

2017 AMERICAN BUSINESS
IN CHINA WHITE PAPER
2017 年度美国企业在中国
白皮书

Unless otherwise indicated, all charts are from the 2017 AmCham China *Business Climate Survey*.
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Chairman's Message

Every year for 19 years now, the members of the American Chamber of Commerce in China have come together to review the business environment in China and make policy recommendations. The result is this annual *American Business in China White Paper*—one of the most comprehensive assessments of operating conditions for foreign companies in China, covering more than 20 industries and 20 other cross-sector areas and regional issues. While many of the recommendations seem similar to those of previous years, I think it's important that the overall trends don't get lost.

One clear underlying trend is the slowing growth of the Chinese economy. While the slowdown is expected and inevitable, it nevertheless needs to be managed, by the central government as well as companies operating in the economy, to manage expectations and avoid damaging shocks to the system. Another clear trend is the increasing interest of Chinese companies in acquiring overseas assets. This trend reflects not just the increasing wealth of Chinese companies, but also the rising influence of the Chinese economy on the rest of the world.

Finally, we are experiencing a clear increase in uncertainty as the US-China relationship enters a new era. The Trump administration is still finding its feet, and China itself will be undergoing a political transition this year. Multinational companies spanning this relationship, both American and Chinese, are paying close attention to developments as they make their plans.

One trend that is missing is reform of the Chinese economy. Long promised, meaningful reform has failed to materialize and is becoming increasingly difficult to enact. In some cases, it seems new policies will further hinder industrial development by discriminating against the forces that can spur growth and innovation. Even so, our members remain committed to China and the development of its economy, a commitment that is reflected in our policy priorities for this year.

Building Trust Through Transparency

Greater transparency would not only help in the government's fight against corruption, but also boost confidence in private companies from both China and overseas that their investments will be fairly protected under the law. The stability and predictability provided by an unambiguous regulatory environment will be important for China's continued growth, and we hope the authorities can close the effectiveness gap between legislation and its enforcement through an inclusive process for participation in the formulation and implementation of laws and regulations.

Promoting Development Through Open Investment

The benefits of open, vibrant markets extend well beyond foreign-invested enterprises. We believe government policy should help all parties in Chinese society—including consumers, farmers, private companies—not the narrow interests of the few. This is especially important given the increasing scrutiny of the US-China commercial relationship and the questions being raised internationally about the

主席致辞

十九年来，每年的这个时候，中国美国商会的会员都会齐聚一堂，评估中国商业环境，提出政策建议。这份一年一度的《美国企业在中国白皮书》（以下全书简称《白皮书》）便是大家集思广益的成果。《白皮书》对在华外国企业进行了最全面的评估，覆盖 20 多个行业、20 个跨行业领域以及地区事务。虽然《白皮书》提出的许多建议与往年相似，但我认为，重要的是我们把握住了整体趋势。

中国经济增长放缓是其中一项明显的重要趋势。尽管增长放缓已在意料之中，且不可避免，但中央政府以及在中国经济中运营的公司仍需对此进行管理，确定经济预期，避免经济体系遭受毁灭性的打击。另一个明显的趋势是中国企业收购海外资产的兴趣日益浓厚。这一趋势不仅反映出中国企业的财富不断增长，也反映出中国经济对世界其他地区的影响力正在不断增强。

最后，随着中美关系进入新时代，我们面临的不确定性因素明显增多。特朗普政府仍未站稳脚跟，中国自身也将在今年经历政治过渡。跨越中美两国的跨国公司——包括美国和中国公司，正在密切关注事态发展，以制定相应计划。

另外，中国经济改革并未“如约而至”。中国政府长期以来所承诺的实效性改革未能实现，而且越来越难以实施。在某些情况下，新政策对可带来增长和创新的力量歧视，将进一步阻碍工业发展。即便如此，我们的会员仍然愿意投身于中国经济的发展，而我们今年的政策重点也体现出这一承诺。

提高透明度，建立信任

提高透明度不仅有助于政府打击腐败，还将增强中国和外国私人企业的信心，确保他们的投资受到法律保护。明晰的监管环境具有稳定性和可预测性等特点，对中国的持续增长至关重要，我们希望政府在法律法规的制定和实施过程中促进包容性的多方参与，以缩小立法与执法之间的成效差距。

开放投资，促进发展

一个充满活力的开放市场能产生巨大的效益，而外商投资企业并不是唯一的受益方。我们认为，政府的政策应为社会各方提供帮助，包括消费者、农民、私营企业，而不应着眼于

access being granted to Chinese companies overseas compared to the access foreign-invested companies have in China.

Stimulating Innovation Through Global Cooperation

To realize its innovation goals, China will need to strengthen its infrastructure and open its institutions to allow information to flow more freely. Creativity is the product of diverse ideas combined in an environment where standards are set with broad participation and intellectual property is protected from theft. We also need to recognize that the rapid pace of innovation is beyond the ability of any single government to manage, meaning that technology regulation requires public-private engagement across borders.

We hope these priorities and the recommendations contained in this *White Paper* can form the basis for fruitful discussions between the Chinese and US governments and our members, who have donated so much of their time to compiling this information. I'd also like to acknowledge the American Chambers in Shanghai and Southwest China, who also provided valuable insights from their members. We hope that through such cooperation, we can contribute to China's continued development and future prosperity.



William Zarit

Chairman

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

April 2017

少数人的狭隘利益。今天，美中商业关系日益严峻，而中国企业在外国的市场准入难度与外国公司在华市场准入难度形成鲜明对比，已引起国际关注，在这种背景下，实施这一政策显得尤为重要。

全球合作，鼓励创新

为实现创新目标，中国需要加强基础设施建设，进一步开放制度管理，允许信息更加自由地流通。创新的本质是在同一个环境下将多种理念结合在一起，同时通过集思广益为这个环境制定标准，为知识产权提供保护。我们还要认识到，仅凭政府自身力量无法有效管理不断加快的创新步伐，因此技术类法规需要政府和企业进行跨界合作。

我们希望本年度《白皮书》提出的以上重点和建议能够为中美两国政府以及商会成员之间进行的富有成效的讨论奠定基础，我们的会员为编写这些资料投入了大量时间。我还要感谢上海美国商会及中国西南美国商会，感谢他们会员企业提供的宝贵见解。商会希望通过这类合作，为中国的持续发展和繁荣稳定做出贡献。



蔡瑞德

中国美国商会主席

2017年4月



Part One:
Business Climate Overview
商务环境综述

Policy Uncertainties Increase Amid Economic Slowdown

Introduction

With uncertainty stemming from political and economic transitions in both the US and China, perceptions of a deteriorating investment environment for foreign companies in China, and a slowing economy, 2017 will likely be one of the most challenging years in decades for US companies in China. While modest improvements have been made in China in areas such as streamlining administration, regulatory transparency, participation in standards development organizations, and intellectual property protection, the pace of economic reforms and market opening has been slow and faltering, and industrial policies and related measures designed to support domestic industries and national champions have narrowed the space for future participation in China's economy by foreign companies.

This 19th edition of the *American Business in China White Paper* explores cross-sector, industry-specific, and regional issues faced by member companies in 2016, and offers practical recommendations for addressing these challenges that will, if implemented, benefit both foreign companies and the Chinese economy as a whole.

China at Home and Abroad in 2016

Bilateral Relations and China's Commitment to be a World Leader in Globalization

In 2016, China played an expanded leadership role on the world stage. China hosted the G20 Summit in Hangzhou in September, and Presidents Barack Obama and Xi Jinping formally ratified the Paris Agreement on climate change at this meeting. Because the two countries together account for about 38 percent of emissions worldwide, their ratification of this agreement constitutes a landmark step in fighting global climate change.

We began, however, to see international trends moving away from globalization in 2016. Populist-fueled discontent led to Britain's withdrawal from the EU, and the US elected a president who campaigned on an "America First" economic policy platform. On January 23, 2017, President

Donald Trump's first weekday in office, he formally abandoned the Trans-Pacific Partnership (TPP), the landmark 12-nation trade deal that included roughly 40 percent of the world economy. This trade deal had outlined high, enforceable standards for labor, the environment, regulatory transparency, intellectual property protection, and market access. The US withdrawal has created a leadership vacuum with respect to Asia-Pacific trade issues, and it is not yet clear whether and how the Trump administration will reassert the US's traditional role of economic leadership in the region.

Going into 2017, China has become increasingly vocal about its support for globalization. At the World Economic Forum in Davos only three days before President Trump's inauguration, Xi Jinping urged the world to remain committed to developing free trade and investment, and emphasized that no one would benefit from a trade war. Since then, China has continued to voice its support for globalization. In his press conference at the closing of the "Two Sessions" (*liang hui*, 两会) meetings on March 15, 2017, Premier Li Keqiang cited the benefits that globalization has brought to China and stated that China will pursue greater openness. At the China Development Forum on March 20, Premier Li further emphasized globalization and promised to create a better environment for foreign companies in China. We are encouraged by China's reaffirmed commitment to an open, globalized economy, but given past experience, our members are largely waiting to see whether China will follow through on this commitment by implementing practical measures that genuinely open China to foreign investment on the basis of a level playing field.

Communication and dialogue is the bedrock for any bilateral relationship, so we are pleased to see high-level communication continuing between American and Chinese leaders. On February 9, 2017, Presidents Trump and Xi had their first phone conversation since Trump's inauguration and Trump agreed to honor the "one China" policy, decreasing uncertainty in the bilateral relationship and, by extension, the US-China business environment. American Secretary of State Rex Tillerson came to Beijing and met with President Xi on March 19, 2017, and by the time this *White Paper* is published, Presidents Trump and Xi will have met in Florida.

政策不确定性在经济增长放缓中增加

引言

鉴 于中美两国政治和经济转型产生的不确定性，在华外资企业感觉投资环境不断恶化以及经济增长放缓，2017年有可能成为在华美国企业面临挑战最严峻的年份之一。虽然中国在简化行政管理、提高监管透明度、放宽参与标准化工作和知识产权保护方面取得了一定进展，但是经济改革和市场开放的步伐仍然缓慢，此外，为扶持国内产业和龙头企业推出的产业政策和相关举措压缩了外资企业未来参与中国经济的空间。

这是中国美国商会（商会）连续第十九年推出《美国企业在中国白皮书》，其中探讨了会员企业2016年面对的跨行业问题、具体行业问题和区域性问题的，并为解决这些问题提出了可行的建议，若能被采纳，将有利于外资企业和中国经济的整体发展。

2016年国内外形势综述

中美双边关系和中国作为全球化领导者的承诺

2016年，中国在世界舞台上的领导作用得到加强。2016年9月，中国在杭州成功举办了G20峰会，期间奥巴马总统和习近平主席正式批准了关于气候变化的《巴黎协定》。由于中美两国的排放量合计约占全球排放量的38%，因此，两国批准这一协定，可以说是应对全球气候变化的里程碑事件。

然而，2016年，我们也看到国际上呈现出反全球化的趋势。在英国，民粹主义点燃的不满情绪导致英国选择脱离欧盟，在美国，当选总统提出了“美国优先”的经济政策纲领。2017年1月23日，即就任后的第一个工作日，美国总统唐纳德·特朗普正式宣布退出跨太平洋伙伴关系协定（TPP）。参加这一贸易协定的12个国家约占世界经济的40%，对劳动力、环境、监管透明度、知识产权保护

和市场准入制定了严格可行的标准。美国退出TPP，导致亚太地区贸易问题出现领导真空，尚不清楚特朗普政府是否以及如何重新主张美国在这一地区的传统经济领导地位。

进入2017年，中国开始积极表态，支持全球化。在达沃斯世界经济论坛上，即特朗普总统宣誓就职前三天，习近平呼吁世界继续秉持自由贸易和投资，强调打贸易战只会两败俱伤。之后，中国继续表示支持全球化。2017年3月15日，在“两会”闭幕式的新闻发布会上，李克强总理提到全球化给中国带来的好处，表示中国将继续扩大开放。2017年3月20日，李克强总理在中国发展高层论坛上进一步强调全球化的重要性，承诺为在华外资企业提供更好的环境。中国重申对经济开放和全球化的承诺让我们深受鼓舞，但是，根据过去的经验，我们的会员企业大都在观望中国是否会信守承诺采取切实措施，真正向外商投资开放市场，推动公平竞争。

沟通和对话是所有双边关系的基石，我们很高兴看到中美两国领导人继续保持高层沟通。2017年2月9日，特朗普总统上任之后首次和习近平主席通电话，他同意举行“一个中国”政策，围绕中美双边关系以及业务环境存在的不确定性得以降低。2017年3月19日，美国国务卿雷克斯·蒂勒森到访北京并和习近平主席会面。此外，此白皮书发布之时，特朗普总统计划于四月初在佛罗里达州海湖庄园和习近平主席会晤。

国内进展

虽然中国近来表态支持市场开放和全球化，但是，中国加入世界贸易组织已经十五年了，投资壁垒仍然林立。商会一直支持中国参与全球经济体系，我们曾经为中国加入世界贸易组织和获得永久正常贸易地位在华盛顿不遗余力地开展游说。入世以来，中国在很多领域采取措施营造更加开放和市场化投资环境，但是步伐一直缓慢且不均匀。2008年全球金融危机以来，中国在某些方面甚至反向行之。

Domestic Developments

Despite recent rhetoric regarding opening and globalization, investment barriers in China remain high 15 years after China's accession to the World Trade Organization (WTO). AmCham China has always supported China's engagement in the global economic system, and we lobbied intensely in Washington in support of China's WTO accession and permanent normal trade relations status at that time. Since then, China has taken steps in many areas to develop a more open, market-oriented investment environment, but the pace has been slow and uneven; following the 2008 world financial crisis, China even appears to be moving in the opposite direction in some regards.

Institutional Reforms Move Forward While Economic Reforms Stall

The Third Plenum of the 18th National Party Congress in November 2013 outlined many reforms that brought hope to investors, with a central message of allowing market forces to play a central role while reducing the government's role in resource allocation. However, since then, Party and military reforms have been prioritized and economic reforms have stalled.

Since the Third Plenum in 2013, there have been three annual plenary sessions of the Party:

- The Fourth Plenum in 2014 focused on transparency, rule of law, good governance, and legal reform.
- At the Fifth Plenum in 2015, the Party formulated a proposal for the 13th Five-Year Plan (13th FYP), which outlined China's economic goals for 2016-2020 and was approved in March 2016. The 13th FYP is structured around five themes: sharing, opening up, green development, balancing the economy, and innovation, and sets a goal for China to become a "moderately prosperous society" by 2020.
- The Sixth Plenum, held in October 2016, focused on Party discipline, including rules against corruption. The ensuing communiqué designated General Secretary Xi as the "core," solidifying his central leadership role in the Party.

President Xi has made his anti-corruption campaign a hallmark of his administration, and its effectiveness has been significant. Members have not listed corruption among their top five business challenges in our annual *Business Climate Survey* since 2013.

Stalled Reforms and the "New Normal" of Continued Economic Slowdown

Economic challenges such as overleveraging, capital outflows, industrial overcapacity, and rebalancing to a more domestic consumption-oriented economy have led China

into a "new normal" of slower economic growth. China's reported 2016 GDP growth was 6.7 percent, its slowest growth rate in 26 years. In his work report to the National People's Congress in March 2017, Premier Li announced an official national GDP growth target of 6.5 percent for the year. AmCham China members, however, place their expectations of GDP growth even lower, with an average estimate of 6.1 percent growth, according to our *Business Climate Survey* conducted in November 2016.

At the Central Economic Work Conference at the end of 2015, "supply-side structural reform" was identified as a major goal for 2016. However, unemployment concerns, vested interests, and an unclear message from the central leadership have caused these efforts at cutting overcapacity to flounder. China's steel capacity in operation actually increased in 2016, since many of the high-profile closures merely shut down plants that were already idle and a recovery in steel prices encouraged more production. We are encouraged that supply-side reforms were identified as an area for continued effort in 2017 at this past year's Central Economic Work Conference, and also by commitments to reduce further the government's managerial role in state-owned enterprises (SOEs) through mixed ownership reforms. The meeting set China's main economic theme for 2017 as "maintaining stability while seeking progress." However, in our view, a stronger commitment to a market-driven economy will ultimately be necessary to address the market distortions that create overcapacity and policies that isolate SOEs from market forces.

The "Two Sessions" held in March 2017 continued the emphasis on many of these themes. In his work report, Premier Li pledged to cut excess capacity in coal and steel. He also emphasized economic stability—calling for a "prudent and neutral" monetary policy, and proposed tax cuts to promote private sector investment. With the backdrop of a slowing economy and increasing geopolitical uncertainty, we hope that China will pursue bold reforms to create a more open, market-driven investment environment. In our view, such reforms are necessary in order to continue to attract the foreign companies that are crucial to China's economic success, and also to enable China to escape the middle-income trap and achieve its long term economic goals.

An Unbalanced Investment Relationship

The economic benefits of foreign direct investment (FDI) are widely known and include the transfer of knowledge, skills, intellectual property, and money. Data from the Rhodium Group places the combined investments of US companies in China at US \$228 billion (RMB 1.51 trillion) as of 2015. Moreover, for much of the past decade, the majority of China's exports have been produced by foreign-invested enterprises (FIEs). But this is really just the tip of the iceberg. According to the economic impact analysis conducted by Professor Michael Enright of the University of Hong Kong

体制改革继续推进，经济改革停滞不前

2013年11月，党的十八届三中全会提出多项改革要求，为投资者带来了希望，其中心是让市场力量发挥主导作用，减少政府在资源配置中的作用。然而，党和军队成为改革重点，而经济改革陷入停滞。

自2013年三中全会以来，中国共产党一共召开了三次全体会议：

- 2014年四中全会，强调透明、法治、善治和法制改革。
- 2015年五中全会，提出第十三个五年规划（“十三五”规划），制定了2016年至2020年间中国经济的发展目标，并于2016年3月获得批准通过。此外，“十三五”规划提出了五个发展理念，即共享、开放、绿色、协调和创新，并力争2020年全面建成小康社会。
- 2016年10月六中全会，强调党纪和反腐败。随后发布的公报确认习近平总书记为“核心”，巩固了其在党内的核心领导地位。

习主席领导下的中国政府大力反腐，效果显著。2013年以来，参加年度《商务环境调查报告》的会员企业已不再将腐败列入五大重要商务挑战。

改革停滞不前和经济增长继续放缓的“新常态”

因为杠杆过高、资本外流、行业产能过剩以及国内消费导向型经济的再平衡等挑战，中国已经处于经济增长放慢的“新常态”。据报道，中国2016年的国内生产总值增长率6.7%是26年以来的最低水平。2017年3月，李克强总理在向全国人大报告工作时宣布，2017年中国国内生产总值增长目标为6.5%。商会会员企业对国内生产总值的增长预期更低，根据2016年11月进行的商务环境调查，平均预期水平只有6.1%。

2015年年底召开的中央经济工作会议将“供给侧结构改革”作为2016年的主要目标。然而，因为失业问题、既得利益以及中央领导层传达的讯息不清，降低产能过剩的努力没有取得实质效果。2016年，很多高调的关停行动只是关停了那些早已闲置的工厂，钢铁价格回升刺激产量进一步增加，中国钢铁行业的产能不降反升。令我们深受鼓舞的是，在去年的中央经济工作会议上，中国决定2017年继续推动供给侧改革，承诺通过混合所有制改革进一步减少政府在国有企业中的管理职责，确定“稳中求进”为2017年的经济基调。不过，依照我们的观点，中国需要做

出更有强力的市场经济承诺，才能解决造成产能过剩的市场扭曲问题以及将国有企业和市场力量分隔的政策问题。

2017年3月中国召开两会，继续强调了很多上述问题。李克强总理在政府工作报告中承诺降低煤炭和钢铁行业的过剩产能，强调经济稳定，要求实施“稳健中性的”货币政策，提出通过减税促进私营部门投资。在经济增长放缓和地缘政治不确定性加大的背景下，我们希望中国继续大胆改革，建立更加开放和市场化的投资环境。我们认为，只有如此，中国才能继续吸引关乎经济成败的外资企业，避免中等收入陷阱以及实现长期经济目标。

投资关系失衡

外商直接投资（FDI）对经济的好处是众所周知的，其中包括知识、技能、知识产权和资金的转让。根据荣鼎集团的数据，截至2015年，在华美国企业的投资共计2280亿美元（1.51万亿元）。另外，在过去十年的大部分时间里，中国大部分出口产品都是外资企业生产的。这只是冰山一角。香港大学教授迈克尔·恩莱特在《发展中国：外商直接投资的卓越影响》一文中通过分析外资企业的经济和技术影响、供应链产生的涟漪效应以及员工的支出，最后得出结论，从2009年到2013年，平均下来，中国每年GDP的33%来自于外商直接投资的贡献。

但是，中国商务部的数据显示，流入中国的外商直接投资增速正在放慢，2016年增速从2015年的6.4%降至4.1%，达到8130亿元（1180亿美元）。联合国贸易和发展会议（UNCTAD）给出的数据甚至更低，2016年的增速只有2.3%。与此同时，中国在美新投资则增至三倍，总额达到456亿美元（3030亿元），大多采取收购形式。目前，中国每年在美投资要高于美国在中国投资。中美两国经济在投资领域相互交织程度日益增长，但存在明显的失衡。

虽然外商直接投资好处多多，但中国的市场准入仍然相对受限，中国在美开展的很多投资无法反向发生在中国。根据经合组织2016年公布的数据，在全部62个国家中，中国的外国直接投资限制指数排在第59位，仅排于缅甸之前。

技术公司面临的产业政策挑战

商会会员企业对2016年11月通过的《网络安全法》深表担忧。根据该法，监管部门就可以要求某些技术接受

Examples of Unbalanced Investment Relationship by Industry

Industry	China	US
Agriculture	Foreign investment in biotech crop breeding, seed production, and commercialization is prohibited.	Foreign investment in biotechnology is permitted without an equity cap.
Automotive	Foreign companies must form a joint venture with a Chinese partner, foreign equity is capped at 50 percent, and the number of joint ventures per investor is capped.	Foreign investment in the automobile industry is permitted without an equity cap.
Securities	Foreign-invested securities broker-dealers are subject to a 49 percent equity cap.	Foreign investment in the securities industry is permitted without an equity cap.
Construction, Engineering, and Design	Wholly foreign-owned construction enterprises 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.	There are no funding-related restrictions on the types of construction projects firms can undertake based on foreign ownership.
Healthcare Services	Foreign investment in medical institutions is subject to a 70 percent equity cap.	Foreign investment in medical institutions is permitted without an equity cap.
Information and Communications Technology	Foreign participation in the provision of cloud services is subject to a 50 percent equity cap and licensing restrictions.	Foreign investment in the provision of cloud services is permitted without an equity cap.
Insurance	Foreign investment in life insurance is subject to a 50 percent equity cap.	Foreign investment in the insurance industry is generally permitted without an equity cap, but some states impose restrictions based on foreign government ownership.
Legal Services	Foreign lawyers are ineligible for a PRC lawyer's license, and Chinese lawyers must relinquish their license if they join a foreign firm.	Foreign lawyers are eligible to take the bar exam in some but not all states.
Media and Entertainment	Foreign film imports are subject to an annual quota.	There are no limits on the number of foreign films exhibited in the US.
Retail	Local governments often force wholly foreign-owned retailers to set up separate legal entities in their jurisdictions, imposing increased tax and administrative burdens on these companies.	There are no common practices that create higher tax and administrative burdens on foreign retailers.

**The above examples of US-China investment imbalances are not intended to be comprehensive, but rather to illustrate just some of the more prominent imbalances which concern our members and are covered in this White Paper.*

投资关系失衡例证（按行业）

行业	中国	美国
农业	禁止外商投资生物技术作物育种、种子生产和商品化。	允许外商投资生物技术，没有持股限制。
汽车工业	境外企业必须和中方建立合资企业，外资持股比例不得超过50%，限制每位投资者设立的合资企业的数量。	允许外商投资汽车工业，没有持股限制。
证券	对外资券商规定了49%的持股比例限制。	允许外商投资证券行业，没有持股限制。
建筑、工程和设计	限制外商独资建筑企业参与外资项目或外商投资达到或高于50%的项目，中国建筑企业因为技术困难无法实施的项目除外。	没有根据外资股权限制外商投资企业开展的建筑项目类型。
医疗卫生服务	医疗机构外资持股比例不得超过70%。	允许外商投资医疗机构，没有持股限制。
信息和通信技术	外资提供云服务的，持股比例不得超过50%并且需要符合许可限制。	允许外商投资云服务，没有持股限制。
保险	外商投资人寿保险的，持股比例不得超过50%。	通常允许外商投资保险行业，没有持股限制，但有些州限制外国政府持股。
法律服务	外籍律师不能取得中国律师证，中国律师加入外资事务所的，必须放弃律师证。	一些州允许外籍律师参加律师资格考试，但不是所有的州。
传媒和娱乐	对外国电影进口实行年度配额限制。	没有限制在美播出的外国电影的数量。
零售业	地方政府常常迫使外商独资零售企业在当地设立独立的法律实体，加重了这些企业的税费和管理负担。	通常没有加重外资零售企业的税费和行政负担的做法。

*上面给出的例证不是全部，只是用来说明本《白皮书》提到的与我们的会员企业相关的一些较为突出的中美投资失衡现象。

国家安全审查和满足“安全可控”要求。考虑到外资企业经营的国际性，该法规定的数据本地化要求以及跨境数据流动限制对外资企业造成了繁重的负担。我们理解中国在这一领域具有合法的国家安全利益，也鼓励中国发展具有国际竞争力的本土企业，但是我们担心中国通过保护主义措施在技术行业建立国家领军企业，这对外资企业非常不公平。基于鼓励自主创新和“中国制造2025”的政策倡议，政府大力支持中国本土技术企业。相关政策的更多详情，请参见“信息和通信技术”、“机械制造”和“投资政策”章节。

虽然中国的技术行业在快速发展，但是《商务环境调查报告》数据显示，技术和研发密集型企业对投资环境的评价最悲观，只有10%的企业对监管环境表示乐观。在技术和研发密集型行业，会员企业指出的五大挑战中有四项与监管有关。同时，美国市场相对开放，为了提高竞争力，中国企业通常可以收购美国的技术公司，且在很多情况下，都有政府出资。我们鼓励中国发展关乎未来经济发展命脉的技术，如物联网、云计算和高端制造，但需要符合公平和市场化原则。

in *Developing China: The Remarkable Impact of Foreign Direct Investment*, which considers the economic and technological impact of foreign-invested companies, the ripple effects through their supply chains, and the spending of employees, FDI was responsible on average for 33 percent of China's GDP from 2009 to 2013.

But FDI inflows to China are slowing, with an increase of 4.1 percent in 2016, reaching RMB 813 billion (US \$118 billion), as compared to a 6.4 percent increase in 2015, according to Ministry of Commerce data. United Nations Conference on Trade and Development figures put this number even lower, with an increase of only 2.3 percent in 2016. At the same time, new Chinese investment in the US has ballooned, tripling in 2016, with deals valued at a total of US \$45.6 billion (RMB 303 billion), mostly in the form of acquisitions. China is now investing more in the US annually than the US is investing in China. The Chinese and US economies are becoming increasingly intertwined in investment, but there is an obvious imbalance.

Despite the clear benefits of FDI, access to China's markets remains relatively restricted, and many of the deals that bring Chinese investment into the US could not happen in reverse. According to the Organisation for Economic Cooperation and Development's 2016 review, China ranked 59 of 62 countries in its Total FDI Restrictiveness Index, just ahead of Myanmar.

Industrial Policy Challenges for Technology Companies

AmCham China member companies are deeply concerned about China's Cybersecurity Law, passed in November 2016. This law provides the regulatory authorities with a legal basis to require national security reviews and impose "secure and controllable" requirements for certain technologies that could be leveraged against FIEs, while data localization requirements and cross-border data flow restrictions in the law impose requirements particularly burdensome for FIEs because of their international operations. While we recognize China's legitimate national security interests in this area and also encourage China to develop globally competitive companies, we are concerned about efforts to create national champions in the technology industry through protectionist measures in ways that unfairly disadvantage foreign companies. Ongoing initiatives encouraging indigenous innovation and "Made in China 2025" also give strong state support to Chinese technology companies. For further information on these policies, see the Information and Communications Technology, Machinery Manufacturing, and Investment Policy chapters.

Despite the rapid expansion of China's technology sector, *Business Climate Survey* data shows that technology and research and development (R&D)-intensive companies had the most negative perspective of the investment environment, with only 10 percent holding an optimistic viewpoint on the regulatory environment. For technology and

R&D-intensive industries, four of the top five challenges identified by members were regulatory. At the same time, the US has a relatively open system that generally allows Chinese companies to acquire US technology companies, in many cases with state funding, in order to become even more competitive. We encourage China to develop the technologies that will be central to the economy of the future such as Internet of Things, cloud computing, and high end manufacturing, but only on fair, market-based grounds.

Recent Policy Developments and Commitments for Increased Openness

There have been some positive developments during 2016 in the policies that govern market access for FIEs in China. For example, China made progress in administrative streamlining efforts and began the transition to a nationwide negative list for managing foreign investment. However, the new negative list released in the December 2016 draft "Catalogue of Industries for Guiding Foreign Investment" opened very few new sectors to foreign investment, and many market access restrictions remain. While seven new pilot free trade zones (PFTZs) were announced in August 2016, new openings for foreign investment in the existing four PFTZs have similarly been underwhelming. For more information on these developments, see the Investment Policy chapter.

In January 2017, the State Council issued the "Circular on Measures for Further Opening Up and Active Use of Foreign Investment" (Circular No. 5), which lists 20 measures to encourage foreign investment, including opening more sectors to foreign investment and ensuring a level playing field for foreign enterprises. We are encouraged by this high-level policy document, and hope to see it paired with specific implementation measures and meaningful action.

Bilateral Investment Treaty (BIT) negotiations have stalled with the American presidential transition and China's impending 19th Party Congress in the fall of 2017. A high-quality BIT would increase American investment in China and bring economic benefits to both sides. We encourage China to implement meaningful market opening and reforms prior to the completion of a BIT to follow through with its commitments to open further to foreign investment and show that it is serious about continued negotiations.

Perception of a Deteriorating Investment Environment

Despite the enormous economic benefits that China has reaped from FDI, there is an increasing perception of animosity toward foreign business that belies its contribution to China's development. As noted above, Chinese companies are expanding overseas into areas restricted to foreign companies in China. This imbalance is seen not just in market entry restrictions, but also in many unofficial practices that disadvantage FIEs already established in China. More than 60 percent of *Business Climate Survey* respondents

最新政策进展和提高市场开放度的承诺

2016年，在华外资企业市场准入政策取得了一些积极进展。例如，中国继续简化行政管理，开始逐步在全国推行外商投资管理负面清单。但是，2016年12月发布的《外商投资产业指导目录》草案，即新的负面清单，新增的允许外商投资行业数量很少，很多行业仍然保留了市场准入限制。2016年8月，中国宣布新增七个自由贸易试验区（自贸区），但是，在原有的四个自贸区，外商投资开放缺乏力度。更多详情，请参见“投资政策”章节。

2017年1月，国务院发布《关于扩大对外开放积极利用外资若干措施的通知》（国发[2017]5号），提出鼓励外商投资的20项措施，其中包括向外商投资开放更多的行业，保障外资企业的公平竞争环境。这一高层政策文件让我们深受鼓舞，我们希望能看到具体的实施措施和有意义的行动。

由于美国总统权力交接，加上中国即将于2017年秋季召开党的十九大，中美双边投资协定的谈判陷入停滞。双方若能达成一份高质量的双边投资协定，将有助于增加美国企业的在华投资，为双方带来切实的经济利益。我们鼓励中国政府在缔结双边投资协定之前采取切实有效的市场开放和改革举措，信守进一步放宽外商投资准入的承诺，以此表明对继续开展谈判的认真态度。

企业感觉投资环境不断恶化

虽然中国从外商直接投资获取了巨大的经济利益，但是外资企业感觉，虽然它们对中国发展做出了贡献，中国却越来越不欢迎它们。如上所述，中国企业在海外开展投资的领域，在中国却限制外资进入。这种失衡不仅表现在市场准入限制方面，还体现在很多非官方的对在华外资企业区别对待的作法。根据商会今年的《商务环境调查报告》，超过60%的受访企业表示对中国政府在未来三年进一步开放市场没有或者缺乏信心。

调查显示，31%的会员企业认为投资环境正在恶化，而24%的会员企业认为投资环境有所改善，这是自2011年设此问题后，会员企业对投资环境持乐观态度占比最小的一次。超过半数（55%）的会员企业认为，与本地企业相比，外资企业受到了不公平待遇，81%的会员企业感觉外资企业不如以往受欢迎。

监管问题和成本上涨成为主要的商业挑战

受访企业连续第二年将“法律法规执行不一致/不清楚”列为首要挑战。在受访企业指出的五大商业挑战中，有三项挑战和政策相关，其他两项分别为“中国保护主义不断升级”和“取得相关许可证困难”。剩余两项商业挑战包括“成本增加”和“合格人才短缺”。

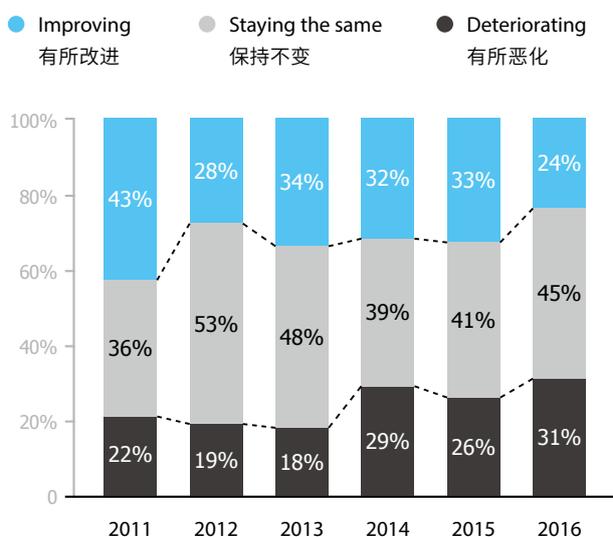
并不是只有我们的会员企业注意到中国监管环境存在的问题。根据世界银行公布的数据，2016年中国的营商便利指数在全部190个国家排名第78位，比圣马力诺稍好。根据世界正义工程公布的法治指数，2016年中国在监管执法方面的排名下降，在113个国家中排第80位，比乌兹别克斯坦略好，相比之下，2015年中国在102个国家排名第71位。

会员企业在人力资源方面也继续面临重大挑战，其中薪资费用不断上涨和社会福利成本增加连续第二年成为人力资源首要和次要挑战。空气质量差成为影响企业招聘和留住在华工作人员能力的第一因素，有58%的受访企业表示空气质量差是一项重要挑战。

在商会的会员企业中，有近120家企业属于全球财富500强，它们在业务经营以及提高生产力和工作效率方面拥有丰富的经验。然而，这些企业无法承受经济增长放缓和监管歧视的双重打击。中国的很多政策对经济并没有益处，特别是在那些加大投入就有望推动未来经济增长的领域。

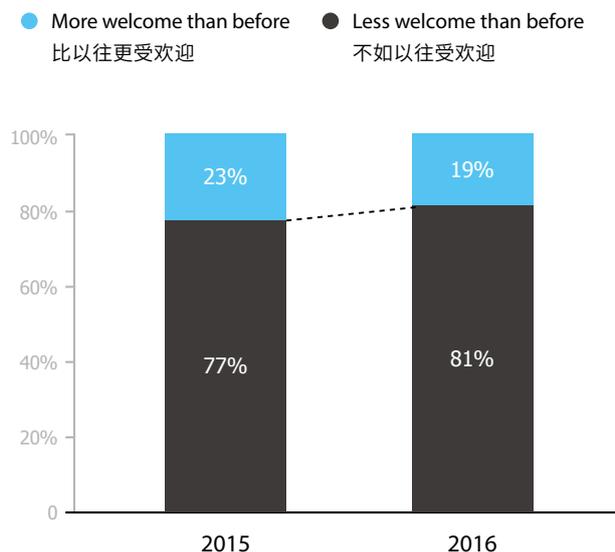
Member Company Perception of Chinese Investment Environment Quality

会员企业对中国投资环境质量的感受



Member Company Perception of Feeling Welcome in China

会员企业感觉在中国的受欢迎程度



have little or no confidence that the government is committed to opening China's markets further in the next three years.

According to survey data, 31 percent of AmCham China member companies say that the investment environment is deteriorating, while only 24 percent believe that it is improving. This is the most pessimistic response we have received for this question since we began asking it in 2011. More than half of members (55 percent) believe foreign companies are treated unfairly compared to local companies, and 81 percent feel less welcome than before.

Regulatory Issues and Rising Costs Lead Business Challenges

The top business challenge as ranked by survey respondents this year for the second year in a row was "inconsistent regulatory interpretation and unclear laws." Of the top five business challenges identified by survey respondents, three are policy related, the other two being "increasing protectionism" and "difficulty obtaining required licenses." The remaining top five business challenges are "increasing costs" and "shortage of qualified talent."

Our members are not alone in observing difficulties with the regulatory environment in China. According to the World Bank, China ranks 78 out of 190 in the Ease of Doing Business Index for 2016, just ahead of San Marino, and according to World Justice Project data, China ranks 80 out of 113 countries for regulatory enforcement in the 2016 Rule of Law

Index, just ahead of Uzbekistan. China's ranking has fallen as compared to 2015, where it ranked 71 among 102 countries.

Member companies also continued to face significant human resources challenges, with rising salary and wage expenses and rising social benefits costs identified as the number one and two challenges, respectively, for the second year in a row. Poor air quality was listed as the number one factor affecting companies' ability to recruit and retain talent in China, with 58 percent of survey respondents identifying this as a significant challenge.

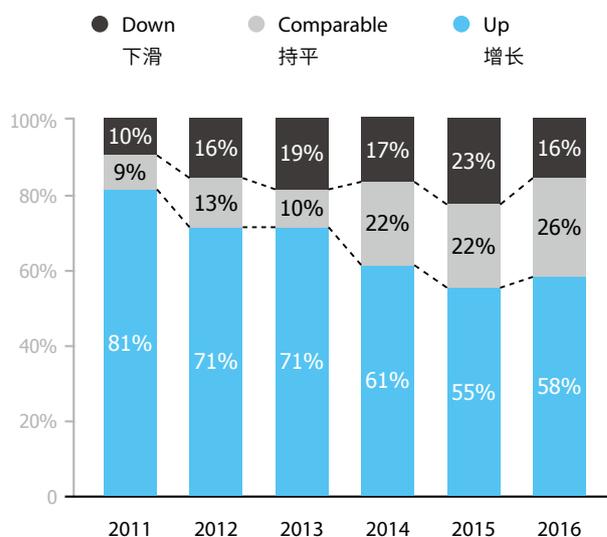
AmCham China's membership includes nearly 120 Global Fortune 500 companies. They are experienced in business and can manage smaller productivity gains with a smaller work force. These companies cannot, however, deal with the double blow of an economic slowdown plus regulatory discrimination. Many of China's policies continue to hamstring the economy, especially in areas that, with greater investment, could drive tomorrow's economic growth.

Business Performance and Investment Trends

Despite the above challenges, more AmCham China member companies report that they were profitable in 2016 as compared to 2015 (68 percent and 64 percent, respectively), although this is down from a peak of 77 percent in 2012. China operations revenue also increased for 58 percent of survey respondents, although again, this is number is far lower than historic highs. In 2011, 81 percent of survey respondents reported revenue growth. For 79 percent of companies, margins in China are less than or

Revenue of Member Company China Operations

会员企业在华业务经营收入情况



Top 2017 Business Challenges for Member Companies in China

在华会员企业 2017 年面临的主要商业挑战

Inconsistent regulatory interpretation and unclear laws 法律法规执行不一致 / 不清楚	58%
Rising labor costs 劳动力成本增加	58%
Increasing Chinese protectionism 中国保护主义不断升级	32%
Shortage of qualified management 缺少合格的管理人员	30%
Difficulty in obtaining required licenses 获取相关许可证困难	29%

企业业绩和投资趋势

尽管面临上述挑战，却有更多的企业表示 2016 年在华业务经营实现盈利（2016 年为 68%，2015 年为 64%），不过仍然低于 2012 年的 77% 的峰值。有 58% 的受访企业表示在华经营收入实现增长，虽然这一数字仍然远低于历史高点。2011 年，81% 的受访企业表示实现收入增长。有 79% 的会员企业表示，虽然中国经济增速相对较快，其在华利润率却低于或与其全球平均水平持平。

上述市场准入和监管限制造成的挑战已经影响到投资趋势。有四分之一的会员企业在过去三年已经向中国境外转移产能或者正在考虑向中国境外转移产能，监管挑战是第三大原因。绝大多数产能转向亚洲其他地区 and 北美。

2017 年，会员企业大都计划降低在中国的投资增幅，有 31% 的企业没有计划扩大投资，另有 39% 的企业计划投资增幅低于 10%。在计划降低在华投资增幅的企业中，有 42% 是因为政策方面的原因，例如，对外资企业不利的市场准入壁垒和政策环境的不确定性。会员企业短期内对中国作为全球投资目的地的重视程度达到历史最低点，只有 56% 的企业将中国作为全球三大投资目的地之一。

政策重点

在华外资企业面临多重监管挑战，2017 年将是中国推进改革以纠正中美投资环境部分失衡现象的关键一年。我们相信，若能沿着以下三条主线采取行动，将有助于中国实现这一目标。

提高透明度，建立信任

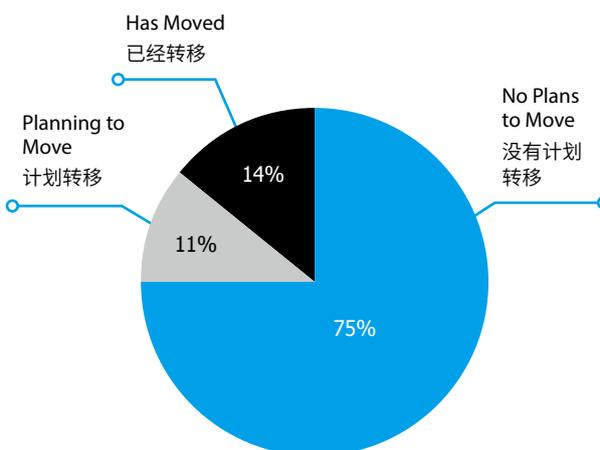
根据 2017 年度《商务环境调查报告》，“法律法规执行不一致 / 不清楚”连续第二年成为商会会员企业面临的首要商业挑战。调查还显示，超过 85% 的会员企业表示，提高监管环境的透明度、可预测性以及公平性对其增加在华投资水平的计划具有显著影响。

为了提高透明度和公平执法，我们建议中国政府：

- 按照多次做出的承诺，继续要求所有法律法规草案有 30 天的公示期，向社会公开征求意见。
- 按照 2016 年的规定要求人民法院在互联网公布所有案件的裁判文书，且应在裁判文书生效之日起 7 个工作日内予以公布。
- 通过公布反垄断调查正式结果和历史案件提高透明度。
- 明确海关和税费规定，以使外资企业充分遵守相关规定并在充分获取信息的情况下做出更明智的投资决定。
- 停止使用“窗口指导”，改为发布公开指令。

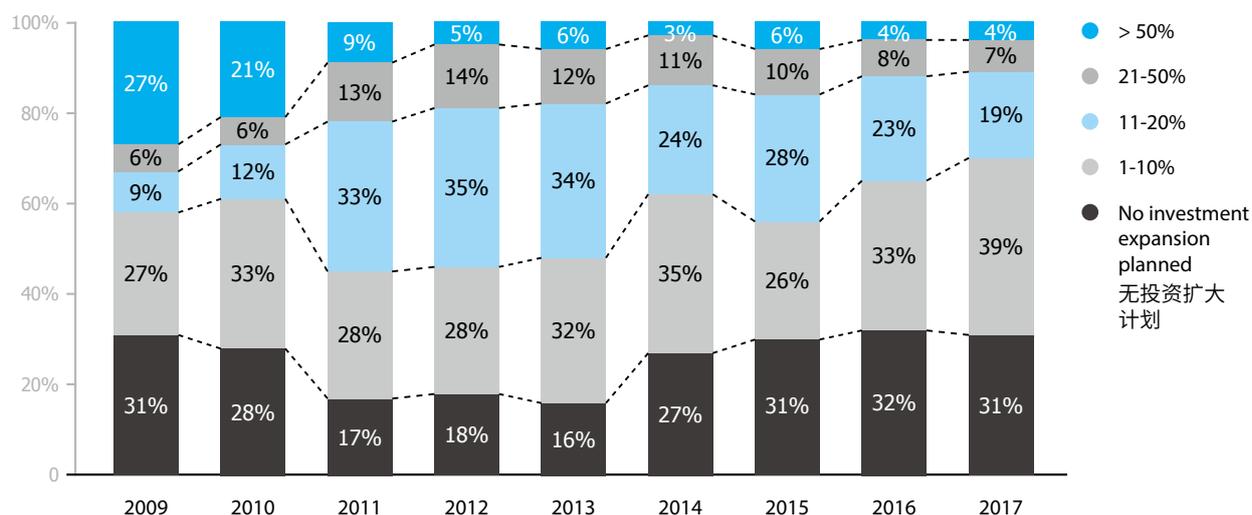
Member Company Movement of Capacity Outside of China in the Past Three Years

过去三年会员企业向中国境外转移产能的情况



Estimated Increase of Investment in China Operations for the Next Year

下一年度在华业务投资增幅预期



comparable to their global operations despite China's relatively rapid growth.

The abovementioned challenges related to market access and regulatory restrictiveness have affected investment trends. One quarter of member companies have moved capacity out of China in the past three years or are currently considering moving capacity out of China, with regulatory challenges listed as the number three reason for doing so. Most capacity is moving to other areas of Asia and North America.

Member companies are generally planning lower levels of investment in China for 2017, with 31 percent of companies not planning any expansion in investment at all, and another 39 percent planning to increase investment by less than 10 percent. Of companies planning lower investment in 2017 as compared to the previous year, 42 percent are doing so because of policy-related reasons such as market access barriers that disadvantage FIEs and uncertainty in the policy environment. China ranked at an all-time low for member company priority in near-term global investment, with only 56 percent of companies ranking China within their top three global investment priorities.

Policy Priorities

FIEs face many regulatory challenges in China, and this is a crucial year to push forward reforms to rectify some of these imbalances in the US-China investment environment. We believe that action along the lines of the following three priorities will help to accomplish this:

Building Trust Through Transparency

The 2017 Business Climate Survey lists "inconsistent regulatory interpretation and unclear laws" as the top business challenge for AmCham China members for the second year in a row. Survey results also indicate that, for over 85 percent of member companies, the realization of greater transparency, predictability, and fairness of the regulatory environment would have a significant impact on their plans to increase investment levels in China.

To improve transparency and equal enforcement of laws and regulations, we recommend that the Chinese government:

- Continue progress in providing 30-day notice and comment periods for all draft laws and regulations across the board, as specified in multiple commitments.
- Improve comprehensiveness in the online publishing of all court cases within seven working days of a ruling as required by 2016 regulations.
- Improve transparency by releasing formal findings and case histories of anti-monopoly related investigations.
- Clarify customs and tax regulations so that foreign companies can fully comply and make more informed investment decisions.
- End the use of "window guidance" and release public directives instead.
- Provide written explanations whenever administrative agencies deny or provide conditioned approvals for license applications or other approval applications, and adhere to decision deadlines provided for in relevant laws and regulations.

- 行政机构拒绝批准或者附条件批准许可申请或其他审批申请的，需要提供书面解释，遵守相关法律法规规定的审批时限要求。

开放投资，促进发展

如果贸易自由流动，企业按照市场原则开展经营活动，市场准入限制较少，那么各方都能从中获益。中国政府最近承诺加大开放力度，为外商投资创造更好的环境，我们期待中国能够沿着下列方向采取具体的行动：

- 开放更多行业的市场准入，实现更均衡的投资关系。中国企业在美国能开展的投资，也应当允许美国企业在中国开展。
- 严密规范国家安全审查和“安全可控”技术要求，不得用于推行经济保护主义或执行产业政策。
- 积极和美国进行谈判，争取达成双边投资协定，严格控制相应的负面清单和特例，确保在中国这一独特的市场上能够充分实现双边投资协定的各项好处。
- 在自贸区大胆推行改革，加快在全国范围推广成功的改革经验。
- 确保内外资企业平等参与“中国制造 2025”。
- 允许内外资企业平等参与政府采购合同的竞标。

全球合作，鼓励创新

50% 的会员企业表示创新是三大优先考虑事项，去年这一比例是 44%。93% 的受访企业表示创新对未来增长很重要。只有通过创新，内外资企业才能够适应“新常态”，才能继续实现盈利。尽管中国在专利、版权和商标保护方面有所改进，但是知识产权保护力度不够，已经成为在华增加创新的首要障碍。有 45% 的受访企业提到这一问题，表明还需要大力改进。

中国限制跨境数据流动并且提出互联网主权的主张，这一政策趋势会妨碍创新。创新要想蓬勃兴盛，全球范围内的沟通和交流是必需的，而不是将本国和世界其他国家和地区隔离开来。商会会员企业表示，对其业务经营产生不利影响的因素包括跨境数据传输速度较慢（93%）、无法使用某些网络工具（92%）和互联网审查（87%）。

我们建议中国政府：

- 制定一部全面的商业秘密法。
- 继续推进知识产权法院的发展，限制专利纠纷中的行政执法行为。
- 向外资企业开放所有的标准制定机构，允许内外资企业平等地参与。
- 推动互联网发挥全球互动平台的功能，放宽对数据跨境流动的限制，鼓励国际合作和创新。

Promoting Development Through Open Investment

All parties thrive when trade flows freely, business operates on market principles, and there are few market access restrictions. We are encouraged by the Chinese government's recent commitments to increase openness and create a better environment for foreign investment, and look forward to concrete action along the lines of the following:

- Implement market opening in more sectors to achieve a more balanced investment relationship. If Chinese businesses can make an investment in the US, American companies should be able to make the same investment in China.
- Ensure that national security reviews and "secure and controllable" technology requirements are narrowly applied and are not used for economic protectionism or to implement industrial policy.
- Actively work with the US to negotiate a robust US-China BIT with a short negative list, narrowly crafted exceptions, and text that ensures the full benefits of the treaty can be effectively reached within China's unique market.
- Make bold reforms in PFTZs and implement successful reforms nationwide on an expedited basis.
- Ensure equal participation for foreign and domestic firms in the "Made in China 2025" initiative.
- Allow foreign companies to participate on equal footing with domestic competitors when bidding for government procurement contracts.

Stimulating Innovation Through Global Cooperation

Innovation is a top three priority for 50 percent of our members, up from 44 percent last year, and 93 percent of survey respondents agree that innovation is important for future growth. Only by innovating can companies, both Chinese and foreign, adapt to the "new normal" and continue to realize profits. However, despite recent improvements in patent, copyright, and trademark protection, the lack of sufficient intellectual property protection remains the top barrier to increasing innovation in China, with 45 percent of respondents identifying it as an issue, indicating that much improvement is still needed.

One policy trend hampering innovation is China's restriction of cross-border data flows and drive for internet sovereignty. Innovation thrives from global interaction and exchange of ideas, not the separation of a country from the rest of the world. AmCham China members have expressed that slow cross-border data speeds (93 percent), the inability to use certain online tools (92 percent), and internet censorship (87 percent) negatively impact their operations.

We recommend that the Chinese government:

- Develop a comprehensive trade secrets law.
- Continue the successful development of intellectual property courts and limit administrative enforcement in patent disputes.
- Open all standards development organizations to FIEs so that they can participate on an equal basis with domestic companies.
- Promote the Internet as a platform for global interaction and limit restrictions on cross-border data flows to encourage international collaboration and innovation.

2017 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 2016 and 2017 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 2016 *White Paper*. The final column indicates each chapter’s priority recommendation for 2017.

Chapter	2016 Recommendation	Progress Rating	2017 Recommendation
Agriculture			
<i>Chinese Government</i>	Improve the sustainability and competitiveness of Chinese agriculture by encouraging foreign investment in seed technology, modern agricultural processing, and bulk transportation.	Low Progress	Improve the sustainability and competitiveness of Chinese agriculture by opening up the industry to foreign investment in seed technology, modern agricultural processing, and bulk transportation.
<i>US Government</i>	Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China BIT negotiations to address the investment restrictions faced by US agriculture producers.	Moderate Progress	Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China BIT negotiations to address the investment restrictions faced by US agriculture producers.
Automotive Policy			
<i>Chinese Government</i>	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.	Low Progress	Give enterprises more opportunities to participate in discussions and submit opinions at the early policy drafting stages so that policies and standards can better meet market needs and facilitate the healthy development of the market and the industry.
Banking and Capital Markets			
<i>Chinese Government</i>			
• <i>Bonds Market</i>	Further open China’s bond markets, including the Panda Bond market, to foreign issuers through market-based reforms to create diverse markets.	High Progress	Continue to reinforce supervision and regulate development of market intermediaries so as to better protect the interests of investors.
• <i>Commercial Banking</i>	Allow US banks to enter the interbank bond market through the removal of technical barriers and to provide OTC commodities derivatives to Chinese clients.	Moderate Progress	Remove all kinds of quotas in the banking sector, including on foreign debt.
• <i>Credit Ratings</i>	Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.	Moderate Progress	Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.
• <i>Private Equity and Venture Capital</i>	Explore avenues to improve the policy environment for investing local pension funds and enterprise annuities in VC/PE funds.	Moderate Progress	Continue to simplify and speed up the antimonopoly review procedures so as not to hinder M&A in VC/PE deals.
• <i>Securities</i>	Fully liberalize foreign investment in the securities sector as soon as possible, before conclusion of US-China BIT negotiations.	Low Progress	Continue to liberalize the securities sector, with the priority on removing the foreign ownership cap on broker-dealers.
Business Sustainability and Non-Profit Engagement			
<i>Chinese Government</i>	Revise the Draft Overseas NGO Law to incorporate the concerns raised by AmCham China and many other international and domestic stakeholders. [MOCA, MPS]	Low Progress	Clarify ambiguous language in the Overseas NGO Law related to scope of activities requiring registration, geographic scope, and other concerns. [MPS, NPC]
<i>US Government</i>	Continue to reiterate concerns regarding the Draft Overseas NGO Law in exchanges with relevant government stakeholders in China. [US Department of State]	High Progress	Continue to reiterate deep and abiding concerns regarding the Overseas NGO Law in exchanges with relevant government stakeholders in China. [US Department of State]

2017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2016及2017年《白皮书》各章节提出的主要建议。

相关政府官员积极应对2016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2017年《白皮书》各章节的主要建议。

章节	2016年白皮书主要建议汇总	进展评价	2017年白皮书主要建议汇总
农业			
中国政府	鼓励外资投资现代农业加工、粮食散货运输和种子技术，从而提高中国农业的可持续性和竞争力。	进展缓慢	允许外资投资种子技术、现代农业加工和粮食散货运输，从而提高中国农业的可持续性和竞争力。
美国政府	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。	有所进展	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双边对话平台与中方官员合作，解决美国农业企业所面临的投资限制。
汽车政策			
中国政府	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。	进展缓慢	政策制订和起草的早期阶段，给与企业更多参与讨论、反馈意见的机会，让政策、标准更符合市场需求，更有利于市场和行业的健康发展
银行和资本市场			
中国政府			
• 债券市场	通过市场改革进一步优化面向外国发债人的中国债券市场，包括熊猫债券市场，创建多元化市场。	进展明显	继续加强监管，规范市场中介机构的发展，以更好地保护投资者的利益。
• 商业银行	取消技术壁垒，允许美国的银行进入银行间债券市场并为中国客户提供场外交易商品衍生品。	有所进展	取消银行业的所有额度限制，包括外债额度。
• 信用评级	取消或放宽对外资CRA中外资比例的限制。	有所进展	取消或放宽对外商投资信用评级机构所有权的比例限制。
• 私募股权	探索各种渠道来改善投资地方养老基金和企业年金配置VC/PE基金的政策环境。	有所进展	继续简化和加快反垄断审批程序，以免妨碍风险投资/私募股权交易的并购活动。
• 证券	尽快完全实现外商投资证券业的完全自由化，且不将证券列入中美双边投资协定负面清单中。	进展缓慢	继续开放证券行业，重点是取消证券经纪公司的外资持股比例限制。
企业可持续性和非政府组织参与			
中国政府	根据中国美国商会和其他国际和国内利益相关方的意见修改《境外非政府组织法》草案。[民政部、公安部]	进展缓慢	明确《境外非政府组织法》中需进行登记的“活动”范围、地域和其他方面的表述。[公安部、全国人民代表大会]
美国政府	在与中国相关政府机构交换意见时继续重申对《境外非政府组织法》草案的关注。[美国国务院]	进展明显	在与中国政府相关方进行交流时，继续重申对《境外非政府组织法》的深度长久关切。[美国国务院]

Chapter	2016 Recommendation	Progress Rating	2017 Recommendation
Chengdu			
<i>Sichuan and Chengdu Governments</i>	Continue expanding trade and market opportunities for US companies and promote equal treatment of US and local companies.	Moderate Progress	Do not discriminate against otherwise qualified FIEs when bidding on government projects.
Chongqing			
<i>Chongqing Government</i>	Clarify the visa and Foreign Expert Permit application process and make it more inclusive, to attract qualified foreign talent to the region.	Moderate Progress	Enforce the accurate reporting of the social insurance base but reduce the percentage of the employee's salary that a company is required to contribute to social insurance in order to be fair to all companies.
Civil Aviation			
<i>Chinese Government</i>	Adopt an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to enable growth and efficiency and manage and alleviate delays.	Moderate Progress	Adopt an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to enable growth and efficiency and manage and alleviate delays.
Clean Technology			
<i>Chinese Government</i>	Further engage with the ECP on pilot programs that allow US companies to participate on a level basis with domestic state-owned and private companies in clean technology initiatives and market development.	High Progress	Further engage with the ECP on dialogues with policy makers and the private sector to increase the transparency of relevant policies. Support the ECP in organizing regional business match-making events and pilot programs that allow US companies to participate in clean technology initiatives and market development.
<i>US Government</i>	Continue to fund the ECP to support deployment of US clean technologies and services in the Chinese market. [DOE, DOC, USTDA]	High Progress	Continue to fund the ECP to support deployment of US clean technologies and services in the Chinese market. [DOE, DOC, USTDA]
Competition Law			
<i>Chinese Government</i>	Issue formal guidelines confirming that foreign-qualified lawyers (i.e., 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.	Low Progress	Issue formal guidelines confirming that foreign-qualified lawyers (i.e., 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.
Compliance			
<i>Chinese Government</i>	Further build on the goals laid out at the Fourth Plenum and in the 13 th Five-Year Plan to develop the rule of law, with the goal of a consistent and predictable legal and regulatory environment for all enterprises, both domestic and foreign.	Moderate Progress	Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, a clear definition of commercial bribery and further detail on the liability of companies for the conduct of their employees in the final version of the revised AUCL will assist companies with developing and enforcing robust, practical commercial bribery compliance programs.
<i>US Government</i>	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.	Moderate Progress	Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.
Construction, Engineering, and Design			
<i>Chinese Government</i>	Apply more flexibility when reviewing design and construction contracts filed with local authorities.	Moderate Progress	Clarify requirements for partners in partnerships which apply for a firm qualification DQ to make it clear that investors other than individuals, such as foreign design companies, can act as partners.
Cosmetics			
<i>Chinese Government</i>	Promote industry development and innovation as basic rules of the Draft Revised Supervision Regulations.	Moderate Progress	Promulgate the "Cosmetics Supervision and Administration Rule" after soliciting the opinions of all relevant stakeholders.

章节	2016年白皮书主要建议汇总	进展评价	2017年白皮书主要建议汇总
成都			
四川省和成都市政府	继续扩大美国企业的贸易和市场机会，采取措施，保障美国企业和当地企业享有同等待遇。	有所进展	政府项目招标避免歧视合格的外资企业。
重庆			
重庆市政府	明确签证、外国专家许可证的申请程序，使其更具包容性，以吸引合格的外国人才来渝。	有所进展	要求准确报告社会保险基数，调低企业缴纳社会保险适用的员工工资比例，确保所有企业的公平待遇。
民用航空			
中国政府	利用空中交通流量管理（ATFM）框架，使广域信息管理系统（SWIM）和空管部门、航空公司、机场当局间的协同决策机制（CDM）相结合，以提高容效，减少航班延误。	有所进展	利用空中交通流量管理（ATFM）框架，使广域信息管理系统（SWIM）和空管部门、航空公司、机场当局间的协同决策机制（CDM）相结合，以提高容效，减少航班延误。
清洁技术			
中国政府	进一步和美中能源合作项目合作开展试点项目，允许美国企业能与境内国有和私营企业一样公平地参与清洁能源技术创新和市场开发。	进展明显	进一步和美中能源合作项目合作推动与政策制定者和私营部门之间的对话，以提高相关政策的透明度。支持中美能源合作项目组织企业对口洽谈活动和试点项目，使得美国企业能够参与清洁技术倡议和市场开发。
美国政府	继续为中美能源合作项目融资，支持在中国市场部署美国清洁技术和服。[能源部、商务部、美国贸易开发署]	进展明显	继续为中美能源合作项目提供全方面包括经费支持，保障其在中国市场帮助美国清洁技术和服落地。[美国能源部、商务部、贸易和发展署]
竞争法			
中国政府	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。	进展缓慢	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	根据四中全会和“十三五”规划提出的目标，进一步推动法治进程，为外资和内资企业创造一个一致的、可预测的法律和监管环境。	有所进展	提供对直接影响合规的法律要求的明确定义和解释。例如，在《反不正当竞争法》最终修订版本中明确定义商业贿赂，详细说明公司对员工行为承担的责任，将有助于公司制定和执行强有力的、实用的商业贿赂合规计划。
美国政府	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等，共同解决各种合规问题及合规政策的执行问题。	有所进展	参与双边对话与研讨会，深入开展科学交流，为实施透明且可预测的监管制度提供支持，针对合规工具和目标达成共同理解。
建筑、工程和设计			
中国政府	地方当局审查已备案的设计和建筑合同时应当更加灵活。	有所进展	明确合伙企业合伙人申请设计企业资质要求，说明外国设计企业等非个人投资者是否可以成为合伙人。
化妆品			
中国政府	建议条例在三大基本原则的基础上还应加入推动行业发展与创新的原则。	有所进展	在听取各方意见的基础上，尽快出台《化妆品监督管理条例》。

Chapter	2016 Recommendation	Progress Rating	2017 Recommendation
Customs			
<i>Chinese Government</i>	Regularly consult with the business community on important concerns in accordance with the Trade Facilitation Agreement [GAC].	Moderate Progress	Comprehensively push forward the reform of integrated customs clearance and continue to promote trade facilitation.
<i>US Government</i>	Promote Authorized Economic Operator/ Customs Trade Partnership Against Terrorism recognition negotiations with China Customs.	High Progress	N/A
Direct Sales			
<i>Chinese Government</i>	Review and revise the Direct Sales Regulation, the Anti- <i>Chuanxiao</i> Regulation, and their associated administrative directives, bringing them in line with China's WTO commitments, standard international practices, the 2013 Judicial Interpretation, and the business realities of the China market.	Moderate Progress	Revise the Direct Sales Regulation as soon as possible, relaxing restrictions on compensation for direct sales agents and allowing compensation based on the aggregate volume of the sales team under a direct sale agent, provided that it is based on sales volume and not on number of sales agents recruited.
Education			
<i>Chinese Government</i>	N/A	N/A	Permit foreign universities to establish educational foundations, as in Hong Kong or the UK for example. These foundations would enable fund-raising and the administration of educational programs subject to relevant approvals. The foundations would also receive tax benefits.
Express Delivery Services			
<i>Chinese Government</i>	Hold meetings and exchanges with international EDS providers to gain a deeper understanding of the specific challenges faced by our member companies. [SCLAO]	Moderate Progress	At the national level, establish a uniform security regulation mechanism for the express delivery industry, clarify regulatory bodies, and standardize regulatory measures across the country.
Food and Beverage			
<i>Chinese Government</i>	Continue to strengthen the development of testing organs, the professionalism of law enforcement officials, and the standardization of law enforcement in order to ensure the uniform and accurate interpretation and implementation of regulations nationwide; additionally, call for the establishment of a public channel and mechanism for communication between enterprises and legislative bodies and provide timely interpretations on the implementation of relevant legislation.	Moderate Progress	Continue to strengthen the development of testing organs, the professionalism of law enforcement officials, and the standardization of law enforcement in order to ensure the uniform and accurate interpretation and implementation of regulations nationwide. Additionally, establish a public channel and mechanism for communication between enterprises and legislative bodies and provide timely interpretations on the implementation of relevant legislation.
Government Procurement			
<i>Chinese Government</i>	Focus on addressing the remaining gaps in China's fifth revised GPA offer as identified in this chapter, and accelerate negotiations toward accession to the GPA in 2016. [MOFCOM, MOF, SASAC]	Low Progress	Focus on addressing the remaining gaps in China's fifth revised GPA offer as identified in this chapter, and accelerate negotiations toward accession to the GPA in 2017. [MOFCOM, MOF, SASAC]
Healthcare Services, Medical Devices, and Pharmaceuticals			
<i>Chinese Government</i>			
• <i>Healthcare Services</i>	Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities.	Low Progress	Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities.
• <i>Medical Devices</i>	Adopt a risk-based approach to medical device clinical trials.	Low Progress	Allow separate charging for products and medical services with advantages in safety, efficacy, and effectiveness in the pricing items to ensure patients' right of choice. [NHFP, NDRC]
• <i>Pharmaceuticals</i>	Set up tiered product quality categories based on scientific criteria and internationally accepted standards, including a category for originators/reference drugs with the highest price premium.	Low Progress	Adopt a quality-oriented drug tendering and procurement model by developing a comprehensive multi-criteria evaluation in the "two envelope" system, setting up tiered drug quality categories, establishing open and transparent tendering rules, allowing at least two winners per bidding group in the national tendering model, and giving hospitals discretion to procure newly approved medicines.

章节	2016年白皮书主要建议汇总	进展评价	2017年白皮书主要建议汇总
海 关			
中国政府	按照《贸易便利化协定》要求，就商界普遍关注的重要事项开展机制性的定期磋商活动。[海关总署]	有所进展	全面推进通关一体化，推动贸易便利化。
美国政府	积极推进和中国海关之间 AEO/CTPAT 互认协定谈判	进展明显	N/A
直 销			
中国政府	修订《直销管理条例》、《禁止传销条例》及配套法规，使之符合中国的入世承诺、国际惯例、2013 司法解释和中国市场的行业现状。	有所进展	尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。
教 育			
中国政府	N/A	N/A	借鉴香港或英国的经验，允许境外大学设立教育基金会。允许教育基金会募集资金，管理需要获得相关审批的教育项目，享受税收优惠。
快递服务			
中国政府	期待国务院法制办能够专门就国际快递领域的问题与企业进行座谈交流，深入了解行业特点。[国务院法制办]	有所进展	期待在国家层面建立快递行业安全监管统一领导机制，明确监管主体，统一全国监管措施。
食品饮料			
中国政府	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，推进“清单式”标准化执法，以加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。	有所进展	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，持续推进“清单式”标准化执法，以加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。
政府采购			
中国政府	重点缩小本章所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于2016年加入《政府采购协定》。[商务部、财政部、国资委]	进展缓慢	重点缩小本章所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于2017年加入《政府采购协定》。[商务部、财政部、国资委]
医疗服务、医疗器械和医药			
中国政府			
• 医疗服务	降低私立医院税费，允许连锁医院对新老医疗机构合并报税。	进展缓慢	降低私立医院税费，允许连锁医院对新老医疗机构合并报税。
• 医疗器械	采用基于风险的医疗器械临床试验方法。	进展缓慢	允许具有安全、功效和有效性优势的产品和医疗服务单独定价收费，保障患者的选择权。[国家卫计委、国家发改委]
• 药品	在药品招标过程中，依照科学标准和国际通行准则，实施质量分层，并将原研药 / 首仿药单独设立一个质量层次。	进展缓慢	采用质量导向的招标采购模式，改进“双信封”制度，建立包括多标准的全面评估招标制度，实施质量分层，建立公开透明的招标规则，在全国性招投标程序中允许每个竞价组决出至少两家人围方，允许医院自主采购采购新批准上市的药品。

Chapter	2016 Recommendation	Progress Rating	2017 Recommendation
High-Tech Trade Promotion and Export Controls			
<i>Chinese Government</i>	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.	Low 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.
<i>US Government</i>	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.	Moderate 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			
<i>Chinese Government</i>	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	Explore more innovative approaches to disability fund contributions, such as allowing enterprises to use funds from the disability fund to support charitable initiatives that would help educate and equip disabled people with employable skills.
Information and Communications Technology			
<i>Chinese Government</i>	Lift equity cap restrictions on FIEs and market entry barriers to the direct delivery of cloud services.	Low Progress	Clarify the data localization requirement of the new Cybersecurity Law so as to restrict its application to a relatively small number of "operators of CII." Ensure that "security review" procedures of the same law, as required for cross-border transfers of critical data and personal information, do not require the disclosure or transfer of private or proprietary information.
<i>Both Governments</i>	Actively implement the outcomes from the Xi-Obama state visit, including those regarding the development of appropriate norms of state behavior in cyberspace and refraining from cyber-enabled theft of IP.	Moderate Progress	N/A
Insurance			
<i>Chinese Government</i>	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	Lift the 50 percent cap on foreign ownership of life insurers.
Intellectual Property Rights			
<i>Chinese Government</i>	Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, and make it available regardless of the level of fame associated with the pirated mark.	Moderate Progress	Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties and make it available regardless of how well known the pirated mark is.
<i>US Government</i>	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 secrets laws and national trade secrets strategy.
Investment Policy			
<i>Chinese Government</i>	Rapidly pursue substantial and actionable openings that will allow foreign investors to expand their operations in China.	Low Progress	Take concrete steps to more fully provide for American investors in China the same levels of market access, legal protections, and non-discriminatory treatment that Chinese investors benefit from in the US today.
<i>Both Governments</i>	Pursue the rapid completion of a high-standard BIT that ensures the intended benefits of the treaty can be reached within China's unique market.	Moderate Progress	Pursue the timely completion of a high-standard BIT that ensures American companies can enjoy the intended benefits of the treaty within China's unique market and that Chinese companies can contribute positively to the US economy.
Legal Services			
<i>Chinese Government</i>	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.	Low Progress	Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers without requiring them to give up their PRC lawyer's license when they join a foreign law firm.
<i>US Government</i>	N/A	N/A	Negotiate with China to revise the current regulations to permit international law firms in China to enjoy the same benefits shared by Chinese law firms operating their offices overseas.

章节	2016年白皮书主要建议汇总	进展评价	2017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	加强与中国企业的沟通, 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。	进展缓慢	加强与中国企业的沟通, 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, 从而推进美中高科技贸易的倡议。	有所进展	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议。
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制度, 或者允许外籍雇员不参加社保。	进展缓慢	探索更有创新性的方法, 例如, 允许企业使用保障金的资金支持慈善事业, 用以向残疾人提供就业技能教育和培训。
信息通讯技术			
中国政府	上调外商投资企业的股本上限, 减少市场进入障碍, 以便直接交付云服务。	进展缓慢	明确新的《网络安全法》关于数据本地化的要求仅适用于相对少数的“关键信息基础设施运营商”。确保该法关于关键数据和个人信息跨境传输需要接受的“安全审查”程序并不要求披露或转让保密或专有信息。
两国政府	积极落实习主席与奥巴马总统国事访问期间的成果, 包括制定相应的网络空间国家行为规范, 打压知识产权网络剽窃行为。	有所进展	N/A
保险			
中国政府	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。	有所进展	取消寿险公司外资股东持股比例不得超过50%的上限规定。
知识产权			
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, 并且无论被剽窃商标的知名度如何, 都以此为依据。	有所进展	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, 无论被剽窃商标的知名度如何, 都应以此为依据。
美国政府	分享美国联邦和各州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。	有所进展	分享美国联邦和各州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	尽快推进切实可行的开放性政策, 允许外国投资者扩大在中国的业务。	进展缓慢	采取切实举措进一步向在中国的美国投资者提供市场准入、法律保护和非歧视待遇, 使其和在美国的中国投资者享受的待遇相同。
两国政府	争取尽快达成一个高标准的双边投资协定, 确保协定的预期利好能够在中国这个独一无二的市场实现。	有所进展	争取及时达成一个高标准的双边投资协定, 确保美国企业在中国这个独一无二的市场能够实现预期的利好, 并且保证中国企业能够为美国经济做出积极贡献。
法律服务			
中国政府	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。	进展缓慢	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。
美国政府	N/A	N/A	与中方进行谈判以修改其现行法律法规, 给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。

Chapter	2016 Recommendation	Progress Rating	2017 Recommendation
Machinery Manufacturing			
<i>Chinese Government</i>	Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested companies.	Moderate Progress	Eliminate restrictions on free flows of capital, information, and merchandise in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.
Media and Entertainment			
<i>Chinese Government</i>	Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Increase and then remove all quotas for foreign films.	Low Progress	Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Increase and then remove all quotas for foreign films.
<i>US Government</i>	N/A	N/A	Work with China and other WTO partners in the renegotiation of the film quota agreement with the goal of allowing market forces to play a greater role and taking steps to eliminate quotas for foreign films.
Northeast China			
<i>Liaoning Government</i>	Create a scheduled plan for further engagement with foreign businesses to discuss the regulatory and operational challenges they face in the region, and find practical solutions for addressing the top challenges presented in this chapter.	Low Progress	Partner with the AmCham China Northeast Chapter in setting up annual dialogues with the Mayor of Dalian, the Mayor of Shenyang, the AmCham China Northeast Chapter Executive Committee, and American business leaders with operations in Liaoning. These dialogues should aim to promote further engagement with foreign businesses to discuss the regulatory and operational challenges American companies face in the region and, through a partnership, find practical solutions for addressing top challenges.
<i>US Government</i>	Encourage the US Consulate's commercial and other staff to intensify their efforts to reach out to local Chinese government officials in a more collaborative and creative way in order to assist American businesses finding solutions to the challenges raised in this chapter.	Low Progress	Encourage the US Consulate's commercial and other staff to intensify their efforts to reach out to local Chinese government officials in more collaborative and creative ways to assist American businesses to find solutions to the challenges raised in this chapter.
Oil and Gas, Energy, and Power			
<i>Chinese Government</i>	Strengthen the application of regulations on tendering and bidding activities to ensure a level playing field. [NDRRC]	Moderate Progress	Continue to develop SPNGX and increase the market's role in setting the price of natural gas, and deepen the reform of China's natural gas distribution networks.
<i>US Government</i>	N/A	N/A	Identify and encourage opportunities to share best practices with relevant Chinese government entities. For example, in the US, open access to upstream acreage and resources and midstream infrastructure, as well as the public availability of data, have attracted high levels of investment and led to technological innovation, resulting in the successful development of unconventional resources.
Real Estate			
<i>Chinese Government</i>	Promote a transparent and equitable market to ensure healthy competition and sustainability over the long term.	Low Progress	We recommend that local governments and MOHURD collaborate to continue rolling out public land registries and enforce an annual property tax in select municipalities to serve as a model for nationwide implementation.
Retail and E-Commerce			
<i>Chinese Government</i>	Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across China.	Moderate Progress	Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across China.
Shanghai			
<i>Shanghai Government</i>	Introduce significant financial service, administrative, and trade facilitation reforms in the China (Shanghai) Pilot Free Trade Zone and reduce restrictions in the negative list that constitute market access barriers, especially in the services area.	Moderate Progress	Reduce the use of window guidance and discriminatory policies that prevent Shanghai from becoming an international financial center.

章节	2016年白皮书主要建议汇总	进展评价	2017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，给予内外资企业同等待遇。	有所进展	取消机械制造业的资本、信息和产品自由流动的限制，给予内外资企业同等待遇。
传媒娱乐			
中国政府	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。增加外国电影的整体配额，并逐渐取消配额限制。	进展缓慢	减少各类外国媒体和娱乐项目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。增加外国电影的整体配额，并逐渐取消配额限制。
美国政府	N/A	N/A	与中国及其他 WTO 合作伙伴进行合作，就电影配额协议进行重新协商，以便市场力量能够发挥更大的作用，并逐步取消外国电影配额制度。
中国东北			
辽宁省政府	制定一份与外资企业讨论其在该地区所面临的监管和经营挑战的计划，找到这一章节中提到的主要挑战的解决方案。	进展缓慢	与中国美国商会东北办公室合作，建立与大连市长、沈阳市长、中国美国商会东北办公室执行委员会、在辽宁经商美国企业领袖的年度对话机制。这些对话旨在加深与外国企业的接触和了解，探讨美国企业在该地区所面临的法律法规和经营方面的挑战，并通过合作为解决这些主要挑战找到切实可行的办法。
美国政府	鼓励领事馆的商务和其他人员与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到这一报告所提到的挑战的解决方案，促进整体经济的增长。	进展缓慢	鼓励领事馆的商务和其他人员积极与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到本报告所提到的各种挑战的解决方案。
石油、能源和电力			
中国政府	加强相关法规在招标投标活动中的落实，以确保建立公平的竞争环境。[国家发改委]	有所进展	继续推动上海石油天然气交易中心的发展，提高天然气定价的市场化，深化中国天然气配送网络的改革。
美国政府	N/A	N/A	寻找机会，鼓励和中国政府相关部门分享最佳实践作法。例如，在美国，通过开放上游探区和中游基础设施的准入以及公开相关数据，投资水平得以提高，技术创新得以开展，非常规资源得以成功开发。
房地产			
中国政府	提升市场透明度和公平度，确保市场健康竞争和长期可持续发展。	进展缓慢	我们建议地方政府和住建部展开合作，继续在选定的城市推动公共土地登记和房产税，为全国范围的实施提供示范榜样。
零售业和电子商务			
中国政府	在全国范围内对零售业，包括所有经营模式，适用统一监管制度，实施持续稳定的标准。	有所进展	以统一的监管体系监管零售业（无论商业形式如何），统一全中国的执法标准。
上海			
上海市政府	在中国（上海）自由贸易试验区出台重要的金融服务、行政和贸易便捷化改革措施，减少负面清单中构成市场准入障碍的限制，尤其是在服务领域。	有所进展	减少使用窗口指导和阻碍上海成为国际金融中心的歧视性政策。

Chapter	2016 Recommendation	Progress Rating	2017 Recommendation
Sports			
<i>Chinese Government</i>	N/A	N/A	Identify and adopt international best practices in sports management, such as aggregate salary caps [GAS].
<i>US Government</i>	N/A	N/A	Continue to urge the Chinese government to enhance the protection of IPR associated with sports-related assets. [DOC, USPTO]
Standards, Certification, and Conformity Assessment			
<i>Chinese Government</i>	Broaden recognition of international SDOs beyond the ISO, IEC, and ITU to any organization which follows the WTO/TBT principles on international standards development.	Moderate Progress	Officially broaden recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development.
Tax Policy			
<i>Chinese Government</i>	Provide taxpayers and tax authorities at all levels with detailed guidance on the implementation of Public Notice 16.	Low Progress	Begin efforts to simplify VAT rates as soon as possible. [SAT, MOF]
Tianjin			
<i>Tianjin Government</i>	Market Tianjin to foreign investors through the use of a professional PR agency and by coordinating with foreign business chambers as first steps in order to help address the challenges of 2015, including the slowdown of economic growth and general market instability.	Moderate Progress	Current platforms such as the Tianjin PFTZ, the <i>Jing-Jin-Ji</i> integration plan, and OBOR position Tianjin as an innovation center and are welcomed by our members. Implement specific policies in Tianjin that will promote innovation through more advanced uses of technology and information by easing restrictive technological barriers, attracting additional skilled labor, and establishing a more transparent business climate.
Visa Policy			
<i>Chinese Government</i>	Shorten the holding period of passports by the PSB when processing residence permits from 15 to five working days.	Low Progress	Accept original documents for work permit applications nationwide, instead of requiring notarized and authenticated copies of original documents.
<i>US Government</i>	Add at least four additional visa-issuing posts in China.	Low Progress	Abolish discriminatory per-country caps on employment-based green cards
Work Safety			
<i>Chinese Government</i>	Continue to emphasize work safety legislation and enforcement at the highest government levels with a focus on work at height.	Moderate Progress	Review international best practices, such as US Occupational Safety and Health Administration (OSHA) regulations, and integrate them into Chinese regulations in order to take advantage of lessons already hard-learned through experience.
<i>US Government</i>	Facilitate the sharing of the most recent work at height laws and regulations in the US (e.g., the 2016 revisions of the American National Standards Institute work at height standards) with the Chinese government, and continue to advocate through the State Council Work Safety Committee and SAWS for a consistent set of work at height standards across industries.	High Progress	Organize Chinese construction enterprises to visit US construction sites and study the use of safety equipment there, including aerial work platforms, and strengthen the education and training of safety equipment end users.
Wuhan			
<i>Hubei and Wuhan Governments</i>	Provide more transparent and uniform enforcement of government rules and regulations.	Low Progress	Expand the current strategy for attracting talent to Wuhan through efforts including managing real estate prices, relaxing <i>hukou</i> regulations, and expanding platforms for universities and companies to work together developing talent.
<i>US Government</i>	Increase the services available to both US and Chinese citizens at the US Consulate General in Wuhan.	Moderate Progress	Cooperate with the Hubei and Wuhan governments to promote Wuhan as an investment opportunity through trade delegations.

章节	2016年白皮书主要建议汇总	进展评价	2017年白皮书主要建议汇总
体 育			
中国政府	N/A	N/A	确定并采用体育管理方面的国际最佳实践，如设定薪金总额限制 [体育总局]。
美国政府	N/A	N/A	继续敦促中国政府加强体育资产知识产权保护。 [美国商业部、美国专利及商标局]
标准、认证和许可			
中国政府	扩大对国际标准制定机构的认可范围，从 ISO、IEC 和 ITU 扩大至其他遵循世界贸易组织贸易技术壁垒 (WTO/TBT) 关于国际标准制定原则的标准制定机构。	有所进展	正式将对国际标准制定机构的认可范围扩大至其他遵循世界贸易组织贸易技术壁垒 (WTO/TBT) 关于国际标准制定原则的标准制定机构。
税收政策			
中国政府	向纳税人和各级税务机关提供第 16 号公告实施细则。	进展缓慢	尽快采取措施简化增值税税率 [国家税务总局、财政部]
天 津			
天津市政府	首先，通过专业公关机构向外国投资者推介天津，与外国商会协调行动，共同应对 2015 年面临的包括经济增长放缓和市场普遍存在的不稳定等因素的挑战。	有所进展	天津自贸区、京津冀一体化战略以及“一带一路”等平台目前将天津定位为创新中心，我们的会员企业对此表示欢迎。天津应当实施具体的政策，放宽技术壁垒限制，吸引更多的熟练劳动力，营造更加透明的营商环境，以便通过促进先进技术和信息的使用，推动创新。
签证政策			
中国政府	将公安部门受理居留许可申请的时间从 10 个工作日缩短至 5 个工作日。	进展缓慢	在全国范围内允许申请工作许可时提交原件，而非提供经过公证和认证的原件副本。
美国政府	在中国至少增设四个签证签发点。	进展缓慢	取消按国别分配工作绿卡的歧视性制度。
安全生产			
中国政府	继续强化安全生产立法和执法，并重点关注高处作业安全立法和执法。	有所进展	核查美国职业安全与健康管理规定等国际惯例，将其融入中国法规体系，以运用这些实践经验。
美国政府	进一步与中国政府分享美国最新的高处作业安全法律法规（如 2016 年新修订的美国国家标准学会高处作业标准），并继续通过中国国家安委会和国家安监总局建议建立一套跨行业的高处作业安全统一标准。	进展明显	组织中国建筑企业参观美国建筑工地，学习包括高空作业平台在内的安全设备的使用，加强对安全设备终端用户的教育和培训。
武 汉			
湖北省与武汉市政府	提高政府法律法规的透明度和一致性。	进展缓慢	通过调控房地产价格、放宽户口限制以及为高校和企业合作开发人才提供平台等方式扩大当前的人才吸引战略。
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。	有所进展	和湖北省及武汉市政府合作，通过贸易代表团提升武汉的投资机会。



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

Business Sustainability and Non-Profit Engagement

Introduction

Business sustainability involves companies developing and implementing strategies that are economically, socially, and environmentally sustainable. Social, non-profit, inter-governmental, and non-governmental organizations (NGOs) (hereafter collectively referred to as non-profit organizations, or NPOs) play a crucial role in fostering sustainable business practices by: ❶ providing an independent source of accountability and expertise for businesses and governments, and ❷ partnering with businesses and governments in local communities to provide support and services to implement sustainability and community engagement initiatives.

A thriving non-profit sector can contribute significantly to addressing China's broader sustainability challenges for the benefit of the Chinese people. These benefits include: helping to provide an educated and healthy workforce, improving and protecting the environment, promoting food and nutrition security, 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.

The US and many other countries, with long traditions of philanthropy, have active civil society sectors that work effectively with both government and businesses to address local and national issues. Though China's rapid growth has produced many economic, social, and environmental challenges, this sector can make positive contributions, especially in the area of sustainable development. AmCham China urges the Chinese government to ensure that recent changes to the regulation of the NPO sector do not unduly constrain the positive impact NPOs and their business partners can provide in China.

Recent Developments and Ongoing Regulatory Issues in Business Sustainability

Corporate sustainability initiatives in China have had a strong focus on social responsibility and charitable activities – hence the still prevalent use of the term corporate social

responsibility (CSR) rather than sustainability (i.e., business practices that are economically, socially, and environmentally sustainable). More recently, CSR practice has evolved to encompass more market-driven concepts. Companies are increasingly exploring the role business can play in improving societal outcomes through an “investment” and “shared value” lens, rather than through a “responsibility” or “compliance” lens. Over the past year, this trend was clearly evident in the growing number of conferences and forums convening businesses, foundations, and NPOs to discuss impact investing, as well as a growing body of research on the topic.

Green Finance and Financial Inclusion

A shift in thinking from CSR and charity to investing for both financial and societal returns is evident in the strong interest the Chinese government and financial institutions have shown in creating innovative financial tools to address environmental and social challenges and to foster financial inclusion. For example, during the 2016 G20 summit, held September 4-5 in Hangzhou, green finance and financial inclusion were two major topics of discussion. In August 2016, the People's Bank of China (PBOC), the Ministry of Finance, and the Ministry of Environmental Protection, among others, issued the “Guidelines for Establishing the Green Financial System” (*Yinfa* [2016] No. 228) to establish a formal green finance mechanism in China. AmCham China commends the PBOC and the Chinese government on these significant steps to facilitate a shift towards a sustainable economic growth model.

Public Reporting Requirements

The Chinese government is increasing pressure on companies to publicly report their environmental and social practices and impact. While sustainability reporting is voluntary from a legal standpoint in China, both central and local governments, as well as domestic stock exchanges and research institutions in China, have issued documents encouraging businesses to publicly release sustainability reports. AmCham China commends the Chinese government on increasing efforts to improve sustainable business practices through reporting. We suggest aiming for as much alignment with internationally established reporting standards as possible. This will reduce the burden on compa-

企业可持续性和非营利性参与

引言

企业可持续性是指企业制定和实施的具有经济、社会和环境可持续性的战略。社会、非营利、政府间或非政府组织（NGO）（以下统称为非营利组织）能够：**①** 为企业和政府提供独立来源的责任和专业知识，并且**②** 与本地社区的企业和政府合作为实现可持续发展和社区参与项目提供支持和服务，从而在促进企业可持续发展方面发挥至关重要的作用。

兴旺繁荣的非营利组织有助于大大缓解中国面临的可持续发展的挑战，符合中国民众的利益。具体的好处包括：提高劳动力的教育和健康水平、改善和保护环境、提高食品和营养安全、扩大医疗和金融等服务行业的准入、倡导食品安全、发展有助于提高生产力的劳资关系、通过志愿服务推动社会的积极参与、向边缘化群体提供社会服务、支持政府对企业合规的监督等。

在美国和其他许多国家，慈善有着悠久的历史，也因此拥有活跃的公民社会组织。它们通过与政府和企业积极开展合作，独立地解决本地和全国性问题。虽然中国经济的快速发展产生了诸多经济、社会和环境挑战，但是这类组织可做出积极贡献，特别是在可持续发展方面。中国美国商会（商会）促请中国政府明确，近期有关非营利组织领域的监管改动不会过度限制非营利组织及其企业伙伴对中国做出积极贡献的能力。

企业可持续性领域的最新进展和现存监管问题

中国企业可持续性计划主要侧重于社会责任及慈善活动，因此企业社会责任（CSR）这一术语的使用仍多于可持续性（即在经济、社会及环境方面可持续的商业实践）。近来，企业社会责任实践逐渐包括更多市场方面的概念。企业正不断从“投资”和“共享价值”方面探索提高企业

社会价值的方法，而不再限于“责任”或“合规性”的角度。该趋势在去年就已日益明显。其中，越来越多的企业、基金会和非营利组织召开会议及研讨会讨论影响力投资并进行相关研究。

绿色金融及金融包容性

自企业社会责任和慈善向金融及社会投资的转变显然对中国政府有益，同时，金融机构已开始创新金融工具以解决环境和社会挑战并促进金融包容性。例如，2016年9月4-5日于杭州举行的20国峰会便将绿色金融和金融包容性作为两大主要议题。2016年8月，为了在中国正式创建绿色金融体系，中国人民银行、财政部、环保部等部委联合发布了《关于构建绿色金融体系的指导意见》（银发〔2016〕228号）。对于中国政府向可持续性经济发展模式转变所做的重大努力，商会表示赞扬。

信息公开要求

中国政府正催促企业公开报告其环境及社会实践和影响。尽管根据中国法律规定，可持续性报告并非强制做出，但其中央及地方政府、国内的证券交易所和研究机构均发布相关文件鼓励企业公布其可持续性报告。对与中国政府通过报告制度大力提高企业可持续性实践的做法，商会表示赞扬。我们建议，此类报告应尽可能按照国际上普遍的报告标准做出，以减轻拥有国际业务的中国和外国企业的负担，使其不必遵守多重及不一致的报告框架要求。近期进展包括：

- 中国国家标准化委员会发布的，于2016年1月生效的《GB/T36001-2015 有关社会责任报告的指导意见》向外国企业阐述了中国政府在可持续性报告方面的相关要求。
- 中国证券业协会要求证券公司就企业社会责任定期提交相关报告。自2016年起，该要求变为季度性报告，

nies (both Chinese and foreign) operating internationally resulting from the need to comply with multiple and inconsistent reporting frameworks. Recent activities include:

- The “Guidance on Social Responsibility Reporting” (GB/T36001-2015), published by the Standardization Administration of China, took effect in January 2016, and provides a good introduction for foreign companies regarding Chinese government expectations towards sustainability reporting in China.
- The Securities Association of China requires that securities firms submit regular reports on CSR activities. Starting in 2016, the reporting requirement became quarterly, and there is mandatory training for staff responsible for such work, with a focus on poverty alleviation.
- Prior to the 2016 G20 summit, the PBOC’s chief economist has proposed that planned amendments to China’s Securities Law include compulsory environmental information and impact disclosure for listed enterprises. If these amendments come into effect, they may serve as important guidance for companies on specific expectations regarding environmental disclosure.

Recent Developments and Ongoing Regulatory Issues in the Non-Profit Sector

Two important regulatory developments are having significant impact on business-NPO relationships in China: the Charity Law and the Law on the Management of the Activities of Overseas NGOs Within Mainland China (Overseas NGO Law).

Charity Law

On September 1, 2016, the Charity Law came into effect. AmCham China commends the Chinese government for implementing this landmark legislation, which aims to strengthen China’s philanthropic sector and clarify the rights and responsibilities of NPOs, donors, beneficiaries, and the government. The law is an important step towards addressing many of the challenges previously hindering domestic NPO development in China. Specifically, it aims to:

- Ease the process to gain charitable status for newly established NPOs and unify the registration process for NPOs;
- Promote public reporting and disclosure obligations of local governments and NPOs;
- Ease approval for public and non-public fundraising (e.g., non-public fundraising directly after registration, and public fundraising after the second year of certification as a charitable organization upon the approval of the Ministry of Civil Affairs (MOCA) and local civil affairs bureaus); and
- Clarify tax exemption and deduction procedures.

AmCham China further commends the Chinese government on the open and participatory process that led to the development of the law and its subsequent supporting regulations. After the law was promulgated in March 2016, at least eight additional draft regulations were released by MOCA for public comment, including draft revisions to the regulations for different types of charitable organizations (foundations, private non-enterprise units, and social groups). AmCham China cautions that the large volume of legislative documents released for the civil society sector in 2016 goes against the Chinese government’s overall aim of deregulation.

Overseas NGO Law

On April 28, 2016, the Standing Committee of the National People’s Congress passed the Overseas NGO Law. The law went into effect on January 1, 2017. AmCham China members are concerned about the breadth and content of the Overseas NGO Law because it has the potential to seriously disrupt the operations of a wide variety of organizations that provide positive and important services to China and its people, as well as those foreign enterprises working closely with foreign NPOs to contribute to China’s development.

Foreign NPOs, including corporate foundations, are integral to the operations of many AmCham China member companies. Many of our members, through their corporate foundations registered as NPOs in the US, frequently work with foreign or local industry associations, universities, environmental organizations, science and technology institutions, and other organizations for purposes such as information sharing, research, market development, and innovation. Both foreign foundations and NPOs play a critical role in guiding and implementing business sustainability and community engagement activities of many commercial enterprises—both foreign and Chinese. The new Overseas NGO Law hampers foreign business community efforts to support local community activities, be they organized by Chinese or foreign NPOs.

In many respects, the Overseas NGO Law undermines China’s efforts to increase its soft power and recent progress in people-to-people exchanges. While AmCham China members respect the right of the Chinese government to regulate foreign NPOs within its borders, we are concerned that the Overseas NGO Law unduly limits their ability to conduct activities which contribute to China’s economic and social development. Specifically, AmCham urges the Chinese government to provide greater clarification on the law and more transparent processes of consultation, to address the uncertainties and questions foreign NPOs have over the law’s implementation.

The foreign NPO community currently struggles with numerous uncertainties and concerns regarding the concrete implementation of the new law, including:

并且需对编写此等报告的员工进行强制培训，报告应重点阐述企业的扶贫工作。

- 在2016年20国峰会召开前，中国人民银行的首席经济师就提议，中国《证券法》的修正案应强制上市公司进行相关环境信息及影响的披露。如此修正案生效，其可作为企业进行具体环保披露的重要指南。

非营利领域的最新进展和现存监管问题

中国两项重大的监管进程正对企业与非营利组织间的关系产生重大影响：《中华人民共和国慈善法》（《慈善法》）和《境外非政府组织境内活动管理法》（《境外非政府组织法》）。

《慈善法》

2016年9月1日，《慈善法》生效。商会对中国政府实施这一里程碑式的立法表示赞扬，该立法加强了中国慈善领域的监管，阐明了非营利组织、捐赠人、受益人及政府之间的权利和责任。该立法对解决此前阻碍非营利组织在华发展的诸多挑战方面迈出了极为重要的一步。具体来说，其旨在：

- 简化新成立的非营利组织从事慈善事业的流程并统一非营利组织的登记程序；
- 促进地方政府和非营利组织的信息发布和披露义务；
- 简化公募及非公募筹资的批准程序（例如，登记后直接进行的定向募捐，以及在民政部或当地民政局登记满两年的慈善组织经批准获得公募资格后可以进行公开募捐）；和
- 明确税务豁免及扣减程序。

商会对中国政府采取的公开及参与式程序表示赞扬，该程序将促进法律及相关法规的发展。自2016年3月公布《慈善法》以来，民政部发布了至少八项法规草案并公开征求意见，包括规定慈善组织类型（基金会、社会服务机构（原名民办非企业单位）和社会团体）的法规修订草案。商会敬请中国政府注意，2016年公民社会领域出台的大量立法文件是否应与其放松管制的大目标保持一致。

《境外非政府组织法》

2016年4月28日，中国人民代表大会常务委员会通过了《境外非政府组织法》。该法律自2017年1月1日起生

效。商会成员对《境外非政府组织法》的管辖范围和内容表示关切，因为该法律可能深度影响多类在华组织向中国及其公众提供积极和重要服务的能力，也可能深度影响外国企业同外国非营利组织进行密切合作并为中国经济发展做出贡献的能力。

外国非营利组织，包括企业基金会，是诸多商会成员正常运营中不可或缺的一部分。我们的很多成员通过其在美国注册为非营利组织的企业基金会，同外国或当地行业协会、大学、环保组织、科技机构及其他组织展开频繁合作，进行信息共享、调研、市场开发及创新模式的交流。外国基金会和非营利组织在指导和实施中外企业的业务可持续性和社区参与活动中起到至关重要的作用。新颁布的《境外非政府组织法》影响了外国商界支持中国或外国非营利组织举办当地社区活动的 ability。

《境外非政府组织法》在很多方面可能限制中国软实力的提升及其在人文交流方面取得的最新进展。商会成员尊重中国政府监管在华外国非营利组织的权力，但我们担心，《境外非政府组织法》会限制外国非营利组织开展活动的 ability，阻碍其对中国经济和社会发展做出贡献。商会特别恳请中国政府进一步明确该法律的具体规定，并提供更为透明的磋商程序，以回应外国非营利组织在法律实施过程中所遇到的不确定及其他问题。

目前，外国非营利组织团体就该法律具体实施中存在的诸多不确定及担忧感到焦虑，包括：

条文措辞不清晰或模糊

- 《境外非政府组织法》要求外国非营利组织在华进行“活动”时应设立相关代表机构或就临时活动进行备案。但是，“活动”的含义仍不甚清晰。例如，外国非营利组织举办的讲座或专业会议是否构成“活动”？
- 《境外非政府组织法》禁止外国非营利组织“从事或者资助营利性活动”。但考虑到企业有强烈的意愿与非营利组织合作进行市场推广活动（例如，既营销企业的产品又同时支持慈善事业），由于此类活动可能间接促进企业品牌及产品的盈利，不知是否会违反《境外非政府组织法》的相关规定。
- 尚不清楚外国非营利组织的驻华代表机构能否获得在华外资企业通过其企业社会责任项目拨付的资金，或获得其他方式的企业资金支持。

Unclear or Ambiguous Language

- The Overseas NGO Law requires foreign NPOs carrying out “activities” in China to either register a representative office or file a temporary activity for the record. However, the meaning of “activities” remains unclear. For example, will a public lecture or a professional meeting organized by a foreign NPO be considered an “activity?”
- The Overseas NGO Law prohibits foreign NPOs from “engaging in or financing profit-making activities.” However, considering the strong interest companies have in working with NPOs to conduct joint marketing activities (e.g., to jointly promote a product and a charitable cause), it is not clear whether such joint marketing activities would be permissible under the Overseas NGO Law, given that such activities may indirectly support brand and product sales.
- There is uncertainty as to whether the China representative offices of foreign NPOs can receive financial support from foreign-invested enterprises in China, whether from their CSR programs or other corporate funding.

Unclear Requirements for Temporary Activity Approval and Record Filing

- The responsibility for obtaining approval for temporary activities rests with a foreign NPO’s Chinese partner, but when trying to seek such approval from their own supervisory unit and file the temporary activities with the public security authority for the record, foreign NPOs’ Chinese partners have found that the procedures and requirements are not clear and vary from one jurisdiction to another. Without clear procedures, the foreign NPOs have had to suspend their program activities while engaging in the lengthy process of registering a representative office. This has caused concern among the foreign NPO community and their Chinese partners. Suspending program activities in many cases results in the foreign NPOs losing access to funds to pay staff salaries, rent, and other overhead expenses, because those funds generally come from program donors and cannot be tapped unless program activities are proceeding. Therefore, suspension of activities is not sustainable for very long.

Professional Supervisory Units

- On December 22, 2016, the Ministry of Public Security (MPS) released the list of eligible Professional Supervisory Units (PSUs), together with a catalogue of program areas and activities. However, foreign NPOs that have approached PSUs to seek sponsorship have found many of them to be unprepared or even reluctant to discuss sponsorship. Some are still discussing internally which department will handle the PSU role, or

what procedures they want to follow for working with foreign NPOs. Others say they need more detailed information about how to discharge their PSU responsibilities before they can proceed. Some have suggested that the foreign NPOs should make very significant changes in their programs if they want sponsorship, but it may not be possible to obtain funding for significantly revised programs. There is also concern that the list of PSUs is too narrow, and does not include entities such as the Chinese Academy of Governance, the Chinese Academy of Social Sciences, and the Development Research Center of the State Council. These organizations would be better positioned to “supervise” foreign NPOs that work in a broad range of programmatic areas. In addition, how foreign NPOs will work with PSUs still remains unclear in the absence of procedural guidelines. Most importantly, there seems to be no incentive for the listed PSUs to step into their PSU role. Many international NGOs are struggling to identify and approach a suitable PSU which is willing to sponsor them.

Uncertainties Regarding “Branches”

- Many foreign NPOs conduct a large number of on-the-ground, long-term projects across China. As a result, various “project offices” across China have been established by these foreign NPOs to carry out such projects. To comply with the new law, many of these foreign NPOs have recently registered or are currently in the process of registering a representative office in China that has a multi-province geographic scope. This is permitted by the “Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas NGOs Within the Territory of China,” issued by the MPS on November 29, 2016, which allows a representative office to have a multi-province geographic scope that extends beyond the locality where they are registered. However, there is a great deal of confusion regarding whether such a representative office may establish or retain project offices that are located within the representative office’s geographic scope but outside of the representative office’s locality of registration. We understand that MPS officials have issued oral interpretations stating that a representative office cannot have any “branches.” However, we note that the abovementioned project offices are distinguishable from branches in that a branch usually houses not only project staff but also a full suite of administrative functions including finance, human resources, public relations, etc., whereas a project office may only have project staff plus at most one or two accounting staff. We suggest that the MPS draw a clear distinction between “branches” and “project offices” and allow a properly registered foreign NGO representative office to establish and maintain project offices within its registered geographic scope. This would be consistent with law applicable to for-profit companies which

临时活动批准及备案要求不清楚

- 外国非营利组织的中方合作单位应负责取得临时活动的审批，但中方合作单位在向其自身的监管机构申请批准并向相关公安机关进行备案时，往往发现相关程序和要求十分模糊，且不同地区的规定也各不相同。因临时活动备案缺乏清晰的程序，为保险起见，外国非营利组织不得不暂停其原计划的慈善项目活动，以办理代表机构的注册程序，耗时冗长。这也使得外国非营利组织团体及其中方合作单位非常担忧。由于慈善项目活动资金通常来源于捐赠人而且捐赠人拨付其资金是按项目进度进行，暂停相关项目活动也就意味着中断了资金来源，外国非营利组织也因此无法支付其员工工资、租金及其他管理费用。因此，项目活动的暂停是不可持续的。

业务主管单位

- 2016年12月20日，公安部发布了业务主管单位名录及相关活动领域和项目目录。但当外国非营利组织请求该名录上的机构担任业务主管单位时却发现，许多机构并未准备好或不愿讨论此事。有些机构仍然还在进行内部讨论，研究哪个部门将负责履行担任业务主管的职责，或者研究关于指导外国非营利组织的工作程序。有些机构表示，在同意担任业务主管之前，它们需要更多有关如何履行相关职责的信息。还有一些机构称，在同意担任某外国非营利组织的业务主管单位之前，该组织必须对其项目进行大幅修改，但如果该外国非营利组织做出这样的修改，将很难获得捐赠人的支持。也有人担心业务主管单位名录过于局限，例如并未将国家行政学院、中国社会科学院及国务院发展研究中心等事业单位列入在内。上述事业单位似乎更适合主管活动领域非常宽泛的一些外国非营利组织。另外，由于缺乏相关的程序指引，业务主管单位与外国非营利组织的协作模式仍不甚清晰。最大的难点是，由于缺乏奖惩激励，列入名录的业务主管单位似乎缺乏承担相应职责的动力。此外，许多外国非营利组织发现难以确认业务主管单位并与其进行接洽。

“分支机构”的界定不明确

- 许多外国非营利组织在华从事诸多需要实地开展的长期项目。由于项目的执行需要，这些外国非营利组织在中国各地设立了多个“项目工作站”。目前根据新法律的要求，许多外国非营利组织已经或正在中国中

请设立活动地域覆盖多省的代表机构；这符合公安部于2016年11月28日发布的《境外非政府组织代表机构登记和临时活动备案办事指南》的要求，该《指南》允许代表机构的活动地域覆盖其驻在地以外的多个省份。但是，尚不清楚该代表机构能否建立或保持位于其活动地域以内但在其驻在地以外的项目工作站。我们了解到，公安部官员曾口头表示，代表机构不得设立任何“分支机构”。但我们注意到上述项目工作站同分支机构存在明显不同：分支机构通常不仅包括项目实施人员也包括财务、人力资源、公关等一整套行政人员，而项目工作站则仅包括项目实施人员，外加一两名会计人员。我们建议公安部明确将“分支机构”和“项目工作站”区分开来，并允许合法成立的外国非政府组织代表机构在其注册的活动地域之内建立和保持相关项目工作站。其实，适用于企业的法律有类似规定，即企业可以设立不构成分支机构的办事处（该办事处不能开具发票或履行其他职能）。

《慈善法》和《境外非政府组织法》之间的关联和对接

- 《慈善法》和《境外非政府组织法》分别是调整国内非营利组织和国外非营利组织的法律。但《慈善法》和《境外非政府组织法》之间的对接仍不清晰，这对于国内外非营利组织间的关系产生了很大的不确定性，尽管近年来这些组织频繁进行合作。例如，拥有公募资格的国内慈善组织在什么样的情形下可以为双方合作（由外国非营利组织参与项目设计或担任项目顾问）的慈善项目进行公开募捐活动？

建议

对中国政府：

- 明确《境外非政府组织法》中需进行登记的“活动”范围、地域和其他方面的表述。[公安部、全国人民代表大会]
- 更新/扩大业务主管单位名录，并将政府机构及事业单位均纳入其中，同时为担任业务主管单位的相关政府机构制定明确的规则及设立更好的奖惩激励措施。[公安部、国务院、全国人民代表大会]

may establish offices that do not constitute branches because they lack the power to issue invoices and perform other functions.

Relation and Interaction Between Charity Law and Overseas NGO Law

- The Charity Law and the Overseas NGO Law are intended to manage domestic NPOs and foreign NPOs, respectively. However, the inter-relation between the Charity Law and the Overseas NGO Law remains unclear. This has created considerable uncertainty given the growing collaboration between domestic charities and foreign NPOs in recent years. For example, under what circumstances would qualified domestic charities be allowed to conduct public fundraising activities for charitable projects that are designed or advised by a foreign NPO?

Recommendations

For the Chinese Government:

- **Clarify ambiguous language in the Overseas NGO Law related to scope of activities requiring registration, geographic scope, and other concerns.** [MPS, NPC]
- Update/expand the list of PSUs to include both government and non-government entities, and provide clear rules and better incentives for relevant government entities to act as PSUs. [MPS, State Council, NPC]

For the US Government:

- **Continue to reiterate deep and abiding concerns regarding the Overseas NGO Law in exchanges with relevant government stakeholders in China.** [US Department of State]

对美国政府：

- 在与中国政府相关方进行交流时，继续重申对《境外非政府组织法》的深度长久关切。[美国国务院]

Competition Law

Introduction

In 2016, China's three antitrust regulators—the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC), collectively, the Anti-Monopoly Enforcement Agencies (AMEAs)—enforced the Anti-Monopoly Law (AML) to regulate competition more forcefully in China. AmCham China applauds MOFCOM's improved efficiency in its review of simple merger filings, the SAIC's increased level of sophistication in enforcement, and the NDRC's legislative projects concerning the drafting of new antitrust guidelines.

Despite this progress, concerns persist regarding: ❶ the disproportionately heavy role of industrial policy in AML enforcement; ❷ insufficient transparency and due process in investigations (particularly those led by the NDRC and SAIC); and ❸ selective admittance of foreign counsel to meetings and hearings with relevant enforcement authorities.

Regulatory Updates

MOFCOM's Enforcement Activities

Improved Efficiency in Simple Case Review

AmCham China appreciates MOFCOM's continued efforts in 2016 to further streamline and accelerate its merger review process. The simplified procedure has proven to be an effective channel for non-issue cases to be resolved in a timely fashion.

The number of merger notifications continued to grow in 2016. In 2016, MOFCOM unconditionally cleared 351 transactions, an increase of more than 12.5 percent compared to 2015. Among these unconditionally approved, 278 cases (78 percent) were cleared under the simplified procedure. The simplified procedure played a large role in expediting the closure of notifications.

MOFCOM's simplified procedure continued to receive significant acceptance and appreciation from the business

community at large. Introduced in the first half of 2014, the simplified procedure has significantly reduced the review time for cases that do not present material competition or industrial policy concerns.

As of November 2016, MOFCOM had cleared 246 of 248 cases under the simplified review procedure. Compared to the same period in 2015, the volume of simple cases reviewed by MOFCOM declined slightly by 2.5 percent. Of these, 232 cases (94 percent) were cleared within Phase I (30 calendar days) and 14 cases (six percent) were cleared in Phase II (an additional 90 calendar days), while none entered the Phase III review. During the first 11 months of 2016, the average clearance time was 24 days for simple cases—an improvement of approximately one week compared to that of 2015.

While AmCham China commends MOFCOM for its continued efforts in increasing the efficiency of the simplified procedure, we also note that the total number of simplified review cases decreased slightly compared to 2015, while the total number of cases notified increased. This corresponds with practitioners' experience that, starting in 2016, MOFCOM became more rigid and formalistic in assessing whether a case qualifies for the simplified procedure, and appears to be forcing a higher proportion of cases back into the ordinary review procedure, risking extended review times for cases that pose no genuine competition issues in China.

MOFCOM's broad discretion to accept or reject a simple case application creates substantial uncertainty for business operators considering whether to apply for this type of merger review. In particular, rejection by MOFCOM, which appears to be on the rise, can cause parties to lose significant time because it essentially requires restarting the entire review process. AmCham China urges MOFCOM to follow the bright-line rules for published simple case acceptances (rather than reserving total discretion to accept or reject a case), or eliminate the *de facto* timing penalty for cases that must be converted from the simple to the ordinary procedure.

Lengthening Review Times in the Ordinary Procedure

Restrictive conditions were imposed in only two merger filings in 2016: the acquisition of SABMiller by Anheuser-Busch InBev (*AB InBev/SABMiller*) and the acquisition of

竞争法规

引言

2016年，中国的三大反垄断监管部门——商务部、国家发展和改革委员会（发改委）和国家工商总局（工商总局）（合称为“反垄断执法机构”）开展《反垄断法》执法，加大了监管中国竞争状况力度。商务部实施简易并购备案审查程序的效率有所提高，工商总局的执法水平更加娴熟，发改委就新版反垄断指南的起草启动了立法项目，中国美国商会（商会）对此表示欢迎。

尽管中国已取得了上述进展，但依然存在如下问题：

❶ 产业政策在《反垄断法》执法过程中影响力过大；❷ 调查程序缺乏透明度且不能完全奉行程序正义（由发改委和工商总局调查的案件较为突出）；❸ 相关执法部门选择性地允许外国律师参加会议和听证。

监管最新进展

商务部的执法工作

实施简易并购备案审查程序的效率有所提高

商会赞赏商务部在2016年相继推出的多项从进一步简化、加快并购审查流程的举措。简易程序已被证实为及时解决非问题类案件的有效渠道。

2016年经营者集中申报数量继续上升，商务部无条件批准351起交易，与2015年相比增长超过12.5%。在上述无条件批准的案件中，有278起（78%）是依据简易程序批准的。简易程序在加快完成申报方面起了很大的作用。

商务部的简易程序持续获得业内广泛的认可和赞赏。简易审查程序于2014年上半年起实施，大大缩短了不具有重大竞争或产业政策问题案件的审查时间。

MOFCOM Simplified Review Cases in the First 11 Months of 2015 and 2016

2015年和2016年前11个月份商务部通过简易审查程序审结的案件

	% Cleared in Phase 1 案一阶段 审结比例	% Cleared in Phase 2 案二阶段 审结比例	% Cleared in Phase 3 案三阶段 审结比例	Refile 重新申请	Average Review Days 平均评审 天数	Median Review Days 中值评审 天数	Longest Review 最长评审 天数	Shortest Review 最短评审 天数
2015	89%	9%	2%	1	31	27	278	11
2016	94%	6%	0%	0	24	24	85	11
Change 变化	5%	-3%	-2%	-1	-7	-3	-193	0

* A 10-day public comment period has been included in review time for all simple deals.

* A 所有简易案件的评审时间中均包含了10天的公众评议期。

St. Jude Medical by Abbott Laboratories (*Abbott/St. Jude Medical*). In addition, as in previous years, the introduction of industrial policy issues into cases that do not pose competition issues appears to have increased the review time of several other cases, which were nevertheless still cleared unconditionally (such as Dell's acquisition of EMC). An unwelcome return to formalism has also added significant burdens to companies under review to provide data and information relating to areas of no significance to competition or industrial policy.

AB InBev/SABMiller: On July 29, 2016, MOFCOM published its approval of the US \$108 billion (RMB 717 billion) acquisition of SABMiller by AB InBev, conditional on SABMiller's divestiture of its 49 percent stake in China Resources Snow Breweries (CR Snow), a major brewer in China, to China Resources Beer (CR Beer). In its review, MOFCOM raised competition concerns regarding the beer market in China, which it further segmented into "mass-brand beer" and "mid-to-high-end brand beer." In 2008, when MOFCOM approved InBev's acquisition of Anheuser-Busch, one of the conditions imposed prohibited the acquiring entity from acquiring any share in CR Snow. Therefore, to comply with that decision and accelerate MOFCOM's review of the underlying transaction, SABMiller entered into a share purchase agreement to sell its entire stake in CR Snow to CR Beer prior to acceptance into Phase I. This "fix-it-first" solution was eventually accepted by MOFCOM. The conditions that MOFCOM required in *AB InBev/SABMiller* are generally consistent with those in the EU and the US, where regulators also required AB InBev to divest SABMiller's local business.

Abbott/St. Jude Medical: On December 30, 2016, MOFCOM approved the US \$25 billion (RMB 166 billion) acquisition of St. Jude Medical by Abbott, conditional on St. Jude Medical's divestiture of its small vascular closure devices business to Japan's Terumo Corporation, including relevant transitional services. In its review, MOFCOM raised competition concerns in the Chinese market for small vascular closure devices, finding that the merger would enhance Abbott's market power by eliminating a close competitor. In addition, MOFCOM found that barriers to entry prevented newcomers from effectively entering the market.

While AmCham China applauds MOFCOM's increasing level of sophistication, we encourage MOFCOM to focus more on genuine competition concerns presented by a transaction, rather than continuing its focus on industrial policy issues raised by competitors or other stakeholders. In addition, MOFCOM's insistence on rigid application of its internal rules requiring hyper-segmented market share data and other information for non-issue transaction areas significantly increases the burden of the filing parties and extends the review time. AmCham China urges MOFCOM to enhance its internal training and education to focus its case handlers' attention on areas of genuine significance rather than immaterial "box-ticking" exercises.

Lifting of Restrictive Conditions

MOFCOM also made progress in lifting restrictive conditions imposed in prior decisions. On June 8, 2016, MOFCOM published its decision to lift the conditions it had previously imposed on Walmart's acquisition of 33.6 percent of the shares of Newheight Holdings (*Walmart/Newheight*) in 2012. Through this acquisition, Walmart would have had certain control rights over Yihaodian, one of China's best-known e-commerce supermarkets, through a reported "variable interest entity" (VIE) structure. Back in 2012, foreign capital was not allowed to hold more than 50 percent of the shares of a business engaged in value-added telecommunications services (VATS). VATS includes various e-commerce businesses, including online sales platforms like Yihaodian. Consequently, when MOFCOM approved this transaction, it required that: ❶ Newheight could use its online platform only for sale of its own products, ❷ Newheight could not allow its online platform to be used by third parties without a VATS permit, and ❸ Walmart could not use a VIE structure to engage in VATS through Yihaodian. However, the restrictive policy on foreign investment in this VATS sector was cancelled by the Ministry of Industry and Information Technology (MIIT) in June 2015, hence fully opening the sector to foreign investment. After examining the updated market conditions and confirming that Walmart had been in full compliance with all of its remedies, MOFCOM decided to lift the previous conditions.

Penalty for Failure to Notify

In 2016, MOFCOM continued to penalize failures to notify in cases of notifiable transactions. In addition to the four failure-to-notify cases published in 2015, MOFCOM published another eight failure-to-notify cases in 2016. Half of these concerned the establishment of joint ventures. As evidenced by these joint venture cases, just obtaining a business license or a certificate of incorporation for joint ventures without first obtaining MOFCOM's clearance is a violation of the AML, even in the absence of any other concrete steps taken to start business operation.

Amongst the eleven companies involved in these penalty decisions (one company was fined twice), seven were domestic companies including four state-owned enterprises (SOEs). The industries involved in these cases include pharmaceuticals, railway engineering construction, software, mobile devices manufacturing, and semiconductors. The varied nationalities and company profiles indicate that MOFCOM did not selectively target foreign companies or give preferential treatment to Chinese SOEs in cases of failure to notify. Of these cases, at least three were voluntarily reported to MOFCOM and rectified by the relevant parties, while at least two were discovered through complaints lodged by third parties. For the remainder, MOFCOM did not disclose information on how it learned about the failures to notify. AmCham China applauds MOFCOM's even-handed enforcement in the

截至 2016 年 11 月，在 248 件案件中，商务部依据简易程序已批准了 246 件。与 2015 年同期相比，经商务部审查的简易案件数量略降了 2.5%。其中，232 件案件（94%）是在第一阶段（30 个日历日）内审结的，14 件案件（6%）是在第二阶段（延长 90 个日历日）内审结的，没有案件进入第三阶段审查。2016 年 1 月至 11 月，简易案件的平均审结周期为 24 天，相比 2015 年大约缩短了一周。

商会赞赏商务部为提高简易程序效率而做出的不懈努力，但我们也注意到相比 2015 年，简易程序审查案件的总量略有下降，而案件申报的总数有所增加。这与从业者的感受一致：自 2016 年起，商务部在评估一件案件是否适用简易程序时变得更加刻板和流于形式，似乎有意迫使更高比例的案件退回至普通评审程序。由此造成的风险就是，并未在中国构成实质竞争问题的案件的审查时间可能会延长。

商务部在决定是否受理一项简易案件的申请上拥有宽泛的自由裁量权，这给经营者在考虑是否申请简易案件审理上造成很大的不确定性。特别是一旦商务部决定驳回申请，相关主体将花费更多时间，因为他们需要重新启动整个审查程序。而目前来看，商务部驳回申请的情况在增多。商会促请商务部对公示的受理申请的案件适用明线规则（而不是完全保留受理或拒绝某一案件申请的自由裁量权），或者取消对简易程序转普通程序案件的时间惩罚。

普通程序的评审时间延长

2016 年，商务部仅对两起并购备案施加了限制性条件：百威英博收购南非米勒案（百威英博 / 南非米勒案）和雅培收购圣犹达案（雅培 / 圣犹达案）。此外，与前几年一样，对不构成竞争问题的案件增设产业政策议题的做法似乎延长了其他几件案件的评审时间，尽管这几件案件最终还是无条件批准了（例如戴尔收购易安信案）。向形式主义的倒退，为受审查公司增加了很大的负担，他们需要提供对竞争或产业政策无足轻重的领域的相关资料和信息。

百威英博 / 南非米勒案：2016 年 7 月 29 日，商务部宣布批准百威英博收购南非米勒的计划，案值 1080 亿美元（7170 亿人民币），附加条件是南非米勒将其所持的华润雪花啤酒（中国）有限公司（中国主要的啤酒制造商，简称“华润雪花”）49% 的股权转让给华润啤酒（控股）有限公司（简称为“华润啤酒”）。在评审意见中，商务部就中国啤酒市场竞争问题表示了担心，并进一步将中国啤酒市场划分为“大众品牌啤酒”和“中高端品牌啤酒”。2008 年，商务部在批准英博收购安海斯 - 布希案时，施加的一项条

件即禁止收购实体收购华润雪花的任何股份。因此，为遵守此项决定并加快商务部对基本交易的评审，在受理进入第一阶段之前，南非米勒已达成股份购买协议，将其所持有的华润雪花的全部股份出售给华润啤酒。商务部最终接受了这种“定资先行”的解决方案。商务部在百威英博收购南非米勒案中所设置的条件与欧盟和美国的相关条件大体上是一致的，欧盟和美国的监管机构也要求百威英博剥离南非米勒所经营的当地业务。

雅培 / 圣犹达案：2016 年 11 月 30 日，商务部批准了案值 250 亿美元（1660 亿人民币）的雅培并购圣犹达案，附加条件是圣犹达将其小腔血管闭合器业务（包括相关过渡性业务）转让给日本泰尔茂株式会社。在评审意见中，商务部就中国医疗器械市场上小腔血管闭合器的竞争问题提出了担心，指出此次并购为雅培除去了一个强劲竞争对手，将使其市场支配力增强。此外，商务部还指出，由于准入门槛的存在，后来者实际上很难进入这一市场。

商会对商务部日趋成熟的业务水平表示赞赏，但仍建议商务部更多地关注一项交易所带来的真正的竞争问题，而不是继续关注竞争者或其他利益相关者所提出的产业政策问题。此外，商务部坚持刻板地施用其内部规定，要求超细分市场相关主体共享有关非问题性交易领域的资料和信息，这严重增加了申请各方的负担，延长了评审时间。商会促请商务部加强内部培训和教育，使案件受理人员主要关注有实质意义的领域，而不是非实质性的“打勾”练习。

取消限制性条件

商务部在取消施加于判例上的限制性条件方面也取得了进展。2016 年 6 月 8 日，商务部公布决定，取消之前于 2012 年对沃尔玛收购纽海控股（简称为“纽海”）33.6% 股份案件（沃尔玛 / 纽海案）施加的限制条件。据报道，在上述并购案中，沃尔玛本可以通过“可变利益实体”结构获得对“1 号店”（一家中国知名电商超市）的几项控制权。但在 2012 年时，中国法律不允许外资企业持有增值电信业务从业企业 50% 以上的股份。增值电信业务从业企业包括各类电商企业，像“1 号店”这样的网络销售平台也属于这一范围。因此，商务部在批准这次交易时，提出了以下要求：① 纽海仅能将其网络平台用于销售自有产品；② 纽海不得允许未持有增值电信业务经营许可证的任何第三方使用其网络平台；及 ③ 沃尔玛不得利用可变利益实体结构通过“1 号店”从事增值电信业务业务。但工业和信息化部取消了对外商投资企业经营增值电信业务业务的政策限

merger review area on both domestic and foreign firms in failure-to-notify cases, and raising the public's awareness in this regard.

NDRC's Enforcement Activities

The NDRC continued to investigate both domestic and foreign companies for price-related anti-monopoly concerns in 2016. Since the issuance of the "Provisions on the Disclosure of Price-Related Administrative Penalty Decisions" in March 2015, which require disclosure of information regarding decisions on the NDRC website as well as through press releases and other means, AmCham China acknowledges that the NDRC has improved the transparency of its investigations and other enforcement activities.

Monopoly Agreements

On December 23, 2016, the Shanghai Development and Reform Commission (DRC) published a penalty decision against SAIC General Motors Sales Company, the joint venture between General Motors and SAIC Motor Corp. According to the decision, the probe began in April 2016. Through investigations, the agency found that the company entered into monopoly agreements with Shanghai-based dealers by issuing regional price notices, notifications on market competition conditions, and price guidance in relation to the supply of certain automobile models. The company also engaged a third-party service provider to assess dealer implementation of those agreements. Dealers that did not follow the company's instructions and guidelines would be punished. Taking into account the nature and the degree of the violation, the price bureau ordered the company to immediately cease the unlawful conduct and imposed a fine of approximately RMB 201.8 million (US \$29 million), which amounted to 4 percent of the company's relevant sales in 2015.

Another high-profile decision imposed substantial fines on Medtronic. On December 9, 2016, the NDRC imposed a fine of RMB 118.5 million (US \$17.1 million) on Medtronic for monopoly agreements in relation to medical equipment supplies. The NDRC found that Medtronic entered into and implemented monopoly agreements with its distributors to restrict resale and bidding prices, divide distribution areas and customers, and forbid distributors from selling competitors' products. According to the decision, the NDRC began its investigation in April 2016 and conducted a series of interviews and on-site raids. The penalty amounted to four percent of Medtronic's sales of the relevant products in 2015.

On July 27, 2016, the NDRC released its penalty decision against three local drug manufacturers for their monopoly agreements with one another to fix the price of estazolam, a basic drug for the central nervous system, as well as their joint supply boycott of downstream tablet producers. The total penalty amount was RMB 2.6 million (US \$0.4 million), amounting to 2.5 to seven percent of these companies' revenues from the relevant product in 2015.

On January 28, 2016, the NDRC published its penalty decision on five local manufacturers of allopurinol, a common drug to treat gout. The decision indicated that the five companies entered into and implemented monopoly agreements on the distribution of allopurinol for price-fixing, market division, and bid-rigging purposes. The aggregate penalty was RMB 4 million (US \$602,000)

Abuse of Dominance

On July 12, 2016, the NDRC published a decision of the local DRC in Hubei against five Chinese natural gas companies for abuse of dominance through charging excessively high prices for the construction and installation of relevant gas facilities, depriving customers of the freedom to choose competing products and services. The Hubei DRC imposed an aggregate fine of RMB 2.96 million (US \$446,000) on the violators, ranging from two percent to four percent of their revenue in the relevant market.

While the NDRC maintains that it enforces anti-monopoly pricing laws without discrimination based on ownership against both domestic and foreign firms, the latter have been subject to disproportionately large fines. In 2016, approximately 94 percent of the NDRC's fines were imposed on foreign firms. AmCham China urges the NDRC to treat foreign and domestic companies equally in AML enforcement, and continue to improve its respect for due process of companies' legal rights during investigations, including prompt notification to companies under investigation of the relevant theory of harm being pursued and the underlying facts that support the theory.

SAIC's Enforcement Activities

Following an investigation lasting over four years but originating in complaints predating the AML, the SAIC finally published its penalty decision against Tetra Pak on November 16, 2016, imposing a fine of approximately RMB 667.7 million (US \$96.1 million) for abuse of dominance. It was reported that the SAIC started the investigation in January 2012 after receiving a tip-off. The SAIC concluded that from 2009 to 2013, Tetra Pak had held a dominant position in the market for equipment, services, and supplies of aseptic packaging of liquid food items in China. The SAIC further found that Tetra Pak had abused its dominance in these three markets through ❶ tying the sale of paper supplies to the sale of equipment or with the provision of relevant services, ❷ restricting upstream suppliers from selling paper supplies to its competitors, and ❸ using loyalty rebate programs to exclude or restrict competition. The Tetra Pak case was the first time that loyalty rebates were recognized as an AML violation, falling under the catch-all provision of Article 17 as a type of "other monopolistic conduct."

Overall, including the Tetra Pak case, the SAIC published fourteen decisions in 2016. The other thirteen were all conducted by local administrations for industry and

制，自2015年6月起，该领域则完全对外资开放。商务部审视新的市场情况并确认沃尔玛一直以来都完全遵守其限制条件后，决定取消之前的限制条件。

对未依法申报的处罚

2016年，商务部继续对未依法进行交易申报的主体进行处罚。除2015年公布的4起未依法申报的案件外，2016年商务部又公布了8起未依法申报的案件，其中半数涉及合资企业的成立。上述合资企业案件证明，仅获取合资企业营业执照或公司注册证，而未事先获得商务部的相关许可属于违反《反垄断法》的行为，即便并未采取其他任何实际行动开始营业。

在商务部决定予以惩罚的11家公司中（1家公司已是第二次受罚），7家是中国公司，其中包括四家国有企业（简称为“国企”）。这些案件涉及到制药、铁路工程建设、软件、移动设备制造和半导体等行业。所涉及公司的国籍、背景各不相同，这说明商务部在未依法申报的问题上并未选择性地针对外国公司或对中国国企给予优惠待遇。在这些案件中，至少有3件是企业主动上报至商务部，后经相关部门予以纠正；同时，也至少有2件是由于第三方投诉才发现问题的。对于其余案件，商务部并未透露他们是如何发现企业未依法申报的。商会赞赏商务部在审查未依法申报的并购案件时对中外企业一视同仁，这有助于提高公众在这一方面的意识。

发改委的执法工作

2016年，发改委继续围绕价格相关的反垄断问题对中外公司展开调查。2015年3月，发改委出台《价格行政处罚决定书公示规定》，要求在发改委网站上或通过新闻发布会及其他途径公开此类决定书的相关信息。商会承认，发改委开展调查及其他执法活动的透明度已有所提高。

垄断协议

2016年12月23日，上海发展和改革委员会公布了一份针对上汽通用汽车销售有限公司（通用汽车公司和上海汽车集团股份有限公司的合资公司）的处罚决定。根据该决定，调查于2016年4月开始。经过调查，上海发改委发现，该公司与上海的经销商之间签订了垄断协议，主要是通过发布地区性价格通知书、有关市场竞争状况的通告以及有关某些汽车款型的供应的价格指导书。该公司还雇佣第三方服务提供商评估经销商对上述协议的执行情况。不执行

公司相关指示和指南的经销商将会受到惩罚。考虑到违法行为的性质和程度，物价局责令该公司立即停止违法行为，并处以约2.018亿人民币（2900万美元）的罚款，这相当于该公司2015年相关销售收入的4%。

在另一起著名案例中，美敦力公司被判高额罚款。2016年12月9日，美敦力公司因签署医疗设备用品垄断协议被国家发改委处以1.185亿人民币（1710万美元）的罚款。国家发改委发现，美敦力公司与其分销商签订并实施垄断协议，限制转售和招标价格，划分分销区域和客户，禁止分销商销售竞争对手的产品。处罚决定称，发改委于2016年4月开始调查，进行了一系列走访和现场突袭。这笔罚款相当于美敦力公司2015年相关产品销售收入的4%。

2016年7月27日，国家发改委公布了针对三家本地药品制造商的处罚决定，这三家制药商互相签订垄断协议，以固定艾司唑仑（中枢神经系统基本药物）价格，并联合抵制下游片剂制造商的供应。这笔罚单总金额为260万人民币（40万美元），占这三家公司2015年相关产品收入的2.5%至7%。

2016年1月28日，国家发改委公布了针对五家别嘌醇本地制造商的处罚决定，别嘌醇是一种治疗痛风的常见药物。处罚决定称，涉事的五家公司签订并实施了别嘌醇分销垄断协议，以实现固定价格、划分市场和操纵投标的目的。罚单总额为400万人民币（60.2万美元）。

滥用支配地位

2016年7月12日，国家发改委在湖北公布了一份本地发改委的处罚决定，称五家中国天然气公司滥用支配地位，对相关天然气设施的建设和安装收取过高价格，剥夺客户自由选择竞争产品与服务的权利。湖北发改委对违法者共罚款296万人民币（44.6万美元），占这些公司相关市场收入的2%至4%。

国家发改委称，该机构实施反垄断价格法规时不因所有权差异而区别对待，对国内与国外公司一视同仁，但事实上国外公司遭受的罚款比例较高。2016年，国家发改委开出的罚单中，约94%针对外国公司。商会敦促国家发改委在执行《反垄断法》的过程中对外国和国内公司一视同仁，并在调查过程中继续加强程序正义，尊重公司的法定权利，包括及时向接受调查的公司告知相关危害理论，以及支持该理论的基本事实。

commerce (AICs) in Jiangxi, Shandong, Inner Mongolia, Hubei, Hunan, Anhui, Xinjiang, and Chongqing. Among these fourteen decisions, one investigation was terminated after the party proposed corrective measures, including commitments to immediately stop the wrongdoing and provide recourse to injured customers. In contrast to the NDRC's enforcement activities, the vast majority of the SAIC's penalty decisions focused on domestic companies and local industries (e.g., broadcasting, water supply, salt, pharmaceuticals, insurance, etc.).

The SAIC is also currently investigating Microsoft for its alleged antitrust violations and has obtained a large volume of data—over four trillion bytes.

Legislative Progress in Draft Anti-Monopoly Guidelines

In addition to its ordinary enforcement activities, the NDRC has made substantial progress in 2016 on the legislative front by releasing a series of five important draft guidelines on behalf of the Anti-Monopoly Commission (AMC) for public comment. These drafts relate to leniency programs, commitments, exemptions, and illegal gains and fines calculation, as well as one draft guideline specifically for the automotive industry. With the exception of the draft guidelines on IPR, which are understood to have been submitted to the AMC, published reports indicate that the NDRC was expected to finalize the drafting of these five guidelines and submit them to the AMC for approval by the end of October 2016. This section provides a brief summary of the public comment versions of these drafts.

Draft Automotive Guidelines

The “Draft Anti-Monopoly Guidelines for the Automotive Industry” focus on three major areas: ❶ potential exemptions from resale price maintenance (RPM); ❷ additional guidance on vertical restraints in other forms, such as customer or geographic restraints, including a limited exemption for companies with market shares of 25 to 30 percent or less; and ❸ automobile brand as a critical factor in defining the aftermarket and in finding illegal restrictions with respect to aftermarket products. Although these guidelines are intended to apply only to the automotive industry, they are a good summary of the NDRC's extensive enforcement experience across a wide range of industries. They may also indicate the approach that the NDRC is likely to take in similar business sectors.

Draft Commitment Guidelines

The “Draft Guidelines on Commitments by Undertakings in Anti-Monopoly Investigations” recognize both behavioral and structural commitments. So long as the AMEA has not completed its investigation, the target company can apply to propose commitments in exchange for a no-infringement finding. However, commitments to rectify horizontal

monopoly agreements are excluded. The draft guidelines also detail the steps to be taken when applying to propose commitments, and early commitments are encouraged.

Draft Leniency Guidelines

The “Draft Guidelines on the Application for Lenient Treatment Rules in Horizontal Monopoly Agreement Cases” provide additional clarity and transparency regarding application procedures and review standards in relation to applications for leniency by companies that were suspected of engaging in cartels or other horizontal monopoly agreements.

Draft Exemption Guidelines

The “Draft Guidelines on the General Conditions and Procedure for Exemption of Monopoly Agreement” set out the procedure to apply for an exemption from a particular agreement being defined as an illegal monopoly agreement during an investigation. The guidelines also discuss the required application materials, the investigation process, and requirements for the publication of exemption decisions. The draft guidelines also provide details on the substantive exemption assessment. Agreements that may benefit the most from these guidelines, if enacted, would be agreements that meet a safe-harbor rule under other guidelines, as the exemption guidelines would serve as an official confirmation that the relevant safe-harbor conduct will not be challenged.

Draft Penalty Calculation Guidelines

The “Draft Guidelines on the Calculation of Illegal Gains and Fines for Monopolistic Conduct” provide an analytical framework to help regulators and business operators determine the amount of illegal gains and the corresponding fines for monopoly agreements and the abuse of dominance, which are governed by Articles 46 and 47 of the AML, respectively. Illegal gains are broadly defined as the additional gains obtained as a result of monopolistic conduct, which is determined by measuring changes in pricing, sales volumes, market share, and profit margins. Generally, the geographic scope for the calculation of illegal gains is China. To determine the fine amount, the draft guidelines use a multiplier of one to 10 percent that is applied to relevant revenue from the last fiscal year and can be adjusted according to aggravating and mitigating factors. Unlike for illegal gains, the geographic scope for the calculation of relevant revenue can be global under certain circumstances.

AmCham China particularly welcomes the increased publication of guidelines from China's AMEAs, as these help to provide clarity and legal certainty to businesses operating in China as to whether their conduct may create an issue under China's laws. AmCham China encourages the AMEAs to continue to draft and finalize guidelines in all areas, including formalization of draft guidelines that have long been in place (such as MOFCOM's draft “Guidelines on the Notification of Concentrations,” last updated in 2015) as well

工商总局的执法工作

对于《反垄断法》发布之前接到的投诉，经过四年多的调查，工商总局最终于2016年11月16日公布了针对利乐公司的处罚决定，对该公司滥用支配地位的行为处以约6.677亿元人民币（9610万美元）的罚款。据报道，工商总局在收到密报后于2012年1月着手调查这起事件。国家工商总局认为，2009年到2013年，利乐在中国液体食品无菌包装设备、服务和供应市场上占据主导地位。工商总局还发现，利乐通过以下途径滥用公司在这三个市场上的主导地位：**①** 在销售设备或提供相关服务的过程中捆绑销售纸品；**②** 限制上游供应商向其竞争对手供应纸张；以及**③** 利用忠诚回扣项目排斥或限制竞争。利乐案首次将忠诚回扣确认为违反《反垄断法》的行为，归属于《反垄断法》第十七条所规定的“其他垄断行为”。

从总体上看，包括利乐案在内，国家工商总局在2016年共发布了14项处罚决定。另外十三项决定均由地方工商行政管理机构实施，包括江西、山东、内蒙古、湖北、湖南、安徽、新疆和重庆。在这14项处罚决定中，其中一项在涉事者实施纠正措施后终止，其措施包括立即停止不法行为，以及向受损害的客户赔偿。与国家发改委的执法活动不同，国家工商总局的处罚决定主要集中于国内公司和地方工业（例如广播、供水、盐、制药、保险等）。

国家工商总局目前还在调查微软被控违反《反垄断法》的行为，并已获得超过四万亿字节的大量数据。

反垄断相关指南草案立法进展

除常规执法行动外，2016年国家发改委还在立法方面取得重大进展，代表反垄断委员会（AMC）发布五部重要指南草案，公开征询意见。这些草案涉及宽大制度、承诺、豁免程序，以及违法所得和罚款计算等，还有一部专门针对汽车行业制定的指南草案。据公开报告声称，除据称已提交给反垄断委员会的知识产权指南草案以外，国家发改委预计将于2016年10月底完成这五部指南草案，并提交AMC审批。本节简要介绍了这些征求意见草案。

汽车业指南草案

《汽车业反垄断指南》包括三项重点内容：**①** 针对维持转售价格（RPM）的可能豁免规定；**②** 有关其他形式的垂直限制的附加指南，如客户或地域限制，包括针对市场份额为25%至30%或以下公司的有限豁免；**③** 汽车品牌

是发展售后市场的重要因素，也是发现售后市场产品非法限制的关键因素。这些指南仅适用于汽车行业，但它们在一定程度上也是发改委在各个行业积累的丰富执法经验的总结。这些指南也表明了发改委有可能在类似商业部门采取的措施。

承诺指南草案

《反垄断案件经营者承诺指南草案》认可经营者的行为承诺与结构性承诺。只要反垄断执法机构尚未完成调查，接受调查的公司即可申请提出承诺，以换取无侵权裁定。但不包括纠正横向垄断协议的承诺。该指南草案还详细说明了履行承诺时应采取的步骤，并鼓励尽早做出承诺。

宽大制度指南草案

《横向垄断协议案件宽大制度适用指南》针对涉嫌签订卡特尔垄断或其他横向垄断协议的公司，进一步明确了这些公司申请宽大处理的程序及其审查标准，并提高了这些程序与标准的透明度。

豁免指南草案

《关于垄断协议豁免一般性条件和程序的指南》规定了公司为调查期间被判定为非法垄断协议的特定协议申请豁免的程序。指南还介绍了所需要的申请材料、调查过程以及豁免决定的发布要求。这部指南草案还提供了实质性豁免评估的细节。该指南实施后，满足其他指南安全港规则的协议将成为最大的受益者，因为此豁免指南正式确认了相关安全港行为不属于处罚范围。

罚款计算指南草案

《认定经营者垄断行为违法所得和确定罚款的指南》提供了分析框架，帮助监管者和商业经营者确定垄断者通过垄断协议和滥用支配地位而获得的违法所得以及相应罚款数额，二者分别受《反垄断法》第四十六条和第四十七条管辖。违法所得一般定义为因垄断行为而获得的额外收益，通过测量价格、销量、市场份额和利润率的变化来确定。一般来说，计算违法所得的地域范围为中国。该指南草案采用的罚款金额比例为上个会计年度相关收入的1%至10%，可根据从重和从轻因素进行调整。与违法所得不同，计算相关收益所采用的地理范围在某些情况下可能是全球范围。

商会非常欢迎中国反垄断执法机构公布更多指南，这将帮助在华运营企业从法律上明确了解其行为是否违反中

as new guidance on developing areas, such as MOFCOM's treatment of neighboring markets with respect to relevant market definitions.

Civil Antitrust Litigation

The past year also witnessed a significant increase in civil antitrust litigation launched in China. The Beijing Intellectual Property Court has become a key battleground for competition disputes, having handled a total of 161 first-instance antitrust cases in 2016. Of published results, 46 judgments related to antitrust disputes, with 16 of the cases involving allegedly anticompetitive agreements between competitors or along the supply chain, 17 cases involving abuse of market dominance, and 14 cases involving administrative monopolies. One case involved both abuse of dominance and administrative monopolies.

Ongoing Regulatory Issues

Exclusion of Foreign Counsel

In the absence of implementing regulations, over the past several years, foreign counsel has often been barred or discouraged from attending meetings with the NDRC and SAIC. This is true even when the lawyers in question are accompanied by local counsel and are not engaging in the practice of Chinese law. This is inconsistent with international practice in which 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.

Granting foreign counsel the ability to meet with relevant authorities will provide an important and beneficial aid to the AMEAs, particularly as cartel conduct increasingly extends across borders. This benefit has been explicitly recognized in the progress made in the US-China Joint Commission on Commerce and Trade (JCCT) commitments at the end of 2014. China committed that, as normal practice, the AMEAs should grant approval upon request from the party involved to allow foreign counsel and/or representatives of foreign law firms' Chinese offices to attend meetings with the AMEAs. AmCham China encourages the AMEAs to formally implement the JCCT commitments in binding guidelines, safeguarding the right of companies to representation by counsel of their choice.

Increasing Transparency

Transparent and predictable enforcement allows companies to plan commercial strategies that comply with the AML. Implementing regulations, interpretive guidelines from regulators, and the publication of decisions of AMEAs and courts are critical to these efforts. Published decisions provide guidance and an opportunity to educate companies about compliance.

MOFCOM generally has shown greater transparency compared to the other two regulators. Publication by the NDRC and SAIC is still, to some extent, selective, delayed, and lacking specificity. However, AmCham China has observed progress by the NDRC and SAIC. For example, in its 47-page decision published against Tetra Pak, the SAIC set a welcomed precedent for detailed competition analysis, including increased use of economic models and theories.

AmCham China recommends that the NDRC and SAIC publish full enforcement decisions as they occur, including meaningful summaries of the relevant evidence as well as analysis and conclusions. To the extent that full enforcement decisions cannot be published, case summaries or enforcement reports can provide guidance.

Due Process

AmCham China recommends that clear guidelines and measures for redress be made available as soon as possible to ensure that both domestic and multinational undertakings under investigation or review have:

- Clear identification of issues and the opportunity to defend;
- The right and practical access to domestic and international legal counsel;
- Notification of the express legal and factual basis for any investigation;
- Direct and meaningful engagement between the parties, the investigative staff, and decision makers; and
- Internal checks and balances on decision making within the enforcement agencies.

Recommendations

For the Chinese Government:

- **Issue formal guidelines confirming that foreign-qualified lawyers (i.e., 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.**
- Release and implement clear guidelines on AML enforcement, including safe-harbor provisions and bright-line rules.
- Publish and guarantee due process rights of companies under review or investigation.

国法律。商会鼓励反垄断执法机构继续起草并完成所有领域的指南，包括早已出台的指南草案的最终定稿（例如商务部于2015年更新的《关于经营者集中申报的指导意见》草案）以及针对发展中地区的新指南，如商务部根据相关市场定义对邻近市场的治理。

民事反垄断诉讼

过去一年，中国发生的民事反垄断诉讼案件大幅增加。北京知识产权法院已成为解决竞争纠纷的主战场，该法院2016年共处理161起反垄断一审案件。在该法院公布的判决结果中，有46起与反垄断争端有关，其中16起案件涉及竞争对手之间或供应链上的反竞争协议，17起涉及滥用市场支配地位，其余14起案件涉及行政垄断。一起案件同时涉及市场支配地位及行政垄断。

现存监管问题

排斥外国律师

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，即便在有中国律师事务所的本地律师陪同且不寻求在中国执业的情况下，也时常无法参加发改委和工商总局的会议。这一做法不符合国际惯例，国际上的通行做法是，允许当事人要求所聘请的国际律师和本地律师一同会见竞争监管部门，从而确保更加高效地传达不同司法管辖区的证据和分析。

允许外国律师与相关部门会面，将对反垄断执法机构的执法活动提供重要且有益的帮助。特别是在卡特尔行为日益呈现国际化趋势的背景下。2014年底美中商贸联委会（JCCT）的承诺也明确肯定了上述益处。中方承诺：作为常规做法，经涉案方申请，反垄断执法机构应当允许外国律师和/或外资律师事务所中国代表处的代表参与反垄断执法机构召开的会议。商会鼓励反垄断执法机构正式执行美中商贸联委会承诺，出台有约束力的指南，保障各方自主选择代理律师的权利。

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《反垄断法》的商业战略。实施细则、主管机关的解释性指导意见以及反垄断执法机构和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服务，教育企业遵守法律。

商务部在透明度方面比其他两家执法机构做得要好，而发改委和国家工商总局在某种程度上依然秉持选择性公开的做法，信息公开滞后且不够详细。不过，商会已经注意到发改委和国家工商总局在这方面的进步。例如，国家工商总局在47页的利乐公司处罚决定中首开先河，详细披露了竞争分析过程，并在分析中更多地使用经济模型与理论。

商会建议发改委和国家工商总局应及时全面地公开执法决定，其中包括经过有实质意义概括的相关证据、分析和结论。不能公开完整的执法决定时，相关部门可以公开案件概要或执法报告，为执法实践提供指导。

程序正义

商会建议发改委尽快制定明确的救济指导意见和措施，确保接受调查或审查的内资企业或跨国公司：

- 明确知晓问题之所在并有机会抗辩；
- 有权并且能够实际征求国内和国际法律顾问的意见；
- 被明确告知调查的法律和事实依据；
- 相关方与调查人员和做出决定的部门直接进行有意义的接触；
- 执法机构内部在做出决定方面应建立内部制衡机制。

建议

对中国政府：

- 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。
- 发布并实施有关《反垄断法》的明确实施指南，包括安全港规定和明线规则。
- 公布和保障被审查或调查企业享有程序正义权利。

Compliance

Introduction

AmCham China member companies face complex compliance concerns in China that are difficult to manage due to the opaque nature of Party influence on government and weak regulatory transparency. As has been well documented previously, US firms in recent years have been subjected to an increasingly broad array of investigatory actions under China's growing toolbox of regulatory and enforcement tools, often carried out benefiting China's domestic industrial policy goals.

In particular, these investigatory actions include ample use of anti-bribery and anti-unfair competition statutes, and more recently, data compliance, data localization, and data privacy provisions. The trend lines on these enforcement actions are not positive; 81 percent of AmCham China member companies surveyed in our annual *Business Climate Survey* responded that they felt less welcome in China in 2016.

We believe it is time for China to step up and address this issue directly by ensuring that its compliance regulations comport with global norms, particularly with respect to fairness and transparency in implementation. China has an opportunity now to truly open its markets to fair and full competition, provide national treatment to all firms, and provide the level of global leadership that its status in the world demands. In turn, the US government should continue to work in good faith to ensure reciprocal treatment for Chinese entities.

Ongoing Challenges and Recent Developments

Anti-Corruption Compliance

In recent years, China has increased efforts to investigate corruption in both the public and private sectors. Of particular note is a renewed emphasis on graft that is severely punished not only within the Party and government, but also in domestic and multinational corporations. Corruption not only involves potential civil and criminal liability, but may also tarnish a firm's reputation, damaging its business in China and internationally. It is essential that companies

operating in China understand relevant local laws and regulations, as well as the relevant anti-bribery laws in their home jurisdictions, in order to comply and avoid negative press or penalties. Below are a few of the key corruption-related issues raised by AmCham China member companies operating in China. This outline is not exhaustive, however, and US companies operating in China need to be alert to a wide variety of corruption and related risks in China's rapidly evolving commercial and legal environment.

Anti-Bribery Law Enforcement

In 2016, anti-bribery prosecutions of government officials, officials in state-owned enterprises (SOEs), and private commercial operators, including employees of foreign-invested companies throughout China, have continued to increase. In light of China's continuing focus on anti-bribery law enforcement, AmCham China members support additional clarity and predictability in regulatory enforcement. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process. Foreign investors rely on certainty and fairness when making investments in China, and a robust, stable, and balanced legal and regulatory environment improves the effectiveness of compliance programs.

Revisions to the Anti-Unfair Competition Law

In February 2016, the State Council Legislative Affairs Office (SCLAO) released draft amendments to the Anti-Unfair Competition Law (AUCL). Proposed revisions of the law included new clauses that provided a more specific definition of commercial bribery. However, in February 2017, the National People's Congress (NPC) released a revised draft of amendments to the AUCL (the 2017 Draft Amendments) that returned many of the more significant changes proposed by the 2016 draft revisions to language closer to the current version of the AUCL, which has been in effect since 1993.

Most notably, the 2017 Draft Amendments do not clearly define the scope of commercial bribery, but instead state summarily that companies "may not use money or property or other means to bribe a counterparty to a transaction or a third party that can influence a transaction. A counterparty to a transaction or a third party that can influence a transaction shall not take bribes." The amendments also remove a provi-

合规

引言

中 国美国商会（商会）的会员企业在中国面临复杂的合规问题，由于党对政府的影响力不够明确，监管缺乏透明度，因此这些合规问题的管理难度很大。如前所述，近几年来，为实现国内产业政策目标，中国不断增加监管和执法工具，导致美国企业面临越来越多的更为广泛的调查行动。

需要指出的是，这些调查行动大量使用反贿赂和反不正当竞争法规，最近还实施了数据合规、数据本地化和数据隐私法规。这些执法行动并没有产生积极的效果；在今年的《商务环境调查报告》中，81%的商会会员企业表示，他们感觉2016年在中国的受欢迎程度有所降低。

我们认为，中国应加紧正视并解决这个问题，确保合规条例符合全球规范，尤其是在法规实施的公平性和透明度方面。现在的中国有机会真正开放市场，实现公平的全面竞争，为所有企业提供国民待遇，实现与其国际地位相称的全球领导水平。另一方面，美国政府应该继续保持诚意，确保中国企业获得互惠待遇。

现存监管挑战及最新发展

反腐败法规

近年来，中国加大了对政府和私营企业的腐败调查力度。特别值得注意的是，受到严厉惩罚的不仅包括党和政府内部的腐败行为，也包括国内和跨国公司的腐败行为。腐败行为不仅会引发民事和刑事处罚，还会损害公司声誉，影响公司在中国和国际市场的业务。在中国经营的公司必须了解当地法律法规，及中国实施的反贿赂法规，做到遵纪守法，避免出现负面新闻或遭受处罚。以下是商会会员企业提出的部分与腐败有关的关键问题，并未涵盖所有问题。在迅速发展的中国商业和法律环境下，在华经营的美国公司应对多种腐败和相关风险保持警惕。

反贿赂法律的实施

2016年，涉及政府官员、国有企业官员、私营企业营商（包括在华外资企业员工）的反贿赂案件不断增加。鉴于中国持续加大反贿赂执法力度，商会的会员呼吁中国提高监管执法的清晰度和可预测性。政府应对法治体系重要组成部分给予支持，包括提高执法透明度、促进法规解释的一致性、保障正当程序等。外国投资者在中国投资期间，有赖于法律的确定性和公平性。建立强大、稳定而平衡的法律和监管环境有助于提高合规项目的效率。

《反不正当竞争法》修订版

2016年2月，国务院法制办公室公布了《反不正当竞争法》修正草案。本次修订新增了条款，对商业贿赂进行了更明确的定义。然而，全国人大于2017年2月发布了《反不正当竞争法》修订案的修订草案（2017修订草案），将2016年修订案中提出的许多重要变更进行了恢复，其内容更接近1993年起既已实施的现行《反不正当竞争法》。

最重要的是，2017年修订草案并未明确规定商业贿赂的范围，只是提及经营者“不得采用财物或其他手段贿赂交易相对方或可能影响交易的第三方。交易相对方或可能影响交易的第三方不得收受贿赂。”此修正案还删除了有关贿赂行为的处罚规定，对公司因其雇员行为而承担的替代责任进行了澄清，调整了违法罚款和处罚规定。我们敦促起草人在第7条中明确商业贿赂范围，详细说明公司对员工行为的责任。

地方工商行政管理机构对商业贿赂法规历来享有较大的酌处权，导致不同地区出现执法不一的情况。2017年修订草案在这一问题上并未做出明确说明。商会敦促国家工商行政管理总局将关于商业贿赂执法权力限制于省市级工商行政管理机构，并发布具有约束力的商业贿赂指导意见和解释。

sion outlining fines for the facilitation of bribery, provide some additional clarification on the vicarious liability of companies for the actions of their employees, and adjust fines and penalties for violations. We urge the drafters to clarify the scope of commercial bribery and provide further detail on the liability of companies for employee conduct in Article 7.

Local administrations for industry and commerce (AICs) have historically had significant discretion in enforcing commercial bribery rules, leading to inconsistent enforcement across different regions. The 2017 Draft Amendments do not provide additional clarity on this matter. AmCham China urges the State Administration for Industry and Commerce (SAIC) to restrict enforcement power with regard to commercial bribery to provincial and municipal-level AICs and publish binding guidance and interpretations regarding commercial bribery.

US Foreign Corrupt Practices Act and Other Corruption Laws

AmCham China member companies have continued to rate compliance with the Foreign Corrupt Practices Act (FCPA) and other corruption laws as a high priority. Companies strive to design compliance programs and employee trainings to address risks. In-house professionals face the difficult task of harmonizing a foreign company's global compliance culture to address both global and local requirements accordingly. To foster international commerce and foreign investment, China should ensure that its bribery and corruption laws meet generally accepted international norms, and that these laws are applied transparently and without discrimination both at home and abroad.

Third-Party Compliance

Third-party compliance, including the activity of sales channel distributors and resellers, vendors, agents, consultants, customs brokers, and supply chain partners, is also a key area of focus and concern for AmCham China member companies. It is essential that Chinese domestic business partners develop compliance programs that address key risks highlighted by both international and Chinese domestic corruption laws. AmCham China member companies appreciate the noticeable progress SOEs have made in developing anti-corruption compliance programs, and encourage the agencies that oversee SOEs, including the State-Owned Assets Supervision and Administration Commission (SASAC), to drive continued improvements in SOE compliance programs. AmCham China also encourages the SAIC to more clearly illustrate the scope of third party and vicarious liability for commercial bribery in Article 7 of the proposed AUCL.

Data Policy Compliance

Over the past two years, China has implemented a comprehensive legal regime establishing the parameters for data security and privacy within mainland China. This new regime focuses

on the control of data through localization and screening and creates compliance challenges for multinational corporations (MNCs) and foreign small and medium-sized enterprises alike. In addition to the general legal regime, industry regulators have issued sector-specific regulations and rules that create additional data compliance requirements.

The central legislation in the new data security architecture is the Cybersecurity Law that takes effect June 1, 2017. The "Network Information Security" chapter in the law establishes a personal data protection regime that attempts to harmonize various data protection concepts already found in other domestic laws and regulations. The National Security Law, issued in July 2015, mandates state control over information and data systems in core areas and sets a new protectionist tone for data security compliance. China's data security regime has become increasingly complex in recent years and poses significant compliance challenges for foreign companies operating in China.

Data Privacy

Regulation of privacy rights is also complicated by the fact that statutory requirements relating to data privacy protection exist in laws and regulations at both national and provincial/municipal levels. In addition to national standards and guidelines, there exist various industry-specific rules related to personal information protection in China.

In December 2012, the NPC issued the "Decision on Strengthening Network Information Protection" (the NPC Decision), which aimed to improve network security and protect personal information. The NPC Decision requires entities that collect or use electronic personal information to specify the purpose, method, and scope of the collection or use, and to obtain consent from the person(s) whose electronic personal information is collected or used. We commend the Chinese government for adopting international data privacy best practices that harmonize with those of other legal jurisdictions.

The 2013 "Guidelines on Information Security Technology and Personal Information Protection in Information Systems for Public and Commercial Services" (the Guidelines), a voluntary national standard, provides guidance on personal information protection. The Guidelines demarcate general and sensitive personal data and provide guidance regarding the collection, handling, cross-border transfer, and deletion of personal data. The standard has been adopted by a number of MNCs operating in China, and may form the basis for future data protection legislation.

Data Localization

Historically, China has not issued comprehensive policies regarding data localization, although the previously mentioned Guidelines prohibit transfer of personal information overseas without user consent or government permission. Other jurisdictions also impose data localization

美国《反海外腐败法》和其他反腐败法

商会的会员企业历来重视美国《反海外腐败法》和其他反腐败法律。这些公司致力于制定合规计划，开展员工培训，以减少合规风险。公司内部专业人员面临着如何协调外国公司全球合规文化、同时满足全球和地方合规要求的难题。为促进国际商业和外商投资的发展，中国应确保其反贿赂和反腐败法律符合普遍接受的国际规范，确保这些法规在国内外都得到透明而公正的实施。

第三方合规

第三方合规包括销售渠道经销商与转售商、供应商、代理商、顾问、报关经纪人和供应链合作伙伴的活动，也是商会重点关注的领域。中国国内商业伙伴必须制定合规计划，防范国际和中国反腐败法规造成的重要风险。商会赞赏中国国有企业在制定反腐败合规计划方面所取得的显著进展，鼓励国有资产监督管理委员会等国有企业监管机构进一步完善国有企业合规计划。商会还鼓励国家工商行政管理总局对《反不正当竞争法》草案第7条中商业贿赂第三方责任范围和替代责任范围给予更为明确的阐释。

数据政策合规

过去两年，中国建立了全面的法律机制，确定了中国大陆数据安全与隐私制度。这一新机制注重通过数据本地化和筛选控制数据，从而为跨国公司和外国中小型企业带来了合规难题。除一般法律制度外，不同行业的监管机构还颁布了具体的法规和规定，提出更多数据合规要求。

2017年6月1日起实施的《网络安全法》是新型数据安全架构的核心法律。《网络安全法》中的“网络信息安全”一章建立了个人数据保护制度，尝试协调其他国内法规已经建立的多重数据保护概念。2015年7月发布的《国家安全法》要求对核心领域的信息和数据系统实施国家控制，从而在数据安全合规领域发出新的保护主义信号。近年来，中国的数据安全体系日益复杂，为在华外国公司带来了严重的合规难题。

数据隐私

国家和省/市两级的法律法规都对数据隐私保护提出了相关要求，令隐私权管理更加复杂。除国家标准和指导方针外，中国不同行业还制定了与个人信息保护相关的具体行业规则。

2012年12月，全国人大发布了《关于加强网络信息保护的決定》（《決定》），旨在提高网络安全、保护个人信息。《決定》要求，收集或使用电子个人信息的实体必须说明收集或使用信息的目的、方法和范围，并征得信息所有者的同意。我们赞赏中国政府采用国际数据隐私最佳实践、并与其他司法管辖区法规进行协调的举措。

2013年发布的《信息安全技术及公共、商用服务信息系统个人信息保护指南》（《指南》）是一部提供个人信息保护指南自愿性国家标准。《指南》区分一般性和敏感性个人数据，就个人数据的收集、处理、跨境转移和删除提供指导。这一标准已被多家在华跨国公司采用，有可能成为未来数据保护立法的基础。

数据本地化

上文提到的《指南》禁止在未得到用户同意或政府许可的情况下将个人信息传输至海外，不过中国在过去并未出台综合性的数据本地化政策。其他司法管辖区也在一定程度上加强了数据本地化要求；但是中国的数据本地化要求与国家安全趋势似乎表明中国有可能制定超出世界先进工业化国家标准的数据本地化政策，这可能阻碍中国成为现代全球生态系统创新领导者。提供跨境服务且需要信息技术（IT）基础设施的公司应密切关注数据本地化政策的进展，以确保符合相关规定的要求。

中国政府力求通过特定的行业规定保护特定类型的数据，禁止数据流出中国境内。相关例证包括：2011年出台的《中国人民银行关于银行业金融机构做好个人金融信息保护工作的通知》、国务院2013年1月1日发布的《征信业管理条例》、国家卫生和计划生育委员会2013年5月5日发布的《人口健康信息管理办法（试行）》、以及2009年发布的《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》等。

大数据

2015年9月5日，国务院发布关于实施《促进大数据发展行动纲要》的通知。该纲要强调了大数据在中国宏观经济发展中发挥的重要作用，概要指出下述四个主要目标：

- 加快政府数据开放；
- 推动研发与产业发展；
- 加强政府和公有领域的应用；
- 加强隐私和数据保护。

requirements to some degree; however, data localization requirements in China, when combined with state security trends, are indicative of a policy trend that goes beyond what is required in the world's advanced industrialized countries and may hinder China's efforts to be a leader of innovation in the modern global ecosystem. Companies looking to provide cross-border services that require information technology (IT) infrastructure will need to follow these developments in data localization closely to ensure that they comply with relevant regulations.

Chinese authorities have sought to protect certain types of data using industry-specific rules to prohibit the export of data outside China. Examples include the 2011 "Notice of the People's Bank of China on Improving Work Related to the Protection of Personal Financial Information by Financial Institutions in the Banking Industry," the "Administrative Regulations on the Credit Reporting Industry" issued by the State Council on January 1, 2013, the "Administrative Measures for Population Health Information (Trial)" issued by the National Health and Family Planning Commission on May 5, 2014, and the 2009 "Regulations on Strengthening the Protection of Secrets and Archive Management Related to the Issuance and Listing of Securities Overseas."

Big Data

On September 5, 2015, the State Council published a notice concerning the implementation of the "Action Plan to Promote Big Data Development." The plan highlights the critical role of big data in China's macroeconomic development and outlines the four primary objectives of:

- Opening government data;
- Boosting research, development, and industry;
- Enhancing government and public domain applications; and
- Increasing privacy and data protection.

Big data continues to disrupt the digital world, challenging long-standing data governance concepts. As discussed above, China has introduced a number of internationally recognized data privacy concepts. These provisions will become increasingly challenging to administer as big data applications become more common in China.

AmCham China encourages the Chinese government to pursue convergence with international norms for big data governance. The adoption of new norms will require a sustained international collaborative effort, which China should participate in and help lead. At the same time, we believe China should not impose an overly restrictive regime on big data before international norms have been developed and integrated into existing data protection regimes. The development of a data policy regime in China has the potential to support immense growth in innovative technologies and to create the framework for advanced services indus-

tries to support the modern global economic ecosystem. Companies operating or looking to invest in China should follow such developments closely in order to ensure compliance with laws that may require burdensome restructuring of their data infrastructure.

Industrial Policy

Efforts on the part of FIEs in China not only to ensure appropriate attention to compliance, but also their very competitiveness in the market, is increasingly challenged by China's significant industrial policy focus through initiatives such as "Made in China 2025" and "Internet +." These programs include express, specific limits on foreign participation while strongly supporting domestic competitors. FIEs operating in China in relevant industries are increasingly finding themselves squeezed to share technology and partner with domestic firms on the front end, while often running into implied if not active inducements to Chinese customers to reduce exposure to foreign products. This is particularly acute in the IT industry. New laws and regulations such as the National Security Law and Cybersecurity Law cause unnecessary compliance challenges for FIEs. China is, in great measure, utilizing laws and regulations to further industrial policy objectives, rather than to foster a compliance environment designed to ensure a fair and consistent set of rules guiding the marketplace for all.

Recommendations

For the Chinese Government:

- **Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, a clear definition of commercial bribery and further detail on the liability of companies for the conduct of their employees in the final version of the revised AUCL will assist companies with developing and enforcing robust, practical commercial bribery compliance programs.**
- Restrict enforcement power with regard to commercial bribery to provincial and municipal-level AICs and publish binding guidance and interpretations regarding commercial bribery.
- Firmly address the fact that foreign business in China often feels unwelcome and unwarrantedly targeted under regulatory and enforcement provisions, including provisions in the AUCL. In this regard, a directive from the central government reinforcing the mandate to provide equal treatment under the law would assist. Many foreign businesses put a heavy focus on and devote significant resources to compliance, which is not generally recognized by enforcement authorities in China.

大数据不断在数字世界掀起波澜，对传统数据治理概念提出挑战。如上所述，中国已引入多种国际公认的数据隐私概念。随着大数据在中国的普及应用，这些规定将为数据管理者带来越来越多的挑战。

商会鼓励中国政府与国际大数据治理规范接轨。为采用新规范，中国需要继续参与并协助引领国际合作。另一方面，我们认为，在相关国际规范出台并被纳入现有的数据保护体系之前，中国不应采取措施过度限制大数据。中国数据政策的发展有可能推动创新技术的显著增长，建立先进的服务业框架，为现代全球经济生态系统提供支持。在华运营或有意在华投资的公司应密切关注这方面的发展并遵守相关法律，这些法律有可能要求他们重组数据基础架构，这是一项繁重的工作。

产业政策

在华外资企业不仅要关注合规事务，还要注重其在中国市场上的竞争力，而中国实施的“中国制造 2025”和“互联网+”等重要产业政策正在使外资企业的竞争力面临严峻挑战。这些政策对外资参与程度进行了明确而具体的限制，同时为国内竞争者提供强有力的支持。在相关行业，越来越多的外资企业被迫与处于前沿的国内企业分享技术、建立合作伙伴关系；另一方面，中国政府还暗中引导消费者减少购买外国产品。这种趋势在 IT 行业尤为突出。新出台的《国家安全法》和《网络安全法》等法律为外资企业带来了不必要的合规难题。很大程度上来说，中国正利用法律法规促进自身产业政策目标的实现，而不是建立适当的合规环境，确立公平而一致的市场指导规则。

- 正视并解决这一问题：在华外国企业经常因监管和执法条款（包括《反不正当竞争法》中的相关条款）而感到不受欢迎，遭受无理的责难。在这方面，发布中央政府指令，强调依法提供公平待遇的法令将大有裨益。许多外国企业非常重视合规，并投入了大量资源，然而这一做法并没有得到中国执法部门的普遍认识。
- 协调国家、地方以及不同行业的数据隐私法规，提高监管一致性。
- 建立符合国际准则的透明、统一、法治体系，在此体系下为在华投资者提供国民待遇，履行 2013 年 11 月十八届三中全会对于让市场力量发挥决定性作用的承诺。
- 提高法律法规起草、实施和执行的透明度，提高法律和监管环境的可预测性与确定性。

对美国政府：

- 参与双边对话与研讨会，深入开展科学交流，为实施透明且可预测的监管制度提供支持，针对合规工具和目标达成共同理解。
- 继续在国际反贿赂和腐败论坛上与中国积极开展合作。

建议

对中国政府：

- 提供对直接影响合规的法律要求的明确定义和解释。例如，在《反不正当竞争法》最终修订版本中明确定义商业贿赂，详细说明公司对员工行为承担的责任，将有助于公司制定和执行强有力的、实用的商业贿赂合规计划。
- 将关于商业贿赂执法权力限制于省市级工商行政管理部门，并发布具有约束力的指南与解释。

- Harmonize national and local regulations and different sector-specific regulations on data privacy to increase regulatory consistency.
- Provide national treatment to investors in China in a transparent, consistent, rules-based system that is in line with international norms, and with market forces playing the central role as promised in November 2013's Third Plenum of the 18th National Party Congress.
- Improve transparency in the drafting, implementation, and enforcement of laws and regulations to strengthen confidence in the predictability and certainty of the legal and regulatory environment.

For the US Government:

- **Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.**
- Continue to work proactively with China in international anti-bribery and corruption forums.

Customs and Trade

Introduction

Since the 18th Party Congress, we have been pleased to see that the General Administration of Customs (GAC) is committed to comprehensively deepening reform, attaching equal importance to top-level design as well as basic enforcement, and working vigorously to streamline administrative processes, delegate powers, and enhance the transparency of government affairs and information. In recent years, China has accelerated its pace of reform and achieved major progress in specific efforts to promote trade facilitation. Nevertheless, some enterprises continue to face substantial difficulties in trade and customs clearance. AmCham China looks forward to further policy improvements to maximize efficiency and reduce challenges for foreign firms.

Ongoing Regulatory Issues and Recent Developments

Further Deepening Reform to Promote Greater Trade Facilitation

AmCham China encourages GAC to continue to adjust policies and optimize procedures designed to facilitate customs clearance, be receptive to constructive input from enterprises, and enable firms to play an active role in reform.

Single Window System

The single window system can increase the efficiency of customs clearance and save costs for enterprises. Currently, however, the single window system is only being piloted in certain coastal ports, and the implementation plans in different localities are not consistent. We encourage GAC to establish a uniform national single window system solution where enterprises are only required to make a single declaration, multiple departments share data, and inspection, customs, and commercial authorities are highly coordinated.

National Clearance Integration

The pilot program for clearance integration appears to have been effective at reducing customs clearance times over the

past year. We encourage GAC to speed up the pace and expand the scope of the pilot, for example, by extending coverage to air cargo, more categories of goods, and a greater number of ports.

Application of the Internet of Things in Customs Clearance

In recent years, there have been many efforts to assess the application of Internet of Things (IoT) technology in imports and exports. We see great opportunities to apply IoT technology to achieve breakthroughs such as real-time tracking of bonded goods, smart inspection, smart declaration, and delivery of dangerous or sensitive goods. We recommend that GAC include IoT technology as an important component of its future strategic plans.

WTO TFA Implementation

In September 2015, China formally ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA), and has proceeded to issue multiple measures to further accelerate the progress of China's trade facilitation. We commend the effort that GAC has put forth in this regard. On February 22, 2017, the TFA formally went into effect and ratifying countries began implementation. As the world's largest goods trading country, the implementation of this agreement has clear positive implications for China. Implementing the TFA is beneficial for modernizing China's comprehensive port management system, raises the competitiveness of domestic products, and improves the environment for attracting foreign investment. In addition, the implementation of the TFA will broadly improve trade facilitation by China's trading partners, creating a speedy customs clearance environment for Chinese exports and bringing broad benefits to enterprises. Therefore, the following period of implementation is extremely important. AmCham China urges GAC to continue its efforts to adjust policy and optimize workflow, as well as listen to input from industry, in order to fully implement all of the trade facilitation measures to which China has committed in the TFA.

More Timely Policy Interpretation

AmCham China urges GAC to publish official interpretations and operating guidelines in a timely fashion after new

海关及贸易

引言

十八大以来，中国海关致力于全面深化改革，顶层设计与基础实施并重，大力推进简政放权、政务公开、信息公开。近年来，中国改革步伐不断加快，取得了重大进展，在促进贸易便利化方向上做出了具体的努力和贡献。但同时，在贸易和通关方面企业仍面临着一些困难。中国美国商会期待中国进一步完善相关政策，以最大程度地提高外国公司的效率并减少外国公司所面临的挑战。

现存监管问题和最新进展

进一步全面深化改革，推动贸易便利化

我们希望中国海关继续大力推进各项政策的调整和通关流程的优化。同时希望海关广泛听取企业的建设性意见，让企业真正地参与到改革中来。

单一窗口

单一窗口可以提高通关效率，节省企业成本。但是目前，单一窗口仅在一些沿海口岸进行试点，且各个试点地方的实施方案不一致。我们希望中国海关建立全国统一的单一窗口解决方案，一次申报，多部门共享数据，提高商检、海关、商务等各部门的协调水平。

全国通关一体化

通关一体化改革一年多来的试点成果显著，有效缩短了通关时间。希望中国海关进一步加快步伐，扩大试点范围，例如，将试点扩展到空运货物，更多商品章节以及更多口岸等。

物联网技术在通关运作中的运用

近几年来，物联网技术在进出口领域的应用备受关注。

我们认为，在保税货物的实时追踪、智能查验、智能申报、危险品 / 敏感货物的运输等等领域，都有可能通过物联网技术来实现划时代的突破。我们建议中国海关把物联网技术作为未来战略计划的重要部分。

WTO《贸易便利化协定》的实施

2015年9月中国正式签署接受了WTO《贸易便利化协定》（《协定》），并相继出台了多项贸易便利化措施来进一步加快中国贸易便利化的进程，中国海关为此付出的努力和进展令人鼓舞。2017年2月22日，《协定》正式生效并在已签署接受协定的成员国间正式实施。作为世界第一大货物贸易国，《协定》的实施对中国具有显著积极意义。一方面，实施《协定》将有助于中国口岸综合治理体系的现代化，提高国内产品的竞争力和改善吸引外资的环境；另一方面，《协定》的实施还将普遍提高中国贸易伙伴的贸易便利化水平，为中国产品出口营造便捷的通关环境，使企业广泛受益。因此，接下来的实施阶段非常重要，商会希望中国海关继续大力推进各项政策的调整和流程的优化，并能倾听业界心声，真正把中国在《协定》中承诺的各项便利化措施落到实处。

更及时的政策解读

一方面，我们希望海关在新的政策法规出台后，尤其是在某些规定新旧转换的过程中，能够及时发布官方的解读和操作说明，各直属海关监管现场能够明确政策的具体操作要求和实施规范，这将有助于企业按照相关规定进行操作。

另一方面，我们希望海关在重要政策出台之前能够开展调研，征求企业意见。以往的实践表明，未经事先通知而执行的政策在实施时往往会遇到很大的困难。比如2016年3月份，海关关于修订报关填制规范的规定突然出台使企业没有时间调整，措手不及。又如2016年12月5日，海关对商品编码进行了合并，将2263个编码合并为401个。

policies or regulations are issued, especially for the transition periods before the regulations take full effect. Customs supervision zones should be clear about specific operations and enforcement requirements of policies in order to allow enterprises to operate as required.

We also hope that GAC will conduct research and listen to enterprises' opinions before issuing important policies. In the past, the implementation of policies without advance warning has created substantial business difficulties. For instance, in March 2016, enterprises were unprepared for GAC's sudden release of amended provisions on completing customs export/import declaration forms. Another example was when customs authorities consolidated product codes on December 5, 2016, merging 2263 codes into 401. Because there was no prior announcement, many previously submitted declaration forms were rejected. Filing information for imported goods related to the processing trade filing manual or which were filed in bonded and other special zones had to be revised and then declared again. This caused losses for some companies whose goods were unable to clear customs as planned.

Further Improve the Self-Disclosure System

GAC introduced a self-disclosure system in 2014. September 2016 saw the implementation of a milestone step to promote self-disclosure by enterprises by including, for the first time, a separate chapter on self-disclosure in the "Regulations on Customs Inspection." Since that time, a number of issues have arisen including how to improve enterprise self-supervision, self-inspection, and self-disclosure; the feasibility of a number of self-correction measures; and how to enable enterprises making honest self-disclosures to realize fair and healthy growth. We urge GAC to clarify relevant procedures, detailed requirements, and rules relating to issues such as the reduction of penalties for self-disclosing enterprises.

Example: Supplementary Declaration for Short Shipment or Overshipment

Short shipments, overshipments, and misshipments occur often in international transport, mostly due to mishandling by the shipper or shipping agent as enterprises often transport massive volumes of goods via third-party logistics service providers. The domestic consignee is often not aware of the discrepancy until after import declaration and inspection. In practice, it is not easy for an enterprise to file a supplementary declaration to the customs authority, and when the difference exceeds RMB 30,000 (US \$4,518) the case may be transferred to the inspection division. If the amount is much larger than that, it may be transferred to the anti-smuggling division. Sometimes enterprises are fined before the issues are resolved, and may even have their credit ratings downgraded because of this.

Further Reform the Regulation of Processing Trade and Customs Special Supervision Zones

There are still a number of challenges in the processing trade. Compliant enterprises have invested a great deal of manpower and resources to record materials in their processing trade handbooks for verification by customs authorities, and to track and manage bonded equipment and consumables. We suggest that GAC conduct in-depth research and promote self-verification by enterprises (credit verification), as well as track, manage, and verify processing trade manuals, bonded equipment, and bonded consumables through companies' enterprise resource planning (ERP) systems and internal control mechanisms. We further recommend that GAC simplify the procedures for enterprises within bonded zones to manage and verify consumables used for production, and to manage and record the entry and exit of materials purchased outside of these zones in RMB.

Example: Handling Non-Technological Depreciation of Raw Materials in Processing Trade

Currently there are three approaches to handling raw materials affected by non-technological depreciation in processing trade: sell them on the domestic market, return them, or destroy them. Generally, the customs authorities will require an enterprise to sell the raw materials on the domestic market and pay the relevant taxes. The other two methods are difficult to use because they are impractical or because of operational-level policies and regulations. In practice, however, some raw materials affected by non-technological depreciation lose their market value and cannot be resold or recycled as waste. Without a valid proof of market value, an enterprise has to destroy these goods after paying taxes according to the import value of the bonded raw materials. We recommend that the market value of raw materials affected by non-technological depreciation be established via public auctions conducted by third parties officially recognized by customs authorities. In case the raw materials no longer have value, the enterprise may apply to destroy them and receive a tax exemption. Such a policy will reduce the tax burden on processing trade enterprises in China.

Royalties

It is a common practice for multinational corporations (MNCs) to pay royalties to patent owners outside China via merchandise trade or non-trade approaches. During the course of customs inspection, enterprises often disagree with customs authorities as to whether royalties should be included in the dutiable value of imported goods. Customs authorities require enterprises to include certain royalties in the dutiable value and pay duties on them. However, due to information asymmetry, customs authorities and MNCs may have different understandings as to the nature, assessment, and allocation of royalties. As a result customs authorities tend to overvalue and target inspection efforts against these royalties.

由于事先没有任何通知，企业原本已经报关的单据被大量退单，如涉及加工贸易手册备案，保税区等特殊区备案的进口产品，必须先修改原备案信息，然后重新报关。有些货物因此不能按原计划清关，给企业带来了损失。

进一步完善自我披露制度

2014年，海关总署开始推行自我披露制度，2016年9月《中华人民共和国海关稽查条例》正式出台，首次把企业自我披露作为单独的章节、正式纳入海关法规，这是中国海关总署在企业自我披露的推动中具有里程碑意义的一步。相伴而来的问题是，企业该如何更好的自我监管、自我核查和自我披露，以及一系列自我纠正措施实施的可行性，如何真正让有诚信的自我披露企业更加良性的健康发展。我们希望海关能够明确相关流程和详细要求，以及对自我披露的企业如何减轻处罚等相关细则。

举例：短溢装现象补申报的相关政策

在国际运输中经常出现发货溢短装或者是错发的情况，这通常是发货商或其运输代理的操作失误所致，特别是在企业多采用第三方货代物流服务，运输量大，因此此类问题比较高发。国内收货企业在完成进口清关后清点收实物时才会发现差异。实际操作中，企业向主管海关申请补申报流程并不是十分顺畅，如果差异金额超过30000元人民币（4518美元）可能会转到稽查，金额再大一些会转到缉私等；有的可能会被要求直接先罚款后处理，甚至会因此降级。

进一步推动加工贸易和海关特殊监管区域的监管改革

企业在加工贸易方面仍然面临不少挑战。守法企业在加工贸易手册的记录（以供海关部门核销）、保税设备和易耗品的跟踪和管理方面投入了大量的人力物力。我们希望中国海关能够深入调研，推动企业自核（信用核销），同时依托于企业ERP系统和内控机制来对加工贸易手册、保税设备和易耗品进行跟踪、管理和核销。我们进一步建议海关简化区内企业生产用易耗品的管理和核销，以及境内区外人民币采购物资的管理和登记进出区流程。

举例：加工贸易中原材料非工艺损耗的处置

对加工贸易生产过程中原材料非工艺损耗的处理，目前有三种处理方式：内销、退运、销毁。一般海关会要求企业以内销补税为主，另外两种处置方式由于缺乏可操作

性或操作层面的政策细则，很难得到执行。而事实上，有些原材料的非工艺损耗已不再具有市场价值，不仅不能进行二次销售，甚至不能作为废品回收再利用。但是由于缺乏对其市场价值的有效证明，企业只能申请按保税原材料进口价值完税后进行销毁处置。我们建议，对于无市场价值的非工艺损耗，是否可通过引入海关认可的第三方专业机构以公开拍卖的方式以确认其市场价值，如确无价值，则企业可申请销毁并且免于征税。该做法将减轻在华加工贸易企业的税赋负担。

关于特许权使用费的问题

跨国企业通过货物贸易渠道或非贸形式向境外支付特许权使用费普遍存在。企业在接受海关稽查时，在关于特许权使用费是否应计入进口货物完税价格的问题上与海关发生分歧。海关要求企业支付的某些特许权使用费应该计入进口货物完税价格，补征相应关税。然而，由于信息的不对称，海关与跨国企业在特许权使用费的性质认定，计征标准，分摊方法等问题上存在一定程度上的理解差异，导致针对特许权使用费的海关估价偏高，海关也随之有针对性的加强了稽查。

我们建议中国海关能够与自我披露制度相结合，鼓励企业主动向海关披露特许权使用费的支付情况，并就特许权使用费的是否应税的问题和海关积极进行磋商。海关相应的对补税方法和追溯期限的给予明确的界定。同时，为使跨国企业更好的配合海关对特许权使用费的稽查，建议海关能够引入有资质的第三方机构来帮助认定相关问题。

关于海关审价的问题

海关对商品定价产生质疑时，通常要求企业提供购买合同和成本构成等资料来配合海关审价工作，作为重视合规的跨国企业，会非常配合海关的审价工作，但整个过程时间长取证资料困难，为了不影响通关或者由于不能提供完整有效的资料，多数企业都会接受海关的较高价格申报，由此引发的问题是：如果多数企业都是无条件接受海关认定的高价格申报，则可能导致海关内部系统价格基准越来越高的现象。会员企业反应的主要问题有：

- ① 海关近来越来越注重案例的示范作用，这对海关的执法统一性有所帮助。但是如果以案例作为标准，必须确保案例的正确和适用性，而目前这些案例基本上都由海关内部掌握，几乎不对外界公开，不能为企业今后的合规管理提供借鉴和指导。

We recommend that GAC base inspection efforts on self-disclosure and encourage enterprises to voluntarily report the payment of royalties, consult with customs authorities as to whether the royalties are dutiable or not, and clarify the method of supplementary duty payment and the retroactive period. At the same time, in order to encourage MNCs to cooperate with customs authorities in the inspection of royalties, we recommend that GAC introduce a qualified third party to help settle relevant issues.

Customs Valuation

In case of any doubt about the price of a product, customs authorities often ask an enterprise to provide a purchase contract, cost composition, and other materials to assist with customs valuation. While MNCs attach great importance to compliance and are very cooperative, since this process may be lengthy and collection of documents difficult, most enterprises would prefer to just accept the higher product value established by customs authorities because they do not wish to hamper customs clearance or because they cannot provide complete and valid supporting documents. However, if most enterprises choose to unconditionally accept the higher value established by customs authorities, the valuation benchmark employed by customs authorities may be raised higher and higher. Our member companies have mentioned the following problems:

- ❶ Customs authorities have begun to emphasize the role of typical cases as examples, which is helpful for consistent customs enforcement. To serve as a standard, a case must be handled correctly and be applicable. However, most of these example cases are kept internally by the customs authorities and seldom published for external reference. As a result, enterprises cannot use them as a guide for compliance management.
- ❷ Though the World Customs Organization published the “Guide to Customs Valuation and Transfer Pricing” in June 2015, GAC has employed different valuation approaches for many affiliated enterprises. Some enterprises even have to pay additional duty based on the median value in the transfer pricing report. In some regards, this is moving back to the Brussels valuation system.
- ❸ According to the “Import and Export Customs Duty Regulations” (Customs Duty Regulations) and “Measures of Customs for the Determination of Dutiable Value of Imports and Exports” (GAC Order [2013] No. 213), import duties and internal taxes are not included in the dutiable value of imported goods. However, in 2016, GAC pointed out in its “Announcement on Revising the Relevant Provisions on the Assessment and Determination of the Duty-Paid Value of Aircraft Under Operating Leases” (GAC Announcement [2016] No. 8) that, for imported leased aircraft, withholding tax, business

tax, and value-added tax paid by the lessee in excess of rent constitute indirectly paid rent and are to be included in the dutiable value. Similarly, according to Article 13.1.3 of the “Import and Export Customs Duty Regulations,” imported goods that are designed or produced for implementing a patent or proprietary technology are restricted to production equipment by the former “Administrative Measures for Customs Declaration” (GAC Order [2003] No. 103) and “valuation definitions.” In practice, however, customs authorities have expanded them to semi-finished products, parts and components, and raw materials. These provisions are inconsistent with the prevailing Customs Duty Regulations.

We encourage greater openness and transparency in customs valuation. For example, GAC could establish a data platform to allow enterprises to search relevant information and typical cases and enhance their self-regulation and compliance. The customs valuation mechanism should be further improved as well. For example, the introduction of a third party to resolve differences in valuation would be a useful step forward. Additionally, GAC should research customs valuation approaches for goods imported by affiliated enterprises as soon as possible and issue a guide to customs valuation and transfer pricing for China.

Goods Classification

Importers and exporters have long been hampered by inconsistencies within the goods classification system. For example, the pre-classification of certain goods is often not in line with the classification made by the relevant customs authorities. The third party goods classification services that customs authorities are currently using help enterprises obtain a certain extent of professional classification service, but classification still varies for certain goods and across different regions. In 2016, GAC made a positive attempt to promote trade facilitation by introducing the “Classification Precedent Inquiry System” and creating a pilot for goods under Chapters 80, 81, and 82 of the “Customs Import and Export Tariff.” It also included a “Precedent Inquiry” option in the electronic port pre-entry system. We hope that GAC can accelerate goods classification reforms and gradually expand the scope of this pilot.

Moreover, in recent years, along with the proliferation of free trade agreements (FTA), more and more products are entitled to preferential FTA tariff rates. However, in instances where the same product is categorized in multiple different ways, customs authorities in different countries tend to think of their own classification as the correct one. As a result, enterprises may be unable to enjoy preferential FTA tariff rates. We suggest that GAC develop solutions to address disqualification for preferential FTA tariff rates due to different classifications. In the meantime, before these solutions can be fully implemented, we encourage customs authorities to propose some workable options for enterprises facing these challenges.

- ② 2015年6月份, WCO出台了转移定价与海关估价指南, 中国海关目前已经对许多关联企业开展了估价, 但是方法各异, 有的甚至直接以转移定价报告的中位值作为标准估价补税, 不得不说, 这一定意义上意味着海关估价倒退回了当年的布鲁塞尔估价体系。
- ③ 《关税条例》以及海关总署213号令(《中华人民共和国海关审定进出口货物完税价格办法》)均规定, 进口关税及国内税收不计入进口货物的完税价格。但海关总署2016年第8号公告(关于修订飞机经营性租赁审定完税价格有关规定的公告)却规定: 对于飞机租赁进口中, 由承租人在租金之外另行作为出租人承担的预提所得税、营业税、增值税, 属于间接支付的租金, 应计入完税价格。又例如, 《关税条例》第13条(一)3款规定“为实施专利或者专有技术而专门设计或者制造的”进口货物, 在原103号令(《中华人民共和国海关进出口货物申报管理规定》)以及“审价释义”中都曾明确规定为特指生产性设备, 而现行海关操作中却将之扩大到了包括半成品、零部件、原材料等所有货物。这些条款与海关目前现行的《关税条例》相违背。

我们希望海关审价能够更加公开化、透明化, 比如, 建立数据平台方便企业可以查询到相关信息以及有代表性的案例, 促进企业自我约束和合规管理。进一步完善审价工作机制, 例如, 引入第三方机构来认定审价差异。同时, 尽快研究关联企业进口货物的海关估价方法, 出台中国海关的转移定价与估价指南。

关于海关归类的问题

一直以来, 商品归类问题经常会给进出口企业带来一些困扰。主要表现在预归类的结果时常和属地海关归类出现不一致。海关目前推行的第三方预归类服务, 在一定程度上能够帮助企业获取专业的归类服务, 但对某些商品会存在归类异议, 或者地区间存在归类不统一的问题。2016年, 中国海关开发了“归类先例辅助查询系统”, 对《海关进出口税则》第80、81和82章的商品进行试点, 并在电子口岸预录入系统中增加了“归类先例查询功能”, 这是中国海关推进贸易便利化做出的积极尝试。我们希望海关加快推进改革, 并逐步扩大试点。

另外, 近些年随着自由贸易协定(FTA)范围的扩大, 越来越多的产品可以享受FTA税率, 但也经常遇到因两国海关对同一产品的归类认定不同的情况, 这种情况下, 通常各国海关都会认为自己的归类是正确的, 但企业就会

因此无法享受FTA的优惠税率。我们建议可以针对此类情况推出应对措施来解决因两国归类差异而导致企业无法享受FTA优惠税率的问题; 同时, 在争议解决之前海关能够向面临这些挑战的企业提出合理的处置办法。

对某些进出口操作进行合理简化

举例1: 循环使用包装物的进出口

企业从环保及成本角度考虑, 在进出口环节回收并重复使用包装。一般都采用暂时进口的方式, 需要主管海关三级审批然后才能申报暂时进口, 并定期退运出口, 有时审批时间会比较长, 会影响到下一个进口周期; 另外还要单独拆分金额进行申报。我们建议, 是否可以对循环使用的包装物暂时进出口的审批流程进行简化。例如: 改变为“循环使用包装物”登记备案制。

举例2: 客户投诉货物的返回

对于客户投诉需要赔偿的货物, 原则上出口货物需要退回国内, 相关税务部门开具对冲发票, 即需要在原出口报关单上核注。但有时货物已经被使用或破坏, 或已经失去其产品价值, 这种情况下退回国内也只能在国内做销毁处理, 既增加了国内废弃物处理的负担, 也可能破坏国内环境, 同时也增加了海关业务工作和统计工作。我们建议, 海关是否可以和相关部门协商, 允许在开具第三方证明或者收货人确认证明的情况下, 不要求实物退回。

举例3: 进口危险品再出口问题

有些危险品从国外进口后, 由于国内市场需求的变化, 导致有些库存需要再出口, 但办理危险品包装证时, 需要出具原包装性能检测结果, 但由于是进口原始包装无法提供相关证明, 导致目前只能采取在原包装状态下套装国内有性能测试结果的包装, 该办法对于桶装液体就很难实施。所以, 我们建议, 是否可以通过其它更为简便的出口途径, 希望中国海关对危险品进出口的相关政策予以进一步的明确和完善。

举例4: 出口限制的有关管理规定

中国在某些技术领域也有一些出口限制管控, 但是对于这些管控的详细条款很难查询。我们建议中国海关建立查询出口限制货物的平台或系统并及时更新, 这样不仅可以供进出口企业正确地查询和有效的控制, 也可以防止出口控制纠纷。

Simplify Certain Import and Export Operations

Example 1: Import and Export of Packing Materials for Reuse

For the sake of environmental protection and cost reduction, enterprises may reclaim and recycle packing materials, generally in the form of temporary import. Level three customs approval is required for packing materials to be temporarily imported and returned for export within a specified period. Sometimes the approval process takes so long that it affects the following cycle of import. Moreover, the packing materials have to be declared separately, requiring the importer to separate the value of the packing materials from the total value of the goods. We suggest streamlining the temporary import and export of packing materials for reuse, for example, by allowing “packing materials for reuse” to be filed for the record instead of requiring approval.

Example 2: Return of Goods upon Customer Complaint

When customers claim compensation, exported goods must, in principle, be sent back to China where the relevant taxation authorities will issue a write-off for the purpose of annotating the former export declaration form. Sometimes, however, goods may be used, damaged, or have otherwise lost product value. In such cases, returned goods can only be destroyed, which increases the burden of waste disposal, damages the domestic environment, and creates additional customs operations and statistics work. We recommend that GAC consult with relevant departments and not permit any return of physical goods upon presentation of a certificate issued by a third party or the consignee.

Example 3: Re-Export of Imported Dangerous Articles

Due to changes in domestic demand, some imported dangerous articles may have to be re-exported. Packing certificates require the performance test results from the original packing, which is impossible for imported packing. For this reason, enterprises have to wrap the original packing with packing that can provide domestic performance test results. This approach is difficult to implement for barreled liquids. We encourage the introduction of more convenient export methods, and hope that GAC can further define and improve policies related to the import and export of dangerous articles.

Example 4: Export Restrictions

China has subjected some technologies to export restrictions, but enterprises often have no way of finding out about these unpublished restrictions. We urge GAC to establish a platform or system to publish and update export restrictions in a timely manner. This system would help importers and exporters make inquiries and exercise effective control, and avoid export control disputes.

Recommendation:

For the Chinese Government:

- **Comprehensively push forward the reform of integrated customs clearance and continue to promote trade facilitation.**
- Further improve the self-disclosure system and clarify specific provisions.
- Step up consultation on concerns such as royalties and pricing, and introduce third party certification in a timely manner.
- Further reform the regulation of processing trade and special supervision zones, streamline administrative processes and delegate power, and simplify import and export procedures while ensuring supervision.

建议

对中国政府：

- 全面推进通关一体化，推动贸易便利化。
- 进一步完善自我披露制度，明确具体条款。
- 对特许权使用费、商品定价等广受关注的问题加大磋商力度，尽快引入第三方认证制度。
- 进一步推动加工贸易和海关特殊监管区域的监管改革，推进简政放权，在保证监管的前提下将进出口程序适当简化。

Government Procurement

Introduction

Since beginning negotiations to join the World Trade Organization (WTO) Agreement on Government Procurement (GPA) in December 2007, China has submitted six offers, with the latest revised offer submitted in December 2014. At a February 2017 meeting of the WTO Committee on Government Procurement, China indicated that it would submit a revised market access offer that would include improvements relating to its sub-central government entities and state-owned enterprises (SOEs). However, the timing for submission of this new revised offer is not known.

AmCham China acknowledges the progress China has made with each revised offer and appreciates that its 2014 offer provides coverage that is in many respects commensurate with the coverage of GPA parties, such as with respect to certain threshold levels and coverage of sub-central government entities. However, AmCham China is concerned about the loss of momentum in China's accession negotiations, given that more than two years have elapsed since China's last offer. AmCham China urges the Chinese government to focus on closing the remaining gaps in the few key areas identified below in order to allow China to be in a position to conclude its accession to the GPA in 2017.

Opening China's government procurement market to foreign competition is in China's interest. Doing so would allow relevant Chinese government 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 urges the Chinese government to further open its government procurement market on a reciprocal basis with the US and the other 46 parties to the GPA by accelerating the process of its accession to the GPA.

China's Government Procurement Market

In July 2016, the WTO conducted its sixth review of China's trade policies and practices. According to the Trade Policy Review (TPR), China's total government procurement rose in value from RMB 1.64 trillion (US \$265 billion) in

2013 to RMB 1.73 trillion (US \$282 billion) in 2014. Local governments accounted for 95.2 percent of the total value of China's 2014 procurement, with only 4.8 percent attributed to the central government.

The TPR also noted that, in 2014, China's government procurement accounted for only about 2.7 percent of China's GDP, a slight decline from 2.8 percent in 2013. This is far less than the 10 to 15 percent of the GDP of an economy that government procurement comprises on average, according to the WTO.

According to the TPR, China's procurement figures cover only "procurement by government departments, institutions, and public organizations using regular budget funds, for goods, construction, and services listed in the Centralized Procurement Catalogue or above certain thresholds for procurement using other financial resources." This is procurement that must be conducted in accordance with the 2003 Government Procurement Law (GPL). China does not include procurement that is outside the scope of the GPL in its procurement statistics.

The TPR pointed out that China's procurement statistics do not include procurement by its SOEs because SOEs are not required to follow the GPL. Another factor in the low procurement statistic is the exclusion of public works projects. According to the US Trade Representative's 2015 report on China's compliance with the WTO, most public works projects, which represent at least one-half of China's government procurement market, are also not covered by the GPL. As a consequence, they are not covered in China's procurement statistics.

Background of China's Accession to the GPA

Threshold Levels

In its 2014 offer, China proposes to apply permanent thresholds that are the same as those used by two or more GPA parties, after a two-year phase-in period with higher transitional thresholds. For goods and services procured by its central government entities, China proposes the same threshold (130,000 Special Drawing Rights (SDRs)), as that of all GPA parties, except Japan and the Netherlands with

政府采购

引言

2007年12月启动加入世界贸易组织《政府采购协定》(GPA)谈判以来,中国已经提交六份出价清单,出价清单最新修改的提交时间为2014年12月。此后中国未再就进一步修改提交最新出价清单作出任何承诺。在2017年2月举行的WTO政府采购委员会会议上,中国表示将提交一份针对市场准入的修改出价,内容将涉及与中央政府实体和国有企业相关的改进。然而,提交此修订的日期尚不明确。

中国美国商会(商会)对中国提交的每一版修改出价清单的进步表示认可,且对2014版最新清单出价范围与《政府采购协定》参加方一般出价水平在很多方面大体相当表示赞赏,例如部分门槛价降至参加方水平以及将次中央实体列入采购主体。但是,考虑到距离中国上一次提交出价清单已过去两年多,商会担心中国会失去加入《政府采购协定》的动力。商会促请中国政府重点缩小下文所讨论的少数关键领域内仍存在的差距,从而使中国能够顺利地在2017年加入《政府采购协定》。

中国对外开放政府采购市场、引入国际竞争符合中国的利益,并有助于中国相关政府实体获取质高价优的商品和服务。加入《政府采购协定》还将为中国提供消除地方保护主义和腐败的工具。商会促请中国政府在互惠的基础上向美国及其他46个GPA成员国继续开放政府采购市场,从而加速加入《政府采购协定》的进程。

中国政府采购市场

2016年7月,世界贸易组织对中国贸易政策和实践进行了第六次审议。根据贸易政策审议(TPR)结果,中国政府采购总金额从2013年1.64万亿人民币(2650亿美元)上升至2014年的1.73万亿人民币(2820亿美元)。在2014年的总采购金额中,地方政府采购金额所占比例高达95.2%,中央政府所占比例仅为4.8%。

TPR还指出,在2014年,中国政府采购金额仅占中国GDP的2.7%,相对于2013年的2.8%出现轻微下滑。根据世界贸易组织的数据,政府采购金额占GDP的平均比例为10%—15%,中国距此还有较大差距。

根据TPR信息,中国的政府采购数据仅涵盖“政府部门、机构及公共组织使用固定财政预算资金对《集中采购目录》中所列商品、工程和服务的采购行为,或使用其他财政资源对超过门槛价进行的采购行为。”该类采购行为必须根据2003年制定的《政府采购法》(GPL)的相关规定执行。对于《政府采购法》涵盖范围以外的采购数据,中国并未将其纳入统计。

TPR指出,由于国有企业并非《政府采购法》的调整对象,因此该类企业的采购数据亦未纳入统计。导致中国采购统计数据偏低的另外一个因素就是将关于公共工程项目的采购数据排除在外。根据美国贸易代表处公布的2015年中国WTO合规报告显示,大多数公共工程项目(几乎占据一半的中国政府采购市场),均不属于《政府采购法》的调整对象。因此,该类项目的数据亦未包含于中国采购统计数据之中。

中国加入《政府采购协定》的相关背景

门槛水平

在2014年提交的出价清单中,中国提出在实行较高过渡门槛的两年渐进期过后,方适用《政府采购协定》两方或多方同等的永久性门槛。在中央政府实体采购货物或服务方面,中国提出的门槛价与除日本及荷属阿鲁巴岛之外的《政府采购协定》全体参加方相当,即13万特别提款权。中国同时采用了参加方通用的500万特别提款权的工程门槛。中国还提出了过渡期门槛,即货物和服务采购采用20万特别提款权,工程服务采用1000万特别提款权。

respect to Aruba. China also follows the parties' use of a construction threshold of five million SDRs. China proposes transitional thresholds of 200,000 SDRs for goods and services and 10 million SDRs for construction services.

For goods and services purchased by its sub-central government entities, China would apply the same threshold as the US and Canada (355,000 SDRs), following application of a two-year threshold of 500,000 SDRs. For goods and services procured by SOEs and other entities, China would apply the 400,000 SDRs threshold used by most parties, including the US, for entities at the sub-central level. That threshold would be applied after a 600,000 SDRs transitional threshold. For construction services procured by both its sub-central entities and other entities, China would initially apply a 25 million SDRs threshold for two years before applying the 15 million SDRs threshold used by Japan and Korea, rather than the five million SDRs used by most parties.

Coverage of Central and Sub-Central Government Entities

China increased its coverage of central government entities from 50 entities in its initial offer to 63 entities in its 2014 offer. That coverage appears comparable to that of GPA parties, with one significant exception. China has not offered its Ministry of Defense or defense-related entities. The only GPA party that does not cover its defense entities is Israel.

With respect to sub-central coverage, China offers 15 of its 22 provinces and all of its four provincial-level municipalities (Beijing, Chongqing, Shanghai, and Tianjin). This coverage is generally comparable to that of GPA parties, such as the US, that list their sub-central entities, but not to those that provide more comprehensive sub-central coverage, such as the EU, which covers categories of entities.

Coverage of SOEs and Other Entities

With regard to the coverage of SOEs and other entities, China's 2014 offer includes 22 entities, only three of which are SOEs: the Agricultural Development Bank of China, China Central Depository and Clearing Co., Ltd., and China Post Group (coverage limited to procurement for universal postal services). Other SOE policy banks, for example, are not offered.

Coverage of Service Sectors

China, like all GPA parties except the US, New Zealand, and Ukraine, bases its coverage of services on a positive list (covering only listed service categories). China's offer is not as comprehensive as that of the US, New Zealand, and Ukraine, which cover all services except those listed. A comparison of China's offer with the services covered by the other parties is difficult because of the spread of coverage among various categories and sub-categories. China follows the other parties that condition their services coverage on

the limitations and conditions specified in its commitments under the WTO General Agreement on Trade in Services.

With respect to construction services, China has gradually expanded its coverage, adding seven new subsectors in its 2014 offer. But that coverage still falls short of the GPA parties, which cover all construction services, with the exception of the exclusion of dredging by the US and Canada.

Within these constraints, China's coverage is generally commensurate with that of the GPA parties. However, some of its proposed exceptions still serve as obstacles to its accession.

Problematic Exceptions

The first of China's problematic exceptions is its reservation of the right to deviate from the principle of national treatment when a specific procurement may "impair important national policy objectives." Such an open-ended exclusion would render China's coverage unpredictable and subjective. Second, China wants to be able to require the incorporation of domestic content, offsets, or transfer of technology in any procurement. Such a reservation would be contrary to the GPA's prohibition of offsets, except as a transitional measure.

Third, China has qualified its sub-central coverage with an exclusion of procurement of construction services "using special funds of the central government." The scope of this restriction is unclear, but it could significantly undermine sub-central coverage if it applies to most or all construction undertaken in the provinces.

Proposed Transitional Measures

China's offer proposes three types of transitional measures: ❶ higher thresholds for all entities for two years after it implements the GPA, ❷ phased-in coverage of two-thirds (10) of its covered provinces three years after the GPA enters into force for China, and ❸ a three-year delay in implementing GPA obligations after its accession.

To facilitate accession by developing countries, the GPA permits the use of transitional measures, with the approval of the parties. Such measures include price preferences, offsets, the phased-in addition of specific entities or sectors, and higher temporary thresholds. The GPA also allows for deferred implementation of specific provisions. But it does not allow for an acceding country to delay its entire implementation of the agreement after its accession.

Overview of Status of China's GPA Accession

China indicated that its 2014 offer included all of the substantive concessions that it was authorized to make at that time. Any further expansion of coverage would depend on future reforms, such as those underway for SOEs and the military. But the timetable for such reforms is not known.

在次中央政府实体采购货物和服务方面，中国将采用与美国和加拿大相同的门槛价（35.5 万特别提款权），在两年过渡期内门槛价为 50 万特别提款权。在国有企业及其他实体采购货物和服务方面，中国计划采用绝大多数参加方（包括美国次中央实体）都采用的门槛价，即 40 万特别提款权，且在两年过渡期内该门槛价为 60 万特别提款权。次中央实体及其他实体采购工程服务时，中国将采用 2500 万特别提款权的两年过渡期门槛价，过渡期过后采用的门槛价为日本和韩国所适用的 1500 万特别提款权，而不是绝大多数参加方所使用的 500 万特别提款权。

中央和次中央政府实体的范围

中国将中央政府实体从初步出价清单中的 50 个增加至 2014 年出价清单中的 63 个。上述覆盖范围看起来与 GPA 参加方的相当，但却存在一个显著的例外情形。中国的采购实体并不包括国防部和国防相关实体，而在《政府采购协定》参加方中只有以色列将国防实体排除在外。

在次中央实体范围方面，中国将其 22 个省份中的 15 个省加上全部 4 个直辖市（北京、重庆、上海和天津）纳入采购实体名单。上述范围与具体列明次中央实体的《政府采购协定》参加方，如美国的覆盖水平大致相当，但与欧盟等更广泛地规定次中央实体类别的参与方相比尚有差距。

国有企业和其他实体的范围

在国有企业和其他实体的覆盖范围方面，中国在其 2014 年的出价清单中列出了 22 家实体，其中只有 3 家是国有企业：中国农业银行、中国中央国债登记结算有限责任公司和中国邮政集团（仅限采购邮政普遍服务）。其他国有政策性银行则未予涉及。

服务业的范围

中国与除美国、新西兰和乌克兰之外的所有《政府采购协定》参加方一样，以正面清单的形式列明采购服务的范围（仅适用列明的服务类别）。美国、新西兰和乌克兰则采取负面清单形式，所有未列入负面清单的服务都属于采购服务范围。相比之下，中国的采购服务范围没有美国和新西兰的全面，与其他参加方也缺乏可比性，因为其他参加方规定的采购服务范围涉及面更广、分类更细。中国还沿用其他参加方的做法，规定采购服务的范围还需遵守中国在 WTO《服务贸易总协定》谈判中规定的限制和条件。

在工程服务方面，中国已逐步扩大采购范围，在 2014

年的出价清单中新增七个子行业。但扩大后的工程服务采购范围依然达不到《政府采购协定》参加方的覆盖水平：除美国和加拿大将疏浚业排除在采购范围之外，其他参加方的采购范围均覆盖所有的工程服务。

在这些限制条件下，中国的采购覆盖范围与《政府采购协定》参加方基本相当，但出价清单中规定的例外情形依然是中国加入《政府采购协定》的阻碍。

问题众多的例外规定

中国的出价清单中存在以下三个问题。首先，例外规定对于“有可能损害国家重要政策目标”的特殊采购保留不执行国民待遇的权利。这种开放式的排除性规定会导致中国政府采购的范围变得不可预测且相当主观。其次，中国希望能够对政府采购项目的本国比例、补偿交易或者技术转移提出要求。这种保留规定与《政府采购协定》所执行的“除过渡性措施外，禁止采用补偿交易”的规定背道而驰。

再次，中国已经提出其次中央实体采购项目不包括采购“使用中央政府专项资金”的工程服务。上述排除规定虽然并不明确，但如果适用于大部分或全部省级工程，则会严重缩小次中央实体的采购项目范围。

提议的过渡性措施

中国在出价清单中提出了三种过渡性措施：① 在履行《政府采购协定》之后的 2 年内，对所有实体实行较高的门槛价；② 中国履行《政府采购协定》之后的 3 年内，分阶段、逐步地在清单列明的省份中三分之二（10 个）的省份推进适用协议；③ 中国在加入《政府采购协定》3 年后开始履行协议。

为了方便发展中国家加入，《政府采购协定》允许使用过渡性措施，但须经过参加方同意。上述措施包括价格优惠、补偿交易和特定实体或行业分阶段、逐步适用协议，以及暂时提高门槛价等。《政府采购协定》还允许延迟执行特定条款，但并不允许申请加入国在加入协议后推迟履行整个协议。

中国加入《政府采购协定》现状综述

中国表示 2014 年出价清单已列明当时所能作出的全部实质性减让，进一步扩大采购范围有待相关改革的继续深入，如正在进行的国企改革和军队改革，但上述改革时间表尚不明确。

In its 2016 Annual Report, the WTO Committee on Government Procurement noted that while China had emphasized “the challenges it faces to further improve its offer,” on June 22, 2016, it had “foreshadowed that additional entities could be included in its next offer.” However, it did not specify the timing of a new offer.

With its 2014 offer, China has moved closer to the coverage of the GPA parties. Its permanent thresholds are the same as those used by two or more parties. Its central government entity coverage is generally in line with that of the GPA parties, with the exception of its exclusion of defense entities. China’s coverage of sub-central government entities and other entities is generally comparable to the coverage of the GPA parties that base their coverage on a list of covered entities. China’s services offer follows most parties in its use of a positive list and appears to offer generally comparable coverage. On construction services, however, China’s offer falls short of the comprehensive coverage of the parties.

With the removal of its proposed transitional measures and exclusions and certain improvements, as discussed in the following section, China could be in a position to conclude its accession to the GPA in 2017.

Fifteen years have elapsed since China committed to join the GPA. China’s GPA accession negotiations are now entering their tenth year. It is time that they were brought to a close. For China, its accession would fulfill a WTO commitment and provide it with access to the procurement of the GPA parties, as well as an opportunity to participate in the development of international procurement standards and practices. For US firms, China’s accession would mean that they would have opportunities to participate in China’s government procurement on a transparent, predictable, and non-discriminatory basis.

Proceeding from the Current Stalemate

China’s most recent offer has pushed it within striking distance of concluding its accession negotiations. If China were to focus on closing the remaining gaps and improving its existing offer in the key areas identified below, there may be a basis for its accession to the GPA and a way forward from the current stalemate.

Additional Provinces

China’s coverage of 15 of its 22 provinces and all four provincial-level municipalities (Beijing, Chongqing, Shanghai and Tianjin) is generally comparable to that of GPA parties, such as the US. However, its coverage falls short when compared to parties like the EU, which provides more comprehensive sub-central coverage. As a result, China should at least ensure that its list includes all of the most important provinces. For example, Sichuan is a large, economically significant province that is currently missing from China’s offer. In

addition, China should make an effort to include additional less-developed provinces where significant government investment and infrastructure projects are currently taking place, such as Qinghai and Gansu.

Additional Services and Construction Services Coverage

If China insists on basing its services and construction services coverage on a positive list, we suggest that China engage in dialogue with US industries through AmCham China in an effort to ensure meaningful coverage and achieve support from the US. Services that China should consider covering that are of importance to US industries include the following:

- All financial services, including insurance, banking, and e-payment services ;
- All construction, engineering, equipment installation, and design services and construction-related consulting services;
- Express delivery services;
- Healthcare services;
- All information and communications technology services;
- Media and entertainment services;
- Real estate services;
- Retail and e-commerce services; and
- Accounting, auditing, and bookkeeping services and services related to management consulting.

Eliminating Broad Exceptions

AmCham China also urges China to eliminate the exception that would reserve China’s right to deviate from national treatment principles when a specific procurement may “impair important national policy objectives.” Such a broad and open-ended exception would render China’s entire offer and coverage unpredictable and subjective. Moreover, China should eliminate the exception that would enable it to require the incorporation of domestic content, offsets, or transfer of technology in any procurement. Such a reservation would be contrary to the GPA’s prohibition of offsets, except as a transitional measure.

Eliminating Proposed Transitional Measures

As noted above, China has proposed three types of transitional measures: ❶ higher thresholds for all entities for two years after it implements the GPA, ❷ phased-in coverage of two-thirds (10) of its covered provinces three years after the GPA enters into force for China, and ❸ a three-year delay in implementing obligations after its accession. AmCham China urges China to eliminate these proposed transitional measures, which would delay China’s overall implementation of the agreement for many years after its accession.

在2016年报中，世界贸易组织政府采购委员会指出，尽管中国在2016年6月22日强调了“其进一步改善出价清单所面临的多项挑战”，但其“暗示将在下一次出价清单中加入更多实体”。然而，中国并未说明提交新出价清单的具体时间。

在2014年的出价清单中，中国的采购范围与《政府采购协定》参加方进一步趋同。该清单中的永久性门槛价与两个或多个参加方一致。中央政府实体范围也与《政府采购协定》参加方基本相当，但排除国防实体。中国所界定的次中央政府实体和其他实体与同样列明采购实体的《政府采购协定》参加方基本相当。中国给出的服务采购项目与绝大部分采用正面清单的参加方保持一致，覆盖范围也基本相当。但在工程服务方面，中国的清单内容却远不及协议参加方那样广泛全面。

如果中国能够取消出价清单中有关过渡性措施和例外情形等内容，并就下文所讨论的内容加以改进，中国有望在2017年完成加入《政府采购协定》的工作。

15年前中国承诺加入《政府采购协定》，10年前中国启动加入《政府采购协定》谈判，如今也到了瓜熟蒂落的时刻。对中国而言，加入《政府采购协定》既是履行一项WTO的承诺，又是进入各参加方政府采购市场的机遇，还是参与国际采购标准和实践的机会。对美国企业而言，中国加入《政府采购协定》意味着它们将有机会在透明、可预期且非歧视的基础上参与中国政府采购市场。

打破当前僵局

中国提交的最新版出价清单极大地提高了中国完成加入谈判的可能性。如果中国能够着重缩小下文所述的少数关键领域内仍然存在的差距，改进现有出价清单，或可为其加入《政府采购协定》奠定基础，打破当前僵局，推进加入协议的进程。

增加省份

中国出价清单中次中央实体包括22个省份中的15个，外加4个直辖市（北京、重庆、上海和天津），范围与《政府采购协定》参加方如美国基本相当，然而与欧盟等更为广泛地划定次中央实体范围的参与方相比，还存在差距。因此，中国应当至少确保次中央实体名单中包括中国所有最重要的省份。例如，面积广大、经济地位高的四川省目前就不在清单之列。另外，中国应当尽量将大规模开展政

府投资和工程建设的部分欠发达省份，如青海省和甘肃省，也纳入政府采购次中央实体名单。

扩大服务和工程服务采购项目范围

如果中国坚持采用正面清单限定政府采购服务和工程服务项目的范围，我们恳请中国政府通过商会与美国相关企业开展对话，从而合理地划定上述范围，取得美方的支持。商会建议中国应当考虑纳入清单的且对美国企业较为重要的服务行业如下：

- 全部金融服务业，包括保险业、银行业和电子支付服务业；
- 全部工程、机械、设备安装、设计服务和工程相关的咨询服务；
- 快递服务业；
- 医疗服务业；
- 全部信息通信技术服务业；
- 传媒和娱乐服务业；
- 房地产业务；
- 零售和电子商务服务业；
- 会计、审计和记账服务业以及管理咨询相关服务业。

取消宽泛的例外情形规定

商会还促请中国取消对于“有可能损害国家重要政策目标”的特殊采购，保留不执行国民待遇的权利这一例外情形规定。这种宽泛且开放式的例外情形规定可能导致中国的整个报价清单和采购项目范围都变得主观且不可预测。另外，商会建议取消“中国有权对政府采购项目的本国比例、补偿交易或技术转移提出要求”这一例外情形规定，因为这种保留措施违背了《政府采购协定》“对非过渡性措施不得采用补偿交易”的规定。

取消过渡性措施

如前所述，中国的出价清单中提出三种过渡性措施：

- ① 在履行《政府采购协定》之后的2年内，对所有实体实行较高的门槛价；
- ② 中国履行《政府采购协定》之后的3年内，分阶段、逐步地在清单所列省份中三分之二（10个）的省份推进适用协议；
- ③ 中国在加入《政府采购协定》3年后开始履行协议。商会促请中国取消上述过渡性措施提案，因为上述措施会导致中国在加入《政府采购协定》数

Given China's economic stature, it would be difficult to justify China's use of transitional measures.

Clarifying Coverage of SOEs

While China added a few SOEs to its list of covered entities in its most recent offer, AmCham China urges China to include major 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 encourage the Chinese government to clarify its position on SOEs by either ❶ issuing an unambiguous directive confirming that SOE purchases are non-government procurements that are based solely on commercial considerations, in line with China's commitments regarding the commercial independence of SOEs in its Working Party Report during its accession to the WTO; or ❷ expanding GPA coverage to include additional major SOEs that procure for governmental purposes.

China's Domestic Procurement Regime

Delinking Government Procurement from Indigenous Innovation Requirements

On November 28, 2016, the General Office of the State Council issued the "Notice on Further Delinking Government Procurement Preferences from Innovation Policies" (*Guobanhuan* [2016] No. 92) to further implement its 2011 Notice No. 42. The 2016 notice requires all central ministries and provincial governments to examine existing indigenous innovation policies and government procurement measures, and publicize a catalogue specifying invalid documents that violate the delinking requirements. In addition, the State Council reaffirmed that local regulations need to be in accordance with China's international commitments, and legislative procedures must be adopted if any conflicts exist.

AmCham China applauds this continued commitment to delink government procurement from indigenous innovation requirements. These developments reflect China's renewed attention to full implementation of the 2011 notice and the government's will to practically implement its previous commitment. On December 19, 2016, the Ministry of Environmental Protection (MEP) publicized an announcement stating that after an internal examination, the MEP has found that it does not have any indigenous innovation policies linked with preferential government procurement measures. AmCham China looks forward to seeing more statements of this kind at the national and local levels.

Government Procurement Evaluation Expert Selection

On November 18, 2016, the Ministry of Finance (MOF) released the "Administrative Measure on Evaluation Experts of Government Procurement," effective January 1, 2017. This

measure aims to regulate the selection of evaluation experts via a national government procurement credit evaluation system and enhance their supervision and management by specifying punitive measures for certain illicit behaviors. The new measure will ensure the impartiality and independence of evaluation experts and help to build a more transparent government procurement market in China.

Definition of "Domestic Product" in Government Procurement Measures

As mentioned in previous editions of the *White Paper*, the "Administrative Measure for the Government Procurement of Domestic Products" has been pending for almost six years after being issued for public comment in 2010, and thus there is still no clear definition of "domestic product." AmCham China encourages the Chinese government to finalize this measure soon, and looks forward to submitting comments before its final promulgation to ensure that goods and services provided by all legal entities in China will be treated equally during procurement processes, regardless of ownership.

Recommendations

For the Chinese Government:

- **Focus on addressing the remaining gaps in China's fifth revised GPA offer as identified in this chapter and accelerate negotiations toward accession to the GPA in 2017. [MOFCOM, MOF, SASAC]**
- Finalize the "Administrative Measure for the Government Procurement of Domestic Products" soon and clarify the definition of "domestic product" in order to ensure that goods and services provided by all legal entities in China will be treated equally during procurement processes regardless of ownership.
- Ensure that nationality-based conditions and restrictions on government procurement are not imposed at the national or local levels.

年后才开始全面执行协议。考虑到中国目前的经济形势，中国采取上述过渡性措施的理由很难成立。

明确国有企业的范围

尽管中国在最新修改报价清单的采购实体中增列了几家国有企业，商会还是促请中国政府将出于政府目的而定期进行采购（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）的大型国有企业纳入实体清单。我们再次建议中国政府通过以下方式明确自己的立场：① 颁布明确的行政条例，规定国有企业采购仅考虑商业因素，而不属于政府采购，且该条例符合中国在加入世界贸易组织工作方报告中，有关国有企业商业独立性的承诺；或② 扩大政府采购实体范围，将出于政府目的进行采购的大型国有企业纳入中国的下一份出价清单中。

中国国内采购体制

政府采购与自主创新要求不挂钩

2016年11月28日，为了进一步落实国办发明电[2011] 41号，国务院办公厅签发了《国务院办公厅关于进一步开展创新政策与提供政府采购优惠挂钩相关文件清理工作的通知》（国办函[2016] 92号）。该通知要求所有中央部委和省级人民政府对现行自主创新政策和政府采购措施进行核查，并公布了一份因违反不挂钩要求而予以废止的文件目录。另外，国务院再次重申，地方法规的规定应与中国政府所作出的国际承诺相一致，如有任何冲突，应采取相应的立法程序进行调整。

商会赞赏中国政府继续履行其政府采购与自主创新要求不挂钩的承诺。上述发展成果表明中国对于全面实施2011年的《通知》所给予的高度重视，以及中国政府切实践行其先前承诺的意愿。2016年12月19日，环保部发表声明，表示经过内部核查，该部不存在自主创新政策与政府采购优惠挂钩的情况。商会期待更多国家部委和地方政府作出类似声明。

政府采购评审专家选择

2016年11月18日，财政部发布了《政府采购评审专家管理办法》（于2017年1月1日正式生效）。该管理办法旨在通过国家政府采购信用评价系统对评审专家的选择进行调整，并通过明确对特定违法行为的惩罚措施，增强

对于评审专家的监督和管理。新管理办法有利于保证评审专家的公正性和独立性，并有助于在中国构建更加透明的政府采购市场。

《政府采购实施条例》中“本国产品”的定义

如往年《白皮书》中所述，自2010年中国公布《政府采购本国产品管理办法》公开征求意见已过了六年的时间，但目前仍处于待定状态。因此，所谓“本国产品”的定义并不明确。商会建议中国政府尽快定稿该管理办法，并希望正式颁布上述管理办法前，能够公开征求意见，确保在华经营的所有法律实体，无论所有权结构如何，都能在政府采购程序中得到公平对待。

建议

对中国政府：

- 重点缩小本章所讨论的中国第五份《政府采购协定》出价清单中仍然存在的差距，加快加入协议的谈判进程，力争于2017年加入《政府采购协定》。[商务部、财政部、国资委]
- 尽快定稿《政府采购本国产品管理办法》并明确“本国产品”的定义，确保在华经营的所有法律实体，无论所有权结构如何，都能在政府采购程序中得到公平对待。
- 确保不对全国或地方层面的政府采购活动设定国籍条件和施加限制。

High-Tech Trade Promotion and Export Controls

Introduction

China is the largest exporter of goods to the US and the third largest export destination for the US behind only Canada and Mexico. Bilateral trade in goods between the US and China grew from US \$147 billion (RMB 910 billion) in 2002 to US \$579 billion (RMB 3.84 trillion) in 2016. 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 potential future growth in bilateral high-tech trade, we hope that both countries will work to increase cooperation on export controls to further promote such trade.

Specifically, we believe that working cooperatively to address the following export control issues will have a positive impact on high-tech trade cooperation:

- Continuing to address misperceptions by the Chinese government and among Chinese industry representatives about the restrictions imposed by US export controls and their impact on Chinese companies' ability to purchase US-origin products.
- Reviewing US export control policies and controls in light of foreign and indigenous availability in China, as controlling items readily available in China can result in:
 - ◆ Decreased national security benefits for the US when the same items can be obtained without license domestically or through a license from another country not subject to the same restrictions the US would impose, and
 - ◆ Loss of sales by US firms to foreign competitors, negatively affecting the US defense industrial base.
- Encouraging governments to promote and work with Chinese entities on the US Bureau of Industry and Security's Entity List that have demonstrated a focus on a culture of compliance.
- Revising Chinese export control lists to align more closely with the multilateral export control regime lists (i.e., the Missile Technology Control Regime, Nuclear Suppliers Group, Australia Group, and Wassenaar Arrangement), both in structure and in language, and adding a list of items equivalent to the list covered by the Wassenaar Arrangement.

- Promoting the growth of a compliance culture among Chinese businesses to decrease diversion concerns and in turn increase the ability of Chinese firms to acquire certain US export-controlled items.

To assist in addressing these issues, AmCham China and AmCham Shanghai (hereinafter referred to collectively as "AmCham") maintain a joint forum, the Export Compliance Working Group (ECWG), dedicated to facilitating civilian bilateral high-tech trade by promoting industry-government cooperation on export controls, increasing understanding and education on US-China export control issues, and emphasizing the importance and benefits of transparency and compliance on export controls. This chapter outlines some of the export control issues the ECWG urges the US and Chinese governments to focus on in the near term.

Ongoing Regulatory Issues

US Export Controls

Education and Training

Export control misunderstandings continue to 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 misunderstandings and increasing US-China high-tech trade. Education and training can help to focus government-to-government discussion on the primary issues, such as US license processing times and criteria in relation to other multilateral regime countries. Many companies operate on the incorrect assumption that the US has more license requirements for list-based items than other multilateral regime countries, when in fact the US requires fewer licenses than other multilateral regime members due to license exceptions. We welcome the interest that many domestic Chinese companies have expressed in learning more about internal control processes to enhance their own compliance.

高科技贸易促进和出口管制

引言

中国是对美国最大的商品出口国，也是仅次于加拿大和墨西哥的第三大出口目的地。中美两国双边货物贸易额已从2002年的1470亿美元（9100亿人民币）跃升至2016年的5790亿美元（3.84万亿人民币）。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。鉴于中美两国都期望从未来的高科技双边贸易增长中受益，中国美国商会希望两国在出口管制领域加强合作，进一步促进此类贸易的发展。

具体来说，中国美国商会认为合作解决以下出口管制问题将对高科技贸易合作产生积极影响：

- 中国政府及业内人士对美国出口管制的限制措施及其对中国企业购买美国原产地产品可能性的影响存在误解，应继续予以解决。
- 根据外国（第三国）及中国本土是否已有类似产品的情况，审核美国出口管制政策及管制措施，因为中国现有的管制项目可能导致：
 - ◆ 如果可以从本土不经过许可证或通过不受美国管制的第三国的许可证获得同样产品，美国的国家安全利益将受到损害。
 - ◆ 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。
- 鼓励各国政府与美国产业与安全局实体名单上的，且已开始关注合规文化的中国实体进行推广与合作。
- 修订中国出口管制清单，使其在结构和语言方面与多边出口管制体系（即导弹及其技术控制制度、核供应国集团、澳大利亚集团和瓦森纳安排）更紧密一致，并增加一个与瓦森纳安排所涵盖清单相同的产品清单。
- 促进中国企业合规文化的发展，减少挪用的担忧，从而提高中国企业获取美国出口管制产品的可能性。

为了协助解决这些问题，中国美国商会和上海美国商会（以下统称“美国商会”）设立了联合论坛——出口合规工作组（ECWG），致力于通过促进行业和政府出口管制方面的合作来推动双边民用高科技贸易的发展，加强对中美两国出口管制问题的理解和教育，并强调出口管制透明度和合规的重要性及益处。本章概述了出口合规工作组促请中美两国政府在短期内关注的一些出口管制问题。

现存监管问题

美国出口管制

教育和培训

美国出口管制导致中美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，从而促进中美两国高科技贸易。教育和培训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以及与其他多边国家体系相关的标准。许多企业错误地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，而事实上，由于许可例外规定，美国比其他多边国家体系的许可证要求更少。许多中国本土企业都表示有兴趣学习更多内控流程知识来提高其自身合规水平，我们对此表示欢迎。

为消除这些误解，美国商会已推动开展针对美国出口商、中国进口商以及政府官员的培训和交流，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，由于受制于中美两国政府的预算限制而无法定期进行交流。鉴于该培训项目有助于消除对出口管制的疑虑、扩大贸易规模，商会促请中美两国政府把握机遇支持和资助此类项目，并在现有两国政府活动中增加此类培训交流活动。

To address these misunderstandings, AmCham has 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 constraints, however, pose a challenge to maintaining a consistent rhythm for these exchanges. AmCham urges both the US and Chinese governments to grasp opportunities to support and fund such programs, as they are necessary to dispel export control misunderstandings and expand trade. In particular, we suggest adding such educational activities to existing bilateral government engagements.

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 urges the US government to continuously review US export control policies and controls in light of indigenous availability in China and work to remove those items that are already produced in China from the multilateral regime lists (except for the Nuclear Suppliers Group, of which China is a member).

Regarding items that 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 necessarily 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.

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, urges the US government to review its processing times and approval criteria for issuing dual-use export licenses and to bring these more in line with the practices of other multilateral regime members.

Entity List

The US Bureau of Industry and Security has greatly increased the number of Chinese entities on the Entity List over the past few years. AmCham understands that the US govern-

ment adds entities to the Entity List only after exhaustive analysis and only when other efforts to resolve the concern have not been successful. However, AmCham hopes to see additional effort by both the US and Chinese governments to promote education to assist Chinese entities that demonstrate a commitment to compliance in their efforts towards removal from the Entity List. We urge both governments to increase their efforts to make channels for outreach available to listed Chinese entities that submit applications for removal from the Entity List to assist such entities to understand the requirements for removal.

Chinese Export Controls

Chinese Regulatory Reform

AmCham is aware that China is in the process of rewriting its export control regulations and hopes that this includes revising the Chinese export control lists to be more in line with the multilateral lists, both in structure and in language. Such alignment would make it much easier for both Chinese and foreign companies to understand and comply with Chinese export controls, as they would be in line with what companies see globally. In addition, it would make it easier for other countries to see in which ways China's export control system is equivalent to those in place in other countries, including multilateral regime members.

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 and countries of proliferation and terrorism concern). AmCham urges Chinese officials to expand their outreach to the US government and other multilateral regime members to further explain the detailed procedures of its export control system, especially as it relates to enforcement.

AmCham also urges the Chinese government to 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 thoroughly 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, which results in constraints on high-tech commercial trade.

In addition, once the Chinese government completes drafting its revised export control regulations, AmCham requests that the draft regulations be released for a public comment period. The government does this with many of its regulations, and AmCham believes that receipt of comments from industry stakeholders would improve the content and enhance the effectiveness of the finalized regulations.

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。这种限制既不会为美国提供安全保障，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作用。因此美国商会促请美国政府根据中国本土产品不断评估美国出口管制政策和管制措施，并努力从多边体系清单（中国作为成员国之一的核供应国集团除外）中去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，相比中国从另一个国家进口同等产品，从美国进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，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，美国商会促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通过标准，使该流程更加符合其他多边体系成员的做法。

实体名单

美国产业与安全局在过去几年大幅增加实体名单上中国实体的数量。美国商会理解美国政府只有在详尽分析后并通过其他努力不能解决问题时才将这些实体加入实体名单。然而，美国商会希望美中两国政府进一步促进教育，从而协助承诺合规的中国实体努力从实体名单中清除。我们促请美中两国政府加大力度，为申请从实体名单中清除的中国上市实体提供可用的推广渠道，以帮助它们了解清除要求。

中国出口管制

中国监管改革

美国商会了解到中国正在修改出口管制条例，并希望对中国出口管制清单进行修改，使其在结构和语言方面更加符合多边清单。这种一致性可使中国企业和外国企业更容易理解并遵守中国出口管制规定，因为这与公司在全球

所见的规定相一致。此外，它可以让其他国家更容易理解，中国出口管制体系在哪些方面与包括多边体系成员在内的其他国家相同。

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）。美国商会促请中国官员主动与美国政府及其他多边体系成员沟通，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。

美国商会还促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系对中美关系至关重要，这会有助于美国企业更全面、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区分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。

此外，一旦中国完成出口管制条例草案的修订，美国商会敦请公布条例草案以便征求公众意见。中国对许多条例采取这一做法，美国商会相信接受行业利益相关者的意见将改善条例内容，提高最终条例的有效性。

加入多边体系

由于中国尚未加入具有影响力的多边体系，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，这对美中两国的高科技贸易造成了负面影响。成为其正式会员可使国际社会对中国及其最大的贸易伙伴一视同仁，从而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，同时也在已成为会员的多边体系中发挥积极的领导作用。

建议

对美国政府：

- 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，从而推进美中高科技贸易的倡议。
- 为实体名单上的、已开始关注合规文化的中国实体提供教育机会和推广渠道。

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 those multilateral regimes of which it is already a member.

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.**
- Provide education opportunities and outreach channels for Chinese entities on the Entity List that have demonstrated a focus on a culture of compliance.
- Take into account the availability of items in China from both domestic and foreign sources as the US government moves into phase three of export control reform.

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.**
- Revise Chinese export control lists to be more closely aligned with the multilateral lists, both in structure and in language, and add a list of items equivalent to the list covered by the Wassenaar Arrangement.
- Improve the transparency of China's export control system and conduct more outreach to and training for US industry with a presence in China on China's export controls.
- Work with Chinese entities on the Entity List that have demonstrated a focus on a culture of compliance to meet fully the legal requirements for removal from the list.
- Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from relevant policy makers and agency officials.
- Apply to join additional multilateral export control regimes.

- 美国政府在进出口管制改革第三阶段时，应考虑到中国是否可以从国内和国外获得相关产品。

对中国政府：

- 加强与中国企业的沟通，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。
- 修订中国出口管制清单，使其在结构和语言方面与多边清单更紧密一致，并增加一个与瓦森纳安排所涵盖清单相同的产品清单。
- 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。
- 与实体清单上的中国实体合作，这些实体已经开始关注合规文化，以充分满足将其从名单中清除的法律要求。
- 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。
- 申请加入其他多边出口管制体系。

Human Resources

Introduction

As in previous years, human resources issues remained a top business challenge for AmCham China members in 2016. According to the AmCham China 2017 *Business Climate Survey*, rising labor costs once again pose some of the greatest challenges to our members' China operations, with an increasing percentage of respondents identifying this as a top concern compared to the previous year.

While many human resources challenges remain similar to those we have seen in previous years, we are also seeing additional challenges like changes to the Disabled Persons' Employment Security Fund and other legislative initiatives which create additional pressure on labor costs.

Looking ahead, multinational corporations (MNCs) will have to adjust and transform their local operations in order to continue top and bottom line growth in an increasingly competitive market in China. The trends of moving operations inland to take advantage of somewhat lower costs, boosting productivity in higher-cost coastal areas, and passing labor cost increases on to consumers continues. These trends raise additional challenges in managing human resources, and unclear laws and regulations and inconsistent enforcement further complicate matters.

Recent Developments

Disabled Persons' Employment Security Fund

On September 9, 2015, the Ministry of Finance, State Administration of Taxation, and China Disabled Persons' Federation jointly issued the "Measures on Levying, Use, and Management of Disabled Persons' Employment Security Fund" (the Measures) in the hope of increasing disabled persons employment. The most noticeable change is switching from using the "average social annual salary in the last year" to the "average enterprise annual salary in the last year" in the formula to calculate the amount that employers contribute to the Disabled Persons' Employment Security Fund (disability fund).

payable amount = (number of total staff of the last year x local statutory rate – number of hired disabled persons) x average enterprise annual salary in the last year

Companies in China are required to hire a sufficient number of disabled workers to meet the minimum threshold. Companies that fail to meet the threshold must make large payments into the disability fund, which acts as a *de facto* penalty.

This significant legislative change came into effect suddenly, without the required solicitation of public comments. It imposes a drastically increased financial burden on enterprises, and the lack of transparency in the drafting process increased the stress on company budgets which were unable to anticipate the policy change. In particular, because the average salaries of foreign-invested companies, many of which are knowledge-intensive and innovation-driven, tend to be considerably higher than the local average, the Measures place a disproportionate financial burden on our member companies.

AmCham China members acknowledge and appreciate the good intentions and strong determination demonstrated by the government to support the employment of disabled individuals. AmCham China member companies are committed to hiring qualified disabled individuals. We also call for the government to follow the same threshold in civil servant recruitment, similar to Japan's legislation which sets an even higher disabled employment threshold for government institutions than that for enterprises. Such policies would motivate all of society to drive the change. Only with joint efforts from all parties can meaningful change be effected.

One challenge in efforts to recruit disabled talent is the scarcity of qualified disabled candidates. The reality is that such conditions are not likely to change overnight. Making enterprises pay into the disability fund does not achieve the fundamental goal of improving disabled persons' employment, but imposes huge financial burdens on the shoulders of enterprises. This increased burden has apparently led to some companies to falsify disabled employment records and engage in other foul play. We encourage measures to genuinely improve the employment situation of disabled persons instead of simply transferring the costs of social welfare to private enterprises.

人力资源

引言

与 上一年度一样，人力资源仍然是中国美国商会（商会）会员企业 2016 年面临的最为严峻的商业挑战之一。根据商会 2017 年度《营商环境调查报告》，劳动力成本上升再次成为会员企业在华运营面临的最严峻挑战之一，与上一年度相比，有更多的受访企业表示劳动力成本上升已经成为其首要挑战。

虽然有很多人力资源挑战仍然与我们之前看到的类似，但是新的挑战也在显现，例如，残疾人就业保障金的修改以及其他一些立法建议就进一步加大了劳动力成本面临的压力。

未来，跨国公司需要调整和转变在华经营模式，才能在竞争日益加剧的中国市场上继续保持营收和利润增长。诸如迁移到成本较低的内地地区，提高成本较高的沿海地区的生产力以及将上涨的劳动力成本转嫁给消费者等趋势仍将继续。上述趋势给人力资源管理带来了新的挑战，而法律法规不清晰以及执行不一致使得事情变得更加复杂。

最新进展

残疾人就业保障金

2015 年 9 月 9 日，财政部、国家税务总局和中国残疾人联合会联合发布了《残疾人就业保障金征收使用管理办法》（“办法”），希望增加残疾人就业。最明显的变动就是，在计算用人单位向残疾人就业保障金（保障金）缴纳金额时，原来的“上年度本市职工年平均工资”改为“上年用人单位在职职工年平均工资”。

年缴纳额 = (上年用人单位在职职工人数 × 当地规定的安排残疾人就业比例 - 上年用人单位实际安排的残疾人就业人数) × 上年用人单位在职职工年平均工资

办法要求在华企业安排一定比例的残疾人就业。没有满足残疾人就业比例的企业必须缴纳更多的保障金，实际上相当于一种处罚。

这一重要的法律变动在没有按要求向社会公开征求意见的情况下，就突然开始实施。这一法规不仅大大加重了企业的财务负担，还由于起草过程缺少透明度，企业无法预见政策变动，而使企业预算压力加大。特别是，很多外资企业都具有知识密集和创新驱动的特性，其平均工资通常比当地平均工资高很多，因此，该办法给我们的会员企业带来了更为沉重的财务压力。

商会会员企业认可并且赞赏中国政府支持残疾人就业的良好用意和坚定决心。商会会员企业致力于聘用合格的残疾人员。我们也呼吁政府公务员招录遵守相同的标准，就像日本，法律要求政府机构遵守比企业更高的残疾人就业标准。这样的政策将会鼓励全社会一起推动改变。只有各方一起努力，才会实现有意义的改变。

推动残疾人就业面临的一个挑战就是缺少合格的残疾人。事实上，这种状况的改变不是一蹴而就的。要求企业缴纳保障金无助于实现改善残疾人就业的根本目标，反而给企业施加了巨大的财务负担。由于负担加重，一些企业会伪造残疾人就业记录或者采取其他不正当的手段。我们鼓励采取措施切实改善残疾人就业状况，而不是简单地将社会福利成本转嫁给私营企业。

2017 年 3 月，保障金缴纳上限被设为社会平均工资的三倍，这将减少对雇用高价值人才企业的影响，对此我们表示欢迎。我们也建议中国政府探索更有创新性的方法，例如，允许企业使用保障金的资金支持慈善事业，用以向残疾人提供就业技能教育和培训。

延迟退休方案

鉴于中国人口老龄化的现实，加上人均寿命延长，2015 年，人力资源和社会保障部（人社部）开始审查现有的《中华人民共和国劳动保险条例》。该条例于 1951 年发

In March 2017, required contributions to the disability fund were capped at three times social average salary. We welcome this development, as it will limit the impact on companies employing high-value talent. We further suggest that the government explore more innovative approaches, such as allowing enterprises to use funds from the disability fund to support charitable initiatives that would help educate and equip disabled people with employable skills.

Prolonged Retirement Proposal

Given the realities of China's ageing population, coupled with increased longevity, the Ministry of Human Resources and Social Security (MOHRSS) began in 2015 to review the "Labor Insurance Regulations," which date back to 1951, and generally require men to retire at the age of 60 and women to retire at the age of 50 or 55. In the meantime, localities are implementing their own retirement plans. For example, in 2010, Shanghai released a retirement plan allowing a maximum five-year extension of the retirement age while employees remain enrolled in pension programs, subject to termination at the employer's discretion.

AmCham China encourages the government to release further guidance on extended retirement measures (e.g., providing employer flexibility to allow extended retirement at their discretion, developing an optimized channel to invest social insurance funds to ensure profitability, and providing employers with tax reductions or rebates to encourage creative means of investing in commercial insurance or developing long-term savings plans) in consultation with industry associations.

Judicial Interpretation on Labor Disputes

In March 2015, the Supreme People's Court released a draft version of its "Fifth Interpretation of Labor Disputes" (the Interpretation) for public comment. This version, containing 150 articles, is significantly more comprehensive than the previous four interpretations. Some clauses of note are highlighted below.

Employer's Late Submission of Evidence

If an employer fails to submit evidence during labor arbitration without a justifiable reason, it may be subject to unfavorable consequences. Even evidence submitted during litigation is subject to court acceptance. This clause leaves significant leeway for the court to decide whether a late submission is justified. A clear definition of what constitutes a justifiably late submission is needed.

Three Categories of Labor Dispatch Positions Excluded from the Scope of Labor Disputes

The court deemed that the definition of a position as "temporary," "auxiliary," or "supplementary" is beyond the scope of a labor dispute and courts will not rule on such claims.

We believe that rather than intervening in daily enterprise management, the court should focus on legal interpretations and applications in larger issues.

Clarification of Criteria to Identify Cases of "Fake Outsourcing"

According to the Interpretation, regarding cases of labor dispatch under the guise of outsourcing, the seller's scope of business is deemed irrelevant and it is the "buyer" who determines the work time and place and provides the labor materials. However, we note that there are multiple examples where, when outsourcing, the worker needs to physically be in the "buyer's" place of work, for example, for the provision of security and cleaning services. It is challenging to isolate such workers from the "buyer's" workplace. A more comprehensive matrix needs to be introduced to distinguish instances of labor being dispatched under the guise of outsourcing.

Support of Employers' Right to Adjust Employee Position and Workplace

The Interpretation supports the employer's right to adjust an employee's position and workplace for legitimate reasons and does not support an employee's claim to severance under such circumstances. We applaud this step as it is not unusual, after the cancellation of a position, for an employer's offer of a similar or the same position (e.g., pay, scope, responsibilities) to be rejected by the employee who then bargains for severance. This does not foster company productivity or employment policy stability.

Reinforcement of Employee Discretion to Set Permanent Contract Terms Following Conclusion of a Second Fixed-Term Contract

Shanghai uniquely grants employees an additional opportunity to forgo contract renewal following the expiration of a second fixed term. If this new rule becomes effective nationwide, Shanghai's approach will likely be subject to further review to ensure consistency with the Interpretation. A consistent nationwide approach on this issue is needed in order to minimize misunderstanding and the frequent need to clarify policy with local governments.

Introduction of a Flexible Solution to the Suspension of Contracts Under Special Circumstances

The Interpretation introduces useful examples under which a contract may be suspended (e.g., an employee being deprived of personal liberties due to a suspected illegal act, mutual agreement by the parties, or extraordinary circumstances beyond the control of the parties). This clarification is welcome and will grant employers greater flexibility to address particular circumstances (e.g., new hires who are on sick leave during their probation period and cannot be

布，要求男性60岁退休，女性50岁或55岁退休。与此同时，各地也正在实施地区性的退休方案。例如，上海在2010年公布了一份柔性退休方案，允许用人单位自行决定退休年龄。在此方案下，员工最长可推迟五年退休，并且可在延迟退休期间继续参加养老保险。

商会促请中国政府在征求各行业协会的意见后，发布进一步的延迟退休指导意见（例如，允许用人单位灵活决定延迟退休，为社保基金提供一个优化的能够确保盈利的投资渠道，通过减税和退税鼓励用人单位创造性地投资商业保险和开发长期储蓄计划）。

劳动争议司法解释征求意见稿

2015年3月，最高人民法院在网上发布了《劳动争议司法解释（五）》（《解释》）征求意见稿，共150条，与之前四版司法解释相比内容更为详实。下面将重点讨论其中一些值得关注的条款：

用人单位延迟提交证据

用人单位在仲裁过程中无正当理由未提交证据的，可能需要承担不利后果。即使是诉讼阶段提交的证据，人民法院也可以不予认定。这一规定使得法院在决定延迟提交证据是否有正当理由时有较大自由裁量权。因此，需要明确什么情形下延迟提交证据才算有正当理由。

三类劳务派遣岗位认定不在劳动争议受理范围内

人民法院认为与“临时性”、“辅助性”或者“替代性”岗位认定有关的争议不属于劳动争议，将不予受理。商会认为，法院应当将重点放在重大问题的司法解释和适用上，而不是在干预企业日常管理上。

明确“假外包”的认定标准

根据《解释》，对于真派遣假外包，“卖方”的经营范围与之无关，决定工作时间和地点以及提供劳动材料的是“买方”。但是，我们注意到，在有些情况下，例如，为了提供安全和保洁服务，外包劳动者需要亲身进入“买方”的工作场所。因此，很难将这些劳动者与“买方”的工作场所分离。这就需要制定一个更加全面的标准体系，用于确认以外包名义派遣的劳动者。

支持用人单位调整岗位和工作场所的权利

《解释》支持用人单位合法调整劳动者的岗位和工作场所，不支持劳动者据此提出离职补偿要求。商会对这一规定表示赞赏，因为某一岗位取消之后，劳动者通常拒绝用人单位提供的类似或相同的岗位（例如，类似或相同工资，工作范围或职责）并因此要求离职和获得补偿。这无助于企业提高生产率或者保持用工政策的稳定性。

强调劳动者连续订立二次固定期限劳动合同后，有权要求订立无固定期限劳动合同

上海是个特例，它允许用人单位在第二个固定期限劳动合同期满后有权选择不予续约。如果这一新规在全国范围内实施，上海就可能需要进一步审视自己的作法，确保与《解释》保持一致。这一问题需要有一个全国统一的解决方案，才能尽量减少误解，以免地方政府不时需要出面澄清政策。

灵活处理特殊情形下的劳动合同终止

《解释》列出了可以中止劳动合同的一些情形（例如，劳动者因为涉嫌违法犯罪被限制人身自由的，双方当事人协商一致的，或者双方无法控制的特殊情形）。这一规定可以让用人单位更加灵活地处理一些特殊情形（例如，新员工因为在试用期内请病假而不能接受充分评估的，员工因为接受有关部门的调查而无法履行职责的）。《解释》还支持用人单位可以不支付劳动报酬并停止缴纳社会保险费，并且劳动合同中止期间不计算为劳动者在用人单位的工作年限。

现存监管挑战及其他挑战

劳动力成本上涨

人力资源问题继续成为商会会员企业面临的主要挑战之一。根据2017年度《商务环境调查报告》，58%的受访企业表示，劳动力成本上升是其在华面临的首要挑战。在受调查的四大行业中，劳动力成本上涨都被列为首要挑战。

具体来说，会员企业面临的三大人力资源挑战分别是“薪资费用不断上涨”，“社会福利成本”和“难以裁退员工”。其中，和上一年度一样，“薪资费用不断上涨”仍然是最大的挑战。

adequately evaluated; employees who cannot perform their duties while being investigated by the authorities). It also provides support to employers with respect to non-payment of remuneration, ceasing social insurance contributions, and not deeming a suspension period as a valid service year.

Ongoing Regulatory and Other Challenges

Rising Labor Costs

Human resources issues continue to rank highly among the top challenges facing AmCham China members. According to the 2017 *Business Climate Survey*, 58 percent of respondents cited rising labor costs as a top challenge to their business in China. Rising labor costs was either the number one or

number two business challenge in each of the four types of industries surveyed.

More specifically, members' top three human resources challenges included "rising salary and wage expenses," "cost of social benefits," and "difficulty terminating employees." Among these, "rising salary and wage expenses," as in last year, remains the biggest challenge.

The continued economic slowdown will likely do little to relieve upward pressures on compensations. In 2016, actual merit increase for general industry in China was 6.7 percent. Most members expect labor costs to increase in 2017 according to the *Business Climate Survey*.

In addition to rising wage and salary expenses, regulatory

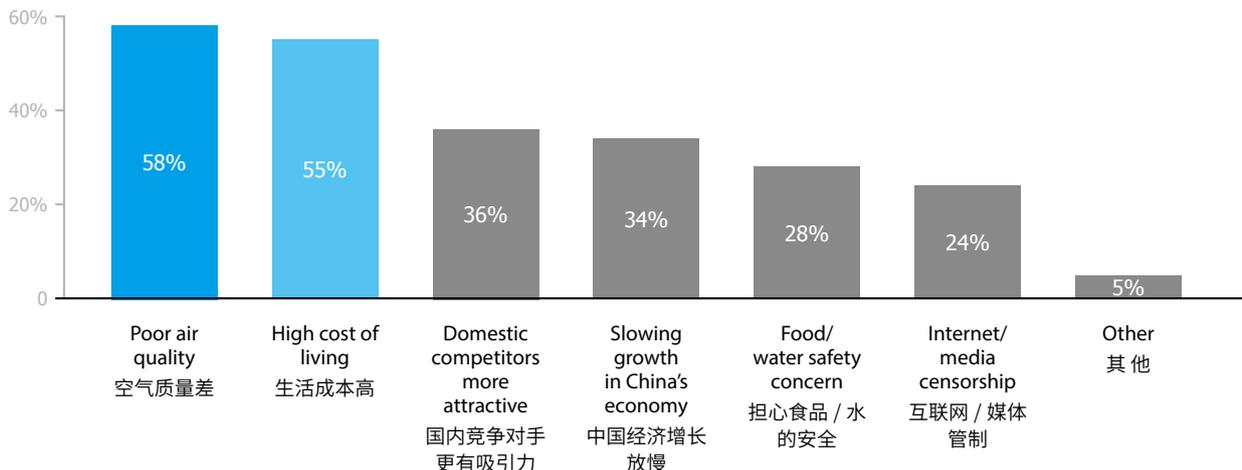
Top 2017 Business Challenges for Foreign Companies in China By Sector

2017 年不同行业在华外企的五大商业挑战

	Technology & Other R&D 技术和其他研发行业	Consumer 消费行业	Services 服务行业	Industrial & Resources 工业和资源行业
1	Inconsistent regulatory interpretation and unclear laws 法律法规执行不一致 / 不清楚 60%	Rising labor costs 劳动力成本增加 58%	Rising labor costs 劳动力成本增加 60%	Inconsistent regulatory interpretation and unclear laws 法律法规执行不一致 / 不清楚 63%
2	Rising labor costs 劳动力成本增加 60%	Inconsistent regulatory interpretation and unclear laws 法律法规执行不一致 / 不清楚 54%	Inconsistent regulatory interpretation and unclear laws 法律法规执行不一致 / 不清楚 59%	Rising labor costs 劳动力成本增加 55%
3	Increasing Chinese protectionism 中国保护主义不断升级 53%	Shortage of qualified management 缺少合格的管理人员 41%	Difficulty obtaining required licenses 取得相关许可证困难 38%	Industry overcapacity 行业产能过剩 46%
4	Difficulty obtaining required licenses 取得相关许可证困难 35%	Shortage of qualified employees 缺少合格的员工 34%	Difficulty terminating employees 难以裁退员工 38%	Increasing Chinese protectionism 中国保护主义不断升级 39%
5	Regulatory compliance risks 监管合规风险 31%	Increasing Chinese protectionism 中国保护主义不断升级 32%	Shortage of qualified management 缺少合格的管理人员 31%	RMB volatility 人民币汇率波动 38%

Significant Challenges to Recruiting and Retaining Talent in China

外企在中国聘用和留住人才的重要因素



中国经济增长继续放慢不太可能缓解薪酬上涨的压力。2016年，行业整体的实际绩效调薪为6.7%。根据《商务环境调查报告》，大多数会员企业预期劳动力成本在2017年将继续上涨。

除了薪资费用上涨，法规变动也加重了企业的成本负担。政府降低了企业社保缴纳，目的是为了减轻企业负担，帮助企业度过经济增长放慢期。但是，与前文提到的残疾人就业保障金变动造成的成本增加相比，这一政策的实际缓解效果非常有限。

另外，一些企业表示因为中国的生活质量问题而面临成本上升的压力。污染、交通和食品安全问题导致人们对事故和疾病存在担心，企业可能需要增加支出才能吸引合格人才来华工作。公众对企业施加越来越大的压力，要求它们加大投入保护员工的健康，详情请见下文。

污染可能造成的后果

2015年12月，北京发布首个空气污染“红色警报”。幼儿园和中小学停课、对交通实施限制，中国政府还鼓励企业考虑弹性工作制。根据2017年度《商务环境调查报告》，在企业聘用和留住人才面临的诸多挑战中，有58%的受访企业选择了空气质量差，这一问题成为最大的挑战。

北京和中国其他地方的空气污染对企业的劳动力供给和保留以及劳动生产率均造成了不利影响。用人单位在选

择办公地点、外派人员住房和公司车辆时，空气质量已经成为一个考虑因素，这就需要增加对这些地区的投入。

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政策方案。另外，考虑到存在的污染风险，为了吸引和留住员工，一些跨国公司还提供了额外的薪资补贴。

至于可能造成的法律后果，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，此条款可能会使其面临法律诉讼风险。中国政府尚未对用人单位为避免承担法律责任能够而且必须采取的补救措施做出规定。由于公众对空气污染的意识有了提高，人们的期望也发生了巨大变化，企业因此面临着压力，需要针对空气污染的不利影响制定适当的应对政策和方案。

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，为促进美中商业关系做出了积极贡献。2017年度《商务环境调查报告》显示，在70%的会员企业中，至少有四分之一的管理职位由中国籍本土员工担任。

changes have added to companies' labor cost burdens. The authorities reduced corporate social insurance contributions with the intention to ease burdens on companies and help them ride out the growth slowdown. However, the relief resulting from this change is minimal compared to the labor cost increases imposed by the changes to disability fund contribution requirements discussed earlier.

In addition, some companies also reported increasing cost pressures resulting from quality of life issues in China. Pollution, traffic, and food safety issues create concerns about accidents and illnesses, and companies may as a result need to spend more money to attract qualified talent to work in China. They also are facing increasing public pressure to invest more in protecting employee health, as further discussed below.

Potential Consequences of Pollution

In December 2015, Beijing issued its first ever "red alert" for pollution. Kindergarten, primary, and secondary school classes were suspended, traffic was restricted, and companies were encouraged by the government to consider flexible working arrangements. According to the 2017 *Business Climate Survey*, poor air quality ranked top among many factors that caused significant challenges for organizations to recruit and retain talent, with 58 percent of respondents selecting this as an issue.

Air pollution in Beijing and elsewhere in China negatively impacts companies' labor supply, workforce retention, and productivity. Air quality has become a consideration for employers when choosing office buildings, expatriate housing, and company cars, requiring increased investment in these areas.

Some companies have established policies and 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 to attract and retain employees, in light of the pollution risks.

In terms of potential legal implications, 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 can and must take to avoid liability. The increased public awareness of air pollution is dramatically changing people's expectations and companies are under pressure to have proper policies and protocols in place to deal with the negative impacts of air pollution.

Shortage of Qualified Talent

Chinese nationals constitute an important component of our member companies' human resources and contribute positively to the US-China commercial relationship. According to the 2017 *Business Climate Survey*, in 70 percent of our member companies, at least three-quarters of management positions are held by Chinese citizens.

Both multinational and domestic employers in China continue to confront a severe shortage of qualified employees and managers in general, though the situation varies by industry. According to the 2017 *Business Climate Survey*, "shortage of qualified management" ranks among the top five overall business challenges of member companies.

The Chinese government is developing plans to deepen education reforms and expand post-secondary enrollment to equip citizens with the skills necessary to work in China's rebalancing economy. The MOHRSS has enacted a program to train six million high school graduates with vocational skills and allocated approximately RMB 6 billion (US \$955 million) 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 US State Department's Education USA program, a large number of Chinese students have traveled to the US to attend university for undergraduate, graduate, and advanced degrees. The return of these educated individuals to China will add talent to the labor pool.

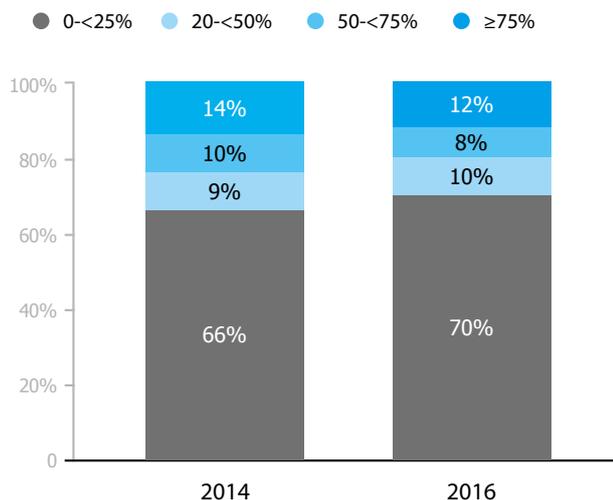
Recommendations

For the Chinese Government:

- **Explore more innovative approaches to disability fund contributions, such as allowing enterprises to use funds from the disability fund to support charitable initiatives that would help educate and equip disabled people with employable skills.**
- Conduct labor market analysis (e.g., regarding labor supplies and shortages, comparisons between industries) and provide guidance to enterprises. [MOHRSS]
- Consult with industry before issuing new laws and regulations and their interpretations, especially those adding to labor costs.
- Establish concrete guidelines for companies to mitigate liability stemming from the health issues caused by pollution.
- Increase employer flexibility to allow extended retirement, optimize social insurance fund investment, and encourage creative means of investing in commercial insurance or developing long-term savings plans.

Non-Native Mainland Chinese Top (Country) Management

中国区管理层的外籍人员所占比例



在华的跨国企业和内资企业仍然面临合格员工和管理人员严重短缺的现状，不过不同行业的情况不尽相同。根据2017年度《商务环境调查报告》，“缺少合格的管理人员”是会员企业面临的是五大商业挑战之一。

中国政府正在制定深化教育改革和扩大高职招生的计划，帮助国民获得中国经济再平衡所需要的技能。人社部已经出台了一项旨在培养600万名具有职业技能的高等学校毕业生计划，同时还拨款60亿人民币（约9.55亿美元）用于为外来务工人员提供职业培训。商会支持中国政府提升中高等院校以及职业教育和培训水平。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。这些毕业回国的学生将补充中国的人才储备。

建议

对中国政府：

- 探索更有创新性的方法，例如，允许企业使用保障金的资金支持慈善事业，用以向残疾人提供就业技能教育和培训。
- 开展劳动力市场分析（例如，劳动力供给和短缺，行业比较），为企业提供指导。[人社部]
- 在发布新的法律法规及解释之前征求行业的意见，特别是那些会增加劳动力成本的规定。
- 减少因污染造成劳动者健康问题企业所需承担的法律风险，并就此出台具体指引。
- 允许用人单位灵活决定延迟退休，优化社保基金投资，鼓励用人单位创造性地投资商业保险和开发长期储蓄计划。

Intellectual Property Rights

Introduction

AmCham China members continued to face intellectual property (IP) challenges in 2016, including with respect to trade secrets, patents, copyrights, rewards and remuneration for service inventions, and trademarks. Strong IP protection is key for foreign companies with investments in China, and improvements in this regard would help both US exports and US jobs. As many Chinese companies start to move up the value chain, issues such as the inability to patent, bad faith trademarks, ineffective courts, and overall weak enforcement are increasingly important for Chinese companies as well. Strong IP protection will be critical for fostering the type of innovation that will make Chinese companies globally competitive. Though IP challenges continue to receive considerable 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 and Recent Developments

Trade Secrets

Trade secrets remain one of the most vulnerable forms of IP in China, in part because Chinese government authorities jeopardize the value of trade secrets by demanding unnecessary disclosure of confidential information for product approvals. Compromising trade secrets reduces economic value, undermines trust, and threatens even long-standing business relationships. Over time, inadequate trade secrets protection hampers cross-border technology transfers, dampens investment in research and development (R&D), and hinders the development of an innovation-driven economy in China. 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 (SMEs).

Trade secrets protection currently depends on a patchwork of laws and regulations, including the Anti-Unfair Competition Law (AUCL) and the Criminal Law. Both laws no longer reflect contemporary commercial realities,

especially innovative methods of trade secrets misappropriation. A typical trade secrets 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 exists for criminal violations. Onerous burdens of proof and constrained powers of discovery pose significant obstacles to effective enforcement.

On February 25, 2016, the State Council Legislative Affairs Office (SCLAO) published draft revisions to the AUCL for public comment. One year later, on February 26, 2017, the Legislative Affairs Commission of the National People's Congress (NPC) published a follow-on version for public comment. Successive improvements to China's trade secrets regime in these drafts are welcome developments. For example, draft Articles 9 and 10 of the NPC version provide useful updates to the definition of a trade secret and the type of activities and operators that may constitute misappropriation. In addition, changes to the level of fines as contained in Article 24 of the NPC draft increase potential administrative fines significantly. Notwithstanding these and other improvements, we remain concerned with several areas where shortcomings remain unaddressed. For example, the AUCL would still focus on the actions of "operators," potentially limiting enforcement actions for misappropriation of trade secrets. We are also disheartened that the NPC removed a provision from the SCLAO draft that would have shifted the burden of evidence production in certain circumstances.

AmCham China looks forward to additional positive developments, ideally a stand-alone trade secrets law in correspondence with the laws governing other IP rights. As proposed in the 2016 White Paper, AmCham China also strongly encourages the Chinese courts to establish written guidelines to ensure trade secrets are protected in civil and criminal litigation cases.

Patents

Legislative Developments

The State Intellectual Property Office (SIPO) released the draft fourth amendment to the Patent Law in August 2012. The draft purports to enhance administrative protection and

知识产权

引言

中 国美国商会（商会）的会员企业在 2016 年依旧面临知识产权方面的挑战，涉及商业秘密、专利、著作权、职务发明奖励和报酬、以及商标等领域。有力的知识产权保护对在华投资的外资企业至关重要，这方面的改进有助于推动美国出口和就业。随着很多中国企业开始向价值链上端转移，无法获得专利授权、恶意商标注册、法院低效以及总体执法不力等问题对中国企业也有着越来越显著的影响。有力的知识产权保护是促进中国企业开展创新活动，进而保持国际竞争力的关键所在。虽然中国有关部门一直很关注知识产权，但是在华运营的内外资企业依旧面临很多共同的挑战。本章将对此作详细说明。

现存监管问题和最新进展

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的一些部门在进行产品审批时要求披露保密信息，包括一些并无披露必要的信息，从而损害了商业秘密的价值。商业秘密的不当披露，会降低产品经济价值、破坏信任甚至危及长期的商业合作关系。商业秘密保护不力的问题如果长期得不到解决，可能妨碍跨境技术转让、抑制研发方面的投资，并且阻碍中国发展创新驱动型经济。另外，有效保护商业秘密所付出的成本比进行专利诉讼要低得多，这是一种潜在的重要成本差异和优势，尤其对中小企业 (SME) 而言。

有关商业秘密保护的现行法律规则散见于多部法律法规，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实践的情况，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试图通过诉诸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，

胜诉的几率通常很低，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构成了重大阻碍。

2016 年 2 月 25 日，国务院法制办公室（国务院法制办）发布了《中华人民共和国反不正当竞争法（修订草案送审稿）》，向社会公开征求意见。一年后，2017 年 2 月 26 日，全国人大法制委员会公布了该送审稿的后续版本。这些草案有助于中国商业秘密制度的持续改进，我们乐见于此积极进展。例如，全国人大修订草案中的第 9 条和第 10 条对商业秘密的定义以及可能构成盗用的活动和经营者的类型提供了有用的更新。此外，该草案第 24 条规定的罚款水平的变动大大增加了可能的行政罚款。尽管有上述及其它改进，我们仍然关注若干问题仍待解决的领域。例如，《反不正当竞争法》仍将侧重于“经营商”的行为，从而可能限制针对盗用商业机密的执法行动。另人沮丧的是，全国人大取消了国务院法制办草案中的一些条款，而它们将在某些情况下转移举证责任的负担。

商会期待其他积极进展，最好能像其他知识产权一样，专门制定一部商业秘密法。正如我们在 2016 年《白皮书》中的提议，我们仍然强烈建议中国法院颁布书面指南，确保商业秘密能够通过民事和刑事诉讼得到保护。

专利

立法进展

2012 年 8 月，国家知识产权局公布了《专利法》第四次修订草案。该草案旨在加强专利的行政保护和执法工作，如增加了主动执法权、没收侵权产品和生产工具、以及判处罚金等新的救济措施。商会对这一行政权力扩大的趋势深感担忧。与其他类型的知识产权不同，专利争议本质上必然会涉及复杂的技术问题，其有效解决必然会耗费大量时间。行政执法程序有可能干预私人之间的争议，导致争议解决过程更为复杂、周期更长，甚至导致进一步的争议，

enforcement of patents, including the addition of proactive enforcement powers and new remedies such as confiscation of alleged infringing products and manufacturing equipment and fines. 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 further disputes.

In addition, administrative authorities may lack the expertise and resources to handle the substantial increase in workload which can 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 International Trade Commission, as references for the administrative protection of patents. However, these examples are not inherently applicable to the Chinese context. These agencies exercise jurisdiction only in very special and limited cases rather than patent disputes generally, are quasi-judicial in their exercise of jurisdiction, and must follow strict procedures.

On April 1, 2015, SIPO released the draft “Amendments to the Patent Law” for public comment. The draft included substantial revisions to 30 articles and added a new chapter on patent applications. Major changes included:

- Expansion of administrative powers regarding investigating patent infringement, issuing injunctions, and levying fines;
- Introduction of “punitive damages” and doubling or tripling the compensation amount for the purpose of “punishing,” rather than simply “compensating,” in cases of willful infringement; and
- Strengthening of the legal system for patent attorneys and patent agencies and imposing strict regulations on unlicensed patent attorneys/agencies.

On December 2, 2015 the SCLAO released a revised draft “Amendments to the Patent Law (Draft for Review)” for public comment. Key amendments included: greater patent protection through enhanced punishment for infringement, promotion of exploitation and application of patents to realize their value, and improvements to the patent review system and the legal systems concerning patent agents.

In the 2016 Legislative Plan of the State Council, the Patent Law revision was assigned third-level priority as a “preparatory project.” Patent Law revision is listed in the 2017 Legislative Plan as a project that the government should “strive to finish within the year.”

Judicial Developments

The Supreme People’s Court published a revised judicial interpretation on patent infringement litigation, effective April 1, 2016. The revised interpretation provides additional guidance on how Chinese courts decide patent infringement cases, which is a welcome development. Specialized IP courts, operating since 2014, have likewise provided further guidance on how patent infringement cases are handled.

The new judicial provisions include the use of rebuttable presumptions to establish the amount of infringement damages and the use of evidence preservation orders to obtain the financial records of defendants. These provisions are a welcome development in fostering transparent and effective patent enforcement in China. AmCham China looks forward to the application of these procedures in a balanced and consistent manner.

Chinese courts have continued their efforts to increase transparency through their publication of decisions, which increases predictability and strengthens the rule of law through the Guiding Cases System. AmCham China welcomes this as a major milestone in evolution of judicial IP protection in China. Considering that this major reform is taking place in a civil law system though, AmCham China is concerned with some aspects of this important initiative, including how guiding cases are selected and the hierarchy of their legal authority when referenced as precedents.

Following its earlier directive requiring the publication of court decisions online, the Supreme People’s Court issued the “Provisions of the Supreme People’s Court on Publication of Judgment Documents by the People’s Courts on the Internet,” effective October 1, 2016, which requires that all decisions be published online within seven working days after they take effect. However, many courts have yet to comply with the publication requirement. Publication of court decisions is fundamental to strengthening the rule of law and enhancing IP protection. AmCham China therefore urges more rigorous implementation of the Supreme People’s Court’s directives on the timely publication of cases in 2017.

Administrative Developments

On October 27, 2016, SIPO published draft “Revisions to the Patent Examination Guidelines” (the Revisions) for public comment. The Revisions provide for post-filing data supplementation (which is particularly useful for pharmaceutical inventions) and make other changes, creating closer alignment of SIPO’s examination procedures with international norms such as those followed by the United States Patent and Trademark Office and the European Patent Office. The Revisions also appear to loosen restrictions on obtaining patents for business methods and software. AmCham China submitted comments on the Revisions where we welcomed most of these changes, but expressed concern that the new

因此，更强有力的司法保护才是更好的办法。

另外，行政主管部门缺少应对激增的工作量所需的专业知识和资源，可能由此导致行政执法负担过重，造成争议解决的迟延或行政程序被滥用。我们注意到，一些中国研究报告引用了外国实践（如美国国际贸易委员会）作为专利行政保护的参考。然而，这些制度在本质上并不适用于中国，因为此类外国机构仅针对非常特别且有限的案件行使管辖权，而不适用于一般性的专利争议。在行使其管辖权时，这类外国机构是准司法性的，且必须遵守严格的程序。

2015年4月1日，国家知识产权局发布了《中华人民共和国专利法（征求意见稿）》，向社会公开征求意见。该草案对30条条款进行了实质性修订，增加了关于专利申请的新章节。主要的更改包括：

- 增大调查专利侵权、发布禁令和征收罚款的行政权力；
- 引入“惩罚性赔偿”，将故意侵权的赔偿金额提高至两倍或三倍，即以“惩罚”为目的，而不只是“补偿”；
- 强化与专利律师、专利代理机构有关的法律制度，并对未经授权的专利律师、代理机构实施严格监管。

2015年12月2日，国务院法制办公室发布了《专利法修订草案（送审稿）》，向社会公开征求意见。主要修订内容包括：加强对侵权行为的处罚、促进专利的运用以实现其价值、改进专利审查制度和专利代理人制度等。

在《国务院2016年立法工作计划》中，专利法修订被列为“预备项目”，重要性属于第三级。在《国务院2017年立法工作计划》中，专利法修订被列为“力争年内完成的项目”。

司法进展

最高人民法院公布了修订后的侵犯专利权纠纷司法解释（“专利司法解释二”），自2016年4月1日起实行。这为中国法院审理侵犯专利权纠纷案件提供了更为清晰的指导，是一项可喜的进展。2014年专门设立的知识产权法院也为专利侵权案件的审理提供了进一步指导。

这些新的司法性规定包括：在确定侵权损害赔偿金额是适用可推翻的推定、使用证据保全令获得被告人的财务记录。这些规定都是可喜的进展，有助于提高中国专利执法的透明度和有效性。商会期待这些程序能够得到平衡、一致的适用。

中国法院已经采取公布判决等方式努力提高透明度，并通过指导性案例制度提高可预测性、加强法治。商会认为这是中国知识产权司法保护的重要里程碑。但是，考虑到这一重大改革是在大陆法系下发起的创举，商会对其某些问题有所担忧，如指导案例的选择方式、被援引为在先判例的案件的效力位阶等。

继之前发布要求在網上公布法院判决的指令之后，最高人民法院又发布《关于人民法院在互联网公布裁判文书的规定》，自2016年10月1日起施行，要求所有发生法律效力裁判文书，应当在裁判文书生效之日起七个工作日内在互联网公布。但是，很多法院还没有遵守这一规定。公布法院判决对加强法治和提高知识产权保护至关重要。因此，商会敦促2017年更加严格地执行最高人民法院的命令，及时公布案件裁决。

行政进展

2016年10月27日，国家知识产权局发布《专利审查指南修改草案（征求意见稿）》，允许补交材料（这对药品发明尤其有用）并且做了其他一些修改。国家知识产权局的审查程序变得更贴近国际规范，如美国专利商标局和欧洲专利局程序。修改草案似乎还放宽了取得商业方法和软件专利的限制。商会针对修改草案提交了意见，我们对其中大部分修改表示欢迎，但是对商业方法专利的新规定表示关注，建议该规则的适用应符合《专利法》中对“新的技术方案”的要求，以避免对专利质量造成不利影响。2017年3月1日，国家知识产权局发布修改后的《专利审查指南》，该指南自2017年4月1日起施行。商会会员企业将继续观察相关进展并且密切关注实际实行过程中的执行结果。

专利的质量仍然让人担忧，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。财政激励导致出现了大量不当的实用新型专利的申请和授权，其中许多申请动机不是因为实用性，而仅仅是为了获得财政补贴。此外，政府可以采取其他方式提高专利质量。例如，《专利法》的修订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侵权赔偿）；在实用新型专利的专利权人启动侵权诉讼程序时要求对该实用新型专利进行审查和评估；并且限制实用新型专利的可转让性。要激励真正的创新并做到对法律主体的公平对待，需要建立适当的制度和机制。

business method patent rules should be consistent with the “new technical solution” requirement of China’s Patent Law, lest patent quality suffer. On March 1, 2017, a final version of the Revisions was issued by SIPO and will enter into effect April 1, 2017, with few changes from the draft Revisions. AmCham China members continue to review these developments and will monitor prosecution results as they are implemented in practice.

Of continued concern is the quality of patents, especially utility model patents (UMPs). We applaud SIPO’s recent measures and plans to eliminate the fiscal incentives that inappropriately induce a flood of UMP applications and grants, many of which are not motivated by utility but solely to take advantage of monetary subsidies. However, there are still further measures that could be adopted to enhance patent quality. For example, the Patent Law could be amended to 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.

Additionally, the State Council’s “Several Opinions of the State Council on Building a Powerful Intellectual Property Nation Under New Conditions,” issued in December 2015, addressed improving patent quality as a major task. SIPO announced a patent quality promotion program to enhance the quality of creation, application, examination, and utilization.

Copyrights

AmCham China is disappointed that there again were no significant legislative developments regarding copyrights in 2016. As such, many of the concerns raised in the 2015 and 2016 *White Papers* persist, in particular those regarding the capping of statutory damages, unreasonably high evidentiary thresholds, widespread enterprise end-user software piracy, and the refusal of Chinese authorities to prosecute pre-installed unlicensed software violations. We urge revision of both the Copyright Law and the Criminal Law in 2017 to provide effective deterrence against software piracy.

Despite an absence of legislative developments in 2016, there were a number of important judicial and regulatory developments, the most noteworthy including the release of the following:

- “Administrative Regulations on Online Publishing Services,” issued by the Ministry of Industry and Information Technology (MIIT) and State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT);
- “Guidelines of the Beijing High People’s Court for the Trial of Cases Involving Network Intellectual Property Rights” (April 13, 2016);

- “2015 Model Copyright Cases by the Beijing Intellectual Property Court” (May 30, 2016); and
- “Circular on Strengthening the Copyright Administration of Internet Literary Works,” issued by the SAPPRFT (November 4, 2016).

AmCham China welcomes these developments, particularly the establishment of a National Copyright Administration (NCA) “black list” of Internet service providers that provide infringing content and a “white list” of Internet literary works that are subject to increased surveillance. AmCham China urges implementation of this “black and white list system” by the NCA in a transparent and non-discriminatory manner and will be watching closely in 2017.

Amendment of the Copyright Law

AmCham China looks forward to further amendment of the Copyright Law in 2017. We applaud the leadership of the NCA for hosting previous rounds of discussion for public feedback on Copyright Law amendments, and we look forward to further opportunities moving forward. AmCham China’s prior recommendations for the Copyright Law remain relevant, and we note the following in particular:

- Increased statutory damages and a reallocated burden of proof, among other proposed changes with respect to enforcement, have been adopted in the most recent amended draft. These additions should be preserved in the final version of the law. AmCham China members strongly urge the SCLAO and NPC to expedite the update of the Copyright Law. We welcome continuing dialogue with both relevant authorities.
- We urge the SCLAO to clarify 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 may hamper development of the software industry in the cloud era.

Rewards and Remuneration for Service Inventions

AmCham China members continue to view employee remuneration requirements for service inventions as too rigid. Upon the granting of a patent, the Patent Law requires employers to pay employees “reasonable remuneration” for patents filed by employers which were predicated on technical achievements by their employees during the course of employment. These technical achievements are referred to in Chinese law and practice as “service inventions.” The “Implementing Regulations of the Patent Law” permit

另外，国务院 2015 年 12 月发布的《关于新形势下加快知识产权强国建设的若干意见》将提升专利质量作为主要任务之一。国家知识产权局宣布将实施专利质量提升工程，提高专利创造、应用、审查和利用质量。

著作权

再次让商会感到失望的是，2016 年中国在著作权立法方面并未取得实质性进展。商会 2015 年和 2016 年《白皮书》中提到的许多问题依然存在，尤其是法定损害赔偿的限制、畸高的证据门槛、广泛存在的企业最终用户软件盗版、中国当局拒绝起诉预装未授权软件的违法行为等。我们促请中国政府 2017 年修订《著作权法》和《刑法》，从而有效震慑软件盗版行为。

尽管 2016 年中国在立法方面并未取得进展，但在司法和监管方面取得了很大成就，其中最值得一提的是下述文件的发布：

- 工业和信息化部（工信部）和国家新闻出版广电总局发布《网络出版服务管理规定》；
- 北京市高级人民法院发布《关于涉及网络知识产权案件的审理指南》（2016 年 4 月 13 日）；
- 北京知识产权法院发布《2015 年著作权典型案例汇总》（2016 年 5 月 30 日）；
- 国家新闻出版广电总局发布《关于加强网络文学出版作品版权管理的通知》（2016 年 11 月 4 日）。

商会对上述举措表示欢迎，尤其是国家版权局建立的“黑名单”（提供侵权内容的互联网服务提供商清单）和“白名单”（加强网络文学出版作品监督）。商会敦促国家版权局透明和非歧视性地执行这一黑名单和白名单制度，并将继续在 2017 年予以密切关注。

《著作权法》的修订

商会希望中国政府在 2017 年对《著作权法》做进一步的修订。为修订《著作权法》，国家版权局召集了多轮讨论，公开征求意见，发挥了领导作用，商会对此表示赞赏，并希望未来能有更多这样的机会。商会之前针对《著作权法》提出的建议依然适用，并特此提出以下几点：

- 在最新的修订草案中，我们会员企业就执法问题提出的提高法定损害赔偿金额和举证责任转移等修订意见已经得到了采纳。这些增补内容应该保留在《著作权

法》最终版本中。商会会员企业强烈促请国务院法制办和全国人民代表大会（全国人大）加快对《著作权法》的修订。我们希望与这两大机构进行持续对话。

- 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具有重要意义。在订阅和云计算领域，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。

职务发明的奖励和报酬

商会会员企业依然认为职务发明的员工补偿要求过于严格。在授予一项专利权后，《专利法》要求雇主就其申请的、以员工在雇用过程中的技术成就为依据的专利向该员工支付“合理报酬”。这些技术成就在中国的法律和实践中被称为“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职务发明报酬的额度。如果没有此类协议或政策，则适用法定的最低金额，但即便是确定的政策也会遭到员工的投诉。

2015 年 4 月，国务院法制办公布《职务发明条例草案（送审稿）》，向社会公开征求意见，扩大了要求支付报酬的发明的范围，提高了最低支付金额，并对雇主报酬机制做出了更多管理规定。2015 年 10 月，《促进科技成果转化法》修正案规定，如果雇主与员工协商之后，未能对奖励办法和数额做出明确规定，基于研究成果、甚至包括未获得专利的创意的投资、销售或许可收入，将在贡献人员之间平均分配。

2016 年 2 月，《法治周末》发表了一篇对中国知识产权从业者和学者的访谈文章，探讨了自 2012 年发布第一版征求意见稿以来起草《职务发明条例》的历程。受访对象普遍认为新法规是不必要的，其中一名学者认为《职务发明条例》事务应该由企业管理，而不是由政府监管。商会会员企业普遍认为《职务发明条例草案》会带来行政管理负担，并且限制了各行业企业的灵活性。我们建议监管机构考虑是否有必要制定新的《职务发明条例》，并建议让市场力量来决定如何根据不同行业的技术特点来最大程度地激励和奖励员工创新。

employers to determine by agreement or internal policy the amount of remuneration payable to the employee for such service inventions. Absent any such agreement or policy, statutory minimum amounts apply, but even established policies have come under collateral attack by employees.

In April 2015, the SCLAO published for public comment draft “Service Invention Regulations” (SIR) broadening the scope of inventions requiring remuneration, increasing minimum payment amounts, and imposing additional administrative requirements on employer remuneration programs. In October 2015, the “Law on Promoting Commercialization of Scientific and Technological Achievements” was amended to require that revenue from the investment, sale, or licensing of research results, including unpatented ideas, be divided equally among contributing personnel if the employer had not previously established a reward mode and amount in consultation with staff.

A February 2016 *Legal Weekly (Fazhi Zhoumo, 法治周末)* article featured interviews with Chinese IP practitioners and scholars discussing the history of the draft SIR since the first version was released for public comment back in 2012. Those interviewed held similar opinions that new regulations are unnecessary, with one academic stating that SIR matters should be managed by enterprises rather than through further government regulation. AmCham China members generally believe that the draft SIR is administratively burdensome and provides insufficient flexibility to enterprises in different industries. We encourage regulators to reconsider whether a new SIR is necessary and recommend allowing market forces determine how to best incentivize and reward employee innovation according to variations in technological characteristics.

Trademarks

Online Counterfeiting

In 2016, the central government continued its efforts to address the longstanding issue of online counterfeiting. These efforts have resulted in increased transparency and improvements in the notice and takedown processes of key offending e-commerce platforms.

On December 27, 2016, the NPC issued a draft E-Commerce Law for public comment. Article 54 of the draft E-Commerce Law contained controversial language that appeared to require e-commerce platforms to relist potentially infringing links/products upon receipt of a counter-notification, even without supporting evidence or a statement of non-infringement. The language of the draft E-Commerce Law also suggests that in such circumstances the only remedy for a brand owner would be to initiate administrative enforcement or a civil complaint before the People’s Courts, something which is impractical for brand owners facing large numbers of infringing listings. AmCham China members are strongly opposed to the introduction of measures, such

as these, that would constitute a dramatic step backwards in the fight against online counterfeiting in China.

The problem of online counterfeiting remains acute and repeat offenders can easily change identities in order to circumvent detection. As was the situation in 2015, the benefits of recent improvements are generally only available to those brand owners who can invest significant resources to regularly monitor e-commerce sites and proactively petition those sites to take down links to infringing products.

As this is a longstanding problem that is not likely to improve without significant government attention and engagement with industry, AmCham China encourages the Chinese government to continue to address this important and pressing problem, in particular by:

- Continuing to apply pressure on e-commerce platforms to implement strict, transparent, and user-friendly notice-and-take down and repeat offender policies (preferably adopting and carrying out simple two or three-strike rules);
- Encouraging e-commerce platforms to adopt best practices to make it easier to identify counterfeiters, easier to remove links that are posted by sellers who cannot provide *prima facie* evidence of authorization, and more difficult for counterfeiters to operate under multiple false identities;
- Encouraging e-commerce platforms to cultivate a culture of IP protection on their platforms and to take proactive measures to make it more difficult for counterfeiters to list products on their sites (e.g., instituting a system of random IP authorization audits of high volume vendors); and
- Rejecting notice-and-take down approaches such as those proposed in the 2016 draft E-Commerce law that appear to favor only e-commerce platforms and online counterfeiters at the expense of brand owners.

Oppositions

Under the amended Trademark Law, which entered into effect on May 1, 2014, there is no appeal process if an opposed trademark is allowed registration by the Trademark Office (TMO) of the State Administration for Industry and Commerce (SAIC). Under the current opposition procedure, an opposed mark will become registered if an opponent loses before the TMO. If the losing party is dissatisfied with the ruling, it must file a request with the Trademark Review and Adjudication Board (TRAB) to invalidate the trademark.

As stated in the 2015 *White Paper*, AmCham China members remain concerned that current opposition procedures tend to advantage the applicants of third-party trademarks filed in bad faith unless the quality of the TMO’s examination of oppositions is improved. AmCham China members continue to report that the quality of TMO decisions has not

商标

在线售假

2016年,中央政府继续处理长期存在的在线售假问题。这些努力提高了透明度,并完善了一些重要的违规电子商务平台的通知和下架流程。

2016年12月27日,全国人大发布《电子商务法》草案,向社会公开征求意见。草案第54条的规定存在争议,似乎要求只要收到经营者提交声明保证不存在侵权行为的,即使无侵权声明没有证据,电子商务平台也应恢复可能侵权的链接/产品。在这种情形下,草案似乎意味着品牌所有者唯一的救济措施就是到人民法院启动民事起诉的行政执法,对于面临大量侵权性能的品牌所有者来说,这不现实。商会强烈反对草案规定的这些措施,这将使中国打击在线售假的行动出现严重倒退。

在线售假问题依然严峻,重复侵权者能够轻松改变身份以逃避检查。与2015年的情况一样,从最近的改进中获益的主要是能够投入大量资源定期监控电子商务网站,并积极请求这些网站删除侵权产品链接的品牌所有者。

没有政府的严正关注以及与业界的合作,这一顽疾不可能有所改进。商会希望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通知和下架,以及累犯处罚政策(最好是直接实行两次或三次即出局的政策);
- 鼓励电子商务平台采用最佳实践,更加便利地甄别出制假售假者、删除不能提供授权初步证据的卖家发布的链接,并提高制假售假者利用多个虚假身份从事售假行为的难度;
- 鼓励电子商务平台在其平台上培育知识产权保护文化,并采取积极措施加大制假售假者在其网站上发布产品的难度(如,可以采取的一种积极措施,对大交易量商家实行随机IP授权审计);
- 拒绝采用2016年电子商务法草案提出的通知和下架措施,因为这似乎只对电子商务平台和在线售假者有利,却牺牲了品牌所有者的利益。

异议

2014年5月1日生效实施的新修订的《中华人民共和国商标法》(《商标法》)未就争议商标在国家工商总局商标局注册登记后的上诉程序做出规定。在现行的异议程序下,如果异议方在商标局败诉,存在异议的商标将被注册。如果败诉方对商标局的决定不满意,它必须向商标评审委员会提出申请,要求宣告该商标无效。

正如我们在2015年《白皮书》中所述,商会会员企业仍然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优势,除非商标局进行异议审查的能力得到显著提升。商会会员企业依旧认为商标局的决议水平并没有提高,尤其当涉及到恶意抢注商标时。

商会强烈建议国家工商管理总局改善商标局异议申请处理程序,如在异议程序中纳入证据交换过程、提供更多发表意见的机会等。此外,我们建议中国政府进一步增加在中国市场内没有名气的中小企业可以使用的工具,以有效应对第三方对其商标的恶意抢注。

最新进展

2016年,一些值得关注的商标相关立法、行政和司法进展包括:

- 最高人民法院发布中国法院10大知识产权案件和50件典型知识产权案例(2016年4月);
- 商标评审委员会发布2015年度商标评审典型案例(2016年4月);
- 最高人民法院发布“关于发布第12批指导性案例的通知”;
- 国家工商总局发布《关于大力促进商标注册便利化改革的意见》(2016年7月);
- 国家工商总局发布《关于印发“委托地方工商和市场监管部门受理商标注册申请暂行规定”的通知》(2016年8月);
- 国家工商总局商标局发布《关于企业在自建网站上使用驰名商标字样等有关问题的批复》(2016年9月);
- 最高人民法院公布迈克尔·乔丹与乔丹体育股份有限公司(以下简称“乔丹公司”)关于“乔丹”商标权行政上诉案的最终判决文件(2016年12月);

significantly improved, particularly for matters that involve the filing of identical trademarks in bad faith.

AmCham China strongly recommends that the SAIC improve procedures for handling oppositions before the TMO and include an evidence exchange process or an opportunity to comment as part of opposition proceedings. We recommend that the Chinese government further strengthen the tools available to SMEs with little or no fame in the PRC market to effectively challenge pirate filings of their trademarks by third parties.

Recent Updates

Several noteworthy trademark-related legislative, administrative, and judicial developments in 2016 include the following:

- Publication of the “10 Big Intellectual Property Cases” and “50 Model Intellectual Property Cases” by the Supreme People’s Court (April 2016);
- Publication of the “2015 Model Cases of the Trademark Review and Adjudication Board” (April 2016);
- Publication of the “Circular of the Supreme People’s Court on the Release of the 12th Batch of Model Cases”;
- Issuance of the “Opinions of the SAIC on Vigorously Promoting the Reform of Facilitating Trademark Registration” (July 2016);
- Issuance of the “Circular of the SAIC on Issuing Interim Regulations on Entrusting Local Departments for Industry and Commerce and Market Supervision to Accept Applications for Trademark Registration” (August 2016);
- Issuance of the “Official Reply of the Trademark Office of the SAIC to Issues Concerning the Use of the Wording of Well-Known Trademarks by Enterprises on Their Self-Built Websites” (September 2016);
- Issuance of a final judgment by the Supreme People’s Court (No. 27 [2016]) on the administrative appeal by Michael Jordan in relation to several disputes against Qiaodan Sports Co., Ltd. for registration and use of the “Qiaodan” name and mark (December 2016);
- Publication of new “Trademark Review and Adjudication Standards” by the SAIC (December 2016); and
- Issuance of the long-awaited “Regulations on Certain Issues Related to the Trial of Administrative Cases Involving the Grant and Affirmation of Trademark Rights” by the Supreme People’s Court (December 2016).

In addition to concerns regarding the quality of opposition decisions, AmCham China members note that a number of concerns raised in the 2014 and 2015 *White Papers* remain outstanding, specifically those regarding enterprise name infringements and bad faith filings.

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 (AICs) have generally been reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The 2014 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 constitute unfair competition. Such acts are to be handled under the AUCL and the recent February 2017 draft revised AUCL contains some encouraging language, including the following:

- Article 6.4 specifically addresses the misleading use of a registered trademark or unregistered well-known trademark as the trade name portion of a registered enterprise name; and
- Article 21 provides that AICs shall order violators of Article 6.4 to change their enterprise names within one month, and provides for fines and removal of the name from the registry if the entity fails to comply.

In 2015 and 2016, AmCham China members encountered numerous instances of pushback from local AICs in matters involving the attempted enforcement of trademark rights in cases involving registered enterprise names. Members have also reported multiple instances in which local AIC enterprise name authorities advised infringers not to capitulate to the demands of trademark owners to change their infringing enterprise names.

Bad Faith Filings

Article 7 of the 2014 Trademark Law provides that applicants 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 2014 Trademark Law was welcomed by AmCham China members. In the 2014 and 2015 *White Papers*, we expressed concern that Article 7 was not listed as an independent ground for opposition or invalidation and thus were uncertain as to the practical effect of this provision in opposition and invalidation proceedings before the TMO and the TRAB.

In 2015 and 2016, the TRAB and the Beijing IP Court referenced Article 7 in multiple decisions involving challenges brought by brand owners against pirate filings and has interpreted many of the more traditional bases for challenging bad-faith filings (such as Articles 10.1.7, 10.1.8, 32, and 44) in light of Article 7. AmCham China applauds efforts by the TRAB and the Beijing IP Court to make use of Article 7 in matters involving *prima facie* evidence of bad faith, particularly in light of the current lack of clear guidance by the SAIC and the Supreme People’s Court on the handling of cases involving preemptive bad faith filings.

- 国家工商总局发布新的《商标审查及审理标准》（2016年12月）；
- 最高人民法院发布期盼已久的《关于审理商标授权确权行政案件若干问题的规定》（2016年12月）。

除对异议决议质量的担忧，商会会员企业注意到2014年和2015年《白皮书》中提出的许多问题仍然存在，特别是企业名称侵权和恶意抢注的问题。

企业名称侵权

中国企业注册时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。2014《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。对这些行为的处理将依据《反不正当竞争法》执行，2016年2月最新修订的《反不正当竞争法》草案包含了一些鼓励性的语言，其中包括：

- 第6条第4款：将他人注册商标、未注册的驰名商标作为企业名称中的字号使用，误导公众，导致市场混淆的；
- 第21条：违反本法第6条第4款规定的，工商局应当责令当事人在一个月内进行企业名称变更登记；期满未执行的，将进行罚款，并将其从注册表中删除。

2015年和2016年，商会的会员企业遇到了许多涉及注册企业名称的案例，并试图行使商标权，却遭遇当地监督检查部门的推诿。据商会的会员企业报告，在许多案例中，当地监督检查部门企业名称登记机关甚至建议侵权人不要屈从于商标所有者提出的、要求其变更侵权企业名称的要求。

恶意抢注

2014年《商标法》第7条规定，商标注册申请人必须遵守诚实信用的原则。2014年《商标法》增加了诚实信用的积极责任，商会的会员对此表示欢迎。在2014年和2015年的《白皮书》中，我们曾经指出第7条未被列为反对注册或导致商标无效的独立理由，因此无法确定当被侵权人向商标局和中国商标评审委员会提出异议和无效诉讼时，这一规定能够产生的实际效果。

2015年和2016年，中国商标评审委员会和北京知识产权法院在许多涉及品牌所有者控告恶意抢注的决议中都提

到了第7条，并基于第7条解释了许多更传统的打击恶意抢注的法律条文（如10.1.7、10.1.8、32和44等条款）。鉴于当前国家工商管理总局和最高人民法院在处理涉及恶意抢注的案件时缺乏明确指导，中国商标评审委员会和北京知识产权法院在涉及恶意的初步证据时积极利用了第7条，商会对此表示赞赏。

商标局在2016年表现还有提升的空间，虽然针对审查人员引进了质量管理体系，但是没有提高异议争端的整体决议质量。商会会员企业注意到商标局容易忽视恶意证据，甚至在争议商标的申请人未对异议提交回应的情况下也会出现这种情况。我们的会员企业期待商标局2017年能够加强和提高异议争端的决议质量控制。

商会很高兴看到2016年12月发布的新《商标审查及审理标准》为处理恶意抢注提供了急需的指导。尤其令人鼓舞的是，《商标法》第32条允许对恶意注册提出异议时提供境外证据。商会希望，商标局通过出台新的评审标准和加强内部质量控制，能够提高涉及恶意商标注册申请的整体决议的一致性和质量。

人民法院

商会会员企业很高兴看到北京知识产权法院正在引领中国知识产权领域的司法改革。尤其是，该院为案件评估建立指导性案例以及先例判决，未来几年里，会有越来越多的人民法院引入这类作法。引进先例判决、支持建立“知产宝”数据库等司法改革项目对于中国建立先进、透明和渐进的知识产权法律体系至关重要。商会欢迎上述举措，期待在接下来的一年能够为司法体制提供支持。

中国近期宣布2017年将在南京和苏州设立知识产权法庭，我们的会员企业深受鼓舞。我们将关注这些地区即将设立的法庭的进展动态。

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，无论被剽窃商标的知名度如何，都应以此为依据。

The TMO was also inconsistent in 2016 and has, unfortunately, failed to improve the overall quality of its review of opposition disputes despite its efforts to introduce a quality regulation system for its examiners. AmCham China members note a frequent disregard by the TMO of evidence of bad faith, even in cases where an applicant of an opposed mark failed to file a response to the opposition. However, members remain hopeful that quality will be improved as the TMO focuses on expanding its quality control efforts in 2017.

AmCham China was pleased to see the introduction of new “Trademark Review and Adjudication Standards” in December 2016 that provide much needed guidance on the handling of bad faith filings. We were particularly encouraged to see that foreign-sourced evidence is now acceptable to prove fame in the context of challenges to preemptive registrations under Article 32 of the Trademark Law. AmCham China hopes that the introduction of new review and examination standards, and the expansion of internal quality control efforts to cover oppositions, will increase the overall consistency and quality of TMO decisions involving trademark applications filed in bad faith.

The People’s Courts

AmCham China members have been encouraged by the efforts of the Beijing IP Court in leading judicial reform in the IP space in China. In particular, we are encouraged by the court’s establishment of a Guiding Cases System for the evaluation and introduction of a case precedent system that will ultimately be introduced more widely to the People’s Courts over the next couple of years. Judicial reform projects, such as the introduction of a case precedent system and support for the roll-out of the “IP House” database, are critically important for the development of a sophisticated, transparent, and progressive IP jurisprudence in China. AmCham China applauds these efforts and looks forward to supporting the judiciary in the next year.

Our members are also encouraged by the recent announcement of the opening of IP tribunals in Nanjing and Suzhou in 2017. We will be watching developments with the courts in these jurisdictions as they unfold.

Recommendations

For the Chinese Government:

- **Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties and make it available regardless of how well known the pirated mark is.**
- 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 secrets protection laws, streamline and clarify procedural rules among courts, and restrain administrative agencies from requesting unnecessary disclosure of proprietary trade secrets information.
- Rigorously implement the Supreme People’s Court’s directives on the timely publication of cases.
- Align the new business method patent rules in the “Revisions to the Patent Examination Guidelines” with the “new technical solution” requirement of China’s Patent Law to ensure regulatory consistency.
- Amend the Patent Law to set a higher bar for the inventiveness of UMPs, limit remedies for UMPs, require examination and assessment upon the UMP patentees’ initiation of infringement proceedings, and limit the assignability of UMPs.
- Strengthen the judicial process for patent disputes and avoid expanding administrative enforcement of patents in amendments to the Patent Law.

For the US Government:

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

- 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，将盗版行为赋予更大的民事赔偿责任，并且把商业使用盗版软件明确定性为违法行为。
- 全面审查目前的商业秘密保护法律，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。
- 严格执行最高人民法院关于及时公布案件的命令。
- 为保证法规的一致性，《专利审查修改草案》中关于商业方法专利的新规定应当符合《专利法》“新的技术方案”的要求。
- 修改《专利法》，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补偿，在实用新型专利的专利权人启动侵权诉讼程序时要求对该实用新型进行审查和评估，限制实用新型专利的可转让性。
- 加强专利纠纷的司法程序，《专利法》的修订避免扩大针对专利的行政执法。

对美国政府：

- 分享美国联邦和各州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

American companies doing business in China are justifiably proud of the contribution they have made to China's economic development. Indeed, a recent economic impact analysis conducted by Professor Michael Enright of the University of Hong Kong, entitled *Developing China: The Remarkable Impact of Foreign Direct Investment*, concluded that when fully considering the direct and indirect impact of foreign direct investment in China, such investment is responsible for 33 percent of China's GDP and 27 percent of China's employment. Foreign-invested enterprises (FIEs) in China have also helped to modernize industries and enterprises, develop supply chains and distribution channels, promote research and development, and improve business practices and standards.

Nevertheless, foreign investors in China had a mixed year in 2016. AmCham China was encouraged by certain efforts to streamline approvals for foreign investment in the country, such as movement toward a nationwide transition to a negative list approach for foreign investment. We also welcome the "Circular on Measures for Further Opening Up and Active Use of Foreign Investment" (Circular No. 5) released by the State Council in January 2017. Circular No. 5 outlines 20 measures to open more sectors to foreign investment and improve the investment environment for foreign companies. We and our members appreciate the complexity of these reforms and hope that more broad-based reforms, including those outlined in Circular No. 5, will be implemented in the year to come with input from our members along the way.

But despite these limited signs of progress, our members continue to feel increasingly discouraged and even unwelcome in China—amidst the backdrop of legislation and industrial policy geared toward bolstering domestic industry at the expense of a fair and level playing field that would benefit the Chinese economy in the long run. AmCham China members responding to our *Business Climate Survey* listed "inconsistent regulatory interpretation and unclear laws," "increasing Chinese protectionism," and "difficulty obtaining required licenses" as three of their top five challenges. These are not new concerns, and some of our members are concerned that the trend lines are not positive. This is especially true for companies in the information and communications technology (ICT)

sector, which can play a crucial role in supporting China's rise up the global value chain.

Indeed, economic reform efforts have not kept pace with the continued decline in investor sentiment caused by macroeconomic trends and perceived discriminatory treatment. The new reality of moderating growth and rising input costs, and the presence of old and new market restrictions—imposed through written measures and unofficial practices—increasingly impact companies' investment decisions in China. Over 25 percent of survey respondents reported plans to move capacity outside of China or had already done so during the past three years. The persistence of old barriers, exacerbated by a series of disconcerting developments throughout the year, present foreign investors with what is in many respects a less-than-favorable environment.

Regardless, our members remain hopeful that the Chinese government will push forward the economic and legal reform objectives laid out in the Third and Fourth Plenums, and take measures to ensure that newly promulgated policies will facilitate—rather than impede—the creation of a level playing field for both foreign-invested and domestically-invested enterprises. AmCham China would welcome further clarification regarding the scope of recently passed laws, regulations, and policies affecting foreign investment, as well as more transparent regulatory drafting and implementation processes that would allow for more input from the business community. Furthermore, our members continue to seek fair and impartial channels for appealing adverse decisions by authorities at various levels of government without fear of retribution.

For years, the American business community has been a strong advocate for engaging with and promoting the development of the Chinese economy. Our view has always been, and continues to be, that a strong Chinese economy is necessary for a strong American economy, and for a strong global economy. That has never been more true than it is today. However, discontent with trade and investment barriers has reduced such sentiment.

From seeking and carefully considering input from the American business community and providing increased market access (ideally in the form of national treatment), to fully guaranteeing for American businesses the kinds of

投资政策

引言

在 华开展业务的美国企业有理由为其对中国经济发展做出的贡献感到自豪。事实上，香港大学教授米高·恩莱特最近在《发展中国：外商直接投资的卓越影响》一文中通过分析经济影响，得出结论：充分考虑外商直接投资的直接和间接影响，外商直接投资对中国 GDP 和中国就业的贡献率分别为 33% 和 27%。外商投资企业（外资企业）也助力于中国实现产业和企业现代化，发展供应链和销售渠道，促进研发以及改进商务实践和标准。

然而，对于在中国的外国投资者来说，2016 年可谓喜忧参半。中国美国商会（商会）很高兴看到中国在全国范围内推进外商投资负面清单制度以及采取其他措施简化外商投资审批。我们也欢迎国务院 2017 年 1 月印发的《关于扩大对外开放积极利用外资若干措施的通知》（国发〔2017〕5 号）。国发 5 号文列举了 20 条具体措施，旨在对外开放更多领域及改善外商投资环境。商会及其会员企业理解这些改革的复杂性，并希望在接下来的一年中国政府能够听取我们会员企业的意见和建议，继续实施更广泛的改革，包括 5 号文中列举的措施。

虽然在华投资环境近年来有一些改善，但我们的会员企业仍感到在中国越来越受阻，甚至越来越不受欢迎。当前的立法和产业政策都倾向于支持国内产业发展，为此牺牲了对中国经济长远发展有利的公平竞争环境。根据商会最新的《商务环境调查报告》，受访会员企业列出的五大挑战中，前三项挑战就是“法律法规解释不一致/不清楚”、“中国保护主义不断升级”以及“取得相关许可证件困难”。这些都不是什么新问题了。同时，一些会员企业还对未来发展趋势感到担心，特别是信息和通信技术行业的企业，它们对于中国在全球价值链中的发展壮大起着至关重要的作用。

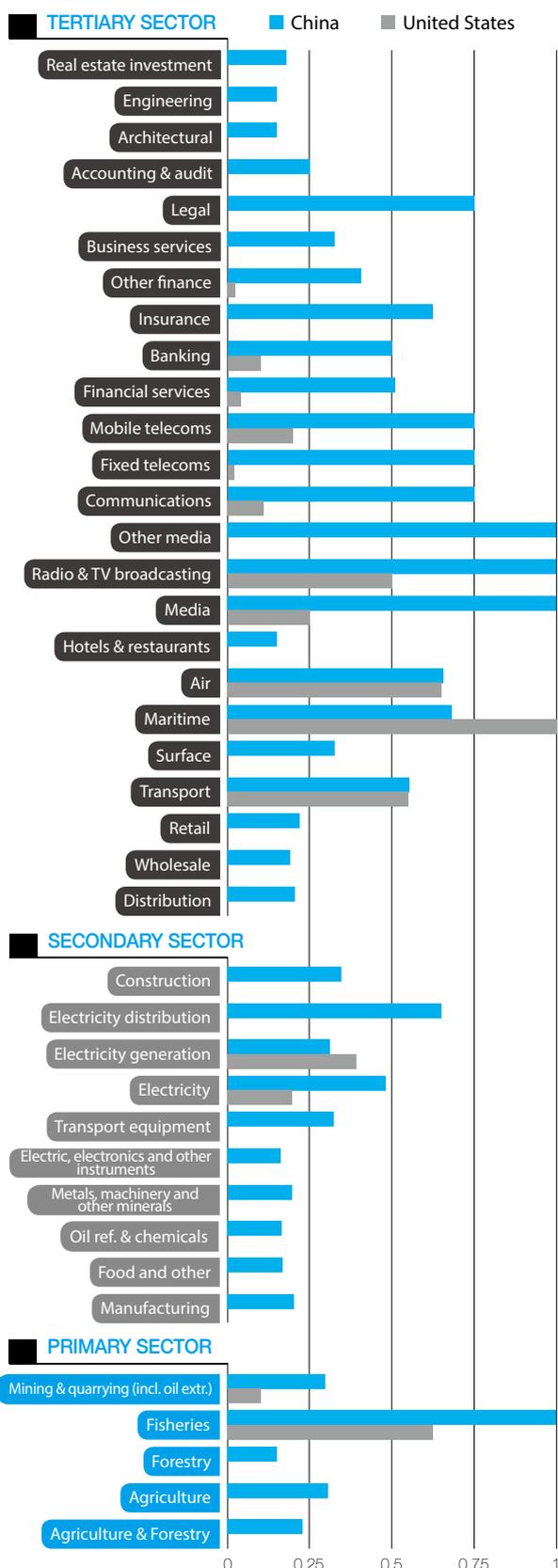
事实上，中国在经济改革方面的努力未能有效缓解投资者因中国宏观经济走向和不公正待遇而导致的日益低落的情绪。增长放缓、投入成本上升以及持续存在的新旧市场限制（无论是成文的措施或是非正式的做法）对外资企业在中国的投资决策影响越来越大。超过 25% 的受访企业称计划将资金转移出中国或在过去三年中已经进行了资金转移。一直存在的壁垒以及年内一系列令人不安的发展动态，令外国投资者感到中国的投资环境在很多方面差强人意。

尽管如此，我们的会员企业仍然希望中国政府继续推进三中和四中全会提出的经济和法治改革目标，采取措施确保新制定的政策将帮助而非阻碍为外资企业和内资企业创造一个公平竞争的环境。商会欢迎中国政府进一步明确最近通过的与外商投资有关的法律、法规和政策的适用范围，提高法规起草和实施过程的透明度，更多地倾听企业界提出的意见。另外，我们的会员企业继续寻求通过公平公正的渠道、没有后顾之忧地对各级政府部门的不利决定提出申诉。

多年以来，美国企业界一直大力倡导参与并推动中国的经济发展。我们始终坚信，美国及全球经济的强大需要中国经济的强大，如今更是如此。但是，这一态度因为对贸易和投资壁垒的不满而受到影响。

从征求并认真考虑美国企业界的意见和建议以及放宽市场准入（最好采取国民待遇的方式）到充分保障美国企业享有中国法律和国际义务规定的各种保护和平等待遇，中国领导人用很多方法表明其致力于和美国企业建立长期合作关系。坦白来说，通过提供与中国投资者目前在美国享受的相同的保护和待遇，中国就可以实现这一目标。这样的话，美国企业就可以在北京和华盛顿两地继续推动中美两国加深经济和政治联系。我们希望，中美双方通过加强合作，最终能够达成一份高标准的双边投资协定，引领两国建立更加公平和强大的双边经济关系，推动太平洋两岸实现互利共赢的经济增长和发展。

2015 Formal FDI Restrictiveness by Sector: China vs. US



protections and equal treatment that are mandated under China’s laws and international obligations, Chinese leaders have many ways to demonstrate their commitment to a long-term partnership with American businesses. Frankly, China could achieve this goal by providing the same kinds of protections and treatment that Chinese investors benefit from in the US today. If so, American businesses can continue to make the case in both Beijing and Washington, DC for deep economic and political ties between China and the US. We hope that a strengthened partnership will set the stage for completion of a high-standard US-China bilateral investment treaty (BIT) and augur the beginning of a fairer, more robust economic relationship between our two countries, leading to mutually beneficial economic growth and development on both sides of the Pacific.

Market Access and Regulatory Reform

For the past several years, we have witnessed a sobering downturn in foreign investor enthusiasm for investing in China—as reflected clearly in AmCham China’s latest *Business Climate Survey*. In 2016, 81 percent of members surveyed felt less welcome in China than before, compared to 77 percent who felt this way in 2015. Though we acknowledge efforts to improve the procedures for reviewing and approving foreign investment in China (and also note new concerns related to China’s increasing focus on implementing a broadly-defined national security review system), actual improvements in market access have been limited, and still are basically in line with the 2015 findings of the OECD, which document an enormous disparity between US and Chinese openness to inbound foreign direct investment (FDI).

FIE Record-Filing Reforms and the Negative List Approach

In 2016, the government of China carried out significant procedural reforms related to approvals for foreign investment and the establishment of FIEs in China. In October, new amendments to four core laws governing FIEs came into effect, creating a universal record filing system for establishing and revising FIEs. A week later, the Ministry of Commerce (MOFCOM) released a final version of the “Interim Measures for Record Filing Administration of the Establishment and Change of Foreign-Invested Enterprises” to implement the amendments.

These reforms indicate movement toward a nationwide negative list approach for foreign investment, creating a framework more amenable to possible investment liberalization. The reforms have been implemented on a nationwide basis after first being tested in the country’s pilot free trade zones (PFTZs) in the past few years. Under the new policy framework,

0 = Completely Open, 1 = Completely Closed
 Source: OECD FDI Regulatory Restrictiveness Index

市场准入和监管改革

在过去的几年中，我们见证了外国投资者在华投资热情逐渐降低，并趋于冷静，这正如商会最新的《营商环境调查报告》所显示的那样。2016年，有81%的受访企业认为在中国不如以往受欢迎，而2015年这个数字为77%。我们承认中国也在努力改进在华外商投资的审批程序（并且注意到中国正在加大力度推行界定广泛的国家安全审查制度以及由此引发了新的关切），但是在市场准入方面进展有限，仍然与经合组织2015年的调查结果大体一致，即：中美两国在对外商直接投资开放市场准入方面存在巨大的差距。

外资企业备案改革和负面清单

2016年，中国政府对在华外商投资以及设立外资企业的审批程序进行了重大改革。2016年10月，新修订的四部监管外资企业的核心法律生效实施，中国开始在全国范围内建立外资企业设立和变更的统一备案制系统。一周后，商务部发布《外商投资企业设立及变更备案管理暂行办法》的最终版本，以实施上述法律修订。

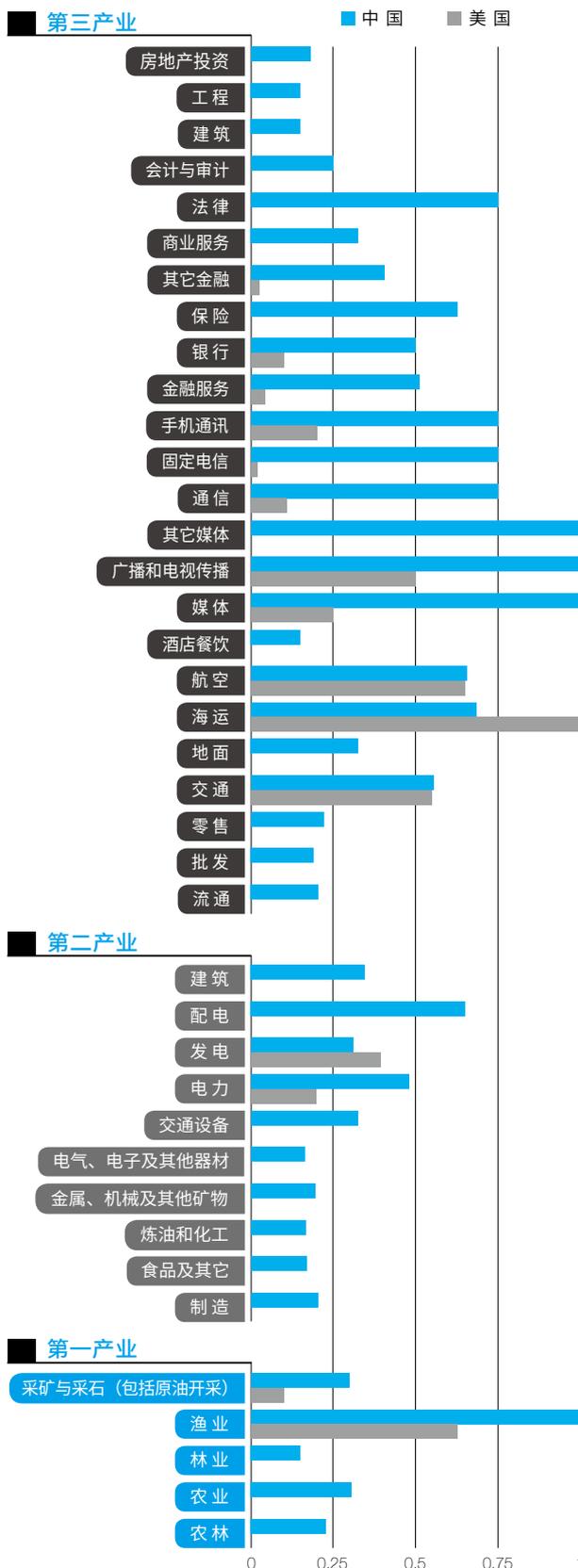
这些改革表明，针对外商投资领域的负面清单制度正在向全国范围推广，为可能的投资自由化创造了一个更加有利的制度框架。上述改革先是在自由贸易试验区（自贸区）经过几年的试点，然后在全国范围内推行。在新的政策框架下，属于《外商投资产业指导目录》中限制类和禁止类（或者属于鼓励类但有股比及高管限制）的外商投资类型，将被视为受限于实施准入特别管理措施，需要接受商务部门的实质性审核及批准。其他外商投资项目将被视为允许投资，只需进行备案（在全国范围内实施后，已经改为在线提交备案申请），不需要进行通常要求的企业审批程序。

随后，商务部及国家发展和改革委员会（国家发改委）于2016年12月发布《外商投资产业指导目录》修订稿征求意见稿，中国政府首次将之称为一份明确的外资市场准入负面清单。清单中列出的限制和禁止类项目的数量大大减少，从2015年的93项减少至62项。虽然有一些修改确实反映了市场开放，但是有很多项目只是删除了与之前的法律、条约及贸易协定重复的限制和禁止。

0 = 完全开放, 1 = 完全封闭

来源：经合组织的外商直接投资限制指数

2015年官方发布的FDI限制行业：中美对比



产业政策
和市场准入

foreign investment that falls into the restricted, prohibited, or “encouraged, but subject to equity and senior management restrictions” categories in the “Catalogue of Industries for Guiding Foreign Investment” (Foreign Investment Catalogue) will be subject to special entry administrative measures—that is, substantive review and approval by commerce authorities. Other foreign investments would be considered permitted and subject only to record filing (a process that has been moved online under the new nationwide expansion), avoiding the standard enterprise approval process.

Later, in December 2016, MOFCOM and the National Development and Reform Commission (NDRC) released for comment a new draft revision of the Foreign Investment Catalogue which was, for the very first time, referred to explicitly by the Chinese government as a negative list for foreign market access. The draft list featured a significantly reduced number of restricted and prohibited items, down to 62 restricted and prohibited categories from 93 in the 2015 version. While some of these changes reflected market openings, many items were simply struck to eliminate duplicative restrictions and prohibitions already reflected in pre-existing laws, treaties, and trade agreements.

These developments followed the issuance in October 2015 of “The Opinions of the State Council on Implementing the Negative List System for Market Access,” which introduced a market access negative list that applied to all market participants, domestic and foreign. This market access negative list (Cross-Industry Negative List) is intended to be an all-inclusive list of sectors in which investment is either prohibited, or restricted with a requirement of administrative approval (e.g., project approval from the relevant department). Sectors not listed in the market access negative list would supposedly be open to investment, with the caveat that foreign investors would also have to check the foreign investment negative list to ensure that no special prohibitions or restrictions applied. The Chinese government is currently piloting this market access negative list in the first four PFTZs, i.e., Shanghai, Tianjin, Fujian province, and Guangdong province, with nationwide implementation expected by 2018.

In the meantime, additional domestic negative lists have been released. In October 2016, NDRC released the “Draft Negative List for Internet Market Access (First Batch, Trial Version)” (Draft Internet Negative List), ostensibly the first of several batches to be released of relevant pre-existing laws and regulations for business activities conducted on or through the Internet (e.g., online pharmaceutical sales, e-hailing taxi services, and online financial services). The relationship between such industry-specific negative lists and the Cross-Industry Negative List, which in theory should function as a comprehensive and all-encompassing list of restrictions across sectors, is unclear. Additionally, since the Draft Internet Negative List is just a “first batch,” it cannot be considered in its current form as a comprehensive set of restrictions for the Internet sector either.

While significant progress has been made this year on advancing a negative list approach, such an approach only sets out a framework for eventual market opening, and does not by itself signify an improvement in terms of market access. Thus far, investors have found the negative list approach in the PFTZs to be disappointing with regards to broadening market access for foreign investors. We are pleased to hear that further market openings in the financial sector are forthcoming, and we hope that they will be replicated in other sectors to ensure a fairer and more competitive landscape. We continue to support China’s rollout of the negative list approach and look forward to further clarification as to whether the finalized unified cross-industry negative list will eliminate the need to refer to multiple industry-specific negative lists and other pre-existing laws.

State-Owned Enterprise Reform

At the Central Economic Work Conference in December 2016, the government announced mixed ownership reforms in seven industries: military, electricity, oil, natural gas, civil aviation, railways, and telecommunications. According to official statements, the mixed ownership reforms are meant to be a transitory step toward greater overall state-owned enterprise (SOE) reform and would allow the government to step away from a managerial role in SOEs and become a stakeholder instead. Private investors (including foreign ones) would have space to restructure SOE management and institute various market-oriented reforms.

AmCham China supports the government’s desire for reform and believes that as investment opportunities open up for our members, they can bring valuable managerial expertise to the reform effort. Most importantly, we believe that the most crucial aspect of reform is not just changing the composition of stakeholders, but also shifting the role of the state to that of an impartial regulator that ensures a fair and competitive market landscape.

US-China Bilateral Investment Treaty

Since 2008, the US and China have been in talks to negotiate a BIT that would provide American investors with access to new sectors of the Chinese economy as well as long-awaited protections against discrimination. The BIT would require both countries to open their economies to foreign investment in all areas except those specifically named in a “negative list,” whose contents are subject to negotiation. China has simultaneously been negotiating an investment agreement with the European Union called the “Comprehensive Agreement on Investment” (CAI). We strongly support the ongoing bilateral BIT negotiations and believe that agreement on a comprehensive, high-standard BIT would constitute the most decisive step the US and China could take to deepen bilateral economic and commercial relations.

We believe that an effective and successful BIT would result in increased American investment into China, leading

上述措施实施之前，2015年10月发布了《国务院关于实行市场准入负面清单制度的意见》，要求对境内外各类市场主体实施市场准入负面清单制度。市场准入负面清单（跨行业负面清单）列出所有禁止领域或要求接受行政审批（例如，相关部门的项目审批）的限制投资领域。市场准入负面清单以外的领域应当开放投资，但是提请外国投资者注意，仍然需要查看一下外商投资负面清单，以确保没有特殊的禁止或限制事项。中国政府目前正在上海、天津、福建和广东四个自贸区试点实施市场准入负面清单制度，预计2018年起在全国范围内实施。

与此同时，中国还发布了其他一些负面清单。2016年10月，国家发改委发布《互联网市场准入负面清单（第一批，试行版）》征求意见稿，显然是针对在互联网或通过互联网开展业务活动（例如，网上药品销售，线上出租车调配，在线金融服务）出台的第一批相关法律法规。理论上来说，跨行业负面清单应当包含所有领域的所有限制事项，但是特定行业的负面清单和跨行业负面清单之间的关系尚不明确。另外，这一互联网市场准入负面清单只是“第一批”，目前也不能视为互联网领域限制清单的全部。

虽然推进负面清单制度在过去的一年取得了重大进步，但其只是为最终的市场开放搭建了一个框架，本身并不代表市场准入有任何改进。目前为止，投资者已经发现自贸区的负面清单制度在向外国投资者放宽市场准入方面令人失望。我们很高兴听说金融领域即将进一步开放市场，希望其他行业也能效仿，从而确保更加公平和更有竞争性的环境。我们继续支持中国推行负面清单制度，期待中国进一步明确最终的统一的跨行业负面清单是否意味着无需再适用多个特定行业的负面清单和其他既存法律法规。

国有企业（国企）改革

在2016年12月召开的中央经济工作会议上，中国政府宣布将在军工、电力、石油、天然气、民航、铁路和电信七个领域开展混合所有制改革。根据官方声明，混合所有制改革是进一步深化国企总体改革的过渡性选择，有助于政府从国企的管理者转变为利益相关者。私营投资者（包括外国投资者）将有机会参与国企管理重组和各种市场化改革。

商会支持中国政府的改革意愿，并且相信随着投资市场的开放，我们的会员企业将为改革贡献宝贵的管理专业知识。最重要的是我们相信，国企改革最关键的不仅仅是改变利益相关者的构成，而且还涉及到将国家的职能转变为公正的监管者，以确保市场的公平和竞争。

中美双边投资协定

自2008年以来，中美两国一直在谈判双边投资协定，这一协定将向美国投资者提供中国经济诸多新领域的市场准入和期盼已久的非歧视待遇。双边投资协定要求两国向外商投资开放经双方谈判商定的“负面清单”之外的所有经济领域。中国同时还在和欧盟谈判《中欧全面投资协定》。我们坚决支持中美双方就签订全面、高标准的双边投资协定加快谈判进程，并且认为这是为中美两国深化双边经济和商业关系所迈出的最具决定性的一步。

我们相信，一份有效的、成功的双边投资协定会吸引更多的美国投资进入中国，从而为消费者带来更加物美价廉的产品，并为中国企业引入宝贵的管理和技术知识。同样，它也将增强中国投资者对美国的信心，支持中国境外投资的增长，为美国创造就业机会及其他经济利益。遗憾的是，目前中国改革开放举步蹒跚，内容乏善可陈。因此我们的会员企业对于中国能否切实履行双边投资协定中的原则和承诺深感疑虑。

鉴于目前美国国内的政治形势以及对中美经济关系对美国产生的不利影响的关切，中国领导人迫切需要更清楚地证明其开放、公平和互惠的承诺。在当前的政治环境下，美国企业界的大力支持对双边投资协定在美国获得批准至关重要。但是，要想获得美国企业界对双边投资协定的支持，中方需要提出一个比目前的负面清单更短小（和限制更少）的负面清单。

我们鼓励中美双方继续为达成一份高标准的双边投资协定而努力谈判并且释放必要的善意，期待在适当的时机最终完成协定的签订。与此同时，在双边投资协定达成之前，中国政府应继续推进有意义的市场开放和改革。这将有利于中国经济并使消费者受益，同时也向外界释放积极的信号，表明中国计划让外国企业获得意义重大的市场准入。否则，我们担心会员企业的投资信心将继续消沉下去。

产业政策的保护主义倾向

认识到经济结构效率低下，中国在《国民经济和社会发展第十三个五年规划》中提出促进国内创新、发展先进技术以及打造智能制造基地等目标。为了实现上述目标，中国政府继续通过制定高水平的产业政策重申未来发展重点和核心经济目标。通过“互联网+”和“中国制造2025”（详见“通信和信息技术”以及“机械制造”章节）

to higher-value products and lower prices for Chinese consumers, as well as the introduction of valuable managerial and technical expertise to Chinese companies. Similarly, it would also boost the confidence of Chinese investors in the US and support the growth of China's outbound foreign investment, creating jobs and other economic benefits for the American economy. Unfortunately, the lackluster pace and substance of recent reforms and openings create doubt amongst our members about China's commitment to the principles to be included in the BIT.

US political trends and concerns about the negative impact on the US of economic relations with China have increased the urgency for China's leaders to demonstrate a more visible commitment to openness, fairness, and reciprocity. If a negotiated BIT is to be ratified in the US, especially in the current political environment, it will require active support by the American business community. However, in order for a BIT to win such support, it will need to include a Chinese negative list proposal that is shorter (and much less restrictive) than what we understand has been proposed to date.

We encourage both sides to continue the hard work of negotiating a high-standard agreement and generating the goodwill necessary to shepherd an agreement toward the finish line when the timing is right. In the meantime, meaningful market opening and implementation of reforms by the Chinese government prior to the completion of a BIT would benefit the Chinese economy and consumers while providing measurable signals of China's intent to achieve meaningful market access for foreign companies. We are concerned that investment sentiment among our members will otherwise continue to decline.

Protectionism in Industrial Policy

Acknowledging structural inefficiencies in the economy, the "13th Five-Year Plan for National Economic and Social Development" promotes domestic innovation, development of advanced technologies, and construction of an intelligent manufacturing base, among other goals. To that end, China continues to give central place to high-level industrial policies that reaffirm the government's development priorities and core economic goals for the future. Through initiatives such as "Internet +" and "Made in China 2025" (further discussed in the ICT and Machinery Manufacturing chapters), the Chinese government outlines a series of strategies to make China a world leader in high-tech manufacturing and make Chinese companies competitive internationally.

AmCham China supports the Chinese leadership's desire to enhance the innovative potential of the Chinese economy, but simultaneously stresses the importance of ensuring that support for localized production, Chinese brands, and indigenous innovation does not result in discrimination against FIEs, which may otherwise play a valuable role in developing China's future high-tech economy. We caution policy-

makers against singling out FIEs through measures such as technology transfer requirements, equity caps, and regulatory hurdles unique to FIEs, as this will skew the market and prevent Chinese consumers and businesses from accessing the technologies and products best suited for their needs. It also risks significant backlash against Chinese investors, goods, and services in other markets around the world.

While there are many examples of the use of industrial policy to discriminate against foreign investors, there are also examples of policy courting foreign investor participation. In August 2016, the Ministry of Industry and Information Technology (MIIT) established Ningbo as the first "Made in China 2025" pilot city and set up 11 committees to partner foreign firms with local manufacturers, marking significant progress in China's first 10-year strategic plan to upgrade Chinese manufacturing.

AmCham China members are committed to helping China develop the innovative potential of its economy. This commitment comes with the expectation that Chinese industry and officials see relationships with foreign investors as long-term relationships based on bedrock principles of openness, fairness, and transparency rather than short-term opportunities for the facilitation of the transfer of technological and managerial know-how. Building respect for these principles into the way in which industrial policies are contemplated, written, and implemented is critical for our members to fully contribute to the high-tech chapter of China's development story.

Protectionist Policy Embedded in Security Laws

Over the past several years, China has continued to build a robust legal regime for security matters. In 2015, the National People's Congress enacted the National Security Law and the Counter-Terrorism Law, which together outlined a series of measures encompassing various aspects of national security, including cybersecurity, counterterrorism, and other threats. This was followed in 2016 by the passage of China's first piece of cybersecurity legislation, the Cybersecurity Law. Together, these and other laws, regulations, and policies manifested a number of concepts that have become cross-cutting themes in Chinese security laws and regulations. While we acknowledge the need for balance between the twin objectives of protecting national security and maintaining openness to foreign investment, we are disappointed to see that recently promulgated security laws protect—or are written in a way that does not exclude the possibility of protecting—national interests that fall well outside the internationally accepted scope of essential national security concerns.

Our members are concerned that future security-related developments may be designed to bolster domestic industry or be used to that effect. Indeed, we have long-standing concerns about discrimination against foreign technology in the name of security, such as with the "Multi-Level Protection Scheme"

等倡议，中国政府制定了一系列战略，力争将中国打造成世界高科技制造行业的领导者，并使中国企业获得国际竞争力。

商会支持中国领导层提升中国经济创新潜力的意愿，但是同时也要强调，中国应当确保不因为支持本地化生产、国内品牌和自主创新而区别对待外资企业，外资企业对于中国未来发展高科技经济本应能够发挥很有价值的作用。我们希望政策制定者避免通过技术转让要求、持股比例限制以及特定的监管障碍等措施区别对待外资企业，因为这不仅会造成市场扭曲，使得中国的消费者和企业无法获得最适合各自需求的技术和产品，而且很可能导致中国的投资者、商品和服务在世界其他市场受到抵制。

尽管通过产业政策区别对待外国投资者的例子有很多，但是通过政策吸引外国投资者参与的例子同样也很多。2016年8月，工业和信息化部（工信部）选择宁波作为首个“中国制造2025”试点示范城市，设立十一个委员会负责协调外资企业和当地制造企业的合作，标志着中国实施制造业升级的第一个十年战略规划取得了重要进展。

商会会员企业致力于帮助中国经济开发创新潜力。因此，期望中国的产业和官员与外国投资者之间是一种基于公开、公平和透明等基本原则的长期合作关系，而不是限于促进技术和管理知识转让的短期机会。在产业政策的计划、制定和实施过程中尊重这些原则，关乎到我们的会员企业是否能够对中国的高科技发展充分贡献力量。

国家安全相关法律内含的保护主义政策

在过去的几年里，中国一直在建立和加强安全事务的法律机制。2015年，全国人大通过《国家安全法》和《反恐怖主义法》，这两部法案涵盖了与国家安全相关的一系列措施，包括网络安全、反恐及其它威胁等。之后，中国于2016年通过首部网络安全法规——《网络安全法》。上述以及其他一些法律法规和政策反映了已经贯穿中国安全相关法规的一些概念。我们承认确实需要在保护国家安全和维持对外商投资开放这两个目标之间保持平衡，但是令我们感到失望的是，最新修订的安全法规所保护的（或者没有排除可能予以保护的）国家利益大大超出了国际公认的基本国家安全范畴。

我们的会员企业担心中国未来有可能设计或利用安全相关政策推进国内产业。事实上，我们长期以来一直担心以

安全之名区别对待外国技术。例如，2007年推出的“信息安全等级保护”（MLPS）就要求按照对国家安全、社会秩序和经济的重要程度预先确定一组信息系统，限制其只能使用国内知识产权。最新的法规让人不免更加担忧。例如，新出台的《网络安全法》就要求将信息安全等级保护制度扩大或复制运用到网络安全领域，其他法律法规也越来越多地提到“安全可控”标准（或类似措辞）。当“安全可控”于2014年年末和2015年年初出现在银行业的法规中时，引发了很大争议，被看作是一项几乎没有遮掩的旨在推动使用国内产品和服务的机制。这些法律法规也越来越多地提出数据本地化的要求，实际上没有提高反而妨碍了跨国公司使用创新技术保护数据安全的能力，并且许多政策要求在华经营的实体应中国相关部门的要求提供界定不清的“技术支持”。上述问题和其他关切的详情，参见“信息和通信技术”章节。

国家安全审查也成为投资相关法律法规一个日益突出的特征。2011年，国务院发布通知，商务部随后发布“实施外国投资者并购境内企业安全审查制度”的“暂行规定”和“规定”。这些规定确立了新的适用于外资在华并购活动的安全审查制度，虽然与美国外国投资委员会对在美外国投资实施的安全审查类似，（实质和程序）却更为宽泛和模糊不清。

2015年，自贸区将这些规定扩大到并购之外的其他外商投资类型。同一年修订的《国家安全法》提出了总体要求，规定“国家建立国家安全审查和监管的制度和机制，对影响或者可能影响国家安全的外商投资、特定物项和关键技术、网络信息技术产品和服务、涉及国家安全事项的建设项目，以及其他重大事项和活动，进行国家安全审查，有效预防和化解国家安全风险”（第五十九条）。为了进一步执行这一规定，各个政府部门正在发布适用于特定行业 and 产品的细则（例如，基础设施和公共设施、种子、银行卡清算机构等），我们预计这一趋势会继续。另外，新《网络安全法》也要求“关键信息基础设施”（CII）运营者的采购接受安全审查，甚至要求关键信息基础设施运营者向境外提供其在中国境内运营中收集或产生的“个人信息和其他重要数据”时接受尚未明确的安全评估。

商会明白，围绕安全审查的许多具体规定尚未最终成形。我们希望安全审查规则的制定和实质实施仅限于确有必要的情形，希望限制这些规则的适用范围，确保透明，允许外国投资者实现有意义的参与，可以毫无顾虑地提出申诉。

(MLPS), first drafted in 2007, which requires a predefined set of Chinese information systems selected for their importance to national security, social order, and the economy, to use only domestic intellectual property. Recent legislation has only compounded and extended these concerns. For instance, the new Cybersecurity Law contains language extending or replicating the MLPS approach to apply to cybersecurity, while other laws and regulations increasingly mention the “secure and controllable” standard (or some variant thereof), which became the subject of much controversy when it appeared in late 2014 and early 2015 in banking regulations as a thinly veiled mechanism for promoting the use of domestic products and services. These laws and regulations also increasingly incorporate data localization requirements that complicate rather than enhance the ability of multinational companies to use innovative techniques for protecting data security, and many require entities with operations in China to provide vaguely defined “technical support” to Chinese authorities when requested. These and other concerns are discussed in greater detail in the ICT chapter.

National security reviews are also becoming a more prominent feature of Chinese investment-related laws and regulations. In 2011, the State Council issued a notice, and MOFCOM then issued “interim provisions” and then “provisions,” governing “Implementation of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors.” These provisions established a new system for security reviews of foreign inbound mergers and acquisitions (M&A) similar to but much broader and less clearly defined (substantively and procedurally) than the security reviews of foreign investment in the US conducted by the Committee on Foreign Investment in the United States (CFIUS).

In 2015, these rules were expanded with respect to the PFTZs to cover other types of inbound investment besides just M&A, and the National Security Law promulgated that same year included an overarching provision mandating that: “The State shall establish institutions and mechanisms for national security review and regulation, conduct national security review of foreign investment, specific items and key technologies, network information technology products and services, construction projects involving national security matters, as well as other major events and activities that affect or may affect national security, and effectively prevent and resolve national security risks” (Article 59). To further implement the requirements of this provision, various government agencies are issuing more detailed rules applicable to specific industries and products (e.g., infrastructure and public utilities, seeds, bank card clearing institutions, etc.), and we expect this trend to continue. In addition, the new Cybersecurity Law, for its part, imposes a security review requirement for procurement by operators of “critical information infrastructure” (CII). Tangentially, that law also requires undefined security assessments of the international transfers required for business reasons of “personal information and other important data” collected or generated in mainland China by operators of CII.

AmCham China understands that many of the specific rules surrounding these security reviews are still taking shape. We hope that both the formulation of security review rules and their substantive implementation will be limited only to circumstances in which they are truly necessary, and that they will be limited in scope, transparent, open to meaningful participation from foreign investors, and subject to appeal without repercussions.

Recommendations

For the Chinese Government:

- **Take concrete steps to more fully provide for American investors in China the same levels of market access, legal protections, and non-discriminatory treatment that Chinese investors benefit from in the US today.**
- Provide further clarification as to whether the finalized unified cross-industry negative list will eliminate the need to refer to multiple industry-specific negative lists and other pre-existing laws.
- Provide further clarification regarding the scope and procedures of national security review mechanisms, and ensure that such mechanisms are limited in scope to focus on essential security concerns and not used to promote local companies and technologies.
- Develop and implement industrial policies based on the principles of openness, fairness, and transparency.
- Provide greater transparency and opportunity for input by the foreign business community in rule-making and standard-setting processes.
- Establish fair and impartial channels for appealing adverse decisions by authorities at various levels of government.

For Both the US and Chinese Governments:

- **Pursue the timely completion of a high-standard BIT that ensures American companies can enjoy the intended benefits of the treaty within China’s unique market and that Chinese companies can contribute positively to the US economy.**
- Ensure that the negative lists from both governments are short with only narrowly crafted exceptions that limit investment only in truly security-sensitive sectors.
- Utilize bilateral dialogues to generate concrete opportunities for investors from each country to contribute more fully to economic development and employment in the other country.

建议

对中国政府：

- 采取切实举措进一步向在中国的美国投资者提供市场准入、法律保护和非歧视待遇，使其和在美国的中国投资者享受的待遇相同。
- 进一步明确最终的统一的跨行业负面清单是否意味着无需再适用多个特定行业的负面清单和其他既存法律法规。
- 进一步明确国家安全审查机制的适用范围和程序，确保这些机制仅限于基本安全范畴，避免将之用于促进本地企业和技术。
- 基于公开、公正和透明原则制定和实施产业政策。
- 提高规则 and 标准制定过程的透明度，给予外资企业界更多的机会提出意见和建议。
- 建立公平公正的渠道用以对各级政府部门的不利决定提出申诉。

对中美两国政府：

- 争取及时达成一个高标准的双边投资协定，确保美国企业在中国这个独一无二的市场能够实现预期的利好，并且保证中国企业能够为美国经济做出积极贡献。
- 确保两国政府列出简短的负面清单，只对真正敏感的安全领域做出明确界定以限制投资。
- 利用双边对话，为两国投资者创造为对方经济发展和就业做出更大贡献的具体机会。

Standards, Certification, and Conformity Assessment

Introduction

Standardization system reform in China continued in 2016. In March, the Standardization Administration of China (SAC) published draft revisions to the Standardization Law for comments, which constitutes an important step forward. The draft Standardization Law establishes a legal framework for many of the important reforms progressing under the guidance of the State Council. In particular, AmCham China commends the inclusion of social organization standards and dispute resolution provisions.

AmCham China strongly supports the goals of the Chinese government's ambitious standards reform plan not just to raise the quality of technology products and services, but also to protect the health and welfare of Chinese citizens. A well-designed standards development framework that reflects international norms and best practices can help to provide a stable foundation for the growth of strong, innovative industries. To that end, we highlight the principles of standards development that have helped produce truly global technology standards, which in turn have fueled global economic growth and provided benefits for society worldwide. We encourage a standards development process that is transparent, open to participants on a global basis, market-driven, consensus-oriented, and technology-neutral.

While AmCham China welcomes these positive developments, China's standardization system still imposes a number of barriers to market entry that remain a concern for member companies. In order of significance, these barriers include:

- ❶ The refusal by some Chinese standardization committees to adopt existing international standards, including those created by private US-based standards bodies that are largely made up of and driven by international industry, such as the Institute of Electrical and Electronics Engineers (IEEE) and ASTM International, despite encouragement from the Chinese government to do so;
- ❷ The inability of foreign-invested enterprises (FIEs) to fully participate in all phases of China's standards development; and

- ❸ China's inconsistency in providing full transparency across all standards development and implementation processes.

Ongoing Regulatory Issues

Recognition and Adoption of International Standards and Due Process

AmCham China continues to encourage China to recognize and adopt international standards and due process in this round of Standardization Law revision. We urge China, like all major industrialized nations that are signatories to the World Trade Organization (WTO), to use its commitments in the WTO Agreement on Technical Barriers to Trade (WTO/TBT) as a basis for legal and policy standardization frameworks. There are elements of the current draft Standardization Law that require careful attention to ensure that China remains consistent with the international community.

The WTO/TBT requires that standards developed by a central government adhere to the provisions where international standards exist or their completion is imminent. International standards must be used in whole or in part as the basis for national or industrial standards, except where doing so would be ineffective or inappropriate. In addition, before adopting a standard, standardization bodies under the central government must allow a period of at least 60 days for the submission of comments on the draft standards by interested parties within the territory of a WTO member.

Over the past several years, China's government and its industries have increasingly embraced a number of international standards. By the end of 2014, about 75 percent of Chinese national standards (GB, *guobiao*, 国标) were derived or developed by adopting standards from the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU). Meanwhile, China continues to increase its efforts to promote international standards by leading standards development work on the Internet of Things in the ISO and IEC joint technical committee (JTC1). While AmCham China is pleased by China's increased involvement in international standards development, we believe that greater progress is required.

标准、认证和合格评定

引言

2016年，中国继续推进标准化体制改革。作为一项重要的举措，国家标准化管理委员会（SAC）于2016年3月发布了《标准化法（修订草案征求意见稿）》。《标准化法》修订草案为国务院指导下开展的很多重要改革确立了法律框架。中国美国商会（商会）尤其赞赏其对社会团体标准和争议解决做出了规定。

中国政府实施的标准化体制改革有着宏伟的目标，不只是为了提高技术产品和服务的质量，也是为了保护中国民众的健康和福祉，商会对此表示大力支持。设计合理标准制定框架能够反映国际标准和最佳实践，有助于为新兴产业的壮大和发展提供一个稳定的基础。为此，我们强调标准制定原则的重要性，因为这些原则将有助于确立真正全球性的技术标准，从而推动全球经济增长并造福世界。我们鼓励标准制定过程向全球参与者保持透明和开放，并遵循，市场驱动、共识导向及技术中立的原则。

商会欢迎这些积极的进展，但是，中国的标准化体制仍然对市场准入设置了一些让会员企业担心的障碍。按照重要性排列，这些障碍包括：

- ❶ 虽然中国政府鼓励采用国际标准，但是，中国的一些标准化委员会仍然拒绝采用现有的国际标准，包括总部设在美国的、主要由国际产业界参与和驱动的民间标准制定机构制定的标准，比如，电气与电子工程师协会（IEEE）和 ASTM 国际标准组织制定的标准；
- ❷ 外资企业不能充分地全程参与中国标准制定的所有阶段；
- ❸ 不能在所有标准制定和实施过程中始终保持完全透明。

现存监管问题

国际标准和程序正义的认可 and 采用

商会继续鼓励中国在这一轮《标准化法》修订过程中认可和采用国际标准和程序正义。我们敦促中国和作为世界贸易组织（WTO）成员国的主要工业国家一样，将其在世贸组织《技术性贸易壁垒协定》（WTO/TBT）中的承诺作为法律和政策标准化框架的基础。为了与国际社会保持一致，目前的《标准化法》修订草案中有一些地方需要特别留意。

世贸组织《技术性贸易壁垒协定》要求中央政府制定的标准必须遵守已有或即将完成的标准。国家标准或行业标准必须基于国际标准的全部或部分，除非无效或不适用。另外，在批准一个标准之前，隶属于中央政府的标准化机构须留出至少 60 天的时间，让其他世界贸易组织成员国内有利害关系的各方对标准草案提出意见。

在过去的几年中，有很多国际标准得到了中国政府和各个行业的认可。截至 2014 年年底，在中国国家标准（GB，国标）中，大约有 75% 源自或采用了国际标准化组织（ISO）、国际电工技术委员会（IEC）和国际电信联盟（ITU）制定的标准。同时，中国在 ISO 和 IEC 的联合技术委员会（JCT1）中承担物联网标准制定工作，以继续加大力度推进国际标准制定。商会非常认可中国大力参与国际标准的制定，希望在这个领域看到更大的进展。

很多在华外资企业非常担心，中国的标准制定过程仍然只是将国际标准和国家标准部分统一，并且缺乏对中国标准一致的解释。中国的许多标准化委员会继续以摘录的方式，部分地采用国际认可的技术标准，并以此为基础制定独特的中国标准，从而造成混淆和不必要的重复，制造市场准入和对外国进口形成限制的贸易壁垒，阻碍中国商品和技术向国际市场的出口，还增加所有相关方的成本和上市时间。商会建议中国全部而非部分接受国际统一

The partial harmonization of international and Chinese standards that continues in China's standards development process and the inconsistent interpretations of Chinese standards are serious concerns for many foreign companies in China. Many Chinese standards committees continue to excerpt fragments of internationally accepted technical standards to create unique Chinese standards that are confusing, unnecessarily duplicative, create trade barriers restricting market entry and foreign imports, and hinder the export of Chinese goods and technology to the global market, increasing cost and time-to-market for all parties. AmCham China recommends that when internationally harmonized standards are being adopted in China, those standards should be adopted in full, not in part. In addition, Chinese regulators should work with international experts to ensure constituency in the interpretation and application of those standards.

Recognition of Disciplined SDOs to be International SDOs

Equally challenging is China's continued reluctance to accept globally oriented standardization coalitions as valid standards development organizations (SDOs). From a practical standpoint, no government, individual, or group of SDOs can singularly lead standards development for all technologies and their applications in the global market. It is essential that regulators consider all existing globally recognized SDOs, including those that are private and US-based. We also encourage regulators to 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 a standard, as accepted by users in the marketplace, should be given weight. By accepting these SDOs and by following these principles for adopting standards, we believe the Chinese government will not only improve its standardization system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

We therefore strongly urge the Chinese government to officially broaden its recognition of international SDOs beyond the ISO, IEC, and ITU to any organization that follows the 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 Section IX. We are confident that private, US-based SDOs meet these qualifications and urge the Chinese government to engage with and accept these SDOs on the same basis as it does with the ISO, IEC, and ITU.

Participation of FIEs in Standards Development

There are still a number of critical SDOs in China that limit full FIE participation. In many cases, FIE participation is often either outright prohibited or granted only under "observer" status, which usually means they have limited or no voting rights, technical committee (TC) electorate eligi-

bility, or ability to participate in standards drafting. FIEs are also often excluded from certain discussions and meetings that are limited to a select group of domestic members, and membership fees for FIEs are often higher than those of their domestic counterparts.

While AmCham China welcomes positive developments such as the opening of the China National Information Security Standardization Technical Committee (TC260) in 2015 to all members, including FIEs, with complete voting rights, a transparent application process remains lacking for the majority of foreign companies. Even for current members, the rights to initiate or develop standards are not clearly defined. Moreover, there are some other TCs which have yet to grant all members equal rights, for example, the China National Information Technology Standardization Committee.

We urge the Chinese government to continue engaging with all relevant stakeholders in developing standards to ensure the resulting standards are widely accepted and supported both domestically and internationally.

Social Organization Standards

One of the major developments in the revision of the Standardization Law is the decentralization of the government-driven standardization process to give associations (societies, chambers, and other consortia) a leadership role in the drafting process. The Chinese national standard "Social Organization Standardization – Part I: Guidelines for Good Practices" (GB/T20004.1-2016) was finally published in 2016, and the following standard titled "Social Organization Standardization – Part 2: Requirements for the Evaluation of Good Practice" is currently in the drafting process. AmCham China encourages the Chinese government to establish standards that set a tone of inclusiveness for social organization standardization.

AmCham China commends efforts by the Chinese government to include industry in standards development. However, according to discussions with the SAC, it appears that the term "social organizations" is intended to be limited to legal bodies approved and regulated by the Ministry of Civil Affairs. As such, companies may find it difficult to set up a "social organization" as an SDO that meets legal requirements.

Although nominally intended to be open to all interested parties, there is a significant risk that an SDO could be dominated by a powerful participant that acts to exclude competitors from participating. AmCham China urges that relevant regulations make clear that social organization SDOs be open to all parties and follow international best practices. A social organization SDO that is not open to all parties may be inconsistent with the Anti-Monopoly Law.

Social organization standards will coexist with national standards and sector standards, which may have a complicated impact on the market. A fast track process is being

标准。另外，中国监管机构应当与国际专家合作，确保标准解释和应用的一致性。

对国际标准制定机构的认可

另外一个挑战是，中国仍然不愿意将面向全球的标准联盟作为正当的标准制定机构（SDO）。从实践角度讲，由于全球市场上的技术及其应用多不胜数，政府、个人或标准制定机构中的任何一方都无法独自承担全球市场上所有标准的制定任务。因此，监管机构需要考虑接受所有现有的国际认可的标准制定机构，包括总部设在美国的民间标准制定机构。我们也鼓励监管机构决定是否采用一项标准时，还应当基于国际认可的标准制定原则和程序正义要求，包括开放参与、透明、公正投票权和协商共识，尤其应当考虑这一标准的技术品质和市场相关度，即市场上用户的接受程度。通过认可这些标准制定机构并遵循这些标准制定原则，我们相信，中国政府不仅能够改进自己的标准化体制，还能够提高中国技术和产品在国际市场上的竞争力。

我们促请中国正式放宽认可国际标准制定机构的范围，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规定的六大原则的所有标准制定组织，即“WTO G/TBT/1/Rev.8”第 IX 节确立的包括透明、公开、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这六大原则。我们相信那些总部设在美国的民间标准制定机构均符合上述资格要求，并促请中国政府像对待 ISO、IEC 和 ITU 一样认可并与这些标准制定机构合作。

外资企业参与标准制定

中国仍有一些重要的标准制定机构限制外资企业的全面参与。在很多情况下，外资企业要么完全被禁止参与，要么只能以“观察员”的身份参与，通常意味着没有或仅有有限的投票权、技术委员会选举资格或参与标准制定的能力。很多讨论和会议往往仅限特定的境内企业参加，外资企业被排除在外。而且，外资企业常常需要缴纳比境内企业更高的会员费。

商会欢迎已经取得的积极进展，例如 2015 年，全国信息安全标准化技术委员会（信安标委）向包括外资企业在内的全体会员开放，给予完全的投票权，但是，对于绝大多数外资企业来说，仍然缺少一个透明的申请过程，而且目前的成员企业在信安标委中是否能拥有标准发起和制

定权仍然不明确。另外，其他一些技术委员会还没有给予所有会员平等的权利，例如全国信息技术标准化技术委员会。

我们促请中国政府继续与所有利益相关方合作制定标准，从而确保所制定的标准在国内和国际获得广泛的认可和支持。

团体标准

将过去政府驱动的标准制定过程分散下放，让团体（学会、商会和其他团体）在标准制定过程中发挥主导作用，这是《标准化法》修订取得的其中一项重大进展。2016 年，中国发布了关于团体标准化的国家标准《团体标准化第 1 部分：良好行为指南》，团体标准化的第二部分《团体标准化第 2 部分：良好行为评价要求》目前正在起草过程中。商会鼓励中国政府确立对团体标准化包容的标准。

商会赞赏中国政府允许行业参与标准制定的举措。根据与国家标准化委的沟通，“团体”似乎只限于民政部批准和管辖的合法的“团体”。所以，企业可能很难设立符合法律要求的“团体”标准制定机构。

虽然标准制定机构名义上向所有相关方开放，但是，实力雄厚的参与者仍然有可能将竞争者排除在外从而占据主导地位。商会敦促相关法规明确提出团体标准制定机构将向所有相关方开放并将遵循国际最佳实践的要求。未向所有相关方开放的团体标准制定机构可能不符合《反垄断法》的规定。

团体标准与国家标准和行业标准共存，可能对市场产生复杂的影响。中国正在考虑通过“快速通道”程序将团体标准转换为国家标准和行业标准。为了防止出现低质量以及不符合国际最佳实践的标准机构（SDO）制定的标准，需要明确“快速通道”规则和流程并且予以妥善实施。

虽然商会鼓励制定团体标准，但是我们认为中国政府应当明确相关规则和要求，以防止特殊利益团体滥用行业规则。

重要的是，因为自愿性标准会对贸易产生影响，所以，中央政府下属的标准化机构必须确保标的制定、采用和运用方式不会给国际贸易制造不必要的障碍。鉴于中央政府负责监督地方政府和其他机构（如，团体）制定的标准，我们建议中央政府鼓励标准制定机构在实践过程中遵守 WTO/TBT 相关规定。

contemplated to convert social organization standards to national standards and sector standards. Clarity is especially important in the fast track guidelines and for the process to be well administered as to prevent low quality standards as well as standards for SDOs that do not follow international best practices.

Although AmCham China encourages the development of social organization standards, we believe that the Chinese government should provide a clear set of rules and requirements to prevent abuse by special interests.

Importantly, because voluntary standards can impact trade, standardization bodies under the central government must ensure that standards are not prepared, adopted, or applied in a way that creates unnecessary obstacles to international trade. We recommend that the central government encourage standards developers to align their practices with WTO/TBT provisions to the extent that it provides oversight of standards developed by local governments or other organizations (e.g., social organizations).

Enterprise Standards

In cases where national standards and sector standards are not available, sometimes companies create their own enterprise standards. In September 2014, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and SAC, along with local quality supervision bureaus, began to actively urge enterprise standards management reform, emphasizing self-disclosure and compliance. In 2015, the AQSIQ and SAC launched pilot programs for the enterprise product standard self-disclosure system in 12 regions and distributed the “Work Plan for Developing the Enterprise Product and Service Standards Self-Declaration System for Disclosure and Public Supervision,” with the aim of accelerating enterprise standards management system reform.

In December 2016, the SAC released a draft of its five elements of the enterprise standards system for public comment. The draft enterprise standards system contains a number of regulations and requirements for enterprises, which include a wide range of security issues. However, it is unclear how to implement such regulations and requirements. The enterprise standards require that an enterprise establish standards management systems in several areas that do not directly address product security and quality issues.

The new system will replace the current standards-filing management system with the goal of enabling enterprises, consumers, government, and third-party institutes to jointly participate in market supervision. AmCham China welcomes the Chinese government’s efforts to enable market participants to play a key role and optimize standardization efforts in the commercial sector. However, AmCham China remains concerned in several respects.

While the new system requires enterprises to disclose product and service standards information, it is unclear what standards information needs to be disclosed. We are concerned about the level of information to be disclosed, particularly with respect to trade secrets protection and the inability to update disclosed information. This is especially true in the information and communications technology (ICT) sector where network services and products are constantly being upgraded and changed.

ICT companies generally utilize specifications in lieu of enterprise standards. Specifications are company internal references for product/service development which vary greatly by company and are often regarded as trade secrets. If the new system requires disclosure of such specifications, it will not only impose onerous costs on companies, but also lead to intellectual property protection concerns. AmCham China recommends that enterprise specifications be excluded from the scope of disclosure and, when information involves trade secrets, enterprises are able to refrain from disclosing such information.

The new enterprise standards management system encourages enterprises to collaborate and develop standards with more advanced technologies than national and sector standards. However, the legal status of enterprise alliance standards and the distinction between an enterprise alliance and a social organization needs to be further clarified by the Chinese government. Standards developed by an enterprise alliance are now categorized as enterprise standards instead of social organization standards, and are adopted only by the members of the alliance, while social organization standards are encouraged to be open to all. In addition, while a social organization must register with the relevant civil affairs department and obtain a technical capacity qualification, an enterprise alliance does not require registration or evaluation.

We are concerned that the differentiation between enterprise alliance standards and social organization standards will complicate the standardization system, potentially undermining the principles of openness, transparency, and equal participation, leading to monopoly risks. We also question whether there will be a process by which enterprise alliance standards or standards developed by an alliance between enterprises can be transformed to become a recommended standard or a compulsory standard. If so, due process, transparency, and openness and equality for all parties become even more critical.

AmCham China suggests that as a guidance document, the requirements should avoid mandating that enterprises follow a single system framework to cover every aspect of product manufacture, which would create excessive restraints on the production and operation of an enterprise. We urge that the enterprise standard system instead follow market economy principles and allow enterprises to freely develop their own standards systems to meet higher-level standards, which will enhance the competitiveness of

企业标准

在没有国家标准和行业标准的情况下，企业有时可以自己制定企业标准。2014年9月，中国国家质量监督检验检疫总局（质检总局）、国家标准委及地方质监局开始积极推进企业标准管理制度改革，强调企业自我披露和合规管理。2015年，质检总局和国家标准委在12个地区开展企业产品标准自我披露制度的试点工作，并且印发《企业产品和服务标准自我声明公开和监督制度建设工作方案》，以加快企业标准管理制度的改革。

2016年12月，国家标准委发布5项《企业标准体系》系列国家标准向社会公开征求意见。企业标准体系草案确定了企业需要遵守的规定和要求，其中包括众多安全问题，但并未明确这些规定和要求的执行方式。此外，企业标准体系要求企业在与产品安全和质量没有直接关联的几个领域建立标准管理制度。

新制度将取代现有的标准备案管理制度，使得企业、消费者、政府和第三方机构共同参与市场监督。对于中国政府为了让市场参与者发挥关键作用以及优化商业领域的标准化工作做出的努力，商会表示欢迎，同时仍然存在几方面的担忧。

新制度要求企业披露产品和服务标准信息，但未就需要披露什么标准信息进行说明。我们对信息披露的水平，特别是商业秘密的保护以及披露的信息无法更新的问题表示担忧。由于网络服务和产品不断更新、变化，信息和通信技术行业更是如此。

信息和通信技术企业通常以规范替代企业标准。规范是企业内部制定的产品/服务开发标准，常常被视为商业秘密，不同企业制定的规范也有很大差别。如果新制度要求披露这些规范，不仅会给企业带来沉重的成本负担，还会引发企业对知识产权保护的担忧。商会建议将企业规范排除在披露范围之外，并且一旦涉及到商业秘密，企业可以拒绝披露相关信息。

新的企业标准管理制度鼓励多个企业联合开发和制定高于国家和行业标准的更先进技术标准。然而，中国政府需要进一步明确企业联盟制定的标准的法律地位以及企业联盟和团体之间的区别。目前，企业联盟制定的标准被归为企业标准而非团体标准，只有联盟的成员采用，而团体标准则被鼓励向所有相关方开放。此外，团体必需在相关民政部门登记并取得技术能力资质，而企业联盟则不需

要登记或评估。

我们担心，企业联盟的标准和团体标准之间的差别会让标准化体制变得复杂，可能有损开放、透明和平等参与之原则并导致垄断风险。我们也想了解，是否有相应的程序将企业标准或企业联盟制定的标准转换成推荐标准或强制标准。如果有这样的程序，那么，程序正义、透明、开放和各方的平等参与等原则就变得更为重要。

商会建议，作为指导文件的要求应当避免强令企业在产品制造的各个环节遵守单一的体系框架，这会给企业生产和运营带来过度的制约。我们敦促企业标准体系应当遵循市场经济原则，允许企业自主制定符合更高标准的标准体系，从而提高各个企业在“走向全球”以及“一带一路”战略中的竞争力。

继续深化中国检测检验认证制度改革

2015年，中国宣布“中国制造2025”战略，计划到2049年成为世界制造业强国，其中就提出要“完善认证认可管理模式，提高强制性产品认证（“3C认证”）的有效性，推动自愿性产品认证健康发展”。李克强总理2016年3月向全国人大提交的报告以及中国发布的“十三五”规划都强调了加强高科技产业、提高质量以及发展现代服务业的重要性。

2016年11月20日，国家质检总局和国家认证认可监督管理委员会（国家认监委）发布了由包括国家质检总局和国家认监委等32个部门共同制定的《认证认可检验检测发展“十三五”规划》（“规划”）。规划要求改进服务、鼓励创新、简化管理和深化改革。

商会欢迎中国实施检测检验认证制度改革，这将有助于提高中国制造产品的质量，进一步推动美中贸易。商会也敦促中国采用检测检验认证的最佳国际实践作法，将规则制定者、裁判员和运动员的角色分开，从而有效地解除现代服务业的禁锢，让市场发挥主导作用，为生产厂商提供更多选择去满足中国市场相关检测检验认证要求。

我们相信，为了深化检测检验认证制度改革，还需要采取其他切实有效的措施，包括允许外资检测机构为所有产品类别提供3C检测认证服务，允许外资机构成为3C认证机构。由此，所有利益相关方才能共同参与建设一个公平、健全的检测检验认证制度。

all enterprises in alignment with China's "going global" strategy and its "One Belt, One Road" initiative.

Further Deepening China's Reform on Testing, Inspection, and Certification

In 2015, China announced its "Made in China 2025" initiative to transform China into a leading manufacturing power by the year 2049. One of the key fundamentals of the initiative is "to improve certification and accreditation management, to refine the effectiveness of the China Compulsory Certification scheme (CCC), and to promote the development of voluntary product certification." Both Premier Li Keqiang's report to the National People's Congress in March 2016 and the 13th Five-Year Plan also reinforce the importance of strengthening the high-tech industry, improving quality, and developing a modern service industry.

On November 20, 2016, AQSIQ and the Certification and Accreditation Administration of China (CNCA) published the "13th Five-Year Plan on Certification, Accreditation, Inspection, and Testing" which was jointly developed by 32 ministries including AQSIQ and CNCA. It calls for improving services, stimulating innovation, streamlining management, and deepening reforms.

AmCham China welcomes China's reform on testing, inspection, and certification (TIC), as it will improve the quality of products made in China and further facilitate US-China trade. AmCham China also urges China to adopt the international TIC best practice of separating the rule makers, referees, and players, which is an effective way to unshackle the modern service industry and let the market take the lead, providing more alternatives for manufacturers to comply with related testing and certification requirements in the China market.

We believe, however, that additional concrete steps need to be taken to deepen TIC reforms, including allowing foreign-invested testing organizations to perform CCC testing for all product categories and enabling foreign-invested organizations to qualify as certification organizations for the CCC. That way, all stakeholders can participate in building a fair and sound TIC system.

Recent Developments

Standardization System Reform

In March 2016, the State Council Legislative Affairs Office published the long-awaited draft Standardization Law on its official website for public comments. These revisions, once passed, will constitute the first amendment to the Standardization Law since it went into effect in 1989. The new draft expands the scope of standards from the current focus on industrial products and engineering to the inclusion of standards on services and social management. It

streamlines mandatory standards development, optimizes the system of recommended standards, grants legal status to social organization standards, and includes regulations on enterprise standards. The mission of the reform is to set up a new market-driven standards system that coordinates government and industry in standards development

AmCham China believes that a market-driven standardization system and standardization reforms will facilitate China's further integration into the international standards development process. We urge China to increase its adoption of internationally accepted standards and support a level playing field for all companies seeking to comply with China's standardization system without discrimination.

Recommendations

For the Chinese Government:

- **Officially broaden recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development.**
- Provide a clear set of rules and requirements in the development of social organization standards to prevent abuse by special interests.
- Adopt existing global technical standards in their complete form whenever available in order to maintain full harmonization and avoid creating duplicative national standards or standards that diverge from prevailing global standards.
- When adopting international standards, Chinese regulators should work with subject matter experts on proper interpretations and applications.
- Adhere to international norms of transparency and openness in the social organization standards development process.
- Monitor the activities of TC and subcommittee-level standards working groups more closely to ensure that FIEs are allowed to participate in all phases of standards-development activities on an equal basis with domestically-invested enterprises.

最新进展

标准化体制改革

2016年3月，国务院法制办在其官网发布了期盼已久的《标准化法（征求意见稿）》。一旦获得通过，这将是《标准化法》1989年生效实施以来第一次修订。新修订的法规的关注焦点从目前的工业产品和工程标准扩大到服务和社会管理标准，简化强制性标准制定过程，优化推荐标准体系，承认团体标准的法律地位，并对企业标准做出规定。改革的目标是建立新型的市场驱动的标准体系，来协调政府和企业标准制定活动中的角色。

商会相信，通过市场驱动的标准化体制和标准化改革，中国能够进一步与国际标准制定流程接轨。我们敦促中国采用更多国际认可的标准，为所有努力遵守中国标准化体制的企业提供一个公平和非歧视的平等环境。

建议

对中国政府：

- 正式将对国际标准制定机构的认可范围扩大至其他遵循世界贸易组织贸易技术壁垒 (WTO/TBT) 关于国际标准制定原则的标准制定机构。
- 明确团体标准制定的规则和要求，防止特殊利益团体滥用规则。
- 尽可能完整采用现有的国际技术标准，避免制定重复的国家标准或者偏离现有国际标准的标准。
- 采用国际标准时，中国监管机构应当与相关学科专家合作，确保对采用的国际标准做出适当的解释和应用。
- 在团体标准制定过程中遵循透明和公开的国际标准。
- 更加密切地监督各技术委员会和技术分委会标准工作组的活动，确保外资企业能够与内资企业平等地全程参与标准制定活动。

Tax Policy

Introduction

Tax base erosion and profit sharing (BEPS) action plans were further localized in China in 2016. The BEPS framework attempts to harmonize international tax administration systems to combat tax avoidance at the international level through the Organisation for Economic Cooperation and Development (OECD). New compliance requirements and anti-tax avoidance provisions in Bulletin 42 redefine China's transfer pricing and international taxation regime and will assist Chinese tax authorities in combatting tax avoidance. We applaud China's efforts to align its tax administration system with international norms and participate in international anti-tax avoidance efforts.

Chinese tax authorities also issued several research and development (R&D) tax incentives in 2016 to encourage technological development and innovation. The final stage of business tax to value-added tax (B2V) regime reform was implemented starting May 1, 2016. B2V reform has boosted employment, improved taxation regimes, supported economic transformation, and reduced indirect tax burdens on taxpayers. We expect more tax policies in the years to come to support the transition of China's economy.

Recent Developments

New Policies for Super Deduction of R&D Expenses: Circular 119 and Bulletin 97

In an effort to support R&D and innovation in China, on November 2, 2015, the Ministry of Finance (MOF), the State Administration of Taxation (SAT), and the Ministry of Science and Technology (MOST) jointly issued Circular 119, which expands the scope of activities and industries that are eligible for a super deduction. On December 29, 2015, the SAT issued Bulletin 97, further clarifying implementation issues relating to Circular 119. The two rules entered into effect on January 1, 2016.

Circular 119 uses a negative list approach to exclude R&D activities in certain industries from claiming super deduction status, while R&D activities not on the negative list are eligible for the super deduction. Compared with the

previous requirement from 2007 that R&D activities eligible for super deduction must operate in "new or high-tech sectors specifically supported by the State," the updated negative list approach expands the scope of activities and industries eligible for R&D super deduction status.

Circular 119 introduces new expenditure items that qualify for R&D super deduction status, and specifies that if an enterprise adopts reasonable methods and documentation that establish shared expenses between R&D and non-R&D activities, the relevant R&D costs are eligible for super deduction. Examples of such dual-purpose expenses include costs related to staff and equipment related to both R&D and non-R&D activities. The new rule removes the restriction that relevant devices, equipment, or intangible assets be "specifically" used for R&D activities to enjoy the incentive.

In cases where an enterprise entrusts R&D activities to external third-party organizations or individuals, Circular 119 stipulates that 80 percent of R&D expenses incurred by the principal (based on the arm's length principle) are eligible for super deduction. However, Circular 119 specifies that if the third party is an overseas organization or individual, super deduction for R&D expenses is not allowed.

While we applaud the expansion in scope of R&D activities eligible for super deduction, given China's trend towards a services consumption-driven economy, we recommend that the SAT further reduce the items on the negative list to promote the investment in all service sector R&D. Furthermore, we are concerned about the exclusion of overseas third-party organizations or individuals in the calculation of R&D expenses to determine eligibility for super deduction. AmCham China believes that this practice unfairly disadvantages foreign-invested enterprises, which rely more heavily on global networks than their domestic competitors.

New Rules for HNTE Status Recognition: Circular 32 and Circular 195

On January 29, 2016, MOST, MOF, and SAT jointly issued the new "Administrative Measures on High and New Technology Enterprise (HNTE) Status Recognition" (Circular 32). The new rules adjust certain thresholds for an enterprise to be recognized as an HNTE, which allows it to

税收政策

引言

2016年，税基侵蚀和利润转移（BEPS）行动计划在中国进一步实现了本地化。BEPS框架致力于通过经合组织（OECD）协调全球税收管理制度，打击国际逃避税。第42号公告的新合规要求和反避税条款重新明确了中国的转让定价和国际税收制度，有助于中国税务机关打击避税行为。中国依据国际准则不断完善其税收管理系统并积极参与国际反避税行动，我们对此表示赞赏。

2016年，中国税务机关还发布了一系列研发税收激励政策，以鼓励技术开发和创新。营业税改征增值税（B2V）改革于2016年5月1日进入最后阶段。B2V改革有助于促进就业、改善税收制度、支持经济转型、降低纳税人的间接税务负担。我们希望中国未来能出台更多税收政策以支持中国的经济转型。

最新进展

研发费用加计扣除新政策：119号文和第97号公告

为支持中国的研发和创新，2015年11月2日，财政部、国家税务总局、科学技术部联合发布了119号文，扩大了符合加计扣除的活动和行业的范围。2015年12月29日，国家税务总局发布了第97号公告，进一步明确了与119号文相关的实施问题。这两项规定已于2016年1月1日施行。

119号文使用负面清单排除了不适用加计扣除的特定行业的研发活动，负面清单上未列出的行业研发活动则适用加计扣除。在2007年的规定中，适用加计扣除的研发活动必须是“国家重点支持的高新技术领域”，而新的负面清单扩大了适用研发加计扣除的活动和行业的范围。

119号文增加了可适用加计扣除的新研发费用项目，并明确如果企业采用合理的方法并保留文件明确有关共同费

用在研发和非研发活动之间的分配，相关的研发支出适用加计扣除。此类双重目的费用包括与员工相关的成本，与研发及非研发活动相关的设备。新规定取消了相关仪器、设备或无形资产必须“专门”用于研发活动的限制。

对于企业委托外部第三方机构或个人进行研发活动所发生的费用，119号文规定按照费用实际发生额的80%计入委托方研发费用并加计扣除。委托外部研究开发费用实际发生额按照独立交易原则确定。不过119号文规定企业委托境外机构或个人进行研发活动所发生的费用，不得加计扣除。

中国政府扩大了适用加计扣除的研发活动的范围，我们对此表示赞赏。鉴于中国正在逐渐转向服务消费主导型经济，我们建议国家税务总局进一步减少负面清单上的项目，从而促进所有服务领域的研发投入。此外，新规在计算可加计扣除的研发费用时将国外第三方组织或个人排除在外，我们对此表示担忧。中国美国商会（商会）认为这一做法对外商投资企业不利，因为这些企业与国内竞争对手相比，更加依赖全球网络。

高新技术企业认定新规：32号文和195号文

2016年1月29日，科学技术部、财政部和国家税务总局联合发布了新的《高新技术企业认定管理办法》（32号文）。新规调整了高新技术企业认定门槛，经认定的高新技术企业可享受15%的企业所得税税率，显著低于25%的标准税率。2016年6月22日，科学技术部、财政部和国家税务总局联合发布了新的《高新技术企业认定管理工作指引》（195号文），进一步明确了32号文中的政策。

新规将一些新兴技术添加到了国家鼓励的高新技术范围中，并删除了一些过时的技术。32号文和195号文具有追溯效力，于2016年1月1日起生效。新规取代了2008年发布的172号和362号文，对高新技术企业的资格要求作出了以下重大改变：

enjoy a 15 percent corporate income tax rate, a rate significantly lower than the standard 25 percent. On June 22, 2016, MOST, MOF, and SAT jointly issued the new “Guidance for Administration of HNTe Status Recognition” (Circular 195) to further clarify policies in Circular 32.

The new rules add emerging technologies to the scope of state-encouraged high and new technologies and remove outdated ones. Circular 32 and Circular 195 are applied retroactively, effective January 1, 2016. The new rules replace Circular 172 and Circular 362 from 2008. They make the following key changes to the requirements for an enterprise to qualify for HNTe status:

Circular 32 and Circular 195 Updates by Topic

Intellectual property (IP):	The new rules still require enterprises to hold the relevant IP, but remove the restriction that an enterprise must have held the IP for the past three years, as well as the requirement for a five-year exclusive license right.
Technical personnel:	The new rules acknowledge the rise in R&D outsourcing and relax requirements regarding the qualifications of technical personnel.
R&D expenses:	The new rules lower the percentage of revenue that must be dedicated to R&D purposes for enterprises whose annual sales revenue is less than RMB 50 million (US \$7.5 million), enabling more small and medium-sized enterprises to enjoy preferential HNTe policies.
Violation/accident records:	The new rules require enterprises to meet certain safety, quality, and environmental protection standards.

According to the new rules, companies with HNTe status must submit an annual report containing details on IP, technical personnel, R&D expenses, business revenue, etc., to the relevant authorities by the end of May the following year.

The new rules establish strict criteria to clarify which companies are eligible to apply for HTNE status. Stricter reporting obligations and new selective examinations by relevant authorities present new challenges for companies seeking HNTe status recognition and may discourage others from applying.

Although the new rules lower the percentage of revenue required to be dedicated to R&D purposes for small and medium-sized enterprises, the percentage remains the same for large enterprises. It is difficult for large enterprises to meet this requirement and for enterprises in rapid revenue growth to keep up. We recommend policymakers consider lowering this percentage for large companies.

New Rules on Reporting Related Party Transactions and Contemporaneous Documentation: Bulletin 42

On June 29, 2016, the SAT issued Bulletin 42 to amend the provisions stipulated in the 2009 “Implementation Measures for Special Tax Adjustment (Trial)” (Circular No. 2) regarding requirements for reporting of related party transactions and contemporaneous documentation. The Bulletin applies starting from tax year 2016.

Bulletin 42 includes the “Annual Related Party Transactions Reporting Forms (2016)” as an appendix. The new reporting requirements increase the total number of forms from nine to 14 and strengthen requirements related to information disclosure. In addition, the new forms also include a country-by-country reporting form.

Bulletin 42 adopts a three-tiered framework regarding the administration of contemporaneous documentation. This framework delineates master filings, local filings, and special-issue filings as proposed in the draft “Implementation Regulation for Special Tax Adjustment” issued by the SAT for public comment in September 2015.

Bulletin 42 will require multinational enterprises to invest more time and resources to meet China’s contemporaneous documentation and reporting requirements. We urge the SAT to conduct research on the increased compliance burden caused by new requirements and implement measures to help taxpayers control these compliance costs.

New Rules on Administration of Advance Pricing Arrangements: Bulletin 64

On October 11, 2016, the SAT issued Bulletin 64 to improve the administration of advance pricing arrangements (APAs). Bulletin 64 entered into effect as of December 1, 2016, replacing Chapter 6 of Circular No. 2 (2009).

Bulletin 64 is another localized BEPS regulation issued by Chinese tax authorities. It further clarifies relevant requirements on APA matters such as minimum requirements for application, procedures for concluding APAs, roll-back periods and application materials, etc.

Compared with previous requirements, the new rules have set a higher standard for APA applications. Enterprises are required to prepare application packages that include analyses of items such as value chains and location-specific advantages.

国科发火(2016)32号和195号对以下议题的规定

知识产权:	新规仍然要求企业拥有相关知识产权的所有权,不过取消了企业必须在过去“近三年内”获得知识产权的限制,以及“五年以上独占许可”获得知识产权的方式。
技术人员:	新规认可了研发外包的趋势,放宽了对技术人员的资格要求。
研发费用:	新规降低了对年销售收入低于5000万人民币(750万美元)的企业的研发费用的占收入比要求,使更多中小企业能够享受高新企业优惠政策。
违规/事故记录:	新规要求企业必须达到特定安全、质量和环保标准。

根据新规,具有高新企业资格的企业必须于次年五月底前向相关机构提交知识产权、科技人员、研发费用、营业收入等年度发展情况报表。

新规设定了严格的标准,明确了哪些企业符合高新企业申请条件。更严格的报告责任和相关部门的新检查机制给计划申请高新企业认证的企业带来了新的挑战,可能削弱其他企业申请的积极性。

尽管新规降低了对中小企业的研发费用的占收入比的要求,但对大企业的比例要求保持不变。大企业以及收入快速增长的企业很难满足这一比例要求,因此我们建议决策者考虑降低对大企业的这一要求。

关于完善关联申报和同期资料管理的新规第42号公告

2016年6月29日,国家税务总局发布了第42号公告,修订了2009年《特别纳税调整实施办法(试行)》(2号文)关于关联申报和同期资料管理的要求。本公告适用于2016年及以后的会计年度。

第42号公告包括附件:《中华人民共和国企业年度关联业务往来申报表》(2016年版)。新报告要求将表格的总数量从9个增加到14个,并强化了与信息披露相关的要求。此外,新表还包括了国别报告。

就同期资料管理而言,第42号公告采用了三层框架。该框架划定了主体文档、本地文档和特殊事项文档,与国家税务总局于2015年9月发布的《特别纳税调整实施办法(征求意见稿)》相一致。

第42号公告将要求跨国公司花费更多时间和资源来满足中国的同期资料文档和报告要求。我们提请国家税务总局开展调研,了解新规带来的合规负担,并采取措施帮助纳税人控制此类合规成本。

关于预约定价安排管理的新规第64号公告

2016年10月11日,国家税务总局发布了《关于完善预约定价安排管理有关事项的公告》。第64号公告于2016年12月1日生效,国税发〔2009〕2号文第六章同时废止。

第64号公告是中国税务机关发布的另一税基侵蚀和利润转移本地化法规。该法规进一步明确了预约定价安排的相关要求,比如申请的最低要求、执行预约定价安排的程序、追溯期以及申请材料等。

相比之前的要求,新规对预约定价安排申请设定了更高的标准。企业需要准备一系列申请材料,包括价值链和地域特殊优势等项目的分析。

此外,第64号公告列举了税务机关“优先受理”或“拒绝”预约定价安排申请的情况。企业须积极配合税务机关开展预约定价安排谈签工作,并调整拟采用的定价原则和计算方法,从而加快申请处理流程。企业在提交正式申请之前,必须完成“分析和评估”流程。

中国税务机关在评估预约定价安排申请时采用了更高的标准,这显示了税务机关对此类事件已积累了丰富的经验,处理得更加熟练。不过第64号公告关于在正式申请前开展“分析和评估”流程的要求可能影响申请双边或多边预约定价安排的企业,因为调整拟采用的定价原则和计算方法可能导致企业在中国的正式申请与其关联方在其他司法辖区的申请存在不一致的情况。我们提请国家税务总局考虑这一问题,并作出进一步的说明。

增值税改革

中国的增值税改革以2012年1月1日在上海启动的改革试点为起点,持续至2016年。2016年3月24日,财政部和国家税务总局联合发布《关于全面推开营业税改征增值税试点的通知》(36号文)。36号文于2016年5月1日正式生效,涵盖所有营改增行业和业务。

36号文中的新增条款和调整条款主要包括:

- 应税范围的调整:应税范围是“在中华人民共和国境内销售服务、无形资产或者不动产”。新增了建筑业、房地产业、金融业、生活服务业四个行业,而且此文件还调整并优化了对每项应税服务范围的注释。

Comparison of Preparation Requirements for Contemporaneous Documentation in Bulletin 42 (2016) and Circular 2 (2009)

Item	Circular 2 (Chapter 3)	Bulletin 42
Report structure	China country file only.	Three-tier framework (i.e., master file, local file, and special-issue file).
Conditions requiring preparation of contemporaneous documentation	<ul style="list-style-type: none"> The annual sum of related party purchases and sales is greater than RMB 200 million (US \$30.1 million) (for toll manufacturing businesses, the amount is calculated based on the import/export customs declaration prices); or The annual sum of other related party transactions is greater than RMB 40 million (US \$6.02 million) (for related party financing, the amount is calculated based on the interest received/paid). <p>The value of related party transactions under a cost sharing arrangement (CSA) or APA will not be counted in determining the above annual sum of related party transactions.</p>	<p>Master file:</p> <ul style="list-style-type: none"> An enterprise has transactions with overseas related parties during the year, and the principal holding company of the enterprise group, which consolidates the enterprise into its financial statements, has prepared a master file; or An enterprise has related party transactions the aggregate of which exceeds RMB 1 billion (US \$151 million) during the year. <p>Local file:</p> <ul style="list-style-type: none"> The annual sum of related party purchases/sales is greater than RMB 200 million (US \$30.1 million) (for toll manufacturing activities, the amount is calculated based on the import/export customs declaration prices); The annual sum of related party purchases/sales of financial assets or intangible assets is greater than RMB 100 million (US \$15.1 million); or The annual sum of other related party transactions is greater than RMB 40 million (US \$6.02 million). <p>The value of related party transactions under a concluded APA will not be counted in determining the above annual sum of related party transactions.</p> <p>Special issue file:</p> <ul style="list-style-type: none"> An enterprise enters or implements CSAs; or An enterprise with a debt-to-equity ratio exceeding the prescribed threshold wishes to prove its related party financing's compliance with the arm's length principle.
Exempt from preparation	<ul style="list-style-type: none"> Related party transactions are covered under an effective APA; or The foreign shareholding percentage is less than 50 percent and related party transactions are only incurred among domestic associated parties. 	<ul style="list-style-type: none"> If the enterprise's related party transactions are only between the enterprise and its domestic related parties, the enterprise may be exempted from the preparation of a master file, local file, and special issue file. For enterprises with an APA, related party transactions that are covered under the concluded APA may be exempted from the preparation of a local file and special issue file.
Deadline for preparation	May 31 of the following year.	<ul style="list-style-type: none"> Master file: within 12 months after the end of the fiscal year for the group's ultimate holding company. Local file and special issue file: June 30 of the following year.
Deadline for submission	Within 20 days upon request from the tax authorities.	Within 30 days upon request from the tax authorities.

第 42 号公告（2016）和 2 号文（2009）对同期资料的准备要求比较

项目	2 号文（第三章）	第 42 号公告
报告结构	单层（仅本地文档）	三层（即主体文档、本地文档和特殊事项文档）
要求准备同期资料的情况	<ul style="list-style-type: none"> 年度发生的关联购销金额（来料加工业务按年度进出口报关价格计算）超过 2 亿元人民币（3010 万美元）；或者 年度其他关联交易金额（关联融通资金按利息收付金额计算）在 4000 万元人民币（602 万美元）以上。 <p>上述金额不包括企业在年度内执行成本分摊协议或预约定价安排所涉及的关联交易金额。</p>	<p><u>主体文档：</u></p> <ul style="list-style-type: none"> 年度发生跨境关联交易，且合并该企业财务报表的最终控股企业所属企业集团已准备主体文档；或者； 年度关联交易总额超过 10 亿元人民币（1.51 亿美元）。 <p><u>本地文档：</u></p> <ul style="list-style-type: none"> 有形资产所有权转让金额（来料加工业务按照年度进出口报关价格计算）超过 2 亿元人民币（3010 万美元）； 金融资产转让金额或无形资产所有权转让金额超过 1 亿元人民币（1510 万美元）；或者 年度其他关联交易金额合计超过 4000 万元人民币（602 万美元）。 <p>上述金额不包括企业在年度内执行预约定价安排所涉及的关联交易金额。</p> <p><u>特殊事项文档：</u></p> <ul style="list-style-type: none"> 企业签订或者执行成本分摊协议的；或者 企业关联债资比例超过标准比例，需要说明符合独立交易原则的。
豁免对象	<ul style="list-style-type: none"> 执行预约定价安排所涉及的关联交易；或 外资股权比例低于 50% 且关联交易仅发生在境内关联方之间。 	<ul style="list-style-type: none"> 企业仅与境内关联方发生关联交易的，可以不准备主体文档、本地文档和特殊事项文档。 企业执行预约定价安排的，可以不准备预约定价安排涉及关联交易的本地文档和特殊事项文档。
准备截止期限	次年 5 月 31 日。	<ul style="list-style-type: none"> 主体文档：在企业集团最终控股企业会计年度终了之日起 12 个月内准备完毕。 本地文档和特殊事项文档：次年 6 月 30 日前。
提交截止期限	自税务机关要求之日起 20 日内提供。	自税务机关要求之日起 30 日内提供。

In addition, Bulletin 64 lists situations where the tax authorities may “prioritize” or “reject” APA applications. Enterprises must actively cooperate and negotiate with the tax authorities on proposed transfer pricing methods and adjust proposals as necessary in order to receive expedited processing on applications. An enterprise must clear the “analyses and evaluation” process before it can submit a formal application.

China tax authorities have applied higher standards in reviewing APA applications, reflecting increased sophistication and experience. However, the “analyses and evaluation” process that Bulletin 64 requires before the formal application may impact companies applying for bilateral or multilateral APAs, because adjusting the proposed transfer pricing method may lead to inconsistency between the enterprise’s formal application positions in China and those of its related parties in other jurisdictions. We urge the SAT to consider this issue and provide further clarification.

Value-Added Tax Reform

China’s value-added tax (VAT) reforms were originally launched as a pilot program in Shanghai on January 1, 2012 and continued in 2016. On March 24, 2016, the MOF and SAT jointly released Circular 36, the “Comprehensive Rollout of the Transformation from Business Tax to VAT.” All B2V industries and businesses are covered by Circular 36 effective May 1, 2016.

The main new and adjusted provisions in Circular 36 include:

- Adjustment of taxable scope: the taxable scope is “the sales of services, intangibles, or real estate within China.” The four industries of construction, real estate, financial services, and consumer services have been newly added, and the circular also adjusts and optimizes the previous annotations of the service scope of each item.
- Applicable VAT rate:

Taxable Services	Applicable VAT Rate
Transportation services	11%
Postal services	
Basic telecommunication services	
Construction services	
Immovable property leasing services	
Sales of real estate	
Transfer of land use right	
Tangible movable property leasing services	17%
Other taxable activities (including financial services, consumer services, etc.)	6%

- Reasonable commercial purpose: tax authorities have the right to determine the sales amount of taxable activities provided by a taxpayer where the amount is egregiously high or low and without reasonable commercial purpose. The term “without reasonable commercial purpose” refers to seeking tax benefits as the main purpose of an action and using artificial arrangements to reduce, exempt, defer VAT payments, or increase VAT refunds.
- Net basis method: the net basis method allows industries, including financial leasing, air transportation, brokerage and agency services, tourism, etc., to calculate the VAT payable amount by deducting certain prescribed expenditures from the gross taxable sales amount under the VAT.
- Real estate is included in VAT input credit: by adding VAT incurred on the purchase of real estate to the scope of VAT input credit in this round of reform, China has now fully implemented a consumption-based VAT regime, which is important in perfecting the VAT credit chain and mitigating the issue of multiple taxation.
- VAT on lending services is not creditable: interest payments, which are the most common financial service charge, are not included in the creditable scope of VAT. In addition, Circular 36 also stipulates that VAT on passenger transportation services, catering services, residential daily services, and entertainment services is not creditable.

There are still a large number of policy uncertainties with respect to B2V reform, in particular relating to cross-border services and new business models, such as public-private partnerships and the digital economy. For these grey areas, inconsistent interpretation or administration at local levels could lead to tax risks for taxpayers. For example, preferential VAT treatment is provided to qualified cross-border services in Circular 36. However, local tax authorities may differ when assessing whether the taxpayer’s services qualify for such preferential treatment due to the lack of detailed and unified guidelines. Uncertainties in tax category reclassification have also been confusing to certain new businesses, and the large number of different VAT rates in China is not in line with international norms. We recommend the MOF and SAT follow up on feedback from taxpayers and industry and issue supporting circulars and implementation measures to refine their VAT policies. AmCham China member companies hope to increase communications with the SAT and MOF to share international best practices in support of these efforts.

The completion of the B2V reform is just the beginning of the next phase of China’s extensive VAT reform. Looking forward, the SAT and MOF are expected to embark on the simplification of VAT rates and the formulation of a VAT law.

- 36 号文规定的适用增值税税率：

应税服务	适用增值税税率
交通运输服务	11%
邮政服务	
基础电信服务	
建筑服务	
不动产租赁服务	
不动产销售	
转让土地使用权	
有形动产租赁服务	17%
其他应税行为（包括金融服务、生活服务）	6%

- 合理商业目的：纳税人发生应税行为价格明显偏低或者偏高且不具有合理商业目的的，主管税务机关有权确定应税行为销售额。不具有合理商业目的，是指以谋取税收利益为主要目的，通过人为安排，减少、免除、推迟缴纳增值税税款，或者增加退还增值税税款。
- 一般计税方法：融资租赁、航空运输、经纪代理服务和旅游服务等行业适用一般计算方法，一般计税方法的应纳税额是指当期销项税额抵扣当期进项税额后的余额。
- 不动产被纳入增值税进项税额抵扣：此轮改革将购买不动产产生的增值税纳入到增值税进项税抵扣范围中，将完整实现规范的消费型增值税制度，这一重要举措有助于完善增值税抵扣链条，缓解多重征税问题。
- 贷款服务增值税未纳入抵扣范围之内，例如利息支付是最常见的金融服务支出，并未纳入增值税抵扣范围。此外，36 号文还规定旅客运输服务、餐饮服务、居民日常服务和娱乐服务的增值税不得抵扣。

营改增改革还存在许多政策不确定性，尤其是涉及跨境服务和新商业模式时，比如公私合营和数字经济。就这些不确定部分而言，地方层面的解释和管理不一致可能会给纳税人带来税务风险。比如，36 号文对符合要求的跨境服务提供增值税优惠政策，不过由于缺乏详细和统一的指

导方针，地方税务机关在评估纳税人的服务是否有资格享受优惠政策时可能会出现执行不一致的情况。税收类别重新分类的不确定性也会给某些新型企业造成困惑，中国的增值税税率种类繁多，与国际通行做法并不一致。我们建议财政部和国家税务总局跟踪纳税人和行业的反馈意见，发布支持性的文件和实施方案，以完善增值税政策。商会的会员企业希望与国家税务总局和财政部加强沟通，分享国际最佳实践，从而为上述工作提供支持。

营改增改革的完成只是中国全面推行增值税改革的起点。未来，希望国家税务总局和财政部进一步简化增值税税率，并制定增值税法。

对金融机构的合规要求：关于通用报告准则 (CRS) 的征求意见稿

2016 年 10 月 14 日，国家税务总局发布了《非居民金融账户涉税信息尽职调查管理办法（征求意见稿）》，向社会公开征求意见。该征求意见稿将为国际通用报告准则在中国的本土化提供法律依据。全球各税务机关采用通用报告准则则应对跨境信息缺乏透明度的问题。通用报告准则要求各国政府间交换其金融机构所掌握的外国个人和企业的账户信息，从而提高全球范围内税收遵从水平。

征求意见稿为金融机构履行通用报告准则义务提供了指导。根据草案，自 2017 年 1 月 1 日起，符合报送条件的金融机构应开展尽职调查并识别出需要报送的账户信息。对金融机构履行尽职调查过程中收集相关信息的报送时限，国家税务总局已承诺与相关金融监管机构协商并另行制定规定。

商会担心征求意见稿会导致金融机构在开展尽职调查时遇到如下困难：

- 尚未明确现有系统和相关工作程序（如用于反洗钱客户身份识别的程序）是否已经准备就绪，并符合新的通用报告准则的要求。
- 该征求意见稿的规定涉及到金融机构最末端的网点和销售单位，会大量增加金融机构培训相关工作人员的责任。

鉴于时间紧迫，我们提请国家税务总局在管理办法的正式版本中引入过渡政策，从而减轻金融机构的合规负担。

Compliance Requirements for Financial Institutions: Draft Measures on CRS

On October 14, 2016, the SAT released the draft “Administrative Measures on the Due Diligence Procedures for Non-Residents’ Financial Account Information in Tax Matters” (the Draft Measures) to solicit public comment. The Draft Measures will provide a legal basis for localizing international common reporting standards (CRS) in China. Various tax authorities around the world are adopting CRS to tackle the lack of transparency on cross-border information. CRS requires the intergovernmental exchange of financial account information of foreign individuals and foreign enterprises, so as to improve international tax compliance.

The Draft Measures provide guidance for financial institutions (FIs) to comply with CRS obligations. According to the Draft Measures, the reporting FIs shall conduct due diligence and identify the reportable information of accounts starting January 1, 2017. As the Draft Measures do not set out a due date for reporting relevant information collected during due diligence, the SAT has committed to coordinate with relevant financial regulatory institutions to separately formulate relevant provisions.

AmCham China is concerned that the Draft Measures will create difficulties for FIs while conducting due diligence, including:

- It is unclear whether the existing system and relevant working procedures (e.g., anti-money laundry procedures for client identification) are ready and compatible with new CRS requirements.
- By covering FI branches and units at the local level, the Draft Measures will create onerous burdens for providing training to relevant personnel.

Given the tight timeline, we urge the SAT to introduce transition polices in the final version of the measures in order to reduce the compliance burden for FIs.

- Conduct research on the increased compliance burden caused by new requirements in Bulletin 42 and implement measures to help taxpayers control these compliance costs. [SAT]
- Lower the percentage of revenue required to be dedicated to R&D purposes for large companies to qualify for HNTE status. [MOF, SAT, MOST]

Recommendations

For the Chinese Government:

- **Begin efforts to simplify VAT rates as soon as possible.** [SAT, MOF]
- Reduce the items on the negative list in Circular 119 that are not eligible for super deduction status in order to promote R&D investment in all service sectors. [MOF, SAT, MOST]
- Follow up on feedback from taxpayers and industry and issue successive supporting circulars and implementation measures to clarify and refine VAT policies. [MOF, SAT]

建议

对中国政府：

- 尽快采取措施简化增值税税率。[国家税务总局、财政部]
- 减少 119 号文中负面清单上不适用加计扣除的项目，从而推动所有服务领域的研发投入。[财政部、国家税务总局、科学技术部]
- 跟踪纳税人和行业的反馈意见，发布后续支持性的文件和实施方案，以明确和完善增值税政策。[财政部、国家税务总局]
- 开展调研，了解第 42 号公告的新要求带来的合规负担，并采取措施帮助纳税人控制此类合规成本。[国家税务总局]
- 降低对大企业的研发费用的收入占比要求，便于大企业获得高新技术企业认定。[财政部、国家税务总局、科学技术部]

Visa Policy

Introduction

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.

In Washington, continued divisive rhetoric and congressional deadlock over immigration reform has left American employers frustrated. AmCham China urges Congress and the president to cooperate to enact common-sense legislation freeing employers to innovate and create jobs.

Recent Developments: Chinese Visas

New National Policy for Foreign Work Permit Applications

To attract foreign talent to China, unify the application process, and improve data sharing on foreigners working in China, the State Administration for Foreign Experts Affairs (SAFEA) released the "Pilot Implementation Plans for Foreigners' Work Authorization Policy," which entered into effect in October 2016 in 10 pilot provincial-level jurisdictions (i.e., Beijing, Shanghai, Tianjin, Hebei, Anhui, Shandong, Sichuan, Guangdong, Yunnan, and Ningxia), and will take effect nationwide on April 1, 2017.

Integrating Two Permits into One

Under the new policy, the employment permit and expert permit are to be combined into a single work permit. Foreigners who still hold a valid employment permit or expert permit may change to a work permit. AmCham China welcomes this streamlining of bureaucratic requirements, which simplifies the process for foreigners to work in China.

Categorization of Expats

Under the new policy, foreign individuals working in China will be categorized into three categories, namely A, B and C.

Category A: "High-end talent," including scientists, technical

experts, international entrepreneurs, and other specialists.

Category B: Foreign professionals, who qualify under a score assessment, are under the age of 60, hold at least a bachelor's degree, and have two years of relevant work experience. Certain requirements may be relaxed if necessary.

Category C: Foreign employees, who engage in temporary, seasonal, non-technical, or service-related work.

Category A foreigners are encouraged to work in China, and thus will not be subject to a numerical restriction. However, quotas on category B foreigners will be subject to market demand, whereas category C foreigners will be subject to an unspecified quota.

Score-Based Assessment

Pursuant to the new policy, a score-based assessment will be conducted for foreign applicants. Applicants may be graded on their educational background, work experience, salary provided by the sponsoring entity, Mandarin proficiency, working location in China, age, etc.

Local authorities may at their discretion set special standards to solicit foreign talent based on local requirements. To this end, extra points will be awarded to qualified applicants. Applicants with a total score below 60 will fall into category C, 60 and over into category B, and 85 and over into category A.

Application Requirements for Each Category

Category A foreigners ("high-end talent") will be provided with a "green channel," meaning:

- No limitation on individuals' age and work experience;
- The employer may guarantee the individual has a clean criminal record instead of providing a certificate of no criminal conviction from the individual's home country government;
- The individual may apply for a work permit after the employment license application (no need to conduct the offshore Z visa application) and then directly convert a valid Chinese visa (i.e., L or F visa) into a residence permit in China; and
- The timeline of the new work permit application will be

签证政策

引言

中国经济的快速增长、人口结构变化和人口老龄化都为发达国家与发展中国家的经济移民带来了新机遇。在这种形势下，中国迫切需要实现监管框架的现代化，并加强其行政能力。

在华盛顿，分裂言论不绝于耳，加之美国国会在移民改革方面陷入僵局，令美国雇主深感不安。中国美国商会（商会）敦促美国国会与总统合作，制定合理法律，鼓励雇主创新并创造新的就业机会。

最新进展：中国签证

有关外国工作许可申请程序的最新全国性政策

为了吸引外国人才来华工作，统一申请流程，完善在华工作外国人的数据共享体系，国家外国专家局（外专局）发布了《外国人来华工作许可制度试点实施方案》，该方案于2016年10月起在北京、上海、天津、河北、安徽、山东、四川、广东、云南、宁夏等10个省市试点实施，并将于2017年4月1日起在全国范围内实施。

将两种许可合二为一

根据新政策，外国人就业证和外国专家证将合并为外国人工作许可证。持有效外国人就业证和外国专家证的外国人可以改为外国人工作许可证。商会欢迎这一精简行政手续的政策，因为它有助于简化外国人在华工作流程。

外籍人士分类

根据新政策，在中国工作的外国人将分为A、B、C三类。

A类：“高端人才”，包括科学家、技术专家、国际企业家和其他专家。

B类：符合特定评分标准的外国专业人士，年龄不满

60岁，拥有学士及以上学位，具有两年相关工作经验。如有必要，可放宽特定要求。

C类：从事临时、季节性、非技术性或服务相关工作的外国员工。

中国鼓励A类外国人在华工作，此类人士不受人数限制。而B类外国人的数量配额受市场需求的限制，C类外国人受未指定配额的限制。

以分数为标准的评估系统

新政策根据分数评估外国签证申请人。根据申请人教育背景、工作经验、赞助单位提供的薪水、普通话水平、在华工作地点、年龄等对申请人进行评分。

地方当局可酌情制定特殊标准，根据当地需求吸引外国人才。为此，合格申请人可获得加分。总分低于60分的申请人被划分为C类，60分及以上属于B类，85分以上属于A类。

各个类别的申请要求

A类外国人（“高端人才”）可获得“绿色通道”，即：

- 不受个人年龄和工作经验的限制；
 - 雇主承诺担保申请人没有犯罪记录，无需申请人所在国政府出具的无犯罪记录纸质件；
 - 申请人可在申请外国人工作许可通知之后申请外国人工作许可证（无需办理离岸Z字签证申请），然后将有效中国签证（即L字或F字签证）直接转换为中国居留许可；
 - 新外国人工作许可证的申请时间短于当前流程。
- B类外国人（“专业人员”）必须符合以下要求：
- 拥有学士或以上学位，拥有至少两年相关工作经验；
 - 申请工作许可时必须提交申请人已公证认证的文凭副

shorter than the current process.

Category B foreigners (“professional personnel”) must meet the following requirements:

- Possess a bachelor’s or higher degree and at least two years of relevant work experience;
- The work permit application must be accompanied by notarized copies of the applicant’s diploma and certificate of no criminal conviction authenticated by the relevant embassy or consulate.

Category C foreigners are subject to a quota—further information has yet to be published by SAFEA.

AmCham China is concerned that these provisions will restrict the ability of US-invested companies to staff their businesses. Moreover, requirements for work permit applicants to submit notarized and authenticated copies of documents create unnecessary administrative burdens for both applicants and diplomatic staff. We urge labor authorities nationwide to provide applicants the option of submitting original documents instead of notarized and authenticated copies of documents in order to reduce administrative burdens and accelerate the hiring process for bringing needed foreign talent to China.

We further urge transparency in the national and local criteria for the score-based assessment system. AmCham China urges the Chinese government to ensure that otherwise qualified individuals are not prevented from working in China because of overly rigid requirements in the score-based assessment system and arbitrarily-set work permit quotas for different categories of foreign talent.

Online Application System

AmCham China welcomes the new SAFEA online application system, which is intended to make work permit policy and processing timelines more uniform and transparent nationwide. Companies may now create their online accounts and then submit foreign employee applications online.

Applicants will be able to download forms from the internet and submit them electronically. A permanent code will be assigned to each application that will enable the tracking of individual applications. The modified application procedure is intended to reduce the amount of required documentation and processing time.

Five-Year Work Permit Pilot Program

A new pilot program announced by the Ministry of Public Security (MPS) on March 9, 2017 will allow foreigners who have worked in China for at least two consecutive years to apply for a five-year work permit. The pilot program will be implemented in nine cities and provinces as well as 11 pilot free trade zones. The current system requires foreigners to reapply for a work permit

every year, even if they sign a multi-year employment contract. AmCham China welcomes this new pilot program, which will reduce the administrative burden on the authorities and help attract global talent to China. We urge the MPS to expand the five-year work permit pilot nationwide as soon as possible.

Permanent Residence

The MPS has issued new immigration policies and regulations to support the establishment of Shanghai as a global science and innovation center and to sustain the development of innovation in Beijing. The new policies clarify the standards for obtaining permanent residence.

Under the new regulation for Beijing, individuals who meet the following criteria will be eligible for permanent residence, so long as they are sponsored by their employers:

- The individual has worked in Beijing for more than four consecutive years and resided in China for at least six months in each of those years; and
- The individual has earned a gross salary of at least RMB 500,000 and paid tax of more than RMB 100,000 each year (these thresholds may be adjusted annually).

Simplified Temporary Residence Permit Application Procedures

Short-term visitors under certain circumstances are required to obtain a work permit and work visa. Foreigners residing overseas can apply for a temporary residence permit (normally valid for less than three months) with the Beijing exit-entry authorities provided they hold an appropriate alien employment license and can apply for their work and residence permits within the visa validity period in Beijing.

E-Channel at Ports of Entry

The Automated Passenger Clearance System, or “e-channel,” allows entry to China through an automated station and without completing an entry-exit form. Effective August 19, 2016, permanent residents and foreigners who are in possession of a long-term work visa (usually one year or longer) in China can use the e-channel. Registration is required at the airport, but upon approval, an individual can use e-channels nationwide. AmCham China welcomes this measure to facilitate international travel for foreigners who reside in China long term.

Ongoing Regulatory Challenges: Chinese Visas

Visa on Arrival

While allowed for some nationalities, US passport holders have always been denied the right to obtain a visa on arrival (VOA) at a port of entry in China. Recently, ports like

本以及经大使馆或领事馆认证的无犯罪记录证明。

C类外国人受配额限制——详细信息尚待外专局发布。

商会担心这些规定将限制美资公司为企业配置工作人员的能力。此外，要求工作许可申请人提交经过公证和认证的文件副本，也为申请人和外交人员带来了不必要的行政负担。我们敦促国家相关劳动管理部门允许申请人提供原件而非经过公证和认证的文件副本，以减少行政负担，加快招聘流程，为中国提供必要的外国人才。

我们进一步敦促国家和地方当局提高分数评估系统的透明度。商会敦促中国为不同类别的外国人才确定工作许可配额，制定分数评估制度要求，以避免符合要求的外国人无法在华工作。

在线申请系统

商会欢迎国家外专局采用新的在线申请系统，该系统旨在统一全国工作许可政策与受理时间，并提高透明度。现在，公司可以创建在线帐户，在线提交外国员工申请。

申请人可以通过互联网下载表格，并以电子方式提交申请表。系统为每份申请人分配永久代码，可用于跟踪该申请人的情况。修改后的申请程序旨在减少申请需要的文件数量和受理时间。

五年工作许可试点计划

公安部于2017年3月9日公布的新试点方案将允许连续两年在中国工作的外国人申请五年工作许可证。试点方案将在九个省市及11个自由贸易区实施。根据目前的制度要求，外籍人士即使签订了多年劳动合同，他们仍需每年重新申请工作许可证。商会欢迎这个新的试点方案，以减轻政府的行政负担，帮助中国吸引全球人才。因此，我们敦促公安部尽快扩大全国五年工作许可证试点工作。

永久居留

为支持将上海建设成为全球科技创新中心，继续推动北京的创新发 展，公安部颁布了新的移民政策法规。新政策明确了申请人获得永久居留权的标准。

根据北京的新规定，在雇主支持下，满足以下标准的人士将有资格获得永久居留权：

- 申请人在北京连续工作四年以上，每年在中国居住至少六个月；以及

- 申请人每年取得的工资总额至少为50万人民币，且缴纳税款超过10万人民币（此标准可以每年调整）。

简化后的临时居留许可申请程序

已持有有效中国签证的外国人在取得相应的外国人工作许可通知一个月内可凭外国人工作许可通知及有效期内的中国签证（商务或旅游签证）向北京出入境管理局申请临时居留许可（通常有效期不超过三个月），无需出境办理Z签证。获得临时居留许可后可继续在境内办理外国人工作许可证及居留许可证。

入境港电子通道

自动乘客清关系统，也称为“电子通道”，允许乘客通过自动化工作站入境中国，无需填写出入境表格。自2016年8月19日起，在中国持有长期工作签证（有效期通常为一年或以上）的永久居民和外国人都可使用电子通道。用户需要在机场注册，获批后即可在全国范围内使用电子通道。商会欢迎这项措施，帮助长期居住在中国的外国人更方便地进行国际旅行。

现存监管问题：中国签证

落地签证

中国允许部分国籍人士获得落地签证，但美国护照持有人常常在中国入境口岸申请落地签证（VOA）时被拒绝。近期，上海等口岸推出了更多种可以在入境口岸获取的签证（如L、F、M和Z字签证）。在面临紧急事项，又无法在中国境外获得签证的情况下，落地签证显得尤为重要。商会建议允许美国公民在华获取落地签，至少在特定紧急情形下允许获得落地签。

“超龄”员工和新毕业生

临近或超过中国官方退休年龄（即男性超过60岁，女性超过55岁）的外国公民申请工作许可时往往要面临更长的受理时间，提交更多的材料，最终还可能因为年龄而被拒绝。尽管中国放宽了对A类申请人的年龄要求，但B类和C类申请人仍面临年龄限制。很多年龄较大的申请人往往掌握着企业所需要的重要技能和丰富经验。中国目前也面临老龄化问题，因此我们建议至少应放宽对B类申请人的年龄限制。

Shanghai have started including more visa types (e.g., L, F, M, and Z visas) that can be obtained at the port of entry. VOA is particularly valuable in urgent situations when obtaining a visa outside China is not possible. AmCham China recommends that US nationals be allowed to obtain VOA in China, at least in certain urgent situations.

Older Workers and New Graduates

Work authorization applications submitted by foreign nationals nearing or above the official employment age limitation (e.g., men over 60 and women over 55 years of age) may be subject to longer processing times, additional requests for documentation, and ultimately be denied because of their age. Although the age-limitation has been lifted for category A applicants, category B and C applicant are still subject to age restrictions. Many of these older applicants hold critical skills and relevant experience needed by companies. As China faces the challenge of an aging population, we recommend that the age limitation also be lifted at least for category B applicants.

Recent graduates also face difficulty in obtaining work authorization as they often lack the required two years of relevant work experience. This requirement not only limits employer discretion in hiring foreign employees, it also disincentives foreign students from studying Chinese because it arbitrarily limits their employment prospects in China post-graduation. AmCham China welcomes recent policies that have begun relaxing this requirement. According to the “Notice on Allowing Outstanding Foreign Graduates to Work in China” (Circular No. 3), jointly issued by the Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, and Ministry of Education in January 2017, the requirement for two years of relevant postgraduate work experience can be waived for international graduates with master’s degrees or above from domestic universities or from well-known foreign universities when applying for a work permit within one year after graduation, if certain criteria are met. Circular No. 3 does not specify the definition of “well-known” foreign universities. We recommend that such opportunities be expanded to all recent graduates with a bachelor’s degree or above from both domestic and overseas universities.

Certificates of No Criminal Conviction for Foreigners Who Have Resided in China

Foreigners who have resided in China for work or other purposes may subsequently be required to provide a Chinese certificate of no criminal conviction (CNCC) for purposes such as background checks for employment or immigration to countries such as the US, Canada, Australia, or New Zealand.

While in some cities such as Beijing and Shanghai, the process to apply for a CNCC is fairly straightforward, in many cities, there is no publicly available procedure for how to apply for a CNCC, and the process can be onerous. For

example, cities such as Chengdu require that the applicant return to China in person to apply, meaning an agent with the power of attorney cannot be used. In other cities, if the foreigner has not kept the cards evidencing temporary residence registration with the local police station, it is not possible to obtain a CNCC. In many cities, local authorities are often unaware of any policies regarding CNCCs.

AmCham China recommends the publication of a ministry-level, nationwide rule to streamline the application process for CNCCs. A photocopy of the foreign national’s passport with a Chinese residence permit should constitute sufficient evidence that the foreign national resided in the city where the residence permit was issued. Foreigners should not be required to return to China to apply for a CNCC or to present their old temporary residence registration cards issued by the local police station.

Residence Permit Processing Time

From August 1, 2015, the application period for a residence permit was reduced by the Beijing Public Security Bureau (PSB) from 15 to 10 business days. This reduces the inconvenience to applicants, as passports are held by the PSB while applications are pending. AmCham China encourages further reduction of processing times both in Beijing and nationwide to five business days, as is the current practice in Shanghai.

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.

Recent Developments: US Visas

Electronic Visa Update System

US Customs and Border Protection (CBP) has created the Electronic Visa Update System (EVUS) to address law enforcement and security concerns regarding certain long-term validity visa holders. Effective November 29, 2016, online EVUS enrollment is required for those traveling to the US with PRC passports containing B1/B2, B1, or B2 visas valid for 10 years. Enrollment is generally valid for two years, although earlier re-enrollment may be required if, for example, the traveler obtains a new passport or visa.

Failure to complete enrollment on time results in automatic “provisional revocation” of the traveler’s visa. However, that provisional revocation is automatically reversed upon EVUS enrollment. CBP recommends that travelers enroll at least

新毕业的大学生在申请工作许可方面也面临困境，因为他们普遍缺少所要求的两年相关工作经验。这一要求不仅限制了雇主雇用外国雇员的自由裁量权，也挫伤了外国学生学习中文的积极性，因为这条规定限制了外国学生毕业后在中国的就业前景。近期出台的政策已经放宽了这一要求，对此商会表示欢迎。根据人力资源和社会保障部、外交部和教育部于2017年1月联合发布的《关于允许优秀外籍高校毕业生在华就业有关事项的通知》（第3号通知），如符合特定标准，在国内大学或国外知名大学获得硕士或以上学位的毕业留学生，在毕业后一年内申请工作许可时，可以不受两年以上工作经验要求的限制。第3号通知并没有说明“知名”外国大学的定义。我们建议将此类机遇扩展至所有持学士或以上学位的国内和国外大学毕业生。

在华居住的外国人无犯罪记录证明

对于因工作或其他目的而在中国居住的外国人，如因就业或移民而前往美国、加拿大、澳大利亚或新西兰等国家时，为通过背景检查，可能需要中国提供无犯罪记录证明（CNCC）。

在北京和上海等城市，申请无犯罪记录证明的过程相对简单，但许多其他城市并没有申请无犯罪记录证明的公开程序，而且申请手续可能相当复杂。例如，成都等城市要求申请人本人返回中国申请，不能通过持有委托书的代理人办理。在其他城市，如果外国人没有相关文件证明已在当地警察局进行临时居留登记，则无法获得无犯罪记录证明。在许多城市，地方当局通常并不了解关于无犯罪记录证明的相关政策。

商会建议制定全国性部级规定，以简化无犯罪记录证明的申请程序。申请人提供附有中国居留证的外国护照复印件，即可充分证明当事人居住于发放居留许可证的城市。不应要求当事人返回中国申请无犯罪记录证明，或出示由当地警察局发放的临时居留许可证原件。

居留许可签发时间

从2015年8月1日起，北京市公安局将外国人申请居留许可的签发时间从15个工作日缩短至10个工作日。在申请处理期间，申请人护照需留存在公安局，因此这一规定减少了由此给申请人带来的不便。商会促请北京乃至全国的公安部门继续缩减处理时间，达到上海目前所执行的5个工作日水平。

签证转换

根据《出入境管理法》，不能将L或F字签证转换为Z字签证。申请人必须离开中国获得单程Z签证，然后返回中国申请多次入境居留许可。

商会建议恢复实施在中国将其他类型的签证转换为Z签证的政策，以降低外国人在中国开展业务的成本。

最新进展：美国签证

签证更新电子系统

美国海关和边境保护局（CBP）建立了签证更新电子系统（EVUS），旨在解决法律实施问题以及特定长期有效签证持有人的安全问题。自2016年11月29日起，持中华人民共和国护照（含有效期为10年的B1/B2、B1或B2签证）前往美国的人士必须在线注册EVUS。注册有效期通常为两年，但如果旅客获得新的护照或签证，则可能需要提前重新注册。

未能按时完成注册将导致旅客签证自动“暂时撤销”。但注册EVUS后，此撤销将自动失效。美国海关和边境保护局建议旅客在旅行前至少72小时完成注册。旅客至少应在登上前往美国的飞机或船只之前，或在陆地入境口岸申请入境之前完成注册。如未能完成注册，旅客将无法获得航班登机牌，或通过陆地口岸入境。

企业家和投资者

对于EB-5移民投资者，美国公民和移民服务局（USCIS）于2016年1月13日公布建议，将目标就业领域的最低合格投资额增加至180万美元（1200万人民币）或135万美元（896万人民币）。

美国公民和移民服务局还公布了2017年7月17日起实施的有关国际企业家入境证的最终规则。“入境证”允许符合要求的企业家在没有签证的情况下进入美国初创公司工作。此类初创公司必须在过去五年内成立，并具有快速增长和创造就业的潜力。此类初创公司必须在过去一年半中获得过美国投资者的最低投资，或政府奖励或津贴。

美国公民和移民服务局行政上诉办公室于2016年12月发布先例决策，帮助企业更轻松获得永久居民身份的国家利益豁免。该决策名为“Matter of Dhansar”，采用新的三重标准，包括：①外国国民的拟议工作必须具

72 hours before travel. At minimum, travelers must enroll before boarding an aircraft or vessel destined for the US, or before applying for admission at a land port of entry. Persons who fail to enroll will not be able to obtain a boarding pass for a flight or enter through a land port of entry.

Entrepreneurs and Investors

For EB-5 immigrant investors, US Citizenship and Immigration Services (USCIS) published a January 13, 2016 proposal to increase the minimum qualifying investment amount to US \$1.8 million (RMB 12 million), or US \$1.35 million (RMB 8.96 million) in targeted employment areas.

USCIS has also issued a final rule on parole for international entrepreneurs, effective July 17, 2017. “Parole” would allow qualifying entrepreneurs to enter the US and work at startups without visas. The startup must have been created within the last five years and have the potential for rapid growth and job creation. The startup must have received certain minimum investments from US investors, or government awards or grants, within the past 1.5 years.

The USCIS Administrative Appeals Office issued a December 2016 precedent decision which may make it easier for entrepreneurs to obtain national interest waivers for permanent resident status. The decision, *Matter of Dhansar*, creates a new three-pronged test: ❶ the foreign national’s proposed endeavor must have both substantial merit and national importance; ❷ the foreign national must be well positioned to advance the proposed endeavor; and ❸ it must be beneficial to the US to waive the normal requirement that the employer first seek to recruit a US worker for the position.

Ongoing Regulatory Challenges: US Visas

Discriminatory Per-Country Caps on Employment-Based Green Cards

Under current law, there is an annual cap of 140,000 employment-based green cards. Rather than waiting in a single queue together in the order that their applications were received, applicants are required to wait in separate queues based on their nationality. Applicants of one nationality may comprise no more than seven percent of all green cards issued in a given year. This “per-country cap” means that the Estonian queue and the Chinese queue are allotted the same maximum number of green cards—despite the fact that Estonia has 1.3 million people and China has 1.3 billion.

The per-country caps result in a broken system for Chinese applicants resulting in long waits to enter the US and take a job, and effectively penalizes employers for hiring Chinese workers by making them wait longer before hiring. We believe that immigrants, like all other people, should be judged based on their individual merits rather than their nationality or other ascriptive criteria.

These per-country caps serve little purpose and should be abolished by Congress. AmCham China supports the Fairness for High-Skilled Immigrants Act, which would do so.

Inadequate Annual H-1B Visa Cap

The number of H-1B visas permitted annually by Congress is subject to a cap that fails to meet demand by both applicants and the US companies that hire foreign professionals. H-1Bs are temporary work visas available to professionals whose services are sought by a US employer offering at least the prevailing wage. The annual cap of 85,000 visas has been exhausted in each of the past 14 fiscal years. In FY 2017, in just the first week that such visas became available, USCIS received more than 236,000 H-1B petitions. Winners were selected through a random lottery, creating unpredictability for American companies’ hiring processes.

According to a report by the US Chamber of Commerce on foreign students with a science, technology, engineering, and mathematics (STEM) degree hired by American companies, each H-1B employee creates 2.62 additional jobs for American workers. H-1B filing fees also create a significant fund earmarked for the STEM education of US workers.

Increasing the cap would give US companies access to the best talent, spurring competitiveness and productivity. An H-1B cap that is too low, on the other hand, drives skilled workers to competitor nations and drives US employers to consider shifting projects to workers abroad.

Controlling Nonimmigrant Visa Appointment Wait Times in China

AmCham China is pleased that the US Mission in China continues to provide short wait times for appointments for individuals applying for nonimmigrant visas, such as B1/B2 visas for business and tourism, despite a continuing increase in demand. In order to further increase capacity, AmCham China urges the US State Department to begin processing visa applications at the US Consulate in Wuhan as soon as practicable, and to add at least four additional visa-issuing locations in China. Potential locations might include cities with more than two million urban inhabitants and no US Consulate, such as Chongqing, Dalian, and Shenzhen.

User-Friendly Nonimmigrant Visa Application Form

The Form DS-160 Nonimmigrant Visa Application is many Chinese citizens’ first encounter with the US government, and it is often a negative experience. First, the only way to see the questions in Chinese is awkward: the applicant must hover the cursor over the English questions to trigger a Chinese pop-up. Second, during the review stage, the questions cannot be saved or printed in Chinese for review.

有实质性利益，对国家具有重要意义；② 外国国民必须有能力和推进该项拟议工作；以及 ③ 美国放弃雇主为该职位优先招聘美国工人的常规规定，但此举必须对美国有利。

现存监管问题：美国签证

按国别分配工作绿卡的歧视性政策

根据现行法规，美国每年最多发放 14 万份工作绿卡。申请人并非按照申请接收顺序统一排队等待，而是根据国籍在不同队列中等待。特定国籍的申请人均不超过当年发放的所有绿卡的 7%。这种“国别分配上限”意味着爱沙尼亚队列和中国队列都具有相同的绿卡数量上限——尽管爱沙尼亚只有 130 万人口，而中国有 13 亿人口。

国别上限导致中国申请系统因拥挤而崩溃，申请人必须等候很长时间才能进入美国工作，也使雇用中国工人的雇主必须面临长时间等待。我们认为，与所有其他人一样，应根据个人优点而非国籍或其它归属标准评判移民申请者。

国别上限的规定实际上收效甚微，建议国会予以废除。商会支持《高技能移民公平法》(Fairness for High Skilled Immigrants Act)，这部法案未采取国别上限规定。

年度 H-1B 签证限制不足

国会每年批准的 H-1B 签证数量受到限制，既无法满足申请人要求，也不能满足雇用外国专业人员的美国公司的需求。H-1B 为临时工作签证，发放给为美国雇主工作的专业人员，这些专业人员的工资最低为现行工资。在过去 14 个财年中，每年 85000 份签证的年度上限已经用尽。2017 财年，仅在开放签证的第一周，美国公民和移民服务局就收到了超过 23.6 万份 H-1B 签证申请。通过审查者还要接受随机抽取，给美国企业的招聘过程带来不可预测性。

美国商会针对美国公司雇用的科学、技术、工程和数学 (STEM) 专业外国学生的报告表明，每名 H-1B 员工能够为美国员工创造 2.62 个工作岗位。H-1B 申请费也为美国工人的 STEM 教育提供了重要资金。

提高上限将帮助美国公司获得顶级人才，同时促进竞争，提高生产力。另一方面，H-1B 上限过低，会将技术员工推向竞争国家，使美国雇主转而考虑将工作交给驻外员工。

控制中国非移民签证的预约等待时间

商会很高兴地看到，尽管非移民签证申请持续增加，美国驻华使团仍在继续帮助非移民签证申请者缩短等待时间，如 B1/B2 商务与旅游签证。为了进一步提高办理能力，商会敦促美国国务院尽快开始在美国驻武汉领事馆受理签证申请，并在中国增加至少四个签证签发点。可能的办理地点包括尚未开设美国领事馆的二百万以上人口城市，如重庆、大连和深圳。

提供人性化的非移民签证申请表

许多中国公民通过 DS-160 非移民签证申请表第一次接触美国政府，而这种接触往往给中国公民带来负面体验。首先，申请表问题中文版本的查看方式非常笨拙：申请人必须将光标悬停在英语问题上，才能触发中文弹出框。第二，检查过程中申请人不能保存或打印中文问题以备检查。第三，提交申请表后，申请人只有一次机会保存并打印最终表格。

申请表的设计不够人性化，导致众多中国申请人聘请代理为其填写申请表。由于在检查阶段或表格正式提交之后无法打印或保存中文问题，使恶意代理人有机会输入申请人不知情的虚假信息。领事官员对这种情况非常不安，但他们必须拒绝含有虚假信息的申请表及相关申请人。为此，商会建议修改 DS-160 表格。

永久居民在国外就职面临的障碍

美国移民法禁止美国公司招聘有意在美国境外就职的绿卡持有人。

如果绿卡持有人连续居留国外一年，期间不曾返回美国，则该持有人将无法再次进入美国。不过，绿卡持有人（包括希望在美国公司驻外岗位就职的持有人）可以申请在国外逗留最长两年后再次入境的许可证。但申请人必须在美国提交申请，并在申请后一至两个月内在美国接受生物识别验证，这就为申请人增加了往返于美国的额外费用。美国公民和移民服务局的国外办事处已经在开展具有不同用途的生物识别验证。我们敦促美国公民和移民服务局允许再入境许可申请人在其国外办公室（包括北京和广州办事处）接受生物特征识别验证。

美国绿卡持有人在海外工作所面临的另一个障碍是，政府武断地要求申请入籍的特定绿卡持有人在“连续居留至少一年”，期间不得出国。根据入籍要求，多数绿

Third, after the application has been submitted, the applicant is only given one chance to save and print the final form.

The poorly designed form is a major reason many Chinese applicants hire agents to prepare their applications. The inability to print or save the questions in Chinese at the review stage, or once the form is finalized, increases the opportunity for unscrupulous agents to enter false information, unbeknownst to the applicants. This is frustrating for consular officers, who may feel compelled to deny applications containing false information, as well for the applicants concerned. AmCham China recommends revisions to the DS-160 form.

Barriers to Permanent Residents Taking Assignments Abroad

US immigration laws inhibit American companies from recruiting green card holders who wish to take assignments outside the US.

A green card becomes invalid for re-entry to the US if the holder remains abroad continuously for one year without returning. However, a green card holder—including someone who wishes to take an assignment for a US company abroad—may apply for a re-entry permit valid for stay abroad for up to two years. However, the applicant must file the application in the US and attend a biometrics appointment in the US one to two months later, which imposes an undue expense on applicants who need to return to the US for this appointment. USCIS offices abroad already conduct biometrics appointments for various purposes. We urge the USCIS to allow reentry permit applicants to have their biometrics taken at USCIS offices abroad, including those in Beijing and Guangzhou.

Another barrier for US green card holders to work abroad is the arbitrary requirement for certain green card holders applying for naturalization to stay in the US for an “uninterrupted period of at least one year” without travelling abroad. Naturalization requires that most green card holders “reside continuously” in the US for five years. While temporary visits abroad are not a problem, an absence of six months generally breaks continuity of residence. The Immigration and Nationality Act makes an exception for persons employed abroad by a US company engaged in the development of foreign trade. In this case, the green card holder may file a Form N-470 Application to Preserve Residence for Naturalization Purposes requesting that time abroad in such employment not break the continuity of residence. However, the statute arbitrarily requires N-470 applicants to have been physically present in the US for an “uninterrupted period of at least one year.” Foregoing even brief visits abroad hardly proves fitness for citizenship. AmCham China urges Congress to amend the Immigration and Nationality Act to eliminate this arbitrary requirement, which has no place in a modern, interconnected world.

Recommendations

For the Chinese Government:

- **Accept original documents for work permit applications nationwide, instead of requiring notarized and authenticated copies of original documents.**
- Shorten the holding period of passports by the local PSB when processing residence permits to five working days nationwide.
- Allow the conversion of other types of visas to a Z visa within China nationwide.
- Publish a ministry-level, nationwide rule streamlining the process for foreigners who have resided in China to apply for certificates of no criminal conviction.
- Grant visas on arrival to US citizens.
- Eliminate age limitations for the purpose of work authorization in China at least for category B applicants in addition to category A applicants, and eliminate work experience requirements for all applicants with a bachelor’s degree or above.
- Expand the five-year work permit pilot nationwide as soon as possible.

For the US Government:

- **Abolish discriminatory per-country caps on employment-based green cards.**
- Increase the annual cap on H-1B temporary work visas for professionals.
- Begin issuing visas at the US Consulate in Wuhan as soon as practicable, and plan to add at least four additional visa-issuing posts in China.
- Redesign the online Form DS-160 Nonimmigrant Visa Application so that it is easy to read the questions in Chinese, as well as to print or save the questions in Chinese at the review stage and once the form is finalized.
- Reduce barriers to permanent residents taking assignments abroad with US companies by allowing reentry permit applicants to schedule biometrics appointments at USCIS offices abroad and by eliminating the statutory requirement that to file Form N-470 Application to Preserve Residence for Naturalization Purposes, applicants must have an uninterrupted year of physical presence in the US.

卡持有人必须在美国“连续”居留五年。虽然期间可以短暂出国，但出国六个月以上就会破坏居留的连续性。根据《移民和国籍法案》（以下简称《法案》），从事外贸发展工作的美国公司驻外人员可以不受此规定约束。此类绿卡持有人可以提交 N-470《入籍而保留居住状态申请表》，申请其在国外工作时间不破坏其美国居留连续性。不过，法案武断地要求 N-470 申请人必须在美国实际“连续居留至少一年”。即使短期出国也不利于持有人申请公民身份。商会敦促国会修改《法案》，取消这条在现代化的互联世界中显然并不合理的武断要求。

- 减少对永久居民外派工作的障碍，允许回美申请者在美公民和移民服务局的国际办公室和全球美国使领馆进行生物识别指纹录入，取消 N-470 申请人必须在美国实际连续居住一年的要求。

建议

对中国政府：

- 在全国范围内允许申请工作许可时提交原件，而非提供经过公证和认证的原件副本。
- 在全国范围内将公安部门受理居留许可申请的时间缩短至五个工作日。
- 在全国范围内允许将其它类别的签证转换为 Z 字签证。
- 发布全国性部级规定，为在华外国人申请无犯罪记录证明提供便利。
- 为美国公民签发落地签证。
- 除 A 类申请人外，至少取消对 B 类申请人申请中国工作许可的年龄限制，为具有学士或以上学位的申请人取消工作经验限制。
- 尽快将五年工作许可证试点推广至全国范围。

对美国政府：

- 取消按国别分配工作绿卡的歧视性制度。
- 提高专业人员 H-1B 临时工作签证年度上限。
- 美国驻武汉领事馆应尽快开始发放签证，并计划在中国增加至少四个签证签发点。
- 重新设计在线的 DS-160 非移民签证申请表，便于申请人查看中文问题，在检查期间及填写完毕后打印或保存中文版问题。

Work Safety

Introduction

In China, work safety has become a cause attracting the attention of government authorities, industry associations, research institutes, the business community, and the general public. As a result of efforts by relevant stakeholders, the Work Safety Law (WSL) was amended in 2014, reinforcing law-based work safety in China.

On October 31, 2016, President Xi Jinping ordered workplace safety supervisory authorities at all levels to observe the “red line” of not sacrificing safety for development, focus on preventing and curbing serious accidents, and promote work safety reform and development in a thorough, comprehensive, systematic, and coordinated manner. As Premier Li Keqiang has pointed out, safety supervisory authorities at various levels are required to adopt new development concepts, put the people’s interests first, reinforce awareness of work safety “red lines,” and promote work safety reform and further address specific issues in key sectors. Authorities are also required to identify and eliminate potential risks, ensure accountability and improved institutions and supervision, and strengthen safety technology, emergency administration, and other basic work. In addition, they are also required to accelerate the establishment of systems to prevent and control safety risks, and take meticulous and pragmatic precautions.

Over the past several years, the Ministry of Housing and Urban-Rural Development (MOHURD), the State Administration of Work Safety (SAWS), and other relevant central authorities have amended a number of laws and regulations with respect to construction, mining, dangerous chemicals, and other key sectors. For example, for the construction industry, a key industry of concern regarding work safety, MOHURD issued updated versions of important industry standards. Meanwhile, local governments have recognized work safety as an important basis and safeguard for social and economic development and continued making innovations in enforcement. For instance, MOHURD has implemented a mechanism to investigate and supervise major accidents.

We expect the government to continue allowing industry associations, research institutes, and the business community to play an active role in providing policy research and consulting, drafting regulations and standards, and

developing, promoting, and applying advanced safety equipment and technologies. We also urge the government to work with these entities to gradually eliminate outdated technical solutions and introduce more effective regulations and standards, as well as more advanced technologies and equipment, to ensure the safety of the general public as well as employees.

Recent Developments

The Eighth China International Forum on Work Safety and China International Occupational Safety and Health Exhibition was held in Beijing in September 2016 with the theme of “Prevention First and Thorough Treatment.” At the conference, SAWS Director Yang Huanning pointed out that work safety in China has been improving since 2002, and the overall numbers of accidents and fatalities across sectors have declined for 14 consecutive years. From the early 1990s to 2002, the numbers of accidents and fatalities rose continuously, with over one million accidents per year at the peak, causing nearly 140,000 fatalities. Since 2002, however, these two figures have been declining, down to 282,000 accidents and 66,000 fatalities in 2015.

Safety has been improving in key sectors, including construction, hazardous chemicals, transportation, tourism, and in particular, mining. However, according to SAWS’s weekly *Work Safety Bulletin* and MOHURD’s “Briefing of Safety Accidents in Housing and Municipal Works in 2016,” in the construction sector, work safety problems are still serious. In 2016, 634 safety accidents occurred in housing and municipal works across the country, resulting in 735 fatalities. Compared to 2015, the numbers of accidents rose by 192, or 43.44 percent, and fatalities by 181, or 32.67 percent. According to MOHURD data, more than 60 percent of these accidents are related to falls from height and structural collapses. To improve work safety in the construction industry, the prevention of accidents related to work height is a core issue to be addressed.

A very serious construction accident occurred on November 24, 2016. At phase III of the Fengcheng power plant project in Yichun, Jiangxi, an operation platform of a cooling tower under construction collapsed, causing 74 fatalities and two other injuries. Preliminary investigations indicated that the

安全生产

引言

在 中国，安全生产工作已经成为政府机关、行业协会、科研机构、企业界和社会公众共同关注的良心事业。通过所有利益相关方的共同努力，《安全生产法》已于2014年得以修订，进一步强化了依法治理安全生产问题。

2016年10月31日，习近平主席强调，各级安全监管监察部门要牢固树立发展决不能以牺牲安全为代价的红线意识，以防范和遏制重特大事故为重点，坚持标本兼治、综合治理、系统建设，统筹推进安全生产领域改革发展。李克强总理指出，各级安全监管监察部门要牢固树立新发展理念，坚持人民利益至上，切实增强红线意识，进一步推进安全生产领域改革，深化重点行业领域专项治理，狠抓隐患排查、责任落实、健全制度和完善监管，强化安全科技、应急管理等工作，加快建立安全风险防控体系，更加细致扎实地做好安全生产各项工作。

近年来，住房和城乡建设部（住建部）、国家安全生产监督管理总局（安监总局）及其它相关的中央部门，针对重点行业如建筑施工、采矿、危险化学品等行业修订了多项法律法规。例如，针对安全生产的重点行业建筑业，住建部出台了修订版的重要行业标准。同时，地方政府也深刻认识到安全生产是经济社会发展的重要基础和保障，并在执法方面不断创新。例如，住建部已经建立了较大级别以上重大事故查处督办制度。

我们期望政府继续允许行业协会、科研机构和企业界在提供政策研究和咨询、法规标准起草、先进安全设备及技术的开发、推广和应用方面发挥积极作用。我们促请政府同这些实体共同合作，逐渐淘汰落后的技术方案，以更有效的法规标准和更先进的技术设备保障公众及员工的安全。

最新进展

2016年9月，主题为“预防为主，标本兼治”的第八届中国国际安全生产论坛暨安全生产及职业健康展览会在北京举行。国家安监总局局长杨焕宁在会上指出，自2002年以来，中国的安全生产工作不断改善，已经实现事故总量和死亡人数连续14年“双下降”。生产安全事故数量及死亡人数，自上世纪90年代初到2002年的10年间一度持续攀升，最高曾达到一年发生100多万起事故、死亡近14万人。然而2002年之后的这13年里，事故总量和死亡人数连年“双下降”，2015年降至28.2万起，死亡6.6万人。

建筑施工、危险化学品、交通运输、旅游等重点行业，特别是采矿业，近年来安全状况持续好转。但是，从安监总局每周定期公布的《安全生产简要情况》和住建部发布的《2016年房屋市政工程生产安全事故情况通报》来看，建筑行业的安全形势依然严峻。在2016年，全国共发生房屋市政工程生产安全事故634起，死亡735人，与2015年相比事故数量增加192起，死亡人数增加181人，同比分别上升43.44%和32.67%。住建部统计数据显示，在这些事故中，因高处坠落和结构坍塌导致的高空作业事故达到60%以上。要改善建筑业安全生产状况，核心问题是解决高空作业相关事故的发生。

2016年11月24日，建筑施工领域发生一起特大事故，江西省宜春市丰城发电厂三期在建项目冷却塔施工平台坍塌，造成74人遇难，2人受伤。初步调查显示，项目施工单位存在赶工期的情况。这起事故的发生再一次证明，以脚手架为代表的高空作业方式无法同时兼顾效率和安全。国务院安全生产委员会2016年4月28日发布了《标本兼治遏制重特大事故工作指南》（以下简称《指南》），要求政府鼓励企业进行技术和设备升级改造，及时发布目录以淘汰落后技术和设备同时促进先进技术的推广，通过法律、行政、市场等多种手段，推动、引导高风险企业升级

construction team was trying to meet a deadline, which once again shows that it is extremely difficult to ensure efficiency and safety at the same time for scaffolding and work at height in general. On April 28, 2016, the Work Safety Committee under the State Council issued the “Work Guidelines for Thoroughly Curbing Serious and Extremely Serious Accidents” (the Guidelines), requiring that the government encourage enterprises to upgrade and retrofit their technologies and equipment. The Guidelines further require authorities to promptly publish a catalogue of outdated safety technologies and equipment to be eliminated and advanced technologies to be promoted. They require regulators to adopt a variety of legal, administrative, and market measures to promote and guide high-risk enterprises to retrofit and upgrade their safety technologies, processes, and equipment; to eliminate a number of unsafe and unhealthy processes, technologies, and equipment; and encourage certain high-risk enterprises to introduce mechanization and automation. It is time for the construction industry to promote aerial work machinery, and AmCham China recommends that construction safety authorities, relevant associations, and contractors all actively promote the mechanization of work at height to ensure construction worker safety.

Improvements in Work at Height Regulations and Standards

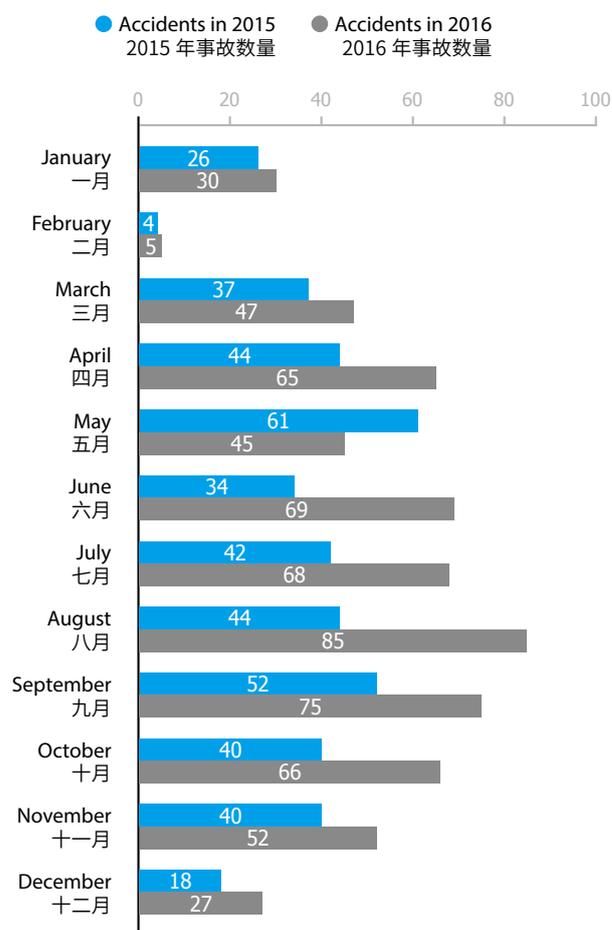
With the promulgation of the amended WSL, the next priority is to further improve relevant implementation policies. AmCham China commends positive actions taken by MOHURD and SAWS, the Chinese government ministries with mandates for work safety supervision.

In 2016, MOHURD issued updated versions of important industry standards. MOHURD replaced the 25-year-old “Technical Code for Work Safety at Height in Construction” (JGJ80-1991) with the revised JGJ80-2016, once again bringing government and public attention to the issue of work safety at height. The “Technical Specifications for Machine Inspection at Construction Site” (JGJ160-2008) was also revised and replaced by JGJ160-2016, recognizing aerial work platforms as safe and effective construction equipment on a technical level.

In order to implement “Made in China 2025,” SAWS in 2016 issued the “Opinions on Promoting Work Safety Technology Innovation,” requiring a greater degree of mechanization and automation in dangerous industries. Pursuant to the national standard “Classification of Work at Height” (GB/T3608), work at height refers to operations in which the operator may fall from a height of two meters or higher. Aerial work refers to work at height involving operations at heights much greater than two meters, usually above 20 meters. Aerial work includes operations carried out on an exposed edge or pit or by climbing or hanging in the air, construction or removal of scaffolds, installation and removal of templates, and other operations. Aerial work is highly

Construction Sector Accidents in 2016

2016 年建筑业安全事故统计



Source: “Briefing of Safety Accidents in Housing and Municipal Works in 2016”

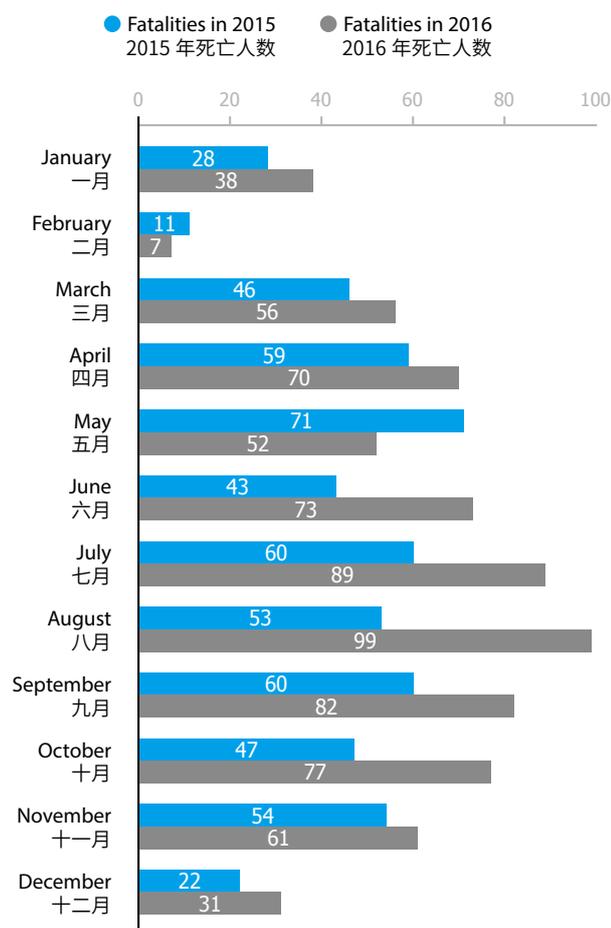
来源: 《2016 年房屋市政工程生产安全事故情况通报》

dangerous and should use as few operators as possible and apply aerial platforms as much as possible to prevent falls from height and collapse of scaffolds. We urge the Chinese government to allow foreign-invested enterprises (FIEs) to participate in the “Made in China 2025” initiative on equal footing with domestic enterprises in order to realize the highest possible standards for aerial work safety.

To cooperate with safety supervisory authorities, the Standards Association of China (SAC) National Elevating Platform Standardization Technical Committee (TC335) is in the process of organizing aerial equipment manufacturers and research institutes to draft “Safety Rules for Elevating Platforms” to encourage manufacturers to design and produce safe and reliable aerial equipment.

Construction Sector Fatalities in 2016

2016 年建筑业安全事故死亡人数



Source: "Briefing of Safety Accidents in Housing and Municipal Works in 2016"

来源: 《2016 年房屋市政工程生产安全事故情况通报》

改造安全技术、工艺流程及设备,将不符合安全标准、职业危害严重的工艺、技术和装备予以淘汰,推动特定高危企业实现“机械化换人、自动化减人”。如今建筑施工领域高空作业必须推广机械化生产,中国美国商会(商会)建议中国建筑安全主管部门、相关协会、建筑承包商积极推广高空作业机械化,保障建筑工人的安全。

完善高处(高空)作业法规和标准

随着新《安全生产法》的颁布,进一步完善法律实施政策成为下一步的重点。承担安全生产监管主要职责的住

建部和安监总局已经在各自职权范围内采取了一些积极措施,商会对此表示赞赏。

2016年,住建部发布了重要行业标准的修订版,修订版的JGJ80-2016替代了已实施25年的《建筑施工高处作业安全技术规范》(JGJ80-1991),使高处作业安全问题再一次进入政府和公众的视野。另外,《施工现场机械设备检查技术规范》(JGJ160-2008)也被修订版的JGJ160-2016所取代,从技术层面认可了高空作业平台这一安全、高效的建筑施工设备。

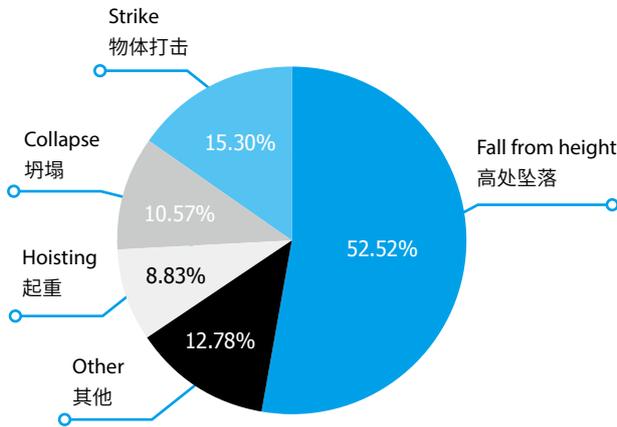
为贯彻落实“中国制造2025”,国家安监总局在2016年发布了《关于推动安全生产科技创新的若干意见》(安监总科技〔2016〕100号),规定在高危行业领域深入实施“机械化换人、自动化减人”。根据国家标准《高处作业分级》(GB/T3608)的规定,凡在坠落高度基准面2米以上(含2米)有可能坠落的高处进行的作业称为高处作业。高空作业是指高处作业中的一种特殊情况,即比2米以上更高的高处,一般在20米以上的高度。高空作业包括临边作业、洞口作业、攀登作业、悬空作业、脚手架搭建与拆除、模板安装与拆除施工、其他高度在2米及2米以上的施工作业。高空作业属于高度危险行业,应当尽量减少作业工人数量,并使用高空作业平台等机械,以避免高空坠落事故和脚手架坍塌事故的发生。我们促请中国政府允许外资企业同内资企业一样平等参与“中国制造2025”,以实现高空作业安全的最高标准。

为配合安全监管部门的行动,全国升降工作平台标准化技术委员会(SAC/TC335)正在组织高空作业设备制造商、科研机构起草制定《升降平台安全规则》,以推动设备制造商设计并生产安全可靠的高空作业设备。

同样重要的是,中共中央、国务院2016年2月6日发布了《关于进一步加强城市规划建设管理工作的若干意见》,促进装配式建筑和钢结构建筑的应用,力争用10年左右的时间,使装配式建筑占新建建筑的比例达到30%。在装配式建筑和钢结构建筑项目中,高空作业平台比传统的脚手架和爬梯更有安全和效率优势。在实践中,我们也可以看到高空作业平台越来越多的应用于多个领域,例如:

- 厂房建设、钢结构施工、高架桥施工;
- 石化设施维护;
- 机场建设和维护;
- 造船;

Construction Sector Accidents in 2016 by Type 2016 年建筑业按类型划分安全事故比例



Source: "Briefing of Safety Accidents in Housing and Municipal Works in 2016"

来源: 《2016 年房屋市政工程生产安全事故情况通报》

Equally important, on February 6, 2016, the Central Committee of the Communist Party of China and the State Council issued the "Opinions on Further Strengthening Urban Planning and Development Management," which promote the application of prefabricated construction and steel structure construction and aim to make prefabricated construction account for up to 30 percent of new construction over the next 10 years or so. In prefabricated or steel structure construction, aerial work platforms are safer and more efficient than conventional scaffolds and stairs. In practice, we can see that increasing numbers of aerial work platforms are used in many sectors, such as:

- Workshop, steel structure, and viaduct construction;
- Petrochemical facilities maintenance;
- Airport construction and maintenance;
- Ship building;
- Commercial logistics;
- High-speed railway;
- Road, bridge, and station construction; and
- Exhibition center construction and maintenance.

We urge government authorities at all levels, including in MOHURD and SAWS, to actively and quickly promote the application of aerial work platforms. Such action will enhance and ensure work efficiency and safety in accordance with central government policies, and should be well received by construction enterprises and workers.

Recommendations

For the Chinese Government:

- Review international best practices, such as US Occupational Safety and Health Administration (OSHA) regulations, and integrate them into Chinese regulations in order to take advantage of lessons already hard-learned through experience.
- Strengthen routine oversight, subject construction sites to more frequent inspections, and investigate and punish the misuse of scaffolding or use of poor-quality scaffolding.
- Ensure strict enforcement of the WSL through measures such as investigating various types of safety accidents, including scaffolding collapses, and preventing the concealment, omission from reports, and private settlement of any such accidents.
- Implement central government regulations on technological innovation, promote the application of aerial work platforms and other safety equipment, and encourage a high degree of mechanization and automation in the field of work safety.
- Implement policies to industrialize construction and accommodate the needs of frontline construction workers, encourage the application of advanced aerial work equipment in prefabricated and steel structure construction, and eliminate outdated conventional approaches to work at height.
- Allow FIEs to participate in the "Made in China 2025" initiative on equal footing with domestic enterprises in order to achieve the highest possible standards for aerial work safety.

For the US Government:

- Organize Chinese construction enterprises to visit US construction sites and study the use of safety equipment there, including aerial work platforms, and strengthen the education and training of safety equipment end users.
- Include aerial work safety issues as a priority in bilateral dialogues, such as the US-China Joint Commission on Commerce and Trade (JCCT) and the US-China Strategic and Economic Dialogue (S&ED).
- Share US best practices and achievements in aerial work safety legislation, enforcement, and regulation with Chinese safety regulators and standards-drafting experts.

- 商业物流；
- 高铁；
- 路、桥、场站建设；以及
- 会展中心建设和维护。

我们促请各级政府主管部门，包括住建部和安监总局，积极推进高空作业平台的普及。根据中央政策，这一措施将提高和保障高空作业的效率和安全，并会受到建筑施工企业和工人的赞赏。

- 向中国安全监管部门官员、标准起草专家分享美国政府在高处作业安全法规标准制定、实施、监管方面的经验和成果。

建议

对中国政府：

- 核查美国职业安全与健康管理规定等国际惯例，将其融入中国法规体系，以运用这些实践经验。
- 加强建筑工地日常安全监管，提高检查的频率，对于滥用脚手架或使用劣质脚手架进行查处。
- 严格执行《安全生产法》，对包括脚手架坍塌事故在内的各类安全事故进行责任追究，杜绝瞒报、漏报和私了的情况。
- 在安全生产领域，贯彻中央关于科技创新的规定，推广包括高空作业平台在内的安全设备的应用，实现“机械化换人、自动化减人”。
- 执行中共中央关于建筑工业化的发展决策，响应一线建筑工人的需求，引导先进高空作业设备在装配式建筑、钢结构建筑领用的应用，淘汰传统落后的高处作业方式。
- 允许外资企业同内资企业一样平等参与“中国制造 2025”，以实现高空作业安全的最高标准。

对美国政府：

- 组织中国建筑企业参观美国建筑工地，学习包括高空作业平台在内的安全设备的使用，加强对安全设备终端用户的教育和培训。
- 把高空作业安全这一当前重要问题优先列入双边合作项目，如中美商贸联合委员会（JCCT）和中美战略与经济对话（S&ED）。



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

Agriculture

Introduction

Food security and food safety continued to be important priorities for China in 2016. The “new normal” of economic slowdown has not reduced China’s appetite for grain or protein, and China’s strong domestic production and agricultural trade with global partners continues to flourish, enabling the Chinese people to access more affordable, diversified, and nutritious food.

The trade of agricultural products between China and America remained strong in 2016, with US agricultural exports to China reaching US \$21.41 billion (RMB 142.2 billion).

Trade benefits are mutual. During 2016, the US has continued to be the largest importer of Chinese goods with imports valued at US \$463 billion (RMB 3.07 trillion).

The Chinese central government emphasizes that food safety, food security, and sustainable agricultural production will continue to be a focus in order to ensure that its people have access to safe and wholesome food at an affordable price.

AmCham China believes that there are opportunities for agricultural industries in China and the US to work together to achieve this goal of making food more affordable, healthy, and sustainable.

Recent Developments and Ongoing Regulatory Challenges

Seed Industry

Restrictions on Foreign Investment in Seed Biotechnology

China has historically both encouraged and discouraged foreign investment through periodic revisions of its “Catalogue of Industries for Guiding Foreign Investment” (Foreign Investment Catalogue). For the seed industry, the current Foreign Investment Catalogue prohibits biotech crop breeding, seed production, and commercialization for companies wholly or partially owned by foreign firms. The revised draft jointly published for comment in December 2016 by the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) maintained these restrictions and prohibitions. AmCham China believes this policy does not help to modernize the Chinese seed industry and instead widens the gap between China and other countries in the biotechnology industry. AmCham China urges the Chinese government to remove this provision in the coming revised version of the Foreign Investment Catalogue, or at minimum move the category from “prohibited” to “restricted.”

Import and Export of Seed and Breeding Materials

In 2016, AmCham China saw continuous improvement in China’s crop variety registration following the amendment of the Seed Law in 2015. However, significant changes to regulations regarding the import and export of seed and breeding materials are necessary to streamline the currently lengthy and complex approval processes. 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 that must obtain multiple approvals on a crop-by-crop and sample-by-sample basis.

US Agricultural Exports to China

美国对华农产品出口



Source: US Department of Agriculture Foreign Agricultural Service, Global Agricultural Trade System

来源: 美国农业部对外农业服务全球农业贸易系统

农业

引言

2016年，粮食安全和食品安全继续成为中国面临的重要议题。即使面临经济增速放缓的“新常态”，中国对粮食或蛋白质的需求也并未减少，中国国内农业生产以及与全球贸易伙伴之间的农业贸易继续兴旺发展，为中国人民提供价格实惠、品种多样和营养丰富的食物。

2016年，中美农产品贸易依然表现强劲，美国对华农产品出口高达214.1亿美元（约合人民币1422亿）。

贸易利益是互惠的。2016年，美国继续成为中国货物的最大进口国，进口货物价值高达4630亿美元（约合人民币3.07万亿）。

中国政府强调将继续重视食品安全、粮食安全和农业生产可持续性，确保人民能够获得经济、安全和健康的食物。中国美国商会（商会）相信，中美两国在农业领域将有机会共同合作，推动实现粮食更加经济、健康和可持续的目标。

最新进展和现存监管挑战

种子行业

限制外资投资种子生物技术

通过定期修订《外商投资产业指导目录》（《目录》），中国对外商投资既有鼓励也有限制。就种子行业来说，现行的《目录》禁止外商独资或合资企业投资生物技术农作物选育、种子生产和商业化。2016年12月，国家发展和改革委员会（国家发改委）和商务部联合发布修订版的征求意见稿，保留了这些限制和禁止。商会认为，这一政策无助于中国实现种子行业的现代化，反而会拉大中国和其他国家在生物技术行业的差距。商会敦促中国政府在本次修订《目录》中删除这一规定，或者至少将其从“禁止”目录移到“限制”目录。

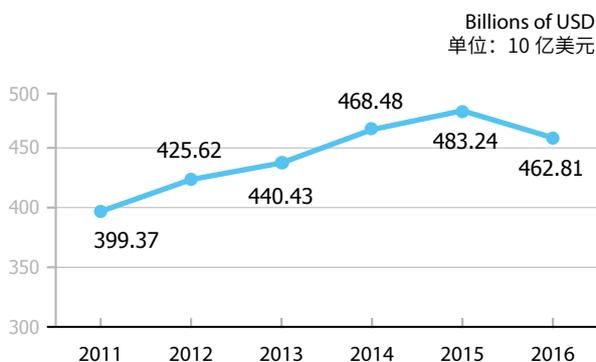
种子和育种材料的进出口

2016年，商会注意到，自2015年《种子法》修订以来，中国不断改进作物品种登记。然而，当前的种子和育种材料进出口制度仍亟待重大改革，以改变现行冗长且复杂的审批程序。例如，如果某出口种质中使用了中国原产种质，那么该项出口将受到严格限制。即使未使用原产种质，为研究目的而进行的种子出口审批程序也十分繁琐，特别是对于育种基地遍布全球的跨国公司，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，不仅延缓了跨国公司与地方种子行业之间的技术交流和科研合作的步伐，也阻碍了中国的新品种研发。此外，农业部进一步加强了对种质资源出口的监管，有时甚至会要求出示

Total US Imports from China

美国进口中国货物总额



Source: US Census Bureau

来源：美国国家统计局

This process includes obtaining approvals from multiple authorities within the Ministry of Agriculture (MOA), registering with MOFCOM, obtaining phytosanitary certification from the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), and obtaining approvals from provincial authorities. Approval processes at the provincial level are especially time consuming and unpredictable, which slow technology exchange and research cooperation between MNCs and the local seed industry and also hamper new variety development in China. Moreover, MOA has further tightened germplasm export controls, in some cases requiring MOA-authorized lab testing reports, which further increases the burden on companies and slows the development of seed varieties.

Counterfeit Seeds and Intellectual Property Protection

The establishment of the intellectual property courts has set a new model for standardized trials and the courts have accumulated valuable experience over the past two years. The courts have received much attention and recognition from industry. AmCham China applauds the Chinese government's efforts to enhance intellectual property rights (IPR) protection to promote industrial development.

It is essential for the seed industry and China's sustainable agriculture to continue pushing forward with IPR system reforms. We encourage China to focus on making progress in the following areas: ❶ adopt the 1991 "International Convention for the Protection of New Varieties of Plants," or at least include the concept of essentially derived varieties into the current plant variety protection framework, which will greatly encourage and promote breeding innovation in China; ❷ open patent protection to biotech plant products which are not individual plant varieties and grant proper patent scope to gene-related inventions, which will encourage innovations in seeds and traits; and ❸ speed up the examination process for new plant varieties and intensify the investigation and punishment of new plant variety infringement. Strengthen germplasm protection efforts and severely punish illegal acts such as stealing patented plants.

Agricultural Processing and Transportation

Industry Integration and Modernization

China has hundreds of thousands of scattered food processing companies with small scales of production, making food safety supervision a challenge. Consolidation in the food processing industry would facilitate food safety supervision. Any such consolidation should treat mergers and acquisitions by foreign companies equally with such transactions by domestically-invested companies. Food industry consolidation could be accelerated if China simplified its anti-monopoly review process and removed restrictions on foreign investment. MOFCOM's lengthy

monopoly review procedure hampers business mergers and acquisitions. The low filing threshold makes mergers or other transactions around the world reportable under the Anti-Monopoly Law (AML), even if the companies' sales figures are fairly minimal in China. The AML also requires enforcement agencies to consider elements that are beyond the scope of classic antitrust analysis. As a result, extraneous issues often color MOFCOM's anti-monopoly analysis and delay the review.

Foreign investment in China's grain processing sector was originally encouraged in the 2004 version of the Foreign Investment Catalogue, but was removed from the "encouraged" category in 2007. Continued investment restrictions led to a range of unintended consequences, including inefficient and outdated production capacity, diminished incentives to develop new technologies, and high costs of consolidation. AmCham China members applaud the deletion of agricultural processing from the new negative list for the four Pilot Free Trade Zones (PFTZs) published in January 2016. We are also encouraged by the nationwide expansion of the negative list model for foreign investment management in Announcement No. 22 jointly issued by MOFCOM and the NDRC in October 2016. However, agricultural processing, with the exception of corn deep processing, is still on the national market access negative list, which is based on the restricted and prohibited categories specified in the Foreign Investment Catalogue. We urge China to further liberalize foreign investment in agricultural processing nationwide by adopting the negative list from the PFTZs.

Food value chain fragmentation is another source of food safety concern, as it increases the risk of contamination during transportation and storage, and also introduces additional inefficiencies into the value chain. A more integrated value chain in which larger, more experienced players maintain control over their supply chains from raw-material origination to finished product delivery would help safeguard China's food supply and minimize the threat of adulteration. However, leading food industry players face policy barriers to building an integrated business. For example, foreign companies are restricted from investing in corn origination, corn storage, and corn wet milling in China. As China strives to save energy and ensure food safety, AmCham China urges the removal of investment restrictions that impede the integration of the food value chain.

Bulk Transportation

High logistics costs make Chinese domestic agricultural products less competitive. Only 25 percent of cross-provincial grain movement in China is handled in bulk. Although China has modern, world-class ports, silos, and railways, the logistics system as a whole underperforms due to fragmentation. China can increase bulk transportation for agricultural commodities by improving certain segments of the logistics network that currently lack bulk-handling capabilities such as rail bulk loading and unloading facili-

农业部授权的实验室出具的试验报告，大大增加了相关企业的负担，也减缓了种子品种开发的进程。

假冒种子和知识产权保护

中国设立知识产权法院为标准化审判树立了新的典范。在过去两年中，知识产权法院积累了宝贵的经验，获得了业界的高度关注和认可。商会赞赏中国政府为促进产业发展而加强知识产权保护所做出的努力。

为了种子行业和农业可持续发展，中国必须继续推进知识产权制度改革。我们促请中国政府重点关注以下领域：

① 采纳 1991 年《国际植物新品种保护公约》，或者至少将实质衍生品种的概念纳入现有的植物品种保护框架，这将极大地鼓励和促进中国的育种创新；② 向不构成单独植物品种的生物技术植物产品提供专利保护，给予基因相关发明适当的专利保护，这将鼓励种子和性状创新；③ 加快植物新品种审查过程，强化植物新品种违规调查和处罚。加强种质保护力度，严厉处罚盗取专利品种等违法行为。

农产品加工和运输

行业整合和现代化

中国有成千上万家分散的小型食品生产加工企业，这给食品安全监管带来了诸多挑战。食品加工行业的整合将有助于促进食品安全监管。这类整合应当平等对待外资企业和内资企业的并购。如果中国能够简化其反垄断审查程序且取消外商投资限制，食品行业的整合就会加速前进。商务部冗长的垄断审查程序妨碍了企业的并购。因报告门槛较低，即使在华销售额很少，企业在世界各地进行合并或其他交易也需要按照《反垄断法》的规定予以报审。《反垄断法》还要求执法机构考虑超出传统反垄断分析范围的因素。因此，商务部的分析经常涉及到与反垄断无关的问题，耽误了审查进程。

在 2004 年发布的《目录》中，粮食加工原本属于“鼓励”行业，但是，2007 年从“鼓励”目录中被删除。持续存在的投资限制产生了众多意料之外的后果，包括产能效率低下和落后、技术开发激励力度减小、整合成本较高。2016 年 1 月，四个自由贸易试验区（自贸区）发布的新版负面清单删掉了农产品加工，商会各成员企业对此表示欢迎。令我们深受鼓舞的还有，2016 年 10 月，商务部和国家发改委联合发布了第 22 号公告，决定在全国范围内对外商投资管理实行负面清单模式。但是，除玉米深加工外，

农产品加工仍然被列入根据《目录》确定的限制和禁止目录制定的市场准入负面清单。我们促请中国采纳自贸区的负面清单，进一步向外商投资开放全国农产品加工。

食品价值链碎片化是食品安全问题的另一个源头，不仅会增加运输和储存过程中的污染风险，也会降低价值链的效率。如果价值链的集成度较高，有规模更大、经验更丰富的企业掌控从原材料收购到最终产品交付这一完整供应链，将会保障中国的食品安全供应，将掺杂假货的风险降至最低。但是，要想实现行业整合，龙头食品企业还面临着政策壁垒。例如，外资企业在华投资玉米收购和储存以及玉米湿磨就受到限制。由于中国正努力实现节能和食品安全，商会促请取消妨碍食品价值链整合的投资限制。

散货运输

物流成本过高使得中国国内农产品的竞争力较弱。中国省际之间的粮食运输仅有百分之二十五是通过散货运输。虽然中国拥有世界一流的现代化港口、仓库和铁路，但是，因为衔接和配套欠缺，物流体系总体表现不佳。中国物流网络的某些环节例如铁路装卸目前缺少散货处理能力，通过提升铁路散装散卸设施等环节，中国可以提高农产品的散货运输。如果中国能够放宽限制，向全体投资者开放粮食贸易和物流投资，高效的大型粮食经销企业就会出现。

如果中国能够打破国有企业对铁路和港口等基础设施的垄断，低成本的集成物流解决方案就会成为可能。商会的会员企业愿意与中国同行分享自己的经验，例如，在美国主要河流通过拖船和驳船实现粮食的散货运输，这一高效率的模式可以在长江流域复制。

增值农产品加工

通过加工转化成高附加值的产品，可以大幅提升农产品原材料的价值。但是，由于原料成本过高以及产能过剩，中国的农产品加工行业举步维艰。2004 年，中国开始对大米和小麦实行“最低收购价格”，并在 2007 年将这一政策推广到玉米、大豆、棉花和糖。这一政策人为增加了加工企业的原料投入成本。许多加工企业在产能过剩的低端市场中竞争惨烈。中国决定从 2016 年起取消“最低收购价格”并且对玉米采用基于市价的收购价格，商会的会员企业对此表示欢迎。

中国政府鼓励产业创新并实现低端制造向高端制造的升级。许多农业大省的官员已经表现出通过吸引外资创造就业和提升农产品原材料价值的强烈意愿。若能将农产品

ties. If China loosened restrictions and opened grain trading and logistics investments to all investors, large and efficient grain distributors could emerge.

Low-cost, integrated logistics solutions could become available if China were to break its state-owned enterprise monopolies for infrastructure such as railways and ports. AmCham China members are willing to share their experiences with their Chinese counterparts. For example, operating a tugboat and barge system on major US rivers for bulk grain transportation is an efficient model that could be duplicated on the Yangtze River.

Value-Added Agricultural Processing

The value of raw agricultural products can be multiplied through processing into value-added products. However, China's agricultural processing industry struggles due to high input costs and overcapacity. China introduced a "floor price" policy on rice and wheat in 2004, and also on corn, soybeans, cotton, and sugar in 2007. However, these policies artificially increase input costs for processors. Many Chinese processors struggle to compete in the over-capitalized, low-end market. AmCham China members welcome China's decision to terminate "floor prices" and form a market-based price on corn starting with the 2016 harvest.

The Chinese government encourages industries to innovate and upgrade from low-end to high-end manufacturing. Officials in provinces with high levels of agricultural production have demonstrated an interest in attracting foreign investment to create jobs and enhance the value of agricultural raw materials. Extending pricing mechanism reforms to other crops like corn and removing agricultural processing from the "restricted" portion of the Foreign Investment Catalogue would help China to develop high-end processing and produce value-added products.

Grain Commodity Trade

Import Approvals of Biotech Products

Since 2010, China's agricultural biotech approval process has gone from being slow but relatively predictable to even slower and less predictable. Since 2012, MOA has only provided decisions on biotech products once per year. In February 2016, MOA approved only three of over a dozen products waiting in the queue for approvals. By December 2016, the list of products pending approvals had grown to 18, excluding previously approved products due for renewal. Out of these 18, only one product was approved by MOA in its latest announcement of approvals released in January 2017. Such delays in the approval of biotech commodities increase the risk of trade disruptions and slow agricultural innovation. In addition, hesitation to approve biotech products undermines Chinese consumer confidence in and acceptance of biotech products.

Amendment of the "Genetically Modified Organism Safety Assessment Measures" (MOA Decree No. 7) came into effect on October 1, 2016. AmCham China appreciates MOA's transparency and openness to public and trade partner input, in addition to MOA's separation of socioeconomic factors from the making of regulatory decisions. We are also encouraged to see some positive changes in the new decree to encourage local cultivation registration. However, the amended decree removed submission windows and feedback timelines, and the frequency of National Biosafety Committee meetings was rephrased as "at least two per year" without any clarification on the actual frequency and schedule. We expect these changes to add significant unpredictability to the current system.

In addition to obtaining a biosafety certificate to approve a genetically modified organism product for food/feed use in China, MOA requires agricultural traders to obtain a new biosafety certificate for each specific shipment to a specific customer, at a cost of RMB 3,000 (US \$452) per application. As a result, traders would need to apply for over 10 biosafety certificates for a vessel delivering grain in containers to more than 10 customers even though all containers are loaded from the same terminal with identical grain. This requirement to obtain shipment-specific and customer-specific biosafety certificates does not improve product safety, and only increases costs for traders and ultimately results in higher prices for consumers. We encourage MOA to remove this unnecessarily duplicative requirement.

Biotechnology has been mentioned in the No. 1 Central Document for eight of the past 11 years since its first mention in 2007, and the commercialization of new Bt cotton, Bt corn, and herbicide-tolerant soybeans was included in the 13th Five-Year Plan released in August 2016. AmCham China applauds continuous efforts by MOA and the Chinese academic and media communities to improve public understanding of biotech-derived products. AmCham China member companies have themselves increased biotech public education efforts by launching social media campaigns and sponsoring media workshops.

Feed Ingredient Import Approvals

The import of feed ingredients such as distiller's dried grains with solubles (DDGS) and other byproducts of fermentation by China is subject to redundant registration and approval processes that involve feed ingredient registration by MOA and product safety evaluation and exporter registration by AQSIQ. Since January 2013, 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 call to streamline and cut administrative licensing requirements. Such new administrative

定价机制改革推广到玉米等其他作物且将农产品加工从《目录》的“限制类”中删除，将有助于中国发展农产品高端加工和生产具有高附加值的产品。

粮食商品贸易

生物技术产品的进口许可

2010年以来，中国生物技术安全证书审批程序变得更为缓慢且难以预测。自2012年起，农业部只向技术开发商提供一年一次的生物技术产品审批决定。2016年2月，在十几个排队等候批准的产品中，农业部只批准了其中三个。到2016年12月，等待批准的产品增加到16个，不包括之前批准的到期需要续期的产品。在这16个产品中，根据2017年1月农业部最新发布的批准公告，只有1个产品获得农业部批准。生物技术产品审批的延误增加了贸易中断的风险，使得农业创新步伐放慢。对批准生物技术产品表现出来的犹豫削弱了中国消费者对生物技术产品的信心和认可。

修订后的《农业转基因生物安全评价管理办法》（农业部第7号令）自2016年10月1日起实施。商会赞赏农业部在监管决策过程中剔除社会经济因素，并且对公众和贸易伙伴的意见和建议秉持透明和开放的态度。我们也很高兴看到新令为鼓励本地栽培登记做出的一些积极变动。但是，修订后的管理办法取消了提交窗口和反馈期限，将国家农业转基因生物安全委员会评审次数修改为每年至少开展两次，但没有说明实际次数和时间安排。我们预计这些修改将大大增加现有制度的不可预测性。

在中国，食品/饲料使用转基因产品除了技术开发商需要获得该产品的生物安全证书外，按照农业部的要求，农产品贸易商还需要为同一个产品每批次进口的每个客户重新取得生物安全证书，每次申请需要缴纳3000元（约合452美元）。因此，如果通过集装箱进口的一批粮食有十几个客户，即使所有的集装箱都来自同一地点、装载相同的粮食，贸易商仍然需要申请十几份生物安全证书。要求为每批次进口的每个客户取得生物安全证书无助于提高产品的安全性，只能增加贸易商的交易成本并最终抬高消费者支付的价格。我们鼓励农业部取消这一非必要的重复审批要求。

在过去11年中，中央“一号文件”8次提到了生物技术，第一次是在2007年。转基因棉花、转基因玉米和抗除草剂大豆的商业化被纳入2016年8月发布的“十三五”规划。商会对中国农业部及学界和媒体持续采取各种举措提高公

众对生物技术产品了解的做法表示欢迎。商会的会员企业也通过社交媒体和研讨会的方式对公众加大生物技术科学普及的力度。

饲料原料的进口许可

中国进口诸如DDGS（玉米酒糟粕）和其他发酵副产品在内的饲料原料需要经历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，要求对原先不需要登记的大豆粕和菜籽粕进行登记。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、减少行政审批的宗旨。此外，上述新增的行政审批要求不仅无助于提高食品安全性，还会增加中国消费者的成本负担。

对美国干玉米酒糟征收反倾销和反补贴税

2016年1月12日，商务部对从美国进口的干玉米酒糟（DDGS）启动反倾销调查。此外，商务部还启动了反补贴调查，对DDGS享受的不公平政府补贴进行调查，确定是否应当征收反补贴税。

从美国进口DDGS是因为：① DDGS因其质量特征而逐渐广泛用于畜牧饲料，特别是在乳品行业；② 中国国内生产不能满足快速增长的需求；③ 中国执行高于全球玉米价格水平的玉米价格政策。

2016年9月23日，商务部公布对反倾销初裁结果，按照33.8%的倾销幅度向美国DDGS产品征收反倾销税。9月28日，商务部公布反补贴初裁结果，向生产企业征收10%—10.7%不等的反补贴税。除此之外，还取消了美国DDGS产品免征增值税的待遇，相当于又增加了13%的税负。美国DDGS产品实际税率达到68%，因此，中国饲料和畜牧企业需要为饲料原材料支付更高的价格。

饲料添加剂

根据2009年《进出口饲料和饲料添加剂检验检疫监督管理办法》（第118号令）的要求，首次向中国出口饲料添加剂的，必须获得国家质检总局的准入许可。这项要求的核心就是对生产企业进行注册登记。注册登记过程通常要求国家质检总局进行现场评审，完成这一过程通常需要两年的时间。

即使已经获得国家质检总局批准和注册登记的饲料添加剂，也需要获得国家质检总局的准入许可。因此，中国

licensing requirements do little to improve food safety while increasing costs to Chinese consumers.

Anti-Dumping and Countervailing Duties on US DDGS

On January 12, 2016, MOFCOM announced an investigation into dumping charges against US DDGS. In addition to the dumping charges, charges of unfair government subsidies also prompted an investigation to determine countervailing duties to correct for the alleged subsidies.

The demand for imported DDGS was driven by: ❶ the increasing adoption of DDGS in livestock feed rations due to its quality characteristics, particularly in the dairy industry; ❷ the inability of China's domestic industry to meet this rapidly growing demand; and ❸ China's own policy of maintaining high corn prices well above global corn price levels.

On September 23, 2016, MOFCOM announced preliminary duties on US DDGS, with anti-dumping duties set at 33.8 percent, and then, on September 28, MOFCOM announced countervailing duties set at 10 to 10.7 percent, depending on the producer. In addition to these duties, the imposition of duties rescinded the value-added tax-exempt status of US DDGS, which added another 13 percent. This results in an effective 68 percent duty on US DDGS, and as a result, Chinese feed and livestock producers will pay more for their feed raw materials.

Feed Additives

Feed additives exported to China for the first time must undergo pre-market approval by AQSIQ, a requirement introduced in 2009 through the "Supervision and Management Measures for the Inspection and Quarantine of Import and Export Feed and Feed Additives" (Decree 118). Central to this approval is registration of the manufacturing facility. The registration process typically requires an on-site audit by AQSIQ, a process can take up to two years to complete.

AQSIQ requires pre-market approval, even for feed additives that have already been approved and registered by MOA. As a result, Chinese producers of animal feed are not allowed access to the newest technology, thus placing China's livestock industry at a disadvantage globally.

In a positive development, AQSIQ is planning a visit to inspect the American feed additive industry. We encourage AQSIQ to use this inspection as a step toward eliminating the duplicative AQSIQ approval requirements on all future feed additive products that are approved by MOA.

Tariff Rate Quotas on Agriculture Commodities

China introduced a tariff rate quota (TRQ) system on major crops during its World Trade Organization (WTO) entry negotiations to protect its farmers and meet its import needs.

However, a number of issues prevent TRQs from supporting these two policy objectives, including the following:

- ❶ TRQ levels have not been adjusted since China's accession to the WTO in 2001 and do not meet the increasing demand in China for agricultural commodities.
- ❷ A majority of import quotas are reserved for state-owned enterprises. The TRQ volume allocated to each private applicant is often too small to be commercially viable for making even one 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, and often held back at other times when importers need to import.

AmCham China recommends that the Chinese government regularly review TRQ levels according to actual market demand and establish a more transparent and market-oriented TRQ allocation system. We also recommend reducing the number of agricultural commodities subject to TRQs, particularly feed grains, so that market demand can be met more efficiently, allowing China access to less expensive agricultural commodities. Chinese processors, including cotton spinning mills, sugar refineries, and feed mills, rely heavily on imports to keep their operations globally competitive.

Beef and Pork Trade

Significant potential exists to increase trade in beef and pork between the US and China. This will allow Chinese consumers to access high quality, safe, and nutritious products at a lower price.

Due to increased demand and constrained domestic beef supplies, China's imports of frozen, fresh, and chilled beef between January and September 2016 totaled 454,829 tons, a 35 percent increase from 2015. Per capita beef consumption is growing, and China has emerged as the largest growth market for global beef suppliers.

In a positive development, MOA announced on September 19, 2016 that it had conditionally lifted its bovine spongiform encephalopathy (BSE)-related ban on imports of US beef following a technical inspection of the US beef production system earlier in the month. Steps remain before trade resumption can occur, most importantly the negotiation of a beef trade protocol specifying import conditions. US farmers and ranchers look forward to prompt engagement by our two governments for further technical discussions on the specific conditions that will allow trade to resume.

的动物饲料生产企业无法获得最新的技术，这使得中国畜牧业在国际市场处于不利地位。

值得肯定的是，国家质检总局正计划考察美国饲料添加剂行业。我们鼓励国家质检总局通过这次考察，将来能够取消已经获得农业部批准的所有饲料添加剂产品的重复性审批要求。

农产品关税配额

为了保护农民和满足进口需要，中国在人世谈判时对主要农作物实施关税配额管理制度（TRQ）。但是，若干问题阻碍了关税配额制度实现这两项政策目标，其中包括：

- ① 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，无法满足中国对农产品日益增长的需求。
- ② 绝大多数进口配额都留给了国有企业。私有企业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。
- ③ 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。
- ④ 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，等到需要进口时往往又不予发放。

商会建议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。我们还建议减少需要配额的农产品数量，特别是饲料谷物，从而更加有效地满足市场需求，使中国能够享用到价格更加实惠的农产品。棉纺厂、制糖厂和饲料加工厂等中国生产企业高度依赖进口来维持企业经营的国际竞争力。

牛肉和猪肉贸易

中美牛肉和猪肉贸易存在巨大的提升空间。中国消费者将能够获得物美价廉、安全和有营养的产品。

由于需求增加和国内牛肉供给有限，2016年1月至9月，中国总计进口冷冻、新鲜和冷鲜牛肉454,829公吨，与2015年相比增长了35%。人均牛肉消费量持续增长，中国已经成为全球牛肉供应企业增长最快的市场。

值得肯定的是，2016年9月19日，农业部宣布，经本

月初对美国牛肉生产体系进行技术评估，决定有条件地取消与牛脑海绵状病（疯牛病）有关的美国牛肉进口禁令。在贸易恢复之前还有一些工作需要做，最重要的莫过于协商确定一份牛肉贸易协定书，明确进口条件。美国农户和农场期待两国政府立即接洽进行技术谈判，敲定恢复贸易的具体条件。

2016年1月至8月，由于国内生猪供应下跌以及价格上涨，美国对华猪肉出口大涨92%。2016年中国猪肉进口创下新高，但随着国内猪群数量的恢复，2017年的猪肉贸易有可能出现回落。美国对华猪肉贸易之所以实现增长，是因为中国于2015年秋重新制订了一份美国猪肉企业准入名单，作为对美国采取新的举措要求美国猪肉满足中国进口标准的回应，其中包括要求产品不得含有莱克多巴胺残留。虽然中国对莱克多巴胺的零容忍不符合这种饲料添加剂安全残留的国际标准，但是，美国政府希望，保证遵守中国标准的承诺有助于提高贸易额的正常和可靠性。

两国猪肉贸易面临的其他贸易壁垒包括限制进口美国冷冻猪肉以及目前禁止进口美国加工肉类产品。我们鼓励中美两国政府就美国加工肉类出口资格达成一致，使得中国消费者能够获得更多安全价优的猪肉产品。最后，我们期待与中国就美国羊肉和羊肉制品贸易开启协商。

我们承认，中国同行也提出，中国的某些肉类/家禽产品在美国市场也面临类似的市场准入难的问题。为了进一步提升中美农业贸易的健康、互惠发展水平，商会促请美国相关监管部门允许美国消费者能够获得更多的安全食品，能够依据科学的方法审批中国肉类、鱼类和熟制家禽产品的市场准入申请。

农业机械

自2004年起，受相关补贴和优惠政策的刺激，中国农民的效率得到提高，中国的农用机械销售额迅速增长。在完成产品测试之后，跨国公司在华生产的产品也可以享受补贴。

2016年，农业部采取更加积极的措施，进一步优化和提高补贴和测试管理的市场导向性，鼓励农民购买安全、可靠和适合的设备。鉴于省级农业部门可以根据当地情况更加自主和灵活地执行补贴政策，各省的补贴政策不尽相同。这个问题给致力于遵守各个省份不同政策的管理和沟通团队增加了很大的压力。为了提高效率，我们鼓励统一各省的政策实施。

The value of US pork exports to China surged 92 percent during the first eight months of 2016 as China's hog supplies fell and domestic prices rose. China's pork imports in 2016 will reach record levels, although a recovery in domestic herd numbers will likely see trade fall next year. The increase in US trade was facilitated by the relisting of a number of US pork processing establishments in the fall of 2015. This relisting was in response to new US government programs that required US pork to meet China's import standards, including one program which requires products to be free of ractopamine residues. Although China's zero tolerance for ractopamine is not aligned with international guidelines on safe residues for this feed additive, the US is hopeful that new assurances on compliance with China's standards will result in more normalized and reliable trade.

Other impediments to pork trade between the two countries include unclear restrictions on the import of US chilled pork and a ban on US processed meat imports. We encourage the US and Chinese governments to engage on US processed meat export eligibility to allow Chinese consumers access to a greater range of safe and affordable pork products. Finally, we look forward to beginning discussions on establishing trade in US lamb and sheep meat products.

We acknowledge that our Chinese counterparts have also voiced concerns regarding market access for certain Chinese meat and poultry products in the US. To promote more robust and mutually beneficial bilateral trade, AmCham China urges US authorities to allow American consumers access to a greater range of safe food, and review Chinese requests for US market access for meat, fish, and cooked poultry products.

Agricultural Machinery

Since 2004, sales of agricultural mechanization equipment have grown rapidly, driven by relevant subsidies and favorable policies resulting in the improved efficiency of Chinese farmers. MNC products produced in China are eligible to enjoy subsidies upon completion of a product homologation process.

In 2016, MOA took more positive actions to further optimize subsidy and homologation management and make it more market-oriented, as well as encourage farmers to purchase equipment that is safe, reliable, and appropriate. Given the fact that provincial agriculture authorities have more autonomy and flexibility on subsidy implementation based on local conditions, subsidy policies vary between provinces. This issue has added a great deal of strain on management and communication teams from agricultural equipment original equipment manufacturers who need to comply with different policies in each individual province. We encourage consistent policy implementation across provinces in order to increase efficiency.

"Made in China 2025" is a national strategy for China. Agricultural machinery is listed as one of the top ten priori-

tized industries. Indigenous innovation is a key component of this plan, including the development of indigenous technologies and intellectual property, as well as the promotion of indigenous brands worldwide. We are concerned that the Chinese government will subsidize indigenous manufacturers of agricultural equipment, creating an unfair competitive environment for MNCs.

Recommendations

For the Chinese Government:

- **Improve the sustainability and competitiveness of Chinese agriculture by opening up the industry to foreign investment in seed technology, modern agricultural processing, and bulk transportation.**
- Establish a science-based and functional regulatory process for approving biotechnology-derived crop products in a timely manner in order to encourage agricultural innovation, increase public confidence and acceptance, and avoid trade disruptions.
- Remove restrictions on the importation of US beef and pork.
- Allow Chinese feed manufacturers access to affordable raw materials in order to enable Chinese protein producers to be globally efficient.
- Encourage consistent agricultural equipment subsidy and homologation management policy implementation across provinces in order to increase efficiency.

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 bilateral investment treaty negotiations to address the 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.

“中国制造 2025”是中国的国家级战略。农业机械属于十大优先产业之一。自主创新是这一战略的重要组成部分，其中包括自主技术和知识产权的开发以及自主品牌的国际推广。我们担心中国政府会向农业设备的本土制造企业提供补贴，使得跨国公司处于有失公平的竞争环境。

建议

对中国政府：

- 允许外资投资种子技术、现代农业加工和粮食散货运输，从而提高中国农业的可持续性和竞争力。
- 建立科学、实用的监管过程，及时审批基于生物科技的作物产品，从而鼓励农业创新，提高公众信心和认可，避免贸易出现中断。
- 取消对美国牛肉和猪肉的进口限制。
- 允许中国种子生产企业获得价格实惠的原材料，使中国粮食生产企业保持国际领先的效率。
- 鼓励农业设备补贴和认证管理政策在各省得到统一执行，以提高效率。

对美国政府：

- 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双边对话平台与中方官员合作，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。

Automotive Policy

Introduction

In 2009, China overtook the US to become the largest automobile market in the world. Chinese auto sales have increased more than tenfold from 2.2 million in 2000 to 24.5 million in 2015. However, with the slowdown of the Chinese economy, the growth of its auto industry also entered a “new normal.” The industry is experiencing great technological changes, from traditional gas-powered engines to new energy vehicles (NEVs) to intelligent and connected vehicles (ICVs). Meanwhile, because of worsening environmental and climate problems, the automotive industry is faced with ever greater challenges. Vehicle manufacturing is a highly-valued pillar industry of the national economy regulated by the government.

AmCham China recognizes and welcomes the achievements made by the Chinese government in streamlining administration, decentralizing power, and enhancing policy transparency, and encourages the Chinese government to further deepen reform and improve governance.

Ongoing Regulatory Issues and Recent Developments

Policy Transparency, Predictability, and Coordination

We urge the government to address the following important concerns of the automotive industry and are prepared to provide support:

- Insufficient consideration is given to the appeals of enterprises in setting policies and standards. The government does not fully solicit industry input when drafting policies and standards, nor does it respond to reasonable opinions and appeals when soliciting public opinions on the drafts. The final versions of some policies even contain content that did not appear in the draft for comment.
- Policies lack predictability, transparency, and continuity, thus creating uncertainty and raising the cost of research and development (R&D) and production. The relevant requirements of policies and standards fail to

fully consider the development level of the industry and the overall market environment. They do not provide sufficient lead time to meet actual production requirements and do not provide enterprises with sufficient time to make adjustments.

- Adequate coordination and communication is lacking between government departments. There is redundancy and inconsistency in policy setting and implementation between the central government and local governments, and also between the departments responsible for regulation.
- Random enforcement increases the compliance costs of enterprises. Law enforcement departments interpret policies in a one-sided manner and fail to adequately consider the special circumstances of business models in the automotive industry as well as internationally accepted best practices. Random enforcement increases the cost of compliance and creates instability. In particular, recent frequent taxation and customs inspections have increased uncertainty.

AmCham China urges the Chinese government to conduct all-around analysis and feasibility studies of regulation in the early stages of formulating and drafting policies. The government should provide enterprises with more opportunities to take part in discussions and make comments so that policies and standards can meet market demand and facilitate the healthy development of consumers and the industry. Considering that automobile production and technological upgrading require extended periods of time, policies should be formulated and adjusted on at least a three-year cycle. Steps should be taken to ① establish a coordination mechanism for automotive policies; ② define the responsible authorities, their responsibilities, and specific requirements for regulation of the automotive industry; ③ enhance consistency between central and local laws and regulations; and ④ further harmonize policies with international best practices.

New Energy Vehicle Policies

NEVs represent a strategic emerging industry in China. The Chinese government has given the development of NEVs strong policy and funding support. To better develop the industry, we recommend the following:

汽车制造业政策

引言

自 2009年起，中国超过美国成为世界最大的汽车市场，汽车销量从2000年的220万辆增加到2015年的2450万辆，增长了10倍多。然而，随着中国经济增速放缓，汽车产业增速也进入了“新常态”。汽车产业正经历着巨大的技术变革，从传统的燃油发动机驱动到新能源车，再到智能网联汽车。与此同时，环境问题日益严峻，汽车行业的发展面临着越来越多的挑战。汽车制造业在中国被当作国民经济的支柱产业，受到政府高度重视和监管。

中国美国商会（商会）对中国政府在简政放权、提高政策透明度方面取得的成绩表示认可和欢迎，并且希望中国政府进一步深化改革，提高政府治理能力。

现存监管问题和最新进展

政策透明度、可预见性和协调性

近年来，中国政府制定了一系列的汽车政策，为中国汽车产业的健康发展起到了积极的作用，为了更好地促进企业发展，希望政府在以下几个问题给企业更多的支持：

- 在政策和标准制订中，更加充分地考虑企业诉求。政策、标准草案起草前期阶段，能够广泛征求各类企业的意见，包括外资企业。在草案公众征求意见阶段，对企业和公众提出的意见进行公开反馈，政策最终版本如有新增内容，也应提前告知公众并再次征求公众意见。
- 提高政策的可预见性，透明度和连续性，避免给企业运营带来不稳定性，从而提高了研发和生产成本。希望政府在制定政策过程中，充分考虑行业发展水平和市场总体环境，结合企业实际生产情况，给与足够的过度期，让企业有充分的时间做出调整。
- 各主管部门之间，中央和地方政府之间在政策制定和

执行过程中存在一定的重复性和不一致性，给企业合法合规工作带来困难，希望政府相关部门之间加强沟通与协调。

- 突发性执法导致企业合规成本增加。希望执法部门能够更加充分地认识到汽车行业商业模式的特殊性和国际通行做法，避免突发性执法，增加企业的合规成本，并对经营造成不稳定性。比如最近频繁的税务、海关稽查，为企业增加了诸多不确定性。

商会建议中国政府在政策制订和起草的早期阶段，对立法做充分论证和可行性研究，给与企业更多参与讨论、反馈意见的机会，让政策、标准符合市场需求，有利于消费者和行业的健康发展。考虑到汽车生产、技术升级为长周期产品，政策的制定和调整应以至少3年为一个周期。应采取以下措施：① 建立汽车政策协调机制；② 明确主管机构、职责和汽车行业监管具体要求；③ 加强中央和地方法规的一致性；和④ 进一步和国际最佳实践接轨。

新能源汽车政策

新能源汽车是中国的战略新兴产业之一，中国政府对新能源汽车的发展给予了极大的政策和资金的支持。为更好的发展新能源汽车产业，我们提出以下建议：

鼓励产品多样化

新能源汽车在世界范围内都是一个新兴产业。在此阶段，政策环境应该尽量对汽车产品的安全性、节能性和环保性进行管控，减少对产地、电池、原材料和技术发展路线的限制。开放的政策环境有利于市场竞争，促进汽车产业技术升级，提高中国在国际市场的竞争力。

保持补贴政策的公平性和稳定性

新能源汽车鼓励政策都设置了实施时间，例如补贴政策到2020年，购置税减免政策到2017年。新能源汽车产品

Encourage Product Diversification

NEVs are an emerging industry around the world. At this stage, the policy environment should to the greatest extent possible regulate the performance of automobile products in safety, energy conservation, and environmental protection, and reduce restrictions on product origin, batteries, raw materials, and technological development paths. An open policy environment can make for market competition, accelerate the development of automotive technology, and enhance the competitiveness of China in the world market.

Maintain Fair and Stable Subsidy Policies

An expiration date has been set for various policies encouraging the development of NEVs. For example, the subsidy policy will expire in 2020 and the purchase tax reduction policy will expire in 2017. Given the long planning period for NEV products, policy stability and the timely announcement of whether a policy will be extended will help the vehicle industry and upstream/downstream supply chains to adjust their medium and long-term product plans. We recommend that the government stabilize the policies that have already been introduced and avoid substantial adjustments in the short run.

At the same time, we hope that the government can make it clear at the earliest possible date whether current policies will be extended. Uncertainty about policies can lead to a wait-and-see mentality in enterprises to the detriment of the industry's development.

Standardized Conditions for the Power Battery Industry

In 2016, the Chinese government released a draft for comment as part of a plan to update the "Standardized Conditions for the Vehicle Power Battery Industry" in 2017, which has greatly raised requirements for capacity and tightened requirements for testing and product standards. In the early period of development for NEVs, it is necessary to foster and encourage outstanding battery enterprises. However, we recommend that the Chinese government not peg the catalogue of battery enterprises directly to access or subsidy policies for NEVs. Instead, we urge use of a technologically-neutral means to manage the battery and vehicle industries and foster product-diversified solutions.

Emissions Standards

Emissions Standards for Passenger Vehicles

AmCham China supports the Ministry of Environmental Protection (MEP) in formulating and implementing uniform national vehicle emissions standards. We hope that the Chinese government can give the automotive industry a transition period of at least four years to ensure the smooth

implementation of Stage VI emissions standards and the healthy development of the industry.

We understand the need to enforce stricter vehicle emissions standards with pollution controls in key regions, but do not support separate local standards introduced by various local governments. We hope that the MEP and local governments can further coordinate on the issues, the effective date for Stage VI standards, and implementation measures. If a local government intends to implement the standards ahead of schedule, a transition period of at least two years should be given to enterprises, and implementation should be strictly in compliance with uniform national standards.

We appreciate efforts made by the MEP to replace the environmental protection catalogue with an environmental protection information disclosure system, but urge allowance of a 12-month preparation period to correct problems existing in the system and procedures, and that the small-batch exemption measures in the Stage V standards can continue.

The implementation of Stage VI emissions standards requires the timely supply of better vehicle fuels. We believe that the quality of China's Stage VI vehicle fuels should be better than that of European V or VI standards. To reach this goal, it is important to upgrade and transform private enterprises in addition to state-owned oil refining enterprises and eliminate backward enterprises.

Emissions Standards for Commercial Vehicles

The MEP's comment period on Stage VI emissions standards for heavy-duty commercial vehicles ended in late 2016. We recommend that at least four to five years be given to original equipment manufacturers (OEMs) to prepare products for compliance with the new standards. We also recommend that implementation be phased in over two stages: phase one (requirements based on the measurement methods and thresholds of European VI Stage C) and phase two (enforcement of all requirements of the Stage VI standards three years after the start of phase one).

AmCham China commented that Stage VI standards raise some unique and excessively strict requirements for consistency management, which will create huge challenges for product development and production management by engine and vehicle manufacturers. We suggest that while strengthening the management of product consistency, regulators fully consider the product quality management capabilities of manufacturers and allow reasonable ranges of fluctuation for the emissions of complicated automotive products involving hundreds of components. The consistency requirements faced by more complicated products under the Stage VI standards should not be any stricter than the existing requirements for relatively simple products under the Stage V standards so that management requirements are scientific and reasonable.

规划周期长，保持政策的稳定性和及时公布政策是否延续，有利于整车及上下游产业链顺利调整中长期产品规划。我们建议政府稳定执行已出台政策，避免短期内进行大幅调整。

同时，我们希望政府尽早解决政策延期问题。政策的不确定性使企业滋生等待和观望情绪，不利于行业发展。

关于动力电池行业规范条件

2016年，中国政府发布征求意见稿，计划于2017年对《汽车动力蓄电池行业规范条件》进行更新，其中大幅提高了产能要求，并加强了检测及产品标准等要求。在新能源汽车发展初期，有必要对优秀电池企业进行培育和激励，但建议中国政府不要将该电池企业目录和新能源汽车准入或补贴政策直接挂钩。应采取技术中立的手段对电池和汽车行业进行管理，允许产品多样化。

排放标准

乘用车排放标准

商会支持由国家环保部制定并实施全国统一的汽车排放标准。为确保国六排放标准的顺利实施与汽车行业的健康发展，我们希望中国政府可以给汽车行业至少四年的过渡期。

我们理解在污染物控制重点区域实施更为严格的汽车排放标准的必要性，但不支持各地单独出台地方标准。我们希望环保部和地方政府进一步协调国六标准生效期和执行办法的问题，地方政府若要提前执行，应给企业至少两年的过渡期，并严格按照国家统一标准执行。

我们赞赏环保部用环保信息公开替代环保目录所做的努力，但希望有12个月的准备期用以纠正系统和程序问题，同时希望延续国五排放标准中的小批量豁免办法。

实现国六排放标准需要及时供应更好的车用燃油。我们认为中国第六阶段车用燃油品质应优于欧五或欧六标准。为达到这个目标，除国有炼油企业外，促进民营企业升级改造和淘汰落后十分重要。

商用车排放标准

环保部于2016年底完成了对重型商用车国六排放标准的征求意见稿。我们建议至少给原始设备制造商4-5年时间为新标准实施做产品准备，同时建议实施时间分两个阶段进行：第一阶段（按照欧六C阶段的测量方法及限值进行

要求）和第二阶段（国六标准的全部要求，第一阶段实施三年后）。

商会注意到国六标准中提到了一些独特且过于严格的一致性管理要求，将给发动机及整车制造商的产品开发和生产管理带来巨大挑战。我们建议在加强一致性管理过程中充分考虑合理的产品质量管理能力和涉及几百个零件的复杂车辆产品的排放合理波动区间，更为复杂的国六产品所面临的一致性要求应至少不严于现有相对简单的国五产品要求，以此制定更加科学合理的管理要求。

燃料消耗法规

2016年，工业和信息化部发布了《企业平均燃料消耗量与新能源汽车积分并行管理暂行办法（征求意见稿）》。我们建议尽快实施该《管理办法》中关于企业平均燃料消耗量积分管理的内容，暂缓实施新能源汽车比例和积分等要求。建议在《管理办法》发布后，对2016年度和2017年度的企业积分情况免于考核，并允许企业间购买油耗积分。

中国目前正在实施《中重型商用车辆燃油消耗量测量方法》（第一、二阶段），两个阶段的标准限制和测试都是对于整车提出要求。商用车燃料经济性受到各种因素的影响，包括发动机效率、整车重量、风阻和滚阻。这意味着仅仅更换轮胎就能改变它的燃料效率。整车油耗测试限定了标准的驾驶循环，与实际操作循环存在差异。因此我们强烈建议增加发动机测试和燃料消耗量的限值，以及针对发动机燃料经济性要求的管理，确保当车辆的使用条件改变或初始安装的附加节能手段损坏或未及时修复时（如用户由于成本问题，未更换原厂的省油轮胎，或未对损坏的降风阻导流装置进行修复），装用的发动机的高效率仍能得到保证。

商用车国六排放标准中增加了发动机油耗的报告要求，对此我们表示欢迎。我们建议环保部和工信部在国六阶段协作制定发动机油耗限值。这将改善整车的油耗要求和管理，而无需企业重复检测和报告。

由于新能源车在电池技术发展及充电设施建设中的局限性，新能源车在一段时间内还无法实现在一些商用车上的应用，例如长途货运和重型车等。从环境保护和能源节约的角度，我们建议中国政府对于传统商用车的节能减排也给予鼓励和支持，包括鼓励在节能车的研发和应用上开展国际合作等，以促进行业的共同进步。

Fuel Consumption Regulations

In 2016, the Ministry of Industry and Information Technology (MIIT) released the draft “Interim Management Measures on Enterprises’ Average Fuel Consumption and New Energy Vehicle Credits” (the Measures) for public comment. We recommend that the provision in the Measures regarding use of a credit system to manage the average fuel consumption of enterprises be implemented as soon as possible, but the implementation of requirements for the proportion of credits required to come from NEVs should be postponed. Enterprises should be exempted from the examination of their credit accumulation in 2016 and 2017 after the Measures are released, and should be allowed to purchase fuel consumption credits from each other.

China is now implementing the “Fuel Consumption Test Methods for Medium and Heavy-Duty Commercial Vehicles (Stages One and Two).” The standard restrictions and tests for both stages stipulate requirements for the vehicle as a whole. The fuel efficiency of commercial vehicles is influenced by various factors, including the efficiency of the engine, weight of the vehicle, wind resistance, and rolling resistance. This means that the mere change of a tire can impact fuel efficiency. Whole-vehicle fuel consumption testing is limited to a standard driving cycle, which differs from the actual operation cycle. Therefore, we strongly recommend the addition of thresholds for engine testing and fuel consumption, as well as the management of requirements for engine fuel economy. This will ensure that the efficiency of an engine is maintained even when its operating conditions change or when original energy-saving components are damaged or not repaired on time (for example, the user does not replace tires with fuel-saving tires from the original factory or repair a damaged wind resistance reduction apparatus because of cost considerations).

We welcome the added requirement of reporting engine fuel consumption in the Stage VI emissions standards for commercial vehicles. We recommend that the MEP and MIIT coordinate to set thresholds for the oil consumption of engines during the period of Stage VI standards. This would improve whole-vehicle fuel consumption requirements and management without requiring repeated tests and reports from enterprises.

Since NEVs face limitations in battery technology development and charging facility construction, there will be a period of time before they can be used for certain commercial purposes, such long-distance cargo transportation and heavy-duty vehicles. From the perspective of environmental protection and energy conservation, we urge the Chinese government to promote progress in the industry by encouraging and supporting energy conservation and emissions reduction for traditional commercial vehicles, including international cooperation in R&D and applications for energy-saving vehicles.

Import of Used Vehicles and Parts for Remanufacturing and R&D

Under the “Administrative Measures for the Import of Mechanical and Electronic Products” and the “Catalogue of Used Electromechanical Products Prohibited for Import” issued by the Ministry of Commerce (MOFCOM) in 2001, old vehicles, engines, and most auto parts are prohibited for import in any form. These provisions have restricted the import of used motor vehicles and parts for remanufacturing and R&D.

We are pleased that MOFCOM is amending the “Administrative Measures for the Recycling of Scrapped Vehicles,” that the vehicle recovery industry will no longer be included under industries for special management, and that the five main components of scrapped vehicles will be allowed to be sold to remanufacturing enterprises. These improvements will greatly promote the development of the recycling economy and the remanufacturing of vehicles. However, the quantity and quality of used parts in China is far from able to meet the large-scale production needs of remanufacturing enterprises, meaning that used core parts still need to be imported from foreign countries. To ensure the quality and safety of remanufactured products, there should be a provision that the used parts should be “delivered and sold to the original manufacturing enterprises of the parts or remanufacturing enterprises authorized by the original manufacturers for remanufacturing.”

With the development of the automobile R&D business, automobile R&D centers in China need to develop globally competitive products or take part in globally coordinated R&D projects. To achieve this objective, R&D centers need to import used vehicles and parts. Prohibitions on the import of used vehicles and parts for R&D have seriously hampered the participation of R&D centers in international cooperative projects and restricted their development of products and technology.

Therefore, we urge MOFCOM, the General Administration of Customs (GAC) and the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) to revise the above administrative measures and the 2001 catalogue of items prohibited for import, or alternatively to clarify the administrative measures for importing used vehicles and parts for R&D purposes. These initiatives will help vehicles and parts made in China to find their way into global markets and enhance the capability of Chinese R&D talent.

Cybersecurity

With the development of ICVs, cybersecurity has become the focus of attention for both the automotive industry and the government. AmCham China recommends that steps be taken to:

进口再制造和研发用旧汽车和零部件

根据《机电产品进口管理办法》和商务部 2001 年发布的《旧机电产品禁止进口目录》，旧的整车、发动机和大部分汽车零部件禁止以任何形式进口。这些规定限制了再制造用和研发用旧机动车和零件的进口。

我们很高兴看到商务部正在修订《报废汽车回收管理办法》，汽车回收业不再纳入特种行业管理，报废汽车的五大总成允许出售给再制造企业，这将大大促进循环经济和汽车再制造的发展。但国内的旧件数量和质量远不能满足再制造企业规模生产的需求，仍需从国外进口核心零部件旧件。同时为保证再制造产品质量和安全性，应规定“交售给零部件原厂再制造企业或经由原厂授权的再制造企业进行再制造”。

随着汽车研发业务的发展，在华汽车研发中心需要开发具有全球竞争力的产品或参与全球协同研发项目。为实现这一目的，研发中心需要长期进口二手整车和零件。研发用旧车和零件无法进口，严重阻碍了在华汽车研发中心参与国际合作项目，使得产品和技术水平发展受限。

为此，我们督促商务部、海关总署和质检总局修改上述进口管理办法和 2001 年的禁止进口目录，或明确研发用旧车及旧零部件进口的管理办法，上述工作将有助于中国制造的汽车和零部件走向世界并提高中国研发队伍的能力。

网络安全

随着智能网联汽车的发展，网络安全已成为汽车行业和政府关注的焦点。商会建议采取以下措施：

- 建立与全球标准接轨的网络安全规章制度；充分吸收专家、制造商、服务商等各主体的意见；引导相关主体在车辆安全设计、研发、检测、智能汽车配置和相关软件方面进行升级；
- 倡导政府支持的试点项目，同时鼓励相关企业参与试点，以积累汽车产业研发资源、提升研发能力；
- 保障高校在网络安全领域进行研究的能力，提升研究质量，保证人才储备。

另外，2016 年 11 月发布的《中华人民共和国网络安全法》第三十七条规定：“关键信息基础设施的运营者在中华人民共和国境内运营中收集和产生的个人信息和重要数据应当在境内存储。因业务需要，确需向境外提供的，

应当按照国家网信部门会同国务院有关部门制定的办法进行安全评估；法律、行政法规另有规定的，依照其规定。”

我们建议相关部门制定具体实施办法时将全球性企业内部为日常业务而进行的正常数据传送设置为安全评估的例外情形。另外，建议对“重要业务数据”进一步明确范围。

智能网联汽车

为加速发展中国的智能网联技术及市场，商会建议采取以下措施：

建立国家层面的发展框架和政府部门协调机制

智能网联汽车产业是多个学科与技术的融合，目前中国一共有近十个部委涉及其中，部门间协调配合还不够。我们期待多部委统一协作，加大对产业的支持。建议建立部门协调机制，借鉴发达国家已有的成熟经验，建立一套政策制定和回顾的有效机制，并以政策全生命周期评价为抓手，提高政策有效性和针对性。

智能网联汽车的发展亟需公共道路的测试

目前，工信部、交通部、公安部三部委正在联合研究制定《智能网联汽车公共道路测试规范》。我们希望这一政策尽快出台，取消全国范围的道路测试的普遍限制，并开放部分高速公路用于道路测试。

加强与其他国家间的技术标准交流，建立国际统一的标准体系

目前，欧盟、北美正在积极制定具体的技术标准与指导意见。考虑到智能网联汽车跨专业与部门的复杂性，我们期待和促请中国政府以及产业组织制定与国际标准统一的技术标准。同时敦促实施透明、中立的产业政策，推动产业发展。

放宽对增值电信业务和经营性互联网信息供应商外资准入限制

一些车联网业务，比如车载信息系统，属于增值电信业务的范畴。根据《中华人民共和国电信条例》，外资企业不能直接进入增值电信业务和经营性互联网信息领域提供服务，必须通过合资企业的形式且外资股权比例不能超过 50%。外资企业经营业务模式受到很大限制，在竞争上处于劣势。我们建议放松股权比例限制，允许外资控股的企业可以进入上述领域。

- Establish cybersecurity rules and regulations that are aligned with global standards; fully incorporate the opinions of experts, manufacturers, and service providers; and guide the relevant players in upgrading vehicle security design, R&D, testing, smart car configuration, and relevant software;
- Encourage government-supported pilot programs and encourage relevant enterprises to participate in programs to accumulate automobile industry R&D resources and strengthen R&D capability within the industry;
- Ensure that institutions of higher learning are capable of conducting research in the field of cybersecurity to improve research quality and provide talent reserves.

Additionally, in accordance with Article 37 of the 2016 Cybersecurity Law, “personal information and important data gathered and generated by critical information infrastructure operators within the territory of the People’s Republic of China shall be stored within the country. If it is indeed necessary to provide the information and data outside the territory due to business requirements, a security assessment shall be conducted in accordance with the measures formulated by the national cyberspace departments together with the relevant departments of the State Council. If laws and administrative regulations provide otherwise, such provisions shall apply.”

We urge the relevant departments to exempt internal data transfer of global enterprises for normal business from the security assessment requirement when drafting implementation measures for the law. We also recommend that the scope of “important data” be further clarified.

Intelligent and Connected Vehicles

To accelerate the development of intelligent and connected technology and its market in China, AmCham China recommends that steps be taken to:

Establish a National-Level Development Framework and Mechanism for Coordinating Between Government Departments

The ICV industry is the fusion of multiple disciplines and technologies and currently involves nearly 10 Chinese government ministries and commissions, which lack mutual coordination and collaboration. We expect them to intensify their collaboration and provide greater support for the industry. We urge establishment of an interdepartmental coordination mechanism and introduction of an effective mechanism to formulate and review policies by leveraging the experience of developed countries. They should focus on evaluating the entire life cycle of policies to make them more effective and targeted.

Expand Tests on Public Roads to Meet ICV Development Needs

The MIIT, Ministry of Transport (MOT), and Ministry of Public Security (MPS) are now jointly researching and formulating “Standards for Road Testing Intelligent and Connected Vehicles.” We hope that a policy can be introduced as soon as possible and the general nationwide restrictions on road testing be cancelled to open some highways for road testing.

Strengthen International Technical Standards Exchanges to Establish a System of Standards Aligned with International Practices

Currently, the EU and North America are drafting specific technical standards and guidelines. Considering the cross-disciplinary and interdepartmental complexity of ICVs, we expect and encourage the Chinese government and industrial organizations to work out technical standards that are harmonized with international standards. We also urge implementation of industrial policies that are transparent and nationality-neutral in order to promote the advancement of the industry.

Loosen Foreign Capital Access Restrictions on Value-Added Telecommunications Businesses and Commercial Internet Information Providers

Some Internet of Vehicles (IoV) business, for example telematics, falls within the sphere of value-added telecommunications services (VATS). Under the “Telecommunications Regulations,” foreign companies cannot directly provide services in the fields of VATS and for-profit Internet information through wholly foreign-owned enterprises. Instead, they must take the form of joint venture enterprises in which the proportion of foreign equity cannot exceed 50 percent. This has greatly restricted the business models of foreign companies and placed them at a competitive disadvantage. We urge that the equity cap be lifted to allow foreign companies to enter this field on a level basis.

Promoting Automobile Consumption

Use of Pickup Trucks in Cities

In 2016, the MIIT, National Development and Reform Commission (NDRC), and MPS jointly launched a pilot program allowing the use of pickup trucks in cities, which is a positive signal for promoting consumption and developing innovative models of circulation. We hope that the program can be more widely implemented to further encourage pickup truck consumption and achieve economies of scale.

Trading of Used Vehicles

In 2016, to advance the trading of used vehicles, the General Office of the State Council distributed the “Opinions on Promoting the Trading of Used Vehicles.” However, many

促进汽车消费

关于皮卡进城

2016年，工信部、发改委、公安部等部委联合发布了皮卡进城试点，为促进消费和发展创新的流通模式释放了积极的信号。我们希望在更大范围内实施皮卡进城试点项目，进一步促进皮卡消费并实现该项目的规模效应。

关于二手车交易

2016年，为促进二手车交易，国务院办公厅印发了《关于促进二手车便利交易的若干意见》。目前，仍有相当多地方政府并未取消二手车限迁政策，希望商务部等相关部委通过有效手段进一步敦促政策落实。

关于限行限购

面对日益严峻的环保和交通压力，尽管各地政府都认识到限行限购政策并不是一个长期有效的解决方案，但现有限行限购城市仍在考虑采用更严格的限制政策，同时其他城市也在考虑类似措施。毋庸置疑，机动车保有量是交通和环境的影响因素之一，但不同类型的机动车使用和排放情况都不一样。我们呼吁地方政府开展更加全面、科学、细化的调查研究，采取全方位的有针对性的措施。

- 采取措施特别允许在华外资 / 合资企业可以参与“中国制造 2025”之中。
- 在下一阶段排放标准实施前，给乘 / 商用车 4-5 年准备期。
- 在商用车油耗标准中增加发动机的测试和限值。

建议

对中国政府：

- 政策制订和起草的早期阶段，给与企业更多参与讨论、反馈意见的机会，让政策、标准更符合市场需求，更有利于市场和行业的健康发展。
- 考虑到汽车生产、技术升级周期较长，政策制定和调整的周期应至少长于三年。
- 建立有效、透明、公开的协调机制，各个政府主管机构应当加强合作，明确主要概念、要求和职责。在新的领域加大部门间的合作，加大对产业的支持，特别是智能网联汽车的发展及其基础设施配套和投资。
- 大力发展新能源车的同时，鼓励传统燃料车发展节能技术。

local governments have yet to cancel policies restricting the movement of used vehicles to other locations. We urge MOFCOM and related ministries to take effective measures to further encourage the implementation of this policy.

Road Space Rationing and Vehicle Purchase Restrictions

Faced with increasingly serious environmental and traffic pressures, local governments that have implemented road space rationing and vehicle purchase restriction policies are considering even stricter restrictive policies and other cities are considering implementing similar measures. However, these policies are not an effective long-term solution. While the total number of cars is undoubtedly one of the factors that influences the environment and traffic, differences exist in the usage and emissions of different types of motor vehicles. We would encourage local governments to carry out more comprehensive, scientific, and detailed research in order to implement comprehensive, targeted measures.

Recommendations

For the Chinese Government:

- **Give enterprises more opportunities to participate in discussions and submit opinions at the early policy drafting stages so that policies and standards can better meet market needs and facilitate the healthy development of the market and the industry.**
- Institute a policy formulation and adjustment cycle of at least three years to account for the long cycle for vehicle production and technology upgrading.
- Establish an effective, transparent, and open mechanism for coordination. The responsible government authorities should strengthen cooperation and clarify their main concepts, requirements, and duties. Interdepartmental teamwork should be enhanced in new fields and support to the industry should be intensified, especially regarding the development of ICVs and investment in the related infrastructure.
- Encourage the development of energy-conserving technology for vehicles using traditional fuels while vigorously developing NEVs.
- Issue measures to specifically allow foreign-invested and joint venture enterprises in China to take part in the “Made in China 2025” initiative.
- Provide a preparation period of four to five years for passenger and commercial vehicles before the implementation of the next stage of emissions standards.
- Add engine testing and thresholds to commercial vehicle fuel consumption standards.

Banking and Capital Markets

Introduction

Foreign banks, including US banks, have long expected the Chinese market to provide huge opportunities. Some even predicted that access to financial services would generate between US \$650 billion (RMB 4.32 trillion) and US \$950 billion (RMB 6.31 trillion) by 2025. However, by the end of 2015, the total assets of foreign institutions were only RMB 2.68 trillion (US \$404 billion), down by 3.94 percent year-on-year. The market share of foreign banks is already low and continues to decrease, down to only 1.38 percent in 2015 according to the annual report published by the China Banking Regulatory Commission (CBRC).

While their EU peers enjoy modestly better treatment, US banks in particular have encountered increasing difficulties in China in the past year. US banks continue to face issues such as quota restrictions, “window guidance” by various regulators, as well as cumbersome regulatory requirements concerning information technology services, in addition to ongoing issues facing the industry, such as ownership caps, licenses for products and services, regulations inconsistent with global norms, and restrictions on raising capital.

Sector Developments and Ongoing Regulatory Challenges

Commercial Banking

2016 was the first year of China’s 13th Five-Year Plan. The central leadership is promoting the five development concepts of innovation, coordination, green development, openness, and sharing. Sustainable development in the banking sector has become a focal point for all banks, including foreign banks. By the end of the third quarter of 2016, Chinese banking financial institutions had accumulated a total of RMB 222.9 trillion (US \$33.57 trillion) in total assets, a year-on-year increase of 15.7 percent, with total liabilities of RMB 205.9 trillion (US \$31.01 trillion), a year-on-year increase of 15.5 percent. In line with the overall slowdown of economic growth, banking sector profit growth continued to be weak. However, liquidity remained sufficient throughout the year according to the CBRC.

Risk and Compliance

To cope with potential liabilities, the CBRC published its first comprehensive risk management guidelines in the latter half of 2016. Modeled on the Bank of International Settlements’ “Core Principles for Effective Banking Supervision,” the new guidelines require all banks in China to have systems and methods that identify, quantify, assess, monitor, report, and mitigate risk. The risks targeted include treasury management, credit risk, market risk, liquidity risk, operational risk, and accounting consolidation. The guidelines contain requirements concerning risk management frameworks, strategies, tolerance and thresholds, policies and procedures, information systems, and data quality control. Furthermore, banks with complex or large-scale operations are required to have a chief risk officer.

In mid-2016, the CBRC held a symposium on the development of long-term mechanisms for compliance management in the banking sector, so as to ensure the sustainable and healthy development of legal and compliant banking business and create better banking services for the real economy. The CBRC leadership wants banks to promote a culture of compliance, optimize their frameworks of compliance management, and shape compliance systems. However, due to changes in regulatory and business environments, compliance management in the banking sector now faces mounting pressure. The People’s Bank of China (PBOC) has also held recent seminars on “banking conduct and culture,” which recommended that all financial institutions promote an internal compliance culture.

In September 2016, the CBRC issued the “Notice Guiding Banks and Financial Institutions to Establish Creditor Committees,” which aims to coordinate efforts to restructure debts held by heavily indebted companies. The notice requires committees comprised of at least three creditor banks to conduct negotiations over debt restructuring plans. Bank creditors can use the committee to coordinate their positions on a company’s existing debt and have the option to refrain from cutting off the company’s access to loans. It is said that ad hoc creditor committees are increasingly being used in the process of debt restructuring for the purpose of tackling “zombie companies.”

银行和资本市场

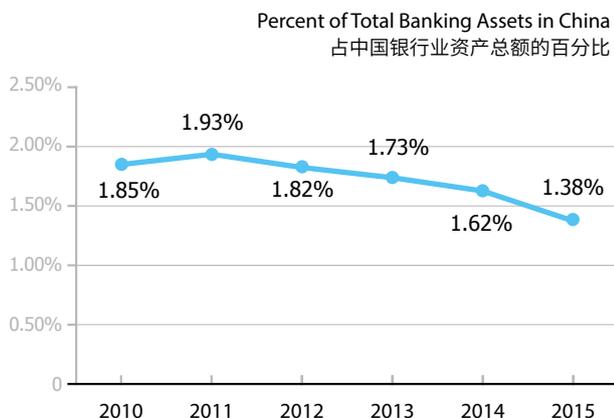
引言

包括美国银行在内的外资银行长期以来一直期望中国市场可以为它们提供巨大的机会。有些外资银行甚至预计到2025年，金融服务市场的准入将提供6500亿美元（人民币4.32万亿）至9500亿美元（人民币6.31万亿）的投资机会。然而，截止2015年年底，外资机构资产总额只有2.68万亿元（4040亿美元），年同比减少3.94%。根据中国银行业监督管理委员会（中国银监会）公布的年度报告，外资银行占有的市场份额原本就很低而且继续减少，2015年减少至1.38%。

过去的一年里，与境遇略好的欧盟同行相比，美国银行在华遇到了更多困难。除了持股比例限制、产品和服务许可，与国际标准不符的法律法规以及筹资限制等银行业现有问题，美国银行还继续面临额度限制、各个监管机构的“窗口指导”以及繁琐的信息技术服务监管要求。

Foreign Banking Assets in China

外资银行在华资产情况



Source: CBRC 2015 Annual Report

来源：中国银监会 2015 年年报

行业进展及现存监管挑战

商业银行

2016年是中国第十三个五年规划的开局之年。中央领导层正在推进创新、协调、绿色、开放、共享这五大发展理念。银行业的可持续发展成为包括外资银行在内的所有银行的重点。到2016年第三季度末，中国银行业金融机构积累的资产总额高达222.9万亿元（33.57万亿美元），年同比增长15.7%，负债总额为205.9万亿元（31.01万亿美元），年同比增长15.5%。随着总体经济增长放缓，银行业的利润增长也表现乏力。但是，中国银监会指出，银行业在全年继续保持充足的流动性。

风险与合规

为了应对潜在负债，中国银监会于2016年下半年首次发布全面风险管理指引。新指引以国际清算银行《有效银行监管核心原则》为模板，要求在中国的所有银行建立用于识别、计量、评估、监测、报告、控制或缓释各类风险的体系和方法，其中包括财政管理风险、信用风险、市场风险、流动性风险、操作风险和账务合并风险等。指引对风险治理架构，风险管理策略、风险偏好和风险限额、风险管理政策和程序、管理信息系统和数据质量控制机制做出了规定。另外，指引还要求规模较大或业务复杂的银行业金融机构设立首席风险官。

2016年年中，中国银监会召开推进银行业合规管理长效机制建设座谈会，希望确保银行业合法合规业务的健康和可持续发展，为实体经济提供更好的银行服务。中国银监会领导希望银行推动合规文化，优化合规管理框架并建立合规制度。因为监管和业务环境发生变化，银行业目前面临巨大的合规管理压力。中国人民银行（人民银行）最近也针对银行业合规文化建设召开研讨会，建议所有金融机构推动内部合规文化的建设。

On October 10, 2016, the State Council released the “Guidelines on the Debt-for-Equity Swap Plan.” The Plan aims to reduce China’s growing corporate debt level by allowing companies with generally positive outlooks but temporary difficulties to exchange their debt for shares of equity. “Zombie enterprises” are not to be allowed to participate. Banks are not permitted to purchase shares of company equity directly, but need to go through their subsidiaries. Other lenders that offer loans to companies, including insurers, state-owned capital investment companies, asset management companies, and private investors, are encouraged to participate. AmCham China welcomes these approaches that regulators are taking to rein in potential risks and bad assets.

RMB Internationalization

The RMB officially became the fifth currency in the International Monetary Fund’s (IMF) Special Drawing Rights (SDR) basket on October 1, 2016, along with the US dollar, euro, Japanese yen and British pound. As a result, the RMB will be more acceptable under cross-border current account trading, and international investors will enjoy better access to RMB-denominated investment and financing products. Bilateral currency cooperation should develop steadily and the RMB is set to take up a greater share of global reserve currency assets. In 2015, the volume of cross-border RMB receipt and payment reached RMB 12.1 trillion. According to Society for Worldwide Interbank Financial Telecommunication (SWIFT) statistics, the RMB has become the third most-used currency in cross-border trade and financing, and took fifth place among all currencies for use in international payments and foreign exchange trading.

The PBOC believes that the RMB’s inclusion into the SDR basket will help stabilize its exchange rate and boost RMB-denominated assets. The PBOC would also like to see an increase in long-term stable capital inflows into China’s foreign exchange market, boosting liquidity and helping stabilize the exchange rate. The central bank reiterated its intention to continue with RMB exchange rate reform while maintaining a stable currency at a reasonable and balanced level. AmCham China welcomes the RMB’s inclusion into the IMF’s SDR basket and believes it will help foster a market-based interest rate regime and be helpful in incremental capital account liberalization.

However, more needs to be done by the Chinese authorities to rebuild market confidence in the RMB. This involves not just delivering further policy liberalization, but also the clear and consistent communication of such intentions over time. Markets need to be convinced of China’s ability to deliver on promises of reform to increase the use of RMB again. While managing capital outflows should help limit depreciation, this should not come at the expense of RMB internationalization and capital account liberalization.

The strategy for RMB internationalization should be balanced. Capital flows should be allowed to expand both ways, so that liquidity can move more easily across borders and liven up the China offshore spot (CNH) scene. Accelerated implementation of RMB outflow programs such as the Qualified Domestic Individual Investor program (commonly referred to as the QDII2) would boost offshore liquidity and wealth management businesses, further signaling to markets that RMB internationalization is back on track.

Banking Information Technology and Cybersecurity

On November 7, 2016, China’s Cybersecurity Law was enacted by the Standing Committee of the National People’s Congress, effective starting June 1, 2017. According to state media, the law expands the scope and definition of critical information infrastructure (CII) to sectors including information and communications technology (ICT) services, energy, transportation, water resources, finance, public services, and electronic governance.

The Cybersecurity Law aims to uphold the principle of sovereignty over cyberspace, and defines the security obligations of technology product and service providers to this end. According to the Chinese government, the law will help establish a system of rules for the protection of CII. However, industry associations and foreign financial institutions have raised concerns about requirements for using “secure and controllable” ICT, as well as data localization, which would mandate the physical onshore storage of customer data collected during the course of a company’s business operations within mainland China. The CBRC and the China Insurance Regulatory Commission (CIRC) are contemplating a re-write and promulgation of their own rules to address these issues.

AmCham China is concerned about the establishment of any product-based, regulatory ICT regimes. We believe that a risk-based regime would be preferable, as it would provide banks with greater flexibility to assess how best to respond to emerging risks and ever-changing threats.

On August 24, 2016, the CBRC, Ministry of Public Security, Cyberspace Administration of China, and Ministry of Industry and Information Technology jointly released the “Interim Measures for the Administration of the Business Activities of Online Lending Information Intermediary Institutions.” The measures prohibit activities including the pooling of investor money to make loans, cooperation with financial institutions to sell wealth management products, and issuance of asset-backed securities. Firms will have to use third-party banks as custodians for investors’ funds. The measures also establish ceilings on personal borrowing through online peer-to-peer websites. AmCham China welcomes this move to increase financial stability by closing loopholes for peer-to-peer lenders to conduct banking activities without being regulated as stringently as banks.

为了协调高负债企业的债务重组，2016年9月，中国银监会印发了《关于做好银行业金融机构债权人委员会有关工作的通知》。通知要求债委会由三家以上债权银行业金融机构发起成立，负责协商债务重组计划。债权银行可以通过债委会协调彼此关于企业债务的立场，有选择避免停止向企业提供贷款的机会。据说，越来越多的“僵尸企业”在债务重组过程中开始使用临时债委会。

2016年10月10日，国务院发布《关于市场化银行债权转股权的指导意见》，支持有较好发展前景但遇到暂时困难的企业将债权转为股权，以降低不断增长的企业债务水平。禁止“僵尸企业”参加债转股。银行不得直接购买企业股权，而是应当通过实施机构实现债转股。鼓励保险公司、国有资本投资运营公司、资产管理公司以及个人投资者等其他出借人参与向企业提供贷款。中国美国商会（商会）欢迎监管部门采取上述措施管控潜在风险和不良资产。

人民币国际化

自2016年10月1日起，人民币成为继美元、欧元、日元和英镑之后的第五种货币，正式被国际货币基金组织纳入特别提款权（SDR）货币篮子。如此一来，人民币在跨境经常项目交易的认可度将会提高，国际投资者也能更好地获得人民币计价的投融资产品。双边货币合作将稳定发展，人民币在全球储备货币资产所占比例将会提高。2015年，人民币跨境收付达到12.1万亿元。根据环球银行金融电信协会（SWIFT）统计，人民币是全球第三大跨境贸易和融资货币，以及第五大国际支付和外汇交易货币。

人民银行相信，人民币纳入SDR货币篮子有助于稳定汇率，推动人民币计价资产。人民银行也愿意看到有更多长期稳定的资本流入中国的外汇市场，这将有助于提高流动性和稳定汇率。人民银行重申在保持人民币汇率合理均衡水平的同时，继续推进人民币汇率改革。商会欢迎人民币纳入国际货币基金组织的SDR货币篮子，相信这将推动中国建立市场化利率机制和进一步开放资本账户。

但是，要想重建市场对人民币的信心，中国政府还有更多的事情需要做。除了进一步采取更为开放的政策，政府还需要更清晰和持续地向外传达相关政策的意图。市场需要确信中国有能力兑现改革承诺，然后才会进一步增加人民币的使用。管控资本流出虽然能够缓解贬值压力，但是不应为此牺牲人民币国际化和资本账户自由化。

人民币国际化应当采取均衡的战略。允许资本双向流

动，以提高流动性跨境转移的便利性，提振人民币离岸市场。加快实施人民币流出项目，如合格境内个人投资者制度（通常称为“QDII2”），将有助于促进离岸流动性和理财业务，进一步向市场表明人民币国际化正重回正轨。

银行信息技术和网络安全

2016年11月7日，全国人大常委会通过了《网络安全法》，该法于2017年6月1日起实施。根据官方媒体报道，该法将关键信息基础设施（CII）的范围和定义扩大到信息和通信技术（ICT）服务、能源、交通、水资源、金融、公共服务和电子政务等领域。

《网络安全法》支持虚拟空间的网络主权原则，并为此规定了技术产品和服务提供者应当履行的安全义务。中国政府表示，该法将推动建立关键信息基础设施保护的规则体系。但是，行业协会和外资金融机构已经对使用“安全可控”信息和通信技术以及数据本地化的要求表示担忧。数据本地化要求企业将在中国境内运营中收集和产生的客户数据在境内存储。中国银监会和中国保险监督管理委员会（中国保监会）正在考虑修订和发布相关规定以解决这些问题。

商会担心中国建立基于产品的信息和通信技术监管机制。我们认为基于风险的机制能够让银行更加灵活地评估如何更好地应对正在出现的风险和不断变化的威胁，所以更为可取。

2016年8月24日，中国银监会、公安部、国家互联网信息办公室（国家网信办）以及工业和信息化部（工信部）联合发布了《网络借贷信息中介机构业务活动管理暂行办法》。办法禁止归集出借人的资金发放贷款、和金融机构合作销售理财产品以及发行资产支持证券。企业应当将投资者的资金交由第三方银行托管。办法还设置了个人通过网络借贷信息中介机构平台借款的上限。此举解决了网络借贷平台开展银行业务却没有接受同样严格监管的漏洞，增加了金融稳定性，商会对此表示欢迎。

投资额度

2016年9月5日，人民银行和国家外汇管理局（外管局）针对RQFII计划下的投资额度自由化问题共同发布了《关于人民币合格境外机构投资者境内证券投资管理有关问题的通知》。与二月份放开的合格境外机构投资者（QFII）计划类似，通知要求按照资产管理的一定比例确定人民币合格境外机构投资者（RQFII）的投资额度。对于资产主要

Investment Quotas

The PBOC and the State Administration of Foreign Exchange (SAFE) jointly issued the “Circular Concerning the Relevant Matters on Domestic Securities Investment by RMB Qualified Foreign Institutional Investors (RQFIIs)” on investment quota liberalization under the RQFII scheme on September 5, 2016. The notice provides that eligible licensed RQFII investors will be given quotas based on a certain percentage of their assets under management (AUM), which is similar to the qualified foreign institutional investor (QFII) scheme liberalized in February. For RQFIIs whose assets are mostly sourced outside China, the initial quota is US \$100 million (RMB 664 million) plus 0.2 percent of average AUM over the previous three years, minus any quota under the QFII scheme. For RQFIIs whose assets are mostly sourced from China, the initial quota is RMB 5 billion plus 80 percent of AUM in the previous year, minus any QFII quota. The rule is aimed at easing the approval procedure for the RQFII quota that overseas investors can use for capital market investments.

AmCham China continues to recommend the removal of all quota-based restrictions, which we believe hinder the healthy growth of the banking sector.

Green Finance

On August 31, 2016, the PBOC, jointly with six other government agencies, issued the “Guidelines for Establishing the Green Financial System.” Key proposals include:

- Adopting the green credit evaluation system as part of the macro-prudential evaluation framework;
- Extending the banking green credit evaluation mechanism from major banks to mid and small-sized banks;
- Standardizing green bond definitions and supporting qualified companies to raise funds through initial public offerings (IPOs) and secondary placements;
- Developing green bond indices; and
- Establishing a national green development fund.

China also drafted the “G20 Green Finance Synthesis Report,” marking the first time the topic of green finance has been incorporated into the G20 agenda. AmCham China welcomes these developments and applauds China’s initiative on green finance.

Window Guidance

In 2016, AmCham China member companies continued to receive “window guidance” from regulators. “Window guidance” in the form of meetings and phone calls is used as an informal regulatory measure, along with official administrative circulars, to require banks to implement

business rules, and support authenticity and compliance inspections under the current policy framework. While these authenticity inspection measures prevent risk and are beneficial to the standardization of cross-border capital flows, they also make it more difficult for US banks and their clients to conduct normal business.

While we understand these measures may be temporary, and are aimed at alleviating urgent problems such as abnormal capital outflows, AmCham China urges regulators to reduce the use of “window guidance” and use transparent, public, official regulatory measures instead. Because of different interpretations of “window guidance” measures and issues with enterprise documentation, “window guidance” may influence or delay legitimate business transactions.

Local Funds Custody License

China’s mutual fund industry has undergone tremendous growth in recent years. Mutual fund industry assets increased by 84 percent in 2015 from RMB 4.5 trillion (US \$720 billion) to RMB 8.4 trillion (US \$1.4 trillion), and pension fund and insurance company assets are beginning to be actively invested both domestically and internationally. However, despite the huge and continuous increase of industry assets, foreign banks are barred from participation.

The 2013 “Measures for the Administration of the Securities Investment Fund Custody Business” allows both qualified domestic banks and locally-incorporated foreign banks to apply to the China Securities Regulatory Commission (CSRC) to obtain a domestic fund custody license and become a qualified fund custodian. However, in 2014, the CSRC announced that license applicants must first obtain clearing membership with the China Securities Depository and Clearing Company (CSDCC). Pursuant to the CSDCC’s updated rules, as of January 2015, maintaining net assets of RMB 40 billion for the last three years is a prerequisite of membership, up from the previously required RMB 3 billion. No foreign banks in China are currently able to meet this asset threshold requirement. Hence, foreign banks are shut out of the market, which stands counter to the original intention of the domestic fund custody regulatory changes in 2013.

Allowing foreign banks better access to China’s market will bring many tangible benefits. Many foreign banks have proven experience and capability in mutual fund custody across the globe. They uphold very high standards in accounting and information disclosure to protect investors. Their increased participation will speed knowledge transfer and spillover benefits to China, and contribute to the healthy development of the industry. We welcome the progress at the Eighth UK-China Financial and Economic Dialogue, which confirmed China’s willingness to explore increased participation of qualified

在中国境外的 RQFII，初始额度 = 1 亿美元 + 近三年平均资产管理规模 * 0.2% - 已获取的 QFII 额度。对于资产主要在中国境内的 RQFII，初始额度 = 50 亿元人民币 + 上年度资产规模 * 80% - 已获取的 QFII 额度。这一规定旨在放宽境外投资者用于资本市场投资的 RQFII 额度的审批程序。

商会继续建议取消所有额度限制，因为这会妨碍银行业的健康发展。

绿色金融

2016 年 8 月 31 日，人民银行和其他六部委共同发布了《关于构建绿色金融体系的指导意见》，主要提出以下建议：

- 将绿色信贷纳入宏观审慎评估框架；
- 将绿色银行评价范围扩大到中小商业银行；
- 统一绿色债券界定标准，支持符合条件的企业发行上市以及通过增发等方式进行再融资；
- 开发绿色债券指数；
- 设立国家绿色发展基金。

中国还起草了《G20 绿色金融综合报告》，首次将绿色金融纳入 G20 议程。商会对这些进展以及中国提出的绿色金融倡议表示欢迎。

窗口指导

2016 年，商会的会员企业继续接受监管机构的窗口指导，窗口指导一般采取会议和电话方式，是一种非正式的监管手段，与正式的通知一样，要求银行落实展业原则，在现有政策框架下加强真实性合规性审核。这些真实性审核措施利于规范跨境资金流动，防范风险，但也在一定程度上影响了美国银行及其客户开展业务的便利性。

我们理解这些措施可能是临时性的，只是为了缓解资本流出异常等紧急问题。商会敦促监管部门减少使用“窗口指导”，多采用透明、公开和正式的监管方式。因为对窗口指导措施理解不同以及企业单证提供问题，窗口指导存在合法业务也被影响甚至延迟的可能。

国内基金托管许可

中国的基金业近年来实现了飞速发展。2015 年，行业资产从 4.5 万亿元（7200 亿美元）增长到 8.4 万亿元（1.4 万亿美元），增幅高达 84%，国内外投资者开始积极投资

养老基金和保险公司资产。虽然基金业资产持续高速增长，外资银行却无法参与其托管业务。

2013 年的《证券投资基金托管业务管理办法》允许符合条件的内资银行以及本地的外资银行向中国证券监督管理委员会（证监会）申请取得境内基金托管许可成为合格的基金托管人。然而 2014 年，证监会宣布许可申请人必须首先取得中国证券登记结算有限公司（中登公司）清算会员资格。根据中登公司最新规定，截止 2015 年 1 月，会员过去三年的净资产必须达到 400 亿元人民币，而之前要求的是 30 亿元人民币。在华的外资银行目前尚无一能满足该资产规模要求。而外资银行被拒之门外的状况，有违于 2013 年境内基金托管监管改革的初衷。

改进外资银行的市场准入能够为中国市场带来很多切实的好处。很多外资银行在世界各地开展基金托管业务，积累了丰富的经验和能力。它们坚持严格的会计和信息披露标准，能够更好地保护投资者。让外资银行更多的参与这一市场，能够加快向中国的知识转让和溢出，促进行业的健康发展。在第八次中英经济财金对话上，中国表示愿意探索合格外资机构更多参与国内托管业务的可行性，我们对此表示欢迎。商会愿意参与并支持政府在这方面的的工作。

证券

商会欢迎中国政府 2016 年提出的开放证券行业的倡议。中国已经采取重要的渐进式举措，以推动总体改革进程，进一步提高投资主体多元化。尤其是，深港通获得中国证监会的批准并于 2016 年 12 月 5 日启动，使得中国企业更容易获得外国投资和资本。外管局也提高了在岸市场准入，放宽对 RQFII 的限制，根据资产规模确定境外投资者的投资额度，并首次将美国投资者包括在内。此外，境外机构投资者还获准投资中国银行间债券市场（CIBM），不再需要提前获得中国监管部门的批准或许可。政府还允许外商独资的境内私募股权基金和外商独资的资产管理公司向国内投资者筹集资金用于投资中国的资本市场。另外，2017 年 1 月，国务院表示将进一步放宽境外证券投资限制，包括允许外商投资的本地企业在中国发行股票和债券。

上述举措将进一步推动经济增长从信贷驱动向股权融资的转变，有助于中国政府实现“十三五”规划制定的目标。在接下来的一年，政府可以进一步推行对增长以及追求投资机会最大化的国内消费者和投资者更加有利的政策。

foreign firms in the domestic custodian business. AmCham China will be pleased to be involved and support these efforts.

Securities

AmCham China welcomes the Chinese authorities' initiatives to liberalize the securities sector in 2016. Important incremental steps have been taken that will advance China's overall reform agenda and further diversify China's investment community. Most notably, the CSRC approved the Shenzhen-Hong Kong Stock Connect, which was launched on December 5, 2016, giving Chinese companies easier access to foreign investors and capital. SAFE also enhanced onshore market access by relaxing RQFII rules and granting quotas to foreign investors based on asset size, including US investors for the first time. In addition, they now permit foreign institutional investors to invest in the China Interbank Bond Market (CIBM) without prior approval or licensing from Chinese regulators. Authorities also allowed wholly foreign-owned onshore private equity funds and wholly foreign-owned asset management companies to raise money from domestic investors to invest in Chinese capital markets. In addition, the State Council signaled in January 2017 its intention to further ease overseas investment curbs on securities, which includes allowing foreign-invested, locally incorporated firms to issue stock and debt in China.

These key initiatives will help the Chinese government achieve the objectives outlined in the 13th Five-Year Plan by further shifting economic growth from being credit-driven to equity-financed. However, the authorities can go further over the next year to make their policies even more meaningful for growth and beneficial to Chinese consumers and investors looking to maximize their investment opportunities.

Ownership

AmCham China strongly encourages the government to consider allowing foreign firms to own and control their Chinese broker-dealers. Full ownership would aid the smoothing of new foreign investments into the CIBM. Greater foreign participation would also improve overall market discipline, as foreign firms would introduce more market-determined pricing of credit, which would channel capital to where it is most efficient. In addition, full ownership would encourage foreign investment banks to introduce their expertise, including underwriting standards and risk management practices, to Chinese firms who are looking to grow internationally as well as domestically. Full ownership could also be a catalyst for foreign investment banks to relocate their subsidiaries to China from other parts of Asia, bringing with them tax revenue and jobs for Chinese citizens. This would help spur the continued development of Shanghai and other large Chinese cities as international financial hubs.

One avenue through which the government can remove the foreign ownership cap is the US-China Bilateral Investment

Treaty (BIT). However, we urge the government not to wait for the BIT negotiations to conclude before further liberalizing China's securities sector. Earlier liberalization in the private equity and asset management sectors, as announced at the beginning of 2016, will introduce healthy competition to China's capital markets and help to efficiently integrate China into international markets much faster.

In turn, increased integration with international markets will allow China to maximize the internationalization of the RMB, as well as tap more foreign capital as a source of funding for Chinese companies and investors. External financing can diversify domestic financial risks to global markets, removing some of the burden on domestic financial institutions to finance Chinese growth. There is much room for external financing to grow, given that China's external debt of 8.5 percent of GDP remains relatively low in an international context. However, to attract further capital inflow, greater market development and market access are essential.

Market Development

To drive the continued development of Chinese equity markets, the product universe for the Shanghai-Hong Kong and Shenzhen-Hong Kong Stock Connect programs must expand beyond dual-listed stocks to exchange-traded funds and other equity-like instruments. In addition, the authorities may wish to allow reciprocal IPO subscriptions, which would widen the investor pool that Chinese companies can access for their IPOs and provide Chinese investors with greater IPO investment choices. To give Chinese investors more certainty, the authorities should also have a concrete timing and implementation process for allowing foreign firms to launch IPOs in China. These developments would not only help spur equity market development, but also allow internationally-sourced equity financing to play a greater role in reducing corporate debt levels, which the IMF estimates to be as high as 145 percent of GDP. Market development will also require the further liberalization of onshore listed derivatives markets. The four futures exchanges in China, namely the China Financial Futures Exchange (CFFEX), Shanghai Futures Exchange (SHFE), Dalian Commodities Exchange (DCE), and the Zhengzhou Commodities Exchange (ZCE), should have a derivatives connect, which would further enrich the ability of market participants to mitigate risk. In addition, the CFFEX should consider removing the trading restrictions for index futures, which have caused market liquidity to thin. Removing restrictions would enhance the market's price discovery function and allow Chinese investors to better use index futures to meet their risk management needs.

Market Access

The development of China's capital markets and increased market access for investors are irrevocably linked. Expanding existing investment channels in the securities sector is crucial to both objectives. We recommend that

所有权

商会强烈呼吁中国政府考虑允许外资企业在中国拥有和控制自己的证券经纪公司。完全所有权有助于中国银行间债券市场的外资流入保持平稳。提高外资参与度也有助于改进总体市场约束，因为外企采取市场化程度更高的信贷定价机制，能够将资本引向效率最高的项目。另外，完全所有制有助于外国投资银行向期待开拓国内外业务的中国企业提供专业知识，包括承销标准和风险管理实践。完全所有权还能够鼓励外国投资银行将位于亚洲其他地方的分支机构转移到中国，并且带来税收和就业机会。这将有助于推动上海等大城市建设成为国际金融中心。

中美双边投资协定是取消外资持股比例限制中的一个渠道。但是，我们敦促中国政府不要等到完成双边投资协定谈判之后再进一步开放中国的证券市场。如果能按照2016年初宣布的那样提早开放私募股权和资产管理领域，将给中国资本市场带来健康的竞争，有效加快中国与国际市场接轨的步伐。

而且，与国际市场接轨能够帮助中国最大限度地实现人民币国际化，使得中国企业和投资者有更多的机会获得境外融资。外部融资能够将国内金融风险分散到国际市场，在一定程度上减轻国内金融机构为中国经济增长提供资金的压力。考虑到中国外债占GDP的比重在国际上来说相对较低，只有8.5%，外部融资仍有很大增长空间。但是，要想吸引更多的资本流入，中国需要加大市场发展和放宽市场准入。

市场发展

为了推动中国股票市场的进一步发展，必须将沪港通和深港通项目的产品范围从双重上市股票扩大到交易所交易基金和其他股权类工具。另外，政府可能希望实施互惠的首次公开发行认购，这将扩大国内企业首次公开发行的投资者构成范围，为中国投资者提供更多首次公开发行的投资选择。为了让中国投资者更加确定，政府还应当为外资企业在中国首次公开发行制定明确的时间表和实施程序。上述举措不仅有助于推动股票市场的发展，还有助于国际股权融资在降低企业债务水平方面发挥更大的作用，根据国际货币基金组织的估算，企业债务占中国GDP的比重已经高达145%。市场发展也要求中国进一步开放境内上市衍生品市场。中国四大期货交易所（即中国金融期货交易所、上海期货交易所、大连商品交易所和郑州商品交易所）的衍生品交易应当连通，从而进一步加强市场参与者降低

风险的能力。另外，中国金融期货交易所应当考虑取消妨碍市场流动性的股指期货交易限制。取消这些限制将提高市场的价格发现功能，使中国投资者能够更好地利用股指期货满足自身的风险管理需求。

市场准入

中国资本市场的发展和资本市场准入的开放是密不可分的。扩大证券行业现有投资渠道对实现这两个目标来说都是至关重要的。我们建议监管部门取消或提高人民币合格境内机构投资者投资额度限制，取消或大幅提高沪港通和深港通的投资额度。这将有助于提高这些渠道的灵活性，允许离岸投资者开展境内投资，以支持中国资本密集型的成长。

债券

2016年年初，人民银行宣布扩大银行间债券市场参与主体范围，允许更多中长期境外机构投资者参与。为此，主权基金、金融机构和跨国公司都增加了人民币计价债券的发行。

商会注意到了2016年取得的一些进展，例如，世界银行在华发行首期特别提款权债券，上海自贸区试点人民币市政债券项目，政府提出的绿色债券倡议，以及为鼓励企业创新设计的特殊公司债券和信用违约互换等，都了市场深度，为投资者提供了更多的投资选择。

商会赞赏中国政府继续完善行政审批程序和市场监管，其中包括人民银行取消离岸机构的额度限制，外管局简化债券投资登记管理程序，中国证监会加强现场检查。这些举措为进一步规范和发展市场奠定了强大的基础，提供了坚定的保证。

随着人民币国际化进程进一步推进，特别是增加作为国际储备货币的使用，商会期待国内债券市场继续保持开放步伐，逐步与国际市场标准和实践接轨。同时我们也认识到，建立高效的国内债券市场将可能是一个长期的发展过程。

商会相信，随着债券市场的成熟，信贷分配过程将变得更加透明，金融市场也能够更好地分散风险。

投资者保护

尽管国内政策制定者已经采取稳步措施降低经济增长中信贷资产集中度，但是，中国的借贷资金仍然主要来自国内储蓄。商会认为金融稳定的风险在继续加大，我们建

regulators eliminate or increase the RQFII investment quota cap, as well as remove or substantially increase the quota for both the Shanghai-Hong Kong and Shenzhen-Hong Kong Stock Connects. Doing so will increase the flexibility of these channels, and allow offshore investors to bolster onshore capital to support China's capital-intensive growth.

Bonds

In early 2016, the PBOC announced its objective of expanding the range of interbank bond market participants to include more medium- and long-term foreign institutional investors. In turn, sovereign funds, financial institutions, and multinational corporations all increased their issuance of bonds denominated in the RMB.

AmCham China noted developments such as the World Bank's first SDR bond, the China (Shanghai) Free Trade Zone's RMB municipal bonds pilot program, and the government initiative on green bonds, as well as the launch of special corporate bonds aimed at encouraging earlier-stage issuers for innovation and credit default swapping. These improved market depth and increased new selective instruments for investors in 2016.

AmCham China commends the Chinese government on its continued improvements to the administrative approval process and market supervision, including the PBOC's removal of quotas for offshore institutions, SAFE's introduction of a simplified registration management procedure related to bond investments, and the CSRC's on-site inspection campaign. These government efforts provide a strong foundation and show China's strong commitment to develop and regulate its markets.

With the further internationalization of the RMB, especially its increased use as an international reserve currency, AmCham China expects the domestic bond market to continue to keep pace with opening up and aligning its standards and practices with those found in global markets. At the same time, we realize that the creation of an efficient domestic bond market is likely to be a long process.

AmCham China believes that when the bond market matures, it will bring greater transparency to the process of credit allocation and enable better diversification of risk in the financial market.

Protection of Investors

Although Chinese policymakers have adopted measures at a steady pace to reduce the credit intensity of economic growth, Chinese borrowings are still largely funded by domestic savings. AmCham China believes that the risks to financial stability continue to build, and we recommend that regulators improve mechanisms to deal with defaults and develop a sound infrastructure framework for investor

protection. When defaults occur, as investors have a relatively minor role in the process, a helpful legal arrangement is crucial to protecting investor rights and minimizing losses.

Comprehensive and Timely Disclosure of Information

The premise for bond investing, especially for credit bonds, is comprehensive and timely information disclosure. Information disclosure for some bonds on the China market is generally not sufficient, especially when compared with international standards. In past years, several default cases have highlighted the slow disclosure of information to the investing public and other stakeholders. For instance, one company did not publicly disclose that it had defaulted on its bank loan until a few months before it informed bond investors that it was unable to meet interest payments on its bonds. Bond investors seem to be subordinated to bank lenders in access to information about the issuers' financial conditions. This asymmetric information distribution allows lenders an advantage to preempt any events that are unfavorable to them as the issuers head towards financial distress. Ultimately, issuers bear the responsibility to treat both lenders and bond investors equally when important operational and financial developments occur. There currently appears to be little incentive for issuers to make timely disclosure. AmCham China urges higher standards of disclosure and greater enforcement of existing regulations to create a more level playing field for all bond investors.

Regulation of Market Intermediaries

With the participation of various investors, especially institutional investors, companies can attain a relatively fair market value on the bond markets. Foreign investors are now able to assess and price Chinese companies in accordance with international standards. It is important that market intermediaries, including underwriters, credit rating agencies (CRAs), law firms, and accounting firms, avoid conflicts of interest. AmCham China recommends that regulators reinforce the rules relevant to providing accurate financial information about issuers, and improve the standards of underwriters and CRAs along the guiding principles of operating diligently and with integrity. To provide Chinese corporates with additional underwriter options, the authorities should further allow the participation of foreign securities joint ventures, for example, by allowing them to underwrite medium-term notes for corporates in the CIBM.

Derivatives

Financial innovation and market development can be fostered through derivatives. Foreign investors should be allowed to trade a broader range of hedging products and participate in primary offerings within the CIBM. If properly traded and prudently supervised, not only would this address investor concern over liquidity in the secondary market, it would also help improve access to important risk

议监管部门改进违约处理机制，为投资者保护建立合理的基础设施框架。由于投资者在投资过程中的作用相对较小，一旦有违约发生，能否做出有益的法律安排对于保护投资者权利以及最小化损失来说就变得非常重要。

全面及时的信息披露

全面及时的信息披露是债券投资的基石，特别是信用债券投资。中国市场上一些债券的信息披露通常不够充分，特别是与国际标准相比。过去几年中，个别违约事件已经凸显对公众和其他利益相关方的信息披露滞后。例如，一家公司直到通知债券投资者其无力支付债券利息的几个月前才公开披露银行贷款违约。债券投资者获得发行人财务状况信息的能力似乎不如银行出借人。由于信息不对称，一旦发行人出现财务困难，出借人能够抢先得知对其不利的情形。最终，当业务和财务发生重大变化时，发行人应当平等对待出借人和债券投资者。目前来看，发行人没有动力及时披露信息。商会敦促中国采用更严格的披露标准，加大现有法规的执法力度，为所有债券投资者创造一个更加公平的竞争环境。

市场中介机构的监管

通过各类投资者的参与，特别是机构投资者的参与，企业可以在债券市场上获得相对公平的市场估价。外国投资者现在可以按照国际标准对中国企业进行评估和定价。重要的是，承销商、信用评级机构（CRAs）、律师事务所和会计师事务所等市场中介机构应当避免利益冲突。商会建议监管部门加强相关规定，要求准确披露发行人的信息，基于勤勉诚实的指导原则改进承销商和信用评级机构的标准。为了让中国企业有更多承销商可以选择，政府应当进一步允许合资证券公司参与，例如，允许其承销银行间债券市场上的中长期公司股票。

衍生品

衍生品可以促进金融创新和市场发展。中国应当允许境外投资者交易更多的套期保值产品以及参与银行间债券市场的一级发行市场。适当的交易加以审慎的监管，不仅能够解决投资者对二级市场流动性的担心，而且能够为中国企业和投资者提供重要的风险管理工具。

监管协调

商会赞赏中国政府在 2016 年为加强监管协调而做出的努力。但是，关于市场分割的担忧仍然存在。虽然监管部

门之间的信息交换得到加强，但是由于国内债券市场分割，市场因快速增长和开放而变得复杂，致使法规难以得到有效执行。

熊猫债市场

成熟完善的熊猫债市场（是指境外借款人在中国境内发行的以人民币计价的债券）有利于并且对人民币国际化来说至关重要，而且能够为各个实体提供长期融资以及有效的筹资平台，从而支持中国实体经济的增长。为了进一步发展这一重要市场，需要提高境外发行人的参与。与其他国家的外资持有比例相比，目前允许外资持有的在中国发行的债券的比例很低。截止 2015 年 11 月，外资持有的中国债券约占 1.6%，在日本，外资持有的境内发行的日本国债约占 10%，而在德国，外资持有的债券约占 60%。

有两项重要的改革，如果能够实施，将为中国的熊猫债券市场吸引更多的境外投资者。也就是说，中国政府应当承认国际会计标准（如英国财务报告准则 101），并且允许境外发行人汇出熊猫债券的收益。亚洲证券业与金融市场协会（ASIFMA）2016 年 11 月进行的全球投资者调查显示，国际投资者很关心投资资金的自由汇出。

信用评级

信用评级和研究能够帮助投资者分析与固定收益证券及其他债务有关的信用风险。对中国国内债券市场感兴趣的国际投资者，可以通过国内信用评级机构发布的信用评级开展信用风险分析。但是，许多国际投资者对国际信用评级机构发布的信用评级更感兴趣。

国际信用评级机构始终紧随市场需求，其信用评级系统具有以下主要特征：

- 观点基于强大而深刻的分析；
- 使用能够简洁传达观点的符号；
- 观点是公开的；
- 市场和行业覆盖范围广泛，具有很高的可比性。

信用评级能够推动市场参与者之间的对话和探讨，从而进一步提高信贷市场的完整性以及人们对信用风险的了解。国际信用评级机构发布的信用评级的可信度和全球可比性对国际投资者来说尤为重要。

商会相信，随着中国社会信用体系的建立，中国信用评级领域的法律框架也会改进。我们也相信中国需要遵循

management tools for Chinese companies and investors.

Regulatory Coordination

AmCham China commends the Chinese government for strengthening regulatory coordination throughout 2016. However, worries about market fragmentation persist. Although information exchange among different regulators has increased, domestic bond market fragmentation makes the enforcement of effective regulation difficult as complexity has increased due to rapid growth and opening up of markets.

Panda Bond Market

A well-developed market for panda bonds (i.e., RMB-denominated paper issued by foreign borrowers in mainland China) is beneficial and crucial to RMB internationalization. It will also offer entities long-term financing and an effective capital-raising platform that supports China's real economic growth. Greater participation of foreign issuers is needed to further develop this important market. Current foreign ownership of bonds issued in China is very low compared to foreign holdings of bonds in other countries. As of November 2015, foreign ownership of Chinese bonds was around 1.6 percent, whereas foreign holdings of onshore Japanese treasury bonds was around 10 percent, and holdings of German bonds was around 60 percent.

There are two key reforms which, if implemented, would attract more foreign investors to the Chinese panda bond market. Namely, the Chinese government should recognize international account standards (such as Financial Reporting Standard 101 in the UK), and facilitate the ability of foreign issuers to repatriate panda bond proceeds. The free repatriation of invested funds is a key concern for international investors, as found by the Asia Securities Industry and Financial Markets Association's (ASIFMA) November 2016 Global Investors' Survey.

Credit Ratings

Credit ratings and research help investors analyze the credit risks associated with fixed-income securities and other financial obligations. For international investors interested in the Chinese domestic bond market, credit ratings issued by domestic CRAs are helpful in such credit risk analysis. However, many international investors would be particularly interested in credit ratings issued by international CRAs.

Over the course of their history, international CRAs have adapted to market needs so that credit rating systems have developed key attributes, which include:

- Opinions supported by insightful and robust analysis;
- Symbols that succinctly communicate opinions;
- Publicly available opinions; and
- Broad coverage across markets and industries that

allows for comparability.

Credit ratings promote dialogue and debate among market participants, which in turn help further the integrity of the debt markets and understanding of credit risk. The credibility and global comparability of the credit ratings issued by international CRAs are particularly important for international investors.

AmCham China believes the legal framework for the Chinese credit rating sector will improve as China establishes its social credit system. We also believe it is important to follow global practices and regulate credit rating agencies in line with international standards. Internationally consistent regulation of CRAs in China is crucial to further broaden and accelerate capital market development given the wide usage of credit ratings in global capital markets.

Additionally, due to the fact that international CRAs have a long history of issuing credit ratings with long-term performance records, international investors see the credit ratings issued by these CRAs as most credible. Ratings on Chinese bonds issued from international CRAs would be perceived as having credible predictive value by international investors. Thus, they would be able to better increase awareness for RMB-denominated issuances and help in their understanding by international investors.

Credit ratings issued by international CRAs establish commonly understood points of reference that enable comparison across markets, industries, and geographies. China is a market of increasing importance and interest to international investors. As part of their analytical work, international investors would be looking for the views of international CRAs to help them understand the relevant creditworthiness of a Chinese bond versus other bonds in which they are interested. For example, an investor can look at a debt issuance in Finland with a BB rating and debt issuance in Brazil with a B rating, and easily understand the international CRA's opinion on their relative creditworthiness.

Altogether, international CRAs can serve as the bridge for capital flows from international investors to the Chinese domestic market if they are allowed to participate in rating Chinese domestic bonds. We are thus encouraged by the recent proposals by the Chinese government to remove foreign investment restrictions on the CRA sector, and recommend that Chinese regulators welcome the participation of international CRAs by ① facilitating international CRAs to operate in Chinese markets without restriction, and ② creating a regulatory environment that is consistent with the international standards set forth in the International Organization of Securities Commission's "Code of Conduct Fundamentals for Credit Rating Agencies."

Venture Capital and Private Equity

In 2016, the Chinese government vigorously supported innovation and entrepreneurship and actively promoted

全球实践作法并且按照国际标准规范信用评级机构。考虑到信用评级在全球资本市场的广泛使用，按照国际规范管理国内的信用评级机构对于中国进一步扩大和加快资本市场发展是非常重要的。

另外，鉴于国际信用评级机构长久以来在信用评级发布领域的优异表现，国际投资者认为这些机构发布的信用评级最为可信。在国际投资者看来，国际信用评级机构发布的中国债券评级能够可靠地预测价值。因此，这些机构有助于提高国际投资者对人民币计价的债券的关注和了解。

国际信用评级机构发布的信用评级能够提供通俗易懂的参考点，方便不同市场、行业和地域之间的比较。国际投资者对中国市场越来越感兴趣和看重。作为分析工作的一部分，国际投资者会参考国际信用评级机构的观点，以了解和比较中国债券和其他债券的信贷价值。例如，面对一个在芬兰发行的BB级债券和一个在巴西发行的B级债券，投资者能很容易地了解国际评级机构对其相对信贷价值的观点。

如果中国允许其参加国内债券的评级，国际信用评级机构完全可以成为沟通国际投资资本向中国国内市场流动的桥梁。因此，中国政府最近提出取消信用评级机构的外商投资限制的建议，我们深受鼓舞。我们建议中国监管部门通过以下方式欢迎国际信用评级机构的参与：① 帮助国际信用评级机构自由地在中国市场开展经营；并且② 创造符合国际证监会组织《信用评级机构基本行为准则》所规定的国际标准的监管环境。

风险投资和私募股权

2016年，中国政府大力支持创新创业，积极推动产业结构调整和经济转型。在这一环境下，风险投资和私募股权（VC/PE）在社会直接融资、促进创新创业、推动实体经济转型方面的独特作用越发凸显出来。

2016年对VC/PE行业产生重要影响的政策包括：

- 2016年9月20日，国务院印发了《关于促进创业投资持续健康发展的若干意见》。这是创业投资行业发展史上首个国家级层面的重要文件，是创投行业向前发展迈出的重要一步。它提出了八项重要举措：① 培育多元创业投资主体；② 拓宽创业投资资金来源，大力培育和发展合格投资者；③ 加强政府引导和政策扶持；④ 完善创业投资相关法律法规；⑤ 完善退出机制；⑥ 优化创业投资市场环境；⑦ 推动创业投资行业双向开

放；⑧ 完善行业自律和服务体系。

- 2016年2月5日，中国证券投资基金业协会发布了《关于进一步规范私募基金管理人登记若干事项的公告》（以下简称“公告”），旨在针对行业前期发展中出现的问题进行规范，促进行业健康发展。公告取消了私募基金管理人等级证明，加强例如信息报送的相关要求，并要求新申请私募基金管理人登记、已登记的私募基金管理人部分重大事项发生改变，须提交法律意见书。同时，要求私募基金管理人员须通过考试或资格申请具备相应的基金从业资格。

结合国际市场的经验，商会希望中国政府在国家层面上鼓励发展VC/PE行业的同时，进一步改革和改善以下具体几个方面：

- 应该以更为开放的姿态鼓励优秀的境内外专业投资机构在国内募集资金并投资。VC/PE投资者在欧美市场多年发展的经验表明，成功的VC/PE投资往往并不单纯取决于资本运作，更重要的是将资金注入有增长潜力的企业，带动行业整合和技术创新，进而促进实体经济的发展乃至推动产业升级。
- 鉴于国际化投资机构对于实体经济发展的促进作用，我们建议监管部门进一步降低投资门槛，对外资普通合伙人的人民币基金与境内人民币基金一视同仁，给予其全面的国民待遇，放宽投资领域和减少审批程序。
- 由于境内有限合伙人的发展仍处于初级阶段，政府需在培养合格投资人队伍，特别是机构投资人方面起到教育和推动作用。目前，个人投资者投资VC/PE基金仍存在信用问题，违约现象较多。因此，进一步加强投资者培养，提升投资者的专业化和理性化，已是私募行业发展的当务之急。
- 商会赞赏中国政府在反垄断审查过程中建立的简化程序，但是相比其它国家来说，审批速度仍有很大提升空间。并购审批时间过长，影响到外商投资中国企业的积极性，使其无法充分发掘潜力。我们建议反垄断审查部门增加人员配备，加快并公正地实施审批过程。
- 按照行业自律为主，政府监管为辅的原则引导VC/PE行业的发展。在目前的监管体制下，中国证券投资基金业协会行使中国证监会职能对私募基金进行管理。由于私募证券投资基金与私募股权基金在融资对象、投资领域、资金管理等方面的诸多不同，故不能采取“一

industrial restructuring and economic transformation. In this environment, the venture capital and private equity (VC/PE) sector has demonstrated a unique role in direct financing, supporting innovation and entrepreneurship, and pushing the transformation of the real economy forward.

Policies that have significantly affected the VC/PE industry in 2016 include:

- On September 20, 2016, the State Council issued the “Opinions on Promoting Sustained and Healthy Development of Venture Capital Investment.” This was the first national-level document in the history of venture capital industry development and thus a significant step forward. It proposed eight major measures: ❶ fostering diversified venture capital investments; ❷ broadening sources for venture capital funding, cultivating and developing qualified investors; ❸ strengthening government guidance and policy support; ❹ improving the laws and regulations related to venture capital; ❺ improving exit mechanisms; ❻ optimizing the market environment for venture capital investment; ❼ promoting the development of domestic and foreign venture investments; and ❽ improving industry self-discipline and the service system.
- On February 5, 2016, the Asset Management Association of China released the “Announcement Regarding Several Issues to Further Regulate PE Fund Manager Registration” (the Announcement) to deal with issues in the early stages of industry development and promote its healthy development. The Announcement cancels grade certificates of PE fund managers, sets stricter requirements on matters such as information reporting, and demands the submission of legal opinions for the registration of new PE fund managers and for major changes in previously-registered PE fund managers. It also requires PE fund managers to pass a test or apply for qualifications to ensure that they are qualified to participate in the PE industry.

However, in addition to national-level encouragement for the development of the VC/PE industry, AmCham China recommends further reform and continued improvements based on experience in international markets specifically in the following areas:

- China should adopt a more open attitude to encourage top domestic and foreign professional investment institutions to raise capital and invest in China. The development of VC/PE investors in European and US markets over the years has demonstrated that successful VC/PE investment does not rely merely on capital operations. In fact, it is more important to inject capital into enterprises with growth potential, drive industrial consolidation and technological innovation, and thereafter promote the growth of the real economy and even upgrade industry.
- International investment institutions can support the

growth of the real economy. We recommend that regulators further lower investment thresholds, give full national treatment to foreign general partners’ RMB-denominated funds, ensure equal treatment with domestic RMB-denominated funds, broaden the permissible scope of investment, and streamline approval procedures.

- As domestic limited partners are still in the early stage of development, the government should play an educational and promotional role in cultivating qualified investors, especially institutional investors. At present, individual investors still have credit problems while investing in VC/PE funds and defaults often occur. Therefore, for the PE industry to develop, it has become imperative to further strengthen the cultivation of investors and enhance their professionalism and rationality.
- AmCham China commends simplified procedures established by the Chinese government for anti-monopoly review. However, compared with other countries, there is still much room for improvement to expedite the review process. Lengthy reviews for mergers and acquisitions (M&A) discourage foreign investment in promising Chinese companies, keeping them from reaching their full potential. We recommend that the relevant anti-monopoly review agencies increase staffing in order to expedite the review process, and conduct reviews in an unbiased manner.
- The growth of the VC/PE industry should be mainly guided by market self-discipline, and complemented by government regulations. Under the current regulatory system, the Asset Management Association of China exercises the regulatory functions of the CSRC over PE funds. Due to multiple differences between private stock-based funds and PE funds in terms of funding sources, investment fields, and capital management, uniform management methods should not be imposed. Instead, they should be treated differently, especially in the areas of information disclosure, fund registration, and fund manager qualification.

Recommendations

For the Chinese Government:

Commercial Banking

- **Remove all kinds of quotas in the banking sector, including on foreign debt.**
- Allow foreign banks to establish risk-based information technology regimes rather than product-based regimes.

Securities

- **Continue to liberalize the securities sector, with the priority on removing the foreign ownership cap on broker-dealers.**

刀切”的管理方式，特别在信息披露、基金备案和基金管理人资格等方面要予以区别对待。

建议

对中国政府：

商业银行

- 取消银行业的所有额度限制，包括外债额度。
- 允许外资银行建立基于风险而非基于产品的信息技术体系。

证券

- 继续开放证券行业，重点是取消证券经纪公司的外资持股比例限制。

债券

- 继续加强监管，规范市场中介机构的发展，以便更好地保护投资者的利益。

信用评级

- 取消或放宽对外商投资信用评级机构所有权的比例限制。
- 根据国际共识和实践，采用新的或者经过修订的针对信用评级行业发展的规定。

风险投资和私募股权

- 继续简化和加快反垄断审批程序，以免妨碍风险投资 / 私募股权交易的并购活动。

Bonds

- **Continue to reinforce supervision and regulate development of market intermediaries so as to better protect the interests of investors.**

Credit Ratings

- **Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.**
- **Introduce new or amended regulations concerning development of the credit rating sector consistent with international consensus and practices.**

Venture Capital and Private Equity

- **Continue to simplify and speed up the anti-monopoly review procedures so as not to hinder M&A in VC/PE deals.**

Civil Aviation

Introduction

AmCham China commends China for its sustained economic growth and the superb safety record of its aviation sector. Although China's GDP growth has slowed, this has had limited impact on air traffic, which continues to grow at record levels. This growth is a direct result of China's gradual transition to a consumption-based economy and the growing importance of the service sector, which is a key contributor to aviation growth. Over the next 20 years, it is forecasted that the Chinese economy will grow at 5.1 percent annually and airline passenger traffic will grow at 6.4 percent annually. These two indicators, as well as other growth items, such as an expanding middle class, help drive a need for more than 6,800 new airplanes valued at US \$1 trillion (RMB 6.6 trillion) in the next 20 years, according to Boeing's Current Market Outlook for China. Per China's 13th Five-Year Plan, 74 new commercial airports will be built to accommodate the region's anticipated growth in air travel. Moreover, according to China's State Council, the country is expected to build more than 500 general aviation airports and own more than 5,000 all-purpose aircraft by 2020.

Chinese carriers surpassed US airlines in 2015 to become the biggest player in US-China air transportation. Passenger volume between the two countries is forecast to triple in just the next five years thanks to improved US visa policies and the designation of 2016 as the "US-China Tourism Year," and could conceivably grow even faster if bilateral aviation agreements are further liberalized. Every day, more than 15,000 people travel between China and the US on 116 flights.

China's civil aviation system is forecast to grow to be as large as the US system by the early 2030s, and China's top three airlines are already among the world's top 10 carriers in terms of passenger volume. Last year, air passenger trips rose 11.8 percent year-on-year to 1.02 billion. Aviation experts forecast the number of air passengers in China will grow 6.4 percent per year in the coming two decades, outpacing the global average of 4.8 percent, with 927 million people flying annually. Additionally, China is expected to overtake the US as the world's largest commercial aircraft market in the next 10 years. US companies engaged in general aviation and the provision of a wide variety of aviation services are seeing similar opportunities to serve the vast Chinese market.

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. US companies are also key partners for China's own commercial aircraft programs, including the Commercial Aircraft Corporation of China's (COMAC) ARJ-21 regional jet and C919 narrow-body jet, and the Aviation Industry Corporation of China's (AVIC) MA700 regional turboprop, and have much to offer as partners in developing China's young general aviation industry. China benefits from its growing role as a supplier of aviation parts and components to customers around the world and is a major source of financing and investment for the global aviation sector. Many US aerospace companies have formed joint ventures (JVs) with AVIC and other Chinese entities for Chinese domestic and overseas opportunities.

The close aviation partnership between the US and China continues to flourish. The US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) 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, Foreign Commercial Service, and US Transportation Security Administration—in a unique and active forum for bilateral cooperation.

While the trend to reduce barriers on the sustainable development of civil aviation in China has been largely successful, challenges remain as one would expect from a system that continues to grow so rapidly. Further systematic efforts are needed to 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 Challenges

Increase Regulatory and Technical Inspection Staff at the CAAC

The relatively low number of regulatory staff at CAAC headquarters poses a risk to China's excellent safety record and a constraint on the industry's sustainable growth. When

民用航空

引言

中 国美国商会（商会）对中国航空业的持续增长和出众的安全记录表示赞赏。尽管中国 GDP 增长放缓，但航空业受影响有限，仍继续保持创纪录的增长。这是因为中国已经逐渐转向以消费为主导的经济，加上服务业比重逐渐加大，更加促进了航空业增长。在接下来的二十年，预计中国经济年均增长率为 5.1%，航空客运量年均增长率可达到 6.4%。在这两方面的因素以及中产阶层不断壮大等其他增长因素的推动下，根据波音公司的《中国当前市场展望》报告，未来 20 年内，中国对新造飞机的需求量为 6800 架，总价达到 1 万亿美元（6.6 万亿人民币）。根据“十三五”规划，中国将新建 74 个商用机场以满足预计出现的区域航空旅行增长需求。另外，国务院表示，到 2020 年，中国预计建设 500 个通用航空机场，拥有超过 5000 架通用飞机。

2015 年中国航空公司首次超过美国航空公司，成为中美航空市场的最大承运方。由于美国签证政策有所改进以及 2016 中美旅游年的开幕，预计在接下来的五年中，中美客运量将会增至原来的三倍，如果双边航空协议可以进一步放宽，预计增长速度会更快。每天有 15000 位旅客乘坐 116 个航班往返中美之间。

预计到 21 世纪 30 年代初，中国民航系统的规模有望与美国并驾齐驱。同时，中国的三大航空公司在客运量方面已经跻身全球十大航空公司之列。去年，航空客运量同比增长 11.8%，达到 10.2 亿人次。航空专家预测，在未来二十年，中国的航空客运量将实现 6.4% 的年均增长率，超过 4.8% 的世界平均水平，每年乘坐飞机出行的人数达到 9.27 亿人次。另外，未来十年里，中国还有望取代美国成为全球最大的商用飞机市场。中国市场潜力巨大，美国通用航空公司以及其他航空服务公司同样看到了机遇。

美国有诸多企业是航空技术、服务及专业知识的重要供应商，它们长期以来投入了大量相关资源帮助中国民航扩容增效，满足中国的广泛培训需求。美国公司也是中国商用飞机项目的重要伙伴，包括中国商飞公司（COMAC）的 ARJ-21 支线飞机和 C919 窄体飞机项目，以及中航工业（AVIC）的 MA700 涡桨支线飞机项目。美国企业也是中国年轻的通用航空工业的重要合作伙伴。中国是航空零部件供应大国，客户遍布世界各地；同时，中国也是全球航空业投融资的主要来源地。在这一领域的不断壮大，也使中国从中获益。许多美国航空航天企业已经与中航工业及其他中国实体合作成立了合资企业，以充分利用中国国内及海外的机会。

中美两国在航空领域建立的合作伙伴关系持续发展。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。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、美国联邦航空局、美国贸易发展署、美国驻华大使馆、美国外国商务服务局以及美国运输安全管理局提供了一个活跃的、独一无二的双边合作平台。

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进步，但是如此快速发展的一个体系必然会继续面临挑战。中国尚需进一步系统地推进中国空域系统现代化，提高效率 and 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。

现存监管挑战

增加中国民用航空行政法规和技术监察人员

民航局机关行政法规和技术监察人员编制数量相对较少，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。与美国联邦航空局相比，就中国航空体系和增长前景而言，民航局的人员编制

compared to the FAA, CAAC staffing is low given the size of China's aviation system and its expected increase in growth. Increased staffing would help reduce the impact on operations caused by difficulties in receiving timely CAAC approvals.

In addition, AmCham China encourages the CAAC to add staffing to provide official English translations of CAAC documentation for suppliers who must comply with these regulations. Each company is forced to translate the regulations on its own, leading to potential safety hazards caused by inconsistent translations.

Reforming China's Airspace System and Improving Operational Efficiency

Reforming China's national airspace management system is critical to meeting China's aviation growth, enabling improved system efficiencies, and reducing the environmental impact of the aviation industry. More efficient, system-wide airspace utilization and management will help to reduce fuel burn, air pollution, flying time, and delays, while simultaneously accommodating new air carrier entrants, growth in airplane operations, and new and expanded 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 continues to grow in passenger and cargo aircraft operations, it continues to exhibit signs of stress, including persistent delays at airports nationwide and a continuing shortage of slots. These delays and slot shortages are due primarily to the limits placed on the use of China's national airspace for civil aviation purposes, attendant inefficiencies in airspace operations, capacity management that relies on a command and control structure, and the multiple ripple effects from the resulting congested airspace when arriving at or departing from airports.

Improving airspace and airport operational efficiency and management is the most essential reform for China to meet the increasing demand for aviation services. The lack of air traffic management flexibility often results in delays, inefficiencies, and potentially unsafe situations. ACP's Massive Delay Response System (MDRS) and Xi'an flight delay projects with the CAAC identified several positive steps that the CAAC has already taken to better manage some of the air traffic problems and passenger expectations; other improvement plans are under consideration.

AmCham China is pleased that the CAAC's plans to adopt and implement a national Air Traffic Flow Management (ATFM) and System Wide Information Management (SWIM) system utilize a collaborative decision making (CDM) model. These tools can provide decision makers with real-time information shared among aviation system users, help authorities to manage China's airspace more effectively and efficiently, and reduce flight delays. The CAAC also is planning to co-

locate military and civilian controllers to better share system information and create common situational awareness. There remains continued need for more system change that focuses on flexible, safe, and efficient system management to achieve delay prevention rather than delay response to accommodate anticipated growth in the aviation system.

The CAAC and Air Traffic Management Bureau (ATMB) recognize that the effectiveness of their MDRS and ATFM systems lag behind world standards due to lack of accurate aviation weather forecasts beyond two hours. Since most flights are committed to depart more than two hours before arrival, it is impossible to delay or cancel flights before they take off for a destination where they cannot land due to thunderstorms or severe weather. These flights then enter holding patterns or divert to alternate airports with fuel becoming an issue. Controller and pilot workload increases, which decreases safety margins and causes unnecessary fuel burn and pollution. Improved weather forecasting and effective use of forecasts with adequate lead time are essential to solving these problems.

Climate Change Obligations: Advance ECER and Sustainability

Climate change is an important global issue. Starting in 2011, the CAAC issued guidance intended to accelerate energy conservation and emissions reduction (ECER) in the aviation industry. Guidance included goals to reduce energy consumption and carbon dioxide emissions through technology and management innovation. US companies were pleased to see progress in specific areas such as fuel savings and efficiency, development of aviation biofuels, new incentives for clean fuel ground service equipment, and the installation and application of new technologies. We recommend the following additional measures to further improve ECER efforts:

- Increase the use of state-of-the-art building materials and green airport building standards in the construction of new airports and expansion of existing airports. Adopt standards for clean construction equipment and processes to limit the impact on air quality.
- Improve airfield taxiway and gate layout design to reduce aircraft taxi times.
- Implement ATMB procedures and airline operations that utilize the capabilities of airplanes equipped with the latest navigation technologies to improve aviation sustainability.
- Continue the effective utilization of NextGen (US) and Single European Sky ATM Research (SESAR) (EU) technologies.
- Work on procedures, measurements, and reward systems to encourage air traffic centers, airlines, and airports to increase the use of new procedures and technologies to gain efficiency in operations.

较少。增加人员数量有助于改善民航局未能及时回复带来的企业经营困扰。

另外，商会促请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，将译文提供给那些必须遵守相关法规的供应商。目前各个公司各自翻译相关法律法规，译文的不一致容易造成安全问题。

改革中国空域系统，提高运行效率

满足航空业增长的需求，改进系统效率以及减少航空业对环境的影响，关键在于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率和管理效率，从而得以容纳更多航空公司的加入，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顶级的安全记录，客机及货机运营数量也在持续增长，但却继续呈现一定压力，如全国大型机场普遍存在的航班延误及持续的航班时刻短缺现象。这些延误及航班时刻短缺主要源于民航的空域使用受限，现有空域管理及流量管理效率偏低，缺少统一的国家流量管控体系。众多连锁反应造成了机场飞机起飞与降落的交通拥堵。

为满足中国民航不断增长的需求，改革提高空域利用率、机场运营效率以及管理水平非常重要。缺少灵活性的交通流量管理经常会导致航班延误、低效率和安全隐患。美中航空合作项目（ACP）与民航局空管局合作开展大面积航班延误应急响应机制（MDRS）项目以及西安空域运行项目，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。

商会很高兴民航局利用协同决策模式（CDM），计划采用并实施全国空中交通流量管理（ATFM）和空管信息系统（SWIM）。上述机制和工具能够为决策者提供航空系统使用者之间分享的实时信息，帮助监管部门更加高效地管理空域和流量，减少航班延误。民航局也在计划加强军民航空管制沟通，以便更好地共享系统数据，统一对情势进行识别和判断。中国还需要继续深化体制改革，将重点放在落实灵活、安全和高效的系统管理上，事前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趋势。

民航局和空中交通管理局（空管局）认识到，由于缺少2个小时以外的准确的航空天气预报，其大面积航班延误应急响应机制和空中交通流量管理系统的有效性落后于

国际标准。由于大多数航班从离港到抵达都超过两个小时，所以即使抵达目的地时因为雷雨或恶劣天气不能降落，也无法在起飞之前推迟或取消航班。这些航班只能在空中盘旋等待或备降其他机场，此时燃料就成为问题。空管人员和飞行员的工作量增加，导致安全性降低，造成不必要的油耗和污染。要想解决这些问题，中国需要改进和有效地利用天气预报，提供充足的预见期。

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议题。自2011年起，民航局开始出台旨在加速航空业节能减排的指导意见，意见提出通过技术和管理创新实现减少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、新增地勤设备清洁燃料激励政策以及安装应用新技术等具体领域取得的积极进展。为了进一步推动节能减排，我们建议采取以下补充措施：

- 提高新建和扩建机场对高新建筑材料和机场建设环保标准的使用。采用环保建筑设备和流程以降低空气质量的影响。
- 完善机场滑行道设计及登机口布局以减少飞机滑行时间。
- 实施空管管制规程以及利用配备最新导航技术的飞机开展航线运行，以提高航空可持续性。
- 继续高效利用美国的下一代航空运输系统技术（NextGen）以及欧盟的单一欧洲天空空中交通管理研究（SESAR）技术。
- 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进而提升效率。

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，同样地，美国也是中国客运及货运航空公司的最大市场之一。商会就增强航空运输业提出如下建议，其中许多建议将为国际和国内航空公司带来更多互惠机遇。

优化航班时刻使用

中国主要枢纽机场的发展，包括北京、上海和广州，都因航班时刻限制而受到严重阻碍。航班时刻的优化分配

Air Carrier Operations and Issues

China is one of the largest markets for US passenger and air cargo airlines, and the reverse applies as well. AmCham China recommends the following to strengthen the air transportation sector. Many of these recommendations will equally benefit Chinese airlines.

Optimize Flight Slot Utilization

Slot constraints at China's major hub airports, including Beijing, Shanghai, and Guangzhou, pose increasingly serious impediments to growth. Optimizing slot allocation procedures and utilization are necessary to meet the growth and efficiency targets set by the State Council. The CAAC and ATMB continue to make improvements by increasing airport capacity, opening new and more flexible flight paths, introducing online slot monitoring, and policing the allocation and utilization of slots more carefully. US airlines commend the CAAC's continuing efforts to strengthen the slot allocation process, and recently to take back unused or under-utilized slots, but would recommend the following additional steps to further improve air services:

- Continue to improve and optimize slot allocation procedures for both domestic and foreign air carriers and ensure slot utilization in accordance with the International Air Transport Association's Worldwide Slot Guidelines.
- Establish a fair and transparent process whereby the re-allocation of unused or under-utilized slots can proceed in a timely fashion.
- Extend airport operating hours at key airports to add capacity without the need for additional facilities.
- Ease or eliminate arbitrary limitations on daily operations which do not consider actual use patterns and encourage more use of off-peak hours.
- Ease or eliminate limitations on day-time slots for all-cargo operations, as well as restrictions on co-terminal operations.
- Continue to reduce or eliminate ground delays at major airports. Such delays have a significant impact on down-line connections, impact costs, and inconvenience customers. Lengthy delays also generate more emissions that will increase air pollution.
- Increase hub efficiency by allowing baggage check for transfer passengers in Beijing and Shanghai Pudong. This will generate more jobs and revenue for airports and help to attract more passengers who are transferring from other cities in northern Asia.

Need for Gateway Airport Improvements

Continued emphasis on improving the operation of China's international gateway airports is needed to make them more efficient international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as true hub airports is a

high priority for US and Chinese air carriers alike. Airlines have found that the US and China are both losing market share to third-party countries whose airlines are capturing US-China passengers and bypassing China's primary international gateways. We recommend the implementation of more efficient hubbing operations and code-share cooperation, which could result in carrier gains for both the US and China as well as improve customer experience. Policies that facilitate timely transfers of cargo and passengers, as well as streamlined baggage handling, should be developed to help China capture a larger share of Pacific Rim air traffic from other regional hubs.

More Efficient, Flexible Procedures Needed for Air Cargo Operations

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, seasons, 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.

i. Slots and Co-Terminalization

The international logistics industry, which depends on just-in-time air transportation, will play an increasingly important role as China moves up the value chain in exports. The policy against awarding any new day-time landing and take-off slots for all-cargo operators at the major hub airports of Beijing, Shanghai, and Guangzhou, due to restricted airspace and a lack of slots, impedes timely express deliveries. This has arbitrarily and adversely affected the growth of express services that are essential to China's export and import trade and is already affecting its competitiveness in global supply chains. However, it is understood that the CAAC may be considering a relaxation of the "freighter window," whereby slots for all-cargo operations are limited to night-time hours at principal Chinese airports. Progress on this issue would provide welcome relief to the market.

The policy of co-terminalization between these major hub airports further impedes timely express deliveries. Co-terminalization allows a carrier to serve two or more points in a foreign country with the same aircraft as part of a continuous journey. The airline is not allowed to carry domestic traffic between these two points (i.e., engage in cabotage), but is otherwise free to provide air service between each of the co-terminalized points and points outside the foreign country. Co-terminalization allows airlines—especially all-cargo carriers—to develop services to smaller, interior points by combining services with larger, more established points. Allowing co-terminalization between major hub airports in China would allow airlines to maximize the efficient use of aircraft and significantly reduce costs while mitigating market risks to the benefit of shippers and manufacturers.

及利用是实现国务院提出的经济增长和效率提升目标的必由之路。民航局和空管局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，引入航班时刻在线监控系统，周密监控航班时刻的使用及分配。美国的航空公司赞赏民航局为优化航班时刻分配流程以及收回没有使用或使用不足的航班时刻所做出的努力，同时建议采取以下补充措施，进一步改进空运服务：

- 根据国际航空运输协会（IATA）制定的《全球时刻指引》，继续改善和优化国内外航空公司的航班时刻分配程序及利用建立公平透明的程序，及时重新分配没有使用或使用不足的航班时刻。
- 建立公平透明的程序，及时重新分配没有使用或使用不足的航班时刻。
- 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。
- 放宽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。
- 放宽或取消对货运航班日间运营的时刻限制以及对国内机场串飞的限制。
- 进一步减少或消除各大机场的地面延误。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浦东中转的旅客进行行李转运，以提高枢纽机场运营效率。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。

改进门户市场的必要性

有必要持续改进中国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，这对于中美两国的航空运输企业而言，都具有重要意义。航空公司已经发现，第三国航空公司通过绕行中国门户机场运送中美两国乘客，从而逐渐瓜分中美航线市场。我们建议提升机场枢纽运营效率和加强代码共享，这会让中美两国的航空公司受益，还可以提升客户体验。政府应当制定政策，推动货物和乘客及时转运，简化行李托运行程序，这些将有助于中国从其他地区性枢纽机场手中争得更多太平洋沿岸地区的客货流。

航空货运运营需要更加高效、灵活的程序

鉴于市场对货运服务需求日益增长以及航线网络日趋复杂，使其对更加灵活的航班调度的要求也随之增加。货运服务的需求并非是静态的，而是会随着节假日的到来、季节变化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，以便货运航空公司根据需求来调配航班，并能及时应对航线网络中其它航班计划的调整。

1. 航班时刻和机场串飞

随着中国在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及时的空中运输。由于空域有限和航班时刻短缺，货运航班无法获得在北京、上海和广州等主要机场枢纽新的日间起降时刻，从而影响到快递货物的及时送达。快递行业对中国进出口贸易至关重要，而上述政策限制了快递货运航空公司的发展，从而削弱了中国在全球供应链上的竞争力。然而，民航局据信可能正在考虑放宽“货运窗口”，将中国主要机场的货运业务限制在夜间进行。如果真的能付诸实施，这一问题就有望得到缓解。

国内主要机场的串飞政策也进一步限制了快递货物的及时送达。串飞允许航空公司使用同一飞机在境外的两个或多个地点执行连续航程。航空公司开展国内运输业务时（即国内航空运输）不允许串飞，但是在境外机场串飞不受限制。航空公司，特别是货运航空公司，可以通过串飞将业务汇集到相对较大和固定的地点，继而延伸至内陆较小的地点。允许在中国主要机场之间串飞，将有助于航空公司最高效地利用飞机，大大降低成本，缓解市场风险，对承运商和制造商也是有利的。

2. 海关和税务

海关通关规章繁琐，影响了及时交货的效率，并继续阻碍中国现代物流业的发展。由于没有高效的海关程序，使保税货物难以在设计航空时间内通过中国的门户机场，使得中国中西部地区的国际航空货运业的发展受到阻碍。一些国际航空货运企业受此影响，正着手将航空枢纽运营功能转移出中国地区，或者不再向这些内陆地区提供服务；同时，中国的增值税制度也可能会促使货运航空公司和货运集成商将基本分拣与集中托运作业移至周边不设增值税国家的枢纽机场。

ii. Customs and Taxation

Cumbersome customs regulations that affect the efficiency of just-in-time operations continue to hamper the evolution and growth of the logistics industry in China. The lack of practical customs procedures to allow goods in-bond to flow through China’s gateway airports in a realistic aviation timeframe discourages the growth of international air cargo to China’s central and western regions. This is prompting affected carriers to move or limit hub operations to airports outside of China or not serve these internal regions at all. Additionally, the imposition of value-added tax (VAT) has the potential to prompt all-cargo carriers or integrators to move essential sorting and consolidation activities to hub airports in other nearby countries that do not have a VAT.

iii. Coordinating Efforts for Service Efficiency and Cost-Effectiveness

The already high costs at major Chinese airports continue to increase, further impeding cargo operations. 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 must work together to lower costs at China’s international airports.

Enforcement of Dangerous Goods Regulations

AmCham China recommends that the Chinese government impose stricter oversight on manufacturers and/or shippers of dangerous goods (e.g., lithium batteries). Airlines work hard to meet “China Civil Aviation Dangerous Goods Transportation Administration Regulations” (CCAR 276-R1) compliance requirements, but remain concerned that other parties may not be following the regulations. Greater enforcement of China’s dangerous goods regulations on other parties such as manufacturers or shippers would be helpful in ensuring passenger safety.

US-China Air Services Liberalization

AmCham China fully supports liberalization of passenger and cargo services pursuant to the US-China Air Transport Agreement. Further liberalization based on a premise of fair access to each country’s airports, including flight slots, will benefit airlines on both sides of the Pacific, giving passengers and shippers more choices and allowing the economies of both countries to benefit from strengthened ties.

Actions Needed to Strengthen Development of the General and Business Aviation Industry

General aviation (GA) includes all aviation except military and scheduled commercial carriers. It includes private and business 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.

We applaud China’s commitments to the continued development of general aviation through the CAAC’s and ACP’s commitment to stronger collaboration efforts in this field, including the recent elimination of a discriminatory tax that exempted certain aircraft produced in China—generally those under 25 metric tons by weight, including general aviation, business jets, and regional aircraft—from a 17 percent VAT.

Recent GA progress has been made, including loosening regulations on low-altitude airspace to enable safe and efficient operations of small aircraft and simplification of permitting procedures for general and business aviation operations. AmCham China applauds the recent policy guidance issued by the National Development and Reform Commission (NDRC) and State Council to further reform the aviation sector. We hope that the challenge of incorporating GA into China’s national airspace system will remain a priority. GA growth depends heavily on Chinese government actions to improve the physical and policy infrastructure.

Further efforts are needed to:

- Liberalize airspace at all altitudes to allow for more direct routings and enable GA aircraft to operate at optimum altitudes for greater fuel efficiency.
- Develop GA airports, improve and integrate GA access to commercial airports, and support competition among Fixed Base Operators with standards for fueling and maintenance facilities and all other functions.
- Differentiate safety regulations based on types of GA and air carriers to accurately match the mitigation of safety risk to the cost of regulation.
- Develop and train a suitable workforce to oversee GA activities and enforce GA regulations.
- Facilitate the use of foreign pilots and take steps to train more pilots and mechanics to support general and business aviation growth.
- Improve the Flight Service Station system to provide online weather and other flight planning information and filing services.
- Provide air carriers access to domestic aeronautical information such that it can be utilized to create the required charts and maps necessary to support safe flight throughout China. The Aeronautical Information Publications for Visual Flight Rules (VFR) must be more widely available even if everything must be done with an approved flight plan. The safety of VFR flights will rely on the availability of the navigational data and charts.
- Adhere to the tiered structure for medical certifications and requirements so that the opportunity to fly is open to a greater portion of the population.

3. 协调服务效率和成本效用

中国主要机场的费用一直很高并且还在继续攀升，进一步损害了航空货运经营。由于各地对诸如燃油、理货和政府报关等物料和服务供应实行垄断，中国的航空费用一直在本地区居高不下。这样的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。

《危险品规则》执行情况

商会建议中国对危险品（比如：锂电池）制造商或者承运商施行更为严格的监管。虽然航空公司本身很努力地遵守《中国民用航空危险品运输管理规定》（CCAR-276R1）的合规要求，但仍对其他各方有不遵守规定的行为表示担忧。对制造商或承运商在内的其他各方加强危险品条例的合规执法将有助于确保旅客安全。

美中航空服务自由化

商会全力支持美中双方按照中美航空运输协定推进两国航空客运和货运市场自由化。两国应当公平地相互开放机场，包括航班时刻，让中美两国的航空公司都从中受益，为旅客和承运商提供更多选择，使两国关系更加密切，从而提振两国经济。

采取积极措施促进通用和商用航空业发展

通用航空（GA）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商用飞机、包机/空中计程商用航空业务、空中游览、民用直升机空中作业、救灾飞机和航空医疗运输机。

中国政府承诺继续大力发展通用航空事业；中国民航局（CAAC）和中美航空合作项目（ACP）进一步承诺加强该项领域的合作，对此我们深表赞赏。中国之前对某些国产飞机免征 17% 的增值税——通常包括重量在 25 吨以下的通用、商用和支线飞机，这一歧视性的税收最近已经被取消。

最近通用航空业取得了诸如放宽低空空域使用规定的多项进展。此举有助于保障小型飞机安全、高效运营，简化通用及商用航空经营许可程序。根据国家发展和改革委员会（国家发改委）和国务院最近发布的指导文件，中国将继续推进航空业的改革，商会对此表示赞赏。我们希望中国优先考虑将通用航空引入国家空域系统，因为通用航

空业的发展在很大程度上取决于中国政府在改善基础设施以及优化政策方面的努力。

除此之外还需要：

- 开放所有高度的空域、允许开设更多直航线路、允许通用航空的飞机在最优高度飞行以提升燃油效率。
- 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设施维修标准及其他功能标准，支持固定基地运营商（FBO）竞争。
- 基于通用航空的种类以及航空承运人区分安全法规，以更准确地减少对管制成本的安全风险。
- 发掘培养合格的监管队伍、监管通用航空活动并执行通用航空法规。
- 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，以支持通用航空和公务航空增长。
- 改进飞行服务站（FSS）系统，以提供在线气象和其他飞行计划信息并实现网上提交服务申请。
- 应向航空公司提供国内航空信息，来创建航图以保证在中国安全飞行。广泛推广目视进近（VFR）。即使仅在拥有获得批准的飞行计划时，才可以获取国内航空信息，但是因为目视进近（VFR）飞行的安全性有赖于导航数据和航图，所以 VFR 需要获取更加广泛的国内航空信息。
- 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。

使航空器审定符合国际标准

商会很高兴民航局为加强协调和效率而大力调整审定程序。重要的是，在此进行的航空器审定及验证工作应符合国际惯例，以保证产品审定流程的一致性及可预测性。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。为了进一步使航空器审定符合国际标准，商会建议民航局考虑采取以下措施：

- 采用标准流程时间，此举有利于公司进行规划，避免不能及时完成流程；
- 与美国联邦航空局、欧洲航空安全局、加拿大运输部、巴西民航局及其他民航当局紧密合作；

Aligning Certification Processes with International Standards

AmCham China is pleased with CAAC's efforts to reorganize its certification operations to help improve coordination and efficiency. It is important that China's certification and validation activities align with international practices to ensure a consistent and predictable process for obtaining product approvals. However, companies report that certification and validation activities in China are often handled differently from those in other nations. To further improve alignment of China's certification processes with international standards, AmCham China recommends that the CAAC consider the following:

- Adopt standard flow times to help with planning, recognizing that sometimes these flows will not be met;
- Work closely with the FAA, European Aviation Safety Agency (EASA), Transport Canada, National Civil Aviation Agency of Brazil (ANAC), and other aviation authorities to:
 - ◆ Ensure that the CAAC certification center consistently aligns its practices with other regulatory bodies around the world and increases its resources and/or delegates responsibilities to help manage the workload and expedite certification efforts;
 - ◆ Learn about conformity inspection and manufacture approval of US products and management of aerospace JVs;
 - ◆ Help inspectors to gain experience in aircraft delivery and align their practices with other regulatory bodies around the world;
- Increase collaboration between with the FAA to build mutual trust, in order to allow for a predictable certification process.

CAAC Parts Manufacturing Authorization Process Needed

We encourage the CAAC to establish a parts manufacturing authorization (PMA) process to permit foreign suppliers of parts and components for the COMAC ARJ-21 and C919 aircraft to sell replacement parts directly to COMAC's airline customers. Without 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, and before releasing PMA rules, we recommend that the CAAC ensure that sufficient rules and guidance materials are in place to address corollary processes. For further detail on PMA rules, please see the 2016 *White Paper*.

Foreign-Based Global Distribution Systems

Global Distribution Systems (GDSs) based outside of China still do not have unrestricted access to participate in the Chinese travel market—either for booking intra-China travel, or for booking travel by Chinese nationals to foreign destinations. This results in part from the cumbersome nature of the existing foreign GDS regulations, which require a foreign airline to apply to the CAAC on behalf of each agent to which the GDS seeks to provide services.

A competitive marketplace for GDSs in China would provide airlines and travel agents the opportunity to sell additional services, more accurately control inventory, and better serve their customers, while providing consumers with better tools to search for low fares and identify a greater range of travel options.

AmCham China urges the Ministry of Transport to repeal the existing regulations on foreign-based GDSs and replace them with a policy that will place foreign GDSs on a fair, competitive playing field with state-owned competitors in terms of market access.

Recommendations

For the Chinese Government:

- **Adopt an ATFM framework that incorporates a SWIM system and CDM among air traffic control, airlines, and airport authorities to enable growth and efficiency and manage and alleviate delays.**
- Develop a state-of-the-art aviation weather forecasting system customized to CAAC operations.
- Align certification processes with international standards.
- Develop a parts manufacturing authorization 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 by introducing more favorable tax policies for the importation of GA aircraft.
- Continue the effective utilization of efficiency-boosting NextGen and SESAR procedures and technologies and develop plans to encourage their system-wide use.
- Regulate foreign-based GDSs, state-owned competitors, and domestic privately-owned competitors alike.

- ◆ 确保新的审定中心与全球其他监管机构的审定程序接轨，够扩充资源，下放相关职能，以此合理减少工作量，加快审定完成速度；
- ◆ 学习美国产品合格检验和制造许可以及管理合资航空公司方面的作法；
- ◆ 帮助监察人员熟悉飞行器交付流程，将民航局自身规章制度同国际接轨；
- 加强与美国联邦航空局的合作，建立互信，确保审定程序的可预测性。

中国民用航空局零部件制造人批准书程序的制定

商会促请民航局制定零部件制造人批准书（PMA）程序，允许中国商飞公司（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。发布 PMA 规则前，商会建议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。有关 PMA 规则的更多详情，请见 2016 年的《白皮书》。

境外全球分销系统

位于中国境外的全球分销系统（GDS）仍然不能自由地参与中国旅行市场，在国内旅行订票以及中国公民的境外旅行订票方面都受到限制。这部分是因为关于境外全球分销系统的现有规章很繁琐，要求外国航空公司代表全球分销系统所服务的各家代理人向民航局提出申请。

允许全球分销系统在华开展竞争，不仅有助于航空公司和旅行社销售更多的服务，实施更准确的库存控制，而且能够为消费者提供更好的工具用以寻找低价机票和更多的旅行选择。

商会敦促交通部取消对境外全球分销系统的限制，制定政策，使得境外全球分销系统在市场准入方面能够与国有竞争对手公平竞争。

建议

对中国政府：

- 利用空中交通流量管理（ATFM）框架，使广域信息管理系统（SWIM）和空管部门、航空公司、机场当局间的协同决策机制（CDM）相结合，以提高容效，减少航班延误。
- 根据民航局的运行需要定制研发天气预报系统。
- 使航空器审定程序符合国际标准。
- 进一步完善零部件制造人授权程序。
- 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的灵活性。
- 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。
- 继续高效利用下一代航空运输系统技术（NextGen）以及单一欧洲天空空中交通管理研究（SESAR）技术并创立计划将其推广到整个系统。
- 规范境外全球分销系统以及国有和国内私营竞争者。

Clean Technology

Introduction

China continues to lead the world in the installation of renewable energy capacity and has the potential to dramatically improve the competitiveness of its commercial and industrial economy through power sector and green building reforms. This could lead to enormous gains in public health and economic welfare, as well as confirm China's global leadership in combating climate change by following through on its commitment to the Paris Agreement. Under this agreement, China is committed to reducing carbon dioxide emissions per GDP by 60 to 65 percent by 2030 compared with the level in 2005. In order to achieve these goals, China will have to add new installed capacity of 100 million kW of nuclear power, 150 million kW of hydroelectric power, 300 million kW of photovoltaic power, and 400 million kW of wind power between 2016 and 2030.

AmCham China strongly supports the Chinese government's pursuit of these goals and policies. Member companies stand ready to bring new business models, experience, and technology to help China capture this opportunity for sustainable economic growth. The US-China Energy Cooperation Program (ECP) and the US-China Clean Energy Research Center (CERC) are examples of US public and private sector commitments to clean technology investment and innovation in China.

Open competition and fair treatment of both private domestic and foreign companies will be vital to achieving China's overall objectives. Foreign participation in these new clean technology programs and markets will help spur China's economic growth. In this regard, AmCham China further emphasizes the importance of:

- Market mechanisms (to eliminate inefficiency/waste);
- Transparency (to encourage compliance and greater competition);
- Participation by foreign technology companies (as a catalyst for higher quality domestic equipment and projects); and
- Protection of intellectual property (IP) rights (to spur technology transfer into China and domestic innovation).

Recent Developments and Ongoing Regulatory Challenges

13th Five-Year Plan

China's "13th Five-Year Plan for Power Sector Development" (13th FYP), released in November 2016 by the National Energy Administration (NEA), unfortunately does not go far enough to tackle China's coal power overcapacity problem. The plan limits coal-fired power to 1,100 GW in 2020, an increase of 180 GW from current capacity in 2016, but there is approximately 200 GW already under construction, and existing plants on average operate at only 50 percent capacity. Unless coal power construction is dramatically curtailed, and/or retirement of existing plants is accelerated, the coal power industry will become a major waste of capital and suffer from inefficient operation for years to come.

We are encouraged by the 13th FYP's emphasis on improving output for solar and wind farms. For example, as of 2015, China had 129 GW of grid-connected wind, while the US had only 75 GW, but US wind farms produced 190 TWh compared to only 185 TWh for China. However, the targets for wind and solar in the 13th FYP are disappointing. China had a total of more than 150 GW of wind power in operation at the end of 2016, so the target of 210 GW is not a signal to significantly increase wind power capacity, and solar photovoltaic (PV) targets appear set to maintain but not increase the current pace of growth. While we recognize that challenges in grid connectivity make it difficult at present to utilize all of the power produced from solar and wind farms, we encourage China to continue expanding solar and wind capacity at the same time as it develops connectivity. We also support the emphasis on expanding wind and solar capacity in southern and eastern provinces, and in distributed applications on the grid.

Air Pollution

PM 2.5 concentrations have decreased since 2013. The Environmental Protection Law and the Law on the Prevention and Control of Air Pollution were revised and strengthened in 2015 and 2016, respectively. These laws provide the Ministry of Environmental Protection (MEP) with additional authority to issue penalties, determine which pollutants to regulate, and establish a pollutant

清洁技术

引言

中国可再生能源装机容量继续领先世界。通过电力行业和绿色建筑领域的改革，中国有可能大大提升其商业和产业经济的竞争力，为公众健康和福利带来巨大的收益。通过遵守《巴黎气候变化协定》的承诺，中国可以确认其在应对全球气候变化中的领导地位。根据《巴黎气候变化协定》，中国承诺到2030年将单位国内生产总值二氧化碳排放量从2005年的65%降至60%。为了实现上述目标，2016年至2030年期间，中国需要新增的装机容量分别为：核电1亿千瓦，水电1.5亿千瓦，光伏发电3亿千瓦，风力发电4亿千瓦。

中国美国商会（商会）大力支持中国政府制定的这些目标和政策。我们的会员企业愿意与中国分享新的业务模式、经验和技能，帮助中国抓住这一实现经济可持续发展的机遇。美中能源合作项目（ECP）和中美清洁能源联合研究中心（CERC）就是美国公共和私营部门承诺在华开展清洁能源投资和创新的例证。

要想实现总体目标，中国需要公平对待境内私营企业和境外企业，允许它们公开竞争。允许外资参与新的清洁能源项目和市场将有助于推动中国实现经济增长。在这一方面，商会进一步强调下列因素的重要性：

- 市场机制（消除低效 / 浪费）；
- 透明度（鼓励合规，促进竞争）；
- 允许境外技术公司参与（作为境内更优质设备和项目的催化剂）；
- 知识产权保护（促进对中国的技术转让和国内创新）。

最新进展和现存监管挑战

“十三五”规划

2016年11月，国家能源局发布了《电力发展“十三五”规划》（“规划”），遗憾的是，该文很大程度上仍局限于解决煤电产能过剩问题。规划要求到2020年煤电装机容量控制在11亿千瓦以内，与2016年相比增加了1.8亿千瓦，但是目前在建项目大约已经有2亿千瓦，现有电厂平均发电量只有产能的50%。除非大幅减少煤电建设以及 / 或者加速关停现有电厂，否则煤电行业在接下来几年仍将继续浪费大量资金，并饱受低效运营的困扰。

令人鼓舞的是，规划强调了提高太阳能和风电场的产出。例如，截止2015年，中国并网风电达到1.29亿千瓦，美国只有7500万千瓦，但是美国风电场发电量达到190太瓦时，中国只有185太瓦时。“十三五”规划制定的风力和太阳能发电目标令人失望。鉴于中国在2016年底投入运营的风力发电已经超过1.5亿千瓦，所以2.1亿千瓦风电装机量的目标算不上很多的增长。太阳能光伏发电目标似乎意在保持而非加快现有的增长步伐。我们承认，由于并网面临的挑战，目前太阳能和风力发电还不能完全得到利用。我们鼓励中国在继续扩大太阳能和风力发电的同时推动并网进程。我们也支持重点扩大南部和东部省份的风力和太阳能发电以及分布式电网的应用。

空气污染

2013年以来PM 2.5浓度已经下降。中国分别于2015年和2016年修订和加强了《环境保护法》和《大气污染防治法》。上述法规进一步授权环境保护部（环保部）发布处罚，决定需要监管的污染物以及建立污染排放许可制度。至于未来法规实施和监管整合可能面临的挑战，可以通过以下方式解决：① 支持研究能效增加、可再生能源以及需求响应对空气质量的影响；② 确保环保部的许可制度包含

discharge permit system. The challenge ahead in terms of implementation and regulatory integration can be addressed by: ❶ underwriting research to model the air quality benefits of increased energy efficiency, renewable energy, and demand response; and ❷ ensuring that the MEP permitting system includes both the principles of best available control technologies (BACTs) and best available techniques (BATs). BATs are particularly important as they include the evaluation of process changes and energy audits.

Electricity Sector Reforms

As recent National Development and Reform Commission (NDRC) and NEA documents suggest, provinces and regions may establish spot markets for power production based on competitive bidding among generators. These markets would produce wholesale prices that fluctuate on day-ahead and intraday timescales. If implemented well, competitive bids in these markets should reflect the short-term costs of various generators, and power plants can be committed and dispatched according to these bids. If it is too difficult to implement spot markets in 2017/2018, implementation of a system based on an energy price (per kWh, based on estimated variable operating cost) plus a capacity price (per kW) for each generator could deliver significant benefits in terms of lower total costs, more efficient operation of the grid, and lower environmental pollution. In this scheme, the capacity price could be determined by competitive auction with relatively little difficulty, and would ideally be based not just on kW of capacity, but also on the flexibility of that capacity, for example, demand response or energy storage that can offer more than just energy supply.

Nearly twenty provinces have launched “market pilots,” including several approved in August and September of 2016. There is some precedent for this in China: in the early part of the last decade, several provinces made short-lived attempts to implement competitive wholesale markets. The NDRC’s November 2015 “Notice on Supporting Electricity Reform Documents” (Document No. 2752) provides guidance on provincial pilots for wholesale generation markets and provides instructions for how non-pilot provinces should gradually make the transition from planned operating hours to a more market-based approach. AmCham China strongly encourages these market-based reforms and transparency, which will help improve the overall efficiency of the sector and thus deliver cost and environmental savings.

Green Energy Demand

Many international and Chinese companies are adopting requirements for obtaining a portion of or all of their electricity from renewable energy. In the US and other countries, companies have started to contract renewable energy supplies from utility-scale wind and solar facilities, typically at prices competitive with grid tariffs, via power purchase agreements (PPAs). Several major US companies are seeking to sign such agreements in China as well. However, there remain multiple

systematic barriers to renewable energy PPAs, including the current structure of electricity tariffs, dispatch practices that favor conventional coal plants over renewable energy, political barriers to trading power between provinces, and lack of transparency concerning grid access.

Multiple US companies are encouraging an authentication system for renewable energy consumption and support local government measures to launch new energy savings and emissions reduction equipment and/or techniques. This should include ❶ a clearer and more stable execution plan for wind and solar subsidies and tariffs over the next five years, ❷ a more comprehensive index to evaluate PV modules’ performance, and ❸ payment of the relevant subsidies on time.

Solar Thermal

Solar thermal is a highly efficient means of producing steam for industrial and power generation applications and can be integrated with natural gas or coal plants to reduce carbon intensity. When thermal energy storage is included, it becomes a valuable resource to help maintain grid reliability and reduce system costs while enabling greater penetration of wind and PV-generated energy.

China is forecast to be the largest concentrating solar power (CSP) market in the world, with potential capacity of over 16,000 GW. In December 2014, China’s “Renewable Energy Development Roadmap 2050” targeted five GW of CSP installed by 2020, which was officially confirmed in the 13th FYP. On September 30, 2015, the NEA issued a notice to select 1 GW of CSP commercial pilot projects by the end of 2015. On November 10, 2015, the NEA announced it had received 109 applications for CSP demonstration projects in the country. The selection process was completed later that month. The NDRC published a 20-year feed-in-tariff (FIT) of RMB 1.15 / kWh (US \$0.17 / kWh) for the CSP pilot program on September 1, 2016. On September 14, the NEA officially released the “Chinese 1 GW Demonstration Project Short List,” with total installed capacity of 1 GW, including nine tower plants, seven parabolic trough plants, and four Fresnel plants for a total of 20 projects on the short list of the first batch of China CSP demonstration projects. According to the FIT policy released by the NDRC, only those completed before December 31, 2018 can enjoy this benchmark price. Because of China’s geography, among other conditions, actual plant construction time can be very limited, meaning that all projects must accelerate the development and construction process.

Distributed Energy

Distributed energy is the most effective solution to increasing energy efficiency and minimizing environmental impact as China’s energy transition continues during the 13th FYP period. The portfolio of distributed power technologies includes diesel and gas reciprocating engines, gas turbines, fuel cells, solar panels, and small wind turbines. They are

最佳可得控制技术 (BACT) 和最佳可行技术 (BAT) 原则。最佳可行技术尤为重要，因为其包括对过程变动和能源审计的评估。

电力行业改革

国家发展和改革委员会 (国家发改委) 以及国家能源局的最新文件表明，各个省和地区可以建立基于发电企业竞价的电力现货市场。这些市场的批发报价每天或者每天之内都有波动。如果实施得当，市场竞价应当能够反映各个发电企业的短期成本，电厂可以根据报价安排电力生产和调度。如果 2017/2018 年度实施现货市场还存在难度，则可以先实施一个基于各个发电企业电量电价 (每千瓦，根据可变经营成本估算值计算得出) 和容量电价 (每千瓦) 的制度，这样也能在降低成本总额、提高电网运营效率以及减少环境污染等方面带来显著的效益。就这一制度来说，容量电价可以通过竞拍的方式决定，难度不大，理想的情况是不仅要考虑 (每千瓦) 容量，还要考虑这一容量的弹性，例如，不再局限于能量供应的需求响应或能量储存。

目前已经有将近二十个省开始试点现货市场，其中包括 2016 年 8 月和 9 月批准的几个省。中国在这方面有先例可循：本世纪初，几个省份曾经试图建立竞价批发市场，不过没有持续多长时间。2015 年 11 月，发改委发布《关于印发电力体制改革配套文件的通知》(2752 号)，指导试点省份建立电力批发市场，同时说明非试点省份如何逐渐将计划运行时间向市场化方式转变。商会大力支持这些市场化改革，增加透明度，这有助于改进电力行业的总体效率，节约成本和保护环境。

绿色能源需求

许多国际企业和中国企业正在实施关于全部或部分采用再生能源电力的要求。在美国和其他国家，企业已经开始通过购电协议 (PPA) 从应用级风电场和太阳能发电厂获得可再生能源供应，而购电价格与电网电价相比很有竞争力。有几家美国大企业正在争取在中国也签订这类协议。但是，可再生能源购电协议尚存在一些制度性障碍，其中包括目前的电价结构，与再生能源相比更偏爱传统煤电厂的电力调度制度，省际电力交易面临的政治障碍以及电网接入缺乏透明度。

一些美国企业正鼓励推行再生能耗认证，支持地方政府启用新的节能减排设备和 / 或技术，这就要求：❶ 对未来 5 年的风力和太阳能发电补贴和电价有一个更加明确和

稳定的执行计划；❷ 有一个更全面的光伏模块性能评估指数；并且 ❸ 按时支付相关补贴。

太阳能热发电

太阳能热发电是一种能够高效地生产出工业和发电所用的蒸汽的方式，可以与天然气或煤电厂整合，实现降低碳排放强度的目的。再加上光热能量储存，太阳能热发电可谓是一种很有价值的资源，不仅能够加大风力发电和光伏发电的市场渗透程度，还有助于维护电网的稳定和降低系统成本。

中国预计将成为全球最大的聚光太阳能发电 (CSP) 市场，潜在容量超过 160 亿千瓦。根据 2014 年 12 月发布的《2050 年中国可再生能源发展路线图》报告，到 2020 年，聚光太阳能发电计划装机容量为 500 万千瓦，这一目标在“十三五”规划中得到正式确认。2015 年 9 月 30 日，国家能源局印发通知，要求各地在 2015 年底申报一个百万千瓦聚光太阳能发电商业示范项目。2015 年 11 月 10 日，国家能源局宣布一共收到 109 份聚光太阳能发电商业示范项目申请。在当月下旬，甄选过程结束。2016 年 9 月 1 日，国家发改委核定聚光太阳能发电试点项目的 20 年上网电价为每千瓦时 1.15 元 (0.17 美元)。9 月 14 日，国家能源局正式公布百万千瓦光热发电示范项目名单，总装机容量 134.9 万千瓦，第一批名单包含 20 个项目，其中 9 个塔式电站，7 个槽式电站和 4 个菲涅尔电站。按照发改委发布的上网电价政策，只有 2018 年 12 月 31 日之前建成完工的项目能够享受这一标杆电价。考虑到中国的地理以及其他条件，项目实际建造时间非常有限，意味着所有示范项目必须加快开发和建设过程。

分布式能源

中国在“十三五”期间将继续推进能源转型，而分布式能源是提高能效以及降低环境影响的最有效的解决办法。分布式电力技术包括柴油和燃气往复式发动机、燃气轮机、燃料电池、太阳能板和小型风力轮机，它们非常灵活，可以应用于电力、机械动力和推进系统等诸多领域。分布式电力技术可以单独运行，也可以与集成技术网络一起运行，以满足大型和小型能源用户的需求。

随着燃气供给的增加，微型电网的进一步发展以及专业能源服务企业的兴起，加速发展天然气分布式能源的条件已经成熟。按照国家发改委确定的目标，到 2020 年，分布式天然气发电容量将从 2015 年的 1100 万千瓦增加到

highly flexible across a range of applications including electric power, mechanical power, and propulsion. Distributed power technologies can stand alone, or they can work together within a network of integrated technologies to meet the needs of both large and small energy users.

With increased gas supply, enhancement of microgrid development, and burgeoning of professional energy service companies, the development of natural gas distributed energy is ready to be accelerated. According to the goal set by the NDRC, natural gas distributed power capacity will grow from 11 GW in 2015 to 50 GW in 2020. Natural gas-fueled combined heat and power (CHP), also known as cogeneration, is a major solution adapted by distributed power projects in commercial, industrial, and public facilities. It can also replace existing coal CHP systems that rely on inefficient coal boilers with new gas turbine combined-cycle technologies, which addresses the urgent need to manage increasingly severe air quality challenges.

To enhance the continued development of natural gas distributed power in China, the market calls for deepened energy reform and affordable world-class technologies with localized services. It is essential to build up the integrated clean energy system by leveraging Internet technologies and microgrid development, in addition to making distributed power transferable and convertible with traditional power distribution and renewables.

Energy Storage

Energy storage is a key enabling technology for renewable energy grid integration, distributed energy, smart grids, green transportation, and development of the “Energy Internet.” As of December 2015, China’s energy storage market had accumulated over 100 MW of storage capacity. As the renewable energy sector continues to grow, power systems will increasingly demand the support of energy storage technology. According to forecasts by the China Energy Storage Alliance (CNESA), under a growth-as-normal scenario, China’s energy storage capacity may reach 14.5 GW by 2020, and under an ideal growth scenario, energy storage capacity can reach 24.2 GW. At present, however, China does not provide adequate support for energy storage, lacking market mechanisms that reflect the technology’s value, as well as basic policy support. The experts at CNESA recommend establishment of a legal framework for storage access to the grid, establishment of a reserve capacity market and ancillary services markets (expanding the “Three Norths” pilot started in 2016), as well as a near-term subsidy covering up to 30 percent of storage system installation costs, with individual subsidies capped at RMB 20 million (US \$3 million).

Demand Response

The NDRC has supported pilot programs for demand response (DR) in four pilot cities (Beijing, Tangshan, Foshan, and Suzhou), as well as Shanghai, which began a

pilot program in 2015. While there is broad recognition that DR can play a significant role in reducing the need to build and operate expensive power plants to serve peak power needs (approximately 20 percent of peak power demand occurs only 50 hours per year), the current pilot projects do not value DR appropriately because power plants have traditionally been allocated by hours instead of efficiency, cost, or environmental benefit. In addition, the role of aggregators, which bundle end-users and bear risk when offering DR to the power grid, is not fully recognized, and the programs do not offer a stable fee for participation (i.e., a fixed capacity payment regardless of the number of times the DR may be used). Unless this is reformed, DR programs in China will not be as successful as those in Korea, the US, Taiwan, or Australia.

Electric Vehicles and Charging

The number of electric vehicles (EVs) sold globally reached 664,000 in 2016, up 37 percent compared to the previous year. According to the China Association of Automobile Manufacturers, the number of new energy vehicles sold in China is forecast to reach 800,000 in 2017. While many manufacturers have significant plans for growth, the rapid anticipatory growth in the EV charging station industry in China has already created problems:

- “Zombie” charging stations and the lack of coordinated plans for charging stations inhibits adoption, and regional protectionism prevents rational expansion of charging station networks.
- Lack of uniform standards on EV charging connectors and payment channels is also inhibiting growth.

Suggestions for reform include unifying EV charging and charging network standards between the US and China and promoting EV car sharing businesses and the leasing of private charging stations.

Wastewater Treatment

Wastewater treatment is a high-energy consumption industry, which leads to a large amount of indirect carbon emissions. In addition, significant amounts of the greenhouse gasses methane and nitrous oxide are produced and escape from the wastewater treatment process, which further increase carbon emissions. Therefore, evaluation of lifecycle cost should govern approval procedures, and emphasis should be placed on low energy consumption during operations to reduce carbon emissions.

Energy consumption per ton should be included in the operational index for performance evaluation to encourage the use of energy efficiency equipment, operational standards, and energy reclamation. Emission reduction targets should also be set for the wastewater treatment sector, and carbon audits should be a core regulatory compliance tool.

5000 万千瓦。天然气热电联产 (CHP) 是商业、工业和公共设施分布式发电项目的主要解决方案。可以改用新型燃气轮机联合循环技术, 以取代现有的依赖低效燃煤锅炉的燃煤热电联产系统, 管理和解决日益严峻的空气质量挑战。

为了进一步发展天然气分布式电力, 市场呼吁中国深化能源改革, 引进价格合理并提供本地化服务的世界一流技术。除了允许分布式电力和传统电力配送及可再生能源之间转让和转换, 中国还需要利用互联网技术和微型电网的发展建立统一的清洁能源体制。

能量储存

能量储存技术关系到可再生能源并网、分布式能源、智能电网、绿色交通以及能源互联网的发展。截止 2015 年 12 月, 中国的能量储存市场已经累积超过 100 兆瓦的储存能力。随着可再生能源行业的继续发展, 电力系统将日益需要能量储存技术的支持。根据中关村储能产业技术联盟 (CNESA) 预测, 到 2020 年, 按照正常的增长模式, 中国的能量储存能力将达到 1450 万千瓦, 按照理想的增长模式, 能量储存能力将达到 2420 万千瓦。但是, 目前中国没有为能量储存提供足够的支持, 缺少能够反映技术价值的市场机制以及基本的政策支持。中关村储能产业技术联盟的专家建议, 中国应当为储能人网建立一个法律框架, 建立储备容量市场和辅助服务市场 (扩大 2016 年启动的“三北”储能试点), 短期之内按照储能系统装机成本的 30% 提供补贴, 每个项目补贴不超过 2000 万元 (300 万美元)。

需求响应

发改委已经在四个城市 (北京、唐山、佛山和苏州) 开展需求响应试点项目, 上海于 2015 年也启动试点。虽然普遍认为需求响应能够发挥重要作用, 不再需要为了满足电力需求峰值而投入巨资建造和运营很多发电厂 (每年约有 20% 的电力需求峰值只发生在 50 小时的时间), 但是目前的试点项目没有恰当地估算需求响应, 因为发电厂传统上是按照小时而非效率、成本或环境收益来分配电力。另外, 虽然综合负荷代理连接最终用户并且承担向电网提供需求响应的风险, 其作用却没有得到充分认可。试点项目没有提供稳定的参与费 (即固定的容量付费, 不考虑需求响应使用的次数)。除非上述问题得到纠正, 否则中国的需求响应项目可能不会像韩国、美国、台湾或澳大利亚那样成功。

电动汽车和充电

2016 年, 全球电动汽车销售量达到 66.4 万辆, 与上一年度相比增长了 37%。根据中国汽车工业协会统计, 中国 2017 年预计销售 80 万辆新能源汽车。很多汽车制造商都加快发展的计划, 然而, 电动汽车充电桩行业的快速预期增长已经引发一些问题:

- “僵尸”充电桩以及充电桩缺少协调规划抑制了充电桩的使用, 地方保护主义阻碍了充电桩网络的合理扩张。
- 电动汽车充电连接器缺少统一的标准和支付渠道, 也抑制了充电桩行业的增长。

我们建议统一中美电动汽车充电和充电网络标准, 促进电动汽车共享业务以及私营充电桩的出租业务。

废水处理

废水处理属于高能耗行业, 间接产生大量的二氧化碳排放。另外, 废水处理过程产生和溢出大量甲烷和一氧化二氮等温室气体, 进一步加重了碳排放。因此, 为了降低碳排放, 审批程序应当评估生命周期成本, 重点关注运行期间的低能耗。

每吨单位能耗应当纳入性能评估使用的运行指标, 以鼓励使用能效高的设备、运行标准和能量回收。还应当为废水处理行业设定减排目标, 应当将碳审计作为一项核心的监管合规工具。

中国政府正在改进相关设备的工业标准。但是, 外资企业仍然不能以正式会员的身份加入标准制定组织。另外, 一些国际标准在中国没有得到应有的认可, 使得外资企业在市场竞争中处于不利地位。例如, 2017 年 3 月, 中国发布废水处理用潜水搅拌机标准, 向社会公开征求意见, 该标准并不符合 ISO21630 等成熟的国际标准。若采用这一标准, 遵循国际标准的外资企业将难以在中国出售自己的产品, 而中国产品在国际市场上的竞争力也会下降。

空气治理

中国政府近年来一直在大力治理空气污染, 着力改进与空气质量有关的法律法规和标准。这些努力已经取得积极的效果, 但是标准制定和执行仍然存在一些问题。例如, 关于室内空气净化, 标准制定和执行的几个问题就增加了企业合规的难度, 其中包括: ① 有多个监管机构; ② 监管

The Chinese government is improving industrial standards for relevant equipment. However, foreign companies are still barred from joining standards setting organizations as official members. In addition, some international standards are not properly recognized in China, thus putting foreign companies at a disadvantage in market competition. For example, new proposed Chinese standards for submersible wastewater mixers released for public comment in March 2017 are not aligned with mature international standards such as ISO 21630. Adoption of the proposed standards would make it difficult for foreign companies that follow international standards to sell their products in China, and make Chinese products less competitive in the international market.

Air Treatment

In recent years, the government has significantly increased efforts to combat air pollution, with a strong focus on improving laws, regulations, and standards related to air quality. These efforts have yielded positive results, although some issues remain in setting and executing standards. For example, regarding indoor air purification, several issues in the setting and implementation of standards make it difficult for companies to comply. These issues include: ❶ multiple regulators; ❷ lack of coordination between regulators; ❸ multiple standards for the same product or technology; ❹ overlapping standards; ❺ lack of consistency in the setting and implementation of standards; and ❻ haste in setting standards and formulating implementation rules. We urge the Chinese government to improve the regulatory oversight and standardization of indoor air purification technology.

Green Buildings and Urbanization

Given the ongoing rapid urbanization and expansion of China's developed areas, it is critical that efforts to improve building energy efficiency incorporate multiple components, including improved building code compliance, incentives for better post-construction building energy performance, and expanded deployment of advanced building energy technology across multiple climate zones. For years, the US and China have worked on multiple advanced building technologies, including new types of cooling that make less noise and use far less energy than conventional air conditioners, as well as advanced building materials. Requiring standardized building energy disclosure for public buildings would act as a powerful market-based incentive for developers to ensure that their green buildings perform as advertised. Several US cities, including New York and San Francisco, have taken the lead on establishing such mechanisms.

While buildings account for about one-third of final energy consumption in China, as of July 2015, green buildings accounted for only one percent of existing buildings, and only six percent of those buildings had received green

operation certification. AmCham China supports Chinese government efforts to increase the number of urban green buildings in new construction to 50 percent. We recommend that all green buildings be required to meet green operation certificate requirements, and that new incentives be offered for the retrofit of existing buildings. We also encourage the development of energy reporting and disclosure for buildings connected to energy market and CO₂ market reforms, thus encouraging transparency and increased market participation in meeting China's overall environmental goals. An excellent example of US support for the green building sector in China is the establishment of a Building Energy Efficiency Fund by the Paulson Institute and the State Council's Leading Group for Economics and Finance. This will shift investment away from a "low-first-cost" approach.

Intellectual Property

The CERC IP Experts Group released a "Researchers' Guide to Intellectual Property and Technology Transfer." This guide highlights ways for protecting and sharing intellectual property that provides a strong foundation for US-China clean energy cooperation. The framework enables research partners to share information with confidence and to retain appropriate rights for new technologies which they create.

Bilateral Cooperation Programs

US-China Energy Cooperation Program

The ECP is a public-private partnership program founded in 2009 with the support of the US and Chinese governments. The mission of the program is to facilitate business cooperation in the energy and environment sector to promote sustainable development and combat climate change. The ECP has two main functions as a private sector alliance: to support both governments to make the business environmentally sound, and to serve as a unique market place to generate business opportunities in the energy and environment sector for member companies through close interaction with governments. The ECP has helped over 80 leading US technology developers and solution providers to obtain access to the Chinese market over the past seven years. It covers the full spectrum of energy and environmental industries, including oil and gas, coal, nuclear, renewable, grid and storage, energy efficiency in buildings and industry, urban infrastructure, resource utilization, and transportation.

Achievements in 2016 include:

- Helped member companies secure deals in a solar project in Shanxi, a micro-grid project in Qinghai, and CHP projects in Nantong and Liaoning.
- Signed two Memorandums of Understanding (MOUs) with Ministry of Commerce (MOFCOM) associations to build an alliance with Chinese stakeholders to promote sustainable infrastructure projects in China and overseas.

机构之间缺少协调；③同一产品或技术有多个标准；④标准存在重叠；⑤标准制定和执行不一致；⑥标准及实施细则的制定过于仓促。我们建议中国政府改善监管，并制定室内空气净化技术的标准。

绿色建筑和城镇化

鉴于城镇化的持续快速推进以及发达地区的扩张，中国需要多管齐下提高建筑能效，包括改进建筑规范合规，鼓励提高施工完成之后的建筑能效，在多个气候带扩大部署先进的建筑节能技术。中美多年来一直在推进几项先进的建筑技术，包括比传统空调噪音更小能耗更低新型冷却设备以及先进的建筑材料。作为一项强有力的市场化激励手段，可以要求公共建筑实施统一的建筑能效披露，从而鼓励开发商确保绿色建筑的实际能效和宣传的效果一致。美国有几个城市，包括纽约和旧金山，已经率先建立了这一机制。

截止到2015年7月，虽然建筑约占中国最终能耗的三分之一，但在现有建筑中，绿色建筑仅占百分之一，其中只有百分之六拥有绿色施工认证。商会支持中国政府推行绿色建筑，将城市新建绿色建筑的比例提高到50%。我们建议要求所有绿色建筑必须达到绿色施工认证的要求，对现有建筑翻修提供新的激励机制。我们还鼓励为推动能源市场和碳排放市场改革而要求相关建筑进行能源报告和披露，以提高透明度和市场参与，实现中国总体环境目标。由保尔森基金会和中央财经领导小组设立的建筑节能基金，推动投资不再偏重降低初始成本，就是美国支持中国发展绿色建筑行业的一个很好例证。

知识产权

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双边合作项目

中美能源合作项目

中美能源合作项目（ECP）建立于2009年，是由中美两国政府支持的政企合作伙伴项目。项目使命是为了推动能源和环境领域的商业合作，促进能源行业的可持续发展以及应对气候变化。ECP主要有两项职能，一个是作为商

业企业联盟从技术及解决方案最佳实践角度为政府制定能源及环保领域商业友好的政策法规提供支持及建议，另一个是通过与政府紧密的合作为其会员企业提供独特的市场开拓及示范项目机会。在过去的七年，ECP已经帮助美国80多家大型技术开发商和解决方案提供商进入中国市场。项目涵盖能源和环保各个行业，其中包括石油天然气、煤炭、核能、可再生能源、电网和储能、建筑和工业能效、城市基础设施、资源利用以及交通运输。

2016年取得的成就包括：

- 帮助会员企业取得山西太阳能项目，青海微型电网项目以及南通和辽宁的分布式热电联产项目。
- 和中国商务部下属机构签署两份备忘录，计划与中国利益相关方建立联盟以推动中国和海外的可持续基础设施项目。
- 和中国18个国家级新区签订备忘录，为会员企业在这些区域拓展绿色相关行业的业务机会。
- 和中国标准化研究院签订备忘录，以便影响中国能源和环保领域的国家和行业标准。
- 与美国政府机构及美国企业组织代表团前往四川、河北、江苏、贵州、新疆、辽宁、山西和湖南开展业务对口洽谈。
- 支持政府主办的高级别双边活动，包括在北京举行的第二届中美低碳城市峰会和第七届中美能效论坛。
- 与美国贸易发展署以及中国商务部组织两个赴美贸易代表团，重点关注绿色机场和清洁技术议题。

中美清洁能源联合研究中心

自2009年成立以来，中美清洁能源联合研究中心在促进中美能源技术开发和能源使用标准合作方面发挥着主导作用，包括上面提到的联合知识产权开发。除了美国能源部、中国科技部、国家能源局以及住房和城乡建设部的支持外，还有私营部门提供的总额为1.5亿美元（9.42亿元）的资金支持（最初五年由两国平分）。中心的联合研究项目主要关注先进用煤技术、清洁汽车、建筑节能和水能技术。2016年，中心还推出了新的重型卡车效率指标。

- Signed an MOU with 18 national new areas to develop business opportunities in green sectors for member companies in these regions.
- Signed an MOU with China's National Institute of Standardization to influence China national and industry standards in the energy and environment sector.
- Organized regional trade missions to Sichuan, Hebei, Jiangsu, Guizhou, Xinjiang, Liaoning, Shanxi, and Hunan with US government agencies and US companies to promote business matchmaking.
- Supported high-level bilateral government-led events including the Second US-China Low Carbon City Forum, and the Seventh US-China Energy Efficiency Forum in Beijing.
- Organized two trade missions to the US together with the US Trade and Development Agency (USTDA) and MOFCOM focusing on green airports and clean technology topics.

US-China Clean Energy Research Center

Since its founding in 2009, CERC has played a leading role in fostering greater US-China cooperation on energy technology development and energy use standards, including the focus on joint IP development mentioned above. Supported by the US Department of Energy (DOE) and China's Ministry of Science and Technology, NEA, and Ministry of Housing and Urban-Rural Development, along with private funding totaling US \$150 million (RMB 942 million) (split evenly between the two countries over an initial five-year period), CERC bilateral research projects focus on: advanced coal, clean vehicles, building energy efficiency, and water energy technologies. In 2016, CERC also launched a new track on heavy-duty truck efficiency.

- Deploy regional pricing schemes for decentralized energy CHP systems to encourage increased efficiency.
- Improve national standards on EV charging, battery safety, and recycling.
- Establish higher standards for infrastructure projects to lower carbon emissions and minimize the environmental impact during the entire life-cycle of the project.
- Focus government incentives more on the quality of renewable energy facilities instead of their installed capacity.
- Apply an energy efficiency rating for energy use in the water sector.

For the US Government:

- **Continue to fund the ECP to support deployment of US clean technologies and services in the Chinese market. [DOE, DOC, USTDA]**
- Continue to support CERC. [DOE]

Recommendations

For the Chinese Government:

- **Further engage with the ECP on dialogues with policy makers and the private sector to increase the transparency of relevant policies. Support the ECP in organizing regional business match-making events and pilot programs that allow US companies to participate in clean technology initiatives and market development.**
- Improve transparency in the local approval process for renewable energy projects.
- Require operation certificates for participation in China's three-star green building rating system, including for building retrofits.
- Establish strict measure and verification standards for green buildings in China. Start to consider a post-construction evaluation approach for certain types of buildings.

建议

对中国政府：

- 进一步和中美能源合作项目合作推动与政策制定者和私营部门之间的对话，以提高相关政策的透明度。支持中美能源合作项目组织企业对口洽谈活动和试点项目，使得美国企业能够参与清洁技术倡议和市场开发。
- 提高地方可再生能源项目审批的透明度。
- 要求包括建筑翻修在内的参加中国三星绿色建筑评级体系的企业，取得施工认证。
- 为绿色建筑制定严格的措施和验证标准。开始考虑对特定类别的建筑实施竣工后的评估。
- 为分散式能源热电联产系统建立区域定价机制，鼓励提高效率。
- 改进电动汽车充电、电池安全和回收利用的国家标准。
- 为基础设施项目建立更高的标准，以减少碳排放，将项目在整个生命周期对环境的影响降至最低。
- 政府的鼓励措施重点考虑可再生能源设施的质量而非装机容量。
- 对水行业的能源使用实行节能评级。

对美国政府：

- 继续为中美能源合作项目提供全方面包括经费支持，保障其在中国市场帮助美国清洁技术和落地。[美国能源部、商务部、贸易和发展署]
- 继续支持中美清洁能源联合研究中心。[美国能源部]

Construction, Engineering, and Design

Introduction

The Chinese Construction, Engineering, and Design (CED) industry continued to experience adjustments in 2016. With the domestic needs and volume of projects in this industry remaining level or even decreasing in certain sectors, it is critical that CED companies adjust themselves to the new environment to generate better operational outcomes. Many domestic Chinese companies have been focusing on developing overseas CED projects and exploring markets outside of China.

With these circumstances in mind, the Ministry of Housing and Urban-Rural Development (MOHURD) has issued several new policies over the past year to cope with the new environment, including new updates to the qualification system for construction enterprises and new policies on general contracting. These policies constitute positive developments in simplifying standards and increasing regulatory clarity.

However, the relatively restrictive and unclear regulatory environment for foreign-invested enterprises (FIEs) in the CED industry generally remains unchanged. As the construction market becomes increasingly globalized, AmCham China maintains that FIEs can enhance China's construction market by introducing advanced technology and management skills to local operations, especially in areas such as green building and energy efficiency. We therefore urge the Chinese government to implement policies to enable the participation 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 2016. When applying for a Design Qualification (DQ), a FIDE may initially apply only for a Grade B or lower DQ, regardless of its size, experience, or international track record. A FIDE can apply directly for a Grade A DQ only if it already holds a Grade One (or higher) 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 higher) 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.

Clarify Rules on Requirements for Foreign-Invested Partnerships to Apply for a DQ

According to the current rules, both domestic and foreign partnerships are allowed to apply for a "firm qualification," which is a special type of DQ. While MOHURD maintains that the rules do not differentiate between domestic and foreign partnerships, one of the requirements is that these partnerships be established by professional individuals in the CED industry. It is not clear whether the partners in the partnerships all need to be individuals who are China-certified professionals (e.g., registered architects), or if other investors such as foreign design companies can act as partners as well. This difference is critical for foreign companies who intend to enter the China market and obtain a firm qualification DQ to undertake relevant design projects. If only professional individuals can set up partnerships and apply for firm qualification DQs, foreign companies will be essentially prevented from obtaining a firm qualification to enter the China market through a firm qualification DQ as it is almost impossible for foreigners to obtain Chinese professional qualifications (e.g., to become a registered architect in China).

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

建筑、工程和设计

引言

2016年，中国建筑、工程和设计行业继续进行调整。鉴于行业国内需求和项目数量增长乏力，某些领域甚至出现下滑，为了改善经营业绩，建筑、工程和设计企业必须进行调整以适应新的环境。因此，很多国内企业一直专注于海外建筑、工程和设计项目的开发和海外市场的开拓。

基于这些情况，住房和城乡建设部（住建部）在过去一年发布了几项新政策以应对新的形势，其中包括修订建筑企业资格制度，制定新的总承包政策。这些政策在简化标准和提高监管透明度方面取得了积极的进展。

然而，建筑、工程和设计行业的外商投资企业（外资企业）仍然面临相对受限和模糊的监管环境。随着建筑市场全球化程度日益提高，中国美国商会（商会）认为，外资企业通过向本地经营者引进先进技术和技巧，能够促进中国建筑市场的发展，尤其是在绿色建筑和节能等领域。因此，我们促请中国政府推行能够促进外资企业参与这一市场的政策。

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

2016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诸多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，商会建议中国政府允许符合要求的外资设计企业直接申请甲级设计资质，而无需先获得乙级资质。

明确外资合伙企业申请设计资质的规则要求

根据现行法律法规，内资和外资合伙企业都可以申请“企业资质”，这是一类特殊的设计资质。住建部认为这些规定并没有区别对待内资和外资合伙企业，但是，其中一项规定就是要求这些合伙企业应当由建筑、工程和设计行业的专业人士设立。该规定未明确是否合伙企业的全体合伙人均必须是在中国获得认证的专业人士（例如，注册建筑师）或者外国设计企业等其他投资者是否也能够成为合伙人。这一区别对于有意进入中国市场并取得相关设计企业资质以承接相关设计项目的外国企业来说至关重要。如果只有专业的个人可以设立合伙企业以及申请设计企业资质，这意味着外国企业实际上无法通过设计企业资质获得进入中国市场的资格，因为外国人几乎不可能在中国取得专业资格（例如，成为中国的注册建筑师）。

彻底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，同时允许其增加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，因为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。

这种不确定性使经营计划更为复杂，人才招聘也更加困难。《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，且外籍员工每年应在中国居住6个月以上。商会认为应当彻底取消此规定。

able to more quickly expand operations and employ more Chinese professionals. However, because 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 in 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.

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 their 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 diffi-

culties. This regulation restricts FICEs to a limited segment of the construction market.

In 2013, such market exclusions were partially removed in the China (Shanghai) Pilot Free Trade Zone. AmCham China believes that the removal of such exclusions should be expanded to all pilot free trade zones and 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, MOHURD, under the “Trial Measures for the Administration of Construction Engineering Projects” (Circular 200), requires 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 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 burdened 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 allow 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 urges the Chinese government to promptly issue clarifying rules on project management qualifications in order to enable companies to operate effectively within a consistent regulatory environment.

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

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受到有关资本金和部分专业岗位人员配备异常繁重的规管。

根据商务部《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，满足外资建筑企业资质的人员配备先决条件尤其具挑战性：对于某些领域关键职位（例如工程师、建筑师等）要求的最少人数，只有本地具有相关执业资格的专业人员才包括在内，而不包括具有相应资质的外籍员工。

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。

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的挑战之一。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。商会认为，应当在所有的自贸区以及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。国家发展和改革委员会（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，目前尚不清楚。

在尝试满足住建部标准的同时，外资企业还面临着商务部和当时的建设部共同发布的《外商投资建设工程服务企业管理规定》（155号令）的选择性适用规定，负担进一步加重，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即可满足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。

商会促请中国政府立即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。

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，旨在指导各方订立相关合同。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）。

商会促请地方当局，除了严格遵照合同范本的合同外，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

住建部简化《建筑业企业资质标准》

2016年10月14日，住建部发布通知，要求简化建筑企业资质的一些标准和要求。具体来说，简化事项主要包括取消了对注册建筑师、中级职称或以上专业人士、取得专业证书的现场管理人员以及最低等级以上技术工人的资质要求，取消了注册建造师电信行业一般施工资质要求，调整了建筑行业一级及以下总承包资质的楼面面积要求。商会对简化标准表示欢迎，相信这是符合建筑市场发展需求的。

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 amendments to the model texts. However, the experience of many FIEs is that some local authorities place additional restrictions on 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 alternate forms of contracts, etc.).

AmCham China urges local authorities to accept different forms of contracts, in addition to those following a strict model text format, in accordance with the Contract Law.

Recent Developments

MOHURD's Simplification of "Construction Enterprise Qualification Standards"

MOHURD issued a notice regarding the simplification of certain standards and requirements for construction enterprise qualification on October 14, 2016. Notable simplifications include the cancellation of requirements on registered builders, professionals with mid-level titles or higher, onsite management staff with professional certificates, and technical workers for qualifications other than the lowest grade. Requirements on registered constructors for telecommunications industry general construction qualifications were also canceled, along with the adjustment of floor area standards for construction industry general contracting qualifications at Grade One and below, among other simplifications. AmCham China welcomes the simplified standards and believes that they are consistent with the evolution of the construction market.

MOHURD's "Opinions on Further Promotion of General Contracting Development"

MOHURD issued the "Opinions on Further Promotion of General Contracting Development" on May 20, 2016 to further clarify the encouraged forms of general contracting, the management of general contracting projects, risk management, filing and approval procedures, etc. Although general contracting is not a new concept in China, due to various regulatory restrictions, the implementation of "true" general contracting, (i.e., a general contractor signing a contract with the owner for procurement, design, construction, and other services, while sub-contractors enter into contracts with the general contractor) has not been very popular, and in some cases even impossible. AmCham China applauds this clarification, which will provide construction enterprises, including FIEs, with greater flexibility in undertaking projects.

Recommendations

For MOHURD:

- Clarify requirements for partners in partnerships which apply for a firm qualification DQ to make it clear that investors other than individuals, such as foreign design companies, can act as partners.
- Apply more flexibility when reviewing design and construction contracts filed with local authorities.
- Allow FIDEs to directly apply for a Grade A DQ without first applying for and obtaining a Grade B DQ.
- Clarify the requirements for non-FICEs/FIDEs to qualify as providers of project management services.

住建部发布《关于进一步推进工程总承包发展的若干意见》

2016年5月20日，住建部发布《关于进一步推进工程总承包发展的若干意见》，进一步明确了鼓励采取的工程总承包模式、总承包项目管理和风险管理方式，及备案和审批程序等事项。工程总承包在中国并非新鲜事物，但是，因为各种监管限制，“真正的”工程总承包（即，总承包商与业主签订采购、设计、建设和其他服务合同，分包商和总承包商签订合同）不是很普遍，在某些情况下甚至是不可能的。这一说明为承接项目的建筑企业，包括外资企业，提供了更大的灵活性。商会对此表示赞许。

建议

对住建部：

- 明确合伙企业合伙人申请设计企业资质要求，说明外国设计企业等非个人投资者是否可以成为合伙人。
- 地方当局审查已备案的设计和建筑合同时应当更加灵活。
- 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企业从事项目管理服务的要求。

Cosmetics

Introduction

In 2016, retail sales of cosmetics in China reached RMB 222.2 billion (US \$32.2 billion), up 8.3 percent year-on-year, which exceeded China's reported GDP growth rate of 6.7 percent. Total expenditures on cosmetics in China now exceed that in Japan, making China the second largest cosmetics market in the world after the US. In 2016, the State Council repeatedly called for an expansion of effective supply to meet new demand, improvement of the environment for consumption, and the continuous promotion of supply-side reforms in consumer goods to satisfy increasing demand.

Recent Developments

The year of 2016 saw the introduction of several favorable policies that impact the cosmetics industry, including:

- On September 30, the Ministry of Finance and the State Administration of Taxation jointly issued the "Notice on Adjusting the Policy for the Consumption Tax on Cosmetics," which cancelled consumption tax on general cosmetics and also lowered the tax rate on premium cosmetics to 15 percent.
- On November 7, the China Food and Drug Administration (CFDA) issued Notice No. 147, which incorporated the in vitro 3T3 neutral red uptake phototoxicity test for chemicals for cosmetic use into the "Safety Technical Standard for Cosmetics (2015 Version)." This is a sign that China has begun to gradually incorporate internationally accepted in vitro assays in the field of cosmetics, which has milestone significance for animal welfare.
- On November 15, a spokesperson for the Ministry of Commerce stated that the transition period for implementing the pilot supervision model for cross-border e-commerce retail imports would be extended until the end of 2017. This means that cosmetics imported for the first time during the transition period will not need to be registered or filed.

Several important transitions took place in 2016. Beginning January 1, 2017, new and existing cosmetics manufacturers

need to obtain a cosmetics production license in lieu of the previous national license for production of industrial products and hygiene license for cosmetics manufacturers in order to engage in production. Additionally, the "Safety Technical Standard for Cosmetics" went into effect on December 1, 2016. This is the cornerstone of Chinese regulations on cosmetics safety, replacing the "Hygienic Standard for Cosmetics (2007 Version)" that had been in effect for nearly a decade.

Revision of the "Cosmetics Supervision and Administration Rule"

In July 2015, the Legislative Affairs Office of the State Council solicited public comments on the draft of the revised "Cosmetics Supervision and Administration Rule" (the Administration Rule). On March 17, 2016, the General Office of the State Council distributed the "Legislative Work Plan of the State Council for 2016," which listed the Administrative Rule as an agenda item. This has major significance as the Administration Rule reflects the Party Central Committee's goal to reduce the supervisory role of government, use market-guided measures, and implement scientific supervision which "is problem-oriented, manages risks, focuses on national conditions, and draws on international experience." However, there is still room to adjust the specific supervisory requirements for administrative licensing, enterprise responsibility, and the special characteristics of products in the industry, as specified below:

- We recommend clarifying that the category of new ingredients subject to administrative licensing be limited to preservatives, sunscreens, colorants, hair dyes, and whitening agents. The wording "and other new ingredients with relatively high risks" should be deleted to clarify the scope of implementation and reduce subjectivity in enforcement. For ingredients not in the abovementioned categories, companies should be allowed to file notifications without pre-market approvals.
- We suggest clarifying the specific category and definition of "functional cosmetics" and deleting language allowing the CFDA to adjust the scope of functional cosmetics; shortening the time limit for the technical review of functional cosmetics and implementing the pre-filing management of functional cosmetics

化妆品

引言

2016年，中国化妆品零售额达2222亿元（合322亿美元），同比增加8.3%，高于中国报告的GDP增长率6.7%，目前中国化妆品消费总额已经超过日本，成为仅次于美国的世界第二大化妆品消费市场。2016年，国务院多次提出扩大有效供给满足新需求，改善消费环境释放新动能，不断推进消费品供给侧结构改革以满足人民群众日益增长的消费需求。

最新进展

2016年有多项影响化妆品行业的利好政策出台，包括：

- 9月30日，财政部和国家税务总局联合发布《关于调整化妆品消费税政策的通知》，取消对普通美容、修饰类化妆品征收消费税，并将高档化妆品的税率调整为15%。
- 11月7日，国家食品药品监督管理总局发布第147号通告，将化妆品用化学原料体外3T3中性红摄取光毒性试验方法纳入化妆品安全技术规范（2015年版）。这标志着中国在化妆品领域开始逐步发展国际通用的动物替代试验方法，具有里程碑式的意义。
- 11月15日，商务部新闻发言人在谈话中表示，将跨境电商零售进口实施试点监管模式的过渡期延长至2017年底，意味着在此过渡期间首次进口的化妆品不需进行注册或备案。

2016年也是承前启后的一年：自2017年1月1日始，现有化妆品生产企业以及新开办的化妆品生产企业需取得《化妆品生产许可证》才可继续生产，以此代替此前的《全国工业产品生产许可证》和《化妆品生产企业卫生许可证》。另外，作为中国化妆品行业安全技术法规的基石，《化妆品安全技术规范》于2016年12月1日实施，沿用近十年

的《化妆品卫生规范》（2007年版）自此退出历史舞台。

《化妆品监督管理条例》修订

2015年7月，国务院法制办就《化妆品监督管理条例（修订草案送审稿）》公开征求意见。2016年3月17日，国务院办公厅印发的《国务院2016年立法工作计划》将《条例（修订稿）》列为预备项目。这具有重要的里程碑意义。《条例（修订稿）》体现了党中央关于减少政府监管作用，采用市场导向的措施，落实“问题导向、风险管理、立足国情、借鉴国际经验”的科学监管理念。但在依法设立行政许可、落实企业责任主体原则、立足行业产品特点等方面，具体监管要求仍有调整空间。具体包括：

- 应明确将实施行政许可的新原料类别限定在防腐剂、防晒剂、着色剂、染发剂和祛斑剂，删除“以及其他具有较高风险的新原料”以明确实施范围并降低执行的主观性。对上述类别外的低风险原料实施真正的告知性备案管理，而无需上市前审批。
- 应明确特殊化妆品的具体类别和定义，删除国务院食品药品监督管理部门可以调整特殊化妆品范围的有关表述。缩短特殊化妆品技术审评时限，对符合功效成分准用目录的特殊化妆品实施事前备案管理；对进口普通化妆品实施上市前告知性备案管理。应明确符合化妆品定义范畴的原育发、美乳、健美、除臭、脱毛化妆品纳入普通化妆品管理。
- 宜单独设立口腔清洁和护理化妆品类别；实行产品备案制度；保留对原料的质量、安全和功效宣称的现有管理要求。
- 建议取消化妆品生产许可制度，对化妆品生产企业实施“企业信息报备、强制实施良好生产规范（GMP）与日常飞行检查相结合”的监管模式。
- 标签与功效宣称管理应充分参考国际惯例，强调企业

that conform to the catalogue of permitted functional ingredients; implementing pre-market entry notification-based filing management for imported non-functional cosmetics; and managing hair growth, breast enhancement, fitness, deodorizing, and hair-removing products as non-functional cosmetics as long as they fall within the scope of the definition of cosmetics.

- We recommend setting up a standalone category for oral cleaning and oral care products; implementing a product filing system; and preserving the existing management requirements for ingredients and claims about quality, safety, and efficacy.
- We recommended canceling the licensing system for cosmetics production and implementing a supervisory model that “integrates enterprise information reporting, enforcement of good manufacturing practices (GMPs), and routine flight inspection” for cosmetics manufacturers.
- We encourage regulators to manage labeling and claims of effectiveness in accordance with international best practices, emphasize enterprise responsibility, develop self-discipline in the industry, and provide the industry with space for development while ensuring product safety and the right of consumers to information.

Imported Non-Functional Cosmetics Filing Pilot

In February 2017, the Shanghai food and drug and inspection and quarantine authorities issued the “Notice on Matters Related to the Work of the Imported Non-Functional Cosmetics Filing Management Pilot in Pudong New Area, Shanghai” and related guidelines. This new policy implements the requirements and direction of the State Council’s “streamline administration and delegate power” administrative licensing reform, eliminating administrative licensing requirements for imported non-functional cosmetics and changing to a notification-based filing management system.

This policy of filing a notification for imported non-functional cosmetics has begun to be implemented in Shanghai’s Pudong New Area. However, a significant amount of uncertainty remains in the supervision and inspection of filing materials and post-submission market supervision for imported non-functional cosmetics. AmCham China urges regulators to further clarify the following concerns:

- We encourage regulators not to investigate products already on the market concerning the requirement for a responsible domestic individual to revise product packaging design (including product tags and product instruction manuals);
- We urge regulators to provide detailed clarification of the circumstances under which the import and sale of a product is temporarily suspended until they can confirm that the materials on file meet product safety requirements;

- We urge regulators to give detailed clarifications on products that have been recalled for quality or safety problems. Since the new policy only involves products imported from the Shanghai Pudong New Area port, it is not applicable to products in other areas such as the Hainan offshore duty-free pilot. This creates difficulties for the responsible domestic individual to follow the new policy in the Pudong New Area for the filing of all imported non-functional cosmetics. We urge the relevant authorities to coordinate and fully consider the special situation of offshore duty-free shopping. We recommend allowing non-functional cosmetics to be imported under offshore duty-free policies so long as companies provide a legitimate certificate of product filing.

Administrative Licensing

Currently, there is no clear time limit for the examination and approval of cosmetics for administrative licensing, so the application process is slow and can even be suspended in midcourse, making it impossible for enterprises to confirm their product’s state of examination and approval. Without a mechanism for communication and exchange of information, it is impossible for enterprises to understand the opinions and thinking of experts during the review process. The process is also inconsistent: sometimes certain products pass examination but other similar products do not. Even when there is no change to existing laws and regulations, companies may receive new or different review opinions, which creates uncertainty for enterprises. We recommend that the CFDA standardize the administrative licensing process for cosmetics, accelerate the speed of examination and approval, and publicize and unify review standards.

Market Supervision

In 2016, the CFDA gradually strengthened the supervision of cosmetics after they enter the market, with a focus on nationwide spot checks of sunscreen and facial masks. In total, the CFDA circulated notices on 322 batches of unqualified sunscreen and 89 batches of unqualified facial masks, reflecting the resolve of the CFDA in its implementation of the “four most stricts” (most rigorous standards, strictest supervision, most severe punishment, and most serious accountability) and its aim to protect consumers’ health, rights, and interests. However, some of the exposed cosmetics are suspected counterfeit products, and a number are still in the process of applying for re-inspection with pending results. Under Article 15 of the Product Quality Law, “before the results of supervision and spot checks are made known to the public, there should be a procedure in place to notify the manufacturer, seller, and other related parties of the inspected products. A manufacturer and/or seller who challenges the result may apply for re-inspection in accordance with this article. The result of the re-inspection shall be the final conclusion of supervision and spot checking.” Therefore, we recommend the CFDA should: ① establish a technical standard for the supervision and spot check of

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。

进口非特殊用途化妆品备案试点

上海市食品药品监督管理局和上海出入境检验检疫局于2017年2月颁布了《关于在上海市浦东新区开展进口非特殊用途化妆品备案管理试点工作有关事项的公告（2017年第4号）》及相关办事指南。该新政的颁布真正落实了国务院“简政放权”行政许可改革的要求和方向：进口非特殊用途化妆品真正意义上停止了行政许可，改为备案管理。

目前，在上海市浦东新区进口非特殊用途化妆品备案的政策正在紧锣密鼓地实施当中。但就进口非特殊用途化妆品时，在备案资料的监督检查和事后的市场监管实际操作中，还存在许多不确定性。中国美国商会（商会）希望能得到监管当局对以下疑虑的进一步解答：

- 有关境内责任人修正产品设计包装（含产品标签、产品说明书）的要求，希望对已上市产品不予追究；
- 对现有资料无法判断产品安全性，在确认备案资料符合要求前暂停进口及销售该产品的情况，予以细化和明确；
- 对于存在产品质量或安全问题，责令下架、召回的情况，予以细化和明确。由于目前该新政仅涉及从上海市浦东新区口岸进口的产品，而不适用于海南离岛免税产品等其他区域的产品，使得即便符合新政要求的境内责任人，也难以遵从该新政在浦东新区全面地进口非特备案。希望相关部门予以协调，充分考虑离岛免税产品的特殊情况，通过离岛免税方式进口的非特产品只要能提供有效的产品备案凭证即可进口。

行政许可

目前部分化妆品行政许可项目没有明确的审批时限，有些申请事项进展缓慢甚至停滞不前，企业也无法及时了解产品的审评状态。由于缺少信息沟通交流的机制，审评过程中专家的意见和想法企业不得而知。审批流程前后不一：类似的产品有时通过有时不通过。即使现有法律法规没有变化，企业也经常收到新的或不同的审评意见，对企业造成不确定性。建议国家食药总局规范化妆品行政许可流程，加快审评审批速度，公开并统一审评标准。

市场监管

2016年，国家食药总局逐步加强了对化妆品的上市后监管，重点开展了全国范围内的防晒类化妆品和面膜类化妆品的监督抽检，共通报322批次不合格防晒类化妆品和89批次不合格面膜类化妆品。这充分反映了总局贯彻实施“四个最严”（最严谨的标准、最严格的监管、最严厉的处罚、最严肃的问责）、保障消费者健康权益的坚定决心。然而，有些被曝光的化妆品涉嫌假冒，有些则尚在申请复检过程中，最终结论并未可知。根据《中华人民共和国产品质量法》第十五条的相关规定，“监督抽查的结果在向社会公布前，应当有程序告知生产者、销售者等相关人员。当生产者、销售者对抽检结果有异议的，可根据本条款申请复检，且复检结果为最终的监督抽查结论”。因此建议总局：一是建立化妆品监督抽样检验技术规范；二是对信息公开的程序建立明确的法规规定（包括信息公开前对相关企业的通知程序），规范信息发布的内容和方式，明确企业陈述申辩的沟通渠道；三是充分考虑信息公开对生产企业造成的影响，仅在事实充分、证据确凿的情况下审慎发布公告。另外，根据原国家食品药品监督管理局2011年发布的《保健食品化妆品安全风险监测工作规范》第三十七条，“安全风险监测结果不作为监督执法依据”。建议总局指导地方监管部门在市场监管执法活动中将风险监测和监督抽检区分开来。

此外，由于许多地方药监部门刚刚接手化妆品的监管，对相关法律法规的变化尤其是新版的《化妆品安全技术规范》缺乏了解，执法水平参差不齐，造成了在检测方法、检测基线、检测结果、产品真伪、执法处罚等方面出现偏差。因此，我们建议国家食药总局加强对地方监管人员的培训，提高监管水平。

跨境电子商务

2016年12月19日，《中华人民共和国电子商务法（草案）》提请全国人大常委会审议。草案第五章中，明确提出了促进跨境电子商务发展的政策。建议在保持目前跨境电商稳定发展的基础上，探索创新的管理政策，并在制定过程中广泛征求社会意见，加强与行业的互动，提高政策稳定性，确保新政实施的平稳过渡。

商会促请主管部门基于风险管理原则，充分考虑化妆品本身消费安全风险较低的国际监管共识，适当放宽准入要求，着重于事中事后监管。

cosmetics; ② establish clear regulations on the procedure for publishing information (including a procedure to notify related enterprises before information is published), standardizing the content and method of information release, and clarifying the communication channel for enterprises to make representations and arguments; and ③ fully consider the impact of information publication on manufacturers and release announcements cautiously and only after collecting adequate facts and irrefutable evidence. Further, under Article 37 of the “Work Specifications for Monitoring the Safety Risks of Health Food” issued by the CFDA in 2011, “The results of safety risk monitoring shall not be used as the basis for supervision and law enforcement.” We recommend that the CFDA guide local supervision departments in drawing a line between risk monitoring and supervision spot checks in market supervision and law enforcement activities.

Many local drug supervision departments have recently taken over the supervision of cosmetics but lack a thorough understanding of changes in relevant laws and regulations, especially the “Safety Technical Standard for Cosmetics.” This has led to inconsistency in law enforcement level, test methods, test baselines, test results, product authentication, and penalties. Therefore, we recommend that the CFDA strengthen the training of local supervisors to improve supervision.

Cross-Border E-Commerce

On December 19, 2016, the draft E-Commerce Law was submitted to the National People’s Congress Standing Committee for review. Chapter V of the draft clearly sets out policies for promoting the development of cross-border e-commerce. We recommend that an innovative management policy be explored that is based on maintaining the current stable development of cross-border e-commerce. Drafters should extensively solicit public comments during the drafting process, increase their interactions with industry, and enhance the stability of policy to ensure a smooth transition into implementation.

AmCham China urges the responsible authorities to appropriately loosen access requirements, focus on supervision, and fully consider international supervision best practices based on risk management principles to keep consumption risks related to cosmetics relatively low.

We further recommend that the government strengthen intellectual property protection during the filing and approval process for trademarks and licenses of compliant enterprises and crack down on acts of noncompliance.

We recommend that the government accelerate the drafting of the “Cosmetics Supervision and Administration Rule” and quickly clarify the filing procedures for imported non-functional cosmetics in Shanghai’s Pudong New Area. We encourage the government to explore the feasibility of a new filing system under the bonded stock-up model on the

foundation of the current notification-based filing system. Additionally, we urge the entry-exit inspection authorities to accept reports issued by third-party test organizations in import and export commodity inspection procedures as soon as possible.

Recommendations

For the Chinese Government:

- Promulgate the “Cosmetics Supervision and Administration Rule” after soliciting the opinions of all relevant stakeholders.
- Clarify as soon as possible the requirements for packaging, selling products temporarily barred from import, and applicability to offshore duty-free shopping in the notification-based filing pilot for imported non-functional cosmetics.
- Establish a legal procedure for the publication of information and strengthen training for local supervising authorities in order to protect the legitimate rights and interests of enterprises.
- Standardize the process of administrative licensing, accelerate the review and approval process, and unify and publish a review standard.
- Establish a stable and feasible policy to manage cross-border e-commerce.

强烈建议政府加强对合规企业的商标、许可备案批件授权等知识产权保护，打击不合规行为。

建议政府积极推进《化妆品监督管理条例》草案的制定，在上海浦东新区快速推进行进口非特殊用途化妆品备案程序的简化。在切实实施告知性备案的基础上，探索新备案制度在保税备货模式下的可行性。此外，我们促请进出口检验检疫管理当局在进出口商检手续中尽快接受第三方检测机构出具的报告。

建议

对中国政府：

- 在听取各方意见的基础上，尽快出台《化妆品监督管理条例》。
- 对于进口非特殊用途化妆品备案试点，尽快明确备案资料的监督检查、事后监管及离岸免税商品适用性等方面的具体要求。
- 建立信息公开的法定程序，加强对地方监督执法人员培训，从而保护企业的合法权益。
- 规范行政许可流程，加快审评审批速度，统一、公开审评标准。
- 建立稳定可行的跨境电子商务管理方案。

Direct Sales

Introduction

The direct sales industry was first introduced to the Chinese market in the early 1990s and then rapidly expanded across the country. According to State Administration for Industry and Commerce (SAIC) statistics, by the end of December 1995 there were 163 direct sales companies in China. From the very beginning, the direct sales industry has been conflated with so-called pyramid schemes. Despite the Chinese government's commitment to eradicating pyramid schemes, such schemes remain a widespread problem. One reason for this is that pyramid schemes often masquerade as legitimate direct sales businesses to confuse the market and regulatory authorities.

To curb the spread of pyramid schemes, the government often imposes strict regulations that adversely affect the direct sales industry. The entire direct sales industry was banned from 1998 until the promulgation of the "Regulation on Direct Sales Administration" (Direct Sales Regulation) in 2005, and has grown steadily since then. According to the Ministry of Commerce (MOFCOM), as of February 2017, 82 enterprises have been approved for direct sales in China. In 2015, the business volume of direct sales companies stood at RMB 192.92 billion (US \$29.05 billion), increasing by 19 percent compared to RMB 162.12 billion (US \$24.42 billion) in 2014.

The direct sales industry plays a positive role in promoting employment, consumption, investment, supply chains, tax revenue, public service activities, and small and micro businesses. In particular, given the "new normal" of the Chinese economy, the direct sales industry can play a greater role in promoting consumption and flexible employment. Active promotion of the direct sales industry can also help China to reach its 13th Five-Year Plan goal of improving living standards. In retrospect, the enactment of the Direct Sales Regulation has defined a legal framework and industry rules that have significantly contributed to the healthy development of the direct sales industry in China.

Over the past several years, the Chinese government has vigorously streamlined administration and devolved powers to remove unnecessary government regulation and revitalize the market economy. However, concepts

and specific provisions contained in the Direct Sales Regulation and related regulations that were released over 11 years ago are far from consistent with what the Chinese government now calls for in overall market regulation, and prevent the direct sales industry from fairly competing with other industries. At the same time, considering the ongoing rapid development of direct sales and business methods, as well as a mature consumer mentality in China, current regulations on direct sales are dislocated from reality. These factors restrict the development of the direct sales industry, making it difficult to realize its social value, for example its ability to promote flexible employment and consumption.

AmCham China appreciates the efforts of the Chinese government to liberalize and regulate the direct sales industry and the positive role that current regulations on direct sales once played. However, the concepts in these regulations differ from current policies and stances advocated by the Chinese government. As a result, the direct sales industry is unable to compete fairly with other sectors, develop in a healthy manner, and contribute to society like a normal industry.

Ongoing Regulatory Issues

Excessive Constraints Prevent the Direct Sales Industry from Fairly Competing with Other Industries

In recent years, the Chinese government has actively streamlined administration and delegated power to remove unnecessary government regulations and revitalize the market economy. With regulatory restrictions relaxed, some sectors have seen active innovation, integration, and rapid growth. Emerging models of business enjoy a greater degree of autonomy, including online marketing, WeChat stores, the sharing economy, etc. In comparison, the Direct Sales Regulation, which has been in force for over 11 years, has specified onerous restrictions on the industry, including restrictions on products, compensation methods, personnel recruitment, and training. With so many restrictions, it is impossible for the direct sales industry to fairly compete with conventional retailers, especially e-commerce and WeChat stores.

直销

引言

20世纪90年代初直销进入中国，并在短时间内即获得迅猛的发展。据国家工商行政管理总局统计，截至1995年12月底，中国已有163家直销公司。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。

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。从1998年开始，中国经历了为期7年的全面禁止直销、传销的阶段。2005年颁布了《直销管理条例》以后，直销行业即进入了稳健发展的新时期。截至2017年2月，商务部网站公示全国共有82家企业通过审批获得直销经营许可。2015年，以开展业务的直销企业共创造了1929.2亿元（290.5亿美元）的业绩，相比2014年的1621.2亿元（244.2亿美元），增长了19%。

直销行业对于促进就业、驱动消费、拉动投资、拉动供应链、增加税收、带动公益事业以及孵化小微企业等方面，都表现出了十分积极的影响。特别是在当前中国经济步入新常态的局面下，直销行业推动消费和促进灵活就业的优势能够发挥更为显著的作用。积极促进直销行业有序发展，有助于加快实现中国第十三个五年规划，提高中国人民的生活水平。回顾历史，《直销管理条例》的颁布提供了法律框架，明确了行业规则，为中国直销行业的健康发展起到了重要推动作用。

近年来，中国政府大力推进简政放权，致力于减少不必要的政府管制，大大增加了市场经济的活力。而已经颁布超过11年的《直销管理条例》及其相关规定，贯彻的管理思路和包含的具体规定，与当前中国政府倡导的整体市场监管导向已经严重不符，造成了直销行业与其他行业根本无法公平竞争。与此同时，在中国直销行业高速发展、

中国商业模式高速发展和消费者心态日益成熟的现实条件下，现行直销法规也与现实时代发展远远脱节。这些因素使得直销行业发展受到局限，其促进灵活就业、推动消费等社会价值难以充分发挥。

中国美国商会（商会）赞赏中国政府在过往对直销行业开放和规范管理所做出的努力，认可现有直销法规在之前历史时期所发挥的积极作用。但现有法规的理念与当今中国政府倡导的政策和立场不符，造成直销行业无法在市场上与其他行业公平竞争，阻碍了直销行业健康发展，难以发挥出正常的行业贡献。

现存监管问题

直销行业受到过多束缚，无法与其他行业公平竞争

近年来，中国政府大力推进简政放权，致力于减少不必要的政府管制，大大增加了市场经济的活力。很多原来受到严格管控的行业都借助宽松的政策环境，积极进行模式创新和融合，得以迅速发展。对于网络销售、微商、分享经济等新兴商业模式，政府更是给予了很大的自主空间。而已经颁布超过11年的《直销管理条例》，却对直销经营的各个方面，如产品、计酬方法、人员招募、培训等等规定了非常繁复的限制，这使得直销行业在市场竞争中被死死地束缚住手脚，根本无法与传统零售，尤其是电商、微商展开公平竞争。

计酬限制

《直销管理条例》对于直销员可以获得的报酬类型及数额加以限制，规定直销员报酬总额不得超过其所售产品收入的30%，《禁止传销条例》规定基于新招募直销员销售业绩（常称为“团队计酬”）的计酬方式，属于传销的特征。这两种限制违背了以市场为基础的经济实践。以市

Compensation Restrictions

The Direct Sales Regulation restricts the type and amount of compensation that direct sales agents can receive, limiting commissions for sales agents to no more than 30 percent of personal sales. In addition, the “Regulation on the Prohibition of Pyramid Selling” stipulates that compensation based on the total volume of a sales team (commonly called “team commission”) is a characteristic of pyramid selling. These two restrictions run counter to 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 other industries. AmCham China recommends that these restrictions be abolished.

In November 2013, the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security jointly issued the “Opinions on Issues relating to the Application of Laws in the Handling of the Crime of Organizing and Leading Pyramid Schemes,” a judicial interpretation which, for the first time, provided that “pyramid selling activities based on the sale of goods and for which sales performance is the basis for ‘team commission’ will not be treated as criminal” and provided a judicial distinction between “multi-level selling” and “pyramid schemes.” Current regulations need to be harmonized and aligned with this judicial interpretation.

Restrictions on the Scope of Direct Sales Products and Original Equipment Manufacturer Products

Aside from a few special categories expressly prohibited by law, conventional stores and online channels have the discretion to decide what kinds of products to sell on the basis of market demand, and they can sell their own products, products processed by other entities on their behalf, or products manufactured by other entities. However, direct sales is confined to six categories of products: cosmetics, cleaning supplies, health foods, health care devices, small kitchenware, and household appliances. Moreover, a direct sales enterprise can only sell its own products (including those of its parent or holding company). In a changing and hotly competitive market, such restrictions fetter the direct sales industry and disadvantage it in market-based competition. Nevertheless, with highly integrated supply chains, the prevalence of original equipment manufacturer (OEM) products, and manufacturing industry overcapacity in China, not allowing the direct sales industry to make use of existing capacity is contrary to the Chinese government’s efforts to cut excess capacity and enhance efficiency.

In order to reduce costs for real economy enterprises and to foster the innovative transformation of physical retail, the central government issued two documents in 2016: the “Notice of the State Council on Issuing the Work Plan for Reducing the Cost of Real Economy Enterprises” (*Guofa* [2016] No. 48) and the “Opinions of the General Office of the State Council on Promoting the Innovative Transformation

of Physical Retail” (*Guobanba* [2016] No. 78). These documents outline measures to reduce institutional transaction costs; deepen administrative, regulatory, and service-oriented reform to create a better business environment; and adhere to a market orientation. The transformation of physical retail depends on the market to remove institutional constraints, create a fair competitive environment, arouse the vitality of market participants, and encourage physical retail enterprises to choose their own path of market adaptation. We believe that the current regulatory and administrative system for the direct sales industry requires urgent reform in accordance with the spirit of the abovementioned central-level documents.

Existing Regulations are Inconsistent with Industry and Social Developments

The Direct Sales Regulation was issued more than 11 years ago. At the time, it had a positive effect as it was in line with social needs and was enforced effectively. The Regulation resulted in continued increases in the total business volume of the direct sales industry, better regulated direct sales enterprises, and improved public knowledge and recognition of direct sales.

However, since the Direct Sales Regulation was issued in 2005, fundamental changes have occurred in terms of the direct sales industry, the maturity of consumers, and the overall Chinese economy. When the regulation was issued, direct sales constituted a new and innovative pattern of circulation compared with traditional business. At the time, consumer perception and mentality was less mature and general commercial regulations were rarely applicable to the direct sales industry, making it appropriate for the government to subject the direct sales industry to separate, detailed regulations.

Now, with the prevalence of e-commerce, WeChat stores, and the sharing economy, direct sales is closer to the traditional real economy and is a familiar and productive marketing approach. Today, consumers are familiar with various business models and the capacity for risk prevention has matured. Moreover, regulations on consumer protection and commercial circulation have gradually improved. Under the current circumstances, existing regulations on direct sales are seriously inconsistent with industry and social developments, and have become an institutional factor hindering the normal growth of the direct sales industry.

As an example, direct sales enterprises are still required to establish a service center in each city where their products are sold to provide consultation and services for consumers. This used to have a practical meaning in making sure consumers were provided after-sales service, when online sales were not yet common. However, given the prevalence of online virtual trading via e-commerce platforms or WeChat today, in addition to highly developed customer service via telephone, internet, or WeChat, such a require-

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，商会建议废除上述限制。

2013年11月，最高人民法院、最高人民检察院、公安部联合印发《关于办理组织领导传销活动刑事案件适用法律若干问题的意见》，该司法解释首次明确规定“以销售商品为目的、以销售业绩为计酬依据的单纯的‘团队计酬’式传销活动，不作为犯罪处理”，更是在司法领域将“多层次销售”和“传销”进行了区分。现行法规应与该司法解释协调一致。

直销产品范围和委托加工产品限制

无论是传统店铺销售，还是线上销售渠道，除了极少数法律明文禁止的特殊品类外，完全可以根据市场需求自主决定其经营的产品品类，既可以销售自己生产的产品，也可以销售委托加工或者其他主体生产的产品。而直销行业，却将可以销售的产品局限于化妆品、保洁用品、保健食品、保健器材、小型厨具、家用电器六个品类的产品。同时，进一步限制直销企业只能销售企业自己生产的产品（包括母公司或控股公司）。在当前市场热点快速切换、竞争激烈的时代背景下，这样的规定大大束缚了直销企业的手脚，使直销行业在以市场为基础的竞争中处于非常不利的局面。然而，在供应链高度整合、委托加工普遍开展和中国制造业产能过剩的背景下，不允许直销企业充分利用社会现有产能，也与中国政府大力去产能、提升效能的做法背道而驰。

中央政府在2016年出台了两个文件，即《降低实体经济企业成本工作方案》（国发〔2016〕48号）及《关于推动实体零售创新转型的意见》（国办发〔2016〕78号），旨在降低实体经济企业成本和推动实体零售转型升级。有关文件中提出着力降低制度性交易成本；深化“放管服”改革，为企业创造更好的营商环境；坚持市场主导。市场是实体零售转型的决定因素，要破除体制机制束缚，营造公平竞争环境，激发市场主体活力，推动实体零售企业自主选择转型路径。健全部门联动和跨区域协同机制，完善市场监管手段，加快构建生产与流通领域协同、线上与线下一体的监管体系”。我们认为，直销行业的现有法规和管理体制，亟待按照中央上述文件的有关精神进行必要的改变。

直销现有法规与现实行业、社会的发展脱节

《直销管理条例》已颁布超过11年。由于符合当时的社会需求，以及监管单位的有效执法，条例实施以来产生了非常积极的影响：直销行业销售总额不断提升、直销企业运作越来越规范、公众对直销的认知和认同度明显提升。

但是，自2005年《直销管理条例》颁布以来，当今的中国直销行业发展现状、消费者和中国整体市场经济的成熟程度已经发生了根本性的变化。在立法之初，相对于传统商业而言，直销建立了一种相对新型的流通模式。当时的消费者的分辨能力、消费心理等还不够成熟，加之当时的一般性商业法规缺乏对直销行业适用的规则，政府对直销行业进行单独、详尽的规范是符合当时的历史条件的。

如今，在各种电商、微商、分享经济逐步普及的情况下，直销行业更接近于传统的实体经济，是一种常见的、富有成效的营销模式。今天的消费者对于形形色色的商业模式耳熟能详，其风险防范能力也足够成熟。同时，有关消费者权益保护、商业流通的一般性法规逐步完善，在所有这些条件下，现有直销立法与行业、社会的发展脱节严重，已经成为束缚直销行业正常发展的制度性因素。

举例而言，直销法规仍然要求直销企业在开展经营的城市中的每一个城区设立固定的服务网点，承担消费者咨询和服务的职能，这在立法初期“线上销售”业态还不常见的情况下，有着保障消费者获得售后服务的现实意义。但是在今天电商、微商等线上虚拟交易平台大行其道，电话、网络、微信客服技术高度发达的情况下，这样的规定完全丧失现实意义，不仅大大加重企业负担，也造成社会资源的严重浪费。与服务网点的规定类似，现有直销法规对于本来应该属于直销企业自己决定的诸多经营环节，如招募、计酬、培训、管理等等，都规定了严格限制。

建议

对商务部、国家工商行政管理总局、国务院：

- 尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。

ment is no longer meaningful. This outdated regulation not only overburdens enterprises but also causes a significant waste of social resources. Similarly, current regulations on direct sales have imposed strict restrictions on various operational details that should be decided by enterprises themselves, including recruitment, compensation, training, and management.

Recommendations

For MOFCOM, SAIC, and the State Council:

- **Revise the Direct Sales Regulation as soon as possible, relaxing restrictions on compensation for direct sales agents and allowing compensation based on the aggregate volume of the sales team under a direct sales agent, provided that it is based on sales volume and not on the number of sales agents recruited.**
- Revise regulations related to the Direct Sales Regulation as soon as possible to relax restrictions on the direct sales industry, including:
 - ◆ Relaxing product category restrictions and allowing the sale of OEM products;
 - ◆ Relaxing restrictions on direct sales agent training;
 - ◆ Removing or relaxing service center requirements.

- 尽快修订现存《直销管理条例》的相关规定，给直销行业松绑，如：
 - ◆ 放宽产品范围，允许委托加工产品作为直销产品；
 - ◆ 放宽直销员培训管制；
 - ◆ 取消或放松服务网点方面的要求。

Education

Introduction

American educational institutions continue to increase cooperation and investment in the Chinese educational sector. However, several new regulations are likely to create uncertainties. These include, as detailed below, the Law on the Management of the Activities of Overseas Non-Governmental Organizations Within Mainland China (Overseas NGO Law), a ban on for-profit schools, and new visa requirements for teachers. On the other hand, China's 13th Five-Year Plan recognizes the importance of advancing reform in China's education sector by promoting greater autonomy for universities and strengthening innovative teaching. Also, in November 2015, the State Council promulgated the "Comprehensive Plan for the Coordination of the Development of World-Class Universities and World-Class Disciplines" to promote the rapid advancement of higher education and research in China.

Future policies should help to incentivize investment by developing stronger market access and a more level playing field in the education sector. US educational institutions will thus be encouraged to partner with China on advancing reform in the educational sector as outlined in the 13th Five-Year Plan.

Higher Education

Higher education is tightly regulated by the Chinese government. At the same time, foreign universities recognize the importance of China due to the country's expanding educational system, increasing investment in education, and strategic advancement of research. The Chinese government, including the Ministry of Education, implements policies and allocates resources to advance international cooperation in higher education. For example, the Chinese Scholarship Council provides substantial funding for scholarly exchange in higher education. Coordinated by the office of Vice Premier Liu Yandong, the presidents of US and Chinese universities met in Chicago and Houston in 2013 and 2015, respectively, to advance exchanges in higher education.

Given the importance of China for US higher education, an increasing number of US universities are investing in joint ventures, foreign representative offices, and wholly foreign-owned enterprises (WFOEs). In some cases, US universities have made significant investments in establishing these joint ventures and entities. Yet, the range and scale of these investments remain hindered by the policy environment. There are opportunities to improve, standardize, and promote policies that would incentivize investment in higher education by foreign universities in China.

Bilateral Agreements

Foreign universities can establish exchange programs and other cooperative academic programs with Chinese universities and other public research and educational organizations. These agreements typically allow for the exchange of faculty and students, and may also enable joint research programs. All agreements need to be filed with and approved by the Ministry of Education. These arrangements can be effective in advancing exchange and cooperation, but they strictly limit the foreign university's ability to manage human resources and finances. This inability discourages foreign universities from ramping up institutional commitment and investment. Therefore, most bilateral agreements are limited in scale and impact.

Joint Ventures

Certain types of activities in higher education are only permitted through the creation of joint venture educational enterprises as stipulated in the "Regulations on Sino-Foreign Cooperative Operation of Higher Education Institutions." If foreign universities aim to offer degree programs in China for Chinese students, then a joint venture partnership is required. Foreign universities cannot independently establish a degree-offering academic institution in China. However, a foreign university can set up a new joint venture in China with a partner, usually a Chinese university. The foreign university can establish an academic department within the university as a joint institution with its partner that has its own governance structure and bylaws. It can independently recruit students, handle finances, hire teachers, and offer degrees, including joint degrees, dual degrees, or new degrees, and establish a joint governance structure and bylaws to oversee the partnership. However,

教育

引言

美 国教育机构继续在中国教育领域加强合作和投资。但是，新颁布的几项规定有可能带来不确定性，具体包括《境外非政府组织境内活动管理法》（《境外非政府组织法》）、禁止营利性学校以及与教师有关的签证新政策。另一方面，中国在“十三五”规划中也认识到促进高校自治、加强教学创新从而推动中国教育改革的重要性。此外，2015年11月，国务院发布《统筹推进世界一流大学和一流学科建设总体方案》，旨在促进中国高等教育和科研的快速发展。

中国未来的相关政策应当有助于鼓励投资，促进教育领域的市场准入和公平竞争。因此，应当鼓励美国教育机构与中国合作，按照“十三五”规划纲要共同推进教育领域的改革。

高等教育

中国对高等教育实施严格管制。与此同时，随着中国扩大教育体系、增加教育投资以及推进科研战略，境外大学意识到中国的重要性。包括教育部在内的中国政府通过政策实施和资源分配，推动高等教育的国际合作。例如，中国国家留学基金管理委员会为高等教育学术交流提供了大量资金。在刘延东副总理办公室的协调下，中美两国大学校长分别于2013年在芝加哥以及2015年在休斯敦举行会议，以促进两国高等教育交流。

鉴于中国对美国高等教育的重要性，越来越多的美国大学开始在中国投资合作办学、设立外资代表处以及外商独资企业。在某些情况下，美国大学已经投入巨大资金设立合作办学机构和实体。然而，这类投资的范围和规模仍然受制于政策环境。应当利用相关契机改进、规范和推动鼓励境外大学投资中国高等教育的政策。

双边协议

境外大学可以和中国大学以及其他公共科研教育机构合作设立交流项目和其他学术合作项目。相关协议通常允许教师和学生交流以及设立合作研究项目。所有协议都需要经过教育部的备案和审批。这些安排能够有效地推动交流合作，但却严格限制境外大学对人力资源和资金的管理能力。面对这种限制，境外大学缺少提高制度承诺和投资的积极性。因此，大部分这类双边协议的规模和影响都是有限的。

合作办学

根据《中外合作办学条例》的规定，开展某些类别的高等教育活动必须设立合作办学机构。境外大学想要在华开设针对中国学生的学位课程，需要采取合作办学的模式。境外大学不能独立地在华设立授予学位的教育机构。但是，境外大学可以与合作伙伴（通常是中国大学）在中国设立新的合作办学机构。境外大学可以与合作伙伴在大学内部设立具有独立治理结构和章程的院系。可以独立地开展招生，管理资金，聘请教师，授予学位（包括联合学位）、双学位、新设学位等，确立合作治理机构和章程监督合作办学。然而，在绝大多数情况下，高等教育合作办学机构无法取得独立的法人资格，因此，在法律上只能隶属于中方合作伙伴。

企业实体

为了开展营利性活动，比如咨询业务，境外大学之前可以通过在中国设立独立的法律实体依照中国商业法律开展这类业务，其中包括外资代表处和外商独资企业。虽然境外大学在中国不能直接设立教育性质的外商独资企业或外资代表处，但是可以通过咨询机构的身份在中国“推介”自己。

分清外商独资企业和外资代表处之间的区别很重要。外资代表处不是独立的法人，在中国不能赚取收入，人员

in almost all cases, a joint venture in higher education cannot be registered as a separate legal entity and therefore is legally subordinate to the Chinese partner.

Business Entities

To engage in for-profit activities, such as consulting business, the corporate office of a foreign university has previously been able to establish an independent legal entity in China to conduct these activities in compliance with Chinese business laws. These entities include foreign representative offices (FROs) and WFOEs. While foreign universities cannot directly set up WFOEs or FROs in China for educational purposes, they can operate to “promote or advocate” foreign universities in China as consultancies.

The difference between a WFOE and an FRO is important. An FRO is not an independent legal person and is not permitted to earn income in China and faces more limitations on hiring staff. A WFOE should earn income in China and pays all associated business and income taxes. The WFOE’s business scope must be approved and usually includes consulting services for the foreign university and possibly other clients. However, WFOEs and FROs are not ideal structurally. Educational foundations, similar to those that can be established in Hong Kong and the UK, would encourage investment by foreign universities if they were permitted to engage in fund-raising, approved educational activities, and received tax benefits.

Overseas NGO Law

It is still uncertain as to how the Overseas NGO Law that went into effect on January 1, 2017 may impact foreign universities in China. Article 53 of the Overseas NGO Law specifically excludes its application to foreign schools’ cooperative activities with Chinese schools. For now, cooperation on higher education is still governed by the “Regulations on Sino-Foreign Cooperative Operation of Higher Education Institutes.” However, the impact that the Overseas NGO Law may have on the WFOEs and FROs established by foreign universities remains an area of concern.

Article 9 of the Overseas NGO law states that “an overseas NGO engaging in activities in the mainland of China shall, in accordance with the law, register an established representative office.” Therefore, some foreign universities are concerned that they will be asked to re-register their entities under the supervision of the Ministry of Public Security in accordance with the Overseas NGO Law. The other concern is that foreign universities will be even more limited in their ability to conduct activities, such as recruiting students, organizing meetings, holding activities for alumni, and fund-raising. Article 21 of the Overseas NGO law, for example, states that “Overseas NGOs and their representative offices shall not solicit donations in

the mainland of China.” The uncertainty surrounding the Overseas NGO Law may reduce foreign universities’ willingness to engage with China.

Imbalance in Student Mobility

US universities provide outstanding educational opportunities for students from China and are benefiting from the explosive rise in demand from Chinese families for US higher education. Last year 328,547 students from China were studying in the US (up eight percent from the previous year). China remains the leading place of origin for students coming to the US for the seventh year in a row, comprising 31.5 percent of all international students studying in the US. This is a welcome trend as international students studying at US colleges and universities contributed US \$32.8 billion (RMB 218 billion) and supported more than 400,000 jobs in the US economy during the 2015-2016 academic year.

In order to ensure the next generation of US leaders is equipped to engage effectively with China—the second largest economy in the world and America’s fastest growing trade partner—it is vital to develop and train a future American workforce capable of cooperating and competing with China. However, the number of US students studying in China has plateaued and even slightly declined over the past several years, falling seven percent in 2016.

In order to address the imbalance between the number of Chinese students studying in the US and the number of US students studying in China, the Obama administration announced in 2015 the One Million Strong initiative, which seeks to increase to 1 million the number of US K-12 students learning Mandarin by 2020, thereby building a pipeline of future students interested in study abroad through language learning. In addition, last year the US State Department opened a new office specifically designed to promote study abroad—the Office of Global Educational Programs. The Chinese government can also make a significant contribution toward helping address the student imbalance by providing more scholarships for US students through the China Scholarship Council and relaxing work visa restrictions on young foreign students and graduates.

China has ambitious aims to develop its higher education system so that more international students will choose to pursue educational opportunities in China, which will help to alleviate this imbalance. For example, as outlined in China’s 13th Five-Year Plan, the Chinese government aims to attract 500,000 foreign students—150,000 of them in higher education—by 2020. Continued foreign investment in Chinese educational institutions will help China in its goal of developing a world-class education system. By increasing access and transparency, investment in Chinese higher education by foreign universities should grow, accelerating the advancement of higher education in China.

聘用面临更多的限制。外商独资企业在中国应当取得收入并支付所有相关营业和所得税费。外商独资企业的经营范围必须获得批准，通常包括为境外大学或其他客户提供咨询服务。但是，外商独资企业和外资代表处不是理想的组织形式。如果像香港和英国那样，允许教育基金会开展资金募集以及核准的教育活动，并给予税收优惠，将有助于鼓励境外大学进行投资。

《境外非政府组织法》

《境外非政府组织法》自2017年1月1日起施行，尚不确定其对境外大学在中国的活动会产生怎样的影响。其中第五十三条特别排除了境外学校与境内学校的交流合作。目前，高等教育合作办学仍然受《中外合作办学条例》的管制。但是，《境外非政府组织法》对境外大学设立的外资代表处和外商独资企业的影响仍然需要关切。

《境外非政府组织法》第九条规定：“境外非政府组织在中国境内开展活动，应当依法登记设立代表机构”。因此，一些境外大学担心，根据《境外非政府组织法》的规定，自己可能需要向公安部重新登记所设立的实体。令人担心的还有，境外大学开展招生、组织会议、举办校友活动、募集资金等活动将面临更大的限制。例如，《境外非政府组织法》第二十一条规定：“境外非政府组织及其代表机构不得在中国境内进行募捐”。围绕《境外非政府组织法》的不确定性可能会削弱境外大学与中国开展合作的意愿。

学生流动不均衡

美国大学为来自中国的学生提供了良好的教育机会，并且从中国家庭对美国高等教育需求的爆炸式增长中获益。2015/2016年，在美留学的中国学生达到328547名（同比增长8%）。中国连续七年成为美国最大的留学生来源国，占在美国国际留学生总数的31.5%。这是一个很好的态势，2015—2016学年，在美国高校就读的国际学生贡献了328亿美元（约合人民币2180亿元），支撑着美国经济40多万个就业岗位。

为了确保美国下一代领导人做好与中国接触合作的准备——后者可是世界第二大经济体和美国增长最迅速的贸易伙伴，关键是要对美国未来劳动力进行开发和培训，使其具备与中国合作和竞争的能力。然而，在过去的几年，在华留学的美国学生人数停滞不前，甚至略有减少，2016年下降7%。

为了解决在美中国留学生人数和在华美国留学生人数之间的失衡，2015年，奥巴马政府宣布实施“百万强”计划，计划2020年将学习汉语的美国幼儿园和中小學生人数增加到100万人，通过语言学习建立将来有兴趣赴海外留学的学生储备。此外，美国国务院去年还设立了一个新的机构负责促进海外留学，即全球教育项目办公室。中国政府也在大力解决这一失衡现象，例如，通过国家留学基金管理委员会向美国学生提供更多的奖学金，放宽年轻外国学生和研究生签证限制。

中国已经在积极致力于发展自身的高等教育体系，吸引更多的国际学生来华留学，这将有助于缓解上述失衡。例如，根据“十三五”规划纲要，到2020年，中国政府计划吸引50万外国留学生，其中15万来自高等院校。外资继续投资中国的教育机构，将帮助中国实现建立世界一流教育体系的目标。通过改善市场准入和透明度，境外大学对中国高等教育的投资有望实现增长，从而加快中国高等教育的发展。

幼儿园和中小学教育

外资国际学校对于外国使节和外籍劳工子女教育以及有志去国外就读高中和大学的中国学生来说都很重要，是中国教育生态体系的一个重要部分，但是，新政策的发展变化使其运营和吸引新的投资面临越来越多的挑战。

义务教育阶段禁止设立营利性民办学校

2016年11月7日，全国人大修改《民办教育促进法》，禁止民办营利性学校向一到九年级学生提供义务教育。中国儿童从小学到初中享受九年免费义务教育。根据修改后的法律，民办学校仍然可以提供各种市场导向的收费式教育服务。

根据2015年教育部公布的数据，中国全国范围内约有162700所民办学校，学生人数超过4570万人。这次修改将对10700所学校以及1200万名学生产生影响。在北京、上海、广州和深圳昂贵的私立学校就读的学生只占民办学校学生的少数。在中国民办学校的學生中，超过一半是农村学生，他们当中有一些由祖父母或亲戚照料，还有一些跟随父母来到城市。这意味着这项法律对中国最弱势的学生群体造成的影响是最大的。因为农村儿童就读的民办学校的运营资金大都来自投资而非捐赠，一旦这些学校转为非营利性，很多投资者就可能撤走投资。这项法律还限制

K-12 Education

Foreign-invested international schools are important not only for educating the children of foreign diplomats and workers, but also for Chinese children with aspirations to study abroad for high school and college. They are an important element in China's education ecosystem, but new policy developments have created increasing challenges for their operations and attracting new investment.

Ban on Private, For-Profit Schools in Compulsory Education

On November 7, 2016, the National People's Congress (NPC) revised the "Private Education Promotion Law," banning private, for-profit schools from offering compulsory education to first through ninth-graders. Chinese children are provided with nine years of free, compulsory education from elementary to junior high school. According to the revised law, private schools are still allowed to offer diversified, market-oriented, paid educational services.

China has about 162,700 private schools nationwide with more than 45.7 million students, according to figures released by the Ministry of Education in 2015. The change would affect about 10,700 schools and as many as 12 million students. Students at expensive private schools in Beijing, Shanghai, Guangzhou, and Shenzhen account for a minority of children in private schools. Rural children, some left in the care of grandparents or relatives and others who migrate with their parents to cities, account for more than half of China's private school students, meaning that this law will have the greatest impact on the most disadvantaged Chinese students. Because private schools attended by rural children are mostly funded by investors, not donors, once these schools switch to a non-profit status, many investors will likely withdraw their support. The new regulations also restrict foreign investment in this sector, limiting opportunities for foreign institutions to expand their offerings or enter the Chinese market.

AmCham China recognizes the need to regulate this fast-growing emerging sector and is pleased to see the Chinese government take steps in this direction. However, imposing a complete ban on for-profit, private education limits channels for foreign capital to enter the K-12 education market in China. We urge China to consider lifting this ban in order to meet growing demand and provide more diverse education opportunities for both foreign and Chinese students.

Effects of New Work Permit Requirements on International School Teachers

Starting in October 2016 with pilots across 10 locations, China has introduced a point-based system to differentiate between work permit applicants of varying professional skill levels. The system will be implemented nationwide starting in April 2017. AmCham China appreciates China's

efforts to standardize the work permit application process and help to more evenly distribute expat talent nationwide. However, the scoring assessment standards for A, B, and C categories of foreign talent are still unclear and we are concerned that arbitrary requirements will prevent highly qualified teachers from working at international schools. Restrictions on work permit applicants nearing the official retirement age and applicants with less than two years of work experience also limit the talent pool for international school teachers. Attracting the most qualified teaching talent not only benefits the international schools themselves, but also the students at these schools, many of whom are Chinese nationals.

AmCham China also recommends simplifying onerous document notarization and authentication requirements for work permits that do not necessarily attest to the authenticity of documents and create delays and administrative burdens. Work permit applicants should be allowed to submit original documents instead of notarized and authenticated documents. For further details on the new work permit application requirements, please refer to the Visa Policy chapter.

Curriculum Restrictions

While there are not yet national-level policies restricting the curriculums offered at foreign-invested international schools, there are instances of such policies being considered at the local level. For example, an unverified internal meeting document of the Shanghai Municipal Education Commission titled "Recent Developments in Shanghai Municipal Curriculum Policy" from October 2016 discussed banning the "complete importation of foreign curriculums" at international schools. It is still unclear how this will specifically affect curriculums at these schools.

AK-12 education environment with a diverse range of options benefits Chinese and foreign students alike. However, the uncertain policy environment regarding restrictions on international school curriculums may discourage the expansion of existing programs and limit foreign investment in this sector. AmCham China hopes for openness in allowing international schools to set their own curricula.

Recommendations

For the Chinese Government:

- **Permit foreign universities to establish educational foundations, as in Hong Kong or the UK for example. These foundations would enable fund-raising and the administration of educational programs subject to relevant approvals. The foundations would also receive tax benefits.**

外资投资，限制了境外机构扩大课程范围或者进入中国市场的机会。

中国美国商会（商会）承认有必要对这一快速兴起和成长的领域进行规范，并且很高兴看到中国政府沿着这一方向采取举措。但是，完全禁止营利性民办教育会限制外资进入中国幼儿园和中小学教育市场的渠道。我们促请中国考虑取消这一禁令，以满足日益增长的需求，为中外学生提供更加多样的教育机会。

新的工作许可规定对国际学校教师的影响

从2016年10月起，中国开始在10个省市试点工作许可计点积分制，将工作许可申请人按照专业技能水平分类。从2017年4月起，这一制度将在全国范围内实施。商会赞赏中国为规范工作许可申请程序以及促进外国专家在全国范围的平均分布而做出的努力。计点积分制将外国人才分为A、B、C三类，但是没有明确的评价标准，我们担心，拥有高资质的教师会因为主观武断的要求而无法在国际学校工作。对即将达到规定退休年龄以及工作经验少于两年的申请人的工作许可申请限制也对国际学校教师的人才储备也造成了不利影响。国际学校吸引高资质的教学人才，不仅符合自身的利益，也有益于在学校就读的学生，其中很多都是中国公民。

商会建议简化工作许可繁琐的公证要求，这些要求不一定能够证明文件真伪，还会造成延误和行政负担。应当允许工作许可申请人提交原件而非公证文件。与工作许可申请新规有关的详细信息，请参见“签证政策”章节。

课程限制

尚没有全国性的政策限制外资国际学校的课程设置，但是在地方层面上，确实存在这样的政策。例如，根据一则未经证实的关于“上海市国际课程政策最新动态”的消息，国际学校将被禁止“国际课程的整建制引入”，我们对此深表担忧。尚不清楚这一规定对这些学校的课程安排会造成怎样的影响。

营造一个选择多样的幼儿园和中小学教育环境对中外学生都是有利的。但是，与国际学校课程限制有关的政策环境存在不确定性，可能会抑制现有项目的扩大以及外资在这一领域的投资。商会希望政府对国际学校自行设定课程持开放态度。

建议

对中国政府：

- 借鉴香港或英国的经验，允许境外大学设立教育基金会。允许教育基金会募集资金，管理需要获得相关审批的教育项目，享受税收优惠。
- 明确境外大学的教育活动不适用《境外非政府机构组织法》。
- 资源分配应当确保让更多的学生从中国国家留学基金管理委员会获得资助，包括在中国短期学习的学生，从而增加在华留学的美国学生人数。
- 允许民办营利性学校向一到九年级学生提供义务教育，以市场为导向提供丰富多样的教育选择。
- 各地工作许可积分评价标准做到公开和方便查阅，取消年龄和工作经验限制，允许工作许可申请提交文件原件。

- Clarify that the Overseas NGO Law will not apply to the educational activities of foreign universities.
- Allocate resources to enable more students, including those who study in China for a short duration, to receive funding from the China Scholarship Council to increase the number of US students studying in China.
- Allow private, for-profit schools to provide compulsory first through ninth-grade education in China to diversify educational options in a market-driven manner.
- Make local work permit scoring assessment standards public and easily accessible, remove limits based on age and work experience, and accept original documents for work permit applications.

Express Delivery Services

Introduction

In light of security challenges in China, relevant authorities are stepping up security regulation in the express delivery service (EDS) industry. These strengthened regulations include the security inspections launched by 13 ministries and commissions in 2015 for logistics and EDS channels and the so-called “three 100 percent” security measures (100 percent visual inspection, real-name registration, and X-ray screening) for EDS channels across the country. While we understand that enterprises have the obligation and responsibility to cooperate with regulatory bodies in strengthening security control, we believe that policies should be based on full consideration of industry-specific conditions on the basis of full communication and consultation with the affected industry as well as other stakeholders. In doing so, regulatory bodies can avoid overly broad measures that may impede normal business operations and create unnecessarily high operating costs and compliance obligations for EDS firms.

Currently, there is no national coordination mechanism for dealing with EDS security issues. Consequently, different policy interpretations cause local authorities to act independently without centralized coordination, and enterprises must cope with various non-uniform inspection and security requirements. Moreover, current policies fail to take fully into account that air express services and their client market differ in fundamental respects from domestic EDS. In order to comply with security measures, enterprises must make multiple and/or inefficient investments in security devices. Such requirements not only increase costs and seriously undermine operational efficiency, but also run contrary to State Council directives to streamline administration and reduce administrative burdens on enterprises.

We hope that relevant regulatory authorities will consider the connection between scientific regulation and industry development in a more balanced manner, maintain effective regulation while supporting and promoting healthy and stable industry development, and facilitate the business of compliant enterprises to ensure robust levels of security in the EDS industry while minimizing the impact on enterprise operating costs.

Ongoing Regulatory Issues

Providing Data for Security Regulation

Recently, local authorities have used various channels and excuses to compel AmCham China member companies to report data, significantly affecting their normal local operations. Specifically, in Tianjin, Nanjing, Suzhou, and Shenzhen, the local postal administrations or public security bureaus have instructed enterprises to link up to their information and data platforms. Failure to do so is subject to enforcement penalties.

Given widespread concerns about global security in multinational corporations (MNCs), many AmCham China member companies have adopted strict and globally consistent procedures and rules for internal data management. These rules stipulate that regional headquarters offices are required to build, manage, and monitor internal data systems and connect them to global data networks for consistent supervision. Requiring an MNC to submit highly confidential internal data to a local platform developed and managed by a third party goes against internationally accepted practices, may expose sensitive data to security risks, and may cause the MNC to incur legal liabilities or other unforeseen losses. If other local governments begin to make similar requests of MNCs, individual firms may be left with little or no control over their own data security management.

In 2014, the State Council released the “Several Opinions on Promoting Fair Market Competition and Maintaining Normal Market Order” (*Guofa* [2014] No. 20), which stated intent to “standardize and improve mechanisms for regulatory enforcement coordination and cooperation, and improve the mechanisms for market regulation authorities to perform their respective duties and responsibilities and work together. Formulate standards for inter-departmental regulatory enforcement information sharing, break up ‘information islands’ and achieve the openness, sharing, and exchange of information resources.” AmCham China member companies report relevant data to the State Post Bureau (SPB) information system on a daily basis. At the national level, members of the Post and Delivery Security Administration Group, including the SPB, the Ministry of Public Security, and local postal administrations and security authorities, can access this data via their internal

快递服务

引言

由于目前中国在安全领域面临的挑战，相关监管部门针对快递行业的安全监管举措不断加强，包括2015年开始启动的13个部委联合针对物流快递渠道安全检查行动，以及在全国实施的快递渠道“三个100%”安全措施。我们理解企业有义务和责任配合监管部门加强安全领域的管控，同时也认为相关政策的制定应充分考虑行业特点和情况，与行业事先经过充分沟通协商，避免一些过度监管措施严重妨碍企业正常业务，额外增加企业负担和运营成本。

目前在行业安全领域，由于缺乏在国家层面的统一协调机制，造成各方对于政策不同解读，各地方各部门分头行动，缺乏统一协调，企业不得不频繁应付各种检查和安要求。另外政策制定过程中没有充分考虑航空快递及其客户市场相对国内业务完全不同的特性，造成企业在购置安全设备、配合安全措施方面重复或无效投入，既增加了企业成本，又严重降低了运营效率，这也与国务院关于简政放权、为企业减负的政策要求相违背。

中国美国商会（商会）期待相关监管部门在政策制定过程中，能够采取更为平衡的方式审视科学监管与行业发展之间的关系，衷心希望既能实现有效监管，又能支持和促进行业健康稳定发展，同时还能为合规守法企业提供更多的便利，创造多方共赢的局面。

现存监管问题

安全监管中的数据提供问题

近日商会会员企业陆续在各地接到要求企业在地方进行数据报送的要求，形成了各地纷纷以各种渠道、各种理由强行企业提交数据的态势，给企业在当地正常运营造成极大影响。这其中包括天津、南京、苏州、深圳等城市，均由地方邮政管理局或公安局下发通知，要求企业要

实现与地方管理部门开发的信息数据平台连通，如果不能按时配合，将根据相关法规对企业进行处罚。

在目前全球安全形势极为严峻的情况下，商会会员企业对于其内部数据管理有非常严格的全球统一的流程和制度，要求只能是各国地区总部建设、管理和监控内部数据系统，并且这样的系统还要与全球数据网络对接，实现全球统一监管。将高度机密的内部数据传输给由地方第三方开发管理的平台，对于国际企业来说将违背全球统一的安全管理规定，也存在极大的安全隐患和风险，可能带来的损失和相关法律责任很难估量。如果其他城市纷纷提出类似要求，将给企业的数据安全带来失控的危险。

2014年国务院发布的《关于促进市场公平竞争维护市场秩序的若干意见》国发〔2014〕20号中早就明确提出：“规范和完善监管执法协作配合机制，完善市场监管部门间各司其职、各负其责、相互配合、齐抓共管的工作机制。制定部门间监管执法信息共享标准，打破‘信息孤岛’，实现信息资源开放共享、互联互通”。商会会员企业早已按照要求每天向国家邮政局的内部信息系统提交相关数据，国家局已经开发了内部信息管理系统，在国家层面也成立了寄递渠道安全管理小组，包括国家局、公安部等在内都是小组成员单位，无论是地方邮政管理局、地方安全部门完全可以通过内部的渠道获取这样的数据，而没有必要各地方、各单位各自向企业索要，既造成信息安全管理风险，又给企业带来极大负担。

《快递业务经营许可管理办法》

据悉，国家邮政局正在起草新的《快递业务经营许可管理办法》。按照草案的表述，办法修订的初衷是为了适应正在制定的《快递条例》而为此进行调整。但是目前《快递条例》仍然处于广泛征求意见后的修改阶段，国务院法制办也没有公布条例的最终版本，此办法的相关条款是否与条例的相关具体规定相一致也无从得知。

network without the need to separately request data from the firms in question. AmCham China recommends that local authorities strengthen coordination with central authorities eliminating the need for EDS firms to separately report data to local platforms. Separately requesting data jeopardizes information security administration and creates a substantial burden for companies.

Measures for the Administration of Express Delivery Business Licensing

We understand that the SPB is in the process of drafting the new “Measures for the Administration of Express Delivery Business Licensing” (the Measures). The stated purpose of the Measures is to make adjustments in preparation for the upcoming “Express Delivery Regulations” (the Regulations). However, the Regulations are still under revision after extensive consultations. The State Council Legislative Affairs Office (SCLAO) has yet to release the final version as of this writing, and it remains unclear whether the Measures will be consistent with the relevant provisions of the Regulations.

Some provisions remain in the Measures even though they have been deleted in the latest draft of the Regulations. These omissions include provisions relating to courier qualification as a condition for licensing pre-approval, assessment of enterprise operation qualifications by third-party bodies, and a catalogue of authorized EDS branches, among others. These provisions had been deleted in an earlier version based on industry feedback. If the Measures are in fact based on the Regulations, we recommend that these provisions be deleted to better accord with the Regulations.

To avoid conflict with high-level policy and ensure consistency between the Measures and the Regulations, we advise waiting until the formal release of the Regulations before making relevant revisions pursuant to the Regulations and provide due consultation with the industry.

EDS Credit System Building

The SPB is currently piloting an EDS credit system nationwide. We welcome this move as it may facilitate the industry’s development. However, during the pilot period, local authorities have asked enterprises to provide employee national identity card information and other personal information with the intent to disclose such private information. AmCham China member companies are concerned about the protection of their employees’ personal information.

Administrative authorities should request such information only when empowered to do so by law. When an employee is suspected of a crime, companies are obligated to cooperate with any investigation and provide relevant information in accordance with law. Aside from these circumstances, administrative authorities should not be able to require that enterprises provide employees’ personal information without proper legal authority, especially if they intend to

disclose personal and employment information. Yet to our knowledge, there are no regulations on employee information collection or disclosure at the national level currently in effect. Absent such legal authority, the management of an employee’s on-the-job activities should be the responsibility of their employer, without interference by administrative authorities. Moreover, to our knowledge, there are no regulations on employee information collection or disclosure at the national level currently in effect.

Because the “Law on Personal Information Protection” has not yet been released, even after years of drafting, EDS providers must comply with the “Interim Regulations on Enterprise Information Disclosure” for issues related to disclosure until further relevant regulations emerge. Enforcement should not go beyond the scope of these interim regulations without legal basis. The upcoming “Measures for Credit Administration in the EDS Industry,” as a departmental regulation and a lower-level law, should be consistent with higher-level laws.

Additionally, EDS is a very competitive sector in terms of credit systems for ranking and scoring enterprises. With modern data availability, consumers can easily determine any given EDS provider’s service quality ranking and have sufficient information to choose from different EDS firms. Furthermore, in 2014, the China Express Association formulated and implemented a poor credit warning system for the EDS industry. As such, it would be duplicative to further require EDS firms to participate in a one-to-five star ranking scale administered by the postal authorities, as well as an unnecessary expenditure of administrative resources. To our knowledge, no developed country has put in place a similar system of inclusive credit appraisal that covers all enterprises and persons in this sector. With so many units and individuals to be assessed, it seems unlikely that an appraisal committee could ensure uniform criteria or impartial results. We feel that such a system would run counter to the government’s stated purpose of reducing the burdens borne by EDS enterprises and strengthening their self-regulatory capacity. Only disclosure of enterprises with poor credit may be meaningful for consumers.

Recommendations

For the Chinese Government:

- **At the national level, establish a uniform security regulation mechanism for the express delivery industry, clarify regulatory bodies, and standardize regulatory measures across the country.**
- Establish a platform based on the SPB’s existing information system to share data between regulatory bodies in order to reduce the need for duplicative data requests on enterprises.

在此办法中企业也发现有些规定在之前条例最新版本中已经被删除，但是在办法中又重新提出，这其中就包括：将快递员资质作为前置许可条件、设立第三方评估机构对企业经营资质进行评估、快递业务许可分支机构名录等，这些条款在之前《快递条例》中已经根据行业建议予以删除。如果办法确实是要根据条例要求进行调整，商会会员企业建议根据条例草案的精神，这些条款都应该从办法中予以删除。

为避免与上位法相冲突，确保办法与条例精神保持一致。建议最好在《快递条例》正式公布出台后，根据条例要求在行业内进行充分协商后再进行相关调整。

快递行业诚信体系建设

目前邮政监管部门正在全国就行业诚信体系建设进行试点。这是为了推动行业良性发展的措施，商会会员企业表示欢迎。但同时我们也注意到，在试点过程中出现地方部门要求企业提供员工身份证等个人信息，并计划对这些私人信息进行公示。这引发了商会会员企业对于个人信息保护的关注。

商会认为行政机关应该依法行政，法无授权不可为。对于涉嫌违法犯罪的员工，企业有义务依法配合调查并提供相关信息。除此之外，行政机关要求企业提供员工个人信息应有法律依据，要公示员工个人信息及与履职相关的信息更是如此。员工的职务行为应由企业管理和负责，主管机关不应在没有法律依据的情况下越过企业干预其劳动管理。员工的职务行为基于与企业的劳动关系，系依照企业指示所为，企业应对员工职务行为及其后果对外承担责任，对内依照企业规章制度进行劳动管理，没有依据要求员工个人对外承担责任。此外，据我们了解，在国家层面，还没有现行有效的针对从业人员个人的信息收集或公示。

尽管《个人信息保护法》草案历经数年，由于种种原因迟迟没有出台。对快递企业的公示应当遵照《企业信息公示暂行条例》，在没有法律依据的情况下不应超出该条例规定的范围。即将出台的《快递行业信用管理办法》作为部门规章和下位法，也不应违反上位法的规定。

另外关于体系建设中给企业评级评分问题，我们认为快递行业是一个竞争非常充分的行业，在现代媒体时代用户有丰富、便捷的渠道了解快递企业的服务质量，用户已经完全有能力、有信息选择使用快递服务。此外，中国快递协会已经于2014年制定并执行了快递行业失信警示制

度，在此情况下，要求企业费时参与、邮政部门花费宝贵的行政资源将全国众多且不断增长的快递企业、从业人员每年评出一、二、三、四、五星级所需的工作量巨大，这样付出的时间人力等成本是否合适值得探讨。用户也不会只看星级去选择快递公司或从业人员。我们了解国外并没有发达国家采取这种涵盖快递行业全部企业和从业人员的信用评价方式。面对如此庞大的被评定对象，评定委员会如何做到评定标准统一、确保评定结果公平、公正。如果不经充分的科学论证就采取这种信用评价方式，会造成对企业正常经营活动的过度干扰，以及对行政资源的浪费，与政府倡导的减轻企业负担、加强行业自律背道而驰。仅公示失信信息对用户来说还有一定借鉴意义。

建议

对中国政府：

- 期待在国家层面建立快递行业安全监管统一领导机制，明确监管主体，统一全国监管措施。
- 以国家邮政局现有信息系统为基础，建立监管部门之间的数据分享平台，避免各部门自行向企业索取数据。
- 建议暂缓《快递业务经营许可管理办法》起草工作，待国务院法制办正式颁布《快递条例》后，根据条例要求进行起草。
- 在诚信体系建设中征求相关专业法律意见，确保员工个人信息得到充分保护，维护员工合法权益。
- 目前的安全措施，即100%收寄验视、实名收寄、过机安检，应根据需要而实施，以尽量减少对企业运营成本的影响。

- Suspend the drafting of the “Measures for the Administration of Express Delivery Business Licensing” until the formal release of the “Express Delivery Regulations” by the SCLAO, and then draft the Measures in accordance with the Regulations.
- Solicit relevant expertise and legal opinions, duly protect the personal information of employees, and ensure their lawful interests and rights while building a credit system.
- Enforce the current security measures of 100 percent visual inspection, real-name registration, and X-ray screening on an as-needed basis to minimize the impact on enterprise operating costs.

Food and Beverage

Introduction

Food safety has become a major focus of the central government. From the implementation of the first food quality assurance programs and the special campaign to rectify food safety problems in 2003 to the enactment of the Food Safety Law in 2009 and its amendment in 2015, a legal foundation has been established for food safety regulation, which has become increasingly standardized. In April 2016, the State Council released the “Notice on Arrangements for Priorities of Food Safety in 2016,” which put forward 11 targets to deepen these efforts. Over the past year, thanks to concerted efforts made by the Chinese government at all levels, new progress has been made in food safety regulation, especially regarding legal codification, standardization, risk prevention, and international exchanges. The 13th Five-Year Plan has raised both “Healthy China” and “Food Safety” as national strategies, raising standards for the development of the food and beverage industry.

Positive Regulatory Developments

Intensified Supervision of Food Safety and More Standardized Production and Operation

Since the beginning of 2016, food safety regulators in China have implemented the “four most stricts” (most rigorous standards, strictest supervision, most severe punishment, and most serious accountability), and the “four haves and two responsibilities” (having duties, posts, personnel, and measures for carrying out the responsibilities of supervision and inspection). These policies have increased the overall level of food safety supervision and strengthened food safety laws, regulations, and systems. With the enactment of the new Food Safety Law, the relevant departments have explored many innovative approaches and methods to improve oversight and enforcement of food safety regulations. These include establishing a system for communicating and consulting about food safety risks, implementing a method for connecting administrative enforcement with criminal punishment, and putting forward a mechanism for coordination and joint action between government agencies. Food safety regulators have implemented the “combination of two licenses into one” (combining food distribution licenses and catering service licenses into food operation licenses) in the

food operation sector, promoted the use of forms in routine inspections, published more law enforcement information, and implemented grid-style grassroots governance.

Achievements of a Coordinated, Multi-Department Food Safety Supervision System and the Establishment of a More Scientific System of Laws, Regulations, and Standards

In 2016, the China Food and Drug Administration (CFDA) issued 12 regulations and nearly 20 important rules or guidelines to implement the Food Safety Law, providing a firmer legal basis for supervision. The Ministry of Agriculture (MOA) has issued 1,000 new standards on maximum residue limits (MRL) for pesticides, increasing the total number of MRL standards for pesticides to 5,450. The National Health and Family Planning Commission (NHFPCC) has led efforts to revise and integrate nearly 5,000 food standards since 2013. The NHFPCC has so far jointly released 926 national standards concerning food safety with other relevant departments. Quality supervision departments have implemented strict supervisory measures overseeing imported food and carried out systematic or retrospective reviews of 35 foods imported to China from 31 American and European countries. This comprehensive, coordinated, multi-departmental supervision has laid a foundation for the standardization of production and operations.

Review and Approval of New Varieties of Raw Materials and Food Additives

In 2016, important progress was made in the review and approval of new varieties of raw materials and food additives, with a total of 92 products approved. This is more than the total number of approvals in the eight-year period from 2008 to 2015 during which only 81 were approved.

Continued Strengthening of International Exchanges

The field of food safety saw frequent and targeted international exchanges in 2016. Such exchanges have been effective in increasing mutual understanding and interactions between Chinese regulators and their foreign counterparts. The CFDA held talks about food safety with its counterparts in numerous countries, including the US. China’s international exchanges and cooperation are changing from passive participation as in the past to more active efforts.

食品与饮料

引言

食

食品安全问题是党中央国务院关注的焦点。从2003年开始开展的食品安全放心工程、食品安全专项整治，到2009年发布《食品安全法》、2015年更新《食品安全法》，食品安全工作走上了一条法制化、规范化的道路。2016年4月，国务院专门印发了《2016年食品安全重点工作安排的通知》，提出了11项目标，工作更加深入。一年来，在各级政府的共同努力下，食品安全工作取得了新的进展，特别体现在法制化、标准化、风险防范和国际交流等方面。此外，在“十三五”规划中将“健康中国”与“食品安全”并列为国家战略，为食品饮料行业未来的发展提出了更高要求。

监管工作的积极发展

强化了食品安全监管工作，生产经营更趋规范

2016年以来，我国食品安全监管机构严格落实“四个最严”、“四有两责”要求，不断创新食品安全监管方式，加强食品安全法律法规和制度建设。随着新食品安全法的深入贯彻实施，各有关部门在制度创新、手段创新、方式创新上探索了许多有益做法，如建立食品安全风险交流会商制度、行刑衔接办法、协调联动机制；实行食品经营“两证合一”；推行日常检查表格化、执法信息公开化、基层治理网格化等。

多部门食品安全监管体系联动初见成效，更趋科学合理的标准法规体系初步建成

2016年国家食品药品监督管理局（食药监总局）已出台与食品安全法相配套的规章12部、重要配套规范性文件近20项，为依法监督提供了法律保障。国家农业部已新制定农药残留限量标准1000项，农药残留量标准达到5450项。国家卫生计生委自2013年起牵头组织完成对近5000项各

类食品标准清理整合，目前已会同相关部门发布926项食品安全国家标准。质量监督部门对进口食品实施了严格的安全监管，对美欧等31个国家的35种输华食品开展了体系审查或回顾性审查。综合性的多部门联动监管为生产经营的规范化奠定了基础。在各部门联合协作下，食品安全标准法规体系更趋科学合理。

食品新原料、食品添加剂新品种审批成果显著

2016年，食品新原料、食品添加剂及食品相关产品新品种审批工作取得重要进展，共批准92种，超过2008—2015年累计批准数量总和（81种）。

不断加强的国际交往

2016年，食品安全领域对外交流频繁且有针对性，有效增进了中国监管机构与其国外对应部门的相互了解和深入交流。其中，食药监总局还陆续开展了与美国多个国家的食品安全相关会谈。国际交流与合作正在由传统的被动参与型向新时期的主动建设型新模式迈进。

不断改善的贸易便利化举措进一步促进国际食品贸易的开展

随着新的食品安全法的实施以及食品安全“十三五”规划的出台，中国对进出口食品安全的监管的顶层设计思路日益清晰、相关配套制度日益完善。比如，为了配合新的食品安全法的实施，相关质量监督部门提出了实行预防为主、风险管理、全程管控、社会共治的监督管理制度，正在建立覆盖进口前、进口时、进口后三个环节的21项管理制度。

“健康中国”战略首发，呼吁各方共治

2016年是中国的“健康之年”，《中国居民膳食指南（2016）》于五月正式颁布；八月，中央召开了全国卫生与健康大会；十月出台了《“健康中国2030”规划纲要》；

International Food Trade Further Developed by Continued Improvement in Trade Facilitation Initiatives

With the Food Safety Law and launch of the “13th Five-Year Plan for Food Safety,” the Chinese government’s high-level thinking on the safety of imported and exported food has become increasingly clear, and the relevant regulatory systems continue to improve. For example, in coordination with the implementation of the new Food Safety Law, the relevant quality supervision departments devised a supervisory management system predicated on prevention first, risk management, whole-process control, and joint social governance. They are currently building a management system with 21 components that covers the three segments of pre-import, during-import, and post-import.

“Healthy China” Strategy Released, Promoting Joint Governance

China witnessed a series of important health-related developments in 2016. In May, the “Dietary Guidelines for Chinese Residents (2016)” was officially issued, followed by the central government’s National Conference on Health and Wellness in August. In October, the central government issued the outline of the “Healthy China 2030” plan and Shanghai hosted the Ninth Global Conference on Health Promotion in November. These actions not only reflect the responsible attitude of the Chinese government regarding the health of its citizens, they also clarify the meaning of “health mutually built and shared by the people,” which is part of the strategic theme of “Healthy China.” Such initiatives require the resources of government, society, and industry to form a powerful, integrated force for maintaining and promoting the health of citizens.

Ongoing Regulatory Issues

Despite these positive accomplishments, AmCham China member companies still face many regulatory and law enforcement challenges which we hope to see resolved.

Room for Improvement in the Food Safety Standards System

As mentioned earlier, many food safety standards were introduced in 2016 and a complete system of food safety standards is beginning to take shape. To further improve the system, we encourage the relevant departments to make further efforts in the following areas:

Clarify the Legal Effect of National Standards and Departmental Regulations on Food Safety

Enterprises go about production and business activities in accordance with both national standards and departmental regulations on food safety. When there is a conflict between the two, the relevant departments need to clarify which set

of rules applies to enable compliance while the inconsistency is resolved.

Further Improve a Unified and Coordinated System of Food Standards

China has begun to establish the framework for a food standards system that is based on food safety standards. However, enterprises remain unclear about how to apply these standards, especially those irrelevant to food safety, which we urge the relevant departments to clarify. We urge the Chinese government to unify the management system of food standards by requiring public health administration departments to formulate food categorization standards that are applicable to all food safety regulations and standards and by allowing industry associations to formulate recommended standards for food quality. This will require the further clarification of the legal status of food standards developed by industry associations.

Shift Seamlessly from Old to New Standards

New national food safety standards tend to be announced and implemented at different times throughout the year instead of all at once, making it very difficult for enterprises to organize production according to a new standard before its implementation date. Sufficient lead time needs to be given before the new standards take effect. Enterprises with special circumstances should be dealt with individually.

Further Refine the Filing Management System for Enterprise Standards

The Food Safety Law provides that enterprise standards are needed only when requirements are “stricter” than national standards, and the NHFPC has issued relevant interpretations. However, the definition of “stricter” is still not clear, causing local public health administration departments to impose inconsistent filing requirements. Resolving this problem requires that the relevant departments further refine the requirements for the enterprise filing management system.

Nutrition Legislation: Joint Governance by Government, Enterprises, and Society to Promote Health and Build a “Healthy China”

We recommend that policies to elevate health concerns to the national level be based on scientific data and survey findings, promote comprehensive treatment and prevention as guiding principles, and take into account the perspectives of experts, trade associations, and opinion leaders. We additionally recommend that officials refer to international best practices to develop policies and guidelines that are just, reasonable, and have been proven effective at promoting healthy lifestyles.

AmCham China has learned that the relevant departments of the Chinese government have completed drafting a “National Action Plan for Nutrition” and hope to actively

十一月，上海承办了第九届全球健康促进大会。这些举动不仅表明了中国政府对于国民健康高度负责的态度，还明确了“共建共享、全民健康”这一“健康中国”的战略主题，兼顾统筹政府、社会、行业等各方力量，形成维护和促进国民健康的强大合力。

现存监管问题

在取得亮眼成绩的同时，中国美国商会（商会）的会员企业也在不断改善的商业环境中发现了一些仍有改进空间的监管和执法问题。

食品安全标准体系仍有改进空间

如前所述，2016年陆续出台了多项食品安全标准，食品安全标准的完整体系已经初见雏形，为进一步完善该体系，我们希望有关部门能就如下方面展开更深入的工作：

明确食品安全国家标准与部门规章的法律效力

企业同时遵照食品安全国家标准和部门规章组织生产和经营活动，当上述两者要求出现差异时需要相关部门予以明确，以便企业遵照落实。

进一步完善统一协调的食品标准体系

我国已经初步建立起一个以食品安全标准为基础的食品标准体系框架，为保障食品的基本安全打下了坚实基础。但企业对如何使用这些标准仍有困惑，尤其是非食品安全标准的地位问题需要得到相关部门的明确，故建议国家统一食品标准的管理制度，即：由卫生行政部门制定适用于所有食品安全法规标准的食品分类标准；由行业协会制定食品质量推荐标准；并进一步明确食品团体标准的地位和作用。

充分考虑新旧标准转换期的无缝衔接

食品安全国家标准的发布和实施往往时间不一，企业在进行切换的时候很难做到恰好在实施日期按新标准组织生产，因此建议将鼓励企业提前实施作为一个基本原则，有特殊情况的可考虑个别处理。

企业标准备案管理制度需要进一步细化

食品安全法对需要做企业标准的情形进行了规定，只有当要求更严时才会有必要制定企业标准，卫计委也出台了相关说明，但未明确更严的标准，这导致各地方卫生行

政部门在具体备案时出现了指标要求不统一的情况。上述问题的解决需要相关部门对企标备案管理制度进行进一步细化要求。

营养健康立法：构建政府、企业、社会共治格局，共建共享“健康中国”

我们支持决策部门在营养健康政策制定过程中充分尊重科学数据和证据，多方听取各方专家、行业协会的意见，参考国际经验，制定综合有效、公正合理的政策和指南，引导行业自律和社会监督，更大力度地推动公众形成良好的生活习惯。

商会了解到有关部门正在制定《国民营养行动计划》，我们期待有机会参与到相关工作中，为相关政策的制定提供有效帮助。

同时我们也呼吁政府监管部门和科研机构加大科普宣传力度，积极向消费者传递有关预包装食品标签解读、食品饮料以及重要营养素和添加剂的科学知识，消除大家由于信息不正确或不完整产生的误会，帮助消费者理性选择；同时有效避免食品谣言引起的恐慌，增强公众对食品安全的信心。

与此同时，我们看到中国饮料工业协会和中国广告协会、中国广告主协会等行业协会正在行业内大力推进行业自律，以积极的行动响应政府号召，落实“健康中国”的国家战略。

商会食品和饮料行业的会员企业认为自己有责任促进大众健康。希望配合“健康中国”的国家战略，积极参与和推进“健康中国”。这既是会员企业义不容辞的义务，也是中国食品饮料行业持续健康发展的重要路径。

食品安全产业链有关的法制建设及监管问题

加强生产经营者追溯主体责任

生产经营者作为追溯主体的责任设置对该政策的有效实施十分重要。在实践中，相关中央和省级法规存在重复和相冲突的情况，这使得生产者在遵守此等法规时的成本增高。但这种情况可予以避免。

《食品安全法》要求国家建立食品安全全程追溯制度，对食品生产经营者建立追溯体系提出了整体要求。国家食药监总局分别在2016年9月出台《关于推动食品药品生产经营者完善追溯体系的意见（以下简称意见）》，2016年

make recommendations on the formulation of nutrition and health policies in the future.

At the same time, we also urge government regulators and scientific research institutions to promote popular science, inform consumers on how to interpret the labels on prepackaged food, and give them scientific knowledge about food, beverages, important nutrients, and additives. The government should work to eliminate misunderstanding caused by incorrect or incomplete information, help consumers make rational choices, avoid panic resulting from food-related rumors, and boost public confidence in food safety.

At the same time, we noted that the China Beverage Industry Association, China Advertising Association, and China Association of National Advertisers have been vigorously promoting voluntary industry commitments, in response to the government's call, and keenly implementing the national strategy of "Healthy China."

AmCham China member companies in the food and beverage industries regard it as their duty to promote public health and intend to actively participate in and advance the national "Healthy China" strategy.

Food Safety Supply Chain Regulatory and Supervisory Issues

Strengthen the Responsibility of Producers and Operators as Tracers

The responsibility of producers and operators as tracers is an area of concern for the effective implementation of policy. In practice, the overlapping and conflicting regulations being promulgated at national and provincial levels will make compliance costly and expensive for manufacturers at best. This does not need to be the case.

The Food Safety Law poses holistic requirements for food producers and operators to establish a beginning-to-end tracing system for food safety. In September 2016, the CFDA issued the "Opinions on Driving Food and Drug Producers and Operators to Improve the Tracing System," and called for public comments on the draft "Guiding Opinions About the Establishment of a Food Safety Tracing System by Food Production and Operation Enterprises" in November. Both documents require production and operation enterprises to assume the main responsibility for building the tracing system and for food and drug departments to provide guidance and supervision, displaying encouraging progress in regulatory oversight.

However, many local governments are building their own tracing platforms and require enterprises to upload data, including retail data, by using specific technical measures such as 2D barcodes and electronic scales. The same enterprises are required to use different tracing systems in different regions, which not only increases compliance costs for the enterprises, but also makes it more difficult to ensure food safety.

AmCham China member companies have nationwide chain businesses across many different regions. We urge and support the use of scientific, rational, and effective solutions to strengthen product tracing through the entire supply chain; it is crucial that central level regulators have a transparent national framework for serialization, and provide clear guidance to local governments, while at the same time prohibiting local governments from operating their own tracing platforms. An effective method to implement serialization, or "track and trace" systems, begins with education of enterprises to explain what serialization is, its benefits, and the requirements of the regulatory environment. There are AmCham China member companies with serialization knowledge that would be willing to engage relevant authorities in constructive discussions to assist in designing such a practical framework.

Existing Issues in Management of Food Production and Operation

Licensing Compliance Challenges

Since the "Management Measures for Food Operation Licenses" and the "General Rules for the Examination of Food Operation Licenses (for Trial Implementation)" (the General Rules) took effect in October 2015, many local governments have issued rules for the examination of local food operation licenses. Many food operators have started to apply for this new license. In the process, many enterprises nationwide have encountered problems, such as unclear descriptions about the concepts in laws and regulations, as well as different interpretations and inconsistent enforcement in different locations. This has resulted in significant difficulty for enterprises in their everyday operations. In September 2016, the CFDA solicited industry opinions on the General Rules, but there have been no official updates as of this writing. The main problems cited by AmCham China member companies include:

- Ambiguous descriptions of key concepts (e.g., "primary format," "business scope");
- Inconsistent food operation license application form formats in different locations and inconsistent interpretations by local licensing authorities;
- Arbitrariness in food operation license auditing; and
- Differences between the detailed rules of some locations and national-level general rules.

We recommend that uniform, explicit, and specific guidance should be given at the central level in relation to key concepts, such as "primary format" and "business items." Local autonomy related to key concepts and judgments should also be appropriately narrowed.

Introduce the Implementation Plan for the Food Safety Law as Soon as Possible

AmCham China welcomes the considerable progress in making the draft "Implementing Regulations of the Food

11月就《关于食品生产经营企业建立食品安全追溯体系的指导意见（征求意见稿）》面向社会征求意见。上述文件均要求生产经营企业承担食品追溯体系建设的主体责任，食品药品监管部门进行指导和监督的基本原则，显示了监管思路的可喜进展。

但在实际操作层面，许多地方政府建立当地政府追溯平台，要求企业上传数据资料，或采用二维码、电子秤等具体技术手段上传零售数据资料。同一企业在不同地区采用不同的追溯系统，不仅加大了企业合规成本，更加大了确保食品安全的难度。

商会会员企业在全国各地区均设有诸多连锁经营业务，我们呼吁并支持采用科学、合理、有效的技术解决方案加强产品的全产业链追溯；国家相关部门能为此等全产业链追溯制定相关透明的国家框架并给予各地政府明确指引，同时叫停地方政府追溯平台的做法至关重要。为有效执行该等全产业链追溯或“跟踪追溯”系统应首先使企业理解全产业链追溯的含义、其相关效益及现行监管环境下的相关要求。商会会员企业具备相关全产业链追溯的知识并愿同相关当局进行建设性对话，以协助建立一套可行的全产业链追溯框架。

食品生产和经营管理现存问题

合规挑战

2015年10月，《食品经营许可证管理办法》和《食品经营许可证审查通则（试行）》正式开始实施。各地随后陆续出台了地方食品经营许可证审查细则，大量食品经营者也开始申请新的食品经营许可证。在这一过程中，很多企业在各地遇到了诸如法规概念描述不明确、各地执法人员解读不同、执法不一的情况，给企业的日常运营带来了较大的困扰。2016年9月，《审查通则（试行）》进行行业内部征求意见。商会会员企业反映的主要问题包括：

- 关键性概念（“主体业态”、“经营范围”）描述不明确；
- 各地方食品经营许可证申请表的格式及地方发证机构的解读不一致；
- 食品经营许可证核查中存在的随意性；
- 部分地方细则与国家通则不相协调。

建议从总局层面，对诸如主体业态、经营项目等关键性概念及其包含的项目予以统一、明确、具体的指引，并适当缩小地方在关键概念和判断上的自主权。

尽快推动实施细则出台

商会十分欣喜地看到此次《食品安全法》实施细则送审稿在科学性、合理性和可操作性等各方面都取得了长足进步。为了协助送审稿日臻完善，我们针对核心内容提出了一些意见和建议，希望有关监管部门在作进一步修订时予以考虑。

- 送审稿中部分条款规定与现行标准或者法规接轨的问题，比如与产品召回有关条款应与已经颁布实施的《食品召回管理办法》保持一致；关于转基因产品标示的条款，应按照农业部有关规定执行；关于食品配料含有可能导致过敏反应物质的条款，应按照食品安全国家标准进行标注。
- 基于食品安全风险考虑，建议明确不得复检的范围限定为“检验结论显示致病性微生物指标不合格的”。合理区分致病菌和非致病菌也有助于减少公众的误解乃至恐慌。
- 对容易引起争议的关键性概念的明确界定，比如“标签瑕疵”的范围划分可以更细致；明确“预包装食品拆包装销售”行为不在“散装食品”范围内；“回收食品”的例外情况界定，如“企业回收的并通过不拆除与食品接触的包装的形式排除食品安全风险或证明无风险的食品”应排除在外；“违法所得”概念界定与其他法律法规保持一致等。

进一步规范统一产品抽检相关制度和实践

进行食品抽检、发布检测结果是相关监管机构对于生产经营环节开展食品安全监管的手段之一，其抽检过程和结果发布对于食品生产和经营企业的业务和声誉均会产生直接影响，也会影响公众对于相关产品食品安全水平的认知，因此需要基于科学、公正和审慎的原则。

尽管近年来食品抽检流程的规范性得到提升，但仍面临一些挑战。

- 现有抽检规定要求一旦抽检不合格，无论不合格要素是否与食品安全风险有关，均需停产下架，对企业的正常运营影响非常大，也容易因为抽检结果的发布造成市场恐慌。因此建议考虑针对不同的抽检要素进行风险分级管理，并根据风险等级提出更合理的后续操作方案，避免一刀切的停产下架。
- 复检指标的科学合理性设置和使用。我们建议对《食

Safety Law” (the Draft Implementing Regulations) scientific, rational, and operational. To assist in improving the Draft Implementing Regulations, we offer some recommendations about the core content:

- Ensure that provisions of the Draft Implementing Regulations are consistent with existing standards, laws, and regulations (e.g., the “Management Measures for Recall of Food”), relevant regulations of MOA on genetically modified products, and national food safety standards for labeling.
- Limit the scope of food that cannot be re-inspected to that with test results exceeding the indicators for pathogenic microorganisms. We recommend that regulations differentiate between pathogenic microorganisms and other microorganisms that do not affect food safety. This would be in line with international supervision practices, and the scientific division of test quotas will help reduce the misunderstanding and even panic of the public.
- Clearly define key concepts that can easily cause disputes. These include the definitions of labeling flaws, bulk food, separately packaged food, recovered food, and illegal gains.

Further Standardize and Unify the System and Practices Related to Food Spot Checks

Regulators conduct spot checks of food and release the results to promote food safety in production and operation. These checks have a direct impact on the businesses and reputation of food production and operation enterprises, and also influence people’s understanding of the food safety of related products. Therefore, it is important for such measures to be scientific, fair, and cautious.

Despite recent improvements made in food spot checks, some challenges remain:

- According to the existing regulations on spot checking, once a product is found unqualified, its production needs to stop and the product needs to be taken off the shelf whether or not the cause is related to food safety risks. This seriously affects the normal operation of the enterprise and may result in market panic. Therefore, we recommend that risk classification management should be considered to account for different sampling elements and create an operation plan based on risk level.
- The setting and use of re-inspection indicators should be scientific and reasonable. We recommend that the relevant provisions in the Draft Implementing Regulations be adjusted to account for the difference between pathogenic and other microorganisms as discussed above.
- Local standards for spot checks are often different and local testing organizations often have different understandings of which standards apply to product spot checks. AmCham China member companies hope to increase communication with the testing organizations

and regulators to share experience, help improve the professionalism of the organizations, and make their tests more scientific.

Concerns About Enforcement

Unify Policy Interpretations and Law Enforcement Standards, Improve the Professionalism of Local Law Enforcement Officials

In the year since the enactment of the new Food Safety Law, multiple implementing policies and regulations have been introduced at the national level to elaborate the standards and requirements of the law. Meanwhile, local governments at different levels have introduced their own policies and regulations. For example, many localities in central and southern China have issued requirements for local government tracing platforms, and local governments in northern China have established different requirements for commercial fast inspection laboratories and imposed measures such as government interviews and media exposure against violators.

Local governments vary substantially in their food safety regulatory frameworks and the capability and qualifications of regulators. This has led to inconsistency in their interpretations of policies, laws, and regulations, and in standards for law enforcement. For example, under the same management system for food production licenses and food operation licenses, different localities vary greatly in licensing requirements. This situation makes little sense from a national regulatory view. It creates a confusing bureaucratic maze for both local and foreign companies, and in fact holds local companies back from developing genuinely global brands.

AmCham China recommends that laws and regulations issued at the national level should be as detailed and clear as possible, that central government authorities should issue exemplary cases and best practices where necessary to guide local enforcement, and that the training of local governments in policies, laws, and regulations should be strengthened. We further suggest that windows should be set up for communications between government and enterprise, and guidance should be given to localities in response to feedback from enterprises. Additionally, AmCham China and its member companies hope to cooperate with the relevant government departments, share international enforcement experience, and provide relevant training and educational programs for grassroots enforcement departments.

Clarify Food Safety Responsibilities Throughout the Supply Chain and Exempt Enterprises That Fulfill Due Diligence Requirements

Food producers and operators shoulder different responsibilities for food safety at different points in the supply chain, and they should fulfill their respective responsibilities at each stage of production. However, many policies, laws, and regulations currently group producers and oper-

品安全法》实施条例中相关条款进行调整，以区分致病菌和非致病菌。

- 各地抽检标准不一，地方检测机构对于产品抽检的适用标准方面存在不同的理解。商会的会员企业愿意加强与相关检测机构和监管部门的沟通，分享经验，共同促进检测机构提升其专业水平，提升检测的科学性。

执法问题

统一政策解读和执法标准，加强地方执法人员专业能力建设

新《食品安全法》颁布一年来，国家层面出台多项配套政策法规，细化标准和要求。与此同时，各地政府、甚至当地不同层级政府也纷纷出台政策法规。如华中、华南等多地政府颁布当地政府追溯平台要求；华北等地政府对门店建立快检实验室提出不同要求，并对违者采用政府约谈、媒体曝光等措施。

此外，各地政府食品安全监管架构不同，监管人员的能力和水平也存在较大差异，各地出现政策法规解读和执法标准不统一的情况。比如同样是《食品生产经营许可证》管理制度，各地在证照上的要求存在较大差异。这在国家监管层面并无任何意义，因为中国和外国公司都会误认其为是官僚主义的做法，同时该做法也抑制了地方公司发展成为国际大品牌的积极性。

因此商会建议国家层面出台法律法规时尽量细化、清晰；加强对地方政府的政策法规培训；建立政府与企业沟通窗口，针对企业反馈给予地方指导。此外，商会及其会员企业愿意与相关政府部门合作，分享国际执法经验，为基层执法机构提供相关的培训教育项目。

明确产业链各环节食品安全责任，鼓励企业尽职尽责

从整体产业链看，食品生产者和经营者承担着不同的食品安全责任，各环节应该各尽其责。但目前许多政策法规都将生产者和经营者合并进行规制，容易造成责任混淆，不易找到食品安全问题的症结所在。商会建议明确生产者、经营者的各自责任，增加或细化经营者尽职免责要求和标准，鼓励企业尽职尽责。

此外，随着电子商务的快速发展，越来越多的企业开展线上业务或线上线下结合。商会呼吁，加快完善网络食品安全监管，细化监管要求，注重源头管理，统一线上线

下监管标准，做到线上线下公平竞争，并有效控制食品安全风险，保护消费者权益。

职业索赔人

2016年8月，《消费者权益保护法实施条例（草案）》面向社会征集意见。该草案将消费者与“职业索赔人”进行了明确区分，意味着后者将不再受消法保护。此举引起了对“职业索赔人”的热议。近年来，在相关法律法规相继推出“惩罚性赔偿条款”后，直接造成了与职业索赔相关的投诉、诉讼事件高发的现象。“职业索赔”现象不受约束的蔓延使得行政执法部门、企业与普通消费者的正常工作、运营和正当权益得不到足够的维护，对正常的经济秩序造成了破坏。职业索赔人只盯宣传瑕疵、只求经济利益而不重产品质量和消费环境保护的行为，与国家鼓励社会共治和质量监督以及建立立法制化，国际化和便利化商业环境的立法初衷相去甚远。

商会于2016年底与食品安全治理协同创新中心开展合作，就职业索赔人问题展开调查，在秉承立法初衷的基础上，探讨职业索赔人问题纠偏的可行性方案，以期将其规范化、制度化。同时，探寻在现有法律制度的框架内以风险分级原则为前提，合理解释“惩罚性赔偿条款”的具体方案，以实现将“职业索赔人”的关注点重新引导到“食品安全问题”上来，有效维护市场秩序并体现食品安全社会共治的立法初衷。

食用农产品监管缺位

从风险管理的角度看，与预包装食品相比，中国食用农产品食品安全的整体挑战更大。目前新“农产品质量安全法”尚未出台，国家食品药品监督管理部门与农业管理部门就食用农产品生产和流通环节对接达成原则一致，即食用农产品产地准出与市场准入对接。2016年7月相关农业管理部门颁布“食用农产品合格证管理试点办法”，建立与市场准入制度相衔接的食用农产品合格证管理制度，计划试点实施一年后进行评估。

在现实状况下，批发市场是农产品产地准出和市场准入的关键对接点。同时由于批发市场产品集中，交易量大，在此环节增加配备检测设备，提升检测能力，可以减少零售门店检测成本压力，同时避免重复检测及检测设备不全的问题。

因此，商会建议 ① 加强农产品产地准出和市场准入相关对接政策的制定，② 强化对批发市场的产品检测和监管，

ators together for regulatory purposes, which often causes confusion of responsibilities, making it difficult to pinpoint the root cause of a given food safety problem. AmCham China recommends that steps be taken to clarify the respective responsibilities of producers and operators, increase or elaborate due diligence requirements and standards for operators, and exempt enterprises who fulfill their due diligence requirements from responsibility for food safety issues associated with products that they purchased from upstream suppliers.

Furthermore, with the rapid development of e-commerce, an increasing number of enterprises have combined online business with offline business. AmCham China recommends improving the online supervision of food safety, elaborating regulatory requirements, focusing more on source management, unifying standards for online/offline supervision, ensuring fair online/offline competition, and effectively controlling food safety risks to protect the rights and interests of consumers.

Professional Claimants

In August 2016, the draft “Implementation Rules of the Consumer Protection Law” (the Draft Rules) were released for public comment. The Draft Rules made clear the definition of “consumer” and distinguished it from the definition of a “professional claimant,” which means the latter will no longer be protected by the Consumer Protection Law. This move has stirred heated public debate regarding “professional claimants,” whose actions have increased as they took advantage of the “punitive compensation articles” that have been successively included in relevant laws, regulations, and judicial interpretations in recent years. The phenomenon of professional claimants has spread unchecked, resulting in a lack of sufficient safeguards for the normal work, operations, and legitimate rights and interests of administrative law enforcement agencies, enterprises, and ordinary consumers. These professional claimants seek economic benefits without regard for product quality or protection of the consumption environment. Such acts damage economic order and are a far cry from China’s original intention to encourage joint social governance and quality supervision and forge a “codified, international, and convenient business environment.”

In late 2016, AmCham China began cooperating with the Center for Coordination and Innovation of Food Safety Governance to launch an investigation of the professional claimant problem. Adhering to the original legislative intent of relevant regulations regarding punitive compensation, we explored actionable proposals to address the problem of professional claimants, hoping to standardize and systemize measures to control this problem. At the same time, we explored specific proposals to reasonably explain “punitive compensation articles” under the framework of the current legal system based on the principle of risk classification, with the goal of shifting the focal point of “professional claimants” back to “food safety problems.” This will effectively

maintain market order and realize the original legislative intent of food safety joint social governance.

Inadequate Supervision of Edible Agricultural Products

From the perspective of risk management, the food safety of Chinese edible agricultural products faces greater overall challenges than pre-packaged food. While the new “Agricultural Product Quality Safety Law” is pending, food and drug administration departments and agricultural administration departments have agreed on principles for linking the production and distribution of edible agricultural products, that is, connecting production with permission for agricultural products to be sold outside of their place of origin through market access in other localities. In July 2016, the relevant agriculture administration department issued the “Pilot Measures for the Management of Certificates of Quality for Edible Agricultural Products” to set up a management system for certificates of quality that is linked to the market access system. The department plans to conduct an evaluation one year after implementing the pilot measures.

In practice, the wholesale market is a crucial connection point between permission for agricultural products to be sold outside of the place of origin and market access elsewhere. Because of the high concentration of products and large turnover in the wholesale market, an increase of testing equipment to increase testing capacity in the wholesale market would reduce testing cost pressures on retail stores and avoid problems like repeated testing and inadequate testing equipment.

Thus, AmCham China recommends that steps be taken to

- ① strengthen the connection of policies between place of origin and market access elsewhere for agricultural products,
- ② intensify the testing and supervision of products in the wholesale market, and
- ③ clarify and elaborate on the due diligence standards or industry norms for edible agricultural product retail enterprises in order to meet the challenge of connecting policies between place of origin and market access elsewhere for agricultural products.

Laws and Regulations on Imported and Exported Food

Accelerate the Revision of the “Administrative Measures for the Safety of Imported and Exported Food” and Introduce a System Designed to Encourage Enterprise Responsibility

Since the beginning of implementation in 2012, the “Administrative Measures for the Safety of Imported and Exported Food” (the Measures) have played an important role in promoting the supervision of the safety of imported and exported food. Following the revision and implementation of the new Food Safety Law, we believe that it is necessary to revise the Measures to meet the specific requirements of the new Food Safety Law.

③ 明确和细化零售企业食用农产品尽职免责标准或行业规范，以应对农产品产地准出和市场准入标准对接的挑战。

进出口食品法规

加快对《进出口食品安全管理办法》进行修订，尽快出台激励企业落实进出口食品安全主体责任的相关制度

《进出口食品安全管理办法》自从2012年实施以来为促进进出口食品安全监管工作发挥了重要作用。随着新的《食品安全法》的修订和实施，我们认为有必要对其进行修订，以落实新《食品安全法》的具体要求。

在激励企业落实主体责任方面，我们关注到新出台了《输华食品境外预先检验制度》、《进口食品优良进口商认定制度》、《输华食品合格第三方检验认证机构认定制度》等相关制度，商会认为这些制度体现了相关质量监督部门在优化管理制度方面的创新性，相关制度的出台也势必进一步推进贸易的便利化。商会会员愿意积极配合相关部门开展相关的行业调研、行业或企业试点，为尽早出台相关制度提供支持和帮助。

将第三方采信制度化并加快推行

随着中国与全球市场的贸易合作推进，日益增长的贸易量给政府的检验检疫能力带来了巨大的挑战。通过推广第三方采信制度，可以有效协助政府开展检验检疫工作。目前，采信第三方的检验结果的模式在部分省市已有实践并取得了良好效果。我们建议中国政府考虑在规范第三方检验模式的同时，出台相关规定引导这一模式在全国范围的推广。

另外，商会很高兴地看到，中国政府正在积极采用风险分级的管理模式对出口食品进行监管，并根据食品风险高低制定相应的抽检计划来保证出口食品的安全。我们希望中国政府对于出口食品监管的检测可以采用较为灵活的方式，企业可以自行选择官方指定或企业自荐的机构，对于风险较低的产品，甚至可以考虑采纳企业实验室的检测数据。

同时，我们建议中国政府考虑与有资质的境外第三方机构合作进行出口/进口预检验。在2016年11月举行的中美商贸联委会上，两国监管机构也提出要建立统一的食物监管标准，加强中美进出口食品安全体系的对接，推动食品贸易顺利开展。我们相信通过实现对出口产品预检验

结果的互认，能够在保证食品质量监管的同时，进一步加大通关的效率。

分类管理与信用管理结合提高通关效率

我们认为可通过进口原料供应商分类管理与进口企业信用管理相结合的方式，一方面促进企业通关便利，另一方面又可实现新《食品安全法》所要求的加强监管和有效监管的目的。建议将进口原料的风险分析、境外供应商的管理规范等纳入分类管理机制中，结合进口企业信用记录进行统一评估。针对不同评估情况，采用不同的检验方法和抽样比例，如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）。

建立研发用途的预包装食品，食品原料及食品添加剂进口的管理制度

在企业研发创新的过程中，相关的食品、原料、添加剂等的进口备案手续所需资料繁杂、耗时较长，不利于企业持续的产品创新。鉴于此类产品并非用于最终消费品的生产、货量也很小、不会造成食品安全风险，我们建议相关质量监督部门考虑针对此类非生产销售用途的预包装食品，食品原料及食品添加剂的进口开通绿色通道，简化备案手续，将监管重点放在原材料使用的可追溯性方面，从而实现有效监管目的。我们愿意积极配合总局制定针对研发创新用途产品进口的相关监管制度。

完善进口食品进出口商备案系统保护企业资料安全

2016年，中国政府在进出口食品可追溯方面推出了一系列新的举措，特别是在进口食品进出口商备案系统中强调，要求企业如实填报食品进口记录和销售记录。这些资料是企业激烈的市场竞争中得以生存的重要信息，对此，在积极配合政府实现进口食品可追溯的同时，企业也担心商业信息的泄露，我们希望中国政府可以进一步完善和优化备案系统，特别是要求加强对企业核心资料的管理，不能由任何人任意调用，即便调用也需要有监控和记录，最大限度保证资料的安全，避免对企业正常运营造成影响。

加快推广地方成功经验

在相关质量监督部门的指导下，很多地方出入境检验检疫部门在监管资源优化配置，提高监管效率，促进贸易便利化方面积累了很多成功的经验，企业无不为之感到鼓

We have seen that several systems have been introduced to motivate enterprises to fulfill their responsibilities, including the “System of Overseas Pre-Inspection of Food Exported to China,” the “System of Recognizing Outstanding Importers of Imported Food,” and the “System of Recognizing Qualified Third-Party Inspection and Certification Institutions for Food Exported to China.” AmCham China believes that these systems show the innovativeness of quality supervision departments in optimizing management systems, and that their introduction will further facilitate trade. AmCham China member companies are willing to work with the relevant authorities in carrying out surveys of related industries and experiments with related enterprises to provide support and help for the earliest possible introduction of the relevant systems.

Institutionalize and Accelerate Implementation of Third-Party Credit Information Collection

With the progress of trade and cooperation between China and the global market, increasing trade volume has brought great challenges for the government’s inspection and quarantine capabilities. The promotion of third-party credit information collection systems can effectively assist the government in developing its inspection and quarantine work. Currently, the model of trusting third-party inspection results has been implemented with positive effects in some provinces and cities. While standardizing the third-party inspection model, we recommend that the Chinese government consider introducing related regulations to guide promotion of this model nationwide.

Additionally, AmCham China is pleased to see that the Chinese government is adopting a classified risk management method in its supervision of exported food, formulating a plan for spot checks according to the level of food risk. We encourage Chinese government to adopt more flexible methods to test exported food that would allow enterprises to select an officially designated testing organization or one recommended by the enterprise. For products of lower risk, regulators could even consider using test data from the enterprise’s own laboratory.

At the same time, we recommend that the Chinese government consider cooperating with qualified overseas third-party institutions in the pre-inspection of imported and exported food. At the US-China Joint Commission on Commerce and Trade (JCCT) meeting held in November 2016, regulators from the two countries proposed to establish uniform standards for food supervision, strengthen the connection of the safety system for imported and exported food in the two countries, and promote food trade. We believe that mutual recognition of the pre-inspection results of exported products will further improve customs clearance efficiency while ensuring the supervision of food quality.

Combine Classified Management with Credit Management to Improve Customs Clearance Efficiency

We think that combining the classified management of imported raw materials suppliers with the credit management of importing enterprises can facilitate more efficient customs clearance for enterprises and also reach the goal set out in the new Food Safety Law of strong and efficient supervision. We recommend that the risk analysis of imported raw materials and the management standards for overseas suppliers should be incorporated into the mechanism for classified management and combined with the credit records of importing enterprises for unified evaluation. Different inspection methods and sampling proportions should be adopted for different types of evaluations, for example fewer test items are needed for low-risk products that are not directly edible (e.g., food additives and food raw materials).

Establish a Management System for the Import of Pre-Packaged Food, Food Raw Materials, and Food Additives for R&D Purposes

The import filing procedures for food, raw materials, and additives used for research and development (R&D) are time-consuming and require detailed documentation, which has a negative influence on sustained product innovation. Since such products are not used in the production of final consumer goods and are small in quantity, they will not lead to food safety risks. We recommend that regulators consider opening a “green channel” to simplify filing procedures for pre-packaged food, food raw materials, and food additives not used for production and sales purposes in order to place the focus of supervision on the traceability of raw materials and achieve effective supervision. We are willing to work with the CFDA in formulating a supervisory system governing the import of products for R&D purposes.

Improve the Filing System for Food Importers and Exporters to Protect Enterprise Data

In 2016, the Chinese government launched a series of new initiatives on the traceability of imported and exported food. In particular, the filing system for food importers and exporters requires enterprises to submit records on the import and sale of food. This material constitutes vital information that enterprises need to survive in a fiercely competitive market. Enterprises are concerned that their business information will be divulged while cooperating with the government to achieve the traceability of imported food. We encourage the Chinese government to further improve the filing system by requiring strengthened management of the core information of enterprises, which should not be used by unauthorized parties. Any use that is indeed necessary should be monitored and recorded to ensure the security of the information to the greatest extent possible and avoid any impact on the normal operations of enterprises.

舞。例如，上海等地已经为研发用途用样品开辟了绿色通道、对进口原料或物料进行分类管理和信用管理，降低抽样量，将更多资源投入到对重点企业及重点原料的监管。部分地方地允许有诚信的企业或低风险的产品运往企业自有仓库待检，极大的降低了监管成本，优化了企业的物流管理。同时，中国（广东）自贸区的“进口食品检验前置”新模式、进口食品快速放行模式等十一项检验检疫创新制度也值得推广至全国。我们建议相关质量监督部门考虑通过在制度层面出台相关条例在全国范围推广这类成功经验。

关于进口食品随附官方证书的要求

我们注意到近期国家有关部门向各出口国驻华大使馆通告了《关于进口食品随附官方证书要求的函》，要求相关食品在输华进口时，需向入境口岸检验检疫部门提交该批货物随附的出口国家（地区）主管部门出具的输华食品官方证书。我们深刻理解中国的食品进口规模和食品饮料行业高度碎片化的特点为进口食品的安全监管所带来的巨大挑战，以及有关部门所面临的严峻挑战。我们认为现有通告函中还存在一些问题，将可能为行业带来新的问题与困惑。我们希望从兼顾进口食品安全监管和贸易便利化的角度出发，通过探索国际实践，探索对进口前监管更为有解决方案。商会期待与相关部门进行进一步的沟通，积极采纳与相关讨论，促进科学决策，共同寻找解决方案，从而为中国的进口食品安全管理的新制度建设贡献绵薄之力。

进口环节的食品标签问题应以食品安全为考虑重点

食品标签是保证食品安全的重要组成部分，尤其对消费者而言。然而，随着我国广大消费者对进口食品需求的不断增长，加之国内、国际上食品标签种类繁多，对进口查验提出巨大挑战，因而进口查验需要将重点放在食品安全上，而不是标签本身。目前，由于标签的问题，例如标签中的归类界定问题，相当数量在国内有需求的食品无法顺利进入中国市场。而另一方面，相关部门又缺少足够的资源审批大量的新增食品标签申请。鉴于此，我们建议将进口食品标签审批工作的重点放在食品安全上，即在保证食品安全的前提下，只要相关的食品标签中所含成分及营养信息如实准确、表述清晰，则予以考虑放行。

建议

对中国政府：

- 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，持续推进“清单式”标准化执法，以加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。
- 在全国范围内加快推进检验检疫通关一体化、进出口食品安全风险分级监管体系、第三方采信制度；简化检测研发用进口样品检验检疫流程。
- 继续完善食品安全国家标准体系，结合目前国内基层食品监管的水平、食品行业的复杂性和进口食品的标准适用性等问题不断加快完善该标准体系，并加强与非食品安全标准的协调和统一管理，最终建成一个全面覆盖，分类清晰的国家食品标准体系。
- 将现有地方食品安全监管结构纳入一套统一的国家体系之中，进行相关培训及具体案例分析，地方监管机构可将此等案例作为参考先例，并在该先例框架下进行相关监管活动。这将减少中国及外国公司的相关成本，使其更容易遵循相关法律规定。

Accelerate the Spread of Successful Local Experience

Under the guidance of the relevant quality supervision departments, many local entry/exit inspection and quarantine departments have accumulated rich experience in optimizing the allocation of regulatory resources, enhancing regulatory efficiency, and promoting trade facilitation. This has been very encouraging. For example, Shanghai and other localities have opened “green channels” for samples for R&D purposes and have implemented classified management and credit management for imported raw materials and other items, reducing sampling quantities so that more resources can be deployed to supervise key enterprises and raw materials. Some localities allow trusted enterprises to transport low-risk products to their own warehouses for inspection, thus greatly lowering regulatory costs and optimizing the logistic management of the enterprises. At the same time, 11 innovative systems of inspection and quarantine implemented in the China (Guangdong) Pilot Free Trade Zone are also worth spreading nationwide. These include the new “imported food pre-inspection” model and the “imported food fast release” model. We recommend that the relevant quality supervision departments consider spreading these types of successful experience nationwide by introducing related regulations.

Requirements for Official Certificates Accompanying Imported Food

Relevant national authorities recently issued a “Letter on Requirements for Official Certificates Accompanying Imported Food” (the Letter) to embassies in Beijing, which requires the submission of an official certificate for food exported to China issued by the responsible agency of the exporting country to the inspection and quarantine department at the entry port. This certificate must accompany the batch of food destined for China. We understand the great supervisory challenges relating to the safety of imported food brought about by the amount of food imported to China and China’s highly-fragmented food and beverage industry. However, we believe the Letter contains certain issues which may bring new problems and confusion to the industry. We hope that a solution more favorable than pre-import supervision can be found through the exploration of international best practices. AmCham China looks forward to further communication with the regulators, taking an active role in the relevant discussions, promoting scientific decision making, and jointly finding solutions to contribute to the creation of a new system for China’s imported food safety management.

Focus on Food Safety as the Priority for Imported Food

Food labeling constitutes an important part of the food safety process, especially for the consumer. However, with rising demand for imported food among Chinese citizens and the wide variety of food labels used both domestically and internationally, import inspections face enormous challenges. It is thus necessary for import inspection to focus on

food safety rather than labeling. Currently, due to labeling issues such as defining food categories, a number of food products are held up in the import process and the authorities have limited resources to approve large varieties of new food labels. Therefore, we recommend that priority be given to food safety in the approval of imported food labels. This will ensure food safety and allow entry of imported food as long as the ingredients and nutritional information are truthfully reflected and clearly stated on the label.

Recommendations

For the Chinese Government:

- Continue to strengthen the development of testing organs, the professionalism of law enforcement officials, and the standardization of law enforcement in order to ensure the uniform and accurate interpretation and implementation of regulations nationwide. Additionally, establish a public channel and mechanism for communication between enterprises and legislative bodies and provide timely interpretations on the implementation of relevant legislation.
- Facilitate the integration of inspection, quarantine, and customs clearance; adopt an import/export food safety risk classification monitoring system and a third-party credit information collection system; and simplify the testing and inspection procedures for the import of samples for R&D purposes nationwide.
- Continue to improve the national system of food safety standards while considering the level of grassroots food supervision, the complexity of the food industry, and the applicability of standards to imported foods; strengthen harmonization with non-food safety standards and manage them uniformly; and establish an all-encompassing and clearly classified national food standard system.
- Unify the current local food safety regulatory structure under a single national system, and provide training and practical case studies which can be used as precedents to local regulators who will operate within that framework. This will reduce cost and compliance burdens on both domestic and foreign companies.

Healthcare Services, Medical Devices, and Pharmaceuticals

Introduction

Though healthcare reform goals were tackled in 2016, a crucial year in working towards the goal of ensuring that everyone has access to basic healthcare services by 2020. The State Council released an outline for its “Healthy China 2030” initiative, published the “13th Five-Year Plan for Medical and Healthcare System Reform,” and implemented the two-invoice system for pharmaceutical products, emphasizing breakthroughs in the hierarchical medical treatment system, modern hospital management, universal health care, drug supply assurance, and comprehensive supervision during the 13th Five-Year Plan. AmCham China is pleased to see the Chinese government taking major initiatives in the healthcare industry, and our member companies will continue to support healthcare reform.

Healthcare Services

In October 2016, China published the “Healthy China 2030 Planning Outline.” President Xi Jinping has stressed placing health at the center of China’s policy formulation mechanism, including health in all government policy. We applaud this overarching policy and hope that the guidelines in this “Healthy China 2030” initiative will be implemented in policies at all levels of government. Foreign-invested medical institutions can play a role in achieving the goals of “Healthy China 2030,” and should be encouraged to participate.

Corporate Tax Rates

Although the Chinese government expressed interest in “gradually expanding the scope of foreign investment in building medical institutions, and encouraging the development of professional hospital management groups” in the “Healthy China 2030” outline, joint venture (JV) healthcare providers are not currently permitted to open branch hospitals, and must register all medical centers separately. JV healthcare providers cannot consolidate the accounts of medical centers as a single entity for tax reporting purposes, even if the medical centers are in the same city. Therefore, the profits of one medical center cannot be used to offset the losses of another medical center under the

same company. This policy can cause the effective tax rate of a developing enterprise to exceed 100 percent, especially during the initial stage of three to four years after a new hospital is established.

At present, private medical institutions pay the standard maximum corporate income tax of 25 percent, even though many industries enjoy a preferential tax rate of 15 percent. A preferential tax rate would help attract more investment in the private sector of the medical field, build a healthier environment for investment and development, and reduce motives for investors to sacrifice quality and safety for returns.

AmCham China recommends that the Chinese government set a preferential tax rate for foreign-invested medical institutions and allow management companies to consolidate the accounts of their medical centers for tax reporting purposes.

Cap on Foreign Ownership

In December 2016, the National Development Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) released a draft revision of the “Catalogue of Industries for Guiding Foreign Investment.” Medical institutions remain a “restricted” industry for foreign investment instead of an “encouraged” industry. Foreign ownership of medical institutions is not allowed to exceed 70 percent, which greatly affects the development of many excellent foreign-invested medical institutions. Moreover, it sets unnecessary thresholds for established foreign-invested medical institutions to open branch hospitals and clinics, and restricts foreign-invested medical institutions from becoming part of the hierarchical medical treatment system in China.

We recommend the Chinese government to change the status of foreign-invested medical institutions from an industry in which foreign investment is restricted to an industry in which foreign investment is encouraged. We also recommend that the government remove shareholding restrictions on foreign investment in medical institutions using JV and foreign-invested partnership ownership structures. The elimination of such restrictions would allow quality foreign-invested medical institutions to better contribute to the development of the medical field in China.

医疗卫生服务、医疗器械和医药

引言

2016年，中国迎来医疗卫生体制改革的关键一年，提出力争到2020年建立覆盖城乡居民的中国特色基本医疗卫生制度。国务院发布《“健康中国2030”规划纲要》以及《“十三五”深化医药卫生体制改革规划》，对药品实施“两票制”，强调十三五期间在分级诊疗、现代医院管理、全民医疗、药品供应保障和全面监管方面取得突破。中国美国商会（商会）很高兴看到中国政府在医疗行业采取重大举措，我们的会员企业将继续支持医疗卫生体制改革。

医疗卫生服务

2016年10月，中国发布《“健康中国2030”规划纲要》。习近平主席强调政府要将人民健康放在优先发展的战略地位，把健康融入所有政策。我们欢迎这一总体政策，并且希望《“健康中国2030”规划纲要》的指导方针能够在各级地方政府层面得到实施。外资医疗机构能够帮助实现“健康中国2030”目标，应当鼓励参与。

企业所得税税率

虽然中国政府在“健康中国2030”规划中表示有意“逐步扩大外资兴办医疗机构的范围，鼓励发展专业性医院管理集团”，但是中外合资医疗服务提供者不得开设分支机构，且必须对每一家医疗点都单独进行注册登记。他们纳税时也不能合并处理旗下医疗点的账目，包括同一城市内的医疗点。因此，同一个公司的一家医疗点的利润不能冲抵另外一家医疗点的亏损。这样可能导致企业总体负担的实际税率超过100%，特别是在新医院开设后3-4年的起步期内。

目前，私人医疗卫生企业仍然按照25%的普通税率缴纳企业所得税，而很多行业都享受15%的企业所得税优惠税率。优惠税率能够帮助私营医疗部门吸引更多投资，创

造更加健康的投资和发展环境，减少投资者为获取利润而牺牲质量和安全的动机。

商会建议中国政府允许外资医疗机构享受优惠税率，允许管理公司纳税时合并处理旗下所有医疗点账目。

外商投资所有权限制

2016年12月，国家发展和改革委员会（发改委）和商务部发布《外商投资产业指导目录》，医疗机构没有被列入“鼓励投资”类，而是被列入“限制外商投资”类。医疗机构外资持股比例不得超过70%，给很多优秀的外资医疗机构的发展造成很大影响。另外，中国对已经设立的外资医疗机构开设分支机构设置了一些没有必要的限制，并且限制外资医疗机构参与中国的分级诊疗体系。

我们建议中国政府改变外资医疗机构的现状，将其从限制外商投资行业改为鼓励外商投资行业。我们也建议中国政府取消中外合资和外资合伙医疗机构的门槛限制。取消这些限制，优质外资医疗机构将能够更好地推动中国医疗领域的发展。

纳入医保报销范围

目前，只有执行政府指导价的医院被纳入基本医疗保险（医保）报销范围。为了避免公共定价制度造成的过度医疗，遵照国际标准开展经营的私立医院往往对医疗服务采取不同的定价方式，从而无法纳入医保报销范围。

中国的政策决策者鼓励投资能够提供优质医疗服务的医疗机构，很多患者也愿意为优质医疗服务支付溢价。每月按时缴纳社保的个人使用优质医疗服务的，在报销金额不超过公立医院适用的最高价格的前提下，不应拒绝纳入医保报销范围。我们建议将私立医院纳入医保报销范围，允许患者报销实际医疗费用中公立医院最高价格及以下部分，差额部分由患者自费支付或者通过补充私人保险支付。

Eligibility for Social Health Insurance

At present, only hospitals complying with government-guided prices are eligible for coverage under government basic medical insurance (BMI). To avoid the overtreatment that results from the public pricing system due to artificially low healthcare prices, private hospitals operating according to international standards often choose to price medical services differently, making them ineligible for BMI reimbursement.

Chinese policymakers encourage investment in medical institutions capable of providing high-quality medical services, and many patients are willing to pay a premium for such services. Individuals who contribute to social insurance on time each month should not be denied BMI reimbursement on quality medical services up to the amount of the price ceilings applicable to public hospitals. We recommend that BMI cover private hospitals and reimburse patients for the maximum amount allowed in public hospitals if they are willing to pay the difference out-of-pocket or through supplementary private insurance.

Medical Devices

We are very pleased to see that in the recently issued outline of the “Healthy China 2030” initiative and the “13th Five-Year Plan for Health and Wellness,” improving the level and quality of medical services, drug safety, and medical technology are emphasized, as reflected specifically by the requirement that “by 2030, the quality standards for drugs and medical devices shall be fully aligned with international standards.” We urge decision makers to follow the principles of “high quality, reasonable price, and appropriate cost performance” in spurring China’s medical industry to reach this goal.

Product Registration

The China Food and Drug Administration (CFDA) has promoted reform of the medical device review and approval process over the past years. Reforms have included adjustment of the organizational structure and functions of the CFDA’s Acceptance Center and its Center for Medical Device Evaluation (CMDE). We appreciate the CFDA’s positive efforts to shorten the review timeline, and expect continuing reforms to encourage innovation. We urge the CFDA to further strengthen the monitoring of review and approval times, open for both pre- and post-submission consultation, and regularly publicize progress during review processes to gradually achieve “zero overdue” administrative licensing reviews and approvals.

For new products currently without technical or clinical trial guidelines, it is crucial to receive more support from the CFDA in advance to obtain registration in China, including instruc-

tions on device classification and categorization, type tests, and clinical trial requirements. However, the “Management Standard for Technical Review and Consulting for Medical Devices,” (Management Standard) released in October 2016 has essentially closed the existing channel for pre-submission consultations. Industry is worried that there will be fewer chances for consultation with CMDE reviewers, as the Management Standard states that each application will have only three face-to-face consultation opportunities, and no consultation is provided for products prior to submission. We are confident that the CFDA will provide more comprehensive guidance, and at the same time we urge the CFDA to allow pre-submission consultations for new medical device applications and devices on clinical trial pre-approval lists. Support by the CFDA for such applications will shorten the time and lower the costs for these new products and technologies to the benefit of Chinese patients, and will help promote innovation.

Clinical Evaluation Requirements

In May 2015, the CFDA issued the “Technical Guidelines for Clinical Evaluation of Medical Devices” (Technical Guidelines) based on the “Regulations on the Supervision and Administration of Medical Devices” (State Council Order No. 650). The implementation of these guidelines has helped companies receive many approvals and obtain waivers for local trials in China. However, companies have also faced challenges due to the limited choices of equivalent devices and clinical trial data that are eligible, which makes following the guidelines quite difficult for certain products, especially new, innovative products. For example, even when using public data for comparison, companies must obtain permission from the manufacturers of the substantially equivalent device to use the data, and only certain literature can be considered as evidence. Some evaluations are limited to products from only one enterprise, or an obsolete product of the last generation. The narrow range of equivalent medical devices has made the relevant literature insufficient, which in turn makes it extremely difficult and time consuming to provide comprehensive evaluations of clinical effectiveness and product safety to satisfy the Technical Guidelines.

We hope that the CFDA will consider the methodologies that the US Food and Drug Administration uses to define equivalent devices when making comparisons, and we would be pleased to provide any support needed to make the Technical Guidelines more practical going forward.

Clinical Trial Requirements

We are pleased that in September 2016, the CFDA published the clinical trial exemption list for the second batch of Class II and Class III medical devices, covering 359 medical devices. We appreciate these efforts by the CFDA to use scientific evaluation mechanisms to shorten the time for innovative devices to enter the market, while ensuring safety and effectiveness.

医疗器械

我们很高兴看到，日前发布的《“健康中国 2030”规划纲要》以及《“十三五”卫生与健康规划》都强调提升医疗服务水平和质量、药品安全和医疗技术，例如，要求“到 2030 年，药品、医疗器械质量标准全面与国际接轨”。我们敦促政策决策者在推动中国医疗行业实现这一目标的过程中，能够遵循“质量优先、价格合理、性价比适宜”的原则。

产品注册

国家食品药品监督管理总局（国家食药监局）过去一年一直在推动医疗设备审批程序的改革，其中包括调整国家食药监局受理中心以及医疗器械技术审评中心的组织结构和职能。我们赞赏国家食药监局为缩短审批时间做出的积极努力，期待其继续推进改革以鼓励创新。我们敦促国家食药监局进一步加强审批时间的监控，开放提交前和提交后咨询，定期公布审批进展情况，逐渐实现行政许可审批“零延误”。

对于目前没有技术审评或临床试验标准的新产品来说，要想在中国注册，关键是要事先取得国家食药监局的更多支持，包括对器械分类、型式试验和临床试验要求的指导。但是，2016 年 10 月发布的《医疗器械技术审评咨询管理规范》（“管理规范”）基本上关闭了现有的提交前咨询渠道。业界担心向审评中心审评人员咨询的机会变得更少，因为管理标准要求，每个受理号申请现场咨询的机会原则上不超过 3 次，对尚未提出注册申请的产品不提供咨询。我们相信国家食药监局会提供更全面的指导，与此同时，我们敦促国家食药监局准许对新的医疗设备以及临床试验和预批准名单中的医疗器械提供申请提交前咨询。国家食药监局对这类申请的支持，将降低这些新产品和新技术的审批时间和费用，不仅有利于中国病患，而且有助于促进创新。

临床评价要求

2015 年 5 月，国家食药监局发布基于《医疗器械监督管理条例》（国务院第 650 号令）制定的《医疗器械临床评价技术指导原则》（指导原则）。指导原则的实施帮助企业取得了许多批准和中国本土试验的豁免。但是，企业也面临着挑战，由于可选择的同品种医疗器械以及符合要求的临床试验数据有限，所以一些产品很难满足指导原则的要求，特别是新产品和创新产品。例如，即使使用公开数据进行比较，企业使用数据也必须取得本质上同种类器

械的生产企业的许可，只有某些文献可以作为证据。一些评价局限于只有一个生产厂家的产品或者上一代的过时产品。同种类医疗器械的可选范围太窄，导致相关文献不充分，进而导致按照指导原则全面评价临床有效性和产品安全性变得异常困难，需要耗费大量的时间。

我们希望国家食药监局在进行比较时，可以考虑采用美国食品与药品管理局（FDA）方法界定同类医疗器械。如有需要，我们愿意提供帮助，以提高技术指导原则的可行性。

临床试验要求

我们很高兴，国家食药监局于 2016 年 9 月公布免于进行临床试验的第二类和第三类医疗器械目录（第二批），涉及 359 种医疗器械。我们赞赏国家食药监局在确保安全和有效性的同时，通过科学评价机制缩短创新医疗器械的上市时间。

2016 年 3 月，国家食药监局和国家卫生和计划生育委员会（国家卫计委）联合发布《医疗器械临床试验质量管理规范》（第 25 号令，业界称为“医疗器械良好临床实践”（MD GCP））。管理规范旨在加强医疗器械临床管理，保障参与者的权利和利益。这一规范的起草人员采用了国际标准和经验，我们表示赞赏。

但是，2016 年 6 月实施后，管理规范也给我们的会员企业带来了许多挑战。例如，管理规范要求“一年内的产品注册检验合格报告”，但是这一要求不清楚，来自国家和地方食药监局的解释也不相同。对需要在临床试验前取得预批准的产品的描述过于泛泛。我们了解，在新管理规范实施期间，国家食药监局会收集行业的反馈意见，将管理规范与国际实践进行比较。商会愿意提供这方面的帮助。

我们欢迎对医疗器械进行临床试验数据合规的随机检查，包括国家食药监局 2016 年开展的旨在加强医疗器械临床试验监管以及调查数据造假等违法违规行为的检查活动。上述举措有助于提高申请者和临床试验机构的法律意识、责任和质量标准。

对于管理规范实施之前进行的临床试验自检，我们建议国家食药监局出台指导规范，确保顺利地模糊的临床试验旧规过渡到新规。上述措施不仅能够避免矫枉过正，而且有助于解决临床试验中的违法违规行为。

In March 2016, the CFDA joined the National Health and Family Planning Commission (NHFPC) in issuing the “Specifications for Quality Management of the Clinical Trials of Medical Devices” (Order No. 25, known as “Good Clinical Practice for Medical Devices” (MD GCP) within the industry). The MD GCP aims to strengthen the management of clinical trials for medical devices and safeguard the rights and interests of participants. We appreciate that the drafters adopted international standards and experience in its formulation.

However, the implementation of the MD GCP in June 2016 has created a number of challenges for our member companies. For example, the MD GCP requires a “qualification test report of product registration within one year,” but this requirement is unclear, and has been interpreted differently by central and local food and drug regulatory authorities. The description of products requiring pre-approval before clinical trials is also too general. We understand that during the implementation of the new MD GCP, the CFDA will collect feedback from the industry and compare the regulations to international practices. AmCham China would be pleased to provide support in this regard.

We welcome compliance inspections of clinical trial data on randomly selected medical devices, including the inspections CFDA conducted in 2016 to strengthen the supervision of medical device clinical trials and investigate violations of laws and regulations, especially acts of data fraud. The initiative has played a positive role in strengthening the legal awareness, responsibility, and quality standards of applicants and clinical trial organizations.

We also recommend that the CFDA introduces guidelines on direct self-inspection for clinical trials conducted before the implementation of the MD GCP to ensure a smooth transition from the old, vague clinical trial requirements to the new regulations. Such measures would address legal and regulatory violations in clinical trials while avoiding overcorrection.

Standards

Since the implementation of the 1989 Standardization Law, China has accepted only products that use the latest version of any Chinese standard. The transition period from the release of a new standard to its implementation is much shorter in China than in other countries. Medical device manufacturers only have one year or sometimes even less to make sure that their devices meet new Chinese standards. In contrast with transition periods of as long as three years in the US and Europe, this is an extremely short period of time.

The process of formulating national standards and adopting international standards lacks transparency and openness. The rules are set up by technical committees composed of representatives from government agencies, test organizations, hospitals, and local manufacturers. Although manufacturers and industry associations can make

comments or suggestions on a draft standard, oftentimes technical members of the committee who wield greater decision-making power have a limited understanding of actual market demand. AmCham China urges the Chinese government to allow foreign-invested medical device companies to participate in technical committees on equal terms with domestic enterprises.

Medical device standards relate not only to premarket preparations such as product research, development, and registration, but also to the post-market supervision of products. For example, the draft version of the “Management Measures for the Recall of Medical Devices” stipulates that “products that do not meet a mandatory standard and the registered or filed technical requirements” will be recalled. This significantly enlarges the scope of product recall and is not in line with global practices. Products with no quality or safety issues face the challenge of product recall due only to the fact that they are not in compliance with the Chinese mandatory standards, which in some cases are the old versions of current international standards. At the end of 2016, the Legislative Affairs Office of the State Council (SCLAO) solicited public opinions on the draft “Management Measures for Medical Device Standards.” The draft measures have clarified responsibilities of participants during the formulation or revision of a standard, but significant issues still remain.

We commend the Chinese government for boosting inter-departmental reform toward standardization to enable market participants to play a greater role in developing standards and supporting innovation. However, China’s approach to formulating and implementing standards on medical devices is overly complicated compared to international norms and has seriously delayed the adoption of the latest international standards, causing manufacturers to bear additional costs of product design and testing, and thus hindering innovation in the industry. Most multinational corporations (MNCs) have adopted updated international standards, but in some cases manufacturers must either lower their own standards to comply with China’s older national standards or give up the Chinese market. We recommend that the Chinese government establish a mechanism of coordination between the CFDA, NHFPC, and General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) in accordance with the State Council reform strategy to simplify national standardization and lower standards implementation from the level of regulation to that of technical guidance.

Post-Market Supervision

The 2015 “Measures for Supervision and Administration of the Use Quality of Medical Devices” (CFDA Order No. 18) clarified that organizations using medical devices may require medical device operating companies to provide maintenance and repair services as agreed in their contract, entrust maintenance and repair to other qualified organizations, or maintain and repair the medical devices themselves. We recommend that the CFDA introduce detailed rules to

标准

自1989年《标准化法》实施以来，中国只接受使用最新中国标准的产品。在中国，从新标准发布到实施的过渡期要比其他国家短很多。医疗器械生产商只有一年或者更短的时间确保自己的产品符合中国的新标准。与美国和欧洲长达三年的过渡期相比，这一期限实在太短。

国家标准制定以及国际标准采用过程缺乏透明和开放。负责制定规则的是由来自政府机构、试验机构、医院和当地生产企业的代表组成的技术委员会。虽然生产企业和行业协会可以对标准草案提出意见和建议，但是，委员会中拥有更大决策权的技术委员往往对市场实际需求了解有限。商会敦促中国政府允许外资医疗器械企业和内资企业平等地参加技术委员会。

医疗器械标准不仅涉及到诸如产品研究、开发和注册等事前准备，而且涉及到产品的事后监管。例如，《医疗器械召回管理办法》草案规定，应当召回“不符合强制性标准、经注册或者备案的产品技术要求的产品。”这一要求使得产品召回范围太广，不符合国际实践作法。即使产品不存在质量或安全问题，但只要不符合中国强制性标准，就面临被召回的危险，而这些强制性标准中有些是旧版的国际标准。2016年年底，国务院法制办公室（国务院法制办）发布了《医疗器械监督管理条例（征求意见稿）》，虽然明确了标准制定或修改过程中参与方的责任，但仍有重要问题没有解决。

中国政府正在推进部际标准化改革，以便让市场参与者在制定标准和支持创新方面发挥更大的作用，我们对此表示赞赏。但是，与国际标准相比，中国医疗器械标准的制定和实施方式过于复杂，严重影响到最新国际标准的及时采用，导致生产企业需要承担额外的产品设计和测试费用，阻碍了行业创新。大多数跨国企业已经采用最新的国际标准，但是，在有些情况下，它们只能选择降低标准以符合中国沿用的旧的国际标准，或者放弃中国市场。我们建议中国政府按照国务院的改革战略，在国家食药监局、国家卫计委和国家质量监督检验检疫总局（国家质检总局）之间建立一个协调机制，简化国家标准制定，将标准实施从法规层面降至技术指导层面。

事后监管

2015年国家食药监局发布的《医疗器械使用质量监督管理办法》（第18号令）已经明确，医疗器械使用单位可

以按照合同的约定要求医疗器械生产经营企业提供维护维修服务，也可以委托有条件和能力的维修服务机构进行维护维修，或者自行进行维护维修。我们建议国家食药监局出台详细的规则，进一步明确售后服务机构的资质、质量相关责任和质量管理体系要求以及维修使用的零部件产品的追溯要求。

医疗器械的集中采购和招标

采购过程

与药品相比，医疗器械会根据适应症、工艺设计、材质、规格、型号等划分为不同的产品系列。产品零配件的分类因为个体患者、治疗方法和操作方式的不同更是复杂多样。

“双信封”模式对同一类别的所有产品进行比较，没有考虑创新性、新技术、特殊适应症等因素。因为竞标和议价之前的预选阶段设置了价格限制，投标企业只能或者将产品价格降至和目录中价位最低的产品相同的价格，或者放弃投标。降价幅度太大，不仅会限制创新产品和性价比适宜的产品的临床使用，还会限制患者获得适合的产品和服务的权利，严重影响到生产企业的创新积极性。我们建议改革医疗器械集中采购模式，用其他方式取代“双信封”模式，如网上采购。

价格控制

1. 采购限价

至于医疗器械的网上采购，各省均采用“全国最低价”作为限价基础，没有考虑一些产品的“全国最低价”和采购模式、数量、回款时间、配送成本等主要因素之间的关系。各省在经济发展、疾病范围以及医疗技术和服务的水平和规模方面存在巨大差异，因此，最终产品价格也存在差异。在确定限价时，我们建议有关部门充分考虑上述因素，设置科学和符合现实的市场价格，避免迫使企业将大量产品撤出市场，这会导致临床需求无法得到满足。

2. 二次议价

近年来，在省级招标结束后，各个城市和医院会进行二次价格谈判，以便进一步压低投标企业的价格。很多企业不得不放弃竞标，造成临床需求无法得到满足。同时，二次议价也增加了相关城市政府机构和医院的工作量，竞标企业不得不在各个城市和医院之间奔波往返，导致经营成本增加。我们建议禁止二次议价，推动省市层面妥善开展医用耗材的集中采购。

further clarify requirements for the qualifications, quality-related responsibilities, and quality management systems of after-sales service institutions, as well as requirements for tracing the components and spare parts used for repair.

Centralized Procurement and Bidding on Medical Devices

Procurement Process

Compared with drugs, medical device products are classified into different series based on indications, technological designs, materials, specifications, and models. The components and accessories of the products fall under complicated and diversified categories due to differences in individual patients, treatment methods, and operation methods. Under the “two envelope” model, all products in the same catalogue are compared without considering factors such as innovativeness, new technology, or special indications. Because of price limits imposed to get past the qualifying rounds before competitive bidding and bargaining, bidding enterprises are forced to either lower their prices to that of the lowest-priced products in the catalogue or give up bidding. Such excessive price reductions not only restrict the clinical use of innovative products and products of appropriate cost performance, but also the right of patients to receive the correct products and services, thus seriously weakening the motivation of manufacturers to innovate. We recommend that the centralized procurement model for medical devices be reformed and the “two envelope” model replaced by another model such as online procurement.

Price Controls

i. Procurement Price Limits

In the online procurement of medical devices, all provinces use the “nationwide lowest price” as the basis for online price limits without considering the relationship between the “nationwide lowest price” of some products and key factors such as procurement model, quantity, time of payment collection, and distribution cost. Different provinces vary greatly in economic development, disease spectrum, and the level and scale of medical technology and services, causing differences in final product prices. When setting price limits, we recommend that the relevant departments fully consider these factors in order to set scientific and realistic market prices and avoid forcing companies to withdraw large numbers of products from the market, which may lead to difficulties in meeting clinical needs.

ii. Secondary Bargaining

In recent years, after successful bidding at the provincial level, cities and hospitals have started to hold secondary price negotiations so that the prices of bidding enterprises are further reduced. Many enterprises are forced to give up bidding, creating difficulties in meeting clinical needs.

At the same time, secondary bargaining has increased the workload of related municipal departments and hospitals and forced bidding enterprises to run around between different cities and hospitals, increasing their operating costs. We recommend that secondary bargaining should be prohibited in order to facilitate the appropriate centralized procurement of medical consumables at the provincial and municipal levels.

Distribution

i. The “Two-Invoice System”

The “two-invoice system” was implemented in December 2016 for pharmaceuticals, and is beginning to be applied to medical devices in some provinces. By allowing no more than two invoices from manufacturer to retailer, this system allows for only one additional distributor or wholesaler, with the aim of reducing markups in the distribution process.

After-sales service is an indispensable part of sales efforts in the medical device industry. Medical device distributors have important functions in before-sales and after-sales services, for example product training, equipment installation and maintenance, distribution and sterilization of tools, and operation support. For implanted (interventional) products in particular, distribution and implantation is only the start of service for the product cycle. Post-surgery follow up and extended after-sales product services require substantial human and material resources which cannot possibly be covered by the limited channels and manpower of manufacturers, thus creating the need for medical device distributors.

The small quantity of medical devices in use and their specialized nature makes it impossible for medical institutions to use batch procurement, so medical devices are usually procured through recurring orders of small quantities. The “two-invoice system” stipulates many administrative requirements which will increase the workload and management costs of manufacturers, distributors, and medical institutions. Management systems for medical device procurement information have yet to be established in most provinces and municipalities of China. It is already difficult to lower the prices of medical devices, and the administrative burdens stipulated under the “two-invoice system” will further increase product distribution costs.

ii. Designated Distributors

In 2016, bidding announcements in a small number of cities required that manufacturers bid first, and bid-winning products were then distributed by government-designated distributors, meaning that manufacturers had no ability to examine the qualifications and after-sales service capabilities of the distributor. Such excessive government intervention clearly violates market laws, defying the general trend of decentralization, and increases the possibility of distributor monopoly. We recommend that requirements for govern-

销售

1. “两票制”

2016年12月，针对药品的“两票制”开始实施，并开始部分省份应用于医用耗材。根据这一制度，从生产商到零售商，最多只能开两次发票，只允许不超过2家经销商或批发商，目的是为了减少流通过程中的加价。

在医疗器械行业，售后服务是销售必不可少的组成部分。医疗器械经销商在售前和售后服务中有着重要的作用，例如，产品培训、设备安装维护、工具配送消毒以及运行支持。特别是植入（介入）性产品，配送和植入只是产品周期服务的开始。术后追踪和延伸售后服务需要投入巨大的人力和物力资源，这些单靠生产企业有限的渠道和人力是不可能应付的，所以需要医疗器械经销商的参与。

医疗器械量少及其特殊性使得医疗机构无法批量采购，因此，医疗设备往往通过重复性的少量订单进行采购。

“两票制”的很多行政性要求会增加生产企业、经销商和医疗机构的工作量和管理成本。中国多数省市还没有建立医疗器械采购信息管理体系。降低医疗器械价格已经很难，“两票制”的行政性要求更是进一步增加了产品销售成本。

2. 指定经销商

2016年，少数城市的招标公告要求生产企业首先投标，然后中标产品由政府指定的经销商负责经销，这意味着生产企业无法检查经销商的资质和售后服务能力。政府如此过度干预显然违反市场规则，不符合简政放权的总体趋势，容易形成经销商垄断。我们建议取消政府指定经销商的要求，确保生产企业有权按照资质标准选择经销商。

在用医疗器械的转让

国务院第650号令和国家食药监局第18号令已经明确允许在用医疗器械的转让。为了提高资源利用效率，规范在用医疗器械转让，确保转让的医疗器械的安全性和有效性，我们建议国家食药监局参照国际规范或标准（如，IEC PAS 63077和IEC 62309）对医疗器械转让期间的质量保证要求加以规范。

医疗器械定价和医保支付制度

医疗服务价格改革已经进入攻坚阶段，任务都不轻松。2016年7月，发改委、国家卫计委、人社部和财政部联合

发布了《推进医疗服务价格改革的意见》，确立了总体改革要求，包括“总量控制、结构调整、有升有降、逐步到位、调放结合、动态调整（以成本和收入结构变化为基础）以及多种方式并存的管理模式”。目前，医疗服务价格改革仍以基于成本而非价值和医疗质量的“降价”为主。与此同时，以主流方法一刀切的定价方式和检验类不区分方法学、手术类耗材打包收费等问题，也为各地能否有效服务于临床带来许多争议。

新增医疗服务价格

2015年12月25日，发改委发布《关于加快新增医疗服务价格项目受理审核工作有关问题的通知》（“通知”），要求加快各地受理新增医疗服务价格项目申请，不受《全国医疗服务价格项目规范（2012年版）》限制。此外，《推进医疗服务价格改革的意见》也要求提高管理效率，加快新医疗技术的临床使用。

目前各地政府推进的地方医疗服务价格调整，仍然主要以《全国医疗服务价格项目规范（2012年版）》为导向，对新医疗服务与诊疗技术准入缺乏明确的指导原则和机制。此外，各地新增医疗服务价格的进度并不一致，部分省份仍然没有启动新增医疗服务价格受理工作。新增窗口开放时间也没有一定规律，部分省份新增医疗服务价格开放时间比较短，医院没有时间充分准备相关证明资料，导致适宜高效的技术和医疗器械无法获得临床使用。

为推动上述政策的实施，我们建议国家发改委敦促各省和地物局尽快启动新增医疗服务项目的受理和审批，制定新增医疗服务项目规范和制度，延长申请受理时间。

检验方法缺乏差异化

根据《全国医疗服务价格项目规范（2012年版）》规定，“检验类项目价格不得区分试剂或方法，要充分考虑当地医疗机构主流检验方法和社会承受能力等因素，以鼓励适宜技术的使用。”目前，一些省份在制定医疗服务价格没有区分方法，仍然按照原有的定价方式。我们明白，这些政策的目的是为了控制总体费用。但是，与较旧的设备相比，很多新型检验设备使用了不同的方法，能够更快更准确地提供结果，通常更为尖端复杂。对检验方法不加区分，会阻碍先进诊疗技术的临床应用和发展。低价技术不能提供诊断和治疗所需要的可靠数据，甚至会增加总体医疗费用。因此，我们建议发改委考虑将更多先进、灵敏和特定的检测方法纳入2012年版规范，特殊情况下允许单独计费。

ment-designated distributors be eliminated, ensuring manufacturers the right to choose a distributor based on their qualification standards.

Transfer of Medical Devices in Use

State Council Order No. 650 and CFDA Order No. 18 have made it clear that the medical devices in use can be transferred between organizations. To enhance resource utilization efficiency, standardize the transfer of medical devices in use, and ensure the safety and effectiveness of the medical devices transferred, we recommend that the CFDA refer to the existing international guidelines or standards (e.g., IEC PAS 63077 and IEC 62309) to standardize quality assurance requirements during the transfer of medical devices.

Pricing of Medical Devices and the BMI Payment System

The reform of medical service prices has entered a stage where the easy tasks have been completed and the remaining tasks will be more difficult. In July 2016, the NDRC, NHFPC, Ministry of Human Resources and Social Security (MOHRSS), and Ministry of Finance jointly issued the “Opinions on Promoting the Reform of Medical Service Prices,” which outline overall reform requirements including “controlling the total number, structural adjustment, markup for some and markdown for others, gradual implementation, combined adjustment and relaxing of controls, dynamic adjustment (based on changes in cost and income structure), and multi-level management.” At present, the reform of medical service prices still mostly involves “markdown” and is unfolding on the basis of cost rather than value and medical quality. At the same time, the problems of a one-size-fits-all pricing model for mainstream in vitro diagnostics (IVD), imposing a uniform methodology for different test classes, and bundled fees for surgical consumables have created doubt whether different regions can effectively serve clinical needs.

New Medical Service Prices

The “Notice on Issues Related to Facilitating the Review and Approval of Newly-Added Medical Service Price Items” (the Notice) issued by the NDRC on December 25, 2015 requires local authorities to accept and process applications for new medical service pricing, exempting them from restrictions in the 2012 “Specifications for Nationwide Medical Service Price Items” (the 2012 Specifications). The “Opinions on Promoting the Reform of Medical Service Prices” also promote increased administrative efficiency to accelerate the clinical use of new medical technologies.

The local medical service price adjustment that authorities are currently implementing in various regions is still based on the 2012 Specifications and lacks clear guidelines and mechanisms for new medical services and technologies. Additionally, the implementation of new medical service item pricing is inconsistent and some provinces still do not

accept the new prices. Office window hours are also irregular. In some provinces, the window hours for new medical service prices are so short that hospitals have no time to prepare the relevant materials, making the clinical use of certain technologies and medical devices impossible.

To facilitate implementation of the 2015 Notice, we recommend that the NDRC urge provincial and local price bureaus to start accepting and reviewing new medical service item pricing as soon as possible, open a window for accepting new items, and extend the hours for accepting these applications.

Lack of Differentiation Between Testing Methods

According to the 2012 Specifications, “differences between reagents or methods shall not be considered when pricing diagnostic items. Factors such as the mainstream testing methods of local medical institutions and affordability should be fully considered to encourage the use of the appropriate technology.” Currently, some provinces do not differentiate between methodologies when fixing medical service prices and base pricing on older methodologies. We understand the purpose of these policies is to control overall expenses. However, many new types of testing equipment use very different methodologies compared to the older ones, provide quicker and more accurate results, and are often more sophisticated. Failure to differentiate between testing methods hinders the clinical application and development of advanced technologies for diagnosis and treatment. Low-price technologies cannot provide reliable data necessary for diagnosis and treatment, and may even cause an increase in overall medical expenses. We urge NDRC to consider adding more advanced, sensitive, and specific test methodologies into the 2012 Specifications, and charge separately for special cases.

BMI Coverage

In many provinces, the catalogue of diagnostic and treatment items covered by BMI has remained unadjusted for years. The result is that many old medical techniques and services covered by BMI are no longer suitable for clinical applications, while new techniques and services are not covered under insurance, thus increasing the financial burden on patients. New and advanced diagnostic technologies are typically viewed as a burden on BMI funds rather than solutions to diseases, and are often subject to coverage restrictions or not covered at all. This approach only accounts for the nonrecurring costs of new and advanced diagnostic technologies, but fails to consider the impact of a technology’s safety and effectiveness on total costs. Under this system, it is difficult to incorporate appropriate techniques into the scope of BMI reimbursement. Appropriate medical technologies can provide patients with more efficient and timely treatment, and lower the probability of recurrence or the risks of other side effects, thus lowering overall medical expenses. At the same time, the existing BMI system limits most coverage to treatment and includes virtually no coverage of procedures necessary for disease prevention and

医保覆盖范围

在很多省份，基本医疗保险覆盖的诊疗项目目录已经多年没有调整，很多老旧医疗技术和服务已经不再适合临床应用，而新的技术和服 务又不在医保覆盖范围之内，从而增加了患者的经济负担。就医保而言，新的先进诊疗技术通常被当作是医保资金的负担而非疾病的解决方案，往往面临报销限制或无法报销。这种做法只考虑新的先进诊断技术的一次性成本，没有考虑技术安全性和有效性对总体费用的影响。按照这一制度，很难将适宜的技术纳入医保报销范围。适宜的医疗技术能够为患者提供高效及时的治疗，降低复发的概率和其他副作用的风险，总体上反而会降低医疗费用。与此同时，现行的医保制度将大多数报销项目局限在治疗领域，几乎没有包含疾病预防和家庭康复诊疗项目。这种制度不仅有违“提高人民健康水平”和“控制医疗卫生总费用”的医疗改革目标，而且对医疗保险基金的有效使用造成极大的浪费。

支付制度改革

“健康中国 2030”规划和《国务院深化医药卫生体制改革领导小组关于进一步推广深化医药卫生体制改革经验的若干意见》均要求“全面推进医保支付方式改革，积极推进按病种付费、按人头付费，积极探索按疾病诊断相关分组付费（DRG）、按服务绩效付费，形成总额预算管理下的复合式付费方式”。《推进医疗服务价格改革的意见》要求“扩大按病种、按服务单元计费范围，逐步减少按项目收费的数量”。

2017 年，国家卫计委在几个城市开展 DRG 试点，推进总额预算管理下的按病种、按天、按人头以及按疾病诊断相关分组（DRG）的复合式付费方式。这些改革需要多部门协调联动。相关部门在制定政策时往往仅对历史开支进行简单加权平均来测算住院或门诊报销的额度，却忽视了适宜技术在为病患提供全程解决方案及节约总体诊疗费用方面的作用。从长远而言，这种方法会加重医保基金和患者的总体经济负担。现有的按病种收付费制度主要涵盖现有的临床方法，意味着一些创新技术和产品不能及时地被纳入按病种收付费体系，因此也无法进入临床应用。这会打击企业开展技术创新的积极性。此外，在实施基于病种或 DRG 的过程中，医院可能会因为成本控制压力使用质量较低的医疗服务和技术。这一现象不仅不符合“提高人民健康水平”的目标，而且还有可能造成医疗资源的浪费。

药品

药品审批

商会赞赏国家食药监局 2016 年在加快药品审批程序方面所取得的重大进展。

药品注册申请积压大幅减少，积压申请的数量从 2015 年的 23,000 份降至 2016 年年底的不到 10,000 份。这部分是因为国家食药监局药品审评中心增加了人手，将工作人员人数从 2015 年的 120 人增加到 2016 年的 400 人，并且将继续招募人员，直到总数达到 1,000 人。

目前，国家食药监局正在修订已于 2015 年完成第二次修正的《药品管理法》。此次修订旨在加速药物审批及支持创新，预计将于 2017 年稍后完成并公布。

国家食药监局还实施了更严格的药品申请标准。申请人不能保证数据可靠有效的，可以撤销申请。不然，一旦发现临床数据有假，国家食药监局在三年之内将不再接受该申请人提交其他药品注册申请。截止 2016 年 1 月 21 日，共有 1184 名申请人（占 73%）要求撤销申请。

除了提高新药申请的门槛，国家食药监局还根据国务院办 2016 年印发的《关于开展仿制药质量和疗效一致性评价的意见》制定了详细实施指南。这些规定要求进行生物等效性研究来评估仿制药相较于原研药的质量和一致性。为了确保这一举措可以清退低质产品，提高仿制药的整体质量，我们建议国家食药监局：

- 优先考虑仿制数据（或证明点）可靠的原研药；
- 建立科学的评价方法，包括体外溶出度曲线测定、生产规范合规性、药理等效性以及生物等效性研究；
- 建立严格的生产企业监管机制，鼓励企业自主开展质量一致性评价，并确保其评价结果的准确性和可靠性；
- 建立严格的仿制药质量监控管理机制，密切监控通过质量一致性评价的仿制药质量，及时清退不再符合质量标准的产品。

药品招标

目前，药品采购广泛采用“双信封”模式。但是，“双信封”模式被扭曲，导致“唯低价是取”，优质产品因为价格劣势被排除在外。这种模式限制患者取得创新优质药品，虽然短期来看减轻政府和患者的经济压力，但是长期

home rehabilitation. Such a payment system not only runs counter to the medical reform goals of “improving people’s health” and “controlling the total costs of healthcare,” it also causes a huge waste of BMI funds.

Payment System Reform

The “Healthy China 2030” initiative and the “Opinions of the Leading Group of the State Council for Deepening the Reform of Pharmaceutical and Healthcare System on Further Promoting and Deepening Experience in the Reform of the System” both call for “all-round promotion of BMI payment method reform, active promotion of capitation based on disease category, and active exploration of payment based on disease-related groups (DRGs) and service performance to form diversified forms of payment under a global budget.” The “Opinions on Promoting the Reform of Medical Service Prices” require “expanding the scope of fee collection based on disease category and service organization, and gradually reducing the amount of item-based fee collection.”

In 2017, the NHFPC will launch a DRG pilot in certain cities. The pilot will put the BMI payment system under a global budget and use diversified forms of payment based on disease category, per-diem, capitation, and DRGs. These reforms will require concerted action and overall coordination among multiple departments. However, when formulating policies, policymakers often set the reimbursement amount for hospitalization or outpatient service expenses based on a simple weighted average derived from past fees and neglect to consider comprehensive solutions which conduct diagnosis and treatment appropriate for the relevant disease to save overall treatment expenses. In the long run, such policies increase the overall financial burden on BMI funds and patients. The current system of payment based on disease category mainly references current clinical methods, which means that some innovative techniques and products cannot be incorporated into the system of payment based on disease category in a timely manner and are therefore unable to enter clinical application. This will dampen the enthusiasm of enterprises for technological innovation. Furthermore, when implementing payment based on disease category or DRGs, hospitals may use medical services and techniques of lower quality because of cost control pressures. This phenomenon not only runs counter to the goal of “improving people’s health,” but may also cause the waste of medical resources.

Pharmaceuticals

Drug Review and Approval

AmCham China applauds the significant progress the CFDA has made in accelerating drug review and approval procedures in 2016.

The backlog of drug registration applications has notably decreased. The number of backlogged applications was reduced from 23,000 cases in 2015 to fewer than 10,000 cases by the end of 2016. This is partially attributed to the increase of staff members in the Center for Drug Evaluation of the CFDA. The number of staff members increased from 120 in 2015 to 400 in 2016. Personnel recruitment will continue until a total of 1,000 staff are on board. Currently, the CFDA is updating the Drug Administration Law following the second revision to the law completed in 2015. The upcoming amendment, aimed at hastening drug review and approval and supporting innovation, is expected to be released for public comment later in 2017.

The CFDA has also set stricter standards for drug applications. If the applicant cannot guarantee the data’s reliability and efficiency, they can choose to withdraw their application. Otherwise, if the clinical data are found to be fraudulent, the CFDA will not accept other drug registration applications from that same applicant for three years. As of January 21, 2016, a total of 1,184 applicants have offered to withdraw their submissions.

In addition to increasing the thresholds for new drug applications, the CFDA developed detailed implementation guidelines for the State Council’s “Opinions on Quality Consistency and Bioequivalence Evaluation for Generics” in 2016. These regulations require bioequivalence studies to evaluate the quality and consistency of generics against originators. To ensure this initiative can rule out low-quality products and improve the overall quality of generics, we recommend that the CFDA:

- Prioritize originators with solid data (or proving points) as reference preparation;
- Set scientific evaluation methodologies, including in vitro dissolution testing, good manufacturing practice (GMP) compliance, and pharmaco-equivalence and bioequivalence studies;
- Establish strict supervision mechanisms for pharmaceutical manufacturers to conduct self-tests and ensure that results are both accurate and reliable;
- Establish a supervision mechanism that closely monitors the quality management system for generics that have passed evaluations and includes the option to remove drugs that fail to meet quality standards.

Drug Tendering

Currently, the “two envelope” model is widely used in drug procurement. However, the “two envelope” model is distorted and creates the tendency for “lowest-price wins all” outcomes, which exclude quality products from the market because they lack price advantages. This system thus limits patients’ access to innovative and quality drugs, which relieves the short-term financial burden on the government and patients, but may cause long-term increases in medical costs due to the poor efficacy of substandard drugs.

来看,因为不合格药品效果不好,反而有可能增加医疗费用。

省级层面执行招标政策时存在规则不清楚和滥用的情况,造成不正当竞争。我们建议政府采用质量导向的招标采购模式,确保患者能够获得最有效的药品,长期医疗费用得到降低。为此,我们建议采取以下具体措施:

- 改进“双信封”制度,建立包括多标准的全面评估招标制度;
- 在药品招标过程中,依照科学标准和国际通行准则,实施质量分层,并将原研药/首仿药单独设立一个质量层次;
- 在省级层面建立公开透明的招标规则,减少省级部门在执行中央政府规定的招标规则时享有的弹性权力;
- 在全国性招投标程序中允许每个竞价组决出至少两家人围方;
- 将同一产品最新推出的剂型和规格纳入招标采购范围,鼓励创新,确保病患能够及时使用更多优质创新药;
- 给予医院自主采购权,可随时采购新批准上市的药品。

全国医保药品报销目录和报销标准

2017年2月,人社部公布最新版的“国家基本医疗保险药品目录”(药品目录),这是2009年以来首次更新。中国的报销审查过程比其他国家长很多。在中国,一种新注册的药品可能需要将近六年才被纳入报销体系。而在英国、日本和法国,只需要三到六个月。药品目录更新滞后,不仅妨碍患者及时获得创新药品,也限制中国医生的临床选择。

为了支持人社部建立动态报销体系,商会建议:

- 定期基于价值对药品目录实施审查,确保更方便取得高价值和创新药品;
- 统一住院患者和门诊患者报销政策,提高政策的平等性;
- 建立科学的报销政策框架,确保合理的成本控制,避免干预正常的诊断和治疗;
- 下一次修订应当将更多的激素类和生殖类药品纳入药品目录,以支持中国的“两孩”政策。

美中医疗卫生合作项目

美中医疗卫生合作项目是旨在加强中美两国在医疗卫生领域合作的项目。该项目自启动以来与相关行业协会保持密切合作,支持中国政府实现提高病患获得优质医疗服务的能力的目标。

2016年,美中医疗卫生合作项目围绕“国际病患日”开展新的系列活动。这一全球性系列活动由美国商务部启动,目的是通过创新救助生命。2016年美中医疗卫生合作项目还和美国商务部以及中国医院协会联合主办活动,探讨如何通过创新和合作改进病患护理。

美中医疗卫生合作项目联合美国贸易发展署、哥伦比亚大学、耶鲁大学和芝加哥大学为赴美考察的国家卫计委、国家食药监局官员和医院领导组织了三次高级管理人员培训。各方很高兴看到这类培训增进了彼此的相互了解。美中医疗卫生合作项目希望和中国政府合作推动进一步的沟通。另外,在中美人文交流项目下,还开展了以转化医学、领导能力开发和肿瘤学为主题的研讨活动。

建议

对中国政府:

医疗卫生服务

- 降低私立医院税费,允许连锁医院对新老医疗机构合并报税。
- 允许高端私立医疗服务供应商纳入医保报销范围。
- 取消对私立医疗卫生企业外商投资所有权限制。

医疗器械

- 允许具有安全、功效和有效性优势的产品和医疗服务单独定价计费,保障患者的选择权。
[国家卫计委、国家发改委]
- 按照国务院的改革战略,在国家食药监局、国家卫计委和国家质量监督检验检疫总局(国家质检总局)之间建立一个协调机制,简化国家标准制定。

Lack of clarification and abuse of rules when implementing tendering policies at the provincial level has also caused unfair competition. We recommend that the government adopt a quality-oriented tendering and procurement model to ensure patients can access the most efficient drugs and lower long-term medical costs. To this end, we recommend the following specific measures:

- Optimize the “two envelope” system by developing a comprehensive multi-criteria evaluation;
- Set up tiered product quality categories based on scientific criteria and internationally accepted standards, including a category for originators/reference drugs with the highest price premiums;
- Establish open and transparent tendering rules at the provincial level and reduce the amount of flexibility that provincial authorities have when carrying out tendering rules mandated at the central government level;
- Allow at least two winners per bidding group in the national tendering model;
- Allow the newly launched specification and dosage of existing drugs onto the bidding list to encourage innovation and improve patient access to innovative and high-quality drugs;
- Enable off-cycle procurement by giving hospitals discretion to procure newly approved medicines.

National Reimbursement Drug List and Reimbursement Standards

In February 2017, MOHRSS updated its National Reimbursement Drug List (NRDL) for the first time since 2009. China’s reimbursement review process is much longer than other countries. In China, it takes almost six years for a newly registered drug to be included in the reimbursement system. In the UK, Japan, and France, it only takes three to six months. The delay in updating the NRDL not only blocks timely patient access to innovative drugs, but also limits clinical choices of Chinese physicians.

To support MOHRSS in creating a more dynamic reimbursement system, AmCham China would recommend:

- Establish a regular and value-based NRDL review approach and ensure greater access to high-value and innovative medicines;
- Harmonize the difference between reimbursement policies for in-patients and out-patients to improve equality;
- Build a scientific reimbursement policy framework to ensure reasonable cost control and avoid negative intervention on normal diagnosis and treatment practices;
- Include more hormone and reproductive medicines on the NRDL during the next round of revision to support China’s two child policy.

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 2016, the HCP started a new series of events surrounding International Patient Day. The purpose of this worldwide event series, initiated by the US Department of Commerce (DOC), is to promote saving lives through innovation. The HCP also co-organized a 2016 event with the DOC and the Chinese Hospital Association to discuss improving patient care through innovation and collaboration.

The HCP has worked with the US Trade and Development Agency (USTDA), Columbia University, Yale University, and the University of Chicago to organize three senior executive trainings for Chinese officials from the NHFPC and CFDA and hospital leaders to travel to the US. All parties have been pleased to see the improvements in mutual understanding via these trainings, and the HCP hopes to cooperate with the Chinese government to facilitate further future communication. Furthermore, topics including translational medicine, leadership development, and oncology have been discussed in workshops as part of the US-China People-to-People Exchange initiative.

Recommendations

For the Chinese Government:

Healthcare Services

- **Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities.**
- Make premium private healthcare providers eligible for BMI reimbursement.
- Remove caps on the foreign ownership of private healthcare enterprises.

Medical Devices

- **Allow separate charging for products and medical services with advantages in safety, efficacy, and effectiveness in pricing items to ensure patients’ right of choice. [NHFPC, NDRC]**
- Establish a coordination mechanism between the CFDA, NHFPC, and AQSIQ according to the State Council reform strategy to simplify national standardization.

- 建立一个综合考虑技术或器械医疗价值的机制，将诊断技术、治疗技术和医疗器械纳入医保覆盖范围；定期开放省级窗口，受理、审查和批准新诊疗项目的医保报销申请。
- 允许医疗器械在注册前进行审批咨询，以鼓励创新，避免浪费，保障患者安全。[国家食药监局]
- 出台政策指导管理规范实施之前进行的临床试验自检，避免要求这类临床试验追溯适用新管理规范。[国家食药监局]
- 检验方法应当包括高度专业化和灵敏的先进技术以及专业性和灵敏性较低的技术。特殊情况下允许收取额外费用。[发改委]
- 推动立法和标准化，确保现代体外诊断产品能够顺利地进入市场。
- 重点考虑功效和合理定价；鼓励行业参与医疗支付体系改革；建立准入机制将优质创新诊断技术、治疗技术和医疗器械纳入基于病种和诊断相关分组（DRG）的支付体系，确保及时投入临床应用。

药品

- 采用质量导向的招标采购模式，改进“双信封”制度，建立包括多标准的全面评估招标制度，实施质量分层，建立公开透明的招标规则，在全国性招投标程序中允许每个竞价组决出至少两家入围方，允许医院自主采购采购新批准上市的药品。
- 定期基于价值对药品目录实施审查，确保更方便取得高价值和创新药品。[人社部]
- 建立科学评价方法和药品审批监管机制，以清退低质产品，提高仿制药总体质量。[国家食药监局]
- 建立科学的报销政策框架，确保合理的成本控制，避免干预正常的诊断和治疗。[人社部]

- Establish a process to include diagnostic techniques, treatment techniques, and medical devices for coverage under BMI that comprehensively considers the medical value of the technique or device; regularly open provincial-level windows for the acceptance, examination, and approval of new diagnostic and treatment items for BMI coverage.
- Allow pre-registration consulting for the approval of medical devices in order to encourage innovation, avoid waste, and ensure patient safety. [CFDA]
- Introduce guidelines to direct enterprise self-inspection for clinical trials conducted before the implementation of the MD GCP and do not retroactively impose the requirements of the MD GCP on these clinical trials. [CFDA]
- Testing methods should include both highly specific and sensitive advanced technology as well as technology with lower specificity and sensitivity. Allow additional fees to be charged for some special circumstances. [NDRC]
- Promote legislation and standardization so that modern IVD products can find their way onto the market smoothly.
- Prioritize efficacy and reasonable pricing; encourage the industry to take part in the reform of the medical payment system; and establish an access mechanism for high-quality, innovative diagnostic techniques, treatment techniques, and medical devices to be included in the payment system based on disease categories and DRGs and ensure their timely clinical application.

Pharmaceuticals

- **Adopt a quality-oriented drug tendering and procurement model by developing a comprehensive, multi-criteria evaluation in the “two envelope” system, setting up tiered drug quality categories, establishing open and transparent tendering rules, allowing at least two winners per bidding group in the national tendering model, and giving hospitals discretion to procure newly approved medicines.**
- Establish a regular and value-based NRDL review approach and ensure greater access to high-value and innovative medicines. [MOHRSS]
- Set scientific evaluation methodologies and establish a supervision mechanism for drug review and approval to rule out low-quality products and improve the overall quality of generics. [CFDA]
- Build a scientific reimbursement policy framework to ensure reasonable cost control and avoid negative intervention on normal diagnosis and treatment practices. [MOHRSS]

Information and Communications Technology

Introduction

In the 13th Five-Year Plan, the Chinese government set information and communications technology (ICT)-related development priorities including the establishment of high-efficiency information networks, the creation of modern, Internet-based industries, the promotion of a national big data strategy, and the prioritization of information security. Subsequent high-level publications such as the May 19, 2016 “National Innovation Driven Development Strategic Plan” and the July 27, 2016 “National Informatization Development Strategic Plan” reaffirmed these priorities. The comments which AmCham China submitted on both published drafts of the Cybersecurity Law and other related regulations demonstrate the high level of priority which we attach to these important developments.

The Chinese government has at its highest levels declared its commitment to pro-competitive and non-discriminatory ICT sector policies, including in particular the promotion of narrowly tailored and nondiscriminatory ICT-related measures, the adoption of international norms, and the avoidance of unnecessary nationality-based restrictions on the purchase, sale, and use of ICT products by commercial enterprises. We applaud these commitments.

However, tangible outcomes from these commitments remain largely unrealized. The Chinese government continues to implement ICT policies that restrict foreign-invested enterprises (FIEs), including in the areas of telecommunications services, cloud computing, product certification, encryption, protection of critical information infrastructure (CII), and market access for ICT products in commercial and non-sensitive government sectors. The lack of clear distinctions between commercial and government information systems, and between information security and national security, creates further barriers for FIEs.

Recent policy developments have increased uncertainty for foreign ICT companies in China. President Xi Jinping, in speeches on April 19 and October 9, 2016, reiterated the priority on indigenous innovation and the use of domestically produced and “secure and controllable” technologies, triggering concern within the ICT sector. On November 7, 2016, the Standing Committee of the National People’s

Congress passed the Cybersecurity Law, and on December 27, the Cyberspace Administration of China (CAC) released its National Cybersecurity Strategy.

An inclusive environment for foreign investment is essential to providing the highest quality ICT products and services to Chinese consumers, cultivating internationally-competitive Chinese ICT enterprises, and encouraging innovation. We urge that the new Cybersecurity Law be implemented in ways that allow broad participation by foreign enterprises to help China’s ICT sector flourish.

Ongoing Regulatory Issues and Recent Developments

Cybersecurity

The Cybersecurity Law demonstrates the Chinese government’s awareness of the complex challenges that face the rapidly changing ICT sector, as well as the government’s desire to regulate cyberspace in a lawfully defined manner.

However, the law as enacted does not alleviate substantive concerns expressed by AmCham China member companies regarding data localization requirements and the restriction of cross-border data flows, security reviews and specifications for ICT products and services, and overly broad requirements to share data and provide technical support and assistance to law enforcement agencies when requested.

We urge that these uncertainties be addressed by the time the law goes into effect on June 1, 2017 through implementing rules and regulations that are neither discriminatory nor impose trade barriers. Regulators should ensure that the new law does not create practices and standards that stunt economic activity and growth in China, or impair contact and understanding between China and the rest of the world.

Data Localization

Article 37 of the Cybersecurity Law requires that “operators of CII” retain within the territory of the People’s Republic of China personal information and other critical information collected or produced during the course of business operations there. Operators may still be able to transfer this

信息和通信技术

引言

中国政府在“十三五”规划中确定了与信息和通信技术相关的发展重点，其中包括建立高效的信息网络、发展现代互联网产业体系、实施国家大数据战略以及强化信息安全保障。其后发布的高层计划也再次对这些重点领域予以重申，如2016年5月19日发布的《国家创新驱动发展战略纲要》以及2016年7月27日发布的《国家信息化战略发展纲要》。中国美国商会（商会）会员企业赞同这些发展重点。我们之前提交的关于《网络安全法》以及其他法规草案的意见也表明了我们对这些领域的高度重视。

中国政府最高层已经确认将推动有利于竞争和非歧视性的信息和通信技术政策，特别是对信息和通信技术采取严格限缩和非歧视性政策，采用国际标准，避免对商业企业在信息通信技术产品的采购、销售和使用上施加没有必要的国别限制。以上这些承诺令人振奋并值得称赞。

但是，这些承诺大都没能得到落实。在电信服务领域、云计算、产品认证、密码、关键信息基础设施（CII）保护以及信息和通信技术产品在商业和非敏感政府领域的市场准入等方面，中国政府还在继续执行限制外商投资企业（“外资企业”）的政策。对商业和政府信息系统以及信息安全和国家安全没有明确区分，也给外资企业进一步制造了壁垒。

最新政策进展也增加了在华信息和通信技术企业面临的不确定性。在2016年4月19日和10月9日的讲话中，习近平主席重申应当重视自主创新以及使用国产和“安全可靠”的技术。这引起了信息和通信技术行业的担忧。2016年11月7日，全国人大常委会通过了《网络安全法》，12月27日，国家互联网信息办公室（“国家网信办”）发布了《国家网络空间安全战略》。

保持一个对外商投资包容的环境，对于向中国消费者

提供最优质的信息和通信技术产品和服务，培育具有国际竞争力的中国信息和通信企业以及鼓励创新来说是必不可少的。我们敦促中国在实施《网络安全法》的同时能够保证外资企业的广泛参与，推动中国信息和通信行业繁荣发展。

现存监管挑战和最新进展

网络安全

《网络安全法》的通过是一项值得称赞的成就，表明中国政府意识到快速发展变化的信息和通信技术行业所面临的复杂挑战以及政府希望依法规范网络空间。我们赞赏该法在制定过程中征求公众意见、保持开放的立法程序。

但是，新法规的很多细节问题仍然没有明确。最终的草案没有解除商会会员企业表明的主要忧虑，包括数据本地化要求、跨境数据流动限制、安全审查、信息和通信技术产品和服务规范、依照执法机构要求分享数据以及提供技术支持和协助的要求过于宽泛等。

我们希望，在2017年6月1日该法生效实施后，其中的一些不确定性能够通过实施细则得到解决。但是，这些没有解决或者没有公正解决的不确定性问题将会产生长期性的贸易技术壁垒。监管部门应当尽量确保新法实施过程中形成的做法和标准不会阻碍中国经济活动和经济增长，不会损害中国和世界其他国家和地区之间的相互联系和了解。

数据本地化

《网络安全法》第三十七条规定要求“关键信息基础设施运营商”将在中华人民共和国境内运营过程中收集和产生的个人信息和重要数据储存在中国境内。运营商仍然可以向境外传输这类信息，但必须是因为业务需要，而且需要接受并通过“安全审查”。

information overseas, but only if the transfer is necessary for business reasons, and only after undergoing and passing a “security review.”

These data localization requirements are detrimental to the performance of global information services in financial and other industries and are overly burdensome for ICT companies. Housing data exclusively in-country is expensive and technically challenging. In addition, operating data transfer protocols on a country-by-country basis is unnecessarily complicated and national borders do not in and of themselves provide security for data on the Internet.

Data localization practices are unnecessary for promoting cybersecurity. China’s data localization provisions may discourage foreign investment by unnecessarily imposing prohibitively complex or expensive requirements to restructure information flows and infrastructure.

We urge that the pending implementing regulations and standards for the new Cybersecurity Law balance security and development objectives. The implementing regulations, including those that promote the use of “secure and controllable” technologies, must comply with China’s World Trade Organization commitments and should encourage the adoption of international models that would support China’s emergence as a global hub for technology and information services. For example, the implementing regulations should narrow the scope of the term “operators of CII” to genuinely critical enterprises. Furthermore, the “security review” should not be unnecessarily intrusive or burdensome, and should refrain from requiring enterprises to disclose trade secrets, such as source code and proprietary customer lists.

Technology Localization, Local Procurement, and Cybersecurity Standards

Technology localization policies mainly take the form of limited market access and indigenous innovation requirements. We strongly recommend that they be avoided, in these and all other forms.

The new Cybersecurity Law contains provisions that would require enterprises to procure only information technology equipment that has passed a security review or otherwise satisfies security-related specifications. The security review procedures and security-related specifications should not permit only the procurement of locally-made information technology hardware and software. The use of foreign technology and products should not be discouraged as it can enable Chinese companies to innovate and become more globally competitive. The pending implementing regulations and standards for the new Cybersecurity Law should allow foreign ICT hardware and software suppliers to seek qualification or certification of their products under applicable security-related specifications which should be compatible with international best practices.

Commercial Encryption Regulation

China’s “Commercial Encryption Regulation” (the Regulation), in effect since 1999, classifies encryption as a state secret. It imposes licensing requirements on the importation, development, and sale of encryption technology in China. It requires a special license for the use of foreign encryption technology, and requires foreign encryption products sold in China to undergo testing that includes the disclosure of source code.

The Regulation is currently under revision. We urge that widely available commercial encryption products not be regulated, that commercial encryption not be classified as a state secret, and that enterprises not be required to obtain a license to import, develop, or sell commercial encryption products in China. We continue to urge that encryption products not be required to undergo any testing or evaluation that requires the disclosure of source code or proprietary intellectual property.

Cloud Services Security Assessment

The CAC established a mandatory “Cloud Services Security Assessment Scheme” in relation to government procurement in the “Opinions Concerning the Strengthening of the Security Administration of Cloud Computing Services of Party and Government Organizations” issued on December 30, 2014. We recommend that this not be extended to procurement by state-owned enterprises (SOEs) or other commercial procurement, to avoid imposing unnecessary costs on service providers.

Moreover, China’s “Multi-Level Protection Scheme” (MLPS), first proposed in 2007 with relation to information security systems, has now been extended to cybersecurity as “Cyber-MLPS,” and will apply to cloud computing, big data, mobile Internet, Internet of Things, and industrial controls. It now applies to sectors such as finance, government, SOEs, medical, and large Internet platforms. The MLPS has been promoted by the Ministry of Public Security and is reaffirmed in the Cybersecurity Law as the basis for CII protection. We urge that the extension of this scheme into commercial cloud markets be limited. Additionally, we urge that all forthcoming certification schemes for cloud computing businesses be operated voluntarily and in a market-driven manner.

In addition, on February 4, 2017, the CAC released the draft “Cybersecurity Review Measures for Network Products and Services” (the Measures) for public comment. The Measures are designed to establish a framework to implement government-led assessments of the ability of ICT companies to comply with security policies and national standards on the basis of “secure and controllable” requirements, and of their trustworthiness as providers to the public sector and other key sectors. The Measures include many vague and undefined terms

上述数据本地化要求不利于金融和其他行业在全球范围内提供信息服务，给信息和通信技术企业造成过重负担。在境内存储数据的要求不仅需要耗费巨资，而且还存在技术挑战。此外，需要逐个与不同国家签订运营数据传送协议的方法也太复杂，而且国界本身不能保障互联网数据的安全。

数据本地化无助于提高网络安全。对数据本地化的要求需要重建数据流和相关基础设施，其过程过于复杂且会产生不必要的成本，可能会打击外商投资的积极性。

我们建议即将出台的《网络安全法》实施规则和标准应当平衡安全和发展的目标。包括使用“安全可控”技术在内的实施规则必须遵守中国的人世承诺，并且应当鼓励采用有助于中国成为全球技术和信息服务中心的国际模式。例如，实施规则应当将“关键信息基础设施运营商”的范围局限于那些真正关键的企业。而且，“安全审查”不能过于繁重或给企业带来困扰，应当避免要求企业披露源代码和客户名单等商业机密。

技术本地化、本地采购和网络安全标准

技术本地化政策主要采取限制市场准入和鼓励自主创新的形式。我们强烈建议应当避免任何形式的上述政策。

根据新修订的《网络安全法》，企业只能采购通过国家安全审查或者满足安全相关要求的信息技术产品。安全审查程序和安全相关要求不应特定到只允许购买本地生产的信息技术设备。使用外国技术和产品能够帮助中国企业开展创新和提高全球竞争力，因此不应加以阻止。即将出台的《网络安全法》实施规则和标准应当允许境外信息和通信技术设备供应商按照符合国际最佳范例的安全相关规定进行产品资质认定或认证。

商用密码管理条例

1999年生效实施的《商用密码管理条例》(以下简称“条例”)将密码归为国家秘密，要求进口、开发和销售密码技术必须取得许可。条例还要求使用国外密码技术需要取得特别许可，要求在中国出售的国外密码产品接受包含源代码披露在内的测试。

该条例目前正在修订中。我们认为，广泛存在的商业密码产品不应受到监管，商业密码不应归为国家机密，不应要求公司取得在中国进口、开发或销售商业密码产品的许可。我们继续敦促中国停止要求密码产品接受任何需要

披露源代码或自有知识产权的测试或评估。

云服务安全评估

2014年12月30日，国家网信办发布《关于加强党政部门云计算服务网络安全管理的意见》，确立了强制性“云计算服务安全审查机制”。我们建议不要将之扩大到国有企业(国企)采购或其他商业采购领域，以免给服务供应商造成不必要的成本负担。

而且，中国2007年首次提出的信息安全等级保护目前已经扩至网络安全领域，成为“网络信息安全等级保护”，还将适用于云计算、大数据、移动互联网、物联网和工业控制。现在适用的领域包括金融、政府、国企、医疗和大型网络平台。信息安全等级保护由公安部推动，《网络安全法》再次确认将其作为关键信息基础设施保护的基础。我们建议限制其在商业云市场的扩展。另外，我们建议，未来所有商业云计算业务认证机制的运行都应当遵循自愿和市场导向的原则。

另外，2017年2月4日，国家网信办发布《网络产品和服务安全审查办法(征求意见稿)》(“办法”)，旨在构建建立一个由政府主导的体系，用来评估信息和通信技术企业遵守安全政策和国家标准“安全可控”要求的能力，以及作为公共部门和其他关键领域的产品和服务供应商的可靠性。该办法有很多措辞模糊不清，令人担心，其中包括：

- “网络产品和服务”的范围；
- 如何协调安全审查和关键信息基础设施保护及信息安全等级保护的要求；
- 实验室测试、现场检查、在线监控和背景调查适用的标准和规范；
- 执行机制、对实际实施检测程序的第三方的认证，以及国家网信办管理“不正当竞争”的职责——《反不正当竞争法》将这一职责留给了其它政府部门；
- 我们促请国家网信办对上述疑虑作出解释，以确保“办法”对外商投资企业不具有歧视性。

市场准入

2015年12月修订的《电信业务分类目录》于2016年3月1日生效施行，作为中国电信行业许可框架的主要组成部分，修订后的目录扩大了中国电信监管体制的范围，除了电信和互联网服务，还将许多新兴信息和通信技术服

which are causes of concern, including:

- The scope of “network products and services”;
- The manner in which security reviews will be coordinated with the protection of CII and requirements arising under the MLPS;
- The standards and specifications which will apply to in-laboratory tests, on-site checks, online monitoring, and background investigations; and
- The mechanism for implementation, the accreditation of third parties which will actually conduct the testing procedures, and the role of the CAC in regulating “unfair competition,” a function which is reserved under the Anti-Monopoly Law to other government departments.

We urge the CAC to clarify these areas of concern to ensure that the Measures do not discriminate against FIEs.

Market Access

The “Telecommunications Services Classification Catalogue,” a key component of the licensing framework for the telecommunications industry in China, was revised in December 2015 and took effect on March 1, 2016. The revision extends the scope of the telecommunications regulatory regime to include, in addition to telecommunications and Internet services, emerging ICT services such as cloud computing, internet data center services, and content distribution network services.

This development effectively makes these emerging services off-limits to foreign companies. FIEs already face severe challenges competing in China’s information communications industry in the form of various investment restrictions, security controls, localization mandates, and protectionist measures. We urge that China’s telecommunications services sector be reformed to encourage innovation and the development of emerging industries. We also recommend that emerging industry participants be permitted to continue working with international counterparts to ensure that domestic telecommunications services policies are consistent with international obligations, and are non-discriminatory, narrowly-tailored, and take international norms into account.

Cloud Computing

Cloud computing is widely viewed as a computer-related service (CRS) in the US and EU. However, the newly revised “Telecommunications Services Classification Catalogue” categorizes cloud computing as a value-added telecommunications service (VATS) in China. Foreign investment in VATS is currently capped at 50 percent. FIEs are therefore prohibited, except through partnerships with licensed domestic companies, from participating in most cloud computing. Foreign participation in cloud computing is strictly limited to technical licensing, support, and training.

Security-related standards and certifications (including some proposed in the new Cybersecurity Law), as well as strict data policies, also limit foreign participation in cloud services in China.

In addition, in December 2016, the Ministry of Industry and Information Technology released a draft “Notice on Regulating Business Behaviors in the Cloud Services Market” (the Notice). The draft Notice reinforces and expands restrictions on foreign cloud service operators, adversely affecting their ability not only to compete on equal terms with Chinese companies in the China market, but also to partner on reasonable terms with Chinese companies. Very few if any of these restrictions apply to Chinese cloud service operators as they invest abroad, including in the US and other major Western markets. For instance, Chinese cloud computing service providers are currently allowed to establish commercial operations in the US without the need for either a license or foreign partner. Moreover, the Notice contains unclear terminology and has a vague scope of application.

Limits of this kind on foreign participation in cloud services will restrict competition in China’s domestic market, and discourage the introduction of new technologies and services into China. In the longer term, these limitations will adversely affect the competitiveness of Chinese cloud services companies as they increasingly compete directly with foreign cloud service providers in international markets. We recommend the relaxation of foreign shareholding limitations, licensing restrictions, and market entry barriers to participation by FIEs in cloud services and other new, innovative business services in China. We also recommend that China adopt global standards and policies that reflect the international and borderless nature of this emerging industry. As an initial concrete step, we recommend re-categorizing cloud computing as CRS rather than VATS, so that foreign enterprises can more fully participate in cloud computing services.

Internet Service Regulations and Internet Controls

China continues to impose stricter Internet controls that create barriers to cross-border data flow and access to the global Internet. These restrictions impair the ability of both foreign and domestic companies to operate and serve customers in a globalized economy. As examples of specific controls, internet information services are consistently categorized as VATS, effectively prohibiting foreign participation in these services. Since 2000, the “Internet Information Services Administrative Measures” have also imposed burdensome requirements and provisions on Internet service providers, including in relation to national security lawful access, server localization, data retention, data privacy, content filtering, and real-name identification registration requirements. Generalized controls include censorship and arbitrary blocking of websites.

务包含在内，例如云计算、互联网数据中心服务和内容分发网络服务。

这相当于将外资企业排除在这些新兴服务之外。外资企业在中国信息和通信行业已经面临严峻的竞争挑战，如各种投资限制、安全控制、本地化要求以及保护主义措施。我们促请中国开放电信服务行业，以便鼓励新兴行业的创新和发展。我们还建议允许新兴行业参与者继续与国际同行合作，以确保国内电信服务政策符合国际义务要求，遵守非歧视和严格限缩原则并且考虑国际标准。

云计算

在美国和欧盟，云计算被广泛视为计算机相关服务（CRS）。然而，中国新修订的《电信业务分类目录》却将云计算归为增值电信业务。目前，增值电信业务的外资股比不得超过 50%。因此，外资企业除了与获得许可的内资企业合伙外，是被禁止参与大多数云计算服务的。外资参与云计算的方式被严格限制在技术许可、支持和培训范围内。安全相关标准和认证（包括新《网络安全法》的一些规定）以及严格的数据政策也限制了外资参与中国的云服务行业。

另外，2016 年 12 月，工信和信息化部（“工信部”）发布了《关于规范云服务市场经营行为的通知（公开征求意见稿）》（“通知”）。该通知强化并扩大了对外资云服务供应商的限制，损害了其在中国市场与内资企业公平开展竞争以及以合理的条件开展合作的能力。中国云服务运营商在海外投资时，包括美国和其他主要西方市场，很少碰到这类限制。例如，中国云服务供应商目前可以在美国开展商业经营，不需要取得许可或寻找国外合作伙伴。此外，该通知的用词模糊，应用范围也不够清晰。

对外资参与云服务的这类限制将会限制中国国内市场的竞争，不利于中国引进新的技术和服。从长远来看，随着中国云服务企业在国际市场逐渐直接与境外云服务供应商展开竞争，这些限制将会给这些中国企业的竞争力造成不利影响。我们建议放宽对外资企业参与云服务和其他新型创新商业服务的外资持股比例限制、许可限制以及消除市场准入壁垒。我们也建议中国采用能够反映这一新兴行业具有的国际性和无国界性质的全球标准和政策。作为具体措施的第一步，我们建议将云计算重新归类，从增值电信业务类改为计算机相关服务，使得外资企业能够更加充分地参与云计算服务。

互联网服务监管和互联网控制

中国继续实施更加严格的互联网控制，阻碍了跨境数据流动和国际互联网访问。这些限制损害了内外资企业在经济全球化条件下开展运营以及向客户提供服务的能力。特定的控制包括，中国一直将互联网信息服务归为增值电信业务，从而禁止外资企业参与。2000 年以来，《互联网信息服务管理办法》也在国家安全、合法访问、服务器本地化、数据留存、数据保密、内容过滤、实名认证注册等方面给互联网服务供应商订立了繁重的要求。宽泛的控制包括互联网审查和随意拦截网站等。

我们建议进一步放宽互联网监管规定。只有采取全球性、无国界和市场导向的方法才能有效地应对互联网的发展并将妨碍发展的负担降至最低。

“安全可控”信息和通信技术

为推动信息和通信技术采用“安全可控”标准，中国政府采取了多项举措，其中包括根据《网络安全法》以及《国家安全法》和《银行业应用安全可控信息技术推进指南（2014–2015 年度）》起草的办法。银行、电信、医疗器械、保险和半导体等行业已经着手推进“安全可控”信息和通信技术。全国信息安全标准化技术委员会（“信安标委”）发布的标准草案将“安全可控”信息和通信技术定义为涉及源代码审查、数据本地化、跨境数据流限制以及供应链保障等要素。在华外资信息和通信技术企业担心这会让他们在竞争中处于不利位置。一些企业甚至已经遭遇这种情况，因为正在与之洽谈的地方政府、银行和保险公司已经被要求遵守草案制定的信息和通信技术标准，仿佛这些标准已经生效实施。

我们敦促中国政府确保网络安全政策制定过程的公开和透明，并认真听取行业意见和建议，兑现关于制定严密规范和非歧视的网络安全政策的承诺，考虑国际标准，不设置基于国别的限制。此外，我们希望政府相关机构能认识到网络安全超越国界，与其他国家的政府和私营部门机构密切合作，共同推动网络安全。

全球互操作性

跨境数据流动

包括个人信息在内的合法的跨境数据流动不应当加以限制，而应当予以鼓励。目前，美国、日本、加拿大和墨西哥已经采用亚太经合组织的跨境隐私规则体系。韩国已

We urge China to adopt a more relaxed regulatory framework for the Internet. A global, borderless, and market-driven approach is the only way to effectively manage the growth of the Internet while minimizing burdens that may stunt its development.

“Secure and Controllable” ICT

Several actions of the Chinese government, including (among many others) the draft Measures that would be promulgated under the Cybersecurity Law, as well as the State Security Law and the “Guidelines on Promoting the Adoption of Secure and Controllable Information Technology in Banking Sector (2014-2015),” promote application of the “secure and controllable” standard to ICT. Efforts to promote “secure and controllable” ICT have already materialized in the banking, telecommunications, medical devices, insurance, and semiconductor industries. Draft standards issued by the National Information Security Standardization Technical Committee (TC260) define “secure and controllable” ICT as that which involves elements such as mandates for source code review, data localization, restrictions on cross-border data flows, and supply chain assurance. These have roused concern among foreign ICT companies in China about the prospect of being put at a competitive disadvantage. Some have already even encountered actual disadvantages, as local governments, banks, and insurers with whom they negotiate have sought to comply with the draft ICT standards as though they were already in effect.

We urge the Chinese government to develop cybersecurity policies using an open and transparent process that takes industry input into account while implementing cybersecurity policies in a manner that is narrowly tailored and nondiscriminatory, takes international norms into account, and does not impose nationality-based restrictions. Furthermore, we recommend that the relevant Chinese government agencies recognize that cybersecurity transcends national borders, and work closely with governments and private sector institutions of other countries to promote cybersecurity.

Global Interoperability

Cross-Border Data Flows

Legitimate cross-border flows of information, including personal information, should not be constrained, and indeed should be encouraged. The Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules System has now been adopted by the US, Japan, Canada, and Mexico. South Korea has now applied and Taiwan has indicated an intention to apply. More economies are expected to join in the coming years, including Singapore and the Philippines, and possibly also Hong Kong, Australia, and Russia. China should consider joining this system, which would encourage the establishment of data security accreditation agencies within China which would be necessary to implement the system.

Data Privacy Issues

The new Cybersecurity Law defines “personal information” as “information of any type that is recorded by electronic or other means, and that is capable of, whether on its own or in combination with other information, distinguishing an individual identity.” This definition is overly broad, because the data user in many cases would not realistically have access to the “other information” necessary to distinguish an individual identity. We strongly recommend that the implementing regulations for the Cybersecurity Law clarify the definition of “personal information” to read “information of any type that is recorded by electronic or other means, and that is capable of, whether on its own or in combination with other information to which the data user has reasonable access, distinguishing an individual identity.”

The Cybersecurity Law obligates network operators to obtain the consent of data subjects to collect their personal information, and to provide notice in the event of a data breach, report security vulnerabilities to customers and government authorities, and provide continuous security maintenance. Such requirements can be very burdensome and costly. We suggest that the forthcoming implementing regulations adopt an approach under which obligations related to the handling of personal data be determined based on the risk of potential harm arising from the proposed use or data breach incident, rather than a consent-based or rule-based approach. For example, the consent of the data subject should be required only for the collection and processing of sensitive personal information and not other types of personal information. Also, if a data breach involves only a very small number of affected persons, or involves information that is already public, or does not involve any sensitive personal information, the data user would have the discretion not to provide notice of the data breach incident.

Standards Policies

Full Participation of FIEs in Standards Development Organizations

Industry standards should be developed based on sufficient discussion and input from all relevant industry participants. This broad-based participation would help to ensure widespread acceptance of and support for the standards. FIEs should be allowed to participate fully in this process. The full participation of FIEs would not only increase acceptance and support of the standards by international vendors, but would also facilitate the transfer of international expertise and experience to China, and improve the practical use and application of standards developed in China.

AmCham China is pleased to see that FIEs have recently been granted an increased degree of participation in the standards-setting process. For many years, FIEs either were not eligible to join standards development organizations in China, or were limited to “observer” status without

经提出申请，中国台湾也表示有意提出申请。未来预计会有更多的经济体加入，其中包括新加坡和菲律宾，香港、澳大利亚和俄罗斯也有可能加入。中国应当考虑加入这一体系，按照实施这一体系的要求鼓励在国内设立数据安全认证机构。

数据保密问题

新的《网络安全法》将“个人信息”定义为“以电子或者其他方式记录的能够单独或者与其他信息结合识别自然人个人身份的各种信息。”这一定义太过宽泛，因为在很多情况下，数据使用者不一定能够取得识别个人身份所需要的“其他信息”。我们强烈建议网络安全法实施规则将“个人信息”明确为“以电子或者其他方式记录的能够单独或者与数据使用者能够合理获得的其他信息结合识别自然人个人身份的各种信息”。

《网络安全法》要求网络运营商收集个人信息需要征得被收集者的同意，数据发生外泄需要告知，如有安全漏洞告知用户并向有关政府部门报告，并且持续提供安全维护。这些要求的负担过于繁重和昂贵。我们建议即将出台的实施细则基于使用计划或数据泄露事件的潜在损害风险而非基于同意或基于规则来确定个人数据处理的相关义务。例如，只有收集和敏感个人信息才需要征得被收集者的同意，其他类型的个人信息不需要。并且，如果数据外泄影响的人数较少或者涉及到已经公开的信息或者没有涉及任何敏感个人信息，数据使用者有权选择不告知。

标准政策

外商投资企业充分参与标准制定组织

行业标准的制定应当基于所有相关行业参与者的充分讨论和提出的意见建议。广泛的参与有助于保证标准获得广泛认同和支持。应当允许外资企业充分参与这一过程。外资企业的充分参与不仅能够让国际供应商接受和支持这些标准，还能够促进国际专业知识和经验的输入，提高中国所制定标准的实用性和应用水平。

商会很高兴看到，外资企业近来对标准制定过程的参与程度得到了不断提高。多年以来，外资企业要么没有资格参加中国的标准制定组织，要么只能以“观察员”的身份加入，没有投票权或者其他有意义的参与方式。而且，标准制定讨论仅限选定的国内企业和机构参加，外资企业不能参加。

信安标委 2015 年以来的举措让我们感到振奋和高兴。商会有几家会员企业成为信安标委的会员，还有一些会员企业成为其下属工作组的会员，从而有权在平等的基础上和本地企业一起参加详细的技术讨论。

这显然是一项积极的进展。我们鼓励更多技术委员会和工作组效仿这一作法。需要做的事情还有很多，因为申请和审批过程尚未完全透明，也有可能某一天不再允许外资企业参加标准制定过程。我们欢迎信安标委展现出的包容态度并促请其能持续推进这一进程。

另外，《标准化法》草案要求企业通过统一的平台公布“企业标准”。这一要求实践起来可能很复杂。不同于传统的有形商品，信息和通信技术供应商提供的产品和服务需要根据技术变化迅速改变。信息和通信技术企业的产品，如云计算，是由各种不断变化的组成部分构成的复杂组合，企业很难制定并发布统一不变的“企业标准”。

信安标委支持网络安全实施的标准

未来几年，信安标委最重要的任务就是支持新《网络安全法》的实施。为此需要针对关键信息基础设施、个人信息保护以及“安全可控”技术指标等议题制定标准。我们鼓励信安标委继续保持符合国际标准的透明的标准制定过程，建议信安标委避免制定不清晰、具有保护主义倾向或者基于原产地偏袒特定技术的标准。我们也促请信安标委严密精准地明确“安全可控”的含义以及用以确定产品或服务“安全可控性”的客观标准。

建议

对中国政府：

- 明确新的《网络安全法》关于数据本地化的要求仅适用于相对少数的“关键信息基础设施运营商”。确保该法关于关键数据和个人信息跨境传输需要接受的“安全审查”程序并不要求披露或转让保密或专有信息。
- 避免实施数据本地化政策。不要接受导致只允许购买本地生产的信息技术设备的标准和规范。允许境外信息和通信技术设备供应商按照安全相关标准和规范进行产品确认或认证。

voting rights or any other form of meaningful participation. Furthermore, FIEs were barred from standards-drafting discussions, which were restricted to a select group of domestic companies and organizations.

We are encouraged and pleased by the way TC260 has operated since 2015. Several AmCham China member companies were recruited to become members. Others were recruited to join as working group members, giving them the right to join in detailed technical discussions on an equal footing with local enterprises.

This is a clearly positive development. We encourage the adoption of such practices by more technical committees and working groups. More remains to be done, however, as the application and approval process is not yet fully transparent, and the possibility remains that FIEs may one day no longer be permitted to participate in the standards-setting process. We applaud the inclusiveness demonstrated in TC260 and urge that it be carried forward as a permanent trend.

In addition, in the draft “Standardization Law,” companies are required to publish their “enterprise standards” through one centralized platform. This can be complicated in practice. ICT suppliers offer products and services that, unlike traditional tangible goods, change rapidly to respond to changes in technology. It will be challenging for ICT companies to publish a single unchanging “enterprise standard” for products which, like cloud computing, involve a complex combination of many varied and changing components.

Standards from TC260 Supporting Cyber Law Implementation

In the coming years, the most important task of TC260 will be to support the implementation of the new Cybersecurity Law. That effort will involve standards-setting programs for topics such as CII, personal information protection, and indicators for “secure and controllable” technology. We encourage TC260 to continue to implement a standards-setting process that is transparent and conforms with international standards, and advise TC260 not to adopt standards that are unclear or protectionist, or confer advantages to particular technologies based on their place of origin. We also urge TC260 to clarify, narrowly and with precision, the meaning of the term “secure and controllable” and the objective metrics that must be satisfied for a determination that a product or service is “secure and controllable.”

Recommendations

For the Chinese Government:

- **Clarify the data localization requirement of the new Cybersecurity Law so as to restrict its application to a relatively small number of “operators of CII.” Ensure that “security review” procedures of the same law, as required for cross-border transfers of critical data and personal information, do not require the disclosure or transfer of private or proprietary information.**
- Avoid technology localization policies. Impose no standards or specifications that restrict procurement of information technology hardware and software to domestically-invested and produced products. Allow foreign and foreign-invested ICT equipment suppliers to seek qualification or certification of their products under applicable security-related standards and specifications.
- Relax foreign shareholding limitations, licensing restrictions, and market entry barriers to the participation of FIEs in cloud services and other new, innovative business services in China.
- Do not allow the standards-setting process to confer advantages on particular technologies based on their place of origin. Continue to allow FIEs to participate in the standards making process, and expand the degree of their participation.
- Ensure that the MLPS not be extended into commercial cloud markets beyond the minimum rational extent. Ensure that certification schemes for cloud computing businesses are operated voluntarily and in a market-driven manner.
- Adopt global standards and policies that reflect the international and borderless nature of cloud computing. Recategorize cloud computing as a CRS rather than a VATS.
- Adopt transparent regulatory approaches to cross-border flows of digital data and technologies, and avoid measures that restrict the legitimate flow of data across borders or link commercial benefit to local investment.
- Clarify the definition of “personal information” and adopt a risk and harm-based approach in the implementing regulations for the new Cybersecurity Law.
- Participate in newly emerging international data transfer mechanisms, including the APEC Cross-Border Privacy Rules System.
- Promote the emergence of data security accreditation agencies in China.

- 放宽对外资企业参与云服务和其他新型创新商业服务的外资持股比例限制、许可限制以及市场准入壁垒。
- 避免标准制定过程基于原产地偏袒特定技术。继续允许外资企业参与标准制定过程，提高外资企业的参与程度。
- 确保信息安全等级保护在商业云市场的延伸不要超出最低的合理限度。确保商业云计算业务认证机制的运营遵循自愿和市场导向的原则。
- 采用能够反映云计算具有的国际性和无国界性质的全球标准和政策。重新归类，将云计算从增值电信服务类改为计算机相关服务。
- 对跨国数字数据和技术流动采取透明的监管方法，避免出台限制合法跨国数据流动或将商业利益与地方投资挂钩的措施。
- 明确“个人信息”的定义，新网络安全法的实施规则采用基于风险和损害的方法。
- 参加新兴的国家数据传送机制，其中包括亚太经合组织的跨境隐私规则体系。
- 促进国内数据安全认证机构的建立和发展。

Insurance

Introduction

AmCham China welcomed the August 2014 release of the “Several Opinions of the State Council on Accelerating the Development of the Modern Insurance Service Industry in the People’s Republic of China” (New Ten Opinions). The New Ten Opinions recognized that “accelerating the development of the modern insurance service industry is an important part of improving the modern financial system” in China and endorsed a market orientation featuring fair competition and the opening of China’s insurance market. AmCham China continues to view this as an important step towards a fairer and more developed insurance market, which can advance the financial security of the Chinese people and the stability of China’s economy.

As further discussed in this chapter, however, the overall pace of reform to achieve this important objective has often

been too slow and complicated by the imprudent investment strategies of certain inexperienced domestic market insurers. Yet at the same time, experienced foreign insurers continue to suffer market entry and expansion barriers, hampering their ability to grow the market and offer China’s consumers a wider choice of products and services to provide for their financial security.

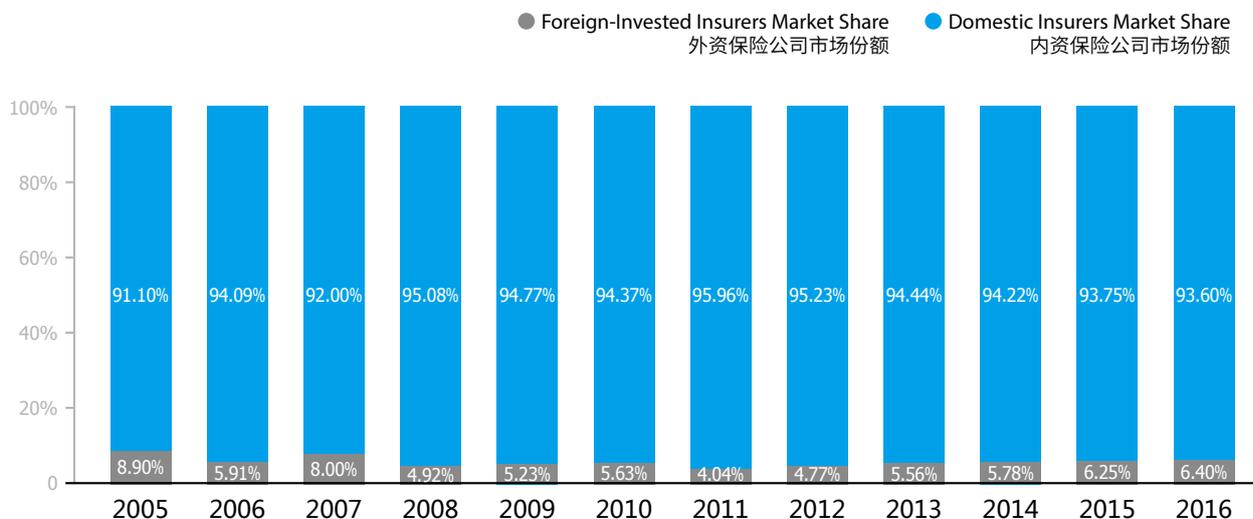
Ongoing Regulatory Issues

Market Entry and Expansion

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

Foreign Life Insurance Market Share in China

外资寿险公司在中国市场占有的份额



Source: CIRC

来源：中国保险监督管理委员会

保险

引言

2014年8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“新十条”），中国美国商会（商会）对此表示欢迎。“新十条”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。商会认为，“新十条”的出台意味着中国向建立更加公平和完善发达的保险市场迈出了重要一步，有利于提高中国民众的财产保障水平，促进中国经济稳定发展。

正如后文所述，商会也注意到，为实现这一重要目标而进行的改革总体步伐过慢，一些经验不足的内资保险公司冒进的投资策略使得局面更加复杂。同时，经验丰富的外资保险公司却面临市场准入和拓展壁垒，在华开拓市场、为中国消费者提供更多用以保障其财产安全的产品和服务的能力受到限制。

现存监管问题

市场准入和拓展

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牌照、并得到平等的国民待遇，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人为设置的持股比例上限、保险牌照发放和新产品审批迟缓及其他障碍。例如，外资保险公司在股权变动方面面临人为设置的时限要求和其他障碍，自主程度低于内资企业。商会继续支持中国政府以自由贸易试验区作为起点推动市场开放，并在全国范围内清除这些障碍。

人寿保险

合资寿险公司中的外资持股比例仍然不得超过50%，即使在自贸区内这一限制也未出现任何松动。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。尽管中国市场年均增幅超过20%，并且很多外资寿险公司在世界各地具有先进、稳健的经营经验，但是截至2016年，在华所有外资寿险公司加起来的市场份额只有6.40%。

2016年9月20日，李克强总理在纽约与迈克尔·布隆伯格及其他美国企业和决策人士会谈时指出，“中国发展保险市场需要学习国外先进经验，也需要国外企业参与，使得市场更具活力，让消费者有更多的选择”。股权比例上限限制了外资寿险公司为中国保险市场提供服务的能力，也不利于达成李克强总理提出的令人赞赏的愿景。股权比例上限也会造成合资企业经营方面的问题。作为中美双边投资协定谈判目前关注的一个焦点问题，取消上述股权比例上限符合中国市场化改革的总体目标，包括符合金融服务国际化以及退休人员养老金来源多样化的需求。

商会欢迎中国保监会在第八次中英经济财金对话中承诺“愿朝着增加在华经营的寿险公司外资股比的方向努力”。同样在9月20日纽约的会谈中，李克强总理进一步指出，“……在中美双边投资协定谈判的最新报价中，中方就保险市场开放做出进一步承诺，相信这方面中美合作的投资潜力巨大”。商会对此也表示欢迎。

因此，商会再次建议尽快取消寿险公司外资股东持股比例不得超过50%的限制规定。

健康保险

2016年8月25日，中国政府发布《“健康中国2030”规划纲要》，指出健康是经济社会发展的基础条件，是国家富强的重要标志。虽然人民健康水平持续提高，但

their domestically invested counterparts. Unfortunately, foreign-invested insurers continue to face artificial ownership caps and delays in the issuance of licenses and new product approvals, as well as other barriers. For example, foreign-invested insurers are subject to artificial timeframes and other barriers with respect to ownership changes, and have less autonomy than their domestic counterparts. AmCham China continues to favor removing these barriers nationwide, with the pilot free trade zones (PFTZs) as a natural starting point for liberalization.

Life Insurance

Foreign insurers remain subject to a 50 percent cap on foreign ownership in life insurance joint ventures (JVs), which has yet to be relaxed even in the PFTZs. This cap, set in 2001 to protect domestic life insurers after China was admitted to the World Trade Organization (WTO), no longer has any justification. All foreign life insurers combined had only a 6.40 percent market share in 2016 in a market that is expanding by more than 20 percent a year even though many such insurers have advanced experience in operating prudentially around the world.

As Premier Li Keqiang stated during his September 20, 2016 meeting in New York with Michael Bloomberg and other senior US business and policy leaders, “In developing its insurance market, China needs to draw upon the advanced experience of foreign countries and get foreign companies involved in this process, so that this market will be one of bigger vitality and consumers will have more options and choices.” The equity cap handicaps the ability of foreign insurers to serve the China market and achieve Premier Li’s laudable vision. The equity cap has also caused operational problems in managing such JVs. As a focus of the current US-China Bilateral Investment Treaty (BIT) negotiations, removing this equity cap is in alignment with China’s broad market-oriented reform goals, including internationalization of financial services and increased financing of retirement needs.

AmCham China welcomes the China Insurance Regulatory Commission’s (CIRC) commitment in the Eighth China-UK Economic and Financial Dialogue to “work towards increasing foreign ownership of life insurance companies conducting business in China.” AmCham China additionally welcomes Premier Li’s further statement in New York on September 20 that, “... In the most recent revised offer that China put to the BIT negotiations, further commitments on insurance sector opening-up were made, and I believe there is great potential for China-US cooperation in this respect.”

AmCham China therefore continues to recommend that the 50 percent cap on foreign ownership in life insurance be promptly lifted.

Health Insurance

On August 25, 2016, the Chinese government announced the “Healthy China 2030” initiative. This plan recognizes that health is a basic requirement for economic and social development and is a key indicator of the nation’s prosperity. Although Chinese people’s health has been improving, the country still faces various challenges brought on by industrialization, urbanization, an aging population, and changes in lifestyle. Future efforts should focus on promoting healthy lifestyles, optimizing health services, improving health security, building a healthy environment and developing health industries. The plan highlights active development of commercial health insurance as an important pillar in building a comprehensive health security system for the nation. In particular, the plan also mentions innovating and developing integrated health insurance and health management service products. Additionally, it calls for the establishment of health maintenance organizations. US specialist health insurers have extensive expertise in this area since health maintenance organizations were first developed in the US. US specialist health insurers hope to participate in this great undertaking through appropriate public-private partnerships and international cooperation. Yet US and other foreign specialist health insurers continue to be restrained from participation in China’s health insurance market by the 50 percent equity cap applicable to life insurance which we urge be lifted.

Reinsurance

In 2016, CIRC began formal implementation of the China Risk-Oriented Solvency System (C-ROSS), China’s second generation solvency regime, and has been conducting inspections of insurance companies for compliance with C-ROSS through its regional bureaus. C-ROSS is a far-reaching and complex set of new rules. Because C-ROSS is new and complex, CIRC needs to make sure that the different bureaus and all CIRC officials interpret its provisions in the same way. Consistency and transparency are important to companies’ ability to properly and quickly comply with C-ROSS. Nevertheless, enforcement needs to be principles-based and align with the Insurance Core Principles of the International Association of Insurance Supervisors and not be “one size fits all.” Insurance companies differ widely in size, complexity, nature of businesses, and products offered. C-ROSS should be interpreted taking into account the specific nature of a company’s business. In order to facilitate smooth and uniform enforcement, we hope to see an official procedure where companies can submit written inquiries concerning the interpretation of specific C-ROSS provisions that would be answered by CIRC in a written public statement. Publicly available written CIRC interpretations would mitigate the risk that different companies or different CIRC officials will have differing interpretations of the same provision.

While more systematic regulation of solvency in the insurance industry is appropriate, AmCham China believes

China's Life Insurance Market Trends

中国人寿保险市场趋势

Unit: RMB 10,000
单位: 万元

Year 年份	Total Premiums 保费总额	Annual Rate of Increase 年增长率	Domestic Life Insurers Premiums 内资人寿保险公司 保费收入	Domestic Insurers Market Share 内资人寿保险公 司市场份额	Foreign Life Insurers Premiums 外资人寿保险公司 保费收入	Foreign- Invested Insurers Market Share 外资人寿保险公 司市场份额
2005	36,462,272.93	--	33,218,254.54	91.10%	3,244,018.40	8.90%
2006	40,610,901.22	11.38%	38,210,195.08	94.09%	2,400,706.14	5.91%
2007	49,489,681.18	21.86%	45,531,728.23	92.00%	3,957,952.94	8.00%
2008	73,375,667.35	48.26%	69,765,688.07	95.08%	3,609,979.28	4.92%
2009	81,441,829.89	10.99%	77,179,179.39	94.77%	4,262,650.50	5.23%
2010	105,008,832.08	28.94%	99,094,121.63	94.37%	5,914,710.45	5.63%
2011	95,600,039.46	-8.96%	91,736,458.00	95.96%	3,863,581.45	4.04%
2012	99,578,863.13	4.16%	94,825,325.85	95.23%	4,753,537.28	4.77%
2013	107,409,258.64	7.86%	101,440,741.08	94.44%	5,968,517.56	5.56%
2014	126,902,846.51	18.15%	119,564,660.37	94.22%	7,338,186.14	5.78%
2015	158,591,310.46	24.97%	148,680,436.37	93.75%	9,910,874.10	6.25%
2016	216,928,108.22	36.78%	203,046,091.58	93.60%	13,882,016.64	6.40%

Source: CIRC

来源: 中国保险监督管理委员会

是中国仍然面临工业化、城镇化、人口老龄化及生活方式变化等带来的各种挑战。纲要要求以普及健康生活、优化健康服务、完善健康保障、建设健康环境、发展健康产业为重点, 强调积极发展商业健康保险, 将其作为建设全民健康保障体系的重要支柱。纲要还特别提出要创新和开发综合健康保险和健康管理服务产品。另外, 纲要还要求建立健康维护组织。鉴于健康维护组织最早是在美国发展起来的, 所以美国的专业健康保险公司在在这方面具有丰富的专业知识。美国的专业健康保险公司希望通过适当的公私合作和国际合作方式参与这项伟大的事业。但是, 由于持股比例不得超过 50%, 美国和其他国家的专业健康保险公司对中国健康保险市场的参与继续受到限制, 我们敦促取消人寿保险的这一持股比例限制。

再保险

2016 年, 中国保监会开始正式实施中国风险导向偿付能力体系 (C-ROSS) ——中国第二代偿付能力监管体系 (以下简称“偿二代”), 并且正在通过各地保监局对保险公司偿二代合规情况实施检查。偿二代是一套广泛复杂的新规则。鉴于偿二代是全新和复杂的, 保监会需要确保各地保监局以及保监会全体官员对规则能够做出相同的解读。一致性和透明性对于保险公司正确、迅速地遵守偿二代规则的能力来说很重要。但是, 执法需要基于原则并且符合国际保险监督官协会 (IAIS) 制定的保险监管核心原则, 不应“一刀切”。鉴于各家保险公司在规模、复杂程度、业务性质和提供的产品等方面存在很大差别, 对偿二代的

that C-ROSS imposes unreasonable capital charges and collateral requirements on cross-border transactions between Chinese ceding insurers and reputable offshore reinsurers with financially sound ratings in their home jurisdictions. AmCham China believes that such capital charges and collateral requirements are unnecessary because CIRC has other means to ascertain the soundness of such offshore reinsurers, including by established means of consultation with their home country supervisors. Moreover, the adverse weighting of cross-border reinsurance transactions will discourage cross-border reinsurance transactions with the perverse consequence of concentrating risk in China rather than dispersing risk more widely. AmCham China urges CIRC to reconsider C-ROSS Chapter 8 Credit Risk Minimum Capital to prevent such unfortunate concentration of risk.

AmCham China is also concerned that the C-ROSS solvency framework will concentrate risk onshore, adversely affecting international reinsurers by overweighting credit risk and imposing collateral requirements even for international reinsurers which are subject to compliance supervision in their home jurisdictions by the International Association of Insurance Supervisors.

Brokerages

Although the 2015 revised “Catalogue of Industries for Guiding Foreign Investment” removed foreign investment in insurance brokerages from the “restricted” category and the October 2016 “Interim Measures for Record Filing Administration of the Establishment and Change of Foreign-Invested Enterprises” simplified the registration of foreign-invested enterprises not classified as “restricted,” CIRC has yet to clarify that foreign-invested insurance brokers’ business licenses are to be consistent with those of domestically-invested brokers. AmCham China urges CIRC to adopt regulations to implement this reclassification. CIRC’s delay denies Chinese consumers a wider choice of brokerages for brokering smaller scale commercial risks, automobile insurance, and individual life and accident insurance.

At the end of 2016, draft “Insurance Broker Regulations” were circulated for public comment. These regulations stipulate that insurance brokers shall be segregated from reinsurance brokers, which is inconsistent with international practice and difficult to implement in practice without further guidance. The draft in its current form will adversely impact the insurance placement process to the detriment of consumers.

Insurance Asset Management Companies

AmCham China applauds the increased issuance of licenses for insurance asset management companies (IAMCs) since 2011 and the establishment of the Insurance Asset Management Association of China in 2014. However,

CIRC continues to regulate this industry based on the 2004 “Interim Provisions on the Regulation of IAMCs,” which requires that IAMCs have at least two founding shareholders, even though the amended Company Law requires only one founding shareholder. In other words, all insurance companies are required to partner with a second company to manage their own funds. AmCham China urges deletion of the second founding shareholder requirement to bring IAMC regulations into alignment with the Company Law which allows one founding shareholder.

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, in comparison to domestically-invested insurers, foreign-invested insurers still suffer from more rigorous and lengthier branch approval procedures, including the effective refusal to consider concurrent applications. Such a slow approval pace hampers the ability of foreign-invested insurers to serve consumers. 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 issuance of the “Interim Measures on the Administration of Internet Insurance Business” in July 2015, allowing insurers to sell certain types of insurance products under certain conditions through the Internet, even in provinces where they do not maintain a branch. However, while there is a huge need now for health insurance products (including critical illness insurance products), which will only increase as the population rapidly ages, such products are still not allowed to be sold online nationwide. AmCham China recommends further opening this channel by expanding the range of products permitted to be sold online to include critical illness products, which will better satisfy customer needs and further contribute to China’s ambitious goals of reforming the financial sector, enhancing financial inclusion and supplementing public health insurance.

Investment of 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

解释应当考虑具体公司的业务性质。为了促进偿二代的顺利和统一实施，关于保险公司针对偿二代具体规定的解释提交书面咨询应当遵循的正式程序，我们希望中国保监会以书面公开声明的形式予以答复。由保监会发布的公开解释将降低不同保险公司或保监会不同官员对同一规定做出不同解释的风险。

尽管对保险行业的偿付能力进行更为系统的监管实属必要，但是商会认为，偿二代对中国分出保险公司与在本国声誉良好且经济实力雄厚的海外再保险公司进行跨境交易施加了不合理的资本费用和担保要求。商会认为上述资本费用和担保要求并无必要，因为中国保监会可以通过其他途径来验证上述海外再保险公司的财务实力，包括可以通过现有的沟通渠道与其母国监管机构进行核查。另外，对跨境再保险交易的过度监管会抑制跨境分出交易，反而造成风险集中于中国国内，而不是广泛分散风险。商会促请保监会重新考虑保险公司偿付能力监管规则第8号“信用风险最低资本”中的相关规定，从而避免出现上述风险集中的不利状况。

商会还担心偿二代框架对在其母国接受国际保险监管协会合规监管的国际再保险公司施加过多的信用风险和担保要求，会造成风险聚集在中国境内，并对国际再保险公司造成负面影响。

保险经纪

虽然2015年修订的《外商投资产业指导目录》不再将保险经纪列为限制外商投资类，并且2016年10月发布的《外商投资企业设立及变更备案管理暂行办法》简化了非限制类外商投资企业的登记注册要求，但是，中国保监会尚未明确外资保险经纪公司的经营范围与内资保险经纪公司一致。商会敦促中国保监会制定规则以执行新的分类。中国保监会的拖延实际上剥夺了中国消费者在选择外资保险经纪公司经纪小型商业风险保险、车险、个人人身和意外保险方面应当享有的更多选择。

2016年底，中国保监会发布《保险经纪人监管规定（征求意见稿）》向社会公开征求意见。该规定要求再保险经纪业务与其他保险经济业务实行隔离，这不仅不符合国际惯例，而且在没有进一步指导的情况下，在实践中也难以执行。目前的草案将对客户的保险安排产生不利影响。

保险资产管理公司

自2011年以来，保险资产管理公司牌照的发放数量有所增加，2014年，中国保险资产管理协会设立，商会对此表示欢迎。但是，中国保监会却继续依照2004年实施的《保险资产管理公司管理暂行规定》进行行业监管，该规定要求保险资产管理公司应当至少有两名发起人股东，而经修订的《公司法》只要求单一发起人股东。换句话说，所有保险公司均需与另外一家公司合作管理自己的资金。商会促请取消至少两名发起人股东的要求，从而使保险资产管理公司管理规定与《公司法》的要求相一致，允许一名发起人股东发起设立保险资产管理公司。

销售和服务渠道

设立分支机构

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，对此商会表示认可。但是，相比内资保险公司，外资保险公司在申请设立分支机构时往往需要面临更为严格和漫长的审批流程，包括直接驳回外资保险公司同时设立多家分支机构的申请。如此缓慢的审批速度影响了外资保险公司为中国消费者提供服务的能力。商会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。商会对中国保监会2015年7月出台的《互联网保险业务监管暂行办法》表示赞赏，该办法允许保险公司在一定条件下可以通过互联网经营特定类型的保险产品，且不受该保险公司是否在该省设有分支机构的限制。虽然目前人们对健康保险产品（包括重大疾病保险产品）有着巨大的需求并且这种需求随着人口快速老龄化将进一步增加，但是这类产品仍然不能通过互联网在全国范围内销售。商会建议进一步放开该渠道，扩大允许保险公司在全国范围内在线销售的保险产品的范围，将重大疾病保险产品纳入其中，从而更好地满足客户需求，推动中国尽早实现金融体系改革、推进金融普惠以及补充社会医疗保险的战略目标。

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 mitigate the shortage of local talent with adequate experience and sophistication for investing in new asset classes. We also hope that related regulatory policies will be issued to provide the necessary risk-hedging tools for these new asset classes and for insurance capital in general.

Tax Issues

Heavier Tax Burden for Insurers Due to VAT Reform

In direct contrast to the State Council's value-added tax (VAT) reform objective of reducing the tax burden on enterprises, especially in the services sector, the tax burden of insurers in China increased significantly after full implementation of the "business tax to VAT" reform in 2016. The tax burden has increased mainly because the reform extended application of the VAT to interest income from fixed-income investment products like corporate bonds, which had been tax-exempt under the business tax system. In addition, the reform raised the tax rate for taxable premium-related products from five percent to six percent. Although input VAT is deductible, in practice, the deductible ratio is insufficient, so the tax rate on premium income is largely unchanged. The increased levies on insurers reduce their profitability in the near term, profoundly impacting their pricing and actuarial practices, and harming the interests of Chinese policyholders. As a result of the reform, AmCham China urges the State Administration of Taxation (SAT), in coordination with related agencies, to alleviate the heavier tax burden on insurers. We recommend maintaining the tax-exempt status for interest income from corporate bonds and debt programs, or at minimum adopting a "cut-off" approach to exempt bonds issued prior to the reform from VAT. We also recommend that the SAT provide more clarity and consistency in its rules for the insurance industry, unify the scope of VAT application across the country, and expand the deductibility range for input VAT. Meanwhile, we are pleased that representative offices of foreign insurance companies have been determined to be VAT-exempt.

Pension Insurance

The "Announcement on Issues Related to Individual Income Tax on Enterprise and Occupational Annuities" (Circular 103), which deferred individual income tax for enterprise and occupational annuities as of January 1, 2014, has not generated a boom in the enterprise annuity market. AmCham China supports tax-deferred treatment for retirement accounts and hopes that the ceiling on such contributions will be raised to further incentivize employees to save more for their own retirement.

Tax-Deferred Individual Retirement Accounts

To the disappointment of many in the industry, the pilot individual tax-deferred pension insurance program has yet to be launched despite years of planning. There is talk of extending the program to include other investment products as well as insurance in an individual retirement account-type third pillar pension program. We applaud this initiative and hope to see the program launched in the near future. We note, however, that no foreign-invested pension insurers or asset managers have been licensed to operate in China despite their many years of operating experience in other countries. We also hope that foreign-invested firms will be allowed to participate in the program to the same extent as domestically-invested financial services companies.

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 (IT) requirements and rules regarding claims, finance, and compliance personnel for new branches. AmCham China urges CIRC to simplify costly burdens wherever possible, and take these burdens fully into account when considering compliance requirements.

Recent Developments

China's Cybersecurity Law

China's Cybersecurity Law will take effect on June 1, 2017. We understand the challenges that Chinese regulators face in managing new technologies and addressing cybersecurity concerns. However, this law sets broad restrictions on cross-border data flows, which will create barriers to both Chinese and foreign companies operating in industries where data needs to be shared internationally. In addition, some key items such as "critical information infrastructure," "critical/important information," and "secure and reliable network products and services" are not clearly defined. This will cause difficulties for companies, including foreign insurers, in identifying and implementing remediation items in a timely manner. AmCham China believes that cybersecurity is complex and requires cooperation across national boundaries. We hope the government will clarify key definitions and review effectiveness of these measures to ensure data security and promote technology innovation, while not restricting cross-border data flows.

CIRC's "Draft Administrative Regulations on the Informatization of Insurance Institutions"

CIRC is contemplating a new rule governing the information systems of insurance institutions after issuing the

保险资金投资

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，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，应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，更能缓解中国在新兴资本投资领域缺乏具备专业经验和技能的本土人才问题。商会还希望，中国能够尽快出台相关监管政策，为上述新兴资产类别以及保险资金提供必要的风险对冲工具。

税务问题

增值税改革加重了保险公司的税负

国务院实施增值税改革的初衷是为了减轻企业特别是服务行业企业的税负，然而，2016年“营业税改增值税”改革全面实施后，中国保险公司的税负却大大增加。税负之所以增加，主要是因为改革将增值税适用范围扩大到公司债券等固定收益类投资产品的利息收入，而在营业税体制下这类收入都是免税的。另外，改革还将保费收入相关的应税产品的税率从5%提高到6%，虽然由此发生的进项增值税可以抵扣，但是在实践中，抵扣比率不足，导致保费收入相关的税负变动不大。税费负担增加将会降低保险公司的短期盈利能力，对保险公司的定价和精算行为产生极大影响，最终损害中国投保人的利益。因此，商会敦促国家税务总局会同相关部门减轻保险公司的税负。我们建议维持公司债券和债务项目利息收入的免税资格，或者至少采取“新老划断”方式，对增值税改革之前发行的债券实行免税。我们也建议国家税务总局提高保险行业相关规则的明确性和一致性，在全国统一增值税适用范围并且扩大进项增值税的抵扣范围。同时我们很高兴外资保险公司的代表处能够获得免征增值税的待遇。

养老保险

《关于企业年金职业年金个人所得税有关问题的通知》(103号通知)规定，自2014年1月1日起，实施企业年金、职业年金个人所得税递延纳税政策。但是，企业年金市场并没有因此实现繁荣发展。商会支持养老金账户延迟缴纳个税的举措，希望有关部门考虑提高相应的养老金缴纳比例上限，从而进一步鼓励员工增加养老储蓄。

递延纳税的个人养老保险账户

令业界很多人感到失望的是，虽然已经筹划多年，个税递延型养老保险试点项目仍未启动。业界有提议将其他投资产品和保险一样纳入第三支柱的个人养老账户中。我们表示欢迎这一举措并且希望能够在不久的将来得到实施。但是，我们注意到，外资养老保险公司或资产管理公司虽然在其他国家有着多年的经营经验，却没有获得在华经营的牌照。我们也希望外资企业能同内资金融服务公司一样参与到该项目中来。

监管和合规成本

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运营成本极高，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。商会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，制定合规要求时充分考虑这些成本负担。

最新进展

《网络安全法》

《网络安全法》将于2017年6月1日实施。我们理解中国监管部门在管理新技术和解决网络安全问题方面所面临的诸多挑战。但是，该法对跨境数据流实施广泛的限制，给在需要进行数据国际共享的行业经营的中外企业设置了障碍。另外，诸如“关键信息基础设施”、“关键/重要信息”以及“安全可信的网络产品和服务”等重要术语没有明确定义。这使得包括外资保险公司在内的企业难以及时地确定和实施整改项目。商会认为，网络安全是一个复杂的问题，需要跨越国境开展合作。我们希望中国政府能够明确上述重要定义并且审视相关办法的有效性，在不限制跨境数据流的情况下，保障数据安全，推动技术创新。

中国保监会《保险机构信息化监管规定（征求意见稿）》

中国保监会正在考虑制定一份规范保险机构信息系统的新规，继2015年10月发布《保险机构信息化监管规定（征求意见稿）》（“规定”）之后，2016年4月已经将修改草案提交至世界贸易组织。该规定要求保险公司采

“Draft Administrative Regulations on the Informatization of Insurance Institutions” (the Draft Informatization Regulations) in October 2015 and submitting the revised version to the WTO in April 2016. The Draft Informatization Regulations require insurers to give priority in the procurement of IT hardware and software to “secure and controllable” products. AmCham China suggests clarifying the definition of “secure and controllable” such that insurers retain the discretion to decide among different vendors and technology providers on the basis of security and reliability of IT systems, not on national origin.

The Draft Informatization Regulations would adversely impact foreign-invested insurers by narrowing their procurement options for China operations. This would increase costs and create interoperability problems with their non-China operations, ultimately reducing security and raising costs for Chinese consumers. Data localization requirements specified in the Draft Informatization Regulations would also have substantial anti-competitive effects on foreign-invested insurers.

“Measures for Insurance Company Compliance Management”

CIRC officially released the “Measures for Insurance Company Compliance Management” (the Measures) in January 2017. The Measures retained the existing requirement imposed on an insurance company headquarters to set up dedicated compliance departments and extended it to include provincial branch offices. The final Measures represented some improvement from the October 2016 draft, including deletion of the clause which required that insurers maintain a minimum number of compliance staff (at least three percent of headcount at headquarters and at least two persons in each provincial branch). AmCham China welcomes such improvement. However, the Measures lack implementation details for insurers to set up compliance departments in provincial branches, which will make it more difficult for insurers to adjust their personnel structure. AmCham China recommends that CIRC further clarify relevant requirements before the Measures take effect on July 1, 2017.

Transparency and Level Playing Field

In 2016, AmCham China observed that CIRC 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 2016, the market share of foreign-invested insurers stood at a mere 5.09 percent, down from six percent in 2004 and up only slightly from 4.46 percent in 2014. The decline in life insurance has been particularly sharp, falling from 8.9 percent in 2005 to 5.8 percent in 2014 before increasing modestly to 6.4 percent in 2016. Even the largest foreign-invested life insurer’s market share is less than two percent. The market share of foreign-invested property and casualty companies, which were previously excluded from the mandatory third-party liability insurance market, continued to barely register at 2.04 percent in 2016. Foreign-invested health and pension insurers continue to be excluded from the market altogether.

Recommendations

For the Chinese Government:

Ownership

- **Lift the 50 percent cap on foreign ownership of life insurers.**
- Allow insurance asset management companies to be established by a single founding shareholder in accordance with the Company Law.

Sales and Service Channels

- Further open the Internet insurance channel by allowing more types of insurance products, including critical illness products, to be sold online nationwide.
- 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.

Licenses

- Increase competition in pension and health insurance by licensing foreign-invested applicants.
- Level the playing field for brokerages by removing restrictions on foreign-invested brokerages.

Tax Issues

- Correct the heavier tax burden on insurance companies as a result of VAT reform.
- Expand tax incentives for tax-deferred annuities.

购信息技术硬件和软件时优先考虑“安全可控”产品。商会建议明确“安全可控”的定义，允许保险公司根据信息技术系统的安全和可靠性而非国别来选择供应商和技术提供商。

该规定会给外资保险公司造成不利影响，减少其在华运营机构的采购选择，不仅成本增加，还会造成与其他国家运营机构的互操作性问题，最终给中国消费者造成安全降低和成本增加。有关数据本地化的要求也会给外资保险公司造成抑制竞争的不利影响。

《保险公司合规管理办法》

2017年1月，保监会正式发布《保险公司合规管理办法》（以下简称“办法”）。办法保留了现有的对保险公司总公司应当设立专门的合规部门的要求，并将这一要求扩大到省级分公司。与2016年10月的草案相比，该办法的最终稿有一些改进，例如，删除了保险公司专职合规人员的最低人数要求（至少占总公司员工总数的3%，每个省级分公司至少有2名专职合规人员）。商会对此表示欢迎。但是，办法没有说明保险公司在省级分公司设立合规部门的实施细则，使得保险公司越发难以调整自身的人员结构。商会建议中国保监会在该办法2017年7月1日生效实施之前进一步明确相关要求。

透明和公平竞争的环境

2016年，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。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。

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业务拓展障碍依然感到失望。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，尽管去年外资保险公司在华市场份额略有提升，但其市场份额的总体趋势却是日渐萎缩。截止2016年底，外资保险公司在华市场份额仅为5.09%，比2004年的6%有所下降，仅比2014年的4.46%略有上升。人寿保险市场份额下降尤其严重，从2005年的8.9%跌至2014年的5.8%，2016年略有增长，为6.4%。即使

是在中国规模最大的外资人寿保险公司，其市场份额也不足2%。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，2016年市场份额也仅为2.04%。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

对中国政府：

所有权

- 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。

销售和服务渠道

- 进一步开放互联网保险销售渠道，允许包括重大疾病保险产品在内的更多类型的保险产品可以通过互联网在线进行全国性销售。
- 外资保险公司申请设立分支机构时，确保在审批手续和审批进度上享受与内资保险公司同等的待遇。

牌照

- 通过向外资公司发放经营牌照，提高养老保险和健康保险的市场竞争。
- 取消对外资保险经纪公司的限制，为保险经纪提供公平竞争的环境。

税务问题

- 解决增值税改革给保险公司加重了税负的问题。
- 扩大个税递延型养老保险的税收优惠的范围。

监管结构

- 明确《网络安全法》中的重要定义，审查该法所规定的措施的有效性。

Structural

- Clarify key definitions in China's Cybersecurity Law and review the effectiveness of the measures in the law.
- Clarify the definition of "secure and controllable" in CIRC's Draft Informatization Regulations and give insurers the discretion to decide among different vendors on the basis of security and reliability of IT systems, not national origin.
- Clarify and elaborate requirements on the compliance function of insurers' provincial branches.
- Remove unnecessary capital charges and collateral requirements on cross-border reinsurance transactions.

- 明确《保险机构信息化监管规定（征求意见稿）》中关于“安全可控”的定义，允许保险公司根据信息技术系统的安全性和可靠性而非国别来选择供应商。
- 明确对保险公司省级分公司合规部门的具体要求。
- 取消对跨境再保险交易实施的不必要的资本费用和担保要求。

Legal Services

Introduction

Non-PRC law firms face a wide range of market access constraints in mainland China, especially: ❶ the inability to employ PRC-qualified lawyers so that they can provide comprehensive legal services to their clients; ❷ prohibitions against participation in important meetings at government departments involving their clients; ❸ discriminatory taxation; and ❹ an unnecessarily slow, complicated, and unpredictable registration process for the establishment of offices.

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 accept 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.

Ongoing Regulatory Issues

Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms

AmCham China continues to urge the Chinese government to revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers with active PRC licenses, so that they may provide comprehensive legal services to their clients. Removing this prohibition would:

- Significantly expand training and future employment opportunities for mainland Chinese law students and lawyers, which would in turn 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;

- Allow Chinese companies to expand more efficiently and successfully by enabling integration of their counsel in China with a worldwide team of legal specialists; 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.

Restricted Appearance Before Government Agencies

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 each 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.

Presently, 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. This lack of clear and consistently enforced regulations:

- Deprives both foreign and Chinese clients of adequate representation in these meetings relating to areas of non-Chinese law;
- Prevents clients from determining the composition of their own legal teams in meetings with Chinese government officials;
- Limits clients' ability to understand government proceedings in their international context;
- 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;
- Creates an uneven playing field;

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，重点包括：❶ 无法雇用中国律师，所以无法为客户提供全方位法律服务；❷ 不允许出席客户与政府部门之间的重要会议；❸ 差别性的税收政策；和❹ 成立代表机构的注册手续过于繁杂，过程漫长而且结果难以预料。

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内地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、接受国际水准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和金融交易各方既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。

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

中国美国商会（商会）继续敦促中国政府修订现行法规，允许外国律师事务所雇用持有有效中国律师执业证的中国律师，为客户提供全面的法律服务。取消这一限制将：

- 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，从而增加训练有素且经验丰富的中国执业律师的数量，使得中国律师事务所和公司能够雇用这些律师担任法律顾问或其他需要法律专业背景的职业；
- 允许中国公司将中国的法律顾问和由法律专家组成的国际团队进行整合，从而更加有效和成功地进行公司扩张；

- 提高外国律师事务所在中国内地代表客户开展业务的能力，协助中国公司寻求扩大全球业务与投资活动的机会。

外国律师参与政府会议受限

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，即按照通行的做法，允许外国律师事务所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。商会也促请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。

目前，中国通常会禁止、限制、根据个案或在不透明的基础上有条件地允许外国律师出席和参与客户与中国政府部门之间举行的很多会议。这方面缺乏明确且一致的规定将：

- 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；
- 妨碍了客户自主选择法律团队成员参与中国政府官员进行会谈的权利；
- 限制了客户在国际环境下理解政府程序的能力；
- 影响了客户向中国政府官员提供的其在中国及境外活动和义务等相关信息的质量；
- 造成了不公平的竞争环境；
- 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；
- 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人世承诺以及中国国务院的相关法规。

据了解，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外国律师会见政府官员。

- Fosters the impression that the Chinese government may engage in arbitrary and discriminatory treatment with respect to foreign companies; and
- Frustrates the right of international law firms to advise foreign and Chinese clients on the impact of the Chinese legal environment—a right that is clearly established in China’s Protocol of Accession to the World Trade Organization (WTO) as well as in State Council regulations.

To the best of our knowledge, no other leading economy limits, restricts, or permits such inconsistent, non-transparent access by foreign lawyers to government officials.

Discriminatory Taxation

Representative offices of foreign law firms are subject to higher PRC income taxation than PRC law firms carrying out the same activities because foreign law firms are denied the ability to be treated as partnership enterprises for PRC tax purposes (for more details please see the 2015 *White Paper*). 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.

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 the 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. This requirement unnecessarily and unreasonably lengthens the approval process for a representative office by 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 a key priority of the central government to boost economic development.

Other Market Access Problems

Foreign law firms also face other restrictions that impair their ability to operate in China. These include: ❶ an unnecessarily difficult process to replace 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 one year limit on the duration of work visas for foreign lawyers (including chief representatives); and ❹ protracted procedures (sometimes up to a year and a half) for obtaining work permits.

We encourage the Chinese government to address these issues in order to improve foreign law firms’ ability to effectively serve their clients, both foreign and domestic, in China.

Foreign Investment Catalogue Restrictions

In the revised “Catalogue of Industries for Guiding Foreign Investment” (Foreign Investment Catalogue) released March 2015, “consulting on Chinese legal matters” was classified as “prohibited,” whereas it was classified as “restricted” in the previous Catalogue. Although the Chinese government released a new draft version of the Foreign Investment Catalogue on Dec. 7, 2016, “consulting on Chinese legal matters” is still listed as a “prohibited industry.” 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 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.

Recent Developments

Small Step Regarding Legal Services in the Pilot Free Trade Zones

Some positive developments have been pursued within the China (Shanghai) Pilot Free Trade Zone (PFTZ) (e.g., the November 2014 “Implementing Measures of the Shanghai PFTZ for the Mutual Assignment of Lawyers as Legal Consultants by Chinese and Foreign Law Firms,” and the “Implementing Measures of the Shanghai PFTZ for Joint Venture Operations Between Chinese and Foreign Law Firms”; see the 2015 *White Paper* for more details on these measures).

Since April 2015, three Sino-foreign joint venture operation law firm offices in the Shanghai PFTZ have been approved by the Shanghai Bureau of Justice. However, daily operations of the joint venture offices still face various difficulties. For example, a joint venture office cannot open its own bank accounts until one year after its establishment.

差别性税收

与从事相同业务活动的中国律师事务所相比，外国律师事务所代表处在中国缴纳的所得税更高，这是因为中国目前不承认外国律师事务所在税法上的合伙企业地位（详情见2015年《白皮书》）。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。

为解决这种不公平现象并与《中美税收协定》中的各项非歧视性原则保持一致，商会建议中国政府在中国所得税征收方面应当给予外国律师事务所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代表处时，必须证明其“设立代表处从事法律服务业务的必要性”。相关政府部门在评估其必要性时，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代表处的地域和数量限制方面的承诺。因为这一要求，审批流程可能延长至9个月之久，这是不必要且不合理的。此外，审批时间也难以预料，通常久拖不决。设立代表处的申请程序可以而且应该进行大幅度地简化。

此外，外国律师事务所设立一个代表处之后，必须等待至少三年才能再增设新的代表处，这种规定限制了外国律师事务所的发展。外国律师事务所均表示在该类申请过程中遭遇了重重困难和拖延现象。内陆省份是中国政府提出的重点经济发展区域，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。

其他市场准入问题

外国律师事务所还面临很多其他限制，这削弱了他们在中国的执业能力。其中包括：① 律所首席代表变更和外国律师变换其任职律所时所需履行的程序过于繁杂；② 不能或难以聘用外籍非法律专业人士；③ 外国律师（包括首席代表）工作签证的有效期只有一年；及④ 取得工作许可的时间相对较长（有时甚至需要一年半的时间）。

商会促请中国政府解决上述问题，从而提高外国律师事务所为在华中外客户提供高效服务的能力。

《外国投资目录》的限制

2015年3月发布的《外商投资产业指导目录》（《指导目录》）将“中国法律事务咨询”列入“禁止”清单，而在旧版的《指导目录》中，这一项是列在“限制”清单中。2016年12月7日，中国政府发布最新修订的《指导目录》，仍将“中国法律事务咨询”列入“禁止”清单。中国于2001年加入世贸组织时承诺允许提供有关中国法律影响的信息服务，然而这不能满足本章谈到的外国律所及其中国籍律师对于进一步放开准入的需求。

最新进展

自由贸易试验区开放法律服务市场的些许进步

中国（上海）自由贸易试验区已经实施了一些积极举措（例如，2014年11月上海市政府发布的《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》和《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》；详见2015年《白皮书》）。

2015年4月以来，三家设在上海自贸区的中外联营律师事务所已经获得上海市司法局的批准。但是，联营事务所的日常经营仍然面临各种困难。例如，联营事务所在设立一年以后才能开立自己的银行账户。

其他论坛对话

中美双方有诸多机会就上述问题进行探讨，包括中美商贸联委会、战略与经济对话和双边投资协定谈判。据悉，司法部正在牵头就中国法律服务市场的开放进程进行研究和讨论，但是，到目前为止，我们尚未看到与此相关的具体行动。本质上而言，什么行动也没有。

2016年初，商会就美国律师事务所在华市场准入问题致函美国商务部长和贸易代表，指出美国律师事务所在华面临的不合理限制。商会在信中鼓励在中美双边投资协定谈判、中美商贸联委会以及战略与经济对话框架下提出这一问题。美国商务部长了解我们在信中提出的关切，并承诺推进这一议题。

本章包含的大部分问题已连续几年由商会提出，但总体上未取得进一步的改善。我们希望双方政府能够加强对这些问题的关注，确保中国法律服务市场能得到进一步的开放，并取得上述的收效。

Other Forums for Dialogue

There are a number of opportunities for the US and China to communicate on the issues raised herein, including the JCCT, the Strategic and Economic Dialogue (S&ED), and the Bilateral Investment Treaty negotiations. The Ministry of Justice is reported to now lead China's effort to conduct research and discussions to introduce the process of opening the Chinese legal services market but, as of this writing, we are not aware of any concrete action that has been taken in this regard. Essentially nothing is happening.

In early 2016, AmCham China sent a letter to the US Secretary of Commerce and US Trade Representative regarding the market access issue for US-based law firms in China, which addressed the unreasonable restrictions US law firms face in China. In this letter, AmCham China encouraged raising this issue in negotiations on the Bilateral Investment Treaty, JCCT, and S&ED. The US Secretary of Commerce acknowledged the concerns flagged in the letter, and promised to move forward on this issue.

Most of the issues included in this chapter have been raised by AmCham China for several years but these barriers on the whole remain unchanged. We hope that increased attention on these issues by both governments will help ensure further opening of the Chinese legal services market in order to bring about the aforementioned benefits.

For the US Government:

- **Negotiate with China to revise the current regulations to permit international law firms in China to enjoy the same benefits shared by Chinese law firms operating their offices overseas.**

Recommendations

For the Chinese Government:

- **Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers without requiring them to suspend their PRC lawyer's license when they join a foreign law firm.**
- Clearly provide in regulations that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments.
- Simplify the requirements, eliminate the unpredictability, and reduce the review period for the establishment of representative offices as well as the opening of additional offices.
- 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, extend the duration of visas for representatives, and decrease work permit approval times.

建议

对中国政府：

- 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。
- 在相关法规中明确允许外国律师参与客户与政府部门间的所有会议。
- 简化设立代表处的要求，消除不可预测性因素，缩短设立代表处及开设新代表处的审核时间。
- 在征收中国所得税方面，为外国律师事务所提供与中国律师事务所同等的待遇。
- 允许外国律师事务所聘请外籍非法律专业人士，改进代表的注册及调动程序，延长代表的签证有效期，缩短工作许可的审批时间。

对美国政府：

- 与中方进行谈判以修改其现行法律法规，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。

Machinery Manufacturing

Introduction

China's machinery manufacturing industry registered moderate growth in 2016 despite weak levels of investment, imports, and exports in the industry. To stabilize the growth rate, the Chinese government has promoted smart manufacturing, green manufacturing, the integration of information technology, and the harmonization of Chinese and international standards.

AmCham China member companies applaud the Chinese government's work on improving industrial capability. However, many firms continue to face significant challenges, including restrictions on the free flow of capital, information, and products, as well as a lack of policy consistency and feasibility. AmCham China urges the Chinese government to consider the issues addressed in this chapter to enhance support for the manufacture of high value machinery.

Ongoing Regulatory Issues

Construction Machinery

Emission Regulation

The "Non-Road Diesel Engine Tier III Emission Regulation" issued by the Ministry of Environmental Protection (MEP) entered into effect on October 1, 2014. The regulation has been instrumental in the industrial upgrade of construction machinery, and is expected to contribute significantly to air quality improvement.

We support the Chinese government's continuing efforts to develop more stringent emissions regulations for non-road construction machines. However, it is also critical to leave enough time for manufacturers to adjust their product designs and arrange production planning in order to meet the stricter regulations. In addition, the nationwide availability of qualified ultra low-sulfur diesel is an essential prerequisite to the implementation of more stringent regulations.

We therefore encourage the MEP to conduct a thorough investigation into the needs and baselines of manufac-

turers before determining the implementation date for the "Non-Road Diesel Engine Tier IV Emission Regulation." AmCham China believes that the implementation date for the construction machinery industry should be no sooner than July 1, 2019 to allow the relevant parties sufficient time to prepare for implementation.

Machine Transportation

The Ministry of Transport (MOT) released the "Administrative Measures on Overloaded Transportation Vehicles" on September 21, 2016. This regulation was designed to improve transportation management and safety. However, the upper limit on vehicular payload has greatly increased the transportation cost of excavators above 30 tons and negatively impacts their quality. Each year, thousands of large excavators above 30 tons are transported to customers or between worksites. To comply with this regulation, these machines have to be disassembled and then reassembled under poor working conditions at jobsites.

The regulation places an added burden on both manufacturers and customers. AmCham China encourages the MOT to work with provincial transportation departments to develop special measures for managing the transportation of large excavators.

Marine Engines

Exhaust emissions from ships are much greater than emissions produced by other vehicles. To protect water resources and the natural environment, we encourage the Chinese government to further strengthen the enforcement of emission regulations, increase on-site inspection and enforcement, and upgrade emissions regulations for ships operating in key water areas, such as scenic spots and urban water sources.

Inland waterway shipping has the advantages of low land consumption, large transportation capacity, low costs, and a high degree of safety and reliability. We urge the Chinese government to attach more importance to inland waterway shipping by increasing infrastructure investment in inland waterways and upgrading ships by adopting energy saving low emission engines and propulsion systems. These measures would promote economic growth and environmental protection in vulnerable coastal areas.

机械制造业

引言

2016年，尽管行业投资和进出口表现乏力，中国的机械制造业仍然实现适度增长。为了稳定增长率，中国政府着力推动智能制造、绿色制造、信息技术集成以及中国标准和国际标准的统一。

中国美国商会（商会）的会员企业赞赏中国政府为提高行业能力所做的工作。但是，许多企业继续面临重大挑战，包括对资本、信息和产品自由流动的限制以及政策缺乏一致性和可行性。商会促请中国政府考虑本章所讨论的问题，加大对高端机械制造业的支持。

现存监管问题

工程机械

排放法规

自2014年10月1日起，环境保护部（环保部）制定的《国家第三阶段非道路移动机械用柴油机排气污染物排放标准》生效施行。上述排放标准将有助于工程机械产业升级和空气质量的显著改善。

我们支持中国政府继续为非道路工程机械制定更加严格的排放标准。然而，为制造商留出充分的时间也很重要，厂家需要时间调整产品设计和安排生产计划，以便满足更加严格的标准。另外，为了实施更严格的标准，需要保证全国范围内合格的超低硫柴油的供应。

因此，我们鼓励环保部首先全面调查制造商的需求和底线，然后再决定“第四阶段非道路移动机械用柴油机排气污染物排放标准”的实施日期。商会认为，为了给相关方留出足够的准备时间，工程机械行业的实施日期不应早于2019年7月1日。

机械运输

2016年9月21日，交通运输部发布了《超限运输车辆行驶公路管理规定》，旨在改进运输管理和安全。但是，对车辆装载量设置的上限，大大增加了30吨以上大型挖掘机的运输成本并对其进行质量产生负面影响。每年都有数以千计的30吨以上的大型挖掘机需要运送到客户或者在不同工地之间转场。为了遵守上述规定，不得不在条件简陋的工地现场对这些设备进行分拆和重新组装。

该规定加重了制造企业和客户的负担。商会促请交通运输部与各省运输管理部门共同制定大型挖掘机运输管理的特别措施。

船用发动机

船舶的废气排放远远高出其他运输工具的排放。为了保护水资源和自然环境，我们促请中国政府进一步加强排放标准的落实执行，增加现场检查和执法力度，更新景区和城市水源等重要水域的运营船舶的排放标准。

内陆水上运输具有占地面积小、运输能力大、成本低以及安全和可靠性高的优点。我们敦促中国政府要更加重视内陆水上运输，增加内河航道基础设施投资，升级船舶装备，采用节能减排的发动机和推进装置。这些举措将有助于促进经济增长，保护沿海地区的脆弱环境。

清洁能源机械

分布式能源（DE）热电联产系统（CHP）一直是能源改革最重要的趋势之一。商会建议中国政府在工业和商业领域重点发展中小型（低于50兆瓦）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（年平均70%以上）。在此期间，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管理条例，加大对地方公用事业企业的支持。上述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，

Clean Energy Machinery

Distributed energy (DE) and combined heat and power (CHP) systems have been some of the most significant trends in energy reform. AmCham China recommends that the Chinese government focus on developing small/medium-sized (less than 50 MW) and multiple-unit DE and CHP systems in industrial and commercial areas to ensure high system operation reliability and efficiency (above 70 percent annual average). In the interim, AmCham China urges expedited development of DE and CHP power grid connection regulations through increased support from local utility companies. Such regulations would 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 and CHP deployment. We urge the Chinese government to promote gas-fired DE and CHP applications in coal-to-gas boiler replacement initiatives as one of the most effective technologies to reduce smog throughout China.

Small municipal waste and small coal integrated gasification combined cycle (IGCC) systems use newly developed IGCC technology which can significantly reduce dioxin, ash, and PM 2.5 emissions. AmCham China recommends that the Chinese government do more to research IGCC technology and develop preferential policies to encourage application of this technology.

Remanufacturing

"The Initiative to Guide the Shift Toward Circular Development" released by the National Development and Reform Commission for public comment in August 2016 constitutes a positive step by the Chinese government to develop green manufacturing. Remanufacturing is highlighted in the initiative as one of the most important measures for the circular development of manufacturing machinery. It pledges to promote major remanufactured products, regulate the remanufacturing service system, and develop several important industry cluster districts.

AmCham China appreciates the Chinese government's continuing efforts on behalf of the remanufacturing industry in recent years. To ensure the healthy development of the remanufacturing sector, we urge the relevant Chinese government departments to coordinate efforts to develop more feasible policies to implement circular development.

Remanufactured finished goods (RFG) should be of the same quality as new products and should be covered by the same quality guarantees. We urge the Chinese government to clarify the definition of RFG and clearly differentiate RFG from "refurbished" and "second-hand" goods. It can then use this definition as a basis for enforcing remanufacturing standards and policies.

We anticipate policy progress in 2017 to allow the free flow of cores (material that is to be remanufactured) and RFGs across borders. We urge the Chinese government to implement a value-added tax (VAT) exemption for cores recycled with a more simplified process, which would be instrumental for the development of the Chinese remanufacturing industry.

Mining

Driven by increasing coal prices in the second half of 2016, China's coal industry appears to be making a recovery. To maintain the healthy development of the coal industry, the Chinese government has prioritized production upgrades and safety improvements.

Embracing mechanization and international best practices will help create a safer, more efficient, and more sustainable coal industry in China. Foreign-invested machinery manufacturers have valuable experience in providing safe, high-quality, and advanced technology. Closer cooperation among international and domestic players could further improve mine safety, efficiency, and sustainability.

Methane explosions are a major hazard for the coal mining industry and methane is also a major contributor to global climate change. According to the Ministry of Land and Resources, China ranks third internationally in coal bed methane/coal mining methane (CBM/CMM) resources contained in coal fields at a depth of less than 2,000 meters. AmCham China applauds the 2007 Chinese government policy to subsidize CBM/CMM drainage and utilization at a rate of RMB 0.3/m³ (US \$0.05/m³). Power generation is an ideal means of utilizing CBM/CMM. However, considering the high cost of CBM/CMM drainage and production, we urge the Chinese government to consider further reform of subsidies to improve mine safety and reduce environmental impacts.

Financial Leasing of Equipment

Financial leasing services have been endorsed as an effective tool to address funding, which drives economic growth by enhancing customer access to more productive equipment for business expansion. The penetration rate of financial leasing for equipment purchasing in developed countries ranges from 15 to 30 percent, while China's rate remains below five percent. Further reform and consistency of leasing regulations across government departments could help to increase the rate of penetration.

Credit records are vital to screening potential leasing customers. AmCham China applauds the "Notice Regarding the Adjustment of the Process for Accessing the Corporate Credit Reporting System" issued by the People's Bank of China (PBOC) in 2015, enabling financial leasing companies to access the central bank's credit reporting system. However, progress remains slow in some cities, which have not taken substantive measures to implement this policy.

包括但不限于较低的燃气价格、税收减免、低息贷款和/或项目启动资本补贴等措施。我们促请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。

小型城市垃圾和小型整体煤气化联合循环发电系统（IGCC）采用最新的IGCC技术，能够大大减少二氧化硫、烟尘和PM2.5的排放。商会建议中国政府进一步研究IGCC技术，制定优惠政策鼓励采用这一技术。

再制造产业

2016年8月，国家发展和改革委员会发布《循环发展引领计划》（征求意见稿），中国政府发展绿色制造迈出了重要的一步。这项计划强调再制造产业是机械制造行业实现循环发展最重要的举措之一，并且承诺将推广主要再制造产品，规范再制造服务体系，发展几个重要的产业集聚区。

商会赞赏中国政府近年来为再制造行业的持续发展做出的努力。为了保证再制造行业的健康发展，我们敦促中国政府相关部门相互协调，制定更加可行的政策推进循环发展。

再制造成品应当具有与新产品相同的质量并享受相同的质量保障。我们敦促中国政府明确再制造成品的定义，将之与“翻新”和“二手”产品区别开来。然后将这一定义作为再制造标准和政策执行的基础。

我们预期，2017年中国有可能允许旧件（材料用于再制造）和再制造成品自由跨境流通。我们敦促中国政府对通过简化过程回收的毛坯免征增值税，这将有助于推动中国再制造产业的发展。

采矿业

2016年下半年，煤炭价格上涨，中国的煤炭行业似乎正在复苏。为了保持煤炭行业的健康发展，中国政府确定了产品升级和安全改进的重点。

推广机械化和国际最佳实践，将有助于中国打造一个更加安全、更具效率也更可持续发展的煤炭产业。外资机械制造商在提供安全、优质、先进的技术方面，具有宝贵的经验。国内外机械制造商进一步深化合作，有助于提高采矿的安全性、效率和可持续性。

瓦斯爆炸是一种重大的煤矿安全事故，同时瓦斯也是全

球气候变化的重要诱因之一。国土资源部的数据显示，中国煤田深度低于2000米的煤层气/煤矿瓦斯资源储量位居世界第三。商会对2007年中国政府出台的，以每立方米人民币0.3元（约合0.05美元）的标准对煤层气/煤矿瓦斯抽采使用给予补贴的政策表示欢迎。发电是一种理想的煤层气/煤矿瓦斯利用方式。但是鉴于煤层气/煤矿瓦斯抽采和生产成本高昂，商会促请中国政府考虑进一步改革相关补贴政策，提升矿山安全作业并减少对环境的不利影响。

设备融资租赁

融资租赁服务一直被视为一种有效的融资方式，能够帮助客户获得扩大生产所需要的更高效的生产设备，从而推动经济增长。发达国家市场上购买设备用于融资租赁的比例约为15%—30%，而在中国，这一比例却不到5%。进一步改革和统一相关政府部门制定的租赁法规，将有助于提高这一比例。

信用记录对于筛选潜在承租人十分重要。2015年，中国人民银行发布《中国人民银行征信中心关于调整企业征信系统机构接入流程有关事项的通知》，允许融资租赁企业接入中国人民银行的征信系统，商会对此表示赞赏。然而，一些城市进展缓慢，没有采取切实有效的措施来执行上述政策。而且，虽然承租人以个人为主，租赁企业目前还不能查询中国人民银行的个人信用记录。

目前，融资租赁公司归商务部监管，其计提的损失准备金不能享受税收减免优惠，而上述税收优惠在发达国家却是融资租赁公司的通行作法。另外，中国自2016年5月1日开始全面实行增值税改革，这之后，商务部审批的租赁公司需要按17%缴纳增值税，相比之下，中国银监会审批的公司只需按6%缴纳增值税，在租赁行业造成差别待遇。

商会建议中国政府保障融资租赁企业能够接入人民银行和企业个人征信系统，实施统一的税收政策，为各类融资租赁企业创造公平竞争的环境。

中国制造 2025

2015年3月，李克强总理宣布中国将推出“中国制造2025”规划。2015年5月，国务院公布了实施这一规划的行动计划。这项规划旨在改革中国制造业，降低劳动密集型制造产业，重点扶持高科技机械和产品。中国的目标是：提高创新能力和制造业效率；到2025年基本实现工业化；到2035年制造业整体达到世界制造强国阵营中等水平；到2049年综合实力进入世界制造强国前列。根据这一战略

Moreover, leasing companies so far lack access to PBOC individual credit records, even though the majority of lessees are individuals.

Today, financial leasing companies under Ministry of Commerce (MOFCOM) supervision cannot claim tax credits for their loss provisions, even though it is a common practice for leasing companies in developed countries to do so. Additionally, after the full scope of VAT reform across China became effective on May 1, 2016, MOFCOM-licensed leasing companies are subject to a much higher 17 percent VAT rate versus the six percent VAT rate of companies licensed by the China Banking Regulatory Commission, which creates disparities in the leasing industry.

AmCham China recommends that the Chinese government ensure financial leasing companies are able to access both corporate and individual credit reporting systems and create a fair competitive environment among all types of financial leasing companies by adopting consistent tax policies.

Made in China 2025

In March 2015, Premier Li Keqiang announced the “Made in China 2025” initiative, and an action plan to implement the initiative was issued by the State Council in May 2015. This program seeks to reshape Chinese manufacturing by reducing labor-intensive production in favor of high-tech machinery and goods. China aims to increase innovation and manufacturing efficiency to achieve basic industrialization by 2025, become an intermediate manufacturing powerhouse with full industrialization by 2035, and become a global leader in manufacturing by 2049. According to the plan, China intends to raise the domestic content of core components and materials to 40 percent by 2020 and 70 percent by 2025. The plan also calls for a strengthening of intellectual property (IP) rights protection for small and medium-sized enterprises, more effective use of IP in business strategy, and allowing firms to self-declare their own technology standards to help them better participate in international standards-setting. Specific details of how China intends to reach these targets are unclear, as is how foreign-invested enterprises (FIEs)—particularly those that are developing and producing goods and products in China for China—will be able to participate in this plan and its sub-programs.

The Chinese government has mandated numerous indigenous innovation policies and publicly stated the goal of having a high percentage of domestic content, which appears to be aimed at import substitution. AmCham China members are concerned that the “Made in China 2025” initiative will be used to support domestic companies at the expense of FIEs, which will be effectively excluded from commercial opportunities in many areas given favoritism toward local firms under the stated industrial policy. End users should have the freedom to purchase capital equipment and services from any vendor they choose, including

local FIE manufacturing operations. Narrowing the choices available in the marketplace through government mandate will reduce opportunities for innovation and negatively impact the overall development of the industry.

Considering that FIEs have become an integral part of China’s economy and, according to MOFCOM, account for one-half of China’s trade and one-quarter of China’s industrial output, we urge the Chinese government to maintain a level playing field for all industry players when implementing “Made in China 2025.” Only in this way will China be able to attain its manufacturing aspirations.

Recommendations

For the Chinese Government:

- **Eliminate restrictions on free flows of capital, information, and merchandise in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.**
- Further strengthen emissions enforcement on non-road machinery, marine engines, etc.
- Encourage development of small/medium-sized and multiple-unit DE and CHP systems in industrial and commercial areas with high system efficiency.
- Allow the free flow of core and RFG across borders and make cores recycled with a simplified process exempt from VAT.
- Encourage mechanization of coal mining and further improve subsidies for CBM/CMM drainage and utilization to improve mining safety, efficiency, and sustainability.
- Ensure financial leasing companies’ access to both the PBOC’s corporate and individual credit reporting systems and create a fair competitive environment for all types of leasing companies.

规划，中国提出，到2020年和2025年，分别有40%和70%的核心基础零部件和关键基础材料实现自主保障。这一规划还提出要继续加强中小企业知识产权保护，在企业战略中更有效地使用知识产权；允许企业自主申报自有技术标准，以帮助他们更好地参与国际标准制定。目前，有关中国将如何实现上述目标的具体细节尚不清楚，而外商投资企业（外资企业），特别是在华为中国客户开发和生产货物和产品的外资企业，如何参与到上述规划及其相关子项目，也尚不明确。

鉴于中国中央政府已经颁布了众多自主创新政策，公开表明计划提高自主保障比例，似乎有意实现进口替代。商会的会员企业担心，“中国制造2025”会被用来扶持内资企业。在很多按照国家产业政策应当优先考虑本土企业的行业，外资企业相当于被排除在商业机会之外。然而，最终用户应当有权从自行选择的供货商购买资本设备和服务，包括外商投资的本地生产企业。通过政府命令压缩市场选择范围将减少创新机会，对行业总体发展产生不利影响。

外资企业已经成为中国经济不可分割的一部分。根据商务部的数据，外资企业为中国贡献了一半的贸易额和四分之一的工业产值。因此商会促请中国政府，在执行“中国制造2025”时，能够对所有产业主体一视同仁，提供公平竞争的机会。只有这样，中国方能顺利实现跻身制造业强国行列的目标。

- 保障融资租赁企业接入人民银行企业和个人征信系统，为各类租赁企业创造公平竞争的环境。

建议

对中国政府：

- 取消机械制造产业的资本、信息和产品自由流动的限制，给予内外资企业同等待遇。
- 进一步加强对非道路机械和船用发动机等排放标准的执行力度。
- 鼓励在工业区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。
- 允许旧件和再制造产品的自由跨境流通，对通过简化过程回收的毛坯免征增值税。
- 鼓励实现煤矿开采机械化，进一步提高对煤层气/煤矿瓦斯抽采使用的补贴水平，提升煤矿的安全、效率和可持续性。

Media and Entertainment

Introduction

The media and entertainment industry plays an increasingly important role in China, providing information, entertainment, and cultural activities to Chinese citizens. As China's international footprint grows, this industry is expected to play an increasingly prominent role in the development of China's global image, reputation, culture, and economy.

The amount of cross-border sales, licensing, investment and other activity in the media and entertainment sector is increasing rapidly. For example, in 2016 China invested US \$4.8 billion (RMB 31.9 billion) in nine entertainment-related projects accounting for just over 10 percent of total Chinese foreign direct investment into the US that year. Double digit compound annual revenue growth rates in this sector in China are projected for the next few years.

China's rich heritage of excellence in entertainment and the arts can best be perpetuated and brought to international attention by fostering initiatives that reinforce the commercial value of creative works in an inclusive manner, while emphasizing the need to protect intellectual property rights (IPR).

Ongoing Regulatory Issues

Cross-Sector Issues

Piracy

AmCham China applauds China's progress in legislation and enforcement of IPR and the establishment of intellectual property (IP) courts, as discussed in the IPR chapter. However, IP infringement remains significant in the media and entertainment industry, as evidenced by the large market for pirated products and content, both on and offline. Despite these problems, there is a growing trend in favor of legitimate consumption of properly licensed online content, especially online television content. This is driven, at least in part, by improvements in IPR protection. As the relevant technologies have advanced, VCDs and even DVDs are becoming less popular, and more Chinese are subscribing to streaming online video platforms.

Occasional enforcement campaigns demonstrate that authorities have the ability to disrupt illegal channels, but organized piracy continues. Despite Internet controls, it is still possible to illegally download music, images, and even whole television programs and films through Chinese search engines.

AmCham China encourages the Chinese government to build on the progress made in the 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 maintains that censorship and other restrictions on media and entertainment are necessary because of their cultural impact. However, censorship is also often used to restrict market access for foreign television programming, music, and films, which has the undesirable side effect of fostering piracy.

Censorship policies routinely delay film, television, and music entry into the Chinese market, creating a time gap in which pirated products can thrive. For example, legitimate DVD/Blu-Ray film discs require censorship approval by the State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT), which takes at least one month. Meanwhile, pirated DVDs and online content appear within a few days of their initial overseas or local release, 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. This also has a substantial negative impact on Chinese domestic entertainment business owners. For instance, many Chinese production companies allocate large budgets to anti-piracy measures for each of their projects, and these costs tend to be shifted to Chinese audiences.

Additionally, censorship of the Internet through website blockages and technical bottlenecks disadvantages both international and Chinese media and entertainment companies. Many foreign and large Chinese companies must utilize virtual private networks in order to 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、娱乐和文化活动。随着中国国际影响力不断扩大，媒体与娱乐业预计将对中国的全球形象、声誉、文化和经济发展产生重要影响。

媒体和娱乐业的跨境销售、许可、投资以及其他活动的数量正在快速增长。例如，在 2016 年，中国在九项娱乐相关项目中共投资 48 亿美元（319 亿人民币），占当年中国对美境外直接投资逾 10 个百分点。预计在未来几年，中国该行业的年复合增长率将高达两位数。

中国应以包容的态度、采取积极的举措来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（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，线上与线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正日益明显，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的加强所推动的。随着相关技术的进步，消费者对于 VCD 甚至是 DVD 的热情感度逐步降低，越来越多的中国消费者开始在流式在线视频平台订阅相关娱乐服务。

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。尽管中国政府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。

中国政府在保护网络电视内容方面取得了一定成就，商会建议中国政府在此之上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

中国政府坚持认为，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，审查制度也经常用于限制外国电视节目、音乐和电影进入中国市场，从而助长盗版活动，这是中美双方不愿意看到的。

审查政策通常会推迟电影、电视和音乐作品进入中国市场，为盗版产品提供了“真空期”，造成盗版产品肆虐。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。与此同时，盗版 DVD 和在线内容在正版产品在国内或国外面市后的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，并不能在竞争中保护中国市场，且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的能力。同时，也对中国国内娱乐业经营者带来严重的负面影响。例如，许多中国娱乐业制作公司会为他们每个项目打击盗版分配巨额预算，而该类成本通常会转嫁至消费者的身上。

此外，通过关停网站和技术瓶颈对互联网进行审查的行为，使国内外的媒体与娱乐公司受到不利影响。许多外国公司和中国大公司必须通过虚拟私人网络才能访问开展业务所需信息。这提高了成本，也影响了外国公司的投资决定。另一方面，小型中国运营商和终端客户因无法及时获取重要信息与内容陷于不利的竞争地位。商会 2017 年度

information necessary to conduct business. This raises costs and affects investment decisions by foreign companies. Meanwhile, small Chinese operators and end-users suffer a competitive disadvantage because they cannot access vital information and content in a timely fashion. According to AmCham China's 2017 *Business Climate Survey*, 87 percent of respondents report that Internet censorship negatively or somewhat negatively impacts their ability to conduct business normally in China.

Lack of Regulatory Clarity and Enforcement

Several Chinese government agencies claim a role in regulating media, entertainment, and culture, and a wide variety of laws, regulations, and even internal government meeting minutes impose regulatory and market access restrictions on the industry. Lack of clarity about these various roles, 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 fail to take into account the rapid development of Internet and wireless technology, leaving vast areas of online content and service offerings to operate under uncertainty. Unclear regulations and inconsistent investment approvals also cause China to lag far behind international standards, particularly in the retail distribution of books and periodicals.

AmCham China recommends that the relevant regulatory agencies, including the Ministry of Industry and Information Technology (MIIT), SAPPRFT, MOC, and State Council Information Office (SCIO), establish clearer lines of authority as well as transparent regulatory drafting processes that allow for public comment at an early stage, with at least 30 days' notice to China has repeatedly committed at the highest levels. In addition, we recommend expediting approval processes for foreign participation and investment in the Chinese media and entertainment market.

Sector-Specific Issues

Film

China enacted its long-awaited Film Promotion Law on November 7, 2016. The law is intended to simplify the regulation of screenplays, film productions and exhibitions, and foreign-related film festivals. There are no fundamental changes to the existing regulatory framework as it affects foreign companies and individuals. Foreigners will still be prevented from engaging independently in film production in China. Foreigners will still be prevented from engaging in film distribution in China. No mention is made of lifting

the quota on importing foreign films on a revenue-sharing basis. Still, many of the changes should streamline the official co-production process for foreign producers. There is also now official recognition of the need for improvements in the system of film finance and the need for tax incentives for local producers.

Non-market barriers continue to hinder the film industry. The number of films that can be imported on a revenue-sharing basis is limited to 34 per year, of which 14 must be enhanced format (e.g., 3D, IMAX). An additional 34 foreign films are permitted per year on a low, flat-fee, or "buy-out" basis. China's current film quota agreement was signed with the World Trade Organization (WTO) in 2012 with a five-year term expiring in February 2017. AmCham China believes that this presents an opportunity for the US and China to take further steps at the WTO to allow market forces to play a bigger role through further revisions or elimination of the film quota system.

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. Official co-productions are regarded as Chinese domestic productions, and are therefore exempt from the quotas, but they must still undergo a rigorous approval and censorship process. China has entered into a number of government-to-government co-production treaties. And while a co-produced film need not necessarily originate from a country with which China has entered into a co-production treaty, such treaties provide for a clearer process to apply for a co-production license. However, the process to obtain a co-production license remains extremely complicated and uncertain.

During President Xi's US state visit in September 2015, a long-form version of a 2012 bilateral agreement between the US and China allowing the import of the aforementioned enhanced-format films was negotiated and entered into effect in 2016. The revised agreement clarifies, among other things, that a studio's 25 percent share of box office revenue is to be calculated on an after-tax basis and that studios may audit the financial records of their Chinese distributors. The Independent Film and Television Alliance argues that China has not complied with the original 2012 agreement, as private companies that could compete with the China Film Group and Huaxia have not been issued film distribution licenses.

In 2012, China became the second largest box office in the world and, by 2013, the country's box office was RMB 21.8 billion (US \$3.6 billion). According to Chinese government figures, China's 2015 box office was RMB 44.0 billion (US \$6.78 billion). Growth slowed in 2016, with only RMB 45.8 billion (US \$6.58 billion) in box office revenue. China remains on track to become the world's largest box office in the next few years. According to SAPPRFT, by late 2016 there were 40,917 cinema screens in mainland China. This compares to an estimated 40,475 in the US. Just over 7,500 new cinema

《营商环境调查报告》指出，87%的受访者认为互联网审查制度对其在华业务造成了不利或些许不利影响。

缺乏监管透明度与执法力度

中国有多个政府部门表示其拥有监管媒体、娱乐与文化业的权利，多项法律法规，甚至政府内部会议记录均对该行业实施监管与市场准入限制。监管权责与法规不明确以及执法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贸易仍在继续。

模糊而不统一的规章使商业首创的规划与实施变得复杂。同时，过时的法规没有考虑到互联网与无线技术的迅猛发展，使很多领域的网络内容和服务产品运营充满不确定性。监管不明确与投资审批不统一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。

因此，商会建议相关监管部门，包括工业和信息化部、国家新闻出版广电总局、文化部、国务院新闻办公室明确权责和公开监管法规起草流程，允许政策制订初期接受公众意见，并且保证中国高层多次承诺的30天以上公示期。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

中国在2016年11月7日正式颁布实施了期待已久的《电影促进法》。本法旨在简化对于剧本、电影制作和展映以及外国相关电影节的监管。本次立法主要影响外国公司和个人，现有监管框架没有根本变化。外国人士仍无法独立在中国进行电影制作，且不得参与中国境内的电影发行。此外，该法未有提及要提高外国电影的收入分配配额。尽管如此，该法中很多改变应会使外国制作人官方联合制片流程更趋合理。同时，官方也认识到提升电影融资体系和为本地制片商提供税收奖励的需求。

有些非市场因素继续阻碍电影产业的发展。例如，每年可进行票房分账的进口电影数量仅限34部，其中14部必须为“高新格式”电影（比如3D电影和巨幕电影）。另有34部国外电影可以较低的固定价格或“买断”（buy-out）价格引进。中国当前适用的电影份额协议是由中国与世界贸易组织（WTO）于2012年签订的，协议期限为五

年，并已于2017年2月正式到期。商会认为，这为中美两国带来一个机会，通过进一步修改或废止电影份额体系，在WTO中更进一步，让市场力量发挥更大的作用。

在中国，电影的进口与发行市场处于双头垄断状态，国家新闻出版广电总局和中国电影集团可决定进口哪些电影以及何时放映。官方联合制作电影作品视为是中国国内电影作品，因而不受份额限制，但仍需经历严苛的批准和审查流程。中国已加入多项政府间联合制作条约。尽管联合制作电影并不要求其起源国属于与中国订立联合制作公约的国家，但是，上述公约规定了更为清晰的联合制作许可申请流程。但是，获得联合制作许可的流程仍然十分复杂，且具有很高的不确定性。

2015年9月，习近平主席访美之时，美中代表团就2012年双边协议的详尽版本加以商议，这一协议允许进口上述“高新格式”电影，并已于2016年生效。修订后的协议指出，首先，美方票房收入的分账比例是25%，应按照税后基准计算，美方制片厂可以审计中方电影发行商的财务记录。独立电影电视联盟表示，中方未能遵守原有的2012年《中美电影协议》，因为美方一些有能力与中国电影集团以及华影竞争的公司未能取得电影发行经营许可证。

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218亿人民币（36亿美元）。根据中国政府数据，中国在2015年的电影票房是440亿人民币（67.8亿美元）。2016年，票房收入增速有所减缓，仅实现458亿人民币（65.8亿美元）的票房收入。中国在未来几年仍有机会成为全球最大的电影市场。根据国家新闻出版广电总局数据，2016年末，中国大陆电影银幕总数达40917块，而美国电影银幕总数约为40475块。仅在2016年1月至9月，中国新增银幕数量就有7500多块。鉴于如此可观的增长，高效发行制度和反盗版措施将对新建影院生存力至关重要。

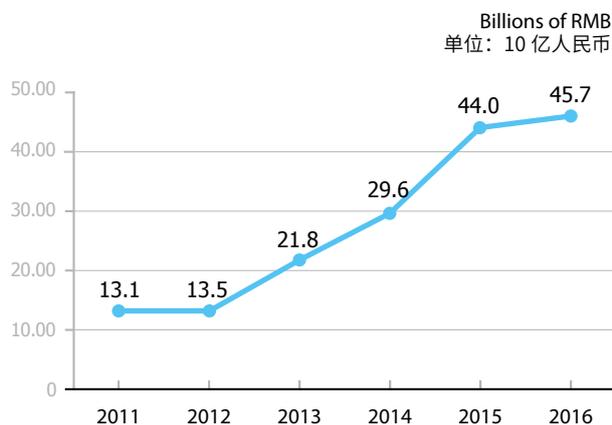
杜绝市场操控或随意规定禁发期后，外国电影发行量将会增加，加之遏制盗版的有效行动，将激发优质娱乐产品的市场需求，使国内媒体与娱乐业受益，同时还将提高中国观众在整个国际市场上的影响力，促使外国电影制作者迎合中国观众的需求。

电 视

非市场化机制严重限制了外国电视内容进入中国。中国政府强力禁止中国有线电视运营商引入外国频道，只限

Box Office Revenue in China 2011-2016

2011—2016 年中国票房收入情况



Source: SAPPRFT

来源：国家新闻出版广电总局

screens were added in the first nine months of the year in China. Considering such growth, an effective distribution system and antipiracy control measures will be crucial 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 discriminate against 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 effectively barred from Chinese stations during prime timeslots, 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 channels outside China with access to their home markets.

In October 2014, SAPPRFT announced restrictions on foreign content on Chinese streaming sites. Foreign content must be registered and is restricted to 30 percent of the amount of local productions that each streaming site has acquired. Since early 2015, US content has been unofficially limited to approximately 40 percent of the 30 percent quota for all

foreign content. This has in practice limited streamed US content to approximately 12 percent of all streamed content. Furthermore, entire series must be submitted for approval before a single episode can be made available.

In June 2016, SAPPRFT severely curtailed the previously robust business of licensing international television formats to Chinese broadcasters and online video sites. The new regulations restrict satellite channels to airing no more than two international or foreign-adapted programs during prime time (7:30 – 10:30 PM) each year and also allowing each program to air only one season during a given year. The new regulations also require that all broadcasters get prior approval to air remakes of foreign shows, and that Chinese production companies must own 100 percent of the IP outright for any programs developed in cooperation with international producers.

In November 2015, SAPPRFT banned certain set-top boxes and streaming applications that are downloaded and installed on smart TV boxes and allow access to foreign content at prices below those charged by cable providers. Under the ban, smart box manufacturers must now apply to authorized state-owned enterprises before allowing distribution of content (including audiobooks, audio, radio, TV, and sports) in this way. Additionally, restrictions regarding distribution of foreign television content via satellite television channels as discussed in previous *White Paper* editions remain a concern.

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. Furthermore, while the US allows for direct Chinese investment into its film and television sector, and indeed has seen a number of high-profile Chinese investments and acquisitions of key US production companies this year, China prohibits even minority stake purchases in its own production company sector by any foreign individuals or entities.

AmCham China urges the Chinese government to substantially reduce or eliminate quotas and restrictions on foreign television content, and 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. We also recommend that China rescind its restrictions on foreign investment in private production companies, as well as the onerous restrictions recently placed on the sale of international television formats in China.

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 industry growth. For example, live events require an advance

在外国人居住比例较大的酒店和住宅区播放此类频道。此外，中国的电视台不得在黄金时段播放境外剧，另外还有其他限制和配额要求，使在中国的观众很难收看到国际节目。而外国频道则被要求协助中国中央电视台海外频道进入其本土市场。

2014年10月，国家新闻出版广电总局宣布限制境外剧在中国的视频网站播放。境外剧必须登记，并且数量不得超过各网站已获得本地作品数量的30%。从2015年初开始，美剧数量被非官方的限制到只能占到全部境外剧总数（即占以上30%配额）的40%左右。这一规定实际上相当于限制美剧数目不超过本地作品数目的12%左右。此外，在所有季度的美剧全部送审批准之前，中国网站不能播出任何一集。

2016年6月，国家新闻出版广电总局对许可国际电视在中国广播公司和在线视频网站进行许可播放的业务进行了严厉限制。根据新法规规定，卫星频道每年黄金时间（晚7:30—10:30）最多只可播放两部国际或外国改编的电视节目，同时，每一节目在一年中只能播放一季。新法规还规定，所有广播公司在播放外国节目的翻拍作品时，须先行获得批准，同时对于与国际制片方合作开发的任何节目，其知识产权须100%归中国制片企业所有。

2015年11月，广电总局发布禁令限制在智能电视上安装某些牌子的机顶盒和某些视频应用软件，这些机顶盒和视频软件可以低于有线电视运营商的价格播放境外剧。按禁令规定，机顶盒生产商须向官方授权的国有企业申请审核，机顶盒上播放的内容（包括有声书、音频、视频、电视节目以及体育节目）审核通过之后，方可发布。除此之外，对于通过卫星电视频道播放境外电视剧的限制，此前的《白皮书》有所讨论，但仍令人担忧。

与电影市场类似，监管与审查制度实际上不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。另外，尽管美国允许中国对其电影电视行业进行直接投资，我们确实也看到2016年中方有多笔巨额投资，且对多家重要美国制片企业完成了收购，但中国仍然禁止任何外国个人或实体收购中国境内的制片企业（即便是少数股权，亦不允许）。

因此，商会促请中国政府大幅减少或取消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竞争，使中国公众收看到更优

质的电视节目。我们也建议中国废除对于外资对中国私人制片企业的投资限制规定，以及最近规定的关于限制在中国销售国际电视节目模式的诸多规定。

现场娱乐

由于缺乏透明度、过度监管、官僚主义以及其他抑制行业增长的管制措施，现场娱乐市场的准入仍然受限。例如，举办现场活动需要提前获得许可或批文。该过程需要主办方提交详细的信息，比如活动工作人员和协助人员名册，而此类信息往往在活动开场前才会到位。另外，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（其他政府法规已存在类似规定），将有助于经理人、艺术家和中介机构更好地规划未来活动，并实现合规要求。

此外，在获得批文之前，活动主办方不得开展售票广告和宣传活动。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，活动主办方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，多数主办方在表演开始一个月之前尚不能获知准确的访华人员名单，更不用说距活动尚有六至九个月就需要批文了。因此，为了获得签证，主办方被迫采用例外措施和危机管理措施。

除此之外，外国演员还需取得“商业表演工作签证”，访华人员必须将工作签证转换为一年居住许可证。而实际上多数访华人员在华逗留时间不足三个月。申请工作签证需要准备由市政文化当局发放的本地表演许可和由市级外事办公室发放的商业表演邀请信。外资公司目前无法直接向中国文化当局申请商业表演许可，而必须与具备该项能力的本地公司合作。

公安局政策中关于现场活动的安全条款缺乏透明度也为活动举办构成障碍。公安局对任何活动的职责范围及收费情况并不公开。此外，为安保人员提供的专座往往超过出席活动的安保人员实际数量，安保人员需要的座位数量不加任何解释就会出现变动。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。

总之，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

license or *piwen* (批文). This process requires submission of such detailed information as event crew and support staff rosters, not typically available until a show is nearly ready to open. In addition, no reason is given when a license application is rejected. Providing an official explanation for rejected *piwen* applications, as required in many other government regulations, would be very helpful to managers, artists, and agents in future planning and compliance.

Moreover, 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 same event crew and performer names submitted for the *piwen* request. However, most international tour promoters 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, tour promoters are forced to seek exceptions and crisis-manage in order to obtain necessary visas.

Touring personnel are also required to obtain a "commercial performance" work visa, which must then be converted into a year-long residence permit, despite the fact that most tours remain in China for less than three months. This visa requires a local performance permit from the municipal culture bureau, and a letter of invitation for a commercial performance from the municipal foreign affairs office. Foreign-invested companies are currently not allowed to directly apply for commercial performance permits from cultural bureaus in China, but rather must work with local companies that have this capability.

Lack of transparency in the Public Security Bureau's (PSB) policies regarding the provision of security at live events also constitutes a barrier. For any given event, it is not clear what the scope of the PSB's role will be or the fees it will charge as they are unpublished. Meanwhile, the number of seats set aside for security purposes usually exceed the number of security personnel attending the event, and the number of seats required varies without explanation. Such practices reduce the sales capacity of an event, while the tickets that are set aside 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 live entertainment venues, producers, and artists, but also for the overall benefit of China's culture industry.

Music

Important sources of income generally available to the music industry in the West, such as royalties from the sale, public performance, and broadcast of music, remain mostly unavailable in China. Weak copyright protection and enforcement in China fosters an environment in which consumers are less willing to pay for music downloads. Additionally, the limited availability of legitimate download sources and the unwillingness of Chinese broadcasters to pay music royalties weaken potential sources of income. To the extent that music downloads generate income at all, that income is often merely a function of money spent on advertising on the platform from which the download occurs.

Continuing restrictions on international record companies that want to make and sell music in China also foster piracy and hinder the development of China's own music industry. The presence of US companies would bring jobs and expertise, leading to market growth and development of locally produced music, as has happened in other nations. In addition, it would allow domestic musical artists to acquire international contacts, which would lead to more opportunities for China to expand its cultural footprint abroad.

AmCham China 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.

Recommendations

For the Chinese Government:

- **Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Increase and then remove all quotas for foreign films.**
- Abolish 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 for foreign content producers regarding television partnerships and collaborations.
- Fight IP violations in all media and entertainment sectors, and increase judicial damage awards in order to enhance their deterrent capabilities.
- Permit foreign investors and production companies to invest and operate in all facets of the program production business in the same manner as Chinese companies.

表演。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权、公开表演与音乐广播，而在中国，此类渠道大多无法为音乐界带来收入。由于中国版权保护不够、执法不力，导致中国消费者不太愿付费下载音乐。除此之外，合法下载资源有限以及中国广播商不愿支付音乐版权这两点原因也导致收入潜在来源减少。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。

对想在中国制作和销售音乐作品的国际唱片公司持续性的限制也助长了盗版之风，还阻碍了中国本土音乐产业的发展。美国公司不仅可为中国带来工作岗位和专业技能，还可扩大市场，并促进本土音乐发展，这在其他国家早已有例可循。此外，本土音乐家能接触到国外音乐家，这将中国文化推广到海外创造更多机会。

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，包括签约艺人，录制、制作和推广音乐作品以及通过实体形式或借助互联网与移动平台发行音乐作品。

建议

对中国政府：

- 减少各类外国媒体和娱乐项目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。增加外国电影的整体配额，并逐渐取消配额限制。
- 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、放松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。
- 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。

- 允许外国投资者和制片公司按照中国企业所享有的业务运行方式，就节目制作全面业务开展投资和运营工作。
- 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。
- 允许外国唱片业签约艺人，以及录制、制作、推广音乐作品并通过实体形式、互联网及移动平台发行音乐作品。

对美国政府：

- 与中国及其他 WTO 合作伙伴进行合作，就电影配额协议进行重新协商，以便市场力量能够发挥更大的作用，并逐步取消外国电影配额制度。
- 与中国合作，针对美国公司在媒体和娱乐行业所面临的投资限制进行审查，以增加美国公司的市场准入机会，确保美国公司在中国能够享受到中国公司在美国所享受类似的市场准入条件。

- 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.
- 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.

For the US Government:

- **Work with China and other WTO partners in the renegotiation of the film quota agreement with the goal of allowing market forces to play a greater role and taking steps to eliminate quotas for foreign films.**
- Work with China to review the investment restrictions on US companies in the media and entertainment sector with a goal of providing greater market access for US companies similar to what Chinese companies enjoy for investments in the US market.

Oil and Gas, Energy, and Power

Introduction

While 2016 was a slow recovery year for the global oil and gas industry, China has pushed reforms in the oil and gas sector by promoting market-based gas prices, increasing gas usage in the energy mix to combat air pollution, formulating policies for the midstream and downstream sectors, promoting the development of unconventional resources, and most recently by a high-level policy to attract foreign investment announced by the State Council in January 2017. AmCham China is encouraged that the Chinese government has taken steps in this direction. However, challenges and uncertainties remain for attracting foreign investment. Given the current low oil prices, a combination of a more open regulatory policy environment and support from the national oil companies (NOCs) that dominate in both acreage and infrastructure are needed to successfully retain and increase foreign investment in China's oil and gas sector.

Recent Developments and Ongoing Regulatory Issues

LNG and Natural Gas

As China continues to invest in natural gas pipelines, storage facilities, liquefied natural gas (LNG) terminals, and other supporting infrastructure, AmCham China is pleased to see the government undertaking the complex but necessary steps to transform the natural gas industry, as evidenced by a number of new policy recommendations issued in 2016. AmCham China believes that adopting market-based pricing, opening access to infrastructure, and a fair and transparent regulatory framework are all vital to increase investment, drive efficiency, lower costs, and help China combat air pollution.

Price

Adopting market-based pricing is one of the most visible benchmarks for any natural gas industry reform, as it allows participants to make independent pricing decisions and fosters a well-formed, functioning natural gas market. Since

natural gas price reform began in 2011, China has progressed through multiple stages of price reform, using measures including cost-plus, netback, the deregulation of unconventional resources and LNG, and oil basket linkage. It has also allowed direct negotiation with large users, deregulated natural gas storage, and lifted fertilizer controls.

On November 26, 2016, the Shanghai Petroleum and Natural Gas Exchange (SPNGX) held its official opening ceremony after operating for a year on a trial basis. During 2016, the exchange recorded 15 billion cubic meters (BCM) of gas transactions, roughly equal to eight percent of nationwide gas consumption. Despite the progress made, prices posted by SPNGX are still heavily anchored by the government setting city gate price ceilings without the frequent price changes associated with a freely traded market.

AmCham China commends China for the progress it has made in implementing market-based pricing in its gas market, although additional reforms are still necessary for natural gas prices to be truly market-based. This transformation will be complete when the mechanisms instituted by SPNGX begin to take a lead role in price discovery in China. Market reforms and the development of SPNGX will take time, so we urge the government to continue its support for reform.

Pipeline

The "Natural Gas Pipeline Transportation Price Management Method" released on October 9, 2016 specified that inter-provincial pipeline tariffs should be priced based on verifiable costs plus a reasonable profit of eight percent after-tax return at a 75 percent utilization rate. To achieve this requires the unbundling of transportation businesses to make their relevant cost of service information public. The three NOCs and a few provincial gas companies responded positively to the directive by providing infrastructure information online and listing contact information for the responsible individuals. These are important first steps toward true open access and AmCham China fully supports the direction of this reform.

The success of reform will depend on the details and pace of implementation. We recommend improvements in four areas: audit, tariff structure, information (including

油气、能源和电力

引言

在 2016 年全球油气行业缓慢复苏之际，中国采取各种措施推动油气行业的改革，其中包括推行天然气市场化定价，为应对空气污染提高能源结构中的天然气使用比例，推出中游和下游行业发展政策，促进非常规资源的发展。最近，国务院于 2017 年 1 月又宣布推出吸引外商投资的政策。中国政府沿着这一方向采取的举措令中国美国商会（商会）深受鼓舞。但是，吸引外商投资仍然面临挑战和不确定性。鉴于油价目前处于低位，中国需要营造一个更加开放的监管政策环境并且得到在探区和基础设施占主导地位的国有石油公司的支持，才能成功地留住和增加油气行业的外商投资。

最新进展和现存监管问题

液化天然气和天然气

商会高兴地看到，在继续投资天然气管道、储存设施、液化天然气码头和其他配套基础设施的同时，中国政府为改革天然气行业也在采取一些复杂却必要的举措，例如，2016 年发布的一系列新的政策建议。商会相信，实行市场化定价、放开基础设施准入、确立公平和透明的监管框架，这些对中国吸引投资、提高效率、降低成本以及应对空气污染来说都是至关重要的。

价格

实施市场化定价是天然气行业改革最显著的标志之一，允许参与者独立地决定价格，有助于天然气市场实现理性运转。自 2011 年启动天然气价格改革以来，价格改革经历了几个阶段，中国采取了成本加成、净回值、放松对非常规资源和液化天然气的管制以及油价联动等措施。中国还允许和大型用户直接协商价格，放宽天然气存储管制以及取消化肥管控。

2016 年 11 月 26 日，经过一年的试运行，上海石油天然气交易中心正式开始运行。2016 年，该交易中心的天然气交易达到 150 亿立方米，大约相当于全国天然气消耗量的百分之八。虽然有进步，但是交易中心发布的价格仍然很大程度以政府设定的城市门站限价为基础，价格不像自由交易市场那样频繁变动。

商会赞赏中国推行天然气市场化定价所取得的进步，当然，天然气定价要真正做到市场化，中国还需要进一步实施改革。当上海石油天然气交易中心的价格机制开始在中国的价格发现中发挥主导作用时，这一改革就算完成了。市场改革和上海石油天然气交易中心的发展尚需时日，因此我们敦请中国政府继续支持这一改革方向。

管道

根据 2016 年 10 月 9 日发布的《天然气管道运输价格管理办法》，跨省管道运输价格应当按照 75% 负荷率、税后收益率 8% 和“准许成本加合理收益”确定。要满足这一要求，就需要将运输业务分类计价，公开相关信息服务成本。三大国有石油公司和一些省份的燃气公司对此做出积极回应，在网上公布了基础设施信息和负责人联系方式，朝着真正开放的市场准入迈出了重要的第一步。商会全力支持这一改革。

改革能否取得成功，取决于改革实施的细节和步伐。我们建议在四个方面做出改进：审计、费率结构、信息（包括运营数据的发布）和执法。例如，独立审计师可以审计费用申请并公布审计结果，费率可以进一步细分，为了鼓励提高负荷率，可以实行多级费率，信息发布应当规范。由于垄断企业常常抵制上述措施的实施，所以，应当由中央政府和国家发展和改革委员会（国家发改委）出面推动必要的变动，确定具体的时间表和奖励政策。

operational data posting), and enforcement. For example, independent auditors could audit cost claims and make the auditing results public, tariffs could be broken down into different components, multi-tiered tariffs could be introduced to incentivize utilization, and information posting could be standardized. Given that monopolistic business entities often resist the implementation of such measures, change needs to be driven by the central government and the National Development and Reform Commission (NDRC) with specific timelines and incentives.

LNG Receiving Terminals and Markets

In conjunction with inter-provincial pipeline tariff reform, the Chinese government should also further encourage intra-provincial cost and downstream reform. Where, in limited cases, retail natural gas prices have been made public in China, they have been among the highest in the world. AmCham China urges the government to make all sectors along the value chain open to foreign investment to bring the best technologies, management philosophies, and safety measures to China.

With the global LNG market entering a period of surplus supply, LNG prices have been driven relatively low, and open access to LNG receiving terminals has become a hotly debated issue that has garnered public attention. AmCham China supports government initiatives toward open access as it will ultimately have a positive effect on US companies looking to sell energy to China by lowering the cost of natural gas. Open access encourages competition and will serve to grow gas demand and the user base for LNG in the long run, something that is good for the broader gas and LNG industry. Additionally, clean-burning LNG will help China combat air pollution by acting as an alternative to coal.

A key issue in facilitating the development of a market-based natural gas industry is the need for China to strike a balance between commercial commitments that have already been made by the country, including exclusivity rights granted to gas companies by the government and NOCs, and the market's drive to gain access to an LNG supply that is affordable and abundant.

There is no easy solution and the government has a significant role to play in helping the industry navigate the transition. AmCham China recommends that the government extend the focus of reform to natural gas distribution networks down to the last kilometer. AmCham China member companies welcome opportunities to participate in dialogue with the central government and NDRC through public policy hearings and other meetings to contribute their knowledge of international best practices to industry reform. Ultimately, lower prices at the burner tips will drive up demand, which is good for the industry, consumers, and the environment.

National Emissions Trading System in China

In September 2015, President Xi Jinping announced that China will launch a national carbon market in 2017, building on ten years of emissions trading experience, initially through the Kyoto Protocol's Clean Development Mechanism (CDM), and more recently through seven pilot carbon markets. In January 2016, the NDRC circulated a notice on China's national emissions trading system (ETS) to the Civil Aviation Administration of China, all provincial development and reform commissions (DRCs), major industry associations, and relevant SOEs. The notice specified that China's national ETS will include eight sectors (power, petrochemicals, chemicals, iron and steel, non-ferrous metals, building materials, pulp and paper, and aviation) and 18 sub-sectors which consume over 10,000 tons of coal equivalent per year.

The creation of a Chinese ETS will have major implications for climate policymaking around the world and will substantially change the dynamics and status quo of current carbon markets. With an expected cap size of at least four billion tons, China's ETS will be twice the size of the EU's ETS and larger than all existing carbon markets combined. The presence of a national carbon market in the country which is the world's largest emitter of greenhouse gases and a key player in world trade has the potential to increase the scale of climate action through carbon markets, which will ultimately support the implementation of the Paris Agreement.

China's ETS is likely to face challenges in critical areas such as ensuring compliance and enforcement and applying uniform rules on monitoring, reporting, and verification across the country. AmCham China believes that there are ample opportunities for policymakers in China to benefit from the experience gained by countries and companies already subject to a carbon market. China's policy approaches to emissions trading will also provide new insights and lessons for mature and developing ETSs.

Shale Gas Development

The Chinese government has been highly supportive of shale gas development as part of its effort to promote natural gas use and reduce emissions from coal combustion. Driven by energy security concerns such as increasing reliance on gas imports, there has been a strong top-down focus on the development of unconventional resources, including shale gas. The Chinese government has issued several policies to promote shale gas development and utilization, including the National Energy Administration's (NEA) release of the "13th Five-Year Plan for Shale Gas Industry Development in China" in September 2016.

The main issue facing China's shale gas development is land ownership. As land owners do not own mineral rights, to access the land, companies need to work with incumbent

液化天然气接收站和市场

在实施跨省管道运输价格改革的同时，中国政府还应当进一步鼓励在省内开展成本和下游行业改革。根据中国偶尔公布的价格数据，中国的天然气零售价格在世界范围内算是很高的。商会敦请中国政府向外资开放价值链上的所有行业，以引进最好的技术、管理理念和安全措施。

随着全球液化天然气市场进入供给过剩时期，液化天然气的价格已经处于低位，开放液化天然气接收站的市场准入已经成为一个引起公众关注的热点问题。商会支持中国政府开放市场准入，这将有助于降低天然气成本，对那些寻求向中国出售能源的美国企业产生积极的影响。开放市场有助于鼓励竞争，长期来看，能够提高天然气需求和用户基数，从而有利于天然气和液化天然气行业的发展壮大。另外，液化天然气属于清洁燃料，可以作为燃煤的替代，因此有助于中国治理空气污染。

为了推动天然气行业的市场化发展，关键的问题在于中国需要在已经做出的商业承诺（包括政府和国有石油公司授予的排他许可权）和液化天然气供给市场准入之间保持平衡，确保供给充足和价格实惠。

虽然没有简单的解决办法，但政府可以发挥重要作用，帮助行业度过转型期。商会建议中国政府将改革重点从天然气配送网络延伸至最后一公里。商会会员企业希望有机会通过公共政策听证会并参加会议与中央政府和国家发改委对话，为行业改革贡献国际最佳实践知识。最终，由于终端价格降低，需求将增加，行业、消费者和环境都将从中获利。

全国碳排放交易体系

2015年9月，习近平主席宣布中国将于2017年启动全国碳排放交易市场。此前中国开展碳排放交易已经有10年的时间，最初是通过《京都议定书》项下的清洁发展机制（CDM），后来又在七省市开展碳排放权交易试点。2016年1月，国家发改委向中国民用航空局（民航局）、各省发改委、有关行业协会和国有企业印发关于启动全国碳排放权交易体系的通知。通知要求全国碳排放权交易体系应当涵盖八个行业（电力、石化、化工、钢铁、有色金属、建材、造纸、航空）和每年能源消费达到1万吨标准煤以上的十八个行业子类。

中国建立全国碳排放权交易体系，将对世界各国的气候政策产生重大影响，大大提升现有碳排放交易市场的

活力和现状。预计全国碳排放权交易体系的规模至少为40亿吨，是欧洲碳排放交易体系规模的两倍，比现有所有碳排放交易市场的总和还要大。作为世界上最大的温室气体排放者以及世界贸易的重要参与者，中国可以通过碳排放交易市场加大气候行动力度，最终促进《巴黎协定》的执行。

中国的全国碳排放权交易体系在一些关键领域也面临挑战，例如，合规和执法，全国统一的监控、报告和核查规则。商会相信，中国的决策者有很多机会可以借鉴已经启动碳排放交易市场的国家和企业的经验。中国对碳排放交易采取的政策举措也能够为成熟和发展中的碳排放交易体系提供新的思路和经验教训。

页岩气开发

中国政府一直大力支持页岩气开发，希望借此促进天然气使用和减少煤炭燃烧产生的排放。出于能源安全方面的担忧，例如，越来越依赖燃气进口，中国自上至下都很支持包括页岩气在内的非常规能源的开发。中国政府已经推出几项政策推动页岩气的开发和利用，其中包括国家能源局2016年9月公布的“十三五”页岩气发展规划。

土地所有权是中国开发页岩气面临的主要问题，由于采矿权不归土地所有人，企业需要和相关国有石油公司合作或者等待竞标页岩地块的勘探权。非国有的内资企业可以参与页岩气许可竞标，而外资企业需要和内资企业合作才能参加竞标。经验丰富的外资页岩气企业由此面临市场准入限制。商会鼓励中国政府向国际石油公司进一步开放页岩气开发，提高它们的参与积极性，加快开发中国的非常规能源。

总体开发计划是中国开发页岩气面临的另一个问题。国家能源局要求企业在总体开发规划获得批准后才能开展某一油气田开展矿井开发工程。按照现有的产量分成合同（PSC）模式，总体开发规划应当包括可采储量、开发并网、开采曲线、经济分析等内容。但是，总体开发规划获得批准后，在开发过程中以及页岩地层勘探开始之后，通常会有新的重要信息出现。为了让页岩地层的生产力达到最大化，总体开发规划必须具有足够的灵活性，允许企业根据最新获得的信息及时调整具体页岩地层的开发。这一灵活性关乎到页岩气开发的成败。商会建议将总体开发规划作为管理页岩气开发方向的无约束力的指导性文件，而不是强制性的管理文件。

NOCs or wait to bid for the exploration rights to a shale block in licensing rounds. Although domestic non-state-owned companies can participate in shale gas licensing rounds, foreign companies are required to partner with domestic companies in order to bid. Such restrictions impose an entry barrier to more experienced foreign shale gas players. AmCham China encourages the Chinese government to provide international oil companies (IOCs) with greater access to prospective shale blocks to enable more active participation and to accelerate the development of unconventional energy in China.

Another issue facing China's shale gas development is the overall development plan (ODP) requirement. The NEA requires an ODP to be approved in order for an enterprise to begin well development in a specific oil or gas field. According to the current model for production sharing contracts (PSCs), an ODP should include such data as recoverable reserves, development well pattern, production profiles, economic analysis, etc. However, significant new information often arises after approval of an ODP during the development period and after shale formation drilling has already started. To maximize shale formation productivity, an ODP must be sufficiently flexible to allow companies to promptly adjust the development of particular shale formations in response to newly acquired information. This flexibility is essential to success in shale gas development. AmCham China recommends the ODP therefore be a non-binding guidance document serving as a forecast for the direction of shale gas development rather than a mandatory governing document.

16th US-China Oil and Gas Industry Forum

The US-China Oil and Gas Industry Forum (OGIF) is a public-private partnership involving government and industry representatives from the US and China. The OGIF enables both countries to meet common goals, including the development of secure, reliable, and economic sources of oil and natural gas while facilitating investment in the energy industry. The OGIF highlights opportunities for cooperation on issues including innovation, improved efficiency, and approaches to achieve better environmental results and cost-effective outcomes.

The 16th OGIF took place in Tysons Corner, Virginia from September 27-29, 2016. More than 140 representatives from both governments and key industry players—including AmCham China members—gathered for three days to discuss topics and developments pertaining to oil and natural gas exploration, production, trade, and regulation. Sessions focused on technology innovation and increasing efficiency in a cost-constrained environment, and on new and innovative ways to mitigate and reduce emissions. Industry experts from both countries shared their insights on a wide range of technical topics, including offshore exploration challenges, improvements in fracking technology, and the value of natural gas in providing

clean energy for China's large population. The meeting provided the Chinese government with detailed examples of currently available interventions that reduce costs by improving efficiency of extraction and processing, while at the same time making progress toward achieving China's environmental goals. Pursuant to the rotation mechanism, the 17th OGIF will be hosted by the NEA in China in 2017. AmCham China sees this forum as an important communication platform and encourages active participation by all relevant stakeholders.

Offshore Environmental Law

In September 2016, the State Council issued a draft revision of the "Regulations Regarding Environmental Protection in Offshore Oil Exploration and Development" (the Draft Revision) for public comment. The Draft Revision provides several key new regulatory provisions including: ❶ all environmental impact assessments (EIAs) related to offshore oil exploration and development must be subject to public comment before submission to the government for review and approval; ❷ four categories of oil spill accidents are designated based on spill volume (ranging from extremely serious to average); ❸ government authorities overseeing damages and losses to the marine ecology due to offshore oil spill accidents will have the right to make claims for damages on behalf of the state; and ❹ penalties issued by the government for offshore oil pollution accidents will be increased by a designated percentage based on the category of the oil spill accident. AmCham China supports the Chinese government's aim of providing further protective measures for the benefit of the marine ecology. However, we urge the Chinese government to ensure that the implementation of the Draft Revision does not unnecessarily impede the EIA approval process and the evaluation of oil spill accidents is conducted fairly and conclusively.

Upstream

Over the past ten years there have been very limited numbers of new upstream PSCs signed by foreign oil companies in China. Most upstream acreage is still controlled by NOCs. Due to recent low oil prices, lack of exploration success, and expiration of existing production licenses, more and more IOCs chose to leave or shrink their upstream business in China. If this trend continues, it will limit China's access to foreign capital and expertise in the upstream sector, which has always been a capital-intensive and technology-driven industry. Thus, we believe it is critical for the government and NDRC to pursue as soon as possible the necessary policy changes and legislative reforms to expand access to upstream acreage, remove restrictions, increase efficiency, and increase fiscal incentives for IOCs. With the likely continuation of low oil prices, upstream appraisal and development opportunities are more attractive to IOCs compared to pure frontier explorations. It is also important that NOCs expand cooperation in upstream development with IOCs to include appraisal and development opportunities.

第 16 届中美油气工业论坛

中美油气工业论坛（论坛）是中美双方政府和行业代表参加的一个公私合作项目。论坛能够帮助两国实现共同的目标，例如，促进能源行业的投资，开发安全可靠和经济的油气资源。该论坛重点关注创新、能效提高以及环保和成本效益提高等领域的合作机会。

2016 年 9 月 27 日至 29 日，第 16 届中美油气工业论坛在美国佛吉尼亚州的泰森斯角举行。来自政府、行业和企业 140 多名代表出席了论坛，其中也包括商会会员企业。在三天的会期内，与会者讨论了与油气勘探、生产、贸易和监管有关的新问题和发展特点，围绕成本约束环境下的技术创新与增效、节能减排领域的创新实践等议题进行了深入交流。两国行业专家就众多技术性议题交换了意见，其中包括海上油气勘探开发面临的挑战，压裂技术的改进，天然气作为清洁能源对中国民众的重要性，等等。此次论坛为中国政府提供了详细的例证，帮助其了解最新的用于提高开采和加工能效、降低成本以及实现环保目标的干预手段。根据轮值机制，国家能源局负责召开 2017 年第 17 届中美油气工业论坛。商会认为这一论坛是一个重要的沟通平台，有助于鼓励有关各方的积极参与。

海洋环境保护法

2016 年 9 月，国务院发布《海洋石油勘探开发环境保护管理条例（修订草案征求意见稿）》（“草案”）。草案新增了几项重要规定，其中包括：① 与海洋石油勘探开发有关的环境影响评价在提交政府审批之前必须向社会公开征求意见；② 按溢油量将溢油事故分为四类（从特大到普通）；③ 负责监督海上溢油事故对海洋生态造成的损害的政府机构有权代表国家提出损害赔偿；④ 政府根据溢油事故的类别逐步加重对海上油污事故的处罚。商会支持中国政府为保护海洋生态采取进一步的保护措施。但是，我们敦促中国政府确保草案的实施不会给环境影响评价过程造成不必要的阻碍，且溢油事故能够得到公正全面的评估。

上游行业

在过去的十年，在华外资石油企业只签署了少量的产量分成合同。上游探区大部分仍由国有石油公司把控。由于近期油价处于低位，勘探成功率较低以及现有生产许可到期，越来越多的国际石油公司选择退出或收缩在华的上游业务。如果这一趋势继续下去，将会限制中国在以资本密集和技术驱动为特点的上游行业获取外国资本和专门技

术。因此，我们认为，中国政府和国家发改委需要尽快进行必要的政策修改和立法改革，放宽上游探区的准入，取消限制，提高效率，为国际石油公司提供更多财政优惠。鉴于油价可能继续保持低位，与单纯的前沿勘探相比，上游评估和发展机会对国际石油公司来说更有吸引力。国有石油公司需要扩大与国际石油公司的上游开发合作，将评估和开发机会纳入合作范围。

建议

对中国政府：

- 继续推动上海石油天然气交易中心的发展，提高天然气定价的市场化，深化中国天然气配送网络的改革。
- 实施政策改革，向外资进一步开放上游矿区的市场准入（即，向国际石油公司开放常规和非常规能源区段，鼓励产量分成合同到期后延期）。
- 鼓励国有石油公司扩大与国际石油公司的上游开发合作，除勘探外，也将评估和开发机会纳入合作范围。
- 将总体开发规划作为管理页岩气开发方向的无约束力的指导性文件，而不是强制性的管理文件。

对美国政府：

- 寻找机会，鼓励和中国政府相关部门分享最佳实践作法。例如，在美国，通过开放上游探区和中游基础设施的准入以及公开相关数据，投资水平得以提高，技术创新得以开展，非常规资源得以成功开发。

Recommendations

For the Chinese Government:

- **Continue to develop SPNGX and increase the market's role in setting the price of natural gas, and deepen the reform of China's natural gas distribution networks.**
- Pursue policy reforms that increase access to upstream acreage for foreign investors (i.e., open both conventional and unconventional blocks to IOCs and encourage the extension of expiring PSCs).
- Encourage NOCs to expand upstream development cooperation with IOCs to include appraisal and development projects in addition to exploration opportunities.
- Make the ODP a non-binding guidance document serving as a forecast for the direction of shale gas development rather than a mandatory governing document.

For the US Government:

- **Identify and encourage opportunities to share best practices with relevant Chinese government entities. For example, in the US, open access to upstream acreage and resources and midstream infrastructure, as well as the public availability of data, have attracted high levels of investment and led to technological innovation, resulting in the successful development of unconventional resources.**

Real Estate

Introduction

The real estate sector prospered in 2016. Real GDP growth remained stable, increasing 6.7 percent in 2016, according to the National Bureau of Statistics (NBS). A surge of loose credit and an upcycle in housing sales—as well as related goods and services—helped support economic growth throughout the year. Home prices accelerated as well, increasing in 62 of the 70 cities surveyed in 2016, with the highest growth in Xiamen, where prices increased by 44 percent year-on-year. This led to an uptick in construction and materials production with developers anxious to return to the real estate market to capitalize on surging housing demand.

The office sector was aided by continued government efforts to promote innovation and foster a “start-up” culture to diversify the economy away from traditional sectors, like manufacturing. As such, finance and technology firms were the key drivers of office occupier demand in 2016, but leasing activity was heavily skewed towards first-tier cities which are close to policy makers and have the strongest access to venture capital. Beijing and Shanghai recorded office rental growth throughout the year and each maintained vacancy rates of under 10 percent.

On the other hand, oversupply of commercial real estate continues to plague many second and third-tier cities, leading to falling rents and capital values and affecting their ability to attract private investment. Some municipal governments have experimented with conversion of land-use rights (i.e., office-use to residential-use) to mitigate oversupply risks. However, deep fiscal reform, such as an annual residential tax, is needed to provide greater flexibility in land-use rights.

The physical retail sector continues to be affected by the tremendous growth in online retail sales, which accelerated by over 30 percent in 2015 and now account for over 10 percent of the nation’s total retail sales, according to the NBS. Landlords have responded by focusing more on experience-oriented retail such as food and beverage, entertainment, and lifestyle brands. The logistics sector has been a beneficiary of rising online retail sales, where well-positioned warehouse markets have experienced

rental growth due to robust demand from e-commerce firms and supporting third-party logistics companies. As such, many international developers and investors have been drawn to this sector, but face constraints such as tight land supply.

Ongoing Regulatory Issues and Recent Developments

Barriers to Foreign Investment

A number of policies were enacted in 2015 to improve and promote fairness in China’s real estate investment market. These include lowering foreign capital requirements for institutional investors, removing residential purchase restrictions on foreign individuals, and making the procurement of onshore loans easier for foreign developers.

However, foreign investors remain at a disadvantage compared to their domestic competitors. Inconsistent taxation and other transaction costs create uncertainty around financial returns and profitability, which discourage foreign investment in China. Foreign developers often find it difficult to purchase suitable land due to zoning restrictions and unfair land auctions. For example, during land auctions the price of land may be intentionally “bid-up” by government-backed developers, as land sales account for a large percentage of government tax receipts.

For foreign real estate investors, the inability to repatriate capital caused by increased restrictions on capital outflows leads to the risk of a “cash trap.” A transparent system to distinguish necessary capital outflows from speculative ones should be established to strengthen investor confidence.

With ample capital available from domestic sources, China’s property market does not need foreign capital. However, opening the market to increased foreign competition will help to elevate investor sophistication and increase market transparency. For example, standards for property management and other soft skills will improve in the market if more foreign competition is allowed. The transparency of market performance will also increase if foreign-listed vehicles complete more building acquisitions in the market. The long-term

房地产

引言

2016年,中国房地产实现繁荣发展。国家统计局的数据表明,实际GDP保持稳定增长,2016年增长率为6.7%。信贷宽松、房产销售回升以及相关商品和服务推动支撑全年的经济增长。房价也出现加速上涨,2016年调查的70个城市中,有62个城市的房价上涨,其中厦门的涨幅最大,同比增长达到44%。这导致建筑和材料生产上扬,开发商急切返回房地产市场,以便从房地产需求增长中获利。

在政府的帮助下,办公地产继续提升创新并培养“创业”文化,推动经济实现多元化发展,摆脱对制造业等传统部门的依赖。为此,2016年,金融和科技公司成为办公用房需求的关键推动力量,但是,租赁活动向一线城市高度倾斜,因为一线城市最贴近政策制定者,获取风险投资的能力最强。北京和上海的办公用房租金实现全年增长,两地的空置率都低于10%。

另一方面,商业地产供给过剩继续困扰着许多二三线城市,致使租金和资本价值下跌,影响这些城市吸引私人投资的能力。为了降低供给过剩的风险,一些城市的政府试验开展土地使用权的转变(即从办公用地转为住宅用地)。但是,为了提高土地使用权的灵活性,需要深化财政改革,例如按年度征收住宅税。

实体零售领域继续受到网络零售渠道快速增长的影响。根据国家统计局的数据显示,2015年网络零售增长超过30%,目前占全国零售销售总额的比例超过10%。为此,房东们更加关注食品和饮料、娱乐、生活品牌等体验式零售部门。物流行业是网络零售增长的受益者,在电商企业以及相关第三方物流公司强劲需求的推动下,位置好的仓储市场租金实现了上涨。很多国际开发商和投资者被吸引到这一领域,但却面临严格的土地供应等限制。

现存监管问题和最新进展

外商投资壁垒

2015年,中国颁布了多项政策以改善和促进中国房地产投资市场的公平性。这其中包括降低机构投资者的外资要求,取消境外个人购买住宅的限制,降低境外开发商在中国获得贷款的难度。

然而,在房地产行业,外国投资者与内资同行相比依然处于劣势。标准不统一的税赋以及其它交易成本造成了房地产投资回报和盈利的不确定性,也打击了外商投资中国房地产行业的积极性。分区限制和不公平的土地拍卖程序造成外资房地产开发商很难购买到合适的土地。例如,在土地拍卖过程中,拥有政府背景的开发商往往会有意地推高出价,因为土地出让金是地方政府财政收入的重要来源。

对于外商投资房地产企业而言,中国跨境资本流动限制的增强,使其面临可能的“现金陷阱”风险。为了增强投资者信心,中国应建立透明的制度,将必要的资本外流和投机性的资本外流加以区分。

由于国内资金充足,中国的房地产市场不需要国外资本。然而对外开放房地产市场,提高市场竞争度有助于提升投资者成熟度和市场透明度。例如,扩大外资参与房地产市场的深度和广度有助于提升物业管理标准水平和其它软技能。如果海外上市实体能完成更多房产收购,也有助于提高市场业绩透明度。长期来看,应当鼓励外资参与市场竞争以提高市场标准,不应因担心资产价格飙升而限制外商投资房地产行业。我们敦促提高市场透明度和公平度,确保市场竞争健康有序。

advancement of market standards should be encouraged while foreign investors should not be restricted due to fears of asset-price inflation. We urge the promotion of a transparent and equitable market to ensure healthy competition.

Transparency and the Regulatory Environment

China's real estate market continues to face significant transparency challenges though there have been moderate improvements. However, there remains a significant gap in real estate transparency between China's first-tier cities and the rest of the country. In Shanghai, for example, strong occupier and investor interest has underpinned a rise in demand for accurate real estate data. Conversely, foreign investment demand into China's smaller markets has been limited, as these cities are largely plagued by oversupply and weaker occupier demand. As such, China's second and third-tier cities have not seen similar advances in transparency. In November 2016, a prominent private online data service was ordered to discontinue publication of its widely-followed residential price index, indicating that the government is still focused on withholding sensitive data, potentially at the expense of market transparency.

China remains especially opaque in terms of transaction processes, as real estate agent standards regarding the disclosure of presale information and negotiation practices remain poor. The accurate accounting of real estate debt is also of increasing concern due to the onset of trust lending and shadow banking channels. Banks still lack a clear procedure for handling non-performing loans, and the tenor is usually extended or "rolled over" with a new loan, compounding credit risk. Additionally, real estate investments that may be deemed questionable, principally by government-backed developers, have incentivized the concealment of such information.

Consequently, mounting pressure from rising default rates and attempts by regulators to reduce moral hazard have led investors to demand clearer information. We encourage the PBOC to make records more readily available to help the market distinguish and understand the performance of key players and the associated risks of their investments. We urge the Ministry of Housing and Urban-Rural Development (MOHURD) to move forward with its proposal to introduce a nationwide property tax and public land registry. The land registry could be modelled after Hong Kong, where land registers, leases, and documents are all searchable online. An annual property tax would boost local tax receipts and reduce reliance on land sales. Additionally, upgraded technology is needed to strengthen the availability of real estate data. For example, online crowdsourcing platforms would enable real-time transaction data to be easily shared between market participants.

Zoning and urban planning should be better calibrated to actual supply and demand conditions. The old model of building first and letting demand materialize is no longer

tenable in the slower-growth environment of the "new normal." Greater transparency would also enable more informed decisions to be made by developers regarding how much commercial real estate can be built at a profit, instead of relying on blind faith, as is current practice.

The China Securities Regulatory Commission (CSRC) approved China's first publicly traded real estate investment trust (REIT) in June 2016. We applaud this move by the Chinese government, which will allow individual investors greater access to commercial real estate. REITs are important for transparency in real estate as they require the public disclosure of financial statements. However, more clarity is needed on the accounting and legal aspects of the securitization of real estate assets. Additionally, local governments rely heavily on property transaction tax revenue and are reluctant to grant the tax exemptions needed to foster a competitive REIT market.

A substantial REIT industry could also provide local developers with a new exit strategy, where commercial properties can be sold to a single investor. At present, developers often elect to sell their properties, unit-by-unit or floor-by-floor, to multiple individual investors. While this reduces the financial burden for developers, it may also lead to severe property management issues and urban decay.

Decentralization of Chinese Cities

First-tier cities in China continued to decentralize in 2016. Beijing's Wangjing and Shenzhen's Houhai are two examples of outperforming decentralized office submarkets accounting for 42 percent and 31 percent of their respective cities' total net leasing absorption in 2016. Cost savings for occupiers is a key driver for the decentralization of office buildings, especially for TMT (technology, media, and telecom) occupiers. Additionally, a wider selection of small, standalone office buildings suitable for en-bloc purchases, leasing, and built-to-suit activities is a significant advantage for firms in decentralized office submarkets and business parks which prefer greater flexibility and a unique working environment.

Government regulations aimed at restricting commercial development within the core areas of first-tier cities will lead to even more decentralization in the future. Meanwhile, first-tier municipal governments are also targeting reduction and conversion of industrial-use properties that are no longer economically productive or have surpassed their useful life. Former factories or industrial parks that are converted to office usage in decentralized submarkets expect to offer even more alternatives for office occupiers.

However, this does not mean all decentralized submarkets across China will be successful in the near term. As economic growth slows in China, especially in lower-tier cities, decentralized submarkets in cities such as Tianjin and Chengdu face a significant oversupply risk. Municipal governments

透明度和监管环境

中国房地产市场的透明度虽然有所改善，但仍然面临重大挑战。然而，中国一线城市和其他城市在房地产透明度方面存在很大差别。例如，在上海，得益于住户和投资者的密切关注，对准确的房地产数据的需求得以增长。相反，在规模较小的市场，因为这些城市大都面临供给过剩和住户需求疲软，外国投资需求比较有限。所以，中国二三线城市在透明度方面没有取得类似的进展。2016年11月，一家知名的私营在线数据服务企业被勒令停止发布受到广泛关注的住宅价格指数，表明政府仍然不愿意公开敏感数据，这有可能付出牺牲市场透明度的代价。

中国的房地产交易程序尤为缺少透明度，原因在于房地产中介有关售前信息披露和协商惯例等方面的标准依然十分落后。随着信托贷款和影子银行渠道的日益兴起，中国房地产债务的会计核算准确性也让人日渐担忧。银行仍然缺少处理不良贷款的明确程序，通常通过发放新贷款对债务进行延期或展期，加重了信贷风险。另外，相关政策也会促使有政府背景的开发商隐瞒其可能存在问题的房地产投资项目的相关信息。

因此，上述现象可能会造成违约率上升，并迫使监管部门急于采取措施降低道德风险，这些因素会最终促使投资者要求房地产企业披露更加详细透明的信息。我们促请人民银行登记并提供相关信息，帮助市场分辨和了解重要市场主体的业绩及其投资风险。我们促请住房和城乡建设部（住建部）推动其关于在全国范围内实施房产税和公共土地登记的提案。土地登记可以参考香港模式，其土地登记、租赁以及各种相关文件都可以在线查询。按年度征收房产税有助于提高地方政府的税收收入，减少对土地出让收入的依赖度。另外，提高房地产数据的可得性需要进行技术升级更新。例如，在线众筹平台为用户提供实时交易数据，使市场参与者可以便利地共享信息。

城市分区和规划应当更加符合市场实际供需状况。先建房屋后刺激需求去库存的旧模式在经济增长放缓的“新常态”下难以为继。提升透明度还有助于开发商基于充分的信息做出商业地产开发决策，从而确保盈利能力，而不是像现在这样盲目开发。

2016年6月，中国证券监督管理委员会（中国证监会）批准中国首个公开交易的房地产投资信托（REIT）。我们对中国政府的上述举措表示赞赏，此举将方便个人投资者投资商业地产。REIT对提高房地产行业透明度十分重要，

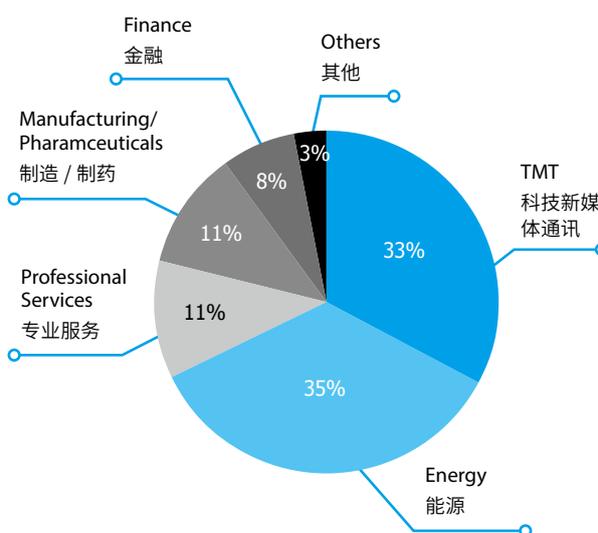
因为REIT要求公开披露财务报表。但是，中国还需要进一步明确房地产资产证券化的会计和法律问题。另外，地方政府严重依赖房产交易税的收入，不愿意为促进REIT市场竞争而给予必要的免税待遇。

REIT行业的发展壮大还能够为本地开发商提供一种新的退出机制，他们可以将商业地产出售给单一的投资人。目前，开发商通常选择按照单元或楼层将房产出售给多位个人投资者。这样虽然能够减轻开发商的财务压力，但是也有可能造成严峻的物业管理问题和城市衰退。

中国城市去中心化

2016年，中国一线城市继续进行去中心化。北京的望京和深圳的后海是两个表现突出的外围写字楼市场，分别占所在城市净租赁总量的42%和31%。办公用户选择搬离市中心，特别是科技/新媒体/通讯（TMT）企业，节省成本是主要的驱动因素。此外，位于外围区域的商务区具备更多适合整体购买、租赁和定制建造的小型独立办公建筑，为倾向于灵活和个性化工作环境的企业提供更丰富的选择，这是外围地区的一个重要优势。

Share of Certified LEED-CI Office Space in Beijing in 2016, by Occupier Industry
2016年北京LEED-CI已认证办公场所的份额，按用户所属行业



Source: CBRE Research, US Green Building Council
来源: CBRE 研究、美国绿色建筑协会

that equip these newly decentralized areas with strong supporting transportation infrastructure and public services will be in the best position for growth. Moreover, local governments should aim to discourage short-sightedness from developers to facilitate a more sustainable growth pattern in cities. A ban on strata-title commercial property sales would cause developers to become more cautious when undertaking new projects, helping to mitigate over-supply risk and improve cities' commercial environments as en-bloc property holders place greater focus on building management than individual investors.

New Technologies Adopted in Office Facilities

The trend to adopt new technologies and innovative methods in office facilities is reflected by occupiers' increasing investment in workplace design. Average fit-out investment rose by four percent year-on-year in Beijing. Occupiers in China are generally willing to invest a significant amount of capital into optimizing their workplace layouts, as efficiency and high-quality interior design are key tools for attracting and retaining employees. Occupiers are also increasingly receptive to buildings with environmental standards, such as Leadership in Energy and Environmental Design (LEED) certification.

Shared workplaces (i.e., "co-working spaces") are another innovation led by TMT firms and have been widely adopted by Chinese occupiers across varied sectors. Flexibility is a key advantage of co-working space as it allows compa-

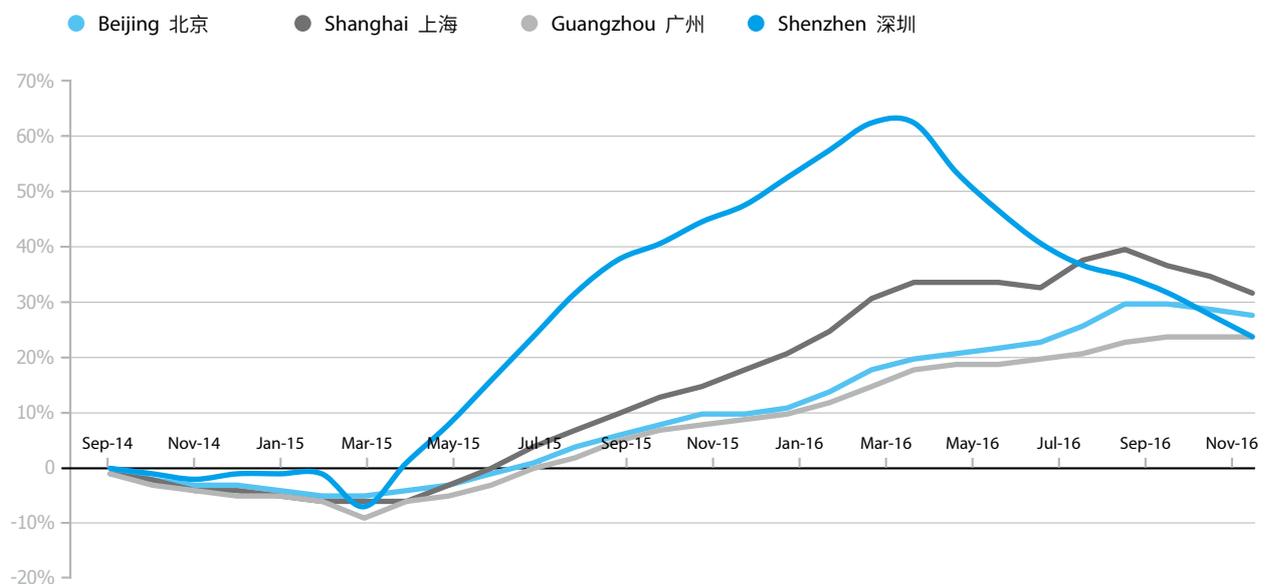
nies, especially start-ups, to experiment without the need for large capital investment for office fit-out or organization-wide change. Additionally, open floor plans and larger public areas are beneficial for facilitating interaction and collaboration. For landlords, co-working spaces strengthen a property's adaptability and reduce turnover risk as they offer on-demand space while vacating tenants can be easily replaced without additional capital expenditure or wait-time. Municipal governments should continue to encourage new technologies beneficial to staff wellness by providing financial incentives and promoting the use of international office standards. Rental concessions for occupants and tax breaks for developers can be used to incentivize the development of "green buildings."

Mitigating Economic Risks Associated with an "Overheated" Property Market

Key cities in China experienced strong increases in housing prices over the first nine months of 2016, with the four first-tier cities (Beijing, Shanghai, Guangzhou, and Shenzhen) all registering growth in excess of 20 percent year-on-year. The overheating of residential markets in major cities partly reflects the acceleration of new credit in China. Based on official figures, the broad measure of credit, known as "total social financing," rose by about 12 percent year-on-year in 2016. In response to the perceived overheating of the residential market, from late September to early October, more than 20 Chinese cities announced cooling measures designed to curb fast growing residential prices.

New Commodity Housing Price Change in First-Tier Cities (Year-on-Year)

一线城市新建商品房价格变动情况（年同比）



Source: National Bureau of Statistics
来源：国家统计局

政府规章旨在限制一线城市核心地区的商业开发，这将导致一线城市未来进一步去中心化。同时，一线城市的政府也在努力减少和改造不再具有经济生产能力或者已经超出使用寿命的工业地产。外围地区的老旧工厂或工业园区被改造成办公用房，可以为办公用户提供更多的选择。

但是，这并不意味着中国所有的外围地区在短期之内都会获得成功。随着中国经济增长放缓，特别是在像天津和成都等非一线城市，外围区域面临巨大的供给过剩风险。只有交通基础设施和公共配套完善的外围地区才具备发展优势。此外，地方政府还应抑制开发商的短视行为，增强城市发展的可持续性。禁止散售商业地产能够让开发商承接新项目时更为谨慎，有助于降低供给过剩风险以及改善城市的商业环境。这是因为，与个人投资者相比，整体自持的大业主更为重视楼宇整体管理。

办公设施采用的新技术

办公用户持续加大办公场所设计投入，反映了采用办公设施科技和创新的趋势。在北京，平均装修投资年同比增长 4%。中国的办公用户通常愿意投入大量的资金优化办公场所布局，因为有效且高质量的内部设计是吸引和留住员工的主要手段。办公用户也日益青睐满足环境标准的建筑，例如“能源与环境设计先锋奖”（LEED）认证标准。

在 TMT 公司的带动下，共享办公室（即“共创空间”）作为另一项创新，已经被中国各个行业的办公用户广泛采用。灵活性是共创空间的主要优势，它使得企业，特别是初创企业，无需投入大量资金用于办公室装修或整体改造即可入驻。另外，开放楼面设计和宽敞的公共区域有助于促进互动与合作。对于业主来说，众创空间按需提供办公空间，租户更替方便，不会产生额外的资本支出或等待时间，所以能够提高房产的适应性，降低租户流动风险。市级政府应当继续通过提供财政支持以及推动使用国际办公标准等方式鼓励采用有益于人员健康的新技术。可以通过向租户提供租金减让以及向开发商提供税收减免，以鼓励“绿色建筑”的开发。

降低与房地产市场“过热”有关的经济风险

2016年1月至9月，中国主要城市的房价呈现强劲增长，其中四个一线城市（北京、上海、广州和深圳）年同比增长均超过 20%。中国主要城市的住宅市场过热，部分反映了新增信贷的快速增长。根据官方数据，2016年广义信贷量即“社会融资总量”同比增幅为 11.3%。为了应对住宅

市场过热，从 9 月底到 10 月初，中国有 20 多个城市宣布采取调控措施以抑制快速增长的住宅价格。

2016 年中央经济工作会议明确，房子是用来住的，不是用来炒的，并表示 2017 年将重点控制信贷高速增长，降低金融风险。中国将继续采取多项具体措施遏制投机需求和房价上涨，例如，提高抵押贷款首付比例，加强土地价格控制，重新恢复限购政策等。然而，中国的房地产市场具有明显的“双轨”特征，三四线城市正在努力降低未售住宅库存。

中国政府应当继续给予地方一定的政策灵活性，允许各个城市因地制宜调控当地房价。规模较小的城市必须将重点放在去库存和促进城镇化上，以提高中长期可持续的房产需求，不应囿于短期的以价换量。另外，中国政府应当继续调整和促进困难城市的公共服务和就业机会，目前这些大都向富庶城市严重倾斜。

建议

对中国政府：

- 建议地方政府和住建部展开合作，继续在选定的城市推动公共土地登记和房产税，为全国范围的实施提供示范榜样。
- 鼓励中国证监会确定传统结构性 REIT 资产转让和免税的监管框架。
- 加大对新的去中心化地区的交通基础设施和公共服务的投入支持，抑制开发商分层出售商业地产等短视行为。
- 通过提供财政支持以及推动使用国际办公标准等方式，鼓励采用有益于员工健康的新技术。
- 全国统筹协调控制富庶城市房地产市场繁荣带来的金融风险，采取新的刺激措施提高房产库存较大的城市的需求。

The 2016 Central Economic Work Conference clarified that housing is for living, not speculation, and also made it a priority to rein in high-credit growth to mitigate financial risks in 2017. More detailed measures, such as raising the down payment ratio for mortgage loans, strengthening land price controls and re-implementing home purchase restrictions, will continue to be rolled out to curb speculative demand and restrain rising home prices. However, China is very much a “two-track” housing market where third and fourth-tier cities are struggling to reduce unsold inventory.

The national government should continue to give flexibility to individual cities to control housing policies at the local level. Smaller cities must focus on destocking and promoting urbanization to increase sustainable housing demand in the mid to long-term, rather than short-term trade-offs between volume and price. Additionally, the national government should continue to work on rebalancing public services and promoting job opportunities in struggling cities, which are currently heavily skewed towards the wealthy coastal cities.

Recommendations

For the Chinese Government:

- **We recommend that local governments and MOHURD collaborate to continue rolling out public land registries and enforce an annual property tax in select municipalities to serve as a model for nationwide implementation.**
- Encourage the CSRC to develop a regulatory framework on asset transfers and tax exemptions for conventionally structured REITs.
- Increase investment in support of transportation infrastructure and public services for newly decentralized areas and discourage short-sightedness by developers, like strata-title sales of commercial property.
- Encourage new technologies beneficial to staff wellness by providing financial incentives and promoting the use of international office standards.
- Promote a nationally coordinated approach to rein in financial risk arising from the housing market boom in wealthy coastal cities, while introducing new stimulus measures to bolster demand in cities with large housing inventory.

Retail and E-Commerce

Introduction

As China is adjusting to a “new normal,” in which the overall economy has shifted gears to a more moderate pace of growth, domestic consumption continues to grow, and is set to become the key driver of China’s economy. As such, the retail and e-commerce sectors play fundamental roles in contributing to and sustaining China’s growth.

In 2016, the Chinese government continued its efforts to promote a transparent and friendly environment for the development of retail and e-commerce industries through a variety of policies and legislation. These include further liberalizing market access, optimizing regulatory systems, streamlining administration, and promoting the integration of online and offline retail. These policies have further strengthened the confidence of AmCham China members that they will experience continued growth in China in the retail and e-commerce sectors.

AmCham China members also believe that to fully realize the dividends of these reforms, thorough implementation of relevant policies and laws at all levels will be crucial. Furthermore, increasing the consistency and foreseeability of policy development and legislative changes is important for optimizing China’s investment environment in the retail and e-commerce sectors.

Ongoing Regulatory Issues

Pressure to Set Up New WFOEs

It is not uncommon for municipal or even district governments to require foreign retailers to set up wholly foreign-owned enterprises (WFOEs) in their jurisdictions. This stems from tax, investment, and political considerations, such as efforts to accrue local income tax or improve statistical performance in the areas of total retail sales of consumer goods, energy efficiency, and emissions reduction. Some governments may leverage promises of support or even administrative approvals as a bargaining tool. As result, some large retailers with chain stores in China may have to operate over one hundred legal entities and value-added tax (VAT) reporting units in China.

These complex and redundant legal entity structures were built up under the pressure of local governments over the years and have resulted in disturbing impediments for AmCham China members, including higher effective corporate income tax rates and considerable increases in managing and operational costs. This phenomenon discourages investment and continues to be one of the most concerning challenges for AmCham China members.

AmCham China is pleased to note that these concerns have been recognized by the Chinese government. The General Office of the State Council recently released the “Opinions on Promoting the Innovative Transformation of Physical Retail Stores” (*Guobanfa* [2016] No. 78) on November 11, 2016, which reemphasized that local governments cannot impede retailers from setting up non-WFOE entities in any form, and urged local authorities to fully implement relevant regulations on consolidating tax filings for head offices and branches.

AmCham China appreciates the efforts of the State Council, particularly the Ministry of Commerce (MOFCOM), to reduce real economic costs by eliminating administrative barriers at the local level. AmCham China is cautiously optimistic about these developments, which depend on implementation in each province and municipality for their success.

Therefore, AmCham China urges the State Council to introduce additional mandatory regulations and policies to prevent local governments from using their administrative power to force retailers to establish new legal entities in their jurisdictions. Further, AmCham China urges the National Development and Reform Commission (NDRC) and National Bureau of Statistics (NBS) to further optimize current statistical methodologies so as to avoid incentivizing local governments to establish large numbers of WFOEs without considering other factors.

High Labor Costs Due to Problematic Statistical Calculation of Average Wages

China’s social insurance premiums are based on average wage in society (AWS). As China continues to develop, the statistical calculation of AWS is becoming increasingly unreasonable, leading to disturbingly high labor costs for employers and lower in-pocket incomes for low-income

零售和电子商务

引言

虽然中国逐渐步入“新常态”，整体经济增速放缓，但国内消费继续保持增长，成为中国经济的主要驱动力。因此，零售和电子商务产业将在推动和保持中国经济持续增长中起到基础作用。

2016年，中国政府继续努力，通过制定各种政策和法律，推动建立更加透明、友好的零售和电子商务产业发展环境。这些政策和法律包括进一步放宽市场准入、优化监管体系、简化行政管理、推动线上和线下零售的整合。这些政策使中国美国商会（商会）会员更加相信，他们将在中国零售和电子商务行业获得持续增长。

商会会员还相信，要完全实现改革红利，必须在各个层面上贯彻实施相关政策和法律。此外，增加政策制定和法律变化的一致性和可预见性，对于优化中国零售和电子商务产业投资环境十分重要。

目前存在的监管问题

设立新外商独资企业的压力

市政府甚至区政府要求外国零售商在其辖区内设立外商独资企业（“外资企业”）的做法并不少见。这一要求主要是基于税收、投资和政治方面考虑，比如努力增加本地所得税税收或者改善消费品零售和节能减排等领域的统计数据。有些政府会通过允诺提供支持（甚至行政审批便利）来换取谈判筹码。因此，一些在中国有连锁店的大型零售商不得不在中国经营100多个法律实体和增值税申报单位。

在当地政府压力下，这些复杂烦冗的法律实体多年来不断增加，已经给商会会员带来了诸多困扰，包括企业所得税平均税率增高，管理和经营成本大幅增加等。这种现象有损投资意愿，也因此成为商会会员最关注的难题之一。

商会对中国政府给予这些问题的关注表示感谢。国务院办公厅最近发布了《关于推动实体零售创新转型的意见》（国办发〔2016〕78号，2016-11-11），文件再次强调地方政府不得以任何形式对连锁企业设立非企业法人门店和配送中心设置障碍，落实好总分机构汇总缴纳企业所得税、增值税相关规定。

商会赞赏国务院（尤其是商务部）在消除各地行政壁垒、降低实体经济成本方面所做的努力。只有各省市能够贯彻实施相关工作，这些努力才能取得实效。商会对此持谨慎乐观态度。

因此，商会敦促国务院制定强制性法律和政策，防止地方政府使用其行政权力强迫零售商在当地设立新的企业法人。此外，商会还敦促国家发展与改革委员会（“发改委”）和国家统计局（“统计局”）进一步优化目前的统计方法，避免地方政府为迎合统计要求而设立大量外资企业，却不考虑其他因素。

由于平均工资统计问题产生了更高用工成本

在中国，社会保险费用（“社保费用”）的计算以社会平均工资为基础。随着中国继续发展，社会平均工资的统计变得越来越不合理，导致用人单位的用工成本过高，而低收入员工到手工资更低。这种情形在零售和其他劳动密集型产业尤其明显。

根据最新统计规定，在各省计算当地社会平均工资时，计算范围只包括国有企业、事业单位和政府机构。工资较低的行业，比如私营企业和个体户不包括在统计范围之内。而且，由于工人工资呈偏正态分布，目前基于平均数而非中位数的计算方法还导致社会平均工资无法代表社会收入水平。

所以，社会平均工资所反映的收入水平高于实际的收入水平，严重增加了用人单位的社保费用，同时也增加了低收入工人的财务负担，因为他们可能需要在申报收入（高于实际工资收入）的基础上缴纳社保费。

employees. This situation is especially challenging in retail and other labor-intensive industries.

According to current statistical rules, when provinces calculate their AWS, the scope of calculation only includes the sectors of state-owned enterprises (SOEs), public institutions, and government agencies. Sectors with lower wages, such as private and individual businesses, are excluded from the statistical scope. Moreover, due to the skewed distribution of population in wages, the current method of calculation, which is based on means instead of medians, also causes AWS to deviate from its purpose of accurately representing society's income level.

Consequently, the AWS falsely reflects higher income levels than in reality, which significantly increases employers' social insurance costs. This also adds to the financial burden of low-income workers, as they may need to pay social insurance on the basis of their reported income, which exceeds their actual gross wage.

AmCham China recognizes the State Council's recent efforts to address this challenge by issuing the "Opinions on Stimulating the Vitality of Key Groups and Driving the Income Increase of Urban and Rural Residents" (*Guofa* [2016] No. 56) in October 2016. This circular urges provincial governments to include all economic sectors in the statistical scope of AWS.

AmCham China also recommends that the Ministry of Human Resources and Social Security (MOHRSS) and NBS further reform statistical methodologies by replacing the AWS with a more representative median wage in society.

Product Quality

Product Quality Law

The Product Quality Law, last amended in 2009, specifies requirements for product producers and operators. However, the law still fails to distinguish between the liabilities of producers and operators regarding penalties.

Thus, when regulators find fake products on retail shelves, retailers are often the ones penalized even though they have fulfilled all legal obligations and it is the producers that failed to meet relevant standards or behaved fraudulently (e.g., by forging certificates). Furthermore, due to the establishment of the National Enterprise Credit Management Information System, which entered into effect on December 1, 2014 and which files and publishes all enterprise penalties, retailers also face increasing and unfair reputational damage.

AmCham China recommends that the National People's Congress (NPC) and the State Council revise the Product Quality Law to further define and distinguish the legal liabilities of operators and producers so as to exempt retailers from penalties when it can be shown that they have fulfilled their obligations.

Sampling Inspections

As the emphasis of regulations is being transformed from regulating products after they are on the market to regulating them before they reach the market, sampling inspections of commercial quality have become a major means of commodity market regulation. Further, sampling inspections may strengthen the supervision of commodities in circulation and effectively protect the legitimate rights and interests of consumers.

Therefore, AmCham China supports sampling inspections and has the following recommendations to make inspection results fairer and more objective:

- ❶ For sampling inspections by industry and commerce or quality supervision authorities: when an enterprise disagrees with an inspection result, inspection authorities should choose a qualified inspection body with nationally-recognized qualifications other than that of the initial inspection body to reexamine the samples.
- ❷ For online sampling inspections by industry and commerce or quality supervision authorities: when samples for inspection are obtained from a store not authorized by the brand owner, in case of any commercial quality dispute, the brand owner should cooperate with the sampling inspection authority to authenticate the product, while the retailer should bear the responsibility for other matters.

Consumer Protection Law and Professional Claimants

Professional claimants remained a key challenge for AmCham China members in 2016. These claimants actively seek out retail outlets and online vendors for mistakes in pricing, labeling, or product quality. Professional claimants sometimes extort retailers for compensation by threatening to report the problem to the government or media.

AmCham China commends the State Council on its current efforts in drafting the "Implementation Rules of the Consumer Protection Law" (Implementation Rules). In accordance with Article 2 of the draft Implementation Rules, consumption behavior with the sole purpose of making profits is excluded for the first time from protection under the Consumer Protection Law. AmCham China members regard this as positive progress, which will help address the long-standing issue of professional complainants.

We also believe that Article 2 will contribute to optimizing the legal framework necessary to encourage the development of social organizations specializing in consumer rights protection. This will further minimize the negative impacts of professional claimants.

为此，国务院于2016年10月10日印发了《关于激发重点群体活力带动城乡居民增收的实施意见》（国发[2016] 56号），敦促省级政府在社会平均工资统计范围中纳入所有经济部门。商会非常赞赏国务院为此做出的努力。

商会还建议人力资源和社会保障部（“人社部”）以及统计局改革统计方法，用更具有代表性的社会工资中位数代替社会平均工资。

产品质量

《产品质量法》

《产品质量法》最后一次修订是在2009年，明确了对产品生产者和经营者的要求。但是，此法未能区分生产者和经营者在相关处罚中应当承担的责任。

因此，如果监管者在零售货架上发现假冒产品，受处罚的通常都是零售商。即使零售商已经履行了所有法律义务，而未能满足相关标准或者有欺诈行为（比如伪造证书）的是生产者。此外，全国企业信用信息公示系统于2014年12月1日生效后，开始记录和公示企业受到的所有处罚，所以零售商受到的不公平的名誉损害越来越多。

商会建议全国人民代表大会（“全国人大”）和国务院修改《产品质量法》，进一步界定和区分经营者和生产者的法律责任，使零售商在有证据证明其履行了相关义务的情况下免受处罚。

抽样检查

随着监管重点从商品上市后的监管转变为商品上市之前的监管，商品质量抽样检查已经成为商品市场监管的主要手段之一。而且，抽样检查可以强化对流通商品的监管，有效保护消费者的合法权益。

因此，商会支持抽样检查，并做如下建议，以使检查结果更加公平和客观：

- 就工商部门和质量监督部门进行的抽样检查而言，如果企业对检查结果有异议，检查机关应当选择一家得到国家认可的有资质的检查机构（而非原检查机构）重新检查样品。
- 就工商部门和质量监督部门进行的网络购买产品抽样检查而言，如果检验样品来自未经品牌所有人授权的店铺，在发生任何商品质量争议时，品牌所有人

应配合抽样检查机关鉴别产品真伪，而零售商则应承担其他责任。

《消费者保护法》和职业打假人

2016年，职业打假人依然是商会会员面对的一个重要挑战。这些职业打假人积极寻找零售渠道和在线商家在定价、标签和产品质量上所犯的错误。他们有时会威胁把问题上报给政府或者媒体，以此对零售商进行敲诈。

商会赞赏国务院在起草《消费者权益保护法实施条例》（“实施条例”）方面所做的努力。根据实施条例送审稿第2条，单纯以营利为目的的消费行为首次被排除在《消费者权益保护法》的保护范围之外。商会会员认为此项规定具有积极意义，有助于解决职业打假人这一顽疾。

我们相信，第2条有助于优化必要的法律框架，促进专门从事消费者权益保护的社会组织的发展。还会将职业打假人造成的负面影响降至最低。

实施条例第二版于2016年11月发布，其中第2条文本变化不大。商会强烈建议国务院在将这一版的第2条纳入最终实施条例，规定“自然人、法人或其他组织以牟利为目的购买、使用商品或接受服务的，不适用本条例。”

电子商务

《电子商务法》

全国人大于2014年年末正式启动立法程序，努力为电子商务的发展制定全面的法律框架。随着2015年初开始实施的国家“互联网+”政策的公布，这一领域的进展继续深化。电子商务立法由全国人大主导，得到跨部级工作组和专家小组的支持。《电子商务法》（草案）已于2016年12月发布，并公开向公众征求意见。

鉴于执法的客观性和统一性至关重要，商会希望本法最终版本能够建立一个统一的顶层法律体系，并在下位法律法规中明确其适用问题。此外，我们还希望本法能够为政府机构的职责划定边界，避免与现有法律及规定相同事项的法规发生冲突，符合中国承担的国际贸易义务。

跨境电子商务政策

中国跨境电子商务业增长迅速，为国内消费增长做出了显著贡献。然而最近几年，这一行业却因过于复杂的监管而受到了阻碍。尤其是在解决本行业不同监管部门之间的职能重叠问题上，进程非常缓慢。

The text of Article 2 remained largely the same in the second draft of the Implementation Rules, released in November 2016. AmCham China strongly recommends that the State Council include this version of Article 2 in the final Implementation Rules, which states that “this regulation shall not be applied to any individual, legal entity, or other organization that purchases, uses, or accepts goods or services for profit-gaining purposes.”

E-Commerce

E-Commerce Law

The NPC officially launched the lawmaking process to provide a comprehensive legal framework for the development of e-commerce at the end of 2014. Progress on this front has continued to develop with the unveiling of the national policy of “Internet +” at the beginning of 2015. The e-commerce lawmaking process was led by the NPC, supported by an inter-ministerial working group and an expert panel. The draft E-Commerce Law was issued for public comment in December 2016.

AmCham China’s hopes that the final version of the law will create a coherent legal system at the top level, with clear guidelines on its application in lower-level laws and regulations. Further, we hope the law will set boundaries on government bodies’ responsibilities, reconcile conflicts with existing laws and overlapping regulations, and will be consistent with China’s international trade obligations. Objective and uniform enforcement will be critical.

Cross-Border E-Commerce Policy

The cross-border e-commerce industry in China is growing rapidly, and makes a remarkable contribution to domestic consumption. Unfortunately, it has been hampered by exceedingly complicated regulations in recent years. In particular, aligning the overlapping functions of the different ministries that regulate the industry has been a slow process.

In April 2016, a batch of policies for cross-border retail e-commerce took effect. The “positive lists” and requirements for customs clearance verification included in these policies forced a majority of cross-border e-commerce companies to face a “life or death test.” The subsequent one-year suspension of these policies and the recent extension of the suspension decision demonstrate the government’s desire to support the development of cross-border e-commerce, and at the same time, this move signals the government’s recognition that cross-border e-commerce should be regulated with a set of new measures that are distinct from those in place for traditional industries and better targeted towards the emerging business models of e-commerce retailers.

AmCham China urges that more transparent approaches be adopted in the process of regulating markets, so as to create a stable policy environment with sufficient understanding

by both industry and consumers. We further recommend a longer grace period before the new cross-border e-commerce policy enters into effect, which would encourage the healthy development of the industry and better implementation of policies.

Regulatory Ambiguity Over Imported Food in Cross-Border E-Commerce

With the enforcement of the revised Food Safety Law, penalties for food businesses have been greatly increased. Imported dietary supplements have become a litigation focus of “professional claimants.” We expect this trend to continue, as food imported through cross-border e-commerce will be increasingly challenged by professional claimants due to ambiguous regulations.

AmCham China recommends that the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) and the CFDA align on the management of imported dietary supplements, as well as on regulations managing food imported via cross-border e-commerce.

Recommendations

For the Chinese Government:

- **Regulate the retail industry, including all business formats, under a unified regulatory system and consistently enforce standards across China.**
- Introduce mandatory regulations to prevent local governments from forcing retailers to set up new legal entities in their jurisdictions. [State Council, MOFCOM]
- Reform the current statistical methodologies relevant to local government key performance indicators, so as to avoid incentivizing local governments to establish more WFOEs. [NDRC, NBS]
- Include all economic sectors in the statistical scope of average wages in society. [provincial governments]
- Reform the statistical measures of the social insurance premium base by using median wages instead of mean wages in society. [MOHRSS, NBS]
- Further urge local food regulatory bodies to focus on institutional and regulatory developments instead of specific systems or technologies for traceability. [State Council, CFDA]
- Align the administration of dietary supplements and food imported via cross-border e-commerce. [AQSIQ, CFDA]
- Revise the Product Quality Law to further define and distinguish the legal liabilities of operators and producers. [NPC, State Council]

2016年4月，一批约束跨境零售电子商务的规定生效。

“正面清单”和这些政策的清关证明要求迫使大多数跨境电子商务公司面临“生死考验”。随后这些政策暂缓一年执行，以及最近的延长暂缓决定都表明，政府有意支持跨境电子商务发展。与此同时，这一举措表明政府认识到，跨境电子商务的监管应该采用与现行的传统行业监管措施完全不同的新措施，对电子商务零售商新出现的商业模式更具针对性。

商会敦促政府在市场监督中采用更加透明的方法，建立稳定的政策环境，充分考虑行业和消费者诉求。我们还建议延长新跨境电子商务政策生效前的宽限期，以鼓励本行业健康发展，更好地实施这些政策。

跨境电子商务进口食品的监管模糊不清

随着最新修订的《食品安全法》的实施，对食品企业的处罚显著增加。进口膳食补充剂成为“职业打假人”的诉讼焦点。我们预计这一趋势还会继续。同时，由于监管上的模糊不清，职业打假人针对通过跨境电子商务进口的食品会提起越来越多的诉讼。

商会建议国家质量监督检验检疫总局（“质检总局”）和国家食品药品监督管理总局（“食药监局”）在对进口膳食补充剂的管理和对跨境电子商务进口食品的监管上采取协调一致的措施。

- 进一步督促地方食品监管机构注重制度和法规的建设，而非具体可追溯体系和技术的发展。〔国务院、食药监局〕
- 调整膳食补充剂和跨境电子商务进口食品的监管。〔质检总局、食药监局〕
- 修改《产品质量法》，进一步确定和区分经营者和生产者法律责任。〔全国人大、国务院〕
- 优化抽样检查机制，使零售商和生产者受到更加公平的待遇。〔质检总局和国家工商管理总局〕
- 在《消费者权益保护法》实施条例最终版中纳入最新版第2条，将职业打假人排除在《消费者权益保护法》的保护范围之外。〔国务院〕
- 通过《电子商务法》建立统一的法律体系，对电子商务进行监管。〔全国人大〕
- 为跨境电子商务监管建立稳定的政策环境，采用更透明的监管方法，充分考虑行业和消费者的诉求。〔商务部、财政部〕
- 在新政策实施前，延长跨境电子商务相关规定的宽限期。〔商务部〕

建议

对中国政府：

- 以统一的监管体系监管零售业（无论商业形式如何），统一全中国的执法标准。
- 制定强制性规定，防止地方政府强迫零售商在其辖区内设立新的法律实体。〔国务院、商务部〕
- 改革目前与地方政府关键绩效指标相关的统计方法，避免地方政府为迎合统计要求而设立更多外商独资企业。〔发改委、统计局〕
- 在社会平均工资统计范围中纳入所有经济产业。〔省级政府〕
- 改革社保费统计方法，采用中位数工资替代社会平均工资。〔人社部、统计局〕

- Optimize sampling inspection mechanisms to promote fair treatment of both retailers and producers. [AQSIQ, SAIC]
- Include the current version of Article 2 in the final version of the “Implementation Rules of the Consumer Protection Law,” which excludes professional claimants from protection under the Consumer Protection Law. [State Council]
- Create a coherent legal system to regulate e-commerce through the E-Commerce Law. [NPC]
- Create a stable policy environment for cross-border e-commerce regulations with more transparent regulatory approaches built on a sufficient understanding of industry and consumers. [MOFCOM, MOF]
- Extend the grace period in cross-border e-commerce-related regulations before new policies enter into effect. [MOFCOM]

Sports

Introduction

Sport has been an important part of US-China relations since 1971 when “ping pong diplomacy” helped open the door to normalize relations between China and the US. Since then, changes in China’s sports industry have been vast. Chinese athletes have emerged as a major force on the world stage and Beijing hosted the Summer Olympics in 2008. Recently, the emergence of a consumer-oriented economy, the confirmation of a substantive policy mandate, and massive investment in national and overseas sports over the last two years have transformed the story of sports in China into one of commerce and opportunity.

On September 2, 2014, Premier Li Keqiang announced the inauguration of sports industry reform with a goal of promoting consumption. On October 20, 2014, the State Council formalized this call to arms through a new guideline entitled “Opinions on Accelerating the Development of the Sports Industry and Promoting Sports Consumption” (the Opinions), a document which accorded the sporting industry an unprecedented level of national importance, and marked the Chinese government’s determination to turn the nation’s sports industry into an important driving force for economic growth.

The Opinions targeted expansion of the sports industry to RMB 5 trillion (US \$800 billion) by 2025, or about one percent of GDP, a level similar to most developed countries. As of December 2014, it was worth about RMB 900 billion (US \$150 billion). In order to reach the goal set out for the sports industry, the Opinions call for the elimination of industrial and policy barriers that limit the growth of the sports industry and encourage the investment of social capital, as well as the infusion of foreign funds, into the construction of facilities as well as the development of related products and services.

According to the 2015 “Catalogue of Industries for Guiding Foreign Investment,” China encourages foreign investment in the operation of sports facilities, fitness, competition performance, sports training, and agency service. The General Administration of Sport of China (GAS), in its 13th Five-Year Plan, stated that sports industry revenue is expected to exceed RMB 3 trillion (US \$432 billion) by 2020, with industry value then achieving one percent of

GDP. Likewise sports consumption is predicted to reach 2.5 percent of disposable income per capita at the same time. AmCham China applauds the recognition of the importance of reform in sports industry management and the importance of foreign investment to the success of this endeavor.

Recent Developments

Decentralization of National Sports Associations

Although professional sports in China are organized by specialized sports associations for each individual sport, a management strategy generally followed in the US as well, the modernization of sports leagues in China is still in the early stages. In China, sports federations, as units under the GAS, run their respective sports leagues. It is generally recognized that professional sport leagues with sophisticated business models remain run by government bureaucrats. However, there have been recent efforts to reform this model.

With the failure of the national soccer team to qualify for the last three World Cups, there have been state-led efforts to improve soccer in China generally, and the national soccer team in particular. In March 2015, a 50-point comprehensive reform plan for soccer published by the General Office of the State Council laid out policy guidelines for this change. The key plank of this reform was the establishment of legal autonomy for the Chinese Football Association (CFA), and in so doing, its formal separation from the GAS.

Previously, an affiliate of the GAS, the Football Management Center (FMC), was the rule-making government body responsible for football in China, while the CFA was responsible only for implementing rules. However, in practice, the FMC and the CFA were run by the same people with different titles, leading to management disarray and widespread corruption. The central government eliminated the FMC in January 2017, leaving the CFA as an autonomous organization that can more effectively introduce management reform.

Reform in the industry has not only been introduced by the GAS, but also by the National Development and Reform Commission (NDRC). In April 2016, the NDRC published

体育

引言

自 1971年“乒乓球外交”打开中美关系正常化的大门，体育一直是中美关系的重要组成部分。自此以后，中国体育产业取得了波澜壮阔的发展。中国运动员已经成为了世界舞台上的主力军，北京也于2008年举办了夏季奥运会。最近，消费导向型经济的发展，实质性政策的出台，以及近两年来国内外体育项目的大规模投资，都进一步推动了中国体育事业向商业化转化，孕育了无限商机。

2014年9月2日，李克强总理宣布启动体育产业改革，旨在促进体育消费。2014年10月20日，国务院通过题为《国务院关于加快发展体育产业促进体育消费的若干意见》（简称《意见》）的新指南，正式落实改革倡议，这份文件标志着体育事业获得了国家前所未有的重视，意味着中国政府决心将国家体育产业转变为经济增长的重要推动力。

《意见》计划到2025年使体育产业规模扩展至5万亿元人民币（8000亿美元），约占国内生产总值的百分之一，这一比例已与多数发达国家相当。截至2014年12月，中国体育产业总值约为9000亿元人民币（约合1500亿美元）。为实现体育产业改革目标，《意见》要求消除限制体育产业发展的产业壁垒和政策壁垒，鼓励社会资本投资，推动外资进入设施建设以及相关产品和服务的开发领域。

根据2015年《外商投资产业指导目录》，中国鼓励外商投资体育设施、健身设施、比赛表演、体育训练和代理服务。中国体育总局在“十三五”规划中指出，2020年体育产业收入预计将超过3万亿人民币（约合4320亿美元），届时体育产业总值将达到GDP的1%。同样，体育消费预计也将达到人均可支配收入的2.5%。中国政府已经意识到体育产业管理改革的重要性，认识到外商投资对确保改革成功所发挥的重要作用，中国美国商会（商会）对此表示赞赏。

最新进展

国家体育协会权力下放

中国的职业体育运动由专门的体育协会组织，整体上采取与美国类似的管理战略，但中国体育联盟的现代化进程尚处于初级阶段。在中国，体育总局下属的体育联合会负责运营各自的体育联赛。现在人们已经普遍认识到，职业体育联盟虽然采用成熟的商业模式，但仍然由政府行政部门管理。不过，近期中国已致力于改革这种模式。

中国国家足球队连续三次未获得世界杯足球赛出线权，促使中国举国上下努力改进中国足球水平，特别是国家足球队的水平。2015年3月，国务院办公厅出台的《足球改革方案五十条》对此作出明确的政策指导。这项足球改革的关键在于为中国足球协会（CFA）赋予合法自主权，使其正式脱离体育总局。

在此之前，体育总局附属单位足球运动管理中心（FMC）是中国足球事业的规则制定机构，而中国足球协会只负责实施管理中心制定的规则。但实际上，足球管理中心和足协由具有不同头衔的同一批领导者管理，导致管理层混乱，腐败现象非常普遍。中央政府对2017年1月取消了足协中心，使中国足协成为自治组织，有助于更有效地实施管理改革。

体育产业改革的发起机构不仅包括国家总局，还包括国家发展和改革委员会。2016年4月，国家发改委出台了2016年至2050年的足球发展方针，要求中国足球融资实现现代化。该方针特别主张在中长期发展中增加海外资金对足球管理的参与力度，允许外资参与当地俱乐部所有权，增加中国球员在海外训练的交流机会。

中国在去年引进这种新型管理模式，得到了市场的大力支持。据国际足球联合会（FIFA）的报道，2016年中国足球俱乐部共花费4.513亿美元（29.97亿人民币）用于

guidelines for the development of football from 2016 to 2050 which, among other things, called for the modernization of financing for soccer in China. In particular, over the medium to long term, it advocates increased overseas participation in the management of football, the participation of foreign capital in local club ownership, and increased exchange opportunities for Chinese players to train abroad.

In the last year, simultaneous to the introduction of this new governance model, the market has spoken loudly in support. Chinese football clubs spent US \$451.3 million (RMB 2.997 billion) on international player transfers in 2016, more than double the US \$168.3 million (RMB 1.047 billion) in 2015, according to a report by the International Federation of Association Football (FIFA). The media rights to broadcast football games under the China Super League, the organization responsible for the top division, were sold for RMB 8 billion (US \$1.25 billion) for the five years from 2016 to 2020. AmCham China applauds this move to decentralize China's soccer league, and, by reducing bureaucracy, promote a more efficient path for the introduction of innovative strategies in football management and play. Additionally, AmCham China welcomes the government's decision to increase foreign investment and participation in Chinese football on the basis that the introduction of new ways of thinking about football development, training, strategy, fitness, nutrition, and medicine may lead to important innovations for the improvement of Chinese football. We hope that these trends will continue in football, and also hope to see similar decentralizations of other Chinese sports leagues with increased opportunities for foreign investment in the local sports industry.

Limits on Salaries and Numbers of Foreign Soccer Players

While the FMC has been eliminated, the demarcation of governance between the GAS and the CFA remains unclear. Over the last year, the CFA has allowed football clubs to spend exorbitant sums on football transfers and salaries for overseas players. In January 2017, the GAS, which still has responsibility for sports overall, remarked that payments were dangerously high and proposed setting a ceiling on player compensation and strengthening financial auditing to limit the increasing financial burden on clubs and stem the outflow of foreign exchange. A few days later, the CFA announced a new policy that it was reducing the number of foreign professionals eligible to play in a match. The goal of this policy is to encourage more local players, while also limiting investment in salaries for foreign players. AmCham China applauds the GAS for its consideration of innovative governance tools from outside the conventional system to explore how to respect the rights of clubs to invest the influx of financial capital in clubs while also reducing the possibility of teams taking on unsustainable financial risk. AmCham China recommends that Chinese sports associations consider international best practices, such as aggregate salary caps by US sports associations.

In contrast to China, some major decision-making in professional sport league management in the US takes account of the views of players as well as owners. For owners, there are complex arrangements within the league's constitutional documents and for players, there are contractual ties. Based on such experience, we would suggest that leagues responsible for managing professional competition in China would benefit from greater input from owners and players. Certainly the form of that input would not be, nor should it be, the same as US systems, but the formation of inclusive committees in the leagues could be beneficial.

AmCham China urges the GAS and various sports leagues to continue exploring international best practices for sports governance in China. The interest of the fan in sports is largely dependent upon their trust in leagues to provide an environment for fair competition amongst their favorite clubs. If fans lose that trust, the leagues risk losing the fans. The more trusted the league, the more likely that Chinese fans' interest will increase.

Ongoing Regulatory Challenges

Sports-Related Intellectual Property Issues

There are two primary types of intellectual property rights (IPR) that relate to sports in China: copyrights and trademarks. Both anchor the commercial value of assets in the sports industry. Relevant laws are intended to establish property rights in an asset, such as a television broadcast or a team logo that may be bought, sold, or leased through licensing, or acquired through a variety of other derivative rights.

Copyright and Media

For most sports organizations globally, and China is no exception, copyright and related rights for broadcasting sports performances are the linchpin in the monetization of this industry. China has become a major player in the national and international business of media rights. Chinese media platforms are not only acquiring media rights for sport leagues in China at very high valuations, but also for leagues in Europe and the US. The structure of these deals ranges across Chinese digital content providers, social media platforms, streaming services acquiring the media rights to sports competitions, and Chinese fund managers purchasing major media rights firms. Chinese media rights owners that are proactive in advocating for the enactment and enforcement of intellectual property laws that deter piracy will help to ensure that they realize full value from their investment.

AmCham China welcomes the report that a program under the auspices of the US-China Joint Commission on Commerce and Trade (JCCT) relating to the copyright protection of live sporting event broadcasts, including those conducted via the

国际球员转会，比2015年的1.683亿美元（10.47亿人民币）翻了一番还多。2016年至2020年，中国最高级别的足球职业联赛——中超联赛的足球比赛转播权共售出80亿元人民币（12.5亿美元）。商会赞赏中国足球协会权力下放的举措，通过消除官僚作风，有助于找到更有效的途径引进足球管理和运行的创新战略。此外，商会欢迎政府增加外商投资、提高外资参与中国足球程度的决策，因为针对足球发展、训练、战略、体能、营养和医学等问题采取新的思维方式，将为改进中国足球水平的提高带来重要创新。我们希望这些趋势能够在足球领域得到继续发展，也希望看到其他中国体育协会实施类似的权力下放举措，以增加外国投资对本地体育赛事的参与机会。

外国足球运动员的薪资和人数限制

尽管管中心已被取消，但体育总局和中国足协之间管理关系的划分仍不明确。去年，中国足协允许足球俱乐部支付海外球员的天价转会费和薪金。仍在整体上负责体育事业的国家体育总局于2017年1月指出，转会费和薪金数额过高，建议对球员薪金设立上限，并加强财务审计，以限制俱乐部承担的不断增加的财务负担，阻止外汇流出。几天后，中国足协宣布了一项新政策，减少有资格参加比赛的外国专业球员的数量。这项政策旨在鼓励更多本土球员参赛，同时也限制了对外国球员的薪金投资。国家体育总局能够跳出传统体系之外，考虑采取新型治理工具，探讨如何在尊重俱乐部对金融资本的投资权的前提下，降低球队所承担的不可持续的财务风险，对此商会表示赞赏。商会还建议中国体育协会考虑采取国际最佳实践，如美国体育协会采取的工资帽限制要求。

与中国相反，美国职业体育联盟管理的部分重大决策同时考虑到了球员和俱乐部所有者的需求。所有者要接受联盟内部完善的规章制度的约束，球员则与球队建立合同关系。根据这些经验，我们建议负责管理中国专业比赛的管理组织加大俱乐部所有者和运动员的参与程度，此举定会为比赛管理者带来诸多回报。当然，这种参与的形式不同于、而且也应该不同于美国的体系，但在联盟内部成立覆盖面较广的委员会将大有益处。

商会促请体育总局与各家体育联合会继续探索如何将国际最佳实践应用于中国体育治理之中。球迷对体育的热爱在很大程度上来自于他们对体育联合会的信任，相信体育联合会能够为他们最喜爱的俱乐部提供公平竞争的环境。一旦失去这种信任，联合会就有可能失去球迷。联合会越可信，中国球迷对体育的兴趣就会越深厚。

现存监管问题

体育相关知识产权问题

在中国，与体育有关的知识产权（IPR）主要分为两种类型：版权和商标。两者都与体育资产的商业价值相关。中国出台了相关法律，旨在确立特定资产的财产权，例如可以通过许可的形式购买、出售或出租，或通过各种其他各类衍生权获得的电视转播权或球队标志使用权等。

版权与媒体

对于全球多数体育组织来说（中国也不例外），体育赛事的版权与相关转播权都是体育产业货币化的关键所在。中国已成为国家和国际传媒经营权业务的主要参与者。中国媒体平台不仅以高价购买中国体育联赛媒体权利，还在购买欧洲和美国联赛的媒体权利。上述交易结构涉及购买重要体育赛事媒体权利的中国数字内容提供商、社交媒体平台和流服务供应商，以及购买主要媒体权利公司的中国资金管理机构。中国的媒体权利所有人积极倡导制定并执行反盗版知识产权法律，有助于确保媒体权利人全面实现投资价值。

据报道，中美商贸联合委员会（JCCT）将于2017年开展项目，保护体育赛事转播（包括互联网转播）相关的知识产权，商会对此表示欢迎。朝阳基层法院于2015年作出的一项判决认定，体育直播可根据中国法律享受版权保护。商会认为，这一判决表明中国司法机构正致力于从结构上解决体育转播的版权问题。

商会促请中国政府继续警惕未经许可的网络与电视体育转播，加强知识产权执法措施，提高损害赔偿金，并要求网络平台对盗版担责。商会还建议中国网络与广播媒体开放竞争，确保版权所有人获得公允价值。在体育媒体产业，成功的权利保护有助于扶持投资与创新——不仅包括中国企业，也包括海外体育内容提供商。

商标和标志

商标法禁止未经授权使用品牌，允许品牌所有者对品牌的使用收取费用。球迷热衷于购买带有球队商标的服装、旗帜或其他物品，许多知名运动员通过注册名字、昵称、姿势、签名、形象或肖像获得商标保护，实现运动员身份的货币化。在中国，体育市场商业化趋势方兴未艾，但体育商标权的界定仍处于初级阶段。最近的两个案例表明了中国体育产业正在面临的挑战，即New Balance

internet, will be held in 2017. AmCham China recognizes the Chinese judiciary's constructive embrace of the challenge of sports broadcasting with a 2015 decision by the Chaoyang Basic-Level Court that indicates that live broadcasts of sports can be deemed copyrightable under Chinese law.

AmCham China urges the Chinese government to continue improving its vigilance over unauthorized broadcasts of sports programming online and on television by enhancing IPR enforcement measures, increasing damage awards, and holding internet platforms responsible for piracy. AmCham China also urges open competition across Chinese online and broadcast media for such rights to ensure that the copyright holder obtains fair value. Successful rights protection will foster greater investment and innovation in the sports media business not only for Chinese firms but also for overseas providers of sports content.

Trademarks and Logos

Trademark law prevents the unauthorized use of a brand and allows a brand owner to charge for the use of the brand. Fans will buy clothing, banners, and other items with trademarked team logos, and many well-known athletes can monetize their identity by registering their own names, nicknames, poses, signatures, image, or likeness for trademark protection. With the commercialization of the sports market being a recent phenomenon in China, the delineation of trademark rights in sports is still at an early stage. Two recent cases illustrate the challenges faced by the sports industry in China: *New Balance v. Zhou Lelun* and *Michael Jordan v. Qiaodan Sports Co., Ltd.*

New Balance, whose China-based sales company is Xinbailun Trade (China) Co., was sued by a Guangzhou clothing manufacturer, Zhou Lelun, in July 2013, on a claim of trademark infringement. Zhou, whose company is named Guangzhou Xingjia Clothing Co., first applied in 1994 for a trademark of Bailun. It finally received registration of the Bailun trademark in 2004. In 2003, the business of New Balance began to grow in China and it began to use the name of its Chinese sales company Xinbailun in its advertisements. In 2004, Zhou filed to revise his trademark to Xinbailun. Reports indicate that New Balance objected on the basis that it had already used Xinbailun in the Chinese market before Zhou's revised application. New Balance maintained that it used the name simply as a corporate reference and not as a trademark because it was never used on athletic shoes, and that Zhou's application was in bad faith. Despite the challenges, the Trademark Office of the State Administration for Industry and Commerce (SAIC) approved Zhou's registration of the revised trademark in 2011. Zhou complained that New Balance's continued use of Xinbailun in online marketplaces confused consumers and made it impossible for him to exploit his own trademark. Zhou sued for trademark infringement in July 2013, and in April 2015, the Guangzhou Intermediate People's Court ruled that there was infringement and issued a remedy of half of New Balance's profits in

China from the time of the registration to the filing of the law suit. While these remedies were later significantly reduced to RMB 5 million (US \$800,000) after New Balance appealed to the Guangzhou High Court, this ruling shows an overly formalistic application of trademark law. Because China is a "first to register" jurisdiction, the use of the trademark was not pertinent to the suit.

Another case, decided by the Supreme People's Court in December 2016, however, suggests that China may be developing a more sophisticated and nuanced understanding of IPR for sports. The pinyin transliteration of Michael Jordan's Chinese name is Qiaodan. A sports company unassociated with and unauthorized by Michael Jordan registered its company name as Qiaodan Sports Co., Ltd. It later registered the Qiaodan trademark in 2000 using the related Chinese characters and proceeded to sell sporting goods under that name. In 2012, Mr. Jordan initiated a trademark action against the company on the basis that the company was building a business through an inappropriate association with his name. The lower court decisions in Beijing were disappointments for Mr. Jordan, but to many people's surprise, the Supreme People's Court, during a live broadcast in December 2016, announced that Mr. Jordan owns the legal rights to the Chinese characters of his own name, but excluded protection of the pinyin version of his name on the basis that there was insufficient evidence to show Chinese consumers made the association between the pinyin name and Mr. Jordan's name. Given that Chinese courts are not based on the system of precedent that is intrinsic to common law, it is unclear to what extent the rule will seep down to lower courts, but a clear message from the top court has been sent. AmChina China applauds the Supreme People's Court's apparent willingness to account for the authentic contribution underlying this trademark matter and recognizes that a legal system that rewards genuine efforts at commercial innovation is both fair and economically sound.

Recommendations

For the Chinese Government:

- Identify and adopt international best practices in sports management, such as aggregate salary caps. [GAS]
- Identify and adopt reform policies in terms of league management and leadership for sports generally; for instance, expanding the decentralization of management in place with the CFA to other sports in order to encourage the development of sport policy that is in line with the interests of the sport being governed. [State Council, NDRC]
- Initiate a forum on international best practices in sports administration where sports officials from China and abroad can discuss the challenges of sound sports management. [GAS]

公司与周乐伦诉讼案，以及迈克尔·乔丹和乔丹体育有限公司诉讼案。

2013年7月，广州服装制造商周乐伦起诉New Balance 在中国的销售公司新百伦贸易（中国）有限公司涉嫌商标侵权。周乐伦的公司名为广州兴佳服装有限公司，最早于1994年申请百伦商标，并于2004年获得百伦注册商标。2003年，New Balance 开始在中国发展业务，并开始在广告中使用中国销售公司新百伦的名称。2004年，周乐伦申请将商标名称改为新百伦。报告显示，New Balance 的反对理由是，在周乐伦提交改名申请之前，New Balance 已经在中国市场上实际使用新百伦的名称。New Balance 坚持认为，之所以只将新百伦用于公司指称而非商标，是因为新百伦在此之前从未被用于运动鞋之上，而周乐伦具有恶意申请改名的嫌疑。尽管面临异议，国家工商行政管理总局商标局仍于2011年批准了周乐伦的商标变更。周乐伦诉称，New Balance 继续在其网店使用新百伦名称，导致消费者产生混淆，使他无法发展自己的商标。周乐伦于2013年7月起诉商标侵权行为，广州市中级人民法院于2015年4月裁定存在侵权事实，并判决New Balance 赔偿从被侵权商标登记日起到提起诉讼期间在中国实现的一半利润。New Balance 上诉至广州市高级人民法院，最终赔偿金额大幅减少至500万人民币（80万美元），但这一裁决仍可视作过度形式化实施商标法的案例。因为中国采取“先登记者先得”的政策，商标的在先使用情况在本案中未得到采信。

2016年12月最高人民法院判决的另一起案件则表明，中国对于体育知识产权的保护可能拥有了更成熟和更细腻的理解。迈克尔·乔丹（Michael Jordan）的中文音译拼音为Qiaodan（乔丹）。一家与迈克尔·乔丹无关，也未经迈克尔·乔丹授权的体育用品公司将公司名称注册为乔丹体育有限公司，又于2000年使用相应的汉字登记了“乔丹”商标，并使用此商标销售体育用品。2012年，乔丹先生针对该公司发起商标诉讼，诉称该公司通过与其姓名建立不正当的联系而发展业务。北京基层法院裁决乔丹先生败诉，但令许多人惊讶的是，最高人民法院在2016年12月的直播判决中宣布乔丹先生拥有其中文名字的合法权利，但由于没有足够证据表明中国消费者在乔丹的拼音名称和乔丹先生的名字之间建立联系，所以不对乔丹的拼音版本提供保护。中国法院并不采取判例制度，所以尚不清楚这一判决能够在多大程度上影响下级法院，但最高法院已经发出明确信号。最高人民法院通过这一商标案例明确

表示承认商标正宗性，并认识到能够有效保护真正商业创新实践的法律才是公平而具有经济意义的法律，商会对此表示赞赏。

建议

对中国政府：

- 确定并采用体育管理方面的国际最佳实践，如设定薪金总额限制。[体育总局]
- 在联盟管理和体育事务领导等领域制定并进行改革。例如，将中国足协的管理权力下放举措扩展到其他体育项目，以鼓励制定符合体育运动项目发展的体育政策。[国务院、发改委]
- 举办体育管理国际最佳实践论坛，召集国内外体育官员讨论如何完善体育管理。[体育总局]
- 继续警惕、严查体育赛事非法转播行为，包括网络与电视转播。[国家版权局、人民法院]
- 在商标和版权案例中避免僵硬执法，认可并支持真正的创意。[工商行政管理总局、人民法院]

对美国政府：

- 继续敦促中国政府加强体育资产知识产权保护。[美国商业部、美国专利及商标局]
- 协助举办论坛，讨论体育管理、体育训练和体育融资等方面的国际最佳实践。[美国商业部、美国国务院]

- Continue vigilance against unauthorized broadcasts of sporting programs whether they be online or on television. [National Copyright Administration, People's Courts]
- Recognize and reward genuine and authentic creative work in trademark and copyright cases rather than formalistic application of the law. [SAIC, People's Courts]

For the US Government:

- **Continue to urge the Chinese government to enhance the protection of IPR associated with sports-related assets.** [DOC, USPTO]
- Facilitate opportunities for forums on international best practices in sports governance, sports training, and sports financing. [DOC, US Department of State]



Part Four:
Regional Issues
区域性问题

Provincial and Local Investment Environment

Many of the challenging trends that foreign companies face on the national level in China are also reflected in different regional areas—unclear and inconsistent regulatory enforcement continue to rank high among concerns across different regions, and the slowing economy and rising labor costs continue to squeeze profit margins nationwide. However, there are also striking differences across different locations in China. According to AmCham China’s 2017 *Business Climate Survey*, perception of the investment environment in Liaoning province, which faces significant challenges in economic transition and recorded negative GDP growth in 2016, was far more negative than in the rapidly developing inland city of Wuhan.

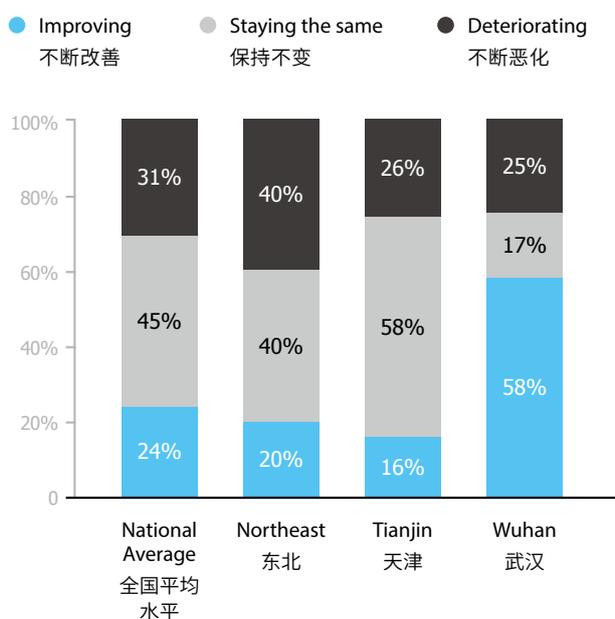
Member companies were also asked to identify regional investment priorities in the survey. As in the 2016 *Business*

Climate Survey, members identified eastern coastal regions as investment priorities for the next year, with a particular focus on Guangdong in the 2017 survey. Certain inland regions such as Chongqing and Sichuan also generated enthusiasm among member companies as high-priority investment targets.

The regional section of the 2017 *White Paper* focuses on the business and investment environment in the cities of Chengdu, Chongqing, Shanghai, Tianjin, and Wuhan, as well as the provinces of northeast China. AmCham China’s regional 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, all contributed chapters. Though each region has its unique challenges and opportunities, member companies report some similar challenges nationwide.

Member Company Perception of Investment Environment Quality

会员企业对于投资环境的看法



Local Regulatory and Enforcement Issues

While foreign companies face certain investment challenges nationwide such as market access restrictions, industrial policy concerns, unclear laws and regulations, lack of regulatory transparency, and inconsistent enforcement, there are also certain challenges that are regional in nature. Inconsistent local interpretations of laws still pose a challenge for foreign and domestic Chinese companies with nationwide operations, and lax or uneven enforcement of rules in second and third-tier cities often disadvantages foreign companies vis-à-vis some of their Chinese competitors.

Human Resources Challenges

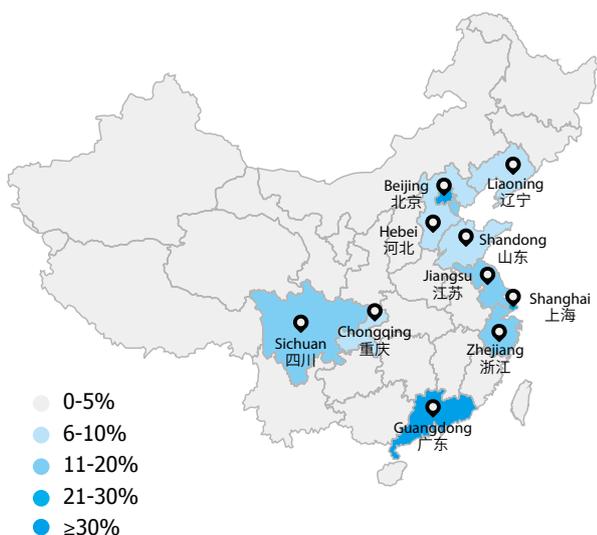
For the second year in a row, respondents to AmCham China’s annual *Business Climate Survey* ranked rising labor costs as their primary human resources challenge followed by the cost of social benefits. The sudden implementation of a requirement for companies to make increased contributions to a fund for disabled individuals has increased these cost pressures even further. Additionally, member companies have reported significant difficulties in hiring and retaining qualified talent in locations across China due to factors such as government licensing requirements for technical staff, a shortage of technically skilled graduates from

省市及地方投资环境

在 华外资企业在地方遇到的很多挑战与其在全国层面上遇到的挑战相同。监管执法模糊和不一致仍引发了各地会员企业的高度担忧，缓慢增长的经济环境和各地劳动力成本上涨继续挤压利润空间。但是，中国不同地区也存在着明显的差异。根据中国美国商会（商会）2017 年度《商务环境调查报告》，与快速发展的内陆城市武汉相比，辽宁省在 2016 年面临经济转型的重大挑战，国内生产总值出现负增长，会员企业对其投资环境给出负面的评价。

调查也询问了会员企业的优先投资区域。与 2016 年度一样，2017 年度《商务环境调查报告》显示，会员企业仍然选择东部沿海地区作为下一年度的优先投资区域，其中广东受到更多的关注。重庆和四川等一些内陆地区也成为会员企业的优先投资目标。

Top Provincial-Level Areas for Investment 投资首选省级地区



2017 年度《白皮书》“区域性”部分重点关注成都、重庆、上海、天津和武汉等城市以及中国东北的商务和投资环境。商会华中、东北和天津分会以及西南美国商会和上海美国商会等姐妹商会都撰写了相应的章节。虽然每个地区都有独特的挑战和机遇，但是各地会员企业也反映了一些共性问题。

地方监管和执法问题

各地外资企业都面临诸如市场准入限制、产业政策担忧、法律规模模糊、监管缺乏透明度以及执法不一致等挑战，同时也存在一些地域性的挑战。地方对法规解释不一致仍然是全国性内外资企业面临的挑战，二三线城市执法松弛或不均衡，也导致外资企业面对本土竞争对手处于劣势。

人力资源挑战

根据商会年度商务环境调查，受访企业连续第二年表示劳动力成本上涨是其面临的最大人力资源挑战，其次是社会福利成本。中国突然提高残疾人就业保障金的缴纳金额，使得企业的成本压力进一步增大。会员企业还反映，它们在中国各地都面临雇用和留住合格人才的困难。造成这些困难的原因有，政府对技术人员发放许可的要求，技术熟练的高校毕业生短缺以及外籍专业人士申请签证要求繁琐。

生活质量的担忧

因为担忧生活质量，在华企业均面临吸引国内外人才的挑战。近年来，中国很多城市的空气污染问题已经引起公众的高度关注。我们赞赏政府在全国各地建设地铁、桥梁、隧道和公路等基础设施的努力。但是，在很多城市交通拥堵严重依然是个问题。会员企业还提到的其它对外籍人才生活质量构成挑战的问题包括，教育基础设施有限以及互联网和媒体管制等。

尽管面临上述问题及中国总体经济放慢的挑战，会员

local universities, and overly onerous visa requirements for foreign professionals.

Quality of Life Concerns

Companies face significant challenges in attracting both domestic and foreign talent in China due to quality of life concerns. The pervasive problem of air pollution in many Chinese cities has garnered increasing public attention in recent years. While we commend government infrastructure construction efforts across China such as new subway lines, bridges, tunnels, and road construction, severe traffic congestion also remains a problem in many cities. Members also cited limited educational infrastructure and internet and media censorship as quality of life challenges that disproportionately deter foreign talent from relocating to certain regions.

Despite these challenges and even in the face of China's overall economic slowdown, members still identify many regional opportunities in China. In particular, members are optimistic about a number of government policies and initiatives designed to spur regional growth and to increase the ease of doing business in their respective provinces. For example, the Construct a National Central City and Rise of Central China strategic plans in Wuhan, the "13th Five-Year Plan for Revitalizing Northeast China," and the "One Belt, One Road" initiative in western China all create strategic regional opportunities for foreign and domestic companies alike. The government also announced that the original four pilot free trade zones (PFTZs) in Shanghai, Tianjin, Guangdong, and Fujian will be expanded to a total of 11 provincial-level jurisdictions to include Liaoning, Zhejiang, Henan, Hubei, Sichuan, Shaanxi, and Chongqing. While we believe it would be beneficial for the government to take even bolder measures to attract foreign investment in many of these initiatives, we applaud the efforts of national and local governments to address regional business challenges. AmCham China and its members hope to build upon the progress that has already been achieved in order to engage constructively with relevant regional stakeholders to improve the business environment and bring benefits to the Chinese economy and Chinese consumers.

企业仍然认为中国很多地区都蕴含着机会。尤其令会员企业感到乐观的是，中国政府为推动区域发展和提高各省营商便利推出了一系列政策和规划。例如，武汉的建设国家中心城市和中部崛起战略规划，《东北振兴“十三五”规划》以及西部地区的“一带一路”，为内外资企业创造了区域性战略机遇。中国政府还宣布将上海、天津、广东和福建四个自由贸易试验区（自贸区）扩大到11个省级地区，其中包括辽宁、浙江、河南、湖北、四川、陕西和重庆。我们认为政府可以采取更为积极的举措吸引外商投资，我们欢迎中央和地方政府为解决区域商务挑战做出的努力。商会及其会员企业希望在现有进展的基础上和相关各方开展建设性的合作，改善区域商务环境，造福中国经济和中国消费者。

Chengdu

This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).

Introduction

Chengdu has emerged as one of southwest China's international economic hubs. Home to more than 265 Fortune 500 companies, the city continues to perform well economically, ranking highest in the region for import/export volume and the number of annual passengers and cargo that pass through its international airport. With a GDP growth rate of 7.7 percent in 2016, well above the national average of 6.7 percent, Chengdu has become an increasingly attractive target for foreign investment.

Chengdu owes its successful development, in part, to its strategic location in Southwest China. An integral part of China's "One Belt, One Road" initiative to connect China with greater Eurasia, the city has benefited from continued government investment. From newly established industrial parks to rapidly developing infrastructure, the city's future development plans are ambitious and expected to bring continued growth to the region. With the completion of the Tianfu International Airport scheduled for 2020, Chengdu will join Beijing and Shanghai as one of three cities in China to have two international airports.

However, despite Chengdu's optimistic development outlook, the city continues to face significant challenges to its continued growth and development. Manufacturing facilities have been ordered to relocate in the interest of urbanization. Difficulties in acquiring qualified local and foreign talent seriously hinder Chengdu-based firms. In many cases, companies are unable to obtain necessary visas for foreign talent and have frequently been frustrated by the opacity of the visa approval process. Compliance is challenging because of a general lack of regulatory transparency where businesses are often unaware of new policies and it is unclear how laws and regulations apply to their operations. Business woes have been compounded by unequal enforcement and application of laws and regulations. Moreover, institutional favoritism and a demonstrated preference for Chinese companies on the part of the government creates an uneven playing field for foreign companies.

Ongoing Issues and Recent Developments

Access to Markets and Market Information

Unequal Treatment of Foreign Companies

As is the case elsewhere in China, foreign companies in Chengdu report that they are not treated equally with respect to investment incentives. For example, the municipal and district governments have been known to announce rent discounts or tax breaks for all companies, while in practice only accepting applications from local firms. Fair implementation of investment incentives will attract increased foreign investment to Chengdu, benefiting its economic development.

Similarly, foreign-invested enterprises (FIEs) are sometimes blocked from submitting bids for government projects on the basis of their foreign ownership. For example, one foreign company was denied the opportunity to bid for a government project, having been told candidly this was due to being foreign-invested and not because of pricing or qualifications. Foreign competition in government procurement will ensure that the Chengdu government receives the best quality products at the most competitive prices.

In the transportation industry, local airlines receive government subsidies, resulting in lower operating costs compared to their foreign competitors. Increased foreign competition in the transportation industry will lead to more internationally competitive Chinese companies, increasing their ability to go global.

Limited Market Information

Many industries lack the market information necessary to compete and do business effectively. For instance, real estate companies do not have access to sufficient market sector and government information, making it difficult to advise clients. Similarly, limited information about areas available for shale development makes it difficult for resource extraction companies to make informed decisions about how and where to drill wells. FIEs may even be unable to obtain business information from clients.

成都

本章由中国西南美国商会撰写。

引言

成都已经成为中国西南地区的国际经济中心之一。吸引了超过 265 家财富 500 强企业，成都经济表现一直良好，年进出口额、国际机场乘客和货物吞吐量都名列西南地区首位。2016 年，成都 GDP 增长率为 7.7%，高于全国的平均水平 6.7%，显示成都对外商投资的吸引力越来越高。

成都的成功发展部分归因于其在西南地区的战略位置。作为连接中国与广大欧亚地区“一带一路”倡议的一个重要节点，政府持续加大对成都的投资。从新建的产业园区到快速发展的基础设施，成都的未来发展有着宏伟的规划，预计将持续推动地区成长。天府国际机场计划 2020 年完工，届时成都将成为继北京和上海之后，中国第三个拥有两个国际机场的城市。

虽然发展前景乐观，但是成都的持续成长和发展仍然面临重大挑战。为了城市化，成都已经命令制造工厂搬迁。难以招聘到合格的本地和外籍人才严重制约了位于成都的企业的发展。很多时候，企业无法为外籍人才取得签证，经常因为签证审批程序的不透明倍感受挫。监管普遍缺乏透明度，企业经常不知道有新的政策出台，也不清楚法律法规对其业务经营的影响，所以，合规形势很严峻。法律法规的执行和适用没有一视同仁，加重了企业的困难。另外，政府方面表现出偏爱和偏袒中国企业，使得外资企业面临不公平的竞争环境。

现存问题及最新进展

市场准入和市场信息

外资企业受到不公平待遇

跟中国其他地方一样，在成都的外资企业也反映在投资优惠方面受到不公平待遇。例如，市政府和区政府已经

宣布对所有企业实行房租优惠和税收减免措施，但在实际操作中只接受本地企业的优惠申请。公平地执行投资优惠政策有助于成都吸引更多的外商投资，有利于其经济发展。

同样，外资企业有时仅仅因为是外资就被禁止参加政府项目的投标。例如，一家外资企业参加政府项目投标被拒，并且被明确告知不是因为价格或资质，只因为是外资企业。外资参与政府采购竞争能够确保成都市政府以最有竞争力的价格获得质量最佳的产品。

在运输领域，本地航空公司因为能够获得政府补贴，所以经营成本低于外资竞争对手。加大运输行业的外资竞争有助于提高中国企业的国际竞争力，增强它们走向国际的能力。

市场信息有限

很多行业内缺少保障开展有效竞争和经营的必备市场信息。例如，房地产企业无法获取充分的市场行业信息和政府信息，造成企业难以向客户提供建议。同样，页岩油气区块开发相关信息不足导致资源开采企业无法基于全面信息决定钻建页岩油气井的地点和方式。外资企业甚至无法从客户那里取得商业信息。

工厂搬迁政策

为了支持城市化发展，成都市政府已经强令许多工业设施搬迁或改造，为住宅和商业区让路。从前的许多制造设施目前四周都是新建的高层住宅和小区。过去的制造区和现存的工厂已经转为商用。地方政府计划将现有工厂搬迁到其他地方。例如，中国西南美国商会一家会员企业十几年前设立的工厂现在已经成为新都区的一处商业中心。但是，因为各种分区限制，工厂搬迁也存在困难。更深层的问题是，很多企业担心过些年会再次被要求搬迁。如果政府继续搬迁工厂，也许会迫使企业干脆离开这一地区或这个国家。我们敦促成都市政府及各区政府采取透明和稳定的城市化政策，方便企业在决定是否投资制造企业时做出明智的投资决定。

Factory Relocation Policies

In support of urbanization, the Chengdu government has forced many industrial facilities to relocate or be converted, making way for residential and commercial zones. Recently constructed residential high-rises and compounds now surround many pre-existing manufacturing facilities. Past manufacturing zones have now been converted to commercial use alongside surviving factories. Local government expects surviving factories to relocate elsewhere. For example, the location of a factory that was founded more than ten years ago and owned by an AmCham Southwest member company has become a business center in the Xindu district. It is difficult, however, to relocate factories because of various zoning constraints. The deeper issue is that many fear that they will face relocation requests again in years to come. If the government continues to displace factories, this may incentivize companies to leave the region or country altogether. We urge the Chengdu municipal and district governments to provide transparency and stability in urbanization policies so that companies are able to make informed investment decisions when deciding whether to invest in manufacturing facilities.

Slow Acceptance of Technological Innovation

FIEs in a variety of industries in Chengdu find that local companies are often slow to adopt new and innovative products and services.

Construction

Misunderstandings regarding the purpose of prefabrication and modularization in the construction industry are an ongoing problem in Chengdu. Another serious issue is a resistance to the use of more steel and less concrete in both residential and commercial construction. With recent overproduction and large inventories of raw steel, there is an opportunity for suppliers to utilize this ready supply of steel output in more creative and less costly ways. This would supply the construction industry in Chengdu with components fabricated from parts and pieces currently manufactured by most light-gauge steel manufacturers. By adding fabrication capability to the pure production of pieces and parts, manufacturers can expand their markets and enable builders to construct their projects in newer and more innovative ways.

AmCham Southwest urges the Chengdu government to implement programs to encourage local manufacturers to work more closely with the foreign design community to be able to offer solutions more attractive to the conventional housing market and consumer. Establishing a separate fabrication capability to augment pure manufacturing with outside design ideas could result in new and less industrialized solutions. Since many of the large steel manufacturing facilities are government-owned, the commitment and resources are already in place and only need to be augmented by establishing fabrication capabilities and teaming up with

the architectural community to produce well planned and designed housing developments for a middle class market that is in need of more affordable housing.

Green Technologies

Building developers and government in southwest China lack a general understanding of the impact of indoor air quality on personal health, so they do not install indoor air filtration systems and other green technologies. Because international and domestic environmental protection policies and media focus on outdoor air quality, indoor air quality issues and solutions are often overlooked. This not only hampers the green technology industry, it also puts Chengdu at risk of losing foreign talent due to diminished quality of life. AmCham Southwest urges the Chengdu government to broadcast public service announcements to inform the public of the dangers of indoor air quality and offer incentives to developers to encourage the incorporation of air filtration systems in new buildings.

Human Resource Challenges

Shortages of Local and Foreign Talent

AmCham Southwest members face shortages of qualified technical staff due in part to overly burdensome licensing requirements. For example, in 2010, the Chengdu Real Estate Governance Bureau instituted the “Chengdu Real Estate Sales Personnel Qualification Exam,” subjecting potential real estate consultants to unnecessarily restrictive licensing requirements. The policy requires real estate consultants to obtain the same broker licenses as real estate agents, even though they do not sell property, preventing otherwise qualified real estate consultants from entering the industry. AmCham Southwest recommends that the Chengdu government reevaluate the necessity of this professional qualification license to determine whether it is in line with the State Council’s efforts to streamline administration and optimize services. The State Council has already eliminated a total of 433 licenses since 2014, accounting for more than 70 percent of professional qualification licenses previously in effect in China.

While it is not news that companies in Chengdu face difficulty attracting qualified local and foreign talent to fill senior-level management positions, they are also having trouble finding affordable quality talent for other positions. The luxury hospitality industry, while relatively new in the southwest region, requires entry and mid-level foreign talent that has had exposure to or been trained in the industry. Learning from young foreign talent will enable Chinese coworkers to understand the level of luxury service required to meet international standards.

Additionally, the local education system does not effectively train students for work in many Chengdu-based FIEs. For example, local architectural and engineering schools still

技术创新接受缓慢

在成都，许多行业的外资企业都发现当地企业在应用新型及创新产品和服务上通常较为缓慢。

建筑业

成都一直对建筑行业的模块化和预制装配式建造存在误解。还有一个严重的问题，住宅和商业建筑不愿意增加钢材以及减少混凝土的使用。鉴于近来原钢生产过剩产生大量库存，供应商可以通过创造性和更经济的方式利用这一现成的钢材来源。成都的建筑行业可以获得使用大部分轻型钢制造商目前生产的零部件所制造的部件。由于不再局限于零部件的生产，钢铁企业可以扩大市场，建筑商可以采取更新颖和创新的方式建造项目。

中国西南美国商会敦促成都市政府采取措施，鼓励当地企业和外资设计企业密切合作，向传统住房市场和消费者提供更有吸引力的解决方案。开辟新的制造能力并且通过外部设计理念提高生产，将会带来新的更多样化的解决方案。由于很多大型钢铁企业都是国有性质，政府承诺和资源都具备，要想扩大生产，只需建立制造设施，与建筑业合作确定规划和设计合理的住房开发项目，以满足中产阶层对价格实惠的住房不断增长的需求。

绿色技术

西南地区的建筑开发商和政府普遍缺乏有关室内空气质量对人体健康影响的了解，因此没有安装室内空气净化系统或采用其他绿色技术。由于国内外环保政策及媒体的关注焦点都是室外空气质量，室内空气质量问题及其解决方案往往被忽视。这不仅阻碍了绿色技术产业的发展，也增加了成都因生活质量日益转差而导致外国人才流失的风险。中国西南美国商会敦促成都市政府通过公共服务公告的方式向公众宣传室内空气质量的危险，并采取措施鼓励开发商在新建房屋中安装空气过滤系统。

人力资源挑战

本地和外籍人才短缺

中国西南美国商会会员企业面临合格技术员工短缺的问题，造成该问题的原因之一是过于繁琐的职业资格审核要求。例如，2010年成都市房地产管理局推出的“成都房地产销售服务人员资格考试”，给未来的房地产咨询从业人员增加了不必要的限制性职业资格条件。该项政策要求

房地产咨询师即便未来不从事房地产销售，也必须取得与房地产经纪人同样的经纪资格，这阻碍了原本合格的房地产咨询师进入该行业。中国西南美国商会建议成都市政府重新评估这一职业资格要求，以确定是否符合国务院关于简政和优化服务的要求。2014年以来，国务院已经取消433项行政许可，占之前实施的职业资格许可的70%以上。

难以吸引合格的本地和外籍人才担任高级管理职务，这对成都的企业不是什么新情况，它们也无能为力为其他职位招募到合格人才。在西南地区兴起不久的豪华酒店业就需要接触过或者受过行业培训的初级和中级外籍人才。中国员工可以向年轻的外籍同事学习和了解符合国际标准的奢华服务水平。

另外，成都当地教育体系培养出的学生并不能有效地契合成都外资企业的工作要求。例如，当地建筑和工程学校缺少有关钢架结构建筑施工的创新性行业技术课程。有的会员企业打算在当地引入创新性建筑施工方法，却发现很难找到合格的建筑师和施工人员。这同时也造成当地模块化与预制装配式房屋建造标准低下等问题。

同样，由于当地技工学校并不提供油田技工培训课程，业内员工通常都是在国有石油公司工作现场获取工作经验。但在某一个公司内部获得的经验或证书很难用于其他油气企业，外资油气企业必须对每个从国企跳槽过来的技术人员都重新进行培训。

外籍人员工作许可申请规定修改

2016年11月，成都开始试点改革外籍人员工作许可申请程序。根据官方媒体报道，“工作许可采取计点积分制，将来华工作的外国人分为外国高端人才、外国专业人才和外国普通人员三类。”这一政策将于2017年4月在全国范围内实施，我们希望其能帮助成都的企业招聘到急需的合格外籍人才，避免通过各类人才的额度限制阻止原本合格的外国人来成都工作。有关工作签证改革的更多详情，请见“签证政策”章节。

困扰所有行业的生活质量问题

和中国其他地区一样，成都也面临因生活质量恶化而导致对合格外国人才吸引力下降的问题。成都市政府已经采取积极措施试图改善这种状况，例如，2016年启动“家在成都”工程，以帮助生活在成都的外籍人士缓解所面临的各种挑战，但是，成都仍然面临很多挑战。

lack courses in the innovative industrial skills required to build steel-frame housing. Member companies in a position to introduce innovative construction methods have had difficulty finding qualified architects and construction crews. This in turn contributes to lower standards for local modular and prefabricated housing construction.

Similarly, as local technical schools do not offer training programs for oil field technicians, employees typically obtain training onsite by working for state-owned oil companies. As it is difficult for these company-specific credentials to transfer over to new employers, oil and gas industry FIEs must re-train any technicians hired from state-owned enterprises.

Revised Work Permit Application Process for Foreigners

In November 2016, the local government implemented a pilot program reforming the application process for Chinese work permits for foreigners in Chengdu. According to state media, “The permit is based on a score-based talent evaluation system that classifies foreign workers into top talent, professional talent, and unskilled workers.” We hope that this program, to be implemented nationwide in April 2017, will help companies in Chengdu hire much-needed qualified foreign talent. We also hope that quotas for different categories of talent will not be used to prevent otherwise qualified foreigners from working in Chengdu. For more information on these work visa reforms, see the Visa Policy chapter.

Quality of Life Concerns Across Industries

In Chengdu, as elsewhere in China, quality of life concerns make it difficult to attract qualified foreign talent. While the Chengdu municipal government has taken positive steps in an attempt to improve this situation, for example launching the “Home in Chengdu” project in 2016 that offers services to help ease the challenges expats face living in the city, many challenges still remain.

Traffic congestion remains a serious problem in Chengdu. We applaud the municipal government’s rapid development of infrastructure and limits on gas powered motorcycles within the city center in an attempt to address this issue. The addition of a raised freeway over the second ring road as well as various bridges and tunnels throughout the city have helped ease congestion, and the rapidly expanding Chengdu Metro currently connects all of the city’s railway stations. With the recent addition of the fourth metro line, daily ridership peaked at 2.38 million in 2016 and an additional seven lines and multiple line extensions are planned to open within the next few years. We encourage the Chengdu government to continue these efforts as well as increase the enforcement of traffic regulations to alleviate disruptive traffic congestion.

Chengdu’s air pollution has spiked over the past few years and comments about dangerous pollution levels have become common in daily conversations. Air quality and

traffic issues go hand in hand and make attracting and retaining foreign talent difficult in Chengdu. The Chengdu Investment Promotion Bureau has stated that the local government will begin promoting environmental protection, air pollution prevention, and energy conservation as priority industries. However, we still await the release of a concrete plan to implement these goals.

Recommendations

For the Sichuan and Chengdu Governments:

- Do not discriminate against otherwise qualified FIEs when bidding on government projects.
- Encourage industries to adopt new and innovative products and services, such as prefabricated construction materials and indoor air filtration systems.
- Increase the transparency and stability of urbanization policies so that companies can make informed decisions to invest in manufacturing facilities.
- Increase transparency and reduce administrative burdens in the visa application process. Ensure that otherwise qualified individuals are not prevented from working in Chengdu because of work permit quotas for different categories of foreign talent and the requirements of the score-based talent evaluation system.
- 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.
- Take further measures to combat dangerous pollution levels, and ease traffic congestion in order to attract and retain foreign talent as well as to safeguard the health of all residents.

成都一直面临严重的交通拥堵问题。我们欢迎市政府加快发展基础设施并在中心城区限制汽油摩托车，以解决这一问题。通过在二环路增建高架桥以及在全市范围内兴建各种桥梁和地下通道，交通拥堵得以缓解，而且，成都的地铁网络正在快速扩张，目前已经连通成都的各个火车站。随着第四条地铁线路的加入，2016年每天乘坐公共交通出行的人数高达238万。未来几年计划还要开通七条线路和几条延伸线路。我们鼓励成都市政府继续努力，加强交通执法，缓解混乱的交通拥堵。

过去几年成都空气污染状况急剧恶化，人们每天都在谈论空气污染水平。空气质量和交通拥堵问题相互作用，使得成都很难吸引和留住外籍人才。成都投资促进局表示当地政府将重点促进环境保护、空气污染防治和节能减排等相关行业的发展。然而，我们还在等待成都市政府就此出台切实可行的实施办法。

建议

对四川省政府和成都市政府：

- 政府项目招标避免歧视合格的外资企业。
- 鼓励各个行业采用新型和创新产品和服务，预制装配式建筑材料和室内空气过滤系统。
- 提高城市化政策的透明度和稳定性，方便企业在决定是否投资制造企业时做出明智的投资决定。
- 提高透明度并且降低签证申请过程的行政负担。确保各类外籍人才的额度限制以及计点积分制的要求不会妨碍合格人才来成都工作。
- 扩大退税范围，以吸引新的行业，提高本地区的竞争。
- 承认国际资产服务许可，使得国际不动产企业在华经营无需重复申请许可。
- 进一步采取措施应对危险的污染水平，缓解交通拥堵，以吸引和留住外籍人才，保障全体居民的健康。

Chongqing

This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).

Introduction

Chongqing is one of only four municipalities directly under the central government. Its location has positioned it to benefit from the government's pivot to western China. Along with major initiatives such as the Yangtze River Economic Zone, the China-Singapore (Chongqing) Demonstration Initiative on Strategic Connectivity, and the city's strategic position as part of the "One Belt, One Road" initiative, AmCham Southwest member companies are confident that Chongqing will continue to perform well economically. Chongqing's GDP grew by 10.7 percent last year—the fastest growth rate of any provincial-level administrative region in 2016.

However, confusion regarding local policies and discrepancies between what is written and what is practiced remains problematic. From policies dictating export duties to those pertaining to visa regulations, companies across the board report a lack of consistency and predictability when it comes to the publication and interpretation of a wide range of policies.

National reform plans to improve transparency and strengthen the rule of law are welcome and, if implemented, should bode well for business all across China. Such plans, along with other items discussed below, would provide needed clarity and predictability to both domestic and foreign businesses interested in Chongqing. We urge government officials to be bold in these efforts.

Ongoing Regulatory Issues

Attracting, Insuring, and Retaining Staff

Relatively low labor costs and living expenses have helped Chongqing-based companies maintain a competitive cost advantage. While foreign-invested enterprises (FIEs) are generally able to hire reliable domestic talent from Chongqing and Sichuan universities, a lack of foreign language skills remains a challenge.

Although Chongqing's international community is small compared to other cities in China, the increase in the number

of foreign consulates and the city's improving infrastructure have encouraged a more international perspective and support the foreign companies located here.

Social Insurance Tax

AmCham Southwest members urge the Chongqing government to re-evaluate the planned social insurance tax, considering that many FIEs already provide private insurance to their foreign 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.

Additionally, in practice, many privately-owned local companies under-report their actual payments to employees in order to evade the minimum social insurance base of RMB 1,500 (US \$226). Many private domestic companies also do not pay into the housing fund for employees as required by law. Because the Chongqing government has not rigorously enforced the applicable regulations, compliant foreign companies find themselves at a competitive cost disadvantage.

Attracting Talent

Given Chongqing's economic growth, there is huge demand for talent across a variety of industries, but companies have difficulty attracting qualified foreign employees due to the nature of education and living conditions. For example, while the financial leasing industry has grown exponentially, it has become a serious challenge for companies to recruit management professionals and experienced sales team members.

An important consideration in attracting foreign talent to Chongqing is the ability to provide quality educational opportunities for dependent children. 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.

An additional obstacle to the internationalization of Chongqing is the Chongqing Exit-Entry Administration

重庆

本章由中国西南美国商会撰写。

引言

重庆是中国四大直辖市之一，凭借其优越的地理位置，一直是中国政府西部开发战略的受益者。随着重庆成为长江经济带、中新（重庆）战略性互联互通示范项目、“一带一路”等重要倡议的战略节点，中国西南美国商会的会员企业相信重庆将继续保持良好的经济发展势头。去年，重庆 GDP 增长率达到 10.7%，位列全部省级行政区中增速第一。

但是，地方政策还存在混乱以及书面规定和具体执行不一致的问题。企业普遍反映，从出口关税政策到签证规定，众多政策的发布和解释都缺少一致性和可预测性。

我们欢迎旨在提高透明度和加强法治的全国性改革计划，这些改革如果得以实施，对全国各地的企业都将是一个重大利好。这些改革计划以及下文提到的其他事项，将会为对重庆感兴趣的内外资企业提供所需的明确性和可预测性。我们敦促政府官员在这方面应积极主动、有所作为。

现存监管问题

吸引、提供保险以及留住员工

重庆的劳动力成本和生活费用相对较低，使当地企业得以保持成本竞争优势。外商投资企业（外资企业）通常能够从重庆和四川的高校招到可靠的国内人才，但是，外语能力欠缺仍是一个挑战。

虽然重庆的国际社区与中国其他城市相比相对较小，但是，随着外国领事馆数量的增加以及城市基础设施的逐渐完善，重庆已经具有更加国际化的视角，能够更好地支持外资企业在当地投资。

社保税

鉴于很多外资企业已经向外籍员工提供私人保险，中国西南美国商会会员企业促请重庆市政府重新评估社保税计

划。例如，国际学校提供的福利通常远高于要求雇用外籍员工的企业强制缴纳的社保税。中国西南美国商会呼吁重庆市政府在这方面避免因为重复征收给企业造成经济负担。

另外，在实践中，当地有很多私营企业为了规避 1500 元（226 美元）的最低社会保险基数，选择少报对员工的实际支付。很多内资私营企业也没有按照法律规定为员工缴纳住房公积金。因为重庆市政府没有严格执行相关规定，导致遵守法律的外资企业在成本竞争中处于不利地位。

吸引人才

考虑到重庆的经济增长水平，各个行业对人才都有着巨大的需求，但是，因为教育性质和生活条件，企业难以吸引合格的外籍员工。例如，虽然融资租赁行业飞速发展，企业在招募专业管理人员和有经验的销售团队成员方面却面临严峻的挑战。

在吸引外籍人才方面，重庆需要考虑为外籍人才子女提供优质的教育机会。向外籍人士提供质量更高、获得认可的教育机会将有助于重庆实现跻身国际一流城市的愿望。

重庆出入境管理局对外籍专业人员实施“一年期签证/居留续签”政策，这是重庆实现国际化的另外一个障碍。我们敦促重庆修改这一政策，向获得认证的教育从业人员颁发期限更长的签证，类似于北京外资机构法人代表享有的两年期签证。这一小小改变能够帮助重庆追赶东部国际化程度更高的城市，减轻人力资源专业人员的负担，提高外籍员工队伍的稳定性。

寻求教育资源

对于有意在重庆办学的国际学校来说，寻求和获取高质量的国际资源（例如，课本、学生储物柜、教学用化学品等）仍然是一项挑战。对进口这类物品施加限制和收取费用并不符合国际教育的要求，这使得重庆在这一方面与中国其他更加国际化的大城市相比处于竞争劣势。

Bureau's "one-year visa/residency renewal" policy for foreign professionals. We urge that this policy be revised to offer certified educators in Chongqing longer visa renewal periods, similar to the two-year period offered to legal representatives 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 burdens on human resource professionals, and increase the stability of foreign staff.

Sourcing Educational Resources

For international schools attempting to establish themselves in Chongqing, the sourcing and acquisition of high quality and international resources (e.g., textbooks, student lockers, science chemicals, etc.) remains a challenge. Regulations and fees for importing such resources do not meet the requirements of international education. This puts Chongqing at a competitive disadvantage compared to other large, more international cities in China.

Recent Developments

Unrealistic Demands for Hiring Disabled Employees

On September 9, 2015, the Ministry of Finance, State Administration of Taxation, and China Disabled Persons Federation jointly issued the "Measures on Levying, Use, and Management of Disabled Persons' Employment Security Fund" (the Measures) for nationwide implementation in January 2016. The Measures require that, when calculating the amount paid to the Disabled Persons' Employment Security Fund (disability fund), the average annual salary of a given company shall be used instead of the average annual salary of local employees as previously required. Because the average salaries of our member companies, many of which are knowledge-intensive and innovation-driven, tend to be considerably higher than the local average, the Measures place a disproportionate financial burden on our member companies.

Our member companies support efforts to employ disabled people, and hope to see an incremental implementation of the Measures that is in line with the actual qualifications of disabled candidates. This will encourage the development of measures to genuinely improve the employment situation of disabled persons instead of simply transferring the costs of social welfare to private enterprises. For more information on the disability fund, please see the Human Resources chapter.

Tight Visa Policies for Teachers

Recently implemented policies require foreign teachers to have a background check, at least a four-year bachelor's degree, and a teaching certificate in order to obtain a residence permit. While international schools appreciate

that these provisions are meant to help insure the quality of foreign teachers, it has become more difficult to obtain residence permits for teaching staff. The Chongqing Municipal Public Security Bureau is unclear about the rules, and the application process is inefficient and more time consuming than before.

While foreigners in other regions in China, such as Shanghai, can obtain or renew multi-year residence permits, foreign teachers in Chongqing are only able to obtain residence permits for one year at a time. For schools looking to employ foreign teachers for more than one year, this policy generates uncertainty since the employer cannot ensure that the permit will be renewed for the next year. It also adds to administrative burdens.

Furthermore, schools are prohibited from hiring native English-speaking teachers with passports from certain nations, such as the Philippines or South Africa. Nationality is not determinative of an individual's language ability, and such discriminatory requirements make it more difficult to hire foreign teachers. We urge allowing schools to hire foreign teachers who are native English speakers regardless of nationality, which would give schools the discretion to hire the best quality teachers.

We also urge the Chongqing Municipal Public Security Bureau to work closely with the affected schools to find a more balanced approach to the issues of teacher nationality and residence permit duration. As these schools are closely linked to the broader attractiveness of Chongqing to foreign companies, their success directly affects the city's competitiveness in China.

Recommendations

For the Chongqing Government:

- **Enforce the accurate reporting of the social insurance base but reduce the percentage of the employee's salary that a company is required to contribute to social insurance in order to be fair to all companies.**
- Re-evaluate the social insurance tax on FIEs to accommodate companies already providing comparable or superior benefits to their employees.
- Enforce the housing fund payment evenly for all companies or revoke this regulation so as not to disadvantage companies that make payments in accordance with law.
- Adopt a flexible or incremental approach in the implementation of the new disability fund contribution requirements.

最新进展

提出不合理的雇用残疾员工的要求

2015年9月9日，财政部、国家税务总局和中国残疾人联合会联合发布《残疾人就业保障基金征收使用管理办法》（以下简称“办法”）。办法自2016年1月起在全国范围内施行，要求计算残疾人就业保障基金（“保障金”）时，使用用人单位的年平均工资而非之前要求的本地员工的年平均工资。鉴于我们的会员企业有很多是知识密集型和创新型的企业，其年平均工资通常大大高于当地工资水平，该办法给他们造成了不均衡的经济负担。

我们的会员企业愿意支持残疾人就业，希望根据残疾人士的实际资质渐进执行该办法。这将鼓励采取能够真正改善残疾人就业形势的举措，而不是单纯地将社会福利成本转嫁给私营企业。有关保障金的更多详情，请见“人力资源”一章。

对教师收紧签证政策

最新的政策要求申请居留许可的外籍教师必须接受背景审查，且至少拥有四年制学士学位和教师资格证。国际学校明白这些举措是为了确保外籍教师的质量，但是教学人员获得居留许可的难度越来越大。重庆市公安局对相关政策法规不熟悉，致使申请过程效率低下，比以往更加耗时。

在中国其他地区，例如上海，外籍教师可以取得或续签多年期居留许可，而在重庆，外籍教师一次只能申请为期一年的居留许可。对于想雇用外籍教师超过一年的学校来说，这一政策不利于学校留住人才，因为用人单位不能保证下一年度能够继续续签居留许可。这一政策也加重了管理负担。

另外，学校还不能雇用持有菲律宾或南非等国家护照的英语为母语的教师。国籍不能决定一个人的语言能力，这种歧视性规定使学校更难招募外籍教师。我们呼吁允许学校不再考虑国籍，可以雇用母语为英语的外籍教师，从而酌情选用最优质的教师人员。

我们也敦促重庆市公安部门与相关学校密切合作，为教师国籍和居留许可期限等问题找到一个更加合理的解决办法。由于这些学校与重庆对外资企业的吸引力密切相关，它们的成功与否直接关系到重庆市在中国的竞争力。

建议

对重庆市政府：

- 要求准确报告社会保险基数，调低企业缴纳社会保险适用的员工工资比例，确保所有企业的公平待遇。
- 重新评估对外资企业征收的社保税，因为有些企业已经向员工提供可比的或者更优的社会福利。
- 对所有企业平等执行住房公积金规定或者取消这一规定，确保依法缴纳公积金的企业不会因此处于劣势。
- 采取灵活或渐进的方式实施残疾人就业保障基金缴纳新规。
- 计算残疾人就业保障基金缴付金额时，不再要求外资企业使用年平均工资，而是允许外资企业沿用旧标准，或者采取两种办法的折衷之道。允许按照之前的标准计算2015年10月之前的保障金缴付金额。
- 修改外籍教育人士的“一年期签证 / 居留续签”政策，向取得认证的教育人员提供多年期的签证。

- In the calculation of the amount payable to the disability fund for FIEs, instead of requiring a company to apply its average salary, allow companies to utilize the old standard of calculation or set a compromise between the two systems. Allow payments to the disability fund made prior to October 2015 to be calculated based on the earlier standard.
- Revise the “one-year visa/residence renewal” policy for foreign education professionals to offer certified educators in Chongqing multi-year visas.

Northeast China

Introduction

Liaoning province, home of AmCham China’s Northeast China Chapter, has struggled economically over the past year and before, largely due to a relatively difficult investment environment compared to other provinces. The province’s GDP declined by 2.5 percent in 2016. This was not only the lowest provincial growth rate in China, Liaoning was also the only province to report negative growth.

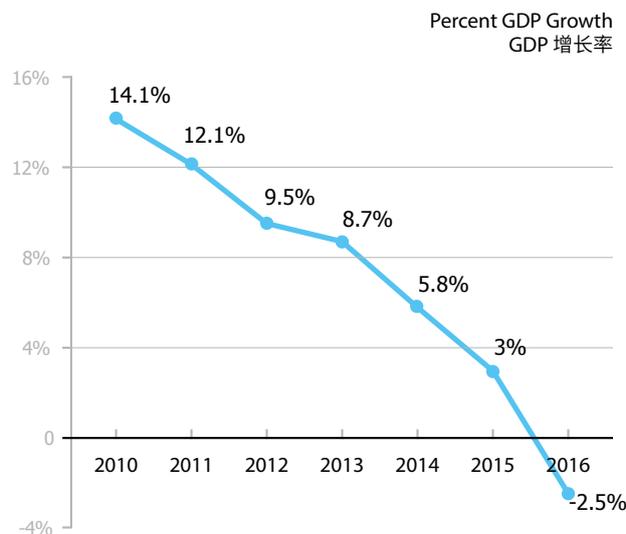
The added value of industrial goods and gross capital formation, which generated most of GDP growth in recent years, is now responsible for the province’s economic contraction. Economic activity in the province is suffering disproportionately due to the slowing demand for industrial goods and tightening credit. Such decline reflects excessive industrial capacity, sluggish investment in infrastructure, and an overheated real estate market, all of which impede

sustainable growth. The province is undergoing a rough economic transition period, which will result in a growth model increasingly driven by the services sector and consumer spending, rather than industrial growth and investment spending.

Beijing has once again called for strong support to aid the economic renewal, development, and upgrade of northeast China, but it remains to be seen how committed provincial authorities are to genuine reform given the changes this will impose on the historic economic base in Liaoning. Premier Li Keqiang, who was formerly Party Secretary in Liaoning, has himself taken a leading role in the Leading Group for Revitalizing Northeast China and Other Old Industrial Bases, driving the implementation of projects such as the establishment of the China (Liaoning) Pilot Free Trade Zone, improving overall government efficiency, and encouraging innovation. Despite these efforts, much more needs to be done to attract both domestic and foreign investors to the northeast.

This chapter summarizes the key results of the AmCham China Northeast Chapter members’ responses to the 2017 AmCham China *Business Climate Survey*. We hope that the *White Paper* and its recommendations will be received positively by the Liaoning government and will lead to further discussion, feedback, and action.

Liaoning Province GDP Growth Rate 2010-2016
辽宁省 GDP 增长率 2010—2016



Source: National Bureau of Statistics
来源：国家统计局

Advantages of Doing Business in Liaoning Province

Despite challenges facing the region, northeast China retains certain advantages for conducting business. The region’s abundant resources, industrial layout, and low-cost labor force provide huge growth potential for companies operating in the northeast. Even in the face of negative GDP growth, 62 percent of our members continue to be profitable.

AmCham China Northeast Chapter members cited several opportunities for doing business in Liaoning. With the continued growth of the emerging middle class, potential increases in the consumption of goods and services was viewed as the top opportunity by respondents. Increasing capabilities in China for innovation were highlighted as the second key area of opportunity, and the third prospect was identified as leveraging China for opportunities in other emerging markets.

中国东北

引言

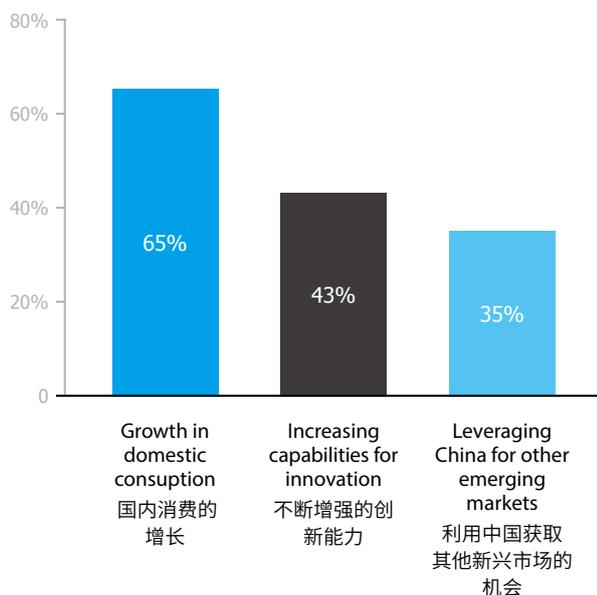
中 国美国商会中国东北地区办公室所在地辽宁省，前年和去年都面临着经济发展的困局，主要原因是辽宁省的投资环境相对不如其他省份。

2016年，该省的GDP下降了2.5%，这不仅在中国的所有省区中排名垫底，而且还是唯一负增长的省份。

工业产品和资本形成总值的增加值近年来主导了GDP的增长，但如今也成为辽宁省经济萎缩的罪魁祸首。由于对工业产品需求的放缓以及信贷从紧，该省的经济活动处于失衡状态。经济衰退反映在工业产能过剩、基础设施投资停滞和房地产市场过热，阻碍了经济的可持续增长。该省正在经历着艰难的经济转型期，转型成功会形成一个逐

Top Three Business Opportunities in Liaoning Province

辽宁省的三大经商机遇



步由服务行业和消费支出所驱动的增长模式，而不再依靠工业增长和投资支出。

中央再次提出要大力支持帮助中国东北经济实现振兴、发展和升级，但考虑到改革将会对辽宁历史上形成的经济基础造成冲击，省委省政府推进改革的决心仍将有待观察。国务院总理李克强此前曾任辽宁省委书记，如今他亲自担任振兴东北地区等老工业基地领导小组组长，推动了中国（辽宁）自由贸易试验区等项目，提高政府的整体效率，并鼓励创新。尽管做出了上述种种努力，东北地区还需要采取更多的措施，才能吸引国内外的投资者前来投资。

这一章节简要介绍了中国美国商会2017年度《营商环境调查报告》中关于东北办公室会员企业的主要调查结果。我们希望辽宁省政府能够认真看待本白皮书的内容和建议，并期待能引发进一步的讨论、反馈和行动。

辽宁省的经商优势

尽管中国东北面临着各种挑战，但该地区仍然在营商方面保持着一定优势。东北地区丰富的资源、工业布局和低成本的劳动力，为在该地区运营的企业提供了巨大的增长潜力。尽管GDP负增长，我们仍然有62%的会员保持盈利。

中国美国商会东北办公室会员企业提到了在辽宁经商的若干机遇。随着中产阶级的持续崛起，商品和服务消费的潜在增长被受访者视为最大的机遇。中国不断增强的创新能力在众多机遇中名列第二，第三大优势则在于可利用中国获取其他新兴市场的机会。

基础设施投资改善了东北地区交通系统的质量。2015年10月，大连市通往丹东的高速铁路开通运营，同时大连的地铁网络也不断扩张，连通该市的不同区域。近年来随着主要城市的发展，大量规划投资用于兴建大桥和隧道等综合网络，提升了城市内部的道路交通。这其中就包括了

Top Five Business Challenges in Liaoning Province

在辽宁省经商的五大商业挑战

2016	2017
Labor costs 劳动力成本	Labor costs 劳动力成本
Shortages of qualified employees 缺乏合格的员工	Inconsistent / Unclear laws and regulations 法律法规不一致 / 不清晰
Inconsistent / Unclear laws and regulations 法律法规不一致 / 不清晰	Inconsistent enforcement of laws & regulations 法律法规执行不一致
Bureaucracy 官僚主义	Chinese protectionism 中国保护主义
Industry overcapacity 行业产能过剩	Regulatory compliance risks 合规风险

Infrastructure investments have improved the quality of transportation systems in the northeast. The city of Dalian saw the opening of a high-speed rail line connecting it to Dandong in October 2015, as well as an extension of its subway system, linking different parts of the city. With the growth that major cities have seen in recent years, massive investment is already planned to increase access within cities through complex networks of bridges and tunnels. These include such schemes as the Sea-Crossing Traffic Project in Dalian, which will connect downtown Dalian with the Jinpu New Area, reducing commute time.

Challenges to Doing Business in Liaoning Province

Top Business Challenges

Alongside the positive aspects of doing business in Liaoning, our members also identified several challenges, with rising labor costs identified as the greatest concern. Rising salaries and wage increases were cited as a challenge by 68 percent of survey respondents. Inconsistent and unclear laws and regulations and enforcement of laws and regulations were identified as continuing challenges

by 50 percent and 42 percent of member respondents, respectively. Increasing Chinese protectionism and regulatory compliance risks round out the top five challenges to conducting business in Liaoning. In all, four of the top five challenges involve government policy. There is also a perception that returning overseas Chinese and local entrepreneurs have greater access to government support than their foreign counterparts. Official acknowledgement of falsification of fiscal data from 2010 to 2014 further highlights transparency issues faced by member companies in Liaoning.

It is important to create a business environment that provides a level playing field for all businesses, fosters open and transparent communications, and grants foreign companies the same market rights as their local Chinese competitors. Liaoning has historically lagged well behind other coastal provinces in implementing reform and, at the government level, is generally considered by investors to have a mindset that is highly bureaucratic and oriented towards traditional industry and SOEs rather than focused on developing future growth industries.

“Revitalizing the Northeast” has been a repeated campaign by central authorities but, broadly speaking, to date it has been largely unsuccessful due to the apparent lack of local resolve in creating effective development policies. Creating an attractive environment for foreign investment in Liaoning would benefit the province in its economic development and transition to a consumer spending and services industry-oriented economy. At this point in Liaoning’s declining economic cycle, the provincial government has little to lose and much to gain by rapidly reforming the economy and effecting actual change in the regulatory environment.

Quality of Life Issues

Along with China’s rapid economic development come certain human resources challenges. Air pollution was the most frequently cited challenge affecting quality of life and hindering recruitment and retention efforts as indicated by 68 percent of respondents. This level is five percent higher than reported one year ago. Although air pollution is a serious problem throughout China, municipal officials have promoted Dalian as a “green city” known for its beaches and clean air. In comparison to other population centers in the country, the Dalian region has seen a significant increase in air pollution. Some of our members have reported that the issue has become a decisive factor for many expatriates when determining whether to accept, extend, or leave a job assignment in Liaoning.

The second most frequently cited challenge impacting quality of life, recruitment, and retention efforts is a relatively higher cost of living (59 percent), followed by food and water safety concerns (45 percent) and internet/media censorship (36 percent).

连接大连市区和金普新区的大连跨海交通项目，项目建成后，将缩短两地的路面行车时间。

辽宁省的经商挑战

最大的商业挑战

除了在辽宁经商的优势之外，我们的会员还指出了他们面临的若干挑战，其中最关注的就是劳动力成本的不断增长。68% 的调查受访企业认为薪酬和工资的增加是他们在辽经商的挑战。法律法规不一致和不清晰以及法律法规执行的不一和不清晰分别被 50% 和 42% 的会员受访企业视为持续的挑战。日益增加的地方保护主义与合规风险进入了在辽宁经商的前五大风险之列。总之，前五大风险中有四项涉及政府政策问题，包括法律法规及执法、保护主义与合规。海归华人和当地企业家似乎比外资企业同行更有可能获得政府的支持。官方正式承认 2010 年至 2014 年的财政数据造假，进一步凸显了辽宁的会员企业所面临的政策环境缺乏透明度的问题。

当务之急是要创造一个能够为所有企业提供公平竞争机会的经营环境，营造开放透明的沟通氛围，使外国企业可以与当地竞争者拥有同样的市场权利。在推行改革方面，

辽宁此前已远远落后于沿海的兄弟省份，而在政府层面，投资者也普遍认为辽宁的思维模式非常官僚主义，倾向于传统产业和国有企业，没有大力发展未来的朝阳产业。

虽然中央政府已不止一次提出“振兴东北”，但迄今为止并未取得整体意义上的成功，原因在于当地尚未下决心制定有效的发展政策。若辽宁能营造一个吸引外国投资的环境，将有助于促进经济发展，加快向消费支出和服务产业导向的经济转型的步伐。在辽宁的经济周期跌入衰退的关键时刻，省政府如果可以加快经济改革并在法规治理上真正下功夫，必将在提振经济发展上获益颇丰。

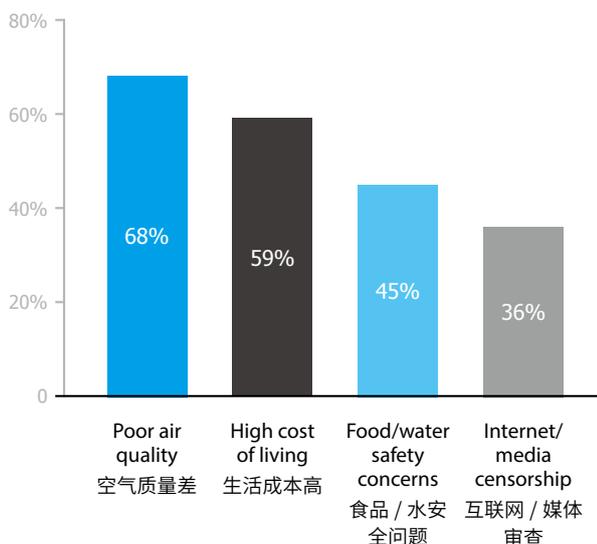
生活质量问题

伴随着中国经济的快速发展，人力资源的一些挑战也随之显现。68% 的受访者将空气污染列为挑战，认为其影响了生活质量、无助于招聘和留住人才。这一数字比去年报告高了 5 个百分点。尽管空气污染是一个全国性的严重问题，但大连市政府却一直在宣传该市为“绿色城市”，以优质海滩和清洁空气著称。然而与中国其它人口集聚的地方相比，大连地区的空气污染已经明显加重。根据我们一些会员企业的报告，许多外籍员工在决定是否接受外派到辽宁、延长留任或是否离开时，都会着重考虑空气质量问题。

第二个被提到的影响生活质量、招聘和留住人才的挑战是相对高的生活成本（59%），随后依次为食品和饮水安全问题（45%）以及互联网/媒体审查（36%）。

Top Four Challenges to Recruiting and Retaining Talent in Liaoning Province

辽宁省招聘和留住人才的四大挑战



建议

对辽宁省、大连市和沈阳市政府：

- 与中国美国商会东北办公室合作，建立与大连市长、沈阳市长、中国美国商会东北办公室执行委员会、在辽宁经商美国企业领袖的年度对话机制。这些对话应旨在加深与外国企业的接触和了解，探讨美国企业在该地区所面临的法律法规和经营方面的挑战，并通过合作为解决这些主要挑战找到切实可行的办法。
- 投资者乐于见到可预测和透明的投资环境，以及服务型政府。过往经验表明，除了个别方面外，

Recommendations

For the Liaoning, Dalian, and Shenyang Governments:

- Partner with the AmCham China Northeast Chapter in setting up annual dialogues with the Mayor of Dalian, the Mayor of Shenyang, the AmCham China Northeast Chapter Executive Committee, and American business leaders with operations in Liaoning. These dialogues should aim to promote further engagement with foreign businesses to discuss the regulatory and operational challenges American companies face in the region and, through a partnership, find practical solutions for addressing top challenges.
- Investors like predictable and transparent investment environments, as well as a supportive government structure. Liaoning is the opposite—with a few exceptions, it has been historically opaque and bureaucratic compared to other provinces, and therefore presents a less attractive investment destination. Standardizing the enforcement of rules and regulations throughout the province to expedite decision making, reduce bureaucratic delays, and increase consistency in the enforcement of rules and regulations would enhance the business environment.
- Improve foreign business access to government support including incubation and business infrastructure parks, free trade zones, and e-commerce platforms.
- Initiate trade facilitation reforms that simplify the procedures for importing goods through Dalian's ports, setting standards of operation, reducing customs clearance times, and general streamlining of customs procedures.
- Share the specific Liaoning province plan to reduce air pollution throughout the northeast region, in accordance with the 2013 "National Action Plan on Air Pollution Control."

For the US Government:

- Encourage the US Consulate's commercial and other staff to intensify their efforts to reach out to local Chinese government officials in more collaborative and creative ways to assist American businesses to find solutions to the challenges raised in this chapter.

辽宁不如其他省份透明，且官僚主义严重，因此在吸引投资上落后于其他地区。如果政府能够在全省境内统一执法标准，加快决策速度，减少官僚主义拖延，增强执法的一致性，将会大大改善营商环境。

- 加大政府对外资企业的支持，其中包括入驻孵化器、企业基础设施园区、自由贸易区和电子商务平台。
- 推动贸易便利化改革，简化大连口岸进口货物的程序，设立操作标准，减少通关时间，整体上提高通关效率。
- 根据 2013 年《大气污染防治行动计划》，将辽宁省防治空气污染的计划与东北地区共享。

对美国政府：

- 鼓励领事馆的商务和其他人员积极与当地政府进行更有合作性和创造性的沟通，帮助美国企业找到本报告所提到的各种挑战的解决方案。

Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai).

Introduction

Shanghai is one of the largest and most prosperous cities in the world's second-largest economy. The city's ambitions are not limited to the domestic economy. Shanghai remains at the forefront of China's economic reform agenda and continues to serve as a test bed for some of China's most progressive reforms. It is the home of the Shanghai Stock Exchange and was the first of China's pilot free trade zones (PFTZs). Still, further reform is needed for the city to reach its international ambitions.

Shanghai's 6.8 percent economic growth outpaced the national level (6.7 percent) in 2016, the first time that has happened since 2008. Although it matched last year's GDP growth rate, Shanghai abandoned the use of GDP targeting in 2015 because setting GDP goals caused significant distortions in investment decisions. Shanghai continued to see foreign investment growth in 2016, up slightly (0.3 percent) from 2015. Foreign investment in Shanghai represents 15 percent of China's foreign investment total. The high-tech sector saw the greatest increase with foreign investment reaching US \$1.26 billion (RMB 8.37 billion), a nearly 61 percent increase over 2015. Shanghai's economy focuses heavily on the services sector, which represents 68 percent of Shanghai's GDP.

Ongoing Regulatory Issues

China (Shanghai) Pilot Free Trade Zone

Launched in September 2013, the China (Shanghai) Pilot Free Trade Zone (Shanghai PFTZ) serves as a testing ground for economic reforms. Some successful reforms piloted in the Shanghai PFTZ have been adopted nationwide, most notably the negative list investment regime, but more than three years after its launch, most AmCham Shanghai members feel that the tangible benefits from the PFTZ have been limited.

The Shanghai PFTZ was the first area in China to use a negative list approach to manage foreign investment. Under the negative list approach, industries and fields on the list are off limits or restricted to foreign investment. Any industry that does not appear on the list is open to foreign investment. The number of items on the Shanghai PFTZ negative list has been reduced

from 190 at its launch in September 2013 to 122 following its latest revision in September 2016. The Shanghai government announced in January 2017 that a further reduction would occur later in the year. Many of the changes thus far, however, have been cosmetic. The number of items on the list have been reduced in part by consolidating items into groups. Genuine reductions have only occurred in some limited areas for foreign investment, with some minor openings in the agriculture, real estate, telecommunications, and pharmaceuticals sectors.

Despite these disappointments, the Shanghai government has said it will continue to push forward in announcing and enacting more Shanghai PFTZ reforms. In November 2016, Chinese Premier Li Keqiang made his third visit in as many years to the Shanghai PFTZ. He noted that since 2013, the zone has launched more than 100 pilot administrative reforms and that the Shanghai PFTZ will be the first to pilot an online "four-in-one" regulation platform. This platform is intended to unify supervision by the Shanghai bureaus of the China Food and Drug Administration, the General Administration of Quality Supervision, Inspection, and Quarantine, the State Administration for Industry and Commerce, and the National Development and Reform Commission in one place under the Shanghai PFTZ Market Supervisory Authority.

According to the Shanghai government, more than 7,300 foreign companies and enterprises have set up operations in the Shanghai PFTZ since 2013 and the zone has reduced logistical costs by an average of 10 percent. Most notably, according to official government statistics, the Shanghai PFTZ contributes one-quarter of Shanghai's GDP but makes up only two percent of Shanghai's land area. This achievement has influenced China to announce that an additional seven PFTZs will be opened in Zhejiang, Hubei, Henan, Sichuan, Shaanxi, and Liaoning provinces as well as in Chongqing municipality for a total of 11 PFTZs nationwide. See the Investment Policy chapter for more information on PFTZs and negative list reforms.

Market Access

There are still market access challenges for Shanghai-based American companies in some sectors, much as it is nationwide. American healthcare providers, pharmaceutical companies, and medical device companies continue to be

上海

本章由上海美国商会撰写。

引言

上海是全球第二大经济体中最大、最繁华的城市，其雄心壮志并不局限于国内经济发展。它是中国经济改革进程的前沿阵地、中国某些最激进改革的试验基地、上海证券交易所的所在地，还拥有中国首个自由贸易试验区（自贸区）。然而，上海需要开展进一步的改革才能实现其国际愿景。

2016年，上海的经济增长率为6.8%，超过了全国水平（6.7%），这是2008年以来的首次超越。虽然去年的GDP增长率达标，但上海自2015年起就摒弃了GDP增长目标，因为制定GDP目标会严重扭曲投资决策。2016年上海的外商投资仍然保持增长，比2015年微增0.3%。上海的外商投资占中国外商投资总额的15%。高新技术领域的外资增长最多，达到12.6亿美元（83.7亿元人民币），比2015年增长将近61%。上海经济高度集中于服务业，GDP占比达到68%。

现存监管问题

中国（上海）自由贸易试验区

中国（上海）自由贸易试验区（上海自贸区）创办于2013年9月，是中国经济改革的一块试验田。在上海自贸区试验成功的几项改革举措已经推广至全国范围，其中最关注的是负面清单投资体制。但在上海自贸区推出三年多之后，大部分上海美国商会的会员感觉自贸区给他们带来的切实利益非常有限。

上海自贸区是中国首个使用负面清单制度管理外商投资的区域。按照负面清单方法，外商投资不得或有限制进入清单上的行业和领域。不在清单上的任何行业，都向外资开放。上海自贸区负面清单的项目数量从2013年9月成立之初的190项减少到2016年最新修订版本的122项。上

海市政府于2017年1月宣布，今年晚些时候还将进一步削减清单项目。然而，迄今为止许多变化只是流于表面。清单项目数量减少，部分原因是某些项目合并成组了。真正的项目减少只存在于一些面向外资开放的有限领域，如农业、房地产、电信和制药业。

虽然结果不尽如人意，但上海市政府表示将继续推动落实更多自贸区改革。2016年11月，中国总理李克强第三次视察了上海自贸区。他指出，自从2013年以来自贸区已经推动了100多项行政改革试验，上海自贸区将会率先试验“四合一”网上综合执法平台。该平台计划将国家食品药品监督管理总局、国家质量监督检验检疫总局、国家工商行政管理总局、国家发展改革委员会在上海的监管职能合并到上海自贸区市场监管局下辖的一个部门。

根据上海市政府的资料，自从2013年以来已经有超过7300家外国公司和企业在上海自贸区开展运营，自贸区的物流成本平均降低了10%。最值得注意的是，根据政府官方统计，占地面积仅为上海区域面积2%的上海自贸区却贡献了上海GDP的四分之一。上述成就的影响使中国宣布将在浙江、湖北、河南、四川、陕西、辽宁和重庆再设立七个自由贸易试验区，全国自贸区的总数将达到11个。更多关于自由贸易试验区和负面清单改革的信息，请参看“投资政策”一章。

市场准入

对于在上海的美国公司而言，在某些领域仍然存在着市场准入方面的挑战，这与中国其它地区并无太大区别。美国的医疗服务提供机构、制药公司和医疗设备公司仍然备受偏向中国国内竞争者的政策和不公平的定价体系的不利影响。中国仍然在信息和通信技术行业加以限制，包括在2016年11月通过了新的网络安全法，该法包含了针对数据本地化、隐私、网络安全和“安全可控的”技术出台的新政策，可能会对在华的外国公司带来严重的市场准入

disadvantaged by preferential policies for domestic competitors and unfair pricing schemes. China has continued to pursue restrictions in the information and communications technology sector, including the passage of a new cybersecurity law in November 2016 that includes new policies on data localization, privacy, cybersecurity, and “secure and controllable” technology that may pose significant market access and legal issues for foreign firms in China. China’s agriculture market also remains restricted or closed to the import of certain key US crops, including restrictions on the import of rice.

Recent Developments

Shanghai’s Business Climate

Like many cities in China, Shanghai’s economy has slowed in recent years. It abandoned its GDP target in 2015 in part because pressure to reach the GDP target was distorting the government’s investment decisions. Without the target, Shanghai is able to focus on better quality growth according to Shanghai officials. Despite the slowdown in the local economy, many business opportunities for American companies in Shanghai remain.

Based on AmCham Shanghai’s *2016 China Business Report*, an annual survey which collected responses from more than 400 member companies, AmCham Shanghai’s members hold a mixed view of the business climate in China. According to the survey, AmCham Shanghai’s members have generally remained positive about long-term business prospects in China with 80 percent of respondents consistently holding an optimistic or very optimistic outlook for the next five years. However, revenue growth has continued to decline each year as the economy has slowed and costs of doing business have risen. This is particularly true in older parts of the economy such as manufacturing.

Shanghai as an International Financial Center

Since the market tumult of the summer of 2015, China has increasingly added restrictions and policies meant to either prevent significant volatility or, more troublingly, prevent capital from leaving China. These new regulations have not only made it increasingly difficult for foreign banks and financial services firms to operate and expand in China, but are also preventing the city from realizing its goal of becoming an international financial center by 2020. There are approximately 230 foreign-invested banks, insurance companies, and securities houses in Shanghai. Since 2011, however, Shanghai has tumbled in Z/Yen Group’s *Global Financial Centers Index*. After being ranked number five in 2011, Shanghai was ranked only 16th in 2016. Shanghai found itself ranked behind other major financial centers in Asia such as Singapore (3), Hong Kong (4), Tokyo (5), and Seoul (12). Foreign bank market share has similarly fallen, making up only 1.62 percent of China’s banking sector by assets in

2014. Foreign banks face a number of discriminatory regulations, such as in China’s cybersecurity and national security laws that may prevent them from using networking equipment compatible with their global operations.

American banks in Shanghai, and China more broadly, face additional, unwritten regulatory challenges in the form of “window guidance.” Window guidance refers to the informal imposition of policy changes through verbal instruction rather than through formal written notification. Window guidance might be used for a temporary deviation from standing rules or even by local regulators if they wish to adjust national regulations to local conditions. In China, window guidance can touch on a range of topics, ranging from interest rates to documentation requests and anything in between. Policies that enforce capital controls or implement “secure and controllable” objectives prevent Shanghai from becoming an international financial center on a par with London or New York.

The national and Shanghai governments, along with the People’s Bank of China (PBOC), have also made a number of pronouncements indicating that they would like to see further internationalization of the RMB. They were also able to gain approval to include the RMB in the International Monetary Fund’s (IMF) Special Drawing Rights (SDR), which took effect in October 2016. Inclusion in the SDR, a basket of global currencies used for lending from the IMF, was seen as a significant indication of China’s reform trajectory. AmCham Shanghai hopes this is a signal of forward momentum and that China does not return to strict capital controls.

In June 2016, the PBOC and the China Banking Regulatory Commission (CBRC) announced that the credit card market would be opened to foreign firms as long as they met a number of requirements. These include requiring that card companies hold RMB 1 billion (US \$151 million) of registered capital in a local company, that the card company be registered as a local entity or domestic bank, and that card companies comply with China’s national security and cybersecurity regulations. Foreign companies are also now able to acquire domestic card clearing companies if they pass a national security review. These new rules are the result of a 2012 World Trade Organization case that ruled China was unfairly discriminating against US credit card companies. China’s credit card payment market had more than RMB 55 trillion (US \$8.3 trillion) in transactions in 2015.

The Shanghai-Hong Kong Stock Connect, which launched in the last quarter of 2014, continued to operate in 2016, allowing international investors to buy A-shares on the Shanghai Stock Exchange via Hong Kong-based stock brokers and also allowing mainland Chinese to invest in Hong Kong stocks via mainland brokers. Both directions have a daily quota. Shanghai is aggressively looking to broaden schemes like the Shanghai-Hong Kong connect and is currently in

和法律问题。对于从美国进口包括稻米在内的主要农作物，中国的农业市场还仍然予以限制或完全不开放。

近期发展

上海商务环境

就像许多中国的其它城市，上海的经济发展近年来也有所放缓。它摒弃了 2015 年的 GDP 目标，部分原因是实现 GDP 目标的压力会扭曲政府的投资决策。据上海官员透露，没有目标的压力，上海就能够专注于更有质量的增长。尽管当地经济发展放缓，但在沪的美国公司仍然有许多商业机遇。

上海美国商会的《2016 中国商业报告》（一份收集了超过 400 家会员公司反馈的年度调查）显示，上海美国商会的会员对中国的商业环境看法不一。根据上述调查，上海美国商会的会员对中国长期的商业前景总体持正面态度，有 80% 的受访者始终对未来五年表示乐观或非常乐观的展望。然而，随着经济放缓，收入增长已经连续逐年下降，而经商成本则不断上升。这在诸如制造业等传统经济领域尤其明显。

上海作为国际金融中心

自从 2015 年夏天的股灾之后，中国加紧出台各种限制性和政策，意在防范市场的剧烈波动，或者后果更严重的资本逃离。这些新规不仅让外资银行和金融服务公司更难以在华经营和扩张，还阻碍了上海实现到 2020 年建成国际金融中心的目标。上海大约有 230 家外资银行、保险公司和证券公司。然而，自 2011 年起上海就从 Z/Yen Group 的“全球金融中心指数”跌落。上海从 2011 年排名第五，到 2016 年仅仅排名第十六。上海排名落后于亚洲其他主要金融中心，例如新加坡（3）、香港（4）、东京（5）和首尔（12）。外资银行的市场份额同样也在下降，2014 年按资产口径计算仅占中国银行业的 1.62%。外资银行面临着许多歧视性的监管，比如中国的网络安全和国家安全法律可能阻碍了外资银行使用与其全球运营兼容的网络设备。

在沪甚至在华的美国银行面临着各种补充的、不成文的、以“窗口指导”为形式的监管挑战。窗口指导指的是通过口头指示而不是正式的书面通知告知的非正式政策变动。窗口指导可用于对现行规则的临时阐释，甚至在当地监管部门希望将国家法规因地制宜灵活运用的前提下做出。

中国的窗口指导涵盖的范围很广，从利率到文件证明要求以及中间的各种环节。强制进行资本管制或落实“安全可控”目标的各项政策阻碍了上海成为与伦敦或纽约并肩的国际金融中心。

中央政府和上海市政府，连同中国人民银行（人行）已多次宣布，希望人民币实现进一步国际化。政府还成功获准，于 2016 年 10 月正式将人民币纳入国际货币基金组织（IMF）的特别提款权（SDR）篮子。人民币纳入 SDR 这一可用于从 IMF 借款的全球货币篮子中，被视为是中国改革进程的一大里程碑。上海美国商会希望中国政府在这方面继续前进，不会重新回到对资本严格管制的老路。

2016 年 6 月，人行协同中国银行业监督管理委员会（银监会）宣布，信用卡市场将向符合要求的外国公司开放。上述要求包括信用卡公司必须持有一家当地公司 10 亿元人民币（1.51 亿美元）的注册资本金，以及信用卡公司必须注册为当地实体或国内银行，同时信用卡公司必须遵守中国的国家安全和网络安全法律。外国公司如果通过国家安全审查，现在也可以收购国内银行卡清算公司。上述新规是世界贸易组织 2012 年一项案件裁决的结果，该裁决认定中国不公平地歧视美国信用卡公司。2015 年，中国的信用卡支付市场以交易额计算达到了人民币 55 万亿元（8.3 万亿美元）。

于 2014 年第四季度推出的沪港通在 2016 年继续运作，国际投资者得以通过香港的券商购买上海证交所的 A 股，中国大陆居民也能够通过大陆券商投资香港股票。双向交易都有一个每日额度。上海积极期待扩大像沪港通这样的机制，目前正与伦敦证券交易所商讨设立“沪伦通”架构的可能性。尽管仍然存在包括如何解决时差问题等诸多障碍，但双方的高谈正在向前推进中。

上海发展目标

上海 2040

2016 年 10 月，上海市政府发布了最新的发展规划。到 2040 年，该市希望建设成为一座全球城市，并且是国际经济、金融、贸易、航运、科技创新中心。正如中央政府“十三五”规划所提出的一样，上海也把创新、协调、绿色投资、开放和共享作为未来五年的发展支柱。上海市政府还制定了规划，在张江开发一个科技创新中心。在该区域内，计划高度专注于研究和开发（研发）以及从研发向商用产品的成功转化。

talks with the London Stock Exchange about the possibility of a Shanghai-London Stock Connect scheme. A number of hurdles remain, including solving issues around time zones, but talks are moving forward.

Shanghai Development Goals

Shanghai 2040

In October 2016, the Shanghai government released its latest development plan. By 2040, the city hopes to become a cosmopolitan city and a center of international economics, finance, trade, shipping, and scientific innovation. Like the national government's 13th Five-Year Plan, Shanghai has also made innovation, coordination, green investment, openness, and sharing its key pillars of development over the next five years. Shanghai's government has also laid out plans to develop an innovation center of science and technology in Zhangjiang, a part of the city. Within this area, they plan to have a heavy focus on research and development (R&D) and the successful transition of prototypes from R&D into commercial production.

Shanghai's government is also focused on the development of more green space and better urban development. This includes promoting public transportation (particularly green transportation), developing more ecological parks, and providing 15 square meters of green space per person.

Headquarters Economy

In July 2011, the Shanghai government issued new regulations to encourage multinational companies to set-up their regional headquarters in Shanghai. These incentives include tax reductions, capital refunds for office space rentals, simplified exit/entry procedures for company executives, and help facilitating local employees to obtain Shanghai residence permits (*hukou*, 户口). It also included some trade facilitation measures that were designed to improve customs clearance processes. The initial regulations expired at the end of 2016, and new regulations took effect on February 14, 2017. These new regulations expanded the scope and type of companies and organizations that can qualify for the headquarters economy program. In addition, the updated regulations offered new relaxations in funds management, entry/exit administration, and talent acquisition rules. By the end of 2016, 580 multinational companies had set up their regional headquarters in Shanghai, which marks an eight percent increase over 2015.

Visa Revisions

In October 2016, Shanghai kicked off a pilot reform on visas for foreign workers. The new program is intended to expedite and streamline the current visa process which is run by two separate departments. The new visa regulation uses a ranking system to assign letter grades (A, B and C) according to their evaluation of the qualifications and talent of the

foreign workers. These letter grades are intended to help better parse out those that are qualified from those unqualified to work in China. This pilot program will be expanded nationwide in April 2017.

Transportation Upgrades

Shanghai is the busiest container port in the world and has the third busiest airport in China by passenger traffic. At the Shanghai International City and Architecture Expo, the Shanghai Airport Authority announced that it would be expanding Shanghai's Pudong International Airport. The current plan is to add three new terminals and four new runways to Pudong International Airport by 2040 which will boost the airport's capacity to 160 million passengers each year. The plan also calls for all of the terminals to be connected by express trains and linked to the Shanghai East Railway Station currently under development. Shanghai has the longest subway system in the world by total route length. Metro Line 21, which will begin construction in 2017, will connect Pudong Airport, Shanghai Hongqiao International Airport and the Waigaoqiao area, and reduce the transit time between Pudong and Hongqiao airports to 45 minutes.

Food Safety Law Revision

On November 10, 2016, the Shanghai municipal government released a second draft of the "Shanghai Food Safety Regulations." The draft imposes stricter requirements on market entry and increases regulatory supervision. In particular, it has more stringent penalties for violations and also introduces a "blacklist" system to prevent those who have violated the rules from re-entering the market.

Recommendations

For the Shanghai Government:

- **Reduce the use of window guidance and discriminatory policies that prevent Shanghai from becoming an international financial center.**
- Continue to move forward with new and innovative reforms within the Shanghai PFTZ that reduce market access barriers and further financial sector liberalization. Extend successful reforms nationwide.
- Strengthen engagement with the foreign business community through government-led briefings on new policies and offer more opportunities for companies to provide input and feedback on local legislation and implementation guidelines.

上海市政府还着力于开发更多绿色空间，并进行更好的城市发展，其中包括推广公共交通（特别是绿色交通）、开发更多的生态公园，并提供人均 15 平方米的绿色空间。

总部经济

2011 年 7 月，上海市政府发布了鼓励跨国公司在上海设立区域总部的新条例。激励措施包括税收减免、办公室租金返还、简化公司管理人员的出入境程序，以及帮助当地员工获得上海户口。另外还包括一些旨在改善通关流程的贸易便利化措施。最初的条例在 2016 年底失效，新版条例则于 2017 年 2 月 14 日开始生效。新版条例扩大了符合总部经济计划的公司和组织的范围和类型。另外，上述升级版条例还增加放宽了基金管理、出入境管理和人才招聘等条款。截至 2016 年底，共有 580 家跨国公司在上海设立了区域总部，比 2015 年增加 8%。

签证政策修订

2016 年 10 月，上海推出了一项外国工作人员签证改革试验。这项新计划意在加快和简化当前由两个独立部门负责处理的签证程序。签证新规采用一套评级体系，根据对外国工作人员资质和能力的评估，以字母（A、B 和 C）划定等级。字母评级旨在帮助更好地区分符合与不符合在中国工作条件的人。这项试验计划将在 2017 年 4 月推广到全国。

交通升级

上海拥有世界上最繁忙的集装箱港口，还有中国第三繁忙的机场（按旅客流量）。在上海国际城市与建筑博览会上，上海机场集团宣布将扩建上海浦东国际机场。目前计划到 2040 年，浦东国际机场将新增三个航站楼、四条跑道，投入使用后将使机场的吞吐量达到每年 1.6 亿人次。该计划还要求所有航站楼之间通过高速列车连接，并接入目前正在开发当中的上海火车站。上海拥有地球上线路总长度最长的城市轨道交通系统。地铁 21 号线将于 2017 年动工，连接浦东和虹桥国际机场以及外高桥地区，将浦东和虹桥机场之间的交通时间减少至 45 分钟。

食品安全法律修订

2016 年 11 月 10 日，上海市政府发布了《上海食品安全条例》第二稿。该草案对市场准入给予更严格的限制，并加强了政府的监督。条例还对违反者施加了更严厉的惩罚，并引入“黑名单”体系，防止违反者再次进入市场。

建议

对上海市政府：

- 减少使用窗口指导和阻碍上海成为国际金融中心歧视性政策。
- 在上海自贸区继续推进新的、创新性的改革，减少市场准入壁垒，进一步放宽金融行业。将成功的改革推广到全国。
- 通过政府牵头的关于新政策的发布会，加强与外国工商业界的沟通，为企业提供更多的机会，就本地立法和实施指导意见给予意见反馈。

Tianjin

Introduction

One of four Chinese municipalities reporting directly to the central government, Tianjin has a population exceeding 15 million and is home to a major airport and seaport. It is located just over 100 kilometers from Beijing, and has become a center for aviation, lease financing, and advanced manufacturing, among other industries.

In terms of macroeconomic indicators, Tianjin continues to grow at a faster rate than the national average and the economy continues to diversify. In 2016, Tianjin boasted a nine percent annual GDP overall growth rate and a 10 percent growth rate in the retail sector. Tianjin's services sector continued to account for the largest share of Tianjin's GDP for the second year in a row. Tianjin also boasts one of the highest per-capita GDPs in China.

The central government and the Tianjin municipal government continue to tout several programs to help Tianjin continue to grow and further integrate with the region and the world. These include the Beijing-Tianjin-Hebei (*Jing-Jin-Ji*) integration plan, linking Tianjin to neighboring Beijing and Hebei province, and the China (Tianjin) Pilot Free Trade Zone (Tianjin PFTZ) and One Belt One Road (OBOR) initiatives, linking China to international markets.

Any data in this chapter, unless otherwise specified, is based on Tianjin Chapter members' responses to the 2017 AmCham China *Business Climate Survey*, which was conducted in late 2016.

Tianjin's Investment Climate and Bilateral Relations

Overall Climate

"The new normal" has led to slower growth rates for the macro-economy as well as the growth of our member companies, with 43 percent of Tianjin-based survey respondents predicting less than 6.25 percent GDP growth for China in coming years. Lower growth rates, along with other factors, have led to a stagnant investment environment for members. While 58 percent of members state that the investment environment remains the same in Tianjin, 26 percent state that its quality is deteriorating.

Although China remains a top investment destination, with 47 percent of respondents naming China among the top three foreign investment destinations for their company, foreign companies operating in Tianjin are less focused solely on China for their overseas or Asian investment and expansion plans, with 41 percent of respondents stating that China is now only one of many destinations that their firms are considering for investment.

Even with expected challenges ahead, 70 percent of Tianjin-based members are not considering moving operations out of China. However, 75 percent of members are planning a less than 10 percent increase in investment next year. An important means to attract more investment to Tianjin would be to create a more transparent and predictable investment environment that allows innovation and efficiency gains.

Jing-Jin-Ji and Pilot Free Trade Zone

Although still in its early stage, the *Jing-Jin-Ji* regional integration plan has begun to realize some efficiencies. The Tianjin airport facilitates increasing amounts of international travel, with passenger traffic increasing from a bit over 14 million in 2015 to nearly 17 million in 2016, and the Shijiazhuang airport is now a stop on the high-speed rail directly from Tianjin just one hour away. In Yujiapu, located in the Tianjin PFTZ, overseas companies are permitted to raise money for overseas investment, such as equity funds. Although in practice it is still quite difficult to obtain the required licenses, further openings in this direction could make significant progress in helping China to truly integrate into international markets.

We recommend that the Tianjin government provide more transparency regarding policies in the Tianjin PFTZ, as well as assistance in helping foreign investors find ways to use this platform. Providing a clear roadmap for future development plans in the *Jing-Jin-Ji* regional integration area would also increase the predictability of the investment environment and could open many new avenues for growth.

Tianjin's Business and Operating Climate

Going forward, 40 percent of respondents predict lower growth. Coupled with higher costs for labor and other inputs, this trend will continue to put pressure on companies

天津

引言

作 为中国四大直辖市之一，天津直接向中央政府报告，其人口超过 1500 万，拥有大型机场和海港，距离北京只有 100 多公里，是航空、租赁融资、先进制造业等行业的中心。

按宏观经济指标衡量，天津经济增长速度继续高于全国平均水平，经济持续多样化发展。2016 年，天津年均 GDP 增长率为 9%，零售行业的增长达到 10%。两年来，对天津 GDP 的最大贡献来自服务业。此外，天津人均 GDP 水平也在全国名列前茅。

中央政府和天津市政府继续通过各项措施帮助天津保持增长和进一步提升区域和国际一体化，其中包括连接天津与临近的北京和河北省的京津冀协同发展计划，以及连

接中国和国际市场的中国（天津）自由贸易试验区和“一带一路”倡议，等等。

2016 年年末，中国美国商会开展了 2017 年度商务环境调查。除非另有说明，本章中的数据均来自对天津会员企业的调查结果。

天津的投资环境和双边关系

总体环境

在“新常态”下，不仅宏观经济增速放缓，我们的会员企业增长也开始放慢。在接受调查的天津会员企业中，有 43% 预测中国未来几年 GDP 增长将低于 6.25%。增长放慢以及其他因素，使得会员企业面临不景气的投资环境。虽然 58% 的会员企业表示天津的投资环境保持不变，但是还有 26% 的企业表示投资环境质量在不断恶化。

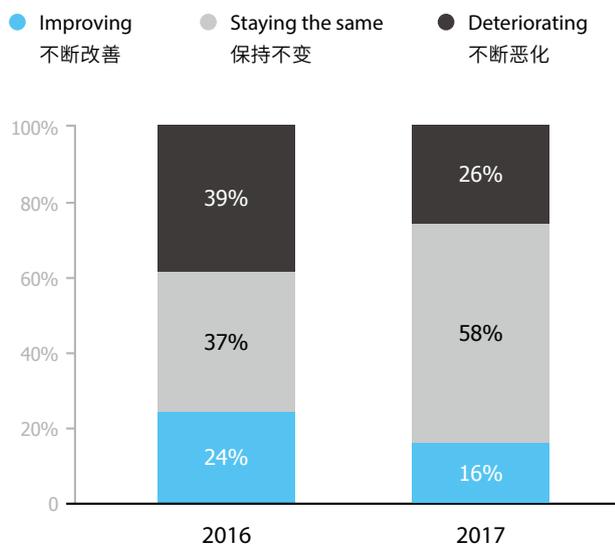
尽管中国仍然是主要投资目的地，有 47% 的受访企业将中国视为其全球三大投资目的地之一。但是，天津外资企业的海外或亚洲投资扩大计划相对来说并没有全部集中在中国，有 41% 的受访企业表示中国只是可供考虑的众多投资目的地之一。

即便预计到前路充满挑战，70% 的天津会员企业并未考虑向中国境外转移。但是，有 75% 的会员企业下一年度的在华增资计划将不到 10%。天津要想吸引更多投资，其中一个重要的方式就是创造一个更加透明、可预测、并能够促进创新和提升效率的投资环境。

京津冀和自由贸易试验区

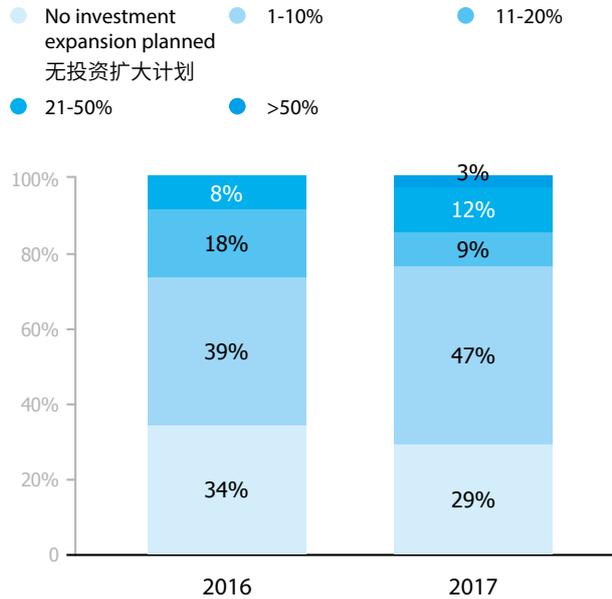
尽管尚在初期，京津冀区域一体化战略已经取得一些成效。例如，天津机场将有助于分流不断增长的国际旅客，其旅客吞吐量从 2015 年的 140 万增长至 2016 年的将近 170 万，石家庄机场目前也可换乘高铁，只需一个小时就可直达天津。在位于天津自贸区的于家堡，境外公司获准通过股票基金等形式为海外投资筹集资金。尽管实践中仍

Quality of China's Investment Environment 中国的投资环境质量



Estimated Investment Increase for China Operations

计划在华增加投资情况



to innovate and become more efficient. While the domestic market continues to grow, business and industry in Tianjin will need to innovate to achieve improved efficiencies to remain competitive in this difficult operating environment.

Business Performance

Along with slower economic growth, our members had a challenging year as companies adjusted to higher costs. Revenue growth is slowing in aggregate across all industries. Although 51 percent of respondents reported revenue growth in 2016, nearly the same number, 48 percent, had flat or declining revenue growth. Likewise, 50 percent of respondents reported increasing profit, while 50 percent reported comparable or declining profits compared with the previous year. To effectively address these challenges, the municipal government needs to deepen its support for enterprises to ensure continuing growth in Tianjin.

Growth Prospects

According to 57 percent of members, growth in the domestic market is still the top business opportunity in China. With continued urbanization and the rise of e-commerce, the domestic market remains the most promising area for further development for member companies.

The top three business goals for 2017 reported by respondents were growing their core business (73 percent),

reducing costs (59 percent), and targeting new revenue (57 percent). This is a clear reflection of the challenge of slowing growth and the effects of rising costs. Member firms appear to be focusing on growth and balancing costs as opposed to new or increased investment in China.

Human Capital Issues

The rising cost of labor and the difficulties in both retaining top employees and letting go of unqualified ones are leading human resources challenges according to respondents. The combination of these factors is making Tianjin a less desirable location for business. In order to maintain economic growth, the city needs a strong and vibrant workforce. This will require cooperation between business and government to manage human resources costs while also ensuring that Tianjin remains an attractive city for the brightest talent.

Total Labor Costs

Among Tianjin members, 63 percent cited rising labor and social benefits costs as their number one human resources challenge. Tianjin is now becoming increasingly uncompetitive, not only when compared with foreign countries, but also relative to other cities in China. Tianjin must slow the rate of growth in labor costs or risk losing its leading position for advanced manufacturing and other labor-sensitive industries.

Skills Shortage

Tianjin still lags behind other major cities in terms of overall management talent. Finding, hiring, and retaining appropriate staff were the biggest human resources challenges cited by 41 percent of members. Tianjin is taking positive steps to address this issue. A strong education base is being built, including the recently created Haihe Education Park, which hosts branch facilities of 13 different colleges and technical schools co-located on one large campus in Jinnan district. Private companies also make use of Haihe's resources with leading projects using the onsite facilities. We believe more needs to be done by the government to publicize these initiatives and to partner with locally-based foreign-invested enterprises.

Technology and Innovation

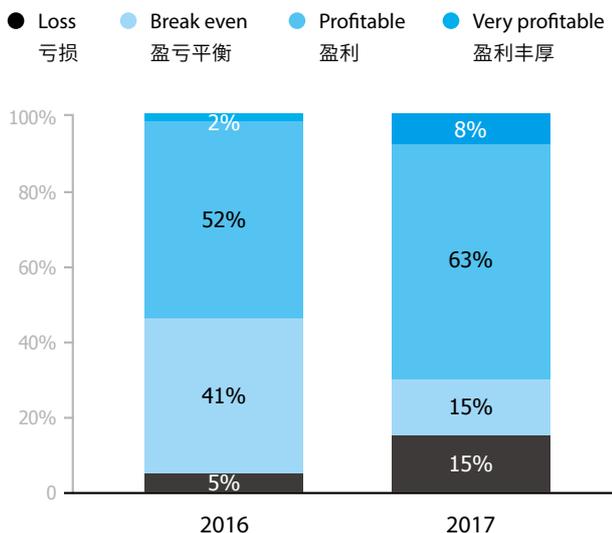
While there has been a marked overall improvement in intellectual property rights (IPR) protection, the protection of trade secrets and trademarks is still a topic of a high concern. A strong and transparent environment in which to operate and innovate is necessary for Tianjin to remain a destination for investment and growth.

Overall Innovation Climate

Innovation remains important in Tianjin, with 97 percent of members considering innovation very important to their operations in China, and 43 percent stating that it is a top three priority. With increasing costs and lower growth, inno-

Financial Performance of Tianjin-Based Member Companies

天津会员企业的财务表现



然很难获得必要的许可，但如果沿着这一方向进一步开放，将极大推动中国真正地融入国际市场。

我们建议天津市政府提高天津自贸区相关政策的透明度，帮助外国投资者更好地利用这一平台。另外，为京津冀一体化地区的未来发展规划提供清晰的路线图，也能够提高投资环境的可预测性，开放众多新的增长途径。

天津的商务和经营环境

展望未来，有40%的受访企业预计增长放缓。加上劳动和其他投入成本增加，这一趋势将迫使企业不得不开展创新和提高效率。虽然国内市场继续增长，但是天津的企业和工业需要通过创新才能在如此艰难的经营环境中实现提高效率和保持竞争力的目标。

企业经营表现

随着经济增速放缓，去年对我们的会员企业极具挑战性，他们需要做出调整以应对成本增加的问题。此外，各个行业都出现了收入增长放慢的态势。虽然有51%的受访企业表示2016年收入实现增长，但几乎相同数量（48%）的会员企业表示收入持平或减少。同样，有50%的会员企业表示利润增加，还有50%的企业表示与上一年度相比利润持平或减少。为了有效解决这些挑战，天津市政府需要进一步采取措施支持企业，确保天津经济继续保持增长。

增长前景

57%的会员企业表示，国内市场增长仍然是中国的主要商业机会。随着城镇化的推进和电子商务的增长，国内市场对会员企业来说是最有发展潜力的领域。

调查显示，受访企业2017年的三大商业目标分别为：实现核心业务的增长（73%）、降低成本（59%）和确立新的收入（57%）。这反映了增长放缓和成本增加带来的挑战。会员企业似乎更关注增长和成本平衡，而不是在中国进行新投资或增加投资。

人力资本问题

调查显示，受访企业面临的主要人力资源挑战包括劳动力成本不断上升以及难以留住优秀员工和辞退不合格员工。这些因素叠加在一起，降低了天津对企业的吸引力。为了保持经济增长，天津需要有强大和充满活力的劳动力。为此，需要企业和政府合作管理人力资源成本，确保天津保持对高端人才的吸引力。

劳动力总成本

在天津的会员企业中，有63%表示劳动力成本和社会福利成本不断上涨是其人力资源的最大挑战。无论与其它国家还是与中国其它城市相比，天津正逐渐丧失其竞争力。天津必须降低劳动力成本增幅，不然就有可能丧失其在先进制造业和其它劳动力密集行业的领先地位。

技能短缺

总体来说，天津在管理人才方面仍然落后于其他主要城市。41%的会员企业表示找到、聘用和留住适当的人才 是其最大的人力资源挑战。天津正在积极解决这一问题。天津正在建设一个优质的教育基地，其中新建的海河教育园区位于津南区，吸引了13所高校和职业院校设立分校区。民营企业也在利用海河的资源，使用园区的设施开展大型项目。我们认为，为了宣传这些项目以及和当地的外资企业开展合作，政府还需开展更多的工作。

技术和创新

知识产权保护总体来说有明显的改善，商业秘密和商标的保护仍是一个备受关注的问题。为了保持其作为投资和增长目的地的地位，天津需要为经营和创新活动营造一个有力而透明的环境。

vation is a key feature in improving efficiency and keeping margins at acceptable levels. According to Tianjin-based member companies, 48 percent report that China is comparable in technology with other international markets and 33 percent think China is more advanced.

Challenges to Innovate

Despite the importance of innovation and the relative perceptions of China's technological advancement, Tianjin historically has not had a well-established base for developing creative talent, so it is not surprising that Tianjin-based members rate insufficient talent as their top challenge to innovate. Beyond talent, lack of IPR protection and restrictive data security policies were listed as top reasons for limiting further investment in innovation and research and development.

In addition to these challenges, the daily operating environment also presents significant difficulties for innovation. Members cited Internet speed, data security, and censorship as the top three technology-related factors negatively impacting daily operations, making it difficult to attract talent and provide the infrastructure and environment required for world class technology development.

Quality of Life Issues

Pollution

In the autumn and winter of 2016, Tianjin was once again plagued by serious levels of air pollution. While the government has taken steps to resolve the issue, persistent pollution has become a major concern and has reduced Tianjin's quality of life. Expatriates and locals are now often heard discussing strategies to request transfers out of Tianjin to avoid this health concern.

Waste and Recycling

There has been little effort in Tianjin to create the kinds of economic incentives that encourage recycling. Because of sustained low commodity prices and increased labor costs, many lower-grade materials are not currently being collected or recycled, and are instead going to landfills. Since 2015, Guangzhou has implemented subsidies for some low-value materials. We recommend implementing similar initiatives in Tianjin, which would help improve the local environment and sustainability.

Transportation

Traffic congestion continues to be a major concern for residents of the city even with existing license plate restrictions in place. However, we note that additional work on the ring road surrounding Tianjin is progressing and the partial opening of subway line six in 2016 was a welcome addition to the city's growing transportation network. We recommend that the Tianjin government continue and accelerate the development of Tianjin's transportation infrastructure,

as well as make further efforts to increase its integration with regional transportation networks. The vast number of regional license restrictions also makes it quite difficult to coordinate road travel between Tianjin, Beijing, and Hebei; keeping track of days and times when cars may and may not enter different cities is confusing and difficult to navigate.

Corporate Social Responsibility

Over 70 percent of members donate to various entities as part of their corporate social responsibility programs. Most donations from our members are used for environmental, educational, and poverty relief programs. We are proud of our members' contributions and look forward to their continued support in making Tianjin a better city through their generous efforts.

Recommendations

For the Tianjin Government:

- **Current platforms such as the Tianjin PFTZ, the Jing-Jin-Ji integration plan, and OBOR position Tianjin as an innovation center and are welcomed by our members. Implement specific policies in Tianjin that will promote innovation through more advanced uses of technology and information by easing restrictive technological barriers, attracting additional skilled labor, and establishing a more transparent business climate.**
- Market Tianjin to foreign investors more effectively through the use of professional public relations agencies and by coordinating with foreign business chambers as the first steps in addressing the challenges of slowing economic growth and general market instability.
- Provide a clear roadmap for Tianjin's role in the Jing-Jin-Ji regional integration strategy with Beijing and Hebei province, including a strategic plan to identify and promote those sectors in which Tianjin has or can gain competitive advantages, such as service industries, in the broader region.
- Be bold and open in designing the Tianjin PFTZ, providing opportunities for input by the foreign business community on needed reforms. Clarify PFTZ policies and promote their benefits within the business community.
- Implement more flexible policies relating to labor and compliance to ensure that Tianjin remains cost-competitive compared with cities of comparable size.
- Conduct a city-specific sustainability study to ensure that quality of life problems and environmental issues are matched with best-practice solutions.

总体创新环境

创新对天津来说仍然很重要，有97%的会员企业认为创新对其在华业务非常重要，43%的会员企业将创新视为业务发展的三大重点之一。随着成本上升和增长放缓，创新成为企业提高效率和保持一定盈利水平的重要因素。调查显示，48%的天津会员企业表示中国的技术水平和其他国际市场相当，33%的会员企业认为中国的技术水平更先进。

创新面临的挑战

虽然意识到创新的重要性和中国技术水平的先进性，但是天津在历史上并没有建立一个良好的创新人才开发基地，因此天津的会员企业将人才不足列为其创新面临的最大挑战就不足为怪了。除了人才，企业将知识产权保护不力以及限制性的数据安全政策列为制约其进一步投资创新和研发活动的主要原因。

除了上述挑战，日常经营环境也给创新制造了很大的困难。会员企业将互联网速度、数据安全和审查制度视为与技术相关的影响其日常经营的三大不利因素，使其难以吸引人才，不能为世界一流技术的开发提供必要的基础设施和环境。

生活质量问题

污染

2016年秋冬，天津再次遭遇严重的空气污染。虽然政府已经采取措施解决这一问题，但是持续的污染已经成为一大问题，降低了天津的生活质量。为了健康着想，外籍员工和本地居民现在经常讨论如何申请调离天津。

废物回收利用

在提供经济奖励以鼓励废物回收利用方面，天津没有什么作为。由于商品价格持续走低以及劳动力成本不断上升，许多低端材料目前没有回收或再利用，而是直接送到垃圾填埋场。广州自2015年开始向一些低值材料提供补贴。我们建议天津也采取类似举措，这将有助于改善当地环境和可持续性。

交通

虽然天津已经对汽车牌照实施限制措施，但是交通拥堵仍然是城市居民关切的重大问题。我们注意到，天津正在推进环路扩建并于2016年部分开放地铁6号线，这些都

有力地扩充了城市的交通网络。我们建议天津市政府继续加快发展该市的交通基础设施，继续与区域交通网络实施整合。然而，京津冀地区对牌照的诸多限制也使得天津、北京和河北之间很难协调其三地的道路交通，难以理清各个城市车辆允许和禁止上路的日期和时间并依此行驶。

企业社会责任

作为企业社会责任项目的一部分，超过70%的会员企业向各个机构提供捐助。会员企业的捐助大都用于环境、教育和扶贫项目。我们为会员企业做出的贡献感到自豪，期待他们继续支持天津，通过其慷慨努力使天津这座城市变得越来越好。

建议

对天津市政府：

- 天津自贸区、京津冀一体化战略以及“一带一路”等平台目前将天津定位为创新中心，我们的会员企业对此表示欢迎。天津应当实施具体的政策，放宽技术壁垒限制，吸引更多的熟练劳动力，营造更加透明的商务环境，以便通过促进先进技术和信息的使用，推动创新。
- 通过专业公关机构更加积极地向外国投资者推介天津，与外国商会协调行动，首先应对经济增长放缓和市场普遍存在的不稳定等因素的挑战。
- 制定一份清晰的路线图，确定天津在区域一体化战略中的作用，包括确定和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。
- 以大胆和开放的方式设计天津自贸区，在必要的改革方面及时征询外资企业界的意见和建议。明确自贸区的政策，使企业界能从中受益。
- 实施更有弹性的劳动力和合规政策，确保天津对其他同等规模城市保持成本竞争优势。
- 对城市特色的可持续性进行研究，确保生活质量问题和环境问题得到最佳的实践解决方法。

Wuhan

Introduction

Amid slowing national growth, AmCham China's Central China Chapter members continue to maintain a positive outlook on central China's overall business environment. According to AmCham China's annual *Business Climate Survey*, 64 percent plan to increase investment in 2017 and 75 percent say that the investment environment has improved or remained the same in the past year. Wuhan will continue to benefit as a key city in the central government's Construct a National Central City and Rise of Central China strategic plans. Wuhan boasts more on-campus university students than any other city in the world, making Wuhan attractive as a talent pool. Information technology, green technologies, healthcare, e-commerce, smart city design, big data, and logistics are among the promising sectors for US companies to invest in.

The Wuhan and Hubei governments continue to improve the city's living and working environment. Three new subway lines opened in 2016, and efforts continue to reduce pollution. A third terminal for the Wuhan airport is under construction.

AmCham China welcomes further government efforts to attract leadership talent, clarify and consistently apply laws and regulations, improve traffic, and develop international-standard banking services. We also welcome expanded efforts by the US, Hubei, and Wuhan governments to promote Wuhan as a service industry investment opportunity.

Ongoing Regulatory Issues and Recent Developments

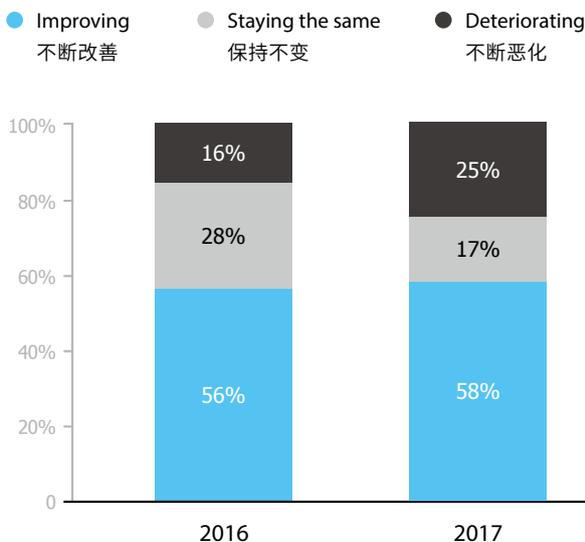
Difficulty Recruiting Talent

Recruiting senior and mid-level talent remains a significant challenge for companies in central China. Members rank rising labor costs as their number one business challenge this year. AmCham China applauds the efforts of local and provincial governments to attract talented personnel to Hubei. Current policies that have focused on attracting global top-level technical experts and leaders are helpful, but not as effective in attracting talented senior managers and team leaders in other areas, whether foreign or Chinese. The talent pool at local universities still neither matches the Wuhan government's ambitions to develop innovative and high-tech talent nor the specific skill needs of relevant foreign enterprises. This limited talent pool also puts pressure on companies' retention of existing staff, increasing labor costs. Managers who work in Wuhan also face housing, education, healthcare, and many other practical challenges, making it difficult to recruit managers from other cities.

AmCham China recommends that the Hubei and Wuhan governments adopt policies to moderate real estate prices. The average price for housing in Wuhan is 50 percent higher than comparable cities such as Chengdu or Wuxi. More affordable housing would aid in attracting talent. AmCham China also recommends that the Wuhan government organize platforms for universities and companies to partner more effectively in improving talent development, as current cooperation efforts are sporadic and isolated. The Wuhan government should also implement policies to

Quality of China's Investment Environment

中国投资环境质量



武汉

引言

虽然中国经济增长总体放缓，但是中国美国商会（商会）华中地区会员企业仍然看好华中地区的总体商务环境。根据商会年度《商务环境调查报告》，64%的会员企业2017年计划增加投资，75%的企业表示投资环境与上一年度相比有所改善或保持不变。武汉将继续受益于中央政府确定的“建设国家中心城市”和“中部崛起”战略。据当地数据统计，武汉在校大学生人数在全球城市排名第一，人才储备充分。诸如信息技术、绿色技术、医疗、电子商务、智慧城市设计、大数据和物流等发展前景良好的行业都是美国企业可以考虑投资的。

武汉市政府和湖北省政府继续改善城市的生活和工作环境。2016年新开通三条地铁线路，并且继续降低污染程度。武汉机场正在修建第三个航站楼。预计在2017年3月底整体投入运行。

商会欢迎政府进一步采取措施吸引管理人才，明确相关法律法规并保证实施的一致性，改善交通条件，发展符合国际标准的银行服务。我们也欢迎美国政府、湖北省以及武汉市努力提升武汉服务行业的投资机会。

现存监管问题及最新进展

难以招聘合格人才

中高级人才的招聘仍然是华中地区企业面临的重大挑战。会员企业将劳动力成本上涨作为今年面临的一项商业挑战。商会对省政府及各地方政府在吸引人才来鄂工作方面所作的努力表示赞赏。目前有关吸引世界一流技术专家和领导者的政策效果明显，但在吸引其他领域的中外优秀高级管理人才和团队领导方面却少有成效。本地高校培养的人才既不符合政府发展创新和高科技行业的宏伟目标的要求，也不能满足相关外资企业的专业技能需求。人才储

备有限也给企业留住在职工造成了压力，从而进一步推高企业的劳动力成本。在武汉工作的管理人员还面临住房、教育、医疗及其他许多实际问题，使得企业难以从其他城市招聘人才来武汉工作。

商会建议湖北省和武汉市政府采取措施抑制房地产价格。武汉住房均价要比成都或无锡这样的可比城市高出50%。提高房价的可承受性有助于吸引人才。商会还建议武汉市政府为高校和企业搭建一个合作平台，改变现有分散孤立的作法，更有效地改进人才培养。武汉市政府还应当采取措施加强和推动中央政府确定的允许高校教师在企业兼职工作的政策。放宽居住/户口限制也会方便来自其他城市的管理人员解决子女入学问题。

法律法规缺乏一致性和明确性

商会认可中国政府在颁布和实施新法律法规，以保持良好商业环境方面所取得的进步。连续两年有超过三分之二的华中地区会员企业认为，政府政策的调整和相关执法活动的推进改善了商业环境。然而，商会的会员企业今年仍然将法律法规缺乏统一性和明确性视为在华中地区开展商业经营所面临的三大挑战中的首要挑战。对外资企业执行的标准比对中国本土企业高，特别是在环境保护领域，使其难以与本土同行竞争。在劳动仲裁等其他领域，也存在对内外资企业采取差别对待的现象，此类现象在湖北省的小城市和县区尤为突出。提高法律法规适用的一致性有助于鼓励外资企业扩大对华中地区的投资。商会建议湖北省政府和武汉市政府充分利用武汉或其他地区的专家资源，对相关执法人员和仲裁人员开展培训，加强他们对法律法规的统一理解和运用。

解决交通问题

商会很高兴看到湖北省政府和武汉市政府近年来大力投资改善交通环境的举措，包括新增国际航线、国际铁路和水运货物交通线路，新建高速公路、地铁和快速公交线

reinforce and stimulate the central government's policy of allowing university instructors to work in companies. Relaxing residency permit (*hukou*, 户口) restrictions would also make it easier for managers from other cities to enroll their children in schools.

Inconsistent and Unclear Laws and Regulations

AmCham China acknowledges the progress made by the Chinese government in enacting and implementing new laws and regulations to maintain a positive business environment. For the second year in a row, more than two-thirds of central China members said changes in and enforcement of government policies have improved the business environment. Nevertheless, inconsistent/unclear rules and regulations remain one of the top three challenges to doing business in central China. Foreign-invested enterprises (FIEs) also seem to be held to a higher standard than their domestic competitors, especially in the area of environmental protection, making it more difficult to compete. The differential treatment of foreign companies compared to their domestic counterparts in other areas such as labor dispute arbitration commissions is particularly acute in the smaller cities and counties of Hubei province. More uniform application of laws and regulations would encourage foreign businesses to increase investment in central China. AmCham China recommends that the Hubei and Wuhan governments utilize experts from Wuhan or other regions to better educate and train enforcement and arbitration officials to have a common understanding and application of laws and regulations.

Addressing Traffic Challenges

AmCham China applauds the significant investments that the Hubei and Wuhan governments have made in recent years to improve traffic conditions, including adding international air routes, international cargo transportation via train and waterway, and additional expressways, subways, and bus rapid transit routes. However, traffic congestion remains one of the chief quality of life issues for AmCham China members. The number of vehicles is increasing at a faster rate than traffic management infrastructure.

AmCham China recommends that the Hubei and Wuhan governments develop a comprehensive traffic management strategy which includes building more parking structures and enforcing laws against parking on pedestrian walkways. We also recommend that real estate developers be required to include traffic flow space in their development of apartment complexes.

Banking Services

AmCham China members welcome China's greater openness in the financial services sector. Nevertheless, enterprises have limited banking options. Almost no foreign banks operate in central China, and those that do face restrictions on the services that they can offer. Credit facilities are sorely

lacking—particularly for small and medium-sized FIEs operating in central China. Smaller enterprises are often forced to use credit cards of individual employees when corporate credit cards would be more convenient and appropriate. AmCham China recommends opening the banking market wider to allow foreign banks more access in order to stimulate improvements in service quality.

Promoting Service Industry Business Opportunities in Wuhan

As central China continues to develop economically and as the personal disposable income of citizens in central China rises, opportunities for service sector industries will continue to expand. Foreign-invested service industry companies are largely underrepresented in central China in comparison to foreign industrial, manufacturing, and technology companies. FIEs can bring new, innovative services to central China, more competitive models for existing services, and increased employment opportunities for locals. However, these service industry companies need the assistance of the US Consulate and local governments throughout central China to remove barriers to entry and to promote new services.

AmCham China urges the US Consulate to coordinate with local governments to help visiting trade delegations explore service sector opportunities in central China as well as sponsor forums to raise awareness of new types of services that can be introduced to the central China market.

Recommendations

For the Hubei and Wuhan Governments:

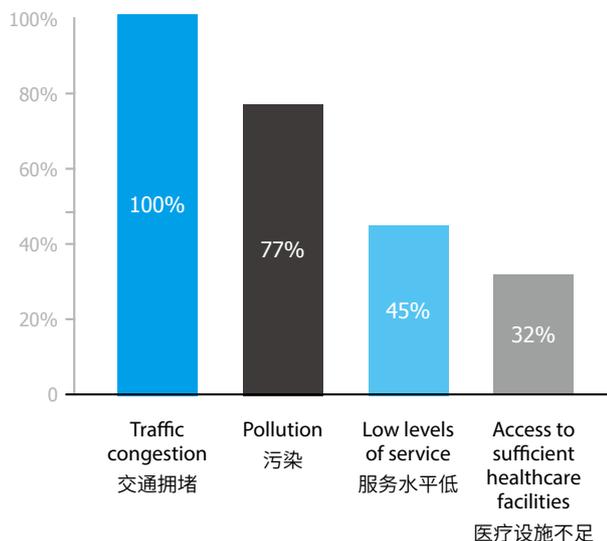
- **Expand the current strategy for attracting talent to Wuhan through efforts including managing real estate prices, relaxing *hukou* regulations, and expanding platforms for universities and companies to work together developing talent.**
- Provide more transparent and uniform enforcement of government rules and regulations.
- Address traffic challenges by improving traffic management and building more parking structures.
- Open the banking sector more widely to foreign investment.
- Cooperate with the US government to promote Wuhan as an investment opportunity through trade delegations.

For the US Government:

- **Cooperate with the Hubei and Wuhan governments to promote Wuhan as an investment opportunity through trade delegations.**

Top Three Challenges that Affect Quality of Life in Wuhan

影响在武汉生活质量的三大挑战



路等。但是，交通拥堵仍然是商会会员企业面临的一个重要的生活质量问题。车辆数量增长的速度超过交通管理基础设施增长的速度。

商会建议湖北省和武汉市政府制定一份全面的交通管理战略，包括建设更多的停车设施，治理人行道停车现象等。我们还建议要求房地产开发商的房屋建设规划考虑交通流量的空间要求。

银行服务

商会会员企业欢迎中国进一步开放金融服务领域。但是，企业可以选择的银行有限。几乎没有外资银行在华开展经营，而那些开展经营的外资银行所提供的服务也有限制。信贷便利奇缺，特别是对在华中的中小型外资企业。尽管企业信用卡更加便利和适合，但是较小的企业经常只能使用员工个人的信用卡。商会建议进一步开放银行业市场，放宽外资银行的市场准入，从而推动服务质量的提升。

提升武汉在服务行业的商业机会

随着华中地区经济进一步发展，居民个人可支配收入提高，服务行业的商业机会将会进一步扩大。与工业、制造和技术行业相比，华中地区服务行业外资企业的数量较少。外资企业能够给华中带来新型和创新服务，为现有服

务提供更有竞争力的模式，增加本地居民就业机会。在取消准入限制以及促进新型服务方面，这些服务行业的企业都需要美国领事馆和华中地区各地政府的帮助。

商会敦促美国领事馆与当地政府协调合作，帮助来访的贸易代表团寻找华中地区服务行业的机会，举办论坛提高华中市场对各类新型服务的认知和接受能力。

建议

对湖北省政府和武汉市政府：

- 通过调控房地产价格、放宽户口限制以及为高校和企业合作开发人才提供平台等方式扩大当前的人才吸引战略。
- 提高政府法律法规透明度和一致性。
- 改进交通管理，增建停车设施，以解决交通问题。
- 向外资进一步开放银行业。
- 和美国政府合作，通过贸易代表团提升武汉的投资机会。

对美国政府：

- 和湖北省及武汉市政府合作，通过贸易代表团提升武汉的投资机会。

Acronyms 缩写表

ACP	US-China Aviation Cooperation Program
AIC	Administration for Industry and Commerce
AMC	Anti-Monopoly Commission
AMEA	Anti-Monopoly Enforcement Agency
AML	Anti-Monopoly Law
APA	Advance Pricing Arrangements
APEC	Asia-Pacific Economic Cooperation
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine
ATFM	Air Traffic Flow Management
ATMB	Air Traffic Management Bureau
AUCL	Anti-Unfair Competition Law
AUM	Assets Under Management
AVIC	Aviation Industry Corporation of China
AWS	Average Wage in Society
B2V	Business Tax to Value-Added Tax
BEPS	Base Erosion and Profit Sharing
BIT	Bilateral Investment Treaty
BMI	Basic Medical Insurance
CAAC	Civil Aviation Administration of China
CAC	Cyberspace Administration of China
CBM/CMM	Coal Bed Methane/Coal Mining Methane
CBP	US Customs and Border Protection
CBRC	China Banking Regulatory Commission
CCAR	China Civil Aviation Regulations
CCC	China Compulsory Certification
CDM	Collaborative Decision Making
CED	Construction, Engineering, and Design
CERC	US-China Clean Energy Research Center
CFA	Chinese Football Association
CFDA	China Food and Drug Administration
CHP	Combined Heat and Power
CIBM	China Interbank Bond Market
CII	Critical Information Infrastructure
CIRC	China Insurance Regulatory Commission
CMDE	Center for Medical Device Evaluation

CNCA	Certification and Accreditation Administration of China
CNCC	Certificate of No Criminal Conviction
CNESA	China Energy Storage Alliance
CNH	China Offshore Spot
COMAC	Commercial Aircraft Corporation of China
CRA	Credit Rating Agency
C-ROSS	China Risk-Oriented Solvency System
CRS	Common Reporting Standards
CRS	Computer-Related Service
CSA	Cost Sharing Arrangement
CSP	Concentrating Solar Power
CSR	Corporate Social Responsibility
CSRC	China Securities Regulatory Commission
DDGS	Distiller's Dried Grains with Solubles
DE	Distributed Energy
DOC	US Department of Commerce
DOE	US Department of Energy
DQ	Design Qualification
DR	Demand Response
DRC	Development and Reform Commission
DRG	Disease-Related Group
ECER	Energy Conservation and Emissions Reduction
ECP	US-China Energy Cooperation Program
ECWG	Export Compliance Working Group
EDS	Express Delivery Service
EIA	Environmental Impact Assessments
ETS	Emissions Trading System
EU	European Union
EV	Electric Vehicle
EVUS	Electronic Visa Update System
FAA	Federal Aviation Administration
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
FI	Financial Institution
FICE	Foreign-Invested Construction Enterprise

FIDE	Foreign-Invested Design Enterprise
FIE	Foreign-Invested Enterprise
FIESE	Foreign-Invested Engineering Services Enterprise
FIT	Feed-in-Tariff
FMC	Football Management Center
FRO	Foreign Representative Office
FTA	Free Trade Agreement
FYP	Five-Year Plan
G20	Group of Twenty
GA	General Aviation
GAC	General Administration of Customs
GAS	General Administration of Sport of China
GB	<i>Guobiao</i> (National Standard)
GDP	Gross Domestic Product
GDS	Global Distribution System
GMP	Good Manufacturing Practice
GPA	Agreement on Government Procurement
GPL	Government Procurement Law
HCP	US-China Healthcare Cooperation Program
HNTE	High and New Technology Enterprise
IAMC	Insurance Asset Management Committee
ICT	Information and Communications Technology
ICV	Intelligent and Connected Vehicle
IEC	International Electrotechnical Commission
IGCC	Integrated Gasification Combined Cycle
IMF	International Monetary Fund
IOC	International Oil Company
IoT	Internet of Things
IP	Intellectual Property
IPO	Initial Public Offering
IPR	Intellectual Property Rights
ISO	International Standardization Organization
IT	Information Technology
ITU	International Telecommunication Union
IVD	In Vitro Diagnostics
JCCT	US-China Joint Commission on Commerce and Trade

JV	Joint Venture
LNG	Liquefied Natural Gas
M&A	Mergers and Acquisitions
MD GCP	Good Clinical Practice for Medical Devices
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
MOCA	Ministry of Civil Affairs
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOST	Ministry of Science and Technology
MOT	Ministry of Transport
MOU	Memorandum of Understanding
MPS	Ministry of Public Security
NBS	National Bureau of Statistics
NCA	National Copyright Association
NDRC	National Development and Reform Commission
NEA	National Energy Administration
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
OBOR	One Belt, One Road
ODP	Overall Development Plan
OECD	Organisation for Economic Cooperation and Development
OEM	Original Equipment Manufacturer
OGIF	Oil and Gas Industry Forum

PBOC	People's Bank of China
PE	Private Equity
PFTZ	Pilot Free Trade Zone
PMA	Parts Manufacturing Authorization
PPA	Power Purchase Agreement
PRC	People's Republic of China
PSB	Public Security Bureau
PSC	Production Sharing Contract
PSU	Professional Supervisory Unit
PV	Photovoltaic
QDII2	Qualified Domestic Individual Investor Program
QFII	Qualified Foreign Institutional Investor
R&D	Research and Development
REIT	Real Estate Investment Trust
RFG	Remanufactured Finished Goods
RMB	<i>Renminbi</i>
RQFII	RMB Qualified Foreign Institutional Investor
S&ED	US-China Strategic and Economic Dialogue
SAC	Standardization Administration of China
SAFE	State Administration of Foreign Exchange
SAFEA	State Administration for Foreign Experts Affairs
SAIC	State Administration for Industry and Commerce
SAPPRFT	State Administration of Press, Publication, Radio, Film, and Television
SASAC	State-Owned Assets Supervision and Administration Commission
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 Right
SESAR	Single European Sky ATM Research
SIPO	State Intellectual Property Office
SIR	Service Invention Regulations
SME	Small and Medium-Sized Enterprise
SOE	State-Owned Enterprise
SPB	State Post Bureau
SPNGX	Shanghai Petroleum and Natural Gas Exchange
SWIM	System Wide Information Management
TC	Technical Committee
TFA	Trade Facilitation Agreement
TIC	Testing, Inspection, and Certification
TMO	Trademark Office
TPR	Trade Policy Review
TRAB	Trademark Review and Adjudication Board
TRQ	Tariff Rate Quota
UK	United Kingdom
UMP	Utility Model Patent
US	United States
USCIS	US Citizenship and Immigration Services
USPTO	US Patent and Trademark Office
USTDA	US Trade and Development Agency
VAT	Value-Added Tax
VATS	Value-Added Telecommunications Services
VC	Venture Capital
VIE	Variable Interest Entity
WFOE	Wholly Foreign-Owned Enterprise
WSL	Work Safety Law
WTO	World Trade Organization
WTO/TBT	WTO Agreement on Technical Barriers to Trade