雇主支付的每次申请费从 2500 美元（15400 元人民币）提高至 7804 美元（48072 元人民币），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 签证的发放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

美国现行相关政策对永久居民（绿卡持有者）希望外派为美国企业工作的限制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成本高昂的回美证申请。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”。为降低该风险，这名永久居民可以申请回美证，该证书允许待在美国境外，但时间不得超过两年。根据联邦法规，申请时申请人必须在美国境内，而且必须在提交申请后 4-6 周内参加生物识别指纹录取。由于指纹录取必须美国本土进行，许多居民先在海外工作，然后再返回美国录取指纹，为此要花费数千美元。

中国美国商会建议修改上述规定，允许外派员工从国外递交申请并在 USCIS 的海外机构和美国驻外使领馆进行生物识别。这些机构在其递交 USCIS 入籍申请时就已经采集了那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，该永久居民也就失去了申请公民的资格。

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《保留归化入籍居住权的申请》（即 N-470 表格）。

建 议

对中国政府：

- **把公安机关处理居留许可时留存申请人护照的期限从 15 缩短为 5 个工作日。**
- 恢复在中国境内把其他类别签证转换为“Z”字签证的做法。
- 不因在中国不属于刑事犯罪的指控而取消申请人获得工作签证的资格。
- 允许国际学校雇用拥有 Z 字眷属签证的代课老师从事临时工作。
- 按与老师相同的情况向保育员签发签证，只要雇主同意他们仅负责三岁或三岁以下儿童的教育工作。
- 对于在中国开始其新的工作职位时将拥有两年教学经验的老师，应尽可能早地处理其签证申请，以便及时签发签证使老师能赶上学校的新学年开始。

Recommendations

For the Chinese Government:

- **Shorten the holding period of passports by the PSB when processing residence permits from 15 to five working days.**
- Resume the conversion of other types of visas to a Z visa within China.
- Refrain from disqualifying visa applicants from obtaining work visas due to convictions that are not considered to be a crime in China.
- Allow international schools to employ substitute teachers who possess a Z dependent visa for occasional work.
- Grant nursery nurses visas on the same basis as teachers provided their employers agree that they will only be in charge of children aged three and under.
- Start processing visas for teachers who will have two years of experience by the time he or she starts a new position in China early enough to allow issuance of the visa in time for the start of the school year.

For the US Government:

- **Add at least four visa-issuing posts in China.**
- Improve on customer service by designing a Chinese version of the online Form DS-160 Nonimmigrant Visa Application that is user-friendly, printable, and savable.
- Abolish discriminatory per-country caps on employment-based green cards.
- Increase the annual H-1B cap from 65,000 to 115,000 and allow adjustments based on the demands of the economy; uncap the existing US advanced degree exemption.
- Reduce barriers to permanent residents taking assignments abroad with US companies by allowing reentry permit applicants to schedule biometrics appointments at international USCIS offices and US consular posts abroad.

对美国政府：

- **中国至少再增加四处签证申发地。**
- 设计一份中文版 DS-160 在线申请表，即非移民签证申请表，使该表格更宜于填写，更方便打印和保存，由此改善客户服务。
- 取消按国别分配工作绿卡的歧视性制度。
- 将每年发放的 H-1B 签证数量上限从 65,000 份上调至 115,000 份，允许根据经济发展需求予以调整。对持有美国高等教育文凭人士的豁免不设上限。
- 减少对永久居民外派工作的障碍。允许回美证申请者在 USCIS 的国际办公室和美国使领馆进行生物识别指纹录取。

Work Safety

Introduction

As China moves from an export-driven to a consumption-driven model of growth, urbanization has been identified as a strategic tool to increase domestic consumption. The "National Plan for Novel Urbanization (2014-2020)" has set the goal of 60 percent urbanization of the population by 2020. This plan is facilitated by the ongoing development and upgrading of the industrial system. Similarly, the concentration of the population and non-agricultural sectors in urban areas drives the development and improvement of industrial infrastructure, helping to ensure healthy development of the construction sector. In 2014, the construction sector contributed 7.02 percent of China's total GDP, and its work force grew to approximately 47 million. The 12th Five-Year Plan targets an annual increase of the gross output of the construction sector of approximately 15 percent.

An urban infrastructure system includes municipal utilities, housing, energy supply, industrial parks, and transportation. During the full cycle of infrastructure construction, operation, and maintenance, work safety deserves careful attention, with work at heights among the greatest areas of concern. China's fatality rate is 9.87 per 100,000 workers, a rate much higher than that of the US, EU, Australia, and Singapore. According to Chinese government statistics, from January 1 to December 31, 2013, there were 512 work safety accidents in municipal administered housing projects, resulting in 665 deaths.

Work safety reform requires increased investment and the adoption of advanced technology and equipment. China's revised Work Safety Law, which entered effect December 1, 2014, clearly requires that companies make the necessary investments to secure safe working conditions. Along these lines, the Ministry of Housing and Urban-Rural Development (MOHURD) has stated that, by 2015, scaffolding usage will be reduced by 50 percent.

Improved legislation and enforcement are the cornerstones of work safety. China has developed an overall work safety legal framework, with the Work Safety Law and Construction Law detailing basic work at heights requirements. However, ministerial and provincial rules are needed to ensure effective enforcement. For example, there are no specific implementation rules governing work at heights safety in China, unlike the US, EU, Australia, Brazil, Singapore, and International Labour Organization which all have specific aerial work safety regulations in place. Violations undermining work safety can only be prevented with strict law enforcement efforts, such as a higher frequency of daily inspections and comprehensive pursuit of civil and criminal liability. Increasing the cost of violations is one of the key features of the new Work Safety Law, and thorough implementation of existing regulations is the next imperative for Chinese government officials at all levels.

While promoting urbanization, AmCham China encourages the Chinese government to set work at heights safety and fire emergency response as its top two priorities, and to achieve safe development by strengthening legislation and enforcement, innovating safety investment mechanisms, and prosecuting liabilities.

Ongoing Regulatory Issues

Regulations and Standards

AmCham China understands that China's regulatory and standards systems differ from those of western countries such as the US. For example, in China, standards only provide technical guidelines. For example, the "Safety and Technical Standard for Work at Heights in Construction Job Sites" (JGJ 80-1991), which is currently undergoing revision, provides technical descriptions of the various types of work at heights found in construction jobsites. There currently are no Chinese technical standards available for work at heights in non-construction sectors.

AmCham China encourages MOHURD and the State Administration for Work Safety to develop ministerial rules for work at heights safety in both construction and non-construction sectors as soon as possible. These ministerial rules should specify fall prevention plans, risk management and control measures, work safety procedures, permit-to-work systems, supervision and inspection regulations, accident investigations, and employer responsibilities. The provisions in these ministerial rules should be quantifiable and applicable. In terms of practicality, Singapore's 2011 "Workplace Safety and Health (Scaffolds Regulations)" is a

安全生产

引 言

鉴于中国的经济增长模式已由出口驱动转变为内需驱动，城镇化成为中国促进国内消费的战略工具。在工业化不断发展、升级的大背景下，《国家新型城镇化规划（2014–2020）》提出了到2020年实现60%城镇化的目标。人口与非农产业在城镇的快速聚集，必然会驱动基础设施的持续发展与完善，并确保建筑业的健康发展。2014年建筑业占中国GDP总量7.02%，建筑工人总数已超过4700万人。“十二五”期间，建筑业总产值的年均增长目标为15%。

城镇基础设施包括市政设施、民用住宅、能源供应、工业园区、交通设施等。在这些基础设施建设、运营、维护过程中，安全生产值得高度关注，首先是高空作业安全。目前，中国的十万人事故死亡率为9.87，仍然高于美国、欧盟、新加坡和澳大利亚等国家和地区，建筑业事故率居高不下是一个关键因素。据官方统计，从2013年1月1日到12月31日，在市政管理的住房项目中共发生512起安全生产事故，导致665人死亡。

安全生产的改革，需要加大安全投入、采用先进技术和装备。中国的新《安全生产法》（2014年12月1日起生效）明确规定企业应当投入必需的资金以保证安全生产条件。根据上述要求，住房和城乡建设部（住建部）决定到2015年将脚手架的使用量减少一半。

完善的立法与严格的执法是安全生产的基础。中国目前已经建立起基本的法律框架体系，《安全生产法》、《建筑法》等法律确立了高空作业安全基本制度。但是，真正能够把法律落到实处的部门规章和省级地方规章依然缺位。比如中国目前没有制定专门的高空作业安全管理规定。而美国、澳大利亚、欧盟、新加坡、巴西和国际劳工组织等制定有专门的高空作业法规。只有通过严格的执法，例如提高日常监督检查的频率、全面追究违法者的刑事责任与经济责任，才能从根本上实现安全生产。提高违法成本已经成为新《安全生产法》的亮点，如何落实是中国各级政府下一步的必要工作。

在中国推进城镇化的过程中，中国美国商会鼓励中国政府将提高高空作业安全和火灾应急响应作为工作重点，加强立法与执法，创新安全投入机制，严格追究法律责任，实现安全发展。

现存监管问题

法规标准体系

中国美国商会了解到，中国的法律体系不同于美国等西方国家。例如，在中国，标准仅仅提供技术指导。正在修订的《建筑施工高处作业安全技术规范》（JGJ80–1991）仅仅对建筑行业的高处作业的分类做出了技术性描述。然而，非建筑行业的高处作业，连一部统一的技术标准都没有。

中国美国商会鼓励中国的住建部和国家安全生产监督管理总局，尽快针对建筑行业和非建筑行业，完善相应的部门规章。这些规章应对高处作业规定详细的坠落预防计划、风险管理和控制措施、安全生产程序、施工许可证制度、监督检查、事故和调查、雇主责任等。部门规章的条款应当尽量量化，具有可操作性。这一点，新加坡的《职业安全与健康（脚手架）条例2011》可资借鉴，该条例规定对脚手架必须每七天进行一次安全检查，若脚手架曝露在恶劣天气环境中，则检查周期更短。

安全投入

中国有不少企业存在一种错误的认识，那就是把安全投入当成一种额外的成本。实际上，如果因为安全投入不足导致事故，不仅会对员工造成伤亡，还会给企业带来工时损失。更重要是，安全事故的发生还会对企业的声誉造成影响。公众对于生产安全问题越来越重视。企业投资先

good example and mandates that scaffolding safety inspections should be conducted every seven days or less if the scaffolding is exposed to adverse weather conditions.

Investment in Safety

There is a false perception among many Chinese enterprises that safety investment should be treated as an additional cost. However, in reality, accidents caused by inadequate safety investments not only result in physical injury to employees, but also result in labor hours lost for employers. More importantly, accidents damage corporate reputation, particularly as the general public is becoming increasingly aware of work place safety issues. Investments in advanced equipment and technology will be rewarded with higher productivity, lower operating costs, and improved reputation. AmCham China encourages the Chinese government to educate local enterprises on the need to adopt advanced and efficient safety equipment.

Financial Leasing Options for Safety Equipment

The price of advanced safety equipment is generally relatively high, and small- and medium-sized enterprises are typically cash-constrained and unable to make the lump-sum payments needed for such equipment. In many countries, financial leasing is the main solution to this challenge. Currently, however, there are no mature financial leasing options for safety equipment in China, which restrain not only Original Equipment Manufacturers from promoting safety equipment, but also end users from adopting advanced safety equipment in a timely manner. Outdated safety equipment can lead to many hazards. AmCham China would support Chinese government efforts to improve development of the financial leasing industry, particularly as it applies to safety equipment.

Rental of Safety Equipment

In an effort to reduce fixed assets, most Chinese companies are reducing their numbers of self-owned equipment. In other countries, a well-developed rental industry enables end users to rent equipment immediately available in the market. Taking aerial working platforms as an example, rental companies own 95 percent of the units in use in the US.

Risk Management

Article 31 of China's Work Safety Law calls for the elimination of techniques and equipment that may seriously endanger production and operational safety. Although the intent of Article 31 is good, no clear measures are provided to prioritize these hazards. In addition, without clear mandatory implementation rules, workers are not able to obtain related training and thus may not be familiar with the benefits of work safety or the use of safety equipment.

With respect to aerial work safety, AmCham China encourages the Chinese government to issue specific national codes on the prevention of falls from heights at two meters and above. A positive example is Australia's "General Falls Prevention 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 a similarly transparent classification of hazard levels. In Australia, 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 standardized structure for reducing potential hazards from work at heights, including the use of aerial work platforms or ladder usage. Such 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.

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 from heights of two meters or greater. Such transparent processes provide clear methodologies and involve key stakeholders in the risk review and management process. The designation of a work at height 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 elements of the success of these systems.

AmCham China recommends that Chinese authorities introduce similar risk management processes and provide training on the use of safe equipment that can be used in lieu of scaffolding.

Recent Developments

Importance of Rule of Law to Work Safety

The Fourth Plenum of the 18th National Party Congress passed the "Decision on Major Issues Concerning the Comprehensive Advancement of the Rule of Law," emphasizing work safety as one priority. We believe the current work safety environment will greatly improve as enforcement agencies are integrated and increase their efficiency.

Updated Work Safety Law Increases Cost of Non-Compliance

The revised Work Safety Law will increase penalties for illegal activities. Regarding the four levels of accidents defined by the "Accident Report and Investigation Regulations," the new law has mandated significantly higher penalties to be imposed on employers, as detailed in the chart.

进的设备和技术可以提高生产效率，降低运营成本，提升美誉度。中国美国商会鼓励中国政府加大对有需要的企业的教育，说服它们积极采用安全、高效的安全设备。

安全设备融资租赁

先进的安全设备一般价格高昂，而中小企业往往由于资金紧张，无法一次性全额购买此类设备。对此，许多国家主要通过融资租赁来解决这一问题。然而目前，中国专门针对安全设备的融资租赁业发展相对滞后，一方面制约了安全设备制造商的产品推广，另一方面制约了企业采用最先进安全设备的进程，导致大批设备老化，造成大量的安全隐患。中国美国商会欢迎中国政府为完善专门针对安全设备的融资租赁业务而作出的努力。

安全设备租赁业

目前，为了减少固定资产，大部分中国企业正减少自有设备的数量。在其它国家，设备租赁业已经发展非常充分，企业在需要的时候，可以从市场上迅速租到相应的设备。以高空作业平台为例，美国租赁公司拥有 95% 使用中的设备。

风险管理

《安全生产法》第 31 条要求淘汰可能严重危害生产运营安全的技术和设备。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，因此也不知道安全生产和使用安全设备的各种益处。

对于高空作业安全，中国美国商会鼓励中国政府出台全国通用的操作准则，专门针对两米及两米以上高空作业的情况预防坠落。澳大利亚的《防坠通则》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受益。在澳大利亚，全国通用操作准则还配合有政府和行业资助的培训项目，按照国家法律予以实施。上述两项战略构成了一个清晰、标准化的框架，可以有效地降低高空作业的潜在风险，包括高空作业平台的使用或梯子的使用。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借鉴，也会有助于向主要的利益相关方提供作业安全分析。

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两米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部门引入类似的风险管理流程，并提供如何使用安全设备（能用于取代不安全的脚手架）的培训。

最新进展

依法治国对于安全生产的重要性

党的十八届四中全国通过了《中共中央关于全面推进依法治国若干重大问题的决定》，把安全生产执法工作列为了其中一项工作重点。我们相信，随着执法队伍的整合、执法效率的提高，安全生产环境会得到极大的改善。

新《安全生产法》提高违法成本

新的《安全生产法》将加大对安全生产违法行为的处罚力度。针对《生产安全事故调查处理条例》规定的四级事故，新法规定了对违法企业更高的罚款数额。（详见下表）

而且，新《安全生产法》对违法行为处罚是全方位的。除了前述对违法企业罚款之外，还有对相关责任人的罚款、刑罚等。另外，还要对违法行为进行公告和通报，这关乎企业声誉。

中国美国商会鼓励中国政府加大对新《安全生产法》的宣传力度。这将让广大企业明白违法成本很高，关乎企业生存，自觉的回到守法经营的轨道上来。

JGJ80–1991 与 JGJ160–2008 的修订

《建筑施工高处作业安全技术规范》（JGJ80–1991 规范）在施行 24 年后，正着手准备修订工作。该标准重点对高空作业的方式进行分类和定义。鉴于高空作业平台是过去 20 多年中，在全球范围内逐渐被普遍采用的高空作业方式，我们希望它也能被纳入修订后的 JGJ80–1991 中。另外，对于脚手架，应借鉴美国、欧盟、新加坡和澳大利

Furthermore, the revised Work Safety Law establishes a loophole-free penalty framework for illegal activities. In addition to the fines imposed on the employers, fines and even imprisonment may be imposed on the responsible managers and employees. In addition, illegal activities will be publicized via the media, which will impact company image.

AmCham China encourages the Chinese government to take greater initiative to promote the revised Work Safety Law. Once employers are aware of the higher cost of unsafe practices, which may potentially impact even their ability to operate, they will be more likely to voluntarily follow the law.

Amendment of JGJ 80-1991 and JGJ 160-2008

After 24 years of implementation, JGJ 80-1991 is currently under revision. This standard categorizes and defines the types of work at heights. As access equipment has been widely used over the past 20 years worldwide, we hope it will be included in the amended JGJ 80-1991. Regarding scaffolding, we recommend introducing transparent scaffolding quality requirements for the installation, maintenance, and deconstruction stages, as exist in regulations in the US, EU, Australia, and Singapore. These countries regulate the use of scaffolding based on height, material, and working levels. For instance, the US restricts utilization of tube and coupler scaffolding over 38.1 meters in length or wood pole scaffolding over 18.28 meters in length.

The "Technical Code for Onsite Inspection of Construction Equipment" (JGJ 160-2008) does not include a separate chapter for aerial work safety equipment. This standard is also undergoing revision, and we hope the amended standard will establish a special chapter for aerial working equipment, including access equipment, suspended baskets, and integrated elevating scaffolding.

Revisions on both standards are expected to be completed and rolled out by the end of 2015. The "Safety Rules for Aerial Work Machinery" are also currently under revision. We hope this regulation will also be finalized in 2015, and our members stand ready to share their expertise and experience in the standard-making process.

Update of the Guiding Catalogue on Foreign Investment

On November 4, 2014, the National Development and Reform Commission and Ministry of Commerce jointly publicized a revised draft of the "Guiding Catalogue on Foreign Investment in Industry" (Catalogue) for public comment. At that time, AmCham China recommended that the final revisions place foreign direct investment (FDI) for work safety in the Encouraged section of the Catalogue, to facilitate the introduction of advanced safety equipment to the Chinese market. However, following the release of the finalized Catalogue in March 2015, FDI in advanced safety equipment remains absent from the Catalogue.

Recommendations

For the Chinese Government:

- **Place high attention on work safety issues emerging as a product of accelerated urbanization, prioritizing aerial work safety in all industrial sectors, particularly the construction industry.**
- Promote the revised Work Safety Law and ensure that employers are aware of the increased cost of non-compliance, motivating them to achieve cost-effective results by investing in safety improvements.
- Roll out the amended JGJ 80-1991 and JGJ 160-2008 standards as soon as possible, specifying the significance of advanced equipment such as access equipment, and establish standards for work at heights in non-construction sectors.
- Develop ministerial rules for aerial work safety in both construction and non-construction sectors, establishing quantifiable and practical rules that enable the enforcement of laws and technical standards.
- Provide preferential financial and tax policies to financial leasing and rental businesses, incentivizing employers to adopt advanced technology and equipment.

For the US Government:

- **Collaborate with the Chinese government and industry experts in sharing the latest laws and regulations for work at heights.**
- Support the use of technology, access, and safety equipment within China and provide training on the use of quality products.

Accident Level 事故等级	Description of Accident (Must only meet one condition to qualify for a given level) 事故描述（三个条件满足一个即可）			Updated Penalty in Millions US $ (RMB) 新法罚款（百万人民币）	Previous Penalty in Millions US $ (RMB) 新法罚款（百万人民币）
	Fatalities 死亡人数	Serious Injuries 重伤人数	Economic Loss in Millions US $ (RMB) 经济损失（百万人民币）		
1	<3	<10	<1.6 (<10)	0.032 – 0.081 (0.2-0.5)	0.016 – 0.032 (0.1-0.2)
2	3 – 10	10 – 50	1.6 – 8.11 (10-50)	0.081 – 0.162 (0.5-1)	0.032 – 0.081 (0.2-0.5)
3	10 – 30	50 – 100	8.11 – 16.23 (50-100)	0.162 – 0.811 (1-5)	0.081 – 0.325 (0.5-2)
4	≥ 30	≥ 100	≥ 16.23 (≥ 100)	0.811 – 1.62 (5-10)	0.325 – 0.811 (2-5)

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。

《施工现场机械设备检查技术规程》（JGJ160–2008）目前并未专门针对高空作业设备设立一章。该标准也在修订，我们希望修订之后的标准能专门设立高空作业设备一章，对高空作业平台、吊篮、附着式升降脚手架的安全检查做出规定。

2015 年底上述两个规范将完成修订并出台。《高空作业机械安全规则》也正在修订中。我们希望该规则能在 2015 年完成修订工作，而我们的会员也乐于分享他们在标准制定过程中的专业意见和经验。

外商投资产业指导目录修订

国家发展和改革委员会和商务部 2014 年 11 月 4 日公布了最新修订的《外商投资产业指导目录》，征求公众意见。当时，中国美国商会建议最终修订稿将外商投资于安全生产领域放入鼓励类目录，便于引进世界先进的安全设备。然而，2015 年 3 月公布的指导目录并没有采纳此建议。

建 议

对中国政府的建议：

- **高度关注城镇化过程中的安全生产问题，重点是加强建筑行业和工业行业领域的高空作业安全监管。**
- 宣传贯彻新修订的《安全生产法》，确保企业认识到随着违法成本的提高，加大安全投入才是最符合成本效益理念的。
- 加快推出新修订的 JGJ80–1991 和 JGJ160–2008，明确高空作业作业平台等先进设备在高处作业安全中地位和作用，并启动非建筑行业高处作业标准制定。
- 制定建筑行业和非建筑行业高处作业安全管理规定，为高处作业提供量化的、可操作的执法依据，促进法律和技术标准的落实。
- 出台优惠财政税收政策，促进融资租赁业和设备租赁业发展，激励企业积极采用先进的技术和装备。

对美国政府的建议：

- **与中国政府和行业专家进行合作，分享最新的高空作业法律和法规。**
- 支持中国在全国范围内推广使用相关技术、高空作业平台和安全设备，并且提供相关设备的操作的培训。

Part Three:
Industry-Specific Issues
具体行业问题

Agriculture

Introduction

As food security and food safety have become increasingly salient global concerns, many international stakeholders have stepped up their efforts to address these issues. For its part, China has achieved record grain harvests for 11 consecutive years through increased investments in technology, irrigation, and incentive programs. Accordingly, China has updated its food security strategy and objectives from "ensuring over 95 percent self-sufficiency on all grains" to the more modest goals of "ensuring absolute self-sufficiency on staple grains, striving for near self-sufficiency on cereals, and allowing modest imports."

To adjust to this new strategy, the Chinese government is encouraging state-owned agricultural enterprises like the China National Cereals, Oil, and Foodstuffs Corporation (COFCO) and state-owned farms to secure global grain sources through overseas acquisitions and farmland leases. AmCham China welcomes the Chinese government's adjustment of its strategic efforts to achieve food security by leveraging international trade and ensuring global supply as well as by increasing domestic production.

While largely self-sufficient in the production of rice, wheat, and corn, China continues to face significant challenges in meeting its food security, safety, and sustainability goals. The combination of China's large and growing population, limited water and arable land, changing food consumption habits, environmental concerns, rising incomes, and corresponding increase in overall demand for both processed and non-processed foods make it increasingly difficult for China to ensure plentiful and safe food for its population.

AmCham China member companies have partnered with China for decades to address its food security and food safety challenges by introducing new technologies, training farmers in improved agronomic practices, and satisfying Chinese demand with global supply. For example, in February 2012, US and Chinese officials signed a five-year cooperation on food security, food safety, and sustainable agriculture. Since then, AmCham China member companies have worked together on a number of projects to promote cooperation between the two countries.

Additionally, AmCham China member companies are cooperating in China to boost production of alfalfa – one of the most important factors for increasing the quality and output of dairy products – and host workshops with global industry experts to help educate Chinese dairy managers and farmers on how to plant, grow, harvest, and preserve the crop. Our member companies are also bringing in experts from around the world to train Chinese farmers on the planting, harvesting, processing, and storage of silage – an economical source of feed for dairies.

One AmCham China member company is working with China Agricultural University to replace a portion of the grain in dairy cattle diets with treated corn stover. To date, large scale feeding trials at two commercial dairy farms have achieved annual cost savings equivalent to approximately US $113 (RMB 700) per cow while maintaining milk yield and quality. Other AmCham China member companies are helping promote China's drive towards agricultural mechanization by conducting equipment field demonstrations around the country.

Agricultural trade plays an important role in the US-China relationship. In 2013, American farmers exported US $28.99 billion (RMB 178.58 billion) of agriculture-related products to China, a one percent increase from 2012, with crops topping the list of export categories in terms of dollar value. Agricultural trade is by no means one way: China exported US $10.18 billion (RMB 62.71 billion) of agricultural products to the US that same year, a six percent increase from 2012. Robust bilateral agricultural trade promotes food security and improves the quality of life in both countries by ensuring a diverse supply of food at reasonable prices.

AmCham China member companies are well positioned and eager to contribute to China's national food security strategy and the full development of China's food systems through the use of modern agricultural practices, competitively priced agricultural products, and value-chain inputs. The US-China Agriculture and Food Partnership, established in late 2013, offers the opportunity to bring together stakeholders representing public, private, and non-governmental organizations from both countries for mutually beneficial projects and initiatives to build bilateral and global capacity in food security, safety, and sustainability. AmCham China member companies look forward to continuing such collab-

农 业

引 言

随着粮食安全和食品安全日益成为全球性的重大问题，许多国际利益相关方都纷纷加大解决上述问题的力度。就中国而言，通过不断加大在技术、灌溉和激励措施方面的投资，中国粮食产量已经连续十一年创新高。同时中国还更新了粮食安全的战略和目标，即从“全部粮食应保持 95% 以上的自给率”调整为更为适度的目标“口粮应保持百分之百的安全，努力实现谷物基本自给自足并允许适度进口。”

为了适应上述新战略，中国政府一直在鼓励国有农业企业，如中国粮油食品（集团）有限公司（“中粮集团”）和国有农场通过海外并购和农田租赁等方式在全球范围内保障粮食供应资源。中国美国商会欢迎中国政府旨在通过利用国际贸易、确保全球供给以及提高国内产量来实现粮食安全的战略调整。

虽然中国在水稻、小麦和玉米上已经基本实现自给自足，但在实现粮食安全、食品安全和可持续性等目标上依然面临诸多挑战。中国人口众多且持续增长、水资源和耕地资源有限、民众的饮食消费习惯不断变化、环境问题不断加剧、人民收入提高、及其对加工食品和非加工食品的需求增长，所有这些因素都使得为国民提供充足且安全的粮食变得愈加艰难。

中国美国商会的会员企业数十年来一直与中国在该领域开展合作，通过引进新技术、培训农民提高农业生产效率、以及通过全球供应来满足中国需求等方式，帮助中国应对粮食和食品安全诸多挑战。例如，2012 年 2 月，美中两国官员签署了一项关于粮食安全、食品安全和可持续农业的五年期合作协议。此后，中国美国商会的会员企业通过一系列的项目，促进两国在该领域的合作。

另外，中国美国商会的会员企业还在中国合作增加苜蓿产量，而苜蓿正是提升奶制品质量和产量最重要的要素之一。他们通过举办研讨会，邀请全球行业专家来帮助和培训中国的奶业管理人员和奶农种植、培育、收割和储存苜蓿。我们的会员企业还在全球范围内，邀请专家来培训中国农民如何进行青贮饲料（一种经济型奶牛饲料）的种植、收割、加工和储存。

中国美国商会的一家会员企业目前正在与中国农业大学合作，尝试用处理后的部分玉米秸秆取代喂养奶牛的粮食饲料。迄今为止，通过对两家商业奶业农场进行大规模的饲料试点，结果显示每年每头奶牛能节省约 113 美元（700 元人民币）的成本。中国美国商会的其他会员企业则正在通过在全中国范围内开展农机设备实地演示等方式，帮助中国实现农业机械化的目标。

农业贸易在美中两国关系中占据重要地位。2013 年，美国农户向中国出口了价值 289.9 亿美元（1785.8 亿人民币）的农业相关产品，比 2012 年提高 1%，其中农作物出口的价值额名列首位。农产品贸易也绝非单向：同年中国也向美国出口了价值 101.8 亿美元（627.1 亿人民币）的农产品，比 2012 年提高 6%。健康的农业双边贸易确保了多样化的粮食供给和合理的粮食价格，保障了两国的粮食安全，提升了两国人民的生活质量。

中国美国商会会员企业已经做好准备，并热切期望能够凭借自己所拥有的现代农业经验、价格极富竞争力的农产品以及价值链上的优势，为中国的国家粮食安全战略和粮食体系的全面发展贡献力量。2013 年下半年建立的中美农业与食品合作项目，有助于聚合两国农业领域的公共部门、私人企业和非政府组织等利益相关方，开发互利项目和计划，提高两国乃至全球在粮食安全、食品安全和可持续性方面的能力。中国美国商会的会员企业希望 2015 年能够与中国同行、政府官员以及其他利益相关方继续推进此类合作。

oration with our Chinese counterparts, government officials, and stakeholders in 2015.

Ongoing Regulatory Issues

Restrictions on Foreign Investment in Agriculture

AmCham China welcomes the relaxation of some restrictions on foreign investment in agriculture. On September 28, 2014, the State Council released the "Decision of the State Council on Temporarily Adjusting the Special Access Management Measures Prescribed by Relevant Administrative Regulations and the Department Rules Approved by the State Council for Implementation in the China (Shanghai) Pilot Free Trade Zone." This Decision will allow wholly foreign-owned enterprises in select industries to participate in the wholesale, retail, and distribution of vegetable oil, sugar, and fertilizer, as well as retail and distribution of grain and cotton without restrictions on the number of stores. AmCham China looks forward to the extension of the relaxation of such restrictions on a nationwide basis.

However, the "Guiding Catalogue on Foreign Investment in Industry" (Catalogue) published by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) continues to be a major barrier for foreign participation in many sectors of China's agricultural industry. In the recently revised version of the Catalogue, which entered effect on April 10, 2015, nearly all restrictions on agriculture and food sectors remained unchanged, including those on biotech crop breeding and seed production, grain origination and storage, and agricultural processing.

The revised Catalogue additionally adds sugar processing to the Restricted section for the first time. AmCham China hopes that substantial steps will be taken to continue opening up the agricultural sector instead of introducing further restrictions. Experiences in other countries have repeatedly demonstrated that removing restrictions on foreign investment in agriculture and agricultural technologies not only unleashes domestic productivity potential and enhances food security, but also encourages innovation by local companies. Furthermore, such restrictions on foreign investment in agriculture restrict competition and reduce efficiency, and impede both farmer access to advanced technologies and consumer access to safe and affordable agricultural products. The benefits of foreign investment are evident in the animal feed and agricultural machinery industries, where foreign investment is allowed or encouraged.

Restrictions on foreign agriculture investments in China conflict with Chinese government policies that acknowledge the benefits of globalization and encourage overseas investments in agricultural biotechnology. Such outbound Chinese investments are generally welcomed by the US and other countries, as demonstrated by the US approval of Shuanghui's acquisition of Smithfield Foods in 2013.

Lengthy and Unpredictable Anti-Trust Reviews

AmCham China member companies are increasingly concerned about the lengthy and unpredictable nature of MOFCOM's antitrust review procedures. China's Anti-Monopoly Law (AML) has introduced a mandatory pre-merger approval process that reviews any transactions involving parties with business in China of a certain size. The threshold – China revenues of approximately US $65 million (RMB 400 million) for at least two of the parties to the transaction – is relatively low. Thus, any global merger of or other transaction between two companies (including those occurring offshore) with fairly minimal sales in China is reportable under the AML. Moreover, regardless of the size of the deal, merger and acquisition cases within the agriculture industry do not qualify for the simplified review procedure as agriculture is deemed a sensitive industry. Formal merger review procedures include up to three phases of 30 (Phase 1), 90 (Phase 2), and 60 (sometimes referred to as Phase 3) days. The AML also requires enforcement agencies – including MOFCOM in the context of merger review – to consult with other government agencies and to consider elements that are beyond classic antitrust analysis. As a result, non-antitrust issues, including Chinese industrial policy, often color its analysis and delay the review. We hope that this process can be streamlined and made more efficient in the future.

The National and Provincial Agricultural Machinery Subsidy List

Since 2004, sales of agricultural mechanization equipment in China have grown rapidly, driven by agricultural machinery subsidies and other favorable policies. The detailed subsidy schedule is revised periodically, encouraging farmers to purchase equipment that is advanced, safe, reliable, and environmentally friendly. However, industry is not included in the revision process, meaning businesses have very limited lead time to adjust their business plans once the revision is officially released. We recommend that the responsible authority reveal the direction of the new schedule well in advance so that manufacturers can quickly respond and bring the right technologies to the China market.

We are pleased to see that the Ministry of Agriculture (MOA) is considering adoption of a more market-oriented approach to subsidy management, and understand that several significant changes will be made in 2015. To enhance the effectiveness of China's agricultural subsidy program and sustainably develop agricultural mechanization, AmCham China urges the MOA to improve the fairness and transparency of the agricultural equipment procurement subsidy process and ensure policy consistency at both the national and provincial levels. We also encourage simplification of the approval process to allow

现存监管问题

对外资投资农业的限制

中国美国商会欢迎中国取消对外商投资农业的部分限制。2014 年 9 月 28 日，国务院颁布了《关于在中国（上海）自由贸易试验区内暂时调整实施有关行政法规和经国务院批准的部门规章规定的准入特别管理措施的决定》，该决定允许外商独资企业在特定行业参与菜籽油、糖和化肥的批发、零售和分销，允许开展粮食和棉花的零售和分销且无店铺数量限制。中国美国商会期待中国政府能在全国范围内取消上述限制。

然而，国家发改委和商务部颁布的《外商投资产业指导目录》（目录）依然是阻碍外资参与中国农业行业诸多领域的主要障碍。2015 年 4 月 10 日起正式施行的最新修订稿中，农业和粮食领域的几乎所有限制都未作改变，其中包括对生物技术农作物选育和种子生产，谷物育种和存储以及农产品加工等方面的限制。

上述修订后的目录还首次将原糖加工列入外商投资产业目录限制类之中。中国美国商会希望中国能够采取实质性的行动继续扩大农业产业的开放，而不是增加更多的限制。其他国家的经验一再表明，取消对外商投资农业和农业科技领域的限制不仅能够释放国内生产力潜能巩固粮食安全，同时还能鼓励本土企业不断创新。另外，上述对外商投资农业的限制还会限制竞争、降低效率，不仅阻碍了农民获取先进技术，还妨害了消费者购买安全实惠的农产品。外商投资带来的种种益处已经在动物养殖、农业机械等鼓励或允许外商投资的产业中得到了充分的体现。

中国对外资投资农业的限制，也与中国认可农业全球化益处和鼓励中国企业投资海外农业生物技术领域的相关政府政策相违背。中国企业的对外投资已经得到了美国及其他国家的普遍欢迎，美国 2013 年批准双汇收购史密斯菲尔德食品公司即是明证。

冗长且不可预测的反垄断审查

中国美国商会的会员企业表示对商务部反垄断审查程序的冗长且不可预测的特质，越发感到担忧。中国《反垄断法》中规定并购交易各方在华营业额在一定规模之上的，在并购前必须先进行审批。中国规定的并购前审批门槛为交易各方中至少两方在华营收达到 6500 万美元（4 亿人民币），该门槛相对较低。因此任何外资并购或者是两家企业进行的其他交易（包括离岸交易），只要相关交易方在华营业额达到最低标准的，就应当依照反垄断法予以报告。另外，无论交易额大小，农业产业领域内的并购案也不能适用简易审查程序，理由是农业属于敏感行业。正式并购程序最多可包括三个阶段：30 天（第一阶段），90 天（第二阶段）和 60 天（有时称为第三阶段）。反垄断法还要求执法部门（并购审查时包括商务部）必须征求其他政府部门的意见，并考虑传统反垄断分析所涉要素之外的其他要素。因此，与反垄断无关的因素，包括中国的产业政策等，通常都会影响并拖延审查进程。我们希望未来能够优化程序，提高效率。

全国和省级农机补贴清单

自 2004 年起，受农机补贴和其他优惠政策的刺激，中国的农用机械销售额迅速增长。政府会定期修改具体的补贴计划，鼓励农民购买先进、安全、可靠、环境友好型的设备。然而，修改计划并不涵盖整个产业，这就意味着在修改正式发布之前，企业仅有非常有限的筹备周期来调整商业计划。我们建议主管机关提前公布新计划的方向，从而制造商可做出迅速反映，将新技术引进中国市场。

我们高兴地看到，农业部正在考虑采用更加市场化的方式来改进补贴管理，并获悉 2015 年将作出许多重大改变。为了提升中国农机补贴项目的有效性以及尽快实现农业机械化，中国美国商会促请农业部在全国和省级范围内提高农机购置目录相关的农机补贴登记程序的公正性和透明度。我们同样鼓励简化审批流程，促使新技术能更快的进入中国市场，从而提高农业生产率。

种子行业

推进现代农作物种业

中国政府已经采取积极措施，出台了几部重要的监管法律法规和政策的修订版，以期实现农作物种业现代化。目前正在修订中的《中华人民共和国种子法》（《种子法》）旨在澄清各相关部门的管理职责，加强种质保护，简化非主粮作物（如蔬菜）品种的登记程序。中国美国商会相信加快种子行业的现代化需要进行彻底的改革，我们也对《种子法》修订工作的进展表示赞赏。然而，我们依然需要强调的是，修订后的《种子法》应当对种子行业中的所有参与主体一视同仁，包括外资种子公司。

new technologies to enter the market more quickly, improving agricultural productivity.

Seed Industry

Promotion of a Modern Crop Seed Industry

The Chinese government has made positive efforts to modernize the crop seed industry by publishing revised versions of important regulations and policies. The pending revision of the "Seed Law of the People's Republic of China" (Seed Law) promises to clarify management roles of different agencies, reinforce germplasm protection, and mandate simplified variety registration processes for non-staple crops (e.g., vegetables). AmCham China believes that substantial reform is required to accelerate the modernization of the seed industry and appreciates the progress made in the process of drafting the Seed Law revisions. However, we continue to emphasize the importance of ensuring that the revised Seed Law treats all industry participants equally, including foreign-invested seed companies.

Variety Registration

On December 27, 2013, the MOA issued the "Measures for Main Crop Variety Registration" (MOA Decree 2013 No. 4). A more specific regulation, the "Guideline on Green Channel Tests for the National Variety Certification of Rice and Corn," was published on May 26, 2014. The new regulations, if implemented, would raise standards for variety registration, allow green channel policies in which integrated seed companies can organize variety registration field trials themselves, and have such trials conducted by qualified third parties with protocols pre-approved by the National Variety Registration Committee. In addition, the Guideline contains detailed regulations necessary to implement green channel policies. AmCham China urges the MOA in its implementation of the new regulations to treat joint ventures (JVs, companies with foreign ownership of more than 25 percent) the same as local seed companies and, if qualified, allow them access to green channels. Foreign seed companies and JVs can significantly contribute to China's goal of food security by introducing advanced varieties and hybrids to Chinese farmers.

Import and Export of Seed and Breeding Materials

Significant changes to regulations regarding the import and export of seed and breeding materials are needed to streamline the currently lengthy and onerous approval processes. Under the "Technologies Import and Export Regulations" and "Measures on the Regulation of the Protection of Crop Genetic Resources of China," imports require approvals from multiple authorities within the MOA, provincial agricultural departments, and inspection quarantine agencies. This multi-layer approval process significantly slows approvals, resulting in delays in breeding technology transfers and new product supply chain management.

Germplasm exports from China are restricted if endogenous germplasm is used. Even when endogenous germplasm is not used, exporting seeds for research purposes is cumbersome – particularly for multinational corporations (MNCs) with breeding stations around the world which must obtain multiple approvals on a crop-by-crop and sample-by-sample basis. This process includes obtaining approvals from multiple authorities within the MOA, registering with MOFCOM, obtaining phytosanitary certification from the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), and approvals from provincial authorities. Approval processes at the provincial level are especially time consuming and unpredictable, slowing technology exchange and research cooperation between MNCs and the local seed industry and hampering new variety development in China. Moreover, the MOA has recently further tightened germplasm export controls, in some cases requiring MOA-authorized lab testing reports, which further increase the burden on companies and slow the development of seed varieties.

Counterfeit Seed and Intellectual Property Protection

According to a MOA investigation, even for nationally leading varieties, over half of the seeds on the Chinese market may 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 domestically invested and foreign-invested seed enterprises, but also harms China's food security and farmers. Counterfeit seeds are of 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 intellectual property (IP) protections. For example, breeders of new plant varieties can apply for IP protection called Plant Variety Protection under the "New Plant Variety Protection Regulations" effective since October 1997. However, FIEs have had great difficulty obtaining this type of IP right. Stronger IP protection would remove counterfeiters from markets and benefit legitimate American and Chinese companies.

International Agricultural Commodity Trade

Barriers to Grains Derived from Biotechnology

AmCham China applauds recent efforts by the MOA to improve public understanding of biotech-derived products and appreciates the actions taken to scrutinize misleading anti-GMO advertisements.

However, in recent years, China's biotech approval process has gone from being slow but relatively predictable to slower, less predictable, and resulting in non-science-based

品种登记

2013 年 12 月 27 日，农业部出台了《主要农作物品种审定办法》（农业部令 2013 年第 4 号）。2014 年 5 月 26 日又出台了一部细化规定，即《国家级水稻玉米品种审定绿色通道试验指南》。新办法若实施，品种审定门槛将进一步提高，同时将允许综合性种业公司享受绿色通道政策，在按照国家品种审定委员会预先批准的程序进行的前提下，自行实施种子品种登记田间试验以及委托第三方实施种子品种登记田间试验。此外，该指南还阐明了有关该绿色通道政策的实施细则。中国美国商会促请农业部在新法规的实施中，能够将中外合营种子企业（指外方占股 25% 以上的合营企业）与内资种业公司一视同仁，允许符合条件的合营企业申请享受绿色通道政策。外资种业公司和中外合营种业公司通过引进先进的种子和杂交品种，能够为中国实现其粮食安全目标做出重大贡献。

种子和繁殖材料进出口

为了改变现行审批程序冗长且繁琐的现状，需要对当前的种子和繁殖材料进出口制度进行重大改革。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》的规定，进口需要经过农业部、省级农业厅和质检部门等内多个部门的审批。这种多层审批程序严重减缓了审批进程，导致繁殖技术转让和新产品供应链管理的延迟。

如果某出口种质中使用了内源种质，那么该项出口将受到严格限制。即使未使用内源种质，为研究目的而进行的种子出口监管程序依然十分繁琐，对育种基地遍布全球的跨国公司来说更是如此，每一种作物和每一份样品都需要完成多道审批程序。上述审批程序包括获得农业部多个司局的批文，完成商务部登记备案，从国家质量监督检验检疫总局（“国家质检总局”）取得植物检疫证书，以及获得省级相关部门的审批。省一级的审批程序尤为耗时且不可预测，从而延缓了跨国公司与中国地方种子行业之间的技术交流和科研合作的步法，阻碍了中国的新产品开发。此外，农业部近期进一步加强了对种质出口的监管，有时甚至会要求经农业部授权的实验室出具试验报告，从而大大加重了相关企业的负担，也减缓了种子品种开发的速度。

假冒种子和知识产权保护

根据农业部调查，即使是国家优秀品种，中国市场上超过一半的种子都是假冒伪劣产品。咨询公司预计市场上超过 80% 的某些知名品种都是假冒的。中国伪冒种子的数量之大不仅伤害了在国内合法投资和在海外投资的种子企业，还伤害了中国的农民和食品安全。由于与正品相比，假冒种子质量低下，导致了产量降低，增大了中国农民的风险，还降低了中国的国家粮食产量。

申请获得基本知识产权保护的时间，是一个亟待改进的重要领域。例如，根据 1997 年 10 月起生效的《中华人民共和国植物新品种保护条例》，新品种的育种者可以申请知识产权保护，即“植物新品种保护权”。然而，外商投资企业很难获得此类知识产权。加强知识产权保护将消除市场上的假冒伪劣品，保护美国和中国企业的合法权益。

国际农产品贸易

对生物技术生产粮食的限制

中国美国商会对农业部近期采取各种举措提高公众对生物技术产品的了解的做法表示欢迎，并对农业部对误导性的反转基因生物广告进行检查的做法表示赞赏。

然而，近年来，中国生物技术审批程序的发展趋势从缓慢但相对可预测变成了更慢、更不可预测，并导致做出一些缺乏科学依据的决策。虽然中国是美国大宗商品的一个主要进口国，但由于中国缓慢而不可预测的审批程序，导致中国消费者难以享受到由新技术衍生的农产品所带来的种种好处。另外，目前的审批程序也削弱了中国获取稳定的粮食供应源和缓解国内通胀压力的能力。

根据农业部的现行规章，生物技术产品审报每年会有三个提交申请和反馈意见的时间窗口。但自 2012 年起，农业部只向技术开发商提供一年一次的决定。农业部已经口头通知中国美国商会的会员企业，技术开发商每年有三个时间窗口提交申请。该政策进一步拖延了生物技术农产品的审批进度，同时增加了扰乱贸易的风险。

在 2014 年 12 月美中商贸联委会会议期间，中国副总理汪洋宣布中国批准三种转基因产品（MIR162 转基因玉米和两种曾于 2014 年夏被拒批的上述大豆品种）。中国美国商会对上述批准表示欢迎，并认为这是中国在努力满足其日益增长的农产品需求方面迈出的重要一步。农业产业的发展有赖于创新且需要一个透明且可预期的审批程序，从而保障全球的种植户都能及时种植生产安全的创新产品。我们期望继续提升上述相关制度的透明度、可期性和科学管理水平。

decisions. Though China is a major buyer of US commodities, the arbitrary nature of its approval system deprives Chinese consumers of the benefits of new technology-derived agricultural products. Additionally, the approval system weakens China's ability to secure stable sources of grain and ease inflationary pressure.

According to MOA regulations, three windows are to be offered each year for application submission and feedback. Since 2012, however, the MOA has only provided decisions to technology developers once per year. AmCham China's member companies have received oral confirmation from MOA officials that, while there are three windows per year for technology developers to submit applications, approvals and feedback will only be given once per year. Such policy further delays approvals of biotech agricultural commodities and increases the risk of trade disruption.

During the December 2014 Joint Commission on Commerce and Trade, Chinese Vice Premier Wang Yang announced the approval of three GM products (MIR162 corn and two varieties of soybeans that were denied approval in the summer of 2014). AmCham China welcomes these MOA approvals as an important step toward helping China meet its growing demand for agricultural commodities. The agricultural industry relies on innovation and requires a predictable and transparent regulatory approval process to ensure that safe and innovative products are able to reach growers around the world. We look forward to the increased transparency, predictability, and science-based management of this system.

Tariff Rate Quotas

A number of issues prevent Chinese Tariff Rate Quotas (TRQ) from fulfilling their potential to support US-China trade relations and the Chinese domestic agricultural market, including the following:

❶ TRQ quota levels have not been adjusted since China's accession to the World Trade Organization (WTO) in 2001 and do not meet the increasing demand in China for corn, sugar, cotton, and other agricultural commodities.

❷ A majority of the import quotas (about 90 percent of the wheat import quota, for example) is reserved for state trade. 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.

❸ A 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 find out who has received TRQs and how much was allocated.

❹ Quota distributions are unpredictable and often at odds with the needs of the market. Quotas are often released at times when importers do not need to import, while quotas are often not released at other times when importers do need to import.

AmCham China requests that the Chinese government regularly review TRQ levels according to actual market demand and to establish a more transparent and market-oriented 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, allowing Chinese access to less expensive agricultural commodities. Implementing these changes will enable Chinese TRQs to function more efficiently, as envisioned under China's WTO accession protocol.

Livestock and Meat Issues

Significant potential exists to increase trade in beef and pork between the US and China. To achieve this, China will need to implement a more science- and risk-based standards structure to ensure food safety while also providing Chinese consumers with lower-priced products.

Due to increased demand and shrinking domestic beef supplies, China's 2014 beef (including variety meat) imports totaled 317,119 metric tons, a slight increase from the 2013 total of 314,437 tons. This dynamic has also been reflected in rising beef prices in China, with prices averaging US $4.67 (RMB 28.77) per pound in September 2014, up five percent year-on-year. In response to the record prices, the Chinese government has been searching overseas for new sources of supply.

However, one key source of supply that remains untapped is US beef. Since the detection of bovine spongiform encephalopathy in the US 10 years ago, China and the US have engaged in negotiations to reestablish importation of US beef. Limited conditions for the importation of boneless beef from cattle under 30 months of age were unilaterally announced in June 2006 but, as of December 2014, no US product has been shipped due to the import conditions set by the Chinese government on US producers and government authorities. We hope that the current ongoing negotiations between the US and Chinese governments will soon conclude with the resumption of US beef exports to China.

There is potential for expanded trade in pork between the US and China as well, especially as Chinese costs of production (e.g., feed grain, labor, environmental protection) continue to rise. The October 2013 acquisition by China's largest pork processor, Shuanghui International, of Smithfield Foods, the largest integrated pork producing company worldwide, speaks to the complementary nature of the two countries' meat industries. However, the new requirements set forth on US pork by the AQSIQ outlining a zero tolerance policy for ractopamine have resulted in a reduction of the number of plants that can supply China's needs.

China's import behavior has generally been commodity

关税配额制度

若干问题阻碍了中国关税配额制度充分发挥其潜力来支持美中贸易关系和中国国内农业市场，其中包括：

❶ 关税配额水平自2001年中国加入世界贸易组织(WTO)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。

❷ 绝大多数进口配额（例如90%的小麦进口配额）都专门留给了国有贸易。私人申请者所能获得的关税配额额度过小，甚至无法满足一次进出口贸易的需求。贸易商们必须聚集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。

❸ 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。贸易商很难获知哪些人获得了配额以及具体数量等信息。

❹ 配额分配缺乏可预测性，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往往又迟迟不发放。

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、以市场为导向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数量，从而使市场能够更加有效地满足需求，使中国百姓能够享用到价格更加实惠的农产品。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。

牲畜和肉类问题

美中牛肉和猪肉贸易存在巨大的提升空间。为了实现这一目标，中国需要执行一套更加依靠科学和风险控制的标准框架，从而在确保食品安全的同时，为中国的消费者提供价廉物美的商品。

鉴于国内牛肉需求增加和供给萎缩的现状，2014年中国总计进口牛肉（包括加工牛肉）317,119公吨，较2013年的314,437吨略有增长。这种供需不平衡的现象造成中国牛肉价格上升，2014年9月中国的牛肉平均价格为4.67美元（人民币28.77元）/磅，同比增长5%。为了应对牛肉价格屡创历史新高的问题，中国政府一直在全球寻找新的牛肉供应源。

然而，进口美国牛肉却还未取得进展。自从十年前美国检出牛脑海绵状病（疯牛病）之后，中国和美国一直就重启进口美国牛肉一事展开谈判。虽然2006年6月中国单方面宣布有条件地进口30月龄以下的无骨牛肉，但截至2013年12月，由于中国政府对美国生产商和美国相关政府部门所施加的进口条件，尚无一家美国牛肉商向中国出口牛肉。我们希望目前正在进行的美中政府谈判能够尽快恢复美国对中国的牛肉出口。

美中两国扩大猪肉贸易的潜力也十分巨大，特别是在中国的生产成本（如饲料、人力、环境保护）不断攀升的背景下。2013年10月，中国最大的猪肉加工企业双汇国际收购全球最大的综合性猪肉生产企业史密斯菲尔德食品公司，充分体现了两国肉类行业的互补性。但国家质检总局对美国猪肉设定的新要求中对莱克多巴胺实施零容忍政策，这导致了能满足中国需求的种类有所下降。

中国的进口行为一向都受商品价格驱动。美国的出口商们希望与大客户，如肉类加工企业、大型餐饮连锁企业以及各类零售商建立更为长期、稳定和成熟的贸易关系。然而贸易壁垒的存在使得这个愿望很难实现。其他贸易壁垒包括限制进口美国冷冻和加工肉类，后者违反了美中两国于1999年签署的有关肉类、小麦和柑橘产品的双边协定。

中国政府近期重申打算采用基于风险评估的标准结构，承诺加强食品安全的做法，使中国美国商会深受鼓舞。中国应当建立更为务实的标准，允许诸如生肉中有病原体这类普通风险的存在。鉴于资源有限，中国应当对能够惠及本土畜牧业，为消费者带来价廉物美且可持续生产的肉类食品的新生产技术进行类似的风险评估。

中国美国商会关注到，中国政府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。对美国的出口家禽征收如此高昂的税收实属不必，而且对市场以及中国的消费者都造成了负面影响。

世界贸易组织争端解决小组2013年9月做出的裁决认定，商务部在反倾销和反补贴税调查中存在多处实质性和程序性错误，我们促请商务部接受上述裁决结果。我们鼓励中国取消对美国进口家禽征收反倾销和反补贴税，或者至少在未来的中期复审中考虑降低对美国出口商的上述税额。

美国的农业企业承认，中国同行生产的农产品在美国市场上也面临类似的市场准入难的问题。为了进一步提升美中农业贸易的健康、互惠发展水平，中国美国商会促请美国相关监管部门也能够依据科学的方法审批中国肉类、

price driven. However, US exporters hope to develop more mature trade based on consistent sales relationships with larger-scale users such as meat processors, large restaurant chains, and retailers. Barriers to trade make this difficult. Other impediments include restrictions on the import of US chilled and processed meats, the latter in violation of the bilateral agreement on meat, wheat, and citrus products signed between the US and China in 1999.

AmCham China is encouraged by the Chinese government's renewed commitment to food safety and by its intention to employ a more risk-based standards structure. This should allow for the establishment of more realistic standards for common risks such as the presence of pathogens on raw meat. Given resource constraints, China should conduct similar risk assessments of new production technologies that may benefit both the local livestock industry and consumers with lower cost, more sustainably produced meat.

AmCham China notes with concern that the Chinese government continues to impose substantial anti-dumping and countervailing duties (AD/CVDs) against a wide range of US poultry exports to China. Levying such prohibitively high duties on US poultry exports is unnecessary and has a disruptive effect on the market and Chinese consumers.

We urge MOFCOM to accept the findings of the WTO Dispute Settlement Panel final ruling in September 2013 that identified several substantive and procedural errors in MOFCOM's AD/CVD investigation. We encourage China to eliminate AD/CVDs on US poultry imports or, at a minimum, give US exporters the opportunity to reduce these duties through future interim reviews.

US agricultural companies acknowledge that our Chinese counterparts have likewise voiced concerns about market access for certain Chinese agricultural products in the US. To promote more robust and mutually beneficial US-China agricultural trade, AmCham China urges US authorities to employ a science-based approach to Chinese requests for US market access for meat, fish, and produce (in particular, cooked poultry, catfish, apples, and pears).

Feed Ingredients

The import of feed ingredients like DDGS and other byproducts from fermentation to China are subject to redundant registration and approval processes that involve feed ingredient registration by the MOA and product safety evaluation and exporter registration by the AQSIQ. Since January 2013, the MOA has further expanded its scope of feed ingredient registration to cover traditional feed products like soybean meal and canola meal, which previously did not require registration. These redundant registration requirements and the introduction of new approval requirements are inconsistent with the Chinese central government's recent call for streamlining and cutting administrative licensing requirements. China needs to import feed ingredients to fuel the growth of its feed industry and its downstream animal farming and meat businesses necessary to meet Chinese consumers' growing demand for protein. Such new administrative licensing requirements do little to improve food safety, and instead become an additional trade barrier that will result in additional economic costs to Chinese consumers.

Recent Developments

Shanghai Free Trade Zone and Bilateral Investment Treaty Negotiations

AmCham China applauds the adoption of a negative list format for the Shanghai Free Trade Zone and the Bilateral Investment Treaty (BIT). However, the Shanghai FTZ negative list published in 2013 and revised in 2014 essentially maintained all of the restrictions on the agricultural industry found in the Foreign Investment Catalogue.

With the complementary nature of Chinese and American agriculture providing substantial potential for bilateral agricultural cooperation, AmCham China encourages the Chinese government to remove most agricultural sectors from the negative list when it is further revised, so that Chinese farmers, consumers, and enterprises can fully realize the potential benefits of the Shanghai FTZ and the BIT.

Target Price Reform

In order to help Chinese farmers better compete with their foreign counterparts, China launched a "floor price" policy on rice and wheat in 2004, and on corn, soybeans, cotton, and sugar in 2007. However, this incentive policy generated unexpected challenges, including artificially high prices for domestic crops and unnecessarily high prices for imports, which have resulted in huge costs to Sinograin, who manages the increased grain reserve.

In 2014, China launched a pilot "target price" program for the new soybean and cotton harvest in north and northeast China. The program allows farmers to sell their products at market prices while being eligible for direct subsidies from the government for the price gap if the market price drops below the target price. Under this program, Sinograin will no longer purchase soybeans and cotton directly from farmers to provide a price floor. China does not have a timetable yet for extending this "target price" reform to other crops, including grains.

AmCham China welcomes this reform as it will lead to a more market-based pricing mechanism. We would be pleased to contribute our global expertise towards assisting China in addressing any unexpected issues that may arise from the trial.

鱼类和农产品（特别是熟制家禽、鲶鱼、苹果和梨）的市场准入申请。

饲料原料

中国进口诸如 DDGS 和其他发酵副产品在内的饲料原料需要历经繁琐的登记和审批程序，其中饲料原料登记在农业部，产品安全性评估和出口商登记在国家质检总局。自 2013 年 1 月起，农业部进一步扩大了饲料原料登记范围，要求原先不需要登记的大豆糟和菜籽粕进行登记。上述繁琐的登记要求以及新增加审批项目的行为，不符合中国中央政府当前提出的简政放权，减少行政审批的要求。中国需要进口饲料原料来促进中国饲料行业及其下游牲畜饲养业和肉类行业的发展，从而满足中国消费者日益增长的蛋白质摄入的需求。上述新增的审批要求不仅无助于提高食品安全，反而新增了贸易壁垒，最后只会增加中国消费者的经济成本。

最新进展

中国（上海）自由贸易实验区和双边投资协定谈判

中国美国商会对中国在中国（上海）自由贸易试验区（“上海自贸区”）实行负面清单管理以及进行双边投资协定（BIT）谈判表示欢迎。不过上海自贸区负面清单不管是 2013 年发布的版本还是 2014 年修订的版本，都基本上保留了 2011 年外商投资产业指导目录中对外商投资农业产业的诸多限制。

鉴于美中两国农业上的互补性以及双边贸易合作领域的巨大潜力，中国美国商会鼓励中国政府在下次修改负面清单时将大多数农业产业从该清单中去除，从而保障中国农民、消费者和企业能够充分享受上海自贸区和双边投资协定可能带来的种种益处。

目标价格改革

为了帮助中国农民更好地与外国同行开展竞争，2004 年，中国对水稻和小麦价格实行“托底价格”的保护政策，之后在 2007 年又对玉米、大豆、棉花和原糖实行价格托底保护。但上述激励政策却带来了始料未及的挑战，包括人为推高国内农作物价格以及不必要的高价进口，导致了负责管理调剂粮食储备的中国储备粮管理总公司（“中储粮”）需承担高额成本。

2014 年，中国对华北和东北地区的新收大豆和棉花实行“目标价格”试点。该项试点允许农民按照市场价出售粮食，但如果市场价低于目标价格的，则可以从政府获得相当于市场价和目标价之间差额的直接补贴。该项试点使得中储粮不再直接从农民手中直接收购大豆和棉花，也不再进行价格托底。中国目前尚未公布何时将上述“目标价格”改革推广适用至包括粮食在内其他农作物的时间表。

中国美国商会对这一改革措施表示欢迎，因为它有助于推动和形成更加市场化的定价机制。我们也很愿意分享我们的全球知识和经验，帮助中国解决在试点中可能遇到的始料未及的各项问题。

一号文件

每年伊始，中国中央政府都会颁布一份新的以农业为主题的文件，即“一号文件”。在 2014 年的一号文件中，粮食安全被列为重中之重，其他重大问题还包括加强食品安全和提升农产品质量。中国美国商会对 2014 年一号文件中承诺建立史上“最严格的食品安全监管制度”表示赞赏。

同样重要是的，2014 年一号文件还第一次正式提出发展可持续农业即“生态友好型农业”，提出建立现代化的水资源管理制度，实现土壤友好型的机械化，发展生态友好型的农药和化肥以及健康的畜禽管理。美国农业产业在食品安全管理和可持续发展农业技术领域位居世界前列。中国美国商会鼓励中国政府营造崇尚信息分享和技术进口的环境，推动实现一号文件中提出的各大目标。

建 议

对中国政府的建议：

- **减少对外资参与和投资农业的限制，特别是将更多的农产品移至外商投资目录之“鼓励”类，同时将大多数农业产业从上海自贸区和双边投资协定的负面清单中去除。**
- 提高反垄断审查的效率和可预测程度，简化审批程序，排除与反垄断无关的因素。
- 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。
- 实现种子注册程序的快速化、公平化和透明化。

Document No. 1

Each year, China's central government updates its de-facto farm bill, the "Document No. 1" (the Document). In the 2014 update, food security was designated a top priority, along with strengthening food safety and the quality of agricultural products. AmCham China member companies commend the Document's pledge to build "the strictest food safety supervision and control system" yet.

Of equal importance, the Document marked the first official mention of sustainable agriculture, or "eco-agriculture." Modernized systems for water resource management, soil-friendly mechanization, eco-friendly pesticides and fertilizers, and healthy livestock management all received mention in the Document. American agribusinesses are world leaders in food safety management and sustainable agriculture technologies. AmCham China encourages the Chinese government to foster an environment open to information sharing and technology imports in order to facilitate achievement of the Document's goals.

Recommendations

For the Chinese Government:

- **Reduce barriers to foreign participation and investment in agriculture, in particular by moving more agricultural products to the Encouraged section of the Foreign Investment Catalogue, and removing most agricultural segments from the negative lists of the Shanghai FTZ and BIT.**
- Improve the efficiency and predictability of anti-trust reviews by streamlining the review process and eliminating non-anti-trust factors.
- Remove unscientific restrictions on the importation of US beef, poultry, pork, and GMO products.
- Improve the speed, fairness, and transparency of the seed registration process.
- Improve the speed, fairness, and transparency of the agricultural equipment subsidy registration process for the MOA's equipment procurement catalogue, both at the national and provincial level.
- 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.
- Increase cooperation with US companies to enable Chinese farmers to produce food more sustainably and in line with global best practices and help reduce the cost of safe food for Chinese citizens.

For the US Government:

- **Work with Chinese officials through bilateral dialogues, including the Joint Commission on Commerce and Trade, Strategic and Economic Dialogue, and US-China BIT negotiations 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, pears, and catfish.
- Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent, science-based regulatory systems, transparent and WTO-compliant agricultural trade policies, and open market access and investment opportunities in China.
- Work with the MOA to hold the second US-China Agricultural Symposium in 2015.

- 在全国和省级层面提升农业部农机购置目录相关农机补贴登记程序的速度、公正性和透明度。
- 取消对美国家禽进口征收的反倾销税和反补贴税，或者至少在未来的中期复审中考虑降低对美国出口商的上述税额。
- 加强与美国相关企业的合作，使中国农民能够吸收全球最佳实践，进行更具可持续性的粮食生产，并帮助减少中国消费者购买安全食品的成本。

对美国政府的建议：

- **通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等平台，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、梨和鲶鱼）的美国市场准入要求。
- 开展双边对话、研讨会和深入的科技交流，支持中国实施透明、科学的监管体系，实施透明且符合世贸组织规则的农业贸易政策，以及开放市场准入和投资机会。
- 与农业部合作举办 2015 年第二届美中农业研讨会。

Automotive Policy

Introduction

Decelerating economic growth, rising inventories, and an increasing number of cities placing restrictions on the sale of cars to tackle traffic and pollution all contributed to the continued deceleration of growth of China's automobile sales in 2014. Overall (passenger and commercial) vehicle sales totaled 19.7 million, a growth rate of 6.9 percent, down from 14 percent in 2013. Sales of passenger vehicles grew 9.9 percent – a rate stronger than found in the US and EU in 2014 – similarly down from the 16 percent rate of growth in 2013.

Ongoing Regulatory Issues

New Energy Vehicle Policies

New Energy Vehicles (NEVs) are widely promoted around the world for their decreased dependence on oil and environmentally friendly and sustainable attributes. The Chinese government strongly supports the development of NEVs, yet a number of separate, interlocking policies unfairly benefit domestically produced NEVs and limit full participation by foreign-invested enterprises (FIEs). Development of NEVs is considered a strategic goal in the promotion of China's indigenous brands and the electric vehicles industry, in an effort to reduce the dominant position of the internal combustion vehicles developed by foreign Original Equipment Manufacturers (OEMs).

During the 2012 US-China Joint Commission on Commerce and Trade, US negotiators raised concerns that the "NEV Recommended List," which determines NEV policy incentives, discriminated against imported vehicles. The "NEV Recommended List" is based on the Ministry of Industry and Information Technology (MIIT) Product Catalogue which excludes imported vehicles. Thus, according to the Product Catalogue, only domestically produced NEVs may qualify for these benefits, even though both domestically produced and imported vehicles have obtained the China Compulsory Certification and are listed in the Ministry of Environmental Protection Emissions Catalogue.

In 2013, the Ministry of Finance issued the "Notice on Further Carrying out the Promotion and Application of NEVs," which specifies that, instead of referring to the "NEV Recommended List," policy incentives will be issued to those who "meet requirements." Thus, according to this regulation, NEV manufacturers should no longer rely on the "NEV Recommended List" to apply for subsides. However, the lack of a clear definition and specific qualifications for "meeting requirements" has led, in practice, to a continued reliance on the Recommended List and MIIT Catalogue. AmCham China recommends that NEVs for sale and use in China be given the same policy support regardless of where they were made. All technologies that promote reduction of fuel consumption and emissions and that utilize renewable energy should be promoted and receive regulatory support.

Charging Standards

China has adopted unique NEV charging standards, some of which are now under revision. AmCham China recommends a harmonization of China's unique standards with their international equivalents during the revision process. Such harmonization will allow new NEV models to enter the China market more quickly, providing customers with greater choice and easing the process for domestic NEV producers looking to sell their products outside of China.

Restrictions on Foreign Investment in NEV Manufacturing

In November 2014, the NDRC released the draft "Interim Administrative Regulations on the New Establishment of and Production Permits for a Manufacturing Entity of Battery Electric Passenger Vehicles" for public comment. We welcome this new policy, which seeks to open up the NEV industry to investments from manufacturers beyond the current group of investors as permitted by the Automotive Industry Development Policy (AIDP). However, this regulation does not ease restrictions on foreign investment (2+2; 50:50) as defined by the AIDP, which continue to limit the benefits of a completely open and competitive market. In light of the central government's commitments to the reform and opening of the economy, we recommend that restrictions on foreign investment in NEV development be removed to help realize energy-saving targets.

汽车政策

引 言

2014 年，由于经济增长减速，存货增加，越来越多的城市实施车辆限购政策以应对交通和污染问题，中国汽车销售增长继续放缓。汽车销售（乘用车和商用车）总量为 1970 万辆，增幅从 2013 年的 14% 降至 6.9%。乘用车销售量增长 9.9%，高于美国和欧盟 2014 年的增长水平，与 2013 年 16% 的增幅相比，也出现增速放缓。

现存监管问题

新能源汽车政策

由于新能源汽车具有对燃油依赖程度低、环保和可持续的特点，世界各地都在大力发展新能源汽车。中国政府也大力支持新能源汽车行业的发展，但是，很多独立却相互联系的支持政策只惠及国产新能源汽车，并且限制外资企业的全面参与。为了削弱外国 OEM 厂商开发的内燃机汽车的市场支配地位，中国将发展新能源汽车视为促进本土品牌和电动车行业发展的一项战略目标。

2012 年美中商贸联委会会议期间，美方谈判人员对《新能源汽车车型推荐目录》确定的新能源汽车扶持政策和排斥进口汽车的立场表示关切。《新能源汽车车型推荐目录》是根据工信部的《产品目录》制定的，而后者也不包含进口汽车。因此，根据《产品目录》，即使国产车辆和进口车辆都取得 3C 认证并且都在环保部制定的《符合环保排放标准车型目录》中，也只有国产新能源汽车有资格享受这些优惠政策。

2013 年，财政部发布《关于继续开展新能源汽车推广应用工作的通知》，其中没有提到《新能源汽车车型推荐目录》，而是规定向“符合要求”的汽车提供补贴。按照这一规定，新能源汽车生产企业不应再根据《新能源汽车车型推荐目录》来申请补贴。但是，由于“满足要求”没有明确的定义和具体的限定，所以，在实践中，《新能源汽车车型推荐目录》和工信部的《产品目录》仍在继续使用。中国美国商会建议，在中国销售和使用的新能源汽车，无论其生产地点，都应当给予同等的政策支持。所有有利于减少燃料消耗和减排以及使用可再生能源的技术都应当被大力推广并享受政策支持。

充电标准

中国采用了特有的新能源汽车充电标准，其中一些标准正在修订。中国美国商会建议中国在修订过程中能够将自己特有的标准和国际标准加以协调和统一。此举能够使新能源汽车的最新车型更迅速地进入中国市场，为客户提供更多的选择，同时也有利于国内新能源汽车生产企业将自己的产品销往国外。

对外商投资新能源汽车制造行业的限制

2014 年 11 月，国家发展和改革委员会发布《新建纯电动乘用车生产企业投资项目和生产准入管理的暂行规定》草案，向社会公开征求意见。这一新规试图向《汽车产业发展政策》目前允许的投资者之外的生产企业开放新能源汽车投资，我们对此表示欢迎。但是，这项规定没有放松《汽车产业发展政策》对外资的限制（2+2；50：50），无法充分实现完全开放和竞争的市场的优势。鉴于中国中央政府致力于经济改革开放，我们建议中国取消新能源汽车的外商投资限制，促进实现节能目标。

排放标准

中国美国商会支持中国政府起草和实施更为严格的排放标准（例如，国六排放标准）。为了更加有效地实施排放标准和减少汽车排放，与汽车排放标准相匹配的燃料供应和提前实施要求也应该统一计划。我们赞赏并期待中国政府采取新举措，通过《车辆生产企业及产品生产一致性监督管理办法》要求商用车严格执行国四标准，并计划使

Emissions Standards

AmCham China supports the Chinese government's efforts at drafting and implementing more stringent emissions standards (e.g., Stage VI emission regulations). In order to implement emissions standards and reduce vehicle emissions more efficiently, fuel supply and pull-ahead emissions standards should similarly be revised to match vehicle emissions standards. We applaud and anticipate implementation of the Chinese government's new initiatives to tighten enforcement through Conformity of Production for commercial vehicle National Standard IV and its plans to use the Clean Air Law to safeguard enforcement and punish violators.

AmCham China hopes that the Chinese government will also consider the feasibility of the vehicle certification process for automotive manufacturers and adopt a uniform system (e.g., test cycles, pollutants to be tested, reference fuels) for the upcoming Stage VI emission regulations, and grant OEMs a minimum of five years to prepare for the new regulations. We urge the Chinese government to apply on-board diagnostics to strengthen compliance.

Regarding the implementation of Stage V emissions regulations, we have noticed that many cities are considering pull-ahead implementation. Automotive manufacturers hope the time table for pull-ahead implementation areas will be announced at least six months in advance to ensure that OEMs have enough time to prepare and compete for a stable share of the market.

Fuel Consumption Regulation

AmCham China supports the Chinese government's policies on energy conservation and emissions reduction. Initiatives to actively promote more stringent fuel consumption standards and regulations, such as the MIIT Phase III Standard for passenger car fuel consumption limits, are worthwhile. However, automotive manufacturers hope that detailed management rules can be issued as soon as possible in order to facilitate OEM compliance. When developing detailed administrative rules, manufacturers hope to see more flexibility in practice – including being allowed to group freely and being granted small-volume fuel consumption exemptions with no fuel consumption limits for individual vehicles – without resorting to administrative orders to cease production on noncompliant manufacturers. Regarding Phase IV (2016-2020) Standards development, AmCham China believes that state-of-the-art auto industry energy-saving technologies and Phase III Standards implementation results (e.g., transfer of Phase III "CAFE" credits to Phase IV) should be fully considered. Adoption of appropriate, realistic, and scientific goals will further encourage the development of China's automotive industry and also support China's fuel consumption targets.

Regarding commercial vehicle fuel economy, we urge China and the US to work together to share best practices on achieving measurable fuel economy gains. China currently regulates fuel consumption limits and test methods on vehicles as a whole. We believe the best way to achieve real and sustainable vehicle CO_2 reductions is by separately regulating engine fuel consumption. Commercial vehicle fuel economy is subject to a wide variety of variables (e.g., engine efficiency, weight, resistance to wind or rolling). Simply changing a vehicle's tires can alter its fuel efficiency. The establishment of a separate efficiency standard for engine fuel economy will allow for the preservation of engine efficiency gains even when the purpose or major features of the vehicle are altered. Additionally, as China considers new fuel economy regulations, we recommend the further streamlining of collaboration between the various agencies with jurisdiction over this issue.

Automotive End-of-Life Policies

China's current End-of-Life Vehicle (ELV) policy is detailed in the National Development and Reform Commission's "Auto Recovery Technology Policy." This policy provides guidance for scrapping and recycling vehicles. Some follow-up policies, standards, and implementing details are being discussed and updated. ELV-related requirements and prohibited substances are included in the Government Procurement Catalogue.

AmCham China hopes these follow-up implementation measures will be harmonized with relevant international regulations and standards to ensure compliance while avoiding unnecessary burdens on OEMs.

Regulatory Transparency, Coordination, and Rule of Law

AmCham China welcomes recent improvements in transparency by the Chinese government and encourages continued efforts, particularly with policies relating to the highly regulated automotive industry. In some cases, FIEs are not granted equal access to the policy making process, whether in draft discussions or during review, while draft opinions collected from the public are not available for sharing. In other cases, final versions of regulations have included the addition of requirements that significantly impact business operations that were not initially part of the draft version released for public comment.

China's automotive regulations remain complex, with duplicative and/or inconsistent regulations being applied by central and local authorities. Coordination and communication between the various authorities remains inadequate. Greater cooperation amongst Chinese regulators to define and clarify key concepts, requirements, and roles and responsibilities would improve efficiency and transparency, promote the rapid and healthy development of the Chinese automotive industry, and enhance its competitiveness in the global market.

用《大气污染防治法》来确保执法、严惩违法行为。

中国美国商会希望中国政府能够考虑汽车认证过程对于汽车生产企业的可行性，在未来的国六标准中实施统一的标准（例如，测试周期、测试的污染物、标准燃料），至少给 OEM 厂商五年的时间为新标准做准备。我们敦促中国政府使用车上诊断系统加强合规。

我们已经注意到很多城市正在考虑提前实施国五标准。汽车生产企业希望至少能够提前六个月公布提前实施领域的时间表，确保 OEM 厂商有足够的时间做好争夺市场份额的准备。

燃料消耗法规

中国美国商会支持中国政府制定的节能减排政策。中国政府很有必要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》所规定的乘用车燃料消耗限制等。但是，汽车生产企业希望能够尽快出台相关管理细则，便于 OEM 厂商开展合规经营。生产企业希望，中国在制定管理细则时能够避免通过行政命令的方式要求不合规的企业停止生产活动，而是采用更大的灵活性，例如允许自由组合，给予销量较小的车辆一定的豁免，同时，单车不设燃料消耗限制。在制定第四阶段（2016–2020）的标准时，中国美国商会认为，应当充分考虑引进最先进的汽车节能技术以及第三阶段标准的实施结果（例如，转让第三阶段的 CAFE 积分）。制定恰当、务实且科学的目标不仅能够进一步促进中国汽车行业的发展，而且有助于中国实现燃料消耗目标。

关于商用车燃料经济性，我们敦促中国和美国共同合作，分享在如何取得可测量燃料经济收益的最佳实践。中国目前将燃料消耗量和检测方法视为一体来监管。我们认为单独监管发动机燃料消耗量，是取得车辆碳排放真实、可持续减少的最好方法。商用车燃料经济受到各种因素的影响，例如发动机效率、重量、风阻和滚动阻力。仅仅是更换车辆的轮胎就能改变它的燃料效率。即便当车辆的用途或主要特性改变，制定单独针对发动机燃料经济性标准法规，仍将确保发动机效率得到提升。此外，如果中国研究新的燃料经济性法规，我们建议在该议题上进一步简政放权，确保不同机构间合作畅通。

汽车报废政策

发改委制定的《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。一些后续的政策、标准和实施细则正在讨论和制定中。《政府采购目录》对汽车报废和禁用物质也有规定。

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和标准保持一致，在确保合规的同时也要避免给 OEM 厂商增加不必要的负担。

监管透明度、协调和法治

中国美国商会对中国政府近期采取的提高透明度的举措表示欢迎，特别是与高度管制的汽车行业有关的政策，并且鼓励中国政府继续努力。在某些情况下，无论是在草案讨论还是审议过程中，外资企业都无法平等地参与政策制定过程，向公众征集的意见也不予共享。在其他情况下，法规的终稿会加入征求意见稿中原本没有并且对企业经营有重大影响的一些要求。

中国的汽车法规政策仍然较为复杂，中央和地方当局实施的规定存在重复和／或不一致。部门之间仍然缺少协调和沟通。各个监管机构应当加大合作，明确主要概念、要求和职责，这将有助于提高中国汽车行业的效率和透明度，推动中国汽车行业实现健康快速发展，提高其在全球市场上的竞争力。

为了进一步提高政策制定的透明度，中国美国商会鼓励中国政府建立一套正式的汽车政策制定机制，以符合法治要求。这样的机制有利于在全社会范围内共享建议，公开征求合理意见，并使业界在新规正式实施前有充分的时间根据新规进行必要的调整。同样，透明的项目审批程序也能够极大地惠及整个行业。

通过政府监管和市场实施实现预期的政策目标

为了更符合国际惯例，中国政府近期制定了一些政策，为国内汽车行业的监管设置了高标准。然而，在具体执行过程中，因为缺少市场监督，有些政策和标准没有实现预期目标。

如果市场完全开放，不再对汽车销售、进口和售后市场实施许可管理，在没有完善的信用体系和能够有效防止不合规行为的措施的情况下，遵守规则的企业将在竞争中处于不利地位。知识产权保护、假冒产品、侵权责任等问题都需要解决。

To further promote the spirit of transparent policy making, AmCham China encourages the Chinese government to establish a formal automotive policy development mechanism to ensure the rule of law. Such mechanism would provide for the public sharing of proposals, seek legitimate comments, and provide adequate time for industry to adjust to new regulations prior to their implementation. A similarly transparent process for project approvals would also greatly benefit the industry.

Achieving Desired Policy Outcomes via Government Supervision and Market Implementation

To better align with international practices, the Chinese government has recently formulated a number of policies that set high standards for the regulation of the domestic auto industry. However, when implemented, some of these policies and standards have failed to deliver their intended outcomes due to a lack of market supervision.

A fully open market without a well-established credit system and effective measures against non-compliant actions will place rule-abiding companies at a competitive disadvantage when authorizations are no longer required in the auto sales, import, and aftersales markets. Issues such as intellectual property rights protection, counterfeit products, and liability of infringement need to be addressed.

AmCham China strongly recommends that Chinese officials consider the level of industry development and the overall market environment when adopting international rules or developing unique standards. The implementation of rules and supervision measures to ensure the achievement of desired policy outcomes are of equal or even greater importance than the releasing of a policy or guideline.

Recent Developments

Approval of Administrative Licenses for Vehicle Maintenance and Repair

Central government agencies are currently revising and formulating a number of regulations to further open and encourage investment in the automotive aftermarket. In light of this and considering the ongoing streamlining of administrative approvals at all levels, we recommend that the long-standing administrative licensing requirements for vehicle maintenance and repair be eliminated. Furthermore, as the after-sales service industry has already been opened to foreign investment through the Ministry of Commerce's (MOFCOM) 2005 "Branded Auto Distribution Policy," any regulations in conflict with these positive developments (e.g., the "Administrative Rules on Foreign Investment in the Road Transportation Industry" released by the Ministry of Transportation on January 11, 2014) should be harmonized.

Import of Used Vehicles and Parts for Research and Development

In order to develop globally competitive vehicles and handle international research and development (R&D) orders, automotive R&D centers must be able to import used vehicles and components from other countries for comparison and to establish benchmarks.

For example, in order to test whether vehicles developed in China meet the requirements of other countries, automotive R&D centers must first export the vehicles to the countries in question. After undergoing testing in their destination country, any failed parts must then be re-imported to China for specific failure tests conducted by the parts suppliers. Such R&D projects can improve the research and manufacturing abilities of the Chinese automotive and auto parts industries, with successful vehicles helping to promote Chinese product and service exports. However, according to Article 30 of the "Machinery Product Import Administration Rules," the import of used machinery products as listed in the "Catalogue of Used Machinery Products Prohibited from Import" (Used Product Import Catalogue) via any form of import measures is forbidden. The Used Product Import Catalogue was first issued in 2002 and has not since been updated. Accordingly, local offices of China Customs and Inspection and Quarantine refuse to accept imports of used vehicles and parts, including those for R&D purposes.

Thus, under the current regulatory environment, automotive R&D centers have to import new vehicles and parts or retain overseas labs to conduct necessary testing. Since vehicle R&D projects usually demand multiple tests requiring a large amount of specialized equipment, some R&D centers and parts suppliers have been forced to terminate such projects due to unbearable costs. In addition, the retention of overseas labs forces Chinese labs to miss out on important business opportunities. Alternatively, R&D centers must limit their R&D market, vehicle types, and standards within China, restricting development of the Chinese automotive R&D industry and of automotive R&D centers.

AmCham China hopes that MOFCOM and related ministries will quickly amend the Used Product Import Catalogue and the "Machinery Product Import Administration Rules" to allow the import of used vehicles and parts for R&D purposes. Our member companies would like to cooperate with the relevant authorities to study the import and supervision measures. We hope that used vehicles and parts will be allowed to be imported via common trade methods or via flexible temporary import methods. We also hope that the revised policies will allow for the import of "waste" parts, which were broken during tests. Such revisions will contribute to the globalization of Chinese-made vehicles and parts.

中国美国商会强烈建议中国官员在采纳国际标准或制定特有标准时能考虑行业发展水平和市场总体环境。为实现预期的政策目标，法规的实施和监管措施与政策或指导方针的发布同等重要甚至更加重要。

最新进展

汽车维修的行政许可审批

中央政府部门正在修改和制定一系列规定，以期进一步放开和鼓励汽车售后市场投资。有鉴于此，并考虑到各级政府正在简化行政审批程序，我们建议取消对汽车维修行业长期实行的行政许可要求。而且，根据 2005 年施行的商务部《汽车品牌销售管理实施办法》，售后服务业已经向外国投资开放，与这些积极举措存在冲突的规定（例如，交通运输部 2014 年 1 月 11 日发布的《外商投资道路运输业管理规定》）应当予以统一。

进口研发用旧汽车和零部件

为开发具有全球竞争力的车型，或者承接国际车型的研发业务，汽车研发中心需要从其它国家进口二手整车和零部件进行比对。

在中国研发的车型，为了验证是否满足出口国的法规，需要将试验用整车新车出口到目的国进行测试，失败的汽车零部件（此时已是旧件或破损件）需要进口到中国，由相应的零部件供应商进行故障分析。在实验整车出口时，无法预知哪些零部件会出现故障。

以上研发业务，不仅可以提升我国汽车研发水平，同时也可以促进零部件的研发和制造水平。同时，国际研发业务属于技术型服务外包产业，是国家鼓励产业。研发成功的国际车型，可以带动我国汽车产品和服务的进出口。但是，禁止旧汽车和零部件进口的相关规定，使得以上研发业务无法顺利开展。

在现有的政策条件下，汽车研发机构只能进口新的整车和零部件，或聘请国外实验室代替中国零部件供应商进行故障分析。由于开发一款新车需要大量的零部件和多次实验，这大大增加了研发成本，国内实力较弱的汽车研发机构或零部件供应商无法承担，而且本来可以在国内完成的试验现在却不得不到国外去做。另外一个解决方法就是把研发市场、车型、标准等都局限在中国境内，这无疑也限制了中国汽车研发水平的提高。

建 议

- **采纳国际规则或制定特有标准时，考虑行业发展水平和市场总体环境，并给出足够的提前期，使企业有充分的时间做出调整，确保合规。**
- 确保公平竞争和政策制定的透明度，使外资企业享有与内资企业相同的参与权利和待遇。
- 确保各级以及不同政府部门在政策制定和实施方面保持一致。
- 修订《禁止进口的旧机电产品目录》和《机电产品进口管理办法》，允许进口旧汽车和零部件用于研发。或发文明确表示试验用二手整车和零部件可以暂时进口的方式进入中国，并将六个月的暂时进口期限延长至一到两年。
- 中国充电标准的修改要将重点放在与国际标准的统一上，以提升新能源汽车行业。
- 取消汽车维修的行政许可要求，统一相关规定，以全面反映中央政府鼓励汽车售后市场投资的倡议。

Recommendations

- **Consider the level of industry development and the overall market environment when adopting international rules or developing unique standards, and allow enough lead time for businesses to make adjustments and ensure compliance.**
- Ensure a level playing field and a transparent policy making process in which FIEs enjoy the same level of government engagement and treatment as domestic companies.
- Ensure consistent policy making and implementation at various levels and among different government agencies.
- Revise the "Catalogue of Used Machinery Products Prohibited from Import" and the "Machinery Product Import Administration Rules" to allow the import of used vehicles and parts for R&D purposes.
- Ensure that that any revisions to China's charging standards focus on their alignment with international standards for the betterment of the NEV industry.
- Eliminate administrative licensing requirements for vehicle maintenance and repair and harmonize relevant regulations to fully reflect central government initiatives to encourage investment in the automotive aftermarket.

Banking and Capital Markets

Introduction

With slowing economic growth, China faces the challenge of rebalancing and managing financial stability. In 2014, defaults and other events in China's shadow banking and corporate sectors revealed rising financial risks and sparked broad discussion regarding moral hazard. As reform efforts push towards use of market guidance in the allocation of financial resources, China will need to develop more sustainable and robust banking and capital markets.

China's GDP per capita output is approximately one-eighth the size of that of the US. To narrow the productivity gap, China will require a robust institutional framework to support its increasingly market-oriented and service-driven economy. Banking and capital markets will play an important role in these efforts. According to the International Data Corporation, China's retail banking revenues have grown 30 percent annually since 2009 and may exceed US $422 billion (RMB 2.6 trillion) by 2020, making it the largest retail banking market in Asia.

Regulatory reform in China's banking and capital markets is an important key to the government's economic reforms and Chinese firms' global expansion. AmCham China believes that foreign-invested financial entities can positively contribute to these reforms by sharing global best practices and promoting healthy market growth.

Sector Developments and Ongoing Regulatory Challenges

Commercial Banking

Recent Developments

Dozens of new regulations, pilot programs, and new initiatives for the commercial banking industry were launched by regulators in 2014.

In June 2014, the China Banking Regulatory Commission (CBRC) released the "Circular on Issuing Key Performance Index (KPI) for Green Credit Implementation" which requires banks to conduct a self-assessment and submit the resulting report before May 31, 2015. Foreign banks support the implementation of green credit standards as a move towards compliance with global standards. However, many questions remain including how self-assessment is defined, whether the CBRC will audit or require proof, and the required level of detail.

In July 2014, the CBRC adjusted banks' loan-to-deposit ratios. The new rules allow foreign banks to count the amount of RMB deposits made by its foreign parent bank within the span of one year. The rules aim to amplify lending capital managed by banks. However, in some cases, the policy adjustments negatively affect banks' ability to manage their own assets and liabilities.

The People's Bank of China (PBOC) initiated the China Legal Entity Identifiers (LEI) system in August 2014. LEI is a 20-digit, alphanumeric code that connects to key reference information and enables unique identification of companies participating in global financial markets. The LEI system was initiated by the Financial Stability Bureau after the 2009 global financial crisis and has been adopted by central banks from many major economies. After its launch by the PBOC, Chinese institutions with legal entity status can apply for global LEI registration. This is a positive step demonstrating Chinese regulators' willingness to adopt global governance rules.

In September 2014, the CBRC issued the "Implementation Rules on Administrative Licensing for Foreign Banks," replacing the former 2006 regulations. The new rules minimize the scope of administrative licensing, simplify procedures, and strengthen supervision. AmCham China welcomes this streamlining of administrative approval procedures.

The "Administrative Rules for Foreign-Invested Banks in China" were issued in December 2014, lowering the threshold for foreign banks to set up branches and conduct RMB business in China. Foreign banks are now able to enjoy national treatment in selected areas and compete with domestic banks on a level playing field. However, the rules do not directly address the leading concerns of foreign banks in China, as discussed below. Thus, the revised rules will have little impact on the operations of foreign banks in China.

银行业和资本市场

引 言

随着经济增速不断放缓，中国面临着重新平衡和维持金融稳定的艰巨挑战。2014 年，中国影子银行和公司领域债务违约及其他相关事件暴露出越来越严重的金融风险，并激起有关道德风险的激烈讨论。鉴于改革的方向是利用市场引导金融资源配置，中国需要发展更具可持续性和健康的银行和资本市场。

中国的 GDP 人均产量大约为美国的八分之一。为缩小上述生产率差距，中国需要一个健康的制度框架来支撑日益加速的市场化改革和服务型经济的发展。而在上述过程中，银行业和资本市场将发挥重要作用。根据国际数据公司的数据，自 2009 年起，中国的零售银行业收入平均年增速保持在 30%，并有望在 2020 年规模超过 4,220 亿美元（2.6 万亿人民币），成为亚洲最大的零售银行市场。

中国银行业和资本市场的监管改革意义重大，是国家经济改革和中资企业全球扩张成功与否的关键所在。中国美国商会相信，外资金融机构可以通过分享全球最佳实践为改革贡献力量，促进市场的健康发展。

行业进展和现存监管问题

商业银行

最新进展

2014 年，商业银行监管部门出台了众多新法规、新试点和新举措。

2014 年 6 月，中国银行业监督委员会（银监会）发布了《关于印发绿色信贷实施情况关键评价指标的通知》，要求银行组织开展本机构绿色信贷实施情况自评价工作，并于每年 5 月 31 日前将自评价报告报送银监会。外资银行支持实施绿色信贷标准，实现在合规上向全球标准看齐。但这一工作依然存在不少疑问题，例如如何定义自我评价，银监会是否将实施审计或要求提供相关证明，如需提供，对证明材料的详细要求等。

2014 年 7 月，银监会调整了对银行的存贷比要求。新规定允许外资银行将其境外母银行一年内在该外资银行的人民币存款用于计算存贷比。上述新规定旨在放大银行管理的放贷资本。然而，在某些情形下，上述政策调整却对银行管理自有资产和负债的能力造成负面影响。

2014 年 8 月，中国人民银行推出全球法人识别编码（LEI）中国注册系统。LEI 是一种 20 位的数字码，该编码连接关键信息，能够唯一地识别全球金融市场参与主体。2009 年金融危机后金融稳定局推出该 LEI 系统，并在全球主要经济体中央银行中得到广泛采用。中国人民银行推出中国本地 LEI 系统后，中国具有法人身份的机构可以申请注册全球 LEI 系统。这一举措表现出中国监管方积极采用全球治理规则的意愿。

2014 年 9 月，银监会发布了《外资银行行政许可事项实施办法》，2006 年发布的相关旧法规同时废止。这一新办法最大限度地缩小了行政许可事项的范围，简化程序同时强化监管。中国美国商会对这一简化行政审批程序的举措表示欢迎。

2014 年 12 月中国修订出台了新的《外资银行管理条例》，新条例降低了外资银行在华设立分支机构和从事人民币业务的门槛。外资银行在部分领域可以享受国民待遇并与内资银行展开公平竞争。然而，新条例依然未能直接解决外资银行在华运营面临的主要问题。下文将对这些主要问题进行讨论。因此，修改后的新条例对外资银行在华运营影响不大。

中国有望在 2015 年推出存款保险制度。该制度要求本地外资法人银行（LIB）为储户的人民币和外币存款留出保险费。中国美国商会对中国人民银行推出存款保险制度，

A bank deposit insurance system is expected to be launched in 2015. This system will require local incorporated foreign banks (LIBs) to set aside insurance premiums for clients' RMB and foreign currency deposits. AmCham China welcomes this move by the PBOC to further reduce market intervention and allow the market to set interest rates. However, it is not clear when banks will be required to pay the premium capital, what the required amount will be, or if different sized banks (e.g., Global Systemically Important Financial Institutions vs. small banks) will be held to different requirements. Also, clarification is needed as to whether the new fund will be operating under the PBOC or run separately.

Despite these positive steps and the incremental efforts by regulators to lift market entry barriers, further liberalization is needed for foreign banks to be able to compete on a level basis with domestic banks in the Chinese market. Compared with more developed markets, numerous restrictions continue to impede the development of foreign commercial banks, including:

- Ownership caps of 20 percent on foreign investors in domestic commercial banks;
- The inability of banks to simultaneously apply for multiple licenses for new products and services;
- An unequal playing field where different regulations are applied to domestic and foreign banks;
- A lack of transparency and consultation before new policies or regulations are released; and
- Restrictions on foreign banks participating in the bond market.

Duplicative Regulatory Reporting

Each month, foreign commercial banks receive hundreds of thousands of requests from various regulators for reports or surveys. Such regulatory reporting is burdensome as: ❶ the regulatory requirements are unclear and, when clarity is sought, explanations may vary by regulator and locality; and ❷ regulators in different locations may create different control standards (e.g., reporting deadline, submission method, reporting criteria) for the same regulatory report.

AmCham China recommends that regulators better coordinate requirements under the guidance of the respective regulators' head office, increase efficiency in data collecting, and reduce or simplify the numerous reporting requirements so as to ease the burden of both domestic and foreign commercial banks and reduce operational costs.

Elimination of Local Investment Incentives

In December 2014, the State Council asked China's local authorities to review for the purpose of elimination many preferential policies for attracting investment, including those applicable to foreign-invested enterprises (FIEs), which often result in local tax rebates. This request is understandable given the intense competition for investment among regional authorities.

AmCham China's member banks have enjoyed tax rebates from local governments and such incentives have played a role in the selection of country headquarters and subsidiaries. We are concerned that the elimination of tax rebates will not only negatively affect commercial banks, but may also generate an overall negative impact on foreign direct investment, as many FIEs are longstanding clients of foreign commercial banks.

AmCham China urges the central government to consider maintaining the existing agreements that support local tax rebates, or issue a grace period before the rebates are completely phased out. As tax incentives for foreign firms are eventually removed, national treatment in regulation and equal market access should be extended.

Taxation

China began to replace the prevailing business tax (BT) with value-added tax (VAT) in 2012. Though the banking industry will likely be fully covered by VAT by the end of 2015, the VAT rules for banks have not yet been released. Unlike the BT of five percent on gross income, VAT (likely at a rate of six percent or 11 percent) is a tax charged on top of banks' net price and heavily relies on a physical invoice (*fapiao*) issued in China.

Without clear rules, foreign banks find it difficult to set pricing strategies regarding the new VAT. Also, in order for foreign commercial banks to be able to issue *fapiao* through the Golden Tax System (GTS), they will have to make significant investments in the updating of their IT systems, operating procedures, and accounting systems. *Fapiao* issuance and management will also pose a significant burden on banks. For example, banks will be required to hire additional staff to report taxation-related updates and install additional systems to link with the GTS. It is believed that the implementation of these reforms will begin in the fourth quarter of 2015.

In January 2015, the State Council Legislative Affairs Office released the draft "Tax Collection and Administration Law" (TCAL) for public comment. The draft TCAL imposes new requirements on the disclosure of tax-related information in various situations and requires financial institutions to report client transactions, specifically the "accounts, account numbers, and investment income of bank account holders as well as total interest and ending balance of the accounts according to the prescribed contents, formats, and time limits. For a single fund transfer of over approximately US $8,117 (RMB 50,000) by a bank account holder or cash withdrawal of over RMB 50,000 within one day, banks must provide relevant information to tax authorities according to relevant rules."

进一步减少对市场的干预，允许市场自行设定利率的做法表示欢迎。但诸如银行在缴纳保险费时，法定保费会是多少；以及不同规模的银行（例如：对全球系统意义重大的金融机构相比小银行）是否设定不同的保费标准等等这些疑问都尚未明确。另外还需明确缴纳后的存款保险费是由中国人民银行管理还是由专门机构单独管理。

尽管中国的监管部门在消除市场准入壁垒方面一直有步骤地采取积极措施并取得相当成效，但若希望外资银行在华运营能够与内资银行公平竞争，还有待进一步放松对外资银行的管制。与发达程度更高的市场相比，中国对外资银行在华运营仍设有如下诸多限制，影响了外资商业银行在中国的发展：

- 外商投资国内商业银行所占股权不得超过 20%；
- 银行不能同时申请多项新产品和服务牌照；
- 内外资银行适用不同的监管法规，无法公平竞争；
- 新政策或法规出台缺乏透明度和意见征求程序；
- 外资银行参与债券市场面临诸多限制。

重复申报监管材料

每月，外资商业银行都会收到各类监管部门发出的成百上千要求提交报告或数据的通知。这种监管申报制度十分繁冗，原因是 ❶ 监管要求不明确，被监管者申请具体明确解释时，不同类别和地点的监管部门的答复又不一致；❷ 即使是同一种监管报告材料，不同地区的监管者可能执行不同的管控标准（如申报时限、提交方法、申报标准等）

中国美国商会建议相关各级监管部门应当在最高各监管总部的指导下，统一监管要求，提高信息收集效率，减少或简化各类申报要求，从而减轻内资和外资银行的负担，降低它们的运营成本。

取消本地投资激励措施

2014 年 12 月，国务院要求中国各地方政府清理并取消多项吸引外资优惠政策，包括适用于外商投资企业（FIE）、通常最终体现在地方税收减免和返还的相关优惠政策。鉴于目前各地争夺投资的竞争十分激烈，这项要求自然可以理解。

中国美国商会的会员银行都曾经享受了地方政府的税收减免和返还优惠政策，且上述激励措施是决定他们选择总行和分支机构所在地时的重要因素。我们担心取消税收优惠不仅将对商业银行造成负面影响，而且会对外商直接投资整体造成不利影响，因为很多外商投资企业都是外资商业银行的长期客户。

中国美国商会促请中央政府考虑保留现有支持地方税收减免和返还政策的协议，或者在完全取消政策之前留出一个宽限期。鉴于最终将会完全取消外资企业税收激励措施，应当相应扩大外资的监管国民待遇和公平市场准入的适用范围。

税 收

2012 年中国开始实施营业税改增值税的税收改革。尽管银行业有望在 2015 年底全部完成营改增改革，但针对银行的增值税细则法规尚未出台。与营业税按照营业总收入的 5% 缴纳不同，营改增后将基于银行净额计征增值税（税率可能定在 6% 或 11%），届时中国境内开具的发票将成为十分重要的依据。

如果没有明确的细则，外资银行就很难基于新的增值税政策制定自己的定价战略。同样，外资银行要想具备通过金税系统（GTS）开具发票，就必须先大规模投资更新 IT 系统、操作规程和会计系统。发票开具和管理也将给银行造成巨大负担。例如，今后银行必须招聘新员工负责申报处理税收相关更新事项，并另外安装与 GTS 连通的新系统。业界认为上述改革将于 2015 年第四季度开始实施。

2015 年 1 月，国务院法制办发布《税收征管法》修订草案并公开征求意见。该草案对各类情形下的税收相关信息披露提出新的要求，并要求金融机构报告客户交易信息，特别是“应当按照规定的内容、格式、时限等要求向税务机关提供本单位掌握的账户持有人的账户、账号、投资收益以及账户的利息总额、期末余额等信息。对账户持有人单笔资金往来达到五万元或者一日内提取现金五万元以上的，银行应当按照规定向税务机关提交相关信息。”

上述要求对外资商业银行构成沉重压力，且可能引发保密问题。与此同时，它还必将增加银行的管理负担和合规成本。在中国这样一个飞速发展的环境下，五万人民币的门槛实在很低，会大幅增加分发、保留和分析收集到的信息的工作量。

中国美国商会建议税务部门考虑推出一个 6 至 12 个月的合理实施窗口，因为上述征税新规则确属复杂并要求安装新系统。

Such requirement would place heavy pressure on foreign commercial banks and may create confidentiality issues. At the same time, it will certainly increase banks' administrative burdens and compliance costs. In a rapidly developing environment, the threshold of RMB 50,000 is quite low and will create a large amount of additional work for dispatching, maintaining, and analyzing the collected data.

AmCham China recommends that the taxation authority consider a reasonable six to 12 month implementation window, as the new taxation requirements are complex and will require the installation of new systems.

Cyber Security Requirement

The September 2014 "Guiding Opinions on the Application of Secure and Controllable Information Technology (IT) to Strengthen Banking Industry Network Security and Informatization," requires that all banks procure "secure and controllable information communications technology" for up to 75 percent of their networks and systems.

This requirement will cover source code reviews, sourcing of local intellectual property and components, adoption of Chinese encryption algorithms, among other requirements. Industry has been given a very short timeframe (plans were required to be submitted by March 15, 2015), and working mechanisms have not yet been established or clarified.

AmCham China welcomes the CBRC's February 12, 2015 Supplementary Public Statement clarifying its intent to reconsider the definition of "source code" and that there will be no discrimination based on nationality during implementation. AmCham China firmly believes that an isolated IT system within China will be limited in its capability to adapt to international best practices and technical models. Local protectionism originating from local procurement may also cause greater trade friction.

All foreign banks operate using thousands of IT standards in their hard- and software. The requirement to replicate these systems using local technology vendors will result in an unbearable cost burden to most foreign banks. In the meantime, the rules will limit Chinese banks' ability to compete globally and securely, given that they will have a limited pool of software from which to choose.

Reforms in the China (Shanghai) Pilot Free Trade Zone

AmCham China supports continued development of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ). Many foreign banks have created a task force to conduct extensive research to better serve clients within the Shanghai FTZ. Some have also set up branches within the Shanghai FTZ's docking area. AmCham China would like to see further concrete policy relaxation, including the testing of RMB full convertibility under capital accounts and adoption of a shortened negative list, as discussed in further detail in the Investment Policy chapter.

The PBOC's Shanghai Branch unveiled measures on implementing segregated account units (SAUs) in the Shanghai FTZ in May 2014. Domestic banks have established SAUs and began business operations in June 2014. The PBOC requirements on how foreign banks can set up SAUs to support RMB and USD currency business remain unclear. As of January 2015, it is reported that nine Chinese and four foreign banks have launched Free Trade Accounts (FTAs) in the Shanghai FTZ.

The PBOC's Shanghai Branch also announced on June 26, 2014 that a pilot program liberalizing deposit rates for small amounts of foreign currency will expand from the Shanghai FTZ to the whole city, beginning June 27. This is the first pilot program to have been expanded beyond the FTZ. This new rule will apply first to corporate deposits and then to personal deposits. Beginning March 1, 2014, the PBOC canceled the upper limits on deposit rates of foreign currency under US $3 million (RMB 18 million) within the Shanghai FTZ as a step toward interest rate liberalization.

The recently announced PBOC Shanghai circular "Experimental Implementing Rules for Macro-prudential Management of Overseas Financing of Separately Accounted and Audited Business Units and Cross-border Fund Flows in the China (Shanghai) Free Trade Zone," though still preliminary and implemented on a trial basis, has provided some much-needed clarity that will guide banks, non-bank financial institutions, and corporations as they borrow from onshore markets and manage cross-border flows through FTAs, in both RMB and foreign currencies.

With the expansion of the Shanghai FTZ into Pudong, AmCham China hopes that foreign LIBs within Shanghai but based outside of the FTZ will be allowed to enjoy the same treatment as those based within the expanded FTZ. Hopefully, in the near future, the scope of the Shanghai FTZ will be further expanded to the whole municipal administrative territory.

Securities

The Third Plenum of the 18th Party Congress established the principle of letting the market play a decisive role in resource allocation and set financial reform priorities, including the gradual transition toward a registration-based initial public offering (IPO) system, the development of third board and over-the-counter (OTC) markets, a market-based interest rate and exchange rate, capital account opening, and RMB internationalization. Over the past year, the Chinese government has issued a series of new rules and practices to drive these reforms, including the Shanghai-Hong Kong Stock Connect scheme, expedited interest rate deregulation, the expanded RMB/USD trading band, and the preferred shared issuance pilot program. These reforms have reinforced market

网络安全要求

2014 年 9 出台的《关于应用安全可控信息技术加强银行业网络安全和信息化建设的指导意见》，要求“安全可控信息技术在银行业总体达到 75% 左右的使用率。”

上述要求涉及源代码审查、利用本地知识产权和组件、采用中国加密算法等。整个银行业执行该规定的时限也非常紧（要求在 2015 年 3 月 15 日之前提交执行计划），但相关工作机制尚未建立或明确。

中国美国商会欢迎银监会在 2015 年 2 月 12 日发布的补充公报，明确了银监会将重新考虑对“源代码”的定义，且承诺在实施期间不会出现国籍歧视。中国美国商会坚定地认为，在中国境内建立一套对外隔绝的 IT 系统势必将限制吸收国际最佳实践和技术模型的能力。地方采购的要求所引发的地方保护主义也会进一步加剧贸易摩擦。

外资银行在华运营所使用的硬件和软件 IT 标准共计有几千种。要求复制使用本土技术供应商所提供的系统会给绝大多数外资银行造成无法承受的成本负担。与此同时，上述规定还将限制中资银行在全球范围内开展安全竞争的能力，因为它们可以选择使用的软件种类有限。

上海自贸区改革

中国美国商会支持中国继续推进中国（上海）自由贸易试验区（上海自贸区）建设。许多外资银行都已经建立工作组，就如何在上海自贸区内更好地为客户提供服务开展广泛调研。部分外资银行还在上海自贸区内设立了分支机构。中国美国商会希望看到出台更多具体的放松管制政策，包括人民币资本项目可自由兑换试点，缩短负面清单等，具体讨论详见《投资政策》一章。

2014 年 5 月，中国人民银行上海总部出台了上海自贸区内分账核算管理实施办法。内资银行自 2014 年 6 月起均已建立分账核算管理并开展业务经营。但中国人民银行尚未对外资银行如何设立用于开展人民币和美元业务的分账核算管理出台明确的规定。截至 2015 年 1 月，据报道已有 9 家中资银行和 4 家外资银行在自贸区内开设了自由贸易账户。

2014 年 6 月 26 日，中国人民银行上海总部还宣布，自 6 月 27 日起，上海自贸区内的小额外币存款利率自由化的试点推广至整个上海地区，是走出自贸区的首个改革试点项目。上述新规定将首先适用公司存款，然后延伸至个人存款。自 2014 年 3 月 1 日起，中国人民银行取消上海自贸区内 300 万美元（1800 万元人民币）以下的外币存款的利率上限，标志着利率市场化又向前迈进一步。

近期中国人民银行上海总部发布《中国（上海）自由贸易试验区分账核算业务境外融资与跨境资金流动宏观审慎管理实施细则》，尽管该细则仅为初步规定且具有试验性质，但对银行、非银行金融机构和公司如何通过自由贸易账户从境外融资和管理跨境资金流动（人民币和美元）给予了市场急需的明确指引。

随着上海自贸区的范围扩展至浦东，中国美国商会希望上海境内、自贸区以外的本地外资法人银行能够与扩展后的自贸区内的本地外资法人银行一样享有同等的待遇。希望在不远的将来，上海自贸区的范围能够进一步扩展至整个上海市辖区。

证 券

十八届三中全会确立让市场在资源配置中起决定性作用的原则，并提出金融改革的重点，包括首次公开发行（IPO）从审批制逐步过渡至注册制、发展新三板和场外交易市场、利率和汇率市场化、开放资本账户、人民币国际化等。去年一年，中国政府出台了一系列新政策和措施来推进改革，包括开通“沪港通”证券互投办法，加快推进利率市场化，扩大人民币 / 美元汇率浮动区间，以及优先股发行试点等。上述改革举措增强了市场主体对中国金融业的信心。但与其他领域的改革相比，外商投资证券行业自由化进一步放开的步伐仍显缓慢。

在 2015 年新修订的《外商投资产业指导目录》中，外商投资证券公司和投资基金管理公司的比例依然不能超过 49%，寿险公司外资比例不超过 50%，合资商业银行外资比例不超过 25%（合计），期货公司外资不得控股。中国的证券市场依然存在诸多挑战，包括 A 股市场过度投机、资本分配缺乏效率、缺乏新产品开发和创新、并购交易难以推进到下一阶段等，这些都与缺少国际市场主体的参与和竞争有关。

如果中国允许全球领先的外国投行在华建立全资子公司，中国将从中受益。与此同时，监管者可以积极稳步地允许外国经纪券商进入不同的资本市场（如新三板、场外交易市场、衍生品交易市场等），对外资放开的速度可以根据资本市场和资本账户开放的需求和进展情况而定，由此在证券业内引入海外竞争。

players' confidence in China's financial industry. However, the pace of further liberalization of foreign investment into the securities sector, among other reforms, remains slow.

In the 2015 edition of the "Guiding Catalogue on Foreign Investment in Industry," foreign investment in securities firms and investment fund management companies remains capped at 49 percent, life insurance companies at 50 percent, joint venture commercial banks at 25 percent (on a combined basis), and futures companies' foreign investors are restricted as minority shareholders. Many of the remaining challenges in China's securities market – including over-speculation in the A-share market, inefficient capital allocation, a lack of new product development and innovation, and the inability of mergers and acquisitions to move beyond the initial stages – are related to insufficient competition and participation from international peers.

China will benefit when the world's leading foreign investment banks are permitted to establish wholly foreign-owned subsidiaries. Meanwhile, regulators can proactively and gradually give foreign brokers access to different capital markets (e.g., third board, OTC market, derivatives), depending on demand and the degree of progress in opening capital markets and accounts, as a means of introducing overseas competition into the securities sector.

Such liberalization will provide foreign investment banks with incentives to transfer knowledge, technology, human capital, risk management, financial innovation, and product lines (e.g., bond futures, mezzanine financing, asset-backed securities, derivatives) to China, or to relocate their subsidiaries to China from other parts of Asia, bringing with them jobs and tax revenues. As a result, Shanghai and other large Chinese cities will see continued development as international financial hubs.

Importantly, even if such subsidiaries are permitted, foreign brokers will still face challenges to gaining market share. Limited branch networks will make it difficult for foreign firms to compete with domestic brokers in retail services (which account for approximately 85 percent of market turnover) and in servicing local corporates, thus they will need to focus on high-end institutional clients. More than 30 years after the opening of China's commercial banking sector, foreign banks – which have been permitted to establish 100 percent wholly-owned subsidiaries since 2007 – hold only a 1.4 percent deposit market share. The securities dealer sector is opening at an even slower pace than the banking sector. We believe that the potential risk from foreign capital flows on China's capital markets is limited and manageable due to China's significant foreign exchange (FX) reserve of around US $4 trillion (RMB 24 trillion), and the State Administration of Foreign Exchange's prudential control of all inward and outward FX remittances.

We believe liberalization will introduce healthy competition to China's capital markets and ensure China's efficient integration into the international markets. The Chinese government's December 21, 2014 announcement to revise the foreign bank rule and relax requirements for foreign bank branch applications and RMB licenses in China is perceived by the financial industry as a solid effort to drive competition in and integration of the banking sector.

The ongoing bilateral investment treaty (BIT) negotiations between China and both the US and EU provide China with an opportunity to evaluate the readiness of its financial industry for further opening. However, we recommend that China not wait for the conclusion of BIT negotiations before further liberalizing its securities sector. The framework of China's current securities sector policy is primarily based on the 2001 Protocol on the Accession of China to the World Trade Organization (WTO). Although China has generally fulfilled its WTO commitments, the opening of its securities sector is far from sufficient to meet the needs of capital market development, as shown by the following:

❶ At the end of 2013, the assets of China's securities companies were approximately US $800 billion (RMB 5 trillion), significantly lower than those of banks – US $24 trillion (RMB 151 trillion) – and insurance companies – US $1.3 trillion (RMB 8.3 trillion).

❷ Equities, including both direct investments and indirect exposures through mutual funds and retirement money, comprise less than 20 percent of financial holdings (six percent of total assets), significantly below the average of 60 percent in more developed economies.

❸ The overall competitiveness, depth, and extensiveness of China's securities sector lags far behind those of other developed economies.

RMB Internationalization

AmCham China understands that currency internationalization involves a demanding process of risk mitigation and control. China also faces unprecedented challenges in governing cross-border transactions. Despite these challenges, significant progress was made in RMB internationalization in 2014, due in part to proactive international trade policies by the Chinese government.

According to the Society for Worldwide Interbank Financial Telecommunication, the RMB ranked as the fifth most traded currency in the world in 2014, behind the Japanese Yen, British Pound, the Euro, and the US Dollar.

There was a significant increase in RMB offshore centers in 2014, with Singapore retaining its leading position with an increase of 574 percent, followed by Luxembourg (517 percent) and the UK (236 percent). In the first nine months of 2014, 28 percent of securities settlement confirmations in RMB were conducted outside of China and Hong Kong, compared to 16 percent during the same period two years ago. In 2014, China continued to ink new trading hub

这种自由化开放的举措会使外国投资银行更有动力将知识、技术、人力资本、风险管理、金融创新和产品线（如债券期权、夹层融资、资产担保证券和衍生品）引入中国，也更有动力将亚洲各地的子公司迁至中国，从而为中国来带更多的就业和税收。上海及中国其他大城市建设国际金融中心的进程也会因此而持续受益。

重要的是，即使上述外资券商全资子公司进入中国，他们要想获取市场份额依然面临重重挑战。外资券商在华网点有限，在零售服务（国内券商的营业额占比约为85%）和本地公司服务方面难以与国内券商竞争，因此他们需要专攻高端机构客户。中国商业银行业对外开放已有30多年，自2007年起允许外资银行在华设立100%控股的全资子银行，但迄今为止外资银行的存款业务市场份额仅为1.4%。证券经纪业的开放步伐比银行业还要缓慢。我们认为外资进入中国资本市场的潜在风险有限且可控，因为中国拥有约4万亿美元（24万亿元人民币）的庞大外汇储备，且国家外汇管理局对外汇汇进汇出均实行审慎管控。

我们认为自由化开放将为中国资本市场引入良性竞争，同时保障中国高效地融入国际市场。2014年12月21日，中国政府宣布修改外资银行管理条例，降低对外资银行在华设立分行和人民币业务牌照的申请要求。业界认为此举将有力地促进银行业竞争和一体化进程。

中国与美国及欧盟正在进行的双边投资协定（BIT）谈判，为中国提供了一个良好的契机，以检验其金融行业是否已经做好了进一步开放的准备。然而，我们建议中国不要等待BIT谈判结束后才开始进一步开放证券业。中国现行的证券业政策框架主要是基于2001年中国加入世界贸易组织备忘录中的相关内容。尽管中国在总体上兑现了其WTO承诺，但中国证券业开放程度远远不能满足资本市场发展的需要，主要表现在如下方面：

❶ 截至2013年底，中国证券企业的资产总计约8000亿美元（5万亿人民币），远远低于同期银行资产——24万亿美元（151万亿人民币）和保险公司资产——1.3万亿美元（8.3万亿人民币）。

❷ 股权投资，包括直接投资和通过共同基金和退休金计划的间接投资，占金融资产的比例还不到20%（占总资产的比例为6%），远远低于发达经济体平均占比60%的水平。

❸ 中国证券行业的综合竞争力、深度和广度都远远落后于其他发达经济体。

人民币国际化

中国美国商会理解货币国际化过程中涉及的风险管控要求极高。中国在管理跨境交易方面也面临前所未见的挑战。尽管如此，2014年人民币国际化取得了显著进展，原因之一就是中国实行了积极的国际贸易政策。

根据环球银行金融电信协会的数据，2014年，人民币是全球第五大贸易货币，位列美元、欧元、英镑和日元之后。

2014年，人民币离岸交易中心业务大幅增长。新加坡依然保持领先地位，交易量增长率达574%，卢森堡名列第二（517%），英国名列第三（236%）。2014年前九个月，28%的人民币证券结算确认在中国内地及香港之外进行，而两年前同期比例为16%。2014年，中国陆续与加拿大、尼泊尔、卡塔尔、斯里兰卡和瑞士签订了新的双边本币互换协定。未来人民币国际化发展的速度和广度都将进一步提升。预计中国在2015年将继续与澳大利亚、肯尼亚、马来西亚、瑞士、阿联酋及美国谈判建立结算中心。

我们坚定地认为人民币国际化将对刺激全球经济增长发挥重要作用，同时人民币国际化也有利于中国及全球金融行业的发展。我们对中国金融监管部门出台的旨在加速人民币国际化进程的全部举措均表示欢迎。

中国相关监管部门如能出台一份清晰和全局性的人民币国际化路线图和时间表，将有助于中国和全球金融行业理解并积极配合该项政策议程。我们的会员企业已经做好准备与中国监管部门分享最佳国际实践和术语，帮助进一步推动人民币国际化。

我们注意到中国人民银行在2012年4月宣布将组织开发独立的人民币跨境银行间支付系统（CIPS），用于处理人民币跨境结算。中国人民银行还确认CIPS系统将落户上海，以建立完整的金融通信基础设施来支持人民币交易。

我们理解未来中国还将继续推进CIPS发展，同时希望中国谨慎制定出台该系统的具体技术条件。我们一直对CIPS的开发表示关注，特别是涉及该系统的拓扑结构、参与者和标准等方面。上述市场基础设施得到国际金融业内主体的认可、接受和参与十分重要。我们建议CIPS的主要功能应当符合国际公认标准和市场实践，从而保障跨境交易生态系统的安全性、高效率和韧性。我们希望有机会

agreements with Canada, Nepal, Qatar, Sri Lanka, and Switzerland. This growth and expansion is expected to continue for the foreseeable future. It is expected that in 2015 China will continue negotiations with Australia, Kenya, Malaysia, Switzerland, the United Arab Emirates, and the US for proposed clearing hubs.

We strongly believe that RMB internationalization will play an important role in stimulating the global economy, and that growth of the RMB will have a positive effect on China's financial sector and on the international financial community. We welcome all initiatives by China's financial regulators to speed the process of RMB internationalization.

A clear and holistic roadmap and timetable for further RMB internationalization by China's regulators will help both the Chinese and global financial communities to understand and proactively align with the policy agenda. Our members are available to share best international practices and terminology with China's financial regulators to assist with the further development of RMB internationalization.

We are aware that the PBOC announced its plan in April 2012 to set up a proprietary Cross-Border Interbank Payment System (CIPS) for the clearing and settlement of cross-border RMB. The PBOC confirmed it would settle the business operations of CIPS in Shanghai with a financial messaging infrastructure to support RMB transactions.

We understand that further developments of CIPS are expected, and hope that release of its detailed specifications will be managed carefully. We have consistently expressed concern regarding the development of CIPS, including its topology, participants, and standards. It is important for the market infrastructure to be recognized through acceptance and participation by the international financial community. We recommend that the key features of CIPS adhere to globally accepted standards and market practices to ensure a secure, efficient, and resilient ecosystem for cross-border transactions. We would welcome any opportunities to work collectively with the PBOC to eliminate any potential bottlenecks preventing wider global use of the RMB.

Private Equity and Venture Capital

Over the past year, the policy environment of the venture capital/private equity (VC/PE) sector has significantly improved as VC/PE funds managers are no longer regulated by multiple government agencies. The burden on VC/PE fund managers has been reduced as they may now register electronically through the China Securities Regulatory Commission (CSRC). Foreign company registrations and foreign investment approvals have been simplified within the Shanghai FTZ as a pilot scheme and a negative list is being used to manage foreign investment within all of the approved FTZs. The expansion of the national equities exchange and quotations throughout the country and IPO registration reform, among other policy initiatives, are ongoing.

Positive regulations released in 2014 include the following:

- In December 2014, the China Insurance Regulatory Commission issued the "Notice on Investment by Insurance Companies in Venture Capital Funds," which broadens the scope of VC fundraising and will indirectly provide approximately US $32 billion (RMB 200 billion) for small and medium-sized enterprises.
- Within the Shanghai FTZ, overseas investments under US $300 million (RMB 1.8 billion) are entitled to a simplified "one form application, one window processing" filing process. As the first PE firm registered in the Shanghai FTZ, Hony Capital finalized its first cross-border investment in under one week in February 2014. To date, approximately 80 percent of cross-border investments within the Shanghai FTZ have been implemented by PE funds.

Looking ahead to 2015, we recommend that the following issues be addressed to support economic restructuring, entrepreneurship, and innovation.

To optimize tax policies for limited-partnership VC/PE funds:

- Release measures on partnership enterprises to clarify that a limited partner shall be levied at the rate of 20 percent, rather than the five to 35 percent paid by "individual businesses" under the Individual Income Tax Law;
- Clarify that a foreign limited partner in limited partnership VC/PE funds will not be regarded as a China-based agency or office to strengthen the predictability of tax issues for overseas institutional investors investing in mainland Chinese VC/PE funds;
- Consider a special policy arrangement for VC funds, as the taxation of limited-partnership VC funds is accounted annually and not calculated based on the duration of funds as a whole. Such taxation is not conducive to encouraging early VC funds to invest in innovative programs; and
- Expand the preferential tax policy on limited partnership venture investment enterprises from the Suzhou Industrial Park and Zhongguancun Zone to other areas. It is suggested that VC funds be allowed to enjoy such policies by being classified as either "small and medium sized" or "high-tech" companies.

To accelerate the growth of qualified institutional investors:

- Explore the possibility of allowing local pension funds and enterprise annuities to invest in VC/PE funds;
- Formulate policy allowing the National Social Security

能与中国人民银行合作，消除一切可能对人民币全球化使用造成妨碍的瓶颈。

私募股权和风险投资

去年，风险投资 / 私募股权（VC/PE）行业政策环境得到显著改善，VC/PE 基金经理不再需要接受多个部门的多头监管，且只需要在中国证券监督管理委员会（证监会）进行电子注册，因此减轻了 VC/PE 基金经理的负担。上海自贸区试点简化区内外资企业注册程序和外商投资审批程序，现已获批的各自贸区也将对外商投资实行负面清单管理。中国目前还在全国范围内推广全国中小企业股份转让系统和 IPO 注册制改革等诸多改革措施。

2014 年颁布的具有积极意义的相关法律法规包括：

- 2014 年 12 月，中国证监会出台了《关于保险资金投资创业投资基金有关事项的通知》，该通知扩大了 VC 筹资范围，并将间接为中小企业提供约320亿美元（2000亿元人民币）的资金；
- 在上海自贸区，海外投资金额在3亿美元（18亿人民币）以下的，可以通过“一表申请，一口受理”的简化程序办理。弘毅资本是首个在上海自贸区注册的PE公司，并于 2014 年 2 月完成了首个跨境投资项目。到目前为止，上海自贸区内 80% 的跨境投资都是由 PE 基金完成的。

展望 2015 年，我们建议中国政府解决下述问题，从而推动经济结构调整、全民创业和创新。

优化对有限合伙制 VC/PE 基金的税收政策：

- 出台相关法规，明确有限合伙制的合伙企业应当按照 20% 的税率，而不是《个人所得税》法中规定的个体工商户所适用的 5%–35% 的税率纳税；
- 明确有限合伙制 VC/PE 基金中的外资有限合伙人不应视作是在华的机构或办事处，从而增强境外机构投资者投资中国大陆 VC/PE 基金时税务上的可预见性；
- 考虑对 VC 基金作特别政策安排。现行有限合伙 VC 基金纳税是按年计征，而不是按照该基金存续期间一次计征。这种计税方法不利于鼓励早期 VC 基金投资创新项目；以及
- 将苏州工业园区和中关村对有限合伙制风险投资企业执行的税收优惠政策推广至其他地区。建议允许 VC 基金享受“中小企业”和“高科技企业”相关优惠政策。

加快发展合格机构投资者：

- 探索允许本地养老基金和企业年金投资 VC/PE 基金的可能性；
- 制定相关政策，允许全国社会保险基金将其管理的一定比例的资金用于投资海外 VC/PE；
- 优化政府指导基金的管理和监督，建立一个公开透明的项目选拔机制和评估机制。

改善合格境内有限合伙（QDLP）试点政策：

- 在上海、深圳和天津之外，进一步扩大 QDLP 政策试点范围；
- 将 QDLP 投资的范围自一级市场扩大至二级市场，从而增加 QDLP 政策的灵活性和吸引力；
- 将合格境内机构投资者的投资范围从二级市场扩大至一级市场。

债 券

2014 年中国太阳能设备生产商上海超日太阳能科技股份有限公司违约事件成为中国债券市场的一项转折性事件，这是自上世纪 90 年代初中国公债市场创立以来发生的首例违约事件。中国美国商会希望这起案例能够警示债券市场主体更加谨慎自律。

我们注意到中国政府对风险敞口的态度已经开始发生转变，其中一个积极的信号便是近年来不仅中央政府，而且金融监管部门都一直强调“按照市场规则处理违约行为”，这符合政府提出的在经济发展中增加市场力量的战略。

2014 年 3 月，李克强总理在一次记者招待会上表示，“个别”金融产品违约难以避免。中国人民银行和证监会都曾表示让违约事件顺应市场力量自然发生，并强调根据市场原则处理违约风险，保护投资者合法权益。最近，中国中央政府剥离自身债务，并限制为地方政府融资工具提供政府隐性担保，为非银行业的健康发展提供了平台。

违约是债务市场不可或缺的一部分，有助于消除银行和非银行系统内的扭曲。根据标普年度全球违约研究报告，从 1981 年到 2013 年，全球企业违约率（包括投资级和投机级）保持在 0.14%–4.14% 的水平。投机级企业违约率在 1991 年达到峰值 11.01%。然而，虽然中国的债券市场位列全球第三，但违约现象却十分少见。这并不是因为所

Fund to invest in overseas VC/PE funds with a percentage of its assets under management; and

- Optimize the management and oversight of government-guided funds in order to establish an open, transparent project selection mechanism and assessment mechanism.

To improve Qualified Domestic Limited Partnership (QDLP) pilot policies:

- Further expand the scope of QDLP pilot policies beyond Shanghai, Shenzhen, and Tianjin;
- Expand the scope of QDLP investments beyond the primary market to include the secondary market, enhancing the flexibility and attractiveness of QDLP policy; and
- Expand the scope of investments by Qualified Domestic Institutional Investors beyond the secondary market, to also include the primary market.

Bonds

The default by Chinese solar-equipment maker Shanghai Chaori Solar Energy Science and Technology Co. in 2014 was a transformative event for China's bond market. It was the first default in China's public bond market, which began trading in the early 1990s. AmCham China hopes this example will encourage participants in the bond market to be more disciplined.

We note that the Chinese government's attitude towards risk exposure has begun to change. A positive signal of "handling defaults in accordance with market rules" has been promoted in recent years, not only by China's central government but also by financial regulators. This adheres to the government's strategy to increase the role of market forces in China's economy.

In March 2014 Premier Li Keqiang stated at a press conference that "isolated cases" of financial product default would be difficult to avoid. The PBOC and CSRC have both shown a willingness to let defaults take their natural course, and have meanwhile stressed the importance of handling default risks according to market-based principles while protecting the lawful rights and interests of investors. Recently, the central government segregated its debts and limited implicit government guarantees to local government financial vehicles, providing a platform for the healthy development of the non-bank sector.

Defaults can help smooth out the kinks in banking and non-banking systems, and are part and parcel of any debt market. Global corporate default rates (including both investment- and speculative-grades) ranged from 0.14-4.14 percent from 1981-2013, according to Standard and Poor's annual global default study. The speculative-grade corporate default rate reached its highest in 1991 at 11.01 percent. However, in China's bond market, which is the third-largest in the world, there have been limited defaults. This is not because all issuers or assets have been able to repay their debt in full and on time, but because local governments or trust companies have bailed them out, or because banks have extended new loans rather than register the original loans as bad assets.

Although China has made significant advances in product innovation and debt issuance, it will need to level the playing field for investors, strengthen its market infrastructure, and promote greater transparency to develop a healthy and well-functioning bond market.

Creating an investor-led environment requires steady improvement in risk-based bond pricing by increasing transparency. A lack of transparency would result in sub-optimal outcomes and rising risks. Information needs to be timely, clear, accurate, and complete. Standardization and quality are just as important as the quantity of information. Companies with a good credit history will continue to easily obtain access to funding at competitive rates. Higher risk issuers need to be distinguished from lower risk ones to make the bond market more efficient.

In addition, further reform of the bond market should facilitate intermediary services, including a ratings industry that exemplifies transparency, objectivity, and independence. AmCham China believes these reforms should aim to protect investors' rights, and encourage China's approach to a well-developed bond market.

Credit Ratings

With the State Council issuance of the "Opinions on the Healthy Development of the Capital Market" in May 2014 and the adoption of implementing measures and other related rules by the relevant regulators, 2015 will be a crucial year for the reform and development of the Chinese capital market. Many of these developments are welcomed by foreign investors, such as Qualified Foreign Institutional Investors (QFIIs) and RMB-QFIIs, who are exhibiting increased interest in the Chinese capital market, including the bond and credit markets.

To date there are few signs indicating that restrictions on foreign participation in the credit rating industry will be eased in step with such developments. Currently, such restrictions appear in two major forms: ❶ an ownership cap of 49 percent on foreign investment in Chinese credit rating agencies (CRAs); ❷ rules and practices, written or otherwise that, at times, put domestic CRAs with foreign shareholders at a disadvantage. In addition, some of the conduct rules adopted or proposed by Chinese regulators appear to deviate significantly from international standards. This will make it difficult for foreign-affiliated CRAs to operate in China even if the ownership restrictions are eased.

有的发债人或资产都能按时足额偿还债务，而是地方政府或信托公司为他们买单，或者是因为银行贷款借新还旧，而不是将旧贷款计入呆坏账。

尽管中国在产品创新和债券发行方面已经取得长足进步，但是依然需要为投资者提供公平的环境，加强市场基础性建设，提高透明度，从而建立一个运行良好、健康的债券市场。

创造一个由投资者主导的环境需要通过不断提高透明度来稳步改进基于风险的债券定价机制。缺乏透明度会导致次优结果并增加风险。信息披露必须及时、清楚、准确和完整。信息的标准化和高质量与信息数量同等重要。历史信用记录良好的公司将比较容易以颇具竞争力的价格获得融资。债券市场需要区分高风险发债人和低风险发债人，从而使其运转更加高效。

另外，债券市场还需进一步推进中介服务，包括发展透明、客观和独立的信用评级行业。中国美国商会相信，这些改革措施会着眼于保护投资者权益并促进中国建立更为成熟、完善的债券市场。

信用评级

2014 年 5 月，国务院出台《关于进一步促进资本市场健康发展的若干意见》，随后相关监管部门又相继出台了意见实施细则和相关法规。2015 年将会是中国资本市场改革和发展的重要一年。外国投资者，如合格境外机构投资者（QFII）和 RMB-QFII 都对上述进展表示欢迎，他们均表示对包括债券和信用市场在内的中国资本市场的兴趣越来越浓厚。

到目前为止，上述改革进展中几乎没有信号显示中国将放松对外资参与信用评级行业的限制。目前上述限制主要表现为两种形式：❶ 外商投资中国信用评级机构（CRA）的所有权比例不得高于 49%；❷ 相关规定和实践中的做法，不管是书面还是口头的，时常将有外商投资的国内 CRA 置于不利境地。另外，中国监管部门制定或建议的某些行为守则也与国际标准显著不同。这将造成即使所有权比例上限取消，外资参股的 CRA 在华运营也会困难重重。

中国美国商会建议相关政府部门取消或放宽所有权限制。中国美国商会还建议监管部门采用符合国际标准的行为守则，从而进一步鼓励外资参与。外资参股的 CRA 参与信用评级市场将使得中国资本市场大为受益，因为他们能够帮助增强中国债券市场的活力和市场主体的信心。

取消或放宽外资参与中国信用评级市场带来的直接或间接的益处包括：

❶ 提高国内 CRA 行业的质量以及市场信用评级的水平，包括：

- 通过知识转让提高国内 CRA 行业从业人员和管理层的业务水平；
- 扩大信用评级流程、技巧、技术和方法的范围；
- 通过大型全球母公司的参与，帮助实现规模经济，促进中国子公司的发展。

❷ 增强中国发行人直接或间接进入国际资本市场的能力，同时帮助全球投资者更好地了解中国发行人的市场信息并协助双方沟通。从而：

- 减少全球出借方与国内借款方之间的信息不对称，促进资本跨境流动，从而使管理完备的公司获得回报；
- 帮助接受评级的发行人以更加经济的方式进入资本市场；
- 将中国分析知识与全球技术更紧密地结合，从而帮助增进中国对全球信用风险的了解。

❸ 提高中国资本市场效率和规范型：

- 协助金融脱媒，降低系统风险；
- 展示国内经济的开放性，为全球投资者释放市场完整性的强烈信号。

建 议

商业银行

- **在各监管总部的指导下，统一监管要求，提高信息收集效率，减少或简化各类申报要求。**
- 保留现有支持地方税收减免政策的协议，或者在完全取消税收减免政策之前留出一个宽限期。
- 建议税务部门考虑针对《税收征管法》实施推出一个 6 至 12 个月的合理实施窗口。
- 在中国境内建立一套独立的银行 IT 系统时应考虑对吸收国际最佳实践和技术模型的能力限制及对银行运营成本上升的巨大压力。

AmCham China recommends that the relevant government agencies remove or ease ownership restrictions. AmCham China further recommends that the regulators adopt conduct rules consistent with international standards to further encourage foreign participation. The participation of foreign-affiliated CRAs would significantly benefit the Chinese capital market, as they can help re-enforce the rigor of and confidence in the Chinese debt market.

The direct and indirect benefits of removing or easing restrictions on foreign participation in the Chinese credit rating industry include:

❶ Improving the quality of the domestic CRA industry and the quality of credit ratings in the Chinese market by:

- Increasing the skills of both the labor force and management of the domestic CRA industry through transfer of knowledge;
- Broadening the range of processes, techniques, technology, and methodological approaches; and
- Helping create economies-of-scale through greater engagement by a large global parent company, stimulating the growth of its Chinese subsidiary.

❷ Enhancing Chinese issuers' access to international capital, either directly or indirectly, in turn improving market information and dialogue on Chinese issuers to a broader group of global investors, thereby:

- Reducing information asymmetry between global lenders and domestic borrowers and facilitating the flow of capital across borders, which tends to reward well-managed companies;
- Helping rated issuers enter the capital markets more economically; and
- Associating Chinese analytical expertise more closely with its global peer group thereby enhancing the understanding of global credit risk within China.

❸ Increasing Chinese capital market efficiency and discipline which:

- Helps with the financial disintermediation process, thereby alleviating systemic concerns; and
- Demonstrates that the domestic economy is open, sending a strong signal of market integrity to global investors.

Recommendations

Commercial Banking

- **Better coordinate reporting requirements under the guidance of the respective regulators' head offices; increase efficiency in data collecting and reduce or simplify the numerous reporting requirements.**
- Maintain the existing agreements that support local tax rebates or issue a grace period before the current rebates are completely phased out.
- The taxation authority should consider a reasonable six to 12 month implementation window for the implementation of the TCAL.
- Consider the significant cost burden of requiring banks to replicate IT systems in China; adopt international best practices and technical models for greater banking security.
- Allow all foreign LIBs in Shanghai based outside of the Shanghai FTZ to enjoy the same treatment as those based in the expanded FTZ, which now includes Pudong.

Securities

- **Fully liberalize foreign investment in the securities sector as soon as possible, and do not include securities on the US-China BIT negative list.**

RMB Internationalization

- **Provide a clear and holistic roadmap and timetable for RMB internationalization that will promote understanding by both the Chinese and global financial communities and allow proactive alignment with the policy agenda.**
- Ensure that the key features of CIPS adhere to globally accepted standards and market practices to ensure a secure, efficient, and resilient ecosystem for cross-border transactions.

Private Equity and Venture Capital

- **Optimize tax policies for limited-partnership VC/PE funds, accelerate the growth of qualified institutional investors, and improve QDLP pilot policies through the recommendations provided in this chapter.**

Bonds

- **Level the playing field for investors, strengthen market infrastructure, and promote greater transparency to develop a healthy and well-functioning bond market.**

- 允许上海自贸区以外的位于上海辖区内的所有本地外资法人银行能够与扩展后的自贸区内（现已涵盖浦东）的本地外资法人银行一样享有同等的待遇。

证 券

- 尽快完全实现外商投资证券业的完全自由化，且不将证券列入美中双边投资协定负面清单中。

人民币国际化

- 中国相关监管部门出台一份清晰和全局性的人民币国际化路线图和时间表，从而有助于中国和全球金融行业理解并积极配合该项政策议程。
- 确保 CIPS 的主要功能符合国际公认标准和市场实践，从而保障跨境交易生态系统的安全性、高效率和恢复力。

私募股权和风险投资

- 通过落实本章提出的相关建议，优化对有限合伙制 VC/PE 的税收政策，促进合格机构投资者的发展，改善 QDLP 试点政策。

债 券

- 为投资者提供公平的环境，加强市场基础设施建设，提高透明度，从而建立一个运行良好的健康的债券市场。
- 进一步推进中介服务，包括发展透明、客观和独立的评级行业。

信用评级

- 取消或放宽对外资 CRA 中外资比例的限制。
- 采用符合国际标准的行为守则，进一步鼓励外资参与。

- Facilitate intermediary services, including a ratings industry that exemplifies transparency, objectivity, and independence.

Credit Ratings

- **Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.**
- Adopt conduct rules consistent with international standards to further encourage foreign participation.

Civil Aviation

Introduction

AmCham China commends the historic growth of China's aviation sector and superb safety record. China is expected to overtake the US as the world's largest air passenger market by 2030 and its top three airlines are now among the world's top 10 carriers in terms of passenger volume. In 2013, 17 airlines from the US and China carried 4.4 million passengers and 150,000 tons of cargo between the two countries.

Additionally, China is expected to overtake the US as the world's single-largest aircraft market in the next 10 years. According to Boeing's Current Market Outlook, China is expected to need more than 6,000 new aircraft over the next 20 years, valued at US $870 billion (RMB 5.36 trillion), an eight percent rise over last year's two-decade estimate.

The US and China are close aviation partners, and this relationship continues to flourish. The US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) continue to enjoy a close partnership that has benefited both sides for many years. AmCham China's affiliated US-China Aviation Cooperation Program (ACP) brings together US industry and government agencies from both countries – the CAAC, FAA, US Trade and Development Agency, US Embassy in Beijing, Foreign Commercial Service, and US Transportation Security Administration – in a unique and active forum for bilateral cooperation.

US companies are important suppliers of aviation technology, services, and know-how, and have committed significant resources to help China reduce its capacity constraints and fulfill a wide variety of training needs. Six US passenger and cargo airlines presently serve China, and many other companies have established joint ventures and representative offices to serve this important market.

While the trend to reduce barriers on the sustainable development of civil aviation in China has been largely successful, challenges remain. Systematic efforts are needed to further open up and modernize China's airspace system, reduce inefficiencies and congestion, realize environmental benefits from the adoption of new technologies and procedures, and accommodate growth.

Ongoing Regulatory and Operational Challenges

Reforming China's Airspace System and Improving Operational Efficiency

Reforming China's national airspace management system is critical to meeting China's forecasted aviation growth, improving system efficiencies, and reducing the environmental impact of the aviation industry. More efficient airspace utilization and management is the best way to reduce fuel burn, air pollution, flying time, and delays, while accommodating the entrance of new air carriers, growth of airplane operations, and expansion and development of new routes.

The surge in air traffic has significantly increased demands on the country's large and complex airspace system. Although the system has a world-class safety record and is handling its growth reasonably well, it exhibits signs of stress, including persistent delays at airports nationwide. These delays are primarily the result of the limited availability and flexibility of national airspace for civil aviation (less than 20 percent of China's airspace is managed by the CAAC), inefficiencies in airspace and capacity management, and a ripple effect from overly congested airports.

Improving airspace and airport operational efficiency, flexibility, and management are the most cited and essential reforms necessary for China to meet the increasing demand for aviation services. The lack of system flexibility often results in delays, inefficiencies, and potentially unsafe situations. ACP's Massive Delay Response System (MDRS) project with the CAAC identified several positive steps the CAAC has already taken to better manage some of the air traffic problems and passenger expectations, and other improvement plans are under consideration.

One of the key MDRS recommendations is for China to adopt and implement an Air Traffic Flow Management (ATFM) and System Wide Information Management (SWIM) system, utilizing a Collaborative Decision Making (CDM) model. These tools can greatly expedite information sharing among aviation system users and help the authorities to more effectively and efficiently manage China's airspace and reduce flight delays. Co-locating military

民用航空

引 言

中国美国商会对中国航空业的历史性增长和出众的安全记录表示赞赏。2030 年中国有望取代美国成为世界第一大航空客运市场，同时中国的三大航空公司在客运量方面现已跻身全球十大航空公司之列。2013 年，往返美中两国的 17 家航空公司共计运送旅客 440 万人次，货物 150,000 吨。

另外，未来十年中国还有望取代美国成为全球最大的单一航空器市场。根据波音公司的《当前市场展望》，未来 20 年内中国对新造飞机的需求量超过 6000 架，价值总计 8700 亿美元（人民币 5.36 万亿元），比该公司去年发布的 20 年预计值增长 8%。

美中两国互为密切的航空伙伴，且这一关系仍在蓬勃发展。美国联邦航空局（FAA）和中国民用航空局（民航局）多年来一直保持着密切的互惠合作关系。中国美国商会下属的美中航空合作项目（ACP）为美国产业界和美中两国相关政府部门——民航局、FAA、美国贸易和发展署、美国驻华大使馆、美国贸易服务局以及美国运输安全局提供了一个独一无二且活跃的双边合作平台。

美国有诸多企业是航空技术、服务和专有知识的重要供应商，它们一直大力投入相关资源帮助中国突破民航运能限制，满足中国的广泛培训需求。目前有六家客运和货运航空公司服务于中国市场，另外还有许多企业在华建立合营企业和代表处来服务中国这个重要市场。

尽管中国在消减民航业可持续发展所面临的障碍方面已经取得了长足的进步，但挑战依然存在。中国尚需进一步系统地推进中国空域系统的开放和现代化，提高效率和缓解拥堵，采用新技术和程序实现环保利益，从而促进中国经济增长。

现存监管和运行方面的挑战

改革中国空域系统，提高运行效率

满足航空业预期增长的需求，改进系统效率，以及减少航空业对环境的影响，关键一点就是要改革中国空域管理系统。降低油耗、减少空气污染、缩短飞行时间和避免航班延误的最好办法是提高空域利用和管理效率，从而得以容纳更多的航空公司，增加运营航班，以及拓展新航线。

空中交通流量的快速增长对中国庞大而复杂的空域系统提出了更高要求。尽管该系统有着世界水准的安全记录，一直保持着良好的成长速度，但已呈现压力迹象，如全国各地普遍存在的航班延误现象。这些延误主要源于民航对空域的使用受限（中国民用航空局控制的空域不足 20%）和缺乏灵活性，空域管理和流量管理效率偏低，同时也是机场旅客过度拥挤造成的一个连锁反应。

提高空域利用和机场运营的效率、灵活性和管理水平经常被提到，必须对其进行改革，如此才能满足中国民航不断增长的需求。缺少灵活性的运营体系则通常会导致航班延误、低效率和安全隐患。ACP 与民航局空管局合作的大面积航班延误应急响应机制（MDRS）显示出民航局已经积极采取多种措施，改善空中交通问题和乘客预期管理，同时还在考虑出台其他改进计划。

对中国的主要 MDRS 建议之一便是使用协同决策机制（CDM），采用和实施空中交通流量管理（ATFM）和全系统信息管理系统（SWIM）。上述这些工具能够极大地增进航空系统使用者之间的信息分享，同时协助监管部门更加高效地管理中国空域，减少航班延误。另一项建议是加强军民航空管制沟通，可以参照FAA的空中交通管理指挥中心的模式，使军航与民航空管人员在同一指挥中心工作，以便更好地共享航班信息数据，统一对情势进行识别和判断。工作重点应放在落实灵活性、安全和高效的系

and civilian controllers to better share system information and create common situational awareness is also recommended. Focus should be placed on flexible, safe, and efficient system management to achieve delay prevention rather than delay response and accommodate anticipated growth in the aviation system.

Climate Change Obligations—Advance Energy Conservation and Emissions Reduction and Sustainability

Climate change is an important global issue. In April 2011, the CAAC issued guidance intended to accelerate energy conservation and emissions reduction (ECER) in the aviation industry. This guidance included goals to lower energy consumption and carbon dioxide emissions through technology and management innovation.

US companies were pleased to see progress in specific areas such as fuel saving and efficiency, development of aviation biofuels, and the installation and application of new technologies. An annual fund of US $162 million (RMB 1 billion) to subsidize Chinese airlines, airports, and China's Air Traffic Management Bureau (ATMB)'s ECER projects was also established.

There is still more that can be done to advance ECER and sustainability. Airports, airlines, the ATMB, and CAAC need a framework to integrate their efforts. To our knowledge, there are no official joint agency programs for airport and aviation sustainability. Greater gains could be achieved with a more integrated approach.

Progress and attention on effective airspace system management will also create direct benefits with respect to capacity, energy savings, and emissions reduction. Thoughtful airfield taxiways and gate layout design can significantly reduce aircraft taxi times. ATMB procedures and airline decisions to equip aircraft with the latest navigation technologies can enable greater benefits with respect to capacity, energy, and emissions.

By contrast, increasing the use of wide-body aircraft on domestic routes is not a viable alternative to pushing forward with the hard work of airspace system reform. Most wide-body aircraft are designed for long-range flights and thus carry extra structural weight that reduces efficiencies on short-haul flights. Wide-body aircraft typically have 10 to 20 percent higher per-seat operating costs on short-haul flights compared to single-aisle aircraft which are optimized for shorter routes, leading to increased fuel burn and emissions that conflict with China's own national ECER objectives.

While there are a handful of high-density domestic routes to slot-constrained airports where wide-body aircraft are necessary, it is difficult to consistently fill these larger aircraft during off-peak periods. US experience offers an interesting illustration: wide-body aircraft are used on only one percent of domestic flights today, down from eight percent in the 1980s, as airlines worked to optimize network efficiencies and as low-cost carriers, which exclusively use single-aisle aircraft, gained a larger share of the market.

AmCham China recommends that the CAAC and ATMB continue to utilize Next Generation Air Transportation System technologies while developing procedures, measurements, and reward systems to encourage air traffic centers, airlines, and airports to increase the use of new procedures and technologies, such as the use of single aisle aircraft on domestic routes, in their everyday operations.

Air Carrier Operations and Issues

China constitutes one of the largest markets for US passenger and air cargo airlines. AmCham China's air carrier members recommend the following to strengthen the air transportation sector and provide mutual benefits to both foreign and domestic airlines.

Optimize Flight Slot Utilization

China's major hub airports, including Beijing, Shanghai, and Guangzhou, are slot-constrained. Optimizing slot utilization is necessary to meet the growth and efficiency targets set by the State Council. The CAAC continues to make improvements in increasing airport capacity, opening new and flexible flight paths, and introducing online slot monitoring. US airlines commend the CAAC's efforts to strengthen the slot allocation process and recommend the following steps for further improvements:

- Continue to improve and optimize slot allocation procedures and slot utilization in accordance with the International Air Transport Association Worldwide Slot Guidelines;
- Extend airport operational hours at key airports to add capacity without having to construct additional facilities;
- Ease or eliminate arbitrary limitations on daily operations which do not consider actual use patterns. Encourage more use of off-peak hours;
- Pay greater attention to the reduction of ground delays at major airports. Such delays significantly impact down-line connections, increase costs, and inconvenience customers. Lengthy delays also generate more emissions and increase air pollution; and
- Increase hub efficiency by allowing baggage check-through for transfer passengers in Beijing and Shanghai. This will generate more jobs and revenue for airports and help attract more passengers transferring from other north-Asian cities.

统管理上，事先有效预防而非事后响应航班延误，从而更加顺应航空系统的预期增长。

应对气候变化的责任——推进节能减排和实现可持续发展

气候变化是一项重要的全球性问题。2011 年 4 月，民航局出台了一项旨在加速航空业节能减排的指导意见，该意见中提出了通过技术和管理创新实现降低能耗和二氧化碳排放的各项具体目标。

美国企业很欣喜地看到中国在燃油节约和增效、发展航空生物燃料和安装应用新技术等具体领域取得积极进展。中国每年向国内民航企业和机构提供共计 1.62 亿美元（人民币 10 亿元）补贴，以支持航空公司、机场和空管等节能减排项目的实施。

中国在推进节能减排和实现可持续发展方面依然大有可为。各大机场、航空公司、空管局和民航局还需要建立一个合作框架来整合各方的努力。据我们所知，目前尚未推广涉及机场、航空公司和空管的可持续发展的联合项目。中国民航业需要加大整合力度，以便取得更大发展。

改进和重视空域系统的管理效率对于扩大运能和节能减排也有着直接的促进作用。在设计机场滑行道和登机口布局时如能考虑周全就可大大减少飞机滑行时间。空管管制规程以及飞行新技术的使用将直接有助于提高吞吐量，实现节能减排。

相比之下，增加宽体客机在国内航线的使用量并非是推进空域体系改革的良策。大多数宽体客机的设计是针对长途飞行，因而承载了额外的结构重量，导致短途飞行效率降低。通常在短途飞行中，宽体客机较之更适宜于短途飞行的单过道客机而言，每座运营成本高出 10–20%，从而导致油耗及排放的增加，有违中国的国家节能减排政策。

尽管对于一些高密度国内航线而言，机场航班时刻资源紧张，有必要使用宽体飞机，但是在非高峰时段，这些宽体飞机也面临着难以维持高客座率的问题。美国的经验提供了一个有趣的例证：随着航空公司致力于优化网络效率，以及那些通常只使用单过道飞机的廉价航空公司市场份额的不断扩大，美国国内航班的宽体客机使用率已从上世纪 80 年代的 8% 下降至如今的 1%。

中国美国商会建议民航局和空管局继续使用下一代航空运输系统技术，同时开发相关规程、考核和奖励系统来鼓励空中交通管理中心、航空公司和机场在日常运营中加大对新规程和新技术的使用力度，例如在国内航线使用单过道飞机。

航空公司的运营和问题

中国是美国客运及货运航空公司最大的市场之一。为了增强航空运输业，为国际和国内航空公司带来更多互惠机遇，中国美国商会的航空公司会员提出如下建议。

优化航班时刻使用

中国主要的枢纽机场，包括北京、上海和广州，都有着航班时刻限制。航班时刻的优化利用是实现国务院提出的经济增长和提升效率目标的必由之路。民航局已在如下领域不断取得新的进展：提高机场运力、开通灵活的新航路，以及引入航班时刻在线监控系统。美国的航空公司赞赏民航局为优化航班时刻分配流程所做出的努力，同时还建议采取以下步骤，以作进一步改进：

- 根据国际航空运输协会（IATA）制定的《全球起降时刻指南》，继续改善和优化航班时刻分配程序及利用；
- 延长枢纽机场的运营时间，在不增加设施的基础上提高运力；
- 放松或取消未考虑实际使用状况的随机性日常运营限制。鼓励更多使用非高峰时段；
- 进一步重视在主要机场减少地面延误。此类延误会对下游航班衔接产生严重影响，增加成本，并给用户造成不便。长时间的延误还将导致更多排放，增加空气污染；
- 允许对在北京和上海中转的旅客进行行李转运以提高机场运营效率。此举将为相关机场创造更多的就业和收入，有助于吸引更多的旅客从亚洲北部其他城市中转。

改进门户机场的必要性

有必要持续改进国际性门户机场的运营，使之成为更高效的国际国内枢纽。大力发展北京、上海以及广州机场，使之成为真正意义上的枢纽，这对于美中两国的航空运输企业而言，都具有重要意义。应当制定政策，推动货物和乘客按时转移，保证行李得到顺畅处理。建立起真正的世界级枢纽机场，有助于中国从其他地区性枢纽机场手中争得更多太平洋地区的客货流。目前，超过 40% 的中国二线

Need for Gateway Airport Improvements

Improved operations at China's international gateway airports are needed for them to become efficient international and domestic hubs. The development of Beijing, Shanghai, and Guangzhou as true hub airports is a high priority for both US and Chinese air carriers. Policies are needed to facilitate timely cargo and passenger transfers and streamline baggage handling. The development of true world-class hub airports can help China capture a larger share of Pacific Rim air traffic from other regional hubs. At present, more than 40 percent of China's second-tier cities are served by third-country carriers hubbed outside of China, resulting in a loss of business to both Chinese and US airlines.

More Efficient, Flexible Procedures Needed for Air Cargo Operations

The international logistics industry, which heavily depends on just-in-time air transportation, will play an increasingly important role as China moves up the value chain in product exports. However, as discussed in the Customs chapter, cumbersome customs regulations and procedural inefficiencies continue to hinder the growth of a modern logistics industry in China. For example, the low priority given to cargo airlines for takeoff and landing slots at Chinese airports impedes the timely delivery of express cargo. This restricts the growth of express cargo airlines and their customers in export industries and 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 timeframes will hamper the growth of international air cargo services in China's central and western regions, and move valued-added sorting and hubbing operations to airports outside of mainland China. Hong Kong is currently the world's largest cargo airport, and most of that cargo is from or destined for the mainland. China's value-added tax (VAT) may also constitute an additional incentive to move essential sorting and consolidation activities to hub airports in neighboring territories.

As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility increases. Demand for cargo services is not static, but fluctuates widely in response to holidays and consumer demand. More flexible and timely procedures are needed to allow air cargo carriers to match schedules to demand and also recover from schedule disruptions elsewhere in their networks.

Costs at major China airports, already high, are increasing and further impede cargo operations. China's aviation fees are already among the highest in the region and local monopolies on the provision of necessary supplies and services, such as fuel, cargo handling, and government filings, are an expensive drag on efficiency. The CAAC, airports, border agencies, and airlines should work together to lower costs at China's international airports, including by increasing marketization and competition.

US-China Air Services Liberalization

AmCham China supports the US government in encouraging their Chinese counterparts to fully liberalize the passenger and air cargo markets between the two countries. Further liberalization will benefit airlines on both sides of the Pacific, giving passengers and exporters more choices and allowing Chinese airlines to benefit from full access to the US market as demand continues to grow.

Actions Needed to Strengthen Development of the Aviation Industry

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 12th 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. The CAAC's commitment to GA development was reinforced at the ACP's December 18, 2013 Steering Committee meeting where GA was listed as one of the top priorities, in addition to stronger collaboration between the US and China in this field. GA growth depends heavily on Chinese government action to improve the physical and policy infrastructure. We applaud the issuance in 2014 of the new "Management Regulations on Use of Low-altitude Airspace (for Trial Implementation)" to help enable the safe, efficient, and comfortable operations of small aircraft, and recognize the challenge in integrating GA operations into the national airspace system. Further efforts are needed to:

- Improve the flight service station 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 through standards for fueling, maintenance facilities, and all other functions;
- 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;
- Utilize foreign pilots and take steps to train more pilots and mechanics to support business aviation growth;
- Reduce the import duty (six percent) and VAT (17 percent) taxes on GA aircraft to a level consistent

城市是由在国外中转的第三国航空公司提供航空运输服务，这对中国和美国航空公司来说都造成了业务流失。

航空货运运营需要更加高效、灵活的规程

随着中国在产品出口价值链上地位的提升，国际物流业将发挥日益重要的作用，而物流业的发展主要依赖准时的空中运输。但正如在海关章节中所论述的，海关通关规章繁琐和程序效率低下，将继续阻碍中国现代物流业的发展。例如在中国的机场，货运航班的起降时刻在分配上没有得到优先安排，从而影响了快递货物的及时送达。这不仅限制了快递货运航空公司及其客户出口行业的发展，也削弱了中国在全球供应链上的竞争力。

由于没有高效的海关程序，使保税货物难以在设计的航空时间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，并致使国际航空货运企业将货物分拣中心和集散中心等运营功能转移出中国大陆地区的机场。目前香港是世界最大的货运机场，其货物的来源地和目的地绝大多数都是中国内地。同时，中国的增值税制度也可能会刺激基本分拣与集中托运作业移至周边国家的枢纽机场。

市场对货运服务需求的增长以及网络的日益复杂，对更加灵活的航班时刻的要求也随之增加。货运服务的需求并非静态的，会随着节假日的到来和客户的需求而大范围波动，因此需要更加灵活和及时的程序，以便货运航空公司能够根据需求来匹配航班时刻，并能调整航线网内其它机场发生的时刻误差。

中国主要机场的费用一直很高，并且还在继续攀升，因此进一步损害了航空货运经营。中国的各种航空费用在本地区一直位居最高之列，且各地对诸如燃油、理货和政府报关等物料和服务供应实行垄断，极大地降低了效率，推升了成本。民航局、机场、边检机构和航空公司应当开展合作，降低中国境内国际机场的各项费用，包括提升市场化水平和鼓励竞争。

美中航空服务自由化

中国美国商会支持美国政府鼓励中国相关政府部门全面推进两国航空客运和货运市场自由化。中美航空旅客运输市场不断快速增长，推进自由化将使美中两国的航空公司受益，为旅客和出口商提供更多选择；与此同时为中国航空公司提供全面进入美国市场的机遇，促进中国的航空公司改善运营管理能力和提升服务水平。

采取积极措施促进航空业的发展

通用航空是指除了军用或定期商用航空业务之外的其他所有航空活动。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、民用直升机空中作业、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，中国政府正式承诺，大力发展通用航空业，为中国经济和社会发展做出重大贡献。在 2013 年 12 月 18 日举办的美中航空合作项目常设委员会会议上，民航局强调了其对于发展通用航空业的承诺，并将通用航空业列为重点工作之一，同时强调将加强中美双方在该领域的进一步合作。通用航空业的发展亟需中国政府采取措施，改善基础设施和政策环境。我们对 2014 年《低空空域使用管理规定（试行）》的出台表示欢迎，该规定有助于保障小型飞机安全、高效和舒适的运营，同时我们认为通用航空运营纳入国家空域系统尚面临特定挑战。中国还应该继续加强下列领域的相关工作：

- 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，以及通过制定燃油和维护设施标准及其他功能标准，为固定基地运商（FBO）提供支持；
- 针对通用航空和商业运输航空的安全规章应有所不同，而且针对不同类型的通用航空的安全规章也应不同，从而有针对性地消减安全风险；
- 为公务航空运营商雇佣外籍飞行员提供便利条件，并逐步培训飞行员和机械工程师，以支持公务航空增长；
- 削减对航空飞机销售征收的进口关税（6%）和增值税（17%），使其与运输飞机所适用的税率相当，并放弃拟议的征收消费税的计划；
- 提供国内航空信息，允许将该信息运用于全国安全航行所必需的图表、地图和数据中。获取航空信息是通用航空业成功发展的基本要求之一。尽管所有航班飞行都必须遵循既定的飞行计划，但针对目视飞行规则（VFR）的航空信息出版物还是应当普遍印发。VFR 飞行的安全性有赖于导航数据和图表的可得性；
- 对飞行员的体检要求和资格认证实施分层管理，扩大飞行员的甄选范围。

with that imposed on transport aircraft and drop the proposed consumption tax;

- Provide access to domestic aeronautical information so that it can be utilized in required charts, maps, and data to support safe flight throughout China. Access to aeronautical information is one of the fundamental requirements for having a successful GA industry. The Aeronautical Information Publications for visual flight rules (VFR) must be more widely available even if all flights must follow an approved flight plan. The safety of VFR flights rely on the availability of navigational data and charts; and
- Follow a tiered structure of pilot medical requirements and certification to make a greater selection of the population eligible to fly.

Aligning Certification Processes with International Standards

The CAAC has created a new aircraft certification center in Shanghai and a new engine certification center in Beijing. It is important that certification and validation activities performed in these centers be aligned with international practices.

AmCham China member companies report that certification and validation activities in China are often handled differently from those in other nations. Examples of such divergences include the requirement for documents and technical data that are not typically utilized, adoption of certification-style processes in validation procedures, and funded travel for meetings.

We believe these discrepancies are the result of the great challenges the certification center faces in starting a new operation and handling a heavy workload. The CAAC is encouraged to work closely with the FAA, the European Aviation Safety Agency, Transport Canada, and other aviation authorities to ensure the certification center consistently aligns its practices with other regulatory bodies around the world.

Increase Regulatory and Technical Inspection Staff at the CAAC

The relatively small number of regulatory staff at CAAC headquarters poses a risk to China's excellent safety record and constrains sustainable industry growth. Increased staffing is vital as member companies widely report negative operational impacts caused by difficulties in receiving timely approvals from the CAAC.

In addition, AmCham China encourages the CAAC to add staffing to provide official English translations of CAAC documentation for suppliers who must comply with their regulations. Presently, each company must translate the regulations on its own, potentially resulting in safety issues.

CAAC Parts Manufacturing Authorization Process Needed

We encourage the CAAC to establish a Parts Manufacturing Authorization (PMA) process, which is needed to permit foreign suppliers of parts and components for the Commercial Aircraft Corporation of China (COMAC) ARJ-21 and C919 aircraft to sell replacement parts directly to COMAC's airline customers. Without such a PMA process, parts required to support post-delivery airline operations would need to flow through COMAC, which is impractical and will be viewed by airlines as a disadvantage in operating COMAC aircraft types.

Initial efforts should focus on the lowest-risk parts. The global PMA industry has evolved to produce very complex parts including those with significant system interactions and that influence boundary conditions for life-limited parts (LLP). It is recognized that the CAAC will need substantial time to build technical capability to support PMA applications.

Before releasing PMA rules, AmCham China recommends that the CAAC ensure that it has sufficient rules and guidance materials in place to address corollary processes, including instructions for continued airworthiness approvals, analysis of system effects (especially with parts impacting thermally balanced systems), validation of airworthiness limitations when PMA parts are introduced on parts that influence LLP boundary conditions, establishment of ownership for failure investigations when operating configurations have been modified away from the type design, and failure message description reporting requirements for PMA holders.

It also is essential that PMA rules and guidance materials address the assessment of design changes – intentional and unintentional – that create operating configurations that have never been tested at the system level, to ensure compliance to all certification requirements.

Prior to launching any PMA effort, the CAAC should review the recent guidance material issued and under development by the FAA to address turbine engine PMA, particularly where the FAA has determined that part-level approval processes are inadequate for assessing system interactions that can be impacted by design changes (intentional and unintentional). The FAA has made this determination despite having had PMA approval processes available for many years.

使航空器审定程序符合国际标准

中国民航局已在上海新开设一家航空器适航审定中心，在北京新设立了一家发动机审定中心。重要的一点是，在此进行的航空器审定及验证工作应符合国际惯例。

据一些公司反映，中国进行的审定及验证工作常常与其他国家的处理方式不同。例如，要求提交一般并不使用的文件及技术数据，在验证过程中采用资质认证式程序，以及会议差旅资助等。

我们认为，正是由于审定中心在启动新的业务和处理繁重的工作时面临重大挑战，才造成上述种种不同。因此，我们希望民航局与美国航空联邦局、欧洲航空安全局、加拿大交通部以及其他民航部门紧密合作，确保新的审定中心与全球其他监管机构的审定程序接轨。

增加中国民用航空局监管人员和技术检查人员

民航局机关编制数量相对较少，这对中国所保持的优异安全记录造成潜在风险，也制约了中国民用航空业的可持续发展。增加民航局工作人员数量至关重要，因为有诸多中国美国商会会员企业反映，由于难以及时取得民航局的各类批准，已经在很大程度上影响了他们的业务运营。

另外，中国美国商会鼓励中国民航局增加专门从事民航局官方法律法规文件翻译的人员，并提供给那些必须遵守上述法规的供应商。目前各个公司各自翻译上述法律法规，容易造成安全问题。

中国民用航空局零部件制造人批准书（PMA）程序的制定

中国美国商会希望民航局制定零部件制造人批准书（PMA）程序，允许中国商用飞机有限责任公司（中国商飞公司 COMAC）ARJ-21 项目及 C919 项目的外国零部件供应商可以直接向中国商飞公司的航空公司客户销售更换件。在没有该批准程序的情况下，支持飞机交付后航空公司运营所需的零部件就必须通过中国商飞公司，这是不现实的，而且从航空公司的角度来看，这不利于中国商飞公司的飞机运行。

相关工作可以从风险最低的零部件开始做起。全球 PMA 行业目前已经发展到可以生产非常复杂的零部件阶段，包括和重要系统互联以及影响寿命件（LLP）临界条件的零部件。大家也意识到中国民航局也还需要一定的时间来建立相应的技术能力以支持 PMA 的审批。

在发布 PMA 规则前，中国美国商会建议中国民航局首先建立充分的规章和指导性材料以建立实施流程，包括持续适航文件的批准，系统效应分析（特别是对于带有影响热平衡系统的零部件），PMA 零部件安装到影响寿命件（LLP）临界条件的部件时适航限制的评估，运行构型改装偏离型号设计后故障调查归属权的制定，以及对于 PMA 持有人的故障信息描述报告要求等。

同时，对于那些会产生没有在系统层面进行过测试的运行构型的设计更改，无论是意向的还是非意向的，要确保 PMA 规章和指导材料能够对该更改进行评估以保证审定要求的符合性。

在开展 PMA 相关工作前，民航局可以参考最近 FAA 发布和制定中的关于涡轮发动机 PMA 的指导材料，尤其是关于 FAA 判定对于（意向的或非意向的）设计更改可能影响到的系统互联的评估仅仅执行零部件层面的批准流程并不足够的这一部分。尽管已经有了多年的 PMA 批准流程，FAA 依然做出了如上决议。

建 议

- **继续开放和改革全国空域系统的管理，让所有使用者都能实现增长，提高效率，其中包括采用实施空中交通流量管理（ATFM）系统，纳入全系统信息管理（SWIM）以及包括空管部门、航空公司、机场当局的协同决策机制(CDM)，以提高中国空域系统的效率，减少航班延误。**
- 使航空器审定程序符合国际标准并开发 PMA 流程。
- 优化中国主要枢纽机场的起降时刻分配和运行程序，增加货运航空公司的航班时刻灵活性。
- 继续加强通用航空业基础设施和政策建设，促进中国国家空域系统内的通用航空业发展，包括对进口通用航空飞机实施适用优惠税收政策。

Recommendations

- **Continue opening up and reforming the management of China's national airspace system to promote growth and efficiency for all users, including the adoption of an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to efficiently utilize the system, and alleviate delays.**
- Align certification processes with international standards and develop a PMA process.
- Optimize slot utilization and operational procedures at China's major hub airports and increase scheduling flexibility for air cargo carriers.
- Continue to strengthen the physical and policy infrastructure to enable GA growth within China's national airspace system, including more favorable tax policies for the import of GA aircraft.

Clean Technology

Introduction

China continued to be at the forefront of global clean technology development and deployment in 2014, remaining the global leader in installing wind power and setting ambitious targets for domestic solar, wind, and other renewable energies. China also made significant steps towards greener economic development and enabling international cooperation.

Particularly commendable developments in 2014 include the:

- US-China Joint Announcement on Climate Change and Clean Energy Cooperation;
- State Council "Energy Development Strategy Action Plan (2014-2020)";
- Development of policies limiting coal-fired generation development;
- Establishment of the Renewable Energy (RE) Information Management Platform; and
- Testing of market reforms, including transmission and distribution separation and direct trading between generation and consumers.

China's long-term energy and emission reduction goals provide technology and project developers with the certainty needed to invest in China's growth. New regulations that specify transparent data and performance management will help ensure fair treatment and support domestic and international private investment. However, more work remains to be done, and member companies continue to encounter specific challenges.

Recent Developments

Energy Development Action Plan and 13th Five-Year Plan Developments

The State Council "Energy Development Strategy Action Plan (2014-2020)," released November 19, 2014, calls for primary energy consumption to be limited to 4.8 billion tons of standard coal equivalent in 2020 and actual coal consumption to be limited to 4.2 billion tons (equivalent to 2.98 tons of standard coal), implying a 2.2 percent compound annual growth rate from 2014-2020. The plan also confirms new energy generation targets for hydro, nuclear, wind, and solar by 2020 of 350 GW, 58 GW, 200 GW, and 100 GW, respectively.

AmCham China member companies are very willing to help China meet these targets – in line with China's stated desire to encourage private investment in power and infrastructure projects – though well-defined payment mechanisms and approval processes are needed to encourage such investment. Meanwhile, unevenly enforced policies at the local level hinder the development of fair and transparent markets. Specifically, we would like to see national pricing implemented for concentrating solar power, natural gas-fired generation, demand response, waste heat generation, and energy storage.

Green Buildings and Urbanization

China is the largest building market in the world and could "lock-in" energy savings and emissions reductions for the next half-century by incentivizing or mandating best practices and use of new technologies. In 2013, the Ministry of Housing and Urban-Rural Development (MOHURD) and the National Development and Reform Commission (NDRC) jointly issued a "Green Building Action Plan" that set a target for 20 percent of all urban buildings to be green buildings by 2015; however, progress has been difficult (some estimates indicate that only two-to-three percent of new construction is green).

On March 16, 2014, the "National New-type Urbanization Plan (2014-2020)" was jointly issued by the Central Committee of the Communist Party of China and the State Council. Various ministries have also announced the development of city demonstration programs, including the following examples:

- MOHURD and Department of Energy: US-China Eco-city Partnerships in seven Chinese cities: Weifang, Rizhao, Dongying, Hebi, Jiyuan, Langfang, and Hefei;
- NDRC: 42 low-carbon pilot cities, seven carbon trade pilot cities, four demand-side pilot cities (Beijing, Suzhou, Foshan, and Tangshan);

清洁技术

引 言

2014 年，中国仍处于全球清洁技术开发和部署的前沿，其风能装机水平继续居于全球领先地位，同时信心百倍地制定了国内太阳能、风能和其他可再生能源发展目标。中国在推进绿色经济发展和加强国际合作方面也取得重大进展。

2014 年中国取得的以下进展尤其值得称道：

- 《美中气候变化和清洁能源联合声明》；
- 国务院出台《能源发展战略行动计划（2014–2020）》；
- 制定限制燃煤发电发展的政策；
- 建立可再生能源信息管理平台；
- 试水市场化改革，包括输配电分开和发电企业与电力用户直接交易等。

中国的长期能源和减排目标决定了中国的发展必然需要相关技术和项目投入。中国已出台有关数据公开和绩效管理的新法规，将有助于确保国内和国际私人投资享有平等待遇。然而，我们的会员企业还面临诸多具体挑战，中国在这一领域还需做出更大努力。

最新进展

能源发展行动计划和“十三五”规划进展

2014 年 11 月 19 日，国务院出台了《能源发展战略行动计划（2014–2020）》，要求到 2020 年，一次能源消费总量控制在 48 亿吨标准煤左右，煤炭消费总量控制在 42 亿吨左右（相当于 29.8 亿吨标准煤），意味着 2014–2020 年的复合年均增长率必须保持在 2.2%。该计划中还确定到 2020 年新能源产量目标分别为常规水电装机达到 3.5 亿千瓦左右，核电装机容量达到 5800 万千瓦，风电装机达到 2 亿千瓦，和光伏装机达到 1 亿千瓦左右。

中国美国商会的会员企业十分愿意助力中国达成上述目标——这也符合中国鼓励社会资本投资电力和基础设施项目的政策目标——但中国还需要明确付款机制和审批程序以切实鼓励投资。与此同时，各地在政策执行力度上的不平衡也阻碍了公平、透明市场的发展。具体而言，我们希望在聚光太阳能发电、天然气发电、需求响应、余热发电和能源存储等的定价方面能够做到全国统一。

绿色建筑和城镇化

中国是全球最大的建筑市场，在今后五十年内可以通过激励或强制实施最佳实践，以及使用新技术来实现建筑物节能减排。2013 年，住房和城乡建设部（住建部）和国家发展和改革委员会（发改委）联合发布了《绿色建筑行动方案》，规定到 2015 年末，20% 的城镇新建建筑需达到绿色建筑标准要求。但实际上推进实现该目标却十分艰难（有预测称只有 2%–3% 的新建建筑物达到了绿色建筑标准）。

2014 年 3 月 16 日，中共中央和国务院联合下发了《国家新型城镇化规划（2014–2020）》。各大部委也纷纷宣布发展各类城市示范项目，其中包括：

- 住建部和美国能源部：美中生态城市合作计划在中国的七个城市进行生态城市试点：潍坊、日照、东营、鹤壁、济源、廊坊和合肥；
- 发改委：42 个低碳试点城市，7 个碳交易试点城市，4 个电力需求侧管理试点城市（北京、苏州、佛山和唐山）；
- 住建部和工信部：近 200 个“智慧城市”；
- 国家能源局（能源局）：新能源城市（100 个示范市、200 个示范县、1000 个示范区），能源局 APEC 低碳示范城镇（100 个示范项目）；
- 交通部：近 40 个公共交通试点城市。

- MOHURD and the Ministry of Industry and Information Technology: nearly 200 "Smart Cities";
- National Energy Administration (NEA): New Energy Cities (100 demo cities, 200 demo counties, 1,000 demo prefectures), NEA-APEC Low Carbon Model Town (100 demo projects); and
- Ministry of Transportation: nearly 40 public transportation pilot cities.

Better coordination between these programs, and cooperation with the US-China Energy Cooperation Program (ECP)'s Eco-City Initiative, will benefit all parties. Specifically, streamlining of expected Eco-City outcomes and metrics, support for repeatable business models, and specification of foreign technology application are needed.

Sustainable Solar Photovoltaic Development

In 2014, the NEA announced a 14 GW solar photovoltaic (PV) target for the year (6 GW centralized and 8 GW distributed). While these initial targets were not met, AmCham China applauds these efforts. However, current policies to promote PV investment are misaligned and create a difficult investment environment. For example, the issuance of solar and wind project development rights (*lutiao*, 路条) were oversubscribed, creating significant delays for companies applying to be included in the RE Catalogue and obtain provincial subsidies. Such delays in subsidy payments pose a significant financial risk to both Chinese and foreign developers. AmCham China recommends that the NDRC and NEA issue clear statements on whether all issued *lutiao* will be honored (for both Chinese and foreign developers) and/or guarantee admittance to the RE catalogue within a fixed time after grid connection (e.g., less than one year) to mitigate this risk.

Additionally, approval procedures for the RE Catalogue appear to be unfairly implemented. Analysis of the applications to and dates of the last five RE Catalogues reveal that a "first come, first served" approach is not followed. This makes foreign companies worry that they are being treated unfairly and experiencing much longer wait times than private Chinese or state-owned enterprises. AmCham China recommends that the NEA and NDRC publicly state and publish online their commitment to a fair approach for approving projects for the RE Catalogue.

Furthermore, the redistribution of subsidy payments to RE project developers continues to encounter delays. The system is sufficiently funded through 2015, but subsidy payments have not reached project owners in some provinces. We recommend that the RE Data Management Platform be extended to publicly track payment flows from the national grid level to the provincial grid level to the project owner, leading to a more efficient, lower cost system.

Collectively, these issues lead to significant delays and present an unacceptable risk to project financers and member companies that want to support PV market development in China. Furthermore, AmCham China encourages a tailored distributed solar PV subsidy schedule that accounts for regional differences in solar endowment in order to ensure efficient market adoption and prevent over-capacity. Currently, local subsidies often impose local sourcing or financing requirements, leading to unfair procurement and approval practices and, therefore, slower and more costly deployment.

Distributed Wind Power

AmCham China also encourages the Chinese government to provide the same magnitude of support and subsidies to distributed wind power generation as for solar PV. Small- to medium-scale (100 kilowatt or below) compact wind power generators can be installed in populated districts, complementing distributive solar PV facilities and microgrids, lowering overall costs, and increasing local reliability.

Demonstration and Deployment of Grid-Scale Integration

Scaling is another key to driving down the cost of RE adoption. The NEA released the "New Energy Demonstration City Classification Management" in 2013 with goals and tasks for each level of government; however, this effort remains stalled. AmCham China encourages large scale deployment of Chinese and US-manufacturing technologies to help the NEA meet its objectives.

Distributed Energy and Combined Heat and Power

In 2011, the NDRC and NEA issued the natural gas-based distributed energy and combined heat and power (DE&CHP) guideline, but increases in gas prices in July 2013 and September 2014, as well as grid blockages, threaten this objective. In November 2014, the NDRC, NEA, and MOHURD issued natural gas DE&CHP demo project implementation plan guidelines that improved grid interconnection rights and granted franchise rights to investors for cooling, heating, and electricity businesses in specified areas. However, provincial and regional policies on top of near-term gas prices jeopardize stable future development of this important market segment. NEA support for specific local demonstration projects will help create the path forward and enable China to take advantage of future shale gas and pipeline gas delivery improvements.

Smart Grid

Over the past year, China has continued its mission to transform the world's largest grid into the world's most efficient and technologically advanced grid. While its pace of development is impressive, several problems remain. In short, the full benefits of such infrastructure are being hampered by the following issues:

加强上述项目之间的协调合作，及它们与美中能源合作项目（ECP）下属生态城市计划之间的合作有助于增进各方利益。特别是优化生态城市的预计成果和指标，支持可复制商业模型和外国技术运用规格等方面的合作确有必要。

太阳能光伏发电的可持续发展

2014 年，国家能源部确定全国年度光伏装机目标为 14GW（其中分布式 8GW，地面电站 6GW），尽管最终未能完成初定目标，但中国美国商会对相关努力依然表示赞赏。不过目前的光伏投资鼓励政策之间存在偏差，给投资者造成诸多困难。例如，目前太阳能和风能项目开发权（“路条”）超额认购，对申请列入可再生能源目录及获得省级补贴的企业造成严重延误。上述补贴支付迟延对中国和外国开发商均构成了严重的经济风险。中国美国商会建议，发改委和能源局对下述问题作出明确规定：是否所有已批“路条”均具有法律执行力（不管是对中资还是外资开发商）和／或承诺在并网后的一定期限（如不超过一年）内即准予进入可再生能源目录以降低上述风险。

另外，实践中可再生能源目录准入审批程序也缺乏公正性。通过对最近五个获准进入目录的项目申请及其时间进行分析后发现，审批流程并未遵守“先到先得”的原则。这就造成外国投资者担心在审批过程中会遭受不公平待遇，且审批等待时间要比中国民营或国有企业长。中国美国商会建议，能源局和发改委公开并在网上发布保障可再生能源目录项目准入审批程序公正性的承诺。

另外，对可再生能源项目开发商的补贴资金再分配也持续遭遇迟延。全系统 2015 年之前的资金配给充裕，但在部分省份项目业主却还没拿到补贴资金。我们建议可再生能源数据管理平台开放公众查询功能，允许公众查询从全国性电网到省级电网再到项目业主的资金流向动态，从而提高全系统效率，降低成本。

上述问题共同导致了严重延误，给项目投资者以及希望助力中国光伏市场发展的中国美国商会会员企业带来了难以承受的风险。另外，中国美国商会鼓励中国政府充分考虑各地在太阳能资源禀赋上的差异，因地制宜地制定区域补贴政策，从而确保高效的市场普及，同时防止产能过剩。目前地方补贴往往附加本地来源和融资要求，造成不公平的采购和审批行为，因此也延误了部署流程并推升了部署成本。

分布式风能发电

中国美国商会还鼓励中国政府对分布式风能发电提供与太阳能光伏发电同等力度的支持和补贴。在人口稠密地区安装中小型（100 千瓦或以下）小风电发电机作为分布式太阳能光伏发电和微电网的补充，从而降低总体成本并提高局部稳定性。

示范项目和规模化电网并网

规模化是降低可再生能源应用普及成本的另一重要手段。2013 年，国家能源局发布了一部新能源示范城市分类管理法规，对各级政府的相关目标和任务做出了规定。但这项工作仍有待推进。中国美国商会鼓励中国政府大规模部署中国和美国的制造技术，助力国家能源局实现上述目标。

分布式能源和热电联产

2011 年，国家发改委和国家能源局出台了《关于发展天然气分布式能源的指导意见》，但由于 2013 年 7 月和 2014 年 9 月天然气价格的两次上调，加上并网存在阻碍，导致实现这一目标面临很大难度。2014 年 11 月，国家发改委、国家能源局和住房与城乡建设部联合发布了《天然气分布式能源示范项目实施细则》，该细则强化了并网权，并允许天然气分布式能源项目在批准区域内进行冷、热、电特许经营。然而省级和地方政策、加上近期天然气价格上调，使这一重要细分市场未来的稳定发展面临考验。国家能源局支持特定地方示范项目将有助于摸索这一领域的发展道路，并有助于中国改善未来页岩气和管道天然气的输送能力。

智能电网

在过去的一年中，中国继续致力于将其全球规模最大的电网升级改造成为世界最高效、技术最先进的电网。尽管发展速度惊人，但仍然存在着几方面问题。简而言之，下述问题阻碍了中国电网充分发挥功效。

- 超高压输电布线延迟加剧了风电弃风限电的现象。
- 能源存储市场由一次性的示范项目驱动，安装很快但缺少持续的税收结构支持。
- 缺乏先进的监管输电网的能力，难以解决特高压交流稳定性的问题。
- 现行定价机制限制了智能电表的运用，而智能电表的普及将打开需求侧应用和服务这一广阔市场。

- Delays in ultra-high-voltage alternating current (UHVAC) transmission deployment have exacerbated wind capacity/curtailment.
- The energy storage market is driven by one-off demonstration projects which will quickly stall without continued tariff structure support.
- Lack of advanced monitoring capability in the distribution grid is needed to solve UHVAC stability problems.
- Current pricing mechanisms limit the utility of smart meters, which will open the market for demand-side applications and services.

At present, incompatible technology standards, limited market access, intellectual property (IP) risks, and lagging market reforms prevent more fruitful cross-border business exchange on smart grid and electric vehicle charging solutions. For example, member companies have developed software to utilize smart grid data for demand response and energy storage but, without market access and IP protection guarantees, these companies cannot risk bringing their technology to China.

US-China Energy Cooperation Program

In 2014, the ECP achieved several outcomes in the energy, green building, and smart grid sectors with bilateral government support, including the following:

- Fostered various commercial agreements on energy efficiency;
- Hosted the US-China Inner Mongolia Clean Coal Roundtable to promote project developments;
- Launched a workshop series on smart solutions focused on green data centers, energy management, and green parks;
- Supported the US-China Climate Change Framework and workshops as well as the proposed demo projects announced during APEC; and
- Further developed its Eco-City Initiative and aimed to promote operable, sustainable, and replicable business models for Chinese eco-city development.

Other Industry Challenges

- Early stage demo projects for clean technologies, like energy storage are often funded by the "863" program, restricting foreign technology and preventing Chinese companies from acquiring innovative foreign technologies. This also creates overinvestment in inferior technologies, hurting China's long-term global competitiveness. For grid-scale clean technology demonstration projects, we recommend establishment of a funding mechanism in addition to the "863"program to encourage foreign cooperation.
- The State Council "Green Building Action Plan of 2014" reaffirmed the importance of MOHURD's green building standards under China's Three-Star Rating System, which requires all government-invested projects to meet MOHURD's standards. This important step should also be considered for non-government buildings, and include technical training and access to energy service companies (ESCOs).
- The Clean Energy Research Center (CERC) has announced plans to build five demonstration buildings in two years, with the China Academy of Building Research building in Beijing having already been completed. We recommend use of the results to show what works in China and provide the rationale for setting aggressive standards which allow the use of both domestic and imported materials and technologies.
- While the CERC and US-China ECP have been successful at developing partnerships between large organizations and academic institutions, some small- and medium-size manufacturers and research organizations have found participation difficult based on institutional size and priorities. In addition, while demonstration projects that result from these programs (e.g., a megawatt-size project in one city) are important first steps, the impact will be limited unless participating companies and related technologies have an opportunity to scale-up and participate in larger, sustainable markets (e.g., gigawatts of projects across multiple geographies).
- In addition to the use of higher standards, identifying and addressing insufficient or conflicting economic incentives for green buildings will be critical. As part of this, the Ministry of Finance and State Administration of Taxation should develop preferential tax and credit policies, as well as "green leasing" incentives.

Recommendations

For the Chinese Government:

- **Continue to set targets and provide preferential policies and incentives for green and energy-efficient building construction and retrofit.**
- Publish clear and transparent approvals for projects in the RE Catalogue.
- Extend China's Three-Star green building rating system to non-government buildings, as well as include technical training and access to ESCOs.
- Consider tailoring the distributed solar PV subsidy schedule to account for regional variation in solar resources as well as technological efficiencies to ensure efficient market adoption.

当前，技术标准不兼容、市场准入有限、知识产权风险以及市场改革进程缓慢，决定了在智能电网和电动车充电解决方案领域的跨境商业交流难以取得更多成果。例如，我们的会员企业已经开发出智能电网需求响应数据应用和能源存储相关软件，但由于无法取得市场准入和知识产权保护，这些企业往往不愿冒风险将技术引入中国市场。

美中能源合作项目

2014 年，在中美两国政府的支持下，中美能源合作项目在能源、绿色建筑和智能电网领域取得如下多项进展：

- 推进达成多项节能领域商业协议；
- 举办中美内蒙古清洁煤圆桌会议，推进项目开发；
- 举办智能解决方案系列研讨会，重点关注绿色数据中心、能源管理和绿色公园；
- 支持中美气候变化框架，资助相关研讨会以及 APEC 期间宣布的相关示范项目；
- 继续推进生态城市计划，努力为中国生态城市发展推广可操作、可持续和可复制的商业模式。

其他行业挑战

- 清洁技术早期示范项目，如能源存储项目的资金通常来自“863”计划，而“863 计划”限制外国技术并禁止中国企业购买外国的创新技术。此举还导致了资金过度投向中国落后技术，削弱了中国长期的全球竞争力。就全网清洁技术示范项目而言，我们建议在“863”计划之外另行建立一个新的资助机制，从而促进中外合作。
- 国务院发布的《2014 绿色建筑行动计划》重申了住建部中国三星绿色建筑评价标准的重要性，要求所有政府投资兴建项目必须达到住建部的标准。我们认为对非政府建筑也应当考虑适用该标准，并考虑加入技术培训和利用能源服务公司。
- 在过去两年里，中美清洁能源联合研究中心（CERC）已经完成了五个示范建筑，包括中国建筑研究院北京办公楼项目。我们建议推广上述示范项目的成功经验，并为制定更高标准提供依据，同时允许使用国内外的材料及技术。
- 尽管 CERC 和中美能源合作项目都已成功地与大型机构和学术单位建立了合作关系，但部分中小型制造商和研究机构却因为组织规模较小和研究重点不同而难以获得参与合作的机会。另外，尽管这些项目中产出的示范项目（例如，一个城市中的兆瓦级项目）是重要的一步，但如果不扩大参与企业的范围和加大相关技术的应用力度，将导致更多企业和相关技术难以参与到规模更大、持续性更强的市场（例如，遍布多地的吉瓦级项目）中，那么这些项目的影响力将会十分有限。
- 除采用更高标准外，找出并解决影响绿色建筑发展的无效或相冲突的经济激励措施同样至关重要。为此，财政部和国家税务总局应当制定出台相关税收优惠和减免措施，以及“绿色租赁”激励措施。

建 议

对中国政府：

- **继续为新建和改造绿色和节能建筑设定目标并提供优惠政策和激励措施。**
- 制定颁布明确且透明的可再生能源目录项目审批程序。
- 将中国三星绿色建筑评价标准扩展适用至非政府建筑，同时加入技术培训和利用能源服务公司。
- 考虑根据各地太阳能资源禀赋上的差异，因地制宜地制定太阳能光伏补贴政策，确保市场应用普及效率。
- 为分布式风电提供与太阳能光伏发电和能源存储同等力度的支持和补贴措施。
- 邀请掌握创新技术的外国企业参与国家级智能电网示范项目。

对美国政府：

- **考虑在中美清洁能源联合研究中心（CERC）之外建立新的、多样化的资助机制，为中小企业和初创公司在中国市场寻找项目和合作伙伴创造更多机会。支持多元投资和咨询平台，既保障多样化又突出专业性。**
- 继续与中国政府合作，共同致力于诸如 CERC 建筑节能项目等旨在降低中国建筑物能耗的政策和技术的研究。

- Provide the same magnitude of support and subsidies that have been allocated for distributed solar to distributed wind power generation and energy storage.
- Invite foreign companies with innovative technologies to participate in national smart grid demonstration projects.

For the US Government:

- **Consider diversifying funding beyond the CERC in order to create opportunities for SMEs and early stage companies looking for project and partnership development opportunities within the Chinese market. Supporting multiple investments and consulting platforms fosters both diversity and specialization.**
- Continue to collaborate with the Chinese government to conduct joint research on policy and technologies that will drive very low-energy buildings in China, such as the CERC Building Energy Efficiency project.
- Develop a corresponding project, perhaps also under the CERC umbrella, to conduct joint research into smart grid solutions, standards, and policies.
- Conduct joint case studies of historical air quality improvement programs in US cities such as Los Angeles and New York, as well as power generation fuel-switching programs and coal caps, in order to derive best practices and lessons learned to inform China's Air Pollution Action Plan.
- Continue to support public-private partnerships that deploy US clean technologies and services in the market, such as the ECP.

- 在 CERC 框架下开发一个对应项目，开展智能电网解决方案、标准和政策等方面的联合研究。
- 联合开展有关历史上美国城市（如洛杉矶和纽约）改善空气质量举措的案例研究，以及发电燃料转换项目和煤炭总量控制的案例研究，从而为中国落实《大气污染防治行动方案》提供更多的最佳实践和经验教训。
- 继续支持旨在推广部署美国清洁能源技术和服务进入中国市场的政府－私营部门合作计划，如美中能源合作项目。

Construction, Engineering, and Design

Introduction

The Chinese government took several positive steps to improve regulation of the construction market in 2014, as discussed later in the Recent Developments section, including measures to address some market place issues and encourage new business models.

However, despite these encouraging steps, the relatively restrictive regulatory environment for foreign construction and engineering companies generally remains unchanged. As the construction market increasingly globalizes, AmCham China continues to believe that foreign-invested enterprises (FIEs) can enhance China's construction market by introducing advanced technology and management skills to local operations. We therefore hope that the Chinese government will promote policies to encourage the development of FIEs in this market.

Ongoing Regulatory Issues

Engineering and Design Sector

Open Grade A Classification to More FIDEs

The legal regime applicable to foreign-invested design enterprises (FIDEs) remained unchanged in 2014. When applying for a Design Qualification (DQ), an FIDE may initially only apply for a Grade B or lower DQ, regardless of its size, experience, or international track record. The only way a FIDE can apply directly for a Grade A DQ is if it already holds a Grade One (or above) construction qualification in the same industry.

These restrictions unfairly discriminate against qualified and experienced foreign companies that otherwise already satisfy 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. Similarly, because of the nature of their business (and the onerous capital and staffing requirements for obtaining a Grade One construction qualification, as discussed below), most qualified and experienced foreign companies do not already hold a Grade One (or above) construction qualification in the same industry. To resolve this conundrum, AmCham China recommends that the Chinese government allow FIDEs which otherwise meet the requirements to apply directly for a Grade A DQ without first applying for and obtaining a Grade B DQ.

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 FIEs in 2007, FIDEs were able to more quickly expand operations and employ more Chinese professionals. However, as the relaxed regulations were introduced as temporary measures, many FIDEs remain reluctant to take advantage of these policies due to uncertainty as to how long they will remain in effect.

Such 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 six months per year.

Construction Sector

Improve Laws Regarding Capital Requirements and Staffing for FICEs

Foreign-invested construction enterprises (FICEs) 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, the "Administrative Provisions for Foreign-Invested Construction Enterprises" (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 or a joint venture with a Chinese firm. They then must apply for the appropriate construction qualification in order to become a FICE.

建筑、工程和设计

引 言

正如下文“最新进展”部分所详述，2014 年，中国政府采取了多项积极措施，旨在改进建筑市场监管，其中包括解决市场问题和鼓励创新业务模式等。

尽管这些举措鼓舞人心，但外资建筑和工程公司面临的监管环境仍然相对限制。随着建筑市场全球化程度日益提高，中国美国商会始终相信，通过在本地经营中引进先进技术和管理技巧，外商投资企业（外资企业）能够促进中国建筑市场的发展。因此，我们希望，中国政府推行鼓励政策，促进外资企业在这一市场上的发展。

现存监管问题

工程及设计行业

向更多外资设计企业开放甲级资质认证

2014 年，适用于外资设计企业的法律制度保持不变。在申请设计资质时，无论其规模、经验与国际业绩记录如何，外资设计企业的初始申请只能为乙级或以下。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的情况下，外资设计企业才能直接申请甲级设计资质。

这些限制对符合条件并具有行业经验的外资公司是一种歧视，因为这些外资公司已经满足申请甲级设计资质的所有条件。这些公司一般对于乙级工程项目既不感兴趣也没有竞争优势，因此没有理由申请乙级设计资质。同理，因为业务性质的原因（以及取得一级建筑资质所需要满足的过重资本要求和人员要求，详见下文），多数符合条件并具有行业经验的外资公司并未在相同行业获得过一级或以上级别的建筑资质。为了解决这一难题，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。

永久性放宽外资设计企业的雇用及居住限制

2007 年，中国放宽了对外资企业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。外资设计企业因此得以加快扩张业务，雇用更多中国员工。但是，这些宽限规定只是临时性的，由于不确定这些临时措施的有效期限，很多外资设计企业不愿意利用这些政策。

这种不确定性使得经营计划变得复杂，并阻碍了人才招聘。《外商投资建设工程设计企业管理规定实施细则》（18 号令）规定，外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应在中国居住 6 个月。中国美国商会认为应当永久性地取消此规定。

建筑行业

改进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有关资本金和部分专业岗位的人员配备异常繁重的规管。

根据《外商投资建筑业企业管理规定》（113 号令）及其实施细则的要求，准备在华从事建筑业的外资投资者首先需要在中国建立独资企业或与中方企业合作建立合资企业，然后必须申请相关的建筑资质，方可成为外资建筑企业。

与国际惯例不同的是，中国法律不接受使用银行担保、履约保证或母公司担保等标准金融工具充当成立外资建筑企业的资本金。此外，获得外资建筑企业资质的人员配备先决条件，尤具挑战：计算某些领域关键职位（例如工程师、建筑师等）的所需最低人数时，只有本地具有相关执业资格的专业人员才能计算在内，而具有相应资质的外籍员工则不能计算在内。

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充当成立外资建筑企业的资本金，还应当修改人员配备要求，承认具有相应资质的外籍专业人员。

Contrary to international practice, Chinese law does not allow standard financial instruments such as bank guarantees, surety bonds, or parent company guarantees to satisfy capital requirements for establishing a FICE. In addition, the staffing prerequisites to qualify as a FICE are particularly challenging as they stipulate that, in certain key personnel categories (e.g., engineers, architects), only locally qualified professionals can be counted towards the required minimum number while highly qualified expatriate professionals on the payroll cannot.

AmCham China believes that internationally accepted standard financial instruments should be allowed to satisfy capital requirements for establishing a FICE in China, and that the staffing requirements should be modified to include appropriately qualified foreign professionals.

Remove Market Exclusions for FICEs

FICEs operating in China continue to face restrictive regulatory burdens, with market exclusion ranking among the biggest challenges. Wholly foreign-owned FICEs are restricted to undertaking foreign-funded projects or projects with foreign investment equal to or greater than 50 percent, except for projects that cannot be undertaken by Chinese construction enterprises because of technical difficulties. This regulation restricts FICEs to a limited segment of the construction market.

In 2013, such market exclusions were partly removed in the China (Shanghai) Pilot Free Trade Zone. AmCham China believes that the removal of such exclusions should be expanded nationwide, as they prevent FICEs from playing a substantive role in the Chinese market and from introducing advanced technology and expertise to the local market.

Project Management Sector

Clarify Project Management Qualifications

Conflicting regulatory regimes make it difficult for FIEs to provide project management services. The National Development and Reform Commission (NDRC) under the "Measures for Recognizing the Qualifications of Engineering Consulting Entities" (Circular 29) requires companies wishing to provide engineering consulting services, including project management, to obtain an Engineering Consulting Enterprise Qualification Certificate. Separately, the Ministry of Housing and Urban-Rural Development (MOHURD) under the "Trial Measures for the Administration of Construction Engineering Projects" (Circular 200) requires foreign FIEs that wish to provide project management services to establish a local entity and obtain qualifications in at least one of six categories (i.e., survey, design, construction, supervision, tendering agency, or cost control). It is not clear whether FIEs must satisfy the regulations of both the NDRC and MOHURD before they can offer project management services.

In addition, FIEs attempting to satisfy MOHURD's regulations are further confused by the selective application of the "Provisions on the Administration of Foreign-Invested Construction Engineering Service Enterprises" (Decree 155), jointly promulgated by the Ministry of Commerce and the then-Ministry of Construction, which allows an enterprise that is not a FICE or a FIDE to provide project management services. FIEs can satisfy Decree 155 by obtaining one of three qualifications (i.e., supervision, tendering agency, or cost control) and qualifying as a foreign-invested engineering services enterprise (FIESE). However, guidelines for the implementation of Decree 155 have yet to be issued and local authorities in many cities have cited this as a reason for refusing to accept FIESE applications.

AmCham China looks to the Chinese government to issue clarifying rules on project management qualifications as soon as possible in order to enable companies to operate effectively within a consistent regulatory environment.

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 current qualification system does not effectively address such projects. Both the "Guiding Opinions Concerning Nurturing and Development of Project General Contractor and Engineering Project Management Enterprises" (Circular 30) and the "Explanation Letter Concerning Market Entry for Project General Contracting" (Circular 161) appear to allow EPC contracting, provided that 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 apparent discrepancy effectively prevents entities with only a DQ from undertaking EPC contracting, which is expressly permitted by Circular 30 and Circular 161.

AmCham China hopes that this inconsistency will be clarified in order to enhance transparency and regulatory uniformity within the industry.

Contract Filing with Local Government Authorities

Various engineering, design, and construction contracts that govern the life cycle of a construction project must be filed with local authorities. Both national and local level governments have issued a series of model texts for such contracts, for the purpose of guiding contracting activities between different parties. While model texts are normally encouraged to be adopted and filed, Chinese law allows the parties to use their own form of contract or make necessary

取消对外资建筑企业的市场排斥

在华经营的外资建筑企业仍然面临种种监管限制，市场排斥是其中最大挑战之一。外商独资建筑企业只能参加外商投资项目或外资比例达到或超过百分之五十的项目，中国建筑企业因为技术困难而无法参加的项目除外。这一规定使得外资建筑企业对建筑市场的参与非常有限。

2013 年，中国（上海）自由贸易试验区部分取消了这种市场排斥。中国美国商会认为，应当在全国范围内取消这种市场排斥，因为它们会妨碍外资建筑企业在中国市场发挥实质性作用及向本地市场引进先进技术和专业知识。

项目管理行业

明确项目管理资质

相互冲突的监管制度使得外资公司难以提供项目管理服务。国家发改委颁布的《工程咨询单位资格认定办法》（29 号令）要求从事工程咨询服务（包括项目管理）的企业必须获得工程咨询单位资格。住建部颁布的《建设工程项目管理试行办法》（200 号令）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至少获得六大门类（即勘察、设计、施工、监理、招标代理及造价咨询）中的一项专业资质。至于外资企业是否必须同时满足国家发改委和住建部的要求才能提供项目管理服务，仍不清楚。

在尝试满足住建部标准时，外资企业对《外商投资建设工程服务企业管理规定》（155 号令）的选择性适用非常困惑，因为该法规允许非外资建筑业企业和外资设计企业提供项目管理服务。外资企业获得监理、招投标代理或造价咨询三项中的任一资质可满足 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，许多城市的地方当局拒绝接受外资工程服务企业的申请。

中国美国商会希望中国政府尽快出台明确的项目管理资质制度，为企业运营创造一个统一的政策环境。

设计、采购、施工行业

明确有关工程总承包的法规

中国已逐步采用在建筑项目中纳入设计、采购、施工承包（工程总承包）的方法，但现有的资质认证系统还不能有效地满足这类项目的需求。《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）似乎均允许工程总承包，只要承包商具有适当的监理、工程设计或总承建资质，并将建筑工作适当地分包给具有资质的分包商。然而，有许多地方官员不接受只具有设计资质的承包商提交的设计采购施工承包申请。这实际上阻碍了只具有设计资质的主体参与工程总承包，显然不符合 30 号令和 161 号令的明文规定。

中国美国商会希望，相关要求能够明确，以便提高本行业的透明度和监管的一致性。

向地方政府当局备案合同

项目生命周期期间的各种工程、设计和施工合同必须向地方当局备案。中央和地方政府已经发布一系列合同示范文本，旨在指导各方合同签订活动。虽然通常鼓励采用范本合同并备案，但中国法律也允许当事方使用自己制定的合同或者对范本合同进行必要的修改。然而，在实践中，许多外资企业发现，一些地方当局会对合同内容做进一步的限制（例如，要求使用范本合同，要求当事方在网上系统输入所有相关信息并签订由此生成的合同文本，拒绝接受其他合同形式）。

中国美国商会希望，除了严格遵照合同范本的合同外，地方当局还能够接受中国《合同法》所允许的其他形式的合同。

最新进展

住建部《关于推动建筑业发展和改革的若干意见》

2014 年 7 月，住建部发布《关于推动建筑业发展和改革的若干意见》，指出了建筑行业不同领域存在的主要问题（例如，与工程设计、招投标、勘察和承包有关的问题），简要介绍了中央政府解决这些问题的计划。这份文件提出的一些问题呼应了中国美国商会最近几年一直倡导的提议。下面简要介绍一下关键的问题：

❶ *探索从主要依靠资质管理等行政手段实施市场准入逐步转变为充分发挥社会信用、工程担保、保险机制等市场竞争体系之路。*

这一目标与中国美国商会关于放宽行业外资企业资质要求（例如，专业人员、注册资本、业绩记录）的建议一致。大多数外资企业在刚进入中国市场时可能没

amendments to the model texts. However, the experience of many FIEs is that some local authorities will place additional restrictions on the content of the contracts (e.g., requiring the use of a model text, requiring parties to input all relevant information into an online system which will generate a form of contract for the parties to sign, refusing to accept separate forms of contracts).

AmCham China hopes local authorities will accept different forms of contracts, in addition to those following a strict model-text format, which are all permitted under the Chinese Contract Law.

Recent Developments

"Several Opinions Regarding Propelling the Development and Reform of the Construction Industry" by MOHURD

MOHURD issued the guiding document "Several Opinions Regarding Propelling the Development and Reform of the Construction Industry" in July 2014, which pointed out major issues in different sectors of the construction industry (e.g., those regarding engineering design, bidding, surveying, contracting) and outlined the central government's intended solutions for these issues. Several of the issues raised in this document echo the concerns and recommendations that AmCham China has been advocating over the past several years. Below is a summary of the key issues:

❶ *To explore the transition from administrative management through the qualification system of enterprises to a more market-oriented competitive system, by utilizing social credit-worthiness, project guarantees, and insurance mechanisms.*

This goal is consistent with AmCham China's past advocacy regarding the relaxation of qualification requirements for FIEs in this industry (e.g., professional personnel, registered capital, track record). Most FIEs do not necessarily have these resources when they first enter the Chinese market, but do have a wealth of international experience, advanced technology, and management skills that could benefit the Chinese market as a whole.

❷ *To promote the implementation of EPC contracting.*

MOHURD recognized that, despite regulations allowing EPC contracting, practical barriers present in the various phases of a construction project (i.e., bidding, permitting, contract filing, site examination, and final acceptance) hamper the ability of both domestically and foreign-invested construction and engineering design enterprises to implement EPC contracts. AmCham China applauds MOHURD's recognition of the issue, and looks forward to its implementation by local-level construction authorities.

❸ *To erase regional market barriers by banning any conditions preventing enterprises from any province from entering another provincial market and prohibiting mandatory requirements to set up local subsidiaries or to participate in local training in order to enter another market.*

These steps are a positive sign that MOHURD will emphasize a more transparent and competitive market place. Most FIEs in the construction industry are primarily based in big cities (e.g., Beijing, Shanghai), so such removal of regional market barriers will encourage the expansion of their business and investments throughout China. This is also consistent with the "Special Equipment Safety Law," which was implemented on January 1, 2014, and provides that local government departments responsible for special equipment safety supervision shall not require a special equipment manufacturer to obtain a local license if it has already obtained a valid license in another city. However, implementation of this new law is not being carried out consistently, as local government departments in cities such as Shanghai, Hangzhou, and Nanjing continue to request that companies apply for new local licenses even when they already hold valid licenses from another city.

❹ *To reform the current bidding system.*

For non-publicly funded projects, a pilot project will be implemented in which company owners are entitled to decide whether or not to go through the bidding process, while remaining responsible for the design and construction companies selected for the project. AmCham China considers this to be a positive sign that more flexibility will be given to the market itself, and that FIEs will likely obtain more opportunities in the non-bidding process.

Issuance of Qualification Transfer/Verification Rules in Mergers and Acquisitions

MOHURD issued an updated "Notice Regarding Qualification Verification Issues after Restructuring, Merger, and Separation of Construction Engineering Enterprises" on May 28, 2014. This notice replaced the 2007 version, for which AmCham China had requested further clarification since its release. Although the 2014 notice clarified that qualifications could be directly transferred in a number of scenarios (i.e., merger, new establishment, restructuring among affiliates, state-owned enterprise reform, and change from foreign-invested to domestically invested enterprise), the policies for foreign companies acquiring domestic enterprises with qualifications remain the same. The only improvement is that the new enterprise no longer needs to submit a track record to apply for the original qualification. AmCham China welcomes this relaxation; however, it would be mutually beneficial to both domestic and foreign enterprises if the post-merger and acquisition reassessment procedure were further simplified or even removed.

有这些资源，但却拥有有利于整个中国市场发展的丰富国际经验、先进技术和管理技能。

❷ *加大工程总承包推行力度。*

住建部意识到，虽然法规允许实施工程总承包，在施工项目的各个阶段（例如招标投标、施工许可、现场执法检查、竣工验收备案）却存在实际阻碍，妨碍内资和外资建筑和工程设计企业开展工程总承包活动。中国美国商会对住建部意识到这一问题表示赞赏，并且期待地方建筑主管部门能够执行这一规定。

❸ *不得设置任何排斥、限制外地企业进入本地区的准入条件，不得强制外地企业参加培训或在当地成立子公司等。*

这些举措是积极的信号，表明住建部强调提高市场的透明度和竞争性。建筑行业的外资企业大多位于大城市（例如，北京、上海），取消区域间的市场壁垒将鼓励这些企业将业务和投资扩大到整个中国。这也与2014年1月1日实施的《特种设备安全法》的规定一致：负责特种设备安全监督管理的地方政府部门不得要求已经依照本法规定在其他地方取得许可的特种设备生产单位重复取得许可。不过，这一新规没有得到统一的执行，上海、杭州、南京等地的地方政府仍然要求已经在其他地方取得许可的企业重新申请许可。

❹ *改革现行招标投标监管方式。*

调整非国有资金投资项目发包方式，试行非国有资金投资项目建设单位自主决定是否进行招标发包，并由建设单位对选择的设计、施工等单位承担相应的责任。中国美国商会认为这是一个积极的信号，意味着市场弹性提高，外资企业有可能在非竞标过程中获得更多的机会。

发布并购交易资质转让／核定规则

2014年5月28日，住建部发布最新的《关于建设工程企业发生重组、合并、分立等情况资质核定有关问题的通知》，取代2007年发布的版本。自2007年版发布以来，中国美国商会一直要求进一步明确相关规定。虽然2014年的通知明确了允许直接转让资质的情形（合并、新设、全资子公司之间的重组、国企改革、企业外资退出等），但是外资企业收购具有资质的内资企业的规定并没有改变。唯一的改进就是，新企业申请原有资质的，可不提交工程业绩资料。中国美国商会对这一宽限表示欢迎，但是，如果能够进一步简化或者取消并购后的重新评估程序，内资企业和外资企业都将受益。

建 议

对住建部的建议：

- **地方当局审查已备案的设计和建筑合同时应当更加灵活。**
- 颁布正式的法规，明确承揽工程总承包项目的资质要求。
- 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。
- 明确非外资建筑业企业和非外资设计公司从事项目管理服务的要求。

对住建部和国家发改委的建议：

- **颁布专门的项目管理资质标准，以清除目前国家发改委与住建部法规之间的含糊。**
- 执行住建部2014年7月发布的指导文件《关于推动建筑业发展和改革的若干意见》。

Recommendations

For MOHURD:

- **Apply more flexibility when reviewing design and construction contracts filed with local authorities.**
- Formally issue regulations clarifying qualifications required to undertake EPC contracting.
- Allow FIDEs to directly apply for a Grade A DQ without first applying for and obtaining a Grade B DQ.
- For companies that are not FICEs or FIDEs, clarify the requirements for qualifying as providers of project management services.

For MOHURD and NDRC:

- **Issue specific project management qualification standards that remove the ambiguity existing between current NDRC and MOHURD regimes.**
- Implement the July 2014 MOHURD guiding document, "Several Opinions Regarding Propelling the Development and Reform of the Construction Industry."

Cosmetics

Introduction

Encouraged by the Chinese government, the cosmetics industry experienced profound growth and change in 2014. Domestic brand names continued to mature while the development of e-commerce both challenged traditional business models and created opportunities for business development. According to 2014 estimates, the cosmetics industry in China is valued at approximately US $33 billion (RMB 210 billion) and remains the second largest cosmetics market in the world. AmCham China remains concerned, however, that international companies continue to experience regulatory bottlenecks that impede their participation in the Chinese market.

Recent Developments

AmCham China is pleased to see that the Chinese government continued to implement incremental cosmetics management reform in 2014. Publication of the draft "Cosmetic Supervision and Administration Rules" (released for comment on November 8, 2014) exemplifies the government's determination and leadership. Development of the "Inventory of Existing Cosmetic Ingredients in China" (published June 30, 2014), "Administrative Measures on Cosmetics Labeling" (released for comment on November 15, 2014), and "Safety and Technical Standards for Cosmetics" (released for comment on February 3, 2015) also reflect improvements in China's cosmetics management system. AmCham China applauds the Chinese government for taking a more proactive approach to encouraging innovation and enabling international trade within a science-based regulatory system.

The Chinese government also made great efforts to reduce administrative complexities within the cosmetics industry, including:

- Implementation of online notifications for domestic normal cosmetics; and
- Integration of manufacturer licensing and the decentralization of the registration process for imported normal cosmetics.

AmCham China encourages the central government – while simplifying administrative procedures and allocating resources – to accelerate the training and capabilities of local regulators to ensure the accurate implementation of central policies and full implementation of science-based regulations.

Key Challenges

"Cosmetic Supervision and Administration Rules" Developments

The current top-level regulation, the "Cosmetic Hygienic Management Rule" (Management Rule) released November 13, 1989, details the implementation of policies that supervise the cosmetics industry. However, the Management Rule has not been revised in over 25 years and is no longer able to support the rapid development of the cosmetics industry and its need for science-based supervision. For example, the Management Rule relies heavily on governmental controls while neglecting the role of enterprises as responsible entities, and focuses on pre-market examination and approvals while paying insufficient attention to post-market supervision. Therefore, AmCham China recommends that the Management Rule be revised to create a scientific, rational, and effective supervisory system, which will help ensure product safety, promote technological innovation, and accelerate the continued healthy and rapid development of China's cosmetics industry. The major objectives of the revisions should include the following:

❶ Cosmetics manufacturers should bear the responsibility for product quality, safety, and compliance, and government supervisory departments should instead ensure product compliance through post-market supervision.

❷ The management of cosmetic ingredients should be classified based on their individual safety risks. The definition of "new ingredients" should be revised to apply only to categories of ingredients that have special functions and relatively higher safety risks (e.g., preservatives, colorants, sunscreens, hair dyes).

❸ Pre-market product categories that are subject to examination and approval should be more clearly defined and

化妆品

引 言

随着中国政府改革步伐的进一步深入，中国化妆品行业在 2014 年的发展也不断发生着改变。虽然本土化妆品企业发展迅猛，但电子商务的发展对传统商业模式带来冲击的同时，也为行业发展带来了机遇。根据 2014 年宏观经济预期，中国化妆品销售额将达到约 330 亿美元（2100 亿元人民币），持续强劲增长势头，并保持全球第二大化妆品消费市场地位。然而，中国美国商会对于国际公司不断遭到监管的瓶颈问题表示担忧，因为这阻碍了他们参与中国市场的竞争。

近期发展：

中国美国商会欣喜地看到中国政府正在按部就班地进行化妆品行业管理改革，《化妆品监督管理条例》草案【2014 年 11 月 8 日公开征求意见】的出台展现了政府推动管理改革的决心与领导力。《已使用化妆品原料清单目录》【2014 年 6 月 30 日公布】和《化妆品标识管理办法》【2014 年 11 月 15 日公开征求意见】及《化妆品安全技术规范》【2015 年 2 月 3 日公开征求意见】等部门规章的制修订工作也体现了中国政府正在改进和完善化妆品管理的法规体系。对于以上行业技术法规的研究发展，中国美国商会希望中国政府能够在科学管理的基础上，进一步与国际化妆品法规体系接轨，鼓励产业创新，推动国际贸易。

另外，在简化化妆品行业行政管理方面，中国政府也做出了非常积极的努力，包括：

- 国产非特殊用途化妆品网上备案程序的实施；
- 化妆品生产企业卫生许可与生产许可的合并以及进口非特殊用途化妆品备案事项行政下放的工作计划。

中国美国商会希望中央政府在推进行政简化和资源再分配的同时，加快针对地方政府管理人员的政策培训和能力建设，确保中央政策的准确落实和全面实现科学执法。

关注问题：

化妆品监督管理条例

《化妆品卫生监督条例》为我国实施化妆品监管提供了政策依据。但该《条例》实施至今 25 年未做修订，已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，忽视企业责任主体的作用；强调市前审批，市后监管不足等。因此，中国美国商会建议通过《条例》的修订，形成科学、合理、有效的监管体系，既确保产品安全，又促进技术创新，最终促使中国化妆品行业继续健康、快速发展。主要修订目标包括：

❶ 由化妆品产品责任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。

❷ 根据安全风险，对化妆品原料实施分类管理。修订新原料定义，将新原料范围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）。

❸ 设置合理科学的产品备案、注册要求，减少并明确上市前审评审批的产品类别。针对普通化妆品，实行简化的、无需审评审批的上市后产品备案制度。单独设立口腔清洁护理化妆品类别，实行产品备案制度。保留现有质量安全和功效宣称的相关规定要求。

❹ 取消生产许可证制度，建立企业信息报备、强制实施 GMP（良好生产规范）、日常飞行检查相结合的新型监管模式。

❺ 标签与广告管理应充分参考国际惯例，强调企业主体责任，发挥行业自律作用；在保证产品安全、满足消费者知情权的基础上给予行业发展空间。

❻ 突出安全评估的地位，认可并采纳国际通用的最新风险评估方法和标准，例如经 OECD 验证的动物替代试验。

❼ 健全产品上市后的监管体系。建立和完善产品信息系统、产品安全风险监测系统和企业信用分级监管系

reduced by establishing reasonable, scientific requirements for product filing and registration. A simplified system that allows for the post-market filing of the product instead of requiring each product to undergo examination and approval should be established. Additionally, a separate classification system for filing product records is needed for oral care products, though existing relevant regulations and requirements for quality, safety, and efficacy claims should be maintained.

❹ The production licensing system should be replaced by a new regulatory model, combining the filing of enterprise information, mandatory implementation of good manufacturing practice, and pilot inspections.

❺ International practices should be taken into full consideration for the management of labels and advertisements to emphasize the corporate responsibility of enterprises, give play to the self-disciplinary role of the industry, and create more room for industry development while securing product safety and consumers' right to information.

❻ Highlight the importance of safety evaluation and recognize and adopt the latest internationally accepted methods and standards for risk evaluation (e.g., the animal testing alternatives certified by the Organisation for Economic Co-operation and Development).

❼ The supervisory system for in-market products should be improved. Additionally a product information system, product safety risk monitoring system, and manufacturer credibility categorization supervision system should be established and further improved. Post-market surveillance should be based on data obtained from the monitoring of safety risks and categorization of manufacturer credibility.

❽ To ensure consumer safety, promote the rapid circulation and trade of cosmetics on a global scale.

Supervision of the Cosmetics Market

The training of relevant law-enforcement departments should be strengthened to improve the supervision capabilities of local authorities. Enterprises faced increasing difficulties with supervision and law enforcement in 2014, in comparison with the previous year. Due to institutional restructuring and the integration of systems between the local Administrations for Industry and Commerce, Quality Supervision Departments, and Drug Administrations, many enforcement personnel from provincial-level Cosmetic Supervision Departments were unsure how to interpret the relevant cosmetic regulations. They also faced difficulties in judging the genuineness of products, which increased enterprise burdens without benefit to the cultivation and development of a consumption market.

AmCham China recommends that the training of relevant cosmetics enforcement departments be strengthened, so as to enhance the supervisory capabilities of local authorities, in line with the relevant spirit and requirements of administration by rule of law.

Implementation of Good Manufacturing Practices

Implementation of good manufacturing practices (GMP) is imperative, and the industry hopes that the China Food and Drug Administration will consider the following points when establishing China's GMP:

- Align with global practices and utilize the term "GMP," to help ensure acceptance of China-made products in foreign markets and promote exports.
- Promote advanced manufacturing models (e.g., fully enclosed pipeline production) and implement concrete requirements (e.g., regarding airborne bacteria).

Claim and Efficacy Management

Regarding safety, it should be a priority for regulators to reduce intervention in cosmetic advertisement claims, and administrative supervision should instead be problem oriented. Scarce administrative and technical resources should be utilized for more pressing aspects of product safety. Claims made through advertisements are the primary method for enterprises to promote the cosmetics market. Assuming that enterprises will be held responsible for guaranteeing the authenticity, science-based nature, and compliance of their advertisements, they should be granted more flexibility. Therefore, we suggest the following:

❶ Continue to apply a model of supervision guided by administrative organs, enterprise responsibility, and industry self-regulation. The responsible administrative departments should formulate relevant principles and requirements for cosmetic advertisements. Enterprises should bear full responsibility for cosmetic quality, authenticity, and science-based nature, and the compliance of advertisements. Encourage industry self-discipline, utilize intra-industry supervision, create an environment for fair competition, and push the innovative development of the industry.

❷ Make guiding principles general and not overly detailed. The government does not need to spend large amounts of manpower and resources on formulating standards assessment methods. As the party primarily responsible for their products, allow enterprises to design scientific and reasonable methods for effective inspection according to the characteristics of their products.

❸ In accordance with the basis of the guiding principles, allow use of third party assessment services. Enterprises should be free to choose effective inspection agencies, including international third-party professional evaluation agencies and enterprise self-evaluation laboratories, to improve industry research and competitiveness.

❹ Allow the market to adjust through "survival of the fittest" and for advertising claims to be self-regu-

统。基于风险监测数据和企业信用等级实施科学分级监管。

❽ 在确保消费者安全的前提下，促进化妆品产品在全球范围内的快速流通和交易。

化妆品的市场监督

加强化妆品相关执法部门的培训，提升地方执法部门的水平。和 2013 年相比，2014 年省级以下的化妆品监管部门由于机构改革，地方工商、质监、药监系统合并，许多执法人员在解读化妆品法规，判定产品真假方面了解不够，为企业带来的很大的困扰和负担，不利于消费市场的培育和发展。

中国美国商会呼吁主管部门加强化妆品相关执法部门的培训，提升地方执法部门的水平，符合依法行政，依法治国的精神和要求。

化妆品 GMP 的建立

GMP（良好生产规范）的实施势在必行，行业希望食药总局在建立中国的 GMP 时，考虑下述两点：

- 在称谓上保持和国际一致，也命名为“化妆品良好生产规范”，尽量不要称为“化妆品生产质量管理规范”或其它名称。这有利于国外市场对中国产品的认可，有利于产品的出口。
- 推广先进的生产方式（如全封闭管道式生产模式），并落实在具体指标要求上，如对沉降菌、浮游粒子的要求等。

化妆品功效宣称管理

相对于安全性，化妆品广告宣称应优先采用干预较少、以问题为导向的行政监管方式。紧缺的行政、技术资源应被投入到与产品安全相关的方面。广告宣称是企业开展化妆品市场推广的重要依靠内容。在企业负责确保其真实性、科学性和合规性的前提下，应给企业更多的发挥空间。鉴于此，我们有以下几方面建议：

❶ 继续沿用行政指导、企业负责和行业自律相结合的监管模式。行政主管部门制定化妆品广告宣称的原则要求；化妆品质量责任企业全权承担广告宣称真实、科学、合规的责任；鼓励行业自律，发挥同业监督作用，创造公平的竞争环境并推动产业创新发展。

❷ 指导原则宜粗不宜细，政府不必花费巨大的人力和物力制定标准评价方法，企业作为产品第一责任人可根据自身产品特点设计科学合理的功效验证方法。

❸ 在符合指导原则基础上，全面开放第三方评价服务，企业可自由选择功效验证机构，包括国际第三方专业评价机构及企业自身评价实验室，提高产业功效研究水平及竞争力。

❹ 充分运用市场优胜劣汰的调节机制，自行净化流通领域的产品宣称，政府可将监管资源投入导致产品安全事故、消费者权益受损的宣称问题上，并加强消费者保护及处罚力度。

建 议：

- **关注《条例》修订的局限性和行业全球一体化发展的诉求，避免技术壁垒造成的贸易冲突和国际合作障碍。**
- 加强行政管理全面下放后地方监管能力的培养和对中央政策精神的理解和贯彻。
- 尊重产业发展的特性和制定具有前瞻性法规的大胆创新。

lated. The government should focus resources on supervision of advertising-related issues that result in product-safety incidents and that impair the rights and interests of consumers while strengthening consumer protection and violation penalties.

Recommendations

- **Focus on the trend toward global industry harmonization and the limitations of the "Cosmetic Supervision and Administration Rules" during its revision; Reduce technical barriers to trade to prevent trade disruptions and barriers against international cooperation.**
- Improve the capabilities of local supervisory departments and ensure standard interpretation and implementation of central policies by local authorities.
- Respect the characteristics of industrial development and formulate forward-looking and innovative laws and regulations.

Direct Sales

Introduction

In the 10 years since promulgation of the "Regulation on Direct Sales Administration" (Direct Sales Regulation) recognized direct sales (*zhixiao*) as a legitimate industry in China, the industry has grown to include close to 50 licensed direct sales companies. AmCham China believes the success of licensed direct sales companies in recent years has demonstrated that direct sales benefit China not only by introducing new products and an alternative shopping channel for consumers, but also by bringing many employment and income opportunities to Chinese citizens.

These benefits complement the objectives of the 12th Five-Year Plan, and can help stimulate domestic consumption and increase the living standard of Chinese citizens. More could be done, however, to support further development of the industry. This would include making the Direct Sales Regulation less cumbersome for companies to comply with and easier for the government to administer, bringing clarity to the public and helping foster social harmony.

Ongoing Issues

Reputation of the Industry and the Need to Unfetter Direct Selling

Since its emergence in China, direct sales have been widely misunderstood. Pyramid schemes (*chuanxiao*) proliferated and persisted in spite of continuous government efforts to eradicate them. Initially, *chuanxiao* operators claimed they were just like direct sales, confusing both the market and the regulators. Thus, the government believed that by limiting direct sales it could control *chuanxiao*. Although the legitimate direct sales industry seeks to distinguish itself from *chuanxiao*, stringent regulations, such as the Direct Sales Regulation and the "Regulation on the Prohibition of Pyramid Selling" (Anti-*Chuanxiao* Regulations), together with the government's suspicion of the industry, produced several negative results:

❶ Legitimate companies are unjustly fettered by regulations. To viably compete in the market, legitimate companies are often forced to adopt policies which, while not violating the letter of the law, often reside in a legal grey area. This exposes legitimate companies to (sometimes economically driven) challenges by interest groups, the media and, at times, local authorities, producing a vicious cycle where overly tight controls induce distorted practices, resulting in further public misunderstanding and suspicion.

❷ Many companies, including some Internet companies, do not claim to be engaging in direct sales nor do they own a direct sales license. By not identifying themselves as direct sales entities, these companies remain outside of the relevant regulations even though their business practices are in essence direct sales. This is not only unfair for the licensed companies, but also confuses the public.

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 with overly stringent regulations, the Chinese government should specifically target fraudulent scams, identified by their use of specific fraudulent sales practices, and appropriately sanction them.

Chinese authorities have overseen direct sales for nearly two decades, though regulation dates only to 2005. 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 individual direct sellers, and compensation based purely on the number of people recruited are the marks of *chuanxiao*. Legitimate direct selling does not use such practices and has adequate consumer safeguards. These distinctions should be clearly reflected in relevant laws and regulations. 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. These include requirements for a minimum US $13 million (RMB 80 million) initial investment, a minimum US $3.3 million (RMB 20 million)

直 销

引 言

2005 年中国政府颁布《直销管理条例》（以下简称《直销条例》），标志着直销在中国获得了合法地位。过去十年中，直销业得到了长足发展，目前已经有近 50 家企业获得中国商务部颁发的直销经营许可。近年来，这些直销企业的经营情况显示：直销行业不仅在引进新产品和提供新购物渠道方面助力中国经济的发展，还为中国百姓带来了众多就业和增收机会。

同时，直销也有助于加快实现中国第十二个五年规划，刺激内需、升级消费，促进中国经济的结构调整，提高中国居民的生活水平。中国美国商会也期待中国进一步支持直销行业发展，推进直销立法修改，使政府执法更加顺畅，企业守法更加严格，同时也使公众对直销认识更加清晰，进而推动社会和谐。

现存监管问题

提升行业声誉和放宽直销法规的必要性

直销行业自进入中国以来一直受到很多误解。尽管政府不断致力于消灭“金字塔诈骗“（又称“传销”），但传销仍猖獗发展。他们经常谎称自己是直销，混淆市场和监管机构视听。导致政府对整个直销行业采取严格监管的方式，希望通过限制直销行业的发展遏制传销的蔓延，并继而出台了《直销管理条例》和《禁止传销条例》，严格监管直销行业。虽然合法直销行业一直努力要与传销划清界限，但过严的监管法规和政府对直销行业的怀疑态度，还是产生了以下负面影响：

❶ 合法企业受到了不公平的法规约束。要想在如此严厉的法规条件下生存，企业往往被迫游走于法律边缘的“灰色地带”。虽然没有违反法律条文，却会面临来自于利益集团、媒体、甚至某些基层监管部门的压力（有些压力出于金钱动机）。二者也可能会形成恶性循环——监管过严致使企业经营手法不规范，导致公众对直销进一步误解和怀疑。

❷ 许多企业（包括一些互联网企业）既未表明正在从事直销，也未获得直销牌照，但实际却在采取直销业务模式，规避了《直销条例》的约束，游走于直销法律之外。这不仅使持有直销许可的企业蒙受了不公平待遇，还造成了公众对直销概念的混淆。

在全球范围内，市场经济发达的国家都允许企业采用各种不同的业务模式。因此相对于通过过严的法规限制直销企业发展，中国政府或许可以更加专注于如何鉴别欺诈性销售，并对那些伪装成合法经营的欺诈行为给予相应禁止和惩罚。

虽然《直销条例》颁布于 2005 年，但中国政府部门在该条例颁布之前，就已经对直销行业展开了监管，至今已有二十年的监管经验，在区分直销与传销方面经验丰富，比如熟知传销的特点（主要包括：要求销售人员加入时大量购货、无认真执行的退货、退款机制、按招募人数计酬）。直销从不允许这些做法，并且会在运营中通过完善的机制，确保消费者及从业人员的合法权益。这些区别应该在相关法规中得以充分体现。除此之外，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。

许可申请程序

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：注册资本不低于人民币 8000 万元（约合 1300 万美元），保证金不少于人民币 2000 万元（约合 330 万美元），外资企业应当有三年以上在中国境外从事直销活动的经验，限制初期经营地域，且在其销售产品的每个城区／县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，导致部分企业不愿申领直销许可，以及未经许可即开展直销经营活动等。这不仅对直销企业不公平，还会给政府带来监管难度，且容易给消费者和公众造成误解。

consumer protection bond, three-year prior direct sales history for foreign-invested enterprises, limited initial geographic approval, and a service center in every urban district in which a company sells products. These requirements have the negative effects of deterring license applications and inducing companies to conduct direct sales without a license. This is not only unfair to legitimate companies, but also makes government supervision very challenging, creating confusion for consumers and the general public.

Service Center Establishment

Direct sales service center requirements are a significant challenge, not only for companies applying for a license, but also for licensed companies seeking to expand. 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 where they sell products. A company that uses sales personnel who, by definition, work outside of fixed retail locations could potentially be required to set up a service center in every one of China's 2,800-plus urban districts.

It is economically daunting to set up so many service centers and impractical to have to do so prior to realizing sales. This requirement also produces two undesirable consequences. First, to comply with the Regulation, companies must simultaneously adopt two different business models to meet both the requirements for direct sales and for non-direct sales. Second, as it is quite impossible to restrict individual sales personnel to selling within the "allowable" urban districts, companies are exposed to charges for operating out of bounds.

Furthermore, the current approval process for service centers is tremendously burdensome to both companies and the government in terms of time, cost, complexity, and work. We were encouraged to see the Ministry of Commerce's (MOFCOM) "Opinion on the Revision of Direct Sales Service Center Management Methods," issued November 2014, seeking input on reducing the service center requirement to one per city. We welcome a market-oriented policy that is simple and practical and look forward to its early implementation.

Change in Direct Selling Supervisory Authority

In October 2011, the Chinese government announced a change that affects the supervisory authority over direct selling. Under Directive 2011(48), the State Council announced that Administration for Industry and Commerce (AIC) and Quality Supervision bureaus below the provincial level will no longer be "vertically" managed by the provincial bureaus. Concurrently, the government announced structural changes and the merging or abolishing of departments, which were not always uniformly implemented in different provinces and cities.

These changes mean that provincial-level AIC officials, who are more experienced in overseeing direct selling, no longer have supervisory authority over issues happening at the local level, and that many new officials with no prior knowledge of direct sales are now supervising the industry. Due to ambiguity in relevant regulations, this could result in widely varying enforcement of regulations, leading to unwarranted harassment, 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 confront this new challenge.

Need to Update Direct Selling Regulations and Administrative Directives

The Direct Sales Regulation and many of its associated administrative directives have been in effect for nearly 10 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 updated and improved regulations. Current regulations can be excessively restrictive, with some completely disconnected from market or operational realities. Examples of regulations in need of revision include:

- Compensation restrictions – The Direct Selling Regulation limits compensation for sales agents to commission on no more than 30 percent of personal sales. The Anti-*Chuanxiao* Regulations issued by the State Council calls compensation based on the total volume of a sales team (commonly called group compensation) a characteristic of *chuanxiao*, and defines it as illegal. Both restrictions run against market-based economic practices and are discriminatory and unfair to the direct sales industry, as market-based compensation and multi-level calculation are common practices in all other industries. Regulations should be relaxed and brought in line with market economy practices.
- Training requirements – The definition of training should be clarified. Regulations imply that training is for "personnel intending to sign up as a sales agent" (meaning those not yet affiliated with the company). However, companies can rarely afford to provide training to people who have not yet been formally hired, regardless of whether or not it uses a direct sales model. We understand the concern that hopeful participants might be tricked by deceptive schemes, but regulations that treat members of the public as company personnel are burdensome and inconsistent with market realities.

Furthermore, regulations stipulate that new sales agents must receive training and pass an exam before receiving a permit to sell, 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.

设立服务网点

对于无论是正在申请直销许可的企业，还是已经持有许可、希望扩区的企业来说，直销服务网点的规定都是一项巨大的挑战。现行直销法规规定，直销企业必须在其营业的每个省份都设立分支机构，并且在开展直销经营的每个市／县都设立“服务网点”。因此如果一家企业要在全国范围内，通过直销人员在固定零售点以外开展业务，需要面临着在 2800 多个市／县设立服务网点的挑战。

设立这么多网点不仅耗资巨大，而且在还未确定有销售成绩之前投入设点也不现实。该要求往往会产生两种不良结果：首先，为了遵守该规定，直销企业必须同时采用两种不同的经营模式——直销业务模式和非直销业务模式；其次，由于很难限定所有直销人员只在“许可”的市／县从事直销，企业也会为此受到处罚。

同时，无论对企业还是政府而言，目前申请设立“服务网点”的审批程序要求的时间长、成本高、过程复杂、工作繁重。2014 年 11 月，商务部公布了《直销企业服务网点管理办法》修订草案，提出每个城市只要求设立一个服务网点的想法，并为此征求意见。我们为此深受鼓舞，也期待政府早日出台简单实用、以市场为导向的服务网点政策。

直销监管权变化

2011 年 10 月，中国政府宣布了一项改变直销监管权的新规定。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。同时，政府还宣布进行机构调整，撤销或合并多个部门，不同省市根据自身特点会出现不同的整合情况。

这些变化将意味着，直销监管经验相对丰富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，而由之前对直销并不了解的基层综合市场执法人员接手监管。由于相关法规尚不明晰，这一权力下放可能会导致各地出现执法不一的情况，并可能给直销企业在各地的分支机构以及当地的营销人员带来不必要的干扰，甚至是处罚。中国有两千多个区县一级和数万个乡镇一级行政单位，直销企业因此将面临极大的挑战。

完善《直销条例》和配套法规的必要性

《直销条例》及配套法规自生效实施至今已有近十年。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《直销条例》进行完善。现行法规有些条例的要求过于严格，有些并不符合市场实际情况。需进一步修订和完善的条例包括：

- 报酬限制——《直销条例》规定直销员可以获得的佣金报酬总额不得超过直销员本人直接向消费者销售产品业绩的 30%。国务院颁布的《禁止传销条例》规定，基于一个销售队伍的总销售业绩来计算报酬的方式属于传销的特征，为非法行为。以市场为基础的计酬方式和多层次计酬方式是其他行业的普遍做法，因此以上两项规定是对直销行业的歧视和不平等待遇，应予以放宽限制，使之符合市场经济规律。

- 培训要求——应对“培训”进行明确定义。根据《直销条例》，培训是针对那些“拟招募的直销员”（即尚未与公司签约的人员）。但通常情况下，无论企业是否从事直销，都不会为尚未与公司签约的人员提供培训。我们理解政府担心想从业的人员会受到传销的危害，但是从企业角度讲，将公众看作企业人员的规定也会为企业带来沉重负担。

  同时，《直销条例》要求拟加入的直销员必须接受培训，并通过考试才能获得直销员直销许可；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。这些具体要求往往缺乏灵活性：例如最好的培训师往往来自于资深直销员，但他们未必符合上述条件。最近政府也在就限制会议规模人数以及禁止在线培训的政策征求行业的意见。这两方面的规定的确有悖于市场原则，是对直销行业的歧视，并且不符合时代要求。

- 加入费用要求——目前，中国禁止收取直销员加入费用。大额费用应当禁止收取，但是象征性的费用有助于确保申请者是真正对直销感兴趣的人员，建议允许适当收取。

- 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。可行性的建议包括：规定哪些产品不得通过直销销售，如明令禁止销售的产品（如枪支或药品）、鲜活产品、大宗商品（如棉花、大米和金属）以及普通消费者难以确定价值的产品（如宝石、贵金属和金融服务）等。

- 直销产品范围——根据《商务部关于加强直销企业变更直销产品说明和直销培训员备案审核监管有关工作

These requirements are overly cumbersome. For example, the best trainers are often experienced sales people who do not necessarily fit the above qualifications. The industry has also been asked to comment on policies that limit the number of attendees per meeting and that prohibit online training. Both policies run counter to market principles and are discriminatory and outdated.

- Recruitment fee requirements – China currently 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.
- Permissible product categories – Limits on the products direct sales companies can sell should be minimized and brought in line with international practice. A better alternative is to define what cannot be sold through direct sales, such as products forbidden in the open market (e.g., firearms, drugs), livestock and fresh produce, large commodities (e.g., cotton, grains, metals), and products whose value is difficult to determine by the average consumer (e.g., gems, precious metals, financial services).
- Scope of direct sales products – According to Article 1 Section 2 of MOFCOM's "Notice on Strengthening Direct Selling Enterprises, Enhancing Direct Selling Products, and Training Direct Selling Employees for Work Related to Auditing Supervision," direct sales enterprises may only sell products produced by their own company, parent company, or holding company and cannot directly sell Original Equipment Manufacturer (OEM) products. However, from both the legal and consumer rights perspectives, we recommend that OEM products be treated the same as a company's own products, or at least allow a certain percentage of a company's products to be comprised of OEM products.
- Geographic approval – Current regulatory practices, though unwritten, seem to indicate that companies entering China's direct sales market may initially receive geographic approval for only one province. Companies may eventually receive approval for additional provinces, usually no more than five provinces at a time, after an unspecified waiting period. The government should grant geographic approvals based on market needs in order to avoid encouraging unauthorized operation of direct sales operations.

AmCham China recommends the revision of these and other regulations in order to remove the impractical provisions that cause disputes and facilitate the proliferation of *chuanxiao* and unlicensed companies. We are also pleased to see many signals that the government is willing to review these regulations. As China has quickly opened up other sectors, we hope the development of the direct sales industry, which affects tens of millions of Chinese citizens, will be treated no differently.

Development of an Industry Platform or Association

Since 2011, MOFCOM has made multiple efforts to set up an industry association. In early 2014, a Direct Sales Working Committee was formed under the China Association of Enterprises with Foreign Investment, which includes only foreign-invested enterprises (FIEs) as members and is thus not fully representative of the industry in China. At around the same time, MOFCOM's Department of Market Supervision attempted to form a China Direct Selling Association, which would include all licensed direct sales companies in China. However, because revision of the regulation for the establishment of trade associations (revised by the Ministry of Civil Affairs) is still pending, the initiative has been put on hold. AmCham China welcomes these efforts, as the direct sales industry needs a platform to enhance communication with the government, strengthen industry standards, and share best practices within the industry. We look forward to its early establishment.

Cross-Border E-Commerce

The Chinese government has openly stated its support for cross-border e-commerce, beginning with bonded zones in cities such as Shanghai, Shenzhen, and Guangzhou. Companies in these zones can freely import overseas products and sell to Chinese consumers directly via online ordering, which makes it a government-sanctioned channel for parallel imports. This practice represents a blatant disregard for brand ownership. It creates price challenges for the brand owners who have paid various duties, invested in production facilities, and employed Chinese workers to produce and market their products. In relation to products which require strong registration controls, such as nutritional supplements, it bypasses China Food and Drug Administration requirements and presents hazards to consumers. All of these issues are unfair to companies that have invested in plants, research and development, and spent years registering their products in China. They also discourage future investments and negatively affect employment in China. We understand the need for China to build its e-commerce infrastructure quickly and to promote domestic consumption, but there is an equally important need to coordinate different sectors and different policies prior to implementation.

Recent Developments

As of December 1, 2014, MOFCOM has issued 46 direct sales licenses. Of these 46, 36 were granted to FIEs, including 10 US companies. It is estimated that the total size of the licensed direct sales business in China in 2013 exceeded US $19.5 billion (RMB 119.8 billion).

的通知》第一条第（二）款规定，“直销企业可依法律规定，以直销方式销售本企业生产的产品及其母公司、控股公司生产的产品，不得直销委托加工的产品。”然而，不论是从立法最基本的“公平原则”，还是充分保护消费者权益等各个角度，我们都支持将委托加工产品视同于自产产品，或者允许直销公司销售一定比例的委托加工产品。

- 地域审批——根据当前不成文的惯例，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。我们建议政府应根据市场需求进行地域审批，以避免无许可经营。

中国美国商会建议对以上及相关规定进行修订，消除那些不切实际、容易引起争议，并滋生传销和无执照企业的规定。我们同时也乐见政府释放信号，表达修订相关规定的意愿。在中国迅速开放多个行业的同时，我们希望直销这个影响着数亿中国居民生活的行业也得到同样公平的待遇。

行业平台或协会发展

自 2011 年起，商务部采取多层努力，希望促成直销行业协会的成立。2014 年初，中国外商投资协会成立了直销行业管理工作委员会。中国外商投资协会的成员企业均是外商投资企业，因此该委员会并不能完全代表中国的直销业。几乎同一时间，商务部市场秩序司展开中国直销协会的成立筹备工作，这样中国所有获批直销许可的企业都可成为该协会的会员企业。然而，由于民政部正在修订关于成立行业协会的法规，这项动议只能暂时搁置。中国美国商会很高兴看到中国政府做出的这些努力，因为直销行业迫切需要一个平台，用以加强与政府沟通，优化行业标准，并在业内分享最佳实践。我们期待中国直销协会早日成立。

跨境电子商务

中国政府已经公开表达了支持跨境电子商务的立场，并容许在包括上海、深圳和广州等城市设立的保税区内的公司，可以自由进口大量海外产品，并通过网络订单卖给中国的消费者。这成为政府许可的平行进口渠道。这种做法忽视了对品牌所有权的保护，并且对品牌拥有者带来了价格方面的重大挑战：因为品牌所有者一直需要支付各种关税，投资生产设施，并通过雇佣中国员工来生产并销售自己产品，而跨境电子商务平台则完全没有这些成本。同时，这还造成某些原本市场准入标准严格的产品，例如营养补充剂及一些有功能宣称的产品，绕过中国食品药品监督管理局的监管，将会给消费者带来极大的未知风险；这对于那些在建设工厂和研发上投入巨资，并花费数年时间在中国市场注册产品的企业也非常不公平。这会打击外资企业未来在华投资的信心，并缩减就业机会。我们理解中国需要在短时间内通过推动电子商务产业来拉动内需、促进进出口贸易的战略需求。但在执行之前，希望对不同产业和不同政策之间的协调多一些考虑，最重要的是要尽量做到维护公平竞争的市场环境。

最新进展

截至 2014 年 12 月 1 日，已有 46 家企业获得了中国商务部的直销经营许可，其中外商投资企业占 36 家，美资企业占 10 家。据估计，2013 年中国获得直销许可企业的总规模超过人民币 1198 亿元（约合 195 亿美元）。

2015 年 3 月，国家发改委公布了《外商投资产业指导目录 (2015 年修订)》，将直销从限制类条目中删除。中国美国商会对此举表示欢迎。

建 议

- **将服务网点设立的要求从每个区 / 县修订为每个市，简化服务网点审批流程；**
- 修订《直销管理条例》、《禁止传销条例》以及配套法规，使之符合中国的入世承诺、国际惯例和中国市场的行业现状；

  具体包括：

  - 从传销的定义中删除“组织者或者经营者通过发展人员，要求被发展人员发展其他人员加入，对发展的人员以其直接或者间接滚动发展的人员数量为依据计算和给付报酬”这一特征；
  - 取消“直销员可以获得的报酬总额不得超过直销员本人直接向消费者销售产品收入的 30%”这一限制；

In March 2015, the NDRC released a revised "Guiding Catalogue on Foreign Investment in Industry," which removed direct sales from the Restricted section of the Catalogue. AmCham China welcomes this initiative.

Recommendations

- **Revise service center requirements from one per urban district to one per city and simplify the service center approval process.**
- Review and revise the Direct Sales Regulation, the Anti-*Chuanxiao* Regulation, and their associated administrative directives, bringing them in line with China's WTO commitments, standard international practices, and the business realities of the China market. Specifically:
  - Remove the clause that "compensation based on sales volume of people recruited by a sales agent" is a defining characteristic of *chuanxiao*.
  - Remove the restriction that compensation for a direct sales agent can only be based on 30 percent of personal sales.
  - Separate recruitment activities and training programs, with training activities relating only to sales people already employed by a company, and allowing company-authorized sales people to become trainers.
  - Relax product category restrictions.
  - Remove the restriction preventing direct sales enterprises from selling OEM products, allowing such products to be sold as its own product, or at least allow for a certain percentage of a company's products to be made up of OEM products.
  - Allow geographic expansion to be market driven.
- Enhance market access and remove discriminatory practices to treat direct sales the same as all other businesses in terms of licensing requirements.
- Expedite the establishment of a China direct selling industry association.
- Review the current cross-border e-commerce policy to ensure fairness to brand owners and investors.

- 明确招募活动和培训项目的差异，同时明确培训活动仅面向与公司签订合同的人员，并允许公司授权直销员成为培训师；
- 放宽对产品类别的限制；
- 取消“直销企业不得直销委托加工的产品”这一规定，将委托加工产品视同于自产产品进行销售，或者允许直销企业销售部分来自委托加工的产品；
- 允许以市场为导向扩宽地域经营范围。

- 提高市场准入，消除对直销行业的歧视性作法；在许可审批方面给予直销行业和其他行业同等待遇；
- 加快建立中国直销行业协会；
- 审核现行的跨境电子商务政策，保证品牌所有者、投资者和电商之间的公平竞争。

Electronic Payment Services

Introduction

Driven by robust consumption, booming e-commerce, and industry innovation, electronic payment services (EPS) continued to evolve rapidly in China in 2014. As China transforms into a consumption-led economy, it has developed the world's second largest consumption market. According to the National Bureau of Statistics of China (NBS), as of December 2014, China's total retail sale of consumer goods reached approximately US $4.2 trillion (RMB 26 trillion), up 12 percent year-on-year.

According to the 2014 *World Payment Report*, from 2008 to 2012, China had a 24.6 percent compound average growth rate of non-cash transactions, making it a worldwide top 10 non-cash payment market. According to the People's Bank of China (PBOC), there has been rapid growth in the use of bank cards among Chinese consumers. In the third quarter of 2014 alone, the total number of consumption-driven bank card transactions reached 5.1 billion – a volume of approximately US $1.8 trillion (RMB 10.8 trillion), representing year-on-year growth of 55.9 percent and 30.7 percent, respectively.

Digital commerce, including cross-border e-commerce, enjoyed rapid growth in 2014. According to the NBS, online retail sales were up 48.7 percent year-on-year, reaching approximately US $452 billion (RMB 2.8 trillion). Such growth is also exemplified by record sales of US $9.1 billion (RMB 57 billion) on Taobao during the Single's Day sale on November 11, 2014. Cross-border spending by Chinese travelers also reached a historic high, resulting in a record tourism revenue deficit of US $70 billion (RMB 433 billion).

To further digitalize commerce and automate payments, the Chinese government issued a host of policies and measures in 2014. The Ministry of Commerce, PBOC, and the State Administration of Foreign Exchange jointly launched a pilot program to allow EPS providers to settle payments in RMB for Chinese consumers making online purchases of goods and services outside of China. In 2014, the PBOC issued the sixth batch of licenses to Third-party Payment Providers (3PPP), increasing the total number of licenses issued since such licensing began in 2011 to 269. These 3PPPs greatly facilitate Chinese buyers both at home and outside of China, online and face to face (F2F or offline).

On October 29, 2014, the State Council announced through a work meeting press release its decision to open up the bank card clearing market to promote consumption, financial opening, and innovation. AmCham China welcomes this announcement as an important step towards an open and competitive EPS market. As China begins to develop its 13th Five-Year Plan, we welcome opportunities for US EPS providers to contribute to the subsequent legislative process that will set the roadmap for their participation in the domestic market.

Ongoing Regulatory Issues

Leveling the Playing Field for the Bank Card Clearing Market

China's EPS market is largely served by both traditional financial institutions (FI) and emerging non-FI 3PPPs. They compete fiercely in almost all aspects of the payment value chain except for one area: bank card clearing services. For historical and regulatory reasons, China UnionPay is the only authorized bank card clearing service provider at the point of sale. In recent years, many 3PPPs have engaged in bank card clearing services for online payments and they are aggressively expanding into the F2F market. However, these 3PPPs have not been duly licensed for such de facto provision of clearing services. This is partly due to the absence of market access rules for clearing service providers. For similar reasons, international bank card clearing service networks, such as Visa and MasterCard, are unable to participate in the domestic market, despite the 2012 WTO ruling that China is obligated to allow foreign networks to provide RMB inter-bank clearing services. We are encouraged by the State Council's decision to open the bank card clearing market to both foreign and domestic players. This move will make the entire payment value chain more competitive. More importantly, it presents an opportunity for China to level the playing field for all participants under one set of rules.

电子支付服务

引 言

2014 年，在强劲的消费、蓬勃的电子商务和产业创新的带动下，中国的电子支付服务（EPS）继续保持快速增长。随着中国经济不断向消费驱动型转型，中国目前已经成为全球第二大消费市场。根据国家统计局（NBS）的数据，截至 2014 年 12 月，中国的消费品零售额总计约为 4.2 万亿美元（人民币 26 万亿元），同比增长 12%。

根据 2014 年度《世界支付报告》，从 2008 年到 2012 年，中国非现金交易复合平均增长率达 24.6%，跻身全球前十大非现金支付市场。根据中国人民银行（PBOC）的数据，中国消费者使用银行卡的势头保持快速增长。仅 2014 年第三季度，使用银行卡消费的总交易次数和交易金额分别达到 51 亿笔和 1.8 万亿美元（人民币 10.8 万亿元），同比分别增长 55.9% 和 30.7%。

2014 年，电子商务（包括跨境电子商务）也呈现快速增长态势。根据国家统计局的数据，在线零售额同比增长 48.7%，达到约 4,520 亿美元（人民币 2.8 万亿元）。2014 年 11 月 11 日光棍节当天淘宝销售额再创新高，达到 91 亿美元（人民币 570 亿元），成为电子商务快速增长的最好体现。中国游客跨境消费也创历史新高，旅游业收入净流出创新记录，达到 700 亿美元（人民币 4,330 亿元）。

为了进一步推动商务电子化和支付自动化，2014 年中国政府陆续出台了一系列相关政策和措施。商务部、中国人民银行和国家外汇管理局联合启动了一项允许电子支付服务供应商为中国消费者在线购买中国境外产品和服务提供支付结算服务的试点。2014 年，中国人民银行发放了第六批第三方支付牌照（3PPP）。自 2011 年开始发放牌照以来，总牌照数已增至 269 个。这些第三方支付机构的服务将极大地便利中国消费者在国内外在线或面对面购物（F2F 或线下）。

2014 年 10 月 29 日，国务院在一次常务工作会议上宣布开放银行卡清算市场，以促进消费、金融开放和创新。中国美国商会对上述决定表示欢迎，并认为这是朝着建设公开、竞争性的电子支付市场迈出的重要一步。中国正启动制定“十三五”计划，我们欢迎中国为美国电子支付服务供应商提供机会，为接下来的相关立法程序贡献力量，而这些立法将为美国服务商参与中国国内市场确定路线图。

现存监管问题

营造公平竞争的银行卡清算市场

中国的电子支付服务市场主要由传统金融机构和新兴非金融机构第三方支付服务供应商共同主导。他们在支付服务价值链的几乎每个环节竞争都很激烈，但唯独银行卡清算服务却是例外。由于历史和监管原因，中国银联是唯一一家有资格从事销售点银行卡清算服务的机构。近年来，很多第三方支付服务供应商逐步涉入在线支付银行卡清算服务，并且正在快速打入线下市场。然而这些第三方支付服务供应商尚未获得从事这种事实上的清算服务的合法牌照。原因之一便是目前缺少清算服务供应商市场准入法规。尽管 2012 年 WTO 裁定中国有义务允许外国支付机构提供人民币银行间清算服务，基于上述类似的原因，国际支付机构，如 VISA 和万事达卡也不能参与中国市场。对于国务院决定向国内外市场主体开放银行卡清算服务的决定，我们深受鼓舞，此举将有助于提高整个支付服务价值链的竞争性。更重要的是，这意味着中国将为所有参与者设定统一的标准，为他们开展市场竞争创造公平的环境。

最新进展

市场准入

尽管国务院的决定指明了发展开放型市场的正确方向，但并没有为此制定建立和运营中国银行卡清算网络的详细实施办法。我们建议相关部门借此机会尽快制定实施细则，为银行卡清算行业建立完整的监管框架。

Recent Developments

Market Access

While the State Council's decision rightly targets development of an open market, it does not set out implementing details to govern the establishment and operation of China's bank card clearing networks. It is advisable for relevant agencies to take this opportunity to formulate the implementation details as early as possible to complete a regulatory framework for the bank card clearing industry.

It is critical that the regulations are prudentially sufficient to keep the clearing network safe from risks. And yet, it is equally important to differentiate bank card clearing networks from financial institutions. Bank card clearing networks only process limited bank card transaction information, excluding any personally identifiable information. They do not transfer and store any funds as financial institutions do. Therefore, they should not be regulated with prudential requirements intended for financial institutions, such as capital adequacy requirements, equity caps, and waiting periods before eligibility for local RMB business operations. Also, it is more efficient for international networks to capitalize on their global processing network to provide better value-added services.

US bank card clearing networks have decades of experience in balancing between risks and efficiencies. They welcome the opportunity to contribute to the rule formulation process, which will hopefully lay a solid foundation for a dynamic, efficient, and secure market.

Bank Card Swiping Fees

In February 2013, the National Development and Reform Commission (NDRC) enacted the "Circular on Optimizing and Adjusting Bank Card Swiping Charges," a new regulation which dramatically cut bank card swiping fees as a way to reduce the cost burden for merchants. While well intended, the regulation has resulted in several unintended consequences that impact the payment ecosystem. First, as the issuing banks now receive significantly less revenue, they are inclined to cut reward programs or invest less in services for cardholders. Second, as the bank card swiping fee is differentiated by merchant categories, a growing number of merchants fraudulently classify themselves as lower-end merchants in order to pay lower fees (e.g., classified as a supermarket) or even no fees (e.g., classified as a school). Last but not least, the NDRC price regulation is only applicable to the F2F market, and not to the online market. Unregulated online 3PPPs, such as AliPay, are able to compete with the regulated F2F providers like China UnionPay at a much lower cost, thus disrupting the long-established F2F market.

As these problems largely stem from flawed fee controls and fee structures, there is a growing need for these to be liberalized. At a conceptual level, it is important that the price regulators not view the fee as a mere cost to merchants, but as an investment essential to maintain and improve the payment ecosystem, including differentiated product and acceptance platforms that serve the different needs of cardholders and merchants. Accordingly, the fee control should be liberalized to allow issuers and acquirers to price their product and acceptance platforms commensurate with their value proposition and risk profiles. Such a product-based fee structure will effectively reduce the risks of merchant miscoding, as seen elsewhere in the world. Additionally, liberalized pricing will allow online and offline providers to compete on a level playing field.

Chip Standards

In 2014, the PBOC continued to accelerate the migration of magnetic stripe cards to PBOC 3.0, a chip standard issued by the PBOC. Starting from January 1, 2015, all new RMB-denominated bank cards were shifted to PBOC 3.0 in economically developed geographical areas.

Though intended to provide better security and more payment functionalities for cardholders, this migration project has triggered concerns on 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 global scale.

By 2020, China will have 500 million outbound travelers and 150 million inbound travelers. A compatible acceptance environment is important both for PBOC 3.0 cardholders traveling abroad and EMV cardholders visiting China. AmCham China encourages the PBOC to work with both domestic and international bank card networks to allow EMV chip standards to be used for domestic transactions when the domestic market opens to international networks. It is equally important to make the PBOC 3.0 standard accessible to foreign networks without technical or economic restrictions.

Recommendations

- **Formulate market access regulations with reasonable requirements to allow international bank card clearing networks to provide RMB denominated services. [PBOC, CBRC, and MOFCOM]**
- Liberalize bank card swiping fees and optimize their pricing structure. [NDRC, PBOC, CBRC, and MOFCOM]
- Allow EMV standards to be used for domestic transactions when the market opens up and make the PBOC 3.0 chip standard accessible to international bank card clearing networks. [PBOC]

虽然相关监管办法必须足够审慎和充分，以确保清算网络的安全和防范相关风险，但同样重要的是，要将电子支付网络与金融机构区分开来。银行卡清算网络只负责处理有限的银行卡交易信息，且不涉及任何个人可识别信息。清算网络也不像银行那样转账或存储资金。因此，对银行卡清算网络监管的审慎性要求，如资本充足率要求、股权上限要求以及申请人民币本地业务资格的等待时间，都应当比对金融机构的相关监管要求低。同时，允许国际支付网络利用他们的全球处理网络有助于提高效率和提供更优质的增值服务。

美国银行卡清算网络多年来积累了丰富的经验，擅长在风险和效率之间保持平衡。他们非常乐意为中国的相关政策制定过程贡献力量，从而为建立一个充满活力、高效且安全的市场奠定坚实基础。

银行卡刷卡手续费

2013 年 2 月，国家发展和改革委员会（国家发改委）出台了《关于优化和调整银行卡刷卡手续费的通知》，该通知大幅削减刷卡手续费以降低商户的成本。尽管该通知的出发点很好，但意想不到的是，此举对支付系统造成一些负面影响。首先，由于如今发卡行的收费大幅减少，他们倾向于减少对持卡人的回馈计划，或削减在持卡人服务方面的投资。第二，由于不同类型的商户缴纳的银行卡刷卡手续费各不相同，越来越多的商户虚假申报低端商户以缴纳较低费率的手续费（如申报为超市），甚至完全不交费（如申报为学校）。最后，国家发改委的上述价格法规仅适用于面对面市场，并不适用于在线市场。因此在线第三方支付服务供应商，如支付宝，处于不受监管的状态，在与受监管的线下市场服务供应商（如中国银联）竞争时，享有费用更低的竞争优势，因此扰乱了存在多年的线下市场。

鉴于上述问题大多源自有瑕疵的手续费监管和手续费结构，因此有必要对此放宽管制。从概念层面来说，价格监管部门不应仅仅将手续费视作商户的成本，而是将其视作保持和改善支付生态系统的一项重要投资，包括区分不同的产品和兑付平台以服务不同持卡人和商户的差异化需求。同样，放松对刷卡手续费的管控可以允许发卡方和收单方根据自己的价值定位和风险状况自由地对他们的产品和兑付平台进行定价收费。这种基于产品的收费结构将有效地降低商户代码错编风险，这种做法在全球其他市场十分常见。另外，定价自由化还有助于线上和线下服务商在同一框架下公平竞争。

芯片标准

2014 年，中国人民银行继续加快由磁条卡向以央行发布的 PBOC3.0 为标准的芯片卡过渡的步伐。从 2015 年 1 月开始，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 引发了与国际通行的 EMV（指 EuroPay、MasterCard 和 Visa）芯片卡标准兼容问题的担忧。这两种标准在全球范围内能否顺畅对接至今尚不清楚。

到 2020 年，中国出境游游客数量将达到 5 亿人次，入境游客数量也将达到 1.5 亿人次。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。中国美国商会鼓励中国人民银行与国内和国际银行卡网络合作，一旦国内市场向国际网络开放，即允许 EMV 芯片卡标准用于国内交易。同样重要的是，要允许国际网络使用 PBOC3.0 标准，而不设置任何技术或经济上的限制。

建 议

- **制定市场准入法规，设定合理要求，允许国际银行卡清算网络提供人民币业务。[中国人民银行、中国银行业监督管理委员会和商务部]**
- 实行银行卡刷卡手续费自由化，优化定价结构。[国家发改委、中国人民银行和商务部]
- 在市场开放时允许 EMV 标准用于国内交易，同时允许国际银行卡清算网络使用 PBOC3.0 芯片标准。[中国人民银行]

Express Delivery Services

Introduction

Following the reform and opening of China's economy, express delivery service (EDS) providers have emerged to develop a thriving industry. The steady development of the EDS industry promotes economic development and international trade, supports industrial and commercial enterprises, and provides services for Chinese consumers. The EDS industry also plays an increasingly important role in the development of China's service and logistics industries, and helps drive employment and economic stability.

However, the express delivery industry in China still faces several problems. The industry has failed to experience a scale effect and competitiveness remains suboptimal. Quality and efficiency suffer from unnecessarily burdensome regulatory requirements. Meanwhile administrative surcharges on cross-border clearances have substantially risen. Such obstacles cause uncertainty and hinder the development of China's EDS industry.

Ongoing Regulatory Issues

Increase the Transparency of the New "Express Regulation" Drafting Process

AmCham China believes that the "Express Regulation" – currently under review by the State Council Legislative Affairs Office on the basis of a draft by the State Post Bureau (SPB) and Ministry of Transportation – will be of major importance to the EDS industry. The "Express Regulation" will have important implications for EDS standards and business operation permits, two key factors in the development of the industry.

As drafting of the regulation has already begun, we look forward to greater transparency in the process of collecting comments and recommendations. It is crucial that enterprises be given a role in the process, as the regulation involves three government departments and will have wide-reaching effects on the industry as a whole. Industry perspective is key to ensuring that the new regulation makes sense not only from a legal perspective but also reflects industry realities.

Expedite Administrative Licensing System Reforms

Clarify Regulations Concerning Express Delivery Service Providers' Scope of Business

In an effort to streamline administrative and delegating power, the State Council requires that all departments publish their respective administrative licensing, examination, and approval matters. The SPB has released licensing, examination, and approval information on EDS operation permits, which fall under the "Postal Law of the People's Republic of China" (Postal Law) and other relevant regulations. Though the issuance of such permits should be straightforward, conflicting regulations and their enforcement burden enterprise operations and significantly hinder industry development.

According to Article 53 of the Postal Law:

> "Where an enterprise applies for an operating permit to provide express delivery services within its own province, autonomous region, or municipality directly under the central government, the enterprise shall file the application with the postal administrative department of the local province, autonomous region, or municipality directly under the central government; where an enterprise applies to operate such services in more than one province, autonomous region, or municipality directly under the central government or to operate international express delivery services, the enterprise shall file the application with the postal administrative department under the State Council…"

Additionally, Article 52 of the Postal Law states that any enterprise that applies for an EDS operating permit should possess "the capacity to provide services appropriate for the regional scope within which it applies to operate such services…" These required capacities are further defined in Clause 3 Article 6 (and subsequently in Articles 7, 8, and 9) of "The Regulation for the Management of Express Business Licensing" which dictates the service provision capabilities a business must possess in order to provide EDS within and between provinces, autonomous regions, and municipalities, as well as internationally.

快递服务

引 言

自中国经济改革开放以来，快递服务企业应运而生，并发展成为一个朝气蓬勃的行业。快递行业的稳步发展促进了经济发展和国际贸易，支持着工商企业的发展，并服务于中国消费者。快递行业在推动中国服务业和物流业的发展中发挥着越来越重要的作用，并有助于增加就业和促进经济的稳定性。

然而，中国的快递行业仍然面临着一些问题。比如，行业没有实现规模效应，行业竞争仍然无序，服务质量和效率受到不必要的繁冗监管要求限制，跨境通关的行政性收费大幅上涨等。这些阻碍因素导致中国快递行业的发展面临着不确定性，阻碍了该行业的发展。

现存监管问题

提高《快递条例》起草过程的透明度

中国美国商会认为，国家邮政局和交通部起草的、国务院法制办公室正在审议的《快递条例》对快递行业至关重要。《快递条例》将对快递服务标准和业务经营许可这两个快递行业发展的关键因素产生重大影响。

既然条例起草已经开始，我们希望征求意见和建议的过程能够更加透明。由于《条例》涉及到三个政府部门，并将从整体上对快递行业产生深远影响，因此，允许快递企业参与这一过程十分重要。为了确保新条例既符合法律要求，又能反映出真实的行业现状，业界的观点很重要。

加快行政许可制度改革

明确关于快递企业业务范围的规定

为了简政放权，国务院要求所有部门公布各自的行政许可和审批事项。国家邮政局已经公布了关于快递经营许可的许可和审批信息，相关事项适用《中华人民共和国邮政法》（《邮政法》）及其他相关规定。尽管许可的签发很明确，但是，相互冲突的法规及执行加重了企业经营的负担，极大地阻碍了行业的发展。

《邮政法》第 53 条规定：

> *“申请快递业务经营许可，在省、自治区、直辖市范围内经营的，应当向所在地的省、自治区、直辖市邮政管理机构提出申请，跨省、自治区、直辖市经营或者经营国际快递业务的，应当向国务院邮政管理部门提出申请……”*

此外，《邮政法》第 52 条规定，快递企业申请快递业务经营许可的，应当具备“与申请经营的地域范围相适应的服务能力……”。《快递业务经营许可管理办法》第 6 条第 3 款（以及第 7 条、第 8 条和第 9 条）对这一能力要求做了进一步规定，要求在省、自治区、直辖市范围内以及跨省、自治区、直辖市经营或者经营国际快递业务的企业必须具备相应的服务能力。

因此，对跨省、自治区、直辖市经营或者经营国际快递业务的快递企业而言，业务范围应当涵盖全国。但是，按照“快递业务经营许可的业务范围”的规定，快递企业的业务范围仅限于其注册并得到国家邮政局批准的省份，限制其在该省份之外的区域开展业务经营。快递经营许可给出的业务范围显然与《快递业务经营许可管理办法》和《邮政法》的规定存在出入。

简化县级许可签发

此外，国家邮政局已经在 350 多个县设立了邮政管理机构。根据上面提到的规定，快递企业申请经营跨省和国际快递业务时，必须向每个城市的管理机构提出申请。如果一家快递企业希望建立一个覆盖全国的经营网络，则必须取得 350 多个批准。市场被人为地分割成 350 多个不同的行政区域，严重限制了业务的拓展和商品的流通。

Thus, the scope of business for enterprises providing EDS both between provinces, autonomous regions, and municipalities, and internationally, should span the entire country. However, according to the "Business Scope of Express Business Operation Permits," the business scope for an EDS provider is restricted to the province in which it is registered and has received SPB approval, effectively restricting business operations beyond said province. Therefore, there is an apparent inconsistency between the stated scope of an EDS operating permit and the regulations included in "The Regulation for the Management of Express Business Licensing" and Postal Law.

Streamline Issuance of Prefecture-Level Permits

Furthermore, the SPB has established over 350 prefecture-level postal authorities. According to the above described regulations, an EDS provider must apply city-by-city to each authority when applying for trans-provincial and international business permits. If an EDS provider wishes to establish an operating network that covers all of China, it must obtain over 350 approvals. Thus, the market is artificially divided into over 350 distinct administrative regions, severely limiting business expansion and commodity circulation.

Allow Branch Offices to File for the Record

Article 54 of the Postal Law states that when an enterprise that provides EDS sets up branches, merges with another enterprise, or divides into separate enterprises, it must make a filing with the postal administrative department (i.e., the SPB) for the record. We understand filing for the record to mean the enterprise should handle industrial and commercial registration formalities and supply any needed supplementary materials.

However, according to Article 12 of the "Administrative Measures for the Express Delivery Market," an EDS provider wishing to set up a branch office "shall go through registration formalities at the Administration for Industry and Commerce [AIC] in the place where the branch or office is located, with the license (duplicate) for express delivery business operation of an enterprise with a legal person status and the directory of its branches." In other words, to establish a branch office, an EDS provider would have to first obtain approval from the SPB and add the newly established branch office into the branch directory before undergoing local AIC registration formalities. Such requirement runs counter to the nature and meaning of filing for the record, burdening the licensing approval process.

Recommendations

- **Grant FIEs more opportunities to participate in the regulatory process based on the principal of transparency and provide timely feedback to industry recommendations by holding symposiums or through other channels.**
- Clearly define the main permit examination and approval body for intra-provincial, trans-provincial, and international EDS providers.
- Issue permits for conducting trans-provincial and international EDS at the provincial level.
- Clarify the application process for establishing branch offices and allow branch establishments to be filed for the record, as intended by Article 54 of the Postal Law.

允许分支机构申请备案

根据《邮政法》第 54 条，快递企业设立分支机构或者合并、分立的，应当向邮政管理部门（即国家邮政局）备案。按照我们的理解，备案是指企业应当办理工商登记手续并且提供所需的补充资料。

但是，《快递市场管理办法》第 12 条规定，希望设立分支机构的快递企业应当“凭企业法人快递业务经营许可证（副本）及所附分支机构名录，到分支机构所在地工商行政管理部门办理注册登记”。也就是说，要想设立分支机构，快递企业首先必须取得国家邮政局的批准并将新设立的分支机构加入分支机构名录，然后才能办理当地工商注册登记手续。这项要求有违备案的本质和用意，加重了许可申请过程的负担。

建 议

- **根据透明原则为外资企业提供更多参与法规制定过程的机会，通过举办研讨会或者其他渠道及时回应业界提出的建议。**
- 明确省内、跨省和国际快递企业的许可审批机构。
- 由省级机构签发跨省和国际快递业务的经营许可。
- 明确设立分支机构的申请程序，按照《邮政法》第 54 条的本意进行分支机构申请备案。

Food and Beverage

Introduction

China made significant progress in 2014 on food safety, with the reorganization of the China Food and Drug Administration (CFDA) leading to more effective supervision of the food safety industrial chain. AmCham China applauds the Chinese government's efforts to increase transparency and solicit industry opinions on relevant laws and regulations. The Chinese government has additionally invested substantial resources to streamline and reorganize food safety standards, establish the National Expert Committee on Food Safety, conduct risk analyses of imported and exported foods, establish a science-based food safety risk management and communications mechanism, and respond quickly to major food safety incidents in an open and transparent manner.

Ongoing Regulatory Issues

Food Safety Law and Participation in the Legislative Process

AmCham China members are closely following the ongoing revisions to the Food Safety Law (FSL). Revisions made in 2014 reflect the Chinese government's focus on the common concerns of its citizens and highlight prevention-oriented risk controls. They also outline steps to promote the social governance of food safety by establishing strict supervision and legal responsibility at all levels. We submitted comments regarding some of the general revisions (e.g., distinguishing food safety from nutrition and food quality, improving the reporting system to account for the rights of both enterprises and consumers, protecting enterprises from experiencing heavy losses caused by malicious false reports). We also submitted suggested revisions on specific issues (e.g., product recalls, product traceability systems, food inspections, supervision management, legal responsibility) addressed in the FSL.

We are pleased that public comments have been solicited throughout the revision process. We first participated in the revision efforts in 2013 when we were invited to participate in several survey meetings held by related departments. Some of our views and suggestions have been adopted by the CFDA, the State Council Legislative Affairs Office (SCLAO), and other government departments. We hope to maintain positive channels of communication as the CFDA and SCLAO continue to improve China's food safety legislation.

Food Safety Standards

The Chinese government sought to clarify food safety standards in 2013 and, by the end of that year, several government agencies were merged to form the National Health and Family Planning Commission (NHFPC). The newly formed NHFPC released hundreds of new national standards for food safety, including eight basic standards, creating an increasingly integrated and scientific system of specifications and testing standards for products and hygiene. AmCham China commends this achievement and, to further the momentum, provides the following suggestions.

Further Accelerate the Streamlining of National Food Safety Standards

We recommend that national, local, and industry standards be further streamlined to minimize contradictions and reduce redundancies. Items not related to food safety issues should not be incorporated into national food safety standards.

Improve Management of Food Safety Standards

The FSL provides that a scientific and rational food safety standards system should be established along with strict departmental rules for the implementation of standards. To properly formulate and manage food safety standards, we suggest that regulators:

- Do not include non-food safety-related content in departmental rules;
- Utilize the testing methods provided in food safety standards during arbitration;
- Recognize the testing methods used for non-food safety standards;
- Clarify the position of the unit holding jurisdiction over non-food safety standards; and
- Place a single department in charge of unifying food safety-related standards at different levels, to ensure that local regulatory authorities share a consistent understanding of laws and regulations.

食品及饮料

引 言

2014 年，中国食品和药品监管局重组，食品安全产业链得到更有效的监管，中国食品安全取得重大进展。中国美国商会赞赏中国政府为增加透明度，以及针对相关法律法规征求业界意见所做的努力。此外，中国政府投入了大量资源来简化和重新制定食品安全标准、建立全国食品安全专家委员会、对食品进出口风险进行分析、建立了以科学为基础的食品安全风险管理和沟通机制，并以公开和透明的方式对重大食品安全事故做出迅速反应。

现存监管问题

食品安全法及立法过程的参与度

中国美国商会会员企业正密切关注食品安全法的修订。2014 年的修订充分体现了国家对社会普遍关注的民生问题的高度重视，修订草案中更加突出预防为主、风险防范，并通过建立最严格的全过程监管制度、最严格的各方法律责任制度，实行食品安全社会共治。我们针对本次草案的一些普通修订提出了意见和建议，例如，区分食品安全与食品营养以及食品质量之间的区别；完善举报制度，兼顾企业和消费者双方的权利，以避免恶意的虚假举报给企业带来重大损失。此外，中国美国商会对《食品安全法》相关的“食品召回、产品追溯制度、食品检验、监督管理、法律责任”等具体问题也提出了具体的修订意见与建议。

中国美国商会欣喜地看到，相关立法部门在《食品安全法》修订的过程中倾听民意，充分吸纳民智。中国美国商会于 2013 年便积极参与立法修订工作，并多次受邀参与相关部门的调研会，提出的一些意见和建议得到了国家食品药品监督管理总局、国务院法制办等政府部门的认可与采纳；我们希望藉此建立起与相关立法部门的长效沟通机制，为食品安全领域的法治建设贡献绵薄之力。

食品安全标准体系

2013 年，食品标准清理工作全面启动。截止 2013 年底，卫计委已整合发布了包括 8 项基础标准在内的数百个新的食品安全国家标准，初步形成了以基础标准为基石，不断整合发展的科学的产品、卫生规范以及检测标准体系。中国美国商会的会员企业深刻感受到科学的标准体系建立过程给企业带来的活力。为进一步科学的推动标准体系建设，中国美国商会特提出以下建议：

进一步加快食品安全国家标准的清理整合工作

建议在加快清理整合过程，加强国家标准与地方标准、行业标准等的协调，尽早从机制上解决有些地方标准、行业标准等与食品安全国家标准相矛盾的问题，对不涉及食品安全问题的项目尽量不纳入食品安全国家标准。

合理区别管理非食品安全标准

《食品安全法》对此提出了两方面的要求，一方面是建立科学合理的食品安全标准体系，另一方面要建立严格的部门规章来管理标准的执行。为了合理制定、管理食品安全标准，我们建议相关监管部门采取如下措施：

- 建议非食品安全相关的标准内容不纳入执法部门规章要求；
- 在仲裁过程中使用食品安全标准中规定的检测方法；
- 认可非食品安全标准规定的检测方法；
- 明确非食品安全标准的地位和管辖单位；
- 由一个部门统一协调食品安全国家标准和其他标准的关系，确保各地方监管部门对法规理解的一致性。

明确企业标准的备案属性

目前有些地方职能部门要求中外企业在备案企业标准的时候均需提供相关专家委员会的审查意见，这种做法改

Clarify the Recording Process of Enterprise Standards

Currently, some local departments require both foreign and domestic enterprises to obtain and submit an assessment from a relevant expert committee in order to record their enterprise standards. This practice adds to the requirement in the FSL on the recording of enterprise standards. We recommend that the NHFPC clarify the requirements for recording enterprise food safety standards and streamline the procedure by barring requirements to obtain additional expert assessments.

Organizational Reforms and Local Law Enforcement

Standardize Management of Local Law Enforcement Departments

The CFDA was established in March 2013 to address both regulatory overlap and oversight and the difficulties in implementing regulatory responsibility caused by the segmented management of food safety. It also provides unified supervision and management of food safety throughout the production, circulation, and consumption stages. Such regulatory reforms are also being implemented at the local level.

Additionally, some local governments have carried out pilot administrative reforms to establish regulatory systems for large markets and departments. These reforms seek to integrate the responsibilities of local Administrations for Industry and Commerce, food and drug regulators, and quality and technology supervisors in order to unify local law enforcement teams and centralize enforcement power. This integration of law enforcement departments should help ensure responsibilities are no longer passed between departments without being addressed. However, effective law enforcement will depend heavily on internal coordinators, particularly at the grassroots level.

Therefore, AmCham China recommends that the CFDA provide more specific guidance for local law enforcement departments, enhance the transparency of grassroots law enforcement, standardize the scope and process of enforcement, clarify local departments' rights and responsibilities and procedures for cooperating with other related departments, and improve the mechanisms and channels for enterprises to lodge complaints and have their problems resolved.

Increase the Professionalism of Local Law Enforcement Officials

AmCham China is pleased to see that the Chinese government is also continuously strengthening and increasing the professionalism of testing organizations and law enforcement teams, as the quality of law enforcement officials directly impacts the effectiveness and justness of law enforcement. The CFDA has developed and is actively implementing a strategy for building law enforcement teams. We would be pleased to cooperate with related government departments in these efforts and provide any needed training assistance. Our members can share with relevant regulatory departments their experience in international law enforcement and provide training and educational programs for grassroots law enforcement organizations.

Law Enforcement Supervision

Align Inconsistent Policy Interpretations and Law Enforcement Standards

Local law enforcement authorities' inconsistent interpretation and implementation of laws and regulations remains a challenge. When local understanding of some standards, laws, or food safety regulations differs from the more widely understood intentions of central government regulation, local government officials are typically unwilling to seek interpretation from higher authorities. Enterprises' requests to the relevant departments for policy interpretation often receive no written response and authoritative policy interpretations from related government websites or other open channels are not easily attainable. AmCham China recommends that the Chinese government clarify that the legislative department is the top authority for the interpretation of laws and regulations. We also continue to call for the establishment of open channels and mechanisms for enterprises to communicate with the legislative department.

Use Scientific Methods to Monitor the Entire Food Safety Value Chain

The Chinese public's increasing interest in food safety has spurred the government to more proactively seek to address potential problems. However, the current food safety regulatory system relies excessively on regulation at the end of the supply chain (e.g., retail sales). In reality, food safety problems often arise before the product reaches the retailer, and it is very difficult for retailers to monitor the entire supply chain of all products sold in their stores. The 2014 revisions to the FSL emphasize that enterprises shall assume primary liability for food safety violations. We recommend that the Chinese government introduce more scientific means for managing and controlling the entire supply chain, to better identify responsibility for food safety in a more scientific and effective way.

Take Steps to Prevent the Increase in Professional Claimants

In 2014, AmCham China members continued to experience problems caused by so-called professional claimants (also known as professional faultfinders), as also discussed in the Retail chapter. According to data from the Shenzhen Market Supervision Bureau, complaints and reports filed by professional claimants rose dramatically from 699 in 2010 to 17,746 by the end of September 2014. Complaints regarding food labels account for nearly one-half of the total.

变了《食品安全法》对企业标准只要求备案的规定，建议卫计委明确食品安全企业标准备案流程，消除审核性规定，简化备案程序。

机构设置改革及地方执法能力

地方执法机构规范化管理有待加强

为解决食品安全分段式管理造成的重复监管、监管盲点和监管责任难以落实的问题，国家于 2013 年 3 月组建了国家食品药品监督管理总局，对生产、流通和消费环节的食品安全实施统一监督管理。这些监管改革也在地方得到了实施。

与此同时，一些地方政府也不同程度地开展了建立大市场大部门监管体制的行政机构改革的试点工作，将工商行政管理、食品药品监管和质量技术监督的职责三合一，建立了执法权更加集中的执法机构，进一步整合了执法队伍。由于新执法部门的组建是基于原不同部门的整合而完成，原来部门间相互推诿责任的现象会得到有效改善，但新组建机构内部是否能协调通畅将在今后的执法工作中起到至关重要的作用，这种问题在基层执法机构可能更为突出。

因此，中国美国商会建议食药总局能就此给地方执法机构提出更加具体的指导意见，提高基层执法工作的透明度，规范基层执法机构的工作范围和流程，更加明晰细化基层执法部门的权责，以及与其他相关部门的合作机制和流程，改善企业反映问题的机制和解决问题的渠道。

地方执法人员专业能力建设亟待提高

中国美国商会高兴地看到中国政府在进行机构改革的同时，还在不断加强检测机构和执法队伍建设，提高执法人员专业水平，努力解决由于人员来自不同部门造成的专业素质参差不齐的现象。执法人员的执法水平将直接决定执法效率、执法公正和执法环境的改善。国家食药监总局制定了落实执法队伍建设的战略，正在积极贯彻落实。中国美国商会及其会员企业希望有机会与相关政府部门合作，为执法人员教育培训方面提供必要的帮助，特别是协助相关监管部门学习国际执法经验，与基层执法机构合作开展相关的培训教育项目等。

执法过程中的监管问题

政策解读和执法标准不一致

一直以来，各地执法机关在解释和执行相关法规时存在缺乏一致性的情况。地方政府官员在对某些食品安全标准或法规的理解与立法部门的本意存在出入时，通常不愿意向上级主管部门或立法部门咨询权威的解释。而企业寻求有关部门的解释通常也无法得到书面回应，也很难在政府相关网站或其他公开渠道寻找到权威的政策解释。中国美国商会希望中国政府能够明确立法部门为法规解读的权威机构，并继续呼吁建立企业与立法部门沟通的公开渠道和机制。

通过科学手段监督整个食品安全价值链

中国民众对食品安全日益重视，促使政府更加积极主动地解决潜在问题，但同时食品安全监管体系过于依赖对供应链终端（零售环节）的监管。事实上，食品安全的隐患往往存在于到达零售环节之前，零售企业很难对整个供应链进行监控。2014 年修订的食品安全法强调了企业将承担食品安全第一责任人的义务。我们建议中国政府在供应链全程建立和加强更为科学的管理和控制手段，科学有效地认定食品安全责任人。

职业索赔人现象蔓延

2014 年，中国美国商会的会员企业继续经历着由所谓“职业索赔人”造成的各种困扰，零售章节对此也有所探讨。根据深圳市市场监管局统计数据显示，由“职业索赔人”提起的投诉、举报在 2010 年为 699 宗，之后在数年中急剧增长，截至 2014 年 9 月底，职业投诉举报的总数达 17746 宗。其中，关于食品标签的投诉举报占了近一半。

此类投诉并非针对真正的食品安全问题，而意在以不向媒体或政府监管机构曝光问题为回报，向企业索要赔偿。此外，这些投诉会将同一问题向多地食品安全监管部门进行备案。近期有些地方是要建部门仅凭“职业打假人”的对于不涉及产品安全的标签内容的举报，在未与企业充分沟通，结论未明的情况下，及下架有关产品，给企业造成巨大经济损失。

此类投诉耗费了企业内负责质量安全人员的大量时间，而地方食品安全监管部门也投入了大量公共资源。我们担心，如果这种现象继续蔓延，将对食品行业的健康发展产生负面影响。

Such complaints distract focus from actual food safety issues and, in reality, are oftentimes veiled attempts to extort enterprises for monetary compensation in return for not disclosing the problems to the media or government regulators. Furthermore, individual problems are often filed with multiple food safety regulators. Recently, some local food and drug administrative departments have removed products from store shelves based only on professional claimants' reports on non-food safety-related issues without first communicating the concern to the enterprise in question. In such cases, the enterprise can suffer large financial losses.

Such complaints waste the time of enterprise quality and safety officers and the public resources of local food safety regulators. We are concerned, however, that the persistence of this phenomenon will negatively impact the healthy development of the food industry.

AmCham China supports the Chinese government's promotion of social governance, increasing the supervisory role of consumers and the media. We are pleased to see that government departments are guiding such social supervision in a more orderly manner. We also note that recent revisions to the FSL include that "for flaws in food labels and instructions that do not impact food safety, the manufacturer or operator will not be held liable for punitive compensation," which targets this phenomenon. Meanwhile, we further recommend that in jurisdiction, the actions of professional claimants be distinguished from those of ordinary consumers to help foster a normal operating environment and ensure market order for the food industry.

Permit Enterprises to Rectify Failed Product Tests

We are pleased by the overall progress that has been made by food safety regulators and professional organizations in the field of food inspection and testing. However, when enterprises are notified of problems found during inspections, they often find it difficult to apply for a retest. For example, after receiving inspection results, an enterprise is typically given five days to respond to any problems. However, because the enterprise will have to internally verify and examine any problems, it is very difficult to address or even notify all relevant personnel of the issue within the allotted timeframe.

Furthermore, to seek a retest, an enterprise must first obtain permission and a written certificate from the retest entity. Additionally, many laboratories are unwilling to accept retest requests or disagree with the initial test's findings. To improve existing retest provisions, AmCham China suggests that the Chinese government introduce more operable testing regulations and require qualified laboratories to accept retest applications.

Inspection of Imports and Exports

Since China's accession to the World Trade Organization in 2001, the total volume of its food imports and exports has increased tenfold. Although US and Chinese officials have endeavored to increase the speed of customs clearance and shorten the duration of inspection and quarantine procedures, as discussed further in the Customs chapter, cumbersome technical requirements and prolonged customs inspections remain key impediments to the further development of the international food trade.

Reduce the Number of Pre-Qualification Requirements for Importers and Exporters of Food Products

Manufacturers generally must register with the authorities and obtain relevant certification before engaging in the import and export of food products. Additionally, some foods must undergo official inspection before qualifying for import or export. This surfeit of administrative procedures and technical barriers reduces the desire of enterprises to import and export. We recommend that both US and Chinese officials minimize technical barriers and simplify technical requirements and conformity assessment procedures for imports and exports on the basis of mutual trust and ensuring safety.

Improve the Speed of Port Customs Clearance

At present, imported and exported products must be officially inspected and certified before they can obtain port clearance, adding to the burden of official laboratories and potentially affecting the freshness of products. Meanwhile, random inspections based on risk analysis have not yet been fully implemented in lieu of the existing practice of inspecting every batch. We recommend that the Chinese government incorporate risk and credit management into current regulations, expand the acceptance of third-party inspection results, increase the speed of customs clearance inspections by classifying on the basis of risk, and reduce inspections for low-risk products not directly edible (e.g., food additives, raw materials).

Recent Developments

Communicating Food Safety Risks and the Role of Media and Experts

China has only recently begun to more publicly share information on food safety risks. Public confidence in food safety is important for the healthy development of the food and beverage industry, however, the focus on emergency response, the public's general lack of knowledge regarding the science behind food safety issues, and the shortage of professionals working on these issues impede overall food safety efforts. Imbalanced, inaccurate, and negative coverage from some media outlets in recent years has exposed a mixture of conflicting interests and monetary gain motivating reporting on food safety issues. Additionally, the misunderstanding or misreading of such food safety-related coverage can quickly result in strong, negative, and emotional public responses which put relevant departments on edge and unsure how to

中国美国商会及其会员企业支持政府倡导的通过鼓励消费者和媒体等的监督作用形成社会共治局面，同时也高兴地看到政府部门正在引导社会监督更为有序地进行。我们注意到《食品安全法》修订草案中新增了“食品的标签、说明书存在不影响食品安全的瑕疵的，生产经营者不承担惩罚性赔偿责任”，料将有效遏制上述现象。同时，我们也恳切建议在司法操作中将“职业索赔人”和普通消费者区别对待，继续为食品行业营造正常的运营环境和市场秩序。

允许企业调整失败产品检测

我们很高兴地看到，食品安全监管部门以及各专业机构在食品检验检测领域的总体水平提高较快。但当监管部门告知企业在检验过程中发现的问题时，企业往往很难申请复检。例如，企业在收到检测结果后，要求在 5 天内对相应问题给出回复。然而，由于企业必须组织内部验证、审核这些问题，他们很难在规定时间内分配甚至通知所有相关员工来处理。

此外，企业在正式提交复检申请前，须首先获得复检单位同意并出具相关书面证明。而很多实验室都不愿意受理复检，出具与初检结果相左的检测报告。为提高当前复检规定的操作性，中国美国商会建议中国政府出台更具操作性的检测规定，并要求有资质的实验室应接受复检申请。

进出口检验问题

中国自 2001 年加入 WTO 以来，进出口食品贸易总量增长了 10 倍，虽然中美两国进出口食品监管部门开展了一系列合作，并努力进行监管方式改革，以提高通关速度、缩短检验检疫时间（海关章节会就此进一步探讨），但繁琐的技术要求、冗长的清关通检时效，仍是制约食品国际贸易进一步发展的主要问题。

减少进出口食品前置资质要求

生产企业普遍需要向官方登记备案，甚至需要经过相关认证才能经营食品进出口业务，更有些食品需要官方检查才能获得进出口资质。如此繁多的行政程序和技术壁垒使企业望而却步，严重降低了企业进出口意愿。我们建议中美两国主管部门能在互信基础上，在保障安全前提下最大限度削减技术壁垒，简化进出口前置技术要求及合格评定程序。

加快口岸通关速度

目前，进出口商品在通关前，必须接受各口岸的官方检验验证，这既加重了官方实验室负担，又可能影响产品的新鲜度；同时，以风险分析为基础的抽检仍未全面实施以替代现行的每批检验。我们建议中国政府将风险管理、信用管理引入监管工作，扩大采信第三方检验结果的范围，在风险分析基础上分类加快通关清检速度、缩减非直接食用低风险产品的检验项目（如食品添加剂、食品原料）。

最新进展

食品安全风险交流以及媒体与专家的角色

中国最近才开始更公开地分享食品安全风险的信息。公众对食品安全的信心对食品饮料行业的健康发展至关重要，然而聚焦应急响应、大众缺少食品安全科普教育，以及相关专业人才匮乏，阻碍了食品安全的总体发展。近年来的一些媒体的失衡、失实和负面的报道暴露出利益混杂和资本推手的问题，而食品安全风险舆情发酵快，对于报道的误解误读容易造成公众情绪化甚至产生逆反心理，使相关部门高度紧张且疲于应对。另一方面，媒体在遇到重大食品安全问题时，也经常会发生“找专家难，找靠谱的专家更难”，而有些时候“专家不愿说、不敢说、也不会说”等问题。

中国美国商会的很多会员企业都因上述失实报道受到了不必要的政府监管及名誉损失，若任其发展，将严重影响消费者信心，阻碍产业发展与消费增长。为此，中国美国商会充分支持《食品安全法》2014 年修订草案中新增加的“风险信息交流制度进一步明确政府职能和提高社会各方参与度，就食品安全风险评估信息和食品安全监督管理信息交流确定了科学、客观、及时、公开的原则”等相关规定。中国美国商会同时建议中国政府建立危机响应系统，对食品安全问题向公众提供及时、科学的解释。

政府、社会和企业共同应对健康挑战

中国美国商会认识到由于不健康饮食和缺乏锻炼，中国慢性病的发展速度加快。2007 年由卫生部和中国营养学会发布的《中国居民膳食指南》明确指出“没有不好的食物，只有不合理的膳食搭配，关键在于平衡”。近年来，国家卫生和计划委员会提出“日行一万步、吃动两平衡、健康一辈子”理念，倡导积极健康的生活方式。这些理念对推

best respond. Alternatively, when actual food safety issues arise, the media often finds it difficult to find reliable experts to speak on the issue. In particularly sensitive cases, experts may be reluctant or fearful to speak out.

Such inaccurate coverage of food safety issues has led to reputational loss for many AmCham China member companies and left them burdened with added layers of government supervision. The continued spread of misinformation will seriously erode consumer confidence, hinder industry development, and reduce consumption growth. We fully support the added provisions in the 2014 revision of the FSL, including to "… further clarify the government's role in communicating risks and increase participation from all sectors of society; set forth the principle of the scientific, objective, timely, and open exchange of information on the risk assessment, supervision, and management of food safety." We also suggest that the Chinese government set up a crisis response system to provide the public with timely and scientific explanations on food safety issues.

Government, Society, and Enterprises Should Jointly Respond to Health Challenges

AmCham China understands that the rate of chronic diseases in China has steadily increased due to unhealthy diet and lack of exercise. The "Guide to the Diet of Chinese Residents," jointly published in 2007 by the then-Ministry of Public Health and the Chinese Nutrition Society, states: "There is no food that is not good. Instead there is only the unreasonable pairing of foods. The key is to find a balance." In recent years, the NHFPC has advocated "walking 1,000 steps a day and eating a balanced diet to ensure a lifetime of health." These concepts play a positive role in encouraging consumers to select suitable foods and maintain a healthy balance of energy through exercise.

In 2015, the relevant departments in China plan to introduce a wide range of health policies and guidelines, including the "Thirteenth Five-Year Plan for the Prevention and Control of Chronic Diseases" and the "Guide to the Diet of Chinese Residents." We recommend that these policy developments be based on scientific data and survey findings; use comprehensive treatment and protections as guiding principles; and heed the views of experts, trade associations, and opinion leaders. We additionally recommend that officials refer to relevant international experiences to develop policies and guidelines that are effective, just, reasonable, and proven effective at promoting healthy lifestyles.

Our food and beverage member companies believe that they also share responsibility in promoting the health of consumers. Top food and beverage companies throughout the world have jointly committed themselves to: ❶ develop new products to address the public health challenges caused by malnutrition or overnutrition; ❷ provide consumers with clear and scientific nutrition information; ❸ implement measures to restrict the sale of foods high in fat, sugar, and salt to children under 12; ❹ advocate for a balanced diet and lifestyle; and ❺ support all sectors of society in jointly responding to public health issues.

Chronic diseases are the result of many factors and responsibility should not be borne by one or several industries. We firmly believe that, with the concerted efforts of society as a whole, the spread of chronic diseases can be effectively contained. Our members are willing to take the lead in their relevant industries and cooperate with the government and all sectors of society to promote the health of Chinese consumers.

Recommendations

For the Chinese Government:

- **Specify in the revision of the Food Safety Law that the producer of food products and not the retailer should assume primary responsibility in food safety incidents; Ensure regulators examine the entire supply chain.**
- Clarify policies, laws, and standards and unify their implementation; Continue to allow enterprises to comment on the drafting of these documents.
- Develop more training programs for local food safety regulators to improve understanding and unify implementation of national laws.
- Improve the operability of product retests to ensure that their results reflect the true quality of products; Authorize and urge qualified laboratories to accept retest applications.
- Distinguish professional claimants from ordinary consumers to ensure the normal operation and development of the food industry.
- Design a more flexible, risk-based system for inspecting imported foods to increase the speed of customs clearance.
- Work with food and beverage enterprises to help increase public knowledge on food safety and nutrition; Establish a food safety crisis response mechanism.

For the US Government:

- **Strengthen communication and cooperation with the relevant government agencies, establish a communication mechanism between government and industry, and maintain scientific and stable import and export policies to improve port inspection efficiency.**
- Share successful food safety regulatory examples with Chinese officials.

动消费者选择适合自己的食品，通过运动保持能量平衡都有着积极的作用。

2015 年，中国相关部门讲制定和推出《慢病防控十三五规划》、《中国居民膳食指南》等各种健康政策和指南。我们建议政策制定部门要基于科学的数据和调查研究，以综合治理、全面防控为指导原则，听取各方专家、行业协会、意见领袖等的意见，参考国际经验，制定综合有效的、公正合理的政策和指南。更大力度地推动全国人民建立良好饮食和运动习惯。

在这一过程中，美国饮料与食品企业责无旁贷。国际著名的食品和饮料公司在全球范围内联合做出了五个方面的承诺：❶ 研发新产品来帮助大众应对营养不良和营养过剩带来的健康挑战；❷ 向消费者提供清晰的、科学的营养信息；❸ 采取措施限制高脂肪、糖和盐食品对 12 岁以下儿童营销；❹ 倡导平衡膳食和吃动平衡的健康生活方式；❺ 积极支持社会各界共同行动应对公共健康问题的行动。

导致慢性病发展是由综合因素造成的，这不该是一个或几个行业承担责任。我们坚信，在全社会的共同努力下，慢性病的发展能够得到有效遏制。我们的会员企业愿意做出表率，带领相关产业，与政府和社会各界积极合作，履行对社会的健康承诺，并最终为促进中国消费者的健康做贡献自己的力量。

建 议

对中国政府的建议：

- **新食品安全法中规定食品生产经营者是食品安全第一责任人。确保监管部门对供应链全程实行监督检查。**
- 阐明政策、法规及标准，并与执法保持一致；继续允许企业对上述文件的起草发表意见。
- 开展更多针对地方食品安全监察官员的培训项目，以加强各地对国家法律的统一、准确解读与执行。
- 完善复检制度的可操作性以保证检测结果可反映产品真实质量并授权和督促有资质的实验室接受复检申请。
- 区别对待“职业索赔人”与普通消费者，保障食品行业的正常运营和发展。
- 针对进口食品，设计更加灵活的制度，改善目前因批批检验导致的通关缓慢的情况
- 与食品饮料企业携手开展食品安全与营养传播与公众教育，建立食品安全危机响应机制。

对美国政府的建议：

- **加强与中国进出口食品监管部门在互信基础上加强沟通合作，保持进出口政策科学、稳定，落实对守法合规企业的便利政策。**
- 与中国政府分享食品安全监管体制的成功管理经验。

Healthcare Services, Medical Devices, and Pharmaceuticals

Introduction

The Chinese government continued in 2014 to set the tone for the country's reform and development. "Letting the market play a decisive role in resource allocation" – a theme set during the 2013 Third Plenum – has become a guiding principle that is also being incorporated into the country's healthcare reform policies.

A more open, fair, and transparent healthcare market will benefit all market players, improving the affordability and accessibility of quality and innovative medical products and services. The Chinese government made significant progress in 2014 to address challenges and promote healthcare reform. AmCham China welcomes the opportunity to work collaboratively with the Chinese government to facilitate these reforms and bring wellness to the Chinese people.

Ongoing Regulatory Issues

Healthcare Services Issues

Tax Rates for Private Hospitals

While the Chinese government has attempted to improve the taxation environment, private hospitals are still responsible for a unified corporate tax rate of 25 percent. This is equal to the highest of all tax rates for businesses and organizations in China. It is at odds with the government's intent to attract private capital – both foreign and domestic – to expand healthcare coverage and promote healthcare reform.

The Chinese government has announced policies encouraging investment in multi-site hospitals, which AmCham China supports. However, current tax regulations do not allow hospital chains to offset initial losses at new facilities. A new facility generally cannot make a profit during the first three to four years because of the time needed to obtain mandatory business and healthcare licenses. The inability to offset new facility losses against existing facility profits for large hospital chains is a deterrent to investors.

Therefore, we recommend that the Chinese government adjust its tax policies in two ways to stimulate the growth of private hospitals. First, reduce the corporate tax rate for private hospitals to 15 percent – the discounted tax rate for qualified enterprises in encouraged industries. Second, allow chain hospitals to consolidate tax reporting for mature and new facilities, at least for facilities located in the same city. These two proposed amendments to corporate tax regulations will have an immediate and marked impact on new investment in the healthcare services sector.

Pricing of Pharmaceuticals

Issued on March 25, 2014 by the NDRC, Notice 503 stated the government's continued commitment to allowing private for-profit hospitals to set their own prices for healthcare services. However, with respect to pharmaceuticals on the National Essential Drug List, these hospitals remain restricted to government-mandated retail prices.

For private hospitals that subscribe to international quality standards, the mandated prices do not cover their pharmacies' operational costs. These costs include, for instance, employing senior clinical pharmacists who provide consultation to both patients and physicians, providing round-the-clock telephone consultation and home delivery, translating package inserts into multiple languages to serve international patients, and validating the integrity of the supply chain. Although some local administrations have allowed hospitals to add a pharmacy service charge to cover these expenses, a split pharmacy and service charge invoice may not be acceptable to all insurance providers.

The over-regulation of pricing also leads to shortages in pharmaceutical stock which negatively impact the ability of private hospitals to deliver consistent care. In the procurement of pharmaceuticals, hospitals and clinics are invariably required to engage local suppliers. However, since manufacturers and distributors are also subject to government-fixed pricing, which varies by region, some choose to provide pharmaceuticals only in those regions where the price lists are more favorable. Thus hospitals are left operating in a gray area to procure the pharmaceuticals their patients need, in the absence of local supply.

Ultimately, although private for-profit hospitals tend to charge a higher overall price for pharmaceuticals, they also tend to have more responsible prescribing patterns,

医疗服务、医疗器械、和药品

引 言

2014 年，中国政府继续为国家改革和发展定调。作为 2013 年三中全会确立的一项主题，“使市场在资源配置中起决定性的作用”已经成为一项指导原则和中国医疗改革政策的一部分。

更加开放、公平和透明的医疗市场能够让市场参与各方受益，有助于提高公众获得和负担高品质创新性医疗产品及服务的能力。2014 年，中国政府在应对挑战和推进医疗改革方面取得重要进展。中国美国商会愿意与中国政府合作，共同推动这些改革事项，改善中国人民的健康状况。

现存监管问题

医疗服务问题

私立医疗机构纳税税率

中国政府已经着手改善税收环境，但是，私立医疗机构仍然适用 25% 的企业所得税税率，是在华所有企业和机构中最高的。这与政府吸引国内外私营资本、扩大医疗覆盖范围和推动医疗改革的初衷是相悖的。

中国政府已经公布鼓励投资设立连锁医疗机构的政策，中国美国商会支持这一举措。但是，现有的税收法规不允许连锁医疗机构冲抵其新设医疗点开办初期的经营亏损。因为需要时间申请必需的营业执照和医疗许可，新设医疗点在最初的三到四年通常无法实现盈利。大型连锁医疗机构不能用现有医疗点的利润冲抵新设医疗点的亏损，这将抑制投资者的投资热情。

因此，我们建议中国政府通过两种方式调整税收政策，刺激私立医疗机构的增长。第一，将私立医疗机构的企业所得税税率降至 15%，与“鼓励类”行业的合格企业适用的优惠税率水平相当。第二，允许连锁医疗机构合并现有成熟医疗点和新设医疗点的税收报表，至少允许位于同一城市的医疗点这样处理。对税收法规的这两条修改建议会对医疗服务行业的新增投资直接产生显著影响。

药品定价

根据 2014 年 3 月 25 日中国国家发展和改革委员会发布的第 503 号通知，政府将继续允许私立营利性医疗机构自行制定医疗服务价格。但是，对于列入《国家基本药物目录》的药品，这些医疗机构应当继续执行政府确定的零售价格。

对于遵守国际质量标准的私立医疗机构来说，政府定价不足以涵盖药房经营成本，其中包括聘请高级临床药师为患者和医生提供咨询服务；提供全天候电话咨询，以及送货上门服务；根据国际病患的需要将药品说明书翻译成多国语言；以及验证供应链完整性。虽然一些地方已经允许医疗机构额外收取药事服务费，用于弥补这些费用开支，但是，并不是所有的保险公司都接受单独开立的药事服务费发票。

价格过度监管也导致药品库存出现短缺，不利于私立医疗机构提供质量统一的医疗服务。在采购药品时，医院和诊所总是被要求使用当地的供应商。但是，因为生产企业和销售企业也需要执行政府定价，不同区域的政府定价又不尽相同，所以，有些企业只向价格更为有利的地区提供药品。因此，在当地没有供货的情况下，医疗机构不得不通过灰色地带采购患者需要的药品。

最后，虽然私立营利性医疗机构的药品价格总体水平较高，但是，他们的处方模式也更为负责，与公立医疗机构相比，药品销售收入在其总收入中只占很小一部分。而且，很多私立医院和诊所要比公立医疗机构更加严格遵守抗生素使用规定，总的来说符合公共健康的利益。中国美国商会强烈建议取消私立营利性医疗机构的价格和采购限制，以便他们能够维持高标准的医疗和服务。

with pharmacy sales comprising only a small portion of their overall income in comparison to public facilities. Furthermore, many private hospitals and clinics have higher compliance to antibiotic prescribing guidelines than their public counterparts, serving the interest of public health as a whole. AmCham China strongly recommends releasing private for-profit hospitals from pricing and procurement constraints in order to permit them to maintain high standards of care and service.

As discussed in the "Pharmaceutical Pricing and Tendering" section, we understand that the NDRC is discussing deregulation of the pharmaceutical pricing mechanism, although the new mechanism is still under development. We hope that any related reforms will help to address the prescription fee issue and lead to more rational prescription behavior in both private and public hospitals.

Reimbursement of Government Insurance (Yibao) at Private Hospitals

For nearly half a decade, the Chinese government has actively encouraged foreign investment in healthcare services and the growth of private hospitals. This is intended to diversify the healthcare choices available to different segments of society and ease the pressure on the public system. However, Notice 58, published by the State Council in 2010, also stipulates that private hospitals are only eligible for government insurance reimbursement (医保, *yibao*) insofar as they fully conform to the price list adopted by public hospitals. This limits the reach and affordability of private hospitals.

First, private hospitals with the same heavily regulated price structure as public hospitals not only cannot sustain international-standard operations, but are also likely to fall short of public facility standards, since the private sector does not enjoy the subsidies – direct or indirect – that are available in the public system. In order to adopt international best practices and provide a more personalized approach to care, private hospitals require greater pricing flexibility.

Second, all employed residents of China are required to contribute to the public insurance pool. Yet patients choosing care at these hospitals are currently not eligible for even partial *yibao* reimbursement. Consequently, when patients choose an international-standard private hospital, they must either bear the full out-of-pocket cost or utilize a commercial insurer.

The policy is also a burden on employers who offer commercial insurance as an employment benefit, particularly those like AmCham China member companies which employ large numbers of foreign citizens. In order to attract top talent, many multinationals and some Chinese companies purchase additional commercial insurance so that their employees can be reimbursed at international hospitals. However, the financial burden to both employers and individuals is exacerbated by the lack of even partial *yibao* reimbursement for service at these hospitals. Additionally, commercial health insurance purchased by employers is considered income to the individual and taxed accordingly.

AmCham China recommends that the Ministry of Human Resources and Social Security allow private, for-profit hospitals to receive *yibao* reimbursement for healthcare services at the prevailing *yibao* reimbursement rates, and allow them to set prices on top of *yibao* at their discretion. The difference between the *yibao* and hospital price is one that commercial insurers can fill, encouraging the growth of the private health insurance market in line with the NDRC's stated goals. In addition, we encourage the State Administration of Taxation to designate additional commercial health insurance purchased by employers as a non-taxable benefit. Altogether this will increase the affordability of and competition among healthcare service providers, stimulate purchases of private health insurance, and ease pressure on the public system.

Physician Licenses for Multiple Practice Sites

On November 5, 2014, the National Health and Family Planning Commission (NHFPC) issued Notice 86, "Regarding the Advancement and Standardization of Multi-Site Physician Employment," further opening the door for physicians to practice at more than one site. This follows the 2011 policy which first permitted physicians to maintain two valid places of practice. However, the new legislation continues to require that physicians receive the approval of their primary employer before engaging with a second employer, significantly limiting uptake. Public hospital presidents have been reluctant to grant such approval, fearing a loss of service by their medical staff.

Notice 86 also suggests the possibility of piloting a new system – whereby physicians would only need to inform, rather than seek approval from, their primary employer – in locations where "conditions are appropriate." AmCham China recommends further liberalization, by which physicians can apply directly to the health bureau for second site licenses, provided that they agree to fulfill the obligatory 40-hour work week at their primary employer. This would encourage the distribution of medical talent across various levels of the healthcare system, both public and private. Enabling licenses to be held in more than one jurisdiction, moreover, would promote the geographical distribution of medical talent, the standardization of practice, and facilitate the development of healthcare chains.

Medical Device Issues

Product Change Registration

On February 12, 2014, the State Council approved the "Regulations on the Supervision and Administration of Medical Devices" (Revised Draft) at its regular meeting. The regulations were formally implemented on April 1,

正如“药品定价和招标”一节所述，我们了解到，中国国家发展和改革委员会正在讨论放松药品定价机制的管制，不过新机制仍在酝酿之中。我们希望，任何相关改革都将有助于解决处方费的问题，使私立和公立医疗机构的处方行为变得更加合理。

私立医疗机构的医保报销制度

在过去的将近五年的时间里，为了向社会各个阶层提供多样化的医疗选择，减轻公立医疗系统的压力，中国政府积极鼓励外国资本投资医疗卫生和私立医疗机构的发展。但是，根据 2010 年国务院发布的第 58 号通知，私立医疗机构只有完全遵循公立医疗机构实行的价目表才有资格取得政府医保报销。这制约了私立医疗机构的经营范围和支付能力。

第一，私立医疗机构面对与公立医疗机构相同的严格的价格管控，不仅无法维持国际标准的运营，而且有可能低于公立医疗机构的标准，因为非公立领域不享受公立系统能够获得的直接或间接补贴。为了采取国际最佳实践做法，提供更具个性化的医疗服务，私立医疗机构需要更大的定价弹性。

第二，中国员工都需要缴纳公共医疗保险。但是，选择在这些医院接受医疗服务的患者目前无法获得任何报销。因此，当患者选择符合国际标准的私立医疗机构时，他们必须完全自费或者使用商业保险。

对于向员工提供商业保险福利的企业来说，特别是中国美国商会会员企业拥有大量外籍员工，这一政策是一项负担。为了吸引顶级人才，许多跨国公司和一些中国企业都会购买附加商业保险，为员工在国际医疗机构发生的医疗费用提供报销。但是，医保对这些医疗机构的医疗服务不提供任何报销，这加重了企业和个人的经济负担。而且，企业购买的商业健康保险被视为个人收入，需要按照规定纳税。

中国美国商会建议人力资源和社会保障部允许私立营利性医疗机构按照适用的医保报销比例享受医疗服务的医保报销，允许它们在医保标准的基础上自行设置价格。医保和医疗机构定价之间的差额由商业保险公司承担，鼓励按照中国国家发展和改革委员会确定的目标发展个人健康保险市场。此外，我们鼓励国家税务总局对企业为员工购买的附加商业健康保险提供免税待遇。总而言之，这将提高医疗服务的负担能力，推动医疗卫生企业之间的竞争，鼓励购买个人医疗保险，减轻公立系统的压力。

医师多点执业许可

2014 年 11 月 5 日，国家卫生和计划生育委员会发布《关于推进和规范医师多点执业的若干意见》的通知（第 86 号通知），进一步放开医师多点执业的大门。在此之前，2011 年，中国出台政策，首次允许医师保持两个有效的执业地点。但是，新法规继续要求拟多点执业的医师获得第一执业地点医疗机构的同意，这在很大程度上限制了选择多点执业的医师的数量。公立医疗机构的院长们因为担心医疗人员的服务受到影响，不愿意批准这样的申请。

第 86 号通知规定，在“有条件的地方”，可以试点医师向第一执业地点医疗机构履行知情报备手续即可开展多点执业试点，无需征得同意。中国美国商会建议进一步放开限制，允许医师直接向卫生局申请多点执业许可，允许他们在第一执业地点医疗机构履行每周 40 小时工作义务的情况下开展多点执业。这将鼓励医疗人才在各级公立和私立医疗卫生体系的分布。而且，持有多地的许可将会推动医疗人才的地域分布、规范执业，促进医疗卫生机构的发展。

医疗器械问题

产品变更注册

2014 年 2 月 12 日，国务院在常规会议上审批通过了《医疗器械监督管理条例》（修订草案），该条例于 2014 年 4 月 1 日起正式施行。该修订草案规定，将产品每四年进行一次再注册更改为每五年更新一次注册。我们希望这项具体规定能够得到批准并实施。

与此同时，2014 年 10 月 1 日施行的《医疗器械注册管理办法》（办法）对产品变化的表述进一步进行了阐述，将产品的变化限定在注册证及其附件载明的内容上。目前，其他国家（包括美国和欧盟）的法律规定，所有产品的变化都必须通过质量体系进行管理、控制和记录，而且并不是所有的变化都需要向医疗器械管理部门进行申报。因此，国家食品药品监督管理总局的此次变革不仅解决了关键的管理问题，又减轻了企业和医疗器械审评中心的负担。

但是，在法规的解读和执行上，各地各级管理机构和不同部门之间可能存在着不同的理解。中国美国商会希望能够对各级医疗器械监管部门和审评机构进行实施本办法的培训。此外，对于并没有在医疗器械注册证及其附件中阐明的内容变化，可以由企业自身的医疗器械质量体系管理和控制。

2014. The Revised Draft replaced the requirement that a product be re-registered every four years with a renewal of registration every five years. We hope that this provision of the Revised Draft in particular will be approved and implemented.

Meanwhile, the "Measures for the Administration of Medical Device Registration (Measures)," which entered into force on October 1, 2014, further elaborate the definition of "product change" by narrowing the scope of change to the content specified in the registration certificate and its appendixes. Legislation in other countries, including the US and EU, specifies that all product changes must be managed, controlled, and recorded by quality systems, and that not all changes must be reported to medical device authorities. Thus, the China Food and Drug Administration's (CFDA) reform not only addresses critical management issues, but also reduces the burden of companies and the Center for Medical Device Evaluation.

However, administrative agencies and departments at different levels may have varying opinions on the interpretation and enforcement of these regulations. AmCham China anticipates a need to train the supervisory departments and evaluation agencies for medical devices at different levels on the Measures. Furthermore, companies should be allowed to manage and control other changes not specified in the medical device registration certificate and its appendixes through their own medical device quality systems.

Country-of-Origin Approval Requirements

AmCham China members understand the need to comply with China's medical device quality controls. However, the country-of-origin requirements are problematic for many foreign-invested enterprises. As the medical device industry becomes increasingly globalized, many medical devices may not be registered in their country-of-origin or the country where the manufacturer is registered – for example, devices purchased by an Original Equipment Manufacturer, or the production of devices for export only or for sale in special zones. In general, these products have already been registered in International Medical Device Regulators Forum (IMDRF) member countries (e.g., Australia, Canada, EU, Japan, US). Most IMDRF members will not, in accordance with the unified standards of the Global Harmonization Task Force, require products already approved by one member country to be reapproved before entering their market. AmCham China recommends that the effective country-of-origin approval requirements be revised to accept IMDRF member country registration approvals and not restrict medical devices from entering the market based on the location where a product was manufactured or the manufacturer is located. Such revisions will help ensure that imported medical devices enter the Chinese market in a timely manner for the benefit of Chinese patients.

Product Instructions and Labeling

On July 30, 2014, the CFDA promulgated the "Regulations on the Administration of Instructions and Labeling of Medical Devices" (Regulations), which entered effect on October 1, 2014. To facilitate the successful and rational enforcement of these Regulations, we suggest the following:

❶ The Regulations specify that the instructions and label of medical devices must contain the date of manufacture and shelf life or date of manufacture and expiration. However, in practice, a shelf life or expiry date does not apply to all medical devices, such as metal implants, tools, and electronic medical devices supplied in a non-sterile manner. Though there is no way for a manufacturer to indicate this information for such products, it may experience unreasonable complications during post-marketing supervision. We recommended that manufacturers not be required to label such products with a "use by" or expiry date.

❷ In the Regulations, the "trade name" field has been deleted from the application form. However, medical devices are a type of commodity with special characteristics. If only generic names are used for all products, it will be impossible to distinguish between the products of different manufacturers or even between those of one given manufacturer when looking at product registration certificates. In particular, some registration certificates may include thousands of product models, distinguishable only by their model number, causing confusion during bid invitations, bidding activities, pricing, and medical insurance claims after marketing. AmCham China recommends that medical device supervisory authorities follow the lead of the drug regulatory authorities regarding the use and management of trade names and allow manufacturers to provide trademark registration documentary evidence; use trade names in the registration application form, instructions, and labels; and include trade names on registration certificates.

❸ The Regulations also include the concept of stock keeping unit (SKU) for the first time and specify that medical device SKUs shall include instructions, but do not require the inclusion of a Chinese label (Circular No. 6). However, this provision is inconsistent with the requirements of the CFDA's Circular No. 26 and Circular No. 43 (which address SKU labeling), and does not provide a specific definition of SKU, leading to inconsistent understanding of SKU among local CFDA branches and manufacturers. We recommend that the medical device supervisory authorities clarify the definition of medical device SKU. The requirement for providing SKU labeling in Class I medical device filing records and Class II/III medical device registration documents should be based on the representative principles.

原产国审批要求

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，原产国要求却给许多外资企业造成困扰，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。通常情况下，这些产品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，而大部分 IMDRF 的成员会遵守全球协调工作组（GHTF）发布的统一准则，让已经得到其他会员国批准的产品顺利进入该国市场，无需再在本国申请批准。中国美国商会建议修改现行的原产国审批要求，接受已经获得任一 IMDRF 会员国审批的医疗器械的注册申请，而不受该上市审批为法定生产商所在国（地区）或实际生产地所在国（地区）的限制。只有这样才能确保进口医疗器械能够及时进入中国市场服务病患。

产品的说明书和标签

2014 年 7 月 30 日，国家食品药品监督管理总局公布了《医疗器械说明书和标签管理规定》（法规），并于 10 月 1 日起正式实施。为了推动这一法规得到顺利和合理的执行，我们建议进一步改进以下领域的工作：

❶ 该法规规定了医疗器械的说明书和标签上一般应包括生产日期和使用期限或者生产日期和失效日期。但是，在实际操作过程中，并非所有的医疗器械都有使用期限或者失效日期，例如以非灭菌方式提供的金属植入物、工具和医疗电子设备。由于制造商无法在这类产品上标明使用期限或者失效日期，制造商可能会在上市后的监督管理过程中遭到不合理的对待。我们建议：对于这类产品，企业可以不标注使用期限或者失效日期。

❷ 在本次法规修订中，商品名一栏已经从申请表中删除。然而，医疗器械是一种具有特殊性质的商品。如果不使用商品名而全部使用通用名称，企业内部以及企业与企业之间，都无法通过注册证上的产品名称来简单的区分产品，特别是针对那些一张注册证上包括上百上千型号的系列产品，只能依赖产品的具体型号来区分，给上市后的招投标、物价医保申报造成困扰。中国美国商会建议医疗器械监管部门可以参考药品管理部门对于商品名的使用和管理。在企业提供商标注册证明文件的基础上，允许企业在注册申请表、说明书、标签上使用商品名，并将商品名最终体现在注册证上。

❸ 本次法规第一次提出了医疗器械最小销售单元的概念，并要求医疗器械最小销售单元应当附有说明书，并没有要求最小销售单元必须要提供中文标签（局 6 号令）。然而，这与局 26 号公告以及局 43 号公告的要求不符（局 26 号公告以及局 43 号公告要求提供最小销售单元的标签），且关于最小销售单元，在法规中也没有相应明确的定义，目前各地方局和各企业的理解也不尽相同。我们建议医疗器械监督管理部门明确给出医疗器械最小销售单元的定义。第一类医疗器械备案资料和第二类、第三类医疗器械的注册资料要求中最小销售单元标签的提供也应当遵循典型性原则。

临床试验

我们欢迎国家食品药品监督管理总局（国家食药局）制定《医疗器械临床评价指南（征求意见稿）》、《豁免提交临床试验资料的第二类医疗器械目录》和《免于进行临床试验的第三类医疗器械目录》。我们认为，这些规定将帮助中国平衡监管部门、行业和患者对临床要求的需要。

我们非常高兴地看到，中国监管部门已经认识到，医疗器械的临床试验只有在无法通过文献、试验报告、临床试用报告或其他现有证据证明产品安全性和效果的情况下才是适合的。《医疗器械监督管理条例》（国务院令第 650 号）也试图实现这种平衡，规定第二类和第三类医疗器械产品在三种情形下免于进行临床试验：

❶ 工作机理明确、设计定型，生产工艺成熟，已上市的同品种医疗器械临床应用多年且无严重不良事件记录，不改变常规用途的；

❷ 通过非临床评价能够证明该医疗器械安全、有效的；

❸ 通过对同品种医疗器械临床试验或者临床使用获得的数据进行分析评价，能够证明该医疗器械安全、有效的。

现有的临床试验规定让人不免担心过多和不必要的人体试验，会占用合格临床试验机构的有限资源，挤占原本应当用于其他更重要领域的有限的监管资源。而且，不必要的临床试验会推迟患者获得救生医疗技术的时间，在可预测性、成本和上市时间方面给行业造成重大负担。上市时间对医疗器械行业尤为重要。考虑到临床试验需要两到三年或者更长的时间，不必要的试验使得产品进入中国市场的时间将会推后两代以上。

Clinical Trials

We applaud the CFDA for developing the "Guidance on Clinical Evaluation of Medical Devices (Exposure Draft)," Class II Medical Device Clinical Trial Exemption List, and Class III Medical Device Clinical Trial Exemption List. We recognize that these initiatives will help China reach a balance between regulatory, industry, and patient needs in the clinical requirement area.

We are pleased to see that Chinese regulatory authorities have recognized that clinical trials for medical devices are only appropriate when safety and efficacy cannot be demonstrated through literature, test reports, clinical trial reports, or other available evidence. China's Order 650 also strives to achieve this balance by outlining three conditions under which Class II and III medical devices are to be exempt from clinical trials:

❶ When definite operating principles, design, and mature manufacturing processes have been established with no record of serious adverse events for substantially equivalent medical devices that have been marketed and clinically applied for years, and without having changed the conventional purpose of the device's use;

❷ When the safety and effectiveness of the medical device can be proven through non-clinical evaluation; and

❸ When the safety and effectiveness of the medical device can be demonstrated through the analysis and evaluation of data obtained through clinical trials or clinical application of equivalent medical devices.

Current clinical trial requirements raise concern over unnecessary and excessive experimentation on humans, strain limited capacity in qualified clinical trial sites, and divert limited regulatory resources away from other more impactful areas. Further, unnecessary clinical trials delay life-saving and life-enhancing technologies from reaching patients and create significant burdens for industry in terms of predictability, cost, and time-to-market. Time-to-market is a particularly important consideration for the medical device industry. Considering that clinical trials are required to last two to three years or longer, unnecessary trials can delay product entry into the China market by two or more generations.

We recommend that China's regulatory authorities and technical departments further explore and execute the best regulatory practices in clinical requirements by taking a risk-based approach to medical device clinical trials, requiring them only if safety and clinical efficacy have not been otherwise demonstrated or when there is a specific justifiable benefit to patient health. The risk-based approach aligns the interests of regulator, industry, and patient – balancing the need to ensure that appropriate trials are conducted when safety and efficacy cannot be proven through other clinical- and non-clinical data while ensuring minimum disruption to patients in need of life-saving medical technology.

Medical Device Pricing and Health Insurance Payment System

The current pricing mechanism for medical devices is based on both government-directed pricing and independent pricing set by manufacturers. China is actively adjusting the relationship between the government and the market to enable more effective market-driven price adjustments. AmCham China supports this strategy and looks forward to cooperating with the Chinese government to further improve supervisory conditions and patient service.

However, due to uncertain top-level system design and direction for medical service pricing reform, a wide range of guidelines and measures for health insurance payment and medical service pricing have been adopted in the pilot regions for healthcare reform. The "National Healthcare Service Items Payment Coding Standard (2012) (Standard)," includes such problems as overly detailed definitions, pricing for medical device usage, a uniformly imposed mainstream-based pricing system, and non-distinction between different procedures and reagents in clinical testing. These problems call into question whether the Standard can be effectively used for clinical applications in various regions. The Standard provides strict definitions for 9,360 medical services and emphasizes strict compliance with standard operating procedures rather than optimal treatment options for patients. A lack of distinct guiding principles and entry mechanisms for new medical services and diagnostic and treatment techniques has delayed the introduction of appropriate, efficient techniques and medical devices in the health insurance payment system, increasing cost to patients. The Standard also restricts the options available to patients as medical institutions may not utilize devices not included in individual payment categories, as patients cannot be compensated for these devices. Additionally, unsound evaluation mechanisms for medical services may lead some medical institutions to utilize low-cost, low-quality products for economic reasons.

Meanwhile, regarding health insurance payment system reforms, diversified forms of payment have been adopted, such as global budget, diagnosis-related group, per-diem, and capitation. Policy makers normally determine the current-period hospitalization or outpatient reimbursement quota according to a simple weighed mean of the current health insurance payment without consideration of the total costs that could be saved through complete process solutions and diagnosis or treatment procedures offered by appropriate techniques. In the long run, this approach will aggravate the overall economic burden of patients and health insurance funds.

To address the above problem, AmCham China recommends the following:

- Use the Standard as a guideline for medical service payments rather than as a strict requirement for clinical practice and payment calculations. Products with significant safety, efficacy, and effect should be allowed to be

我们建议中国监管和技术部门对医疗器械临床试验采取基于风险的做法，进一步探索和实施临床要求的最佳监管实践做法，只有在无法通过其他方式证明安全性和临床效果或者确定对患者健康有利的情况下才要求进行临床试验。基于风险的方法综合考虑了监管机构、行业和患者的利益，平衡两个方面的需要，既要在无法通过其他临床和非临床数据证实安全性和效果的时候确保进行适当的试验，也要确保将对需要救命医疗技术的患者的妨碍减到最小。

医疗器械的定价和医保支付制度

目前，医疗器械价格形成机制主要是政府指导价与企业自主定价的体系。目前，国家正在积极地调整政府与市场的关系，以期更有效地发挥市场调节作用。中国美国商会对政府这一战略表示支持，并愿意与政府一起为改善监管环境和更好地为服务患者而努力。

然而，在顶层设计不明确、医疗服务价格改革方向未定的情况下，医改试点地区各类的支付费与定价的导向和做法多种多样。《国家医疗服务项目收费编码规范（2012）》（规范）中过于详尽的内涵、医疗器械的使用计费、以主流方法一刀切的定价方式和检验类不区分方法试剂等问题，也为各地能否有效服务于临床带来许多的争议。本规范对 9360 项医疗服务赋予了严苛的内涵，从医疗实践的角度，项目更着重于严格的操作流程，而非病患的最佳治疗方案；而新医疗服务与诊疗技术缺乏明确的指导原则和准入机制，导致适宜高效的技术和医疗器械的医保支付滞后于临床使用，使得病患花费更多治疗成本。规范还限制了病患对医疗器械的选择权，因为医疗机构可能不会使用未列入个人支付类别的器械，并且病患使用这些器械也不会得到补偿。此外，在医疗服务评估机制不健全的情况下，一些医疗机构可能会因为经济原因，使用低价低质的产品。

与此同时，在医疗保险支付制度改革方面，总额预付、按病种支付、按床日支付、按人头支付等多种支付方式共存，而决策者在制定政策时大多根据以往医疗保险费用支付的现状进行简单的加权平均给出当期的住院或门诊报销的额度，忽视了适宜技术为疾病提供的全程解决方案及其诊疗手段对疾病总费用的节约，从长远而言，这种方式会加重医保基金和患者因该疾病的总体经济负担。

中国美国商会就此提出如下建议：

- 将《收费编码规范》作为支付医疗服务的指南，而非严苛的临床实践要求和计费依据；允许显著安全性、效用和效果的产品可以在收费项目中单独收费，保障病患具有选择权；即使是打包收费也应该在各相关配套政策及医疗体系完备的基础上逐步改革；
- 强调疗效优先、价格合理的原则，确保政策制定过程中的透明性，当各种目标出现矛盾时，以服务患者为第一要务，并通过相关政策整体的顶层设计来实现其它目标；
- 建立完善的诊疗技术和医疗器械定价和医疗保险准入制度和流程，定期就新技术等的临床价值和经济性等进行沟通，从而促进新技术与服务相适宜的市场准入和纳入医保支付体系。
- 鼓励业界参与医疗支付系统的任何变革，避免将医疗技术拒之门外，并增加政府透明度，依据 WTO 原则，合理制定征求意见时间。

医疗器械上市后统一监管标准

《医疗器械说明书和标签管理规定》是执法部门进行监督执法的基本准则。中国试图实施更严苛的市场监管要求，导致各类检查频次的增加、很多监管负责人没有进行过医疗器械监管方面的培训或者没有执行检查的资格。中国美国商会关心的是，在简政放权的大环境下，政府部门内部缺少沟通会导致未来医疗器械投资产生混乱和区别对待。因此，我们建议国家食品药品监督管理总局向地方药监部门提供培训和统一标准，以便减少监管混乱和执法不一致。

此外，中国美国商会也将继续关注国家食品药品监督管理总局为改善与医疗器械召回和危机投诉制度相关的检查和流程所做的努力。基于医疗器械召回的定义在中国远比在国外更加宽泛这一原因，外资企业需要向国家食品药品监督管理总局报告产品的全球召回情况，即使该产品召回并不涉及中国市场。我们希望国家食品药品监督管理总局能够采纳国际公认的产品召回定义。此外，我们也希望国家食品药品监督管理总局能够增强对相关媒体和公众的教育，以及对中国本土企业的引导。同时，我们还建议国家食品药品监督管理总局能够采用改进的信用评级系统，敦促中国本土医疗器械生产企业与境外生产企业一样按照中国的法规要求召回产品。

charged separately to ensure patients' right of choice; package fees should be gradually reformed after the supporting policies and healthcare system have been improved.

- Emphasize the principles of "efficacy first, reasonable pricing" to ensure transparent policy making; when various goals are in contradiction, the servicing of patients should be prioritized with other goals being achieved through top-level policy design.
- Establish a sound pricing system for diagnostic and treatment techniques and medical devices, as well as mechanisms for their inclusion in the health insurance payment system. Regular communication on the clinical value and cost-effectiveness of new technologies and services should be conducted to enable their market introduction and incorporation into the health insurance payment system.
- Encourage the healthcare sector to participate in reforms on the health payment system to avoid the exclusion of medical technologies. Enhance transparency and develop a reasonable schedule for soliciting public input according to WTO principles.

Unified Supervisory Standard for Marketed Medical Devices

"The Regulations on the Administration of Instructions and Labeling of Medical Devices" serves as a benchmark for law enforcement agencies to conduct enforcement activities. The Chinese government's efforts at implementing stricter marketing supervision requirements have led to an increase in inspections, yet many of the responsible personnel do not have proper training in medical device supervision or lack qualifications to conduct inspections. AmCham China is concerned that, as the government looks to loosen regulations and strengthen inspections, a lack of intra-governmental communication will create confusion and disincentivize future investments in medical devices. Therefore, we recommend that the CFDA issue unified standards and provide regular training for local drug supervisors to reduce regulatory confusion and inconsistent enforcement.

In addition, we continue to pay close attention to the CFDA's efforts to improve inspections and procedures relating to medical device recalls and crisis complaint mechanisms. A foreign company's scope of recalls is much broader in China than in other countries. Companies must report global product recalls to the CFDA, even if the product recall does not involve the Chinese market. AmCham China encourages the CFDA to adopt the internationally accepted definition of product recalls. Furthermore, we hope that the CFDA will strengthen its educational activities for the media and the public, and its guidelines for domestic manufacturers. Additionally, we also recommend that the CFDA adopt an improved rating system to streamline recall procedures for both domestic and foreign manufacturers.

Medical Device Unique Identification

AmCham China is pleased to learn that the CFDA, as an official member of the IMDRF and the IMDRF's Unique Device Identification (UDI) Special Task Force, is actively participating in the research and promotion of UDI systems for medical devices, establishing a Special Steering Team in July 2014. In the US, Class III medical devices must fully meet UDI requirements for medical devices, although a number of Class III products have been temporarily exempted or delayed. We hope that relevant parties in China and the US will further discuss this issue and share their experiences.

Centralized Procurement and Bidding for Consumable Medical Supplies

Local governments and the medical device industry have been in open communication since the launch of the centralized procurement and bidding project for consumable medical supplies. On December 17, 2012, the former Ministry of Health, together with five other ministries, jointly issued the trial "Regulations on Centralized Procurement of High-Value Consumable Medical Supplies." While this is a good start, it does not fully take into account the complexity of the high-value consumable medical supplies industry. We recommend that relevant regulations be improved and a fair, transparent, and standardized bidding process be established on the basis of the principle of "quality comes first at a reasonable price."

Although both pharmaceuticals and medical technologies similarly require high investments in research and development (R&D), there are many differences between these two sectors, as described below.

- Cost

  The fundamental differences between the costs of the manufacture, transportation, sale, and service of medical devices and of pharmaceuticals exemplify the inability to use the same model of centralized procurement for these two types of products. With implantable medical devices, for example, doctors must perform complex surgical procedures to implant medical devices into their patients. Such procedures incur further costs for pre- and post-operative services, intensive training of doctors, and technical support for surgical implants during the procedure (e.g., pacemakers) and after surgery (e.g., pacemaker settings). Implantable medical devices must be customized for individual patients to ensure safety, thus medical technology companies must stock a complete line of products of varying specifications and models, resulting in high transportation and storage costs. Conversely, pharmaceuticals can be directly used by patients according to the product instructions.

医疗器械唯一标识

中国美国商会很高兴了解到，国家食品药品监督管理总局作为 IMDRF 的正式成员以及 IMDRF 医疗器械唯一标识特别任务小组的成员积极参与了医疗器械唯一标识的调研和推进工作，并在 2014 年 7 月成立专项领导工作组。目前，美国的第三类医疗器械产品必须完全符合医疗器械唯一标识的要求，但在实施过程中也有不少三类产品被暂时豁免或延期符合上述唯一标识的要求，我们希望中美可以就此问题进行进一步的探讨并分享双方经验。

医用耗材的集中采购与招标

自医用耗材集中采购和招标项目实施以来，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，原卫生部会同其他五部委联合发布了《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加以完善，以质量优先，价格合理为原则，建立一套公正、透明的标准化招投标程序。

虽然药品和医疗技术具有研发成本高的相似性，但两者还是有很大区别的，正如下文所列：

- 成 本

  医疗器械生产、运输、销售和服务医疗技术的成本与药品的成本有根本性的区别，这直接决定了在集中采购中不可直接照搬药品模式。以植入性医疗器械为例，医疗器械植入产品必须经过医生操作复杂的手术植入患者体内，该流程将在手术前和手术后产生相当大的成本：包括培训医生掌握手术成功所必需的操作技能；以及在手术室进行外科手术植入过程期间（例如，起搏器）和手术后（例如，起搏器设定）提供技术支持。植入性医疗器械服务于患者时必须要个性化的使用才能保障医疗安全，因此，医疗技术企业必须储备规格、型号齐全的产品，其运输、储备的成本较大。相反，药品只需要按照产品使用说明书就可直接使用。

- 生命周期

  医疗器械与药品生命周期也有很大不同，一种药品的专利期，在获得批准后通常享有 18 年或更长时间的专利保护；而一个创新型医疗器械的专利寿命仅为 18 个月。

- 生产方式

  药品可以分批次生产，降低边际成本；医疗器械需要单个生产，边际成本相比较高。

中国美国商会对医疗器械集中采购面临的主要问题的建议：

- 运费和保险费付至（CIP）价

  2014 年，部分省份根据“进口产品按含税 CIP 价格加合理差率进行价格比较”这一规定，制定招标上限价。然而，这一价格难以涵盖在华运营外资企业在中国本土巨大的运营成本。我们希望以市场调节为导向，减少政府干预。同时，我们建议取消对 CIP 价的采集及将其作为价格管控手段的相关规定。

- 采购目录及创新

  2008 年的《全国高值医用耗材集中采购目录》需要更新。由于医疗器械行业的独特性，过去六年来，已涌现大量的新技术和产品。中国美国商会建议：创建标准化的采购目录及产品分类和质量评价标准。国家卫生和计划生育委员会在设计新产品和技术的评价指标时，要鼓励新技术、材料和工艺的创新。

- 采购流程

  医用耗材集中采购流程应当改进。目前，各省的集中医用耗材采购期是至少两年，这使得新产品在不同省市因采购周期的不同无法及时上市，而产品注册证的时限仅有 4 年，不仅延缓了产品更新换代的周期，更限制了创新产品及时服务于患者。

  中国美国商会建议：各省在执行集中采购期间应明确新产品增补时间、流程和规则，并及时更新、完善评标专家库，确保其拥有足够的了解医疗器械产品的专家。

- 资质文件

  我们建议采用标准化的资质文件目录和价格标准，以减轻企业负担。目前，各省要求企业医用耗材集中采购提交的资质文件过于复杂，应尽量减少提交材料，以提高招投标双方的效率。

- Life Cycle

  There are considerable differences between the life cycles of medical devices and pharmaceuticals. Pharmaceutical patent periods will last more than 18 years after approval is obtained, while the average life expectancy of an innovative medical device patent is merely 18 months.

- Manufacturing Process

  Pharmaceuticals can be produced in batches, lowering marginal costs. Marginal costs for medical devices are much higher because devices must be individually produced.

AmCham China's recommendations for key issues affecting the centralized procurement of medical devices are as follows:

- Carriage and Insurance Paid (CIP) Price

  In 2014, some provinces set an upper price limit for bidding based on the provision that "the tax-inclusive CIP price plus a reasonable markup shall be used for the price comparison for exported products." However, this price fails to cover the high operating costs for foreign companies in China. We hope that the price change will be driven by market adjustments and that government intervention be reduced. We recommend the cancellation of the collection of CIP price information and the provision regarding the use of CIP price as a measure for price controls.

- Procurement Catalogue and Innovation

  The 2008 "National Catalogue for Centralized Procurement of High-Value Medical Supplies" needs to be updated. Due to the unique nature of the medical instrument industry, an abundance of new technologies and products have appeared in the intervening six years. AmCham China recommends the creation of a standardized procurement catalogue, as well as standards for product categorization and quality evaluation. We further recommend that, when designing evaluation indices for new products and technologies, the NHFPC pay special attention to innovations in new technologies, materials, and techniques.

- Procurement Process

  Procedures for the centralized procurement of medical supplies should be improved. Each province's centralized medical supply procurement period is currently at least two years, during which new products cannot be launched in a timely manner due to differences in procurement cycles. Additionally, the validity period of a product's registration certification is only four years, extending the product upgrade cycle and making it difficult for patients to utilize innovative products. AmCham China recommends that each province clearly define the timing, process, and rules for the addition of new products during the centralized procurement period. Furthermore, they should update and improve the evaluation expert database in a timely fashion so as to ensure that a sufficient number of professional experts familiar with medical device products are available.

- Qualification Documents

  We recommend standardizing qualification document catalogues and price standards in order to reduce the burden on enterprises. Currently, the qualification documentation requested by each province to be submitted by enterprises during centralized medical supply procurement is overly complex, and required materials should be minimized to improve efficiency.

- Bidding Costs

  Medical device companies participating in bidding activities are required to pay a wide variety of costs, including bidding service fees and deposits. To reduce unforeseeable costs accrued during the course of centralized procurement for consumable medical supplies, we recommend that provinces adopt a provincial-level centralized procurement mechanism and publish the legal basis for their charges and relevant rates.

We hope that the NHFPC will uphold the tenets of fairness, openness, transparency, and compliance with national trade policies and World Trade Organization agreements as it addresses the issues discussed above. These measures will not only enhance work efficiency, reduce the burden of medical device companies, and facilitate big-data-based government supervision of the medical device sector, but will also reduce rent seeking associated with procurement projects.

Pharmaceutical Industry Issues

Pharmaceutical Pricing and Tendering

The year 2014 was historic for drug pricing reform, with the Chinese government taking many concrete steps to liberalize price controls on pharmaceuticals. On November 25, 2014, the NDRC released a draft scheme for promoting drug pricing reform. The reform plan hinges on decreasing administrative oversight of the pharmaceutical market and eventually abolishing government fixed maximum retail prices for drugs. Meanwhile, the NHFPC and other government departments are also in the process of instituting the guiding documents on centralized drug procurement at public hospitals to reform the drug procurement practice.

AmCham China welcomes these efforts to increase the role of the market in drug pricing. While removing administra-

- 招标费用

  目前，医疗器械企业参加投标活动时，需要缴纳招标服务费、保证金等名目繁杂的各种费用。为了减少医疗耗材集中采购期间征收的各种不可预知的费用，我们建议各省采取以省为单位的集中采购机制，公开医用耗材集中采购费用收取的合法依据和收费标准。

综上所述，我们希望国家卫生和计划生育委员会在解决上述问题时能够本着公正、公开、透明原则，并遵守国家贸易政策及世界贸易组织相关协议的规定。这不仅可以提高工作效率，减轻医疗器械企业的负担，有助于政府基于大数据下的行业监管，还可以降低采购项目中的寻租风险。

医药行业问题

药品定价和招标

对于药品定价改革来说，2014 年是具有历史意义的一年，在这一年，中国政府采取了很多具体举措放松对药品的价格管控。2014 年 11 月 25 日，中国国家发展和改革委员会发布推动药品定价改革的方案草案。这一改革方案强调减少对药品市场的行政监管，最终取消政府确定药品最高零售价。与此同时，国家卫计委等政府部门也在制定公立医疗机构药品集中采购的指导文件，实施药品采购改革。

中国美国商会欢迎中国为提高市场在药品定价中的作用而做出的这些努力。虽然取消药品定价行政限制能够让市场在鼓励创新和提高产品质量方面发挥更大的作用，但是，政府应当考虑如何建立有效的监管机制，确保患者能够负担和获得这些创新性高质量产品。

在药品招标和采购领域，中国美国商会很高兴地看到，中国政府正在进一步调整招标政策，更重视质量，不再遵循“最低价胜出”的采购原则。至于质量控制和监督，为了提高药品质量，中国已经采用药品生产质量管理规范（GMP），并且正在试点仿制药质量一致性评价项目。中国美国商会对所有这些举措表示欢迎。

但是，在地方执行和实施层面，由于缺少质量分级制度，最终导致价格成为药品招标的主导因素。因此，有必要建立质量分级制度。只有这样，患者才能够获得创新性高质量药品。

上述举措将会极大地鼓励医药企业增加用于开发创新性高质量药品的研发支出，防止医药企业以牺牲质量的方式赢取以价格为基础的采购招标。中国美国商会希望与行业协会和政府合作，进一步推动定价改革，探索有效的价格管理和监督机制，建立科学透明的招投标制度。

医疗保险制度改革和国家医保报销药品目录

医疗保险制度对于控制患者对创新性高质量药品的负担能力也能够发挥关键作用，中国政府正在对其进行改革。2014 年，许多省份合并城镇居民医疗保险和新型农村合作医疗保险，建立城乡医疗保险制度。这是一项积极的举措，有助于推动建立统一的医疗保险制度和优化保险资金的管理。中国美国商会对迄今为止已经取得的进展表示赞赏。

但是，与医保密切相关的国家医保报销药品目录自 2009 年以来就没有修订过，这阻碍了中国患者获得过去五年发布的创新性高质量药品。一些新药（例如，肿瘤药品）自 2004 年开始就在等待列入国家医保报销药品目录。

中国美国商会建议修订这一目录，以减轻患者使用创新性高质量药品的经济负担。中国美国商会及其会员企业希望能够有机会与中国政府合作，共同探索医疗保险制度改革的其他途径。

提高病人获得创新治疗的能力

药品审评滞后是医药行业面临的最大挑战。目前，新药产品获得国家食药局的上市许可至少需要五年的时间，导致中国患者不能及时获得有效的创新产品。例如，由于缺少系统性的支持，危重患者获得创新药品，特别是治疗遗传疾病的药物的能力仍然受限。尤其是，现行的《药品注册管理办法》没有明确在目标患者群体规模很小，统计数据分析方法基本不可行的情况下，如何申请免于“常规”的临床试验。此外，只有少数几个城市对遗传病的治疗提供一定的报销。

我们期待：❶ 修改《药品管理法》，明确在中国没有替代治疗方法（或者治疗选择非常有限）的疾病的药品加速审批程序；❷ 建立长期机制，先从省级试点项目开始，对重大遗传疾病的患者提供支持；❸ 将只能使用创新药品治疗的遗传疾病纳入大病保险的覆盖范围。中国美国商会欢迎中国政府在 2014 年 12 月召开的中美商贸联委会（JCCT）上做出的简化美国医药产品审批程序的承诺，包括减少不必要的临床试验，我们期待更具体的举措。

tive restrictions on drug pricing allows the market to play a greater role in encouraging innovation and high quality products, the government should also consider how to establish effective supervision mechanisms so that patients can have access to these innovative and quality drugs at affordable prices.

In the area of drug tendering and procurement, AmCham China is pleased to see that the Chinese government is further adjusting tendering policies and placing a stronger emphasis on quality, moving away from the "lowest-price wins" procurement principle. In terms of quality control and supervision, China has adopted Good Manufacturing Practice criteria, and is also piloting a generic drug quality consistency evaluation program to improve drug quality. AmCham China welcomes all of these initiatives.

However, when it comes to enforcement and implementation at the local level, the absence of a quality grading system ultimately leads to price being the dominant consideration in drug tendering. Therefore, it is essential that a quality grading system be put in place. Only in this way will patients be able to access innovative and quality drugs.

The aforementioned initiatives will provide a catalyst for increased spending on R&D to develop innovative and quality drugs, and decrease incentives for pharmaceutical companies to sacrifice quality to win procurement bids based on price. AmCham China wishes to work together with industry associations and government to further advance pricing reforms, explore an efficient price management and supervision mechanism, and establish a scientific and transparent tendering and bidding system.

Medical Insurance System Reform and the National Reimbursement Drug List

The medical insurance system also plays a key role in controlling the affordability of innovative and quality drugs for patients, and is undergoing reform by the Chinese government. In 2014, many provinces integrated the medical insurance system for urban residents and the new rural cooperative medical insurance system, establishing an urban-rural medical insurance system. This is a positive move to promote the unified medical insurance system and to optimize the management of insurance funds. AmCham China applauds the progress made thus far.

However, the National Reimbursement Drug List (NRDL) that is so intricately linked with medical insurance reimbursement has not been updated since 2009, hindering Chinese patients' access to innovative and quality drugs that have been launched during the past five years. Some of the new treatments (e.g., oncology products) have been waiting for the NRDL since 2004.

AmCham China recommends updating this list to ease the financial burden for patients using innovative, higher-quality drugs. AmCham China and our member companies would welcome the opportunity to work together with the Chinese government to explore other ways to reform the medical insurance system.

Increasing Patients' Access to Innovative Treatments

Drug lag is the most challenging issue facing the pharmaceutical industry. Currently, it takes at least five years for new pharmaceutical products to obtain marketing approval from the CFDA, which delays Chinese patients' timely access to effective and innovative products. For example, the access of critically ill patients to innovative medicines, especially those treating genetic diseases, remains limited due to a lack of systemic support. In particular, the current Drug Registration Regulation does not provide a clearly defined procedure to apply for a waiver of "traditional" clinical trials, when the target patient population is very small and the statistical data analysis methods are essentially not feasible. In addition, only a few cities provide some level of reimbursement for the treatment of genetic diseases.

We look forward to ❶ a revision of the Drug Administration Law that clarifies a specific and accelerated drug-approval procedure for diseases for which there is no alternative treatment (or for which there are very limited treatment options) in China; ❷ a long-term mechanism that supports patients with critical genetic illnesses starting with provincial-level pilot programs; and ❸ an expansion of critical illness insurance coverage for the treatment of genetic diseases that can only be treated by innovative medicines. AmCham China welcomes the commitments made by the Chinese government at the December 2014 Joint Commission on Commerce and Trade (JCCT) to streamline the review and approval procedure for US pharmaceutical products, including reducing unnecessary clinical trials, and we look forward to more concrete approaches to come.

Regulatory Data Protection

The pharmaceutical sector is a research-intensive and highly innovative industry. A transparent and predictable policy environment that safeguards intellectual property through patents and regulatory data protection (RDP) is essential for reinvestment in innovation by both domestic and foreign pharmaceutical companies.

In recent years, China has made significant efforts to increase the quality and transparency of its patent system, including improving RDP regulations and implementation. In early 2014, the CFDA published a draft revision of the Drug Administration Law for public comment. AmCham China believes that this is an opportunity for China to further improve its RDP.

监管数据保护

医药行业具有研究密集型和高度创新的特征。为了鼓励国内外医药企业对创新的再投资，需要创造透明和可预测的政策环境，通过专利和监管数据保护来保障知识产权。

近年来，中国大力提高其专利制度的质量和透明度，包括改进监管数据保护的管理和实施。2014 年初，国家食药局发布《药品管理法》修改草案，公开征求意见。中国美国商会认为，这是中国进一步改进监管数据保护的一个机会。

在申请上市许可的过程中，医药企业需要提交很多与药品效果和安全性有关的敏感信息。中国美国商会建议政府建立一个有效、一致和全面的监管数据保护机制，确保这些数据不被用于不公平的商业用途。

美中医疗卫生合作项目

作为一项旨在与中美政府及医疗行业之间建立更紧密合作关系的协作计划，美中医疗卫生合作项目（HCP）与行业协会密切合作，帮助中国政府实现提高患者获得医疗服务的能力的目标。

2014 年，医疗卫生合作项目继续与主要利益相关方展开合作，支持中国引进新的医疗卫生理念和技术，在山东、重庆和广东组织召开美中医疗卫生合作研讨会。这类研讨会是美国和中国医疗专业人士就医疗信息技术、医疗机构管理、老人护理以及非传染性疾病等专题交流看法的宝贵平台，推动政府和医药行业讨论如何提高患者获得新技术的能力。目前，医疗卫生合作项目已经在超过 12 个省级地区共同主办这类研讨会，包括北京、重庆、海南、河南、湖北、湖南、辽宁、黑龙江、广西、云南、山东和广东。医疗卫生合作项目还参加了美中之间关于医疗卫生议题的其他对话活动，包括 2014 年的中美商贸联委会。

此外，医疗卫生合作项目还与其他行业组织合作，集中资源，支持业界和政府之间讨论监管问题，与中国政府有关部门分享国际经验和最佳实践做法。2014 年 5 月，医疗卫生合作项目和中国美国商会医疗卫生论坛邀请中美两国专家探讨医疗技术评估，解读“新增医疗服务项目”（绿皮书）。2014 年 12 月，医疗卫生合作项目和美国贸易发展署组织了一个由中国医疗卫生官员和医疗机构管理人员组成的考察团，赴哥伦比亚大学梅尔曼公共卫生学院和匹兹堡大学医疗中心接受医疗机构管理和公共卫生培训，并参加医疗卫生创新研讨会。

建 议

医疗服务

- **降低私立医疗机构的纳税税率，允许连锁医疗机构合并现有成熟医疗点和新设医疗点的税收报表，至少允许位于同一城市的医疗点这样处理。**

医疗器械问题

- **对医疗器械临床试验采取基于风险的做法。**
- 医疗器械监管部门和评审机构在执行过程中应当遵守《医疗器械监督管理条例》的规定。
- 修改原产国审批要求，不再根据产品生产所在国或生产企业所在国来限制医疗器械进入中国市场。
- 将《收费编码规范》作为医疗服务付费指南，而非采用严苛的临床实践要求和计费依据；允许将安全性和疗效显著的产品列为个人支付项目，保证患者的选择权；在配套政策和医疗体系得到改进之后，逐渐改革套餐收费。
- 强调疗效优先、价格合理的原则，确保政策制定的透明度；不同目标存在冲突的，应当以服务患者为第一要务，并且通过顶层政策设计实现其他目标。
- 在招标采购过程中，取消对口岸价的采集及将其作为价格管控手段的相关规定。

医药问题

- **设立招标过程的质量分级制度，提高患者获取创新性高质量药物的能力。**
- 修订国家医保报销药品目录，减轻患者的经济负担。
- 采取切实措施，简化药物产品审批程序，减少不必要的临床试验。

During the process of applying for marketing approval, pharmaceutical companies need to submit extensive sensitive data on drug efficacy and safety. AmCham China proposes that the government establish an effective, consistent, and comprehensive RDP system to prevent such data from succumbing to unfair commercial use.

US-China Healthcare Cooperation Program

As a collaborative initiative working to build closer working relations between the US and Chinese governments and industry in the healthcare sector, the US-China Healthcare Cooperation Program (HCP) has worked closely with industry associations and supported the Chinese government's goal of enhancing patient access to healthcare services.

In 2014, the HCP continued to work with key healthcare stakeholders to support the introduction of new healthcare concepts and new technologies to China, and organized US-China Healthcare Cooperation Workshops in Shandong, Chongqing, and Guangdong. These workshops have been a valuable platform for US and Chinese healthcare professionals to exchange ideas on specific topics such as healthcare IT, hospital management, senior care, and non-communicable diseases, and have facilitated government-industry discussions on enhancing patient access to new technologies. So far, the HCP has co-organized such workshops in more than 12 provincial-level jurisdictions, including Beijing, Chongqing, Hainan, Henan, Hubei, Hunan, Liaoning, Heilongjiang, Guangxi, Yunnan, Shandong, and Guangdong. The HCP also participated in other US-China dialogues on healthcare topics, including the 2014 JCCT.

In addition, the HCP has worked with other industry associations to pool resources and support regulatory discussions between industry and government to share international experiences and best practices with Chinese authorities. In May 2014, the HCP and the AmCham China Healthcare Forum invited Chinese and US experts to discuss health technology assessments and for a read-out on the "Newly-added Medical Service Items" (Green Book). In December 2014, the HCP and the US Trade and Development Agency organized a study tour for Chinese health officials and hospital administrators to Columbia University's Mailman School of Public Health and the University of Pittsburgh Medical Center for training on hospital management and public health, as well as workshops on healthcare innovations.

Recommendations

Healthcare Services

- **Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities, at least for facilities in the same city.**

Medical Device Issues

- **Adopt a risk-based approach for medical device clinical trials.**
- Medical device supervisory departments and evaluation agencies should comply with the "Regulations on the Supervision and Administration of Medical Devices" during their implementation.
- Revise the country-of-origin approval requirements to no longer restrict medical devices from entering the Chinese market based on the location where a product was manufactured or the manufacturer is located.
- Use the Payment Coding Standard as a guideline for medical service payments rather than as strict requirements for clinical practice and payment calculations. Products with significant safety, efficacy, and effect should be allowed to be listed as individually paid items to ensure patients' right of choice; package fees should be gradually reformed after the supporting policies and healthcare system has been improved.
- Emphasize the principles of "efficacy first, reasonable pricing" to ensure transparent policy making; when various goals are in contradiction, serving patients should be prioritized with other goals being achieved through top-level policy design.
- During the bidding and procurement process, cancel the collection of CIP price information and the requirement for use of CIP price as a measure for price controls.

Pharmaceutical Issues

- **Put in place a quality grading system for the tendering process to enhance patient access to innovative and quality drugs.**
- Update the NRDL list to ease the financial burden on patients.
- Take concrete approaches to streamline the review and approval process for pharmaceutical products and reduce unnecessary clinical trials.

Information and Communications Technology

Introduction

Greater liberalization of the information and communications technology (ICT) sector in China will enhance China's technological capabilities and stimulate innovation across the economy. AmCham China believes that the recommendations included in this chapter will improve China's position in the global ICT value chain and advance China's "ICT transformation."

The importance of the ICT sector to all participants in China's development has been clearly articulated in its 12th Five-Year Plan, national "informatization" programs, Strategic and Emerging Industries (SEIs) objectives, and in the Third Plenum Decision issued in November 2013.

AmCham China's ICT Forum is encouraged by China's moves to liberalize aspects of the ICT sector along several policy lines – especially during the Asia-Pacific Economic Cooperation meeting hosted in Beijing in November 2014. AmCham China trusts that the swift conclusion of an expanded Information Technology Agreement will provide an updated list of IT products exempt from global tariffs. A bilateral investment treaty between China and the US would constitute a major additional advance in gaining mutual approvals for equipment sales and ICT service operations in both countries.

Despite these positive developments, a number of policy challenges still must be addressed to foster the healthy development of China's ICT sector. The ICT industry serves global networks and provides products and services across borders, interconnected by the Internet and produced via complex supply chains that span the globe. Consequently, the ICT sector requires close international policy coordination and consensus-building between governments around the world.

Rapid advances in technology and product innovation present new and evolving policy challenges that can be addressed only by close coordination between industry and regulators. Key areas such as information security, cyber security, and critical information infrastructure protection all rely on cross-border information sharing regarding threats and broad deployment of leading technologies, global standards, and best practices.

Recent revelations of information security breaches have dampened cross-border investment and cooperation opportunities in the ICT sector, leading some governments to attempt to protect critical national information infrastructure by discriminating against foreign technology. Such misguided discrimination undermines global cyber security, and is contrary to the fundamental interests of every country, including the US and China.

A positive way forward is to work closely with all relevant parties to ensure that commercial and social services are free to develop without onerous restrictions, and that both domestic and foreign ICT companies are able to compete on a level playing field, to maximize the benefits of ICT across all sectors of the economy.

AmCham China has worked closely with several Chinese government departments to improve bilateral business relations, but several challenges remain, including:

- China-specific regulatory or technological requirements and mandates;
- China-specific standards and conformity assessment regimes; and
- Testing and certification regimes that require disclosure of commercial secrets.

Such issues create market barriers and limit the growth of the ICT sector in China and abroad.

Ongoing Regulatory Concerns

Market Access for Telecom and Internet Services

Foreign and foreign-invested companies face severe challenges competing in China's telecommunications and Internet sectors due to investment restrictions, security controls, and a range of protectionist measures.

More troubling, China is extending this restrictive regulatory framework beyond traditional telecommunications services into any IT sector that utilizes Internet connectivity, including:

信息通信技术

引 言

进一步开放信息通信技术行业（ICT）能够提升中国的技术能力，鼓励经济创新。中国美国商会认为，这一章给出的建议有助于提高中国在全球信息通信技术价值链中的地位，推动中国“信息通信技术转型”。

第十二个五年计划、国家信息化项目、战略性新兴产业发展规划、以及 2013 年 11 月三中全会作出的决定，都明确阐明了信息通信技术对所有中国发展参与者的重要性。

根据相关政策，中国关于推动信息通信技术领域自由化的举措——特别是于 2014 年 11 月在北京举行的亚太经合组织会议期间所公布的有关政策使中国美国商会信息通信技术论坛倍受鼓舞。中国美国商会相信，迅速签订一份范围更广的《信息技术协议》将促成全球免税 IT 产品的更新清单。中美之间的双边投资协定将会有效推动实现两国相互批准设备销售和信息通信技术服务运营。

尽管取得了这些积极的进展，但是，中国信息通信技术行业的健康发展，还必须解决很多政策挑战。信息通信技术行业通过互联网相互连接，通过遍布全球的综合供应链开展生产，服务全球网络，跨越国境提供产品和服务。因此，信息通信技术行业需要各国政府密切协调国际政策和建立共识。

由于技术和产品创新的快速发展，对政策制定的挑战也日新月异，只有通过业界和监管部门的密切协调才能解决。信息安全、网络安全、关键信息基础设施的保护等主要领域，都要依赖各国之间共享风险信息，广泛部署先进技术，实施全球标准和最佳实践做法。

近来披露的信息安全漏洞事件抑制了信息通信技术行业的跨境投资与合作机会，导致一些国家试图通过排斥外国技术的方式保护国家关键的信息基础设施。这种受误导的歧视政策将会损害全球网络安全，不符合包括美国和中国在内的各个国家的根本利益。

积极的解决办法就是相关各方密切合作，确保商业和社会服务不受繁琐的限制，实现自由发展，国内外信息技术通信企业能够开展公平竞争，使得信息通信技术最大限度地惠及所有经济领域。

中国美国商会与中国的几个政府部门进行了密切合作以改善双边商务关系，但是仍然面临几项挑战，其中包括：

- 中国特有的监管或技术要求与政令；
- 中国特有的标准和合规评估机制；以及
- 要求披露商业秘密的测试和认证机制。

这些问题制造了市场壁垒，限制了信息通信技术行业在中国和海外的发展。

现存监管问题

电信和互联网服务的市场准入

由于投资限制、安全管制和一系列保护主义措施，外国企业和外商投资企业在参与中国电信和互联网行业竞争时面临着严峻的挑战。

更为麻烦的是，中国正在将这一监管限制机制从传统电信服务延伸到所有使用互联网连接的 IT 行业，包括：

- 电信增值服务的持股上限和限制，其中包括云计算、软硬件进口和采购限制，信息安全限制；以及
- 与国际标准存在差异的技术标准，互联网内容限制，隐私和跨境数据流限制。

目前，外商投资电信服务的比例上限为：基础服务 49%，增值服务 50%。而且，较高的最低出资要求和模糊的审批标准已经很大程度上阻碍了外商投资中国的电信行业。

- Equity caps and restrictions on value-added telecommunication services (VATS), including cloud computing, information security, and import and procurement of hardware and software; and
- Technical standards that often diverge from global standards, Internet content restrictions, and privacy and cross-border data flow restrictions.

Foreign investment in telecommunications services is currently capped at 49 percent for basic services and 50 percent for VATS. Moreover, high minimum capital requirements and opaque approval standards have effectively prevented foreign investment in China's telecommunications sector.

In 2013, the Ministry of Industry and Information Technology (MIIT) released two draft regulations that significantly expand the scope of "telecom businesses" under its regulation. In April 2013, the MIIT published for comment the "Administrative Measures for the Trial Operation of New Types of Telecommunications Businesses," which requires registration for a pilot period for new and emerging telecommunications services. In May 2013, the MIIT published for public comment a revised draft of the "Telecommunications Business Classification Catalogue." Last updated in 2003, the Catalogue sets market access, joint venture, and licensing requirements for various types of telecom and Internet business activities.

In combination, the draft Catalogue and draft Measures potentially capture a broad range of new technologies and businesses delivered via the public Internet, raising concerns that foreign and foreign-invested enterprises (FIEs) will be unable to provide cloud computing (including software-as-a-service, infrastructure-as-a-service, and platform-as-a-service), big data, "Internet of Things," and other new, innovative business services in China, except through partnerships with licensed domestic companies.

The imposition of additional restrictions will create significant entry barriers to foreign investment in China's ICT sector, curtail competition, and hinder the introduction of new technologies and services. If foreign investment in China is limited, this will restrict competition in China's domestic market, adversely affecting the competitive capabilities of Chinese companies as they increasingly go abroad.

Initial reforms adopted in the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) have the potential to further open China's telecommunications industry to foreign investment. AmCham China urges additional steps to open the telecommunications industry to foreign investment in the Shanghai FTZ, and welcomes the creation of additional zones open to foreign investment in the telecommunications industry.

Cloud Computing

ICT companies around the world are faced with greater competitive pressures to migrate services to the cloud and Internet to provide flexibility and reduce costs for consumers. AmCham China is concerned, however, that regulatory restrictions on the cloud and Internet VATS will limit FIE investment.

Cloud computing, despite being identified as an area of strategic development in China, remains largely off limits to foreign ICT companies, due to a number of policy challenges, including equity caps, investment restrictions, and market entry barriers. In September 2014, the China National Information Security Standards Technical Committee (TC260) approved and formally released two standards that are designed to establish a security framework for public sector cloud computing deployments in China. If implemented, these standards would likely become mandatory for government procurement, along with critical infrastructure systems under the Multi-level Protection Scheme regime.

In addition to the TC260 standards, there are at least two separate and potentially conflicting initiatives related to government procurement of cloud computing services and cloud computing security requirements in China. The first is an effort led by the China Communications Standardization Association (CCSA) and the Ministry of Finance regarding the procurement of cloud services and the second is an MIIT Informatization Promotion Department proposal to launch work on technical standards for cloud-based e-government platforms, which includes a specification for security.

China has made numerous bilateral and multilateral commitments to provide foreign enterprises with fair and equitable participation in the development of SEIs. This includes cloud computing and the development of SEI policies in a manner compliant with WTO obligations.

AmCham China recommends that the Chinese government fulfill these commitments in an expeditious manner, removing investment and other restrictions that prevent foreign investment in cloud computing in China. Furthermore, we believe that China's deployment of cloud computing technologies will be facilitated by adopting global standards and policies that reflect the international and borderless nature of this emerging industry. We also recommend that the Chinese government provide greater clarity and participation regarding standards and regulations related to cloud computing.

Cybersecurity

On January 18, 2015, the Cyberspace Administration of China (CAC, which also serves as the office of the Central Leading Small Group for Cybersecurity and Informatization) disclosed that it had finalized a draft of China's National Cybersecurity Review Regime, and that

2013年，工业和信息化部（工信部）公布两部法规草案，大大拓宽了“电信业务”的范围。2013年4月，工信部公布《新型电信业务管理办法试运行》征求意见稿，规定新业务试运行期间实行备案管理。2013年5月，工信部公布《电信业务分类目录（修订稿）》，向社会公开征求意见。上一次修订时间是2003年，该目录对各种电信和互联网业务活动设置了市场准入、合资和许可要求。

《目录》草案和《管理办法》草案都有可能涵盖众多通过公共网络提供新型技术和业务，人们担心外国企业和外商投资企业必须同获得牌照的内资企业合作，否则无法在中国提供云计算（包括软件即服务、基础架构即服务、平台即服务）、大数据、物联网以及其他新型创新业务服务。

实施额外的限制是对外国投资中国的信息通信技术行业设置重大的市场准入壁垒，将会限制竞争，阻碍引进新的技术和服务。外国投资在中国受到限制，也会制约中国国内市场的竞争，对纷纷向海外拓展业务的中国企业的竞争能力造成不利影响。

中国（上海）自由贸易试验区的初步改革举措有可能进一步向外国投资开放中国的电信行业。中国美国商会促请中国采取进一步的措施，在该自贸区向外商投资开放电信行业，并且欢迎设立其他自贸区并向外商投资开放电信行业。

云计算

为了促进灵活性和降低消费者的成本负担，世界各地的信息通信技术企业面临着将服务转向云端和互联网的巨大竞争压力。但是，中国美国商会担心中国对云端和互联网增值电信服务的限制将会限制外资企业投资。

在中国，云计算虽然被确定为战略发展行业，但是，因为持股上限、投资限制、市场准入壁垒等众多政策制约，外国信息通信技术企业大都无法进入。2014年9月，全国信息安全标准化技术委员会（TC260）批准并正式发布两部标准，为中国公共部门云计算部署确定了一个安全框架。一旦实施，这些标准就可能变成政府采购和《信息安全等级保护管理办法》规定的关键基础设施系统的强制性要求。

除了TC260制定的标准，中国至少还有两项与政府采购云计算服务以及云计算安全要求有关的可能存在冲突的提议。第一项是中国通信标准化协会和财政部提出的关于采购云服务的提议，第二项是工信部信息化推进司提出的关于制定基于云计算的电子政务公共平台技术标准的提议，其中包含安全规范。

中国在很多双边和多边协议中承诺允许外国企业公平公正参与战略性新兴产业的发展，其中就包括云计算和根据其在世贸组织框架下的义务制定战略性新兴产业政策。

中国美国商会建议中国政府加快履行这些承诺，取消外商投资在华投资云计算业务面临的投资和其他限制。而且。我们相信，若是采用能够反映这一新兴行业的国际和无边界性质的全球标准和政策，将有助于推动中国云计算技术的部署。我们还建议中国政府提高云计算相关标准和规定制定的透明度和参与度。

网络安全

2015年1月18日，国家互联网信息办公室（同时也作为：中共中央网络安全和信息化领导小组办公室）透露，已经完成中国《国家网络安全审查制度》的起草，将提交2015年2月召开的中共中央网络安全和信息化领导小组办公室第二次会议审议。2012年年底，针对华为和中兴公司在美国市场受到的歧视，国务院提议制定《国家网络安全审查制度》，对进入中国市场的信息通信技术产品和服务进行安全风险审查。

国家互联网信息办公室表示，新的《审查制度》将对外国和本国供应方对关键领域提供的产品和服务实施评估，既包括已经部署的产品也包括新产品。审查包括测试和认证、持续监控以及包括禁止使用产品和服务等行政处罚。中国美国商会建议不要建立构成市场准入壁垒的信息安全审查机制。我们要求在这一制度生效实施之前，向国内外信息通信技术企业公开征求意见。

外国公司在很多网络安全和信息安全相关领域都面临中国政策造成的挑战。出于对外国技术的不信任，中国经常采取单边举措和依赖本国技术，特别是在加密和信息安全产品方面。加上商用系统和政务系统之间缺少区别，国内产业利益相关方试图以安全为由获得对外国同行的竞争优势，致使形势变得更加糟糕。许多与网络安全有关的政策的实施都没有公开征求意见或者与信息通信技术行业协商，使得业界很难回应或适应。

加 密

信息通信技术行业高度期待中国能够修订1999年颁布实施的《商用密码管理条例》（《管理条例》）。根据1999年的《管理条例》，加密技术属于国家机密，任何单

the document would be submitted to the Second Session of the Central Leading Small Group for Cybersecurity and Informatization in February 2015 for review. The National Cybersecurity Review Regime will vet ICT products and services entering the China market for security risks, and was originally proposed in late 2012 by the State Council in response to perceived discrimination against Huawei and ZTE in the US market.

According to the CAC, the new Review Regime will assess ICT products and services provided to critical sectors by both foreign and domestic suppliers, and will cover products already deployed as well as new products. The review itself will include a testing and certification process, ongoing monitoring, and administrative sanctions including potential product and service bans. AmCham China recommends against the institution of information security review mechanisms that constitute market access barriers. We ask that this regime be open for public comment, from both foreign and domestic ICT companies, before taking effect.

There are a number of cybersecurity and information security-related areas in which China's policies create challenges for foreign companies. Distrust of foreign technologies often gives rise to unilateral approaches and reliance on indigenous technology, particularly with regards to encryption and information security products. This is exacerbated by a lack of distinction between commercial and government systems, as well as by domestic industry stakeholders seeking to use security concerns to gain an advantage over foreign competitors. Many of these cybersecurity-related policies are introduced without opportunity for public comment or consultation with the ICT industry, making it difficult for industry to respond or adapt.

Encryption

The ICT industry has highly anticipated the release of the revised "Commercial Encryption Regulations" (Regulations), replacing those in effect since 1999. Under the Regulations, encryption is classified as a state secret and entities importing, developing, and selling encryption technology in China must obtain licenses from the State Cryptography Administration Office of Security Commercial Code Administration (OSCCA), including a special license to use foreign encryption technology. Although the Regulations have been under revision for a number of years, the OSCCA and the State Council Legislative Affairs Office have not yet released a revised version for public comment.

In early 2014, the State Council published a government directive mandating the deployment of domestic encryption algorithms "SMX" in China's financial sector beginning in 2015 and to be fully deployed by 2020. This policy impacts all ICT vendors whose products are required to interface with and support indigenous encryption algorithms, with the aim to soon replace all foreign cryptographic technology in the Chinese banking industry. Moreover, foreign firms are severely restricted from implementing Chinese cryptography technology into their commercial products and face discriminatory regulatory, testing, and certification requirements that are only transparent to local domestic players. AmCham China continues to recommend that:

- Widely available commercial encryption products not be regulated;
- Commercial encryption not be classified as a state secret; and
- Companies not be required to obtain a license to import or sell commercial encryption products in China, or to undergo product security testing and evaluation that requires disclosure of source code and proprietary intellectual property (IP).

Data Protection

A number of new measures designed to protect data and privacy have also emerged in recent years. The MIIT's "Guide to Personal Information Protection for Public and Commercial Service Information Systems" and the China Academy of Information and Communications Technology's "Telecommunications and Internet Users Personal Information Protection Administrative Measures," implemented in September 2013, require telecom and Internet service companies to protect private data, and to obtain explicit user permission for collection and utilization of private data. Most recently, TC260 released in April 2014 the draft "Conduct Security Criteria for Information Technology Product Vendors" for comment. The draft includes prohibition of cross-border data flows in many key economic sectors, restrictions on data collection by ICT vendors, as well as restrictions on cooperating with foreign governments in collection of data.

AmCham China recommends greater industry participation in the creation and drafting of privacy and online data protection measures to ensure minimization of the impact of privacy regulations on innovation in products and services. In particular, AmCham China recommends that Chinese regulators adopt transparent regulatory approaches to cross-border flows of digital data and technologies, avoiding measures that restrict the legitimate flow of data across borders or link commercial benefit to local investment.

Standards Policy in ICT

China continues to aggressively implement and adopt standards that support indigenous development of key industries while curbing market access to foreign products and services. Such approach is inconsistent with the global nature of the ICT industry and creates trade barriers that hinder innovation, harming both industry and consumers. In addition to the concerns addressed in the Standards, Certification, and Conformity Assessment chapter, AmCham China recommends the following:

位在中国从事加密技术的进口、研发和销售必须取得国家商用密码管理办公室（OSCCA）的许可，使用外国加密技术需要申请特别许可。虽然《管理条例》的修订已经持续进行了几年，但是，国家商用密码管理办公室和国务院法制办还没有发布征求意见稿。

2014 年年初，国务院发布政府指令，要求金融行业从 2015 年开始使用国产“SMX”加密算法并在 2020 年完成全部部署。这项政策的目的是为了迅速替代中国银行业使用的所有外国加密技术，因此，所有的信息通信技术供应方都会受到影响，它们的产品需要为国产加密算法提供接口和支持。而且，外国企业在其商用产品中使用中国加密技术受到严格的限制，并且面临只对本土国内企业保持透明的歧视性监管、测试和认证要求。中国美国商会继续建议：

- 取消对广泛普及的商用加密技术的管制；
- 不要将商用加密技术列为国家机密；以及
- 不再要求企业申请在中国从事商用加密产品的进口或销售的许可或者接受要求披露源代码和自有知识产权的产品安全测试和评估。

数据保护

中国近年来已经制定了一些旨在保护数据和隐私的新规。2013 年 9 月工信部实施的《公共及商用服务信息系统个人信息保护指南》和中国信息通信研究院《电信和互联网用户个人信息保护规定》要求电信和互联网服务企业保护个人数据，收集和利用个人数据需要征得用户的明确同意。2014 年 4 月，TC260 公布《信息安全技术信息技术产品供应方行为安全准则》征求意见稿。草案对很多关键经济领域的跨境数据流动，信息通信技术供应方收集数据，以及与外国政府合作收集数据的行为做了限制。

中国美国商会建议中国在制定隐私和在线数据保护措施的过程中能够提高行业的参与程度，确保将隐私规定对产品和服务创新的影响降至最低。特别是，中国美国商会建议中国监管部门对跨境数字数据流动和技术实施透明的监管，避免采取限制合法跨境数据流动或者将商业利益与本地投资挂钩的措施。

信息通信技术标准政策

中国继续大力实施和采用支持本国关键产业发展的标准，同时限制外国产品和服务的市场准入。这种做法不符合信息通信技术行业所具有的全球性，而且会造成贸易壁垒，阻碍创新，损害行业和消费者。除了“标准、认证和合格评定”一章提出的问题，中国美国商会还提出以下建议：

- 提高中国标准制定组织的开放和透明度；
- 给予外资企业平等参与中国标准制定组织的权利；以及
- 允许中国相关部门和商业企业采用国际标准，中外企业将普遍从中受益。

外资企业全面参加标准制定组织

信息通信技术行业有很多重要的标准制定组织都限制外资企业的参加。尽管网络与信息安全技术工作委员会（TC8）允许外国企业参加（只能以观察员的身份）是一个可喜的进步，但是，TC260 仍然限制外资企业参加。在很多标准制定组织，外资企业虽然获得观察员的身份，但是却没有投票权，不能参加技术委员会会员会议的选举，不能参加标准的起草，缴纳的费用经常高于国内企业。而且，标准起草的讨论过程只允许选定的国内企业和组织参加，而禁止外资企业参加。中国美国商会建议向所有利益相关方实施非歧视性的开放，确保制定和实施高质量的能够实现全球价值的标准。

知识产权保护力度不够

外资企业在华一直面临知识产权保护问题，2010 年–2011 年，中国开展打击知识产权侵权和假冒产品的专项行动，之后建立了全国知识产权协调机构。尽管如此，在华外资企业仍然很担心知识产权保护，特别是标准和合格评定制度对专利的处理。例如，一些正在起草的信息安全标准就要求提供产品或软件的源代码。虽然是自愿性的，但是，之前中国的国家标准从未有过这样的要求。源代码通常被视为专有信息和知识产权资产，企业没有义务共享。中国美国商会建议中国以透明的方式实施知识产权保护、执行和问责规定，由政府主导宣传尊重和重视知识产权的文化。

- Increased openness and transparency in Chinese standards development organizations (SDOs);
- Equal participation rights for FIEs in Chinese SDOs; and
- The adoption of global standards by relevant Chinese authorities and commercial enterprises, which should be universally beneficial to both foreign and domestic companies.

Full Participation of FIEs in SDOs

A number of critical SDOs in the ICT sector limit participation of FIEs. For example, while the opening of the CCSA Network and Information Security Technical Committee (TC8) to foreign participation (observer status only) was a welcome step forward, TC260 still prohibits foreign participation. In many SDOs where FIEs are granted observer status, they have no voting rights, are not eligible to stand for election at member conferences for technical committees, are not eligible to participate in the drafting of standards, and are often charged higher fees than domestic counterparts. Furthermore, FIEs are barred from standards-drafting discussions where only a select group of domestic companies and organization are allowed to participate. AmCham China recommends non-discriminatory openness to all interested parties to ensure the development and adoption of high quality standards that yield global value.

Insufficient Protection of Intellectual Property Rights

Intellectual property rights (IPR) protection has been a constant issue for FIEs in China, highlighted by the 2010-2011 special campaign against IPR infringements and counterfeits and subsequent establishment of a national-level IPR coordinating office. Protection of IPR, however, remains a significant concern for foreign companies in China, particularly in the treatment of patents in standards and conformity assessment regimes. For example, in some information security standards currently being drafted, requirements to provide the product or software source code have been included. Although voluntary, such requirements never previously appeared in China's national standards. Source code is generally considered proprietary information and an IP asset that companies are not obligated to share. AmCham China recommends that China maintain transparent implementation of IPR protection, enforcement, and accountability, as well as government leadership in propagating a culture of respect and value for IPR in China.

Recommendations

- **Eliminate technology localization mandates and ensure that programs and measures designed to foster innovation and technology development in China are fair, non-discriminatory, transparent, open to foreign participation, and do not distort global markets.**
- Remove licensing and approval requirements for provision of telecom value-added services and cloud computing technologies by foreign companies in the China market, as well as policies that require partnership with domestic companies as a condition for market access.
- Refrain from the institution of information security policies that create market access barriers. We ask that this regime be open for public comment, from both foreign and domestic ICT companies, before taking effect.
- Regarding encryption, ensure that:
  - Widely available commercial encryption products not be regulated;
  - Commercial encryption not be classified as a state secret; and
  - Companies not be required to obtain a license to import or sell commercial encryption products in China, nor undergo product security testing and evaluation that requires disclosure of source code and proprietary IP.
- Allow greater industry participation in the creation and drafting of privacy and online data protection measures to ensure minimization of the impact of privacy regulations on innovation in products and services; Adopt transparent regulatory approaches to cross-border flows of digital data and technologies, avoiding measures that restrict the legitimate flow of data across borders or link commercial benefit to local investment.
- Ensure that development of policy and regulations is done in close consultation with industry, that ICT FIEs have rights of participation in SDOs, and the opportunity to provide comment on all regulations and policies affecting the ICT industry.

建 议

- **取消技术本地化要求，允许外国企业在公平、非歧视、透明和开放的基础上参与旨在促进中国创新和技术发展的项目和措施。**
- 取消外国企业在中国市场开展电信增值服务和云计算技术业务需要申请许可和审批的要求以及取消与国内企业合伙作为市场准入条件的政策。
- 避免制定造成贸易壁垒的信息安全政策。我们要求在这一制度生效实施之前，向国内外信息通信技术企业公开征求意见。
- 关于加密，确保：
  - 取消对广泛普及的商用加密技术的管制；
  - 不要将商用加密技术列为国家机密；以及
  - 不再要求企业申请在中国从事商用加密产品的进口或销售的许可或者接受要求披露源代码和自有知识产权的产品安全测试和评估。
- 提高行业对隐私和在线数据保护措施制定过程的参与程度，确保将隐私规定对产品和服务创新的影响降至最低；对跨境数字数据流动和技术实施透明的监管，避免采取限制合法跨境数据流动或者将商业利益与本地投资挂钩的措施。
- 确保在制定政策和条例过程中与行业密切协商，信息通信技术外资企业有权参加标准制定组织，有机会对影响信息通信技术行业的各项规定和政策提出意见和建议。

Insurance

Introduction

In August 2014, the State Council released the "Several Opinions of the State Council on Accelerating the Development of the Modern Insurance Service Industry in the People's Republic of China" (State Council Opinion). The State Council Opinion recognizes that "accelerating the development of the modern insurance service industry is an important part of improving the modern financial system" in China. The State Council Opinion endorses a market orientation featuring fair competition and the opening of China's insurance market. AmCham China views this as an important step toward a more developed and fairer insurance market, which can advance the safety and security of China's people and the stability of the economy.

The State Council Opinion includes over thirty paragraphs discussing the enhancement and reform of China's insurance industry and calls for much needed improvements, including building commercial insurance into a pillar of the social security system, innovating pension insurance products and services, developing diversified health insurance services, and enhancing the insurance industry's participation in disaster relief. The State Council Opinion also encourages innovative insurance products and services and supports tax policy reform to accelerate the development of a modern insurance service industry. It also sets goals for insurance industry depth (insurance premium income/GDP) of five percent, and insurance density (insurance premium income/total population) of approximately US $560 (RMB 3,500) per person by the year 2020. Finally, it calls for enhancing society's overall education and awareness of insurance and risk protection products.

AmCham China applauds the State Council Opinion for its progressive encouragement of the development of a more robust insurance industry in China. In particular, AmCham China welcomes the State Council Opinion's call for innovative products and market oriented-reform with respect to many lines of insurance. AmCham China is encouraged by the State Council Opinion and looks forward to the prompt development of more specific rules and regulations, as well as tangible actions with respect to investment and the opening up of a modern and competitive insurance market in China. Specifically, AmCham China hopes to see further reduction of restrictions on foreign investment and more rapid and fairer insurance licensing procedures. Increased participation by experienced international insurance firms in China's market will further the goals noted in the State Council Opinion and help China to develop a modern insurance industry for the benefit of its economy and people.

Ongoing Regulatory Issues

Market Access

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, foreign-invested insurance companies need both to acquire a license to operate in China and be accorded national treatment in order to compete on a level playing field with their domestically invested counterparts. Unfortunately, foreign-invested insurers continue to face delays in the issuance of licenses and new product approvals, as well as artificial ownership caps and other barriers. AmCham China continues to favor removal of these barriers in the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) and nationwide.

Seasoning Requirements

The "Administrative Measures for the Representative Offices of Foreign Insurance Institutions" require that a foreign insurance company be in continuous existence for at least 20 years, and the "Administrative Rules on Foreign-Invested Insurance Companies" require that the company be in continuous existence for at least 30 years and maintain a representative office for at least two years before it can establish an insurance company in China. AmCham China believes that the 20- and 30-year seasoning requirements are unreasonably long, constitute unfair market entry barriers compared to domestically invested companies (which can be established de novo), and take no account of a company's reorganization through merger and acquisition even if the core business remained intact. Moreover, several of our members report inexplicably lengthy and indefinite delays, extending several years in some cases, in obtaining operating licenses for unclear reasons even after satisfying all seasoning requirements. We note that the State Council

保 险

引 言

2014 年 7 月，国务院颁布了《关于加快发展现代保险服务业的若干意见》（以下简称《意见》）。《意见》指出，在中国“加快发展现代保险服务业对完善现代金融体系具有重要意义”，确定坚持市场主导的基本原则，营造公平竞争的市场环境，提升中国保险市场的开放水平。中国美国商会认为，该《意见》出台意味着中国向建立更加完善和公平的保险市场迈出了重要一步，有利于提高中国人民的生命和财产安全与保障，促进中国经济稳定发展。

《意见》共包含 30 多条，着重阐述了增强中国保险业整体实力、深化保险行业改革及一些亟待完善的方面，包括将商业保险建成社会保障体系的重要支柱，创新养老保险产品与服务，发展多样化健康保险服务，提高保险业的灾害救助参与度。同时，鼓励创新保险产品与服务，支持保险税收政策改革，推动发展现代保险服务业。《意见》明确了保险业发展目标，即到 2020 年，中国保险深度（保费收入 / 国内生产总值）达到 5%，保险密度（保费收入 / 总人口）达到 560 美元 / 人（相当于 3500 元人民币）。《意见》最后要求大力普及保险知识，提高全民保险意识，增强公众对风险防范类保险产品的认知。

中国美国商会非常赞同《意见》中明确的指导思想，即逐步建设充满活力的中国现代保险服务业，尤其对《意见》要求创新保险产品、全面深化保险业市场化改革表示欢迎。受此《意见》出台的鼓舞，中国美国商会期待中国政府相关部门尽快制定实施条例和细则，也希望看到有关投资和开放具备高度竞争力的现代化保险市场的切实举措，特别是降低外资准入门槛，简化保险许可手续，提高审批的公平程度。随着越来越多经验丰富的外资保险公司参与中国保险市场的竞争，《意见》中提出的发展目标将得到进一步推进，从而促进中国现代保险业的发展，服务中国经济腾飞，为中国人民创造福祉。

现存监管问题

市场准入

许多美国保险公司拥有几十年的保险行业经营管理经验，在世界各地拥有众多客户，他们希望将自己的产品提供给中国消费者。但是，为了在中国开展保险业务，外资保险公司需要获得在华经营许可和平等的国民待遇，以便与中资保险公司在平等基础上进行竞争。遗憾的是，外资保险公司仍面临着保险许可发放和新产品审批迟缓、难以突破外资股东持股比例上限及其他障碍。中国美国商会将继续支持中国政府在上海自由贸易试验区（以下简称“上海自贸区”）和全国范围内清除这些障碍。

经营期限资格要求

根据《外国保险机构驻华代表机构管理办法》，外国保险公司持续经营 20 年以上才能在中国设立保险公司。根据《外资保险公司管理条例》，外国保险公司持续经营 30 年以上且在中国境内已经设立代表机构 2 年以上才能在中国设立保险公司。中国美国商会认为，现行的 20 年或 30 年的经营期限要求过长，存在不合理性，与内资保险公司可以从零开始相比，这对外资保险公司而言，是一种不公平的市场准入障碍，同时，未考虑企业通过合并或收购进行重组但核心业务保持不变的情况。另外，中国美国商会多家会员企业反映，在获取经营许可时，即使满足了所有条件，仍然可能会因不明原因遇到无限期拖延，有时甚至需等待长达数年。中国美国商会建议缩短在中国设立保险机构的母公司经营年限要求，并且在确定持续经营年限时应充分考虑公司重组的情况。在申请企业满足条件后，相关部门无充足理由不得额外拖延发放许可。

人寿保险

根据相关规定，合资寿险公司中的外资持股比例不得超过 50%，这一限制即使在上海自贸区试点项目中也未出

eliminated the two-year representative office seasoning requirement for foreign-invested banks in the "Decision on Amending the Regulations on the Management of Foreign-Invested Banks," effective January 1, 2015. AmCham China recommends that seasoning requirements be shortened (including by elimination of the representative office seasoning requirement), corporate reorganizations be taken fully into account when determining continuity, and, after seasoning requirements have been satisfied, the issuance of licenses not be subject to additional delays without adequate justification.

Life Insurance

Foreign insurers remain subject to a 50 percent cap on foreign ownership in life insurance joint ventures, for which there has yet to be any relaxation even in the Shanghai FTZ. This cap, set in 2001 to protect domestic life insurers after China was admitted to the World Trade Organization, no longer has any justification. Domestic life insurance in aggregate had a 94.2 percent market share in 2014 while all foreign life insurers combined had only a 5.8 percent market share. Individual domestic life insurers have also grown, with three of these providers ranked among the global top 50 life insurers in terms of total assets. The equity cap handicaps the ability of foreign insurers to serve the China market and has caused operational problems in managing such joint ventures. AmCham China continues to recommend lifting the 50 percent cap on foreign ownership in life insurance.

Insurance Asset Management Companies

AmCham China applauds the increased issuance of licenses for insurance asset management companies (IAMCs) in the last four years and the newly established Insurance Asset Management Association of China. However, the China Insurance Regulatory Commission (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.

Health Insurance

AmCham China welcomes CIRC's September 29, 2013 decision to support the establishment of specialized foreign-invested health insurance institutions in the Shanghai FTZ. Several US-invested specialist health insurers with many years of experience, who wish to help expand China's health insurance market, have remained on the sidelines while waiting years for a license to be issued under de facto barriers to market entry. We hope that applications to approve foreign-invested health insurance institutions in the Shanghai FTZ will be reviewed on a non-discriminatory basis, allowing US-invested health insurers to bring their expertise to China. We further hope that the Shanghai FTZ approval procedure will soon be extended nationwide.

Sales and Service Channels

Branching

AmCham China recognizes that branch application procedures have formally leveled the playing field between foreign-invested and domestically invested insurers with respect to branch as well as sub-branch approvals. However, the slow pace of foreign players' geographical expansion impedes them from serving more Chinese customers, due to CIRC's stricter approval procedures in comparison to domestic players and the de facto refusal to approve foreign players' concurrent branch applications. AmCham China continues to urge CIRC to promptly review foreign-invested insurers' branch applications, including concurrent branch applications of qualified foreign-invested insurers.

Internet Insurance

The development of Internet insurance presents a tremendous opportunity for China to effectively promote innovation and financial reform, and a unique opportunity for foreign insurers to acquire new customers cost-effectively and build brand awareness. AmCham China applauds CIRC's support of Internet insurance and is encouraged that the latest draft regulation allows insurers to conduct Internet business of certain products under certain conditions in provinces where they do not have a branch. Lifting the branching restriction will tap the enormous potential of online insurance sales and provide more options for consumers. AmCham China recommends further opening this channel by allowing more types of products to be sold online nationwide, which will contribute to China's ambitious goals of reforming the financial sector and enhancing financial inclusion.

Bancassurance

It is widely believed that the current bancassurance model is not sustainable. The withdrawal of insurance personnel from bank branches, since the regulatory change in 2011, has reinforced the emphasis on unsophisticated products, alongside high commissions and unsatisfactory sales practices. Banks have only been able to satisfactorily serve "walk-ins" and are only adequately skilled to offer simplified insurance products to the lower levels of the banks' customer bases. AmCham China urges that qualified insurance companies be allowed to station sales representatives, clearly identified as representing an insurance company rather than bank personnel, in bank offices to assist with consumer inquiries.

现任何松动。中国政府在 2001 年对外资保险公司的股权比例做出限制，主要为了在中国加入世贸组织后对内资寿险公司加以保护，但时至今日，该规定已失去存在的合理性。截至 2014 年，内资寿险公司合计市场份额达 94.2%，而所有外资寿险公司加起来的市场份额不过 5.8%。内资寿险公司一直在不断发展壮大，其中三家企业以其总资产跻身全球前 50 强寿险企业行列。因此，设置 50% 的股权比例上限不利于外资寿险公司为中国保险市场提供服务，同时，造成合资企业经营管理方面的问题。中国美国商会再次建议能够取消人寿保险公司外资股东持股比例不得超过 50% 的限制规定。

保险资产管理公司

过去四年中，保险资产管理公司许可的发放数量有所增加，并成立了中国保险资产管理协会，中国美国商会对此表示由衷赞赏。但另一方面，根据中国保险监督委员会（以下简称“保监会”）下发的《保险资产管理公司管理暂行规定》要求，设立保险资产管理公司应当至少有两名发起人股东，而 2005 年修订的《公司法》则只要求单一发起人股东。换句话说，所有寿险公司均需与另外一家公司合作管理自己的资金，这无疑将对寿险企业的外资股东造成严重影响，即便假定他们能够以可接受的条件找到另一个发起人股东，他们却要在自己成立的保险资产管理公司中被迫沦为小股东。

健康保险

对于保监会 2013 年 9 月 29 日关于支持在上海自贸区内试点设立外资专业健康保险机构的决定，中国美国商会表示欢迎。多家经验丰富的美资专业健康保险公司均表示愿意帮助中国开拓健康保险市场，但这些公司一直面临着市场准入的实质性障碍，因迟迟拿不到许可而不得不徘徊在中国市场的大门之外。我们希望在审批外资进驻上海自贸区设立健康保险机构时能够做到无区别对待，允许美资健康保险机构将专业经验带到中国市场。我们也希望上海自贸区的审批程序能够很快推广到全国。

销售和服务渠道

建立分支机构

外资保险公司在中国境内申请设立分支机构时，原则上享受与内资保险公司同样的待遇，对此中国美国商会表示认可。但在实际操作层面，保监会往往对外资公司采取更为严格的审批流程，或者直接驳回外资保险公司同时设立多家分支机构的申请，造成外资保险公司在机构铺设方面进展缓慢，无法为更多中国消费者提供服务。中国美国商会将继续敦促保监会加快外资保险公司设立分支机构的审批速度，其中包括允许符合条件的外资保险公司同时设立多家分支机构。

互联网保险

互联网保险业务的发展为中国有效推动创新发展、深化金融体制改革带来了巨大机遇，也为外资保险公司以较低成本获取新客户和提升品牌知名度创造了难得的机会。中国美国商会非常赞同保监会关于支持互联网保险业务发展的决定，同时，我们也认为监管框架需要进一步完善，例如应当允许保险公司在已设立分支机构的省份之外跨区域经营互联网保险业务，因为跨区域经营限制将严重削弱网络保险营销潜力，降低客户的可选择性，也使外资保险公司因分支机构数量较少而处于竞争劣势。中国美国商会建议进一步放开该渠道，允许保险公司在全国范围内开展互联网保险业务，以推动中国尽早实现金融体系改革、提高金融包容性的战略目标。

银行保险

业界广泛认为，当前的银保销售模式是不可持续的。自 2011 年银保渠道销售监管政策调整以来，随着保险公司驻点销售人员纷纷撤出银行网点，银保销售开始侧重销售相对简单的保障型产品，但产生了佣金居高不下和业绩下滑的问题。银行网点仅能基本满足服务零散客户的要求，提供的保险产品也是针对较低端客户的简单产品。中国美国商会敦促监管机构能够允许保险公司驻点销售，并要求保险公司驻点销售人员在为客户提供咨询服务时明确自己的身份是保险公司员工而不是银行职员。

2014 年 1 月 8 日，中国保监会和中国银监会联合下发了《关于进一步规范商业银行代理保险业务销售行为的通知》（自 2014 年 4 月 1 日起实施），重申“商业银行的每个网点不得与超过 3 家保险公司开展保险业务合作。”由于部分银行已经成立了自己的保险公司，且大多数银行更倾向与大型内资保险公司合作，此项限制进一步加剧了外资保险公司的经营难度。中国美国商会再次建议放宽银保渠道合作限制，允许银行与更多的保险公司合作。

In addition, a stricter regulation on bancassurance introduced by CIRC and the China Banking Regulatory Commission came into force on April 1, 2014. It reinstated the "three insurers rule" that a bank branch only be allowed to sell insurance products of three different insurance companies. This restriction imposes particular difficulty on foreign-invested insurance companies as some banks have their own insurance subsidiaries and many banks choose to cooperate with larger domestic insurers. AmCham China continues to recommend relaxing the restriction on bancassurance cooperation to allow banks to cooperate with additional insurers.

Investment in Insurance Funds

AmCham China applauds the continued loosening of restrictions on investment vehicles that has opened new investment channels and markets. However, AmCham China urges that the size and investment experience of the corporate parents of insurance companies be taken into account when determining qualifications to invest insurance funds in the capital market. Taking these factors into account would greatly assist in transferring knowledge from mature markets to China. It would also help to mitigate the shortage of local talent with adequate experience and sophistication for new asset class investment. We also hope that related regulatory policies will be released for the necessary risk-hedging tools for these new asset classes and for insurance capital in general.

Products

Property Insurance

Although property insurance companies are authorized to provide master policies, the prohibition on offering group-wide master policies is very inefficient, forcing insurers to offer separate policies to a group company's subsidiaries wherever in China they may be located. This prohibition has a particularly deleterious impact on foreign-invested insurers because their branch networks are smaller than domestically invested insurers, in part because regulations in effect prior to 2013 subjected foreign-invested insurers to more onerous branch licensing procedures. In addition, minimum annual premium and minimum investment requirements limit the ability of insurers to offer master policies to smaller clients.

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 China is pleased that this Notice has yet to be finalized and hopes that it will be withdrawn. Press reports on the 2015 Annual Insurance Supervisory Work Plan offer some optimism in this regard. AmCham China continues to believe 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 comparable restriction under the "Regulations on the Administration of Reinsurance Business (2010)." Moreover, AmCham China is 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.

AmCham China is also concerned that the draft China Risk Oriented Solvency System "C-ROSS" solvency framework will concentrate risk onshore and adversely affect international reinsurers by overweighting credit risk and imposing collateral requirements even for international reinsurers which are subject to IAIS-compliant supervision in their home jurisdictions.

Brokerages

AmCham China is pleased that insurance brokerages are no longer classified as a Restricted Industry in the 2015 revision of the "Guiding Catalogue on Foreign Investment in Industry." Previous restrictions generally prevented foreign-invested brokerages from broking smaller scale commercial risks, automobile insurance, and individual life and accident insurance.

Tax Incentives

Pension Insurance

AmCham China welcomed *Caishui* [2013] No. 103 (Circular 103), jointly issued by the Ministry of Finance, the Ministry of Human Resources and Social Security, and the State Administration of Taxation on December 11, 2013. Circular 103 defers individual income tax for enterprise and occupational annuities as of January 1, 2014. Tax-deferred annuities are an important means for people to provide financial security for themselves and their families after retirement and under other circumstances that affect their ability to work. AmCham China supports tax-deferred treatment for retirement accounts and hopes that the ceiling on such contributions will be raised to further alleviate the burden of supporting an aging population currently borne by the government and retirees' families, while increasing savings for investment.

Individual Tax-Deferred Pension Pilot Program

To develop China's pension system and encourage people to buy commercial pensions, Shanghai has been preparing an individual tax-deferred pension insurance pilot program since 2009, but the launch has been postponed as the preferential tax

保险资金投资

中国美国商会赞同中国政府持续放宽对投资工具的限制，这一举措有助于开拓新的投资渠道和市场。但是，中国美国商会呼吁，在确定保险公司使用保险资金投资资本市场的资质时，充分考虑该保险公司母公司的规模和投资业绩。考虑这些因素有助于推动成熟市场的专业知识输入中国，更能缓解本土在新兴资本投资领域缺乏具备专业经验和技能人才的问题。针对上述新资产类别和保险资金，中国美国商会希望尽快出台相应的风险对冲工具监管政策。

产 品

财产保险

尽管财产保险公司被授权可以提供统一承保服务，但对于提供集团范围的一揽子保险（统括保单）依然存在限制，从而降低了承保效率，使得保险公司不得不分别为同一集团的下属机构提供保单，无论这些机构在何地。由于外资保险公司的机构铺设远远少于内资保险公司，这种限制对外资保险公司尤为不利，而根据 2013 年之前颁布的监管规定，外资保险公司设立分支机构需要经历更加繁琐的审批流程。不仅如此，对保险公司最低年度保费收入和最低资本额度的要求也限制了外资保险公司无法向中小企业客户提供统一承保服务。

再保险

2012 年 12 月底，保监会下发了《关于外资保险公司与其关联企业从事再保险交易有关问题的通知（征求意见稿）》。中国美国商会对该通知未最终定稿感到欣慰，并希望保监会最终能够撤回该通知（征求意见稿）。媒体对 2015 年度保险监管工作计划的相关报道中对此表示乐观。中国美国商会始终认为，《通知》（征求意见稿）中的一些规定对外资保险公司存在区别对待，其中包括外资保险公司与其关联企业从事再保险的分出或分入业务须经保监会事先批准，而根据保监会 2010 年颁发的《再保险业务管理规定》，对内资保险公司并不存在此类限制。另外，根据国际保险监理官协会（IAIS）制定的全球保险业最佳监管操作规范，我们认为，《通知》（征求意见稿）的限制性规定并无任何依据。即便确实需要设置一些限制，也没有必要在上述通知（征求意见稿）中对关联企业的资质要求提出如此繁复的条件，只要符合某一信用评级标准就足够了。

中国美国商会还十分关注“中国风险导向的偿付能力体系”（C-ROSS），并且担心因过分强调信用风险，而对符合其本国 IAIS 监管原则的国际再保险公司强加抵押担保要求，此举不但会对这些国际再保险公司造成重大不利影响，更会将风险集中于中国本土而得不到合理分散。

保险经纪

在2014年《外商投资产业指导目录》修订征求意见稿中，保险经纪已经不再列为受限制行业，而此前的规定通常不允许外资保险经纪公司开展小型商业风险、车险、个人人身意外保险经纪业务，中国美国商会对此表示赞赏。

税收优惠

养老保险

2013 年 12 月 11 日，财政部、人力资源社会保障部、国家税务总局联合下发《关于企业年金职业年金个人所得税有关问题的通知》（财税 [2013]103 号文），对此中国美国商会表示欢迎。《通知》规定，自 2014 年 1 月 1 日起，企业和事业单位缴付的企业年金或职业年金单位缴费部分，在计入个人账户时，个人暂不缴纳个人所得税。在人们退休之后或发生其他影响个人工作能力的情况时，个税递延型养老保险将成为保障个人和家庭财产安全的重要手段。中国美国商会非常支持个人年金账户延迟缴纳个税的举措，也希望相关部门能够考虑提高养老金缴纳比例上限，减轻政府和退休职工家庭赡养老龄人口的负担，并增加可用于投资的储蓄。

个税递延型养老保险试点项目

为发展中国的养老保障体系，鼓励人们购买商业养老保险，上海自 2009 年起开始筹备个税递延型养老保险试点项目，但由于实行相关税收优惠政策触及多个政府部门的利益，项目启动一再延迟。此次《意见》的出台预示着这个期待已久的试点项目有望在 2015 年底之前或更早时间在上海启动。我们希望外资保险公司能够参与该项目，并获得与内资保险公司同等的待遇。

健康保险

继《关于城镇医疗卫生体制改革的指导意见》发布后，中国政府一直致力于加快发展健康保险，推动完善医疗保障服务体系，对此中国美国商会表示欢迎。《指导意见》充分认识到商业健康保险的重要性，将其视为主要依靠国家财政支持的全民基本医疗保障制度的有力补充。

policies involve the interests of many government bodies. We applaud the indication in the State Council Opinion that this long-awaited pilot program will be initiated in Shanghai by the end of 2015, if not sooner. We hope that foreign-invested insurers will be allowed to participate in the program to the same extent as domestically invested insurers.

Health Insurance

AmCham China welcomes the Chinese government's expansion of healthcare by focusing on health insurance following the issuance of 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 rich experience in this field and are eager to be licensed so that they can assist its development.

Advisory, Remuneration, and Regulatory and Compliance Costs

Advisory

A number of local governments in China have established international business advisory councils to provide a resource for advice from international business leaders. AmCham China recommends that CIRC follow suit in order to access the knowledge and experience of international industry leaders to promote the development of the insurance industry in China on a sound and prudential basis.

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 information technology requirements and rules regarding claims, finance, and compliance personnel for new branches. AmCham China urges CIRC to take measures to simplify costly burdens wherever possible.

Recent Developments

Transparency

AmCham China has observed that CIRC has frequently published regulations for comment involving foreign investment without allowing the minimum 30-day comment period to which the Chinese government has committed. AmCham China urges CIRC to comply with this requirement and generally be more transparent with respect to regulatory developments.

While AmCham China recognizes several regulatory advances, we remain disappointed by the persistence of barriers to market entry and expansion that foreign-invested insurers face. Domestically invested insurers and insurance brokerages, particularly larger companies, continue to enjoy more regulatory favor with respect to ownership structure and access to capital, allowing 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. As of year-end 2014, the market share of foreign-invested insurers stood at a mere 4.5 percent, down from six percent in 2004 and up only slightly from 3.9 percent in 2013. The decline in personal insurance has been particularly sharp, falling from 8.9 percent in 2005 to 4.8 percent in 2012 and increasing slightly to 5.8 percent in 2014. Even the largest foreign-invested life insurer's market share is less than one percent. The market share of foreign-invested property and casualty companies, who were previously excluded from the motor third party liability insurance market, continues to barely register at 2.2 percent in 2014. Foreign-invested health and pension insurers continue to be excluded from the market altogether.

Recommendations

Sales and Service Channels

- **Put into practice the review and approval of branch applications by foreign-invested insurers 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.
- Further open the channel of Internet insurance by allowing more types of insurance products to be sold online nationwide.

Licenses

- Increase competition in pension and health insurance by licensing foreign-invested applicants.

Ownership

- Shorten and rationalize seasoning requirements.
- 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.

税费减免也将有力刺激商业健康保险的购买，特别是保障型产品。美国一些专业健康保险机构在该领域积累了丰富的经验，他们热切期望能够尽快获得相关许可，以便助推商业健康保险在中国的发展。

咨询、薪酬及监管合规成本

咨 询

中国一些地方政府已经成立了国际商业咨询委员会，汇聚来自全球的各行业优秀人才来提供咨询意见和建议。中国美国商会建议保监会不妨如法炮制，充分利用全球保险行业精英的知识和经验，在合理审慎的基础上推动中国保险业的发展。

监管合规成本

中国美国商会的会员企业拥有丰富的国际市场从业经验，他们发现，与其他大多数市场相比，在中国开展保险业务的成本极高，特别体现在行政审批和合规要求极其繁琐，诸如对信息技术的要求，有关理赔、财务、新设分支机构合规负责人的规定等。中国美国商会在此呼吁保监会尽量简化程序，尽可能降低保险公司的成本负担。

最新进展

透明度

中国美国商会观察到，保监会经常发布涉及外商投资的新法规征求意见稿，但未能坚守中国政府承诺的向社会广泛征求意见的 30 天期限规定。中国美国商会呼吁保监会能够遵守这一 30 天期限规定，并进一步提高监管动向披露的透明度。

中国美国商会认可中国监管工作取得的进步，但我们对外资保险公司依然面临的市场准入和机构拓展障碍还是表示失望。内资保险公司和内资保险经纪公司，尤其是大型保险企业，在所有权结构和资本运作方面仍然享有更多监管优惠并因此受益，但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所增长，但外资保险公司的中国市场份额却普遍出现了下滑。截至 2014 年底，外资保险公司的市场份额仅为 4.46%，比 2004 年的 6% 大幅下降，比 2013 年 3.9% 的略有增长。人身保险业务的下降尤其严重，从 2005 年的 8.9% 跌至 2012 年的 4.8%，2014 年略有增长，达 5.78%。即使是在中国规模最大的外资人寿保险公司，其市场份额也不到 1%。以前不允许外资财产和意外险公司参与开展机动车第三方责任险业务，现在获准经营之后，2014 年市场份额也仅为 2.22%。目前，外资健康保险和养老保险公司仍无法进入中国市场。

建 议

销售和服务渠道

- 外资保险公司申请设立分支机构时，在审批手续和审批进度上应享受和内资保险公司同等的待遇；
- 取消在商业银行驻点销售银保产品的合作保险公司数量限制；
- 取消保险公司通过互联网销售保险产品的跨区域经营限制。

许 可

- 通过向外资保险公司发放经营许可，增强养老保险和健康保险的市场竞争性。

所有权

- 缩短经营年限资格要求，使其更合理化；
- 取消寿险公司外资股东持股比例不得超过 50% 的上限规定；
- 依照《公司法》规定，允许单一发起人股东设立保险资产管理公司。

税收优惠

- 加大个税递延型养老保险的税收优惠力度。

监管结构

- 在保监会内部单独设立一个部门，按照寿险和财产险的监管标准对健康险业务进行监管。

Tax Incentives

- Expand tax incentives for tax-deferred annuities.

Structural

- Establish a separate department in CIRC to regulate health insurance at the same level as the life insurance and property insurance departments.

Legal Services

Introduction

Non-PRC law firms face a wide range of market access constraints in mainland China, especially: ❶ an unnecessarily difficult, delayed, and unpredictable registration process for the establishment of offices; ❷ the inability to employ PRC-qualified lawyers so that they can provide comprehensive legal services to their clients; ❸ prohibitions against participation in important meetings at government departments involving their clients; and ❹ discriminatory taxation.

These constraints impose a significant, measurable impact on foreign firms' ability to operate in China. As reported in the 2014 *White Paper*, the results of a 2013 survey of foreign law firms in China place regulatory constraints and discriminatory taxation among the top three challenges impacting their practices. The most often-cited regulatory constraint was the suspension of the licenses of PRC-qualified lawyers while employed by non-PRC law firms.

Quite simply, these policies make it very difficult for foreign firms to serve their clients. Despite the Chinese economy's comparatively large size and good performance, the vast majority of respondents reported that, in 2012, five percent or less of their firm's global revenue was attributable to mainland China business. A large number of respondents also noted that revenue either decreased or was much lower than their firm's operations elsewhere, with the majority noting that profits per equity partner were below the firm-wide norm. Given this scenario, the two most important regulatory reforms requested by survey respondents were: ❶ allowing PRC-qualified lawyers to retain their licenses while employed by foreign firms, and ❷ providing foreign law firms equal tax treatment with their PRC counterparts. AmCham China urges the adoption of such reforms.

The Chinese government's continued restrictions in this sector significantly limit the options available to mainland 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 foreign law firms. Moreover, the current restrictions are inconsistent with international best practices and result in the unwillingness of many foreign investors and parties to financial transactions to agree to 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.

Recent Developments

Negative Trend for the Foreign Investment Catalogue

In the new edition of the "Guiding Catalogue on Foreign Investment in Industry," released March 2015, "consulting on Chinese legal matters" is classified as "Prohibited"; the provision of information regarding the impact of Chinese laws is nevertheless permitted in accordance with China's commitments in the 2001 Protocol on the Accession of the PRC to the World Trade Organization (WTO). It does not, however, address the need for further liberalization of access for foreign law firms and their Chinese national lawyers as discussed elsewhere in this chapter.

Small Step of Legal Liberalization in the Shanghai Free Trade Zone

On November 18, 2014, the Shanghai municipal government issued the "Implementing Measures of the China (Shanghai) Pilot Free Trade Zone for the Mutual Assignment of Lawyers as Legal Consultants by Chinese and Foreign Law Firms." Such measures allow a Chinese domestic law firm and a foreign law firm to enter into an agreement whereby the Chinese domestic law firm assigns Chinese lawyers to a mainland representative office of the foreign law firm as Chinese legal consultants, while the foreign law firm can assign foreign lawyers to the Chinese domestic law firm (or a branch thereof) as foreign legal consultants. However, in such "mutual assignment," both the Chinese and foreign lawyers assigned must only engage in business cooperation within their respective scope of practice and authority. In order to establish such a cooperation scheme, either the Chinese law firm or the foreign law firm has to form an office within the Shanghai FTZ. Meanwhile, both the Chinese law firm and

法律服务

引 言

外国律师事务所在中国大陆面临着诸多市场准入限制，其中包括：❶ 成立办事处的注册手续过于繁杂，过程漫长而且结果难以预料；❷ 无法雇用中国律师，所以无法为客户提供全方位法律服务；❸ 不允许出席客户与政府部门之间的会议；❹ 差别性的税收政策。

这些限制对外国律师事务所在华运营造成了重大影响。2014 年《白皮书》曾经提到，根据 2013 年的调查，监管限制和差别性税收居影响外国律师事务所在华经营的三大挑战前列。其中反映最强烈的监管限制就是中国律师受聘于外国律师事务所时，其律师执业证将被暂停。

显而易见，这些政策使得外国律师事务所在为客户提供法律服务时面临重重困难。尽管中国经济总量和增长速度都较为突出，但是，绝大多数受访者表示，2012 年，他们在中国大陆的业务收入占其全球收入的比率不超过百分之五。很多受访者表示他们在中国的收入出现下跌或者明显低于事务所在其他国家的业务收入，大多数受访者表示，合伙人平均利润水平低于事务所总体水平。因此，受访者最希望在如下两个监管领域进行改革：❶ 允许中国律师在受雇于外国律师事务时保留其律师执业证，以及 ❷ 向外国律师事务所提供与中国律师事务所同等的税收待遇。中国美国商会促请相关部门采纳上述改革措施。

中国一直在上述领域对外国律师事务所进行限制，这不仅严重阻碍了中国大陆企业和外国企业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外国律师事务所工作、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解决争端。

这些限制还有违互惠原则，因为大多数中国的主要贸易伙伴都允许中国律师事务所在其境内设立提供全面服务的分所。

最新进展

《外国投资目录》的消极趋势

2015 年 3 月，国家发展和改革委员会公布新版《外商投资产业指导目录》（《指导目录》）中，将“中国法律事务咨询”列入“禁止”清单，然而，这与中国 2001 年加入世贸组织作出的承诺不符。并且，这也不能满足本章中谈到的中国籍律师与外国律所对于进一步放开准入的需求。

上海自贸区开放法律服务市场的一小步

2014 年 11 月 18 日，上海市政府发布《中国（上海）自由贸易试验区中外律师事务所互派律师担任法律顾问的实施办法》，允许中国律师事务所与外国律师事务所以协议方式，由中国律师事务所向外国律师事务所驻华办事处派驻中国律师担任中国法律顾问，由外国律师事务所向中国律师事务所（或者分所）派驻外国律师担任外国法律顾问。不过，“互派”的中国和外国律师必须在各自执业范围和权限内开展业务合作。为了开展这一合作，中国律师事务所或外国律师事务所至少应有一方在上海自贸区内设立办事处。此外，中国律师事务所和外国律师事务所还需要满足多项具体要求，如成立时间（满三年）、合伙形式、用工、内部控制等。

同一天，上海市政府发布《中国（上海）自由贸易试验区中外律师事务所联营的实施办法》，允许中国律师事务所与外国律师事务实行联营，向中外客户分别提供涉及中国和外国适用法律的法律服务，或者合作办理跨境和国际法律事务。联营期间，双方的法律地位、名称和财务各自保持独立，各自独立承担民事责任。至少有一方应当在上海自贸区设立办事处，参与联营的律师事务所还需要满

foreign law firm are subject to many specified thresholds regarding the term (three years), partnership organization, employees, internal control, and other requirements.

On the same day, the Shanghai municipal government also issued the "Implementing Measures of the China (Shanghai) Pilot Free Trade Zone for Joint Venture Operations between Chinese and Foreign Law Firms." Such measures allow a Chinese and a foreign law firm to engage in joint venture (JV) operations to provide Chinese and foreign clients respectively with legal services involving the application of Chinese and foreign laws, or cooperate with each other in handling cross-border and international legal matters. During the period of JV operations, the two law firms will remain independent of each other in terms of legal status, name, and finance, and independently bear civil liability. At least one firm in the JV will be required to maintain an office in the Shanghai FTZ and the involved law firms will have to meet several thresholds regarding the maximum term, employees, organization, and other requirements.

The purpose of such measures is to provide "one-stop shop" services to clients which need services for cross-border legal matters. In addition, such regulatory developments will promote communication and cooperation between Chinese and foreign law firms. However, they do not have any substantial impact on the market access constraints described above and on law firm expenses worldwide. Such JVs have rarely been successful elsewhere and do not create genuine material market openings for international law firms.

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 have reportedly urged the State-owned Assets Supervision and Administration Commission 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 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, EU, and Japan, 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, including Japan, South Korea, Hong Kong, Singapore, and elsewhere is to open domestic legal service markets to participation from foreign law firms.

Ongoing Regulatory Issues

Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms

Foreign 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 a foreign 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 mainland Chinese law students and lawyers, and enhance foreign law firms' capacity to represent clients doing business in mainland China and Chinese companies looking to expand their global commercial and investment activities.

Foreign law firms provide the integrated, seamless service across different jurisdictions and areas of law needed by multinational companies. Giving Chinese companies greater access to such legal services would allow them to expand more efficiently and successfully by enabling integration of their counsel in China with a worldwide team of legal specialists. Removing the prohibition on foreign law firms' hiring of PRC-qualified lawyers would also expand the pool of trained and experienced PRC-qualified 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 mainland Chinese government departments is often prohibited, restricted, or permitted only conditionally on a non-transparent and case-by-case basis. The lack of clear, consistently enforced regulations permitting foreign lawyers to participate in such proceedings 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 mainland Chinese government officials relating to the clients' activities and obligations in China and abroad. Overall, it creates an uneven playing field and fosters the impression that the Chinese government may engage in arbitrary and discriminatory treatment

足成立时间、用工、组织形式等条件。

这些措施的目的是为了向需要跨境法律服务的客户提供“一站式”服务。而且，这一监管措施的发展也有助于促进中外律师事务所之间的沟通和合作。不过，这些措施对前述市场准入限制以及律师事务所的全球收支不会产生任何实质性的影响。这种联营在其他国家也很少有成功的，对外国律师事务所来说不是真正的实质性市场开放。

中国律师事务所在境外的发展

随着中国企业业务经营全球化程度日益提高，中国律师事务所继续在中国以外的地方开设分所，在外国司法管辖区内提供法律服务。事实上，据报道，一些中国律师事务所已促请国家资产监督管理委员会制定相关法规，要求中国国有企业在开展境外交易时聘请中国律师事务所。这一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办事处的初衷，还有可能违反中国在世贸组织框架下应当履行的国民待遇承诺。

中国律师事务所之所以能在海外发展，很大程度上是因为没有遇到限制其执业的保护性贸易壁垒。在美国、欧盟和日本，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，有近 10 家中国律师事务所已经设立了办事处，提供美国法律相关服务，其中有些办事处设立的时间已经超过十年之久。在亚太地区，包括日本、韩国、香港、新加坡等地，向外国律师事务所开放法律服务市场并允许其提供法律服务已经是大势所趋。

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

外国律师事务所在中国设立的办事处不能雇用持有有效中国律师执业证的中国律师或任用其为合伙人。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办事处，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中国内地的业务能力，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。

外国律师事务能够提供跨国企业所需要的一体化的、涉及不同法律类别和不同司法管辖区域的无缝法律服务。如果中国公司有机会获得此类法律服务，其聘请的中国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，训练有素且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位。

中国美国商会敦促中国政府修改相关的现行法律法规，允许外国律师事务所雇用持有中国律师执照的律师或任用其为合伙人，以便他们为客户提供全面的法律服务。

外国律师参与政府会议受限

在客户与中国政府部门之间举行的各类会议上，中国通常会禁止和限制外国律师出席和参与，或者根据个案在不透明的基础上有条件地允许外国律师出席和参与。对是否允许外国律师参与上述会议的规定不明确和不一致，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，也影响了客户自主选择法律团队成员与中国政府官员进行会谈的权利。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其在中国及境外活动和义务等相关信息的质量。总之，这造成了不公平的竞争环境，同时，由于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可能武断地、区别地对待外资企业的印象。

据我们所知，全球其他主要经济体中都没有上述限制和局限，或者仅在不统一、不透明的基础上允许会见政府官员。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向中外客户就中国法制环境提供咨询的权利——而这一权利已经明确写入了中国入世承诺以及中国国务院的相关法规中。

中国美国商会敦促中国政府履行其在第 25 届中美商贸联委会上做出的承诺，按照通行的做法，允许外国律师事务驻华代表处的代表应相关方的要求参与三大反垄断执法机构的会议。中国美国商会也敦促中国政府的所有执法部门在其他法律领域也履行这一承诺。

with respect to foreign companies when their legal counsel is barred or restricted from participation.

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 WTO as well as in State Council regulations.

AmCham China urges the Chinese government to implement its commitment made at the 25th Joint Commission on Commerce and Trade (JCCT) to allow representatives of foreign law firm representative offices established in China to attend and participate in meetings as normal practice with any of the three anti-monopoly enforcement agencies upon request from the party involved. AmCham China further urges the Chinese government to implement this commitment across all government enforcement agencies in other areas of law.

Discriminatory Taxation

Representative offices of foreign law firms are subject to higher PRC income taxes than PRC law firms carrying out the same activities. Profits of foreign 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 discrepancy exists because foreign law firms are denied the ability to be treated as partnership enterprises for PRC tax purposes. As a result, foreign law firms are taxed first at an enterprise income tax rate of 25 percent at the entity level. To the extent that they are repatriated, after-tax profits are then subject to tax a second time at an enterprise income tax rate of 10 percent. In the event that after-tax profits are paid to partners resident in China, the rate is as high as 45 percent in the form of individual income tax on those partners.

In addition, foreign firms are denied the preferential tax calculation method granted to PRC law firms that significantly drives down the domestic firms' effective income tax rate. PRC law firms can enjoy a cap on their profits subject to PRC income tax regardless of the amount of such actual profits. The cap varies by location and local practice. In Beijing, the cap is understood to be 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 25 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 five 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 the Chinese government provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

Burdensome Representative Office Registration

Foreign law firms face burdensome regulatory approval procedures not applicable to PRC law firms. When applying to establish a representative office, a foreign law firm must demonstrate "a need to establish a representative office to start legal service operations." Authorities evaluate such need 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 foreign law firms can establish in mainland China.

These vague, undefined conditions unnecessarily and unreasonably lengthen the approval process up to nine months. 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, a foreign law firm must wait three years after establishing a representative office before opening an additional office, thus limiting its growth. Foreign law firms have reported substantial difficulties and delays in the processing of these applications as well. This restriction impairs the ability of foreign law firms to serve clients in interior provinces, which are key targets of the 12th Five-Year Plan for economic development.

AmCham China trusts that the legal service dialogue to be initiated as agreed in the 25th JCCT will result in positive measures to open the Chinese legal services market to foreign law firms at an early date.

Other Market Access Problems

Foreign law firms also face a number of other restrictions that impair their ability to operate in China. These include: ❶ an unnecessarily difficult process to change the chief representative of a firm and for foreign lawyers to transfer firms; ❷ an inability to, or difficulty in, hiring foreign non-legal professionals; ❸ the limitation of one-year work visas for foreign lawyers (especially chief representatives); and ❹ protracted procedures (sometimes up to a year and a half) for obtaining work permits.

AmCham China encourages the Chinese government to allow international law firms to hire foreign non-legal professionals, improve the procedures for registering chief representatives and transferring representatives, increase

差别性税收

与从事同样业务活动的中国律师事务所相比，外国律师事务所办事处在中国缴纳的所得税更高。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。之所以存在这种差异，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支付给常驻中国的合伙人，合伙人还需要缴纳高达 45% 的个人所得税。

另外，外国律师事务所也不享受中国律师事务所所享受的优惠税收计算方法，这一计算方法能够大幅降低中国律师事务所的实际所得税税率。不论实际利润如何，中国律师事务所都可以在计算所得税应纳税额时享受利润封顶待遇。各地的封顶规定和执行情况不尽相同。在北京，利润封顶为收入的 25%。由于中国律师事务所的收入只作为一次应纳所得税额，北京市的中国律师事务所的实际所得税税率由此可以降至 17.5%（即收入的 25%，假定利润率为 50%，再乘以所得税最高税率 25%）。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）。

为解决这种不公平并与《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，中国政府为外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。

代表处注册程序繁琐

外国律师事务所面临比中国律师事务所更为繁琐的监管审批程序。外国律师事务所在申请设立办事处时，必须证明其“设立办事处从事法律服务业务的必要性”。相关政府部门在评估其必要性时，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大陆设立办事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，该过程可能长达 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办事处之后，必须等待至少三年才能再增设新的办事处，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均表示，其在该类申请过程中遭遇了重重困难和拖延现象。这些限制损害了外国律师事务所为内陆省份客户提供服务的能力，内陆省份是“十二五”规划中提出的重点经济发展区域。

中国美国商会相信，第 25 届中美商贸联委会同意启动的法律服务对话将会导致积极的举措产生，力争让中国尽快向外国律师事务所开放法律服务市场。

其他市场准入问题

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：❶ 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；❷ 不能或难以聘用外籍非法律专业人士；❸ 外国律师（特别是首席代表）工作签证期一年的限制；及 ❹ 得工作许可的时间相对较长（有时甚至需要一年半）。

中国美国商会希望中国政府允许外国律师事务所聘请外籍非律师专业人士、改进首席代表的注册程序和其他代表的调动程序、延长代表的签证有效期、及缩短工作许可的审批时间。这将提高外国律师事务所在中国更加有效地为中外客户提供服务的能力。

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任用其为合伙人，不再要求中国执业律师在加入外国律师事务所时放弃执业证。**
- 书面明确允许外国律师参与其客户与政府部门间的所有会议。
- 简化设立办事处的要求，尽可能消除不可预测性因素，缩短设立办事处及开设新代表处的审核时间。
- 在征收中国所得税方面，为美国律师事务所提供与中国律师事务所同等的待遇。

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.

Recommendations

- **Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers and not require them to give up their PRC lawyer's license when they join a foreign law firm.**
- Clearly provide in writing 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.
- Provide foreign law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.
- Allow foreign law firms to hire foreign non-legal professionals, improve the procedures for registering and transferring representatives, increase the length of time visas are valid for representatives, and decrease work permit approval times.

- 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，缩短工作许可的审批时间。

Machinery Manufacturing

Introduction

The Chinese government has made significant efforts to restructure and improve the machinery manufacturing industry, which experienced steady development in 2014. Such efforts include promoting innovation, developing strategic emerging industries, strengthening industrial basics, and integrating information technology in industrialization and green development.

The Chinese government further promoted reforms in administrative approvals and streamlined central and local government procedures. Despite the significant improvements that have been made in recent years, AmCham China member companies continue to face policy challenges, including restrictions on foreign direct investment, industry overcapacity, challenges protecting intellectual property (IP) derived from innovation, and a lack of regulatory consistency. We encourage the Chinese government to consider the issues addressed in this chapter to support growth in higher-value machinery manufacturing.

Ongoing Regulatory Issues

Restrictions on Foreign Investment

AmCham China applauds the efforts made by the Chinese government to further liberalize the investment approval regimes and open up the general manufacturing industry in 2014. However, foreign-invested enterprises (FIEs) are still prevented from setting up wholly foreign-owned enterprises or holding majority ownership in several key manufacturing sectors, such as low and medium speed diesel engines and crankshafts for marine vessels and rail transportation equipment. FIEs 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 domestically and foreign-invested firms. For additional information, please see the Investment Policy chapter.

Industry Consolidation

In the 12th Five-Year Plan, the Chinese government emphasized industrial consolidation in order to promote industry upgrading and revitalization. With leading technologies, experience, and know-how, AmCham China member companies are poised to play a key partnering role in consolidating and upgrading China's machinery manufacturing capacity. However, complicated and unclear merger and acquisition (M&A) review procedures and intra-government consultation mechanisms impede further participation. AmCham China encourages the Chinese government to welcome participation from FIEs by instituting more transparent M&A review procedures and intra-government consultation mechanisms. Furthermore, FIEs should be treated in the same manner as their domestic counterparts with regard to review standards.

Innovation

AmCham China member companies are increasingly localizing their businesses and investing significantly in local innovation in China. For example, according to the 2015 AmCham China *Business Climate Survey*, nearly half of member companies in the resource and industrial sector (including machinery manufacturing) have established research and development (R&D) centers in China. Of these, members point to tailoring products or services to local market needs as the primary goal for doing so. Thirty-nine percent have developed R&D facilities in China to tailor products for other developing markets in the world, reflecting the growing importance and influence of member company China teams in their global operations. However, ineffective enforcement of IP rights remains a concern for 80 percent of members. Thus, even though many companies have set up infrastructure for local innovation, significant improvements in IP protection are needed for member companies to conduct more of their core global R&D and innovation activities in China.

AmCham China understands the Chinese government's desire to encourage innovation by promoting High- and New-Tech Enterprise (HNTE) certification with incentives. Our member companies have already invested millions of dollars to set up R&D centers in China and partnered with Chinese counterparts to support such initiatives. However,

机械制造业

引 言

2014 年，中国机械制造行业实现稳步发展，而中国政府一直在大力推动机械制造行业的重组和升级，具体措施包括促进创新，发展战略性新兴产业，加强行业基础，利用信息技术推动工业化和绿色发展进程。

中国政府进一步推动行政审批改革，简化中央和地方政府的程序。虽然最近几年情况已经有了明显改善，但是中国美国商会的会员企业仍然面临着政策挑战，包括外商直接投资限制、行业产能过剩、创新产生的知识产权的保护挑战以及监管缺乏一致性等问题。中国美国商会希望中国政府能够考虑本章中提出的以下问题，从而支持高价值机械制造业的发展。

现存监管问题

外商投资限制

2014 年，中国政府进一步放开投资审批机制和一般制造行业，中国美国商会对此表示欢迎。但是，在几个关键制造领域，例如中低速柴油机、海上船舶使用的机轴和铁路运输设备，外资企业仍然不能设立外商独资公司或持有过半数所有权。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

为了促进行业的升级换代和振兴，中国政府在“第十二个五年规划”中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。然而，由于中国现行并购审查程序以及政府部门之间的内部磋商机制不仅复杂，而且不透明，这降低了外资企业进一步参与的可能性。中国美国商会建议中国政府通过提升并购审查程序和政府部门之间内部磋商机制的透明度，并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。

创 新

中国美国商会的会员企业的业务本地化程度日益提高，正在加大对中国本地创新的投资。例如，根据中国美国商会 2015 年度《商务环境调查》，有将近半数的资源和工业领域（包括机械制造行业）的会员企业已经在中国设立研发中心。这些企业的主要目的就是为了根据本地市场的需求量身定制产品或服务。有 39% 的会员企业在中国设立研发机构，从而向其他发展中市场提供定制产品，反映了会员企业的中国团队在其全球业务运营中不断提高的重要性和影响力。有 80% 的会员企业仍然对知识产权执法不力表示担忧。因此，尽管许多企业已经设立本地创新机构，会员企业要想在中国进一步开展核心的全球性研发和创新活动，还需要中国在知识产权保护方面做出重大改进。

中国美国商会明白中国政府希望通过高新技术企业认定，并采取激励措施来鼓励创新。我们的会员企业已经投入巨资在中国设立研发中心，与中国同行一起对这些倡议表示支持。但是，我们担心高新技术企业认定制度现有的知识产权所有权资格标准将使外资企业处于不利地位，不利于其全球创新和知识产权战略的实施。我们建议中国高新技术企业知识产权认定应该：❶ 修改为允许跨国公司总部取得知识产权的所有权，或者 ❷ 允许向中国的关联机构进行非排他性许可。中国美国商会的会员企业是全球创新的引领者，能够为中国企业提供宝贵的参考经验。我们建议中国政府在修订包含高新技术企业认定标准的《国家重点支持的高新技术领域目录》时也征求一下外资企业的意见和建议。

we are concerned that current IP ownership qualification criteria for HNTE certification will put foreign companies at a disadvantage, distorting their global innovation and IP strategy. We suggest that China's HNTE IP certification criteria should either: ❶ be amended to allow for IP ownership by multinational corporate headquarters, or ❷ allow for non-exclusive licenses for Chinese affiliates. AmCham China member companies lead innovation worldwide and their experience could be a valuable reference for Chinese companies. We suggest that the Chinese government grant equal opportunities to foreign companies to provide input when the "Key High- and New-Technology Areas Supported by the Nation," which includes HNTE criteria, is updated.

Clean Energy Machinery

High efficiency gas fired distributed energy and combined heat and power (DE&CHP) systems can play a significant role in energy conversion and emissions reduction and improve circular economy systems. AmCham China has long been supportive of China's considerable efforts to tackle energy efficiency and emission issues. AmCham China recommends that the Chinese government focus on the development of small/mid-sized (less than 50 megawatts) and multiple-unit DE&CHP systems in industrial and commercial areas to ensure high system operation reliability and efficiency (above 70 percent). In the meantime, AmCham China urges that development of DE&CHP power grid connection regulations be expedited with increased local utility company support. The regulations should encourage both the central and local governments to provide incentives including, but not limited to, lower gas prices, tax credits, low interest loans, and/or subsidization of a project's first capital cost to promote DE&CHP deployment. We recommend that the Chinese government promote gas fired DE&CHP applications in coal-to-gas boiler replacement initiatives as one of the most effective technologies to reduce smog throughout China.

Remanufacturing

The "Circular Economy Promotion Law of the PRC" issued in January 2009 was an important milestone for the development of the remanufacturing industry in China. During his visit to the US in February 2012, President Xi Jinping called for both countries to improve cooperation in remanufacturing.

AmCham China was encouraged by improvements made to the management system of the remanufacturing industry in 2014. To ensure the healthy and rapid development of this emerging industry, we recommend that the Chinese government make clear an aligned definition of remanufacturing among different ministries, specify that remanufactured finished goods (RFG) are not used goods, allow free flow of core (material that is to be remanufactured) across borders, and join the Asia-Pacific Economic Cooperation Pathfinder for Remanufacturing, alongside most other economies in the region. Remanufacturing is, by nature, energy and resource saving and environmentally friendly in comparison to the production of equivalent new products. US-China collaboration on remanufacturing could help bring recognition to and acceptance of the environmental benefits generated by the industry and aid both countries' efforts in sustainability development.

Mining

AmCham China welcomes the Chinese government's efforts to improve safety and raise the technological and operational standards of the domestic mining industry. In particular, the embrace of mechanization and international best practices would help create a safer, more efficient industry. Foreign-invested machinery manufacturers have experience in providing safe, high-quality, and advanced technology. AmCham China member companies have championed introducing these types of technologies to China for decades.

For example, drill and blast is a traditional cost effective way to mine. However, in areas where drill and blast is prohibited or where there are security concerns, one AmCham China member company has partnered with local companies to bring a new surface mining technology to China, which provides a safe and cost-effective alternative. The new technology is currently being promoted in northwestern China and in areas close to cities, where access to dynamite and blasting is restricted for safety reasons.

Such cooperation between international and domestic players helps to further improve mine safety and operational efficiency in China's mining industry. To enhance the pace of development of China's mining industry, AmCham China recommends that the Chinese government consider providing special support for the importation, sale, and manufacturing of these types of new mining technologies in China.

Rail

Maintenance of freight diesel locomotives is a highly professionalized task. To improve 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.

清洁能源机械

高效的燃气分布式能源热电联产系统（DE&CHP）在能量转换和减排方面能够发挥重要的作用，能够改进循环经济体系。中国美国商会长期以来一直支持中国大力解决能源效率和排放问题。中国美国商会建议中国政府在工业和商业区重点发展中小型（低于 50 兆瓦特）和多机组分布式能源热电联产系统，以确保系统运行具有高度的可靠性和效率（超过 70%）。与此同时，中国美国商会希望中国加快制定分布式能源热电联产系统的电网接入条例，加大对地方公用事业企业的支持。条例应当鼓励中央和地方政府通过各种激励措施促进分布式能源热电联产系统的部署，包括但不限于较低的燃气价格、税收减免、低息贷款及／或项目启动资本补贴。我们建议中国政府在煤改气锅炉改造过程中推动燃气分布式能源热电联产系统的应用，从而在全国范围内有效地减少雾霾。

再制造产业

2009 年 1 月发布的《循环经济促进法》是中国再制造产业发展的一个重要里程碑。2012 年 2 月，习近平主席在访美期间呼吁中美两国加强再制造产业的合作。

2014 年，再制造产业的管理制度得到改进，中国美国商会为此深受鼓舞。为了确保这一新兴产业的健康快速发展，我们建议中国政府统一各个部委对再制造的定义，明确再制造制成品不是二手货，允许旧件（可以再制造的材料）自由跨境流通，与亚太地区大多数国家一道加入亚太经合组织的“再制造探路者倡议”。与等价的新产品的生产相比，再制造具有节约能源和资源以及环保的性质。美中在再制造产业方面的合作能够帮助人们认识和接受这一产业具有的环境效益，帮助两国实现可持续发展。

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以及提高技术与操作标准方面的努力表示欢迎。特别是，推广机械化并采用国际最佳实践有助于提高行业安全水平与效率。外资机械制造企业在提供安全和高质量的先进技术方面具有丰富的经验。中国美国商会的会员企业几十年来一直支持中国引进这些技术。

例如，钻爆是一种经济高效的传统采矿方式。但是，在禁止进行钻爆或存在安全问题的地区，中国美国商会的一家会员企业已经与当地企业合作，将一种露天采矿新技术引入中国，提供了一种经济安全的替代选择。这一新技术目前正在中国西北地区以及由于安全原因而限制使用炸药和爆破的临近城市的地区进行推广。国际企业和国内企业之间的这种合作有助于进一步提高中国采矿业的安全和经营效率。为了加快中国采矿业的发展，中国美国商会建议中国政府考虑向这类采矿新技术的引进、销售和制造提供专门支持。

铁 路

货运柴油机车的维护是一项高度专业化的工作。为了提高效率和安全水平，中国美国商会建议中国政府鼓励铁路公司雇佣货运机车制造商负责维护工作，铁路公司则专注于铁路运营和管理。

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待遇。**
- 简化并购审批程序，提高审批透明度，允许外资企业更大范围地参与行业整合。
- 允许旧件和再制造成品的自由跨境流通，确保再制造产品的技术标准与新产品保持一致。
- 为引入、制造和销售包括非爆破露天采矿技术在内的专业设备新技术提供税收激励，支持采矿行业采用全球最佳安全实践。
- 政府提供大力支持，鼓励在工业和商业区发展高效的中小型和多机组分布式能源热电联产系统。

Recommendations

- **Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested companies.**
- Streamline M&A approval procedures and increase transparency to allow FIEs to make a greater contribution to industry consolidation efforts.
- Allow the free flow of cores and RFG across borders, and confirm that remanufactured products follow the same technical standards as original new products.
- Support the ongoing efforts to embrace global best practices for safety in the mining industry, by providing tax incentives for the importation, manufacturing, and sale of new specialized equipment technologies, including non-blast surface mining technology.
- Encourage development of small/mid-sized and multiple-unit DE&CHP systems in industrial and commercial areas with high system efficiency through strong government support.

Media and Entertainment

Introduction

The media and entertainment industry plays an increasingly important 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 its global image, reputation, cultural influence, and economic interests.

While cultural and artistic development is a significant element of China's 12th Five-Year Plan (12th FYP), censorship and other restrictions threaten to undermine this effort. China's rich heritage of excellence in entertainment and the arts can be best perpetuated and brought to international attention by fostering initiatives that educate, regulate, and reinforce the commercial value of creative works, while emphasizing the need to protect intellectual property rights (IPR).

Ongoing Regulatory Issues

Cross-Sector Issues

Piracy

AmCham China applauds the progress in legislation and enforcement of IPR and the establishment of intellectual property (IP) courts, as discussed in the IPR chapter. However, for the media and entertainment industry, IP violations remain significant, as evidenced by the huge market for pirated products and content, both on- and offline. Despite these problems, there is a growing trend toward legitimate consumption of properly licensed content online, especially online television content. This is driven, at least in part, by improvements in IPR protection.

Occasional enforcement campaigns demonstrate that authorities have the ability to disrupt illegal channels, but organized piracy continues. Despite current Internet controls, it is still possible to illegally download music, images, and even whole television programs and films via Chinese search engines.

AmCham China encourages the Chinese government to build on the progress made in protection of online television content by continuing to strengthen IPR enforcement, increase damage awards, and fight Internet piracy by requiring all online platforms to protect IPR and assist in enforcement efforts.

Censorship

The Chinese government argues that censorship and other restrictions on media and entertainment are necessary because of their cultural impact. However, it appears that censorship is also often used to restrict market access for foreign television programming, music, and films, while having the undesirable side effect of fostering piracy.

Censorship policies routinely delay film, television, and music entry into the Chinese market, creating an environment in which pirated products can thrive. For example, legitimate DVD/Blu-Ray film discs require censorship approval by the State Administration of Press, Publications, Radio, Film, and Television (SAPPRFT), which takes at least one month. Meanwhile, pirated DVDs appear within a few days, stealing the market from legitimate businesses. In effect, such censorship only encourages piracy while unsuccessfully protecting the Chinese market from competition, undermining the sector's profitability and inhibiting its ability to create new entertainment and cultural works.

Finally, censorship of the Internet through site blockages and technical bottlenecks 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 in order to access the information they need. This raises costs and becomes a factor when companies consider investing 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 place regulatory and market access

媒体与娱乐

引 言

媒体与娱乐业在中国扮演着越来越重要的角色，为中国公民提供信息，满足其对世界级娱乐和文化活动的需求。随着中国国际影响力的不断扩大，媒体与娱乐业将对中国的全球形象、声誉、文化影响力和经济利益产生重要影响。

文化与艺术发展是中国“第十二个五年规划”的重要组成部分，但中国的审查制度和其他限制制度有可能影响这个领域的发展。中国应采取积极举措来宣传、规范并增强创意作品的商业价值，并强调知识产权保护的重要性，从而更好地保护中国丰富而优秀的娱乐与艺术传统，吸引国际社会的关注。

现存监管问题

跨行业问题

盗 版

正如“知识产权”一章所述，中国美国商会对中国在知识产权立法和执法方面取得的进步以及设立知识产权法院的做法表示赞赏。但是，媒体与娱乐行业的知识产权侵权问题仍然非常严重，网上与网下盗版产品与内容所拥有的庞大市场就是明证。虽然存在这些问题，中国合法消费正版网络内容的趋势仍日趋明显，特别是网络电视内容。这种趋势至少在一定程度上是由知识产权保护推动的。

不时开展的知识产权执法行动表明当局有能力阻断非法渠道，但有组织的盗版行为仍在继续。尽管中国当局对互联网进行了管控，用户仍可通过中国搜索引擎非法下载音乐、图片甚至完整的电视节目与电影。

中国美国商会建议中国政府基于保护网络电视内容的成就，继续加强知识产权执法，提高损害赔偿金，要求所有在线平台保护知识产权、协助执法行动，以对抗互联网盗版行为。

审查制度

中国政府声称，考虑到媒体和娱乐行业的文化影响力，有必要对其设立审查制度和其他限制制度。然而，审查制度似乎也经常被用于限制外国电视节目、音乐和电影进入中国市场，同时也具有助长盗版活动的副作用。

审查政策通常会延迟电影、电视和音乐作品进入中国市场，造就了盗版产品肆虐的环境。例如，合法的 DVD/蓝光电影光碟需要通过国家新闻出版广电总局的审批，审批过程至少需要一个月。另一方面，盗版 DVD 在几天之内就会出现在市场上，盗取合法产品的市场。实际上，这种审查制度只会助长盗版气焰，而且并不能在竞争中保护中国市场，降低了娱乐业的利润率，限制了从业者创造新的娱乐与文化作品的能力。

最后，通过关停网站和技术瓶颈对互联网进行审查的行为使国际和国内的媒体与娱乐公司受到不利影响。外国公司被迫将服务器和信息系统移至国外，许多外国公司和中国大公司需要通过虚拟专用网络才能访问所需信息。这提高了成本，也成为阻碍企业投资中国市场的一个因素。另一方面，小型中国运营商和最终用户因无法及时获取重要信息与内容陷于不利的竞争地位。

缺乏监管透明度与执法力度

许多中国政府机构声称有权监管媒体、娱乐与文化业，多项法律法规也对该行业实施监管与市场准入限制。监管权责与法规的不明确以及执法的不一致都妨碍了中国媒体与娱乐业的发展。此外，在国家文化部、国家新闻出版广电总局和其他监管机构发布互相矛盾的公告以争夺监管权的同时，利润丰厚的网络盗版行为仍在继续。

模糊而不统一的规章使业务的规划与实施变得复杂。

restrictions on the industry. Lack of clarity about these various roles, on the regulations themselves, and their inconsistent enforcement, inhibits the development of the media and entertainment industry in China. Moreover, as the Ministry of Culture (MOC), SAPPRFT, and other regulators issue conflicting proclamations in a battle for oversight, the lucrative trade in online piracy continues.

Vague and inconsistent regulations complicate the planning and implementation of business initiatives. In addition, outdated regulations have failed to take into account the rapid development of Internet and wireless technology, 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 that regulatory agencies, including the Ministry of Industry and Information Technology (MIIT), SAPPRFT, MOC, State Council Information Office (SCIO), and others, establish clearer lines of authority as well as transparent regulatory drafting processes that allow for public comment at an early stage. In addition, we recommend expediting approval processes for foreign participation and investment in the Chinese media and entertainment market.

Sector-Specific Issues

Film

AmCham China appreciates the February 2012 agreement between the US and China allowing the importation of an additional 14 "enhanced format" (e.g., 3D, IMAX) films. However, this agreement is already outdated. Many regulatory barriers remain in place, including a limitation on the distribution of international films on a commercial scale. For example, regulators currently limit the number of films imported on a revenue-sharing basis to 34 films a year, of which 14 must be enhanced format. An additional 30 films are permitted on a low, flat-fee or "buy-out" basis. China also maintains an import and distribution duopoly, managed by the SAPPRFT and China Film Group, which dictates what films may be imported and when they may be released.

According to the Motion Picture Association of America, between 2003 and 2012, China's box office grew from US $120 million to $2.7 billion (RMB 726 million to 16.3 billion). In 2012, China became the second largest box office in the world and, by 2013, the country's box office was US $3.6 billion (RMB 22 billion). China's 2014 box office was US $4.8 billion (RMB 29.7 billion). According to the SAPPRFT, there were at least 18,000 movie screens in China as of early 2014, an increase of 39 percent from 2013. Considering such growth, an effective distribution system and antipiracy control measures will be central to the commercial viability of new venues.

Increased distribution of 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 increase the importance of the Chinese audience within the overall international market, encouraging foreign filmmakers to 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 those in China to watch international content. At the same time, foreign channels are required to assist China Central Television with access to their home markets.

Since regulation and censorship do not actually prevent the Chinese people from obtaining international television content, as with film, the effect of non-market mechanisms is simply to foster piracy.

AmCham China recommends that the Chinese government 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, the staging of live events requires securing a license or *piwen* (批文) in advance. However, this 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

而且过时的法规没有考虑到互联网与无线技术的迅速发展，使大量网络内容和服务产品的运营缺乏明确的指导原则。不清晰的监管与不统一的投资审批也使中国远远落后于国际标准，特别是在书籍与期刊的零售发行方面。

中国美国商会建议工业和信息化部、国家新闻出版广电总局、文化部、国务院新闻办公室等监管机构建立起明确的权责界限和透明的监管法规制定流程，允许公共意见参与。此外，我们还建议加快外资企业参与及投资中国媒体与娱乐市场的审批流程。

行业特定问题

电　影

中国美国商会对中美双方于 2012 年 2 月签署的协议表示赞赏，根据该协议，中国会额外引进 14 部“高新格式”（如 3D、IMAX 等）电影。但实际上这项协议已经过时。目前中国仍然存在多项监管限制，包括限制国际电影的商业发行。例如，监管机构将每年进口的分帐电影数量限制为 34 部，其中 14 部必须为“高新格式”电影。另外还可以较低的固定价格或“买断”（buy-out）价格引进 30 部电影。在中国，电影的进口与发行市场仍在维持两家独大的格局，由国家新闻出版广电总局和中国电影集团决定进口哪些电影以及何时放映这些电影。

美国电影协会（Motion Picture Association of America）称，2003 至 2012 年，中国电影票房已由 1.2 亿美元增加至 27 亿美元（由 7.26 亿人民币增加至 163 亿人民币）。2012 年，中国成为全球第二大电影票房国，到 2013 年，中国的电影票房已达到 36 亿美元（220 亿人民币）。2014 年中国电影票房为 48 亿美元（297 亿人民币）。中国国家新闻出版广电总局称，2014 年初，中国至少拥有 18,000 部电影银幕，与 2013 年相比增加了 39%。鉴于如此可观的增长，高效发行制度和反盗版措施将是实现新建影院商业可行性的关键因素。

杜绝市场操控或随意规定的禁发期后，外国电影发行量将会增加，加之遏制盗版的有效行动，将激发优质娱乐产品的市场需求，使国内媒体与娱乐业受益，同时还将提高中国观众在国际市场上的影响力，促使外国电影制作者迎合中国观众的需求。

电　视

非市场化机制严格阻碍了外国电视内容进入中国。中国政府有效禁止中国有线电视运营商引入外国频道，在外国居民比例较高的酒店和住宅区限制播放外国电视频道。另一方面，中国电视台被禁止在黄金时间播放进口节目，另外还有其他限制和配额要求使中国观众很难收看到国外节目。而外国频道则被要求协助中国中央电视台进入他们的本土市场。

与电影市场类似，实际上监管与审查制度并未能阻止中国观众获得国际电视内容，因此非市场化机制只会助长盗版行为。

中国美国商会建议中国政府大幅减少对外国电视节目的配额限制，同时公布详细监管法规来规范国内电视与外国内容制作商的合作与协作。这样做有助于通过监管透明度和相互合作促进行业的竞争，使中国公众收看到更多优质电视节目。

现场娱乐

现场娱乐市场的准入仍然受到缺乏透明度、过度监管、官僚主义以及其他抑制行业增长的管制措施的限制。例如，举办现场活动需要提前获得许可或批文。这个过程需要主办方提交相关信息，比如活动工作人员和支持人员名册，而此类信息往往在活动开场前才会到位。此外，监管机构拒绝发放许可时并不提供拒绝理由。如能提供拒绝发放批文的官方解释，将有助于经理人、艺术家和中介机构更好地规划未来活动。

此外，在获得批文之前，活动主办方不得开展售票宣传活动。因此，作为国际惯例的一整套销售展示活动几乎不可能开展，也就减少了获得企业赞助（需要提前预算）的机会。

获得批文后，需向发放签证的官员发送通知书，列出与批文申请书上相同的工作人员和演员姓名。然而，多数国际表演团体在表演开始一个月之前尚不能获知准确的访华人员名单，而申请批文时距活动尚有六至九个月。因此，为了获得签证，表演团体被迫采用例外措施和危机管理措施。此外，访华人员必须将工作签证转换为一年居住许可，而实际上多数访华人员在华逗留时间不足三个月，从而造成不必要的耽搁和行政负担。

这种现场娱乐活动面临的困难环境与第十二个五年规

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 in advance 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 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 burdens.

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 12th FYP. We encourage the Chinese government to allow performers from abroad to enter China on business visas instead of work visas. A foreign performer requires a commercial performance visa, which is a work visa that is issued on the basis of the performer having received a local performance permit by the municipal cultural bureau and a letter of invitation for commercial performance, issued by the local municipal foreign affairs office. Foreign-owned companies are currently not able to directly apply for commercial performance permits from cultural bureaus in China, but rather must work with local companies that have this capability.

Other barriers to successfully holding live events exist as well. The Public Security Bureau (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 as they are unpublished. 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 selling capacity of an event, while the set-aside 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, compounded by other issues from security to visas, deter world-class performers from coming to China. AmCham China urges the Chinese government to streamline and clarify relevant procedures and regulations, not only for the benefit of live entertainment venues, producers, and artists, but also for the overall benefit of China's cultural industry.

Music

Important sources of income generally available for those in the music industry in the West, such as royalties from the sale, public performance, and broadcast of music, are mostly unavailable in China. This is caused by the unwillingness of Chinese consumers to pay for music downloads, the limited availability of legitimate download sources, weak enforcement of IPR, and the unwillingness of Chinese broadcasters to pay music royalties. To the extent that music downloads generate income at all, that income is typically a function of money spent on advertising on the platform from which the download occurs.

AmCham China urges the Chinese government to permit foreign sound recording companies to invest and operate in all facets of the music business in the same manner as Chinese companies. This includes the right and ability to sign artists and to record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.

News Media

While the government has made some progress in increasing access to information, it continues to erect barriers to the kind of transparency necessary to do business in China.

According to the Foreign Correspondents' Club of China (FCCC), the authorities have done much in recent years to move to a regular and predictable schedule for economic data releases. This has aided coverage of China's dynamic and evolving economy and has also helped create a level playing field for all news agencies, domestic or foreign. The Chinese government has also published contact information for spokespeople working for ministries and provinces, and some ministries are now holding regular and informative press conferences. Increased openness helps foreign journalists report accurately and completely on China's policies and positions.

However, numerous obstacles hinder the ability of reporters for foreign news agencies to gather information critical to understanding the business environment in China. In its "Position Paper on Working Conditions for Foreign Correspondents in China," the FCCC cites as a chief concern the apparently arbitrary classification of previously public information as a "state secret." This practice has led to threats against news agencies that have released economic information ahead of the official publication date, even if that information had been openly discussed at a public event. Even on topics of little or no sensitivity, obtaining information from the Chinese government is unnecessarily difficult. Most officials of interest remain unavailable, and ministries in general are slow and unresponsive to inquiries. Representatives of government agencies or affiliated organizations often discriminate against foreign media, withholding data and denying access to press events.

For these and other reasons, it is often difficult for overseas investors and companies to get reliable information about China, making it more risky to do business here.

Moreover, it has become increasingly difficult for foreign news providers to do business in China. Over the last two years, it has become clear that foreign media companies will only be allowed to expand into this market if they play by

划提出的“开放文化与艺术交流”的精神相违背，不利于交流的开展。我们建议中国政府允许国外演员持商务签证而非工作签证进入中国。外国演员需要商业表演签证，该签证属于工作签证，演员收到由市政文化当局发放的本地表演许可和由本地市政外事管理机构发放的商业表演邀请信后，才能获得该工作签证。外国公司目前无法直接向中国文化当局申请商业表演许可，因此必须与具备该项能力的本地公司合作。

举办现场活动还面临其他障碍。公安局为现场活动提供安全保障。但是，公安局对特定活动的职责范围及收费情况并不公开。另一方面，为安保人员提供的专座往往超过了参加活动的安保人员实际数量，安保人员需要的座位数量经常不加任何解释就出现变动。此类现象影响到活动的销售能力，预留专票往往由黄牛党打折卖出，促使消费者偏离合法销售渠道，损害了活动的商业利益。

缺乏透明度和明确指导原则的批文流程，加之安保和签证等问题，都阻碍了世界一流的表演艺术家来华表演。中国美国商会敦促中国政府简化并明确相关流程与法规，此举不仅对现场娱乐场馆、主办方和表演艺术家有利，也将使整个中国文化产业受益。

音 乐

西方音乐界的常见主要收入来源包括销售版税、公开表演与音乐广播，而在中国，多数此类渠道都无法为音乐界带来收入。这是因为中国消费者不愿付费下载音乐、合法下载资源有限、知识产权执法不力，以及中国广播商不愿支付音乐版税。即使音乐下载能够带来收入，这种收入也通常来源于音乐下载平台的广告收入。

中国美国商会敦促中国政府允许外国音乐制作公司以与中国公司相同的方式投资并运营中国音乐业务。包括艺人签约，以及录制、制作、推广和通过实体形式与互联网与移动平台发行音乐作品的权利与能力。

新闻媒体

中国政府为提高信息可用性开展了一些工作，但就提高在中国开展工作所需要的透明度而言，政府仍在不断增加障碍。

驻华外国记者俱乐部（FCCC）称，近年来，中国当局开展了大量工作，定期发布经济数据。此举有助于新闻媒体报道充满活力、不断发展的中国经济，也有助于为国内和国外新闻机构创造公平的竞争平台。中国政府还公布了各部委与省份的发言人联系信息，还有部分部委定期举行新闻发布会。开放度的增加有助于外国记者准确而完整地报道中国的政策与立场。

不过，中国仍存在多种障碍影响外国新闻机构记者收集有关中国商业环境的重要信息。在《外国记者在中国工作条件意见书》(Position Paper on Working Conditions for Foreign Correspondents in China) 中，驻华外国记者俱乐部提出的一个重要问题是中国政府将已经公之于众的信息武断地划分为“国家机密”。这种做法使在官方发布日期之前公布经济信息的新闻机构受到威胁，即使这些信息已经在公共活动中被公开讨论。即使对于小型或非敏感型主题，向中国政府获取信息也非常困难。多数相关官员对记者避而不见，大部分政府部门对新闻界的质询反应迟缓。政府机构或相关组织的代表经常对外国媒体区别对待，对外国媒体隐瞒数据，禁止其参加新闻活动。

出于以上及其他原因，海外投资者和公司通常很难获得有关中国的可靠信息，加大了他们在中国做生意的风险。

此外，外国新闻机构在中国开展业务的难度越来越大。外国媒体公司为了进入中国市场，只能遵守中国政府的规定，听从政府指导报道哪些新闻、不报道哪些新闻，在过去两年中这种趋势愈发明显。2014 年，中国继续屏蔽多家外国新闻提供商的英语网站，中国当局似乎将整个新闻体系作为威胁和惩罚的目标，特别是在新闻界就所谓的“敏感”话题进行调查报道之后。

中国美国商会督促中国当局不要针对、威胁、排斥外国新闻机构与记者，从而为潜在投资者提供在中国开展业务所需要的信息。

最新进展

电 视

2014 年 10 月，国家新闻出版广电总局宣布在中国流媒体网站上限制外国节目。外国节目播出前需要注册，并限制在各家流媒体网站总内容量的 30% 以内。如果是外国电视剧，必须将完整剧集提交审批，获得批准后方能播出其中的剧集。

2013 年，国家新闻出版广电总局实施严厉限制措施，影响到外国电视内容在中国大陆的引进或许可。这些限制

the Chinese government's rules on what stories to cover, and what not to cover. The English language websites of multiple foreign news providers continued to be blocked in China in 2014, and Chinese authorities appeared to target entire news organizations for intimidation and punishment, especially after investigative reporting on so-called "sensitive" topics.

AmCham China urges that foreign news agencies and journalists not be targeted, intimidated, and excluded in their efforts to provide potential investors with the information needed to conduct business in China.

Recent Developments

Television

In October 2014, the SAPPRFT announced restrictions on foreign content on Chinese streaming sites. Foreign content is to be registered and restricted to 30 percent of each streaming site's total offering. Entire series must be submitted for approval before a single episode can be made available.

In 2013, the SAPPRFT imposed severe limitations affecting the importation or licensing of foreign formats for television programs in Mainland China. These restrictions created an incentive for the Sino-foreign co-development of television content as such content is regarded as domestic for regulatory purposes. The new rules restrict each satellite channel to importing just one foreign format each year which cannot be broadcast prior to 10 PM. Moreover, only four licenses have been made available for foreign or domestic talent music shows to be broadcast on satellite television during 2014. Thirty percent of total weekly broadcast time on satellite television channels must be made up of content including news, domestically produced animation, and documentaries on economics, culture, education, life services, or agriculture. Regulatory attention is focused on satellite broadcast because the footprint is national. Terrestrial broadcasters are generally confined to provincial footprints and are of less relevance to foreign interests.

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. In particular, reclassify foreign investment in media and entertainment from "restricted" to "permitted" and increase all quotas for foreign films.**
- Fight IP violations in all media and entertainment sectors, and increase judicial damage awards in order to enhance their deterrent capabilities.
- Establish clearer lines of authority among the MIIT, SAPPRFT, MOC, SCIO, and other media and entertainment regulatory agencies, and institute a transparent regulatory drafting process that allows for public comment.
- 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 visas instead of work visas.
- Wind back the new restrictions on the streaming of foreign television content, eliminate the television quota system, ease restrictions on prime time broadcasts and foreign channels' market access, and publish detailed regulations on television partnership and collaboration for foreign content producers.
- Allow the foreign 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 targeting, intimidation, and exclusion of foreign news agencies and reporters in an effort to provide potential investors with the information needed to conduct business in China.

措施催生了中外联合制作的电视内容，因为从监管角度来看，这些内容属于国内节目。根据新规定，各家卫视每年只能引进一个外国电视节目，而且不能在晚上10点前播出。此外，2014年，外国或国内音乐选秀节目仅获得四份卫视播放许可。卫视频道每周播放时间的30%必须用于播放新闻、国产动漫，以及经济、文化、教育、生活服务或农业类纪录片。监管当局的注意力集中于卫星电视，因为卫星电视的覆盖范围遍及全国。地面站电视台一般仅限省内播放，外方对此类电视台兴趣较小。

建 议

- **减少各类外国媒体进入中国市场的非关税壁垒，减少外国媒体提供商的市场准入壁垒，包括媒体审查与控制。特别是要将媒体与娱乐业的外国投资由“限制”改为“允许”，增加外国电影的整体配额。**
- 在所有媒体与娱乐领域打击知识产权违法行为，提高法定损害赔偿限额，以提高震慑力。
- 明确工业和信息化部、国家新闻出版广电总局、文化部、国务院新闻办公室和其他媒体与娱乐监管机构的职责权限，建立透明的规则起草流程，允许征求公众意见。
- 协调现场娱乐活动参加人员的批文与签证申请流程，为中国实现文化交流与发展目标提供支持，例如允许国外人士持商务签证而非工作签证入境。
- 取消限制外国电视节目在中国播出的新规定，取消电视配额体系，减少黄金时间播放限制和外国频道进入中国市场的限制，同时公布详细监管法规来规范国内电视与外国内容制作商的合作与协作。
- 允许外国音乐行业签约艺人，以及录制、制作、推广音乐作品并通过实体形式与互联网与移动平台发行音乐作品。
- 避免针对、威胁、排斥外国新闻机构与记者，从而为潜在投资者提供在中国开展业务需要的信息。

Oil and Gas, Energy, and Power

Introduction

The Chinese government in 2014 continued to deepen reforms with a focus on anti-corruption and the rule of law. The energy sector – a key contributor to China's slowing, yet still strong, economic growth – remained a priority for the Chinese government, and the objective to steadily improve the energy mix continued to drive the development of clean energy, especially natural gas and unconventional resources such as shale gas.

AmCham China welcomes the significant progress made in several specific policy and regulatory arenas impacting the oil and gas sector. For example, "Mixed Ownership" reforms across all sectors in China encouraged state-owned enterprises to improve their governance, efficiency, profitability and, hence, their global competitiveness. National oil company (NOC) leaders in the oil and gas sector such as CNPC and Sinopec announced specific deals to develop mixed ownership, and additional programs that could provide foreign investors with more opportunities to participate are expected.

Supported by these macro policies and guidelines, domestic gas producers, namely the NOCs, have endeavored to develop onshore unconventional resources. One key example is the Fuling shale gas project in the Sichuan basin developed by Sinopec, which is the first successful commercial shale gas project in China. It is expected to produce 3.5 billion cubic meters per annum (bcma) of shale gas in 2015 with an accumulated production capacity of five bcma. This development is very encouraging and is motivating others to invest in the development of shale resources.

AmCham China applauds these remarkable developments and our members will continue to seek quality investment opportunities and contribute to China's oil and gas development, with a particular focus on unconventional onshore resources. However, while we are encouraged by these positive regulatory and industrial developments, our member companies continued to experience several key challenges which could hinder new and current investments, particularly as they may be exacerbated by the decline in oil prices which began in late 2014.

Ongoing Regulatory Issues

Lack of Open Access to Upstream Acreage

Current Status

Foreign energy companies wanting to invest in China's upstream sector are discouraged by the limited availability of quality resources and blocks, as oil and gas resources are mainly controlled by the NOCs under their existing licenses. Due to the significant investment that the NOCs have made on conventional resources, much of their acreage is under-explored for unconventional resources such as shale gas/oil and tight oil. Compared with the output from shale developments in the US, it is unlikely that China will reach its ambitious target of 60-100 bcma of shale gas production by 2020, considering the current low levels of shale resource exploration and investment. Indeed, the Chinese government has recently halved its 2020 shale gas production target to 30 bcma.

Although the Ministry of Land and Resources (MOLAR) has been tightening its governance on acreage and some under-explored blocks have been required to be relinquished by the NOCs, the question remains as to how MOLAR will re-allocate these acreages – among the NOCs or released for public bidding, as in the previous two shale gas license rounds.

The two license rounds that were held in 2011 and 2012 for shale gas helped to attract investments and encourage competition. Although the number of blocks on offer was small, the license rounds are a major breakthrough in terms of non-NOC access to upstream acreage and resources. That said, it is generally believed that the acreages available to the non-NOCs tend to hold less prospectivity than those held by the NOCs under their existing licenses.

Challenges for Foreign-Invested Enterprises

One of the key challenges for foreign-invested enterprises (FIEs) is that they are not allowed to directly participate in the license rounds for shale gas. Though FIEs are allowed to form joint ventures (JVs) with Chinese partners, the legal framework and the rigid process of creating a JV do not support the flexibility required by investors to undertake

石油天然气、能源和电力

引 言

2014 年中国政府继续深化反腐和法治等重点领域的改革。能源行业是中国虽见放缓但依然强劲的经济增长的主要推动力，依然是中国政府的工作重点；同时中国按照稳步优化能源结构的目标，继续推进着清洁能源、特别是天然气和非常规能源（如页岩气）的发展。

中国美国商会对影响油气行业的具体政策和监管领域所取得的重大进展表示欢迎。例如，中国在各个行业推广“混合所有制”改革，鼓励国有企业改善治理，提高效率和盈利水平，从而最终提升国企的全球竞争力。油气行业中的国有石油公司领导者，如中石油和中石化都公布了推进混合所有制的具体交易，并且今后将开展更多项目，这些都为外国投资者提供了更多的参与机会。

在这些宏观政策和方针的支持下，国内油气生产商即各个国有石油公司，都已着力开发陆上非常规资源。一个重要案例就是中石化在四川盆地开发的涪陵页岩气项目。作为中国首例成功的商业勘探业页岩气项目，它计划在 2015 年产出 35 亿立方米页岩气，并在未来累计产量达到 50 亿立方米。该项目开发非常鼓舞人心，并正在激励更多的投资者投资开发页岩气资源。

中国美国商会对上述显著进展表示赞赏，我们的会员企业将继续寻求高质量的投资机会，重点专注非常规陆上资源，为中国油气行业的发展做出贡献。尽管在监管方面和行业内取得的上述积极进展让我们深受鼓舞，然而，我们的会员企业仍面临诸多重大挑战，严重影响他们的增量和存量投资，尤其是从 2014 年下半年开始的石油价格大跌更加剧了上述挑战的影响。

现存监管问题

缺乏公开获取上游区块的途径

现 状

外国能源公司希望投资中国油气上游行业的愿望往往因为只能获得有限的高质量资源和区块数量受到打击，因为油气资源目前大部分都掌握在各个国有石油公司的现有区块内。虽然国有石油公司在常规资源上已进行了巨额投资，但他们所掌握的大部分区块中的非常规资源，如页岩气／油和致密油却处于勘探投入不足的状态。与美国页岩开发产量相比，再考虑到中国目前页岩资源勘探和投资水平较低，中国不太可能实现其制定的到 2020 年页岩气年产量达到 600–1000 亿立方米的宏伟目标。实际上，中国政府最近已经将 2020 年的页岩气年产量目标减半为 300 亿立方米。

尽管国土资源部已经逐步加紧对油气区块的管理，并要求国有石油公司放弃部分勘探投入不足的区块，但问题是国土资源部将如何对上述区块进行再分配——是在多家国有石油公司之间，还是如前两轮页岩气招标那样进行公开招投标？

2011 年和 2012 年开展的上述两轮页岩气招标有效地吸引了投资并鼓励了竞争。尽管这两轮招标的区块数量较少，但该程序本身就是一项重大突破，标志着非国有石油公司也能够获得上游区块和资源。尽管如此，但目前普遍认为非国有石油公司能够获取的区块在资源前景上比国有石油公司手中的现有区块要差。

对外商投资企业的挑战

外商投资企业（外资企业）所面临的重大挑战之一就是不能直接参与页岩气招标。尽管外资企业可以与中国合作伙伴成立合资企业来参与投标，但合资企业的法律框架和严格的设立流程，无法满足投资石油、天然气和非常规

these high-risk oil, gas, and unconventional resource exploration activities. Moreover, the timelines stipulated after the blocks were published for inclusion into the license rounds were insufficient for formation of a JV.

As a result, International Oil Companies (IOCs) – which possess significant management expertise and technology know-how in the development of conventional and unconventional resources – continue to have very limited access to China's oil and gas acreage. Under the current fiscal regime, the most feasible way for IOCs to access acreage and resources is through production sharing contracts (PSCs) with the NOCs, however, in both previous license rounds there was no clear indication as to whether FIEs would be allowed to participate in the licensed blocks through PSCs.

Another commercial challenge is that FIEs are often in a much weaker position during the PSC negotiations compared to their Chinese counterparts. As there is not an industry-wide standard PSC model for unconventional resources, each negotiation is conducted individually between an FIE and its much stronger Chinese counterpart. Furthermore, the current negotiation framework for an unconventional resource PSC is usually based on a conventional PSC model, which does not recognize the special characteristics of unconventional resources (e.g., long production life, rolling developments, difficulty in relinquishment) and, as such, lacks the flexibility to meet the needs of unconventional exploration and development. Under unfavorable commercial terms and tough negotiations, foreign companies often face significant challenges in making investment decisions. These decisions are becoming even more problematic in light of the current low price of oil and industry-wide capital reductions.

In order to allow for activity during a lengthy, challenging PSC negotiation period, NOCs often suggest that FIEs enter into a joint study agreement (JSA) to conduct some operational work (e.g., seismic and wells). However, such JSAs do not guarantee access to PSCs for the IOCs and oftentimes expose them to significant risks (technical, financial, legal).

Suggested Improvements

AmCham China strongly recommends that MOLAR continue to strengthen acreage governance and rescind licenses for the under-explored, under-invested blocks, as well as make more quality acreage available for future public bidding.

In the near term, we recommend that MOLAR work out specific guidelines on how FIEs may participate in shale gas license rounds, ideally through PSCs with a Chinese partner, with the license blocks for foreign participation being cleared prior to issuing the license round. We also strongly recommend that relevant government entities (e.g., the National Energy Administration (NEA), the Ministry of Commerce, MOLAR) establish a model unconventional resource PSC as soon as possible, with joint efforts as appropriate.

In the medium term, AmCham China proposes that MOLAR consider allowing FIEs to directly bid in the shale gas license rounds, and operate the blocks under a tax-royalty-like arrangement, in the same manner as NOCs and private Chinese companies. This will greatly simplify the process, and help attract the investments needed to accelerate China's shale gas exploration and development. Once the mechanism has proved successful for shale gas, the Chinese government could consider extending it to other types of conventional and unconventional oil and gas resources.

In the long term, AmCham China believes that it is in China's best interest to transform the domestic upstream sector into a truly open and competitive environment and eventually adopt the tax-and-royalty scheme across all upstream sectors of the oil and gas industry.

Limited Access to Data

Current Status

In China, most oil and gas-related data is owned by acreage owners (mostly NOCs), and is considered a state secret which must be kept confidential for extended periods. It is common that different NOCs in the same basin do not share data, even if they are operating side-by-side. This lack of information sharing often leads to an overlap of drilling activities (especially in un-prospective areas) and less-efficient deployment of investment capital. FIEs can only purchase data at infrequently held public license rounds (e.g., the annual offshore license round held by CNOOC) or access data of a specific block through a bilateral cooperation agreement with an NOC. In contrast, in many other countries, it is often a mandatory requirement that oil and gas license holders release data after a reasonable confidentiality period. In the US, large amounts of publicly available data are a key enabler for the rapid development of unconventional resources, improving productivity in the sector.

Challenges for FIEs

Sufficient and reliable data is crucial for conducting technical evaluations of any oil and gas play and is even more important for unconventional resources, which require tens of thousands of development wells in often diverse, heterogeneous rocks and surface conditions. The shortage of data in China results in a common lack of a deep, calibrated understanding of the country's geology, which significantly increases the technical uncertainties of a basin or area in which inventors are interested, thus making investment decisions even more challenging. Even if a foreign company may access data via a cooperation project with an NOC counterpart, the process of acquiring data is very long (involving signing cooperation and confidentiality agreements, obtaining government approval, etc.) and may cause project delays.

资源勘探等高风险活动企业对灵活度的要求。另外，招标区块公布后的投标申请时限也不足以新成立一家合资企业。

因此，国际石油公司虽然掌握着常规和非常规能源开发所需的重要管理技能和技术，但获取中国油气区块的准入空间依然十分有限。在现有财税制度下，国际石油公司获得区块和资源最可行的途径是通过与国有石油公司签订产品分成合同（PSC）。不过在前两轮的招标中，没有明确说明是否允许外资企业通过 PSC 进入招标的区块。

外资企业面临的另一项商业挑战是与中国谈判对手相比，外资企业在产品分成合同谈判过程中往往处于极其弱的地位。由于缺乏行业统一的非常规资源产品分成合同标准范本，每份合同都需要外资企业和占据强势地位的国有石油公司亲自、具体地协商谈判。另外，目前非常规资源产品分成合同的谈判框架通常是基于常规资源产品分成合同的标准范本，而该范本往往不能体现非常规资源的特殊性（如生产周期长、滚动式开发、区块面积撤销难等），因此无法满足非常规资源勘探开发对灵活度的要求。上述不利商业条款和谈判艰难等因素使得外资企业在做投资决策时面临严峻挑战，且在当前低油价和全行业缩减资本开支的背景下，投资决策就面临更大的问题。

在冗长且充满挑战的 PSC 谈判过程中，国有石油公司往往建议外资企业与其签订一份联合研究协议（JSA），以便进行一些作业（如地震和钻井等）。然而上述 JSA 并不能保证国际石油公司获得产品分成合同，且往往让他们面临重大风险（技术、财务和法律风险）。

建议改进措施

中国美国商会强烈建议国土资源部不断加强区块管理，取消并收回勘探不足且投资不足的区块的矿权，且在今后的公开招标中拿出更多高质量的区块。

短期上看，我们建议国土资源部就外资企业如何参加页岩气招标制订具体办法，最好是通过与中方合作者签订产品分成合同的形式，且在启动招投标程序之前就明确哪些是已经获得对外开放许可从而允许外资参与的区块。我们同时还强烈建议相关政府部门（如国家能源局、商务部和国土资源部）尽快共同制订出台一份非常规资源产品分成合同标准范本。

中期上看，中国美国商会建议国土资源部允许外资企业直接参与页岩气招标，并允许外资企业按照类似矿税制的框架，即像国有石油公司和私营中资公司一样，来运营相关区块。此举将极大地简化程序，吸引更多投资，进而加快中国页岩气勘探开发进程。一旦上述机制在页岩气领域获得成功，中国政府可以考虑将其推广至其他类型的常规和非常规油气资源。

长期来看，中国美国商会认为真正开放国内上游行业，形成充分竞争的环境并最终在整个油气上游行业采用矿税制将有助于中国实现利益最大化。

有限的资料获取

现 状

在中国，绝大多数油气相关数据都掌握在油气区块所有者（多为国有石油公司）的手中，这些数据被视作国家机密，必须长期保密。往往在同一个盆地内不同的国有石油公司之间，即使是在并肩作业，也不共享数据。这种缺乏信息共享的现状往往造成重复钻井（特别是在勘探潜力差的地区）和投资资本的低效利用。外资企业只有在不定期举行的公开招标中（如中海油每年举行的海上区块招标）才能购买数据，或者通过与国有石油公司签订双边合作协议获得某特定区块的相关数据。然而在其他很多国家，往往强制性要求油气矿权所有者在合理的保密期后对外发布相关资料。在美国，大量可公开获取的信息正是非常规资源快速发展、行业生产率快速提升的主要推动力。

外资企业面临的挑战

充足且可靠的数据对于开展任何油气技术评估至关重要，对非常规资源甚至更为重要，因为非常规资源往往要求在具有多样性和非均质性的岩石和地表条件下进行几万个钻井作业。中国相关数据的缺乏导致业界普遍难以对中国的地质状况形成一个深入、标准的共识，极大地增加了投资者对感兴趣的盆地或区域进行投资在技术上的不确定性，因此使得做出投资决定更加困难。即使外国企业可以通过与国有石油公司进行项目合作取得数据，上述数据获取程序却十分漫长（包括签订合作和保密协议、取得政府审批等），并可能造成项目延误。

建议改进措施

短期而言，中国美国商会建议相关政府部门对有关的数据法规进行修改，允许披露有助于提升生产力且不会影响中国安全利益的油气数据。

Suggested Improvements

In the near term, AmCham China suggests that authorities make amendments to relevant regulations on data to allow productivity-enabling disclosure of oil and gas data that does not compromise China's security interests.

In the medium-to-long term, we recommend that China set up a data sharing mechanism in line with international practice to allow the free purchase, trading, and exchange of oil and gas data, or set up a central database for companies with appropriate qualifications to access. We believe that such access to data is vital for the acceleration of the unconventional resource developments in China.

Limited Access to Pipelines and LNG Terminals

Current Status

Currently, over 90 percent of China's gas pipelines are controlled by the NOCs, which historically do not transport third-party gas. In early 2014, the NEA published the "Measures for Regulation of Fair and Open Access to Oil and Gas Pipeline Networks" regarding third-party access to oil and gas pipelines and facilities, including LNG terminals. The Measures require companies operating oil and gas pipelines and facilities to be open to third-party market players and provide fair delivery and storage services. This is a milestone for opening up the midstream sector and will significantly enhance gas development. However, it is not yet transparent as to whether these pipelines and LNG terminals have "spare capacity" – a pre-condition for open access. As a result, independent gas producers (e.g., coalbed methane (CBM) or shale gas producers) face challenges when negotiating with the NOCs to market their gas for the pipelines, which may delay development of the gas resources.

Challenges for FIEs

The key challenge for FIEs is the lack of assurance for access to onshore pipelines if gas is discovered. Many FIEs experience significant obstacles in gas marketing negotiations with their NOC partners, which can seriously undermine the economic feasibility of a project and may negatively impact an IOCs' investment decisions.

Suggested Improvements

In the near term, we recommend that relevant authorities clarify conditions and guidelines for third-party access to ensure spare capacity can be utilized by all third parties in a fair and open way.

In the medium- to long-term, the Chinese government should consider separating pipeline transmission businesses from upstream businesses and/or potentially form independent specialized pipeline operators, while further encouraging investments from various sources (in addition to CNPC/Sinopec) in nation-wide pipeline infrastructure to significantly increase available pipeline capacity for competitive and efficient utilization.

Government Procurement of Pipeline Construction Equipment

Current Status

The Government Procurement Law is based on the principles of openness and transparency, fair competition, impartiality, and good faith. Furthermore, the law stipulates that no entity or individual may, by any means, deny or restrict free access by outside suppliers to local markets or the market of the same industry for government procurement.

Challenges for FIEs

In practice, the process of getting onto government procurement lists is often time consuming and complex, especially for FIE equipment suppliers to Sinopec and CNPC. One AmCham China member company, for example, which is the largest manufacturer in the world for a certain type of pipeline construction equipment, has spent the past 10 years trying to get onto the Sinopec and CNPC procurement lists without success.

Suggested Improvements

AmCham China recommends that Sinopec and CNPC improve the speed, fairness, and transparency of the registration process for international pipeline construction equipment manufacturers to include their equipment in their procurement catalogues. Doing so will not only allow FIEs to more effectively introduce new technologies to the China energy industry, but will also allow bids to be more price competitive.

Recent Developments

During the past year, AmCham China has kept open dialogues with the NEA, MOLAR, and other relevant Chinese authorities. We appreciate their openness to listen to our feedback and continued efforts to address our concerns. We note that considerable efforts including, but not limited to, the following actions described below have been made by the Chinese government to improve the regulatory and operational environment for foreign investors. AmCham China welcomes these policies and actions, and encourages further improvements in a timely manner.

Actions by China's National Energy Administration

China Energy Plan 2014-2020

On November 19, 2014, China published its "2020 Energy Plan" (the Plan) setting targets for shifting to a lower-carbon

从中长期来看，我们建议中国建立一个符合国际惯例的数据分享机制，允许自由购买、交易和交换油气数据，或者建立中央数据库，允许有资质的企业申请获取该数据库中的数据。我们相信上述数据获取机制对加速中国非常规资源开发至关重要。

有限的管道准入（包括 LNG 接收站）

现 状

当前，中国 90% 以上的天然气输送管道都由国有石油公司控制，且传统上不输送第三方的天然气。2014 年初，国家能源局出台了《油气管网设施公平开放监管办法》，对第三方接入油气管网和设施（包括液化天然气接收站）做出了规定。该办法要求油气管网设施运营公司必须向第三方市场主体开放相关管网和设施，并提供公平的运输和存储服务。这是中游行业对外开放的一项里程碑式的改革措施，必将极大推进天然气开发。然而油气管道与 LNG 接收站是否具有“剩余能力”尚不透明，这是开放接入的前提。因此，独立天然气生产商（如煤层气或页岩气生产商）在与国有石油公司协商接入运输管道时将面临诸多挑战，可能会造成天然气资源开发的延迟。

外资企业面临的挑战

外资企业面临的最主要的挑战就是即便有了天然气，也不能确保可以接入陆上的输气输管道。很多外资企业在与国有石油公司进行有关天然气销售的谈判时都遇到了重重障碍，从而严重降低了相关项目的经济可行性，并可能对国际石油公司的投资决策造成负面影响。

建议改进措施

短期看，我们建议相关政府部门明确第三方接入管道的条件和指引，确保所有的第三方都能公平公开地利用管网设施剩余能力。

从中期和长期看，中国政府应该考虑将管道运输业务与上游业务分离，和／或成立独立、专门的管道运营公司，同时进一步鼓励多方主体（中石油和中石化之外的其他主体）参与全国的管道基础设施，从而大大提升可用的管输能力的竞争力和高效使用。

管道铺设设备的政府采购

现 状

《政府采购法》确立了公开透明、公平竞争、公正和诚实信用的原则。另外，该法还规定任何单位和个人不得采用任何方式，阻挠或限制供应商自由进入本地区或本行业的政府采购市场。

外资企业面临的挑战

实际操作中，进入政府采购名录的过程常常耗时而且复杂，特别是外资企业进入中石油和中石化的设备采购供应商名录尤为艰难。以中国美国商会的一家会员企业为例，该会员是某种管道铺设设备全球最大的制造商，过去十年来一直在努力进入中石化和中石油的采购名录，但一直未获成功。

建议改进措施

中国美国商会建议中石油和中石化提高国际管道建设设备制造商申请进入其采购目录的登记程序的速度、公平性和透明度。这样做将不仅有助于外资企业更加有效地将新技术引入中国能源行业，同时还将使投标在价格上更具竞争力。

最新进展

在过去的一年中，中国美国商会与国家能源局、国土资源部和其他相关政府部门保持着开诚布公的对话。我们感谢上述部门以开放的姿态聆听我们的反馈并一直努力解决我们的问题。我们注意到 2014 年中国政府在监管环境和外国投资者的经营环境方面所作出了一些（不仅限于下列）重大努力。中国美国商会对这些政策和措施的出台表示欢迎，并鼓励尽快取得更多进展。

国家能源局的相关举措

《能源发展战略行动计划（2014–2020 年）

2014 年 11 月 19 日，中国发布了《能源发展战略行动计划（2014–2020 年）》（行动计划），提出了建立以天然气和可再生能源为主体的低碳能源结构。该行动计划将 2020 年全国能耗目标设定为 48 亿吨煤当量（意味着 2016–2020 年之间中国年复合增长率为 3.8%）。到 2020 年，

energy mix led by gas and renewable energy. The Plan set the country's energy consumption target to 4.8 billion tons of coal equivalent by 2020 (indicating a 3.8 percent compound annual growth rate for 2016-2020). Natural gas will remain the fastest-growing part of the energy mix through 2020, with the goal for gas to grow from its current five percent to 10 percent (360 bcma) of the energy mix by 2020. Shale gas and CBM production targets are set at 30 bcma each by 2020.

Continued Gas Price Reform in China

Following nationwide gas price reforms in July 2013, non-residential prices for existing gas were further raised in 2014. To date, China has reached its goal of merging prices for existing and incremental gas by the end of 2015. The objective of gas price reforms is clear. If the reforms can be accelerated and pricing begins to be completely determined by market mechanisms, then the confidence of upstream investors will significantly increase, promoting the exploration and development of challenging unconventional resources.

Actions Taken as Part of US-China Energy Agreements

14th OGIF Meeting

The US-China Oil and Gas Industry Forum (OGIF) is a public-private partnership that convenes business and government leaders from the US and China petroleum and natural gas sectors on an annual basis.

The 14th US-China OGIF took place in Denver, Colorado from September 24-26, 2014. More than 150 representatives from both governments and key industry players gathered together during the three days to discuss key topics and developments in oil and natural gas exploration, production, trade, and regulation. Reports on China's shale gas and the US-China natural gas relationship were presented at this year's OGIF, which explored the key challenges facing China's shale gas development and provided specific recommendations to the Chinese government, such as continued policy reforms and the development of a model PSC for unconventional resource development. Industry experts from both countries shared their insights and experiences on a wide range of topics, including shale gas technologies, US-China LNG trade, tight oil technologies, carbon capture, use and storage, enhanced oil recovery, and CBM.

Challenges Faced by Chinese Companies Investing in US Natural Gas

While actively developing their businesses in China, AmCham China members have been in communication with Chinese companies investing in the US, and understand that they also face some regulatory challenges in the natural gas business.

Gas Sales

In the US, fuel tax is levied on volume rather than heating value, thus one liter of diesel equals 1.7 liters of LNG in terms of heating value. Therefore, tax on LNG is 70 percent higher than on the same heated value of diesel, making LNG uncompetitive compared to gasoline and diesel. We suggest that the US government issue a more reasonable tax policy to encourage LNG to be used as a much cleaner transportation fuel alternative to gasoline and diesel.

Chinese LNG investors have stated that US policies for use of LNG as a bunker fuel are unclear, challenging their strategies and business plans. We suggest that the US government provide clarity and a specific timeline on Emission Control Area policy for both the east and west coasts.

Gas Exports

It is suggested that the Department of Energy (DOE) publish timely investigative reports regarding the impact of gas exports on the US domestic economy, and that the US government publish clearer requirements for gas exports, based on the findings of the report.

Oil and Gas Investment Review

In recent years, some Chinese investors have been subject to strict reviews by relevant US government bodies for their investments in oil and gas sectors (particularly regarding mergers and acquisitions). It is suggested that the US government review such investment cases from Chinese companies in an objective and non-politicized manner.

Recommendations

For the Chinese Government:

- **Make concrete plans (including a time table and specific steps/milestones) to open upstream acreage/resources to all types of investors – including foreign companies and Chinese private investors. In the near term, provide specific and practical guidelines for foreign investors to participate in the exploration and production of unconventional resources.**
- Clarify and further define third-party access rights to gas pipeline infrastructure.
- Improve the speed, fairness, and transparency of the registration process for international pipeline construction equipment manufacturers to include their equipment in the Sinopec and CNPC procurement catalogues.

天然气将依然是中国能源结构中增长最为迅速的部分，行动计划提出到 2020 年，天然气占比应从当前的 5% 增长至 10%（3600 亿立方米 / 年），2020 年页岩气和煤层气年产量目标则均设定为 300 亿立方米。

继续推进天然气价格改革

继 2013 年 7 月在全国范围内进行天然气价格改革后，2014 年，中国进一步提高非居民用存量天然气价格，今年初已实现了到 2015 年底将存量和增量天然气价格并轨的目标。气价改革整体方向是明确的，如能进一步加快改革步伐，尽早实现天然气完全由市场机制定价的最终目标，将会显著增强上游投资者的信心，并有益于对非常规资源的勘探开发。

美中能源协议下的相关举措

第十四届美中油气工业论坛

美中油气工业论坛（OGIF）是一项政企合作项目，每年集聚美国和中国石油天然气行业的商业和政府领袖共商大计。

第十四届美中油气工业论坛于 2014 年 9 月 24 日 –26 日在科罗拉多州丹佛市举行。在为期三天的论坛期间，150 多名来自美中两国政界和商界的代表共聚一堂，共同探讨石油和天然气勘探、生产、贸易和监管中的重要问题和进展。今年论坛上还发布了中国页岩气报告和美中天然气合作关系报告，这些报告研究了中国页岩气发展所面临的重大挑战，并对中国政府提出了具体的建议，如继续推进政策改革和制订非常规资源开发 PSC 标准范本等。两国的行业专家就一系列问题广泛交换意见和分享经验，包括页岩气技术、中美液化天然气贸易、致密油技术、碳捕捉、使用和储存、提高原油采收率和煤层气。

中国企业在美投资天然气面临的挑战

在积极开展其在华业务的同时，中国美国商会的会员企业也一直与在美投资的中资企业保持联系，并了解到这些企业在天然气行业所面临的一些监管挑战。

天然气销售

在美国，燃油税是按照体积而非热值计征，因此 1 公升柴油的热值等于 1.7 公升液化天然气（LNG）的热值。所以 LNG 的税负要比同等热值的柴油高 70%，造成 LNG 与汽油和柴油相比极度缺乏竞争力。我们建议美国政府制订更为合理的税收制度，鼓励使用 LNG 作为比汽油和柴油更为清洁的交通用能源。

中国的液化天然气投资者还指出，美国关于将 LNG 用作船用燃料的政策并不明确，从而影响了他们在美商业战略和业务计划。我们建议美国政府对东西海岸排放控制区域 (ECA) 尽快出台更明确的政策以及具体时间表。

天然气出口

建议美国能源部尽早发布天然气出口对美国国内经济影响的调查报告，并建议美国政府在该报告结论的基础上对天然气出口制定更加明确的要求。

油气行业投资审查

近年来，一些中国投资者在投资美国油气行业时（特别是涉及并购时），受到美国政府相关机构严格的投资审查。建议美国政府在对中国企业进行此类投资审查时，应保持客观正面地评估，并减少政治考量。

建 议

对中国政府：

- **制定关于向包括外资企业和中资企业在内的各类投资者开放上游区块 / 资源的具体计划（包括时间表和具体步骤及重大节点）。近期内针对外国投资者参与非常规资源勘探的开发制定具体可行的办法。**
- 进一步明确和细化第三方管网设施接入权的定义。
- 提升对国际管道建造设备生产商申请产品列入中石化和中石油采购目录的处理速度、公正度和透明度。

对美国政府：

- **包括国务院、能源部和商务部在内的美国相关政府部门应该积极与中国对口部门联络，游说对国际石油公司开放更多油气区块和资源。**
- 积极寻找机会向相关中国政府部门介绍美国在开放上游区块、资源和中游基础设施，以及数据公

For the US Government:

- **Relevant US government agencies, including the Department of State, DOE, and Department of Commerce, should engage their Chinese counterparts to lobby for open acreage and resource access in China for IOCs.**
- Identify opportunities to share the US experience with relevant Chinese government entities on how open access to upstream acreage and resources and midstream infrastructure, as well as the public availability of data, has fundamentally attracted high levels of investments and technological innovations, resulting in the successful development of unconventional resources in the US.
- Relevant US government agencies, including the Department of State, DOE, and Department of Commerce, should seek to understand and address the challenges facing Chinese companies investing in the US.

开使用等方面的经验，以及这些举措如何使得美国有效地吸引高额投资和鼓励技术创新，并最终在非常规资源开发领域取得成功。

- 美国相关政府部门，包括国务院、能源部和商务部应该积极了解并解决中国公司在美投资所面临的各种问题。

Real Estate

Introduction

The Chinese government in 2014 continued its efforts to dampen speculation in the housing market by introducing new policies aimed at restricting purchasing demand. The real estate industry has also been affected by challenges faced by the retail sector. Leasing at new shopping centers slowed with space increasingly being leased to the food and beverage sector. Landlords in non-traditional locations are offering more incentives to attract and retain tenants, while strata-titled projects are increasingly being left behind as the market evolves.

While overall transparency in China's commercial real estate market has been improving, the country was recently upgraded to semi-transparent by the JLL Global Real Estate Transparency Index (Index), recognizing improvements that have been made over time. The introduction of real estate investment trust (REIT) structures has coincided with improved transparency in several markets across the globe. CITIC Securities was granted permission in May 2014 to issue the first REIT in China. Given the large and critical role that real estate plays in China's economy, AmCham China supports continued attention to the regulatory side of China's real estate market, particularly the consistency of enforcement of rules across jurisdictions.

Ongoing Regulatory Issues

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. These factors contribute to market destabilization, poor investment decisions, and defective construction. The government recently proposed to increase site inspections and enhance regulation of 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 to materialize. AmCham China encourages the Chinese government and local development companies to partner with more experienced foreign firms to accelerate the introduction of international best practices, raising the overall quality of the industry for its participants.

Transparency and Enforcement of Contract and Property Rights

Some progress has been made to improve transparency and consistency in the administration and enforcement of both contractual and property rights, a key factor consistently cited by AmCham China and others to encourage real estate investment in China. However, there is much room for improvement. Improvements in the regulation of real estate lending, for example, have helped China move from Low Transparency to Semi-Transparent on the Index.

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 can have difficulty enforcing their rights or 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. While anecdotal evidence suggests that corruption was once commonplace, the current administration has made significant progress in prosecuting corrupt officials and business people. The administration's efforts to address anti-corruption measures have bolstered confidence that laws governing business in China will be upheld and support a business environment that is fair to both domestic and foreign companies.

The Ministry of Housing and Urban-Rural Development is spearheading the creation of public, readily accessible provincial and national property rights and interests registries, with a view towards improving urban planning, real estate transaction efficiency, and construction and quality standards. To accelerate this process, the initiative was elevated to the State Council level, underscoring its impor-

房地产

引 言

中国政府在 2014 年出台了限购的新政策，以继续努力抑制房地产市场的投机行为。但这些措施似乎过于极端，房地产行业还受到零售行业的影响。新建购物中心的租赁放缓，其场地越来越多地出租给餐饮业。非传统地段的业主采取更多激励措施以吸引和挽留租户，而分层所有权项目则随着市场发展日益落后。

随着中国商业地产市场的整体透明度不断改善，仲量联行全球房地产透明度指数（Index）最近将中国提升到“半透明”级，这是对中国所作出的改进的认可。房地产投资信托基金（REIT）结构的引入与全球多个市场中透明度的改善同步。中信证券股份有限公司（中信证券）于 2014 年 5 月获准在中国发行首只房地产投资信托基金。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，中国美国商会支持中国政府持续关注中国房地产市场的监管层面，尤其是不同司法辖区的执法一致性问题。

现存监管问题

质量及执法一致性

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地方房地产开发商与经验丰富的外国企业合作，借鉴国际最佳实践，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透明度和一致性方面已经取得一些进展，中国美国商会和其他机构多次重申这一关键因素，它有助于鼓励在华房地产投资。然而，改进的空间仍然很大。例如，对房地产贷款管制的改善使中国在“全球房地产透明度指数”中从“低透明”级上升到“半透明”级。

地方对于产权和权益注册的管理，包括土地使用权、租赁、抵押和其他地产权益，以及与公共安全优先权有关的条例都涉及多重繁杂的法规，这些法规并不明晰，而且地方政府的执行也不尽统一。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，较难行使其权益而且可能会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。尽管坊间传言腐败在中国曾经司空见惯，但本届政府已经在打击腐败官员和商界人士方面迈出重大步伐。政府强化反腐措施的努力让我们重振信心，我们相信中国商业相关的法律将得以有效执行并有助于建立一种对于国内外企业均为公平的商务环境。

住房和城乡建设部正负责牵头建立对公众开放的省级或国家级产权登记体系，这将有利于改善城市规划，提高房地产交易效率以及建筑和质量标准。为加速这一过程，这一举措上升到国务院层面，凸显了其对政府的反腐运动和即将实施的房产税制度的重要性。中国美国商会支持这一举措并希望其能迅速实行。

遵守先前商定合同条款的业主人数在不断增加，但还有部分业主和房客仍继续拒绝履行合同义务。合同执行的改善能使合同当事各方乃至整个市场受惠。中国美国商会承认对这种瞬息万变的市场进行监管的难度很大。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。

tance to the administration's anti-corruption campaign and the forthcoming implementation of a property tax system. AmCham China supports this initiative and hopes to see its rapid implementation.

The number of landlords that adhere to previously agreed contractual terms is improving, but some landlords and tenants continue to dishonor contractual obligations. Improved enforcement of contracts is beneficial to all parties involved in the contract and to the overall market. While AmCham China respects the challenges faced in regulating a rapidly transforming market, enforcement of contractual obligations is an absolute necessity and remains a cornerstone in any market economy looking to attract and retain leading global corporations.

Regulatory authorities should work with the real estate industry to deliver robust and timely market data, analysis, and information, in keeping with national initiatives already underway.

Property Tightening Measures

In 2013, the central government reiterated that a 20 percent capital gains tax would be levied on home sellers who dispose of their properties within five years. Price control targets would also be set for local governments. Down payment and mortgage loan interest rates for second home purchases would be raised in cities with soaring home prices. In addition, non-local families with one or more homes, as well as non-local families that have not made tax payments or social security payments for the required period, would be banned from buying homes in the cities where they reside.

Older policies still in effect include one providing that only local Chinese residents currently owning one property may purchase additional properties. Non-locals and foreigners (or locals with two or more properties) are not allowed to purchase additional property. The minimum down payment on a second home has increased from 50 to 60 percent. Owners who sell their property within five years of purchase will be required to pay a tax on the sale. Local governments are expected to create a cap on price growth, based upon changes in local income and various affordability measures. This requirement particularly targets tier-two and tier-three cities that are experiencing rapid development.

Recent government measures have been aimed at restricting demand for new homes. However, fewer plots of land have been sold for residential use, which has contributed to rising prices in recent years. AmCham China believes that the Chinese government should refrain from interfering with the market – evidence shows that government intervention has not curbed the rise of housing prices – and focus on developing a housing management system. For example, the government can concentrate on building affordable housing while leaving commercial housing prices up to the market. Many large metropolitan cities around the world offer practical lessons and best practices that could serve as reference points for Chinese officials when they are formulating their own policies. The key for the Chinese government is to improve its system of land deployment.

Sustainability and Green Building

In recent years, the Chinese government has taken a number of important steps to reduce the environmental impact of real estate construction and maintenance. The "Action Plan on Green Planning," which sets goals for green building standards, is detailed in both the 2013 and 2014 *White Paper* Clean Technology chapters.

As of June 2014, the US Green Building Council has certified or registered 1,961 projects in 29 of China's 34 provinces, with a total construction space of 111 million square meters since the Council began certifying buildings in China in 2005. The tremendous growth in Leadership in Energy and Environmental Design green building activity has made China the second largest market globally, bolstering the notion that energy efficiency and environmental sustainability are important to landlords. Further demonstrating the appetite for environmental sustainability is the China Green Building Label. This program is a very positive step forward for the construction and operation of buildings in China in the sense that it improves building standards. However, improved transparency of approvals criteria and increased international recognition of this distinction are needed.

In 2013, China commenced testing a carbon emission trading pilot program beginning with Beijing, with the aim of reducing carbon dioxide emissions to 40-45 percent per unit of GDP by 2025. The Beijing pilot scheme is unique in that it includes commercial buildings. As part of the scheme, buildings that exceed their electricity allotment are fined. Often, this means fining property managers, who lack the unilateral authority to improve building efficiency because electricity accounts are in their names. The efficacy of the program hinges on holding liable the ultimate decision makers – building ownership in this instance – rather than their agents.

The government's efforts are in line with AmCham China's views on the environmental sustainability of real estate and we commend the progress made so far. In the 2014 *China Greentech Report*, the China Greentech Initiative stated that buildings account for 20 percent of China's energy consumption. Adopting regional, climate-based building designs that promote reduced use of heating in the north and air conditioning in the south should be of the highest priority and are consistent with the central government's aims.

AmCham China members welcome the Chinese government's continued efforts to integrate greater energy efficiency in 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

监管机构应与房地产行业协作以提供翔实及时的市场数据、分析资料和信息，从而与已经开展的国家举措保持同步。

房地产紧缩措施

2013 年，中央政府重申对处置其五年之内房产的卖家征收 20% 的资本所得税。同时也将为地方政府设定价格控制目标。在房价飙升的城市中，将提高第二套房的首付比例和按揭贷款的利率。此外，对于拥有一套或多套住房的非当地家庭，以及未能在规定期限中纳税或缴付社会保险款的非本地家庭，将禁止其在所居住的城市中购买住房。

较早的一些政策仍然有效，其中包括：已拥有一套住房的当地居民只能购买一套新房产。非当地居民和外国人（或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。

最近政府采取的措施旨在限制对新建房屋的需求。然而，住宅用途的地块售出却越来越少，这又导致近年来房产价格不断上涨。中国美国商会认为，中国政府不应干涉市场，已经有证据表明政府干预并不能遏制房价，所以中国政府的重点应在关注住房管理系统的开发。例如，政府可以集中精力建设经济适用房，而商品房价格由市场决定。世界上许多大城市提供了实用的经验教训和最佳实践，可供中国官员在制定政策时借鉴。对于中国政府而言，关键在于改善土地配置体系。

可持续性发展和绿色建筑

近年来，中国政府采取了一系列重要举措来降低房产建设和减少对环境的影响。在《绿色建筑行动方案》中，设定了绿色建筑标准的目标，这在 2013 和 2014《白皮书》“清洁技术”一章中有详细阐述。

截至 2014 年 6 月，美国绿色建筑委员会（US Green Building Council）已经认证或注册了中国 34 个省份中 29 个省份的 1961 个项目，自该委员会于 2005 年开始在中国进行建筑认证以来，认证的总建筑面积达到 1.11 亿平方米。在《能源和环境设计先导》绿色建筑活动中所取得的巨大增长已经使中国成为全球第二大市场，并使业主们更加相信能源效率和环境可持续性的重要性。《中国绿色建筑评价标识》则进一步证明对环境可持续发展的渴求。这项计划是中国建筑和建筑运营管理迈出的积极一步，其意义在于提高建筑标准。然而，中国仍然需要提高审批标准的透明度以及这种评价的国际认可度。

2013 年，中国从北京开始测试一项碳排放交易试点项目，其目标是到 2025 年将每单位国内生产总值的二氧化碳排放量减少 40% 至 45%。北京的试点方案的独特性在于其纳入了商业建筑。作为该计划的一部分，凡超过其电力分配额的建筑均予以罚款。在通常情况下，通过处罚缺乏单方面权力的物业管理者以改善建筑效率，因为电力账户挂在他们名下。这一项目的效力取决于让最终决策者（在这里为房屋所有权人）而不是其代理人承担责任。

中国政府的努力与中国美国商会关于房地产环境可持续性的看法是一致的，并且我们对迄今为止所取得的进步表示赞赏。在《中国绿色科技报告 2014》中，“中国绿色技术行动计划”称建筑占中国能耗的 20%。采用区域性基于气候的建筑设计，如减少北方的热耗和减少南方的空调使用，这是重中之重，同时符合中央政府的目标。

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，要想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。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

管控房地产周期

房地产市场日益国际化，特别是在房地产市场总量中占有很大比例的商业房地产。外国投资的全球流动会使当地市场更容易受到房地产市场波动的影响。虽然投机泡沫表现出某种共性，但对其尚未有共同的定义，对其产生的根本原因也未形成一致的认识。然而，人们普遍认为，投机泡沫的发展可描述为一种“社会化热情传染病”，不断上涨的资产价格造成进一步刺激，从而吸引更多的投资者。在 2007–2008 年金融危机之后，经济学家们开始把注意力转向熟悉的实物资产方面，原因在于纯粹的理性选择模型不足以解释市场波动。政策制定者们目前正在重新考虑是否能够或应该从公共利益出发管控主要周期或“泡沫”。

the overall energy footprint of the building sector. Given their wealth of expertise in this sector, our members remain prepared to continue assisting China in these efforts and look forward to continued government support and encouragement in ensuring fair market access and protection of intellectual property rights.

Recent Developments

Managing Real Estate Cycles

Real estate markets are becoming increasingly internationalized, particularly with respect to commercial real estate which accounts for a substantial proportion of the total real estate market. The global flows of foreign investment may make local markets more susceptible to real asset volatility. Although speculative bubbles show certain commonalities, there is no common definition or unanimously accepted root cause of their development. However, it is generally agreed that underlying mechanisms, such as self-reinforcing feedback loops and groupthink dynamics, lead to property prices rising well above the level justified by market fundamentals. The development of a speculative bubble can be described as a "social epidemic of enthusiasm," in which increasing asset prices create further excitement, which in turn attracts more investors. Following the financial crisis of 2007-2008, economists have turned their attention to what is known about real asset cycles as market volatility cannot be fully explained by pure rational choice models. Policy-makers are currently reconsidering whether major cycles or "bubbles" can or should be managed in the public interest.

Overbuilding Risk

One of our primary concerns is the potential for overbuilding in the office and retail sectors, particularly in vast new "central business districts" and "new cities" that local governments are sponsoring on the peripheries of existing city centers. Virtually all tier-two and tier-three cities build at least one, often in conscious expectation of repeating the success of Shanghai's Pudong New Area. Notable examples include Hangzhou's Qianjiang New City and Yujiapu in Tianjin's Binhai New Area, where parts of the planned 9.5 million square meters of real estate imitate New York City's Manhattan.

Such new cities invariably include vast amounts of new office and retail space. While support from government and state-owned enterprises can guarantee a market for some of this space, much of it is built on a "build it and they will come" model whose assumptions regarding demand look increasingly less realistic as China's economic growth continues to slow.

The risk is highest in lower-tier cities such as Wuxi and Changsha, whose small size and manufacturing orientation reduce the necessity for multiple, glittering new financial districts. Mature regional centers such as Tianjin and Hangzhou should fare better, as their growing middle classes and service sectors will contribute to faster absorption of new shopping malls and office space.

Even in stronger markets, the time needed to fill new downtowns could pose financial problems for local governments, which have borrowed large sums to build new cities and accompanying infrastructure, often through China's shadow banking system. Slower-than-expected returns from poorly performing new districts pose a threat that extends beyond simple questions of real estate occupancy.

Banks in China have been lending money to state-owned developers and local government financial vehicles (LGFVs) to build new real estate projects across the country. Many of the state-owned developers and LGFVs have implicit guarantees from the government because they are government-related entities. As a result, banks feel comfortable providing financing despite the potentially unviable nature of some commercial projects. Because of the resulting moral hazard, highly speculative real estate projects are funded and, in many cases, add unneeded supply to cities.

At present, many local governments generate a substantial portion of their tax revenue by selling land to developers. As local government debts have risen, local governments have needed to sell more land. The most highly sought after land has been residential land, because residential units can be pre-sold to generate a quick cash flow, and because residential projects have been highly profitable for developers over the past decade. However, for local governments, the sale of residential land only generates revenue on the initial sale of the land and when the units are sold. Thus, local governments have been encouraging developers to buy more land for commercial projects which, in theory, can generate taxes in perpetuity from the ongoing business activity.

To incentivize developers to purchase commercial land, the government couples the commercial land with residential land. The problem with the coupling is that local governments tend to sell commercial land in areas where large residential projects are viable, but where a commercial project is uneconomical. Local governments are often also involved in the design of the commercial areas, instead of letting the developers design commercial projects that may be better suited for an emerging area.

Property Taxes

The perpetual uncertainty tied to funding sources remains a fundamental problem for local governments in China. While the sale of land-use rights contributes a significant amount of revenue to local governments across the country, this revenue is non-recurring because land is a finite resource. Furthermore, dependency on land sales incentivizes local

过度建设的风险

我们关注的另一个重要问题是办公和零售业存在过度建设的可能性，尤其是大量新建的“中央商务区”和“新城”，这些位于现有城市中心边缘的建筑均为地方政府发起。几乎所有二线和三级城市均至少建设一个此类项目，往往是有意效仿上海浦东新区成功范例。著名的例子包括杭州的钱江新城和天津滨海新区的于家堡，在已规划的 950 万平方米房地产项目中，一部分就是效仿纽约市的曼哈顿。

此类新城无一例外包括大量新建写字楼和零售场所。尽管得到政府支持，而且国有企业可以保证这些建筑面积的部分市场，但更多是以“筑巢引凤”的模型而建设，而这种关于需求的假设看来日渐显得不切合实际，原因在于中国经济增长持续放缓。

二三线城市诸如无锡和长沙等面临着最高风险，由于其城市规模较小，加上制造业导向减少了对多样化、光鲜亮丽的新金融区的需求。而成熟的区域中心，如天津和杭州则应该表现较好，因为其不断增长的中产阶级和服务业将有助于更快地吸纳新建购物商场和写字楼。

即使在较为强劲的市场中，填充新市区所需的时间可能会给地方政府造成财政问题，因为地方政府往往是通过中国的影子银行系统借贷大量资金来建设新城市及其配套基础设施。新区表现不佳导致回报低于预期，其造成的威胁已经不再局限于房地产占用率这样简单的问题。

中国的银行一直在向国有开发商和地方政府融资平台（LGFVs）提供贷款，以在全国各地建设新的房地产项目。作为与政府相关的实体，许多国有开发商和地方政府融资平台得到政府的隐性担保。因此，尽管某些商业项目可能并不可行，但银行仍然心安理得地提供融资。由此而导致的道德风险，以及得到资金支持的高度投机性房地产项目，给城市增加了并非必需的供应量。

目前，许多地方政府很大一部分税收收入源自于向开发商出售土地。随着债务上升，地方政府不得不出售更多土地。其中最抢手的是住宅用地，因为住宅可预售而产生快速现金流，这也是过去十年来开发商从住宅项目中获得高利润的原因所在。然而就地方政府而言，出售住宅用地只能获得土地初始出售和住宅售出时的收入。因此，地方政府一直鼓励开发商购买更多商业项目用地，因为在理论上源源不断的商务活动可以带来永久性税源。

政府为鼓励开发商购买商业用地，就将商业用地和住宅用地捆绑在一起。而这种搭配会造成问题，即地方政府往往在适宜开发大型住宅项目的地区出售商业用地，但在这样的区域中商业项目并不合算。在新开发区中，地方政府倾向于参与商业区域的设计，而不是放手让开发商自行设计可能更适合的商业项目。

房产税

中国地方政府所面临的一个根本问题一直是资金来源不确定性。土地使用权出售虽然给各地方政府带来大量收入，但毕竟土地资源有限，所以这种收入是一次性的。此外，依赖于土地出让会刺激地方政府增加新建项目的土地供应，从而加剧供过于求的风险。根据国家审计署的数据，2013 年政府土地出让收入（通过土地使用权转让）总额为 5630 亿美元（折合人民币 3.5 万亿元），相当于全国 1396 个县和 316 个城市债务偿还总额的 37.2%。

实施全国性房产税制度将有助于政府获得可观、稳定的收入来源，从而用于偿还债务和减少地方经济的债务压力。在本世纪前十年中，中国实际 GDP 增长率高居 10% 左右，此后逐步下降到 2014 年的 7.4% 左右。鉴于其资金来源渠道有限，经济增长放缓加剧了各界对地方政府偿债能力的担忧。更糟糕的是，地方政府融资平台这种负责为地方政府筹集资金的国有实体长期以来被视为银行系统风险的主要来源，其运作和财务流程均缺乏透明度，进一步加剧了地方政府财政崩溃的风险。

房产税不仅有助于实现地方政府财源多元化，而且还能在许多方面缓解财政风险。首先，地方政府通过房产税可获得稳定的资金来源，这将大幅减少其对于本地经济活动中周期性极强的土地交易收入的依赖。其次，鉴于出让土地的税收刺激地方政府以较低补偿征用农民的土地用于开发，对土地价值征税会更好地控制农村土地收购，并为农民提供抵押土地的机会，从而提高其收入和农业生产力。第三，房产税可作为地方政府融资平台的一种可靠替代来源。

房产税会有助于激励地方政府在本地区投资，而房产不断增值会带来更高税收并减少地方政府因税收需要而鼓励开发商建造商用建筑的动机，其实这类建筑不仅开发商不想要，而且本地也不需要。此外，房产税可抑制造就房地产繁荣的投机性投资。今天的供大于求并不意味着明天的供大于求。

房产税对于中国地方政府的融资渠道改革至关重要，

governments to increase the supply of new construction projects, aggravating the risk of oversupply. According to data from the National Audit Office, government income from land sales (via the transfer of land-use rights) totaled US $563 billion (RMB 3.5 trillion) in 2013, equal to 37.2 percent of the total debt repayments for 316 cities and 1,396 counties in China.

Implementing a national system of property taxes would contribute to a sizeable and steady stream of revenue for governments, which could then be used to pay down debts and reduce debt pressure on local economies. Although China's real GDP growth rate hovered at 10 percent in the 2000s, it has since dropped off, settling at around 7.4 percent in 2014. Slower economic growth has increased concern surrounding the capability of local governments to repay debt given their limited avenues for fund sourcing. Further compounding the situation is the fact that LGFVs, the state-owned entities responsible for raising funds for local governments, have long been flagged as key sources of risk for the banking system. Their lack of transparency both in operation and within their financial processes further heightens the risk of local government fiscal collapse.

Property taxes can aid in the diversification of local government funding sources while easing financial risks in several ways. First, they would enable local governments to obtain a stable funding source, which would make them far less reliant on the very land transaction revenues that are highly cyclical to local economic activity. Second, given that land sales taxes have incentivized local governments to expropriate land from farmers for development with little compensation, taxing the value of land would better control rural land acquisitions and provide opportunities for farmers to mortgage land, which can raise their incomes and agricultural productivity. Third, property taxes can serve as a reliable alternative to LGFVs.

A property tax would have the benefit of incentivizing local governments to invest in their areas, as increasing property values could then result in higher taxes and reduce the incentive for local governments in need of tax revenue to encourage developers to build commercial space they do not want and that the local area does not need. In addition, it would curb speculative investment in real estate, which has helped to create the boom in real estate construction. Oversupply today does not mean oversupply tomorrow.

Essential to the reform of local government funding sources in China, property taxes have also proven successful in developed countries. However, to ensure fair and adequate levying on properties, it will be necessary to create a real estate registration system capable of identifying not only current owners, but also new owners after the transfer of land rights. No such nationwide system in China currently exists on the level needed to support the taxation of privately owned property, but officials have recently announced their intention to do so, which bodes well for laying the groundwork for the implementation of a China property tax system in the future.

Recommendations

- **Regulatory authorities should work with the real estate industry to deliver robust and timely market data, analysis, and information, in keeping with national initiatives already underway.**
- National authorities should adopt targets for delivering enhanced transparency, broadly defined, across real estate markets and related markets for securities.
- Policy makers at the national and local levels should engage with the real estate industry on the impact of public policies on the real estate sector.
- Establish a platform for tracking significant new policies and recent research, and communicate these to senior decision-makers in the real estate and financial sectors, and to public sector policy makers. Specific areas of focus should include:
  - The economic costs and benefits of alternative policy options, as applied to real estate sectors;
  - Developments in derivative markets and their impact on real estate;
  - Reform of the banking sector and its impact on real estate;
  - The impact of microeconomic factors, such as planning regimes, bankruptcy processes, and consumer protection legislation, on real estate market volatility;
  - Development of readily and publicly accessible registries for provincial and national property rights and interests.

而且其在发达国家也取得了成功。然而，为确保房产公平和征税适当，有必要建立一种房产登记制度，以能够识别当前业主和土地使用权转让后的新业主。目前中国尚未建立针对私房征税的全国性登记系统，不过官方最近宣布了建立这种制度的意向，这预示着未来中国房产税制度的实施奠定了基础。

建 议

- **监管机构应与房地产行业协作以提供翔实及时的市场数据、分析资料和信息，从而与已经开展的国家举措保持同步。**
- 国家有关部门应制定目标，明确界定整个房地产市场以及相关证券市场并提高其透明度。
- 国家和地方各级政策制定部门应就公共政策对房地产行业的影响与房地产行业进行沟通。
- 建立一种平台以跟踪重大的新政策和最新研究，并将此类内容传达给房地产和金融行业的高级决策者以及公共领域的政策制定者。具体的重点领域应包括：
  - 应用于房地产行业的备选政策产生的经济成本和效益；
  - 衍生产品市场的发展状况及其对房地产的影响；
  - 银行部门的改革及其对房地产的影响；
  - 微观经济因素，如规划制度、破产流程和消费者权益保护立法等，对房地产市场波动的影响；
  - 建立对公众开放的省级和国家级产权登记体系。

Retail and E-Commerce

Introduction

China's retail industry experienced many challenges and opportunities in 2014. Physical stores experienced enormous pressure from declining sales and competition from online retailers and new technologies, which are transforming China's modern retail industry. Yet, potential new markets are developing in second, third, and fourth-tier cities as China continues to urbanize. E-commerce, logistics, and distribution remain the key forces driving domestic consumption.

The Chinese government continues to improve market access for foreign retailers and promote the development of the circulation sector (which includes wholesale, retail, and logistics) by improving legal and regulatory systems, streamlining administrative procedures, loosening market access constraints, and shifting from market entry approval requirements to concurrent and post-event regulations.

Foreign-invested enterprises play an important role in China's retail industry, accounting for about 15 percent of employment in the sector. AmCham China hopes that the Chinese government will continue its efforts to create a fair and transparent regulatory environment for all retail entities and consistently enforce laws and regulations.

Ongoing Regulatory Issues

Food Safety

Food safety remained a top concern in 2014, not only for the retail sector, but for society as a whole. AmCham China highly appreciates the Chinese government's continued efforts to optimize food regulatory and enforcement systems by amending its Food Safety Law and restructuring enforcement bodies.

Legal Liabilities of Food Operators and Producers

Current regulatory and enforcement mechanisms concentrate on downstream, customer-facing food operators in the food supply chain. Strengthened supervision is still needed upstream in the food supply chain (e.g., in farms, processing centers, slaughterhouses) where there is often a lack of capacity to implement or awareness of relevant laws, regulations, and standards.

In reality, food safety problems often arise before the product reaches the retailer, and it is very difficult for retailers to monitor the entire supply chain of all products sold in their stores. When working with suppliers, a retailer is only able to review the supplier's certificates, licenses, and test reports. It is costly and time consuming to verify those papers' authenticity or ensure that the supplier's food products are always processed and transported in compliant ways. However, when food producers fail to meet relevant standards or behave fraudulently (e.g., forging certificates), retailers are often the ones who are penalized and suffer reputational damage.

AmCham China recommends that the Chinese government further define and distinguish the legal liabilities of food operators and producers – and supervise all sectors along the food supply chain – to ensure that food safety responsibility is identified in a more scientific and effective way as discussed in greater detail below.

Food Traceability

Food traceability systems are an important tool for ensuring food safety. Several Chinese agencies have recently begun developing independent traceability systems for certain food categories. However, system requirements and their implementation are inconsistently applied across the country. Additionally, most of these systems will be implemented or piloted by retail outlets. Thus, there is concern that the multiplicity of food traceability systems and inconsistency in their implementation at the local level will impede food traceability in China, while placing unnecessary financial and managerial burdens on retailers, particularly those that operate nationwide, instead of allocating responsibility in accordance with risk along the entire supply chain.

AmCham China strongly recommends that the Chinese government streamline the efforts of the China Food and Drug Administration (CFDA), Ministry of Commerce (MOFCOM), Ministry of Agriculture, General Administration of Quality Supervision, Inspection, and Quarantine, and National Health and Family Planning Commission through

零售与电子商务

引 言

2014 年，中国的零售行业经历了诸多挑战和机遇。实体店面临诸多压力，比如销售下滑，来自网上零售商的竞争，以及新技术的不断涌现，中国的现代零售行业正在发生转变。随着中国城镇化进程的推进，二线、三线和四线城市，作为潜在的新市场，也在发展壮大。电子商务、物流和配送仍然是推动国内消费的重要力量。

中国政府通过改进法律和监管制度、简化行政程序、放宽市场准入限制、从市场准入审批要求转移到事中事后监管等措施，继续改善外资零售企业的市场准入，促进流通领域（包括批发、零售和物流）的发展。

外资企业在中国零售行业中扮演着重要的角色，约占该行业就业的 15%。中国美国商会希望，中国政府能够继续努力为所有零售商创造一个公平、透明的监管环境，始终如一地执行各项法律和法规。

现存监管问题

食品安全

食品安全依然是 2014 年零售行业以及全社会的关注重点。中国政府通过修改《食品安全法》和重组执法机构，继续优化食品监管和执行制度，中国美国商会对此表示高度赞赏。

食品生产经营者的法律责任

目前的监管和执行机制集中在食品供应链下游，即面对消费者的食品经营者。食品供应链的上游（例如，农场、加工中心、屠宰场），因为相关法律、法规和标准的执行不力或意识淡薄，仍然需要加强监管。

事实上，食品安全问题经常发生在产品到达零售商之前，零售商很难监控店内销售的所有产品的整个供应链。对于合作的供应商，零售商只能够审查这些供应商的证明、许可和检验报告。验证这些文件的真伪或者确保供应商对食品产品的加工和运输符合相关规定是一件费钱费时的事情。然而，当食品生产者未能遵守相关标准或者存在欺诈（例如，伪造证明）时，受到处罚并且声誉受损的却经常是零售商。

中国美国商会建议中国政府进一步明确和区分食品生产者和经营者的法律责任，将食品供应链的所有环节都纳入监管，确保以更加科学和有效的方式（详情见下文）确定食品安全责任。

食品可追溯

食品追溯制度是确保食品安全的一项重要工具。有几家中国机构最近已经开始为某些食品类别制定单独的追溯体系。然而，体系及其执行要求在全国各地没有得到一致的实施。而且，这些体系大都选择在零售商店施行或试点。因此，食品追溯体系的多重性及其在地方上的实施不一致有可能阻碍中国食品追溯制度的发展。这非但无助于按照整个供应链的风险分布情况分配责任，反而会给零售商，特别是全国性经营的零售商，造成不必要的财务和管理负担。

中国美国商会强烈建议中国政府通过统一监管，确定高风险类别的优先次序，从而简化国家食品药品监督管理总局、商务部、农业部、国家质量监督检验检疫总局、国家卫生和计划生育委员会等部门的监管流程。供应链上的食品生产经营者应当适用统一的全国性标准，以确保这些体系的效率和有效性。中国美国商会随时准备好愿与相关部门合作，共同在中国建立一个世界级的食品追溯体系。

食品安全领域的最新进展

全国人大正在审议《食品安全法》。中国美国商会注意到，为了确保食品安全，中国政府已经采取积极措施致

unified regulations, prioritizing high-risk categories. Both food producers and operators along the supply chain should be held to consistent national requirements to ensure the effectiveness and efficiency of these systems. AmCham China is prepared to work collaboratively with the relevant authorities to create a world-class system of food traceability in China.

Recent Developments in Food Safety

The Food Safety Law is approaching the final phase of approval by the National People's Congress. AmCham China recognizes the positive steps that have been taken to establish a strict and comprehensive regulatory framework for ensuring food safety and appreciates the Chinese government's solicitation of and respect for the opinions of industries and trade associations on these revisions.

However, there is concern that the new version of the Food Safety Law may be subject to over- and under-regulation in different areas. For example, in the latest draft published by the National People's Congress in December 2014, the regulations on labeling – which do not directly relate to the actual safety of food – are overly detailed, but the administrative penalties for fraud – a serious concern in food safety – are relatively modest, with more severe criminal penalties unlikely to be available.

Single-Purpose Commercial Prepaid Cards (Shopping Cards, Gift Cards)

Following issuance of the "Administrative Measures on Single-Purpose Commercial Prepaid Cards (Trial Implementation)" in September 2012 and the following detailed documents clarifying their implementation, AmCham China has seen positive changes within the industry regarding transparency, consumer rights protection, and risk prevention. In order to further promote the healthy development of the industry, AmCham China makes the following recommendations.

Classification of Issuers

We appreciate the Chinese authorities' efforts to manage potential risks by establishing three categories of card issuers: Group Issuer, Band Issuer, and Scale Issuer. Each category is guided by various requirements including constraints on trademark license registration and fund management. However, current classification definitions are indistinct and it is difficult to differentiate the risk levels between the three categories.

AmCham China recommends that the relevant agencies introduce a credit system to enable dynamic credit ratings and to categorize and regulate vending enterprises based on these ratings.

Standardizing Prepaid Card Transactions

China still lacks national standards for the issuing of invoices or *fapiao* in prepaid card sales and the activities of sales promotions or discounts, which can lead to regulatory loopholes. This also increases vending enterprises' risks due to uneven law enforcement between different regions, such as the inconsistent interpretation of the "Anti-Unfair Competition Law of the People's Republic of China" (Anti-Unfair Competition Law) by local regulators. What is a common practice for promoting sales in one city or district might be deemed commercial bribery elsewhere.

AmCham China encourages further standardization in these areas to reduce regulatory risks and the inconsistency of law enforcement.

Recent Developments in Prepaid Cards

MOFCOM is revising the "Administrative Measures on Single-Purpose Commercial Prepaid Cards." In the public draft, vending enterprises are required to deposit higher proportions of funds, while the letter of guarantee is no longer an eligible measure of deposited funds. Therefore, performance guarantee insurance appears to be the most feasible alternative for vending enterprises.

Retailer-Supplier Relations

Disputes regarding promotion fees and other transactional issues continued to affect retailer-supplier relations in 2014. Without a third-party mediation scheme, disputes are easily intensified.

AmCham China encourages the further standardization of national enforcement practices in this area and the introduction of third party retailer-supplier mediation platforms.

Recent Developments in Retailer-Supplier Relations

The State Council included legislation on fair dealing between retailers and suppliers in its 2014 plan. Transactions between retailers and suppliers are routine civil and commercial acts which are already well regulated by comprehensive legal and regulatory systems, including both the Contract Law and the Anti-Unfair Competition Law. AmCham China recommends the Chinese government to reconsider the necessity of developing new legislation specifically on transactions between retailers and suppliers.

Retail Corporate Structure and Local Government Demand for Wholly Foreign-Owned Enterprises

In recent years, increasing numbers of city governments, and sometimes even district governments, require retailers to set up wholly foreign-owned enterprises (WFOEs) in their

力于建立一个严格、全面的监管架构，中国美国商会赞赏中国政府在修订相关法规时能够征求和尊重业界和行业协会的意见和建议。

然而，新版《食品安全法》在很多领域可能存在过度监管或监管不足的问题。例如，在全国人大 2014 年 12 月发布的最新草案中，与实际的食品安全没有直接关联的标签管理规定过于繁琐，而对于严重关乎食品安全的欺诈行为，行政处罚力度相对较轻，似乎没有规定更严厉的刑事处罚。

单用途商业预付卡（购物卡、礼品卡）

继 2012 年 9 月《单用途商业预付卡管理办法（试行）》及其实施细则发布之后，中国美国商会已经看到这一行业在透明度、消费者权益保护和风险防范方面发生了积极的变化。为了进一步推动行业的健康发展，中国美国商会提出以下建议。

发卡企业的分类

我们赞赏中国当局为了管理潜在风险将发卡企业分为三类的做法，即集团发卡企业、品牌发卡企业和规模发卡企业。每一类别都有备案和资金管理等各种要求和限制。然而，目前的分类界定并不明晰，难以区别三个类别的风险水平。

中国美国商会建议相关部门引进信用体系，实施动态的信用评级，根据评级结果对销售企业进行分类和监管。

进一步规范预付卡经营行为

对于预付卡销售以及促销或折扣活动，中国仍然没有全国性的发票开具标准，导致监管存在漏洞。由于不同地区的执法存在不一致，例如，地方监管部门对《中华人民共和国反不正当竞争法》（《反不正当竞争法》）的解释不一致，导致销售企业的风险增加。在一个城市或地区为促销进行的正常活动在其他地方就有可能被视为商业贿赂。

中国美国商会鼓励进一步提高这些领域的标准化程度，以降低监管风险和执法不一致。

预付卡领域的最新进展

中华人民共和国商务部正在修改《单用途商业预付卡管理办法》。在公开草案中，销售企业被要求存入更高比例的资金，不再允许使用银行保函。因此，保证保险似乎成为销售企业最可行的替代选择。

零售商—供应商关系

2014 年，与促销费和其他交易问题有关的争议继续影响零售商—供应商关系。在没有第三方调解机制的情况下，争议很容易激化。

中国美国商会鼓励进一步规范这一领域的全国性执法行为，引进第三方零售商—供应商调解平台。

零售商—供应商关系最新进展

国务院将制定《零售商供应商公平交易管理条例》列入 2014 年立法计划。零售商和供应商之间的交易只是正常的民事和商事行为，已经有适用的综合性法律和监管制度，其中包括《合同法》和《反不正当竞争法》。中国美国商会建议中国政府重新考虑为零售商和供应商之间的交易制定专门新法规的必要性。

零售企业公司结构以及地方政府对外商独资企业的要求

近年来，有越来越多的市政府甚至区政府要求零售商在其管辖范围内设立外商独资企业。零售业属于资本密集型行业，投资一个店铺的成本经常导致店铺在最初经营的几年面临亏损。为了收税，地方政府要求店铺注册为外商独资企业。而店铺最初几年亏损，城市并不会实现税收收入，重要的是，较大规模的企业发生的损失由于法律限制，无法享受减免税款的待遇。这种日益普遍的要求店铺注册为外商独资企业的做法给企业造成沉重的负担，缺乏税收效率。中国美国商会建议各级政府停止这种做法，采取措施推动建立一个统一、开放的全国性市场体系。应当探索其他结构，例如，只在省级层面设立外商独资企业，由省政府向下辖城市分配税费收入。

中国美国商会很高兴看到各部委已经建立相关机制，试图消除贸易垄断和区域市场准入壁垒，允许货物和生产在全国范围内自由流动。我们建议通过这些机制促使地方政府不再要求零售商在本市和本区设立外商独资企业。

价格监管

虽然中国的零售业已经发生巨大的变化和发展，却没有根据新的形势修订上世纪 90 年代及本世纪初颁布的《中华人民共和国价格法》（《价格法》）及其从属法规。这种不协调给监管部门以及中国零售行业的进一步发展带来了挑战。

jurisdictions. Retail is a capital-intensive business and the cost of investment in a store often results in financial losses during the first years of a store's operation. Local governments demand that a store register as a WFOE in order to receive tax revenues. As the store loses money in its first years, the city receives no tax income and, importantly, the losses incurred by the business become trapped in the legal structure and are not tax deductible for the larger entity. This increasingly common phenomenon of requiring that stores register as WFOEs is tax-inefficient and onerous. AmCham China suggests that government agencies at all levels stop this practice and take measures to promote a unified nationwide and open market system. Alternate structures should be explored, for example, whereby WFOEs are only established at the provincial level and provincial governments distribute tax revenue to their cities.

AmCham China is pleased to see that ministerial mechanisms have been established to try to eliminate trade monopolies and regional entry barriers, allowing for the free movement of goods and production throughout the country. We suggest that these mechanisms should lead local governments to relinquish the requirement that retailers set up WFOEs in their cities and districts.

Pricing Regulations

Although China's retail industry has undergone enormous change and development, the "Price Law of the People's Republic of China" (Price Law) and its subordinate regulations, issued in the 1990s and 2000s, have not been amended to adapt to this new era. This mismatch generates challenges for both regulators and the further growth of China's retail industry.

Price Fraud

Price fraud is a serious legal charge in any jurisdiction. However, the definition of price fraud in the "Provisions of the Prohibition of Price Fraud Behavior" is vague. Consequently, professional complainants, as discussed in the next section, take advantage of this lack of clarity and seek compensation against retailers' random and unintentional mistakes.

AmCham China suggests that the Chinese government further clarify the definition of price fraud and distinguish between intentional and unintentional pricing mistakes.

Price Regulations for Online Retailers

Such antiquated pricing regulations are hardly applicable to the current realities of online retailing. This disparity makes it difficult to effectively and fairly regulate both online and offline retailing.

AmCham China strongly recommends that the Chinese government revise the Price Law and its subordinate regulations and develop a unified pricing regulatory system applicable to both online and offline retailing formats.

Professional Complainants

In 2014, AmCham China members continued to experience problems caused by so-called professional complainants (also known as professional faultfinders) – a phenomenon unique to the Chinese market – as also described in the Food and Beverage chapter. These complainants seek out retail outlets' and online vendors' mistakes on pricing, labels, or product quality, and extort retailers for compensation under threat of reporting the problem to the government or media.

Professional complainants differ entirely from ordinary consumers, based on their focus and behavior. The behavior of professional complainants resembles that of members of organized crime. It is commonplace for them to physically abuse store management and cause disruptions affecting ordinary customers. They appear focused exclusively on large retailers, who face reputational and compliance costs related to the complaints. Their actions offer virtually no value for consumers and waste public resources with their high volumes of reports.

AmCham China suggests that relevant Chinese agencies conduct comprehensive studies on this phenomenon, align perspectives on professional complainants, and identify effective measures to tackle this issue.

New Policies May Incentivize Professional Complainants

AmCham China members are concerned that recent regulatory developments may encourage the activities of professional complainants. On March 15, 2014, the Supreme People's Court put into effect the "Regulation on Certain Issues on the Application of Law in the Handling of Food and Drug Dispute Cases." This regulation supports the activities of "buying fake [food and drug] products on purpose," which is regularly undertaken by professional complainants. Additionally, a number of local governments issued incentive policies which highly encourage the reporting of concerns in the areas of consumer rights protection and food safety. A key distinction is that ordinary consumers report to food safety regulators for the sole purpose of protecting their own rights and safety, rather than for personal benefit. Thus, such incentive policies may have the perverse effect of encouraging professional complainants without offering any actual benefit to consumers.

E-Commerce

In 2014, e-commerce continued to be the powerhouse of Chinese domestic consumption and received strong support from the Chinese government. Competition and integration between online and offline retailers is boosting the healthy development of China's retail industry, to the benefit of Chinese consumers.

价格欺诈

价格欺诈在任何地方都是很严重的罪名。然而，《禁止价格欺诈行为的规定》对价格欺诈的定义较模糊，正如下面谈到的，结果导致职业投诉人利用这种模糊，针对零售商无意中或非故意犯下的错误寻求赔偿。

中国美国商会建议中国政府进一步明确价格欺诈的定义，将故意和非故意的价格错误区分开来。

对网上零售商的价格监管

这种已经过时的价格监管与网上零售行业的发展现状不符。这种脱节使监管机构难以对线上和线下零售活动实施有效和公平监管。

中国美国商会强烈建议中国政府修改《价格法》及其从属法规，确立一个统一的同时适用于线上和线下零售模式的价格监管体系。

职业索赔人

2014 年，中国美国商会的会员企业继续遭遇职业索赔人（也称为“专业找错人”）这一中国市场特有现象造成的问题——还可参见“食品饮料”部分的介绍。这些索赔人搜罗零售商店和网上销售商在价格、标签或产品质量方面的错误，威胁向政府或媒体报告，借机向零售商索要赔偿。

从关注焦点和行为方式来看，职业索赔人与普通消费者截然不同。职业索赔人的行为与有组织犯罪成员的行为相似。他们经常实质性地扰乱店铺经营，给普通消费者造成不良影响。他们似乎只关注那些一旦遭遇投诉将面临信誉和合规成本的大型零售商。这些人的行为对消费者几乎没有任何价值，他们的大量举报也是在浪费公共资源。

中国美国商会建议中国相关部门对这一现象进行全面调查，统一对职业索赔人的认知，并确定有效措施来解决这一问题。

新政策可能鼓励职业索赔人

中国美国商会的会员企业担心最新的监管政策可能会鼓励职业索赔人的行为。2014 年 3 月 15 日，最高人民法院发布《关于审理食品药品纠纷案件适用法律若干问题的规定》，对“知假买假（食品和药品）”的行为表示支持，而这正是职业索赔人经常干的事情。此外，很多地方政府还发布激励政策，积极鼓励民众举报消费者权益保护和食品安全领域的问题。关键的区别在于，普通消费者向食品安全监管部门举报只是为了保护自身的权利和安全，而不是为了从中获利。因此，这些激励措施可能适得其反，只能鼓励职业投诉人，对消费者没有任何实际好处。

电子商务

2014 年，电子商务仍然是中国国内消费的强大推动力，并且得到中国政府的大力支持。线上和线下零售商之间的竞争和整合正在推动中国零售行业的健康发展，造福中国消费者。

中国美国商会高度赞赏中国政府为取消外资进入电子商务行业的市场准入限制做出的努力。我们鼓励相关部门进一步放宽其他限制，其中包括国务院修改的《外商投资电信企业管理规定》规定的外商投资电信增值服务企业的出资比例不得超过 50% 的限制。

电子商务行业的最新动态

2015 年 4 月 10 日起，《外商投资产业指导目录（2015 年修订）》开始正式施行。中国美国商会很高兴看到电子商务和网上销售从限制名单上取消。此外，2015 年 1 月 13 日，工信部宣布取消在中国（上海）自由贸易试验区注册的电子商务企业的外商投资上限，表明中国政府有意放松电子商务企业的市场准入。我们期待这些政策能够在全国范围内推行。

建 议

- **将各种形式的零售业务模式纳入统一的监管体系，实行全国统一的执行标准。**
- 进一步明确和区分食品经营者和生产者之间的法律责任，平衡对食品供应链上各个行业的监管重点，确保对食品安全实施有效的监管，促进食品安全的社会治理。[全国人大和国家食品药品监督管理总局]
- 简化相关机构的流程，建立全国统一的食品追溯体系。[国务院和国家食品药品监督管理总局]
- 引进相关体系，根据信用评级对预付卡销售企业进行分类和监管。[国务院和商务部]
- 重新考虑对零售商和供应商之间的交易进行立法的必要性。[国务院和商务部]

AmCham China highly appreciates the Chinese government's efforts to remove market access constraints to foreign investment in e-commerce. We encourage relevant agencies to further loosen remaining restrictions, including the 50 percent cap on foreign investors' capital contributions to value-added telecom service enterprises set in the State Council's revised "Provisions on the Administration of Foreign-Invested Telecom Enterprises."

Recent Developments in E-Commerce

On April 10, 2015, the revised "Guiding Catalogue on Foreign Investment in Industry" entered effect. AmCham China was pleased to see that e-commerce and online sales have been removed from the Restricted category. Additionally, on January 13, 2015, the Ministry of Industry and Information Technology announced the removal of the ceiling on foreign investment in e-commerce for enterprises registered in the China (Shanghai) Pilot Free Trade Zone, indicating the Chinese government's intention to relax market access constraints on e-commerce enterprises. We look forward to the expansion of these policies nationwide.

Recommendations

- **Regulate the retail industry, in all its business formats, under the same regulatory system, using consistent enforcement standards nationwide.**
- Further define and distinguish legal liability between food operators and producers and balance the focus of supervision between all sectors of the food supply chain to ensure the effectiveness of food safety regulations and to promote societal governance on food safety. [NPC and CFDA]
- Streamline the efforts of relevant agencies to build a unified national food traceability system. [State Council and CFDA]
- Introduce a system to categorize and regulate prepaid card vending enterprises based on credit ratings. [State Council and MOFCOM]
- Reconsider the necessity of legislation on the transactions between retailers and suppliers. [State Council and MOFCOM]
- Revise the Price Law and its subordinate regulations to develop a unified pricing regulatory system applicable to both online and offline retailing formats. [NPC, State Council, and NDRC]
- Conduct comprehensive studies on professional complainants to align understanding on this phenomenon and to identify effective measures to tackle it. [NDRC and SAIC]

- 修改《价格法》及其从属法规，确立一个统一的同时适用于线上和线下零售模式的价格监管体系。[全国人大、国务院和国家发改委]
- 对职业索赔人进行广泛的调研，统一对这一现象的认知，确定有效的解决措施。[国家发改委和国家工商管理总局]

Part Four:
Regional Issues
区域性问题

Provincial and Local Investment Environment

In 2014, the majority of AmCham China members continued to expand their operations throughout China. Though China's formerly booming economic growth has slowed significantly, investment opportunities in many localities remain attractive as many provinces and cities continued to report rates of GDP growth higher than the national average. As foreign companies develop their operations, disparities between regional business environments – including inconsistent enforcement of central policies, varying levels of infrastructure development, and the financial condition of certain provinces and localities – have become apparent and are key challenges to our members.

Investing in China's localities, regardless of industry or growth statistics, requires businesses to work with local stakeholders. AmCham China members strive to work collaboratively with local and provincial officials to improve their business operations, to contribute to the development of China, and offer opportunities to Chinese citizens in these regions.

This regional section of the *White Paper* highlights some of the challenges and successes experienced in 2014 in the cities of Chengdu, Chongqing, Shanghai, Tianjin, Wuhan, and in the northeast China region. Contributions were submitted by AmCham China's chapters in Central China, Northeast China, and Tianjin, as well as our fellow chambers, the American Chamber of Commerce in Shanghai and the American Chamber of Commerce in Southwest China. Though each region has its unique challenges and opportunities, three key needs resonate throughout this section: ❶ infrastructure essential to the development of healthy, livable cities for Chinese and foreign professionals; ❷ consistent and transparent regulatory regimes essential to support the development of local and foreign businesses alike; and ❸ human resource policies to facilitate the attraction and retention of skilled local Chinese and foreign professionals.

Infrastructure

China's cities continued to focus on building infrastructure in 2014 that will benefit both foreign and Chinese companies. AmCham China applauds provincial and central governments for encouraging the development of business friendly infrastructure. Members have noted with excitement the Tianfu New Area in Chengdu, the introduction of new international schools in Wuhan, and the proposed integration of public transportation for the new regional plan for Beijing, Tianjin, and Hebei province. Although more still needs to be done, provincial and local governments deserve credit for their ongoing commitment to improving the quality of life of Chinese and foreign professionals working in these areas.

That said, members continue to express concern about issues such as air pollution, traffic congestion, and the quality of essential services such as healthcare and education. These areas are considered to be key barriers to attracting and retaining skilled Chinese and foreign staff in the regions in which AmCham China member companies invest.

Regulatory Reforms

Members have expressed both concern and excitement regarding various regional policy reforms. Foreign-invested enterprises (FIEs) have noted the success of the Ministry of Commerce's favorable tax policy incentives for companies which invest in western China, as noted in the Chengdu chapter. However, AmCham Southwest members have also encountered tax challenges, such as double taxation in social insurance and compulsory taxes levied on companies that employ foreign workers.

Free Trade Zones

Plans for the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) and the China (Tianjin) Pilot Free Trade Zone generated significant interest from the foreign business community in 2014. Despite the slow pace of reforms and the longer-than-expected negative list in the Shanghai FTZ, all of the China-based AmChams remain interested in the success of the Shanghai FTZ and await the replication of these reforms in the newly announced FTZs in Tianjin, Guangdong, and Fujian. We urge local planners to be bold in these efforts, and to draw upon the expertise and resources that the foreign companies offer.

Human Resource Concerns

In AmCham China's 2015 *Business Climate Survey*, 61 percent of respondents indicated that labor costs continue to be a top business challenge for their China operations. Though the results of similar surveys conducted in many of the cities featured in this section indicate that lower costs of labor are

省市及地方投资环境

2014 年，中国美国商会大部分会员企业继续在全国各地拓展业务。虽然中国之前的高速经济增长已经大幅下降，但是，许多地方的投资机会仍然极具吸引力，因为许多省市报告的国内生产总值增速仍高于全国平均水平。这些省市报告的数据显示，国内生产总值增速继续高于全国平均水平。随着外资企业的业务发展，各地区商务环境之间的差异开始凸显出来并成为我们会员企业面临的主要挑战，其中包括各地区对中央政策的执行不一致、基础设施发展水平不同、以及某些省市的金融条件差异等。

在中国各地投资，无论是什么行业或增长统计数据如何，都需要企业与当地利益相关者合作。中国美国商会会员企业努力与地方和省市官员合作，改进自身的业务经营，为中国的发展贡献自己的力量，为该地区的中国公民提供机会。

《白皮书》的地区章节重点介绍了 2014 年中国美国商会会员企业在成都、重庆、上海、天津、武汉以及中国东北地区面临的挑战和取得的成就。中国美国商会华中、东北和天津办公室，以及上海美国商会和西南美国商会都提供了稿件。虽然每个地区都有不同的挑战和机遇，但却存在以下三方面的共同需求：❶ 为中国和外国专业人士创建健康宜居城市所需的基础设施；❷ 支持本地和外资企业发展所需的统一、透明的监管制度；以及 ❸ 吸引和留住国内外技术专业人员的人力资源政策。

基础设施

中国各个城市在 2014 年仍继续大力建设基础设施，外资和内资企业都将从中受益。中国美国商会赞赏省级和中央政府鼓励发展益于营商的基础设施的努力。会员企业十分高兴地注意到，成都启动了天府新区、武汉设立了新的国际学校，以及京津冀地区拟整合公共交通规划等。虽然还有很多事情需要去做，但是，省市和地方政府一直致力于改善中外专业人士所在地区的生活质量，这是值得称赞的。

即便如此，会员企业仍然十分关心空气污染、交通拥堵、医疗和教育等基本服务的质量问题。这些问题关系到中国美国商会会员企业投资所在地区是否能吸引和留住中外技术人才。

监管改革

对于各种各样的地区政策改革，会员企业喜忧参半。外商投资企业注意到，商务部对投资中国西部的企业提供了税收优惠，如“成都”一章中所述。但是，西南美国商会的会员企业也面临着税收方面的挑战，例如，聘用外国员工的企业面临社会保险双重征税和强制性税费。

自由贸易区

2014 年，外资企业对中国（上海）自由贸易试验区（上海自贸区）和中国（天津）自由贸易试验区的规划表现出浓厚的兴趣。虽然上海自贸区的改革进展缓慢，负面清单比预想的要长，但是，美国商会在中国设立的各个机构仍然对上海自贸区的成功十分感兴趣，并且期待在最近宣布的天津、广东和福建等地自贸区能够复制这些改革措施。我们促请地方规划部门能够大胆尝试，充分利用外资企业提供的专业知识和资源。

人力资源问题

根据中国美国商会 2015 年的“商务环境调查”，百分之六十一的受访者表示劳动力成本仍是其在华经营面临的主要挑战。虽然在很多城市进行的类似调查的结果表明，中国二、三线城市较低的劳动力成本仍然是吸引投资的主要优势，但这些地区的劳动力成本正在快速上涨，给这些地区的外资企业带来了经营挑战。这些地区的外资企业还常常难以吸引和留住合格的员工。中国美国商会鼓励继续改善当地教育机会，包括重视外语学习，以此帮助解决中国城市面临的合格劳动力短缺的问题。

major benefits to investing in second- and third-tier Chinese cities, these regions are also experiencing significant labor cost increases, thus presenting operational challenges to the FIEs in these cities. FIEs in these regions also oftentimes experience difficulties in attracting and retaining qualified employees. AmCham China encourages continued improvements in local educational opportunities, including an emphasis on foreign language learning, as one way to help address shortages of qualified labor in China's cities.

Investment-Related Debt Concerns

While China has undertaken a comprehensive reform of the economic model which brought it to this point, the transition to a more sustainable model – driven by domestic consumption and a rebalancing between services and manufacturing – is proving challenging for many provinces and local governments that had grown dependent on the borrowing that financed so much of their development. Government efforts to rein in debt and bring greater transparency and discipline to local government finances are proving difficult. With the overall economy now slowing and greater caution about provincial and municipal balance sheets expressed by international rating agencies, foreign businesses are also becoming more sensitive to the underlying financial condition of the localities where they do business, and whether the impressive investment-driven growth statistics can be maintained.

与投资相关的债务问题

虽然中国已经开始全面改革现行的经济模式，但是，事实证明，对于仍依赖借贷实现发展的很多省市和地方政府来说，虽然可持续发展模式受国内消费驱动并能够实现服务业和制造业之间的再平衡，但向该模式的转变仍具有很大挑战性。政府为限制债务、提高地方政府财政透明度和规范性所做的努力也面临着重重困难。随着总体经济增长速度放缓，国际评级机构对省市和地方政府资产负债表的态度更为谨慎，外资企业对业务经营所在地潜在的金融形势以及是否能够继续维持投资驱动的高速增长数据变得更加敏感。

Chengdu

This chapter was contributed by the American Chamber of Commerce in Southwest China.

Introduction

Chengdu, the capital of Sichuan Province, is the commercial, innovation, industrial, and consumer hub of western China. It ranks first in the region in almost every metric, including number of Fortune 500 companies, import-export volume, and number of annual passengers and cargo that pass through its international airport. It also boasts the most foreign consulates and the largest foreign community. In 2014, Chengdu's gross domestic product grew 8.9 percent year-on-year, surpassing RMB 1 trillion (US $162 billion) for the first time. The secondary sector was led by the electronics and automotive industries, which grew 15.4 percent and 13.2 percent, respectively, over 2013. The service industry generated added value of US $83.2 billion (RMB 512.47 billion), up 8.6 percent over 2013, and the financial sector saw rapid growth in 2014, increasing added value by 15.9 percent. However, total annual fixed-asset investment in the secondary sector fell 13.4 percent.

In spite of these impressive metrics, there is still room for improvement. For example, there is a shortage of qualified foreign talent. Alongside the difficulty in acquiring visas for non-expert or non-specialist foreign talent, this is one of the most common complaints of foreign-invested enterprises (FIEs) operating in Chengdu.

Chengdu's municipal government – as well as the Sichuan provincial government – appears determined to attract more FIEs to the region. Tax reduction policies enacted in 2010 and extended through 2020 aimed both to reward established FIEs and attract new ones. An official complaint center for foreign businesses was recently established by the Sichuan provincial judicial department, which is another indication of the local government's attempt to make a more welcoming environment for FIEs in southwest China.

However, according to AmCham Southwest's survey of its Chengdu members, these efforts alone are too narrowly focused to encourage FIEs to establish a new base in Chengdu. More attention to the broader policy issues discussed below will be required if this goal is to be achieved.

Ongoing Issues

Energy Sector Challenges

Difficulty in Obtaining Data

Energy FIEs can obtain market access only by signing a production sharing contract with a state-owned enterprise. Furthermore, recent shale gas auctions do not provide FIEs with a means to enter the shale market in China.

Public access to well data is critical for the development of unconventional resources in China. However, existing regulations regarding the use of energy companies' data have been identified as problematic by both international and domestic energy companies, as further discussed in the Oil and Gas, Energy, and Power chapter.

Limited Availability of Waste Disposal Vendors

It is imperative for energy-related enterprises to be able to safely dispose of contaminated water and other waste byproducts. However, only one vendor in Sichuan province is authorized to dispose of industrial and hazardous waste. Government agencies in Sichuan do not permit trucks to transport waste outside of the province to licensed disposal facilities in other provinces. In order to ensure that those in the energy sector are able to safely and efficiently dispose of industrial waste, we recommend that local governments establish more waste disposal vendors in the province and allow the transportation of industrial waste across local borders to nearby disposal facilities.

Attracting, Relocating, and Retaining Talent

Challenges to the Hospitality Industry

The number of four- and five-star hotels in Chengdu continues to increase; however, hotels struggle to attract the needed highly trained local staff. This is partially due to the fact that hospitality is not seen as a high priority or prestigious industry in the region, where more emphasis is typically placed on technical fields.

成 都

本章由中国西南美国商会编写。

引 言

四川首府成都市是中国西部地区的商业、创新、工业与消费中心。在整个西部地区几乎所有测评指标中，成都市均排名第一，包括《财富》五百强公司数量、进出口量，以及成都国际机场的年客运量与货运量。成都还拥有西南地区最多的外国领事馆和最大的外国社区。2014 年，成都国内生产总值（GDP）同比增长 8.9%，首次突破一万亿人民币（1620 亿美元）。成都第二产业以电子和汽车工业为龙头，这两个行业分别比 2013 年增长了 15.4% 和 13.2%。服务行业产生增加值 832 亿美元（5124.7 亿人民币），比 2013 年增加 8.6%，金融行业在 2014 年取得快速增长，增加值提高了 15.9%。不过，第二产业的年总固定资产投资下降了 13.4%。

尽管取得骄人业绩，成都仍然存在改进空间。例如，成都缺少合格的外国人才。一方面，非专家或非专业的外国人才很难取得签证，另一方面，外国人才的缺乏是成都外资企业（FIE）报怨最多的问题之一。

成都市政府和四川省政府似乎决心吸引更多外资企业入驻成都。2010 年颁布的减税政策已延长至 2020 年，该政策旨在鼓励已成立的外资企业，同时吸引更多新的外资企业。四川省司法部门近期设立了服务于外国企业的官方投诉中心，再次表明本地政府试图在中国西南地区为外资企业创造更有利的环境的决心。

不过，据中国西南美国商会对成都会员的调查，这些工作的范围过于狭窄，不足以鼓励外资企业在成都设立新公司。要实现这一目标，政府应更多关注下文讨论的更多政策问题。

现存问题

能源行业面临的挑战

难以获取数据

能源领域的外资企业只有通过与国有企业签署产品分成合同才能获得市场准入。此外，近期的页岩气区块拍卖活动也没有为外资企业提供进入中国页岩气市场的途径。

向公众开放井数据是在中国发展非传统型能源的关键所在。然而，国际和国内能源公司都认为有关能源公司数据使用的现有法规存在严重问题，详见《石油天然气、能源与电力》章节的讨论。

废物处理工厂数量有限

能源相关企业必须要安全处理污水和其他废物副产品。然而，四川省仅有一家工厂有权处理工业废物和有害废物。四川省政府机构不允许卡车将废物运送至外省持有执照的废物处理工厂。为保证能源公司安全而高效地处理工业废物，我们建议当地政府在省内建立更多废物处理厂，同时允许工业废物跨省运输至附近处理厂。

吸引、调动及保留人才

酒店业面临的挑战

成都市四星级和五星级酒店数量持续增加；但酒店仍很难招聘到训练有素的人才。这在一定程度上是因为当地酒店业未被视为重点和优先发展的行业，当地政府一般更重视技术领域的发展。

简化员工调动的海关通关手续

搬迁行业不仅受到物流和货运代理的影响，还受海关通关和移民政策的影响。员工及其个人物品的搬迁流程仍然相当繁琐。准备通关时，必须通过货运代理或其指定报

Simplify Customs Clearance for Employee Relocation

The relocation industry is affected not only by logistics and freight forwarding, but also by customs clearance and immigration policies. The process for relocating individuals and their personal goods remains cumbersome. In preparation for customs clearance, each article's type must be declared by a freight forwarder or its appointed customs broker. A container of commercial goods might contain only one or a few types of goods, but a container of personal goods might contain dozens or even a hundred different types of goods, which creates a burdensome amount of paperwork that increases the potential for error during the customs clearance process.

While the many foreign consulates, Fortune 500 companies, and other FIEs in southwest China fuel the relocation industry, the region poses certain unique geographic challenges. Inland transportation of shipments – which is mainly by truck travelling through multiple logistics hubs – can be a difficult challenge. Inconsistent local interpretations of customs clearance regulations, coupled with the smaller number of personal goods shipments compared to other regions such as Shanghai, present hurdles for relocation companies and clients trying to clear shipments in southwest China.

Policies for Attracting FIEs to the Region

The Chengdu and Sichuan governments have put forth policies over the past several years to encourage the growth of certain enterprises, especially in the financial and information technology (IT) industries. While such efforts are welcomed by FIEs, certain policies have been found to be selectively enforced, if enforced at all.

Favorable Tax Policies

Since 2010, two separate tax policies have existed for new and established enterprises. These represent the Ministry of Commerce's efforts to reward companies with a long history in the region for their contribution to western China's economy and attract further investment.

FIEs entering the region between January 1, 2011 and December 31, 2020 will be taxed at a reduced rate of 15 percent. Those registered before December 31, 2010 and engaged in the transport, power supply, water conservancy, postal service, and radio and television industries enjoy a preferential policy in which they are exempt from enterprise income taxes for two years and taxes will be reduced by half for another three years. These policies can be found in the third clause of Article 2 in the "Notice of the Ministry of Finance, the General Administration of Customs, and the State Administration of Taxation on Tax Policy Issues concerning Further Implementing the Western China Development Strategy."

Recent Developments

Opening of the Tianfu New Area

The Chengdu Tianfu New Area (TFNA) was officially established in October 2014. The TFNA is designed to further facilitate China's western development, urbanization, and innovation-driven economic and social growth. In an effort to develop China's inland economy, preferential policies are being offered to attract both FIEs and domestic companies to establish a presence in the TFNA.

Staff Recruitment within the Manufacturing Industry

The rapid increase of manufacturing companies in Chengdu has increased rates of employee turnover, particularly as more companies choose to open within the TFNA, and more job options become available. Such turnover, in addition to the rise of wages, results in higher recruitment costs, affects product quality, and hinders the competitiveness and long-term development of the manufacturing industry.

We recommend that, in order to attract qualified employees, the development of schools, restaurants, medical care, shopping, and other related services and infrastructure be emphasized within the TFNA.

Customs Issues

Increase Efficiency of Customs Clearance

As increasing numbers of Fortune 500 companies settle in Chengdu, the volume of imports and exports has significantly increased. Staffing at customs offices should be increased to meet this growing demand. It is hoped that the paperless customs clearance process, which has been in pilot implementation since mid-2014, will further improve the efficiency of handling imports and exports.

Recognize Duty-Free Exemptions

Duty-free exemptions for industry-related equipment are provided for on paper but, in practice, are rarely granted. Many FIEs relocate to western China presuming these exemptions will be recognized, as they are in other countries. While imports are generally handled efficiently, duties are almost always imposed, further increasing the cost of doing business in the region.

Real Estate Industry Updates

Vacancies and Oversupply

There is an oversupply in Chengdu's commercial property sector, causing capital pressure for developers due to plots requiring a high percentage of commercial space. As Chengdu becomes increasingly saturated with retail prop-

关行申报所有物品类型。一个商品箱可能只装有一种或几种商品类型，但个人物品箱则可能装有数十种甚至一百种不同类型的物品，造成繁琐的通关文书工作，增加了通关流程出错的机率。

西南地区有多家外国领事馆、《财富》五百强企业和其他外资企业，为搬迁行业带来大量业务，但该地区仍面临特殊地域问题。内陆运输主要依靠卡车往返于多个物流枢纽，这种运输模式有时面临很大困难。本地对海关通关法则的解释不统一，而且与上海等城市相比个人物品运输量较小，为希望在中国西南地区办理货运通关手续的搬迁公司和客户带来了负担。

吸引外资企业入驻当地的政策

在过去几年中，四川省与成都市政府制定了各种政策以鼓励特定企业的发展，特别是在金融与信息技术（IT）领域。这些努力受到了外资企业的欢迎，但部分政策仅得到选择性实施，或根本未实施。

有利的税收政策

自 2010 年起，新老企业就面临两套不同的税收政策。这些政策表明商务部有意奖励在当地经营悠久的企业，以表彰他们对中国西部经济的贡献，同时吸引更多投资进入西部。

2011 年 1 月 1 日至 2020 年 12 月 31 日期间入驻当地的外资企业可享受 15% 的优惠税率。2010 年 12 月 31 日之前注册的交通、供电、水利、邮政服务以及广播和电视企业都能够享受优惠政策，可免缴两年企业所得税，另有三年税收减半优惠。这些政策详见《财政部、国家税务总局、海关总署关于深入实施西部大开发战略有关税收政策问题的通知》第二条第三款。

最新进展

设立天府新区

成都天府新区（TFNA）于 2014 年 10 月正式成立。天府新区的设立旨在进一步推动中国西部开发、城市化进程和创新型经济与社会发展。为发展中国内地经济，中国政府将提供优惠政策吸引外资企业和国内企业在天府新区落户。

制造业员工招聘

成都市制造企业的迅速增加提高了员工流动率，特别是越来越多的企业选择在天府新区落户，为员工创造了更多可选岗位。人员流动增加，加之工资上涨，造成企业招聘成本上升，影响到产品质量，对制造业的竞争力与长期发展造成不利影响。

我们建议，为吸引合格人才，应在天府新区内重点建设学校、餐馆、医疗服务机构、购物设施以及其他相关服务与基础设施。

海关问题

提高海关通关效率

随着越来越多的《财富》500 强企业入驻成都，成都市进出口量显著增加。建议增加海关人员数量，以满足增长的需求。我们希望 2014 年中期开始试点的无纸海关通关流程能够进一步提高进出口处理效率。

认可免税优惠

政府对工业相关设备的免税待遇进行了书面规定，但该优惠很少得到贯彻实施。许多入驻中国西部的外资企业都以为这些免税优惠政策能够像其他国家一样得到认可。虽然整体进口流程比较高效，但税费始终存在，进一步增加了外国企业在当地经营的成本。

房地产业现状

空置与过剩

政府要求房产设计中包括大比例的商业地产，造成成都商业地产圈出现供应过剩现象，给开发商造成了资本压力。随着成都零售产业日趋饱和，商业地产开发商已开始在四川省其他二线城市寻求机遇。

甲级写字楼市场先前曾因私营金融公司需求增加而获得发展动力。这种疯狂扩张的趋势在第三季度有所放缓，并在第四季度戛然而止。第四季度，大量私营金融公司倒闭，也将 40,000 平方米（m²）商业地产重新推向市场。2014 年前九个月，成都市写字楼季度平均净吸纳量为 82,601m²，而在第四季度猛跌至 4,528m²。尽管成交量大幅减少，金融服务仍是甲级写字楼的主要需求来源，占 2014 年租赁交易的 40.5%。

2014 年第四季度，成都市甲级写字楼平均有效租金

erty, commercial real estate developers have begun to explore opportunities in other second-tier cities in Sichuan province.

The Grade A office market was previously fueled by strong demand from private-sector financial companies. Such frenzied expansion slowed in the third quarter, then ground to an abrupt halt in the fourth quarter. The closure of a large number of such firms in the fourth quarter also returned 40,000 square meters (m²) to the market. Net absorption of Chengdu's Grade A offices fell dramatically to just 4,528 m² in the fourth quarter from a quarterly average net absorption of 82,601 m² during the first nine months of 2014. Despite this slump in activity, financial services remained the key source of demand for Grade A offices, accounting for 40.5 percent of 2014 leasing deals.

The average Chengdu Grade A office effective rent in the fourth quarter of 2014 saw its fourth consecutive quarterly decline to approximately US $16 (RMB 98.3)/m²/month. This represents a year-on-year decline of 3.8 percent. Despite this, Grade A office vacancies also declined to 28.4 percent, 4.8 percentage points lower than in the fourth quarter of 2013. This fall in vacancies was driven by relatively limited new supply, as only 231,004 m² of new Grade A offices were launched in 2014.

Licensing Issues

While local regulators require real estate brokerage firms to possess a broker's license, individuals at such firms are not so required. This makes it difficult to manage individual brokers. Additionally, international asset service licenses, which are held by many foreign brokerages, are not recognized in China. Thus, foreign brokerages are required to obtain further licenses in order to operate in China.

Access to Land

For real estate and property developers, land acquisition mechanisms appear to favor developers with closer relationships with local governments. This preferential and opaque process is disadvantageous to companies trying to enter this industry in western China.

Retail Industry Updates

Chengdu retail sales rose 12.9 percent over the previous year, reaching a total of approximately US $49.6 billion (RMB 305.3 billion) in the first nine months of 2014. Sales of consumer goods rose 13.5 percent to approximately US $40.3 billion (RMB 248.7 billion). After a significant slowdown in 2013, food and beverage sales growth rebounded 10 percent year-on-year, with apparel faring less well.

Chunxi Village and CapitaMall Tianfu launched in the fourth quarter of 2014. Located in the core retail submarket of Yanshikou with a total GFA of 12,000 m², Chunxi Village is positioned as a trendy mall targeting young consumers. CapitaMall Tianfu is located in the Xinnantiandi area. The mall opened on December 12, 2014 with an approximate opening occupancy rate of 60 percent. The launch of these two properties brings the 2014 total of new high-quality retail supply in Chengdu to approximately 790,000 m².

Over 1.6 million m² of high-quality shopping mall and department store accommodation is projected to launch in 2015, more than the new supply for 2013 and 2014 combined. However, considering the high availability of retail space in Chengdu, and retailers' cautious expansion plans, we expect a large number of these planned projects for 2015 to either be repositioned or delayed due to difficulties in securing tenants.

Recommendations

For the Sichuan and Chengdu Governments:

- **Establish more waste disposal vendors in Sichuan province and allow the transportation of industrial waste across provincial borders to nearby disposal facilities.**
- Simplify the calculations for defining domestic goods, as specified in the Government Procurement Law.
- Define more categories or rubrics through which foreign specialists may apply for work visas.
- Add amenities in manufacturing and decentralized industrial areas to help attract and retain staff.
- Extend tax rebates to attract new industries and foster greater competition within the region.
- Recognize international asset service licenses so that international real estate firms do not have to apply for redundant licenses when operating in China.

连续第四个季度下降，跌至约 16 美元（98.3 元人民币）/m²/ 月。即同比下滑 3.8%。不过，甲级写字楼空置率也下降到 28.4%，比 2013 年第四季度降低了 4.8 个百分点。空置率降低源于新增供应量相对有限：2014 年仅有 231,004m² 甲级写字楼上市。

执照问题

本地监管机构要求房产经纪公司持有经纪人执照，不过对中介公司的员工并无此要求，这就加大了管理单个房产经纪人的难度。此外，许多外国经纪公司持有的国际资产服务执照在中国不被认可。因此，外国经纪公司必须另外申请执照才能在中国运营。

土地获取

在房地产开发商看来，中国的土地获取机制似乎更偏向与本地政府关系密切的开发商。这种有所偏向并不透明的流程对试图进入中国西部房地产业的企业非常不利。

零售业现状

2014 年前九个月，成都零售业销售额与上一年相比增加 12.9%，达到约 496 亿美元（3053 亿元人民币）。消费品销售额增加了 13.5%，达到约 403 亿美元（2487 亿元人民币）。继 2013 年大幅下滑之后，食品与饮料销售额增长同比反弹 10%，服装类商品销售则较为逊色。

春熙 Village 和凯德天府于 2014 年第四季度开业。春熙 Village 位于盐市口核心零售分市场，总建筑面积 12,000m²，是一座面向年轻消费者的时尚购物中心。凯德天府位于新南天地。这座购物中心于 2014 年 12 月 12 日开业，开业入驻率约为 60%。这两座购物中心的开业使 2014 年成都市优质零售产业供应量达到约 790,000m²。

2015 年，将有超过 160 万 m² 的高质量购物中心和百货商店铺位计划启动，远超 2013 和 2014 年的新建总和。然而，由于成都零售空间非常充足，零售商又对扩张计划持谨慎态度，我们预计大量 2015 年的新建项目要么会重新定位，要么会因苦于吸引租户而延迟。

建 议

针对四川省政府与成都市政府：

- **在四川省内建立更多废物处理厂，允许工业废物运出省，由附近的废物处理厂处理。**
- 简化《政府采购法》规定的界定本国产品的计算方法。
- 增加外国专业人员可以申请工作签证的类别或类目。
- 增加制造基地和分散型工业区的便利设施，以吸引并留住员工。
- 扩大退税范围，以吸引新行业入驻，并促进本地企业有序竞争。
- 承认国际资产服务执照，这样在中国运营的国际房地产公司就无需再额外申请执照。

Chongqing

This chapter was contributed by the American Chamber of Commerce in Southwest China.

Introduction

Chongqing is one of China's oldest industrial bases and one of only four municipalities directly under the central government. However, its structure is substantially different from the other three. As of 2013, Chongqing's urban population accounted for only 58.3 percent of its 29.7 million residents. According to the 2014 Chongqing Statistical Yearbook, Chongqing's GDP rose 10.9 percent over 2013 to reach approximately US $227 billion (RMB 1.4 trillion).

Recent national reform plans to improve transparency and strengthen the rule of law are welcome and, if implemented, bode well for the future of doing business all across China. If implemented, such plans, along with other items discussed below, should provide needed clarity and reliability to both domestic and foreign businesses interested in Chongqing. We urge government officials to be bold in these efforts.

In the meantime, confusion regarding local policies and discrepancies between what is written and what is practiced remain problematic. From policies dictating export duties to those pertaining to visa regulations, companies across the board report a lack of consistency and reliability when it comes to the publication and interpretation of all kinds of policies.

Ongoing Regulatory Issues

Attracting, Insuring, and Retaining Foreign Staff

Relatively low labor costs and living expenses have helped Chongqing-based companies maintain a competitive cost advantage. Additionally, FIEs are generally able to hire reliable domestic talent from Chongqing and Sichuan's universities. However, a lack of foreign language skills remains a challenge.

While Chongqing's expatriate population remains small compared to China's other major cities, the increase of foreign consulates and the city's improving infrastructure has encouraged a more international perspective, and supports the foreign companies located here.

Social Insurance Tax

AmCham Southwest members encourage the Chongqing government to re-evaluate the planned social insurance tax before it is implemented, taking into consideration that many FIEs already provide private insurance to their employees. For example, international schools generally provide benefits that well exceed those financed by the compulsory social insurance taxes that are required of companies that employ foreign staff. AmCham Southwest encourages the Chongqing government to ensure that companies are not subjected to duplicative financial burdens in this regard.

Attracting Foreign Talent

An important element to attracting foreign talent to Chongqing is the provision of quality educational opportunities for their children. There is currently only one accredited international school in Chongqing. Providing more high quality, accredited expatriate education opportunities would be a very helpful step in achieving Chongqing's ambition to become an international-class city. The following issue stands in the way of this goal.

The Chongqing Exit-Entry Admission Bureau implements a "one-year visa/residency renewal" policy for foreign professionals. We request that this policy be revised to offer certified educators in Chongqing longer visa renewal periods, similar to the two-year period offered to legal persons of an entity in Beijing. This would be one small change that could help Chongqing catch up to the more internationalized cities to the east, decrease the burden on human resource (HR) professionals, and increase the stability of foreign staff.

Foreign Student Visas

There is also a troubling lack of support for foreign student visas. The Chongqing Public Security Bureau (PSB) is unable to effectively address concerns regarding such visas, particularly for expat parents with personal businesses lacking large HR teams. Moreover, there is no fixed definition of "foreign student" and the PSB or Exit-Entry Admission Bureau lacks a consistent process to handle the processing of student visas.

重 庆

本章由中国西南美国商会提供

引 言

重庆是中国最古老的工业基地之一，也是直接由中国中央政府管辖的四大直辖市之一。然而重庆的结构与其他三个直辖市有着很大的不同。截至 2013 年，重庆的城镇居民人口仅占其 2970 万居民人口的 58.3%。根据 2014 年重庆统计年鉴，重庆 2013 年全年 GDP 增速为 10.9%，达到近 2270 亿美元（1.4 万亿人民币）。

中国近期在全国范围内进行的提高透明度和加强法治的改革规划受到了广泛欢迎，这些改革措施在实施后将极大地有利于中国未来商业环境的改善。这些改革计划如得以实施，将和下文讨论的其他事项一道，为有兴趣在重庆进行投资和经营的内、外资企业提供必要的政策清晰度和可靠性。我们促请政府官员在这些方面大胆创新。

与此同时，地方政策模糊以及法规字面规定与实际执行之间存在不一致依然是个问题。从出口税率政策到签证监管法规，企业均反映各类政策在文本和解释之间存在不一致，且缺乏可靠性。

现存监管问题

吸引和留住外籍员工以及为外籍员工缴纳保险

相对较低的劳动力成本和生活成本使得重庆企业具有较强的成本竞争力。另外，外资企业通常可以直接从重庆和四川高校雇佣可靠的本地人才。但缺乏外语技能仍对外资企业构成挑战。

尽管与中国其他大城市相比，重庆的外国人口比例目前相对较低，但随着越来越多的外国领馆进驻重庆，以及重庆基础设施的持续改善，重庆的国际化水平正在不断提高，为外资进军重庆提供了更有力的支持。

社会保险税

西南美国商会的会员企业鼓励重庆市政府在正式征收社会保险税前先对该政策重新进行评估，并充分考虑许多外资企业已经为其员工购买商业保险的现实情况。例如，国际学校为其外籍员工提供的福利水平要远远高于法定强制性社会保险税的待遇水平。西南美国商会鼓励重庆市政府确保企业不会因此而承受双重经济负担。

吸引外国人才

吸引外籍人才来重庆工作的一项重要因素便是能够为他们的子女提供高质量的教育机会。目前重庆只有一家获认证的国际学校。提供更多高质量且经认证的国际学校教育机会将十分有助于重庆实现跻身国际化都市的宏伟目标。而以下是阻碍重庆实现这一目标的主要障碍。

重庆出入境管理局目前针对外籍专业人士执行了一项“一年期签证／居住证续签政策”。我们要求对该项政策进行修改，为在重庆且持有资格证的教师提供更长的签证续签期，可以参照北京市给予企业法人的两年续签期。上述小小的政策修改却有助于重庆赶上东部国际化程度更高的城市，降低人力资源成本同时提高外籍员工的稳定性。

外国学生签证

重庆在对外国学生签证方面也缺少政策支持并引起诸多不便。重庆市公安局不能有效地解决有关签证方面的问题，特别是涉及经营私营企业的外籍父母但该企业没有大规模人力资源团队时。另外也没有关于“外国学生”的固定定义，公安局和出入境管理局在处理学生签证的流程上也缺乏一致性。

相关问题的更多内容请参阅“签证政策”一章。

Please refer to the Visa Policy chapter for more information on these issues.

Sourcing Educational Resources

For international schools attempting to establish in Chongqing, the sourcing and acquisition of high quality and international resources (e.g., textbooks, student lockers, science chemicals) remains a challenge. Regulations and fees for importing such resources are not aligned with the needs of international education. This puts Chongqing at a competitive disadvantage compared to other large, more international cities in China.

Recent Developments

Tightened Visa Policies for Teachers

While we can appreciate the reasons for the government's tightening of certain regulations regarding the employment of foreign teachers and experts in Chongqing's schools, recently enacted regulations have added further unintended burdens. We urge the government to work closely with the affected schools to find a more balanced approach. For example, providing more advance notice for any such measures would also ensure that enacted policies achieve their goals in the best way possible. As these schools are so closely linked to the broader attractiveness of Chongqing to foreign companies, their success directly affects the city's competitive position within China.

Weakening Real Estate Sector Hurting Non-Banking Financial Services

Chongqing's real estate sector weakened in 2014. Financial firms' clients in the real estate industry in Chongqing continue to experience difficulty with the repayment of loans. As a result, some AmCham Southwest members in non-banking financial services have chosen to put more emphasis on asset lending, such as using land or buildings as collateral. However, in cases such as repossession of collateral, dealing with local court systems has proven to be slow and unreliable.

Doing business in real estate has therefore become much riskier, with large banks refusing to renew or issue new loans to developers. As the financial conditions of developers, the task of credit risk assessment, and pursuit of remedies in the courts have all become more difficult, the broader threat of declining real estate values affecting the broader economy has become a greater business concern.

VAT Exemptions for Export Services

In early 2014 the State Administration of Taxation issued an announcement regarding the rebate of taxes on goods exported by foreign trade comprehensive service enterprises. This announcement sought to clarify the terms of earlier provisions, promote the participation of small and medium enterprises in the international marketplace, and curb abuses of the export value-added tax refund system. Some of the guidelines include:

- An export agreement must have been signed between the manufacturer and the overseas enterprise or individual stipulating that the goods in question will be exported by the comprehensive service provider to the overseas party, who will then issue payment to the service provider; and
- The service provider must directly handle its export activities (i.e., without outsourcing), contribute to the strengthening of risk controls, and evaluate the business standards and manufacturing capabilities of the manufacturing enterprise.

AmCham Southwest's members in Chongqing report that municipal and provincial governments, in practice, often ignore these new guidelines on VAT exemptions for export services. This exemption, if respected, could help them lower their selling price and become more competitive in the world market.

Recommendations

For the Chongqing Government:

- **Re-evaluate the social insurance tax on FIEs to accommodate companies already providing insurance to their employees.**
- Respect value-added tax exemptions for export services, as provided by the State Administration of Taxation, bringing local practice into alignment with the new national emphasis on the Rule of Law.
- Revise the "one-year visa/residency renewal" policy for foreign professionals to offer certified educators in Chongqing longer visa renewal periods.
- The Public Security Bureau should clarify the definition of "foreign student."

教育资源采购

对于欲在重庆建校的国际学校而言，难以采购和获取高质量的国际资源（如课本、学生用储物柜和试验用化学品）依然是一大挑战。有关上述资源进口的监管法律和费用都无法满足开展国际教育的需求。这就使得重庆与中国其他更加国际化的城市相比处于竞争劣势。

最新进展

收紧教师签证政策

尽管我们理解重庆市政府近期收紧有关重庆市学校雇佣外籍教师和专家的政策的原因，但这些新出台的法规的确进一步加重了相关学校不必要的负担。我们促请重庆市政府加强与受政策影响的学校的沟通，努力找到一个更为平衡的监管办法。例如，在相关政策实施前留足事先通知的时间也有助于确保相关政策出台后能够最大程度地实现政策目标。鉴于这些学校也与重庆对外资企业的吸引力息息相关，这些学校的成功与否也直接影响到重庆在中国城市中的竞争力排名。

疲软的房地产市场影响非银行金融服务的发展

2014 年，重庆的房地产市场呈现疲软态势。重庆的房地产行业中的金融企业客户持续面临难以偿还贷款的问题。因此，部分西南美国商会非银行金融服务业的会员企业选择将重点放在资产抵押贷款上，如将土地或建筑物作为贷款担保。然而在涉及抵押物收回等案例中，当地法院系统办事速度缓慢且缺乏可靠性。

由此造成房地产业内相关企业面临的风险会因为大银行拒绝向开发商展期旧贷款或发放新贷款而升高。由于开发商的资金状况不断恶化，信贷风险评估工作越来越难开展，向法院寻求救济也困难重重，由此造成的房地产价格下跌对宏观经济的影响也越来越成为企业的一大担忧。

出口服务免征增值税

2014 年初，国家税务总局发布了一项有关外贸综合服务企业出口货物退（免）税政策的公告。该公告旨在鼓励中小企业开拓国际市场，抑制出口增值税退税政策滥用等问题。其中一些规定包括：

- 生产企业与境外单位或个人已经签订出口合同，并约定货物由外贸综合服务企业出口至境外单位或个人，货款由境外单位或个人支付给外贸综合服务企业；
- 外贸综合服务企业必须直接处理其出口行为（即不可外包），同时应加强风险控制，严格审查生产企业的经营情况和生产能力。

据西南美国商会在重庆的会员企业反映，实践中重庆市政府和四川省政府经常不执行上述外贸综合服务企业退（免）增值税的规定。而上述退（免）税规定如若执行将有助于降低销售成本，从而增强在全球市场中的竞争力。

建 议

对重庆市政府：

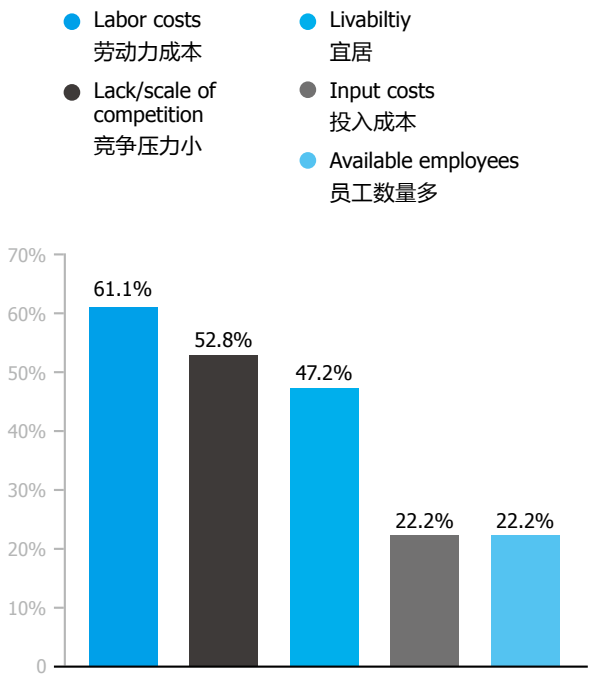
- **充分考虑外资企业已经为其员工购买商业保险的现状，对外资企业适用社会保险税政策进行重新评估。**
- 尊重执行国家税务总局出台的外贸综合服务企业增值税退（免）税政策，使地方执法实践更加符合中国目前正提倡的依法治国的要求。
- 修改现行外籍专业人士“一年签证／居住续期”政策，为在渝的持证教师提供更长的签证展期。
- 公安局应当明确“外国学生”的定义。

Northeast China

Introduction

Liaoning province, home of AmCham China's Northeast China chapter, is located in the southern part of the northeast region and covers an area of 145,900 square kilometers. Bordering the Yellow and Bohai Seas to the south and the Korean Peninsula to the east, it has abundant natural resources. It has also served as a heavy industry base since the 1950s. Among the three provinces in northeast China – Liaoning, Jilin, and Heilongjiang – Liaoning is the largest in terms of GDP and has experienced steady GDP growth. Though national GDP growth is now slowing, Liaoning's stable economic environment – achieved through the restructuring of large- and medium-sized state enterprises over the years and a focus on development of its four pillar industries (petrochemicals, metallurgy, machinery, and electronics) – should provide a strong cushion.

What are the biggest advantages to doing business in Liaoning compared to Tier 1 cities?
与一线城市相比，在辽宁经商的最大优势是？



Liaoning's 2014 GDP reached US $464.28 billion (RMB 2.86 trillion), an increase of 5.8 percent over 2013. Foreign direct investment reached US $27.56 billion (RMB 169.77 billion) and total imports and exports hit US $114.75 billion (RMB 706.92 billion), a decrease from 2013 of 0.29 percent. Of this total, imports constituted US $55.65 billion (RMB 342.83 billion), a 10.96 percent increase from 2013, while exports constituted US $59.11 billion (RMB 364.11 billion), a 8.96 percent decrease from 2013.

Liaoning began its "going out" outbound investment policy in 2008 to encourage local enterprises. Since 2009, 239 overseas merger and acquisition projects have been completed, including 28 in the first three quarters of 2014 with a total investment value of US $355 million (RMB 2.2 billion).

In October 2014, AmCham China Northeast conducted a survey of its members regarding the top business challenges and opportunities specific to northeast China. This chapter highlights the key findings of this survey. We hope that these results will be viewed positively by the Liaoning government and will lead to discussion on these issues. Not only do we hope to share these results with local government officials, but we also hope to hear directly from government leaders on their plans to address the challenges our members have identified.

Advantages to Doing Business in Liaoning Province

AmCham China Northeast members cited several advantages to doing business in Liaoning's tier-two cities, compared with tier-one cities such as Beijing, Shanghai, Guangzhou, or Shenzhen. These benefits included lower labor costs, lower competition, and greater livability.

Regarding labor costs, members view the average wage (including base salary, benefits, and taxation) of a direct employee to be a clear advantage of doing business in Liaoning. Of course, as in most cities, labor costs are expected to rise with the promotion of policies to increase wages, in

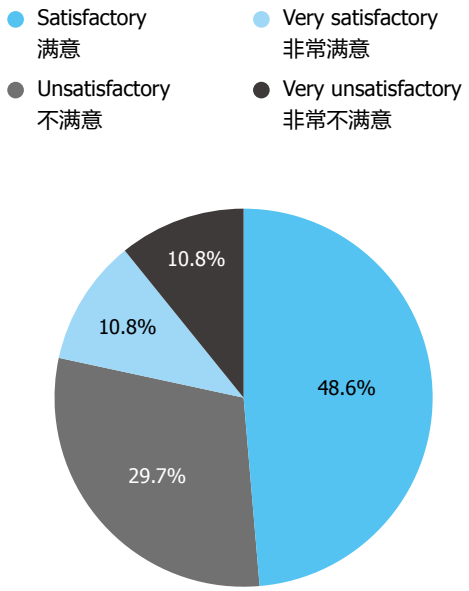
中国东北

引 言

中国东北一章主要介绍辽宁省。辽宁省位于东北地区南部，占地 145900 平方公里，南临渤海和黄海，东接朝鲜半岛，拥有丰富的自然资源。辽宁省自上世纪 50 年代以来一直是重工业基地。在中国的东北三省辽宁、吉林和黑龙江中，辽宁省的 GDP 总量最大，且 GDP 增速最平稳。尽管全国的 GDP 增速正在放缓，但多年来国有大中型企业改革创造的稳定经济环境，以及重点发展石油化工、冶金、机械和电子四大支柱产业的方向，为辽宁的经济发展提供了强有力的支撑。

How would you characterize local government support towards foreign businesses in Liaoning?

您如何评价地方政府对在辽宁经商的外资企业的支持力度？



2014 年辽宁省 GDP 总量达到 4642.8 亿美元（2.86 万亿元人民币），比 2013 年增长 5.8%。外国直接投资额为 275.6 亿美元（1697.7 亿元人民币），进出口贸易总额达到 1147.5 亿美元（7069.2 亿元人民币），比 2013 年下降 0.29%，其中进口额为 556.5 亿美元（3428.3 亿元人民币），比 2013 年增长 10.96%，出口额为 591.1 亿美元（3641.1 亿元人民币），比 2013 年下降 8.96%。

辽宁省自 2008 年起开始实施鼓励本地企业“走出去”的对外投资政策。从 2009 年起算，已完成 239 个境外并购项目，其中 2014 年前三季度完成了 28 个，总投资金额达 3.55 亿美元（22 亿元人民币）。

2014 年 10 月，中国美国商会东北办公室对会员企业开展了一项关于中国东北商业挑战和机遇的调查。本文列出了此项调查的主要结论。我们希望辽宁省政府能够积极看待这些调查结果，进而对这些问题展开讨论。我们不仅希望能与相关地方政府官员分享这些调查信息和结果，还期待就会员企业提出的相关问题，能直接听取地方政府领导的具体解决方案。

在辽宁经商拥有的优势

中国美国商会东北办公室的会员企业认为，与北京、上海、广州或深圳等一线城市相比，在辽宁省诸多二线城市经商具有如下优势：劳动力成本较低、竞争程度较低和宜居度高。

在劳动力成本方面，会员企业认为在辽宁省直接雇佣一名员工所需支付平均工资（包括基本工资、福利和税收）明显较低。不过由于大部分城市为了对抗高通货膨胀和提高生活水平，纷纷出台提高工资的政策，劳动力成本将因此被推高。但目前而言，与一线城市相比，辽宁省拥有明显的劳动力成本优势。

an effort to combat high inflation and raise the standard of living. However, there are currently still clear labor cost advantages in Liaoning compared to tier-one cities.

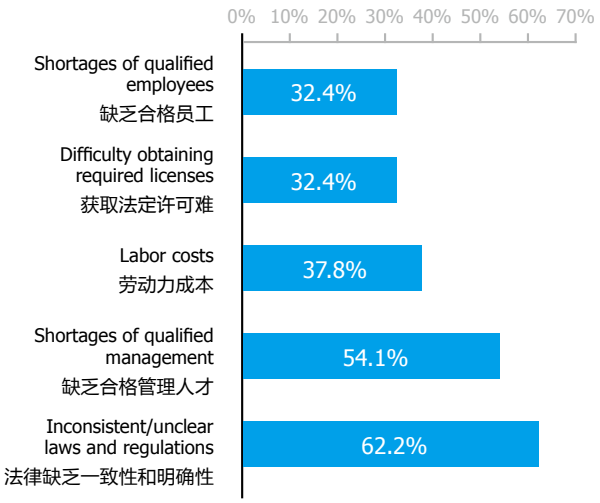
The second business advantage cited by our members was lower competition, meaning that businesses in Liaoning are less concerned with employee turnover and losing key talent to competitors. Members further noted a sufficient availability of human resources in Liaoning to staff their businesses.

The third most-cited advantage of doing business in Liaoning compared to tier-one cities was livability, including factors such as stability, healthcare, culture, environment, education, and infrastructure. Liaoning's abundant natural beauty and interesting attractions contribute to its livability. Additionally, members cite real estate and utilities as affordable and in adequate supply, as well as the convenience of public transportation, as the top-three positive aspects impacting their quality of life in Liaoning.

Finally, local government support towards foreign business was also cited as favorable, with nearly 60 percent of our members rating local government support as "Satisfactory to Very Satisfactory." Examples of local government support of American businesses can be seen in the government's efforts to promote foreign direct investment in Liaoning and frequent communication and open dialogue between local government officials and the US Consulate General's office in Shenyang. Additionally, the local government's strategic development of Dalian as an international logistics center and regional financial center in northeast China and the government's support in providing a safe environment and friendly community for expatriates living in Liaoning scored highly in the survey.

What are your top five business challenges in Liaoning?

您在辽宁面临的商业挑战的前五名是？



Challenges to Doing Business in Liaoning Province

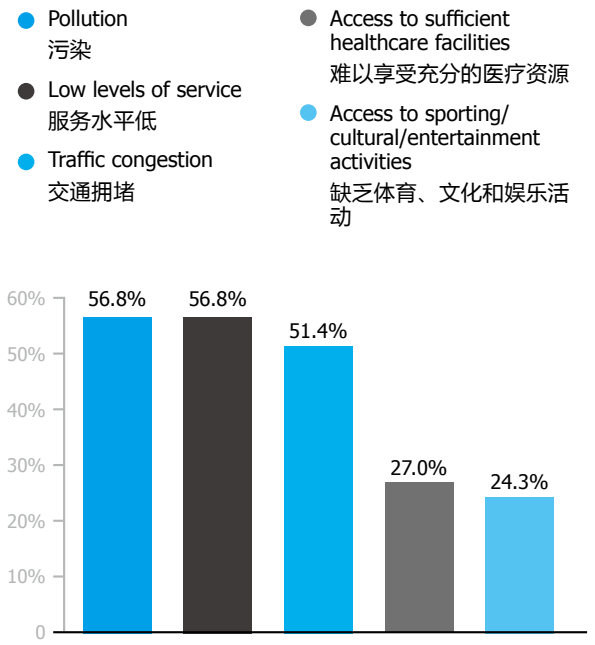
While there are many positive aspects of living in Liaoning, several challenges were also highlighted by our members. "Inconsistent and Unclear Laws" and "Shortages of Qualified Management" were cited as two of the biggest challenges to doing business in Liaoning. These issues were by far the biggest challenges, with over 60 percent of respondents citing "Inconsistent and Unclear Laws" and over half citing "Shortage of Qualified Management" – both selected by nearly double the number of members as the other three challenges comprising the top five – as their biggest challenge. Challenges such as "Labor Costs," "Difficulty Obtaining Required Licenses," "Shortages of Qualified Employees," and "Pollution" round out the top five. Although these challenges are not new nor necessarily region specific, it is very clear that these are two of the biggest challenges facing any American company doing business in Liaoning.

Indeed, results from the annual AmCham China *Business Climate Survey* have continually found "Inconsistent and Unclear Laws" to be a top business challenge nationwide, selected by a proportionately similar number as found in the AmCham China Northeast survey.

Similarly, "Shortages of Qualified Management" have also been consistently noted nationwide in the *Business Climate Survey Report*, with 36 percent of AmCham China members citing it as the greatest risk facing their China operations in 2014. In comparison, over 54 percent of respondents to the 2014 northeast China-specific survey cited it as a top challenge in Liaoning, with 43 percent of respondents specifically stating that "Shortages of Qualified Management" is the biggest disadvantage of doing business in Liaoning in comparison to tier-one cities. Both numbers are quite high and of great concern, but also indicative of the increasing challenges faced by operations in non-tier-one cities.

Overall, the greatest challenges our member companies face in Liaoning are similar to those faced throughout the country. Shortage of a qualified workforce, government bureaucracy and lack of transparency, IP protection concerns, and pollution are all significant challenges to any business in China. In addition to workforce challenges and pollution concerns, traffic congestion and healthcare are also real quality-of-life issues that need to be addressed. That these concerns continually rank highly year after year demonstrates just how great a challenge these issues are and how difficult they are to solve. The northeast China region is still developing and seeking to attract investment and such negative perceptions may deter future investments or even lead existing American enterprises in the region to move their investments elsewhere.

What are your top three challenges that affect your quality of life in Liaoning?
您在辽宁面临的商业挑战的前五名是？



我们的会员企业选出的第二大商业优势是竞争压力小，也就是说在辽宁经营的企业不用那么担心员工离职或关键人才跳槽去竞争对手等问题。会员企业还指出辽宁省具有充足的人力资源，完全可以满足企业经营的人员需求。

调查中显示的辽宁省相对于一线城市的第三大商业优势是宜居度，包括社会治安、医疗、文化、环境、教育和基础设施等。辽宁省内丰富秀丽的自然资源和风景名胜都增加了其宜居度。另外，会员们还指出辽宁省内房价和公共事业服务价格实惠，供给充足，公共交通便利，这成为提高在辽宁生活质量的三大积极要素。

最后，地方政府对外资的支持也是辽宁的重要优势之一。近 60% 的受访会员企业认为地方政府支持“满意或非常满意”。例如，地方政府对美资企业的支持表现在辽宁省鼓励外商直接投资，地方政府官员经常与美国驻沈阳领事馆进行开诚布公的交流沟通。另外，省政府将大连市建成国际性物流中心和中国东北区域金融中心的发展战略，以及该省政府在支持为居住在辽宁的外国人提供安全、友好的社区环境等方面的工作也得到了受访会员企业的高度评价。

在辽宁经商面临的挑战

尽管在辽宁经商和生活都享有诸多有利条件，但我们的会员企业还是指出了他们面临的挑战。“法律缺乏一致性和明确性”、“缺乏合格管理人才”被列为在辽宁经商面临的最大两项挑战，超过 60% 的受访者选择了“法律缺乏一致性和明确性”，超过半数的受访者选了“缺乏合格管理人才”，受访企业选择这两项的比例几乎都是面临挑战前五大选项中的其他三项被选比例的两倍。“劳动力成本”、“获取法定许可难”、“缺乏合格员工”和“污染”则是受访会员选择的挑战排行榜的剩余前几名。尽管上述挑战并非新问题，也不具有地区特殊性，但依然切实反映了美资企业在辽宁经商面临的最大的两项挑战。

事实上，中国美国商会的年度《中国商业环境调查》结果持续显示，在全国范围内，“法律缺乏一致性和明确性”都是最大的商业挑战，甚至选择该项的百分比都与商会东北办公室的调查结果相近。

无独有偶，在全国范围内的《商业环境调查报告》中，“缺乏合格管理人才”也一直是高票选项，2014 年，36% 的中国美国商会会员企业将其选为在华运营所面临的最大风险。而 2014 年东北地区调查中则显示超过 54% 的受访者将该项选为在辽宁经商的最大商业挑战，43% 的受访者还认为“缺乏合格管理人才”是在辽宁经商与在一线城市经商相比所面临的最大不利因素。上述百分比都很高，且都颇受关注，但同时也显示出在非一线城市经营面临风险加大。

从总体上看，我们在辽宁的会员企业所面临的挑战与在全国其他地区类似。缺乏合格的劳动力、政府官僚主义、缺乏透明度、知识产权保护不力和污染是在全国范围内具有普遍性的重大挑战。除了劳动力挑战和污染问题之外，交通拥堵和医疗资源有限也是影响生活质量的、需要切实改善的问题。这些问题多年来排名居前，这充分显示了这些挑战的严重性和解决这些问题的困难程度。中国东北地区仍然处于发展中阶段，还在不断地吸引投资，这些负面因素可能会影响投资人未来投资的积极性，甚至会导致该地区现有的美资企业选择将投资转移到其他地区。

Recommendations

For the Liaoning Government:

- **Further engage with foreign businesses to discuss the regulatory and operational challenges faced in the region and practical solutions moving forward.**
- Seek to streamline and clarify laws and regulations throughout Liaoning.
- Develop policies that help attract qualified management and employees to Liaoning while keeping labor costs at a competitive level.
- Clarify and make transparent the process for obtaining required business licenses.

建 议

对辽宁省政府：

- 继续邀请外资企业讨论在该地区经商所面临的法律和运营挑战，共商具有操作性的解决措施。
- 在全省范围内统一和明确相关法律和法规。
- 制定相关政策，在吸引合格管理人才和劳动力来辽宁工作的同时确保劳动力成本的竞争力。
- 明确和公开获取法定营业执照和许可的程序。

Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai.

Introduction

Shanghai, as China's commercial capital, remained at the forefront of China's economic reform agenda in 2014. The China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) celebrated its first anniversary and new regulations that benefit American and other foreign companies continued to be issued. Although there has been disappointment in the pace and scope of reforms in the Shanghai FTZ, the central government has nevertheless announced plans to establish three new FTZs that will replicate the Shanghai FTZ's policy reforms and investment liberalization. The Shanghai-Hong Kong Stock Connect also established a trading link in 2014 that allows investors to buy and sell shares through the two exchanges. Following the establishment of intellectual property (IP) courts in Beijing and Guangzhou, the Shanghai IP court was also established in late December 2014 to handle cases. Despite these positive developments, there remain significant challenges in the Chinese market for American businesses, particularly in the financial, healthcare, agricultural, and information and communications technology (ICT) sectors. Tremendous opportunities continue to present themselves, however, and our members remain optimistic about their business prospects.

The American Chamber of Commerce in Shanghai (AmCham Shanghai) and AmCham China are committed to assisting Shanghai to successfully develop its economic environment and achieve its 2020 development goals. We look forward to deeper engagement with government authorities to support implementation of these goals and to enhance our longstanding partnership with the Shanghai municipal government.

Ongoing Regulatory Issues

China (Shanghai) Pilot Free Trade Zone

Following its launch in September 2013, the Shanghai FTZ continued to generate interest from the American business community in 2014. Touted as an experimental space to test major policy reforms and advance municipal objectives, the Shanghai FTZ has introduced some reforms in the financial and logistics sectors; however, further progress is needed. In June 2014, the Shanghai FTZ Authority released the second draft of the "Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone." This draft, which many had hoped would drastically reduce the size of the negative list, remains overly long and maintains restrictions in many areas. Though the list itself was reduced by more than 20 percent, careful analysis shows that much of this reduction was done by combining multiple restrictions or deleting references to restrictions that apply to both foreign and domestic businesses, rather than a true reduction of the negative list's length. A revised list is scheduled to be released in 2015, and we hope that the Chinese government will strengthen reform efforts by issuing a concise and high-standard negative list.

We continue to have high hopes for the Shanghai FTZ and its ability to encourage foreign investment and economic liberalization in Shanghai. The Shanghai FTZ introduced a number of positive initiatives in the financial sector, including cash pooling, free trade accounts, and other cross-border RMB settlement reforms. In certain circumstances, these reforms have made it easier for companies to move cash out of China. American businesses have also been pleased with FTZ reforms that have simplified Customs clearing procedures within the zone. (See the Trade Facilitation section of this chapter for more detailed information). In late 2014, the Chinese government also approved the establishment of FTZs in Tianjin, Guangzhou, and Fujian provinces. We hope this signals that more aggressive liberalization is on the horizon.

Market Access

Since China's accession to the World Trade Organization (WTO) on December 11, 2001, many of its market access barriers have been reduced. Yet, in 2014, regulatory challenges continued to limit the growth of American businesses in Shanghai, and market access barriers are present in virtually every sector of the Chinese market. Our members in the agriculture, ICT, healthcare, and financial services sectors, in particular, face market access barriers (as detailed in the respective industry *White Paper* chapters) which hinder the further development of these industries in Shanghai.

上 海

本章由上海美国商会撰写

引 言

2014 年，上海作为中国最大的商业中心，继续走在中国经济改革的最前沿。中国（上海）自由贸易试验区（上海自贸区）成立已有一周年，且还在陆续制定出台有利于美资及其他外资企业的新法规。尽管上海自贸区在改革的速度和范围方面尚不尽如人意，但中国中央政府依然宣布计划复制上海自贸区政策改革和投资自由化的模式，成立了三个新的自贸区。2014 年，上海证券交易所和香港联合交易所还建立了“沪港通”机制，允许投资者在所在地买卖对方交易所上市的规定范围内的股票。继北京和广州成立知识产权法院后，上海也于 2014 年底设立了知识产权法院专门审理相关案件。虽然上海取得了上述积极进展，但是美国企业在中国市场依然面临着严峻挑战，尤其是在金融、医疗、农业和信息通信技术行业领域。不过鉴于未来依旧会呈现巨大机遇，我们的会员企业对他们的商业前景仍保持乐观。

上海美国商会和中国美国商会共同致力于协助上海成功地完善其经济环境并实现上海 2020 年发展目标。我们期待与相关政府部门建立更紧密的沟通合作，以支持上述目标的实现，并继续深化我们与上海市政府建立的长期合作关系。

现存监管问题

中国（上海）自由贸易试验区

自 2013 年 9 月上海自贸区成立以来，2014 年美国商界对其依旧保持着浓厚的兴趣和关注。上海自贸区是重大改革政策的试验区，也是推进实现上海市各项发展目标的动力，上海自贸区已经在金融和物流行业进行了多项改革，但各项改革还需深化。2014 年 6 月，上海自贸区管委会发布了《中国（上海）自由贸易试验区外商投资准入特别管理措施（负面清单）（2014 年修订）》。2014 版负面清单在出台前被寄予厚望，期待其能够大幅缩减负面清单的规模，但事实上该版负面清单依然十分冗长且限制过多。尽管该版负面清单的篇幅缩减了 20%，但仔细分析却可以发现缩减部分都是来自将多个限制条款合并或是删除对内外资企业都适用限制的参照条款，并非对负面清单实质内容的真正删减。上海自贸区将在 2015 年发布再修订后的负面清单，我们希望中国政府能够出台一个简明且高标准的负面清单以强化改革力度。

我们继续对上海自贸区及其鼓励外商在沪投资和推进上海经济自由化的能力抱有很高期望。上海自贸区在金融行业开创了一系列积极改革举措，包括现金池管理、自由贸易账户，以及其他的跨境人民币清算改革等。这些改革措施在一定情形下便利了企业将资金汇出中国。美国企业还很高兴地看到，自贸区改革简化了区内海关清关程序（详见“贸易便利化”一节）。2014 年底，中国政府批准天津、广东和福建三省市建立自贸区。我们希望这是预示中国进一步加速自由化进程的信号。

市场准入

自 2001 年 12 月 11 日加入世界贸易组织（WTO）以来，中国一直在不断削减市场准入壁垒。但 2014 年，美资企业在沪依然面临不少监管挑战，它们的业务发展受到了限制，且市场准入壁垒几乎实际存在于中国市场的每个行业。我们从事农业、信息通信技术、医疗和金融服务行业的会员企业尤其受到市场准入壁垒（详见《白皮书》具体行业问题各章）的制约，这些壁垒同时也抑制了相关行业在上海的进一步发展。

最新进展

上海的商业环境

根据上海市统计局的数据，2014 年上海 GDP 增长 7.0%，比 2013 年的 7.7% 有所降低，也低于全国 7.4% 的 GDP 增长率。截止 2014 年 11 月，美国和上海之间的

Recent Developments

Shanghai's Business Climate

In 2014, according to the Shanghai Municipal Statistics Bureau, Shanghai's GDP expanded by 7.0 percent, down from 7.7 percent growth in 2013, compared to a reported national GDP expansion of 7.4 percent. By November 2014, the total import and export trade volume reported between the US and Shanghai increased to US $134.4 billion (RMB 833.2 billion), for an increase of 1.9 percent. Shanghai remained a popular destination for foreign direct investment (FDI) as well. In 2014, contracted FDI into Shanghai increased 26.8 percent from 2013 to US $31.6 billion (RMB 196 billion). And, by the end of 2014, 490 multinational companies had designated Shanghai as their regional headquarters and there were 678 foreign-invested research and development sectors.

According to AmCham Shanghai's 2015 *China Business Report*, a growing number of American companies have located their businesses in China to sell to the Chinese market rather than simply use China as an export hub, with more than 68 percent of AmCham Shanghai members saying they are "in China for China." While the Chinese economy slows, companies continue to be optimistic about the Chinese market, with more than 80 percent saying they have a positive five-year outlook in China. Many of the other troubles faced by American companies in Shanghai (e.g., increased costs and increased domestic competition) are similar to those they face in developed country markets.

Developing Shanghai into an International Financial Center

In 2009, the State Council declared that Shanghai would become one of the world's preeminent international financial centers by 2020. The ambitious plan calls for a mature financial system that boasts well-established financial institutions, advanced markets, and globally competitive financial products and services, as well as advanced tax, credit, regulatory, and legal systems. Additionally, in November 2014, the Shanghai government announced that it had set the goal of making Shanghai an international insurance center by 2020. According to Xinhua, to achieve this goal, the insurance penetration rate should increase by six percent and the insurance density (or the per capita premium) should increase to approximately US $1,190 (RMB 7,300) by the year 2020. The Shanghai government plans to use these new targets, in addition to the Shanghai FTZ, to help drive the modernization of the service sector and reach its 2020 goals.

On November 17, 2014, Shanghai and Hong Kong launched the Shanghai-Hong Kong Stock Connect, a pilot project experimenting with cross-border investment between the Shanghai and Hong Kong stock exchanges. The Stock Connect allows Hong Kong and international investors based in Hong Kong to invest in the Shanghai Stock Exchange (RMB-denominated China A-shares only) and mainland China investors to invest in the Hong Kong Stock Exchange. Quotas are in place to limit each day's trading volumes in both directions, though these limits have rarely been reached in the initial months of trading via Stock Connect. The opening of the Shanghai Stock Exchange is a significant step forward in China's internationalization of its financial sector and critical to the further development of Shanghai as an international financial center. AmCham Shanghai supports the Stock Connect pilot project and looks forward to working with Shanghai and Hong Kong financial regulators to continue to develop this exciting program.

Trade Facilitation

From January to November 2014, the Shanghai Customs district processed US $713.3 billion (RMB 4.4 trillion) in import-export value, up 6.8 percent from 2013. US-Shanghai trade made up US $121.8 billion (RMB 751.1 billion) of that total, an increase of 2.3 percent from 2013. As noted above, Shanghai Customs and the Shanghai Import and Export Quarantine Bureau (CIQ) piloted several new initiatives in the Shanghai FTZ in 2014. The "three ones" policy of a single application, a single inspection, and a single clearance was launched to increase efficiency and reduce costs as companies moved goods through the Shanghai FTZ. The Shanghai FTZ has also piloted a "single window" system whereby companies are able to apply for and receive clearance from both Shanghai Customs and the CIQ at the same time. Previously, companies had to file separately with each department, which caused delays and increased costs.

Yangtze River Delta Integration

The Yangtze River Delta region has become a vital region of economic globalization in China and will continue to be an international gateway for the Asia Pacific region. President Xi Jinping also noted the importance of the integration of the Yangtze River Delta region – with an emphasis on the cooperation and coordination mechanisms of the local Chinese governments – during a visit to Shanghai after attending the Fourth Conference on Interaction and Confidence Building Measures in Asia Summit on May 21, 2014. Reflecting President Xi's policy direction, the General Administration of Customs announced the integration of Customs bureaus in the Yangtze River Delta region in September 2014.

In recent years, economic growth of the Yangtze River Delta has steadily increased, as has the presence of US enterprises and investment projects. These companies and projects are taking advantage of new manufacturing and research and development clusters, many of which include advanced-level services, high-tech research firms, and top American brands.

Many of these American companies are implementing high-end manufacturing and importing high-tech manufacturing equipment to tap into the rapidly growing opportunities in the expanding domestic consumer sector. To support

进出口贸易总额增长至 1344 亿美元（8332 亿元人民币），同比增长 1.9%。上海依然是外商直接投资的热门地区。2014 年，上海的合同外商直接投资为 316 亿美元（1960 亿元人民币），比 2013 年增长 26.8%。另外，截止 2014 年底，490 家跨国公司在上海建立了地区总部，沪上的外资研发部门也达到了 678 家。

根据上海美国商会发布的《2015 年中国商业报告》，越来越多美资企业的在华经营定位已经不再是简单地将中国作为出口枢纽，转而向中国市场销售产品，有超过 68% 的上海美国商会的会员企业表示他们将“立足中国、服务中国”。尽管中国经济增长有所放缓，但我们的会员企业继续对中国市场表示乐观，80% 的受访企业表示他们对中国未来五年的前景持乐观态度。美资企业在上海面临的诸多其他困难（如成本上升和国内竞争加剧）与他们在其他发达国家市场中所面临的挑战类似。

将上海建成为国际金融中心

2009 年，国务院提出了 2020 年将上海建成全球著名国际金融中心的目标。这一宏伟计划要求一个由完善的金融机构、先进的市场、具有全球竞争力的金融产品和服务以及先进的税收、信贷监管和司法制度构成的成熟金融体系。另外，2014 年 11 月，上海市政府宣布了一项新目标，力争于 2020 年将上海建成为世界保险中心。据新华社报道，为了实现这一目标，到 2020 年，上海保险渗透率需要增长 6%，保险密度（或人均保费）需要增加至大约 1190 美元（7300 元人民币）。上海市政府计划利用上述新目标，以及上海自贸区，来推动实现服务业的现代化并实现其 2020 年目标。

2014 年 11 月 17 日，上海和香港共同推出了“沪港通”试点项目，旨在推进通过上交所和港交所进行的跨境投资。“沪港通”允许香港和国际投资者在香港投资上海证券交易所的股票（仅限于人民币计价的 A 股），而中国内地投资者也可以投资港交所上市的股票。沪港通项目对沪股通和港股通的日交易额度分别规定了上限，但自实施几个月以来基本未出现触及上限的情况。上述开放上海证券交易所的举措是中国朝着金融行业全球化迈出的重要一步，对进一步发展和巩固上海的全球金融中心地位具有重要意义。上海美国商会支持“沪港通”试点项目，并期待与上海及香港的金融监管者合作，继续推进这一激动人心的项目。

贸易便利化

2014 年 1 月至 11 月，上海海关清关进出口货物额为 7133 亿美元（4.4 万亿元人民币），比 2013 年增长 6.8%。其中美国与上海之间的贸易额为 1218 亿美元（7511 亿元人民币），比 2013 年增长 2.3%。如上所述，2014 年上海海关和上海进出口检验检疫局在上海自贸区进行了多项新试点，如实施海关、检验检疫“一次申报、一次查验、一次放行”（“三个一”）政策，以提高企业自贸区物流通行效率并降低成本。上海自贸区还进行了“单一窗口”试点，即企业可以同时向上海海关和进出口检验检疫局申请和领取通关手续，而之前企业必须分别向相关部门提交申请，从而导致延误并增加成本。

长三角一体化

长三角地区对中国实现经济全球化至关重要，也将继续成为中国连接亚太地区的国际门户。习近平主席参加完 2014 年 5 月 21 日举行的亚信峰会在沪考察期间也曾指出长三角地区一体化的重要性，特别强调要在各地政府之间建立合作协同机制。为响应习主席的政策指示，2014 年海关总署宣布在长三角地区推进海关通关一体化。

近年来，长三角地区经济和美国在该地区建立的企业和投资的项目均保持持续稳定增长。这些企业和项目充分利用该地区的新兴制造业和研发集群优势，其中不乏高端服务、高科技企业和知名美国品牌。

许多美国企业正在实施高端制造业项目，并进口高技术制造设备，以挖掘中国国内消费市场快速增长带来的众多机会。为了支持美国企业在本地区的活跃发展，上海美国商会于 2012 年 5 月建立了长三角网络，2013 年 10 月建立了苏州中心。

美资企业正在帮助长三角地区从制造中心向高附加值一体化地区的加速转型，使之拥有广泛的现代商业服务、物流、研发、高科技和零售企业。

US companies active in the region, AmCham Shanghai opened its Yangtze River Delta Network in May 2012 and Suzhou Center in October 2013.

American firms are helping the Yangtze River Delta region accelerate its transformation from a manufacturing hub into a high value-added integrated region, boasting a wide range of modern business services, logistics, research and development, high-tech, and retail firms.

Recommendations

For the Shanghai Government:

- **Reduce the number of restrictions on the negative list for the Shanghai FTZ and further engage the American business community on ways it can help drive the reform process.**
- Provide American financial service firms greater access to ongoing reforms in the financial service sector and allow them greater access to cross-border transactions, cash pooling, and foreign exchange activities.
- Reduce significant market access barriers, particularly in the healthcare, ICT, and agricultural sectors, and create a level playing field for both Chinese and American companies.

建 议

对上海市政府：

- **减少上海自由贸易试验区负面清单中的限制，提高美资企业帮助推进改革进程的参与度。**
- 为美国参与正在进行的金融服务行业改革提供更多机会，提升他们参与跨境交易、现金池管理和外汇业务的广度和深度。
- 减少重大市场准入壁垒，特别是在医疗、信息通讯技术和农业行业的壁垒，为中资和美资企业营造公平竞争的环境。

Tianjin

Introduction

Tianjin, a leading industrial and commercial city located in northern China's Bohai Bay region which includes Beijing, is one of four municipalities directly under the central government. Host to a major seaport and the third largest container port in mainland China, Tianjin's GDP has historically grown faster than the nation as a whole.

Tianjin has long been a preferred location for economic reform and was one of the first cities selected to host a special economic zone similar to those found in Shenzhen and Shanghai. The Tianjin Economic Development Area was established in 1984 and has over 30 years of successful development, including investments made by many leading US companies.

In 2009, the BinHai New Area was developed under the State Council's strategic plan to ensure that Tianjin continued to grow as China's third economic engine, following the Pearl River Delta and Yangtze River regions. This has allowed for better coordination across many economic zones as well as for the entire city. Furthermore, Tianjin's application for free trade zone (FTZ) status was approved by the State Council in December 2014, following the China (Shanghai) Pilot Free Trade Zone's (Shanghai FTZ) approval in late 2012.

AmCham China encourages the respective government bodies to continue to position Tianjin as an economic center, with a focus on reforms that promote development of the service economy while maintaining a competitive investment environment. We believe the new FTZ is a significant opportunity. We also urge the government to address several quality of life issues to attract a broader range of professional services, as detailed in the following paragraphs.

Data cited throughout this chapter is based on the results of an October 2014 survey of AmCham China's Tianjin-based membership.

Ongoing Regulatory Issues

Free Trade Zone

President Xi Jinping has emphasized the development of FTZs as a key driver of the economic reform agenda. Tianjin's application to establish an FTZ was first announced in 2013 following establishment of the Shanghai FTZ and was approved by the State Council on December 28, 2014. Though the Tianjin FTZ was originally scheduled to open on March 1, 2015, at the time of this writing, it has not yet been officially launched. We continue to see the FTZ as a substantial opportunity for Tianjin to showcase innovation and reform on an international scale, while enhancing its business reputation. Given the slow pace of reform in the Shanghai FTZ, we urge local planners in Tianjin to be bold in their thinking, and encourage them to call upon the resources and advice that the foreign business community can offer.

Development of the Service Economy

Tourism Sector

Tianjin has made significant progress in becoming a tourist destination, though further improvements could be made with the development of a comprehensive marketing plan. Improving services at public venues, transportation links, and at related food and beverage outlets is critical for continued growth in tourism. Stronger efforts are also needed to promote art and entertainment events in order to attract audiences and fully utilize the developing infrastructure.

Financial Sector

Apart from potential FTZ developments, Tianjin's financial sector remains under-developed. The Tianjin government should utilize the FTZ platform to encourage further developments by banks, consulting companies, and other financial service firms, including foreign-invested companies, to serve local and international commerce and trade and become a service center for the region.

Other Professional Services

Tianjin should continue to encourage the development of all professional service sectors. Due to its proximity to Beijing,

天 津

引 言

天津，与北京同处中国北方的渤海湾地区，是中国主要的工商业城市，四大直辖市之一，拥有重要的海港和中国大陆第三大集装箱码头，国内生产总值增长速度一直高于全国平均水平。

天津长期以来一直是中国经济改革的首选地点，是首批获准设立与深圳和上海类似的特别经济区的城市之一。1984 年，天津经济开发区设立以来，经过 30 多年的成功发展，吸引了很多美国大企业的投资。

2009 年，滨海新区列入国务院战略发展规划，天津经济继续保持增长态势，成为继珠江三角洲和长江经济带的中国第三大经济支撑带。整个城市和多个经济区之间实现了更好的协调发展。继 2012 年年底中国（上海）自由贸易试验区批准设立后，2014 年 12 月，国务院又批准天津设立自由贸易试验区。

中国美国商会鼓励相关政府机构继续将天津定位于经济中心，关注能够促进服务经济发展的改革事项，同时维持较有竞争力的投资环境。我们相信新设的自贸区是一个重要的机遇。我们也促请政府解决与生活质量有关的几个问题，从而吸引更多的专业服务，详情请见下文。

本章引用的数据基于中国美国商会 2014 年 10 月对位于天津的会员企业的调查结果。

现存监管问题

自由贸易区

习近平主席强调自由贸易区的发展是经济改革进程的重要驱动力。继上海自贸区设立之后，2013 年，天津首次宣布申请设立自贸区，并于 2014 年 12 月 28 日获得国务院批准。天津自贸区原本计划 2015 年 3 月 1 日开放，但是，直到撰写本文时，还没有正式启动。我们仍然相信自贸区是一个重要的机会，有助于天津在国际范围内展示创新和改革成果以及提高商业信誉。鉴于上海自贸区改革的缓慢步伐，我们敦促天津地方规划部门开放思想，大刀阔斧，鼓励他们利用外资工商企业提供的各种资源和建议。

服务类经济的发展

旅游业

天津旅游业已经取得了重要发展，不过仍需要制定一个全面的营销计划。公共场所、运输通道和相关餐饮企业服务的改进对于旅游业继续保持增长至关重要。为了吸引观众，充分利用正在发展的基础设施，还需要加大支持力度，促进艺术和娱乐活动的发展。

金融业

除了自贸区的潜在发展，天津的金融业仍然不是很发达。天津市政府应当利用自贸区这一平台，鼓励包括外资企业在内的银行、咨询公司和其他金融服务企业的进一步发展，服务本地和国际商贸需要，成为地区服务中心。

其他专业服务

天津应当继续鼓励各个专业服务行业的发展。由于毗邻首都北京，天津专业服务业的发展相对于需求而言，还是比较落后的。这既包括金融服务业，也包括律师、会计、人力咨询和其他主要专业人员。

天津的竞争力

劳动力成本

虽然与中国其他一线城市相比，天津的劳动力成本较低，但是，我们的会员企业仍然将劳动力成本上涨列为首要的业务挑战。基本工资、社会福利和其他间接劳动力成本的增长速度超过了生产力和经济的增长速度。我们支持中国增加国内消费的战略，但是，天津应当实施谨慎稳健

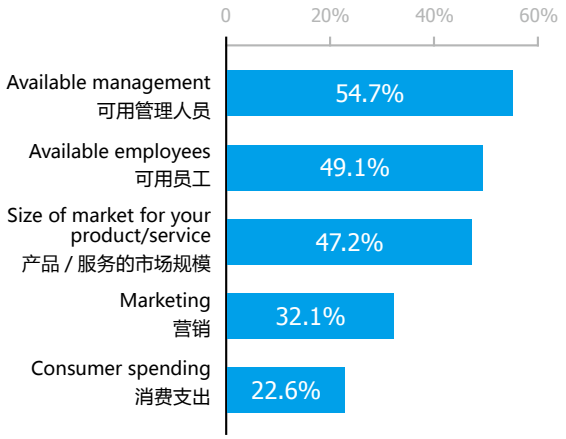
the professional service industry lags behind the demand for such services. This includes not only financial services but also lawyers, accountants, human resource consultants, and other key professionals.

Competitiveness of Tianjin

Labor Costs

Although labor costs in Tianjin are comparably lower than other tier-one Chinese cities, our members cite rising labor costs as their top business challenge. Base salaries, social benefits, and other indirect labor costs are increasing faster than productivity and economic growth. While we support the strategy of increasing domestic consumption, Tianjin should carefully moderate its policies in order to maintain cost competiveness.

What are the biggest disadvantages to doing business in Tianjin compared to Tier 1 cities?
与一线城市相比，在天津经商面临的最大不利因素是什么？



Availability of Talent

Fifty-five percent of AmCham China Tianjin members report that a lack of qualified management puts Tianjin at a disadvantage compared to other tier-one Chinese cities. Furthermore, nearly 50 percent responded that there is a shortage of qualified employees at all levels, compared to other tier-one cities. We believe these two factors are significant hurdles to developing a strong service sector in Tianjin.

Ease of Doing Business

Seventy-seven percent of our members report satisfaction with the Tianjin government's support of foreign business. Despite the challenges presented in this chapter, the Tianjin government has a long history of strong partnership with foreign-invested enterprises. Keeping Tianjin government services competitive with those in other tier-one cities is likewise important.

Quality of Life Issues

Pollution

Pollution ranks with labor costs as our members' top business challenge, and the largest negative factor affecting the quality of life in Tianjin. While there is substantial awareness of the issue, expedited solutions should be implemented in all sectors. We applaud efforts to reduce the number of vehicles on the road and remove older vehicles, but bolder steps need to be taken to reduce the harmful emissions of heavily polluting sectors.

Traffic Congestion

Forty-five percent of our members cite traffic congestion as a major concern affecting the quality of life in Tianjin. Mass transit still holds great promise in reducing chronic traffic congestion in Tianjin. We encourage further development of the metro system, advancing construction where viable. We encourage development of programs that incentivize people to leave their cars at home and utilize public transit. Strategic development in outlying areas and connections to regional transportation are likewise key areas for future development.

Recent Developments

Regional Integration

Looking to the future, the regional integration strategy to incorporate Beijing, Tianjin, and Hebei province should drive economic reforms. We believe it will be important to select a few key industries that can be developed as regional champions based in Tianjin. Promising areas include healthcare, technology, and environmental and supply chain services. Tianjin is uniquely positioned to take full advantage of its role in the region if a properly executed plan is developed.

Modernization of the City

A wave of additional investments in retail properties, office buildings, and hotels occurred in 2014. This included the new Riverside 66 shopping mall; the new Shangri-La, Pan Pacific, and Crowne Plaza hotels; and several new office buildings. Additional supply is expected in 2015 and, while

的政策，以保持自身的成本竞争力。

可用人才

55% 的中国美国商会天津会员企业表示，缺少合格的管理人员使得天津与中国其他一线城市相比处于劣势。而且，将近百分之五十的企业表示，与其他一线城市相比，天津各个水平的合格员工数量也不足。我们认为，这两个因素将极大地制约天津服务业的发展。

经商便利度

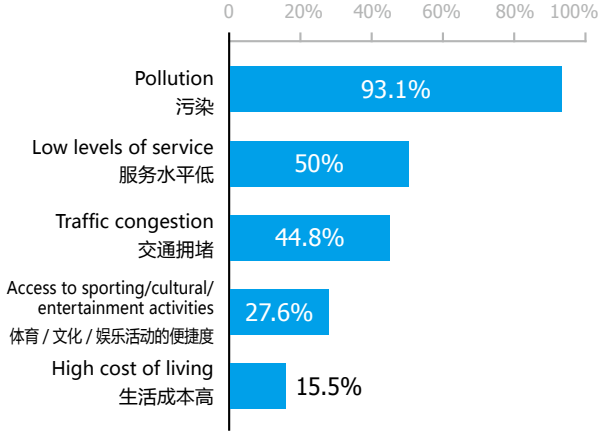
77% 的会员企业表示满意天津市政府对外企的支持。虽然存在本章提出的各种挑战，但是，天津市政府长期以来一直与外资企业保持有力的合作。另外，保持天津政府服务与其他一线城市的竞争同等重要。

生活质量问题

污 染

污染和劳动力成本是会员企业面临的主要业务挑战，是影响天津生活质量的最大不利因素。虽然已经强烈意识到这一问题，但是，天津还是需要在各个领域迅速采取解决措施。我们对政府减少道路行驶车辆以及淘汰陈旧车辆所做的努力表示赞赏，不过，天津还需要采取更大胆的举措减少重污染行业的有害排放。

What are the top three challenges that affect your quality of life in Tianjin?
影响天津生活质量的三大挑战是什么？



交通拥堵

45% 的会员企业将交通拥堵视为影响在天津生活质量的主要因素。要想缓解长期存在的交通拥堵问题，在公共交通方面仍然可以大有作为。我们鼓励进一步发展地铁系统，在可行的地方推动建设。我们赞成开展相关项目，鼓励人们放弃开车改乘公共交通。外围以及连接区域交通的地区在将来也有可能成为重要的战略发展地区。

最新进展

区域一体化

展望未来，北京、天津和河北省的京津冀一体化战略将推动经济改革进程。我们认为，天津需要选择几个可以发展成为地区领军行业的关键行业。非常有前景的领域包括医疗保健、技术，以及环境和供应链服务。如能制定和实施一份适当的规划，天津便能够利用其独特的优势，在该地区充分发挥作用。

城市现代化

2014 年，天津再次掀起商业地产、办公楼和酒店投资浪潮，其中包括新建的恒隆广场、新香格里拉酒店、泛太平洋酒店、皇冠假日酒店以及几处写字楼。预计 2015 年还会有新的物业入市。虽然有时供大于求，但是事实上这些新建项目已经提高了服务行业的质量。随着城市新建项目的增加以及新的娱乐和餐饮场所的开设，天津的宜居性得到很大提升。要想进一步提升，目前来看，改进服务交付是关键所在。

超过 50% 的会员企业将各个行业的服务水平较低视为影响其在天津生活质量的主要因素。我们鼓励制定一份全面的战略，帮助改善服务水平，这将有助于天津总体形象的提升。与其他一线城市相比，良好的服务质量口碑对天津的未来发展至关重要。

sometimes characterized as oversupply, these new projects have, in reality, enhanced quality in the service sector. With the addition of these new projects and the opening of new entertainment and dining-related venues around the city, Tianjin's livability is widely considered to be improving. Focusing on service delivery is now the key requirement for further improvement.

Over 50 percent of our members cite low levels of service across all sectors as a major challenge to their quality of life in Tianjin. We encourage development of a comprehensive strategy to help improve the service level which would, in turn, improve Tianjin's overall image. It is vital for Tianjin's future development to be known for its service quality in comparison to other tier-one cities.

Recommendations

For the Tianjin Government:

- **Provide a clear roadmap for Tianjin's role in the regional integration strategy with Beijing and Hebei province, including a strategic plan to endorse certain sectors in which Tianjin has or can gain competitive advantage, such as service industries, in the broader region.**
- Be bold in shaping Tianjin's new FTZ, and design it in an open way with opportunities for timely consultation with the business community.
- Utilize a public relations agency to assist Tianjin in creating a master plan to better brand and market the city.
- Create a study to analyze and deal with the impact of rising labor costs and the necessary reforms to keep Tianjin competitive in attracting management.
- Conduct a city-specific sustainability study to ensure problems are matched with best practice solutions.
- Continue to reduce traffic congestion by developing practical and enforceable policies, along with continued focus on public transportation solutions.
- Continue efforts in making Tianjin a better tourism and conference destination by taking advantage of recent infrastructure investments.

建 议

对天津市政府：

- **制定一份清晰的路线图，确定天津在京津冀区域一体化战略中的作用，包括支持服务业等天津具有或者能够获得竞争优势的产业在该地区发展的战略计划。**
- 大胆规划天津自贸区，以开放的方式进行设计，及时征询企业界的意见和建议。
- 通过公关机构协助天津制定一份品牌提升和城市营销计划。
- 研究和分析劳动力成本上涨造成的影响以及在确保天津对管理人才的吸引力方面进行改革。
- 对城市特色的可持续性进行研究，确保问题得到最佳实践的解决方法。
- 继续制定切实可行的政策减少交通拥堵，继续关注公共交通的解决方案。
- 通过利用近期基础设施投资，继续将天津打造成更佳的旅游和会议聚集地。

Wuhan

Introduction

The city of Wuhan, capital of Hubei province, continues to report rapid economic growth fueled in large part by the central government's "Rise of Central China Plan." The government continues to expand construction of comprehensive infrastructure, development of higher-end products, green economic growth, a cleaner environment, and increased consumption. The Hubei provincial government is also prioritizing the seven strategic emerging industries identified by the central government in 2013: next-generation information technology, energy conservation and environmental protection, alternative energy, biotechnology, high-end equipment manufacturing, advanced materials, and new energy vehicles.

While its foreign population is proportionally much smaller than China's tier-one cities, Wuhan nevertheless aspires to an international profile – for example, in 2014, Wuhan hosted international tennis and golf events. The Hubei and Wuhan governments continue to make progress on improving traffic, reducing air pollution, attracting talent, developing education opportunities for expatriate children, and transforming Wuhan into a more favorable investment environment. Regarding quality of life, in a 2014 survey of AmCham China Wuhan chapter member companies, over half of the respondents mentioned livability as an advantage Wuhan has over China's coastal cities.

The gross domestic product of Hubei and Wuhan grew 9.7 percent in 2014, reaching approximately US $438 billion (RMB 2.7 trillion) and exceeding US 162 billion (RMB 1 trillion), respectively. Foreign direct investment in Hubei totaled US 7.9 billion (RMB 48.7 billion), an increase over 2013 of 15.1 percent. Foreign businesses continue to increase their presence in Wuhan. With these developments, AmCham China members are generally optimistic about their near-term business outlook, with 62 percent of members indicating they are confident about Wuhan's two-year business environment outlook. Ninety percent also expressed satisfaction with the Wuhan government's support of foreign business.

Despite this healthy overall growth, the manufacturing sector is still experiencing a slowdown and is expected to remain flat into 2015. Additionally, acquiring high-level management talent continues to present a challenge to American businesses operating in the region.

AmCham China welcomes further government efforts to clarify and consistently apply laws and regulations, attract world-class talent, encourage investment from small- and medium-sized enterprises (SMEs), develop international-standard medical care, protect air quality, and improve traffic and pedestrian safety. We also look forward to expanded US Citizen Services at the US Consulate in Wuhan.

Ongoing Regulatory Issues

Inconsistent and Unclear Laws and Regulations

AmCham China recognizes that all levels of government have made progress to clarify and simplify business laws, rules, and regulations. However, AmCham China member companies cite inconsistent and unclear laws and enforcement practices as the biggest challenges to their business operations in Wuhan, which puts them at a disadvantage relative to their domestic competition. Areas of particular concern include *hukou* rules and environmental and labor laws. For example, enforcement of environmental protection laws against foreign-invested companies is more stringent than against domestically invested companies. Also, if an employee clearly violated company policy and was terminated, the labor arbitration tribunals in some locations ruled in favor of the employee, in others in favor of the company. Clarifying laws and regulations and enforcing them consistently will encourage more American companies to invest in central China.

Difficulty Recruiting Talent

Member companies report that the biggest disadvantage to doing business in Wuhan compared with Chinese coastal cities is the lack of available managerial talent. AmCham China applauds the efforts of the local and provincial governments to attract talented personnel to Hubei. Current policies have focused on attracting global top-level technical experts and leaders. However, current policies are not as effective at attracting talented senior managers and team leaders, whether foreign or Chinese. For example, if a Chinese senior manager moves to Wuhan from Shanghai

武 汉

引 言

在中国中央政府“中部崛起”计划的推动下，湖北省省会武汉市的经济持续快速发展。武汉市政府继续建设综合型基础设施，发展高端产品，促进绿色经济增长，打造清洁环境，拉动市场消费。湖北省政府也非常重视中央政府 2013 年划定的七大新兴战略产业，包括：新一代信息技术、节能环保技术、替代性能源技术、生物技术、高端设备制造、先进材料以及新能源汽车。

尽管武汉市外国人口的比例远远少于一线城市，但武汉仍然渴望成为一个国际化的大都市。例如，2014 年武汉市举办了国际网球与高尔夫球比赛；湖北省政府与武汉市政府持续改进交通条件、减少空气污染、吸引优秀人才，为外国家庭的子女提供教育机遇，将武汉市打造成为更有吸引力的投资目的地。在生活质量方面，2014 年针对中国美国商会武汉分会会员开展的调查显示，超过一半的受访者认为，与中国其他沿海城市相比，“宜居”是武汉市的优势之一。

2014 年，湖北省与武汉市国民生产总值增长 9.7%，分别达到约 4380 亿美元（2.7 万亿人民币）及超过 1620 亿美元（1 万亿人民币）。湖北省外国直接投资为 79 亿美元（487 亿人民币），与 2013 年相比增加 15.1%，外国企业继续扩大在武汉的运营范围。在此发展背景下，中国美国商会会员对其近期业务前景持乐观态度，62% 的会员对武汉未来两年的商业环境前景充满信心，90% 的会员对武汉市政府对外国企业的支持表示满意。

然而，在健康的整体增长背景下，制造业仍面临增长放缓的局面，2015 年前景可能仍不景气。此外，在当地运营的美国企业仍面临高级管理人才紧缺的问题。

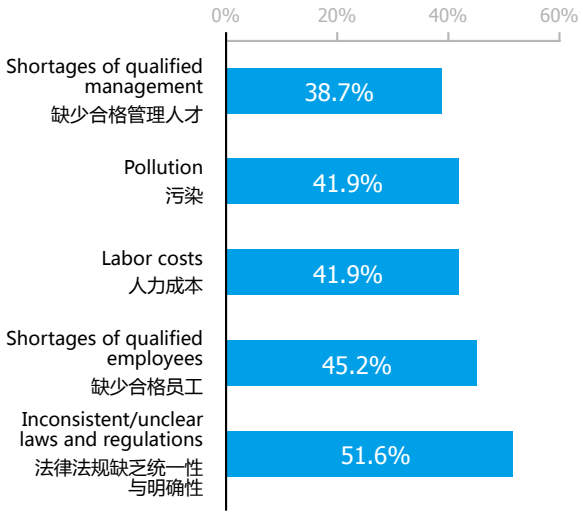
中国美国商会欢迎政府采取措施，进一步明确相关法规并确保持续实施，吸引世界一流的人才，鼓励中小企业（SME）投资，发展国际标准医疗服务，保护空气质量，改善交通条件，保护行人安全。中国美国商会还希望扩大美国驻武汉领事馆为美国公民提供的服务范围。

现存监管问题

法律法规缺乏统一性与明确性

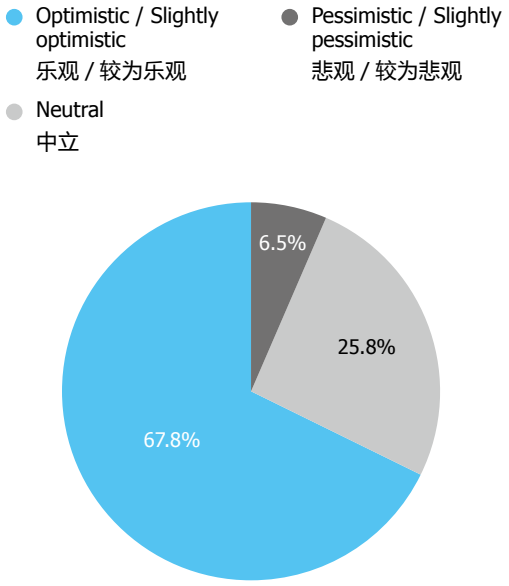
中国美国商会意识到，各级政府都在努力明确及简化商业法律、法规和规定。但是，中国美国商会成员公司认为，模糊不清的法规与执法不一致仍是影响企业在汉运营的最大障碍，这些障碍使他们相对于国内竞争对手处于不利地位。引起这些公司担忧的主要问题包括户口体系以及环境和劳动法规。例如，针对外国投资企业的环保法规执行力度比国内投资企业更为严格。如果公司员工明显违反公司政策并被终止劳动合同，部分地区的劳动仲裁机构偏向员

What are the top five business challenges in Wuhan?
在武汉面临的五大商业挑战



区域性问题

How would you describe your two-year business outlook in Wuhan?
会员对企业在武汉近两年商业前景的评价



while retaining his/her Shanghai *hukou*, he/she will face difficulties educating his/her children and accessing other social services. AmCham China recommends expanding the current policy focus from global top-level experts to include senior managers and team leaders, and from talented individuals to talented teams.

While Wuhan's 1.3 million university students present a huge pool of potential talent, the abilities of university graduates often do not match the needs of global, high-tech companies. AmCham China also recommends that local and provincial governments take the initiative to provide platforms for universities and global companies to work together to equip university students for work in international companies.

Encouraging Small- and Medium-Sized Enterprises

The Wuhan and Hubei governments are implementing their strategic plans to develop this region, attracting more foreign businesses, with current plans focusing on attracting large companies and large projects. However, large companies and large projects require an entire value chain to support them, while SMEs constitute most of the value chain. The current plans do not do enough to support SMEs. The procedures for small companies to register, operate, and expand have become increasingly complicated and difficult, as the process and standards for approval are often unclear or inconsistently followed. More than 40 percent of central China member companies surveyed cited difficulty in acquiring required licenses as one of their top business challenges in Wuhan. AmCham China encourages the Wuhan and Hubei governments to establish a foreign investment center for SMEs and to clarify approval requirements and standards.

Air Quality Concerns

Since designating air quality as one of the top 10 priorities to improve the quality of life for residents, the Wuhan government has taken numerous measures to improve air quality. These include monitoring pollution emissions and reducing the amount of emissions from buses, coal boilers, and kitchens. The Wuhan government has also increased the use of natural gas and renewable sources of energy. Additionally, the Wuhan government has installed PM 2.5 monitoring instruments at 10 monitoring stations and published PM 2.5 data, as well as PM 10, SO_2, and NO_2 levels, on a real-time basis. In 2013, Wuhan adopted a more stringent air quality standard. Nevertheless, member companies still report air pollution as one of the top three challenges to doing business in Wuhan and the top challenge affecting quality of life.

AmCham China recommends that the Wuhan government ensure that new pollution standards are strictly enforced. The government should adopt higher vehicle emission standards and create incentives to encourage high-efficiency energy (e.g., combined cooling, heating, and power technology), electrical vehicles, improved industrial energy efficiency, waste reuse, and recycling.

Improving Medical Care

Medical care for the foreign community in Wuhan continues to improve. The two main hospital systems have excellent facilities, diagnostic capabilities and medical skills, and actively interact with academic institutions and hospitals in developed countries. Many hospitals have established VIP clinics or other advanced services designed for foreigners. However, member companies mention lack of adequate healthcare facilities as a significant challenge to their quality of life. Language barriers often prevent foreigners from being able to communicate freely with hospital staff. Furthermore, there is only one international family medicine clinic in Wuhan, open only two half-days per week, staffed with an American family physician licensed in the US and in China. Fiscal incentives that encourage international-standard medical care providers to offer additional services would facilitate medical developments in Wuhan, thus encouraging more foreigners to invest, live, and work in Wuhan.

Addressing Traffic Challenges

AmCham China applauds the Wuhan government's significant investment in comprehensive infrastructure development, including roads, the airport, shipping, and an urban rail system. We understand that improvements of this scale necessitate some disruption to traffic flows. Nevertheless, member companies cite traffic congestion as the second

工，其他地区则会偏向公司。如果武汉能够制定明确的法律法规，并采取统一执行形式，将鼓励更多美国公司在中国中部投资。

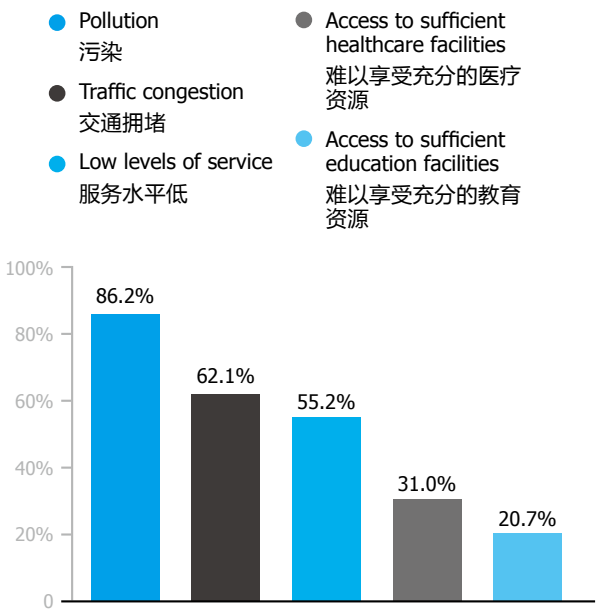
人才招聘

成员公司称，与中国沿海城市相比，在武汉做生意遇到的最大困难在于缺乏合格的管理人才。中国美国商会欢迎省市政府为吸引人才前往武汉所采取的举措。目前的政府更侧重于吸引国际一流的技术专家和领袖。而当前政策在吸引优秀的中方或外方高级管理人员和团队领袖方面仍不尽人意。例如，如果一位中国高级经理由上海来到武汉，同时仍保持上海户口，那么这位管理人员在子女教育和获取其他社会服务方面就会遇到困难。中国美国商会建议将当前政策的重点从吸引国际一流专家扩展到吸引高级管理人才和团队领袖以及优秀的团队成员。

武汉拥有 130 万高校学子，为企业提供了巨大的人才储备，但大学毕业生的工作能力通常不符合国际高科技公司的要求。中国美国商会建议省市政府采取措施，为大学和全球公司提供合作平台，将大学生培养成为适合国际公司需求的人才。

What are the top three challenges that affect quality of life in Wuhan?

您或您所在机构是否存在因空气质量问题而很难招聘到高级管理人才来华工作的情况？



鼓励中小型企业

武汉市政府与湖北省政府正在实施地区发展战略计划，旨在吸引更多外国公司入汉，当前计划以吸引大型公司和项目为主。不过，大型公司与项目需要完整的价值链提供支持，而中小型公司则是价值链的主要组成部分。目前实施的计划在支持中小型企业方面尚不完善。由于审批流程与标准通常模糊不清或不能统一执行，小型公司的注册、运营和扩展流程越来越复杂和困难。在调查中，40% 以上的中部成员公司认为，如何获取营业执照是他们在武汉创业面临的最大难题之一。中国美国商会督促武汉市政府与湖北省政府建立面向中小型企业的外国投资服务中心，明确审批要求与标准。

空气质量

武汉市政府将空气质量列为提高市民生活质量的十大重要问题之一，并采取多项措施改善空气质量，包括监控污染排放，减少公交车、烧煤锅炉与厨房排放等。武汉市政府还增加了天然气和可再生能源的使用。此外。武汉市政府在 10 处监测点安装了 PM2.5 监控视频，实时公布 PM2.5 数据以及 PM10、SO_2 和 NO_2 水平。2013 年，武汉采用了更为严格的空气污染控制标准。不过，成员公司仍认为空气污染是在武汉创业的前三大挑战之一，并且是影响生活质量的最重要问题。

中国美国商会建议武汉市政府确保严格实施新污染标准。政府应采用更高的汽车排放标准，创建奖励机制，鼓励高效能源（如混合冷却、加热与动力技术）和电动汽车的推广，提高工业能源效率，促进水资源的循环再利用。

医疗卫生服务

武汉市外国人社区的医疗卫生服务得到持续改进。两家主要医院系统拥有先进设施、出色诊断能力和医疗技术，并能与发达国家学术机构和医院积极互动。许多医院都建立了 VIP 诊所或其他为外国人设立的先进服务机构。不过，成员公司仍认为缺少足够的医疗卫生设施是影响其生活质量的主要问题之一。语言障碍常使外国人无法与医院自如交流。此外，武汉仅有一家国际家庭诊所，每周仅开放两个半天，由持有美国和中国执照的美国家庭医生运营。如能建立激励机制，让符合国际标准的医疗服务提供商提供额外服务，将有助于推动武汉的医疗事业发展，从而促进更多外国人在汉投资、生活和工作。

biggest challenge to their quality of life in Wuhan. One related safety concern is that sidewalks are often removed around construction projects, increasing the danger to pedestrians and cyclists. AmCham China recommends that the Wuhan government provide stronger supervision of construction contractors, requiring them to provide safe pedestrian walkways to minimize safety risks and optimize traffic flow during construction projects. Other suggestions for increasing traffic flow include designating bus rapid transit lanes to encourage use of public transportation and enforcing the prohibition of parking in bus stops. When residents can travel more safely, Wuhan will become a more welcome place not only for its citizens but also for foreign investment.

Recent Developments

New International School Building

The presence of international schools is another key factor foreign companies consider when deciding whether to invest in a location. AmCham China applauds the significant investment that the Wuhan Economic and Technical Development Zone made to build new international school facilities, providing a higher-quality educational environment for the children of expatriate personnel working in Wuhan.

Expansion of Medical Care Facilities for Foreigners

The one clinic for foreigners in Wuhan that is staffed by a US-certified doctor, as discussed above, has recently expanded its facilities. AmCham China recognizes the investments made by the Wuhan government to expand medical services for foreigners living in Hubei.

Recommendations

For the Hubei and Wuhan Governments:

- **Provide transparent and equal enforcement of government rules and regulations. [Hubei government, Wuhan government]**
- Expand the current strategy of attracting top talent to include senior managers and team leaders. [Hubei government, Wuhan government]
- Provide platforms for universities and global companies to work together to equip university students for work in global companies. [Hubei and Wuhan Commercial Bureaus and Education Bureaus]
- Establish a foreign SME investment center to clarify and simplify the process of obtaining licenses and government approvals. [Hubei government, Wuhan government]
- Encourage international-standard healthcare facilities to operate in Wuhan by providing incentives to qualified operators. [Hubei government, Wuhan government]
- Continue to encourage the use of mass transportation systems to reduce traffic congestion, parking problems, and pollution. [Hubei government, Wuhan government]
- Ensure pedestrians have safe places to walk throughout the city. [Hubei government, Wuhan government]

For the US Government:

- **Increase the services available to both US and Chinese citizens at the US Consulate General in Wuhan. [US Consulate General, Wuhan]**

交 通

中国美国商会十分赞赏武汉市政府为全面发展基础设施而开展的大规模投资，包括公路、机场、水运和城市铁路系统。我们理解，如此大规模的基建项目可能造成部分地区交通中断。不过，成员公司仍认为交通拥堵是影响武汉生活质量的第二大问题。与此相关的安全问题是，建筑项目周围的人行道通常会被隔离，增加了行人和骑自行车者的危险。中国美国商会建议武汉市政府加强对建筑承包商的监督，要求他们提供安全人行道，以减少施工期间的安全风险，优化交通流量情况。其他优化交通流量的建议包括指定快速公交系统专用车道，鼓励市民使用公共交通工具，禁止其他车辆在公交车站停靠。如能保障市民安全出行，武汉将成为市民和外国投资者的理想生活乐园。

最新发展

新建国际学校

国际学校的建立是外国公司决定是否在当地投资的另一个重要因素。中国美国商会十分赞赏武汉经济技术开发区为创办新国际学校而进行的大量投资，该项目为外国驻汉工作人员的子女提供了优质教育环境。

增加为外国人提供医疗卫生服务的机构

上文所述武汉唯一由美国认证医生执业的外国人诊所最近扩大了规模。中国美国商会十分赞赏武汉市政府为在湖北生活的外国人扩展医疗服务所做的投资。

建 议

针对湖北省政府与武汉市政府：

- **实现透明而平等的政府法规执法。[湖北省政府，武汉市政府]**
- 扩展当前人才战略，吸引高级管理人才与团队领袖。[湖北省政府，武汉市政府]
- 为大学和全球公司提供平台，共同培养适合全球公司需求的大学生。[湖北省与武汉市商务厅（局）与教育厅（局）]
- 成立外国中小型企业投资服务中心，明确并简化获取执照及通过政府审批的流程。[湖北省商务厅，武汉市政府]
- 建立激励机制鼓励有国际水准的医疗服务机构在武汉开设分支机构。[湖北省政府，武汉市政府]
- 继续鼓励公民使用公共交通系统，解决交通拥堵、停车问题和污染问题。[湖北省政府，武汉市政府]
- 确保行人在市内拥有安全的人行道。[湖北省政府，武汉市政府]

针对美国政府：

- **扩大美国驻武汉总领事馆对美国和中国公民的服务范围。[美国驻武汉总领事馆]**

Acronyms 缩写表

3PPP	Third-party Payment Providers
ACP	Aviation Cooperation Program
AD	Airworthiness Directive
AEO	Authorized Economic Operator
AFP	US-China Agriculture and Food Partnership
AFTM	Air Traffic Flow Management
AIC	(Local) Administration for Industry and Commerce
AML	Anti-Monopoly Law of China
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine
ATFM	Air Traffic Flow Management
ATMB	Air Traffic Management Board
AUCL	Anti-Unfair Competition Law
AWP	Aerial Work Platform
BEPS	Tax Base Erosion and Profit Shifting
BIS	US Bureau of Industry and Security
BISIEC	China Bureau of Industry, Security, and Import and Export Control
BIT	Bilateral Investment Treaty
BRIC	Brazil, Russia, India, China
BT	Business Tax
CAAC	Civil Aviation Administration of China
CAC	Cyberspace Administration of China
CAGR	Compound Annual Growth Rate
CBD	Central Business District
CBM	Coalbed Methane
CBRC	China Banking Regulatory Commission
CCAR	China Civil Aviation Regulations
CCC	China Compulsory Certificate
CCHP	Combined Cooling, Heating, and Power
CCSA	China Communications Standards Association
CECP	Certified Executive Compensation Professional
CERC	US-China Energy Research Center
CFDA	China Food and Drug Administration

CFIUS	Committee on Foreign Investment in the United States
CIIC	China International Intellectech Corporation
CIPS	China International Payment System
CIQ	China Inspection and Quarantine
CIRC	China Insurance Regulatory Commission
CMDE	Center for Medical Device Evaluation
CMDSA	China Medical Device Standardization Association
CNAF	China National Arts Foundation
CNOOC	China National Offshore Oil Company
CNPC	China National Petroleum Company
COMAC	Commercial Aircraft Corporation of China
CSP	Concentrating Solar Power
CSRC	China Securities Regulatory Commission
DBDC	Dual-branded Dual Currency
DDGS	Dried Distillers Grains with Solubles
DE&CHP	Distributed Energy and Combined Heat and Power
DQ	Design Qualification
DTA	Double Tax Agreement
ECER	Energy Conservation and Emission Reduction
ECP	US-China Energy Cooperation Program
ECWG	Export Compliance Working Group
EDS	Essential Drug System / Express Delivery Services
ELV	End-of-Life Vehicles
EMV	Europay, MasterCard, Visa
EPC	Engineering, Procurement, and Construction
EPS	Electronic Payment Service
ESCO	Energy Service Company
F2F	Face to Face
FAA	US Federal Aviation Administration
FBO	Fixed Base Operators
FCCC	Foreign Correspondents' Club of China
FCS	Foreign Commercial Service

FDI	Foreign Direct Investment
FESCO	Foreign Enterprise HR Service Company
FI	Financial Institutions
FICE	Foreign-Invested Construction Enterprise
FIDE	Foreign-Invested Design Enterprise
FIE	Foreign-Invested Enterprise
FIESE	Foreign-Invested Engineering Services Enterprise
FIL	Foreign Investment Law
FRAND	Fair, Reasonable, and Non-Discriminatory
FSL	Food Safety Law
FTA	Free Trade Accounts
FTZ	Free Trade Zone
FX	Foreign Exchange
FYP	Five-Year Plan
GA	General Aviation
GAAR	General Anti-avoidance Rule
GAC	General Administration of Customs
GAPPRFT	General Administration of Press, Publications, Radio, Film, and Television
GMP	Good Manufacturing Practices
GPA	Government Procurement Agreement
HCP	US-China Healthcare Cooperation Program
HDL	Hard Disc Loading
HEV	Hybrid Electric Vehicle
HNTE	High- and New-Technology Enterprise
IAIS	International Association of Insurance Supervisors
IAMC	Insurance Asset Management Companies
IATA	International Air Transport Association
ICA	Instruction for Continued Airworthiness
ICT	Information and Communications Technology
IEC	International Electrotechnical Commission
IIP	Indigenous Innovation Product
IMDRF	International Medical Device Regulators Forum
IOC	International Oil Company
IOSC	International Organization of Securities Commission
IoT	Internet-of-Things

IP	Intellectual Property
IPO	Initial Public Offering
IPR	Intellectual Property Rights
IR	Implementing Regulation
ISO	International Organization for Standardization
IT	Information Technology
ITA	Information Technology Agreement
ITU	International Telecommunication Union
JCCT	US-China Joint Commission on Commerce and Trade
JI	Judicial Interpretation
JSA	Joint Study Agreement
JV	Joint Venture
LEED	Leadership in Energy and Environmental Design
LGFV	Local Government Financial Vehicle
LLP	Low Level Presence/ Life Limited Part
LOB	Limitation on Benefits
LP	Limited Partner
M&A	Mergers and Acquisitions
MDRS	Massive Delay Response System
MEP	Ministry of Environmental Protection
MIIT	Ministry of Industry and Information Technology
MLPS	Multi-level Protection Scheme
MNC	Multinational Corporation
MOA	Ministry of Agriculture
MOC	Ministry of Culture
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOFCOM	Ministry of Commerce
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOLAR	Ministry of Land and Resources
MOST	Ministry of Science and Technology
MOU	Memorandum of Understanding
MPAA	Motion Picture Association of America
MTC	Model Tax Convention
MTCR	Missile Technology Control Regime

NAFMII	National Association of Financial Market Institutional Investors
NCAC	National Copyright Administration of China
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEDL	National Essential Drug List
NEEQ	National Equities Exchange and Quotations
NEV	New Energy Vehicle
NGO	Non-governmental Organization
NHFPC	National Health and Family Planning Commission
NOC	National Oil Company
NPC	National People's Congress
NRDL	National Reimbursement Drug List
OEM	Original Equipment Manufacturer
OGIF	Oil and Gas Industry Forum
OSCCA	Office of Security Commercial Code Administration
OTC	Over-the-Counter
PBOC	People's Bank of China
PMA	Parts Manufacturing Authorization
PPT	Principal Purposes Test
PSB	Public Security Bureau
PSC	Product Sharing Contract
QFII	Qualified Foreign Institutional Investors
R&D	Research and Development
RDP	Regulatory Data Protection
RE	Renewable Energy
REIT	Real Estate Investment Trust
RFG	Remanufactured Finished Goods
RPM	Resale Price Maintenance
S&ED	US-China Strategic and Economic Dialogue
SAC	Standardization Administration of China
SAFE	State Administration of Foreign Exchange
SAIC	State Administration for Industry and Commerce
SAM	Software Asset Management
SAPPRFT	State Administration of Press, Publications, Radio, Film, and Television

SAT	State Administration of Taxation
SAWS	State Administration of Work Safety
SCIO	State Council Information Office
SCLAO	State Council Legislative Affairs Office
SDO	Standards Development Organization
SDR	Special Drawing Rights
SEI	Strategic Emerging Industries
SEMB	State Encryption Management Bureau
SIPO	State Intellectual Property Office
SKU	Stock Keeping Unit
SOA	State Oceanic Administration
SPB	State Post Bureau
SPC	Supreme People's Court
SWIM	System Wide Information Management
TCE	Tons of Coal Equivalents
TDA	US Trade and Development Agency
TEDA	Tianjin Economic Development Area
TFNA	Chengdu Tianfu New Area
TIER	Technologies Import and Export Regulations
TMO	Trademark Office
TPM	Technological Protection Measures
TRAB	Trademark Review and Adjudication Board
TRQ	Tariff Rate Quota
UDI	Unique Device Identification
UHVAC	Ultra-High-Voltage Alternating Current
UMP	Utility Model Patents
USCIS	US Citizen Immigration Services
UVL	Unverified List
VAS	Value-added Service
VAT	Value-added Tax
VC/PE	Venture Capital/Private Equity
VEU	Validated End-User
VFR	Visual Flight Rules
VIE	Variable Interest Entities
WFOE	Wholly Foreign-owned Enterprise
WHO	World Health Organization
WHT	Withholding Income Tax
WTO	World Trade Organization
YRD	Yangtze River Delta